



THE ADVENT AND FUTURE OF INTERNATIONAL PORT SECURITY LAW

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Awakened to the inherent vulnerability of ships and seaports to the twenty-first century brand of terrorism, the global seafaring community is largely putting aside regional, political, and ideological differences to devise a new international legal framework to safeguard world shipping interests, protect coastal populations from the threat of surreptitious seaborne attack, and to assure trading partners of ship and cargo security. The first iteration of the world-wide effort to regulate port security is codified in a document authorized by amendment to the 1974 United Nations Convention on Safety of Life at Sea (“SOLAS”),¹ called the International Ship and Port Facility Security (“ISPS”) Code.² Originally adopted to promote mariners’ welfare, SOLAS set forth rules for the construction and navigation of ships engaged in international

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¹ International Convention for the Safety of Life at Sea, Nov. 1, 1974, 32 U.S.T. 47, 1184 U.N.T.S. 276 (entered into force May 25, 1980) [hereinafter SOLAS].

² See, IMO Doc. SOLAS/CONF.5/34, annex 1 (Dec. 12, 2002) [hereinafter ISPS Code] (providing resolution 2 of the Dec. 2002 conference containing the ISPS Code). The ISPS Code is implemented through chapter XI-2 of SOLAS. See SOLAS, *supra* note 2, at ch. XI-2.

trade.³ Pursuant to a 2002 amendment, SOLAS signatories were required to implement the provisions of the Code and self-certify compliance by July 1, 2004.⁴ Since then, as participating nations recognize opportunities to improve upon ISPS Code's basic tenets, they continue to refine the regulations in their own bodies of laws. Participating governments have established programs to coordinate the international application of ISPS regulations. Using a wide array of legislative devices such as treaties, statutes, regulations, rules, executive orders, and royal decrees, the world's maritime nations have spontaneously created an entire field of international maritime law—where none existed before.

This article considers the conditions giving rise to international port security law and the subsequent and future legislative and regulatory evolution of international port security law. This article weighs the regulatory influence of the ISPS Code from the United States' perspective and will consider five main issues of port security law. First, to what degree is global port security constrained by self-imposed regulatory gaps in the ISPS Code? Second, how have SOLAS signatory nations addressed and corrected regulatory deficiencies arising from these gaps? Third, how has the United States addressed the jurisdictional challenges resulting from the ISPS Code and from maritime law in general? Fourth, to what extent have ISPS Code regulation protocols given rise to unforeseen legal uncertainties involving jurisdictional infringement, trade agreement adherence, evidentiary procedures, criminal prosecutions, contractual obligations, and tort litigation? Finally, how can maritime nations continue to improve and strengthen the international port security legal regime?

In order to enhance the international port security legal regime, this article then proposes that the United Nation's International Maritime Organization ("IMO") develop an advanced international port security regulatory model. This advanced port security regulatory model will promote international cooperation, facilitate information sharing, and elevate the global port security regulatory discussion above and

³ SOLAS, *supra* note 2, preamble.

⁴ *Id.*

beyond the existing ISPS Code minimum standard. This, in turn, will improve global security.

I. BACKGROUND

Marine insurance giant Lloyd's of London estimates that approximately 112,000 merchant vessels comprising the contemporary maritime shipping industry⁵ link the world's 11,892 international port facilities in 155 coastal nations, dependent territories, and island states. Roughly half a billion containers are dispatched to the seas each year and one in nine of these containers are bound for the United States.⁶ Annually, U.S. ports handle in excess of 50,000 international vessel arrivals, receiving almost ten million containers by sea transport, along with hundreds of millions of tons of liquid and bulk cargo.⁷ Due to the sheer size and complexity of maritime transit based commerce, the U.S. Transportation Security Administration and Federal Bureau of Investigation have identified the global shipping network as the most viable and logistically feasible conduit to move a terrorist organization's weapons and operatives to the United States.⁸

The overwhelming flow of container cargo entering the United States by sea makes unilateral security oversight virtually impossible. Security checks of marine imports at U.S. points of entry are negligible

⁵ Peter Chalk, *Maritime Terrorism: The Threat to Container Ships, Cruise Liners, and Passenger Ferries*, in LLOYD'S MIU HANDBOOK OF MARITIME SECURITY 117, 118 (Rupert Herbert-Burnes et al., eds., 2009).

⁶ BUREAU OF TRANSP. STATISTICS, U.S. DEP'T OF TRANSP., AMERICA'S CONTAINER PORTS: DELIVERING THE GOODS (2007), available at http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/americas_container_ports/2007/pdf/entire.pdf. The American portion of world maritime trade is close to twenty percent. The American portion of world maritime trade is close to twenty percent. See Maritime Commerce Security Plan for the National Strategy for Maritime Security, June 28, 2005, pp 3-4.

⁷ *The State of Maritime Security: Hearing Before the S. Comm. on Commerce, Science & Transp.*, 108th Cong. 2 (2004) (statement of Admiral Thomas H. Collins, Commandant, U.S. Coast Guard, Robert C. Bonner, Comm'r, Customs & Border Protection & Admiral David M. Stone, Acting Adm'r, Transp. Sec. Admin.).

⁸ *Security Challenges for Transportation of Cargo: Hearing Before the S. Subcomm. of the Comm. on Appropriations.*, 107th Cong. (2002) (prepared statement of John MaGaw, Undersecretary of Transp. for Sec.).

and only about ten percent of containers and bulk cargos are subject to scrutiny.⁹ Even then, a security “screening” may consist only of the computer reconciliation of cargo manifests and bills of lading. Further compounding the issue, the supply chain is frighteningly porous. Stretching from manufacturer to consumer, the supply chain winds through a frequently unvetted shipper, then exporter, importer, freight forwarder, customs broker, excise inspector, an uncleared dock worker, and a truck driver, a harbor feeder craft, an ocean carrier, and finally, it reaches the consumer. This long chain presents a myriad of opportunities for exploitation by terrorist groups. For example, terrorist groups are adept at defeating the rudimentary container locks and seals in current use by the shipping industry—and access to these containers are made easier by the porous nature of the chain.¹⁰

A. *New Threats to International Maritime Security*

The world is a different place than it was when the nineteenth century naval historian Alfred Thayer Mahan theorized that “(a)s a nation . . . launches forth from its own shores, the need is soon felt of points upon which the ships can rely for peaceful trading, for refuge and supplies. In the present day friendly, though foreign, ports are to be found all over the world; and their shelter is enough while peace prevails.”¹¹ With the dawn of the twenty-first century, many maritime nations find this friendly shelter threatened by terrorists.

Evidence of the security challenges inherent to the modern shipping industry is plentiful. In October 2001, dockworkers in the southern Italian port of Gioia Tauro investigated unusual noises coming from a Canadian-bound container and found Rizik Amid Farid (“Farid”) inside a well-appointed box. Farid, an Egyptian national and suspected al Qaeda member, was bearing communications devices, computers, maps, and an airline mechanic’s certificate. The airline mechanic’s certificate was valid for New York’s JFK, Newark, Los Angeles

⁹ Robert Block, *Security Gaps Already Plague Ports*, WALL ST. J., Feb. 23, 2006, at A12.

¹⁰ Joshua Ho, *Managing Port and Ship Security in Singapore*, in LLOYD’S MIU HANDBOOK OF MARITIME SECURITY 307, 307-09 (Rupert Herbert-Burnes et al., eds., 2009).

¹¹ ALFRED THAYER MAHAN, *THE INFLUENCE OF SEA POWER UPON HISTORY* 27 (Dover Publications 1987) (1890).

International, and O'Hare Airports. After his arraignment and release on bond, the stowaway disappeared.¹² Soon after the September 11th attacks, Abdul Qadeer Khan ("Khan"), the founder of Pakistan's nuclear development program, stepped up covert nuclear assistance to known state sponsors of terrorism. Having previously provided clandestine technical assistance to Iran, Libya, and North Korea, Khan secretly arranged for the transport of nuclear production components by container ship to those countries from 2002 to 2003. When one of the ships was intercepted, Khan confessed his involvement, but the extent of the illicit container shipments remains unknown.¹³ In December 2002, covert North Korean ballistic missile shipments were intercepted en route to Yemen.¹⁴ In April 2005, Chinese human traffickers set up a fraudulent import/export company and outfitted a container with food, water, blankets, sleeping bags, circulation fans, and pre-cut egress holes. Twenty-nine people boarded the container and transited to the Port of Los Angeles, remaining undetected until they attempted to exit the port facility.¹⁵

Even when not specifically targeted, the global maritime supply chain can be profoundly impacted by terrorism. This was illustrated in the days following the September 11th attacks when the U.S. Customs Service ratcheted the standing port security posture to such a level that all ports of entry were effectively closed.¹⁶ This halted import/export operations, severely impacted time sensitive manufacturing operations,

¹² John-Thor Dahlburg, *Guarding the Coast, and More; Already Protecting 95,000 Miles of Shoreline, the Smallest U.S. Military Branch Found Itself on the Homeland Defense Front Lines After Sept. 11*, L.A. TIMES, Apr. 13, 2002, at A1.

¹³ Michael Laufer, A.Q. *Khan Nuclear Chronology*, 8 CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE 1, 7-8 (2005).

¹⁴ Robert Marquand & Peter Ford, *A New Doctrine and a Scud Bust*, CHRISTIAN SCIENCE MONITOR, Dec. 12, 2002, at 1.

¹⁵ MICHAEL MCNICHOLAS, MARITIME SECURITY: AN INTRODUCTION 184 (2008).

¹⁶ *The Container Security Initiative and the Customs-Trade Partnership Against Terrorism: Securing the Global Supply Chain or Trojan Horse?: Hearing Before the Permanent Subcomm. On Investigations of the S. Comm. on Homeland Security & Governmental Affairs*, 109th Cong. (2005) (statement of Robert C. Bonner, Comm'r, Customs & Border Protection, U.S. Dep't of Homeland Security).

substantially hindered output in the heavy industrial sector, and disrupted a wide range of international commerce.¹⁷

Mirroring the U.S.'s reaction to September 11th, the international community immediately took action. The IMO's responsive development and imposition of maritime security requirements was conducted at a pace described as "mind-boggling."¹⁸ In November 2001, the IMO scrambled to close the gaps in ship-to-port security made painfully obvious by the previous month's terrorist attacks. Seizing upon the malleable and already widely accepted SOLAS¹⁹ as the speediest device to improve security, the IMO chose it as a means to standardize and give effect to a uniform list of ship and port facility security measures.²⁰ The twenty-seven year old SOLAS Convention was amended on December 12, 2002 to incorporate the ISPS Code, a newly minted set of maritime transportation security standards that could respond better to the threats posed by international terrorism.²¹

The stated objective of the ISPS Code was to "establish the new international framework of measures to enhance maritime security and through which ships and port facilities can co-operate to detect and deter acts which threaten security in the maritime transport sector."²² The ISPS Code imposes basic security obligations upon international port

¹⁷ Joseph L. Parks, *The United States-Canada Smart Border Action Plan: Life in the FAST Lane*, L. & BUS. REV. AM. 395, 399 (2004); *State of Maritime Security Hearing*, *supra* note 9 ("[A] terrorist incident against our marine transportation system would have a devastating and long-lasting impact on global shipping, international trade, and the world economy. Based on a recent unscheduled port security closure incident, a maritime terrorist act was estimated to cost up to \$2 billion per day in economic loss to the United States.").

¹⁸ Dennis L. Bryant, *Historical and Legal Aspects of Maritime Security*, 17 U.S.F. MAR. J.L. 1, 24 (2005).

¹⁹ The United Nations Convention for the Suppression of Unlawful Acts Against Maritime Navigation also afforded means to address this issue. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, arts. 3-4, Mar. 10, 1988, 1678 U.N.T.S. 221 (defining a panoply of offenses pertaining to the terroristic use of ships either international transit, or ships in port and scheduled to be in international transit).

²⁰ ISPS Code, *supra* note 3, preamble, para 5.

²¹ ISPS Code, *supra* note 3, foreword, p. iii.

²² ISPS Code, *supra* note 3, part B, 1.1.

facilities and shipping interests of contracting governments and supplements those obligations with optional implementation guidance. Addressing the security responsibilities of the shipper and the port facility, the ISPS Code mandates: (1) security threat assessment; (2) the establishment of ship-to-port communications; (3) physical access restriction; (4) weapons and explosives interdiction; (5) security threat notification; (6) ship and port facility security assessment and planning; and (7) the performance of security training, drills, and exercises.²³ Complementing the mandatory provisions, the ISPS Code envisions more specific measures and arrangements needed to achieve and maintain compliance with the mandatory requirements,²⁴ particularly with respect to the protection of ships berthed within port facilities (i.e., the ship-to-port interface).²⁵

B. *ISPS Code Limitations*

Though conceptually ambitious, the ISPS Code suffers from a number of built-in limitations²⁶ that undermine its ultimate effectiveness. First, as noted above, the ISPS Code is only partially mandatory. The mandatory portion constitutes only about a third of the Code, rendering it more of a port security primer lacking the application of meaningful port security measures. ISPS Code's optional portion delves into greater detail on the mechanics of security, but its implementation cannot be compelled. Second, even the mandatory security measures are restricted to ship-to-port interface.²⁷ Beyond the immediate boundaries of regulated wharves and piers, the international community makes no

²³ ISPS Code, *supra* note 3, part A, 1.3.

²⁴ ISPS Code, *supra* note 3, part B, 1.2, 1.4-1.5.

²⁵ ISPS Code, *supra* note 3, part B, 1.4 (“There could, however, be situations when a ship may pose a threat to the port facility, e.g. because, once within the port facility, it could be used as a base from which to launch an attack.”).

²⁶ ISPS Code, *supra* note 3, preamble para. 5 (“[I]t was ... agreed that the provisions relating to port facilities should relate solely to the ship/port interface. The wider issue of security of port areas will be the subject of further joint work between the International Maritime Organization and the International Labour Organization. It was also agreed that the provisions should not extend to the actual response to attacks or to any necessary clean-up activities after such an attack.”).

²⁷ *Id.*

demands.²⁸ Sprawling industrial zones immediately adjacent to many of the world's port facilities remain unregulated. Furthermore, the IMO specifically declined to address incident response procedures in the ISPS Code²⁹, which is of little help to developing nations and, by design, also completely fails to provide enforcement guidance. Standing alone, the ISPS Code is limited in scope because it is mostly suggestive, lacks meaningful security guidance, and is, as a practical matter, unenforceable.

C. SOLAS 74: *International Responses*

Enforceability issues aside, the philosophy behind the ISPS Code's universal port security scheme is based on twin precepts: to be effective, security measures must be initiated at the beginning of the supply chain (the production/loading phase) and it is easier to prevent a terrorist device from entering the supply chain than to detect it once it is there.³⁰ This modern cargo security methodology employs a chain-of-custody approach similar to the start-to-finish control of evidence in a criminal investigation.³¹ In order to have the chain-of-custody approach within the global maritime trade, previously unheard of levels of international cooperation fostering heightened maritime security awareness are required. To this end, SOLAS's 2002 amendment pertaining to port security required all of the Convention's one hundred and fifty-five signatories to promulgate the individually applicable laws, decrees, orders, and regulations necessary to fully implement the fledgling ISPS Code³² in their jurisdiction by July 1, 2004.³³ Although this initiative is meeting varying degrees of success, it promotes a compelling common objective, coupled with significant commercial incentives, and most maritime states have complied to the best of their respective abilities.

²⁸ *Id.*

²⁹ *Id.*

³⁰ MICHAEL McNICHOLAS, MARITIME SECURITY: AN INTRODUCTION 135(2008).

³¹ *Id.* at 137.

³² SOLAS, *supra* note 2, art. I(b).

³³ ISPS Code, *supra* note 3.

The global family of water-bordering states is as diverse as its constituents. Illustrating this, the maritime community employs a wide array of legislative tools to implement the ISPS Code.³⁴ The most basic form of compliance is implementation by citation. By this method, some SOLAS signatories opt to adopt the entire ISPS Code as written, without expansion.³⁵ Other signatories restate the ISPS Code language in full or in part in their own legislative traditions.³⁶ While technically sufficient to comply with standing international obligations, these methods of implementation automatically adopt the ISPS Code's built-in shortcomings, rendering the subject government powerless to respond to security incidents or to enforce security standards in the absence of supplemental legislation. Though nations may rise to independently address this challenge,³⁷ the potential impact upon the effectiveness of port security in developing nations may be significant. Worse, some SOLAS signatories rely upon aging general port regulations that fail to address security altogether³⁸ and others neglect to report any effort at compliance.³⁹

Anticipating the challenges to developing nations, the Convention, by resolution, strongly urged signatories and member states to "provide, in co-operation with the organization, assistance to those

³⁴ See Annex A for a comprehensive list of national legislation that implements the ISPS Code.

³⁵ See, e.g., Annex A, *supra* note 35 (including Argentina, Cameroon, Equatorial Guinea, and Iceland).

³⁶ See, e.g., Annex A, *supra* note 35 (including Bangladesh, Dominica, Ghana, Guatemala, and Honduras).

³⁷ Annex A, *supra* note 35 (including Cambodia and Fiji).

³⁸ See, e.g., Annex A, *supra* note 35 (including Benin, Chile, Gambia, and India).

³⁹ SOLAS, *supra* note 2, art. I(b) ("The Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect"); *id.* art. III(b) (requiring Contracting Governments to deposit with the IMO Secretary-General "the text of laws, decrees, orders and regulations which shall have been promulgated on the various matters within the scope of the present Convention"). To date, the following countries have yet to promulgate or deposit applicable port security laws or regulations as required: Benin, Comoros, Cote d'Ivoire, Curacao, Djibouti, Egypt, Eritrea, Guinea, Guinea-Bissau, Haiti, India, Iran, Kiribati, Lebanon, Libya, Maldives, Micronesia, Namibia, Nauru, Nicaragua, Nigeria, North Korea, Oman, Pakistan, Qatar, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sri Lanka, St. Maarten, Syria, Timor-Leste, Tuvalu, United Arab Emirates, and Western Sahara.

States which have difficulty in implementing or meeting the requirements of the adopted amendments or the ISPS Code....⁴⁰ To further this, the IMO initiated the Global Program on Maritime and Port Security in 2002 to assist developing countries in improving SOLAS and ISPS Code compliance.⁴¹

D. *The United States' Approach to Port Security*

The United States was motivated to significantly contribute to the development of the international port security infrastructure to counter the most spectacular terrorist attentions in modern history. U.S. port security legislation took a truly innovative turn in the international realm post-9/11. Taking what is arguably the most vigorous approach to port security, the United States' domestic port security implementation strategy relies on U.S. Coast Guard officers appointed as port captains⁴² who have authority to establish security zones,⁴³ command incident response efforts,⁴⁴ and to otherwise enforce port security laws and regulations.⁴⁵ By late 2002, the U.S. stood ready to proactively implement its own port security legislation and adopt regulations with verbiage remarkably similar to the international effort.⁴⁶ Not content to rely upon the efficacy of the fledgling ISPS international maritime security scheme for the protection of the American seaports, Congress took unprecedented measures to push the boundaries of the U.S. maritime transportation system all the way to the ports of origin around the world. Signed into law almost a month before the ISPS Code's

⁴⁰ ISPS Code, *supra* note 3.

⁴¹ Press Release, Int'l Mar. Org., Security Compliance Shows Continued Improvement (Aug. 6, 2004).

⁴² 14 U.S.C. § 634(a) (2006).

⁴³ 33 C.F.R. §1.05-1(f) (2012).

⁴⁴ 46 U.S.C. §70107A(d) (2010).

⁴⁵ 33 C.F.R. §§1.01-30 (2007); 33 C.F.R. §§101-106 (2003).

⁴⁶ Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, 116 Stat. 2067 (2002) ("It is in the best interests of the United States... to have a free flow of interstate and foreign commerce and to ensure the efficient movement of cargo The International Maritime Organization and other similar international organizations are currently developing a new maritime security system that contains the essential elements for enhancing global maritime security. Therefore, it is in the best interests of the United States to implement new international instruments that establish such a system.").

adoption, the U.S. Maritime Transportation Security Act⁴⁷ (“MTSA”) granted the U.S. Coast Guard⁴⁸ sweeping powers to regulate domestic and international shipping within U.S. ports and territorial waters.

Similar in theme but far more specific than the ISPS Code, MTSA established detailed new regulatory authority in maritime governance,⁴⁹ shipping,⁵⁰ port facility⁵¹ and outer continental shelf security.⁵² Given the United States’ influence as a global economic power, MTSA effectively codified maritime transportation security protocols not only for the U.S., but also for every seafaring nation seeking to trade along her shores because the party must comply with the MTSA.⁵³

In 2004, the U.S. Coast Guard established the International Port Security (“IPS”) Program to meet MTSA’s foreign port assessment mandates.⁵⁴ IPS Program representatives, who are primarily junior officers below the rank of Commander, are dispatched around the world to meet with key government and port authorities to verify compliance with international security standards and assess the effectiveness of anti-terrorism measures in facilities that service U.S.-bound vessels.⁵⁵

⁴⁷ *Id.*

⁴⁸ 46 U.S.C. § 70101(5) (2006).

⁴⁹ 33 C.F.R. §§ 101, 103 (2011).

⁵⁰ 33 C.F.R. § 104 (2011).

⁵¹ 33 C.F.R. § 105 (2011). In concept, “ports” are much more expansive than “port facilities,” which are generally limited to the ship-to-port interface. Accordingly, depending on the geography and nature of commerce in a coastal area, a single port may contain several separate and distinct port facilities, each with its own owner/operator and cargo specialty (i.e. petroleum, container, bulk, passenger, etc.).

⁵² 33 C.F.R. § 106 (2011).

⁵³ Similarly influential, Australia, Canada, and the European Community soon followed with similar maritime security legislation that further solidified international ship and port facility security standards.

⁵⁴ US COAST GUARD, Navigation & Vessel Inspection Circular No. 06-03 (2007); Edward H. Lundquist, *International Port Security Program: Coast Guard’s Watchful Eye Monitors Security Problems Overseas*, COAST GUARD OUTLOOK 136, 137 (2011) (quoting U.S.C.G. Commandant ADM Robert J. Papp and Commander Tanya Schneider).

⁵⁵ US COAST GUARD, Navigation & Vessel Inspection Circular No. 06-03 (2007); Lundquist, *supra* note 55, at 136, 137 (quoting Commander Tanya Schneider).

The IPS Program prefers to take a cooperative, bi-lateral approach, inviting foreign maritime trading partners to the United States to observe how the U.S. Coast Guard implements port security on a reciprocal basis.⁵⁶ Since its inception, the IPS Program finds the policy of reciprocity sufficient to overcome most jurisdictional hurdles. The U.S. Coast Guard has visited the port facilities of more than 150 maritime trading partners, and more than half of the world's coastal nations have accepted the invitation to view U.S. port facilities in return.⁵⁷

In addition to defining domestic port security obligations and establishing a policy of reciprocity, the MTSA requires the U.S. Coast Guard to evaluate the effectiveness of anti-terrorism measures in the ports of foreign trading partners,⁵⁸ notify those governments of noted lapses,⁵⁹ provide technical assistance to correct security deficiencies which could potentially affect U.S. port security, and to prescribe conditions of entry for any vessel arriving from a foreign port that does not maintain effective anti-terrorism measures.⁶⁰

In the event of an adverse determination, the U.S. Coast Guard, in cooperation with the U.S. Department of State, must issue a formal demarche to the trading partner outlining the noted deficiencies and recommending steps for improvement.⁶¹ A foreign government has

⁵⁶ Lundquist, *supra* note 55, at 137 (quoting Commander Tanya Schneider). Private port owners in the United States are under no statutory or regulatory obligation to cooperate with the Coast Guard to allow foreign port security delegations access their facilities. While the Coast Guard enjoys domestic port facility access by virtue of its numerous law enforcement and regulatory authorities, that power does not extend to authorizing access to third parties and foreign powers. See 33 C.F.R. §§ 101-106 (2011). Should the Coast Guard ever seek to force the issue, a reluctant port owner could potentially object on the ground that the U.S. sponsored inspection of a facility by a foreign power constitutes a violation of the Fourth Amendment prohibition against unreasonable searches and seizures. U.S. CONST. amend. IV. Furthermore, such an involuntary inspection would violate regulatory prohibitions on divulging the proprietary information and trade secrets of U.S. entities. 49 C.F.R. § 1520.7 (2011).

⁵⁷ Dan Orchard, *International Port Security – A Global Challenge*, 68 U.S. COAST GUARD PROCEEDINGS 34 (2011).

⁵⁸ 46 U.S.C. § 70108 (2011).

⁵⁹ 46 U.S.C. § 70109 (2006).

⁶⁰ 46 U.S.C. § 70110 (2006).

⁶¹ 46 U.S.C. § 70109(a) (2006) (stating that unless the Secretary “[finds] that a port in a foreign country does not maintain effective antiterrorism measures, the Secretary shall

ninety days from the date of notification to remedy major security deficiencies within its port facilities.⁶² After the ninety days, if the trading partner remains unresponsive, the U.S. Coast Guard must notify the public of the insufficiency of security measures within the ports of that country.⁶³ This notice, known as a Port Security Advisory (“PSA”), is published in the Federal Register and alerts U.S. Coast Guard units and the maritime industry at large to the security deficiencies and the control measures prescribed for ships coming from non-compliant ports.⁶⁴ Vessels arriving in the U.S. that have visited any country on the PSA list during their five most recent port calls are normally boarded or examined by the U.S. Coast Guard to ensure the vessel implemented sufficient security measures while in those ports.⁶⁵ If the Captain of the Port is not satisfied with the vessel’s security posture, the Captain may impose conditions of entry⁶⁶ and then deny entry if the vessel does not meet those conditions.⁶⁷ If the government of a foreign trading partner refuses to cooperate or otherwise obstructs the assessment process, the U.S. Coast Guard is empowered by statute to formally conclude non-compliance with international port security standards by virtue of its inability to complete the assessment due to the lack of cooperation.⁶⁸

notify the appropriate authorities of the government of the foreign country of the finding and recommend the steps necessary to improve the antiterrorism measures in use in the port.”).

⁶² 46 U.S.C. § 70110(b); Mike Brown, *International Port Security Program - Implementation of International Regulations*, 63 U.S. COAST GUARD PROCEEDINGS 45, 47 (2006).

⁶³ 46 U.S.C. § 70110(b) (2006).

⁶⁴ See, e.g., Notification of the Imposition of Conditions of Entry for Certain Vessel Arriving to the United States from the Democratic Republic of Sao Tome and Principe, 75 Fed. Reg. 18,871 (Apr. 13, 2010).

⁶⁵ Lundquist, *supra* note 55, at 137.

⁶⁶ Conditions of entry may include, but are not limited to, the imposition of enhanced security measures, declaration of security, daylight transit, security sweeps, armed security, vessel escorts, offshore lightering, and underwater hull surveys. See, e.g., Notification of the Imposition of Conditions of Entry for Certain Vessel Arriving to the United States from the Democratic Republic of Sao Tome and Principe, 75 Fed. Reg. 18871 (Apr. 13, 2010).

⁶⁷ 46 U.S.C. §70110(b) (2006).

⁶⁸ 46 U.S.C. §70108(e) (2006).

In theory, if foreign port security measures are similar to U.S. MTSA standards,⁶⁹ the respective trading partners could enter into cooperative agreements recognizing this to satisfy mutual assessment requirements. The obvious benefits of such an arrangement include freeing personnel to concentrate assessment efforts in areas of genuine need, reduced costs to all parties, and an enhanced atmosphere of cooperation and partnership between signatories. However, such an agreement will require an adjustment to existing U.S. law, which currently imposes a positive obligation on the U.S. Coast Guard Commandant to reassess the effectiveness of antiterrorism measures in foreign ports not less than once every three years.⁷⁰ To allow for bilateral security agreements in this context, the statute must first be amended to allow the U.S. Coast Guard to rely upon PSAs performed by approved third parties. While under discussion, this idea has not advanced legislatively.

II. PORT SECURITY LAW

To date, there are no legal challenges against the United States' policy and procedure for assessing anti-terrorism measures in foreign ports and imposing conditions on ships arriving from foreign ports. However, the rapid domestic and international progression of the body of port security regulation gives rise to the potential for repercussions in other areas of public and private law. In the absence of extant case or controversy, the student of international port security law is not afforded the benefit of authoritative deliberation and guidance. Nevertheless, certain avenues for legal debate are obvious in the areas of jurisdictional authority, trade obligations, contracts, torts, criminal law, evidence and international convention.

⁶⁹ See, e.g., Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 on Enhancing Ship and Port Facility Security, 2004 O.J. (L 129) 6 (EC); Council Directive 2005/65 of the European Parliament and of the Council of 26 October 2005 on Enhancing Port Security, 2005 O.J. (L 310) 28 (EC); *Maritime Transport and Offshore Facilities Security Act 2003* (Cth) (Austl.); *Maritime Transport and Offshore Facilities Security Regulations 2003* (Cth) (Austl.); *Maritime Transportation Security Act*, S.C. 1994, c. 40 (Can.); *Marine Transportation Security Regulations*, SOR/2004-144 (Can.).

⁷⁰ 46 U.S.C. § 70108(d) (2006).

A. *Public Law*

To the extent that port security law frequently invokes inter-governmental interaction, the body of public law is perhaps most sensitive to the emanations of these regulations. Political, ideological, or nationalistic differences may spark criticism of America's unrepentant regulatory focus on port security even though global maritime trade arguably benefits from the increased security environment promoted by U.S. law and foreign policy. In some quarters, the United States is derided as the self-assumed guardian of the world order writ large,⁷¹ especially by countries with more complex hostilities hard wired into the national, tribal, or religious psyche.

1. State Sovereignty

Addressing Congress in 2004, Admiral Thomas Fargo, the former commander of U.S. Forces in the Pacific, suggested the deployment of special operations forces in high-speed vessels to protect U.S. shipping against the threat of terrorism in the Strait of Malacca and approaches to the Port of Singapore.⁷² Malaysia rejected the proposal out of hand, noting that they could look after their own area and that "the use of forces in Southeast Asia to fight terrorism will only serve to fuel Islamic Fundamentalism."⁷³ Likewise, the Indonesian Foreign Ministry balked at U.S. participation in the region on the ground, stating "[i]t is the sovereign responsibility and right of the coastal states of Indonesia and Malaysia to maintain safety and security of navigation in the Malacca Strait."⁷⁴

⁷¹Chris Rahman, *Evolving U.S. Framework for Global Maritime Security from 9/11 to the 1000-ship Navy*, in LLOYD'S MIU HANDBOOK OF MARITIME SECURITY 39 (Rupert Herbert-Burnes et al., eds., 2009).

⁷²David Rosenberg, *Dire Straits: Competing Security Priorities in the South China Sea*, ASIA-PACIFIC JOURNAL: JAPAN FOCUS, (Apr, 13, 2005), <http://www.japanfocus.org/-David-Rosenberg/1773>.

⁷³Sudha Ramachandran, *Divisions Over Terror Threat in Malacca Straits*, ASIA TIMES, June 16, 2004.

⁷⁴*Indonesia Joins Malaysia in Shunning U.S. help in Malacca Straits*, ASSOCIATED PRESS, Apr. 12, 2004 (quoting Foreign Ministry spokesman, Marty Natalegawa); Ramachandran, *supra* note 75.

The precept of state sovereignty is enshrined by the United Nations Charter⁷⁵ and embraced by international courts.⁷⁶ Pursuant to the United Nations Convention on the Law of the Sea⁷⁷ this sovereignty is also applicable to the territorial seas,⁷⁸ harbors within,⁷⁹ and roadsteads beyond.⁸⁰ In the United States, the commitment to the sanctity of national sovereignty is perhaps most evident with regard to the protection of her shores.⁸¹ The U.S. Supreme Court has long held that territorial waters are “subject to the complete sovereignty of the nation, as much as if they were a part of its land territory, and the coastal nation has the privilege even to exclude foreign vessels altogether.”⁸² Thus, Congress has “the power . . . to condition access to our ports by foreign-owned vessels upon submission to any liabilities it may consider good American policy to exact.”⁸³ In application, the Third Restatement of the Foreign Relations Law of the United States notes that “in general, maritime ports are open to foreign ships on condition of reciprocity, . . .

⁷⁵ U.N. Charter art. 2.

⁷⁶ *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14, 112 (June 27).

⁷⁷ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

⁷⁸ UNCLOS, *supra* note 78, art. 2 (“The sovereignty of a coastal State extends, beyond its land territory and internal waters . . . to an adjacent belt of sea, described as the territorial sea.”).

⁷⁹ UNCLOS, *supra* note 78, art. 11 (“For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast.”).

⁸⁰ UNCLOS, *supra* note 78, art. 12 (“Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea.”).

⁸¹ The United States is, by history and geography, a maritime nation and its national security is inextricably linked with seaport security and the control of territorial waters and its approaches. *Haig v. Agee*, 453 U.S. 280, 307 (“It is ‘obvious and unarguable’ that no governmental interest is more compelling than the security of the Nation.”) (quoting *Aptheker v. Secretary of State*, 378 U.S. 500, 509 (1964)).

⁸² *United States v. Louisiana*, 394 U.S. 11, 22 (1969).

⁸³ *Lauritzen v. Larsen*, 345 U.S. 571, 592-93 (1953). This authority derives from the enumerated powers of Congress under the U.S. Constitution. See U.S. CONST. art. I, § 8 (“The Congress shall have power . . . [t]o regulate Commerce with foreign Nations . . .”).

but the coastal State may temporarily suspend access in exceptional cases for imperative reasons”⁸⁴

In 1986, the International Court of Justice echoed U.S. jurisprudence and set a precedent more specifically applicable to the discussion of ISPS Code implementation and enforcement in light of public law state sovereignty. In an attempt to deter Nicaragua from launching guerilla attacks against its Central American neighbors in the early 1980’s, the U.S. imposed sanctions against the regime of Manuel Noriega, closing American ports to vessels of Nicaraguan registry. The sanctions were challenged in the International Court of Justice by the Nicaragua Mining Company. Supporting U.S. policy, the court held that internal waters are subject to the sovereignty of the particular port state and that it is “by virtue of its sovereignty that the coastal State may regulate access to its ports.”⁸⁵ Considerations of state sovereignty⁸⁶ naturally lead to jurisdictional discussions.⁸⁷

2. U.S. Jurisdiction Over International Waters

This paper will not delve into the intricacies of jurisdiction, except to note the exceptional circumstances under which U.S. courts occasionally adjudicate on extraterritorial matters with no traditional

⁸⁴ Restatement (Third) of Foreign Relations Law § 512 cmt. c (1987).

⁸⁵ *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14, 111 (June 27).

⁸⁶ As an aside on the general issue of Sovereignty, ISPS Code Part B, section 4.3 allows contracting governments to authorize a Recognized Security Organization (RSO) to undertake certain security related activities, including: (1) approval of Ship Security Plans, or amendments thereto, on behalf of the Administration; (2) verification and certification of compliance of ships with the requirements of chapter XI-2 and part A of this Code on behalf of the Administration; and (3) conducting Port Facility Security Assessments required by the Contracting Government. Although it is incumbent upon each SOLAS signatory to identify and qualify its own RSOs, there are many companies which provide international RSO services. Where such services are rendered, the RSOs are arguably exercising regulatory authority over that country’s shipping and port infrastructure, thus suggesting that the contracting governments have ceded certain of their sovereign powers to the foreign companies.

⁸⁷ The general concept of “jurisdiction” encompasses not only the traditional exercise of adjudicative and regulatory power by courts and law enforcement agencies, but also describes the constitutional powers of Congress to exert extraterritorial authority to promote the interests of U.S. foreign policy in the form of legislative jurisdiction.

jurisdictional nexus. One such avenue for jurisdiction is territorial, which arises from the location of an offense.⁸⁸ If no territorial connection exists, a nation may still create that nexus on the high seas or in foreign territorial waters through bi-lateral enforcement agreements or by obtaining the consent of any other affected states.⁸⁹ Long employed by the U.S. Coast Guard to greatly extend the bounds of general maritime law enforcement authority, bi-lateral and consent agreements are supported by U.S. courts, which have held that nothing prevents two nations from agreeing that the domestic laws of one nation shall be extended onto the high seas or into the territorial waters of the other.⁹⁰

3. Congressional Authority

By contrast, the extraterritorial reach of Congress in matters of foreign policy has nothing to do with the jurisdiction of the courts. The Constitution grants Congress broad powers to “regulate Commerce with foreign Nations,”⁹¹ and the Supreme Court upholds the Congressional power to “make laws applicable to persons or activities beyond our territorial boundaries where United States interests are affected.”⁹² Congress is generally presumed not to have exceeded the limits of customary international law.^{93 94} However, that is not to say that Congress is absolutely bound by international law.⁹⁵ Although acts of Congress do not normally have extraterritorial application, that presumption may be overcome if such intent is clearly manifested, particularly with regard to the application of treaties and circumstances

⁸⁸ *United States v. Smith*, 680 F.2d 255, 257 (1st Cir. 1982).

⁸⁹ *United States v. Cardales*, 168 F.3d 548, 553 (1st Cir. 1999).

⁹⁰ *United States v. Gonzales*, 776 F.2d 931, 938 (11th Cir. 1985).

⁹¹ U.S. CONST. art. I, § 8, cl. 3.

⁹² *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813-14 (1993) (citing *Ford v. United States*, 273 U.S. 593, 621-23 (1927)).

⁹³ See *Hartford Fire Ins. Co.*, 509 U.S. at 814 (stating that under one of the fundamental tenets of statutory construction, “an act of congress ought never to be construed to violate the law of nations if any other possible construction remains.”) (quoting *Murray v. Schooner Charmer Baby*, 6 U.S. 64, 81 (1804)).

⁹⁴ *Hartford Fire Ins. Co.*, 509 U.S. at 814-15.

⁹⁵ *Hartford Fire Ins. Co.*, 509 U.S. at 814-815; *Rainey v. United States*, 232 U.S. 310, 316 (1914); *Whitney v. Robertson*, 124 U.S. 190, 194 (1888).

that involve foreign and military affairs.⁹⁶ Accordingly, if it chooses to do so, Congress may legislate with respect to conduct outside the United States in excess of the limits imposed by international law.⁹⁷ Where the presumption against extraterritoriality is overcome or is otherwise inapplicable, Congress is deemed to have asserted its “legislative jurisdiction” or “jurisdiction to prescribe.”⁹⁸ Establishing adjudicative or legislative jurisdiction to govern port security on a public law state sovereignty basis is only the first step towards affecting enhanced international port security protocols.

4. Enforcement

Whether implemented by international agreement or through unilateral assertion of legislative jurisdiction, the efficacy of port security standards abroad ultimately rests on the enforcing nation’s power to punish non-compliance, typically through the influence or manipulation of market forces. In fact, the U.N.’s IMO takes the general position that while it has no direct power to enforce the ISPS Code, it anticipates that market forces and economic factors will either drive compliance or quickly force non-cooperative shippers and facilities out of the market.⁹⁹ In U.S. ports, conditions of entry designed to safeguard against terrorist attacks also tend to subject non-compliant vessels to increased scrutiny, delay, and additional costs.¹⁰⁰ PSAs serve to deter passenger traffic to non-compliant countries.¹⁰¹ Given the commercial strength of the United States, the issuance of conditions of entry and public security warnings ultimately has the potential to affect shipping rates, increase insurance premiums, deter tourism, and cause the diversion of cargo to

⁹⁶ *Hartford Fire Ins. Co.*, 509 U.S. at 814 (Scalia, J., dissenting); *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 188 (1993).

⁹⁷ *Hartford Fire Ins. Co.*, 509 U.S. at 814-16.

⁹⁸ *Id.* at 813; RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 60 (1934); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 401, 403 (1987).

⁹⁹ *FAQ on ISPS Code and Maritime Security*, IMO, <http://www.imo.org/OurWork/Security/FAQ/Pages/Maritime-Security.aspx> (last visited Nov. 5, 2012).

¹⁰⁰ Brown, *supra* note 63, at 48.

¹⁰¹ See, e.g., Notification of the Imposition of Conditions of Entry for Certain Vessels Arriving to the United States from the Democratic Republic of Sao Tome and Principe, 75 Fed. Reg. 18,871, 18,872 (Apr. 13, 2010).

more security-conscious countries. In theory, the threat of such business losses should be incentive to promote port security measures sufficient to the higher standards of more security-conscious nations. The willingness of most maritime states to cooperate with the U.S. Coast Guard in ensuring the efficacy of those measures seems to bear out this theory.¹⁰²

5. Trade Agreements

From the perspective of government liability, international trade agreement prohibitions could also be a consideration in the application of trans-national security related regulatory requirements. Adopted by the international community in increments,¹⁰³ the General Agreement on Tariffs and Trade (“GATT”)¹⁰⁴ sets international trade guidelines and dispute resolution procedures. It also guarantees freedom of maritime transit and forbids member states from discriminating against vessels because of the vessel's flag, origin, or destination.¹⁰⁵ To that end, GATT encourages member states to reduce the complexity of import formalities and documentation requirements, so as to avoid unnecessary administrative delay.¹⁰⁶ However, GATT also recognizes that it is the maritime state's sovereign right to take any measures necessary to ensure the national security.¹⁰⁷

¹⁰² Brown, *supra* note 63, at 48; Lundquist, *supra* note 66, at 137.

¹⁰³ With the most recent iteration finalized in 1994 at the Uruguay round of talks. Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994).

¹⁰⁴ General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]; Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement].

¹⁰⁵ GATT, *supra* note 105, art. V.

¹⁰⁶ GATT, *supra* note 105, art. VIII.

¹⁰⁷ GATT, *supra* note 105, art. XXI(b) (“Nothing in this Agreement shall be construed ... (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials or the materials from which they are derived; (ii) relating to the traffic in arms, ammunitions and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; (iii) taken in time of war or other emergency in international relations.”).

6. Current Port Security Regulations in Practice

The convergence of obligation and authority observed in treaties, GATT, U.S. domestic law, and public law is illustrated in the general provisions of SOLAS which empower contracting governments to subject arriving ships to control measures, but grants those ships an entitlement to compensation for damages incurred as a result of undue detention or delay.¹⁰⁸ If a port authority has clear grounds to suspect that an arriving vessel or its port of origin are not security compliant, the authority may impose control measures,¹⁰⁹ including the requirement of additional security-related information, inspection of the ship, delaying the ship, detention of the ship, restriction of operations and movement within the port or expulsion of the ship from port.¹¹⁰ However, SOLAS tempers this clause, warning that denial of entry or expulsion from a port is only appropriate where a ship poses an *immediate* security threat.¹¹¹ Thus, under the terms of the Convention, port authorities must make every effort to avoid undue delay or detention, or face civil liability for any loss or damage suffered.¹¹²

7. U.S. Liability Arising From Distinctions Between MTSA and ISPS Code

The U.S. is in a unique situation because the vigorous port security standards prescribed by MTSA¹¹³ far exceed ISPS Code minimums. Accordingly, an inconvenienced shipper whose voyage originated in the port of a PSA country, that is, a country found by the U.S. Government to have ineffective anti-terrorism measures, may be able to mount challenges after MTSA's application. If the country has self-certified ISPS Code compliance as required by SOLAS, it could arguably maintain that a non-contemporaneous sampling by the U.S. Coast Guard does not constitute "clear grounds" or indicate an

¹⁰⁸ SOLAS, *supra* note 2.

¹⁰⁹ SOLAS, *supra* note 2, ch. XI-2, reg. 9.

¹¹⁰ SOLAS, *supra* note 2, ch. XI-2, reg. 9.

¹¹¹ SOLAS, *supra* note 2, ch. XI-2, reg. 9, 3.3.

¹¹² SOLAS, *supra* note 2, ch. XI-2, reg. 9, 3.5.

¹¹³ Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, 116 Stat. 2064 (2002).

“immediate security threat”. If the claimant can convince the court that the port authority subjected the vessel to undue detention or delay, the U.S. Government may be indebted to the shipper and other affected parties for commercial loss and cargo damage arising from the port authority’s actions.

Such an assertion is not without comparative precedent, as seen in *Canadian Transport Co. v. United States*.¹¹⁴ In *Canadian Transport*, a foreign company based out of a foreign port filed a lawsuit due to the U.S. government’s attempts to administer domestic port regulations. In April 1974, the Canadian-chartered coal carrier M/V TROPWAVE attempted to enter the port of Norfolk, Virginia. The Coast Guard denied entry on the ground that the ship’s master and several of its officers were Polish nationals and so the ship diverted to Baltimore, disembarked the Communist Bloc personnel and returned to Norfolk.¹¹⁵ It was alleged by Canadian Transport Co. that the detour caused the company to suffer \$93,000 in damages.¹¹⁶ The company filed a claim against the U.S. Government alleging intentional interference with contract rights under the Suits in Admiralty Act,¹¹⁷ violation of U.S. treaty obligations, and deprivation of property without due process of law in violation of the Fifth Amendment.¹¹⁸ On motion for summary judgment, the U.S. argued that the U.S. Coast Guard was engaged in the performance of a “discretionary function,” thereby rendering the U.S. immune from suit in that case.¹¹⁹ The district court agreed and the case was dismissed in its entirety.¹²⁰

Upon review, the Appellate Court supported most of the district court’s rationale, but noted that the record reflected that several other Communist Bloc ships and crews were admitted to the Port of Norfolk within the same timeframe, creating an inference that the Coast Guard’s

¹¹⁴ *Canadian Transport Co. v. United States*, 663 F.2d 1081 (D.C. Cir. 1980).

¹¹⁵ *Id.* at 1083.

¹¹⁶ *Id.* at 1084.

¹¹⁷ Suits in Admiralty Act, 46 U.S.C. § 741 (2006).

¹¹⁸ *Canadian Transport Co.*, 663 F.2d at 1083.

¹¹⁹ *Id.* at 1085.

¹²⁰ *Canadian Transport Co. v. United States*, 430 F. Supp. 1168 (D.D.C. 1977), *aff’d in part, rev’d in part*, 663 F.2d 1081 (D.C. Cir. 1980).

actions were arbitrary.¹²¹ The Appellate Court concluded that the Coast Guard's practice of admitting some Communist Bloc vessels while excluding others created a genuine issue of material fact as to whether it was truly performing a discretionary function.¹²² Thus, the Appellate Court reversed the judgment of the District Court and the case remanded for further proceedings.¹²³ *Canadian Transport Co.* demonstrates that similar challenges may arise where MTSA regulations are employed to restrict entry of foreign shipping into U.S. ports.

8. Unique Challenges to Adjudicatory Process in International Port Security Law

In theory, the rapid expansion of international port security law could go so far as influencing adjudicative processes by affecting the application of procedural and evidentiary rules. For example, if a terrorist tucks himself away on a ship with a foreign-approved security plan and then wreaks havoc in the destination port, the terror victims could conceivably seek redress against the ship's operator for failing to implement all requisite security measures to prevent the attack. Plaintiff's counsel will naturally seek the ship's security plan with an eye toward building the case, but they may not get it.

Under the ISPS Code, a ship's security plans must be protected from "unauthorized access or disclosure."¹²⁴ U.S. law is in accord with this precept and goes even further to designate such documents as "sensitive security information."¹²⁵ In the United States, foreign and domestic vessel owners, operators, and charterers are charged with safeguarding sensitive security information¹²⁶ and are forbidden to release such documents except to persons with a "need to know."¹²⁷ Violation could subject the vessel operator to civil penalties and "other enforcement or corrective action" by the U.S. Department of Homeland

¹²¹ *Canadian Transport Co. v. United States*, 663 F.2d 1081, 1088 (D.C. Cir. 1980).

¹²² See *id.* at 1089 (noting that the Suits in Admiralty Act's discretionary function exemption is limited to the exercise of discretion in formulating governmental policy).

¹²³ *Id.* at 1093.

¹²⁴ ISPS Code, *supra* note 3, part A, 9.7.

¹²⁵ 33 C.F.R. § 104.400(c) (2011); 49 C.F.R. § 1520.5(b) (2006).

¹²⁶ 49 C.F.R. § 1520.7 (2011).

¹²⁷ 49 C.F.R. § 1520.9 (2011).

Security.¹²⁸ Unfortunately for our hypothetical litigants, such information is not releasable under the Freedom of Information Act (“FOIA”).¹²⁹ ¹³⁰ Access to the sensitive information is specifically granted to attorneys only for the purpose of providing legal advice to the vessel operator or representing the vessel operator in judicial or administrative proceedings regarding those requirements.¹³¹ This exception lies in the allowance that the U.S. Coast Guard may authorize the release of sensitive security information, provided that the requestor can demonstrate the “need to know.”¹³²

As a rule, the U.S. Coast Guard itself avoids receipt of foreign ship security plans and discourages the international transfer of such documents.¹³³ The U.S. Coast Guard cites lack of resources as the primary reason for not demanding receipt of global shipping’s estimated 40,000 ship security plans.¹³⁴ It is worth noting that, as a practical matter, U.S. Coast Guard review of foreign ship security plans could open U.S. ship owners to undesirable reciprocal demands by the U.S.’s maritime trading partners. Due to this consideration, any request for U.S. Coast Guard authority to release vessel security plans will likely be evaluated through the lens of the foregoing regulations and procedure, thus inevitably requiring judicial intervention and substantially protracting the discovery process and litigation in general.

9. Criminal Law

Meaningful analysis of the international avalanche of criminal regulations defining port security-related offenses and penalties is far

¹²⁸ 49 C.F.R. § 1520.17 (2011).

¹²⁹ 5 U.S.C. § 552 (2006).

¹³⁰ 49 C.F.R. § 1520.15 (2011).

¹³¹ 49 C.F.R. § 1520.11 (2011).

¹³² 49 C.F.R. § 1520.15 (2011).

¹³³ Coast Guard Vessel Security, 68 Fed. Reg. 60,483, 60,488 (“Foreign flag vessels need not submit their Vessel Security Assessments or Vessel Security Plans to the Coast Guard for review or approval. . . . [O]wners and operators of foreign flag vessels that meet the applicable requirements of SOLAS Chapter XI will not have to submit their assessments or plans to the Coast Guard for review or approval.”).

¹³⁴ *Port Security: Hearing Before the Subcomm. on Coast Guard and Mar. Transp. of the H. Comm. on Transp. and Infrastructure*, 108th Cong. (2003) (statement of Admiral Thomas H. Collins, Commandant, U.S. Coast Guard).

beyond the scope of this paper. However, it is worth noting that, as with any untried body of law, it is conceivable that circumstances may arise when the implementation of one rule causes the responsible party to violate another. Take, for instance, the time-honored precept of the Master's discretion. As set forth in the ISPS Code, the Master's discretion allows the Master to abrogate any law which conflicts with the Master's belief of what is necessary to maintain ship safety.¹³⁵ Simultaneously, international law as reflected in the ISPS Code requires ships in port to comply with the security requirements stated by that particular port authority.¹³⁶ In some countries, non-compliance of such directives may constitute a criminal offense,¹³⁷ which gives rise to conflicts between international standards and local implementation of port security.

To illustrate this point, consider that a passenger ship may frequent a heavily regulated port where the authority limits pier-side access to a single point of entry for security reasons. Violation of such a requirement could constitute a criminal offense under the laws of the port state. If a fire breaks out in the engine room, threatening passengers and crew, the captain may disregard this security requirement and open all access points to allow for emergency response. By opening additional entry points the captain is also potentially permitting unauthorized access to the ship from criminal elements. In such circumstances, the conflict between safety and security could give rise to criminal charges. In the alternative, where the captain neglects safety in favor of enforcing ship and port security measures, injured parties could pursue damages in tort. Although such a result may seem improbable, the burgeoning, but untested, body of international port security legislation could be rife with such conflicts.

¹³⁵ See SOLAS, *supra* note 2, ch. XI-2, reg. 8 ("The master shall not be constrained by the Company, the charterer or any other person from taking or executing any decisions which, in the professional judgment of the master, is necessary to maintain the safety and security of the ship. . . . If, in the professional judgment of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to those requirements necessary to maintain the safety of the ship.").

¹³⁶ SOLAS, *supra* note 2, ch. XI-2, reg. 4, 3.

¹³⁷ See, e.g., Cambodia, Annex A, *supra* note 35.

B. *Private Liability*

Private law defines, regulates, enforces, and administers relationships among individuals, associations, and corporations.¹³⁸ In the maritime context, such dispute could materialize along the well-traveled paths of contract and tort litigation, but as in the public realm, the impact of international port security law development on private disputes is likely to be wide reaching. While it is difficult to assess exactly how evolving international port security law will impact private law, the body of existing jurisprudence in other areas of transportation law may hint at the trajectories that resulting litigation may follow.

1. Marine Insurance

Marine insurance is arguably one of the most prevalent issues in private maritime law, touching at least tangentially on almost every aspect of the practice. As noted above, when a country which fails to effectively implement anti-terrorism measures in its port facilities, it may be publically identified, named in a PSA in the federal register, and have its vessels subjected to conditions of entry to U.S. ports. Marine insurers will note the adverse action and will likely increase premiums or terminate coverage. This compounds the negative implications arising from the country's failure to implement effective anti-terrorism measures. When policies are issued and claims arising from security incidents come to fruition, the legal scholar should expect to see significant legal debate concerning the precise meaning of "war risks" and other insured or excluded perils.¹³⁹

¹³⁸ BLACK'S LAW DICTIONARY 830 (6th ed. 1995).

¹³⁹ "War risks" are generally defined as hostile acts or warlike operations. See *Standard Oil Co. v. United States*, 340 U.S. 54 (1950). The U.S. Supreme Court has found that, within the marine insurance context, the term "war risks" includes adventures and perils involving "restraints and detainments of all kings, princes, and people". 345 U.S. 427 (1953) (citation omitted). In contrast, lower courts have expanded the concept of "war risks" to include the use of offensive weapons such as mines, torpedoes, and bombs. *North Branch Resources, L.L.C. v. M/V MSC CALI*, 132 F. Supp. 2d 293 (S.D.N.Y. 2001). A hostile act need not necessarily involve the overt use of a weapon, but may include operations such as the extinguishment of a navigational light or the outfitting of a ship, if

2. Contractual Liability for Violating Port Security Measures

The exercise of port state control measures by a maritime trading nation can conceivably give rise to contractual disputes over liability for lost time and extra expenses incurred by shipping companies trying to comply with conditions of entry. Marine shipping contracts or “charter parties” typically define the terms of the shipping obligation and penalties for non-performance. Such charter parties allow for a specified period of time to load or discharge cargo, known as laytime. After agreed laytimes expire, the charterer may become liable for a specified rate of liquidated damages, known as demurrage.¹⁴⁰ Thus, to interpret the effect of charter parties, one must determine if laytime commenced. The answer to this hinges upon a factual determination as to whether the voyage was completed or, in maritime parlance, whether the vessel in question is an “arrived ship.”¹⁴¹ Theoretically, if a ship is detained at the end of a voyage for enhanced security consideration by the port state, a dispute may arise between the parties as to whether the vessel was an arrived ship, which would commence laytime and expose the charterer to liability for demurrage charges.¹⁴²

Separate contractual liability related to port security implementation may also be found under the general maritime law warranty of seaworthiness. Stated simply, the warranty of seaworthiness requires that the ship be “reasonably fit for the use intended.”¹⁴³ Under maritime law, this warranty is implied in all contracts.¹⁴⁴ It is arguable

done for hostile purposes. *Int’l Dairy Eng’g Co. v. Am. Home Assurance Co.*, 352 F. Supp. 827 (N.D. Cal. 1970).

¹⁴⁰ *Trans-Asiatic Oil Ltd., S.A. v. Apex Oil Co.*, 804 F.2d 773, 775 (1st Cir. 1986); *Gloria Steamship Co. v. India Supply Mission*, 288 F. Supp. 674, 675 (S.D.N.Y. 1968).

¹⁴¹ *Fukaya Trading Co., S.A. v. E. Marine Corp.*, 322 F. Supp. 278, 283 (E.D. La. 1971); *see also St. Ioannes Shipping Corp. v. Zidell Explorations, Inc.*, 336 F.2d 194, 196 (9th Cir. 1964) (“It is concededly the law that under a charter such as the one here, where the lay time is calculable beforehand, delays in the securing of the berth for a discharge of cargo, once the ship has arrived at port, are chargeable to the charterer.”).

¹⁴² *BIMCO ISPS/MTSA Clause for Voyage Charter Parties 2005*, BIMCO SPECIAL CIRCULAR (Baltic and Int’l Mar. Council, Bagsvaerd, Den.), June 15, 2005.

¹⁴³ *Amerada Hess Corp. v. S/T Mobil Apex*, 602 F.2d 1095, 1097 (2d Cir. 1979).

¹⁴⁴ *Aaby v. States Marine Corp.*, 181 F.2d 383, 385 (2d Cir. 1950).

that the warranty of seaworthiness includes an assurance that the ship is administratively prepared to enter the destination port and deliver the cargo as intended by the parties.¹⁴⁵ A shipping company's failure to implement personnel, security plan, and documentation requirements required by the ISPS Code¹⁴⁶ could render those ships unseaworthy under general maritime law, enabling parties to sue for contract violations under the warranty of seaworthiness.

3. Tort Liability

Shipping companies could conceivably incur tort liability for failure to properly implement ISPS Code and MTSA security measures. Absent specific precedent, tort claims arising from port security incidents will likely reflect the line of jurisprudence occurring in aviation security claims. After the September 11th attacks, a class action claim was filed against the involved airlines and airport operators.¹⁴⁷ The class included injured claimants, survivors, and entities suffering property damage.¹⁴⁸ The suit alleged that the defendants failed to fulfill their assigned security responsibilities.¹⁴⁹ The district court rejected a Motion to Dismiss, holding that while an intervening intentional or criminal act generally severs the liability of the original tort-feasor,¹⁵⁰ the requirement for causation "has no application when the intentional or criminal intervention of a third party or parties is reasonably foreseeable."¹⁵¹ The court reasoned that the airlines and airport operators were uniquely positioned to protect the plaintiffs from harm and were aware of the history of terrorist suicide missions and hijackings.¹⁵² Due to this, an

¹⁴⁵ See *In re Complaint of Delphinus Maritima, S.A.*, 523 F. Supp. 583, 595 (S.D.N.Y. 1981) (holding, *inter alia*, that a ship owner's failure to check crew credentials, furnish proper navigational charts, and other administrative failures rendered the ship unseaworthy).

¹⁴⁶ See, generally, mandatory provisions of ISPS Code, Part A, Section 9 (ship security plans), Section 10 (ship security records), Section 12 (ship security personnel) and Section 19 (International Ship Security Certificates).

¹⁴⁷ *In re Sept. 11 Litig.*, 280 F. Supp. 2d, 279, 287 (S.D.N.Y. 2003).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 302 (citation omitted).

¹⁵¹ *Id.*

¹⁵² *In re Sept. 11 Litig.*, 280 F. Supp. 2d, 279 at 294-95 (S.D.N.Y. 2003).

obligation existed to take reasonable aviation security measures that would deter terrorist attacks.¹⁵³ Similarly, the duty to take reasonable security measures is well codified in maritime law.¹⁵⁴

If terrorists attack a U.S. port or deliver weapons and operatives using security regulated vessels that are later used in an attack, claims against the ship owner will likely mirror those against the airlines. The plaintiffs can argue that any ISPS Code or MTSA requirement is a reasonable security measure and that the failure to follow it automatically demonstrates a breach of duty, exposing ship owners to the liability seen in aviation security cases.¹⁵⁵

III. THE FUTURE OF INTERNATIONAL PORT SECURITY

While many port security-related legal dilemmas remain untried, significant diplomatic, political, and regulatory developments are already reducing much of the jurisdictional uncertainty surrounding the implementation of the MTSA. Through the U.S. Coast Guard, the United States is promoting an aggressive program of bi-lateral security development and international consensus building aimed to satisfy MTSA mandates and improve the overall integrity of the global maritime system, notably through the IPS Program.

¹⁵³ *Id.* at 307.

¹⁵⁴ International Convention for the Unification of Certain Rules Relating to Bills of Lading, Signed at Brussels, Aug. 25, 1924, T.S. No. 931, 120 U.N.T.S. 155 (entered into force Dec. 29, 1937).

¹⁵⁴ *Id.*, Art. III, Rule 1

¹⁵⁵ Although the ship owner could file for limitation of liability protections, such a defense would only be effective if the ship was compliant with all applicable laws and regulations. See 46 U.S.C. App. §§ 181-188 (2006) (discussing that a vessel owner may limit tort liability to the amount of interest the owner holds in the vessel and freight pending, provided that the loss is incurred without their privity or knowledge). The discovery needed to determine compliance will hinge on the ship's records, including the security plans, which is problematic because U.S. policy prevents the easy disclosure of security plans. This also puts the ship owner in a difficult spot because the failure to keep complete administrative records or to follow training requirements will limit the ship owner's ability to demonstrate sufficient duty to establish a limited liability defense. See generally ISPS Code, *supra* note 3.

The effectiveness of the U.S. approach to regulatory coordination reflects the cooperative global sentiment that has given rise to the rapid expansion of international port security law. Naturally, this coordination is only successful if maritime nations share unified interest in safeguarding their combined port infrastructure. Some countries are inevitably less advanced in the field of port security than others, regardless of their sincerity. While the United States, the European Union, Canada, and Australia were politically and professionally situated following the September 11th attacks to fully regulate their port security processes, many coastal countries lacked the governmental capacity or political will to address port security beyond a cursory recognition of the fundamental international obligations of the SOLAS Convention.¹⁵⁶ Since the ISPS Code avoids critical elements such as incident response, enforcement, or application beyond the limited scope of the ship to port interface, countries which adopt the regime verbatim or by reference also adopt its built-in limitations.¹⁵⁷

The challenge for the community of maritime nations is to find a way to elevate the global port security regulatory discussion above the ISPS Code's minimum standards. Unfortunately, the MTSA and its Canadian and European counterparts are useless in this context because they are crafted to address specific, complex port security issues that result in unduly convoluted marine security policies in comparison to the port security regimes commonplace in many African, South American, and Asian maritime nations. Since the particularized Western security approach does not translate easily into a general system, a uniform template or guideline does not yet exist to develop improved international port security regulations.

¹⁵⁶ SOLAS, *supra* note 2, resolution 5 (“[I]n some cases, there may be limited infrastructure, facilities and training programmes for obtaining the experience required for the purpose of preventing acts which threaten the security of ships and of port facilities . . .”).

¹⁵⁷ The international community is aware of the built-in limitations and tries to address them in cooperative resolutions. See SOLAS, *supra* note 2, resolution 5 (strongly urging contracting governments and member states to “provide, in co-operation with the Organization, assistance to those States which have difficulty in implementing or meeting the requirements of the adopted amendments or the ISPS Code . . .”).

A. *Developing a New International Port Security Code*

The need for further development of more specific port security standards was reiterated in the 2002 amendment to the SOLAS Convention and its associated resolutions.¹⁵⁸ More than a decade later, no further progress has been made to achieve this. In the absence of such detailed guidance, many developing nations are left directionless in their quest to achieve the port security standards enjoyed by the world's more advanced nations. Considering this, the IMO should commence development of an advanced SOLAS port security regulatory model to assist developing countries, promote international cooperation, facilitate information sharing, and elevate the global port security regulatory discussion, emphasizing that the standard must be above and beyond the current ISPS Code minimums.

A review of international port security law reveals that the substance of such a template is emerging. In the years following the September 11th attacks, many countries recognize the value of enhanced port security regulatory standards and seek them out. Nations that transcend the ISPS Code do so by addressing meaningful enforcement, incident response, and conducting compliance evaluation. Although unavoidably piecemeal in nature, the efforts of individual nations to improve on respective legislative and regulatory schemes reflect genuinely innovative port security implementation developments and trend toward bridging ISPS Code gaps, particularly with regard to facility administration, prohibitions, procedures, personnel duties, and adjudication. This suggests a common benchmark for maritime nations to coordinate their port security expectations may be identified.¹⁵⁹

How can one identify the common benchmark, coalescing these independent regulatory advances into a viable port security regulatory model? For comparative analysis, it is useful to rethink the concept of port security regulation, exchanging the ISPS Code's multi-layered, cross-referenced approach for simplicity. Though disparate in form and legal tradition, international port security regulations tend to group

¹⁵⁸ See SOLAS, *supra* note 2, resolution 2; ISPS Code, *supra* note 3, preamble para. 5.

¹⁵⁹ See Annex A, *supra* note 35.

around three common themes: (1) the controlling authority,¹⁶⁰ (2) the primary port security objectives,¹⁶¹ and (3) the means utilized by the controlling authority to enforce the regulatory objectives.¹⁶² Compiling the essence of these into a collection of legislative best practices will create a tool to allow maritime nations to share their innovations and learn from their trading partners. This compilation will serve as a comprehensive international model port security code, creating a new uniform standard.

B. *International Model Port Security Code*

Developing a code that is internationally comprehensible is a challenge. By design, such a model must be concise and straightforward enough to be widely accessible. The model code must be thorough enough in scope to serve capacity building and developmental assistance applications. Since nations of disparate legal tradition and governance wish to coordinate port security measures, it should be sufficiently detailed for use as an analytical checklist. Meanwhile, the model should avoid terms of art and cross-references and permit universal consideration as an *à la carte* menu of stand-alone port security regulatory options.

At minimum, a model code should define the duties and powers of port and shipping authorities and the general, physical, and operational security requirements for both ships and ports. The model code should explain the role of enforcement, prosecutorial, and judicial elements in the implementation of the requirements. The model code should incorporate a broad survey of existing laws and regulations defining offenses and penalties. Lastly, it should remain flexible to address the changing doctrines of port security law as the field continues to evolve in response to the persistent threat of international terrorism. To create this model code, the international maritime community should take steps to supplement existing port security guidance under SOLAS

¹⁶⁰ 33 C.F.R. § 103 (2011).

¹⁶¹ 33 C.F.R. § 104 (2011).

¹⁶² 46 U.S.C. § 70110(a) (2006).

with a Model Port Security Code that will provide developmental assistance beyond the current limited standard of the ISPS Code.¹⁶³

IV. CONCLUSION

Prompted by the early twenty-first century surge in international terrorism, the international community recognizes the need to safeguard the global shipping industry by regulating and coordinating international ship and port security. The world's coastal nations demonstrated unprecedented levels of cooperation to craft the field of international law that is embodied in the ISPS Code. Although the ISPS Code serves as the current standard for international port security discussions, it was intentionally limited by its drafters, rendering it effectively unenforceable as a stand-alone document. Several nations have enacted measures to bridge these gaps, but the United States has taken its regulatory approach a step further, conceptually pushing the boundaries of port security back to the shores of the nation's foreign trading partners. The need for a uniform international port security code to enhance and protect international security is unmistakable.

From its inception, the efficacy of port security law has drawn from the unity of purpose of coastal states in promoting the integrity of the global shipping system. Recognizing this dynamic, the IMO entrusts the evolution of port security law to the international community itself, tasking SOLAS signatory states with mutual assistance in the development of effective port security laws and regulations.¹⁶⁴ As maritime and port security law continues to develop and mature, maritime trading partners find it increasingly important to continue to improve the port security infrastructure, elevating the port security discussion beyond ISPS Code minimum standards and establishing legislative means for effective response and enforcement.

To support this pursuit, the community of maritime nations should create an advanced port security regulatory model. Such a model will serve as both an analytical and capacity building tool, and will enable

¹⁶³ The author proposes the following Model Port Security Code substance and structure included in Annex B.

¹⁶⁴ SOLAS, *supra* note 2, resolution 5.

developing nations to consider and discuss the legislative and regulatory means by which their trading partners define governmental duties and authorities. Critically, a model international port security code will specify ship and port security requirements and empower law enforcement officers, prosecutors, and judges to protect their respective sectors of the international maritime trade. A model port security code will add much needed support to achieving the international community's goal of safe and secure ports.



ANNEX A: COMPREHENSIVE LIST OF LEGISLATION FOR ISPS CODE IMPLEMENTATION

<i>Algeria</i>	Executive Decree re: Matters of ship and port installation security; Executive Decree inscribing the designation of qualified authorities.
<i>Angola</i>	Decreto No. 48/05 Diario Da Republica August 8, 2005.
<i>Angola</i>	Decreto No. 66/07 Diario Da Republica August 15, 2007.
<i>Antigua & Barbuda</i>	Antigua and Barbuda Merchant Shipping Act, 2006, Official Gazette Vol. XXVI No. 19 dated 6th April, 2006, Part VI Maritime Security.
<i>Argentina</i>	Presidential Decree 1241/03 (Regimen de la Navegacion Maritima, Fluvial Y Lacustre, Decreto 1241/2003, No. 138.536/03 del registro del Ministerio de Justicia, Seguridad Y Derechos Humanos, 12/12/2003.
<i>Aruba</i>	AB 1993 No. GT 18, 17 August 2007; AB 2004 no. 40, 09 May 2007; Ministeriele Regeling 2009 no. 81, 16 September, 2009; Schepenbesluit 2004 Decree on Shipping 2004-B.
<i>Australia</i>	Maritime Transport and Offshore Facilities Security Act 2003 (Act no. 131 of 2003, amd Act no. 81 of 2010), 6 July 2010; Maritime Transport and Offshore Facilities Security Regulations 2003 (Statutory Rules 2003 no. 366 amd SLI 2010 no. 178), 1 July 2010.
<i>Austria</i>	230th Regulation of the Minister of Transport, Innovation and Technology a national program to increase the security of Austrian ships, No. 387/1996, 21 June 2006.
<i>Bahrain</i>	Law 48/2009, 8 July 2009.
<i>Bangladesh</i>	Merchant Shipping (Ship and Port Facility Security) Rules 2008, November 2008.
<i>Belgium</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Royal Decree on the State Control of the Port, Number: 2010014271/Docket number: 2010-12-22/19, 22 December 2010; Royal Decree Establishing Rules and Common Standards for Ship Inspection and Survey Organizations and Relevant Activities of Maritime Administrations, Number: 2011014041/Docket number: 2011-03-13/03, 13 March 2011.
<i>Belize</i>	Registration of Merchant Ships (Ship Security) Regulations, 2004, Statutory Instr. No. 90 of 2004, 30 April 2004; Port Facility Security Regulations, Statutory Instr. No. 101 of 2004, 12 June 2004.
<i>Brazil</i>	Plano Nacional De Segunca Publica Portuaria, December 2002.
<i>Brunei</i>	Merchant Shipping (Safety Convention) (Amendment) Regulations, 2004, 23 September, 2004.

<i>Bulgaria</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Cambodia</i>	Sub-Decree on Ship and Port Facility Securities, no. 40 SD/PK, 9 May 2006.
<i>Cameroon</i>	Decree No. 2008/237 of 7/17/08; Arrette No. 410 of 7/17/08.
<i>Canada</i>	Marine Transportation Security Act, S.C. 1994, c.40, December 15, 1994; Marine Transportation Security Regulations, SOR/2004-144, 21 May 2004.
<i>Chile</i>	Reglamento General de Orden, Seguridad Y Disciplina en las Naves Y Litoral de la Republica, 10 September 2009; Instrucciones Para Entidades Que Cuentin Con Sistemas De Seguridad Privada Maritimo-Portuaria, 30 November 1997.
<i>China</i>	International Ship Security Code, 2008; Port Facility Security Code, 2007; Gangkou Sheshi Bao'an Gongzuo Zhinan (Guidelines for Port Facility Security Practice); International Ship Security Code, 2008.
<i>Colombia</i>	Decreto 730 De 2004, Diario Oficial 45.488, 12 March 2004; Resolucion numero 354 Dimar-Digen de 2003, 13 November 2003; Resolucion numero 339 Dimar-Digen de 2003, 28 October 2003.
<i>Congo</i>	Arrete No. 276.
<i>Congo, Dem Republic of the</i>	Ordonnance portant Creation et Fonctionnement du Comite National de Surete Maritime (CNSM) No. 410/CAB/SGT/2009; Direction No, 041/16-10.c-10/2009, 24/03/2009.
<i>Cook Islands</i>	Shipping (Maritime Security) Regulations 2004, Act No. 13;2004, 16 June 2004.
<i>Costa Rica</i>	Decretos No. 31845-MOPT, Alcance No. 27 a La Gaceta No. 119, 18 June 2004.
<i>Croatia</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; The Protection of Commercial Vessels and Ports Open to International Maritime Traffic Code (ISPS Code) (Zakon o sigurnosnoj zastiti trgovackih brodova i luka otvorenih za medunarodni promet), Broj: 01-081-04-1357/2; Port Security Act 2004 (Official Gazette 48/04); Maritime Code (Pomorski zakonic).
<i>Cuba</i>	Resolucion No. 251/05, Gaceta Oficial, 1 March 2006, p. 179.
<i>Cyprus</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.

<i>Denmark</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Announcements from DMA B. Ship Building and Equipment of B Chapter XI-2 Special Measures to Enhance Maritime Security, Executive Order No. 9423, 7 June 2004; Order on the Security of Port Facilities, Executive Order No. 144, 8 March 2004; Announcement of Port Security Features, Ordinance No. 414, 08 May 2012.
<i>Dominica</i>	Marine Safety Circular, MSC 01-04.
<i>Dominican Republic</i>	Presidential Decree 1082-03, 25 November 2003; Comision Portuaria PBIP, 10 March 2004.
<i>Ecuador</i>	Executive Decree 1.111, 27 November 2003; Instruction Oficio No. DIGMER-244/2003 (Pt A); Instruction Oficio No. DIGMER-257/2004; Instruction Oficio No. DIGMER-264/2004 (Pt B); DIGMER-SPM-119-R, 13 December 2005; DIGMER-SPM-924-O, 04 March 2004.
<i>El Salvador</i>	Ley General Maritimo Portuaria, No. 994, Official Gazette 182, Vol. 357, 1 October 2002.
<i>Equatorial Guinea</i>	Ministerial Order No. 16/2008, 7 March 2008.
<i>Eritrea</i>	The Eritrean Port Regulations, Legal Notice No. 103/2005, Gazette Vol. 14/2005, No. 8, 30 October 2005.
<i>Estonia</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Fiji</i>	Maritime & Ports Authority Standard Operational Procedures for Security Officers; Marine (ISPS Code) Regulations 2008, Act No. 35, 2008.
<i>Finland</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>France</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Ordonnance No. 2005-898, 2 August 2005; Decret No. 2007-476, 29 March 2007; Decret No. 2007-937, 15 May 2007; Order on the Safety of Ships, Official Gazette No. 0304/Text No. 17, 31 December 2008; Decree on the Safety of Ships, Official Gazette No. 142/Text No. 34, 20 June 2004; Amendments to the Annex to the 1974 International Convention for the Safety of Life at Sea, Together an International Code for the Security of Ships and Port Facilities (ISPS Code), Official Gazette No. 75/Text No. 5, 28 March 2004.

<i>Gambia</i>	Ports Act, Act No. 21 of 1972 (Amd 2009), Chapter 68:01, 1 September 2009.
<i>Germany</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Regulation of Self-protection of Ships to Defend Against External Threats, 2787, 19 September 2005.
<i>Ghana</i>	Ghana Maritime Security Act, 2004, Act 675, 1 November 2004.
<i>Greece</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Grenada</i>	Statutory Rules and Orders of 2004, June 2004 (Ships and Port Facilities Security Regulations 2004).
<i>Guatemala</i>	Resolucion de la Conferencia - Codigo Internacional Para La Proteccion de Los Buques Y De Las Instalaciones Portuarias, Diario de Centro America No. 82, p. 20, 31 July 2006.
<i>Guyana</i>	Guyana Shipping (Ship and Port Facility Security) Regulations 2004, Reg. no. 2 of 2004, The Official Gazette, 8 May 2004.
<i>Honduras</i>	Decreto Ejecutivo No. PCM-002-2004, La Gaceta, No. 30,378, 30 April 2004; Acuerdo No. 09-DT, La Gaceta, No. 30,686, 3 May 2005.
<i>Hong Kong</i>	Merchant Shipping (Security of Ships and Port Facilities) Rules, Gazette No. 13 of 2004, 29 June 2004.
<i>Iceland</i>	Act on Maritime Security No. 50/2004, cf. amd. No. 18/2007.
<i>India</i>	Merchant Shipping Act 1958; Amd 2002; Amd 2003; India Ports Act.
<i>Indonesia</i>	Regulations Implementing ISPS Code.
<i>Iraq</i>	Law of Ports 21/1995.
<i>Ireland</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; European Communities (Port Security) Regulations 2007, Iris Oifigiuil, 15 June 2007; European Communities (Ship and Port Facilities) Regulations 2004, S.I. No. 413 of 2004.
<i>Israel</i>	Ports Order of 1972.
<i>Italy</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Jamaica</i>	Harbors Act; Shipping Act.
<i>Japan</i>	Law for the Security of Ships and Port Facilities Law No. 31, 4/14/04.
<i>Jordan</i>	Law No. 46 of 2006/Law of Jordan Maritime Authority; Resolution No. 1 of 2004.

<i>Kenya</i>	Merchant Shipping Act of 2009.
<i>Kiribati</i>	Sec. 16 of Shipping Act of 1990; Amd 2006; Kiribati Ports Authority Act 1990 (Amd 1999).
<i>Kuwait</i>	Ministerial resolution No. 90, 2004.
<i>Latvia</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Cabinet Minister Reg. 682; Procedure for Providing Networking Activities Vessel Traffic Monitoring and Information System of Data Exchange Within, Cabinet Regulation No. 857, 4 August 2009.
<i>Liberia</i>	Marine Notice ISP-001 09/04; Monrovia Security Plan 21 MAR 05.
<i>Lithuania</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Res. 490, 30 Apr 01; MoTC Order no. 3-614, 6 Nov, 03; Gov. Decree No. 90, 28 Jan 04; MoTC Order No. 3-108, 25 Feb 04; MoTC Order No. 3-370, 29 Jun 04; LMSA Order No. V-37, 1 Mar 05; MoTC Order No. 3-254, 1 Jun 05; Gov. Decree no. 485, 29 May 06; MoTC Order No. 3-234, 8 Jun 06; MoTC Order No. 3-2, 23 Jun 06; International Ship and Port Facility (Terminal) Security Code, Nr.138-503, 9 December 2002.
<i>Malaysia</i>	Act A1316 Merchant Shipping Act 2007.
<i>Maldives</i>	Draft Port Security Regulation.
<i>Malta</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Malta Maritime Authority Act, Subsidiary Legislation 352.21 2004.
<i>Marshall Islands</i>	MTSA; Title 22; Port Security Regulations; Marine Notice 2-011-16.
<i>Mauritania</i>	Decree 2006-016.
<i>Mauritius</i>	GN/03; 28/04; Ports Regulations 2005.
<i>Mexico</i>	Resolution no. 117; Ley de Navigacion; Reg. 5 Jul 2004.
<i>Montenegro</i>	Zakon O Sigurnosti Pomorske Plovidbe, February 2012.
<i>Mozambique</i>	Resolution No. 25/2004 of 14 July 2004.
<i>Myanmar</i>	Myanmar Merchant Shipping Act 1/2007 (7 Feb 07); The Burma Merchant Shipping Act.
<i>Namibia</i>	Namibia Ports Authority Act, No. 2 of 1994.
<i>Nauru</i>	Port Security Plan (Non-sig/recent coup).
<i>Netherland Antilles (BES)</i>	Landsbesluit havenbeveiling (Ao 2004 No. 51); Eilandsbesluit havenbeveiling (Ao 2004 No. 51); Lansverordening 29 Dec 2009; Ministeriele Beschikking (PB 2004, No. 51).

<i>Netherlands</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; Havenbeveiligingswet [Port Security Law] 7/6/04 & 7/7/10; Schepenbesluit 2004.
<i>New Zealand</i>	Maritime Security Act, March 31, 2004; Maritime Security Regulations, 2004.
<i>Nicaragua</i>	SOLAS Adopted by reference: Nat'l Law 399 (La Gazeta 9/13/04); Regs 2004/153.
<i>Oman</i>	Sultani Decree 98/81 Law for Organization of Sea Trade in Territorial Waters; Decree 12/93; Decree 35/81.
<i>Pakistan</i>	Karachi Port Security Force Ordinance, LXXXIV of 2002; Maritime Security Agency Act, 1994; Coast Guards Act, 1973.
<i>Palau</i>	Executive Order 221; Maritime Security Regulations.
<i>Panama</i>	Ley de Migracion (Ley No. 3 22 Feb 08); Ley 56 (6 Aug 08); Ley 57- General de marine Mercante, 6 August 2008; Ley 57 - General de Marine Mercante, 6 August 2008.
<i>Papua New Guinea</i>	Decision 217/2005; Merchant Shipping Regulation 2004.
<i>Peru</i>	Resolución Ministerial (Ministerial Resolution) 300-2004-MTC/02; 329-2004-MTC/02.
<i>Philippines</i>	Executive Order No. 311; Dept Order No. 2005-05; Senate Bill S.No. 970 (2010); RA No. 9993 (2011).
<i>Poland</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Portugal</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Qatar</i>	Law 8/2004 Protection of Maritime Facilities; Dec. 1966/29 Decree for the Organization of Qatari Seaports.
<i>Romania</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Russia</i>	Document No. 16-03, 9 Feb 07. RF Gov't Reg. 324 (4/11/00); RF Inst. BP-177-p (8/12/03); RF Inst. BP-29-p (2/25/04).
<i>Samoa</i>	Maritime Security Act, 2004; Shipping Act 1998
<i>Sao Tome & Principe</i>	Law Decree 2/1994, 13/2007, 32/2007, 30/2009; PF Access regulations March 2009; Decreto-Lei No. 4/2010.
<i>Saudi Arabia</i>	2006 GCC Rules & Regulations for Seaports (Partial).
<i>Senegal</i>	Decree 2006.322; Decision 2004.565; Decision 2004.1037.
<i>Singapore</i>	Maritime and Port Authority of Singapore Act of 1996 (S 215/2004 Amended) & Merchant Shipping Act of 1995. (Amended).

<i>Slovenia</i>	Reg (EC) No 725/2004, 31 Mar 05; Dir. 2005/65/EC, 26 Oct 05; 884/2005.
<i>Solomon Islands</i>	National Merchant Shipping Act, 1998.
<i>Somalia</i>	Maritime Security Bill 2011; Administrative Activity, Police and Service in Ports.
<i>South Africa</i>	Merchant Shipping Act 1951; Regulations, 2004; National Ports Act No. 12 2005.
<i>South Korea</i>	Ship and Port Facility Security Regulation No. 2003-65; Act for the Security of International Ship and Port Facilities; Enforcement Decree of the Act for the Security of International Ship and Port Facilities, February 4, 2008.
<i>Spain</i>	Reg (EC) No 725/2004, 31 Mar 05; Dir. 2005/65/EC, 26 Oct 05; 884/2005; Real Decreto 1617/2007, 7 Dec.; 2005 Amendments to the International Code for the Security of Ships and Facilities (ISPS Code), 196 (80), 20 May 2005; Resolution 1 of the Conference of Government Contracting International for the Safety of Life at Sea, Resolution 1, 12 December 2002; Resolution 2 of the Conference of Government Contracting International for the Safety of Life at Sea, Resolution 2, 12 December 2002; Ministry of Development Order, FOM/2381/2008 ORDER 13708, 30 July 2008; Annex to the Convention for the Safety of Life at Sea, 12 December 2002.
<i>St. Kitts Nevis</i>	Merchant Shipping (Ships and Port Facility Security) Regulations, 2004.
<i>St. Lucia</i>	Shipping (Ship and Port Facility Security) Regulations No. 46 of June 29, 2004.
<i>St. Vincent</i>	Ship and Port Facility Security Regulations, 2004 (Gazette of Statutory Rules and Orders, 2004 No. 18 6/29/04).
<i>Sudan</i>	Ministerial Decree 9/2003.
<i>Suriname</i>	Maritime Security Law, 2004 (SB 2004 No.90).
<i>Sweden</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security.
<i>Syria</i>	Unified Investments in Syrian Ports.
<i>Taiwan</i>	Commercial Port Law, 2005/02/05.
<i>Tanzania</i>	Merchant Shipping Act (No. 21 of 2003).
<i>Thailand</i>	Untranslated Legislation.
<i>Timor-Leste</i>	Draft Regulations.
<i>Togo</i>	Arrete No. 008/MTPTUH/SG/DAM; Arrete No. 009/MTPTUH/SG/DAM; Ministerial Order 9 Apr 10 (Prescriptions); Ministerial Order 2 Feb 10 (Report).
<i>Tonga</i>	Shipping Act Section (CAP 136); International Ship and Port Facility Security Regulation of 2004; Maritime Security SOP.

<i>Trinidad & Tobago</i>	Port Authority Procedures; Shipping Regs Ch. 50:10.
<i>Tunisia</i>	Maritime Safety Acts (Amd) 1976, 1999.
<i>Turkey</i>	Law 618/1925; Law 2692/1982.
<i>Tuvalu</i>	Merchant Shipping Act (Rev. 2008).
<i>Ukraine</i>	2 Shovtnya 2008, Sec. 16:10; 16:11; 16:18; 17:08; 17:13; 17:25; 17:50; 18:08; 18:03; 18:16.
<i>United Arab Emirates</i>	Port of Fujirah Ordinance of 1982.; NTA Strategic Plan 2011-2013.
<i>United Kingdom</i>	Regulation (EC) No 725/2004, 31 March 04; Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security; The Port Security Regulations 2009, No. 2048, 1 September 2009; The Ship and Port Facility (Security) Regulations 2004, No. 1495, 1 July 2004; The Ship and Port Facility (Security) (Amendment) Regulations 2005, No. 1434, 1 July 2005.
<i>Uruguay</i>	Instructivo De Proteccion Maritima; Decreto 181/2004.
<i>Vanuatu</i>	Port Security Regulation Order No. 17 of 2004.
<i>Vietnam</i>	PM Decision 125/2004; PM Decision 11/2009; Ministry of Transport Circular No. 27/2001/TT-BGTVT 4/14/11; Prime Minister Decision No. 191 9/16/2003.
<i>Yemen</i>	PFSP in file; Ministry of Transport Decision 108/2009 Rules & Instructions for Yemeni Ports.

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