

EAST ASIAN OBSERVER

International Ship and Port Facilities Security Code and its Implementation in Indonesia

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1. Introduction

The principal objective of the International Maritime Organization (“IMO”) is to provide a machinery for the co-operation of government regulations and practice related to shipping engaged in international trade.¹ For this purpose, the IMO is entrusted with the task of encouraging the adoption of the highest practicable standards in a number of specific fields, such as maritime safety, efficiency of navigation, the prevention and control of marine pollution from ships and related administrative and legal matters.² Each State remains free, in theory, to create and apply its own legal standards for maritime safety or safety of shipping, to ships flying its flag and, to a more limited extent, to foreign ships entering its ports or territorial sea. Nevertheless, there would be chaos if these standards varied widely or were incompatible. Fortunately, the international community has perceived the

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¹ IMO Assembly 14th Sess. Dec. 1985, Res. A.572 (14) General Provisions on Ships’ Routeing. See IMO Convention art. 15(j). See also UNITED NATIONS OFFICE FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, ANNUAL REVIEW OF OCEAN AFFAIRS: LAW AND POLICY, MAIN DOCUMENTS 1985 – 1987 VOLUME I, 251 (1989). IMO’s Convention also specifies the functions which the Organization is to undertake in order to achieve its purposes, which embrace: (a) to provide for the drafting of conventions, agreements or other suitable instruments and to recommend these to Governments; (b) to convene conferences when necessary; (c) to make regulations on matters remitted to it by Governments or other appropriate international organizations; (d) to facilitate consultation and exchange of information among Governments; and (e) to facilitate technical cooperation. See also T. Mensah, *The International Regulation of Maritime Traffic: IMO Approaches*, in THE UN CONVENTION ON THE LAW OF THE SEA: IMPACT AND IMPLEMENTATION 483 (E. Brown & R. Churchill eds., 1987).

² Mensah, *id.* at 483.

need for uniformity in the global standards to promote safety of shipping. These standards are contained in a number of international conventions, most of which are works of the IMO. The shipping safety standards dealt with by these conventions consist of factors including seaworthiness of ships.³

The main convention which deals with the seaworthiness of ships is the International Convention for the Safety of Life at Sea of 1974 (hereinafter SOLAS Convention), the latest version of the SOLAS Convention, the first of which was inspired by the sinking of the *Titanic*.⁴ The SOLAS Convention regulates standards for the construction of ships, fire-safety measures, life-saving appliances, carriage of navigational equipment and other aspects of the safety of navigation. In recent times, however, the SOLAS Convention does not sufficiently ensure maritime safety since criminal acts, including terrorism have been carried out against shipping activities. Ships of various countries operating in both the waters of flag States and of port States, or in international waters were neither safe from nor secured against threats and attacks committed by groups of criminals and terrorists.⁵ The threats of violence and attacks are directed not only to ships of various kinds, such as ships of commerce, cargo and passenger, but also to military vessels. Such hazardous threats and attacks even on port facilities started because adequate attention was not paid to the security of the concerned facility. This motivated the IMO to revise or update the SOLAS Convention in order to provide more protection to ships and port facilities all over the world. That is why the international community was successful at designing and issuing a Resolution on International Ships and Port Facilities Security Code (hereinafter ISPS Code).

The ISPS Code came into effect on July 1, 2004. Up until January 1, 2004, no member of the IMO had raised any objection to the provisions and principles of the ISPS Code. The Republic of Indonesia gave her acceptance to the Declaration on June 18, 2003.

The ISPS Code is an amendment to the SOLAS Convention 1974. The Convention was revised because it was not successful in ensuring the safety of ships or its contents (passengers and goods) when the ship either stops at any port or roadsteads, or is sailing in the sea. To address or correct any deficiency or weakness existing in the convention, the ISPS Code stipulates various obligations imposed on ship owners or operators, port's authority, and the government of the IMO member

³ R. CHURCHILL & A. LOWE, *THE LAW OF THE SEA*, 185 (1983).

⁴ The first SOLAS Convention is the 1912 International Convention for the Safety of Life at Sea.

⁵ See generally E. Lee, *Military Rescue Operation for the Hostages Taken by Somali Pirates: Was the Korean Navy's "Daybreak in the Gulf of Aden" Legitimate?* 5 J. EAST ASIA & INT'L L. 38-9 (2012).