THE INTERNALIZATION, UNILATERISM AND REGIONALIZATION OF MARITIME SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT:

A Comparative Study

By

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Resolution A 924 (22) adopted by the twenty-second General Assembly of the International Maritime Organization (IMO), that was held in London in November 2001, urged the Member Governments of the organization to review “measures and procedures to prevent and suppress acts of terrorism that threaten the security of passengers and crews and the safety of ships.” (1) The Assembly further directed the Legal and Facilitation committees of the IMO to review the “existing legal and administrative measures, with a view of updating them to facilitate prevention and suppression of acts of terrorism against ships and port facilities “ (2) This sparked off intense work by the Maritime Safety Committee of the IMO through an Intersessional Working Group (ISWG) that culminated to the adoption of a series of far reaching “measures to prevent and suppress acts of terrorism against shipping.” (3) This was accomplished by a Diplomatic Conference of Contracting Government that met in London from 2nd - 13th December 2002. The most important of these measures were the adoption of the amendment to SOLAS 74 Chapter X1 and the development of the International Ships and Port Security (ISPS) code.

One is bound to ask questions as to what were the measures to be reviewed by the contracting governments and was the deficiencies that necessitated the review? , What constitutes terrorism and what were the past experiences and responses to require adoption of new measures? And what are the future prospects of combating terrorist threats against ships and port facilities?

This dissertation examines and critically analyses the past trends and threats of terrorism and the responses and measures employed to combat it. The study will also examine the amendment to SOLAS74 Chapter X1 creating Chapter X1-2 and the ISPS code and its impact and success in preventing and suppressing acts of terrorism against maritime navigation. It will further highlight the measures already being taken ahead of the implementation of the ISPS code and give an overview of the prospects of the maritime security and the cooperation among states to combat terrorism especially against ships and port facilities. Finally the paper will give relevant recommendations on the measures required to facilitate cooperation in
prevention, suppression and combating the threats of acts of terrorism against maritime industry.

Key words – Terrorism, Prevention, Combating, Suppression, Cooperation Risk management Target hardening and Access.

3 International Maritime Organization (IMO) News(No1 2003); IMO adopts new measures on maritime security pp 5
DECLARATION

I certify that all materials in this dissertation that are not mine have been identified and properly referenced and no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own views, and are not necessarily those of the University.

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LIST OF ABBREVIATIONS

AD – Actione Directe
AIS – Automatic Identification Systems
BR – Red Brigades
C – TPAT – Customs Trade Partnership Against Terrorism
CSI – Container Security Initiative
CSR – Continuous Synopsis Record
E T A – Euzakadi ta Askatasuna
EC – European Commission
ESPO – European Sea Ports Organization
EU – European Union
FBI – Federal Bureau of Investigations
FLN – National Liberation Front
ILO – International Labour Organization
IMO – International Maritime Organization
ISM – International Safety Management
ISPS – International Ship and Port Security
LNG – Liquefied Natural Gas
MSC – Maritime Safety Committee
NATO – North Atlantic Treaty Organization
NVOCC – Non-Vessel Operating Common Carrier
OAS – Organization Armee Secret
OAS Organization of American States
OECD – Organization of Economic Cooperation and Development
PFLP – Popular Front for the Liberation of Palestine
PIRA – Irish Republican Arm
PTA – Prevention of Terrorism Act
RAF – Red Army Faction
SOLAS – Safety of Life at Sea
STCW – Standards of Training Certification and Watchkeeping
TREVI – Organization of European Interior and Justice Ministers
TWA – Trans world Airlines
ULCC – Ultra Large Crude Carrier
UN – United Nations
UNSCR – United Nations Security Council
USA – United States of America
USCG – United States Coast Guard
WCO – World Customs Organization
WMD – Weapons of Mass Destruction
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- MSC Circular 443. Measure to prevent unlawful acts against
passengers and crew on board the ship

-Resolution A 584(14) 1985. Measures to Prevent Unlawful Acts,
which threaten the safety of the ships and security of passengers
and crews.

- MSC Circular 754. Passenger ferry security
CHAPTER ONE.

1.0 INTRODUCTION

The threat of acts of violence against ships and port establishments is not a new phenomenon in the history of shipping. Ships have been subject of piracy, hijackings, violent robberies and other forms of violence since the invention of the sails. Early incidents of piracy were actually romanticised as “visions of bearded renegades sailing the seas of endless blue something akin to a maritime Robin Hood”\(^4\). Today’s piracy is a violent bloody and ruthless game perpetrated by profiteers against victims who are on their own and defenceless and not expecting any help “just around the corner”\(^5\). Whole Crews have been murdered in cold blood and ships and their cargo lost without trace only to reappear in trade under different names, flags and crews as phantom ships. The incidents of piracy have been increasing over the years and are of major concern not only to the International Maritime Community and IMO but also to coastal states in whose waters the effects of piracy may be felt or whose ships are attacked.

The international chamber of shipping has defined piracy as “an act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with intent or capability to use force in furtherance of that act.”\(^6\) This is indicative that the incidents of piracy, hijacking and robbery with violence against ships, all have one element in common, monetary gains as the main motivation. These acts and other such as the pilferage of goods in the port are all incidents of maritime security. Additionally to these elements are the incidents of the terrorism, which has of recent has become a major concern to the international community and in particular to the maritime industry. The threat of acts of terrorism to the security of passengers, crews ships and port facilities is the subject of this study.


\(^5\) Ibid (pp9)

\(^6\) Ibid (pp9)
In chapter two the study will attempt to examine the definitions of maritime security and terrorism. It worth to note that the definition of terrorism has been a subject of contradictions both to the political leaders and the academicians and this study will not attempt to solve the impasse. What can be accomplished here is a construction of an analysis that would explain the features of terrorism in order to gain a working definition that befits the concept. Kenneth G Hawkes 1989 p4 - 6 constructs two scenarios that can explain the magnitude of the threat of modern terrorism to ships and port facilities. In the first scenario a terrorist gains access to the port facility and eventually on board ship using the business card of the ships attorney based in Boston where the ship has just been moored in readiness for discharge of its dangerous cargo of liquefied natural gas. The terrorist has taken advantage of the rush hours of the morning when the inspections at the entry points is lax and when the master of the ship is confronted by all sorts of service providers who all require his attention. He therefore stealthily gets onboard the ship with no one to stop him and gets seated before the ship master who has no way of verifying the credentials of this attorney during these hours in the morning. The man who has effortlessly gained access to the ship is not an attorney but a dangerous terrorist and he has with him weapons capable of levelling a major portion of the port city of Boston.

In the other scenario the caretakers of an oilrig platform are mercilessly bored by the routine operation of ensuring that the oil flow properly to the shoreline facilities and they do not anticipate any unforeseen misshape. However, the platform is a target of terrorists bent on extortion and the plan is to approach the installation under cover of bad weather and darkness and take control of the platform and the people therein. Hawkes concludes that these scenarios would succeed and have been succeeding for years and are likely to succeed in “today’s maritime void”.

The two scenarios mentioned above have common features, which is the essence of maritime security. In both cases there is no control of access and therefore

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the terrorists are able get to their targets without being detected. Secondly the terrorists have approached their targets during their weakest moments when caution is at its lowest and therefore the targets could not be forewarned and have therefore become the easy or targets of opportunity. Ships and port facilities are easy targets of terrorists because of the enormity of their operations and equipment.

The threat of acts of international terrorism against ships and port facilities can be discerned in at least four main areas. Once the terrorists are on board a hijacked ship or port facility, they may use it for extortion by threatening to blow it and if it is an LNG or an offshore installation like the ones in the above scenarios, the state concerned may need to consider negotiation with the terrorists if there is no other feasible solution to the problem. This will be more critical if terrorists can hijack a mega cruise ship with 4500 passengers and crew and demand concessions and ransom because of the sensational reaction the incident would draw from the media and the number of lives under threat. Secondly, the terrorists may place an explosive device in a mega container ship and blow it up in a port facility in an act of sabotage. They may even blow up an LNG or a ULCC in causing massive casualties and destruction of the port infrastructures and the port city and causing enormous environmental pollution which will not only affect the economy of the concerned coastal state but also could paralyse the international trade of that country.

Thirdly terrorists may attempt to use the ships to transport weapon including weapons of mass destruction as means of infiltration to a particular country to be used for terrorist activities. They may even try to infiltrate terrorists themselves using ships and more so by using containers, which is, the most used equipment for the modern door-to-door transportation. This has been attempted in the case of Achilles Lauro in which the Palestinian terrorists attempted to introduce weapons to Israel but changed their motive and hijacked the ship when they were identified in 1985. Furthermore in “October 2001 the Italian authorities intercepted a terrorist “stacked” in a container and destined for Canada with all life support equipment and papers to
make him have an easy entry to that country as an airport security officer. This can be repeated and there are possibilities that it has been attempted and succeeded before discovery by the Italian authorities.

Lastly, a vessel can be used by terrorist as a weapon of mass destruction and rammed into another ship or port facility with disastrous consequences. Terrorists have already accomplished this during the attack on the USS Cole in 2000 in which they used a small boat loaded with bombs and rammed onto the warship killing 17 men and injured many others and the recent Limburg bombing in 2002. If such an incident is perpetrated against a port facility or a mega cruise ship using a gas or crude carrier and loaded with explosives, the consequences will be unimaginable and the casualties and destruction will be shocking.

These capabilities are within the reach of contemporary terrorists. Thousands of ships are sailing in the world seas carrying all types of dangerous cargo unprotected and susceptible to attacks by terrorists and it just requires one fanatic with the required indoctrination to cause a serious incident using a vessel as a means of mass destruction. The suicidal attacks in the United States on 11th September 2001 should serve as glaring examples to this fact.

The upsurge of international terrorism will be discussed in chapter three. The study of maritime security should be seen in the wider context of the general development of terrorism in the western democracies that experienced various levels of upsurge of terrorist activities especially during the period between 1968 and 2001. This has a lot of bearing on the maritime security, as the same western states own the largest shipping fleets in the world.

This upsurge is closely related to the defeat of the Palestinian cause during the six days Arab – Israel war in 1967 when realising their weakness in the use of revolutionary armed struggle the Palestinians reverted to terrorism to advance their cause. They engaged in aircraft hijackings, hostage taking, assassinations and sabotage and therefore internationalising the Palestinian cause. They further adopted

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the leftist ideologies and gained significant support of the emerging leftist domestic
terrorist groups that were emerging and operating in Western Europe and in Latin
America who professed to fight for the liberation struggle against imperialists in the
third world.

The Palestinians' terrorists also sought political asylum in these countries
from where they could organize and plan operations against Israel targets and those
of the Western states that were perceived to support Israelis. These developments
were further compounded by the emergence of state sponsors of terrorism who either
used their agents to further their harassment of opponents or supported various
terrorist groups to attack the Israel and the American interests or to engage in
terrorist activities against their own countries or their rival groups.

Except for the Great Britain that had been experiencing terrorism from Irish
terrorists for a considerable time, almost all the other European states save for the
Scandinavian countries saw an emergence of the leftist terrorist during this period.
These groups were sympathetic to the Palestinian cause and professed to fight for the
down trodden in the Third World and attacked the American and other targets which
they perceived as to represent the western imperialism. They also attacked targets in
their own countries especially the businessmen and the politicians whom they
perceived to sustain an undemocratic and oppressive systems.

The period between 1970 and 1990 saw two significant developments in the
terrorist trends. On the one hand there was evolution from aircraft hijackings and
hostage taking of the late 60s and early 70s to kidnapping and assassinations in the
second part of 70s and early 80s and finally to sabotage during the last part of the
1980s. On the other hand there is abandonment of the extremist leftist terrorism and
adoption of extremist rightist ideology that is evident in West Germany. In Italy the
domestic terrorist activities are more or less subdued during the late 1980s. The
international terrorism however continues into 1990s but it also had undergone
transformation from the earlier leftist orientation to more fanatical and religious
rightist nationalism.
The other important element to consider in relation to the development of the contemporary terrorism is the way each western nation responded to the threat of terrorism. Each country handled terrorist activities in accordance with its strategic foreign policy interests in case of international terrorism and on the domestic scene the responses ultimately depended on whether the threat to the fundamental democratic institutions and the rights of its citizens. It is therefore interesting to discern the ad hoc manner in which the western nations approached the issue of terrorism. Terrorists came to take the advantage of the democratic practices, which assured them of political asylum and established their operational bases in Europe from where they could organize and execute their activities without fear of being suppressed by the authorities. Even when apprehended after a bloody attack the were treated as common criminal and tried under the national laws and sentenced to light jail terms as one terrorist commented of United Kingdom that,” if one of your countrymen killed a man in Libya, he would be shot in a matter of days. Here the assassins know that if they do get caught it will be a jail sentence for ten years. Then he will go home to a hero welcome.”\(^9\)

In fact it was believed that the British police were unarmed and in one case it is asserted as follows; “When the terrorists who seized the Iranian Embassy were recruited in Iraq, they were assured that the British police were unarmed and could not harm them”.\(^{10}\) However the seizure was dealt with ruthlessly by the British special forces but the notion is indicative of the factors that intensified the terrorist activities in the western democracies during that period.

This chapter will also will examine and analyse critically the measures that were deployed by individual countries to combat the terrorism and their reflection on the subsequent developments in counterterrorism. It is evident that the western democracies lacked a common approach to the problem of terrorism despite much effort being undertaken in the establishment of organizations such as the TREVI for the European Community and the OAS for the American states. This essentially was

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\(^{10}\) Ibid (pp15)
because there lacked a common definition as to what constitutes terrorism and each state had its own particular interpretation of the problem. The period was the era of revolutionary movements, which practiced both guerrilla as well as terrorist tactics. This created confusion, as more often the perpetrators of terrorist acts would claim to have acted in self-determination against oppressive and racist regimes and were protected under the exception from political offences.

This problem was further compounded by the emergence of rogue states that sponsored terrorism under the guise of assisting states to fight against colonial domination and other forms of oppressions. This claim eventually became the bottleneck in the adoption of the multilateral conventions that were signed by the member states of the United Nations and rendered them ineffective in eliminating the threat of terrorism.

Chapter four will examine the measure both multilateral and bilateral that were developed during the period preceding the attack on America on September 11, 2001 with a view of establishing the deficiencies that necessitated the requirement for review and development of new ones to facilitate the prevention and suppression of acts of international terrorism especially against maritime navigation. The evaluation of these measures has a direct relevance to the new ones being adopted both by the United Nations, the International Maritime Organization and the other bilateral arrangements aimed at elimination of international terror.

Since 1960s the United Nations General Assembly has adopted twelve conventions and protocols aimed at prevention and suppression of international terrorism wherever committed by whomever and whatever the cause. The key words in all the conventions are establishment of jurisdiction, prosecution or extraditions of the offender and cooperation of states in the above endeavours. However due to pressure from the developing countries and the Eastern block the clause on self-determination in inserted and this brought the contradiction as to what should be the common and acceptable definition of international terrorism. This more than anything else led to none implementation of these international instruments and the same fate was to experience with the bilateral conventions. This prompted states such
as the United States to seek agreements with the friendly countries or undertook to its
own countermeasures to interdict terrorists and took unilateral measures that
included use of military force to protect its citizens from the threat of terrorism.

Therefore the Assembly of the IMO that met in November 2001 among other
things, directed the Legal and Facilitation committees to review the existing legal
and administrative measures to prevent and suppress acts of international terrorism
that threaten the security of passengers the crews and the port facilities.

The impact of the attack on the world trade centre in New York and the
Pentagon in Washington DC by terrorists on 11TH September 2001 proved the
unpredictability of terrorist tactics and dynamism. The weapons deployed, the
everence of the casualties and the precision of the planning and operation were
indicative of the determination of the contemporary terrorists to accomplish their evil
designs. This led to the realisation that ships were easier targets of opportunity than
the aircraft due to the nature of their operation and the cargo they transport and the
enormity of the equipment itself.

The impact of the above attack can be visualised in the intense work that it
sparked off in the shipping industry with the adoption of the resolution 1373 by the
UN Assembly and the resolution A924 (22) by the General Assembly of the IMO.
These two resolutions were the basis of the deliberations of the Intersessional
Working Group that worked throughout the year 2002 to prepare the required
measures to prevent and suppress terrorist attacks against maritime navigation and
port facilities.

The most contentious issues that confronted the maritime experts during the
deliberation of the measures to be undertaken were the concerns of the inspections,
scope of application of the measures, identification the owners of the ships and who
is actually responsible for the recruitment of the crews and the identification of the
seafarers, port facility personnel and the port service providers. The inspection of
cargo was even more critical bearing in mind that already some ports were plagued
with congestions due to low productivity especially in the developing countries. The
USA delegation had already proposed the container security initiative, which was
subject to much opposition from the industry but was left to the consultation between the World Customs Organization and the IMO.

The requirement for the identification of the owners of the ships was another problematic issue in view of the fact that most of the ships are currently under single company registration in open registries where national controls are minimal. Therefore the issue “of piercing the corporate veil” was left for the consideration of the legal committee of the IMO. This issue is still an agenda of the legal committee and perhaps will be deliberated by the IMO General Assembly scheduled for November 2003. The identification of the seafarers was left for finalisation by the International Labour Organization in consultation with the IMO.

The identification of the port personnel and the port service providers was left to the contracting government to handle in their domestic law in consultation with the ILO and their local trade unions. It was felt that as the measures being proposed are only concerned with the ships at the interface with the port facility, the issues concerning shore personnel should be in the preview of the domestic regulations.

The issue of the scope of application for port and the categories to be affected was left to the definitions in the other regulations concerning the ships engaged in international voyages and the ports serving them. However there was a dilemma as to the ships engaged in near international voyages and ports serving the ships on such voyages. Some delegations from nations with large number of ports including those that are privately owned like Japan and some European countries felt that there should be guidelines on this but a compromise was reached that as this may include even smaller vessels engaged in regional trade, it should be left to the national authorities to decide in consideration of the magnitude of the perceived threats. The coastal states were encouraged to enter into regional agreements, if necessary, to develop guidelines on this issue. This will be dealt with in chapter five of this study.

The requirement of the new SOLAS 74 chapter 11 – 2 and the ISPS code will be discussed in chapter six. In this chapter the discussion will dwell on the provisions and the requirement of the new chapter and the code and chapter six will look at the overall impact of the implementation of these provisions. The requirements of the
The requirements of these mandatory instruments have placed heavy responsibilities on the contracting governments and the companies. The governments have to ensure that the shipping industry is secure from the new phenomenon of international terrorism by availing the correct and credible intelligence information as to the terrorist threats and setting the appropriate levels of security in which ships and port facilities will operate at a particular time. The problem that may arise here is as to what extent the government bureaucracies will share security intelligence with the company as most of the government security information is classified and is based on the need to know basis. Furthermore the security of the ships and the port facilities will be entrusted on the company security officers and the port facilities security officers. The issue is as to the capability of these officers in handling the security intelligence passed to them? The governments are bound to designate a particular authority to implement these requirements and the problem will arise as to the experience of the officers that the governments will entrust with these responsibilities especially in the developing countries.

The contracting governments are responsible for ensuring that a port facility security assessment is undertaken and a port facility security plan is prepared for their approval. They are also required to approve the ships security assessment and the security plan. The issue of great concern again is that whereas the role of the preparation of the security plans and the security assessment can be contracted to the Recognized Security Organizations (RSOs) the governments are required to approve
them by the part A of the ISPS code. This again raises the question of the appropriate expertise with the governments who are trained in the relevant assignments.

The SOLAS chapter 11 – 2 and the ISPS code are silent on the legal measures to be applied in case a terrorist is apprehended attempting to get access either to the ship or the port facility. This is left to the jurisdiction of the contracting governments to apply the domestic legislation as for the ships that fail to comply there will be strict measures, it is either denial of entry, detention or expulsion from the port. The master of the ship is also at liberty to refuse to comply in writing and choose to bypass that particular port if deems to be insecure for his ship.

The guidelines to the implementation of the chapter 11 –2 of SOLAS74 and the part A of the ISPS are amply discussed in the recommendatory guidelines in the part B of the ISPS code. However it is of interest to examine some of the procedures of the implementation. This will include discussion of some of the control required by regulation 9 2 of chapter 11 –2and provided for under section 19 of the part A of the code. Furthermore some developed nations such as the United States, United Kingdom and other European nations have embarked on the implementation of the ISPS code even before the date of the entry into force of the amendments. This is in response to the Secretary General call during the closure of the Diplomatic Conference on 13TH December 2002 when he commented that: “Because of the worldwide escalation of acts of terrorism, there can be no doubt of the wisdom, for all parties concerned, of starting to put in place without delay all the necessary infrastructure, such as the legislative, administrative and operational measures that will be needed to give effect to the decisions of the maritime security conference. It is important that this is done methodically and systematically and as soon as possible, without waiting for the entry – to – force date of 1ST July 2004.”11 Some of the mentioned have already developed their model ISPS code. This will be discussed in details in the relevant chapter.

The other measures that have been taken and the financial implications to combat international terrorism will be discussed in chapters seven and eight. The failure of the multilateral initiatives to combat terrorism has led to a flurry of activities in reorganization at regional and bilateral levels to develop cooperation in countering the international terrorist activities. The terrorist attack on America led to the realisation that no country is safe from terrorist menace. After the attack there developed a fragile coalition to punish the states suspected of harbouring terrorists but this now seems to be breaking and there is tendency to unilateralism once again.

There are also endeavours to develop capabilities in combating terrorism especially in the developing countries that have experienced the spill over of terrorism from the western democracies that had had along history of the phenomenon. There is further a rush to ratify and implement the existing multilateral and bilateral treaties and establishment of anti – terrorist special units. Already a number of countries in the developing world have drafted anti – terrorist bills which are experiencing a lot of opposition as in case of Kenya and Malaysia and others.

There is also the implementation of the contentious Container Security Initiative that has been experiencing opposition from the Association of European Ports and the developing countries. There is also the attempts especially in the United States to involve the shipping community in the implementation of security measures and programmes to assist the government in prevention of terrorist activities in the shipping transport.

In these chapters the study will also analyse the financial implications of the implementation of the measures adopted to prevent and suppress the acts of terrorism. This involves the strengthening of port security infrastructure and equipments, port surveillance and patrol and communication equipment training of port facility security personnel and strengthening of the perimeter defences.

The ships will also be required to install the alert systems and distant tracking equipment and they will have to strengthen the restricted areas and train the ship security personnel on board. These are all additional to the already overburdened and over regulated industry at least in views of the operators. The equipment and the
infrastructure required is expensive and will be a great burden especially to the developing countries but the IMO has developed a fund for the purpose.

In chapter nine the study will draw the conclusions and give recommendations and suggestion for the efficient implementation of the measures adopted by the international shipping community to deal effectively with the threat of international terrorism against maritime sector.
CHAPTER TWO

2.0 DEFINITIONS:

There are three concepts that would require definition, as they constitute the theme of this study. These are maritime security, terrorism and the port facilities. This will enable us to understand the way they are used and highlighted in the study.

2.1 Definition maritime security

Maritime security has been defined “as those measures employed by owners, operators, and administrators of vessels, port facilities offshore installations, and other marine organizations or establishments to protect against seizure, sabotage, piracy, pilferage, annoyance or surprise.” This can be further considered as embracing all measures taken to prevent hostile interference with lawful operations of the maritime infrastructure installations and equipment. The above definition should be distinguished from maritime safety that has been defined as to constitute “those measures employed by the owners, operators and administrators of vessels, port facilities offshore installations and other marine organizations or establishments to prevent or minimise occurrence of mishaps or incidents at sea that may be caused by substandard ships, unqualified crew, or operators error.”

The distinction between the above definitions is clearly that of the nature of the threats. On the one hand the threats to maritime security are external and can be countered by development of equally external preventive or suppressive measures and on the other the threats to maritime safety are internal and can be countered by improvement of operational standards of the ships and the competencies of the crew. Furthermore while the incidents of maritime security involve use of violence on the

victims or destruction of infrastructure and equipment, the incidents of maritime safety involves mishaps resulting from poor operation of the infrastructure and equipment due to poor structural standards and operations that can be attributed to human errors commonly brought about by equally poor standards of training and qualification. Two important instruments provide for last but not the least both concepts that have been high on the agenda of activities of the IMO. These are the SOLAS 74 convention for the maritime safety and the SUA convention 1988 for the maritime security.

Turning to the former definition, it is prudent to make to further distinctions for the acts reflected as to the two types of threats to maritime security. There are two key words in the definition that are crucial to this distinction that the words annoyance and surprise. The term annoyance will more often than not refer to incident that can be anticipated like piracy and violent robbery, and pilferage which have characterised the history of shipping industry and has persisted because of human weaknesses in maintaining vigilance and security consciousness on the part of those charged with the responsibility to do so. Hawkes explains this even more vividly in the scenarios of the ship sailing in the Phillips channel in Singapore and the sleepy security guard in the port facility in Seattle. In the case of the ship in the Phillips channel “the ships radar is functioning but no one pays much attention to it. The only lookout posted is the able bodied seaman on watch and he is on the bridge with the mate. ----- Unknown to the mate or anyone else on board, two high-speed boats are approaching from astern. ----- The master’s instructions are to do nothing, in case of a boarding, that might antagonise the captors.”14 As to the sleepy guard in the port facility, “there has been no activity in his area of the port for hours, at least none of which he was aware. He has become bored with the night, bored with his job, and bored with the girlie magazine left by the guard he relived hours before. His only concern and that on which he now focuses all his attention, is staying awake until the end of his shift. A hundred yards or so away, in a container storage area, the thieves are at work. They know the port. They come from the rank and file of the

people who work there.”\textsuperscript{15} In the first case, there will be no resistance because the industry has chosen to remain so, while it is a known fact that Phillip channel and the Malacca strait is a pirates infested hot spots. Furthermore those on board are not vigilant despite this fact and have assumed that “the watch will pass uneventfully.”\textsuperscript{16}

In the case of the demoralised and bored guard, is that pilferage of goods in the port is a persistent problem and hence the deployment of the guards. However this particular guard will not detect the crime because he is not vigilant and the thieves know their trade. Other scenarios can be mentioned but all are indicative that incidents that cause annoyance are preventable or at least can be detected through vigilance before they occur. A characteristic common to these incidents is that they are motivated by monetary gains and will only result to intense violence in furtherance to this motive.

The concept of the element of surprise denotes incidents such as seizure and sabotage common with the terrorist phenomenon. Terrorism has leverage in the element of surprise and thrives on the attack on easy and target of opportunity and it is difficult to anticipate their occurrences and more often than not they are only detected when they have taken place. The activities involving seizure and sabotage are perpetrated by actors with no compunction to use force to achieve their objectives and are often bloody and excessively violent. These activities are not incensed by motivation of monetary gains and will most often than not revert to seeking monetary awards such as ransoms to finance the planning and execution of their plans. This will be discussed in details under the definition of terrorism.

2. 2 Definition of port facility

The new SOLAS 74 chapter X – 2 has attempted to explain what constitutes a port facility, as it is critical to the decision as to which assets, infrastructures, structures and areas should be earmarked for protection but has not offered a clear definition. This was left for the governments to define after consideration of each assets vulnerability assessment. However the Maritime Safety committee (MSC)\textsuperscript{15} Ibid (pp5)\textsuperscript{16} Ibid. (pp5)
meeting held in May 2002 went short of developing a definition when it was asserted that the port facility security assessments constitutes identification and evaluation of “important assets and infrastructures that are critical to the port facility as well as those areas and structures that, if damaged, could cause significant loss of life or damage to the port facility’s economy or environment.” 17 The terms assets, infrastructures, areas and structures constitutes the most important features of the port facility and are required to be protected. The assets may be viewed as comprising of the cargo handling equipment, communications facilities and equipment, boats and surveillance equipment, while the infrastructures would refer to channel, berths and quays, oil and container terminals, port facility stores and the perimeter fences. The area and structures may refer to the seaside and the constructions around the port periphery that although they are not part of the port facility can be used for attacks on the port and therefore require to be secured.

It is therefore justifiable to define the port facility as that area of the port that constitutes “those critical assets infrastructures and structures that if damaged, could cause loss of life or damage the ports economy or the environment.” This would actually leave out such areas as dockyards and the living quarters of the port employees. This was left for the consideration of the government in view of their proximity to the port and whether the terrorists intending to launch attacks against the port facility could use them.

2.3 Definition of terrorism

Over the last four decades, the international community has not developed a definition as to what constitutes terrorism that is universally acceptable. Efforts to define the concept have been hampered by the considerations of as to what motivates the terrorists to engage in violent acts rather that the justification of the acts themselves. Most of the definitions especially by the political leadership have been subjective and based on their ideological orientations and interpretations. It has been observed that “the definitions are often subjective and self – serving or thought to be

so by those who oppose the political interpretation they support.”\textsuperscript{18} The notion of self-determination and liberation from oppressive and racist regimes has been used by revolutionaries, state sponsors and perpetrators of terrorism to justify the unacceptable acts of terrorism. The assertion of “one mans terrorist is another mans freedom fighter has not only become a cliché but one of the most difficult obstacles in coping with terrorism.”\textsuperscript{19}

The notion of self-determination has further led to contradictions as to the distinctions between the acts of indiscriminate terrorism and the national liberation struggle. The states that support and sponsor terrorism have often justified their action by stating that they are assisting the oppressed and downtrodden to liberate themselves from oppression, subjugation and occupation. The Syrian president Hafez Assad expressed this position vividly when he asserted that, “we have always opposed terrorism. But terrorism is one thing and national struggle against occupation is another. We are against terrorism – Nevertheless we support the struggle against occupation waged by national liberation movements.”\textsuperscript{20} Syria has been highly suspected of supporting various terrorist groups the most prominent being the Hezbollah, which has claimed numerous terrorists, acts in the Middle East and in Europe. The fifth Islamic Summit meeting in April 1987 had a similar declaration of support for liberation struggle as against the individual or state brutal and unlawful terrorist activities The conference concluded that “this struggle is sanctioned by heavenly law, by human values and by international conventions”\textsuperscript{21} This was in reference to the clauses in the United Nation conventions for prevention


\textsuperscript{20} Ibid (pp3)

\textsuperscript{21} Ibid (pp3)
and suppression of international terrorism. The Eastern countries and the third world nations that were experiencing the process of decolonization pushed these clauses through the Assembly of the UN. The same became the most difficult obstacles in the implementation of these conventions but also the cooperation of the world nations including the western democracies in the counterterrorism measures. It is evident that this notion still persists despite the fact that most of the liberation in the third world had subsided by the end of 1980s except for the Palestinian question in the Middle East. The declaration by the Foreign and Interior Ministers of the Arab League conference meeting in Cairo in 1998 was even more specific when it was noted that “the belligerent activities aimed at liberation and self determination are not in the category of terrorism -------- hostile activities against regimes or family of rulers will not be considered political attacks but rather criminal assaults.” These statements by the political leaders are a reflection of the notion that the end justifies the means. They do not explain as to what constitutes the belligerent activities of the freedom fighters or in that case those hostile activities against regime or families of rulers. This argument therefore is indicative that even terrorist activities carried out in the pursuit of struggle against oppressive regimes is justified and should not be regarded as acts of terrorism and hence criminal. These activities are blamed on the imperialist who as a former soviet president asserted had no regard for the will of the people or law of history he concludes that; “Liberation struggles cause their indignation. They describe them as terrorism.”

However protagonists of this argument have argued that a freedom fighter doesn’t kill small children in buses and innocent bystanders or foreign tourists who do not pose any threat to the perpetrators of these acts. In fact the notion of one mans terrorist is another’s freedom fighter does not justify the blowing up of buses and murder of non-combatants as the terrorists do. Benjamin Netanyahu has described, “this as a disgrace that democracies would allow the treasured word freedom to be associated with terrorism.” It is therefore, justified to conclude that the arguments

22 Ibid (pp4)
23 Ibid - (pp 4)
24 Ibid (pp 4)
put forward to support the issue of self determination as justified as a political offence and excepted from criminal prosecution has been the major weakness for the extradition treaties entered into by the various states in the efforts to deal with international terrorism and has been used by terrorist to operate and organize their activities especially in the western democracies where the democratic institutions and the asylum legislations uphold these principles.

Before an analysis of the various definitions of the term terrorism can be undertaken it is prudent to make a comparative analysis of the concepts political terrorism and guerrilla fighters. Guerrilla warfare is more characteristic of the process of liberation and self-determination and this is the category of action that should encompass the belligerent activities of the freedom fighters. Traditional guerrilla warfare is a violent struggle using or threatening to use violence against military targets, security forces and the political leadership in order to attain political aims with the goal of eventually removing the incumbent government and replacing it with a revolutionary regime. Guerrilla warfare is characteristic of rural struggle and their basic support is the rural population and any indiscriminate attack that would affect the innocent non-combatants would be their undoing as evidenced in Uruguay, leading to a military takeover in which the revolutionaries were the losers in 1980s. In case guerrilla shifts its base to the urban areas in principle it would target particular urban military facilities or attack specific military or security forces or a political leader at the level of decision making in order to achieve its political aims.

25 This has however failed and most of the urban guerrillas have turned to terrorism that has wrongly been referred to as the urban guerrilla warfare. This is actually what happened to the revolutionary guerrillas in Latin America leading Castro and Cuban revolutionaries to regard the cities as the “graves of revolutionaries.

On the other hand, terrorism involves intentional use or threat of use of violence in order to achieve political aims. Terrorism does not have clearly set out goals and objectives and its targets are undefined spontaneous and indiscriminate. It entails using violence against a civilian target without the identity of the victim in

25 Ibid (pp10)
order to spread fear in a larger proportion than the affected to intimidate or force reaction especially in the media. This would further give leverage in forcing the state or the organization to concede to the terrorist demand. Therefore terrorism is essentially different from guerrilla warfare in that it mode of activity and the target choosing are not specific and it specifies a target not done on the basis to influence decision making but to instil fear in the general For instance seizing the German embassy in Stockholm in 1986 by Red Army Faction and killing of two diplomats did not lead to change of the German government stand on no concessions to terrorists.

It can therefore be correctly argued that by hiding behind the guise of national liberation, terrorism doesn’t absolve itself from responsibility of its actions. Furthermore “not only it is untrue that on mans terrorist is another’s freedom fighter, but it is also untrue that the end justifies the means”. Nevertheless, it happens that if a guerrilla organization breaks its traditional rules of engagement it becomes a terrorist organization according to objective of its activities and not according to the interpretations of the definers.

Terrorism has also been subject of intense debate by the academicians in search of an acceptable definition. Schmidt and Youngman in their book identified 109 definition of terrorism from a survey carried out among the academic in the field. They identified several common features, which appeared in most of the definitions. Some of these features are, recurring element, violence and force, political fear and emphasis of terror, threat psychological effects and anticipated reactions and discrepancy between the target and the victim. Others are intentional, planned and organized action and methods of combat strategy and tactics. These are characteristics of terrorism as it has a tendency of recurring and inculcates fear by use of excessive terror and thrive on threat of terror, psychological effects and the anticipated reaction. Furthermore, It is intentionally planned, systematic and organized action. It is therefore imperative that an acceptable definition should embrace all these elements. The US State Department defines terrorism as

26 Ibid (pp11)
“premeditated politically motivated violence perpetrated against non-combatant targets by sub national groups or clandestine state agents, usually intended to influence an audience.”

While the list drawn by Schmidt and Youngman did not attempt to suggest the perpetrators and the victims, the US adds to the terrorists the state agent to the list of the perpetrators and therefore bringing the issue of states participation in either sponsoring terrorist activities or being involved in perpetrating the acts themselves. It should be noted that a number of countries are in the US list of state sponsors of terrorism and this could have influenced the definition. More on this will be mentioned later in this chapter as a form of terrorism.

Douglas Kash vol8 has defined terrorism as “an act or threat of act of violence which targets civilian or property of the state which is intended to inject fear into civilian population or government or serves as a retaliatory strike and has a political goal.” While in this definition the element of premeditation is not clearly reflected and the perpetrators identified, there is an additional element of retaliation. Professor Kash further elaborates that civilians include all those at the time of the attack are not in active military status, who pose no immediate threat or likely foreseeable future threat. In the former it is not clear as to why there should be retaliation as most of the terrorist acts are deemed to be unprovoked. It is evident that the US government has assisted various states in the developing countries in training of the security forces and provision of equipment for counter terrorist measure and this been one of the causes of anti US sentiments especially with the terrorist organization in Latin America but this cannot explain the attacks by Alqaida terrorists on US targets or the European terrorist groups that targeted American and other western interests in Europe in 1970sand 1980s. In the second instance it may be a reaction to the killing of US serviceman during the hijack of TWA 847 in 1985 and the kidnapping and attempted assassination of US NATO Generals and the bombing of Le Belle Discotheque in Berlin in 1985 when six American servicemen were killed and several others injured.

27 Crenshaw M. Loc. Cit.
The other definition for consideration is by Boaz Ganor “Defining Terrorism”. He defines terrorism as “the intentional use of or threat to use violence against civilian or civilian targets in order to attain political gains.” 29 Ganor is specific in differentiating the targets that is, the civilian population and the civilian targets. This may have been influenced by the type of terrorism in Israel where he is the Director of an institute dealing with counterterrorism. The implication is that civilians would refer to the general public in the streets and who have been targets of Palestinian terrorist both in Israel and abroad. Furthermore the Palestinians do not recognise the Israelis as innocent civilians and have no remorse to kill them as one of the leaders of Palestinians puts; “as much as we repudiate any activities that endanger innocent lives, that is against civilians in the countries that are not involved in the Arab – Israel conflict, we feel no remorse concerning attacks against Israel military and political elements who wage war against Palestinian people.” 30 Therefore the Palestinian terrorists consider all the Israelis as combatants and not innocent civilians and hence potential targets.

As regards the civilian targets, Israel or any other state would be concerned with target such as the transport facilities and infrastructures, civilian buildings and any other structures used for civilian purposes. This may reflect the terrorist attacks on targets such as buses, trains, aircraft, ships airports and airlines counters, supermarkets restaurants and business establishments. These have been target of terrorist activities not only by the domestic terrorists but also the international terrorists as well. There has been hijacking and blowing up of aircraft, blowing of buses and trains, attacks of restaurants and discotheques in Paris and Berlin and this would have a significance in the definition by Ganor as the Israelis have had a long history of attacks on their civilian targets by the Palestinian terrorists.

Walter Laqueur (1999) offers another interesting definition. He defines terrorism as “the unlawful use or threat of use of force or violence against individual or property to coerce and intimidate governments or society often to achieve

29 Ganor B. Loc. Cit.
30 Ibid (pp 10)
political, religious or ideological objectives.”\textsuperscript{31} Laqueur goes a step further and includes the concepts of religion and ideology in the definition of terrorism. This is because the history of terrorism is characterised by various epochs of religious and ideological orientations. The Sicari, assassins and the Indian secret societies all of which practiced terrorism had a religious orientation. During the 19\textsuperscript{th} century the Russia terrorists and anarchists professed to represent the socialist ideology and were fighting the establishment to uplift the living standards of the lower classes or the serfs. The period between the first and second world wars saw an upsurge of right wing ideology that is broken by the upsurge of the nationalist movements of the 1950s which have more rightist orientation than the left. The left wing became a driving force both in the nationalist revolutionary movements and by extension to terrorism in 1960s 1970s and the early part of 1980s and by late 80s most of the terrorist groups had abandoned the leftist ideology and were either going out of business like the Red army faction in Germany or most of the terrorists were in prison and their organizations defeated as in case of the Red Brigade in Italy. From 1990s there is a peculiar upsurge of a mixture of sectarian, millenarian, and religious nationalism that is characteristic of fanatical fundamentalism that displays some elements of apocalyptic and pathological orientations. This has featured in the attacks on the guest workers hostels in 1992 in Germany and the suicide bombing missions of the Arabs terrorists. It is therefore evident that the contemporary terrorism while showing traits of rightwing tendencies, has no clearly identified ideological orientation and it can only be seen on religious and nationalistic basis.

It suffices therefore; to conclude that a comprehensive definition of terrorism should consist of the elements of elaborate planning, organization and precise execution, targets should be civilians and civilian oriented infrastructures and the intention to cause fear and anxiety. The others should include the intended intimidation of the government or the society and the goals to be achieved whether

they are political, religious or ideological. Terrorism should therefore be analysed in accordance with its intentions and not motives because its does not reflect any clear motivations to justify its actions. It has been observed that “motives are entirely irrelevant to the concept of political terrorism ---- At best they are regularities associated with terrorism. More often than not they simply confuse the analysis.”  

2.4 International and transnational aspects of terrorism

After the above analysis of the proposed definition, it is prudent to ask the obvious question as to when is terrorism considered as international or transnational and when is it domestic? Professor Martha Crenshaw (1989) observes that; “terrorism qualifies as international or trans-national when it involves actions in which the nationality of the victims is different from that of the perpetrators or the operation is extra – territorially located outside the boundaries of the contested area.”

While this description explains the international qualification of the terrorist groups it does exclude the terrorist who operate only in their countries such as the separatist groups and those that fight for self determination like the Hamas in the occupied territories although some of their activities may transcend their national boundaries. On the other hand the US sees terrorism in three levels. On the first level are those terrorist organizations that operate primarily within a single country. Their reach is limited but the modern globalize world their activities can have international consequences. In this group are the terrorist organizations such as the RAF in Germany AD in France RB in Italy Tupamaro in Uruguay Luminoso in Peru FAR in and other terrorist groups in Latin America. In the US we have the weathermen, the anti-abortionists, the Black Panther and other eccoterrorist groups. In Asia we have the Abu Sayyib in the philippines The others are the November 17 terrorists In Greece, Sikh Separatists and Kashmir Separatist in India and many other groups both around the world. These groups quite often have cooperated with others such as the Palestinians and have been involved in terrorist activities outside their countries.

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33 Crenshaw M (1989). Loc cit
There is evidence of cooperation between the Palestinian terrorist and the Baader Meinhof in the hijack of the Air France plane to Entebbe in 1976 and the Actione Directe, and Brigate Rosse and the Palestinians in the attack of the oil Ministers in Vienna in 1986.

The second group consists of those terrorist organizations that operate regionally and transcends at least one international boundary. In this we have principally the Jamaa Ismailiya in Indonesia, The Tamil Tigers of Sri Lanka, Some factions of the Palestinian terrorists, the terrorists groups in Pakistan, the ETA in Spain PIRA in Ireland and others. The last group consists of organizations whose operations span several regions and their ambitions can be transnational and even global. In this category will fall the dreaded Al Qaida, the Black September, the FNL of Algeria The Palestinians and the state supported terrorist such as those from various Middle Eastern countries that are suspected to use their state agents and terrorist groups they control to perpetrate incidents of terrorism.

There is evidence of close cooperation between all these groups directly by sharing intelligence, personnel, expertise, and safe houses. They have and continue to cooperate in religious and “ideological agenda and reinforcing each others efforts to cultivate international image for the cause.”34 This was more evident in 1960s and 1970s when almost all terrorist groups were sympathetic with the Palestinian cause with a leftist ideology and cooperated in executing some terrorist activities for them. Ganor observes that “terrorism is no longer a local problem of specific countries but an issue involving a number of international aspects”35 This is more so because terrorist of today can attack targets in a variety of countries and establish cells and headquarters in various countries train in diverse camps and can receive sponsorship from various sources. They can also seek and receive support from communities and religions and so on. It is therefore difficult to draw a line between those terrorist groups that are domestic and those that are international.

34 US. Department of State National Strategy for Combating Terrorism 2003 pp15
The next obvious question should be; who among the terrorist groups are likely to attack the ships or the port facility? What are their capabilities? Who is likely to launch the weapons of mass destruction and what is the magnitude of the terrorist threat to the ships and the ports among other targets? And how can these threats be combated?

All the above-mentioned groups are capable of perpetrating acts of terrorism against ships and port facilities the right orientation and rhetorical ideology and equipment. The cooperation, which is the characteristic of modern terrorist organizations and the development of modern information technology, has enabled even the seemingly domestic groups to have an international reach. Furthermore, most of the groups have trained in Palestinian camps and benefited from their vast expertise and resources. Also the general anti western mood inherent in most of these groups and especially among the radical Islamic groups makes them share their resources as well as expertise and a personnel in organizing and executing acts of terrorism against western targets and the shipping industry is not an exception.

As regards the capabilities available to the terrorists, they should not be underestimated. As Paul Wilkinson (1979) puts it “I think we underestimate terrorists groups if we think of them all as amateur nineteenth century anarchists with bombs sticking out of their pockets and smoke coming out of their ears.”[^36] It may be true that there are still some isolated cases of amateur terrorist groups but most of the modern terrorist are professionals with vast financial and human resources trained to handle sophisticated explosive devices and planning spectacular operations. The recent terrorist operations are indicative of these characteristics. The apocalyptic fanaticism and indoctrination portrayed by the suicide indicates as unstoppable fervour and commitment to the cause and is another feature of terrorism that cannot be ignored.

With the capabilities that are inherent in almost all the terrorist organizations, every terrorist is capable of launching weapons of mass destruction. It is possible today than ever for the ingredient of the construction of a chemical to be obtained from civilian establishments or be stolen from military installations. Furthermore whereas it may be more difficult to construct a biological weapon the technology to make a chemical projectile is readily available and doesn’t require expert engineers as it can be done in an ordinary laboratory conditions.

It is also believed that the state sponsors of terrorism have sought to develop weapons of mass destruction capability. The states may avail the raw materials or finished devices to the terrorist groups either for political purposes or for financial gains. It is noted however that the so called rogue states may not allow access to WMD to the extremist groups for fear of reprisals in case they are actually used causing much destruction and casualties. But Laquer has a different opinion, he argues that, “these weapons may be acquired for deterrence or for political blackmail rather than with intention of using them. But once they exist it is always possible that they will be used either in warfare or in surrogate war, that is to say a weapon of state sponsored terrorism.” This therefore means that there are no inhibitions among the states sponsoring terrorism that would guarantee non-use of these weapons once they are in existence. Furthermore the surrogate states may not have control of the terrorists as indicated by Usama bin Laden when he declared in 1998, “acquisition of WMD is a religious duty.”

To combat all forms of terrorism it requires a multi faceted approach. The US state department in the national strategic plan to combat terrorism is even more militaristic when it declares that the approach should, “identify the terrorists, identify their sanctuary and destroy their capability to plan and operate”. This approach has its limitations in that the contemporary terrorist organizations operate in cells that are difficult to identify and the conspiratorial nature makes even difficult to identify their

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sanctuaries. Their communication system cannot be tapped due to inhibitions especially in the western democracies where the investigation of suspected terrorists inhibited by claims of infringements of the human rights.

The National Strategy further indicates that America will focus “decisive military power and specialised intelligence resources to defeat terrorist networks globally and with its partners will target the individual states and transnational networks that enable terrorism to flourish”.40 This statement can be construed to source of the unilateral actions that have been taken against states like Libya during the Eldorado canyon Operation in 1986, And the other activities in Afghanistan and Iraq that are subject of a lot of debate today. President George Bush put it even more vividly in June 2002 when he said that; “we will take the battle to the enemy, disrupt his plans and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path of action. And this nation will act.”41 This statement has a finality of a military expedition of a conventional warfare, which may not be effective in combating terrorism. Terrorism has defied the rule of the conventional warfare and hence unilateralism can only lead to political conflicts and complications that would be exploited by the perpetrators of terrorism.

It has been argued that terrorism is inherently difficult to eliminate because much of its activities is the work of small autonomous underground factions attacking targets of opportunity.42 It is therefore suggested that the cooperation among states should be enhanced especially in exchange of intelligence, enforcement of international conventions against terrorism, the punishment of the states that defy the cooperation and the enactment of the relevant laws that would be deterrent to terrorist activities in the individual nation. Lack of this cooperation especially in the implementation of the multilateral treaties however has led to frustration of some states such as the US compelling them to result to military force in order to pre-empt or retaliate and this can lead to international escalation of conflicts. It is therefore to

40 Ibid pp 19:
41 Ibid pp 11:
conclude that it is possible that the western nations will continue to prefer unilateralism if the multilateral solutions cannot be reached through the implementation of the international agreement.
CHAPTER THREE

3.0 THE THREATS OF TERRORISM IN THE WESTERN DEMOCRACIES FROM 1970 TO 2001

A study of threat of terrorist activities against maritime and port security would not be comprehensive without consideration of the development of terrorism in the western democratic nations 1970s. These nations are the leading ship owning nations and they have some of the busiest ports in the world. Secondly the largest volume of the sea trade is to or from these nations. Any terrorist activities against shipping industry will not only adversely affect the economies of these nations but also their international trade. It should be noted that all the known incidents of attacks on ships involved ships from the same nations.

The development of international terrorism in the Western Europe can be understood in relation to two major factor that were at play during the 1950s and 1960s. On the one hand there were the nationalist liberation movement in the former colonies, which were fighting for independence from colonial domination and on the other was the defeat of the Arab nations during the Arab –Israel war in 1967. The nationalist revolutionaries realising the weakness against the stronger colonial forces were abandoning their traditional rural guerrilla campaigns and embracing Marxist Leninist leftist ideology and engaging in urban that involved acts of terrorism. On the part of the Palestinians on realization of the futility of armed struggle against the Israeli forces they reverted to terrorism and sought asylum in the west European states where the could plan and execute their operations against Israeli targets and for those western nations who were seen to be supporters of the state of Israel.

These developments should be further seen in the way these nations experienced the international terrorism, how they responded and how they cooperated to develop countermeasures to combat the threat. It is noteworthy that these nations except for United Kingdom that had had a long experience with domestic IRA terrorism, there was also development of domestic left wing terrorist
groups in West Germany, France, Italy and Spain which would have impact on the way each state responds to international terrorism. The legal instrument that had been developed for combating domestic terrorism became useful in dealing with international terrorist phenomenon. The only exception to this was the United States whose domestic terrorist activities were insignificant but it suffered the most from the international terrorist activities leading to the spectacular September 11th 2001 attack on the world trade centre in New York and the Pentagon in Washington DC.

3.1 The scope of the terrorist upsurge and threats

All the western democracies experienced various forms of terrorist activities during the period under review. United Kingdom and Italy experience both domestic and international terrorism but Italy considered foreign terrorists as not only “villains however despicable their acts were, but groups with which agreement or compromise must be possible and from which all parties involved should derive benefits.” It had therefore to contend with the domestic Marxist – Leninist leftist Red Brigades that had been formed from the young communists in 1970. The RB caused mayhem in Rome and the industrial towns in the north targeting Israeli establishments and businesses and the industrial concerns especially those with American interests. At the instigation of the Palestinians and in George Habash in particular BR was involved in the attacks against NATO installations in Italy and attacked Pan Am in 1973. In 1981 was involved in the abduction of the American General James Dozier in Verona.

Red Brigades announced in 1985 that they are joining with the other European terrorist groups the form a joint front to drive out the American interests from Europe as they were symbols of imperialism of which the brigade was established to fight on behalf of the down trodden masses of the third world. The seizure and murder of Aldo Moro in 1978 and the bombing of a railway station in Bologna in 1980 could be seen as the beginning of the downfall of the group. By the

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44 Ibid pp78
end of 1986 most of the members of the group were in jail or had recanted and by 1987 activities of the group had halted.

Britain had to contend with various terrorist groups especially those from the Middle East and North Africa but there were also the Basques the Armenians and the Croats. The Middle Eastern groups were the most active and attacked Israel and those of other countries deemed to be supporters of Israel. The most notable incidents are the attempted assassination of Israeli Ambassador in 1982, the seizure of the Iranian embassy in 1980; the attempted bombing of El Al aircraft at Heathrow airport in 1986 and the downing of a Pan Am flight 103 at Lockerbie in Scotland in 1988. There were also attacks on the Libyan dissident living in Britain and the IRA Irish terrorists who had attacked Britons overseas and especially the military personnel on the mainland Europe.

On the other hand the United States suffered the most from the international terrorism all over the globe. US citizens were visible globally as diplomats, military men, businessmen and tourists and hence easy target for terrorists. There were attacks on American businessmen, diplomats, and soldiers in Latin America by terrorist groups such as Tupamaro Uruguay, ELN FARC, in Colombia Luminoso in Peru and others who saw American assistance to their governments as the cause of the failure of their revolutionary movement. In the Middle East US presence is first of all seen as the perpetuation of the Jewish state and of recent as a hindrance to reforms in the Gulf States. In Europe the American presence was seen especially by the left wing groups as a relic of imperialism and anti American sentiment were expressed through targeting its interest for terrorist attacks. Terrorist acts against US national accounted to 21% of the total terrorist acts globally. The most notable incidents are the attack on the marine barracks in Beirut and the bombing the US embassy in 1983, the hijacking of the TWA 847 in 1985, Attempted assassination of General Alexander Haig in 1971 and the bombing of Pan Am 103 in 1988 among other. The only incident of international terrorism to take place on the US soil was the attack on the World Trade Centre in 1993 and brief seizure of the Iranian mission
in New York and other minor terrorist threats by some Jewish activists and the shocking one the September 11th attack in 2001

Nevertheless, although there has been an apparent lack of intense anti state violence in the US, there were some threats of terrorist by rightist groups mostly of deployment of biological agents this has not posed any significant threat to the American citizen. The only notable incident was the poisoning of food in departmental stores in Chicago and the Oklahoma bombing of 1995. However these incidents are indicative of vulnerability to attacks by weapons of mass destruction by any determined groups and fanatical elements with missions such as the Al Qaida terrorists.

France experienced more of domestic terrorism than international terrorist activities. This was due to the direct involvement of the AD; the leftist terrorist organization that had been formed in 1979 had concentrated its attacks against foreign targets. It collaborated with the Palestinian groups in attacking Israeli Factory in 1982 in 1985 the group assassinated General Rene André an the Director of peace keeping force in Europe and during the same year joined the other European terrorist organization in the declaration of the formation of a joint front to attack NATO and the western European military and industrial targets. The group therefore concentrated its attacks on the targets such as the NATO oil pipeline agency, Interpol, OECD, and businesses with South African Interests. Therefore international terrorism in France had an indigenous origin and the French government could look aside as long as their activities did not put the lives of its citizens in jeopardy.

France however experienced activities from other international terrorist groups such as the GIA and FLN from Algeria and the various Palestinian faction most of whom had sought asylum status in France. These groups were engaged in terrorist activities targeting foreign establishments but as stated above their actions were deemed not to be a threat to French national democratic institutions and therefore they had some degree of operation and protection from the French asylum laws.
West Germany and Spain experienced mostly domestic terrorism in form of the Red Army faction, a left wing terrorist group formed in 1970 in Germany and the Basques movement a separatist terrorist group fighting form the formation of an independent Basque state is Spain. Both groups collaborated with the Irish terrorists and the Palestinian factions through whom the received assistance from the various state sponsors to advance leftist ideologies. In 1972 the Basques assassinated the Spanish Prime Minister and escaped into the Basque region in France where they had been allowed safe haven as long as they do not arouse the Basque nationalism in the region.

The German RAF claimed to fight for the liberation of the downtrodden masses of the third world and hence was involved in perpetrating terrorist attacks against western and NATO and the industrial establishments especially those with American interests. The group cooperated with the Palestinian faction and other European terrorist groups both in training and planning for attacks. The most notable incidents in which these groups cooperated were the hijack of an Air France airliner to Entebbe in 1976 and the attack on the oil ministers in Vienna in 1986. The group engaged in terrorist attacks on businessmen industrialists and politicians and in 1985 attacked the German embassy in Stockholm Sweden and killed two embassy staffs but the reaction of the German government was tough and marked the beginning of the disintegration of the group. By 1987 the group had already abandoned the left wing ideology and had been replaced by more rightist groups that were more of neo Nazis than revolutionaries. These groups were instrumental in rising of nationalist fervours of 1992 when there were attacks on the guest worker in Germany. These groups were also out of business by the same year when they opted to surrender and some committed suicide in prisons.

Israel experienced a unique type of terrorism in that the country was surrounded by hostile Arab states that became the immediate sponsors of the Palestinian terrorism. Therefore besides the war against terrorism Israel had and continues to fight for her existence from extinction, which was the major policy of the PFLP. Due to her policies of the emergency decrees and retaliation against
terrorist attacks Israel was able to divert terrorism from the domestic scene and therefore exported it especially to Western Europe. These policies deterred the population in the occupied territories from cooperating with the terrorists and thus undermined the areas where they would get sanctuaries and warned the sponsoring states of the costs of collaborating and tolerating terrorists.  

3.2 The policies and responses to the upsurge of international terrorism

There were marked divergences in the way the western democracies responded to the international terrorist activities due to their diverse constitutional systems. In the US Britain Germany and Israel terrorism was considered as a common crime in domestic law and could be handled as that except the political offences that were provided for by their constitutional guarantees of civil liberties In France and Italy the responses were determined by the national strategic interests and especially in the former the provision of the asylum in the constitution was sacred. The Great Britain Prevention of terrorism Act was promulgated in 1974 and Israel had an anti terrorist decree since 1948. The US dealt with incidents of terrorism by use of committees system coordinated by the state department until 1984 and 1986 when anti terrorist legislations were put in place. In 1980s and 1990s the British and German governments reorganised their domestic legislations to provide for countermeasures for international terrorism while the Italian government utilized the domestic legal structures to destroy the domestic terror groups while using diplomacy to accommodate and defeat the international terrorism without using military forces.  

During this period these states established specialised military and police units to respond to terrorist activities and especially in the hostage rescue operations and for the protection of the vital interests that were soft targets for the terrorists. The Israelis had the First of these units that rescued the Israelis hijacked to Entebbe by the PFLP and RAF terrorists in 1976 in a spectacular raid that has been described as

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to have “served as a unique and outstanding example of both Israeli transnational antiterrorist initiatives and the efficiency of its military and intelligence services.”  

This was to be emulated by the other western nation with mixed successes as in the rescue of German hostages aboard a Lufthansa aircraft hijacked to Mogadishu Somalia in 1977 and the US attempt to rescue hostages in Iran in 1980 and during the Achille lauro incident where the US and the Italian forces had a standoff over the capture of the Palestinian terrorist who had hijacked the cruise ship and killed an American citizen.

Legislation was modified to reinforce the intelligence community and police forces to facilitate their effectiveness in handling the counterterrorism activities. What is evident is the increase of the power of the police in prosecution of the suspected terrorist and the power of extraterritorial arrests especially the US after the enactment of the Omnibus or the so-called “Long Arm” Act in 1986 and also the introduction of Air Marshal in the air crafts in 1984. Special police armed units are also established to guard the soft targets such as the diplomats and national leaders and the airports and the foreign embassies abroad. In Israel the occupied territories are governed through military emergence decrees that allow the military to declare curfews and deport or demolish buildings that are suspected to house terrorists.

These powers meet with criticism from the human rights advocates especially when they were applied to investigation of domestic terrorism. In Britain the PTA has been reviewed several times and updated the last one being in 2002 and it still meets a lot of opposition from civil liberties advocate as inference with the democratic rights of the British people.

In the US there was resistance to investigations of the Central American groups that were resident and who were suspected by the law enforcement agencies to be connected to the communist rebel fighting their governments especially in El Salvador. It has been alleged as Livingstone puts it that for Reagan administration counterterrorism served as justification for intensifying domestic political

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investigations. In Germany even those seeking employment in the public service had to pledge to defend the constitution and disassociate themselves from terrorist groups and ideologies.

The police forces in Europe however established central computer data collection systems pioneered by Germany to track the movements of terrorists and identify their hideouts. This system was quite successful in Germany and Italy but it was also opposed as it infringed on the privacy of the citizens but it assisted the intelligence and law enforcement agencies to identify and apprehend wanted terrorists and it is today still helpful to the tracking and interdiction of international terrorist organizations.

3.3 Negotiations With terrorists and international cooperation.

Except for France and Italy who has a peculiar accommodation with the terrorist groups and who experienced intensive terrorist activities in their capitals, all the other western democracies had strong policies against negotiations with terrorist groups or for that matter, giving in to terrorist demands and giving them concessions. Italy’s position was reactive and motivated by search for economic peace and accommodation with international terrorists especially those from the Middle whole activities were usually reduced after negotiations in which they were accorded free passage through Italy. As for the French government some times it dealt harshly with international terrorism but on the other hand adopted a laissez faire approach the gave the groups freedom of movement in France. For instance the notorious Venezuelan terrorist Carlos conducted most of his activities on behalf of PLPF out of Paris and was to escape only when he was involved in shooting of French security men.

The US and Israel have a similarly articulate policy of not according terrorists benefits of their actions. The US views terrorism as a low intensity warfare and considers its first line of defence to be overseas in form of information exchange and diplomacy. It rejects terrorism in all basis since it is a criminal activity that no political cause could justify Israel approaches terrorism in accordance with the strategic objectives of encircling the phenomenon from all direction in order to
destroy the enemy, liquidate its leadership and destroy their capability to organise and execute terrorist act. The British policy is a firm political will to uphold the rule of law and to defeat terrorism in this case by promoting national and international measures to combat the threat by minimizing their rewards and maximizing their losses. Germany had a similar declaration.

However all these states in various form and degrees negotiated with terrorist organizations for the best of the strategic national interest and in an endeavour to bring the hostages home safely and for others for economic peace and foreign relations. The negotiations led to release of hardcore terrorists and thus perpetuating recurrence of further terrorist activities and more demands and expansion of operations. It also public ridicule of the government by its citizens as being unable to take decisive actions against terrorists to protect its people. The Germany Chancellor commented after refusal to negotiate with terrorists who had seized the German embassy in Stockholm that all the authority of the constitutional state will crumble and we cannot guarantee protection for anyone anymore. Therefore the government had acted decisively on a matter concerning terrorism. The refusal to negotiate with terrorism during the Mogadishu saga and the rescue of the plane and the hostages by German commandos ensured that no further hijack of the Lufthansa was repeated.

As regards the international cooperation there were also a mixture of successes due mostly to the diversity of the legal system among the western democracies. The most contentious issues were the requests for extraditions of the terrorist suspect for trial in the countries who could claim jurisdiction over the acts they had committed or who require to try them for previous terrorist acts or whose national had been victims of their acts. There other issue is the punishment of the states that sponsored terrorism by either directing, financing their operations, giving the training and weapons and providing them with safe havens and bases from where to launch their attacks. The cooperation on this issue depended of the foreign strategic interests of the states under review. The US on realisation that terrorism is an international and transnational problem sought cooperation with its allies and friends to pressurise the states that sponsor terrorists to refrain from the practice and
if no cooperation is forthcoming to impose sanctions. Failure of cooperation resulted to raid on Libya in 1986 after the bombing of Pan Am aircraft in Rome airport and the le Belle Discotheque in Berlin which several American soldiers and national were killed and injured. This is also evident when Libya is again in the bombing of the PAN Am 103 killing all passengers and crew on board.

The problem with extradictions proceedings arises from the provisions of exception from political offences in the asylum laws provided for in the constitutions of most of the states and included in the multilateral agreements against terrorism that were signed by the Members of the United Nations. These provisions are also contained in the other bilateral and regional agreements that were ratified in 1970s and 1980s. It is evident that even the guerrillas who hijacked the Portuguese passenger ship Santa Maria in 1960 claimed to have acted for self determination and should not be considered as common criminals but should be accorded exception from political offence.

Therefore there are rejections of extradition between France and Italy and France and Germany and France and Spain. It believed that “the revolutionaries were entitled to use violence to create new order”. The French government felt the need to preserve the French tradition of asylum for the foreign activists. In 1970s the French rejected to extradict Wilfred Bose who was wanted in West Germany to stand trial for terrorist activities and instead deported him only for him to command the terrorists who hijacked the Air France airliner to Entebbe in 1976. The British also rejected several requests by Italy to extradict nine terrorists until the extradition treaty was reviewed and the same was with the extradition treaty between the US and the British, which had to be reviewed to allow extradition of Irish terrorists from America.

The other problem that was to be encountered on the international cooperation was the exchange of information. At first this was hampered by the diverse attitudes on the protection of intelligence information sources. The establishment of computer data collection and analysing system solved this problem especially after the establishment of the TREVI group in Europe in 1977 and the inclusion of the US after the The Hague meeting in 1986. The cooperation between the police forces in Europe was a big boost to counterterrorism and especially with the establishment of centralised data exchange and communication system. This led to significant decline in the number of terrorist incident from the second half of 1980s and 1990s until the escalation of the present religious Islamic radical terrorism that will require a change of cooperation to march the ever dynamic renovations of the terrorist groups and the threat of use of weapons of mass destruction.

The overview of the threat of terrorism above is essential for the understanding of the threat of acts of terrorism against ships and port facilities. The responses and the elusive cooperation is critical to the successful implementation of the requirement of the new SOLAS X1 – 2 and the ISPS code The cooperation is seen to be elusive because even with the present threat of weapons of mass destruction the western democracies have not assessed the magnitude of the threat and develop a common strategy for counterterrorism.
CHAPTER FOUR –

4.0 EXISTING SECURITY MEASURES FOR PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM.

Since the advent of the modern contemporary international terrorism in 1960s, the international community has signed various multilateral and bilateral treaties in an endeavour to prevent and suppress international terrorism. The members of the United Nations have signed twelve conventions and protocols while the European Union, Organization of African Unity and the Organization of American States have signed one each. The UN Security Council and the General Assembly have also adopted various resolutions urging the member states of the organization to establish jurisdiction over the offences stipulated in the various conventions by incorporating them into their national legislations and cooperate among themselves in order to prevent combat and suppress the threat of terrorist actions wherever they occur, whatever the cause and by whomever has caused them.

The most crucial conventions for this study are the International Convention against Taking of Hostages 1979, International Convention for the Suppression of Terrorist Bombing 1997 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 1988. The issues of hostage takings and the terrorist bombings are the main theme of the measures that are required by the new SOLAS X1 – 2 and are among the offences stipulated under the SUA convention 1988.

The International Maritime Organization has also adopted various resolutions and issued several circulars that are intended to assist the member states to implement the above international conventions. These will be discussed later in this chapter. However a short summary of the conventions is essential to establish their relevance to the study of the threat of acts of terrorism that threatens the security of the passenger and the crew and the safety of the ships and port facilities.
4. 1 The International Convention against Taking of Hostages 1979

The International Convention against Taking of Hostages 1979 considers acts of hostage taking as criminal offences punishable under the customary criminal justice of the state parties to the convention. The acts are summarised as direct involvement or complicity in the seizure detention and threat to kill, injure or continue to detain a hostage, whether actual or attempted in order to compel a state or an international intergovernmental organization, a person or group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostages. The requirement for the member states is that each state party to the convention is required to make this offence punishable by appropriate penalties. Furthermore where hostages are held in the territory of a state party, that state party is obliged to take all measures it considers appropriate to ease the situation of the hostages and secure their release. After the release of the hostages state parties are obligated to facilitate the departure of the hostages. Each state party is obliged to establish jurisdiction over the offences of taking hostages. Article 4 further obliges the state parties to cooperate in the prevention of preparation and commission of these offences in their territories. Under Article 9 the famous notion of self-determination is provided for. State should reject extradition if the intended prosecution or punishment is based on the consideration of race, religion, nationality, ethnic origin, or political opinion.

The threat of hostage taking is very imminent to ships especially the passenger and ferry ships that are increasingly becoming the popular mode of transport of passengers and for leisure and in particular the fast growing cruise ship tourism. It is unimaginable to contemplate a fanatic radical terrorist group hijacking a mega cruise ship with over three thousand passengers and crew and threatening their lives and the anxiety and sensation it would generated internationally. These incidents have

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49 UN Collection of International Treaties: Conventions against Terrorism; International Convention against the Taking of Hostages; 1979 New York Articles 1&2 pp207
50 Ibid Article 6
already been witnessed during the Santa Maria IN 1961, the cruise ship City of Polo in 1988, and the famous Achille Lauro in 1985.

4.2 The Convention for the Suppression of Terrorist Bombing

The convention for the suppression of terrorist bombing was necessitated by the change of operational tactics by the terrorists from the dominantly taking of hostages and hijacking of the aircraft in the 1970s and 1980s and adopted sabotage by bombing in the late 1980s and 1990s. It stipulates the offence of terrorist bombing as “an intentional and unlawful delivery, placement, discharge or detonation of an explosive or other lethal device whether attempted or actual in or into or, against a place of public use or a state or government facility or an infrastructure facility with intent to cause death or serious bodily injury or extensive destruction likely or actually resulting in major economic loss.”

Any person who participates or assists in the commission of the offence has also committed the offence according to the definition of the convention.

The state parties to the convention are required to establish jurisdiction over and make punishable under their domestic laws the offence described, extradict or submit for prosecution persons accused of committing or aiding the commission of the offences and to assist each other in connection with criminal proceedings under the convention. The offences referred to in the convention are extradictable under the existing extradition treaties or under the convention itself.

Incidents of bombing the ships and threatening to bomb have already been witnessed in the maritime industry as evidenced by the case of the cruise ship Sanya that was sunk by a limpet mine off the coast of Beirut in 1973 and the sinking of the coal ferry Nellie by the Irish terrorists in 1981. Recently we have had the bombing of the USS Cole 2000 and the oil tanker Limburg in 2002.


52 Ibid, Article 6 pp5

4.3 The Convention on Suppression of the Unlawful Acts Committed against Maritime Navigation and the Protocol on the Fixed Platforms on the Continental Shelf

The SUA convention 1988 is the only international instrument that has a direct reference to the acts of violence committed against maritime navigation. It stipulates the offence as seizure or exercise of control over a ship by any form of intimidation, violence against a person on board a ship, destruction of a ship of the causing of damage to that ship, or placing on a ship a device or substance which is likely to destroy or cause damage to that ship or its cargo, destruction of or serious damaging of or interference with the maritime navigation facilities, and knowingly communicating false information. The drafters of the convention endeavoured to include all the elements that constitute maritime security and mention the threat of international terrorism in the preamble but not in the text. This is reflected when recalling the UN resolution 40/61 of 1985 that urges the state parties to the convention to cooperate with the other states to “contribute to the progressive elimination of causes underlying international terrorism.” The states were also urged to pay attention to all situations “that may give rise to international terrorism and may endanger international peace and security.” These assertions make the convention lack any new innovations like its predecessors that were rendered ineffective by the notion of one mans terrorist is another’s freedom fighter. Which had increasingly become a stumbling block to counterterrorism measures However the convention attempted to fill a gap in the international law that concerns the violent acts against maritime operations perpetrated by pirates and the recent increase of the incidents of terrorist acts against ships and the cases of the cruise ships Sanya and the Achille Lauro could be cases in reference.

In addition to the offences of interfering with the maritime navigation equipment and communications and passing of incorrect navigational information which is common

to the pirates and other criminal acts against ships, the convention covers the
offences as prescribed in the other conventions discussed above making it an useful
legal instrument for combating modern international terrorist threat to the ships and
port facilities. For this purpose the IMO General Assembly directed the Legal
committee to review the existing legal measures and in particular this convention in
order to update it to include the issue of the terrorist activities in its text. This should
be high in the agenda of the next General Assembly to be held in November 2003.

The above-mentioned conventions have not achieved their objectives for the simple
reason that while a number of state parties have ratified them, they have not
incorporated them in their domestic legislations in order to establish jurisdiction over
the offences prescribed therein. Furthermore, even where they have been
implemented for instance among the western democracies there are different
interpretations that render cooperation especially in the extradition of the offenders
face difficulties due to considerations of other national interests. Furthermore the
motives and the tactics of the terrorists that were prevalent during the drafting of
these conventions and the others have changed so drastically that they will require
complete overhaul to make them relevant to the modern countermeasure to combat
terrorism. The planes that were hijacked for the negotiation purposes now is being
used as a weapon itself, the bomb that was placed in a building and used for extortion
or detonation by remote device is today deployed by a fanatical suicide bomber
whose commitment and mission seems unstoppable and who besides threat of the
deployment, is all the more ready to deploy a weapon of mass destruction.

4. 4 The IMO Resolutions and Circulars

The international Maritime Organization has developed one resolution and several
maritime safety committee circulars to assist the member Government and the
industry to strengthen port and on board security. Resolution A 584 (14) of 1985
directed the MSC and the other committees of the IMO to “develop practical
technical measures including shore side and shipboard which may be employed by
Government, port authorities, administrators, ship owners, ship operators,

55 Ibid pp88
shipmasters and crews to ensure the security of passengers and crews on board ships. The assembly further urged the maritime security committee to take cue from the marked successes of the International Civil Aviation Organization (ICAO) in the establishment of standards and recommended practices for the airports and security of the aircraft.

This resulted to the development of two MSC circulars 443 and 754 in 1986 and 1996 respectively, that were intended to improve security of ports and the passengers and crews on board passenger ships and passenger ferries. The two circulars were a reaction to the Achille Lauro Incident of 1985, urged the member Governments to develop appropriate measure against unlawful acts threatening the passengers and crews on board ships by incorporating the proposed measures in their national legislations and promulgate regulations that could inter alia “provide penalties for persons attempting to gain unauthorised access to port facilities and persons committing unlawful acts against passengers and crews on board ships.” The guidelines provided by the above resolution and circulars have formed the basis of the new SOLAS 74 chapter X1 – 2 and the development of the ISPS code that will be discussed in the next chapter.

The Maritime Safety Committees circulars 622 and 623 though adopted to deal with incidents of piracy and armed robberies against ships have some relevant provisions that are applicable to the prevention and suppression of acts of terrorism against port facilities and maritime navigation. These can be discerned in the elements of cooperation in the prosecution procedures and extradictions, sharing of the information on the offenders among the various agencies of the coastal states and the issue of vigilance to detect intentions of boarding the ships by the perpetrators of unlawful acts.

Also of relevance are the alerting systems that are covered by the early implementation provision contained in the amendment SOLAS 74 Chapter v.

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56 International Maritime Organisation (IMO) Resolution A 584 (14) appended in MSC Circular 443 pp 15. Measures to prevent unlawful acts which threaten the safety of ships and security of their passengers and crews, IMO London (1986)
bringing the date of entry to force by July 2004 together with the ISPS code. The cooperation between the ships and the Regional Rescue Coordination Centres (MRCC) has been initiated in the communication of attacks to the shore based installations and security agencies which can serve the same in cases of terrorists boarding of a ship on the high seas. Furthermore the installation of deterrent equipment and lighting systems would deter both the pirates and terrorist alike. The above circulars and the resolution have largely been ineffective as they lack legal instrument for their enforcement due to the non-implementation of the relevant international conventions that would provide the legal instruments for the enforcement.

57 International Maritime Organisation (IMO)1986 Circ.443 para.3.2 pp 2. Measures to prevent unlawful acts against passengers and crews on board ships, IMO London (1986)
5.0 THE SOLAS 74 AMENDMENTS AND THE DEVELOPMENT AND ADOPTION OF THE INTERNATIONAL SHIP AND PORT FACILITY SECURITY (ISPS) CODE

The terrorist attacks on the World Trade Centre in New York and the Pentagon in Washington DC on the morning of September 11th 2001 and the previous attacks on the US embassies in Kenya and Tanzania, reflected two significant developments in the international terrorism. On the one hand the attacks demonstrated that geographical separation from the hot spots of terrorist activities is no longer a guarantee of safety and security of any nation from international terrorism. The degeneration of the terrorist organization into small and loosely organized but highly secretive cells and the advantages of the development of modern telecommunication and information technology have made it easy for the terrorist cells to communicate their plans without being detected. Furthermore globalisation has made movement of people easier especially in the western democracies and the world at large and this has also applied to the terrorists, enabling them to establish cells in every continent. President George W Bush puts is even more clearly when he asserts “America is no longer protected by vast oceans. We are protected from attacks only by vigorous action abroad and increased vigilance at home.”

On the other hand, these attack proved the earlier notion that the terrorists are more interested in publicity rather than mass casualties is no longer fashionable. The terrorist who fancied seeing “a lot of people watching and many people listening but not a lot of dead bodies” ceased to exist in 1980s as evidenced by the bombing of the marine barracks in Beirut and the downing of Pan Am flight 103. The attacks have ushered in a new era of conflict more bloody and destructive than ever before. Paul Rodgers of the Infrastructure protection Centre of the FBI explains that “while terrorists once generally used acts of terrorism as a means to publicise their causes,

58 US State Department: Loc. cit
the operational objectives in the more recent attacks focuses on producing maximum
destinations, casualties and impact." The attacks further demonstrated an ambitious
scope and dimension with consummate coordination and unprecedented
professionalism and tradecraft that kept so large an operation so secret and
unswerving dedication and determination in the execution of the plan. The selection
of the weapons and the target proved beyond doubt that no sector is safe from
international terrorism and more so the shipping sector due the international nature of
its operation.

Following the attack on the World Trade Centre in New York on September
11th many world nations undertook urgent measures to review their security against
terrorist attack. The IMO Secretary General in response to resolution1373 adopted by
the UN general Assembly in October 2001 passed a note to the organizations 22nd
General Assembly meeting in London in November 2001 addressing measures to
prevent acts of terrorism that threaten the security of ships and port facilities. The SG
presented to the assembly the resolution A 924 (22) that had been prepared by the
extra ordinary session of the IMO council that had met a week before the assembly
session commenced on 16th November 2001. The Assembly at the close of the session
adopted resolution A 924 (22) unanimously and made a wide ranging decisions that
would spark off intensive work for the member states of the organization throughout
the year 2002 culmination to the convening of the Diplomatic Conference of the
contracting Governments to adopt a wide ranging measures that had been developed
during the year.

While adopting the resolution A 924 (22) the Assembly urged the member
states to review the existing, and develop new measures to prevent and suppress acts
of terrorism that threaten the security of passengers and crews and the safety of ships
and port facilities. It further directed the Legal and the Facilitation committees to
review the existing legal and administrative measures with a view to updating them
to facilitate the prevention and suppression of acts of terrorism against shipping and
port sectors. The assembly also decided that a maritime safety committee

intersessional working group comprising of all the member states including the intergovernmental agencies, non governmental organizations and the industry to be established in February 2002 to prepare and make recommendations on the measures to be adopted and submit them to the MSC 75 scheduled to meet in May that year. Therefore in order to make an adequate analysis of the amendments of the SOLAS 74 and the development of the ISPS code it is prudent to evaluate the work of the MSC intersessional working group that met in February and September 2002, the NAV and COMSAR subcommittees of MSC and the legal and the facilitation committees of the organization.

5.1 The Intersessional Working Group (ISWG) Meeting 11 – 15th February and 13 – 19th September 2002

The first ISWG that met at the IMO in February 2001 proposed various amendments to SOLAS Chapters V Regulation 19 and X1 Regulations 3 and 5 to provide for the installation of the Automatic Identification Systems, (AIS) ships alert systems, the ships identification numbers and the issuance of Continuous Synopsis Record (CSR) respectively. The working group also recommended the development of the International Ship and port security (ISPS) code. The amendments to SOLAS and the development of the ISPS code are built upon the MSC circulars 443 of 1986 and the subsequent circular 754 of 1996, which set out measures to prevent unlawful acts against passengers and crews on board passenger ships and passenger ferries respectively. The former covered the passenger ships on international voyages of more than 24 hours while the latter catered for passenger ferries on international voyages. Both were a reaction to the Achille Lauro and the City of Poros incidents, which involved passenger ships in 1985 and 1988 respectively.

These circulars resulted from the provisions of the IMO Assembly resolution A 584 (14) that directed the MSC and the other committees “as required, to develop on a priority basis, detailed and practical technical measures including both ashore and shipboard measures which may be employed by Governments, port authorities
and administrators, ship-owners, ship operators, ships masters, and the crews to ensure the security of the passengers and crews on board ships.  

MSC circular 443 provided for the preparation and development of the ships and port security plans and risk assessment of the port facilities and urged the Governments, port authorities, administrators, ship owners, ships operators, ships masters, and the crews, to take “appropriate measures against unlawful acts threatening passengers and crews on board ships.” The circular urged the governments to put in place appropriate legislation, which inter alia could provide penalties for those persons gaining or attempting to gain access to port facilities and persons committing crimes on board ships. The circular further elaborated the provisions of the port and ships security plans and proposed the designation of the port facility and ship security officers to develop and implement the security plans while the government were urged to designate an authority to approve and verify these plans. It also required the contracting Governments to report incident of maritime security to the Secretary General of the IMO. The implementation of these measures should not interfere with the seamless movement of passenger services and should put into consideration of the provisions of the international law.

The MSC circular 754 was based on an IMO seminar on ferry security held in November 1993 after the Herald of Free Enterprise incident in 1987 and the loss of Scandinavian Star in 1990 when members urged the organization to consider recommending development of measures similar to those proposed in the circular 443 for passenger ferries operating on international routes and ports serving them. The requirements proposed included that the member Governments implement the measures that are developed voluntarily, need to apply the carriage of vehicles, and cohesiveness in developing of the measures by the member Governments to avoid conflicting demand being placed on the ferry operators. The Governments should further harmonise their measures to reduce the differing requirements placed on the

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61 International Maritime Organisation (IMO) 1986 MSC circ. 443. para 4.1 pp 3. *measures to prevent unlawful acts against passengers and crews on board ships.(IMO) London 1986*
ferry operators by different states and that the IMO should set up a Correspondence Group in order the incorporate the measures recommended into the agenda of the maritime safety committee.

Circular 754 encompassed all the measures proposed under circular 443 but introduced the element of the setting up of security levels. It was proposed that “as part of bilateral agreements Member Governments may wish to agree a system of threat level notification covering background, moderate, and high levels of threat and the security measures each considers appropriate for these levels.”62 The circular emphasised the need for trained responsible officers to perform the duties as defined in MSC cir 443 and proposed establishment of a security liaison committees in the fashion of the maritime and port security committees proposed by the first intersessional working group that met in February 2002. It actually set the theme of the risk management concept that is inherent in the ISPS code by proposing the designation of the restricted areas in the port facility, the access control and identification inspection of passengers and their baggage and screening and also the control of embarkation and disembarkation.

The two MSC circulars though non mandatory provided the drafters of the ISPS code with the basic concepts on the roles to be played by the governments, the designated authorities, the administrations, the companies and the ships masters and the obligations of each stakeholder in the prevention of the commission of unlawful acts against the shipping industry and the port sector. The ISWG therefore had no difficulties in laying the foundation of the work that would occupy the international maritime community for the rest of the year 2002 but was to encounter several contentious issues. These were the identification and the background information on the seafarers, the information sharing between the ships and the port state control authorities and the issue of ownership and control of ships. Another contentious issue was the issue of categorization of the ports as well as the ships, which will fall within the scope of application of the new proposed amendment to SOLAS and the ISPS code.

The various delegations both from the Contracting Governments intergovernmental non-governmental and the industry and notably the United States delegation, made a wide range of proposals on the measures to improve maritime security drawing largely from the provisions of the MSC circular 443 for the ISWG to consider and recommend to the MSC 75. The ISWG adopted these recommendations unanimously. With only minor changes in the text especially on the issues of the ship and offshore security plans, the port facility security plans designation ship and port facility security officers, the port and ships vulnerability assessment the installation of automatic identification systems (AIS), the ships alert systems and the Continuous Synopsis Records.

The issue of the identification of seafarers was sensitive and required careful considerations. The US delegation had proposed that a new regulation be added to Chapter X1 of SOLAS 74 entitled “Seafarers Identification and Background Check” which would require the “Administrations to verify whether each member of the ships crew or other persons employed or engaged in any capacity on board a ship on the business of that ship has been convicted of any serious criminal offence under the laws of the Administration.” The issue of identification document for the seafarers was unanimously agreed by most of the delegations as essential and this has been on the high agenda of the International Labour Organization that was considering a review of the seafarer’s identity document convention 108 of 1958 and the ISWG proposed that the IMO should approach the ILO with a view to establish a joint IMO/ILO working group to deliberate on the issue and accelerate the revision of the convention 108 to facilitate the implementation of this proposal alongside the other measures to be developed on the prevention of acts of terrorism against ships and port facilities.

The proposal of the requirement of background check of the seafarers drew long discussion in plenary as it met with a lot of opposition from the delegates who felt that on the one hand this would infringe on the seafarers human rights and on the

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other it would infringe of the privacy of both the seafarers and the official company information. The representative of the seafarers felt that the information to be contained in the identity documents should be disclosed to the concerned employee. There was however a general awareness among the delegates that in view of the structure of the operations of contemporary international terrorism, a terrorist cell can be introduced in a ship or port facility and organize and execute a terrorist attack from inside. Furthermore the current research on the issue of fraudulent acquisition of certificates of competency by some seafarers points to such possibility.

Some delegates felt that it should not be construed that the information contained in the document is meant for denying any person employment on board ship or port facility but would rather enable the company or the port facility to decide as to whom to allow access to sensitive and restricted areas that require to be secured. It was therefore imperative that a compromise should be arrived at and this was left to the deliberation of the IMO/ILO working group and the MSC75 that was scheduled to meet in May 2002. The Secretary General of the IMO however urged the contracting Governments that while the “details of this issue are being worked out by the organization and until the solution is reached the confined and solitary nature of seafaring should be recognised and the crews need for and ability to be granted shore leave should not be impeded.”

This was a timely observation as a number of nations had already introduced stringent visa requirements for seafarers on board foreign ships that call in their ports.

The second contentious issue was the definition of the owners of the ships and who actually decides on the employment of the personnel on board ships and controls their operations. It was the contention of the ISWG that this identification was essential to establish the person or persons who would be held responsible for the implementation of the measures being developed for securing the maritime industry from unlawful acts of terrorism. This proved quite difficult as most of the ships today are registered under intricate corporate arrangements that involve

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companies running various other enterprises with the beneficial owners hidden behind this façade that is difficult to penetrate or what has come to be known as “piercing the corporate veil”

It was however necessary that a compromise attempt should be adopted to solve this problem and the ISWG settled for the recommendation for an additional Regulation 5 to the SOLAS 74 Chapter X1 requiring ships to have Continuous Synopsis Records on board giving the history of the ship that would include the registered owner or owners of the ship, who appoints the crews and control the operations of the ship, and who signs the charter contracts on behalf of the owner. It was proposed that the Administration should be required to maintain the CRS and forward it to the next Administration in case of a change of flag and continuously update it in cases of change of ownership. The company was required to inform the Administration in case of any changes in the records it holds on that particular ship.

Another element that would pose confusion to the delegates was the sharing of intelligence information on terrorism between the Administrations and the port state authorities, flag states and the company and the port states and ships. This is more so in view of the fact that the information contained in the vulnerability assessment reports and the ship and port facility plans to be prepared for the ships as well as the port facilities that were to form the basis of the recommendations by the ISWG were to be protected from disclosure to unauthorised persons. Furthermore information on terrorist activities is highly classified information and the Governments will be reluctant to divulge it to persons not authorised to handle such sensitive government secrets

This problem was subject to lengthy discussion especially when it came to the consideration of the controls that were proposed under the Regulation 9 to be included in the new amended SOLAS 74 Chapter X1. Some delegates proposed that to resolve this issue it be proposed that a two way track inspection be introduced where the statutory classical inspection would be undertaken by the authorised port state control officers while the security inspection should be entrusted to other officers possibly from the police forces. There also would be the problem as to who
should be designated as the company or the port facility security officers. The issue here was as to what qualifications the persons to be designated should possess in view of the sensitivity of the information they were expected to handle.

There was also concern that was expressed by the shipping industry as well as the ports on the flow of information on which the declaration of security by the Contracting Governments and which would facilitate the movement from a particular security level to another. The information is expected to be credible and should be collaborated, as movement from one security level would involve additional costs in form of introduction of extra measures. More often however, the information that can be gathered on intelligence regarding terrorist organizations and their operations is usually fragmented ambiguous and often of doubtful credibility unless the terrorist organization has been penetrated.

Therefore the information that may be passed to the company or the port facility is of tactical nature to assist them to thwart a terrorist plot and actually to assist them to establish the first line of defence to facilitate appropriate response to a perceived or imminent threat. Paul R pillars of US National Security Agency suggests “that intelligence contribution should be viewed rather in more strategic sense of which groups pose the greatest threat, which times, and which regions present the greatest dangers and what targets and what tactics more likely to be used.”

Therefore, a compromise had to be reached where there should be a seamless flow of information to enable the ships and port facilities to more smoothly from security level 1 to 2 without requirement of external assistance while the Contracting Government should ensure that the credibility of the intelligence to require them to move to the security level 3 and the imminence of the likelihood of an incident be checked before declaration of security at that level. Furthermore the declaration of security at level 3 should be temporary and ships and port facilities should operate on it as long as the imminent threat and should change to other levels as soon as the threat is over.

There was also the question of the ports that would be subject to the provisions of the proposed new ISPS code. The adoption of the definition of the port facilities provide for ships serving International voyages bringing a large number of ports and terminals within the scope of application of the code. This would overburden the port and terminal operators and the administration with the wide range of measures to be implemented and some member states proposed that the categorisation be based on the outcome of the port and terminals assessment report that would determine the extent of the threat risks each port or terminal faces.

Furthermore the ISWG was aware that some ports might not have particular risks and may not be potential targets of terrorist attacks but this notion was treated with caution for while the terrorist may not target particular ports for direct attack they may still use such ports for infiltration either of the weapons or the terrorist themselves as can be illustrated by the attempted smuggling of a terrorist from a port in the Mediterranean coast in October 2001. It was therefore proposed that the Contracting Governments, after the vulnerability assessment should consider the extent of application of the new regulations to those ports facilities which although they have been designed or are intended primarily to serve ships not engaged on international voyages but occasionally to receive ships arriving or departing on international voyages unless the assessment indicate non or negligible risk in these facilities.

The proposal on container examination at the port of loading also drew diverse reactions especially from the International Association of Ports and Harbours (IAPH), the International Chamber of Shipping (ICS) and the Association of European Port and Harbours. It was felt that the proposed inspection of containers in selected ports would give advantage to those ports and affect the flow of container traffic in the other ports. It would also lead to congestion in ports and affect the turn round of vessels and increase the costs both to the shippers and the ships operators as well. This required a compromise trade off as on the one hand there was the concern of the maritime security against act of terrorism and on the other there was the concern of the smooth and seamless flow of world trade.
The threat of containers being used by terrorist organization for transportation of weapons is real as containers are loaded and unloaded away from port and transported to the ports for transhipment and only 2% of the containers were being inspected. While making this proposal the US delegation indicated that “the potential for use of these containers by terrorists for atrocious acts is very real. Containers can be used for the transport of weapons of mass destruction or as recently experienced in a European port, for the transport of potential terrorists.” It was proposed that a container once packed and inspected can be electronically sealed and this may provide it with a chain of custody as it moves through the worlds transportation system.

Furthermore it is worth to note that when the ISWG was discussing these proposals the US customs department was already negotiating with various port administrations on what has come to be known as the container security initiative and by August 2002 just a month before the second ISWG meeting in September the same year twenty major ports had signed the agreement on the container examination. The issue was however recommended for cooperation with the World Customs Union and by the next ISWG. IMO had signed a memorandum of understanding with the organization on the issue. Except for the few issues such as the installation of the AIS, the ship alert systems and the application of the new proposed measures only at ship/port interface and the above contentious issues, the ISWG prepared and submitted the recommendations for the mandatory amendments to the SOLAS 74 Chapter X1 and the development part A of the International Ships and Port Facilities Security (ISPS) code.

In summary the ISWG that met in February 2002 made several key recommendations to the MSC 75. These were, the acceleration of the implementation timetable for the installation of the automatic identification system on existing ships, the amendment to SOLAS chapter X1and the proposed international ships and ports security ISPS code, the requirement of the ships security plan, ships security officers

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and the company security officers. Others were the new requirements for the port security plan, ship security officers, and the port risk vulnerability assessment. The ISWG also recommended the urgent review of the seafarers’ identification documents by the ILO, and the installation of ships alert systems to provide the seafarers with capability to activate alarm in case of terrorist hijacking.

The committee also proposed to have another attempt at “piercing the corporate veil” by recommending a desirability of transparency of the ownership and control of ships and particularly who decides the appointment of seafarers and the employment of the ships. The inspection of containers that had generated a lot of discussion during the meeting was also sent to the MSC with a recommendation for it to be handled by the organization in cooperation with the WCO. Finally the ISWG recommended the placement of equipment on board ships and port facilities to prevent unauthorised accesses to the ships at sea and at the ports and assistance through technical cooperation to the developing countries to build capacity for maritime security.

The recommendations and the draft ISPS code were adopted by the MSC 75 that was held in May 2002 with only minor alterations especially the wording of the clauses in the text. An ad hoc working group that met during the MSC 75 session came up with the development of the recommendatory part B of the ISPS and the Draft Resolutions to be adopted by the Diplomatic Conference for the amendment to SOLAS and ISPS code and the other special measures that require to be undertaken to implement the amendments. The committee also proposed the convening of the second ISWG to meet in September to deliberate on the part B of the code and refine the draft measures in readiness for adoption by the conference.
CHAPTER SIX:

6.0 THE FINAL ACT – THE REQUIREMENTS OF SOLAS 74 CHAPTER XI – 2 AND THE ISPS CODE.

The main task of the ISWG that met in September 2002 was to deliberate and finalise the part B of the ISPS code and the refinement of some of the contentious issues mentioned above. The issue of the identity of the seafarers and the background information was being handled by the ILO in consultation with the IMO, the examination of containers at the port of loading was being discussed under an IMO/WCO memorandum of understanding and the issue of control and the information exchange had been left for the final decision of the Contracting Governments. Therefore in essence at the close of the second MSC Intersessional Working Group meeting in September, the agenda for the Diplomatic Conference was complete for adoption by the MSC 76 that met concurrently with the conference. The Secretary General of the IMO at the close of the session indicated that the session was historical. He asserted that “this had indeed been an historical session not so much from the viewpoint of the volume of work the committee was able to accomplish and the thousands of pages of documents it dealt with but more importantly in respect of the substance of the decision made.”67

The amendments to SOLAS X1 creating two new chapters X1 – 1 and X1 – 2. The former would be dealing with maritime safety while the latter would deal with enhancement of maritime security and the International Ship and port Security ISPS code alongside eleven conference Resolutions to strengthen them were adopted by the Diplomatic Conference of the Contracting Governments held in London from 9th to 16th December 2002

6.1 Security requirements of the new SOLAS 74 Chapter XI – 2 and the ISPS code.

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The objectives of the new maritime regulatory regime as contained in the new chapter X -11 of the SOLAS 74 and the international ship and port facilities security code is to establish an international framework for the cooperation between the Contracting Governments and the shipping and port industries to detect security threats and take the appropriate preventive measures against the security incidents that threaten the security of passengers and crews and the safety of ships and the port facilities. Chapter X1 –2 and the ISPS Code further establish and define the roles of the respective players in the maritime transport industry. The major goals are on the one hand to ensure an early and efficient exchange of security information between the Contracting Governments, the shipping industry and the port facilities serving on international voyages. On the other hand they provide methodology for security assessment so as to have plans and procedures to react to the changing levels of security and to ensure that adequate and proportionate maritime security measures are in place to respond effectively to these security levels.

In general the regime requires the Governments, the shipping companies and the port authorities to gather and assess information on security threats and use the information for preparation of the appropriate security plans to monitor and prevent among other things, the unauthorised access to the ships and port facilities and their restricted areas. The other requirements are to prevent introduction of unauthorised weapons and other incendiaries or explosives to the ships and port facilities and to ensure that an efficient communication is maintained between the ships and the port facilities by providing the necessary communication equipment and means of raising alarm on board ships and the corresponding equipment at the port facilities. Port facilities and ships are required to undertake periodic drills and training to familiarise with security procedures and plans.

6.2 Obligations and the responsibilities of Contracting Governments in respect of security.

The Regulations 3 and 7 of the SOLAS 74 Chapter X1 –2 stipulates the obligations of both the contracting Governments and the Administrations. The contracting Governments are responsible for setting the appropriate security levels
and ensuring provision of security information both to the port facilities within their territory and the ships sailing in their territorial waters and to ships when entering a port or whilst in their port. The Administrations are responsible for setting the security levels for the ships flying their flags. The setting of the appropriate levels should be based on the credibility of the gathered information and collaboration. The information on the threat is expected to be specific and the threat imminent. These requirements are bound to meet some shortfalls because the information regarding the threat of terrorist activities is mostly fragmented and the question of specificity would be difficult to solve. However, the information that the Government would provide to the port facilities and ships in its territorial waters or in the port would facilitate them in Declaration of Security and to operate at a particular security level.

The contracting Governments are also responsible for conducting the port facilities security assessment and the approval of the port security plans and their subsequent amendments. It is therefore necessary that the information that the government exchanges with the port facility is based on the vulnerability assessment and hence the security plans that are base on the same assessment should contain measures that could enable both the ships and port facilities to move especially from levels 1 to 2 without external assistance. At level 3 the ships and the port facilities should operate according to specific instructions that would be provided by the governments. For instance when the Government of Kenya declared high alert after indications of the presence of a wanted terrorist in May 2003 there was a reaction in the civil aviation industry and some airlines withdrew their services to Kenya although we have no any information on the reaction of the ships that were in the territorial waters and in the port of Mombasa.

The Contracting Governments after conducting the risk assessment of all the port facilities within the territory are responsible for designating the ports that would be affected by the new requirement and for which a port facility security officers should be designated. This also applies to the port facilities that although not designed for serving ships on international voyages but occasionally serves ships
arriving or departing on international voyages for which alternative measures they are expected to develop.

The Governments are also responsible for ensuring compliance with the requirements of the new regulations under chapter X1 – 2/9 of SOLAS and the Part A of the ISPS code. This would involve a two tier inspection where there will be the classical verification of safety measure as required by the ISM code and the additional verifications which will verify the ISPS requirements and the penalties besides the normal corrective and detention measures may involve a ship being denied entry into a port or being expelled for non compliance. In both cases the Contracting Government is obliged to inform the State whose flag the ship is flying and other states whose ports the ship is expected to make calls.

The contracting Government when it has received credible information of a threat of a security incident will determine the time and the security level at which the declaration of security should be required. This would address the measures that should be initiated in accordance with the provisions in both the ship and port facility security plans. It should be noted that when the Governments conduct the port facilities risk assessment they identify the critical assets and infrastructures that if damaged can result to loss of life or destruction of the port economy and the environment. The vulnerability assessment would indicate the weaknesses of the port facilities whose protection is of great concern to the Government and on which the it would base the declaration of security in the threat is reported or is suspected.

6.3 Responsibilities of the shipping companies as regards security

According to the X – 2/4 and paragraph 6 of the regulations the role of the company is to designate the company security officer who would ensure that the ship security assessments and the ship security plans are properly carried out and prepared and the plan placed on board ships. The company is obliged to designate ship security officers for each ship in its fleet and define the role of the masters whose authority and responsibility to make decisions regarding the security of the ship should not be impeded by anybody. The company is further obliged to ensure that the ship security officers and the masters of the ships are facilitated to perform their
duties effectively and efficiently. It should ensure that the ships in its fleet are equipped with the AIS and the ships alerting systems.

The Company must ensure that the ship security plans are approved by the administration and contains measures that would facilitate the ships to adjust to the security levels as may be decided by the Contracting Governments in whose ports the ship may be intending to enter or are operating in. The include prevention of introduction of unauthorised weapons and other explosives devices that may be use against persons on board ships, identification of restricted areas, and prevention of unauthorised access to those areas. In case of breach of security the plan should contain the procedures for responding to the relevant security levels and have procedures of evacuation if necessary. Finally the plan should contain provision for deployment of the personnel on board ships and have the information as to who is responsible for the recruitment and the control of the ships business and procedures for training of the personnel on these plans.

6.4 Responsibilities of the port facilities as regards security.

While it is the responsibility of the Contracting Governments to ensure that the assessment of the port facilities within their territories that serve ships engaged on international voyages are carried out efficiently the port facilities are obliged to designate a port security officers who will be responsible for the preparation and implementation of the port security plan. The plan should indicate measures that would enable the port facility to respond to the various security level that the Government may set and advice on the declaration of security.

The measures include among others the assets and infrastructures that would require protection, the possible threats to these assets and infrastructures, their weaknesses and the countermeasures that should be deployed to reduce the vulnerability. The efficient implementation of the security level 1 is critical not only to the security of the port facility but also to that of the ships that are served by that particular port facility.

The terrorists will more likely attempt to get access to the ships or the port facility from the shore side rather than from the sea and therefore will always try to
get to the ship either as a stowaway or a service provider in the port. It is therefore critical that the measures required by the new regulations such as the controlling the access to the port facility, monitoring the port facility areas including the berthing and the anchorage areas and monitoring the restricted areas would reduce the vulnerability of the of the port facility and subsequently that of the ships in the port.

An assessment of security of the port facilities on the Kenyan Coast revealed that the explosive and the devices used for the attack on the US Embassy in Nairobi in 1998 may have been infiltrated through a small port facility north of Mombasa used for fish landings. It is therefore imperative that the plans should put into consideration such possibilities.

6.5 The Diplomatic Conference Resolutions.

The eleven Resolutions that were adopted by the conference covered various aspects that would add wait to the measures that had been adopted. Resolutions 1 and 2 dealt with the adoption of the amendments to SOLAS 74 and the ISPS code and the date of their entry into force which was set at 1st July 2004. The third Resolution is very crucial because it gave proposals for the development of the training model for the ships and port facility security officers, technicians who will work on the AIS and ships alert systems and long range tracking systems.

Resolution four is also crucial in view of the handicaps that may been experienced by the developing countries especially in financial and technical aspects of the implementation of the measure as required by the new security regulation. Resolution six is more of a warning to the Contracting Governments that unlike the flexibility that was exercised during the implementation of the ISM code and the STCW95 the enhancement of security against terrorist activities is of high priority and the will not be extension.

Resolution seven gives allowance to the Contracting Governments to develop measure for the port facilities and offshore installations that are not covered by chapter X1 – 2of the SOLAS74. This would benefit nations with numerous port facilities such as the European Community and some Asian Countries and United States who felt that inclusion of all these port facilities would involve the operators
with extra burden and subsequently this would have been passed on to the consumers and affect their economies.

Resolutions eight and nine covered the cooperation between the IMO, WCO and ILO on the contentious issues regarding the container examination at the loading port and that of the identity and background checks for the seafarers. The tenth Resolution resulted from a similar resolution by Brazil that proposed development of regulation requiring ships to be equipped with long range tracking equipment and offered to donate similar equipment to the IMO as a sample. The issue was forwarded to the Navigation Subcommittee to deliberate on the technical maturity of the equipment before it is incorporated into the regulations.

The work of the Conference was recognised by the General Assembly of the UN and the G8 summit meeting in Canada and the Secretary General of the IMO was full of praise when during the closing of the Conference he declared “that you have also succeeded, through the interest the conference has generated worldwide, in highlighting and promoting the need for the development of a security consciousness in all that we do to compliment IMOs existing objectives of developing a safety culture and environmental conscience.”68 The Contracting Governments were urged to start putting the necessary infrastructure in place even before the date of entry to force of the regulation in view of the world wide escalation of acts of terrorism. Furthermore, the future design of ships and the port facility plans will have to include the security measures that are provided for in the ship and port facility security plans in accordance with the new regulations.

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CHAPTER SEVEN

7.0 THE FINANCIAL IMPLICATIONS FOR IMPLEMENTATION OF THE NEW REGULATIONS

7.1 The cost of implementation of terrorism – security measures to the shipping companies

The maritime security measures that were adopted by the Diplomatic Conference of the contracting Governments of the IMO is estimated to cost the ship owner a total of $1.3 billion in additional equipment and personnel and an annual budget of an estimated $730 million according to OECD report released recently. This is besides the costs that will be incurred by the port facilities to implement tighter security measures on the shore side of the ports and the terminal. 69

The report quoting a study by a consultant Allen Hamilton indicates that the maritime transport system is vulnerable to being targeted or exploited by terrorists. A large attack especially a well coordinated one could have the result of shutting down the entire system as governments scramble to put in place appropriate measures, the cost of such an attack would likely be measured in tens of billion of dollars. Therefore the comparison would point to the fact that inaction would cost more that this estimates.

The above figures represent perhaps only the Installations of the AIS and ships alert systems and the recruitment and training of the company and ships security officers and the familiarization training of the personnel on board ships. The figures may also cover the preparation of ships risk assessments and the preparation of the ships security plans, which are the requirement for them to operate at the security level 1.

The ships will be required to initiate additional measures when moving to higher alert levels and this involves additional costs.

The ships furthermore may be required to install long range tracking system as required by Conference Resolution 10 that was adopted by the December 2002
Diplomatic Conference of the Contracting Governments, surveillance equipment to facilitate the control and inspection of personnel having access to ships, screening of the cargo and the persons seeking to embark and ships stores to prevent introduction of illegal weapons and explosive on board. They may also be required to modify the integrity of the structure of the ships especially the locking systems of the access to the restricted areas. The threat of terrorism furthermore, may lead to escalation or introduction of new insurance premiums that have not been reflected in the ISPS Code. These entail further costs to the shipping companies.

7.2 The costs of implementation of the new measures to the port facilities

The port facilities are expected to meet the cost of preparing and implementing the port facility security plans besides the recruitment and the training of the port facility security officers and the port facility security personnel. They will be further required to install communication equipment to receive and transmit navigation and security information to the ships while communicating intention to enter the ports or while operating in the ports or communicating the Declaration of Security (DS). Where port facilities are operated by private terminal operators they may be required to meet the cost of the improvement of the integrity of the port infrastructures assets and structures that are susceptible to terrorist attacks and which contribute to ship/port interface. This drew a substantial discussion during the drafting of the amendment to SOLAS X1 and the ISPS code especially from the European Sea Ports Organization (ESPO) who urged the Contracting Governments to bear the cost of the verifications of the port security assessment and the port facility plans approvals. It also urged the Governments to take these costs into accounts when setting the levels of security and declaration of security.70

7.3 The expenditure by the Contracting Governments

The Contracting Governments have been given a wide range of responsibilities that will require them to effect huge additional provisions in their annual budgets. The Governments are required to designate a national authority to implement the new

70 ESPO. International Port Security Code: Report to the MSC 76. pp2
SOLAS X1 – 2 and the ISPS code and designate and communicate to the IMO a contact person or authority that would be available on 24 hour basis to respond to the communication from ships and port facilities that may encounter security incidents. They are further required to conduct port facility risk assessment and verify the port facility security plans. This entails a wide range of training of officers and security men to familiarise them with the new phenomenon of maritime security against international terrorism.

The Governments are also responsible for undertaking the risk assessments for all the port facilities in their territories that serve ships on international voyages and those although not designed to serve ships on international voyages but occasionally serve ships arriving or departing on such voyages. They can accomplish this by utilizing their own expertise or contracting the work to Recognised Security Organization whose expertise they have to pay for.

Where the Contracting Governments are also the port operators, which is characteristic of most Governments and more so in the developing countries, they will have to meet huge bills to improve the port facility infrastructure, assets and structures that are critical to the port operations and susceptible to threat of terrorist attacks. They will also spend substantial amounts to develop legislative framework that would facilitate implementation of the SOLAS amendments and part A of the ISPS code. Lastly the contracting Governments may choose to offer grants to the port facilities in their territories to facilitate the implementation of the new measures or guarantee them to acquire financing for the projects to accomplish the same.

The US government for instance, since the enactment of the maritime and Port Security Act 2002, allocated $104,093,293 as port security grant excluding the port incident and training funding. The allocation was only earmarked for assessments and mitigation strategies and the enhancement and the operational security. The government further allocated $98.7 million for maritime security programmes and an additional $98.054 million for the administration and training by the Maritime Administration. Another $37 and $ 33 millions were offered as ship building loans.

71 American Maritime Officer. *Maritime Administration Journal*: pp 1
and for backing new programmes respectively. Furthermore the maritime security programme would offer the 47 US flag commercial ship $2 million to offset the expenses for compliance with the maritime security programmes.\(^{72}\)

To enhance the implementation of the Maritime and Port Security act 2002, the US government allocated the USCG $5.9 and $6 billions for 2002 and 2003 fiscal years respectively.\(^{73}\) It has also allocated similar amounts to enhance the operational and organizational capabilities of the law enforcement and the intelligence agencies to facilitate the counterterrorism measures. The Department of Homeland Security has also been allocated Similarly huge amounts of funds for emergency preparedness and response for the training and the expenses of the first responders in case of any terrorist incident including an attack on a ship or a port facility.

Other countries especially in the European Union have similar programmes but this type of expenditure will not be within reach of many Governments particularly in the developing countries who will either turn to bilateral borrowing or will have to get their port facilities to adjust their charges and tariffs to meet this new expenditure. Shipping companies may also have to adjust their freight rates to cover these new costs.

7. 4 The expenditure by the IMO

Nevertheless, the IMO established a fund amounting to 1.5million pounds to assist the developing countries in particularly the training and awareness creation to enable the to participate equally in the implementation of the measures to prevent and suppress acts of terrorism that threaten passengers and crews and safety of ships and the port facilities.\(^{74}\) This Fund will provide technical assistance to the developing countries primarily in the field of training especially of port facility security officers and creating awareness on maritime security among the government officers who will be designated to implement the maritime and port security requirements. The actual costs will be computed authentically when the two IMO instruments enter into

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\(^{72}\) Ibid(pp1)  
\(^{73}\) US House Committee on Transportation and Infrastructure, Port Security.pp2  
\(^{74}\) International Maritime Organisation (IMO) – 2\(^{nd}\) – 13\(^{th}\) 2002. (pp3) MSC 76/4/1. Measures to enhance maritime security. Loc cit
force from 1\textsuperscript{st} July 2004. However the above analysis of the expenditure already incurred by the United States is indicative of the expectations of the Contracting Governments and the shipping Industry of the cost of the measures to be implemented. It is a trade off that has to be undertaken as non-action may be disastrous.
CHAPTER EIGHT


8.1 International response to the September 11 attacks

Following the events of the September 11\textsuperscript{th} attacks in the United States, the world governments began to reassess their security systems against possible attacks by international terrorists organizations. They were shocked as Bruce Hoffman in his article Terrorism and Counterterrorism after September 11\textsuperscript{th} observes, by the “scope and the dimensions of the attacks, their consummate coordination and synchronization, professionalism and tradecraft that kept so large an operation so secret. Also Shocking was the unswerving dedication and determination of 19 aircraft hijackers who willingly and wantonly killed themselves, the passengers and crews of the four aircraft they commandeered and the thousands of persons working in or visiting both the World Trade Centre and the Pentagon”\textsuperscript{75} The Governments therefore initiated stringent border control and visa requirements that had negative impact on the movement and the freedoms of the people including the seafarers on ships serving on international voyages whose shore leaves were affected.

The year 2002 was a period of intense activities on the world scene as Governments reviewed their legislations on terrorism and developing new one where there were none. There was an awakening to the need for cooperation that was elusive in the period preceding the attacks and there was a revitalization of regional bilateral and multilateral initiatives to develop the countermeasures against terrorism and a coalition was formed led by the US to seek and interdict terrorism from its sanctuaries and punish the sponsors and the collaborators of international terrorism. There was also a rush by the Governments to develop the legislative frameworks to facilitate the ratification of the international conventions against international terrorism and it’s financing. There was cooperation in Identifying and freezing of financial resources and assets of the terrorist organizations and their collaborators by
many countries and others were developing the conducive legislations to facilitate the implementation of the UNSCR 1373 on the same exercise. Many countries cooperate in the information exchange on intelligence on terrorist organizations, that leads to arrests and detention of a substantial number of terrorists and disruption of a their planned attacks and for the first time the world nations attempts to seek a common understanding as to what constitutes international terrorism.

8. 2 The IMO initiatives

At the IMO work on initiatives had been taken to assist the developing countries to contribute to the world effort to protect shipping to the best of their ability and in line with the standards under the elaboration by the organization and three workshops had already been conducted in Mombasa, Singapore and Sydney and other were to follow. Furthermore the IMO and the ILO had established an excellent cooperation on the seafarers’ identification and in accordance with the commendations if the ISWG had signed a memorandum of understanding with the WCO on cooperation on container inspections.\(^76\)

Some Contracting Governments such as the USA and the UK have already created departments to deal with counterterrorism and had began to implement the new measures by enacting the Maritime and Port Security Acts and developing their models of the ISPS code. The EU is also in the process of completing its model of the code, which it promises to be ahead of the IMO, developed code. The Kenya Government among other developing countries conducted a security survey of its ports in October 2002 that has contributed to the establishment of the now operational Antiterrorist Unit and the Counterterrorism Bill that has already been presented to the National Assembly for enactment.

8. 3 the container security initiative (CSI)

The most dramatic initiative that has affected the maritime sector however has been the Container Security Initiative that was developed by the US Customs Department in 2002. The core elements of the CSI is first to establish a criteria for identifying high risk containers based on advance information targeting, secondly to

\(^{75}\) Hoffman B. 2002 pp 1: Terrorism; Threat Assessment, Countermeasures and Policy, 2002

\(^{76}\) International Maritime Organisation (IMO) MSC 76/4/1 loc. cit
pre-screen the containers before they are shipped to US ports, thirdly to pre-screen the high risk containers using high technology and fourthly to use smarter technology to secure containers. While briefing the Senate security committee Robert Boner, the US customs Commissioner, asserted that the aim of the initiative is to push outwards and allow customs more to react to potential threat, to stop the threat before it reaches the US and to expedite the flow of the low risk commerce across its borders. “Unfortunately, the cargo containers are susceptible to terrorist threat. You may recall the discovery by Italian Authorities last year in October, of a suspected Al Qaeda operative, an Egyptian national living inside a sea container. He was headed for the Canadian port of Halifax with airport maps security badges and an airport mechanics credentials”.

The intentions of the US customs are to implement the initiative in several phases. In the first phase it would post US customs inspectors in twenty-world mega ports that handle over half of the containers bound for US ports with portable equipment to work with their counterparts in those ports to identify the high risk containers and screen them before they are loaded on ships sailing to the US ports. By August 2002 eight ports in the European Union and others including Singapore and Hong Kong had signed the CSI agreements with the US customs. This met with a lot of opposition from the International Association of ports and Harbours and European Commission as it was deemed to give competitive advantage to a few ports that would affect the flow of container business between the other ports. The EC in October 2002 started infringement proceeding against several members of the Union for participating in the CSI namely the Netherlands, Germany, Belgium and France but the US customs reacted fast and included eleven more of the European ports. The argument is that the ports that are participating in the initiative

http://www.customs.gov/xp/cgov/newsroom/commissioner/speeches_statements/arch
… Retrieved on 17 – 2 – 2003
78 Ibid (pp2).
are the traditional hubs that have been transhipment centres for the cargo destined to various destinations in the world and the CSI is not expected to distort this pattern.

8. 4 The 24 hours rule

Alongside the CSI is the 24 hours rule requiring the shippers to forward electronically, of detailed manifest information 24 hours before containers loading. This is being implemented to further improve the identification and targeting of high-risk containers and applies to all carriers in any countries intending to send cargo to the US. Commissioner Robert Boner, while giving a speech to the Association of US ports authorities, has termed the 24 hours rule as a matter of national security “24 hours rule requires sea carriers and NVOCCS to provide the customs with detailed description of the content of the sea containers headed for this country from Rotterdam or Singapore for the port of Newark, the port of Los Angeles or the port of Charleston. I want them pre-screened there not here.”

The containers that fail the pre-screening will be issued with the do not load directive until their manifests satisfactorily meet the requirement. This will affect the shipping agencies who may have to bear some liabilities due to the delays in shipments and the vessels that will ignore the do not load warnings will be denied unloading containers in the US ports.

The CSI and the 24-hour rule arrangements are reciprocal as other nations that are invited to post their officer in US port and Canada has taken the lead and has posted inspectors in the port in US to work alongside their counterparts to verify the containers crossing into Canada from American ports such as Seattle and Newark. However this arrangement, though an efficient measure to interdict incidents of terrorism will affect the container trade in the poor countries that may not afford the advanced equipment to conduct the rigorous inspections. Furthermore the initiative will be an additional expense to the shippers who may be required to incur additional transportation costs while transporting the containers from the quayside to the

inspection centres which obviously will be away from the ship/port interface even at the transhipment hubs. The electronic or the smart sealing that is expected to secure containers in the world transportation system may also not offer complete safety for containers as in case of some ports in Africa whose containerised cargo is transported by trucks from far off destinations and do not have efficient screening equipment and hence will fail the manifest details of the 24 hours rule and the pre-screening requirements as required by the CSI.

8. 5 The Customs Trade Partnership Against Terrorism

The other initiative by the US customs department is the Customs Trade Partnership Against Terrorism (C – TPAT) in which the shippers and carriers are expected to conduct a comprehensive assessment of their supply chain security and take steps to substantially improve physical security, personnel security, access control and other actions that together strengthens the overall supply chain and improve the ultimate security of the country’s borders. According to Boner “the Importers have voluntarily agreed to take steps to increase the security of their cargo from the foreign docks to US borders. And for their efforts we will reduce their inspections and other customs burdens. In fact we intend to give companies that partner with us the fast line across the border.”

80 This was on realisation that no importer or carrier for that matter wants to be the company that brought a weapon of mass destruction into the United States. The benefits to the US carriers and shippers are expected to be, as Commissioner Boner adds, “fewer customs examinations, more predictable deliveries, reduced inventory need, lower risk of theft, lower transport cost and of course no weapons of mass destruction in the containers.”

81 As for the US ports, the benefits will be, efficient container movement, greater predictability, freed up terminal storage and shorter waiting time at terminal exits. The above initiatives are actually suitable for the involvement of the industry


81 Ibid (pp5)
in the development of measures to prevent and suppress acts of terrorism against maritime navigation and the port facilities as required by the ISPS code developed by the Contracting Governments of the IMO. In fact the container security initiative is an advance implementation by the US Government of the recommendation by the ISWG for cooperation with the WCO that has been working on the examination of the containers in the multimodal transport.

These initiatives perhaps were undertaken in view of the statement by the IMO Secretary General in the introduction to the IMO News No1 2003, that “because of the worldwide escalation of acts of terrorism, there can be no doubt of the wisdom, for all parties concerned, of starting to put in place without delay all the necessary infrastructure such as the legislative administrative and operational measures that will be needed to give effect to the decisions of the maritime security conference.” He urged the governments to do this methodically and systematically without waiting for the entry into force date of 1st July 2004. “The last minute actions could not only play into the hands of the very people these measures are designed to stop but could also lead to restriction on the movement of ships found not to be in compliance with the applicable requirements of the SOLAS and the ISPS code.”

The operational measures have worked very successively as can be evidenced by the CSI and the C–TPAT and the cooperation that has been experienced among the world nations in the counterterrorism measures. There however have been a lot of negative reactions to the development of anti terrorist legislations, which are necessary for the implementation of the new requirement for the maritime security. For instance countries that have published anti terrorist Bills have barely pushed them for enactment due to opposition from the politicians the legal fraternity and the liberty groups. In states such as the United States and Britain where the anti terrorist legislations are in place in form of Patriot Act and the prevention of terrorism Act respectively, the liberty groups have opposed the as draconian and infringing on personally constitutional rights.

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83 Ibid pp5
This legislations though containing some elements that constitutes infringement of personal freedoms are necessary for the collection of the intelligence information that will be required by the ships and the port facilities to enable them to move from a particular security level to another. This cannot be possible without the enhancement of the investigation capabilities that are provided for by these legislations. This will require sensitization of the citizen to understand the extent and what constitutes the international terrorism and the threats it poses to their security.

While developing and executing the security measures whether legislative or military, the international community should endeavour to seek and eliminate the root cause of terrorism that seems to be more embedded in social factors than the political spheres that are subject to the measures that are currently being undertaken. For instance the elimination of the poverty that is characteristic of the populations in the terrorist prone regions will discourage the element of the current belief in martyrdom among modern terrorist if the standard of life in these regions are improved. This will reduce the tendency of hopelessness that has provided recruits to the terrorist organizations.
CHAPTER NINE

9.0 CONCLUSIONS

9.1 General observations

The preceding chapters of this dissertation have discussed and analysed the threat of terrorism both to the world nations in general and to the maritime security in particular. It is evident from the study that the threat of international terrorism is real and it will be with us for the foreseeable future and it is the role of the international community to develop countermeasures to combat it and its manifestations. It has further been revealed by the study that there has been lack of common interpretation of the concept international terrorism both by the academics and the politicians leading to different definitions of terrorism and hence lack of common approach in combating the phenomenon. The study has further analysed the various definitions and interpretations and the notion of the one man terrorist is another’s freedom fighter which capitalised on the concept of self determination and the struggle of the oppressed people that became and still is the biggest obstacle in dealing with international terrorism.

It is also evident that there was an upsurge of international terrorism in the western democracies during the 1970s and 1980s that is characterised by ideological leftist orientation resulting from the liberation movements and the Palestinian question in the Middle East. This period witnessed the evolution of international terrorism from aircraft hijackings and kidnapping to sabotage and suicide bombings causing much destruction and mass casualties as discerned during the attacks on the US marines Barracks in Beirut, Pan Am flight 103, bombing of the US embassies in Nairobi and Dar es Salaam and the attacks on the World Trade Centre and the Pentagon on 11th September 2001.

During the same period the international community through the member states of the UN developed and signed twelve international conventions and protocols against international terrorism. There were also the bilateral and regional conventions that were signed but all lacked the legal framework as the states failed to
ratify them and hence could not be enforced to prevent the escalation of acts of terrorism. The failure of the implementation of these international instruments seem to have been embedded in the different perceptions various nations had as regards international terrorism and the strategic foreign interests of the affected nations. In fact some nations were ready to look aside as long as the terrorist activities did not threaten the democratic institutions that are the basis of their constitutions as is the case with France. Other such as Italy and Greece viewed international terrorism as an element of foreign diplomacy and sought accommodation with terrorism for mutual benefits. In Britain, United States, Germany and Israel viewed terrorism as common criminal acts that should be dealt with under the domestic law. During this period these nations developed strict legislations to combat terrorism and empowered their law enforcement agencies to investigate and prosecute terrorists. They also empowered their intelligence communities to collect intelligence on terrorists and created specialised police and military units to respond to terrorist incidents especially the hostage rescues.

One common feature is that there was lack of cooperation in information exchange and the extradctions mostly due to differences in security structures and the definitions as to what constitutes the international terrorism. Furthermore some felt that extradition may interfere with the asylum laws that were sacred to their constitutions and has protected those seeking asylum from being prosecuted for political offences. Due to foreign policy considerations these nations could not cooperate in punishing the states that sponsors terrorist organizations. This led to frustration of some states such as the US who took unilateral action to punish the perceived offending states.

It is evident however that international terrorism did not threaten the fundamental principles of democracy and therefore there was no rush to restrict freedoms for the sake of greater security. Only nations such as Britain and Israel that introduced full range of powers that was criticised as encroaching on civil liberties. Nevertheless international terrorism alone was not usually sufficient cause to bring about introduction of countermeasures that would encroach on democratic processes.
and civil liberties. In fact Charters in The Deadly Sin of terrorism p221 contends that, “If international terrorism did not prove to be the major distabilising threat to liberal democracy than many suggested neither did those responses of those states realized the worst fears regarding the demise of civil liberties.”84. However terrorism had destabilising effect in the nations in Latin America where the military overthrew the developing democratic states and replaced them with regimes that suppressed the same democracy the terrorists had been fighting for as was the case of Uruguay.

During the 1990s there was evidence of an upsurge of rightist radical religious nationalism that was characterised by the fundamentalism and fanatism with anti western ideologies that led to the events of the September 11th attacks. There has been a degeneration of the terrorist groups into small loosely organised cells, highly secretive and sensitive to their security that they are very difficult to infiltrate by the intelligence and the law enforcement agencies. These cells have an intricate system of financial operations that facilitates their operations almost independently with only little control from a far off authority on the planning and execution of their acts. Nevertheless the financial sources of terrorist activities have been sought and frozen by various states in the implementation of the UNSCR Resolution 1373.

The dimensions and the scope of the September 11th in the US and the impact it had on the international security led to the realisation by the shipping industry that ships and port facilities are likely targets for international terrorists due to their vulnerability and the scope of their operations and equipment. This leads to the adoption of the Resolution A 924 (22) by the IMO Assembly meeting in London in November 2001 urging the Contracting Governments to review and develop measures to prevent and suppress acts of terrorism that threaten the security of passengers crews ships and port facilities. The year 2002 saw intense work by the members of the IMO that culminated to the adoption of a wide range of measures that included the creation of a new SOLAS Chapter X1 – 2 and the development of

the international ship and port security (ISPS) code all of which will enter into force on 1st July 2004.

The year also witnessed the revitalization of the cooperation that had been elusive in the past and there is cooperation in the punishing of the perceived state sponsors of terrorism and the exchange of information leading to detention of a substantial number of terrorists and disrupting their organization at least for the time being. Their is also initiation of measures such as the CSI that sought to expand the US first line of defence overseas by ensuring that all containers destined for US ports are pre-screened in the ports of loading with the cooperation of the customs inspectors of the port states and the partnership with the US carriers and the shippers.

9.2 Recommendations

According to Tom Ridge an assistant to President George Bush on homeland security the threat of terrorism will be with us for the foreseeable future. “As we confront it, we must present a unified front to this unconventional enemy. To succeed, we must stand shoulder to shoulder with all committed nations for in unity there is strength.”85 This is an all-encompassing statement that depicts the need for international cooperation in order to develop common approach to the countermeasures to combat the acts of terrorism. This calls for the evaluation of individual states foreign strategic interests and international diplomacy to bring them in line with efforts of the international community to combat the threat of terrorism. The issue of international cooperation has been quite often expressed in various forums but the treatment of terrorism has been ad hoc reaction to incidents and dramatic declarations without unified action. The cooperation should be developed in the fields of information sharing on terrorist movements and organizations and formulation of common programmes aimed at combating the phenomenon. The nations that develop accommodation with terrorist either by negotiating concessions

with them ultimately jeopardise the security of the other nations that attempt to develop stringent measures against terrorists.

Cooperation should also be established in the punishing of the errant states that give sanctuary, safe havens and finance the terrorists in either planning or executing their activities. This has been the most critical due to differing foreign policy and commercial priorities among the developed nations. This has led to the offended states taking unilateral action that have complicated further the international relations as has recently been evidenced by the issue of American and British attacks in Iraq. The same was the case of the US attacks on Libya in the 1980s.

The other area that would require cooperation is the capacity building for the developing countries in developing measures to combat terrorism. It is worth to note that due to enhancement of the terrorism combat capabilities, law enforcement and the information gathering technology, the terrorist activities and incidents have shifted to the developing countries and now we have concentrations of terrorist cell in Africa and the Far East where the Government efforts the check this concentrations is often hampered by lack of adequately trained intelligent and law enforcement agencies. The US Government has been at the forefront at giving assistance in this field but a lot of cooperation from other developed countries is necessary both in technical and financial assistance to enable these regions to check the growth of terrorist cells and bases. There should further be cooperation and unified approach in looking for the root causes of the upsurge of terrorism and particularly the settlement of the Palestinian question and the elimination of poverty in the terrorist hot spots that have been advocated prominently by the Egyptian president as a prerequisite for solving the issue of international terrorism.

It is also recommended that the international community should establish a common definition of the term international terrorism. The process of liberation struggles against colonial and oppressive racist regimes are basically over and the Palestinian question has been under negotiation since 1990s. The separatist movements that have occurred in several countries are no longer considered
nationalist and they are intended to create new states and their activities are not justified to practice terrorism as it would jeopardised their support from the citizens the seek to administer if their struggle succeeds.

The Egyptian President Honsi Mubarak has for 18 years since 1985 proposed an international conference preferably under the auspices of the United Nations to seek for a common definition of terrorism and look for its cause. In an address to Washington Post in December 2001 he has been quoted to have asserted that, “with all frankness I say that what hindered holding of the conference since I called for it 15 years ago was the difference on the definition of terrorism.”

The definition of terrorism is crucial since it will among other things the lead to the interpretation of the root cause of the phenomenon and facilitate holding responsible the countries that hide behind the concept of self determination to support terrorist activities and prescribe their penalties collectively. It will also form the basis of ratification and implementation of the already signed international conventions.

Professor Martha Crenshaw 1989, in her book “Terrorism and International Cooperation p 158” has observed that the “world nations have available to them extensive expertise on terrorism much of which is under utilized. This group of experts goes beyond the accumulation to interpretation of terrorism and explaining its relationship to national and international security. This can offer comprehensive and objective analysis of the problem on which multilateral initiatives could be founded.”

The international community should therefore enlist the expertise available to develop a common approach to the issue of international terrorism devoid of the individual states foreign interests and interpretations of the phenomenon.

Furthermore the nations of the world should give priority to ratification and implementation of both the multilateral and bilateral as well as the regional treaties that have been promulgated since the upsurge of international terrorism in late 60s and early 70s. These treaties should be incorporated in the national legislations to

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facilitate the prescription of the appropriate penalties to punish the suspected terrorists and suppress and prevent their activities from occurring. In fact the measures that have been developed to prevent incidents of terrorism against ships and port facilities will not have any effects if they are not supported by the national domestic legislation developed by the Contracting Governments who are members of the IMO and the ratification of these treaties and especially the SUA convention and the protocol of the off shore platforms and installations. The implementation of these treaties will also facilitate the development of harmonised anti terrorist laws that will enable international cooperation in combating terrorism no matter its manifestation.

Finally the Governments should cooperate with the media to educate their citizens on the dangers of international terrorism. In some instances the media has been giving the terrorist more coverage than the Governments efforts to suppress it. This has made it difficult for development of anti terrorist laws as has been experienced by some countries that have published anti terrorist bills. This is more critical with the current threat of the weapons of mass destruction. US Government has created the Department of Homeland Security for this purpose and to prepare the public for any incident of terrorist attack by maintaining vigilance.

As to the threat of international terrorism acts against ships and port facilities the governments and the industry should take the warning of the chairman of the ISWG Mr Wall who advised that the “idea that the code will not be strictly implemented next year are unfounded companies must stop pretending and start implementing as the enforcement of the code will be stringent.”88 Despite this misconception many companies and ports have begun to implement the requirements and there should be no confusion between the commercial interests and the security of maritime navigation and the ports. The earlier implementation of these measures will reveal the difficulties that may be inherent in the ISPS code and highlight them before they can affect the movement of the ships when the code and the SOLAS amendments finally come to force in July 2004

88 Mr Wall. Chairman of the ISWG on Maritime Security. Lloyd list, 12 – 6 – 2003
The future cooperation on combating international terrorism may ultimately depend on an interaction between the bilateral and multilateral initiatives as well as the domestic efforts in intelligence gathering and sharing and development of common approach especially now that the threat of deployment of weapons of mass destruction is plausible and imminent. Efforts should be directed at isolating the terrorist activities to a particular region or State and then all resources national, regional as well internationally to eliminate the threat. Anti terrorist legislations should be enacted especially in the terrorist hot spots but control should be initiated to ensure that they are not misused by the law enforcement agencies.
References:


Levitt, M. (2002); *Political economy of the Middle East terrorism.* Herzlia, Israel: International Policy Institute for Counter-Terrorism


APPENDIX 1

AMENDMENT TO THE ANNEX TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974 AS AMENDED

CHAPTER V
SAFETY OF NAVIGATION

Regulation 19 – Carriage requirement for shipboard navigational systems and equipment

1 The existing subparagraphs .4, .5 and .6 of paragraph 2.4.2 are replaced by the following:

“. 4 in case of ships, other than passenger ships and tankers of 300 gross tonnage and upward but less than 50,000 gross tonnage not later than the first equipment survey after 1 July 2004 or by 31 December 2004, whichever is earlier, and”

2 The following new sentence is added at the end of the existing subparagraph 7 of paragraph 2.4:

“Ships fitted with AIS shall maintain in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.”

CHAPTER X1
SPECIAL MEASURES TO ENHANCE MARITIME SECURITY

3 The existing chapter X1 is renumbered as chapter X1 – 1

Regulation 3 – Ship identification number

4 The following text is inserted after the title of the regulation:
“(Paragraphs 4 and 5 apply to all ships to which this regulation applies. For the ships constructed before [1 July 2004] the requirements of paragraphs 4 and 5 shall be complied with not later than the first scheduled dry-docking of the ship after [1 JULY 2004]”

5 The existing paragraph 4 is deleted and new text is inserted:

“4 The ships identification numbers shall be permanently marked

.1 in a visible place either on the stern of the ship or on either side of the hull amidship port or starboard above the deepest assigned load line or either side of the superstructure port or on starboard or on the front of the superstructure or in the case of passenger ships, on a horizontal surface visible from the air and:

.2 in an easily accessible place either on one of the end transverse bulkheads of the machinery places as defined in regulation II –2/3. 41 or on the hatchway or in the case of tankers, in the pump room or in the case of ship with ro–ro spaces as defined in regulation II – 2/3.41 on one of the end transverse bulkheads of the ro–ro spaces.

5 The permanent markings shall be plainly visible, clear of any other markings on the hull and shall be painted in a contrasting colour.

5.1 The permanent markings referred to in paragraph 4.1 shall be less than 200 mm in height. The permanent markings referred to in paragraph 4.2 shall not be less than 100 mm in height. The width of the marks shall be proportionate to the height.

5.2 The permanent markings may be made by raised lettering or by cutting it in or by centre punching it or by any other equivalent method of marking the ship identification number which ensures that the marking is not easily expunged.

5.3 On the ships constructed of material other than steel or metal, the administration shall approve the method of marking the ships identification numbers.

6 The following new regulation 5 is added after the existing regulation 4
Regulation 5
Continuous Synopsis Record

1. Every ship to which chapter 1 applies shall be issued with a continuous synopsis record.
2.1. The Continuous Synopsis Record is intended to provide an on board record of the history of the ship with respect to the information recorded therein.
2.2. For ships constructed before 1st July 2004 the Continuous Synopsis Record shall, shall at least provide history of the ship as from 1st July 2004
3. The Continuous Synopsis Record shall be issued by the Administration to each ship that is entitled to fly its flag and it shall contain at least the following information:
   .1. the name of the state whose flag the ship is entitled to fly;
   .2. the date on which the ship was registered with that state
   .3. the ships identification number in accordance with regulation 3;
   .4. the name of the ship;
   .5. the port at which the ship is registered;
   .6. the name of the registered owner(s) and their registered address (es);
   .7. the name of the bareboat charterer (s) and their registered address (es), if applicable;
   .8. the name of the company, as defined in regulation 1X/1, its registered address and the address (es) from where it carries out the safety management activities;
   .9. the name of the classification society (ies) with which the ship is classed;
   .10. the name if the Administration or Contracting Government or of the recognised organization which has issued the Document of Compliance (or Interim Document of Compliance) specified in the ISM code as defined in regulation 1X/1, to the company operating the ship and the name of the body which carries out the audit on the basis on which the document, if other than that issuing the document;
   .11. the name of the Administration or Contracting Government or the recognised organization that issued the Safe Management Certificate (or interim Safety Management Certificate) specified in the ISM code as defined in regulation1X/1 to
the ship and the name of the body which has carried out the audit on the basis of which the certificate was issued, if other than that issuing the certificate;
.12 the name of the Administration or of the Contracting Government or of the recognised security organization that has issued the International Ship Security Certificate (or an Interim Ship Security Certificate) as specified I part A of the ISPS code as defined in regulation X1 – 2/1 to the ship and the name of the body which has carried out the verification on the basis on which the certificate was issued, if other than that issuing the certificate and
.13 the date on which the ship ceases to be registered with that state.

4.1 Any changes relating to the entries referred to in paragraphs 3.4 to 3.12 shall be recorded in the Continuous Synopsis Record so as to provide updated and current information together with the history of the changes.

4.2 In case of any changes relating to the entries referred to in paragraph 4.1 the Administration shall issue, as soon as is practically possible but not later than three months from the date of the change, to the ship entitled to fly its flag either a revised and updated version of the Continuous Synopsis record or appropriate amendments thereto.

4.3 In case of any changes relating to the entries referred to in paragraph 4.1, the Administration, pending the issue of a revised and updated version of the Continuous Synopsis Record, shall authorise and require either the company as defined in regulation 1X/1 or the master of the ship to amend the Continuous Synopsis Record to reflect the changes. In such cases, after the Continuous Synopsis Record has been amended the company shall without delay, inform the Administration accordingly.

5.1 The Continuous Synopsis Record shall be in English, French or Spanish language. Additionally, a translation of the Continuous Synopsis Record into the official language or languages of the Administration may be provided.

5.2 The Continuous Synopsis Record shall be in the format developed by the Organization and shall be maintained in accordance with the guidelines developed by the Organization. Any previous entries in the Continuous Synopsis Record shall not be modified, deleted or in any way erased or defaced.
6 Whenever a ship is to be transferred to the flag of another state or the ship is sold to another owner (or is take over by another bareboat charterer) or another company assumes responsibility for operation of the ship the Continuous Synopsis Record shall be left on board.

7 When a ship is to be transferred to the flag of another state, the company shall notify the Administration of the name of the state under whose flag the ship is to be transferred so as to enable the Administration to forward to that state a copy of the Continuous Synopsis Record covering the period during which the ship under their jurisdiction.

8 When a ship is transferred to the flag of another state the Government of which is a Contracting Government, the Contracting Government of the state whose flag the ship was flying hitherto shall transmit to the Administration as soon as possible after the transfer takes place a copy of the relevant Continuous Synopsis Record covering the period during which the ship was under their jurisdiction and together with any Continuous Synopsis Record previously issued to the ship by other states.

9 When the ship is transferred to the flag of another state, the Administration shall append the previous Continuous synopsis Record the Continuous Synopsis Record the Administration will issue to the ship so as to provide the continuous history record intended by this regulation.

10 The continuous Synopsis Record shall be kept on board the ship and shall be availed for inspection at all times.

7 The following new chapter X1 – 2 is inserted after the renumbered chapter X1 – 1:

**CHAPTER X1 –2**

**SPECIAL MEASURES TO ENHANCE MARITIME SECURITY**

**Regulation 1 – Definitions**

1 *Bulk carrier* means a bulk carrier as defined in regulation 1X/1.6

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.2 Chemical tanker means a chemical tanker as defined in regulation V11/8.
.3 Gas carrier means a gas carrier as defined in regulation V11/11.2
.4 High speed craft means a craft as defined in regulation X/1.2
.5 Mobile offshore drilling unit means a mechanically propelled drilling unit, as defined in regulation X/1 not on location.
.6 Oil tanker means an oil tanker as defined in regulation 11 –1/ 2.12
.7 Company means a company as defined in regulation 1X/1
.8 Ship/port interface means the interaction that occur when a ship is directly and immediately affected by actions involving the movements of persons, goods or the provision of port services to or from the ship.
.9 Port facility is a location, as determined by the Contracting Government or by the designated authority, where the ship/port interface takes place. This includes areas such as anchorages, waiting berths and approaches from seaward as appropriate.
.10 Ship to ship activity means any activity not related to the port facility that involves the transfer of goods or persons from one ship to another.
.11 Designated Authority means the organization(s) or the administration(s) identified, within the Contracting Government, as responsible for ensuring the implementation of the provisions of this chapter pertaining to port facility security and ship/port interface, from the point of view of the port facility.
.12 International ship and port facility security ISPS code means the international code for the security of ships and port facilities consisting of Part A (the provisions of which shall be treated as mandatory) and Part B (the provisions of which shall be treated as recommendatory) as adopted, on 12th December 2002 by resolution 2 of the Conference of Contracting Government to the International Convention on the Safety of Life at sea 1974 as may be amended by the Organization, provided that:
.1 amendments to Part A of the code are adopted, brought into force and take effect in accordance with article V111 of the present Convention concerning amendment procedures applicable to the annex other than this chapter; and
.2 amendments to Part B of the code are adopted by the Maritime Safety Committee in accordance with its rules of procedure.

.13 Security incident means any suspicious act or circumstance threatening the security of a ship, including a mobile drilling unit and a high speed craft, or a port facility or of any ship/port interface or any ship to ship activity.

.14 Security level means the qualification of the degree of risk that an incident will be attempted or will occur.

.15 Declaration of security means an agreement between a ship and either a port facility or another ship with which it interfaces specifying the security measures each will implement.

.16 Recognised security organization means an organization with appropriate expertise in security matters and with the appropriate knowledge of ship and port operations authorised to carry out assessment or a verification or an approval or a certification activity, required by this chapter or part A of the ISPS code.

2 The term “ship”, when used in regulations 3 to 13, includes mobile offshore drilling units and high speed craft.

3 The term “all ships” when used in this chapter means any ship to which this chapter applies.

4 The term Contracting Government when used in regulations 3, 4, 10, 11, 12 and 13 includes reference to the “Designated Authority”

Regulation 2

Application

1 This chapter applies to:

.1 the following types of ships engaged on international voyages:

.1.1 passenger ships, including high-speed passenger craft;

.1.2 cargo ships, including high speed craft, of 500 gross tonnage and upward; and

.1.3 mobile offshore drilling unit; and
.2 port facilities serving such ships engaged on international voyages.

3 Notwithstanding the provision of paragraph 1.2, Contracting Governments shall decide the extent of application of this chapter and of the relevant sections of Part A of the ISPS code to those port facilities within their territory which, although used primarily by ships not engaged on international voyages, are required, occasionally, to serve ships arriving or departing on an international voyage.

(a) Contracting Governments shall base their decision under paragraph 2 on port facility security assessment carried out in accordance with the provision of part A of the ISPS code.

(b) Any decision which a Contracting Government makes, under paragraph 2 shall not compromise the level of security intended to be achieved by this chapter or Part A of the ISPS code.

4 This chapter does not apply to warships, naval auxiliaries or other ships owned or operated by Contracting Government and used only on Government non-commercial service.

5 Nothing in this chapter shall prejudice the right or obligation of states under the international law

Regulation 3

Requirements of Contracting Governments with respect to security

1 Administrations shall set security levels and ensure the provision of information to the ships entitled to fly their flag. When changes in security level occur, security information shall be updated as the circumstances dictates.

2 Contracting Government shall set security levels and ensure the provision of security information to port facilities within their territory and ships prior to entering
a port or whilst in a port within their territory. When changes in security occur, security level information shall be updated as the circumstances dictates.

Regulation 4
Requirements for the companies and ships
1 Companies shall comply with the relevant requirements of this chapter and of part A of the ISPS code, taking into account the guidance given in part B of the ISP code.
2 Ships shall comply with the relevant requirement of this chapter and part A of the ISPS code, taking into account the guidance given in part B of the ISPS code, and such compliance shall be verified and certified as provided for in part A of the ISPS code.
3 Prior to entering a port or whilst in a port within the territory of a Contracting Government, a ship shall comply with the requirements for the security level set by the Contracting Government, if such level is higher than the security level set by the Administration for that ship.
4 Ships shall respond without delay to any change to a higher security level.
6 When a ship is not in compliance with the requirements of this chapter or of the part A of the ISPS code or cannot comply with the requirement for the security level set by the Administration or by another Contracting Government and applicable to the ship, then the ship shall notify the appropriate competent authority prior to conducting any ship/port interface or prior to entry into port, whichever occurs earlier.

Regulation 5
Specific responsibilities of companies
The company shall ensure that the master has available on board, at all times, information through which officers duly authorised by a Contracting Government can establish:
1 who is responsible for appointing the members of the crew or other persons currently employed or engaged onboard the ship in any capacity on the business of that ship;
2 who decides the employment of the ship; and
3 in cases where the ship is employed under the terms of charter party (ies), who are
the parties to such charter party (ies)

Regulation 6
Ships security alert system
1 All ships shall be provided with a ship security alert system as follows:
   .1 ships constructed on or after 1st July 2004;
   .2 passenger ships, including high speed craft, constructed before 1st July 2004, not later than the first survey of the radio installation after 1st July 2004
   .3 oil tankers chemical tankers gas tankers bulk carriers and cargo high speed craft, of 500 gross tonnage and upward constructed before 1st July 2004, not later than the first survey of the radio installation after 1st July 2004; and
   .4 other cargo ships of 500 gross tonnage and upward and mobile offshore drilling units constructed before 1st July 2004, not later than the first survey of the radio installation after 2006
2 The ship security alert when activated, shall:
   .1 initiate and transmit a ship to shore security alert to a competent authority designated by the Administration, which in these circumstances may include the company, identifying the ship, its location and indicating that the security of ship is under threat or it has been compromised;
   .2 not send the ship security alert to any other ship;
   .3 not to raise any alarm on board the ship; and
   .4 continue the ship security alert until deactivated and or reset.
3 The ship security alert system shall:
   .1 be capable of being activated from the navigation bridge and in at least one other location; and
   .2 conform to performance standards not inferior to those adopted by the Organization.
7 The ship security alert system activation point shall be designed so as to prevent the inadvertent initiation of the ship security alert.
8 The requirement of a ship security alert system may be complied with by using radio installation fitted for compliance with the requirement of chapter XV, provided that all requirements of this regulation are complied with.

9 When an Administration receives notification of a ship’s security alert, the Administration shall immediately notify the state(s) in the vicinity of which the ship is presently operating.

10 When a Contracting Government receives notification of a ship’s security alert from a ship which is not entitled to fly its flag, that Contracting Government shall immediately notify the relevant Administration and, if appropriate, the state(s) in the vicinity of which the ship is presently operating.

**Regulation 7**

**Threat to ships**

1 Contracting Governments shall set security levels and ensure the provision of security information to the ships operating in their territorial sea or having communicated an intention to enter their territorial sea.

2 Contracting Governments shall provide a point of contact through which such ships can request advice or assistance and to which such ships can report any security concerns about other ships, movements or communications. Where a risk of attack has been identified, the Contracting Government concerned shall advice the ships concerned and their Administrations of:

.1 the current security level;

.2 any security measures that should be put in place by the ships concerned to protect themselves from attack, in accordance with the provisions of part A of the ISPS code; and

.3 security measures that the coastal state has decided to put in place, as appropriate

**Regulation 8 security**

**Masters discretion for the ship safety and**

1 The master shall not be constrained by the company, the charterer or any other person from taking or executing any decision, which, in the professional judgement of the master, is necessary to maintain the safety and security of the ship. This
includes denial of access to persons (except those identified as duly authorised by the Contracting Government) or their effects and refusal to load cargo including containers or other closed cargo transport units.

2 If, in professional judgement 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. In such cases, the master may implement temporary security measures and shall forthwith inform the Administration and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter. Any such temporary security measures under this regulation shall, to the highest possible degree be commensurate with the prevailing security level. When such cases are identified, the Administration shall ensure that such conflicts are resolved and that the possibility of recurrence is minimal.

**Regulation 9**

Control and compliance measures

1 **Control of ships in ports**

1.1 For the purpose of this chapter, every ship to which this chapter applies is subject to controls when in a port of another Contracting Government by officers duly authorised by that Government, who may be the same as those carrying out the functions of regulation 1/19. Such control shall be limited to verifying that there is on board a valid International Ship Security Certificate or a valid Interim International Ship security certificate issued under the provisions of part A of the ISPS code (certificate, which if valid shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirement of this chapter or the ISPS code.

1.2 When there are such clear grounds, or whereon valid certificate is produced when required, the officers duly authorised by the Contracting Governments shall impose any one or more control measures in relation to that ship as provided in paragraph 1.3. Any such measures imposed must be appropriate, taking into account the guidance given in part B of the ISPS Code.
1.3 Such control measures are as follows: inspection of the ship, delaying the ship, detention of the ship, restriction of operations including movement within the port or expulsion of the ship from the port. Such control measures may additionally or alternatively include other lesser administrative and corrective measures.

2 Ship intending to enter a port of another Contracting Government

2.1 For the purpose of this chapter, a Contracting Government may require that ships intending to enter its ports provide the following information to officers duly authorised by that Government to ensure compliance with this chapter prior to entry into port with the aim of avoiding the need to impose control measures or steps:

.1 that the ship possesses a valid certificate and the name of the issuing authority;
.2 the security level at which the ship is currently operating;
.3 the security level at which the ship operated in any previous port where it has conducted a ship/port interface within the timeframe specified in paragraph 2.3;
.4 any special or additional security measures that were taken by the ship in any previous port where it had conducted a ship/port interface within the timeframe specified in paragraph 2.3
.5 that the appropriate ship security procedures were maintained during a ship-to-ship activity within the timeframe specified in paragraph 2.3
.6 other practical security related information (but not the details of the ship security plan) taking into account the guidance given in part B of the ISPS Code.

If requested by the Contracting Government, the ship or the company shall provide confirmation, acceptable to that Contracting Government, of the information required above.

2.2 Every ship to which this chapter applies intending to enter the port of another Contracting Government shall provide the information described in paragraph 2.1 on request of the officers duly authorised by that Government. The master may decline to provide such information on the understanding that failure to do so may result to denial of entry into port.
2.3 The ship shall keep records of the information referred to in paragraph 2.1 for the last 10 calls at port facilities.

2.4 If, after receipt of the information described in paragraph 2.1, officers duly authorised by the Contracting Government of the port in which the ship intends to enter have clear grounds for believing that the ship is in non compliance with the requirements of this chapter or part A of the ISPS Code, such officers shall attempt to establish communication with and between the ship and the Administration in order to rectify the non compliance. If such communication does not result in rectification or if such officers have clear grounds otherwise for believing that the ship is in non compliance with this chapter or part A of the ISPS Code, such officers may take steps in relation to that ship as provided in paragraph 2.5. Any such steps must be proportionate taking into account the guidance given in part B of the ISPS Code.

2.5 Such steps are as follows:

.1 a requirement for rectification of the non compliance;
.2 a requirement that the ship proceed to a location specified in the territorial sea or internal waters of that Contracting Government;
.3 inspection of the ship, if the ship is in territorial sea of the Contracting Government the port of which the ship intends to enter; or
.4 denial of entry into port.

Prior to initiating any such steps, the ship shall be informed by the Contracting Government of its intentions. Upon this information the master may withdraw the intention to enter the port. In such cases, this regulation shall not apply.

3 Additional provisions

3.1 In the event:

.1 of imposition of a control measure, other than a lesser administrative or corrective measure referred to in paragraph 1.3; or
.2 any steps referred to in paragraph 2.5 are taken,
an officer duly authorised by the Contracting Government shall forthwith inform in writing the Administration specifying which control measures have been imposed or
steps taken and the reasons thereof. The Contracting Government imposing the control measures or steps shall also notify the recognised security organization, which issued the Certificate relating to the ship concerned and the Organization when any such control measures have been imposed or steps taken.

3.2 When entry into port is denied or the ship is expelled from port, the authorities of the port state should communicate the appropriate facts to the authorities of the state of the next appropriate ports of call, when known, and any other appropriate coastal states, taking into account guidelines developed by the Organization. Confidentiality and security of such notification shall be ensured.

3.3 Denial of entry into port, pursuant to paragraphs 2.4 and 2.5 or expulsion from the port pursuant to paragraph 1.1 and 1.3 shall only be imposed where the officers duly authorised by the Contracting Government have clear ground to believe that ship poses an immediate threat to the security or safety of persons or of ships or other property and there are no other appropriate means for removing that threat.

3.4 The control measures referred to in paragraph 1.3 and the steps referred to in paragraph 2.5 shall only be imposed, pursuant to this regulation, until the no compliance giving rise to the control measures or steps has been corrected to the satisfaction of the Contracting Government, taking into account actions proposed by the ship or the Administration, if any.

3.5 When Contracting Governments exercise control under paragraph 1 or steps under paragraph 2:

.1 all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained or delayed, it shall be entitled to compensation for any loss or damage suffered; and

.2 necessary accesses to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

Regulation 10

Requirements for port facilities
1 Port facilities shall comply with the relevant requirements of this chapter and part A of the ISPS Code, taking into account the guidance given in part B of the ISPS Code.

2 Contracting Governments with port facility or port facilities within their territories, to which this regulation applies, shall ensure that:

.1 port facility security assessments are carried out, reviewed and approved in accordance with the provisions of part A of the ISPS Code; and

.2 port facility security plans are developed, reviewed, approved and implemented in accordance with the part A of the ISPS Code.

Contracting Governments shall designate and communicate the measures required to be addressed in a port facility security plan for the various security levels, including when the submission of Declaration of Security will be required.

**Regulation 11**

**Alternative security agreements**

1 Contracting Governments may, when implementing this chapter and part A of the ISPS Code, conclude in writing bilateral or multilateral agreements with other Contracting Governments on alternative security arrangements covering their international voyages on fixed routes between port facilities located within their territories.

2 Any such agreements shall not compromise the level of security of other ships or of the port facilities not covered by the agreement.

3 No ship covered by such an agreement shall conduct ship-to-ship activity with any ship not covered by the agreement.

4 Such agreement shall be reviewed periodically, taking into account the experience gained as well as any changes in the particular circumstances or the assessed threats to the security of the ships, the port facilities or the route covered by the agreement.
Regulation 12
Equivalent security arrangements

1 An Administration may allow a particular ship or a group of ships entitled to fly its flag to implement other security measures equivalent to those prescribed in this chapter or the part A of the ISPS Code, provided such security measures are at least as effective as those prescribed in this chapter or the part A of the ISPS Code. The Administration, which allows such security measures, shall communicate to the Organization particulars thereof.

2 When implementing this chapter and part A of the ISPS Code, a Contracting Government may allow a particular port facility or a group of port facilities located within their territory, other than those covered by an agreement concluded under regulation 11, to implement security measures equivalent to those prescribed in this chapter or part A of the ISPS Code, provided such security measures are at least as effective as those prescribed in this chapter or part A of the ISPS Code. The Contracting Government, which allows such security, shall communicate to the Organization particulars thereof.

Regulation 13
Communication of information

The Contracting Governments shall, not later than 1 July 2004, communicate to the Organization and shall make available for the information of the companies and ships:

.1 the name and contact details of their national authority or authorities responsible for ship and port facility security;

.2 the locations within their territory covered by the port facility security plans

.3 the names and contact details of those who have been designated to be available at all times to receive and act upon the ship to shore security alert, referred to in regulation 6.2.1

.4 the names and contact details of those who have been designated to be available at all times to receive and act upon any communication from Contracting
Governments exercising control and compliance measures referred to in regulation 9.3.1: and
5 the names and contact details of those who have been designated to be available at all times to provide advice or assistance to ships and to whom ships can report any security incident concern referred to in regulation 7.2; and thereafter update such information as and when changes relating thereto occur. The Organization shall circulate such particulars to other Contracting Governments for the information of their officers.

2 Contracting Governments shall, not later than 1 July 2004, communicate to the Organization the names and contact details of any recognised security organizations authorised to act on their behalf together with details of the specific responsibility and conditions of the authority delegated to such organizations. Such information shall be updated as and when changes relating thereto occur. The organization shall circulate such particulars to other Contracting Governments for information of their officers.

4 Contracting Governments shall, not later than 1 July 2004, communicate to the organization a list showing the approved port facility security plans for the port facilities located in their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval and thereafter shall further communicate when any of the following changes take place:
1 changes in the location or locations covered by an approved port facility security plan are to be introduced or have been introduced. In such cases the information to be communicated shall indicate the changes in the location or locations covered by the plan and the corresponding date as of which such changes are to be introduced or implemented;
2 an approved port facility security plan, previously included in the list submitted to the Organization, is to be withdrawn or has been
withdrawn. In such cases, the information to be communicated shall indicate the date on which the withdrawal will take effect or was implemented. In these cases, the communication shall be made to the Organization as soon as practicably possible; and

3 additions are to be made to the list of approved port facilities security plans. In such cases, the information to be communicated shall indicate the location or locations covered by the plan and the date of approval.

4 Contracting Governments shall, at five years interval after 1 July 2004, communicate to the Organization a revised and updated list showing all the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and corresponding date of approval (and the date of approval of any amendments thereto) which will supersede and replace all information communicated to the Organization pursuant to paragraph 3 during the preceding five years.

5 Contracting Governments shall communicate to the Organization information that an agreement under regulation 11 has been concluded. The information communicated shall include:

1 the names of the Contracting Governments which have concluded the agreement;
2 the port facilities and the fixed routes covered by the agreement;
3 the periodicity of review of the agreement;
4 the date of entry into force of the agreement; and
5 information on any consultations, which have taken place with other, contracting Governments.

And thereafter shall communicate, as soon as practicably possible, to the Organization information when the agreement has been amended or has ended.

6 Any Contracting Government, which allows, under the provision of regulation 12, any equivalent security arrangements with respect to a ship entitled to fly its
flag or in respect to a port facility located within its territory, shall communicate to the Organization the particulars thereof.

7 The Organization shall make available the information communicated under paragraph 3 to other Contracting Governments upon request.