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<u>REGULATORY INITIATIVES AT THE INTERNATIONAL LEVEL</u>

Final report

INVENTORY OF REGULATORY INITIATIVES AT THE INTERNATIONAL LEVEL IN THE FIELD OF INLAND TRANSPORT SECURITY

FINAL

THE MULTIDISCIPLINARY GROUP OF EXPERTS ON INLAND TRANSPORT SECURITY

United Nations Economic Commission for Europe

Geneva

Introduction

A thorough search of international organizations was undertaken to find any regulations and/or references to inland transport security. The following is a summary of what was located during the course of that search.

Methodology:

Given the breadth of organizations in existence, the search was confined to those organizations, which were perceived as the most pertinently associated with international relations, international policy and international regulations.

The listed organizations were researched in much the same way as the national documents. Following a general web search to identify relevant organizations, searches were carried out on their web pages. Results linked to transport security in any form were recorded and the document saved. These results were then re-evaluated and documents relating directly to transport security, including some form of evaluation, recommendation, regulation or references to significant legislation were included in this report.

List of organizations researched

- UN
- EU
- International Road Transport Union
- IPU
- OSZE
- Europarat
- NATO
- OECD
- WHO
- IWF
- IOM
- African Union (AU)
- Andean Community
- Arctic Council
- Asia-Pacific Economic Cooperation
- Asian Development Bank
- Asian Productivity Organization
- Asociacion Latinoamericana de Integration
- Association of Southeast Asian Nations
- CAB International
- Caribbean Community and Common Market
- Caribbean Export Development Agency
- Central American Bank for Economic Integration
- Central Bank of West African States (BCEAO)
- Centre on Integrated Rural Development for Asia and the Pacific
- Chemical Weapons Convention. See OPCW
- North American Commission for Environmental Cooperation
- Common Market for Eastern and Southern Africa
- The Commonwealth
- Commonwealth of Independent States (CIS)
- Community of Portuguese Speaking Nations (CPLP)
- Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO)
- Council of the Baltic States
- Council of Europe
- European Bank for Reconstruction and Development
- European Court of Human Rights
- European Free Trade Association
- European Organization for Nuclear Research (CERN)
- European Central Bank (ECB)
- Free Trade Area of the Americas
- G8 (Group of 8) Information Centre
- G20 (Group of 20)
- Gulf Cooperation Council
- Inter-American Development Bank (IADB)
- Inter-governmental Authority on Development
- International Criminal Police Organization (INTERPOL)
- International Development Association
- International Institute for the Unification of Private Law (UNIDROIT)
- International Labour Organization (ILO)
- International Organization for Migration (IOM)
- International Telecommunication Union
- International Trade Centre
- Inter-Parliamentary Union
- Islamic Development Bank Group
- Latin Union
- League of Arab States
- Nordic Council and Council of Ministers
- North American Development Bank
- North American Free Trade Agreement Secretariat (NAFTA)
- Non-Aligned Movement (NAM)
- North Atlantic Treaty Organization (NATO)
- The Northern Forum
- Nuclear Energy Agency
- Organisation Internationale de la Francophonie
- Organisation for Economic Co-operation and Development (OECD)
- Organization for the Prohibition of Chemical Weapons (The Chemical Weapons Convention Website)
- Organization for Security and Co-operation in Europe (OSCE)
- Organization of the Islamic Conference
- Organization of the Petroleum Exporting Countries (OPEC)
- Paris Club
- Parlamento Amazónico
- Pacific Islands Forum
- Pan-American Health Organization (PAHO)
- Secretariat of the Pacific Community
- South Asian Association for Regional Cooperation
- South Centre (An Intergovernmental Organization of Developing Countries)
- UNIDROIT See International Institute for the Unification of Private Law

Document Summaries

Andean Community

The Andean Community has issued two documents concerning transport security.

Decision 398 International Passenger Transportation by Road; Replacing Decision 289[1] recognizes the need for security checks along the transport route. The decision states: "Such inspections as must be carried out along the route for legal reasons of national security or if there is evidence of the commission of customs violations are excepted from the stipulation of the previous paragraph," exempting them from legislation which prevents inspections of vehicles along the transport route for other purposes.

Decision 399 International Transportation of Merchandise by Road, Replacing Decision 257[2] further elaborates on transport security inspections, once again incorporating their consideration into legislation to facilitate international border crossing and transportation. Under article 201, the Decision states that authorized vehicles engaged in international transportation services shall not be submitted to customs, immigration, police, and sanitary controls at places other than the border. However, it provides for inspections to be carried out along the route for legally stipulated reasons, national security or if customs violation evidence is found, making such inspections excepted from the provision. Additionally, the Decision enforces security considerations in the construction and maintenance of road transport vehicles. It provides that vehicles are equipped with doors or other openings outfitted with safety devices that guarantee its inviolability during transportation or storage, and that allow for the placement of stamps, customs seals, inspection seals or other elements of customs security.

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[1] Decision 398 International Passenger Transportation by Road, Replacing Decision 289,
http://www.comunidadandina.org/ingles/normativa/D398e.htm
[2] Decision 399 International Transportation of Merchandise by Road, Replacing Decision 257,
http://www.comunidadandina.org/ingles/services/directory.htm

ASEAN

ASEAN Regional Forum *Statement on Strengthening Transport Security Against International Terrorism*, **2 July 2004**[3]

In the statement participating states and organization will endeavour to:

- Enhance efforts and cooperation in fighting terrorism and to jointly explore new practical measures and initiatives to combat terrorism in the transport sector
- Strengthen the legal cooperation framework to counter terrorism in all modes of transport by accession to relevant global anti-terrorist conventions and protocols and the conclusion of appropriate bilateral and multilateral treaties, agreements, and conventions
- Strengthen cooperation in the exchange of information, particularly on terrorist activities – planned or being committed – and persons and entities/organizations/groups involved
- Strengthen practical cooperation between law-enforcement bodies, and relevant security and intelligence services as well as state transportation agencies and organizations in counteracting terrorism in transport
- Explore possible ways of improving interoperable methods of identifying members of terrorist groups active in international transport routes
- Hold appropriate simulation and joint exercises, with a view to enhancing institutional capacity building of coastal states, especially with regard to piracy and maritime and aerial terrorism, to ensure effective modal coordination of maritime and aviation security and safety measures
- Consider opportunities to plan and implement, as appropriate, coordinated special operations and criminal investigations, and set up under the most appropriate jurisdiction, joint operative teams to mitigate the effects of terrorist attacks on transport facilitates and bring the perpetrators to justice
- Cooperate, consistent with existing relevant transportation regimes, in preventing transportation systems from being used by terrorist, either as a site to commit terrorist acts or for transporting personnel, arms, explosives and explosive devices, and weapons of mass destruction
- Promote cooperation between research institutions to examine terrorism against the transport network, carry out joint research, exchange expertise and recommend methodologies, technologies, and best practices for combating such threats through meetings, seminars and conferences or through exchange of legislative and other legal regulations, and scientific research results
- Assist in providing appropriate training and equipment to respective transport security services

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[3] Asean Regional Forum Statement on Strengthening Transport Security against International Terrorism, 2 July 2004, http://www.aseansec.org/16249.htm.

- Continue to develop and harmonize measures aimed at enhancing necessary security regimes for container shipping, while taking into account national legal systems and the need to avoid unnecessary increase in costs and disruption to trade
- Jointly examine and consider means to counter suicide terrorist attacks against transportation and transport facilities
- Continue to develop concerted efforts to fight piracy and other border crimes such as smuggling of illicit containers, under the aegis of IMO and respective national and regional frameworks, in particular, those relating to enhanced export control measures
- Develop and share best practices in the formulation of an intermodal transport security framework that would link air, rail, road, inland waterway and maritime transport, believing that such a framework will provide a coherent, cost-effective, and rational approach to cargo transport security
- Encourage constructive interaction between the ARF and other regional and international organizations in this area with counter-terrorism mandates
- Cooperate to ensure that terrorists are prevented from using information technology and its applications to disrupt and sabotage the operation of transportation systems
- Annually review the progress of these and other efforts to combat terrorism in transport at the following ARF Ministerial Meetings

Asociación Latinoamericana de Integración

The ***Informe de Seguimiento de las Actividades Sobre la Iniciativa de Transporte Para el Hemisferio Occidental***,[4] recognizing the importance of transport security within the organization, supports the immediate creation of the Grupo de Trabajo sobre Seguridad en el Transporte, whose stated objectives are to identify areas of technical cooperation, to adopt methods to facilitate contacts between government specialists, to evaluate the development of transport systems and to develop financially solvent security programs for the protection of goods and individuals in the area of transport.

The Disposiciones Particulares para el Transporte de Mercancias Peligrosas en Cantidades Limitadas[5] holds unique suggestions concerning transport of dangerous materials. It recommends there be a limit on the quantity of dangerous materials transported per shipment. It further requires that a panel be maintained for the evaluation of dangerous material transport, that an assessment be made of risks involved with transport, specific training for transport personnel, that dangerous good transport cannot be conducted in association with passenger transport, and that adequate documentation be prepared for the shipment, including a statement of conformity with the regulations of the shipment.

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[4] Informe de Seguimiento de las Actividades Sobre la Iniciativa de Transporte Para el Hemisferio Occidental, http://www.aladi.org/nsfaladi/estudios.nsf/decd25d818b0d76c032567da0062fec1/f5bd4f91920ec4ad0325703500600f89/$FILE/1918.pdf

[5] Disposiciones Particulares para el Transporte de Mercancias Peligrosas en Cantidades Limitadas,http://www.aladi.org/nsfaladi/textacdos.nsf/5907ef28575b756103256d2c005e5b6c/5aaaa0385327a8d903256825007916f7/$FILE/PC7-Anexo%20II.CapVI.doc

CEC

The *Crossing the Border Opportunities to Improve Tracking of Transboundary Hazardous Waste Shipments in North America*[6] report comments on the dangers of hazardous waste but includes three suggestions for transport security, specifically at borders. It recommends the appropriate authorities:

- Designate specific hours of operation and ports of entry for hazardous waste shipments
- Identify capacity building needs for personnel with responsibility for tracking transboundary hazardous waste shipments
- Develop standards for sharing information electronically between agencies

These measures primarily address tracking and control of hazardous waste, but do not specifically address issues that occur along the supply chain outside of border posts.

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[6] Crossing the Border Opportunities to Improve Tracking of Transboundary Hazardous Waste Shipments in North America, http://www.cec.org/files/PDF/LAWPOLICY/Crossing-the-Border_en.pdf

EUROPEAN UNION

Transport of dangerous goods rules: The EU has incorporated chapter 1.10 of ADR, RID and ADN into its legislation concerning the transport of dangerous goods by road, rail and inland waterways respectively.

Maritime security rules: Regulation No. 725/2004 of 31 March 2004 on enhancing ship and port facility security and Directive 2005/65/EC of 26 October 2005 on enhancing port security.

Authorized Economic Operator (AEO) as set out in EU legislation. The most relevant clauses can be found in EC Regulation 648/2005 pages L 117/13 to 117/16 and Commission Regulation No. 1875/2006 pages L 360/64 to 360/72.

Aviation rules: Regulation Nr. 2320/2002 of 16 December 2002 establishing common rules in the field of civil aviation security.

EUROPEAN UNION

Policy papers/proposals

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: *Proposal for a Regulation of the European Parliament and of the Council on Enhancing Supply Chain Security*[7]

The proposal begins with an elaboration of the need for transport security. It notes that terrorism is one of the greatest threats to democracy and freedom, and that the risk of a terrorist attack targeting freight transport remains high. As such, transport security has become a vital worldwide issue. It specifically concerns the European Union whose role as trading partner relies on effective and secure transport by all modes and at all levels.

Recently, considerable improvements have been made to transport security in Europe. In 2003 the Commission already pointed to the need for enhanced security in land freight transport. There are currently no rules in place for the European land transport supply chain in its entirety. The supply chain is defined as comprising all the transport and transport related operations and processes beginning at the production site and ending at the cargo's point of destination.

To combat terrorism, the EU Heads of State called for "the strengthening of all forms of transport systems, including the enhancement of the legal framework and the improvement of preventive mechanisms." To do nothing is not an option. The Commission therefore proposes Community action to enhance the security in the land transport supply chain to complement existing Community transport security rules. This proposal does not cover passenger transport security, in particular in mass transport systems, which could be addressed at a later stage if necessary.

The Communication sets out the essential facts about freight transport security that any initiative in this area must take into account. It discusses the advantages and disadvantages of certain options and the reasons why the legislative measure proposed is the most realistic and focused approach to enhance security for European freight transport. The goal of the proposal is to enhance supply chain security to provide greater protection for all European freight transport against possible terrorist attacks with the following objectives:

- To increase the level of security along the supply chain without impeding the free flow of trade
- To establish a common framework for a systematic European approach without jeopardizing the common transport market and existing security measures

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[7] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Proposal for a Regulation of the European Parliament and of the Council on Enhancing Supply Chain Security, http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0079en01.pdf

- To avoid unnecessary administrative procedures and burdens at European and national levels

The measure proposed by the Commission establishes a mandatory system requiring Member States to create a security ("secure operator") quality label which can be awarded to operators in the supply chain that meet European minimum security levels, thus allowing mutual recognition of the label on the internal market. It introduces, within the mandatory provisions for the Member States, a voluntary scheme under which operators in the supply chain increase their security performance in exchange for incentives. The proposal makes operators in the supply chain responsible for their security performance in European freight transport and provides for "secure operators", who benefit from facilitations where security controls are carried out. "Secure Operators" also distinguish themselves positively from other competitors in the area of security, giving them a commercial and competitive advantage. The proposal further allows for regular updating and upgrading of security requirements, including recognized international requirements and standards, through the committee procedure.

The report addresses several key questions. Prominent among these is the question of what security level is needed. The discussion concludes that the security awareness of all actors involved in the intra-EU supply chain should be increased and that, depending on the goods transported, the position of the operator within the chain and the vulnerability of the infrastructure, the level of security needed can be defined. However, it is impossible in practice to establish, in a single all-embracing operation, security rules and measures for the land transport supply chain comparable to those in air and maritime transport. Instead, it is more realistic to establish a framework of minimum-security requirements that can gradually evolve in line with technological progress and risk developments to ensure satisfactory security levels in an operational environment.

The rest of the proposal discusses the finer details of the proposed program. This includes addressing issues of the competent authority for supply chain security; the awarding of "Secure Operator" status and the benefits of that status; the withdrawal or suspension of the status; the focal point for supply chain security; the implementation and conformity checking; the confidentiality and dissemination of information; personnel security; documentation procedures; information security; education and training awareness; risk assessment; and the conditions to be met by a recognized organization for supply chain security.

Commission of the European Communities, Brussels, 1.8.2006, *Report from the Commission to the Council and the European Parliament on Transport Security and its Financing*[8]

The Commission reports its findings on transport security funding:

- According to studies on aviation and maritime security, security costs can be significant and are currently largely borne by the users
- Increased transparency relating to security taxes and charges would give users of transport services better information and provide insight into possible effects on competition. The current lack of transparency increases the difficulty to identify potential distortions
- The multitude of approaches to the implementation funding of security measures can lead to distortion of competition. This is particularly relevant in cases where Member States require additional, more stringent measures than those imposed by Community legislation
- The Commission's general views set out in its *Communication to the European Parliament and to the Council on "The repercussions of the terrorist attacks in the United States on the air transport industry"* remain valid. In particular, the Commission considers that, because the protection of European citizens against terrorist attacks is essentially a State responsibility, public funding does not constitute state aid as it is associated with the exercise of power typical of a public authority

Ensuring Better Protection against Terrorism for Freight Transport[9] includes in its report that the European Commission has proposed new rules aimed at improving protection against terrorist attacks within the inland freight transport sector. Under these rules, operators providing more stringent security will enjoy favorable inspection conditions and improved relations with trading partners.

The Commission is further proposing a regulation to improve supply chain security without creating a barrier to trade. It wishes to enhance security across the whole supply chain by means of a common framework. This would also avoid unnecessary administrative procedures at European and national levels. The Commission recommends:

- A mandatory system requiring Member States to create a security ("secure operator") quality label to be awarded to operators meeting European minimum security levels, thus allowing mutual recognition of the label across the internal market
- A voluntary scheme under which operators in the supply chain increase their security performance in exchange for incentives
- Making operators in the supply chain responsible for their security performance

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[8] Commission of the European Communities, Brussels, 1.8.2006, Report from the Commission to the Council and the European Parliament on Transport Security and Its Financing, http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0431en01.pdf
[9] Ensuring Better Protection against Terrorism for Freight Transport, http://europa.eu/scadplus/leg/en/lvb/l24462.htm

- Allowing "secure operators" to benefit from favourable security inspection conditions, giving them a commercial and competitive advantage
- Allowing regular updating and upgrading of security requirements, through the committee procedure, whereby the Commission is assisted by a committee of representatives from Member States

"Secure operator" status is given special consideration. The document stresses that before being granted this status, operators must meet a number of security management requirements relating to the preparation, transportation, forwarding and shipment of merchandise.

Member States must designate a competent authority for granting such a status, which attests to an operator's ability to keep the supply chain for which it is responsible free of security breaches. "Secure operator" status is granted to those operators who can prove that:

- They have established, implemented, and documented a security management system
- They ensure that measures needed to counter possible risks are made available to that part of the supply chain for which they bear responsibility
- Their security management system allows continuous improvements
- They meet specific requirements

"Secure" status can be withdrawn if operators are in serious or repeated breach of security requirements.

According to the Commission, the proposal has the added benefit of increasing security awareness amongst operators, by encouraging them to take a more hands-on approach to security management. The proposed measures would also facilitate interconnection between the different modes of transport: the security standards applied to inland transport would complement the strict Community rules already in place in airports and seaports.

Communication from the Commission to the European Parliament and the Council of 6 November 2007 on enhancing the security of explosives.

The European Union is an area of increasing openness and an area in which the internal and external aspects of security are intimately linked. It is an area of increasing interdependence, allowing the free movement of people, ideas, technology and resources. As a result it is also an area which terrorists may abuse to pursue their objectives and which has already been abused for this purpose. The foiled attacks in London and Glasgow on 29 and 30 June as well as the terrorism related arrests which took place in Germany, Denmark and Austria were a reminder of the threat. In this context, concerted and collective European action, in a spirit of solidarity, is indispensable to combat terrorism.

Explosive devices are the weapons most used in terrorist attacks and have been responsible for the vast majority of victims of terrorist attacks over the last 50 years. Consequently, enhancing the security of explosives and making the production of explosive devices for terrorists more difficult has been and continues to be a priority for the European Union.

On 25 March 2004, in the immediate aftermath of the Madrid attacks, the European Council, in its Declaration on Combating Terrorism, established as a priority the need "to ensure terrorist organisations and groups are starved of the components of their trade". The European Council noted in particular that "there is a need to ensure greater security of firearms, explosives, bomb-making equipment and the technologies that contribute to the perpetration of terrorist outrages".

In response to the European Council's declaration, the Commission adopted, a Communication on 18 July 2005 on "Measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms"1. One of the principal measures announced in this Communication was the Commission's intention to draw up an EU action plan for the enhancement of the security of explosives based on recommendations from a group of experts.

A multi-stakeholder dialogue involving both public and private sectors was taken forward through the Explosives Security Experts Task Force, composed of representatives of the relevant stakeholders, including industry and public authorities. The work of the Task Force, which has concentrated through four separate working groups on the issues of precursors, supply chain, detection and public security, culminated in June 2007 with the submission of a report identifying 50 recommendations for measures designed to heighten the security of explosives in the EU.

Working on the basis of the Report of the Task Force, the Commission has developed a comprehensive "Action Plan on Enhancing the Security of Explosives", which deals with all aspects of security and draws extensively on public-private cooperation in a spirit of Public Private Security Dialogue. Since a clear demarcation between public and private sector activities is needed in certain areas, the Action Plan also includes new instruments for cooperation between specialised services in the Member States.

IAEA

Radioactive Material: Transport Security, **Ms. Ann-Margret Eriksson Eklund, IAEA Office of Nuclear Security**[10]

The IAEA has provided a tiered list of security provisions for the transport and safety of nuclear material. They are divided and presented as follows:

General security provisions:

- The competent Authority, should provide, at its discretion, threat information to operators
- Operators should consider Security Requirements commensurate with their responsibilities
- Transfers limited to appropriately identified carriers/consignees
- Use of appropriate security measures at in-transit storage sites
- Procedures to initiate inquiry for overdue shipments and, if lost or stolen, to initiate efforts to locate and recover
- Security locks
- Security awareness
- Security awareness training of personnel
- Personnel identity verification: Carrier personnel should carry positive identification
- Security verification of conveyances
- Security inspections of conveyances
- Written instructions with required security measures
- Security related information exchange by operators
- Trustworthiness verification

Enhanced Security Measures:

- Apply to packages exceeding thresholds
- The Competent Authority should identify carriers and consignors
- All operators should develop, implement and periodically review a security plan:
    - Allocation of responsibilities
    - Records of packages/materials transported
    - Review of operations and assessment of vulnerability
    - Identification of measures used to reduce security risks
    - Procedures for reporting and dealing with threats, breaches, and incidents
    - Evaluating, testing and review/update of security plan
    - Measures to ensure information security
    - Measures to limit distribution of sensitive information
    - Measures to monitor the shipment

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[10] Radioactive Material: Transport Security, Ann-Margret Eriksson Eklund, IAEA Office of Nuclear Security, http://www.unece.org/trans/doc/2007/its/1st_ppt07e.pdf

- The State should assign responsibility for security plans
- The security plan may be incorporated into other plans
- Operators should ensure appropriate response plans
- Advance notification
  - Consignor should notify consignee of planned shipment, mode, and expected delivery time
  - Consignee should confirm receipt/non-receipt
  - Consignor should notify receiving/transit States (if required)
- Tracking devises
  - When appropriate, transport telemetry or other tracking methods or devices should be used, ranging from bar code to more sophisticated near real-time tracking systems
- Carrier should provide ability to communicate from conveyance
- Additional provisions for road, rail, and inland waterway
  - Carriers should ensure operational readiness of devices, equipment, etc.
  - Continuous attendance or secure parking of road conveyance

Additional Security Measures
- States should consider enhancing measures based on a DBT, prevailing threat or nature of the material, inter alia:
  - Additional training
  - Carrier licensing, approval of their security plans, and auditing
  - Use of automated real-time tracking
  - Use of guards
  - Evaluation of potential for sabotage
  - Transfer of security responsibilities during shipment
  - Review of security plans, holding exercises, etc

Minimizing the Impact of Radioactive Transport Security Compliance
- Consistency with other dangerous goods security requirements
- Consistent application
  - National regulations and interpretations that set up unique requirements have caused some carriers to opt out of carrying radioactive material
  - "Context sensitive" (i.e., flexible) application of requirements, for example to air transport
- As requirements are put into place, Competent Authorities and carriers should share experience
  - Consistent interpretation of requirements
  - Application experience and ideas for improvement

Inter-Parliamentary Union

The Inter-Parliamentary Union produced a resolution entitled ***The Role of Parliaments in Strengthening Multilateral Regimes for Non-Proliferation of Weapons and for Disarmament, in the Light of New Security Challenges***.[11] In this resolution, the Union:

- Calls on all parliaments to provide strong and effective support to all resolutions and recommendations on peace, disarmament and security previously adopted at IPU Conferences and Assemblies
- Urges national parliaments to press their governments to sign, accede to and ratify, as appropriate, all conventions, treaties and other international instruments aimed at ensuring non-proliferation, arms control, disarmament and greater international security, and to implement them fully
- Calls on governments, national parliaments and the international community to address the root causes which create an environment that might lead people to resort to violence at the individual, national and international levels
- Calls for the convocation, under the auspices of the United Nations, of an international conference on combating terrorism, with a view inter alia to establishing a clear-cut definition of this serious problem
- Invites all countries to build on the existing achievements in disarmament, arms control and non-proliferation, so as to ensure that they are sustained processes in the future
- Calls on the United Nations to work more closely with the IPU in reducing tensions, resolving conflicts and fighting terrorism
- Urges parliaments also to focus on particular areas of international tension
- Further urges the bold identification of the most dangerous threats to international order and stability, such as the Arab-Israeli conflict and the conflicts in Iraq and Afghanistan, the situation in the Darfur region and the Great Lakes region of Africa, and other trouble spots that could pose a serious threat and that require urgent political action to prevent conflict
- Encourages parliaments to adopt appropriate national legislation to control the export of armaments of all types, more particularly focusing on items relating to weapons of mass destruction, such as components and precursors
- Calls on European parliaments and Governments to ratify without delay the Adaptation Agreement relating to the CFE Treaty, taking into account its paramount importance for maintaining a high level of security and stability in Europe
- Calls also for accession by States to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, with a view to enabling its entry into force
- Further calls on all countries to intensify efforts for the implementation of Security Council resolution 1540 (2004) and of United Nations General Assembly resolution 58/48, to

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[11] The Role of Parliaments in Strengthening Multilateral Regimes for Non-Proliferation of Weapons and for Disarmament, in the Light of New Security Challenges http://www.ipu.org/conf-e/111/111-1.htm

    prevent the spread of weapons of mass destruction and their means of delivery, and to consolidate policies aimed at preventing the transfer, especially to terrorists, of equipment, materials and technology which may be used for the proliferation of such weapons

- Urges parliaments to enact legislation holding governments responsible when they allow arms to be leaked to terrorists and organized crime groups and prohibiting such leaks

The NATO Parliamentary Assembly

Two relevant documents were located. The first is document ***036 Cds 07 E - The Protection of Critical Infrastructures***[12]. It states the military must play a more active role in the protection of infrastructure, including the transport infrastructure. It also states that informing the public is crucial, as is coordination with other international organizations. With globalization spreads, the danger to critical infrastructure increases and must be addressed more fully. Finally, it recognizes the existing standards and regulations of the UN and the EU, and recommends their consideration and implementation.

The second document located is the ***060 Cds 06 E - NATO and Civil Protection***[13] report. It gives an account of NATO's involvement with international security in a variety of programs. No suggestions are given, however, concerning transportation security.

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[12] 036 Cds 07 E - the Protection of Critical Infrastructures, http://www.nato-pa.int/Default.asp?CAT2=0&CAT1=0&CAT0=576&SHORTCUT=1165
[13] 060 Cds 06 E - Nato and Civil Protection, http://www.nato-pa.int/Default.asp?CAT2=0&CAT1=0&CAT0=576&SHORTCUT=903

OSCE

The Bucharest Plan of Action for Combating Terrorism[14]
This Action Plan recognizes that terrorism as a threat to international peace and security, in the OSCE area as elsewhere. The OSCE commits to worldwide efforts at combating terrorism and is able to contribute through its comprehensive security concept linking the politico-military, human and economic dimensions; its broad membership; its experience in the field; and its expertise in early warning, conflict prevention, crisis management, post-conflict rehabilitation and building democratic institutions. In addition, many effective counter-terrorism measures fall into areas in which the OSCE is already active and proficient, such as police training and monitoring, legislative and judicial reform, and border monitoring.

The aim of the Action Plan is to establish a framework for comprehensive OSCE action, to be taken by participating States and the organization as a whole, to combat terrorism, fully respecting international law, including the international law of human rights and other relevant norms of international law. The Action Plan seeks to expand existing activities that combat terrorism, facilitate interaction between States and, where appropriate, identify new instruments for action. Recognizing that the fight against terrorism requires sustained efforts the Plan will identify activities to be implemented immediately, as well as over the medium and long term.

The stabilization of governments is discussed as one way of reducing terrorist acts, as are the promotion of human rights and the rule of law, addressing socio-economic needs and preventing violent conflict. The Plan commits to strengthening national anti-terrorism legislation and supporting law enforcement agencies. Notably, it also commits to halting the movement of terrorists.

The Organization for Security and Co-Operation in Europe 6 December 2005 Ministerial Council Ljubljana 2005: Second Day of the Thirteenth Meeting Mc(13) Journal No. 2, Agenda Item 8 *Decision No. 6/05: Further Measures to Enhance Container Security*[15] proposes the following:

- All OSCE participating States should take measures recommended in the WCO Framework of Standards to Secure and Facilitate Global Trade as soon as possible
- In taking measures foreseen by the Framework of Standards to Secure and Facilitate Global Trade, the OSCE participating States will in particular aim to promptly incorporate into their national procedures and regulations the Seal Integrity Program for Secure Container Shipments, contained in the Appendix to Annex 1 of the Framework
- All OSCE participating States will inform each other on the measures taken to implement the above commitment

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[14] The Bucharest Plan of Action for Combating Terrorism, http://www.state.gov/coalition/cr/ddr/8833.htm

[15] Organization for Security and Co-Operation in Europe 6 December 2005 Ministerial Council Ljubljana 2005: Second Day of the Thirteenth Meeting Mc(13) Journal No. 2, Agenda Item 8 Decision No. 6/05: Further Measures to Enhance Container Security, http://www.osce.org/documents/mcs/2005/12/17430_en.pdf

OECD

The ***Container Transport Security across Modes***[16] report evaluates the weaknesses in the container transport chain, calling on authorities to address container transport by creating an intermodal framework integrating measures across the entire chain. Although there was already an attempt to do this among a variety of agencies, these attempts do not adequately succeed in addressing the issue of container transport security.

The report further states that more specific threat assessments involving transport authorities are needed and that security must be adapted to the threat. Policy must be instituted to allow authorities the necessary power to address threats and emergencies, and principles must be considered when addressing policy issues. Some of these principles include emphasizing that security is a shared responsibility and that security procedures must be more specifically adhered to.

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[16] "Container Transport Security across Modes," OECD, 2005

United Nations

UN Model Regulations, Chapter 1.4, Security Provisions[17]

The UN Regulations for transport security are included in their totality for reference purposes.

NOTE 1: This Chapter provides requirements intended to address the security of dangerous goods in transport in all modes. Mode specific security provisions can be found in Chapter 7.2. National and modal authorities may apply additional security provisions which should be considered when offering or transporting dangerous goods.

NOTE 2: For the purposes of this Chapter security means measures or precautions to be taken to minimize theft or misuse of dangerous goods that may endanger persons or property.

1.4.1 General provisions

All persons engaged in the transport of dangerous goods shall consider security requirements for the transport of dangerous goods commensurate with their responsibilities.

1.4.1.2 Consignors shall only offer dangerous goods to carriers that have been appropriately identified.

1.4.1.3 Transit sites, such as airside warehouses, marshalling yards and other temporary storage areas shall be properly secured, well lit and, where possible, not be accessible to the general public.

1.4.2 Security training

1.4.2.1 The training specified for individuals in 1.3.2 (a), (b) or (c) shall also include elements of security awareness.

1.4.2.2 Security awareness training shall address the nature of security risks, recognizing security risks, methods to address and reduce such risks and actions to be taken in the event of a security breach. It shall include awareness of security plans (if appropriate) commensurate with the responsibilities of individuals and their part in implementing security plans.

1.4.2.3 Such training shall be provided or verified upon employment in a position involving dangerous goods transport and shall be periodically supplemented with retraining.

1.4.2.4 Records of all security training undertaken shall be kept by the employer and made available to the employee if requested.

1.4.3 Provisions for high consequence dangerous goods

1.4.3.1 In implementing national security provisions competent authorities shall consider establishing a programme for identifying consignors or carriers engaged in the transport of high consequence dangerous goods for the purpose of communicating security related information. An indicative list of high consequence dangerous goods is provided in Table 1.4.1.

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[17] Un Model Regulations, Chapter 1.4, Security Provisions
http://www.unece.org/trans/danger/publi/unrec/rev14/14files_e.html

1.4.3.2 Security plans
1.4.3.2.1 Carriers, consignors and others (including infrastructure managers) engaged in the transport of high consequence dangerous goods (see Table 1.4.1) shall adopt, implement and comply with a security plan that addresses at least the elements specified in 1.4.3.2.2.
1.4.3.2.2 The security plan shall comprise at least the following elements:
(a) Specific allocation of responsibilities for security to competent and qualified persons with appropriate authority to carry out their responsibilities;
(b) Records of dangerous goods or types of dangerous goods transported;
(c) Review of current operations and assessment of vulnerabilities, including inter-modal transfer, temporary transit storage, handling and distribution as appropriate;
(d) Clear statements of measures, including training, policies (including response to higher threat conditions, new employee/employment verification etc.), operating practices (e.g. choice/use of routes where known, access to dangerous goods in temporary storage, proximity to vulnerable infrastructure etc.), equipment and resources that are to be used to reduce security risks;
(e) Effective and up to date procedures for reporting and dealing with security threats, breaches of security or security incidents;
(f) Procedures for the evaluation and testing of security plans and procedures for periodic review and update of the plans;
(g) Measures to ensure the security of transport information contained in the plan; and
(h) Measures to ensure that the distribution of the transport information is limited as far as possible. (Such measures shall not preclude provision of transport documentation required by Chapter 5.4 of these Regulations).

NOTE: Carriers, consignors and consignees should co-operate with each other and with appropriate authorities to exchange threat information, apply appropriate security measures and respond to security incidents.

WORK OF UNCTAD IN THE FIELD OF MARITIME TRANSPORT SECURITY

In the context of its continuing mandate in the field of transport and trade facilitation, as set out in the Sao Paulo Consensus,[18] UNCTAD has been monitoring current and emerging international developments on transport security, particularly developments at the IMO, the WCO and the EU, as well as in individual countries, and has analyzed some of the possible implications of such measures for developing countries. UNCTAD has issued a number of reports and other relevant publications in this respect, in particular the following:

UNCTAD Reports

- **CONTAINER SECURITY: Major Initiatives and Related International Developments, (UNCTAD/SDTE/TLB/2004/1)**

This report provided an overview over measures, initiatives and international developments relevant to maritime container security and offered some preliminary analysis of their potential impacts for the trade and transport of developing countries.
The full text of the report is available from the UNCTAD website: www.unctad.org/ttl/legal

- **Maritime Security: ISPS Code Implementation, Costs and Related Financing (UNCTAD/SDTE/TLB/2007/1)**
In 2002, a new international maritime security regime was adopted, under the auspices of the IMO as part of the 1974 Safety of Life at Sea Convention (SOLAS). The International Ship and Port Facility Security Code (ISPS Code) imposes wide-ranging obligations on governments, shipping companies, and port facilities which were required to be implemented by 1 July 2004. In order to help assess the costs associated with the ISPS Code, as well as their potential economic implications, UNCTAD conducted a global study based on a set of questionnaires designed to obtain first hand information from all affected parties. The main objective was to establish the range and order of magnitude of the ISPS Code-related expenditures made from 2003 through 2005 and to gain insight into the financing mechanisms adopted or envisaged. In addition the study sought to clarify matters relating to the implementation process, level of compliance and other less easily quantifiable impacts. The full text of the report, reflecting the results of the survey, is available from the UNCTAD website: www.unctad.org/ttl/legal

UNCTAD Review of Maritime Transport

In addition to substantive reports, UNCTAD has published some information on international maritime and supply-chain security developments in its annual "**Review of Maritime Transport**". The 2007 issue is expected to be published soon. Copies of the review of Maritime Transport are available to download from the UNCTAD website at: www.unctad.org/ttl. Below are relevant extracts from the 2005 and 2006 issues.

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[18] See Sao Paulo Consensus, TD/410, paragraphs 59 and 41.

Other UNCTAD Publications

Information on security-related developments is also provided in UNCTAD's quarterly "Transport Newsletter". Full text of the newsletter is available from the UNCTAD website: www.unctad.org/ttl. For some recent security articles see the following issues: No.34, Fourth Quarter 2006, and No.35, First Quarter 2007.

Excerpts from Relevant Issues of the Review of Maritime Transport

Review of Maritime Transport, 2005:
"Developments in International Maritime Security: Entry into Force of the ISPS Code

Internationally, one of the most important recent developments in the field of maritime security was the entry into force, on 1 July 2004, of the International Ship and Port Facility Security Code (ISPS Code).[19] In December 2002, the International Maritime Organization (IMO) had adopted the ISPS Code as part of an additional chapter[20] to the 1974 Safety of Life at Sea Convention (SOLAS). The Code, together with a number of other amendments to SOLAS,[21] provides a new comprehensive security regime for international shipping.[22] It applies to all cargo ships of 500 gross tonnage or above, passenger vessels, mobile offshore drilling units and port facilities serving such ships engaged in international voyages.[23] Part (A) of the Code establishes a list of mandatory requirements, and Part (B) provides recommendations on how to fulfill each of the requirements set out in Part (A).

The new security regime imposes a wide range of responsibilities on governments, port facilities and ship-owning and -operating companies. These responsibilities were described in some detail and with appropriate references to the respective provisions of the Code in an earlier UNCTAD report.[24] However, for ease of reference, the main obligations are briefly summarized here.

Responsibilities of Contracting Governments

The principal responsibility of Contracting States under SOLAS chapter XI-2 and Part (A) of the Code is to determine and set security levels. Responsibilities also include, *inter alia*:

- approval of *Ship Security Plans*
- issuance of *International Ship Security Certificates* (ISSC) after *verification*
- carrying out and approval of *Port Facility Security Assessments*
- approval of *Port Facility Security Plans*
- *determination of port facilities* which need to designate a *Port Facility Security Officer*
- exercise of *control and compliance measures*.

Governments may delegate certain responsibilities to Recognized Security Organizations (RSO) outside Government.

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[19] For the complete text of the ISPS Code, see SOLAS/CONF.5/34, Annex 1. See also *The International Ship and Port Facility Security Code*, 2003 Edition, ISBN 92-801-5149-5. For further information, see the IMO website (www.imo.org). Please note that all ISPS-related circulars issued by the IMO are available on the website under "legal", "maritime security".

[20] Chapter XI-2 on "Special measures to enhance maritime security".

[21] Chapters V and XI of the annex to SOLAS were amended, the latter chapter being renumbered as chapter XI-1.

[22] Cf. ISPS Code (A), Art. 1.2.

[23] See SOLAS, chapter XI-2/2 and ISPS Code (A), Art. 3.

[24] *Container Security: Major Initiatives and Related International Developments,* UNCTAD/SDTE/TLB/2004/1, paras. 80–86 (www.unctad.org).

Responsibilities of vessel-owning and/or -operating companies

Vessel-owning and/or -operating companies have a number of responsibilities, chief among which is to ensure that each vessel a company operates obtains an *International Ship Security Certificate* (ISSC) from the administration of a flag state or an appropriate RSO, such as a classification society. In order to obtain an ISSC, the following measures must be taken:

- designation of a *Company Security Officer* (CSO)
- carrying out *Ship Security Assessments* (SSA) and development of *Ship Security Plans* (SSP)
- designation of a *Ship Security Officer* (SSO)
- training, drills and exercises

A number of special mandatory requirements in SOLAS chapters V, X-1 and X-2 apply to ships and create additional responsibilities for vessel-owning companies and for Governments. These include in particular the following:

- *Automatic Identification System* (AIS)
- *Ship Identification Number* (SIN)
- *Ship Security Alert System* (SSAS)
- *Continuous Synopsis Record* (CSR)

Responsibilities of port facilities

Depending on size, there may be, within the legal and administrative limits of any individual port, several or even a considerable number of port facilities for the purposes of the ISPS Code.

- *Port Facility Security Plans* (PFSP): based on the *Port Facility Security Assessment* carried out and, upon completion, approved by the relevant national Government, a *Port Facility Security Plan* needs to be developed.
- *Port Facility Security Officer* (PFSO): For each port facility, a Security Officer must be designated.
- Training drills and exercises

Both Governments and industry faced the challenging task of implementing the various new security requirements within a short timeframe, by 1 July 2004. Full and complete compliance by that date was crucial, as the repercussions of non-compliance could be severe.[25] Efforts to ensure compliance intensified in the weeks and days prior to the deadline date, and continued in the period immediately afterwards. Despite the initially slow progress in implementation of the ISPS Code, figures provided by IMO member Governments indicate that by 1 July 2004, more than 86 per cent

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[25] For further details on control and compliance measures, see UNCTAD report *Container Security: Major Initiatives and Related International Developments,* UNCTAD/SDTE/TLB/2004/1, para. 85 (www.unctad.org).

of ships and 69 per cent of declared port facilities had security plans approved.[26] By August 2004, the IMO reported that 89.5 per cent of over 9,000 declared port facilities had had their Port Facility Security Plans approved and "well beyond 90 per cent" of all ships had been issued International Ship Security Certificates, which indicated that almost complete compliance with the new IMO security measures was being achieved. However, according to the IMO, the picture was uneven, with "regional pockets in which progress had not been as rapid as might be hoped". Africa and the countries of the former Soviet Union and Eastern Europe were described as being slow in implementing the new ISPS security rules.[27]

According to the IMO, national authorities as well as any relevant industries displayed a pragmatic and reasonable attitude towards parties responsible for the implementation of the new security measures in the weeks following the 1 July deadline. No major disruptions to global trade were reported as a result of non-compliance, and, in particular, a responsible attitude was displayed in cases where administrative bottlenecks were to be blamed for any identifiable shortcomings. Nevertheless, there were some reports of ships being detained, cautioned or turned away.[28]

Overall, it appears that the challenge of ensuring compliance with a wide range of requirements and within a tight timeframe has been remarkably well met by Governments and industry alike. However, it needs to be emphasized that the challenge remains, both for Governments and industry, of maintaining substantive compliance with the new international security regime. The ISPS Code is far-reaching, and the scope of the relevant security requirements is wide. In addition to ensuring compliance with the relevant formal requirements of the Code,[29] both Governments and industry are under a continuous obligation to conduct risk assessments and to ensure that effective and appropriate responses to the identified level of risk are taken.

A number of guidance circulars relating to the implementation of the ISPS Code have been issued by the Maritime Safety Committee (MSC) of the IMO. These include in particular the following:

- MSC Circular 1111[30] deals in some detail with the security measures and procedures to be applied at the ship/port interface when either the ship or the port facility do not comply with

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[26] See Press Briefing of 1 July 2004, *Secretary-General Mitropoulos pays tribute to the efforts made to implement the ISPS Code* (www.imo.org).

[27] See Press Briefing of 6 August 2004, *Security compliance shows continuous improving* (www.imo.org). Regarding ISPS Code compliance by IAPH Member Ports, see the IAPH website (www.iaphworldports.org).

[28] See *Measures to Enhance Maritime Security; Progress Report on the Implementation of the Special Measures to Enhance Maritime Security Detailed in SOLAS chapter XI-2 and the ISPS Code*, MSC 79/5/1, 24 September 2004, paras. 6, 7 (www.imo.org).

[29] Note, for instance, a survey on ISPS Code implementation carried out by the European Seaports Organisation (ESPO), which draws attention to the fact that some ships appear to be presenting tonnage certificates of below 500 GT, issued under pre-1969 Tonnage Measurement Rules, and are thus exempt from the ISPS Code requirements. See *ESPO Survey of implementation of ISPS Code/EU Regulation in EU Ports*, of 8 March 2005 (www.espo.be).

[30] See *Guidance relating to the Implementation of SOLAS chapter XI-2 and the ISPS Code* MSC/Circ. 1111, of 7 June 2004. The guidelines also provide recommendations for ships calling at the port of a State that is not a Contracting Government and remind all parties that the requirement for ships to keep records of their last 10 calls at port facilities applies only to calls made on or after 1 July 2004.

the requirements of chapter XI-2 and of the ISPS Code.[31]. An Annex provides detailed "*Interim Guidance on Control and Compliance measures to Enhance Maritime Security*".[32]

- MSC Circular 1130[33] contains guidance on security-related information, which must be supplied or may be requested prior to entry of a ship into port.
- MSC Circular 1132[34] provides guidance on a variety of matters, in particular the setting of and response to security levels, the practice of requiring and responding to requests for a declaration of security and matters relevant to access and boarding procedures.
- MSC Circular 1131[35] provides *Interim guidance on Voluntary Self-Assessment by SOLAS Contracting Governments and by Port Facilities*. The guidance contains a questionnaire to allow Governments to assess the effectiveness with which obligations in respect of port facilities are and continue to be fulfilled.

In order to effectively implement the wide range of ISPS Code security requirements, Governments and industry incur significant costs. Attempts have been made to assess the approximate costs involved, both globally and at the national level, but no comprehensive assessment has been published since the ISPS Code entered into force. How costs should be distributed, between Governments and industry and among different parties within the affected industries, remains a matter of debate.

As concerns cost sharing between parties within the affected industries, so far there is a clear trend, particularly among port authorities and terminal operators but also among ship-owning or -operating companies, to pass on the extra costs associated with the new security regime to their customers through the imposition of security fees and charges. While increasingly common, the practice is not yet uniform, and there seem to be considerable variations in the level of charges. While generally accepting the need to recover security costs, shippers are faced with charging practices of both ports and shipping lines that lack transparency and add to transaction costs, particularly for developing-country traders.

For instance,[36] terminal security fees quoted for continental European ports range from around €2 per container (import and export container, excluding trans-shipment) for Oslo to around €5 for several Spanish ports, €8 for most Italian ports, €8.50 for Rotterdam and €9 for Bremerhaven,

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[31] Ibid. Annex 1. The Guidance also addresses the position of ship construction, conversion and repair yards and deals with the requirements of chapter XI-2 and the ISPS Code, when a ship interfaces with a floating production, storage and offloading unit (FPSO) or a floating storage unit (FSU).

[32] Ibid. Annex 2.

[33] MSC/Circ.1130, of 14 December 2004, *Guidance to Masters, Companies and Duly Authorized Officers on the Requirements Relating to the Submission of Security-Related Information Prior to the Entry of a Ship into Port* (www.imo.org).

[34] MSC/Circ.1132, of 14 December 2004, *Guidance relating to the Implementation of Solas Chapter XI-2 and the ISPS Code,* (www.imo.org).

[35] See *Interim guidance on voluntary self-assessment by SOLAS Contracting Governments and by port facilities*, MSC/Circ.1131, of 14 December 2004.

[36] The information in the text is taken from a table compiled by Hapag-Lloyd Container Line providing details of "Terminal Security Fees" applicable in various European, Australian, US, South American and New Zealand ports (www.hlcl.com). An informative and useful summary of port security fees and charges assessed by North American port authorities and terminal operators has been published by the American Association of Port Authorities (www.aapa-ports.org).

Hamburg, Le Havre, Antwerp and Zeebrugge. Charges quoted for UK ports range, for export containers, from £4.75 in Thamesport to £7.50 in Felixstowe and, for import containers, from £5.50 in Southampton to £10.50 in Felixstowe. Similar variations may be observed in other parts of the world.[37]

Security charges introduced by some container lines also vary, albeit to a lesser extent. For instance, the Far Eastern Freight Conference (FEFC) announced in August 2004[38] that its members would charge €5 for containers "moved to or from ports in the North Continent of Europe, Scandinavia, the Baltic and the Mediterranean", £1.50 for movements to and from the UK ports of Tilbury, Felixstowe, Southampton and Thamesport (where lines recover the security charge from shippers/consignees), and £3.50 for movements to and from other UK ports. Hapag-Lloyd Container Line charges a "carrier security fee" of $6 per container,[39] and P&O Nedlloyd announced in December 2004 that it would charge a $6 carrier security charge on all containers handled by the line from 1 January 2005.[40] "

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[37] Ibid.
[38] See announcement of 13 August 2004 (www.fefclondon.com).
[39] See www.hlcl.com.
[40] See www.ponl.com.

*Review of Maritime Transport, 2006***:**

"Legal Issues Affecting Transportation: An Overview of Recent Developments Relating to Maritime and Global Supply Chain Security, [...]

1.   Maritime and global supply chain security

Maritime and global supply chain security continues to remain high on the international agenda, and several international organizations are continuing their work to develop standards and recommended practices in these areas. Important international developments in the field include those described below.

In January 2006, a high-level **Ministerial Conference on International Transport Security** was held in Japan.[41] The conference recognized inter alia the serious threat to international maritime transport posed by acts of terrorism, and the continued need to address vulnerabilities. In that connection, it welcomed the activities undertaken by relevant international organizations, particularly the International Maritime Organization and the World Customs Organization,[42] and invited those organizations to consider, in cooperation, the development of appropriate measures to enhance the security of the maritime transport of containers in the international supply chain. In addition, IMO was invited to undertake a study and, as necessary, make recommendations for enhancing the security of ships other than those already covered by SOLAS Chapter XI-2 and the ISPS Code.[43] States were urged to ensure the continued compliance of their port facilities with the requirements of SOLAS Chapter XI-2 and the ISPS Code. Furthermore, it was resolved to share best practices in the implementation of those instruments, to continue to provide assistance and support for capacity building, and further promote international cooperation in the education and training of officers.

In relation to international supply-chain security, a major development was the unanimous adoption in June 2005 of *The Framework of Standards to Secure and Facilitate Global Trade*[44] *(SAFE Framework)* by the Council of the **World Customs Organization**.[45] The SAFE Framework rests on two "pillars", namely Customs-to-Customs Network arrangements and Customs-to-Business partnerships, and consists of four core elements:

        1.   The Framework harmonizes the advance electronic cargo information requirements concerning inbound, outbound and transit shipments.

        2.   Each country that joins the Framework commits itself to employing a consistent risk management approach to address security threats.

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[41] The Conference was held in Tokyo on 12 and 13 January 2006. The objective was to exchange views and information on international transport security in the aviation, land and maritime sectors, and to discuss the issues that should be addressed in an internationally coordinated and cooperative manner. For further information, see http://www.mlit.go.jp/english/.

[42] For further details, see *Ministerial Statement on Security in International Maritime Transport*.

[43] The reference relates to amendments to the *Safety of Life at Sea Convention* (SOLAS), 1974, which was adopted in 2002. For information on this, see the IMO website at www.imo.org. See also UNCTAD*, Review of Maritime Transport 2005*, p. 84*.*

[44] For more information see www.wcoomd.org.

[45] At that time, the WCO was composed of 166 member States. At the time of writing, that number had risen to 169.

3.   The Framework requires that at the reasonable request of the receiving nation, based on a comparable risk-targeting methodology, the sending nation's Customs administration will perform an outbound inspection of high-risk containers and cargo, preferably using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors.

4.   The Framework defines the benefits that Customs will provide to businesses that meet minimal supply-chain security standards and best practices.

The *SAFE Framework* relies on modern Customs principles contained in the revised Kyoto Convention,[46] which entered into force in February 2006, such as risk management based on advance electronic information, use of modern technology and a partnership with trade. It is based on existing supply-chain security and facilitation initiatives and programmes already in place at national levels, for example and in particular, in the United States.

Implementation of the Framework is intended to help Customs authorities to enhance their risk-assessment and risk-management capabilities and adopt an intelligence-based selective approach to targeting closed containers for inspection, primarily on the basis of advance electronic information provided by economic operators involved in the international supply chain. It is designed to improve Customs authorities' abilities to detect and deal with high-risk consignments before their arrival, and thus increase efficiency in the administration of goods by reducing their clearance and release time.

The *SAFE Framework* establishes the concept of the "Authorized Economic Operator" (AEO), who is involved in the trade supply chain and is approved as meeting certain criteria broadly outlined in the standards of the Customs-to-Business pillar of the Framework (Annex 2). Such operators should be entitled to participate in simplified and rapid procedures for the provision of minimum information. Detailed implementation requirements for the *SAFE Framework*, including those for cargo security and for AEOs, are being drawn up by the WCO.

As of June 2006, 135 WCO members had expressed their intention to implement the Framework. Many of those members will require capacity building. In order to assist developing countries in particular in the implementation of the *SAFE Framework*, the WCO's Directorate for Capacity Building has recently launched a major capacity-building programme, known as COLUMBUS, under which diagnostic missions are conducted, a needs assessment is carried out and an action plan is developed, with a view to identifying donors that are willing to fund projects to enable Customs Administrations to become *SAFE Framework* compliant.[47] At present, it is not possible to adequately assess the trade-related impacts of the implementation of the new global supply-chain security framework. Much will depend on whether SMEs, particularly in developing countries, will be able to comply with the requirements, such as those related to the use of electronic communication and modern technology and those related to AEO recognition, and on whether mutual recognition of the AEO status can effectively be achieved.

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[46] *International Convention on the Simplification and Harmonization of Customs Procedures (as amended),* June 1999.
[47] See the Speech by the Deputy Secretary General of the WCO at the 11th WCO Asia Pacific Regional Heads of Administration Conference, 4 April 2006, Beijing China (www.wcoomd.org).

The idea of a voluntary framework for the recognition of "secure operators" is also under discussion at the level of the **European Union**. Recently, a Communication[48] was issued by the European Commission, containing a proposal for an EC Regulation to introduce a voluntary security scheme under which operators in the supply chain would increase their security performance in exchange for incentives, such as fast-track treatment both inside the EU and at external borders, and obtain "secure operator" status. For this purpose, member States might either avail themselves of existing systems or procedures or create a specific system for supply-chain security. The scheme would cover intermodal transport and follow previous terrorism legislation in the field of maritime transport and ports. To obtain "secure operator" status, an operator would have to implement a security management system and demonstrate that it covers areas such as protection of buildings, access control and personnel procedures. As with the requirement of the WCO *SAFE Framework*, each member State would have to recognize the "secure operator" status conferred by another member State.

It should be noted that the **International Maritime Organization** (IMO) has begun to consider proposals for integrating, into international legislation,[49] appropriate cargo security procedures based on or compatible with the standards of the WCO's *SAFE Framework* Thus, key elements of the WCO standards may in due course become part of the international law for maritime cargo transports, such as the 1965 *Convention on Facilitation of International Maritime Traffic* (FAL), as amended, and the 1974 *Safety of Life at Sea Convention* (SOLAS), as amended.

Amendments to SOLAS, which were adopted by the IMO in 2002, including in particular the *International Ship and Port Security* (ISPS) *Code*, continue to represent the most important international set of rules for the security of ships and port facilities.[50] The ISPS Code entered into force on 1 July 2004, and the IMO's Maritime Safety Committee (MSC) has issued a number of guidance circulars to assist in the implementation of and compliance with the requirements of ISPS Code.[51] Most recently, at its 81st session in May 2006, the MSC adopted a further set of guidance circulars,[52] notably the following:

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[48] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on enhancing supply chain security, *Proposal for a Regulation of the European Parliament and of the Council on enhancing supply chain security*, COM(2006), 79, 27 February 2006.

[49] See *Enhancement of security in cooperation with the WCO,* doc. MSC/81/5/4, 9 February 2006. See also *Measures to Enhance Maritime Security*, Report of the Working Group on Maritime Security (Part I), MSC 81/WP.5, of 17 May 2006. The Maritime Safety Committee (MSC), at its 81st session, in May 2006, discussed the carriage of closed transport units and of freight containers transported by ships and referred the matter to the Ship/Port Interface (SPI) Working Group of the Facilitation Committee for further consideration, including the development of draft amendments to the SOLAS Convention.

[50] For an overview over the responsibilities of Governments, port facilities and ship-owning and ship-operating companies under the ISPS Code, see UNCTAD, *Container Security: Major Initiatives and Related International Developments*, UNCTAD/SDTE/TLB/2004/1, paras. 80–86. See also *UNCTAD Review of Maritime Transport 2005*, p. 84.

[51] The MSC circulars are available on the IMO website (www.imo.org). See also UNCTAD, *Review of Maritime Transport 2005*, p. 87.

[52] Other circulars adopted include MSC.1/Circ.1188, *Guidelines on training and certification for port facility security officers*; MSC.1/Circ.1189, *Guidance on the provision of information for identifying ships when transmitting ship security alerts*; MSC.1/Circ.1190, *Interim scheme for the compliance of special purpose ships with the special measures to enhance maritime security*; and MSC.1/Circ.1191, *Further reminder of the obligation to notify flag States when exercising control and compliance measure.* A full list of all relevant circulars is included in MSC.1/Circ.1194.

- MSC.1/Circ.1192, Guidance on voluntary self-assessment by SOLAS Contracting Governments and by port facilities;[53]

- MSC.1/Circ.1193, Guidance on voluntary self-assessment by Administrations and for ship security;

- MSC.1/Circ.1194, Effective implementation of SOLAS chapter XI-2 and the ISPS Code.

In relation to the ISPS Code, it should also be noted that the **UNCTAD** secretariat is in the process of conducting a large-scale survey that seeks to establish the experiences and views of parties directly affected by the new maritime security regime, especially as regards costs related to the implementation of the ISPS Code. These parties include Governments, shipowning and operating companies engaged in international transport, and ports serving such ships. The results of the survey are expected to be available by the end of 2006.[54]

With regard to other relevant developments at **IMO**, it is also worth drawing attention to progress in relation to the introduction of *Long-Range Identification and Tracking Systems* (LRIT). By way of background, it should be recalled that it is already a special mandatory SOLAS requirement[55] for certain categories of ships to be equipped with *Automated Identification Systems* (AIS). AIS are shipboard automatic electronic reporting devices that communicate basic information regarding the ship's identity, position, course and speed to other AIS transponders and shore-based facilities. The AIS currently used are capable of transmitting information up to a range of around 50 nautical miles offshore. In order to extend significantly the tracking capabilities of SOLAS Contracting Governments, the introduction of LRIT has been proposed.

After extensive discussions,[56] the MSC adopted in May 2006 new regulations for the LRIT, to be included in SOLAS chapter V (Safety of Navigation), together with associated performance standards and functional requirements.[57] The MSC also approved the establishment of an ad hoc Working Group on Engineering Aspects of LRIT.

LRIT will be a mandatory requirement for ships engaged in international voyages, more particularly passenger ships (including high-speed craft), cargo ships (including high-speed craft) of 300 gross tonnage and upwards, and mobile offshore drilling units. The SOLAS regulation establishes a multilateral agreement for sharing LRIT information among Contracting States on the identity, location, date and time of the position of ships for security and search and rescue

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[53]The Guidance circular is a revised version of MSC/Circ.1131.

[54] Information on results of another survey conducted by the International Transport Workers' Federation (ICFTU), bringing to the attention of the MSC, inter alia, problems experienced by seafarers in obtaining shore leave following the implementation of the ISPS Code, can be found in IMO document MSC 81/5/8, submitted for consideration at the 81st session of the MSC (10–19 May 2006).

[55] SOLAS chapter V/19.

[56]The issue of LRIT has been considered by the Maritime Safety Committee (MSC) and by the Sub-Committee on Radiocommunications and Search and Rescue (COMSAR). For further information, see most recently the COMSAR Report to the Maritime Safety Committee (COMSAR 10/16, section 10, also published as an extract in document MSC 81/5/Add.1, and Annexes 17 and 18) and *Measures to Enhance Maritime Security*, Report of the Working Group on Maritime Security (Part II), MSC 81/WP.5/Add.1. See also the IMO website (www.imo.org).

[57] Resolutions MSC.202(81), MSC.210(81) and MSC.211(81).

purposes. It maintains the right of flag States to protect information about ships flying their flag, as appropriate, while permitting coastal States access to information about ships navigating up to 1,000 nautical miles off their coasts.[58] While AIS is a broadcast system, data derived through LRIT will be available only to recipients who are, according to the regulation, entitled to receive the information.[59] Safeguards concerning the confidentiality of data have been built into the relevant regulatory provisions. The regulation provides for a phased-in implementation schedule for ships constructed before its expected entry into force date of 1 January 2008, as well as some exemptions for ships operating exclusively in certain areas and already fitted with AIS.

Efforts are also being made at **IMO** to incorporate security-related provisions into other international legal instruments, such as the 1978 *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers* (STCW Convention) and the STCW Code.[60]

Finally, it should be noted that amendments to the 1988 *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (SUA Convention)[61] and its 1988 Protocol[62] were adopted on 14 October 2005 under the auspices of IMO. Once widely and uniformly implemented by IMO States Parties, the 2005 SUA Protocols[63] will provide a legal basis for the arrest, detention and extradition of persons in the event of a terrorist attack against shipping. The main amendments effected by the 2005 Protocols include the following:

- A broadening of the list of offences already contained in the 1988 SUA Convention and its Protocol. The offences listed shall be made punishable by each State Party by appropriate penalties that take into account their gravity.

- Inclusion in the 1988 SUA Convention of provisions covering cooperation and procedures to be followed if a State Party desires to board on the high seas a ship flying the flag of another State Party, when the requesting party has reasonable grounds to suspect that an offence under the Convention has been or is about to be committed. The authorization of the flag State is required before such boarding.

- Inclusion in the 1988 SUA Convention of a provision to the effect that none of the offences should be considered a "political offence" for purposes of extradition, and of a

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[58] Note that it has been emphasized that the regulation "was not creating or affirming any new rights of States over ships beyond what was existing in international law, particularly UNCLOS, nor altering existing rights, jurisdictions, duties and obligations of States in connection with the law of the sea"; see the note by the Secretary-General for consideration by the Council at its 96th session, document C 96/7/Add.1 of 30 May 2006.

[59] While the costs arising for States seeking to receive LRIT information are, at this stage, not yet clear, some reference to various likely charges is provided in COMSAR 10/16 (MSC 81/5/Add 1), at para. 10.50.

[60] For an overview of other amendments to SOLAS and mandatory codes and guidelines adopted by the MSC at its 81st session in May 2006, see the IMO website (www.imo.org).

[61] *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,* 1988 (SUA Convention).

[62] *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf,* 1988 (SUA Protocol).

[63] 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (SUA Convention); and 2005 Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (SUA Protocol).

provision dealing with conditions under which a person detained may be transferred to another State Party.[64]

The Protocols were opened for signature on 14 February 2006 and will remain open for signature until 13 February 2007. Thereafter they will remain open for accession. Seventy-one States signed the Final Act of the Conference.[65]"

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[64] For further information, see the IMO website, www.imo.org.
[65] The 2005 Protocol amending the SUA Convention requires adoption by 12 member States to enter into force. The 2005 Protocol to the SUA Protocol requires adoption by only 3 State Members, but its entry into force is contingent on the entry into force of the amendments to the SUA Convention.

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