



GLOBAL MARITIME SECURITY: THE ROLE OF SPAIN AS A PORT STATE

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ABSTRACT

Since the year 2001 in the Maritime World, two kinds of concept have emerged out of the common root: safety and security. In this paper we will first analyse the international situation and the preventive agreements reached since 9/11 under the auspices of the International Maritime Organisation (IMO), and then consider the role of a State such as Spain, seeking conclusions that can be generalised to other western countries of the European grouping. Finally, and based on certain experiences in respect of Port State Control, we will discuss the real effectiveness of the measures that appear today to be accepted.

Keywords: Maritime Security, Terrorism, Port State Control, Spain.

INTRODUCTION

A semantic or media question?

In the Spanish language one single word “seguridad” encompasses two English terms that are similar but have different associations: “safety” and “security”. In respect of maritime language, people have always spoken of the “safety of life at sea” (as in the SOLAS Convention). “Security” has been a term that has been associated with maritime legislation only since the tragic terrorist attacks of 11 September 2001. In fact it was necessary to assimilate into Spanish a term different from that of

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“seguridad” to convey the semantic content of the word “security”: that term was “protección”, which was used in the Spanish version of the International Ship and Port Facility Security Code (ISPS). In an editorial piece in a maritime journal, published shortly after the events in New York, it was said: “A reasonable definition of security might be that it is a sub-set of safety, where the perceived risk is seen to arise from person or persons with criminal or malevolent intentions. In maritime transport our experiences of breaches of security have been concerned with mainly domestic issues such as cargo theft, stowaways, piracy etc.” In a certain way we can say that, since the year 2001 in the maritime world, two kinds of concept have emerged out of the common root of “seguridad”; these have resulted, in the case of their application to ships, in two codes of management: the already existing International Safety Management Code (ISM) and the new ISPS code, duplicating the tasks in an ISM Officer and an ISPS Officer, although in practice, in most ships, responsibility for both rests with the same figure of the Chief Officer; similarly, for safety and for security, there are two plans, two audits and two records.

As we shall see in this article, after five years, this need for duplication is not so much real as for propaganda purposes, to demonstrate to the public, via the communications media, that actions are being taken to defend us against International Terrorism. But everything that runs counter to these policies is being criminalised, and a type of policy is being defended that effectively expands the predominance of the USA in the world, as has already been argued in previous papers (King, 2005; Stasinopoulos, 2003). This is because the Government of the USA has, to a large extent, unilaterally imposed not only the cost-benefit analysis of this dual attribution of safety and security, but also the analysis of the real likelihood of these risks and the preventive efficacy achievable by implementing these measures (Banomyong, 2005a).

In this paper we will first analyse the international situation and the preventive agreements reached since 9/11 under the auspices of the International Maritime Organisation (IMO), and then consider the role of a State such as Spain, seeking conclusions that can be generalised to other western countries of the European grouping. Finally, and based on certain experiences in respect of Port State Control, we will discuss the real effectiveness of the measures that appear today to be accepted.

Maritime Security before September 2001

Explicit policies in respect of *Maritime Security* are relatively new in the history of international navigation and maritime transport; although in earlier times ships and sailors always went armed and prepared to defend themselves against all types of threat. But, since the middle of the 20th century, a stable level of safety has been assumed in maritime transport, on which the trading relationships of most countries of the world are based. International concern about security has been growing during the last 40 years, despite relatively few serious events occurring. Only piracy and



the assaulting of vessels, which seemed to be phenomena reserved to films and literature at the start of the century, have been considered serious threats to which the IMO itself has given relative priority, especially since the United Nations Convention on the Law of the Sea. Today piracy at sea, carried out systematically, has been concentrated more in particular parts of the Third World, especially in countries like Somalia, Indonesia and Malaysia (Ong-Webb, 2006; Yun Yun, 2007; Birnie, 1987). In any case, acts of maritime piracy should not be considered, to our way of thinking, as acts of maritime terrorism, since the motives for piracy are usually economic in origin, in contrast to acts of terrorism, which are usually intended to pressure Governments in respect of their social, economic or religious policies.

The Ship as a weapon of mass destruction (WMD).

To date, suicide boat attack has been Al Qaeda's preferred method of maritime terror attack (Daly, 2003). Thus in the new 21st century, the two events directly attributed to maritime terrorism, in accordance with the principles established previously, had as their targets two vessels, one military and the other civil: the "Cole" and the "Limburg". Evidence has also been found of unspecified actions planned to attack US and British warships as they passed through the Strait of Gibraltar (Nincic, 2005; Gottschalk et al., 2000; Burnett, 2002).

However the fundamental change in the emphasis on maritime security policies really took place, as we all know, by terrorist attacks that had nothing to do with maritime transport: those that took place on the infamous date of 11 September 2001 in the city of New York. These attacks marked a major turning point in the global concern about terrorism, and this was reinforced by the attacks in 2004 in Madrid and 2005 in London.

It has been since 2001 that much greater emphasis has been placed on security in those places where protection may be weakest, that is, in the various points of admission to a country, on land borders and at seaports and airports, together with the stricter control and inspection of persons and merchandise entering a country. As stated by Donna J. Nincic (2005), a merchant ship could be used as a WMD, either as a weapon delivery system (chemical/biological/nuclear weapons could be hidden on a ship, and primed to detonate), or as a delivery system for both fuel and cargo (traditional or dangerous cargo). This is evident, but the doubt remains the same: with imagination, almost anything can be deemed a potential risk. How can we assess the risk from something which experience has taught us is a harmless tool? What sort of neuroses will we develop if we have to fear everything?

The U.S. measures

The international scenario of the year 2001 allowed the USA to use its military power to manage global affairs and trade (King, 2005). Its hegemonic character has



permitted the unilateral establishment of a large number of measures aimed at controlling and preventing terrorist attacks; these have enabled the US to exercise greater control of oceans and sea lanes to achieve its strategic objectives. Therefore critical elements of maritime infrastructure, such as ports, waterways and vessels, are of paramount importance (Stasinopoulos, 2003).

From a new organisation of the US government departments involved, and the creation of the new Office of Homeland Security, a new policy has been designed that has gradually been imposed on maritime transport on the world scale, with the objective, in principle, of limiting terrorist activity in that country; this policy is based on three fundamental proposals:

- I. The necessary modification of international regulations, with special incidence in the SOLAS'74 Convention, and in the creation a new International Ship and Port Facility Security Code (ISPS), and the implementation in other states of the philosophy of the US Maritime Transportation Security Act of 2001 (US Cong., 2002, 2003).
- II. Putting into action a series of programs intended to detect terrorist threats in the cargo of vessels, especially the "Container Security Initiative" (CSI) program (Willis et al., 2004; OECD, 2005; Cook, 2007).
- III. The exhaustive control of all the persons who intervene in the transport of merchandise by sea, including the movement of persons within port facilities.

We can summarise the most important initiatives promoted by the Government of the USA (Dalgaard-Nielsen, 2006):

- Container Security Initiative (CSI).
- Megaport.
- 24 hours Rule.
- Customs - Trade partnership against terrorism (C-TPAT).
- The S.O.S. (Sail Only if Scanned) Act

Many other initiatives are being put into effect in respect of the security of logistic chains, and affect all modes of transport; these include the:

- CIP - Carrier Initiative Program; and, at the private level, the
- SCIA - Super Carrier Initiative Agreement;
- ACSI - Americas Counter Smuggling Initiative;
- BASC - Business Alliance for Secure Commerce.

THE RESPONSE OF THE INTERNATIONAL ORGANISATIONS

IMO Maritime Security Policy

Since its Assembly of 1987, the IMO has been expressing its concern over the danger to passengers and crews represented by the increased acts of piracy and other



illicit acts. Its Maritime Safety Committee drew up a series of proposals, although the response of countries was very limited. Shortly after, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) was signed in Rome on 10 March 1988 and entered into force on 1 March 1992 (Roach, 2004; Valencia, 2004).

On 5 July 1996 the IMO, through its Maritime Safety Committee, adopted the circular MSC/Circ.754 on passenger ferry security, which made recommendations on security measures for passenger ferries on international voyages shorter than 24 hours, and for ferry ports. And thus we come to the 22nd Assembly of the IMO, on 20 November 2001, when a new Resolution A.924(22) “Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships” was approved. The resolutions of this Assembly only one month after the assault of 9/11 crystallised a year later (on 13 December 2002) in a Diplomatic Conference on Maritime Security, which put into effect the following new international instruments: the amendments to the SOLAS Chapter V, with the program for the accelerated implementation of the Automatic Identification System (AIS), the new amended SOLAS Chapters XI-1 “Special measures to enhance maritime safety” and SOLAS XI-2 “Special measures to enhance maritime security”, together with the new International Ship and Port Facility Security Code (ISPS). Thus the IMO, only one year after the attacks of 9/11, adopted the philosophy of the Government of the USA in respect of most of the measure on maritime security that the US had unilaterally put into operation (Hesse, 2004; IMO, 2003a-d; Jones et al., 2006, IMO-ILO, 2004).

The reform of Port State Control (PSC)

One of the most controversial rules of the new SOLAS Chapter is that referring to the Inspection of Vessels (Rule XI-2/9), which establishes two regimes: the conventional PSC in port, and the control that can be exercised before the vessel enters port (the new “anti terrorist” regime).

— Traditional PSC regime.

This involves verification of the existence of a valid certificate of security on board the vessel. If it does not have a Certificate, or if there are well-founded reasons for suspicion, the following control measures can be applied: delay or detention of the vessel, restriction of its operations, restriction of movement, and expulsion from the port if there is an immediate threat to persons or goods and there is no other reasonable means of eliminating the threat.

— New regime “prior to entry in port”.

The following information is required from the vessel: confirmation of the existence of the International Certificate of Security, and the authority that has issued it; confirmation of the level of security at which the vessel operates, and at which it has



operated previously; confirmation of special or additional measures previously adopted; and confirmation of compliance with the security procedures. If there are well-founded reasons for suspicion of non-compliance, the Port State will be able to impose measures: it can demand rectification of the non-compliance; it can demand that the vessel must move to a specified place in its territorial or internal waters; it can inspect the vessel; it can deny entry in port if there are well-founded reasons for believing there is an immediate threat to persons and goods, and there are no other means of eliminating the threat; it can oblige the vessel to notify it of the control measures adopted. There is also a procedure for preventing unnecessary delays to the vessel, and the vessel has the right to indemnity in respect of undue delays or detention.

Bearing in mind that Rule XI-2/9 of the new SOLAS, which stipulates the measures for controlling vessels that are already in port, and for controlling the vessels that intend to enter the port of another State, could provoke conflicts of national interests, the MSC proposed a provisional model for implementation, so that it should be consistent, uniform and harmonised. Thus on 21 May 2004, the Maritime Safety Committee issued the circular, MSC.159 (78), titled "Interim guidance on control and compliance measures to enhance maritime security" (Alcázar et al., 2002; Piniella et al., 2005; Sage, 2005).

THE ROLE OF A PORT STATE

The role of the European Union

The European Economic and Social Committee is one of the bodies of the Union that has shown very clearly its apprehensions on the subject of the "Security of Transport" (EESC, 2002). This body reminded the sadly-deceased Transport Commissioner, Loyola de Palacios, that international maritime transport has become more costly due to the additional maritime security measures; these costs include demands for notification, more frequent inspections, and obligations in respect of escorting by tugs; all this has resulted in an increase in costs and in longer waiting times. The Organisation for Economic Cooperation and Development (OECD) established that the cost of the delays, the administrative work, and compliance related to crossing frontiers now represents 13% of the value of the merchandise involved, compared with 5% previously, and that a further 1% to 3% could be added to those costs in respect of security measures (OECD, 2003). This increase is corroborated by the data from UNCTAD, which estimated an average of 488 million euros per annum spent by each port for operating the ISPS Code (UNCTAD, 2004). Added to this figure are the costs of implementing the security system, which range between 827 million and 1,729 million euros. Investment in equipment accounts for 35% of this cost, infrastructures for 26%, personnel for 14%, training for 8%, and processing costs for the rest. These costs are equivalent to increasing the



total charge for international maritime transport by about 1% with respect to the initial cost and by 0.5% with respect to the annual cost, the report explains (Alderton, 2002; Boscke et al., 2003; Barnes et al., 2005; X-Li et al., 2003; Banomyong, 2005b; Dulbecco et al., 2003).

Despite European reservations, all the measures required by the USA at the international level were put into operation in Europe by the Directives of Maritime Security; the first of these was Regulation (EC) N° 725/2004 of the European Parliament and of the Council, of 31 March 2004, on enhancing ship and port facility security, where the application of the IMO regulation was even extended to passenger ships engaged in national traffic, and belonging to class A, and to their owner companies and to the port facilities that serviced them, and the implementation of this Regulation from 1 July 2007 in all the European States. This made it obligatory to apply a series of dispositions included in part B of the ISPS Code, which at first appeared as guides. Later the Commission Regulation (EC) N° 884/2005 of 10 June 2005 laid down "Procedures for conducting Commission inspections in the field of maritime security". In 2005 the new Directive 2005/65/CE of the European Parliament and Council, of 26 October, continued the work undertaken by the approval of Ruling 725/2004/CE. The Directive creates the Local Security Committee, and puts emphasis on the importance of security in wheeled traffic entering or leaving port facilities; this affects a large number of automobiles and other vehicles loaded with merchandise, and has the object of ensuring the introduction of adequate security measures for these (Bichou, 2004).

Spain in the global scenario

Spain like the USA has been the victim of a large-scale terrorist attack and, in the case of Spain, the perpetrators also utilised a means of transport: the train. A series of 10 explosions took place on the morning of Thursday 11 March 2004, on the Madrid metropolitan railway system; terrorists had planted bombs, disguised as rucksacks, loaded with explosives, on crowded early-morning commuter trains. The result was the deaths of 191 persons and injuries to more than 1,700. The terrorist "commando group" was located some weeks later, in an apartment in the Madrid suburb of Leganés. After police had surrounded the building, the members committed suicide together by blowing up the apartment as the security forces were initiating an assault to capture them. All the members of the Islamist cell who were present, together with an agent of the police group, died in this action.

We can say, therefore, that Spain is a country that has experienced extreme terrorist violence, not only that of Islamist character but also by extremists of the Basque secessionist movement in the North East of Spain, more or less continuously over more than 40 years.



With relation to the security of its maritime borders, in addition to implementing the previously-described measures as a State belonging to the European Union, Spain has problems of its own, as a result of its geographic location: it forms part of the border of Southern Europe with the Maghreb countries, and offers many possible entry points for illegal immigrants from many countries of Africa and Asia, across the Straits of Gibraltar and from the west coast of Africa to the Canaries. In increasing numbers, Maghrebi and sub-Saharan immigrants are taking advantage of the generally good climate to try and reach the “promised land” of the developed countries of Europe. This represents a considerable security challenge, but is also a human drama of enormous dimensions. Not only are immigrants crossing from the North coast of Morocco to Andalusia in small boats known as “pateras”; there is a substantial traffic from Mauritania, Sahara and Morocco to the Canary Islands, which are part of Spain, by “cayucos”, fishing canoes utilised in the small African coastal communities. The number of illegal immigrants has reached figures in excess of one thousand in a single weekend, and in the last full year, 2006, the total number of illegal immigrants reaching Spain by maritime routes has been estimated at 25,000. But even worse are the figures related to the associated losses of human lives at sea, which the Red Cross has estimated at around 2,000 persons each year (Pugh, 2001).

Evidently Spain has opted for two types of measure in recent years in the face of the problems of terrorism and illegal immigration by sea: measures of coercive character and other political measures, which can be summarised in the following terms:

- The administrative unification of the technical means of security between the Ministry of the Interior and the Ministry of Development.
- Implementation of the measures of maritime security approved at the international level by the International Maritime Organisation and adhesion to some of the programs of the USA in the matter of detection in containers, such as the CSI, which have been put into operation first in the port of Algeciras, and later Valencia and Barcelona.
- The establishment of new systems of vigilance.
- Involvement of the authorities of the European Union in the problem of maritime security in the coastal and border areas of the Straits of Gibraltar.
- Political agreements with the governments of Morocco and Mauritania to try and suppress the traffic of illegal immigrants from their coasts.
- Improvement of the humanitarian and health systems for the reception of illegal immigrants apprehended.

As part of this effort, the Government of Spain has put into effect two particular operational schemes termed SIVE, the initials in Spanish of the “Integrated System of Exterior Vigilance”. Initially its implementation has been limited to the zones with the highest incidence of illicit traffic: that is, the littoral of Andalusia (from



Ayamonte on the Atlantic, to Cabo de Gata on the Mediterranean coast), the Canary Islands of Fuerteventura and Lanzarote, and the Spanish cities of Ceuta and Melilla on the North African coast. However, the extension of the scheme to the rest of the national territory is not discounted, since as a whole Spain forms part of the southern border of the European Union.

The governmental agreements have reduced drastically the arrival of “*pateras*” full of undocumented immigrants to the coasts of Andalusia, the majority of them originating from sub-Saharan Africa, although arrivals to the coasts of the Canary Islands have increased.

In Spain, the ports of general interest of the State initially drew up a Security Plan prepared on the basis of the results of a prior “Assessment of the Security of the Port Facility”. This assessment identified the risks and threats that could affect the port facilities, and determined their degree of vulnerability to these risks. To this end, the methodology utilised for the assessment of security, and the production of the corresponding security plans for the ports, included the design of a software tool, titled “SECUREPORT”, a tool approved by the Ministry of the Interior. Prior to the entry into force of the ISPS Code, the Government of Spain had established some initial measures in respect of maritime security in the ports, although these were not as fundamental or comprehensive as those currently existing.

The Ministry of the Interior is the government department responsible for establishing the levels of security, the minimum contents of the necessary training courses and the contents of the Ship Security Plans, for all vessels. It is also the organ of the State that coordinates the Security Forces of the State in the event of receiving a Security Alert. As regards the detailed application of security measures, the General Directorate of Merchant Shipping (Ministry of Development) is the body charged with reviewing and approving the Security Plans of ships, with verifying on board the implementation of the Security Plans and then issuing the corresponding International Ship Security Certificate, and with authorising Recognised Security Organisations to act in name of the Government. This work is done peripherally in the Maritime Captaincies; thus in Spanish vessels the Flag Inspectors carry out the verification on board of the actual implementation of the Plans, and the production of the Report corresponding to their findings. In foreign vessels, the MoU Inspectors will carry out the same type of inspection, and will report to the Maritime Captain the serious cases of vessels that do not have a Certificate, or if it has expired or is false or raises suspicion of being false, or if it is invalid or not correctly issued or completed. In compliance with the ISPS Code, the peripheral Maritime Administration, through its Inspectors, will undertake the control of access, identification and control of restricted zones, control of the cargo and provisions, control of any unaccompanied luggage, vigilance, communications, training, exercises and practice to make personnel familiar with the Code, as well as the assessment of contingency plans.



For the communication of any threat, the “Permanent Centre of Information and Coordination” (CEPIC) has been set up in the State Secretariat for Security, through the State Society for Maritime Rescue and Safety (SASEMAR).

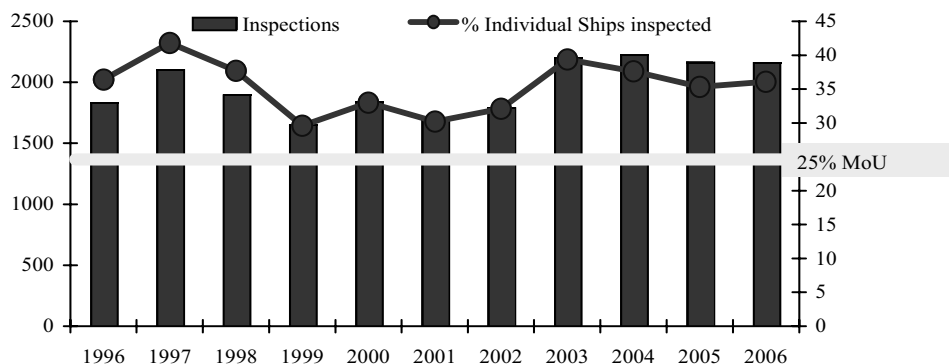
The control measures

Spain is a signatory of the Memorandum of Paris (1982), which represents the first regional agreement signed concerning port state control (Piniella et al., 2005). Its level of participation in the agreement is within the limits fixed of 25% of the inspections, and this has even been exceeded by a suitable margin, as can be seen in Figure 1. With the introduction of the International Ship and Port Facility Security Code on 1 July 2004, the Paris MoU mounted a three month programme to verify compliance with new security requirements for ships. Results show that of the 4681 security checks carried out only 72 resulted in the ship's detention on security grounds. The programme, which was held in conjunction with the Tokyo MoU, ran from 1 July to 30 September 2004 and used a uniform questionnaire to test the key elements of the ship's security arrangements. According to the sources of the MoU itself, a total of 4681 security checks were made on 4306 individual ships; a total of 28 inspections resulted in detention solely on security grounds, while another 44 ships were detained on security and other grounds. This represents a rate of 1.5% of inspections resulting in detention for security reasons compared with an overall detention rate for the period of 5.7%. Monthly figures revealed an improving level of compliance as the programme progressed. In July 50 ships were detained compared with 13 in August and 9 in September. The reported cases of non-compliance of the new ISPS Code have not proved to be serious; in fact, most cases of non-compliance were rectified on the spot. The most common non-compliance was a failure to record previous ports of call. As can be appreciated in Table 1-c, the deficiency in compliance with the standards of security that were detected in the Paris MoU Security Campaign is closely related to the rest of the deficiencies by Flags. Of the six flags with more than one detention, five are on the Black List of the MoU for that year.

We can say, therefore that the compliance by the shipping companies was excellent, and in the first year of implementation of the ISPS Code, most ships were becoming adapted to the organisation requirements that were asked of them. If we widen the range of inspections analysed up to the present day, we can see from the data given in Table 2 that the percentage of deficiencies in matters of maritime security (ratio of deficiencies to individual ship x 100) is around 5 to 6% in the two years completed (2005 and 2006). Specifically in the MoU of Paris, some 800 deficiencies are detected annually (817 and 735); this value is very similar to that for non-compliance of other standards of safety or of prevention of contamination (SOLAS, MARPOL, ILO, ...). If we look at other PSC Memoranda, the data are similar.



Figure 1. Spanish inspections in Paris MoU.

Source: <http://www.parismou.org>Table 1-a. Results of the Paris MoU Security Campaign (2004):
Flags with more than 10 inspections and more than one detention.

Flag State	Inspections	Detentions on Security Grounds	Detention Rate
Georgia	56	5	8.9%
Korea Democratic People's Rep.	22	5	22.7%
Panama	471	10	2.1%
Russian Federation	205	11	5.4%
St Vincent and the Grenadines	186	3	1.6%
Syrian Arab Republic	20	2	10.0%
Grand total for all flags	4681	72	1.5%

Source: <http://www.parismou.org>

Note: Of those flags with more than 10 inspections and more than one detention, the following six showed rates above average. Ships registered with these flags accounted for 50% of all detentions on security grounds.

Table 1-b. Results of the Paris MoU Security Campaign (2004):
Non-compliance and detentions.

Most common Non-compliance	No.
Failure to record previous ports of call	349
Access control onto and around the ship	200
Failure to keep records of security drills.	215

Detentions according to the Age	%
15 years or older	90
Less than 15 years	10

Rate of Detained Ship Type	%
Refrigerated Cargo ship	3.6
General Dry Cargo ship	2.6
Roll-on/Roll-off Cargo ship	1.1
Oil Tankers ship	0.6
Bulk Carriers ship	0.5
Container ship	0.2

Source:
<http://www.parismou.org>

Note of MoU Paris 2004 Report: Much of the certification for ISPS was carried out by Recognised Security Organisations (RSO) on behalf of the ship's flag state. Some of these RSO's are new to the PSC regime and the data in respect of these organisations was not sufficiently complete for analysis. It is also the case that most of the security detentions were due to lack of valid certification, which generally is outside the control of the RSO itself.



Table 1-c. Results of the Paris MoU Security Campaign (2004): Comparison between the Flags with most detentions under the ISPS Code and the general list of vessels detained, by Flag.

Ranking Flag State/Security detentions	Ranking MoU Paris List	Excess Factor
Georgia	Black list – Very high risk	4.59
Korea Democratic People's Rep.	Black list – Very high risk	9.81
Panama	Black list – Medium risk	1.07
Russian Federation	Grey list	0.32
St Vincent and the Grenadines	Black list – High risk	3.45
Syrian Arab Republic	Black list – Very high risk	4.00

Source: <http://www.parismou.org>

In the USA, in the past year, only 35 vessels were detained on grounds of maritime security, and of these, 28 were for not controlling the access of persons on board. Of the “black list” of 9 flags in questions of security, 6 were already on the list for questions of safety.

Table 2. Maritime security deficiencies Paris MoU Inspections (2004 – 2006)

			Deficiencies in % of total number	Ratio of deficiencies to indiv. ship x 100
2004(*)	64113	No. Total deficiencies		
	107	Security deficiencies	0.17	0.85
2005	62434	No. Total deficiencies		
	817	Security deficiencies	1.31	6.27
2006	66142	No. Total deficiencies		
	735	Security deficiencies	1.1	5.48

Source: <http://www.parismou.org>

(*) Security-related data for 2004 given in the table only cover the July - December period.

CONCLUSION

The globalisation of the Planet is the globalisation of trade, transport, and the movement of persons, but it is also the globalisation of risk. It is not ethical to think that globalisation may be rapid in one sense and yet in another that we have to apply all sorts of checks to it, because that way we create an unequal world, which is basically the origin of all these problems. International terrorism is a fact, as is the psychosis produced by horrific attacks of New York, Madrid and London. However, the big problems should be approached with international consensus and not unilaterally. The containers that are shipped to the USA are shipped securely, but who should pay for that security? And what about the containers shipped to other destinations? In maritime transport, the IMO, as a specialist agency of the UN has played an important role in the regulation of safety standards and protection of the natural environment, and can play the same role in respect of maritime security, in conjunc-



tion with other international organisations. Following our review of maritime security which has been focused on one state, Spain, in particular, we can state that, in these three years, the western port states have put all the initiatives (ISPS, CSI, ...) into operation fairly rigorously. And the control measures reflect that this compliance is at a similar level as compliance with the rest of the standards and agreements that we consider the minimum standard for a vessel to be operated securely. Spain has opted for the investment of public funds in these types of infrastructure, but only a cost-benefit analysis can give a fair evaluation of the investments that we need to make. There can be no doubt that the payment of this cost will have a considerable influence on maritime supply-chain management. But the doubt arises as to whether putting these measure into place in vessels and ports can give us the desired degree of assurance that there can be no re-occurrence of the events that gave rise to the measures.

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LA PROTECCIÓN MARÍTIMA GLOBAL: EL PAPEL DE ESPAÑA COMO ESTADO RECTOR DEL PUERTO.

En la lengua española una sola palabra “Seguridad” engloba dos términos que en inglés tienen acepciones diferentes “Safety” y “Security”. En los términos del lenguaje marítimo siempre se había hablado de “Safety of life at sea” (Convenio SOLAS). “Security” ha sido un término que se ha asociado a la legislación marítima sólo a partir de los tristes atentados del 11 de Septiembre de 2001. En este artículo se analiza la situación internacional y los acuerdos preventivos tomados a partir del 11-S en el seno de la Organización Marítima Internacional (IMO) para detenernos posteriormente en el papel de un Estado como España, que puede generalizarse a otros países occidentales del entorno europeo. Finalmente y a partir de ciertas experiencias sobre Control de Estado rector del Puerto discutiremos la eficacia real de las medidas hoy manifiestamente aceptadas.

REVISIÓN Y ANÁLISIS DEL PROBLEMA.

En el artículo se realiza en primer lugar una revisión de las políticas de Protección Marítima anteriores a Septiembre de 2001, posteriormente se analiza lo que hemos denominado “el buque como arma de destrucción masiva”, (WMD) tal como ha sido ya establecido en Nincic (2005) a partir de los sucesos trágicos del 9/11. A partir de una nueva organización de los departamentos y la creación del *Office of Homeland Security* se diseñó una nueva política en los EE.UU. que poco a poco se va imponiendo a nivel mundial en el transporte marítimo con el objetivo, en principio, de limitar la acción terrorista en el país, en base a tres propuestas fundamentales:

- La necesaria modificación de la normativa internacional, con especial incidencia en el SOLAS y en la creación de un nuevo Código, el ISPS, así como la implantación en otros estados de la filosofía de la Ley norteamericana “*Maritime Transportation Security Act 2001*”.
- La puesta en marcha de una serie de programas que prevengan la detección de amenazas terroristas en la carga de los buques, especialmente el programa “*Container Security Initiative*” (CSI).
- El control exhaustivo de las personas que intervienen en el transporte de mercancías por vía marítima, incluyendo el movimiento de personas en instalaciones portuarias.

Podemos resumir las iniciativas más importantes promovidas por la Administración de los EE.UU.: Container Security Initiative (CSI); Megaport; Regla de las 24 horas; Acuerdo de Aduanas (C-TPAT); Medidas “S.O.S.” *Act. The Sail Only if Scanned*.



En una segunda parte del artículo analizamos la respuesta de las Organizaciones Internacionales, para pasar a analizar el actual doble régimen de los Estados rectores de Puerto (PSC). Y dentro de este papel esta España, contemplada desde un punto de vista de miembro de la Unión Europea. España ha optado por dos tipos de medidas en los últimos años ante los problemas de terrorismo e inmigración ilegal por vía marítima, las de carácter coercitivo y otras de tipo político

CONCLUSIONES

La globalización del Planeta es la globalización del comercio, del transporte, del movimiento de personas, pero es también la globalización de los riesgos. No es ético pensar que la globalización pueda ser rápida en un sentido y en el otro tengamos que poner todo tipo de trabas, porque de esa manera creamos un Mundo desigual, que en definitiva es el origen de todos estos problemas. El Terrorismo Internacional es un hecho, como lo es la psicosis producida por los grandes atentados de Nueva York, Madrid o Londres. Los grandes problemas deben alcanzarse con el consenso internacional y no de forma unilateral. Los contenedores que van a EE.UU. van seguros, pero ¿quién paga esa seguridad? ¿cómo van los contenedores cuando el destino es diferente? En el transporte marítimo, IMO, como agencia especializada de Naciones Unidas ha jugado un papel importante en la regulación de las normas de seguridad y protección del Medio Ambiente, y puede jugar el mismo papel a la hora de la protección marítima, en conjunción con el resto de las organizaciones internacionales. Después de nuestra exposición que hemos particularizado en un Estado concreto, España, podemos apuntar que en estos tres años los países occidentales portuarios han puesto en marcha con cierta rigurosidad todas las iniciativas (ISPS, CSI,...). Y las medidas de control reflejan que ese cumplimiento es al mismo nivel que el del resto de las normas y Convenios que consideramos estándar mínimo para la navegación segura de un buque. España ha optado por la inversión con dinero público de este tipo de infraestructuras, pero solo un análisis de coste-beneficios puede dar la medida justa de las inversiones que debamos tomar. El pago de este coste no cabe duda influye considerablemente en la cadena de gestión logística. Y la duda surge en si con tener en regla estas medidas en buques e instalaciones portuarias podremos tener la certeza de que los hechos que dieron lugar a las mismas no se puedan volver a producir.

