

The ISPS Code and Club Concerns

Jonathan Lux

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Jonathan joined Ince & Co in 1975, qualified as a solicitor in England & Wales in 1977 and in Hong Kong in 1986. Jonathan became a partner in 1983. He specialises in maritime, energy, marine insurance, international trade and general commercial litigation and has been involved in many landmark cases in these fields. He acts for the major P&I Clubs, their shipowner or charterer members, cargo interests, cargo sellers and buyers as well as the major insurers covering the divergent risks in issue. Jonathan has been a pioneer in the introduction of ADR (principally mediation) into his fields of practice. He is an accredited mediator (CEDR, The Academy of Experts and ADR Net) and leads the firm's ADR Group which will assume increasing importance in the light of the radical reforms to the Courts' Civil Procedure Rules. Jonathan is a Member of Mediation Panel of Mediationsstelle für Wirtschaftskonflikte.

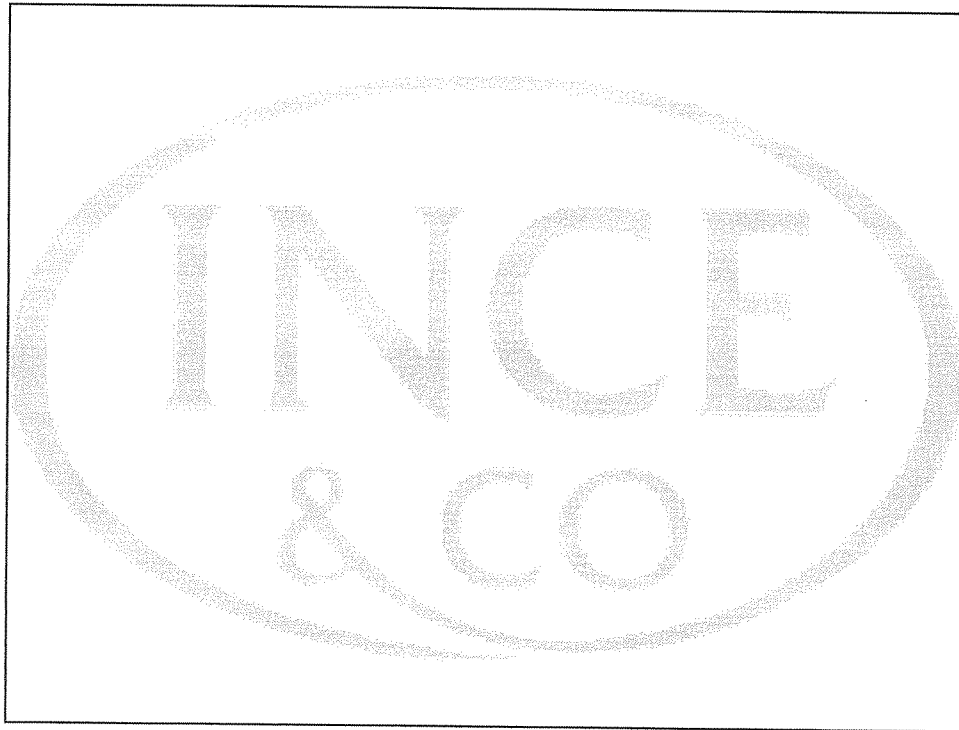
With the increasing number of disputes involving ship's bunkers, Jonathan has become a leading expert advising bunker suppliers, shipowners and charterers. He is a Council Member of the International Bunker Industry Association and former co-ordinator of its working group on dispute resolution. He has drafted a number of the conditions which have now become standard clauses in the supply contracts and charterparty terms.

Jonathan is co-author of "The Law of Tug, Tow and Pilotage", "The Law and Practice of Marine Insurance and Average" and "Bunkers". He is editor of "Classification Societies" and author of various other publications in the fields of maritime law, insurance and international trade. He is a frequent lecturer on these subjects both in the UK and on the international circuit.

He is a Freeman of the City of London, Liveryman of the Worshipful Company of Solicitors, supporting member of The London Maritime Arbitrators' Association, member of LMAA Supporting Members Liaison Committee, Fellow of the Chartered Institute of Arbitrators, member of the British Academy of Experts, Member of the Council of the International Bar Association's Section on Business Law and Chairman of the IBA's Human Rights Institute's Committee on Legal Systems and Vice-Chairman of IBA Standing Committee on the UN and other World Organisations (UNWOC). He is supporting member of the Association of Average Adjusters and a member of the steering group of the London Shipping Law Centre. Jonathan is also Vice-Chairman of the British Brazilian and Portuguese Law Association (BBPLA).

Jonathan is also one of a small number from outside China to be listed as an Arbitrator on the Panel of Arbitrators of China Maritime Arbitration Commission

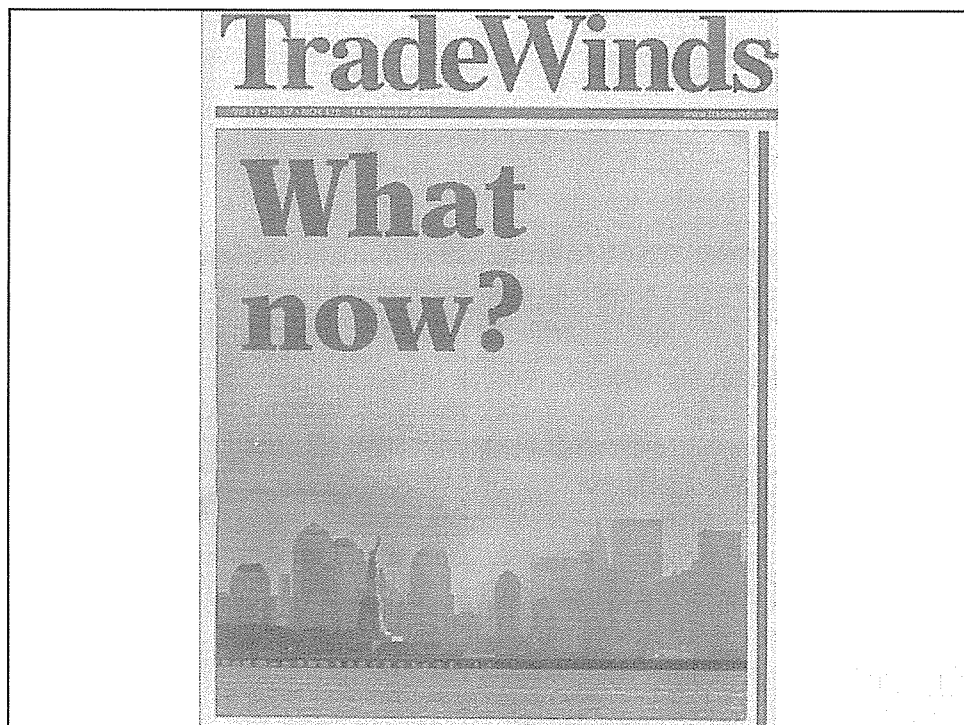
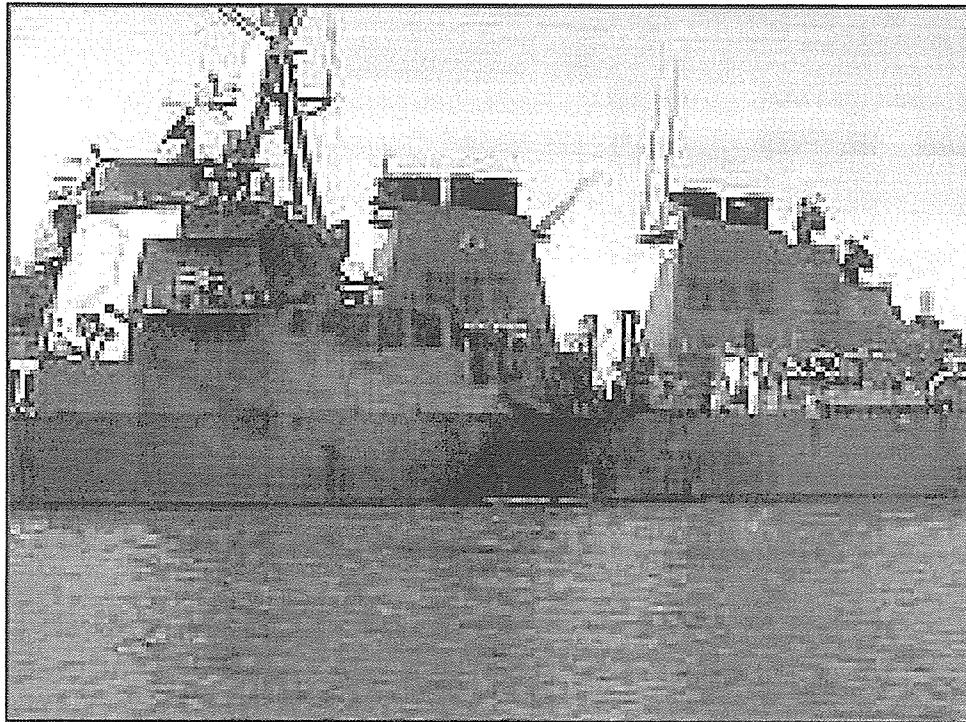
Jonathan is listed in Chambers Global Directory 2000-2001 as a leading international shipping lawyer in London. He also has Entries in Debretts People of Today (2003 and Who's Who in American Law (2003); he is also a Member of the Council of the BCCG (British Chamber of Commerce in Germany).



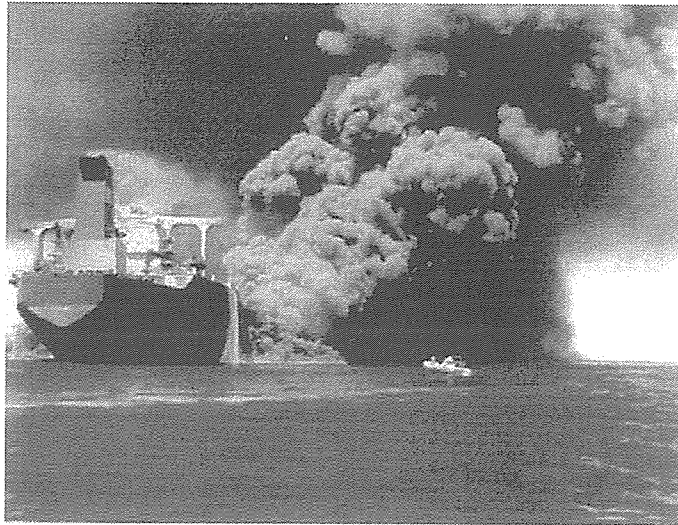
**ISPS CODE AND CLUB
COVER**

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September 2004

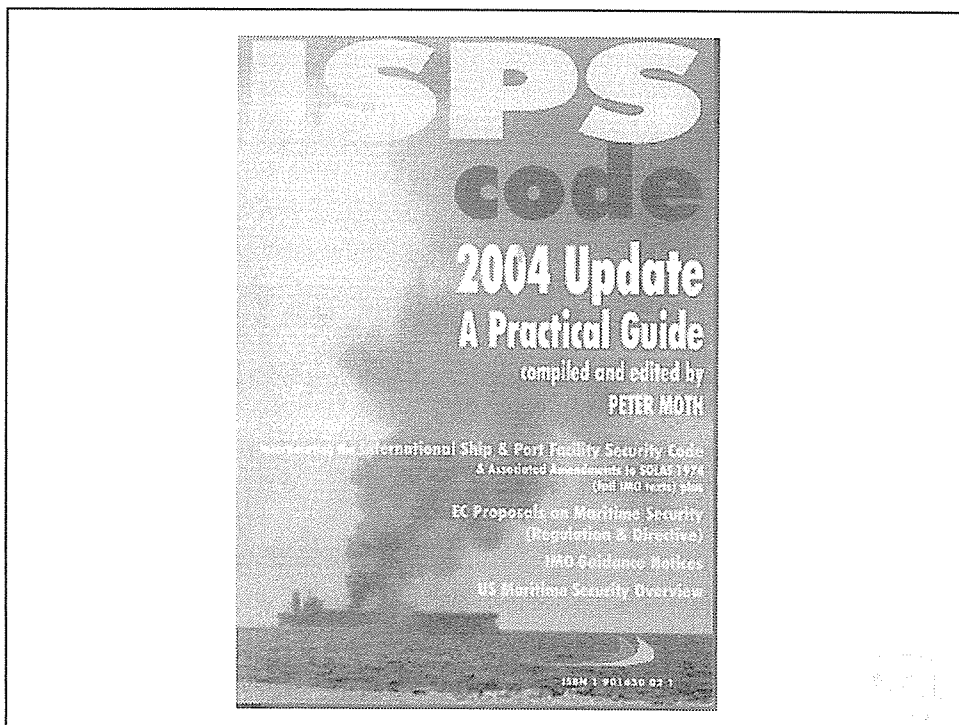
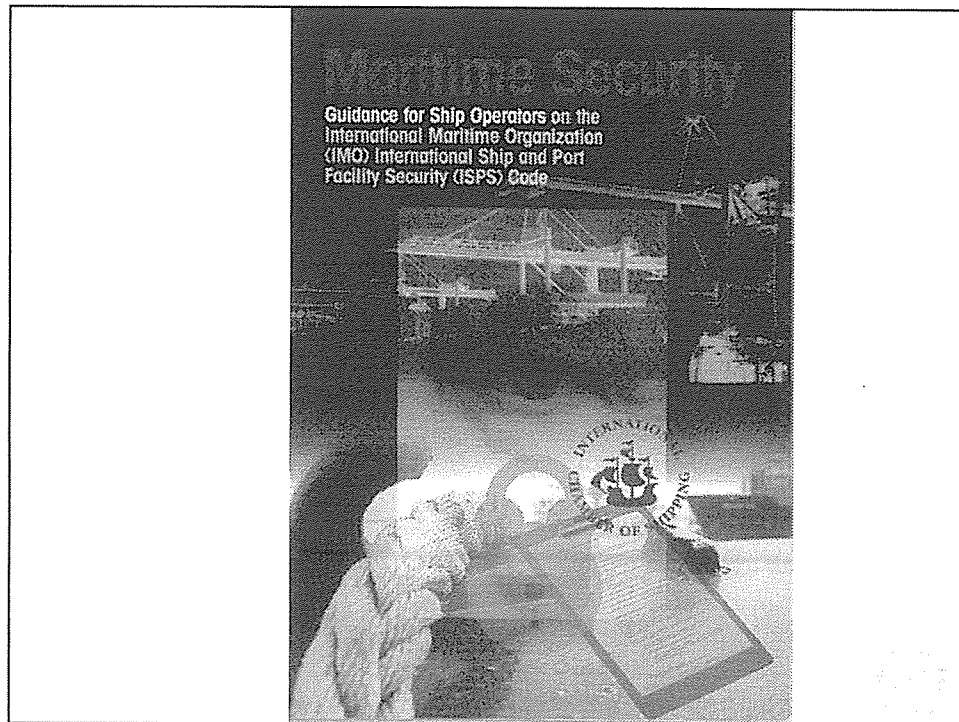
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MV LIMBURG, OCTOBER 6, 2002



- SOLAS amended December 2002 to include
- A new Chapter XI-2
- International Ship and Port Facility Security (ISPS) Code
- To be in force by 1 July 2004



Interested Parties

- Passenger ships, including high speed passenger craft;
- Cargo ships, including high speed craft, of 500 gross tonnage and upwards;
- Mobile offshore drilling units;
- Shore facilities serving such ships engaged on international voyages
- Does not apply to war ships, naval auxiliaries or other ships owned or operated by a contracting Government

New SOLAS Regulations and International Ship and Port Facility Security (ISPS) Code

Summary of Requirements

A. Ship Modifications/Additional Carriage Requirements

Ships will be required to:

1. Carry / fit an Automatic Identification System (AIS);
2. Show the ship identification number externally and internally;
3. Have a ship security alert system.

B. Shipping Company Responsibilities

Companies will be required to:

1. Obtain an International Ship Security Certificate in respect of each ship that they operate;
2. The carrying out of a Ship Security Assessment (to include an On Scene Security Survey);

New SOLAS Regulations and International Ship and Port Facility Security (ISPS) Code Cont....

3. The production of a Ship Security Plan which satisfies SOLAS and the ISPS Code, ensuring that the plan is:
 - i. approved by, or on behalf of, the flag state;
 - ii. Available on board the vessel at all times;and that the measures outlined in the plan are implemented
4. The designation of an officer on each ship as the Ship Security Officer;
5. Ensuring that appropriate security drills and exercises are carried out;
6. Providing appropriate resources to the ship to carry out the Security Plan.

New SOLAS Regulations and International Ship and Port Facility Security (ISPS) Code Cont....

c. Documentary / Information Requirements for Ships

Ships will be required to:

1. Carry a Ship Security Plan which has been approved by, or on the behalf of, the flag state;
2. Obtain and carry an International Ship Security Certificate issued / authorised by the flag state;
3. Obtain and carry a Continuous Synopsis Record issued by the flag state;
4. Carry additional information on board relating to crew appointees, parties to charter parties, and those responsible for deciding the employment of the ship;
5. Have available on board a record of certain other security related information

New SOLAS Regulations and International Ship and Port Facility Security (ISPS) Code Cont....

D. The ISPS Code in Operation – Compliance and Controls

Under the ISPS Code, provisions in relation to compliance and controls will apply.

E. Obligations of Contracting Governments

Under the provisions of Chapter XI-2 of SOLAS and Part A of the ISPS Code, Contracting Governments will have various responsibilities.

F. Summary of Requirements for Ports

Requirements similar to those required for ships will be established in respect of port facilities⁴

ISPS in Practice

- From July 2004, Regulation 9 of XI-2 establishes that a Contracting Government, will have the right to exercise various control and compliance measures, including:
 - Port State Control Inspection to verify that a valid International Ship Security Certificate (or Interim Certificate) is held on board
 - Inspection of the Ship's Security Plan limited access allowed to the specific sections of the plan relating to the non-compliance, subject to the consent of either the flag state or the Master.
 - If "Clear Grounds" then port can impose "additional control measures".

Clear Grounds

- Ship does not correspond with the requirements
- Documentation not valid or have expired.
- Master or ship's personnel are not familiar with security procedures.
- Ship has embarked persons, or loaded stores in violation of the ISPS Code
- Not completed a declaration of security

Additional Control Measures

- A more extensive inspection of the ship
- Delaying or deviating the ship
- Detention of the ship
- Restriction of operations within the port
- Deny port entry/expulsion of vessel from the port

Denied entry/expulsion

- Port state should advise the appropriate facts to the port state authorities of the next appropriate ports of call, if known, and any other appropriate coastal state.
- Such notifications should remain confidential.
- Can be imposed where the inspecting officers of the contracting Government have 'clear grounds' to believe that the ship poses an immediate threat to security
- Can only be imposed while the non-compliance giving rise to such action remains in force
- If a ship is unduly detained or delayed or expelled it shall be entitled to compensation for any loss or damage suffered
- Necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes

What if:

- A vessel arrives in the US and is denied entry because of a port visited on a previous charter?
- A vessel arrives at a port in the US from a port that, during the ship's passage, failed to comply with the US's 90 day demand to improve security?
- A vessel arrives in a US port from a port state whose security level has increased while on passage. The vessel is delayed for inspection and the cargo is ruined (perishable) or damaged

Club Cover

- Non compliance with ISPS Code = breach of flag state requirements
- Cargo claims
- Will Clubs reserve their position?
- Deviation – SOL Insurance
- Amendment to Club Rules