

*IN THE FOURTH SESSION OF THE THIRD
PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA*

**REPORT OF THE COMMITTEE ON
ROADS & TRANSPORT**

ON THE

**GHANA MARITIME
SECURITY BILL**

JULY 2004

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1.0 INTRODUCTION

- 1.1 The Ghana Maritime Security Bill was laid before the House on Tuesday, 29th June 2004 in accordance with Article 103 of the 1992 Constitution. Subsequently, it was referred to the Committee on Roads and Transport for consideration and report pursuant to Order 189 of the Standing Orders of the House.
- 1.2 In considering the Bill, the Committee met with the Minister for Ports, Harbours and Railways and his Deputy, the Commissioner of Shipping and Navigation Division of the Ministry of Ports, Harbours and Railways (MPHR) and his officials, officials of MPHR and an officer of the Attorney General's Department.

The Committee is grateful to them for attending upon it to assist in its deliberations.

2.0 REFERENCE DOCUMENTS

The Committee availed itself of the following documents in its deliberations:

1. The 1992 Constitution of the Republic of Ghana
2. The Standing Orders of the House
3. The International Ship and Port Facility Security Code (ISPS)
4. The International Convention on the Safety of Life at Sea (SOLAS), 1974.
5. The Ghana Shipping Act, 2003 (Act 645)
6. The Ghana Maritime Authority Act, 2002 (Act 630)

3.0 PURPOSE OF THE BILL

The Ghana Maritime Security Bill seeks to give legal effect to the International Ship and Port Facility Security Code (ISPS Code) in Ghana to enhance maritime safety and security.

4.0 BACKGROUND INFORMATION

Following the September 11, 2001 event in which the world witnessed a series of brutal terrorist attacks on the USA, the International Community saw the need to heighten the sense of security alertness among all nations and organizations. The maritime industry worldwide, was no more considered a safe, non political global transportation system, but rather, a liability that exposes all nations (maritime and non-maritime) to the threat of terrorist attacks.

As a result, the International Maritime Organization (IMO) consulted member countries on the need to review measures already adopted by organizations to combat acts of violence and crime at sea. Thus, the 22nd session of the IMO Assembly agreed to hold a Diplomatic Conference to adopt new regulations to enhance ship and port security in order to avert shipping from becoming a target of international terrorism.

At the Diplomatic Conference, a new comprehensive security regime for International shipping was adopted following a number of amendments to the Safety of Life at Sea Convention (SOLAS). The most far reaching of these amendments were enshrined in the

ISPS Code which contains detailed security requirements for all governments, port authorities and shipping companies as well as guidelines on how to meet these requirements.

At the end of the conference, the IMO urged all parties concerned to put in place, the necessary legislative, administrative and operational measures needed to give full effect to the ISPS Code. This, when done, will strengthen maritime security, prevent and suppress acts of terrorism against shipping.

5.0 SUMMARY OF THE PARTS OF THE BILL

The Ghana Maritime Security Bill is structured into six (6) parts. The following are the summaries of the various parts:

5.1 Part I - Preliminary

This part of the Bill spells out the category of ship and port facilities to which the Bill applies.

5.2 Part II - Provisions Relating to Ghana Maritime Authority and Recognized Security Organizations.

Provisions in this part outline the functions of the Ghana Maritime Authority and the appointment of recognized security organizations as well as its responsibilities.

5.3 Part III - General Provisions Relating to Security

This part of the Bill gives the general security provision as incorporated in the ISPS Code for ships, ports and port facilities. It spells out the situations in which there can be a Declaration of Security, the arrangements associated with the Declaration, and the testing of the efficacy of the port facility and ship security plan.

5.4 Part IV - Ship Security

Part IV of the Bill defines the general security provisions which should be put in place in a ship. For purposes of clarity, Part IV is divided into five (5) sub-parts.

Sub-part (I) deals with the application, content and approval of ship security plans as well as amendment and enforcement of ship security plans. It also deals with appeals against decisions of the Authority.

Sub-part (II) details the provisions needed to be complied with by Ghanaian ships in relation to ship security levels, assessment and systems.

Sub-part (III) provides for the application, validity and other issues relating to an international ship security certificate. The cancellation of the certificate and circumstances relating to the issuance of the interim international ship security certificate is also enshrined in this part.

Sub-part (IV) deals with the control and regulation of ships in Ghanaian ports.

Sub-part (V) provides for the duties and functions of all security officers detailed to the ship and the ship board personnel in ensuring the safety and security of the ships and the cost for detention of ships in Ghanaian ports.

5.5 Part V - Port Security

This part of the Bill spells out the duties of a port facility operator. It also deals with the designation of port facility security officers, port facility security assessments, port facility security plans, the designation of port security zones and the declaration of exclusion zones for ships. It again provides for the application of restrictions with respect to port security zones, the recovery of costs by the Authority for the seizure of items and the modalities to deal with persons who refuse to be screened or searched.

5.6 Part VI - Miscellaneous

This part contains various miscellaneous provisions such as the appointment and functions of maritime security officers and the powers of the Minister to make regulations. This part also contains a consequential amendment to section 289 of the Ghana Shipping Act, 2003 (Act 645).

6.0 OBSERVATIONS

The Committee observed the following in its deliberations:


- a. The Committee observed that, Ghana being a member of the IMO and party to the SOLAS convention is obliged to implement the ISPS Code. The implementation of the code will mean an assurance to the International community that Ghana as a nation has taken measures to detect and prevent unlawful acts that can threaten the security of ports and ships engaged in international shipping.
- b. The Committee also noted that the passage of the Ghana Maritime Security Bill would enable Ghana to establish the respective roles and responsibilities of contracting governments, government agencies, local administrators and the shipping and port industries at the national and international level.
- c. It was further observed that, the country would be required to ensure the early and efficient collection and exchange of security related information with other nations when it implements the ISPS code.
- d. Finally, the Committee noted the urgent need for Ghana to implement the ISPS Code in order to attract foreign ships to call at the ports in Ghana, and thereby increase the country's revenue generation.

7.0 RECOMMENDATION AND CONCLUSION

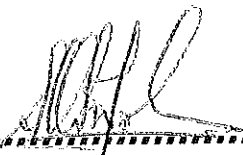
The Committee appreciates the events that led to the adoption of the ISPS Code by the IMO. It is therefore the view of the Committee that, subject to the proposed amendments (*see attached Appendix*) for the consideration of this House, the Ghana Maritime Security Bill will create the requisite legal framework to enable government agencies, ship owners and port authorities in Ghana to take appropriate measures to detect and prevent unlawful acts that can threaten the security of ports and ships engaged in international trade.

The Committee therefore recommends to the House, the passage of the Ghana Maritime Security Bill.

Respectfully submitted.



.....
ABIGAIL ABA ANSO (MS.)
(CLERK TO THE COMMITTEE)



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HON. S. K. SARFOH
(CHAIRMAN, COMMITTEE ON
ROADS & TRANSPORT)

2ND JULY, 2004

APPENDIX

GHANA MARITIME SECURITY BILL

PROPOSED AMENDMENTS

1. Part I

Clause 7(1)

Insert "*in accordance with Part B of the Code*" after "shall" in line one (1). Clause 7(1) will therefore read as follows:

"The Authority shall in accordance with Part B of the Code set three separate ascendant levels of security namely, security levels 1, 2, and 3 for every Ghanaian ship and every port or port facility within the country".

The amendment is to ensure that the security levels set by the Authority would conform to what pertains in Part B of the ISPS Code.

Clause 9(2)

The meaning of Clause 9(2) was not very clear in that, Clause 9(1) provides that the Minister, after conducting his assessment of the risk of ship-port interface and ship to ship activity, may determine when a Declaration of security is required. Thus, the provision in Clause 9(2) should mean that the Minister, after his Declaration of Security, may publish in a gazette, a notice of a Declaration of Security. Therefore

the Committee proposes that Clause 9(2) be deleted and replaced with a new paragraph that will read as:

"The Minister may publish in the gazette a notice of Declaration of Security in respect of a specified port or place".

Clause 11 (3d)

Delete "*facility*" after "*port*" in line two (2), and insert "***security***".

2. Part II

Clause 16(3)

Penalty units have always been used in calculating fines in our legislations. For conformity purposes therefore, the Committee proposes that fines imposed should be in penalty units and not dollars. The Committee again noted that, provision was not made for custodial term in the event of a defaulter not being able to pay the fine.

Therefore, the Committee proposes that:

- "*the cedi equivalent of US\$1,000.00*" after "*than*" in line four (4) of Clause 16(3) be deleted and replaced with "***500 penalty units***".

- Delete "*the cedi equivalent of US\$10,000.00*" after "*exceeding*" in line four (4) and insert "***5,000 penalty units or to a term of imprisonment not exceeding 5 years***".

Clause 21(4)

- Delete "*the cedi equivalent of US\$1000.00*" after "*than*" in line four (4) and insert "***500 penalty units***".
- Delete "*US\$10,000.00*" after "*equivalent*" in line five (5) and insert "***5,000 penalty units or to a term of imprisonment not exceeding 5 years***".

Clause 22(2)

Delete "*the cedi equivalent of US\$10,000.00*" after "*exceeding*" in line three (3) and insert "***5,000 penalty units***".

Clause 22(3)

Delete "*the cedi equivalent of US\$5000.00*" after "*exceeding*" in line three (3) and insert "***2,500 penalty units***".

Clause 25(3a)

Delete "*the cedi equivalent of US\$10,000.00*" after "*exceeding*" in line two (2) and insert "***5,000 penalty units***".

Clause 25(3b)

Delete "*the cedi equivalent of US\$5,000.00*" after "*exceeding*" in line two (2) and insert "**2,500 penalty units**".

3. Part III

Clause 27(2)

- Delete "*the cedi equivalent of US\$5,000.00*" after "*than*" in line three (3) and before "*and*" in line four (4) and insert "**2,500 penalty units**".
- Delete "*the cedi equivalent of US\$15,000.00*" after "*exceeding*" in line four (4) and insert "**7,500 penalty units**".

Clause 29(5)

- Delete "*the cedi equivalent of US\$5,000.00*" in line three (3) and insert "**2,500 penalty units or to a term of imprisonment not exceeding 2 years**".

Clause 36(4a)

- Delete "*the cedi equivalent of US\$5,000.00*" after "*exceeding*" in line two (2) and before "*or*" in line three (3) and insert "**2,500 penalty units**".
- Delete "*12 months or to both*" in line four (4) and insert "**2 years**".

Clause 36(4b)

- Delete "*the cedi equivalent of US\$10,000.00*" after "*than*" in line two (2) and before "*and*" in line three (3) and insert "**5,000 penalty units**".
- Delete "*US\$15,000.00*" in line four (4) and insert "**7,500 penalty units**".

4. Part IV

Clause 39(1)

Delete "*with*" after "*produced*" in line two (2) and insert "**without**".

Clause 41(4a)

Delete "*the cedi equivalent US\$5,000.00*" after "*exceeding*" in line one (1) and before "*or*" in line two (2) and insert "**2,500 penalty units**".

Clause 41(4b)

- Delete "*the cedi equivalent of US\$5,000.00*" after "*than*" in line one (1) and before "*and*" in line two (2) and insert "**2,500 penalty units**".
- Delete "*the cedi equivalent of US\$10,000.00*" after "*exceeding*" in line two (2) and insert "**5,000 penalty units**".

Clause 42

Insert "a" after "where" in the title of clause 42. Thus, the title will read as:

"Action to take where a ship is not in compliance with this Act."

5. Part V

Cause 50(3)

- Delete "*the cedi equivalent US\$1,000.00*" after "than" in line three (3) and before "and" in line four (4) and insert "***500 penalty units***".
- Delete "*the cedi equivalent of US\$10,000.00*" after "exceeding" in line four (4) and insert "***5,000 penalty units or to a term of imprisonment not exceeding 5 years***".

Clause 52(5)

- Delete "*the cedi equivalent of US\$1,000.00*" after "than" in line four (4) and insert "***500 penalty units***".
- Delete "*the cedi equivalent of US\$10,000.00*" after "exceeding" in line five (5) and insert "***5,000 penalty units or to a term of imprisonment not exceeding 5 years***".

Clause 60(9)

- Delete "*the cedi equivalent of US\$1,000.00*" after "*exceeding*" in line four (4) and insert "**500 penalty units**".
- Delete "**or to both**" after "*years*" in line five (5).

Clause 65(4)

Delete "*may*" after "*ship*" in line two (2) and insert "**shall**". The Clause will then read as:

"Where the person who refuses to be screened or searched is a passenger or a crew member, the company or master of the ship shall refuse to allow that passenger or crew member to board the company's ship

Clause 69(3)

- Delete "*the cedi equivalent of US\$1,000.00*" after "*exceeding*" in line two (2) and before "*or*" in line three (3) and insert "**500 penalty units**".
- Delete "*3 months or to both*" after "*exceeding*" in line three (3) and insert "**2 years**".

6. Part VI

Interpretation

The Committee proposes the following:

- a. that the meaning of "***Declaration of Security***" be deleted and inserted with a new paragraph to read as:

"Declaration of Security" means the Declaration of security determined by the Minister under sub-clause (1) and (2) of Clause 9.

- b. that the meaning of the "*Minister*" should read as "***Minister responsible for marine transportation***" rather than "Minister responsible for Ports, Harbours and Railways.
- c. that the meaning of "recognized security organization" be deleted and replaced with a new paragraph which should read as:

"an organization appointed under sub-clause (1) of clause 5 and includes a security organization affiliated to the IMO or designated by the Minister as competent for appointment by the Authority in accordance with clause 5(4)".