

EL CÓDIGO PBIP 12 AÑOS DESPUÉS

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El Código de Protección de Buques e Instalaciones Portuarias (PBIP/ISPS) fue creado como un Anexo de la Convención SOLAS (Convención de la Organización Marítima Internacional para la protección de la vida humana en el mar) el año 2002, con el propósito de que entrara en plena vigencia el año 2004.

Al ser presentado como un Anexo de una Convención vigente, que ya había sido ratificada por los Estados Miembros de la OMI, la opinión general fue que el mismo no requería ratificación mediante una ley aprobatoria, sancionada por los respectivos poderes legislativos de dichos Estados, sino tan solo de la adhesión al mismo, por parte de los respectivos poderes ejecutivos.

No obstante, la República Bolivariana de Venezuela, para sorpresa de la comunidad marítima pública representada en la OMI, sometió el Código PBIP, el año 2006, a un proceso de ratificación formal, como si de una nueva Convención se tratara; o (mejor aplicable al caso) como si el Anexo contuviera elementos radicalmente extraños al Convenio SOLAS y excediera, por lo tanto, la simple adhesión.

Sobre este tema sostuvimos una interesante discusión, con ocasión del Congreso Iberoamericano de Derecho Marítimo, celebrado ese mismo año en Panamá, aunque bajo los auspicios de la Asociación Venezolana de Derecho Marítimo.

Venezuela alegó, en su momento, que el Código PBIP era una normativa completamente nueva, en cierta forma extraña al Convenio SOLAS, que modificaba su legislación interna y que era realmente una ley, pues contenía normas generales de aplicación obligatoria.

Al final el tema quedó para lo anecdótico, siendo el primer caso de ratificación legislativa de un Anexo hecho a una Convención ya ratificada.

12 años han pasado.

Ahora bien, en este Año de Gracia de 2018, ya se contabilizan más de cuarenta (40) modificaciones al Código PBIP, hechas por los órganos de la Organización Marítima Internacional mediante Circulares ejecutivas y obligatorias, las cuales se listan a continuación, tomadas de la web oficial de la OMI:

Circulares sobre protección marítima dictadas en ejecución del Código PBIP:

- 26/09/1986. MSC/Circ.443. Measures to prevent unlawful acts against passengers and crews on board ships.
- 05/07/199. MSC/Circ.754. Passenger ferry security.
- 28/02/2003. MSC/Circ.1067. Early implementation of the special measures to enhance maritime security
- 26/06/2003. MSC/Circ.1072. Guidance on provision of ship security alert systems.

- 10/06/2003. MSC/Circ.1073. Measures to enhance maritime security. Directives for Maritime Rescue Co-ordination. Centers (MRCCS) on acts of violence against ships
- 10/06/2003. MSC/Circ.1074. Measures to enhance maritime security interim guidelines for the authorization of recognized security organizations acting on behalf of the administration and/or designated authority of a Contracting government
- 06/06/2003. MSC/Circ.109 . Guidance relating to the implementation of SOLAS Chapter XI-2 and the ISPS Code
- 15/01/2004. MSC/Circ.1104. Implementation of Solas Chapter XI-2 and the ISPS Code
- 29/03/2004. MSC/Circ.1106. Implementation of Solas Chapter XI-2 and the ISPS Code to port facilities
- 07/06/2004. MSC/Circ.1109 False security alerts and distress/security double alerts
- 14/12/2004. MSC/Circ. 1109/Rev.1 false security alerts and distress/security double alerts
- 07/06/2004. MSC/Circ.1110 Matters related to Solas Regulations XI/2/6 and XI-2/7
- 07/06/2004. MSC/Circ.1111 Guidance relating to the implementation of Solas Chapter XI-2 and the ISPS Code
- 07/06/2004. MSC/Circ.1112 Shore leave and access to ships under the ISPS Code
- 07/06/2004 MSC/Circ.1113 Guidance to port state control officers on the non-security related elements of the 2002 Solas Amendments
- 14/12/2004. MSC/Circ.1130 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
- 14/12/2004. MSC/Circ.1131 Interim guidelines on voluntary self-assessment by Solas contracting governments and by port facilities
- 14/12/2004. MSC/Circ.1132 Guidance relating to the implementation of Solas Chapter XI-2 and the ISPS Code
- 14/12/2004. MSC/Circ.1133 Reminder of the obligation to notify flag states when exercising control and compliance measures
- 20/12/2004. MSC/Circ.1142. MEPC/Circ.425. Marking the ship's plans, manuals and other documents with the IMO ship identification number
- 23/05/2005. MSC/Circ.1154 Guidelines on training and certification for company security officers
- 23/05/2005. MSC/Circ.1155 Guidance on the message priority and the testing of Ship Security Alert Systems
- 23/05/2005. MSC/Circ.1156 Guidance on the access of public authorities, emergency response services and pilots on board ships to which SOLAS XI-2 and the ISPS Code apply
- 23/05/2005. MSC/Circ.1157 Interim Scheme for the compliance of certain cargo ships with the special measures to enhance Maritime Security
- 22/05/2006. MSC.1/Circ. 1188 Guidelines on training and certification for port facility security officers
- 30/05/2006. MSC.1/Circ.1189 Interim scheme for the compliance of special purpose ships with the special measures to enhance maritime security
- 30/05/2006. MSC.1/Circ.1190 Guidance on the provision of information for identifying ships when transmitting ship security Alerts
- 30/05/2006. MSC.1/Circ.1192 Guidance on voluntary self-assessment by Solas contracting governments and by port facilities
- 30/05/2006. MSC.1/Circ.1193 Guidance on voluntary self-assessment by Administrations and for ship security
- 14/12/2006. MSC.1/Circ.1217 Interim guidance on voluntary self-assessment by Companies and company security officers (CSOs) for ship security
- 15/12/2006. MSC.1/Circ.1219 Interim LRIT Technical specifications and other matters
- 21/10/2007. MSC.1/Circ.1235 Guidelines on security-related training and familiarization for shipboard personnel
- 08/12/2008. MSC.1/Circ.1297 Guidance to search and rescue services in relation to requesting and receiving LRIT information
- 08/12/2008. MSC.1/Circ.1299 Transitional arrangements and measures for accelerating the completion of the establishment of the LRIT system
- 09/06/2009. MSC.1/Circ.1305 Revised 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
- 27/05/2010. MSC.1/Circ.1341 Guidelines on security-related training and familiarization for port facility personnel
- 15/02/2011. MSC.1/Circ.1259/Rev.4 Long-range identification and tracking system. Technical documentation (Part I)
- 15/02/2011. MSC.1/Circ.1294/Rev.2 Long-range identification and tracking system. Technical documentation (Part II)
- 23/05/2011. MSC.1/Circ.1405 Interim guidance to shipowners, ship operators, and ship masters on the use of privately contracted armed security personnel (PCASP) on board ships in the high risk area
- 23/05/2011. MSC.1/Circ.1406 Interim recommendations for Flag States regarding the use of privately contracted armed security personnel on board ships in the high risk area
- 16/09/2011. MSC.1/Circ.1406/Rev.1 Revised interim recommendations for flag states regarding the use of privately contracted armed security personnel on board ships in the high risk area
- 16/09/2011. MSC.1/Circ.1408 Interim recommendations for port and coastal states regarding 22/09/2011. MSC-FAL.1/Circ.2 Questionnaire information on port and coastal state requirements related to privately contracted armed security personnel on board ships the use of privately contracted armed security personnel on board ships in the high risk area
- 25/05/2012. MSC.1/Circ.1405/Rev.2 Revised interim guidance to shipowners, ship operators, and shipmasters on the use of privately contracted armed security personnel on board ships in the high risk area
- 25/05/2012. MSC.1/Circ.1406/Rev.2 Revised interim recommendations for flag states regarding the use of privately contracted armed security personnel on board ships in the high risk area

- 25/05/2012 MSC.1/Circ.1408/Rev.1 Interim recommendations for port and coastal states regarding the use of privately contracted armed security personnel on board ships in the high risk area
- 25/05/2012 MSC.1/Circ.1443 Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the high risk area
- 21/10/2007. MSC-FAL.1/Circ.1 Securing and facilitating international trade
- 06/01/2003. SN/Circ.227 Guidelines for the installation of a shipborne Automatic Identification System (AIS)

Esta nueva realidad nos obliga a pensar, o si se prefiere, a elucubrar, sobre cuál debería ser la conducta plausible de la Autoridad Acuática venezolana:

¿Debería aplicar sin más el contenido de dichas circulares?; o

¿Debería informar al Ejecutivo Nacional, para que evalúe las mencionadas circulares e inicie el proceso de ratificación legislativa, de aquéllas que considere modificatorias de la legislación interna de la República Bolivariana de Venezuela, o del Código PBIP, que también es Ley de la República?

Reflexión final.

Debo decir que esta vez, a diferencia de hace doce años en Panamá, no traigo la respuesta, pero sí la intención de fomentar una discusión constructiva y productiva sobre esta materia.

Muchas gracias.