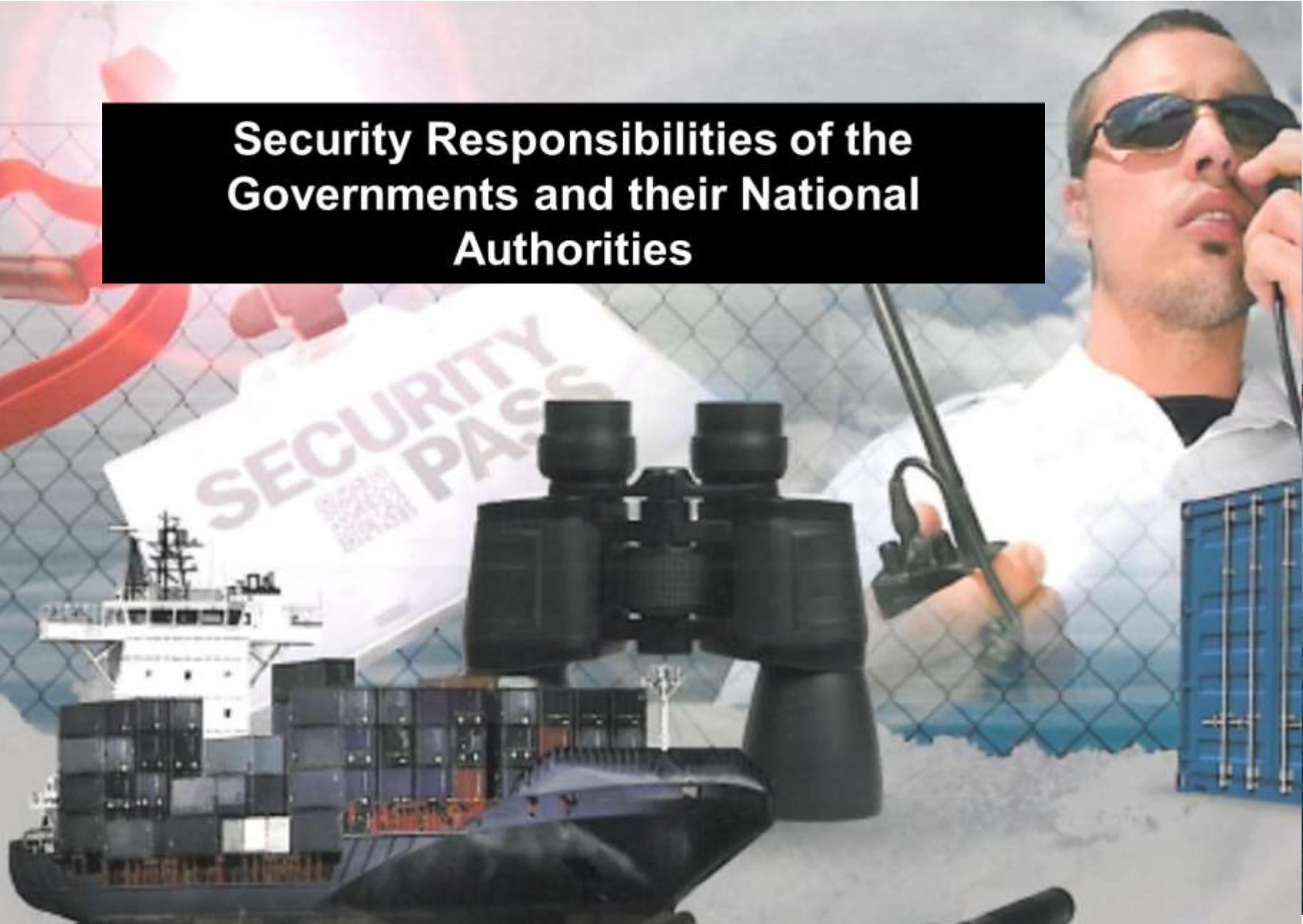


# Security Responsibilities of the Governments and their National Authorities



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# Responsibilities of the CG / Enabling Maritime and port Security Legislation



# Aim

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Provide Guidance on several aspects of national legislation that could be utilized to fully implement the Maritime Security Measures



# Objective

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At the end of the presentation, participants will be able to understand which topics should be included to give effect to the maritime security measures at the national level



# In a Nut Shell



# Effectiveness of maritime convention

IMO Instruments Implementation Code A.1070 (28) III Code paragraph 8:

When a **new** or **amended** instrument of the Organization enters into force for a State, the Government of that State **shall** be in a position **to implement and enforce** its provisions through **appropriate national legislation** and to provide the necessary implementation and enforcement infrastructure

# Effectiveness of maritime conventions (cont.)

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Ultimate effectiveness of any convention depends upon States successfully executing the following:

- Becoming a Party to the convention
- Enacting related national legislation
- Implementing
- Enforcing
- Reporting as required



## IMO'S THREE-PRONGED APPROACH: IMPLEMENTATION AND ENFORCEMENT

### RATIFICATION

Ratify the convention

### IMPLEMENTATION

Transpose the convention to domestic law through primary or secondary legislation

### ENFORCEMENT

Have the mechanisms for proper enforcement of the standards in the convention



### 3. Enabling Legislation (1/3)

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- The drafting and enactment of appropriate national legislation is **ESSENTIAL** to the successful implementation and oversight of the Maritime Security Measures.



### 3. Enabling Legislation (2/3)

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- The term **legislation** encompasses all primary and secondary legislation promulgated to implement the Maritime Security Measures.
  - **Primary legislation** refers to acts, laws and decrees
  - **Secondary legislation** refers to regulations, instructions, orders and by-laws issued under powers granted in primary legislation

### 3. Enabling Legislation (3/3)

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- A Government has the discretion **to extend** the application of the Maritime Security Measures to the following elements under its jurisdiction:
  - Non - SOLAS ships
  - The port facilities used by non - SOLAS ships; and
  - Offshore activities

## Experience to date

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- In some countries, international legal instruments and amendments such as the maritime Security Measures **automatically apply in national laws**.
- In most countries, the Maritime Security Measures have been implemented through the **amendment of existing safety**, port, or shipping legislation.
- A number of Governments have enacted **specific new legislation** to apply the Maritime Security Measures to both their port facilities and ships.

# Provisions in National Legislation (1/2)

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To fully implement the requirements in the maritime security measures, the legislation could cover:

1. Definitions;
2. Application;
3. Designated Authority and Administration;
4. Security levels;
5. Port facilities;
6. PFSAAs
7. Ships



# Provisions in National Legislation (2/2)

To fully implement the requirements in the maritime security measures, the legislation could cover:

- 8. PFSPs and SSPs
- 9. Retention of Records and DoS;
- 10. Inspection of PFs and ships;
- 11. Enforcement action;
- 12. Control and compliance measures;
- 13. Offences related to the maritime security measures



# 1. Definitions in Legislation (1/2)

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The definitions used in national legislation should be similar to those used in the ISPS code.

However, there are certain terms are not defined within them including:

- Administration;
- Shipping company
- Competent authority
- International voyage;
- Master; and
- Restricted areas





# 1. Definitions in Legislation (2/2)

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It may be necessary to provide definition of such terms in national legislation. Some are defined elsewhere in the SOLAS convention.



## 2. Application of legislation

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- The maritime Security Measures apply to PFs within the State`s jurisdiction, to its SOLAS ships and to its territorial waters.
- The National Legislation should define their territorial application, including the State territorial sea

### 3. Designated Authority and Administration

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- The legislation could specify which organization within the Government is to regulate port facility security ( i.e the **Designated Authority**), and which organization is to regulate ship security (i.e **Administration**)
- The legislation could also specify whether the organizations and their officials have **delegated** power **to act on their behalf**, in the organization`s name, or whether they act under the authority of the relevant Minister.

## 4. Security Levels (1/2)

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- Setting the security level is a government responsibility.
- There are few examples of national legislation that identifies the organization within the Government responsible for setting it, unless it is the DA or Administration.
- National legislation could specify who is responsible for communicating changes in security level and for receiving and responding to such changes.



## 4. Security Levels (2/2)

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- National legislation could give the DA and Administration the power to establish the time allowed to implement a change in security level.



## 5. Port Facilities (1/2)

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DA need the authority to designate a PF as:

1. One required to appoint a PFSO and prepare a PFSP; and/or
2. One used occasionally by SOLAS ships where the DA appoints an organization or person ashore to be responsible for shore – side security

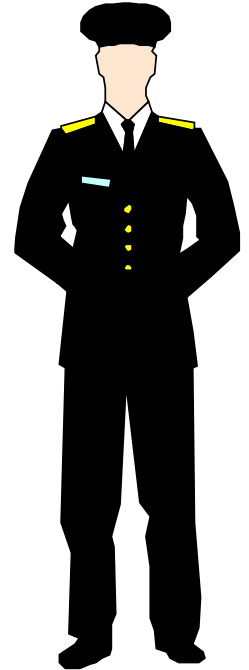


## 5. Port Facilities (2/2)

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National legislation could establish the requirements related to:

1. Notification to the PF owner or operator to appoint a PFSO and to prepare a PFSP; and
2. Notification of the appointment of an organization or person ashore responsible for communicating with SOLAS ships at port facilities occasionally used by such ships and the responsibilities of that organization or persons





## 6. Port Facility Security Assessment (1/2)

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- PFSA is undertaken by the DA officials or RSO on their behalf.
- The National legislation should specify:
  - ✓ How the PFSA should be undertaken
  - ✓ How often and under which circumstances PFSA should be reviewed and refreshed.



## 6. Port Facility Security Assessment (2/2)

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The National legislation could authorize those undertaking the PFSA to:

- ✓ Enter land or premises
- ✓ Inspect documents, records and plans;  
and
- ✓ Inspect security equipment



## 7. Ships ( 1/2)

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The Maritime Security Measures require shipping companies operating SOLAS ships to appoint:

1. At least one CSO with the responsibility to undertake SSA and prepare a SSP for each SOLAS ship; and
1. A SSO, accountable to the master, responsible for implementing the SSP.



## 7. Ships (2/2)

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National legislation could establish that the shipping company is responsible for the actions of their company and SSOs and the security of their ships



## 8. PFSPs and SSPs

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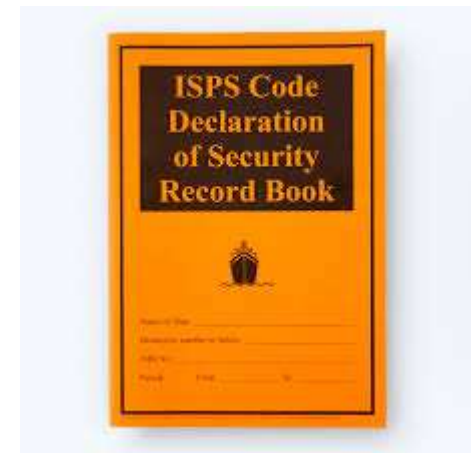
National legislation could set out the requirements and procedures applying to :

1. The submission of PFSPs and SSPs;
2. The approval of PFSPs and SSP
3. The requirements to review an approved PFSP or SSP; and
4. The submission of amendments to an approved PFSP or SSP.



## 9. Retention of records and DoS

National legislation should specify when a Declaration of security is needed, and the **minimum time** that security records and Declarations of Security have to be retained at the port facility or on a ship.



# 10. Inspection of port facilities and ships (1/2)

The legislation could give officials in DA and Administrations, or those authorized to undertake inspections duties on their behalf, **authority to enter** port facilities or **to board** ships **to assess** their compliance with the requirements of the Maritime Security Measures





# 10. Inspection of port facilities and ships (2/2)

These powers could include the authority to:

- **inspect a port facility** or ship to assess compliance;
- inspect security **equipment**;
- initiate a port facility or ship security drill;
- **enter any premises** associated with a port facility or shipping company;
- request and **inspect documents**, records and plans;
- **interview** individuals regarding the security of a port facility or ship; and
- **obtain and retain evidence** relating to a security deficiency found at a port facility or on a ship.



# 11. Enforcement action (1/3)

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Puts teeth (power) to  
produce a desired effect:

# 11. Enforcement action (2/3)

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The national legislation should give the power for Designated Authority to take following actions:

- Power to issue an **enforcement notice** requiring correction of deficiency within a stated period.
- For serious deficiency, power to issue restriction or **suspension** notices applying to specific activities at the port facility.
- Establish procedures covering **withdrawal** of certification or an approved PFSP and the appeal of such.
- Establish administrative, civil or criminal **penalties** when a port facility fails to comply with an enforcement notice.

# 11. Enforcement action (3/3)

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- Example criminal offences and **penalties** when a port facility fails to comply with an enforcement notice.
- ***Example: Failure of an individual to comply with security directions***
  - *It shall be a criminal offence for an individual to knowingly or intentionally fail to comply with security directions issued by the Designated Authority /Administration, punishable by*
    - *\$15,000 fine per violation; or*
    - *Two years imprisonment.*

# 12. Control and compliance measures

- National legislation **should** allow control measures to be taken when a foreign flagged SOLAS ship is in port, or has indicated its intention to enter the port.
- These control measures can involve:
  1. Inspection of the ship;
  2. Delaying the ship;
  3. Detention of the ship;
  4. Restrictions on operations
  5. Expulsion from port;
  6. Refusal of entry into port; and
  7. Other lesser administrative or corrective measures



## 13. Offences relating to the maritime security measures



The maritime Security measures do not themselves establish any offences. The criminal or terrorist acts that they seek to detect and deter are typically already offences under a state`s criminal law or criminal code.

# Any Question

