



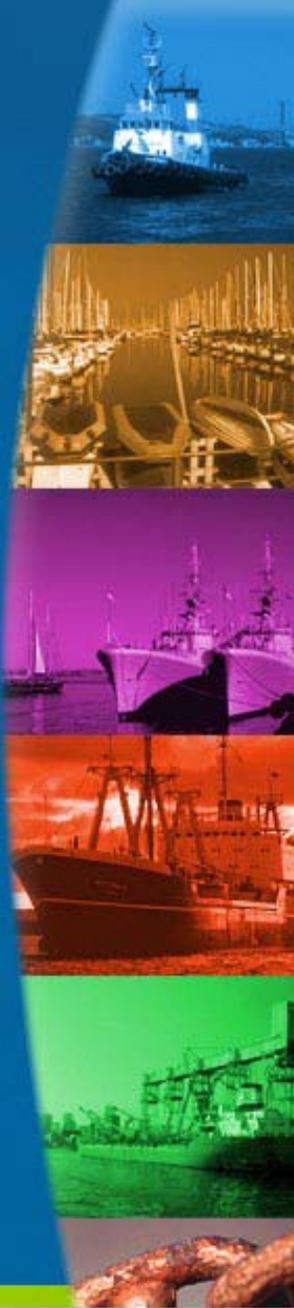
ISPS/MTSA Jurisdictional Challenges

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Presentation Outline

- ISPS Code Overview
- The Contracting Government (State)
- The Recognized Security Organization (RSO) challenge
- Standardization
- The Maritime Transportation Security Act (MTSA)



ISPS Code Overview

- The contents of the Code are not new to security people
- What is new is:
 - the people that are reading the Code, and
 - the sincere desire to understand the intent (specified or implied) and to comply with the Code
- The Code is very structured and objective. In general there are three elements, Preamble, Part A and Part B



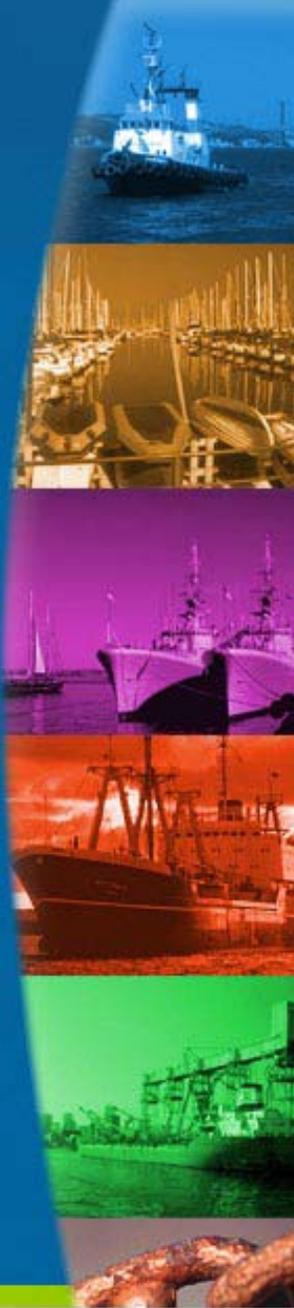
ISPS Code Overview (cont.)

- The Preamble is self explanatory, Part A is required and Part B is recommended
- It is a little “wordy”, dry reading and leaves way for interpretation
- It is not directive in nature, but recommends actions, even in Part B
- There is technical language usage, but it is not real difficult



ISPS Code Overview (cont.)

- However, we must understand that it is addressing an international audience with a broad perspective that allows for compliance based on the independent Contracting Government (i.e., State) interpretation.



ISPS Code Overview (cont.)

- Through out the Code there are five (5) things that repeat, over and over. I call these “ISPS Code 101”:
 - Security Officers
 - Assessments
 - Plans
 - Training, Exercises, Drills
 - Audits
- There are key differences between Part A and Part B



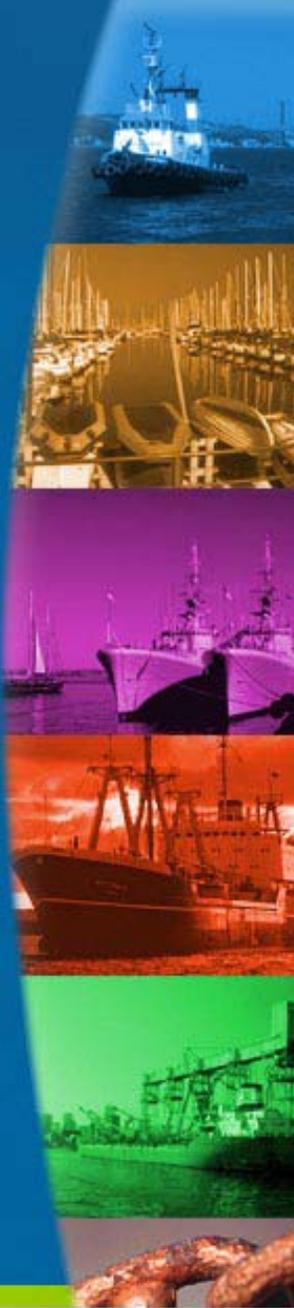
ISPS Code Overview (cont.)

- Part A and Part B do not outline detailed requirements or recommendations for actions for terminals or facilities, they concentrate on vessels and ports
- In simple terms, the Code is the first layer of policy that addresses Maritime Security for vessels, ports, terminals, and facilities
- The key to understanding it.....is to read it and develop your own understanding of its intent and to develop a more subjective interpretation that fits your regional security requirements



Contracting Governments (i.e., States)

- Contracting Governments provide the second layer of the ISPS Code
- A Contracting Government is simply a country
- A country has a national unity/heritage, government and with the right to establish law and share commerce
- Each country has the right to decide what they are going to do concerning social, economical, political and religious issues



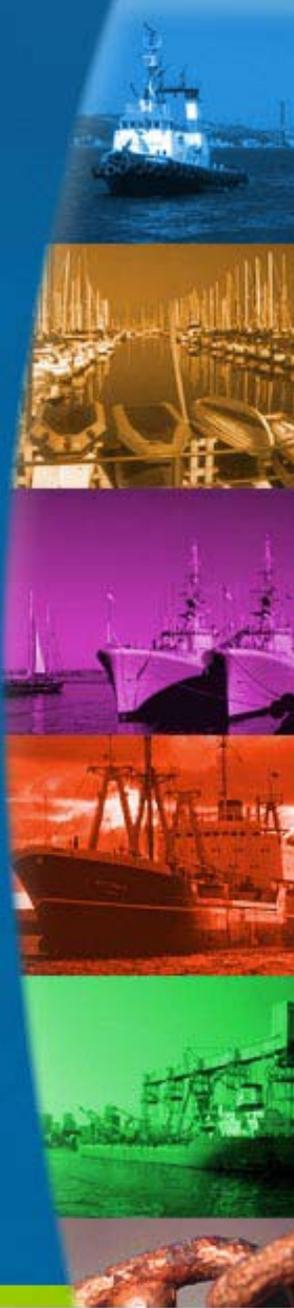
Questions

- The concepts outlined in the present ISPS Code have been around under the IMO since 1974 and ignored by most Contracting Governments
- Since security concepts have been around at IMO for a long time:
 - Why should we or anybody, be paying attention to security concepts now?
 - Why should the events of 9/11 change the way a State should do business?



Questions (cont.)

- We do not do business with the United States, therefore, why should we change the way that we are doing business?
- We are not a member of the IMO; therefore why does this apply to us?
- We use vessels that are less than 500 tons, therefore we are exempt, why should we care?
- Where can we find funding to meet these costly security requirements/recommendations?



Questions (cont.)

- The list of questions and issues could go on and on, and I for one can see value in the questions
- I certainly do not have all the answers. However, I can see the impact on the industry with the parallel examples of illegal narcotics and smuggling



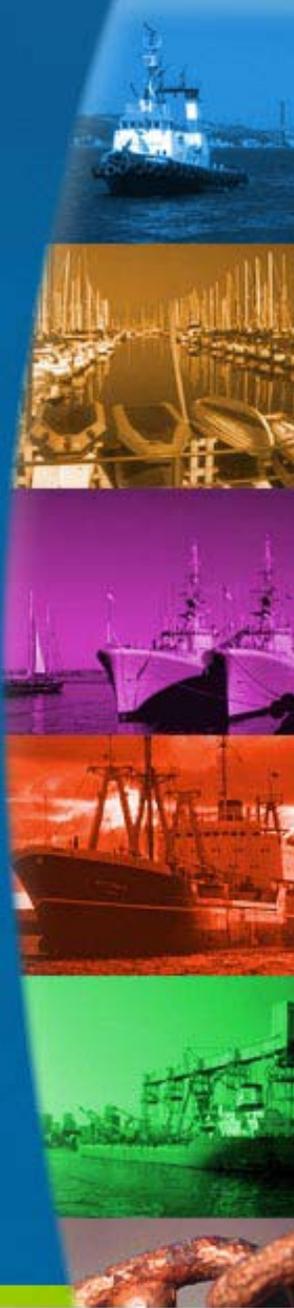
Contracting Governments (cont.)

- The falsification of documentation, the conspiracy of cargo theft, the corruption within governments, jurisdictional conflicts and the washing of cargo for reasons of tax evasion and insurance fraud are all examples of patterns for terrorists to exploit
- The transport of cargo affects the world economy as a whole
- The weakest link in this process is the Contracting Government that does not take this seriously



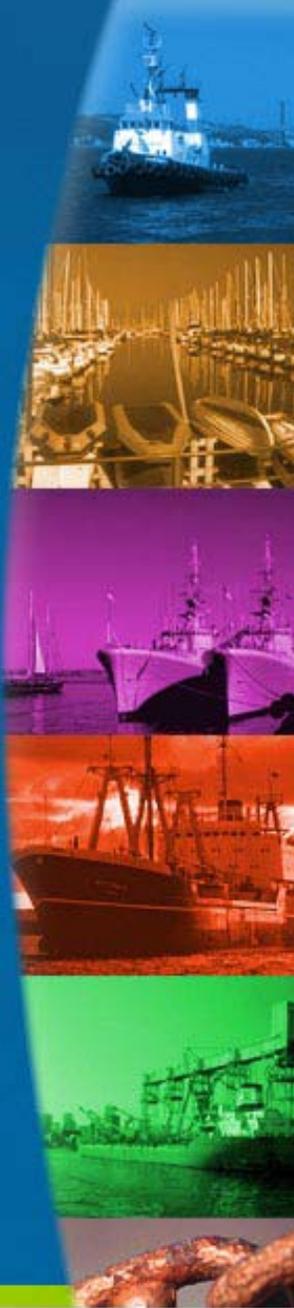
Contracting Governments (cont.)

- The ISPS Code does not address sanctions, however individual Contracting Governments are identifying sanctions and in some cases delaying and even forbidding trade with those countries that do not comply
- The Contracting Governments should develop an understanding the Code and provide more subjective guidance to meet the intent of the Code, tailored to their requirements



RSO Challenge

- The Code identifies the use of a Recognized Security Organization; however there is some confusion with respect to the authority of an RSO
- The RSO may or may not be part of the Contracting Government
- If an RSO is not part of the Contracting Government, it does not have the authority of that Government



RSO Challenge (cont.)

- If the RSO is a duly appointed representative (and part of the government) it may have that authority
- The Code discusses the qualifications of an RSO, however this leave way for a great deal of interpretation
- The real challenge is for the Contracting Government to establish procedures/qualifications for an RSO, yet avoid corruption, “pork-barreling”, exploitation marketing and in general the misuse of authority



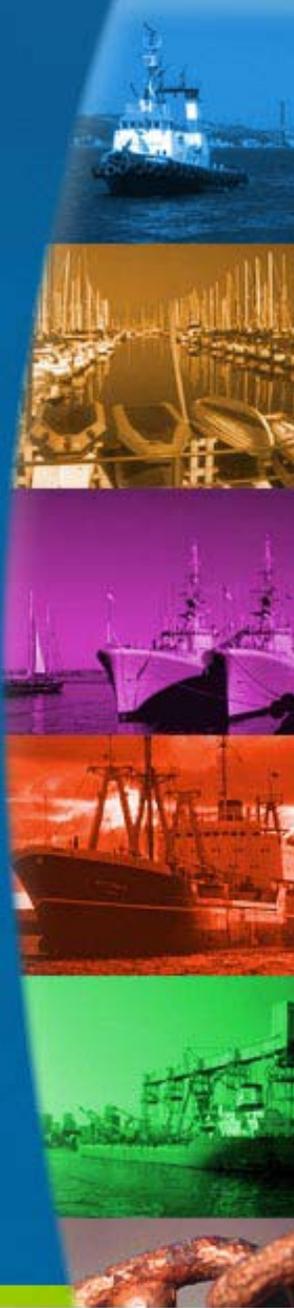
RSO Challenge (cont.)

- In my opinion, the delegation of authority to independent RSOs' creates conflicts between the Contracted Government and individual companies
- The individual company needs to have direct interface with the elected government officials that negotiate, approve or disapprove assessments and plans



RSO Challenge (cont.)

- I believe the Contracting Government should interface directly with Company Security personnel to establish a mechanism to challenge assessments, plan and audits
- The RSO (government or independent contractor) is the third layer of the Code that can address specific requirements for security at a geographical location at a point in time



Standardization

- The international acceptance of the ISPS Code has established a profession for security in the maritime arena
- Three years ago, I could have counted the trained maritime security professionals on one hand
- At this point the industry is flooded with personnel that spent time in the Navy, Customs or Coast Guard that claim to be maritime security professional



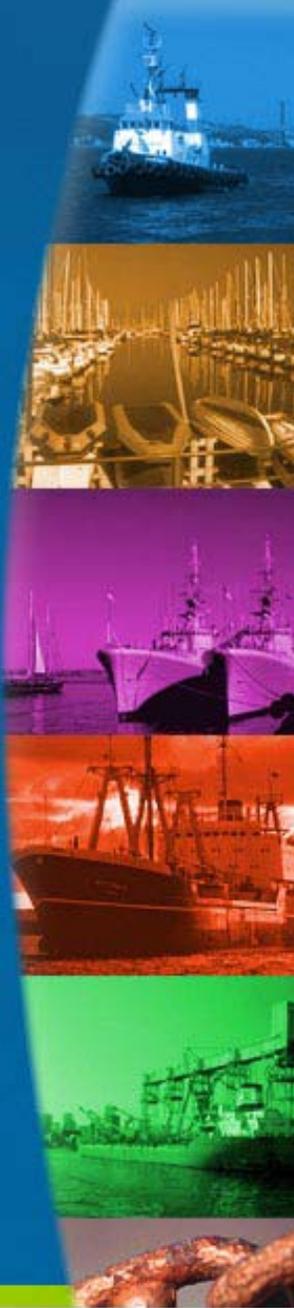
Standardization (cont.)

- They are closer to being qualified than anyone else, but clearly there is no training or qualification standard that is recognized internationally
- Equally, there are training programs that are springing up for ISPS, SSO, PFSO, etc. The fees vary, but the programs are generally the same. Basically, they copy the general outlines in the ISPS Code and plagiarize checklists that are in process as the industry grows



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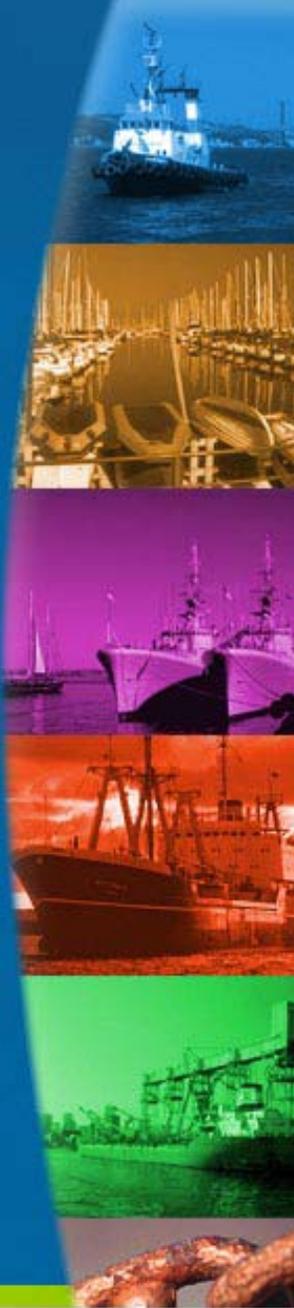
Standardization (cont.)

- There is a much broader meaning of standardization, however, in the following areas:
 - Policies
 - Procedures
 - Training, Exercises, Drills
 - Audits
 - Assessments
 - Plans
 - Reviews
 - Enforcement
 - Sanctions



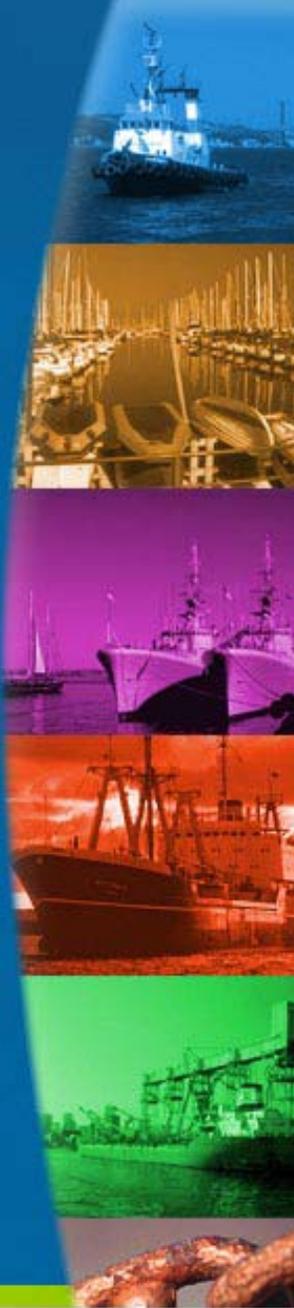
Standardization (cont.)

- The standards for selection, training and certification for Maritime Security Personnel will be a significant challenge over the next seven years



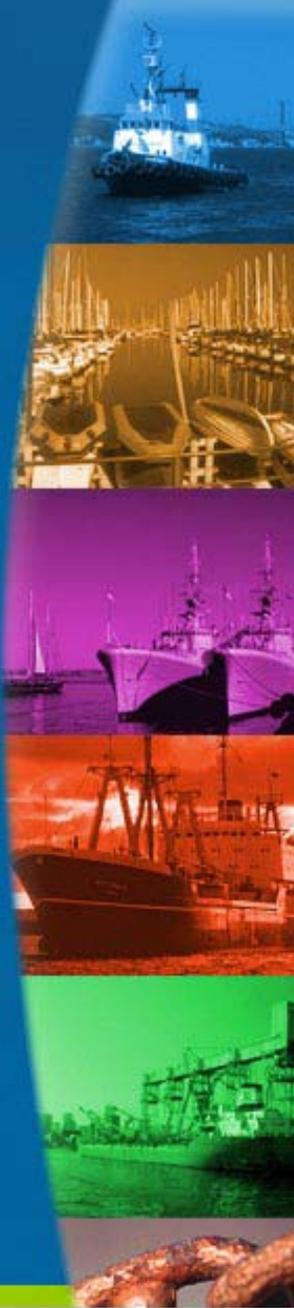
Maritime Transportation Security Act (MTSA)

- ISPS “101” and MSTA “101” are about the same
- The basic parts for both documents are the same
- The real difference is that MTSA is U.S. national legislation and has sanctions associated with it
- There are now specific Code of Federal Regulation (CFR) sections that implement the MTSA requirements



MTSA (cont.)

- There is precedence that establishes the requirement for all Contracting Government Flagged Vessels to comply with the Contracting Government rules, regulation and laws
- There are stipulations in the U.S. CFR that requires compliance by Foreign Flagged Vessel that call in the United States



MTSA (cont.)

- There are requirements that address information regarding the previous ten port calls, before entering the waters of the United States
- Under the USCG regulation for port facilities (33 CFR Part 105), fines are being issued to ports, terminals and facilities for failure to submit assessments and plans, prior to Dec 31, 2003



MTSA (cont.)

- This is a beginning to changes in the industry
- Companies, foreign flagged vessels, ports, terminals and other related facilities that are not preparing to comply with the ISPS Code (and secondarily to MTTSA) are ill advised

