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Maritime Identity Documents

Update on Identity Documents for Seafarers:

by

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Good morning. I am pleased to be with you at this IDGA conference that is focused on one of the most important national security issues: maintaining port security.

A key, and so far unfulfilled, component of port security is implementing a uniform, comprehensive, international system of identification for merchant mariners that would enable the United States and other countries to establish authoritatively the identity of any merchant mariner aboard any vessel in the United States and positively ascertain the identity of every merchant mariner working on every ship in the world.

I have been asked to give an update on identity documents for seafarers. However before I give an update, I believe that it is important to understand a bit of the background of that led to the requirements so that we can put the update in the proper perspective.

I realize that what I am about to say will sound pretty basic, but some of the misunderstandings about what purposes an identification document is expected to accomplish has contributed to problems in implementing some identity document standards.

One of the most fundamental requirements for maintaining port security is to know the people who are in our seaports. All of the intelligence data that security agencies might gather on persons who pose a risk to security is of little use if we cannot positively ascertain the identity of the people who are being screened. When looking at identity documents, it is therefore necessary to separate their functions: their function as evidence of nothing more than ascertaining identity and their function as a security or clearance document.

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First and foremost, identity documents must be considered as documents that ascertain identity; that use reliable identity criteria, such as biometrics, and that can be verified through dependable uniform technology systems.

It should be relatively straightforward to create dependable, uniform standards for identity documents for American seafarers and port workers. In fact identity documents issued by the United States for United States citizens and residents can provide a level of security beyond simply ascertaining identity – they can also be evidence of satisfactorily passing a security screening.

Foreign citizens' identity documents must be viewed much differently from those issued by the United States to its own citizens and residents. The United States cannot produce identity documents for all of the people in the world. The United States must therefore rely on identity documents issued by other countries. Identity documents issued by foreign countries cannot be accepted for ascertaining the holder's security clearance or for authorizing access to secure areas of United States port facilities. Their utility is limited to positively ascertaining identity through international standards for biometrics, machine readability, and verification. However, once identity is ascertained, the United States can determine the holder's trustworthiness by conducting records checks through its intelligence data. The key to the reliability of a background check is being sure of the identity of the person being checked.

In response to the September 11, 2001 attacks on the United States of America, the United States Coast Guard proposed several initiatives to Congress and the International Maritime Organization to help protect merchant shipping and seaports from terrorist attacks. Almost all of these recommendations have been adopted and implemented through the Maritime Transportation Security Act of 2002 (MTSA) and the International Ship and Port Facility Security Code (ISPS).

Congress recognized the importance of ascertaining the identity of merchant mariners in two separate sections of the Maritime Transportation Security Act of 2002, recognizing that identity documents for domestic seafarers must be different from those for foreign seafarers. The first mandated issuing biometric transportation security cards (later called TWICs) to all American merchant mariners, and others, especially those persons who need unescorted access to secure areas in facilities.² The MTSA specified criteria for issuing cards, including background checks and disqualifying acts and offenses.

The second section encouraged the Coast Guard to negotiate an international agreement, by November 25, 2004, "that provides for a uniform, comprehensive, international system of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction, including the territorial water, of the United States waters or such other country."³

The provision encouraging the Coast Guard to negotiate an international agreement for seafarers' identity documents acknowledged that the International Labor Organization was already working on the United States' initiative to develop an international convention for standard seafarers' identity documents.

² 46 U.S.C. 70105

³ 46 U.S.C. 70111

The Coast Guard responded to the November, 2004 deadline by, along with several other federal agencies, negotiating an international agreement at the International Labour Organization in Geneva. The Seafarers' Identity Document Convention, (Revised), 2003 also known as ILO-185, was adopted by the ILO on 20 June 2003. ILO-185 establishes an international system of biometric seafarers' identity documents that conforms to the MTSA as well as the technical requirements for visas contained in the U.S. Enhanced Border Security and Visa Reform Entry Act of 2002⁴. The Seafarers' Identity Document Convention provides workable system that satisfies contemporary security concerns, maintains necessary facilitation of shipping, and recognizes the needs of seafarers. Features of ILO-185 include:

- Establishes international standards for seafarers identity documents (SIDs);
- SIDs are issued by the seafarer's country of citizenship or permanent residence, not by the flag state;
- SIDs employ fingerprint biometric standards using internationally recognized and proven ICAO standards that are used in the international aviation industry (including well-tested readers);
- SIDs are identity documents only, they are not travel documents;
- SIDs do not require background checks or security clearances, they only establish identity so that background checks and security assessments can be made from them.
- SIDs would remain in seafarers' possession, even while ashore (passports with US visas are normally kept locked up in the ship's safe.)

Although an international agreement on seafarers' identity documents was completed in 2003, the Convention has not achieved its promise because it has not been ratified by the United States or many other countries. I will speak more about this later.

By 2006 neither of the MTSA mandates for foreign or domestic identification documents had been put into place. In response, Congress included new mandates for identification documents in the Security and Accountability for Every Port of 2006 (Safe Port Act) that was signed into law by the President on October 13th, 2006.⁵ In this Act Congress provided specific deadlines to the Secretary of DHS to begin implementing the TWIC program in high priority ports by July 1, 2007 and to start a pilot program to test the technology of the TWIC card readers. With regard to international identity documents, the Act extended the MTSA deadline for international identification documents by requiring the Secretary of DHS to either (a) come to an international agreement on seafarers' identity documents, or failing that to (b) provide Congress draft legislation to establish a uniform comprehensive identification system for seafarers by 13 October 2007.

PROGRESS ON TWIC

⁴ 8 U.S.C. 1732 (b)(1) requires visas to be machine-readable, tamper-resistant with biometric identifiers. 8 U.S.C. 1732 (b)(2) mandates all ports of entry to have accurate scanners that can read biometric identifiers and can verify identity.

⁵ Public Law 109-347
109th Congress

Since passage of the SAFE Port Act, TSA and the Coast Guard have made considerable progress toward implementing the TWIC domestic identification program in the maritime sector.

On January 25, 2007, TSA and the Coast Guard issued regulations for enrolling merchant mariners and persons requiring unescorted access to secure areas of maritime facilities and vessels. Highlights of the regulations include:

- The fees for the cards are \$132.50 or \$105.25 for those workers who have already had a federal threat assessment.
- TWICs will be required for access to facilities and vessels by September 25, 2008 (Compliance dates will be staged for each COTP Zone. TSA and the Coast Guard will announce compliance dates in each zone at least 90 days in advance.)
- To leverage TWIC's biometric capability
- Procedures for newly hired workers
- Requirements for background checks and disqualifying acts or omissions:
 - Legal presence and work authorization for non-citizens (TWIC qualifying immigration status list is at 49 C.F.R. 1572.105)
 - Permanent disqualifying offenses (espionage, sedition, treason, terrorism, murder, dealing in explosives);
 - No convictions within seven years or incarcerations within five years for certain crimes (firearms crimes, extortion, fraud, bribery, smuggling, kidnapping, arson, robbery, rape, and assault with the intent to kill).within specified time periods
 - Mental incapacity restrictions (not adjudged as lacking mental capacity or formally committed to a mental health facility).
- Appeals and waiver process
- Coast Guard will conduct unannounced checks. The Coast Guard intends to purchase handheld card readers in FY2008 for use during vessel and facility inspections and spot checks. After the compliance date passes in a given port, the Coast Guard will use the card readers to randomly check the validity of an individual's TWIC.

On July 6, 2007 the Coast Guard promulgated a Navigation and Vessel Inspection Circular (NVIC)⁶ that provides detailed guidance on how the Coast Guard and TSA intend to apply the TWIC regulations. In addition, two plain language guidelines for owners and operators and for TWIC applicants are available on TSA's TWIC website. TSA has provided information on its website and has established telephone hotlines for information on the TWIC program.⁷

⁶ U.S. Coast Guard's NVIC 03-07, "Guidance for the implementation of the TWIC Program in the maritime sector"

⁷ For questions regarding enrollment: TSA Website www.tsa.gov or hotline telephone 866 347 8942. For other questions: TWIC Help Desk Email: uscg-helpdesk-@uscg.mil or hotline telephone 877 687 2243.

The published TWIC regulations do not require vessels and facilities to install card readers. The TWIC program utilizes a technology that has not been tested in the maritime environment. Because of this, the SAFE Port Act requires the Department of Homeland Security to conduct a pilot program to test the viability of TWIC cards and readers in the maritime environment. Final regulations for TWIC readers must be published within two years after the pilot program commences. Regulations for TWIC reader technology specifications were published on September 11, 2007 and are available on the TSA TWIC website. The TWIC reader and card use a contactless reader technology that is compatible with the Federal Information Processing Standard (FIPS) 201-1. Recognizing that the technology might not work in the field tests, the SAFE Port Act provides that individuals will not be charged an additional fee if they must obtain a different card based on the result of the pilot program. TSA is also in the process of conducting a pilot program to test TWIC access control technologies in the maritime environment that will include a variety of maritime facilities and vessels in multiple geographic locations. According to TSA, the results of the pilot program will help the agency issue future regulations that will require the installation of access control systems necessary to read the TWIC cards. It will be important that TSA's TWIC access control technology pilot program ensures that these technologies work effectively in the maritime environment before facilities and vessels will be required to implement them.

TWIC enrollment began in Wilmington, Delaware on October 16 and will be phased-in according to a schedule published by TSA. Enrollment is in process in Corpus Christi, Texas; Honolulu, Hawaii; Baton, Rouge, Louisiana; Tacoma, Washington; Beaumont, Texas; and Oakland, California.

From the reports that we have received from seafarers who have applied for TWICs in Wilmington, the enrollment process is running smoothly. We do, however, receive many questions about the exact addresses of enrollment centers. The published port by port enrollment schedule does not include addresses of the actual enrollment centers, and seafarers are sometimes finding it difficult to find them.

OUTSTANDING TWIC ISSUES

- TSA relies on FBI rap sheets which the Attorney General has reported are 50% incomplete because states failed to update their arrest records after the disposition of the case. This will result disqualifying many applicants and potentially overwhelming the appeals process.
- The MTSA's standards for disqualifying crimes were based on the applicant's potential as a terrorism risk. The TSA regulations are much broader and disqualify persons who have committed crimes that are not terrorism or national security related.
- TWIC utilizes a technology that is different from the ILO SID technology. TWIC readers will not read foreign SIDs and US merchant mariners' TWICs cannot be read by SID readers in foreign ports.
- Untested technology.

PROGRESS ON INTERNATIONAL SEAFARERS' IDENTIFICATION

Unfortunately, there has not been much progress on implementing the MISA and Safe Port Act mandates to implement a uniform, comprehensive, international system of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction, including the territorial water, of the United States waters or such other country. The Department of Homeland Security did not meet the October 13, 2007 mandate to either come to an international agreement on seafarers' identity documents, or failing that to provide Congress draft legislation to establish a uniform comprehensive identification system for seafarers. The Coast Guard has responded to Congress that it has prepared a draft NPRM defining the identification documents necessary for all foreign mariners calling on U.S. ports, presumably including SIDs.

There is an easy solution to this problem in the ILO Seafarers' Identity Document Convention (ILO-185) that I mentioned earlier. This convention would give the United States an off-the-shelf international seafarers' identity system that has been agreed to internationally and that utilizes a proven technology (the ICAO standards). The only problem is that the United States has not ratified the convention, and this, in turn, has discouraged other countries from doing so.

I have discussed with several representatives of ILO member nations why their governments have not ratified ILO-185. The usual response I hear from them is something like this: Why should we ratify the Convention if the United States hasn't? The Convention is, after all, an American initiative. Why should we invest in the costs of establishing a seafarers' identity document system if the SIDs won't be accepted by the United States?

So, why hasn't the United States ratified ILO-185?

The United States hasn't ratified the Convention because Article 6 of the Convention would require the United States to accept a SID as a substitute for a visa for the purpose of shore leave. The United States requires foreign crewmembers to have a crewmember D-1 visa for shore leave.⁸ The United States' reliance on its visa system that covers only foreign seafarers who want shore leave in the United States is preventing far greater protections throughout the maritime world that would be realized through widespread implementation of ILO-185. Three significant maritime and port security improvements over D-1 visas that would be realized through ILO-185 are:

- Visas are required only for those foreign seafarers requesting shore leave in the United States. Seafarers on ships in United States ports and waters are not required to have visas. ILO-185 would provide a mechanism for establishing the identity of all seafarers on all ships wherever they are.
- Passports with visas are kept locked up in ships' safes when in United States ports. ILO-185 SIDs would be carried by foreign seafarers when ashore, providing them with secure biometric identification while ashore.
- Potentially, all of the world's seafarers could have biometric IDs

⁸ The United States requires foreign crews on visiting merchant vessels and aircraft to have a D-1 visa to apply for shore leave 8 U.S.C. § 1101(a)(15)(D)(i). The United States policy requiring visas for merchant mariners' shore leave violates the Facilitation of International Maritime Traffic Convention's Standard 3.45 "Crewmembers shall not be required to hold a visa for the purpose of shore leave".

There are significant advantages in using an already agreed upon and workable international seafarers' identity verification system instead of unilaterally trying to create a new one. How can the United States, or any other nation, unilaterally impose a worldwide mariners' identification system that would require identification credentials for all of the world's seafarers?

One possible solution to the problem is for the Department of Homeland Security to promulgate regulations that would waive visas for merchant mariners holding valid ILO-185 SIDs under its existing visa waiver authority.⁹

It now appears clear that the Department of Homeland Security will not use its regulatory authority to authorize visa waivers to merchant mariners possessing valid ILO-185 SIDs. Therefore, some Congressional action is needed. I recommend one of the two following approaches:

1. The Department of Homeland Security should consult with the appropriate Congressional committees to clarify its existing authority to promulgate regulations authorizing visa waivers for SID holders. This would be the most expeditious approach, assuming Congress agrees with DHS's regulatory authority.
2. The Department of Homeland Security and the maritime industry should ask Congress to enact legislation that would enable the United States to ratify ILO-185 as soon as possible. The legislation should authorize visa waivers for foreign crewmembers holding valid ILO-185 SIDs. The legislation would not have to eliminate crewmember D-1 visas. Such visas could remain a requirement for foreign crewmembers who don't have SIDs and wish to apply for shore leave in the United States. Visa waivers could also be contingent upon issuing countries sharing their data on biometrics of seafarers who have been issued SIDs.

⁹ United States law in 8 U.S.C. 1282(a) authorizes the Secretary of the Department of Homeland Security to promulgate regulations providing conditions for waiving visas. There are existing regulations in 8 CFR 252.1(d) that authorize visa waivers for all or part of a crew. Neither the statutory or regulatory authority provide any criteria for granting visa waivers, but past waivers include instances where ships could not obtain a visa because there was no American consulate at its last foreign port, or because the ship received unexpected orders while at sea to proceed to a United States port. 8 U.S.C. 1182(d)(5) and 8 C.F.R. 253.1 provide authority for crewmembers to go ashore in the United States without a visa to conduct necessary ship's business or to obtain medical care.