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TWICs Identify American mariners – what about the foreign mariners?



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Good morning. It is a pleasure to be back at the Marine Log Maritime and Port Security Conference. This is the fourth year in a row that I have spoken here. For the past three years I spoke about shore leave for seafarers. This year I am going to speak about something else. I was asked to speak about maritime and port security in the context of legislative initiatives. I will examine with you the possible need for new Congressional action that would enable the United States to fulfill its objective of initiating worldwide biometric credentialing for merchant mariners.

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).

Two vitally important maritime and port security initiatives have yet to be implemented. One of them, ensuring container security, is a complicated problem that will require great expense and possibly new technology to solve.

The other initiative is implementing a standardized world-wide system of identifying merchant mariners. Implementing this initiative won't require much money or advanced technology. Its successful implementation depends only upon the political will of the United States.

This unfulfilled key to effective maritime and port security is establishing 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 United States waters and positively ascertaining the identity of every merchant mariner working on every ship in the world.

We need to know the identity of all crew on ships in United States ports, United States territorial seas and EEZ - not just those who want to go on shore leave in the United States.

We need to know the identity of all crewmembers on ships that are owned by Americans or that are carrying United States cargo anywhere in the world, not just those who are working on United States flag vessels.

All the world's merchant mariners need to be identified as the professionals that they are so that they can be protected from imposters.

What is needed is an identification credential that will do nothing more than establish that a merchant mariner is the person that he or she purports to be. The identification credential does not need to authorize shore leave. The identity credential does not need to authorize access to secure areas of ships or port facilities. All an identification credential needs to do is to ascertain identity. Once identity is established, then our security authorities can check that person out from our own security data. We don't need identification card to attest to the foreign seafarer's security status. We wouldn't rely on a foreign government's background check anyway. All we need the identification credential to do is to ascertain identity so that we can use our own data to make a security assessment on the person. Based upon our own security assessment, security authorities can decide whether the mariner can go ashore, have access to security areas or be the subject of enhanced security precautions.

As we have already heard yesterday and today at this conference, we have come a long way towards getting identification documents for a small portion of the world's merchant mariners: the Americans. The Transportation Worker's Identification Credential (TWIC) should, when it is fully implemented by New Year's Day 2009, provide a lot of confidence in ascertaining the identity of merchant mariners on American ships. There are some details to be worked out with the ID card readers, but I am pretty sure that the questions about the costs of the card readers and whether they will work in a marine environment will be worked out.

But, what about the foreign merchant mariners? TWICs are for Americans. They will not be issued to foreign merchant mariners working on foreign merchant vessels. How can we confidently ascertain the identity of foreign merchant mariners?

Congress recognized the importance of ascertaining the identity of merchant mariners in two sections of the Maritime Transportation Security Act of 2002. The first mandated issuing biometric transportation security cards (TWICs) to all American merchant mariners, among others.¹ The second encouraged the Coast Guard to negotiate an international agreement "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."²

¹ 46 U.S.C. 70105

² 46 U.S.C. 70111

I can verify for you from my personal observations, that the Coast Guard fulfilled the wishes of Congress. The United States Coast Guard, along with several other federal agencies, went to the International Labour Organization in Geneva and negotiated the international agreement that Congress requested. 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 2002³. 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 of 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.)
- Requirements for each ratifying country to put into place a comprehensive security regime;
- Requirements for each ratifying country to maintain a national database of seafarers who have been issued the document that is accessible in real time to other ratifying countries;
- Requirements for quality control of the entire national system of producing and issuing documents that would be subject to international oversight.

The Seafarers' Identity document would achieve all of the maritime and port security concerns expressed by Congress as well as the international maritime community. There is only one problem with the Convention: it hasn't come into widespread usage. So far, only ten countries have ratified the Convention since it was adopted in 2003, none of which are major seafarer producing nations (Azerbaijan, Bahamas, France, Hungary, Jordan, Lithuania, Republic of Moldova, Nigeria, Pakistan, and Vanuatu). The Convention entered into force on 9 February 2005.

³ 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.

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.⁴ 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. Two 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.

I have attached to my paper a table comparing features of D-1 visas to those of ILO-185 SIDs. You will see from the table that the SID's benefits equal or, in most instances, exceed those provided by D-1 visas.

Ever since ILO-185 was adopted at the ILO, the Coast Guard, the Department of State, the Department of Homeland Security and the Department of Labor have been confronted by the conflicts between the maritime and port security benefits of ILO-185 and the ostensible obstacle to its ratification by statutory visa requirements.

Finding a solution to the problem became much more urgent when the President signed the SAFE Port Act. That Act, in its section 110, requires the Department of Homeland Security to by 13 October 2007 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.

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?

⁴ 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".

A 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.⁵

The Department of Homeland Security has been reluctant to use its regulatory authority to authorize visa waivers to merchant mariners possessing valid ILO-185 SIDs without clear guidance from Congress. 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.

In summary, effective maritime and port security depends upon establishing a uniform, comprehensive, international system of identification for merchant mariners. The best way to accomplish this is for the United States to ratify the International Seafarers' Identity Document Convention (ILO-185) and encourage other maritime nations to do likewise. The United States can remove its ostensible obstacle to ratifying the convention by the Department of Homeland Security promulgating regulations waiving visas for crewmembers holding valid ILO-185 SIDs. Congress should clarify the Department of Homeland Security's authority by enacting legislation authorizing the Department to waive D-1 visas for crewmembers holding SIDs.

Ratifying and implementing ILO-185 by the United States and other maritime nations would close a large gap in maritime and port security and, by the way, it would help seafarers too!

⁵ 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.



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COMPARISON UNITED STATES CREWMEMBER VISA AND ILO-185 SEAFARERS' IDENTITY DOCUMENT

	<i>Crewmember (D-1) Visa</i>	<i>ILO-185 Seafarers' Identity Document</i>
Who Issues?	Consular officers at American Consulates issue D-1 visas. 22 C.F.R. 41.41	Seafarers' country of nationality or country of permanent residence issues SIDs. Art. 2
Who Must Possess?	Foreign crewmembers applying for shore leave in the United States must have a D-1 visa. There is no requirement for foreign crewmembers who are on a ship in United States waters to possess a visa if they don't apply for shore leave.	SIDs to be issued to seafarers who apply for them. There is no requirement in ILO-185 for seafarers to possess a SID. However, countries could require seafarers to possess SIDs. Art. 2. SID holders shall not be required to hold a visa for the purposes of shore leave. Art. 6
Exceptions	Legislative authority already exists for immigration officers to waive visas in circumstances provided for in regulations. 8 U.S.C. §1282(a), INA 212(d)(4), and INA 212(a)(7)(B)(i)(I), (i)(II)	The Department of Homeland Security could promulgate regulations authorizing CBP officers to waive visas for crewmembers possessing conforming ILO-185 SIDs. In the alternative, Congress could enact specific legislation authorizing waiving visas for crewmembers possessing valid SIDs. A crewmember who does not have a SID would have to possess a D-1 visa to apply for shore leave.
Physical Requirements	All United States visas issued after October 26, 2005 must be machine readable, tamper-resistant, and use biometric identifiers. Biometric identifiers must conform to national and international standards. 8 USC 1732 (b) (1)	SIDs must be machine readable, tamper resistant and use a biometric identifier. Annex to ILO-185 allows updating biometric identifier to conform to emerging technologies. Art. 3. ILO-185 was drafted so that SIDs would conform to the physical requirements for United States visas.
Duration of Validity	Varies according to nationality of applicant and that country's reciprocal treatment of US citizens. Maximum period of validity is ten years. 22 C.F.R. 41.112	To be determined by issuing country with a maximum period of validity of ten years. Art 3.6.
Interview	A consular officer interviews visa applicants at time of visa application.	CBP officer interviews all crew when their vessel makes entry to US port after making foreign port call.

	<i>Crewmember (D-1) Visa</i>	<i>ILO-185 Seafarers' Identity Document</i>
Background Checks	Consular officer conducts record check as part of visa application at the time of application. (Record check usefulness would diminish over the life span of the visa.)	Issuing country determines criteria for issuing SIDs to seafarers. Seafarers entering United States ports will be screened by CBP before arrival. CBP conducts up-to-date records checks of all crewmembers on ships entering United States ports as part of the 96-hour pre-arrival notice procedure. SID would be used to ascertain identity, not admissibility.
Travel Document	A D-1 visa is affixed to a seafarers' travel document and is part of the travel document.	SIDs are not travel documents. Art. 3.4. (b) A crewmember would need to have a passport in addition to a SID.
Identification While Ashore	Crew passports and seamen's books are locked up the ship's safe while in port. Crewmembers do not have biometric visas on their person while they are on shore leave.	SIDs shall remain in the seafarer's possession at all times. Art. 7. Crewmembers holding SIDs would have reliable identification documents while shore leave.
Database	Integrated entry and exit data system captures data only for aliens entering (and departing) the United States.	SID issuing country must maintain an electronic database of SID records. Information concerning validity and authenticity of SIDs must be provided to ILO member nations. Art. 4. With widespread ILO-185 ratification, identity records of virtually all of the world's seafarers could be captured in accessible databases.
Shore Leave	D-1 visas do not entitle holders to shore leave. CBP officer authorizes shore leave after considering results of pre-arrival records check and interviews. Visas would be used to ascertain identity	SIDs do not entitle holders to shore leave. CBP officer authorizes shore leave after considering results of pre-arrival records check and interviews. SIDs would be used to ascertain identity.
Verification of Biometrics	Consular officer would verify biometrics as part of visa application process	CBP would verify biometrics at each entry by the US Visit program.