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MARITIME SECURITY CHANGES FOR SHIP'S CREWS

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Good afternoon. The theme for this conference is “What changes can we expect from the new administration and what changes would we like to see”. I have been asked to speak on maritime security changes for ship’s crews.

Security is a word and concept that has been used and misused for a variety purposes. Security has been used as a way to get votes, to make political points, to make jobs, to get contracts, to keep others from getting contracts, and many other purposes. A lot of things have been done and undone under the guise of security that have had little effect on protecting our freedoms and our well-being. All you have to do is say “security” and your actions will not be questioned. In the post 9-11 world it is almost unpatriotic to question “security”. Security has also assumed the connotation of “anti-terrorism”. But security is not just about protecting us from terrorists. In the maritime context, security does have an anti-terrorist component, but it involves much more than that.

The September 2005, National Strategy for Maritime Security points out that United States and global economic prosperity depends upon maritime commerce and that protecting maritime commerce must be a top priority.

“Because the economic well-being of people in the United States and across the globe depends heavily upon the trade and commerce that traverses the oceans, maritime security must be a top priority. Maritime security is required to ensure freedom of the seas; facilitate freedom of navigation and commerce; advance prosperity and freedom; and protect the resources of the ocean. Nations have a common interest in achieving two complementary objectives: to facilitate the vibrant maritime commerce that underpins economic security, and to protect against ocean-related terrorist, hostile, criminal, and dangerous acts. Since all nations benefit from this collective security, all nations must share in the responsibility for maintaining maritime security by countering the threats in this domain.”¹

Most maritime security measures instituted since 2001 have been anti-terrorism in nature. I cannot say that all of the measures are based on actual threat assessments or that they were designed to protect against actual threats. But, counter terrorism has been the rationale behind most of the maritime security measures. Post 9-11 maritime security has spawned a huge industry at great cost in terms of the expense of programs and equipment as well as in terms of adding secondary costs and

¹ The *National Strategy for Maritime Security*, p. 1. (<http://www.whitehouse.gov/homeland/maritime-security.html>)

inefficiencies to waterborne commerce. Fortunately, perhaps as a tribute to some of the security measures, there have been very few terrorist attacks on shipping (only one since 2001: the French tanker Limburg in October 2002 off Yemen), and I am aware of no merchant seafarers who have been arrested in the United States for being a terrorist. But, placing so much emphasis on protecting shipping from terrorist attacks has both masked and exacerbated a much more serious threat to maritime commerce. A far greater threat than terrorism to shipping is the worldwide crisis of recruiting and retaining sufficient skilled seafarers to operate the number of merchant vessels needed to sustain maritime commerce and economic well-being. This is a far greater threat to maritime security than terrorism and piracy.

Some of you will recall that in 2000 and 2001 we started an initiative with the U.S. Coast Guard to address the looming crisis of recruiting and retaining seafarers. We had a lot of meetings, scoping sessions, and we convened two national conferences to encourage government and industry solutions to the recruiting and retention problems. Then came September 11, 2001. Attention shifted from recruiting and retention to protecting maritime commerce from terrorism. But, the recruiting and retention problem did not go away. In fact, because of inattention to seafarers' issues, it got worse. In 2007 and 2008 the maritime industry was re-awakened to the recruiting and retention crisis. The rapid growth in shipping coupled with decreasing supplies of experienced seafarers led to ships being tied up for lack of crews. There were dire predictions that there would be an even greater crisis as the 9,000 ships on the order books were delivered when there were not enough experienced seafarers to operate existing ships. In addition, there is concern that safety and the environment will suffer because of inexperienced seafarers who were being promoted too quickly to fill needed shipboard positions.

The current economic crisis has changed all of that. Conventional wisdom and educated predictions have been thrown out of the window. Now, like in 2001, attention has been diverted away from recruiting and retaining seafarers to the latest big issue: the economy. However, the recruiting and retention crisis is still looming. The cyclical nature of the shipping industry has historically been characterized by booms and busts. The current slump in shipping will end and growth will return because prosperity in today's and tomorrow's globalized economy depends upon merchant shipping. Throughout the history of shipping there has remained a constant requirement to recruit and retain skilled and reliable seafarers. The current shipping slowdown is an opportunity to address the most pressing maritime security issue: recruiting and retention.

The crewing crisis has dominated every maritime industry meeting over the past two years. Numerous factors are cited for the crisis, and discussions of all of the factors that affect seafarers' job satisfaction and seafarers' recruiting and retention could be the subject of several seminars and conferences. Despite all of the attention being given to recruiting and retention, decisions are being made or not made, and policies are being initiated or not initiated, that do not appear to take into account their effects on seafarers' job satisfaction. Ironically, the seafarers' recruiting and retention crisis does not appear to be given the priority it demands by the maritime industry or governmental authorities.

In keeping with the conference theme, there are some changes I would like to see the new administration make. I am not suggesting that we throw out all of the maritime anti-terrorism security measures. But, most of today's maritime security measures were hastily conceived in response to the September 11, 2001 attacks taking into account the best information available at that time. Now eight years later and with five years MTSA and ISPS experience, it is a good time for the new administration to undertake a comprehensive review maritime security. I would like to see the administration review maritime all security measures in terms of their effectiveness in protecting maritime commerce, as well as in terms of their costs, especially their costs in respect to shipping efficiencies and their effects on seafarers' recruiting and retention.

There are many maritime security factors that the administration should review, but I will examine only four issues that have had an impact on recruiting and retaining seafarers: piracy, TWIC cards, seafarers' exposure to criminal prosecution, and shore leave.

Piracy: Recent attacks on merchant shipping by Somali pirates – especially the attacks on ships carrying humanitarian aid to Somalia, the Ukrainian M/V Faina with its cargo of 33 T-72 tanks and other weaponry, and the Saudi super-tanker Sirius Star loaded with \$100 million worth of crude oil - has attracted worldwide attention. The United Nations Security Council has even taken up the problem, adopting four resolutions since June. Missing from the piracy discussions, however, are the effects of piracy on merchant mariners. The most recent Security Council Resolutions, Resolution 1838 of 7 October 2008, Resolution 1844 of 20 November 2008, and Resolution 1851 of 16 December 2008 don't even mention merchant mariners, and Resolution 1816 of 2 June 2008 makes only scant reference vessel crews, almost as an afterthought. Pirate attacks on any merchant vessel, whether US flag or not, whether carrying US cargo or not, or whether owned by Americans or not, affects American interests. The treat of piracy has a big effect on recruiting and retaining seafarers. The United States needs to take action to eradicate piracy wherever it occurs. Piracy is a universal crime. Any nation can prosecute a pirate wherever he or she is found. But we need to do more.

The maritime industry, international organizations and governments are making progress in developing piracy reporting systems and guidance on how to minimize the risk of an attack, and what to do during and after. However the post-piracy attack guidance is generally limited to reporting.

There is a great need to focus attention on piracy's effects on its human victims. Government and the maritime industry need to take the lead in demonstrating to seafarers that they matter and that their welfare is important to them. Merchant mariners and their families are often left without appropriate care, including counseling, after pirate attacks².

International bodies such as the International Maritime Organization and the International Labour Organization could develop guidelines for shipowners on caring for merchant mariner victims of piracy and armed robbery at sea. The maritime industry and other interested organizations, including the International Maritime Organization and the International Labour Organization could collaborate on establishing a resource center for shipowners and merchant mariners on the availability of specialized counseling, medical care and other appropriate services for victims of piracy and armed robbery at sea.

TWIC. The Transportation Worker Identification Credential program was established by the Maritime Transportation Security Act of 2002. It was one of the hastily crafted post 9-11 legislative initiatives. It is just now being implemented after years of delay and at great expense to taxpayers and individual American seafarers and port workers (including port chaplains). Based on reports that we have received from ports where the TWIC program has been implemented, seafarers have been adversely affected. For example, foreign seafarers, who do not normally have TWICs need to be escorted through terminals by someone who has a TWIC. When there is no TWIC escort available to escort seafarers from the gangway to the terminal gate, the seafarers can't go on shore leave.

² Resolution 1851 encourages "States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity."

I have been very gratified by the USCG's response to TWIC implementation problems that I have reported. Unfortunately, USCG policy does not always get properly implemented by terminals. For example, the USCG allows any number of seafarers to be transported in a port chaplain's van so long as the chaplain has a TWIC. Some terminals won't allow the chaplain's van to park near the gangway. Therefore seafarers must be escorted from the gangway to the van. In that circumstance, only five seafarers can be escorted, effectively limiting the number of seafarers the chaplain can escort to five. Another terminal (that handles break bulk such as rolled steel and wind vanes), erected a fence around the gangway and required seafarers to be escorted from the gangway fence to the terminal gate by the facility security guard between 0800 and 1700. From 1700 until 0800 the next morning, there was no facility guard and no one to escort the seafarers between their ship and the facility gate.

Another issue is that foreign port chaplains, who are so essential to maintaining seafarers' well-being, such as those from the Norwegian Seamen's Church, the German Seamen's Mission, the Swedish Seamen's Church and other international maritime ministry societies cannot get TWICs because their visas (R-1) are not on the list of visas eligible for TWICs.

The Coast Guard has been devoting a lot of valuable resources to the TWIC program, including working with me and port chaplains to resolve problems that we have identified. The Coast Guard has listened to our TWIC problems and has tried to remedy them, but I wonder if spending so much time ironing out the wrinkles in the TWIC program is the highest and best use of scarce Coast Guard resources.

I would like to see the new administration seriously reevaluate the TWIC program in terms of threat analysis, the security benefits, the costs of those benefits, and whether it is worth the expense – including the costs of making recruiting and retention more difficult.

Criminal Prosecutions. Seafarers' work is difficult and dangerous. They endure long periods of separation from home, family and friends, and they live and work in a very hazardous environment. Because of this, maritime nations enacted special protections for seafarers to induce them to pursue their dangerous and lonely work. Coastal countries, however, appear in recent years to have ignored the contributions that shipping and seafarers make to their prosperity. Rather than protecting seafarers by law, some countries have used the law to single out seafarers for criminal prosecutions when things go wrong in their ports. As a result, the perceptions that seafarers are subject to greater risks of criminal prosecutions than persons pursuing other occupations are deterring skilled people from seagoing careers. Two recent cases that illustrate seafarers' unfair exposure to criminal prosecutions are the MT Hebei Spirit and the MV Coral Sea.

MT Hebei Spirit. While at anchor in Daesan Harbor, South Korea early in the morning of December 7, 2007 the VLCC Hebei Spirit under the command of Captain Jasprit Chawla was struck by a runaway crane barge. The barge was floating free after it broke away from its tug in rough seas. The collision punctured three tanks on the Hebei Spirit causing the largest oil spill in South Korean history. Although credited with taking actions that limited some of the damages, Captain Chawla and Chief Officer Syam Chetan were criminally prosecuted by South Korean prosecutors. On June 23, 2008 both Captain Chawla and Chief Officer Chetan were cleared of all charges by the district court. However, last December 10, the Korean Appeals Court overturned their acquittal and sentenced Captain Chawla to an 18-month prison term and Chief Officer Chetan to 8 months.

MV Coral Sea. In mid-July 2007, Captain Kristos Laptalo, First Mate Konstantin Metelev, and Bosun Narciso Carcia of the M/V Coral Sea were arrested and charged with smuggling 52 kilos of cocaine into Greece. The cocaine was discovered by the ship's agent during a routine quality check hidden in two of the 27,000 boxes of bananas that had been unloaded in Patras, Greece. (The Coral

Sea's total cargo was 187,000 boxes of bananas.) The seafarers did not have access to the cargo of bananas during loading in Ecuador or during the voyage to Europe. After being held in prison for one year, the seafarers' trial was held in July 2008. No evidence was produced at trial that established any connection between the seafarers and the cocaine. To the contrary, one prosecution witness testified that he didn't believe that the seafarers knew that cocaine was on their vessel. The court acquitted First Officer Metelev and Bosun Carcia, but convicted Captain Laptalo and sentenced him to fourteen years in prison and a € 200,000 fine. The judges' rationale for convicting Captain Laptalo was that as Captain he should have known what was on his ship and be responsible for it. In late November 2008, the Greek appeals court acquitted Captain Laptalo and released him after seventeen months of incarceration.

A case closer to home was Captain Schroeder who was convicted of manslaughter in federal court in Mobile, Alabama in 2006 after his vessel, the MV Zim Mexico III knocked over a crane tragically killing an electrician. The conviction was based on only simple negligence, which was sufficient for the crime. The Seamen's Manslaughter Act, 18 USC 1115, provides criminal penalties when a **maritime** incident results in death. A conviction under the Act requires only proof of any degree of negligence, including simple negligence. Persons working on other conveyances, such as trains, airplanes, trucks, or buses do not face criminal conviction for deaths caused by their simple negligence or unintentional acts. (A different manslaughter crime applies to those persons and others, including mariners, within federal jurisdiction. This crime, 18 U.S.C. 1112, like most other manslaughter crimes, requires proof that the accused caused a death with criminal intent or by criminal negligence.)

The Seamen's Manslaughter Act runs counter to modern maritime safety principles by preventing a casualty investigation from determining the cause of a casualty. If a maritime accident causes a death, the entire ship's crew and the ship's managers are in jeopardy of criminal prosecution. As a result, they have the right to refuse to answer an investigator's questions about the circumstances surrounding the casualty, thereby making it very difficult for an investigator to determine the casualty's cause and to make recommendations for prevention.

An additional negative impact of the archaic act lies with its potential to deter mariners from joining or staying in shipboard occupations. Criminally prosecuting mariners for unintentional acts or acts of neglect, not crimes in other sectors, effectively deters people from becoming or remaining mariners.

The United States Seamen's Manslaughter Act is a relic of the past. It should be repealed, leaving 18 U.S.C. 1112, available for prosecuting mariners or ship operators who cause the death of another through criminal intent or criminal negligence.

I would like the new administration to recommend to Congress that the Seamen's Manslaughter Act be repealed or amended.

Shore Leave. Restrictions on shore leave continue to be a major issue for seafarers in terms of recruiting and retention and in encouraging them to be enthusiastic security assets. Restricting seafarers' shore leave gives them the impression that they are security risks and not valued members of the security team.

We, at the Seamen's Church Institute of New York and New Jersey, have conducted annual surveys of seafarers' shore leave detentions and restrictions on seafarers' and chaplains' access through terminals in United States ports since 2002. Last July seafarers' centers in thirty-four United States ports and one Canadian port participated in the survey. Twenty three ports detailed instances where seafarers were denied shore leave or terminals imposed restrictions on chaplains' or seafarers' access through the terminals.

The survey revealed that on approximately 20% of the ships visited, one or more seafarers were not allowed shore leave. The main reasons for detaining seafarers on their ships were failure to have

a visa and terminals charging exorbitant fees to escort seafarers through their terminals. There were also instances where seafarers were denied shore leave by their ship's master or shipping company policy and by ships' agents failing to fulfill CBP requirements.

The visa problem could be solved and maritime security enhanced by the United States ratifying the ILO Seafarers' Identity Document Convention, ILO-185. The Convention establishes an international system of biometric seafarers' identity documents (SIDs). A key feature of the Convention that has also proven to be a stumbling block to United States ratification is that an ILO-185 seafarers identity document (SID) would serve as a substitute for a visa. The United States is one of the few countries in the world (Australia being another) that requires ships' crewmembers to have a visa for shore leave. ILO-185 provides a solution to this problem by providing an alternative to seafarers having to obtain multiple visas for the various countries that might require them. ILO-185 would also dramatically increase maritime security by providing a mechanism for positively identifying, through biometrics, the world's professional merchant mariners. Furthermore, it would provide a way to enhance seafarers' status by recognizing them as professional merchant mariners.

I would like to see the new administration ratify the Seafarers' Identity Document Convention.

A solution to the problem of terminals charging exorbitant fees to escort seafarers through the terminals was contained in Coast Guard authorization bills section 719 of H.R. 2830 and section 921 of S. 1892. Both bills would have required terminals to provide timely access through terminals to seafarers at no cost. Unfortunately these bills were not enacted before the 110th Congress ended. I would like to see the new administration ask Congress to revive similar legislation in the 111th Congress.

In closing, the time is right for the new administration to take a fresh look at our nation's maritime security measures. After almost nine years after the 9/11 attacks, with almost five years experience with MTSA and ISPS, and at a time when facility security plans are about to be renewed the new administration should conduct a comprehensive review and reassessment of United States maritime security measures. The review should consider all threats to maritime security, especially the threat of their being insufficient skilled and responsible crews to operate the merchant vessels required to sustain our nation's and the world's economies.

Today's globalized economy is critically dependent upon merchant shipping. Merchant shipping is threatened by shortages of qualified seafarers to operate today's and future merchant fleets. Recruiting and retaining seafarers is the maritime industry's gravest long term crisis. The crisis doesn't affect only shipowners. It has grave consequences for the world's economic prosperity that is so critically dependant on merchant shipping. The seafarers' recruiting and retention crisis therefore cannot be solved by ship operators alone. It is a problem that affects everyone. Governments, the shipping industry, and anyone that makes a decision affecting seafarers' lives and work are part of the solution. What is required is a fundamental change in how seafarers are perceived. Rather than thinking of seafarers as potential terrorists, scapegoats, or objects of charity, seafarers must be elevated in stature commensurate to their contributions to the world's economies. Whenever decisions are made by shipowners, public authorities, prosecutors, or businesses that potentially affect seafarers, the decision makers must consider their decision's effect on recruiting and retaining seafarers.