



**THE SEAMEN'S CHURCH INSTITUTE
OF NEW YORK AND NEW JERSEY**

241 Water Street
New York, New York 10038
212/349-9090 Fax: 212/349-8342 Website:
www.seamenschurch.org

MARINE LOG

MARITIME AND PORT SECURITY 2007

**WASHINGTON, DC
JANUARY 29, 2008**

SEAFARERS: STILL PART OF THE ANSWER, NOT PART OF THE PROBLEM

By Douglas B. Stevenson, Esq.
Director, Policy, Advocacy & Law
The Seamen's Church Institute of New York & New Jersey¹

Good morning.

The topic that I have been given to discuss this morning is: "Seafarers: Still Part of the Answer, Not Part of the Problem". As this is a maritime and port security conference, the topic is about seafarers' relationship to maritime and port security.

Seafarers are indeed a vital key to effective maritime security: the concept of "domain awareness" relies on seafarers to be eyes and ears on merchant ships and in seaports, uniquely qualified to recognize suspicious situations, and to report them to the authorities. Seafarers are definitely still part of the answer.

Seafarers are not terrorist risks. I am aware of no intelligence assessment based on credible evidence that has identified seafarers as terrorist risks. I am not aware of any seafarers who, since September 11, 2001, have been arrested, convicted of terrorism charges, or who are locked up in Guantanamo. Seafarers are not part of the problem.

Seafarers still part of the answer, and they are not part of the problem, BUT, seafarers are still not perceived as security assets. Rather, they are still perceived as potential terrorists. In many situations, the industry and the authorities are rebuffing seafarers' potential contributions to security by treating seafarers as if they were part of the problem, that is, treating them as if they were terrorism suspects.

¹ Douglas B. Stevenson directs the Seamen's Church Institute's Policy, Advocacy and Law programs. The Seamen's Church Institute of New York & New Jersey, 241 Water Street, New York, NY 10038. Tel: +1 (212) 349-9090 Fax: +1(212) 349-8342 Email: DouglasStevenson@seamenschurch.org
www.seamenschurch.org

This morning I will approach maritime and port security from a different angle; from the prospective of the biggest crisis facing the maritime industry today: the looming crisis of recruiting and retaining skilled and reliable mariners. This crisis has significant security implications.

What kinds of people will be attracted to seagoing careers?

Will we really know who these people are?

Has seafaring life becoming so onerous and unrewarding that the only people who will be attracted to seagoing careers are those people who have no other options ashore?

The crewing crisis dominates every maritime industry meeting. Ship managers and crewing agencies are finding it increasingly difficult to find and keep skilled and reliable seafarers. I have even heard reports that ships have been tied up because they did not have sufficient crews.

HSBC Insurance Brokers Protection and Indemnity Report for 2008 stated: "Put starkly, there are insufficient competent seafarers today to allow for every ship to be adequately manned 24 hours a day."

And, to make matters worse, we are facing a crewing crisis with today's level of shipping. How is the industry going to meet the demands for seafarers with an expanding world merchant fleet?

Shipyards around the world are working to capacity to build new ships, and the yard's order books are filled for several years to come. The LNG fleet is expected to double by the end of the decade. All of these ships are going to require skilled and reliable crews, but where are they going to come from? Crewing offices used to be able to find enough seafarers from their own cities, recruiting people they knew. Now they must look far beyond their traditional recruiting areas and recruit from people they do not know.

Crewing managers will do whatever they can to fill crew rosters. But again, what kinds of people are willing to begin and remain in seagoing careers when there is high demand for skilled and reliable people in careers ashore.

What do people want from a career?

Of course, pay and financial security are big considerations - and seafarers should be well paid - but paying higher and higher salaries do not alone guarantee employee loyalty or reliability. Employees who are attracted only by higher pay will quickly jump to the next highest paying job. Today's employees today want much more from a career than good pay. Some of the things employees want include:

- People want jobs that do not disrupt their personal lives. They want flexibility to attend to pressing personal needs.
- People want to be recognized for their contributions to their organization.
- People need to feel comfortable in their work environment (physical working and living conditions, organizational values, good management and congenial co-workers).

On the negative side, employees do not want a job in an organization:

- That requires people to choose between having a life and having a career;
- That treats people not as people, but as factors in production; or
- That views people not as individuals, but as labor costs and not assets.

How do seagoing careers fit in with those criteria?

At last year's Connecticut Maritime Association Conference, a panel of shipping executives discussing recruiting and retaining seafarers concluded that the romanticism of going to sea has faded. Some of the reasons for this include higher regulation, visa and shore leave issues and criminalization. A discussion of all of the factors that affect seafarers' job satisfaction and seafarers' recruiting and retention could be the subject of an entire conference. In fact it has been the subject of several conferences.

I would like to focus on only two aspects of seafarers' recruiting and retention this morning: seafarers' criminal exposure and shore leave.

Criminal Exposure

Several recent cases have highlighted the perception that seafarers are particularly susceptible to being criminally prosecuted in their line of work:

- Last December, Captain Chawla and two of his officers aboard the VLCC Hebei Ocean are being criminally prosecuted by Korean authorities after the Hebei Ocean was hit at its anchorage by a crane barge that had broken free of its tow resulting in South Korea's worst oil spill.
- In 2002 Captain Mangouras was criminally charged by Spanish prosecutors after his ship, the M/T Prestige, sank and spilled oil after being denied safe refuge by Spanish port authorities. Captain Mangouras is still out on bail awaiting trial.
- In 2006, Captain Schroeder was convicted of manslaughter after a jury in Federal Court in Mobile, Alabama determined that his simple negligence contributed to the death of an electrician working on a crane that was struck by his vessel, the M/V Zim Mexico II while maneuvering alongside.

These cases, as well as several others, have created a perception that seafarers are subject to criminal prosecutions for actions that would not be crimes in any other occupation. I am not suggesting that seafarers should not be prosecuted for criminal activity. Criminal laws are important to deter intentional crimes. Seafarers themselves need to be protected from intentional misconduct that harms them and their environment.

The problem for recruiting and retaining skilled and reliable seafarers is the perception seafarers are unfairly prosecuted for unintentional crimes or are unfairly made scapegoats when accidents occur. Whether this perception is real or not doesn't matter, and I don't want to get into a discussion of that, because when you are trying to recruit or retain seafarers, perception is reality. I have heard many seafarers say and have read many accounts that seafarers are worried about criminal exposure, and that this risk affects their career choices.

Recently, V Ships President Roberto Giorgi stated that the maritime industry's recruiting and retention crisis will get worse unless the maritime industry unites to protect seafarers from unreasonable prosecutions.

A good starting place for the industry to unite to protect seafarers is in the United States. As the Captain Schroeder case demonstrated, there is a special manslaughter statute, the Seamen's Manslaughter Act, 18 USC 1115, that provides criminal penalties for maritime fatalities caused by only simple negligence. This act, by its very presence on the books, says to seafarers that they are being treated different from other workers in a very negative way.

The law applies only 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. When bad things happen in ports, prosecuting a transient mariner becomes a convenient way for local prosecutors to appease their constituents. Such short-sighted prosecutions may well work against local interests by hampering casualty investigations and by deterring ships from calling at ports where mariners face unfair exposure to criminal prosecutions.

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 recommend that the maritime industry work together to change the Seamen's Manslaughter Act and show those considering starting or continuing seagoing careers that the industry is acting to protect them from unreasonable prosecutions.

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.

Last week I received the following email from an American seafarer giving an example of a private company denying shore leave:

“I am attempting to find information on U.S. Seafarer's rights to shore leave when in U.S. Ports.

All references I have found refer to foreign seamen.

Can a U.S. company forbid shore leave for U.S. seamen in U.S. ports under normal circumstances?

I have recently hired on with a company in the Gulf of Mexico which verbally states that personnel are restricted to the vessel, or nearby dock area when in port.

I have never worked for a U.S. company where you were restricted to the vessel. I find this to be quite odd.”

DNV and INTERTANKO informed me about a Department of Homeland Security policy that restricts seafarers' shore leave. It used to be quite common for seafarers signing off ships in the United States to spend a few days in the United States before returning home. They would go sight-seeing, visit relatives, and go shopping. (They spent a lot of money shopping.) In fact, U.S law allows seafarers who sign off their ships in the United States to remain in the United States for up to 29 days. Customs and Border Protection (CBP) policy now prohibits any delays in repatriating signed-off seafarers. In an email to INTERTANKO, the DHS wrote:

“In the case of repatriation, CBP will want to see that a departure flight was already scheduled. The officer wants to see that the crewmember's intention is to leave the United States, and not to go sightseeing or visiting or spending time touring the US.”

These examples reveal private industry and governmental attitudes about seafarers, that they are security risks, terrorist suspects, not valued members of the security team.

Like my discussion of seafarers' criminalization, I will restrict my discussion to one initiative for the maritime industry to consider: encouraging the United States and other maritime nations to ratify the International Seafarers Identity Document Convention (ILO-185). This initiative, when fulfilled will facilitate seafarers' shore leave, increase security, and improve recruiting and retention.

The most common reason for denying seafarers shore leave in the United States is seafarers not having a crewmembers' visa. The United States is one of the few countries in the world (Australia being another) that violates the Convention on Facilitation International of Maritime Traffic by requiring 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 mechanism for positively identifying, thorough biometrics, the world's professional merchant mariners. Furthermore, it would provide a way to enhance seafarers' status by recognizing them as professional merchant mariners.

ILO-185 was adopted in response to an American post 9-11 initiative. Congress understood the importance of ascertaining the identity of merchant mariners by enacting two separate sections of the Maritime Transportation Security Act of 2002. The first

mandated issuing biometric transportation security cards (later called TWICs) to all American merchant mariners.

The second section of the MTSA 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.”

The Coast Guard responded to the November, 2004 deadline by, along with several other federal agencies, negotiating ILO-185 at the International Labour Organization in Geneva. 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 2002. 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.)

By 2006 the MTSA mandate for foreign seafarers’ identification documents had not been fulfilled. In response, Congress included a new mandate for identification documents in the Security and Accountability for Every Port of 2006 (Safe Port Act). In this Act Congress 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.

Unfortunately, there has not been much progress on implementing the MTSA and Safe Port Act mandates to implement a uniform, comprehensive, international system of identification for seafarers.

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 for the Safe Port Act mandate in ILO-185. 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.² 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

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

² 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".

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.

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.

What good are regulations, policies, and practices if they create onerous requirements that hinder commerce or deter seafarers from shipboard careers that are so necessary to commerce?

I have highlighted two examples where laws and policies designed for a narrow objective that actually work against larger national and international interests by contributing to the seafarers' recruiting and retention crisis that is also diminishing security. There are many other similar examples affecting the attractiveness of seafaring careers. There are solutions for these two examples that the maritime industry could unite around: repeal the Seamen's Manslaughter Act, and ratify and implement ILO-185.

Furthermore, whenever you consider a new regulation, policy, or practice, look beyond your narrow objective and consider how it affects seafarers' recruiting and retention.