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IMPACTS OF ISPS ON SEAFARING

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I regret that I am not able to be with you today. I am grateful to the Company of Master Mariners of Canada for giving me the opportunity to provide a paper on the impacts of the International Ship and Port Facility Security Code (ISPS) on seafaring.

The International Ship and Port Security Code was created by the International Maritime Organization in response to the September 11, 2001 attacks on the United States of America. Its provisions are very similar to American regulatory requirements implementing the United States' Maritime Transportation Security Act of 2002. For more than six years, the maritime world has been preoccupied with security. The fact that this seminar is addressing the effects of the ISPS on seafarers is a testament to the maritime industry's continued attention to security.

Following September 11, 2001, a vast array of security measures has been mandated by governments and self-imposed by the industry. Since the first of July, 2004, when the International Ship and Port Security Code (ISPS) became mandatory, ships and port facilities have completed threat assessments, implemented security plans, and designated security officers. Crews have participated in security training and drills. Access to sensitive areas of ships and ports has been restricted. Gangways are guarded and visitors

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controlled. Flag and port states have issued and inspected security documents, and they have tested crews' security responsibilities.

When the ISPS was under consideration, expert advice was assembled from both maritime and non-maritime sources, and their perspectives were different. Shore based interests tended to look upon seafarers as suspicious unknown entities who could easily be detained on their ships to protect security. Maritime interests were concerned about the effects that onerous security measures would have on seafarers and commercial efficiency.

Fortunately, good judgment prevailed in shaping the ISPS approach to seafarers. The ISPS takes into account the reality of seafaring: that seafarers have traditional roles and duties to protect lives and property at sea and in port. The ISPS relies on the concept of "domain awareness" to promote security. In simple terms, domain awareness means: know your environment; recognize suspicious activity, and report suspicious activity to the authorities. You might also call this policy "responsible, caring neighbors". Good neighbors keep an eye on their neighborhoods, and when they see suspicious activity that could be a threat to their neighborhood, they call the police. In the maritime context, ships' crews are singularly well placed to observe unusual activity onboard their vessels and surrounding areas and to report suspicious activity to the authorities.

The ISPS recognizes seafarers' essential security role by giving them many new responsibilities. Seafarers' security responsibilities vary from ship to ship and from port to port - depending upon the ship's and port's particular threat assessment. Security measures also depend upon the designated security level (from normal Security Level One to high Security Level Three) established by the ISPS. At all levels of security, seafarers are required to monitor their ship and surrounding areas and to report dangerous and suspicious activities.

The ISPS recognizes seafarers' unique role in combating terror. The ISPS also confirms seafarers' fundamental right to shore leaveⁱ. An important aspect of the ISPS is its requirement that shore facility security plans must include provisions for seafarers' movement through the facilities for shore leave and chaplains' and unions' access to vesselsⁱⁱ. The ISPS recognizes that security is enhanced when seafarers are perceived as responsible, caring neighbors rather than as suspects in their shared maritime community. Seafarers' vigilance in noticing and reporting suspicious activities will undoubtedly save lives, as well as enhance a spirit of cooperation between seafarers and port security personnel.

There was, however, considerable concern amongst the ISPS drafters that the ISPS's policies of balancing security needs with seafarers' human needs might not be appreciated by those who would implement the ISPS around the world. In response, one month before the ISPS implementation date, the IMO Marine Safety Committee promulgated an instructional Circular (MSC Circular 1112) that explained the ISPS policy of balancing security needs with human rights and the requirement to maintain ships' safety and working efficiency by allowing crew shore leave and access to ship support servicesⁱⁱⁱ.

ISPS implementation began long before the Code became mandatory on 1 July 2004. There were immense adjustments required of both regulators and the regulated when the

ISPS security culture was added to the ISM safety culture in the maritime industry. As with any new regime that required people to change their routines, there were several conflicts between seafarers and security authorities shortly after the ISPS came into force. When egos and authorities clashed there were issues. Some of the episodes were widely reported in the press.

Many of the problems, such as requiring authorities to show their credentials to ship security officers, have been resolved. Other issues remain, such as crew leaving their ship in violation of strict immigration laws, and conflicts when seafarers attempt to enforce their ships' security plans on port workers who don't want to be bothered by them. (For example port workers demanding that secure areas of the ship in which they are working remain unlocked and port workers refusal to show identification and sign in and off the ship.)

Since September 11, 2001 the Seamen's Church Institute (SCI) has monitored security requirements' effects on mariners. In an attempt to quantify the effects of ISPS on seafarers before and after the Code's effective date, SCI has conducted several nationwide surveys of shore leave detentions and chaplains access to ships in United States and Canadian ports.

The surveys focused on seafarers' denial of shore leave and chaplains' access to vessels because these were the two biggest negative effects of post 9-11 security measures observed by SCI and port chaplains. The surveys revealed the following problems in United States ports:

- Foreign seafarers who did not possess a crewmember D-1 visa were not allowed shore leave by immigration authorities. United States immigration laws require all crewmembers, both ships' crews and commercial aircraft crews, to possess a crewmember D-1 visa as a condition of applying for shore leave. This visa requirement, which is contrary to customary maritime practice and the Convention on the Facilitation of Maritime Traffic, has been a feature of American immigration law since 1952.
- All seafarers, foreign and American, were denied shore leave by private terminal operators irrespective of the seafarers' immigration status. These private terminal restrictions were typically imposed at petroleum terminals. They involved terminals that followed the word of the ISPS, but not its spirit. For example, a private terminal would have provisions in its facility security plan providing for crew shore leave and chaplains' access to ships in the terminal, but it would require them to be escorted by the terminal's security service and charge a prohibitively high fee – effectively denying seafarers and chaplains' access.

No Canadian ports have reported problems with shore leave denials or chaplains' access.

The surveys conducted after July 2004 have shown at least one positive ISPS effect on seafarers. There were many fewer reported instances of private terminal operators denying shore leave. In the pre-ISPS surveys, private terminal operators' denial of shore leave to ships' crews was one of the two most common causes for crew detentions. Lack of crewmember visas provided the other most frequent reason. Most private terminals in the United States appear to have implemented the ISPS requirement that facility security

plans must contain procedures for facilitating shore leave as well as access to ships by representatives of seafarers' welfare organizations.

As mentioned earlier, the ISPS Code recognizes seafarers' unique role in promoting security, it also codifies seafarers' fundamental rights to shore leave, as have other international instruments before it.

Prior to ISPS, The International Maritime Organization's Convention on Facilitation of International Maritime Traffic, ratified by ninety-two countries including the United States, provided a modern codification of mariners' right to shore leave if the formalities of arrival had been met, and "public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order." The same language is also found in Article 6.8 of the International Labour Organization's Seafarers' Identity Document Convention (ILO-185).

In MSC/Circ.1112 of 7 June 2004, the International Maritime Organization reminded Contracting Governments of their responsibilities in implementing the ISPS to afford special protections to seafarers and of the critical importance of shore leave. The exhortations contained in the Circular are based on the principles that seafarers have primary security duties under the ISPS, and they should be viewed as partners in the new security regime rather than as potential threats to security.

Although not a part of ISPS, ILO's Seafarers' Identity Document Convention (ILO-185) is closely related to it, and, like the ISPS was created in response to the September 11, 2001 attacks on the United States.

ILO-185 has the opportunity to address the lack of visa issue while providing a uniform enhancement to maritime security and promoting shore leave. On 20 June 2003, at the United States' initiative, the International Labour Organization adopted the Seafarers' Identity Documents Convention (Revised) (ILO-185). ILO-185 enhances maritime security by setting international standards for seafarer identification documents (SID) that provide reliable, positively verifiable and internationally acceptable identification. ILO-185 codifies mariners' rights to shore leave, and it requires Member countries to accept SIDs in place of visas for the purposes of shore leave. Member countries must maintain electronic databases of SIDs that are accessible by authorities from all ILO Member countries.

Ratification and implementation of ILO-185 by maritime nations depends upon the United States taking the lead in ratifying and implementing the Convention - and on the United States accepting SIDs as a basis for waiving crewmember visas for shore leave. Countries will have little incentive to set up a SID system and mariners will have little incentive to obtain a SID if the United States requires crewmember D-1/2 visas in addition to SIDs.

Unfortunately, one of ILO-185's best features, that it can be used as a substitute for a visa, has proven to be an obstacle to United States ratification - and consequently, widespread ratification by other maritime nations. I am encouraged that eleven countries have already ratified ILO-185 and that Canada will soon have an ILO-185 compliant seafarers' identity document system in place^{iv}.

The ISPS has made a significant impact on seafarers' lives and the ways they go about their work. They have new security duties. They have new training requirements. They have new controls on their movements. However, restrictions on seafarers' access to shore leave and welfare facilities have improved in some ports following the ISPS's implementation. Many countries are taking seriously the principles contained in the ISPS and the International Maritime Organization's MSC Circular 1112 that maritime security is enhanced when merchant mariners' fundamental rights are protected.

From the data that we have collected at SCI, the main sources of problems related to ISPS that affect seafarers could be summarized as follows:

- Transitional implementation difficulties in seafarers and regulators confronting changes. Such human traits as egos, personalities and authority often contributed to the problems.
- Lack of understanding the ISPS. Some difficulties arose from authorities misunderstanding the ISPS requirements.
- Costs. A major factor in ISPS implementation is related to the costs of implementation. For example, who is going to pay for providing seafarers' and chaplains' security escorts through sensitive terminals?
- Residual shore-based security trepidations restricting seafarers' and chaplains' movements through terminals.
- Rigid enforcement of port state immigration laws that restrict seafarers to their ships.

Although most of the issues relating to the impacts of the ISPS on seafaring have been negative, there are some aspects of the Code that are potentially positive for seafarers. When the ISPS was being developed, there was tension between differing views of seafarers' as security risks. Although no intelligence data supported the notion that seafarers were security risks or potential terrorists, there were also no studies that showed that they were not risks. Some security officials, especially those who did not have maritime backgrounds, looked upon seafarers with suspicion. They didn't want to take any chances with them, and they considered it prudent to restrict seafarers to their ships while in port. Unfortunately, many shipowners could not rebut such unfounded impressions. They themselves could not vouch for their crews. After years of employing crews through manning agencies and operating their ships through ship management companies, many shipowners' connections with their crews were quite attenuated.

The ISPS has forced shipowners to get to know who they are hiring to work on their ships. Shipowners now have a vested interest in hiring seafarers who they have checked out and who they know. In addition, shipowners must invest in training crews about their companies' and vessels' security procedures. It is therefore in shipowners' best interests to retain seafarers that they know to be reliable, responsible, and secure. This should result in raising seafarers' status and value - at least with shipowners.

The ISPS and its maritime security measures are not going to go away, and its implementation will continue to have impacts on seafarers' lives. Many of the problems related to implementing the ISPS will go away over time. However, some issues will recur and others will need new solutions. Our challenge, and a challenge for the entire

maritime community is to find reasonable measures that provide security for ships, their crews and ports without unreasonably burdening seafarers or restricting the flow of commerce. Some steps to that end include:

- Port chaplains should participate in port security committees. Port chaplains can provide port security committees invaluable insights into seafarers' contributions to the port's security and to the ports' policies that might discourage seafarers from cooperating with security authorities. Port chaplains' participation in the committees will also acquaint contingency planners with the vital resources chaplains can bring to a crisis situation.
- Countries should establish high-level lines of communication to respond to ISPS implementation problems affecting seafarers on their ships and in their ports such as the one established between the Seamen's Church Institute of NY & NJ and the U.S. Coast Guard.
- Encourage all maritime nations, especially the United States, to ratify and implement the International Labour Organization's Seafarers' Identity Document Convention (ILO-185). Widespread ratification of ILO-185 would enhance security by requiring all seafarers to have positive identification that would establish that they are legitimate professional mariners and not others posing as mariners. Shore leave opportunities would be increased for mariners holding an ILO-185 seafarers' identity document because the ILO-185 identity document would be a substitute for a visa.

Thank you for giving me the opportunity to address how the ISPS affects seafarers. I am sorry that I could not be with you today to respond to any questions or comments in person. I am happy to respond to any question or comment you might have by email or telephone.

ⁱ ISPS Code Preamble 11. "Recognizing that the Convention on the Facilitation of Maritime Traffic, 1965, as amended, provides that foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order, Contracting Governments, when approving ship and port facility security plans, should pay due cognizance to the fact that ship's personnel live and work on the vessel and need shore leave and access to shore-based seafarer welfare facilities, including medical care."

ⁱⁱ ISPS Code Part A 16.3.15 Port facility security plans must address "procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship, including representatives of seafarers' welfare and labour organizations."

ⁱⁱⁱ Ref.T2-NAVSEC/2.11 MSC/Circ.1112

1 The Conference of Contracting Governments to the International Convention for the Safety of Lives at Sea (SOLAS), 1974 (London, 9 to 12 December 2002), adopted, inter alia, amendments to the Annex to the Convention, as amended, in particular new chapter XI-2 on Special measures to enhance maritime security and the new International Code for the Security of Ships and Port Facilities (ISPS Code).

2 The Conference also adopted Conference resolution 11 on Human-element-related aspects and shore leave for seafarers which, inter alia, urged Contracting Governments to take the human element, the need to afford special protection to seafarers and the critical importance of shore leave into account when implementing the provisions of SOLAS chapter XI-2 and the ISPS Code.

3 The Maritime Safety Committee, at its seventy-eighth session (12 to 21 May 2004), recognizing and considering the need for additional information to assist Contracting Governments and the industry to comply with the spirit of Conference resolution 7, while at the same time meeting their obligations under SOLAS chapter XI-2 and the ISPS Code, directed its Maritime Security Working Group to examine and provide additional guidance on specific aspects of shore leave and access to ships under the ISPS Code.

4 The Guidance relating to shore leave and access to ships, as approved by the Committee, is given at annex.

5 Member Governments and international organizations are invited to bring this circular to the attention of national Designated Authorities, Administrations, port facility security officers, maritime industry and all other parties concerned responsible for the implementation of maritime security measures.

ANNEX

1 The 2002 SOLAS Conference that adopted SOLAS chapter XI-2, the ISPS Code, and associated conference resolutions, was aware of potential human aspect problems affecting the fundamental human rights of seafarers with the imposition of a security regime on international shipping on a global basis. It was recognized that seafarers would have the primary duties and responsibilities for implementing the new security regime for ships. At the same time, there was concern that the emphasis on port facility security may result in the ship and seafarers being viewed as a potential threat to security rather than partners in the new security regime.

2 In this regard, it was recognized that there may be conflicts between security and human rights, as well as between security and the efficient movement of ships and cargoes in international trade that is essential to the global economy. There must be a proper balance between the needs of security, the protection of the human rights of seafarers and port workers, and the requirement to maintain the safety and working

efficiency of the ship by allowing access to ship support services such as the taking on of stores, repair and maintenance of essential equipment, and other vital activities that are appropriately undertaken while moored at port facilities.

3 The 2002 SOLAS Conference incorporated the protection of the fundamental human rights of seafarers into SOLAS chapter XI-2 and the ISPS Code. The Preamble to the ISPS Code clearly states that the Code shall not be interpreted in a manner that is inconsistent with existing international instruments protecting the rights and freedoms of maritime and port workers. The Preamble also called to the attention of Contracting Governments that in approving security plans they should be aware of the need for seafarer's shore leave and access to shore-based welfare facilities and medical care.

4 To address these concerns and principles, section A/16.3.15 of the ISPS Code provides that a port facility security plan (PFSP) must contain procedures for facilitating shore leave, crew changes and access for visitors including representatives of seafarers' welfare and labour organizations. This should be construed as including shore-based ship support personnel and the taking onboard of ship's stores. The guidance contained in paragraph B/16.8.14 of the ISPS Code reinforces this requirement by providing that the PFSP should contain such procedures relating to all security levels.

5 In approving PFSPs, Contracting Governments must ensure that PFSPs address the procedures described in section A/I 6.3.15 of the ISPS Code, taking into account the guidance in paragraph B/16.8.14 of the ISPS Code.

6 From a practical perspective, it is also important that port facilities seek a balance between the needs of security and the needs of the ship and its crew. A port facility operator should ensure co-ordination of shore leave for ship personnel or crew change-out, as well as access through the port facility for visitors to the ship, including representatives of seafarers' welfare and labour organizations and those concerned with the maintenance of ships' equipment and safe operation, with ship operators in advance of the ship's arrival. A singular focus on the security of the port facility is contrary to the letter and spirit of the ISPS Code and will have serious consequences for the international maritime transportation system that is a vital component of the global economy. It is further noted that the ILO/IMO Code of Practice for Port Security recommends that all port stakeholders work co-operatively to make such arrangements and advance plans.

^{iv} Azerbaijan, Bahamas, France, Hungary, Jordan, Republic of Korea, Madagascar, Moldova, Nigeria, Pakistan, and Vanuatu