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Seafarers' Credentials and Terminal Access
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Good morning. My name is Deborah Blanchard, and I am the Staff Attorney in the advocacy department of the Seamen's Church Institute of New York and New Jersey. I bring you greetings from our Executive Director Jean Smith, and from Douglas Stevenson, the Director of the Institute's advocacy program, who regrets he was not able to be here himself.

Over the last few years, we at the Seamen's Church Institute have witnessed significant changes in the role that seafarers are called on to play in enhancing maritime security, and we are reminded in our work on a regular basis not only of their critical role in promoting maritime domain awareness, but also of the importance of shore leave to those seafarers.

My topic for this morning's presentation is the Seafarers' International Identity Document, ILO-185, on which The Seamen's Church Institute held a roundtable discussion on ILO-185 in January 2006. As one of the main stumbling blocks for widespread ratification appear to lie with the Identity Document convention's requirement that the Seafarers Identity Card serve as an alternative to a visa for shore leave purposes, I will also touch on the status of seafarers shore leave issues in the United States.

I will briefly discuss the important new role seafarers play in enhancing maritime security, the historical and international legislative basis for preserving shore leave, then turn to ILO-185, the Seafarers International Identity Document convention, and the ways in which widespread implementation of the convention will enhance maritime security, without having to compromise the ancient right of shore leave. We must continue with interdepartmental and international dialogue so as not to lose the momentum towards ratification of this critical security tool

Seafarers' New Role

I begin with seafarers' new role in the maritime security regime, as it provides context for the importance the seafarers' identity document convention, or SID.

For more than five years, the maritime world has been preoccupied with security. A vast array of security measures against the threat of terrorism have 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 controlled. Flag and port states have issued and inspected security documents, and they have tested crews' security responsibilities.

Notwithstanding all of the ISPS's paperwork requirements, the fundamental ISPS principle for assuring security is "domain awareness". In other words, know your environment, recognize things that are not normal and put your attention on those things that are out of the ordinary.

The ISPS relies on ships crews to be good neighbors in protecting the maritime community from terrorism. Their ability to observe unusual activity onboard their vessel and its surrounding areas is a key element in saving lives and preventing damage and destruction. The ISPS recognizes seafarers' essential security role by giving them many new responsibilities. Seafarers' security duties will vary from ship to ship and from port to port depending upon the ship's and port's particular threat assessment. Security measures will also depend upon the designated security level 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.

Shore Leave Background

As seafarers play a crucial new role in the security regime, it is important to note the new challenges they face to existing rights, especially as the SID ILO-185 presents an opportunity to preserve the existing rights while promoting the new security requirements of ISPS.

For as long as mariners have gone to sea on merchant ships, shore leave has been a cherished right – but it is not an absolute right. Like most individual rights, shore leave must be balanced against other interests such as the vessel's operational schedule and safety requirements.

For a time immediately after September 11th, we at SCI witnessed a severe decrease in shore leave for seafarers. For a time, seafarers faced shore leave difficulties due to the elimination of the crew list visa, inability to obtain visas due to long waits for appointments at the consulate, as well as local terminal restrictions prohibiting seafarers ashore **regardless** of whether they possessed a visa. Fortunately the situation has greatly improved. While the main reason seafarers still face shore leave denials remains due to lack of visa, many more seafarers now obtain visas if a possibility exists they might visit the U.S. Some employers even require a U.S. visa as a condition of employment. While vast improvements have occurred, visas can still remain costly and difficult to obtain, particularly if long distances are involved to travel to the US consulate.

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 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 now used by ILO-185 in Article 6.8.

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.

The International Seafarers Identity Document ILO 185 has the opportunity to address the lack of visa issue while providing a uniform enhancement to maritime security & promoting shore leave.

ILO 185

No doubt many of you are familiar with the background and details the Convention and of the Seafarers Identity Document convention, but allow me to cover a bit of background on the convention and its specifics, before addressing the advantages of ratification.

Details of the SID

In order to strengthen maritime security, ILO-185 originated in a fourteen-point maritime security proposal presented by the U.S. Government. The goal was to strike a balance between security, commerce, and civil liberty concerns.

On 20 June 2003, the International Labour Organization adopted the Seafarers' Identity Documents Convention (ILO-185), which revised the previous seafarers identity document convention, ILO-108.

ILO-185 came into force in February 2005, and it currently ratified by seven countries: Jordan, France, Nigeria, Vanuatu, Azerbaijan, Republic of Moldova, and Hungary.

The SID would be issued by the seafarer's country of nationality or country of permanent residence. It would be valid for not more than ten years, renewable after 5 years.

The ID must be machine readable, tamper resistant, and will contain the name of the issuing authority, indications enabling rapid contact with that authority, the date and place of issue of the document, details such as the full name sex; date and place of birth; nationality; any special physical characteristics that may assist identification; digital or original photograph; and signature. In addition, it will contain an additional biometric, such as thumb print or iris scan, that would allow for verification that the seafarer is who he says he is, and which only requires equipment that can be conveniently and reliably operated in ports and in other places, including on board ship, where verification of identity is normally carried out by the competent authorities.

The annex to ILO-185 allows for updating the biometric identifier to conform to emerging technologies, and was drafted so that it would conform to the physical requirements for United States visas.

Under ILO-185, member countries must maintain electronic databases of SIDs that are accessible by authorities from all ILO Member countries. The information in the database will be restricted to details which are essential for the purposes of verifying a seafarers' identity **document** or the status of a seafarer, and which are consistent with the seafarer's right to privacy. Information concerning the validity and authenticity of the SID must be provided to ILO member nations. Members who have ratified the convention must carry out independent evaluation of the administration of its system for issuing seafarers' identity documents, including quality-control procedures, at least every five years. Reports on such evaluations, subject to the removal of any confidential material, shall be provided to the Director-General of the International Labour Office with a copy to the representative organizations of shipowners and seafarers in the Member concerned.

General Benefits

With widespread ratification of 185, identity records of virtually all the world's could be captured in accessible databases. International cooperation is essential to the promotion of widespread ratification and implementation of the Convention.

It provides the mechanism for creating a uniform secure ID to maintain facilitation of international shipping and seafarers travel while improving security. Widespread ratification of ILO-185 would enhance maritime security by setting international standards for seafarer identification documents (SID) that provides reliable, positively verifiable and internationally acceptable identification.

ILO-185 preserves the sovereign right of a nation to exclude persons who pose threats to public health, public safety, public order or national security. And the SID would not serve as a travel document, only as an identification document.

Among the many security benefits offered by derived from the ratification, some of those most beneficial to shipowners include:

- The SID enhances US security interests beyond its borders by positively identifying seafarers on U.S. owned vessels carrying US cargo outside US waters and on US owned foreign flagged ships
- Shipowners will have a better sense of who they employ with biometric SIDs, improving security
- Shipowners costs will be lower if they don't have to pay for security guards for vessels with seafarers on board without visas

ILO 185 & SHORE LEAVE

Returning to the important shore leave issue, ILO-185 also codifies mariners' rights to shore leave and requires Member countries to accept SIDs in place of visas for the purposes of shore leave. The preamble of the convention states:

“Being aware that seafarers work and live on ships involved in international trade and that access to shore facilities and shore leave are vital elements of seafarers' general well-being and, therefore, to the achievement of safer shipping and cleaner oceans,”

Article 6.5 of the convention also requires port authorities to allow seafarers to have shore leave unless they have reason to refuse entry because of “public health, public safety, public order or national security.”

*I will not go through it in its entirety, but you may wish to note the SID/visa comparison chart in materials we prepared for this presentation.

The United States currently 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). Crewmembers who sign-off from their ships in the United States and depart on conveyances other than the ships on which they arrived on are required to have D-2 visas, 8 U.S.C. § 1101(a)(15)(D)(i). Crewmembers who wish to enter the United States to join their ship in the United States are considered transits and must have a C-1 visa, 8 U.S.C. § 1101(a)(15)(C).

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 no incentive to set up a SID system and mariners will have no incentive to obtain a SID if the United States requires crewmember D-1/2 visas in addition to SIDs.

ILO-185 SIDs would not serve as travel documents, but they would provide a basis for waiving a D-1/2 visa. Legislative authority already exists in 8 U.S.C. §1182(d) and §1282(a) for Customs and Border Protection officers to waive visas in circumstances provided for in regulations. 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 who have valid SIDs.

The standards for SIDs enumerated in ILO-185 satisfy the technical requirements of the U.S. Enhanced Border Security and Visa Reform Entry Act of 2002 (e.g. machine-readable, tamper-proof, digital photograph, biometric indicator).

Seafarers, regardless of whether they possess a visa, come under scrutiny with the 96-hour notice requirement. SIDs, like visas, do not guarantee shore leave. If ILO-815 is ratified, all seafarers, not just those with U.S. visas will have biometrics that can verify their identity, but will not change the CPB interview for admissibility.

The combination of the ILO-185 card and existing security measures, including port of entry immigration interviews, would provide a sufficiently high level of security. Crewmembers not in possession of a SID would have to obtain a visa to apply for shore leave in the United States. To have all seafarers entering U.S. waters possess a SID adds a significant benefit, greater than only portion possessing a U.S. visa.

Downsides of No Widespread Ratification

If ILO-185 is not ratified by the major maritime nations, an increasing number of port states may begin to impose visa requirements for shore leave, resulting in increased expenses and administrative burdens. U.S. In addition, the United States will have to devise a new credentialing system for foreign seafarers to meet the requirements of the Maritime Transportation Security Act.

Implementing ILO-185 represents a significant expense for many maritime labor producing countries, such that without major port state acceptance of the SID, they may be reluctant to undertake the cost of creating a secure SID implementation system for no benefit.

Conclusion

In conclusion, we must maintain interdepartmental, intergovernmental and international dialogue on the convention so as not to lose momentum working towards ratification of this important security tool. Seafarers are critical partners in promoting and enhancing maritime domain awareness, and shore leave is a crucial element of their working lives.

SIDs offer the best possible compromise between legitimate port security requirements and the need for crews to attend to their physical, emotional, and spiritual needs on shore leave – provided that the Convention is broadly ratified and implemented.

Thank you for the opportunity to speak.