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INDEPENDENT

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations, and Criminal Justice, Drug Policy and Human Resources

From: Christopher Shays
Chairman

Mark E. Souder
Chairman

Date: December 8, 2005

Subject: Briefing memo for December 13, 2005 Subcommittee hearing.

Attached find the briefing memo required by Committee rules for the hearing on *International Maritime Security*, scheduled for Tuesday, December 13, 2005 at 2:00 p.m., room 2154 Rayburn House Office Building in Washington, D.C.

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SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS
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December 8, 2005

MEMORANDUM

To: Members of the Subcommittees on National Security, Emerging Threats and International Relations, and Criminal Justice, Drug Policy and Human Resources.

From: Dr. R. Nicholas Palarino, Senior Policy Analyst, and Pat DeQuattro, Congressional Fellow.

Subject: Briefing memorandum for the hearing, *International Maritime Security*, scheduled for Tuesday, December 13, 2005 at 2:00 p.m., room 2154 Rayburn House Office Building in Washington, D.C.

PURPOSE OF THE HEARING

The hearing will examine two aspects of international maritime security, including coordination of assistance in the event of an attack by terrorists or pirates, and jurisdictional challenges related to criminal incidents aboard cruise lines.

HEARING ISSUE

1. **What decision-making procedures and processes are in place to determine the extent to which the US government responds to a ship being attacked by terrorists or pirates?**

2. **What jurisdictional conflicts occur when United States citizens traveling on a foreign flagged vessel are involved in a criminal incident?**

BACKGROUND

In the past several years both civilian and military vessels have come under attack by terrorists and pirates. United States citizens have been on board some of the civilian vessels. A number of factors are taken into consideration before the United States responds to such an attack.

Crimes against US citizens on board commercial ships sometimes become problematic because of jurisdictional issues. Cruise ships are frequently registered and operated under the jurisdiction of a country other than the United States. Consequently US federal agencies must be invited on board to investigate reported criminal activities, and also adhere to foreign government laws and regulations. Jurisdictional issues can place constraints on US investigative agencies.

A number of international treaties and domestic laws govern freedom of the seas and protection of individuals traveling aboard ships. The United Nations

Convention on Law of the Sea (UNCLOS), also called the Law of the Sea (LOS), is a series of agreements designed to allow freedom of the seas and establishment of a country's maritime boundaries. The United States is not a party to the Convention. **(Attachment 1)**

The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation entered into force in March 1992, and requires appropriate action be taken by signatories against persons committing unlawful acts against ships. Unlawful acts include the seizure of ships by force, acts of violence against persons on board ships and the placing of devices on board a ship which are likely to destroy or damage the vessel. **(Attachment 2)**

The International Ship and Port Facility Security Code (ISPS) is an amendment to the Safety of Lives at Sea Convention (SOLAS). SOLAS is an agreement which protects merchant ships and allows amendments designed to enhance security of such vessels. The ISPS objective is to assist in detection of security threats and implement security measures by assigning responsibilities to governments and local administrations, ships and port industries. **(Attachment 3)**

The United Nations Convention against Transnational Organized Crime and accompanying Protocols allow increased cooperation among law enforcement officials for a number of law enforcement areas including the elimination of the time consuming process of negotiating bilateral agreements for extradition of individuals. **(Attachment 4)**

There are a host of United States laws implementing the provisions of the international treaties and agreements including violence against maritime navigation, maritime and territorial jurisdiction, attacks on vessels and penalties for crimes. **(Attachment 5)**

In October 2005, President George W. Bush released the National Strategy for Maritime Security establishing policy guidelines to enhance national and homeland security by protecting US maritime interests. The strategy has eight supporting plans. **(Attachment 6)**

1. The National Plan to Achieve Maritime Domain Awareness lays the foundation for an effective understanding of anything associated with the maritime domain that could impact the security, safety, economy, or

environment of the United States, and identifying threats as early and as distant from our shores as possible.

2. The Maritime Transportation System Security Plan responds to the President's call for recommendations to improve the national and international regulatory framework regarding the maritime domain.

3. A Maritime Commerce Security Plan establishes a comprehensive plan to secure the maritime supply chain.

4. The Maritime Infrastructure Recovery Plan recommends procedures and standards for the recovery of the maritime infrastructure following attack or similar disruption.

5. An International Outreach and Coordination Strategy provides a framework to coordinate all maritime security initiatives undertaken with foreign governments and international organizations, and solicits international support for enhanced maritime security.

6. The Global Maritime Intelligence Integration Plan uses existing capabilities to integrate all available intelligence regarding potential threats to U.S. interests in the maritime domain.

7. A Maritime Operational Threat Response Plan (MOTR) aims for coordinated United States Government response to threats against the United States and its interests in the maritime domain by establishing roles and responsibilities that enable the government to respond quickly and decisively.

8. The Domestic Outreach Plan engages non-federal input to assist with the development and implementation of maritime security policies.

Terrorism and Piracy

While there is no clear international definition of terrorism, on October 8, 2004, the United Nations Security Council unanimously passed Security Council resolution 1566 which describes acts of terrorism:

> [C]riminal acts, including [those] against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philodophical, ideological, racial, ethnic, religious or other similar nature... **(Web Resource 1)**

Terrorist attacks against vessels are rare but are highly publicized. The hijacking of the Italian ship Achille Lauro marked one of the first recorded terrorist acts against a cruise ship. On October 7, 1985, four men representing the Palestine Liberation Front (PLF) took control of the Achille Lauro (a cruise ship) off Egypt while she was sailing from Alexandria to Port Said within Egypt. Holding the passengers and crew hostage, the terrorists directed the vessel to sail to Tartus, Syria, and demanded the release of 50 Palestinians then in Israeli prisons.

Refused permission to dock at Tartus, the hijackers shot one wheelchair-bound passenger, an American named Leon Klinghoffer, because he was Jewish, and threw his body overboard, leaving him to die. The ship headed back towards Port Said, and after two days of negotiations the hijackers agreed to abandon the liner for safe conduct and were flown towards Tunisia aboard an Egyptian commercial airliner. The plane was intercepted by United States Navy fighters on October 10, 1985, and directed to land in Italy, where the hijackers were arrested. **(Web Resource 2)**

The *USS Cole* entered the harbor of Aden, Yemen, on October 12, 2000, for a routine fuel stop. A small craft approached the port side of the destroyer, and an explosion occurred, putting a 40-by-40-foot gash in the ship's port side. Seventeen sailors were killed and 39 others were injured in the blast. The attack, organized by Osama bin Laden's al-Qaida terrorist organization, was carried out by suicide bombers Ibrahim al-Thawr and Abdullah al-Misawa. **(Web Resource 3)**

On October 6, 2002, a small boat loaded with explosives rammed into the French oil tanker Limburg as it headed into a Yemeni port. The blast ripped through the tanker's double hull, killing a crewman and spilling 90,000 barrels of burning crude

oil into the Gulf of Aden. Authorities linked the bombing to al-Qaeda. **(Web Resource 4)**

The International Maritime Organization reports in 2004 there were 330 acts of piracy (and armed robbery) directed against maritime vessels. **(Web Resource 5)** Piracy consists of any of the following acts:

> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
> (b) any act of voluntary participation in the operation of a ship or of an
> aircraft with knowledge of facts making it a pirate ship or aircraft;
> (c) any act of inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b). **(Web Resource 6)**

A cruise liner, the *Seabourn Spirit*, was attacked on November 5, 2005, 115 km off the coast of Somalia, by two pirate speedboats launched by a mother boat. The ship carried 151 passengers, none of whom was injured, although machine gun shots were fired as well as rocket propelled grenades. An unexploded grenade wedged itself in the wall of a room and was disarmed after the attack by sailors from the *USS Gonzalez*. One *Seabourn Spirit* crew member, a security officer, was injured while combating the raiders with a long range acoustic device (LRAD). The sonic device repelled the pirates by blasting a powerful wave. According to one passenger, one of the ship's security officers, while manning the device from the rear was hit by shrapnel to the head. The ship's captain, attempted to ram the pirates and the cruise liner escaped by speeding away. **(Web Resource 7)**

Crimes on Vessels

Crime (against humanity) is defined as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population; or persecution on political, racial or religious grounds in execution of or in connection

with any crime, whether or not in violation of domestic law of the country where perpetrated. **(Attachment 7)**

Numerous crimes occur aboard maritime vessels. Most are not publicized. However, cruise ship crimes are publicized and reported because cruise ships are like floating cities. Any problem people have in a city they will have on a ship, and like a city crimes are made public. There are approximately 50 cruise ship crimes against US citizens reported to the Federal Bureau of Investigation each year. Almost 50 percent are considered sexual assaults, 20 percent assaults, 10 percent finance related, and 10 percent missing persons. Ten percent fall into other categories of criminal activity.[1]

At least 12 cruise ship passengers have gone into the water or disappeared in 11 separate incidents over the past 5 years. For example, James Scavone disappeared from a cruise ship on July 5, 1999, while sailing from Miami to San Juan, Puerto Rico. The Federal Bureau of Investigation determined there was no evidence of foul play, and the case was closed in August 2000. On May 13, 2005 a couple, Hue V. Pham and Hue T. Tran were reported missing off a cruise ship sailing between the islands of Barbados and Aruba. The couple has never been found. George Alan Smith was on a cruise ship sailing from Mykonos, Greece and Kusadasi, Turkey. He disappeared in the early morning hours of July 5, 2005 and has never been found. The Pham, Tram and Smith investigations are ongoing. **(Attachment 8)**

[1] Discussions between Subcommittee Staff and representatives of the Federal Bureau of Investigation, December 5, 2005.

WITNESSES

Panel I witnesses, representatives from the Department of Defense, US Coast Guard, and Federal Bureau of Investigation, were asked to respond to the following questions:

- What international and national laws pertain to security of Americans on board ships traveling outside US territorial waters?
- What are your Department's roles and responsibilities under the newly released National Strategy for Maritime Security?
- What types of statistics are kept concerning security incidents on board ships, and how is this data reported to the public?
- What is the decision-making process and what procedures does your organization take after notification a ship with Americans is attacked by terrorists or pirates?
- What is the decision making process and what procedures does your organization take after notification a crime has been committed against an American on board a ship outside US territorial waters ?
- What types of security standards has your organization established, and what types of security training does your organization offer to ship personnel carrying American passengers?

Panel II witnesses, representatives from cruise lines and cruise line associations, were asked to respond to the following questions:

- What international and national laws pertain to security of Americans on board ships traveling outside US territorial waters?
- What types of statistics are kept concerning security incidents on board ships, and how is this data made available to the public?

- How is the public informed about the risks from terrorist or piracy attacks and criminal activity during a voyage?

- What procedures does your organization take in the event one of your ships or a member's ship is attacked by terrorists or pirates?

- What procedures does your organization take after notification a crime has been committed against an American on board one of your ships, or one of your member's ships, outside US territorial waters?

- What types of security standards has your organization established, and what types of security training does your organization offer to ship personnel carrying American passengers?

DISSCUSSION OF HEARING ISSUES

1. What decision-making procedures and processes are in place to determine the extent to which the US government responds to a ship being attacked by terrorists or pirates?

On November 5, 2005, the Seabourn Spirit, a luxury cruise liner with a crew of 160 and over 150 passengers was attacked by pirates 100 miles off the coast of Somalia. There were American passengers on board. The 440-foot-long, 10,000-ton cruise ship, which is registered in the Bahamas sustained minor damage from the attacking pirates who used small arms and rocket propelled grenades to attack the ship. **(Web Resource 7)**

The ship attempted to ram the attackers, used noise devices to fend them off and made a safe getaway. After the incident took place the United States Navy was dispatched to the Seabourn Spirit on November 7, 2005, in order to dispose of unexploded ordnance lodged in the ship. **(Attachment 10)**

A more determined and better armed force might have been able to inflict more damage or could have succeeded in boarding the ship. Although cruise lines are

taking security precautions, they are still vulnerable and may not be as lucky when the next attack occurs and may require assistance.

In the past, Presidential Decision/NSC-27 (PD-27), Procedures for Dealing with Non-Military Incidents, was used to guide interagency decision-making to determine how to respond to an act of piracy or terrorism.
(Attachment 9)

The PD-27 process was recently replaced under the new Maritime Operational Response Plan (MOTR). The new plan enables the US government to quickly assign roles and responsibilities to the appropriate agencies.

The new Global Maritime Intelligence Integration Plan is a classified document. The plan requires agencies to integrate all available intelligence regarding potential threats to US interests in the maritime domain. The United States response to incidents of terrorism and piracy is based on several factors. The location of the vessel, in some cases, could make it difficult for US assets to respond. Additionally, the nation the vessel is flagged under requires an invitation by the host country before the United States may provide assistance. Once permission is received, a recommendation is developed by an interagency group determining how to and to what extent the United States should respond.[2]

Although procedures are in place to make a decision to respond to attacks, American passengers traveling on ships should be aware that the US government may not be able to come to their assistance in a timely manner.

2. What jurisdictional conflicts occur when United States citizens traveling on a foreign flagged vessel are involved in a criminal incident?

"Cruise ships are like floating cities," says a director of security for a cruise line. "Any problem you have in a town you have on a ship." And as in any town, "most criminal incidents aboard a craft are minor," says a security manager for major

[2] Discussions between Subcommittee Staff and representatives of the Federal Bureau of Investigation and US Coast Guard, December 2 and 5, 2005.

cruise line. "They occur when people drink too much and get in fights, lose small items, or have wallets stolen from common areas." **(Attachment 11)**

Issues of jurisdiction can affect how security investigates crimes that occur at sea. A crime can occur among two people of different nationalities on a ship from a third country that is sailing in the territorial waters of a fourth. Cruise ships report most crimes to the Federal Bureau of Investigation (FBI) when US passengers are involved.

In the waters of a foreign country, a crime is also reported to the officials of that nation and to the embassies of the parties involved. The laws of the country whose flag the ship flies do not come into play with regard to criminal issues unless the ship is actually in that country's waters at the time of the incident, but they do come under international law if the country is a signatory to international maritime agreements. **(Attachment 11)**

However, reporting does not mean that anything can be done. International maritime law is not as solidified as US law, and some cases do not result in convictions because of jurisdictional issues.

Cruise lines carrying American citizens instruct the captain and the security manager on each ship of jurisdictional issues and give detailed instructions on whom to contact in case of criminal activity. For example, when American citizens are involved, cruise line security representatives are instructed to contact the FBI when in international waters and the state or local police when in US waters.

When in the Caribbean, incidents are reported to officials at the next port of call. However, guests can bring civil suits against the cruise lines for acts that never face criminal prosecution. To help counter such claims, all cruise lines investigate and track incidents. Cruise ship security then take action based on the information collected. **(Attachment 11)**

Cruise lines have procedures to deal with passengers reported missing. In general, if a guest does not respond to intercom pages and cannot be located by other passengers, a ship-wide search is conducted. If the passenger is still not located the US Coast Guard is notified and the cruise ship will trace the passenger's last known whereabouts, and the time the passenger was at this location. The ship can

then determine the location of the ship in relation to the passenger's last known whereabouts and transmit this information to the US Coast Guard or to the appropriate vessels conducting a search for the missing passenger. **(Attachment 8)**

Certain issues about cruise line travel should be highlighted to passengers. American passengers should be aware that even though they board a ship in a US port it does not necessarily mean they are fully protected by the United States justice system. Most ships are registered outside the United States and travel in territorial waters where US laws might not apply. Additionally, the cruise industry does not report crime data consistently. The governing law, the International Maritime Law, is not as well developed as US law. And finally, reporting a crime on board a cruise ship does not mean anything will be done or that a crime will be investigated. Passengers should be made aware of these issues.

WITNESSES

Panel I

Representative
Department of Defense

Rear Admiral R. Dennis Sirois
Assistant Commandant for Operations
United States Coast Guard
and
Rear Admiral John Crowley
Judge Advocate General
United States Coast Guard

Mr. Chris Swecker
Assistant Director
Criminal Investigation Division
Federal Bureau of Investigation

Panel III

Mr. Michael Crye
President
International Council of Cruise Lines

Mr. Greg Purdy
Director of Security
Royal Caribbean Cruise Lines

Representative
Carnival Cruise Lines

ATTACHMENTS

1. Wikipedia, "United Nations Convention on the Law of the Sea", summary.

2. International Maritime Organization, "Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988".

3. International Maritime Organization, "International Ship and Port Facility Security Code", summary.

4. International Maritime Organization, "The United Nations Convention against Transnational Organized Crime and its Protocols', summary.

5. United States Codes Relating to International Maritime Security.

6. Homeland Security, "National Strategy for Maritime Security Supporting Plans", summary.

7. United Nations, "Charter of the International Military Tribunal".

8. M.C. Move, "Disappearances leave mystery," *Jacksonville Business Journal*, June 2005.

9. Presidential Decision/NSC 27, "Procedures for Dealing with Non-Military Incidents".

10. US Forces Central Command, US 5th Fleet, "US Navy EOD Team Removes Inert RPG Remnant From Cruise Liner".

11. Teresa Anderson, "Maritime Security Cruise Control", *Security Management Online*.

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6. United Nations, "United Nations Convention on the Law of the Sea of 10 December 1982"; available from http://www.un.org/Depts/los/convention_agreements/convention_overview_convention; accessed December 5, 2005.

7. Wikipedia, The Free Encyclopedia, "The Seabourn Spirit" ; available from http://en.wikipedia.org/wiki/The_Seabourn_Spirit; Internet; accessed November 29, 2005.