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The Ebb & Flow of the United States Coast Guard: Our Forgotten Heroes in Times of Crisis

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I. INTRODUCTION

The American public is constantly reminded by advertising that armed forces are protecting their freedoms. It is common to turn on a television or radio and hear “the few, the proud the Marines” or even the newly touted “Army of One” Arguably, however, it is the Coast Guard who are the forgotten heroes who have been protecting our borders for over 200 years.1

The Coast Guard’s motto is “Semper Paratus,” meaning "Always Ready". The United States Coast Guard, (USCG) has participated in every U.S. conflict from landing troops on D-Day and on the Pacific Islands in World War II, extensive patrols and shore bombardment during the Vietnam War, to Operation Iraqi Freedom.2

The Coast Guard is a branch of the “armed forces” of the United States.3 The term “armed forces” included the divisions of the Army, Navy, Air Force, Marine Corps, and Coast Guard.4 Today, the Coast Guard5 is also a component of the U.S. Department of Homeland Security (DHS), unlike any other branches of the military which are components of the Department of Defense.6

The USCG is a multimissioned maritime7 service. Its purpose is to protect the public, the environment, and U.S. economic interests in the Nation’s ports and waterways, along the coast, on international waters, or in any maritime region to support national security.8

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1 See infra notes 10 through 24 and accompanying text.
2 Id. (discussing also Maritime interception operations, coastal security patrols, and law enforcement detachments are the major roles of the USCG in Iraq).
4 10 U.S.C.S. §101; see also http://lpa.org.
5 14 U.S.C.S. §1, The Coast Guard is a service in the Department of Homeland Security, except when operating as a service in the Navy.; see also http://law2.house.gov
6 Id.
7 The maritime domain is defined as all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, and
The broad role that USCG plays in homeland security further includes law enforcement, search and rescue, marine environmental pollution response, and the maintenance of rivers, as well as, intracoastal and offshore aids to navigation.9 As of January 2005, The USCG had approximately 39,000 men and women on active duty; 8,100 reservists; 7,000 full time civilian employees and 35,000 civilian volunteers known as “auxiliarists”.10

This article focuses on some of the United States legal issues surrounding maritime security at our borders. Section II will highlight the history of the USCG from its inception in the 1700’s through its new responsibilities after September 11th 2001. Section III will critic the Maritime Security as it is today, including what measures have been taken under Homeland Security, port security and shipping container security. Section IV outlines the future vision of change which arguably should occur and what the War on Terrorism means to the United States Coast Guard.

II. HISTORY OF THE UNITED STATES COAST GUARD

The History of the USCG has been one of change in both stated purpose and actual duties.

A. 1700’S – REVENUE CUTTER SERVICE

The birth of the Coast Guard dates back, over two hundred and twenty years ago, to the time of George Washington when, Alexander Hamilton created the Revenue Cutter Service.11 This service, the forefather of the modern USCG, was originally created to protect against import

vessels and other conveyances. The maritime domain for the United States includes the Great Lakes and all navigable inland waterways such as the Mississippi River and the Intra-Coastal Waterway.

smuggling. Ten vessels were originally commissioned to protect against piracy and smuggling off the Northeastern seaboard of the United States. During the first ten years, with only 100 personnel, import smuggling was curtailed. This curtailment raised approximately 205 million dollars in import and export fees during the ten years.

Thus, the Coast Guard is the oldest continuous seagoing service and has fought in almost every war since the Constitution became the law of the land in 1789. Following the War of Independence (1776-83), the Continental Navy was disbanded. From 1790 until 1798, when the U.S. Navy was created, the revenue cutters were the only national maritime service. The Acts establishing the Navy also empowered the President to use the revenue cutters to supplement the fleet when needed. This was the beginning of the state of affairs where in times of War the USCG becomes a part of the Navy, just as it is today. Laws later clarified the relationship between the Coast Guard and the Navy.

The Coast Guard traditionally performed two roles in wartime. The first was to augment the Navy with men and cutters. The second was to undertake special missions, for which peacetime experiences have prepared the Cutter Service with unique skills. During the Quasi-War with France (1798-99), eight cutters operated along the U.S. southern coast in the Caribbean Sea, and among the West Indies Islands. The cutter The Pickering made two cruises to the West

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13 Id.
14 Id.
15 Id.
19 Id.
20 Id.
21 Id.
22 Id.
23 Id.
Indies and captured ten prize vessels, one of which carried 44 guns and 200 men, three times her own force.\textsuperscript{24}

Early on, the Cutter Service adopted the broader role of protecting and fostering in addition to regulating maritime transportation and trade.\textsuperscript{25} The Service drove out pirates from our Northeastern seaboard.\textsuperscript{26} This service of protecting the Continental U.S. borders and regulating maritime transportation and trade continues in present day Coast Guard duties.

Slavery was the turbulent issue during the first part of the 19\textsuperscript{th} century.\textsuperscript{27} In 1794, the Cutter Service was ordered to prevent any new slaves from being transported from Africa.\textsuperscript{28} By the Civil War, Cutter Service had arrested numerous slave traders and freed around 500 slaves.\textsuperscript{29} The Cutter Service was charged with the responsibility of securing the ports. Even today, the USCG performs spot checks for illegal immigrants and slaves on inbound cargo vessels at all major U.S. ports.

\textbf{B. 1900\textquotesingle}s – THE REVENUE CUTTER SERVICE BECOMES THE USCG TRIFECTA

In 1915, President Woodrow Wilson combined the Revenue Cutter Service with the Lifesaving Service\textsuperscript{30} and formed the new United States Coast Guard.\textsuperscript{31} This time period represented a major metamorphosis in the development of what we know as the modern day

\begin{itemize}
  \item \textsuperscript{24} Id.
  \item \textsuperscript{25} Id.
  \item \textsuperscript{26} Id.
  \item \textsuperscript{28} http://www.nightbeacon.com/lighthouseinformation/articles/Revenue_Cutter_Service.htm (last visited March 2, 2007).
  \item \textsuperscript{29} Id. A ban on imports was declared by President Thomas Jefferson in 1808 and as a result, cutters closed all ports in the nation.
  \item \textsuperscript{30} Id. The United States Life-Saving Service was a United States government agency that grew out of private and local humanitarian efforts to save the lives of shipwrecked mariners and passengers. It began in 1848 and ultimately merged with the Revenue Cutter Service to form the United States Coast Guard in 1915.
  \item \textsuperscript{31} President Woodrow Wilson signed into law the Act to Create the Coast Guard on January 28, 1915.
\end{itemize}
USCG. Even though the service had a new name, the mission stayed the same as it had since the 1700’s.

1. *The United States Coast Guard*

   In the 1920’s, Prohibition\(^32\) made the United States a "dry" nation.\(^33\) Coast Guard cutters conducted the unpopular "Rum War at Sea."\(^34\) During the early days of Prohibition, the Coast Guard was seriously handicapped by the lack of vessels, particularly fast ones.\(^35\) By 1924, lines of ships were anchored beyond the three mile limit near large U.S. cities off the east coast seaboard, known as “Rum Rows”. These rum runners would off-load their cargoes of alcoholic beverages onto speed boats commonly aimed at cities in Florida carrying rum from the Caribbean.\(^36\) The rum rows increased off the northeastern seaboard as the illegal import of Canadian whiskey increased.\(^37\) This lucrative but dangerous business was often punctuated by murders, hijackings and other violent crimes.\(^38\)

   "Rum Rows" were not only gracing Florida and New York’s doorsteps. Fleets of rum-running craft from broken-down fisherman to freighters of considerable tonnage constantly seemed to hover off the eastern coasts of the United States.\(^39\)

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\(^{32}\) [http://en.wikipedia.org/wiki/Prohibition](http://en.wikipedia.org/wiki/Prohibition) (*discussing* Prohibition, also known as *Dry Law*, refers to a law in a certain country by which the manufacture, transportation, import, export, and sale of alcoholic beverages is restricted or illegal) (last visited March 2, 2007).


\(^{34}\) Rum War at Sea was the common phrase at the time to describe the USCG using law enforcement against Rum boats illegally importing Caribbean Rum into the U.S. see [http://www.nightbeacon.com/lighthouseinformation/articles/Revenue_Cutter_Service.htm](http://www.nightbeacon.com/lighthouseinformation/articles/Revenue_Cutter_Service.htm) (last visited April 4, 2007).; see also [http://law2.house.gov](http://law2.house.gov).

\(^{35}\) Id.


\(^{37}\) Id.

\(^{38}\) Id.

2. The United States Coast Guard Reserve

In 1939, the USCG Reserve was established and composed of unpaid, volunteer U.S. citizens who owned motorboats or yachts. The new reserve assisted the USCG with all of its missions and has continued to do so until the present day.

On July 11, 1941, Congress established the Coast Guard as a branch of both the land and naval forces of the United States. The Coast Guard is the only branch of armed forces to be empowered under both criteria. During the 1940’s – 1990’s the USCG was under the direction of the Treasury Department’s Department of Transportation during times of peace and under the service of the Navy during times of War. Although the president retained the option to place the USCG under the Navy for emergency situations, which could be at times of peace.

3. The United States Coast Guard Auxiliary

In addition, the 1941 statute enacted by Congress created an actual military reserve and renamed the original volunteer reserve to the Coast Guard Auxiliary (Auxiliary). The Auxiliary originally and to this day is composed of U.S. citizens who own motorboats, yachts, aircraft, or radio stations, or those who, because of training or experience, are deemed by the

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40 55 Stat. § 585, see also http://a0920405.uscgaux.info (last visited March 23, 2007); see also http://law2.house.gov.
41 “By the statute enacted July 11, 1941, the Coast Guard was constituted a branch of the land and naval forces of the United States at all times.” 55 Stat. § 585 (former 14 U.S.C.S. § 1); see also http://law2.house.gov (internet from September 6, 2005).
42 “The statute further states that “this section therefore merely continues an existing agency and codifies existing law on the military status of the Coast Guard, substituting "armed forces" for "land and naval forces" because of the recent establishment of the Department of the Air Force as an "armed force" rather than as a part of the "land and naval forces."” The Coast Guard is designated a service in the Treasury Department except when operating as a service in the Navy.” Id.
43 “This is a better definition of the status of the Coast Guard than one which defines it as a service under the Treasury Department [Department of Transportation] in time of peace, because the President is authorized to place the Coast Guard under the Navy in time of emergency, which could be in time of peace.” Id.; see also http://www.division-1.org.
44 14 U.S.C. §822; see also http://a0920405.uscgaux.info (internet from February 6, 2007); see also http://www.division-1.org.
Commandant to be qualified for membership in the Auxiliary. The first aim of the Auxiliary is to assist rescues on the high seas and on navigable waters by utilizing certified volunteers and their vessels to supplement the USCG fleet. The second aim is to indoctrinate all owners and operators of small craft in safety requirements in the operation and navigation of their vessels. These twin aims reflect the distinction which must exist between the preventive and remedial activities of the Coast Guard as the premier maritime safety agency of the Federal Government.

4. Recent Legislation Affecting the Auxiliary.

Although the Coast Guard is a military service and a member of the U.S. Armed Forces, it is also charged with many civil responsibilities in addition to its military missions. During the 1990’s, the main thrust of the Auxiliary and Reserve units was to handle only a few limited civil responsibilities for the USCG.

In the 1990’s, with the downsizing of the U.S. armed forces throughout the country, our borders were at risk. The U.S. already had a relatively small seafaring force and with

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45 14 U.S.C. §823
46 Title 14, United States Code contains the laws of a general and permanent nature about the Coast Guard. The original 14 U.S.C. 822 stated: "The purpose of the Auxiliary is to assist the Coast Guard was to promote safety and to effect rescues on and over the high seas and on navigable waters; to promote efficiency in the operation of motorboats and yachts; to foster a wider knowledge of, and better compliance with, the laws, rules, and regulations governing the operation of motorboats and yachts; to facilitate other operations of the Coast Guard.” Id.; see also http://www.division-1.org.
47 “These aims fell into two major categories stated in a memorandum to Congress accompanying the draft of the proposed bill ultimately enacted as the Act of September 30, 1944, chapter 453, 58 Stat. 759 (1944), stating "The primary purpose of the establishment of the Coast Guard Auxiliary was to indoctrinate all owners and operators of small craft in safety requirements in the operation and navigation of small craft. A secondary purpose of the institution of the Coast Guard Auxiliary was to utilize the Auxiliary craft and personnel, after suitable training and indoctrination, in carrying out certain duties of the Coast Guard with particular reference to those concerned with the safety of navigation." 58 Stat. 759, 78 Cong. Ch. 453(1944); see also http://www.division-1.org.
48 Id.; see also http://www.uscgaux-d8cr.org (internet from November 4, 2002).
49 Operations Policy Manual, COMDTINST M16798.3 (series); see also http://www.uscgaux-d11nr.org.
globalization efforts well under way, the U.S. needed to increase the size of the USCG. On October 19, 1996, Congress answered the problem by signing the Coast Guard Authorization Act into law. This law was the first major legislation affecting the Auxiliary since its establishment in 1939. The major change effected was that all Auxiliarists were now authorized to perform any Coast Guard function while under orders. Ramifications are that, although the Auxiliarists are civilian volunteers, once they obtain orders whether it be for Boating Safely classes or for a Search and Rescue mission, they are considered active duty Coast Guard personnel.

Each Auxiliary organizational element and unit, when acting within the scope of its assigned responsibilities, is deemed to be a U.S. instrumentality for certain matters related to non-contractual civil liability. While assigned to duty, Auxiliarists are considered to be Federal employees. For example, an Auxiliarist may be entitled to the same legal protection afforded other Coast Guard personnel in the event a third party sues the Auxiliarist for claims allegedly arising from acts committed by the Auxiliarist acting within the scope of his/her assigned duties.

Additionally, clarified Auxiliary vessels, while assigned to authorized Coast Guard duty, are deemed to be public vessels of the U.S. and Coast Guard vessels. The Auxiliary aircraft, while assigned to authorized duty, are deemed to be Coast Guard aircraft, public vessels of the U.S. and Coast Guard vessels. Also the qualified Auxiliary pilots while assigned to duty are

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52 Public Law No. 104-324, 110 Stat. 3901; see also http://www.uscgaux-d11nr.org.
53 14 U.S.C. §822; The purpose of the Auxiliary was expanded to read: "The purpose of the Auxiliary is to assist the Coast Guard as authorized by the Commandant in performing any Coast Guard function, power, duty, role, mission, or operation authorized by law"; see also http://www.uscgaux-d11nr.org.
54 14 U.S.C. §822(a).
55 Id.; see also http://www.uscgaux-d11nr.org
56 Id.; see also http://www.uscgaux-d11nr.org
57 14 U.S.C. §§ 827 - 828
deemed to be Coast Guard pilots. 58 All these provisions provide greater liability protection to Auxiliary members while on Coast Guard duty. 59 The purpose of this legislation was to free up the USCG’s civil missions. 60 The results of this change enabled the USCG to focus on the military missions assigned to them. This arguably paved the way to USCG’s much larger role in Homeland Security.

C. NEW MISSIONS FOR THE AUXILIARY AND RESERVE MEMBERS

With the dawn of the new requirements the War on Drugs was “heating up”. 61 President Bush ushered in expanded responsibilities for the U.S. Coast Guard Auxiliarists and the U.S. Coast Guard Reservists. These range from recruitment of high school graduates into the USCG Academy to river, intercoastal, open seas and air patrols. 62 The current missions encompass the civil missions that the USCG were solely responsible for prior to the Twenty-first century. These missions are Academy Introduction Mission, Administrative Support to the Coast Guard, Aids to Navigation, Bridge Administration, Civil Air Patrol Support, Contingency Preparedness, Licensing of Merchant Mariners, Marine Environmental Protection and Safety, Operational Support to the Coast Guard, Port Safety and Security, Public Affairs Support, Recreational Boating Safety, Recruiting, Search and Rescue, Vessel Inspections, and Waterways Management. 63 With the redistribution of responsibilities, the USCG is now able to primarily focus on Maritime Security.

58 Id.
59 Id.
60 Id. In addition, the legislation expanded the Commandant’s authority to use the Auxiliary to assist other federal agencies, state authorities and local governments in areas other than recreational boating safety.
63 Operations Policy Manual, COMDTINST M16798.3(series). When specifically authorized by the Commandant, Auxiliary programs and activities may become international, extending beyond the U.S., its territories and possessions.
This realignment puts the Auxiliary's role entirely within the Coast Guard's civil function responsibilities.\textsuperscript{64} Although the Auxiliary’s role does not extend to any Coast Guard military or direct law enforcement missions, Auxiliarists commonly “ride along” assisting and supporting the overall cutter while the active Coast Guard personnel are on active military and active armed forces service.\textsuperscript{65}

III.\textsuperscript{ }MARITIME SECURITY TODAY

In October 1985, the hijacking of the Italian cruise ship ACHILLE LAURO marked one of the first actual terrorist acts recorded in modern maritime history.\textsuperscript{66} Following that incident, the International Maritime Organization (IMO)\textsuperscript{67} issued measures\textsuperscript{68} to prevent unlawful acts against passengers and crew on board ships.\textsuperscript{69} The IMO, headquartered in London, is a specialized agency of the United Nations which is responsible for measures to improve the safety and security of international shipping and to prevent marine pollution from ships.\textsuperscript{70} IMO is also involved in legal matters, including liability and compensation issues, and the facilitation of international maritime traffic.\textsuperscript{71} IMO was established under the auspices of the United Nations in Geneva on March 17, 1948 and met for the first time in January 1959.\textsuperscript{72} After the ACHILLE LAURO, the IMO Convention with 165 signatory countries ensures that appropriate action is taken against persons committing unlawful acts against ships. Such illegal acts include the seizure of ships by force, acts of violence against persons on board ships, and the placing of

\textsuperscript{64} Id. ; see also \url{http://www.d7oax3.net}.
\textsuperscript{65} 14 U.S.C. §822; see also \url{http://www.d7oax3.net}.
\textsuperscript{66} \url{http://www.imo.org} (last visited March 2, 2007).
\textsuperscript{67} Id.
\textsuperscript{68} Id. (adopting MSC/Circ.443).
\textsuperscript{69} Id.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
devices onboard a ship which are likely to destroy or damage it. The U.S. Coast Guard is responsible for carrying out compliance with these International conventions.

The maritime security issues facing the United States today fall within three distinct levels. First, general security, which encompasses the auspices of the newly created Homeland Security. Second, geographical areas mainly focused at port security which affects all of the nations’ infrastructures. And finally, the specific issues dealing with cargo container security.

A. HOMELAND SECURITY

On March 1, 2003, the USCG was officially transferred from the Department of Transportation to the Department of Homeland Security. The president wanted to heighten the Coast Guard role in national security. Therefore, the missions were separated into non-homeland security missions and homeland security missions. Non-homeland security missions include the civil missions discussed previously that the Auxiliary typically service. Homeland security missions now are defined as those affecting ports, waterways and coastal security, drug interdiction, migrant interdiction, defense readiness, and other law enforcement. Since the September 11th terrorist attacks, Congress has reacted with several new pieces of legislature to outline the new powers and requirements of the USCG Homeland Security missions.

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76 10 U.S.C.S. § 101
77 Id.
78 6 U.S.C.S. §468; See also supra notes 61-65 and accompanying text, The Non-homeland security missions include Coast Guard Marine safety, Search and rescue, Aids to navigation, Living marine resources (fisheries law enforcement), Marine environmental protection, and Ice operations.
79 Id.
1. Maritime Transportation Security Act of 2002

On November 25, 2002, Congress passed the Maritime Transportation Security Act (MTSA) of 2002.\textsuperscript{80} This legislation, adopted from separate bills passed by the House and the Senate, imposes vast security requirements on vessel owners, operators, and U.S. ports and terminals.\textsuperscript{81}

One of the first orders to the USCG under the act was for the service to provide an initial assessment of the facility and vessel vulnerability, to be completed no later than December 31, 2004.\textsuperscript{82} In complying, the USCG conducted an assessment of vessel types and United States facilities on or adjacent to the waters subject to the jurisdiction of the United States to identify those vessel types and United States facilities that pose a high risk of being involved in a transportation security incident”.\textsuperscript{83}

Second, the legislation required a formal written report. The report had to identify all critical assets and infrastructures,\textsuperscript{84} so that each potential target could be analyzed.\textsuperscript{85} After this was completed a detailed vulnerability assessment of the facilities and vessels that might be involved in a transportation security incident was identified. The infrastructures evaluated


\textsuperscript{82} 46 U.S.C.S. § 70102(b); see also http://marad.dot.gov.

\textsuperscript{83} 46 U.S.C.S. § 70102(a); see also http://marad.dot.gov.

\textsuperscript{84} The USA Patriot Act of 2001, defined critical infrastructure as those “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters” 42 U.S.C. § 519 c(e).

\textsuperscript{85} Id.; see also http://marad.dot.gov.
included weaknesses in physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, and contingency response systems.\textsuperscript{86}

Upon completion of the assessment, the USCG provides the owner or operator with a copy of the vulnerability assessment for their facility or vessel.\textsuperscript{87} Further, the Act requires that the USCG update each vulnerability assessment conducted under this Act at least every 5 years.\textsuperscript{88}

After completing the assessment, a security plan was initiated called the National Maritime Transportation Security Plan.\textsuperscript{89} Its sole purpose was for deterring and responding to a transportation security incident.\textsuperscript{90} The National Maritime Transportation Security Plan provided for efficient, coordinated, and effective action.\textsuperscript{91} The Plan included lists of Federal departments and agencies that would be assigned to protect each facility or vessel including what procedures and techniques should be employed to deter a national transportation security incident. The Plan also called for a surveillance and notice system. Additionally, it includes a plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident.\textsuperscript{92} The Plan includes consultation and coordination with the Department of Defense and must be updated at least every 5 years by the Federal Maritime Security Coordinator.\textsuperscript{93}

\begin{footnotesize}
\begin{itemize}
\item 86 Id.
\item 87 46 U.S.C.S. § 70102(b)(2); see also http://marad.dot.gov; see also http://www.epandi.com.
\item 88 46 U.S.C.S. § 70102(b)(3); see also http://marad.dot.gov; see also http://www.epandi.com.
\item 89 46 U.S.C.S. § 70103(a)(1); see also http://marad.dot.gov; see also http://www.epandi.com.
\item 90 Id.
\item 91 Id.
\item 92 46 U.S.C.S. § 70103(a)(2)(a-j); The National Maritime Transportation Security Plan shall be broken into Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under an area director; see also http://marad.dot.gov; see also http://www.epandi.com.
\item 93 46 U.S.C.S. § 70103(b)(2)(g); see also http://marad.dot.gov; see also http://www.epandi.com.
\end{itemize}
\end{footnotesize}
2. **Maritime Transportation Act of 2006.**

At a July 11, 2006 at the press meeting, the President announced that he had enacted the Coast Guard and Maritime Transportation Act of 2006.\(^4\) The Act authorizes USCG funding to carry out and perform all of the functions originally created under the MTSA of 2002.\(^5\)

The Act requires the Coast Guard to work with the IMO and with foreign nations toward specified international objectives.\(^6\) The commitment to internationally secure maritime waters is foremost.\(^7\)

The United States places such importance on the adherence to this Act that they have invoked very serious penalties within the act for anyone in non-compliance. A violation of the Maritime Security Act or the regulations promulgated thereunder may give rise to liability up to $25,000 per violation.\(^8\)

**B. PORT SECURITY**

Port Security is essential to international commercial growth. The continued growth in legitimate international commerce in the maritime domain unfortunately, has been accompanied by growth for criminal purposes.\(^9\) Threats to maritime security come in many varieties. These threats range from the smuggling of people, drugs, weapons, including WMD’s\(^10\), and other contraband, as well as piracy and armed robbery against vessels. Incidents of maritime crime tend to be concentrated in areas of heavy commercial maritime activity. This holds true

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\(^4\) H.R. 889; see also http://www.whitehouse.gov/news/releases/2006/07/20060711-5.html (last visited February 8, 2007).

\(^5\) Id.

\(^6\) Id.

\(^7\) Id.

\(^8\) Id.


\(^10\) The term "weapon of mass destruction" (WMD) is defined in 18 U.S.C. § 2332a(c) as including any destructive device as defined in [18 U.S. Code] section 921...; any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any weapon involving a biological agent, toxin, or vector (as those terms are defined in 18 U.S.C. § 178...); or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life. (citing from http://www.whitehouse.gov/homeland/maritime-security.html#section2 (last visited February 8, 2007).
especially where there is significant political and economic instability, or in regions with little or no maritime law enforcement capacity.\textsuperscript{101} Today’s criminals are usually well organized and well equipped with advanced communications, weapons, and high-speed craft. The capabilities to board and commandeering large underway vessels, demonstrated in numerous piracy incidents, could also be employed to facilitate terrorist acts.\textsuperscript{102}

In the wake of September 11\textsuperscript{th}, the international community recognized the need to protect the international maritime transport sector against the threat of terrorism.\textsuperscript{103} Port security now begins with Maritime intelligence.\textsuperscript{104} The IMO framework responded swiftly and firmly by developing new requirements to the Safety of Life at Sea Convention (SOLAS). The SOLAS is regarded as the predominant IMO treaty.\textsuperscript{105} The new IMO adoptions of December 2002, represent the culmination of cooperation between governments, government agencies, local administrations and shipping and port industries.\textsuperscript{106}

By October 22\textsuperscript{nd}, 2003 the U.S. Coast Guard published a final version of the new comprehensive security regime requirements which entered into full force on July 1, 2004.\textsuperscript{107} This publishing reflected that the new requirements harmonized the Automatic Identification System (AIS) mandates on the SOLAS,\textsuperscript{108} also amended by the IMO, and the MTSA.\textsuperscript{109}

\begin{flushright}
\textsuperscript{101} Id.  \\
\textsuperscript{102} Id. see also http://usaonwatch.com.  \\
\textsuperscript{104} A London- based United Nations organization whose decisions have treaty status in the U.S. and most of the world available at http://www.imo.org (last visited March 2, 2007).  \\
\textsuperscript{105} http://www.navcen.uscg.gov/marcomms/imo/default.htm (last visited February 21, 2007).  \\
\textsuperscript{106} Id. Maritime security is an integral part of IMO's responsibilities.  \\
\textsuperscript{107} Id.  \\
\textsuperscript{108} The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster; available at http://www.imo.org/Conventions/mainframe.asp?topic_id=257&doc_id=647; see also http://maritimecompliance.com/  \\
\textsuperscript{109} 33 C.F.R. §164.46
\end{flushright}
The most far-reaching of which enshrines the new International Ship and Port Facility Security Code, which contains detailed security-related requirements for governments, port authorities and shipping companies in a mandatory section, together with a series of guidelines on how to meet these requirements.\textsuperscript{110}

Under the MTSA, as discussed earlier the Secretary for the USCG (now the Secretary of Homeland Security) is required to implement a system to collect, integrate, and analyze information concerning vessels operating on or bound for waters subject to the jurisdiction of the United States, including information relating to crew, passengers, cargo, and intermodal\textsuperscript{111} shipments.\textsuperscript{112} The MTSA requires vessels, while operating on the navigable waters of the United States, be equipped with and operate an automatic identification system\textsuperscript{113} if the vessel is 65 feet or more in length. However, even if the vessel is shorter than 65 feet, if it is a self-propelled vessel that is on an international voyage it must also comply with the SOLAS.\textsuperscript{114} The system includes a vessel risk profiling component that assigns incoming vessels a terrorism risk rating.\textsuperscript{115}

The terrorism risk rating includes the creation of an automatic identification system (AIS).\textsuperscript{116} This system is analogous to the type of airline tracking system that the Federal Aviation Administration utilizes for all inbound airlines.\textsuperscript{117} The current USCG AIS is a shipboard radar display with overlaid electronic chart data that includes a mark for every significant ship within

\textsuperscript{110} Id.
\textsuperscript{111} Intermodalism involves the integration of different modes of transportation such as rail, road, and sea, by means of a single shipping container. Multimodal systems charge a single through-rate to the shipper and employ a single set of shipping documents regardless of the number of modes or the number of shippers involved. See Richard W. Palmer & Frank P. DeGuilio, \textit{Terminal Operations and Multimodal Carriage: History and Prognosis}, 64 Tul. L. Rev. 281, 283-84 (1989) (addressing the use of multimodal carriage and its advantages and future in shipping).
\textsuperscript{112} 46 U.S.C.S. § 70113(a); see also http://marad.dot.gov; see also http://www.epandi.com.
\textsuperscript{113} http://marad.dot.gov.
\textsuperscript{114} 33 C.F.R §164.03
\textsuperscript{115} Id.
\textsuperscript{117} Id.
radio range and includes a velocity vector. Each ship "mark" reflects the actual size of the ship, with position to GPS or differential GPS accuracy. By "clicking" on a ship mark, you can learn the ship name, course and speed, classification, call sign, registration number and other information. AIS gives maneuvering information, closest point of approach, time to closest point of approach and other navigation information, more accurate and timelier than information available from an automatic radar plotting aid.

Besides the length requirement, another part of the required AIS divides the vessels into classes. Typical cargo vessels that travel from port to port would fall under a Class “A” description. A Class “A” AIS unit broadcasts information every two to ten seconds while underway, and every three minutes while at anchor. The information broadcasted includes the MMSI number, the navigation status, the rate of turn, speed over ground, position accuracy, longitude, and latitude, course over ground, true heading, and the time stamp based on universal time to nearest second that this information was generated.

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119 Id. (discussing what each mark would look like on the screen).
120 Id.
121 Id.
123 Id.
124 Maritime Mobile Service Identities are formed of a series of nine digits which are transmitted over the radio path in order to uniquely identify ship stations, ship earth stations, coast stations, coast earth stations, and group calls. These identities are formed in such a way that the identity or part thereof can be used by telephone and telex subscribers connected to the general telecommunications network principally to call ships automatically, available at http://www.navcen.uscg.gov/marcomms/gmdss/mmsi.htm.
125 As defined "at anchor," "under way using engine" or "not under command" would be reported
126 Right or left, 0 to 720 degrees per minute (input from rate-of-turn indicator).
127 1/10 knot resolution from 0 to 102 knots
128 Differential GPS or other and an indication if (Receiver Autonomous Integrity Monitoring) RAIM processing is being used
129 to 1/10000 minute
130 to 1/10000 minute
131 Relative to true north to 1/10th degree
132 0 to 359 degrees derived from gyro input
133 Hesse and Charalambous, see supra note 103 at 138.
By receiving this information at least every three minutes, the USCG is able to track
expected in bound vessels accurately. By knowing the “expected” vessels, any unexpected
vessels can be determined as a potential terrorist threat within seconds.

In addition, these Class “A” AIS units broadcast an additional laundry list of information
every six minutes, all of which are critical to determining a potential security risk. Every six
minutes the AIS broadcasts the MMSI number again, the IMO number, the radio call sign,
the name of ship, the type of ship or its cargo, the dimensions of ship, location on ship where
reference point for position reports is located, type of position fixing device, the draught of
ship, the destination and the estimated time of arrival at destination including the month, day,
hour, and minute in universal time.

This information is vital to intercepting a potential transportation threat. For example, a
ship could leave Singapore, filing a correct float plan and having all of the cargo listed on its
Bill of Lading. However, the ship could stop over at several small countries or islands along
its eventual path to the U.S. ports.

By tracking all of this required information about the ship, any unusual changes in the
ship, its freight or how she is traveling can be determined long before entry into its designated
destination port. At first blush, it might be difficult to recognize why determine the draught of a
ship. However, the draught among other things indicates to an experienced examiner the amount

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134 Id.
135 Id.
136 Unique referenceable identification related to ship's construction.
137 International call sign assigned to vessel, often used on voice radio.
138 The IMO has a table of possibilities that are available.
139 Various options from differential GPS to undefined
140 1/10 meter to 25.5 meters [note "air-draught" is not provided]
142 A float plan is a listing of all the designated destination stops for a vessel available at: http://www.floatplan.com.
143 Bills of Lading are defined as the document issued on behalf of the carrier describing the kind and quantity of
goods being shipped, the shipper, the consignee, the ports of loading and discharge and the carrying vessel available
of cargo that a ship is carrying. For instance, if a ship stops in an unexpected small port in the South Seas and picks up illegal cargo, these items could be detected by the time delay or the drop in the draught of the ship. Further by changing or adding to the cargo the estimated time of arrival at the destination port would also change.

All of the ongoing information required by the Automatic Identification System can be used by ports all over the world. This information will ensure that ports are secure and that the potential of a port security incident is minimized. The AIS focuses on vessels that pose a high security threat. And in doing so, it assists the USCG to focus on protecting the U.S. port security in terms of a potential breach of cargo container security.

C. CONTAINER SECURITY

Although the Maritime Security Act primarily focuses on vessel and port security, a subject of equal and perhaps greater concern is container security.

Each year in the United States eight thousand ships make fifty-one thousand port calls and deliver approximately seven and a half million overseas containers.\(^{144}\) Of those seven and a half million containers, only two percent are actually inspected.\(^{145}\) Each inspection takes an average of three hours per container.\(^{146}\) The inability to verify the contents of containers and the general lack of inspection suggests that containers could be used by terrorist organizations as an


\(^{145}\) See Allison Dunfield, Billions More Urged for the Military, Globe & Mail, (Mar. 1, 2002) (explaining that this rate of inspection is not abnormal in comparison to other Western countries and that Canada inspects approximately three percent of its containers). U.S. Customs Commissioner Robert C. Bonner takes issue with the criticism of the two percent inspection rate and he maintains that the two percent screening is more effective than critics suggest because it is based on a "multi-layered strategy of risk management" that targets high-risk containers. See Robert C. Bonner, Speech Before the Center for Strategic and International Studies at 6 (Jan. 17, 2002) [hereinafter CSIS Speech], available at http://www.customs.gov/about/speeches/speech0117-02.htm (last visited February 2, 2007)

\(^{146}\) Id.
effective means to transport weapons of mass destruction into ports or even as a means for terrorists themselves to circumvent immigration control.\textsuperscript{147}

1. \textit{History of Container Security}

Over the centuries, many attempts have been made to simplify and improve the handling of marine cargo.\textsuperscript{148} Success was achieved with bulk commodities by replacing casks and barrels with vessels specifically designed to transport oil, coal, and grain.\textsuperscript{149} However, for many years very little progress occurred in the area of general cargo.\textsuperscript{150} Until the mid-1950s, general cargo was handled break-bulk style.\textsuperscript{151} Packages were loaded onto trucks or rail cars at the factory and then transported to a port and unloaded.\textsuperscript{152} Each parcel was then hoisted onboard a vessel and braced for an ocean crossing.\textsuperscript{153} Once the ship arrived at its destination, the entire process would occur again in reverse.\textsuperscript{154} This system was highly inefficient, created multiple opportunities for theft, and often resulted in the cargo arriving damaged or destroyed.\textsuperscript{155}

After World War II, economic necessity dictated a need for a more efficient handling of general cargo.\textsuperscript{156} The revolution occurred in the mid-1950s when Malcolm McLean,\textsuperscript{157} owner of a North Carolina trucking firm, purchased a small shipping line and implemented a system of

\begin{thebibliography}{9}
\item Palmer & DeGiulio, \textit{see supra} note 111, at 285-86 (discussing developments in general cargo)
\item Chadwin et al., \textit{see supra} note 149 (explaining break-bulk style cargo handling)
\item Id.
\item Id.
\item Id.
\item Id.
\item Id. (discussing societies need for a better cargo solution).
\end{thebibliography}
"containerization."\textsuperscript{158} McLean believed that by moving the entire trailer instead of individual packages, the goods would only have to be handled twice; once at the factory door and then again at the door of the recipient.\textsuperscript{159} The implementation of this new system of containerization created positive economic benefits for both shippers and ship owners.

However, today the very efficiency of containerized systems makes them a potential security threat. Further, the lack of transparency in modern multimodal systems helps immunize cargo from theft,\textsuperscript{160} but at the same time, it creates an enhanced security risk.\textsuperscript{161}

2. Container Risk Today

Daily from around the world thousands of metal case containers the size of school buses arrive at America's docks. These containers account for 95 percent of America’s goods from overseas.\textsuperscript{162} They are crane-hoisted off cargo ships. Usually with no inspection, the containers are then fastened onto trucks or trains and are dispersed throughout the country. Many experts think the next terrorist attack could arrive in a container.\textsuperscript{163} Officials fear that terrorists could pack a chemical, biological or radiological weapon into a crate, and slip it into a metal container holding other goods. It would then be stacked with thousands of other identical containers on a

\textsuperscript{158} Chadwin et al., \textit{see supra} note 149 at 1-2 (discussing the innovations of McLean). Though McLean came up with his idea for containerization in 1937, he did not implement it until the 1950s when he purchased the Pan-Atlantic Steamship Company. In 1956, McLean converted a World War II tanker named Ideal X to carry freight by rigging fifty-eight containers to the ship's deck. The new system proved successful and he subsequently changed the name of the company to Sea-Land Service Inc. The company developed into one of the world's largest container shipping lines and was eventually sold to R.J. Reynolds in 1969; \textit{see also} Wolfgang Saxon, Malcom McLean Container-Shipping Pioneer, San Diego Union-Tribune, May 19, 2001, at B7 (remembering highlights of the life of Malcom McLean), available at 2001 WL 6463326; \textit{see also} All Things Considered: Interview with Paul Richardson (NPR radio broadcast, May 29, 2001) (discussing the life and career of Malcom McLean), available at 2001 WL 9434939. (last visited February 27, 2007).

\textsuperscript{159} Chadwin et al., \textit{see supra} note 149 at 1 (discussing McLean's innovations)

\textsuperscript{160} \textit{See When Trade and Security Clash}, Economist, Apr. 6, 2002, at 59, 60 (recognizing that while containerization initially reduced petty theft, it appears to have increased by a considerable amount the value of those thefts that do occur), available at 2002 WL 7245753. In other words, containerization has promoted criminal efficiency. Id. at 60.

\textsuperscript{161} Id.


\textsuperscript{163} Id.
U.S.-bound cargo ship. In June of 2002, Joe Angelo, Coast Guard director of standards, told more than 100 maritime officials that the potential use of these containers by terrorists is very real.

Detonated at a major port like Newark or Los Angeles, a weapon in a container could threaten millions of nearby residents, contaminate waterways, adjacent airports, highways and rail lines and cripple the trade-dependent U.S. economy by forcing a port shutdown. Hans Binnendijk, a National Defense University professor who has briefed officials on the danger of weapons in a container stated that “everything would just halt.” It is easy to imagine that such an event would paralyze trade by forcing inspection of containers on all other ships. Arguably, ports around the globe shipping any cargo to the U.S. would be forced to inspect containers prior to departure, just as passenger and airline baggage inspections have been implemented since 9/11.

More unnerving, was Stephen Flynn’s statement that such a container would have virtually no risk of being intercepted. Container Security is the soft underbelly of globalization. A basic problem is that shipping is fully international. The U.S.’s emphasis on efficiency marginalizes security as a costly impediment.

Further perpetuating the risk of a container security breach is the container packing industry. Many are looking to improve security by having closer inspections where containers

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164 Id.
165 Id. (Discussing new shipping security regulations the Coast Guard will propose, including the possibility of more container inspections).
166 Id.
167 Id.
168 Id.
169 Stephen Flynn is a Coast Guard commander and senior fellow at the Council on Foreign Relations.
170 Id.
171 Id. (discussing that few ships are actually flagged in the United States).
172 Id.
are packed, conceding that mass inspection during off-loading is impossible and perhaps meaningless.\textsuperscript{173} Today, the container-packing industry is an unregulated global labyrinth.\textsuperscript{174} More than 500,000 outfits around the world are in the packing business, many of them mom- and-pop operations that receive goods from obscure outposts.\textsuperscript{175} "Things originate from Timbuktu."\textsuperscript{176}

Terrorists could arguably buy an established exporter and pack chemical agents into a U.S. bound shipment whose otherwise licit contents would raise no alarms.\textsuperscript{177} In fact, reports and court testimony have indicated that Osama bin Laden, believed by the United States to have masterminded the September 11\textsuperscript{th} attacks, covertly owns a shipping fleet.\textsuperscript{178} It is known he used a cargo ship in 1998 to deliver supplies to suicide bombers in Kenya who destroyed the U.S. embassies in Kenya and Tanzania, killing more than 220 people, including 12 Americans.\textsuperscript{179} In October 2003, a suspected al-Qaida terrorist was found settled in a 40-foot container, complete with a bed, toilet and heater, ready for a ship voyage from Italy to Toronto.\textsuperscript{180}

Many ports surround major metropolitan areas creating an even greater risk. In the New York-New Jersey port\textsuperscript{181}, if something detonates in the port, the potential to not only destroy the

\textsuperscript{173} Thomas Frank, see supra note 162.
\textsuperscript{175} Stephen Flynn, see infra note 189.
\textsuperscript{176} Thomas Frank, see supra note 162.
\textsuperscript{177} Id.
\textsuperscript{179} Id.
\textsuperscript{180} Id.
\textsuperscript{181} Id. (explaining that the Port of New York & New Jersey, handling nearly one-fifth of the nation's shipment containers, ranks third in container traffic, after Port of Long Beach and Port of Los Angeles. Through the 361 coastal and inland ports in the United States, 5.7 million shipment containers went through U.S. ports in 2001, most of them 40-feet long. In 1989 there were only 2.7 million containers, showing almost doubling numbers in the last decade. However, fewer than 2 percent of the containers are inspected by U.S. officials).
port but a major rail line, highway and airport are extremely high.\textsuperscript{182} Robert Bevelacqua, a maritime security consultant in Arlington, Virginia, fears terrorists sinking a ship in a narrow commercial channel to block vital imports such as oil which arrives largely by tanker.\textsuperscript{183}

In 2002, many envisioned creating security standards under which containers would be packed, sent to cargo ships and brought to U.S. ports.\textsuperscript{184} Containers that met the standards would be swiftly unloaded; others would face costly delays from inspections.\textsuperscript{185} The United States could simply impose container-security standards for any incoming shipment, as it did after the Exxon Valdez spill by requiring all oil tankers unloading in U.S. ports to be double-hulled.\textsuperscript{186} However, the Coast Guard fears that such unilateral action would weaken the United States in the IMO and possibly lead others, such as the European Community, to impose its own standards.\textsuperscript{187} The best way to enhance worldwide maritime security is to accomplish it at the international level.\textsuperscript{188}

3. \textit{Container Security Initiative}

The lack of container transparency was further emphasized in a hypothetical posed by Commander Stephen Flynn of the U.S. Coast Guard right after the September 11\textsuperscript{th} attacks. His hypothetical posited a situation in which a terrorist organization wanting to deliver a weapon of mass destruction by container could purchase an overseas exporter with an established trade record with the United States and use the shipper as a front.\textsuperscript{189} He hypothesized that a container could have a global positioning system device so it could be tracked as it moved through

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{182} Bethann Rooney, a security manager for the Port Authority of New York and New Jersey. \textit{Id}.
\item \textsuperscript{183} \textit{Id}.
\item \textsuperscript{184} Thomas Frank, \textit{see supra} note 162.
\item \textsuperscript{185} \textit{Id}.
\item \textsuperscript{186} \textit{Id}.
\item \textsuperscript{187} \textit{Id}.
\item \textsuperscript{188} \textit{Id}.
\item \textsuperscript{189} Stephen E. Flynn, \textit{Homeland Security is a Coast Guard Mission}, U.S. Naval Institute Proceeding, Oct. 2001, at 72, 73 (explaining the Coast Guard's ability to defend the United States against attacks at vulnerable ports), available at 2002 \textit{WL} 8246696. (last visited February 2, 2007).
\end{itemize}
\end{footnotesize}
Singapore or Hong Kong to intermingle with the more than five hundred thousand containers moved by each of these ports every month. A container could arrive in the United States via Long Beach or Los Angeles and be loaded directly on a railcar for the transcontinental trip. Current regulations do not require an importer to file a cargo manifest with the U.S. Customs Service until the cargo reaches its entry port.\(^\text{190}\) As an example that could be Newark which is 2,800 miles of U.S. territory away from where it first entered the country. A further problem is that the importer is permitted 30 days' transit time to make the trip to the East Coast.\(^\text{191}\) One can easily imagine the millions of foreseeable problems with the current system.

Flynn points out one possibility that the container could then be detonated at a major rail hub, such as Chicago, producing a continent-wide disruption of transportation that would have devastating economic results.\(^\text{192}\)

In order to ensure that Flynn’s hypothetical does not come to fruition, the United States Government has developed and implemented a cargo container security strategy to identify, target, and inspect cargo containers before they reach U.S. ports.\(^\text{193}\)

The two entities responsible for cargo container security are the Bureau of Customs and Border Protection ("CBP") and the United States Coast Guard. The Coast Guard coordinates its efforts with the Department of Homeland Security ("DHS") and CBP to ensure the security of ports, waterways and maritime borders. Its role with the DHS continues to include protecting ports, the flow of commerce, and the marine transportation system from terrorism; maintaining maritime border security against illegal drugs, illegal aliens, firearms, and weapons of mass

\(^{190}\) 19 U.S.C. §1431.
\(^{191}\) Id.
destruction; and ensuring that the United States can rapidly deploy and resupply its military
assets, both by keeping Coast Guard units at a high state of readiness, and by keeping marine
transportation open for the transit of assets and personnel from other branches of the armed
forces.\footnote{United States Coast Guard, The Coast Guard & Homeland Security, available at:
http://www.uscg.mil/hq/g%2Dcp/history/homeland%5Fsecurity.html (last visited February 25, 2007),
explaining additional requirements include protecting against illegal fishing and indiscriminate
destruction of living marine resources, prevention and response to oil and hazardous material
spills, both accidental and intentional; and coordinating efforts and intelligence with federal,
state, and local agencies).}

Because the Coast Guard occupies such a unique role within the concept of Homeland
Security its capabilities are extremely relevant, valuable, and needed for Maritime Homeland
Security, whether the threat is termed a military or terrorist attack.\footnote{The U.S. Coast Guard,
Using the intelligence gathered under the Container Security Initiative, (CSI) the USCG reviews
information on all cargo entering U.S. ports.\footnote{Id.} Any cargo that presents a risk to the United States is inspected using
The CSI continually updates security criteria for identifying high-risk containers based on advance information, pre-screening containers at
the earliest possible point, using the latest technology to quickly pre-screen high-risk containers
security/international activities/csi/csi in brief.xml (last visited February 25, 2007).}
which transmit shipment data via radio frequencies and
indicate whether the containers to which the seals are attached have been tampered with.\footnote{Thomas J. Schoenbaum & Jessica C. Langston, An All Hands Evolution: Port Security in the Wake of September 11th, 77 Tul. L. Rev. 1333, 1349 (2003).}
Because it is too late if a terrorist device gets to a port in the United States, the U.S. has been spending millions of dollars to secure our ports.\textsuperscript{201} As of fiscal 2005, the New York-New Jersey port has been awarded over $77 million to secure its facilities.\textsuperscript{202} Port Los Angeles, the largest container port in the U.S in Long Beach, California has received over $91 million for similar work.\textsuperscript{203}

An additional core element of CSI is overseeing foreign ports. United States custom officials are placed at foreign seaports to oversee the security procedures of those ports and to work with the foreign officials posted there.\textsuperscript{204}

Additionally, the United States Government requires that advance information about all containers be given to U.S. Customs and Border Protection 24 hours before cargo is loaded onto vessels at foreign seaports (24-Hour Rule).\textsuperscript{205} Containers posing a potential terrorist threat are identified and targeted before they arrive at U.S. seaports by the National Targeting Center ("NTC").\textsuperscript{206} The NTC was established as the centralized coordination point for all anti-terrorism efforts.\textsuperscript{207} The NTC uses intelligence and terrorist indicators from the above discussed scenarios to review advance information\textsuperscript{208} for all cargo, passengers, and imported shipments before arrival into the United States.\textsuperscript{209} The NTC then coordinates this intelligence with all relevant federal

\textsuperscript{201} Id. (Rob Quartel, a former U.S. Maritime Commission member, now chairman of FreightDesk Technologies explaining FreightDesk Technologies, is a freight logistics company).
\textsuperscript{202} Michael Chertoff: \textit{(discussing} budgetary issues with the American Association of Port Authorities at a conference on March 20, 2007), \textit{available at} \url{http://www.dhs.gov/xnews/speeches/sp_1174503082769.shtm}. \textit{(last visited March 24, 2007)}.
\textsuperscript{203} Id.
\textsuperscript{205} \url{http://www.whitehouse.gov/homeland/maritime-security.html#section2}.
\textsuperscript{207} Id.
\textsuperscript{208} Id. \textit{see also} \url{http://usaonwatch.com}.
\textsuperscript{209} Id.; \textit{see also} \url{http://marad.dot.gov}; \textit{see also} \url{http://www.epandi.com}. 
agencies such as the USCG, Federal Air Marshals, FBI, Transportation Security Administration, as well as the intelligence community.\textsuperscript{210}

By providing specific intelligence to all the affected federal agencies, the containers entering at America’s ports comply with security levels required under the Homeland Security initiatives.\textsuperscript{211} Today the CSI initiative is being widely accepted across the globe.\textsuperscript{212}

Approximately 47 countries have endorsed and implemented CSI procedures at their ports.\textsuperscript{213}

**IV. FUTURE VISION**

By April 1, 2007, the USCG was required to develop and implement a long-range automated vessel tracking system for all vessels in United States waters that are equipped with the “Global Maritime Distress and Safety System or equivalent satellite technology.”\textsuperscript{214} This requirement is consistent with international treaties, conventions, and agreements to which the United States is a party.\textsuperscript{215} However, the USCG was ahead of the deadline when it created the AIS system, which satisfied all of the requirements and even provided a few additional safeguards that were not required.

Staying ahead of the international threats is always a main focus of the USCG. Accordingly, the USCG continues to represent the U.S. at meetings of the IMO.\textsuperscript{216} The IMO committee responsible for maritime safety is, the Maritime Safety Committee.\textsuperscript{217} The Coast Guard holds public advisory meetings, called Shipping Coordination Committee and Safety of

\begin{footnotesize}
213  Id.
214  46 U.S.C.S. § 70115
215  46 U.S.C.S. § 70115
217  Id. discussing the two subcommittees under the MSC are responsible for maritime communications and radio navigation, the Radio communications and Search and Rescue Subcommittee and the Safety of Navigation Subcommittee, meet about once per year).
\end{footnotesize}
Life at Sea working group meetings, in Washington DC in preparation for the IMO meetings in London to ensure that all concerns are well documented prior to the meeting.218

A. A RETURN TO THE PAST

The goals at the international level are reminiscent of times from the past. The USCG a century ago had the duty of finding the rum smugglers, now the mission entails curtailing the ability of criminals to smuggle WMD and terrorists into our borders. The stakes are higher now, the threats more real. However, the jobs for the USCG have not changed only the tools and the players are different.

With the growth of the international community, there must be one plan; a plan that is utilized throughout the globe. The United States commerce could be devastated by terrorist activities in other nations. Americans saw a sharp dip in the economy when Iraq set fires to oil wells during the first Iraq war or even when the bombers where randomly blowing up metro trains in London. These events affected the economy even though they were not incidents against product transportation. Arguably the effect on the economy would be even worse if the incidents directly dealt with transportation of goods.

The smooth operation of the global economy depends on the free flow of shipping through straits used for international navigation. In the past few years shipping lanes have solidified.219 Now about one third of the world's trade and half its oil traverse the Straits of Malacca and Singapore.220 Just like its counterparts, the Delaware and the Mississippi Rivers of the past, these waterway thoroughfares are vital to commerce.221 For this reason the Coast Guard must ensure commerce safety. Like the Straits of Malacca, many of these key international

218 Id.
220 Id.
221 See supra notes 7-21 and accompanying text.
waterways are relatively narrow and could be closed to shipping, at least temporarily, by an accident or a terrorist attack.\textsuperscript{222}

The USCG’s work now affects the globe. By joining forces and implementing mandatory deadlines with the IMO, the USCG is ensuring a safer and more stable economic tomorrow. With limited economic and physical forces, the USCG must make changes to accomplish their needed goals. This author proposes utilizing the strength of the trifecta; Team Coast Guard. The Homeland Security missions would be handled by our full time active USCG personnel. These members would have the full time duty of maintaining safety on our waterways while the Reservists and the Auxiliarist would exclusively maintain the civil side of the trifecta.

1. \textit{Coast Guard proposed future focus}

The USCG must remain steadily focused on the Homeland Security missions only. Traditionally, Congress has stated that these include: ports, waterways and coastal security, drug interdiction, migrant interdiction, defense readiness, and other law enforcement.\textsuperscript{223} However, the U.S. has other national agencies that are responsible for some of these missions. A realignment of missions would better affect the overall maritime security community. Installing one or two agents from different agencies onboard the USCG vessels would give greater breadth to the law enforcement coverage. For example, the drug interdiction is and should be solely focused within the Drug Enforcement Agency (DEA). DEA agents should be onboard USCG vessels to provide their own checks. Then if any drugs were found, the crime scene should transfer to DEA hands, releasing the USCG vessel to go onward to other vessel checks. The same could be said with the mission of migrant interdiction. The U.S. agency that should have sole responsibility for this mission is the U.S. Customs and Boarder Patrol (CPB). CBP could also have an agent on board.

\textsuperscript{222} http://www.whitehouse.gov/homeland/maritime-security.html#section2 (last visited March 2, 2007); see also http://usaonwatch.com.

\textsuperscript{223} Id.
the USCG vessel and respond in the same way as the DEA agent would with drugs. While the
USCG members were checking documents and cargo manifests, the CBP could be looking for
immigrants and the DEA agents for drugs. By having all three agents focusing on their duties, it
would allow for a speedier and more thorough stop. Further, by transferring the detail to the
appropriate agency, once DEA or CBP forces arrived if an incident was found, the USCG vessel
would be release to head on to further Homeland Security missions.

As part of the “other law enforcement” mission the Coast Guard should continue with its
Sea Marshall program. The Sea Marshals are armed Coast Guard officials who board high-risk
vessels as they come into port to make sure that the vessels are not overtaken by terrorists and do
not pose an unacceptable threat.224 The screening of the information received from the 24-Hour
Rule can only do so much. The U.S. must take the extra precaution of putting Sea Marshals on
board ships entering the U.S.225 One of the high-risk vessels that Sea Marshall’s should continue
to board routinely is cruise ships. Cruise ships are a high-consequence target therefore remain an
attractive target for someone who wants to commit a terrorist act.226

Transferring these missions to the agency with the most expertise would leave ports,
waterways, coastal security, and defense readiness missions solely to the Coast Guard. By
limiting the duties and missions required by the limited USCG personnel would allow focused

224 Id.
225 Poulin, 12 U.S.-Mex. L.J at 93.
226 Id.
2. **Coast Guard Reserve and Auxiliary take over new roles**

USCG Reservists and Auxiliarists must share the non-homeland security missions. These include marine safety, search and rescue, aids to navigation, living marine resources, marine environmental protection, and ice operations.²²⁷

Notwithstanding the defense readiness, which all trifecta members must regularly train for, this author proposes a splitting of the forces. Focusing the attention of the Reservists and the Auxiliarists, the duties will become practiced and a concentration of knowledge can occur. During my years within the Auxiliary, it has been noticed that there is simply too much to do. Normally this would not be a problem. However, the USCG rightfully enforces required training prior to commencing any missions. Thus, it takes a new Auxiliarist a long time before they can become useful in many mission areas. For example, in order to become certified as an Auxiliary crewman²²⁸ one must take a 12 week class and pass two tests, one on dry land and one on the open water. It is not uncommon for this program to take 6 to 8 months for each crewmember to complete. Alternatively, there are a few missions within the Auxiliary that a new Auxiliarist can achieve within just a couple of weekends. One such mission would be learning how to teach a Boaters Safety course.

Obviously there are other missions that few Auxiliarists are actually trained for, like ice operations. The members who are trained in this mission either live in the Northwest seaboard near Washington or Alaska or have previous served in the USCG or in the USCG Reserves. Thus it would be more effective if the USCG Reservists would take control and maintain the missions that require higher levels of ongoing training. The missions requiring this level of advanced training would include living marine resources, marine environmental protection, and ice

²²⁷ Palmer & DeGiulio, *see supra* note 111 at 283.
²²⁸ A crewman is one who can go out on search and rescue missions, *available at* Operations Policy Manual COMDTINST M16798.3 (series).
operations. The missions that can be achieved through long-term or sporadic education should transfer exclusively to the Auxiliary. Sole responsibility for the non-homeland security missions of marine safety, search and rescue, and aids to navigation should be handled by the Auxiliary.

Additionally, each group would be responsible for their own recruitment. By placing a directed focus on each of the trifecta’s missions, each group would become extremely knowledgeable about their mission and their needs. This would ensure continued growth and improvements for their mission’s effectiveness and economic standings.

B. WAR ON TERRORISM

The United States looks on a new century, a new millennium, full of hope and promise. However, significant challenges, risks, and uncertainties will undoubtedly accompany the opportunities that lie ahead.229 Nowhere will the complex mosaic of activity be more profound than in the nation’s waterways, the inland rivers, ports and harbors, coastal areas, and offshore maritime regions that serve as arteries for trade, sources of food and natural resources, playgrounds for recreation, and national borders. But a host of transnational dangers including international terrorism will continue to tax America’s maritime security, demanding action from a broad spectrum of agencies.230

Security needs will continue to rise as the international trade market increases. In the coming years, America will become more dependent upon international trade, the vast majority of which will be transported on the water.231 U.S. maritime trade will double, if not triple, by 2020.232

230 Id.
231 Id.
232 Id.
New initiatives are needed to ensure that all nations fulfill their responsibilities to prevent and respond to terrorist or criminal actions with timely and effective enforcement. More robust international mechanisms will ensure improved transparency in the registration of vessels and identification of ownership, cargoes, and crew of the world's multinational, multi-flag merchant marine. Weak regulations and enforcement by some nations hinder transparency. Terrorists and criminals are currently exploiting this vulnerability by re-registering vessels under fictitious corporate names, and renaming and repainting vessels. New initiatives should be pursued diplomatically through international organizations such as the IMO, the World Customs Organization, or the American Association of Port Authorities that already involve strong participation within the maritime industry. Where appropriate, these initiatives must build upon existing efforts, such as the CSI, the International Code for the Security of Ships and Port Facilities, and the 2002 amendments to the International Convention for the Safety of Life at Sea. Initiatives should be coordinated by the Department of State and should include provisions such as implementing standardized international security and World Customs Organization frameworks. These standards must ensure that goods and people entering a country do not pose a threat.

Transparency must be accomplished by expanding the use of modernized and automated systems, processes, and trade-data information. Additionally, vessel registration, ownership, and operation, as well as crew and cargo identification must be readily available in a timely manner. Transparency must be at the forefront of all our initiatives. Countries must work together to develop and expand means for rapid exchanges among governments. Countries must be willing to release relevant intelligence and law enforcement information concerning suspected

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233 Id.
234 See supra notes 156-193 and accompanying text for discussion of transparency in containerization.
terrorist or criminal activity in the maritime domain. Once intelligence has been gathered, the governments must be prepared to implement procedures for enforcement action against all vessels entering or leaving a nation's ports, internal waters, or territorial seas when they are reasonably suspected of carrying terrorists, criminals or supporting a terrorist or criminal endeavor. Further, adopting streamlined procedures to verify nationality and take appropriate and verifiable enforcement action against vessels in a timely manner consistent with the well-established doctrine of exclusive flag State jurisdiction\(^{235}\) must be steadfast among all nations.\(^{236}\) Adopting streamlined procedures for inspecting vessels reasonably suspected of carrying suspicious cargo and seizing such cargo when it is identified as subject to confiscation must be a global cooperative to ensure stabilized security.\(^{237}\)

To meet requirements in the 21st century, Coast Guard units must operate as a highly mobile, flexible system that responds to mission priorities based on extensive use of information, intelligence, and communications.\(^{238}\) Consequently, the ad hoc mix of aging assets in use today, which include aircraft, cutters, boats, stations, and command centers, some of which date back to World War II, must be integrated to meet mission requirements.\(^{239}\) Satellites and sensors must also provide real-time information allowing total visibility in maritime regions.\(^{240}\) Vessel and harbor networks, command centers, and communications systems will contribute to a world-class waterways management system under Coast Guard leadership.\(^{241}\)

\(^{235}\) If the vessel is in waters under the jurisdiction of the flag State, the responsibility of the flag State is exclusive.\(^{236}\) http://www.whitehouse.gov/homeland/maritime-security.html#section2 (last visited March 2, 2007); see also http://usaonwatch.com.\(^{237}\) Id.\(^{238}\) http://www.uscg.mil/history/coastguard2020.pdf (last visited March 2, 2007).\(^{239}\) Id.\(^{240}\) Id.\(^{241}\) Id.
The United States should continue to improve the capabilities of current programs and develop new capabilities and procedures to find and track maritime threats and illicit activities.\textsuperscript{242} Expansion and enhancement of USCG systems must be used to initiate and obtain maximum domain awareness. New capability systems should include both short and long-range vessel detection and monitoring capabilities and regulatory and private sector initiatives and agreements to enhance advance notices of arrival, vessel movement information, supply-chain security practices, and manifest and entry information for cargo; international arrangements that promote enhanced visibility into the maritime supply chain and the movement of cargo, crews, and passengers; sensor technology, human intelligence collection, and information processing tools to persistently monitor the maritime domain; and international coalitions to share maritime situational awareness on a timely basis.\textsuperscript{243}

By placing these additional capabilities to current systems, the members of the USCG will be infusing the transparency that is desired to ensure an internationally secure maritime system. Further, by adding all of these additional requirements the USCG will be creating a layering of security. The recognition of the fact that no security security system is bullet proof, whether it is American ports or ports around the globe is foundational to a global society.\textsuperscript{244} This system could then be followed by other countries. The technology should especially be shared with smaller growing countries. The only way to ensure maritime security is to provide every port comparable security systems. If a port is left vulnerable, then terrorists will arguably use it to hurt their targets. In today’s global economy, and manufacturing based on “just-in-time” supplies, one port down will affect the entire international maritime community.

\textsuperscript{242} Id. see also http://usaonwatch.com.
\textsuperscript{243} http://www.whitehouse.gov/homeland/maritime-security.html#section2 (last visited March 2, 2007); see also http://usaonwatch.com.
\textsuperscript{244} Michael Chertoff, see supra note 202 (discussing Homeland Security measures as they are presently at a March 20, 2007 conference).
V. CONCLUSION

Maritime Security has been redefined in the twenty first century. The ultimate effect of the new initiatives upon world trade and maritime commerce remains uncertain. However, what is certain is that through the generations, the men and women of the Coast Guard have stepped forward to defend our nation. The USCG protects our waterways and ports, enforces maritime law, and safeguards commerce and natural resources. For over two centuries the USCG has rescued those in peril on the seas. Now the Coast Guard is carrying out those missions during a new kind of war. A war on a national front that is full of electronic possibilities. The Coast Guard has always been vital to our nation's security, and the American people should be grateful to stand behind their ever lifted shield of freedom. 245

245 Office of the Press Secretary; May 25, 2006; President Attends Change of Command Ceremony for the Commandant of the United States Coast Guard; Fort Lesley J. McNair; Washington, D.C. available at: http://www.whitehouse.gov/news/releases/2006/05/20060525-1.html (last visited 2/8/07)