

The work group held extensive discussions regarding the experiences of mariners under the present maritime security regulations as related to shore leave and access. It referenced the research performed by the ITF and the port chaplains of the United States through the Center for Seafarers Rights of the Seamen's Church Institute of New York/New Jersey. The ITF's report *Access Denied* records numerous negative effects of the implementation of the ISPS Code in general, and the denial of shore leave in particular. One of the conclusions of *Access Denied* states:

“The implementation of the ISPS Code has, broadly, increased the workload for seafarers and introduced additional procedures that have negative cost and time implications. It has significantly added to the stresses of life at sea - most obviously in the form of tighter restrictions inhibiting rest and relaxation. The additional responsibilities and extra tasks to be carried out at busy times - such as loading and unloading in port - raises serious concerns on such issues as health and safety/working time/fatigue and stress, particularly as a result of conflicting and competing duties.”

From personal experiences, and reports from mariners, the denial of short leave has had a detrimental effect on the morale of mariners. In addition, members of the work group felt that the denial of shore leave has had some effect on the mariner retention.

The work group recognized that there is no model shore leave and access policy. The work group believes that efforts should be made to develop model procedures to help standardize shore leave and access policies and procedures

Finally, the work group noted many stories of seafarers and shipping companies having to pay excessive fees to have access to shore leave. This brings about a *de facto* denial of shore leave even if *de jure* shore leave is allowed. The ITF report *Access Denied* relates:

“Transportation:

After a long voyage at sea, the crew requested some shore leave. No problem for the Captain.

But, for the transport from the berth to the gate it cost 65 USD, one way, number of persons not important... then the seafarers

One MM&P contracted shipping company noted that they are being charged \$3,000 per port call, by a Louisiana facility for the transportation of their US crew members from the ship to the gate

### **Recommendation one:**

MERPAC notes that the United States is not in conformity with the treaty obligations related to access to shore leave as provided for in the ISPS Code. MERPAC recommends that the Coast Guard review the ISPS Code<sup>1</sup>, The *Preamble* to the ISPS Code<sup>2</sup> IMO Conference Resolution 11

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<sup>1</sup>ISPS Code Part A 16.3.15 - “The plan shall address...procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship, including representatives of seafarers' welfare and labour organizations.” ISPS Code Part B 16.8.14 - “In addition to the guidance given under paragraph 16.3, the PFSP should establish the following, which relate to all security levels...the procedures for facilitating shore leave for ship's personnel

entitled: *Human-element-related aspects and shore leave for seafarers* (12 December 2002), IMO MSC/Circ.1112 *Shore Leave and Access to Ships Under the ISPS Code* (7 June 2004), and IMO MSC/Circ.1132 *Guidance Relating to the Implementation of SOLAS Chapter XI-2 and the ISPS Code*, ILO Convention 185. MERPAC further recommends that the Department of Homeland Security and/or the US Coast Guard modify the present CFR's to conform to the United States' signatory obligations to the ISPS Code that calls for *facilitation*, and not *coordination* of shore leave and access. Specifically, that:

- The US Coast Guard shall not approve Facility Security Plans that do not include procedures for facilitating shore leave for ship personnel or personnel changes, as well as access of visitors to the ship, including representatives of seafarers' welfare and labour organizations. Presently par. 105.405 does not include Part A 16.3.15, which is the ISPS Code states every plan shall address.
- That Ship owner or operator (33 CFR, Ch. I, Sub-chapter H, Subpart B Part 104.00(b)(6)) must ensure facilitation of shore leave for vessel personnel or crew change-out as well as access through the facility of visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with facility operators in advance of vessel's arrival.
- That Facilities Security Requirements for Owners or Operators (33 CFR, Ch. I, Sub-chapter H, Subpart B Part 105.200(7)), ensure the facilitation of shore leave for vessel personnel or crew change-out, as well as access through the facility to for visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with vessel operators in advance of a vessel's arrival. In facilitating such leave, facility owners or operator may refer to treaties of friendship, commerce, and navigation between the U.S. and other nations.

### **Recommendation two:**

MERPAC recommends that to resolve the problems enumerated in **Recommendation 1**, that the

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or personnel changes, as well as access of visitors to the ship, including representatives of seafarers' welfare and labour organizations.”

<sup>2</sup>ISPS Code *Preamble* #11 - Recognizing that the Convention on the Facilitation of Maritime Traffic, 1965, as amended, provides that foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order, Contracting Governments, when approving ship and port facility security plans, should pay due cognisance to the fact that ship's personnel live and work on the vessel and need shore leave and access to shore-based seafarer welfare facilities, including medical care.

Coast Guard immediately amend the present 33 CFR sub-chapter H sections 104.200 (b)(6) and 105.200 (b)(7) be amended from “. . . must ensure coordination of shore leave . . .” to “. . . shall ensure and facilitate access to shore leave...”

And the language found in Part A 16.3.15 of the ISPS Code into the list of

**Recommendation three:**

MERPAC calls on the Department of Homeland Security and the US Coast Guard to note the International Maritime Organization’s clarification of the issues related to shore leave and access in MSC/Circular 1112 #4:

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

MERPAC also notes #2 of this same circular:

“In this regard, it was recognized that there may be conflicts between security and human rights, as well as between security and the efficient movement of ships and cargoes in international trade that is essential to the global economy. There must be a proper balance between the needs of security, the protection of the human rights of seafarers and port workers, and the requirement to maintain the safety and working efficiency of the ship by allowing access to ship support services such as the taking on of stores, repair and maintenance of essential equipment, and other vital activities that are appropriately undertaken while moored at port facilities.”

MERPAC recommends to the Department of Homeland Security and the US Coast Guard place the burden on the facility which wishes to deny shore leave and access to justify how their need for such denial exceeds the right of seafarers to shore leave and access to the vessel by those mentioned in Part A 16.3.15 of the ISPS Code.

**Recommendation four:**

MERPAC noted that section 307, entitled: **SEAMEN’S SHORESIDE ACCESS** in the Coast Guard Authorization Act 2007 (H.R. 5681), which read:

“Each facility security plan approved under section 70103© of title 46, United

States Code, shall provide a system for seamen assigned to a vessel at that facility and representatives of seamen's welfare, labor organizations, and pilots to board and depart the vessel through the facility in a timely manner at no cost to the individual.”

MERPAC recommends that the Coast Guard place this paragraph in the 2008 authorization act, and vigorously support the enactment of the section.

**Recommendation Five:**

**Resolution 11, *Human-element-related Aspects and Shore Leave for Seafarers*#2**

MERPAC believes that in the area of shore leave and access, the US Coast Guard has misinterpreted the spirit and the letter of the ISPS Code<sup>3</sup> in developing the maritime security regulations. This misinterpretation has caused seafarers to be illegally denied shore leave, and those listed in Part A 16.3.15 of the ISPS Code to be illegally denied access. MERPAC takes note of Resolution 11 of the ISPS Code, which is entitled *Human-element-related Aspects and Shore Leave for Seafarers*. #2 states:

“2. Encourages Contracting Governments, Member States of the Organization and non-governmental organizations with consultative status at the Organization to report to the Organization any instances where the human element has been adversely impacted by the implementation of the provisions of chapter XI-2 of the Convention or the Code;”

MERPAC recommends that the US Coast Guard begin an assessment process to determine instances where the human element has been adversely impacted by the present implementation of the provisions of chapter XI-2 of the Convention or the Code, and to report the findings to the IMO.

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<sup>3</sup>“...A singular focus on the security of the port facility is contrary to the letter and spirit of the ISPS Code and will have serious consequences for the international maritime transportation system that is a vital component of the global economy....” IMO MSC/Circular 1112 #6.