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**Focus on Shipbuilding
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Liang

**Chairman & CEO Sinopacific
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Washington Insider

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Piracy and Maritime Safety Top America's 2009 Maritime Agenda

CONGRESS AND THE OBAMA ADMINISTRATION RESPOND TO THE CHALLENGE OF SOMALI PIRACY

AMERICANS UNIFORMLY PRAISED the astonishing rescue of Captain Richard Phillips of the *Maersk Alabama* by U.S. Navy Seals. But what marked the dramatically successful culmination of a frightening hostage incident on the high seas also signaled the beginning of a more meaningful policy review by the Obama Administration and the Congress of how the United States should confront this serious national security challenge.

The United States Government Must Protect Americans First

The heroism of Captain Phillips and the remarkable precision of the U.S. Navy Seals overshadowed the chronic timidity that for years has characterized America's response to Somali pirates. Until the April 2009 attacks, U.S.-flag vessels had largely avoided encounters with Somali pirates, who targeted hundreds of foreign-flag vessels for several years. The United States viewed the Somali pirate plague as largely a problem to be addressed by other nations, principally through the United Nations and the European Union. The *Maersk Alabama* and *Liberty Sun* attacks, however, signaled a wake-up call for America. No longer could the United States be content to cede leadership to feckless international organizations whose primary policy instrument is to approve the payment of ransom to pirates in the hope that no one will be hurt. Last year alone, this policy of tacitly facilitating ransom payments netted the pirates over \$30 million.

While the decisive response of the Obama Administration to the recent attacks suggested that the government had found its sea legs amidst the tempest, subsequent events in Washington

revealed an Administration uncertain about how to proceed to craft an effective long-term policy to combat Somali pirates. While the State Department called for emergency diplomacy and declared that the United States bans ransom payments, elements of the Department of Defense (DOD) obstinately resisted calls by American merchant seamen and the U.S.-flag fleet for immediate protection in the form of armed forces security detachments stationed aboard U.S.-flag ships sailing through the pirate gauntlet. This reluctance by DOD to commit the modest forces necessary to prevent future attacks contrasted sharply with the decisiveness of the rescue of Captain Phillips and caused Senator Lautenberg to ask DOD at a congressional hearing why the U.S. response to the threat of piracy was so "timid."

Initially, DOD officials attempted to deflect their responsibility to protect American citizens onto U.S.-flag shipowners who, they suggested, had not done enough. But Coast Guard testimony to Congress praised the crews of the U.S.-flag vessels, who had not only executed their security plans expertly but also creatively implemented enhanced measures to defeat pirates.

Oddly, DOD officials asserted that the U.S. Navy did not have the resources to patrol a vast area of 2.5 million square miles offshore Somalia or to protect the 33,000 annual ship transits of the region. But this is a red herring. American merchant seamen sailing on U.S.-flag vessels represent a small number of vessels warranting security. According to congressional testimony by the Under Secretary of Transportation and the U.S. Maritime Administration, there is only on average

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about one U.S.-flag vessel in the region on any given day. Moreover, placing small teams of U.S. military personnel on this discrete number of vessels for the very limited time they transit high-risk areas is well within the capability of the U.S. government. If DOD can't, then the U.S. Coast Guard should be called into action.

Pursuant to the Maritime Transportation Security Act of 2002, the Coast Guard established a specially trained Deployable Operations Group which, according to the law, "shall be trained, equipped, and capable of being employed to rapidly deploy to supplement United States armed forces domestically or overseas" to protect U.S.-flag vessels from "destruction, loss or injury from crime." Coast Guard forces regularly deploy overseas. If the DOD won't provide security, then Coast Guard units should be immediately deployed as provided by law to protect U.S.-flag vessels on high-risk transits through the region.

Ironically, the supplemental war funding appropriations bill pending before Congress provides \$80 million for Somalia, \$40 million more than requested by the Obama Administration, and an additional \$35 million for U.S. Navy anti-piracy operations, but not one cent to protect American merchant seamen

with armed forces security teams during high-risk transits off Somalia. Without the basic preventative measure of deploying Coast Guard maritime security teams, the American people are destined to witness another frightening episode where American merchant seamen are held hostage.

Congress Should Reaffirm the Right of Self-Defense Against Maritime Piracy

Additionally, to give U.S.-flag shipowners the lawful capacity to protect themselves, Congress and the Obama Administration should swiftly enact desperately needed legislation reaffirming the traditional right of defense against maritime piracy and clearing away legal obstacles that as a practical matter make it difficult to arm U.S.-flag merchant vessels.

While the right of U.S.-flag ships to resist piracy has been enshrined in statute since 1819, more recent Department of State arms control regulations have effectively prevented shipowners from doing so. State Department arms control export regulations effectively prohibit U.S.-flag vessels from departing the United States with firearms. Furthermore, key foreign countries prohibit vessels from bringing arms into their ports.

Shipowners also face liability in American courts for injuries and damages that may result from self-defense measures they either take or don't take. For example, a crewman from the *Maersk Alabama* sued the shipowner for putting him at risk during the recent events near Somalia. Such lawsuits were unheard of in 1819, but they are a real and present danger today.

Most U.S.-flag vessels on international routes are carrying U.S. government-impelled cargoes, including military cargoes. The *Maersk Alabama* was carrying U.S. government food aid to the region when it was attacked. Likewise, the *Liberty Sun* carried approximately 47,000 metric tons of food aid, enough to feed over 250,000 Africans for a year. Therefore, the laws that effectively bar U.S.-flag shipowners from hiring armed security teams present a clear and present danger to the U.S. government's foreign policy program to provide famine relief aid to Africa. Without this critically important food aid, a desperate and already unstable political region will only worsen.

In response to calls to hire private security guards to protect their vessels, shipowners and the unions representing American merchant seamen have explained that the laws of the United States

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and foreign countries effectively prevent them from doing so. In recent testimony before Chairman Bill Delahunt (D-MA) of the Oversight Subcommittee of the House Committee on Foreign Affairs, the Judge Advocate of the Coast Guard acknowledged that that the problem of hiring private armed security guards on U.S.-flag vessels was "complicated" and that the Administration was studying it.

But the time for studying the problem has passed. The time is ripe for decisive legislative action to clear away the unintended legal obstacles that block the traditional American right of self-defense against acts of maritime piracy. To that end, key U.S.-flag interests have proposed legislation that will do just that. The time has come for the Obama Administration to exhibit the same decisiveness that it did in the rescue of Captain Phillips and lead the Congress to empower the U.S.-flag fleet and its American merchant mariners to protect themselves.

The Maritime Safety and Security Agenda of the 111th Congress

Consistent with the pressing need for legislative action on piracy, key Senate and House leaders have agreed to elevate security and safety measures for the maritime industry to the top of their legislative agenda. The Senate Commerce Committee will take up Senator Kerry's (D-MA) legislation to promote security and safety for American passengers on cruise ships. The same legislation was introduced in the House of Representatives by Rep. Doris Matsui (D-CA) and enjoys many bipartisan co-sponsors. As proposed, the legislation mandates basic requirements like reporting crimes to the Coast Guard and FBI, requiring preservation of evidence, and providing proper medical treatment to rape victims. It also requires cruise lines to adopt basic safety measures to allow passengers to protect themselves from attacks by cruise ship staff, whom the cruise lines afford unbridled access to passenger cabins that has facilitated brutal attacks on passengers. Additionally, the legislation would require cruise lines to raise safety rails to reduce the frequency of incidents where passengers accidentally fall overboard and to install technology to detect when such incidents occur and to speed rescue. It also provides cruise ship victims the same legal remedies long afforded to passengers on airlines.

Beyond cruise ship security and safety, Chairman Oberstar (D-MN) should be expected to reprise his marine safety reform proposals that passed the House of Representatives during the 110th Congress, including overhauling the Coast Guard

administrative law judges program. Despite the Coast Guard's effort to reform these programs by addressing glaring deficiencies, Congress may see the wisdom of mandating key provisions as a matter of law so they are not abandoned when the current Commandant's term ends in a year.

Additionally, Senator Lautenberg (D-NJ) has again introduced legislation to cure marine safety deficiencies exposed by the Cosco Busan allision and oil spill in San Francisco Bay. The legislation mandates double-hull protection for fuel tanks for U.S.-flag vessels with aggregate fuel capacity of 600 cubic meters or more. It also expressly grants Coast Guard vessel traffic systems the authority to order changes in the course and speed of vessels. Hopefully, this legislation will once and for all end the Coast Guard's nonsense that it has no authority to intervene in the face of an obvious safety hazard. The Cosco Busan incident plainly illustrated that prompt and assertive action by the Coast Guard vessel traffic system could have avoided the allision.

Recommendations

The Obama Administration should provide armed forces security for U.S.-flag vessels and crew on high-risk transits in the pirate-infested waters off Somalia. If the U.S. Navy can't do it, the U.S. Coast Guard should. And Congress should seize the moment and swiftly act on the proposal to reaffirm the right of self-defense against maritime piracy. By highlighting maritime security and safety as their top shared agenda, the leaders of the House and Senate hope to enact their major priorities more quickly. Whether or not this legislative strategy proves successful for cruise ship and marine safety generally, the safety of American merchant seamen and U.S.-flag ships – and the foreign policy interests of the United States – surely demand swift action on piracy protection now.

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