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**DEPARTMENT OF HOMELAND SECURITY**

**U. S. COAST GUARD**

**STATEMENT OF**

**REAR ADMIRAL WAYNE JUSTICE  
ASSISTANT COMMANDANT FOR RESPONSE**

**ON**

**CRUISE SHIP CRIME**

**BEFORE THE**

**COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE**

**SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION**

**U. S. HOUSE OF REPRESENTATIVES**

**MARCH 27, 2007**

Good morning Mr. Chairman and distinguished members. I am honored to appear before you today to discuss jurisdiction and coordination of assistance in the context of crime on cruise ships, as well as interagency initiatives to address this issue. I intend to focus my remarks on briefly reviewing key aspects of the operational and legal environments in which crime on cruise ships arises, and apprising you of our progress since then in addressing this issue.

Crime on cruise ships is receiving increasing attention from Congress, the media, victims' rights groups, law enforcement, and the cruise industry. Such attention can contribute substantially to providing an even safer and more secure environment for the over eight million U.S. citizens who are cruise ship passengers each year.

Given the global, multi-national, operational, and legal structure of cruise ship operations, responsibilities for reporting, responding to, investigating, prosecuting, and adjudicating crime on cruise ships is distributed among a variety of nations, organizations, and individuals around the world. This is because the authorities and capabilities necessary to respond to and investigate allegations of crime on cruise ships often shifts depending on the nature of the crime, the nationality of alleged victims and perpetrators, and, most importantly, the location of the vessel at the time the crime is committed and reported.

While no single nation has the authority or the resources to patrol and secure the entire maritime domain, the United States continues to lead the world's efforts to achieve greater maritime security, and the U.S. Coast Guard is at the forefront of those efforts.

In considering response options of the United States to crime on cruise ships, the Coast Guard is mindful of the essential operational and legal environment in which many cruises occur. Most cruise ships operate extra-territorially (indeed, foreign travel is a large part of their appeal) and, therefore, beyond the reach of U.S. criminal jurisdiction with respect to most offenses. Central to understanding this point is the recognition that the vast majority of cruise ships are not flagged in the United States, but in foreign countries such as Panama, The Bahamas, and Liberia. When these foreign flagged vessels engage in transnational voyages on the high seas, particularly during a voyage that does not depart from or arrive in a U.S. port, the law of the Flag State, not the United States, applies in most cases.

It is a well-settled principle of international law that a vessel operating seaward of any State's territorial sea is subject to the exclusive jurisdiction of its Flag State. In today's world, many ships do not come from or have never visited the home port painted on their sterns. Instead, many shipping owners, as a means of lowering operating costs, register their vessels in countries offering competitive tax and other commercial advantages. This trend has grown over time. While it creates certain economic efficiencies for world trade, it requires the constant attention and participation of the international community to maintain and enforce global safety and security standards.

Similarly, it is equally well-settled that unless Congress provides otherwise, the criminal laws of the United States do not apply extraterritorially aboard foreign flagged vessels on the high seas. When U.S. laws do apply, there is almost always some nexus between the offense and specific U.S. interests. Even then, the United States cannot board a foreign flag vessel on the high seas to enforce those laws without the consent of the Flag State, except for a limited number of recognized universal offenses. The practical consequence of this principle is that in any case involving suspected criminal activity directed at or aboard a foreign flag vessel on the high seas,

close and immediate international cooperation is required to board the vessel at sea, investigate the facts, collect evidence, and sort out the jurisdiction of various States with interests in the matter. Fortunately for the bulk of U.S. cruise ship passengers, critical U.S. laws covering serious crimes usually extend jurisdiction if the crime is committed by or against a U.S. national and the voyage in question has a scheduled departure or arrival in the United States. In such cases, the main issue is timely access to witnesses, suspects, and evidence.

As a practical matter and consistent with these well-settled principles of international and U.S. domestic law and practice, this operational milieu allocates most criminal jurisdiction with respect to extraterritorial cruise ship crime to Flag States or coastal States, not the State of the passenger's nationality. For example, the accepted international legal framework does not support the imposition of compulsory reporting requirements by coastal States or the States of passengers for unlawful acts committed beyond their territorial jurisdiction aboard foreign flagged vessels. This same framework allocates investigative and enforcement jurisdiction to flag or other coastal States, not U.S. law enforcement agencies, with respect to criminal activity that occurs aboard foreign flagged cruise ships operating beyond the 12 mile U.S. territorial sea.

The nature of the legal environment aboard foreign flagged cruise ships should come as no surprise – as with any vacation taken in foreign territory, the responsibility for crime prevention and response lies with the sovereign of that territory, not with the sovereign of the vacationer's home country. And most vacationers focus on aspects of private security provided by the hotels and resorts they select, and may even make such selections based in part on their perception of a crime-free environment. While U.S. embassy resources in foreign countries can often assist U.S. nationals who are the victims of crime in obtaining services and working through the host State's legal system, U.S. agents rarely have jurisdiction to investigate or participate in the prosecution of such offenses. This situation may be exacerbated aboard cruise ships where there is no Embassy to provide support or assistance, and where passengers must depend on cruise line security personnel for first-responder investigative services.

The legal environment aboard foreign flagged cruise ships does not mean that cruise ships are or should become havens for lawlessness. While some alleged homicides, disappearances, and serious sexual crimes have garnered appropriate attention and concern, there is no data to suggest that crime on cruise ships is more prevalent or severe than in any other vacation venue. The legal environment does mean that prompt reporting of serious crime by cruise passengers and the cruise industry coupled with investigative cooperation among coastal and Flag States is essential to preserving cruise ship security and safety.

Prospective cruise ship passengers need to assess the level of security and safety on cruise ships on which they may embark just like they would evaluate their safety and security risks when visiting a foreign country. Congressional hearings like these help highlight that responsibility, and encourage the cruise ship industry to embrace transparency in reporting and crime prevention strategies to remain economically competitive. As I will discuss in a moment, the Coast Guard and the Federal Bureau of Investigation (FBI), working with the Cruise Line International Association (CLIA), are completing plans for a voluntary crime reporting process that we believe will improve transparency and security, and help better inform both the discussion and response with respect to allegations regarding crime on cruise ships.

United States law enforcement agencies do have a role, albeit limited, to play in preventing, investigating, and responding to crime aboard foreign cruise ships operating beyond U.S. territorial waters. As a threshold matter, 33 C.F.R. § 120.220 is a Federal regulation that requires certain passenger vessels, including cruise ships, to report unlawful acts and related activity “that occurs in a place subject to the jurisdiction of the United States.” Notably, 33 C.F.R. § 120.220 also states that “U.S.-flag vessels . . . must report each such incident that occurs in a place outside the jurisdiction of the United States.”

This section applies to all passenger vessels over 100 gross tons, carrying more than 12 passengers for hire; making voyages lasting more than 24-hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the United States or its territories. It does not apply to ferries that hold Coast Guard Certificates of Inspection endorsed for “Lakes, Bays, and Sounds”, and that transit international waters for only short periods of time, on frequent schedules.

So, while this U.S. reporting requirement applies to unlawful acts and related activity that occurs in U.S. waters aboard foreign flagged cruise ships that call in the United States, it does not require the reporting of unlawful acts and related activity aboard foreign-flag vessels located outside U.S. territorial jurisdiction. As I mentioned earlier, this regulatory approach is completely consistent with well-settled principles of international law regarding the extraterritorial application of a coastal State’s domestic laws.

In limited circumstances, both international and U.S. domestic law permit the exercise of U.S. criminal jurisdiction aboard foreign flagged cruise ships operating seaward of U.S. territorial waters. The principal law under which the U.S. exercises its Special Maritime and Territorial Jurisdiction (SMTJ) is set forth in Section 7 of Title 18 of the U.S. Code. This statute provides, in relevant part, that the U.S. has jurisdiction over crimes committed on a ship if:

- (1) The ship, regardless of flag and of the nationality of the victim or the perpetrator, when such vessel is on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State;
- (2) The ship, regardless of flag, is a U.S.-owned vessel, either whole or in part, regardless of the nationality of the victim or the perpetrator, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State;
- (3) The offense by or against a U.S. National was committed outside the jurisdiction of any nation; or
- (4) The victim or perpetrator is a U.S. national on any vessel during a voyage that departed from or will arrive in a U.S. port.

This “Special Maritime and Territorial Jurisdiction” provision is essentially a “gap filler.” It was designed to ensure that if the appropriate flag or coastal State has failed to enact a law addressing a serious crime, particularly with some direct nexus to U.S. interests, that the U.S. would be in a position to enforce its law. However, much of the serious crime we’ve seen involving cruise ships is clearly under the jurisdiction of either a foreign coastal State or the cruise ship’s Flag State, and therefore not within the jurisdiction of the United States.

While our jurisdictional capacity over crime aboard foreign flagged cruise ships may be limited, our capability to develop effective partnerships with other nations, other agencies, and industry is not nearly so constrained. Accordingly, the Coast Guard believes that developing strategic partnerships, particularly with respect to reporting and responding to serious crimes affecting U.S. nationals on foreign flagged cruise ships provides the most sensible approach to addressing recent concerns about cruise ship crime.

Working closely with the Federal Bureau of Investigation (FBI) and the Cruise Line International Association (CLIA), the Coast Guard has participated in the development of voluntary procedures relating to the reporting of serious violations of U.S. laws committed aboard cruise ships, and FBI response to such violations. Given the legal and operational environment I have described, we believe this voluntary reporting system is the most promising and viable option for improving crime reporting and investigative response in the near term. Moreover, we believe that most cruise lines will embrace the opportunity to report and improve responses to serious crimes affecting U.S. nationals, and that cruise lines that fail to participate in this process will be at a competitive disadvantage.

Under the procedures recently proposed to CLIA, CLIA members will telephonically contact the nearest FBI field office or Legal Attaché office as soon as possible to report any of the following incidents involving serious violations of U.S. law: homicide, suspicious death, missing U.S. National, kidnapping, assault with serious bodily injury, sexual assaults (as defined in 18 U.S.C. §§ 2241, 2242, and 2243), firing or tampering with vessels, and theft greater than \$10,000. If CLIA members are unable to contact the FBI Legal Attaché, they will contact the FBI field office located closest to their security office.

After telephonic contact, CLIA members will follow-up with a standardized written report we've developed with FBI. CLIA members will submit reports to the U.S. Coast Guard's National Command Center, which is manned around the clock, via either via facsimile or e mail, and to the FBI via fax. The National Command Center will promptly forward the reports to appropriate federal investigative agencies, when not the FBI. The Coast Guard's function of receiving and forwarding the reports neither expands nor imposes upon the Coast Guard any investigative responsibilities. In the majority of cases, the FBI, not the Coast Guard, will be the primary investigative agency for the activity reported on the forms, and the ultimate decision to investigate or respond to the alleged serious acts will rest with the FBI or appropriate law enforcement agency. I will defer to the FBI to describe their intentions with respect to response noting that we will fully support the FBI with technical assistance and logistic support, as well as employing available Coast Guard resources and authority to preserve crimes scenes and control the movement of vessels and persons subject to the jurisdiction of the United States.

Incidents not falling into one of the above categories and, therefore, not requiring immediate attention by the FBI, may be e-mailed or faxed to the local FBI field office or Legal Attaché office. Such incidents would include theft greater than \$1,000 but less than \$10,000, and, certain allegations of abusive sexual contact.

The FBI will, on an annual basis, compile the information provided by the cruise lines and prepare a comprehensive report. This report (cruise line information redacted) will be provided to CLIA, and, to our knowledge, represents the first disciplined effort to gather serious crime statistics with respect to cruise ships frequented by U.S. nationals. These data will permit some analysis of trends and comparison with other maritime and tourism venues. The Coast Guard

encourages CLIA to disclose the report information to potential cruise ship passengers so that they can make informed judgments about their comparative safety and security, and so that CLIA members can take appropriate measures to reduce the potential for unlawful activity aboard their vessels.

If criminal activity aboard a CLIA vessel does not meet the above reporting criteria, CLIA members may report the incident to the proper state or local law enforcement authority. The decision to continue and/or conduct additional investigation of crimes within the jurisdiction of state or local law enforcement will be at the sole discretion of the respective state or local agency.

Narcotics matters will continue to be reported under current agreements with the Drug Enforcement Administration, Immigration and Customs Enforcement, and Customs and Border Protection.

Attacks against vessels, including piracy or terrorist attacks will continue to be reported through the Ship's Security Alert System (SSAS) and other established emergency response channels via the most expeditious means possible. Coast Guard Command Centers around the country, including the National Command Center, will continue to accept and process emergency reports regarding attacks and threats against vessels, regardless of Flag State, in accordance with the President's Maritime Operational Threat Response (MOTR) Plan, which has proven to be a huge success.

Reports of missing persons aboard cruise ships have also attracted attention, although rigorous data is sparse. When the Coast Guard command or operations center receives a report from a cruise ship of a missing person (and we receive very few such reports), several factors influence our response including the effort made to locate the person on board, evidence that the person may be in the water or have gone over the side, the location of the cruise ship, and the time elapsed since the person was last observed. We follow standard search and rescue protocols in handling cases that might involve persons currently in the water, and work closely with appropriate investigative agencies if suspicious circumstances are apparent. But, these are not frequent occurrences.

As I said earlier, the practical consequence of jurisdictional principles and finite operational resources is that in any case involving suspected serious criminal activity directed at or aboard a foreign flag vessel, including cruise ships, on the high seas, close and immediate international cooperation is required to respond. MOTR provides a clear, modern process for quickly vetting myriad U.S. interests and resource options, securing international cooperation when necessary and appropriate, and executing effective courses of action, including boarding suspect vessels at sea, investigating the facts, collecting evidence, and sorting out the jurisdiction of various States with interests in the matter. MOTR provides an effective mechanism for the U.S. approach to maritime security threats and to develop timely and tailored responses based on authorities, capabilities, competencies, and partnerships. In short, MOTR has improved the ability of the United States to bring the right assets to bear when maritime threats affect American interests anywhere in the world.

In early March, U.S. agencies used MOTR successfully to assist Japanese authorities in investigating and prosecuting a homicide involving Chinese and Vietnamese sailors aboard a Japanese flagged fishing vessel on the high seas approaching Hawaii. While there was no U.S. criminal jurisdiction over the offense, we were able to provide the necessary operating

environment and logistics support to facilitate investigation and response by the Flag State. As a result, the Government of the United States was able to assist the Government of Japan in quickly bringing an alleged murderer from the high seas to justice. We intend to use the MOTR process to garner reciprocal support from other nations when serious crimes against U.S. nationals warrant similar investigative efforts.

Those of us who have made a profession of maritime security continue to undertake significant initiatives to better protect U.S. citizens and U.S. interests throughout the maritime domain in the 21<sup>st</sup> Century. It is clear that some serious acts affecting U.S. nationals aboard foreign flagged cruise ships have brought great sadness to the families of victims. The Coast Guard mourns the losses these families have suffered and we are committed to improving the overall safety and security environment within the maritime domain. We recognize the collective jurisdictional and resource limitations of the United States, but we see viable strategies to improve the safety and security of U.S. nationals aboard cruise ships by leveraging partnerships with industry and international partners, as well as improving transparency for consumers. We believe the proposed Voluntary Cruise Ship Crime Reporting Procedures are a positive step in the right direction.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.