

Testimony of Arthur J. Volkle, Jr.
Piracy against U.S. Flag Vessels: Lessons Learned
House Committee on Transportation and Infrastructure
Committee on Coast Guard and Maritime Transportation
May 20, 2009

Mr. Chairman;

Thank you for the opportunity to testify before the Committee this morning on an issue of great concern to our Company, and to all U.S. flag operators engaged in international trade.

I am Skip Volkle, Vice President of America Cargo Transport, Inc. (“ACTC”), as well as Vice President and General Counsel of Marine Resources Group, Inc. (“MRG”). In addition to ACTC, MRG owns seven other tug and barge companies. Our companies operate around the world. We are in turn a subsidiary of Saltchuk Resources, Inc., which owns our sister companies Totem Ocean Trailer Express, Sea Star Lines, and Interocean American Shipping. Collectively, we operate one of the largest shipping enterprises under the U.S. flag

ACTC operates both tug/barge units and ships in international trade, primarily carrying U.S. government cargoes, both military and food aid. We have tug/barge units engaged in continuous shuttle service in the Persian Gulf, tug/barge units carrying food aid cargoes in the Caribbean and West Africa, and we operate Ro-Ro ships carrying primarily military cargoes from the U.S. through the Gulf of Aden into the Persian Gulf.

Our primary concern as we operate in these waters is to assure the safety and security of our crews. We strongly believe that the most effective way to protect our seamen and our vessels from the piracy threat in the Gulf of Aden is to provide armed security, and we have been arming our vessels for a number of years. In fact, until recently we were the only U.S. flag operator not on charter to the military to provide armed security aboard its vessels. On at least one occasion, our security policy has been effective in deterring an attack by pirates. Fortunately, the deterrence resulted merely from a display of arms, without actually having to use deadly force. Both the U.S. Navy and Coast Guard have recognized the efficacy of armed security in protecting against pirate threats.

However, although we have engaged armed security, we are concerned that the legal and regulatory framework relating to arming private vessels is inadequate to respond to the threat.

As a threshold matter, we believe that the primary role in protecting U.S. flag vessels operating in pirate waters off East Africa is and should be the United States Navy and/or Coast Guard. For over two hundred years, owners operating under the U.S. flag sailed the world's oceans secure in the knowledge that, in flying the American flag, we sailed under the protection of the United States Navy. Historically, the primary mission of the Navy has been the protection of U.S. merchant shipping, and we believe that that mission is as important today as it was when the Navy responded to the last major threat of piracy against our ships 200 years ago.

We recognize the size of the ocean subject to these attacks, and do not dispute the difficulty in attempting to deploy fleet assets to provide adequate protection off the east coast of Africa. Nevertheless, we believe that deploying armed military security teams aboard U.S. merchant flag ships is the most effective, and cost-effective, means of protecting our shipping, at least in the near term. There are not that many U.S. flag ships operating in the region. Military forces are trained to respond to the armed threat we are experiencing. Military security avoids regulatory shortfalls, liability concerns, and international reluctance to permit armed merchant vessels into their ports. We are not suggesting this as a permanent solution, but as a solution for the near and intermediate term as our government engages in broader solutions to the pirate problem, both afloat and ashore. As an aside, the protection afforded by our Navy or Coast Guard can serve as an added inducement to owners to register their ships under the U.S. flag.

That said, to the extent that the U.S. is not going to provide military armed riding crews, we need the government to address the legal and regulatory regime, both domestically and internationally, to permit us to adequately provide armed private security.

First, we would note that we are not advocating arming our crews. The job of our crew is to run the ship, and they do not have the training to assume the added responsibility of providing an

armed defense. The use of arms should be the responsibility of trained, experienced, professional security personnel. We currently engage two different security companies; their personnel embark on our vessels when the vessels commence operation in high risk areas like the Gulf of Aden and the Persian Gulf.

Second, although we have demonstrated that arming our vessels can be done, U.S. and international laws present significant impediments to arming. As a general rule, private security teams are prohibited by various national laws from travelling with arms to embark aboard a vessel. To the extent that the U.S. Government can obtain cooperation from other governments to permit armed security to travel with arms for deployment aboard vessels, it should do so. We would much prefer to stay out of the arms business altogether, and leave it to trained security forces to bring their weapons with them when they board our vessels.

In the interim, because of these limitations, if security teams are used aboard our vessels, we must provide the weapons, and the weapons must be aboard the vessel when the security teams embark.

Under U.S. regulations, placing weapons aboard a vessel departing the U.S. is considered an “export” of weapons, even if those weapons are intended as a permanent part of ship’s equipment and the weapons are intended to be brought back to the U.S. when the vessel returns. To “export” weapons as part of ship’s equipment, U.S. regulations the “ITAR” regulations, require an International Arms Dealer Export License. These regulations are found at 22 CFR 123.1 *et seq.* Obtaining a “temporary export license,” is virtually impossible because the State Department requires explicit consent from every country to which the vessel will call prior to issuing a permit. We have attempted to obtain such consent from some of the countries where we call, to no avail.

Therefore, the only way to place arms aboard a vessel is under the regulations at 22 CFR 123.17(c), which permits individual seamen to bring up to three semi-automatic weapons, less than 50 caliber, aboard the vessel as *personal effects*. We have had our crew sign for weapons (semi-automatic AK47s or their equivalent) aboard our vessels departing the U.S. The weapons are kept in secure storage by the Captain and are released to the security team when required.

As an example of the problems arising from these regulatory issues, we can point to a recent incident where we were loading a military cargo aboard one of our ships at a U.S. military base here in the United States. Base security prohibited us from bringing our weapons aboard the base, even under guard, to deploy aboard our ship to protect the military's cargo. We attempted to get someone in Washington to reverse the decision, to no avail. Ultimately, we had to move our ship to a commercial pier to get the weapons aboard. And this was to protect a military cargo.

It seems to us that this problem can be addressed through a regulatory change, and should be done immediately. U.S. regulations should provide that U.S. flag merchant vessels can carry arms as part of ship's equipment. To the extent that this change cannot be effected by regulatory change, we ask that Congress provide whatever statutory authority would be required to do so.

Third, the government should provide suitable vetting for private security firms and standards for those firms. Ideally, the Coast Guard should provide vetting and licensing or approval of security firms. This would help us address the liability issues attendant upon carrying armed security. As an interim measure, the Coast Guard could provide guidelines or checklists for security firms.

Fourth, the government should provide general rules of engagement, to provide some legal protection for the use of force to protect our ships; these rules, however, must be sufficiently flexible so that appropriate force may be used to repel pirates, and must provide that the discretion to use force rests with the Captain.

Fifth, the government needs to engage other governments in the region to create a regulatory regime where armed vessels may enter the various ports. We can insure weapons are secured upon entering port. If necessary, we can permit port authorities to remove the weapons while the vessel is in port, and return them when we are getting to depart. But we should be able to bring our armed vessels into foreign ports. As an interim measure, it would be extremely helpful to the U.S. shipping community if the U.S. can provide a centralized information bank which lists the various port state requirements/limitations on entry with arms.

In our view, U.S. flag vessels will be on the whole more secure if it becomes generally known that U.S. flag vessels are armed, particularly if armed by the U.S. military. We believe that the pirates would choose easier targets than attempt to take on armed U.S. merchant ships.

Sixth, I would note the significant liability concerns we have regarding the present state of affairs. I previously alluded to these concerns. Providing express authority for arming vessels, and providing standards for employment of security teams and rules of engagement, would be helpful. In addition, we remain concerned about insurability. We understand that the International Group of P&I Clubs has expressed reservations about coverage of armed vessels, and any limitations in cover would be a serious problem for operators. To the extent that the U.S. Government can be useful in assuring continued insurance cover, it should do so. Moreover, we need to have our government, in particular the State Department and the Coast Guard, committed to supporting U.S. flag operators, seamen, and our security teams in the event of an incident involving use of force. Ideally, statutory immunity from liability arising out the use of force in self-defense should be provided, with any claims relating to use of force by U.S. flag vessels on the high seas to defend against pirate attack should be committed to the exclusive jurisdiction of the U.S. federal courts in admiralty.

Finally, the U.S. government needs to address the issue of cost. When operating in these waters, we are primarily carrying U.S. government cargoes, both military and food aid. If the government is going to leave it to us to provide security for these cargoes, we believe that it is unreasonable for the government to direct us to ports where we are exposed to threats of piracy, expect enhanced security to protect those cargoes, and not bear the costs of providing that security.

I hope that these views are helpful to the Committee's consideration of these important issues, and I thank you for the opportunity to address them before you. I would be happy to answer any questions you might have.