



JUDGE ADVOCATE GENERAL OF U. S. COAST GUARD VISITS IMLI

Rear Admiral William D. Baumgartner, Judge Advocate General of the U. S. Coast Guard, recently visited IMLI and delivered a lecture on “Maritime Security and Law Enforcement: Migration and Other Pressing Challenges”.



Rear Admiral William D. Baumgartner lecturing to IMLI Class 2006-2007.

In his lecture, Rear Admiral Baumgartner emphasized the need to address maritime security threats because of the impact it has on the global economy. He stated that: *“The maritime domain is the greatest defining geographic feature of our increasingly interconnected world. It covers 140 million square miles and over 70% of the earth’s surface. Maritime transportation is the primary mechanism, and in many cases, the only feasible one, for moving goods and commodities around the world quickly and cheaply. The ships that ply the maritime domain are the primary mode of transportation for world trade, carrying over 80% of world trade by volume, making the security of the maritime*

domain critically important to the prosperity and liberty of billions of people. Disruptions to that trade can have immediate and significant global economic impact. In addition to and because of its economic significance, the maritime domain is vital to the national security of many nations.”

To address maritime security threats, he underscored the need to recognize the desired outcomes and provide for a legal framework for the identification of authorities, the enhancement of capabilities and competencies, and the creation of partnerships. The legal framework will enable States to reduce maritime security risks by enhancing their awareness of the maritime domain, creating and properly overseeing a maritime security regime, increasing operational presence in the affected area and enhancing measures for deterrence, and improving response capabilities.

Rear Admiral Baumgartner pointed out that international maritime law has identified the spectrum of criminal activity and the responses to such criminal threats. Criminal activity included: piracy; slave trading; unauthorized broadcasting; illegal fishing; illicit drug trafficking; migrant smuggling; trafficking in persons; hijacking and violence in maritime navigation; firearms smuggling; proliferating weapons of mass destruction (WMD), delivery systems and related materials; and terrorist acts. Responses recognized by international law included: right of visit; hot pursuit; ship boarding or ship riding with flag State consent or master’s consent; diversion to port; pursuit or entry to investigate; and overflight in the territorial sea. Other responses included measures that would ensure the State’s right to national self-defense in accordance with the U.N. Convention particularly Article 51, and measures found in bilateral agreements and multilateral agreements.

While these threats have been recognized by international law, States have nevertheless had the inherent right to identify other perceived threats to their security. The United States in particular has considered the following as threats to the State: waterborne improvised explosive device (WBIED); WMD importation by small craft, container, or other clandestine maritime means; use of ships or cargo as weapons or WMD; small vessel attacks; sabotage of critical infrastructure; sabotage or hijacking of high interest vessels; and mining of critical ports by swimmer or small boats.

In taking measures to address threats to security, he stressed that the United States continues to recognize the exclusive jurisdiction of the flag State over vessels registered under their flag. The U. S. has asked permission from the flag States and, with their cooperation, the U. S. has taken measures to stop and board suspected vessels. They have asked the flag State to explain the action of any particular vessel, or to take action against and prosecute the erring vessel. He believes that cooperation by flag States has always been given because of the capability of the U. S. to conduct the investigation.

The U. S. has also taken steps to address another real threat: the threat of illegal migration. Rear Admiral Baumgartner stated that: *“Illegal migration has been a long-standing issue that will remain a major challenge to regional stability, and it will be one of the most important factors affecting maritime security through the next 10 years.*

Transnational migration has been spurred by a decline of social well-being or internal political unrest and it has become common over the past decades. It has great potential to upset regional stability because of the strain migrants and refugees place on fragile economies and political systems. In some countries the collapse of political and social order prompts maritime mass migrations, such as the ones the United States experienced from Cuba and Haiti, and that experienced by Malaysia, Singapore, the Philippines and Thailand from Vietnam and Cambodia in the 1980s. Humanitarian and enforcement efforts entailed by the management of such migrations require a significant commitment of security resources. The potential for terrorists to take advantage of human smuggling networks in attempts to circumvent border security measures cannot be ignored. As security in ports of entry, at land-border crossings, and at airports continues to tighten, criminals and terrorists may consider relatively undefended coastlines to be less risky alternatives for unlawful entry.”

He identified three parties who are involved in illegal migration: the migrants (or those wishing to escape from extreme poverty and unemployment; improve earnings and standard of living; escape from persecution, conflict or war; or escape from ecological crisis or degradation); the criminals (or those identified as opportunistic entrepreneurs or members of organized crime); and the law enforcers (or the immigration authorities, border protection authorities, foreign affairs officials, and health and welfare officials).

In the U. S., the Coast Guard deals with illegal migration by sea. They have had to take measures to address concerns like loss of life because of unsafe methods for the carriage of passengers when undertaking migration by sea. For this purpose they have put in place measures for the conduct of search and rescue operations in case of accidents involving illegal migration. The U. S. Government has put in place programs designed for the conduct of proper screening of migrants who are in fear of persecution so that they are properly protected and they are not subject to further persecution. The U. S. Coast Guard coordinates with other government agencies to make sure that migrants are properly handled.

The potential way ahead with respect to this problem of illegal migration is the Migrant Smuggling Protocol to the U.N. Convention on Transnational Organized Crime that provides a framework for flag State and port State responsibilities. Another alternative is the creation of bilateral treaties so that the concerns of the coastal State can be specifically addressed, cooperative efforts to be undertaken by the parties can focus on the problem, and the parties can address the threat together.

Rear Admiral Baumgartner serves as the Judge Advocate General and Chief Counsel of the United States Coast Guard. In this capacity, he is the Coast Guard's senior legal advisor and is responsible for all aspects of the service's legal program.