

INTERTANKO ANNUAL TANKER EVENT
Tokyo, Japan

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Thank you. I'm very happy to be here with you and appreciate the invitation to speak. I am assuming – and I'm very happy to say this -- that the invitation is a reflection of the strong and positive current relationship between INTERTANKO and the International Maritime Pilots Association and the American Pilots' Association.

The architect of this new relationship is, without question, Joe Angelo. I knew and worked with Joe while he was at the Coast Guard. Participating on a number of United States delegations to IMO meetings, we became friends, and I developed a deep appreciation for Joe's special talents. Among those is an ability to take a fresh look at an issue, unencumbered by past attitudes and assumptions, and come up with a practical way forward. In this case, Joe recognized what I had felt for some time: the members of INTERTANKO and the pilots of the International Maritime Pilots Association and the American Pilots' Association share too many interests, responsibilities and concerns for us not to have a cooperative, mutually-supportive relationship.

Pilots-INTERTANKO Discussion Group

Even when we've disagreed on some matters in the past, the pilots and INTERTANKO have been able to work together on specific projects and have maintained a respectful dialogue. Nevertheless, in order for the pilots and INTERTANKO to move to a higher, more substantive level of cooperation, Joe saw that we first needed to set up a forum where we could talk to each other openly, candidly, and comfortably. That's the genesis of the Pilots-INTERTANKO Discussion Group. As you may know, the group has had two meetings now, with the third scheduled for the first week in August.

The foundation for any truly successful relationship is trust. In our meetings, there's no posturing or grandstanding and no fear that what any of us says will be in *Lloyd's List* the next day. INTERTANKO representatives have reviewed IMPA and APA guidelines, best practices papers and position statements on such topics as bridge resource management, the master-pilot information exchange, the proper use of advanced navigation technology, the role of the pilot, the master-pilot relationship, and training in all of those subjects. The idea, of course, is to build up our understanding of each other's practices and challenges. As we do that, we lay the groundwork for specific areas of cooperative action.

Whether as a direct result of our Discussion Group meetings or the larger improvement in our relationship, we have been able to help each other and work together on several projects. For example, I want to publicly thank INTERTANKO for its help with the current effort at the IMO to improve the requirements and standards for pilot ladders and other aspects of pilot transfer arrangements. Joe and Fredrik Larsson have not only supported IMPA in this, they have provided valuable assistance and advice. Fredrik has been particularly helpful with the Correspondence Group working on the item. This is of extreme importance to pilots worldwide, and your support has been noted and appreciated by our members. Unfortunately, not all the shipowner NGO's have been as supportive.

In the same spirit, IMPA has publicly supported your initiative on the use of distillate fuels. We congratulate you on the proactive, and in some ways courageous, leadership step that you have taken, which has clearly pushed the IMO in a positive direction on the issue of ship emissions. IMPA made an intervention at the meeting of the IMO's BLG Subcommittee in support of the proposal – in our case, from the perspective of operational safety. The greater responsiveness and reliability of ships on distillate is of real benefit in pilotage waters. We will look for future opportunities to support you on this issue.

We also share your recently expressed concern over what appears to be an unacceptable level of engine and steering failures. This is frequently discussed by pilots. As you know, both the potential negative consequences and the frequency of these failures are greatest in pilotage waters. I think this is another prime area where we could work together and achieve some positive results.

Criminalization of Maritime Casualties

Another very important, and vexing, area of mutual concern is the criminalization of maritime casualties. This is an international problem that poses great dangers for the maritime industry as a whole and certainly for pilots and other mariners. Again, we congratulate INTERTANKO on its clear opposition to this disturbing trend. In particular, I applaud Bob Bishop for his public statements on the HEBEI SPIRIT case. I recognize that criminal charges, arrests and imprisonment of ship's officers for casualties are bad for business and are sure to have negative long-range implications for the recruitment and retention of needed seafarers. But Bob's comments, as well as others by INTERTANKO representatives on the criminalization issue, have displayed a genuine concern for the personal damage done to the seafarers and their families.

Of course, when I talk about the evils of criminalizing maritime casualties for mariners, I am referring to criminal charges filed against mariners for unintentional conduct that is at worst negligent. In some cases, mariners have been thrown in jail merely for being on a ship that is involved in a casualty. On the other hand, I'm not talking about intentional or willful wrongdoing or even recklessness. That's a different matter. But, criminal charges and imprisonment on the basis of simple negligence or applying strict liability standards, as in the case of the infamous Migratory Bird Treaty

Act in the United States, are not only irrational, counterproductive, and harmful to the industry, they are fundamentally unjust. In my opinion, this is a human rights issue.

Pilots are definitely not immune from this. Although the COSCO BUSAN incident is believed to be the first time that a U.S. pilot has been charged with criminal violations in connection with a ship casualty, we were under no illusions that pilots would somehow be exempt from the growing trend. In fact, our legal advisers have for a number of years cautioned that in any marine casualty involving a discharge of oil or other hazardous substance, it should be assumed that criminal charges will be brought against someone associated with the ship. Moreover, the decision of the authorities as to whom should be charged may have much less to do with relative culpability or fault than with politics and other extraneous factors. I think that's pretty much the case all over the world.

Pilots, at least in the U.S. and most other places in the world, have long had to deal with the reality that every time a pilot boards a ship, he or she knows that a moment's inattention, complacency, confusion, or a wrong decision could lead to a potentially catastrophic vessel casualty with hundreds of millions of dollars in damages and/or loss of life, the end of the pilot's career, and financial ruin for the pilot and the pilot's family. Coupled with the physical dangers involved in the job of piloting, no other occupation or profession presents such risks to its practitioners in the normal course of their activities. Now we have to add to that list of unpleasant professional risks the possibility of criminal charges, imprisonment, and public vilification.

It is important that the entire maritime industry stand together on this issue. After an accident, there are the inevitable and unfortunate finger-pointing, blame-shifting, attention-diverting exercises by all the people and entities, including governmental authorities, involved. This strategy has been, if anything, intensified by the specter of criminal sanctions. We should all agree, however, that the use of criminal sanctions for unintentional conduct by a party involved in a maritime casualty is wrong, no matter who that party is.

COSCO BUSAN

Having mentioned the COSCO BUSAN incident, let me offer a few comments on that. As you may know, the U.S. National Transportation Safety Board released the final report of its investigation a week or two ago. The APA was a party to the investigation. We had a representative who actively participated in most of the evidence-gathering work of the investigation, and we submitted comments on drafts of the report and suggested findings, conclusions, and recommendations. Based on our knowledge of the facts, we might have taken a somewhat different approach than the NTSB on some aspects of the accident. There are some areas, for example, where we feel that the NTSB relied too heavily on assumptions and speculation. In general, however, we don't have major problems with the report, which will certainly be reviewed very carefully by pilots in the U.S. and elsewhere.

I do have to be cautious and restricted in my comments about the incident itself. There are pending civil suits as well as the criminal charges against the pilot and the ship operator. The description of the facts of the accident in the NTSB report, however, clearly indicates that there was, in Bridge Resource Management terms, a complete loss of situational awareness by the bridge crew and the pilot and a textbook example of an error chain to which multiple parties contributed. The legal proceedings are dealing with the allocation of responsibility and liability for those causative factors.

The pilot involved will never pilot another ship. The San Francisco pilot commission summarily suspended his state license soon after the accident. They eventually reached a settlement in which he retired and gave up that license permanently. The Commission nevertheless issued a report on the incident and described what it considered to be deficiencies in the pilot's performance.

Following a post-accident review of information previously submitted by the pilot, the U.S. Coast Guard took the position that the information indicated that the pilot was not medically fit and that it had erred in renewing the pilot's federal license. He agreed to voluntarily deposit the license with the Coast Guard until such time as he might present medical information demonstrating his fitness. As a result, he presently has no federal pilot license.

The pilot was charged by U.S. federal prosecutors with one count of a violation of the Clean Water Act for negligently caused the discharge of oil. That's a misdemeanor punishable by up to one year in jail and a fine of \$100,000. He was also charged with one count of violating the Migratory Bird Act by causing the death of birds covered by a migratory bird treaty. That is a strict liability statute, enacted for a purpose far different from its use in connection with an oil spill from a vessel. It is a misdemeanor punishable by up to six months in jail and a fine of \$15,000.

The pilot was subsequently charged with two felonies not directly related to the accident. These charges were for providing allegedly false or incomplete information on medical examination reports submitted to the Coast Guard in the past. Those felony charges were eventually split from the oil spill charges and were due to be tried separately.

According to press reports, the pilot and the prosecutors have reached a plea agreement. The pilot agreed to plead guilty to the Clean Water Act and Migratory Bird Act charges in return for the dismissal of the false statement charges and a recommended sentence of between 2 and 10 months in jail as well as a fine of between \$3,000 and \$30,000 for the oil spill charges. Sentencing is scheduled for next month. The judge is not bound by the recommended sentence, although if she does not issue a sentence within the agreed parameters, the pilot would be free to change his plea, and the matter would proceed as if the plea agreement were never reached.

The ship operating company has also been charged with violations of the Clean Water and Migratory Bird Acts as well as six counts of felony false statements and

obstruction of justice. The latter are in connection with falsification of evidence, including passage plans prepared after the accident. Those charges are pending, with trial scheduled for later this year.

The operating company, pilot and a number of other parties face several civil suits as a result of the incident. That all-too-familiar consequence of a marine casualty will have to play out.

The lasting impact of this incident on the practice of piloting and on the piloting profession remains to be seen. It's still too early for that type of assessment. It is true, however, that pilots in the U.S. and elsewhere have already looked at, and debated, the incident in effort to discern useful lessons-learned so that similar problems can be prevented in the future. The circumstances of the accident and what went wrong on the bridge of that ship were certainly far from routine. Even today as we learn more about it, it is, in several respects, bewildering. The accident, nevertheless, touches on many pilotage and navigation issues that have been around for a long time.

I can tell you that pilots and pilot groups, particularly in the U.S. are currently reexamining their practices in such areas as getting underway in restricted visibility, the content and dynamics of the master-pilot information exchange, interactions with bridge crews, and the use of portable piloting units. I expect that the COSCO BUSAN will be a prime subject of review in Bridge Resource Management for Pilots courses.

Serious marine casualties are tragedies – not just for the marine environment, but for the people involved and for our industry as a whole. They are even more tragic if we don't learn from them.

Fortunately, IMPA and APA now have a forum for discussing the lessons of the COSCO BUSAN and other issues with our friends in INTERTANKO. I am looking forward to the next meeting of the Pilots-INTERTANKO Discussion Group and for other opportunities for us to work together and perhaps enter into a more formalized cooperative relationship.

I'd like to close by reiterating my appreciation for Joe Angelo's efforts to bridge whatever gap existed between the pilots and INTERTANKO. In my tenures as president of the APA and of IMPA, I have always sought to reach out to other groups and leaders within our industry. I've been able to establish close working relationships not just with INTERTANKO but also with CIRM, the International Harbourmaster Association, the IMO Secretariat, and others. Often those relationships have been built on personal friendships -- which I believe dramatically increase the chances of success in any cooperative venture. Fortunately, Joe and I were friends before INTERTANKO so cleverly hired him. I hope my regard for him and our friendship won't adversely affect his standing within INTERTANKO.

I am pleased to report that Joe will be invited to speak to the next IMPA Congress in 2010. Thank you.