Statement of
Stephen E. Flynn, Ph.D.
Senior Fellow, National Security Studies
Council on Foreign Relations
sflynn@cfr.org
(212) 434-9676
on
"Bolstering the Maritime Weak Link"

presented before the
United States Senate
Committee on Governmental Affairs
Room 342, Dirksen Senate Office Building
Washington, D.C.

Hearing on
"Weak Links: Assessing the Vulnerability of U.S. Ports and Whether the Government is Adequately Structured to Safeguard Them"
9:30 a.m.
Thursday, December 6, 2001

Good morning, Mr. Chairman.

My name is Stephen Flynn. I am a Senior Fellow with the National Security Studies Program at the Council on Foreign Relations where I am directing a multi-year project on "Safeguarding the Homeland: Rethinking the Role of Border Controls."

It is privilege for me to be here today to testify on the vital issue of assessing the vulnerability of U.S. ports and how our government is structured to safeguard them in the wake of the tragic events of September 11. Over the past 2 ½ years, I have been conducting research that has been examining in large part the security weaknesses associated with the system of intermodal transportation that is so indispensable to support global trade and travel. That project has afforded me the opportunity to conduct field visits along the U.S.-Mexican, and U.S.-Canadian borders, within major seaports throughout the United States, in Montreal, Rotterdam, Hong Kong, and Kingston, Jamaica.

My research question has essentially been this: Given the cascading tide of peoples and goods moving through our seaports, and across our borders on trucks and trains, how do regulatory and enforcement agents accomplish their public mandates of filtering the bad from the good; and the dangerous from the benign?

The answer I have arrived at is that the U.S. government and the international community

has no credible way to reliably detect and intercept illegal and dangerous people and goods that infiltrate our maritime and surface transport networks. The tools and protocols for conducting inspections, collecting and mining data, and sharing information have simply not kept pace with the size, speed, and complexity of the international networks that transport people and goods. In addition the staffing, training, and resource levels of front line agencies operating in seaports and at land border crossings are completely out of alignment with their mounting task of managing the growing threats of criminals and terrorists.

This conclusion is an extremely sobering one, particularly in light of what I argue are three unpleasant "facts of life" we must accept in the wake of the events of September 11. First, there will continue to be anti-American terrorists with global reach for the foreseeable future. Second, these terrorists will have access to the means—including chemical and biological weapons—to carry out catastrophic attacks on U.S. soil. And third, the economic and societal disruption created by the September 11 attacks and the subsequent anthrax mailings has opened a Pandora's box. Future terrorists bent on challenging U.S. power will draw inspiration from the seeming ease with which the United States can be attacked, and they will be encouraged by the mounting costs to the U.S. economy and the public psyche exacted by the hasty, ham-handed efforts to restore security.

Along with other national security experts, I belief that what we witnessed on September 11 is how warfare will be conducted in the 21st Century. What this means is that, at the end of the day if all goes well with the current fight in Afghanistan, only the terrorists of the moment will have been defeated. The United States may be unrivaled in terms of its global military, economic, and cultural reach, but there are still real limits to its power. There will always be anarchical corners of the world, for terrorists to hide, whether in the unpoliceable areas of third world mega-cites or in the rural hideaways within failed or failing states. Even if the war on terrorism extends for a decade or more, new adversaries will arise to fill the shoes of those who have perished. Indeed, a likely consequence of the prosecution of that war will be to motivate new recruits into the ranks of terrorism. As with the drug war, "going to the source" is seductive in principle, but likely to prove illusive in practice.

Therefore, the United States and the international community face the stark reality that there will continue to be adversaries who will use catastrophic terrorism as a means of warfare. We also must be mindful of the fact that the goal of these attacks is not simply to kill people, but to create economic and societal disruption that weakens the victim and generates pressures for it to change its policies. Ultimately, therefore, a war on terrorism should be about reducing the vulnerability of the systems of transport, energy,

information, finance, and labor from being exploited or targeted by terrorists.

The best way to illustrate the limits of our current security measures within seaports and the intermodal transportation networks is to consider the security challenge represented by commercial containers—the 20' and 40' boxes that are carried on ships, trains, and 18-wheelers which accounted for 80 percent of the overseas general cargo that arrived in United States in 1999—that number continues to rise and is expected to account for 100 percent of general cargo by 2010.

Consider this scenario that I posited in an article I wrote for *Foreign Affairs* a little over a year ago. Terrorists tied to Osama bin Laden might purchase a company in Karachi, Pakistan that has been in the business of sending ceramics to a New York-based importer for more than a decade. In one of the shipments they could load a chemical agent into a container ultimately destined for Newark, New Jersey, with virtually no risk that it would be intercepted. The container would likely be sent via Singapore or Hong Kong to mingle with the over one million containers that are handled by each of these ports every month. It could well be loaded aboard a 6600 TEU container ship like the *Regina Maersk*, bound for Long Beach, California which receives almost one-quarter a million containers each month. It would likely travel in-bond which means that it would not be inspected at its port of arrival. The U.S. Customs Service inspection system is built around clearing cargo at its final destination (confusingly known as the "port of entry," referring to the point at which goods enter the U.S. economy). Furthermore, the importer has up to 30 days to transport cargo from its arrival port to its port of entry. The container could be diverted or the weapon activated anywhere en route, long before its contents were subject to examination.

Now let's contemplate what the fallout might be the first time a container is used as a weapon. The American people would want to know where and how they can be assured that other containers do not pose a threat. When they learn how the maritime container trade operates, they are unlikely to be reassured. These containers can be loaded by upwards of 500,000 non-vessel operators (NVOCCs) and 40,000 freight forwarders from around the planet. After placing a numbered plastic seal on the latch of the container doors, these boxes are allowed to move into seaport terminals, aboard container ships, and on to trains and truck, with only the scantiest of information about their contents. On the infrequent occasion where U.S. authorities examine a container—about 1 and 100 get a cursory look and roughly 1 and 500 are subjected to a comprehensive physical inspection—this is done in the port of entry.

But suppose there was a chemical weapon loaded in one of these containers which is triggered by opening its door. If this happened in the port of Newark, the effects would

not be limited just to the maritime terminals within the East Coast's largest container port. The plume from a chemical weapon could readily contaminate the adjacent railroad tracks that link the northeast to the continental rail system, the New Jersey Turnpike, and the Newark International Airport—all of which are located within one mile of the container terminal. Presented with the prospect of such a calamity, government authorities might decide that no containers be allowed in the port at all. The economic consequences of cutting off the flow of cargo to a market of over 40 million consumers within a 200-mile radius are almost too-painful to contemplate, but would certainly represent an important victory for an anti-American terrorists.

I pose this dark scenario to help highlight the new security challenges associated with the post-September 11 world, and what I think represents a national and international imperative to address the issue of security within our maritime transport network. What is at stake is not just the opportunity this network presents for a terrorist who wants to exploit it so as to launch another catastrophic terrorist attack on U.S. soil. But, to a considerable extent, the fate of global trade also rests in the balance. This situation is considerably more daunting that the recent anthrax attacks. Faced with the risk of contaminated mail, we could shift to e-mail, faxes, and Fed-Ex. However, if U.S authorities find themselves having to turn off the maritime container trade spigot, we will have effectively self-imposed a blockade on our own economy. This is because there is no alternative to a container for moving general cargo between North America and Europe, Asia, Africa, and Australia.

What I have outlined above has three very important implications for the subject of today's hearing on the vulnerability of U.S. seaports and how the government is structured to the safeguard them:

(1) Seaports cannot be separated from the international transport system to which they belong. Ports are in essence nodes in a network where cargo is loaded on or unloaded from one mode—a ship—to or from other modes—trucks, trains, and, on occasion, planes. Therefore, seaport security must always be pursued against the context of transportation security. In other words, efforts to improve security within the port requires that parallel security efforts be undertaken in the rest of the transportation and logistics network. If security improvements are limited to the ports, the result will be to generate the "balloon effect"; i.e., pushing illicit activities horizontally or vertically into the transportation and logistics systems where there is a reduced chance of detection or interdiction.

(2) Port security initiatives must be harmonized within a regional and international context. Unilateral efforts to tighten security within U.S. ports without commensurate

efforts to improve security in the ports of our neighbors will lead shipping companies and importers to "port-shop"; i.e., to move their business to other market-entry points where their goods are cleared more quickly. Thus the result of unilateral, stepped-up security within U.S. ports could well be to erode the competitive position of important America ports while the locus of the security risk simply shifts outside of our reach to Canada, Mexico, or the Caribbean to ports such as Halifax, Montreal, Vancouver, and Freeport.

(3) Since U.S. ports are among America's most critical infrastructure, they should not be viewed as a primary line of defense in an effort to protect the U.S. homeland. The last place we should be looking to intercept a ship or container that has been co-opted by terrorists is in a busy, congested, and commercially vital seaport.

The fact that seaport security must be considered within a broader transportation and logistics context that includes ports outside U.S. jurisdiction has obvious implications for how the U.S. government is organized to safeguard them. Consider these important structural impediments:

(1) Agencies with responsibility for a specific transportation mode rarely communicate with their counterparts in other modes. In fact, there is a pervasive culture of competition among the modes, often reinforced by their congressional advocates, which leads to a zero-sum approach to parceling out resources. An illustration of this phenomenon is the recent decision by the House to bankroll additional airport security, in part, by diverting $60 million in supplemental monies promised to the U.S. Coast Guard to pay for its stepped-up port security mission.

(2) The security challenge associated with seaports is not just the one posed by conveyances—ships—but the operators, passengers, and cargo on those ships—and the shoreside infrastructure where those people and goods are loaded and offloaded. The federal agencies with primary oversight responsibility for the people, cargo, and conveyances are sprawled across a number of federal departments; e.g., (1) People: Consulate Affairs in the State Department and INS; (2) Goods: U.S. Customs, USDA, and FDA; and (3) Ships and the non-landside of the ports: the U.S. Coast Guard. Responsibility for landside security lies within a smorgasbord of local, state, and private entities that often differs from port to port. The thousands of trucks and their drivers that move in and out of the ports each day are perhaps the most poorly monitored and regulated of all.

(3) Since the jurisdiction of most of these agencies runs out at the water's edge, they tend to approach their regulatory and enforcement mission within a domestic framework as opposed to an international one.

This state of affairs should have been seen as unacceptable before September 11. Now there is particular urgency to taking a comprehensive approach to redressing these issues. Since, seaports are the main arteries that feed global markets by moving commodities, cargo, business travelers, and tourists, protecting that circulatory system from being compromised by terrorists is an important imperative unto itself. Enhancing transport security, therefore, is one part, about preventing terrorists from exploiting the networks to cause catastrophic harm, and the other part about sustaining the continued viability of international commerce. This task can only be accomplished by moving away from ad hoc controls at the seaports that lie within U.S. jurisdiction, and toward point of origin controls, supported by a concentric series of checks built into the system at points of transshipment (transfer of cargo from one conveyance to another) and at points of arrival.

Moving upstream is not as difficult or futuristic of a task as it might appear at first brush. As a start, the United States and its allies should capitalize on the enormous leverage over global maritime transportation networks that a few key jurisdictions can exercise. At some point during their journey, nearly all the ships that carry general cargo must steam into or out of just a handful of global mega-ports such as Long Beach and Los Angeles, Hong Kong, Singapore, Hamburg, Antwerp, and Rotterdam. If the port authorities and their governments of just these seven ports could agree to common standards for security, reporting, and information-sharing for operators, conveyances, and cargo moving within or through those ports, those standards would become virtually universal overnight. Anyone who chose to not play by these rules would find themselves effectively frozen out of competitive access to the world's major markets.

Megaports could require, for example, that anyone who wants to ship a container through their ports, must have that container loaded in an approved sanitized facility. These facilities would have loading docks secured from unauthorized entry and the loading process monitored by camera. In high-risk areas, the use of cargo and vehicle scanners might be required with the images stored so that they can be cross-checked with images taken by inspectors at a transshipment or arrival destination.

After loading, containers would have to be fitted with a theft-resistant mechanical seal. The drivers of the trucks that deliver goods to the port would be subjected to mandatory background checks. For instance, the routes of trucks into ports could be monitored and even controlled by available technology. A microcomputer connected to a transponder and global positioning system (GPS) could be attached to the motor control system of the trucks involved, so that if they strayed out of licensed routes, the engines of the trucks would shut down and the authorities would be automatically notified. The transponder, like those used for the "E-Z-pass" toll-payment system across the northeastern United

States, would give authorities the ability to monitor and control would result in an automatic alert to the police.

GPS transponders and electronic tags could also be placed on shipping container so that they could be tracked. A light or temperature sensor installed in the interior of the container could be programmed to set off an alarm if the container were opened illegally at some point during transit. Importers and shippers would be required to make this tracking information available upon request to regulatory or enforcement authorities within the jurisdictions through which it would be destined.

Manufacturers, importers, shipping companies, and commercial carriers, finally, could agree to provide to the authorities with advance notice of the details about their shipments, operators, and conveyances. This early notice would give inspectors the time to assess the validity of the data, to check it against any watch lists they may be maintaining, and provide timely support to a field inspector deciding what should be targeted for examination.

As with many safety or universal quality control standards, private trade associations could hold much of the responsibility for monitoring compliance with these security measures. As a condition of joining and maintaining membership within an association, a company would be subjected to a preliminary review of their security measures and would agree to submit to periodic and random spot checks. Without membership, access to ships servicing the mega-ports, in turn, would be denied.

This system which advances near-real time transparency of trade and travel flows would serve two purposes. First, to reduce the risk of shipments being compromised in transit. Second, to enhance the ability for enforcement officials to quickly act on intelligence of a compromise when they receive it by allowing them to pinpoint the suspected freight. The importance of achieving this second objective cannot be overstated. The sheer number of travelers and volume of trade along with the possibility of internal conspiracy even among companies and transporters who are deemed low-risk makes critical the ongoing collection of good intelligence about potential breeches in security. But, that intelligence is practically useless if it helps only to perform a post-attack autopsy. Mandating "in-transit accountability and visibility" would provide authorities with the means to detect, track, and intercept threats once they receive an intelligence alert.

Mandating that data be provided is one thing; effectively managing and mining it so as to make a credible determination of risk is another. Front-line agencies must be brought out of their 19th century stove-piped, record-keeping worlds. To reduce the potential for overload, some existing data collection requirements could be eliminated, consolidated,

or accomplished by other methods such as statistical sampling. The goal should be to create within each national jurisdiction one clearing-house for receiving data about people, cargo, and conveyances. All government users of the data could then collect and analyze what they needed from that pool.

Inspectors and investigators assigned to front line regulatory and enforcement agencies will continue to play a critical role in the timely detection and interception of anomalies. To be effective, however, a serious effort must be made to improve their pay, staffing numbers, and training, and to push them beyond the border itself into common bilateral or multilateral international inspection zones. Mega-ports and regional transshipment ports should play host to these zones and allow agents from a number of countries to work side-by-side. Such an approach would take better advantage of information collected by law enforcement officials at the point of departure, allow transport-related intelligence to get into the security system sooner, and reduce the congestion caused by concentrating all inspections at the final destination. The bilateral inspection zones set up by French and British officials at both ends of the English Channel tunnel could serve as a model.

Enlisting mega-ports, focusing on point of origin security measures, and embracing the use of new technologies all support the homeland security mission be enhancing the ability of front line agencies to detect and intercept global terrorist activity before it can arrive on U.S. soil. This approach also precludes the need to impose draconian security measure within seaports that has the effect of imposing a self-embargo on the American economy. It will require providing meaningful incentives to companies and travelers to win over their support. It mandates a serious infusion of resources to train and equip front-line agencies like Customs, INS, and Coast Guard to operate and collaborate in this more complex trade and security environment. And it involves mobilizing U.S. allies and trade partners to harmonize these processes throughout the global transportation networks.

Conclusion:

Building a credible system for detecting and intercepting terrorists who seek to exploit or target international transport networks would go a long way towards containing the disruption potential of a catastrophic terrorist act. A credible system would not necessarily have to be perfect, but it would need to be good enough so that when an attack does occur, the public deems it to be as a result of a correctible fault in security rather than an absence of security.

Ultimately getting seaport security right must not be about fortifying our nation at the

water's edge to fend off terrorists. Instead, its aim must be to identify and take the necessary steps to preserve the flow of trade and travel that allows the United States to remain the open, prosperous, free, and globally-engaged societies that rightly inspires so many in this shrinking and dangerous world.