

# Interagency Collaboration on the *High Seas*

**by Brian Wilson**

On November 23, 1970, a Lithuanian sailor desperate to defect to the United States leapt spectacularly from the deck of a Soviet ship onto a U.S. Coast Guard (USCG) cutter. After discussions among U.S. government departments failed to produce a coordinated response, a Coast Guard commander gave the 40-year old sailor back to the Soviets. Simas Kudirka did not go easily though; several Soviet “seamen” had to beat him into submission, all while aboard a U.S. military vessel off Martha’s Vineyard, Massachusetts. When the Soviets finally departed the Coast Guard ship with their would-be defector wrapped in a blood-drenched blanket, it was widely believed Kudirka was dead.<sup>1</sup>

News of the event spread quickly. A *New York Times* editorial asserted the forcible removal of Kudirka is “surely one of the most disgraceful incidents ever to occur on a ship flying the American flag.” The *Washington Post* declared, “No more sickening and humiliating an episode in international relations has taken place within memory...”

Presidential outrage and Congressional hearings soon followed. Bad decisions certainly led to the outcome, but equally bad coordination among federal departments contributed, as well. Kudirka’s botched asylum request importantly served as a catalyst to address an arcane but vitally important aspect of governance: How to ensure the timely alignment of federal agency action.

The details of the Kudirka story are well documented as the subject of eight Congressional hearings, two books, and an Emmy-award winning TV movie. In 1970, cell phones, instant messaging, e-mails, and Blackberries were still years away. There existed few 24-hour national-level federal agency command/operations centers and certainly no clear guidance regarding when departments should consult with one another. What emerged from the ashes of the Kudirka incident was a presidential directive mandating a stronger, more integrated interagency. The current interagency process is far from perfect; at times it can be cumbersome and bureaucratic, at other times, amazingly agile. The salience of the Kudirka incident, detailed below, lives on through

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a contemporary mechanism for interagency coordination—the Maritime Operational Threat Response (MOTR) Plan.

## **Simas Kudirka**

Kudirka found himself off Martha’s Vineyard because the Soviets had finally agreed to a bilateral meeting with the U.S. to discuss the volume of flounder being snagged by their fisherman off the U.S. coast. Bad weather changed the plans for an underway meeting in international waters, and U.S. and Soviet vessels proceeded to U.S. territorial waters where they anchored next to each other.

At one point in the day, Kudirka threw a crumpled note hidden in a pack of cigarettes onto the USCG cutter *Vigilant* manifesting his intent to defect to the U.S. The *Vigilant*’s executive officer immediately and correctly notified higher headquarters and sought guidance to the possibility Kudirka might attempt to defect by jumping into the water and swimming toward the *Vigilant*. Should the Americans try to beat the Soviets to the rescue? Should Kudirka be treated as a deserter or asylum-seeker? Do other U.S. agencies/departments need to be notified?

Finding the appropriate State Department contact consumed several hours. Once reached, he refused to provide definitive policy or guidance to the Coast Guard, characterizing the potential asylum situation as a “sticky question.”<sup>2</sup> Coast Guard policies on asylum were not clearly delineated at the time, and the State Department official neglected to share basic guidance for handling such a request.<sup>3</sup> There were other challenges, including the senior intelligence officer at Coast Guard headquarters in Washington, D.C. not being allowed to see the *Vigilant*’s message because he was not on the “cleared list.” Operating errors on ship transmissions further delayed the dissemination of critical information regarding the situation.

Then Kudirka did the unexpected: Rather than jumping in the water, he leapt from the

deck of the Soviet vessel onto the *Vigilant*. This new development generated a renewed request for guidance. In response, the acting commander of the First Coast Guard District, Captain Fletcher W. Brown, Jr., again called Admiral William B. Ellis at home, but on convalescent leave. Admiral Ellis did not believe it would be productive to again seek guidance from Washington, D.C and provided decisive but inaccurate direction, labeling

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Kudirka a deserter who must be returned if the Soviets made a request.<sup>4</sup> Captain Brown then conveyed the order to the Commanding Officer of the *Vigilant*. Because the *Vigilant*’s secure communications systems were inoperable, the ship used unclassified transmissions, easily accessed by the Soviets. Within minutes of the cutter’s radio transmissions, the Soviet’s requested Kudirka’s return.

The *Vigilant*’s commanding officer continued to raise concerns to his chain of command until he was blasted with the following, unambiguous edict, which he followed: “You have no discretion! You have your orders! Use whatever force is necessary! Do not let an incident occur!”<sup>5</sup> The *Vigilant*’s captain told the Soviets, “He’s all yours,” as Kudirka screamed, “No, no...Russians... Killing...Siberia.” Kudirka sought to evade capture but was apprehended by Soviet seamen on board *Vigilant*, who took turns hitting and kicking Kudirka, at times, in front of the cutter’s officers and enlisted crew. Because the two ships had now separated from each other and were underway, the Coast Guard transported the

Soviet seamen, with a visibly injured Kudirka, to their vessel.

Kudirka may have been assaulted and ferried back to the Soviet Union, but he did not die. Four years later in his first meeting with the Soviets, President Gerald Ford shocked his staff, including Henry Kissinger, by disregarding its advice and requesting the Soviets release Kudirka. The Soviets unexpectedly complied.

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### **The Presidential Directive 27 Process**

The Coast Guard and State Department separately developed interim procedures after the Kudirka incident for handling requests for political asylum by foreign nationals. In part, the interim guidance provided: “Under no circumstances should the person seeking asylum be arbitrarily or summarily returned to foreign jurisdiction or control pending determination of his status.” In 1972, the State Department formalized its policy for dealing with requests for asylum by foreign nationals.

In January 1978, a Presidential Directive was approved for handling non-military incidents, such as the one involving Kudirka. Presidential Directive 27 (PD 27) “Procedures for Dealing with Non-Military Incidents” covered a broader scope of issues than just asylum and sought to create a uniform and clearly understood process for responding to non-military incidents that could have an adverse impact upon the conduct of U.S. foreign relations. PD 27 did not define “adverse impact,” but did provide detailed guidance regarding implementation, such as the requirement to maintain a 24-

hour watch, the process to inform agencies of an incident, protocols in the event of a disagreement regarding the proposed course of action, and designation of the Department of State Operations Center as the central point of contact.

The PD 27 process was intended to apply to all non-military incidents that could adversely impact U.S. foreign relations, but in practice, it became an interagency mechanism employed primarily to address the government’s response to migrants and drug traffickers in the maritime domain. PD 27 issues included diplomatic engagements with foreign nations, investigative challenges, prosecution options, and operational concerns.

The PD 27 process was extensively used and aligned U.S. government courses of action in more than 3,000 incidents from 1978 to 2005. While integrated operations centers were a critical component of interagency coordination, the PD 27 process also (and consistently) brought together subject matter experts from the Departments of State and Justice; the Coast Guard; and at times, the Department of Defense. For over 25 years, this process proved to be a pioneering mechanism to ensure unity of effort, but as with any decision-making process, it relied on timely and accurate information, as well as training/awareness at the operational level as illustrated by the following examples.

In 1985, Miroslav Medvid, a Ukrainian merchant seaman sought asylum after jumping from his Soviet ship and swimming to shore near the Port of New Orleans.<sup>6</sup> In this case, information did not effectively or expeditiously flow from the operational to national level. Once ashore, two border patrol officers, “made the inexplicable decision...that Medvid had not been seeking asylum and should be returned to his ship.”<sup>7</sup> There was a subsequent interview of Medvid, a legislative/executive branch clash, and sensational allegations, but Medvid, like Kudirka, ultimately departed U.S. waters on a

Soviet vessel. Also like Kudirka, the facts of this defection request are well-documented.

Congress held four hearings to examine its circumstances and directed an investigation that included more than 200 interviews. The PD 27 process was addressed in the report, but Congress primarily focused on the adequacy of Immigration and Naturalization Service (INS) asylum procedures and operational-level decisions and actions.

A second case illustrating the importance of timely and accurate information occurred in 1991 when the USCG, through the PD 27 process, sought interagency concurrence to request foreign state approval to board a coastal vessel (M/V Nordic) suspected of carrying drugs. Difficulties with conducting a thorough at-sea boarding in international waters led to the Honduran-flagged ship being directed to port in St. Marc, Haiti, where Coast Guard personnel discovered drugs on board the vessel. As the Nordic was now in Haitian territory, the Haitian government requested and received U.S. consent to take custody of Bram Coumou, the ship's master and owner. Coumou, who was confined by Haitian authorities for six months until his acquittal, sued the U.S. government for negligent conduct, among other things, and requested damages for his arrest and confinement.

Situation reports and related memoranda before the PD 27 process participants—which failed to reflect that Coumou was an American citizen who had made the request for a boarding several days earlier and was cooperative during the boarding and offloading of cargo—was held by the court to be “grossly deficient and inaccurate.” The Fifth Circuit Court of Appeals reversed the district judge’s finding that the government was liable for personal injury and property damage but remanded the case, “to determine whether the government’s failure to convey information to Haitian authorities constituted a breach of its duty of reasonable

care.”<sup>8</sup>

In contrast to the Medvid and Coumou cases, the prohibitive majority of incidents addressed through the PD 27 process quietly, effectively, and efficiently aligned U.S. government responses to migrants and drug traffickers. Noted criminal law expert Eugene Fidell asserted the PD 27 process, “certainly seems to have had a positive impact...In almost three decades since it went into effect, the process has become an integral part of federal interagency operations. Fortuitously, it was in place as the maritime war against drugs began in earnest [as well as] when illegal maritime migration began to present a significant threat in the 1980s...”<sup>9</sup>

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### **The Maritime Operational Threat Response (MOTR) Plan**

Following the events of September 11, 2001, interagency alignment expanded significantly with the creation of a process that directed agency coordination for the U.S. government response to drug trafficking, illegal migrants, and fishing incursions, as well as certain military incidents and newly identified maritime threats. The PD 27 process addressed “nonmilitary incidents” whereas the new plan addresses “maritime threats.”

Efforts to draft the Maritime Operational Threat Response (MOTR) Plan spanned six months, with approximately a dozen representatives from multiple agencies meeting weekly. Key objectives of the working group were to address the scope of the threat and develop a plan that supported a “whole of

government” response to the full spectrum of maritime threats. Importantly, the plan created a construct that both mandated coordination and protected agency authorities.

An interim MOTR process was first implemented in 2005 and then finalized in October 2006 as one of eight maritime plans, along with the National Strategy on Maritime Security, directed by National Security Presidential Directive 41/Homeland Security Presidential Directive 13. The Presidential Directive provided, in part, that the Maritime Threat Response plan would ensure the “seamless United States Government response to maritime threats against the United States...”

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the prerogative of the agency but generally includes commanders and captains, and their civilian equivalents, Government Service 14s and 15s. Lieutenants and lieutenant commanders, as well as senior executive service, admirals, generals, departmental deputy assistants, and ambassadors, have at times, participated. Because MOTR is a flexible process that is unique to each case, coordination activities can be unclassified or classified and can include as

few as four to more than fifty representatives.

Aligning federal action and securing international cooperation in the vast maritime environment is especially critical as most threats involve multiple countries. The President’s 2010 National Security Strategy noted: “To succeed, we must update, balance, and integrate all of the tools of American power and work with our allies and partners to do the same.”

Collectively, \$700 billion in merchandise move through U.S. ports and waterways annually. On a global scale, approximately 75 percent of transnational trade moves by water, and more than two-thirds of the world’s surface is comprised of ocean. The maritime domain represents a, “global maritime transportation network including U.S. facilities and waters [where]...insecurity in one element can adversely affect security throughout the system.”<sup>10</sup>

Data from just one of the agencies that could be involved in MOTR underscores the need for a national coordinating mechanism in the maritime domain. In its 2009 annual performance report, the USCG noted it removed more than 350,000 pounds of cocaine headed to the U.S., interdicted approximately 3,700 undocumented migrants attempting to illegally enter the U.S., and conducted over 5,400 fisheries conservation boardings. Any one of those boardings or interdictions could involve multiple agencies and result in national-level coordination activities in accordance with the MOTR Plan and its protocols.

One potential threat that required an integrated response involved an Asian country that had received a radiation detector as part of the U.S. Department of Energy’s Megaports initiative. Ambiguous signals from the detection equipment raised the possibility that undocumented nuclear material was being transported in the maritime domain. Several agencies combined with international efforts to successfully locate and verify the legitimacy

of 17 suspected containers scattered among 14 ships.<sup>11</sup>

Another case that required interagency coordination involved a foreign-flagged tank vessel en route to the U. S. in 2005. There were reports of potential links between the vessel's owner and terrorist organizations. The vessel was in poor materiel condition and had not made a port call in the U.S. in approximately 15 years. The vessel operated exclusively in the Middle East and was carrying liquid urea, a fertilizer which could have a legitimate commercial purpose or potentially be used as an explosive.<sup>12</sup>

The possibility of a national security threat led to interagency discussions regarding the desired national outcome and courses of action. Agencies brought multiple views, including the need to identify and respond to the threat as far from the U.S. as possible, concern over disrupting commercial trade, questions regarding whether an at-sea boarding would damage the ongoing investigation, and uncertainty about the implications of the boarding (in bilateral and international venues). Interagency participants agreed to courses of action that included requesting flag state confirmation of registry and consent to the boarding, which was expeditiously granted. A boarding and inspection and interviews with crewmembers occurred approximately 900 miles from the U. S. coast, which along with other actions enabled the U.S. government to confirm the legitimacy of the shipment and authorize its port entry.

In yet another case, the MOTR process facilitated discussions, decisions, and actions following the attack on M/V Maersk Alabama, a cargo ship transporting food aid for Somalia. The boarding by Somali pirates represented the first time an American-flagged vessel had been hijacked in more than 150 years. Three pirates departed the ship with Captain Richard Phillips. MOTR coordination activities occurred within hours of the hijacking. Representatives from the

Departments of State, Justice, Defense (which included the Office of the Secretary of Defense, the Joint Staff, and Combatant Commands), Transportation, and Homeland Security, as well as the intelligence community and other government agencies participated.

Secure video teleconferences were held twice daily over six days to connect senior U.S. government officials on three continents. The MOTR process facilitated expeditious and transparent information dissemination, interagency concurrence on desired national outcomes, and alignment of courses of action. Following the dramatic rescue of Captain Phillips by U.S. Special Operations Forces, collaboration was also necessary to bring the

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surviving pirate to the U. S. for trial.

The successful response to the hijacking sparked efforts to create a single office dedicated to managing the MOTR process. The Global MOTR Coordination Center (GMCC) was established in February 2010 to support U.S. interagency MOTR partners and to serve as a national MOTR coordinator and its executive secretariat. While the MOTR process has existed since 2005, the GMCC, with an office of six (four civilians and two active duty military officers), was tasked with providing trained and dedicated facilitators; institutionalizing MOTR structure and processes; maintaining MOTR protocols; assisting with MOTR war games and exercises; and capturing MOTR lessons learned and best practices.

In GMCC's first eight months, the MOTR process facilitated the disposition of several instances of piracy, more than 80 separate migrant events, 100 law enforcement cases, and apprehended 70 detainees.

One of those cases occurred in September 2010 following the rescue of the hijacked M/V Magellan Star, when agencies turned to the MOTR process to deal with multiple investigative, diplomatic, and prosecution issues. In another case, when a distressed vessel capsized in the Gulf of Aden, the migrants were brought aboard a U.S. Navy vessel. The MOTR process was again employed to facilitate national-level discussions, decisions and agreed-upon courses of action regarding their transfer to land.

The MOTR process has been effective because of several key enablers: clear national-level guidance; strong agency involvement and support at all levels; frequent training and informational briefs; development of detailed "protocols" (operational guidance); and familiarization. MOTR participants generally work together on a daily basis and thus have awareness of issues, authorities, and concerns of their interagency colleagues even before they are raised in a MOTR call.

MOTR process representatives have sought to improve awareness and training through an annual "war game" at the Naval War College in Newport, RI. This two-day exercise has addressed current and emerging issues and agency roles and responsibilities, as well as gaps and seams. More than 25 training and familiarization briefings conducted in 2010 have raised awareness and proved instrumental in ensuring senior-level, as well as operational (including command watch centers) awareness and support. MOTR training is also occurring at military service academies to familiarize the next generation of military leaders with details of the plan and how it is implemented at the operational level. In addition, GMCC representatives have met with officials from foreign governments to discuss national-level coordinating mechanisms and the interagency process.

Interagency involvement in the MOTR process is reflected in coordination activities as well as through membership on the Current Operations Implementation Team (COIT), which functions as the MOTR Plan's board of directors. Frequently, COIT members are the participants in coordination activities. With meetings approximately every six weeks, the COIT discusses MOTR cases, issues with the process, and recommendations for refinement.

The MOTR protocols provide pre-planned responses to specific types of cases, the script for a call, subject matter experts in each agency, and agency command/operations center contact information. Interagency review of the protocols occurs annually. This review process and the document it produces enable MOTR calls to occur with a level of consistency as difficult policy questions are addressed.

## **Interagency Reform and Educational Initiatives**

The MOTR process is just one mechanism to ensure coordination. As long as there are separate agencies with separate authorities, missions, capabilities, and training there will be a need to improve coordination. Strengthening the interagency process and establishing training and professional development requirements have recently received considerable attention.

In response to Congressional direction to examine the national security interagency system, the Project on National Security Reform (PNSR) produced several impressive studies calling for systemic change. In addition to a comprehensive study on building an integrated national security professional system, PNSR released a sweeping report in 2008, "Forging a New Shield." PNSR remarked in the 2008 report that: "The U.S. position of world leadership, our country's prosperity

and priceless freedoms, and the safety of our people are challenged not only by a profusion of new and unpredictable threats, but by the now undeniable fact that the national security system of the United States is increasingly misaligned with a rapidly changing global security environment.”

In September 2010, Congressmen Ike Skelton and Geoff Davis introduced legislation (H.R. 6249) to revamp interagency national security education, development, and coordination. Separately, the U.S. Army Command and General Staff College has developed an interagency studies program, as has the University of Kansas and other schools and universities.

## Conclusion

Institutionalizing collaboration is more than just a maritime challenge: it is a governance challenge. Forty years after the Kudirka episode, an enduring lesson is that communication, coordination, training, and leadership are critical to ensuring timely national-level alignment and information sharing. Horizontal coordinating mechanisms, such as the one used by the MOTR process, have application in other areas of federal government operations. The continued development and growth of constructs that require agencies to communicate, coordinate, and exchange information will require considerable attention, focus, and support and specifically well-defined authorities, direction, training, and education. **IAJ**

## NOTES

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