



Piracy off the Horn of Africa

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Summary

Pirate attacks in the waters off the Horn of Africa, including those on U.S.-flagged vessels, have brought new U.S. and international attention to the long-standing problem of piracy in the region. According to the International Chamber of Commerce International Maritime Bureau (IMB) Piracy Reporting Center 217 attacks occurred in the waters off the Horn of Africa during 2009, with 47 successful hijackings. The IMB recorded 111 attacks in those waters in 2008, almost double the number in 2007. Attacks have been concentrated in the Gulf of Aden between Yemen and the northern coast of Somalia and along Somalia's eastern coastline. However, in July 2009, the United Nations Secretary General warned that "as a result of the military presence in the region, pirates have employed more daring operational tactics, operating further seawards, towards the Seychelles, and using more sophisticated weaponry." The U.S. government also reports that the number of vessels fired upon in 2009 (127) was triple the number fired upon in 2008 (42). Attacks continue to threaten commercial shipping and relief shipments bound for East Africa and the Horn, amid a regional humanitarian crisis that experts are calling the worst since 1984.

The increase in pirate attacks off the Horn of Africa is directly linked to continuing insecurity and the absence of the rule of law in war-torn Somalia. The absence of a functioning government in Somalia remains the single greatest challenge to regional security and provides freedom of action for those engaged in piracy along the Somali coast. Some observers also have alleged that the absence of coastal security authorities in Somalia has allowed illegal international fishing and maritime dumping to occur in Somali waters, which in turn has undermined the economic prospects of Somalis and may be providing economic or political motivation to some pirate groups. The apparent motive of many active pirate groups is profit, and piracy has proven to be a lucrative activity for many. Ransoms paid to pirates and their supporters, some of which now are worth millions of dollars, may exacerbate ongoing fighting and undermine regional security.

In 2008, the U.N. Security Council issued four resolutions (1816, 1838, 1846, and 1851) to facilitate an international response to piracy off the Horn of Africa. Resolution 1851 authorizes international naval forces to carry out anti-piracy operations in Somali territorial waters and ashore, with the consent of Somalia's Transitional Federal Government (TFG). Resolution 1872, adopted May 26, 2009, authorizes member states to participate in the training and equipping of the TFG security forces in accordance with Resolution 1772 (2007). Resolution 1897, adopted December 2, 2009, extends these mandates for twelve months. In January 2009, a multilateral Contact Group on Piracy off the Coast of Somalia (CGPCS) was established to coordinate anti-piracy efforts. U.S., NATO, European Union, regional, and other naval forces are currently patrolling near Somalia in coordination with a U.S.-led Task Force.

The Obama Administration has outlined its policy response and pledged to continue working through interagency and multilateral coordination and enforcement mechanisms established during the Bush Administration. Most experts believe that the reestablishment of government authority in Somalia is the only guarantee that piracy will not continue as a threat. The 111th Congress has explored a range of options to address both the threat posed by piracy as well as its underlying causes, and has sought to influence U.S. policy through oversight of U.S. military operations and diplomatic efforts and through defense and foreign assistance appropriations and authorizations. See CRS Report RL33911, *Somalia: Current Conditions and Prospects for a Lasting Peace*, by Ted Dagne and CRS Report R40081, *Ocean Piracy and Its Impact on Insurance*, by Rawle O. King.

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Recent Developments

The 217 recorded pirate attacks in the Gulf of Aden and the waters far off Somalia's eastern coast during 2009 nearly doubled the number of attacks—111—recorded in the region during 2008. The United Nations Secretary General warned that “as a result of the military presence in the region, pirates have employed more daring operational tactics, operating further seawards, towards the Seychelles, and using more sophisticated weaponry.”¹ Data attributed to the International Chamber of Commerce International Maritime Bureau's (IMB) Piracy Reporting Center states that, in 2009, over 1,050 crew members on dozens of hijacked vessels were taken hostage by Somali pirates, and most of the hostages were released following ransom negotiation.² As of April 1, 2010, IMB data indicated that 32 vessels had been attacked in the region since January, with seven successful hijackings. According to the IMB, Somali pirates were holding eight ships and 143 crew members hostage while seeking negotiated ransom payments.

President Obama signed an executive order on April 13, 2010, that states that acts of piracy or armed robbery at sea off the coast of Somalia constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. The order authorizes the Treasury Department, in coordination with the State Department, to identify and to block the property and interests under U.S. jurisdiction of individuals threatening the peace and security of Somalia, those obstructing the delivery of humanitarian assistance to or in Somalia, and those directly or indirectly supporting military activities in Somalia. In December 2009, the United Nations Security Council renewed the authorizations granted by Resolution 1846 (2008) and Resolution 1851 (2008) for twelve months. Resolution 1897, adopted December 2, 2009, further encouraged states to undertake agreements that would allow governments to embark law enforcement officials aboard coalition anti-piracy vessels for the purpose of facilitating the investigation, detention, and eventual prosecution of piracy suspects.

The extension of the U.N. mandate followed months of renewed pirate activity in the region, including the November 2009 seizure of the *MV Maran Centaurus*, an Greek-flagged supertanker bound for the Louisiana Offshore Oil Port with a cargo of 2 million barrels of Kuwaiti crude oil. In March 2010, pirates captured the *MT Al Nisr al Saudi*, a smaller oil tanker bound for Jeddah, Saudi Arabia from Japan, without a cargo. In April 2010, pirates hijacked the South Korean tanker *MT Samho Dream* and its cargo of approximately \$160 million worth of Iraqi crude oil bound for the United States.

Attacks continue in the Gulf of Aden, in spite of increased international maritime security efforts in those waters. Warnings issued by the IMB's Piracy Reporting Center in 2009 highlighted a rash of pirate attacks in the Bab el Mandeb strait and advised ships to transit at least 600 nautical miles from Somalia's eastern coast. The end of winter weather limitations has led some observers to expect a new increase in attacks during the spring months of 2010, before the monsoon season returns in the summer. The U.S. Department of Transportation Maritime Administration (MARAD) issued a March 2010 advisory warning U.S. vessels that:

Pirates are attacking vessels transiting in the Gulf of Aden, off the Somali coast, and the western Indian Ocean, including attacks as far as 1000 nautical miles off the Somali coast.

¹ Report of the Secretary-General on the situation in Somalia, S/2009/373, July 20, 2009.

² Mark McDonald, “For Somali Pirates, 2009 Is a Record Year,” *New York Times*, December 30, 2009.

Attacks have taken place off the Kenyan and Tanzanian coasts. These pirates are firing automatic weapons and rocket propelled grenades (rpg) in an attempt to board and hijack vessels. Once the attack is successful and the vessel hijacked, the pirates direct the vessel to the Somali coast and thereafter demand a ransom for the safe release of the vessel and crew. Despite the increase in presence and effectiveness of naval forces in the region, as well as the effectiveness of defensive and protective measures, pirate activity has continued and a number of commercial and civilian ships have been successfully attacked and seized.

Vessel operators should anticipate an increase in piracy attacks from March through May [2010] as the area transitions from the southwest to the northeast monsoon when calmer weather favorable for small boat activity will prevail.³

The United States has participated in meetings of the multilateral Contact Group on Piracy off the Coast of Somalia in 2009 and 2010 (see “Contact Group on Piracy off the Coast of Somalia” below). At the September 2009 meeting, the Group approved a International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia to balance the cost of prosecution and incarceration of piracy suspects by regional countries. According to U.S. officials, Kenya, which has taken responsibility for prosecuting most pirate suspects to date, may no longer be willing to accept pirate suspects captured by international navies for trial.⁴ As of April 16, 2010, reports suggested that up to 21 pirate suspects in U.S. Navy custody could be transferred to the United States to stand trial.⁵

The Contact Group’s January 2010 meeting approved the final terms for the trust fund, and the United Nations Office of Drugs and Crime (UNODC) will administer the fund. To date, Cyprus, Denmark, France, Germany, Greece, Japan, Sweden, the United Kingdom, and Norway reportedly have pledged support for the fund. Japan also has announced a \$14 million contribution to an United Nations International Maritime Organization (IMO)⁶-administered trust fund to support capacity building initiatives for regional signatories of the Djibouti Code of Conduct anti-piracy agreement (see “International Maritime Organization (IMO) and the Djibouti Code of Conduct” below).

Within the Group, U.S. officials have led the efforts of a working group seeking to improve awareness and implementation of self-defense best practices in the shipping and insurance industries. Since May 2009, the United States and several other governments have signed a Commitment to Best Management Practices to Avoid, Deter or Delay Acts of Piracy (the so-called “New York Declaration”), including popular ship registry countries such as Panama, Liberia, the Bahamas, and the Marshall Islands.

³ U.S. Department of Transportation Maritime Administration Advisory #: 2010-05, Risk to Vessels Transiting High Risk Waters, March 29, 2010. MARAD’s previous advisory statement (#:2009-07) noted that, “Naval vessels patrolling the [Maritime Security Patrol Area] provide a measure of deterrence through their presence, but this is limited due to the vast area of the [Gulf of Aden] and is even less effective in the open waters east of Somalia. Given the high volume of shipping in the region, the safety of all ships cannot be guaranteed due to the often long response times due to the considerable distances involved.”

⁴ Agence France Presse, “To fight pirate scourge, follow the money: US admiral,” April 16, 2010.

⁵ Lolita C. Baldor, “Officials: Piracy suspects may be in US for trial,” Associated Press, April 17, 2010.

⁶ The International Maritime Organization is a United Nations agency with over 168 member governments. Based in the United Kingdom, its members develop regulations for international shipping related to safety, the environment, and maritime security. It also serves as a global coordinating body for legal issues, technical co-operation, and maritime security including anti-piracy efforts. For more information, see: <http://www.imo.org/>.

As international coordination of anti-piracy efforts has improved at sea and in the region in recent months, U.S. civilian and military officials have continued to stress the importance and difficulty of finding solutions to the problem of instability ashore in Somalia. To that end, the African Union (AU) has extended the mandate of their peacekeeping force in the country, known as the African Union Mission to Somalia (AMISOM). In February 2010, the United Nations Security Council passed Resolution 1910, extending its approval of AMISOM's mandate through January 31, 2011 and reiterating its support for a phased, conditions-based approach to the deployment of UN support. The Security Council has pledged \$72 million for AMISOM, and, since 2007, the United States had provided training, logistics support, and assistance worth over \$170 million to AMISOM.⁷ AMISOM forces continue to come under attack from Islamist groups opposed to the presence of foreign troops in Somalia, including the Al Qaeda influenced group known as *Al Shabaab* and a newer group, *Hizbul Islam*.

The U.S. government and international donors have expressed support for the unity government formed between the Transitional Federal Government (TFG) and the Alliance for the Reliberation of Somalia (ARS), which returned to Mogadishu in early 2009 with elected ARS leader Sharif Sheikh Ahmed as its president. Elements of the ARS based abroad, as well as groups and factions in Somalia, have vowed to continue fighting against the new government, and violence has surged. In response, the United Nations, the League of Arab States, the African Union, and the regional Intergovernmental Authority on Development (IGAD) issued a joint statement in June 2009 condemning the insurgents as a threat "not only to the country, but to the IGAD region and the international community."⁸ In March 2010, *Ahlu Sunna Wal Jamaa* (ASWJ), an Islamist militia joined forces with the TFG to combat Al Shabaab.

The international Contact Group on Somalia continues to work on a multilateral basis to support Somali efforts to reach reconciliation agreements and implement the country's Transitional Federal Charter. An April 2009 donors conference netted \$213 million in pledges of support for AMISOM and TFG plans to support police and security forces.⁹ On May 26, 2009, the United Nations Security Council unanimously adopted Resolution 1872, granting new authorization for members states to participate in the training and equipping of the TFG security forces in accordance with Resolution 1772 (2007) (see "United Nations Security Council" below). Resolution 1910 (2010) calls on donors to promptly disburse pledged funds for AMISOM and the TFG.

The U.S. government, working through AMISOM partners, has provided TFG security forces with small arms, ammunition, and funds to purchase weapons. This effort has raised concerns among some observers who claim that weapons provided to the TFG are being resold and benefiting insurgents.¹⁰ In January 2010, Amnesty International released a report warning of specific diversion threats and calling on donor states, including the United States, to ensure adequate anti-diversion measures are applied to equipment and weapons shipments and that human rights training is incorporated in training initiatives.¹¹

⁷ Figure provided to CRS by U.S. State Department, January 2010.

⁸ U.N. Political Office for Somalia, "Joint Statement on the Assassination of Somali Security Minister," June 18, 2009.

⁹ Agence Europe, "EU/SOMALIA: With \$213 million promised, international community surpasses expectations," April 24, 2009.

¹⁰ See claims made by Peter Pham cited in Fawzia Sheikh, "As Washington Crafts Somalia Review, Arms Deal Draws Criticism," *Inside the Pentagon*, Vol. 25, No. 34, August 27, 2009.

¹¹ Amnesty International, *Somalia: International Military and Policing Assistance Should Be Reviewed*, January 2010.

According to U.S. officials, the United States also has provided operational support to the TFG forces as well as support to regional partners who are training the TFG security personnel. In mid-2009, the Administration arranged for “urgent” shipments of approximately 40 tons of small arms and ammunition to TFG forces in response to growing attacks from its enemies. As of January 2010, U.S. officials stated that the total value of the program was under \$14 million.¹² In June 2009, State Department spokesman Ian Kelly said:

At the request of [the TFG] government, the State Department has helped to provide weapons and ammunition on an urgent basis. This is to support the Transitional Federal Government’s efforts to repel the onslaught of extremist forces, which are intent on destroying the Djibouti peace process and spoiling efforts to bring peace and stability to Somalia through political reconciliation. Any State Department assistance to the TFG underscores our longstanding policy of supporting the Djibouti peace process. This is also supported by the international community and follows on to our participation in International Contact Group meetings in Somalia.¹³

In April 2009, U.S. Secretary of State Hillary Clinton indicated that U.S. diplomats planned to engage with Somali Transitional Federal Government (TFG) officials and leaders from the semi-autonomous region of Puntland (shaded in **Figure 1** below) and the Eyl district to “press these leaders to take action against pirates operating from bases within their territories.” Puntland authorities reportedly have taken some limited action in response, although the U.N. Monitoring Group on Somalia reported in March 2010 that piracy in north-eastern Somalia “benefits from the patronage and protection of State institutions,” and that “the newly established administration of Abdirahman Mohamed “Faroole” is nudging Puntland in the direction of becoming a criminal State.”¹⁴ (see “The Pirates” below).

The Obama Administration requested FY2009 supplemental Peacekeeping Operations (PKO) funding to provide “non-lethal equipment, logistical support, and basing facilities for the African Union Mission to Somalia and to support Somali security sector reform.” The Administration also sought authority to transfer up supplemental Contributions for International Peacekeeping Activities (CIPA) funding to the PKO account for Somalia. Overall, in FY2009, the Administration provided \$246.6 million in PKO funding for Somalia. For FY2010, the Administration estimates it will provide \$102 million in PKO funding for Somalia, along with \$2 million in Nonproliferation, Antiterrorism, Demining, and Related Programs funding for small arms and light weapons destruction programs (NADR-SALW). For FY2011, the Administration is requesting \$53.6 million in PKO funding and \$2 million in NADR funding to continue these programs, in conjunction with \$40,000 in International Military Education and Training (IMET) funding. For more information about political developments in Somalia and U.S. policy, see CRS Report RL33911, *Somalia: Current Conditions and Prospects for a Lasting Peace*, by Ted Dagne.

¹² Figure provided to CRS by U.S. State Department, January 2010. A June 2009 background briefing from an unnamed senior U.S. State Department official described the effort as providing “small arms and limited munitions,” explaining that the United States has provided “funds for the purchase of weapons; and we have also asked the two units that are there, particularly the Ugandans, to provide weapons to the TFG, and we have backfilled the Ugandans for what they have provided to the TFG government.” U.S. State Department, “Background Briefing on U.S. Assistance to the Somalia Transitional Federal Government,” Washington, DC, June 26, 2009.

¹³ U.S. State Department Daily Press Briefing, Washington, DC, June 25, 2009.

¹⁴ Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853 (2008), S/2010/91, March 10, 2010.

On November 13, 2009, United Nations Secretary General Ban Ki-moon released his latest report to the Security Council required by Resolution 1846 on the security of international navigation off the coast of Somalia (S/2009/590).¹⁵ The Secretary General also reported to the Security Council on the Situation in Somalia in January 2010 and provided an update on international anti-piracy efforts.¹⁶ The January report concluded that, while coalition counter-piracy efforts are making pirate operations more costly and dangerous, “pirates now attack ships, some as far away as 1,000 nautical miles off the coast of Somalia in the Indian Ocean, and have generally become sophisticated in their operations.”

The European Union and NATO have extended the mandates for their counter-piracy missions through the end of 2010 and the end of 2012, respectively (see “NATO: Operation Ocean Shield” and “European Union: Operation ATALANTA” below). China announced its willingness to assist EU forces in escorting World Food Program relief shipments and to improve its cooperation with the coalition task force providing security escorts in the Maritime Security Patrol Area in the Gulf of Aden (see “Combined Task Force 151 and Other Navies’ “National Escort Systems”” below).

Background

Piracy has reemerged as a global security threat, most recently in the waters off the Horn of Africa, but also in West Africa, the waters off India, the South China Sea and the Strait of Malacca, and the Caribbean. Pirates tend to operate in regions with large coastal areas, high levels of commercial activity, small national naval forces, and weak regional security cooperation mechanisms. These characteristics facilitate other maritime security threats, including maritime terrorism, weapons and narcotics trafficking, illegal fishing and dumping, and human smuggling operations.

Worldwide rates of piracy began to increase in the early 1990s, peaking at roughly 350 to 450 reported attacks per year during the period 2000-2004, then declining by almost half by 2005. In 2007, almost half of the world’s reported pirate attacks took place in African waters, mainly near Nigeria and Somalia. The number of attacks in Somali waters doubled in 2008, accounting for an estimated 40% of the 293 pirate attacks reported worldwide.¹⁷ The recent increase in pirate attacks off Somalia has caused the total number of worldwide pirate attacks to return to the levels of 2000-2004: of the 406 worldwide attacks in 2009, 217 of them occurred off the coast of Somalia. Moreover, high-profile attacks on high value vessels in the Gulf of Aden and the west Indian Ocean have brought renewed international attention to the problem of piracy in waters off the Horn of Africa.

The U.S. National Maritime Security Strategy, issued in 2005, stated that the “safety and economic security of the United States depends upon the secure use of the world’s oceans,” and identified “well organized and well equipped” pirates and criminals as threats to international maritime security. The bombing of the *U.S.S. Cole* in 2000 in the Yemeni harbor of Aden and the bombing of the French oil tanker *MV Limburg* in 2002 illustrated the threat of potential maritime

¹⁵ Report of the Secretary-General pursuant to Security Council resolution 1846 (2008), S/2009/590, November 13, 2009.

¹⁶ Report of the Secretary-General on the situation in Somalia, S/2009/684*, January 8, 2010.

¹⁷ Statistical information on annual pirate attacks found in this report is derived from reports by the International Maritime Bureau, a division of the International Chamber of Commerce.

terrorism in the region. The United States, working with its international partners, established a combined naval task force to meet the terrorism threat (Combined Task Force 150),¹⁸ and increased bilateral military and security assistance to regional navies. However, prior to the establishment in January 2009 of the new Combined Task Force 151 (see “Combined Task Force 151” below), the United States had not assigned any naval assets the sole task of performing anti-piracy operations in the Horn of Africa region.

Similarly, until 2008, the international community did not respond to the threat of piracy in the waters off of Somalia in a coordinated, dedicated manner. In December 2008, the European Union launched EU NAVFOR Operation ATALANTA, representing the first naval operation under the framework of the European Security and Defense Policy (ESDP). Similarly, NATO has launched a dedicated anti-piracy mission, Operation Ocean Shield, and other navies have deployed ships to provide security for vessels bearing their flags. The development of a collaborative regional response in East Africa in 2009 mirrored regional reactions to the threat of piracy in the Strait of Malacca between Malaysia, Singapore and Indonesia, which are credited with having drastically reduced the instance of piracy in Southeast Asia since 2005 (see “International Maritime Organization (IMO) and the Djibouti Code of Conduct” below). Eradicating piracy in the Horn of Africa region may prove to be a more daunting task. The vast areas of the western Indian Ocean and the Gulf of Aden where the pirates operate are remote, Somalia remains largely ungoverned, and regional states have relatively weak naval capabilities.

Piracy off the Horn of Africa: Profile

The Pirates

Several groups of pirates currently operate in Somali waters, according to reports from the United Nations Secretary General, an experts group convened by the Secretary General’s Special Representative for Somalia in November 2008, and the U.N. Monitoring Group on Somalia established pursuant to Security Council resolution 1853 (2008).¹⁹ Organized predominantly along clan lines and based in distinct, remote port towns, the groups have varying capabilities and patterns of operation, making generalized responses more difficult. The two primary groups identified by the U.N. Monitoring Group in its March 2010 report are a pirate network based in the Mudug region district of Harardera (Xarardheere) and two pirate networks based in the Puntland region district of Eyl and Garad. The Secretary General and the Special Representative’s experts group also report that smaller pirate groups also operate from the Somali ports of Bosaso, Qandala, Caluula, Bargaal, Hobyo, and Mogadishu.²⁰ The Secretary General has warned that

¹⁸ See also: <http://www.cusnc.navy.mil/cmef/150/index.html>.

¹⁹ Report of the Secretary-General pursuant to Security Council Resolution 1846 (2008), S/2009/146, March 16, 2009; and, International Expert Group on Piracy off the Somali Coast, Final Report: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah, November 10-12, 2008, Nairobi, Kenya.

²⁰ The Special Representative’s experts group November 2008 report identified the following specific pirate group leaders (clan, location in parentheses): Isse Mahmuud and Leelkase (Darood, Eyl), Omar Mahmuud (Darood, Garad), and the Habargedir (Hawiye, Hobiya, Harardera, and Mogadishu). In August 2009, the International Crisis Group released a report indicating that there were three distinct pirate groups, which it identified as the Northern gang, based in Eyl; the Central gang, based in Hobyo; and the Southern gang, based in Harardera. The U.N. Monitoring Group March 2010 report focuses on the activities of Mohammed Hassan Abdi “Afweyne” (Habar Gidir Saleeban, Haardera), Abshir Abdillahi “Boyah” (Majeerteen, Eyl), and Mohamed Abdi Garaad (Majeerteen, Puntland). See also International Crisis Group, *Somalia: The Problem with Puntland*, Africa Briefing No. 64, August 12, 2009.

some of the pirate groups “now rival established Somali authorities in terms of their military capabilities and resource bases.” Pirate groups have operated from many of these remote communities, each heavily dependent on fishing, since the early 1990s.

Several of the pirate groups have adopted names to suggest that they are acting in a maritime security capacity, and some reports suggest that some of the pirates may have previously received training by Somalia’s former navy and by foreign security firms and been given semi-official status to intercept foreign fishing vessels and extract fines. Today, the pirates are collectively referred to by Somalis as *burcad badeed* (sea bandits).²¹ Nevertheless, piracy appears to have become an attractive pursuit for young men, creating potential legal complexities for regional and international governments seeking to try young pirate suspects for alleged crimes.

Puntland

The northern semi-autonomous region of Puntland (shaded in **Figure 1**) appears to be home to the most active and capable pirate networks, and some regional and local government officials there are alleged to have facilitated and profited from piracy in spite of some limited recent efforts by regional leaders to crack down on piracy-related corruption. In March 2010, the U.N. Monitoring Group on Somalia reported that key leaders in the Puntland administration “have received proceeds from piracy and/or kidnapping,” and, that “in some cases the Puntland authorities have extended protection to pirate militias.”²² Puntland authorities protested the report’s conclusions and characterized them as politically motivated. In August 2009, the TFG and the Puntland authorities agreed to a joint program for anti-piracy cooperation, and, in November 2009, the Secretary General reported that local Puntland authorities “have succeeded in launching limited relevant activities to thwart, curb, or investigate piracy.”²³ Puntland’s regional authorities have developed a basic coast guard, but accounts suggest that the equipment and capabilities of this small force remain very limited.

Motives

According to the final report of the experts group convened in November 2008 by U.N. Special Representative to Somalia Ahmedou Ould-Abdallah, “poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia.”²⁴ While the profitability of piracy appears to be the primary motivating factor for most pirates, other observers argue that since conditions in

²¹ Ibid.

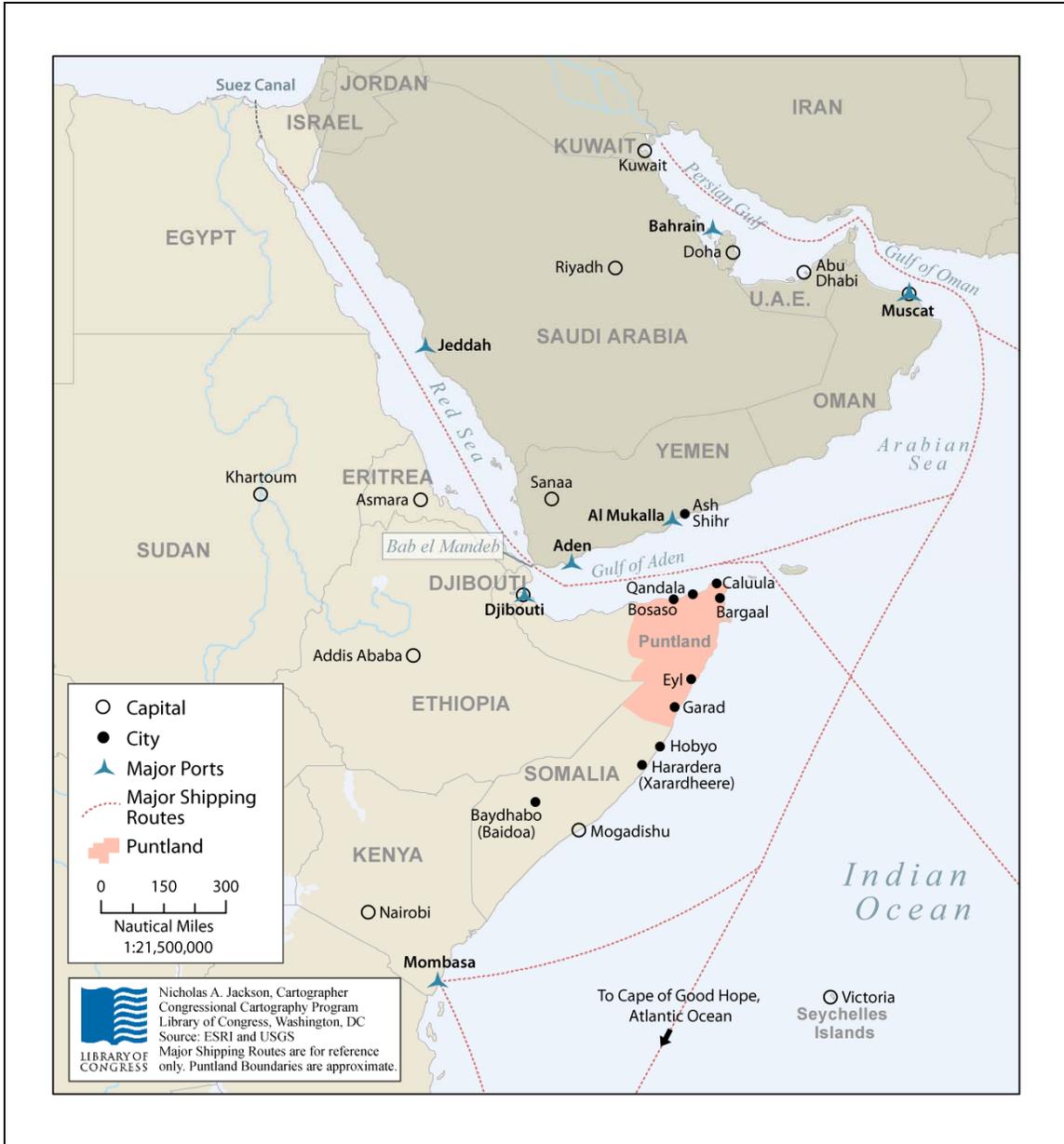
²² Report of the Monitoring Group on Somalia, S/2010/91, March 10, 2010.

²³ Report of the Secretary-General, S/2009/590, November 13, 2009. In April 2009, Puntland security forces began to launch raids on some alleged pirate bases, and the region’s courts have tried and convicted suspected pirates. Local authorities also initiated *wa’yigelin*, a “sensitization campaign” and have offered general amnesty to those that renounce piracy. *All Africa*, “Anti-Piracy Campaign Begins Today in Puntland,” April 24, 2009; and, *All Africa*, “Puntland Nabs 15 Pirate Suspects, Seizes 5 Boats,” May 18, 2009.

²⁴ International Expert Group on Piracy off the Somali Coast, Final Report: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah, November 10-12, 2008, Nairobi, Kenya.

Somalia make survival difficult for many and prosperity elusive for most, the relative risk of engagement in piracy seems diminished.²⁵

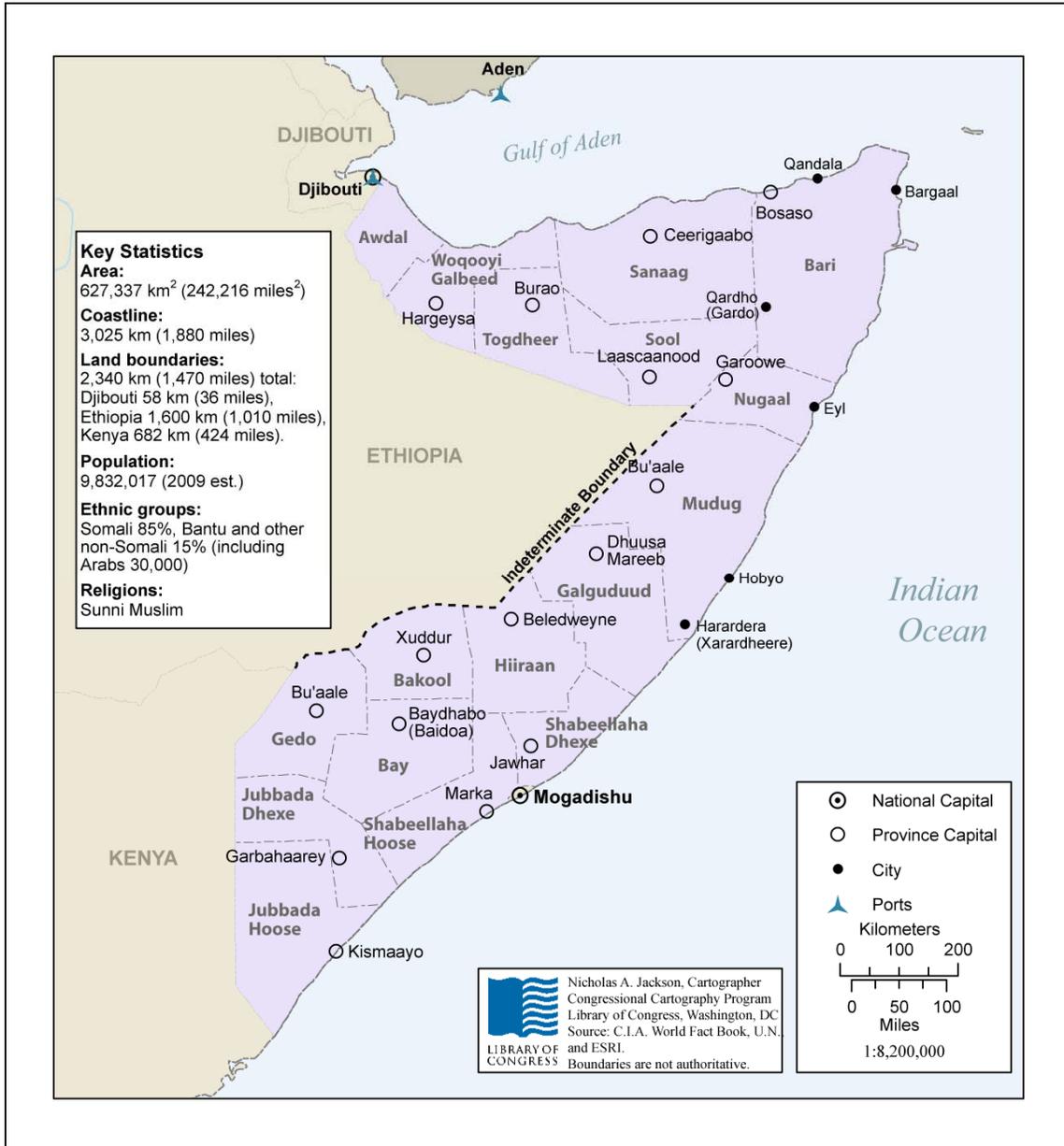
Figure I. The Horn of Africa, Surrounding Waters, and Key Locations



Source: Congressional Cartography Program, Library of Congress, adapted by CRS Graphics.

²⁵ The dire economic and security situation in Somalia is illustrated by the continuing outflow of refugees and migrants to neighboring countries. The U.N. High Commissioner for Refugees estimates that as many as 50,000 people, predominantly Somalis, crossed the Gulf of Aden to Yemen in 2008. The deaths of hundreds of migrants in a boat accident off the northern Somali coast in April 2009 illustrate a pattern of similar accidents which continues. "More Somali Migrants Drown off Yemeni Coast," UN IRIN, March 1, 2009.

Figure 2. Somalia Map



Source: Congressional Cartography Program, Library of Congress, adapted by CRS Graphics. Statistics from Central Intelligence Agency, *The World Factbook*.

Somali pirates interviewed by international media sources frequently link their piracy activities to trends such as illegal fishing and dumping in Somali waters that have emerged as the country has lost its ability to patrol its waters over time.²⁶ While these explanations may mask the opportunistic piracy of some, reports suggest that illegal fishing and dumping have disrupted Somalia's coastal economy. For example, a July 2005 report from the United Kingdom Department for International Development (DFID) estimated that Somalis lost \$100 million to illegal tuna and shrimp fishing in the country's exclusive economic zone in 2003-2004.²⁷

The international Contact Group on Piracy off the Coast of Somalia (CGPCS) (see "Contact Group on Piracy off the Coast of Somalia") stated at its inaugural meeting that "piracy is symptomatic of the overall situation in Somalia including the prevalence of illegal fishing and toxic waste dumping off the coast of Somalia, which adversely affects the Somali economy and marine environment."²⁸ The CGPCS also reaffirmed "its respect for Somalia's sovereignty, territorial integrity, and sovereign rights over natural resources" and underscored that the group's participants "ensure that their flagged vessels respect these rights."

Paradoxically, the regional fishing industry reportedly has been damaged significantly by the threat of piracy. According to some reports, tuna catches in the Indian Ocean fell 30% in 2008, in part because of fishing vessels' fears of piracy. This has had a major impact on countries like the Seychelles, which rely on the fishing industry for up to 40% of their earnings.²⁹

The use of force by international naval patrols to apprehend or kill pirate suspects has raised the prospect that revenge may become a motivating factor for pirates whose associates are killed or captured. The April 14, 2009, attack on the U.S.-flagged *MV Liberty Sun* allegedly was carried out with the intention of damaging or sinking the ship and injuring or killing its crew in retaliation for the deaths of three Somali pirates during U.S. military efforts to secure the release of the detained captain of the *MV Maersk Alabama* days earlier (see "Threats to U.S. Flagged Vessels and the *MV Maersk Alabama* Incident" below).³⁰ According to the U.S. Office of Naval Intelligence (ONI), as of December 30, 2009, the number of vessels fired upon by Somali pirates in 2009 (127) was triple the number fired upon during 2008 (42).³¹

²⁶ The U.N. experts group noted the tendency of pirates to characterize their actions as an alternative livelihood or as retribution for illegal international activities in Somali waters: "The pirates also firmly believe that they have every right and entitlement to attack illegal fishing vessels operating in their territorial waters as their fishing resources are being pillaged daily by international shipping vessels from Asia and Europe." International Expert Group on Piracy off the Somali Coast, Final Report, p. 15.

²⁷ DFID, "Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries," July 2005.

²⁸ Statement of the Contact Group on Piracy off the Coast of Somalia, New York, January 14, 2009.

²⁹ "Somali Piracy 'Reduces Tuna Haul,'" *BBC*, January 22, 2009.

³⁰ An alleged pirate commander named Abdi Garad told reporters, "This attack was the first against our prime target. We intended to destroy this American-flagged ship and the crew on board but unfortunately they narrowly escaped us. The aim of this attack was totally different. We were not after a ransom. We also assigned a team with special equipment to chase and destroy any ship flying the American flag in retaliation for the brutal killing of our friends." *Agence France Presse*, "Pirates stage rocket attack on US freighter," April 14, 2009.

³¹ U.S. Office of Naval Intelligence, Maritime OPINTEL Report - SOMALIA: Piracy Analysis and Warning Weekly (PAWW) Report (Horn of Africa), December 30, 2009.

Tactics and Demands³²

As noted above, some Somali pirate groups have developed sophisticated operational capabilities and have acquired weaponry, equipment, and funds that make them on par with or more effective than the local forces arrayed against them. The typical Somali pirate team is equipped with a variety of small arms, including AK-47 rifles and rocket propelled grenade (RPG) launchers. Many pirate teams use fishing skiffs powered with large outboard motors to give chase to larger, but slower moving tankers, cargo ships, yachts, cruise ships, barges, and tug boats. Local Somali fisherman reportedly are forced to support pirate activities in some cases, while in other cases, coastal Somalis lend their fishing boats, equipment, and navigational expertise to teams of would-be pirates from inland communities.

Somali pirates initially focused on attacking ships in the western Indian Ocean, off Somalia's eastern coast. When ships operating on that route shifted further out to sea, Somali pirates shifted their focus to the Gulf of Aden, where there is a concentration of merchant ships (an estimated 33,000 per year)³³ operating in a more constrained waterway that is relatively close to Somalia's northern shore. Most recently, now that international naval forces are patrolling the Gulf of Aden with some effectiveness, Somali pirates have shifted some of their focus back to the Indian Ocean, and are now able to operate hundreds of nautical miles from the Somali coastline, often with the support of so-called 'mother ships.' These 'mother ships' are larger fishing vessels often acquired or commandeered by acts of piracy, and tend to operate out of the Somali ports of Bosaso and Mogadishu and the Yemeni ports of Al Mukalla and Ash Shihr.

U.S. and international officials suspect that in some cases, Somali businessmen and international support networks provide pirate groups with financing and supplies in return for shares of ransom payments that are also distributed among pirates themselves.³⁴ The IMB has disputed claims that pirates receive intelligence support in order to target specific vessels, arguing that "the suggestion that vessels are targeted in advance using shore based intelligence is spurious.... Further, there is no information in the public domain that would enable pirates to precisely locate a targeted vessel at sea and then to mount a successful attack off the Horn of Africa."³⁵ In March 2010, the U.S. Office of Naval Intelligence (ONI) reported that "vessels attacked off Somalia are randomly selected and not specifically targeted for any reason other than how easily the vessel can be boarded. Pirates simply patrol an area, wait for a target of opportunity, and attempt to board."³⁶ The pirates refuel and purchase logistical supplies like fuel and engine parts in Yemen, according to U.S. naval officials.³⁷ According to the NATO Shipping Center, Somali pirates returning from

³² The U.S. government has provided mariners with descriptions of common pirate tactics and instructions for response. See, for example, U.S. Department of Transportation Maritime Administration, "Somali Pirate Tactics," December 2008, available at http://www.marad.dot.gov/documents/HOA_Somali%20Pirate%20Tactics_15DEC2008.pdf.

³³ Assistant Secretary Andrew J. Shapiro, U.S. State Department, Bureau of Political-Military Affairs, "Taking Diplomatic Action Against Piracy," Remarks to the Global Maritime Information Sharing Symposium, National Defense University, Washington, D.C., September 16, 2009.

³⁴ For a detailed account of this share-based distribution system among pirates, see Annex III of the Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1853 (2008), S/2010/91, March 10, 2010.

³⁵ International Chamber of Commerce- International Maritime Bureau, "Shipping Industry dismisses reports of targeted Somali pirate attacks," May 15, 2009.

³⁶ U.S. Office of Naval Intelligence, Maritime OPINTEL Report - SOMALIA: Piracy Analysis and Warning Weekly (PAWW) Report (Horn of Africa), March 17, 2010.

³⁷ Comments by Admiral Mark Fitzgerald in "Work with Yemen Government on Somali Piracy: U.S. Admiral," *Reuters*, March 9, 2009.

raids in the Gulf of Aden often stop at the port of Caluula on the northeast tip of Somalia before proceeding to their safe havens on the Indian Ocean coast.³⁸

One of the unique characteristics of Somali piracy has been the taking of hostages for ransom. In this sense, piracy off Somalia can be viewed as a form of maritime kidnapping. Unlike pirate attacks in Strait of Malacca or Nigeria, where ships are boarded either to take the vessel or its contents, pirates off the Horn of Africa routinely take the target vessel's crew hostage in return for ransom payments. This approach to piracy is possible because the pirates have a sanctuary on land in Somalia and in its territorial waters from which they can launch pirate attacks and conduct ransom negotiations. Pirates in other parts of the world are less likely to have such sanctuaries. This has presented maritime security forces with significant challenges to traditional engagement strategies and tactics.

According to reports, most vessels under attack have less than 15 to 30 minutes between the first sighting of the pirates and their boarding of the ship and taking of hostages. If a naval ship cannot arrive on scene within those 15 to 30 minutes, it will likely arrive too late to prevent the ship's capture. Naval combatant ships generally can steam at speeds of up to 30 knots (speeds of 20+ knots might be more likely), so unless a naval ship happens to be a few miles away when a commercial ship comes under attack, it won't arrive until after (perhaps long after) the 15- to 30-minute window has come and gone. The large area of water to be patrolled and the relatively small number of naval ships available means that the closest naval ship is often far too distant to arrive within that timeframe.

While pirate attacks may involve violence and the use of weaponry, most Somali pirate groups have not shown a willingness to wantonly harm captives taken in the course of their raids. Pirates in other parts of the world who engage in these types of attacks might be more likely to kill or seriously wound merchant ship crew members, since extracting ransom payments is not their objective. Negotiations for ransom involve the use of satellite telephones, third-party intermediaries in Somalia and abroad, and public relations efforts to influence interaction with property owners and foreign officials. Most navies have avoided rescue operations that could endanger the lives of hostages, preferring instead to engage in hostage negotiations or wait for shipping companies to negotiate ransom. According to reports, a rescue operation by French naval forces, designed to free a family held hostage onboard a small sailboat off the Somali coast, resulted in the death of the vessel's owner, a French citizen, during an exchange of fire between the pirates and naval personnel.³⁹

Prior to the U.S. military resolution of the *MV Maersk Alabama* seizure and other French military operations, the most sensational cases of piracy to date had been resolved through the payment of large sums of money to different pirate syndicates.⁴⁰ The Ukrainian ship *MV Faina* was released for a reported \$3.2 million ransom in February 2009 after being held for nearly 6 months by pirates based in Harardera (Xarardheere). The seizure of the ship, carrying T-72 tanks and a significant amount of ammunition and small arms, led several governments, including the United States, to dispatch naval forces to the region to monitor the ship and its cargo. The Saudi oil supertanker *MV Sirius Star* was released for a reported \$3 million ransom to Eyl-based pirates in

³⁸ Report of the UN Secretary General, S/2009/146, paragraph 6, page 2.

³⁹ Others onboard were rescued safely.

⁴⁰ The French military also has reportedly undertaken a number of raid and rescue operations since April 2008 to free its citizens held aboard seized ships.

January 2009 following its seizure in November 2008. Similarly, reports suggested Somali pirates received a \$4 million ransom in December 2009 to release the Chinese bulk coal carrier *MV De Xin Hai*.⁴¹

The hijacking of the *MV Sirius Star*, *MV De Xin Hai*, *MV Maran Centaurus*, and the April 2010 hijacking of the *MT Samho Dream* illustrate the threat piracy can pose to international energy supplies as well as the capabilities of some Somali pirates to operate far out to sea against large vessels. Ransom payments are considered to be problematic by some observers because they encourage pirates to continue their attacks with the expectation that insurance and shipping companies will decide that ransoms are cost effective relative to the insured values of personnel and cargo (see “Threats to Commercial Shipping and Global Trade” below).

The use of force by international naval forces to apprehend pirates and to free hostages in 2009 has raised the prospect of an escalation in the pirates’ use of force. As noted above, pirate leaders vowed to retaliate for the deaths of some of their operatives at the hands of U.S. and other international naval forces. However, to date few hostages have been harmed in pirate attacks. Nonetheless, the use of force against suspected pirate vessels also may be problematic because of the difficulty inherent in distinguishing a pirate mother ship from a legitimate commercial ship. According to reports, in November 2008, a ship from the Indian navy attacked what it thought was a pirate mother ship, only to discover, after the attack was conducted, that the targeted ship was an innocent Thai commercial trawler.

The effective use of force against pirate strongholds in coastal towns would likely require significant military planning and the investment of considerable resources in order to avoid or minimize civilian casualties. The number of naval ships that would be needed to completely halt piracy in the Gulf of Aden and the waters of Somalia’s eastern coast is probably much larger than the force that has been operating there recently, approximately 40 combatant ships as of early 2010. According to some estimates, as many as 60 might be required to fully suppress piracy in the Gulf of Aden alone. The adjoining area of concern in the Indian Ocean off Somalia’s eastern coast, which has been measured at more than 1 million square miles, is much larger than the Gulf of Aden, so completely halting piracy in that area would likely also require an even larger number of ships.

Reports suggest that some pirates have invested ransom earnings in sophisticated weaponry and have fortified their operating bases against local authorities and potential international intervention. Some observers warn that international military operations to combat pirates ashore with force could undermine political reconciliation efforts aimed at reestablishing national governance in Somalia. (See “Oversight of U.S. Military Forces and U.S. Foreign Assistance” below.)

Piracy off the Horn of Africa: Impact

The strategic location of the Horn of Africa increases its importance for international security and commerce. The northern coastline of Somalia lies to the south of the Gulf of Aden, a key transit zone for ships passing to and from the Red Sea and the increasingly active port of Djibouti. The U.S Department of Energy estimated that, as of 2006, as many as 3.3 million barrels of oil per

⁴¹ Mohamed Olad Hassan, “Pirate claims \$4M paid to release Chinese ship full of coal held off coast of Somalia,” *Associated Press*, December 28, 2009.

day were transiting the Bab el Mandeb strait between the Gulf of Aden and the Red Sea.⁴² The Indian Ocean waters off the southeast coast of Somalia are home to busy shipping lanes for trade between Asia and East Africa, as well as for ships making longer voyages around South Africa's Cape of Good Hope. Ship traffic to and from the Kenyan port of Mombasa is particularly vulnerable to security disruptions in the west Indian Ocean. The Maritime Administration testified in February 2009 that:

On average, at least one U.S. commercial vessel transits the area each day. Many of these US-flag vessels carry Department of Defense cargo bound for Operations Iraqi and Enduring Freedom. U.S.-flag vessels transiting the region also carry humanitarian cargoes generated by U.S. AID or international organizations to the Horn of Africa, including Djibouti, Somalia and other countries in East Africa or South Asia.⁴³

Threats to Commercial Shipping and Global Trade⁴⁴

Somali piracy results in several types of economic costs, including ransom payments, damage to ships and cargoes, delays in delivering cargoes, increased maritime insurance rates, and the costs to harden merchant ships against attack and employ naval forces for anti-piracy operations. The total economic costs of piracy, though large in an absolute sense, are nevertheless only a very small fraction of the total value of worldwide shipborne commerce. In testimony on February 4, 2009, before the House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, Peter Chalk, senior policy analyst at the Rand Corporation, stated that the overall annual cost of piracy to the maritime industry is estimated to be between \$1 billion and \$16 billion. Some of these costs are ultimately passed on to the consumer.

In May 2008, based on the advice of the Lloyd's Joint War Committee, insurance underwriters at Lloyds of London designated the Gulf of Aden a "war-risk" zone subject to a special insurance premium. In response, London-based ocean marine insurers raised premium rates for ships making the voyage through the Gulf of Aden and the Suez Canal. One group of London insurance brokers and underwriters has estimated extra premiums at \$10,000 to \$20,000 per trip through the Gulf of Aden.⁴⁵ U.S. rates, however, do not appear to have changed, in part, because of the U.S. Maritime War Risk Insurance Program, the competitive nature of the ocean marine insurance business and actions taken by owners to protect their ships and cargo. According to representatives of the American Institute of Marine Underwriters (AIMU), U.S. ocean marine insurers have not had to pay ransom for any act of piracy; therefore, they say, hull and cargo insurance rates for vessels leaving the United States remain the same.

London-based shipping firms are usually prepared to pay ransom when the demanded sums are considered low, ranging from \$500,000 to \$2 million, compared with the value of the ships and cargo. Such payments are reimbursed because hull insurance policies issued in London explicitly

⁴² U.S. Department of Energy, Energy Information Administration, Country Analysis Brief: World Oil Transit Chokepoints, January 2008.

⁴³ U.S. Department of Transportation, Maritime Administration, Statement of Acting Deputy Administrator James Caponti before the Sub-committee on Coast Guard and Maritime transportation of the Committee on Transportation and Infrastructure, United States House of Representatives, on International Piracy, February 4, 2009, p. 3.

⁴⁴ For more information about the commercial impact of piracy, see CRS Report R40081, *Ocean Piracy and Its Impact on Insurance*, by Rawle O. King.

⁴⁵ *Piracy Threat Hikes Insurance Premiums: Insurers to Raise Rates in High-Risk Areas After Piracy Heists Off Somali Coast*, November 20, 2008, located at <http://www.msnbc.msn.com/id/278262>.

covered the peril of piracy.⁴⁶ (Hull insurance forms used by American insurers generally exclude coverage for the peril of piracy.) However, when the ransom demanded exceeds the value of the cargo, the shippers typically do not pay the ransom. Some firms have developed specific insurance products to address piracy-related ransom costs.⁴⁷

In 2009, as the frequency of vessel seizures and ransoms in the Gulf of Aden and Indian Ocean spiked to unprecedented levels, some marine underwriters in London began to shift from covering piracy under hull policies to covering the peril under war risk policies.⁴⁸ This change may have been taken in an effort to address possible ambiguity in how piracy (including marine kidnap and ransom) is covered. The purchase of a war risk policy obviates the need for a separate marine kidnap and ransom insurance policy. Under the hull policy, the kidnap and ransom perils are generally covered under a contractual provision called “general averages” whereby the owner, insurance company, and other interested parties enter into an agreement prior to each shipment to pay a proportional share of a vessel’s expenses in the event of piracy that may or may not include kidnap and ransom. The problem is that in the event of an actual piracy certain ambiguities and legal challenges arise.

Ship operators (and their governments) might still judge the costs of paying occasional ransoms to be far less than the costs of rerouting the shipping around the southern tip of Africa — a longer and more costly trip — or arming merchant ships. Some experts maintain the payment of ransoms in the event of vessel seizure has kept the level of violence associated with piracy relatively low. Thus, the payment of occasional ransoms might be viewed by ship operators (and their governments) as a regrettable but tolerable cost of doing business, even if it encourages more piracy. In March 2010, U.S. Assistant Secretary of State for Political-Military Affairs Andrew Shapiro stated the Administration’s position that “continued payments will only encourage more kidnappings. For this reason, the United States actively encourages other states to adopt our no concessions policy and refrain from paying ransoms.”⁴⁹

Pirate attacks have continued to increase despite patrols off the coast of East Africa by the navies of several nations, including the United States, the United Kingdom, other members of the European Union and other nations. Pirates have responded to the increased naval presence by moving attacks further out to sea — a move that has had the intended effect of increasing the area in the Gulf of Aden and the Indian Ocean that the vessels that comprise the international navies must patrol.

Meanwhile, the increase in pirate attacks is occurring at a time when the shipping industry is suffering from the economic downturn. The frequency of hiring dry bulk carriers, a key industry component, has decreased; the “hire” rates dropped over 90% in late 2008, in part because of

⁴⁶ Robert F. Worth, “Pirates Seize Saudi Tanker off Kenya: Ship Called the Largest Ever Hijacked,” *New York Times*, November 18, 2008, p. A. 6.

⁴⁷ Stuart Collins, “Insurers increase war rates for several high-risk areas” *Business Insurance*, Volume 43; Number 31, September 7, 2009.

⁴⁸ Zack Phillips, “Marine Insurers Transfer Piracy Risk to War Cover: Surge in Attacks Prompts Move by London market,” *Business Insurance*, March 30, 2009, at <http://www.businessinsurance.com/article/20090329/ISSUE01/100027383>.

⁴⁹ U.S. Assistant Secretary of State for Political-Military Affairs Andrew J. Shapiro, Keynote Address to American University Law Review Symposium - Counter-Piracy Policy: Delivering Judicial Consequences, Washington, DC, March 31, 2010.

disruptions to trade finance.⁵⁰ Also, many ship owners and other key industry participants reportedly absorbed severe losses from the global financial crisis. Some major dry bulk shippers lost money speculating on the market in shipping derivatives related to the direction of dry bulk rates during 2008.⁵¹ Shipping derivatives were developed to manage risk stemming from fluctuations in freight rates, vessel prices, interest rates, and foreign exchange rates.

Threats to Humanitarian Aid Deliveries

Piracy also threatens the delivery of vital humanitarian assistance to the Horn of Africa, much of which arrives by sea.⁵² According to the February 2010 Joint Government and Humanitarian Partners' Humanitarian Requirement Document, an estimated 5.23 million people in Ethiopia will require emergency food assistance through December 2010. The United States provided over \$600 million in food aid and humanitarian assistance to Ethiopia in FY2008, over \$340 million in FY2009, and over \$314 million to date in FY2010.⁵³ In neighboring Somalia, the U.N. Food and Agriculture Organization reports that an estimated 3.2 million Somalis, approximately 43% of the population, required food aid as of January 2010. U.S. food aid and humanitarian assistance to Somalia totaled approximately \$150 million in FY2009 and has reached over \$23.5 million to date in FY2010.⁵⁴ The Obama Administration requested \$200 million in FY2009 supplemental International Disaster Assistance (IDA) funding and \$300 million in FY2009 supplemental P.L. 480, Title II humanitarian assistance, in part to address food and water shortages in Somalia, Ethiopia, and Sudan. For FY2010, the Administration requested \$40 million in P.L.480 funding for Ethiopia and \$30 million for Sudan. The FY2011 request includes \$50 million in P.L.480 funding for Ethiopia and \$30 million in P.L.480 funding for Sudan.

Food insecurity in the region, caused by drought and instability, has been heightened by high food and fuel prices in the region. Officials from the World Food Program (WFP), which ships tens of thousands of metric tons of food monthly to the Horn of Africa region, reports that it has become more expensive to ship assistance to Mogadishu, and that their ability to deliver relief is significantly hampered. Al Shabaab militants demanded in December 2009 that the WFP halt imports of food assistance in favor of purchasing supplies from Somali farmers. The WFP suspended operations in southern Somalia in January, amid growing threats and intimidation. Canada, NATO, and European Union forces assumed escort responsibilities for WFP shipments in late 2008 (see "NATO: Operation Ocean Shield" and "European Union: Operation ATALANTA" below).⁵⁵ In March 2010, China's navy offered to assist the European Union forces currently escorting WFP shipments, a role that could require the expansion of China's naval deployment to the region.

⁵⁰ Ibid.

⁵¹ A shipping derivative is a financial instrument whose price is dependent upon or derived from one or more underlying assets. The derivative itself is a contract between two or more parties. Its value is determined by fluctuations in the underlying asset. The most common underlying assets include stocks, bonds, commodities, currencies, interest rates, and market indexes.

⁵² Food insecurity in the region is also exacerbated by banditry, roadblocks, inter-clan fighting, and attacks on aid workers.

⁵³ USAID, Complex Emergency – Ethiopia, Situation Report #5, March 10, 2010.

⁵⁴ USAID, Complex Emergency – Somalia, Situation Report #3, March 10, 2010.

⁵⁵ Christian Fraser, "On Patrol with the Pirate Hunters," BBC, November 21, 2008.

Threats to U.S. Flagged Vessels and the *MV Maersk Alabama* Incident

The threat of piracy to ongoing relief efforts and U.S.-flagged vessels was illustrated clearly in April 2009, when pirates hijacked the *MV Maersk Alabama* and attacked the *MV Liberty Sun*, both U.S.-flagged and crewed cargo vessels contracted by the WFP to deliver USAID food assistance off the southeast coast of Somalia. On April 8, 2009, Somali pirates seized the U.S.-flagged commercial shipping vessel *MV Maersk Alabama* approximately 250 nautical miles south east of the Somali town of Eyl. The *Maersk Alabama* had delivered food aid to the port of Djibouti and was en route to the port of Mombasa, Kenya, when it was seized by Somali pirates. Press reports suggested that the 20-member crew of U.S. citizens overtook their Somali captors some time after the ship was seized and attempted unsuccessfully to free the ship's captain, Vermont resident Richard Phillips.

In response, the United States Navy dispatched the *U.S.S. Bainbridge*,⁵⁶ an Arleigh Burke-class destroyer, and reconnaissance aircraft to the area in order to monitor the small craft where Captain Phillips was being held. Federal Bureau of Investigation personnel worked with naval personnel to conduct hostage negotiations for the captain's release. On April 11, after officials determined that Phillips' life was in immediate danger, U.S. special forces mounted a successful rescue operation with the authorization of President Barack Obama. Three pirates were killed by snipers in the U.S. rescue operation; a fourth, a young Somali named Abdiwali Abdiqadir Muse, has been indicted and has pled not guilty to piracy, conspiracy, hostage taking, and weapons charges before the United States District Court in the Southern District of New York.⁵⁷ Some analysts expressed concern that the rescue operation would trigger the use of increasingly violent tactics in future pirate attacks.

A leader of the pirate group based in the town of Eyl who held Phillips reportedly vowed revenge, telling reporters that, "this matter will lead to retaliation and we will hunt down particularly American citizens travelling our waters. Next time we get American citizens ... they [should] expect no mercy from us." An April 14, 2009 attack on a second U.S.-flagged vessel, the *MV Liberty Sun*, appeared to be an attempt by pirates to make good on that threat. A pirate leader told reporters after the *Liberty Sun* attack that, "We were not after a ransom. We also assigned a team with special equipment to chase and destroy any ship flying the American flag in retaliation for the brutal killing of our friends."⁵⁸ The *Maersk Alabama* again came under attack in November 2009, but repelled pirates using an armed security team, evasive manoeuvres, and long range acoustic devices.

⁵⁶ The *U.S.S. Bainbridge* is named for Captain William Bainbridge, the commander of the *U.S.S. Philadelphia* who was held in captivity in the Barbary state of Tripoli from 1803 to 1805 after the *Philadelphia* ran aground in Tripoli harbor during anti-piracy operations. The captivity of Bainbridge and his crew significantly escalated the military confrontation between the United States and the Barbary pirates, whose threats to U.S. vessels in the Mediterranean were a key factor in the early development of the United States Navy. For more information, see <http://www.bainbridge.navy.mil/sitepages/history.aspx>.

⁵⁷ See complaint *U.S. v. Abduwali Abdukhadir Muse*, 09-MG-1012, U.S. District Court, Southern District of New York, April 21, 2009; and Alexandra Marks, "Teen Somali to be Tried as Adult," *Christian Science Monitor*, April 21, 2009. Muse was charged with participating in two other pirate attacks in January 2010. He pled not guilty.

⁵⁸ *Agence France Presse*, "Pirates stage rocket attack on US freighter," April 14, 2009.

Potential Financing of Regional Conflict and Terrorism Concerns

The volatile Horn of Africa is home to several ongoing armed conflicts, and armed banditry is a common threat in much of the region. The small arms trade in the Horn and its potential to fuel instability remains a major concern to the international community. In spite of the longstanding United Nations arms embargo on Somalia established by Security Council Resolution 733 (1992), U.N. observers have reported “persistent violations” in recent years amid calls from the African Union and others for the lifting of the embargo to allow the armament of transitional government forces battling Islamist insurgents (see “United Nations Security Council” below). According to the Security Council Resolution 1851, “the lack of enforcement of the arms embargo ... has permitted ready access to the arms and ammunition used by the pirates and driven in part the phenomenal growth in piracy.”

Observers have expressed apprehension that some of the revenue from ransoms paid for the release of ships and hostages may be used to finance an influx of more weapons to the area for pirates or others. According to some experts, some of the same boats used for pirate attacks are used to carry refugees and economic migrants from Somalia to Yemen, and many return carrying arms.⁵⁹ U.S. Navy officials have not found that fighters associated with *Al Shabaab* have financial ties to piracy at present, but the potential for personnel linkages may remain.⁶⁰ A Canadian intelligence assessment released in December 2009 reportedly describes a “Islamist extremism-piracy nexus” in which *Al Shabaab* personnel supply “weapons, combat training and local protection” pirates operating in southern Somalia in exchange for portions of the spoils from successful hijackings either in cash or seized weapons and materiel.”⁶¹ To the extent that ransom payments and new arms further empower criminal pirate groups, the challenge that such groups pose to local authorities at present and to reconstituted national authorities in the future could grow.

U.S. and International Policy Responses

Piracy in the waters off the Horn of Africa is a symptom of the wider instability that has plagued Somalia and the region since the early 1990s. At present, the internationally recognized Transitional Federal Government (TFG) is working to form a functional unity government and to reconstitute national security and law enforcement entities. The United States has supported reconciliation efforts in Somalia and have taken a leadership role in coordinating diplomatic and military responses to the threat of piracy in the region, in coordination with the United Nations Security Council. Funds pledged at an April 2009 donors conference for Somalia in Brussels were intended in part to support the development of security forces by the TFG, and such forces, once developed, may improve local authorities’ ability to act against pirates ashore. Some caution, however, that assistance and equipment provided to TFG forces may in some cases be transferred to the insurgent groups.⁶²

⁵⁹ International Crisis Group, *Somalia: The Trouble with Puntland*, Africa Briefing No. 64, August 12, 2009.

⁶⁰ Vice Admiral William Gortney, the commander of U.S. Naval Forces Central Command told the House Armed Services Committee on March 5, 2009, that “We look very, very carefully for a linkage between piracy and terrorism or any kind of ideology and we do not see it. It would be a significant game changer should that linkage occur. But we have not seen it. We watch very carefully for it.”

⁶¹ Stewart Bell, “Somali militants training pirates,” *National Post* (Toronto), December 03, 2009.

⁶² Jeffrey Gettleman, “In Somalia, a Leader Is Raising Hopes for Stability,” *New York Times*, September 17, 2009.

To date, U.S. and international efforts to respond to the threat of piracy have taken on a multi-faceted approach. In order to provide a short term response to the immediate threat to international navigation in the region's waters, the United Nations Security Council has authorized third party governments to conduct anti-piracy operations in Somali territorial waters and ashore, but only with authorization from and in coordination with the TFG. Among CTF-151, the EU's Operation ATALANTA, NATO's Operation Ocean Shield, and other navies' "national escort" operations, approximately 3 dozen combatant ships are patrolling in the region. Regional bodies such as the African Union, the Arab League, and ad hoc groupings such as the participants in the December 2008 International Conference on Piracy in Nairobi, Kenya, have held consultative meetings and issued policy statements condemning piracy in the region and providing guidance for the development of coordinated, collaborative regional responses.

U.S. Policy

The U.S. National Maritime Security Strategy, issued in 2005, stated that the "safety and economic security of the United States depends upon the secure use of the world's oceans," and identified "well organized and well equipped" pirates and criminals as threats to international maritime security. In June 2007, the Bush Administration adopted a Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea that stated that it is the policy of the United States to "[c]ontinue to lead and support international efforts to repress piracy and other acts of violence against maritime navigation and urge other states to take decisive action both individually and through international efforts." In December 2008, the Bush Administration issued an implementation plan based on that policy to address piracy threats in the Horn of Africa region. The U.S. National Security Council (NSC) "*Countering Piracy off the Horn of Africa: Partnership and Action Plan*" set out the objective "to repress this piracy as effectively as possible in the interests of the global economy, freedom of navigation, Somalia, and the regional states."⁶³ In pursuit of that objective, the plan outlined three "lines of action" for U.S. policy:

"1) prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy; 2) disrupt acts of piracy consistent with international law and the rights and responsibilities of coastal and flag States; and 3) ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates by flag, victim and coastal States, and, in appropriate cases, the United States."

In support of the 2007 policy and 2008 plan, the Bush Administration formed an interagency Counter-Piracy Steering Group that "addresses the full spectrum of anti- and counter-piracy efforts, from piracy prevention to interruption and termination of acts of piracy, to ensure the accountability of pirates." The State Department and Defense Department are the co-leaders of the steering group and work with other U.S. government agencies, such as USAID and the Departments of Transportation, Homeland Security, Treasury, and Justice, to coordinate U.S. policies and engagement in the multilateral initiatives that have been developed since mid-2008. To date, the steering group has overseen efforts to implement elements of the December 2008 NSC *Action Plan*, which pledged U.S. support for the establishment of the international Contact Group on piracy (established January 2009, see "Contact Group on Piracy off the Coast of

⁶³ U.S. National Security Council, "Countering Piracy off the Horn of Africa: Partnership and Action Plan," December 2008, available at http://www.marad.dot.gov/documents/Countering_Piracy_Off_The_Horn_of_Africa_-_Partnership_Action_Plan.pdf.

Somalia”) and a regional counter-piracy coordination center (under development, see “International Maritime Organization (IMO) and the Djibouti Code of Conduct”).

The Obama Administration endorsed the Bush Administration’s overarching strategic approach with regard to the piracy threat, and over the course of 2009 Administration officials outlined new implementation plans. In addition to providing expanded material assistance to the Somali Transitional Federal Government (TFG) in support of its efforts to provide security ashore, U.S. officials and military personnel have engaged with leaders and officials from the regions of Puntland to encourage them to take action against piracy and to improve coordination with international efforts. The United States remains a leading participant in the multilateral CGPCS, and has supported the “New York Declaration” initiative to establish benchmark best practices for governments, shipping companies, and insurance firms with regard to maritime security and piracy.⁶⁴

The December 2008 *Plan* called for U.S. “bilateral assistance programs for judicial capacity building efforts” for regional states, and the Administration welcomed the September 2009 establishment of a trust fund to support regional prosecutions, but has not announced any U.S. contribution.⁶⁵ Comments from officials suggest the Administration shares the view expressed in the Bush Administration Action Plan that U.S. anti-piracy efforts are intended “to be mutually supportive of longer-term initiatives aimed at establishing governance, rule of law, security, and economic development in Somalia.”⁶⁶

United Nations Security Council

Resolution 1816 (June 2008) authorizes states acting in cooperation with and with prior notification of the TFG to “enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea” and to “use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery.”⁶⁷ The initial authorization lasted for six months from June 2008. Resolution 1838, adopted in October 2008, calls on states with military capabilities in the region to contribute to anti-piracy efforts and clarified the standing of the authorization contained in Resolution 1816 with respect to international law.⁶⁸

At the request of the TFG, the mandate established in Resolution 1816 was extended for 12 months in December 2008 in Resolution 1846.⁶⁹ In December 2008, Resolution 1851 expanded the mandate by authorizing states and regional organizations that are acting at the TFG’s request to “undertake all necessary measures that are appropriate *in Somalia* [italics added] for the purpose of suppressing acts of piracy and armed robbery at sea.”⁷⁰ Both resolutions require any

⁶⁴ U.S. State Department, “The United States Signs “New York Declaration,” Washington, DC, September 9, 2009.

⁶⁵ Donna Hopkins, Plans and Policy Team Leader, U.S. State Department Bureau of Political-Military Affairs, Office of Plans, Policy, and Analysis, “Safeguarding the Seaways: Counter-Piracy Contact Group Meets in New York,” *Dipnote*, September 17, 2009, available at http://blogs.state.gov/index.php/entries/seaways_counter-piracy/.

⁶⁶ Secretary of State Hillary Clinton, “Announcement of Counter-Piracy Initiatives,” Washington, DC, April 15, 2009.

⁶⁷ S/Res/1816 (2008), available at <http://www.un.org/Docs/sc/unscreolutions08.htm>.

⁶⁸ S/Res/1838 (2008), available at <http://www.un.org/Docs/sc/unscreolutions08.htm>.

⁶⁹ S/Res/1846 (2008), available at <http://www.un.org/Docs/sc/unscreolutions08.htm>.

⁷⁰ S/Res/1851 (2008), available at <http://www.un.org/Docs/sc/unscreolutions08.htm>.

authorized international measures to be undertaken in accordance with humanitarian and human rights laws. Other provisions of Resolution 1851 have guided developments since December 2008 and may inform future U.S. or international initiatives (see “Contact Group on Piracy off the Coast of Somalia”, “United Nations Office on Drugs and Crime”, and “Oversight of U.S. Military Forces and U.S. Foreign Assistance” below).

Resolution 1846 authorized the provision of technical assistance to TFG personnel and forces “to enhance the capacity of these States to ensure coastal and maritime security” in accordance with procedures outlined in Resolution 1772.⁷¹ Under paragraphs 11 and 12 of Resolution 1772, the supply of technical assistance to Somali “security sector institutions” is authorized provided that prior case-by-case notification is made to the U.N. arms embargo Committee for Somalia.⁷² Resolution 1851 provides similar authorization to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking authorized anti-piracy operations in Somali waters. The transfer of weaponry to Somali maritime security forces would require separate authorization from the Security Council. The African Union’s Peace and Security Council and the TFG long requested that the broader U.N. arms embargo be amended or lifted in order to improve the capabilities of forces fighting Islamist insurgents. On May 26, 2009, the United Nations Security Council unanimously adopted Resolution 1872, granting new authorization for members states to participate in the training and equipping of the TFG security forces in accordance with Resolution 1772. Resolution 1897, adopted December 2, 2009, extended the mandates in Resolutions 1846 and 1851 for twelve months.⁷³

Contact Group on Piracy off the Coast of Somalia (CGPCS)

Based on Resolution 1851, the Bush Administration led the formation of a multilateral Contact Group on Piracy off the Coast of Somalia (CGPCS) made up of 24 member governments and five regional and international organizations.⁷⁴ The Contact Group held its first meeting in January 2009 and identified six tasks for itself: 1) improving operational and information support to counter-piracy operations, 2) establishing a counter-piracy coordination mechanism, 3) strengthening judicial frameworks for arrest, prosecution and detention of pirates, 4) strengthening commercial shipping self-awareness and other capabilities, 5) pursuing improved diplomatic and public information efforts, and 6) tracking financial flows related to piracy.⁷⁵ In support of these goals, four working groups make recommendations at periodic meetings of the Contact Group secretariat on relevant military/operational, judicial, diplomatic, and public information aspects of regional and international anti-piracy efforts. The goals of the working groups’ efforts are to improve operational coordination, information sharing, and the effectiveness of legal enforcement activities among all regional and international actors combating piracy in the region.

⁷¹ S/Res/1772 (2007), available at http://www.un.org/Docs/sc/unsc_resolutions07.htm.

⁷² For more information, see the Committee web page at <http://www.un.org/sc/committees/751/>.

⁷³ S/Res/1897 (2009), available at http://www.un.org/Docs/sc/unsc_resolutions09.htm.

⁷⁴ Resolution 1851 “encourages all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast.”

⁷⁵ Statement of Contact Group on Piracy off the Coast of Somalia, New York, January 14, 2009.

The CGPCS met in March, May, and September 2009 to begin planning a series of coordinated responses. The latest plenary meeting of the CGPCS was held in New York in January 2010, and its membership has grown to 45 member governments, seven regional organizations, and two observers.⁷⁶ The Contact Group's January 2010 meeting approved the final terms for an anti-piracy trust fund, which will be administered by the United Nations Office of Drugs and Crime (UNODC). To date, Cyprus, Denmark, France, Germany, Greece, Japan, Sweden, the United Kingdom, and Norway reportedly have pledged support for the fund. Japan also has announced a \$14 million contribution to an United Nations International Maritime Organization (IMO)-administered trust fund to support capacity building initiatives for regional signatories of the Djibouti Code of Conduct anti-piracy agreement. The next CGPCS meeting is planned for May 2010.

Combined Task Force 151 and Other Navies' "National Escort Systems"

United States Naval Forces Central Command (NAVCENT) commands the Combined Maritime Forces operating in the Arabian/Persian Gulf, Gulf of Oman, Gulf of Aden, Red Sea, Arabian Sea, and Indian Ocean. In January 2009, the command established Combined Task Force 151 (CTF-151), with the sole mission of conducting anti-piracy operations in the Gulf of Aden and the waters off the Somali coast in the Indian Ocean. That role had previously been filled by CTF-150, which continues to perform counterterrorism and other maritime security operations as it has since 2001. In August 2008, CTF 150 and partner forces agreed to the establishment of a Maritime Security Patrol Area (MSPA) in the Gulf of Aden to serve as a dedicated, more secure transit zone for merchant vessels. The MSPA has been credited in part with lowering the success rate of Somali pirates in the Gulf of Aden transit zone. Within the MSPA, eastbound and westbound Internationally Recommended Transit Corridors (IRTC) have been established "to de-conflict commercial transit traffic with Yemeni fishermen, provide a measure of traffic separation, and allow maritime forces to conduct deterrent operations in the [Gulf of Aden] with a greater degree of flexibility."⁷⁷ All U.S.-flagged vessels transiting the Gulf of Aden have been directed to plan their voyages using the IRTC.⁷⁸

The list of countries participating in CTF-151 is fluid and consists of personnel and approximately two dozen ships from the United States, the United Kingdom, Canada, Denmark, France, Germany, Greece, Italy, the Netherlands, Pakistan, Saudi Arabia, Spain, South Korea, Turkey and Yemen, among others. Task force operations are coordinated from the NAVCENT command center in Bahrain. U.S. Coast Guard Law Enforcement Detachments (LEDETs) operate aboard CTF-151 vessels and perform support and advisory missions during boarding operations and provide training to task force personnel on evidence procedures, maritime law, and related issues. As of August 2009, NAVCENT reported that, since January 2009, CTF-151 and other cooperating naval forces had "encountered 527 pirates; 282 of which were disarmed and released, 235 disarmed and turned over for prosecution, and 10 were killed."⁷⁹

⁷⁶ U.S. State Department Bureau of Political-Military Affairs, "Contact Group on Piracy off the Coast of Somalia: List of Participants, Fourth Plenary Meeting," New York, NY, September 10, 2009.

⁷⁷ U.S. Department of Transportation, Maritime Administration Advisory # 2009-07, Gulf of Aden, Red Sea, and Indian Ocean Transit, September 9, 2009.

⁷⁸ Ibid.

⁷⁹ Ibid.

Other countries, most notably Russia, China, and India, have deployed naval forces to the region to participate in monitoring and anti-piracy “national escort system” operations. From an operational perspective, while these countries have not formally and fully coordinated their policies with CTF-151, there are ongoing communication efforts. A military coordination mechanism known as Shared Awareness and De-confliction (SHADE) coordinates the activities of coalition forces and Russia, China, India, and Japan through monthly meetings.

In January 2010, China agreed to assign one of its naval vessels to patrol the IRTC in coordination with CTF-151 and other coalition forces and signaled it may seek a rotating co-chairmanship role in future SHADE gatherings. Naval observers and officials in the United States have noted the engagement of China with particular interest, as Chinese naval operations in the Horn of Africa region demonstrate the Chinese government’s desire and ability to protect international shipping lanes far from China’s shores. China’s recent offer to assist European Union naval forces with World Food Program escort operations indicate China’s willingness to expand its responsibilities in the region, which may require an expansion of its naval deployment.

NATO: Operation Ocean Shield

In October 2008, the North Atlantic Treaty Organization (NATO) deployed the first of two Standing NATO Maritime Groups to conduct anti-piracy operations in the Horn of Africa region. The first deployment, named Operation Allied Provider, served as a temporary protection force for World Food Program assistance shipments in the region. In December 2008, NATO ended Operation Allied Provider and transitioned WFP protection responsibilities to the European Union’s new naval operation (see “European Union: Operation ATALANTA” below).

In March 2009, NATO launched a new anti-piracy mission, Operation Allied Protector, under the command of Standing NATO Maritime Group 1 (SNMG1). According to NATO, the forces participating in Operation Allied Protector acted to “deter, defend against and disrupt pirate activities.” The Maritime Group was originally scheduled to perform temporary anti-piracy missions as it transited the Horn region en route to South East Asia and as it returned in June 2009.⁸⁰ In April 2009, NATO officials cancelled the planned SNMG1 visits to Singapore and Australia and extended the Operation Allied Protector mission until June 20, 2009. As of late March 2009, the following ships were participating in SNMG1 and Operation Allied Protector: *NRP Corte Real* (flagship, Portugal), *HMCS Winnipeg* (Canada), *HNLMS de Zeven Provinciën* (The Netherlands), *SPS Blas de Lezo* (Spain), and the *USS Halyburton* (United States).

In August 2009, NATO replaced Operation Allied Protector with a new anti-piracy mission, Operation Ocean Shield, currently under the command of Standing NATO Maritime Group 2 (SNMG2). In March 2010, NATO extended the operation through the end of 2012. Like its predecessor missions, Operation Ocean Shield has a primary responsibility to deter and respond to piracy, while participating in capacity building efforts with regional governments. In relation to the latter aspect of the mission, the Group flagship has hosted maritime officials from the Puntland regional government and visited the Somali port of Bosaso in the northern province of Bari (see **Figure 2**, “Map of Somalia”) for consultations with officials responsible for port security and maritime transportation.⁸¹ As of March 8, 2010, the following ships were

⁸⁰ The task force is scheduled to visit Karachi, Pakistan, Singapore, and Perth, Australia, before returning to the Horn of Africa Region.

⁸¹ NATO Allied Maritime Component Command, “NATO works with Somali officials,” August 14, 2009, available at (continued...)

participating in SNMG2 and Operation Ocean Shield: *HMS Chatham* (flagship, United Kingdom), *HS Limnos* (Greece), *ITS Scirocco* (Italy), *TCG Gelibolu* (Turkey), and *USS Cole* (United States).

European Union: Operation ATALANTA

In December 2008, the European Union launched EU NAVFOR Operation ATALANTA, its first naval operation under the framework of the European Security and Defense Policy (ESDP). Forces participating in Operation ATALANTA have been tasked with providing protection for WFP vessels and merchant vessels and are authorized to “employ the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where they are present.”⁸² The European Council has extended the mandate for Operation ATALANTA to December 2010. According to the European Union, the operation will involve up to twenty ships and over 1,800 personnel over its full term. As of March 2010, Belgium, France, Germany, Greece, Italy, Luxemburg, the Netherlands, Spain, and Sweden have made permanent contributions of forces and personnel to the operation, and other EU member states support the operation’s headquarters.⁸³ In coordination with the deployment, EU NAVFOR also has established an online center known as Maritime Security Center-Horn of Africa (MSC-HOA) for transiting ships to record their ships’ movements voluntarily and to receive updated threat information.⁸⁴ Similar voluntary tracking and reporting services are provided by the United Kingdom Maritime Trade Operations office in Dubai and the U.S. Navy’s Maritime Liaison Office in Bahrain.

International Maritime Organization (IMO) and the Djibouti Code of Conduct

The International Maritime Organization (IMO)⁸⁵ has had an international anti-piracy program since the late 1990s and has successfully engaged on a multilateral basis in other regions to improve anti-piracy cooperation. At present, cooperative mechanisms for managing the security of the waters near the Horn of Africa are being developed as called for by the IMO⁸⁶ and as encouraged by Resolution 1851.⁸⁷ The IMO began sponsoring consultation meetings on piracy for

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http://www.manw.nato.int/page_operation_ocean_shield.aspx.

⁸² European Union Council Secretariat, “Fact Sheet: EU naval operation against piracy (EU NAVFOR Somalia - Operation ATALANTA),” EU NAVFOR/04, March 2009.

⁸³ EU NAVFOR Somalia - Operation ATALANTA, “Fact Sheet: EU Naval Operation Against Piracy,” September 17, 2009.

⁸⁴ Information on the Maritime Security Center-Horn of Africa (MSC-HOA) is available at <http://www.mschoa.eu/Default.aspx>.

⁸⁵ The International Maritime Organization is a United Nations agency with over 168 member governments. Based in the United Kingdom, its members develop regulations for international shipping related to safety, the environment, and maritime security. It also serves as a global coordinating body for legal issues, technical co-operation, and maritime security including anti-piracy efforts. For more information, see: <http://www.imo.org/>.

⁸⁶ IMO Resolution A.1002(25) “calls Upon Governments in the region to conclude, in co-operation with the Organization, and implement, as soon as possible, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships.”

⁸⁷ Resolution 1851 “encourages all states and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to consider creating a center in the region to coordinate information relevant to piracy and armed (continued...)”

the Horn of Africa region in 2005, which led to the development of a draft cooperative framework agreement in early 2008.

In January 2009, representatives of 17 regional governments met at an IMO-sponsored meeting in Djibouti and adopted a Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the western Indian Ocean and the Gulf of Aden.⁸⁸ Most regional governments⁸⁹ have signed the Code of Conduct, which remains open for signature by other parties. Three regional facilities—the Maritime Rescue Coordination Centre in Mombasa, Kenya, the Sub-Regional Coordination Centre in Dar es Salaam, Tanzania, and a regional maritime information center that is to be established in Sana'a, Yemen—are planned to support the information sharing components of the agreement. The parties also agreed to resolutions on technical cooperation and the establishment of a regional training center in Djibouti. In September 2009, Japan made an initial contribution of \$14 million to a trust fund dedicated to supporting the IMO's Djibouti Code-related training and capacity building operations. Djibouti hosted a series of implementation meetings in February 2010.

A similar cooperative framework developed by the IMO, the littoral states of the Strait of Malacca, and other Asian governments has been in force since 2006. Known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (ReCAAP),⁹⁰ the agreement established procedures for coordinating responses to piracy and sharing best practices among law enforcement and security personnel. The ReCAAP Information Sharing Center (ISC) in Singapore now serves as the principal clearinghouse for piracy reporting and response coordination.⁹¹ These steps, taken in conjunction with other regional agreements between Malaysia, Indonesia and Singapore to coordinate anti-piracy patrols in the Straits of Malacca and surrounding waters, have been successful in reducing piracy in that region. The negotiation of the bilateral and multilateral initiatives in the Straits of Malacca region highlighted several issues that may be of interest to parties seeking to establish similar programs in the Horn of Africa region, namely the importance of addressing local concerns over sovereignty, territorial water rights, and the presence of foreign military forces in regional waters.

United Nations Office on Drugs and Crime (UNODC): "Shipriders" and Capacity Building

Under the auspices of Resolution 1851 and in conjunction with the judicial working group of the CGPCS (see "Contact Group on Piracy off the Coast of Somalia" above), the United Nations Office on Drugs and Crime has launched a project to facilitate regional law enforcement

(...continued)

robbery at sea off the coast of Somalia."

⁸⁸ Meeting minutes available at <http://www.fco.gov.uk/resources/en/pdf/pdf9/piracy-djibouti-meeting>.

⁸⁹ Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania, and Yemen signed the code of conduct in January 2009. Saudi Arabia and Mauritius became signatories in March 2010.

⁹⁰ Text available at <http://www.recaap.org/about/pdf/ReCAAP%20Agreement.pdf>. Sixteen signatories include the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, and the Socialist Republic of Vietnam.

⁹¹ A diagram of ReCAAP-ISC reporting and response procedures is available at http://www.recaap.org/about/pdf/Information_Flow_Response_chart.pdf.

participation in anti-piracy enforcement efforts off the coast of Somalia.⁹² The program was encouraged in language included in Resolution 1851 and focuses on providing judicial capacity building assistance to regional states and facilitating so-called “shiprider” arrangements in which regional law enforcement personnel are seconded to international vessels to perform anti-piracy arrest and investigation functions. The United States has shiprider agreements with a number of Western Hemisphere governments to facilitate maritime security operations in waters of shared concern.

In general, shiprider arrangements are designed to address the logistical and legal challenges inherent in multilateral naval enforcement efforts in remote areas or where the capacity of regional governments does not allow for the provision of sufficient security. With regard to current operations in the Horn of Africa region, long transport times, limited military resources, legal limitations on the operations of military personnel, and complex differences in jurisdictional standards and requirements would complicate the arrest and prosecution by the varied non-regional forces operating under Resolution 1851.

In order to help regional governments meet the added resource requirements that the arrest, detention, and prosecution of Somali pirate suspects would create, the UNODC is also providing judicial capacity building assistance, in coordination with the European Commission and other donors, including the United States. UNODC Executive Director Antonio Maria Costa testified before the House Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight on the shiprider concept and proposed U.N. support in May 2009.⁹³ UNODC also released a preliminary description of its judicial capacity building efforts in November 2009.⁹⁴ UNODC also has been designated the chair for the donor trust fund authorized by the CGPCS.

Private Sector and Shipping Industry Responses

Private sector and shipping industry responses to the threat of piracy in the waters off the Horn of Africa have varied. In addition to altering financial decisions based on higher insurance costs, some accounts suggest that shipment navigation patterns have changed in response to the threat of piracy, with some vessels preferring to circumnavigate the southern Cape of Good Hope rather than risk attack in the Gulf of Aden. Crews also have developed a number of unique countermeasures and best practices in their attempts to ward off and resist pirate attacks. The use of water cannons, fire hoses, and passive sonic defenses has become more widespread. Initial industry surveys suggested that ships that operate at speeds above 15 knots⁹⁵ and that have higher freeboards⁹⁶ have proven less susceptible to pirate attack. However, the U.S. Office of Naval Intelligence warned in March 2010 of “pirates’ increasing ability to board any vessel regardless of

⁹² Resolution 1851 “invites” states and regional organizations “to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (“shipriders”) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under [the] resolution.”

⁹³ Transcript, UNODC Executive Director Antonio Maria Costa testimony before the House Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight, May 14, 2009.

⁹⁴ United Nations Office on Drugs and Crime, Counter Piracy Programme, November 2009, available at http://www.unodc.org/documents/easternafrika//piracy/UNODC_Counter_Piracy_Programme.pdf.

⁹⁵ One knot is unit of measurement equivalent to one nautical mile per hour or 1.15 miles per hour.

⁹⁶ The term ‘freeboard’ refers to the distance between the waterline and the main deck of the ship.

high freeboard.”⁹⁷ Debates about the use of armed guards continue among shipping industry representatives, government officials, and observers worldwide (see “Options for Improving the Immediate Security of Merchant Ships”).

The IMO and other bodies such as the International Chamber of Commerce International Maritime Bureau (ICC-IMB) have developed detailed guidance and recommendations for governments and commercial vessels seeking to prevent, deter, and respond to pirate attacks.⁹⁸ The IMB also has established a 24-hour piracy reporting center in Kuala Lumpur, Malaysia, which seeks to serve as the global, one-stop shop for piracy reporting and piracy threat information distribution for commercial vessels. The IMB also works with other regional information centers to collect and disseminate threat and situation reporting. For the Horn of Africa region, the IMB and European Union Maritime Security Center-Horn of Africa (MSC-HOA) issue periodic “Industry Updates” detailing recent trends in pirate attacks and making recommendations to vessels transiting regional waters.⁹⁹

Issues for Congress and Policy Options

The risk of pirate attacks in the waters off the Horn of Africa is unlikely to disappear in the near term, and the United States government has identified piracy as a direct threat to U.S. national security interests. Policies developed by the Bush Administration to address Somali piracy have been revisited and enhanced by the Obama Administration in light of high profile attacks on U.S.-flagged vessels and crew members in April 2009.

Most defense analysts acknowledge that while the unprecedented level of naval patrols in the area—conducted by more than twenty nations—has deterred some attacks, the area is simply too vast to prevent all incidents. When the *MV Maersk Alabama* was attacked on April 8, 2009, the closest naval vessel, the *U.S.S. Bainbridge*, was approximately 300 nautical miles away. Similarly, the *U.S.S. Bainbridge* was only able to arrive on the scene of an aborted April 14 attack on the *MV Liberty Sun* a reported six hours after the attack ended. The continuing anti-piracy operations of international navies also comes at significant cost, as governments around the world weigh the budgetary impact of the current economic downturn and military requirements in other theaters of operation.

Like terrorism, acts of piracy in African waters pose a transnational security threat that emanates from areas plagued by conflict, weak governance, and economic insecurity. Continuing conflict in Somalia and Yemen illustrate the unstable regional context surrounding new anti-piracy operations. Regional security forces currently have limited maritime capability, and many governments have prioritized the development of their armies at the expense of navies or coast guards. That has changed to some extent in recent years, as international studies have highlighted the threat to local economies posed by illegal fishing, in addition to more traditional maritime security threats. Regional coordination and intelligence sharing also is weak.

⁹⁷ U.S. Office of Naval Intelligence, Maritime OPINTEL Report - SOMALIA: Piracy Analysis and Warning Weekly (PAWW) Report (Horn of Africa), March 17, 2010.

⁹⁸ Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia, Version 2, August 2009, available at http://www.icc-ccs.org/images/stories/pdfs/bmp_21-8-2009.pdf.

⁹⁹ Available at http://www.icc-ccs.org/index.php?option=com_content&view=article&id=344&Itemid=233.

The United States and its international partners have used various policy tools to address similarly complex security circumstances in other regions. However, ongoing U.S. and international security operations in environments such as Afghanistan, Pakistan, Iraq, and Colombia suggest that military intervention and foreign assistance require political consensus, political will, local partnership, and significant coordination in order to be successful. Maritime security efforts in the Persian Gulf, the Caribbean, the waters of West Africa, and the Strait of Malacca have had the same requirements. While short term results in containing other transnational threats have proven to be achievable, the long-term ability of international intervention to eliminate these threats is less certain in the absence of committed and capable regional and local actors.

Legislation in the 111th Congress

The 111th Congress has explored other options for protecting maritime traffic in the region. H.R. 3376, the U.S. Mariner and Vessel Protection Act of 2009, introduced in July by Representative Frank Lobiondo, aims to address the use of force and the right of self-defense of U.S. mariners against acts of piracy. Sec. 3505 of the FY2010 National Defense Authorization Act (H.R. 2647, P.L. 111-84, October 28, 2009) requires any vessel carrying cargo for the Department of Defense in areas of high risk of piracy to be equipped with “appropriate non-lethal defense measures to protect the vessel, crew, and cargo from unauthorized seizure at sea.” Section 3506 of the Act further required the Administration to report within 60 days on steps it is taking along a variety of tracks to facilitate the embarkation of armed security teams aboard U.S. flagged vessels carrying U.S. government cargo in high risk areas.¹⁰⁰ The House version of H.R. 2647, would have required the Secretary of Defense to embark military personnel on board U.S.-flagged vessels carrying cargos owned by the U.S. government if a vessel is traveling in a high risk area and is determined by the Coast Guard to be at risk of being boarded by pirates. The Senate version of the bill did not include these measures.

Congress has also stressed that the U.S. government and others must address the piracy problem both at sea and on land. H.Rept. 111-166, accompanying H.R. 2647, expressed concern with continuing safe havens for Somali pirates, noting that “there does not appear to be a strategy for dealing with the organizations ashore in Somalia.” S.Rept. 111-35, accompanying the FY2010 National Defense Authorization Act, stressed the need for a “holistic approach,” emphasizing the need for the commercial shipping industry to develop effective piracy countermeasures to protect its ships and crews.

Two resolutions passed by the House and Senate in April 2009 commended the crew of the *MV Maersk Alabama*, Captain Richard Phillips, and the U.S. military for its efforts in rescuing Captain Phillips and serving in anti-piracy missions (H.Res. 339 and S.Res. 108). The Senate resolution called on President Obama to “work with the international community and the transitional government of Somalia to develop a comprehensive strategy to address both the burgeoning problem of piracy and its root causes.”

¹⁰⁰ The report was delivered on February 26, 2010. It details a number of steps the Administration has taken to issue guidelines to U.S.-flagged vessels and to coordinate with regional port authorities to determine regulatory requirements relevant to armed security personnel.

Oversight of U.S. Military Forces and U.S. Foreign Assistance

U.S. military engagement in the region is divided among two geographic combatant Commands. U.S. Central Command's area of responsibility (AOR) includes the waters of the Gulf of Aden and those off the eastern Somali coast, while the AOR of the new U.S. Africa Command (AFRICOM), which became fully operational in October 2008, encompasses the African continent.¹⁰¹ To date, much of the U.S. military's anti-piracy response has been conducted at sea, by Central Command (CENTCOM). On land, AFRICOM provides security assistance to several regional maritime security forces, few of which have "blue water capacity." CENTCOM provides similar assistance to the Yemeni coast guard.

Oversight of U.S. Navy anti-piracy operations focuses on forces associated with CTF-151 and with NATO's Operation Ocean Shield. Several U.S.-homeported Navy ships support the deployment of U.S. Navy ships operating on a continuous basis in the areas where Somali pirates are active. As such, the commitment of a single additional U.S. Navy ship to the area can affect the Navy's ability to perform missions in other parts of the world.

U.S. military operations in the region are not limited to anti-piracy efforts. The United States has conducted anti-terrorism activities in the Horn of Africa and in Yemen for over a decade, including the naval Combined Task Forces established as part of Operation Enduring Freedom. Djibouti has hosted the U.S.-led Combined Joint Task Force–Horn of Africa (CJTF-HOA) at a semi-permanent Forward Operating Site, known as Camp Lemonnier, since 2003, with approximately 2,000 U.S. military personnel in residence. The command authority for CJTF-HOA, formerly under CENTCOM, has been transferred to AFRICOM. Its efforts initially focused primarily on countering violent extremism in the region, but the Task Force's activities have expanded in recent years to include a wide variety of activities aimed at building the capacity of regional militaries to respond to more general threats, such as natural disasters and armed conflict. CJTF-HOA personnel provide training to the region's security forces on counter-terrorism, maritime security, and peacekeeping.

As mentioned above, the United States conducts an array of maritime security assistance programs in East Africa and Yemen. In Kenya, for example, the United States provides maritime security assistance to both the Kenyan Navy and an array of agencies, including the Kenya Wildlife Service, revenue authority, and police, to address an array of threats, from smuggling and illegal fishing to terrorism. The U.S. also began support for a regional Maritime Center of Excellence in Mombasa in early 2009; courses at the Center are attended by participants from throughout East Africa. Several African countries, including Djibouti, Kenya, Tanzania, and Yemen, have received U.S. support for the installation of radar systems that provide enhanced maritime domain awareness.

Congress expanded the Department of Defense's Section 1206 "train and equip" authority in FY2009 to include assistance for civilian maritime security forces to conduct counterterrorism operations. Counter-piracy is not mentioned. However, several FY2009 Section 1206 programs support increased maritime capacity to address terrorist threats in the waters affected by Somali

¹⁰¹ AFRICOM's AOR includes all African countries except Egypt, which remained in the AOR of CENTCOM after that command transferred responsibilities for the Horn of Africa countries to AFRICOM in 2008. For more information see CRS Report RL 34003, *U.S. Africa Command: U.S. Strategic Interests and the Role of the U.S. Military in Africa*, by Lauren Ploch.

piracy, including programs for Djibouti, Yemen, Mozambique, Mauritius, Tanzania, and the Seychelles. In August 2009, AFRICOM and the government of the Seychelles announced an agreement governing Operation Ocean Look, which allows the U.S. military to operate P-3 Orion aircraft and unmanned aerial vehicles from the Seychelles in an effort to improve maritime surveillance in regional waters.¹⁰² The FY2010 National Defense Authorization Act (P.L. 111-84) limits to \$75 million per fiscal year the amount of FY2010 and FY2011 Section 1206 assistance that can be used, inter alia, “to build the capacity of a foreign country’s maritime security forces to conduct counterterrorism operations.”

U.N. Security Council Resolution 1851 “calls on Member States to assist the TFG, at its request and with notification to the Secretary-General, to strengthen its operational capacity to bring to justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea.” The Obama Administration may seek to expand current assistance programs for regional and Somali actors subject to congressional appropriations and authorization and in accordance with United Nations Security Council resolutions. As noted above, the Obama Administration requested \$40 million in FY2009 supplemental Peacekeeping Operations (PKO) funding to provide “non-lethal equipment, logistical support, and basing facilities for the African Union Mission to Somalia and to support Somali security sector reform.”¹⁰³ While those funds are likely to be directed toward improving Somali capacity to counter threats from insurgents and terrorists, to the extent that assistance improves the overall ability of government forces to operate effectively and assert security control, it may have positive implications for anti-piracy operations in the future. The Administration requested \$67 million in FY2010 PKO funding for Somalia and is requesting \$53.6 million in FY2011 PKO funding to continue these programs.

Although some press reports in April 2009 quoted unnamed U.S. officials as stating that the U.S. military may consider launching military attacks against pirate strongholds, in testimony before the House Armed Services Committee in March 2009, Stephen Mull, then-Acting Undersecretary of State for International Security and Arms Control, stated that although the United States supported the inclusion in Security Council Resolution 1851 of authorization for anti-piracy operations on land, there were, at that time “no plans to conduct counter-piracy operations on land.”¹⁰⁴ Various parts of the U.S. government continue to encourage Somali figures in the Transitional Federal Government and in the region of Puntland to take action against pirate safe havens ashore. Overall, the Administration has not signaled any major policy changes from the December 2008 National Security Council *Partnership and Action Plan*, which states that the United States “will work with concerned governments and international organizations to disrupt and dismantle pirate bases to the fullest extent permitted by national law.”

¹⁰² U.S. AFRICOM/Republic of Seychelles, Office of the President, “Seychelles President James Michel Hails Strengthening of Surveillance Cooperation with the United States,” August 20, 2009.

¹⁰³ According to the Administration justification for the supplemental request, “funding may also be directed towards Security Sector Reform (SSR) efforts. Some funding will pay for equipment and logistical support for training efforts for Somali troops by Tanzania, Uganda, Rwanda, and other nations in the region that will implement the training activities.” The Administration also is seeking authority to transfer up to \$50 million in supplemental Contributions for International Peacekeeping Activities (CIPA) funding to the PKO account for Somalia, if necessary.

¹⁰⁴ Testimony of then-Acting Undersecretary of State for International Security and Arms Control Stephen Mull before the House Armed Services Committee, March 5, 2009.

Piracy, Law Enforcement, and International Cooperation

Several United Nations instruments address the problem of piracy, including the Convention on the High Seas,¹⁰⁵ the Convention on the Law of the Sea (UNCLOS),¹⁰⁶ and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention).¹⁰⁷ The United States is a signatory to the Convention on the High Seas and the SUA Convention, but not to UNCLOS. A “global diplomatic effort to regulate and write rules for all ocean areas, all uses of the seas and all of its resources” resulted in the convening of The Third United Nations Conference on the Sea in 1973 and the adoption of UNCLOS in 1982.¹⁰⁸ UNCLOS generally incorporates the rules of international law codified in the Convention on the High Seas, but also comprehensively addresses the use of other areas of the sea including, for example, the territorial seas, natural resources, and the seabed.

The Convention on the High Seas, to which the United States is a party, and UNCLOS both address piracy by stating that “[a]ll states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”¹⁰⁹ The term “piracy” is defined in UNCLOS (Article 101) as:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed-
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).¹¹⁰

Article 110 of UNCLOS authorizes warships to visit and/or inspect ships on the high seas that are suspected of engagement in piracy. Although the United States is not party to UNCLOS, the Convention on the High Seas also authorizes the right of visitation/inspection of vessels suspected of being engaged in piracy.¹¹¹ States, under both the Convention on the High Seas and UNCLOS, are authorized to seize a pirate ship, or a ship taken by piracy and under the control of

¹⁰⁵ Convention on the High Seas, 13 U.S.T. 2312; T.I.A.S. 5200; 450 U.N.T.S. 82. Signed at Geneva, April 29, 1958. Entered into force September 30, 1962.

¹⁰⁶ United Nations Convention on the Law of the Seas (UNCLOS), 21 I.L.M. 1261. Convention adopted December 10, 1982. Entered into force November 16, 1994 (the United States is not a party to the Agreement).

¹⁰⁷ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, T.I.A.S. Signed at Rome, March 10, 1988. Entered into force March 1, 1992 (for the United States March 6, 1995).

¹⁰⁸ The United Nations Convention on the Law of the Sea (A historical perspective), available at http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

¹⁰⁹ Convention on the High Seas at Article 14; UNCLOS at Article 100.

¹¹⁰ UNCLOS at Article 101. (The definition is, with a minor grammatical change, the same definition found in the Convention on the High Seas (Article 14).

¹¹¹ Convention on the High Seas at Article 22.

the pirates, and arrest the persons and seize the property on board.¹¹² The courts of the State whose forces carry out a seizure may decide the penalties to be imposed on the pirates.¹¹³

The SUA Convention further expands on the judicial treatment of pirates. Its main purpose is “to ensure that appropriate action is taken against persons committing unlawful acts against ships.”¹¹⁴ Unlawful acts include, but are not limited to, the seizure of ships; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.¹¹⁵ The SUA Convention calls on parties to the agreement to make its enumerated offenses “punishable by appropriate penalties which take into account the grave nature of those offenses.”¹¹⁶ The United States criminalizes acts of piracy¹¹⁷ and foreigners or U.S. citizens that commit acts of piracy are subject to imprisonment for life.¹¹⁸ While it appears that U.S. law is sufficient to address the criminality of piracy, this may not be the case in other countries. Additionally, even with comprehensive criminal laws, the logistics related to the enforcement of the laws may be an impediment to their utilization.

Questions regarding legal jurisdiction, due process for detained pirate suspects, and the role of foreign military forces in anti-piracy law enforcement activities may complicate current U.S. and international operations against pirates in the Horn of Africa region. The most immediate legal concern associated with anti-piracy operations are jurisdictional questions that arise based on the location of pirate attacks and/or international naval interventions, the nationalities of crew members, and the countries of registry and/or ownership of any seized vessels.¹¹⁹ Multiple governments may be able to assert legal jurisdiction depending on the specifics of the incident. Political will may be present in some countries, but many governments lack sufficient laws and judicial capacity to effectively prosecute suspected pirates. The disposition of property and insurance claims for vessels involved in piracy also raises complex legal questions. A developing legal issue concerns the prosecution of juveniles participating in acts of piracy. Recent reports suggest that some of the Somali pirates are teenage minors,¹²⁰ and therefore could have a defense of infancy in certain jurisdictions that may assert jurisdiction over the offense.¹²¹

To date, some of these legal and law enforcement challenges have been addressed through the establishment of bilateral agreements by the United States, the United Kingdom, the European

¹¹² Convention on the High Seas at Article 19; UNCLOS at Article 105.

¹¹³ *Id.*

¹¹⁴ International Maritime Organization statement on aims for the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, available at <http://www.imo.org/>.

¹¹⁵ *Id.*

¹¹⁶ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation at Article 5.

¹¹⁷ 18 U.S.C. § 1651 *et seq.*

¹¹⁸ 18 U.S.C. §§ 1651 and 1652.

¹¹⁹ For one review and discussion of these legal questions from a U.S. military point of view, see Cmdr. James Kraska and Capt. Brian Wilson, “Fighting Piracy,” *Armed Forces Journal*, February 1, 2009 (expressing view that international and regional cooperation, not armed force, is the long-term solution to piracy).

¹²⁰ See <http://www.smh.com.au/world/fate-of-teen-pirate-uncertain-20090414-a5ih.html>.

¹²¹ For example, under common law, children under the age of seven are conclusively presumed to be without criminal capacity, those who have reached the age of fourteen are treated as fully responsible, while as to those between the ages of seven and fourteen there is a rebuttable presumption of criminal incapacity. In addition jurisdictions have adopted juvenile court legislation providing that some or all criminal conduct by those persons under a certain age (usually eighteen) must or may be adjudicated in the juvenile court rather than in a criminal proceeding. LaFave & Scott, *Criminal Law* §4.11 (2d ed. 1986).

Union and others with governments in the Horn of Africa region, particularly with Kenya. Some agreements concluded to date define procedures for the detention, transfer, and prosecution of captured pirate suspects. For example, suspected pirates captured by U.S. military forces now may be transferred to Kenyan custody for prosecution according to the terms of a bilateral memorandum of understanding signed in January 2009. As of September 2009, 100 suspected pirates captured by warships from France, Germany, Italy, Spain, Sweden, the United Kingdom, and the United States were being prosecuted in Kenyan courts.¹²² However, recent reports suggest that Kenyan officials have decided to suspend the acceptance of new pirate suspects for prosecution, pending further negotiation with the United States and other coalition parties. The United States has provided capacity building assistance to Kenya's Department of Public Prosecutions since 2005, and a resident legal advisor from the U.S. Department of Justice (DOJ) is providing the Kenyan government with assistance in piracy cases.

DOJ has conducted several piracy workshops for prosecutors, police, and maritime security personnel. Other international donors have become increasingly engaged, and U.N. Office on Drugs and Crime (UNODC) is currently implementing a substantial capacity building program funded by the European Commission, as noted above (see "United Nations Office on Drugs and Crime (UNODC): "Shipriders" and Capacity Building"). Efforts also are underway to establish mechanisms for regional law enforcement personnel to serve as shipriders on coalition vessels and to expand the anti-piracy law enforcement and judicial capacities of neighboring states.

Options for Improving the Immediate Security of Merchant Ships

Risk Reduction and Best Practices

The U.S. Department of Transportation Maritime Administration (MARAD) issues detailed guidance to U.S. mariners transiting the waters off the Horn of Africa region to help ensure their safety and security.¹²³ Its latest guidance, issued March 29, 2010, includes instructions for U.S. flagged vessels seeking escort support from the U.S. Navy and Combined Maritime Forces participating in coalition naval security operations in the region.¹²⁴ As noted above, international bodies such as the International Maritime Organization¹²⁵ and the International Maritime Bureau¹²⁶ also have revised their recommendations for actions that merchant ships and their crews can take to reduce their risk of being attacked and captured.

These include measures that can be taken before and during pirate attacks. For example, rerouting ships, if possible, allows ships to avoid waters where Somali pirates are known to operate. This option can lengthen operating routes and increase shipping costs, but perhaps not as much as paying an occasional ransom. Recommendations suggest that transit of high-risk areas is not

¹²² The U.S. State Department provided CRS with documents on the status of piracy trials in Kenya in September 2009.

¹²³ U.S. Department of Transportation Maritime Administration Advisories are available at http://www.marad.dot.gov/news_room_landing_page/maritime_advisories/advisory_summary.htm.

¹²⁴ U.S. Department of Transportation Maritime Administration Advisory #: 2010-06, Guidance to Vessels Transiting High Risk Waters, March 29, 2010.

¹²⁵ International Maritime Organization, "Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships," MSC1/Circ.1334, June 23, 2009.

¹²⁶ International Maritime Bureau-Piracy Reporting Center, Best Management Practices, August 2009, available at http://www.icc-ccs.org/images/stories/pdfs/bmp_21-8-2009.pdf.

recommended at times of day when Somali pirates historically have been more likely to stage attacks, namely in early morning or dusk hours. In transit, effective watch procedures are recommended, since early detection of impending attacks increases the likelihood that avoidance and suppression measures will succeed. Higher ship operating speeds and evasive maneuvers have proven effective in many cases, as have denial systems such as barbed and razor wire and specialized electrical fences for ships. Crew preparation, training, and responses also are credited with reducing risks of successful pirate attacks.

Arming Merchant Ships¹²⁷

Arming merchant ships can be done by either giving arms to the ship's crew, or by hiring armed security teams to ride on the ships. Some observers and industry representatives have advocated for these options as a means of ensuring that there is an immediate security presence aboard vessels to serve as a deterrent or to respond to pirate attacks. Supporters argue that the large geographic distances and limited responsiveness of international naval assets to piracy attacks makes the provision of on-ship security necessary. Others contend that the training of crew members to safely handle weapons does not pose an undue financial or practical burden to shipping companies. However, some merchant ship owners and operators are strongly averse to arming merchant ships, for practical and financial reasons.

U.S. government officials traditionally have expressed concern that merchant ships with armed crew members could pose security or terrorism risks visiting U.S. ports. As noted above, private or military gun battles with pirates can raise the overall level of violence associated with piracy off Somalia, which may increase risks to all merchant mariners on ships operating in that area. Since merchant ship crews are often not trained in the use of weapons, they might not be able to use them very effectively in fighting pirates. If ship crews try to defend themselves with firearms and fail, the pirates might be more likely to kill some of the crew members.

Even if used properly, lighter firearms might not be effective in countering pirates armed with heavier weapons, such as rocket-propelled grenades. Pirates with access to large amounts of money from prior ransom payments can acquire heavier weapons, so as to out-gun the merchant ships. In all cases, fire is a major safety concern, particularly on tanker ships, and gunfire could ignite vapors from the ship's cargo, or the cargo itself.

Financial concerns may also mitigate against arming merchant ships. Hiring armed security teams might be more expensive than paying occasional ransoms. Liability for fatal shootings aboard a ship can be a complex legal matter that can lead to expensive lawsuits. Since many ports restrict vessels from having weapons on board, commercial ships that often make calls at multiple ports along their operating routes could find it difficult to operate along certain routes. Reports suggest that private companies providing armed guards and shipping companies using armed security teams are grappling with these and other related issues in an effort to avoid legal trouble. Hugh Martin, general manager of security firm Hart Security UK has stated that "the amount of effort we put in to ensure we are legal is colossal."¹²⁸

¹²⁷ Most of the concerns listed here are discussed in John W. Miller and Paulo Prada, "Attack Raises Debate On Guns For Sailors," *Wall Street Journal*, April 11, 2009; and Keith Bradsher, "Rescue Fuels Debate Over Arming Crews," *New York Times*, April 13, 2009.

¹²⁸ Katharine Houreld, "Private Ship Escorts Guard Against Pirates," *NavyTimes.com*, June 5, 2009. For additional discussions of issues relating to arming of merchant ships, see Keith Bradsher, "Rescue Fuels Debate Over Arming (continued...)"

In mid-2009, the IMO Maritime Safety Committee released the following guidance:

The MSC agreed that flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of a ship...the use of unarmed security personnel is a matter for individual shipowners, companies, and ship operators to decide. The carriage of armed security personnel, or the use of military or law-enforcement officers (duly authorized by the Government of the flag State to carry firearms for the security of the ship) should be subject to flag State legislation and policies and is a matter for the flag State to authorize, in consultation with ship owners, companies and ship operators.¹²⁹

Sec. 3506 of the National Defense Authorization Act for FY2010 (H.R. 2647, P.L. 111-84, October 28, 2009) required the Administration to report within 60 days on its efforts to facilitate the embarkation of armed private security teams on U.S. flagged commercial vessels operating in high risk areas. Items to be reported on include the elimination of restrictions under any regulation or provision of law on the use of armed security teams in high risk areas, the negotiation of bilateral agreements with relevant coastal states, and the development of common training and qualification standards for armed security teams. The report was delivered to Congress in February 2010 and describes numerous advisories the Administration has issued that offer guidance to U.S. flagged commercial vessels. The report also provides detail on U.S. efforts to coordinate with and obtain information from relevant foreign port authorities on the issue of armed security teams.¹³⁰

International Traffic in Arms Regulations (ITAR)

The International Traffic in Arms Regulations (ITAR) may be an area of concern for ship owners desiring to arm their vessels in self-defense against acts of piracy. Section 38 of the Arms Export Control Act (ACEA)¹³¹ authorizes the President to control the export and import of defense articles and defense services. The President, through Executive Order 11958, as amended, delegated the statutory authority to promulgate regulations with respect to exports of defense articles and defense services to the Secretary of State. The resulting regulations are known as the International Traffic in Arms Regulations.¹³²

ITAR requires U.S. persons¹³³ to obtain a license in order to export or import items identified on the United States Munitions List.¹³⁴ As defined by regulation, the term “export” includes “sending

(...continued)

Crews,” *New York Times*, April 13, 2009; and John W. Miller and Paulo Prada, “Attack Raises Debate On Guns For Sailors,” *Wall Street Journal*, April 11, 2009.

¹²⁹ Revised guidance on combating piracy agreed by IMO Maritime Safety Committee, Maritime Safety Committee - 86th session: 27 May - 5 June 2009.

¹³⁰ Report to Congress on Restrictions on U.S.-Flagged Commercial Vessel Security Pursuant to P.L. 111-84, Section 3506, February 26, 2010. Report provided to CRS by U.S. Navy Office of Legislative Affairs, April 2010.

¹³¹ P.L. 90-629, 90 Stat. 744 (22 U.S.C. § 2778) (Arms export control is addressed in Chapter 39 of Title 22 of the *United States Code* (22 U.S.C. §§ 2751-2799aa-2)).

¹³² 22 C.F.R. §§ 120-130.

¹³³ A ‘U.S. person’ is defined at 22 C.F.R. §120.14 and §120.15, as a “natural person who is a lawful permanent resident as defined by 8 U.S.C. § 1101(a)(20) or who is a protected person as defined by 8 U.S.C. § 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state, local) entity.”

¹³⁴ 22 C.F.R. pt. 121.

or taking a defense article out of the United States¹³⁵ in any manner.”¹³⁶ Objects covered by the term “defense article” are found on the United States Munitions List¹³⁷ and are classified into 21 separate categories. Categories I and III appear to be most relevant in a discussion regarding protection from acts of piracy because they include firearms (category I) and ammunition (category III) that could be used in the defense of a vessel. Based on the definitions of export and defense articles, a ship owner would be required to obtain a license for the temporary export of firearms and ammunition, or other covered armaments, for use in the defense of a vessel.

There is an exception to the licensing requirement under ITAR for the temporary export of not more than three non-automatic firearms and not more than 1,000 cartridges. To comply with this exception a U.S. person: (1) must declare the temporary export of the firearms and submit to an inspection by a customs officer; (2) must retain the firearms with the person (i.e., not mail the firearms to the destination); and (3) maintain the firearms for that person’s exclusive use and not for reexport or transfer of ownership.¹³⁸ The regulation makes a distinction between U.S. persons and crew members of vessels, but how the distinction would affect the status of the vessel as an entity is unclear.¹³⁹ This exception may be an option available to owners as a way to arm their vessels, without obtaining an export license since the term “U.S. person” is defined to include a corporation, business association, and partnerships, as well as other entities. Additionally, it would appear that individual crew members would be able to temporarily export firearms under the exception. However, crew members utilizing privately owned weapons to defend corporate property could raise significant legal liability issues for both the individuals and the corporation.

The ITAR licensing requirement exception does not supersede prohibitions against exports to certain countries, including, but not limited to countries identified by the United Nations Security Council through a United Nations Arms Embargo.¹⁴⁰ Additionally, a license to export defense articles, or in the alternative obtaining an exemption from the licensing requirement, does not address or satisfy requirements of foreign countries that may exist with respect to operating a vessel in their territorial waters while carrying weapons. The vessel’s owner is responsible for knowing and respecting the laws of the foreign country.

Convoys

Some observers argue that U.S. and international naval vessels should provide convoy protection services to ships transiting the Horn of Africa region, particularly the Gulf of Aden. Supporters argue that the direct participation of coalition or other naval assets in merchant ship convoys would eliminate the risks posed by unescorted travel through the Gulf of Aden or areas along the eastern coast of Somalia by cutting down the response times to attempted attacks. However, merchant ship operators may be reluctant to use a convoy system because it can require merchant ships to wait in a certain location for the next scheduled convoy to begin. The delays associated

¹³⁵ The term ‘United States’ is defined at 22 C.F.R. § 120.13, as “when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possession of the United States, the District of Columbia, the Commonwealth of the North Mariana Islands, any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.”

¹³⁶ 22 C.F.R. § 120.17(a).

¹³⁷ 22 C.F.R. § 121.1.

¹³⁸ 22 C.F.R. § 123.18(c).

¹³⁹ *Id.*

¹⁴⁰ 22 C.F.R. § 126.1.

with this waiting can impose costs on ship operators that could be greater than the cost of paying an occasional ransom. The establishment and maintenance of a convoy system over the long term, in the absence of broader efforts to address the root causes of the piracy problem, could pose unacceptable costs for international navies.

Escorts by Navy Ships

As of March 2010, the current MARAD advisory indicates that U.S.-flagged vessels may contact U.S. military headquarters in Bahrain to request escort services. Navy or Coast Guard vessels could escort U.S.-flagged commercial ships traveling in the Gulf of Aden, just as U.S. Navy vessels escorted U.S.-flagged ships (including reflagged Kuwaiti oil tankers) in the Persian Gulf in 1987-1988 (aka Operation Earnest Will) so as to protect them from potential Iranian attack during the Iran-Iraq war.

If Navy ships that are forward deployed to the Indian Ocean/Persian Gulf region were diverted from their current missions in that region to a mission of escorting U.S.-flagged commercial ships in the Gulf of Aden, the incremental financial cost (i.e., the additional dollar cost, above the costs that would be incurred if the ships continued performing their currently assigned missions in the Indian Ocean/Persian Gulf region) might be small. However, there would be an opportunity cost in terms of those ships not performing their currently assigned missions in the Indian Ocean/Persian Gulf region. Such missions can include engagement activities aimed at building or reinforcing U.S. partnerships with other countries in the region, humanitarian assistance and disaster-response (HADR) operations, intelligence, surveillance, and reconnaissance (ISR) operations, counterterrorism operations, deterrence of regional aggression, and crisis response and containment. Policymakers might need to weigh the potential advantages of escorting U.S.-flagged commercial ships in the Gulf Aden against the potential disadvantages of reduced Navy capacity for performing other missions in the Indian Ocean/Persian Gulf region.

If Navy ships that are forward deployed to other regions, such as the Mediterranean or the Western Pacific, were diverted from their current missions in those regions to a mission of escorting U.S.-flagged commercial ships in the Gulf of Aden, the incremental financial cost could be larger due to the need to expend additional fuel to transit to and from the Gulf of Aden region. Even so, the incremental financial cost might be relatively small as a fraction of annual Navy costs for ship operations. There would again be an opportunity cost in terms of those ships not performing their currently assigned missions in the regions from which they were diverted, which again can include things such as engagement activities, HADR operations, ISR operations, counterterrorism operations, deterrence of regional aggression, and crisis response and containment. Policymakers might again need to weigh the potential advantages of escorting U.S.-flagged commercial ships in the Gulf Aden against the potential disadvantages of reduced Navy capacity for performing missions in areas such as the Mediterranean or Western Pacific.

Armed Security Details of U.S. Military Personnel

An alternative to having U.S. Navy (or Coast Guard) ships escort U.S.-flagged commercial ships would be to provide a small security detail of armed U.S. military personnel to each U.S.-flagged ship for the duration of its transit through the Gulf of Aden. The detail would board each U.S.-flagged ship at the start of its transit through the high-risk zone and depart the ship at the end of its transit through the high-risk zone. One person who has suggested this alternative—a retired U.S. Navy vice admiral—asserted that “A few well-armed teams aboard a few ships could

accomplish this mission” of protecting U.S.-flagged commercial ships traveling through the area.¹⁴¹ An August 2009 news report states that France has placed military personnel aboard tuna fishing boats in the Indian Ocean and Belgium has offered eight-person military teams at a cost of \$162,000 per week.¹⁴² Some U.S. corporate officers have argued that military teams should protect U.S.-flagged in order to avoid “regulatory shortfalls, liability concerns, and international reluctance to permit armed merchant vessels into their ports.”¹⁴³ Section 3506 of the House-passed version of H.R. 2647, the FY2010 Defense Authorization act, would have required the Secretary of Defense to embark U.S. military personnel on board U.S.-flagged vessels carrying cargos owned by the U.S. government if a vessel is traveling in a high risk area and is determined by the Coast Guard to be at risk of being boarded by pirates. The Senate version of the bill did not include these measures.

Maritime War Risk Insurance and Implications of “Armed Crews”

Federal law (Title XII of the Merchant Marine Act of 1936, as amended) authorizes the federal government to administer a maritime war risk insurance program that insures or reinsures, as a last resort, ocean-going commerce should private ocean marine insurance markets prove insufficient. Available statistics suggest that the insurance industry’s financial resources are adequate, given policyholder surplus levels (an insurance term that refers to the claims-paying capacity or capital available to the insurer), and there is ample supply of coverage for ocean-going vessels.¹⁴⁴ As a result, despite the dramatic increase in piracy off the coast of Somalia and increased premiums for sending a cargo shipment through the Gulf of Aden, some may contend that Congress does not need to amend the existing federal insurance statutory construct.

Others have urged arming ship crews as a risk mitigation option. Congress may choose to consider steps to allow armed crews on some ships or support the use of military personnel in response to the current wave of piracy. Merchant ships travelling through the Gulf of Aden and Indian Ocean have increasingly hired armed private security contractors to protect their vessels against pirate attacks; crews have reportedly become adept at repelling attacks by pirates. In March 2010, for the first time, private security guards aboard the MV *Almezaan* killed a Somali pirate attempting to attack a vessel. The MV *Almezaan* is a Panamanian-flagged cargo ship under United Arab Emirates-ownership.

Ocean marine insurers are divided on the “armed crew” issue. Some insurers believe traditional negotiations after an act of piracy, which have resulted in prompt formula-based ransom payments and an understanding between ship owners and the pirates about not damaging the ship or cargo in exchange for expedited payments, is the best approach to containing the cost of ocean marine transportation in piracy zones. Acts of piracy are declining in other areas although piracy still poses a threat to shipping and trade. Some contend that arming ship crews would encourage

¹⁴¹ John B. Perkins III, “Protect Our Mariners,” *Washington Times*, August 30, 2009: B1.

¹⁴² Christopher Torchia, “Western Nations Weigh Arming Civilian Ships,” *NavyTimes.com*, August 13, 2009.

¹⁴³ Testimony of Arthur J. Volkle, Jr., Vice President, American Cargo Transport, Inc., before the House Committee on Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation, May 20, 2009.

¹⁴⁴ According to the A.M. Best Company, the U.S. property/casualty insurance industry’s reported surplus, a measure of claims-paying capacity or capital, increased by \$27.8 billion to \$490.8 billion during the third quarter 2009, up from \$463 billion at the end of the second quarter. While not all of the \$490.8 billion is allocated to ocean marine insurance, the level of industry-wide surplus suggests U.S. private insurers have the overall financial resources to cover potential losses from incidences of ocean piracy.

pirates to be more violent when taking a ship, increasing the risks to cargo, vessels, and crew. Still other insurers would support an investigation into the piracy situation in an effort to protect international commerce, particularly at a time of global economic crisis.

Toward a Long-Term Solution: "Piracy is a Problem that Starts Ashore"¹⁴⁵

Some Members of Congress have called on the Administration to develop a "comprehensive approach" to Somalia that responds to the threat of piracy in the context of a broader initiative to stabilize the country and support transitional government institutions. Some U.S. officials support a similar approach. In January 2009, Dr. Jun Bando, Maritime Security Coordinator and U.S. AFRICOM Liaison for the U.S. Department of State Bureau of African Affairs argued that "a durable solution for ending piracy in the Horn of Africa will require improving security, stability, rule of law, and economic opportunity in Somalia, as well as solidifying political progress by forming a unity government and advancing the peace process."¹⁴⁶

"Ultimately, piracy is a problem that starts ashore and requires an international solution ashore. We made this clear at the offset of our efforts. We cannot guarantee safety in this vast region."

Vice Admiral William Gortney

Commander, U.S. Naval Forces Central Command

Testimony before the House Armed Services Committee, March 5, 2009

Beginning in January 2009, the Obama Administration signaled its intention to continue working with U.S. partners in the Contact Group on Somalia and the Contact Group on Piracy off the Coast of Somalia toward those goals. In response to attacks on U.S.-flagged and -crewed vessels during 2009, a more robust anti-piracy policy has been developed, and official statements indicate that the Administration intends to proceed on a multi-track basis by building regional capacity, supporting multilateral anti-piracy initiatives, and improving coordination in the U.S. interagency.¹⁴⁷

The Administration's interagency Counter-Piracy Steering Group continues to lead the efforts of over 75 bureaus, offices, and embassies engaged in anti-piracy operations. The State and Defense Departments lead the Steering Group and the Departments of Transportation (U.S. Maritime Administration [MARAD]), Justice, Homeland Security, Treasury, and USAID are members. Enhanced U.S. assistance to the Somali Transitional Federal Government and engagement with regional Somali representatives also aims to strengthen the ability and willingness of Somalis to secure regions where pirates currently enjoy safe havens.

In the short term, the international community has responded to the threat of piracy in the waters off the Horn of Africa with multinational naval patrols, diplomatic coordination efforts, and enhanced private security efforts by members of the commercial shipping industry. The challenge

¹⁴⁵ United States Navy, Commander, Combined Maritime Forces Public Affairs, "Combined Maritime Forces Issues New Alert to Mariners," April 7, 2009.

¹⁴⁶ Dr. Jun Bando, Maritime Security Coordinator/U.S. Africa Command Liaison, U.S. Department of State Bureau of African Affairs, "International Response to Piracy Expanded, Unified," *DipNote*, January 30, 2009.

¹⁴⁷ U.S. State Department Bureau of Political-Military Affairs, "Fact Sheet: United States Actions To Counter Piracy Off the Horn of Africa," September 1, 2009.

of locating and sustaining jurisdictions willing and able to prosecute piracy suspects and detain pirate convicts persists. In the longer term, U.S. officials and international experts believe that addressing the threat of piracy will require the strengthening of regional security capabilities, improved intelligence gathering and sharing, more effective and capable law enforcement, and enhanced multilateral coordination, both at sea and on land. By all accounts, pirates will likely continue to find sanctuary in Somalia until basic governance and security conditions there improve, a prospect threatened by ongoing conflict.

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