# INTERNATIONAL PIRACY ON THE HIGH SEAS

**(111–6)**

# HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

FEBRUARY 4, 2009

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

47–259 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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# U.S. House of Representatives
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Washington, DC 20515

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February 4, 2009

**SUMMARY OF SUBJECT MATTER**

**TO:** Members of the Subcommittee on Coast Guard and Maritime Transportation

**FROM:** Subcommittee on Coast Guard and Maritime Transportation Staff

**SUBJECT:** International Piracy on the High Seas

### PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will convene at 2:00 p.m., on Wednesday, February 4, 2009, in Room 2167 of the Rayburn House Office Building to receive testimony regarding international piracy.

The purpose of this hearing is to gather information on the causes and extent of piracy and to understand its effect on international shipping. To date, no U.S.-flagged vessels have been attacked or seized by pirates. However, the expansion of international piracy – particularly in the Horn of Africa region -- threatens to raise the costs of transporting goods through that highly traveled region at a time of significant distress in the world economy.

### BACKGROUND

WHAT IS PIRACY?

The United Nations Convention on the Law of the Sea (UNCLOS) defines "Piracy" and:

(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).

Additionally, UNCLOS defines armed robbery against ships as "any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of 'piracy' directed against a ship or against persons or property on board such ship, within a State's jurisdiction over such offences."[1]

Though the United States is not a party to UNCLOS, the definition of piracy provided by UNCLOS is also used in the President's June 14, 2007 Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea, and the 1958 Convention on the High Seas, to which the United States is a party.

The International Maritime Bureau (IMB), a non-profit organization that is acting as a focal point in the fight against maritime crime, was established in 1981 by the International Chamber of Commerce. It defines "piracy" broadly as "an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of that act."

HISTORY OF PIRACY

Pirates have been attacking ships at sea throughout history. Many pirates were at various times in their careers "privateers" who had been authorized by their national government to attack and pillage the ships of enemy nations. In some cases, merchant or naval seamen joined pirate vessels seeking a share of seized goods. There were, however, significant risks associated with the decision to become a pirate: the standard punishment for individuals caught engaging in acts of piracy was typically death.

Among the most famous pirates in history were the Barbary Corsairs, also known as the Barbary pirates, who conducted pirate operations from bases along the northern coast of Africa from the early 1500s through the early 1800s. These pirates typically held captured crews for ransom; however, they also sold some captured sailors into slavery.

After winning independence from Great Britain in the Revolutionary war, the United States began paying tribute to the Barbary states to protect U.S. shipping interests (as many other nations did at that time). Despite these payments, Barbary pirates began seizing U.S. ships and the U.S. eventually began paying cash and goods to ransom sailors. Some sources estimate that total U.S. payments to the Barbary pirates may have required nearly a quarter of total national revenues by 1800.

[1] 1982 United Nations Convention on the Law of the Sea

Upon becoming President of the United States in 1801, Thomas Jefferson refused to deal with the Barbary pirates, leading to the outbreak of the first of two wars between the United States and Barbary powers between 1801 and 1815. The Barbary pirates were not fully suppressed until after the 1830s, when northern Africa began to be colonized by foreign states.

Privateering was made an international crime in 1856 with the signing of the Declaration of Paris. Signatories to this Declaration agreed to ban letters of marque (which were essentially commissions issued by governments to private merchant vessels authorizing them to seize the ships of enemy nations)[2], outlaw privateering, and authorize the navies of each country to enforce the Declaration. Advances in maritime technology – including the introduction of steam and subsequent systems of propulsion – also served to limit the reach of pirates.

Nonetheless, as this hearing will examine, piracy has never been completely eliminated. At the present time, most acts of piracy occur in the Horn of Africa region (originating from Somalia) and, to a lesser extent, off the coast of Nigeria, and in the Straits of Malacca and the waters around Indonesia and Malaysia.

MODERN PIRACY

The International Chamber of Commerce's International Maritime Bureau's Piracy Reporting Center (IMB PRC) reported that a total of 293 incidents of piracy and armed robbery occurred worldwide in 2008. In that year, 49 vessels were hijacked, leaving 889 crewmembers hostage to pirates. The charts below detail recorded incidents of piracy between 2003 and 2008.

**Actual and Attempted Pirate Attacks – 2003-2008**

| Location | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|---|
| SE Asia | | | | | | |
| Indonesia | 121 | 94 | 79 | 50 | 43 | 28 |
| Malacca Straits | 28 | 38 | 12 | 11 | 7 | 2 |
| Malaysia | 5 | 9 | 3 | 10 | 9 | 10 |

[2] Article 1, Section 8 of the United States Constitution authorizes the United States Congress to grant letters of marque and reprisal. It also authorizes the Congress to "define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations."

| | | | | | | |
|---|---|---|---|---|---|---|
| Philippines | 12 | 4 | - | 6 | 6 | 7 |
| Vietnam | 15 | 4 | 10 | 3 | 5 | 11 |
| Bangladesh | 58 | 17 | 21 | 47 | 15 | 12 |
| **Africa** | | | | | | |
| Gulf of Aden | 18 | 8 | 10 | 10 | 13 | 92 |
| Nigeria | 39 | 28 | 16 | 12 | 42 | 40 |
| Somalia | 3 | 2 | 35 | 10 | 31 | 19 |
| Ghana | 3 | 5 | 3 | 3 | 1 | 7 |
| **South America** | | | | | | |
| Peru | 7 | 5 | 6 | 9 | 6 | 5 |
| Colombia | 10 | 5 | 2 | 2 | - | 1 |
| Jamaica | 5 | 7 | 8 | 3 | 1 | - |
| Venezuela | 13 | 7 | 2 | 4 | 1 | 3 |
| **Worldwide Other** | 108 | 96 | 69 | 59 | 83 | 56 |
| **Total** | 445 | 329 | 276 | 239 | 263 | 293 |

Source: International Maritime Bureau

**Types of Violence to Crewmembers in Pirate Incidents – 2003-2008**

| Types of violence | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|---|
| Taken Hostage/ Kidnap/ransom | 359 | 234 | 453 | 265 | 355 | 931 |
| Crew threatened | 65 | 34 | 14 | 17 | 6 | 9 |
| Crew assaulted | 40 | 12 | 6 | 2 | 29 | 7 |
| Crew injured | 88 | 59 | 24 | 15 | 35 | 32 |
| Crew killed | 21 | 32 | - | 15 | 5 | 11 |
| Missing | 71 | 30 | 12 | 3 | 3 | 21 |
| **Total** | **644** | **401** | **509** | **317** | **433** | **1,011** |

Source: International Maritime Bureau

The chart below shows the types of vessels that were attacked by pirates in 2008.

**Types of Vessels Attacked by Pirates in 2008**

| Vessel Types | Incidents |
|---|---|
| Container | 49 |
| Bulk Carrier | 48 |
| Chemical Tanker | 39 |
| General Cargo | 38 |

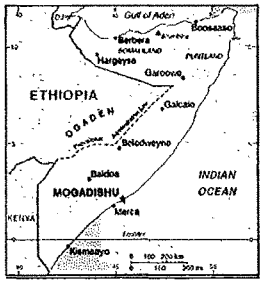
| | |
|---|---|
| Tanker | 30 |
| Tug | 16 |
| Product Tanker | 16 |
| Fishing Vessel | 9 |
| Yacht | 9 |
| LPG Tanker | 6 |
| Passenger Ship | 3 |
| Roll-on/Roll-off | 1 |
| Offshore Support Vessel | 1 |
| Other | 28 |
| **Total** | **293** |

Source: International Maritime Bureau

Importantly, pirate attacks affect many different parties, including the flag state of the vessel that is attacked, the states of nationality of the crew members aboard the attacked vessel, the state from which the pirates originate, the state in whose waters (if any) the attack occurs, the states of the ship and cargo owners, and the states for which cargo on attacked vessels is destined. In addition to their immediate impacts on the vessels, individuals, and cargo involved in an attack, sustained episodes of piracy can affect international shipping rates (by leading to the diversion of cargoes to other shipping lanes) and lead to increases in insurance rates. Further, they can isolate those states from which the piracy is originating if vessels refuse to make port calls in those nations.

### *Piracy in the Horn of Africa Region*

The area currently experiencing the most sustained incidences of piratical activity is the Horn of Africa, where piracy originates predominantly from Somalia. Somalia's coast extends 2,300 miles in both the Gulf of Aden and the Indian Ocean; this coast opens pirates into an area of ocean that exceeds 2.5 million square miles.[3] In general terms, the number of piracy incidents in the Horn of Africa are increasing, the range of miles offshore in which the pirates attack is expanding, and attacks against ships and crewmembers appear to be increasingly aggressive.




[3] U.S. National Security Council, *Countering Piracy Off the Horn of Africa; Partnership & Action Plan*, December 2008.

Somalia is a country that has been plagued by decades of civil violence. Central government control of the country effectively ended in 1991, creating a humanitarian crisis. In late 1991, the United States became involved in delivering humanitarian aid to Somalia. In December 1992, as the situation on the ground continued to destabilize, the U.S. deployed military forces to Somalia as part of OPERATION RESTORE HOPE. In October 1993, U.S. forces became involved in an intense urban battle in Mogadishu after a U.S. Army Black Hawk helicopter was downed by forces loyal to a Somali warlord. By early 1994, U.S troops were withdrawn from the country.[4]

According to the Central Intelligence Agency's (CIA) World Fact Book, between 1994 and the present, local regions in Somalia have been controlled by a variety of clan factions and warlords. In 2006, an Islamist militia called the Somali Islamic Courts Council seized control of the south of the country. In response to the Council's advance, troops from Ethiopia invaded Somalia and pushed many of the Islamic Courts forces out of the country. Ethiopian troops remained in Somalia until January 2009, when the last Ethiopian troops were reported to have withdrawn from the country.[5]

The current political situation in Somalia is difficult to assess as numerous factions appear to be continuing on-going struggles for control of (different regions in) the country. On January 31, the *New York Times* reported that the Transitional Somali parliament, meeting in Djibouti, elected Sheik Sharif Sheik Ahmed as President. However, given that the paper reports that the Transitional Government controls "only a few city blocks in Somalia," it unclear how effective his leadership will be unless military factions are somehow united behind him.[6] The *Times* also reports that this is the Transitional Government's 14th attempt to form a formal governance structure.[7] Among the many forces aligned against the Transitional Government is an Islamist faction called Al-Shabaab, which is reportedly seizing parts of the country, including most recently the town of Baidoa.[8]

While social indicators are difficult to measure in Somalia with any precision, the CIA reports that approximately 40 percent of Somalis live in extreme poverty and that life expectancy in the country is less than 50. Agriculture is Somalia's most important (legitimate) economic sector, with the raising of livestock accounting for roughly 40 percent of the country's Gross Domestic Product.

Piracy originating in Somalia has increased in recent years as conditions on land have continued to deteriorate. In 2008, the IMB PRC reported a combined total of 111 pirate attacks in the Gulf of Aden and the Indian Ocean originating from Somalia – an increase of 200 percent above the number of incidents reported in 2007.

Most of the attacks conducted by Somali pirates are aimed at ships transiting the Gulf of Aden, which is the shortest route between Asia and Europe. It is estimated that between 16,000 and

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[4] U.S. Army Center of Military History, *The United States Army in Somalia, 1992-1994*, CMH Publication 70-81-1.
[5] "Troop pull-out leaves government on brink," Steve Bloomfield, *Sunday Herald*, February 2, 2009. <http://www.sundayherald.com/international/shinternational/display.var.2459722.0.troop_pullout_leaves_government_on_brink.php>
[6] "Somalis Cheer Moderate President," Jeffrey Gettleman and Mohamed Ibrahim, *The New York Times*, January 31, 2009.
[7] Ibid.
[8] Ibid.

20,000 ships pass through the Gulf of Aden on an annual basis, including tanker ships moving approximately 12 percent of world petroleum shipments.[9]

The rise of piratical activity in the Gulf of Aden has significantly increased insurance premiums for ships transiting that region. "War risk" insurance premiums, which cover damages to ships resulting from such incidents as acts of war and insurrection and which have risen in cost tenfold in the past year, may eventually be required for ships transiting the Gulf. If the cost of insurance for transits of the Gulf of Aden becomes too expensive, or the danger of transiting the Gulf is perceived to be too great, shipping companies may avoid the Gulf and take the longer route to Europe and North America around the Cape of Good Hope – a route that extends travel times and increases fuel consumption, which would have the effect of increasing the cost of transporting goods during a time of economic slowdown.

Piracy in the Horn of Africa is having an effect on shipping prices. On January 1, 2009, CMA CGM, the world's third largest container shipping company, introduced a $23 per twenty-foot equivalency unit (TEU) "Aden Gulf Surcharge" on all containers it moves through the Gulf of Aden. The company indicates the surcharge is meant to offset increased insurance premiums and other costs associated with the prevailing risks of piracy in the area.[10]

### *How Somali Pirates Operate*

To this point, the aim of Somali pirates has been to hijack vessels and hold crew members as hostages for ransom.[11] Somali pirates appear to have little interest in or opportunity to steal cargos or vessels for re-sale. Thus, of 49 vessel hijackings worldwide in 2008, 42 were hijacked by Somali pirates, who took a total of 815 crewmembers hostage. As of December 31, 2008, Somali pirates were presumed to be holding13 vessels and 242 crewmembers as hostages for ransom.[12] The National Security Council indicates that hostage ransoms paid to Somali pirates typically range from $500,000 to as much as $2 million, and that pirates may have received as much as $30 million in ransom proceeds in 2008.[13] According to the IMB, in 2008, four crew members died as a direct/indirect result of a Somali pirate attack, two crew members were injured, and 14 crew members are missing and presumed dead.[14] Those held hostage by Somali pirates often report that they are generally well-treated physically but experience significant psychological trauma.

Somali pirates typically launch from onshore bases along Somalia's Indian Ocean coast and from the Puntland along the country's northeast coast in small skiffs powered by outboard engines. The pirates are usually armed with automatic weapons and rocket-propelled grenade launchers and generally attack vessels in multiple small bands from multiple directions. Once an attack begins, it can typically be completed in under 20 minutes, giving a vessel limited time to respond to an attack or to receive assistance from outside forces.

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[9] U. S. National Security Council, *Countering Piracy Off the Horn of Africa: Partnership & Action Plan*, December 2008.
[10] CMA CGM Press Release on Aden Gulf Surcharge, December 17, 2008.
[11] ICC International Maritime Bureau, Piracy and Armed Robbery Against Ships Annual Report, January 1-December 31, 2008.
[12] Ibid.
[13] U.S. National Security Council, *Countering Piracy Off the Horn of Africa; Partnership & Action Plan*, December 2008.
[14] ICC International Maritime Bureau, Piracy and Armed Robbery Against Ships Annual Report, January 1-December 31, 2008.

Somali pirates have been increasing the range of their operations from the near shore area and now appear capable of operating up to 450 miles or further offshore.[15] The expanse in the range of piratical activity is attributed to the pirates' increasing use of "mother ships" from which activities can be coordinated.

Somali pirates typically target vessels that are traveling "low" and "slow" – meaning vessels that have less than 6 meters of freeboard (the distance from the water line to the deck of the ship) traveling under 15 nautical miles per hour. Somali pirates have never seized a vessel at night. Further, although the largest numbers of attacks have been directed against containerships, pirates are typically not successful in hijacking these vessels due to their high freeboards and high speeds. Product tankers and personal yachts – and those vessels with inadequate watch-keeping arrangements – are considered to be the most vulnerable to pirate attacks.

In one of the most highly publicized recent attacks, pirates seized the Saudi oil tanker *Sirius Star* on November 15, 2008. Many aspects of this attack differed from "ordinary" Somali pirate attacks. The *Sirius Star* is a large super tanker more than 300 meters long. It was fully loaded with an oil cargo estimated to be worth $100 million at the time it was seized some 450 miles off the coast of Kenya in the Indian Ocean; at the time of its seizure, the *Sirius Star* was headed south toward the Cape of Good Hope. The 25 members of the *Sirius Star's* crew were taken hostage and an initial demand for $25 million was made by the pirates. In January 2009, a ransom payment reported to have totaled approximately $3 million was paid for the release of the vessel and its crew; the ransom was parachuted onto the deck of the vessel. After receiving their ransom, the eight pirates holding the *Sirius Star* fled in a small boat and were subsequently chased by other pirates; during the chase, the pirates (and their ransom) capsized and at least five pirates drowned.[16]

More recently, on January 29, 2009, it was reported that pirates had seized the *Longchamp*, a German liquefied petroleum gas (LPG) carrier, in the Gulf of Aden even as it was being escorted by a naval convoy.

The best defense against pirate attacks in the Horn of Africa region appears to be the employment of relatively unsophisticated countermeasures, including the completion of transits at night, the use of fire hoses to spray water along the sides of vessels, the assembly of crews into secure safe areas, the use of barbed wire and other devices that make it difficult to scale the sides of a vessel, and frequent course changes. In some cases, vessels under imminent threat of attack have utilized evasive maneuvers to escape pirates.

The international maritime community has not reached clear consensus regarding whether private security guards should be carried on vessels transiting the Horn of Africa region. The IMB has stated "A private armed response does not solve the problem. All it does is displace it to the target not so well protected. It will certainly lead to an escalation in the arms carried by the pirates. The inevitable result will be security becoming the preserve of a few who can afford it whilst most

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[15] Ibid.

[16] "Pirates on the Sirius Star drown with $3 million ransom," *The Herald Sun*, January 11, 2009, <http://www.news.com.au/heraldsun/story/0,21985,24898242-663,00.html>

other vessels go defenseless in the even more dangerous waters . . . there is little be gained and much to lose from having private armed security on board a few vessels transiting this high risk area".[17]

A number of non-lethal devices are available that ships can use to try to deter pirates, including satellite tracking equipment featuring silent alarms that can be used to notify external parties (such as ship owners) of an attack, systems that will electrify a hull, and long-range acoustic devices that can focus sound waves at decibels painful to humans toward specific targets. An acoustic device was used in November 2005 by the luxury cruise ship *Seabourn Spirit* to repel a pirate attack. Some shipping companies are concerned, however, that the use of non-lethal weapons to deter pirates provides inadequate protection for crew members who may be facing individuals armed with automatic weapons and rocket-propelled grenade launchers.

In general, most vessel flag states do not allow arms to be carried on board their merchant vessels. Merchant vessels traditionally have the right to innocent passage through the territorial waters of a coastal state based on the premise that they are unarmed and pose no threat to the coastal states or to other vessels in the area.

***International Response to Piracy in the Horn of Africa***

The international community has undertaken several coordinated efforts to combat piracy in the Horn of Africa.

***ATALANTA***

The UNCLOS adopted on December 10, 1982, sets the legal framework that governs the effort to combat piracy, armed robbery at sea, and other criminal activity in the maritime domain. The United Nations has also released a number of recent resolutions concerning the situation in Somalia, including Resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), and 1846 (2008).

On December 16, 2008, the Council adopted the United States-led resolution 1851 (2008), which calls on those states and organizations that are able to do so to actively participate in defeating piracy and armed robbery off Somalia's coast by deploying naval vessels and military aircraft. The resolution authorizes nations to attack pirates on land within Somalia and to "take all necessary measures that are appropriate in Somalia" to suppress "acts of piracy and armed robbery at sea."

On September 12, 2008, the European Union established a Naval Force (EUNAVFOR) Anti Piracy Operation off the coast of Somalia named Operation ATALANTA, which reached its initial operational capability on December 13, 2008. The operation was established to support the United Nations Security Council (UNSC) Resolutions 1814, 1816, 1838, and 1846, among others.

ATALANTA is headquartered in Northwood, United Kingdom, and commanded by Rear Admiral Phillip Jones of the United Kingdom. Its operational capability is to be provided by a force of up to six ships and three maritime patrol aircraft from various participating countries; during its first four months of operation, the participating countries are to include the United Kingdom, France, Greece, Spain, and Germany.

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[17] ICC International Maritime Bureau Piracy and Armed Robbery Against Ships Annual Report January 1-December 31, 2008.

Among its specific missions, ATALANTA is protecting the vessels of the World Food Programme (WFP) that deliver food aid to Somalia; protecting vulnerable vessels cruising off the Somali coast; and acting to deter, prevent and repress acts of piracy and armed robbery off the Somali coast as needed. As of January 16, 2009, ATALANTA had escorted five WFP ships and it is expected that by the end of January, it will have escorted up to 10 vessels, which will have delivered enough food aid to feed one million people.[18]

Two weeks after Operation ATALANTA was initiated, it undertook its first action to interrupt an act of piracy. As a member of ATALANTA, the German frigate *FDS Karlsruhe* assisted the Egyptian bulk carrier *M/V Wadi Al-Arab* when that vessel made an emergency call for assistance after coming under attack. The *FDS Karlsruhe* launched a helicopter that fired warning shots to deter the attack and the attack was abandoned, albeit a crewmember on board the *Wadi Al-Arab* was injured by gunfire. The *Karlsruhe* then succeeded in capturing and disarming six pirates, who were subsequently released following orders from the German government.

### *Combined Task Force 151 (CTF-151)*

There are more than 20 nations – including the United States, United Kingdom, France, the Netherlands, Pakistan, Canada and Denmark – that have naval forces in the broader Horn of Africa/Arabian Gulf/Indian Ocean region. The forces, known as the Combined Maritime Forces (CMF), patrol the region to combat terrorism, interdict illegal drugs and migrants, and ensure maritime security.

The CMF has created several task forces directed to carry out specific types of missions. For example, task force CTF 150, created at the beginning of OPERATION ENDURING FREEDOM in Iraq, has as its mission the deterrence of drug and weapons trafficking in the Gulf of Aden, Gulf of Oman, the Arbian Sea, the Red Sea, and the Indian Ocean. In August 2008, CMF created a Maritime Security Patrol Area (MSPA) in the Gulf of Aden intended to thwart piracy. As forces from CTF 150 became increasingly engaged in combating piracy, the CMF created task force CTF 151 in January 2009 and assigned the task force to fight piracy.

U.S. Navy Rear Admiral Terence McKnight has been named the commander of CTF 151 and the *USS San Antonio* (LPD-17), an amphibious transport dock, was designated as the flagship of the task force. Members of Coast Guard Law Enforcement Detachment (LEDET) 405 are currently deployed on board the *San Antonio* to serve as boarding forces and to provide training on law enforcement activities, including the preparation of evidence packages and the handling of suspects taken into custody.

### *National Security Council Piracy Plan*

In December 2008, the United States National Security Council published *Countering Piracy off the Horn of Africa: Partnership & Action Plan*, which outlines the strategies the U.S. will pursue to repress piracy. The *Plan* directs three "lines of action," which are summarized below.

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[18] Website of the Council of the European Union; <http://consilium.europa.eu/cms3_fo/showPage.asp?id=1567&lang=EN>

- **Prevent pirate attacks by reducing the vulnerability of the maritime domain:** The Commander, U.S. Naval Central Command established the Maritime Security Patrol Area in the Gulf of Aden in August 2008. This area will be patrolled by combined maritime forces, with whom, to the extent permitted, the U.S. will share relevant intelligence. The *Plan* also indicates that the U.S. will establish a "Contact Group" of countries willing to work together to coordinate responses to piracy. Further, the *Plan* encourages ships to update their Ships' Security Assessment and Security Plans in keeping with the International Ship and Port Facility Code (ISPS) to incorporate those actions (such as increasing speed, employing non-lethal measures, and engaging third-party security where appropriate) into their plans that will enable them to offer the best defense against pirate attacks.

- **Interrupt acts of piracy:** The *Plan* indicates that the U.S. and cooperating nations will conduct anti-piracy operations to interdict pirate vessels and, where possible, to intervene in acts of piracy. The *Plan* also supports the disruption of pirate bases in Somalia and, to the extent possible, the disruption of pirate revenue.

- **Hold pirates accountable by prosecuting them for their crimes:** The *Plan* notes that "Somali-based piracy is flourishing because it is currently highly profitable and nearly consequence-free." Thus, establishing the capacity to capture and prosecute pirates is essential to combating piracy; to that end, the *Plan* supports the development of agreements and arrangements with states in Africa and around the world that will allow pirates to be captured, held in custody, and prosecuted. The *Plan* anticipates that some actions will be conducted under the provisions of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), adopted in 1988, which provides a framework under which those suspected of piracy may be rendered to coastal states that are parties to the Convention.

***Maritime Security Centre–Horn of Africa***

In September 2008, the European Union established the Maritime Security Centre (Horn of Africa) (MSCHOA) in support of the UN Security Council's Resolutions 1814, 1816 and 1838 and as part of a European Security and Defense Policy directive. MSCHOA is a Coordination Center operated by the European Union Naval Force (EUNAVFOR) tasked with preventing and deterring acts of piracy against merchant shipping operating in the Horn of Africa region.

MSCHOA has a secure website through which ship owners, ship masters, and agents can register their vessel details, enter/update the positions of their vessels, and receive information and guidance designed to inform them about specific piracy risks. The Centre, which is manned by personnel from several countries, will use the information it gathers to create a comprehensive picture of the vulnerability of shipping in the Horn of Africa region and then to coordinate with a range of military forces operating in the region (notably EUNAVFOR) to provide support and protection to mariners.

***International Maritime Bureau***

Concerned about the growth in piracy then occurring in Southeast Asia, the IMB created the Piracy Reporting Centre (PRC) in Kuala Lumpur, Malaysia, in October 1992.

The PRC provides a number of services without charge to help inform the maritime community about piratical activity, including providing daily status reports and weekly updates on piracy; reporting acts of piracy and armed robbery at sea to law enforcement and the International Maritime Organization (IMO); publishing quarterly and annual statistical reports on piracy; and providing assistance when possible to crew members and ship owners whose vessels have been hijacked or attacked.

***Contact Group on Piracy off the Coast of Somalia***

On January 14, 2009, pursuant to United Nations Security Council Resolution 1851, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established. The CGPCS is comprised of 24 nations and is intended to enable members to coordinate actions to suppress piracy off the coast of Somalia. Participating nations include: Australia, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, Republic of Korea, the Netherlands, Oman, Russia, Saudi Arabia, Somalia TFG, Spain, Turkey, United Arab Emirates, United Kingdom, United States, and Yemen as well as the African Union, The European Union, The North Atlantic Treaty Organization (NATO), the UN Secretariat, and the IMO. The CGPS will periodically report the progress of its activities to the United Nations Security Council.

The CGPS has established four working groups to address six inter-related focus areas, including:

- Working Group One: Convened by the United Kingdom with the support of the IMO to improve the coordination of anti-piracy activities and support the establishment of a regional coordination center;
- Working Group Two: Convened by Denmark with the support of United Nations Office on Drugs and Crime (UNODC) to strengthen avenues for prosecuting pirates;
- Working Group Three: Convened by the United States with the support of the IMO to improve the awareness of the international maritime community of the extent and threats of piracy; and
- Working Group Four: Convened by Egypt to expand diplomatic and public information efforts on all aspects of piracy.

The CGPCS will meet again in March 2009 to review the organization and progress of the four working groups and to examine recent developments pertaining to piracy.

***Prosecution of Pirates***

The absence of clear procedures for handling captured pirates had been an obstacle to the international effort to combat piracy. Given the collapse of the Somali criminal justice system, and the extent to which the proceeds from piracy may be flowing through the Somali economy, the prosecution of pirates in Somalia is impractical (if not impossible). Other options for prosecuting

pirates include sending them to the flag state of the vessel that they have attacked – although in some cases, flag states also have limited capacity to prosecute pirates.

Additionally, many countries that could potentially seize pirates are uncertain how to handle them and are reticent to become involved in the complexities of prosecuting such suspects. In some instances, detaining pirates on coalition naval vessels has proven to be complicated given uncertainty regarding how pirates should be handled and where they will be confined until tried.

In December 2008, the governments of the United Kingdom and Kenya signed a memorandum of understanding (MoU) covering the arrest, transfer, and prosecution of Somali pirates detained by British naval vessels. The agreement will provide legal support to enable Britain to transfer to Kenya suspected pirates detained by the British naval fleet during its operations in the Gulf of Aden and Indian Ocean. In January 2009, the United States and Kenya signed a similar MoU that will allow Somali pirates captured by the United States to be tried in Kenyan courts.

In December 2008, the United Nations Office on Drugs and Crime (UNODC) proposed measures to deter, arrest, and prosecute pirates in the Horn of Africa which were endorsed by United Nations Security Council in Resolution 1851. These measures include the establishment of international agreements that will allow enforcement agents from the Horn of Africa region to join warships as 'ship riders,' which would enable these agents to arrest individuals who conduct acts of piracy against the vessels on which they ride and try them under the national laws of their country of citizenship. Subject to a special agreement, a ship rider arrangement would allow law enforcement officers from countries like Kenya, Djibouti, Tanzania, or Yemen to join a warship off the Somali coast, arrest the pirate in the name of their country, and have them sent to their national court for trial.

On January 26, 2009, the IMO convened an international meeting in Djibouti attended by representatives from countries throughout Africa and from those nations that have stationed naval ships in the Horn of Africa region (including the United States) to discuss the formation of an agreement intended to strengthen the ability of regional nations to combat piracy. It is expected that the final agreement will call on signatories to cooperate to arrest and prosecute pirates, to seize pirate vessels and assets, and to assist mariners affected by piracy. The agreement is also likely to call upon signatories to ensure that their own national laws are adequate to allow the prosecution of pirates and/or to allow the extradition of pirates.

### *Future Implications of Piracy Originating from Somalia*

At the present time, piracy in Somalia constitutes a growing threat to international shipping. If it continues to expand, it will increase the rates of maritime insurance and may even lead to the diversion of ships around the Cape of Good Hope. Further, the U.S. and other authorities are closely examining the possibility that if Islamist factions expand their control of Somalia, piracy could begin to be intertwined with terrorist agendas. Finally, if pirates continue to target product tankers and to attack them with rocket-propelled grenades, there is a risk that a ship carrying oil or another hazardous product could be severely damaged or even set alight, which could cause significant environmental damage in the Horn of Africa region.

While the international community has moved to place naval forces in the Horn of Africa region with the specific mission of combating piracy, the sheer size of the area that these forces must patrol makes it highly unlikely that these patrols will ever be successful in thwarting all attempted pirate attacks – particularly given that those committing these acts are often poor and desperate and have easy access to weapons. The key to eliminating the threat that piracy poses at sea is to improve the situation on the ground in Somalia. Thus, the National Security Council writes in its piracy *Plan* that "piracy off the Somali coast is only one manifestation of the tragic events Somalia has experienced for almost 20 years. Consequently, long-term actions to establish governance, rule of law, security, and economic development in Somalia are necessary to repress piracy fully and sustainable in the region."

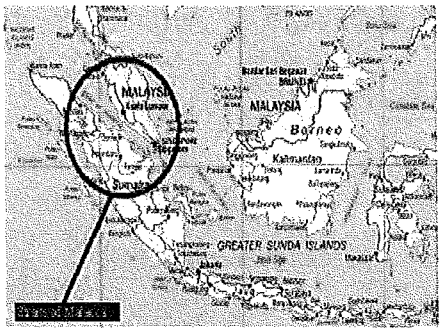
***Piracy in Regions Other than the Horn of Africa***

*Southeast Asia and Indian Sub Continent*

Several areas in Southeast Asia have been considered piracy "hotspots" for many decades, particularly the Straits of Malacca, which are a narrow channel that extends for more than 500 miles between Indonesia and Malaysia and which have historically been the site of many violent pirate attacks.

In the Straits of Malacca, pirate attacks have typically been directed against ships at anchor – though attacks of ships underway have also occurred. All reported acts of piracy involve intruders who board the vessel and typically threaten crew members; attacks also typically involve the theft of personal items and items from a ship's safe. Pirates in Southeast Asian waters, who are often members of highly organized crime syndicates, are typically heavily armed. They generally have knowledge of the many island passes in the areas around Indonesia and Malaysia and can avoid detection as well as hide captured ships.

According to the Center for Maritime Security and Diplomacy, the typical pirate attack in the Straits of Malacca early in this century involved the holding of crewmembers for ransom – albeit attacks in that region sometimes involved significant violence and even the seizing and eventual re-selling of cargoes and vessels. The IMB's 2004 piracy survey reported that of 86 crewmembers kidnapped for ransom in pirate attacks in that year, 36 were captured in the Straits of Malacca. However, in that same year, 30 crew members were killed in the Straits, and 21 crew members were killed in the Straits in 2003.




Piracy in the Straits of Malacca has declined in recent years following the initiation of concerted action by Indonesia, Malaysia, Singapore, and India to combat piracy and to assert the rule of law in the Straits and in the waters around Indonesia and Malaysia. Ships have also become more accustomed to taking precautionary measures in this area. According to the IMB, pirate attacks in the Straits fell in 2008 to just two – the fourth straight year of declines. Pirate attacks in Indonesia are also on the decline; 28 attacks occurred in Indonesia in 2008 – a decline from 43 in 2007.

*Piracy in Waters Off the Coast of Nigeria*

The waters off the coast of Nigeria are currently experiencing the second highest number of serious pirate attacks in the world; for that reason, this region is viewed as a high-risk area. While attacks along the East Coast of Africa and the Gulf of Aden typically occur on the high seas, the attacks in the vicinity of Nigeria are conducted within the territorial seas of Nigeria. There were 40 confirmed piracy incidents in Nigeria in 2008, in which 27 vessels were boarded and five were hijacked.[19] Pirates frequently target oil industry platforms in this area with 17 tankers being attacked and seven attacks were directed against support and supply ships. The remaining incidents were directed against bulk carriers, general cargo ships, and container ships.[20] Nigerian incidents are typically violent and crew members are frequently injured or kidnapped.

## PREVIOUS COMMITTEE ACTION

The Subcommittee on Coast Guard and Maritime Transportation has not previously held a hearing on international piracy.

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[19] Ibid.

[20] ICC International Maritime Bureau, Piracy and Armed Robbery Against Ships Annual Report, January 1-December 31, 2008.

## WITNESSES

### Panel I

**Rear Admiral William D. Baumgartner**
Judge Advocate General
United States Coast Guard

**Rear Admiral Ted Branch**
Director of Information, Plans and Security
Office of the Chief of Naval Operations

**Mr. James Caponiti**
Acting Administrator
Maritime Administration

### Panel II

**Mr. Peter Chalk**
Senior Political Scientist
RAND Corporation

**Captain Phil M. Davies**
Director
Oil Companies International Marine Forum

**Mr. Peter Swift**
Managing Director
Intertanko

**Mr. Giles Noakes**
Chief Maritime Security Officer
Baltic International Maritime Council

# HEARING ON INTERNATIONAL PIRACY ON THE HIGH SEAS

**Wednesday, February 4, 2009**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION,
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:01 p.m., in Room 2167, Rayburn House Office Building, Hon. Elijah E. Cummings [Chairman of the Subcommittee] presiding.

Mr. CUMMINGS. This hearing will come to order.

Before we begin, I ask unanimous consent that Mr. Pete Olson of Texas may sit with the Subcommittee today and participate in this hearing. Mr. Olson has already been assigned to the Committee on Transportation and Infrastructure and is to be assigned to the Subcommittee, but his Committee assignments have not yet been formalized. Therefore, without objection, it is so ordered.

I also welcome the other new Members of our Subcommittee who have not gotten here yet, Mr. Kagen and Mr. McMahon on our side, and Mr. Ehlers and Mr. Platts on the Republican side. I am very pleased to have them.

Ladies and gentlemen, it is my honor to have been appointed to a second term as Chairman of the Subcommittee on the Coast Guard and Maritime Transportation. I know before becoming Chairman of the Subcommittee the extraordinary work the Coast Guard performed in the Gulf Coast region in the aftermath of Hurricane Katrina. During my tenure I have come to see firsthand what an amazing service the Coast Guard is and how vital it is to the defense of our Nation and the safety of our maritime industry. I also have come to understand how integral maritime transportation is to the success of our economy.

As I embark on this new term as Chairman, I remain committed to being the Coast Guard's biggest supporter, as well as its most constructive critic. I will continue to pursue every available opportunity to strengthen our Nation's Merchant Marines and to support the more effective integration of water into what should be an increasingly multimodal transportation network in our Nation.

I welcome our new Ranking Member, Congressman Frank LoBiondo, who previously chaired this Subcommittee with distinction. I appreciate the expertise he brings to this position, and I look forward to working closely with him.

I also welcome all of the new and returning Members of the Subcommittee. We have planned an aggressive and what I trust will

be a productive schedule in the 111th Congress, and I look forward to working with each of you to ensure the success of our legislative and oversight efforts.

Today we convene our first hearing in the 111th Congress to examine the causes of piracy at sea and its effects on global shipping. The term ″pirate″ may conjure in many people's minds romantic images of swashbuckling adventurers. However, in reality, a 21st century pirate is frequently a desperately poor individual from an unstable or failing state roaming the ocean in a small skiff waiting to attack vulnerable cargo ships with a rocket-propelled grenade launcher. There is nothing romantic about this figure or about the crime of piracy, which threatens the lives of mariners on innocent passages on the world's oceans and could have the effect of raising shipping rates at a time of a deepening economic recession.

Our hearing is intended to provide a comprehensive examination of piracy, including its prevalence, its current and potential impact on shipping, and the nature and effectiveness of the international efforts being implemented to combat it.

According to the International Maritime Bureau, there were 293 reported pirate attacks against ocean-going vessels in 2008. While pirate attacks occur sporadically in many parts of the world, piracy is most prevalent in the Horn of Africa region, with gangs from Somalia seizing vessels and holding their crews for ransom.

The international community has mounted a multifaceted response to piracy in this region. The United States is taking an active role in this effort through its leadership of Task Force 151. However, given the size of the ocean area the international forces must control and their limited manpower, international navy powers are unlikely to be able to protect every ship passing the Horn of Africa from pirates.

Further, as we will examine, while the first priority of the international forces active in the Horn of Africa's region is preventing or intervening in pirate attacks, the question of what to do with captured pirates is an important and complicated one, given the absence of the rule of law in Somalia and the complexity of international legal arrangements pertaining to crimes at sea.

Efforts are currently under way to increase regional and international cooperation to support the effective arrest, detention and prosecution of pirates, And we look forward to receiving an update on the status of the current and planned agreements. That said, the piracy occurring at sea off the coast of Somalia is, frankly, just a symptom of what is a much greater problem, and that is the violence and instability that has persisted inside Somalia for more than some 20 years.

Just last week, the Parliament of Somalia, which meets outside the country, elected a new President, reportedly another in a series of attempts undertaken by the transitional government in recent years to form a stable administrative structure. Frankly, this new administration's first challenge will be to assert control over the country it was elected to govern. When Islamist force is advancing, and where multiple tribal and warlord factions continue to battle for domain over various regions of the country, the lesson from the Straits of Malacca, where piracy was a significant threat in the early part of this decade, indicates that the key to controlling pi-

racy in the Horn of Africa region will be asserting the rule of law at sea.

In the case of Somalia, however, the assertion of rule of law at sea will likely require the establishment of some semblance of the rule of law on land. To date, fortunately, no U.S.-flag vessels or U.S. citizens have been attacked by pirates. However, whenever a critical ocean trading route is threatened by piracy, all ships passing through in that area are at risk, and the world's economy, which is critically dependent on the innocent passage of goods moved by water is affected.

I look forward to the testimony of our witnesses from the United States Coast Guard, the United States Navy, the Maritime Administration and from a variety of maritime associations and interests. And with that, I again welcome our new Ranking Member and former Chairman of this Committee, Congressman LoBiondo, and recognize him for his opening statement.

Mr. LOBIONDO. Thank you very much, Mr. Chairman. I am very, very, very honored to be on the Committee and to be serving as the Ranking Republican in this 111th session of Congress. I thank you for your leadership in the last session. I look forward to working with you and Members of this Subcommittee and Full Committee on both sides of the aisle to address the needs of the Coast Guard and maritime community at large. I know that you share my intent to address these issues with swift enactment of a Coast Guard authorization bill this year.

The Subcommittee is meeting this afternoon to review conditions that have led to an increase in piracy on the high seas and combined efforts by the United States and international community to respond to these attacks and to prevent future attacks. Piracy is recognized internationally as a crime against all nations and to which all nations—I repeat—all nations must respond. Piracy not only disrupts the safe and efficient movement of maritime commerce, it is a form of terrorism that cannot be tolerated in any region of the world.

In recent years we have witnessed a dramatic increase in the number of attacks on merchant vessels transiting off the coast of Somalia. In part, this increase is due to the lawlessness that has resulted from the absence of a functioning government, Mr. Chairman, as you pointed out. Today armed gangs are operating with impunity, attracted to piracy by multimillion-dollar ransoms that continue to be paid out by vessel ownership groups. I am extremely concerned that the conditions that are supporting the growth of piracy may be exploited by other groups intent on carrying out terrorist attacks here at home and abroad.

The United States has recently committed to place the Navy and Coast Guard assets in the region to protect vessels in the area and has invited other nations to join that effort. I applaud the services for taking action, but I am concerned about the specifics of how and to what extent U.S. assets and personnel will be used in the region. I am interested in learning more about the actions of our servicemen and women and what they will be undertaking to deter future attacks, the scenarios under which the U.S. personnel will be used to repel or apprehend suspected pirates, and the procedures by which suspects will be prosecuted. I would also like to learn more

about the measures industry can take to best protect themselves from such attacks.

I want to thank you, Mr. Chairman, again for calling this hearing, and I thank the witnesses for appearing today and look forward to the testimony in the Subcommittee.

Mr. CUMMINGS. Thank you very much.

Mr. Baird.

Mr. BAIRD. I thank the Chairman.

Mr. Chairman, I regret I have another meeting to get to, but I wanted to just put into the record two brief comments. One, I had the privilege of being briefed in Bahrain very recently on the efforts being made there, and I think they are outstanding. But I had a troubling discussion with a young cadet at the Merchant Marine Academy just a couple of years ago who was on his annual—the year-long service at sea that the Merchant Marine cadets do. He shared with me having crewed on a ship in this region and had a very valuable cargo, and the defense on board the ship consisted of Gurkhas with knives. Now, the Gurkhas are fierce fighters, and knives are potent weapons, but not against an RPG. So I wonder if our witnesses could comment a little bit about the onboard defense capabilities of these ships, and especially if the ships are transporting U.S.-made goods, and even more importantly if they are transporting U.S. military supplies.

The young man I was speaking to, if I remember the conversation correctly, implied that the boat was laden with U.S. military goods heading up to our military operations, and that was of particular concern. But even if it were not military, just valuable commercial supplies protected by Gurkhas with knives in a dangerous area is not sound policy. I would welcome comments. I will be unavailable to hear those, but if you could offer it in the record or later in your testimony, I would appreciate it. And I thank the gentlemen.

Mr. CUMMINGS. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. And not unlike the Ranking Member, I thank you for having called this hearing.

I will be very brief with my opening statement. It is my belief, Mr. Chairman and Ranking Member, that these ruthless acts of piracy must be addressed and resolved because it poses a threat to maritime around the world. And as the Ranking Member indicated, piracy is indeed a form of terrorism. So I look forward to hearing the testimony today.

Thank you again for calling the hearing.

Mr. CUMMINGS. Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman. And thank you for calling today's hearing.

Piracy off of Somalia has recently emerged as a serious and growing threat to shipping. In 2008, as we heard, pirate attacks off the coast of Somalia and the Gulf of Aden have more than doubled. Although piracy has been a threat to seafaring nations for thousands of years, the emergence of aggressive and persistent attacks off the Horn of Africa is especially concerning.

The gulf here is a critical shipping corridor. Between 16- and 20,000 ships transit it annually, including 12 percent of the world's petroleum shipments. The rise of piracy in the region puts mari-

ners in danger and poses an economic burden to shipping companies. In fact, according to a Chatham House report, insurance premiums for ships traveling through the gulf have risen tenfold in 2008.

Several factors have contributed to the frequency of pirate attacks. A larger number of high-value targets passing through the gulf, global proliferation of small arms trade, and most significantly, as we have heard, persistent civil violence and lawlessness in the country of Somalia.

Any comprehensive international approach at combating piracy must address the current political situation in Somalia. The international community has recently stepped up efforts to combat piracy here. Combined Task Force 151 and Operation Atlanta have begun to patrol the area and provide protection to ships traveling through the gulf. The International Maritime Bureau's Piracy Reporting Center and MARAD have helped inform the maritime community about piracy and implement best practices for ships to evade and defend themselves from pirate attacks, and I look forward to hearing about those efforts.

But when it comes to piracy in the 21st century, there is no X that marks the spot to point us in the right direction, but there are several ways the U.S. policymakers can undertake to help combat piracy: by encouraging the commercial maritime industry to adopt best practices; make greater use of defense technologies; help states in pirate-prone areas boost their coastal monitoring interdiction capabilities; and finally, provide resources to MARAD so they can continue to advise the industry on how to strengthen their own security.

So, Mr. Chairman, I want to thank you again for holding this hearing. I look forward to discussing with our witnesses how the IMB and shipping companies can increase security and decrease opportunities for piracy, as well as the role that MARAD and the Coast Guard and our Navy are playing to help the maritime community navigate this serious issue.

Mr. CUMMINGS. Thank you very much, Mr. Larsen.

Before we hear the testimony of our first panel, I just want to recognize former Congresswoman Beverly Byron for joining us today. I want to thank you, Congresswoman, for being with us. I want to thank you for your service and all of the things you have done with regard to transportation and the issues that we confront. And thank you very much for being here. And I thank you also for sharing the fact that we both are from Maryland.

We will now hear from our panel. Rear Admiral William D. Baumgartner is the Judge Advocate General of the United States Coast Guard. Rear Admiral Ted Branch is the Director of Information, Plans and Security in the Office of the Chief of Naval Operations. And James Caponiti—am I close?

Mr. CAPONITI. Yes.

Mr. CUMMINGS. Caponiti is the Acting Administrator of the Maritime Administration.

Rear Admiral William J. Baumgartner.

**TESTIMONY OF REAR ADMIRAL WILLIAM D. BAUMGARTNER, JUDGE ADVOCATE GENERAL, UNITED STATES COAST GUARD; REAR ADMIRAL TED BRANCH, UNITED STATES NAVY, DIRECTOR OF INFORMATION, PLANS, AND SECURITY, OFFICE OF THE CHIEF OF NAVAL OPERATIONS; AND JAMES CAPONITI, ACTING ADMINISTRATOR, MARITIME ADMINISTRATION**

Admiral BAUMGARTNER. Mr. Chairman, Representative LoBiondo and distinguished Members of this Subcommittee, good afternoon, and thank you for the opportunity to appear before you to discuss piracy and the Coast Guard's role in addressing this threat to freedom of navigation, the safety of international shipping and the lives of those seafarers who are so crucial to our international economy. I ask that my written statement be included in the record.

Piracy is one of the oldest universal crimes. Under international law, every nation has a legal authority to bring pirates to justice. Such authority, however, does not guarantee success. Coordinated, international action is essential.

The administration's recently released National Strategy for Countering Piracy off the Horn of Africa acknowledges that lasting solutions require significant improvements in the governance, rule of law, security and economic development of Somalia; however, there are steps that can be taken in the near term. The national strategy lays out these steps in three lines of action. The first entails preventative and precautionary measures to render piracy less attractive; most importantly, measures to make commercial vessels more difficult for pirates to attack.

The second focuses on operations to interrupt and terminate piracy. Towards this end, U.S. Central Command has established combined Task Force 151 to deter, disrupt and suppress piracy in this region. Presently, Coast Guard Law Enforcement Detachment 405 is operating under this combined task force and is on board the USS San Antonio conducting boardings and training in the Gulf of Aden.

The third focuses on effective prosecution of pirates. Specific measures include development of regional antipiracy agreements; promotion of existing international agreements such as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, or SUA Convention; and the enhancement of regional partner capabilities to prosecute pirates. These efforts are well under way.

In January, the United States signed a Memorandum of Understanding with Kenya under which Kenya will accept custody of suspects and seize property for either trial in their country or transfer to another. This agreement builds on Kenya's past efforts, including the conviction of 10 pirates captured by the United States Navy in 2006 and the pending trial of 8 pirates captured by British Navy forces last fall. The SUA Convention, which I mentioned earlier, has been an invaluable tool in these efforts.

Just last week at a meeting convened by the International Maritime Organization in Djibouti, 21 regional nations adopted an agreement for cooperation in the interdiction, investigation and prosecution of pirates, as well as the establishment of regional information and training centers. Although not eligible to become a

party to this agreement, the U.S. delegation led by the Coast Guard played an important role supporting this effort.

As the Nation's primary maritime safety and maritime law enforcement agency, as well as a branch of the Armed Forces, the Coast Guard has a significant role in responding to piracy. The Coast Guard leads U.S. antipiracy efforts at the International Maritime Organization. The Coast Guard establishes and enforces requirements for vessel security plans under the Maritime Transportation Security Act and the International Ship and Port Facility Security Code. These plans include antipiracy measures. As well, the Coast Guard engages in international training to enhance the capacity of other nations to take action against pirates both on their waters and in their courts. And currently we are engaged with several nations in the Horn of Africa region doing precisely this. Significantly, the Coast Guard has just published a revised Model Maritime Service Code that developing nations may use as a template to establish the laws and institutions necessary to counter piracy.

As I conclude, I want to emphasize that piracy is a multifaceted threat. The response requires a broad array of legal authorities, operational capabilities, skills and competencies, as well as the participation of numerous U.S. Government agencies, international partners and commercial entities. The Coast Guard has a unique role to play and remains committed to this effort.

Thank you for the opportunity to address the Committee, and I look forward to your questions.

Mr. CUMMINGS. Thank you very much.

Rear Admiral Ted Branch.

Admiral BRANCH. Good afternoon, Chairman Cummings and distinguished Members of the Subcommittee. I am happy to have the opportunity to appear today and discuss the U.S. Navy's counterpiracy efforts in the vicinity of Somalia.

Somalia is a lawless and largely ungoverned country, with the shoreline stretching over 1,500 miles, equal to the distance from Miami to Maine. The primary industry and livelihood of coastal Somalia has always been fishing, and Somalis are capable mariners.

During the last year, and especially last summer and fall, piracy incidents and subsequent ransom payoffs increased dramatically. The lack of governance, poor economic conditions, vast coastline and numerous vessels along the coast created a situation allowing pirates to mix with fishermen, evade coalition navies, and take merchant vessels hostage with little or no consequences.

It is estimated that 25,000 ships per year transit the area in question. And the pirates enjoy complete freedom of movement both at sea and ashore. Merchant vessels were forced to comply with boardings by pirates brandishing automatic weapons and grenade launchers. Compliant vessels and crews were generally unharmed, and after days or weeks of negotiation, ship owners paid a ransom to have their ships released.

For the past several years, countries in the region have largely been unwilling or unable to receive or prosecute captured pirates, so there was virtually no legal deterrent or risk to committing piracy. This inability to effectively investigate and prosecute suspected pirates was the single most significant impediment to stem-

ming the rising tide of piracy. Now, due to the diligent efforts of the State Department and international community, there are enhanced Security Council resolutions on piracy and agreements in place for detention, investigation and prosecution of suspected pirates.

Even though no United States ships or seamen have been pirated, the United States Navy has taken a leadership role in counterpiracy operations. In response to the increasing frequency of piracy obviously in 2008, U.S. Naval Forces Central Command, or NAVCENT, developed and is executing a counterpiracy plan. This has four main components: international naval presence, improved defensive measures from the shipping industry, international legal framework for resolving piracy cases, and removal of safe havens in Somalia.

NAVCENT began by designating a maritime security patrol area in the Gulf of Aden where merchant vessels could transit with a higher probability of encountering naval vessels along the route. NAVCENT also engaged with the commercial shipping industry through the International Maritime Organization by working to help develop best practices for mariners in order to reduce the risk of being pirated.

NAVCENT coordinated the support and participation of several navies who have contributed ships to the campaign. NATO, the European Union and other countries acting unilaterally have agreed to participate or are already on station conducting counterpiracy operations near Somalia. Countries with naval ships who have or are participating in counterpiracy operations include the United States, United Kingdom, Germany, France, Denmark, Greece, Italy, Turkey, Russia, Pakistan, India, Malaysia, China, and Saudi Arabia. The Republic of Korea and Japan have announced their intention of sending ships to the region to support this effort.

In January, NAVCENT stood up Combined Task Force 151, focused on counterpiracy operations and commanded initially by a United States Navy Rear Admiral. Even with this high level of cooperation, the ocean area is vast, and both merchant ships and potential pirated vessels are numerous.

Piracy is not a problem that can be solved with naval force alone. It is an international crime requiring an international solution. Efforts by the international community, industry and NAVCENT are bearing fruit. There are currently more than 20 ships operating in the region, demonstrating international willingness to provide assets and expend resources to help solve this problem. Recent failed piracy attempts have been caused by merchant ships taking evasive action when being fired upon by pirates. In some cases, these defensive measures delayed the pirates enough for naval forces to appear and disrupt the attack. In other cases, the fact that merchant ships presented a hard target was enough to dissuade the pirates. In the last 2 months there have only been 5 successful piracies out of 34 attempts.

With increased coalition naval presence, the merchant shipping industry taking actions to limit their chances of being pirated, and local countries such as Kenya agreeing to detain and try suspected pirates, we are making positive progress and lowering the level of piracy seen in August through November off the coast of Somalia.

We are pleased by the positive progress in our counterpiracy efforts. As stated at the offset, however, piracy is a problem that starts ashore and requires an international solution. The ultimate solution is ashore in Somalia, assuring security and stability and eliminating the conditions that breed pirates.

Mr. Chairman and Members of the Subcommittee, I want to thank you for inviting me to appear here today, and I will be happy to answer your questions.

Mr. CUMMINGS. Thank you very, very much.

Mr. James Caponiti, please.

Mr. CAPONITI. Good afternoon. And thank you, Mr. Chairman and Members of the Subcommittee. It is a pleasure for me to be here today to discuss the serious threat stemming from piracy on the seas.

The impact of piracy has been very significant. Acts of piracy threaten freedom of navigation and the flow of commerce on which all trading nations depend. The recent incidents in the Gulf of Aden have become very serious, as you outlined, sir.

The Gulf of Aden links the Mediterranean Sea and the Suez Canal with the Indian Ocean and is one of the busiest choke points in the world. The area is operated—many vessels operating in the area are serving Europe, which also—and also East Africa, South Asia and the Far East; yet there are U.S. flagships that serve the area. About one ship a day is in the region, and many of the ships that are in the region may be carrying government assistance cargo.

The vessels that are vulnerable are those with—that are slow-speed vessels or low freeboard, which is the distance from the water to the deck, and ships such as container ships or roll-on/roll-off vessels are less vulnerable than tankers or dry bulk ships.

Throughout 2008, the global piracy situation grew substantially worse, and, as you said, particularly in the gulf region area. Currently 10 commercial ships are being held for ransom with about 200 crew members at risk. Just last week a German-owned tanker under Bahamas' flag, the Longchamp, was captured, and that was the third vessel in the month of January.

Of course, ship owners and operators are negatively impacted by the threat of piracy with higher costs—higher costs in their own right, higher insurance premiums and the threats to crews. The disruption to commerce, of course, is something that threatens all trading nations.

The U.S. has been a leader in the international action to combat the current piracy crisis, and the United States welcomes the U.N. Intervention. The most recent U.N. Security Council resolution in December 1851 raised the stakes on necessary means that forces may take to counter piracy. And the U.N. also created—in January meetings created a Contact Group on Piracy off the Coast of Somalia for international cooperation. One of those contact groups is being led by the United States group, and it is the group that addresses coordination of the commercial industry with best practices to protect themselves.

MARAD is perhaps unique among government agencies with regard to its interest in piracy issues. We are a civilian, nonregulatory agency with a robust sealift mission which leverages the as-

sets and human resources of commercial companies. We are very involved with our own vessels in the Ready Reserve Force and the OIF and OEF sealift. We are very involved in maritime education and training with our Federal academy and assistant State academies, and we have assisted the IMO in training regimes for security regimes on vessels and in companies.

We also have cargo preference oversight, and we monitor the flow of U.S. DOD cargo and aid cargo as it transports on the oceans of the world. We have been involved in past operations in the Falklands and then the Red Sea and Libya in providing information to divert U.S. flagshipping from threats that exist at sea.

We accompanied the State Department in meetings in late December and January in the U.N. and have been asked to take the lead on some issues in collaboration with the industry. We are very involved with that. We were involved, leading up to the end of your crises, with many forms in which we invited the U.S.-flag community and the international community to discuss means to combat piracy and to cooperate with naval forces. We continue to meet with the industry to finalize BMPs and share industry concerns with government agencies.

We have intensified our efforts in the fight against piracy and will continue to do so throughout 2009 to further improve coordination between the industry and the various navies participating in the Gulf of Aden. Combating international piracy is no small effort, evidenced by its long history. Much work has already been done, but much remains to be done before international piracy can be eliminated. MARAD has the unique and vital role in the development of U.S. antipiracy policy, and we believe we provide a valuable service to the commercial industry.

Mr. Chairman, the Department of Transportation and the Maritime Administration stand ready to assist in any way possible to address this piracy issue and any other issues that threaten the national and economic security of the United States and our allies. I want to thank you, Mr. Chairman and the Members of the Subcommittee, for your leadership in holding this hearing today, and I will be happy to answer any questions. Thank you.

Mr. CUMMINGS. I want to thank you all for your testimony. I just have a few questions, and then we will go to Mr. LoBiondo.

Admiral Baumgartner, the Coast Guard has deployed the Law Enforcement Detachment, LEDET, 405 on board the U.S. San Antonio, I think you talked about that, which is a flagship of Task Force 151. LEDET is serving as a boarding force and providing training to Navy personnel on law enforcement matters.

Can you comment on the work that LEDET has performed to date? For example, how many boardings has it conducted? Further, I understand that the Coast Guard cutter BOUTWELL has been deployed to CENTCOM for 3 to 4 months. Will BOUTWELL be deployed to undertake antipirate missions as part of Task Force 151?

Admiral BAUMGARTNER. Thank you, Mr. Chairman. First, with the crux of your questions on the exact number of boardings that LEDET 405 has conducted, I don't have that particular information. LEDET is working underneath CTF 151. I will be happy to get that information and provide it for the record.

[Provided subsequent to the hearing: As of February 4, 2009, LEDET 405 has conducted six boardings while assigned to CTF 151. These boardings were conducted working with Navy's Visit Board Search and Seize (VBSS) teams.]

I do know that they are conducting extensive training there. They have specific law enforcement expertise. They are used to acting in this mode with naval—U.S. naval platforms, as well as the naval platforms of other services.

The BOUTWELL is, as you mentioned, on its way over to that theater. It will be working for Central Command. I would anticipate that Central Command may assign it at some point in time to CTF 151, and that it might engage in counterpiracy operations. However, once we turn the asset over to Central Command, they will decide at any particular point in time what is the most appropriate mission for the BOUTWELL to conduct. As I said, I suspect they will be heavily engaged in this once they get in theater.

Mr. CUMMINGS. As you know, Rear Admiral, one of the things that I have always been concerned about was the—and this Committee has expressed concern about with regard to the Coast Guard, particularly after 9/11—is how we have been—the Coast Guard has been stretched to take on all kinds of missions and what have you. And we understand what is happening here, but do you see that as having significant impact on your operations here in the United States and with regard to bringing safety and guarding our coasts and what have you?

Admiral BAUMGARTNER. Sir, the BOUTWELL's deployment is something that we factor into our regular operations plan and scheduling. We do have commitments, as one of our Nation's armed services, to deploy and interact and have interoperability with the Navy and the rest of the Department of Defense. So it will not impact our normal scheduled operations. It is vital for us to continue these types of deployments to ensure that we bring our unique capabilities, authorities and perspective to operations such as those in Central Command.

With regards to your specific question about the impact upon our marine safety mission, there will be no visible impact there. The BOUTWELL does engage in submarine safety operations, but is primarily engaged in law enforcement operations, search and rescue and those type of things. So I would not see any negative impact on our Marine safety mission.

As far as the law enforcement detachment is concerned, we have had a law enforcement detachment over working for CENTCOM really since we entered that theater back in 2003. And that is, again, a planned deployment, and that is something that we factored into our operations.

Mr. CUMMINGS. The question that I think comes up when people hear about these pirate acts—and I hear this when people find out in my district that I chair the Coast Guard Subcommittee, that this is the question they ask. So, wait a minute, let me make sure I understand this. This is what they say: So you mean you have got a ship that is carrying millions upon millions and millions of dollars' worth of goods such as oil, and some little boat can come up with some folks with some guns and take over that ship? And the ques-

tion becomes, does the Coast Guard recommend that vessels carry armed guards; and if not, why not; and if so, why so?

Admiral BAUMGARTNER. Yes, sir. With respect to carriage of armed guards, the U.S. Government does recognize that that is an option available to a ship owner. We do recognize that that option has to be thought out very carefully in advance, particularly—once you bring armed guards and weapons on board a vessel, you have to make absolutely sure that they are fully qualified to use those weapons, trained, certified as appropriate, and so forth. You also need a very well-thought-out, well-coordinated and rehearsed practice method of using those weapons. This is not something for crewmen or part-time security guards or novices to engage in.

Now, the other thing that is essential there is to ensure that all the other parties that are involved with that ship transit are aware and are coordinated with what is happening. For example, there are cargo interests. Some cargos may be dangerous, may be hazardous. Obviously with liquified natural gas, oil and so forth, there are significant problems and dangers, and it may be totally inappropriate to have weapons on board.

You also have to look at the flag state that is involved. Frankly, most shipping is not carried on U.S.-flag vessels. I think everybody is aware of that in this room. So you have to look at what the flag state law is, and there are significant concerns there. And armed security guards and crew that use weapons have to be fully aware and be coordinated with that flag state.

One other interest that is pretty significant here are insurance interests, and they will have to be heavily involved in reviewing any decision that is made.

So to summarize, it is an option that is available, it is a complex one to use, and needs to be well thought out in advance.

Mr. CUMMINGS. If a merchant vessel comes under attack by pirates in international waters, what are the rules of engagement for the crew members on that vessel?

Admiral BAUMGARTNER. Well, sir, some things may vary from nation to nation. The flag state law will govern what that crew is able to do. For the most part, though, that crew will be able to engage in self-defense and defense of others. So if they are threatened, and a pirate attack usually threatens imminent bodily injury or death, under the laws of most nations, they are entitled to take appropriate proportional acts in self-defense.

Mr. CUMMINGS. Just one last question. Admiral Branch, an Islamist faction called al-Shabab is apparently working to exert some type of control over Somalia. What do we know about this group and its objectives? Is al-Shabab aligned with al Qaeda, and if so, how closely? Further, I understand that al-Shabab has been designated by the State Department as a terrorist organization. Therefore, I ask what is your assessment of the nature of the risks that terrorist entities may begin to use piracy in some way to advance their agendas?

Admiral BRANCH. Thank you, sir.

My understanding is that al-Shabab is an offshoot of the Council of the Islamic Courts from previous times in Somalia, and they are a terrorist organization, according to the United States Govern-

ment. Their affiliation with al Qaeda is not a direct affiliation, but an affiliation of common goals and purposes as far as we can tell.

Interestingly, al-Shabab is opposed to piracy, demonstrably opposed to piracy. And, in fact, when they and their fellows were in charge, piracy decreased markedly in the areas where they were in control.

The United States Government and Navy and naval intelligence has looked for a nexus between piracy and terrorism, and so far we have not found that nexus. In some respects, it would be an easier problem to tackle if we could establish that definitively, but we have not been able to.

Mr. CUMMINGS. Why do you say that?

Admiral BRANCH. Why do I say what?

Mr. CUMMINGS. What you just said. You said——

Admiral BRANCH. It would be a different problem to handle?

Mr. CUMMINGS. You said it would be an easier problem to handle.

Admiral BRANCH. I probably should have said a different problem to handle, because we have very clear—I mean, we have been engaged in the war on terror now for some number of years, and we are pursuing that stridently wherever we find it. We haven't found that nexus to terrorists. These are criminals in the eyes of the United States Government as opposed to terrorists, so we have to treat them as criminals with the authorities that are ensued there.

Mr. CUMMINGS. What does the ability of a relatively unsophisticated individual in very small boats to quickly commandeer large ocean-going vessels say about our ability to prevent terror threats from small boats at sea? I mean, what does that say?

Admiral BRANCH. Well, sir, I guess I would respond to that by saying that piracy doesn't generally happen when grey ships are there, whether they are U.S. Navy grey ships or others. The problem we have is covering the area sufficiently to keep the criminal act of piracy in progress from becoming a hostage situation. Once the pirates are aboard and have taken over the ship, now it is a hostage situation and not—again, the things that we can do—our limitations are different. We have to have permission.

For example, if we were to try to do some kind of hostage takedown, that is a whole other ballgame than preventing an act of piracy in progress, because you have the nation, the flag state, the owning entity, the hostages themselves, the crew member, the masters involved, the cargo owner is involved, and you risk certain—you certainly increase the risk to the crew members in that kind of takedown. Therefore, there hasn't been any appetite to do those kinds of hostage takedowns once the ships were captured.

Mr. CUMMINGS. Mr. LoBiondo.

Mr. LOBIONDO. Thank you, Mr. Chairman.

If you would, Admiral, help me walk through—there is a ship, a tanker, whatever the ship may be, and it is off the coast, and they realize that there is some action starting against them. That would typically be a small boat coming at them. How do they communicate with the ship they are trying to take over?

Admiral BRANCH. What we have seen in the past—it varies. Merchant shipping has an alert watch which we endorse, an alert watching capability that has a lookout that can see these ships on

the horizon and sees these small boats out there coming in a threatening manner, should be alerted. That watch organization should alert those ships. The ships that have an active defensive capability or plan will begin to speed up, will begin taking evasive action. Many of these ships that have successfully evaded have passive defensive measures which can be as simple as raising the accommodation ladders and the means to get on the ship, or having fire hoses energized and going over the side to help knock down anyone trying to gain access to the ship. There has even been some cases of barbed wire, razor wire on access points if the pirates try to climb up. That would inhibit their activities.

So the ships, if they see the pirates coming, they can take these evasive actions if they choose to. There have been very few cases where ships that took evasive action and did not comply with the pirates that have been actually pirated. In most cases, those ships, the pirates decide it is too hard, and they go somewhere else. And it was already mentioned in testimony, I think over here, that the ships with the high freeboard distance from the water to the rail and they can go faster than about 18 knots or so are not impervious, but have a very low chance of being pirated just because it is a tough task to hook a boarding ladder up against the side of the ship and climb up onto the ship from these small boats.

So the ships that have evasive plans, defensive measures in place do present a very hard target. And that does two things for us. It might just dissuade the pirates, or it might give us time if we have a ship in the neighborhood to get the ship or a helicopter in the area to have the pirates cease their attack.

Mr. LOBIONDO. So it is up to each individual ship owner as to what policy they have?

Admiral BRANCH. For a large part, yes, sir. There are procedures in place in the military Sealift Command and for government charters that have standardized approaches. The training was mentioned, the training programs that—MARAD professors are very good. We certainly endorse those training proposals to enable the shipping industry to help in their own defense.

Mr. LOBIONDO. So let us say a ship is at watch, and they see something coming up. I mean, typically what does that give them, a half hour, an hour notice or warning?

Admiral BRANCH. We have about 15 minutes to react and to interdict the piracy.

Mr. LOBIONDO. So 15 minutes now. Is there a standardized procedure or attempt to standardize procedure where the ship would contact who to let them know that they believe they are under attack?

Admiral BRANCH. Yes, sir. The coordination centers. The ships can call the coordination centers. There is one in Bahrain. There is one also in Djibouti. Sometimes they call all the way back to London. But they have phones on ships now. They can call, make those phone calls back to the coordination centers and IMO centers.

Mr. LOBIONDO. So the coordination center makes a determination of who is closest to——

Admiral BRANCH. No, sir. It is not a commanding drill. That is just spreading the word that there is a ship in danger.

Mr. LOBIONDO. How does help get——

Admiral BRANCH. They also will go out typically on registered British radio. It is a VHF radio, relatively short range. So people that hear that call may well be in a position where they can try to react, especially if there is an aircraft airborne already to try to venture into that area.

Mr. LOBIONDO. Is that military people you are talking about?

Admiral BRANCH. I am talking about military people.

Mr. LOBIONDO. So whatever military people might be in the area that hear that SOS?

Admiral BRANCH. Yes, sir. And CTF 151 has coordinated where these assets that are under their direction should best be positioned to try to spread out the coverage, if you will, with the ships that are there on national tasking or the ships that are there under other authorities, to try to get as much of the coverage of the grey holes that we can out in that area. And it is all about response time in preventing the piracy from happening. Once the pirates are on board the ship, there is not a lot we can do then because now we have a hostage situation.

Mr. LOBIONDO. Just one last question. Let us say that the SOS goes out, and somebody is in close proximity, some military asset is in close proximity. What do they then have the authority to do to the pirates?

Admiral BRANCH. They have the authority to thwart the pirates' attack.

Mr. LOBIONDO. What does that mean?

Admiral BRANCH. That means to stop it.

Mr. LOBIONDO. By force?

Admiral BRANCH. Yes, sir. By force.

Mr. LOBIONDO. Okay. Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Larsen.

Mr. LARSEN. I am going to start off with some questions for Admiral Branch. How many countries are involved with CJTF 151?

Admiral BRANCH. Right now the only countries that have ships involved are the United States and the United Kingdom.

Mr. LARSEN. And how many ships is that?

Admiral BRANCH. Five.

Mr. LARSEN. And we have four?

Admiral LARSEN. Yes, sir.

Mr. LARSEN. We have four of those, and the U.K. has one. But there are any number of other countries with ships as well?

Admiral BRANCH. Yes, sir.

Mr. LARSEN. We are coordinating with those other countries, but we are not coordinating the actions of those other countries; is that right?

Admiral BRANCH. We are coordinating with those other countries, but we are not—the countries that are there on national tasking, we are not commanding those ships. It is a coordination effort, but not a command relationship.

Mr. LARSEN. There is a separate NATO task force or a separate EU task force replacing the NATO task force?

Admiral BRANCH. Yes, sir. There is an EU task force on the scene conducting counterpiracy operations, and they are being commanded by a British one-star out of Northwood. There also have been some NATO ships in the area, not presently engaged, and

then various ships on national tasking. The Chinese are there. The Russians are there. And there are other ships that are out there on their own national order.

Mr. LARSEN. For the Chinese, this is their first major overseas deployment since 1421, I think. Have we been coordinating with them? And how do we communicate and coordinate with them?

Admiral BRANCH. We have been communicating with them as navies do, as a matter of deconfliction and safety of navigation and whatnot. And we have been coordinating—coordinating is probably too strong a word. We have been communicating with them on e-mail actually to help ease the language barrier, and that communication typically consists of where they are, and what they are observing, and where they intend to move and patrol that day. And we will adjust accordingly to take advantage of that presence.

Mr. LARSEN. I am not going to leave the other two out, but just a few more. At what point for the U.S. Navy would we move from a deterrence to a kinetic action for the Navy, in this circumstance, in a piracy circumstance?

Admiral BRANCH. With the standup of CTF—Combined Task Force 151, the orders are flowing that will initiate the second phase of that operation. The first phase is really just the standup of the organization and getting the position, getting ready to run.

The second phase will be a situation where we go out more actively and look for suspected pirates and apprehend them. The long pole or the impediment to that has been up until now lack of any reasonable disposition means. But now that we have an agreement with Kenya, we have something that we can do with these apprehended pirate suspects. We will be able to go out and arrest them for being pirates and take them in, gather the evidence, and take them to——

Mr. LARSEN. So we have a place to put them, and presumably the Kenyan justice system would then prosecute?

Admiral BRANCH. Right.

Mr. LARSEN. Presumably.

One more question about the Navy. I will try to be quick about this. This is the how much and how long—the thought of putting U.S. Navy destroyers against Somalian fishing boats for a certain amount of time seems reasonable, but for a longer period of time seems to be a stretch of U.S. naval assets given the other needs in the world. Another way of putting this—I look forward to the next panel, because I would like to know how long they are going to depend on the U.S. Cavalry to protect them when they have things they can do to protect themselves, and we have many other things that we need to be doing with our own limited naval assets. Do you have a direction on how much and how long for the U.S. Navy under 151?

Admiral BRANCH. No, sir. It is an open-ended construct right now. There is a lot to do in the Central Command area of operations, as you mentioned, but the United States Navy also recognizes it has a piece to play in the solution of this problem.

Mr. LARSEN. Absolutely. I agree that you do. And I know that the shipping companies do as well.

Mr. Caponiti, just quickly. In conversations with shipping operators, they have spoken actually very highly of the work that

MARAD has done to help the industry implement best management practices, especially the antipiracy assessment teams. Can you give us an idea of this initiative's progress?

Mr. CAPONITI. Yes, sir. Thank you.

The initiative is an MSC, military seal of command, initiative. They are working with the Naval Investigative Services and also the Justice Department training centers. We are also assisting them in boarding vessels. This is strictly voluntary. We have started with U.S.-flag vessels at first. We think this might extend to the foreign-flag community. There is a test going on this week at Norfolk with a Ready Reserve Force vessel, one of the MARAD vessels, and we will then——

Mr. LARSEN. Tomorrow, then?

Mr. CAPONITI. Yes. And we will be testing with an APL vessel after that.

Mr. LARSEN. Do you expect an after-action report at some point?

Mr. CAPONITI. Yeah. This has been viewed—there are a number of carriers who indicated that they want to participate in this. They would like to voluntarily participate, and we will obviously see how this goes and have more to report on it.

Mr. LARSEN. Great. Thank you. I look forward to hearing back about the progress on that.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us, gentleman.

Admiral Baumgartner, piracy is both a safety and security issue in the maritime domain, and the Coast Guard, in my opinion, seems to be the appropriate agency to lead the counterpiracy efforts. Is it your belief that the Coast Guard has the ability to serve in that capacity?

Admiral BAUMGARTNER. Well, sir, as you mentioned, we are uniquely positioned as a maritime safety agency, as well as a maritime law enforcement agency, and as an armed force, so we do have a unique position to play there and a unique role, and we are able to bring different perspectives and different capacities to bear.

We also have a long history of working with the International Maritime Organization on piracy issues, including circulars on antipiracy measures, and the International Ship and Port Facility Code, and the antipiracy measures that are contained in each ship's security plan.

As far as the Coast Guard leading the efforts, part of this is a matter of capacity and where our ships and assets are at. As far as the Horn of Africa is concerned, we obviously don't have the ships to put over there, so that makes it very difficult. We are not in a position to take an operational lead in this particular fight. We are involved as—in cases as pirates are apprehended. If they are apprehended by U.S. naval forces, we are part of something called the motor or maritime operational threat response process. That is a process where all U.S. agencies that have expertise or authority in an area collaborate to figure out how best to work together to address a particular case. So we might be involved in consulting, or providing investigators, or helping preserve evidence, or things along those lines.

Mr. COBLE. And, Admiral Branch, I didn't intend to cut the Navy adrift with my question to that end.

Admiral Baumgartner, let me follow up with this. What can the shipping industry and/or the maritime industry do to combat piracy? In other words, are there any voluntary activities that the industry can take to reduce the probability of acts of piracy?

Admiral BAUMGARTNER. Yes. There are several. And, in fact, I think, as has been mentioned already, the industry is doing quite a bit to work on best management practices. And, in fact, I just yesterday got something that the Oil Companies International Maritime Forum produced, and they will be on your second panel, and I am sure they would love to talk about it. But I think they just put out 27,000 of these booklets on effective antipiracy measures. Some of them have already been mentioned here, and preparedness is one of the most important ones.

All of the vessels that are transiting that area are supposed to have or do have vessel security plans. They have annexes in those plans on how to deal with piracy and other similar threats. Practicing those plans and reviewing those plans and ensuring you are ready when you transit that area is probably the most important thing.

Speed has already been mentioned here; appropriate erratic maneuvers to make sure that the people from the small pirate skiff can't climb easily aboard your vessel. Admiral Branch talked about some of those as well, fire hoses, other things that make it difficult to draw out the length of the attack so that perhaps a warship or a helicopter or something can get there. Those are all very important measures and steps that industry can take. And I think one of the things is not to stop. The vessels that continue to keep up speed, continue to maneuver and buy time for help wear the pirates down, and that is one of the most effective measures that can be taken.

Mr. COBLE. Let me get to Admiral Branch and Mr. Caponiti. Is there a solution to the problem, or do you have suggestions that are ongoing now that would work toward reducing these ruthless acts?

Admiral BRANCH. Sir, as you say, the long-term solution is to make the conditions such as in Somalia or wherever the pirates come from, that they are not inclined to go into that business. We have to make it unprofitable for them and uncomfortable for them to do this. And we can make it uncomfortable in a number of ways, by arresting them when they are out there in their skiffs with rocket-propelled grenades and guns and ladders and sending them to jail. We can make it uncomfortable for them by defeating their attacks, or we can make it uncomfortable for them by being just too damn frustrating to get aboard the fourth or fifth ship they try when that ship is exercising active and passive defensive measures.

Mr. COBLE. Get their attention, in other words?

Admiral BRANCH. Yes, sir. Unless we can make it unprofitable and uncomfortable, I think we will be in this business in Somalia for a while.

Mr. COBLE. I thank you, sir.

Yes, sir.

Mr. CAPONITI. Sir, may I add, we believe the best management practices that have been adopted by the industry on a large scale have made a difference. There are a number of them out there. We are consolidating those to provide to nations that are willing to listen.

One other thing. One thing that we could do as a government, that we could do in Congress, is to encourage our Senate colleagues to adopt the Law of the Sea Convention. There are some provisions in there that would help us to enforce the laws of the sea and to bring them—to bring the bad guys to prosecution. So that is one thing that this Nation could do to assist the situation.

Mr. COBLE. Thank you, gentlemen.

I yield back, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. And welcome back. It is good to be back on the Committee.

My first question is for Rear Admiral Branch. Recently in the news there has been great talk about both Russia and China taking part in anti-piracy activity around the Horn of Africa. How active has their participation been in the anti-piracy activity?

Admiral BRANCH. Both the Russians and the Chinese have established a presence in the Gulf of Aden primarily, and they are actively engaged in helping deter piracy in the vicinity of their forces. The Chinese primarily are concerned with Chinese flag and Hong Kong flag vessels as they go through. The Russians, I am not sure if the Russians are focusing there or if it is—I could get back to you on the record to say who they have been most closely coordinating with. But in any case, the presence of those great hulls is a deterrent to piracy where they are, and if they are in one particular area, we can put the other assets that we coordinate in control and others to spread out the wealth of the naval assets and make the problem harder for the pirates.

Ms. RICHARDSON. Are you working in coordination with them?

Admiral BRANCH. We are communicating with them. Again, ″coordination″ is probably too strong a word for both of those entities. But as mariners do at sea, we communicate generally for safety navigation and to determine intentions. And in this case we have done that kind of communications to establish their areas of operations and their focus, and then we can—for the forces we do command or coordinate, we can spread those out to cover more area.

Ms. RICHARDSON. Would you choose to coordinate more or is the communication sufficient at this time?

Admiral BRANCH. We will communicate and leverage the channels of communication we have to the best advantage as we can.

Ms. RICHARDSON. And, Admiral, you mentioned that we are not the operating lead at the Horn of Africa. Is there anything that we should do to change that or is it sufficient as it exists?

Admiral BAUMGARTNER. My comments were meaning that the Coast Guard itself as an agency can't be leading the efforts there simply because we don't have the platforms there. Now, with Combined Task Force 151, as Admiral Branch has talked about, we do

have very much a leading role on the water in that area, and as that task force ramps up I suspect that role will only increase.

Ms. RICHARDSON. Thank you very much.

Mr. CUMMINGS. Thank you very much.

Mr. McMahon, and welcome to the Committee.

Mr. MCMAHON. Thank you, Mr. Chairman. Chairman Cummings, it is indeed privilege and an honor to be here, and I look forward to working with you, sir. As a new Member, I am excited to join this Subcommittee, and I thank you and these witnesses for focusing on this important issue of international policy.

I know that much ground has been covered, and you mentioned this a little bit, but I also serve on the Foreign Affairs Committee, and just what we can do in Congress and what we can do with that Committee in terms of the international mechanisms to deal with this problem, whether it is the United Nations or the different treaties that you mentioned that we as a NATION can pursue on that front to deal with this very important problem.

I leave it to you to choose.

Admiral BAUMGARTNER. I will say a few words on that account. We have been, as the Coast Guard, as a law enforcement agency and working with these types of counterparts in other countries been involved in this for quite some time. In terms of what the Congress can do here, as Mr. Caponiti said, one important thing is encourage your counterparts in the Senate to act on the Law of the Sea Convention. That will help us immensely as we go about negotiating additional agreements and working in additional international forums. The Law of the Sea Convention is really the constitution of the oceans in terms of international law. It always makes our job more difficult when we go to negotiate anything, it makes it more difficult because we are not a party to that particular convention. It is a always an obstacle, something we have to address. That is probably the number one thing.

The other international mechanisms, they are out there. Piracy is a universal crime well-explained in international law. The SUA Convention provides good mechanisms for cooperation, for prosecution or extradition of pirates and similar criminals. We have been engaged in lots of efforts to get other nations used to the idea of using these tools and used to the idea of trusting in these authorities.

As we have seen with Kenya, Kenya has made good steps forward. Last week there was a regional agreement in Djibouti where 21 nations agreed to use these tools to investigate, interdict, and prosecute piracy. So many of these things are moving forward already.

From a parochial point of view, the Coast Guard, as the Chairman knows, we would benefit greatly from an authorization in the act that would allow us to proceed with our modernization efforts. One of the key things in our modernization efforts is establishing a Coast Guard operations command so that we would have a very strong, operationally focused—worldwide operationally focused command that can ensure that we are making the most of all of our capabilities and capacities addressing these kinds of threats.

Mr. MCMAHON. Thank you, Rear Admiral. And I look forward to working with all of you, but in particular with you because, as you

know, I have in my district the Coast Guard base in Staten Island which has the command for New York City and is vital for our city and for our Nation.

How long has the Law of the Sea Convention been before the Senate waiting for ratification?

Admiral BAUMGARTNER. Well, I believe it was forwarded in 1995. That was right after the 1994 agreement that solved many of the flaws with the original convention.

Mr. MCMAHON. Is there anything that you think would have it move at this point, or is it eternally stuck there?

Admiral BAUMGARTNER. I have great optimism that it will move. Even in the last Congress, it was voted out of the Senate Foreign Relations Committee overwhelmingly in favor of ratification, a good bipartisan vote there. It simply didn't make it to a floor vote. I already have faith that this Senate and this Congress will move forward on the Law of the Sea Convention. We hope that we can see hearings scheduled and we can see a floor vote.

I know that Secretary of State Clinton did mention this in her confirmation hearings, the importance of this. So the more messengers we have on this, the faster it will happen and the more effective, and all of us here, MARAD, the Navy, the Coast Guard, the State Department, can be in our international efforts to combat piracy and other threats.

Mr. MCMAHON. Thank you, sir.

Mr. Chairman, I yield the remainder of my time. Thank you, sir.

Mr. CUMMINGS. Thank you very much.

Just one last question of the three of you.

Statistics from the International Maritime Bureau indicate that there were 293 actual and attempted pirate attacks against vessels worldwide in 2008, a decline from the 445 actual and attempted pirate attacks recorded by IMB in 2003.

What likely accounts for the overall decline in piracy worldwide in the last 5 years, and are attacks actually decreasing or are fewer attempted attacks being reported or are both happening?

Mr. CAPONITI. The incidents of piracy—Malacca was the hot spot a number of years ago, and that situation was diminished, mitigated by really the action that happened on the land. The two governments, Malaysia and Indonesia, took very strong action within their territories to stamp out the pirate cells. That is what cured that and that is really what we need.

We do think that since when the tempo heightened during the summer this year and the international community began to get together and talk about this, there was an increase in naval forces, true. But the international community, the commercial industry began to get together in forums to talk about this. There was a lot of discussion about how they could harden the target and the way they harden the target is through best practices, basic maneuvers the Admiral spoke about. Before you go into a region that has a threat of piracy, the crew needs to be prepared. They need to know what they are going to do before they get there if there is an attack and what each member of the crew is going to do. We think those initiatives are paying off.

You are going to have a panel here in a few minutes that I think could probably give you a little more detail on that, but we think

that the community uniting the way it has to combat this has really had an impact. Right now we have some bad weather out there with the seasons, which may be one of the reason why things have mitigated. We will know better as the calendar goes along whether the actions that we have taken really will have a permanent effect. We suspect we have improved things.

The other thing, though, the pirates themselves are adjusting their procedures as we adjust ours. So this initiative needs to remain interactive. It remains dynamic. We need to keep our eye on this and react as they react.

Mr. CUMMINGS. Anyone else?

Admiral BAUMGARTNER. Yes, sir. I would add here that there is an interesting timing coincidence, and I don't think it is any coincidence at all. You mentioned the statistics for 2003. In 2004 is when the International Ship and Port Security Facilities Code went into effect. Here domestically we call it MTSA, Maritime Transportation Security Act. That introduced significant vessel security plan requirements, facility and port security requirements.

One of the important impacts of that is, as Jim Caponiti said, it hardened vessels as targets for pirates. Now they had to have organized and approved security plans. At the same time this made it more difficult to bring stolen cargo or stolen ships into ports because there were real port facility plans and requirements in place. I think that is no coincidence at all. And as Mr. Caponiti said, the regional cooperation in the Straits of Malacca was key in ensuring there wasn't a landside safe haven for pirates to take ships while they went about their business, held their hostages and so forth. And certainly in Somalia, as we all know, that is the key. There is a friendly supporting coastline there that supports these operations, and that is what is the real enabler for piracy off the Horn of Africa.

Mr. CUMMINGS. All right.

Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

Admiral Baumgartner, the MOU with Kenya, is it just a U.S. MOU with Kenya?

Admiral BAUMGARTNER. Yes, sir, it is a bilateral MOU with Kenya. But the U.K. has a similar MOU and the Djibouti agreement, the Djibouti Code of Conduct, has many of the very same provisions in it. That is a volunteer agreement. But that will spread much of this throughout the region.

Mr. LARSEN. So if the French navy captures pirates, they can use Kenya, or would they?

Admiral BAUMGARTNER. What they would do is under the Djibouti Code of Conduct they would approach—they could approach one of the regional countries and say under the terms of the Djibouti Code of Conduct we would like you to take custody of the prisoners and the evidence and prosecute the case.

I would also note that the International Maritime Organization has had a template for these procedures and agreements out for a while as well.

Mr. LARSEN. All right. That gives me the best answer maybe you can give me but not as solid an answer as I would like to hear.

Admiral BAUMGARTNER. Yes, sir. France right now I would——

Mr. LARSEN. And I don't mean to pick on the French. Any other country but the United States that has an MOU with Kenya. Picking the other countries, I want to be clear I am not pointing out any one country.

Admiral BAUMGARTNER. The U.K. does have an MOU with Kenya. I am not aware of any other country that has a direct bilateral MOU with Kenya at this point in time. They may have them, but I am not aware of any.

Mr. LARSEN. What is your expectation for Kenya once we deliver people and evidence to the Kenyan justice system?

Admiral BAUMGARTNER. My expectation is that Kenya will accept those and they will put them right in their criminal justice system. We already have one positive experience with them. Ten pirates that we brought to them in the fall of 2006, they tried them in their courts, convicted them, and they are serving a 7-year prison term right now. And as we speak there are eight pirates, if I have got the numbers right—I believe it is eight pirates that the U.K. captured this fall that are awaiting trial in Kenyan courts. I think it was scheduled earlier this month, and I don't know if that trial has actually started yet or not. I would expect that Kenya would continue along in that vein and step up to the plate as they have.

Mr. LARSEN. Do we have any negative experience, any experience of turning people over and then no prosecutions taking place or inadequate prosecutions taking place?

Admiral BAUMGARTNER. I am not aware of that with Kenya.

Mr. LARSEN. Any other countries you are aware of that with?

Admiral BAUMGARTNER. I don't think the United States has had any experience turning over prisoners other than those to Kenya. It has been a problem in the past where naval forces have captured prisoners and they haven't found a regional country willing to take them, and there are significant legal and logistical challenges. If your home country or the flag state of the warship is 7,000 miles away, it may make it extremely challenging to get those prisoners from the Horn of Africa to your country in a timely manner to satisfy your own judicial system. So there have been cases where navies just have not been able to do anything with the pirates because they can't get another country to accept that particular group.

Mr. LARSEN. And what happens to that pirate?

Admiral BAUMGARTNER. I think that in various times they have been turned loose or they have been turned over to other quasi-authorities in that area, authorities that we might not recognize as the United States Government. The end result of the pirates we really don't know, but I would suspect that——

Mr. LARSEN. They might go back to pirating or they might not make it back to pirating?

Admiral BAUMGARTNER. Yes, sir. I do not expect that they faced justice in any kind of a system that we would recognize.

Mr. LARSEN. Sure. All right.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you. I want to thank the panel for your excellent testimony. We will probably have some follow-up questions in writing. But thank you very much.

I want to now call our next panel.

Mr. Peter Chalk is a Senior Political Analyst with the RAND Corporation. Captain Phil M. Davies is Director of the Oil Companies International Marine Forum. Mr. Peter Swift is Managing Director of Intertanko. And Mr. Giles Noakes is Chief Maritime Security Officer of the Baltic International Maritime Council.

Mr. Chalk, you will be first.

**TESTIMONY OF PETER CHALK, SENIOR POLITICAL ANALYST, RAND CORPORATION; CAPTAIN PHIL M. DAVIES, DIRECTOR, OIL COMPANIES INTERNATIONAL MARINE FORUM; DR. PETER SWIFT, MANAGING DIRECTOR, INTERTANKO; AND GILES NOAKES, CHIEF MARITIME SECURITY OFFICER, BALTIC INTERNATIONAL MARITIME COUNCIL**

Mr. CHALK. Thank you, Mr. Chairman and distinguished Members of the Subcommittee, for the opportunity to testify before you today.

At the outset I would like to stress one main point. Piracy is above all an economically driven phenomenon. This is true both with respect to those who engage in the practice where the objective is to make profits and those against whom attacks are frequently directed where the desire to keep operating costs as low as possible has at times precluded or outweighed imperatives for instituting more onboard security.

A total of 1,845 actual and attempted attacks of piracy were recorded around the world's waters between 2003 and 2008. That figure probably underrepresents the true scale of piracy because in many cases, possibly as many as 50 percent, attacks are not reported. Sometimes shipowners do not like to report attacks for fear that this will increase maritime insurance premiums as well as result in lengthy and costly post-attack investigations.

As we have heard, the concentration of piracy is greatest around the Horn of Africa but other high-risk areas include Indonesia, Bangladesh, India, Tanzania, and Gulf of Guinea off West Africa.

Seven main factors would seem to account for the emergence of piracy today in the scale we are seeing. First has been the growing trend toward the use of skeleton crews, both as a cost-cutting device and as a reflection of more advanced maritime navigation. This has both precluded the option for concerted anti-piracy watches as well as made the general task of gaining control of ships that much easier.

Second, the general difficulties associated with personal surveillance have been compounded by demands that are being made on many littoral states to enact very expensive territorially based systems of homeland security in the post-9/11 era.

Third, lax coastal and portside security have directly contributed to opportunistic attacks against ships at anchor.

Fourth, corruption and easily compromised systems of judicial structures have encouraged official complicity in piracy both with respect to providing intelligence on ship locations as well as helping with the rapid discharge of pirated cargos.

Fifth, the endemic anarchic situation in Somalia has directly contributed to the rash of attacks we have seen off Horn of Africa.

Sixth, the ready willingness of shipowners to pay increasingly large sums for the return of their cargos and vessels has provided an added financial incentive to engage in maritime crime.

And, finally, the global proliferation of small and light weapons has provided pirates with an enhanced means to act in a more lethal and destructive basis than was previously the case.

The dangers associated with piracy are fairly multifaceted. At the most basic level, attacks constitute a direct threat to the lives of citizens of a variety of flag states. Piracy also has a direct economic cost in terms of lost trade, stolen cargos, and fraudulent trade. It is conservatively estimated that it costs between $1 and $16 billion a year to the maritime industry at present.

Politically piracy can also play a key role in undermining government legitimacy by encouraging corruption. And, finally, piracy has the potential to trigger a major environmental catastrophe. The nightmare scenario would be a mid-sea collision between a pirated vessel that is left to drift and a heavily laden oil tanker.

As we have heard, the rapid escalation of piracy at the Horn of Africa has prompted unprecedented international action on the part of the global community. The United States has enacted Combined Task Force 151 to monitor predefined maritime corridors in the Gulf of Aden. That supplements a year-long EU naval force that was deployed last year. Several other countries have sent their own navies to the region, and the U.N. Security Council has now sanctioned the use of force against pirate dens on land by passing Security Council Resolution 1851 in December of last year.

Although these initiatives have met with some success, their overall utility does raise some questions. First, the area to be monitored is enormous, over 1 million square miles. There is also the issue of national interests. It is not apparent how the EU naval flotilla will be funded or whether or not the potentially thorny issue of cost-sharing is even being broached.

In addition, questions of legal jurisdiction have yet to be fully settled and appropriate rules of engagement have still to be fully fleshed out. Employing force against pirate dens on land carries the obvious danger of large-scale civilian collateral damage and associated accusations that the West is once again intent on destroying Muslim lives.

Finally, the deployment of naval frigates will only be able to address the piracy problem at its end rather than at its root on land.

I would like to conclude with five areas I think the Committee should consider as worthy candidates for directed further research:

One, what are the costs of piracy and how do these compare to the expenses required for mitigation?

Two, what is the best way of dealing with piracy in areas of endemic lawlessness and anarchy where there is no government with which to engage?

Three, is the current international legal framework for countering piracy sufficient, or does it need to be changed in some fashion?

Fourth, what is the extent of government responsibility in countering piracy and what role should the private sector play in helping to manage the problem?

And, finally, what are the chief land-based factors that contribute to modern-day piracy, and how can these best be addressed?

Again, I thank you for the opportunity to be here today, and I look forward to answering any questions that you might have.

Mr. CUMMINGS. Thank you.

Mr. Davies.

Captain DAVIES. Mr. Chairman, Committee Members, thank you for your invitation today to address the Committee.

Piracy on the high seas is one of the most critical and concerning issues facing the maritime community today. OCIMF firmly believes that the establishment of law and order on the high seas is an issue for international governments. However, we also recognize that maritime security and in particular piracy remains a concern to us all. OCIMF appreciates the importance of this Committee meeting, particularly in light of the current situation in the Gulf of Aden, and looks for further ways industry can work with governments to reduce the threat of piracy.

OCIMF itself is a voluntary association, having as its members over 70 of the world's leading oil companies. Our members engage in activities of mutual concern relating to transportation of oil and gas by tanker with special reference to the protection of the marine environment and the promotion of safety in marine operations. In relation to piracy, OCIMF's priority is the safety and well-being of our mariners while adhering to the principle of free movement of trade in international waters.

We have submitted written testimony, including a copy of the booklet ″Piracy - the East Africa/Somalia Situation,″ published in conjunction with the IMB, Intertanko, Intercargo and SIGTTO.

My written testimony today covers six key areas related to current operations in the Gulf of Aden, and this afternoon I would like to focus on a few of these.

Industry has been engaged in efforts to combat piracy for some time now and gives full support to the various efforts of the United Nations bodies, particularly the International Maritime Organization. In this regard we fully support the U.N. Resolutions leading to U.N. Security Council Resolution 1851 in December, 2008. We welcome the establishment of EUNAVFOR, Combined Task Force 151, and the contributions of NATO. We also welcome the contributions of other navies in the area and look upon this as an opportunity for development of new friendships and cooperation.

In this regard we need to ensure that lines of communication are kept simple. There is currently a significant amount of confusion in regard to overall operational control. Vessels require a single point of contact for assistance, particularly when under attack. OCIMF supports the continued utilization of NAVFORUK, which is both an operational headquarters for EU Naval Force in addition to a key NATO facility. We also recognize the forward assistance provided by the U.K. Maritime Trade Organization in Dubai and the United States Maritime Liaison Office in Bahrain. OCIMF does not support the establishment of further regional coordination centers, as it is likely to do little to assist in mitigating piracy on the high seas.

The shipping industry is engaged on many levels with the fight on piracy, and this includes a provision of senior merchant navy officers into the EU Naval Force Headquarters in Northwood to assist with liaison development of best practices in relation to operations in the Gulf of Aden. We are also active, through the International Maritime Organization, with the Maritime Safety Committee correspondence group reviewing IMO measures and recommendations to industry.

OCIMF welcomes a contact group established under U.N. Security Council Resolution 1851 and recognizes the leadership of the United States in this important approach to resolving the piracy issue. We look forward to working in partnership with government and industry to further develop best practices for deployment against the piracy threat.

The shipping industry estimates that approximately 30 percent of vessels transiting in the Gulf of Aden are still not adequately prepared. It is hoped that our booklet, which I mentioned earlier, may assist in educating these vessels and mariners in basic precautions.

OCIMF fully supports training of mariners in nonlethal means of avoiding, deterring, and delaying pirates boarding vessels. However, this training must be completed under existing international legislation such as the International Ship and Port Security, ISPS, Code; and the Standards on Training and Certification of Watchkeepers, the STCW Convention.

We do not support the use of armed guards or other private forces in protecting vessels. Oil tankers and LNG ships in particular do not provide a platform conducive for armed guards or gunfire. However, the same safety factors and concerns apply to all vessels. The use of armed guards are likely to lead to significant increased risk of personal injury, fire, and explosion, risk of escalation of conflict, particularly as pirates will assume all vessels are armed and attack tempo will increase accordingly. We also note the use of armed guards is not supported by any of the key international organizations.

OCIMF recognizes that in order to remove pirates from the seas it is important to develop the necessary legal framework such that authorities may prosecute pirates when captured. A practical way forward is to establish treaties to allow prosecution within littoral states to the conflict. Probably the most suitable place of prosecuting Somalia pirates are Kenya and Yemen, which are both close to the areas where piracy occurs. OCIMF supports this approach and the agreements already entered into as it allows the littoral states who do not have naval assets to support the anti-piracy efforts through successful prosecution of pirates.

Equally an important role for industry is to ensure that evidence is clearly recorded and witnesses as requested are available to the courts.

Mr. Chairman, I thank you and the Committee for the opportunity to speak before you today and would be pleased to answer any further questions.

Mr. CUMMINGS. Mr. Swift.

Mr. SWIFT. Congressman Cummings, distinguished Members, thank you very much for the invitation to speak to you this after-

noon on this very important issue. Intertanko's members represent about 80 percent of the world's independent fleet of oil and chemical tankers.

Piracy on the high seas, as you have already heard, is a major issue for the United States, for governments, for the maritime industry, and eventually for the consumer. Piracy in the strategically important chokepoint in the Gulf of Aden and off the Somali coast is of particular concern for oil shipments and my members. The hijacking last November of the Saudi Arabian Sirius Star carrying more than 2 million barrels of crude oil to the United States highlighted the reasons for our concern and our alarm. We are therefore grateful that nations, and especially the United States, have started to take appropriate responses to that action.

While governments and many others have legitimate concerns about these events, I want to assure you all that the prime concern of our members, and I suspect all other shipowners, is the safety and welfare of our seafarers, and the concern for the security of our ships and security of their cargo come second. But there are other consequences of these attacks which are of major concern. These include, for example, the additional costs for insurance and for crews transiting that area or the extra costs associated with the longer voyages for ships that opt to re-route around the Cape of Good Hope, costs that are eventually borne by the consumer.

So what is being done and what else is needed? My members firmly believe that the establishment of law and order on the high seas is an issue for governments and not one that industry can solve. That said, we recognize though that the shipping industry does have a big part to play in this matter and there is therefore a shared responsibility between industry and governments.

On the industry side we are fully committed to the development and the implementation of the best practices that have been referred to. To this end we also cooperate with the International Maritime Organization in reviewing and updating guidance to owners and to ships. We distribute security bulletins regularly to our members. We work with our industry colleagues to provide both generic and specific advice for transits, and we maintain regular contact with the military advisers and reporting centers.

We have also seconded some of our staff to the EU Naval Force Headquarters to enhance two-way communications between military and commercial operations and to help ensure that information is routinely and promptly updated. One particular challenge does remain, and that is that we want to ensure that all shipping transiting in this region is made fully aware of those best practices.

We are therefore now focused on methods to promote awareness, appraising other owners and operators of relevant facts, the risks involved, and the measures that ships can take to avoid, deter, or delay pirated attacks. We are focusing especially on those ships outside the large net of well-informed and responsible ship operators who are already well-appraised and well aware. This is because while there continue to be soft targets or relatively soft targets, the potential rewards for pirates remain high, and therefore all shipping is potentially vulnerable and remains at risk.

While industry is doing its best, my members believe that governments must take the appropriate action to eliminate pirates in

the region. In this regard I believe there are five main governmental functions that are necessary.

The first is to provide and then maintain sufficient military assets, both naval and aviation, in the area. Until recently, these were woefully inadequate, but fortunately with the establishment of CT 151 and the combined European Naval Forces, the situation has improved.

The second need is to ensure coordination between those military assets and to ensure that we make the most effective use of the resources available. From the ship operator's standpoint, it is important that there be clarity in the reporting and communication mechanisms with these forces.

Thirdly, there is a need to ensure single or at least compatible rules of engagement for those military forces. Each navy has its own national laws of engagement when confronting pirates. Ideally they should engage on the same lines; preferably upon arrival at the scene.

Fourthly, there is a need, as you have heard, to develop the necessary legal authorities to prosecute pirates when captured, and the examples given, such as in Kenya, are particularly welcomed.

Fifthly, there is, of course, the need to develop a long-term solution to the Somali problem, but I think we all naturally understand that this will take time.

Finally, Mr. Chairman, I would like to reiterate the total commitment of my members to take the best practical steps to avoid these attacks and to cooperate fully with governments operating in the region.

We thank you for the opportunity to address the Subcommittee.

Mr. CUMMINGS. Thank you very much.

Mr. Noakes.

Mr. NOAKES. Good afternoon, Chairman Cummings, Ranking Member LoBiondo, and Members of the Subcommittee. Thank you for inviting BIMCO, the largest of the shipowners associations, to testify in front of your Committee.

Last year 14 of the 42 vessels hijacked off the coast of Somalia were BIMCO members.

Piracy is a global but not a new phenomenon, but has only really come to the attention of the international community in the last 6 months or so. My aim now is to summarize briefly my written statement on what the industry and particularly BIMCO is doing about piracy and outline those areas of international piracy that remain of gravest concern to BIMCO. I would like to focus on three important competing security resources.

Firstly, global security and competing security resources. In short, BIMCO is concerned that governments and the world's navies have overlooked the fact that globalization is fundamentally a bad trade, the physical movement of heavy goods and commodities by sea. Recent statements, seminars, and in the press, however, have made it clear that the defense of trade appears archaic and dated.

The Malacca problem, however, took international efforts and regional efforts to resolve it to guarantee freedom of the seas to the global supply chain being challenged by local pirates. This supply chain is once again being held to ransom in the Gulf of Aden/Horn

of Africa area, a commercial strategic chokepoint. The cost of navies in order to mitigate the threat has to be balanced with the implications of the inability to maintain normal trade and the nations' vital interests. Indeed, this has been seriously exacerbated only last week by the declaration of two large container lines that they will now go around the Cape.

The implications for the Suez Canal and regional economic stability and the rest of the global economy are significant.

The attack on the capture and of the LPG carrier MV Longchamp, discussed earlier, in the Gulf of Aden last Thursday before dawn for the first time confirms that pirates are resourceful and cunning. By deploying decoys, they led coalition warships away from natural targets and succeeded in boarding what is recognized as the most vulnerable type of vessel, a slow-moving and low freeboard bulker. BIMCO understands that it is impossible to fund sufficient warships for navies to run escorted convoys, but it is clear there are still not enough assets to make the current ″area protection system,″ so named, to work. It is clearly having an effect and has continued communication and enhanced information sharing also, but whilst attacks such as the Longchamp can take place then more assets will still be needed.

The situation is forcing many in the industry to avoid the area as it is economically more viable and safer for crews to say nothing of the security of the hulls themselves. Indeed, the industry has forecast a severe shortage of officers and crews over the next decade, and the safety of crews has become a major industry driver both for recruitment and retention.

Secondly, judicial weaknesses. Arrest and trial of pirates, as we have heard, is proving difficult as even those nations providing naval forces have not addressed their national law on piracy and the necessary legal statutes to arrest and try pirates. Nations who are committing resources and warships to counter piracy seemingly fail to see that putting pirates back ashore is making a laughingstock of them and failing to deter the pirates from continuing their lucrative trade.

UNCLOS does not explicitly require states to enact legislation, but it does obligate states to cooperate to the fullest extent possible in the repression of piracy on the high seas. Notwithstanding this obligation under UNCLOS to cooperate to the fullest extent, the vast majority have not implemented the requirements of SUA1988 signed by 149 nations. For example, because of this the Danish warship which should be out at sea deterring pirates is alongside in Bahrain today with five pirates arrested in the act still onboard. It is waiting for its government and the Dutch Government to make up their minds how to hand over the pirates to the Dutch legally for trial. The Dutch have said they would try them, but 1 month later this situation has not been resolved.

BIMCO is aware that the U.S. Coast Guard is a strong advocate of implementing the SUA1988 proposal swiftly, and BIMCO will support all efforts to see a speedy implementation, including cognizance within the U.N. Contact Group Working Group tasked to address jurisdictional issues and by inviting its members to engage with their national governments.

Thirdly and finally, perceptions and understanding. The industry, with the International Maritime Organization, has been at great pains to defend itself against piracy for some considerable time, as evidenced in the number of actions as listed in my statement. Over the last 6 months or so, however, the industry has been continually invited to prove its own defenses against piracy. You have heard it is working hard to do so and mainly by the military. These range from best preparations to using armed guards. The last it resolutely opposes because of the risks, implications, and dangerous precedents involved in accepting such measures.

The industry also understands the complications of coordinating and controlling the vessels from four different groups, from currently 14 nations with 20 ships soon to be 15 nations and 22 ships. The industry perception, however, is that whilst this is clearly working and having an effect, it remains a concern as to whether the capacity of these forces is being maximized to best effect and indeed whether there are still enough ships.

BIMCO would also suggest that there is a greater need to understand the role of IMO as the preeminent maritime body and the vehicles already exist to examine methods of deterring and defeating piracy. The ISPS codes, for example, do not specifically address piracy in name, but by utilizing the ISPS ship security assessment requirements to address the piracy threat, much can be achieved. The work of the piracy contact group that has fallen out of UNSCR 1851 will need to be coordinated through the IMO where work is already in hand to revise Maritime Safety Committee Circulars.

In summary, it is accepted that it is naive to defeat piracy totally. But the volume of successful attacks remains unacceptable, and there is a requirement for a paradigm change in how navies and governments view the industry. There is a requirement for this paradigm change in order to, firstly, appreciate the importance of shipping and the maintenance of the global economic system and recognize its vulnerabilities; secondly, make piracy less attractive by arresting and trying captured pirates; and finally, to reduce the numbers taken and held to gain the initiative to break the back of the problem.

Chairman Cummings, Ranking Member LoBiondo, Members of the Subcommittee, thank you again for the opportunity to testify today. BIMCO is committed to working tirelessly with our industry partners and all stakeholders involved in protecting seafarers and ships from international piracy. I am happy to take any questions you may have.

Mr. CUMMINGS. Thank you very much. I want to thank all of you for your testimony. We have got our last votes for today coming up. So what we are going to do is sort of abbreviate our questions and what have you and try to resolve this hearing before we go to vote. We have three votes.

You all have been so kind to stick around as long as you have, and we have Members who have to get out of town also.

We are very pleased to have our Chairman of the entire Transportation Committee, Mr. Oberstar, with us, and I am glad to recognize him at this time.

Mr. OBERSTAR. Thank you, Mr. Chairman. I want to congratulate you for your initiative in focusing Committee attention on this

issue of piracy and Mr. LoBiondo for participating. Welcome back to the Coast Guard Subcommittee, Mr. LoBiondo. You have performed exceptional service in years past, and we are glad to have you back in this position.

Mr. LOBIONDO. It is an honor to be here. Thank you, sir.

Mr. OBERSTAR. And Chairman Cummings has done extraordinary service in his first 2 years of our majority in the last Congress and is continuing in this Congress.

We have to make it clear to the international community that piracy is a matter of great concern to all seafaring nations and that it will not be tolerated, will not be taken lightly, and that mariners should not be in fear of their lives or their livelihoods as they transit this or any other region. Piracy, whether it was in the Mediterranean in the early years of our Nation or in our backyard in the Caribbean during the time of the Fleu Boustea, the French pirates, is an act or a series of acts that our government from its inception has not tolerated and will not tolerate.

There are companies nonetheless that have not taken the appropriate measures that they can and should take to protect themselves. We know well oceans cover 80 percent of the globe surface and navies can't be everywhere. So we have to have responsible companies that will take charge of their own destiny, but we have to have our naval fleets and our Coast Guard authority present where there is high probability of piracy action. And you can help us by the testimony you have given, which is very well said.

I stayed up last night and read it, a greater understanding of piracy, its impact, how it occurs, where it occurs, and what actions we can take preventively, preemptively, and in the course of commerce. We thank you very much for your testimony.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

Mr. Chalk, good to see you again. You were in my office a few weeks back; so I am not going to rehash some of the things we talked over. But since then we have received more information on the MOU between the U.S. and Kenya and with regards to what does a dog do with the car once he catches it. Answering that question, what are your thoughts about the U.S.-Kenyan MOU and what is going to be done with pirates who are captured, and have you made an assessment whether that is going to be enough of a deterrent effect?

Mr. CHALK. Thank you for that question. I think the MOU that the United States has signed with Kenya is a positive development because one of the greatest problems was, as you said, what do you do with the pirates once you have caught them? In most cases, though, they were just handed back into Somalia, which was basically a get-out-of-jail card right there.

The problem with the Kenyan judicial system if you are looking at the country as a whole is that there is rampant corruption and the judicial structure there has been the recipient of numerous influxes of assistance both from the United States and from the United Kingdom. And really in terms of its functioning at this point, although it is a positive development, I have my own doubts

as to how efficient the court system will be and how clean it will be as well.

So I think that there is still a lot to be worked out in terms of the actual prosecution of apprehended pirates and whether or not—I certainly do not see the Kenyan detention system as being a sufficient deterrent for Somali-based pirates, particularly given how much they are earning today and the fact that the MOU really only extends to the United States; so it doesn't affect other countries.

Mr. LARSEN. That is something probably worth exploring for us in the future.

Mr. Noakes, is that a correct pronunciation?

Mr. NOAKES. Yes, sir.

Mr. LARSEN. You talked about the capacity of the existing military assets as well as the numbers. Let us not talk about whether or not there is enough naval assets, but you mentioned perhaps a capacity of the existing assets may not be used fully. That is what I gathered. You probably also heard my comments in the previous panel. It is sort of the how much, how long question when we clearly have other needs around the world. Some are more needy and some are less needy, but certainly other needs around the world. So can you try to touch on how much, how long and expand on the capacity of military assets and how they are being used?

Mr. NOAKES. Mr. Larsen, I don't quite understand what you are getting at. I think my colleagues here would agree we understand this can't go on forever, and I think all three of us alluded to the issue of capacity. But the concern I think that the industry has in general is that you have a commendable reaction from the international community, and I mentioned the issue of I think 14 nations, about to become 15 nations with 22 ships. That is a sizable what I used to call command and control problem, and if that is maximized to its best, then I suspect in a very short period of time it could achieve a realistic amount of deterrence on the high seas, particularly if supported by the other aspects of the judicial additional weaknesses being resolved to a certain element, and that I think is the problem. But how long is a piece of string? And hence why I introduced my brief presentation over the issue of what is important in terms of globally strategic commerce and whose nations have those vital interests.

But there is no doubt about it. The revenues of the Suez Canal have gone down in the last quarter of 2008. They are going down probably this quarter already and two major box lines have already opted not just because of the piracy problem, but that is one of the reasons, as have some of the Intertanko members, as has the biggest shipping line in the world Maersk.

So we have to look at it from a holistic and big picture as well as the nitty-gritty small issues, but equally the industry is aware it has to help itself, too.

Does that go some way to answer your question?

Mr. LARSEN. Yes, somewhat. I would like to do some follow-up perhaps with you or Mr. Swift, Captain Davies, or your representatives around here, to chat a little more about this problem because I think we might try to go to the Seapower Subcommittee on the Armed Services Committee and chat with our Navy about this as well in a more complete manner.

Mr. CUMMINGS. Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. I will be very brief. Just one question for Captain Davies.

Over the past couple of years there have been armed attacks at oil installations and tankers around the Nigerian Delta region. What, if any, measures are being taken to lessen the likelihood of future attacks which disrupt the flow of global energy supplies, and how cooperative have the Nigerian authorities been in helping to tackle this issue?

Captain DAVIES. Thank you, Ms. Richardson. I think basically in terms of Nigeria it tends to be much more of an armed robbery/kidnap situation than a hijacking of vessels. What we have seen is that the Nigerian navy has tried to engage. In fact, they are fighting them in two places. They are fighting in the Delta. They are also trying to protect the oil fields offshore.

Unfortunately, one of our members suffered an attack a couple years ago where seven members were taken ashore, and the psychological effects on the seafarers that were involved are extreme, and that is one of our big concerns in this. But certainly Nigeria is trying as hard as it can to protect the installations, but one of the big problems there is it is within Nigerian waters. So it tends to be a Nigerian problem rather than an international problem, as we are seeing in the Gulf of Aden.

Mr. CUMMINGS. I want to thank you all for being with us. Sorry we had to shorten this part a bit, but like I said, we will follow up with you.

We are not going to resolve this situation overnight. One of the things you have made clear is this is a very, very, very complex problem and perhaps will require some complex solutions, but I do believe that we will be able to address it, and we will. Thank you very much.

This hearing is now adjourned.

[Whereupon, at 3:52 p.m., the Subcommittee was adjourned.]

**SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION**

**"International Piracy on the High Seas"**

**February 4, 2009 – 2:00 p.m.**
**Room 2167, Rayburn House Office Building**

*Script of Chairman Elijah E. Cummings*

The hearing will come to order [gavel].

Before we begin, I ask unanimous consent that Mr. Pete Olson of Texas may sit with the Subcommittee today and participate in this hearing.

Mr. Olson has already been assigned to the Committee on Transportation and Infrastructure and is to be assigned to this Subcommittee, but

his Subcommittee assignments have not yet been formalized.

Therefore, without objection, it is so ordered.

I also welcome the other new Members of our Subcommittee: Mr. Kagen and Mr. McMahon on our side, and Mr. Ehlers and Mr. Platts on the Republican side.

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It is my honor to have been appointed to a second term as Chairman of the Subcommittee on Coast Guard and Maritime Transportation.

Though I knew before becoming Chairman of this Subcommittee of the extraordinary work the Coast Guard performed in the Gulf Coast region in the aftermath of Hurricane Katrina, during my tenure, I have come to see first-hand what an amazing service the Coast Guard is and how vital it is to the defense of our nation and the safety of the maritime industry.

I have also come to understand how integral maritime transportation is to the success of our economy.

As I embark on this new term as Chairman, I remain committed to being the Coast Guard's biggest supporter as well as its most constructive critic.

I will also continue to pursue every available opportunity to strengthen our nation's merchant marine and to support the more effective integration of water into what should be an

increasingly multi-modal transportation network in our nation.

I welcome our new Ranking Member, Congressman Frank LoBiondo, who previously chaired this Subcommittee. I appreciate the expertise he brings to this position and look forward to working closely with him.

I also welcome all the new and returning Members of the Subcommittee. We have planned an aggressive and what I trust will be productive schedule in the 111th Congress and I

will look forward to working with each of you to ensure the success of our legislative and oversight efforts.

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Today, we convene our first hearing in the 111th Congress to examine the causes of piracy at sea and its effects on global shipping.

The term "pirate" may conjure in many people's minds romantic images of swashbuckling adventurers. However, in reality, a 21st century pirate is frequently a desperately poor individual

from an unstable or failing state, roaming the ocean in a small skiff, waiting to attack vulnerable cargo ships with a rocket-propelled grenade launcher.

There is nothing romantic about this figure – or about the crime of piracy, which threatens the lives of mariners on innocent passage on the world's oceans and could have the effect of raising shipping rates at a time of deepening economic recession.

Our hearing is intended to provide a comprehensive examination of piracy – including its prevalence, its current and potential impact on shipping, and the nature and effectiveness of the international efforts being implemented to combat it.

According to the International Maritime Bureau, there were 293 reported pirate attacks against ocean-going vessels in 2008.

While pirate attacks occur sporadically in many parts of the world, piracy is most prevalent in the Horn of Africa region, where gangs from Somalia are seizing vessels and holding their crews for ransom.

The international community has mounted a multi-faceted response to piracy in this region – and the United States is taking an active role in this effort through its leadership of Task Force 151. However, given the size of the ocean area that international forces must patrol and their limited manpower, international naval powers

are unlikely to be able to protect every ship passing the Horn of Africa from pirates.

Further, as we will examine, while the first priority of the international forces active in the Horn of Africa region is preventing or intervening in pirate attacks, the question of what to do with captured pirates is an important and complicated one given the absence of the rule of law in Somalia and the complexity of international legal arrangements pertaining to crimes at sea.

Efforts are currently underway to increase regional and international cooperation to support the effective arrest, detention, and prosecution of pirates – and we look forward to receiving an update on the status of current and planned agreements.

That said, the piracy occurring at sea off the coast of Somalia is frankly just a symptom of what is a much greater problem – and that is the violence and instability that has persisted inside Somalia for more than 20 years.

Just last week, the parliament of Somalia, which meets outside the country, elected a new President – reportedly another in a series of attempts undertaken by the transitional government in recent years to form a stable administrative structure.

Frankly, this new administration's first challenge will be to assert control over the country it was elected to govern – where an Islamist force is advancing and where multiple tribal and warlord factions continue to battle for dominion over various regions of the country.

The lesson from the Straits of Malacca, where piracy was a significant threat in the early part of this decade, indicates that the key to controlling piracy in the Horn of Africa region will be asserting the rule of law at sea.

In the case of Somalia, however, the assertion of the rule of law at sea will likely first require the establishment of some semblance of the rule of law on land.

To date, fortunately, no U.S.-flagged vessels or U.S. citizens have been attacked by pirates.

However, whenever a critical ocean trading route is threatened by piracy, all ships passing through that area are at risk and the world's economy, which is critically dependent on the innocent passage of goods moved by water, is affected.

I look forward to the testimony of our witnesses from the United States Coast Guard, the United States Navy, the Maritime Administration – and from a variety of maritime associations and interests.

With that, I again welcome our new Ranking Member, Congressman LoBiondo, and recognize him for his opening statement.

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**Statement of Representative John Linder (R-GA)**
**To the House Transportation and Infrastructure Subcommittee on Water Resources and Environment Concerning the Sustainability of our Nation's Wastewater Management and the Need to Establish a National Water Commission to Guide us as we Formulate Water Policies and Allocate Future Investments of Federal Funds To Repair, Restore, and Improve our Nation's Water Infrastructure**

**February 4, 2009**
**10:00 a.m.**

Ms. Chairwoman, Ranking Member, and Members of the Committee,

I appreciate the efforts of my colleagues on the House Transportation and Infrastructure Subcommittee on Water Resources and Environment in holding a hearing on what is arguably one of the most pressing domestic issues facing us today: The current state of our nation's water resources management efforts. It is no secret that our country's infrastructure is slowly crumbling before our eyes, and the cost to fix it is rising every day. I can hardly open a newspaper without seeing an article discussing the need to address America's water infrastructure woes.

Our country's water infrastructure is between 50-100 years old, and it is now failing to the point that it is posing potential threats to public health and safety. In our lifetime, we have not had to face a major restoration of our nation's infrastructure, however, over the last decade we have witnessed those systems in a steady rate of decay.

The country's impending shortage of clean, affordable water has weighed on my mind for a number of years now. In fact, in 1978, I wrote an article predicting that one of the 2 major challenges for our country in the twenty-first century would be providing enough water for our booming population.

Indeed today, Americans are faced with major droughts, legacy infrastructure, the lack of basic water data, and outdated water plans. Moreover, we are beginning to face the challenge of absorbing our expanding population into the fold, but if we don't come up with new ways to manage our limited water resources we will find ourselves increasingly unable to meet the growing demand. There is little we can do to control the growth in our country, especially in the urban centers and coastal communities, but there is much we can do to control how we absorb the growth. The traditional methods of capturing and distributing fresh water within the United States each year will not be sufficient 20 years from now. We have to turn our attention to this issue before the time comes when we will one day turn on our taps and find that no water emerges.

Trillions of gallons of water fall on each one of our nation's states each year, yet our aquifers are being pumped dry and our citizens are often subject to stringent water restrictions. Why? One of the reasons is because we do not effectively capture rainfall before it evaporates or runs off into the ocean. Nearly 50% of California's rainfall goes out to the sea unused even once. We

need to recharge our aquifers and we need to begin building new water supply systems to capture storm water as well as the runoff from the melting snow packs out West. Second, about 85% of our nation's water is used in agriculture and 40% of that never reaches a plant. This is because the technology used to distribute the water to our agriculture is both outdated and aging. Another reason why we are faced with critically low water levels is because older cities are losing approximately 20 percent, on average, of the water carried through their pipes each day. New York City loses 36 million gallons per day to leaks in the Delaware Aqueduct, while Philadelphia loses 85 million gallons per day to leaks in city pipes. The city of Boston is not far behind that number in terms of daily water loss. According to experts at the Environmental Protection Agency, by 2016, over half of our nation's pipes will be in very poor condition, if not completely unusable. We clearly need to do a better job with our conservation efforts, and fixing leaky pipes is one easy way to do that. We should also promote water audits to more systematically identify such problems.

Additionally, as aquifers are depleted, the ground tends to subside and can result in broken underground pipes, which causes additional leaks in a system that already wastes a large percentage of drinking water. Aquifer depletion also causes sewage pipes to break, releasing contaminants into the aquifers. As populations and water wastefulness continue to multiply, cities will be forced to spend even more money – not simply to fix and replace underground pipes, but to replace their entire water delivery systems.

Since 2001, I have been calling for the creation of a national water commission to examine our nation's water issues in order to provide our country with a roadmap to get us to the next generation with enough clean water for everyone from the West Coast to the East Coast and beyond. My bill, H.R 135, will create that roadmap for our nation's states. Without that roadmap, we will be lost. We must act now to face future emergencies proactively. It's tragic that we find ourselves in this situation, but we can persevere with the right tools. Providing all Americans with fresh water is not a partisan issue. It is a matter of life and death for the future of our country.

In the last decade, we have spent more time setting up non-substantive commissions and councils to rename buildings, create postage stamp designs, and honor individuals for routine acts of labor, than we have spent trying to preserve one of life's most important natural resources. In 1973, our last nation's water commission wrote: "Water is one of several resources without which a nation cannot satisfy the fundamental wants of its people or achieve the important national goals it sets for itself. Without water life cannot be sustained." Are we going to be courageous and do what it takes to conserve and maintain that resource? I sincerely hope so, and I would ask that my colleagues join me in fighting for the creation of the Twenty-First Century National Water Commission to help us do that.

This issue is so important to me that in 2007, I joined four of my colleagues in the House, Representatives Jim Costa (D-CA), Grace Napolitano (D-CA), George Radanovich (R-CA), and Bart Stupak (D-MI), to form a Water Caucus to start a dialogue on the urgent need for our country to perform a national water assessment before we spend more of our energy and dollars on piecemeal efforts to solve interrelated and complex water problems. Since its inception, forty Members, representing a number of diverse areas, have joined the Caucus. During the last year,

the Water Caucus has held a number of briefings aimed at encouraging staff and Members involved and interested in water issues to explore ways in which we can more effectively manage our nation's limited water resources with the limited amount of dollars at our disposal.

Most recently, the Water Caucus hosted a documentary screening and briefing of the film, Liquid Assets: The Story of Our Water Infrastructure, to highlight the current state of our nation's water resources infrastructure. This documentary tells the story of the infrastructure systems used to capture, store, clean, and transport water, wastewater, and stormwater. These aging systems have not been maintained during their life spans, and some estimates suggest that their repair and restoration will be the single largest public works endeavor in our nation's history.

Since my legislation was introduced in 2001 to create a national water commission there has been much squabbling over the finer points of the bill. Not everyone is going to like where we go with this commission. After all, we are resistant to change by our very nature. A win-win is usually a political fiction for all of the actors involved in any given situation. That said, right now we are all losers. And we will continue to lose if we don't act now.

Thirty-six years is too long a time to go without a new national water assessment. Let's take a chance and get a national water commission up and running today. Let's have the commission spend several years studying the issues at hand. As we pour what few Federal dollars we have left into repairing and improving our nation's water resources infrastructure; I reiterate: let's take the opportunity provided by a new national water commission to learn and listen given the thirty-six years of history since the last commission.

As we think about improving our nation's water resources infrastructure let's make sure that we get a few things in place to better allocate limited Federal dollars:

- Let's organize a national water commission that is composed of state and local water resources professionals; people who wake up and are responsible for getting water to thousands of people every day. Bureaucrats and academics often come up idealized solutions to complex problems with no real way to implement them. We need innovative workable solutions.

- Let's determine the proper Federal role of government in water resources management, how Federal agencies fit into that role, and the appropriate level of Federal investment by creating a roadmap for them to use.

- Let's identify mechanisms and programs to support state and local planning and implementation of water related activities by providing a valued way for allowing local and state needs to be brought forward in a systematic way.

- Let's identify the gaps and assist states and local communities in collecting the data they need to make their own water plans and policies.

Given the fractured nature of our water resources management system in place today, these tasks will not be easy, but I am more than ready to face the challenges that lie ahead.

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United States Coast Guard

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**DEPARTMENT OF HOMELAND SECURITY**

**U. S. COAST GUARD**

**STATEMENT OF**

**RADM WILLIAM BAUMGARTNER**

**ON**

**INTERNATIONAL PIRACY ON THE HIGH SEAS**

**BEFORE THE**

**SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION**

**COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE**

**U. S. HOUSE OF REPRESENTATIVES**

**FEBRUARY 4, 2009**

*RADM Baumgartner appears before the Committee on behalf the Commandant to testify on Coast Guard policy and programs relevant to international piracy. He does not appear or offer testimony in his capacity as the Judge Advocate General of the Coast Guard.*

Good afternoon Chairman Cummings and distinguished members of the Subcommittee. I am Rear Admiral William Baumgartner appearing today on behalf of the U.S. Coast Guard. I welcome the opportunity to appear before you to discuss the significant expansion of piratical acts off the coast of Somalia, and the Coast Guard contribution to ongoing efforts to address this threat to freedom of navigation, and the safety of international shipping and those seafarers who are the lifeblood of our international economy.

Piracy is as old as society itself, dating back more than 2,000 years. The struggle against piracy was a constant concern of merchant countries, which very early led to the adoption of the first example in human history of an extraterritorial law and a universal crime. Indeed, pirates have been declared *hostes humani generis* - - enemies of the human race.[1] Acts of piracy have always placed the lives of seafarers in jeopardy and affected the shared economic interest of all nations. Even a single piratical act affects the interests of many nations, including the flag State of the victim vessel, the various countries of nationality of each of the seafarers held hostage, regional and coastal States, and the States of the vessel and cargo owners as well as destination and transshipment States.

In the case of Somalia-based piracy, increasingly brazen attacks in 2.5 million square miles of ocean from land-based enclaves located all along an under-governed and economically devastated 2,300 mile coast pose a serious threat to global shipping. This combination of illegal piratical activity and non-existent rule of law offer a potential breeding ground for other transnational threats.

The Straits of Malacca and the Gulf of Aden present very different challenges and potential solutions when it comes to the problem of countering piracy threats.

Regional States in and about the Straits of Malacca have the capability, capacity and operational expertise to respond to acts of piracy and legal regimes to effectively deliver legal consequences to pirates when they are apprehended. Coordinated patrols by the maritime forces of Indonesia, Malaysia, Singapore, land-based actions taken by these countries, and increased security on vessels transiting the Straits of Malacca have resulted in a significant reduction in piratical acts in that vector. Indeed, when acts of piracy were on the rise in the Straits of Malacca, nations in that area expressed their intent to respond to the threat through locally coordinated responses without the need for international assistance from outside the region.

Unlike the Straits of Malacca, States in the area of the Gulf of Aden and Horn of Africa lack the maritime capabilities and capacity to respond to acts of piracy on the high seas and in their territorial seas. Moreover, the pirates themselves operate from an under-governed State, Somalia, in which there is virtually no capability to apprehend pirates or disrupt their operations with government law enforcement or security forces. Also, the piratical aims of Somali pirates are different than pirates operating in the Straits of Malacca. To date, Somali pirates have been interested in ransom only and are not interested in stealing cargo or reusing the ships they attack for other purposes other than brief periods of use as motherships for another piratical attack.

Because piracy is a universal crime under international law, every nation has the legal authority to establish jurisdiction over piracy and punish the offenders, regardless of nationality of the perpetrator or the victims, or of the vessels involved.[2] This has been a basic tenet of customary

[1] Piracy off the Coast of Somalia, International Expert Group on Piracy off the Somali Coast, 21 Nov 2008
[2] See 1982 United Nations Convention on the Law of the Sea, arts. 100-107.

international law for centuries, and is also enshrined in treaties such as the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on Law of the Sea. United Nations Security Council Resolutions 1846 and 1851 have recently extended this authority to include acts committed within the Somali territorial sea, and have sanctioned the apprehension of suspected pirates and their supporters found ashore in Somalia.[3]

However, legal authority alone does not ensure success. Combating this threat requires well-coordinated interagency and international use of that lawful authority in operations that account for the unique problems presented by the logistics and geography of the region, as well as the vast expanse of ocean on which pirate attacks have taken place. The coordinated application of legal authorities must also address the complex challenges of evidence collection and potential prosecutions under differing legal regimes, and the dangers to innocent seafarers and hostages inherent in any response actions intended to wrest control of a victim ship from pirates.

Additionally, response to such incidents must take into account the ability of pirates in the region to be supported from and flee to friendly enclaves ashore, as well as the interests of various stakeholders in the outcome of any piracy incident, from the flag State of the victim vessel and States of nationality of the innocent seafarers to regional partners whose security is directly threatened by these brazen attacks.

Efforts to deter, counter and punish acts of piracy can be successful only through a multi-national effort bolstered by the support and assistance of international institutions, the commercial shipping industry, and other non-governmental organizations. In particular, I would like to commend the International Maritime Organization (IMO) for its leadership in responding to this and other threats to commercial shipping and seafarers. Following the 9-11 terrorist attacks, the IMO rapidly developed the International Ship and Port Facility Security or "ISPS" code to better safeguard international shipping from acts of terrorists and others who would threaten commercial shipping and the safety of innocent seafarers. The purpose of the ISPS code is to provide a standard, consistent framework for evaluating risk. It enables governments to offset changes in threats to shipping with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures. The ISPS code provides a valuable and time-tested mechanism for industry, in cooperation with the IMO, to harden targets against pirate attacks.

Additionally, the IMO has been addressing piracy in its Maritime Safety Committee and other forums as the Somalia situation has intensified. I will speak to some of those efforts, in which the Coast Guard and other U.S. government agencies have been active participants, shortly.

Through the millennium, maritime trade has been critical to the economic vitality and security of nations. That is even more evident today. The unimpeded flow of maritime commerce is the lifeblood of the global economy. As of 2008, seaborne trade accounted for approximately 80 percent of global trade in terms of volume and 70 percent in terms of value. The Gulf of Aden, which spans the Horn of Africa and Somalia's north coast, is a vital shipping lane connecting the Middle East, Europe, Asia, and North and South America. More than 20,000 ships and nearly 12 percent of the world's petroleum transit the Gulf of Aden each year. These ships present valuable prey to Somali pirates. Since the end of 2007, piracy activity has shifted away from the

[3] U.S. National Strategy for Countering Piracy off the Horn of Africa: Partnership & Action Plan, December 2008

Mogadishu port area and into the Gulf of Aden.[4] Actual and attempted hijackings and piratical acts by Somali pirates more than doubled in 2008, with more than 60 incidents recorded through October 2008, as compared to 25 cases in all of 2007.[5]

Pirate attacks are not only increasing in number, they are also extending farther out to sea. Since late 2007, Somali pirates using small arms and rocket-propelled grenades have attacked vessels up to 450 miles from the Somali coast, further highlighting the increasing risk to commercial shipping interests in the region. High profile hijackings, like those conducted against an oil-laden Saudi supertanker and a Ukrainian ship carrying tanks, small arms, and ammunition, demonstrated just how vulnerable even the biggest ships are to piracy.

In 2008, an estimated $30 million in ransoms were paid to pirates, emboldening their activity and perpetuating the threat. Most often, the pirates literally "get away" with their illegal conduct. To date, cases in which Somali pirates have been apprehended and actually brought to justice for their crimes are the exception rather than the rule. Most often, even in cases in which pirate attacks have been thwarted or the pirates apprehended, the pirates escape prosecution and eventually return to their criminal, but successful, business model - - pirating wealthy vessels and demanding huge ransoms. Left unchecked, high profits, low costs, and little risk of legal or other consequences ensure continued growth in piratical activity off Somalia.

In response to this threat, the National Security Council released in December of last year, with the approval of the President, the *National Strategy for Countering Piracy off the Horn of Africa: Partnership and Action Plan.* The Coast Guard was actively involved with interagency partners in developing this important national strategy document. The National Strategy is realistic and acknowledges that lasting solutions to the piracy problem require significant improvements in governance, rule of law, security and economic development in Somalia. However, in light of the current threat, there are steps that can be taken in the near term to deter, counter, and reduce the risk of attacks by Somali pirates. The National Strategy lays out operational objectives in three lines of action. The Coast Guard has a meaningful role to play across each line of action as I will briefly summarize.

The first line of action focuses on preventing pirate attacks by reducing the vulnerability of the maritime domain to piracy. It is supported by four preventative and precautionary measures that include: (1) establishing a senior level Contact Group of nations that have the political will, operational capability, and resources to combat piracy off the Horn of Africa; (2) strengthening and encouraging the use of the Maritime Security Patrol Area (MSPA) in the Gulf of Aden; (3) updating Ship's Security Assessment and Security Plans to harden commercial shipping against pirate attacks; and (4) establishing strategic communications plans to emphasize the destructive effects of piracy on trade, human and maritime security, and to encourage the rule of law.

Within this first line of action, the Coast Guard, in close cooperation with the IMO as well as our sister agencies, is leading efforts to enhance and update counter-piracy guidance to industry; requiring U.S. vessels and encouraging all vessels to address the piracy safety and security threat via the existing domestic and international law architecture; carrying out a range of industry engagement activities; and directly contributing to regional capacity building and cooperation efforts. Precautionary measures include such simple tactics as:

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[4] Piracy in Somalia – Threatening Global Trade, Feeding Local Wars – Chatham House, October 2008

[5] Somalia: Piracy and the Policy Vacuum. Africa Focus Bulletin, November 22, 2008. http://www.africafocus.org/docs08/som0811.php

- transiting the threat area at maximum safe speed - - vessels traveling at less than 16 knots with low freeboard are known to be at heightened risk of attack;
- for vessels that are unable to outrun pirate vessels, changing course repeatedly, consistent with safe navigation, and conducting night-time transits through threat areas to reduce risks;
- incorporating vessel designs and modifications that prevent or delay pirates from gaining control of a vessel in the event that pirates are able to successfully board, such as safe-areas where crews can muster and effective physical barriers to vessel control areas;
- using non-lethal defensive measures such as netting, wire, electric fencing, long-range acoustical devices, and fire-hoses for deterrence when safe and feasible; and
- employing properly certified security consultants on vessels transiting the region to provide guidance on security measures, onboard training in non-lethal response techniques for vessel personnel, specialized equipment such as night vision equipment to better detect potential threats before an attack is imminent, and other response and prevention measures.

These and other relatively low-tech solutions have already proven effective at "hardening" merchant shipping targets. Even if such tactics cannot entirely prevent pirate attacks, they may prolong the time it takes for pirate groups operating from small craft to gain control of a target vessel long enough for naval or law enforcement response assets in the area to successfully intervene. Industry plays an important role here and must take responsibility for the safety and security of vessels and their crews through appropriate and well-conceived modifications to vessel designs, security plans, and operations in high threat areas.

The second line of action looks to interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states. It is supported by six elements that include: (1) supporting and contributing to a regionally-based counter-piracy coordination center that alerts shipping to pirate activity, gathers and analyzes information, and dispatches resources; (2) seizing and destroying vessels outfitted for piracy and related equipment; (3) providing persistent interdiction-capable presence to support counter-piracy operations; (4) supporting shiprider programs and other bilateral and regional counter-piracy agreements and arrangements; (5) disrupting and dismantling pirate bases ashore under the authority already granted by the United Nations Security Council and in cooperation with regional partners; and (6) disrupting pirate revenue through the development of national and international capabilities to gather, assess, and share financial investigation information on pirate financial operations, with the goal of tracing payments to pirate organizations and apprehending their leaders and enablers.

Counter-piracy operations are primarily a maritime law enforcement activity that the Coast Guard is trained and equipped to support. We are the competent authority for the U.S. government on more than 30 bilateral agreements with foreign partners. These agreements underpin a wide range of Coast Guard operations including counter-drug, migrant interdiction, fisheries enforcement, and Proliferation Security Initiative missions. The Coast Guard understands the domestic and international legal frameworks and the associated boarding and enforcement requirements necessary to ensure the successful negotiation and implementation of agreements to facilitate counter-piracy operations on the water and the delivery of legal consequences to the pirates ashore. The Coast Guard's international training teams and deployable law enforcement detachments offer tailored maritime law enforcement training that can be easily integrated in regional capacity building initiatives, and which is tied directly to at-sea operations.

The U.S. Central Command (CENTCOM) has stood up Combined Task Force (CTF) 151, whose mission is to deter, disrupt, and suppress piracy in order to support United Nations Security Council resolutions, protect global maritime commerce, prevent future attacks, enhance maritime security, and secure freedom of navigation for the benefit of all nations.

Operating as part of CTF 151, the Coast Guard's Law Enforcement Detachment (LEDET) 405 is currently on board the USS San Antonio conducting boardings with the San Antonio's Visit Board Search and Seizure (VBSS) teams in the Gulf of Aden. The role of LEDET 405 is to supplement and train the VBSS teams in various Maritime Interdiction Operations mission areas, including maritime law, boarding policies and procedures, evidence collection and preparation, and tactical procedures.

Piracy boiled down to its most basic elements is criminal activity by lightly armed thugs deployed from small boats and fishing vessels. Should the President direct the Secretary of Defense to undertake counter-piracy maritime law enforcement operations, the Coast Guard is ready to assess requirements and offer relevant capability to our partners. As both a military service and a service with broad law enforcement authority, the Coast Guard is uniquely capable of bridging defense and law enforcement functions. We train and operate with the Navy every day, which enables seamless integration into maritime contingency operations. Should the Joint Staff forward a request for Coast Guard forces, we will work closely with Secretary Napolitano to determine the appropriate contribution of capability while remaining ever cognizant of our domestic responsibilities.

With some notable exceptions, including cases in which authorities in Kenya agreed to prosecute pirates[6], Somali pirates to date have suffered few consequences, even when they were apprehended. Frequently, the navies or other forces that apprehended pirates were from states outside the region, and faced significant legal and logistical challenges in transporting pirates, evidence and witnesses to appear in their courts. At the same time, the vast majority of regional states did not have the necessary arrangements in place to receive pirates, along with evidence and witnesses, for trial in their courts. Flag states faced similar challenges if they wished to bring pirates to justice in their courts. Thus, pirates are often not held accountable for their crimes and quickly make their way back to the Somali coast where they continue their piratical activities. The profits available from this criminal activity, coupled with the extremely low risk that apprehension will result in any meaningful consequences, further encourages pirates to keep plying their illegal trade.

To counter this problem, the third line of action in the Piracy Action Plan is intended to ensure that those who commit acts of piracy are held accountable for their actions by facilitating prosecution of the suspected pirates in a just forum. This is supported by four elements: (1) concluding agreements and arrangements to formalize custody and prosecution arrangements with regional and other partners; (2) supporting and encouraging the exercise of jurisdiction under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime

[6] Examples of cases in which pirates have been brought to justice include a 2006 case in which the U.S. Navy apprehended a group of 10 Somali pirates that had hijacked an Indian vessel, and a November 2008 case in which the Royal Navy captured 8 Somali pirates who had attacked a Danish ship. In both of these cases, authorities in Kenya agreed to prosecute the pirates. In the 2006 case, all ten of the pirates received seven year sentences. The prosecution against the 8 pirates who the Royal Navy apprehended in November 2008 was scheduled to resume in January 2009.

Navigation (SUA Convention); (3) supporting and encouraging the use of other applicable international instruments and customary international law; and (4) enhancing capabilities of regional states to accept suspected pirates for prosecution, extradition, and incarceration.

The IMO has been a leading force within the United Nations to combat the Somali-piracy threat. By delegation from the State Department, the Coast Guard provides the Head of the U.S. Delegation for IMO meetings and activities. The IMO works throughout the region to foster cooperation between stakeholder countries, and to create the legal and operational framework for regional States to combat piracy. IMO has passed resolutions establishing a framework for international cooperation, updated counter-piracy guidance to industry previously discussed, and, perhaps most importantly, promoted judicial consequence delivery mechanisms so that pirates, once caught, face meaningful and just punishment under the rule of law.

A key component of the proposed consequence delivery system advocates application of the SUA Convention. The SUA Convention was adopted in 1988, in part as a direct response to the terrorist hijacking of the cruise ship ACHILLE LAURO and murder of the American citizen Leon Klinghoffer off the coast of Egypt in 1985. The SUA Convention is designed to ensure that appropriate action is taken against persons committing unlawful acts against ships, including, among other acts, the seizure of ships by force; acts of violence against persons onboard ships; and the placing of devices on board a ship which are likely to destroy or damage it. The convention obliges contracting governments either to extradite alleged offenders or submit cases to their competent authorities for the purpose of prosecution. All of the States within a 1,000 nautical mile radius of the Gulf of Aden are signatories to the SUA Convention, with the notable exceptions of Somalia, Eritrea, and Ethiopia.

Under international law an act of piracy is defined as a criminal act of violence, detention, or depredation committed for private ends by the crew or the passengers of a private ship in or over international waters against another ship or persons and property on board. The SUA Convention applies more broadly to acts of violence against ships regardless of the motive of the actor, but covers acts of piracy. Most importantly, though, the SUA Convention establishes a framework whereby masters of ships may deliver suspected offenders to a coastal State that is party to the SUA Convention. The coastal State is then obliged under the SUA Convention, with few exceptions, to accept custody and either extradite the suspected offender or submit the case for the purpose of prosecution. The Coast Guard was instrumental in building broad support for using the existing SUA Convention to combat Somali-based piracy, and for ensuring that the SUA Convention was recognized in the two most recent United Nations Security Council Resolutions addressing piracy.

Securing arrangements with regional partners to facilitate the expeditious investigation, prosecution and, as appropriate, punishment of apprehended pirates is equally critical to the success of any consequence delivery plan. On January 16, 2009, the United States and the Government of Kenya completed a Memorandum of Understanding concerning the conditions of transfer of suspected pirates, armed robbers, and seized property in the western Indian Ocean, the Gulf of Aden, and the Red Sea. This new arrangement is extremely encouraging and builds significantly on Kenya's past efforts to bring pirates to justice. With a partner state in the region willing to cooperate in the investigation and prosecution of suspected pirates, an important first step has been taken in developing a means for regional states and stakeholders to respond to the criminal activity that directly affects them, and to deliver consequences consistent with the rule of law. We look forward to working with the Government of Kenya and other states in this

common goal. The Coast Guard is also working with our interagency partners to assist other regional states and victim states in building the necessary capacity to deliver judicial consequences to pirates. Just last week, the Coast Guard led the U.S. delegation for final negotiations in Djibouti on regional cooperation to combat piracy.

Let me conclude by emphasizing that the threats that piracy poses to the United States, our international partners, and the industry and seafarers who make their living on the last global commons are multi-faceted. The response to these threats requires a broad array of legal authorities, operational capabilities, skills and competencies, and the support and expertise of numerous U.S. Government, international, and commercial entities. The Coast Guard has a unique role to play, and remains committed to working with our military, government, and industry partners to bring these criminals to justice and forge long-term solutions for regional maritime safety and security.

Thank you for the opportunity to address you today and for your attention. I look forward to your questions.

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UNTIL RELEASED BY THE
HOUSE TRANSPORTATION
AND INFRASTRUCTURE
COMMITTEE

**U.S. NAVY**

**STATEMENT OF**

**RDML TED N. BRANCH**

**ON**

**INTERNATIONAL PIRACY ON THE HIGH SEAS**

**BEFORE THE**

**SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION**

**COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE**

**U. S. HOUSE OF REPRESENTATIVES**

**FEBRUARY 4, 2009**

Good afternoon Chairman Cummings and distinguished members of the Subcommittee. I am Rear Admiral Ted Branch appearing today on behalf of the Chief of Naval Operations. As a member of the CNO's staff in the Operations and Plans Directorate, I am happy to have the opportunity to appear before your committee and discuss the U.S. Navy's counter-piracy efforts in the vicinity of Somalia.

**Background**

Somalia is a largely ungoverned country with a shoreline stretching over 1,500 miles – equal to the distance from Miami to Maine. The primary industry and livelihood of coastal Somalia has always been fishing, and Somalis are capable mariners. During the last year, and especially last summer and fall, piracy incidents and ransom payouts increased dramatically. The lack of governance, poor economic conditions, vast coastline, and numerous vessels along the coast created a situation allowing pirates to mix in with legal fisherman, evade coalition Navies, and take merchant vessels hostage with little or no consequences. It is estimated that 25,000 ships per year transit the area in question, and the pirates enjoyed complete freedom of movement both at sea and ashore. Merchant vessels were forced to comply with boardings by pirates brandishing automatic weapons and grenade launchers. Compliant vessels and crews were generally unharmed and, after days or weeks of negotiation, ship owners paid a ransom to have the ships released. As of late, and evident with the pirating of M/V FAINA (carrying Russian tanks, rocket propelled grenades and anti-air artillery) and M/T SIRIUS STAR (crude oil), the pirates appear emboldened. With the rewards so high (ransoms typically exceed $1M dollars) and little to no risk of consequences, thus far, piracy has become an attractive way of life for people in war-torn Somalia. Flush with cash, pirates may upgrade their equipment (boats, weapons, boarding equipment), improve their tactics and procedures, and continue to adapt to coalition naval presence over time.

For the past several years, countries in the region and some states victim to piracy have largely been unwilling or unable to receive and prosecute captured pirates, so there was no legal deterrent or risk to those committing piracy. This inability to deal with apprehended pirates, or persons under control (PUCs), we believe, has been a significant impediment to stemming the rising tide of piracy. Even if a naval vessel was close enough to interdict the act of piracy before the pirates took hostages, there was a downside to apprehending the perpetrators. If there was no law enforcement recourse, the ship would generally have to house the PUCs for extended periods, and in many cases would have to eventually release them when they could not be prosecuted. Now, due to the diligent efforts of the State Department and international community, there are enhanced United Nations Security Council Resolutions on piracy and bilateral agreements in place for the detention and prosecution of PUCs. Even though no United States ships or seamen have been pirated, the U.S. Navy has taken a leadership role in counter-piracy operations.

**U.S. Navy Leadership**

In response to the increasing frequency of piracy in August of 2008, U.S. Naval Forces Central Command (NAVCENT) developed and is executing a counter-piracy campaign plan.

NAVCENT began by designating a Maritime Security Patrol Area in the Gulf of Aden where merchant vessels could transit with a higher probability of encountering naval vessels along the route. We had found that piracy usually did not happen in the vicinity of navy ships. NAVCENT also energized the commercial shipping industry and interfaced with the International Maritime Organization, providing "best practices" to mariners in order to avoid being pirated. Initially in the summer and early fall, relations between navies and industry were strained with each side believing the other could be doing more to prevent acts of piracy. However, through continued dialogue with concerned stakeholders, cooperation with industry is improving.

NAVCENT garnered the support and participation of several Navies who have contributed ships to the campaign. NATO, the European Union, and other countries acting unilaterally have agreed to participate or are already on station conducting counter-piracy operations near Somalia. Countries with naval ships who have or are participating in counter-piracy operations include the United States, the United Kingdom, Germany, France, Denmark, Greece, Italy, Turkey, Russia, Pakistan, India, Malaysia, China, and Saudi Arabia. The Republic of Korea and Japan have announced their intention of sending ships to the region to support this effort. On 13 January, NAVCENT stood up Coalition Task Force 151 focused on counter-piracy operations and commanded initially by a United States Navy Rear Admiral. Even with this high level of cooperation, the ocean area is vast and merchant ships are numerous. Piracy is not just a naval problem to solve – it is an international problem requiring an international solution.

**Current Situation**

The efforts by NAVCENT are bearing fruit. There are currently more than 20 ships operating in the region, demonstrating international willingness to provide assets and expend resources to help solve this problem. Recent failed piracy attempts have been caused by merchant ships taking evasive actions when being fired upon by pirates, rather than slowing down and allowing themselves to be boarded. In the last two months, there have been only 5 successful piracies out of 34 attempts. With increased coalition Naval presence, the merchant shipping industry following NAVCENT's advice to limit their chances of being pirated, and local countries such as Kenya agreeing to incarcerate and try suspected pirates, we are making positive progress in lowering the level of piracy seen in August through November off the coast of Somalia.

**Overview of Legal Authorities**

Although I am not a lawyer, my legal advisors continue to rely on a number of legal authorities to provide guidance for U.S. Navy operations. They are:

**International Legal Authority:** Piracy has always been a crime of universal jurisdiction and international law has long recognized a general duty of all nations to cooperate in the suppression of piracy. This traditional obligation is included in the 1958 Geneva Convention on the High Seas (U.S. Party) and the 1982 UN Convention on the Law of the Sea (U.S. non-Party). Both provide that all States shall cooperate to the fullest possible extent in the suppression of piracy.

**UNSCR 1846:** United Nations Security Council Resolution (UNSCR) 1846, passed in December (renewing UNSCR 1816) and valid for 12 months, provides certain authorities for countering piracy off Somalia. It condemns piracy and calls upon States to increase cooperation in counter-piracy operations and subsequent disposition of PUCs. UNSCR 1846 also authorizes States cooperating with the Transitional Federal Government (TFG) to enter Somali territorial waters and use all necessary means consistent with international law in those waters to repress acts of piracy and armed robbery. This resolution also urges States to implement their obligations under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) to help in PUC disposition

**UNSCR 1851:** United Nations Security Council Resolution (UNSCR) 1851 also expresses concern over the payment of ransoms to pirates, and calls upon States to deploy naval assets and seize and dispose of boats, arms and related equipment used by pirates. UNSCR also contains language authorizing "all necessary means" to combat piracy at sea (within Somali territorial waters).

It should also be noted that other countries have encountered difficulty in prosecuting suspected pirates in their domestic courts. The Danes recently captured several suspected pirates and were unable to prosecute them on their own. Japan is currently reviewing its domestic legislation to make it more effective against suspected pirates; however, domestic politics are delaying any immediate action. The United Kingdom has proposed modifications to domestic legislation to facilitate prosecutions and recently reached an agreement with Kenya under which Kenya will accept jurisdiction of pirates captured by UK forces. Pirates recently captured by HMS CUMBERLAND have been turned over to Kenya, where they are currently on trial. In January 2009, the government of Kenya agreed to accept and try suspected pirates captured by the U.S. military, through a Memorandum of Understanding (MOU) signed by both the U.S. and Kenya. This MOU allows the international community a viable method to deter and punish acts of piracy.

**SUA Convention:** The SUA Convention may provide a framework for delivery of suspected pirates to coastal nations for subsequent prosecution or extradition. The SUA Convention was created in the wake of the *Achille Lauro* incident and addresses crimes against ships, crew and passengers. Offenses under the Convention include: seizing a ship by force, threat or intimidation, and performing certain acts that could endanger the safe navigation of the ship, such as performing acts of violence against persons on board, destroying or damaging a ship or cargo, causing damage to the ship, placing a device or substance on the ship that is likely to destroy it, destroying maritime navigation facilities,

or communicating false information. States Parties to the Convention are obligated to make SUA offenses punishable domestically. Additionally, a master of a State Party vessel may deliver suspects to another State Party. The receiving State is obligated to accept delivery of suspects and then either prosecute or extradite them to another SUA Party, unless it determines SUA is not applicable.

There are currently 150 State Parties to the SUA Convention, including the United States, Bahrain, Djibouti, Kenya, Oman, Qatar, Saudi Arabia, Sudan, UAE and Yemen. Understanding there may be some human rights concerns with specific nations, if these States would agree to apply SUA to the actions of the pirates and follow their obligations to accept delivery of suspects to prosecute or extradite, the use of SUA can help alleviate the PUC disposition issue. Some Parties to SUA believe that the SUA convention is not applicable to acts of piracy, viewing the SUA Convention as a counter-terrorism convention.

**U.S. Legal Authority to Repress Piracy:** The United States has implemented the SUA Convention in Title 18 U.S. Code section 2280, which prohibits, among other things, seizing control of a ship by force. In addition, the United States has long-standing laws against piracy, including Title 18 U.S. Code section 1651, which provides that, "Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life."

The long term solution requires a stable Somalia with a government that can effectively police her own citizens, and protect the rights of those ships sailing in international waters. Piracy is an international problem that requires an international solution.

I will be happy to take your questions.

**DEPARTMENT OF TRANSPORTATION**

**MARITIME ADMINISTRATION**

**STATEMENT OF ACTING DEPUTY ADMINISTRATOR**

**JAMES CAPONITI**

**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**

Good afternoon, Mr. Chairman and Members of the Sub-committee. I am pleased to have the opportunity to appear before you today to discuss the serious threat stemming from maritime piracy. Throughout 2008, the global piracy situation grew substantially worse– particularly in the Gulf of Aden off the Coast of Somalia. The impact of piracy has been very significant. Acts of piracy threaten freedom of navigation and the flow of commerce. Off the Horn of Africa, piracy disrupts the flow of critical humanitarian supplies. Pirates frequently demand millions of dollars in ransom for the release of hostages, ships and cargoes. The Washington Post recently reported that pirates made an estimated $30 million hijacking ships for ransom last year. In 2008, 42 vessels were seized by pirates operating off the Coast of Somalia. Globally, 889 mariners were held hostage (815 in Somalia) as part of ransom demands. The International

Maritime Bureau (IMB) reports that in 2008, globally, 11 mariners were murdered by pirates and another 21 are missing and presumed dead. Particularly, the IMB also reports that, off the Horn of Africa, four mariners were killed and 14 are missing and presumed dead.

The vessels most vulnerable to piracy are those traveling slowly and with low freeboard – that is to say, there is not much height between the water and the deck level. At any given time during the past six months, close to a dozen or more vessels and their crews have been held hostage off the Somali coast. Currently, ten commercial ships are being held for ransom by pirates in Somalia, along with approximately two hundred crewmembers. Just last Thursday, the LONGCHAMP, a German tanker, was captured in the Gulf of Aden – the third ship to be taken this month in what is one of the world's busiest shipping lanes. The ship is registered in the Bahamas. Its crew includes 12 Filipinos and one Indonesian. One reason for the success of seajackings and ransom taking is that the government in Somalia is ineffective and this has enabled pirates to operate with relative impunity. Further, there have been press reports opining that some local officials are on the pirates' payroll.

The Gulf of Aden, which links the Mediterranean Sea and the Suez Canal with the Indian Ocean, is one of the busiest shipping choke points in the world. An average of 50 commercial vessels transit the Gulf daily. Many of these vessels are potential targets. More than 3.3 million barrels of oil pass through

the Gulf of Aden every day. This represents 4% of the world's total daily production and 12% of all the oil transported by water daily around the world by sea. In addition, numerous other cargoes and container freight pass through the Gulf daily.

Approximately 80% of the vessels transiting the Gulf of Aden carry cargo destined to and from Europe, East Africa, South Asia, and the Far East. However, a significant portion of cargoes is also destined to and from the United States. In addition, U.S. citizens serve as crew or are passengers on internationally registered vessels transiting the area.

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.

As mentioned, seajackings off the Horn of Africa significantly increased in 2008, with more than 100 attacks and 40 successful seajackings. Although only one-third of one percent of all the vessels transiting the Gulf of Aden are seajacked, the cost and disruption to the flow of commerce overall is significant. There is also a serious risk of an environmental disaster should a vessel be

damaged or sunk during a hostile attack. Press reports indicate that numerous merchant mariners have been killed or are presumed dead and that hundreds more have been traumatized by being attacked and held hostage.

Ship owners and operators are also negatively impacted by rising daily operating costs due to increased insurance premiums and operational delays caused by longer transit times or diversions to avoid the area. In many cases, there are additional costs related to the higher wages which must be paid to crew transiting the higher risk area. Both the shipper and the consumer are ultimately impacted due to these higher operating costs and the delays in the supply chain. This is particularly true where vessels are diverted around the Cape of Good Hope in an effort to avoid the Gulf of Aden altogether, which also increases fuel consumption and the carbon footprint of marine transportation. Higher shipping costs also raise the costs of commodities for local populations. The Horn of Africa is currently experiencing its most severe food security crisis since the early 1990s.

The United States has been a leader in international action to combat the current piracy crisis. Historically, it has been our Nation's long-standing policy to support freedom of the seas. In July 2008, the United States took a leadership role in the United Nations against piracy. This resulted in United Nations (UN) Security Council Resolution 1816 which authorized countries cooperating with the Transitional Federal Government of Somalia, for which advance notification

has been provided to the Secretary-General to take all necessary means within existing international law to repress piracy and armed robbery in Somali Territorial waters. This was followed by additional Security Council resolutions 1838 and 1846 in the fall of 2008. In December 2008, the United States drafted UN Security Council Resolution 1851 which authorizes countries cooperating with the Transitional Federal Government (TFG) of Somalia to take all necessary means to repress piracy and armed robbery in Somalia. In effect, this allows states that have received the authorization of the TFG to use Somali territory and airspace to conduct counter-piracy operations ashore.

UN Security Council Resolution 1851, which authorized all necessary means at sea and in Somalia, also encouraged the establishment of an international cooperation mechanism -- known now as the UN Contact Group on Piracy off the Coast of Somalia (CGPCS). The CGPCS has 24 nations as members and five international organization observers (the UN, NATO, EU, AU and the IMO). In addition, invitations have been extended to four other nations and the Arab league. The Department of State represents the United States on the CGPCS. The CGPCS will facilitate the sharing of information, coordinate activities, and reach out to the shipping and insurance industries. The first meeting of the CGPCS took place January 14th at the United Nations in New York City.

The CGPCS established four working groups which will provide recommendations to the CGPCS. Working Group #1 will address activities

related to military and operational coordination and will be convened by the United Kingdom. Working Group #2 will address judicial aspects of piracy and will be convened by Denmark. The United States has the lead for Working Group #3, which focuses on shipping self-awareness and other capabilities. MARAD is leading efforts on this Working Group in close collaboration with the Coast Guard. Working Group #4 will endeavor to offer recommendations to improve diplomatic and public information efforts and will be convened by Egypt.

The UN Security Council resolutions called for greater cooperation between governments and industry to reduce the incidence of piracy. In January 2009, former-Secretary of State Rice stated that, "Once a hostage situation develops, the stakes in military operations increase. Consequently, an important part of counter-piracy efforts must be measured in enhancing self-defense capabilities of commercial vessels, increasing the odds of success against pirates until warships arrive." This sentiment still holds true.

Because of its specialized knowledge, such as operation of our mobility sealift vessels, and established relationships with U.S. and international shipping, maritime unions, and marine insurance communities, the Department of Transportation's Maritime Administration (MARAD) has considerable experience in dealing with a diverse maritime industry and is actively involved in the fight against piracy. MARAD is perhaps unique among government agencies with regard to its interest in piracy issues and its ability to assist. MARAD operates a

fleet of Ready Reserve Force (RRF) vessels which have transited the Gulf of Aden region in support of Operations Iraqi and Enduring Freedom (OIF). As OIF winds down, RRF vessels may play a significant role again in support of the demobilization of forces, exposing vessels and crews to threats from pirate attacks. Further, many vessels supported by MARAD's Maritime Security Program (MSP), which participate in the Voluntary Intermodal Sealift Agreement (VISA), transit the Gulf of Aden on a routine basis. Finally, MARAD has oversight over government cargoes transiting the region – particularly aid and military cargoes that are carried mainly aboard U.S.-flag commercial vessels transiting the Gulf. As an interface between U.S. maritime labor and the federal government, the Maritime Administration also has great interest in protecting the welfare of U.S. mariners who sail aboard vessels in the region.

MARAD also provides operational advice to U.S.-flag owners and operators, including counter-piracy measures and awareness, on a regular basis through MARAD Advisories and through a comprehensive and frequently updated website. We play a key role in the training of merchant mariners through the development of International Maritime Organization (IMO) maritime security courses and workforce development. Working with the U.S. Coast Guard and IMO, Vessel Security Officer, Company Security Officer, and Facility Security Officer courses were developed by the United States Merchant Marine Academy. MARAD continues to certify maritime security training providers who meet the

criteria established by the U.S. Coast Guard. To date, more than 50 training providers have been certified across the country.

In late December, the State Department asked MARAD to assist with the CGPCS Industry Outreach Working Group. To this end, MARAD continues to meet with industry to help shape best management practices to counter piracy and to share industry concerns with U.S. government agencies. Also in December, the National Security Council published an action plan, the National Strategy for "Countering Piracy off the Horn of Africa: Partnership & Action Plan" (CPAP). MARAD and the Department of Transportation were actively involved in developing this Plan, and MARAD posted the CPAP on its website for the benefit of industry.

MARAD also supports the Military Sealift Command's proposal to create and implement "Anti-Piracy Assessment Teams." These teams will consist of personnel from the Naval Criminal Investigative Service, the Federal Law Enforcement Training Center, and MARAD. On a voluntary basis, these teams will board U.S.-flag vessels and offer recommendations on how to improve a vessel's physical defenses against piracy, and review tactics, techniques and procedures. The American industry has embraced this proposal, and we plan to share the process with the international community for similar implementation.

MARAD's continuing outreach to the maritime industry on the piracy issue has taken many forms. In addition to leading informal meetings and participating in international forums, MARAD has hosted several collaborative meetings with both the American and international maritime industry community. In October and November 2008, MARAD and the State Department sponsored meetings with representatives from the maritime industry to specifically discuss piracy in the Gulf of Aden. Participants included company security officers from major U.S. flag carriers, including American President Lines (APL), Horizon Lines, Maersk, Intermarine, Interamerican Ocean Shipping, American Roll On/Roll Off, Crowley, American Overseas Marine, and Ocean Shipholdings. Flag states with U.S.-owned vessels or with vessels serving strategic U.S. interests also participated, including representatives from Denmark, Marshall Islands, Liberia and Panama. The U.S. Navy's Maritime Liaison Office Bahrain and the United Kingdom's Maritime Transport Office were also included. Topics specifically addressed at these meetings were maneuvering and speed, illumination, communication, duress terminology, armed force protection, and self-defense devices which may be used to deter piracy.

At the request of the maritime industry, MARAD facilitated extensive discussions on piracy with the State Department, Federal Bureau of Investigation (FBI), Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard). In November 2008, MARAD participated in a public hearing hosted by the Coast Guard, focused on piracy initiatives being conducted

by the International Maritime Organization's Maritime Safety Committee (MSC). In December 2008, MARAD staff played an instrumental role in several other international planning events related to piracy. MARAD participated in the NATO Senior Civil Emergency Planning Committee meeting held in Brussels, Belgium, by the NATO Planning Board on Ocean Shipping. This Planning Board is chaired by MARAD.

On December 2, 2008, MARAD hosted a Piracy Round Table meeting to discuss industry "self-help" and best practices to counter piracy. This meeting brought U.S. government agencies together with the maritime industry to develop a mutual understanding of the problem and to develop best practices recommendations. Members of the industry included shipping associations, registries, carriers, marine insurance companies and representatives from the European Union. U.S. government representatives included personnel from the Coast Guard, State Department, Department of Defense, Office of Naval Intelligence, U.S. Agency for International Development, the National Security Council, and the Homeland Security Council. MARAD established an Anti-Piracy portal on the Agency's website, which is continuously updated. MARAD Advisories are posted on this site as are any recent developments and key contact information.

MARAD hosted an international maritime industry Piracy Summit on December 11, 2008, with representatives from more than 50 industry

associations, insurers, shipping companies, and labor to encourage them to further develop best management practices to combat piracy and to implement these strategies. Representatives from government included the Department of State (State Department), the Department of Homeland Security , Coast Guard, U.S. Transportation Command, Office of Naval Intelligence and Military Sealift Command.

In late December, MARAD joined the State Department for discussions in London between representatives of European Union navies and maritime trade associations. The purpose of these discussions was to further develop and implement best management practices and to improve communication between maritime companies and military forces in the Gulf of Aden region. MARAD continues to meet with industry to finalize best management practices and share industry concerns with government agencies.

In early 2009, MARAD intensified its efforts in the fight against piracy to further improve coordination between industry and the various navies participating in the Gulf of Aden, to provide voluntary assessments of security on U.S. vessels, and to further establish best management practices to prevent piracy. Additional industry meetings, UN meetings, meetings hosted by the Baltic International Maritime Council (BIMCO) and a counter-piracy meeting held in Dubai and hosted by the Maritime Liaison Office in Bahrain, have all pursued these objectives. Since maritime labor is such an important factor in pirate

attacks, and since mariners have been killed or held hostage as part of ransom demands, MARAD has included maritime labor in discussions and meetings, when feasible.

It is clear that combating international piracy is no small effort, evidenced by its long history. Much work has already taken place, but much remains to be done, before international piracy can be eliminated. Due to its unique and positive relationship with U.S.-flag and international vessel owners, MARAD has a vital role in the development of U.S. anti-piracy policy. Additionally, through its training role, MARAD provides a valuable service to the commercial fleet. Mr. Chairman, the Department of Transportation and the Maritime Administration stand ready to assist in any way possible to address piracy and any other issue that threatens the national and economic security of the United States and our allies.

I want to thank the members of this Subcommittee and Chairman Cummings for your leadership in holding this hearing today. I will be happy to answer any questions you might have.

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# TESTIMONY

# Maritime Piracy

## *Reasons, Dangers and Solutions*

PETER CHALK

CT-317

February 2009

Testimony presented before the House Transportation and Infrastructure Committee, Subcommittee on Coast Guard and Maritime Transportation on February 4, 2009

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Published 2009 by the RAND Corporation
1776 Main Street, P.O. Box 2138, Santa Monica, CA 90407-2138
1200 South Hayes Street, Arlington, VA 22202-5050
4570 Fifth Avenue, Suite 600, Pittsburgh, PA 15213-2665
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***Maritime Piracy***
***Reasons, Dangers and Solutions***[2]

**Before the Committee on Transportation and Infrastructure**
**Subcommittee on Coast Guard and Maritime Transportation**
**United States House of Representatives**

**February 4, 2009**

**Introduction**

Thank you, Mr. Chairman and distinguished Members of the Subcommittee, for the opportunity to testify on this important subject. The rash of pirate attacks off the Horn of Africa and Gulf of Aden in 2008 has cast into sharp light an enduring problem that affects not only this part of the continent but many other areas of the world. This testimony aims to inform and put into context the current debate on piracy by providing an overview of the scope and contributing factors driving armed maritime violence in the contemporary era and the principal dangers associated with this particular manifestation of transnational crime. Given the publicity and unprecedented character of the international response to Somali-based piracy, the testimony also briefly addresses the appropriateness of the measures that have been instituted to deal with armed maritime violence off the Horn of Africa and Gulf of Aden.

At the outset I would like to stress one main point: piracy is, above all, an economically driven phenomenon. This is true both with respect to those who engage in the practice – profit being the main objective – and those against whom attacks are directed, ship owners – where the desire to keep operating costs as low as possible has frequently outweighed imperatives for more concerted on-board security. This economic dimension is important in understanding the manifestation and evolving dynamic of piracy as well as for setting it apart from maritime terrorism, which is primarily aimed at leveraging or otherwise undermining the oceanic environment to secure political, ideological or religious imperatives.

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[2] This testimony is available for free download at http://www.rand.org/pubs/testimonies/CT317/.

**Scope and Dimensions of Maritime Piracy**

A total of 1,845 actual or attempted acts of piracy were registered around the world between 2003 and the end of 2008, which equates to an average annual rate of around 352. The true figure is undoubtedly greater because in many cases (possibly as many as 50 percent) shipowners are reluctant to report attacks against their vessels out of concern that this will merely lead to increases in maritime insurance premiums and result in lengthy and costly post-incident investigations.

The concentration of piracy is greatest around the Horn of Africa and the Gulf of Aden, which accounted for roughly 37 percent of all attacks reported in 2008 (111 out of 293). Other high-risk zones include Nigeria/Gulf of Guinea, Indonesia, India, Bangladesh and Tanzania, which collectively accounted for 59 percent of all non-Horn of Africa/Gulf of Aden incidents last year.

The scale and sophistication of piracy has jumped markedly in recent years, especially in the waters off East Africa. Gangs now routinely hijack large ocean-going vessels and have exhibited a proven capacity to operate as far as 500 nautical miles from shore. There has also been a discernible spike in hostage-takings. In 2008 889 crew members were abducted, the highest figure on record and a significant 207 percent increase on the total for 2007. Currently Somali pirates are thought to be holding 11 vessels and 210 crew for ransom.

**Factors Accounting for the Emergence of Piracy in the Contemporary Era**

Piracy has traditionally been "fed" by two underlying drivers, which when taken together, have provided an almost limitless range of vulnerable targets from which to choose: the enormous volume of commercial freight that moves by sea; and the necessity of ships to pass through congested (and ambush-prone) maritime choke points such as the Panama Canal, Suez Canal, the Straits of Hormuz, Strait of Bab el-Mandab, the Malacca Straits and the Bosphorous Straits. The emergence of piracy in the contemporary era age reflects the continued salience of these basic causal variables in addition to at least seven other contributory factors:

First has been a growing trend toward the use of "skeleton crews," both as a cost-cutting measure and as a reflection of more advanced navigation technology. Although this reduced manning is undoubtedly more efficient, the smaller number of sailors now found on board many vessels has reduced the options for concerted anti-piracy watches and has made the task of gaining control of ships that much easier.

Second, the general difficulties associated with maritime surveillance have been significantly heightened as a result of 9/11 and the concomitant pressure exerted on many governments to invest in expensive land-based homeland security initiatives. This has further reduced what in many cases are already limited resources for monitoring territorial waters.

Third, lax coastal and port-side security have played an important role in enabling low-level pirate activity, especially harbor thefts against ships at anchor. Problems of this sort have been particularly evident in Brazil, East Africa and across South and Southeast Asia. In many cases there is either no functioning maritime police presence at all or the units in place are devoid of adequate staff, boats, equipment and training.

Fourth, corruption and easily compromised judicial structures have encouraged official complicity in high-level pirate rings. The nature of this involvement has been extensive, ranging from providing intelligence on ship movements and locations to helping with the rapid discharge of stolen cargoes.

Fifth, the endemic anarchic situation in Somalia has directly contributed to the rampant scale of piracy that we are currently seeing being witnessed off the Horn of Africa. With no sovereign government in place, gangs have virtual free-run of the area, enjoying widespread latitude to enforce "rules" that further and protect their own vested interests.

Sixth, the ready willingness of shipowners to pay increasingly large sums of money for the return of their vessels and cargoes has provided added incentive to engage in maritime crime. Somali pirates are projected to have netted at least $20 million in ransoms last year, with the negotiated deal for the release of the Saudi-registered *Sirius Star* allegedly running to an unprecedented $3 million. For many gangs, the prospect of windfall profits such as these far outweighs any attendant risk of being caught or otherwise confronted by naval and coast guard patrol boats.

Finally, the global proliferation of small arms has provided pirates (as well as terrorists and other criminal elements) with an enhanced means to operate on a more destructive and sophisticated level. Originating from a variety of sources in Africa, Asia and Europe, these munitions include everything from pistols, light/heavy caliber machine guns and automatic assault rifles to anti-ship mines, hand-held mortars and rocket-propelled grenades. Most commentators generally agree that the availability of weapons such as these, most of which are readily transportable, easy to handle, cheap and durable, is one of the main underlying causes that has contributed to the growing level of violence that has come to typify piracy in recent years.

**The Dangers of Piracy**

The dangers associated with contemporary piracy are complex and multifaceted. At the most basic level, attacks constitute a direct threat to the lives and welfare of the citizens of a variety of flag states. Apart from the risk of death or injury, many who have been subjected to a pirate attack suffer considerable mental trauma and may never go to sea again.

Piracy also has a direct economic impact in terms of fraud, stolen cargos and delayed trips and could undermine a maritime state's trading ability. Today, the overall annual cost of piracy to the maritime industry is estimated to be anywhere between $1 billion and $16 billion. The true figure could be far higher, especially once expenses incurred from implementing mitigation efforts are factored in.

Politically, piracy can play a pivotal role in undermining and weakening governing legitimacy by encouraging corruption among elected officials and bureaucrats. This has been a recurrent problem in Indonesia, which until 2008 was consistently designated as the most pirate prone hot spot in the world.

Finally, piracy has the potential to trigger a major environmental catastrophe, especially if an attacked vessel is left to drift in a congested sea lane of communication. The "nightmare" scenario is a mid-sea collision involving a heavily-laden oil tanker. Not only would the resulting discharge of petroleum cause irreparable damage to off-shore resources and marine life, but it would also seriously degrade long stretches of fertile coastal lowlands if the oil were left to drift. This would pose significant difficulties to any state that relies on the oceans as a primary source of food, either for domestic consumption or regional/international export.

**The Current International Response to Piracy off the Horn of Africa**

The rapid escalation of armed attacks off the Horn of the Africa has prompted unprecedented counter-piracy action by the international community. In January, the United States announced the formation of a new Combined Task Force (CTF) 151 to monitor and patrol defined maritime corridors in the Gulf of Aden. This will supplement a year-long European Union (EU) naval flotilla that was deployed late last year, with contributions from the United Kingdom, France, Spain, Germany and Greece. Several other states have also sent ships to the region, including India, China, Russia, Malaysia, Saudi Arabia, and South Korea; Australia, the United Arab Emirates and, possibly, Turkey are expected to add to these forces later this year. Finally, the United Nations Security Council (UNSC) has now sanctioned "cooperating" states to enter Somalia's territorial

waters and attack pirate dens on land, passing UNSC Resolutions 1816, 1846 and 1851 between June and December 2008.

Although these initiatives have met with some success, ensuring the delivery of relief supplies to African Union (AU) peacekeepers stationed in Somalia and successfully thwarting several attempted hijackings, their overall utility is somewhat questionable. Not only is the area to be monitored huge (over a million square miles), issues of national interest are bound to arise. It is not apparent, for instance, how the EU flotilla will be funded and, more important, whether the potentially thorny issue of cost-sharing has even been broached. In addition, questions of legal jurisdiction have yet to be settled (particularly in terms of prosecuting detained suspects) and appropriate rules of engagement have still to be fully fleshed out. Employing force against pirate dens in Somalia also raises the specter of large-scale civilian damage and concomitant accusations that the west is once again "intent" on destroying innocent Muslim lives. Finally, the deployment of naval frigates will only ever be able to address piracy at its end point, on the sea, rather than at its root, on land.

Given these problems, the international community should look to accompanying this explicitly militaristic approach to piracy with more innovative, non-kinetic strategies. First, it should focus more adroitly on boosting the coastal monitoring and interdiction capabilities of all the littoral states in the vicinity of the Horn of Africa/Arabian Peninsula; providing surveillance assets, training and technical support would be a good start. Second, the international community should make increasing efforts to sponsor public-private partnerships aimed at better commercializing and marketing communication and defensive technologies such as ShipLoc (an basic but effective satellite tracking device that has been endorsed by the International Maritime Bureau), SecureShip (a non-lethal electrical perimeter fence designed to prevent unauthorized boarding) and long-range acoustic devices that emit loud disorienting blasts of sound. Third, the international maritime industry must be given greater financial incentive to adhere to basic security protocols, such as avoiding dangerous routes, maintaining constant anti-piracy watches, keeping in close contact with nearby vessels, and maneuvering at speed, through the offer of lower insurance premiums or, if there is non-compliance, the threat of higher ones.

Finally and admittedly most vexing, because piracy off the Horn of Africa is essentially an extension of the land-based violence, corruption, and lawlessness that has plagued Somalia since the collapse of the Barre dictatorship in 1991, greater effort must be devoted to restoring a semblance of stability to this war-torn country. Until this void in regional governance is decisively filled, the waters off the Horn of Africa/Arabian Peninsula will remain a highly attractive theater for

armed maritime crime given their expanse, the lack of regulation, and their importance as a vital maritime corridor linking the Mediterranean with the Indian Ocean.

**Areas for Further Research**

I would like to conclude with five areas I think the Committee should consider as worthy candidates for further directed research:

1. What are the costs of piracy and how do these compare to the expenses required for mitigation?

2. What is the best way of countering armed maritime violence in regions of chronic lawlessness and anarchy?

3. Is the current international legal framework for countering piracy sufficient or does it need to be changed in some fashion (and, if so, how)?

4. What is the extent of government responsibility for countering piracy and what role should the private sector play in helping to manage this problem?

5. What are the chief land-based factors that contribute to modern-day piracy and how can these best be addressed?

Again, I thank you for the opportunity to be here today. I am happy to answer any questions that you might have.

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30 January, 2009

# US House of Representatives Sub-Committee on Coastguard & Maritime Transportation

## February 4th, 2009

## Written Testimony

Captain Phil M. Davies; Director
Oil Companies International Marine Forum

The Oil Companies International Marine Forum is a company limited by guarantee incorporated under a private Act of Parliament in Bermuda.

# Glossary

## CTF 151 - Combined Task Force (CTF) 151

- Established by the US Navy to conduct counter-piracy operations in and around the Gulf of Aden, Arabian Sea, Indian Ocean and the Red Sea and to create a lawful maritime order and develop security in the maritime environment.

## EUNAVFOR - European Naval Force

- Established by the European Union the force consists of Naval units and support from EU member countries. Operational HQ is in Northwood, UK. The mission of EUNAVFOR is the protection of World Food Program vessels and fighting piracy around the Horn of Africa.

## IMO – International Maritime Organisation

## ISPS – International Ship & Port Security Code

## MARAD – US Maritime Administration

## MARLO – Maritime Liaison Office

- MARLO's mission is to facilitate the exchange of information between the US Navy, CTF 151 and the commercial Maritime community. Based in Bahrain it operates as a conduit of information to ensure the safety of shipping.

## MSC HOA – Maritime Security Center Horn of Africa

- Established at Northwood UK as Operational Headquarters for EU Naval Forces. Maintains highly informative website for use by merchant vessels.

## MSPA – Maritime Security Patrol Area

- The MSPA was established to provide a defined area of operations for Naval Forces. Within the MSPA transit corridors have also been established and merchant vessels are encouraged to utilise these.

## OCIMF – Oil Companies International Marine Forum

## UNSCR – United Nations Security Council Resolution

## UKMTO – United Kingdom Maritime Trade Organisation

- Based in Dubai the UKMTO monitors vessel movements and piracy in the Arabian Sea, Persian Gulf, Gulf of Aden & East Africa.

## VLCC – Very Large Crude Carrier

The Oil Companies International Marine Forum, OCIMF, wishes to thank the committee for the opportunity to submit testimony. International Piracy on the High Seas is one of the most critical and concerning issues facing the marine community today. OCIMF appreciates the committee taking interest in the issues and are committed to implementing solutions to ensure world trade continues to flow safely and without threat to the environment.

OCIMF is a voluntary association having as its members over 70 of the world's leading oil companies. Our members engage in activities of mutual concern relating to transportation by tanker and marine terminalling of crude oil, liquefied natural gas, liquefied petroleum gas, their derivatives and related organic compounds, with special reference to the protection of the marine environment and the promotion of safety in marine operations.

In relation to piracy OCIMF's priority is the safety and well being of mariners while adhering to the principle of free movement of trade in international waters.

Within this testimony it is our intent to address key elements related to piracy;

- How tankers differ from, and why they may pose different piracy risk than other vessels.
- What is the current situation in the Gulf of Aden?
- Other areas of concern for International Piracy.
- Incidents.
- Lessons Learned.
- Best Maritime Practices to Avoid, Deter & Delay Piracy.
- What is, or can be done, by the industry & governments.

In support of efforts to reduce piracy attacks OCIMF, in conjunction with other industry groups has produced a booklet, Piracy 'The East Africa/Somalia Situation; Practical Measures to Avoid, Deter or Delay Piracy Attacks'. It is intended to distribute this booklet free to vessels transiting the area. Copies are attached to this testimony and may be of interest to the committee as the booklet reflects the current situation and industry actions within the Gulf of Aden.

Piracy is a term used to describe acts of armed robbery, hijacking and other malicious acts against ships in international waters. They are carried out with the intent of stealing valuables onboard and/or extorting money from ship owners and/or other third party interests by holding the ship or crew to ransom. The International Maritime Bureau (IMB) defines piracy as "the act of boarding any vessel with intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act". Since this definition reflects the popular understanding of the word 'piracy', this term will be used throughout this testimony to describe any such act against a ship. All evidence to date indicates that the situation in the waters off Somalia is a piracy and not a terrorist threat.

Piracy is normally by definition restricted to International waters, acts of piracy in territorial waters are deemed acts of armed robbery and fall under the jurisdiction of the sovereign state. Somalia is considered a failed state and hence is unable to assume its responsibilities as a sovereign state. Protection is therefore required for vessels operating both in International waters and those within the territorial waters of Somalia. Though not addressed in this testimony OCIMF recognises that re-building the political institutions of Somalia must be a critical path to fighting piracy both afloat and ashore. Government & Industry action is required to keep this International strategic shipping route open and safe for transit.

Vacating an international sea route sets dangerous precedents; the Gulf of Aden remains an important waterway for world trade with approximately 7% of all oil and 5% of LNG passing through the area. If oil tanker traffic were to be re-routed to avoid the Gulf of Aden this would add an additional 10-15 days to transits and increase tanker demand by around 8%.

Armed attacks on merchant vessels transiting the Gulf of Aden, and other waters near the Horn of Africa, have increased in frequency over the past months. Approximately 20,000 vessels a year transit the Gulf of Aden. There were 140 attempts and at least 39 vessels that were boarded detained and/or held hostage by pirates in 2008 (Source: UKMTO). Such acts have usually been conducted with the use or threat of violence, which can be particularly traumatic for those directly involved, as well as their families.

**How tankers differ from, and why they may pose different piracy risk than other vessels.**

Tankers, in loaded condition, are particularly at risk from attack due to a number of factors;

- Speed; generally few laden tankers are capable of speeds in excess of 15 knots. To date all attacks on vessels have been on vessels at speeds of less than 16 knots.
- Freeboard; This is the distance from the water to the deck, as can be seen in the picture above, some types of loaded tankers may be particularly vulnerable as their freeboards are around 12-15 feet and easily scalable via ladder.
- High Value; the cargoes carried are generally of high value and offer an attractive reward or ransom token for the pirates.
- Environmental damage; the potential for an environmental incident exists throughout the attack and any subsequent capture.

**Current Situation**

While OCIMF appreciates the current cooperation between international navies and governments, we also believe we could do better. Given that we expect the tension to continue for an extended period of time optimising the co-operation between all parties is imperative.

The establishment of the Maritime Security Patrol Area, (MSPA), and the establishment of compressed shipping lanes in the Group Transit Area, make naval patrols to deter & disrupt piracy attacks more effective. With the formation of EUNAVFOR, CTF 151 the contribution of NATO and the independent actions of Russia, China, Malaysia and India to send forces to the area the naval presence is now significant.

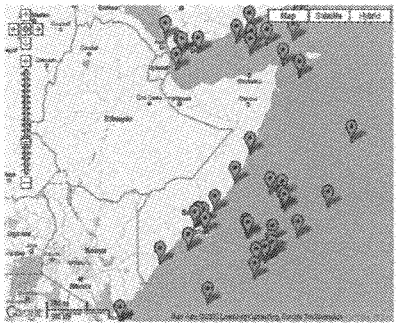
Of concern to industry is the challenge over communication with the various forces, with EUNAVFOR operating from Northwood, UK, and CTF 151 from Bahrain. Shipping organisations, to avoid confusion, need to have a single point of contact for maritime security issues. We also need to look at bringing in "non-aligned" Russia, Malaysia, India, and China. OCIMF recognises that significant improvements have been made however the scale of the task and the area covered continues to increase hence the need for communications protocols to be implemented quickly. We believe that the EUNAVFOR coordination, based on Northwood, (which is also a key NATO center), provides an excellent solution, as it has strong links with the Central Command in Bahrain and is now becoming recognised by industry. OCIMF and industry partners have during the past six months supported EUNAVFOR further with the placement of senior merchant navy personnel within the Northwood staff as liaison officers.

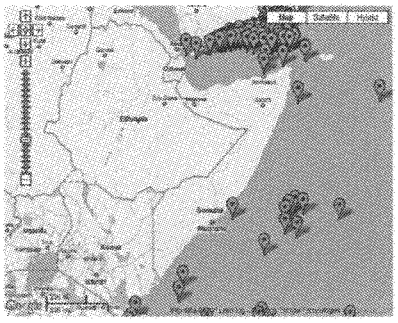
OCIMF has successfully facilitated discussions between agencies through the hosting of a 'Joint Industry Naval Forces Piracy Workshop' in London in December. We intend to follow-up this discussion with a further workshop later in 2009. OCIMF has continued to work within its remit as a consultative organisation to IMO to advance the work and role of IMO in combating piracy and in the development of key UNSCR resolutions. OCIMF supports the actions directed under UNSCR1851 and is a member of the Contact Group working committee on industry.

In 2008 there were attacks on one of every four hundred and eighty vessels transiting the Gulf of Aden, 39 of these attacks were successful. The implementation of the Maritime Security Patrol Area, MSPA, late in 2008 and the introduction of the Group Transit Scheme by EUNAVFOR in December, 2008, appear to have had an effect in reducing the number of successful attacks, though this

period also coincides with a period of seasonally poor weather in the area which may also explain part of the reduction.

Between January 1st – 26th, 2009, there have been two successful hijackings and 11 further attempts. Both successful attempts took place outside the MSPA; the unsuccessful attacks were deterred by a combination of vessels following the Best Practices established by Industry and EUNAVFOR with naval intervention. Approximately 40 pirates have been detained during this period.





The two maps above show the increase in reported piracy attacks from 2007 to 2008, (Source: International Maritime Bureau, IMB).

## Other Areas of Concern

Though the naval forces are currently focused on the Gulf of Aden additional attacks, including the VLCC Sirius Star, have taken place offshore East Africa, as indicated in the charts above. As in the Gulf of Aden these attacks appear to be launched from mother vessels. As the naval forces and actions by merchant vessels are successful within the Gulf of Aden there is a concern that piracy activities will move increasingly into the Indian Ocean.

The Gulf of Aden is currently unique in that the vessels have been hijacked and ransomed. Other areas of concern to the industry are:

- **Nigeria**; The situation in the Niger Delta area of Nigeria has led to attacks on oil facilities and vessels. These attacks have led to personnel being killed, kidnapped and held to ransom.

- **Malacca Straits**; Piracy has been an issue in this area for over 20 years, the common modus operandi is to board the vessel and steal valuables from the vessel and crew. Actions by the littoral states of Indonesia, Malaysia & Singapore have led to a significant decrease in attacks in recent months.
- **Brazil;** Similar to the Malacca Straits these attacks are restricted to robbery of valuables from the vessel and crew.

The International Maritime Bureau, IMB, tracks data on piracy attacks through their coordination center in Kuala Lumpur, Malaysia.

**Incidents**

In all of the reported incidents the pirates attack from small open boats or 'skiffs'. Generally the pirates fire on the vessels in order to persuade them to stop and allow boarding. The pirates appear able to board vessels at speeds up to 16 knots.

The above picture shows a typical skiff with pirates displaying armaments including an RPG.

Sirius Star (Tanker)

The vessel was attacked approximately 300 miles East of Somalia. Access to the vessel was made via the stern where the freeboard was approximately 15 feet. The vessel had followed all best practices and was taken advice throughout the incident directly from the UK Maritime Trade Office in Dubai and EUNAVFOR in Northwood, UK. The combination of a calm sea, low freeboard and speed of 15 knots allowed the pirates to gain access. The vessel was held off the coast of Somalia for 57 days. Normal process after capture is for the vessel to be taken to an anchorage where the pirates are reinforced by 30-40 additional guards.

At the time of attack the vessel was headed south for passage through the Mozambique Channel, following the incident many owners have re-routed vessels to the East of Madagascar.

Maersk Regensburg (Container Vessel)

Vessel was attacked approximately 200 miles off Mombasa, though hit by multiple armaments the vessel was able to out run the pirates by increasing speed to 18 knots. Following this attack revised instructions were issued to Masters restricting passage through the high risk area of vessels with either speed less than 18 knots or having a freeboard less than 10 metres, (33 feet).

Damage caused by RPG's to Maersk Regensburg

**Lessons Learned**

Key lessons learned have been incorporated into the OCIMF booklet, Piracy 'The East Africa/Somalia Situation; Practical Measures to Avoid, Deter or Delay Piracy Attacks'. In summary these are;

1. Risk Assessment

Prior to transiting the High Risk Area, the ship owner and ship Master should carry out their own risk assessment to assess the likelihood and consequences of piracy attacks to the vessel, based on the latest available information. The output of this risk assessment should identify measures for prevention, mitigation and recovery and will mean combining statutory regulations with supplementary measures to combat piracy.

## 2. Preparation

Recent experience demonstrates that vessels can significantly improve their chances of avoiding or delaying an act of piracy by taking a number of relatively simple preparatory steps

In a typical pirate attack small high speed (up to 25kts) open boats deploy from a mother ship, which is often a pirated fishing vessel. Commonly two or more of these small, high speed, open boats are used in attacks, often approaching from either quarter of the intended target.

Experience also suggests that, before pirates have gained control of a vessel, the sudden appearance of Naval Forces by air or sea usually persuades them to abandon the attack. Therefore, delaying the pirates at any stage of an attack buys additional time and can greatly increase the chance of Naval Force intervention.

Careful preparations by the ship, including specific training for the crew, may dissuade the pirates from pressing home an attack and hijacking a vessel if their closer inspection of the potential target reveals a number of protection measures.

If pirates choose to proceed with an attack the physical preparations may prevent or delay boarding of the vessel. If the pirates do manage to board the vessel, preparations onboard can still delay or prevent them taking control and hijacking the vessel.

Owners of vessels that make frequent transits through the High Risk Area may consider making further alterations to the vessel and/or provide additional equipment and/or manpower as a means of further reducing the risk of piracy attack.

## 3. Conduct During Transit of the High Risk Area

Before entering the High Risk Area, ship owners and Masters should:

- Gather up-to-date information on the situation
- Review the risk assessment in light of latest information
- Based on the risk assessment, make necessary preparations
- Register passage with Maritime Security Centre-Horn of Africa, based at EUNAVFOR/NATO base at Northwood. (www.mschoa.org).
- Report to UKMTO

Once in the High Risk Area, vigilance is likely to be the best form of defense against attacks by pirates. On entering the High Risk Area, the Master should therefore, as a minimum, set Security Level 2 as defined by the ISPS Code. (Security Level 2 actions should be reviewed to ensure they are appropriate to the threat – deck patrols are not recommended).

A final check should be carried out to verify that all defense and security measures are in place, or to hand, and fully operational.

Any equipment that may be required at short notice, for example fire pumps, should be tested and left ready for use.

It is recommended that the transit through the High Risk Area is conducted at Full Sea Speed.

It is further recommended that vessels review their machinery to ensure that everything is in full working order and consider operating two steering motors and two generators.

As it is considered unlikely that the pirates currently have the ability to monitor Automatic Identification System, AIS, transmissions, it is recommended that the AIS be left on but that the amount of information be restricted to ship's identity, type, position, course, speed, navigational status and other safety-related information which may be of use to the Naval Forces in the event of an attack.

4. Actions on Encountering Pirates

Maintain maximum sustainable speed and consider evasive maneuvers while maintaining maximum speed to create a confused wake. Maneuver to remove any lee from either side of the ship (sea state dependent).

Activate fire pumps to commence use of fire hoses and water monitors to cover areas of the vessel vulnerable to attempts to board. The water spray and jets are likely to hamper the pirates' physical attempts to board and may deluge their boats, swamping them or causing damage to the engine.

Crew alerted and told to go to their designated pirate attack muster station, roll call carried out to ensure that all crew members are safe and accounted for – once complete all positions to report to the bridge to confirm citadel secured.

**Rules of Engagement**

OCIMF strongly supports the use of non-lethal defensive measures to Avoid, Deter or Delay any pirate attack. Evidence to date is that vessels, in the Gulf of Aden, that have followed the Best Practices as adopted within the OCIMF booklet are better able to avoid, deter or delay an attack.

Oil tankers and LNG ships do not provide a platform conducive for armed guards or gunfire. OCIMF does not support the use of armed guards for a number of reasons;

- Significantly increased risk of personnel injury, fire & explosion.
- Risk of escalation of conflict – Pirates will assume all vessels are armed and attack tempo will increase accordingly.
- Difficulties of firing on a small boat as opposed to pirates who have a large target.
- Dealing with pirates onboard after a successful attack; liable to lead to increased risk of harm to crew.
- Armed guards are not supported by key International Organizations.
- Consequences of injury to pirates due to gunfire.
- Possibility of mistaken identity, local fishermen are known to carry guns as self protection against pirates and sharks.
- Master has command of the vessel and is responsible for all personnel onboard. Merchant vessels are not warships and it is very difficult for Masters to control weapons teams.

**What is, or can be done, by the industry & governments**

Industry

It is estimated that as many as 30% of the vessels transiting the Gulf of Aden are not following the minimum guidance outlined in publications such as the OCIMF guideline, Piracy 'The East Africa/Somalia Situation; Practical Measures to Avoid, Deter or Delay Piracy Attacks'. These vessels put themselves at serious risk of harm and the ease of their capture encourages piracy to continue. OCIMF along with its industry colleagues are working with Naval Forces and governments through the Contact Group, EUNAVFOR, IMO and other forums to reach out to vessels not complying with basic precautions.

All vessels are required to operate to the requirements of the ISPS code, as a minimum vessels must review their procedures to ensure they are fully updated to meet the piracy threat.

Governments

OCIMF supports the work of the Contact Group on Piracy off the Coast of Somalia, (CGPCS), as proposed under UNSCR1851. In addition OCIMF believes the following actions at Government & International organisation level will help to bring an end to International Piracy on the High Seas in this area.

1. Communication

We need to ensure that lines of communication are kept simple; there is currently a significant amount of confusion in regard to overall operational control. Vessels require a single point of contact for assistance, particularly when under attack. OCIMF supports the continued utilisation of Northwood, UK, and the forward assistance provided by UKMTO in Dubai and MARLO in Bahrain. OCIMF does not support the establishment of further regional coordination centres as this is likely to do little to assist in mitigating piracy on the high seas.

2. Continued Protection

Somalia is in many ways a special case, as it is a failed state which is unable to secure its territorial waters and its legal system is inadequate to deal with the impartial prosecution and detention of its own citizens who undertake piracy. Until this situation is resolved it is likely that piracy will remain a substantive issue off the coast of Somalia including both the Gulf of Aden and the North Western part of the Indian Ocean.

In addition to the continued role of Industry in ensuring its vessels are not easy targets we require long term commitments from Naval Forces to provide protection. We also recognise that littoral states can provide protection through Coastguards and encourage Navies to play a role of developing the Coastguards of the littoral states. In the long term Industry is not concerned whether protection comes from Navies or Coastguard, provided it is effective. Mixture has its advantages: Surveillance and intervention capability of navies, legal capabilities of Coastguards. Better still if Coastguards are from littoral states then they can follow through on prosecution. It is OCIMF's belief that governments of OECD countries should consider accelerating funding and training programmes for Coastguard development in littoral states.

3. Provide for better legislation and prosecution

- Current legislation - The Problem
  - The absence of an internationally-agreed procedure for prosecuting captured pirates has discouraged many nations from taking more vigorous action against piracy.

- Future - Establish an International Tribunal
  - International tribunals such as the International Criminal Court in The Hague ("ICC") are established under a treaty to prosecute offences in circumstances where national courts are unable or unwilling to prosecute.

- A more practical alternative is to establish treaties to allow prosecution within the littoral states to the conflict; probably the most suitable places for prosecuting Somali pirates are Kenya and the Yemen, which are both close to the areas where piracy occurs. OCIMF supports this approach as it allows the littoral states who do not have naval assets to support the anti-piracy efforts through successful prosecution of the pirates.

- Legal and policy difficulties arising from the capture of pirates are may be avoided or overcome by having Law Enforcement Detachments ("LEDETs") from the prosecuting countries on board vessels, to arrest pirates at source.

- An important role for Industry is to ensure that evidence is clearly recorded and witnesses as requested are available to the courts.

Attachment 1

**Piracy - The West Africa/Somalia Situation**
**Practical Measures to Avoid, Deter or Delay Piracy Attacks**

This booklet has been produced by the Oil Companies International Marine Forum (OCIMF), the International Association of Independent Tanker Owners (INTERTANKO), International Association of of Dry Cargo Shipowners (INTERCARGO), the ICC International Maritime Bureau (IMB) and the Society of International Gas Tanker and Terminal Operators (SIGTTO) with the aim of providing practical information to assist seafarers faced with potential or actual acts of piracy while operating in the Gulf of Aden and other waters near the Horn of Africa (the 'High Risk Area'). The High Risk Area covers that area of the ocean where attacks are known to have taken place at the time of writing (January 2009), but this may change over time if the pirates change their tactics and/or extend their area of operation.

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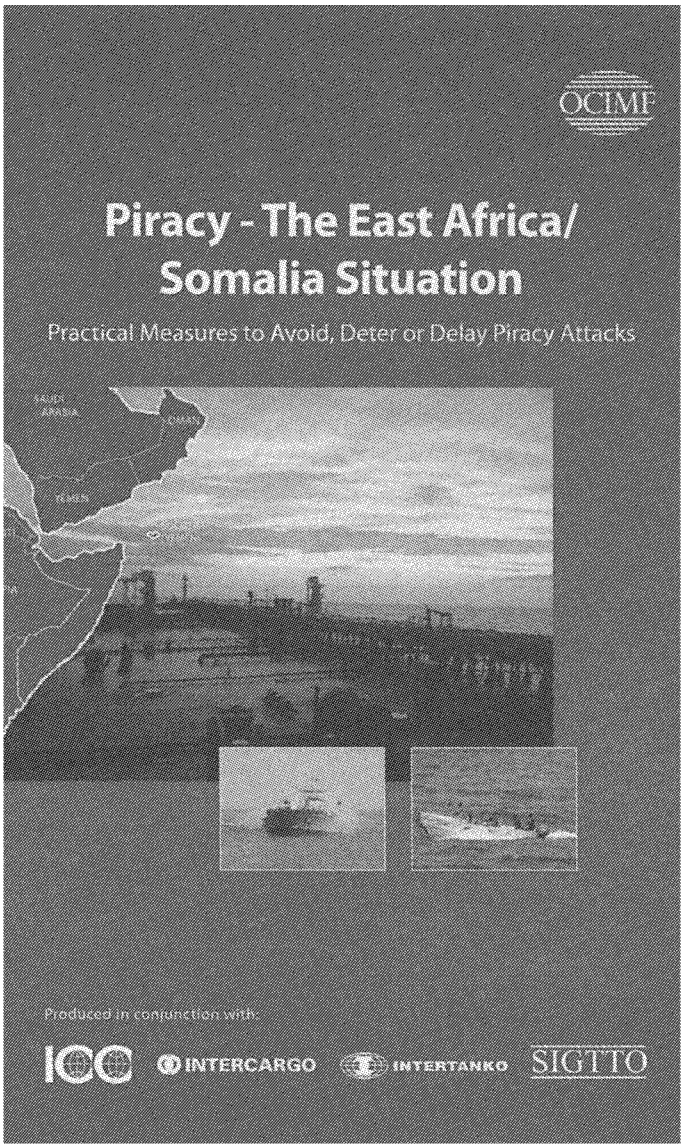
OCIMF
Piracy - The East Africa/
Somalia Situation
Practical Measures to Avoid, Deter or Delay Piracy Attacks
Produced in conjunction with:
ICC
INTERCARGO
INTERTANKO
SIGTTO

OCIMF

# Piracy

## The East Africa/Somalia Situation
## Practical Measures to Avoid, Deter or Delay Piracy Attacks

***OCIMF's mission is to be the foremost authority on the safe and environmentally responsible operation of oil tankers and terminals, promoting continuous improvements in standards of design and operation.***

*Issued by the*

***Oil Companies International Marine Forum***

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**Oil Companies International Marine Forum (OCIMF)** is a voluntary association of oil companies having an interest in the shipment and terminalling of crude oil and oil products. OCIMF is organised to represent its membership before, and consult with, the International Maritime Organization (IMO) and other government bodies on matters relating to the shipment and terminalling of crude oil and oil products, including marine pollution and safety.

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- **IMB.** The ICC International Maritime Bureau (IMB) is a specialised division of the International Chamber of Commerce, set up in 1981 to look into shipping and trading crime. The IMB runs the Piracy Reporting Centre (PRC) in Kuala Lumpur which is the only 24 hour manned centre able to process reports of attacks against ships worldwide. It passes on this information immediately to the nearest law enforcement agencies for action. Set up in 1991, it acts as a focal point for the industry in matters relating to maritime piracy. http://www.icc-ccs.org/

- **INTERCARGO** (International Association of Dry Cargo Shipowners) has, since 1980, represented the interests of owners, operators and managers of bulk carrier and dry cargo shipping and works closely with the other international associations to promote a safe, high quality, efficient and profitable industry. It has 155 Full and Associate members located around the world. http://www.intercargo.org

- **INTERTANKO** is the International Association of Independent Tanker Owners. INTERTANKO has been the voice of independent tanker owners since 1970, ensuring that the oil that keeps the world turning is shipped safely, responsibly and competitively. INTERTANKO has a vision of a professional, efficient and respected industry, that is dedicated to achieving safe transport cleaner seas and free competition. http://www.intertanko.com/

- **SIGTTO** (The Society of International Gas Tanker and Terminal Operators) was established in 1979 to encourage safe and responsible operation of liquefied gas tankers and marine terminals handling liquefied gas, to develop advice and guidance for best industry practice among its members and

to promote criteria for best practice to all who either have responsibilities for, or an interest in, the continuing safety of gas tankers and terminals. The Society is registered as a 'not for profit' entity in Bermuda and is owned by its members who are predominately the owners of assets in the LPG/LNG ship and terminal business. The Society has observer status at IMO. http://sigtto.org/

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# Introduction

Piracy is a term used to describe acts of armed robbery, hijacking and other malicious acts against ships in international waters. They are carried out with the intent of stealing valuables onboard and/or extorting money from ship owners and/or other third party interests by holding the ship or crew to ransom. The International Maritime Bureau (IMB) defines piracy as "the act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act". Since this definition reflects the popular understanding of the word 'piracy', this term will be used throughout this booklet to describe any such act against a ship.

Armed attacks on merchant vessels transiting the Gulf of Aden, and other waters near the Horn of Africa, have increased in frequency over the past months. There were 140 approaches and at least 39 vessels actually detained by pirates in 2008 (Source: UKMTO). Such acts have usually been conducted with the use or threat of violence, which can be particularly traumatic for those directly involved, as well as their families.

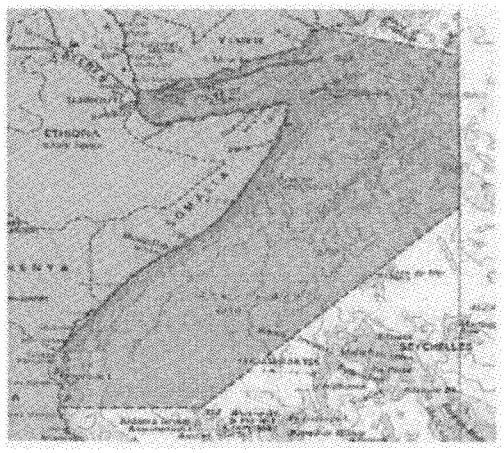

*Diagram 1 - The High Risk Area*

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As the situation in the High Risk Area is subject to change it is recommended that frequent reference is made to the Maritime Security Centre – Horn of Africa website – www.mschoa.org.

**IMPORTANT: The extent to which the guidance given in this booklet is followed is always to be at the discretion of the ship owner and Master.**

Section 1

# Risk Assessment

Prior to transiting the High Risk Area, the ship owner and ship Master should carry out their own risk assessment to assess the likelihood and consequences of piracy attacks to the vessel, based on the latest available information (see Annex 2 for useful contacts and potential sources of information). The output of this risk assessment should identify measures for prevention, mitigation and recovery and will mean combining statutory regulations with supplementary measures to combat piracy.

Factors to be considered in the risk assessment should include, but may not be limited to, the following:

Crew Safety: The primary consideration should be to ensure the safety of the crew. Care should be taken, when formulating measures to prevent illegal boarding and access to superstructure from the outside, that crew members are not trapped inside and so unable to escape in the event of another type of emergency, such as a fire.

Freeboard: Pirates will probably try to board at the lowest point above the waterline, usually on either quarter. Recent trends suggest that vessels with a minimum freeboard greater than 8 metres have a much greater chance of successfully escaping a piracy attempt than those with less freeboard.

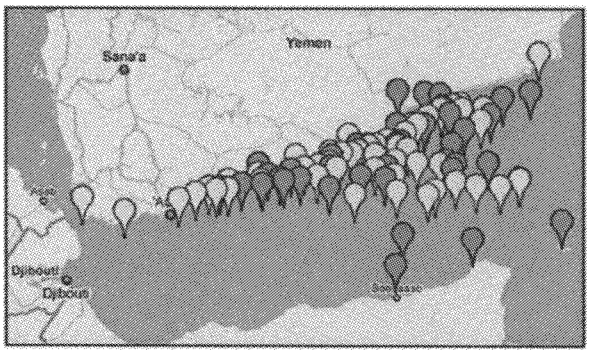
Speed: If a potential attack is detected early, the ability to outrun the attackers will defeat the attack before it develops. It is therefore recommended that vessels proceed at Full Sea Speed. To date, there have been no reported successful attacks at speeds over 16 knots. (If a vessel is part of a "Group Transit" (see page 19 and for further details see www.mschoa.org) speed may be required to be adjusted.)

Prevailing weather: Pirates operate from very small craft, which limits their operations to moderate weather conditions. While no statistics exist, it is likely to be difficult to operate these small craft in sea states 3 and above.

Time of transit: Transiting the High Risk Area during the hours of darkness appears currently to be a lower risk option. All but one of the incidents to date have taken place during daylight hours, the only exception being an attack carried out in bright moonlight. Daylight attacks are more likely to take place during the early morning or late evening. It is unlikely that a vessel will be able to complete a transit of the High Risk Area during the hours of darkness. Therefore, Masters may wish to consider which are likely to be the highest risk areas (as determined by latest information obtained just prior to the transit) and plan to travel through those areas during the hours of darkness. Any perceived reduction in risk by transiting in darkness needs to be balanced against the fact that daylight transiting allows for early detection of potential attackers.

Early awareness of an impending attack has been identified as a very important factor when differentiating between vessels that have evaded an attack and those that were successfully attacked.

Piracy activity: The risk of a piracy attack appears to increase immediately following the release of a hijacked vessel and/or following a period of poor weather.




**2008 - Gulf of Aden**

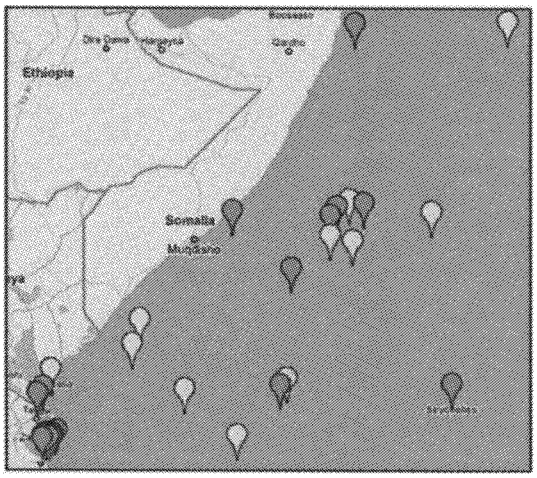
Total number of reported incidents **92.**

*Of these, there were:*

**60** Attacks on merchant vessels **(31 vessels were fired at) and**

**32** Merchant vessels hijacked

*(Source IMB)*




**2008 - Area to the south of the Horn of Africa - Associated with Somali Piracy**

Total number of reported incidents **19.**

*Of these, there were:*

**9** Attacks on merchant vessels **(of which 8 were fired at) and**

**10** Merchant vessels hijacked

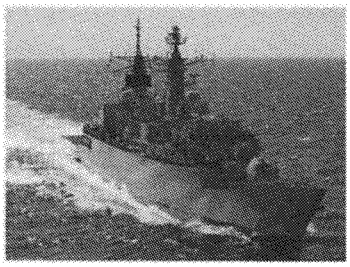
*(Source IMB)*

6

Section 2

# Preparation

Recent experience demonstrates that vessels can significantly improve their chances of avoiding or delaying an act of piracy by taking a number of relatively simple preparatory steps.



*HMS Cumberland, © Crown Copyright/MOD*

In a typical pirate attack small high speed (up to 25kts) open boats deploy from a mother ship, which is often a pirated fishing vessel (see page 25). Commonly two or more of these small high speed open boats are used in attacks, often approaching from either quarter of the intended target.

Experience also suggests that, before pirates have gained control of a vessel, the sudden appearance of Naval Forces by air or sea usually persuades them to abandon the attack. Therefore, delaying the pirates at any stage of an attack buys additional time and can greatly increase the chance of Naval Force intervention.

Careful preparations by the ship may dissuade the pirates from pressing home an attack and hijacking a vessel if their closer inspection of the potential target reveals a number of protection measures.

If pirates choose to proceed with an attack the physical preparations may prevent or delay boarding of the vessel. If the pirates do manage to board the vessel, preparations onboard can still delay or prevent them taking control and hijacking the vessel.

Owners of vessels that make frequent transits through the High Risk Area may consider making further alterations to the vessel beyond the scope of this booklet and/or provide additional equipment and/or manpower as a means of further reducing the risk of piracy attack.

The guidance below primarily focuses on preparations that are within the capability of the ship's crew, using equipment and manpower that will normally be available. The guidance is based on experience of piracy attacks to date and may require amendment over time if the pirates change their methods.

IMPORTANT: It is very important that, before any physical preparations are commenced, a full risk assessment is carried out as outlined in this Section. In particular, it is essential that fire exit routes are available and that access to life saving craft and life saving appliances is maintained.

The preparatory measures that follow will be an output of the risk assessment, and are likely to include the following:

## Implementation of the Ship Security Plan (SSP)

A cornerstone of any response to an attack by pirates will be the Ship Security Plan (SSP), as required by the ISPS Code, and its effective implementation. This booklet is intended to supplement the ISPS not replace it. It is therefore important that, before entering the High Risk Area, the ship's crew should have practised and perfected the procedures set out in the SSP, taking into account the guidance given in Part B of the ISPS Code.

The use of private security firms for additional security and/or onboard training is solely at the company's discretion.

**Arming of ships and/or ships crews and the employment of armed private security guards is not recommended.**

## Watchkeeping and Enhanced Vigilance

Prior to commencing transit of the High Risk Area, it is recommended that preparations are made to support the requirement for increased vigilance by:

- Making arrangements to ensure additional lookouts for each Watch
- ensuring that there are sufficient binoculars for the enhanced bridge team
- considering night vision optics, if available.

*Well constructed dummies placed at strategic locations around the vessel can give an impression of greater numbers of people on watch.*

## Closed Circuit Television (CCTV)

Once an attack is underway and pirates are firing weaponry at the vessel, it is difficult and dangerous to observe whether the pirates have managed to gain access to the vessel. The use of CCTV coverage allows a degree of monitoring of the progress of the attack from a less exposed position:

- Consider the use of CCTV cameras to ensure coverage of vulnerable areas, particularly the poop deck
- consider positioning CCTV monitors at the rear of the bridge in a protected position

- further CCTV monitors could be located at the Piracy Attack Crew Muster Point (see page 17)
- Recorded CCTV footage may provide useful evidence after an attack - see page 28.

## Alarms

Sounding the ship's alarms/whistle serves to inform the vessel's crew that a piracy attack has commenced and, importantly, demonstrates to any potential attacker that the ship is aware of the attack and is reacting to it. It is important to ensure:

- Ensure that the Piracy Alarm is distinctive to avoid confusion with other alarms potentially leading to the crew mustering at the wrong location outside the accommodation
- Crew members are familiar with each alarm, including the signal warning of an attack and an all clear, and the appropriate response to it
- exercises are carried out prior to entering the High Risk Area.

## Upper Deck Lighting

It is recommended that the following lights are available and tested:

- Weather deck lighting around the accommodation block and rear facing lighting on the poop deck consistent with Rule 20(b) of the Collision Regulations
- search lights for immediate use when required

**Navigation lights should not be switched off at night.**

## Deny Use of Ship's Tools and Equipment

Pirates generally board vessels with little in the way of equipment other than personal weaponry. It is important to try to deny pirates the use of ship's tools or equipment that may be used to gain entry into the superstructure of the vessel. Tools and equipment that may be of use to the pirates should be stored in a secure location.

## Protection of Equipment Stored on the Upper Deck

Small arms and other weaponry are often directed at the vessel, and are particularly concentrated on the bridge, accommodation section and poop deck.

- Consideration should be given to providing protection, in the form of sandbags or Kevlar blankets, to gas bottles or containers of flammable liquids that must be stored in these locations
- ensure that any excess gas bottles or flammable materials are landed prior to a transit.

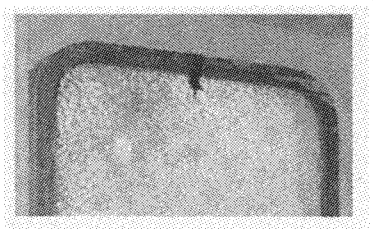
## Control of Access to Accommodation and Machinery Spaces

It is very important to control access routes to deter or delay pirates who have managed to board a vessel and are trying to enter accommodation or machinery spaces.

- All doors and hatches providing access to the accommodation and machinery spaces should be secured to prevent them being opened by pirates gaining access to the upper deck of the vessel
- careful consideration should be given to the means of securing doors and hatches

- it is recommended that once doors and hatch are secured a designated and limited number are used for access when required
- where the door or hatch is on an escape route from a manned compartment, it is essential that it can be opened by a seafarer trying to effect an exit by that route. Where the door or hatch is locked, it is essential that a key is available, in a clear position, by the door or hatch
- where doors and hatches are watertight, ensure all clips are fully dogged down in addition to any locks.

## Enhanced Bridge Protection



*Further protection against flying glass can be provided by fitting security glass film*

The Bridge is usually the focus for the attack. In the initial part of the attack, pirates direct weapons fire at the bridge to coerce the vessel to stop. Once onboard the vessel, they usually try to make for the bridge to enable them to take control. Consideration of the following further protection enhancements might be considered:

- Kevlar jackets and helmets available for the bridge team to provide a level of protection for those on the bridge during an attack. (If possible, jackets and helmets should be in a non–military colour)

- while most bridge windows are laminated, further protection against flying glass can be provided by the application of security glass film
- fabricated metal (steel/aluminium) plates for the side and rear bridge windows and the bridge wing door windows, which may be rapidly secured in place in the event of an attack
- the after part of both bridge wings (often open) can be protected by a wall of sandbags
- razor/barbed wire barricade on the external ladders on either side of the vessel leading up to bridge wing.

## Physical Barriers

Pirates typically use ladders and grappling hooks with rope attached to board vessels underway, so physical barriers can be used to make this difficult. Before constructing any physical barriers, it is recommended that a survey is conducted to identify areas vulnerable to pirates trying to gain access:

- The construction of barriers will depend on the precise location used but might include barbed or razor wire
- extending the width of gunwales to prevent ladders and hooks gaining purchase may be considered
- coating gunwhales and other potentially vulnerable structures with 'anti-climb' paint may be considered
- electrified barriers are not recommended for hydrocarbon carrying vessels, but following a safety assessment may be appropriate for some other types of vessel
- it is recommended that warning signs of the electrified fence or barrier are displayed – inward facing in English/language of the crew, outward facing in Somali
- the use of such outward facing warning signs might also be considered even if no part of the barrier is actually electrified.

*Example of a warning sign in Somali, which states –*
*DANGER HIGH VOLTAGE ELECTRIC BARRIER*

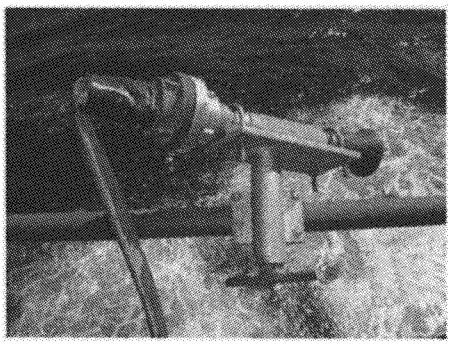
## Water Spray and Foam Monitors

The use of water spray and/or foam monitors has been found to be effective in detering or delaying pirates attempting to board a vessel.

*Picture courtesy of NATO (2008)*

- Manual operation of hoses and foam monitors is not recommended as this is likely to place the operator in a particularly exposed position
- it is recommended that hoses and foam monitors (delivering water) should be fixed in position to cover likely pirate access routes
- once rigged and fixed in position, it is recommended that hoses and foam monitors are in a ready state requiring just the remote activation of fire pumps to commence delivery of water. Actual foam supply should not be used as this will be depleted relatively quickly and will leave the vessel exposed in the event that the foam supply is required for firefighting purposes
- observe the water and foam monitor spray achieved by the equipment once fixed in position to ensure effective coverage of vulnerable areas

- improved water coverage may be achieved by using baffle plates fixed a short distance in front of the nozzle.



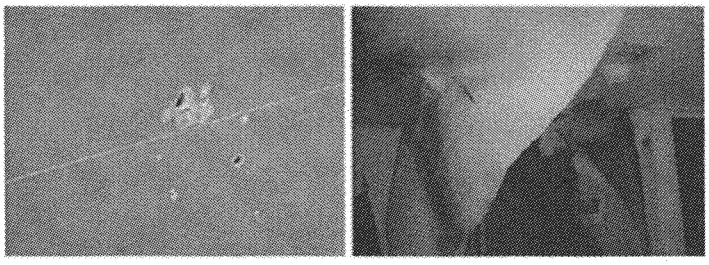
## Piracy Attack Crew Muster Point

It is recommended that a Piracy Attack Crew Muster Point is designated for use in the event of a piracy attack. The location of the muster point should be chosen to provide maximum physical

protection to the crew. It is likely to be low and central in the accommodation section. It is recommended that the muster point is provided with:

- Food and water
- toilet facilities
- 2 independent means of communication with the bridge (eg radio and telephone)
- fire fighting equipment
- first aid equipment
- portable lighting
- CCTV monitor
- list of ship's crew.

Procedures should be in place for mustering the crew and for ensuring that all are accounted for at their designated positions. These are likely to be the Piracy Attack Crew Muster Point, the Bridge and the Machinery Control Room.



Section 3

# Conduct During Transit of the High Risk Area

Before entering the High Risk Area, ship owners and Masters should:

- Gather up-to-date information on the situation
- review the risk assessment (see Section 1) in light of latest information
- based on the risk assessment, make necessary preparations (see Section 2)
- register passage with Maritime Security Centre-Horn of Africa (www.mschoa.org - see Annex 2).
- report to UKMTO (see Annex 2)

**IMPORTANT: Any changes or updates in vessels' passage plan should be reported directly to UKMTO. In any event, 6-hourly position reports should be passed directly to UKMTO.**

A Maritime Security Patrol Area (MSPA), not marked with navigation marks, has been established in the Gulf of Aden. To assist the protection of merchant vessels 'transit corridors' through the MSPA have been designated (for further details and the coordinates of the transit corridors and procedures for Group Transits through the corridors see www.mschoa.org ). The use of Group Transits is encouraged by the MSC as it assists further the protection of merchant vessels by optimising the co-ordination of Naval assets, including air support

Once in the High Risk Area, vigilance is likely to be the best form of defence against attacks by pirates. On entering the High Risk Area, the Master should therefore, as a minimum, set Security Level 2 as defined by the ISPS Code. (Security Level 2 actions should be reviewed to ensure they are appropriate to the threat – deck patrols are not recommended).

A final check should be carried out to verify that all defence and security measures described in this section are in place, or to hand, and fully operational. Any equipment that may be required at short notice, for example fire pumps, should be tested and left ready for use.

It is recommended that the transit through the High Risk Area is conducted at Full Sea Speed.

It is further recommended that vessels review there machinery state and consider operating two steering motors and two generators.

There are differing views on whether the AIS should be switched on or off during the time that the ship is in the High Risk Area. SOLAS requires that ships fitted with AIS maintain it in operation at all times except where international agreements, rules or standards provide for the protection of navigational information. If the AIS is switched off it is very difficult for the Naval Forces to identify, track and monitor merchant vessels transiting the High Risk Area.

As it is considered unlikely that the pirates currently have the ability to monitor AIS transmissions, it is recommended that the AIS be left on but that the amount of information be restricted to ship's identity, type, position, course, speed, navigational status and other safety-related information which may be of use to the Naval Forces in the event of an attack. However, it is recognised that the Master may exercise his discretion and switch off the AIS.

**IMPORTANT: If the AIS is switched off, it should be activated at the time of an attack.**

The following list of additional activities primarily concerns mobilisation or implementation of measures put in place during the preparatory phase.

## Watchkeeping and Vigilance:

- Bridge watches and look-outs increased
  - additional look-outs posted on the Bridge. (Note: Well constructed dummies placed at strategic locations around the vessel give the impression of greater numbers of people on watch)
  - radar watch maintained. (Note: Boats used by pirates are small, possibly of wood or GRP construction, and therefore poor radar targets)
  - constant radio watch maintained on all distress and safety frequencies particularly VHF Channel 16 and Maritime safety broadcasts for the area monitored, backed up by VHF Channel 8, which is monitored by Naval vessels
  - night vision optics for use during the hours of darkness if available
- engine room manned and ready for manoeuvring
- all non-essential work on deck suspended
  - increased ability to keep crew members in a secure area
  - capacity to increase the number of lookouts.

## Measures to deter or prevent boarding attempts:

- Transit of the High Risk Area at Full Sea Speed. (Note: The small boats used by the pirates can be vulnerable to stern wash)
- maximum available lighting to illuminate the area aft of the bridge
- CCTV in operation (if fitted)
- outboard equipment raised and/or positioned inboard
- fire hoses rigged and fixed in position and foam monitors in a ready state.

## Measures to prevent access to accommodation and machinery spaces:

- Access to bridge, engine room, steering gear room and accommodation secured and controlled. External doors secured from the inside
- 'citadel' method of protection within the secured accommodation block, while ensuring that escape in an emergency is always quickly possible
- Piracy Attack Crew Muster Point fully equipped and provisioned
- tools or other implements that may be of use to the pirates stored in a secure location
- physical barriers at vulnerable points.

## Alarms:

- Alarm signals, including ship's whistle, ready for immediate use
- crew members familiarised with the various alarms used onboard the vessel and their responses to them.

## Communications:

- List of contacts, prepared messages and the policy regarding communications available to all designated officers who may need to use them, and also posted in the wheelhouse. (Note: This information should also be contained within the Ship Security Plan)
- minimise external communications (radios, handsets and AIS information) to essential safety and security-related communication and SOLAS information only
- crew working outside secure areas on an exceptional basis only and in constant communication with the bridge.

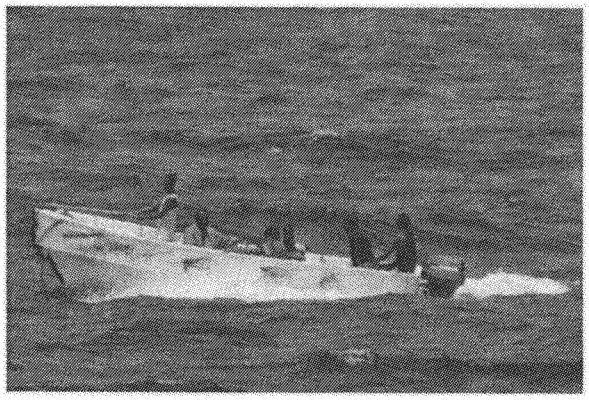
Section 4

# Actions on Encountering Pirates

## Vessel acting suspiciously

Within the High Risk Area, there will be small vessels engaged in legitimate activities. Close CPAs from such vessels inevitably raise concerns that they may be pirates. Assistance in identifying whether a particular vessel is likely to be a pirate or not can be obtained by a telephone call to the UKMTO. (Contact details in Annex 2).

## Identified pirate vessel in vicinity of own vessel:



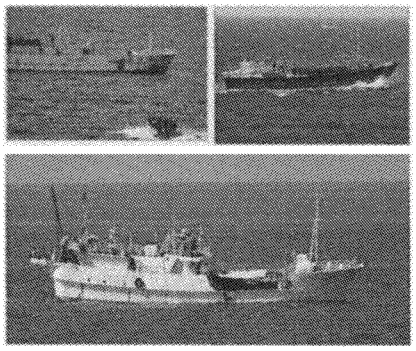
If the preparation and precautionary measures have been effective, a possible attack will be detected early. At this time, the Master should:

- Activate the ship's security alarm system
- alert the following organisations[1] to the fact that an attack is likely to take place
  - The United Kingdom Maritime Trade Operations (UKMTO)[1]
  - The Maritime Security Centre - Horn of Africa (MSCHOA)[1]

  The organisations should be further advised if the threat increases or fails to materialise

- Consider whether a distress message should be broadcast.

Standard ship's message formats are provided in Annex 1.



*Types of vessels used as mother ships from which pirates operate small open boats for carrying out attacks*

[1] *The organisations listed above have assets and may be able to provide direct assistance. They will relay messages to other Naval units as appropriate. Contact details are contained in Annex 2.*

## Attack imminent:

**Active measures to deter or prevent boarding attempts:**

- Maintain maximum sustainable speed
- Consider evasive manoeuvres while maintaining maximum speed to create a confused wash
- manoeuvre to remove any lee from either side of the ship (sea state dependent)
- activate fire pumps to commence use of fire hoses and water monitors to cover areas of the vessel vulnerable to attempts to board. The water spray and jets are likely to hamper the pirates' physical attempts to board and may deluge their boats, swamping them or causing damage to the engine.

**Measures to ensure crew safety and to retain control of the ship:**

- Crew alerted and told to go to their designated pirate attack muster station
- roll call carried out to ensure that all crew members are safe and accounted for – once complete all positions to report to the bridge to confirm
- citadel secured.

## Attack in progress:

- Continue evasive measures as outlined above
- 'mayday' call on VHF Channel 16 (and VHF Channel 8 as this is also monitored)
- report immediately to UKMTO and MSCHOA
- distress message via the DSC (Digital Selective Calling) system and Inmarsat–C as applicable

- activate all available defensive measures.

Attacks have been thwarted in several cases where the defensive measures described in this booklet were used and the pirates chose not to press home the attack. It is therefore important to try to resist the pirate attack for as long as possible without further endangering the crew.

## Pirates onboard:

Once the pirates are onboard the ship:

- Try to remain calm
- stay together so far as it is practicable to do so
- crew members operating outside secure areas to remain in constant communication with the Bridge
- offer no resistance
- cooperate with the pirates
- leave CCTV recorders running.

### DO NOT:

- Use firearms, even if available
- use flash photography, which may be mistaken for muzzle flashes by the pirates or by any military forces sent to assist
- use flares or other pyrotechnics as weapons against pirates.

In the event that military personnel take action onboard the vessel, and unless otherwise directed, all personnel should keep low to the deck, cover their head with both hands (always ensuring that hands are empty and visible). Be prepared to answer questions on identity and status, as military personnel may take some time to differentiate ship's crew from pirates.

Section 5

# Post Incident Actions and Reporting

It may be difficult to determine the point at which an attack has been repulsed. It is strongly recommended that the crew remain at secure locations until there is a degree of certainty that all of the pirates have either broken off the attack or have left the vessel.

Once it is known that an attack is over, and after securing the safety of the ship and crew:

- Make post incident reports to:
  - The UK Maritime Trade Operations (UKMTO) Dubai
  - The Maritime Security Centre-Horn of Africa (MSCHOA)
  - The International Maritime Bureau (IMB)
- carry out an internal debrief of the ship's company
- offer professional counselling to those who may have been affected by events
- make a post incident report to owners/operators
- consider an appropriate mechanism for informing next of kin
- secure any evidence of the attack, including CCTV coverage.

ANNEX 1

# Standard Ship's Message Format[1]

## Report 1 – Initial message – Piracy/armed robbery attack alert

1. Ship's name and callsign, IMO number, Inmarsat IDs (plus ocean region code) and MMSI

- MAYDAY/DISTRESS ALERT (see note)
- URGENCY SIGNAL
- PIRACY/ARMED ROBBERY ATTACK

2. Ship's position (and time of position UTC)

- Latitude
- Longitude
- Course
- Speed (knots)

3. Nature of event

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**Note:** It is expected that this message will be a Distress Message because the ship or persons will be in grave or imminent danger when under attack. Where this is not the case, the word MAYDAY/DISTRESS ALERT is to be omitted.

Use of distress priority (3) in the Inmarsat system will not require MAYDAY/DISTRESS alert to be included.

## Report 2 – Follow-up report – Piracy/armed robbery attack alert

1. Ship's name and callsign, IMO number

2. Reference initial PIRACY/ARMED ROBBERY ALERT

3. Position of incident
- Latitude
- Longitude
- Name of the area

4. Details of incident:
- While sailing, at anchor or at berth
- method of attack
- description/number of suspect craft
- number and brief description of pirates
- what kind of weapons did the prates carry
- any other information (eg language spoken)
- injuries to crew and passengers
- damage to ship (which part of the ship was attacked?)
- brief details of stolen property/cargo
- action taken by the Master and crew
- was incident reported to the coastal authority and to whom?
- action taken by the Coastal State.

5. Last observed movements of pirates/suspect craft

6. Assistance required

7. Preferred communications with reporting ship:
- Appropriate Coast Radio Station
- HF/MF/VHF
- Inmarsat IDs (plus ocean region code)
- MMSI

8. Date/time of report (UTC)

1 MSC/Circ.623/Rev.2

ANNEX 2

# Useful Contacts, Sources of Information

1) **United Kingdom Maritime Trade Operations (UKMTO)**
(will relay to naval units).

- e-mail: UKMTO@eim.ae
- Telephone: +971 50 552 3215
- Fax: +971 4 306 5710
- Telex: (51) 210473

2) **Maritime Security Centre – Horn of Africa (MSC – HOA)**

- Via website: www.mschoa.org

3) **Combined Joint Task Force – Horn of Africa (CJTF- HOA)**
(has assets and will also relay).

- e-mail: brett.j.morash@hoa.centcom.mil
- or: brett.j.morash@hoa.usafrica.com.mil
- Telephone: +253 358 978

4) **Maritime Liaison Office – Bahrain (Marlo – Bahrain)**
(will relay).

- Telephone: +973 1785 3927
- Cell: +973 3944 2117

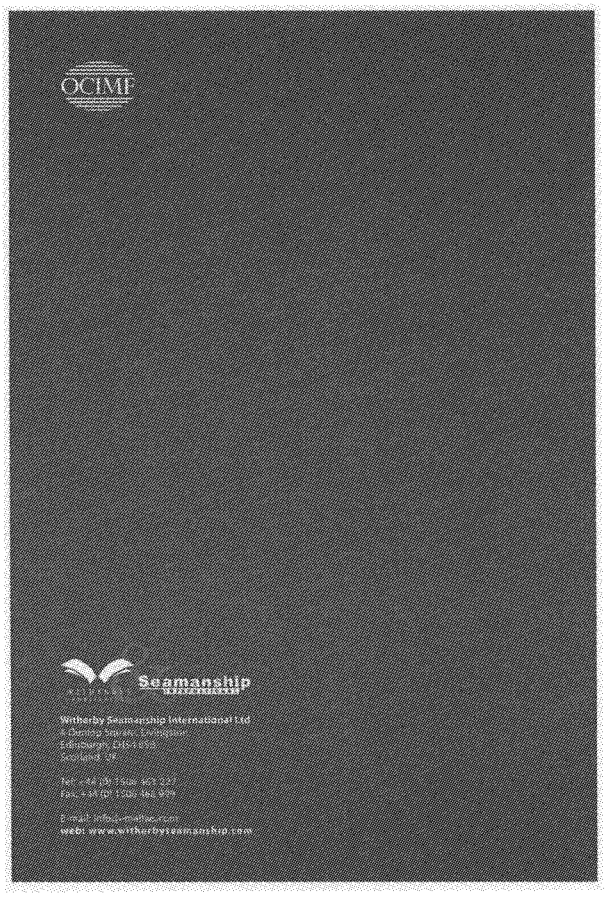
5) **IMB Piracy Reporting Centre**

IMB/ICC-CCS 24 hour Anti Piracy **Helpline**

- Telephone: +60 3 2031 0014

IMB Piracy Reporting Centre, Kuala Lumpur, Malaysia

- e-mail: piracy@icc-ccs-org
- or: imbkl@icc-ccs.org
- Telephone: +60 3 2078 5763
- Fax: +60 3 2078 5769
- Telex: MA34199 IMBPC1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# BIMCO

**STATEMENT ON INTERNATIONAL PIRACY**

**BY GILES NOAKES**

**CHIEF MARITME SECURITY OFCIER OF BIMCO**

**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES**

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION**

**FEBRUARY 2009**

Good afternoon Chairman Cummings, and Members of the Subcommittee: I appreciate the opportunity to be here today and address BIMCO'S role in dealing with International Piracy

**INTRODUCTION/BACKGROUND**

1. Thank you for inviting BIMCO, the largest of the ship owners associations to testify in front of your committee. Last year 14 member's vessels were hijacked off the Horn of Africa (HOA) and Gulf of Aden (GOA) whilst many more were attacked there, in the Gulf of Guinea and in the Malacca Straights/South China Seas. Piracy is a global but not new phenomenon but has only come to the attention of the international community in the last few months. Ironically it has had a serious and growing effect on shipping over the last 10 years but is now growing exponentially off the HOA/GOA and Guinea coasts whilst regional and international action in the straights of Malacca has had a significant effect in reducing piracy.

2. This last highlights the international communities signal failure to identify with the economic consequences of the situation where piracy is rife. Indeed, it was the raising of insurance rates in the Malacca straights and the Japanese economies 100% reliance on

Middle East oil that acted as the catalyst. It is of grave concern to the industry that the same stimuli have not – until very recently effected efforts to counter International Piracy elsewhere to date.

3. It is commonly suggested that the solution to Piracy is always ashore and in the case of GOA/HOA this is clearly apparent but it is also apparent that this is a long term solution that will not meet the short term the immediacy of this situation. You will have heard the statistics from my colleague from the IMB. I propose to try and put some of what he has said and BIMCO's efforts in this field into perspective.

**AIM**

3. My aim is to brief what the industry and particularly BIMCO is doing about Piracy and outline those areas of international piracy that remain of the gravest concern to BIMCO. I would like to focus on the three important messages that cover:

- Resources – the role of governments and navies to provide in sufficient numbers
- Judicial weaknesses in the international and national systems of law which fail to deter piracy because of the inability to arrest and try pirates even caught in the act.
- The jaundiced perception of industry and clear lack of understanding of the role of the shipping industry – initially by governments and now mainly by the military.

**GLOBAL SECURITY AND COMPETING SECÙRITY RESOURCES**

4. In short, the industry is concerned that governments and the world's navies have overlooked the fact that globalisation is fundamentally about trade – the physical movement of heavy goods and commodities by sea. Coalition"blue water" navies traditionally view the sea as the space to neutralise and defeat enemy sea power in order to project power ashore.

5. The Piracy debate has given industry the perception that there is only a limited understanding that the seas are a vital human and economic space that are often poorly secured. Recent statements at conferences and in the press have made it clear that the"defence of trade" appears archaic and dated to many.....
*"Yet any navy that has lost its sight of its economic mission to protect the seaborne commerce of its own country or the trading system to which it belongs, has become detached from its roots and reality"*
**Dr Geoffrey Till – Navies and the New World Order – Proceedings Mar 2005**

6. The Malacca problem took international efforts and regional focus to resolve it and to guarantee freedom of the seas for the global supply chain being challenged by local pirates. This supply chain is once again being held to ransom in the GOA/HOA area – a commercial strategic choke point with implications for many, from the Egyptian economy and the Suez Canal to Mediterranean Ports and Economies, industries and

consumers. For the shipping industry the economics of the business do no allow for extra burdens – particularly in a period of such economic downturn as currently experienced.

7. The cost of navies in order to mitigate the threat has to be balanced with the implications of the inability to maintain normal trade. Indeed, this has been seriously exacerbated only last week by the declaration of two large Container lines that they will now go around the Cape because it is more economic, and this when already many tanker and bulker operators have already declared this preference. The implications for the Suez Canal and regional economic stability and the rest of the Middle East's economy are significant.

8. It is against this background that the short term problem of deterring and defeating piracy needs to be addressed. The resources are limited and also expensive to deploy but many governments including the USA have strategic vital interests to protect in this region and indeed, in the Gulf of Guinea. Equally they have other competing commitments to address. What is sure already is that the failure to address them is forcing many components of the multifaceted shipping industry to avoid the area as it is economically more viable and safer for crews – to say nothing of the security of the hulls themselves. Indeed, the industry has forecast a severe shortage of officers and crews over the next decade and the safety of crews has become a major industry driver both for recruitment and retention.

**JUDICIAL**

9. The industry has to address these problems whilst faced with the scenario where, commendable efforts by coalition naval forces in arresting and detaining pirates, is proving a nugatory exercise. Arrest and trial of pirates is proving difficult as even those nations providing forces have not addressed their national law against piracy and the necessary legal statutes to arrest and try pirates - notwithstanding the existence of UNCLOS and SUA 1988 which directly address the problem. Feeble excuses are being made by nations who are committing resources and warships to counter piracy but fail to see that putting pirates back ashore is making a laughing stock of them and failing to deter the pirates from continuing their lucrative trade.

10. UNCLOS does not explicitly require states to enact legislation but it does obligate states "to cooperate to the fullest extent possible in repression of piracy on the high seas" (Article 100). Notwithstanding the obligation under UNCLOS to cooperate to the fullest extent the vast majority have not implemented the requirements of SUA1988 – signed by 149 nations. Article 5 of SUA 1988 - requires states to enact legislation and article 6 and its sub clauses defines the requirements in detail.

11. The excuse in the main, of many, is that SUA is an inappropriate instrument to legislate against piracy as it was prepared in a counter terror context. This is nonsense and indeed, the articles make no reference to terrorism and the acts proscribed by SUA include all those acts committed by pirates off the GOA/HOA. BIMCO is aware that the USCG is a strong advocate of implementing this proposal swiftly, as reaffirmed by the

UN in UNSCR 1851. BIMCO will support all efforts to see a speedy implementation , including lobbying for its cognizance with the UN Contact Group Working Group tasked to address jurisdictional issues and by inviting it's members to lobby their national governments.

**PERCEPTIONS & UNDERSTANDING**

12. The industry, with IMO has been at great pains to defend itself against piracy for some considerable time as evidenced in:

- MSC Circulars – originally drafted some 10 years ago
- Pamphlets and Booklets dating back some 10 years, to more recently including:
    - Bimco Shipmasters Security Manual
    - The International Chamber of Shipping Booklet on Piracy
    - The BIMCO Pamphlet "Tips on avoiding Piracy and Armed Robbery" in conjunction with the IMB and ReCAAP.
    - The OCIMF Piracy Booklet just released.
- Lobbying of the UN, IMO and Governments throughout 2008.
- The development of the BIMCO Voyage Risk Planning (VRP) service with the IMB

13. Over the last 6 months or so however the industry has been continually invited to improve it's own defences against piracy – mainly by the military - ranging from preparations to using armed guards (this latter which it resolutely opposes because of the risks, implications and dangerous precedents involved in accepting such measures). It has taken until now and a fact finding mission by MARAD and the Assistant Secretary of State Pol/Mil of the State Department to industry – to convince otherwise. i.e. that the industry has been addressing the issue of international piracy for some considerable time but its observations and cries have fallen on deaf ears. Indeed only last week the commander of the new TF151 alluded to increased efforts by merchantmen – at least the military are no longer demanding merchantmen use armed guards for self protection.

14. The industry in a short space of time has created it's own "contact group" of all stakeholders involved to assist the military both in education about it and liaison with the commendably growing number of assets being provided under the banner of EUNAVFOR, NATO, TF 151 or independently. Having educated many of the navies on the various financial implications of time and voyage charter parties, insurance costs – both hull and P& I the industry is also better placed to understand the complications of coordinating and controlling vessels from the four different groupings from 14 nations with 20 ships. The industry perception however is that whilst this is clearly working and having an effect it remains concerned as to whether the capacity of these forces is being maximized to best effect and indeed, whether there are still enough ships.

15. The attack and capture of the MV Longchamp - a LPG carrier - last Thursday confirms the pirates are resourceful and cunning. By deploying decoys they led coalition warships away from the actual target and succeeded in boarding what is recognized as the most vulnerable type of vessel – a slow moving and low freeboard bulker. Equally the

attack occurred before dawn for the first time and will have required good planning and execution.

16. The industry understands that it is impossible to find sufficient warships from navies to run escorted convoys but it is clear that there are still not enough assets to make the current "area protection system" work. It is clearly having an effect as has continued communication and enhanced information sharing but whilst attacks such as the Longchamp can take place then more assets will be needed. It should be noted also that some of the current success can be put down to recent and predictable bad weather. An alternative risk mitigator is already taking place – transits via the Cape – as discussed above - but with the concomitant implications. At a time when the weather is improving and the volume of hijacked vessels reducing after ransom payments then the next four weeks will truly identify the scale of the effectiveness of current counter piracy activities.

**SUMMARY**

16. It is accepted by most that it is naïve to hope to defeat piracy totally but the volume of successful attacks remains unacceptable and there is a requirement for a paradigm change in how navies and governments view the industry. There is a requirement for this paradigm change in order to:

- Appreciate the importance of shipping in the maintenance of the global economic system and recognize its vulnerabilities.
- Make piracy less attractive by arresting and trying captured pirates
- Reduce numbers taken and held and to gain the initiative to break the back of the problem.

17. BIMCO would also suggest that there is a greater need to understand the role of IMO as the pre-eminent maritime body and that vehicles already exist to examine methods of deterring and defeating Piracy. The work of the Piracy contact group that has fallen out of UNSCR 1851 will need to be co-coordinated through IMO where work is already in hand to revise MSC Circulars (advisories to Governments and Shipping Lines) on countering piracy. The ISPS codes for example do not address Piracy but could be very easily utilized to cover the exigencies of Piracy in the future.

Chairman Cummings and members of the Subcommittee, thank you again for the opportunity to testify today. BIMCO is committed to working tirelessly with our industry partners and all stakeholders involved in protecting seafarers and ships from international piracy.

I am happy to answer any questions you may have.

INTERTANKO
THE INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
-FOR SAFE TRANSPORT, CLEANER SEAS AND FREE COMPETITION-
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**UNITED STATE CONGRESS**
**HOUSE OF REPRESENTATIVES**
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**
**SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION**

**HEARING ON INTERNATIONAL PIRACY ON THE HIGH SEAS**

**TESTIMONY OF**
**DR PETER M SWIFT**
**MANAGING DIRECTOR**
**THE INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS**
**(INTERTANKO)**

**February 4, 2009**

Good afternoon, I am Dr Peter Swift, Managing Director of the International Association of Independent Tanker Owners (INTERTANKO) which represents about 80% of the world's independent tanker owners.

I would like to thank you for inviting me to testify before this Sub-committee on this very important issue affecting the maritime industry.

INTERTANKO has been the voice of independent tanker owners since 1970, ensuring that the oil that keeps the world turning is shipped safely, responsibly and competitively. INTERTANKO has a vision of a professional, efficient and respected industry that is dedicated to achieving safe transport, cleaner seas and free competition. Its members are based in over 45 countries and own and operate more than 3000 oil and chemical tank ships. The Association and its members are committed to continuous improvement and to cooperation with all the appropriate stakeholders in the oil and chemical shipping community. (For further information please see www.intertanko.com)

Last year, the Wall Street Journal reported "The surge of piracy in the Gulf of Aden has turned it into one of the most dangerous passages in the world." I could not agree more. Unfortunately, the problem has expanded beyond the Gulf of Aden to more than 450 miles of the coast of Somalia, Kenya and Tanzania. These unlawful acts must be stopped as soon as possible.

The passage through the Gulf of Aden is strategically vital for the delivery of the world's supply of oil, gas and chemicals; with the Energy Information Administration (EIA), US Department of Energy, long recognising the Bab el-Mandab passage as one of the principal "choke points" for world oil and energy supply.

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ISO 9000

Unlike in other parts of the world* where pirates usually board a ship with the intention to rob the crew and the ship of any valuables, the main intent of the pirates operating off the coast of Somalia is to hijack the ship and demand large sums of ransom money for the release of the crew and the ship. Before I go any further, I want to unequivocally assure you all that our main concern, first and foremost, is the safety and welfare of our seafarers, both at sea and in port. Concern for the security of our ships and their cargo is secondary.

The International Maritime Bureau (IMB) reports that in 2008 there were more than 111 reported piracy attempts in this area, with 42 ships hijacked during the year and more than 800 seafarers taken hostage. It has been reported that in 2008 the pirates have received nearly $50 million in ransom payments. The modus operandi has been that typically 10-15 ships are held at any one time pending the negotiations over the ransom payment which may extend over a period of several weeks. The number of ships held at one time appears to be a factor in the frequency of the attacks on transiting ships, as are the local weather conditions. It is noteworthy that following the recent release of several ships, and despite relatively adverse wind and sea conditions during January this year, the IMB has reported that 3 vessels have been hijacked in the past month

The consequences of this unlawful action on the high seas, which threatens to continue for some time to come, include substantial increases in insurance premia as well as manning costs, with seafarers' pay often doubling or even with the refusal of some seafarers to sail on ships transiting this region. In addition, a number of companies have made the conscious decision to have their ships avoid the area entirely and to re-route them around the Cape of Good Hope thus often incurring large time and cost penalties - in some cases more than two weeks and many hundreds of thousands of dollars on each voyage. The ultimate consequences of this defensive action are increased transportation costs of goods around the world - costs that ultimately are paid for by the consumer - something definitely unwelcome in today's economic and financial times.

This growing threat to global commerce has been widely known within the maritime industry for a long time and actively reported within the maritime press on a regular basis, but for the most part it had gone unnoticed by the mainstream press and the general public. It was not until the pirates took the Belize flag cargo ship *MV Faina*, carrying tanks, weapons and ammunition in September 2008 and then the Saudi Arabian-owned tanker, *MV Sirius Star,* carrying more than 2 million barrels of crude oil heading for the United States in November 2008, that this serious problem was finally brought to the attention of the general public through the international press and worldwide news media - and perhaps also through the increased involvement of the United States.

With the leadership of the Secretary General of the United Nations' International Maritime Organization (IMO), Mr. Efthimios Mitropoulos, and with the assistance of the United States, the United Nations Security Council has addressed piracy off the coast of Somalia through the adoption of UN Security Council Resolution 1816 (June 2008) and more recently, Resolutions 1838 (October 2008), 1846 (December 2008) and 1851 (December 2008). We, within the maritime industry, very much appreciate these positive steps by the UN Security Council and were very pleased to see the establishment of the United Nations' Contact Group on Somali Piracy which is being led by the United States. All of these efforts have been helpful, but more needs to be done to end this damaging criminal activity.

In addressing what necessary measures need to be taken, let me start out by saying that I firmly believe that the establishment of law and order on the high seas is an issue for governments and not one that industry can solve on its own. That said, we recognise that the shipping industry has a part to play in this matter. I firmly believe that, in addressing this problem, there is a shared responsibility between the industry and governments.

From the industry perspective, the international shipping industry played a major role in the development of the most recent version of the International Maritime Organization (IMO) Guidance to Shipowners, Ship Operators, Ship Masters and Crew on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships. This guidance was adopted unanimously by the IMO Maritime Safety Committee as an MSC Circular in May 2002. The recent developments off the coast of Somalia have prompted the IMO Maritime Safety Committee to initiate a review and update of this MSC Circular and, as in the past, the international shipping industry is working closely with the IMO member states to improve these guidelines based upon practical on-the-spot experience.

More recently, at the request of the U.S. Maritime Administration, INTERTANKO took the lead in coordinating a wide variety of international shipping and industry associations in preparing a list of Best Management Practices to assist ships in avoiding and deterring piracy attacks, and in delaying attacks, that may nevertheless still be successful, in the Gulf of Aden and other waters near the Horn of Africa. These Best Practices were developed as input to the UN Contact Group's first meeting which took place last month. We were very pleased to see that this United Nations meeting acknowledged the efforts of the industry including the development of the Best Practices guidance. In particular, the communiqué "...applauds the work of the maritime industry...to establish self-defence standards for commercial vessels transiting the region. International maritime industry groups have taken efforts to address the piracy threat. Of note is the adoption by the world's leading shipping, cargo, and insurance organisations of a set of common best practices..." I can assure you that the maritime industry is committed to working with the governments to solve this very serious problem and will continue to improve its practices to avoid piracy acts based upon experience gained.

While the industry is doing its best to advise its ships how best to avoid, deter and delay piracy attacks, it is the industry view that governments must take the appropriate action to eliminate pirates from the region. In this regard, I believe that there are five main governmental functions that must be addressed and enhanced to solve the problem. These include:

1. Providing and maintaining sufficient assets, both naval and aviation, in the area;
2. Establishing a coordinated approach;
3. Ensuring single, or at least compatible, rules of engagement;
4. Developing the necessary legal authorities to prosecute pirates when captured; and
5. Developing a long term solution to the Somalia problem on land.

All five of these functions are clearly addressed in the UN resolutions and in some of these areas action is currently being taken by governments. However, there needs to be a firm commitment by all governments to address all of the issues to ensure a long term, lasting solution to this piracy problem. I would like to briefly touch upon each of these areas.

1. Up until recently, I believe that there was a general consensus within the maritime industry that there were woefully inadequate naval assets in the region to properly solve this problem. Over the past few months, this situation has changed. Russia, Malaysia, India, China and the Republic of Korea have committed military resources to the region, and will soon be followed by Japan, to join those of the United States, the United Kingdom, France and other European states which were already in the region. In addition, the Combined Maritime Force (CMF) operating in this region of the world has just recently established Combined Task Force (CTF) 151 to focus specifically on piracy off the coast of Somalia while the European Union, in November 2008, established an EU Naval Force (EUNAVFOR) and operation "Atalanta". We hope that these increases in assets and operations in the region will continue to be effective. This will, however, largely depend on continued support by all governments.

2. Now that there are more assets in the region, coordinated action amongst governments needs to remain the focus. From a ship operator's perspective, it is important that position reporting and communications are streamlined. On position reporting, I wish to record that recent experience with Gulf of Aden transits has demonstrated the value of operators registering their vessels' movements with EUNAVFOR Atalanta, through the coordinating Maritime Security Centre – Horn of Africa (MSCHOA) web site, and reporting (regularly but not excessively) ship's position, course and speed to a voluntary reporting system, such as UKMTO Dubai or MARLO Bahrain. On communications, it is important that appropriate communication mechanisms are in place to ensure that information received by the contact point will be passed without delay to all of the appropriate military headquarters and deployed units. As a result of this activity, coordination and communication among the multinational naval units, as well as with commercial shipping, is improving and its effectiveness is increasing

3. While more governments are sending assets to the area, which is indeed a positive step, each government's navy has its own national rules of engagement when confronting the pirates. Some are allowed to engage upon arrival on the scene, while others cannot unless they are attacked. I am optimistic that the establishment of CTF151 and EUNAVFOR will improve the situation but I believe that there needs to be as much consistency as possible, hopefully along the lines of engaging upon arrival of the scene

4. A further major concern has been that after any capture of pirates, the governments concerned have lacked the national legal authorities to prosecute them. Whilst there are now several bilateral agreements in place to progress the prosecution of arrested pirates (for example the UK and USA with Kenya), there must be more willingness by governments to accept and prosecute pirates who have been arrested.

I am therefore pleased to note that, at the recent high-level meeting convened by the IMO in Djibouti with the states of the Western Indian Ocean, Gulf of Aden and Red Sea, this was addressed. The Code of Conduct, which was adopted and became effective on January 29, confirms that each signatory intends to review its national legislation with a view to setting in place laws to criminalize piracy and armed robbery against ships, and adequate guidelines for the exercise of jurisdiction, conduct of investigations, and prosecution of alleged offenders.

5. Of course the long term solution to ending piracy off the coast of Somalia is the establishment of a stable national government able to put an end to the lawless behaviour

of pirates that operate out of Somalia. I fully recognise that this is the desire and objective of all governments and fully understand that this will take time.

INTERTANKO as an association and our industry partners are working hard and cooperating fully to ensure that our respective ship-owning members are taking all necessary precautions to avoid and deter piracy attacks and are cooperating and reporting fully with the military forces and reporting centres in the region. Our respective Guidance notes on Best Practice are widely distributed, backed by regular communications and updates. We are also committed to extending these to the several - perhaps as many as 30% of – other ships which transit the Gulf of Aden or Somali waters, and which are not routinely appraised of relevant facts, the risks involved and the measures that ships can take to avoid, deter or delay piracy attacks.

Currently the principal industry associations are studying the mechanisms available to them which will assist routine updating of advice and guidance to **all** ships and shipmasters on best practices, lessons learned, etc.

One of several reasons for our focus on those ships outside of the large net of well informed, and responsible operators, is the recognition that while there exist relatively "soft" targets, the potential rewards for pirates remain great and **all** shipping remains vulnerable to piracy attacks. Hence the industry representatives are strengthening their combined efforts to heighten awareness and to provide topical guidance on best practices. Without doubt any successful attack on any target provides encouragement to those perpetrating these maritime crimes and raises the risk level for all shipping.

In closing, I would like to reiterate the total commitment of the maritime industry to take the best practical steps to avoid piracy attacks and to cooperate fully with the governments operating in the region. We, the shipping industry, welcome and appreciate wholeheartedly the recent efforts that have been taken by governments to address this very serious problem, but we believe that these efforts need to be sustained as well as fully coordinated until this problem is eliminated.

I hope these comments are helpful to your Sub-committee's deliberations. Thank you again for the opportunity to participate in this hearing.

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* Other areas of concern remain:

- the continuing high level of attacks, involving armed robberies (including regrettably several killings) and kidnappings in and adjacent to the Gulf of Guinea, in particular in the Niger Delta
- the Malacca Straits, where, in large part as a result of increased cooperation between the littoral states, there has been a continuing downward trend in the number of attacks, which have usually involved the theft of valuables from the crew and ship, and
- the seas in and around Brazil, where the majority of the attacks are also primarily focused on theft and robbery.

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Statement of

**Christopher Koch**

President & CEO
**World Shipping Council**

Before the

**House Subcommittee on Coast Guard and Maritime Transportation**

Regarding

**"International Piracy on the High Seas"**

February 4, 2009

## I. Introduction

Chairman Cummings and members of the Subcommittee, thank you for the invitation to provide a statement on the current issue of piracy. Over the past year, piracy off the coast of Somalia, particularly in the 500 mile long Gulf of Aden (GOA) transit corridor, has become a major safety, security and economic issue affecting the 20,000 ships that transit the region annually. We thank the Committee for its interest in this issue and its recognition that, while this area of the world is roughly 8,000 miles from here and many nations have a vital interest in the freedom and security of maritime commerce, American import and export commerce, American military cargo, American aid cargo (e.g. World Food Program), and American ships and crews pass through this region daily. The United States has always had a strong economic and security interest in defending the right of freedom of navigation around the world, and it is highly appropriate that it contribute in meaningful ways to the international efforts in the GOA.

The World Shipping Council ("WSC" or "the Council") is a trade association that represents the international liner shipping industry. In addition to serving as WSC's President and CEO, I serve as the Chairman of the National Maritime Security Advisory Committee

(NMSAC), a Federal Advisory Committee Act committee providing advice to the Coast Guard and the Department of Homeland Security (DHS) on maritime security issues.

Liner shipping is the sector of the maritime shipping industry that offers regular service based on fixed schedules and itineraries. The World Shipping Council's liner shipping member companies provide an extensive network of services that connect American businesses and households to the rest of the world. WSC member lines carry roughly 93% of America's containerized international cargo.[1] Approximately 1,500 ocean-going liner vessels, mostly containerships, make 26,000 U.S. port calls each year. More than 50,000 container loads of imports and exports are handled at U.S. ports each day, providing American importers and exporters with efficient transportation services to and from roughly 175 countries. Today, U.S. commerce is served by more than 125 weekly container services, an increase of over 60% since 1999, moving roughly 17 million containers of American export and import commerce.

In addition to containerships, liner shipping offers services operated by roll-on/roll-off or "ro-ro" vessels that are especially designed to handle a wide variety of vehicles, including everything from passenger cars to construction equipment. In 2006, these ro-ro ships brought almost four million passenger vehicles and light trucks valued at $83.6 billion into the U.S. and transported nearly one million of these units valued at $18 billion to U.S. trading partners in other countries.

Liner shipping is the heart of a global transportation system that connects American companies and consumers with the world. More than 50 percent of the $1.8 trillion in U.S. ocean-borne commerce is transported via liner shipping companies. The international liner shipping industry has been determined by DHS to be one of the elements of the nation's "critical infrastructure".

Liner shipping generates more than one million American jobs and $38 billion in annual wages. This, combined with other industry expenditures in the U.S., results in an industry contribution to U.S. GDP that exceeds $100 billion per year.

## II. The Piracy Threat

The U.S. National Security Council's December 2008 report, *Countering Piracy Off the Horn of Africa: Partnership & Action Plan,* states: "Maritime piracy is a universal crime under international law which places the lives of seafarers in jeopardy and affects the shared economic interest of all nations. The United States will not tolerate a haven where pirates can

[1] A listing of the Council's member companies and additional information about the Council can be found at www.worldshipping.org

act with impunity; it is therefore in our national interests to work with all States to repress piracy off the Horn of Africa."

Since early 2008, there have been more than 200 attempts by pirates in the GOA region to attack and hijack vessels. Of these, pirates have successfully hijacked an estimated 50 vessels[2] and taken almost a thousand crewmen hostage. The GOA pirates' tactics are now well known and typically involve multiple, high-speed skiffs capable of up to 25 knots operating from a mother ship. Pirates generally have targeted large, slow moving ships that have a low freeboard (the distance from the waterline to the main deck). Statistics indicate that the highest risk vessels are those that operate at 15 knots or less and that have a freeboard of less than 8 meters. Attacks typically occur when visibility is at its lowest – at dawn and dusk -- and the skiffs approach the target vessel from its quarter. Pirates employ machine guns, rifles and rocket propelled grenades (RPGs) and attempt to slow or stop target ships by firing on them so the pirates can then use grappling hooks and portable ladders to get on board. Once a vessel is hijacked, the pirates typically request a large ransom payment for the safe return of the crew, vessel and cargo. The ransom payments demanded, which constitute much less than the potential for the loss of life or the value of the vessel and cargo, are paid by protection and indemnity (P&I) clubs (i.e. ship insurance providers) to prevent harm to the crew, cargo and vessel.[3]

Liner shipping vessels – containerships and ro/ro vessels – typically operate at speeds above 18 knots and can sustain speeds of 22-24 knots. Liner vessels are the world's fastest large cargo vessels. Liner vessels are also unique in that they have a much higher freeboard than many other commercial ship types. These two factors have to date resulted in liner vessels being less vulnerable to successful hijacking by pirates in the GOA region. Although pirate skiffs can operate at 25 plus knots, it is more difficult for them to keep up with a container ship operating at such speeds because the smaller vessels are more significantly impacted by waves and wind.

Although no containerships or ro/ro vessels have been successfully hijacked in the GOA region, 19 liner shipping vessels have reported being the subject of attacks and hijacking attempts since February 2008. In six of these attacks, the vessels were fired upon by pirates using guns and/or RPGs. Thankfully no crewmembers were injured, but the pictures we have

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[2] Last week, pirates in the GOA hijacked their 50th vessel, a German liquefied petroleum gas ship (the 4,316 dwt *Longchamp*) with 13 crew in the Gulf of Aden. The *Longchamp* was reportedly en route to Asia from Europe escorted by a naval convoy when it was boarded by 7 armed pirates in the morning.

[3] Ransom payments typically take place on average two or more months after the vessel and crew are in captivity. The result is obviously substantial physical and mental strain on the crews, including health risks once stores and fresh water are consumed. The ship and its cargo are also in constant risk during this time, with both commercial and environmental consequences possible.

provided separately to Committee staff illustrate the potentially lethal force that was used in these efforts. In at least one of these incidents, naval force intervention (Russian) was helpfully involved in repelling the attack.

## III. Actions Employed to Reduce the Risk of or Respond to an Attack

As discussed above, high speed and high freeboard have been significant pirate attack risk-reduction factors. Consequently, many WSC member companies, which operate multiple different types of ships (e.g., tankers), have established internal guidelines directing vessels that cannot maintain 18 knots and have a freeboard less than 10 meters to avoid transiting the GOA region and re-route via the Cape of Good Hope and pass east of Madagascar. This route can add almost 3000 miles and up to 14 days to the voyage.

WSC member company liner vessels that do transit the GOA region, in addition to maintaining a transit speed of greater than 18 knots, are employing tactics to prevent attack and/or to respond to an attack. A cornerstone of any response to an attack by pirates is the Ship Security Plan (SSP), required by the International Ship & Port Facility Security (ISPS) Code, and its effective implementation. In this context, ship operating companies have developed and implemented preventative measures based on their own security assessments and with consideration of best management practices circulated by the International Chamber of Shipping, European Union, International Maritime Organization (IMO), and United States. Although the specific measures employed by member company ships are security sensitive, some of the common attack prevention measures are described below.

***Common Measures Employed to Prevent Pirate Attack***:

- Check in with the Marine Safety Center – Horn of Africa (MSC-HOA) and the United Kingdom Marine Trade Operations (UKMTO) office in Dubai to ensure Coalition naval forces in the region are aware of and tracking your position;
- Establish and follow procedures dictated in the Ship Security Plan and prepare a detailed piracy contingency plan;
- Transit the highest risk areas of the designated transit corridor at night;
- Post extra roving watches to monitor the decks;
- Adjust watch schedules to increase the number of personnel on the bridge and performing lookout duties;
- Pre-position and pressurize all fire hoses and train crew to direct hoses on pirates attempting to board;
- Position additional lights on deck and over the side to prevent pirates from boarding under cover of darkness;
- Perform piracy drills prior to arrival in the GOA region;
- Prepare an emergency communication plan so that MSC-HOA and UKMTO can be notified immediately if the vessel is attacked;

- Establish a safe, locked area for the crew to muster if attacked;
- Secure and control access to the bridge, manned engine room, steering gear room and crew quarters;
- Ensure all pilot ladders are stowed and secured on deck.

Because there are a large number of small fishing vessels operating the GOA region and these vessels look like those employed by the pirates, commercial ships have very little time during which to determine if an approaching vessel poses a risk. Consequently, employment of the preventative measures above does not completely mitigate the risk of being the subject of an attempted hijacking. Vessel operators have therefore developed and implemented additional tactics to reduce the likelihood that a hijack attempt will be successful.[4]

***Common Tactics Employed When Under Attack:***

- Activate the ship security alarm system (SSAS)[5];
- Activate the emergency communications plan;
- Sound the onboard emergency alarm to notify crew to implement the piracy contingency plan;
- Maximize vessel speed;
- Execute zig-zag maneuvers to prevent a small boat from approaching the vessel;
- Man the fire hoses and discharge water over the side;
- Muster the crew in the designated safe area.

If, despite the above tactics, a vessel is successfully boarded by pirates, vessels have been directed to take the following actions: 1) attempt to notify MSC-HOA and UKMTO that the pirates are onboard; 2) cooperate fully with the pirates and offer no resistance; 3) keep the

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[4] To the best of our knowledge, commercial vessels generally do not employ armed guards onboard for the Gulf of Aden piracy situation for a variety of reasons, including: the use of firearms could further escalate the situation and innocent lives may be lost; some flag administrations discourage the use of armed guards with firearms; some port states reportedly restrict arms aboard commercial vessels; substantial unresolved issues of liability exist if someone is injured or killed in the line of fire; there are practical operational concerns such as command and control, rules of engagement, use of deadly force, weapons security, intra port/ship transfer of weapons and guards; questions regarding quality of civilian armed guards as well as with their training and experience for shipboard force protection operations; P&I insurance companies discouragement of the use of armed guards; the possibility of fire, explosion or sinking of a commercial vessel if an exchange develops between personnel aboard a commercial ship and the pirates; and concerns and liabilities arising from the fact that the ships transiting the GOA carry a variety of hazardous cargoes.

[5] The International Ship and Port Facility Security (ISPS) Code, which took effect July 1, 2004, mandated that passenger ships and cargo ships greater than 500 gross tons be equipped with a silent SSAS that sends an alert via satellite to the vessel's flag state administration and designated Company Security Officer. The alert provides the vessel's position and indicates that the vessel needs immediate security assistance. IMO standards require that flag states, upon receiving a Ship Security Alert, must notify appropriate coastal states in whose vicinity the ship is operating.

crew mustered in one location; and 4) secure the main engine (if the engine room is evacuated).

## IV. International Response to GOA Piracy

The Council commends the U.S. Government, the European Union (EU), the United Nations, and the governments of other nations that are participating in the international effort to counter piracy in the GOA region. While the international shipping industry must and is playing a part in addressing the piracy threat in the GOA region, the long term solution to this regional breakdown of law and order requires the continuation of international cooperation, including the support of the U.S. Government. The United States -- the largest trading nation in the world and a nation that has a long tradition of protecting the freedom of navigation -- is working with the United Nations Security Council, setting up Combined Task Force (CTF) 151 comprised of naval assets from over twenty nations, and partnering with the EU Naval Force ATALANTA and MSC-HOA.[6]

The establishment of MSC-HOA as the primary conduit through which information is passed between commercial ships and Coalition naval forces has been a critical step. MSC-HOA has established a helpful website (www.mschoa.eu) through which ship owners and operators, ship management companies, international trade associations, and others may obtain the latest intelligence information and weather, sign on to participate in group transits through the region, review advice and updated preventative measures, and obtain contact information for the UKMTO, EU Naval Force, CTF 151 and others.

Furthermore, MSC-HOA and CTF 151 have established a system of four daily eastbound and westbound group transits, which vessels may join based on their anticipated transit speeds. Although the transits are not technically convoys because they are not accompanied by naval escort, the transits are monitored by military helicopters and naval assets that have been strategically positioned along the transit corridor. This type of approach demonstrates effective use of limited naval resources and enables a grouping of commercial vessels to work together to significantly reduce the risk that any one vessel will be attacked.

Coordination of the international naval response has significantly improved since the establishment of ATALANTA and CTF 151. Prior to their establishment, naval assets sought primarily to protect commercial ships flying their countries' flags. We have recently, however, seen examples in which a Russian naval ship came to the aid of a Danish ship, a Malaysian naval

[6] To date, we understand that the nations that are contributing and cooperating in the international effort to address piracy in the GOA region include Canada, China, Denmark, Egypt, France, Germany, India, Iran, Italy, The Netherlands, Japan, Malaysia, Pakistan, Russia, Saudi Arabia, South Korea, Spain, Turkey, the United Kingdom, and the United States.

ship came to the aid of an Indian tanker, the French navy came to the aid of Panamanian and Croatian ships, and the Danish navy came to the aid of a Dutch vessel. We are also pleased that CTF forces are now actively boarding suspect vessels with joint U.S. Navy and U.S. Coast Guard boarding teams to actively counter the piracy threat and gain vital information regarding the pirates' tactics and techniques. These types of responses are commendable because they prevent the pirates from identifying and capitalizing on gaps in the protection effort, making it more difficult for the pirates to choose prospective targets.

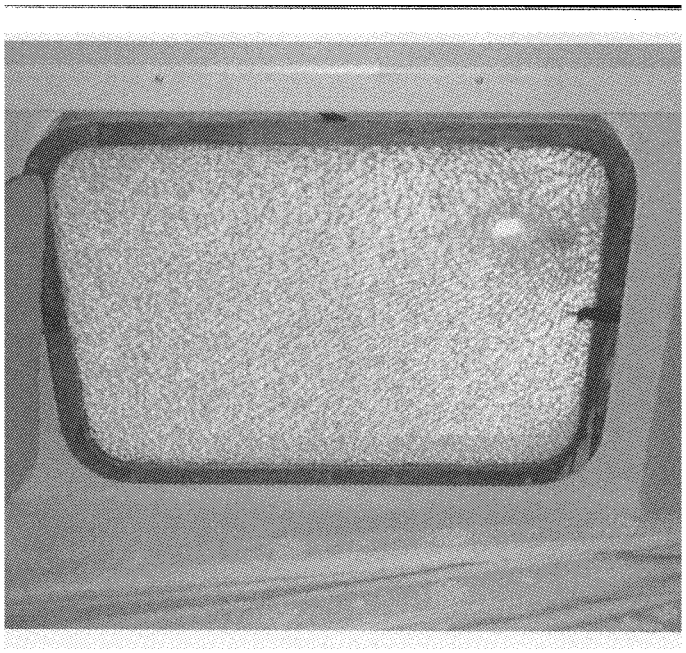
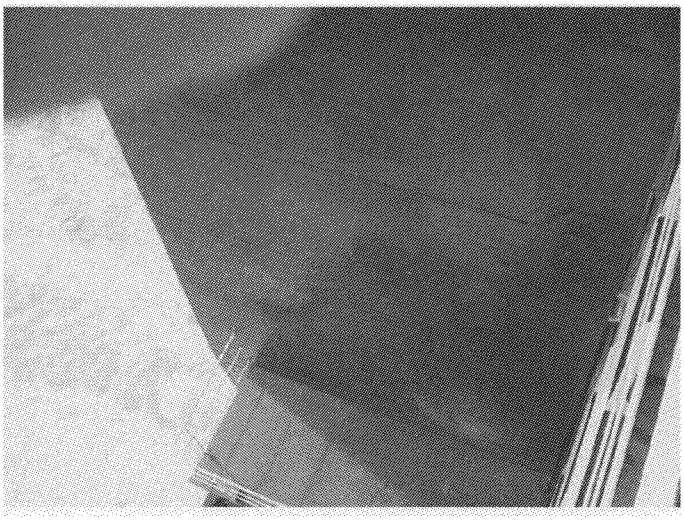
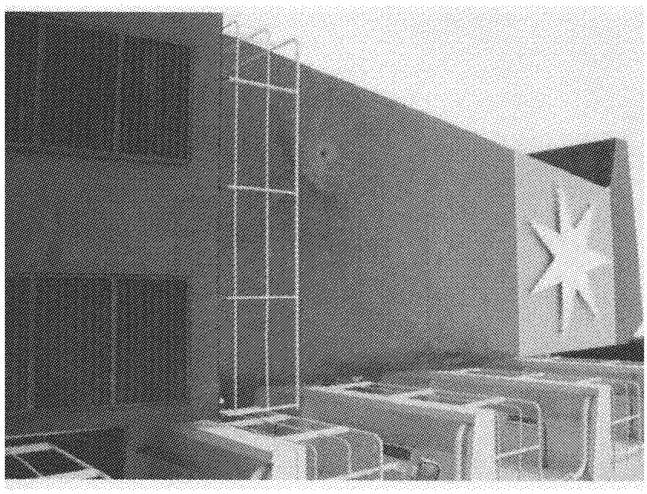
At the same time, it seems clear that the pirates are demonstrating their capability to adapt to varying conditions, whether those conditions are weather related or whether they are preventive measures, as last week's capture of the *Longchamp,* which reportedly was involved in a naval convoy, demonstrates. We also note that as the pirates become financially stronger with their receipt of ransom payments, their opportunity to modernize their equipment also increases.

One of the more difficult problems for which a satisfactory solution has not yet materialized is what to do with pirates after they are apprehended at sea. Returning captured pirates to Somalia is not a desirable option and will not contribute to a solution to this problem. While we do not wish to minimize the complexity of the legal issues involved, we encourage the United States to continue to play a leading role in helping design an agreed legal framework that will try and imprison convicted pirates. UN Security Council Resolution 1851 recognizes the urgency and the need for governments to take measures to address this continuing problem. An international solution to this problem is required sooner rather than later. It should be an international priority. Any support this Committee can provide to the government's efforts to address this problem would be welcomed.

Part Three of the National Security Council paper, *Countering Piracy off the Horn of Africa: Partnership & Action Plan*, proposes that the United States conclude agreements with States in the region that will investigate, prosecute and punish captured pirates. We understand that the U.S. is concluding an agreement with Kenya in this regard, and we strongly commend that effort. We also support and encourage the U.S. to work with other governments to establish agreements with States in the region that will allow use of their territory to hold captured pirates until they can be transferred to States that are able and willing to prosecute them. Finally, we encourage U.S. and international efforts to work together to disrupt and dismantle pirate bases ashore and to deal with the political and economic forces that have made Somalia a breeding ground for illicit activity.

## V. Conclusion

Pirate attacks on commercial ships transiting the GOA region represent a serious threat to global commerce, to the lives of seafarers of many nations, and to the freedom of the seas. These attacks also burden an already struggling global economy by creating uncertainty regarding the safety, security and reliable delivery of international commerce. Pirate activity has reached such proportions that some vessels are re-routing around the southern tip of Africa or paying substantial war risk and other cost premiums to transit the region. Pirate attacks continue, as the facts of last week demonstrate. Ransom payments, while appropriate to save lives, ships and cargoes and to protect the environment, provide additional financial resources for the pirates' capabilities.

The solution to the problem will require coordinated, sustained efforts by the United States, the European Union, the United Nations, other nations and the maritime industry to protect ships from being hijacked while simultaneously addressing the root causes of the piracy itself—namely the presence of the failed State of Somalia in the region.

The liner shipping industry will continue to do its part to ensure that vessels operating in the GOA region are properly prepared to deploy appropriate preventative measures to reduce the likelihood of pirate attack. The Council and its member companies wish to commend the U.S. government for playing a significant role in this important effort, and we appreciate this Subcommittee's interest and oversight of these issues. We would be pleased to provide additional information that may be of assistance. Thank you.