

PIRACY AGAINST U.S.-FLAGGED VESSELS: LESSONS LEARNED

(111-35)

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

May 20, 2009

Printed for the use of the
Committee on Transportation and Infrastructure



U.S. GOVERNMENT PRINTING OFFICE

49-954 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
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JAMES L. OBERSTAR, Minnesota, *Chairman*

NICK J. RAHALL, II, West Virginia, *Vice Chair*
PETER A. DeFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
ELIJAH E. CUMMINGS, Maryland
ELLEN O. TAUSCHER, California
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
RUSS CARNAHAN, Missouri
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
MAZIE K. HIRONO, Hawaii
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ARCURI, New York
HARRY E. MITCHELL, Arizona
CHRISTOPHER P. CARNEY, Pennsylvania
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
STEVE COHEN, Tennessee
LAURA A. RICHARDSON, California
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland
SOLOMON P. ORTIZ, Texas
PHIL HARE, Illinois
JOHN A. BOCCIERI, Ohio
MARK H. SCHAUER, Michigan
BETSY MARKEY, Colorado
PARKER GRIFFITH, Alabama
MICHAEL E. McMAHON, New York
THOMAS S. P. PERRIELLO, Virginia
DINA TITUS, Nevada
HARRY TEAGUE, New Mexico

JOHN L. MICA, Florida
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, Jr., Tennessee
VERNON J. EHLERS, Michigan
FRANK A. LoBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
HENRY E. BROWN, Jr., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
CONNIE MACK, Florida
LYNN A WESTMORELAND, Georgia
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio
BRETT GUTHRIE, Kentucky
ANH "JOSEPH" CAO, Louisiana
AARON SCHOCK, Illinois
PETE OLSON, Texas

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

ELIJAH E. CUMMINGS, Maryland, *Chairman*

CORRINE BROWN, Florida	FRANK A. LOBIONDO, New Jersey
RICK LARSEN, Washington	DON YOUNG, Alaska
GENE TAYLOR, Mississippi	HOWARD COBLE, North Carolina
BRIAN BAIRD, Washington	VERNON J. EHLERS, Michigan
TIMOTHY H. BISHOP, New York	TODD RUSSELL PLATTS, Pennsylvania
STEVE KAGEN, Wisconsin	PETE OLSON, Texas
MICHAEL E. McMAHON, New York	
LAURA A. RICHARDSON, California	
JAMES L. OBERSTAR, Minnesota	
<i>(Ex Officio)</i>	

CONTENTS

	Page
Summary of Subject Matter	vi

TESTIMONY

Caponiti, James, Acting Administrator, Maritime Administration	4
Doell, Paul, Director of Legislative Affairs, American Maritime Officers International Union	29
Frothingham, Ed, Principal Director, Office of the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, Department Of Defense; accompanied by Charles Ikins, Director, East and Southern Africa Policy, Office Of African Affairs, Office of the Secretary of Defense	4
Johnsen, Erik L., President, Waterman Steamship Corp	29
Salerno, Rear Admiral Brian, Assistant Commandant for Marine Safety, Security and Stewardship	4
Shapiro, Philip J., President and CEO, Liberty Maritime Corporation	29
Tellez, Augustin, Executive Vice President, Seafarers	29
Van Loo, Bill, Secretary-Treasurer, Marine Engineers' Beneficial Association; accompanied by Michael J. Rodriguez, Executive Assistant to the President, International Organization of Masters, Mates & Pilots	29
Volkle, Jr., Arthur J., Vice President, American Cargo Transport	29

PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS

Cummings, Hon. Elijah E., of Maryland	42
McMahon, Hon. Michael E., of New York	47

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Caponiti, James	49
Doell, Paul	57
Frothingham, Edward	64
Johnson, Erik L.	73
Salerno, Rear Admiral Brian	78
Shapiro, Philip J.	86
Volkle, Jr., Arthur J.	93



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

John L. Mica
Ranking Republican Member

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

James W. Coon II, Republican Chief of Staff

May 19, 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: Hearing on "Piracy Against U.S.-Flagged Vessels: Lessons Learned"

PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will meet on Wednesday, May 20, 2009, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding recent acts of piracy against U.S.-flagged vessels and the lessons to be learned from these attacks. This is a follow-up to a hearing the Subcommittee held on February 4, 2009.

BACKGROUND

RECENT INCIDENTS OF PIRACY

In the first five months of 2009, there has been a dramatic increase in the activity of Somali pirates in the Gulf of Aden and along the east coast of Somalia. The current number of pirate attacks to date in 2009 already surpasses the total number of attacks in that area in all of calendar year 2008. In 2008, there were a total of 111 known actual and attempted Somali pirate attacks resulting in the hijacking of 42 vessels. As of May 12, 2009, there have already been 114 known actual and attempted attacks resulting in 29 successful hijackings.¹ The Gulf of Aden has been the scene of the majority of the attacks and hijackings. However, as vessels have rerouted to avoid pirate prone areas within that Gulf, there has also been a significant increase in the number of incidents off the east coast of Somalia; 43 attacks have occurred there as of May 12 compared to 19

¹ "Pirate Attacks Off Somalia Already Surpass 2008 Figures," International Maritime Bureau Press Release, May 12, 2009.

in all of 2008.² As of April 15, 2009, approximately 300 crewmembers (none of whom are U.S. citizens) and 18 vessels remained captives of Somali pirates. These statistics are illustrated in the chart below.

Number of Somali Pirate Attacks in the Horn of Africa Region

	2008	Jan 1-May 12, 2009
Crewmembers taken hostage	815	478
Vessels Attacked, Gulf of Aden	92	71
Vessels Attacked, East Coast of Somalia	19	43
Total Vessels Attacked	111	114
Vessels Hijacked, Gulf of Aden	32	17
Vessels Hijacked, East Coast of Somalia	10	12
Total Vessels Hijacked	42	29

Source: International Maritime Bureau

Although the number of pirate attacks in the Horn of Africa region has increased, the presence of foreign naval forces has decreased the pirates' rate of success in hijacking vessels. In January 2009, one in every six vessels known to have been attacked by Somali pirates was successfully hijacked. As the number of foreign naval vessels patrolling the Horn of Africa region has increased, the ratio of successful attacks for every attack attempted has decreased to one in eight in February and to one in thirteen in March. By comparison, the rate was one in three in the last quarter of 2008.³

In response to the increase in pirate activity in the Horn of Africa region, the European Union Maritime Security Centre - Horn of Africa (MSCHOA), in cooperation with the European Union Naval Force (EU NAVFOR) Operation ATALANTA, the United Kingdom Maritime Trade Operations, and the Combined Maritime Forces, revised the Internationally Recognized Transit Corridor (IRTC) on February 3, 2009. The IRTC is the path that merchant vessels are recommended to transit within the Maritime Security Patrol Area (MSPA), which is an unmarked rectangular corridor between Yemen and Somalia established by Combined Task Force 150 in August 2008. The MSPA was created under the direction of the Commander, U.S. Naval Central Command, with the intention of creating an area on which naval forces could concentrate their efforts to protect merchant vessels as they transit the Gulf of Aden. The MSPA is patrolled by a coalition of forces comprised of foreign naval vessels and air assets that provide deterrence and protection to merchant vessels. Vessels transiting the Gulf of Aden area are advised to use the IRTC, as naval assets can provide the greatest level of protection and support against pirates in that area.

² Ibid.

³ ICC International Maritime Bureau, Piracy and Armed Robbery Against Ships Annual Report, January 1-March 31, 2009.

Working with participating vessels, MSCHOA now coordinates “group transits” through the IRTC that follow established timelines; vessels choose the appropriate transit based on their speed of travel. The group of vessels then transit through the corridor together, making it easier for naval assets to monitor the movements of the vessels.

To avoid pirate prone areas, many vessels have re-routed east of Madagascar to avoid areas near the northern end of the Mozambique Channel. However, pirates have begun to expand the areas in which they are attacking ships and are now targeting ships hundreds of miles off the east coast of Somalia, between South Africa and the Arabian Gulf/Indian sub-continent. Using mother ships, pirates have attacked vessels from 300 nautical miles to up to 900 nautical miles from the Somali coastline. There have also been a number of attacks in an area that is approximately 400 nautical miles from the Somali capital of Mogadishu.⁴ MSCHOA now recommends that vessels that are not making scheduled port calls in Somalia or along the east coast of Africa should stay at least 600 nautical miles off the coastline of Somalia if possible.

The Congressional Research Service has estimated that given the size of the areas in which Somali pirates are now known to be active, more than 60 naval ships might be needed to suppress piracy in the Gulf of Aden alone.⁵ Over the past few months, there have been approximately 12 to 20 naval ships operating within the region.

INCIDENTS INVOLVING U.S. FLAGGED VESSELS

On April 8, 2009, the U.S.-flagged container ship *MV Maersk Alabama* was attacked and seized by pirates approximately 250 nautical miles southeast of the Somalia coastline. The vessel, manned by 20 U.S. crewmembers, was carrying U.S. government food aid to the Kenyan port of Mombasa when it was attacked. Press reports suggest that the U.S. crew on board overtook their Somali captors some time after the ship was attacked and attempted unsuccessfully to free the ship’s captain, Richard Phillips, after he had been taken hostage by the pirates. In response, the U.S. Navy dispatched the *USS Bainbridge* and reconnaissance aircraft to the area to monitor the small boat in which Captain Phillips was held by the pirates. Federal Bureau of Investigation personnel worked in conjunction with naval personnel to conduct negotiations in an effort to secure the captain’s release. Four days into the hostage stand-off, U.S. authorities on the scene determined that Captain Phillips’ life was in immediate danger and, with the prior authorization of President Obama, U.S. Special Forces sharpshooters stationed on the *Bainbridge* killed the three pirates with three gunshots, securing Captain Phillips’ release. The remaining pirate among those holding Captain Phillips hostage is in U.S. custody and will be arraigned in the United States. He has been charged with piracy, conspiracy to seize a ship by force, conspiracy to commit hostage taking, discharging a firearm, and brandishing a firearm while committing hostage taking. He is awaiting trial in the U.S. District Court in the Southern District of New York.⁶

On April 14, 2009, the U.S.-flagged vessel, *MV Liberty Sun*, with 20 U.S. crewmembers, was attacked by pirates approximately 285 miles southeast of Mogadishu as it was on its way to deliver U.S. government food aid to destinations along the east coast of Africa. The vessel had unloaded

⁴ ICC International Maritime Bureau, Piracy and Armed Robbery Against Ships Annual Report, January 1-March 31, 2009.

⁵ Congressional Research Service, “Piracy off the Horn of Africa,” April 21, 2009.

⁶ “Accused Somali Pirate to Be Tried As Adult,” MSNBC.com, April 21, 2009.

part of its food aid cargo in Port Sudan and was en route to Mombasa, Kenya, at the time of the attack. Pirates fired on the vessel with rocket propelled grenades and AK-47s. The crewmembers successfully thwarted the attack, and the *Liberty Sun* continued on its voyage to Kenya.

After the attack on the *Liberty Sun*, a pirate named Abdi Garad told a news agency that Somali pirates had intended to destroy the vessel and its crew. He stated that the pirates attacking U.S.-flagged vessels were no longer after ransom but instead were seeking revenge for the deaths of those pirates who had held Captain Phillips.⁷ There is now growing fear among the U.S. merchant fleet that the use of deadly force by the U.S. military against Somali pirates has the potential to cause any future piracy incidents against U.S.-flagged vessels to be associated with a level of pre-meditated and intentional violence that has not heretofore been typical of Somali pirate attacks. Increased use of force may also lead Somali pirates to increase the level of force they employ in their attacks on merchant vessels.⁸

IMPACTS OF PIRACY

The increase in pirate attacks in the Horn of Africa region is occurring as shipping companies are facing plunging freight rates and reduced shipping volumes. The overall annual cost of piracy to the maritime industry has been estimated to be between \$1 billion and \$16 billion.⁹ This figure includes ransom payments, increased insurance rates, increased training costs, costs associated with the installation of anti-piracy equipment and vessel "hardening" measures, costs associated with repairing vessels damaged by pirate attacks, and delays in cargo deliveries due to rerouting. International governments are also affected as they bear the monetary and opportunity costs of providing naval assets for anti-piracy patrols.

Some insurance premiums for vessels transiting the Horn of Africa area have increased and some vessels are now carrying war risk insurance to cover damages to vessels resulting from incidents such as acts of war and insurrection. According to the U.S. Maritime Administration, the cost of war risk insurance premiums is estimated to be \$20,000 per ship, per voyage, compared to \$500 in 2007. This figure excludes injury, liability, and ransom coverage.¹⁰ Importantly, however, although insurance rates for vessels from some countries have increased, according to the American Institute of Marine Underwriters, hull and cargo rates for vessels leaving the U.S. have not changed because U.S. ocean marine insurers have yet to pay a ransom arising from an act of piracy.¹¹

HUMANITARIAN ASSISTANCE

The provision of humanitarian assistance to the Horn of Africa region is also threatened by piracy. Both Somalia and neighboring Ethiopia are food insecure nations heavily dependent on food aid provided by the international community. According to the U.S. Agency for International Development (USAID), there are more than 7.2 million Ethiopians and 3.2 million Somalis

⁷ "French Warship Captures Pirates," BBC, April, 15, 2009.

⁸ ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report, January 1-December 31, 2008*.

⁹ Testimony, Peter Falk, presented before the House Transportation and Infrastructure Committee, Subcommittee on Coast Guard and Maritime Transportation on February 4, 2009.

¹⁰ "The Long Way Around," Lloyd's List, November 26, 2008.

¹¹ Congressional Research Service, "Piracy off the Horn of Africa," April 21, 2009.

(approximately 43 percent of the Somali population) who receive U.S. emergency humanitarian assistance. The U.S. provided more than \$600 million in humanitarian assistance to Ethiopia in fiscal year 2008 and more than \$111 million in fiscal year 2009 funding through April 2009.¹² The U.S. gave more than \$270 million in humanitarian assistance to Somalia in fiscal year 2008 and more than \$157 million in fiscal year 2009 through January 2009.¹³

The United Nations World Food Programme (WFP) has reported increased costs associated with the delivery of food aid to Somalia, Uganda, Kenya, southern Sudan, and the eastern Democratic Republic of the Congo, and reports that its ability to deliver relief has been hampered. The WFP has expressed growing concern that millions of people in the Horn of Africa region and east Africa will go hungry if the food assistance on which they rely cannot be delivered through Mombasa to Somalia, Uganda, Kenya, southern Sudan, and the eastern part of the Democratic Republic of the Congo.¹⁴

Sea routes used by WFP to get food to Somalia



Source: World Food Programme

CONDITIONS IN SOMALIA

Somalia is one of the poorest and most violent countries in the world. The country has suffered from extensive drought and has been racked by violence following the collapse and subsequent absence of a functioning government. The Final Report issued by the International Expert Group on Piracy off the Somali Coast in November 2008 asserts piracy will persist and will continue to increase due to the persistence of “poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing, and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia.”¹⁵ The Expert Group also stated that unless there is an alternate means of income available to Somalis to replace the pirate trade, criminal activity will continue to be an accepted method of generating income within Somalia.

¹² USAID, Complex Emergency – Ethiopia, Situation Report #6, April 9, 2009.

¹³ USAID, Complex Emergency – Somalia, Situation Report #4, January 4, 2009.

¹⁴ World Food Programme, “Two New Piracy Incidents Underline Threat to WFP Shipments,” April 15, 2009.

¹⁵ International Expert Group on Piracy off the Somali Coast, “Piracy off the Somali Coast Final Report,” November 2008.

ESTABLISHING ORDER IN SOMALIA

At an international conference organized by the European Union in April 2009, leaders from the United Nations and from African Union countries pledged \$213 million to increase security in Somalia and attempt to end piracy originating there. The European Union stated that assisting Somalia's new government in stabilizing the country is critical to eliminating the root causes of piracy.¹⁶

Recently, nine countries in the vicinity of the Indian Ocean and the Red Sea, including Djibouti, Ethiopia, Maldives, Madagascar, Seychelles, Yemen, Tanzania, Kenya, and Somalia signed a document pledging their support to seize, investigate, and prosecute pirates off the coast of Somalia. The document, called the Code, promotes shared operations and allows authorized officials to board patrol vessels or aircraft of another signatory.

SOMALI COAST GUARD

The International Maritime Bureau (IMB) has suggested that a Somali Coast Guard should be established to protect its waters and to prevent toxic dumping and illegal fishing; this force could also assist in decreasing the number of pirate attacks on foreign merchant vessels. The Somali Coast Guard could be established under the sponsorship of the African Union.¹⁷ The IMB suggests that the international shipping industry should use potential ransom money to maintain and operate such a Coast Guard.

PROSECUTION OF PIRATES

Pirates have been prosecuted in countries outside Somalia using the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Countries that are a party to the Agreement can prosecute pirates and individuals who are alleged to have taken hostages on the high seas in any country, regardless of the flag state of the vessel against which the acts are committed.

Under recent agreements with Kenya, the U.S., United Kingdom, and European Union countries can turn over suspected pirates to Kenya for prosecution. The United Kingdom and the U.S. signed their memoranda of understanding with Kenya in December 2008 and January 2009, respectively. More recently, the European Union and Kenya signed an agreement on March 6, 2009, under which suspected pirates can be transferred from EU NAVFOR Operation ATALANTA coalition forces vessels to Kenya for prosecution. Since the agreement was signed on March 6th, 2009, approximately 52 suspected pirates have been transferred to Kenya by the EU NAVFOR.¹⁸ In return for turning suspects over to Kenya for prosecution, the U.K., U.S., and European Union have agreed to assist Kenya in improving and modernizing their judicial systems.¹⁹

¹⁶ "More Than \$200M Pledged to Beat Somali Pirates," CNN.com, April 24, 2009.

¹⁷ Ibid.

¹⁸ EU NAVFOR – ATLANTA Press Release, "Frigate Hands Over 13 Suspected Pirates to the Kenyan Authorities," May 16, 2009.

¹⁹ "The West Turns to Kenya as Piracy Criminal Court," New York Times, April 24, 2009.

Relevant U.S. laws covering the prosecution of pirates in the United States include 18 U.S.C. Section 1653²⁰, regarding Aliens as Pirates, and 18 U.S.C. Section 1203²¹, regarding Hostage taking.

ARMING U.S.-FLAGGED MERCHANT VESSELS

As pirate attacks in the Horn of Africa region have expanded, discussion of whether U.S.-flagged merchant vessels transiting the region should be armed has intensified. There appears to be no clear framework governing whether or how vessels should be armed or resolving the numerous questions of liability (including both civil and criminal liability) that the arming of merchant vessels could raise.

The United Nations Convention on the Law of the Seas (UNCLOS) (to which the United States is not a party) Article 17 states, “ships of all States . . . enjoy the right of innocent passage through the territorial sea.” Under Article 19, “passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.” Among other conditions, however, passage becomes “prejudicial” if it involves “any exercise or practice with weapons of any kind.”

Under UNCLOS, the mere arming of a merchant vessel does not appear to make it a ship of war. Thus, under Article 29, a warship is defined as “a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.”

Articles 105 and 107 of UNCLOS authorize action against pirates – but reference only State actors. Thus, Article 105 states “on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft . . . and arrest the persons and seize the property on board.” However, Article 107 states that “a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.”

Nonetheless, U.S.-flagged vessels are authorized under U.S. law to resist pirates, pursuant to 33 U.S.C. 383, which states:

²⁰ 18 USC Section 1653 states: Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is a pirate, and shall be imprisoned for life.

²¹ 18 USC Section 1203 states: (a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment. (b) (1) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless— (A) the offender or the person seized or detained is a national of the United States; (B) the offender is found in the United States; or (C) the governmental organization sought to be compelled is the Government of the United States. (2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.

The commander and crew of any merchant vessel of the United States, owned wholly, or in part, by a citizen thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel, or upon any other vessel so owned, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States, and may subdue and capture the same; and may also retake any vessel so owned which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States.

However, this statute is silent on whether the crew of U.S. merchant vessels may employ arms when resisting pirates, what arms they may employ, or when force (including deadly force) may be used.

Under 10 U.S.C. 351, the President is empowered to arm merchant vessels during war or threat to national security.²² However, even this statute contemplates threats posed by “any foreign government or agency.”

A memo developed for the National Defense Transportation Association by the law firm of Winston and Strawn has argued that “there is no legal or policy framework to guide private ship owners and insurance interests thus potentially leaving the ship owner responsible for ill defined and unknowable risks.”²³

Further, U.S. law appears to present significant practical impediments to the arming of merchant ships’ crews, given the prohibition against exporting weapons out of the U.S. The Arms Export Control Act (Chapter 39 of Title 22, United States Code) controls the transfer of “defense articles” (defined under 22 C.F.R. 121.1 to include firearms, which are further defined to include “non-automatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms”) out of the United States. Specifically, 22 C.F.R. 127.1 states that it is unlawful “to export or attempt to export from the United States any defense article.” The term “export” is broadly defined under 22 C.F.R. 120.17 to mean “sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data.”

Under 22 C.F.R. 123.1, “any person who intends to export or to import temporarily a defense article must obtain the approval of the Office of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption.”

²² 10 U.S.C. 351 states: (a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States. (b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests. (c) Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section. ²³ “Legal Issues Relating to the Carriage of Private Armed Security Personnel on U.S. Flag Merchant Vessels,” Constantine G. Papavizas and H. Allen Black III, Winston and Strawn, LLP, April 24, 2009, page 2.

Among other exemptions, under 22 C.F.R. 123.17(a), Port Directors of U.S. Customs and Border Protection shall permit the export of firearms “except barrels, cylinders, receivers (frames) or complete breech mechanisms when the total value does not exceed \$100 wholesale in any transaction.” Under 22 C.F.R. 123.17(b), the export of “non-automatic firearms” without a license is permissible “if they were manufactured in or before 1898, or are replicas of such firearms.” Further, 22 C.F.R. 123.17(c) states:

Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export temporarily from the United States without a license not more than three non-automatic firearms . . . and not more than 1,000 cartridges therefore, provided that:

- (1) A declaration by the U.S. person and an inspection by a customs officer is made;
- (2) The firearms and accompanying ammunition must be with the U.S. person’s baggage or effects, whether accompanied or unaccompanied (but not mailed); and
- (3) They must be for that person’s exclusive use and not for re-export or other transfer of ownership. The foregoing exemption is not applicable to a crew-member of a vessel or aircraft unless the crew-member declares the firearms to a Customs officer upon each departure from the United States, and declares that it is his or her intention to return the article(s) on each return to the United States.

However, many nations have laws prohibiting the import of weapons or the carrying of weapons into their ports – restrictions which appear to make it difficult or impossible for ships’ crews either to get a weapons export license or even to make the declaration required under 22 C.F.R. 123.17(c)(3).

Liability considerations for ship owners and all other parties are not clear for a variety of potential scenarios – including crew members shooting each other and the use of force against potential pirate attacks (including when deadly force may be used). Ship owners may be held liable in the event of the death of a crew member. Further, the legal analysis by Winston and Strawn has found that the Protection and Indemnity Clubs that insure vessels “may deny coverage for claims arising out of the use of arms against piracy attacks if they determine that such use was imprudent or unreasonable.”²⁴

Further, 22 U.S.C. 463 requires that armed vessels leaving US ports must provide bonds. Given these and other legal considerations, it appears that it may be difficult to arm a vessel’s crew members or even potentially to engage armed security guards while maintaining compliance with U.S. law, not to mention the various laws of the ports of call which the vessel may visit.

DEPARTMENT OF STATE ANNOUNCEMENT ON COUNTER-PIRACY INITIATIVES

On April 15, 2009, Secretary of State Hillary Rodham Clinton announced a number of anti-piracy initiatives in a statement she made during a press availability following the attack on the

²⁴ Legal Issues Relating to the Carriage of Private Armed Security Personnel on U.S. Flag Merchant Vessels,” Constantine G. Papavizas and H. Allen Black III, Winston and Strawn, LLP, April 24, 2009, page 15.

Liberty Sun. Secretary Clinton stated that “The United States does not make concessions or ransom payments to pirates.” She announced the intention of the U.S. to send an envoy to an international meeting regarding peacekeeping in Somalia who would “work with other partners to help the Somalis assist us in cracking down on pirate bases and in decreasing incentives for young Somali men to engage in piracy.” She also announced that the U.S. and its partners would work to free ships currently being held for ransom and would “explore tracking and freezing pirate assets.” She indicated that she had “tasked a diplomatic team to engage with Somali Government officials from the Transitional Federal Government as well as regional leaders in the Puntland” and “press these leaders to take action against pirates operating from bases within their territories.” Further, she indicated that she had directed staff to “work with shippers and the insurance industry to address gaps in their self-defense measures.”

COAST GUARD MARITIME SECURITY DIRECTIVE 104-6

On May 12, 2009, the Coast Guard issue Maritime Security Directive 104-6, which “provides the maritime industry with specific, risk-based measures to take to deter, detect or disrupt piracy.”²⁵ The Directive requires U.S.-flagged vessels to adopt an anti-piracy plan before entering high risk waters and to use those measures known to help prevent pirate attacks, including transiting through established transit lanes, utilizing erratic course changes, and traveling at the highest possible speeds. Additionally, ships transiting areas of pirate activity must include anti-pirate protocols in their vessel security plans. The Directive states that “During transit through high-risk areas, it is the ship’s responsibility to maintain a vigilant anti-piracy watch and ensure all shipboard anti-piracy precautions are in force.”²⁶

U.S. FUNDS TO COMBAT PIRACY

On May 12, 2009, the House of Representatives passed H.R. 2346, the “Supplemental Appropriations Act, 2009”. This legislation included \$8.5 million to support expanded diplomatic activities which include, among other programs, the development of meetings and activities to support the International Contact Group on Piracy. H.R. 2346 also appropriated \$70 million to support the African Union Mission to Somalia (ANISOM) mission and \$10 million for the Economic Support Fund to assist Somalia with economic growth and governance programs. The Committee also directed the Department of State to provide a report on the feasibility of creating U.S. maritime capabilities to combat piracy in the Gulf of Aden and Indian Ocean.

PREVIOUS COMMITTEE ACTION

The Subcommittee on Coast Guard and Maritime Transportation held a hearing on February 4, 2009, on international piracy.

²⁵ U.S. Coast Guard, Press Release, “Coast Guard Issues Maritime Security Directive 104-6,” May 12, 2009.

²⁶ *Ibid.*

WITNESSES

Panel I

Rear Admiral Brian Salerno
Assistant Commandant for Marine Safety, Security, and Stewardship
United States Coast Guard

Mr. Ed Frothingham
Principal Director, Office of the Deputy Assistant Secretary of Defense for
Counternarcotics and Global Threats
Department of Defense

Mr. James Caponiti
Acting Administrator
Maritime Administration

Panel II

Arthur J. Volkle, Jr.,
Vice-President
American Cargo Transport

Philip J. Shapiro
President and CEO
Liberty Maritime Corporation

Erik L. Johnsen
President
Waterman Steamship Corp

Bill Van Loo
Secretary-Treasurer
Marine Engineers' Beneficial Association

Accompanied by

Michael Rodriguez
Executive Assistant to the President
Masters, Mates, and Pilots

Paul Doell
Director of Legislative Affairs
American Maritime Officers

Augustin Tellez
Executive Vice President
Seafarers International Union

HEARING ON PIRACY AGAINST U.S. FLAGGED VESSELS: LESSONS LEARNED

Wednesday, May 20, 2009

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

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Elijah E. Cummings [chairman of the Subcommittee] presiding.

Mr. CUMMINGS. This hearing is called to order.

On February 4th, 2009, I convened this Subcommittee to examine international piracy on the high seas, particularly in the Horn of Africa region.

At that time, no U.S.-flagged vessels had been attacked by pirates, and the general conclusion among our witnesses was that ships should focus on implementing the anti-piracy measures that had been identified as likely to thwart attempted pirate attacks, such as transiting the Horn of Africa at night and at the highest possible rate of speed, and employing non-lethal measures such as water hoses.

Now, however, we convene in very changed circumstances. Two U.S.-flagged vessels, the MAERSK ALABAMA and the LIBERTY SUN, have been attacked by Somali pirates.

One of the attacks resulted in the taking of an American Captain, Richard Phillips, hostage. He was freed only through the decisive intervention of U.S. military forces, including Navy SEALs, who eventually killed the pirates holding Captain Phillips after it became clear his life was in imminent danger.

These attacks against the MAERSK ALABAMA and the LIBERTY SUN are the first known pirate attacks against a United States-flagged vessel since the end of our war with the Barbary pirates in the early 1800s.

These attacks, conducted by young men from the desperately poor nation of Somalia, who have few legitimate opportunities to earn a living and who arm themselves with RPGs and AK-47s and take to the seas in small boats, represent in many ways a threat that our Nation confront.

That said, the United States-flagged merchant fleet has always been able to rely on the protection of the United States Navy to ensure its safety. As we saw with the MAERSK ALABAMA, that Navy is more than capable of handling this current threat.

Nonetheless, at the present time, it appears that the United States-flagged fleet is essentially being left to handle its immediate security needs by itself.

On May 12th, the Coast Guard issued Maritime Security Directive 104-6, which purports to “provide the maritime industry with specific, risk-based measures to take, to deter, detect or disrupt piracy.”

Specifically, the Directive requires U.S.-flagged vessels to adopt an anti-piracy plan before entering high risk waters and to employ those measures known to help prevent pirate attacks, including transiting through established transit lanes, utilizing erratic course changes, and traveling at the highest possible speeds.

Additionally, the Directive requires vessels to “supplement ship’s crew with armed or unarmed security based on a piracy specific vessel threat assessment conducted by the operator and approved by the Coast Guard.”

While these are sensible recommendations that a merchant vessel should follow to protect itself while transiting waters where pirate attacks are common, there is a broader question to be considered: Why is it that the best our Nation appears to have to offer our merchant mariners at this time is instructions on the steps they should take to protect themselves?

It is not at all clear to me why the Navy or, in the absence of a willingness to act on the part of the Navy, the Coast Guard, isn’t providing embarked military personnel on the few U.S.-flagged vessels that transit the Horn of Africa region, most of which, I note, are carrying U.S. Government impelled cargoes.

While I have no doubt that the Navy would respond immediately if another attack occurs against a U.S.-flagged vessel, the timeliness of their response could be hindered if Navy assets are far from the scene of the attack.

And, sadly, in the time that it takes the Navy to respond to an incident, another hostage situation may have been created, putting another United States mariner at the mercy of pirates who have already announced their intention to take revenge against U.S. mariners for the deaths of their pirate colleagues in the MAERSK ALABAMA incident.

Given these realities, I don’t believe the Department of Defense would really argue that U.S.-flagged vessels are safer if they are left to protect themselves. Nor do I think the DOD would argue that it is preferable to respond to an incident rather than to prevent an incident from occurring.

That said, the issue we must explore is the following. We have long argued that we need a U.S.-flagged merchant fleet to carry U.S. Government cargoes and to provide sealift capacity to support DOD needs in time of war and national emergency.

For that reason, we have created the Maritime Security Program, which provides direct payments to U.S.-flagged ships to ensure that they are available when the Government needs them.

Given this, isn’t it in our national interest to utilize the very limited U.S. military resources that would be necessary to protect our U.S.-flagged fleet rather than leaving them to implement their own defensive measures?

We look forward to hearing from our witnesses on this critical issue today.

With that, I recognize our distinguished Ranking Member, Mr. LoBiondo.

Mr. LOBIONDO. Thank you, Mr. Chairman, and good morning to everyone. Thank you, Mr. Chairman, for calling this hearing.

As you pointed out, since the Subcommittee's last hearing on this topic, Somali pirates have increased their attacks on merchant vessels operating in the Gulf of Aden and the Indian Ocean, to include the unsuccessful hijacking of the U.S. vessel MAERSK ALABAMA, which was repelled by the vessel's crew and ultimately by our military forces. Despite this and other successes, Somali pirates are currently in control of at least 15 ships.

As I said at our last hearing, I think this type of piracy cannot be tolerated by the United States or the international community, and this hearing provides us with a chance to examine the ways to respond to the ongoing and widening threat.

As a result of the continued piracy off the coast of Somalia, many in the maritime community are looking at ways to enhance security of merchant vessels, including the placement of armed security personnel aboard ships operating in high-risk areas.

A vessel's crew has every right under U.S. and international law to defend themselves and the vessel, including the use of deadly force. However, I do have some concerns about just how a vessel operator and crew goes about arming the vessel. How many personnel should be armed? What are the training requirements? Can arms be taken into foreign ports? And what are the legal ramifications for the crew and vessel owner if the vessel is defended using firearms?

I hope that we will be able to address these issues and get some of the questions answered today.

Recently, the Coast Guard issued new security guidelines that vessels operating in these areas must comply with. Several of these new guidelines will require changes to vessel procedures, and I look forward to discussing with our witnesses from the operating and labor communities how they intend to implement these changes.

I also look forward to hearing your views on whether the United States military personnel should or could be placed on board U.S.-flagged merchant vessels as a deterrent to piracy.

Lastly, I hope the Coast Guard will address how they intend to certify or monitor the capacities added aboard U.S. vessels.

Piracy is a major concern to our Nation and the American taxpayers, and, indeed, all of the world. Americans are directly paying into maintaining an anti-piracy presence in the Horn of Africa region, and consumers will ultimately absorb the increased costs associated with rising insurance rates and rerouted or lengthened voyages due to the threat of piracy.

It is incumbent on us to examine ways to minimize and, in fact, end this threat and its impact on world commerce and our own national economy.

I want to thank the witnesses for their testimony today, and I look forward to addressing these issues and others with the Subcommittee as we move forward.

Again, thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

There being no opening statements, we will proceed right to our panel. Rear Admiral Brian Salerno, Assistant Commandant for Marine Safety, Security and Stewardship; Mr. Ed Frothingham, Principal Director, Office of the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, Department of Defense; Mr. Charles Ikins, Director, East and Southern Africa Policy, Office of African Affairs, Office of the Secretary of Defense; and Mr. James Caponiti, Acting Administrator, Maritime Administration.

Rear Admiral, welcome. Welcome all. We welcome all of you and we will hear from you, Rear Admiral.

TESTIMONY OF REAR ADMIRAL BRIAN SALERNO, ASSISTANT COMMANDANT FOR MARINE SAFETY, SECURITY AND STEWARDSHIP; ED FROTHINGHAM, PRINCIPAL DIRECTOR, OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR COUNTERNARCOTICS AND GLOBAL THREATS, DEPARTMENT OF DEFENSE; ACCOMPANIED BY CHARLES IKINS, DIRECTOR, EAST AND SOUTHERN AFRICA POLICY, OFFICE OF AFRICAN AFFAIRS, OFFICE OF THE SECRETARY OF DEFENSE; AND JAMES CAPONITI, ACTING ADMINISTRATOR, MARITIME ADMINISTRATION

Admiral SALERNO. Good morning, Mr. Chairman, distinguished Members of the Committee. I appreciate the opportunity to appear before you and discuss maritime piracy and the Coast Guard's role in addressing this threat to freedom of the seas, to the safety of shipping, and, most importantly, to the safety of mariners.

In response to the threat of piracy off the Horn of Africa, the Coast Guard has been working closely with our Government and industry partners, with the International Maritime Organization, and through the International Contact Group on Piracy off the Coast of Somalia to strengthen preventative measures for merchant ships and to develop international regimes for the prosecution of apprehended pirates.

We have also been involved operationally by providing forces, within the limits of our capacity to do so, to the U.S. Central Command, some of which have been, in turn, assigned to on-scene counterpiracy efforts.

Although many nations have provided naval forces to the region to counter the threat of piracy, it remains equally important for merchant vessels to take appropriate measures to reduce their vulnerability to attacks.

To best identify realistic measures, particularly in light of evolving pirate tactics, the Coast Guard has been working closely with domestic and international maritime industry leveraging long-standing relationships forged in our transportation safety and security roles. As new security guidelines are developed, the Coast Guard updates its requirements for U.S.-flagged vessels to modify their vessel security plans, plans which are required by the Maritime Transportation Security Act.

The mechanism by which we convey specific anti-piracy planning requirements is the Maritime Security Directive, which you mentioned in your statement, Mr. Chairman. The most recent directive pertaining to anti-piracy measures was released last week, and we

are continuing to work with the industry and the interagency to implement its provisions.

It is important to note that the two U.S.-flagged pirate attacks that were mentioned in your statement, Mr. Chairman, the MAERSK ALABAMA and the LIBERTY SUN, each had self-protection procedures in place and their crews were prepared to take the appropriate actions. This exemplifies the kind of preplanning that we want all U.S. ships to undertake.

Internationally, the International Maritime Organization has been very active on this issue. As head of the U.S. delegation to IMO, the Coast Guard has been deeply involved with other flag states and with industry NGOs to revise anti-piracy guidelines applicable to international merchant fleets. Piracy is on IMO's agenda for the Maritime Safety Committee meeting scheduled to convene next week in London, and we will actively participate in that meeting.

The Coast Guard has also actively participated in IMO-sponsored regional initiatives to improve international governance, including the development of the Djibouti Code for Regional Cooperation. We have assisted the State Department in the development of a bilateral agreement with Kenya for the prosecution of apprehended pirates, and we have been heavily engaged in the Contact Group on Piracy off the Coast of Somalia. In this latter effort, we co-lead with the U.S. Maritime Administration a working group focused specifically on industry self-protection measures.

When piracy events do occur, swift communications among involved U.S. Government agencies is exceptionally important. The mechanism for doing this is the Maritime Operational Threat Response process, or MOTR. MOTR has been used in over 600 cases since it was first established in 2006; however, the recent MAERSK ALABAMA and LIBERTY SUN cases were the first ones related to piracy. Post-incident debriefs within the interagency indicate that the process worked very well. It ensured complete coordination among multiple agencies having direct responsibilities for different aspects of the Government's response.

As mentioned earlier, the Coast Guard has forces in the region under the operational control of the U.S. Central Command. Coast Guard law enforcement detachments have been specifically assigned to Combined Task Force 151, where they augment U.S. Navy vessel boarding teams. These teams have been directly involved in the apprehension of pirates in several recent cases. The law enforcement detachment's expertise in vessel boardings at sea, as well as collecting evidence, providing witness statements, and handling suspects, has been an asset to CENTCOM.

In closing, Mr. Chairman, I want to assure you that the Coast Guard is committed to fulfilling its statutory and regulatory responsibilities for the safety and the security of U.S. merchant vessels and crews. We will remain engaged with the industry in the implementation of anti-piracy measures identified in the Directive, as well as with the international maritime community through our role in IMO and the Contact Group.

Thank you for the opportunity to be here today, and I look forward to your questions.

Mr. CUMMINGS. Mr. Frothingham?

Mr. FROTHINGHAM. Thank you, Chairman Cummings, Ranking Member LoBiondo, distinguished Members of the Committee. We appreciate the opportunity to appear before you and testify. I ask that the testimony we present be admitted and that we just make small, short comments.

Mr. CUMMINGS. So ordered.

Mr. FROTHINGHAM. Thank you.

Sir, addressing piracy is important to the United States and to the world. Freedom of the seas is crucial for national security and international commerce. DOD's strategic goals are to detect, deter, and disrupt piracy, and assist in prosecution against pirates that are caught.

But we have to put this into context. Take the Gulf of Aden, for example. There are 50 commercial vessels transiting the Gulf of Aden on any given day, and on any given day three to seven U.S.-flagged vessels are transiting as well. In 2008, there were over 33,000 vessels transiting the Gulf of Aden and there were 112 pirate attacks. Of those 112 pirate attacks, 42 were successful. By the numbers, that is less than half a percent.

Now, we can't ignore pirate attacks, and we aren't suggesting that. But the low numbers have grave implications for us with regard to military allocation of resources.

Further, the targets that we are talking about, as you pointed out, are very difficult to track, and, when not engaged in pirate attacks, they blend in with the rest of the traffic. Further, the attacks are rapid and in short duration and hard to respond to in any timely fashion, even if you are just over the horizon.

Finally, after the attacks are concluded, the pirates manage to get to their safe havens and blend in with the population, and are difficult to get to for several reasons, not the least of which is sovereign territory.

The point of this is that, for the reasons I have just stated, it is regrettable that there is no clear understanding that the global military forces, much like civilian police forces, cannot always intervene if criminals strike. As a result, many shippers have been slow to invest adequately in basic low-cost anti-piracy measures that would render their ships far less vulnerable.

Working with other departments and agencies, we are working on a comprehensive strategy and are seeking engagement for other nations to deal with the threat of piracy. Today, in the Gulf of Aden, for example, there are 34 vessels from over 15 nations working together to stop this threat.

In conclusion, DOD will continue to respond and support U.S.-flagged vessels, but at this present time that is all we can do. Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Ikins.

Mr. IKINS. Mr. Chairman and distinguished Members of the Committee, I appreciate this opportunity to testify about the growing problem of piracy off the Coast of Somalia. My name is Charles Ikins, and I serve within the Office of African Affairs at the Office of the Secretary of Defense.

Reducing incidents of piracy is important both to the United States and to the international community. Piracy endangers inno-

cent mariners, disrupts commerce, causes economic damage to shipping companies, and contributes to instability ashore, especially in Somalia.

From a regional perspective, our goals, as Mr. Frothingham has said, are deterrence, disruption, interdiction, and prosecution. But achieving these will be challenging for several reasons.

First, the challenge of space. The pirates operate in a total sea space four times the size of Texas, which is over a million square nautical miles.

Second, there is no effective and reliable central governing authority or capacity in Somalia. At the moment, pirates can operate with impunity from coastal fishing villages as long as they have the support of the local Somali clan leadership. Though regional governments in Somaliland and Puntland have demonstrated some capacity to provide limited services, including law enforcement, in most respects, Somalia remains ungoverned, allowing pirates to use coastal villages as safe havens.

Third, even when pirates are captured, serious gaps remain in the international community's ability to prosecute them for their crimes, and thus an effective legal deterrent. Although all states may exercise jurisdiction over pirates as a matter of international law, some states still lack the appropriate domestic laws to prosecute pirates in their own courts when the act of piracy occurred on the high seas. Other states have appropriate domestic legal frameworks but lack the prosecutorial and judicial capacity to effectively hold pirates accountable. In this regard, we applaud Kenya for agreeing to take on the task of prosecuting pirates.

In such a large area of water, and with so many other critical national security priorities, it is not possible for our military to prevent or intervene in each and every attack. But with the appropriate industry-led, onboard security measures in place, the vast majority of pirate attacks can be thwarted. Most pirates are opportunistic criminals. Whenever possible, they will focus on the easy targets and avoid the difficult. Our main task now is to assist commercial carriers in making their ships hard targets.

Thank you for offering me this opportunity to testify, and I welcome your questions and comments.

Mr. CUMMINGS. Thank you very much.

Mr. Caponiti.

Mr. CAPONITI. Good morning, Chairman Cummings, Ranking Member LoBiondo, and Members of the Subcommittee. I am pleased to have the opportunity to appear before you today to discuss the serious threats stemming from the ongoing piracy problems in the waters off of Somalia. Throughout 2008 and continuing into 2009, the global piracy situation has grown substantially worse, particularly in an ever-expanding area off the coast of Somalia, where more than 20,000 vessels transit each year.

The impact of piracy has been very significant, but the American public has only recently become aware of the situation with the attacks on two American-flagged vessels, both of which were carrying food aid, cargo for Somalia.

Acts of piracy threaten freedom of navigation and the flow of commerce. Off the Horn of Africa, piracy attacks disrupt the flow of critical humanitarian supplies. In most instances, pirates de-

mand millions of dollars in ransom for the release of hostages, ships, and cargoes.

Press reports indicate that, in 2008, pirates received an estimated \$30 million in ransoms for the release of seajacked vessels. In 2008, 42 vessels were seized by pirates operating off the coast of Somalia and, globally, 889 mariners were held hostage by pirates as part of ransom demands.

In 2009, the number of attacks continues to rise, but the success rate has been reduced. We had a recent spurt in April, though, that was a little bit out of character with the rest of what has been going on. In total, there have been more than 27 successful seajackings in 2009, with more than 476 seafarers captured, and one seafarer was killed by a pirate attack last week.

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, and many of these vessels are vulnerable to attacks. On average, about one U.S. commercial vessel enters the area each day, and on any given day about three to seven vessels are in the waters that we are talking about.

Many of these U.S.-flagged vessels carry Department of Defense cargo bound for Operations Iraqi and Enduring Freedom, and U.S.-flagged vessels transiting the region also carry humanitarian cargoes generated by the U.S. Agency for International Development or other international organizations to the Horn of Africa, including Djibouti, Somalia, and other countries in East Africa or South Asia.

Early this year, 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, to further establish best management practices to prevent piracy, and to bring industry's perspectives and ideas to the interagency process.

Since maritime labor is uniquely vulnerable to pirate attacks with mariners killed, harmed or held hostage as part of ransom demands, MARAD has included maritime labor in discussions and meetings. The most recent MARAD broadly focused industry and interagency meeting was held on April 23rd at DOT headquarters.

MARAD has also participated in senior level industry and Government discussions and scoping sessions with a defense transportation system focus led by U.S. Transportation Command and the National Defense Transportation Association Military Seal Committee. The most recent meeting of this kind included Vice Admiral Gortney, who used firsthand perspective as the commander of Naval Forces Central Command.

The United States leads efforts to enhance industry's self-awareness as the lead for Working Group 3 of the Contact Group, the co-lead with the Coast Guard of the Working Group 3 of the Contact Group. MARAD led the delegation and Coast Guard chaired the Working Group meeting in February, and MARAD presented international industry-developed best practices at the Contact Group Plenary in Cairo in March.

MARAD has also supported the dissemination of counterpiracy guidance, and we have worked to better the coordination between military, civilian, and operators in the region. MARAD likewise

provides U.S.-flagged projected schedules on the waters off Somalia to the National Maritime Intelligence Center and vessel tracking information on U.S.-flagged vessels to appropriate military authorities.

Since the recent attacks, there are additional BMPs that have been learned, and these are being evaluated and we will provide our views to Coast Guard as they consider revision to MARSEC directives. Given limited military resources available to fully protect commercial shipping in the waters off Somalia, there is an increasing focus on the issue of shipping companies hiring private armed security personnel to protect their vessels while transiting the waters off Somalia.

However, there are many complicated factors which must be addressed before the industry as a whole can adopt these recommendations. These include the need to develop appropriate standards for armed security providers, compliance with port state restrictions on arms aboard merchant vessels entering many ports in the world, consideration and reaction to the potential escalation of violence due to the presence of arms on board commercial vessels, issues of safety for the crew and vessel, rules on the use of force, design constraints of vessels to carry additional personnel, insurance and liability issues, and many other related factors.

Clearly, the maritime industry needs the Government's assistance in this area to set or guide standards and measures of performance, and MARAD is actively engaged with other agencies in understanding and developing the needed guidance on the use of armed security.

The U.S. Coast Guard recently issued an updated MARSEC Directive that requires the implementation of several security protocols, many of which are similar to the BMPs already noted. This MARSEC was developed by the Coast Guard in close consultation with interagency partners, including MARAD. At the request of Coast Guard, MARAD will participate in reviewing vessel security plans required by the MARSEC, as well as subsequent development of implementing guidance on the use of armed or unarmed security.

Most recently, MARAD engaged the marine insurance industry to determine the effects of the piracy situation on insurance rates and the effects of insurance if vessels carry armed security personnel aboard their ships. The concerns of insurance companies have been made clear. The use of private armed security teams has not been fully addressed in terms of rules on the use of force, port state control on firearms, the certification of security personnel, and vessel and crew safety.

All of these issues raise serious liability considerations from the standpoint of the marine insurance industry, and underwriters have shared their concerns on the absence of standards; the need to vet security firms; potential liability implications to the owner, insurer, and security firm; and the potential escalation of hostile actions that will increase the risk.

Mr. CUMMINGS. You are going to have to wrap up.

Mr. CAPONITI. Sir, we appreciate the opportunity to be here. We will do everything we can to assist the process. Thank you.

Mr. CUMMINGS. Thank you very much. I have been very generous and gave you two extra minutes.

Mr. Frothingham, you say that you all are coming up with a comprehensive plan? Is that what you said? When do you anticipate that happening?

Mr. FROTHINGHAM. I think it is an ongoing effort working with the interagency and the international community in many of the efforts that the Admiral was talking about. Our participation is there, along with the other departments and agencies. So I don't have a deadline right now, and it depends on the actions of a lot of other factors that we don't control.

Mr. CUMMINGS. Rear Admiral, are you working on that plan too?

Admiral SALERNO. Sir, with respect to engagement with the international community, yes, sir, we are. What we see as the next step is encouraging other flag states who operate merchant fleets to adopt the same best management practices so they will harden their ships as was described. A hardened ship is much less likely to be pirated. What we have done with our Maritime Security Directive in effect is a template that we will urge other flags to do for their fleet as well.

Mr. CUMMINGS. Let me go to Mr. Frothingham or Mr. Ikins. You stated in your written testimony that "Somali pirates operate in a total sea space of more than a million square nautical miles, making it difficult for naval or law enforcement ships and other assets to reach the scene of a pirate attack quickly enough to make a difference."

You also noted that "The relatively low incidence of pirate attacks has implications for how we allocate military assets" and you noted that the DOD is fighting two major wars and is faced with many competing demands for its resources.

Then you note that "Many of the resources most in demand for counterpiracy activities, such as intelligence, surveillance and reconnaissance assets are the same assets that are urgently required elsewhere."

Wouldn't it be possible and relatively inexpensive to place four to five-person teams of embarked military personnel on a small number of U.S.-flagged vessels transiting the Horn of Africa region, most of which I note are carrying U.S. cargoes? Exactly which major missions being conducted by the U.S. Navy would be threatened by the assignment of, say, no more than 100 Navy personnel to provide embarks to U.S.-flagged merchant vessels? In fact, wouldn't this approach be cheaper than maintaining many U.S. Navy vessels in the Horn of Africa region?

Mr. FROTHINGHAM. That is a good question, sir. As a matter of fact, we are embarking security teams on U.S.-flagged vessels in that area.

Mr. CUMMINGS. And how is that determined? I mean, how do you determine how many and when?

Mr. FROTHINGHAM. We have a practice of vessels owned by the Military Sealift Command that have crew members, five of the crew members are trained and armed, and then on vessels that the Military Sealift Command we also embark security teams numbering 12 or less that are trained and armed. Commercial vessels chartered only to carry DOD cargo, but on a charter that goes for

six months or longer we train members of the crew, five members of the crew to be armed and provide security for that vessel.

Vessels less than that we don't have that training embedded in the program, so if it is 180 days or less carrying DOD cargo, we don't train crew members to do that. That is based on allocation of resources and the risk and force protection involved with the interest in the cargo that we are shipping, particularly to places like Iraq and Afghanistan.

Mr. CUMMINGS. And how long has that been going on, that training process that you just talked about?

Mr. FROTHINGHAM. For some time. I can get you the exact dates of that, if you want.

Mr. CUMMINGS. I am just trying to figure out is that something that has come about recently because of all the problems or whether it is something that has been happening over the years. I also want to know whether there has been any consideration to expanding that, because, again, we are looking for practical solutions and it sounds like that is something you are doing to a degree, and I am just wondering what your thinking is on that.

Mr. FROTHINGHAM. Yes, sir. The Naval Expeditionary Command located in Virginia has anywhere from 144 to 70 personnel that are trained to provide these services. They are allocated against all the combatant commands, so they are in demand at PAYCOM and other places as well. We do that based on the resources and the threat that we are facing and the requirements that the combatant commands levee on the Navy. I can get you the details on that, sir.

Mr. CUMMINGS. I would appreciate that. What about non-military sealift ships like the MAERSK ALABAMA? Why shouldn't they get embarks?

Mr. FROTHINGHAM. Well, that gets to the question of the vessels that I was describing of the six month leases or longer, carrying exclusive DOD cargoes, they are given the status of sovereign vessels, and we do that as protection of the sovereign vessels. Vessels less than six months carrying DOD cargo and mixed cargo or non-duty cargo are not considered to be sovereign vessels, and we would ask them to rely on their own devices as we would a homeowner in a neighborhood counting on police support. It is kind of the allocation of risk.

Mr. CUMMINGS. Let me follow that up. Does the DOD believe that U.S.-flagged merchant ships are more secure if they are left to manage their security in pirate-infested waters on their own, rather than having embarked military personnel? If not, why shouldn't embarked military security teams be provided to them? Why should U.S.-flagged vessels and U.S. citizens be left to essentially defend themselves?

Further, I couldn't help but note that you state that "This is a context in which our actions will be most effective when private partners take proactive measures themselves." So if a foreign threat was attacking Americans, say, in Washington, DC, would you recommend that the best response would be for those under attack to hire private security guards and strengthen the defenses around their homes? Why is the situation different when the attacks against Americans are occurring outside the United States?

Mr. FROTHINGHAM. Well, another good question, sir.

Mr. CUMMINGS. Thank you.

Mr. FROTHINGHAM. It depends on a couple of things. One of the things you characterized was a foreign attack on Washington, D.C. Of course we wouldn't rely on homeowners to defend against an attack from a foreign threat to the United States. However, we consider pirates criminals, and they are treated that way in the world.

Therefore, we would take measures that would be anti-criminal measures. We think that most of the attacks can be thwarted based on the measures that are being recommended by the Maritime Administration and being approved in the Coast Guard security plans. We think at this time that answers the mail. Of course we will defend U.S.-flagged vessels, just as we would the MAERSK ALABAMA, and we will continue to do so in the future. But we have to allocate the resources based on the threat that we are examining and the risks that are involved.

Mr. CUMMINGS. Let me just ask you, then I will turn it over to our Ranking Member, the members of the unions that represent our Nation's merchant mariners are concerned because it appears that the DOD is not taking the lead in protecting U.S.-flagged merchant vessels. Is it the case that protecting U.S. commercial shipping is no longer among the primary missions of the United States Navy? And, if so, when exactly did this change in mission priorities take place?

Mr. FROTHINGHAM. I would have to go back and read the mission of the United States Navy to refresh my recollection, but I believe that defending U.S.-flagged vessels is a mission of the U.S. Navy. I don't think it has changed, but it is a mission set that has to be balanced against other requirements levied by the President of the United States and based on what Congress wants us to do. We will, of course, defend U.S.-flagged vessels and will continue to do so, we consider that a very important duty, and that is where we are.

Mr. CUMMINGS. You know, I have often talked about how, in our Country, we believe that we are prepared for emergencies. Katrina showed us that we weren't, except for the Coast Guard. And I just wonder, if things got worse, will we be looking back saying that we wish we had done things right now to prepare.

There is a book that I just read called Peaks and Valleys, and it says that when you are in your valley, you need to be preparing for your peak, and when you are in your peak you need to be preparing for your valley. I just worry that when it times come for the rubber to meet the road, we will discover there is no road.

I have some more questions, but, Mr. LoBiondo, I yield.

Mr. LOBIONDO. Thank you, Mr. Chairman.

I am curious, any of our panel members, do you all believe that vessels and their crews have an unquestioned ability to defend themselves against a pirate attack? Does anybody believe they don't?

Admiral SALERNO. Sir, I will speak for the Coast Guard. We believe that the ships do have the inherent ability to self-defense.

Mr. LOBIONDO. Okay. Anybody on the panel disagree with that?

Mr. FROTHINGHAM. Can you explain what you mean by ability or right?

Mr. LOBIONDO. You are on a vessel, you are part of the crew, you are under attack by pirates. Can you defend yourself? Do you have the right and ability to defend yourself?

Mr. FROTHINGHAM. I certainly agree you have the right. I can't tell you whether they have the ability to defend themselves, because it depends on the ship.

Mr. LOBIONDO. With that in mind, do you think crew members have indemnity under U.S. law for incidents that may occur on a vessel if they are responding to an attack?

Mr. CAPONITI. Sir, I can try that one. I believe they do have. That is a risk that the crew has, and I think it is one of the things that we need to be very careful about with our expectations of crews. I think the fundamental responsibility of a carrier to protect his vessels with lethal or non-lethal measures is a reasonable expectation.

It raises a lot of issues, though, and what we in the Government need to do is, when we establish security directors, we need to address those variables as well as we can. I can assure you that there is a lot of work being done in the interagency on this. Coast Guard has the lead on the Maritime Security Directives, I don't want to speak for them, but they have pulled in Maritime Administration and other agencies to try to address the serious issues that are raised in this environment that we are talking about.

So we don't pretend that it is easy. We think that most ships that are in those waters that are U.S.-flagged ships are not high-risk ships. I shouldn't say most. Many are not high-risk ships, they are high and fast. The ones that are highly vulnerable, though, we need to take extreme measures with every kind of lethal and non-lethal measure available to us.

Mr. LOBIONDO. What is your feeling about indemnity with international law for U.S.-flagged vessels?

Mr. CAPONITI. I believe I can competently answer this. I think there is a personal indemnity risk that seamen and crewmen have if they do something irresponsible while trying to defend themselves. I think that is a grey area that is in the eyes of the beholder.

So, certainly, this whole situation puts crews in jeopardy. We have had a couple of instances where military forces—I believe military forces—have fired on fishermen, thinking they were pirates, and it raises a lot of legal issues. Certainly, if a soldier does that, it is different than if a mariner does that. A mariner I think is personally liable and a whole host of legal issues come cascading down on that.

Mr. LOBIONDO. There is a lot of discussion from the industry and from all interested parties on what is the best way to protect and to defend ourselves, and the Chairman indicated his belief that the United States Navy should actually just play part of the role. We haven't had much discussion, though, about if the Navy or the Coast Guard is unable or unwilling to play that role, what is the thought about a team of private contractors that are former military, that have military training, but are not U.S. military, that are hired by the owners or the vessels themselves that are U.S.-flagged? Admiral?

Admiral SALERNO. Sir, there are a number of companies that are already doing that, hiring private security to protect their ships and their crews, so we know it can be done. One of the reasons we included that option in our Maritime Security Directive is because it has proven to be a very effective deterrent to pirate attacks.

In a recent briefing by Admiral Gortney from Central Command, NAVCENT—he is a naval component commander—he indicated that of 12 cases of pirate attacks on merchant ships that have had embarked security teams, they have all been successfully repelled.

So, in many cases, just the mere demonstration that the ship is protected is sufficient to dissuade a pirate from continuing the attack, so they are very effective.

Mr. LOBIONDO. So that might be something that will be looked at as a possible recommendation as folks unfold on developing a strategy?

Admiral SALERNO. Yes, sir. That is, in fact, included as an option within the Maritime Security Directive, armed or unarmed teams.

Mr. LOBIONDO. Well, I know it is a complicated issue and my time has expired, but just a quick observation that we are taking our time, as we should, and there are a variety of different legal and all kinds of issues involved with this. But I venture to say that if there were an incident tomorrow on a U.S.-flagged vessel where U.S. citizens were harmed or killed, we would have a whole different attitude about the urgency with which we are dealing with this and the measures with which we would be willing to go to.

Thank you, Mr. Chairman.

Mr. CUMMINGS. You know, Mr. LoBiondo, I agree with you a million percent, and I think that that is why we want this thing done right, but we want to get it done.

I think what happens too often is people—and I am not talking about you all, just talking about in general—people look at a problem and they say it is hard, we are going to deal with it, we are going to deal with it, we are going to deal with it, and the next thing you know, five years go by, ten years go by, but, in the meantime, a lot of damage is done.

That is why this Committee has consistently set timetables, because we realize that unless you measure something, unless you set some timetables, nothing may happen. That is a problem, and we simply cannot afford for nothing to happen. So that is why I asked you, Mr. Frothingham, exactly what your timetable was with regard to this. I promise you, this is our watch, and we are going to bang this issue until we get a resolution, because I just think it is just that important.

Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. I very much appreciate your having this hearing today.

I want to compliment, even though he is on the second panel, Mr. Volkle for his statement. I think a lot of people have outlined a problem and the only real solutions to us were in his statement. So I want not direct this to the gentleman from MARAD.

Mr. Volkle points out that in order for an American-flagged vessel to carry weapons, that 22 CFR would have to be amended. So, first, let me get a clarification. When he talks about 22 CFR per-

mits an individual seaman to bring up to three semiautomatic weapons. Is that per vessel or per seaman, sir?

Mr. CAPONITI. Sir, I am not certain of the provision. I would imagine that that is per seaman.

Mr. TAYLOR. Could you get a clarification for the Committee?

Mr. CAPONITI. I could get a clarification for you, sir.

Mr. TAYLOR. Second thing, he talks about the temporary export license and then I am going on to his statement: "It is virtually impossible because the State Department requires explicit consent from every country to which a vessel will call prior to issuing a permit. We have attempted to obtain such consent from some of the countries where we call, to no avail."

Mr. Caponiti, I would think that is your job. Maybe a year ago it might not have been your job, but if we are a Maritime Administration that is in the business of promoting maritime commerce for our Nation, I would think one of the resources that you can provide them is to say if you are going to be delivering something to Somalia, if you are going to be delivering something to Djibouti, if you are going to be delivering something to the United Arab Emirates, these are the rules; we have made the calls ahead of time and this is what you should anticipate.

The second thing is, since it is a very real problem, going back to what Mr. LoBiondo said, the MAERSK ALABAMA should never have been hijacked; it was fairly fast and had high sides. So, according to your rules, they have already broken that rule. And there are a lot of tankers that are a lot slower and a lot lower, and they are vulnerable.

So, again, Mr. Chairman, I think we really have two options, and I very much appreciate your willingness to do something. Number one, in the short term, we have to decide whether or not we, as a Nation, are going to put our folks on board. And there are a lot of ways to do that, Coast Guard port security teams, individual augmentees from the Navy Reserve, from the Coast Guard Reserve, from the Marine Corps Reserve. I guarantee if the call went out to man vessels on a temporary basis until we came up with a national program, you would have hundreds of volunteers to do just that.

Secondly, on the long term, I agree that it probably ought to be done by the private sector, because we are involved in two simultaneous wars and we need to come up with a set of rules. But the Maritime Administration needs to be going to 22 CFR, getting a clarification for these companies, what they can carry, have an agreement with the nations that we are going to be calling on as far as the exchange of weapons, if we have to lock up weapons while we are in port, if we have to lock up weapons while we are in port domestically. There has to be some clear-cut rules, and you would think our Nation would be taking the lead and letting people know what they need to do, and we are not doing that.

Again, both of you are exactly right, we tried to do it on the cheap and lost 20 sailors in the Port of Aden because we didn't have waterside security on the Kohl, and almost lost a billion and a half dollar warship, in addition to those 20 sailors. We tried to do air time security on the cheap and it resulted in two planes flying into the Twin Towers and a third ending up in a field in Penn-

sylvania that probably would have hit the building across the street, and another plane that hit the Pentagon.

We are trying to do this on the cheap, and every one of those vessels, you had it exactly right in your statement, they are either carrying American military cargo or American aid cargo. It is our stuff, and we have to defend our stuff because it has got our flag on the back, our crews on board, and it ought to be something that, when people say, well, why should I have an American-flagged vessel, it is because we are going to defend our stuff. That is the difference between having an American flag or a flag of convenience.

I appreciate your having this hearing. We ought to take the lead, and if we don't do it through this Committee, then we need to do it through the Armed Services Committee.

Mr. CUMMINGS. Would the gentleman yield?

Mr. TAYLOR. Absolutely, Mr. Chairman.

Mr. CUMMINGS. I was just sitting here and I was just thinking about being effective and efficient, and one of the things I am hoping that we are can do, that both sides can do, is come together with our recommendations with regard to what needs to be done and present them to Defense and to the Coast Guard so that we let it be known the things that we think ought to happen.

Now, they are trying to come up with a comprehensive plan. I just think that we need to, coming out of this Committee, at least make our recommendations to them. There are things that we are going to have to do, I am sure, as a legislative body, but I think that this matter is of such urgency, that we need to do that and we need to do it soon. And the things that you just recommended, and some other things that I have been thinking about, such as training, extending this training, we will get to that, but I just think that we have got to put it on the record how we feel about this and we need to do it immediately.

Mr. TAYLOR. Mr. Chairman, jurisdictionally, because MARAD is under the sea power Subcommittee and this Committee, Food for Peace program goes through the Foreign Ops Committee, the appropriators, etcetera. We are probably going to have to prepare a floor amendment so that everyone can vote on it at once, rather than going through multiple Committees and dragging it out forever.

But I very much appreciate your willingness to address this, and, at the very least, we ought to be dictating that a part of the cost of getting that contract, whether it is to deliver military aid or Food for Peace program, that you are going to have to have an armed crew on board, and we recognize that there is a cost associated with that. We set up the rules as to what the minimum crewing ought to be. We don't need to come up with a lot of rules of engagement, we need the people on the scene at that time making the rules of engagement. I just think that would make more sense. Thank you very much for addressing it.

Mr. CUMMINGS. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. This is a vital hearing and very important matter. I have a judiciary hearing I am going to have to attend, so I will be going back and forth.

Admiral, it may be repetitious because these questions overlap, but let's assume we have a U.S. flag carrying U.S. Government car-

goes on high-risk transit through pirate-infested waters. Let me put a two-part question to you. Given that fact situation, does the Coast Guard have the authority to deploy maritime security and safety teams to deter piracy outside the U.S., A? And, B, what capabilities would these teams provide in addition to the law enforcement detachments already in place?

Admiral SALERNO. Sir, whenever the Coast Guard deploys in a Title X capacity, we do so at the request of a geographic combatant commander. So, in this case, it would be Central Command or NAVCENT. So we don't self-deploy, it is always in response to a request for forces from the geographic commander. The forces we have in theater right now are there on that basis.

Does the Coast Guard have the competency to engage in this kind of mission? Yes, but, as you well know, sir, very much constrained by capacity. So should a request come in from the combatant commander, we would do everything we can within our capacity limits to provide the requested resources, but then they would essentially work for the combatant commander and take their tasking from the combatant commander.

Mr. COBLE. And I think this question has been put to the entire panel, but let me revisit it. I think it is a grey area. The question is do crew members have indemnity under U.S. laws for incidents that may occur during a vessel's response to an attack internationally or domestically? Anybody? As I say, I think it is a grey area, but anybody want to weigh in on it?

Mr. CAPONITI. Sir, I will attempt to. I believe the crew is liable for actions taken to defend himself to the extent that they are rendered to be unreasonable. And, you know, unreasonable is a term that is grey. I think they have a right to defend themselves, clearly, but if they do the wrong thing under the wrong circumstances, they are going to have legal issues that they are going to have to contend with.

Mr. COBLE. Some risks assumed, then.

Mr. CAPONITI. Some risk, yes, sir.

Mr. COBLE. Thank you, gentlemen, for being with us.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

Mr. Baird.

Mr. BAIRD. I thank the gentleman.

Do we have an estimate of the cost of the operations that ensued following the MAERSK ALABAMA takeover?

Mr. FROTHINGHAM. If you are talking about naval vessels, it averages about \$107,000 a day.

Mr. BAIRD. And how many vessels were involved?

Mr. IKINS. Depending on the time, sir, two to three.

Mr. BAIRD. Okay. And how about aircraft?

Mr. IKINS. I would say we had at least a couple aircraft involved.

Mr. BAIRD. I understand some of this would be classified.

The reason I asked the question is I have been briefed on this issue, both overseas and domestically. It is my understanding that basically what has happened is that the shipping industry has made a cost benefit analysis and they have said, well, the cost of putting up a crew on a ship and arming them, et cetera, et cetera, is just high enough that they figured out the probability of getting

a ship taken over and paying the ransom. They are willing to pay the ransom, which is kind of reinforcing bad behavior, it strikes me.

But on top of that, they are socializing the cost. In other words, they decide, well, we will pay the ransom, but if it is a U.S. ship, U.S. crew, we are going to feel obliged to rescue those guys, and I am glad we did, and credit our SEALs and all the other folks for doing it, but at a huge cost to our taxpayers.

I am just wondering if it is not time to change that cost benefit ratio in some fashion, meaning you don't just get to say Uncle Sam and the SEALs and the Navy and the Marines and Air Force, and whoever else plays along, is going to rescue you; you have got to put up the scratch and roll it into the cost of your products.

To me, that has got to happen, Mr. Chairman. And I would welcome the gentlemen's costs on that. I just doesn't seem that the cost benefit ratio, as it currently works, works out fine for those guys, except if we lose a valuable life or we lost precious cargo. But talk to us a little bit about that cost benefit ratio, if you would.

Mr. FROTHINGHAM. It is a little out of my line, sir, but I think you are right. I think it is where you allocate the costs. The consumers of the goods will have to pay the extra cost if the industry pays the cost of protection, which is maybe a good place for it to be. If we don't do it that way, then the taxpayers pay the costs, whether they consume them or not.

Mr. BAIRD. Admiral?

Admiral SALERNO. I can't comment on the cost benefit analysis by industry; perhaps that is best left to the second panel. But I can tell you that collectively within the interagency and also within our Government and industry dialogue there is, I think, unanimity of opinion that we don't want to have another U.S. ship boarded by pirates. So our collective goal is to not get into that situation overall.

Mr. BAIRD. There is another aspect of the cost benefit ratio, as I understand it, and that is that just given the size of the area and the mobility of the pirates and the uncertainty of the attacks, it is virtually impossible to patrol it. You know, we have token ships out there and they can respond within a certain amount, but it is not hard to see where our token ships are, and you just go somewhere else.

So not only is it costly, it is also ineffective and inefficient. I just don't see another way, other than arming the ships at sea and having the owners pay for it, that you are really going to achieve the desired result.

Mr. CAPONITI. Sir, can I just add something?

Mr. BAIRD. Please.

Mr. CAPONITI. With respect to the cost benefit analysis, we have commented that most of the ships in those waters, most U.S.-flagged ships in those waters are carrying some kind of Government cargo, DOD or food aid.

In both respects, the Government will include in the payment, the Government payment for services will include the cost that the carrier are bearing to harden themselves in those waters. The TRANSCOM commander has made that clear and MARAD has the responsibility to oversee the fair and reasonable rate process for

food aid under USAID, and we are putting those costs into the calculations. We need the cooperation of carriers to know what those costs are, obviously, but we will put those into the fair and reasonable rate calculations so that they do not, by themselves, bear the cost.

Mr. BAIRD. Do you mandate that they be armed, if you are going to roll that into the cost?

Mr. CAPONITI. We are not mandating that anybody is being armed. Under the MARSEC Directives, we don't mandate anything—and I will let Admiral Salerno say this, but there may be some high-risk vessels that are highly vulnerable may only be able to obtain a maritime security approval if they arm themselves. I mean, we are talking about low and slow in those waters under circumstances—

Mr. BAIRD. I will echo Mr. Taylor's comment and just one last comment, then I will close out. Some years ago, not that long ago, I met with some MARAD cadets or some cadets of the Merchant Marine Academy who had been on MARAD vessels, I understand it, and it was protected by Gurkhas armed with knives, truly, and they were hauling a pretty valuable cargo. And as tough as a Gurkha is, I think it is crazy if that was the security at the time. My belief is that there ought to be a bright line that says you attack an American ship or an American crew, you have got a high probability of getting killed.

Mr. Chairman, I think we ought to settle in this Committee for nothing less than this, that every pirate anywhere on earth knows if it is an American ship and it is an American crew, and you try to take it down, the guys on board are going to do everything they can to kill you and they will be armed and capable of doing so. Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Olson.

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

My first question is just for the panel in general. We have been focusing, clearly, on the situation in the Gulf of Aden and off the coast of Somalia, but do you see the risk of piracy expanding to other places in the world? For example, when I was in the Navy back in the early 1990s, the Straits of Malacca near Indonesia were considered to be the high piracy areas. Any other areas that are developing to be a problem?

Admiral SALERNO. Yes, sir. In fact, in our Maritime Security Directive, it identifies a number of areas around the world where ships are potentially at risk, we just term them high-risk areas. The Straits of Malacca is a good example. That was a piracy hotspot for quite a while; it is still an area of concern.

One of the main differences is there are coastal nations there that have applied resources to tamp down that problem. That doesn't necessarily exist in the Horn of Africa. Another region of the world is off the coast of Nigeria, where we have a number of U.S.-flagged offshore supply vessels operating there in the oil and gas industry, which are often subject to essentially armed robbery. It is a different modus operandi; they don't seize the vessels and hold them ransom, but they go on board the vessels and rob them at gunpoint for valuables.

So the short answer, sir, yes, there are other areas of the world where we are concerned.

Mr. OLSON. One more question. Regarding the Somali pirates again and their sophistication, do they seem to be still just a group of independent operators or are we seeing some sort of coordination amongst different pirates when they are out there on the water and coordinating their attacks against merchant vessels in the area?

Mr. IKINS. Sir, some aspects of that will be classified, but they appear to be, in some cases, independent operators. There are various clans that are involved in this in northern Somalia, north of Mogadishu; they are operating out of Somaliland and Puntland primarily. They do talk to each other.

I think that they do sometimes provide each other assistance, but in many cases their independent operators are sort of entrepreneurial, and in some cases this is almost a business proposition; someone puts up the money, recruits the people to do it, a decision is made about who will get what percentage, and then they essentially lie in wait and look for an opportunity. It is essentially opportunistic criminality; it is not organized crime, per se, but there is a low level degree of organization.

And if I could continue, sir, in regard to your previous question, the point that the Admiral makes about we hear the Gulf of Aden compared to the Straits of Malacca frequently, and the differentiation he made is key, in that you had a group of countries who are relatively developed and who have capabilities, and who agreed to work together. We don't have that in the Gulf of Aden.

Now, Yemen has a coast guard. I can't speak to their mission, but I know that they are involved in counterterrorism missions. Somalia does not, as I said in my statement, it doesn't really have a functioning government. Somaliland and Puntland do have somewhat functioning governments, and, in fact, there is a Puntland coast guard which does function, but it is very poorly equipped, very small numbers. Eventually, what we would like to do is get to the point where we could build up those kinds of capabilities around that area so that they would have their own ability to address this issue.

Mr. OLSON. Yes, sir, the straits, compared to, you said, four times the size of Texas is the area you are dealing with off the coast of Somalia. The straits are pretty narrow, some of those choke points, and you can get them coming through.

One last question for you, Admiral. Under the Coast Guard's new Security Directive, vessels operating the Horn of Africa region must resubmit their vessel security plans with additional security protocols regarding terrorism, piracy, and armed robbery by next Monday. I just wanted to get an update on that.

How many plans do you anticipate receiving? Will vessels be placed under operational restrictions prior to approval of any amended plans? And will they be required to meet a standard checklist of security measures with certain requirements? Will that apply only to certain classes of vessels?

Admiral SALERNO. Yes, sir. There was a very short time frame, 15 day time frame for people to acknowledge that they had received the Maritime Security Directive and then to implement a lot of the

measures that are contained within that Directive in that short time frame. We acknowledge it will take longer for the companies to actually submit their revised plans, and in some cases the measures may take longer to implement. So we are working with the companies on an individual basis. We don't expect everything to be done by next Monday.

Mr. OLSON. Thank you very much. I am over my time and I yield back.

Mr. CUMMINGS. Thank you very much.

Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Rear Admiral, did I understand, did you give our Chairman a commitment of when this plan was going to be ready?

Admiral SALERNO. Are you referring to the international engagement plan, ma'am?

Ms. RICHARDSON. What our plan is going to be to respond to this issue. I remember hearing you and Mr. Frothingham say that you were working on coming up with something. Did either of you guys give the Chairman a specific date of when we could expect that? I remember hearing him asking for it, but I don't ever remember hearing you respond.

Mr. FROTHINGHAM. You are correct. We said that we have no time certain that we are doing it. It is a complicated process, involves a lot of actors that we don't control, so I haven't got a time for you.

Ms. RICHARDSON. Can you give us an estimated time that we could expect it?

Mr. FROTHINGHAM. No, ma'am, not at this time.

Ms. RICHARDSON. Okay.

Mr. Chairman, I would just say that, in my opinion, that is unacceptable, to come before this Committee to give us testimony and not be prepared to tell us when we could expect to get further information.

It may be complicated, but what happened on the seas that all of the American people and across the world witnessed was also complicated, and for you to come to this Committee with no timetable, in my opinion, is unacceptable, and I would recommend that we send a letter to the appropriate armed services requesting that they give us a specific timetable. We are not telling you it has to be in two weeks, one month, whatever it is, but the fact that you can't give us a timetable is of great concern to me.

Mr. CUMMINGS. Would the gentlelady yield?

Ms. RICHARDSON. Sure.

Mr. CUMMINGS. What you all are hearing from Ms. Richardson is the way we operate in this Committee, because we adopted, even before the President said it, the urgency of now. That is what this is all about. We have learned, as legislators, that—and some of you have never been before this Subcommittee, so let me tell you what this is about, and I will give you back your time, Ms. Richardson.

What we found that people come before our Committees, they tell us what they are going to do and then they wait us out. I am talking about not just this Committee, but other Committees. And then they wait long enough, until a new Congress comes in, sometimes, a whole new group of people, a whole new Chairman, everything

is new, and then it starts all over again. And you find that you are going on this merry-go-round, never getting anywhere fast.

So what I would suggest is that you all adopt the Commander-in-Chief's very words, the urgency of now. That is where we are getting to. We are trying to get this done because we realize we have a limited amount of time to act, period. And I say it over and over again, this is our watch. This is our watch. And if we fail to act, then I am convinced that lives will be lost, people will be harmed because we failed to act.

So, with that, I will yield back to the gentlelady.

Ms. RICHARDSON. Thank you, Mr. Chairman.

To further build upon what the Chairman—did you want to respond with a timetable?

Admiral SALERNO. Yes, ma'am. Let me offer a few comments for clarification.

There is an anti-piracy plan; that has already been developed and promulgated by the National Security Council. Perhaps I misunderstood your question. What we don't necessarily control is the international aspects of how the plan is being carried out. The plan is under NSC control. We can certainly provide that for you.

There are four working groups organized under that plan, one of which we referred to earlier, which is the industry self-protection measures, co-led by the Coast Guard and MARAD. But, internationally, it is viewed as a U.S. lead. There are the three other working groups, one—

Ms. RICHARDSON. Excuse me, sir. With all due respect, I have only got three minutes to talk, and I get it.

Admiral SALERNO. Okay.

Ms. RICHARDSON. What I am saying to you is we need for you to get it. What our Chairman just said is this is on our watch. If you haven't watched newspapers lately, I am not going down for you. I am not going down for you not addressing the concerns that are going to be said, because what is going to happen is, if this happens against next week, they are going to come to our Committee, the American people, and say why didn't you take action.

And what I am saying to you, I am not carrying that boat for you. It is your responsibility. You say you have this basic plan, but what we said in this Committee is your plan isn't working. You don't currently have a plan in place to determine if in fact, okay, we have got these contractors, whoever, security that are on these ships, and they shoot and they kill somebody. What is going to happen then?

So your plan has to go further than what you have, because you have not given authority to these various security people that, God forbid, you go in and you make a mistake and you shoot someone that you should not shoot, then what happens?

I am kind of familiar with Whitewater, Blackwater, and so on. You tell me what is the perception across the Country with Blackwater and what happened in Iraq. I don't think it is positive. And we had to work to establish some standards that we, as American people, can believe and say, yes, we might have contractors. But if we are going to have people out there doing these things, they have to follow certain regulations.

From what I have heard in this Committee, you have not established what those regulations are. And because you haven't, that makes us liable. And, for me, what I am saying is that is unacceptable and I am not willing to carry that for you. What I am willing to do is to ensure that we fix it.

So, with all due respect, you have a preliminary plan, but it needs to be adjusted. So what we are asking is when do you think, with these international groups and whoever you have to work with, when do you think you can make those adjustments? My expectation would be if you can't tell us now, you would come back in writing to this Committee and say this is the time frame that we think we can adjust.

And oh, by the way, I would suggest you have a Plan B, because judging from an article that I saw, that was Tuesday, May 19th, the organization that is supposed to work to do some of this has backpedaled on what they feel they need to do. So we, as Americans are going to have to decide if the international community doesn't figure it out, what are we going to do. We still have that responsibility, and my question is when are you going to come up with that plan.

Finally, I would say I think it is wrong to suggest that there would be private companies, private individuals to do this work and, in the words that you said, sir, it is a grey area and it is in the eyes of the beholder. What happens to that individual who shoots somebody and, unfortunately, kills somebody, they are either going to be hung up and dragged on the back of some ship, or other people, another ship, is going to be hijacked, and I don't think that should be a grey area in the eyes of the beholder.

It should be clearly identified what is the process, what is the engagement process, what are you authorized to do, because, otherwise, we are all on the hook for this; and, as I have said, I am not willing to be on the hook for it. So we need to come up with a plan and work that plan, and I think we are completely within our jurisdiction to ask you to give us a plan.

You wanted to say something.

Mr. CAPONITI. Yes. With respect to the armed security teams, I believe the expectation is that armed security teams would come in with their own liability insurance. That is probably something that they would carry.

Ms. RICHARDSON. Okay, let me—and I am going to yield back because now my time has expired.

Sir, they can have all the liability insurance that they want. This is the United States of America. If someone on the back of a ship shoots and kills someone who shouldn't have been responded to in that way, that is bad for all of us. If you haven't learned that in the last eight years, we have not made progress. It is our responsibility to do what is right, and that means, if they have a contract and they are on an American ship, we are liable for what will be perceived of how we respond. It is a bigger responsibility that we have, and what I am pushing back to you is to say we need to meet that test, and I don't think that we are doing it.

Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Frothingham and Mr. Ikins, I am just curious. We had a tough time getting Defense to come to this hearing, and I am sitting here and I am just wondering is this something you guys just don't like? I mean, is it such a messy issue that you just don't want to—and I am not trying to be funny. I am very serious.

When I have an organization—and I am not knocking you; I need to understand this—whose job it is to defend this Country, and when we have a situation, like this piracy problem, and then I ask the very organization that is supposed to defend the Country to come in and talk about what their position is, and then for us to have difficulty getting you to come here, I wonder what that means. And I must tell you it pains me tremendously.

Then I listen to the testimony, and I wasn't going to say anything, but the more I have listened to it, it seems as if—I am just wondering is there a—am I missing something, that we are paying our Defense Department to defend us, but then when I call the Defense Department in to tell us what they are doing to defend us, the Defense Department doesn't want to come in? Help me with that. I mean, just be candid with us. Is there an issue? Are we missing something?

Mr. FROTHINGHAM. With all candor, sir, I am not aware of any reluctance to come testify.

Mr. CUMMINGS. There was phenomenal reluctance. Phenomenal. And that is why I am saying this. I would not say this if it did not pain me. It is literally painful because it makes me wonder what this is all about. And all I am saying to you is that—and I think you are probably feeling a lot of frustration on both sides here, because we want to see something happen, and then Defense comes up and Defense says, well, we are working on it. Coast Guard comes up and we put out some directives basically saying do the best you can.

So I am trying to figure out—then we ask for a plan. Well, we don't know, we'll see what we can do. I mean, this is the United States of America. And I am sitting here, I am trying to figure out, you know, sometimes I feel like I am missing something.

So you all do want to come up with a plan, a comprehensive plan. You don't know when you are going to come up with the plan. Do you have any idea, Mr. Ikins? Any idea. Just give me a ballpark figure.

Mr. IKINS. Well, Mr. Chairman, if I can go back to what Admiral Salerno was saying, there is an interagency approved plan for counterpiracy action. It is approved by the NSC and the interagency; it is dated as of December 2008. It is posted on the MARAD Web site. It is available. It has three identified lines of action in it. If you wish, I can delineate.

Mr. CUMMINGS. Should it be updated in light of changed circumstances?

Mr. IKINS. Possibly so. It was intended to be a living document.

Mr. CUMMINGS. And how live is it? When was it last updated, do you know?

Mr. IKINS. Well, it just came out in December 2008, sir.

Mr. CUMMINGS. Okay. Have you looked at it recently?

Mr. IKINS. I have a copy of it in this book, sir.

Mr. CUMMINGS. So will you take a look at it and tell us whether you think it ought to be updated?

Mr. IKINS. Yes, sir. I think it is a good plan. This has been the subject of a great deal of discussion among the interagency and the interagency if responding to this effectively. I have spent a lot of my time and so have a lot of other people here, particularly in regard to Captain Phillips, in regard to earlier the comment about where are we, where is the Navy.

I will just say this. We will always respond to U.S. ships in extremes where and when we can, but there is a matter of physics involved, and I won't cite the statistic again of the space out there, but in both cases that have been mentioned, the MAERSK ALABAMA and the LIBERTY SUN, in both cases the USS BAINBRIDGE was able to respond within a reasonable amount of time and was able to respond effectively, as we saw.

So there is a plan; it is being executed. These international groups that the Admiral referred to are part of that plan. The United States is leading on that and, in fact, the reason that there are international forces out in the Gulf of Aden right now, the EU, with Operation Atlanta, the creation of Combined Task Force 151 by NAVCENT, other nations which are not part of those coalitions or the Coalition Maritime Force, as well, and other nations such as Russia and China and India, which, although they are not part of those coalitions, still operate and coordinate with each other. And, in fact, the operational coordination is going quite well.

So that was part of that plan, and we have marched through some of those things and I think it probably could be looked at. I will leave that to my superiors to take a look at that, but the interagency has been engaged on this. I can testify to that.

Mr. CUMMINGS. Do you think it is better to respond than to prevent?

Mr. IKINS. I think it is always cheaper to prevent, sir.

Mr. CUMMINGS. And isn't it difficult to respond if the Navy—I don't have anything else.

Rear Admiral, just one question. Is the Coast Guard capable of providing law enforcement detachment teams to be embarked on U.S.-flagged vessels transiting the Horn of Africa?

Admiral SALERNO. Sir, I am going to go back to my earlier comment. If we are requested by the combatant commander, we will do everything we can to provide the requested resources, but we do not self-deploy. So it is always under the auspices and at the direction of the combatant commander.

Mr. CUMMINGS. Any other questions? I had a number of questions, but I will submit them in writing. Any other questions?

Mr. TAYLOR. Mr. Chairman, if you don't mind.

Mr. CUMMINGS. Mr. Taylor.

Mr. TAYLOR. I thank the Chairman very much.

Mr. Caponiti, sir, we have a lot Italian-Americans down my way, but not that name, so please forgive me.

[Laughter.]

Mr. TAYLOR. Again, we are under a lot of pressure to balance the budget.

One of the things that comes up in my town meetings is what does MARAD do? And I say, well, they run the Merchant Marine Academy. Other than that, I am not so sure. I really think that this is a time where you can prove to the American public the

value of MARAD. I think it ought to be your organization that is looking around the world at where these ships are going, reaching agreements with those countries, coming up with a plan of what weapons can be carried on board in the short-term.

We know that we are hiring Blackwater type crews for vessels carrying military cargo in that part of the world, so we have a pretty good idea what that costs per ship to make that transit. It ought to be our policy and it ought to be your policy, since you are the Maritime Administrator, that says we are going to have that on every American-flagged vessel carrying an American cargo. It means, yes, we are going to buy a little bit less of something making that transit; it also means we are not going to have a national embarrassment or the national shame of losing a vessel or losing American mariners.

You need to be coming to this Congress immediately. We can fix it, but, quite frankly, we have got a lot of other challenges, and we may not do it as well as you do. And I want to see to it that it is done right the first time, for a lot of reasons.

So I would hope that you would make some suggestions to this Committee, because otherwise this Committee is going to be sending some mandates to you, and I think we ought to be doing this in a cooperative manner, given the expertise of your association, given the expertise of the people that you have access to on a daily basis.

And going back to some of the points that were raised about 22 CFR and any other challenges we have, and we have a very short period of time. The Defense authorization bill is going to be in Committee on the 17th of June; it will be on the House Floor before the 4th of July. That is one of the mechanisms to address this, and we are going to need your suggestions before then.

Admiral SALERNO. Sir, with your permission.

Mr. TAYLOR. Yes, Admiral.

Admiral SALERNO. Maybe I can provide some insights and aid my colleague, Mr. Caponiti, another Italian-American. Sir, you raise some good points about 22 CFR, and I wanted to assure you that there is a lot of ongoing dialog with that. Those regulations, the ITAR regulations, the International Trafficking and Arms Regulations, are managed by the Department of State.

We are in direct contact with the Department of State on those regulations and on the arms export permissions and the individual capacity by which mariners can bring weapons on board a ship. It is cumbersome right now, but State is aware of the issue and is looking at providing interpretations that would ease the ability for ships to bring embarked security teams on board with their weapons, privately provided teams.

Also, you raised the question about port entry by U.S.-flagged vessels into foreign ports. That is an ongoing concern. In fact, one of the reasons the Maritime Security Directive did not mandate armed teams is the recognition that some countries will not permit that.

Mr. TAYLOR. Admiral, if I may. And I am sorry to trouble your line of thought, but this is a gift of the American people to those countries. It is more than fair for us to say these are the strings attached to that gift. We are not going to put out fellow Americans

or that vessel at risk to deliver this gift of food or whatever it is. In the case of military cargo, then we are there for a purpose, a different purpose.

Admiral SALERNO. Yes, sir.

Mr. TAYLOR. And, again, if you are going to allow us to use your port, if we are going to pay to use your port to unload this military cargo, again, these are the strings attached. We are going to protect our people; we are going to protect our vessel. That is a reasonable cost of doing business.

Admiral SALERNO. I think we are in violent agreement, sir.

Mr. TAYLOR. Okay. Then I hope we will both have a violent sense of urgency on this.

Admiral SALERNO. Yes, sir.

Mr. TAYLOR. I had a briefing in Bahrain in December, and to more or less quote the Navy admiral, when they see an American flag, they back off. Well, that is no longer the case, is it? So now that we know they have attacked American vessels, then we have to respond in a much more aggressive manner.

Admiral SALERNO. One other point?

Mr. TAYLOR. Yes, sir.

Admiral SALERNO. Just for your awareness, Department of State has issued a demarche to other countries to actually determine what restrictions they would have on the entry of armed teams into their ports, and as that information comes in we will provide that, certainly, to the industry and we would be happy to provide that to you.

Mr. TAYLOR. Thank you, Admiral.

Thank you, Mr. Chairman.

Mr. CAPONITI. Sir, can I respond? From the standpoint of MARAD, we have been very, very involved in this effort. We are not the regulatory authority on the Security Directives, but, with respect to all of that, we have been working with Coast Guard and we have been in the interagency.

On the issue of the port states, with respect to cargo preference, we will get very involved with that. We will work with State Department. I believe your intervention is a good one, and we will take a very aggressive look at that and work to get those protocols worked out from the standpoint of delivery of food aid into these countries.

Mr. TAYLOR. Can you get back with me within two weeks as to what your initiatives have been?

Mr. CAPONITI. Yes, sir. We will give you what our initiatives are and we will give you a plan. Thank you.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Larsen.

Mr. LARSEN. Mr. Chairman, as we move forward on this, I hope that you will involve me and my office as well, in trying to sort this out. One of the concerns I have had about this is the open-ended commitment of our own military assets to this mission. It is one of those where there is no end in sight at this point.

Because, as we have heard, perhaps not today, but certainly in looking at the broader situation of piracy in the Gulf of Aden and the Indian Ocean, it is a problem that exists in large part because of the desperation of the pirates themselves, which is therefore tied

to the social and economic conditions in Somalia. And an open-ended commitment of our Navy and our Coast Guard to that region, protecting U.S.-flagged vessels or being part of a joint task force, as they are, isn't going to solve that problem that is on the coast.

So we hope that we keep that in mind, as well as keep in mind certainly the other commitments that we have and many other priorities that we have around the world, and we are asking our men and women in the Navy and the Coast Guard, as well as our other men and women in the military, to participate in.

So my concerns about the use of our men and women or having even security detachments on U.S.-flagged vessels really derives from that point, when does this end; otherwise, we will be doing this—again, it will be an open-ended commitment with a growing number of priorities in the world for our military. So I am hoping that we can have that part of the discussion as we try to craft a solution on this. There is no need to go into what all those commitments are; we can read about them every day in the paper, so I won't get into that.

For Mr. Frothingham, a couple questions. And, again, I apologize for being late, but in your testimony you stated that the international community has turned over about 146 pirates over to law enforcement officials in various countries for prosecution. How many of those that have been captured have been actually released, do we have that number?

Mr. FROTHINGHAM. I can try and get the best. I don't have that number with me today. And it changes depending on what the reporting is.

Mr. LARSEN. Sure. Well, I would appreciate it if we can get that number perhaps as a marker to see how successful or unsuccessful the prosecution efforts have been.

Are there any significant non-liquid assets held by pirates that would be possible to freeze, and is that a realistic approach to combating the piracy? Probably not of the individual pirates themselves, but basically the clans that are running the operations?

Mr. FROTHINGHAM. That is a great question, and part of the problem is that it is very, very hard to track. We are working on it. We haven't been able to break into it; staged mainly in the country of Somalia or used to bankroll other operations.

Mr. Ikins might have more information.

Mr. LARSEN. Mr. Ikins?

Mr. IKINS. Sir, I can tell you that that is something that we have been looking at, and, in fact, next week, in New York, at the meeting of the Contact Group on Piracy off the coast of Somalia, we are probably going to suggest that there be an international group established to look into that and to see how we can coordinate with our international partners to address that issue.

Mr. LARSEN. Is that going to be done under a U.N. auspice or is it an ad hoc group coming together?

Mr. IKINS. It is an ad hoc group. It is done at the U.N., but it is not a U.N. organization. But it does take guidance from the two U.N. Security Council resolutions, 1846 and 1851, that refer to piracy off the coast of Somalia. But it is a group, in accordance with the Counterpiracy Action Plan, which directed the interagency to

stand up International Contact Group. That was done so in January in New York, shortly after this plan came out, and it was spearheaded by the United States.

Mr. LARSEN. So what you are telling us today, then, is one part of taking action, we are going to see some of that action taking place next week is to establish this Contact Group to begin looking at how we can look at freezing some of these non-liquid assets as a way to maybe strangle, metaphorically, the financial pipeline to the—hopefully, the leadership in the clans as a way to put a crimp in the piracy.

Mr. IKINS. Yes, sir. And you are correct, it is difficult. That is out of my lane, that particular functional issue, but it is difficult, and what Mr. Frothingham says is accurate, that a great deal of this money does stay within Somalia, and I am sure you have read the stories about the villas and the cars.

Mr. LARSEN. Right.

Mr. IKINS. So it is something that does need to be focused on, to go after the month.

Mr. LARSEN. Thank you.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

Thank you all very much. We will now move on to the next panel.

Mr. Arthur Volkle, Vice President of American Cargo Transport; Mr. Philip Shapiro, President and CEO of Liberty Maritime Corporation; Mr. Erik Johnsen, President of Waterman Steamship Corporation; Mr. Bill Van Loo; Secretary-Treasurer, Marine Engineers' Beneficial Association. Sitting at the desk, but not testifying, will be Mr. Michael Rodriguez, Executive Assistant to the President of International Organizations of Masters, Mates & Pilots; Mr. Paul Doell, Director of Legislative Affairs, American Maritime Officers; and Mr. Augustin Tellez, Executive Vice President, Seafarers International Union.

Mr. Volkle?

TESTIMONY OF ARTHUR J. VOLKLE, JR., VICE PRESIDENT, AMERICAN CARGO TRANSPORT; PHILIP J. SHAPIRO, PRESIDENT AND CEO, LIBERTY MARITIME CORPORATION; ERIK L. JOHNSEN, PRESIDENT, WATERMAN STEAMSHIP CORP; BILL VAN LOO, SECRETARY-TREASURER, MARINE ENGINEERS' BENEFICIAL ASSOCIATION; ACCOMPANIED BY MICHAEL J. RODRIGUEZ, EXECUTIVE ASSISTANT TO THE PRESIDENT, INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS; PAUL DOELL, DIRECTOR OF LEGISLATIVE AFFAIRS, AMERICAN MARITIME OFFICERS; AND AUGUSTIN TELLEZ, EXECUTIVE VICE PRESIDENT, SEAFARERS INTERNATIONAL UNION

Mr. VOLKLE. Thank you, Mr. Chairman. Let me say at the outset that we really appreciate your comments and the comments of the rest of the Committee. I think you all get it, the problems that we are facing everyday with our ships operating in the Gulf of Aden and the Persian Gulf.

American Cargo Transport regularly operates through the Gulf of Aden, carrying U.S. military cargoes. In addition, we have tug and

barge units that operate around the clock in the Persian Gulf delivering military cargoes into Iraq. So the threat of piracy is one that is very real to us.

The primary principle that we follow when we send our vessels there is the protection of our crews, and for a number of years we have firmly believed that the way to protect our crews and our vessels is to provide armed security; and we have provided armed security on ACT vessels for a number of years.

Even the Navy and the Coast Guard has flat-out said that if you want to protect your ships, the way to do it is to provide armed security, and we do. That being said, there are significant legal and regulatory problems that we think need to be addressed.

As a threshold matter, we continue to believe that the security of our vessels should be provided by the U.S. Navy or the Coast Guard. For 200 years, those of us who fly the U.S. flag have sailed secure in the knowledge that we sailed under the protection of the U.S. Navy, until now. The Navy seems, as you indicated, reluctant to provide armed security for our vessels, and we think that this is an achievable solution in the short and near term.

We understand there is a million miles of ocean out there, and to attempt to deploy fleets to protect the U.S.-flagged vessels is difficult, if not impossible. But, Mr. Chairman, as you indicated, with about 100 guys, less than a crew of one ship, the Navy could put, or the Coast Guard could, put armed security people on board the three to seven U.S.-flagged vessels that regularly operate in that area. It seems the most cost-effective way to very rapidly provide security for our ships.

That being said, if the DOD is not going to provide that security for our U.S.-flagged vessels—and let me also add that if the Navy or Coast Guard were to step up and provide that kind of security, that gives another inducement for others to register under the U.S. flag; and as one of the largest U.S. flag operators, we think that encouraging people to fly the U.S. flag is a good thing.

But if DOD is not going to provide that support for us and leave us to defend ourselves, then our Government needs to help us, and the first thing that they need to do—and Mr. Taylor referred to this—is to fix the ITAR regs and allow us to adequately arm our vessels. We currently do arm our vessels, but we do it through a regulatory workaround where, because we cannot purchase weapons for our vessels and put that as part of the security equipment on the vessel, the only way we can get weapons on our vessels is for the crew to sign for these weapons as personal effects. Obviously, that raises liability concerns for them, and it creates all kinds of problems trying to get the weapons onto the ships.

As a recent example, about two months ago we loaded a military cargo at a Navy base in Charleston, South Carolina. We showed up at the front gate with our weapons, asked for an escort to the ship with our weapons, and we were not permitted to enter the base with our weapons. We had to move our ship to a commercial pier to put weapons aboard to defend military cargo, even when the Navy says the only way to ensure protection of the ships is to put weapons on the ships. So we need to get the regulatory fix for this problem to allow us to adequately arm.

In addition to that, the U.S. Government has got to work with foreign governments to allow our ships to enter their ports. Again, Mr. Taylor noted we are giving food aid cargoes to these countries, and they are not permitting our armed vessels to come into their ports. Fortunately, I will say, for the ports that we operate in in the Persian Gulf, in Dubai and Kuwait and Iraq, we are permitted to bring weapons in; but there are a lot of ports where that is a problem. So the Government needs to address that.

We also need to be confident that we have the full support of the United States Government if we run into a problem out there. And I am not talking necessarily about responding with Navy ships; I am talking about if we get into an armed conflict. Fortunately, we haven't had that happen, and I will say we have been approached by pirates. Our armed security team went out on the stern, brandished their weapons; the pirates turned around and went the other way. But if we have a problem, we need to know that the State Department and the Coast Guard is going to support U.S.-flagged mariners and U.S.-flagged owners if other countries start to raise problems.

My testimony points out a number of other kind of detailed issues that we think need to be addressed. One, of course, is the liability concerns that were referenced in the prior panel, and I am happy to answer any further questions on that.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much.

Mr. Shapiro?

Mr. SHAPIRO. Mr. Chairman, Mr. LoBiondo, distinguished Members of the Committee, thank you for the opportunity to testify on the important issue of piracy. As you know, one of our vessels, the U.S.-flagged vessel LIBERTY SUN, was attacked by pirates off the coast of Somalia on April 14th, just two days after the incredible rescue of Captain Phillips of the MAERSK ALABAMA. Thankfully, no one the crew of the SUN was injured, despite the vessel being hit by four rocket-propelled grenades and automatic weapons fire, and the SUN arrived safely at Mombasa, Kenya on April 15th.

The LIBERTY SUN was on a humanitarian mission of mercy to deliver much-needed U.S. Government food aid to East Africa, 47,000 metric tons of food, as a gift from the American people. The SUN's cargo alone is enough to feed 250,000 people for a year in several African countries, including Somalia.

Without revealing operational details for fear of assisting the pirates, I can say that one of our vessels is almost always in or near the danger area at any given time. So we take the threat of piracy very, very seriously.

Our company and our crew implemented enhanced precautions to make our vessels difficult pirate targets prior to the recent incidents. Captain Donald Grosse and the rest of the crew followed our company's security plan and kept their cool under fire. No boarding occurred and the crew did everything that could reasonably be asked of them. At the time of the attack, our anti-piracy security measures exceeded Federal and international requirements. The only thing we couldn't do was shoot back.

We also wish to thank the U.S. Navy for their prompt and effective response to the incident, and are especially grateful to General

Duncan McNabb and Admiral Ann Rondeau of TRANSCOM for their help in the LIBERTY SUN incident.

Mr. Chairman, I know you would like us to focus on lessons learned. We believe the first lesson is to acknowledge the foresight of Congress in enacting the Maritime Transportation and Security Act of 2002. Under that Act, shipowners are required to conduct vulnerability assessments and adopt vessel security plans for approval by the Coast Guard.

In the case of our company, we adopted, prior to the MAERSK ALABAMA incident, stringent vessel security plans containing every measure recommended by every international organization to make our vessels difficult piracy targets.

Our priority is the safety and security of our crews. For example, the crew of the SUN had rigged fire hoses over the stern to create a virtual flood wall of water coming off the ship. When the BAINBRIDGE arrived, the crew informed Captain Grosse that they had never seen so much water coming off a vessel. In addition, the crew erected plywood barricades over the stern of the vessel.

The second lesson that we should all recognize and deal with are the limitations of these passive security measures. It is unwise to assume that such security measures will be sufficient in and of themselves to protect American lives. The MAERSK ALABAMA incident constitutes a game changer in this regard. After the incident, self-proclaimed pirate leaders issued direct threats against the lives of American merchant mariners. Therefore, Mr. Chairman, I urge our Government to adopt more protective measures for U.S.-flagged vessels.

We greatly appreciate the Navy's response to the LIBERTY SUN incident and we are grateful to both DOD and the European Union for the cooperation we have received to date. But responding after the fact, as you pointed out, sir, in our view is not the most effective means of protecting the few U.S.-flagged vessels transiting the pirate danger zone.

We urge the Government to consider embarking small numbers of U.S. Government security personnel on those very few U.S.-flagged vessels that transit the high-risk pirate infested areas. In our view, small embarked security teams are a more effective deterrent than patrolling the entire million square miles of ocean that are affected. Also, using small security teams is a much more cost-effective response than attempting to patrol the million square miles.

I am also reminded of a bit of history on this point of dealing with pirates. The first Federal naval force, which became the U.S. Navy, was authorized in the Naval Act of 1794 for the express purpose of dealing with pirates. In the words of the law, it had become necessary to have a Navy to provide for "protection against the depredations committed by the Algerine corsairs on the commerce of the United States." We would hope that these roots run deep and the Navy continues to provide the protections against modern piratical acts.

The third lesson we should consider is the possibility of arming our U.S.-flagged vessels and making the legal changes necessary to do so. Heretofore, merchant vessels simply have not routinely carried firearms. It is true that we have an unquestioned right of self-

defense under a U.S. statute dating back to 1819. But more recently enacted State Department arms export regulations make it difficult to arm vessels. Additionally, shipowners risk being second-guessed in both U.S. and foreign courts for self-defensive measures that were common in 1819.

In light of the recent threats to recent merchant mariners, we respectfully request Congress consider clearing the legal obstacles that currently block shipowners from arming our vessels in self-defense to protect our crews when it is appropriate.

I believe, sir, that we are doing all we can within the law to protect our crews. We look forward to working with you and other Members of the Subcommittee and other leaders to bring the U.S. law up to date. I also hope we can come to an understanding that we can't switch from a no firearms regime to an armed protection regime overnight. Our ships need protection now, not months from now. In the interim, we will need either Government security teams or naval vessel escorts in the danger high-risk transit.

The piracy problem has correctly been described as an international problem that needs an international solution. But we should not let the complexity of the international problem deter us from addressing what could be done in the United States right now to protect our American merchant mariners on U.S.-flagged vessels, and most especially those on missions for the U.S. Government.

Thank you for inviting me to appear, and I would be pleased to answer any questions you may have.

Mr. CUMMINGS. Thank you very much.

Mr. Johnsen.

Mr. JOHNSEN. Thank you, Mr. Chairman and Members of the Committee. As the President of Waterman Steamship Corporation and Central Gulf Lines, both of which are Section 2 U.S. citizen companies that own and operate 13 U.S.-flagged commercial vessels in the international and domestic trades, I appreciate the opportunity to address the continuing threat of piracy against commercial vessels in the U.S.-flagged and international-flagged fleets.

Waterman operates the MAERSK ALABAMA under charter. It is the employer of its crew, who were engaged in the recent piracy incident off the coast of Somalia last month. The safety and protection of our dedicated vessel crews have been and continue to be our primary concern.

Given the nature of the military and commercial cargoes that we carry, the U.S.-flagged vessels of Waterman and Central Gulf frequently ply the trade lanes through the Gulf of Aden and other waters off the East Coast of Africa. Likewise, a significant portion of the U.S.-flagged fleet engaged in foreign trade operates in these very waters. Consequently, unimpeded navigation in these same waters must be maintained to preserve the commercial viability of the U.S.-flagged merchant fleet and its ability to support the Nation's economy and military interest.

However, as we know all too well, the threat of piracy continues to exist in the Gulf of Aden and Somali basin. That threat directly affects U.S. security, foreign policy, economic and other vital national interests. Just a few weeks ago, MAERSK and Waterman directly confronted the reality of that very threat. The President of the United States and his Administration are to be commended for

the measures and effective response to the piracy incident. Additionally, our Country should be extremely proud of the U.S. Navy and its highly trained personnel for their actions. And certainly the single focus of our entire company was to work towards the safe return of Captain Phillips and his crew, who are proud members of the MMMP, MEBA, and the SIU.

But the Nation's national will and that of our U.S. Government must be appropriately directed to eliminate the threat of piracy in the Horn of Africa region. We all recognize that the long-term solution is to work multi-nationally to eliminate the flow of monies to the pirates and assist in establishment of a viable government in Somalia. In the interim, immediate steps must be taken to protect U.S. and international interest in the region. Therefore, I would offer the following observations for purposes of further discussion and action by the U.S. Government.

While the U.S. Government works closely with its international partners to diplomatically restore civil order and a stable working government within Somalia, we must suggest that the basic elements of fear, food, and money should be the focal points, as they are a volatile catalyst for continuing piracy activities in the Gulf of Aden and Somali basin. Fear, in that warlords and other threatened families of young men whom they seek to recruit in the life of piracy. Good in the fact that warlords and others control a large segment of the population in Somalia and use food as a weapon to foster support for pirate activities. Third, money, in the vast sums of money brought into Somalia through these pirate activities only serve to create a destabilizing and reckless desire for more and more.

While those solutions will take time to accomplish, we must address the immediate needs to protect U.S. and international flagged shipping from the threat of piracy. Our companies continue to work closely with the U.S. Coast Guard, the Department of Defense, and other U.S. Government agencies in the development of best practices, enhanced information sharing arrangements, and other actions to address vessel piracy issues.

However, arming vessel crews must not be considered as one of the solutions to this vessel piracy problem for a wide variety of safety, security, training, and other reasons. Commercial vessels are trained and equipped to take non-lethal and other protective measures in the event of pirate attacks to harden vessels until help arrives. Any use of deadly force and other lethal actions should remain the province of highly trained and experienced military or security personnel.

Additionally, we must continue to work with our multinational partners to expand air and sea patrols and enforcement activities against pirates. Overall, we believe that a properly coordinated plan that involves all affected countries, vessel owners, operators, maritime labor, insurance companies, cargo interests, and related parties can substantially reduce the threat of piracy while also decreasing the overall protection costs.

Mr. Chairman, I appreciate the opportunity to testify on this vital important matter confronting our Nation and the shipping industry. We stand ready to assist you in your efforts to address the

threat of piracy against all vessels off the East Coast of Africa and other regions in the world. Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Bill Van Loo.

Mr. VAN LOO. Thank you, Mr. Chairman and Members of the Subcommittee. My name is Bill Van Loo, and I am the Secretary-Treasurer of the Marine Engineers' Beneficial Association. The full maritime union sitting here appreciate the opportunity to testify before you this morning.

To the merchant mariners, our organizations represent crew U.S.-flagged vessels that frequently operate in waters where the threat of piracy is the greatest. Our members deeply appreciate your leadership, Mr. Chairman, in scheduling this hearing. We look forward to working with you and your Subcommittee to formulate responses to the threats posed by piracy which offer the greatest measure of protection for U.S.-flagged vessels and their citizen crews.

American mariners working aboard the U.S.-flagged vessels transiting through the Gulf of Aden, around the Horn of Africa and into the Indian Ocean continue to face an immediate and ongoing threat from international pirates. Make no mistake, the pirates are targeting U.S.-flagged vessels. As evidenced by the Administration's response to the recent attacks on the U.S.-flagged vessels MAERSK ALABAMA and LIBERTY SUN, the U.S. Navy and its personnel have the ability and expertise to effectively respond. The Navy officers and sailors attached to the USS BAINBRIDGE executed the extremely difficult mission of rescuing Captain Richard Phillips, Master of the MAERSK ALABAMA.

While it is true the pirates never took control of either the ALABAMA or the SUN, we, the United States, have to assume the circumstances will be different should the pirates hijack another American-flagged vessel, and the result may not be quite as fortuitous.

The U.S. merchant marine is the fourth arm of defense. The United States cannot allow pirates to force the American flag from flying the oceans of the world. Nor can we allow these criminals to drive American citizens out of the maritime industry. Absent a U.S. merchant marine, our armed forces overseas would have to rely on foreign-flagged vessels and crews to deliver their necessary machinery, equipment, and other supplies.

The mariners aboard those foreign-flagged vessels may not be willing to deliver cargo for the purpose of supplying the U.S. military, as was the case in the first Gulf War in 1991. Consequently, we are extremely disappointed that the Department of Defense has apparently decided that preemptive protection of U.S.-flagged vessels and U.S. citizen crews is not their responsibility. We strongly believe, first and foremost, that it is the responsibility of the U.S. Government to provide the necessary protection to life and property aboard U.S.-flagged vessels.

Flying the U.S. flag is an extension of the United States itself, regardless of where the ship is operating. The unions believe the most effective way to protect its U.S. citizen crews is to attach a handful of military personnel to each vessel transiting pirate-infested waters. We understand the waters of the Gulf of Aden,

where recent pirate activity has been the greatest, encompasses an enormous area. Yes, an international coalition of navies is now patrolling these waters, but, nonetheless, vessels are still being hijacked. The area is just too large to patrol.

We also understand that private industry needs to assume some responsibility, and any agreement between the international maritime community must be balanced, applied equally to all nations, and not economically disadvantage the U.S.-flagged merchant marine. Our maritime unions are prepared to consider any and all steps that may be necessary to protect the lives of the men and women we represent. We believe that attaching private security teams aboard vessels may provide some measure of protection against pirate attacks. These non-U.S. military teams must be properly equipped and trained to take aggressive action when a vessel is under attack.

However, it should be noted that there are serious concerns and risks throughout the maritime industry regarding this approach. The employment of private security detachments have raised command and liability issues which must be thoroughly considered before proceeding in this fashion.

In addition, Mr. Chairman, we would like to address the issue of arming the crew. We categorically reject the notion that this should be considered the best, or even a primary solution to the problem of piracy, or that it is the answer to the threat posed by pirates. Rather, we believe it should be considered as only one part of the overall comprehensive response. Such a program should encompass only the most highly qualified mariners on each vessel who, as determined by the shipowner and master, have extensive training and expertise in the use of weapons. Conversely, we do not believe that an individual should have access to arms aboard the vessel simply and exclusively because he happens to hold a certain rating or license.

We would ask, Mr. Chairman, that you and your Subcommittee work with us to help eliminate whatever statutory and regulatory impediments may exist to the employment of a private security force and to allow a limited number of crew members access to arms aboard U.S.-flagged commercial vessels.

In conclusion, we again wish to express our appreciation for your efforts, Mr. Chairman, and the efforts of your Subcommittee to focus attention on this extremely serious problem. We stand ready to continue to work with you and your Subcommittee, and we request that our formal statement be included as part of the hearing record.

Mr. CUMMINGS. I want to thank all of you for your testimony.

I might note to the Members of the Committee we have got a vote coming up very shortly, so I will be very brief, then we will see if we can conclude this hearing before we vote.

Mr. Van Loo, you wrote in your testimony that maritime labor is extremely disappointed that the Department of Defense has apparently decided not to accept primary responsibility for protecting United States-flagged vessels and their U.S. citizen crews. This is a very strong statement. Why do you feel that way?

Mr. VAN LOO. We fly the American flag, and we feel that we should have force protection in dangerous waters.

Mr. CUMMINGS. And you have indicated that maritime labor feels that the issue of arming crews should not be considered the best or even a primary solution to the problem of piracy. What are some of the challenges that arise if a crew is armed on a U.S.-flagged merchant vessel?

Mr. VAN LOO. Well, the challenges would be that they would have to have the proper training and also the willingness to use a weapon. Some people are just not comfortable using a firearm.

Mr. CUMMINGS. You know, you were saying, Mr. Volkle, that you all have folks armed now, is that right?

Mr. VOLKLE. Yes, Mr. Chairman.

Mr. CUMMINGS. How do you determine which ships you are going to try to have armed personnel on?

Mr. VOLKLE. Every vessel that we send through the Gulf of Aden or operating in the Persian Gulf has armed security from the moment they hit Suez until the moment they leave Suez. So every one of our vessels has an armed security team deployed.

Mr. CUMMINGS. A little earlier, I am sure you all heard Mr. Baird's questions, when he was talking about private industry and the Government paying, and that industry realizes that this is like a tax, that they are going to have some problems, that it is going to be like a tax, and that the question becomes where does the Government, from a financial standpoint, where does the Government draw the line. Could you comment on that?

Mr. VOLKLE. I would be happy to.

Mr. CUMMINGS. Or any other—

Mr. VOLKLE. I would be happy to.

Mr. CUMMINGS. Sure.

Mr. VOLKLE. To date, we have basically eaten the cost of providing armed security on our vessels because of our concern for the safety of our crew. That being said, and it was pointed out here, we are carrying U.S. military cargoes, and we believe that the U.S. Government, if they are not going to provide military security, which we think they should, the U.S. Government ought to assist with the cost of providing armed security to protect our vessels.

Mr. SHAPIRO. Mr. Chairman, if I could just answer. Our opinion is that it is the sovereign's responsibility to protect the U.S.-flagged fleet and its U.S. citizens abroad. It is the history of the Navy. I believe that it was Thomas Jefferson that sent the Marines, before the Navy was even constituted, to clear out the pirates on the Barbary Coast in Africa, now Lybia, which were attacking U.S.-flagged vessels.

No one has a problem with cost here, sir. We are willing to pay for it. The implication that we have not, that it is a money issue is not really the question. It is a legal issue. There are some people that have put armed guards on vessels. There are others—my attorneys tell me that there are too many uncertainties both with regard to the ITAR regulations and, more importantly, being able to get into the recipient nation's ports, because they are the ones, often, on the food aid cargoes, that bar the use of weapons.

So I don't believe cost is an issue. I believe we need to clear the impediments. If the Government is not going to do what all of us believe is their job, then let us help ourselves by providing that se-

curity. But we need to clear the legal impediments and the uncertainties that exist to do that.

Mr. CUMMINGS. Mr. LoBiondo.

Mr. LOBIONDO. Thank you, Mr. Chairman.

Thanks to our panel. It was a very interesting discussion with different points of view.

For Mr. Van Loo, I heard you very clearly and your strong suggestion that we not arm crew members or have them have access to firearms, but let's work under an assumption for a minute that the military is not going to or does not deploy personnel on U.S.-flagged vessels, and arming the crew, for whatever reason, is determined to be a necessity. Now, you talked a little bit about what procedures should be followed. I would like to make sure I understood correctly. What criteria do you think should be followed to accomplish this, and specifically, who on the crew should be authorized to either carry or have access to firearms? And what kind of training, in your view, would be necessary for them to do this?

Mr. VAN LOO. First, on the training part, it would take at least a comprehensive course of getting used to using certain weapons, shotgun, rifle, even an AK-47, because that is what the pirates are using, and you can purchase them in Somalia for \$30.

As far as who would have access to the firearms, it would always be under the control of the master of the vessel. But who would be able to utilize them, in my opinion, it would be any one of the top eight officers, not necessarily the top four, but whoever is willing and trained to utilize them.

And I will fall back on arming the crew, that if it is the only alternative, it is because we don't want to bring a knife to a gunfight, and that is what we are being asked to do now.

Mr. TELLEZ. Congressman, if I might.

Mr. LOBIONDO. Yes, sir.

Mr. TELLEZ. Currently, at the Seafarers School, since 2003, we have trained approximately 600 people in small arms training, what we call small arms course, and that 600 includes 140 Coast Guard, by the way. They are trained in small arms training, pistols, 9 millimeter, riot shotgun, M-14, and M-16 semiautomatic weapons. They are trained on how to use them; they are trained on how to safely handle them. But there is no amount of training that we can give them in that short period that is going to prepare them to take into consideration rules of engagement. It takes a long time for law enforcement officers to—it takes a short time to teach someone how to shoot a gun; it is a little bit longer to teach them when to shoot the gun. So although we can teach them the practical training, it is going to take a little bit longer with reinforced drills on board the vessels to have them understand rules of engagement.

Mr. LOBIONDO. I appreciate that. Is that course certified by anyone, certified by the Coast Guard or—

Mr. TELLEZ. Certified by Military Sealift Command.

Mr. LOBIONDO. Military Sealift?

Mr. TELLEZ. Yes.

Mr. VAN LOO. All four unions have training.

Mr. TELLEZ. And ours was set up by that aforementioned different colored water organization.

Mr. LOBIONDO. I think we know who you mean.

Okay, thank you, Mr. Chairman.

Oh, excuse me. Mr. Rodriguez.

Mr. RODRIGUEZ. Yes, thank you, Mr. LoBiondo.

Just to kind of go back and make a little more clear what our perspective is, we prefer to have armed military security teams on board our vessels because they would be acting as an agent of the United States Government, and, from our perspective as labor, liability attaches personally to our masters and our officers on board those ships. Now, that attaches whether we have a private security team on board or if we are carrying the weapons ourselves. So that is why we have such a strong statement on why we want military teams.

There was a suggestion before of how that might happen, reservists. For some time, Puerto Rican National Guardsmen were deployed on board vessels. So there are ways to do this if there is a willingness to do it, and that is where our disappointment is, is that there seems there is no willingness.

In terms of the training, we train our people to basically use the weapon, but when you start to talk about using the weapon and ramping up the use of force on board a ship, that is training that is very specialized. And as someone just mentioned, it is now how to use the weapon, it is when to use the weapon. And, again, those liabilities attach to our people personally, and, Mr. Chairman, we have mentioned in this Committee that there is a tendency around the world to criminalize seafarers for their actions and their mistakes, and this is something that we have very, very deep concerns about. So that is why, when we say we want armed security teams on board that are military, it is for that reason, and the training issue is a very touchy one. The level of training that is required is something that is a very heavy lift for us.

Thank you.

Mr. LOBIONDO. Thank you.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman. I would like to caution us in referring to when President Jefferson sent our Navy over to battle the Barbary pirates, because in order to get out of that situation, we, first off, had someone to negotiate with and, second, we didn't pay a tribute because we wouldn't do that, and we wouldn't pay a ransom because we wouldn't call it that. But in order to get our ship back, we paid money to the folks who held it. So if we are willing to play the analogy out fully, let's find someone to negotiate with and start paying ransoms. And I don't think the U.S. Government is going to do that, and I wouldn't want it to happen, anyway, that way. So we need to be careful about our historical analogies, because I think there are a lot of differences between 2009 and 1801 through 1804, 1805-ish.

I would like to do some follow-up at some point, perhaps not today, with some of the folks here in the labor community to understand their concerns a little bit more. The rules of engagement are an important issue and one of the challenges that we face right now on the rules of engagement is the fact that we talk about having U.S. Navy vessels there. We are in a joint task force with the

U.K., I think Korea and Singapore. We are potentially negotiating with other countries to be part of that joint task force. The EU also has their own task force. The Chinese are over there operating independently. There is some talk that the Iranians are going to deploy a destroyer and an oiler as well.

There is enough of a mess of rules of engagement among four or five different command authorities, if you will, much less than having armed military folks on these ships or arming you and your members on these ships, and what that might mean if you are getting assistance or if a U.S.-flagged vessel is getting assistance from a non-U.S. military vessel; who is talking to who, how are you talking? Say if the Koreans come to help, there is a rules of engagement and a communication problem as well.

So it might be very particular, it might be a situation that would never exist, but then, on the other hand, I don't think we necessarily foresaw the MAERSK ALABAMA situation happening, either. So thinking about who is going to be armed, who is going to be protecting which ships on the ship itself is partly a discussion that we have to consider within the broader context of whose militaries are deployed out there, who is helping to respond to which pirate events, because you all are going to be in a position of having to potentially be communicating and/or receiving help from folks that you maybe didn't expect to get help from.

So my only point is it is a complex picture out there and I want to be helpful in trying to simplify it as much as possible to ensure the protection of the goods, ensure the protection of the ship, and ensure the protection of the people on the ship. So that is the direction I want to head on this, but I think we need to have a better—well, you all have a much better understanding than I ever will. We need to have a better understanding of the context in which you all are operating out there. So I just wanted to offer that and explain where I am coming from on this.

Yes, Mr. Shapiro.

Mr. SHAPIRO. Mr. Larsen, thank you, and I appreciate your thoughts. I just would like, for the record, for it to be known that the Chinese government is escorting Chinese ships in the area. The Russian government is escorting Russian ships. The Belgians are taking care of Belgian ships after two of their ships were hijacked. And the French are now taking care of the French ships. So it is not unprecedented that national governments protect the nation state of their flag.

Mr. LARSEN. I would also suggest, with apologies to our good friends in all those countries, that they are not doing much else in the world. So my issue there is the other commitments that our U.S. Navy has and the Coast Guard has in the rest of the world, we need to take that into consideration. If we had a 313-ship Navy, which we are trying to get to, and we don't have it, this would be a much simpler discussion to have.

My only suggestion is to have a broader conversation about what our priorities are, including this priority, and how we get that support and security out to you. We are trying to get to that 313 ship Navy. I know the exact ships that we put out there. They wouldn't be destroyers, they would be LCS. They would be flying around at

16 knots and there is no way these guys would be able to run away from us. It would be great. But we are not there yet.

Mr. SHAPIRO. But just so you know, that is why we are here. We are here because if the Government can't do it because it is over-extended, then we need to be put in a position where we can do it ourselves, and we need to remove the legal impediments that stand in the way. And we need to do it quickly. There is a sense of urgency here.

Mr. LARSEN. I am for all of it. I am for solving it. I just want to be clear that it is not a matter of picking some up and putting down. But we will get there.

Mr. SHAPIRO. Thank you.

Mr. Volkle? Yes, you would like to get a whack at me. Go right ahead.

Mr. VOLKLE. No, sir. Just to point out, again, we understand that putting 100 ships out there is neither realistic nor effective, and that is why we think armed security teams, for less than a crew of one ship, we can protect the U.S. flag.

With respect to rules of engagement, that is obviously a concern, but we need to have rules of engagement that absolutely permit the people on the ship to make the decisions that they need to make to protect themselves from pirates. They can't be a requirement to call Washington and get approval. But that is something that needs to be addressed.

Mr. CUMMINGS. Thank you very much.

Gentlemen, I want to thank all of you for your testimony. I think that you understand that we are going to do everything in our power to move this situation along. What form that will take, I don't know, but I promise you we will work with the Coast Guard and others in our Defense Department to see what we can do to bring clarity.

Having been a small businessman, I always tell people in government that the one thing that business folks need, they need people to make decisions so that they can then do what they need to do. When we are in these areas of suspense, grey areas, basically what it does is it causes all kinds of problems, and in this instance possibly it could cost lives. So we have got work to do. I promise you, I promise we will address this with the utmost urgency, and, again, we thank you so much for your time.

This hearing is now adjourned.

[Whereupon, at 12:18 p.m., the Subcommittee was adjourned.]

SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION

“Piracy Against U.S.-Flagged Vessels: Lessons Learned”

May 19, 2009 – 10:00 a.m.

Room 2167, Rayburn House Office Building

Opening Statement of Chairman Elijah E. Cummings

On February 4, 2009, I convened this Subcommittee to examine international piracy on the high seas, particularly in the Horn of Africa region.

At that time, no U.S.-flagged vessels had been attacked by pirates – and the general conclusion among our witnesses was that ships should focus on implementing the anti-piracy measures that had been identified as likely to thwart attempted pirate attacks, such as transiting the Horn of Africa at night and at the highest possible rate of speed and employing non-lethal measures such as water hoses.

Now, however, we convene in very changed circumstances. Two U.S.-flagged vessels – the *Maersk Alabama* and the *Liberty Sun* – have been attacked by Somali pirates.

One of the attacks resulted in the taking of an American Captain, Richard Phillips, hostage. He was freed only through the decisive intervention of U.S. military forces, including Navy SEALs, who eventually killed the pirates holding Captain Phillips after it became clear his life was in imminent danger.

These attacks against the *Maersk Alabama* and the *Liberty Sun* are the first known pirate attacks against a U.S.-flagged vessel since the end of our war with the Barbary pirates in the early 1800s.

These attacks – conducted by young men from the desperately poor nation of Somalia who have few legitimate opportunities to earn a living and who arm themselves with RPGs and AK-47s and take to the seas in small boats – represent in many ways the asymmetry of the threats that we as a nation confront today.

That said, the U.S.-flagged merchant fleet has always been able to rely on the protection of the U.S. Navy to ensure its safety. As we saw with the *Maersk Alabama*, that Navy is more than capable of handling this current threat.

Nonetheless, at the present time, it appears that the U.S.-flagged fleet is essentially being left to handle its immediate security needs by itself.

On May 12, the Coast Guard issued Maritime Security Directive 104-6, which purports to “provide[...] the maritime industry with specific, risk-based measures to take to deter, detect or disrupt piracy.”

Specifically, the Directive requires U.S.-flagged vessels to adopt an anti-piracy plan before entering high risk waters and to employ those measures known to help prevent

pirate attacks, including transiting through established transit lanes, utilizing erratic course changes, and traveling at the highest possible speeds.

Additionally, the Directive requires vessels to “supplement ship’s crew with armed or unarmed security based on a piracy specific vessel threat assessment conducted by the operator and approved by the Coast Guard.”

While these are sensible recommendations that a merchant vessel should follow to protect itself while transiting waters where pirate attacks are common, there is a broader question to be considered.

Why is it that the best our nation appears to have to offer our merchant mariners at this time is instructions on the steps they should take to protect themselves?

It is not at all clear to me why the Navy or, in the absence of a willingness to act on the part of the Navy, the Coast Guard, isn’t providing embarked military personnel on the few U.S.-flagged vessels that transit the Horn of Africa region – most of which, I note, are carrying U.S.-government impelled cargoes.

While I have no doubt that the Navy would respond immediately if another attack occurs against a U.S.-flagged vessel – the timeliness of their response could be hindered if Navy assets are far from the scene of the attack.

And sadly, in the time that it takes the Navy to respond to an incident, another hostage situation may have been created – putting another U.S. mariner at the mercy of pirates who have already announced their intention to take revenge against U.S. mariners for the deaths of their pirate colleagues in the *Maersk Alabama* incident.

Given these realities, I don't believe the Department of Defense would really argue that U.S.-flagged vessels are safer if they are left to protect themselves.

Nor do I think the DOD would argue that it is preferable to respond to an incident rather than to prevent an incident from occurring.

That said, the issue we must explore is the following. We have long argued that we need a U.S.-flagged merchant fleet to carry U.S.-government cargoes and to provide sealift capacity to support DOD needs in time of war and national emergency.

For that reason, we have created the Maritime Security Program, which provides direct payments to U.S.-flagged ships to ensure that they are available when the government needs them.

Given this, isn't it in our national interest to utilize the very limited U.S. military resources that would be necessary to protect our U.S.-flagged fleet rather than leaving them to implement their own defensive measures?

We look forward to hearing from our witnesses on these critical issues today.

With that, I recognize the Ranking Member, Congressman LoBiondo.

####



The Honorable Michael E. McMahon
Statement
Transportation and Infrastructure Committee,
Subcommittee on Coast Guard and Marine Transportation
Hearing on Piracy Against U.S. Flagged Vessels:
Lessons Learned
March 11, 2009

Thank you Chairman Cummings and Ranking Member Lobiondo, and a special welcome and thank you to Rear Admiral Salerno and all of our witnesses for your testimony this morning.

Mr. Chairman, back in February you had the great foresight to raise this important issue – and I am glad that we are addressing it here again today. Because since the beginning of this year, the international piracy problem has only gotten worse. In fact this year has seen more pirate attacks in the first few months of 2009 than all of 2008 combined.

All of this obviously took on new meaning for the American people with the April 8th attack on the MV Maersk Alabama. It is unacceptable for a small band of rogue pirates to be holding up American citizens and taking hostages.

Shipping is a critical component of international trade and commerce. Our shipping fleets have taken precautions to protect against pirate attacks. But these costs provide a further drag on their ability to thrive in this economy. Security measures vary greatly from ship to ship and our merchant mariners are not really trained to guard against military style attacks on the high seas. Especially in this tough economic climate, we cannot let the dangers posed to our captains and crews of our commercial vessels disrupt the flow of global trade, and our economy.

Mr. Chairman, we and our international allies need to seriously consider how to fully marshal all of our tools to combat this threat – diplomatic, economic, political and even military. Just like we did back in the 18th and 19th century when we eliminated the threat from the Barbary pirates, our world must unite to combat this threat.

We should not -- and cannot -- tolerate pirate attacks against our hardworking men and women who operate our commercial fleet. It may be time to consider the need for and costs of providing our ships through the Horn of Africa and the Gulf of Aden with military support. Because in this day and age it is unacceptable for an American citizen piloting some of our most important cargo to be held hostage by a group of kids with guns.

**DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
STATEMENT OF ACTING DEPUTY ADMINISTRATOR
JAMES CAPONITI
ON
PIRACY AGAINST U.S.-FLAG VESSELS
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES**

May 20th, 2009

Good morning, Chairman Cummings, Ranking Member LoBiondo and Members of the Committee. I am pleased to have the opportunity to appear before you today to discuss the serious threat stemming from the ongoing piracy problem in the waters off of Somalia, and the lessons learned from recent attempts at piracy affecting U.S.-flag vessels. Throughout 2008 and continuing into 2009, the global piracy situation has grown substantially worse- particularly in an ever expanding area off the coasts of Somalia, where more than 20,000 vessels transit the region each year. Although the impact of piracy has been very significant, the American public has only recently been made more aware of the situation with the attacks on two American flag vessels, the MAERSK ALABAMA and the LIBERTY SUN – both of which were carrying food aid for Somalia.

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. Press reports indicate that in 2008, pirates received an estimated \$30 million dollars in ransom for the release of seajacked vessels. In 2008, 42 vessels were seized by pirates operating off the Coast of Somalia. Globally, 889 mariners were held hostage by pirates (815 in Somalia) as part of ransom demands. The International Maritime Bureau (IMB) reported that in 2008, globally, 11 mariners were murdered by pirates and another 21 are missing and presumed dead. The IMB also reported that during the same period, off the Horn of Africa, four mariners were killed and 14 are missing and

presumed dead. In 2009, the number of attacks continues to rise however the success rate (except for April) has been reduced. In total there have been more than 27 successful seajackings in 2009 with more than 476 seafarers captured. (15 vessels are currently being held with 229 seafarers.) One seafarer was killed by pirates last week.

The vessels most vulnerable to piracy attacks are those traveling slowly (with limited speed capabilities) and with low freeboard - that is to say, there is not much height between the water and the deck level. A primary reason for the pirates' success is the ineffectiveness of Somalia's government, enabling pirates to operate with virtual 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, and the Red Sea with the Indian Ocean, is one of the busiest shipping lanes 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 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 the U.S. Agency for International Development (USAID) or international organizations to the Horn of Africa, including Djibouti and Somalia and other countries in East Africa or South Asia.

As mentioned, seajackings off the Horn of Africa significantly increased in 2008 and 2009. 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 several merchant mariners have been killed or are presumed dead and that hundreds, including American mariners, have been traumatized by being attacked and held hostage, and even by the uncertainties generated by the growing instability of the region.

Ship owners and operators are also negatively affected by rising daily operating costs due to increased insurance premiums and, in some cases, 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 affected by 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 likewise raise the costs of commodities for local populations.

The United States has been a leader in promoting collaborative international action to combat the current piracy crisis. 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 fight against piracy. This resulted in United Nations (UN) Security Council Resolution 1816 which authorized countries cooperating with the Transitional Federal Government (TFG) of Somalia, for which advance notification has been provided to the Secretary-General, to enter Somali territorial waters to repress piracy. 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 TFG of Somalia to enter Somali territory to repress piracy. This resolution was adopted by the Security Council.

UN Security Council Resolution 1851 also encouraged the establishment of an international cooperation mechanism -- known now as the Contact Group on Piracy off the Coast of Somalia (CGPCS). The Contact Group for Piracy off the Coast of Somalia was created in New York City on January 14, 2009, and currently numbers 28 nations (Australia, Belgium, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, Republic of Korea, The Netherlands, Norway, Oman, Portugal, Russia, Saudi Arabia, Somalia TFG, Sweden, Spain, Turkey, United Arab Emirates, United Kingdom, United States, and Yemen), and 6 international organizations (African Union, Arab League, European Union, North Atlantic Treaty Organization, United Nations Secretariat and International Maritime Organization) with seven additional countries (Canada, Cyprus, Liberia, Nigeria, Malaysia, Panama, Singapore) pending requests to participate. The Department of State represents the United States on the CGPCS. The CGPCS acts as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast. The CGPCS met in January at the United Nations in New York City and in Egypt in mid-March. The CGPCS will meet again in late May.

The CGPCS established four working groups to provide recommendations to the CGPCS. Working Group #1 is addressing activities related to military and operational coordination and is chaired by the United Kingdom. Working Group

#2 is addressing judicial aspects of piracy and is chaired by Denmark. The United States has the lead for Working Group #3, which focuses on shipping self awareness and interaction with industry. The Department of Transportation's Maritime Administration (MARAD) and the Coast Guard have been co-leading this Working Group. Working Group #4 is tasked with offering recommendations to improve diplomatic and public information efforts and is chaired 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 today, and we saw evidence of this in the seajacking of the MAERSK ALABAMA.

Because of its specialized knowledge, such as operation of our mobility sealift vessels, and established relationships with U.S. and international shipping, maritime unions, the marine insurance community and global maritime industry associations, MARAD has considerable experience in dealing with the diverse interests of the global 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 that have transited the Gulf of Aden region in support of Operations Iraqi and Enduring Freedom (OIF and OEF). As OIF winds down, RRF vessels may be called upon to play a significant role again in support of the demobilization of forces, with a consequence of exposing the vessels and crews to threats from pirate attacks.

Further, many vessels supported by MARAD's Maritime Security Program (MSP), participate in the Agency's Voluntary Intermodal Sealift Agreement (VISA) and transit the Gulf of Aden on a routine basis. The MAERSK ALABAMA is one of the 60 vessels enrolled in the MSP. MARAD also oversees government cargoes transiting the region - particularly food aid and military cargoes that are carried mainly aboard U.S.-flag commercial vessels transiting the Gulf. Finally, as an interface between U.S. maritime labor and the federal government, we have great interest in protecting the welfare of U.S. mariners who sail aboard vessels in the region.

MARAD provides operational advice to U.S.-flag owners and operators, including counter-piracy measures and awareness on a regular basis through MARAD Advisories, through a comprehensive and frequently updated website, and through MARAD's electronic "MARVIEW" system which is available to registered users. We have also contributed to the Maritime Safety and Security

Information System (MSSIS) for the purposes of providing more efficient piracy related data.

MARAD also plays 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. Efforts are also being made to include anti-piracy and security training in the academic programs at USMMA and the state maritime academies and to augment this training at the maritime union schools.

In late December, the Department of State asked MARAD to assist with the CGPCS Industry Outreach Working Group. Since 2008, MARAD has met on numerous occasions with industry to help shape best management practices to counter piracy and to share industry concerns with U.S. government agencies. In late 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 strongly supported the Military Sealift Command's proposal to create and implement "Anti-Piracy Assistance Teams" (APAT) for commercial vessels. These teams consist of personnel from the Naval Criminal Investigative Service, and MARAD. On a voluntary basis, these teams board U.S.-flag vessels and offer recommendations on how to improve a vessel's physical defenses against piracy. The teams also review security tactics, techniques and procedures and make appropriate recommendations. To date, a number of successful APAT vessel assessments and recommendations have been completed and more are currently scheduled. We expect this process to be embraced by 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 and appropriate federal agencies. For example, in October and November 2008, MARAD and the Department of State 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 Department of State, Department of Defense, 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 which focused on piracy initiatives being considered 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 (SCEPC) meeting held in Brussels, Belgium, which included piracy as an agenda item. MARAD chairs the NATO Planning Board on Ocean Shipping, which reports to the SCEPC.

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; Department of State; Department of Defense, Office of Naval Intelligence; USAID; 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 the Department of State; the Department of Homeland Security; Coast Guard; U.S. Transportation Command, Office of Naval Intelligence and Military Sealift Command participated in the Summit.

In late December, MARAD joined the Department of State 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, to further establish best management practices to prevent piracy and to bring industry's perspectives and ideas to the interagency process. 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 uniquely vulnerable to pirate attacks, with mariners killed or held hostage as part of ransom demands, MARAD has included maritime labor in discussions and meetings, when feasible. The most recent MARAD industry and interagency meeting was held on April 23rd.

MARAD led the U.S. delegation of Working Group #3 at the meeting of the Contact Group on Piracy off the Coast of Somalia in March of 2009 (which was chaired by the USCG), and presented the international industry developed (and MARAD facilitated) "Best Management Practices" (BMPs) to counter piracy. MARAD also supported the dissemination of counter piracy guidance and better coordination between military and civilian operators in the region. The agency likewise provides U.S. flag projected schedules in the waters off Somalia to the National Maritime Intelligence Center (NMIC) and vessel tracking information on U.S. flag carriers to appropriate military authorities.

Given limited military resources available to fully protect commercial shipping in the waters off Somalia, there is an increasing focus on the issue of shipping companies hiring private armed security personnel to protect their vessels while transiting the waters off Somalia. However, there are many complicated factors which must be addressed before the industry, as a whole, can adopt this recommendation. These include the need to develop appropriate standards for armed security providers, compliance with port state restrictions on arms aboard merchant vessels entering many ports in the world, consideration of potential escalation of violence due to the presence of arms onboard commercial vessels, issues of safety for the crew and vessel, rules on the use of force, design constraints of vessels to carry additional personnel, union contract issues, insurance and liability issues and many other related factors. Clearly, the maritime industry needs government assistance in this area to set or guide standards and

measures of performance and MARAD is actively engaged with other agencies in understanding and developing the needed guidance on the use of armed security.

On May 11, 2009, the USCG issued an updated "Maritime Security Directive" (for Ships Operating in High Risk Areas) that requires the implementation of several security protocols; many of which are similar to the BMPs noted above. This MARSEC was developed by the USCG in close consultation with the interagency, including, MARAD. At the request of the USCG, MARAD will participate with the USCG in reviewing vessel security plans required by the MARSEC.

Most recently, MARAD has engaged the marine insurance industry to determine the effects of the piracy situation on insurance rates and the effects on insurance if vessels carry armed security personnel aboard. On May 14th, MARAD hosted a meeting of insurance representatives, the USCG, Department of State, and Military Sealift Command. The concerns of the insurance companies were made clear. MARAD and the USCG indicated that we will work together along with other federal agencies to develop an adequate process that enables carriers to embark armed security on board their vessels in a proper manner. They also shared their concerns with standards, rules, and vetting of security firms, liability implications to the owner, insurer and security firm, and escalation of hostile actions that will increase risks.

Finally, MARAD has reached out to the maritime labor community to seek ways to address the seafarer community's interest in the human element issues associated with piracy, including training and awareness, communication. The communication aspect is particularly important in gaining information from crews that have been released after being hostages. Such information can contribute valuable lessons learned to further enhance security.

Combating international piracy is no small effort. 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 maintained 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. 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 you for your leadership in holding this hearing today. I will be happy to answer any questions you might have.

STATEMENT OF THE
AMERICAN MARITIME OFFICERS
INTERNATIONAL ORGANIZATION OF MASTERS, MATES
& PILOTS
MARINE ENGINEERS' BENEFICIAL ASSOCIATION
AND
SEAFARERS INTERNATIONAL UNION
TO THE
SUBCOMMITTEE ON COAST GUARD AND MARITIME
TRANSPORTATION
OF THE
COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE
ON
PIRACY AGAINST UNITED STATES-FLAG VESSELS:
LESSONS LEARNED

MAY 20, 2009

Mr. Chairman and Members of the Subcommittee:

The American Maritime Officers (AMO), the International Organization of Masters, Mates & Pilots (MM&P), the Marine Engineers' Beneficial Association (MEBA) and the Seafarers International Union (SIU) appreciate the opportunity to submit this statement in conjunction with your Subcommittee's hearing on piracy. The licensed and unlicensed merchant mariners our labor organizations represent crew United States-flag vessels that frequently operate in waters where the threat of piracy is the greatest. Consequently, the officers and members of our unions deeply appreciate your leadership, Mr. Chairman, in scheduling this hearing. We look forward to working with you and your Subcommittee to formulate responses to the threats posed by piracy which offer the greatest measure of protection for U.S.-flag vessels and their United States citizen crews.

In fact, American mariners working aboard U.S.-flag vessels operating in that region continue to face an immediate and ongoing threat from international pirates. As our American mariners simply attempt to do their jobs, their lives are in constant peril as these pirates decide when – not if - to take further aggressive action against commercial ships.

Clearly, the actions taken by the Administration and, most specifically, the Department of Defense in response to the recent attacks against the U.S.-flag vessels MAERSK ALABAMA and LIBERTY SUN demonstrate that the United States Navy and its personnel have the capability and expertise to respond quickly and effectively. In both instances, the pirates never took control of the U.S.-flag vessel and, as everyone is now aware, the Navy SEALs executed a dramatic rescue of Captain Richard Philips, master of the MAERSK ALABAMA, which has attracted the worldwide praise it deserves.

This is important not only because no American ship, cargo or crew member was lost but because our country unequivocally demonstrated that we will protect our U.S.-flag fleet which contributes to the economic, political and military security of the United States. Our country cannot allow pirates to force the U.S.-flag off the high seas or to drive American citizens out of our industry. All too often the role that our organizations and

the United States citizen merchant marine officers and crew we represent play in protecting the economic security of our nation and supporting the Department of Defense and our troops overseas is overlooked. Without a United States-flag merchant fleet and without the American citizen licensed officers and crew who sail aboard these vessels, our armed forces overseas would be dependent on others for the supplies, equipment and other cargo they need to do their job to protect America's interests.

Consequently, we are extremely disappointed that the Department of Defense has apparently decided not to accept primary responsibility for protecting United States-flag vessels and their U.S. citizen crews. Our unions had in fact asked the Administration to continue to treat this situation and the ongoing threat posed by pirates with the utmost urgency. In a letter to the President dated April 24, 2009, we stated that it is our position that "the most effective step that must be taken to prevent further aggressive action against U.S.-flag commercial vessels and their crews is for our government to immediately provide U.S.-flag vessels with the force protection necessary to prevent any further acts of piracy against them." We strongly believe it is first and foremost the responsibility of the United States government to provide the protection necessary to ensure the safety of life and property aboard United States-flag vessels. When a vessel flies the United States flag it becomes an extension of the United States itself, regardless of where in the world the vessel is operating.

This is in fact why we believe the decision by the Department of Defense to defer primary responsibility to the private maritime industry for affirmatively protecting against attacks by pirates ignores their duty to protect merchant vessels, and to ensure the unfettered movement of cargo along the world's sealanes. We do not disagree that there is a limit to any government's resources - even America's. In fact, due to the vastness of the area to be covered - and the areas of threat are continually growing larger - our Navy and the coalition of other navies currently positioned in the Gulf of Aden region may simply not have the resources to provide all the protection necessary to prevent and stop every attack.

Nor do we disagree that private industry must and should assume some responsibility. But, it is in our opinion naïve at best to believe that private industry does not need and deserve the U.S. Government's help. Simply having the Department of Defense respond to an attack, rather than working in concert with private industry to prevent attacks, is not enough to properly assure American mariners that their Government stands ready, willing and able to protect them from attack by pirates.

In the case of the LIBERTY SUN and the MAERSK ALABAMA, the vessels and crews were on a mission of mercy, carrying U.S. food aid cargo to some of the world's neediest people. These vessels and other vessels carrying American aid proudly fly the United States-flag in foreign ports to help demonstrate that Americans are a compassionate people. It shows that American ships and their crews will work to make sure that the less fortunate of the world who need our aid will in fact receive our aid – U.S. produced agricultural commodities. U.S.-flag ships and their crews play a key role in the process which must continue.

Notwithstanding the outcomes of the MAERSK ALABAMA and LIBERTY SUN incidents, it is important for all Americans to understand that the threat presented by piracy is a fact of life for American mariners and for seafarers around the world. It has recently been reported by the International Maritime Bureau (IMB) of the International Chamber of Commerce that compared to the first quarter of 2008, piracy incidents have almost doubled in the first quarter of 2009, from 53 to 102. According to the IMB, this increase is due almost entirely to increased pirate attacks off the Gulf of Aden and the east coast of Somalia, where 61 of the 102 attacks occurred.

We agree that the increased level of piracy in this region of the world is due largely to the political and economic conditions within Somalia. There is, at best, tremendous political instability which is coupled with severely depressed economic conditions that do not offer the level or measure of opportunity necessary to discourage individuals from pursuing this life of crime.

This is not, of course, a situation that can or will be solved quickly, or just by the United States. It will require a coordinated international effort to try to reverse the conditions within Somalia that have led to this increased level in piracy. But while the world works to confront the root causes of piracy, it is critical that the United States and the rest of the world act to address piracy itself – to develop an international approach that entails uniform response procedures when pirates are discovered in waters near a vessel; that includes a uniform approach to protecting vessels and crews; and which covers the prosecution for piracy and penalties for those convicted. We also believe that all flag nations, including those which do not have military forces to contribute to this effort, must therefore participate in this effort financially. They should pay their fair share to help offset the cost of protecting their flag vessels that the United States and other countries will incur.

It is also important to reach an international agreement that applies and enforces any new requirements equally to all vessels in order to ensure that U.S.-flag vessels are not economically disadvantaged. It is important to remember that shipping is a business; ship owners, operators, and cargo shippers are interested in moving their cargo from point to point safely and at the lowest possible cost. If the threat posed to merchant mariners by piracy is not given the same seriousness by all vessel owners and operators and flag states, and if these same vessel owners and operators and flag states choose to sacrifice the health and safety of their mariners for the bottom line, American vessel owners and operators will be disadvantaged as they try to do the right thing, and the number of U.S.-flag vessels will likely diminish, taking American maritime jobs with them. To the degree this happens, more and more of American cargo will be carried by foreign vessels that are more susceptible to pirate attacks, and more and more of American cargo will be at risk. Simply put, we believe that the ultimate response to piracy must be international, the steps taken and the requirements imposed must be applied to all vessels, and the costs of protecting vessels, cargo and crew must be borne equally and not disadvantage any one flag.

Nevertheless, as we said previously, the immediate threat to vessels and crews posed by piracy is real, and action must be taken now to protect U.S.-flag vessels and American mariners. We remain convinced that until and unless the international maritime community acts, there is no effective alternative to United States government involvement and action working in concert with our shipping industry and maritime labor organizations. We agree with the statements made by Secretary of State Hillary Clinton: “We have to act swiftly and decisively to combat this threat. These pirates are criminals. They are armed gangs on the sea. And those plotting attacks must be stopped, and those who have carried them out must be brought to justice. Defending against piracy must be the joint responsibility of governments and the shipping industry.”

Consequently, it remains our firm conviction that as an essential first step, the United States government should immediately provide protection for the United States-flag vessels that are and will be operating on sea lanes where piracy remains a serious threat. This protection should entail military escorts or military security detachments placed aboard the vessel. Nevertheless, as we noted earlier, it does not appear that the Department of Defense will provide the escorts or security detachments that are necessary to more effectively prevent pirates from successfully boarding United States-flag vessels and capturing, harming or killing the American crew.

Consequently, and because our maritime industry is serious about combating piracy, our maritime unions are prepared to consider any and all steps that may be necessary to protect the lives of the men and women we represent. We believe, for example, that the utilization of a private security detachment aboard a vessel may provide some measure of protection against pirate attacks. In fact, a force protection detachment of a few highly qualified, experienced personnel, with armed forces background and training, to serve as first responders in the event pirates are detected can be effective in repelling the attack. Such individuals can and should be equipped to take aggressive action when it is confirmed that pirates are approaching the vessel and an attack against the vessel may be imminent. However, it should be noted that there are serious concerns and risks throughout the maritime industry regarding this approach. The employment of private

security detachments can, for example, raise command and liability issues which must be thoroughly considered before proceeding in this fashion.

We would ask, Mr. Chairman, that you and your Subcommittee work with us to help eliminate whatever statutory and regulatory impediments may exist to the employment of a private security force aboard United States-flag commercial vessels.

In addition, Mr. Chairman, we would like to address the issue of “arming the crew”. We categorically reject the notion that this should be considered the best or even a primary solution to the problem of piracy or that it is “the answer” to the threat posed by pirates. Rather, we believe that to the degree this option is considered – and we believe it must be considered - it should be considered as only one part of an overall, comprehensive response. Even then, it should entail no more than a few highly trained individuals who, as determined by the ship owner and Master, have extensive training and expertise in the use of weapons and that only these few individuals have access to the arms. Conversely, we do not believe that an individual should have access to arms aboard the vessel simply and exclusively because he happens to hold a certain rating or license.

Again, we would ask that you work with us to help eliminate whatever statutory and regulatory impediments may exist to giving a limited number of crewmembers access to arms aboard a United States-flag commercial vessels.

In conclusion, we again wish to express our appreciation for your efforts, Mr. Chairman, and the efforts of your Subcommittee to focus attention on this extremely serious problem. We stand ready to continue to work with you and your Subcommittee and we request that this statement be included as part of hearing record.

HOLD UNTIL RELEASED
BY THE COMMITTEE

STATEMENT FOR THE RECORD

MR. EDWARD FROTHINGHAM

PRINCIPAL DIRECTOR, OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF
DEFENSE FOR COUNTERNARCOTICS AND GLOBAL THREATS, POLICY

MR. CHARLES IKINS

DIRECTOR, EAST AND SOUTHERN AFRICA POLICY,
OFFICE OF AFRICAN AFFAIRS, OFFICE OF THE SECRETARY OF DEFENSE

**BEFORE THE
HOUSE TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD
AND MARITIME TRANSPORTATION**

MAY 20, 2009

Mr. Chairman and members of the committee, we appreciate this opportunity to testify about the growing problem of piracy on the high seas.

Piracy is a growing problem, but not a new one. Since humans first began to travel and move valuables by ship, there have been pirates. Julius Caesar himself was seized by pirates in 75 B.C., and released after ransom was paid. Piracy on the high seas was also a major preoccupation of the early American republic; by 1800, the young United States was paying about 20% of total federal revenues to the Barbary States, as ransom and tribute.

International efforts to combat piracy also have an ancient pedigree. Since Roman times, pirates have been deemed *hostes humani generis*: the enemies of all humankind. As a matter of customary international law, piracy is the classic crime of “universal jurisdiction,” meaning that every state has the right to capture and prosecute piracy on the high seas, even if its own ships or nationals are not involved.

In the modern era, piracy has become a relatively unusual crime, dropping to only 100 to 200 reported incidents annually during the 1970s and 80s. In the 90s, however, piracy began to increase, and we are now seeing a dramatic and sudden upswing in reported pirate attacks worldwide, as well as geographic shifts in areas of high pirate activity. As recently as 2007, the Gulf of Guinea was the most active part of the world for piracy, but pirate activity is increasingly now found along the Somali coast. In the first quarter of 2009, 102 incidents of piracy were reported to the International Maritime Bureau, nearly double the number of incidents reported during the same period in 2008. And nearly all of that increase appears to stem from increased pirate activity off the coast of Somalia.

Reducing incidents of piracy is important both to the United States and to the international community. As a general matter, freedom of the seas is critical to our national security and international commerce, and it is also a core principle of international law, one that all nations have a stake in supporting. Piracy endangers

innocent mariners, disrupts commerce, can cause severe economic damage to shipping companies and contribute to instability ashore. Recent pirate attacks in the Gulf of Aden and along Somalia's East Coast have targeted U.S. and U.S.-supported ships transporting food aid and other humanitarian supplies to Somalia and other vulnerable societies, disrupting the flow of aid to those who need it most.

Recent incidents—including the dramatic rescue of the captain of the Maersk-Alabama by the U.S. Navy—have increased public and international attention to piracy, and resolve has grown for finding durable solutions to this problem. At the Department of Defense, we are working closely with other Agencies and Departments to develop comprehensive counter-piracy strategies. And the United States is not alone in this effort: already, more than 28 other nations are conducting counter-piracy operations off Somalia, as are international organizations such as NATO and the EU.

We are seeing concrete results from our efforts: since August 2008, international efforts have led to the destruction or confiscation of 36 pirate vessels and the confiscation of numerous weapons, including small arms and RPGs. The international community has also turned 146 pirates over to law enforcement officials in various countries for prosecution.

From a Department of Defense perspective, our strategic goals with regard to Somali piracy include deterrence, disruption/interdiction, and prosecution.

Achieving these goals will be challenging for several reasons. First, the root causes of Somali piracy lie in the poverty and instability that continue to plague that troubled country, and addressing these root causes will be a lengthy, complicated and difficult process. At the moment, pirates can operate with impunity from coastal fishing villages as long as they have the support of the local Somali clan leadership. Though regional governments in Somaliland and Puntland have demonstrated some capacity to provide services, including law enforcement services, in most respects Somalia remains ungoverned, allowing pirates to use coastal villages as safe havens. Pirates also operate in a cash economy, making their profits difficult to track and interdict.

Conflict, instability and drought have caused a humanitarian crisis of long duration in Somalia, where an estimated 3.2 million people now rely on international food assistance to survive. In an environment where legitimate economic opportunities are scarce, piracy and other forms of crime can flourish. In the long run, effectively combating piracy off the Somali coast will be linked to our ability to help the Somalis themselves increase government capacity and find appropriate ways to meet the population's basic needs.

Second, the geographic area affected is vast: Somali pirates operate in a total sea space of more than a million square nautical miles, making it difficult for naval or law enforcement ships and other assets to reach the scene of a pirate attack quickly enough to make a difference. In that vast expanse of ocean, tracking a few dozen low-tech pirate skiffs and intervening to stop attacks that can last only a few minutes is exceptionally difficult. When they are not actively engaged in piracy, pirate vessels easily blend in with ordinary shipping. When they return to land, pirates become still more difficult to locate.

Third, even when pirates are captured, serious gaps remain in the international community's ability to prosecute them for their crimes and thus create an effective legal deterrent. Although all states may exercise jurisdiction over pirates as a matter of international law, some states still lack the appropriate domestic laws to prosecute pirates. Other states have appropriate domestic legal frameworks, but lack the prosecutorial and judicial capacity to effectively hold pirates accountable, or lack the political will required.

We appreciate Kenya's role in prosecuting suspected pirates captured the region. But Kenya should not bear the burden for the international community. Other affected nations must step up and prosecute pirates in their domestic courts as well, just as the United States has when our citizens were the victims of an attack.

Finally, although the merchant shipping industry has made significant improvements in on-ship security measures over the last few months, far more is needed. Ships from all over the world transit the Gulf of Aden and use the shipping lanes along the east coast of Somalia, but many assume unrealistically that there is no need for more

robust shipboard security measures, because military forces will always be present to intervene if pirates attack. As a result, many in the industry have so far been unwilling to invest in the basic security measures that would render them less vulnerable to attack.

These varied and complex challenges should make it clear that there will be no simple solution to the growing problem of piracy off the Somali coast. That said, a few statistics help keep the problem of Somali piracy in perspective. Each year, more than 33,000 vessels transit the Gulf of Aden, and in 2008, there were 122 attempted pirate attacks, of which only 42 were successful. In other words: pirates attack less than one half of one percent of shipping in the Gulf of Aden, and their attacks have succeeded only about a third of the time.

That does not mean that we can ignore piracy in the region, of course. To safeguard the principles of maritime freedom and the lives of innocent mariners, the U.S. government is taking action to address the problem of piracy—particularly at a moment when attacks have been increasing, both in numbers and in ambition.

At the moment, Somali piracy appears to be motivated solely by money, not by ideology, and we do not see meaningful links between pirates and organized violent extremist groups, inside or outside Somalia. Nonetheless, we know that in other contexts, narcotics production and other forms of criminal activity are sometimes “taxed” by extremist groups, as in Afghanistan. We need to ensure that piracy does not evolve into a funding source for violent extremist organizations.

The relatively low incidence of pirate attacks has implications for how we allocate military assets. As the members of this Committee know, the Department of Defense has urgent priorities around the globe. We face two ongoing wars in Iraq and Afghanistan, and we continue multi-faceted overseas contingency operations against violent extremism. In the Horn of Africa, our existing and planned counterterrorism activities remain vital to that global struggle against extremism. Many of resources most in demand for counter-piracy activities, such as intelligence, surveillance and reconnaissance assets, are the same assets that are urgently required elsewhere.

While it is important that we find effective ways to address the growing problem of piracy—with particular attention to preventing piracy from becoming a funding source for violent extremist groups—we need to ensure that effectively addressing piracy does not come at the expense of other ongoing, critical military commitments.

We believe that this can be done. Already, we are taking effective steps to address the four challenges outlined above. Through the creation of Combined Task Force 151 (CTF 151), which focuses exclusively on counter-piracy, we are actively seeking engagement from other states, and we are pleased that so many states are beginning to play a role in joint counter-piracy efforts. Denmark, Singapore, South Korea, Turkey and the United Kingdom have joined our efforts; others have indicated that they will do so as well. In fact, Turkey has taken command over CTF 151 aboard USS GETTYSBURG. Canada, France, Germany, Greece, Italy, Japan, Malaysia, Netherlands, the People's Republic of China, the Russian Federation, Saudi Arabia, Yemen and others have all contributed forces – either individually, or through NATO or the European Union.

Although not without challenges, coordination between allies and the merchant ships that transit the area has been impressive, with outstanding communications between industry and the EU's Maritime Security Center for the Horn of Africa, which is based in Northwood, United Kingdom. The EU's Maritime Security Center plays a key role in relaying critical information from merchant ships to operational forces. Moreover, the international array of forces and their ability to work together has been impressive, as demonstrated by the Combined Maritime Forces monthly Shared Awareness and Deconfliction (SHADE) meetings in Bahrain. These involve over 20 nations and ensure that our international responses will be as effective as possible.

Most important in the short run, we are actively working with merchant shipping lines to help ensure that all vessels take appropriate measures to protect themselves from pirates. Here again, some statistics are instructive: when we look at patterns in pirate attacks in the region, we see that of the *unsuccessful* pirate attacks, a full 78% were thwarted simply by effective action taken by the crews of the ships under attack. Only in

22% of unsuccessful attacks were military or law enforcement interventions related to the positive outcome.

This highlights the fact that the single most effective short-term response to piracy will be working with merchant shipping lines to ensure that vessels in the region take appropriate security measures themselves. In so vast an expanse of ocean, and with so many other critical national security priorities, it is not possible for our military to prevent or intervene in each and every pirate attack. But with appropriate on-board security measures in place, the vast majority of pirate attacks can be thwarted without any need for military intervention.

Effective merchant ship security includes both passive and active defense measures, and we are committed to working with commercial carriers who operate in the region to undertake vulnerability assessments and disseminate best practices. Effective passive security measures can include developing a comprehensive security plan; including risk assessment; the removal of external ladders; posting lookouts at all times; limiting lighting; rigging barriers (such as barbed wire and fencing) in low freeboard areas; varying routes taken and avoiding high-risk areas when possible; securing hatches to limit access to crew and control spaces; creating “safe rooms” and maintaining good communications with maritime security authorities.

Active defense measures can range from rigging fire hoses to repel boarders to maintaining professional civilian armed security teams on board. While there is some concern within the shipping industry about armed security teams, we are working with industry representatives in conjunction with other agencies to explore how contracted security teams can be a useful and viable option for highly vulnerable ships, such as low-freeboard and slow vessels.

As part of this effort, it may be useful to develop incentives that will help encourage merchant ships to invest in security measures. These could range from tax credits to reduced insurance rates for ships with enhanced security. Ultimately, it may be appropriate to mandate some of these actions, beginning with passive self-defense.

Regardless, we will continue to develop partnerships within the shipping industry to make sure that information on best practices is disseminated widely and that vessels have the information they need to adequately assess and mitigate risk.

We will continue to be prepared to respond as appropriate when U.S.-flagged vessels and U.S. citizens are involved. But this is a context in which our actions will be most effective when private partners take proactive measures themselves. Most pirates are opportunistic criminals: whenever possible, they will focus on the easy targets, and avoid the difficult targets. Our main task is to assist commercial carriers in making their ships hard targets.

We will also continue to focus on longer-term efforts to prevent and punish piracy in the region. We will continue to work with allies and regional states to develop their capacity to patrol the seas and protect their own shipping, and we will encourage them to fill any gaps in their legislative frameworks, so that they can prosecute pirates in their own domestic systems. We will also work with regional states to increase prosecutorial and judicial capacity to try pirates, since effective and fair prosecutions are part of creating a long-term deterrent. And we will work when possible with local authorities in Somalia to address the on-shore components of piracy, tracking the on shore-investors and safe-havens that enable piracy on the high seas. Finally, the United States continues to work with the international community to better address the root causes of piracy that arise out of poverty and instability in Somalia.

Many of these efforts dovetail with our existing development and counterterrorism goals in the region. While none of them will be quick fixes, over the long term, increasing local government and law enforcement capacity and fostering sustainable economic development are all part of reducing the threat of violent extremism, as well as reducing the threat of piracy.

Mr. Chairman and Members of the Committee, we recognize that the problem of piracy is not just a problem of Somalia. In recent years, pirate activity has also occurred in the Caribbean, the South China Sea, and other places around the globe. Although the

complete elimination of piracy on the high seas would be as difficult to achieve as the complete elimination of all robberies and assaults, we believe that we can, and must, reduce the likelihood of successful pirate attacks through deterrence, disruption, interdiction and punishment. This will require coordinated international action and a variety of innovative public-private partnership, but we are confident that progress can be made. Congress can help facilitate our efforts by encouraging and incentivizing the commercial shipping industry and their insurers to take appropriate passive and active measures to protect their ships.

Thank you for offering us this opportunity to testify, and we welcome your questions and comments.

**Statement of
Erik L. Johnsen, President
Waterman Steamship Corporation
and
Central Gulf Lines, Inc.**

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

Piracy Against U.S.-Flag Vessels: Lessons Learned

May 20, 2009

Mr. Chairman and Members of the Committee:

As the President of Waterman Steamship Corporation (Waterman) and Central Gulf Lines, Inc. (Central Gulf), both of which are United States-citizen companies under "section 2" of the Shipping Act, 1916, that own and operate 13 U.S.-flag commercial vessels in both the international and domestic trades, I appreciate the opportunity you have provided today to address the continuing threat of piracy against commercial vessels in the U.S.-flag and international-flagged fleets. Waterman operates the MAERSK ALABAMA under charter and is the employer of its crew who were engaged in the recent piracy incident off the coast of Somalia in April 2009.

Waterman and Central Gulf vessels provide a wide-range of oceangoing commercial freight transportation through pure car/truck carrier, roll-on roll-off, container shipping, and domestic coastwise services. From our beginning in 1947 when my grandfather purchased our first post-World War II "Liberty" ship, our American companies have significantly expanded operations around the world.

Notably, and of extreme importance to our Nation's military and economic security needs, Waterman and Central Gulf have provided from their inception critical commercial sealift support to the Department of Defense (DoD) for its global military operations. Our U.S.-flag vessels and the dedicated crews that serve on those vessels proudly, willingly, and without hesitation have delivered vital military equipment, supplies and other materiel into war zones and other hostile areas in direct support of DoD operations, including those conflicts in Korea, Vietnam, Operation Desert Shield/Storm, Operation Enduring Freedom in Afghanistan, and Operation Iraqi Freedom. Our American companies and our U.S. vessel crews continue to this day to provide critical sealift support for global DoD operations and missions.

Because of the vital need for sealift support, the Maritime Security Program (MSP) was enacted by the Congress to ensure that DoD has the access it requires to commercial U.S.-flag

{W0018157.1}

shipping and U.S. merchant mariners for the Nation's economic and military security. Waterman and Central Gulf are active participants in the MSP, with each company operating four militarily-useful vessels under that program. These Waterman and Central Gulf vessels include some of the newest and largest roll-on/roll-off vessels in the U.S.-flag fleet that, as a result of ramp capabilities and variable spacing of movable interior decks, can accommodate a significant number of large military vehicles and aircraft, including military trucks, up-armored HUMVEEs, Mine-Resistant Ambush Protected (MRAP) vehicles, helicopters and other aviation assets, military supply vehicles and the most modern tanks in DoD's inventory. Our vessels can quickly transport large quantities of such equipment and other materiel when and where needed by U.S. Armed Forces around the world. The MSP program has proven to be quite effective and should be further enhanced.

Additionally, a key component of our national security and foreign policy objectives is the delivery of vital food supplies to impoverished countries in Africa and other regions. Through the U.S. Department of Agriculture and the U.S. Agency for International Development, and with participating non-governmental organizations (NGOs) such as CARE, Catholic Charities, and the World Food Programme, Waterman and Central Gulf have shipped millions of tons of food aid cargo to needy people in strife-torn and other deserving countries. In fact, MAERSK ALABAMA was en route to deliver United States food aid cargo to Kenya at the time when the vessel and its American crew were attacked by Somali pirates.

Given the nature of the military and commercial cargo that we carry, the U.S.-flag vessels of Waterman and Central Gulf frequently and regularly ply the trade lanes through the Gulf of Aden and other waters off the East Coast of Africa. Likewise, a significant portion of the U.S.-flag fleet engaged in the foreign trade operates in these same waters. Consequently, peaceful and unimpeded navigation in these same waters must be maintained to preserve the commercial viability of the U.S.-flag merchant fleet and its ability to support the Nation's economic and military interests.

However, as we know all too well, the threat of piracy continues to exist in the Gulf of Aden and the Somali Basin as well as other areas around the globe. That threat directly affects U.S. security, foreign policy, economic and other vital national interests. Just a few short weeks ago, Maersk, Waterman, the crew on the MAERSK ALABAMA, and both companies' employees directly confronted the reality of that very threat. The President of the United States and his Administration are to be commended for the measured and effective response to the piracy incident involving MAERSK ALABAMA. Additionally, our country should be extremely proud of the U.S. Navy and its highly-trained personnel for their actions in rescuing the crew and their vessel. And, certainly, the single focus of our entire company was to work towards the safe return of Captain Phillips and his crew, who are proud members of the International Organization of Masters, Mates & Pilots, the Marine Engineers' Beneficial Association, and the Seafarers International Union. But the national will and that of our U.S. Government must be appropriately directed to eliminate the threat of piracy in the Horn of Africa region and to ensure that vessels and citizens of the United States never again have to experience a pirate attack like that faced by the crew of the MAERSK ALABAMA.

Simply put, the United States must continue its multinational efforts to forcefully address and eliminate the threat of piracy to commercial shipping in the vicinity of the Horn of Africa and elsewhere around the globe. We applaud the recent statement of President Obama after the rescue of Captain Phillips:

[The United States] remain[s] resolved to halt the rise of piracy in [that] region. To achieve that goal, we must continue to work with our partners to prevent future attacks, be prepared to interdict acts of piracy and ensure that those who commit acts of piracy are held accountable for their crimes.

We all recognize that the long-term solution is to eliminate the flow of monies to the pirates and assist in the establishment of a viable government in Somalia. In the interim, immediate steps must be taken to protect U.S. and international interests in the region. Therefore, building upon the President's statement, I would offer the following observations for purposes of further discussion and action by the U.S. Government:

- To eliminate the piracy activity in and around Somalia will take a continual multinational, multi-level effort. While the root cause of piracy is on land in Somalia, the source of funding for those pirate activities is at sea. The United States has long taken a leadership role to work with and assist other nations to maintain the common heritage of the freedom of navigation on the high seas, and we must continue to do so now. Unfortunately, approximately 150 vessels (all international flag) were successfully hijacked in the past year. As a result, reports show that the pirates have accumulated about \$80-to-\$100 million in ransom money to profitably fund their increasing attacks on merchant vessels. This is simply outrageous and unacceptable. Unless we stop the flow of money to these pirates, we will never be rid of them, and we will be forever requiring the U.S. Navy and other naval forces of the world to protect vessels plying these seas.
- Therefore, while the United States Government works closely with its international partners to diplomatically restore civil order and a stable, working government within Somalia, we would suggest that the basic elements of fear, food and money should be the focal points as they are the volatile catalysts for continuing piracy activities in the Gulf of Aden and the Somali Basin:
 - Fear, in that warlords and other individuals threaten Somali families of young men and boys whom they seek to recruit into a life of piracy.
 - Food, in that those warlords and others control the very livelihoods of a large segment of the population in the country, and use food as a weapon to foster support for pirate activities.
 - Money, in that the vast sums of money brought into Somalia through pirate activities only serve to create a destabilizing and reckless desire for more and more. The payments of ransom money stoke the fires of greed throughout the

region, and we urge the Congress to support the announced initiatives of the Department of State to stop such payments.

- While those solutions will take time to accomplish, we must address the interim and immediate need to protect U.S. and international flag shipping from the threat of piracy. Our companies continue to work closely with the U.S. Coast Guard, DoD and other U.S. government agencies in the development of “best practices”, enhanced information sharing arrangements, and other actions to address vessel piracy issues. As you undoubtedly know, the U.S. Coast Guard has recently issued a multi-faceted, updated Maritime Security Directive. However, concerning such efforts, press reports and other sources improperly seem to support the notion of providing arms and ammunition for use by vessel crews. Arming vessel crews must not be considered as one of the solutions to the vessel piracy problem for a wide variety of safety, security, training, and other reasons. Commercial vessel crews are trained and equipped to take non-lethal and other protective measures in the event of a pirate attack to “harden” vessels until help arrives. Any use of deadly force and other lethal actions should remain the province of highly trained and experienced military or security personnel, and we support the use of such embarked security teams aboard high-risk vessels transiting through high-risk piracy areas.
- Additionally, we must continue to work closely with our multinational partners to expand air and sea patrols and enforcement activities against pirates. The brave actions by the U.S. Navy Seals in the MAERSK ALABAMA incident should serve as a deterrent to future acts of piracy against American ships. Similarly, enhanced patrols and vessel escorts by U.S. and allied vessels and aircraft will help to secure the area and prevent future piracy attacks. Ongoing communications and sharing of appropriate intelligence with commercial vessels transiting the region will continue to enable those vessels to better prepare and avoid piracy attacks. However, as we have pointed out, a key component of anti-piracy protection efforts should be the deployment of appropriately-equipped military or armed security teams aboard vessels. The presence of highly-trained and experienced military and/or armed security personnel would be a solid deterrent to piracy attacks against vessels.
- Based upon our preliminary estimate from a variety of sources, we believe that more than \$1 billion is being expended annually by those nations and shipping industry members engaged in combating piracy. And yet, the piracy continues at a significantly increased tempo. We believe that a properly coordinated plan that involves all affected countries, vessel owners/operators, maritime labor, insurance companies, cargo interests, and related parties can substantially reduce the threat of piracy while also decreasing the overall protection costs. We plan to address various ideas in this regard with all interested stakeholders, including the Congress, DoD, the U.S. Coast Guard, and other appropriate Federal departments and agencies, with hopes of developing such a plan.

Mr. Chairman, I appreciate the opportunity you provided to me today to testify on this vitally important matter confronting our Nation and the shipping industry. Waterman, Central Gulf and their vessel crews have decades of experience in sailing in harm's way in the furtherance of U.S. national defense, economic security objectives, and humanitarian relief efforts. Accordingly, we continue to stand ready to assist you in your efforts to address the threat of piracy against all vessels off the East Coast of Africa and other regions of the world.

* * * * *



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-0921
Phone: (202) 372-3500
FAX: (202) 372-2311

DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

**RADM BRIAN M. SALERNO
ASSISTANT COMMANDANT FOR
MARINE SAFETY, SECURITY, AND STEWARDSHIP**

ON THE

PIRACY AGAINST U.S. FLAGGED VESSELS: LESSONS LEARNED

BEFORE THE

SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

U. S. HOUSE OF REPRESENTATIVES

MAY 20, 2009

Good Morning Mr. Chairman and distinguished members of the Committee. It is a pleasure to appear before you today to discuss piracy against U. S. flagged vessels.

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. Domestically the Coast Guard works with and regulates the U.S. merchant fleet to reduce its vulnerability to acts of piracy.

Maritime piracy is a universal crime under international law because it places the lives of seafarers in jeopardy and affects the shared economic interests of all nations. In addition to placing the lives and safety of seafarers in jeopardy, a single piratical attack affects the interests of numerous countries, including the flag State of the vessel, various States of nationality of the seafarers taken hostage, regional coastal States, owners' States, and cargo shipment 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 along an under-governed and economically devastated 2,300 mile coast pose a threat to global shipping. Eliminating piracy and other transnational threats requires stronger law enforcement capacity and rule of law in Somalia.

Beyond disrupting shipping activities, these threats come at a great economic and human cost. In 2008 there were 293 incidents of piracy against ships worldwide – an increase of 11 percent from the previous year. As of mid-April, 16 ships and almost 200 mariners were being held captive by pirates in the Horn of Africa region where piratical attacks have tripled in recent years. As piratical activities increase, so do insurance costs for vessels transiting in high risk areas. The alternatives, however, are not inexpensive either. According to Lloyd's List, ships that elect to transit around the Cape of Good Hope to avoid piracy in the Horn of Africa will incur an additional \$250,000 in fuel costs per trip and an additional seven to ten days of transit time. While these expenses are high, they may become sufficiently attractive to shipping companies to justify as the cost of doing business.

Small vessels are the vehicle of choice for pirates to conduct their attacks. These vessels are fast, readily available, relatively inexpensive, and blend in well with other small vessels commonly operating in the area. The Coast Guard recognizes the vulnerabilities these vessels present and therefore requires vessel operators to address tactical methods for avoiding small vessel attack in their Vessel Security Plan.

In addition to developing tactical plans to deter and respond to piracy, the Coast Guard uses its statutory authorities to address the piracy threat. This involves a two pronged approach that relies on both domestic and international law. Domestically, the Maritime Transportation Security Act of 2002 provides the legal authority for the Coast Guard to regulate safety and

security of cargo, ships, and most importantly seafarers. Under this authority, the Coast Guard developed regulations that require U.S. ship owners and operators to assess and plan for a wide range of security threats, including threats of piracy. This plan, known as a Vessel Security Plan, is received and approved by the Coast Guard.

When the Coast Guard determines that additional security measures are necessary to deal with a specific threat, it can issue a Maritime Security, or MARSEC, Directive. MARSEC Directives can be global or regional in scope. In April 2008, the Coast Guard issued MARSEC Directive 104-6 Rev. 1. This Directive provides direction to Company Security Officers of U.S. vessels that engage in international voyages to, or through, areas at risk for terrorism, piracy and armed robbery against ships. The Coast Guard, in consultation with industry, is currently increasing this designated high risk area to extend further offshore.

Title 18, Section 1651 of the U.S. Code also makes piracy a crime. Consistent with international law, any vessel engaged in piracy may be subject to the jurisdiction of the United States regardless of whether the vessel is foreign flagged. The United States Department of Justice (DOJ) is currently using this statute to prosecute a Somali pirate for his alleged participation in the recent attack upon the MAERSK ALABAMA. Operating at all times as a military service and maritime law enforcement agency, the Coast Guard has authority to conduct counter-piracy operations against any vessel engaged in piratical acts, including conducting boardings, searches, seizures and arrests.

In addition to being the subject of domestic legal regimes, piracy is a crime of universal jurisdiction under conventional and customary international law. Accordingly, every nation has the legal authority to establish jurisdiction and punish the offenders, regardless of nationality of the perpetrator or the victims, or of the vessels involved.¹ This has been a basic tenet of customary 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, issued in December 2008, have provided Chapter VII authorities to certain states and international organizations, for which advance notification has been provided by the Somalia Transitional Federal Government to the UN Secretary-General, to enter Somali waters and territory to repress piracy.

Yet many nations do not have sufficient legal structures in place to adjudicate piratical acts and punish offenders. The Coast Guard has been actively engaged in supporting the development of legal frameworks to facilitate the prosecution of suspected pirates. This work included facilitating development of the U.S./Kenya Memorandum of Understanding (MOU), the Djibouti Code [for regional cooperation], the Contact Group on Piracy off the Coast of Somalia, and a number of International Maritime Organization initiatives.

Of course, legal authority alone does not ensure success. Victim states must have the political will to prosecute. Furthermore, combating the threat of piracy requires well-coordinated interagency and international use of the 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

¹ See 1982 United Nations Convention on the Law of the Sea, arts. 100-107

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.

The International Maritime Organization (IMO) continues to lead international efforts to combat the Somali-piracy threat. By delegation from the State Department, the Coast Guard provides the Head of the United States (U.S.) Delegation for IMO meetings and activities. The IMO has passed resolutions establishing a framework for international cooperation, updated counter-piracy guidance to industry, and, perhaps most importantly, promoted judicial consequence delivery mechanisms so that pirates, once caught, face meaningful and just punishment under the rule of law. United Nations (U.N.) Security Council Resolution 1851 specifically encourages nations to employ the operative provisions of the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) Convention, to which the United States is a Party. All of the States within a 1,000 nautical mile radius of the Gulf of Aden are signatories to the Suppression of Unlawful Acts (SUA) Convention, with the notable exceptions of Somalia, Eritrea, and Ethiopia.

In December 2008, the National Security Council released the National Strategy for Countering Piracy off the Horn of Africa: Partnership and Action Plan. The Plan lays out operational objectives for responding to the threat of piracy in three lines of action: (1) prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy; (2) interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag States; and (3) ensure that those who commits acts of piracy are held accountable for their actions by facilitating prosecution of the suspected pirates in a just forum. Accomplishing the objectives of this Plan requires a coordinated government approach that integrates military, law enforcement, judicial, diplomatic, and commercial interests in and beyond the affected region.

Several elements are critical to the success of an effective and lawful consequence delivery plan: (1) ensuring that victim states exercise jurisdiction under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention); (2) supporting and encouraging the use of other applicable international instruments and customary international law; (3) securing agreements and arrangements with regional partners to formalize custody and prosecution arrangements for cases in which victim states cannot establish jurisdiction; and (4) enhancing capabilities of regional states to accept suspected pirates for prosecution, extradition, and incarceration in these limited cases. The Coast Guard is actively engaged with the White House and other agencies in ongoing efforts to support each of these elements.

The Coast Guard was instrumental in facilitating broad international support for using the SUA Convention as a mechanism for effective consequence delivery. 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. It is designed to ensure appropriate action is taken against persons committing unlawful acts against ships, including, 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. 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 to their competent authorities for the purpose of prosecution.

In support of the United States' objectives, the Coast Guard is contributing to ongoing efforts to secure arrangements with regional partners to facilitate the expeditious investigation, prosecution and, as appropriate, punishment of apprehended pirates. On January 16, 2009, the United States, and the Government of Kenya completed a MOU 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. The United Kingdom and European Union have concluded similar MOUs with the Government of Kenya.

In March 2009, under the terms of this MOU, the Government of Kenya accepted custody of seven of the pirates after their alleged attack on the M/V POLARIS, a Marshall Islands flagged vessel. The pirates were apprehended by a joint Coast Guard and Navy vessel boarding search and seizure team embarked on the USS VELLA GULF. Kenya agreed to prosecute all seven pirates under its national criminal laws. The United States hopes to conclude similar arrangements with other countries in the region to ensure that no single country bears the burden of prosecution.

Additionally, in January 2009, the Coast Guard led the U.S. Delegation to observe final negotiations in Djibouti on regional cooperation to combat piracy. The meeting resulted in adoption of the Djibouti Code of Conduct, which provides a legal framework for the interdiction and prosecution of pirates. The Code also contains practical law enforcement measures, including a shiprider program to share scarce patrol resources and information sharing and operational coordination mechanisms. Nine of the twenty-one regional nations signed the agreement in Djibouti, allowing the Code to immediately enter into force. Each signatory intends to review its national legislation with a view towards ensuring there are laws in place to criminalize piracy, and adequate guidelines for the exercise of jurisdiction, conduct of investigations, and prosecution of alleged offenders.

With regard to our current forces in the Gulf of Aden region, the Coast Guard is operating off the Horn of Africa through two organizational structures. Coast Guard forces (patrol boats and boarding teams) are operating in support of U.S. Central Command (CENTCOM) based on a Request For Forces. CENTCOM has operational control of these forces and has directed they conduct operations with Combined Task Force 151 (CTF 151). Second, Coast Guard Activities Europe is responsible for a number of marine safety and security functions across Europe, the Middle East, and Africa.

CENTCOM established Combined Task Force 151 to conduct counter-piracy operations in response to the growing threat in January 2009. CTF 151's mission is to "Deter, disrupt, and suppress piracy in order to support UN Security Council resolutions, protect global maritime commerce, prevent future attacks, enhance maritime security, and secure freedom of navigation for the benefit of all nations." The Task Force considers this mission to be law enforcement related. Coast Guard Law Enforcement Detachments (LEDETS) currently operate in support of CTF 151 since establishment. LEDETS augment Navy Visit Board Search and Seizure (VBSS) teams near the Horn of Africa and provide training in maritime laws, boarding policies and procedures, evidence collection and preparation, and tactical procedures. It is important to note

that both the Coast Guard and Navy have independent authority to conduct counter-piracy operations against any vessel engaged in piratical acts, including conducting boardings, searches, and seizures.

The integration of Coast Guard boarding team personnel with Navy VBSS teams takes advantage of the unique competencies, capabilities, and authorities of our two services in a manner that offers a comprehensive boarding capability that is ready to address a broad spectrum of threats in the maritime domain. Coast Guard/Navy cooperation in counter-piracy operations is an example of how our two services are working together to ensure interoperability and readiness to operate as an effective force to address the international issue of piracy.

The second structure through which the Coast Guard is involved off Africa is through our office in Europe. Coast Guard Activities Europe is a 26 person unit located in Rotterdam, Netherlands. It is responsible for marine safety and security functions in Europe, the Middle East, and Africa. Marine Inspectors from this office conduct incident investigations and inspect U.S. flagged merchant ships. Marine inspectors are critical in the event a U.S. flagged and Coast Guard certificated vessel intends to implement hardening techniques that improve the vessels ability to mitigate pirate attacks. The Coast Guard must ensure that the security techniques do not impede safety of life at sea, interfere with the use or deployment of safety equipment, or otherwise impose a detriment to maritime safety. Additionally, Activities Europe provides International Port Security Liaison Officers who work with the U.S. Embassy, foreign government officials, and port representatives to share information and enhance port security.

Following the MAERSK ALABAMA and LIBERTY SUN incidents, a team of U. S. Coast Guard personnel studied the incidents with interested parties, including the Federal Bureau of Investigation, Navy Criminal Investigative Service (NCIS), vessel owners and operators, shipping agencies, and others acting on behalf of owners and operators. Our team also visited the vessels in Mombasa, Kenya to verify the material condition, status of safety equipment, effectiveness of the vessel security plan, and to conduct an incident investigation.

Counter-piracy forces must be informed and have as complete an operational picture as possible. As the piracy cases off Somalia have illustrated, there is a continuing need for maritime domain awareness - the ability to detect, classify, and identify vessels at sea. We need greater awareness of maritime activities around the world, as well as along our coastlines, for both safety and security purposes. We also need better integration of systems and operations among maritime partners. Specifically, we need to continue to employ a layered approach to maritime domain awareness, using complementary systems to increase overall capability. We need to accelerate deployment of a net-centric tactical system that implements Department enterprise standards for the sharing of situation data and services across multiple interagency domains and Coast Guard systems.

The Coast Guard currently uses correlation technology that is continuously evaluating data received from multiple sources including, but certainly not limited to, position reports, radar tracks, Automatic Identification System (AIS) and Long Range Identification and Tracking (LRIT) positions, and other external and internally collected data feeds, to correlate and best detect, classify and identify vessels at sea. The correlation capability in the Coast Guard's Common Operational Picture provides a comprehensive display of tracks which is a vital piece of the Coast Guard's maritime domain awareness capability, a capability that is shared with the Navy and other homeland and national security partners.

The Maritime Transportation Security Act (MTSA) authorizes the Secretary of Homeland Security to develop and implement a long-range automated vessel tracking system, so MTSA provides the Coast Guard with authority to implement the IMO's LRIT system. The United States has successfully completed testing on and is receiving position data from 153 US flag ships with LRIT. Approximately 600 U.S. flag ships fall under the LRIT regulation and will be tracked by the end of Current Year (CY) 09. The quicker vessels are equipped with this secure means of position reporting, the quicker this capability will be available to enhance maritime domain awareness in areas like the Gulf of Aden and Horn of Africa.

Maritime threats, including piracy and the use of small vessels to conduct attacks can be mitigated through greater maritime domain awareness. Coordination among U.S. government agencies and with our international partners is exceptionally important in our anti-piracy efforts. The United States' Maritime Operational Threat Response (MOTR) process was established to address the full spectrum of 21st Century maritime security and defense threats to, or directed against, the United States and its interests globally. The MOTR Plan establishes an integrated network of national-level maritime command centers to achieve coordinated, unified, timely, and effective planning and mission accomplishment by the U.S. Government, and to ensure a coordinated response consistent with desired national outcomes. The Plan sets forth lead and supporting Federal agency roles and responsibilities for MOTR based on existing law; desired U.S. Government outcome; greatest potential magnitude of the threat; the response capabilities required; asset availability; and authority to act. The MOTR Plan also directs clear operational coordination requirements and sets forth protocols for interagency coordination, consultation, and assessment throughout MOTR execution.

The national interagency successfully employed the MOTR Plan nearly in over 600 maritime cases since 2005. These cases include drug interdiction, migrant interdiction, fisheries violations, violence at sea, bomb threats, radiation/nuclear alarm resolution, piracy, and complex multi-disciplinary events.

During the recent MAERSK ALABAMA piracy case, the Coast Guard participated in interagency coordination via the Maritime Operational Threat Response (MOTR) process and was the lead agency responsible for industry outreach. The post incident debriefs with Maersk and our MOTR partners indicate that the MOTR process worked very well.

To strengthen international coordination as called for by U.N. Security Council Resolution 1851 and to fulfill a key objective of the national counter-piracy Plan, the United States created an international Contact Group on Piracy off the Coast of Somalia to coordinate international counter-piracy efforts. The participants agreed to establish four working groups to address the following focus areas: (1) activities related to military and operational coordination and information sharing; (2) judicial aspects of piracy (chaired by Denmark); (3) measures to strengthen shipping self-awareness and other capabilities (chaired by the United States Coast Guard and the Maritime Administration); and (4) improvement of diplomatic and public information efforts on all aspects of piracy (chaired by Egypt).

In addition to co-chairing a working group, the Coast Guard has participated in plenary sessions of the Contact Group, and all of the Working Groups. Through this mechanism, we have worked in concert with the shipping industry to develop preventative measures that reduce their vulnerability to attack. There are numerous examples of these measures succeeding in thwarting piratical attacks in the Gulf of Aden and Horn of Africa region. While we are still examining the

attacks on the U.S. vessels MAERSK ALABAMA and LIBERTY SUN, I can tell you that the preventative measures they took before the events in accordance with their vessel security plans and industry best practices contributed greatly to a successful resolution in both cases.

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.

STATEMENT OF PHILIP J. SHAPIRO
PRESIDENT AND CHIEF EXECUTIVE OFFICER
LIBERTY MARITIME CORPORATION

1979 Marcus Avenue
Suite 200
Lake Success NY 11042
(516) 488-8800

BEFORE THE

COAST GUARD AND MARITIME TRANSPORTATION
SUBCOMMITTEE

HOUSE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE

MAY 20, 2009

STATEMENT OF PHILIP J. SHAPIRO
LIBERTY MARITIME CORPORATION

Mr. Chairman, thank you for the opportunity to testify on the important issue of piracy. As you know, one of our vessels – the U.S.-flag vessel LIBERTY SUN – was attacked by pirates off the coast of Somalia on April 14, just two days after the incredible rescue of Captain Phillips of the MAERSK ALABAMA. Thankfully, no one on the crew of the SUN was injured, despite the vessel being hit by four rocket propelled grenades and automatic weapons fire, and the SUN arrived safely in Mombasa, Kenya on April 15.

The LIBERTY SUN was on a mission of mercy to deliver much needed U.S. government food aid to East Africa -- 47,000 metric tons of food as a gift from the American people. The SUN's cargo alone is enough to feed more than 250,000 people for a year in several African countries including Somalia. Without revealing operational details for fear of assisting the pirates, I can say that one of our vessels is almost always in or near the danger area at any given time and so we take the threat of piracy very, very seriously.

Our company and our crew implemented enhanced precautions to make our vessels difficult pirate targets prior to the recent incidents. Captain Don Grosse and the rest of the crew followed the company's security plan and kept their cool under fire. No boarding occurred and the crew did everything that could reasonably be asked of them.

We also wish to thank the U.S. Navy for their prompt and effective response to the incident. We are especially grateful to General Duncan McNabb and Admiral Ann Rondeau for their help in the LIBERTY SUN incident.

Mr. Chairman, I know you would like us to focus on lessons learned.

We believe the first lesson is to acknowledge the excellent foresight of Congress in enacting the Maritime Transportation and Security Act of 2002 or MTSA. Under that act, ship owners were required to conduct vulnerability assessments and adopt vessel security plans.

In the case of our company, we adopted stringent vessel security plans containing every measure recommended by international organizations to make our vessels difficult piracy targets.

For example, the crew of the SUN had rigged fire hoses to cover the stern of the vessel to create a virtual flood wall of water coming off the ship.

When the BAINBRIDGE arrived, their crew informed Capt. Grosse that they had never seen so much water coming off of a vessel.

The second lesson is that we should all recognize and deal with the limitations of vessel-only passive security measures. It is unwise to assume that such security measures will be sufficient in and of themselves to protect American lives. The MAERSK ALABAMA incident constitutes a game changer in this regard. After the incident, self-proclaimed pirate leaders issued direct threats of violence against American merchant mariners.

Therefore, Mr. Chairman, I urge our Government to adopt more active protective measures for U.S.-flag vessels. We greatly appreciate the response of the Navy to the LIBERTY SUN incident, and we are very grateful to both DoD and the EU for the cooperation we have received to date. But responding after the fact is not, in our view, the most effective means of protecting the very few U.S.-flag vessels transiting the pirate danger zone.

We strongly urge the Government to consider embarking a small number of U.S. Government security personnel on the very few U.S.-flag vessels that transit high-risk transit areas at any one time. In our view, small embarked security teams are a more effective deterrent than patrolling large

ocean areas with vessels. Also, using small security teams is a much more cost effective response than attempting to protect millions of square miles of ocean or in dealing with a hostage situation after the fact.

I am also reminded of a bit of history on this point of dealing with pirates. The first federal naval force, which became the U.S. Navy, was authorized in the Naval Act of 1794 for the express purpose of dealing with pirates. In the words of the law, it had become necessary to have a Navy to provide for the “protection” against “depredations committed by the Algerine corsairs on the commerce of the United States.” We would hope that these roots run deep and that the Navy continues to provide protections against modern piratical acts.

The third lesson is that we should consider the possibility of arming U.S.-flag vessels and making the legal changes necessary for this to occur.

Heretofore, merchant vessels simply have not routinely carried fire arms. It is true that U.S.-flag vessels and their crews have an unquestioned right of self-defense under a U.S. statute dating back to 1819. However, more recently enacted State Department arms export regulations make it very difficult to arm vessels. Additionally, ship owners risk being second-guessed in U.S. and foreign courts for self defensive measures that were

common in 1819. In light of the recent threats to U.S. merchant mariners, we respectfully request that Congress consider clearing the legal obstacles that currently block ship owners from arming our vessels in self-defense to protect our crews when it is appropriate.

I believe that U.S. flag ship owners are doing all they can within the law to protect their crews. I look forward to working together with you, Congressman Oberstar and the other members of this Subcommittee and other Congressional leaders to bring U.S. law up to date and give us the legal framework we need to be able to protect ourselves.

I also hope that we all can come to an understanding that private industry cannot switch from a no-firearms regime to an armed protection regime overnight. Our ships need protection now – not months from now. In the interim, we will need either naval vessel escorts or government security teams for U.S.-flag vessels on high risk transits.

The piracy problem has correctly been described as an international problem that needs an international solution. But we should not let the complexity of the international problem deter us from addressing what can be done in the United States right now to protect American merchant

mariners on U.S.-flag vessels – and most especially those on missions for the U.S. government.

Thank you again for inviting me to appear here today and I would be pleased to answer any questions you or your colleagues may have.

Testimony of Arthur J. Volkle, Jr.
Piracy against U.S. Flag Vessels: Lessons Learned
House Committee on Transportation and Infrastructure
Committee on Coast Guard and Maritime Transportation
May 20, 2009

Mr. Chairman;

Thank you for the opportunity to testify before the Committee this morning on an issue of great concern to our Company, and to all U.S. flag operators engaged in international trade.

I am Skip Volkle, Vice President of America Cargo Transport, Inc. ("ACTC"), as well as Vice President and General Counsel of Marine Resources Group, Inc. ("MRG"). In addition to ACTC, MRG owns seven other tug and barge companies. Our companies operate around the world. We are in turn a subsidiary of Saltchuk Resources, Inc., which owns our sister companies Totem Ocean Trailer Express, Sea Star Lines, and Interocean American Shipping. Collectively, we operate one of the largest shipping enterprises under the U.S. flag

ACTC operates both tug/barge units and ships in international trade, primarily carrying U.S. government cargoes, both military and food aid. We have tug/barge units engaged in continuous shuttle service in the Persian Gulf, tug/barge units carrying food aid cargoes in the Caribbean and West Africa, and we operate Ro-Ro ships carrying primarily military cargoes from the U.S. through the Gulf of Aden into the Persian Gulf.

Our primary concern as we operate in these waters is to assure the safety and security of our crews. We strongly believe that the most effective way to protect our seamen and our vessels from the piracy threat in the Gulf of Aden is to provide armed security, and we have been arming our vessels for a number of years. In fact, until recently we were the only U.S. flag operator not on charter to the military to provide armed security aboard its vessels. On at least one occasion, our security policy has been effective in deterring an attack by pirates. Fortunately, the deterrence resulted merely from a display of arms, without actually having to use deadly force. Both the U.S. Navy and Coast Guard have recognized the efficacy of armed security in protecting against pirate threats.

However, although we have engaged armed security, we are concerned that the legal and regulatory framework relating to arming private vessels is inadequate to respond to the threat.

As a threshold matter, we believe that the primary role in protecting U.S. flag vessels operating in pirate waters off East Africa is and should be the United States Navy and/or Coast Guard. For over two hundred years, owners operating under the U.S. flag sailed the world's oceans secure in the knowledge that, in flying the American flag, we sailed under the protection of the United States Navy. Historically, the primary mission of the Navy has been the protection of U.S. merchant shipping, and we believe that that mission is as important today as it was when the Navy responded to the last major threat of piracy against our ships 200 years ago.

We recognize the size of the ocean subject to these attacks, and do not dispute the difficulty in attempting to deploy fleet assets to provide adequate protection off the east coast of Africa. Nevertheless, we believe that deploying armed military security teams aboard U.S. merchant flag ships is the most effective, and cost-effective, means of protecting our shipping, at least in the near term. There are not that many U.S. flag ships operating in the region. Military forces are trained to respond to the armed threat we are experiencing. Military security avoids regulatory shortfalls, liability concerns, and international reluctance to permit armed merchant vessels into their ports. We are not suggesting this as a permanent solution, but as a solution for the near and intermediate term as our government engages in broader solutions to the pirate problem, both afloat and ashore. As an aside, the protection afforded by our Navy or Coast Guard can serve as an added inducement to owners to register their ships under the U.S. flag.

That said, to the extent that the U.S. is not going to provide military armed riding crews, we need the government to address the legal and regulatory regime, both domestically and internationally, to permit us to adequately provide armed private security.

First, we would note that we are not advocating arming our crews. The job of our crew is to run the ship, and they do not have the training to assume the added responsibility of providing an

armed defense. The use of arms should be the responsibility of trained, experienced, professional security personnel. We currently engage two different security companies; their personnel embark on our vessels when the vessels commence operation in high risk areas like the Gulf of Aden and the Persian Gulf.

Second, although we have demonstrated that arming our vessels can be done, U.S. and international laws present significant impediments to arming. As a general rule, private security teams are prohibited by various national laws from travelling with arms to embark aboard a vessel. To the extent that the U.S. Government can obtain cooperation from other governments to permit armed security to travel with arms for deployment aboard vessels, it should do so. We would much prefer to stay out of the arms business altogether, and leave it to trained security forces to bring their weapons with them when they board our vessels.

In the interim, because of these limitations, if security teams are used aboard our vessels, we must provide the weapons, and the weapons must be aboard the vessel when the security teams embark.

Under U.S. regulations, placing weapons aboard a vessel departing the U.S. is considered an "export" of weapons, even if those weapons are intended as a permanent part of ship's equipment and the weapons are intended to be brought back to the U.S. when the vessel returns. To "export" weapons as part of ship's equipment, U.S. regulations the "ITAR" regulations, require an International Arms Dealer Export License. These regulations are found at 22 CFR 123.1 *et seq.* Obtaining a "temporary export license," is virtually impossible because the State Department requires explicit consent from every country to which the vessel will call prior to issuing a permit. We have attempted to obtain such consent from some of the countries where we call, to no avail.

Therefore, the only way to place arms aboard a vessel is under the regulations at 22 CFR 123.17(c), which permits individual seamen to bring up to three semi-automatic weapons, less than 50 caliber, aboard the vessel as *personal effects*. We have had our crew sign for weapons (semi-automatic AK47s or their equivalent) aboard our vessels departing the U.S. The weapons are kept in secure storage by the Captain and are released to the security team when required.

As an example of the problems arising from these regulatory issues, we can point to a recent incident where we were loading a military cargo aboard one of our ships at a U.S. military base here in the United States. Base security prohibited us from bringing our weapons aboard the base, even under guard, to deploy aboard our ship to protect the military's cargo. We attempted to get someone in Washington to reverse the decision, to no avail. Ultimately, we had to move our ship to a commercial pier to get the weapons aboard. And this was to protect a military cargo.

It seems to us that this problem can be addressed through a regulatory change, and should be done immediately. U.S. regulations should provide that U.S. flag merchant vessels can carry arms as part of ship's equipment. To the extent that this change cannot be effected by regulatory change, we ask that Congress provide whatever statutory authority would be required to do so.

Third, the government should provide suitable vetting for private security firms and standards for those firms. Ideally, the Coast Guard should provide vetting and licensing or approval of security firms. This would help us address the liability issues attendant upon carrying armed security. As an interim measure, the Coast Guard could provide guidelines or checklists for security firms.

Fourth, the government should provide general rules of engagement, to provide some legal protection for the use of force to protect our ships; these rules, however, must be sufficiently flexible so that appropriate force may be used to repel pirates, and must provide that the discretion to use force rests with the Captain.

Fifth, the government needs to engage other governments in the region to create a regulatory regime where armed vessels may enter the various ports. We can insure weapons are secured upon entering port. If necessary, we can permit port authorities to remove the weapons while the vessel is in port, and return them when we are getting to depart. But we should be able to bring our armed vessels into foreign ports. As an interim measure, it would be extremely helpful to the U.S. shipping community if the U.S. can provide a centralized information bank which lists the various port state requirements/limitations on entry with arms.