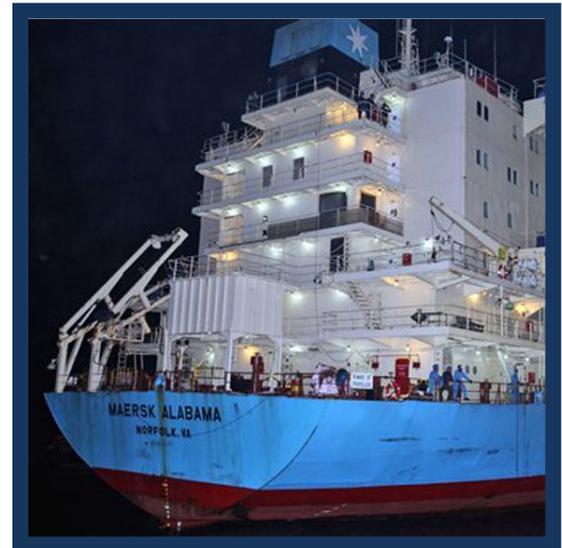




CENTER FOR LAW AND
MILITARY OPERATIONS

Fast Action Binder Piracy





Center for Law and Military Operations

The Judge Advocate General's Legal Center and School

600 Massie Road

Charlottesville, Virginia 22903-1781

[CLAMO Website](#)



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CLAMO Fast Action Binder: Piracy Forward

In the last several years piracy has become a hot topic among operational law attorneys in the sea services and their interagency and international counterparts. The pirate attack on the MAERSK ALABAMA in 2009 brought the subject of piracy off the coast of Somalia to the headlines in the United States. However, the U.S. Navy, Marine Corps and Coast Guard have been engaged for many years in efforts to combat piracy in the Gulf of Aden in partnership with the Department of State, Department of Justice, the U.S. Maritime Administration, other Federal agencies, the International Maritime Organization and numerous industry groups and countries in the region.

There is no shortage of scholarly writing on the subject of piracy; however, many operational law attorneys have asked for a single volume resource that brings key resources and references on the subject of piracy together under one cover. This Fast Action Binder is intended to meet that need. The pages that follow are not a compendium of all knowledge about the subject of piracy. As the title implies, this is a quick reference guide intended to help JAGs get to the starting line for further review and research.

I hope you find this Fast Action Binder a useful part of your JAG toolkit. If you have suggestions for improving this binder please let us know by sending an email to CLAMO@CONUS.ARMY.MIL.

LTC Rodney LeMay, Director
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CLAMO FAST ACTION BINDER: PIRACY

INTERNATIONAL CONVENTIONS

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UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Done at Montego Bay, Jamaica, December 10, 1982

Entered into force November 16, 1994

Note: US not a party to UNCLOS

(Selected Provisions)

Article 100

Duty to co-operate in the repression of piracy

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101

Definition of piracy

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102

Piracy by a warship, government ship or government aircraft whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103

Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105

Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy

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.

Article 110

Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

(a) the ship is engaged in piracy;

(b) the ship is engaged in the slave trade;

(c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;

(d) the ship is without nationality; or

(e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply *mutatis mutandis* to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

President Ronald Reagan Statement on United States Oceans Policy

March 10, 1983

The United States has long been a leader in developing customary and conventional law of the sea. Our objectives have consistently been to provide a legal order that will, among other things, facilitate peaceful, international uses of the oceans and provide for equitable and effective management and conservation of marine resources. The United States also recognizes that all nations have an interest in these issues.

Last July, I announced that the United States will not sign the United Nations Law of the Sea Convention that was opened for signature on December 10. We have taken this step because several major problems in the Convention's deep seabed mining provisions are contrary to the interests and principles of industrialized nations and would not help attain the aspirations of developing countries.

The United States does not stand alone in those concerns. Some important allies and friends have not signed the convention. Even some signatory states have raised concerns about these problems.

However, the convention also contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states.

Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans -- such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf. Recently discovered deposits there could be an important future source of strategic minerals.

Within this Zone all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight. My proclamation does not change existing United States policies concerning the continental shelf, marine mammals, and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction. The United States will continue efforts to achieve international agreements for the effective management of these species. The proclamation also reinforces this government's policy of promoting the United States fishing industry.

While international law provides for a right of jurisdiction over marine scientific research within such a zone, the proclamation does not assert this right. I have elected not to do so because of the United States interest in encouraging marine scientific research and avoiding any unnecessary burdens. The United States will nevertheless recognize the right of other coastal states to exercise jurisdiction over marine scientific research within 200 nautical miles of their coasts, if that jurisdiction is exercised reasonably in a manner consistent with international law.

The Exclusive Economic Zone established today will also enable the United States to take limited additional steps to protect the marine environment. In this connection, the United States will continue to work through the International Maritime Organization and other appropriate international organizations to develop uniform international measures for the protection of the marine environment while imposing no unreasonable burdens on commercial shipping.

The policy decisions I am announcing today will not affect the application of existing United States law concerning the high seas or existing authorities of any United States Government agency.

In addition to the above policy steps, the United States will continue to work with other countries to develop a regime, free of unnecessary political and economic restraints, for mining deep seabed minerals beyond national jurisdiction. Deep seabed mining remains a lawful exercise of the freedom of the high seas open to all nations. The United States will continue to allow its firms to explore for and, when the market permits, exploit these resources.

The administration looks forward to working with the Congress on legislation to implement these new policies.

CONVENTION ON THE HIGH SEAS

*Done at Geneva on April 29, 1958
Entered into force September 30, 1962*

Note: US is a party to
High Seas Convention

(Selected Provisions)

Article 14

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 15

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 18

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 19

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 20

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 21

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article 22

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That the ship is engaged in the slave trade; or

(c) That though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Note: US is a party to the SUA Convention and its Protocols

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 2005

(2005 SUA Convention)

[Note: The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988 was modified extensively by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. What follows is a “clean” copy of the new instrument designated (by Article 15 of the 2005 Protocol) by the title above.]

Article 1

1. For the purposes of this Convention:

(a) “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

(b) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.

(c) “serious injury or damage” means:

(i) serious bodily injury; or

(ii) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or

(iii) substantial damage to the environment, including air, soil, water, fauna, or flora.

(d) “BCN weapon” means:

(i) “biological weapons”, which are:

(1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(ii) “chemical weapons”, which are, together or separately:

(1) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(1), which would be released as a result of the employment of such munitions and devices;

(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(2).

(iii) nuclear weapons and other nuclear explosive devices.

(e) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(f) “precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

(g) “Organization” means the International Maritime Organization (IMO).

(h) “Secretary-General” means the Secretary-General of the Organization.

2. For the purposes of this Convention:

(a) the terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and

(b) the terms “source material” and “special fissionable material” have the same meaning as given to

those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

ARTICLE 2

1. This Convention does not apply to:
 - a. a warship; or
 - b. a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
 - c. a ship which has been withdrawn from navigation or laid up.
2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

Article 2 bis

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee and humanitarian law.
2. This Convention does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.
3. Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.

ARTICLE 3

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

- a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- b. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
- c. destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
- d. places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
- e. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- f. communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

2. Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraphs 1 (b), (c), and (e), if that threat is likely to endanger the safe navigation of the ship in question.

Article 3 bis

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
 - (a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:
 - (i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
 - (ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
 - (iii) uses a ship in a manner that causes death or serious injury or damage; or
 - (iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or
 - (b) transports on board a ship:

(i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(ii) any BCN weapon, knowing it to be a BCN weapon as defined in article 1; or

(iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or

(iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

2. It shall not be an offence within the meaning of this Convention to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,

(b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

Article 3 *ter*

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in article 3, 3 *bis* or 3 *quater* or an offence set forth in any treaty listed

in the Annex, and intending to assist that person to evade criminal prosecution.

Article 3 *quater*

Any person also commits an offence within the meaning of this Convention if that person:

(a) unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in article 3, paragraph 1, article 3 *bis*, or article 3 *ter*; or

(b) attempts to commit an offence set forth in article 3, paragraph 1, article 3 *bis*, paragraph 1(a)(i), (ii) or (iii), or subparagraph (a) of this article; or

(c) participates as an accomplice in an offence set forth in article 3, article 3 *bis*, article 3 *ter*, or subparagraph (a) or (b) of this article; or

(d) organizes or directs others to commit an offence set forth in article 3, article 3 *bis*, article 3 *ter*, or subparagraph (a) or (b) of this article; or

(e) contributes to the commission of one or more offences set forth in article 3, article 3 *bis*, article 3 *ter* or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:

(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 3, 3 *bis* or 3 *ter*; or

(ii) in the knowledge of the intention of the group to commit an offence set forth in article 3, 3 *bis* or 3 *ter*.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5 bis

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in this Convention. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* when the offence is committed:
 - a. against or on board a ship flying the flag of the State at the time the offence is committed; or
 - b. in the territory of that State, including its territorial sea; or
 - c. by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - a. it is committed by a stateless person whose habitual residence is in that State; or
 - b. during its commission a national of that State is seized, threatened, injured or killed; or
 - c. it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.
4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.
3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:
 - a. communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
 - b. be visited by a representative of that State.
4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1. The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who the master has reasonable grounds to believe has committed an offence set forth in article 3, 3 *bis*, 3 *ter*, or 3 *quater*.
2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the

authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 1. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

Article 8 bis

1. States Parties shall co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible.

2. Each request pursuant to this article should, if possible, contain the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination, and any other relevant information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible. The requested Party shall acknowledge its receipt of any written or oral request immediately.

3. States Parties shall take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere.

4. A State Party that has reasonable grounds to suspect that an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* has been, is being or is about to be committed involving a ship flying its flag, may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall use their best endeavours to render such assistance within the means available to them.

5. Whenever law enforcement or other authorized officials of a State Party ("the requesting Party") encounter a ship flying the flag or displaying marks of registry of another State Party ("the first Party") located seaward of any State's territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater*, and the requesting Party desires to board,

(a) it shall request, in accordance with paragraphs 1 and 2 that the first Party confirm the claim of nationality, and

(b) if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter referred to as "the flag State") for authorization to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* has been, is being or is about to be committed, and

(c) the flag State shall either:

(i) authorize the requesting Party to board and to take appropriate measures set out in subparagraph (b), subject to any conditions it may impose in accordance with paragraph 7; or

(ii) conduct the boarding and search with its own law enforcement or other officials; or

(iii) conduct the boarding and search together with the requesting Party, subject to any conditions it may impose in accordance with paragraph 7; or

(iv) decline to authorize a boarding and search.

The requesting Party shall not board the ship or take measures set out in subparagraph (b) without the express authorization of the flag State.

(d) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is granted authorization to board and search the ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* has been, is being or is about to be committed, if there is no response from the first Party within four hours of acknowledgement of receipt of a request to confirm nationality.

(e) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry,

the requesting Party is authorized to board and search a ship, its cargo and persons on board, and to question the persons on board in order to determine if an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* has been, is being or is about to be committed. The notifications made pursuant to this paragraph can be withdrawn at any time.

6. When evidence of conduct described in article 3, 3 *bis*, 3 *ter* or 3 *quater* is found as the result of any boarding conducted pursuant to this article, the flag State may authorize the requesting Party to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The requesting Party shall promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to this article. The requesting Party shall also promptly inform the flag State of the discovery of evidence of illegal conduct that is not subject to this Convention.

7. The flag State, consistent with the other provisions of this Convention, may subject its authorization under paragraph 5 or 6 to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or where those measures derive from relevant bilateral or multilateral agreements.

8. For all boardings pursuant to this article, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution. However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State having jurisdiction under article 6.

9. When carrying out the authorized actions under this article, the use of force shall be avoided except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions. Any use of force pursuant to this article shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.

10. Safeguards:

(a) Where a State Party takes measures against a ship in accordance with this article, it shall:

(i) take due account of the need not to endanger the safety of life at sea;

(ii) ensure that all persons on board are treated in a manner which preserves their basic

human dignity, and in compliance with the applicable provisions of international law, including international human rights law;

(iii) ensure that a boarding and search pursuant to this article shall be conducted in accordance with applicable international law; (iv) take due account of the safety and security of the ship and its cargo;

(v) take due account of the need not to prejudice the commercial or legal interests of the flag State;

(vi) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;

(vii) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* are afforded the protections of paragraph 2 of article 10, regardless of location;

(viii) ensure that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and

(ix) take reasonable efforts to avoid a ship being unduly detained or delayed.

(b) Provided that authorization to board by a flag State shall not per se give rise to its liability, States Parties shall be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article when:

(i) the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or

(ii) such measures are unlawful or exceed those reasonably required in light of available information to implement the provisions of this article. States Parties shall provide effective recourse in respect of such damage, harm or loss.

(c) Where a State Party takes measures against a ship in accordance with this Convention, it shall take due account of the need not to interfere with or to affect:

(i) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(ii) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.

(d) Any measure taken pursuant to this article shall be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and,

notwithstanding articles 2 and 2 *bis*, the provisions of this article shall apply.

(e) For the purposes of this article “law enforcement or other authorized officials” means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government. For the specific purpose of law enforcement under this Convention, law enforcement or other authorized officials shall provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.

11. This article does not apply to or limit boarding of ships conducted by any State Party in accordance with international law, seaward of any State’s territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action.

12. States Parties are encouraged to develop standard operating procedures for joint operations pursuant to this article and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures for the conduct of operations.

13. States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out in accordance with this article.

14. Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this article.

15. Upon or after depositing its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures. Such designation, including contact information, shall be notified to the Secretary-General within one month of becoming a Party, who shall inform all other States Parties within one month of the designation. Each State Party is responsible for providing prompt notice through the Secretary-General of any changes in the designation or contact information.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

ARTICLE 11

1. The offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater*. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* as extraditable offences between themselves, subject to the conditions provided by the law of the requested State Party.

4. If necessary, the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* shall be treated, for the purposes of extradition between States Parties, as if they had been

committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 11 bis

None of the offences set forth in article 3, 3 bis, 3 ter or 3 quater shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 11 ter

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 3, 3 bis, 3 ter or 3 quater or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

ARTICLE 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in articles 3, 3 bis, 3 ter and 3 quater, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

Article 12 bis

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 3, 3 bis, 3 ter or 3 quater may be transferred if the following conditions are met:

(a) the person freely gives informed consent; and

(b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

(a) the State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) the person transferred shall receive credit for service of the sentence being served in the State from which the person was transferred for time spent in the custody of the State to which the person was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever that person's nationality, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions

anterior to that person's departure from the territory of the State from which such person was transferred.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater*, particularly by:

(a) taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater*.

2. When, due to the commission of an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater*, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:

- a. the circumstances of the offence;
- b. the action taken pursuant to article 13, paragraph 2;
- c. the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.

3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the Organization, to other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

Final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005

Article 16 bis

The final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 shall be articles 17 to 24 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.

ARTICLE 17

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 18

Entry into force

1. This Protocol shall enter into force ninety days following the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 20

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 21

Declarations

1. Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Protocol to the State Party, the treaty shall be deemed not to be included in article 3 *ter*. The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the Secretary-General of this fact.
2. When a State Party ceases to be a party to a treaty listed in the Annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party may declare that it will apply the provisions of article 3 *ter* in accordance with the principles of its criminal law concerning family exemptions of liability.

ARTICLE 22

Amendments to the Annex

1. The Annex may be amended by the addition of relevant treaties that:
 - (a) are open to the participation of all States;
 - (b) have entered into force; and
 - (c) have been ratified, accepted, approved or acceded to by at least twelve States Parties to this Protocol.
2. After the entry into force of this Protocol, any State Party thereto may propose such an amendment to the Annex. Any proposal for an amendment shall be communicated to the Secretary-General in written form. The Secretary-General shall circulate any proposed amendment that meets the requirements of paragraph 1 to all members of the Organization and seek from States

Parties to this Protocol their consent to the adoption of the proposed amendment.

3. The proposed amendment to the Annex shall be deemed adopted after more than twelve of the States Parties to this Protocol consent to it by written notification to the Secretary-General.

4. The adopted amendment to the Annex shall enter into force thirty days after the deposit with the Secretary-General of the twelfth instrument of ratification, acceptance or approval of such amendment for those States Parties to this Protocol that have deposited such an instrument. For each State Party to this Protocol ratifying, accepting or approving the amendment after the deposit of the twelfth instrument with the Secretary-General, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

ARTICLE 23

Depositary

1. This Protocol and any amendments adopted under articles 20 and 22 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Protocol or acceded to this Protocol of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Protocol;

(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

(iv) any communication called for by any article of this Protocol;

(v) any proposal to amend the Annex which has been made in accordance with article 22, paragraph 2;

(vi) any amendment deemed to have been adopted in accordance with article 22, paragraph 3;

(vii) any amendment ratified, accepted or approved in accordance with article 22, paragraph 4, together with the date on which that amendment shall enter into force; and

(b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.

3. As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 24

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Done at London this fourteenth day of October two thousand and five.

In Witness Whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

ANNEX

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
8. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
9. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

**1678 U.N.T.S. 221, 27 I.L.M. 668
(1988)**

Entered into force March 1, 1992

The states parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Considering that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

Considering that the occurrence of such acts is a matter of grave concern to the international community as a whole,

Being convinced of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

Recalling resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

Recalling further that resolution 40/61 "unequivocally condemns, as criminal) all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security",

Recalling also that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

Having in mind resolution A.584 (14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

Noting that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

Affirming the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

Affirming further that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

Recognizing the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

Have agreed as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1. This Convention does not apply to:
 - a. a warship; or
 - b. a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
 - c. a ship which has been withdrawn from navigation or laid up.

2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1. Any person commits an offence if that person unlawfully and intentionally:

- a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- b. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
- c. destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
- d. places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
- e. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- f. communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
- g. injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2. Any person also commits an offence if that person:

- a. attempts to commit any of the offences set forth in paragraph 1; or
- b. abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
- c. threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single

State, or the lateral limits of its territorial sea with adjacent States.

2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:

- a. against or on board a ship flying the flag of the State at the time the offence is committed; or
 - b. in the territory of that State, including its territorial sea; or
 - c. by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
- a. it is committed by a stateless person whose habitual residence is in that State; or
 - b. during its commission a national of that State is seized, threatened, injured or killed; or
 - c. it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.
3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:
 - a. communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
 - b. be visited by a representative of that State.
4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1. The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.
2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of

his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 1. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.
4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.
5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition

treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3.
3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.
5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.
6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.
7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence

of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:
 - a. taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;
 - b. exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.
2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
 - a. the circumstances of the offence;
 - b. the action taken pursuant to article 13, paragraph 2;
 - c. the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.
2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.
3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of

the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - a. signature without reservation as to ratification, acceptance or approval; or
 - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - c. accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - a. inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

Safety of Maritime Navigation

- i. each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - ii. the date of the entry into force of this Convention;
 - iii. the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
 - iv. the receipt of any declaration or notification made under this Convention;
- b. transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In Witness Whereof the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

Done at Rome this tenth day of March one thousand nine hundred and eighty-eight.

PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

Text adopted by the Conference

Preamble

The states parties to this Protocol,

Being parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988,

Acknowledging that terrorist acts threaten international peace and security,

Mindful of resolution A.924 (22) of the Assembly of the International Maritime Organization requesting the revision of existing international legal and technical measures and the consideration of new measures in order to prevent and suppress terrorism against ships and to improve security aboard and ashore, and thereby to reduce the risk to passengers, crews and port personnel on board ships and in port areas and to vessels and their cargoes,

Conscious of the Declaration on Measures to Eliminate International Terrorism, annexed to United Nations General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting United Nations General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

Recalling resolutions 1368 (2001) and 1373 (2001) of the United Nations Security Council, which reflect international will to combat terrorism in all its forms and manifestations, and which assigned tasks and responsibilities to States, and taking into account the continued threat from terrorist attacks,

Recalling also resolution 1540 (2004) of the United Nations Security Council, which recognizes the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

Recalling further the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; the Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979 and amendments thereto adopted on 8 July 2005; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, and the International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the General Assembly of the United Nations on 13 April 2005,

Bearing in mind the importance of the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, and of the customary international law of the sea,

Considering resolution 59/46 of the United Nations General Assembly, which reaffirmed that international co-operation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions, and resolution 59/24 of the United Nations General Assembly, which urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its

Protocol, invited States to participate in the review of those instruments by the Legal Committee of the International Maritime Organization to strengthen the means of combating such unlawful acts, including terrorist acts, and also urged States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea,

Considering also the importance of the amendments to the International Convention for the Safety of Life at Sea, 1974, and of the International Ship and Port Facility Security (ISPS) Code, both adopted by the 2002 Conference of Contracting Governments to that Convention, in establishing an appropriate international technical framework involving co-operation between Governments, Government agencies, national and local administrations and the shipping and port industries to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade,

Considering further resolution 58/187 of the United Nations General Assembly, which reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law,

Believing that it is necessary to adopt provisions supplementary to those of the Convention, to suppress additional terrorist acts of violence against the safety and security of international maritime navigation and to improve its effectiveness,

Have agreed as follows:

ARTICLE 1

For the purposes of this Protocol:

1. “Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
2. “Organization” means the International Maritime Organization (IMO).
3. “Secretary-General” means the Secretary-General of the Organization.

ARTICLE 2

Article 1 of the Convention is amended to read as follows:

Article 1

1. For the purposes of this Convention:

(a) “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

(b) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.

(c) “serious injury or damage” means:

(i) serious bodily injury; or

(ii) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or

(iii) substantial damage to the environment, including air, soil, water, fauna, or flora.

(d) “BCN weapon” means:

(i) “biological weapons”, which are:

(1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(ii) “chemical weapons”, which are, together or separately:

(1) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(1), which would be released as a result of the employment of such munitions and devices;

(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(2).

(iii) nuclear weapons and other nuclear explosive devices.

(e) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(f) “precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

(g) “Organization” means the International Maritime Organization (IMO).

(h) “Secretary-General” means the Secretary-General of the Organization.

2. For the purposes of this Convention:

(a) the terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and

(b) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

ARTICLE 3

The following text is added as article 2 *bis* of the Convention:

Article 2 bis

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee and humanitarian law.

2. This Convention does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, and the activities undertaken by military forces of a

State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.

3. Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.

ARTICLE 4

1. The *chapeau* of article 3, paragraph 1 of the Convention is replaced by the following text:

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

2. Article 3, paragraph 1(f) of the Convention is replaced by the following text:

(f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

3. Article 3, paragraph 1(g) of the Convention is deleted.

4. Article 3, paragraph 2 of the Convention is replaced by the following text:

2. Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraphs 1 (b), (c), and (e), if that threat is likely to endanger the safe navigation of the ship in question.

5. The following text is added as article 3 of the Convention:

Article 3 bis

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(a) when the purpose of the act, by its nature or context, is to intimidate a population, or to

compel a government or an international organization to do or to abstain from doing any act:

(i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(iii) uses a ship in a manner that causes death or serious injury or damage; or

(iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or

(b) transports on board a ship:

(i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(ii) any BCN weapon, knowing it to be a BCN weapon as defined in article 1; or

(iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or

(iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

2. It shall not be an offence within the meaning of this Convention to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,

(b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

6. The following text is added as article 3 *ter* of the Convention:

Article 3 ter

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in article 3, 3 *bis* or 3 *quater* or an offence set forth in any treaty listed in the Annex, and intending to assist that person to evade criminal prosecution.

7. The following text is added as article 3 *quater* of the Convention:

Article 3 quater

Any person also commits an offence within the meaning of this Convention if that person:

(a) unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in article 3, paragraph 1, article 3 *bis*, or article 3 *ter*; or

(b) attempts to commit an offence set forth in article 3, paragraph 1, article 3 *bis*, paragraph 1(a)(i), (ii) or (iii), or subparagraph (a) of this article; or

(c) participates as an accomplice in an offence set forth in article 3, article 3 *bis*, article 3 *ter*, or subparagraph (a) or (b) of this article; or

(d) organizes or directs others to commit an offence set forth in article 3, article 3 *bis*, article 3 *ter*, or subparagraph (a) or (b) of this article; or

(e) contributes to the commission of one or more offences set forth in article 3, article 3 *bis*, article 3 *ter* or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:

(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 3, 3 bis or 3 ter; or

(ii) in the knowledge of the intention of the group to commit an offence set forth in article 3, 3 bis or 3 ter.

ARTICLE 5

1. Article 5 of the Convention is replaced by the following text:

Each State Party shall make the offences set forth in articles 3, 3 bis, 3 ter and 3 quater punishable by appropriate penalties which take into account the grave nature of those offences.

2. The following text is added as article 5 bis of the Convention:

Article 5 bis

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in this Convention. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

ARTICLE 6

1. The *chapeau* of article 6, paragraph 1 of the Convention is replaced by the following text:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3 bis, 3 ter and 3 quater when the offence is committed:

2. Article 6, paragraph 3 of the Convention is replaced by the following text:

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify

the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

3. Article 6, paragraph 4 of the Convention is replaced by the following text:

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3 bis, 3 ter and 3 quater in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

ARTICLE 7

The following text is added as the Annex to the Convention:

ANNEX

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.

2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

5. Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.

6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

7. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

8. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

9. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

ARTICLE 8

1. Article 8, paragraph 1 of the Convention is replaced by the following text:

1. The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who the master has reasonable grounds to believe has committed an offence set forth in article 3, 3 *bis*, 3 *ter*, or 3 *quater*.

2. The following text is added as article 8 *bis* of the Convention:

Article 8 bis

1. States Parties shall co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible.

2. Each request pursuant to this article should, if possible, contain the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination, and any other relevant information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible. The requested Party shall acknowledge its receipt of any written or oral request immediately.

3. States Parties shall take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere.

4. A State Party that has reasonable grounds to suspect that an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* has been, is being or is about to be committed involving a ship flying its flag, may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall use their best endeavours to render such assistance within the means available to them.

5. Whenever law enforcement or other authorized officials of a State Party (“the requesting Party”) encounter a ship flying the flag or displaying marks

of registry of another State Party (“the first Party”) located seaward of any State’s territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater*, and the requesting Party desires to board,

(a) it shall request, in accordance with paragraphs 1 and 2 that the first Party confirm the claim of nationality, and

(b) if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter referred to as “the flag State”) for authorization to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* has been, is being or is about to be committed, and

(c) the flag State shall either:

(i) authorize the requesting Party to board and to take appropriate measures set out in subparagraph (b), subject to any conditions it may impose in accordance with paragraph 7; or

(ii) conduct the boarding and search with its own law enforcement or other officials; or

(iii) conduct the boarding and search together with the requesting Party, subject to any conditions it may impose in accordance with paragraph 7; or

(iv) decline to authorize a boarding and search.

The requesting Party shall not board the ship or take measures set out in subparagraph (b) without the express authorization of the flag State.

(d) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is granted authorization to board and search the ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* has been, is being or is about to be committed, if there is no response from the first Party within four hours of acknowledgement of receipt of a request to confirm nationality.

(e) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is authorized to board and search a ship, its cargo and persons on board, and to question the persons on board in order to determine if an offence set forth in article 3, 3 bis, 3 ter or 3 quater has been, is being or is about to be committed. The notifications made pursuant to this paragraph can be withdrawn at any time.

6. When evidence of conduct described in article 3, 3 bis, 3 ter or 3 quater is found as the result of any boarding conducted pursuant to this article, the flag State may authorize the requesting Party to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The requesting Party shall promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to this article. The requesting Party shall also promptly inform the flag State of the discovery of evidence of illegal conduct that is not subject to this Convention.

7. The flag State, consistent with the other provisions of this Convention, may subject its authorization under paragraph 5 or 6 to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or where those measures derive from relevant bilateral or multilateral agreements.

8. For all boardings pursuant to this article, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution. However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State having jurisdiction under article 6.

9. When carrying out the authorized actions under this article, the use of force shall be avoided except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions. Any use of force pursuant to this article shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.

10. Safeguards:

(a) Where a State Party takes measures against a ship in accordance with this article, it shall:

(i) take due account of the need not to endanger the safety of life at sea;

(ii) ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law;

(iii) ensure that a boarding and search pursuant to this article shall be conducted in accordance with applicable international law; (iv) take due account of the safety and security of the ship and its cargo;

(v) take due account of the need not to prejudice the commercial or legal interests of the flag State;

(vi) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;

(vii) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in article 3, 3 bis, 3 ter or 3 quater are afforded the protections of paragraph 2 of article 10, regardless of location;

(viii) ensure that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and

(ix) take reasonable efforts to avoid a ship being unduly detained or delayed.

(b) Provided that authorization to board by a flag State shall not per se give rise to its liability, States Parties shall be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article when:

(i) the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or

(ii) such measures are unlawful or exceed those reasonably required in light of available information to implement the provisions of this article. States Parties shall provide effective recourse in respect of such damage, harm or loss.

(c) Where a State Party takes measures against a ship in accordance with this Convention, it shall take due account of the need not to interfere with or to affect:

(i) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(ii) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.

(d) Any measure taken pursuant to this article shall be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding articles 2 and 2 bis, the provisions of this article shall apply.

(e) For the purposes of this article “law enforcement or other authorized officials” means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government. For the specific purpose of law enforcement under this Convention, law enforcement or other authorized officials shall provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.

11. This article does not apply to or limit boarding of ships conducted by any State Party in accordance with international law, seaward of any State’s territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action.

12. States Parties are encouraged to develop standard operating procedures for joint operations pursuant to this article and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures for the conduct of operations.

13. States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out in accordance with this article.

14. Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this article.

15. Upon or after depositing its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or, where necessary, authorities to receive and respond to

requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures. Such designation, including contact information, shall be notified to the Secretary-General within one month of becoming a Party, who shall inform all other States Parties within one month of the designation. Each State Party is responsible for providing prompt notice through the Secretary-General of any changes in the designation or contact information.

ARTICLE 9

Article 10, paragraph 2 is replaced by the following text:

2. Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

ARTICLE 10

1. Article 11, paragraphs 1, 2, 3 and 4 are replaced by the following text:

1. The offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater*. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* as extraditable offences between themselves, subject to the conditions provided by the law of the requested State Party.

4. If necessary, the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater* shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

2. The following text is added as article 11 *bis*, of the Convention:

Article 11 bis

None of the offences set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

3 The following text is added as article 11 *ter* of the Convention:

Article 11 ter

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

ARTICLE 11

1. Article 12, paragraph 1 of the Convention is replaced by the following text:

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater*, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. The following text is added as article 12 *bis* of the Convention:

Article 12 bis

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* may be transferred if the following conditions are met:

(a) the person freely gives informed consent; and

(b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

(a) the State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) the person transferred shall receive credit for service of the sentence being served in the State from which the person was transferred for time spent in the custody of the State to which the person was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever that person's nationality, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to that person's departure from the territory of the State from which such person was transferred.

ARTICLE 12

Article 13 of the Convention is replaced by the following text:

1. States Parties shall co-operate in the prevention of the offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater*, particularly by:

(a) taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in articles 3, 3 *bis*, 3 *ter* and 3 *quater*.

2. When, due to the commission of an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater*, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 13

Article 14 of the Convention is replaced by the following text:

Any State Party having reason to believe that an offence set forth in article 3, 3 *bis*, 3 *ter* or 3 *quater* will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 14

Article 15, paragraph 3 of the Convention is replaced by the following text:

3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the Organization, to other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 15

Interpretation and application

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles 1 to 16 of the Convention, as revised by this Protocol, together with articles 17 to 24 of this

Protocol and the Annex thereto, shall constitute and be called the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention).

ARTICLE 16

The following text is added as article 16 *bis* of the Convention:

Final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005

The final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 shall be articles 17 to 24 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.

FINAL CLAUSES

ARTICLE 17

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 18

Entry into force

1. This Protocol shall enter into force ninety days following the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 20

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 21

Declarations

1. Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Protocol to the State Party, the treaty shall be deemed not to be included in article 3 *ter*. The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the Secretary-General of this fact.
2. When a State Party ceases to be a party to a treaty listed in the Annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party may declare that it will apply the provisions of article 3 *ter* in accordance with the principles of its criminal law concerning family exemptions of liability.

ARTICLE 22

Amendments to the Annex

1. The Annex may be amended by the addition of relevant treaties that:
 - (a) are open to the participation of all States;
 - (b) have entered into force; and
 - (c) have been ratified, accepted, approved or acceded to by at least twelve States Parties to this Protocol.
2. After the entry into force of this Protocol, any State Party thereto may propose such an amendment to the Annex. Any proposal for an amendment shall be communicated to the Secretary-General in written form. The Secretary-General shall circulate any proposed amendment that meets the requirements of paragraph 1 to all members of the Organization and seek from States Parties to this Protocol their consent to the adoption of the proposed amendment.
3. The proposed amendment to the Annex shall be deemed adopted after more than twelve of the States Parties to this Protocol consent to it by written notification to the Secretary-General.
4. The adopted amendment to the Annex shall enter into force thirty days after the deposit with the Secretary-General of the twelfth instrument of ratification, acceptance or approval of such amendment for those States Parties to this Protocol that have deposited such an instrument. For each State Party to this Protocol ratifying, accepting or approving the amendment after the deposit of the twelfth instrument

Safety of Maritime Navigation 2005 Protocol

with the Secretary-General, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

Done at London this fourteenth day of October two thousand and five.

In Witness Whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

ARTICLE 23

Depositary

1. This Protocol and any amendments adopted under articles 20 and 22 shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed this Protocol or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Protocol;
 - (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) any communication called for by any article of this Protocol;
 - (v) any proposal to amend the Annex which has been made in accordance with article 22, paragraph 2;
 - (vi) any amendment deemed to have been adopted in accordance with article 22, paragraph 3;
 - (vii) any amendment ratified, accepted or approved in accordance with article 22, paragraph 4, together with the date on which that amendment shall enter into force; and
 - (b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.
3. As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 24

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, 2005

(2005 SUA Fixed Platforms Protocol)

[Note: The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 1988 was modified extensively by the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. What follows is a “clean” copy of the new instrument designated (by Article 6 of the 2005 Protocol) by the title above.]

Article 1

1. The provisions of article 1, paragraphs 1(c), (d), (e), (f), (g), (h) and 2(a), of articles 2 *bis*, 5, 5 *bis* and 7, and of articles 10 to 16, including articles 11 *bis*, 11 *ter* and 12 *bis*, of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, as amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, shall also apply *mutatis mutandis* to the offences set forth in articles 2, 2 *bis* and 2 *ter* of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.
2. In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.
3. For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

Article 2

1. Any person commits an offence if that person unlawfully and intentionally:
 - a. seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
 - b. performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - c. destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - d. places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety.
2. Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraphs 1(b) and (c), if that threat is likely to endanger the safety of the fixed platform.

Article 2 bis

Any person commits an offence within the meaning of this Protocol if that person unlawfully and intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

- (a) uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
- (b) discharges, from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- (c) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a) or (b).

Article 2 ter

Any person also commits an offence within the meaning of this Protocol if that person:

- (a) unlawfully and intentionally injures or kills any person in connection with the commission of any of the

offences set forth in article 2, paragraph 1, or article 2 *bis*; or

(b) attempts to commit an offence set forth in article 2, paragraph 1, article 2 *bis*, subparagraph (a) or (b), or subparagraph (a) of this article; or

(c) participates as an accomplice in an offence set forth in article 2, article 2 *bis* or subparagraph (a) or (b) of this article; or

(d) organizes or directs others to commit an offence set forth in article 2, article 2 *bis* or subparagraph (a) or (b) of this article; or

(e) contributes to the commission of one or more offences set forth in article 2, article 2 *bis* or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:

(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 2 or 2 *bis*; or

(ii) in the knowledge of the intention of the group to commit an offence set forth in article 2 or 2 *bis*.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 2 *bis* and 2 *ter* when the offence is committed:

a. against or on board a fixed platform while it is located on the continental shelf of that State; or

b. by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

a. it is committed by a stateless person whose habitual residence is in that State;

b. during its commission a national of that State is seized, threatened, injured or killed; or

c. it is committed in an attempt to compel that State to do or abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 2 *bis* and 2 *ter* in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the

States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2.

5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

Final clauses of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005

Article 4 *bis*

The final clauses of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005, shall be articles 8 to 13 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. References in this Protocol to States Parties shall be taken to mean references to States Parties to the 2005 Protocol.

ARTICLE 8

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

a. signature without reservation as to ratification, acceptance or approval; or

b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

c. accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the 1988 Protocol without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded

to the 1988 Protocol may become a Party to this Protocol.

ARTICLE 9

Entry into force

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General. However, this Protocol shall not enter into force before the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation has entered into force.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 10

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 11

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force

of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 12

Depositary

1. This Protocol and any amendments adopted under article 11 shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - a. inform all States which have signed this Protocol or acceded to this Protocol of:
 - i. each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - ii. the date of the entry into force of this Protocol;
 - iii. the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
 - iv. any communication called for by any article of this Protocol; and
 - b. transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.
3. As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 13

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Done at London this fourteenth day of October two thousand and five.

In Witness Whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF

**Done at Rome, 10 March 1988
Entered into force 1 March 1992**

The states parties to this protocol,

Being parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,

Recognizing that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

Taking account of the provisions of that Convention,

Affirming that matters not regulated by this Protocol continue to be governed by the rules and principles of general international law,

Have agreed as follows:

Article 1

1. The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the Convention") shall also apply *mutatis mutandis* to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

2. In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.

3. For the purposes of this Protocol, "fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

Article 2

1. Any person commits an offence if that person unlawfully and intentionally:

- a. seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
 - b. performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - c. destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - d. places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
 - e. injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).
2. Any person also commits an offence if that person:
- a. attempts to commit any of the offences set forth in paragraph 1; or
 - b. abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - c. threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.

Article 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:
- a. against or on board a fixed platform while it is located on the continental shelf of that State; or
 - b. by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
- a. it is committed by a stateless person whose habitual residence is in that State;
 - b. during its commission a national of that State is seized, threatened, injured or killed; or
 - c. it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If

such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

Article 5

1. This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

- a. signature without reservation as to ratification, acceptance or approval; or
- b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- c. accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

Article 6

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

Article 7

1. This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

4. A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

Article 8

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

Article 9

1. This Protocol shall be deposited with the Secretary-General.

2. The Secretary-General shall:

a. inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:

i. each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

ii. the date of entry into force of this Protocol;

iii. the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

iv. the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;

b. transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.

3. As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

Done at Rome this tenth day of March one thousand nine hundred and eighty-eight.

PROTOCOL OF 2005 TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF

Text adopted by the Conference

The states parties to this Protocol,

Being parties to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf done at Rome on 10 March 1988,

Recognizing that the reasons for which the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was elaborated also apply to fixed platforms located on the continental shelf,

Taking account of the provisions of those Protocols,
Have agreed as follows:

ARTICLE 1

For the purposes of this Protocol:

1. "1988 Protocol" means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
2. "Organization" means the International Maritime Organization.
3. "Secretary-General" means the Secretary-General of the Organization.

ARTICLE 2

Article 1, paragraph 1, of the 1988 Protocol is replaced by the following text:

1. The provisions of article 1, paragraphs 1(c), (d), (e), (f), (g), (h) and 2(a), of articles 2 *bis*, 5, 5 *bis* and 7, and of articles 10 to 16, including articles 11 *bis*, 11 *ter* and 12 *bis*, of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, as amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts

against the Safety of Maritime Navigation, shall also apply *mutatis mutandis* to the offences set forth in articles 2, 2 *bis* and 2 *ter* of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

ARTICLE 3

1. Article 2, paragraph 1(d) of the 1988 Protocol is replaced by the following text:

(d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety.

2. Article 2, paragraph 1(e) of the 1988 Protocol is deleted.

3. Article 2, paragraph 2 of the 1988 Protocol is replaced by the following text:

2. Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraphs 1(b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 4

1. The following text is inserted as article 2 *bis*:

Article 2 bis

Any person commits an offence within the meaning of this Protocol if that person unlawfully and intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

(a) uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(b) discharges, from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(c) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a) or (b).

2. The following text is inserted as Article 2 *ter*:

Article 2 ter

Any person also commits an offence within the meaning of this Protocol if that person:

(a) unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in article 2, paragraph 1, or article 2 bis; or

(b) attempts to commit an offence set forth in article 2, paragraph 1, article 2 bis, subparagraph (a) or (b), or subparagraph (a) of this article; or

(c) participates as an accomplice in an offence set forth in article 2, article 2 bis or subparagraph (a) or (b) of this article; or

(d) organizes or directs others to commit an offence set forth in article 2, article 2 bis or subparagraph (a) or (b) of this article; or

(e) contributes to the commission of one or more offences set forth in article 2, article 2 bis or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:

(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 2 or 2 bis; or

(ii) in the knowledge of the intention of the group to commit an offence set forth in article 2 or 2 bis.

ARTICLE 5

1. Article 3, paragraph 1 of the 1988 Protocol is replaced by the following text:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 2 bis and 2 ter when the offence is committed:

(a) against or on board a fixed platform while it is located on the continental shelf of that State; or

(b) by a national of that State.

2. Article 3, paragraph 3 of the 1988 Protocol is replaced by the following text:

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

3. Article 3, paragraph 4 of the 1988 Protocol is replaced by the following text:

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 2 bis and 2 ter in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2.

ARTICLE 6

Interpretation and application

1. The 1988 Protocol and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles 1 to 4 of the 1988 Protocol, as revised by this Protocol, together with articles 8 to 13 of this Protocol shall constitute and be called the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol).

ARTICLE 7

The following text is added as article 4 bis of the Protocol:

Final clauses of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005

The final clauses of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005, shall be articles 8 to 13 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. References in this Protocol to States Parties shall be taken to mean references to States Parties to the 2005 Protocol.

FINAL CLAUSES

ARTICLE 8

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the 1988 Protocol without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the 1988 Protocol may become a Party to this Protocol.

ARTICLE 9

Entry into force

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General. However, this Protocol shall not enter into force before the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation has entered into force.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 10

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 11

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 12

Depositary

1. This Protocol and any amendments adopted under article 11 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Protocol or acceded to this Protocol of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Protocol;

(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

(iv) any communication called for by any article of this Protocol; and

(b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.

3. As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Protocol to Fixed Platform

ARTICLE 13

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

Done at London this fourteenth day of October two thousand and five.

In Witness Whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.



CLAMO FAST ACTION BINDER: PIRACY
SELECTED U.N. SECURITY COUNCIL RESOLUTIONS

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United Nations

S/RES/1772 (2007)

**Security Council**Distr.: General
20 August 2007

Resolution 1772 (2007)**Adopted by the Security Council at its 5732nd meeting, on
20 August 2007***The Security Council,*

Recalling its previous resolutions concerning the situation in Somalia, in particular resolution 733 (1992), resolution 1356 (2001), resolution 1425 (2002), resolution 1725 (2006) and resolution 1744 (2007), the statements of its President, in particular those of 13 July 2006 (S/PRST/2006/31), 22 December 2006 (S/PRST/2006/59), 30 April 2007 (S/PRST/2007/13) and 14 June 2007 (S/PRST/2007/19),

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia through the Transitional Federal Charter, and stressing the importance of broad-based and representative institutions reached through an all-inclusive political process, as envisaged in the Transitional Federal Charter,

Reiterating its strong support for the Special Representative of the Secretary-General, Mr. François Fall,

Reiterating its appreciation of the efforts of the international community, in particular the African Union, as well as the League of Arab States, the Intergovernmental Authority on Development and the European Union, to promote peace, stability and reconciliation in Somalia, and *welcoming* their continued engagement,

Welcoming the communiqué of the African Union Peace and Security Council of 18 July 2007, which states that the African Union will extend the mandate of its mission to Somalia (AMISOM) for an additional six months, and *noting* that the communiqué calls for the United Nations to deploy a peacekeeping operation to Somalia that will support the long-term stabilization and post-conflict restoration in the country,

Taking note of the letter of the Chairperson of the African Union Commission dated 4 August 2007 to the Secretary-General (S/2007/499), which requested that experts from the African Union Commission and the United Nations Secretariat meet as soon as possible to discuss what further support might be provided to AMISOM,



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Taking note of the Secretary-General's report on Somalia of 25 June 2007 (S/2007/381), in particular paragraph 30 on the deployment of a team of 10 military, police, and civilian experts to African Union headquarters to support its mission planning and management capacity structure, and *expressing* its appreciation for this support of AMISOM,

Recalling that cooperation between the United Nations and the regional arrangements in matters relating to the maintenance of peace and security, as are appropriate for regional action, is an integral part of collective security as provided for in the Charter of the United Nations,

Taking note of paragraph 27 of the Secretary-General's report referred to above communicating the offer of the International Contact Group of its "Good Offices" to facilitate the process of genuine political reconciliation in Somalia, and *encouraging* the International Contact Group to continue the implementation of this offer,

Reiterating its support for Somalia's Transitional Federal Institutions, *underlining* the importance of providing and maintaining stability and security throughout Somalia, and *underscoring* the importance of disarmament, demobilization and reintegration of militia and ex-combatants in Somalia,

Condemning all acts of violence and extremism inside Somalia, and *expressing* its concern regarding the continued violence inside Somalia,

Stressing its concern at the upsurge in piracy off the Somali coast described in paragraph 51 of the Secretary-General's report, and *taking note* of the joint communiqué of the International Maritime Organization and the World Food Programme of 10 July 2007,

Emphasizing the contribution that AMISOM and its Ugandan contingents are making to lasting peace and stability in Somalia, *condemning* any hostility towards them, and *urging* all parties in Somalia and the region to support and cooperate with AMISOM,

Underlining that the full deployment of AMISOM will help avoid a security vacuum and help create the conditions for full withdrawal of other foreign forces from Somalia,

Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Stresses* the need for broad-based and representative institutions reached through an all-inclusive political process in Somalia, as envisaged in the Transitional Federal Charter, in order to consolidate stability, peace and reconciliation in the country and to ensure that international assistance is as effective as possible;

2. *Welcomes* the convening of the National Reconciliation Congress (NRC) at the initiative of the Transitional Federal Institutions, and *urges* all parties to support the NRC and participate in the political process;

3. *Stresses* the need for the NRC to be an all-inclusive intra-Somali political process involving all stakeholders including all political leaders, clan leaders,

religious leaders, the business community, and representatives of civil society such as women's groups;

4. *Urges* the Transitional Federal Institutions and all parties in Somalia to respect the conclusions of the NRC and to sustain an equally inclusive ongoing political process thereafter, and *encourages* them to unite behind the efforts to promote such an inclusive dialogue;

5. *Reiterates* the need for the ongoing political process to both agree on a comprehensive and lasting cessation of hostilities and to produce a road map for a comprehensive peace process, including democratic elections at the local, regional and national levels as set out in Somalia's Transitional Federal Charter;

6. *Requests* the Secretary-General to continue and intensify his efforts to strengthen the NRC and, more widely, promote an ongoing all-inclusive political process, including by assisting the Transitional Federal Institutions' role in delivering both and by working together with the African Union, the League of Arab States, the Intergovernmental Authority on Development, the European Union, and the International Contact Group on Somalia, and *requests* the Secretary-General to report, pursuant to the timetable set out in paragraph 17 below, on the efforts of the Transitional Federal Institutions, on progress made in the NRC and the subsequent political process, and on any obstacles to the success of either;

7. *Requests* the Secretary-General to provide in the same reports an assessment of further measures that may be required to strengthen the ability of the United Nations Political Office for Somalia (UNPOS) to fulfil the role envisaged in paragraph 6 above, including the possibility of relocation from Nairobi to Mogadishu and any security measures that might be necessary for such a move;

8. *States its intention*, following the Secretary-General's reports referred to in paragraph 6 above, to take measures against those who seek to prevent or block the NRC or a peaceful political process, or those who threaten the Transitional Federal Institutions or AMISOM by force, or take action that undermines stability in Somalia or the region;

9. *Decides* to authorize member States of the African Union to maintain a mission in Somalia for a further period of six months, which shall be authorized to take all necessary measures as appropriate to carry out the following mandate:

(a) To support dialogue and reconciliation in Somalia by assisting with the free movement, safe passage and protection of all those involved with the process referred to in paragraphs 1 to 5;

(b) To provide, as appropriate, protection to the Transitional Federal Institutions to help them carry out their functions of government, and security for key infrastructure;

(c) To assist, within its capabilities, and in coordination with other parties, with implementation of the National Security and Stabilization Plan, in particular the effective re-establishment and training of all-inclusive Somali security forces;

(d) To contribute, as may be requested and within capabilities, to the creation of the necessary security conditions for the provision of humanitarian assistance;

(e) To protect its personnel, facilities, installations, equipment and mission, and to ensure the security and freedom of movement of its personnel;

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10. *Urges* member States of the African Union to contribute to the above mission in order to help create the conditions for the withdrawal of all other foreign forces from Somalia;

11. *Decides* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon in paragraphs 1 and 2 of resolution 1425 (2002) shall not apply to:

(a) Supplies of weapons and military equipment, technical training and assistance intended solely for the support of or use by the mission referred to in paragraph 9 above; or

(b) Such supplies and technical assistance by States intended solely for the purpose of helping develop security sector institutions, consistent with the political process set out in paragraphs 1 to 5 above and in the absence of a negative decision by the Committee established pursuant to resolution 751 (1992) within five working days of receiving the notification described in paragraph 12 below;

12. *Decides* that States providing supplies or technical assistance in accordance with paragraph 11 (b) above shall notify the Committee established pursuant to resolution 751 (1992) in advance and on a case-by-case basis;

13. *Emphasizes* the continued contribution made to Somalia's peace and security by the arms embargo, *demands* that all Member States, in particular those of the region, fully comply with it, *reiterates* its intention to consider urgently ways to strengthen its effectiveness, including through targeted measures in support of the arms embargo, and *requests* that the Committee established pursuant to resolution 751 (1992) report to the Council within 60 days of the adoption of this resolution on possible measures that might be taken and how they might be implemented;

14. *Urges* Member States to provide financial resources, personnel, equipment and services for the full deployment of AMISOM;

15. *Requests* the Secretary-General to consult with the African Union Commission on what further support might be provided to AMISOM and report back to the Council on any progress, pursuant to the timetable set out in paragraph 17 below;

16. *Requests* the Secretary-General, further to the observations in his report on Somalia of 25 June 2007 referred to above, to continue to develop the existing contingency planning for the possible deployment of a United Nations Peacekeeping Operation replacing AMISOM including:

(a) Sending a further Technical Assessment Mission to the region as soon as possible;

(b) Further contact with potential troop-contributing countries;

(c) Identifying what further action the United Nations and the international community should take to help create the conditions necessary for, and to overcome potential obstacles to, the deployment and success of a United Nations peacekeeping mission in Somalia, including specifying measures, indicators and time frames for review of progress that will assist the Security Council's decision on the appropriateness of and objectives for a United Nations mission;

17. *Requests* that the Secretary-General report to the Council within 30 days after the adoption of this resolution, and then again within a further 30 days, on the status of the further development of the plans outlined in paragraph 16 above, as well as the political aspects in paragraphs 6 and 7 above;

18. *Encourages* Member States whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law;

19. *Reaffirms* its previous resolutions 1325 (2000) on women, peace and security, and 1674 (2006) and 1738 (2006) on the protection of civilians in armed conflict, and *stresses* the responsibility of all parties and armed groups in Somalia to take appropriate steps to protect the civilian population in the country, consistent with international humanitarian, human rights and refugee law, in particular by avoiding any indiscriminate attacks on populated areas;

20. *Strongly supports and encourages* the ongoing relief efforts in Somalia, *recalls* its resolution 1502 (2003) on the protection of humanitarian and United Nations personnel, *calls on* all parties and armed groups in Somalia to take appropriate steps to ensure the safety and security of AMISOM and humanitarian personnel, and grant timely, safe and unhindered access for the delivery of humanitarian assistance to all those in need, and *urges* the countries in the region to facilitate the provision of humanitarian assistance by land or via air and sea ports;

21. *Reaffirms* its previous resolution 1612 (2005) on children and armed conflict and *recalls* the subsequent conclusions of the Security Council Working Group on Children in Armed Conflict pertaining to parties to the armed conflict in Somalia (S/AC.51/2007/14);

22. *Decides* to remain actively seized of the matter.

**Security Council**Distr.: General
15 May 2008

Resolution 1814 (2008)**Adopted by the Security Council at its 5893rd meeting, on
15 May 2008***The Security Council,*

Recalling its previous resolutions concerning the situation in Somalia, in particular resolution 733 (1992), resolution 1356 (2001), resolution 1425 (2002), resolution 1725 (2006), resolution 1744 (2007), resolution 1772 (2007), resolution 1801 (2008) and resolution 1811 (2008), and the statements of its President, in particular those of 13 July 2006 (S/PRST/2006/31), 22 December 2006 (S/PRST/2006/59), 30 April 2007 (S/PRST/2007/13), 14 June 2007 (S/PRST/2007/19) and 19 December 2007 (S/PRST/2007/49),

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia through the Transitional Federal Charter (TFC), *stressing* the importance of broad-based and representative institutions reached through a political process ultimately inclusive of all, as envisaged in the TFC, and *reiterating* its support for Somalia's Transitional Federal Institutions (TFIs) to take this forward,

Reiterating the need for agreement on a comprehensive and lasting cessation of hostilities and a roadmap for the remainder of the transitional process, including free and democratic elections in 2009 as set out in the TFC,

Welcoming the continued efforts by Prime Minister Nur "Adde" Hassan Hussein and his Cabinet, under the leadership of President Abdullahi Yusuf Ahmed and supported by the Transitional Federal Parliament, to advance the political process and implement the transitional period, as required by the TFC, in particular the agreement to prepare a timetable for the Constitutional Process leading to a referendum in 2009, the presentation of the Reconciliation Strategy of the Transitional Federal Government (TFG), engagement with clan and local leaders across the country, and efforts to implement the National Security and Stabilisation Plan and to improve public finance management including budgetary and fiscal processes, and *supporting* efforts to make further progress in all these areas,



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Welcoming the commitment of all Somali parties that have agreed to engage in dialogue with each other with a view to establishing peace and security in Somalia, *urging* all Somali parties to honour these commitments and to resort to peaceful means only to resolve their disputes, *further welcoming* the supporting role of the United Nations, in particular the practical support of the Special Representative of the Secretary-General (SRSG) and the United Nations Political Office for Somalia (UNPOS) to help progress this dialogue, and *supporting* in this regard the start on 12 May 2008 of discussions between the parties in Djibouti,

Welcoming the Secretary-General's report on Somalia of 14 March 2008 (S/2008/178), in particular its assessment that the political situation in Somalia currently provides a renewed opportunity for the international community to give practical support to domestic initiatives, including an increased presence of United Nations personnel and, subject to broad-based political and security agreements and conditions on the ground, the deployment of a United Nations peacekeeping operation to succeed the African Union Mission to Somalia (AMISOM),

Welcoming the Secretary-General's support for a comprehensive United Nations strategic approach for peace and stability in Somalia, aligning and integrating political, security and programmatic efforts in a sequenced and mutually reinforcing way, and *endorsing* ongoing work by the United Nations to support the political process in Somalia and to determine options for re-locating United Nations staff to Somalia,

Commending the work of the SRSG, Mr. Ahmedou Ould-Abdallah, and of UNPOS, *reaffirming* its strong support for his work, in particular his leading role in coordinating international efforts, and *requesting* that all parties, as well as international organizations, the United Nations country team and Member States support and work in close coordination with him at all times,

Reaffirming its condemnation of all acts of, and incitement to, violence inside Somalia, *expressing* its concern at all acts intended to prevent or block a peaceful political process, and *expressing* its further concern at such acts and incitement continuing,

Underlining the importance of providing and maintaining stability and security throughout Somalia, and *underscoring* the importance of disarmament, demobilization and reintegration of militia and ex-combatants in Somalia,

Emphasizing the contribution that AMISOM is making to lasting peace and stability in Somalia, *welcoming* in particular the continuing commitment of the Governments of Uganda and Burundi, *regretting* the recent loss of a Burundian soldier, *condemning* any hostility towards AMISOM, and *urging* all parties in Somalia and the region to support and cooperate with AMISOM,

Underlining that the full deployment of AMISOM will help facilitate the full withdrawal of other foreign forces from Somalia and help create the conditions for lasting peace and stability there,

Taking note of the letter dated 20 February 2008 from the Chairperson of the African Union (AU) Commission to the Secretary-General, which was annexed to the Secretary-General's report of 14 March 2008, and of the reply from the Secretary-General of 23 April 2008 (S/2008/309),

Emphasizing the continued contribution made to Somalia's peace and security by the arms embargo imposed by resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772 (2007), and *reiterating* its demand that all Member States, in particular those in the region, comply fully with it,

Expressing deep concern at the human rights situation in Somalia, and *taking note* of the Resolution on Somalia adopted at the 7th Session of the Human Rights Council, and of the renewal by the Human Rights Council of the mandate for the Independent Expert on Somalia,

Expressing its serious concern at the worsening humanitarian situation in Somalia and the continuing difficulties for humanitarian organizations operating in Somalia, including humanitarian access and security for humanitarian personnel, and *reaffirming* the humanitarian principles of humanity, neutrality, impartiality and independence,

Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Requests* the Secretary-General to continue and intensify his efforts, working together with the international community, to promote an ongoing political process which is ultimately inclusive of all, including by assisting the TFIs in this regard and in delivering services to the Somali people;

2. *Strongly supports* the approach proposed by the Secretary-General's report of 14 March 2008, *welcomes* his intention to provide an updated comprehensive, integrated United Nations Strategy for peace and stability in Somalia, aligning and integrating political, security and programmatic efforts in a sequenced and mutually reinforcing way, and to include an assessment of the capacity of UNPOS to implement the Strategy, and requests that he submit the updated version to the Security Council within 60 days from the adoption of this resolution;

3. *Approves* the Secretary-General's proposal in his report of 14 March 2008 to establish a joint planning unit in the office of the SRSG to facilitate effective and efficient implementation of the integrated strategy;

4. *Welcomes* the Secretary-General's recommendation, as set out in his report of 14 March 2008, to relocate UNPOS and the country team headquarters from Nairobi to Mogadishu or an interim location in Somalia in order to help deliver the comprehensive, integrated United Nations strategy in Somalia, and *requests* the Secretary-General to establish the necessary security arrangements for such a relocation, and to update the Security Council when he submits the Strategy referred to in paragraph 2 above;

5. *Decides* that UNPOS and the United Nations country team shall, in promoting a comprehensive and lasting settlement in Somalia and through the promotion of the ongoing political process, enhance their support to the TFIs with the aim of developing a constitution and holding a constitutional referendum and free and democratic elections in 2009, as required by the TFC, and facilitating coordination of the international community's support to these efforts, and *requests*

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the Secretary-General within 60 days from the adoption of this resolution to report on progress with this work;

6. *Recalls* its intention to take measures against those who seek to prevent or block a peaceful political process, or those who threaten the TFIs or AMISOM by force, or take action that undermines stability in Somalia or the region, and *therefore requests* the Committee established pursuant to resolution 751 (1992) (herein after “the Committee”) to provide, within 60 days from the adoption of this resolution, recommendations on specific targeted measures to be imposed against such individuals or entities;

7. *Recalls* its intention to strengthen the effectiveness of the United Nations arms embargo on Somalia, *states* its intention to take measures against those who breach the arms embargo, and those who support them in doing so, and *therefore requests* the Committee to provide, within 60 days from the adoption of this resolution, recommendations on specific targeted measures to be imposed against such individuals or entities;

8. *Requests* the Secretary-General to continue his contingency planning for the possible deployment of a United Nations peacekeeping operation in Somalia to succeed AMISOM, including of possible additional scenarios, in close contact with UNPOS, the United Nations country team and other United Nations stakeholders, taking account of all relevant conditions on the ground, and considering additional options for the size, configuration, responsibility and proposed area of operation of the mission depending on different conditions on the ground, *requests* the Secretary-General to update on progress in his planning in the report referred to in paragraph 5 above, and *expresses* its willingness to consider, at *an* appropriate time, a peacekeeping operation to take over *from* AMISOM, subject to progress in the political process and improvement in the security situation on the ground;

9. *Welcomes* the Secretary-General’s undertaking, as set out in his letter of 23 April 2008 to the Chairperson of the AU Commission, to provide additional United Nations technical advisers to the AU’s Strategic Plans and Management Unit in Addis Ababa, and *encourages* the Secretary-General to continue to explore with the AU Commission Chairperson, in coordination with donors, ways and means to strengthen United Nations logistical, political and technical support for the AU, to build the AU’s institutional capacity to carry out its commitments in addressing the challenges it faces in supporting AMISOM, and to assist AMISOM’s full deployment, to the extent possible and as appropriate, with the goal of achieving United Nations standards, and to update the Council in the report referred to in paragraph 5 above;

10. *Reiterates* its call upon Member States to provide financial resources, personnel, equipment and services for the full deployment of AMISOM and upon Member States of the African Union to contribute to AMISOM in order to facilitate the withdrawal of other foreign forces from Somalia and help create the conditions for lasting peace and stability there, *urges* those Member States which have offered to contribute to AMISOM to fulfil such commitments, *recognizes* that more needs to be done to harness increased support for AMISOM, and *takes note* of the Secretary-General’s proposals for harnessing such support, as set out in his letter of 23 April 2008;

11. *Reiterates* its support for the contribution made by some States to protect the World Food Programme maritime convoys, *calls upon* States and regional organizations, in close coordination with each other and as notified in advance to the Secretary-General, and at the request of the TFG, to take action to protect shipping involved with the transportation and delivery of humanitarian aid to Somalia and United Nations-authorized activities, *calls upon* AMISOM troop-contributing countries, as appropriate, to provide support to this end, and *requests* the Secretary-General to provide his support to this effect;

12. *Strongly supports and encourages* the ongoing humanitarian relief efforts in Somalia, *recalls* its resolution 1502 (2003) on the protection of humanitarian and United Nations personnel, *calls on* all parties and armed groups in Somalia to take appropriate steps to ensure the safety and security of AMISOM, United Nations and humanitarian personnel, *demands* that all parties ensure timely, safe and unhindered access for the delivery of humanitarian assistance to all those in need, wherever they may be, and *urges* the countries in the region to facilitate the provision of humanitarian assistance, including the timely, safe and unhindered passage of essential relief goods into Somalia by land or via air and sea ports;

13. *Requests* the Secretary-General to strengthen ongoing efforts for establishing a United Nations-led mechanism for bringing together and facilitating consultations between humanitarian organizations operating in Somalia, the TFG, donors and other relevant parties in order to help resolve issues of access, security and provision of humanitarian relief throughout Somalia, and *further requests* him to report on progress in the report referred to in paragraph 5 above;

14. *Requests* the Secretary-General to establish an effective capacity within UNPOS to monitor and enhance the protection of human rights in Somalia, and to ensure coordination, as appropriate, between UNPOS, the Office of the High Commissioner for Human Rights and the Human Rights Council Independent Expert, and *further requests* the Secretary-General to report on progress in achieving this in the report referred to in paragraph 5 above;

15. *Supports* the ongoing efforts of the United Nations, the African Union and interested Member States, in close cooperation with the TFG, to develop security sector institutions in Somalia, and *requests* the SRSO to enhance his coordination role in this area, aligning relevant United Nations programmes and Member States' activities;

16. *Condemns* all and any violations of human rights and international humanitarian law, *calls upon* all parties in Somalia to respect fully their obligations in this regard, and *calls* for those responsible for such violations in Somalia to be brought to justice;

17. *Reaffirms* its previous resolutions 1325 (2000) on women, peace and security, and 1674 (2006) and 1738 (2006) on the protection of civilians in armed conflict, and *stresses* the responsibility of all parties and armed groups in Somalia to take appropriate steps to protect the civilian population in the country, consistent with international humanitarian, human rights and refugee law, in particular by avoiding any indiscriminate attacks on populated areas;

18. *Reaffirms* its previous resolution 1612 (2005) on children and armed conflict and *recalls* the subsequent conclusions of the Security Council Working

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Group on Children in Armed Conflict pertaining to parties to the armed conflict in Somalia (S/AC.51/2007/14);

19. *Recalls* that, pursuant to Article 65 of the United Nations Charter, the Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request;

20. *Decides* to remain actively seized of the matter.

United Nations

S/RES/1816 (2008)*

**Security Council**Distr.: General
2 June 2008

Resolution 1816 (2008)**Adopted by the Security Council at its 5902nd meeting on
2 June 2008***The Security Council,**Recalling* its previous resolutions and the statements of its President concerning the situation in Somalia,*Gravely concerned* by the threat that acts of piracy and armed robbery against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, the safety of commercial maritime routes and to international navigation,*Expressing* its concerns at the quarterly reports from the International Maritime Organization (IMO) since 2005, which provide evidence of continuing piracy and armed robbery in particular in the waters off the coast of Somalia,*Affirming* that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), sets out the legal framework applicable to combating piracy and armed robbery, as well as other ocean activities,*Reaffirming* the relevant provisions of international law with respect to the repression of piracy, including the Convention, and *recalling* that they provide guiding principles for cooperation to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state, including but not limited to boarding, searching, and seizing vessels engaged in or suspected of engaging in acts of piracy, and to apprehending persons engaged in such acts with a view to such persons being prosecuted,*Reaffirming* its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,*Taking into account* the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia’s territorial waters,

* Reissued for technical reasons.



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Deploring the recent incidents of attacks upon and hijacking of vessels in the territorial waters and on the high seas off the coast of Somalia including attacks upon and hijackings of vessels operated by the World Food Program and numerous commercial vessels and the serious adverse impact of these attacks on the prompt, safe and effective delivery of food aid and other humanitarian assistance to the people of Somalia, and the grave dangers they pose to vessels, crews, passengers, and cargo,

Noting the letters to the Secretary-General from the Secretary-General of the IMO dated 5 July 2007 and 18 September 2007 regarding the piracy problems off the coast of Somalia and the IMO Assembly resolution A.1002 (25), which strongly urged Governments to increase their efforts to prevent and repress, within the provisions of international law, acts of piracy and armed robbery against vessels irrespective of where such acts occur, and *recalling* the joint communiqué of the IMO and the World Food Programme of 10 July 2007,

Taking note of the Secretary-General's letter of 9 November 2007 to the President of the Security Council reporting that the Transitional Federal Government of Somalia (TFG) needs and would welcome international assistance to address the problem,

Taking further note of the letter from the Permanent Representative of the Somali Republic to the United Nations to the President of the Security Council dated 27 February 2008, conveying the consent of the TFG to the Security Council for urgent assistance in securing the territorial and international waters off the coast of Somalia for the safe conduct of shipping and navigation,

Determining that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Condemns and deplors* all acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia;

2. *Urges* States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery and, in this context, *encourages*, in particular, States interested in the use of commercial maritime routes off the coast of Somalia, to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea in cooperation with the TFG;

3. *Urges* all States to cooperate with each other, with the IMO and, as appropriate, with the relevant regional organizations in connection with, and share information about, acts of piracy and armed robbery in the territorial waters and on the high seas off the coast of Somalia, and to render assistance to vessels threatened by or under attack by pirates or armed robbers, in accordance with relevant international law;

4. *Further urges* States to work in cooperation with interested organizations, including the IMO, to ensure that vessels entitled to fly their flag receive appropriate guidance and training on avoidance, evasion, and defensive techniques and to avoid the area whenever possible;

5. *Calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery off the Somali and nearby coastlines;

6. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 5 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

7. *Decides* that for a period of six months from the date of this resolution, States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:

(a) Enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and

(b) Use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery;

8. *Requests* that cooperating states take appropriate steps to ensure that the activities they undertake pursuant to the authorization in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

9. *Affirms* that the authorization provided in this resolution applies only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of member states under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that it shall not be considered as establishing customary international law, and affirms further that this authorization has been provided only following receipt of the letter from the Permanent Representative of the Somalia Republic to the United Nations to the President of the Security Council dated 27 February 2008 conveying the consent of the TFG;

10. *Calls upon* States to coordinate their actions with other participating States taken pursuant to paragraphs 5 and 7 above;

11. *Calls upon* all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators or piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution;

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12. *Requests* States cooperating with the TFG to inform the Security Council within 3 months of the progress of actions undertaken in the exercise of the authority provided in paragraph 7 above;

13. *Requests* the Secretary-General to report to the Security Council within 5 months of adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery in territorial waters and the high seas off the coast of Somalia;

14. *Requests* the Secretary-General of the IMO to brief the Council on the basis of cases brought to his attention by the agreement of all affected coastal states, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

15. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authority provided in paragraph 7 above for additional periods upon the request of the TFG;

16. *Decides* to remain seized of the matter.

United Nations

S/RES/1838 (2008)

**Security Council**Distr.: General
7 October 2008

Resolution 1838 (2008)**Adopted by the Security Council at its 5987th meeting, on
7 October 2008***The Security Council,**Recalling* its resolutions 1814 (2008) and 1816 (2008),

Gravely concerned by the recent proliferation of acts of piracy and armed robbery at sea against vessels off the coast of Somalia, and by the serious threat it poses to the prompt, safe and effective delivery of humanitarian aid to Somalia, to international navigation and the safety of commercial maritime routes, and to fishing activities conducted in conformity with international law,

Noting with concern also that increasingly violent acts of piracy are carried out with heavier weaponry, in a larger area off the coast of Somalia, using long-range assets such as mother ships, and demonstrating more sophisticated organization and methods of attack,

Reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Commending the contribution made by some States since November 2007 to protect the World Food Programme (“WFP”) maritime convoys, and, the establishment by the European Union of a coordination unit with the task of supporting the surveillance and protection activities carried out by some member States of the European Union off the coast of Somalia, and the ongoing planning process towards a possible European Union naval operation, as well as other international or national initiatives taken with a view to implementing resolutions 1814 (2008) and 1816 (2008),

Noting recent humanitarian reports that as many as three-and-a-half million Somalis will be dependent on humanitarian food aid by the end of the year, and that maritime contractors for the WFP will not deliver food aid to Somalia without naval warship escorts, *expressing its determination* to ensure long-term security of WFP deliveries to Somalia and *recalling* that it requested the Secretary-General in resolution 1814 (2008) to provide his support for efforts to protect WFP maritime convoys,



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Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Taking note of the letter dated 1 September 2008 of the President of Somalia to the Secretary-General of the United Nations expressing the appreciation of the Transitional Federal Government (“TFG”) to the Security Council for its assistance and expressing the TFG’s willingness to consider working with other States, as well as regional organizations, to provide advance notifications additional to those already provided, in accordance with paragraph 7 of resolution 1816 (2008), to combat piracy and armed robbery at sea off the coast of Somalia,

Recalling that in the statement of its President dated 4 September 2008 (S/PRST/2008/33) it welcomed the signing of a peace and reconciliation agreement in Djibouti and commended the Special Representative of the Secretary-General for Somalia, Mr. Ahmedou Ould-Abdallah, for his ongoing efforts, and *emphasizing* the importance of promoting a comprehensive and lasting settlement in Somalia,

Recalling also that in the statement of its President dated 4 September (S/PRST/2008/33) it took note of the parties’ request in the Djibouti Agreement that the United Nations, within a period of 120 days, authorize and deploy an international stabilization force and *looking forward* to the Secretary-General’s report due 60 days from its passage, in particular a detailed and consolidated description of a feasible multinational force, as well as a detailed concept of operations for a feasible United Nations peacekeeping operation,

Emphasizing that peace and stability, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia,

Determining that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat against international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates that it condemns and deplors* all acts of piracy and armed robbery at sea against vessels off the coast of Somalia;

2. *Calls upon* States interested in the security of maritime activities to take part actively in the fight against piracy on the high seas off the coast of Somalia, in particular by deploying naval vessels and military aircraft, in accordance with international law, as reflected in the Convention;

3. *Calls upon* States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to use on the high seas and airspace off the coast of Somalia the necessary means, in conformity with international law, as reflected in the Convention, for the repression of acts of piracy;

4. *Urges* States that have the capacity to do so to cooperate with the TFG in the fight against piracy and armed robbery at sea in conformity with the provisions of resolution 1816 (2008);

5. *Urges* also States and regional organizations, in conformity with the provisions of resolution 1814 (2008), to continue to take action to protect the World

Food Programme maritime convoys, which is vital to bring humanitarian assistance to the affected populations in Somalia;

6. *Urges* States, as requested in particular by International Maritime Organization resolution (“IMO”) A-1002(25), to issue to ships entitled to fly their flag, as necessary, advice and guidance on appropriate precautionary measures to protect themselves from attack or actions to take if under attack or the threat of attack when sailing in waters off the coast of Somalia;

7. *Calls upon* States and regional organizations to coordinate their actions pursuant to paragraphs 3, 4 and 5 above;

8. *Affirms* that the provisions in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of member States under international law, including any rights or obligations under the Convention, with respect to any situation, and *underscores* in particular that this resolution shall not be considered as establishing customary international law;

9. *Looks forward* to the report of the Secretary-General requested in paragraph 13 of resolution 1816 (2008) and *expresses* its intention to review the situation with respect to piracy and armed robbery at sea against vessels off the coast of Somalia with a view, in particular, upon the request of the TFG, to renewing the authority provided in paragraph 7 of resolution 1816 (2008) for an additional period;

10. *Decides* to remain seized of the matter.

**Security Council**

Distr.: General
20 November 2008

Resolution 1844 (2008)

**Adopted by the Security Council at its 6019th meeting, on
20 November 2008**

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, in particular resolution 733 (1992), resolution 751 (1992), resolution 1356 (2001), resolution 1425 (2002), resolution 1519 (2003), resolution 1676 (2006), resolution 1725 (2006), resolution 1744 (2007), resolution 1772 (2007), resolution 1801 (2008), resolution 1811 (2008), and resolution 1814 (2008), and the statements of its President, in particular those of 13 July 2006 (S/PRST/2006/31), 22 December 2006 (S/PRST/2006/59), 30 April 2007 (S/PRST/2007/13), and 14 June 2007 (S/PRST/2007/19), and recalling also its resolution 1730 (2006) on general issues relating to sanctions,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Underlining the importance of providing and maintaining stability and security throughout Somalia,

Reaffirming its condemnation of all acts of violence in Somalia and incitement to violence inside Somalia, and *expressing* its concern at all acts intended to prevent or block a peaceful political process,

Expressing its grave concern over the recent increase in acts of piracy and armed robbery at sea against vessels off the coast of Somalia, and noting the role piracy may play in financing embargo violations by armed groups, as described in the statement of 9 October 2008 by the Chairman of the Committee established pursuant to resolution 751 (1992) (hereinafter “the Committee”) to the Security Council,

Emphasizing the continued contribution made to Somalia’s peace and security by the arms embargo imposed by paragraph 5 of resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772 (2007), and *reiterating* its demand that all Member States, in particular those in the region, comply fully with the requirements of these resolutions,



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Recalling its intention, outlined in paragraph 6 of resolution 1814 (2008), to take measures against those who seek to prevent or block a peaceful political process, or those who threaten the Transitional Federal Institutions (TFIs) of Somalia or the African Union Mission in Somalia (AMISOM) by force, or take action that undermines stability in Somalia or the region,

Further recalling its intention to strengthen the effectiveness of the United Nations arms embargo on Somalia, outlined in paragraph 7 of resolution 1814 (2008), and to take measures against those who breach the arms embargo, and those who support them in doing so,

Recalling also its request, outlined in paragraphs 6 and 7 of resolution 1814 (2008), to the Committee to provide recommendations on specific targeted measures to be imposed against such individuals or entities,

Taking note of the letter of 1 August 2008 from the Vice-Chairman of the Committee to the President of the Security Council,

Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the Committee pursuant to paragraph 8 below, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory;

2. *Decides* that the measures imposed by paragraph 1 above shall not apply:

(a) where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation; or

(b) where the Committee determines on a case-by-case basis that an exemption would otherwise further the objectives of peace and national reconciliation in Somalia and stability in the region;

3. *Decides* that all Member States shall freeze without delay the funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee pursuant to paragraph 8 below, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee, and decides further that all Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of such individuals or entities;

4. *Decides* that the measures imposed by paragraph 3 above do not apply to funds, other financial assets or economic resources that have been determined by relevant Member States:

(a) to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or

maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant State to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets or economic resources, and in the absence of a negative decision by the Committee within three working days of such notification;

(b) to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant State or Member States to the Committee and has been approved by the Committee; or

(c) to be the subject of a judicial, administrative or arbitral lien or judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement provided that the lien or judgement was entered into prior to the date of the present resolution, is not for the benefit of a person or entity designated pursuant to paragraph 3 above, and has been notified by the relevant State or Member States to the Committee;

5. *Decides* that Member States may permit the addition to the accounts frozen pursuant to the provisions of paragraph 3 above of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen;

6. *Reaffirms* the general and complete arms embargo against Somalia imposed by resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772 (2007);

7. *Decides* that all Member States shall take the necessary measures to prevent the direct or indirect supply, sale or transfer of weapons and military equipment and the direct or indirect supply of technical assistance or training, financial and other assistance including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to the individuals or entities designated by the Committee pursuant to paragraph 8 below;

8. *Decides* that the provisions of paragraphs 1, 3 and 7 above shall apply to individuals, and that the provisions of 3 and 7 above shall apply to entities, designated by the Committee;

(a) as engaging in or providing support for acts that threaten the peace, security or stability of Somalia, including acts that threaten the Djibouti Agreement of 18 August 2008 or the political process, or threaten the TFIs or AMISOM by force;

(b) as having acted in violation of the general and complete arms embargo reaffirmed in paragraph 6 above;

(c) as obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;

9. *Decides* that the measures outlined in paragraphs 1, 3 and 7 above cease to apply in respect of such individuals or entities if, and at such time as the Committee removes them from the list of designated individuals and entities;

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10. *Underlines* the importance of co-ordination by the Committee with other United Nations Sanctions Committees and with the Special Representative of the Secretary-General;

11. *Decides* further to expand the mandate of the Committee as set out in resolution 751(1992) to include the following tasks:

(a) to monitor, with the support of the Monitoring Group established pursuant to resolution 1519 (2003), implementation of the measures imposed in paragraphs 1, 3 and 7 above, in addition to the general and complete arms embargo reaffirmed in paragraph 6 above;

(b) to seek from all Member States, in particular those in the region, information regarding the actions taken by them to implement effectively the measures imposed by paragraphs 1, 3 and 7 above and whatever further information it may consider useful in this regard;

(c) to examine information regarding alleged violations of measures imposed by paragraphs 1, 3 and 7 above, paragraph 5 of resolution 733 (1992) and paragraphs 1 and 2 of resolution 1425 (2002), and take appropriate action if necessary;

(d) to designate individuals and entities pursuant to paragraphs 3 and 8 above, upon the request of Member States as referred to in paragraph 12 below;

(e) to consider and decide upon requests for exemptions set out in paragraphs 2 and 4 above;

(f) to review regularly the list of individuals and entities designated by the Committee pursuant to paragraphs 3 and 8 above, with a view to keeping the list as updated and accurate as possible and to confirm that listing remains appropriate, and to encourage Member States to provide any additional information whenever such information becomes available;

(g) to report at least every 120 days to the Security Council on its work and on the implementation of this resolution, with its observations and recommendations, in particular on ways to strengthen the effectiveness of the measures imposed by paragraphs 1, 3 and 7 above;

(h) to identify possible cases of non-compliance with the measures pursuant to paragraphs 1, 3, and 7 above and to determine the appropriate course of action on each case, and requests the Chairman, in periodic reports to the Council pursuant to paragraph 11 (g) above to provide progress reports on the Committee's work on this issue;

(i) to amend its existing guidelines to facilitate the implementation of the measures imposed by this resolution and keep these guidelines under active review as may be necessary;

Listing

12. *Encourages* Member States to submit to the Committee for inclusion on its list of designees, names of individuals or entities who meet the criteria set out in paragraph 8 above, as well as any entities owned or controlled, directly or indirectly, by the submitted individuals or entities or individuals or entities acting on behalf of or at the direction of the submitted entities;

13. *Decides* that, when proposing names to the Committee for listing, Member States shall provide a detailed statement of case, together with sufficient identifying information to allow for the positive identification of individuals and entities by Member States, and *decides further* that for each such proposal Member States shall identify those parts of the statement of case that may be publicly released, including for use by the Committee for development of the summary described in paragraph 14 below or for the purpose of notifying or informing the listed individual or entity, and those parts which may be released upon request to interested States;

14. *Directs* the Committee in coordination with the relevant designating States and with the assistance of the Monitoring Group, after a name is added to the list, to make accessible on the Committee's website a narrative summary of reasons for listing;

15. *Decides* that the Secretariat shall, after publication but within one week after a name is added to the list of individuals and entities, notify the Permanent Mission of the country or countries where the individual or entity is believed to be located and, in the case of individuals, the country of which the person is a national (to the extent this information is known) and to include with this notification a copy of the publicly releasable portion of the statement of case, any information on reasons for listing available on the Committee's website, a description of the effects of designation, the Committee's procedures for considering delisting requests, and the provisions regarding available exemptions;

16. *Demands* that Member States receiving notification as in paragraph 15 above take, in accordance with their domestic laws and practices, all possible measures to notify or inform in a timely manner the listed individual or entity of the designation, together with the information provided by the Secretariat as set out in paragraph 15 above;

17. *Encourages* Member States receiving notification as in paragraph 15 above to inform the Committee on steps they have taken to implement the measures set out in paragraphs 1, 3 and 7 above;

Delisting

18. *Welcomes* the establishment within the Secretariat of the Focal Point, pursuant to resolution 1730 (2006), that provides listed individuals, groups, undertakings or entities with the option to submit a petition for de-listing directly to the Focal Point;

19. *Urges* designating States and States of citizenship and residence to review de-listing petitions received through the Focal Point, in accordance with the procedures outlined in the annex to resolution 1730 (2006), in a timely manner and to indicate whether they support or oppose the request in order to facilitate the Committee's review;

20. *Directs* the Committee to consider requests, in accordance with its guidelines, for the removal from the Committee's list of designees those who no longer meet the criteria pursuant to this resolution;

21. *Decides* that the Secretariat shall, within one week after a name is removed from the Committee's list of designees, notify the Permanent Mission of

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the country or countries where the individual or entity is believed to be located and, in the case of individuals, the country of which the person is a national (to the extent this information is known), and demands that States receiving such notification take measures, in accordance with their domestic laws and practices, to notify or inform the concerned individual or entity of the delisting in a timely manner;

22. *Encourages* the Committee to ensure that fair and clear procedures exist for placing individuals and entities on the Committee's list of designees and for removing them as well as for granting humanitarian exemptions;

23. *Decides* that the mandate of the Monitoring Group, as set out in paragraph 3 of resolution 1811 (2008) shall also include the tasks outlined below:

(a) to assist the Committee in monitoring implementation of this resolution by providing any information on violations, of the measures imposed in paragraphs 1, 3 and 7 above, in addition to the general and complete arms embargo reaffirmed in paragraph 6 above;

(b) to include in its reports to the Committee any information relevant to the Committee's designation of the individuals and entities described in paragraph 8 above;

(c) to assist the Committee in compiling narrative summaries referred to in paragraph 14 above;

24. *Reminds* all Member States of their obligation to implement strictly the measures imposed by this and all relevant resolutions;

25. *Decides* that all Member States shall report to the Committee within 120 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 1 to 7 above;

26. *Decides* to review the measures outlined in paragraphs 1, 3 and 7 above, within 12 months;

27. *Decides* to remain actively seized of the matter.

**Security Council**Distr.: General
2 December 2008

Resolution 1846 (2008)**Adopted by the Security Council at its 6026th meeting, on
2 December 2008***The Security Council,*

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008) and 1838 (2008),

Continuing to be gravely concerned by the threat that piracy and armed robbery at sea against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (“TFG”) to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia’s territorial waters,

Taking note of the requests from the TFG for international assistance to counter piracy off its coasts, including the 1 September 2008 letter from the President of Somalia to the Secretary-General of the United Nations expressing the appreciation of the TFG to the Security Council for its assistance and expressing the TFG’s willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, the 20 November 2008 letter conveying the request of the TFG that the provisions of resolution 1816 (2008) be renewed, and the 20 November request of the Permanent Representative of Somalia before the Security Council that the renewal be for an additional 12 months,

Further taking note of the letters from the TFG to the Secretary-General providing advance notification with respect to States cooperating with the TFG in



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the fight against piracy and armed robbery at sea off the coast of Somalia and from other Member States to the Security Council to inform the Council of their actions, as requested in paragraphs 7 and 12 of resolution 1816 (2008), and encouraging those cooperating States, for which advance notification has been provided by the TFG to the Secretary-General, to continue their respective efforts,

Expressing again its determination to ensure the long-term security of World Food Programme (WFP) maritime deliveries to Somalia,

Recalling that in its resolution 1838 (2008) it commended the contribution made by some States since November 2007 to protect (WFP) maritime convoys, and the establishment by the European Union (EU) of a coordination unit with the task of supporting the surveillance and protection activities carried out by some member States of the European Union off the coast of Somalia, as well as other international and national initiatives taken with a view to implementing resolutions 1814 (2008) and 1816 (2008),

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia,

Welcoming the signing of a peace and reconciliation Agreement (“the Djibouti Agreement”) between the TFG and the Alliance for the Re-Liberation of Somalia on 19 August 2008, as well as their signing of a joint ceasefire agreement on 26 October 2008, *noting* that the Djibouti Agreement calls for the United Nations to authorize and deploy an international stabilization force, and *further noting* the Secretary-General’s report on Somalia of 17 November 2008, including his recommendations in this regard,

Commending the key role played by the African Union Mission to Somalia (AMISOM) in facilitating delivery of humanitarian assistance to Somalia through the port of Mogadishu and the contribution that AMISOM has made towards the goal of establishing lasting peace and stability in Somalia, and *recognizing* specifically the important contributions of the Governments of Uganda and Burundi to Somalia,

Welcoming the organization of a ministerial meeting of the Security Council in December 2008 to examine ways to improve international coordination in the fight against piracy and armed robbery off the coast of Somalia and to ensure that the international community has the proper authorities and tools at its disposal to assist it in these efforts,

Determining that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia;

2. *Expresses* its concern over the finding contained in the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy off the coast of Somalia;

3. *Welcomes* the efforts of the International Maritime Organization (“IMO”) to update its guidance and recommendations to the shipping industry and to Governments for preventing and suppressing piracy and armed robbery at sea and to provide this guidance as soon as practicable to all Member States and to the international shipping community operating off the coast of Somalia;

4. *Calls upon* States, in cooperation with the shipping industry, the insurance industry and the IMO, to issue to ships entitled to fly their flag appropriate advice and guidance on avoidance, evasion, and defensive techniques and measures to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia;

5. *Further calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines;

6. *Welcomes* initiatives by Canada, Denmark, France, India, the Netherlands, the Russian Federation, Spain, the United Kingdom, the United States of America, and by regional and international organizations to counter piracy off the coast of Somalia pursuant to resolutions 1814 (2008), 1816 (2008) and 1838 (2008), the decision by the North Atlantic Treaty Organization (NATO) to counter piracy off the Somalia coast, including by escorting vessels of the WFP, and in particular the decision by the EU on 10 November 2008 to launch, for a period of 12 months from December 2008, a naval operation to protect WFP maritime convoys bringing humanitarian assistance to Somalia and other vulnerable ships, and to repress acts of piracy and armed robbery at sea off the coast of Somalia;

7. *Calls upon* States and regional organizations to coordinate, including by sharing information through bilateral channels or the United Nations, their efforts to deter acts of piracy and armed robbery at sea off the coast of Somalia in cooperation with each other, the IMO, the international shipping community, flag States, and the TFG;

8. *Requests* the Secretary-General to present to it a report, no later than three months after the adoption of this resolution, on ways to ensure the long-term security of international navigation off the coast of Somalia, including the long-term security of WFP maritime deliveries to Somalia and a possible coordination and leadership role for the United Nations in this regard to rally Member States and regional organizations to counter piracy and armed robbery at sea off the coast of Somalia;

9. *Calls upon* States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and relevant international law, by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use;

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10. *Decides* that for a period of 12 months from the date of this resolution States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:

(a) Enter into the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and

(b) Use, within the territorial waters of Somalia, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery at sea;

11. *Affirms* that the authorizations provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been provided only following the receipt of the 20 November letter conveying the consent of the TFG;

12. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 5 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

13. *Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorization in paragraph 10 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

14. *Calls upon* all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution;

15. *Notes* that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”) provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation; *urges* States parties to the SUA Convention to fully implement their obligations under said Convention and cooperate with the Secretary-General and the IMO to build judicial capacity for the

successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

16. *Requests* States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authority provided in paragraph 10 above;

17. *Requests* the Secretary-General to report to the Security Council within 11 months of adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery in territorial waters and the high seas off the coast of Somalia;

18. *Requests* the Secretary-General of the IMO to brief the Council on the basis of cases brought to his attention by the agreement of all affected coastal States, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

19. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authority provided in paragraph 10 above for additional periods upon the request of the TFG;

20. *Decides* to remain seized of the matter.

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**Security Council**Distr.: General
16 December 2008

Resolution 1851 (2008)**Adopted by the Security Council at its 6046th meeting, on
16 December 2008***The Security Council,*

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), and 1846 (2008),

Continuing to be gravely concerned by the dramatic increase in the incidents of piracy and armed robbery at sea off the coast of Somalia in the last six months, and by the threat that piracy and armed robbery at sea against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, and *noting* that pirate attacks off the coast of Somalia have become more sophisticated and daring and have expanded in their geographic scope, notably evidenced by the hijacking of the M/V Sirius Star 500 nautical miles off the coast of Kenya and subsequent unsuccessful attempts well east of Tanzania,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law,

Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Again taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict, or upon interdiction to prosecute pirates or to patrol and secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters,

Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letter of 9 December 2008 from the President of Somalia requesting the international community to assist the TFG in taking all necessary measures to interdict those who use Somali territory and airspace to plan, facilitate or undertake acts of piracy and armed robbery at sea, and the 1 September 2008 letter from the President of Somalia to the Secretary-General of the UN expressing the appreciation of the TFG to the Security Council for its assistance and expressing the TFG's willingness to consider working with other



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States and regional organizations to combat piracy and armed robbery off the coast of Somalia,

Welcoming the launching of the EU operation Atalanta to combat piracy off the coast of Somalia and to protect vulnerable ships bound for Somalia, as well as the efforts by the North Atlantic Treaty Organization, and other States acting in a national capacity in cooperation with the TFG to suppress piracy off the coast of Somalia,

Also welcoming the recent initiatives of the Governments of Egypt, Kenya, and the Secretary-General's Special Representative for Somalia, and the United Nations Office on Drugs and Crime (UNODC) to achieve effective measures to remedy the causes, capabilities, and incidents of piracy and armed robbery off the coast of Somalia, and *emphasizing* the need for current and future counter-piracy operations to effectively coordinate their activities,

Noting with concern that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice, and *reiterating* that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation,

Welcoming the report of the Monitoring Group on Somalia of 20 November 2008 (S/2008/769), and *noting* the role piracy may play in financing embargo violations by armed groups,

Determining that the incidents of piracy and armed robbery at sea in the waters off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplors all acts of piracy and armed robbery against vessels in waters off the coast of Somalia;

2. *Calls* upon States, regional and international organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution, resolution 1846 (2008), and international law, by deploying naval vessels and military aircraft and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;

3. *Invites* all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the

exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention;

4. *Encourages* all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast; and *recalls* that future recommendations on ways to ensure the long-term security of international navigation off the coast of Somalia, including the long-term security of WFP maritime deliveries to Somalia and a possible coordination and leadership role for the United Nations in this regard to rally Member States and regional organizations to counter piracy and armed robbery at sea off the coast of Somalia are to be detailed in a report by the Secretary-General no later than three months after the adoption of resolution 1846;

5. *Further encourages* all states and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to consider creating a centre in the region to coordinate information relevant to piracy and armed robbery at sea off the coast of Somalia, to increase regional capacity with assistance of UNODC to arrange effective shiprider agreements or arrangements consistent with UNCLOS and to implement the SUA Convention, the United Nations Convention against Transnational Organized Crime and other relevant instruments to which States in the region are party, in order to effectively investigate and prosecute piracy and armed robbery at sea offences;

6. In response to the letter from the TFG of 9 December 2008, *encourages* Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, *notes* the primary role of the TFG in rooting out piracy and armed robbery at sea, and *decides* that for a period of twelve months from the date of adoption of resolution 1846, States and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia for which advance notification has been provided by the TFG to the Secretary-General may undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG, provided, however, that any measures undertaken pursuant to the authority of this paragraph shall be undertaken consistent with applicable international humanitarian and human rights law;

7. *Calls on* Member States to assist the TFG, at its request and with notification to the Secretary-General, to strengthen its operational capacity to bring to justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea, and *stresses* that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

8. *Welcomes* the communiqué issued by the International Conference on Piracy around Somalia held in Nairobi, Kenya, on 11 December 2008 and *encourages* Member States to work to enhance the capacity of relevant states in the region to combat piracy, including judicial capacity;

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9. *Notes* with concern the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy in waters off the coast of Somalia, and that the lack of enforcement of the arms embargo established by resolution 733 (1992) has permitted ready access to the arms and ammunition used by the pirates and driven in part the phenomenal growth in piracy;

10. *Affirms* that the authorization provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under UNCLOS, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law, and *affirms further* that such authorizations have been provided only following the receipt of the 9 December 2008 letter conveying the consent of the TFG;

11. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) shall not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 6 above;

12. *Urges* States in collaboration with the shipping and insurance industries, and the IMO to continue to develop avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in waters off the coast of Somalia, and *further urges* States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

13. *Decides* to remain seized of the matter.



Resolution 1853 (2008)**Adopted by the Security Council at its 6050th meeting, on
19 December 2008***The Security Council,*

Reaffirming its previous resolutions and the statements of its President concerning the situation in Somalia, in particular resolution 733 (1992) of 23 January 1992, which established an embargo on all delivery of weapons and military equipment to Somalia (hereinafter referred to as the “arms embargo”), resolution 1519 (2003) of 16 December 2003, resolution 1558 (2004) of 17 August 2004, resolution 1587 (2005) of 15 March 2005, resolution 1630 (2005) of 14 October 2005, resolution 1676 (2006) of 10 May 2006, resolution 1724 (2006) of 29 November 2006, resolution 1744 (2007) of 20 February 2007, resolution 1766 (2007) of 23 July 2007, resolution 1772 (2007) of 20 August 2007, resolution 1801 (2008) of 20 February 2008, resolution 1811 (2008) of 29 April 2008, and resolution 1844 (2008) of 20 November 2008,

Recalling that, as set out in its resolutions 1744 (2007) and 1772 (2007), the arms embargo on Somalia does not apply to (a) weapons and military equipment, technical training and assistance intended solely for support of or use by the African Union Mission in Somalia (AMISOM), and (b) supplies and technical assistance by States intended solely for the purpose of helping develop security sector institutions, consistent with the political process set out in those resolutions and in the absence of a negative decision by the Committee established pursuant to resolution 751 (1992) (hereinafter referred to as “the Committee”) within five working days of receiving an advance notification of such supplies or assistance on a case-by-case basis,

Reaffirming the importance of the sovereignty, territorial integrity, political independence and unity of Somalia,

Reaffirming that the Djibouti Peace Agreement and follow-on dialogue process represent the most viable basis for a resolution of the conflict in Somalia, and reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia based on the Transitional Federal Charter (TFC),

Reiterating the urgent need for all Somali leaders to take tangible steps to continue political dialogue,



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Commending the work of the Special Representative of the Secretary-General, Mr. Ahmedou Ould-Abdallah, and reaffirming its strong support for his efforts,

Taking note of the report of the Monitoring Group dated 10 December 2008 (S/2008/769) submitted pursuant to paragraph 3 (i) of resolution 1811 (2008) and the observations and recommendations contained therein,

Condemning flows of weapons and ammunition supplies to and through Somalia in violation of the arms embargo as a serious threat to peace and stability in Somalia,

Reiterating its insistence that all States, in particular those in the region, should refrain from any action in contravention of the arms embargo and should take all necessary steps to hold violators accountable,

Reiterating and underscoring the importance of enhancing the monitoring of the arms embargo in Somalia through persistent and vigilant investigation into the violations, bearing in mind that strict enforcement of the arms embargo will improve the overall security situation in Somalia,

Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Stresses* the obligation of all States to comply fully with the measures imposed by resolution 733 (1992), as well as resolution 1844 (2008);

2. *Reiterates* its intention to consider specific action to improve implementation of and compliance with measures imposed by resolution 733 (1992), as well as resolution 1844 (2008);

3. *Decides* to extend the mandate of the Monitoring Group referred to in paragraph 3 of resolution 1558 (2004), and requests the Secretary-General to take the necessary administrative measures as expeditiously as possible to re-establish the Monitoring Group for a period of twelve months, drawing, as appropriate, on the expertise of the members of the Monitoring Group established pursuant to resolution 1811 (2008), and with the addition of a fifth expert, in consultation with the Committee, in order to fulfil its expanded mandate, this mandate being as follows:

(a) to continue the tasks outlined in paragraphs 3 (a) to (c) of resolution 1587 (2005);

(b) to carry out additionally the tasks outlined in paragraphs 23 (a) to (c) of resolution 1844 (2008);

(c) to continue to investigate, in coordination with relevant international agencies, all activities, including in the financial, maritime and other sectors, which generate revenues used to commit arms embargo violations;

(d) to continue to investigate any means of transport, routes, seaports, airports and other facilities used in connection with arms embargo violations;

(e) to continue refining and updating information on the draft list of those individuals and entities who violate the measures implemented by Member States in accordance with resolution 733 (1992) and paragraphs 8 (a) to (c) of resolution 1844 (2008), inside and outside Somalia, and their active supporters, for possible future

measures by the Council, and to present such information to the Committee as and when the Committee deems appropriate;

(f) to continue making recommendations based on its investigations, on the previous reports of the Panel of Experts (S/2003/223 and S/2003/1035) appointed pursuant to resolutions 1425 (2002) of 22 July 2002 and 1474 (2003) of 8 April 2003, and on the previous reports of the Monitoring Group (S/2004/604, S/2005/153, S/2005/625, S/2006/229, S/2006/913, S/2007/436, S/2008/274 and S/2008/769) appointed pursuant to resolutions 1519 (2003) of 16 December 2003, 1558 (2004) of 17 August 2004, 1587 (2005) of 15 March 2005, 1630 (2005) of 14 October 2005, 1676 (2006) of 10 May 2006, 1724 (2006) of 29 November 2006, 1766 (2007) of 23 July 2007 and 1811 (2008) of 29 April 2008;

(g) to work closely with the Committee on specific recommendations for additional measures to improve overall compliance with the arms embargo, as well as the measures imposed in paragraphs 1, 3 and 7 of resolution 1844 (2008);

(h) to assist in identifying areas where the capacities of States in the region can be strengthened to facilitate the implementation of the arms embargo, as well as the measures imposed in paragraphs 1, 3 and 7 of resolution 1844 (2008);

(i) to provide to the Council, through the Committee, a midterm briefing within six months of its establishment, and to submit progress reports to the Committee on a monthly basis;

(j) to submit, for the Security Council's consideration, through the Committee, a final report covering all the tasks set out above, no later than 15 days prior to the termination of the Monitoring Group's mandate;

4. *Further requests* the Secretary-General to make the necessary financial arrangements to support the work of the Monitoring Group;

5. *Reaffirms* paragraphs 4, 5, 7, 8 and 10 of resolution 1519 (2003);

6. *Requests* the Committee, in accordance with its mandate and in consultation with the Monitoring Group and other relevant United Nations entities, to consider the recommendations in the reports of the Monitoring Group dated 5 April 2006, 16 October 2006, 17 July 2007, 24 April 2008, and 10 December 2008 and recommend to the Council ways to improve implementation of and compliance with the arms embargo as well as the measures imposed in paragraphs 1, 3 and 7 of resolution 1844 (2008), in response to continuing violations;

7. *Decides* to remain actively seized of the matter.

United Nations

S/RES/1872 (2009)


Security Council

 Distr.: General
 26 May 2009

Resolution 1872 (2009)
**Adopted by the Security Council at its 6127th meeting, on
 26 May 2009**

The Security Council,

Recalling all its previous resolutions and statements of its President concerning the situation in Somalia,

Recalling its resolutions 1325 (2000) and 1820 (2008) on women and peace and security, 1674 (2006) and 1738 (2006) on the protection of civilians in armed conflict, and 1539 (2004) and 1612 (2005) on children and armed conflict,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

Reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia,

Further reaffirming that the Djibouti Agreement represents the basis for a resolution of the conflict in Somalia, and *stressing* the importance of broad-based and representative institutions reached through a political process ultimately inclusive of all,

Welcoming in this regard the election by the Transitional Federal Parliament of Sheikh Sharif Sheikh Ahmed as President of Somalia, the subsequent appointment of a new Unity Cabinet under the Transitional Federal Government, and its relocation to Mogadishu,

Commending the contribution of the African Union Mission to Somalia (AMISOM) to lasting peace and stability in Somalia, *expressing* its appreciation for the continued commitment of troops to AMISOM by the Governments of Uganda and Burundi, and *condemning* any hostilities towards AMISOM and the Transitional Federal Government,

Commending the Special Representative of the Secretary-General, Mr. Ahmedou Ould-Abdallah, and *reaffirming* its strong support for his efforts,

Stressing the importance of the re-establishment, training, equipping and retention of Somali security forces, which is vital for the long-term stability of Somalia, and *welcoming* President Sheikh Sharif Sheikh Ahmed's focus on peace through strengthening the security sector, as his government's leading priority,



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Reiterating its serious concern at the renewed fighting in Somalia and *reaffirming* its support for the Transitional Federal Government,

Reiterating its serious concern at the worsening humanitarian situation in Somalia and *calling on* all Member States to contribute to current and future consolidated humanitarian appeals,

Recognizing the commitment of the Transitional Federal Government to address the humanitarian situation in Somalia and *encouraging* it to continue to work with the United Nations to build the capacity of its institutions to this end,

Expressing its concern that serious crimes, in particular killing and maiming, have been committed against civilians and humanitarian staff, in the ongoing conflict in Somalia and *reaffirming* the importance of the fight against impunity,

Recalling its resolution 1844 (2008), imposing measures against those individuals or entities who have been designated as engaging in or providing support for acts that threaten the peace, security or stability of Somalia, acting in violation of the arms embargo or obstructing humanitarian assistance to Somalia,

Recognizing that the ongoing instability in Somalia contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, *stressing* the need for a comprehensive response by the international community to tackle piracy and its underlying causes, and *welcoming* the efforts of the Contact Group for Piracy off the Coast of Somalia, States and international and regional organizations,

Welcoming the Secretary-General's report (S/2009/210) and its recommendations for continued action on the political, security and recovery tracks by the Transitional Federal Government with the support of the international community,

Determining that the situation in Somalia constitutes a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Calls* on all Somali parties to support the Djibouti Agreement, and *welcomes in this regard*, President Sheikh Sharif Sheikh Ahmed's call for all opposition groups to support this process;

2. *Requests* the Secretary-General, through his Special Representative for Somalia, to work with the international community to continue to facilitate reconciliation;

3. *Requests* the Secretary-General to include in his next report recommendations on ways to strengthen the Djibouti peace process;

4. *Underlines* the crucial importance of all parties taking appropriate measures to ensure, without delay, unhindered humanitarian access and assistance to the Somali people;

5. *Condemns* the recent resurgence in fighting and *calls* for the end of all hostilities, acts of armed confrontation and efforts to undermine the Transitional Federal Government;

6. *Emphasizes* that Somalia's long-term security rests with the effective development by the Transitional Federal Government of the National Security Force

and the Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy;

7. *Welcomes* the International Conference on Somalia held in Brussels on 23 April 2009 in support of the Somali security institutions and AMISOM;

8. *Urges* Member States, regional and international organizations to contribute generously to the United Nations Trust Fund for the Somali security institutions, and to offer technical assistance for the training and equipping of the Somali security forces, consistent with paragraphs 11 (b) and 12 of resolution 1772 (2007);

9. *Requests* the Secretary-General to continue to assist the Transitional Federal Government in developing the transitional security institutions, including the Somali Police Force and the National Security Force, and further requests the Secretary-General to support the Transitional Federal Government in developing a national security strategy including plans for combating illicit arms trafficking, disarmament, demobilization and reintegration (DDR), justice and corrections capacities;

10. *Calls* on the Transitional Federal Government to develop, in the context of the national security strategy outlined above, the legal and policy framework for the operation of its security forces including governance, vetting and oversight mechanisms, ensuring respect for the rule of law and the protection of human rights;

11. *Recalls* its statement of intent regarding the establishment of a United Nations peacekeeping operation as expressed in resolution 1863 (2009);

12. *Notes* that any decision to deploy such an operation would take into account inter alia the conditions set out in the Secretary-General's report (S/2009/210);

13. *Requests* the Secretary-General to take the steps identified in his report in paragraphs 82-86, subject to the conditions in his report, and to report on progress by 30 September 2009, and again by 31 December 2009; and expresses its intention to review the situation;

14. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) shall not apply to supplies and technical assistance provided in accordance with paragraph 11 (b) of resolution 1772 (2007) to the Transitional Federal Government for the purposes of the development of its security sector institutions, consistent with the Djibouti peace process and subject to the notification procedure set out in paragraph 12 of resolution 1772 (2007);

15. *Requests* the African Union to maintain and enhance AMISOM's deployment in Somalia in order to carry out its mandate as set out in paragraph 9 of resolution 1772 (2007), *welcomes* its efforts to protect the airport, seaport and other strategic areas in Mogadishu; and *encourages* it to continue to assist the Transitional Federal Government in the establishment of the National Security Force and the Somali Force;

16. *Decides* to authorize the Member States of the African Union to maintain AMISOM until 31 January 2010 to carry out its existing mandate;

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17. *Requests* the Secretary-General to continue to provide a logistical support package for AMISOM comprising equipment and services but not including the transfer of funds, as described in his letter (S/2009/60) to AMISOM, until 31 January 2010; and *further requests* the Secretary-General to include in the reports requested in paragraph 13 above an update on the deployment of this package;

18. *Requests* AMISOM to ensure that all equipment and services provided under the support package are used in a transparent and effective manner for their designated purposes, and *further requests* the African Union to report to the Secretary-General on the usage of such equipment and services in accordance with the Memorandum of Understanding to be established between the United Nations and the African Union based on appropriate internal control procedures;

19. *Requests* the Secretary-General to continue to provide technical and expert advice to the African Union in the planning and deployment of AMISOM through the existing United Nations planning team in Addis Ababa;

20. *Urges* Member States, regional and international organizations to contribute generously to the United Nations Trust Fund for AMISOM while noting that the existence of the trust fund does not preclude the conclusion of direct bilateral arrangements in support of AMISOM;

21. *Requests* the Secretary-General, through his Special Representative for Somalia and the United Nations Political Office for Somalia (UNPOS), to coordinate effectively and develop an integrated approach to all activities of the United Nations system in Somalia, to provide good offices and political support for the efforts to establish lasting peace and stability in Somalia and to mobilize resources and support from the international community for both the immediate recovery and long-term economic development of Somalia;

22. *Requests* the Secretary-General, through his Special Representative for Somalia and UNPOS, to work with the Transitional Federal Government to develop its capacity to address human rights issues and to support the Justice and Reconciliation Working Group to counter impunity;

23. *Requests* the Secretary-General to expedite the proposed deployment of elements of UNPOS and other United Nations offices and agencies, including the United Nations Support Office for AMISOM (UNSOA), to Mogadishu consistent with the security conditions, as outlined in his report (S/2009/210);

24. *Decides* to remain actively seized of the matter.

United Nations

S/RES/1897 (2009)

**Security Council**Distr.: General
30 November 2009

Resolution 1897 (2009)**Adopted by the Security Council at its 6226th meeting, on
30 November 2009***The Security Council,*

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), and 1851 (2008),

Continuing to be gravely concerned by the ongoing threat that piracy and armed robbery at sea against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Somalia and the region, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law and the extended range of the piracy threat into the western Indian Ocean,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law,

Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Again taking into account the crisis situation in Somalia, and the limited capacity of the Transitional Federal Government (TFG) to interdict, or upon interdiction to prosecute pirates or to patrol or secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters,

Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letters of 2 and 6 November 2009 from the Permanent Representative of Somalia to the United Nations expressing the appreciation of the TFG to the Security Council for its assistance, expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, and requesting that the provisions of resolutions 1846 (2008) and 1851 (2008) be renewed for an additional twelve months,



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Commending the efforts of the EU operation Atalanta, which the European Union is committed to extending until December 2010, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime Forces' Combined Task Force 151, and other States acting in a national capacity in cooperation with the TFG and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia,

Noting with concern that the continuing limited capacity and domestic legislation to facilitate the custody and prosecution of suspected pirates after their capture has hindered more robust international action against the pirates off the coast of Somalia, and in some cases has led to pirates being released without facing justice, regardless of whether there is sufficient evidence to support prosecution, *reiterating* that, consistent with the provisions of the Convention concerning the repression of piracy, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation, and *stressing* the need for States to criminalize piracy under their domestic law and to favourably consider the prosecution, in appropriate cases, of suspected pirates, consistent with applicable international law,

Commending the Republic of Kenya's efforts to prosecute suspected pirates in its national courts, and *noting* with appreciation the assistance being provided by the United Nations Office of Drugs and Crime (UNODC) and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia ("CGPCS"), to support Kenya, Somalia and other States in the region, including Seychelles and Yemen, to take steps to prosecute or incarcerate in a third state after prosecution elsewhere captured pirates consistent with applicable international human rights law,

Noting the ongoing efforts within the CGPCS to explore possible additional mechanisms to effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia,

Further noting with appreciation the ongoing efforts by UNODC and UNDP to support efforts to enhance the capacity of the corrections system in Somalia, including regional authorities, to incarcerate convicted pirates consistent with applicable international human rights law,

Welcoming the adoption of the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, and the establishment of the International Maritime Organization (IMO) Djibouti Code Trust Fund (Multi-donor trust fund- Japan initiated), as well as the International Trust Fund Supporting Initiatives of the CGPCS, and *recognizing* the efforts of signatory States to develop the appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, interdict suspect vessels, and prosecute suspected pirates,

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy

and armed robbery at sea off the coast of Somalia, and further emphasizing that Somalia's long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy,

Determining that the incidents of piracy and armed robbery at sea off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplors all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia;

2. *Notes* again its concern regarding the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia (S/2008/769, page 55) that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off the coast of Somalia, and calls upon all States to fully cooperate with the Monitoring Group on Somalia;

3. *Renews* its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;

4. *Commends the work* of the CGPCS to facilitate coordination in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with the IMO, flag States, and the TFG and *urges* States and international organizations to continue to support these efforts;

5. *Acknowledges* Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, and *calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia, including regional authorities, and nearby coastal States upon their request to enhance their capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines, and stresses the importance of coordination in this regard through the CGPCS;

6. *Invites* all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention;

7. *Encourages* Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in

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the fight against piracy and armed robbery at sea, and *decides* that for a period of twelve months from the date of this resolution to renew the authorizations as set out in paragraph 10 of Resolution 1846 (2008) and paragraph 6 of Resolution 1851 (2008) granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General;

8. *Affirms* that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been renewed only following the receipt of the 2 and 6 November 2009 letters conveying the consent of the TFG;

9. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 7 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraphs 5 above which have *been exempted* from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

10. *Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorizations in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

11. *Calls on* Member States to assist Somalia, at the request of the TFG and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and *stresses* that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

12. *Calls upon* all States, and in particular flag, port, and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;

13. *Commends* in this context the decision by the CGPCS to establish an International Trust Fund to support its initiatives and *encourages* donors to contribute to it;

14. *Urges* States parties to the Convention and the SUA Convention to fully implement their relevant obligations under these Conventions and customary international law and cooperate with the UNODC, IMO, and other States and other international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

15. *Welcomes* the revisions by the IMO to its recommendations and guidance on preventing and suppressing piracy and armed robbery against ships, and *urges* States, in collaboration with the shipping and insurance industries, and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further *urges* States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

16. *Requests* States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authorizations provided in paragraph 7 above and further requests all States contributing through the CGPCS to the fight against piracy off the coast of Somalia, including Somalia and other States in the region, to report by the same deadline on their efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy;

17. *Requests* the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia;

18. *Requests* the Secretary General of the IMO to brief the Security Council on the basis of cases brought to his attention by the agreement of all affected coastal States, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

19. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 7 above for additional periods upon the request of the TFG;

20. *Decides* to remain seized of the matter.

United Nations

S/RES/1918 (2010)


Security Council

 Distr.: General
 27 April 2010

Resolution 1918 (2010)
**Adopted by the Security Council at its 6301st meeting, on
 27 April 2010**

The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008) and 1897 (2009),

Continuing to be gravely concerned by the threat that piracy and armed robbery at sea against vessels pose to the situation in Somalia and other States in the region, as well as to international navigation and the safety of commercial maritime routes,

Reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), in particular its articles 100, 101 and 105, sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Reaffirming also that the authorizations renewed in resolution 1897 (2009) apply only with respect to the situation in Somalia and shall not affect the rights, obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and *underscoring in particular* that resolution 1897 shall not be considered as establishing customary international law,

Stressing the need to address the problems caused by the limited capacity of the judicial system of Somalia and other States in the region to effectively prosecute suspected pirates,

Noting with appreciation the assistance being provided by the United Nations Office on Drugs and Crime (UNODC) and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia (“CGPCS”), to enhance the capacity of the judicial and the corrections systems in Somalia, Kenya, Seychelles and other States in the region to prosecute suspected, and imprison convicted, pirates consistent with applicable international human rights law,

Commending the role of the EU operation Atalanta, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime



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Forces' Combined Task Force 151, and other States acting in a national capacity in cooperation with the Transitional Federal Government (the TFG) and each other, in suppressing piracy and armed robbery at sea off the coast of Somalia, including by bringing persons suspected of piracy to justice,

Commending the efforts of the Republic of Kenya to date to prosecute suspected pirates in its national courts and imprison convicted persons, and *encouraging* Kenya to continue these efforts, while acknowledging the difficulties Kenya encounters in this regard,

Also commending the efforts to date of other States to prosecute suspected pirates in their national courts,

Acknowledging the decision of the Seychelles to engage in the prosecution of suspected pirates, and *welcoming in particular* their decision on 6 February 2010 to consider hosting a regional prosecution centre,

Commending the decision by the CGPCS to create the International Trust Fund supporting initiatives of the Contact Group on Piracy off the Coast of Somalia administered by the UNODC to defray the expenses associated with prosecution of suspected pirates and to support other counter-piracy initiatives, *welcoming* the contributions of participating States and *encouraging* other potential donors to contribute to the fund,

Welcoming the adoption of the CGPCS regional capability needs assessment report and *urging* States and international organizations to provide fullest possible support to enable early implementation of its recommendations,

Commending those States that have amended their domestic law in order to criminalize piracy and facilitate the prosecution of suspected pirates in their national courts, consistent with applicable international law, including human rights law, and *stressing* the need for States to continue their efforts in this regard,

Noting with concern at the same time that the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates,

Acknowledging the ongoing efforts within the CGPCS to explore possible mechanisms to more effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia,

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy and armed robbery at sea off the coast of Somalia, and further emphasizing that Somalia's long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy,

Being concerned over cases when persons suspected of piracy are released without facing justice and *determined* to create conditions to ensure that pirates are held accountable,

1. *Affirms* that the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community;

2. *Calls on* all States, including States in the region, to criminalize piracy under their domestic law and favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international human rights law;

3. *Welcomes* in this context the progress being made to implement the IMO Djibouti Code of Conduct, and *calls upon* its participants to implement it fully as soon as possible;

4. *Requests* the Secretary-General to present to the Security Council within 3 months a report on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the CGPCS, the existing practice in establishing international and mixed tribunals, and the time and the resources necessary to achieve and sustain substantive results;

5. *Decides* to remain seized of the matter.

United Nations

S/RES/1950 (2010)

**Security Council**Distr.: General
23 November 2010

Resolution 1950 (2010)**Adopted by the Security Council at its 6429th meeting, on
23 November 2010***The Security Council,*

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008), 1897 (2009), and 1918 (2010), as well as the Statement of its President (S/PRST/2010/16) of 25 August 2010,

Continuing to be gravely concerned by the ongoing threat that piracy and armed robbery at sea against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Somalia and the region, to the safety of seafarers and other persons, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law, and also gravely concerned by the extended range of the piracy threat into the western Indian Ocean and the increase in pirate capacities,

Expressing concern about the reported involvement of children in piracy off the coast of Somalia,

Recognizing that the ongoing instability in Somalia contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, and stressing the need for a comprehensive response to tackle piracy and its underlying causes by the international community,

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, and stressing the importance of preventing, in accordance with international law, illegal fishing and illegal dumping, including toxic substances,

Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Again taking into account the crisis situation in Somalia, and the limited capacity of the Transitional Federal Government (TFG) to interdict, or upon



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interdiction to prosecute pirates or to patrol or secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters,

Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letter of 20 October 2010 from the Permanent Representative of Somalia to the United Nations expressing the appreciation of the TFG to the Security Council for its assistance, expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, and requesting that the provisions of resolution 1897 (2009) be renewed for an additional twelve months,

Commending the efforts of the EU operation Atalanta, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime Forces' Combined Task Force 151, and other States acting in a national capacity in cooperation with the TFG and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia, and *welcoming* the efforts of individual countries, including China, India, Islamic Republic of Iran, Japan, Malaysia, Republic of Korea, Russian Federation, Saudi Arabia, and Yemen, which have deployed ships and/or aircraft in the region, as stated in the Secretary-General's report (S/2010/394),

Welcoming the capacity building efforts made by the International Maritime Organization (IMO) Djibouti Code Trust Fund (Multi-donor trust fund — Japan initiated), and the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia, and recognizing the need for all engaged international and regional organizations to cooperate fully,

Noting with concern that the continuing limited capacity and domestic legislation to facilitate the custody and prosecution of suspected pirates after their capture has hindered more robust international action against the pirates off the coast of Somalia, and in some cases has led to pirates being released without facing justice, regardless of whether there is sufficient evidence to support prosecution, and *reiterating* that, consistent with the provisions of the Convention concerning the repression of piracy, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation,

Underlining the importance of continuing to enhance the collection, preservation and transmission to competent authorities of evidence of acts of piracy and armed robbery at sea off the coast of Somalia, and *welcoming* the ongoing work of IMO, INTERPOL and industry groups to develop guidance to seafarers on preservation of crime scenes following acts of piracy, and noting the importance for the successful prosecution of acts of piracy of enabling seafarers to give evidence in criminal proceedings,

Commending the Republic of Kenya and the Republic of Seychelles' efforts to prosecute suspected pirates in their national courts, welcoming the engagement of the Republic of Mauritius, and *noting* with appreciation the assistance being provided by the United Nations Office of Drugs and Crime (UNODC), the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia,

and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia (“CGPCS”), to support Kenya, Seychelles, Somalia, and other States in the region, including Yemen, to take steps to prosecute, or incarcerate in a third state after prosecution elsewhere, captured pirates consistent with applicable international human rights law, and emphasizing the need for States and international organizations to further enhance international efforts in this regard,

Welcoming the readiness of the national and regional administrations of Somalia to cooperate with each other and with States who have prosecuted suspected pirates with a view to enabling convicted pirates to be repatriated back to Somalia under suitable prisoner transfer arrangements, consistent with applicable international law including international human rights law,

Welcoming the report of the Secretary General (S/2010/394), as requested by resolution 1918 (2010), and the ongoing efforts within the CGPCS and the United Nations Secretariat to explore possible additional mechanisms to effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia,

Stressing the need for States to consider possible methods to assist the seafarers who are victims of pirates, and welcoming in this regard the ongoing work within the CGPCS and the International Maritime Organization on developing guidelines for the care of seafarers and other persons who have been subjected to acts of piracy,

Further noting with appreciation the ongoing efforts by UNODC and UNDP to support efforts to enhance the capacity of the corrections system in Somalia, including regional authorities notably with the support of the Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia, to incarcerate convicted pirates consistent with applicable international human rights law,

Bearing in mind the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, and *recognizing* the efforts of signatory States to develop the appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, interdict suspect vessels, and prosecute suspected pirates,

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy and armed robbery at sea off the coast of Somalia, and *further emphasizing* that Somalia’s long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy,

Determining that the incidents of piracy and armed robbery at sea off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia;

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2. *Recognizes* that the ongoing instability in Somalia is one of the underlying causes of the problem of piracy and contributes to the problem of piracy and armed robbery at sea off the coast of Somalia, and *stresses* the need for a comprehensive response to tackle piracy and its underlying causes by the international community;

3. *Notes again* its concern regarding the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia (S/2008/769, page 55) that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off the coast of Somalia, and *calls upon* all States to fully cooperate with the Somalia and Eritrea Monitoring Group including on information sharing regarding possible arms embargo violations;

4. *Renews* its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;

5. *Commends the work* of the CGPCS to facilitate coordination in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with the IMO, flag States, and the TFG and *urges* States and international organizations to continue to support these efforts;

6. *Acknowledges* Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, *recalls* the importance of preventing, in accordance with international law, illegal fishing and illegal dumping, including toxic substances, and *calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia, including regional authorities, and nearby coastal States upon their request to enhance their capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines, and stresses the importance of coordination in this regard through the CGPCS;

7. *Encourages* Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in the fight against piracy and armed robbery at sea, and *decides* that for a further period of twelve months from the date of this resolution to renew the authorizations as set out in paragraph 10 of resolution 1846 (2008) and paragraph 6 of resolution 1851 (2008), as renewed by resolution 1897 (2009), granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General;

8. *Affirms* that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations, under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been

renewed only following the receipt of the 20 October 2010 letter conveying the consent of the TFG;

9. *Further affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 7 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 6 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

10. *Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorizations in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

11. *Calls on* Member States to assist Somalia, at the request of the TFG and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and *stresses* that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

12. *Calls upon* all States, and in particular flag, port, and coastal States, States of the nationality of victims, and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of all persons responsible for acts of piracy and armed robbery off the coast of Somalia, including anyone who incites or facilitates an act of piracy, consistent with applicable international law including international human rights law to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;

13. *Calls upon* all States to criminalize piracy under their domestic law and to favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international law including international human rights law;

14. *Reaffirms* its interest in the continued consideration of all seven options for prosecuting suspected pirates described in the Secretary-General's report (S/2010/394) which provide for different levels of international participation, taking into account further new information and observations from the Secretary-General based on the consultations being conducted by his Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia, with a view to taking further steps to ensure that pirates are held accountable, emphasizing the need for strengthened cooperation of States, regional, and international organizations in achieving this goal, and encourages the CGPCS to continue its discussions in this regard;

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15. *Urges* all States to take appropriate actions under their existing domestic law to prevent the illicit financing of acts of piracy and the laundering of its proceeds;

16. *Urges* States, in cooperation with INTERPOL and Europol, to further investigate international criminal networks involved in piracy off the coast of Somalia, including those responsible for illicit financing and facilitation;

17. *Stresses* in this context the need to support the investigation and prosecution of those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia;

18. *Commends* the establishment of the Trust Fund Supporting the Initiatives of States Countering Piracy off the Coast of Somalia and the International Maritime Organization (IMO) Djibouti Code Trust Fund (Multi-donor trust fund — Japan initiated) and *urges* both state and non-state actors affected by piracy, most notably the international shipping community, to contribute to them;

19. *Urges* States parties to the Convention and the SUA Convention to fully implement their relevant obligations under these Conventions and customary international law and cooperate with the UNODC, IMO, and other States and other international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

20. *Welcomes* the revisions by the IMO to its recommendations and guidance on preventing and suppressing piracy and armed robbery against ships, *underlines* the importance of implementing such recommendations and guidance by all stakeholders, including the shipping industry, and *urges* States, in collaboration with the shipping and insurance industries, and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further *urges* States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

21. *Requests* States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General in 9 months of the progress of actions undertaken in the exercise of the authorizations provided in paragraph 7 above and further requests all States contributing through the CGPCS to the fight against piracy off the coast of Somalia, including Somalia and other States in the region, to report by the same deadline on their efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy;

22. *Requests* the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia;

23. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 7 above for additional periods upon the request of the TFG;

24. *Decides* to remain seized of the matter.

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CLAMO FAST ACTION BINDER: PIRACY
SELECTED INTERNATIONAL MARITIME ORGANIZATION
RESOLUTIONS AND CIRCULARS

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INTERNATIONAL MARITIME ORGANIZATION



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Note: IMO Resolution A.1025(26) supersedes A.922(22). Resolution A.922(22) is offered here for historical background

ASSEMBLY
22nd session
Agenda item 9

A 22/Res.922
22 January 2002
Original: ENGLISH

RESOLUTION A.922(22)

**Adopted on 29 November 2001
(Agenda item 9)**

**CODE OF PRACTICE FOR THE INVESTIGATION OF THE CRIMES OF
PIRACY AND ARMED ROBBERY AGAINST SHIPS**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

RECALLING ALSO the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), 1988 and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf,

NOTING resolution A/RES/55/7 on Oceans and the law of the sea, by which the United Nations General Assembly, at its fifty-fifth session, urged all States, and in particular coastal States, in affected regions to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea, including through regional co-operation, and to investigate or co-operate in the investigation of such incidents wherever they occur and bring the alleged perpetrators to justice in accordance with international law,

NOTING ALSO the approval by the Maritime Safety Committee of MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.2 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships,

BEARING IN MIND the rights and obligations of States under the international law of the sea, including the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS),

RECOGNIZING WITH DEEP CONCERN the grave danger to safety of life at sea, maritime safety and the protection of the marine environment arising from acts of piracy and armed robbery against ships,

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RECOGNIZING ALSO that the number of acts of piracy and armed robbery against ships continues to increase worldwide,

BEING AWARE that the fight against piracy and armed robbery against ships is often impeded by the absence of effective legislation in some countries for the investigation of reported cases of piracy and armed robbery against ships,

BEING ALSO AWARE that, when arrests are made, some Governments are lacking the legislative framework and adequate guidelines for investigation necessary to allow conviction and punishment of those involved in acts of piracy and armed robbery against ships,

TAKING INTO ACCOUNT the recommendation made at regional seminars and workshops organized by IMO within the context of the 1998 anti-piracy project that the development of a code of practice for the investigation and prosecution of acts of piracy and armed robbery against ships should be pursued on a priority basis, to ensure appropriate punishment for the crime of piracy and armed robbery against ships,

BEING CONVINCED of the need for a code of practice to be adopted and promulgated as soon as possible,

BEING ALSO CONVINCED of the need for Governments to co-operate and to take, as a matter of the highest priority, all necessary action to prevent and suppress any acts of piracy and armed robbery against ships,

HAVING CONSIDERED the recommendation of the Maritime Safety Committee at its seventy-fourth session,

1. ADOPTS the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships set out in the Annex to the present resolution;
2. INVITES Governments to co-operate in the interests of safety of life at sea and environmental protection by increasing their efforts to suppress and prevent acts of piracy and armed robbery against ships;
3. ALSO INVITES Governments to develop, as appropriate, agreements and procedures to facilitate co-operation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;
4. ENCOURAGES Governments to apply the provisions of international instruments aimed at improving safety of life at sea and the prevention and suppression of acts of piracy and armed robbery against ships;
5. REQUESTS the Secretary-General to bring this resolution and the annexed Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships to the attention of Member Governments, the United Nations and other international organizations concerned, for information and appropriate action;
6. FURTHER REQUESTS the Maritime Safety Committee and the Legal Committee to keep the Code under review and to take action as they may deem appropriate;

7. URGES Governments to take actions, as set out in the Code of Practice, to investigate all acts under their jurisdiction of piracy and armed robbery against ships, and to report to the Organization pertinent information on all investigations and prosecutions concerning these acts;
8. FURTHER URGES all Governments responsible for ports, anchorages and sea areas to inform the Organization of specific advice they have made available to ships on the subject of piracy and armed robbery against ships for promulgation by the industry to ships concerned.

ANNEX

**CODE OF PRACTICE FOR THE INVESTIGATION OF THE CRIMES
OF PIRACY AND ARMED ROBBERY AGAINST SHIPS****1 PURPOSE OF THIS DOCUMENT**

The purpose of this document is to provide IMO Member States with an *aide-mémoire* to facilitate the investigation of the crimes of piracy and armed robbery against ships.

2 DEFINITIONS

For the purpose of this Code:

2.1 **“Piracy”** means unlawful acts as defined in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

2.2 **“Armed robbery against ships”** means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship or against persons or property on board such a ship, within a State’s jurisdiction over such offences.

2.3 **“Investigators”** means those people appointed by the relevant State(s) to intervene in an act of piracy or armed robbery against a ship, during and/or after the event.

3 PRIOR CONSIDERATIONS**Legislation**

3.1 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences.

* The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

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

3.2 States are encouraged to ratify, adopt and implement the practical applications of the 1982 United Nations Convention on the Law of the Sea, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Navigation and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

Action by coastal/port States

3.3 To encourage masters to report all incidents of piracy and armed robbery against ships, coastal/port States should make every endeavour to ensure that these masters and their ships will not be unduly delayed and that the ship will not be burdened with additional costs related to such reporting.

Coastal State agreements

3.4 Coastal States are encouraged, where appropriate, to enter into bilateral or multilateral agreements to facilitate the investigation of piracy and armed robbery against ships.

4. TRAINING OF INVESTIGATORS

4.1 Training of investigators should cover the **primary purposes of an intervention/investigation:**

- .1 In any cases where persons on board have been abducted or have been held hostage, the primary objective of any law enforcement operation or investigation must be their safe release. **Their rescue must take precedence over all other considerations.**
- .2 Arrest of offenders.
- .3 Securing of evidence, especially if an examination by experts is needed.
- .4 Dissemination of information which may help prevent other offences.
- .5 Recovery of property stolen.
- .6 Co-operation with the authority responsible for dealing with any particular incident.

4.2 Investigators must be trained and experienced in conventional investigative techniques, and should be as familiar as possible with a ship environment. Maritime knowledge will of course be an advantage, and access to persons with knowledge on maritime procedures useful, but it is investigative skills which are vital.

4.3 Trainers may wish to emphasise that offenders could still be at the scene of the crime when investigators arrive on scene.

5 INVESTIGATIVE STRATEGY

5.1 It is essential that those employed by security force agencies to investigate piracy or armed robbery against ships shall have demonstrated investigation skills and competencies, as well as maritime knowledge/experience. Offenders are ultimately land-based, and it is likely that it is on land that they will be most vulnerable to detection. Associates may be prepared to give information against them, for example, and it is there that they will be spending the proceeds of their crime. It is also probable that offenders will be involved in other offences such as carrying illegal immigrants, and useful intelligence may be lost if investigators are too compartmentalised in their approach.

5.2 Conventional detective methods offer the best chance of identifying and apprehending pirates and perpetrators of armed robbery.

5.3 It may be appropriate to link anti-piracy measures to anti-smuggling patrols or efforts to prevent drug smuggling or unlawful drug trafficking, thus minimising duplication of effort and saving resources. Wherever possible, an inter-agency approach to investigation should be adopted.

Overall management/other liaison/co-operation

5.4 It is important to identify the person and/or organization in charge of an investigation. Confusion or delay in the early stages will at best result in delayed investigative opportunities and loss of evidence. At worst, it may increase the danger to any crewmen held captive by the offenders, possibly resulting in avoidable loss of life or injury.

5.5 Recognition should be given to the different national interests that may be involved in each case, including: flag State of the ship; country in whose territorial waters the attack took place; country of suspected origin of the perpetrators; country of nationality of persons on board; country of ownership of cargo; and country in which the crime was committed. In cases of piracy and armed robbery against ships outside territorial waters, the flag State of the ship should take lead responsibility, and in other cases of armed robbery the lead should be taken by the State in whose territorial waters the attack took place. In all cases it should be recognised that other States will have legitimate interests, and therefore liaison and co-operation between them is vital to a successful investigation.

5.6 It is important to involve relevant organizations (e.g. Interpol, ICC/International Maritime Bureau) at an early stage, where appropriate, in order to take account of the possibility that transnational organized crime may be involved.

5.7 If in the course of the investigation there is an unavoidable need to change the investigators in charge, a full debriefing should take place.

6 DEALING WITH AN INITIAL REPORT

When information is received that a ship is under attack, or a recently-committed major offence is reported and the ship is accessible, investigators should attend without delay. The responsibilities of those who first attend crime scenes will be the following:

Preservation of life

- .1 They must secure medical treatment for all persons injured.

Prevention of the escape of offenders

- .2 They must be alert to the possibility that, in some circumstances, offenders may still be in the vicinity.

Warnings to other ships

- .3 Whenever practicable warnings should be issued to other ships in the vicinity which may be vulnerable to attack.

Protection of crime scenes

- .4 Recovery of forensic material from a crime scene has the potential to provide evidence to identify offenders. Equally, interpretation of what happened at the scene will help investigators and determine the outcome of the investigation. It is therefore vital that crime scenes be protected until appropriately qualified personnel arrive to examine them. This point must be fully understood by the master, crew and shipowner of any ship involved.
- .5 The initial phases of the law enforcement and emergency services' response present the greatest risk of scene contamination. Personnel co-ordinating the law-enforcement response should be aware of the risk of contamination and advise persons attending scenes, including other law enforcement officials and naval personnel, accordingly.
- .6 They must ensure that the authorities in the country with lead responsibility for investigating any crime are informed of the details of the incident and given the opportunity to conduct an investigation into it. Any evidence, details of action taken, etc should be passed to the State with the lead responsibility.

Securing evidence

- .7 Focused questioning at the crime scene may lead to information which, by being rapidly passed to all appropriate authorities, could lead to the identification or arrest of the offenders, e.g. description of offenders, description of ship and direction ship was last seen heading in.
- .8 Law enforcement officials first attending a scene must appreciate the importance of their role in gathering and passing on as quickly as possible relevant evidence, even if the offenders have escaped. Mistakes or omissions at the outset may have serious implications for the subsequent investigation.
- .9 Investigators should bear in mind that recovery of property during the investigation is important, as it may become evidence in the event of any prosecution.

7 THE INVESTIGATION

Proportionality

The course of an investigation will to a large extent depend on the circumstances of the offence. In this regard the investigating agency will wish to take account of the "seriousness" of the incident. This will range from stolen property to loss of life. Consequently, the action to be pursued should be proportionate to the crime committed and consistent with the laws that were violated. The following will, however, be common to all piracy and armed robbery investigations:

Establishing and recording of all relevant facts

- .1 All relevant facts must be recorded in a systematic way. Most law enforcement agencies use multi-purpose crime reporting forms, but officers dealing with offences at sea must be sure to include the additional information which may subsequently prove essential in legal proceedings in these cases e.g. weather, sea state, position, direction of travel and speed of the ship, a detailed description of the ship and so forth.
- .2 Photographs and videotapes taken of and on a ship will help investigators and witnesses to explain subsequently what happened.
- .3 Investigators must bear in mind that the laws governing offences committed at sea allow, in some circumstances, for legal proceedings in countries other than those where the investigators may be based. Investigations must therefore be sufficiently comprehensive and detailed to make it possible to explain what happened to courts other than the investigators' own, possibly several years after the offences have been committed. The *modus operandi* of investigators has to be described in the investigation report.

Recording of individual witness accounts

- .4 These should be recorded in a formal manner, acceptable for use in subsequent court proceedings. Witness accounts will form the basis of any prosecution case and untrained personnel should not be used for this important task.
- .5 Witness accounts must be recorded at the earliest opportunity, as memories fade and accounts may be influenced by contact with other witnesses and media reports.
- .6 Where witnesses speak languages different from that of the investigators, as will happen frequently in piracy cases, their accounts must be recorded in their own languages and through use of properly qualified interpreters when this can be done within a reasonable timescale. Investigators should be aware that an account signed by a witness, or indeed a suspect, in a language foreign to that person may be valueless in court proceedings. It is important, therefore, to establish the legal requirements for the validity of evidence in each case.

- .7 Experience has proved that witnesses in piracy cases, and particularly those who have been subjected to violence, are likely to be exceptionally distressed. Their experience will have been all the worse if they have been held captive for a long period and/or been in fear of death, and the situation will be exacerbated still further if they are far from home. Investigators should bear these factors in mind and deal with them sympathetically and patiently if they are to elicit all relevant facts.
- .8 Witnesses should be interviewed separately from each other, when this can be done within a reasonable timescale, in order to protect the integrity of the individual accounts of the incident.
- .9 Investigators should focus upon obtaining specific descriptions of the individuals involved in the piracy incident, particularly noting any distinguishing characteristics of the “leader”.
- .10 If more than one offender is involved, investigators should attempt to obtain particular information from the witnesses about the actions of each individual offender, rather than be satisfied with general statements about what “the hijackers” or “the pirates” did on the ship.

Detailed forensic examination of scenes

- .11 Detailed forensic examination of the crime scene, particularly in serious cases including cases of homicide, offers investigators the best opportunities of establishing crucial information and evidence which may ultimately result in the case being solved.
- .12 Investigators should secure particular objects or places on the ship where the offenders may have left fingerprints or other latent prints of value.
- .13 Investigators will be well advised to take advantage of the full range of specialist services available to them.
- .14 Investigators should take into consideration the need not to detain ships or impede work on board longer than is strictly necessary to carry out the forensic examination.

Search of intelligence databases

- .15 Crimes must not be treated in isolation.
- .16 Offenders may be responsible for similar crimes not yet solved, but when the evidence from those cases is accumulated and considered, opportunities of identifying offenders may emerge. Appropriate databases, including those held by the International Maritime Bureau in Kuala Lumpur, Malaysia, should be searched to identify any series of offences. However, usage of private databases has to be compatible with the law governing the investigation. Consideration should be given to contacting Interpol in case they have any information on the offenders.

- .17 Equally, offenders may have previous convictions, the details of which could link them to crimes under investigation.

Distribution of information and intelligence to appropriate agencies

- .18 An important product of an effective investigation, even if it does not lead to any arrests, should be the generation of intelligence, and systems should be in place to ensure that potentially useful intelligence is disseminated to all appropriate parties. These might include law enforcement agencies, naval authorities, coastguards, harbour masters and others who might need it, and could act on it according to their national regulations.
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INTERNATIONAL MARITIME ORGANIZATION



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ASSEMBLY
26th session
Agenda item 10

A 26/Res.1025
18 January 2010
Original: ENGLISH

Resolution A.1025(26)

**Adopted on 2 December 2009
(Agenda item 10)**

**CODE OF PRACTICE FOR THE INVESTIGATION OF CRIMES OF
PIRACY AND ARMED ROBBERY AGAINST SHIPS**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

RECALLING the rights and obligations of States under the international law of the sea, including the provisions of the United Nations Convention on the Law of the Sea relating to piracy,

RECALLING ALSO the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988 and encouraging States that have not done so, to ratify the said instruments as a matter of priority,

NOTING resolution A/RES/63/111 on *Oceans and the law of the sea*, by which the United Nations General Assembly, at its sixty-third session, urged all States, in cooperation with the International Maritime Organization, to actively combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity-building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, for bringing the alleged perpetrators to justice in accordance with international law, and by adopting national legislation,

NOTING ALSO the approval by the Maritime Safety Committee of MSC.1/Circ.1333 and MSC.1/Circ.1334 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships,

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.



RECOGNIZING WITH DEEP CONCERN the grave danger to safety of life at sea, maritime safety, security and the protection of the marine environment arising from acts of piracy and armed robbery against ships,

RECOGNIZING ALSO that the number of acts of piracy and armed robbery against ships continues to increase worldwide,

BEING AWARE that the fight against piracy and armed robbery against ships is often impeded by the absence of effective legislation in some countries for investigating reported cases of piracy and armed robbery against ships,

NOTING the need for capacity-building and technical cooperation in the field of suppression of piracy and armed robbery against ships,

BEING ALSO AWARE that, when arrests are made, some Governments lack the legislative framework and investigative guidelines necessary to ensure the conviction and punishment of those involved in acts of piracy and armed robbery against ships,

RECALLING that the Assembly, at its twenty-second regular session and through resolution A.922(22), adopted the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (“the Code of Practice”) and, at its twenty-fifth session and through resolution A.1002(25), requested as a matter of urgency the Maritime Safety Committee to review and update the Code of Practice taking into account developments and emerging needs,

BEING CONVINCED of the need for an amended Code of Practice to be adopted and promulgated as soon as possible,

BEING ALSO CONVINCED of the need for Governments to cooperate and, as a matter of the highest priority, take all necessary action to prevent and suppress any acts of piracy and armed robbery against ships,

HAVING CONSIDERED the recommendation made by the Maritime Safety Committee at its eighty-sixth session,

1. ADOPTS the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships (“Code of Practice”) set out in the annex to the present resolution;
2. INVITES Governments to cooperate in the interests of safety of life at sea, environmental protection and enhancement of maritime security by increasing their efforts to suppress and prevent acts of piracy and armed robbery against ships;
3. URGES Governments to implement the Code of Practice, to investigate all acts of piracy and armed robbery against ships under their jurisdiction, and to report to the Organization pertinent information on all investigations and prosecutions relating to these acts so as to allow lessons to be learned from the experiences of shipowners, masters and crews who have been subject to attacks, thereby enhancing preventative guidance for others who may find themselves in similar situations in the future;
4. ALSO INVITES Governments to develop, as appropriate, agreements and procedures to facilitate cooperation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;

5. ENCOURAGES Governments to apply the provisions of international instruments aimed at enhancing the safety and security of life at sea and at preventing and suppressing acts of piracy and armed robbery against ships;
6. FURTHER URGES all Governments responsible for ports, anchorages and sea areas off their coasts to inform the Organization of specific advice they have issued on the subject of piracy and armed robbery against ships, for promulgation to ships concerned;
7. REQUESTS the Maritime Safety Committee and the Legal Committee to keep the Code of Practice under review and authorizes them to adopt jointly the necessary amendments to the Code of Practice;
8. REQUESTS FURTHER the Maritime Safety Committee and the Legal Committee to report on action taken in accordance with this resolution to the twenty-seventh regular session of the Assembly;
9. REVOKES resolution A.922(22).

ANNEX

**CODE OF PRACTICE FOR THE INVESTIGATION OF CRIMES
OF PIRACY AND ARMED ROBBERY AGAINST SHIPS**

1 PURPOSE OF THIS DOCUMENT

The purpose of this document is to provide Member States with an *aide-mémoire* to facilitate the investigation of the crimes of piracy and armed robbery against ships.

2 DEFINITIONS

For the purpose of this Code:

2.1 “Piracy” means an act defined in article 101 of the United Nations Convention on the Law of the Sea (UNCLOS).*

2.2 “Armed robbery against ships” means any of the following acts:

- .1 any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea;
- .2 any act of inciting or of intentionally facilitating an act described above.

2.3 “Investigators” means those people appointed by the relevant State(s) to investigate an act of piracy or armed robbery against a ship, after the event has occurred.

2.4 “Initial responders” means those people who are appointed by the relevant State(s) to intervene in an act of piracy or armed robbery against a ship, during the event.

* The following definition of piracy is contained in article 101 of the United Nations Convention on the Law of the Sea:

“Piracy consists of any of the following acts:

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

3 PRIOR CONSIDERATIONS

LEGISLATION

Apprehension and prosecution

3.1 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences. States are furthermore encouraged to take the necessary national legislative, judicial and law enforcement actions as to be able to receive, prosecute or extradite any pirates or suspected pirates and armed robbers arrested by warships or military aircraft or other ships or aircraft clearly marked and identifiable as being on government service. States should take into consideration appropriate penalties when drafting legislation on piracy.

3.2 States are encouraged to implement the provisions of UNCLOS, the Convention for the Suppression of Unlawful Acts Against the Safety of Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988.

Action by coastal/port States

3.3 To encourage masters to report all incidents of piracy and armed robbery against ships, coastal/port States should make every endeavour to ensure that these masters and their ships will not be unduly delayed and that the ship will not be burdened with additional costs related to such reporting.

Agreements or arrangements for investigations

3.4 Article 100 of UNCLOS requires all States to cooperate to the fullest possible extent in the repression of piracy.

3.4.1 Coastal States are encouraged to cooperate to the fullest possible extent in the investigation of armed robbery incidents and attempts, together with other interested States such as the flag State, and, where appropriate, to enter into appropriate bilateral or multilateral agreements to facilitate such investigations and the prosecution of the perpetrators.

3.4.2 In addition, States are encouraged to cooperate to the fullest possible extent in the investigation of acts or attempted acts of piracy and to enter into bilateral or multilateral agreements with other interested States such as the flag State or the coastal State so as to facilitate such investigations and the prosecution of the perpetrators.

4 TRAINING OF INVESTIGATORS

4.1 Training of investigators should cover the primary purposes of an investigation:

- .1 In any cases where persons on board have been abducted or have been held hostage, the primary objective of any law enforcement operation or investigation must be their safe release. Their rescue and safety should take precedence over all other considerations.

- .2 Arrest of offenders.
- .3 Securing of evidence, especially if an examination by experts is needed.
- .4 Dissemination of information which may help prevent other offences.
- .5 Recovery of property stolen.
- .6 Cooperation with the authority responsible for dealing with any particular incident.
- .7 Gathering and assessing related information from all available sources.

4.2 Investigators should be trained and experienced in conventional criminal investigative techniques, and should be as familiar as possible with a ship environment. Maritime knowledge will, of course, be an advantage, and access to persons with knowledge of maritime procedures useful, but it is investigative skills which are vital.

4.3 Written procedures in the national language on how to conduct an investigation could be useful. Such procedures should be updated and adjusted in light of experiences gained and with due regard for national legislation.

4.4 Trainers may wish to emphasize that offenders could still be at the scene of the crime when investigators arrive on scene.

4.5 Investigators should be trained how to handle persons who have experienced very stressful situations. Learning techniques on how to question persons suffering from post-traumatic stress could prove useful.

5 INVESTIGATIVE STRATEGY

5.1 It is essential that investigators should have demonstrated criminal investigation skills and competencies, as well as maritime knowledge/experience. Offenders are ultimately land-based, and it is likely that it is on land that they will be most vulnerable to detection. Associates may be prepared to give information against them, for example, and it is there that they will be spending the proceeds of their crime. It is also probable that offenders will be involved in other offences such as smuggling irregular immigrants, and useful intelligence may be lost if investigators are too compartmentalized in their approach.

5.2 Conventional detective methods offer the best chance of identifying and apprehending pirates and perpetrators of armed robbery.

5.3 It may be appropriate to link anti-piracy measures to anti-smuggling patrols or efforts to prevent illicit traffic in narcotic drugs and psychotropic substances, thus minimizing duplication of effort and saving resources. Wherever possible, an inter-agency approach to investigation should be adopted.

Overall management/other liaison/cooperation

5.4 For the purpose of enhancing the capacity of States to combat piracy and armed robbery against ships, States should endeavour to cooperate on the investigation to the fullest possible extent.

5.5 Maritime trade, being of an international nature, will bring into play various legal/boundary issues. While conducting investigations all States which have an interest should fully cooperate with those conducting the investigations.

5.6 It is important to identify the person and/or organization in charge of an investigation. Confusion or delay in the early stages will at best result in delayed investigative opportunities and loss of evidence. At worst, it may increase the danger to any member of the crew held captive by the offenders, possibly resulting in loss of life or injury which could have been avoided.

5.7 Recognition should be given to the different national interests that may be involved in each case, including: flag State of the ship; country in whose territorial waters the attack took place; country of suspected origin of the perpetrators; country of nationality of persons on board; country of ownership of cargo; and country in which the crime was committed. In cases of piracy, the flag State of the ship should take lead responsibility, and in cases of armed robbery the lead should be taken by the State in whose territorial waters the attack took place. In all cases it should be recognized that other States will have legitimate interests, and therefore liaison and cooperation between them is vital to a successful investigation and apprehension of the perpetrator.

5.8 The shipowner or company should be informed of the attack and the plan for the investigation.

5.9 It is important to involve relevant intergovernmental organizations at an early stage, where appropriate, in order to take account of the possibility that transnational organized crime may be involved and, where appropriate, to provide related information to non-governmental organizations dealing with various forms of maritime crime or fraud.

5.10 If, in the course of the investigation, there is an unavoidable need to change the investigators in charge, a full debriefing should take place.

6 DEALING WITH AN INITIAL REPORT

When information is received that a ship is under attack, or a recently committed major offence is reported and the ship is accessible, initial responders and investigators should attend without delay. The responsibilities of those who first attend crime scenes are the following:

Preservation of life

- .1 Secure medical treatment for all persons injured and advise the crew, if the situation warrants, that the threat no longer exists and the crew is safe.

Prevention of the escape of offenders

- .2 Be alert to the possibility that, in some circumstances, offenders may still be in the vicinity and advise the crew accordingly.

Warnings to other ships

- .3 Whenever practicable, issue warnings to other ships in the vicinity which may be vulnerable to attack.

Protection of crime scenes

- .4 Recovery of forensic material from a crime scene has the potential to provide evidence to identify offenders. Equally, interpretation of what happened at the scene will help investigators determine the outcome of the investigation. It is therefore vital that crime scenes be protected until appropriately qualified personnel arrive to examine them. This point should be fully understood by the master, crew and shipowner of any ship involved.
- .5 The initial phases of the law-enforcement and emergency services' response present the greatest risk of scene contamination. Personnel coordinating the law enforcement response should be aware of the risk of contamination and advise persons attending scenes, including other law enforcement officials and naval personnel, accordingly.
- .6 The authorities in the country with lead responsibility for investigating any crime should be informed of the details of the incident and given the opportunity to conduct an investigation into it. Any evidence, details of action taken, etc., should be passed to the State with the lead responsibility.

Securing evidence

- .7 Focused questioning at the crime scene may lead to information which, by being rapidly passed to all appropriate authorities, could lead to the identification or arrest of the offenders, e.g., description of offenders, description of ship and direction in which the ship was last seen heading.
- .8 Law enforcement officials first attending a scene must appreciate the importance of their role in gathering and passing on as quickly as possible relevant evidence, even if the offenders have escaped. Mistakes or omissions at the outset may have serious implications for the subsequent investigation.
- .9 Investigators should bear in mind that recovery of property during the investigation is important, as it may become evidence in the event of any prosecution.

7 INVESTIGATION**Proportionality**

The course of an investigation will depend to a large extent on the circumstances of the offence. In this regard the investigating agency will wish to take account of the "seriousness" of the incident. This can range from theft of property to hostage-taking and ultimately to loss of life. Consequently, the action to be pursued should be proportionate to the crime committed and consistent with the laws that were violated. The following considerations will, however, be common to all piracy and armed robbery investigations:

Establishing and recording all relevant facts

- .1 All relevant facts should be recorded in a systematic way. Most law enforcement agencies use multi-purpose crime reporting forms, but officers dealing with offences at sea should be sure to include the additional information which may subsequently prove essential in legal proceedings in these cases, e.g., weather, sea state, position, direction of travel and speed of the ship, a detailed description of the ship and so forth.
- .2 Photographs and videotapes taken of and on a ship will help investigators and witnesses to explain subsequently what happened.
- .3 Investigators should bear in mind that the laws governing offences committed at sea allow, in some circumstances, for legal proceedings in countries other than those where the investigators are based. Investigations should therefore be sufficiently comprehensive and detailed to make it possible to explain what happened to courts other than the investigators' own, possibly several years after the offences have been committed. The *modus operandi* of investigators should be described in the investigation report.

Recording individual witness accounts

- .4 These should be recorded in a formal manner acceptable for use in subsequent court proceedings. Witness accounts will form the basis of any prosecution case and untrained personnel should not be used for this important task.
- .5 Witness accounts should be recorded at the earliest opportunity, as memories fade and accounts may be influenced by contact with other witnesses and media reports.
- .6 If witnesses speak languages different from that of the investigators, as will happen frequently in piracy and armed robbery cases, their accounts should be recorded in their own languages and with the aid of properly qualified interpreters when this can be done within a reasonable timescale. Investigators should be aware that an account signed by a witness, or indeed a suspect, in a language foreign to that person may be valueless in court proceedings. It is important, therefore, to establish the legal requirements for the validity of evidence in each case.
- .7 Experience has proved that witnesses in piracy and armed robbery cases, particularly those who have been subjected to violence, are likely to be exceptionally distressed. Their experience will have been all the worse if they have been held captive for a long period and/or been in fear of death, and the situation will be exacerbated still further if they are far from home. Investigators should bear these factors in mind and deal with the witnesses sympathetically and patiently if they are to elicit all relevant facts.
- .8 Witnesses should be interviewed separately from each other, when this can be done within a reasonable timescale, in order to protect the integrity of the individual accounts of the incident.

- .9 Investigators should focus on obtaining specific descriptions of the individuals involved in the piracy incident, particularly noting any distinguishing characteristics of the “leader”.
- .10 If more than one offender is involved, investigators should attempt to obtain specific information from the witnesses about the actions of each individual offender, rather than be satisfied with general statements about what “the hijackers” or “the pirates” did on the ship.

Detailed forensic examination of scenes

- .11 Detailed forensic examination of the crime scene, particularly in serious cases including cases of homicide, offers investigators the best opportunities of establishing crucial information and evidence which may ultimately result in the case being solved.
- .12 Investigators should secure particular objects or places on the ship where the offenders may have left fingerprints or other latent prints of value.
- .13 Investigators would be well advised to take advantage of the full range of specialist services available to them.
- .14 Investigators should take into consideration the need not to detain ships or impede work on board longer than is strictly necessary to carry out the forensic examination.

Searching intelligence databases

- .15 Crimes should not be treated in isolation.
- .16 Offenders may be responsible for similar crimes not yet solved, and when the evidence from those cases is accumulated and considered, opportunities of identifying offenders may emerge. Appropriate databases, including those held by organizations such as the Information Sharing Centre established in Singapore under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia or the International Maritime Bureau established in Kuala Lumpur, Malaysia by the International Chamber of Commerce, should be searched to identify any series of offences. However, usage of private databases has to be compatible with the laws governing the investigation. Consideration should be given to contacting Interpol or neighbouring coastal States in case they have any information on the offenders.
- .17 Equally, offenders may have previous convictions, the details of which could link them to crimes under investigation.

Distribution of information and intelligence to appropriate agencies

- .18 An important product of an effective investigation, even if it does not lead to any arrests, should be the generation of intelligence, and systems should be in place to ensure that potentially useful intelligence is disseminated to all appropriate parties. These might include law enforcement agencies, naval authorities, coastguards, harbour masters and others that might need it and could act on it according to their national regulations.

- .19 Lessons learned from the investigation, even if it does not lead to any arrest, should be reported to the Organization and made available by the Organization to Member States, intergovernmental organizations and non-governmental organizations with consultative status in order to enable all interested parties to benefit from the information obtained during the investigation.
 - .20 If information gathered during an investigation leaves the State in charge of the investigation with reason to believe that an offence of piracy or armed robbery might have been committed elsewhere or might be committed at a later time, that State should furnish, as promptly as possible, and in accordance with its national legislation, any relevant information in its possession to States which it regards as having established jurisdiction over the offences of piracy and armed robbery in accordance with paragraph 3.1 of this Code.
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ASSEMBLY
26th session
Agenda item 10

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Resolution A.1026(26)

**Adopted on 2 December 2009
(Agenda item 10)**

**PIRACY¹ AND ARMED ROBBERY AGAINST SHIPS²
IN WATERS OFF THE COAST OF SOMALIA**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECALLING ALSO article 1 of the Charter of the United Nations, which includes, among the purposes of the United Nations, the maintenance of international peace and security,

¹ “Piracy” is defined in article 101 of the United Nations Convention on the Law of the Sea as follows:

“Piracy consists of any of the following acts:

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

² “Armed robbery against ships” is defined in the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships (resolution A1025(26), Annex, paragraph 2.2), as follows:

“Armed robbery against ships means any of the following acts:

- .1 any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of “piracy”, committed for private ends and directed against a ship or against persons or property on board such ship, within a State’s internal waters, archipelagic waters and territorial sea;
- .2 any act of inciting or of intentionally facilitating an act described above.”

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ALSO RECALLING article 100 of the United Nations Convention on the Law of the Sea (“UNCLOS”), which requires all States to co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State,

RECALLING FURTHER article 105 of UNCLOS which, *inter alia*, provides that, on the high seas or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates and arrest the persons and seize the property on board,

BEARING IN MIND article 110 of UNCLOS which, *inter alia*, enables warships, military aircraft, or other duly authorized ships or aircraft clearly marked and identifiable as being on government service to board any ship, other than a ship entitled to complete immunity in accordance with article 95 and article 96 of UNCLOS, when there are reasonable grounds for suspecting that the ship is, *inter alia*, engaged in piracy,

REAFFIRMING resolution A.545(13) on “Measures to prevent acts of piracy and armed robbery against ships”, adopted on 17 November 1983; resolution A.683(17) on “Prevention and suppression of acts of piracy and armed robbery against ships”, adopted on 6 November 1991; and resolution A.738(18) on “Measures to prevent and suppress piracy and armed robbery against ships”, adopted on 4 November 1993,

BEARING IN MIND ALSO resolution A.1002(25) on “Piracy and armed robbery against ships in waters off the coast of Somalia” through which the Assembly has recommended a number of actions to be taken by Governments, the Transitional Federal Government of Somalia, the Council, the Maritime Safety Committee and the Secretary-General, with a view to bringing the situation under control,

NOTING WITH APPRECIATION the actions taken by the Security Council of the United Nations and in particular the adoption, under the provisions of chapter VII of the Charter of the United Nations, of Security Council resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), and 1897 (2009) in relation to piracy and armed robbery in waters off the coast of Somalia,

NOTING that the General Assembly of the United Nations, by resolution A/RES/63/111 on “Oceans and the law of the sea”, has recommended a number of actions to be taken by each State and through co-operation, coordination and collaboration at a bilateral, regional or global level with a view to repressing piracy and armed robbery against ships, in particular in waters off the coast of Somalia and, *inter alia*, has urged States to implement the related provisions of UNCLOS, as well as the provisions of resolution A.1002(25),

BEARING IN MIND resolution A. 1025(26), through which the Assembly adopted the *Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships* (“the Code”) and which, *inter alia*, urges Governments to take action, as set out in the Code, to investigate all acts of piracy and armed robbery against ships occurring in areas or on board ships under their jurisdiction; and to report to the Organization pertinent information on all investigations and prosecutions concerning these acts,

ALSO NOTING WITH APPRECIATION the outcomes of the “Subregional meeting on maritime security, piracy and armed robbery against ships for Western Indian Ocean, Gulf of Aden and Red Sea States” which was convened by IMO and held in Djibouti from 26 to 29 January 2009 and in particular the adoption of the *Code of Conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden* (“the Djibouti Code of Conduct”),

WELCOMING the establishment of the IMO Djibouti Code of Conduct Trust Fund and EXPRESSING thanks and appreciation to the Government of Japan for its generous donation thereto; as well as to the Governments of the Netherlands, Norway and the Republic of Korea for their pledges to financially support capacity-building activities aimed at implementing the provisions of the Djibouti Code of Conduct,

NOTING that the Maritime Safety Committee, in response to the provisions of resolution A.1002(25) and the discussions of the issue within the Security Council, has approved revised recommendations³ to Governments and guidance⁴ to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships, including specific advice⁵ developed by the industry in relation to the situation in waters off the coast of Somalia,

NOTING ALSO that the Sub-Committee on Safety of Navigation has reviewed the details, and recommended⁶ the use by all ships transiting the Gulf of Aden, of the Internationally Recommended Transit Corridor in the Gulf of Aden, as it may be amended from time to time by those who established it,

NOTING WITH SATISFACTION the actions taken by the Maritime Safety Committee, the Technical Co-operation Committee, the Council and the Secretary-General in relation to the suppression of piracy and armed robbery in waters off the coast of Somalia,

NOTING FURTHER the information on developments that have taken place since its last session and the contribution made by various entities to repress piracy off the coast of Somalia,

BEING AWARE that the Security Council, through resolution 1425 (2002), has stipulated that the arms embargo on Somalia prohibit the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities,

³ Refer to MSC.1/Circ.1333 on Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships, as it may be revised.

⁴ Refer to MSC.1/Circ.1334 on Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships, as it may be revised.

⁵ Refer to MSC.1/Circ.1332 on Piracy and armed robbery against ships in waters off the coast of Somalia and MSC.1/Circ.1335 on Piracy and armed robbery against ships in waters off the coast of Somalia – Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia developed by the industry, as it may be revised.

⁶ SN.1/Circ.281 on Information on Internationally Recommended Transit corridor (IRTC) for ships transiting the Gulf of Aden, as it may be revised.

NOTING that the Security Council, in resolution 1853 (2008), decided, *inter alia*, to extend the mandate of the Monitoring Group⁷ on Somalia and directed it to continue to investigate, in coordination with relevant international agencies, all activities, including in the financial, maritime and other sectors, which generate revenues used to commit violations of the embargo on all delivery of weapons and military equipment to Somalia, which the Security Council had established by resolution 733 (1992),

NOTING WITH GREAT CONCERN, that incidents of piracy and armed robbery against ships continue to occur in waters off the coast of Somalia, some of which have reportedly taken place more than 500 nautical miles from the nearest land,

MINDFUL OF the grave danger to life and the serious risks to navigational safety and the environment to which such incidents continue to give rise,

BEING AWARE of the serious safety and security concerns that the shipping industry and the seafaring community continue to have as a result of the attacks against ships sailing in waters off the coast of Somalia referred to above,

BEING CONCERNED at the negative impact that such attacks continue to have on the prompt and effective delivery of food aid and of other humanitarian assistance to Somalia and the serious threat that this poses to the health and well-being of the people of Somalia,

RECOGNIZING that the particular character of the present situation in Somalia requires an exceptional response in order to safeguard the interests of the maritime community making use of the waters off the coast of Somalia,

RECOGNIZING ALSO the strategic importance of the navigational routes along the coast of Somalia for regional and global seaborne trade and the need to ensure that they remain safe at all times,

RECOGNIZING FURTHER, in view of the continuing situation in Somalia giving rise to grave concern, the need for the continued implementation of appropriate measures to protect ships sailing in waters off the coast of Somalia from piracy and armed robbery attacks,

RESPECTING FULLY the sovereignty, sovereign rights, jurisdiction and territorial integrity of Somalia and the relevant provisions of international law, in particular UNCLOS,

HAVING CONSIDERED the recommendations of the Council, at its twenty-fifth extraordinary session, in the light of the prevailing situation in the waters off the coast of Somalia,

1. CONDEMNS AND DEPLORES all acts of piracy and armed robbery against ships irrespective of where such acts have occurred or may occur;
2. APPEALS to all parties which may be able to assist to take action, within the provisions of international law, to ensure that:

⁷ The Monitoring Group on Somalia established by the Security Council through resolution 1519 (2003) and its mandate was renewed, expanded and extended through resolutions 1558 (2004), 1587 (2005), 1630 (2005), 1676 (2006), 1724 (2006), 1766 (2007), 1772 (2007), 1801 (2008), 1811 (2008), 1844 (2008) and 1853 (2008).

- (a) all acts or attempted acts of piracy and armed robbery against ships are terminated forthwith and any plans for committing such acts are abandoned; and
- (b) any hijacked ships, seafarers serving in them and any other persons on board are immediately and unconditionally released and that no harm is caused to them;

3. EXPRESSES DEEP APPRECIATION FOR:

- (a) the work done by naval vessels and other military assets towards repressing piracy and armed robbery against ships in the Gulf of Aden and elsewhere off the coast of Somalia and in escorting ships carrying humanitarian aid to Somalia;
- (b) the efforts of all those who have responded to calls from, or have rendered assistance to, ships under attack in waters off the coast of Somalia;
- (c) the work done by international and regional organizations in warning parties concerned about incidents occurring in waters off the coast of Somalia;
- (d) the efforts made by organizations in the industry to raise awareness among, and provide guidance for, their respective memberships and to report to the Organization in relation to this issue; and
- (e) the efforts of those who have rendered assistance in resolving cases where ships have been hijacked and seafarers have been held hostage;
- (f) the arrangements which have been put in place by States of the region for receiving ashore and prosecuting alleged offenders captured by naval ships operating in the area or for providing support facilities to naval ships and other military assets operating in the area, in particular the efforts by Kenya, Djibouti and Yemen;
- (g) the establishment of the Contact Group on Piracy Off the Coast of Somalia as an international co-operation mechanism to act as a common point of contact between and among States and regional and international organizations on all aspects of combating piracy, in line with the provisions of Security Council resolutions 1851 (2008) and 1897 (2009);

4. STRONGLY URGES Governments to increase their efforts to prevent and suppress, within the provisions of international law, acts of piracy and armed robbery against ships irrespective of where such acts occur and, in particular, to co-operate with other Governments and international organizations in the interests of the rule of law, safety of life at sea and environmental protection, in relation to acts occurring or likely to occur in the waters off the coast of Somalia;

5. ALSO STRONGLY URGES Governments which have not already done so to promptly:
- (a) issue, taking into account the recommendations and guidance developed by the Organization⁸ and the industry⁹, to ships entitled to fly their flag, as necessary, specific advice and guidance on any appropriate additional precautionary measures ships may need to put in place when sailing in waters off the coast of Somalia to protect themselves from attack, including, *inter alia*, areas to be avoided;
 - (b) recommend¹⁰ to ships entitled to fly their flag to follow, when navigating through the Gulf of Aden, the Internationally Recommended Transit Corridor established therein as well as the advice and guidance provided by the relevant entities;
 - (c) issue, taking into account the recommendations and guidance developed by the Organization¹¹ and the industry¹², to ships entitled to fly their flag, as necessary, advice and guidance on any measures or actions they may need to take when they are under attack, or threat of attack, while sailing in waters off the coast of Somalia and in the Gulf of Aden;
 - (d) encourage ships entitled to fly their flag to ensure that information¹³ on attempted attacks or on acts of piracy or armed robbery committed while they are sailing in waters off the coast of Somalia is promptly conveyed to the flag State, the nearby coastal States, the nearest most appropriate Rescue Coordination Centre and the security forces which operate naval and other military assets in the area¹⁴;
 - (e) provide a point of contact through which ships entitled to fly their flag may request advice or assistance when sailing in waters off the coast of Somalia and to which such ships can report, in addition to reporting to the security forces which operate naval and other military assets in the area¹⁵, on any security concerns about other ships, movements or communications in the area or attempted attacks or acts of piracy or armed robbery;
 - (f) bring to the attention of the Secretary-General information¹⁶ on any attempted attacks or acts of piracy or armed robbery committed against ships entitled to fly their flag while they are sailing in waters off the coast of Somalia, to enable the Secretary-General to take appropriate action in the circumstances;

⁸ Refer to MSC.1/Circ.1333 and 1334, as they may be revised.

⁹ Refer to MSC.1/Circ.1332 and 1335, as they may be revised.

¹⁰ SN.1/Circ.281 on Information on Internationally Recommended Transit corridor (IRTC) for ships transiting the Gulf of Aden, as it may be revised.

¹¹ Refer to MSC.1/Circ.1333 and 1334, as they may be revised.

¹² Refer to MSC.1/Circ.1332 and 1335, as they may be revised.

¹³ Refer to appendix 5 of the annex to MSC.1/Circ.1334 and to annex C to the annex to MSC.1/Circ.1335, as they may be revised.

¹⁴ Refer to MSC.1/Circ.1302 on Piracy and armed robbery against ships in waters off the coast of Somalia, as it may be revised.

¹⁵ Refer to MSC.1/Circ.1302.

¹⁶ Refer to appendix 5 of the annex to MSC.1/Circ.1333 and appendix 6 of the annex to MSC.1/Circ.1334, as they may be revised.

- (g) encourage ships entitled to fly their flag to implement expeditiously, for the ship's protection and for the protection of other ships in the vicinity, any measure or advice the nearby coastal States or any other State or competent authority may have provided, including advice or guidance provided by warships or other naval or military assets which may be operating in the area;
- (h) establish, as necessary, plans and procedures to assist owners, managers and operators of ships entitled to fly their flag in the speedy resolution of hijacking cases occurring in the waters off the coast of Somalia;
- (i) establish, as necessary, plans and procedures for putting in place measures or taking appropriate actions with a view to ensuring that any attacked or hijacked ship entitled to fly their flag, and its shipboard personnel, continue to be fit to trade and work on board, respectively, or issue, as necessary, to ships entitled to fly their flag, advice and guidance on any measures or actions they may need to take to this end;
- (j) establish, as necessary, plans and procedures to assist those who have been held hostage, when such assistance is requested;
- (k) investigate all acts or attempted acts of piracy and armed robbery occurring in the waters off the coast of Somalia against ships entitled to fly their flag or, if applicable, with the consent of other States having jurisdiction, collect related evidence when the shipboard personnel involved in such cases are national, citizens or resident, and report to the Organization any pertinent information and make available any related evidence to those investigating such cases;
- (l) take all necessary legislative, judicial and law-enforcement action so as to be able, subject to national law, to receive, prosecute or extradite any pirates or suspected pirates and armed robbers captured by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service; and
- (m) conclude, with respect to ships entitled to fly their flag employed by the World Food Programme for the delivery of humanitarian aid to Somalia, where such ships are to be escorted by warships or military aircraft, or to other ships or aircraft clearly marked and identifiable as being on government service, taking into account operative paragraph 7(e), any necessary agreements with the State(s) concerned;

6. REQUESTS Governments to instruct national rescue coordination centres or other agencies involved, on receipt of a report of an attack, to promptly initiate the transmission of relevant advice and warnings through the World-Wide Navigation Warning Service, the International SafetyNet Service or otherwise, for ships sailing in the waters off the coast of Somalia, so as to warn shipping in the immediate area of the attack;

7. REQUESTS, once more, the Transitional Federal Government of Somalia to:

- (a) take any action it deems necessary in the circumstances to prevent and suppress acts of piracy and armed robbery against ships originating from within Somalia and thus deprive them of the possibility of using its coastline as a safe haven from which to launch their operations;

- (b) take appropriate action to ensure that all ships seized by pirates and armed robbers and brought into waters within its territory are released promptly and that ships sailing off the coast of Somalia do not henceforth become victims of acts of piracy or armed robbery;
- (c) take appropriate action to ensure the unconditional delivery of food and water supplies to ships seized by pirates and armed robbers and brought into waters within its territory, as well as the unconditional delivery of humanitarian and medical aid to the shipboard personnel;
- (d) advise the Security Council that it continues to consent to warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, entering its territorial sea to engage in operations against pirates or suspected pirates and armed robbers;
- (e) also advise the Security Council of its readiness to continue to conclude, taking into account operative paragraph 5(m), any necessary agreements so as to enable warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service, to escort ships employed by the World Food Programme which are delivering humanitarian aid to Somalia or leaving Somali ports after having discharged their cargo; and
- (f) promote, for those Somalis seeking to make their living from working at sea, legitimate maritime careers and make use of the available assistance in this respect;

8. CALLS UPON the Governments of the region, if they have not already done so, to sign the Djibouti Code of Conduct; to progress and complete the implementation of the provisions of the Djibouti Code of Conduct as soon as possible;

9. CALLS UPON all other Governments, in co-operation with the Organization and as requested by Governments of the region, to assist these efforts and to consider making financial contributions to the IMO Djibouti Code of Conduct Trust Fund;

10. REQUESTS the Secretary-General to:

- (a) transmit a copy of the present resolution to the Secretary-General of the United Nations for consideration and any further action he may deem appropriate; and to express to him and, through him, to the Security Council the gratitude and appreciation of IMO for the actions he and the Security Council have taken on this issue to date;
- (b) continue monitoring the situation in relation to threats to ships sailing in waters off the coast of Somalia and report to the Council, the Maritime Safety Committee, the Legal Committee and the Technical Co-operation Committee, as and when appropriate, on developments and any further actions which may be required;
- (c) continue the co-operation with the Monitoring Group on Somalia;

- (d) continue to consult with interested Governments and organizations in establishing a process and means by which technical assistance can be provided for Somalia and nearby coastal States to enhance the capacity of these States to give effect to the present resolution, as appropriate;
- (e) undertake, as and when necessary, steps for promoting the co-operation, coordination and avoiding duplication of efforts, among the States and organizations providing or seeking to provide assistance to the States in the region, so as to enable them individually and collectively to engage actively in the repression of piracy and armed robbery against ships; and
- (f) undertake, as and when necessary, any other actions which would promote the implementation of the provisions of this resolution or would be conducive to the efforts of those seeking to implement its provisions;

11. REQUESTS the Maritime Safety Committee to review the provisions of this resolution as well as any salient provisions of related resolutions which have been or may be adopted by the Security Council in this respect and to develop, where necessary, guidance and recommendations so as to enable Member Governments and the shipping industry to implement its provisions, taking into account current and emerging trends and practices;

12. REQUESTS the Legal Committee and the Technical Co-operation Committee to assist the Maritime Safety Committee, as appropriate;

13. REQUESTS the Council to continue to monitor the situation in relation to threats to ships sailing in waters off the coast of Somalia and in the Gulf of Aden; and to initiate any actions which it may deem necessary, including co-ordinating the work of the competent Committees of the Organization to ensure the protection of seafarers and ships sailing in waters off the coast of Somalia and in the Gulf of Aden and to ensure appropriate co-operation with other organizations and entities tasked with relevant activities;

14. REVOKES resolution A.1002(25).

INTERNATIONAL MARITIME ORGANIZATION



IMO

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MSC/Circ.1073
10 June 2003

T2-NAVSEC/11

MEASURES TO ENHANCE MARITIME SECURITY

DIRECTIVES FOR MARITIME RESCUE CO-ORDINATION CENTRES (MRCCS) ON ACTS OF VIOLENCE AGAINST SHIPS

- 1 The Maritime Safety Committee, at its seventy-second session (17 to 26 May 2000), approved Directives for Maritime Rescue Co-ordination Centres (MRCCs), (MSC/Circ.967) which, in most incidents of piracy and armed robbery against ships, are the first point of contact between the ship and coastal authorities concerned, following the Master's decision to request assistance.
- 2 The Maritime Safety Committee, at its seventy-seventh session (28 May to 6 June 2003), modified the text of the exiting Directives to include provisions for the handling by MRCCs of alerts received from ships in response to terrorist acts and other security incidents.
- 3 The revised text of the Directives is given at annex.
- 4 Member Governments and international organizations are recommended to bring this circular to the attention of their national MRCCs, shipowners, ship operators, shipping companies, shipmasters and crews.
- 5 This circular supersedes MSC/Circ.967 dated 6 June 2000.

* * *

ANNEX

DIRECTIVES FOR MARITIME RESCUE CO-ORDINATION CENTRES (MRCCs)**1 Definitions**

“Act of violence”: For the purposes of this circular, the phrases “act of violence” and “acts of violence against ships” encompass acts of piracy, acts of armed robbery against ships and any other security incident directed against a ship which does not fall into one of the preceding categories. For the purposes of this circular, the “ship” includes all persons on board.

“Piracy” The 1982 United Nations Convention on the Law of the Sea (UNCLOS) (article 101) defines piracy as follows:

“Piracy consists of any of the following acts:

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

“Security Forces Authority”: For the purposes of this circular, and in accordance with the organization of and the decisions by the national Governments, the SFA (Security Forces Authority) is generally a national or regional command of a public agency such as the Navy, Coast Guard or Police in charge of providing the response to security incidents.

“Security incident”. SOLAS 1974, as amended, chapter XI-2 defines a security incident as “any suspicious act or circumstance threatening the security of a ship, including a mobile offshore drilling unit and a high speed craft, or of a port facility or of any ship/port interface or any ship to ship activity”.

“Overt Security Alert”: For the purposes of this circular, an overt security alert uses a communication channel or method which makes no attempt to deny knowledge of its activation and use, for example VHF broadcast.

“Covert Security Alert”: For the purposes of this circular, a covert security alert uses a communication channel or method designed to deny knowledge of its activation to perpetrators of the acts of violence, for example a ship security alert system as detailed in the ISPS Code.

2 General

2.1 While all Governments may grant their maritime rescue co-ordination centre(s) (MRCCs)¹, in addition to those of search and rescue (SAR), powers in the application of national regulations and instructions, the response to acts of violence against ships is the only one of these extensions that forms part of the IMO regulations². In this way, MRCCs are incorporated in the organization that Governments have to set up to deal with acts of violence against ships, which may occur suddenly and anywhere.

2.2 For these reasons, this circular has been drawn up especially for the MRCCs², taking into consideration their own situations and normal activities. It should be considered in connection with guidance on maritime security given in chapter XI-2 of the SOLAS Convention, and the International Ship and Port Facility (ISPS) Code, and guidance on piracy and armed robbery against ships given in MSC/Circ.622/Rev.1 for Governments, and MSC Circ.623/Rev.1 aimed at shipping companies, masters and crews.

2.3 MRCCs can expect to receive a ship security alert of an act of violence against a ship in a number of ways. This ship security alert can come directly from the ship or via an alternative source. These alternative sources include, but are not limited to, other ships, an adjacent MRCC, the national SFA, ship operators and flag State administrations.

2.4 The immediate MRCC response to an alert should be determined by whether the alert received by the MRCC is determined to be an overt alert or a covert alert. Determining whether the alert is overt or covert is a critical factor as the response for each is extremely different as shown below:

- .1 Overt Security Alert: For an overt alert communication with the ship or other ships in the vicinity of the ship under threat or attack need not be delayed or disguised, for example a Master of a ship may use an overt alarm to discourage an attack;
- .2 Covert Security Alert: For a covert alert **no attempt is to be made** to contact the ship originating the alert and no communications are to be made with other ships in the vicinity of the ship under threat. A Master of a ship may use a covert alarm to deny those posing the threat or making an attack the knowledge that an alert has been made; and
- .3 Unspecified Security Alert: A security alert is deemed to be unspecified when:
 - .1 it is unclear whether the alert is overt or covert; or
 - .2 the initial alert is overt and this is subsequently superseded by a declaration that it is a covert alert.

Detailed guidance for these three situations is provided in the operating instructions below.

¹ Certain missions, which MRCCs have to carry out, in addition to search and rescue, are however set out in chapter 7 of the IAMSAR Manual, volume II

² All the aspects laid down for the MRCC in this circular should be taken as valid for the joint rescue co-ordination centres (JRCC) and, if the national authority so decides, for the maritime rescue sub-centres (MRSC) and joint rescue sub-centres.

2.5 Bilateral agreements between States may be reached for the application of co-operation procedures that might differ from those set out above.

3 Preparatory measures

It is essential that MRCCs are in all respects prepared for situations involving acts of violence against ships. Preparatory measures taken by each MRCC must include actions to:

- .1 ensure that the MRCC is in possession of appropriate national instructions giving details of the Security Force Authority (SFA) responsible for the operational application of contingency plans (counter-measures) to deal with situations involving acts of violence against ships;
- .2 establish fast and effective methods of communication for use between the MRCC and the SFA in question. These methods of communication should be tested on a regular basis;
- .3 If appropriate and feasible, repeat points 3.1 and 3.2 above for each State whose coastal waters are included in the search and rescue region (SRR) of the MRCC;
- .4 ensure the MRCC has clear written procedures and instructions on the actions to be taken by operations personnel when dealing with an act of violence against a ship;
- .5 establish who is responsible for notifying other Administrations and Contracting Governments of the act of violence in accordance with SOLAS 1974, as amended, chapter XI-2, regulations 6 and 7; and
- .6 train the MRCC personnel in:
 - .1 the risks of an act of violence against a ship in the SRR covered by the MRCC in particular and the phenomenon of acts of violence against ships in general;
 - .2 the use of the MRCC procedures and instructions relating to acts of violence against ships;
 - .3 the communications regarding attacks or threats of attack that the MRCC might receive; and
 - .4 the reports to be sent in the event of an alert and all other actions to be taken.

4 Operating measures

4.1 Action to be taken by MRCCs upon receipt of all types of security alerts:

- .1 If the position of the incident is within the SRR of the MRCC, the MRCC should immediately inform the appropriate SFA, using the method of communications set out in 3.2. In addition, if the position is close to the boundaries of the SRR, the MRCC should also inform the appropriate neighbouring MRCC; and

- .2 If the position of the incident is outside the SRR of the MRCC, the MRCC should relay the alert to the appropriate MRCC using the normal methods of communication among MRCCs for search and rescue operations or other pre-determined discreet inter-MRCC communication channels as appropriate.

4.2 Operating measures for OVERT security alerts

In the event of receiving an overt security alert, in addition to the actions detailed in paragraph 4.1 above MRCCs should:

- .1 maintain contact with the SFA and other parties as detailed in 4.1 above;
- .2 contact the ship to determine if the security alert is real or false and to ascertain the nature of the current situation;
- .3 if no response is received, assume that the act of violence is ongoing and advise the SFA accordingly;
- .4 determine the most effective way of issuing a security alert warning for the other ships in the vicinity using appropriate systems and procedures² and
- .5 place SAR resources on standby if appropriate. Prior to authorizing their dispatch by the MRCC, the SFA should determine the risk to the SAR assets.

4.3 Operating measures for COVERT security alerts

In the event of receiving a covert security alert, in addition to the actions detailed in paragraph 4.1 above, MRCCs should:

- .1 maintain contact with the SFA and other parties as detailed in 4.1 above;
- .2 under no circumstances should an MRCC receiving a covert security alert acknowledge receipt of the information received. In addition the MRCC must not send any communication or advice to the Master, other persons on board, or ships in the vicinity of the incidents related to that incident unless directed by the SFA;
- .3 place SAR resources on standby if appropriate. Prior to authorizing their dispatch by the MRCC, the SFA should determine the risk to the SAR assets; and
- .4 assist the SFA by providing operational information as requested by the SFA.

4.4 Operating measures for UNSPECIFIED security alerts

Unspecified alerts should be treated as covert in accordance with paragraph 4.3 above.

5 Additional Actions

- 5.1 The MRCC should endeavour to keep the ship's Administration informed of the acts of violence committed against this ship and of their consequences.

² e.g Refer to format and drafting guidance in COMSAR/Circ.15 – Joint IMO/IHO/WMO Manual on Maritime Safety Information (MSI)

5.2 If laid down in the national regulations and instructions, the MRCC may also have to report directly:

- .2.1 to the national authority or authorities empowered to deal with the phenomena concerned, if this authority or these authorities are different from the SFA referred to above; and
- .2.2 to the person or body entrusted with the inquiries into the acts of violence within the meaning of this circular.

5.3 The MRCC may be required to supply additional information to the Administration, if the Administration has an obligation to send a report of events to the Organization.

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Ref. T2-MSS/2.11.4.1

MSC.1/Circ.1302
16 April 2009

PIRACY AND ARMED ROBBERY AGAINST SHIPS IN WATERS OFF THE COAST OF SOMALIA

1 During 2008, most reported acts of piracy and armed robbery against ships in the waters off the coast of Somalia and, in particular, the seizure and attempted seizure of ships for ransom, occurred in the Gulf of Aden. However, since the beginning of this year, there has been a worrying increase in the number of attacks reported off the east coast of Somalia in the Western Indian Ocean, some taking place over 500 nautical miles off that coast.

2 The recent increase in the number of acts of piracy in the waters off the coast of Somalia is considered to be largely due to an improvement in the weather following the end of the monsoon season. The successful efforts of navies in patrolling and disrupting pirate attacks in the Gulf of Aden may also have been a contributory factor in the increase in pirate activity in the Somali Basin and the Western Indian Ocean.

3 In view of the increased number of attacks in the Western Indian Ocean, the International Chamber of Shipping (ICS) released advice to its members, on 15 April 2009, to the effect that, as advised by the Maritime Security Centre Horn of Africa (MSCHOA), shipmasters should not, unless unavoidable, plan their passage within 600 nautical miles of the Somali coast in the Western Indian Ocean (ICS (09)10, copy attached).

4 In view of the current situation, as described above, and the impact any act of piracy and armed robbery may have on human life, the safety of navigation and the environment, Member Governments and international organizations concerned are invited, as a matter of urgency, to advise shipowners, ship operators and managers, shipping companies, shipmasters and all other relevant parties to make further efforts to implement fully the preventive measures provided in:

- .1 MSC/Circ.622/Rev.1 – Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships; and
- .2 MSC/Circ.623/Rev.3 – Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships.

5 Furthermore, Governments and international organizations concerned should, as a matter of urgency, advise shipowners, ship operators and managers, shipping companies, shipmasters and all other relevant parties to:

- .1 accept the advice of MSCHOA and ICS as provided in paragraph 3 above;
- .2 unless operating under national schemes, register the intended movement of their ship with MSCHOA via the website www.mschoa.org;

- .3 unless operating under national schemes, report the navigation route of their ship to the United Kingdom Maritime Trade Operations (UKMTO) Dubai, when navigating through the Gulf of Aden and/or the Western Indian Ocean;
- .4 take prompt action in response to any alerts or guidance issued by MSCHOA, UKMTO Dubai, Maritime Liaison Office (MARLO) Bahrain, the International Maritime Bureau Piracy Reporting Centre (IMB PRC), ALINDIEN (Tel: +33 (0) 4 83 16 10 97 – alindien@free.fr) or any coastal State authority in the region so as to minimize the risk of attack; and
- .5 report any attacks or suspected pirate activity to UKMTO Dubai (Tel: +97 1505523215 – ukmto@eim.ae) or IMB PRC (Tel: +60 320310014 – imbkl@icc-ccs.org / piracy@icc-ccs.org) immediately, with further reports to MSCHOA (opscentre@mschoa.org) and the regional Maritime Rescue Coordination Centre as soon as possible.

6 This circular is issued following consultations between the Secretary-General and the Chairman of the Maritime Safety Committee.

ANNEX

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15 April 2009

To: ALL FULL AND ASSOCIATE MEMBERS ICS(09)10

Copy: All Full and Associate Members (for information)
Marine Committee
Maritime Law Committee
ISF Labour Affairs Committee

PIRACY UPDATE – SHIPS TRANSITTING THE INDIAN OCEAN OFF THE COAST OF SOMALIA

Action required: ICS endorses MSCHOA advice that ships should, unless unavoidable, avoid planning a passage within 600nm of the Somali coast in the Indian Ocean.

The piracy situation off the coast of Somali has changed in recent weeks with successful attacks being conducted much farther East into the Indian Ocean than seen hitherto. The rate of attacks taken through to successful hijacking has also increased.

The problem for ships in the Indian Ocean does differ from the situation in the Gulf of Aden where the protective Group Transit system still operates, under the coordination of MSCHOA. In the Indian Ocean there is not likely to be the same level of warship presence nor at this stage is a group transit approach likely to be appropriate. The MSCHOA website now recommends that, unless unavoidable, **ships keep at least 600 nautical miles from the Somali coastline and when routing north/south consider keeping East of longitude 60E until East of the Seychelles.**

ICS fully endorses this advice and requests members to disseminate it as widely as possible.

ICS is seeking further advice from the military authorities and will keep members updated.

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 Marine Director

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IMO

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Ref. T2-MSS/2.11.4.1

MSC.1/Circ.1332
16 June 2009

PIRACY AND ARMED ROBBERY AGAINST SHIPS IN WATERS OFF THE COAST OF SOMALIA

1 Following adoption of United Nations Security Council resolution 1851 (2008), the Contact Group on Piracy off the coast of Somalia (CGPCS) was established and held its inaugural meeting on 14 January 2009 to facilitate discussion and coordination of actions among States and organizations to suppress piracy off the coast of Somalia. The participants in the CGPCS, *inter alia*, agreed to establish four working groups, one of which (Working Group 3) was to address the strengthening of shipping self-awareness and other capabilities.

2 In order to progress the work of Working Group 3, 11 industry organizations developed the Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia (Best management practices), attached in annex 1.

3 The Maritime Safety Committee (the Committee), at its eighty-sixth session (27 May to 5 June 2009), considering the distinctive nature of the incidents of piracy and armed robbery against ships in waters off the coast of Somalia, and deciding that guidance specific to the area was warranted, endorsed the work of Working Group 3 and agreed to promulgate the Best management practices to all interested parties.

4 The Committee, noting that vessels engaged in fishing in piracy affected areas off the coast of Somalia were particularly vulnerable to attack, also endorsed the additional guidance to vessels engaged in fishing attached in annex 2. This guidance is intended to be read in conjunction with the Best management practices attached in annex 1.

5 Nothing in the Best management practices or in the additional guidance for vessels engaged in fishing should be read as contradicting the Organization's universal guidance on piracy and armed robbery against ships contained in:

- .1 MSC.1/Circ.1333 on Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships;
- .2 MSC.1/Circ.1334 on Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships; and
- .3 resolution A.922(22) on Code of practice for investigation of crimes of piracy and armed robbery against ships,

or subsequent amendments thereto.

6 In considering the guidance in the Best management practices on the use of non-lethal measures to deter boarding by pirates or armed robbers, the Committee stressed that seafarers should not be put at increased risk. With respect to the use of fire-fighting systems, the Committee also recognized that the types and capabilities of onboard fire-fighting systems vary on vessels. Such safety implications should be considered in the vessel's preparations for the transit.

7 Nothing in the attached Best management practices should be read as limiting the Master's authority to take action deemed necessary by the Master to protect the lives of passengers and crew.

8 Administrations are invited to bring the attached Best management practices to the attention of shipowners, ship operators and managers, companies, shipmasters, ship security officers and all other relevant parties.

9 Member Governments are invited to bring the attached Best management practices and the additional guidance to vessels engaged in fishing to the attention of fishing vessel owners, operators and managers, regional fishery management organizations, fishermen and all other relevant parties.

10 Member Governments, Administrations, international organizations and non-governmental organizations with consultative status are also invited to bring to the attention of the Committee, at the earliest opportunity, the results of the experience gained from the use of the Best management practices and the additional guidance to vessels engaged in fishing, for consideration of action to be taken.

ANNEX 1

BEST MANAGEMENT PRACTICES TO DETER PIRACY IN THE GULF OF ADEN AND OFF THE COAST OF SOMALIA

(February 2009)

In an effort to counter piracy in the Gulf of Aden and off the Coast of Somalia, these Best management practices are supported by the following international industry representatives:

- 1 International Association of Independent Tanker Owners (INTERTANKO)
- 2 International Chamber of Shipping (ICS)
- 3 Oil Companies International Marine Forum (OCIMF)
- 4 Baltic and International Maritime Council (BIMCO)
- 5 Society of International Gas Tanker and Terminal Operators (SIGTTO)
- 6 International Association of Dry Cargo Ship Owners (INTERCARGO)
- 7 International Group of Protection and Indemnity Clubs (IGP&I)
- 8 Cruise Lines International Association (CLIA)
- 9 International Union of Marine Insurers (IUMI)
- 10 Joint War Committee (JWC)
- 11 International Maritime Bureau (IMB)

MSC.1/Circ.1332

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SUGGESTED PLANNING AND OPERATIONAL PRACTICES FOR OWNERS, OPERATORS, MANAGERS AND MASTERS OF SHIPS TRANSITING THE GULF OF ADEN AND OFF THE COAST OF SOMALIA

PURPOSE

1 The purpose of this document is to provide Best Management Practices (BMP) to assist companies and ships in avoiding piracy attacks, deterring attacks and delaying successful attacks in the Gulf of Aden (GoA) and off the Coast of Somalia. The organizations consulted on this document represent the vast majority of ship owners and operators transiting the region.

2 These organizations will encourage their members to utilize these BMP and will endeavour to promulgate these to other shipping interests as BMP for combating piracy in the region. This document complements guidance provided in MSC.1/Circ.1334.

TYPICAL ATTACK PROFILES AND LESSONS LEARNT

1 During 2008 significantly increased pirate attacks on merchant ships occurred throughout the GoA and off the coast of Somalia. The majority were clustered around the northern side of the GoA but some attacks have occurred further off the east coast of Somalia.

2 Analysis of successful attacks indicates that the following common vulnerabilities are exploited by the pirates:

- a. Low speed
- b. Low freeboard
- c. Inadequate planning and procedures
- d. Visibly low state of alert and/or evident self protective measures
- e. Where a slow response by the ship is evident.

3 Commonly two or more small high speed (up to 25 knots) open boats/"skiffs" are used in attacks often approaching from the port quarter and/or stern.

4 The use of a pirate "mother ship", which is a larger ship carrying personnel, equipment and smaller assault craft, has enabled the attacks to be successfully undertaken at a greater range from the shore.

5 Vigilance should be highest at first light and last light, as the majority of the attacks have taken place during these periods.

6 To date no successful attacks have occurred on ships at 15 knots or more.

7 The majority of attempted hijacks have been repelled by ship's crew who have planned and trained in advance of the passage and employed passive counter measures to good effect.

RECOMMENDED BEST MANAGEMENT PRACTICES

1 Introduction

- a. Whilst recognizing the absolute discretion of the Master at all times to adopt appropriate measures to avoid, deter or delay piracy attacks in this region, this checklist of best practices is provided for ship owners and ship operators, Masters and their crews.
- b. Not all may be applicable for each ship, therefore as part of the risk analysis an assessment is recommended to determine which of the BMP will be most suitable for the ship. The following have however generally proved effective:

2 Prior to Transit – General Planning

a. *General*

- i. The Maritime Security Centre – Horn of Africa (MSCHOA), is the planning and coordination authority for EU Forces in the Gulf of Aden and the area off the Coast of Somalia. UKMTO Dubai is the first point of contact for ships in the region. The day-to-day interface between Masters and the military is provided by UKMTO Dubai, who talk to the ships and liaise directly with MSCHOA and the naval commanders at sea. UKMTO requires regular updates on the position and intended movements of ships; they use this information to help the naval units maintain an accurate picture of shipping. (See Glossary at Appendix 1 for further detail.)
- ii. Prior to transiting the high risk area, the owner and Master should carry out their own risk assessment to assess the likelihood and consequences of piracy attacks on the ship, based on the latest available information. The outcome of this risk assessment should identify measures for prevention, mitigation and recovery and will mean combining statutory requirements with supplementary measures to combat piracy.
- iii. Company crisis management procedures should consider appropriate measures to meet the threat of piracy by adopting IMO and other industry recommended practices as appropriate to the particular circumstances and ship type.
- iv. Advanced notice of the passage plan is required by the naval authorities so that they can identify vulnerabilities and plan suitable protection. This is achieved through MSCHOA. The information provided will enable MSCHOA to plan suitable protection and track the ship's passage through the area.
- v. Whilst measures should be taken to prevent pirates boarding, the safety of crew and passengers is paramount.

b. *Company Planning:*

- i. It is strongly recommended that managers and/or the operations department register their ships and passage plan prior to transit of the Internationally Recommended Transit Corridor (IRTC) with MSCHOA (<http://www.mschoa.org>).

MSC.1/Circ.1332

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- ii. Review the Ship Security Assessment (SSA) and implementation of the Ship Security Plan (SSP) as required by the International Ship and Port Facility Code (ISPS) to counter the piracy threat.
- iii. The Company Security Officer (CSO) is encouraged to see that a contingency plan for the high risk passage is in place, exercised, briefed and discussed with the Master and the Ship Security Officer (SSO).
- iv. Be aware of the particular high risk sea areas that have been promulgated.
- v. Carry out crew training prior to passage.
- vi. The use of additional private security guards is at the discretion of the company but the use of armed guards is not recommended.
- vii. Consider additional resources to enhance watch keeping numbers.

c. *Ship's Master Planning:*

- i. Once the ship's passage is registered with MSCHOA, Masters are advised to update their position and intended movements with UKMTO during the planning phase, preferably 3 – 4 days before entering either the GoA or passing the coast of Somalia.
- ii. Prior to transit of the region it is recommended that the crew should be thoroughly briefed.
- iii. The anti-piracy contingency plan has been shown to be most effective when implemented in advance; a drill is conducted prior to arrival in the area, the plan reviewed and all personnel briefed on their duties; including familiarity with the alarm signal signifying a piracy attack.
- iv. Masters are advised to also prepare an emergency communication plan, to include all essential emergency contact numbers and pre-prepared messages, which should be ready at hand or permanently displayed near the communications panel (e.g., telephone numbers of MSCHOA, IMB PRC, CSO, etc. – see Contact List at Appendix 2).
- v. Define the ship's AIS policy: SOLAS permits the Master the discretion to switch off AIS if he believes that its use increases the ship's vulnerability. However, in order to provide naval forces with tracking information within the GoA it is recommended that AIS transmission is continued but restricted to ship's identity, position, course, speed, navigational status and safety related information. Off the coast of Somalia the decision is again left to the Master's discretion, but current naval advice is to turn it off completely. This should be verified with MSCHOA.

3 Prior to Transit Voyage Planning

- a. Masters having registered their ship with MSCHOA should report to UKMTO before entering the GoA or passing the coast of Somalia.

b. Inside the GoA

- .1 EUNAVFOR strongly recommends that ships conduct their passage within the IRTC. Westbound ships should bias themselves to the northern portion of the corridor, and eastbound ships to the southern portion. Group Transit (GT) guidance within the GoA for times and speeds are on the MSCHOA web site, if a GT is contemplated.
- .2 Ships should avoid entering Yemeni Territorial Waters (TTWs) while on transit. This is for reasons of customary international law, as it is not possible for international military forces (non Yemeni) to be able to protect ships that are attacked inside Yemeni TTW.
- .3 Ships may be asked to make adjustments to passage plans to conform to MSCHOA routing advice.
- .4 During GTs ships should not expect to be permanently in the company of a warship. But all warships in the GoA, whether part of EUNAVFOR or coordinating with them, will be aware of the GoA GTs and will have access to the full details of vulnerable shipping.
- .5 MSCHOA strongly recommends Masters make every effort to plan transit periods of highest risk areas of the GoA for night passage (MSCHOA will advise ships). Very few successful attacks have occurred at night.

c. Outside the GoA

- i. Ships transiting South and East of the Coast of Somalia to ports outside of East Africa should consider navigating to the east of Madagascar or (for guidance) maintain a distance of more than 600 nautical miles from the coastline.
- ii. Masters should still update UKMTO in the usual manner with their ship course and details.

4 Prior to Transit – Defensive Measures

- a. Taking into account the manning levels, ensure that ship routines are adjusted sufficiently in advance to ensure well-rested and well-briefed crew are on watch and ensure sufficient watch keepers are available.
- b. Consider minimizing external communications (radios, handsets and AIS information) to essential safety and security related communication and SOLAS information only, during transit of the GoA and passing the Coast of Somalia.
- c. Increase readiness and redundancy by running additional auxiliary machinery, including generators and steering motors.
- d. Increase lookouts/bridge manning.
- e. Man the Engine Room.

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- f. Secure and control access to bridge, engine room, steering gear room, and crew quarters.
- g. In case of emergency, warships can be contacted on VHF Ch. 16 (Backup Ch.08).
- h. Check all ladders and outboard equipment are stowed or up on deck.
- i. If the ship has a comparatively low freeboard consider the possibility of extending the width of the gunwales to prevent grappling hooks from gaining hold.
- j. It is recommended a piracy attack muster point or “citadel” is designated and lock down procedures rehearsed in order to delay access to control of the ship and buy time. Ideally this should be away from external bulkheads and portholes.
- k. Consider the use of dummies at the rails to simulate additional lookouts. However if ship design creates lookout black spots and the security assessment identifies this risk then it may have to be covered by manpower.
- l. It is suggested fire pumps and/or hoses should be pressurized and ready for discharge overboard in highest risk quarters.
- m. Consider the use of razor wire/physical barriers around stern/lowest points of access, commensurate with crew safety and escape.
- n. Consider the use of passive defence equipment.
- o. Consider providing night vision optics for use during the hours of darkness.
- p. Operate CCTV (if fitted).

5 In Transit – Operations

- a. All ships inside the GoA are strongly urged to use the IRTC and follow MSCHOA GT advice and timings as promulgated on the MSCHOA web site.
- b. If you intend to follow a GT through the IRTC: Transit at the group transit speed but remain aware of the ship’s limitations. (Current advice for example is that if your maximum speed is 16 knots, consider joining a 14 knot GT and keep those 2 knots in reserve.)
- c. If you do not intend to follow a GT through the IRTC: Maintain full sea speed through the high risk area. (Current advice is that if the maximum speed of the ship is more than 18 knots, then do not slow down for a GT, maintain speed).
- d. Ships should comply with the International Rules for Prevention of Collision at Sea at all times; navigation lights should not be turned off at night. Follow the guidance given by Flag State Authority (e.g., for UK ships Marine Guidance Notice 298).
- e. Provide deck lighting only as required for safety. Lighting in the shadow zones around the ship’s hull may extend the area of visibility for lookouts, but only where consistent with safe navigation. (Current naval advice is to transit with navigation lights only.)

- f. Keep photographs of pirate “mother ships” on the bridge. Report immediately if sighted. Report all sightings of suspect mother ships to UKMTO and the IMB PRC. (See Appendix 3 for an example of a Piracy Report for passing such information or any other attack or sighting.)
- g. The Master should try to make as early an assessment of a threat as possible. As soon as the Master feels that a threat is developing he should immediately call the UKMTO.
- h. Keep a good lookout for suspicious craft, especially from astern. Note that most attacks to date have occurred from the port quarter.
- i. Protect the crew from exposure to undue risk. Only essential work on deck should occur in transit of the high risk area.
- j. Use light, alarm bells and crew activity to alert suspected pirates that they have been detected.
- k. A variety of other additional commercially available non-lethal defensive measures are available that could be considered; however these should be assessed by companies on their merits and on the particular characteristics of the ship concerned.

6 If Attacked by Pirates

- a. Follow the ship’s pre-prepared contingency plan.
- b. Activate the Emergency Communication Plan/Call in order of priority:
 - i. The UK Maritime Trade Operations (UKMTO) Dubai.
 - ii. The Maritime Security Centre Horn of Africa (MSCHOA).
 - iii. The International Maritime Bureau (IMB).
- c. Activate the Ship Security Alert System (SSAS), which will alert your Company Security Officer and flag State.
- d. If the Master has exercised his right to turn off the Automatic Identification System (AIS) during transit of the piracy area, this should be turned on once the ship comes under pirate attack.
- e. Sound emergency alarm and make a PA announcement ‘Pirate attack’ in accordance with the ship’s emergency plan.
- f. Make ‘Mayday’ call on VHF Ch. 16 (and backup Ch. 08, which is monitored by naval ships). Send a distress message via the DSC (Digital Selective Calling) system and Inmarsat-C as applicable. Establish telephone communication with UKMTO.
- g. Prevent skiffs closing on the ship by altering course and increasing speed where possible. Pirates have great difficulty boarding a ship that is:
 - i. Making way at over 15 knots.
 - ii. Manoeuvring – it is suggested that as early as possible Masters carry out continuous small zigzag manoeuvres whilst maintaining speed. Consider increasing the pirates’ exposure to wind/waves and using bow wave and stern wash to restrict pirate craft coming alongside.

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- h. Activate fire pump defensive measures.
- i. Muster all remaining crew in defined safe muster area/citadel.
- j. Maximize ship speed. Evidence to date from failed attacks is that the pirates will give up if unable to board within 30 – 45 minutes. If you can buy time until the military forces can arrive, this often leads the pirates to abort their attack¹.

7 If Boarded by Pirates

- a. Before pirates gain access to the bridge, inform UKMTO, MSCHOA and if time permits the Company.
- b. Offer no resistance; this could lead to unnecessary violence and harm to crew.
- c. If the bridge/engine room is to be evacuated, then the main engine should be stopped, all way taken off if possible and the ship navigated clear of other ships.
- d. Remain calm and co-operate fully with the pirates.
- e. Ensure all crew, other than bridge team, stay together in one location.
- f. If in a locked down “citadel” ensure internal protection/cover is available in case the pirates attempt to force entry. Keep clear of entry point/doors and portholes/windows – do not resist entry.

8 In the Event of Military Action

- a. Crew should be advised NOT to use cameras with flash at any time when any military action is underway
- b. In the event that naval personnel take action on board the ship, all personnel should keep low to the deck, cover their head with both hands (always ensuring that hands are visible and not holding anything) and make no sudden movements unless directed to by friendly forces.
- c. Be prepared to answer questions on identity and status on board.
- d. Be aware that English is not the working language of all naval units in the region.

UPDATING BEST MANAGEMENT PRACTICES

1 It is anticipated that these BMP will be periodically updated based upon operational experience and lessons learned. The parties to this document will endeavour to meet regularly to update these BMP and to circulate revisions to their respective members and other interested organizations.

2 If in doubt, consult the MSCHOA website where additional relevant information will always be posted (noting that this may not be endorsed by all of the above-listed organizations).

¹ This is why early registration with MSCHOA, use of Group Transit timings and updating your position with UKMTO are all essential: it gives a better probability that naval support will be nearby if the pirates attack.

APPENDIX 1

GLOSSARY

The roles and inter-relationship of the coordinating bodies involved.

EUNAVFOR

EUNAVFOR is the main coordinating authority which operates the Maritime Security Centre (Horn of Africa). All information and contact details are to be found within the MSCHOA website.

MSC (HOA) Maritime Security Centre (Horn of Africa)

MSCHOA was set up by the European Union (EU) as part of a European Security and Defence Policy initiative to combat piracy in the Horn of Africa. This work commenced with the establishment of EU NAVCO in September 2008. This Coordination Cell working in Brussels established links with a broad cross section of the maritime community and provided coordination with EU forces operating in the region. In November 2008, the Council of the European Union took a major step further by setting up a naval mission – EU NAVFOR ATALANTA – to improve maritime security off the Somali coast by preventing and deterring pirate attacks and by helping to safeguard merchant shipping in the region.

UKMTO – (UK) Maritime Trade Operations

The UK Maritime Trade Operations (UKMTO) office in Dubai acts as a point of contact for industry liaison with the Combined Military Forces (CMF). UKMTO Dubai also administers the Voluntary Reporting Scheme, under which merchant ships are encouraged to send daily reports, providing their position and ETA at their next port whilst transiting the region bound by Suez, 78°E and 5°S. UKMTO Dubai subsequently tracks ships, and the positional information is passed to CMF and EU headquarters. Emerging and relevant information affecting commercial traffic can then be passed directly to ships, rather than by company offices, improving responsiveness to any incident and saving time.

For further information, or to join the Voluntary Reporting Scheme, please contact MTO Dubai: ukmtodubai@eim.ae.

* * *

APPENDIX 2

USEFUL CONTACT DETAILS

<p>UKMTO</p> <p>E-mail Telephone Cell Fax Telex</p>	<p>UKMTO@eim.ae +971 50 552 3215 +971 4 306 5710 (51) 210473</p>
<p>MSCHOA</p> <p>Via Website for reporting Telephone Fax E-mail</p>	<p>www.mschoa.org +44 (0) 1923 958545 +44 (0) 1923 958520 postmaster@mschoa.org</p>
<p>IMB PRC</p> <p>E-mail Telephone Cell Fax Telex</p>	<p>piracy@icc-ccs.org +60 3 2078 5763 +60 3 2078 5769 MA34199 IMBPC1</p>

* * *

APPENDIX 3

FOLLOW UP REPORT – PIRACY ATTACK

- 1 Ship's name and call sign, IMO number
- 2 Reference initial PIRACY ALERT
- 3 Position of incident/Latitude/Longitude/Name of the area
- 4 Details of incident:
 - method of attack
 - description/number of suspect craft
 - number and brief description of pirates
 - what kind of weapons did the pirates carry
 - any other information (e.g., language spoken)
 - injuries to crew and passengers
 - damage to ship (which part of the ship was attacked?)
 - action taken by the Master and crew
 - was incident reported to the coastal authority and to whom?
 - action taken by the Coastal State.
- 5 Last observed movements of pirates / suspect craft
- 6 Assistance required
- 7 Preferred communications with reporting ship:

Appropriate Coast Radio Station/HF/MF/VHF/Inmarsat IDs (plus ocean region code)/MMSI
- 8 Date/time of report (UTC)

ANNEX 2

ADDITIONAL GUIDANCE FOR VESSELS ENGAGED IN FISHING, SUPPLEMENTARY TO THE BEST MANAGEMENT PRACTICES TO DETER PIRACY IN THE GULF OF ADEN AND OFF THE COAST OF SOMALIA

I RECOMMENDATIONS TO VESSELS IN FISHING ZONES

1. Non-Somali fishing vessels should avoid operating or transiting within 200 nm of the coast of Somalia, irrespective of whether or not they had been issued with licences to do so.
2. Do not start fishing operations when the radar indicates the presence of unidentified boats.
3. If polyester skiffs of a type typically used by pirates are sighted, move away from them full speed, sailing into wind and sea to make their navigation more difficult.
4. Avoid stopping at night, be alert and maintain bridge, deck and engine-room watch.
5. During fishing operations, when the vessel is more vulnerable, be alert and maintain radar watch in order to give maximum notice to the Authorities if an attack is in course.
6. While navigating at night, use only the mandatory navigation and safety lights so as to prevent the glow of lighting attracting pirates who sometimes are in boats without radars and are just lurking around.
7. While the vessel is drifting while fishing at night, keep guard at the bridge on deck and in the engine-room. Use only mandatory navigation and safety lights. The engine must be ready for an immediate start up.
8. Keep away from unidentified ships.
9. Use VHF as little as possible to avoid being heard by pirates and make location more difficult.
10. Activate AIS when maritime patrol aircraft are operating in the area to facilitate identification and tracking.

II IDENTIFICATION

1. Managers are strongly recommended to register their fishing vessels with MSCHOA for the whole period of activity off the coast of Somalia. This should include communicating a full list of the crewmen on board and their vessels' intentions, if possible.
2. Carry out training prior to passage or fishing operations in the area.

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3. Whenever fishing vessels are equipped with VMS devices, their manager should provide MSCHOA with access to VMS data.
4. Fishing vessels should avoid sailing through areas where they have been informed that suspected pirate “mother ships” had been identified and should use all means to detect, as soon as possible, any movement of large or small vessels that could be suspicious.
5. Fishing vessels should always identify themselves upon request from aircraft or ships from Operation ATALANTA or other international or national anti-piracy operation.
6. Military, merchant and fishing vessels should respond without delay to any identification request made by a fishing vessel being approached (in order to facilitate early action to make escape possible, especially if the vessel is fishing).

III IN CASE OF ATTACK

1. In case of an attack or sighting a suspicious craft, warn the Authorities (UKMTO and MSCHOA) and the rest of the fleet.
2. Communicate the contact details of the second master of the vessel (who is on land) whose knowledge of the vessel could contribute to the success of a military intervention.

Recommendations only for Purse Seiners

3. Evacuate all personnel from the deck and the crow’s nest.
 4. If pirates have taken control of the vessel and the purse seine is spread out, encourage the pirates to allow the nets to be recovered. If recovery of the purse seine is allowed, follow the instructions its stowage and explain the functioning of the gear in order to avoid misunderstanding.
-

INTERNATIONAL MARITIME ORGANIZATION
4 ALBERT EMBANKMENT
LONDON SE1 7SR

Telephone: 020 7735 7611
Fax: 020 7587 3210



IMO

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Ref. T2-MSS/2.11.4.1

MSC.1/Circ.1333
26 June 2009

PIRACY AND ARMED ROBBERY AGAINST SHIPS

Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships

- 1 The Maritime Safety Committee, at its eighty-sixth session (27 May to 5 June 2009), reviewed MSC/Circ.622/Rev.1 (Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships) and prepared the revised recommendations given in the annex.
- 2 The revision was carried out on the basis of the outcome of the comprehensive review of the guidance provided by the Organization for preventing and suppressing piracy and armed robbery against ships; and took into account the work of the correspondence group on the review and updating of MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22), established by MSC 84.
- 3 Member Governments, in particular those within areas identified as affected by acts of piracy and armed robbery against ships, are recommended to take any necessary action to implement, as appropriate, the recommendations given in the annex.
- 4 Member Governments are also recommended to bring this circular and MSC.1/Circ.1334 to the attention of all national agencies concerned with anti-piracy and anti-armed robbery activities, shipowners, ship operators, shipping companies, shipmasters and crews.

ANNEX

**RECOMMENDATIONS TO GOVERNMENTS FOR
PREVENTING AND SUPPRESSING PIRACY*
AND ARMED ROBBERY¹ AGAINST SHIPS**

Piracy and armed robbery against ships

1 Before embarking on any set of measures or recommendations, it is imperative for governmental or other agencies concerned to gather accurate statistics of the incidents of piracy and armed robbery against ships, to collate these statistics under both type and area and to assess the nature of the attacks with special emphasis on types of attack, accurate geographical location and *modus operandi* of the wrongdoers and to disseminate or publish these statistics to all interested parties in a format that is understandable and usable. Advanced intelligence could also prove useful in obtaining information to Governments in order to be able to act in a coordinated manner even before an attack occurs. Based on the statistics of the incidents and any intelligence of piracy and armed robbery against ships Governments should issue to ships entitled to fly their flag, as necessary, advice and guidance on any appropriate additional precautionary measures ships may need to put in place to protect themselves from attack. Governments should involve representatives of shipowners and seafarers in developing these measures to prevent and suppress piracy and armed robbery against ships.

2 In any ongoing campaign against piracy and armed robbery, it is necessary, wherever possible, to neutralize the activities of pirates and armed robbers. As these people are criminals under both international law and most national laws, this task will generally fall to the security forces of the States involved. Governments should avoid engaging in negotiations with these criminals and seek to bring perpetrators of piracy and armed robbery against ships to justice. Negotiating with criminals in a case regarding hijacking of a ship may encourage potential perpetrators to seek economic revenue through piracy.

* The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (article 101):

“Piracy consists of any of the following acts:

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

¹ The Sub-regional meeting on piracy and armed robbery against ships in the Western Indian Ocean, Gulf of Aden and Red Sea area, held in Dar es Salaam, United Republic of Tanzania, from 14 to 18 April 2008, agreed to modify this definition. Consistent with the ReCAAP Agreement, the “private ends” motive has been added to the definition. The formulation “within internal waters, archipelagic waters and territorial sea” replaced “within a State’s jurisdiction”. The new formulation reflects the views of France, supported by other States participating in the meeting, that the definition for armed robbery against ships should not be applicable to acts committed seaward of the territorial sea. The new definition reads: “Armed robbery against ships” means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea.

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Self protection

3 Ships can and should take measures to protect themselves from pirates and armed robbers. These measures are recommended in MSC.1/Circ.1334. While security forces can often advise on these measures, and flag States are required to take such measures as are necessary to ensure that owners and masters accept their responsibility, ultimately it is the responsibility of owners, companies, ship operators and masters to take seamanlike precautions when their ships navigate in areas where the threat of piracy and armed robbery exists. Flag States should make shipowners/companies aware of any UN Security Council, IMO, or any other UN resolutions on piracy and any recommendations therein relevant for the shipowner, ship operator, the master and crew when operating in areas where piracy or armed robbery against ships occur.

4 With respect to the carriage of firearms on board, the flag State should be aware that merchant ships and fishing vessels entering the territorial sea and/or ports of another State are subject to that State's legislation. It should be borne in mind that importation of firearms is subject to port and coastal State regulations. It should also be borne in mind that carrying firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods.

Non-arming of seafarers

5 For legal and safety reasons, flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of a ship. Seafarers are civilians and the use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. Carriage of arms on board ships may encourage attackers to carry firearms or even more dangerous weapons, thereby escalating an already dangerous situation. Any firearm on board may itself become an attractive target for an attacker.

Use of unarmed security personnel

6 The use of unarmed security personnel is a matter for individual shipowners, companies, and ship operators to decide. It should be fully acceptable to provide an enhanced lookout capability this way.

Use of privately contracted armed security personnel

7 The use of privately contracted armed security personnel on board ships may lead to an escalation of violence. The carriage of such personnel and their weapons is subject to flag State legislation and policies and is a matter for flag States to determine in consultation with shipowners, companies, and ship operators, if and under which conditions this will be allowed. Flag States should take into account the possible escalation of violence which could result from carriage of armed personnel on board merchant ships, when deciding on its policy.

Military teams or law enforcement officers duly authorized by Government

8 The use of military, or law enforcement officers duly authorized by the Government of the flag State to carry firearms for the security of the ship is a matter for the flag State to authorize in consultation with shipowners, companies, and ship operators. Flag States should provide clarity of their policy on the use of such teams on board vessels entitled to fly their flag.

Action plans

9 The coastal State/port State should develop action plans detailing how to prevent such an attack in the first place and actions to take in case of an attack. Coastal States should consider their obligations under SOLAS regulation XI-2/7 on Threats to ships which requires, *inter alia*, where a risk of attack has been identified, the Contracting Government concerned shall advise the ships concerned and their Administrations of:

- .1 the current security level;
- .2 any security measures that should be put in place by the ships concerned to protect themselves from attack, in accordance with the provisions of part A of the ISPS Code; and
- .3 security measures that the coastal State has decided to put in place, as appropriate.

Also, due to the possibility of collision or grounding of a ship as a result of an attack, the coastal State/port State will need to coordinate these action plans with existing plans to counter any subsequent oil spills or leakages of hazardous substances that the ship or ships may be carrying. This is especially important in areas of restricted navigation. The coastal State/port State should acquire the necessary equipment to ensure safety in waters under their jurisdiction.

10 Flag States should develop action plans detailing the response to be taken on the receipt of a report of an attack and how to assist the owners, companies¹, managers and operators of a ship in case of a hijacking. A point of contact through which the ships entitled to fly their flag may request advice or assistance when sailing in waters deemed to present a heightened threat and to which such ships can report any security concerns about other ships, movements or communications in the area, should be provided.

11 All national agencies involved in preventing and suppressing piracy and armed robbery against ships should take appropriate measures for the purpose of maximizing efficiency and effectiveness and, at the same time, minimizing any relevant adversity. The coastal State/port State should also establish the necessary infrastructure and operational arrangements for the purpose of preventing and suppressing piracy and armed robbery against ships.

12 States and relevant international organizations are encouraged to support capacity-building in areas or regions where piracy and armed robbery against ships is known to occur.²

13 Where ships are employed by a United Nations (UN) humanitarian programme for the delivery of humanitarian aid into areas at heightened threat, where such ships are to be escorted by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on Government service, such escorts should be implemented in conformity with international law and

¹ The term “company” is defined in SOLAS regulations IX/1 and XI-2/1.

² The ReCAAP Information Sharing Centre (ReCAAP ISC) undertakes capacity-building initiatives to enhance the capability of ReCAAP Contracting Parties in combating piracy and armed robbery against ships in the region. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) is a government-to-government Agreement that addresses the incidence of piracy and armed robbery against ships in Asia. The status of ReCAAP ISC is an IGO. Further details may be found at www.recaap.org. Similar arrangements are being developed by IMO in other regions.

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UN resolutions. The flag State of the ship being escorted should endeavour to conclude any necessary agreements in respect of such ships entitled to fly their flag with the State(s) providing the escorts.

14 Article 100 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) requires all States to cooperate to the fullest possible extent in the repression of piracy. In this regard, States interested in the security of maritime activities should take an active part in repression of and fight against piracy, particularly in areas where the United Nations Security Council expresses concern about the imminent threat of attacks by pirates and calls upon States to do so. This could be done by prosecuting suspected pirates, contributing to capacity building efforts and by deploying naval vessels and aircraft in accordance with international law to patrol the affected areas.

15 On communication and cooperation between various agencies, and the response time after an incident has been reported to the coastal State:

- .1 an incident command system for tactical as well as operational response should be adopted in each country concerned to provide a common terminology; integrated communications; a unified command structure; consolidated action plans; a manageable span of control; designated incident facilities; and comprehensive resource management;
- .2 existing mechanisms for dealing with other maritime security matters, e.g., smuggling, drug-trafficking and terrorism, should be incorporated into the incident command system in order to allow for efficient use of limited resources;
- .3 procedures for rapidly relaying alerts received by communication centres to the entity responsible for action should be developed or, if existing, kept under review; and
- .4 Governments should by bilateral or multilateral agreements cooperate in establishing, when appropriate, a single point of contact for ships to report piracy threats or activities in specific high threat areas.

16 It is imperative that all attacks, or threats of attacks, are reported immediately to the nearest RCC¹ or coast radio station to alert the coastal State/port State and followed up by a more detailed written report.² On receipt of radio reports of an attack or post attack reports, the RCC or other agency involved must take immediate action to:

- .1 inform the local security authorities so that contingency plans (counter action) may be implemented;
- .2 alert other ships in the area to the incident utilizing any appropriate communication means available to it, in order to create or increase their awareness; and
- .3 inform the adjacent RCCs when appropriate.³

¹ In the Asian region, the RCCs of some ReCAAP Contracting Parties are also the ReCAAP Focal Points. The RCCs of the coastal States disseminate information of an incident internally to their respective Focal Points, maritime authorities and law enforcement agencies, as deemed appropriate. A similar system is being developed for the Gulf of Aden and Western Indian Ocean area under the Djibouti Code of Conduct.

² Flow diagrams for reporting incidents are attached as appendices 1 and 2.

³ A template for Ships' Message Formats is attached as appendix 4.

17 The report received by maritime Administrations may be used in any diplomatic approaches made by the flag State to the Government of the coastal State in which the incident occurred. This will also provide the basis for the report to IMO.

18 Coastal States/port States should report to IMO any act of armed robbery in their waters or acts of piracy close to their waters which have been reported to them or, if such a report has not been made, where they have information of an incident because of the geographical proximity to the incident or due to the participation in the apprehension of the perpetrators. The format presently used for reports to IMO is attached at appendix 5.

19 The recording and initial examination of reports is best done, wherever possible, by a central agency possessing the necessary skills and resources. In order to maintain the required credibility, both from Government and commercial sectors, such an agency must be accurate, authoritative, efficient and impartial in both its product and its dealings with others. It is judged that the Organization best suited to this role continues to be IMO itself, although the use of IMB's Piracy Reporting Centre in Kuala Lumpur, Malaysia, the ReCAAP Information Sharing Centre (ISC) in Singapore, the Maritime Security Centre Horn of Africa or similar arrangement, as a satellite for dissemination of information should also be considered.

20 The detailed work of assessment should be carried out by the security forces of the coastal State concerned who will probably have access to further information to complete the picture and background of the attacks and those persons responsible.

21 It is important that, once the collection and collation stages have been completed, the product be distributed to all agencies requiring that information. These agencies include the Governments of coastal States for dissemination of the information, the Governments of flag States for distributing it through maritime Administrations to shipowners/company, ship operators, to other interested Government departments and other interested agencies and relevant international organizations such as ReCAAP ISC. See appendices to this circular regarding the information sharing and incident reporting process.

22 To encourage masters to report all incidents of piracy and armed robbery against ships, coastal States/port States should make every endeavour to ensure that these masters and their ships will not be unduly delayed that the ship will not be burdened with additional costs related to such reporting, and the welfare of the crew will be taken into account.

23 Flag, port and coastal States are encouraged to enter into bilateral or multilateral agreements¹ to facilitate the investigation of acts of piracy and armed robbery against ships. States should cooperate to investigate fully all acts or attempted acts of piracy and armed robbery against ships entitled to fly their flag. Flag, port and coastal States are encouraged to inform other States and organizations of any relevant experience they may have obtained during the investigation, which other States may benefit from. States should implement the Code of Practice for Investigation of Crimes of Piracy and Armed Robbery against Ships, IMO resolution A.922(22) or subsequent resolutions.

¹ The Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) is an initiative that demonstrates a multilateral Government-to-Government agreement. Also see appendix 2 to this circular regarding the information sharing and incident reporting process in the Asian region.

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24 On investigation into reported incidents and prosecution of pirates and armed robbers when caught:

- .1 it should be firmly established which entity in each country has responsibility and legal authority for carrying out post-attack investigations, since lack of clarity during the hours after an incident may result in missed investigative opportunities and loss or deterioration of evidence;
- .2 the appointed investigation agency should have personnel trained in standard investigative techniques and who are familiar with the legal requirements of the courts of their countries, as it is widely assumed that prosecution, conviction and confiscation of assets of offenders are the most effective means of discouraging would-be offenders;
- .3 as offenders may be involved in other kinds of offences, piracy and armed robbery against ships should not be viewed in isolation and useful information should, therefore, be sought in existing criminal records; and
- .4 systems should be in place to ensure that potentially useful information is disseminated to all appropriate parties, including investigators.

25 IMO regularly sends to coastal States reports of armed robbery stated to have been committed in their territorial waters, requesting information on the result of any investigations they have conducted. Coastal States are requested to respond to these inquiries even when they are unable to conduct an inquiry either because the incident was not reported or was reported too late for an investigation to be conducted. Any such responses should continue to be circulated to the sessions of the Committee.

Criminal jurisdiction

26 A person apprehended at sea outside the territorial sea of any State for committing acts of piracy or armed robbery against ships, should be prosecuted under the laws of the investigating State by mutual agreement with other substantially interested States.

Substantially interested State means a State:

- .1 which is the flag State of a ship that is the subject of an investigation; or
- .2 in whose territorial sea an incident has occurred; or
- .3 where an incident caused, or threatened, serious harm to the environment of that State, or within those areas over which the State is entitled to exercise jurisdiction as recognized under international law; or
- .4 where the consequences of an incident caused, or threatened, serious harm to that State or to artificial islands, installations or structures over which it is entitled to exercise jurisdiction; or
- .5 where, as a result of an incident, nationals of that State lost their lives or received serious injuries; or

- .6 that has at its disposal important information that may be of use to the investigation; or
- .7 that, for some other reason, establishes an interest that is considered significant by the lead investigating State; or
- .8 that was requested by another State to assist in the repression of violence against crews, passengers, ships and cargoes or the collection of evidence; or
- .9 that intervened under UNCLOS article 100, exercised its right of visit, under UNCLOS article 110, or effected the seizure of a pirate/armed robber, ship or aircraft under UNCLOS article 105 or in port or on land.

27 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery at sea, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences.

28 For visits to ports in certain countries, ships need to carry amounts of money in cash to cover disbursements and other requirements. Cash on board a ship acts as a magnet for attackers. Where the carriage of large sums of cash is necessary because of exchange control restrictions in some States, these States are urged to take a more flexible approach.

29 Flag States should require all ships operating in waters where attacks occur to have measures to prevent attacks and attempted attacks of piracy and armed robbery against ships and on how to act if such an attack or attempted attack occurs, as part of the emergency response procedures in the safety management system, or part of the ship security plan. Such measures should include a full spectrum of appropriate passive and active security measures. The ship security plan and emergency response plans should be based on a risk assessment which take into account the basic parameters of the operation including:

- .1 the risks that may be faced;
- .2 the ship's actual size, freeboard, maximum speed and the type of cargo, which is being transported;
- .3 the number of crew members available, their capability and training;
- .4 the ability to establish secure areas on board ship; and
- .5 the equipment on board, including any surveillance and detection equipment that has been provided.

Ships not covered by the ISM Code or the ISPS Code should be required to take similar precautionary measures.

30 Bearing in mind that ships already have in their procedures the ability to take preventive measures, Governments should use caution when considering the use of security levels 1, 2 and 3 in the ISPS Code for piracy and armed robbery situations.

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31 If at all possible, ships should be routed away from areas where attacks are known to have taken place and, in particular, seek to avoid bottlenecks. If ships are approaching ports where attacks have taken place on ships at anchor, rather than on ships underway, and it is known that the ship will have to anchor off port for some time, consideration should be given to delaying anchoring by slow steaming or longer routing to remain well off shore thereby reducing the period during which the ship will be at risk. Such action should not affect the ship's berthing priority. Charter party agreements should recognize that ships may need to deviate away from areas where attacks occur and that ships may need to delay arrival at such ports, either when no berth is available for the ship, or offshore loading or unloading will be delayed for a protracted period.

32 Coastal States situated in areas affected by piracy and armed robbery

- .1 in order to be able to respond, as quickly as possible, to any report from ships on piracy and armed robbery attacks, every piracy or armed robbery threat area should be adequately covered by Coast Earth Stations which are continuously operational, and which preferably are situated in the littoral State responsible for the area or in neighbouring States;
- .2 neighbouring countries having common borders in areas which can be characterized as piracy and armed robbery threat areas should establish cooperation agreements with respect to preventing and suppressing piracy and armed robbery¹. Such agreements should include the coordination of patrol activities in such areas. An example of a model agreement is attached as appendix 6;
- .3 on further development of regional cooperation, a regional agreement to facilitate coordinated response at the tactical as well as the operational level should be concluded between the countries concerned:
 - .3.1 such an agreement should specify how information would be disseminated; establish joint command and control procedures (a regional incident command system); ensure efficient communications; set policies for joint operations and entry and pursuit; establish the links between entities involved in all maritime security matters; establish joint specialized training of and the exchange of views between investigators; and establish joint exercises between tactical and operational entities; and
 - .3.2 that existing agreements, bilateral or regional, be reviewed, if necessary, to allow for the extension of entry and pursuit into the territorial sea of the State(s) with which the agreement has been made and practical operational procedures which will ensure the granting of permission to extend pursuit into another jurisdiction being received by the pursuing vessel at very short notice;

¹ Examples of such agreements include the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), details of which may be found at www.recaap.org; the Memorandum of Understanding on the Establishment of a Regional Integrated Coast Guard Network in West and Central Africa; and the Code of Conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden (the Djibouti Code of Conduct).

- .4 as piracy and armed robbery against ships is not only a regional but a global problem, the established regional cooperation forums should ensure cooperation amongst themselves and the IMO in order to draw on the different experiences gained;
- .5 every country is recommended to ensure that each national RCC, which may be contacted by RCCs from other countries, is capable at all times of communicating in English. Thus, at least one person with a satisfactory knowledge of the English language – both written and spoken – should always be on duty;
- .6 in order to minimize coordination problems and possible delays in cases when distress/safety messages related to a specific area are received by Coast Earth Stations and RCCs in other countries, it is recommended to arrange common meetings/seminars for key personnel from both areas for the exchange of views and to establish suitable procedures and actions in different types of situations. Consideration should also be given to arranging common exercises to verify that procedures and actions are effective;
- .7 if an attack is reported in an area covered by NAVTEX transmissions, a piracy/armed robbery attack warning with category “Important” or “Vital”, as appropriate, should be transmitted whenever such warnings can be transmitted sufficiently early to enable ships to take precautions appropriate to preventing attacks. If an attack is reported in an area which is not covered by NAVTEX transmissions, a piracy/armed robbery attack warning should be transmitted as an EGC SafetyNET message through the INMARSAT system. In this respect, relevant authorities are recommended to make arrangements with one or more Coast Earth Station(s) covering relevant areas, so as to be registered as “information providers”; and
- .8 those countries that have established, or which plan to establish, radar surveillance systems, are recommended to investigate the potential suitability of such facilities for anti-piracy/armed robbery purposes. If such facilities are judged to be suitable for such purposes, the facilities and procedures necessary for their rapid and efficient use should be established.

33 Governments should coordinate with the shipowner or the company and the coastal State when receiving a ship security alert. It is important that any response to an incident is well planned and executed, and emphasizes the safety of the crew. Those involved should be as familiar as possible with a ship environment. Therefore, those responsible for responding to acts of piracy or armed robbery of ships, whether at sea or in port, should be trained in the general layout and features of the types of ship most likely to be encountered. Shipowners should be encouraged to cooperate with the security forces by providing access to their ships for the necessary familiarization.

34 Coastal States should consider the use of suitably equipped helicopters and other suitable means in countering acts of piracy and armed robbery. Security forces should consider the use of modern night vision equipment and other applicable modern technology.

35 A local rule of the road amendment allowing ships under attack to flash or occult their “not under command” lights should be authorized in areas where pirate/armed robbery attacks are more common.

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36 States with adjacent coastal waters affected by pirates and armed robbers should develop or maintain coordinated patrols by both ships and aircraft.

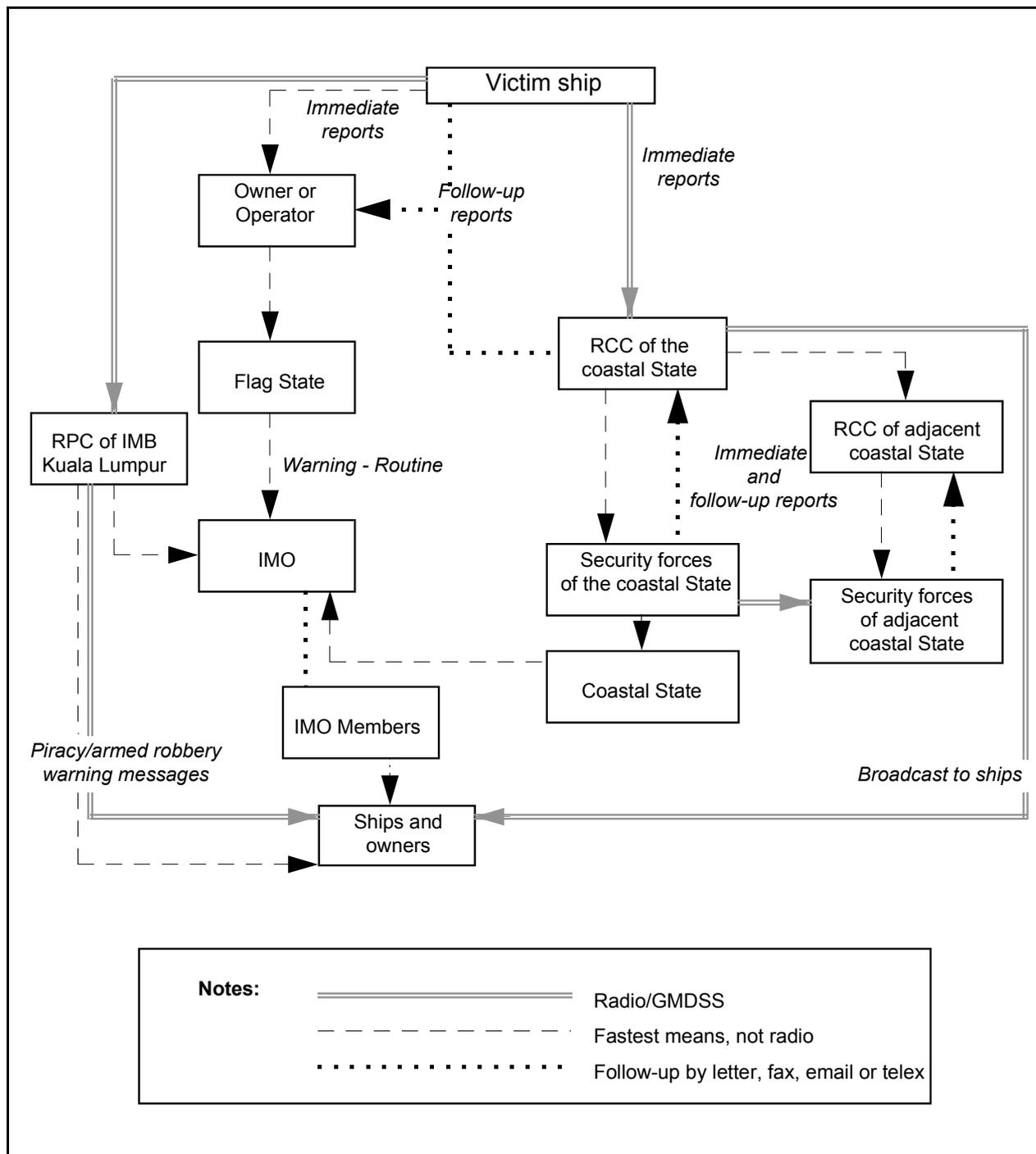
37 Security forces and Governments should maintain close liaison with their counterparts in neighbouring States to facilitate the apprehension and prosecution of criminals involved in such unlawful acts. Some countries have already a well established coordination which is also used for preventing and suppressing piracy and armed robbery.

38 RCC personnel should be instructed on the most efficient means of communicating reports on piracy and armed robbery, which they receive. Depending on the circumstances, this may require forwarding the reports to another RCC or coast radio station, notifying security forces or patrol craft in the area and taking steps to have a broadcast warning issued or other suitable action taken.

39 RCCs should be encouraged to forward all received reports of piracy and armed robbery to IMO. States are encouraged to share any information with IMB's Piracy Reporting Centre and the ReCAAP Focal Points.

APPENDIX 1

STATISTICS, FLOW DIAGRAMS AND OTHER RELEVANT INFORMATION



Flow diagram for attacks in coastal waters

APPENDIX 3

**“PHASES” RELATED TO VOYAGES
IN PIRACY AND ARMED ROBBERY THREAT AREAS**

Phase Symbol	Phase Description
A	Approaching a piracy/armed robbery threat area (1 hour prior to entering)
B	Entering a piracy/armed robbery threat area
C	Inside a piracy/armed robbery threat area, but no suspect piracy/armed robbery vessel detected
D	Inside a piracy/armed robbery threat area: suspect piracy/armed robbery vessel detected
E	Certainty that piracy/armed robbery will be attempted
F	Pirate/armed robbery vessel in proximity to, or in contact with, own ship
G	Pirates/armed robbers start attempts to enter ship
H	Pirates/armed robbers have succeeded in entering ship
I	Pirates/armed robbers have one or more of the ship's personnel in their control/custody
J	The pirates/armed robbers have gained access to the bridge or the master's office
K	The pirates/armed robbers have stolen property/money, etc.
L	The pirates/armed robbers start to disembark
M	The pirates/armed robbers have disembarked
N	The pirate/armed robbery vessel is no longer in contact with the ship
O	Own ship leaves the piracy/armed robbery threat area

APPENDIX 4

SHIPS' MESSAGE FORMATS

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

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

MAYDAY/DISTRESS ALERT (see note)

URGENCY SIGNAL

PIRACY/ARMED ROBBERY ATTACK

2 Ship's position (and time of position UTC)

Latitude	Longitude
Course Speed	KTS

3 Nature of event

Note: It is expected that this message will be a Distress Message because the ship or persons will be in grave or imminent danger when under attack. Where this is not the case, the word MAYDAY/DISTRESS ALERT is to be omitted.

Use of distress priority (3) in the INMARSAT system will not require MAYDAY/DISTRESS ALERT to be included.

Report 2 – Follow-up report – Piracy/armed robbery attack alert

1 Ship's name and, callsign, IMO number

2 Reference initial PIRACY/ARMED ROBBERY ALERT

3 Position of incident

Latitude	Longitude
Name of the area	

4 Details of incident, e.g.:

While sailing, at anchor or at berth?
Method of attack
Description/number of suspect craft
Number and brief description of pirates/robbers

- What kind of weapons did the pirates/robbers carry?
 - Any other information (e.g., language spoken)
 - Injuries to crew and passengers
 - Damage to ship (Which part of the ship was attacked?)
 - Brief details of stolen property/cargo
 - Action taken by the master and crew
 - Was incident reported to the coastal authority and to whom?
 - Action taken by the Coastal State
- 5 Last observed movements of pirate/suspect craft, e.g.:
- Date/time/course/position/speed
- 6 Assistance required
- 7 Preferred communications with reporting ship, e.g.:
- Appropriate Coast Radio Station
 - HF/MF/VHF
 - INMARSAT IDs (plus ocean region code)
 - MMSI
- 8 Date/time of report (UTC)

APPENDIX 5

**FORMAT FOR REPORTING TO IMO THROUGH MARITIME
ADMINISTRATIONS OR INTERNATIONAL ORGANIZATIONS**

- 2* Ship's name and IMO number
Type of ship
Flag
Gross tonnage
- 3 Date and time
- 4 Latitude Longitude
Name of the area**
While sailing, at anchor or at berth?
- 5 Method of attack
Description/number of suspect craft
Number and brief description of pirates/robbers
What kind of weapons did the pirates/robbers carry?
Any other information (e.g., language spoken)
- 6 Injuries to crew and passengers
Damage to ship (Which part of the ship was attacked?)
Brief details of stolen property/cargo
- 7 Action taken by the master and crew
- 8 Was incident reported to the coastal authority and to whom?
- 9 Reporting State or international organization
- 10 Action taken by the Coastal State

* Corresponding to the column numbers in the annex to the IMO monthly circulars.

** The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

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

APPENDIX 6

DRAFT* REGIONAL AGREEMENT ON COOPERATION IN PREVENTING AND SUPPRESSING ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

Note: Due to different circumstances among States, this example agreement may be varied to meet specific situations.

Agreement between the Governments of _____, _____,
_____, _____, and _____

(Hereinafter, “the Parties”);

Bearing in mind the complex nature of the problem of piracy and armed robbery against ships;

Having regard to the urgent need for international cooperation in preventing and suppressing piracy and armed robbery against ships;

Desiring to promote greater cooperation between the parties and thereby enhance their effectiveness in preventing and suppressing piracy and armed robbery against ships;

Being conscious of the fact that, in order to prevent and suppress piracy and armed robbery against ships effectively and efficiently, the active participation of all States affected is needed;

Taking into account that the Governments do not have sufficient technical and material resources to prevent and suppress piracy and armed robbery against ships independently;

Recognizing that piracy and armed robbery are international and transnational threats to seafarers, property and the environment; and conscious of the fact that the Parties are experiencing increased incidents of piracy and armed robbery within their maritime zones and adjoining international waters;

Have agreed as follows:

Definitions

For the purpose of this Agreement, unless expressly provided otherwise:

- 1 “Piracy” means those acts as defined in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), 1982.

* The present draft includes text in square brackets which was left to the discretion of the individual Governments. Note: attention should also be given to existing regional agreements such as the Djibouti Code of Conduct, the ReCAAP, and the IMO/MOWCA Memorandum of Understanding on the Establishment of a Regional Integrated Coast Guard Network in West and Central Africa.

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- 2 “Armed robbery against ships” means [...].
- 3 “National waters [and airspace]” means the territorial sea and internal waters of the Parties [and the air space over those States].
- 4 “Law enforcement vessels” mean ships of the Parties clearly marked and identifiable as being on government non-commercial service and authorized to that effect, including any boat and aircraft embarked on such ships, aboard which law enforcement officials are embarked.
- [5 “Law enforcement aircraft” means aircraft of the Parties engaged in law enforcement operations or operations in support of law enforcement activities clearly marked and identifiable as being on non-commercial government service and authorized to that effect.]
- 5[6] “Liaison officer” means one or more law enforcement officials, including boarding teams, of one Party authorized to embark on a law enforcement vessel of another Party.
- 6[7] “Suspect vessel” means a vessel used for commercial or private purposes in respect of which there are reasonable grounds to suspect it is involved in piracy or armed robbery against ships.
- 7[8] “Incident Command System” means a regional system for operational/tactical response to acts of piracy and armed robbery against ships providing common terminology, modular organization, integrated communications, unified command structure, consolidated action plans, manageable span of control, designated incident facilities and comprehensive resource management.

Nature and scope of the Agreement

- 1 The Parties shall cooperate in preventing and suppressing piracy and armed robbery at sea to the fullest extent possible, consistent with available law enforcement resources and related priorities.
- 2 The Parties undertake to agree on procedures for improving intelligence sharing.

Operations in [and over] national waters

Operations to suppress piracy and armed robbery in the national waters of a Party are subject to the authority of that Party.

Programme for law enforcement officials aboard another Party’s vessels

- 1 The Parties shall establish a law enforcement liaison officer programme among their law enforcement authorities. Each Party may designate a coordinator to organize its programme activities and to notify the other Parties of the types of vessels and officials involved in the programme.
- 2 The Parties may designate qualified law enforcement officials to act as law enforcement liaison officers.

3 Subject to the law of the Parties involved, these liaison officers may, in appropriate circumstances:

- .1 embark on the law enforcement vessels of other Parties;
- .2 authorize the pursuit, by the law enforcement vessels on which they are embarked, of suspect vessels fleeing into the territorial waters of the liaison officer's Party;
- .3 authorize the law enforcement vessels on which they are embarked to conduct patrols to suppress acts of armed robbery against ships in the liaison officer's Party's national waters; and
- .4 enforce the laws of the Parties in national waters, or seaward there from in the exercise of the right of hot pursuit or otherwise in accordance with international law.

4 When a liaison officer is embarked on another Party's vessel, and the enforcement action being carried out is pursuant to the liaison officer's authority, any search or seizure of property, any detention of a person, and any use of force pursuant to this Agreement, whether or not involving weapons, shall be carried out by the liaison officer, except as follows:

- .1 crew members of the other Party's vessel may assist in any such action if expressly requested to do so by the liaison officer and only to the extent and in the manner requested. Such request may only be made, agreed to, and acted upon in accordance with the applicable laws and policies; and
- .2 such crew members may use force in self-defence, in accordance with the applicable laws and policies.

5 Parties may only conduct operations to suppress piracy and armed robbery in the waters of another Party with the permission of that Party in any of the following circumstances:

- .1 an embarked liaison officer so authorizes;
- .2 on those exceptional occasions when a suspect vessel, detected seaward of national waters, enters the national waters of another Party and no liaison officer is embarked in a law enforcement vessel, and no law enforcement vessel from the Party whose national waters have been entered by a suspect vessel is immediately available to investigate, the law enforcement vessel may follow the suspect vessel into national waters, in order to board the suspect vessel and secure the scene, while awaiting expeditious instructions and the arrival from law enforcement authorities of the Party in whose national waters the event took place;
- .3 on those equally exceptional occasions when a suspect vessel is detected within a Party's national waters, and no liaison officer is embarked from that Party and no law enforcement vessel is immediately available to investigate from that Party, the law enforcement vessel from another Party may enter the national waters, in order to board the suspect vessel and secure the scene, while awaiting expeditious instructions from the law enforcement authorities and the arrival of law enforcement officials of the Party in whose national waters the event has occurred; and

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- .4 Parties shall provide prior notice to the law enforcement authority of the Party in whose national waters the event took place of action to be taken under subparagraphs .2 and .3 of this paragraph, unless it is not operationally feasible to do so. In any case, notice of the action shall be provided to the relevant law enforcement authority without delay.
- [6 When aircraft of the Parties (hereafter referred to as “aircraft”) are operating to suppress piracy and armed robbery against ships or supporting such operations, other Parties shall permit those aircraft:
- .1 to overfly the territory and waters of other Parties with due regard for the laws and regulations of those Parties for the flight and manoeuvre of aircraft, subject to paragraph 7 of this section; and
- .2 to land and remain in national airports, after receiving authorization from the minister of public security, on the occasions and for the time necessary for the proper conduct of operations deemed necessary under this Agreement.
- 7 The Parties shall, in the interest of flight safety, observe the following procedures for facilitating flights within the national airspace by law enforcement aircraft:
- .1 in the event of planned law enforcement operations, Parties shall provide reasonable notice and communication frequencies to the appropriate aviation authorities responsible for air traffic control of planned flights by its aircraft over national territory or waters;
- .2 in the event of unplanned operations, the Parties shall exchange information concerning the appropriate communication frequencies and other information pertinent to flight safety; and
- .3 any aircraft engaged in law enforcement operations or operations in support of law enforcement activities in accordance with this agreement shall comply with such air navigation and flight safety directions as may be required by pertinent aviation authorities, and with any written operating procedures developed for flight operations within their airspace under this Agreement.]

Operations seaward of the territorial sea

1 Whenever law enforcement officials of a Party encounter a suspect vessel flying the flag of another Party or claiming to be registered in the country of another Party, located seaward of any State’s territorial sea, this Agreement constitutes the authorization of that Party for the boarding and search of the suspect vessel and the persons found on board by such officials. If evidence of piracy or armed robbery against ships is found, law enforcement officials may detain the vessel and persons on board pending expeditious disposition instructions from the Government of the flag State.

2 Except as expressly provided herein, this Agreement does not apply to or limit boardings of vessels seaward of any State’s territorial sea, conducted by either Party in accordance with international law, whether based, *inter alia*, on the right of visit, the rendering of assistance to persons, ships, and property in distress or peril, the consent of the shipmaster, or an authorization from the flag State to take law enforcement action.

Jurisdiction over detained vessel

1 In all cases arising in national waters, or concerning vessels flying the flag of a Party seaward of any State's territorial sea, the Party whose flag is being flown by the suspect vessel shall have the primary right to exercise jurisdiction over a detained vessel, cargo and/or persons on board (including seizure, forfeiture, arrest, and prosecution), provided, however, that the Party may, subject to its constitution and laws, waive its primary right to exercise jurisdiction and authorize the enforcement of another Party's law against the vessel, cargo and/or persons on board.

2 Instructions as to the exercise of jurisdiction pursuant to paragraph 1 shall be given without delay.

Implementation

1 Operations to suppress piracy and armed robbery pursuant to this Agreement shall be carried out only against suspect vessels, including vessels without nationality, and vessels assimilated to vessels without nationality.

2 All Parties shall utilize the Incident Command System when operating in conjunction with another Party in an operation within the scope of this Agreement.

3 All Parties undertake to agree on uniform reporting criteria in order to ensure that an accurate assessment of the threat is developed. Furthermore, all Parties shall endeavour to ensure that reporting ships are not unduly detained for investigative purposes. A summary of reports to each Party shall be shared at least annually with the other Parties.

4 A Party conducting a boarding and search pursuant to this Agreement shall promptly notify the flag State of the results thereof. The relevant Party shall timely report to the other Party, consistent with its laws, on the status of all investigations, prosecutions and judicial proceedings resulting from enforcement action taken pursuant to this Agreement where evidence of piracy and armed robbery has been found.

5 Each Party shall ensure that its law enforcement officials, when conducting boardings and searches [and air interception] activities pursuant to this Agreement, act in accordance with the applicable national laws and policies of that Party and with the applicable international law and accepted international practices.

6 Boardings and searches pursuant to this Agreement shall be carried out by law enforcement officials from law enforcement vessels [or aircraft]. The boarding and search teams may operate from such ships [and aircraft] of the relevant Parties, and seaward of the territorial sea of any State, from such ships of other Parties as may be agreed upon by the Parties. The boarding and search team may carry standard law enforcement small arms.

[7 While conducting air intercept activities pursuant to this Agreement, the Parties shall not endanger the lives of persons on board and the safety of civil aircraft.]

7[8] All use of force pursuant to this Agreement shall be in strict accordance with the applicable laws and policies and shall in all cases be the minimum reasonably necessary under the circumstances. Nothing in this Agreement shall impair the exercise of the inherent right of self-defence by law enforcement or other officials of either Party.

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8[9] When carrying out operations pursuant to this Agreement, the Parties shall take due account of the possible advantage of conducting boarding and search operations in safer conditions at the closest port of a Party to minimize any prejudice to the legitimate commercial activities of the suspect vessel, or its flag State or any other interested State; the need not to delay unduly the suspect vessel; the need not to endanger the safety of life at sea without endangering the safety of the law enforcement officials or their vessels [or aircraft]; and the need not to endanger the security of the suspect vessel or its cargo.

9[10] To facilitate implementation of this Agreement, each Party shall ensure the Parties are fully informed of its respective applicable laws and policies, particularly those pertaining to the use of force. Each Party shall ensure that all of its law enforcement officials are knowledgeable concerning the applicable laws and policies of the other Parties.

10[11] Assets seized in consequence of any operation undertaken in the national waters of a Party pursuant to this Agreement shall be disposed of in accordance with the laws of the Party. Assets seized in consequence of any operation undertaken seaward of the territorial sea of a Party pursuant to this Agreement shall be disposed of in accordance with the laws of the seizing Party. To the extent permitted by its laws and upon such terms as it deems appropriate, a Party may, in any case, transfer forfeited assets or proceeds of their sale to another Party. Each transfer generally will reflect the contribution of other Parties to facilitating or effecting the forfeiture of such assets or proceeds.

11[12] The law enforcement authority of one Party (the “first Party”) may request, and the law enforcement authority of another Party may authorize, law enforcement officials of the other Party to provide technical assistance to law enforcement officials of the first Party in their boarding and investigation of suspect vessels located in the territory or waters of the first Party.

12[13] Any injury to or loss of life of a law enforcement official of a Party shall normally be remedied in accordance with the laws of that Party. Any other claim submitted for damage, injury, death or loss resulting from an operation carried out under this Agreement shall be processed, considered, and if merited, resolved in favour of the claimant by the Party whose officials conducted the operation, in accordance with the domestic law of that Party, and in a manner consistent with international law. If any loss, injury or death is suffered as a result of any action taken by the law enforcement or other officials of one Party in contravention of this Agreement, or any improper or unreasonable action is taken by a Party pursuant thereto, the relevant Parties shall, without prejudice to any other legal rights which may be available, consult at the request of a Party to resolve the matter and decide any questions relating to compensation.

13[14] Disputes arising from the interpretation or implementation of this Agreement shall be settled by mutual agreement of the Parties.

14[15] The Parties agree to consult, on at least an annual basis, to evaluate the implementation of this Agreement and to consider enhancing its effectiveness, including the preparation of amendments to this Agreement that take into account increased operational capacity of the law enforcement authorities and officials. In case a difficulty arises concerning the operation of this Agreement, any Party may request consultations with another Party to resolve the matter.

15[16] Nothing in this Agreement is intended to alter the rights and privileges due any individual in any legal proceeding.

16[17] Nothing in this Agreement shall prejudice the position of any Party with regard to the international law of the sea.

Entry into force and duration

1 [Entry into force]

2 [Denunciation]

3 This Agreement shall continue to apply after termination with respect to any administrative or judicial proceedings arising out of actions taken pursuant to this Agreement during the time that it was in force.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at _____, this _____ day of _____

INTERNATIONAL MARITIME ORGANIZATION
4 ALBERT EMBANKMENT
LONDON SE1 7SR

Telephone: 020 7735 7611
Fax: 020 7587 3210



IMO

E

Ref. T2-mss/2.11.4.1

MSC.1/Circ.1334
23 June 2009

PIRACY AND ARMED ROBBERY AGAINST SHIPS

Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships

- 1 The Maritime Safety Committee, at its eighty-sixth session (27 May to 5 June 2009), approved a revised MSC/Circ.623/Rev.3 (Guidance to shipowners and ship operators, shipmasters and crews for preventing and suppressing acts of piracy and armed robbery against ships) as given at annex.
- 2 The revision was carried out on the basis of the outcome of the comprehensive review of the guidance provided by the Organization for preventing and suppressing piracy and armed robbery against ships; and took into account the work of the correspondence group on the review and updating of MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22), established by MSC 84.
- 3 Member Governments and organizations in consultative status with IMO are recommended to bring this circular to the attention of shipowners, ship operators, shipping companies, shipmasters and crews and all other parties concerned.
- 4 This circular revokes MSC/Circ.623/Rev.2.

ANNEX

**GUIDANCE TO SHIPOWNERS, COMPANIES¹, SHIP OPERATORS, SHIPMASTERS
AND CREWS ON PREVENTING AND SUPPRESSING ACTS OF PIRACY* AND
ARMED ROBBERY** AGAINST SHIPS**

Introduction

1 This circular aims at bringing to the attention of shipowners, companies, ship operators masters and crews the precautions to be taken to reduce the risks of piracy on the high seas and armed robbery against ships at anchor, off ports or when underway through a coastal State's territorial waters. It outlines steps that should be taken to reduce the risk of such attacks, possible responses to them and the vital need to report attacks, both successful and unsuccessful, to the authorities of the relevant coastal State and to the ships' own maritime Administration. Such reports are to be made as soon as possible, to enable necessary action to be taken.

2 It is important to bear in mind that shipowners, companies, ship operators, masters and crews can and should take measures to protect themselves and their ships from pirates and armed robbers. While security forces can often advise on these measures, and flag States are required to take such measures as are necessary to ensure that owners and masters accept their responsibility, ultimately it is the responsibility of shipowners, companies, ship operators, masters and ship operators to take seamanlike precautions when their ships navigate in areas where the threat of piracy and armed robbery exists. Planning should give consideration to the crew's welfare during and after a period of captivity by pirates or armed robbers. Before operating in waters where attacks have been known to occur, it is imperative for shipowners, companies, ship operator and masters concerned to gather accurate information on the situation in the area. To this end the information on attacks and attempted attacks gathered, analysed and distributed by the IMO, IMB's Piracy Reporting Centre

¹ The term "company" is defined in SOLAS regulations IX/1 and XI-2/1.

* The following definition of piracy is contained in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (article 101):

"Piracy consists of any of the following acts:

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

** The Subregional meeting on piracy and armed robbery against ships in the Western Indian Ocean, Gulf of Aden and Red Sea area, held in Dar es Salaam, United Republic of Tanzania, from 14 to 18 April 2008, agreed to modify this definition. Consistent with the ReCAAP Agreement, the "private ends" motive has been added to the definition. The formulation "within internal waters, archipelagic waters and territorial sea" replaced "within a State's jurisdiction". The new formulation reflects the views of France, supported by other States participating in the meeting, that the definition for armed robbery against ships should not be applicable to acts committed seaward of the territorial sea. The new definition reads: "Armed robbery against ships" means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea.

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and the ReCAAP Information Sharing Centre (ReCAAP ISC)², the Maritime Security Centre, Horn of Africa, Governments and others is vital information, upon which precautionary measures should be based.

3 These recommendations have been culled from a number of sources. Where conflicting advice has been apparent, the reason for choosing the recommended course has been stated.

The pirates'/robbers' objective

4 In addition to the hijacking of ships and the holding the crew hostage, and the theft of cargo, other targets of the attackers include cash in the ship's safe, crew possessions and any portable ship's equipment. When there has been evidence of tampering with containers, it may be an indication that the raiders may initially have gained access when the ship was berthed in port and then gone over the side, with what they could carry. The application of the ISPS Code is an important precautionary measure and a thorough checking of ships' compartments and securing them before leaving ports is therefore strongly encouraged.

Reducing the temptation for piracy and armed robbery

Cash in the ship's safe

5 The belief that large sums of cash are carried in the master's safe attracts attackers. In some cases this belief has been justified and sums have been stolen. While carrying cash may sometimes be necessary to meet operational needs and crew requirements and to overcome exchange control restrictions in some States, it acts as a magnet for attackers and they will intimidate and take hostage the master or crew members until the locations have been revealed. Shipowners should consider ways of eliminating the need to carry large sums of cash on board a ship. When this need arises because of exchange control restrictions imposed by States, the matter should be referred to the ship's maritime Administration to consider if representations should be made to encourage a more flexible approach as part of the international response to eliminate attacks by pirates and armed robbers.

Discretion by masters and members of the crew

6 Masters should bear in mind the possibility that attackers are monitoring ship-to-shore communications and using intercepted information to select their targets. Masters should however also be aware that switching off AIS in high-risk areas reduces ability of the supporting naval vessels to track and trace vessels which may require assistance. Caution should also be exercised when transmitting information on cargo or valuables on board by radio in areas where attacks occur.

7 It is up to the master's professional judgement to decide whether the AIS system should be switched off, in order for the ship not to be detected, when entering areas where piracy is an imminent threat, however the master should balance the risk of attack against the need to maintain the safety of navigation and, in particular, the requirements of COLREG Rule 7 on Risk of collision, and should act in accordance with the guidance in resolutions A.917(22) and A.956(23). The master should also be aware that other ships operating in high-risk areas may have taken a decision to

² The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) is a Government-to-Government Agreement that addresses the incidence of piracy and armed robbery against ships in Asia. The status of ReCAAP ISC is an IGO. Further details may be found at www.recaap.org.

switch off the AIS system. In the event of an attack, masters should ensure to the extent feasible that AIS is turned on again and transmitting to enable security forces to locate the vessel.

8 Members of the crew going ashore in ports in affected areas should be advised not to discuss the voyage or cargo particulars with persons unconnected with the ship's business.

Smaller crews

9 The smaller crew numbers now found on board ships also favour the attacker. A small crew engaged in ensuring the safe navigation of their ship through congested or confined waters will have the additional onerous task of maintaining high levels of security surveillance for prolonged periods. Shipowners may wish to consider enhancing security watches if their ship is in waters or at anchor off ports, where attacks occur. Shipowners may wish to consider providing appropriate surveillance and detection equipment to aid their crews and protect their ships.

Recommended practices

10 The recommended practices outlined below are based on reports of incidents, advice published by commercial organizations and measures developed to enhance ship security. The extent to which the recommendations are followed or applied are matters solely for the owners or masters of ships operating in areas where attacks occur. The shipping industry would also benefit from consulting other existing recommendations, including those given by the ReCAAP ISC³, the IMB Piracy Reporting Centre, BIMCO, ICS and other industry bodies.

11 Given that the masters are often required to follow multiple reporting procedures in these difficult circumstances, it is necessary to simplify these procedures as far as operationally feasible. It is therefore recommended that in the event of an occurrence masters should report all actual or attempted attacks of piracy and armed robbery or threats thereof, to:

- (i) the nearest RCC or regional piracy focal point where applicable (e.g., RECAAP ISC in the Asian region⁴),
- (ii) the flag State, and
- (iii) the IMB Piracy Reporting Centre⁵.

12 The recommended actions are defined as phases related to any voyage in a piracy and armed robbery threat area. The phases define the main stages in all situations of pre-piracy or armed robbery, attempted piracy or armed robbery and confirmed piracy or armed robbery. Depending on the development of any one situation, they may or may not materialize. A list of phases is given in Appendix 3.

³ The ReCAAP ISC collates and analyses information concerning piracy and armed robbery against ships, and publishes regular reports which identify patterns and trends, highlight good practices and recommend preventive measures.

⁴ See Appendices 2 to this circular regarding the information-sharing and incident-reporting processes generally and in the Asian region.

⁵ The IMB Piracy Reporting Centre is manned 24 hours a day and set up to receive and promulgate reports of attacks or attempted attacks worldwide.

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The pre-piracy/armed robbery phase

13 Written procedures on how to prevent or suppress attacks of pirates and armed robbers should be found either in the ship's Safety Management System or in the ship security plan.

14 The entry into force of the ISPS Code and the ISM Code have made security assessments and risk assessments an integral part of the safety and security precautions. Measures to prevent and suppress piracy and armed robbery against ships should be part of either the emergency response procedures in the safety management system, or as a situation that requires increased alertness, should become a part of the procedures in the ship security plan.

15 All ships operating in waters or ports where attacks occur should carry out a security assessment as a preparation for development of measures to prevent attacks of pirates or armed robbers against ships and on how to react should an attack occur. This should be included as a part of the emergency response procedures in the safety management system or a part of the procedures in the ship security plan. The security assessment should take into account the basic parameters of the operation including:

- .1 the risks that may be faced including any information given on characteristics of piracy or armed robbery in the specific area;
- .2 the ship's actual size, freeboard, maximum speed, and the type of cargo;
- .3 the number of crew members available, their proficiency and training;
- .4 the ability to establish secure areas on board ship; and
- .5 the equipment on board, including any surveillance and detection equipment that has been provided.

16 The ship security plan* or emergency response procedures should be prepared based on the risk assessment, detailing predetermined responses to address increases and decreases in threat levels.

The measures should, *inter alia*, cover:

- .1 the need for enhanced surveillance and the use of lighting, surveillance and detection equipment;
- .2 controlling of access to the ship and the restricted areas on the ships by ships' personnel, passengers, visitors, etc.;
- .3 prevention of unauthorized intrusion by active and passive devices and measures, such as netting, wire, electric fencing, long-range acoustic devices, as well as the use, when appropriate, of security personnel on vessels transiting high-risk areas, and taking other measures to make it more difficult for pirates to board vessels. The safety of onboard personnel should always be taken into account when installing passive devices on board and awareness information should be provided;
- .4 monitoring the security of the ship;
- .5 crew responses, if a potential attack is detected or an attack is underway;

* Guidance can be found in the ISPS Code.

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- .6 the radio alarm procedures to be followed; and
- .7 the reports to be made after an attack or an **attempted attack**.

Ship security plans or emergency response procedures should ensure that masters and crews are made fully aware of the risks involved during attacks by pirates or armed robbers. In particular, they should address the dangers that may arise if a crew adopts an aggressive response to an attack. Early detection of a possible attack may often be the **most effective deterrent**. Aggressive responses, once an attack is underway and, in particular, once the attackers have boarded the ship, could significantly increase the risk to the ship and those on board.

17 In accordance with the ship security plan, all doors allowing access to the bridge, engine-room, steering gear compartments, officers' cabins and crew accommodation should be secured and controlled in affected areas and should be regularly inspected. The use of surveillance equipment to monitor the areas as well as regular patrolling can be of merit. The intention should be to establish secure areas which attackers will find difficult to penetrate. Securing by locking or other means of controlling access to unattended spaces adjoining areas could also prove useful.

18 The shipowner, company, operator and master should bear in mind, the seafarer's need for shore leave and access to shore-based welfare facilities and medical care.

19 It is important that any response to an incident is well planned and executed, and those involved should be as familiar as possible with a ship environment. Therefore, those responsible within the security forces for responding to acts of piracy and armed robbery against ships, whether at sea or in port, should be trained in the general layout and features of the types of ships most likely to be encountered and shipowners in consultation with the flag State should cooperate with the security forces in providing access to their ships to allow the necessary onboard familiarization.

Routeing and delaying anchoring

20 If at all possible, ships should be routed away from areas where attacks are known to have taken place and, in particular, seek to avoid bottlenecks. When deciding on a ship's route the company should take into consideration the type of ship, the size and maximum speed as well as the freeboard and the dangerous nature of the cargo. If convoys are offered such a measure should also be considered to avoid serious attacks on ships at sea. If ships are approaching ports where attacks have taken place on ships at anchor, rather than ships underway, and it is known that the ship will have to anchor off port for some time, consideration should be given to delaying anchoring by longer routeing to remain well off shore or other methods by which the period during which the ship will be at risk is reduced. Contact with port authorities should ensure that berthing priorities are not affected. Charter party agreements should recognize that ships may need to delay arrival at ports where attacks occur either when no berth is available for the ship or offshore loading or unloading will be delayed for a protracted period.

Practise the implementation of the ship security plan

21 Prior to entering an area, where attacks have occurred, the ship's crew should have practised the procedures set down in the ship security plan. Alarm signals and procedures should have been thoroughly practised and training and drills carried out. If instructions are to be given over the ship's address systems or personal radios, they must be clearly understood by those who may not have fully mastered the language in which the instructions will be given.

22 In order to ensure higher vigilance upon entering the area where attacks occur, additional specific security briefings should be given to all ship personnel on the threats of piracy, re-emphasizing the procedures for reporting suspicious persons, objects or activities. Full or partial searches of the ship should be carried out regularly while in the area with heightened threat of attack.

23 It cannot be emphasized enough that all possible access points to the ship and any key and secure areas on it must be secured or controlled in port, at anchor and when underway in affected areas. Crews should be trained in the use of any additional surveillance or detection equipment installed on the ship. Planning and training must be on the basis that an attack will take place and not in the belief that with some luck it will not happen. Indications to attackers that the ship has an alert and trained crew implementing a ship security plan will help to deter them from attacking the ship.

Precautions at anchor or in port

24 In areas where attacks occur, the ships' masters should exercise vigilance when their ships are preparing to anchor or while at anchor. Furthermore, it is important to limit, record and control those who are allowed access to a ship when in port or at anchor. Photographing those who board the ship can be a useful deterrent or assist the identification of attackers who may have had access to the ship prior to their attack. Given that attackers may use knowledge of cargo manifests to select their targets, every effort should be made to limit the circulation of documents which give information on the cargoes on board or their location on the ship. Similar precautions should be taken in regard to the circulation of information on crew members' personal valuables and ship's equipment, as these items are also targeted by attackers.

25 Prior to leaving port, the ship should be thoroughly searched and all doors or access points secured or controlled. This is particularly important in the case of the bridge, engine-room, steering space and other vulnerable areas. Doors and access points should be regularly checked thereafter. The means of controlling doors or access points which would need to be used in the event of an emergency on board will need careful consideration. Ship or crew safety should not be compromised. Searches on board for intruders should be conducted in such a way that the safety of the crew performing these duties is not compromised.

26 Security guards employed in port or at anchorage on different ships should be in communication with each other and the port authorities during their watch. The responsibility for vetting such guards lies with the security personnel companies, which themselves should be vetted by the appropriate authorities.

Watchkeeping and vigilance

27 Maintaining vigilance is essential. All too often the first indication of an attack has been when the attackers appear on the bridge or in the master's cabin. Advance warning of a possible attack will give the opportunity to sound alarms, alert other ships and the coastal authorities, illuminate the suspect craft, undertake evasive manoeuvring or initiate other response procedures. Signs that the ship is aware it is being approached can deter attackers.

28 When ships are in, or approaching areas of known risk of piracy or armed robbery, bridge watches and look-outs should be augmented, bearing in mind that many attacks are mounted from astern. Additional watches on the stern or covering radar "blind spots" should be considered. Companies should consider investing in low-light binoculars for bridge staff and look-outs. Radar

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should be constantly manned but it may be difficult to detect low profile fast moving craft on ship's radars. A yacht radar mounted on the stern may provide additional radar cover capable of detecting small craft approaching from astern when the ship is underway. Use of an appropriately positioned yacht radar when the ship is at anchor may also provide warning of the close approach of small craft.

29 It is particularly important to maintain a radar and visual watch for craft which may be trailing the ship when underway but which could close in quickly when mounting an attack. Small craft which appear to be matching the speed of the ship on a parallel or following course should always be treated with suspicion. When a suspect craft has been noticed, it is important that an effective all-round watch is maintained for fear the first craft is a decoy with the intention to board the ship from a second craft while attention is focused on the first.

30 In addition to the use of overt means of transmitting alerts, the ship security alert system could be used in the event of a piracy or armed robbery attack. It should, however, be borne in mind that certain non-disclosure issues prevail with regards to the configuration and locations of the system.

31 Companies owning or operating ships that frequently visit areas where attacks occur should consider the purchase and use of more sophisticated visual and electronic devices in order to augment both radar and visual watch capability against attackers' craft at night, thereby improving the prospects of obtaining an early warning of a possible attack. In particular, the provision of night vision devices, small radars to cover the blind stern arcs, closed circuit television and physical devices, such as barbed wire, may be considered. In certain circumstances non-lethal weapons such as acoustic devices, may also be appropriate. Infrared detection and alerting equipment may also be utilized.

Communications procedures

32 The master should ensure that an authorized person responsible for communications is on duty at all time when the ship is in, or approaching, areas where attacks occur. It should be ensured that ship-shore communication methods are tested and report intervals agreed prior to entering the high-risk area. The frequency of reporting should be maintained.

33 Shipowners should report attacks and attempted attacks to any national, regional or subregional reporting systems made available by Governments, including those run by security forces.

34 Where possible, ships raising alerts should specify that an act of "piracy/armed robbery" is in progress, in line with other distress categories such as "sinking" or "on fire". This could have a potential to improve the alerting process and speed of response.

35 Prior to entering areas where attacks have occurred and where the GMDSS installation on board does not have facility for automatically updating the "ship position" data from an associated electronic navigation aid, it is strongly recommended to enter the ship's position at regular intervals into the appropriate communications equipment manually. It is recommended that owners initiate the GMDSS INMARSAT "C" alarm programme before entering affected areas for use when appropriate.

36 When entering waters where piracy or armed robbery activities have been reported – especially if the AIS is turned off for security reasons – the ship should routinely transmit its position to the shipping company at given intervals, thereby giving the shipping company a first notice that something is amiss if the transmissions are interrupted. Masters should act in accordance with the guidance in resolution A.917(22) on Guidelines for the onboard operational use of shipborne automatic identification systems (AIS) and resolution A.956(23) on Amendments to the guidelines for the onboard operational use of shipborne automatic identification systems (AIS) (resolution A.917(22)) concerning the turning off of AIS. In the event of an attack, masters should ensure to the extent feasible that AIS is turned on and transmitting to enable security forces to locate the vessel.

Radio watchkeeping and responses

37 A constant radio watch should be maintained with the appropriate shore or naval authorities when in areas where attacks have occurred. Continuous watch should also be maintained on all distress and safety frequencies channels or frequencies which could have been determined by local authorities for certain areas. Ships should also ensure all maritime safety information broadcasts for the area monitored. As it is anticipated that INMARSAT's enhanced group calling system (EGC) will normally be used for such broadcasts using the SafetyNET service, owners should ensure a suitably configured EGC receiver is continuously available when in, or approaching areas where there is risk of attack. Owners should also consider fitting a dedicated receiver for this purpose, i.e. one that is not incorporated into a Ship Earth Station used for commercial purposes to ensure no urgent broadcasts are missed.

38 IMO recommends in MSC.1/Circ.1333 that Governments should arrange for RCCs to be able to pass reports of attacks to the appropriate security forces. As for the reports from the ship, see paragraphs 11, and 39 to 44, below.

39 If suspicious movements are identified which may result in an imminent attack, the ship is advised to contact the relevant RCC, the flag State or other relevant information centres such as the IMB Piracy Reporting Centre or the ReCAAP ISC. Where the master believes these movements could constitute a direct danger to navigation, consideration should be given to broadcasting an "All stations (CQ)" "danger message" as a warning to other ships in the vicinity as well as advising the appropriate RCC. A danger message should be transmitted in plain language using the "safety" priority. All such measures shall be preceded by the safety signal (Sécurité)⁶.

40 When, in his/her opinion, there is conclusive evidence that the safety of the ship is threatened, the master should immediately contact the relevant RCC or, in certain areas, with the radio stations which could have been recommended by local authorities, and if considered appropriate, authorize broadcast of an "All Stations" "Urgent Message" any radiocommunications service he/she considers appropriate or which could have been recommended by local authorities, e.g., INMARSAT, etc. All such messages shall be preceded by the appropriate Urgency signal (PAN PAN) and/or a DSC call using the "all ships urgency" category. If the Urgency signal has been used and an attack does not, in fact, develop, the ship should cancel the message as soon as it knows that action is no longer necessary. This message of cancellation should likewise be addressed to "all stations".

⁶ Specific guidance in respect of waters off the coast of Somalia has been issued as MSC.1/Circ.[1332] and also MSC.1/Circ.1302.

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41 Should an attack occur and, in the opinion of the master, the ship or crew are in grave and imminent danger requiring immediate assistance, the master should immediately authorize the broadcasting of a distress message, preceded by the appropriate distress alerts (MAYDAY, DSC, etc.), using all available radiocommunications systems. To minimize delays, if using a ship earth station, ships should ensure the coast earth station associated with the RCC is used. For ships subject to the ISPS Code, a distress signal should also be sent to the flag State using the most expeditious means for example the ships security alert system. All ships should however report the attack to the flag State to help the investigation of incidents involving ships entitled to fly their flag.

42 The ship may be able to send a covert piracy alert to an RCC. However, as pirates may be on board the ship and within audible range of the communication equipment, when the RCC sends an acknowledgement of receipt and attempts to establish communication, they could be alerted to the fact that a piracy alert has been transmitted. This knowledge may serve to further endanger the lives of the crew on board the ship. RCCs and others should, therefore, be aware of the danger of unwillingly alerting the pirates that a distress alert or other communication has been transmitted by the ship.

43 Masters should bear in mind that the distress signal is provided for use only in case of **imminent** danger and its use for less urgent purposes might result in insufficient attention being paid to calls from ships really in need of immediate assistance. Care and discretion must be employed in its use, to prevent its devaluation in the future. Where the transmission of the Distress signal is not fully justified, use should be made of the Urgency signal. The Urgency signal has priority over all communications other than distress.

Standard ships' message formats

44 The standard ships' message formats given in Appendix 4 should be used for all piracy/armed robbery initial and follow-up alert reports.

Lighting

45 Ships should use the maximum lighting available consistent with safe navigation, having regard in particular to the provisions of Rule 20(b) of the 1972 Collision Regulations. Bow and overside lights should be left on if it can be done without endangering navigation. Ships must not keep on deck lights when underway, as it may lead other ships to assume the ship is at anchor. Wide beam floods could illuminate the area astern of the ship. Signal projector lights can be used systematically to probe for suspect craft using the radar guidance if possible. So far as is practicable crew members on duty outside the ship's secure areas when in port or at anchor should avail themselves of shadow and avoid being silhouetted by deck lights as this may make them targets for seizure by approaching attackers.

46 Based on specific information on acts of piracy and armed robbery at sea in specific regions, ships may consider travelling blacked out except for mandatory navigation lights. This may prevent attackers establishing points of reference when approaching a ship. In addition, turning on the ship's lights as attackers approach could alert them that they have been seen, dazzle them and encourage them to desist. It is difficult, however, to maintain full blackout on a merchant ship. The effectiveness of this approach will ultimately depend in part on the level of moonlight, but primarily on the vigilance of the ship's crew. While suddenly turning on the ship's light may alarm or dazzle attackers, it could also place the crew at a disadvantage at a crucial point through temporary loss of their night vision.

Secure areas

47 In accordance with the ship security plan, all doors allowing access to the bridge, engine-room, steering gear compartments, officers' cabins and crew accommodation should be secured and controlled at all times and should be regularly inspected. The intention should be to establish secure areas which attackers will find difficult to penetrate. Consideration should be given to the installation of special access control systems to the ship's secure areas. Ports, scuttles and windows which could provide access to such secure areas should be securely closed and should have laminated glass, if possible. Deadlights should be shut and clipped tightly. The internal doors within secure areas which give immediate access to key areas such as the bridge, radio room, engine-room and master's cabin should be strengthened and have special access control systems and automatic alarms.

48 Securing doors providing access to, and egress from, secure or key areas may give rise to concern over safety in the event of an accident. In any situation where there is a conflict between safety and security, the safety requirements should be paramount. Nevertheless, attempts should be made to incorporate appropriate safety provisions while allowing accesses and exits to be secured or controlled.

49 Owners may wish to consider providing closed-circuit television (CCTV) coverage and recording of the main access points to the ship's secure areas, the corridors approaching the entrances to key areas and the bridge. The allocation of additional personnel to guarding and patrolling of restricted areas can be a useful preventive measure.

50 To prevent seizure of individual crew members by attackers – seizure and threatening a crew member is one of the more common means of attackers gaining control over a ship – all crew members not engaged on essential outside duties should remain within a secure area during the hours of darkness. Those whose duties necessarily involve working outside such areas at night should remain in regular communication with the bridge, it may be the first indication of an attack if the watchkeeper does not report in, if manning permits work in pairs, make irregular rounds on the deck and should have practised using alternative routes to return to a secure area in the event of an attack. Crew members who fear they may not be able to return to a secure area during an attack should select places in advance in which they can take temporary refuge.

51 There should be designated muster areas within the ship's secure areas where the crew can muster during an attack and communicate their location and numbers to the bridge.

Alarms

52 Alarm signals, including the ship's whistle, should be sounded on the approach of attackers. Alarms and signs of response can discourage attackers. Alarm signals or announcements which provide an indication at the point at which the attacker may board, or have boarded, may help crew members in exposed locations select the most appropriate route to return to a secure area. Announcements made by the crew should be made in the working language of the ship.

53 The crew initial familiarization checklist should specifically state the various alarms used on board the vessel, the response and muster station to each of these alarms. The alarms and alarm signals should be standardized throughout the fleet and not be specific.

Use of distress flares

54 The only flares authorized for carriage on board ship are intended for use if the ship is in distress and is in need of immediate assistance. As with the unwarranted use of the distress signal on the radio (see paragraph 43 above), use of distress flares simply to alert shipping rather than to indicate that the ship is in grave and imminent danger may reduce their effect in the situations in which they are intended to be used and responded to. Radio transmissions should be used to alert shipping of the risk of attacks rather than distress flares. Distress flares should only be used when the master considers that the attackers' actions are putting his/her ship in imminent danger.

Use of defensive measures

55 Experiences show that robust actions from the ship which is approached by pirates may discourage the attackers. Outrunning attacks may be an appropriate preventive manoeuvre. If the situation permits, the speed should be increased and maintained at the maximum level. Provided that navigational safety allows, masters should also consider "riding off" attackers' craft by heavy wheel movements and turning into wind so as to remove any lee from either side of the ship. Heavy wheel movements should only be used when attackers are alongside and boarding is imminent. The effect of the bow wave and wash may deter would-be attackers and make it difficult for them to attach poles or grappling irons to the ship. Manoeuvres of this kind should not be used in confined or congested waters or close inshore or by ships constrained by their draught in the confined deep water routes found, for example, in the Straits of Malacca and Singapore.

Use of passive and non-lethal devices

56 The use of passive and non-lethal measures such as netting, wire, electric fencing, and long-range acoustic devices may be appropriate preventive measures to deter attackers and delay boarding.

57 The use of water hoses should also be considered though they may be difficult to train if evasive manoeuvring is also taking place. Water pressures of 80 lb per square inch and above have deterred and repulsed attackers. Not only does the attacker have to fight against the jet of water but the flow may swamp his/her boat and damage engines and electrical systems. Special fittings for training hoses could be considered which would also provide protection for the hose operator. A number of spare fire hoses could be rigged and tied down to be pressurized at short notice if a potential attack is detected.

58 Employing evasive manoeuvres and hoses must rest on a determination to successfully deter attackers or to delay their boarding to allow all crew members to gain the sanctuary of secure areas. Continued heavy wheel movements with attackers on board may lessen their confidence that they will be able to return safely to their craft and may persuade them to disembark quickly. However, responses of this kind could lead to reprisals by the attackers if they seize crew members and should not be engaged in unless the master is convinced he can use them to advantage and without risk to those on board. They should not be used if the attackers have already seized crew members.

Firearms

59 With respect to the carriage of firearms on board, masters, shipowners and companies should be aware that ships entering the territorial sea and/or ports of a State are subject to that State's legislation. It should be borne in mind that importation of firearms is subject to port and coastal State regulations. It should also be borne in mind that carrying firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods.

Non-arming of seafarers

60 The carrying and use of firearms by seafarers for personal protection or for the protection of a ship is strongly discouraged. Seafarers are civilians and the use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. Carriage of arms on board ship may encourage attackers to carry firearms or even more dangerous weapons, thereby escalating an already dangerous situation. Any firearm on board may itself become an attractive target for an attacker.

61 It should also be borne in mind that shooting at suspected pirates may impose a legal risk for the master, shipowner or company, such as collateral damages. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he or she has acted in self defence. Also the differing customs or security requirements for the carriage and importation of firearms should be considered, as taking a small handgun into the territory of some countries may be considered an offence.

Use of unarmed security personnel

62 The use of unarmed security personnel is a matter for individual shipowners, companies, and ship operators to decide. The use of unarmed security personnel to provide security advice and an enhanced lookout capability could be considered.

Use of privately contracted armed security personnel

63 If armed security personnel are allowed on board, the master, shipowner, operator and company should take into account the possible escalation of violence and other risks. However, the use of privately contracted armed security personnel on board merchant ships and fishing vessels is a matter for flag State to determine in consultation with shipowners, operators and companies. Masters, shipowners, operators and companies should contact the flag State and seek clarity of the national policy with respect to the carriage of armed security personnel. All legal requirements of flag, port and coastal States should be met.

Military teams or law enforcement officers duly authorized by Government

64 The use of military teams or law enforcement officers duly authorized by the Government of the flag State to carry firearms for the security of merchant ships or fishing vessels is a matter for the flag State to authorize in consultation with shipowners, operators and companies. The carriage of such teams may be required or recommended when the ship is transiting or operating in areas of high risk. Due to rules of engagement defined by their Government, or in coalition with other Governments, boarding conditions should be defined by the States involved, including the flag State. The shipowner, operator and company should always consult the flag State prior to embarking such teams.

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The phases of suspected or attempted piracy/armed robbery attack

Suspected piracy/armed robbery vessel detected

65 Early detection of suspected attacks must be the first line of defence. If the vigilance and surveillance has been successful, a pirate/armed robbery vessel will be detected early. This is the stage at which the security forces of the nearest littoral or coastal State must be informed through the RCC, using the ships' message format contained in Appendix 4. The ship's crew should be warned and, if not already in their defensive positions, they should move to them. Appropriate passive and active measures, such as evasive manoeuvres and hoses should be vigorously employed as detailed in the preparation phase or in the ship's security plan.

66 Shipowners, company, ship operator and master should be aware of any UN Security Council, IMO or any other UN resolutions on piracy and armed robbery against ships and any recommendations therein relevant to the shipowner, operator, master and crew when operating in areas where piracy or armed robbery against ships occur.

Being certain that piracy/armed robbery will be attempted

67 If not already in touch with the security forces of the littoral coastal State, efforts should be made to establish contact. Crew preparations should be completed and, where a local rule of the road allows ships under attack to do so, a combination of sound and light signals should be made to warn other ships in the vicinity that an attack is about to take place. Vigorous manoeuvring should be continued and maximum speed should be sustained if navigation conditions permit. Nothing in these guidelines should be read as limiting the master's authority to take action deemed necessary by the master to protect the lives of passengers and crew.

Pirate/armed robbery vessel in proximity to, or in contact with, own ship

68 Vigorous use of hoses in the boarding area should be continued. It may be possible to cast off grappling hooks and poles, provided the ship's crews are not put to unnecessary danger.

69 While giving due consideration to safety of crew, vessel and environment it is recommended that masters should not slow down and stop, as far as practicable, when pursued by or fired upon by pirates/armed robbers intending to board and hijack the vessel. Where the pirates/armed robbers operate from a mother ship, masters should consider steering away from the mother ship thus increasing the distance between the attacking craft and the mother ship.

Pirates/armed robbers start to board ship

70 Timing during this phase will be critical and as soon as it is appreciated that a boarding is inevitable all crew should be ordered to seek their secure positions and activate any systems for raising the alarm including the ship security alert system.

Pirates/armed robbers have succeeded in entering ship

71 Early detection of potential attacks must be the first line of defence, action to prevent the attackers actually boarding the second, but there will be incidents when attackers succeed in boarding a ship. The majority of pirates and armed robbers are opportunists seeking an easy target and time may not be on their side, particularly if the crews are aware they are on board and are

raising the alarm. However, the attackers may seek to compensate for the pressure of time they face by escalating their threats or the violence they employ. When attackers are on board the actions of the master and crew should be aimed at:

- .1 securing the greatest level of safety for those on board the ship;
- .2 seeking to ensure that the crew remain in control of the navigation of the ship; and
- .3 securing the earliest possible departure of the attackers from the ship.

72 The options available to the master and crew will depend on the extent to which the attackers have secured control of the ship, e.g., by having gained access to the bridge or engine-room, or by seizing crew members who they can threaten, to force the master or crew to comply with their wishes. However, even if the crew are all safely within secure areas, the master will always have to consider the risk to the ship the attackers could cause outside those areas, e.g., by using firebombs to start fires on a tanker or chemical carrier.

73 If the master is certain that all his/her crew are within secure areas and that the attackers cannot gain access or by their actions outside the secure areas they do not place the entire ship at imminent risk, then he/she may consider undertaking evasive manoeuvres of the type referred to above to encourage the attackers to return to their craft.

74 The possibility of a sortie by a well-organized crew has, in the past, successfully persuaded attackers to leave a ship but the use of this tactic is only appropriate if it can be undertaken at no risk to the crew. For an action like this to be attempted the master must have clear knowledge of where the attackers are on the ship, that they are not carrying firearms or other potentially lethal weapons and that the number of crew involved significantly outnumbers the attackers they will face. If a sortie party can use water hoses, they stand an increased chance of success. The intention should be to encourage the attackers back to their craft. Crew members should not seek to come between the attackers and their craft nor should they seek to capture attackers as to do so may increase the resistance the attackers offer which will, in turn, increase the risk faced by members of the sortie party. Once outside the secure area, the sortie party should always stay together. Pursuit of an individual attacker by a lone crew member may be attractive but if it results in the crew member being isolated and seized by the attackers, the advantage turns to the attackers. Crew members should operate together and remain in constant communication with the bridge and should be recalled if their line of withdrawal to a secure area is threatened.

75 If the crew do apprehend an attacker, he/she should be placed in secure confinement and well cared for. Arrangements should be made to transfer him/her to the custody of officers of the security forces of a coastal State at the earliest possible opportunity. Any evidence relating to these activities should also be handed over to the authorities who take him/her into custody.

The pirates/armed robbers begin to gain control and take one or more of the ship's crew into their custody

76 If the attackers have gained control of the engine-room or bridge, have seized crew members or can pose an imminent threat to the safety of a ship, the master or officer in charge should remain calm and, if possible, seek to negotiate with the attackers with the intention of maintaining the crew's control over the navigation of the ship, the safe return of any hostages they may hold and the early departure of the attackers from the ship. There will be many circumstances when compliance

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with the attackers' demands will be the only safe alternative and resistance or obstruction of any kind could be both futile and dangerous. An extract from United Nations Guidance on surviving as a hostage is given in Appendix 4.

77 In the event of attackers gaining temporary control of the ship, crew members should, if it is safe and practicable, leave Close Circuit Television (CCTV) records running.

78 As there have been occasions when entire crews have been locked up, consideration should be given to secreting equipment within areas in which the crew could be detained to facilitate their early escape.

79 In the event of hijacking a ship, the shipping company should seek expert advice and assistance from professionals to the effect of the safe return of the crew, as handling these situations have shown to be time-consuming and stressful for all parties involved.

The pirates/armed robbers have stolen property/money, etc.

80 At this stage it is essential that the pirates/armed robbers are assured that they have been given everything they demand and a strong reassurance that nothing has been secreted may persuade the pirates/armed robbers to leave.

The pirates/armed robbers start to disembark from the ship

81 If the crew are in their secure positions, it would be unwise of them to leave this security until it is confirmed that the pirates/armed robbers have left the ship.

The pirates/armed robbers have disembarked from the ship

82 A pre-arranged signal on the ship's siren will alert the crew to the "all clear". The company Security Officer should be informed accordingly.

Action after an attack and reporting incidents

83 Immediately after securing the safety of the ship and crew a post attack report (Follow-up report, as shown in Ships' message formats in Appendix 5) should be made to the relevant RCC and, through them, to the security forces of the coastal State concerned. As well as information on the identity and location of the ship, any injuries to crew members or damage to the ship should be reported, as should the direction in which the attackers departed together with brief details of their numbers and, if possible, a description of their craft. If the crew have apprehended an attacker, that should also be reported in this report.

84 If an attack has resulted in the death of, or serious injury to, any person on board the ship or serious damage to the ship itself, an immediate report should also be sent to the ship's maritime Administration. In any event a report of an attack is vital if follow-up action is to be taken by the ship's maritime Administration. The shipowner, companies, ship operators, shipmasters and crew should cooperate with the investigators and provide the requested information.

85 Any CCTV or other recording of the incident should be secured. If practicable, areas that have been damaged or rifled should be secured and remain untouched by crew members pending possible forensic examination by the security forces of a coastal State. Crew members who came

into contact with the attackers should be asked to prepare an individual report on their experience noting, in particular, any distinguishing features which could help subsequent identification of the attackers. A full inventory, including a description of any personal possessions or equipment taken, with serial numbers when known, should also be prepared.

86 As soon as possible after the incident, a fuller report should be transmitted to the authorities of the coastal State in whose waters the attack occurred or, if on the high seas, to the authorities of the nearest coastal State. Due and serious consideration should be given to complying with any request made by the competent authorities of the coastal State to allow officers of the security forces to board the ship, take statements from crew members and undertake forensic and other investigations. Copies of any CCTV recordings, photographs, etc., should be provided if they are available.

87 Ships should take the necessary precautions, and implement the necessary procedures to ensure rapid reporting of any case of attack or attempted attack to the authorities in the relevant coastal States to enhance the possibility of security forces apprehending the attackers.

88 Any report transmitted to a coastal State should also be transmitted to the ship's maritime Administration at the earliest opportunity. A complete report of the incident, including details of any follow-up action that was taken or difficulties that may have been experienced, should eventually be submitted to the ship's maritime Administration. The report received by maritime Administrations may be used in any diplomatic approaches made by the flag State to the Government of the coastal State in which the incident occurred. This will also provide the basis for the report to IMO.

89 The format required for reports to IMO through maritime Administrations or international organizations is attached at Appendix 6. Indeed, at present the lack of adequate and accurate reporting of attacks is directly affecting the ability to secure governmental and international action. Reports may also contribute to future refining and updating any advice that might be issued to ships.

90 Reports to the RCC, coastal State and the ship's maritime Administration should also be made if an attack has been unsuccessful.

91 Using RCCs, as recommended by IMO in MSC/Circ.1073, will eliminate communication difficulties.

On leaving piracy/armed robbery high-risk/high-probability areas

92 On leaving piracy/armed robbery threat areas, shipmasters should make certain that those spaces that need to be unlocked for safety reasons are unlocked, unrig hoses and revert to normal watchkeeping/lighting. However, though ships may be operating outside high-risk/high-probability areas, ship masters may, at their discretion, have ready their anti-piracy/robbery measures in view that the pirates/robbers may attack outside these areas.

Post-incident follow-up

93 A debriefing should be conducted by the owner/master, SSO and CSO to learn from the attack and identify areas of improvement. The debriefing should be conducted immediately after the incident so that the events are fresh and should involve the entire crew.

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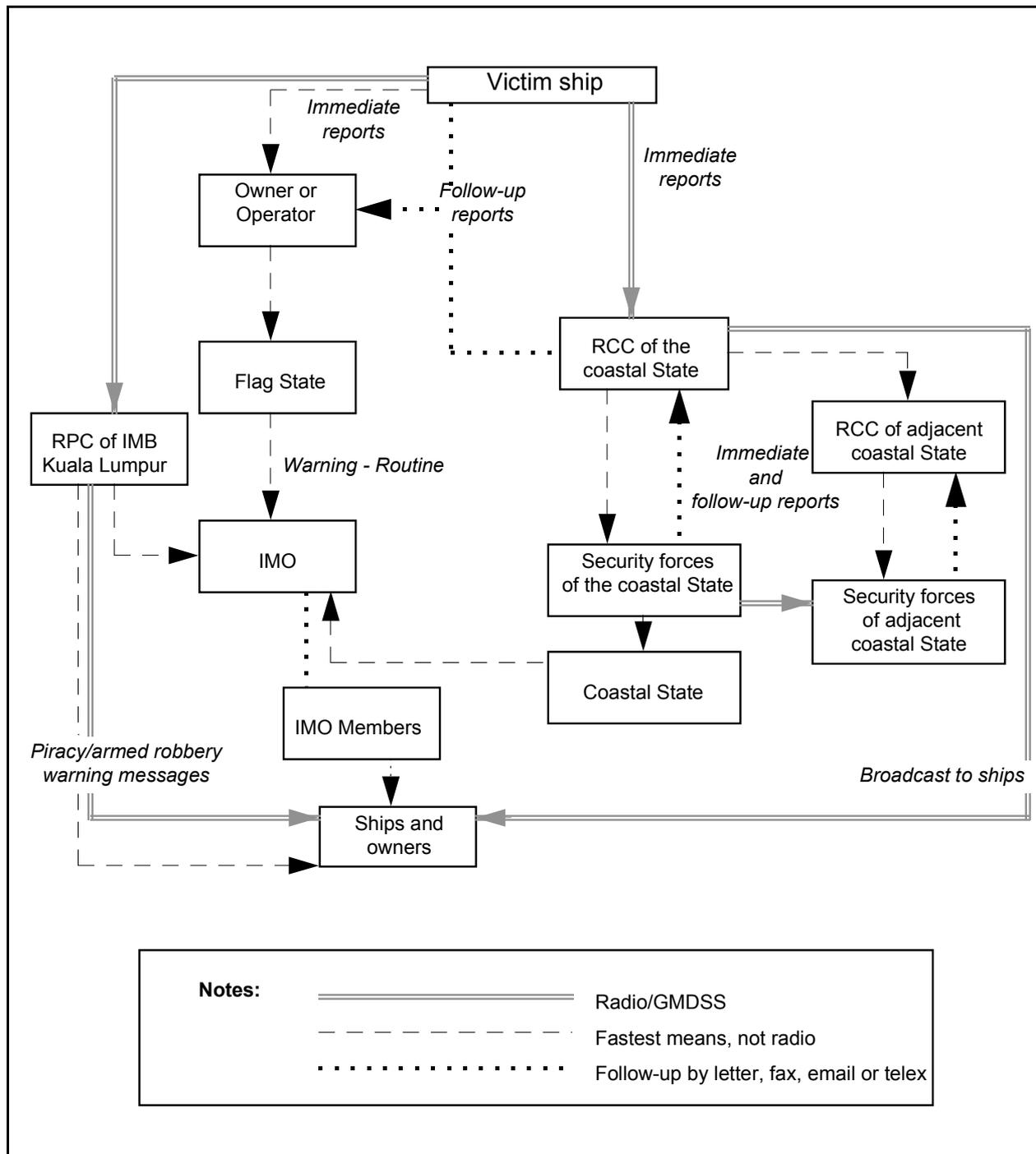
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94 The shipowner should be aware that the seafarer may suffer from trauma or similar condition after being victimized under an attack from pirates or armed robbers. The shipowner should offer advice from professionals if the seafarer wishes such assistance. An important first step in reducing the risk from trauma is for masters to debrief crew immediately after the attack or release of a vessel in order to get crew to confront their experiences. An important second step is for counselling professionals to debrief crew as soon as possible after the attack or release of the vessel in order to assist the crew to manage their experiences.

APPENDIX 1

STATISTICS, FLOW DIAGRAMS AND OTHER RELEVANT INFORMATION

Flow diagram for attacks in coastal waters



APPENDIX 3

**“PHASES” RELATED TO VOYAGES
IN PIRACY AND ARMED ROBBERY THREAT AREAS**

Phase Symbol	Phase Description
A	Approaching a piracy/armed robbery threat area (1 hour prior to entering)
B	Entering a piracy/armed robbery threat area
C	Inside a piracy/armed robbery threat area, but no suspect piracy/armed robbery vessel detected
D	Inside a piracy/armed robbery threat area: suspect piracy/armed robbery vessel detected
E	Certainty that piracyarmed robbery will be attempted
F	Pirate/armed robbery vessel in proximity to, or in contact with, own ship
G	Pirates/armed robbers start attempts to enter ship
H	Pirates/armed robbers have succeeded in entering ship
I	Pirates/armed robbers have one or more of the ship's personnel in their control/custody
J	The pirates/armed robbers have gained access to the bridge or the master's office
K	The pirates/armed robbers have stolen property/money etc
L	The pirates/armed robbers start to disembark
M	The pirates/armed robbers have disembarked
N	The pirate/armed robbery vessel is no longer in contact with the ship
O	Own ship leaves the piracy/armed robbery threat area

Appendix 4

EXTRACT FROM UN GUIDANCE ON SURVIVING AS A HOSTAGE

Introduction

Over the past few years the number of seafarer who have been kidnapped or taken hostage has increased substantially. Every hostage or kidnap situation is different. There are no strict rules of behaviour; however, there are a number of steps which you can take to minimize the effects of detention and enhance your ability to cope and to see the incident through to a successful release.

Survival considerations

These techniques have been successfully employed by others who have been taken hostage:

- No one can tell an individual whether he or she should resist or not if taken hostage/kidnapped. This decision must be made by each person's own assessment of the circumstances. Resisting the attempt may be extremely risky. You may be injured if you attempt to resist armed individuals. It is possible that you will immediately be blindfolded and drugged.
- Being taken hostage is probably one of the most devastating experiences a seafarer can undergo. The first 15 to 45 minutes of a hostage situation are the most dangerous. Follow the instructions of your captors. They are in a highly emotional state, regardless of whether they are psychologically unstable or caught in an untenable situation. They are in a fight or flight reactive state and could strike out. Your job is to survive. After the initial shock wears off, your captors are able to better recognize their position. Be certain you can explain everything on your person.
- Immediately after you have been taken, pause, take a deep breath and try to relax. Fear of death or injury is a normal reaction to this situation. Recognizing your reactions may help you adapt more effectively. A hostage usually experiences greatest anxiety in the hours following the incident. This anxiety will begin to decline when the person realized he/she is still alive – at least for now – and a certain routine sets in. Feelings of depression and helplessness will continue throughout captivity and most hostages will feel deeply humiliated by what they undergo during captivity. Most hostages, however, will quickly adapt to the situation. Remember your responsibility is to survive.
- Do not be a hero; do not talk back or act "tough". Accept your situation. Any action on your part could bring a violent reaction from your captors. Past experiences show that those who react aggressively place themselves at greater risk than those who behave passively.
- Keep a low profile. Avoid appearing to study your abductors, although, to the extent possible, you should make mental notes about their mannerisms, clothes and apparent rank structure. This may help the authorities after your release.

- Be cooperative and obey hostage-takers' demands without appearing either servile or antagonistic. Be conscious of your body language as well as your speech. Respond simply if you are asked questions by the hijackers. Do not say or do anything to arouse the hostility or suspicious of your captors. Do not be argumentative. Act neutral and be a good listener to your captors. Do not speak unless spoken to and then only when necessary. Be cautious about making suggestions to your captors, as you may be held responsible if something you suggest goes wrong.
- Anticipate isolation and possible efforts by the hostage-takers to disorient you. Your watch may be taken away so you are unable to determine whether it is night or day. Nevertheless, try to maintain a routine.
- Try to appear uninterested as to what is going on around you. Sleep, read a book, etc. When so occupied, you will be less influenced by what is going on around you, and hijackers do not bother people who are not a threat to them.
- Try to keep cool by focusing your mind on pleasant scenes or memories or prayers. Try to recall the plots of movies or books. This will keep you mentally active. You must try to think positively. Try to maintain a sense of humour. It will lessen anxiety.
- Ask for anything you need or want (medicines, books, paper). All they can say is no.
- Build rapport with your captors. Find areas of mutual interest which emphasize personal rather than political interests. An excellent topic of discussion is family and children. If you speak their language, use it – it will enhance communications and rapport.
- Bear in mind that hostages often develop a positive attitude towards their captors. This is known as “Stockholm Syndrome”, after an incident involving hostages at a Swedish bank. In addition, as the hostage identifies with his/her captors, a negative attitude towards those on the outside may develop.
- You may be asked to sign notes verifying that you are alive or you may be asked to write a “confession” that you or the organization have been involved in nefarious activities. The decision to sign these is an individual one based on the situation. Some hostages refuse to sign unless the language of the note is changed. This may help bolster your morale and make you feel less helpless. It can also serve to command a certain degree of respect from the captors.
- Exercise daily. Develop a daily physical fitness programme and stick to it. Exercises will keep your mind off the incident and will keep your body stimulated. If possible, stay well-groomed and clean.
- As a result of the hostage situation, you may have difficulty retaining fluids and may experience a loss of appetite and weight. Try to drink water and eat even if you are not hungry. It is important to maintain your strength.
- Do not make threats against hostage-takers or give any indication that you would testify against them. If hostage-takers are attempting to conceal their identity, give no indication that you recognize them.

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- Try to think of persuasive reasons why hostage-takers should not harm you. Encourage them to let authorities know your whereabouts and condition. Suggest ways in which you may benefit your captors in negotiations that would free you. It is important that your abductors view you as a person worthy of compassion and mercy. Never beg, plead or cry. You must gain your captors' respect as well as sympathy.
- If you end up serving as a negotiator between hostage-takers and authorities, make sure the messages are conveyed accurately. Be prepared to speak on the radio or telephone.
- Escape only if you are sure you will be successful. If you are caught, your captors may use violence to teach and others a lesson.
- At every opportunity, emphasize that, as a seafarer you are neutral and not involved in politics.
- If there is a rescue attempt by force, drop quickly to the floor and seek cover. Keep your hands over your head. When appropriate, identify yourself. In many cases, former hostages feel bitter about the treatment they receive after their release. Most hostages feel a strong need to tell their story in detail. If assistance in this regard is not provided, request a post-traumatic stress debriefing. Bear in mind that the emotional problems of a former hostage do not appear immediately. Sometimes they appear months later. Whatever happens, readjustment after the incident is a slow process requiring patience and understanding. As soon as the hostage realizes that he or she is a normal person having a normal reaction to an abnormal situation, the healing process can begin.
- Be patient.

APPENDIX 5

SHIPS' MESSAGE FORMATS**Report 1 - Initial message - Piracy/armed robbery attack alert**

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

MAYDAY/DISTRESS ALERT (see note)

URGENCY SIGNAL

PIRACY/ARMED ROBBERY ATTACK

2 Ship's position (and time of position UTC)

Latitude	Longitude
Course Speed	KTS

3 Nature of event

Note: It is expected that this message will be a Distress Message because the ship or persons will be in grave or imminent danger when under attack. Where this is not the case, the word MAYDAY/DISTRESS ALERT is to be omitted.

Use of distress priority (3) in the INMARSAT system will not require MAYDAY/DISTRESS ALERT to be included.

Report 2 - Follow-up report - Piracy/armed robbery attack alert

1 Ship's name and, callsign, IMO number

2 Reference initial PIRACY/ARMED ROBBERY ALERT

3 Position of incident

Latitude	Longitude
Name of the area	

4 Details of incident, e.g.:

While sailing, at anchor or at berth?

Method of attack

Description/number of suspect craft

Number and brief description of pirates/robbers

What kind of weapons did the pirates/robbers carry ?

Any other information (e.g., language spoken)

Injuries to crew and passengers

Damage to ship (Which part of the ship was attacked?)

Brief details of stolen property/cargo

Action taken by the master and crew

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Was incident reported to the coastal authority and to whom?
Action taken by the Coastal State

- 5 Last observed movements of pirate/suspect craft, e.g.:
Date/time/course/position/speed
- 6 Assistance required
- 7 Preferred communications with reporting ship, e.g.:
Appropriate Coast Radio Station
HF/MF/VHF
INMARSAT IDs (plus ocean region code)
MMSI
- 8 Date/time of report (UTC)

APPENDIX 6

**FORMAT FOR REPORTING TO IMO THROUGH MARITIME
ADMINISTRATIONS OR INTERNATIONAL ORGANIZATIONS**

- 2* Ship's name and IMO number
 - Type of ship
 - Flag
 - Gross tonnage
- 3 Date and time
- 4 Latitude Longitude
 - Name of the area**
 - While sailing, at anchor or at berth?
- 5 Method of attack
 - Description/number of suspect craft
 - Number and brief description of pirates/robbers
 - What kind of weapons did the pirates/robbers carry ?
 - Any other information (e.g., language spoken)
- 6 Injuries to crew and passengers
 - Damage to ship (Which part of the ship was attacked?)
 - Brief details of stolen property/cargo
- 7 Action taken by the master and crew
- 8 Was incident reported to the coastal authority and to whom?
- 9 Reporting State or international organization
- 10 Action taken by the Coastal State

* Corresponding to the column numbers in the annex to the IMO monthly circulars

** The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

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

APPENDIX 7

DECALOGUE OF SAFETY

1 Watch over the ship and the cargo

It is the duty of every Master to take care of the cargo and take precautionary measures for the complete safety of the ship, as well as that of the activities carried out on board by the crew or other persons employed on board. All crew members should co-operate in the vigilance, in their own interests, communicating any suspicious activity to the Officer of the Watch.

2 Illuminate the ship and its side

Keep the ship illuminated, particularly, the outer side and the whole length of the deck, using high powered floodlights. Bad visibility impedes the action of the watchmen, constituting a favourable factor for unlawful activities. Do not forget what is recommended in rules 2 and 30 of the COLREG.

3 Establish communication for outside support

Whenever possible, install a telephone line with easy access for the watchman or crew member on duty. Ask for assistance by the telephone.

Remember also the list of stations which will be on permanent watch on VHF - channel 16. These stations can forward the request for assistance to the competent authorities.

4 Control of accesses to the cargo and to living quarters

The Master's cabin is one of the main objectives of the assailants who are looking for money and the master keys to other living quarters, to steal the crew's personal effects of value and nautical equipment from the bridge. The cabins and other living quarters should be kept locked whenever their occupants are absent.

Normally cargo will only be the object of robbery or theft if the criminals have advance knowledge of the contents, through information collected by unscrupulous persons who have access to the bill of lading. Attempt to stow the containers with valuable cargo in a manner to obstruct their doors. Isolate the means of access to the ship and also the accesses to the internal areas, creating a sole way of entry and exit by the gangway, guaranteeing its control by the watchman posted there.

5 Keep the portholes closed

Open portholes can be an easy access to clever criminals: close them with the clips in place always when you leave. Try also, to keep the accesses to internal areas locked, guaranteeing the entry and exit by the gangway watchman.

6 Do not leave valuables exposed

Try to reduce the opportunities of robbery by putting all portable equipment which is not in use to its place of storage. Valuables left exposed tempt opportunistic thieves, keep them in safe place under lock and key.

7 Keep the gangways raised

At anchorages and in port, make the access difficult by keeping the gangways and rope ladders raised. In port, only leave the gangway to the dockside down.

8 In case of an assault

- I - do not hesitate to sound the ship's general alarm in case of a threat of assault;
- II - try to keep adequate lighting to permanently dazzle the opponents, in case of an attempt by strangers to climb the ship's side;
- III - raise the alarm, by VHF - channel 16, to the ships in the area and to the permanent watch system of the authorities ashore (cite the existing structure in the port). The efficiency of assistance by the security forces depends on an early alarm;
- IV - sound the alarm with intermittent blasts on the siren and use visual alarms with floodlights and signalling rockets;
- V - if appropriate, to protect the lives of those onboard, use measures to repel the boarding by employing powerful floodlights for dazzling the aggressors or using jets of water or signalling rockets against the areas of boarding; and
- VI - do not attempt any heroic acts.

9 Keep the contracted watchmen under the control of the officer of the watch

Demand a good watchman service. Make them identify all persons that enter and leave the ship. Recommend that the crew co-operate with the control. Do not allow the watchman to leave the gangway, unless he is relieved by another watchman or a crew member.

10 Communicate to the police any occurrence relating to robbery, theft or assault

Occurrences involving assault or robbery should be communicated to the Security forces, for the pertinent legal steps to be taken.

This information will make possible the study of measures to be adopted for the prevention and combat of these crimes, contributing to guaranteeing the safety of the crew and the ship.

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LONDON SE1 7SR

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Fax: 020 7587 3210



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Ref. T2-OSS/2.7.1

SN.1/Circ.281
3 August 2009

**PIRACY AND ARMED ROBBERY AGAINST SHIPS IN WATERS OFF THE COAST
OF SOMALIA**

**INFORMATION ON INTERNATIONALLY RECOMMENDED TRANSIT
CORRIDOR (IRTC) FOR SHIPS TRANSITING THE GULF OF ADEN**

1 The Sub-Committee on Safety of Navigation (NAV), at its fifty-fifth session (27 July to 31 July 2009) reviewed the recently established Internationally Recommended Transit Corridor (IRTC) in the Gulf of Aden and endorsed its use by mariners transiting the area.

2 Member Governments are invited to bring the annexed details of the Internationally Recommended Transit Corridor (IRTC) to the attention of all concerned including shipowners, ship operators, shipmasters and crews and, in particular, to ensure that mariners take into account the guidance contained therein and follow the recommended IRTC.

3 Member Governments are also informed that the IRTC is subject to change by military authorities according to prevailing circumstances. Member Governments and relevant maritime authorities are urged to obtain up-to-date information from the “MSCHOA” website <http://www.mschoa.org> or NAV-warnings promulgated for that area.

4 Member Governments are also urged to advise their shipowners, ship operators, shipmasters and crews to consider the provisions of MSC.1/Circ.1334 on “Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships”, MSC.1/Circ.1332 on “Piracy and armed robbery against ships in waters off the coast of Somalia”, and MSC.1/Circ.1302 on “Piracy and armed robbery against ships in waters off the coast of Somalia”, prior to transiting the region.

5 The Secretariat will arrange to issue the necessary amendments for the guidance of all concerned.

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DETAILS OF AN INTERNATIONALLY RECOMMENDED TRANSIT CORRIDOR (IRTC) IN THE GULF OF ADEN

Limits of IRTC in the Gulf of Aden

The corridor includes the creation of separate eastbound and westbound transit lanes. Each lane will be 5 nm wide and will be separated by a 2 nm buffer zone. The IRTC eastbound lane begins at 045° E between 11° 48'.00 N and 11° 53'.00 N. The lane is oriented along a straight line course of 072° and terminates at 053° E between 14° 18'.00 N and 14° 23'.00 N. The IRTC westbound lane begins at 053° between 14° 25'.00 N and 14° 30'.00 N. The lane is oriented along a straight line course of 252° and terminates at 045° east between 11° 55'.00 N and 12° 00'.00 N.

	Eastbound lane		Westbound lane	
1	11° 53'.00 N	045° 00'.00 E	14° 30'.00 N	053° 00'.00 E
2	14° 23'.00 N	053° 00'.00 E	12° 00'.00 N	045° 00'.00 E
3	14° 18'.00 N	053° 00'.00 E	11° 55'.00 N	045° 00'.00 E
4	11° 48'.00 N	045° 00'.00 E	14° 25'.00 N	053° 00'.00 E

Initial reports

Upon entering the detailed reporting area, or leaving a port within the region, the recommended Voluntary Reporting Requirements are as follows:

- .1 **Initial report to UKMTO Dubai (e-mail or fax)**
- .2 **Initial report to MARLO (e-mail or fax)**

Additionally, if planning to transit the Gulf of Aden, or navigate within the area bounded by the African coast, 12°N, 58°E and 10°S:

- .3 **Register Vessel Movement with MSC-HOA (online, e-mail or fax)**

Position, course and speed reporting

After transmitting the initial report to UKMTO Dubai, MARLO and MSC-HOA (as applicable), vessels are encouraged to report their noon position, course, speed, estimated and actual arrival times to UKMTO Dubai and MARLO whilst operating in the region.

Vessels are also encouraged to increase the frequency of such reports when navigating in known high risk/piracy areas and further report upon passing Point A and Point B as set out in the annexed chart in the Gulf of Aden.

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Contacts and sources of information

Primary Emergency Contact

UKMTO (United Kingdom Maritime Trade Operations)

E-mail: ukmto@eim.ae
Tel: +971 50 552 3215
Fax: +971 4 306 5710
Telex: (51) 210473

Secondary Contacts

(1) MSC-HOA (Maritime Security Centre – Horn of Africa)

E-mail: postmaster@mschoa.org
Tel: +44 1923 958545
Fax: +44 1923 958520
Via website: www.mschoa.eu

(2) MARLO-Bahrain (Maritime Liaison Office-Bahrain)

E-mail: marlo.bahrain@me.navy.mil
Tel: +973 1785 3925
Cel: +973 3940 1395

(3) IMB Piracy Reporting Centre

E-mail: piracy@icc-ccs.org
E-mail: imbkl@icc-ccs.org
Tel: +60 3 2031 0014
Fax: +60 3 2078 5769
Website: www.icc-ccs.org

(4) NATO Shipping Centre

Tel: +44 1923 956 574
Fax: +44 1923 956 575
E-mail: info@shipping.nato.int
Website: www.nato.int

ANNEX 30**RESOLUTION MSC.305(87)
(adopted on 17 May 2010)****GUIDELINES ON OPERATIONAL PROCEDURES FOR THE PROMULGATION OF
MARITIME SAFETY INFORMATION CONCERNING ACTS OF PIRACY
AND PIRACY COUNTER-MEASURE OPERATIONS**

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

RECALLING ALSO article 100 of the United Nations Convention on the Law of the Sea ("UNCLOS"), which requires all States to co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State,

BEARING IN MIND resolution A.1026(26) on "Piracy and armed robbery against ships in waters off the coast of Somalia" through which the Assembly has recommended a number of actions to be taken by Governments, the Transitional Federal Government of Somalia, the Council, the Maritime Safety Committee and the Secretary-General, with a view to bringing the situation under control,

NOTING that the Maritime Safety Committee has approved revised recommendations¹ to Governments and guidance² to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships, including specific advice³ developed by the industry in relation to the situation in waters off the coast of Somalia,

NOTING ALSO that the Sub-Committee on Safety of Navigation has reviewed the details, and recommended⁴ the use by all ships transiting the Gulf of Aden, of the Internationally Recommended Transit Corridor in the Gulf of Aden, as it may be amended from time to time by those who established it,

BEING AWARE of the serious safety and security concerns that the shipping industry and the seafaring community continue to have as a result of the attacks against ships sailing in waters off the coast of Somalia referred to above,

RECOGNIZING, in view of the continuing situation in Somalia giving rise to grave concern, the need for the continued implementation of appropriate measures to protect ships sailing in waters off the coast of Somalia from piracy and armed robbery attacks,

¹ Refer to MSC.1/Circ.1333 on Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships, as it may be revised.

² Refer to MSC.1/Circ.1334 on Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships, as it may be revised.

³ Refer to MSC.1/Circ.1332 on Piracy and armed robbery against ships in waters off the coast of Somalia and MSC.1/Circ.1335 on Piracy and armed robbery against ships in waters off the coast of Somalia – Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia developed by the industry, as it may be revised.

⁴ Refer to SN.1/Circ.281 on Information on Internationally Recommended Transit corridor (IRTC) for ships transiting the Gulf of Aden, as it may be revised.

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HAVING CONSIDERED, at its eighty-seventh session, the proposed draft Guidelines on Operational Procedures for the promulgation of Maritime Safety Information concerning acts of Piracy and counter-Piracy operations,

1. ADOPTS the Guidelines on Operational Procedures for the promulgation of Maritime Safety Information concerning acts of Piracy and Piracy counter-measure operations, the text of which is set out in the Annex to the present resolution;
2. RESOLVES that the Guidelines be brought into use with immediate effect;
3. REQUESTS the Secretary-General to transmit copies of this resolution and the Annex to all Member Governments;
4. FURTHER REQUESTS the Secretary-General to transmit copies of this resolution and the Annex to the International Hydrographic Organization (IHO), the International Mobile Satellite Organization (IMSO), the Chairman of the IHO WWNWS Sub-Committee and naval and military forces currently engaged in official counter-piracy operations.

ANNEX

**GUIDELINES ON OPERATIONAL PROCEDURES FOR THE PROMULGATION OF
MARITIME SAFETY INFORMATION CONCERNING ACTS OF PIRACY
AND PIRACY COUNTER-MEASURE OPERATIONS**

1 Maritime Safety Information (MSI) concerning acts of piracy and piracy counter-measure operations is broadcast through the World-Wide Navigational Warning Service (WWNWS) in accordance with the general guidance and requirements contained in MSC.1/Circ.1310: Revised Joint IMO/IHO/WMO Manual on Maritime Safety Information (Joint MSI Manual) and the International SafetyNET Manual. These operational procedures provide specific additional guidance for naval and military authorities involved in the gathering and interpretation of information on acts of piracy and piracy counter-measure operations, and NAVAREA or National Coordinators within the WWNWS who are responsible for originating the broadcasts.

2 A piracy attack warning should be broadcast as an "URGENT" NAVAREA or Coastal Warning immediately on receipt of the source information and at least at the next scheduled broadcast or for as long as the information remains valid.

3 Naval or military authorities wishing to provide information on acts of piracy and piracy counter-measure operations for broadcast under these procedures should nominate a Military Navigational Warning Coordinator (MNWC) for all matters related to the release and coordination of information for broadcast. Contact details for the MNWC should be notified to the IMO Secretariat (info@imo.org) and the IHO (info@ihb.mc), who will inform the chairman of the IHO World-Wide Navigational Warnings Service Sub-Committee (IHO WWNWS-SC).

4 As the single point of contact for the WWNWS in this regard, the Chairman of the IHO WWNWS-SC should nominate an alternative to act on his behalf in the event that he is not available at any time.

5 Draft messages concerning piracy and piracy counter-measures for input into the WWNWS should be routed through the MNWC to the Chairman of the IHO WWNWS-SC.

6 The Chairman of the IHO WWNWS-SC should:

- .1 check messages for format in accordance with the Joint MSI Manual;
- .2 liaise with MNWC if any changes are needed to the draft; and
- .3 forward the approved text to the relevant NAVAREA or National Coordinator(s) for broadcast.

7 Personnel providing navigational warnings concerning acts of piracy and piracy counter-measure operations should have a working knowledge of:

- .1 SOLAS chapter IV and the GMDSS;
- .2 MSC.1/Circ.1310 and resolutions A.705(17) *Promulgation of Maritime Safety Information*, as amended, and A.706(17) *World Wide Navigational Warning Service*, as amended, including the use of standardized texts and message formats; and

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.3 the legal definitions of piracy; relevant parts of the UN Convention on the Law of the Sea (UNCLOS), particularly as they apply to territorial waters limits; and other political and operational issues related to the environment in which they are operating.

8 Naval and military authorities should avoid requesting broadcasts that give instructions to merchant shipping and instead phrase their warnings in factual and/or advisory terms.

9 Naval and military authorities providing information for broadcast may wish to install facilities to receive Inmarsat-C SafetyNET and, where appropriate, NAVTEX so that they can monitor the broadcast of messages.

10 MNWCs are responsible for informing the Chairman of the IHO WWNWS-SC as appropriate, when the information is no longer valid.

11 Once the MNWC has forwarded information to the Chairman of the IHO WWNWS-SC for broadcast, the final decision on what to broadcast and how this is done rests with the NAVAREA or National Coordinator concerned. This decision should be guided by resolution A.706(17), as amended, the International SafetyNET Manual and MSC.1/Circ.1310, and be taken in the light of all other information on hand.



CLAMO FAST ACTION BINDER: PIRACY REGIONAL AGREEMENTS

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**CODE OF CONDUCT
CONCERNING THE REPRESSION
OF PIRACY AND ARMED ROBBERY AGAINST SHIPS
IN THE WESTERN INDIAN OCEAN AND THE GULF OF ADEN**

(IMO COUNCIL DOCUMENT C 102/14, ANNEX)

The Governments of Comoros, Djibouti, Egypt, Eritrea, Ethiopia, France, Jordan, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Oman, Saudi Arabia, Seychelles, Somalia, South Africa, Sudan, the United Arab Emirates, the United Republic of Tanzania and Yemen (hereinafter referred to as “the Participants”),

DEEPLY CONCERNED about the crimes of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden and the grave dangers to the safety and security of persons and ships at sea and to the protection of the marine environment arising from such acts;

REAFFIRMING that international law, as reflected in UNCLOS, sets out the legal framework applicable to combating piracy and armed robbery at sea;

NOTING that the Assembly of the International Maritime Organization (hereinafter referred to as “IMO”), at its twenty-fifth regular session, adopted, on 27 November 2007, resolution A.1002(25) on Piracy and armed robbery against ships in waters off the coast of Somalia which, among other things, called upon Governments in the region to conclude, in co-operation with IMO, and implement, as soon as possible, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships;

NOTING ALSO that the General Assembly of the United Nations, at its sixth-third session, adopted, on 5 December 2008, resolution 63/111 on Ocean and the law of the sea which amongst others:

- recognizes the crucial role of international cooperation at the global, regional, sub-regional and bilateral levels in combating, in accordance with international law, threats to maritime security, including piracy, armed robbery at sea, terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats, the enhanced sharing of information among States relevant to the detection, prevention and suppression of such threats, the prosecution of offenders with due regard to national legislation and the need for sustained capacity-building to support such objectives;
- emphasizes the importance of prompt reporting of incidents to enable accurate information on the scope of the problem of piracy and armed robbery against ships and, in the case of armed robbery against ships, by affected vessels to the coastal State, underlines the importance of effective information-sharing with States

potentially affected by incidents of piracy and armed robbery against ships, and takes note of the important role of the IMO;

- calls upon States to take appropriate steps under their national law to facilitate the apprehension and prosecution of those who are alleged to have committed acts of piracy;
- urges all States, in cooperation with the IMO, to actively combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity-building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislation, as well as providing enforcement vessels and equipment and guarding against fraudulent ship registration;
- welcomes the significant decrease in the number of attacks by pirates and armed robbers in the Asian region through increased national, bilateral and trilateral initiatives as well as regional cooperative mechanisms, and calls upon other States to give immediate attention to adopting, concluding and implementing cooperation agreements on combating piracy and armed robbery against ships at the regional level;
- expresses serious concern regarding the problem of increased instances of piracy and armed robbery at sea off the coast of Somalia, expresses alarm in particular at the recent hijacking of vessels, supports the recent efforts to address this problem at the global and regional levels, notes the adoption by the Security Council of the United Nations of resolutions 1816 (2008) of 2 June 2008 and 1838 (2008) of 7 October 2008, and also notes that the authorization in resolution 1816 (2008) and the provisions in resolution 1838 (2008) apply only to the situation in Somalia and do not affect the rights, obligations or responsibilities of Member States of the United Nations under international law, including any rights or obligations under the United Nations Convention on the Law of the Sea (hereinafter referred to as "UNCLOS"), with respect to any other situation, and underscores in particular that they are not to be considered as establishing customary international law;
- notes the initiatives of the Secretary-General of the IMO, following up on resolution A.1002(25) to engage the international community in efforts to combat acts of piracy and armed robbery against ships sailing the waters off the coast of Somalia; and
- urges States to ensure the full implementation of resolution A.1002(25) on acts of piracy and armed robbery against ships in waters off the coast of Somalia;

NOTING FURTHER that the Security Council of the United Nations has adopted resolutions 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (2008) in relation to piracy and armed robbery in waters off the coast of Somalia;

RECALLING the Assembly of IMO, at its twenty-second regular session, adopted, on 29 November 2001, resolution A.922(22) on the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships which amongst others invited Governments to develop, as appropriate, agreements and procedures to facilitate co-operation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;

TAKING INTO ACCOUNT the Special measures to enhance maritime security adopted on 12 December 2002 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 as amended, including the International Ship and Port Facility Security Code;

INSPIRED by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia adopted in Tokyo, Japan on 11 November 2004;

RECOGNIZING the urgent need to devise and adopt effective and practical measures for the suppression of piracy and armed robbery against ships;

RECALLING that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (hereinafter referred to as "SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery or persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation;

DESIRING to promote greater regional co-operation between the Participants, and thereby enhance their effectiveness, in the prevention, interdiction, prosecution, and punishment of those persons engaging in piracy and armed robbery against ships on the basis of mutual respect for the sovereignty, sovereign rights, sovereign equality, jurisdiction, and territorial integrity of States;

WELCOMING the initiatives of IMO, the United Nations Office on Drugs and Crime, the United Nations Development Programme, European Commission, League of Arab States, and other relevant international entities to provide training, technical assistance and other forms of capacity building to assist Governments, upon request, to adopt and implement practical measures to apprehend and prosecute those persons engaging in piracy and armed robbery against ships;

WELCOMING the creation in New York on 14 January 2009 of the Contact Group on Piracy off the coast of Somalia which will help mobilize and co-ordinate contributions to international efforts in the fight against piracy and armed robbery against ships in the waters off the coast of Somalia, pursuant to United Nations Security Council resolution 851(2008);

NOTING FURTHER the need for a comprehensive approach to address the poverty and instability that create conditions conducive to piracy, which includes strategies for effective environmental conservation and fisheries management, and the need to address the possible environmental consequences of piracy;

Have agreed as follows:

Article 1

Definitions

For the purposes of this Code of Conduct, unless the context otherwise requires:

1. “*Piracy*” consists of any of the following acts:
 - (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
 - (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
 - (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).
2. “*Armed robbery against ships*” consists of any of the following acts:
 - (a) unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea;
 - (b) any act of inciting or of intentionally facilitating an act described in subparagraph (a).
3. “*Secretary-General*” means the Secretary-General of the International Maritime Organization.

Article 2

Purpose and Scope

1. Consistent with their available resources and related priorities, their respective national laws and regulations, and applicable rules of international law, the Participants intend to cooperate to the fullest possible extent in the repression of piracy and armed robbery against ships with a view towards:

- (a) sharing and reporting relevant information;
- (b) interdicting ships and/or aircraft suspected of engaging in piracy or armed robbery against ships;
- (c) ensuring that persons committing or attempting to commit piracy or armed robbery against ships are apprehended and prosecuted; and
- (d) facilitating proper care, treatment, and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to piracy or armed robbery against ships, particularly those who have been subjected to violence.

2. The Participants intend this Code of conduct to be applicable in relation to piracy and armed robbery in the Western Indian Ocean and the Gulf of Aden.

Article 3

Protection Measures for Ships

The Participants intend to encourage States, ship owners, and ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, and, in particular, recommendations^{1,2} adopted by IMO.

Article 4

Measures to Repress Piracy

1. The provisions of this Article are intended to apply only to piracy.
2. For purposes of this Article and of Article 10, “pirate ship” means a ship intended by the persons in dominant control to be used for the purpose of committing piracy, or if the ship has been used to commit any such act, so long as it remains under the control of those persons.
3. Consistent with Article 2, each Participant to the fullest possible extent intends to cooperate in:

¹ MSC/Circ.622/Rev.1 on Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships as it may be revised. [*Replaced by MSC.1/Circ.1333*]

² MSC/Circ.623/Rev.3 on Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships as it may be revised. [*Replaced by MSC.1/Circ.1334*]

- (a) arresting, investigating, and prosecuting persons who have committed piracy or are reasonably suspected of committing piracy;
 - (b) seizing pirate ships and/or aircraft and the property on board such ships and/or aircraft; and
 - (c) rescuing ships, persons, and property subject to piracy.
4. Any Participant may seize a pirate ship beyond the outer limit of any State's territorial sea, and arrest the persons and seize the property on board.
5. Any pursuit of a ship, where there are reasonable grounds to suspect that the ship is engaged in piracy, extending in and over the territorial sea of a Participant is subject to the authority of that Participant. No Participant should pursue such a ship in or over the territory or territorial sea of any coastal State without the permission of that State.
6. Consistent with international law, the courts of the Participant which carries out a seizure pursuant to paragraph 4 may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ship or property, subject to the rights of third parties acting in good faith.
7. The Participant which carried out the seizure pursuant to paragraph 4 may, subject to its national laws, and in consultation with other interested entities, waive its primary right to exercise jurisdiction and authorize any other Participant to enforce its laws against the ship and/or persons on board.
8. Unless otherwise arranged by the affected Participants, any seizure made in the territorial sea of a Participant pursuant to paragraph 5 should be subject to the jurisdiction of that Participant.

Article 5

Measures to Repress Armed Robbery against Ships

1. The provisions of this Article are intended to apply only to armed robbery against ships.
2. The Participants intend for operations to suppress armed robbery against ships in the territorial sea and airspace of a Participant to be subject to the authority of that Participant, including in the case of hot pursuit from that Participant's territorial sea or archipelagic waters in accordance with Article 111 of UNCLOS.
3. The Participants intend for their respective focal points and Centres (as designated pursuant to Article 8) to communicate expeditiously alerts, reports, and information related to armed robbery against ships to other Participants and interested parties.

Article 6

Measures in All Cases

1. The Participants intend that any measures taken pursuant to this Code of conduct should be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being in government service and authorized to that effect.
2. The Participants recognize that multiple States, including the flag State, State of suspected origin of the perpetrators, the State of nationality of persons on board the ship, and the State of ownership of cargo may have legitimate interests in cases arising pursuant to Articles 4 and 5. Therefore, the Participants intend to liaise and co-operate with such States and other stakeholders, and to coordinate such activities with each other to facilitate the rescue, interdiction, investigation, and prosecution.
3. The Participants intend, to the fullest possible extent, to conduct and support the conduct of investigations in cases of piracy and armed robbery against ships taking into account the relevant international standards and practices, and, in particular, recommendations³ adopted by IMO.
4. The Participants intend to co-operate to the fullest possible extent in medical and decedent affairs arising from operations in furtherance of the repression of piracy and armed robbery against ships.

Article 7

Embarked Officers

1. In furtherance of operations contemplated by this Code of conduct, a Participant may nominate law enforcement or other authorized officials (hereafter referred to as “the embarked officers”) to embark in the patrol ships or aircraft of another Participant (hereafter referred to as “the host Participant”) as may be authorized by the host Participant.
2. The embarked officers may be armed in accordance with their national law and policy and the approval of the host Participant.
3. When embarked, the host Participant should facilitate communications between the embarked officers and their headquarters, and should provide messing and quarters for the embarked officers aboard the patrol ships or aircraft in a manner consistent with host Participant personnel of the same rank.
4. Embarked officers may assist the host Participant and conduct operations from the host Participant ship or aircraft if expressly requested to do so by the host Participant, and only in

³ Resolution A.922(22) on the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships as it may be revised. [To be replaced at the 26th meeting of the IMO Assembly in November-December 2009 (A.26) by the text in MSC 86/26/Add.2, Annex 23, as it may be amended by the Assembly.]

the manner requested. Such request may only be made, agreed to, and acted upon in a manner that is not prohibited by the laws and policies of both Participants.

Article 8

Coordination and Information Sharing

1. Each Participant should designate a national focal point to facilitate coordinated, timely, and effective information flow among the Participants consistent with the purpose and scope of this Code of conduct. In order to ensure coordinated, smooth, and effective communications between their designated focal points, the Participants intend to use the piracy information exchange centres Kenya, United Republic of Tanzania and Yemen (hereinafter referred to as “the Centres”). The Centres in Kenya and the United Republic of Tanzania will be situated in the maritime rescue co-ordination centre in Mombasa and the sub-regional co-ordination centre in Dar es Salaam, respectively. The Centre in Yemen will be situated in the regional maritime information centre to be established in Yemen based on the outcomes of the sub-regional meetings held by IMO in Sana’a in 2005 and Muscat in 2006 and Dar es Salaam. Each Centre and designated focal point should be capable of receiving and responding to alerts and requests for information or assistance at all times.

2. Each Participant intends to:

- (a) declare and communicate to the other Participants its designated focal point at the time of signing this Code of conduct or as soon as possible after signing, and thereafter update the information as and when changes occur;
- (b) provide and communicate to the other Participants the telephone numbers, telefax numbers, and e-mail addresses of its focal point, and, as appropriate, of its Centre and thereafter update the information as and when changes occur; and
- (c) communicate to the Secretary-General the information referred to in subparagraphs (a) and (b) and thereafter update the information as and when changes occur.

3. Each Centre and focal point should be responsible for its communication with the other focal points and the Centres. Any focal point which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships should promptly disseminate an alert with all relevant information to the Centres. The Centres should disseminate appropriate alerts within their respective areas of responsibility regarding imminent threats or incidents to ships.

4. Each Participant should ensure the smooth and effective communication between its designated focal point, and other competent national authorities including search and rescue coordination centres, as well as relevant non-governmental organizations.

5. Each Participant should make every effort to require ships entitled to fly its flag and the owners and operators of such ships to promptly notify relevant national authorities, including the designated focal points and Centres, the appropriate search and rescue coordination centres and other relevant the contact points⁴, of incidents of piracy or armed robbery against ships.

6. Each Participant intends, upon the request of any other Participant, to respect the confidentiality of information transmitted from a Participant.

7. To facilitate implementation of this Code of conduct, the Participants intend to keep each other fully informed concerning their respective applicable laws and guidance, particularly those pertaining to the interdiction, apprehension, investigation, prosecution, and disposition of persons involved in piracy and armed robbery against ships. The Participants may also undertake and seek assistance to undertake publication of handbooks and convening of seminars and conferences in furtherance of this Code of conduct.

Article 9

Incident Reporting

1. The Participants intend to undertake development of uniform reporting criteria in order to ensure that an accurate assessment of the threat of piracy and armed robbery in the Western Indian Ocean and the Gulf of Aden is developed taking into account the recommendations^{5,6} adopted by IMO. The Participants intend for the Centres to manage the collection and dissemination of this information in their respective geographic areas of responsibility.

2. Consistent with its laws and policies, a Participant conducting a boarding, investigation, prosecution, or judicial proceeding pursuant to this Code of conduct should promptly notify any affected flag and coastal States and the Secretary-General of the results.

3. The Participants intend for the Centres to:

- (a) collect, collate and analyse the information transmitted by the Participants concerning piracy and armed robbery against ships, including other relevant information relating to individuals and transnational organized criminal groups committing piracy and armed robbery against ships in their respective geographical areas of responsibility; and
- (b) prepare statistics and reports on the basis of the information gathered and analysed under subparagraph (a), and to disseminate them to the Participants, the shipping community, and the Secretary-General.

⁴ For example the Maritime Liaison Office Bahrain (MARLO), the United Kingdom Maritime Trade Office Dubai (UKMTO).

⁵ MSC/Circ.622/Rev.1 on Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships as it may be revised. [*Replaced by MSC.1/Circ.1333*]

⁶ MSC/Circ.623/Rev.3 on Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships as it may be revised. [*Replaced by MSC.1/Circ.1334*]

Article 10

Assistance among Participants

1. A Participant may request any other Participant, through the Centres or directly, to co-operate in detecting any of the following persons, ships, or aircraft:
 - (a) persons who have committed, or are reasonably suspected of committing, piracy;
 - (b) persons who have committed, or are reasonably suspected of committing, armed robbery against ships;
 - (c) pirate ships, where there are reasonable grounds to suspect that those ships are engaged in piracy; and
 - (d) ships or persons who have been subjected to piracy or armed robbery against ships.
2. A Participant may also request any other Participant, through the Centres or directly, to take effective measures in response to reported piracy or armed robbery against ships.
3. Co-operative arrangements such as joint exercises or other forms of co-operation, as appropriate, may be undertaken as determined by the Participants concerned.
4. Capacity building co-operation may include technical assistance such as educational and training programmes to share experiences and best practice.

Article 11

Review of National Legislation

In order to allow for the prosecution, conviction and punishment of those involved in piracy or armed robbery against ships, and to facilitate extradition or handing over when prosecution is not possible, each Participant intends to review its national legislation with a view towards ensuring that there are national laws in place to criminalize piracy and armed robbery against ships, and adequate guidelines for the exercise of jurisdiction, conduct of investigations, and prosecutions of alleged offenders.

Article 12

Dispute Settlement

The Participants intend to settle by consultation and peaceful means amongst each other any disputes that arise from the implementation of this Code of conduct.

Article 13

Consultations

Within two years of the effective date of this Code of conduct, and having designated the national focal points referred to in Article 8, the Participants intend to consult, with the assistance of IMO, with the aim of arriving at a binding agreement.

Article 14

Claims

Any claim for damages, injury or loss resulting from an operation carried out under this Code of conduct should be examined by the Participant whose authorities conducted the operation. If responsibility is established, the claim should be resolved in accordance with the national law of that Participant, and in a manner consistent with international law, including Article 106 and paragraph 3 of Article 110 of UNCLOS.

Article 15

Miscellaneous Provisions

Nothing in this Code of conduct is intended to:

- (a) create or establish a binding agreement, except as noted in Article 13;
- (b) affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag;
- (c) affect the immunities of warships and other government ships operated for non-commercial purposes;
- (d) apply to or limit boarding of ships conducted by any Participant in accordance with international law, beyond the outer limit of any State's territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action;
- (e) preclude the Participants from otherwise agreeing on operations or other forms of co-operation to repress piracy and armed robbery against ships;
- (f) prevent the Participants from taking additional measures to repress piracy and armed robbery at sea through appropriate actions in their land territory;

- (g) supersede any bilateral or multilateral agreement or other co-operative mechanism concluded by the Participants to repress piracy and armed robbery against ships;
- (h) alter the rights and privileges due to any individual in any legal proceeding;
- (i) create or establish any waiver of any rights that any Participant may have under international law to raise a claim with any other Participant through diplomatic channels;
- (j) entitle a Participant to undertake in the territory of another Participant the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Participant by its national law;
- (k) prejudice in any manner the positions and navigational rights and freedoms of any Participant regarding the international law of the sea;
- (l) be deemed a waiver, express or implied, of any of the privileges and immunities of the Participants to this Code of conduct as provided under international or national law; or
- (m) preclude or limit any Participant from requesting or granting assistance in accordance with the provisions of any applicable Mutual Legal Assistance Agreement or similar instrument.

Article 16

Signature and Effective Date

1. The Code of conduct is open for signature by Participants on 29 January 2009 and at the Headquarters of IMO from 1 February 2009.
2. The Code of conduct will become effective upon the date of signature by two or more Participants and effective for subsequent Participants upon their respective date of deposit of a signature instrument with the Secretary-General.

Article 17

Languages

This Code of conduct is established in the Arabic, English and French languages, each text being equally authentic.

DONE in Djibouti this twenty-ninth day of January two thousand and nine.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Code of conduct.

Signed (signatures omitted) in Djibouti on 29 January 2009 by Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, United Republic of Tanzania and Yemen.

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Regional Cooperation Agreement on Combating Piracy
and Armed Robbery against Ships in Asia

The Contracting Parties to this Agreement,

Concerned about the increasing number of incidents of piracy and armed robbery against ships in Asia,

Mindful of the complex nature of the problem of piracy and armed robbery against ships,

Recognizing the importance of safety of ships, including their crew, exercising the right of navigation provided for in the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as "the UNCLOS",

Reaffirming the duty of States to cooperate in the prevention and suppression of piracy under the UNCLOS,

Recalling "Tokyo Appeal" of March 2000, "Asia Anti-Piracy Challenges 2000" of April 2000 and "Tokyo Model Action Plan" of April 2000,

Noting the relevant resolutions adopted by the United Nations General Assembly and the relevant resolutions and recommendations adopted by the International Maritime Organization,

Conscious of the importance of international cooperation as well as the urgent need for greater regional cooperation and coordination of all States affected within Asia, to prevent and suppress piracy and armed robbery against ships effectively,

Convinced that information sharing and capacity building among the Contracting Parties will significantly contribute towards the prevention and suppression of piracy and armed robbery against ships in Asia,

Affirming that, to ensure greater effectiveness of this Agreement, it is indispensable for each Contracting Party to strengthen its measures aimed at preventing and suppressing piracy and armed robbery against ships,

Determined to promote further regional cooperation and to enhance the effectiveness of such cooperation,

Have agreed as follows:

Part I
Introduction

Article 1
Definitions

1. For the purposes of this Agreement, "piracy" means any of the following acts:

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

2. For the purposes of this Agreement, "armed robbery against ships" means any of the following acts:

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party's jurisdiction over such offences;
- (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 2
General Provisions

1. The Contracting Parties shall, in accordance with their respective national laws and regulations and subject to their available resources or capabilities, implement this Agreement, including preventing and suppressing piracy and armed robbery against ships, to the fullest extent possible.

2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under the international agreements to which that Contracting Party is party, including the UNCLOS, and the relevant rules of international law.

3. Nothing in this Agreement shall affect the immunities of warships and other government ships operated for non-commercial purposes.

4. Nothing in this Agreement, nor any act or activity carried out under this Agreement shall prejudice the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea.

5. Nothing in this Agreement entitles a Contracting Party to undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national law.

6. In applying paragraph 1 of Article 1, each Contracting Party shall give due regard to the relevant provisions of the UNCLOS without prejudice to the rights of the third Parties.

Article 3
General Obligations

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:

- (a) to prevent and suppress piracy and armed robbery against ships;
- (b) to arrest pirates or persons who have committed armed robbery against ships;

- (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
- (d) to rescue victim ships and victims of piracy or armed robbery against ships.

2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

Part II Information Sharing Center

Article 4 Composition

1. An Information Sharing Center, hereinafter referred to as "the Center", is hereby established to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships.
2. The Center shall be located in Singapore.
3. The Center shall be composed of the Governing Council and the Secretariat.
4. The Governing Council shall be composed of one representative from each Contracting Party. The Governing Council shall meet at least once every year in Singapore, unless otherwise decided by the Governing Council.
5. The Governing Council shall make policies concerning all the matters of the Center and shall adopt its own rules of procedure, including the method of selecting its Chairperson.
6. The Governing Council shall take its decisions by consensus.
7. The Secretariat shall be headed by the Executive Director who shall be assisted by the staff. The Executive Director shall be chosen by the Governing Council.
8. The Executive Director shall be responsible for the administrative, operational and financial matters of the Center in accordance with the policies as determined by the Governing Council and the provisions of this Agreement, and for such other matters as determined by the Governing Council.

9. The Executive Director shall represent the Center. The Executive Director shall, with the approval of the Governing Council, make rules and regulations of the Secretariat.

Article 5 Headquarters Agreement

1. The Center, as an international organization whose members are the Contracting Parties to this Agreement, shall enjoy such legal capacity, privileges and immunities in the Host State of the Center as are necessary for the fulfillment of its functions.

2. The Executive Director and the staff of the Secretariat shall be accorded, in the Host State, such privileges and immunities as are necessary for the fulfillment of their functions.

3. The Center shall enter into an agreement with the Host State on matters including those specified in paragraphs 1 and 2 of this Article.

Article 6 Financing

1. The expenses of the Center, as provided for in the budget decided by the Governing Council, shall be provided by the following sources:

- (a) Host State financing and support;
- (b) Voluntary contributions from the Contracting Parties;
- (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and
- (d) Any other voluntary contributions as may be agreed upon by the Governing Council.

2. Financial matters of the Center shall be governed by a Financial Regulation to be adopted by the Governing Council.

3. There shall be an annual audit of the accounts of the Center by an independent auditor appointed by the Governing Council. The audit report shall be submitted to the Governing Council and shall be made public, in accordance with the Financial Regulation.

Article 7
Functions

The functions of the Center shall be:

- (a) to manage and maintain the expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;
- (b) to collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing acts of piracy and armed robbery against ships;
- (c) to prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;
- (d) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;
- (e) to circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;
- (f) to prepare non-classified statistics and reports based on information gathered and analyzed under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and
- (g) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships.

Article 8
Operation

1. The daily operation of the Center shall be undertaken by the Secretariat.

2. In carrying out its functions, the Center shall respect the confidentiality of information provided by any Contracting Party, and shall not release or disseminate such information unless the consent of that Contracting Party is given in advance.

3. The Center shall be operated in an effective and transparent manner, in accordance with the policies made by the Governing Council, and shall avoid duplication of existing activities between the Contracting Parties.

Part III
Cooperation through the Information Sharing Center

Article 9
Information Sharing

1. Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18.

2. Each Contracting Party shall, upon the request of the Center, respect the confidentiality of information transmitted from the Center.

3. Each Contracting Party shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centers, as well as relevant non-governmental organizations.

4. Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal points, and the Center when appropriate, of incidents of piracy or armed robbery against ships.

5. Any Contracting Party which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Center through its designated focal point.

6. In the event that a Contracting Party receives an alert from the Center as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

Article 10
Request for Cooperation

1. A Contracting Party may request any other Contracting Party, through the Center or directly, to cooperate in detecting any of the following persons, ships, or aircraft:

- (a) pirates;
- (b) persons who have committed armed robbery against ships;
- (c) ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or
- (d) victim ships and victims of piracy or armed robbery against ships.

2. A Contracting Party may request any other Contracting Party, through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.

3. A Contracting Party may also request any other Contracting Party, through the Center or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.

4. The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Center of such request.

5. Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party.

Article 11
Cooperation by the Requested Contracting Party

1. A Contracting Party, which has received a request pursuant to Article 10, shall, subject to paragraph 1 of Article 2, make every effort to take effective and practical measures for implementing such request.

2. A Contracting Party, which has received a request pursuant to Article 10, may seek additional information from the requesting Contracting Party for the implementation of such request.

3. A Contracting Party, which has taken measures referred to in paragraph 1 of this Article, shall promptly notify the Center of the relevant information on the measures taken.

Part IV
Cooperation

Article 12
Extradition

A Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

Article 13
Mutual Legal Assistance

A Contracting Party shall, subject to its national laws and regulations, endeavor to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party.

Article 14
Capacity Building

1. For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed robbery against ships, each Contracting Party shall endeavor to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance.

2. The Center shall endeavor to cooperate to the fullest possible extent in providing capacity building assistance.

3. Such capacity building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.

Article 15
Cooperative Arrangements

Cooperative arrangements such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned.

Article 16
Protection Measures for Ships

Each Contracting Party shall encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in particular, recommendations adopted by the International Maritime Organization.

Part V
Final Provisions

Article 17
Settlement of Disputes

Disputes arising out of the interpretation or application of this Agreement, including those relating to liability for any loss or damage caused by the request made under paragraph 2 of Article 10 or any measure taken under paragraph 1 of Article 11, shall be settled amicably by the Contracting Parties concerned through negotiations in accordance with applicable rules of international law.

Article 18
Signature and Entry into Force

1. This Agreement shall be open for signature at the depositary referred to in paragraph 2 below by the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the Socialist Republic of Viet Nam.

2. The Government of Singapore is the depositary of this Agreement.

3. This Agreement shall enter into force 90 days after the date on which the tenth instrument of notification by a State listed in paragraph 1, indicating the completion of its domestic requirements, is submitted to the depositary. Subsequently it shall enter into force in respect of any other State listed in paragraph 1 above 30 days after its deposit of an instrument of notification to the depositary.

4. The depositary shall notify all the States listed in paragraph 1 of the entry into force of this Agreement pursuant to paragraph 3 of this Article.

5. After this Agreement has entered into force, it shall be open for accession by any State not listed in paragraph 1. Any State desiring to accede to this Agreement may so notify the depositary, which shall promptly circulate the receipt of such notification to all other Contracting Parties. In the absence of a written objection by a Contracting Party within 90 days of the receipt of such notification by the depositary, that State may deposit an instrument of accession with the depositary, and become a party to this Agreement 60 days after such deposit of instrument of accession.

Article 19 Amendment

1. Any Contracting Party may propose an amendment to this Agreement, any time after the Agreement enters into force. Such amendment shall be adopted with the consent of all Contracting Parties.

2. Any amendment shall enter into force 90 days after the acceptance by all Contracting Parties. The instruments of acceptance shall be deposited with the depositary, which shall promptly notify all other Contracting Parties of the deposit of such instruments.

Article 20 Withdrawal

1. Any Contracting Party may withdraw from this Agreement at any time after the date of its entry into force.

2. The withdrawal shall be notified by an instrument of withdrawal to the depositary.

3. The withdrawal shall take effect 180 days after the receipt of the instrument of withdrawal by the depositary.

4. The depositary shall promptly notify all other Contracting Parties of any withdrawal.

Article 21
Authentic Text

This Agreement shall be authentic in the English language.

Article 22
Registration

This Agreement shall be registered by the depositary pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

**MARITIME ORGANISATION
OF WEST AND CENTRAL AFRICA**

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MOWCA

**13th Session of the General Assembly
Dakar 2008**

29 – 31 July 2008
Dakar, Republic of Senegal

MOWCA/XIII GA.08/8

Item 6.2.1.1.c of the Agenda
Original : FRENCH
Version : English

Mission Statement: “Towards a cost-effective Maritime Transport Service, high on safety, security and low on pollution”

**MEMORANDUM OF UNDERSTANDING
ON THE ESTABLISHMENT
OF A SUB-REGIONAL INTEGRATED
COAST GUARD NETWORK
IN WEST AND CENTRAL AFRICA.**

**MÉ MORANDUM D'ENTENTE DU
RÉSEAU SOUS-RÉGIONAL
INTÉGRÉ DE GARDE-CÔTES DES
ÉTATS D'AFRIQUE DE L'OUEST
ET DU CENTRE.**

<p>The Coastal Member States of the Maritime Organization of West and Central Africa (MOWCA) :</p> <ol style="list-style-type: none">1. Angola2. Benin3. Cameroon4. Cape Verde5. Congo6. Congo DR7. Côte d'Ivoire8. Gabon9. The Gambia10. Ghana11. Guinea12. Guinea Bissau13. Equatorial Guinea14. Liberia15. Mauritania16. Nigeria17. Sao Tome and Principe18. Senegal19. Sierra Leone20. Togo	<p>Les États côtiers membres de l'Organisation maritime de l'Afrique de l'Ouest et du Centre (OMAOC) :</p> <ol style="list-style-type: none">1. Angola2. Bénin3. Cameroun4. Cap-Vert5. Congo6. Congo RD7. Côte d'Ivoire8. Gabon9. Gambie10. Ghana11. Guinée12. Guinée-Bissau13. Guinée équatoriale14. Libéria15. Mauritanie16. Nigéria17. Sao Tomé-et-Principe18. Sénégal19. Sierra Leone20. Togo
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<p>Landlocked Member States of MOWCA associated to the Memorandum :</p> <p>Burkina Faso Mali Niger Central African Republic Chad</p> <p><i>Considering</i> the relevant provisions of United Nations General Assembly resolution 55/2 on the United Nations Millennium Declaration and, in particular, section II on Peace, security and disarmament; section III on Development and poverty eradication; section IV on Protecting our common environment; and section VII on Meeting the special needs of Africa</p> <p><i>Considering</i> the United Nations General Assembly resolution A/RES/55/7 on Oceans and the Law of the Sea urging all States, and in particular coastal States, in affected regions to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea, including through regional co-operation, and to investigate or co-operate in the investigation of such incidents wherever they occur and bring the alleged perpetrators to justice in accordance with international law;</p> <p><i>Considering</i> the United Nations General Assembly resolution A/RES/59/24 on Oceans and the Law of the Sea also urging all States, in co-operation with the International Maritime Organization, to combat piracy and armed robbery at sea; and to carry on regional co-operation in the prevention and suppression of piracy and armed robbery at sea in some geographical areas, and urging States to give urgent attention to promoting, adopting and implementing co-operation agreements, in particular at the regional level in high-risk areas;</p>	<p>Les États enclavés membres de l'OMAOC associés au Mémorandum :</p> <p>Burkina Faso Mali Niger République centrafricaine Tchad</p> <p><i>Notant</i> les dispositions pertinentes de la résolution 55/2 de l'Assemblée générale des Nations Unies sur la Déclaration du Millénaire des Nations Unies et, en particulier, la section II "Paix, sécurité et désarmement"; la section III "Développement et élimination de la pauvreté"; la section IV "Protéger notre environnement commun"; et la section VII "Répondre aux besoins spéciaux de l'Afrique";</p> <p><i>Notant</i> la résolution A/RES/55/7 de l'Assemblée générale des Nations Unies sur les océans et le droit de la mer, dans laquelle l'Assemblée prie instamment tous les États, en particulier les États côtiers, de prendre toutes les mesures nécessaires et appropriées, notamment dans le cadre de la coopération régionale, pour prévenir et combattre les actes de piraterie et les vols à main armée commis en mer, d'enquêter ou d'apporter leur concours aux enquêtes menées sur de tels incidents partout où ils se produisent et de traduire en justice les auteurs présumés, conformément au droit international;</p> <p><i>Notant</i> la résolution A/RES/59/24 de l'Assemblée générale des Nations Unies sur les océans et le droit de la mer dans laquelle également l'Assemblée engage vivement tous les États à lutter, en coopération avec l'Organisation maritime internationale, contre les actes de piraterie et les vols à main armée commis en mer; et à poursuivre la coopération régionale en matière de prévention et de répression de la piraterie et des vols à main armée en mer dans certaines régions, et engage vivement les États à s'employer d'urgence à promouvoir, adopter et exécuter des accords de coopération, en particulier au niveau régional dans les régions à haut risque;</p>
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Considering the United Nations General Assembly resolution A/RES/60/30 on Oceans and the Law of the Sea also urging all States, in cooperation with the International Maritime Organization, to combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity-building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislation, as well as providing enforcement vessels and equipment and guarding against fraudulent ship registration,

Taking into account the Maritime Transport Charter for West and Central African States, adopted in Abidjan on May 7, 1975 and as amended on August 6, 1999;

Taking into account the Convention on the Institutionalisation of the Ministerial Conference of Central African States on Maritime Transport adopted in Accra on February 26, 1977 and as amended in Abidjan on August 06, 1999;

Taking into account the MOWCA resolution n°193/12/03 on maritime safety in West and Central Africa adopted in LUANDA on October 31, 2003, in particular the setting up of an integrated sub-regional network of coastguards;

Recognizing that the history of maritime security and safety as well as marine environmental protection in West and Central African Sub-region is full of incidents and accidents that expose the lack or inadequacy of response capability in the sub-region ;

Notant la résolution de l'Assemblée générale des Nations Unies A/Res/60/30 sur les océans et le droit de la mer, dans laquelle l'Assemblée engage vivement tous les États à lutter, en coopération avec l'Organisation maritime internationale, contre les actes de piraterie et les vols à main armée commis en mer en adoptant des mesures, y compris d'aide au renforcement des capacités, en formant les gens de mer, le personnel des ports et les agents de la force publique à la prévention et à la constatation des incidents et à la conduite d'enquêtes à leur sujet, en traduisant en justice les auteurs présumés conformément aux dispositions du droit international, en se dotant d'une législation nationale, en consacrant à cette lutte des navires et du matériel adaptés et en empêchant les immatriculations frauduleuses de navires;

Prenant en considération la Charte des transports maritimes des Etats de l'Afrique de l'Ouest et du Centre, adoptée à Abidjan le 7 mai 1975 et telle que modifiée le 6 août 1999;

Prenant en considération la Convention portant création de la Conférence ministérielle des États de l'Afrique de l'Ouest et du Centre sur les transports maritimes adoptée à Accra le 26 février 1977 et telle que modifiée à Abidjan le 6 août 1999;

Prenant en considération la résolution No 193/12/03 de l'OMAOOC adoptée à LUANDA le 31 octobre 2003 sur la sécurité maritime en Afrique de l'Ouest et du Centre, en particulier la mise en place d'un Réseau sous-régional intégré de garde-côtes;

Reconnaissant que l'histoire de la sécurité et de la sûreté maritimes ainsi que de la protection de l'environnement marin en Afrique de l'Ouest et du Centre est émaillée d'incidents et d'accidents qui ont mis en évidence l'absence de capacité de réaction de la sous région ou son inadéquation;

Appreciating the efforts carried out in these fields, by the United Nations, through the International Maritime Organization IMO, by the adoption of various conventions, including the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (the 1988 SUA Convention), as revised, and the International Convention on Maritime Search and Rescue, 1979, as amended (SAR 1979), aiming at developing an international search and rescue (SAR) plan so that no matter where an accident occurs, the rescue of persons in distress at sea would be co-ordinated by a SAR organization and, when necessary, by co-operation between neighbouring SAR organizations; including also the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974), the Protocol of 1978 relating to the International Convention on the Prevention of Pollution from Ships, 1973, as amended (MARPOL PROT 1978), OPRC Convention, 1990, etc. which provisions should be implemented at shore and at sea, for the implementation of maritime navigation and marine pollution prevention and control;

Recognizing with deep concern the grave dangers to the safety and security of persons at sea and to the protection of the marine environment arising from unlawful acts against ships and in particular from acts of piracy or armed robbery;

Also recognizing that national, regional and international efforts to combat terrorism also enhance the ability to combat organized crime and armed robberies against ships;

Being aware that the fight against piracy and armed robbery against ships is often impeded by the absence of effective or adequate legislative and administrative arrangements for the investigation of reported cases of piracy or armed robbery against ships;

Accueillant avec satisfaction les efforts déployés par les Nations Unies, par l'intermédiaire de l'Organisation maritime internationale (OMI), à savoir l'adoption de diverses Conventions dont la Convention de 1988 pour la répression d'actes illicites contre la sécurité de la navigation maritime (Convention SUA de 1988), telle que révisée, et la Convention de 1979 sur la recherche et le sauvetage maritimes (Convention SAR), telle que modifiée, visant à établir un plan international de recherche et de sauvetage (SAR) afin que, partout où un accident se produit, le sauvetage des personnes en détresse en mer soit coordonné par une organisation SAR et, lorsque nécessaire, moyennant la coopération entre les organisations SAR voisines, ainsi que la Convention internationale de 1974 pour la sauvegarde de la vie humaine en mer (Convention SOLAS de 1974), telle que modifiée, le Protocole de 1978 relatif à la Convention internationale de 1973 pour la prévention de la pollution par les navires, tel que modifié (MARPOL PROT 1978), la Convention OPRC de 1990, etc., dont les dispositions devraient être mises en oeuvre sur terre et en mer aux fins de la prévention et du contrôle de la pollution marine et de la navigation maritime;

Constatant avec une vive inquiétude les graves dangers pour la sécurité et la sûreté des personnes en mer et pour la protection du milieu marin qui résultent des actes illicites commis à l'encontre des navires, et notamment des actes de piraterie ou des vols à main armée;

Reconnaissant également que les initiatives nationales, régionales et internationales de lutte contre le terrorisme renforcent aussi la capacité de combattre la criminalité organisée et les vols à main armée à l'encontre des navires;

Conscients que la lutte contre la piraterie et les vols à main armée à l'encontre des navires est souvent entravée par le manque de dispositifs législatifs et administratifs efficaces ou appropriés pour enquêter sur les cas de cet ordre qui ont été déclarés;

Being also aware that, when arrests are made, there is the absolute need for a legislative framework and of adequate guidelines for the conduct of investigation so as to allow for the prosecution, conviction and punishment of those involved in acts of piracy and armed robbery against ships.

Recalling the obligations of States under United Nations Security Council resolutions 1373 (2001), 1540 (2004) and 1566 (2004);

Recalling the provisions of the United Nations Convention on the Law of the Sea (UNCLOS);

Recalling also the relevant provisions of the 1988 SUA Convention and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (the 1988 SUA Protocol);

Recalling further the need for ships, consistent with the provisions of UNCLOS, to provide assistance in response to a situation of persons in distress at sea;

Recognizing also the vulnerability of transport networks, the important role energy shipping plays in the global economy, and the importance, in this respect, of enhancing safety, security, and environmental protection of the sea area along the Atlantic coast of the MOWCA Member States (hereinafter referred to as "the coast of West and Central Africa");

Recognizing further the need to balance maritime security and facilitation and to minimize any adverse effects on the free flow of commerce to and from ports in West and Central Africa and that enhanced maritime security along the coast of West and Central Africa will promote international trade, economic co-operation and sustainable economic development;

Conscients également que, dans le cas où sont effectuées des arrestations, il est absolument nécessaire de disposer d'un cadre législatif et de directives appropriées pour la conduite de l'enquête de façon à permettre la poursuite, la condamnation et le châtement des personnes impliquées dans des actes de piraterie et de vols à main armée à l'encontre des navires;

Rappelant les obligations des États en vertu des résolutions 1373 (2001), 1540 (2004) et 1566 (2004) du Conseil de Sécurité des Nations Unies;

Rappelant les dispositions de la Convention des Nations Unies sur le droit de la mer de 1982;

Rappelant également les dispositions pertinentes de la Convention SUA de 1988 et du Protocole de 1988 pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental (le Protocole SUA de 1988);

Rappelant en outre que les navires doivent, conformément aux dispositions de la Convention des Nations Unies sur le droit de la mer, prêter assistance dans les situations où des personnes sont en détresse en mer;

Reconnaissant également la vulnérabilité des réseaux de transport, le rôle considérable que joue le transport de l'énergie dans l'économie mondiale et l'importance qu'il y a, à cet égard, à renforcer la sécurité, la sûreté et la protection de l'environnement de la zone maritime le long de la côte Atlantique des États membres de l'OMAO (ci-après dénommée "la côte de l'Afrique de l'Ouest et du Centre");

Reconnaissant en outre qu'il faut respecter un équilibre entre la sûreté maritime et les dispositions visant à faciliter la navigation et réduire au maximum tout effet négatif sur le libre mouvement du commerce à destination et en provenance des ports d'Afrique de l'Ouest et du Centre, et qu'une sûreté maritime renforcée le long des côtes d'Afrique de l'Ouest et du Centre favorisera le commerce international, la coopération économique et le développement économique durable;

Acknowledging the fact that the enhancement of security in the international maritime transport sector is an indispensable and fundamental condition for the welfare and economic security in West and Central Africa and is in the direct interest of all States;

Further recognizing that the successful implementation and maintenance of compliance with SOLAS 1974 and the International Ship and Port Facility Security Code (the ISPS Code) require, *inter alia*, the early and efficient collection, assessment and exchange of security-related information;

Also recognizing the need to set, in accordance with SOLAS 1974 regulation XI-2/7 on Threats to ships, security levels and to ensure the provision of security level information to ships operating in our territorial sea or having communicated an intention to enter our territorial sea, and where a risk of an attack has been identified, to provide advice to the ships concerned;

Expressing great concern for the security of passengers and crews on board ships including small craft, both at anchor and underway, in the context of incidents involving terrorism and other unlawful acts against ships, and the associated risks to people on shore or populations in port areas as well as to ports, offshore terminals and the marine environment;

Being convinced of the need for MOWCA Member States to co-operate and to take, as a matter of the highest priority, all necessary action to prevent and suppress any incidents which threaten the security in the international maritime transport sector;

Reconnaissant le fait que le renforcement de la sûreté dans le secteur des transports maritimes internationaux est une condition essentielle et fondamentale de la prospérité et de la sûreté économiques de l'Afrique de l'Ouest et du Centre et que tous les États y ont directement intérêt;

Reconnaissant en outre que, pour assurer l'application et le respect permanent de la Convention SOLAS de 1974 et du Code international pour la sûreté des navires et des installations portuaires (Code ISPS), il faut, entre autres, procéder à la collecte, l'évaluation et l'échange rapides et efficaces de renseignements concernant la sûreté;

Reconnaissant également qu'il faut, conformément à la règle XI-2/7 de la Convention SOLAS de 1974 relative aux menaces contre les navires, établir des niveaux de sûreté et veiller à ce que les renseignements sur ces niveaux de sûreté soient communiqués aux navires exploités dans les mers territoriales des États de l'Afrique de l'Ouest et du centre ou ayant fait part de leur intention d'entrer dans ces mers territoriales et, lorsqu'un risque d'attaque a été déterminé, informer les navires concernés;

Se déclarant gravement préoccupés par la sûreté des passagers et des équipages à bord des navires, y compris des embarcations de faibles dimensions, qu'ils soient au mouillage ou en route, dans la perspective d'incidents incluant des actes de terrorisme et d'autres actes illicites à l'encontre des navires, ainsi que par les risques connexes pour les personnes à terre ou les populations se trouvant dans les zones portuaires et pour les ports, les installations portuaires au large et le milieu marin;

Convaincus qu'il faut que les États membres de l'OMAOOC coopèrent et prennent, à titre hautement prioritaire, toutes les mesures nécessaires pour prévenir et réprimer tous les incidents qui menacent la sûreté du secteur des transports maritimes internationaux;

Recognizing the importance of sustainable fisheries as potential means for creating and sustaining employment, providing food security and generating revenue for the national economies of MOWCA Member States, and that they contribute to economic growth and poverty reduction;

Desiring to move from words to action through full implementation of various international instruments for sustainable fisheries adopted or enacted in the past decades, including the 1995 Food and Agriculture Organization Code of Conduct for Responsible Fisheries, Governments in West and Central Africa should appreciate the social, economic and financial benefits of sustainable fisheries and provide financial, material and human resources to achieve defined objectives in protecting these resources and their environment;

Recognizing that among those rescued at sea may be refugees and asylum seekers who should in accordance with international law, specifically the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol as well as the 1969 OAU Convention governing the specific aspects of refugee problems of Africa, be disembarked promptly at a place of safety where they are safe from prosecution or other human rights violation and where the asylum requests will be examined;

Realizing that measures taken to control borders and restrictions on aliens' access to territory constitute a valid exercise of State sovereignty;

Respecting fully the sovereignty, sovereign rights, jurisdiction and territorial integrity of the States which constitute the network, the principle on non-intervention, and the relevant provisions of international law, in particular, UNCLOS;

Reconnaissant l'importance que revêtent les pêcheries durables en tant que moyen susceptible de créer et de maintenir des emplois, d'assurer la sécurité alimentaire et de générer des recettes pour les économies nationales des États membres de l'Organisation maritime de l'Afrique de l'Ouest et du Centre, ainsi que leur contribution à la croissance économique et à la réduction de la pauvreté;

Souhaitant concrétiser les mots par des actions en mettant pleinement en œuvre les divers instruments internationaux relatifs aux pêcheries durables, adoptés ou promulgués au cours des précédentes décennies, notamment le Code de conduite de 1995 pour une pêche responsable adopté par l'Organisation des Nations Unies pour l'alimentation et l'agriculture, les Gouvernements des pays d'Afrique de l'Ouest et du Centre devraient être conscients de l'intérêt social, économique et financier des pêcheries durables et fournir des ressources financières, matérielles et humaines pour atteindre des objectifs précis en matière de protection de ces ressources et de leur environnement;

Reconnaissant que parmi ceux qui sont secourus en mer, il peut y avoir des réfugiés et des demandeurs d'asile qui devraient, conformément au droit international, précisément la Convention de 1951 relative au statut des réfugiés et son Protocole de 1967 ainsi que la Convention de l'OUA régissant les aspects propres aux problèmes des réfugiés en Afrique (1969), être débarqués au plus tôt en un lieu sûr où ils seront à l'abri de toute poursuite ou d'autres violations des droits de l'homme et où les demandes d'asile seront examinées;

Conscient que les mesures prises pour assurer le contrôle des frontières et les restrictions d'accès des étrangers sur le territoire sont justifiées dans le cadre de l'exercice de la souveraineté d'un État;

Respectant pleinement la souveraineté, les droits souverains, la juridiction et l'intégrité territoriale des États qui constituent le Réseau, le principe de non-intervention et les dispositions pertinentes du droit international, notamment la Convention des Nations Unies sur le droit de la mer;

Recognizing the potential benefits for the establishment of an integrated coast guard function network for the west and central coast of Africa across a wide range of activities, including the enhancement of maritime safety, security and environmental protection, law enforcement, and economic development;

Recognizing that in the absence of a regional integration scheme, these conventions impose costly obligations in each West and Central African State in so far as each State develops its own regulation framework, set up its own shore installations and brings into service its own coastguard network mainly through its Navy or Maritime Administration;

Conscious that the multiplicity of regulations and implementation procedures concerning their marine and coastal zones is not only expensive for the States taken individually, but also does not allow the States to take full advantage of economies of scale in guarding the coast and it also creates barriers and obstacles to shipping and trade ;

Noting that, taking into account the considerable obligations posed by the 1979 SAR Convention, it had not been accepted or ratified by many Coastal states throughout the world including those of West and Central Africa and that the SAR Convention as amended clarifies the responsibilities of Governments and puts greater emphasis on the regional approach and co-ordination between maritime and aeronautical SAR operations ;

Conscious that in the absence of a sub-regional agreement on the right of hot-pursuit across national borders, the sub-region lacks an effective means to pursue and prohibit piracy and armed robbery acts;

Reconnaissant l'intérêt que pourrait présenter la mise en place d'un Réseau intégré de garde-côtes le long du littoral des pays d'Afrique de l'Ouest et du Centre dans des domaines très variés, notamment le renforcement de la sécurité et de la sûreté maritimes et la protection de l'environnement, l'application des lois et le développement économique;

Reconnaissant qu'en l'absence de dispositif régional d'intégration, les conventions imposent de coûteuses obligations à chaque État de l'Afrique de l'Ouest et du Centre, dans la mesure où chaque État élabore son propre cadre réglementaire, établit ses propres infrastructures à terre et met en service son propre réseau de garde-côtes, en s'appuyant principalement sur sa marine nationale ou son administration maritime;

Conscients que la multiplicité des règles et des procédures d'application concernant leurs zones maritimes et côtières n'entraîne pas seulement des frais importants pour les États pris individuellement, mais également qu'elle ne leur permet pas de tirer pleinement parti des économies d'échelle en ce qui concerne les services de garde-côtes et qu'elle crée par ailleurs des obstacles et des barrières aux transports maritimes et au commerce;

Notant que, compte tenu des obligations considérables imposées par la Convention SAR de 1979, cette dernière n'a pas été acceptée ou ratifiée par nombre d'États côtiers à travers le monde, dont ceux de l'Afrique de l'Ouest et du Centre, et que la Convention SAR, telle que modifiée, clarifie les responsabilités des gouvernements et met davantage l'accent sur une approche régionale et sur la coordination entre les opérations SAR maritimes et aéronautiques;

Conscients qu'en l'absence d'accord sous-régional sur le droit de poursuite à travers les frontières nationales, la sous-région manque de moyens effectifs de poursuivre et de combattre les actes de piraterie et les vols à main armée;

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Recognizing that although most of MOWCA Member States, through their respective Navy, Marine Police and Merchant Marine Administrations, already perform some coastguard activities, however these activities are not co-ordinated for a regional response in case of crises transcending national boundaries ;

Conscious that most of the IMO Conventions can only be implemented effectively on a regional or sub-regional basis and,

Convinced that MOWCA Member States individual coastguard activities can take advantage of economies of scale derived from an **improved and harmonized regional coastguard network and a strengthened co-operation and exchange of information**

Conscious that the issues of management of the seas and oceans are closely interrelated and need to be considered as a whole ;

Affirming the duty of States to use the seas and oceans for peaceful purposes ;

Acknowledging the importance of resolving sovereignty and jurisdictional disputes peacefully and without resort to force ;

Supporting the will of MOWCA to foster a regional environment conducive to maintaining the peace, commerce and prosperity of the West and Central Africa;

Taking into account IMO Resolution A.584(14) of 20 November 1985 on the development of measures to prevent unlawful acts which threaten the safety of ships and security of their passengers and crews ;

Acknowledging the guiding principles for the Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources set out in Chapter 17 of Agenda 21, agreed at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992 ;

Reconnaissant que, bien que la plupart des États membres de l'OMAOC assurent déjà des activités de garde-côtes par l'intermédiaire de leur marine nationale, leur police maritime et leur administration de la marine marchande, ces activités ne sont pas coordonnées de manière à pouvoir intervenir à l'échelle régionale en cas de crise dépassant les frontières nationales;

Conscients que la plupart des conventions de l'OMI ne peuvent être effectivement mises en œuvre que dans un cadre sous-régional ou régional et,

Convaincus que les activités de garde-côtes des États membres de l'OMAOC pris individuellement peuvent tirer grand parti des économies d'échelle découlant de la mise en place d'un réseau régional de garde-côtes amélioré et harmonisé et d'une coopération renforcée, ainsi que des échanges d'informations;

Conscients du fait que les questions relatives à la gestion des mers et océans sont étroitement liées et doivent être prises en considération dans leur ensemble;

Affirmant le devoir des États d'utiliser les mers et les océans à des fins pacifiques;

Reconnaissant qu'il est important de résoudre les conflits de souveraineté et de juridiction par la voie pacifique et sans usage de la force;

Appuyant la volonté de l'OMAOC de faciliter l'émergence d'un environnement régional propice au maintien de la paix, au commerce et à la prospérité de l'Afrique de l'Ouest et du Centre;

Tenant compte de la résolution de l'OMI A.584 (14) du 20 novembre 1985 sur l'élaboration de mesures visant à prévenir les actes illicites qui compromettent la sécurité des navires et la sûreté de leurs passagers et de leurs équipages;

Reconnaissant les principes directeurs énoncés dans le chapitre 17 d'Action 21, adopté à la Conférence des Nations Unies sur l'environnement et le développement de Rio de Janeiro en 1992, à savoir protection des océans et de toutes les mers - y compris les mers fermées et semi-fermées - et des zones côtières et protection, utilisation rationnelle et mise en valeur de leurs ressources biologiques;

<p>Acknowledging the importance of seaborne trade in the West and Central Africa;</p> <p>Conscious of the interests which countries share in the marine environment, and in a spirit of cooperation, friendship and goodwill ;</p> <p>Conscious of the need to develop a common approach to common maritime safety and security problems ; and</p> <p>Taking into account of the recommendations of IMO/MOWCA forum held in Dakar from 23 to 25 October 2006 on the establishment of an integrated coast guard function network for West and Central African Countries;</p> <p>Convinced that the following Memorandum of Understanding will promote regional maritime cooperation and a stable maritime environment, contribute to the peace, good order and continuing prosperity of the West and Central Africa ;</p> <p>Agree to what follows:</p> <p>FIRST PART: DEFINITION, RELEVANT INSTRUMENTS, RIGHTS AND DUTIES:</p> <p><u>ARTICLE I</u> <u>DEFINITIONS</u></p> <p>1. For the purposes of the following Memorandum :</p> <p>"State Party " or " Party " means West and Central Africa coastal State having signed or accepted this Memorandum of Understanding</p> <p>"archipelagic waters" means those waters enclosed by the archipelagic baselines of an archipelagic State drawn in accordance with Article 47 of UNCLOS ;</p> <p>"coastguard" means a public statutory agency in a State responsible for the development and implementation of policies on safety of life at sea, search and rescue interventions, maritime navigation police and marine pollution police ;</p>	<p>Reconnaissant l'importance du commerce maritime dans la région de l'Afrique de l'Ouest et du Centre;</p> <p>Conscients des intérêts que les pays partagent en ce qui concerne le milieu marin, dans un esprit de coopération, d'amitié et de bonne volonté;</p> <p>Conscients qu'il est nécessaire de mettre au point une approche commune pour résoudre les problèmes communs de sécurité et de sûreté maritimes; et</p> <p>Tenant compte des recommandations du forum OMI/OMAOC tenu à Dakar du 23 au 25 octobre 2006 sur la mise en place d'un réseau intégré de garde-côtes pour les États d'Afrique de l'Ouest et du Centre;</p> <p>Convaincus que le présent Mémoire d'entente peut d'une part, promouvoir la coopération maritime régionale et un environnement maritime stable, et d'autre part, contribuer à la paix, à l'ordre et à la prospérité durable de l'Afrique de l'Ouest et du Centre;</p> <p>Conviennent de ce qui suit :</p> <p>PREMIÈRE PARTIE : DÉFINITIONS, INSTRUMENTS PERTINENTS, DROITS ET OBLIGATIONS :</p> <p>Article 1 : DÉFINITIONS</p> <p>1. Aux fins du présent Mémoire :</p> <p>"État Partie" ou "Partie" signifie un État côtier de l'Afrique de l'Ouest et du Centre ayant signé ou accepté le présent Mémoire d'entente.</p> <p>"eaux archipélagiques" signifie les eaux fermées délimitées par les lignes de base archipélagiques d'un État archipel tracées conformément à l'article 47 de la Convention des Nations Unies sur le droit de la mer de 1982;</p> <p>"garde-côtes" signifie l'administration de droit public d'un État qui est chargée de l'élaboration et de la mise en œuvre des politiques relatives à la sauvegarde de la vie humaine en mer, aux interventions de recherche et de sauvetage, à la police maritime et à la surveillance de la pollution marine;</p>
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<p>Competent Officer: An Officer of a State Party, competent to enforce legal provisions, to investigate infringements to these provisions and to prosecute or to report to a prosecuting Authority.</p> <p>Facility: Mobile or fixed facility of the Network</p> <p>"continental shelf" means the submarine area of seabed and subsoil as defined by Part VI of UNCLOS ;</p> <p>"enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States, as defined by Part IX of UNCLOS ;</p> <p>"exclusive economic zone" means an area superjacent to the sea-bed, and subsoil, as defined by Part V of the UNCLOS ;</p> <p>"foreign sea" means a sea area where a State, as coastal State, is different from the State providing the flag of a given facility of the Organization ;</p> <p>"high seas" means those waters to which the provisions of Part VII of UNCLOS applies ;</p> <p>"marine environment" includes the oceans and all seas and adjacent coastal areas ;</p> <p>"piracy" as defined in Art 101 of UNCLOS means : (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed :</p>	<p>Fonctionnaire compétent : Fonctionnaire d'un État Partie, habilité à appliquer des dispositions juridiques, enquêter sur des infractions à ces dispositions et engager des poursuites devant les tribunaux ou rendre compte à l'autorité chargée de ces poursuites.</p> <p>Moyen : Moyen mobile ou fixe du réseau</p> <p>"plateau continental" désigne les fonds marins et leur sous-sol, tel que défini dans la partie VI de la Convention des Nations Unies sur le droit de la mer de 1982;</p> <p>"mer fermée ou mer semi-fermée" désigne un golfe, un bassin ou une mer entouré par deux ou plusieurs États et relié à une autre mer ou à l'océan par un passage étroit, ou constitué, entièrement ou principalement, des mers territoriales et des zones économiques exclusives de deux ou plusieurs États côtiers, telles que définies dans la partie IX de la Convention des Nations Unies sur le droit de la mer de 1982;</p> <p>"zone économique exclusive" désigne une zone surjacente au fond de la mer, et au sous-sol, telle que définie dans la partie V de la Convention des Nations Unies sur le droit de la mer de 1982;</p> <p>"mer étrangère" signifie une zone maritime où un État, agissant en tant qu'État côtier, est différent de l'État du pavillon d'un moyen de l'Organisation;</p> <p>"haute mer" signifie les eaux auxquelles les dispositions de la partie VII de la Convention des Nations Unies sur le droit de la mer de 1982 s'appliquent;</p> <p>"milieu marin" désigne les océans et toutes les mers et les zones côtières adjacentes;</p> <p>"piraterie", telle que définie à l'article 101 de la Convention des Nations Unies sur le droit de la mer de 1982 désigne : a) tout acte illicite de violence ou de détention ou toute déprédation commise, par l'équipage ou les passagers d'un navire ou d'un aéronef privé, agissant à des fins privées, et dirigé :</p>
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<ul style="list-style-type: none"> - on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft ; - against a ship, aircraft, persons or property in a place outside the jurisdiction of any State ; <p>(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft ;</p> <p>(c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”;</p> <p>"pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities, as defined by Part I of UNCLOS ;</p> <p>"sea lines of communication" is the term used to describe shipping routes used for seaborne trade ;</p> <p>"surveillance" means the observation of aerospace, surface and sub-surface areas, places, persons or objects by visual, aural, electronic, and photographic means; and</p> <p>"territorial sea" means the belt of sea which is claimed by the coastal State as territorial sea in accordance with Section 2, Part II of UNCLOS.</p> <p><u>ARTICLE II</u> <u>RELEVANT INSTRUMENTS</u></p> <p>1. For the purposes of this Memorandum, "relevant documents" are the under listed instruments together with any protocols or amendments thereto and mandatory codes enacted pursuant to such instruments or protocols :</p>	<ul style="list-style-type: none"> - contre un autre navire ou aéronef, ou contre des personnes ou des biens à leur bord, en haute mer; - contre un navire ou aéronef, des personnes ou des biens, dans un lieu ne relevant pas de la juridiction d'un État; <p>b) tout acte de participation volontaire à l'utilisation d'un navire ou d'un aéronef, lorsque son auteur a connaissance de faits dont il découle que ce navire ou cet aéronef est un navire ou aéronef pirate;</p> <p>c) tout acte ayant pour but d'inciter à commettre les actes définis aux lettres a) ou b), ou commis dans l'intention de les faciliter;</p> <p>on entend par "pollution du milieu marin" l'introduction directe ou indirecte, par l'homme, de substances ou d'énergie dans le milieu marin, y compris les estuaires, lorsqu'elle a ou peut avoir des effets nuisibles tels que dommages aux ressources biologiques et à la faune et la flore marines, risques pour la santé de l'homme, entrave aux activités maritimes, y compris la pêche et les autres utilisations légitimes de la mer, altération de la qualité de l'eau de mer du point de vue de son utilisation et dégradation des valeurs d'agrément, telle que définie dans la partie I de la Convention des Nations Unies sur le droit de la mer, de 1982;</p> <p>"lignes de communications maritimes" est le terme utilisé pour décrire les routes maritimes servant au commerce maritime;</p> <p>"surveillance" signifie l'observation de l'espace aérien, des surfaces terrestres et des zones sous-marines, des lieux, des personnes ou des objets par des moyens visuels, acoustiques, électroniques et photographiques; et</p> <p>"mer territoriale" désigne la partie de la mer qui est revendiquée par l'État côtier en tant que mer territoriale, conformément à la section 2 de la partie II de la Convention des Nations Unies sur le droit de la mer de 1982.</p> <p>Article 2 : INSTRUMENTS PERTINENTS</p> <p>1. Aux fins du présent Mémoire, les "instruments pertinents" sont ceux énumérés ci-dessous, avec tous les protocoles ou amendements y afférents ainsi que les codes obligatoires adoptés dans le cadre de ces instruments et protocoles :</p>
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<ul style="list-style-type: none"> • Maritime Transport Charter for West and Central Africa adopted in Abidjan on May 7, 1975 and as amended on August 6, 1999; • IMO Assembly resolution A.584(14) of 20 November 1985 on the development of measures to prevent unlawful acts which threaten the safety of ships and security of their passengers and crews; • United Nations General Assembly resolutions A/Res/55/2, A/Res/55/7, A/Res/59/24 and A/Res/60/30 • MOWCA Recommendations No 04/05; No 05/05; No 06/05 approving the establishment of four (4) coastguard zones in the sub-region for effective zonal coordination and the setting up of two principal coordinating centres for the region, adopted by the MOWCA Bureau of Ministers in Luanda, March 2005 and September 2007; • MOWCA Resolution n° 182/11/01 approving the proposal to establish an integrated Sub-regional Coast Guard network, adopted at 11th General Assembly of Ministers of MOWCA, Abuja, 4th June 2001; • International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74); • The International Ship and Port Facility Security Code.(ISPS Code) Code ; • United Nations Convention on the Law of the Sea 1982 (UNCLOS) ; • International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78) ; • Convention on the International Regulation for Preventing Collisions at Sea 1972; (COLREG 72) ; 	<ul style="list-style-type: none"> • Charte maritime d'Abidjan de l'Afrique de l'Ouest at du Centre de 1975, telle que modifiée le 6 août 1999; • Résolution de l'OMI A.584(14) du 20 novembre 1985 sur l'élaboration de mesures visant à prévenir les actes illicites qui compromettent la sécurité des navires et la sûreté de leurs passagers et de leurs équipages; • Résolutions de l'Assemblée générale des Nations Unies A/Res/55/2, A/Res/55/7, A/Res/59/24 et A/Res/60/30 • Recommandations de l'OMAO No 04/05 ; No 05/05; n°06/05 approuvant l'établissement de quatre (4) zones couvertes par des garde-côtes dans la sous-région en vue d'une coordination efficace entre les zones et la création des deux centres principal de coordination pour la région, adoptées par le Bureau des Ministres de l'OMAO à Luanda, mars 2005 et septembre, 2007; • Résolution No 182/11/01 de l'OMAO approuvant la proposition visant à établir un réseau sous-régional intégré de garde-côtes, adoptée à la 11^{ème} Assemblée générale des Ministres de l'OMAO à Abuja le 4 juin 2001; • Convention internationale de 1974 pour la sauvegarde de la vie humaine en mer (Convention SOLAS de 1974) et son Protocole de 1978; • Code international pour la sûreté des navires et des installations portuaires (Code ISPS) ; • Convention des Nations Unies sur le droit de la mer de 1982; • Convention internationale de 1973 pour la prévention de la pollution par les navires, telle que modifiée par le Protocole de 1978 (MARPOL 73/78); • Convention sur le Règlement international de 1972 pour prévenir les abordages en mer (Convention COLREG de 1972);
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<ul style="list-style-type: none"> • International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969 as amended by the CLC protocol of 1992; • International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; (SUA 88), as amended ; • Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, (SUA Prot 88), as amended ; • International Convention on the preparation, the fight and the co-operation in case oil pollution (OPRC 90); • 1979 SAR Convention as amended • United Nations Food and Agricultural Program Code of Conduct for Fisheries; • 1951 Convention relating to the Status of Refugees, and its 1967 Protocol as well as the 1969 OAU Convention governing the specific aspects of refugee problems of Africa. 	<ul style="list-style-type: none"> • Protocole de 1992 modifiant la Convention internationale de 1969 sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures (Protocole CLC de 1992); • Convention de 1988 pour la répression d'actes illicites contre la sécurité de la navigation maritime (Convention SUA de 1988), telle que modifiée; • Protocole de 1988 pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental (Protocole SUA de 1988 tel que modifié); • Convention internationale de 1990 sur la préparation, la lutte et la coopération en matière de pollution par les hydrocarbures (Convention OPRC); • Convention SAR de 1979, telle que modifiée; • Code de conduite pour une pêche responsable de l'Organisation des Nations Unies pour l'alimentation et l'agriculture; • Convention de 1952 relative au statut des réfugiés (et Protocole de 1967) ainsi que Convention de l'UA y afférente.
<p>Article 3: RIGHTS AND DUTIES</p> <p>1. States recognize:</p> <ul style="list-style-type: none"> • the sovereignty and responsibilities of other States in respect of their internal waters, territorial seas, and archipelagic waters ; • the sovereign rights and duties of other States with regard to exclusive economic zones and continental shelves; and • the rights and responsibilities of other States as provided by UNCLOS, other conventions, treaty obligations and general international law. 	<p>Article 3 : DROITS ET OBLIGATIONS</p> <p>1. Les États reconnaissent :</p> <ul style="list-style-type: none"> • la souveraineté et les responsabilités des autres États en ce qui concerne leurs eaux intérieures, mers territoriales et eaux archipélagiques; • les droits souverains et les obligations des autres États en ce qui concerne leurs zones économiques exclusives et leurs plateaux continentaux; et • les droits et les responsabilités des autres États, tels que prévus par la Convention des Nations Unies sur le droit de la mer de 1982 et les autres conventions et traités et par le droit international général.

<p>SECOND PART: THE INTEGRATED NETWORK OF COASTGUARDS</p> <p>TITLE I: AT THE NATIONAL LEVEL</p> <p>Article 4: The States Parties take following obligations:</p> <p>1. to seek the establishment of a system for coordinating agencies with responsibility for national coastguard functions by each coastal Member State of MOWCA to develop and implement, as necessary:</p> <p>(a) appropriate national maritime security policies to safeguard maritime trade from all forms of unlawful acts;</p> <p>(b) national legislation, practices and procedures, which together provide the security necessary for the safe and secure operation of port facilities and ships at all security levels;</p> <p>(c) legislation which ensures effective protection of the marine environment.</p> <p>2. to establish, as necessary, a national system for co-ordinating the related activities between the departments, agencies, control authorities, and other organizations of the State, port operators, Companies and other entities concerned with, or responsible for the implementation of, compliance with, and enforcement of, measures to enhance maritime security and search and rescue;</p> <p>3. to establish, as necessary, a national system for harmonizing and co-ordinating security measures designed to enhance the security in the international maritime transport sector with those of other modes of transport ;</p> <p>4. to institute or improve a national mechanism for intra- and intergovernmental agencies and other relevant stakeholders to co-operate and co-ordinate on a coastguard function;</p> <p>5. to prosecute, in accordance with relevant domestic laws, perpetrators of all forms of piracy and unlawful acts against seafarers, ships, port facility personnel and port facilities;</p>	<p>DEUXIÈME PARTIE : LE RÉSEAU INTÉGRÉ DE GARDE-CÔTES</p> <p>TITRE I : AU NIVEAU NATIONAL</p> <p>Article 4 : Les États Parties s'engagent à :</p> <p>.1 solliciter la création par chacun des États membres de l'OMAOOC d'un service national de garde-côtes pour élaborer et mettre en œuvre, selon qu'il conviendra :</p> <p>a) une politique nationale de sûreté maritime afin de protéger le commerce maritime contre toutes les formes d'actes illicites;</p> <p>b) une législation nationale, des règles pratiques et des procédures qui assurent conjointement les conditions nécessaires à la sécurité et à la sûreté de l'exploitation des installations portuaires et des navires à tous les niveaux de sûreté;</p> <p>c) une législation qui garantit une protection efficace de l'environnement marin.</p> <p>.2 mettre en place, le cas échéant, un système national en vue de coordonner les activités connexes entre les départements, institutions, autorités chargées du contrôle, et autres organismes de l'État, exploitants portuaires, compagnies et autres entités chargées de mettre en œuvre, appliquer et faire appliquer les mesures visant à renforcer la sûreté maritime ainsi que la recherche et le sauvetage;</p> <p>.3 mettre en place, le cas échéant, un système national en vue d'harmoniser et de coordonner les mesures relatives à la sûreté destinées à renforcer la sûreté dans le secteur du transport maritime international avec celles qui s'appliquent à d'autres modes de transport;</p> <p>.4 mettre en place un mécanisme national, ou améliorer le mécanisme existant, permettant aux institutions officielles nationales et intergouvernementales et à d'autres parties prenantes concernées de coopérer et de coordonner l'action des services des garde-côtes;</p> <p>5. poursuivre en justice, conformément aux lois nationales applicables, les auteurs de toutes les formes d'actes de piraterie et d'actes illicites à l'encontre des gens de mer, des navires, des installations portuaires et du personnel qui y travaille;</p>
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<p>6. Set up in each MOWCA member States the maritime Fund</p> <p>Article 5: Organization and operation</p> <p>The organization and the operation of the national structure come exclusively under the responsibility of each State in accordance with the laws and regulations in force.</p> <p>TITLE II: AT THE REGIONAL LEVEL</p> <p>Article 6: The Parties take following obligations:</p> <p>1. to seek the establishment of an integrated coastguard function network for West and Central Africa to develop and implement, as necessary:</p> <p>(a) appropriate regional maritime security policies to safeguard maritime trade from all forms of unlawful acts;</p> <p>(b) regional legislation, practices and procedures, which together provide the security necessary for the safe and secure operation of port facilities and ships at all security levels;</p> <p>2. to consolidate the existing, or seek to establish, as the case may be, a regional maritime information centre through which the States can share and exchange security-related information, for the aim of preventing or combating unlawful acts against seafarers, ships, port facility personnel and port facilities in the area and ensuring prompt response to any distress or security alert received from these ships;</p> <p>3. to seek ways for engaging States which trade with West and Central Africa and the shipping industry to support and enhance the safety, security and environmental protection in West and Central Africa;</p> <p>4. to combat piracy, armed robbery against ships, unlawful acts and transnational organized crime at sea by enhancing the regional maritime security strategies and multilateral co-operation in their implementation;</p>	<p>6. créer, dans chaque État membre de l'OMAO, les fonds maritime.</p> <p>Article 5 : Organisation et fonctionnement</p> <p>L'organisation et le fonctionnement de la structure nationale relèvent exclusivement de la compétence de chaque État Partie conformément aux lois et règlements en vigueur.</p> <p>TITRE II : AU NIVEAU RÉGIONAL</p> <p>Article 6 : Les États Parties s'engagent à :</p> <p>.1 s'employer à créer un réseau intégré de garde-côtes des pays d'Afrique de l'Ouest et du Centre pour élaborer et mettre en œuvre, selon qu'il conviendra :</p> <p>a) une politique régionale appropriée de sûreté maritime afin de protéger le commerce maritime contre toutes les formes d'actes illicites;</p> <p>b) une législation régionale, des règles pratiques et des procédures qui assurent conjointement les conditions nécessaires à la sécurité et à la sûreté de l'exploitation des installations portuaires et des navires à tous les niveaux de sûreté;</p> <p>.2 renforcer l'actuel centre régional d'information maritime, ou s'employer à en créer un, selon le cas, grâce auquel les États peuvent mettre en commun et échanger des renseignements relatifs à la sûreté en vue de prévenir les actes illicites à l'encontre des gens de mer, des navires, des installations portuaires et de leurs personnels se trouvant dans la zone, ou de lutter contre ces actes, et de garantir une intervention rapide dans tous les cas où sont reçues des alertes de détresse ou de sûreté provenant de ces navires;</p> <p>.3 rechercher des moyens d'inciter les États Parties qui font commerce avec l'Afrique de l'Ouest et du Centre ainsi que le secteur des transports maritimes à développer et à renforcer la sécurité, la sûreté et la protection de l'environnement en Afrique de l'Ouest et du Centre;</p> <p>4. lutter contre les actes de piraterie et les vols à main armée à l'encontre des navires, les actes illicites et la criminalité transnationale organisée en mer, en améliorant les stratégies régionales de sûreté maritime et en renforçant la coopération multilatérale aux fins de leur mise en oeuvre;</p>
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<p>5. to integrate any existing co-operative efforts or arrangements relating to combating unlawful acts against seafarers, ships, port facility personnel and port facilities and trans-national organized maritime crime, including those relating to collection, assessment, sharing and exchanging of security-related information and those relating to the co-operation and co-ordination among the institutions concerned, such as naval units, coastal patrol and law enforcement agencies, shipping companies, seafarers, and port authorities with a view of identifying any areas which may warrant improvements;</p> <p>6. to improve international and regional co-operation with a view to ensure that pirates and persons committing unlawful acts against seafarers, ships and port facilities and port facility personnel do not evade prosecution;</p> <p>7. to take into account any existing legislative and administrative arrangements relating to the investigation of alleged piracy or armed robbery incidents and for the prosecution, conviction and punishment of those involved in acts of piracy and armed robbery against ships with a view of identifying any areas which may warrant improvement taking into account the guidelines for the suppression of piracy and armed-robbery against ships¹ developed by the International Maritime Organization;</p> <p>8. to improve the capacity of national and regional training institutions for the training and development of relevant indigenous human capital for the operation of an efficient regional coastguard function network;</p> <p>9. to seek the commitment, consistent with the provisions of UNCLOS, of any military ship or other ships in the area capable of providing assistance, to respond to any situation of persons in distress at sea;</p>	<p>5. intégrer toutes les initiatives ou dispositifs de coopération existants qui ont trait à la lutte contre les actes illicites à l'encontre des gens de mer, des navires, des installations portuaires et de leurs personnels, et à la criminalité transnationale organisée dans les transports maritimes, notamment ceux qui concernent la collecte, l'évaluation, la mise en commun et l'échange de renseignements relatifs à la sûreté, ainsi que ceux qui portent sur la coopération et la coordination entre les institutions concernées telles que les unités navales, les services de recherche côtiers et les organes de la force publique, les compagnies de navigation, les gens de mer et les administrations portuaires afin de recenser tous les éléments qu'il y aurait lieu d'améliorer;</p> <p>6. améliorer la coopération internationale et régionale afin de garantir que les pirates et les personnes qui commettent des actes criminels à l'encontre des gens de mer, des navires et des installations portuaires et du personnel qui y travaille, n'échappent pas aux poursuites;</p> <p>7. prendre en compte tous les dispositifs législatifs et administratifs existants qui ont trait aux enquêtes sur les incidents présumés de piraterie et de vols à main armée ainsi qu'à la poursuite, à la condamnation et au châtement des personnes impliquées dans des actes de piraterie et des vols à main armée à l'encontre des navires, afin de recenser tous les éléments qu'il y aurait lieu d'améliorer en tenant compte des recommandations et des directives pertinentes sur la répression des actes de piraterie et des vols à main armée à l'encontre des navires formulées par l'Organisation maritime internationale;</p> <p>8. améliorer les moyens des institutions de formation nationales et régionales aux fins de la formation et de la mise en valeur du capital humain local en vue de faire fonctionner un réseau régional efficace de garde-côtes;</p> <p>9. obtenir l'engagement, conformément aux dispositions de la Convention des Nations Unies sur le droit de la mer, de la part de tous les navires de guerre ou autres qui se trouvent dans la zone et sont en mesure de prêter assistance, qu'ils interviendront lorsque des personnes sont en détresse en mer;</p>
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<p>10. to become parties to and implement the provisions of, the International Conventions and Protocols related to the prevention and suppression of international terrorism and, in particular, the 1988 SUA Convention, the 1988 SUA Protocol, the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; the United Nations Convention against Trans-national Organized Crime, 2000; and also to become parties to and implement the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol as well as the 1969 OAU Convention governing the specific aspects of refugee problems of Africa;</p> <p>11. to ensure that, in seeking the fulfilment of the above objectives, a balance is maintained between the need to enhance maritime security and facilitation of maritime traffic and to avoid any unnecessary delays to international maritime trade in West and Central Africa;</p> <p>12. to co-operate and collaborate with the sub-regional fisheries bodies and the Food and Agriculture Organization on preventing and combating illegal, unregulated and unreported fishing, and protecting fisheries resources for sustainable long term utilization to sustain livelihoods in West and Central Africa;</p> <p>13. to ensure that measures taken to control borders and restrictions and aliens access to territory are in compliance with international law including human rights and refugee law;</p> <p>14. to co-operate with the United Nations High Commissioner for Refugees with regard to the protection of asylum seekers and refugees at sea;</p>	<p>10. devenir parties, dans les plus brefs délais, aux conventions et protocoles internationaux qui concernent la prévention et la répression du terrorisme international, et notamment la Convention SUA de 1988, le Protocole SUA de 1988, le Protocole de 2005 relatif à la Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime et le Protocole de 2005 relatif au Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, la Convention des Nations Unies contre la criminalité transnationale organisée (2000); et aussi devenir parties en appliquant leurs dispositions, à la Convention de 1951 relative au statut des réfugiés et son Protocole de 1967 ainsi qu'à la Convention de l'OUA régissant les aspects propres aux problèmes des réfugiés en Afrique (1969);</p> <p>.11 faire en sorte, en s'efforçant d'atteindre les objectifs ci-dessus, de respecter un équilibre entre la nécessité de renforcer la sûreté maritime et les dispositions visant à faciliter le trafic maritime, de façon à éviter de retarder indûment le commerce maritime international en Afrique de l'Ouest et du Centre;</p> <p>.12 coopérer et collaborer avec les organismes de pêche sous-régionaux et l'Organisation des Nations Unies pour l'alimentation et l'agriculture pour prévenir et éliminer la pêche illicite, non déclarée et non réglementée, et protéger les ressources halieutiques en vue d'une exploitation durable permettant de conserver les moyens de subsistance en Afrique de l'Ouest et du Centre;</p> <p>13. s'assurer que les mesures prises pour contrôler les frontières et les restrictions de l'accès des étrangers sur le territoire sont conformes au droit international, notamment aux droits de l'homme et au droit des réfugiés;</p> <p>14. coopérer avec le Haut Commissariat des Nations Unies pour les réfugiés (HCR) en ce qui concerne la protection des demandeurs d'asile et des réfugiés en mer;</p>
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<p>15. to review periodically the progress of the efforts made in achieving the above objective and to share the result of the experience gained with MOWCA Member States; and</p> <p>16. to have the General Assembly of MOWCA and the Bureau of Ministers informed of efforts made in achieving the above objective, and of the international support provided in this regard.</p> <p>TITLE 2: MISSION AND ORGANISATION</p> <p>Article 7: Missions</p> <p>The goal of the Coastguard Function Network (the Network) is to allow the parties to promote and make joint efforts as far as their maritime activities are concerned, particularly those devoted to the protection of the human life, the enforcement of the laws, the improvement of safety and the protection of the environment.</p> <p>Article 8: Administrative organisation</p> <p>The highest body of administration of the Network is the Council of Ministers (hereafter called the Council).</p> <p>The Council of Ministers elects its bureau in accordance <u>with the Rules of Procedure of the Organisation</u></p> <p>The Council decides on the general policy of the Network, adopts the annual budget, appoints the Principal Coordinator and takes all other decisions envisaged by the memorandum. It can interpret the Memorandum.</p> <p>The Council meets twice (2) per annum. It can hold extraordinary meetings where necessary.</p> <p>The Principal Coordinator of the Network takes part in the meetings of the Council.</p> <p>The Secretary-General of MOWCA takes part in the meetings of the Council as observer.</p>	<p>15. examiner régulièrement l'état d'avancement des initiatives menées pour atteindre les objectifs susmentionnés et partager les résultats de l'expérience acquise avec les États Membres de l'OMAO; et</p> <p>16. tenir l'Assemblée Générale de l'OMAO et le Bureau des Ministres informés des efforts déployés pour atteindre les objectifs ci-dessus et du soutien international reçu à cet effet.</p> <p>TITRE 2 : MISSIONS ET ORGANISATION</p> <p>Article 7 : Missions</p> <p>Le Réseau de garde-côtes a pour mission de permettre aux États Parties de promouvoir et d'entreprendre, dans la mesure où leurs activités maritimes sont concernées, des actions communes visant notamment à la sauvegarde de la vie humaine en mer, au respect des lois, à l'amélioration de la sécurité et à la protection du milieu marin.</p> <p>Article 8 : Organisation administrative</p> <p>L'organe suprême de décision du Réseau est le Conseil des Ministres (ci-après dénommé le Conseil).</p> <p>Le Conseil des Ministres élit son bureau conformément au <u>règlement intérieur de l'Organisation.</u></p> <p>Le Conseil décide de la politique générale du Réseau, adopte le budget annuel, nomme le Coordonnateur principal et prend toutes autres décisions prévues par le Mémoire. Il peut interpréter le Mémoire.</p> <p>Le Conseil se réunit deux (2) fois par an. Il peut tenir des réunions extraordinaires en cas de besoin.</p> <p>Le Coordonnateur principal du Réseau participe aux réunions du Conseil.</p> <p>Le Secrétaire général de l'OMAO participe aux réunions du Conseil en qualité d'observateur.</p>
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Article 9: TECHNICAL EVALUATION COMMITTEE

The Technical Committee of Evaluation (hereafter called the technical committee, is composed of experts nominated by the Secretary-general of MOWCA, in charge of steering the implementation and the progress of the Network

Article 10: Committee of Representatives

The Representatives of the Committee (hereafter called the Committee) is composed of a Representative for each State Party. **Each Representative can be assisted by two substitutes.**

The Representative of a State Party is the Person in charge, in his/her country, of the general coordination of all the questions relating to the Network and the only person in charge of the connection between his Government and the Network, except for what relates to the capacity of the Council.

The Committee assists the Principal Coordinator in the general administration of the Network. On a proposal from the Principal Coordinator, it decides principles of the work programme and the means of the Network. It adopts the relevant operational documents relating to the activity of the [Organisation](#).

It examines all the questions submitted to it by the Principal Coordinators and, according to the cases, delivers opinions, decides or transmits to the [technical evaluation committee](#).

The Committee proposes to the Council the appointment of the Deputy Principal Coordinator and the Coordinator of zones.

The committee of evaluation attends the meetings of the committee as statutory participant.

The Representatives Committee elects its bureau in accordance with the rules of procedure of the [Organisation](#).

Article 9 : Le Comité technique d'évaluation

Le Comité technique d'évaluation (ci-après) appelé le comité technique, est composé d'experts nommés par le Secrétaire Général de l'OMAOC, chargé de suivre la mise en œuvre et l'évolution du Réseau

Article 10 : Comité des représentants

Le Comité des Représentants (ci-après appelé le Comité) est composé d'un Représentant de chaque Etat Partie. **Chaque Représentant peut être assisté de deux Représentants suppléants.**

Le Représentant d'une Partie est le Responsable, dans son pays, de la coordination générale de toutes les questions regardant le Réseau et seul chargé de la liaison entre son Gouvernement et le Réseau, à l'exception des questions relevant de la compétence du Conseil.

Le Comité assiste les Coordonnateurs principaux dans la gestion du Réseau. Sur proposition des Coordonnateurs principaux, il décide (des principes) du programme d'activité des moyens du Réseau. Il adopte les documents opérationnels pertinents en relation avec l'activité du Réseau.

Il examine toutes les questions qui lui sont soumises par les Coordonnateurs principaux et, selon les cas, donne les avis, décide ou transmet au comité technique d'évaluation.

Le Comité propose au comité d'évaluation la nomination des Coordonnateurs principaux Adjointes et les Coordonnateurs de zones.

Le comité d'évaluation assiste statutairement aux réunions du comité.

Le Comité des Représentants élit son bureau conformément au règlement intérieur du Réseau

<p>Article 11: Committee of Representatives</p> <p>The Principal Coordinator is the legal representative of the network. He/she is responsible for its general management and can take the required measures to this end, in accordance with the provisions of this memorandum. He/she can delegate his powers to his Assistant and to the Coordinator of the zones in accordance with the directives approved by the Council.</p> <p>He/she is replaced by the Deputy Principal Coordinator when he/she is unavailable. He/she accounts for operational activities of the Network at each meeting of the Council.</p> <p>Article 12: Constitution of the Network</p> <p>The Network comprises four (04) Coastguard zones with respective four (4) Coastguard Zonal Coordinating Centres and two (2) Principal Coordinating Centres:</p> <ul style="list-style-type: none"> - Zone 1: Mauritania, Senegal, Gambia, Guinea Bissau, Cabo Verde. - Zone 2: Guinea, Sierra Leone, Liberia, Cote d'Ivoire, Ghana. - Zone 3: Togo, Benin, Nigeria, Cameroon, Equatorial Guinea. - Zone 4: Gabon, Congo, DRC, Sao Tome & Principe, Angola. <p>In each zone, a Coordinator is in charge of operations in his/her zone, according to Principal Coordinator's instructions and orders.</p> <p>Article 13</p> <p>The Network comprises fixed facilities and mobile facilities.</p> <p>Article 14: Fixed facilities include:</p> <ul style="list-style-type: none"> • operational facilities, devoted to gathering of information (such as radar stations) and anagement of operations and, in general, of all the activities of the Network; • training facilities, devoted to improving the skills of the staff. Training facilities can be shared with another structure or created within the framework of an existing training centre; 	<p>Article 11 : Comité des représentants</p> <p>Le Coordonnateur principal est le représentant légal du Réseau. Il est responsable de sa gestion générale et peut prendre les mesures nécessaires à cette fin, conformément aux dispositions du présent Mémorandum. Il peut déléguer ses pouvoirs à son adjoint et aux Coordonnateurs de zone, conformément aux directives approuvées par le Conseil.</p> <p>Il est remplacé par le Coordonnateur principal adjoint en cas d'empêchement. Il rend compte, lors de chaque réunion du Conseil, des activités du Réseau.</p> <p>Article 12 : Constitution du Réseau</p> <p>Le Réseau comprend quatre (4) zones des garde cotes avec quatre (4) Centres de coordination de la zone et deux (2) Centres principal de coordination :</p> <ul style="list-style-type: none"> - Zone 1 : Mauritanie, Sénégal, Gambie, Guinée-Bissau, Cap Vert. - Zone 2 : Guinée, Sierra Léone, Libéria, Côte d'Ivoire, Ghana. - Zone 3 : Togo, Bénin, Nigéria, Cameroun, Guinée équatoriale - Zone 4 : Gabon, Congo, RDC, Sao Tomé-et-Principe, Angola <p>Dans chaque zone, les operations sont dirigées par un Coordonnateur, selon les instructions et ordres du Coordonnateur principal.</p> <p>Article 13</p> <p>Le Réseau comprend des moyens fixes et des moyens mobiles.</p> <p>Article 14 : Les moyens fixes comprennent :</p> <ul style="list-style-type: none"> • les moyens opérationnels, consacrés à la collecte des informations (comme les stations radar) et à la direction des opérations, et d'une manière générale, des activités du Réseau; • les moyens de formation, consacrés à l'amélioration des compétences du personnel. Les moyens de formation peuvent être partagés avec une autre structure ou être créés dans le cadre d'un
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<ul style="list-style-type: none"> • Means, devoted to the maintenance and the operational support of the Network. <p>Article 15 The logistic means of the Network include nautical and aeronautical means, and also terrestrial means. All the logistic means of the Network are subject to the operational rules envisaged by the second part of this memorandum. All the means of the Network have the same colors and distinctive marks adopted by the Council. Similar distinctive characteristics appear in the logo and emblem of the Network.</p> <p>Article 16: Each ship belonging to the Network flies the flag of the State Party where it is assigned. It is used only in its zone except temporarily for joint missions, reinforcements or replacements of other ships. The logistic means of the Network cannot be used for military missions of the flag State, except for peace or evacuation missions</p> <p>The logistic means are the property of the Network. It supplies them with fuel, makes the maintenance and assigns each one of them to a State Party which has the responsibility to equip and train the crew.</p>	<p>établissement de formation existant;</p> <ul style="list-style-type: none"> • Les moyens de soutien, consacrés à l'entretien et au soutien opérationnel du Réseau. <p>Article 15 Les moyens mobiles du Réseau comprennent des moyens maritimes et aéronautiques et également des moyens terrestres. Tous les moyens mobiles du Réseau sont soumis aux règles d'exploitation prévues dans la deuxième partie du présent Mémoire. Tous les moyens du Réseau portent les mêmes couleurs et marques distinctives adoptées par le Conseil. Des caractéristiques distinctives semblables apparaissent dans le logo et l'emblème du Réseau.</p> <p>Article 16 Chaque navire du Réseau bat le pavillon de l'État Partie à laquelle il a été affecté. Il est utilisé uniquement dans sa zone sauf, à titre temporaire, pour des missions conjointes, du renfort ou en remplacement d'autres moyens. Les moyens du Réseau ne peuvent pas être utilisés pour des missions militaires menées par l'État du pavillon, sauf pour des missions de maintien de la paix ou d'évacuation.</p> <p>Les moyens mobiles sont la propriété du Réseau qui les approvisionne en carburant, les entretient et qui affecte chacun d'eux à une Partie qui a la charge d'équipes et de former l'équipage.</p>
<p>A part of the training of the crew however is organized and supported by the Network. While endorsing the responsibility to equip and train the crew, the Flag State can make arrangements with other States Parties in order to allow nationals to be embarked in the maximum proportion of a third of the officers and half of all the crew.</p> <p>Article 17 However, if the agreement fixing the conditions of equipment and maintenance is accepted by the Network, a State Party can provide the network with logistic means as stipulated by the memorandum except for the right of ownership.</p>	<p>Une partie de la formation des équipages est cependant organisée et supportée par le Réseau. Tout en assumant la responsabilité d'équiper et de former l'équipage, l'État Partie du pavillon peut passer des accords avec d'autres Parties pour que des nationaux de celles-ci soient embarqués dans la proportion maximale d'un tiers des officiers et de la moitié de tout l'équipage.</p> <p>Article 17 Cependant, si l'accord fixant les conditions d'équipement et d'entretien est accepté par le Réseau, un État Partie peut mettre un moyen mobile à la disposition du Réseau, comme prévu par le présent Mémoire, sauf en ce qui concerne le droit de propriété.</p>

<p>In this case, the conditions of armaments, provisioning and maintenance are subject of an agreement between the Organization and the State Party</p> <p>Article 18 The supply and the maintenance of ships can be conceded by the zones Coordinators to a private company with the consent of the Principal Coordinators.</p> <p>Article 19 The Principal Coordinator and zone Coordinators are assisted by a permanent office including as much as possible agents of all the parties concerned. These offices include an operational center devoted to the collection of information and to the diffusion of information relating to the activities of the Organization</p> <p>THIRD PART: RULES OF OPERATIONS</p> <p>TITLE 1: IN NORMAL TIME</p> <p>Article 20: At national level Each State Party organizes at the national level, its surveillance missions in accordance with its laws and regulations in force.</p>	<p>Dans ce cas, les conditions d'armement, d'approvisionnement et d'entretien font l'objet d'un accord entre l'Organisation et l'État Partie.</p> <p>Article 18 Les tâches relatives à l'approvisionnement et à l'entretien des moyens peuvent être concédées par les Coordonnateurs de zone à une société privée avec l'accord du Coordonnateur principal.</p> <p>Article 19 Le Coordonnateur principal et les Coordonnateurs de zone sont assistés par un bureau permanent comprenant autant que possible des agents de toutes les parties concernées. Ces bureaux comprennent un centre opérationnel consacré à la collecte d'informations et à la diffusion d'informations relatives aux activités de l'Organisation.</p> <p>TROISIÈME PARTIE : LES RÈGLES D'EXPLOITATION</p> <p>TITRE I : EN TEMPS NORMAL</p> <p>Article 20 : Au niveau national Chaque État Partie organise, au niveau national, ses missions de surveillance conformément à ses lois et règlements en vigueur.</p>
<p><u>Article 21: Zone cooperation agreement</u></p> <p>The States Parties, in addition to the provisions of the memorandum and its appendices, can sign bilateral cooperation agreements without prejudice to the agreement set up and organizing the specific functioning of each zone.</p> <p>Each time it is necessary, a State Party can benefit, through this agreement, from logistical and humane support of another State Party according to procedures they will have adopted.</p> <p>The same State Party can sign the same agreement with the other State Parties of the zone.</p> <p>Article 22: The missions are planned and ordered by the zone Coordinators.</p> <p>The States Parties via their representatives send to</p>	<p>Article 21 : Accord de coopération au niveau de la zone</p> <p>Outre les dispositions réglementaires prévues par le Mémoire et ses annexes, les États Parties peuvent signer des accords de coopération bilatérale sans préjudice de l'accord cadre mis en place et organisant le fonctionnement spécifique de chaque zone.</p> <p>Chaque fois qu'il est nécessaire, un État Partie peut dans le cadre de cet accord bénéficier du soutien d'un autre État Partie en moyens logistiques et en personnel, selon les modalités qu'ils auront arrêtées.</p> <p>Un État Partie peut signer le même accord avec tous les autres États Parties de la zone.</p> <p>Article 22 : Les missions sont planifiées et ordonnées par les Coordonnateurs de zone.</p> <p>Les Parties, par l'intermédiaire de leur Représentant,</p>

<p>the zone Coordinators, with any useful justification, their requests for presence of the facilities in their sector.</p> <p>The programmes of missions ordered by the zone Coordinators are sent to the Representatives of the State parties of the zone.</p> <p>Article 23: The facilities must carry out constabulary missions in accordance with the law of the competent State Party for the given sector, and in accordance with UNCLOS.</p> <p>SAR missions are carried out according to provisions of SAR Convention and its protocols.</p> <p>Article 24: On request or with the authorization of a competent agent, a coastguard facility can carry out an act of police in a foreign sector, as if it were a facility of the State Party of this sector and in accordance with the applied laws. If the competent agent is not on board, his request or his authorization can be transmitted by any suitable means of communication. The reports of the embarked agents on board have the same legal force as a report carried out by a competent Officer.</p>	<p>envoient aux Coordonnateurs de zone, avec toutes justifications utiles, leurs demandes concernant la présence des moyens dans leur secteur.</p> <p>Les programmes des missions ordonnées par les Coordonnateurs de zone sont envoyés aux Représentants des États Parties de la zone.</p> <p>Article 23 : Les moyens doivent servir à exécuter les missions de police dans le respect du droit de l'État Partie compétent pour le secteur donné, et dans le respect de la Convention des Nations Unies sur le droit de la mer de 1982.</p> <p>Les missions SAR sont exécutées selon les dispositions de la Convention SAR et de ses documents d'application.</p> <p>Article 24 : Sur demande ou avec l'autorisation d'un agent compétent, un moyen peut exécuter un acte de police dans un secteur étranger, comme s'il était un moyen de l'État Partie de ce secteur et en conformité avec la législation qui y est en vigueur. Si l'agent compétent n'est pas à bord du moyen, sa demande ou son autorisation peut être transmise par tout moyen de communication approprié. Les comptes rendus des agents embarqués à bord du moyen ont la même valeur juridique qu'un compte rendu effectué par un fonctionnaire compétent.</p>
<p>Article 25: The States Parties take any appropriate measures to harmonize their legal status relating to the policing at sea.</p> <p>TITLE II: IN TIME OF CRISIS</p> <p>Article 26: In case of events (accidents, acts of piracy, marine pollution, and other illicit acts) in territorial waters under jurisdiction of a given zone, and requiring an external assistance, the Maritime Authority approaches at once the Principal Coordinator of the zone and informs the agency or agencies with responsibility for national coastguard functions.</p> <p>The Principal Coordinator concerned implements the action plan envisaged for this purpose and annexed at the present memorandum.</p> <p>TITLE III: EMERGENCY PLAN</p> <p>Article 27: The Principal Coordinator works out a sub regional draft of emergency plan to be submitted to the approval of the Council. The Principal Coordinator is in charge of the implementation of the emergency</p>	<p>Article 25 : Les États Parties prennent toute mesure appropriée pour harmoniser leurs régimes juridiques relatifs à la police en mer.</p> <p>TITRE II : EN TEMPS DE CRISE</p> <p>Article 26 : En cas d'événements (accidents, actes de piraterie, pollution marine, trafic et autres actes illicites) ayant eu lieu dans les eaux sous juridiction d'une zone donnée et nécessitant une assistance extérieure, l'autorité maritime locale saisit aussitôt le Coordonnateur principal de la zone en vue d'informer les garde-côtes.</p> <p>Le Coordonnateur de la zone en question met en œuvre le plan d'action prévu à cet effet et annexé au présent Mémoire.</p> <p>TITRE III : PLAN D'URGENCE</p> <p>Article 27 : Le Coordonnateur principal établit un projet de plan d'urgence sous-régional à soumettre à l'approbation du Conseil. Le Coordonnateur principal est chargé de la mise en œuvre du plan d'urgence</p>

<p>plan thus adopted.</p> <p>FOURTH PART: FINANCIAL RESOURCES</p> <p>Article 28: The financial resources of the network include:</p> <ul style="list-style-type: none"> - regional maritime funds; - the normal or <u>extraordinary contributions decided by the Council</u>; - contributions of organizations or donor countries; - 50 % of penalties and confiscations resulting from the actions of the Network. <p>Article 29: Each State Party begins to pay its financial contribution to the Network in accordance with the decisions and procedures adopted by the council.</p>	<p>ainsi adopté.</p> <p>QUATRIÈME PARTIE : RESSOURCES FINANCIÈRES</p> <p>Article 28 : Les ressources financières du Réseau comprennent :</p> <ul style="list-style-type: none"> - les fonds maritimes régionaux; - les contributions ordinaires <u>ou extraordinaires décidées par le Conseil</u>; - des contributions d'organisations ou pays donateurs; - 50 % des amendes et confiscations résultant des actions du Réseau. <p>Article 29 : Chaque État Partie s'engage à s'acquitter de sa contribution financière aux coûts de fonctionnement du Réseau, conformément aux décisions et procédures adoptées par le Conseil.</p>
<p>FIFTH PART: ENGAGEMENTS OF STATE PARTIES</p> <p>Article 30: Each State Party gives effect to the provisions of this Memorandum or its appendices, which constitute an integral part of the Memorandum, and will take any necessary measures to ratify or accept the relevant legal instruments for the implementation of the Memorandum.</p> <p>Article 31: Each State Party establishes an effective national organization of coastguard, by making sure that this organization is in conformity with the standards described in the instruments defined in this Memorandum.</p> <p>Article 32: Each State Party consults, cooperates and exchanges information with other States Parties in order to improve the objectives of the Memorandum.</p> <p>SIXTH PART: FINAL PROVISIONS</p> <p>TITLE I : OTHER PROVISIONS</p> <p>Article 33: Any State Party which has accepted the Memorandum can propose amendments or appendices to the Memorandum.</p> <p>In the case of amendment proposal to the Memorandum, the following procedure will apply:</p>	<p>CINQUIÈME PARTIE : ENGAGEMENTS DES ÉTATS PARTIES</p> <p>Article 30 : Chaque État Partie donne effet aux dispositions du présent Mémoire ou de ses annexes, lesquelles font partie intégrante du Mémoire, et prendra toutes les mesures nécessaires pour ratifier ou accepter les instruments juridiques pertinents pour la mise en œuvre du Mémoire.</p> <p>Article 31 : Chaque État Partie établit une organisation nationale de garde-côtes efficace, en s'assurant que cette organisation est conforme aux normes décrites dans les instruments définis dans le présent Mémoire.</p> <p>Article 32 : Chaque État Partie se concerta, coopère et échange des informations avec les autres États Parties en vue de mieux réaliser les objectifs du Mémoire.</p> <p>SIXIÈME PARTIE : DISPOSITIONS FINALES</p> <p>TITRE I : DISPOSITIONS DIVERSES</p> <p>Article 33 : Tout État Partie, qui a accepté le Mémoire, peut proposer des amendements ou des annexes au Mémoire.</p> <p>Dans le cas d'une proposition d'amendements au Mémoire, la procédure suivante s'appliquera :</p>

<p>a) the amendment suggested will be submitted to the principal Coordination Centre in order to be studied, at least six (06) weeks before the meeting of the Committee;</p> <p>b) the amendments will be adopted by a majority of two thirds of the Representatives of the States Parties in the Committee;</p> <p>c) if the amendment is adopted, it will be communicated by the principal Coordination Centre to the States Parties for acceptance.</p>	<p>a) l'amendement proposé sera soumis au Centre principal de Coordination pour étude, au moins six (6) semaines avant la réunion du Comité;</p> <p>b) les amendements seront adoptés par une majorité des deux tiers des Représentants des Parties présentes et votantes dans le Comité;</p> <p>c) si l'amendement est adopté, il sera communiqué par le Centre principal de Coordination aux États Parties pour acceptation.</p>
<p>Article 34: An amendment is supposed to be accepted, either at the end of a period of six (06) months after adoption by the Representatives of the States Parties in the Committee, or at the end of any other period determined unanimously by the Representatives of the States Parties in the Committee, unless for the considered period an objection is communicated to the Secretariat by a State Party.</p> <p>An amendment comes into force sixty (60) days after being accepted, or at the end of any other period determined unanimously by the Council.</p> <p>Article 35: In case of amendment or appendix proposals, the following procedures is followed:</p> <p>a) the amendment or the appendix proposed will be submitted to the examination by the States Parties through the Principal Coordinator;</p> <p>b) the amendment or the appendix is supposed to be accepted at the end of a period of three (03) months from the date on which it was communicated by the Principal Coordination Centre, unless a State Party requests only the amendment in writing or the appendix is not examined by the Committee. In this case, the procedure specified in article 6.1.1 applies;</p> <p>c) the amendment or the appendix comes into force sixty (60) days after being accepted, or at the end of any other period determined unanimously by the States Parties.</p> <p>Article 36: The Memorandum comes into force without prejudice to the laws and regulations derived from an international instrument.</p> <p>A Maritime Authority satisfying the criteria specified in</p>	<p>Article 34 : Un amendement est réputé avoir été accepté, soit à la fin d'une période de six (6) mois après adoption par les Représentants des États Parties dans le Comité, soit à la fin de toute autre période déterminée à l'unanimité par les représentants des États Parties dans le Comité au moment de son adoption, à moins que pendant la période considérée une objection soit communiquée au Secrétariat par un État Partie.</p> <p>Un amendement entre en vigueur soixante (60) jours après avoir été accepté, ou à la fin de toute autre période déterminée à l'unanimité par le Conseil.</p> <p>Article 35 : Dans le cas de propositions d'amendements ou d'annexes au Mémoire, la procédure suivante est suivie :</p> <p>a) l'amendement ou l'annexe proposé sera soumis à l'examen des États Parties par l'intermédiaire du Coordonnateur principal;</p> <p>b) l'amendement ou l'annexe est réputé avoir été accepté à la fin d'une période de trois (3) mois à partir de la date à laquelle il a été communiqué par le Centre principal de coordination, à moins qu'un État Partie ne demande par écrit que l'amendement ou l'annexe ne soit examiné par le Conseil. Dans ce cas, la procédure spécifiée à l'article 6.1.1. s'applique;</p> <p>c) l'amendement ou l'annexe entre en vigueur soixante (60) jours après avoir été accepté, ou à la fin de toute autre période déterminée à l'unanimité par les États Parties.</p> <p>Article 36 : Le Mémoire s'applique sans préjudice des droits et obligations découlant d'un instrument international, quel qu'il soit.</p> <p>Une autorité maritime, qui remplit les critères</p>

<p>this memorandum or its amendments or appendices can adhere to the Memorandum or its amendments or appendices with the agreement of all the States Parties which have accepted the Memorandum, its amendments or appendices.</p>	<p>spécifiés dans le présent Mémorandum ou dans ses amendements ou annexes, peut adhérer au Mémorandum ou à ses amendements ou annexes avec l'accord de tous les États Parties qui ont accepté le Mémorandum, ses amendements ou annexes.</p>
<p>Article 37: The Memorandum remains ready for signature to the West and Central Africa States and throughout a twelve (12) month period, in the headquarters of MOWCA.</p> <p>However, it comes into force in a given zone three months after all the States Parties of this zone have signed it.</p> <p>After the considerations mentioned above, the States Parties will be able to implement it if they satisfy the requirements contained in the Memorandum.</p> <p>Article 38: Any maritime Authority or Organization wishing to take part as observer will submit a written request to the Committee, and will be considered as observer with the unanimous agreement of the Representatives of the States Parties present and voting at the meeting of the Committee.</p> <p>Article 39: Each State Party, which has not yet done so, is invited to establish, specialized Government Agency which shall develop and execute on shore and at sea duties of maritime navigation and marine pollution polices, including search and rescue, combating piracy and unlawful acts against safety and security of maritime navigation.</p> <p>Article 40: In establishing such Agencies, States shall take account of the relevant international conventions and instruments on the aforementioned issues and the need to grant adequate enforcement powers to such Agencies. States shall take steps to harmonize their legal regimes regarding enforcement at sea</p> <p>MARITIME COOPERATION</p> <p>Article 41: States are invited to become parties to UNCLOS, SUA and other relevant instruments, noting that this will contribute to the strengthening of peace, security, cooperation, sustainable development and friendly relations.</p>	<p>Article 37 : Le Mémorandum demeure ouvert à la signature des États de l'Afrique de l'Ouest et du Centre pendant une durée de douze (12) mois, au siège de l'OMAO.</p> <p>Toutefois, il entre en vigueur dans une zone donnée trois mois après que tous les États Parties de cette zone l'ont signé.</p> <p>Compte tenu des aspects susmentionnés, les États Parties peuvent mettre le Mémorandum en application s'ils satisfont aux exigences qui y sont énoncées.</p> <p>Article 38 : Une autorité maritime ou organisation souhaitant participer comme observateur soumettra au Comité une demande écrite, et sera admise comme observateur avec l'accord unanime des Représentants des États Parties présents et votantes à la réunion du Comité.</p> <p>Article 39 : Tout État Partie, qui ne l'a pas encore fait, est invité à établir un service gouvernemental spécialisé chargé de mettre au point et d'exécuter, à terre et en mer, les missions de police en matière de navigation maritime et de pollution marine, y compris la recherche et le sauvetage, la lutte contre la piraterie et les actes illicites commis contre la sécurité de la navigation maritime.</p> <p>Article 40 : En créant de tels services, les États Parties tiennent compte des conventions et instruments internationaux pertinents relatifs aux questions susmentionnées ainsi qu'au besoin de garantir des pouvoirs coercitifs adéquats à de tels services. Les États Parties prennent les mesures nécessaires pour harmoniser leurs régimes juridiques concernant l'application des lois en mer.</p> <p>COOPÉRATION MARITIME</p> <p>Article 41 : Les États sont invités à devenir Parties contractantes à la Convention des Nations Unies sur le droit de la Mer de 1982, à la Convention SUA et à d'autres instruments pertinents, dans le but de contribuer au renforcement de la paix, de la sûreté, de la coopération, du développement durable et des</p>

	relations amicales.
<p>Article 42: States Parties accept that a comprehensive concept of regional maritime security requires an integrated regional and multidisciplinary approach, necessitating cooperation and coordination of all interested bodies and activities.</p> <p>Article 43: States Parties agree to offer assistance upon request in a coordinated method to member States on capacity building in terms of equipment and personnel requirement for the establishment of and efficient performance of coastguard functions by a designated agency.</p> <p>Article 44: States Parties recognize the importance of cooperation for the management of the marine environment, particularly with respect to safety, security and maritime casualty for the West and Central Africa region.</p> <p>MARITIME ROUTES</p> <p>Article 45: States Parties recognize the importance of freedom of navigation, in accordance with the provisions of UNCLOS, to the maintenance of seaborne trade in West and Central Africa.</p> <p>Article 46: Taking into account the promotion of the safety of navigation and the protection of the marine environment, States shall develop cooperative approaches to the maintenance and protection of maritime routes. Such co-operative approaches include exchanges of information and training in such areas as humanitarian assistance, search and rescue, marine safety, and law and order at sea. The exchange of information should include information on likely threats to, or security incidents relating to maritime routes.</p> <p>Article 47: Further implementation of this cooperative approach could include naval cooperation and the sharing of information resulting from maritime surveillance.</p>	<p>Article 42 : Les États Parties admettent qu'une bonne compréhension du concept de sûreté maritime régionale implique une approche régionale et multidisciplinaire intégrée, nécessitant la coopération et la coordination de toutes les structures et activités concernées.</p> <p>Article 43 : Les États Parties s'engagent à apporter leur assistance aux États membres, sur demande et de manière coordonnée, afin de renforcer les capacités en matière d'équipement et de personnel, en vue de la mise en place et de l'exécution efficace des fonctions de garde-côtes par un service désigné.</p> <p>Article 44 : Les États Parties reconnaissent l'importance de la coopération pour la gestion du milieu marin dans la région de l'Afrique de l'Ouest et du Centre, particulièrement en ce qui concerne la sécurité et la sûreté maritimes, et les accidents maritimes.</p> <p>ROUTES MARITIMES</p> <p>Article 45 : Les États Parties reconnaissent l'importance de la liberté de navigation, conformément aux dispositions de la Convention des Nations Unies sur le droit de la mer de 1982, pour la poursuite des échanges commerciaux maritimes dans la région de l'Afrique de l'Ouest et du Centre.</p> <p>Article 46 : Eu égard à la promotion de la sécurité de la navigation et de la protection du milieu marin, les États Parties établissent des stratégies de coopération pour le maintien et la protection des routes maritimes. De telles stratégies de coopération prévoient l'échange d'informations et la formation dans des domaines tels que l'assistance humanitaire, la recherche et le sauvetage, la sécurité maritime et l'ordre public en mer. L'échange d'informations devrait inclure les renseignements sur les menaces potentielles ou les incidents en matière de sûreté concernant les routes maritimes.</p> <p>Article 47 : D'autres mesures de mise en œuvre de cette stratégie de coopération peuvent inclure la coopération maritime et le partage des informations résultant de la surveillance maritime.</p>

<p>HUMANITARIAN ASSISTANCE</p> <p>Article 48: States Parties recognize the benefits of working together on the prevention, mitigation and management of maritime natural disasters, including preparedness and early warning systems, the exchange of information, compilation of data bases, planning, disaster reduction and relief activities, as well as training and education programs.</p> <p>SEARCH AND RESCUE</p> <p>Article 49: States Parties are invited to promote greater sharing of maritime Search and Rescue (SAR) experience and expertise, as well as facilitate coordination and cooperation in SAR training and procedures.</p> <p>Article 50: States Parties consult with regard to the ratification, implementation and participation in relevant conventions and instruments concerning maritime SAR.</p> <p>MARITIME SAFETY</p> <p>Article 51: States Parties shall promote navigational safety by measures such as:</p> <ul style="list-style-type: none"> - the edition of adequate cartography; - the publication and the diffusion of notices to sailors; - the use of appropriate navigational aids; - the notification of recommended shipping routes. <p>Article 52: States Parties express support for regional and international efforts to deal with the problem of sub-standard ships, including the establishment of regional systems of port state control.</p> <p>Article 53: States Parties consult each other with regard to the ratification, implementation and participation in relevant conventions and instruments concerning maritime safety.</p>	<p>ASSISTANCE HUMANITAIRE</p> <p>Article 48 : Les États Parties reconnaissent les avantages découlant des initiatives communes de prévention, d'atténuation des effets et de gestion des catastrophes maritimes naturelles, notamment la préparation et les systèmes d'alerte rapide, l'échange d'informations, le regroupement des bases de données, la planification, la prévention des catastrophes et les activités humanitaires, ainsi que la formation et les programmes éducatifs.</p> <p>RECHERCHE ET SAUVETAGE</p> <p>Article 49 : Les États Parties sont invités à promouvoir un plus grand partage de leur expérience et expertise en matière de recherche et de sauvetage (SAR), et à faciliter la coordination et la coopération en matière de formation et de procédures SAR.</p> <p>Article 50 : Les États Parties se concertent en ce qui concerne la ratification, la mise en œuvre et la participation aux instruments et conventions maritimes pertinents en matière de recherche et de sauvetage.</p> <p>SÉCURITÉ MARITIME</p> <p>Article 51 : Les États Parties favorisent la sécurité maritime en prenant des mesures telles que :</p> <ul style="list-style-type: none"> - l'édition de cartes adéquates; - la publication et la diffusion d'avis aux navigateurs; - l'utilisation d'aides à la navigation appropriées; - la notification des routes maritimes recommandées. <p>Article 52 : Les États Parties expriment leur appui aux efforts régionaux et internationaux destinés à régler le problème des navires sous normes, y compris l'établissement de régimes régionaux de contrôle par l'État du port.</p> <p>Article 53: Les États Parties se concertent en ce qui concerne la ratification, la mise en œuvre et la participation aux instruments et conventions maritimes pertinents en matière de sécurité maritime.</p>
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LAW AND ORDER AT SEA

Article 54: States Parties recognize the importance of cooperation in the maintenance and enforcement of law and order at sea, including the prevention of piracy, drug smuggling, and other crimes at sea, also recognize the rights of States Parties to enforce their domestic laws at sea to the extent allowed by international law.

Article 55: States Parties recognize the right of hot pursuit and shall develop an effective mechanism thereof which shall take in consideration the provisions of Article III of this Memorandum.

Article 56: States Parties are invited to institute regular meetings to enhance cooperation and coordination in their maritime enforcement activities.

NAVAL CO-OPERATION

Article 57: States Parties acknowledge the confidence-building benefits of naval cooperation, including increased personnel contacts and voluntary measures to promote naval transparency.

Article 58: States Parties may wish to consider a framework of bilateral or multilateral instruments for the navy concerned in order to avoid the nautical incidents.

MARITIME SURVEILLANCE

Article 59: States Parties recognize that maritime surveillance may be conducted for peaceful purposes as part of the exercise of freedom of navigation and over flight in areas claimed as exclusive economic zone or continental shelf, and on the high seas. This should be conducted with consent and without prejudice to the jurisdictional rights and responsibilities of the coastal State within its exclusive economic zone or over its continental shelf, as provided for under UNCLOS. <http://aus-cscap.anu.edu.au/memo4.html> - [fn0#fn0http://aus-cscap.anu.edu.au/memo4.html](http://aus-cscap.anu.edu.au/memo4.html) - [fn0#fn0](http://aus-cscap.anu.edu.au/memo4.html)

ORDRE PUBLIC EN MER

Article 54 : Les États Parties reconnaissent l'importance de la coopération pour le maintien et le respect de l'ordre public en mer, y compris la prévention de la piraterie, du trafic de drogue et d'autres crimes en mer, et reconnaissent également les droits des États à appliquer leurs lois nationales en mer dans les limites admises par le droit international.

Article 55 : Les États Parties reconnaissent le droit de poursuite et mettront en place à cet effet un dispositif efficace qui tiendra compte des dispositions de l'article III du Mémoire.

Article 56 : Les États Parties sont invitées à instituer des réunions régulières pour renforcer la coopération et la coordination de leurs activités en matière d'application des règlements maritimes.

COOPÉRATION MARITIME

Article 57 : Les États Parties reconnaissent les avantages découlant de la coopération maritime pour ce qui est de créer un climat de confiance, y compris le renforcement des contacts entre personnels et les mesures volontaires visant à promouvoir la transparence.

Article 58 : Les États Parties peuvent souhaiter disposer d'un cadre d'instruments bilatéraux ou multilatéraux applicables aux marines nationales concernées en vue d'éviter les incidents maritimes.

SURVEILLANCE MARITIME

Article 59 : Les États Parties reconnaissent que la surveillance maritime peut être exercée à des fins pacifiques, dans le cadre de l'exercice de la liberté de navigation et de survol des zones économiques exclusives ou des plateaux continentaux et de la haute mer. La surveillance maritime devrait être exercée avec l'accord de l'État côtier et sans préjudice de ses droits et responsabilités d'ordre juridictionnel dans sa zone économique exclusive ou sur son plateau continental, conformément à la Convention des Nations Unies sur le droit de la mer de 1982.

<p>Article 60: States Parties shall work towards developing arrangements for the sharing of surveillance information with other States Parties to this Memorandum.</p> <p>PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT</p> <p>Article 61: States Parties recognize their individual and collective obligation to protect and preserve the marine environment.</p> <p>Article 62: States Parties shall consult with regard to:</p> <p>(a) cooperation on a bilateral, sub-regional and regional basis in taking all measures necessary to prevent, reduce, monitor and control pollution of the marine environment from all sources ;</p> <p>(b) the ratification, implementation and participation in relevant conventions and instruments concerning protection, preservation and monitoring of the marine environment;</p> <p>(c) the implementation of Chapter 17 of Agenda 21, adopted at the 1992 United Nations Conference on Environment and Development (UNCED), particularly those program areas concerning integrated management and sustainable development, marine environmental protection and the strengthening of international cooperation, including regional cooperation and coordination; and</p> <p>(d) the development and implementation of national, sub-regional and regional monitoring programs and contingency plans in response to pollution incidents in the marine environment.</p> <p>Article 63: States Parties consult at the bilateral and sub-regional levels in the formulation and harmonization of policies for the conservation, management and sustainable utilization of marine living resources that straddle maritime zones, or which are highly migratory, or occur in the high seas.</p>	<p>Article 60 : Les États Parties oeuvrent à la mise en place de mécanismes de partage des renseignements découlant de la surveillance avec d'autres États Parties au Mémorandum.</p> <p>PROTECTION ET PRÉSERVATION DU MILIEU MARIN</p> <p>Article 61 : Les États Parties reconnaissent leur obligation individuelle et collective de protéger et préserver le milieu marin.</p> <p>Article 62 : Les États Parties se concertent en ce qui concerne :</p> <p>a) la coopération sur une base bilatérale, sous-régionale et régionale, en vue de prendre toutes les mesures nécessaires pour prévenir, réduire, suivre et contrôler la pollution du milieu marin due à toutes les sources;</p> <p>b) la ratification, la mise en œuvre et la participation aux conventions et instruments pertinents concernant la protection, la préservation et la surveillance du milieu marin;</p> <p>c) la mise en œuvre du chapitre 17 d'Action 21, adopté à la Conférence des Nations Unies de 1992 sur l'environnement et le développement (CNUED), notamment les programmes concernant la gestion intégrée et le développement durable, la protection du milieu marin et le renforcement de la coopération internationale, y compris la coopération et la coordination régionales; et</p> <p>d) l'élaboration et la mise en œuvre de programmes de surveillance et de plans d'urgence nationaux, sous-régionaux et régionaux, pour faire face aux incidents de pollution du milieu marin.</p> <p>Article 63 : Les États Parties se concertent aux niveaux bilatéral et sous-régional pour formuler et harmoniser les politiques de conservation, gestion et utilisation durable des ressources biologiques marines qui sont situées de part et d'autre des zones maritimes, ou qui sont particulièrement migratoires ou bien qui apparaissent en haute mer.</p>
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Article 64: States Parties consult at the bilateral and sub-regional levels in the formulation and harmonization of policies for the exploration and exploitation of marine non-living resources which occur across two or more zones of national jurisdiction, especially in cases where a shared resource can be exploited, wholly or in part, from one or more of the zones of national jurisdiction.

MARINE SCIENTIFIC RESEARCH

Article 65: States parties are invited to cooperate, directly or through competent international, regional or sub-regional organizations, for the purpose of promoting studies, undertaking programs of scientific research and the exchange of information and data about the marine environment, particularly about pollution of the marine environment and changing sea levels.

Article 66: States Parties are invited to consult on the harmonization of their respective procedures, in accordance with Part XIII of UNCLOS, for granting consent to proposed marine scientific research projects in their exclusive economic zones and on their continental shelves.

TECHNICAL COOPERATION AND CAPACITY-BUILDING

Article 67: States Parties recognize the benefits of technical cooperation and capacity-building, and are invited to implement relevant programs in the maritime sector designed to build infrastructures, institutions and capabilities for policy formulation and implementation. This includes information sharing and development of database.

Article 64 : Les États Parties se concertent aux niveaux bilatéral et sous-régional pour formuler et harmoniser les politiques d'exploration et d'exploitation des ressources non biologiques marines qui sont situées de part et d'autre de deux ou plusieurs zones sous juridiction nationale, notamment dans les cas où une ressource partagée peut être exploitée, en tout ou en partie, à partir d'une ou plusieurs zones sous juridiction nationale.

RECHERCHE SCIENTIFIQUE MARINE

Article 65 : Les États Parties sont invités à coopérer, directement ou à par l'intermédiaire des organisations sous-régionales, régionales ou internationales compétentes, en vue de promouvoir des études, de conduire des programmes de recherche scientifique et d'échanger des informations et des données sur le milieu marin, notamment sur la pollution du milieu marin et l'évolution du niveau de la mer.

Article 66 : Les États Parties sont invités à se concerter en vue d'harmoniser leurs procédures respectives en matière d'octroi d'autorisations pour les projets de recherche scientifique marine proposés dans leurs zones économiques exclusives et sur leurs plateaux continentaux, conformément à la partie XIII de la Convention internationale des Nations Unies sur le droit de la mer.

COOPÉRATION TECHNIQUE ET RENFORCEMENT DES CAPACITÉS

Article 67 : Les États Parties reconnaissent les avantages de la coopération technique et du renforcement des capacités, et sont invités à mener à bien des programmes pertinents dans le secteur maritime pour mettre en place des infrastructures, des institutions et des capacités en vue de formuler et d'appliquer des politiques générales. Cela inclut le partage d'informations et la création de banques de données.

TRAINING AND EDUCATION	FORMATION ET ÉDUCATION
<p>Article 68: States Parties cooperate on the development and promotion of training and educational programs for the management of the marine environment, particularly for the maintenance of safety and law and order at sea, the preservation and protection of the marine environment, and the prevention, reduction and control of marine pollution. Such cooperation might include :</p>	<p>Article 68 : Les États Parties coopèrent en vue de mettre au point et de promouvoir des programmes éducatifs et de formation concernant la gestion du milieu marin, notamment le maintien de la sécurité et de l'ordre public en mer, la préservation et la protection du milieu marin, et la prévention, la réduction et le contrôle de la pollution marine. Cette coopération peut notamment consister à :</p>
<p>a) the offer of places on national training courses to other States, subject to payment of relevant costs;</p>	<p>a) offrir des places dans les cours nationaux à d'autres États Parties, à condition de payer les coûts y afférents;</p>
<p>b) sharing curriculum and course information;</p>	<p>b) partager les programmes et les informations sur les cours;</p>
<p>c) the exchange of naval and law enforcement personnel, scientists and other experts;</p>	<p>c) échanger des personnels de la marine et de la force publique, ainsi que des scientifiques et d'autres experts;</p>
<p>d) the exchange of views on maritime issues;</p>	<p>d) échanger des avis sur les questions maritimes;</p>
<p>e) holding conferences, seminars, workshops and symposiums on maritime subjects of common interest; and</p>	<p>e) tenir des conférences, séminaires, ateliers et symposiums sur des sujets maritimes d'intérêt commun; et</p>
<p>f) fostering cooperation among maritime training institutions and research centres.</p>	<p>f) encourager la coopération entre les institutions de formation maritime et les centres de recherche.</p>
<p>g) the offer of places on national training courses to other States, subject to payment of relevant costs;</p>	<p>g) offrir des places dans les cours nationaux d'autres États, à condition de payer les coûts y afférents;</p>
<p>h) the exchange of naval and law enforcement personnel, scientists and other experts;</p>	<p>h) échanger des personnels de la marine et de la force publique, ainsi que des scientifiques et d'autres experts;</p>
<p>i) the exchange of views on maritime issues;</p>	<p>i) échanger des avis sur les questions maritimes;</p>
<p>j) holding conferences, seminars, workshops and symposiums on maritime subjects of common interest; and</p>	<p>j) tenir des conférences, séminaires, ateliers et symposiums sur des sujets maritimes d'intérêt commun; et</p>
<p>k) fostering cooperation among maritime training institutions and research centres.</p>	<p>k) encourager la coopération entre les institutions de formation maritime et les centres de recherche.</p>

<p>States Parties are invited to institute regular meetings to enhance cooperation and coordination in their maritime enforcement activities.</p> <p>TITLE II: FINAL PROVISIONS</p> <p>Article 69: Any State Party can withdraw from the Memorandum by a written notification to the Committee sixty (60) days before.</p> <p>Article 70: The English, French and Portuguese versions of this Memorandum are authentic.</p> <p>This Memorandum is adopted and open to signature in Dakar,</p> <p>Hereafter have signed The Representatives of the following States Parties:</p> <ol style="list-style-type: none"> 1. Angola 2. Benin 3. Cameroon 4. Cape-Verde 5. Congo 6. D.R. Congo 7. Côte d'Ivoire 8. Gabon 9. Gambia 10. Ghana 11. Guinea 12. Guinea-Bissau 13. Equatorial Guinea 14. Liberia 15. Mauritania 16. Nigeria 17. Sao Tomé and Principe 18. Senegal 19. Sierra Leone 20. Togo 	<p>Les États Parties sont invités à instituer des réunions régulières pour renforcer la coopération et la coordination dans leurs activités de mise en application de la réglementation maritime.</p> <p>TITRE II : DISPOSITIONS FINALES</p> <p>Article 69 : Tout État Partie peut se retirer du Mémorandum en le notifiant par écrit au Comité soixante (60) jours avant.</p> <p>Article 70 : Les versions anglaise, française et portugaise du présent Mémorandum font également foi.</p> <p>Le présent Mémorandum est adopté et ouvert à la signature à Dakar, le -----,</p> <p>Ont signé les Représentants des États Parties ci-après :</p> <ol style="list-style-type: none"> 1. Angola 2. Bénin 3. Cameroun 4. Cap-Vert 5. Congo 6. Congo RD 7. Côte d'Ivoire 8. Gabon 9. Gambie 10. Ghana 11. Guinée 12. Guinée-Bissau 13. Guinée-équatoriale 14. Libéria 15. Mauritanie 16. Nigéria 17. Sao Tomé-et-Principe 18. Sénégal 19. Sierra Leone 20. Togo
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STRATEGY OF MOWCA SUB-REGION IN SUPPRESSING PIRACY, ARMED ROBBERY AND OTHER UNLAWFUL ACTS AGAINST SHIPPING, RESPONDING TO MARITIME ACCIDENTS AND PROTECTING THE MARINE ENVIRONMENT

SUMMARY:

This document provides information on current and future work by Member States of MOWCA to establish an enduring institutional framework - **INTEGRATED SUB-REGIONAL COAST GUARD NETWORK** – to combat Piracy, Armed Robbery and other Unlawful Acts against Ships, respond to maritime accidents, while generally enhancing Maritime Safety, Security, Search and Rescue and Marine Environmental Protection in the coastal waters of West and Central Africa

INTRODUCTION

The International Maritime Organization (IMO) has expressed serious concern about the rising trend of piracy, armed robbery and other unlawful acts against shipping in various sub-regions of the world. The International Maritime Bureau reports that, 325 incidents of piracy and armed robbery against merchant shipping took place in 2004 with 30 seafarers murdered in the process.

In a paper to the 80th session of the Maritime Safety Committee of IMO, the United Kingdom drew attention to this problem by stating that piracy and armed robbery has affected the UK seafarers and ships in all parts of the world from the islands of the Caribbean to the coast of Africa and on the important trade route through the Malacca Strait.

In the West and Central African sub-region, piracy, armed robbery and other criminal activities against shipping is assuming dangerous dimension posing serious problems to shipping, and particularly acting as a hindrance to the development of coastal shipping service in the sub-region. In 2003, 67 cases of acts of piracy and armed robbery against ships were reported off the coast of West Africa. In 2004, 58 cases were reported.

Civil strife in a number of countries in the sub-region and the attendant proliferation of small arms has made crucial the need for action to save merchant shipping in the sub-region.

On Maritime Safety, a number of maritime accidents in the coastal waters and inland waterways have claimed avoidable significant casualties due to defective Search and Rescue (SAR) efforts. The sinking in 2003 of the passenger vessel, MV Joola off the coast of Senegal resulted in a massive loss of 1,800 lives. Aviation disasters involving Kenyan Airways off the coast of Abidjan (2002), and a Lebanese Chartered Flight off the coast of Cotonou (2004), exposed the lack of an effective sub-regional response to maritime disasters.

Marine pollution from hydrocarbon activities and the discharge of waste water from ships constitute a serious threat to marine ecosystems. Furthermore, illegal and indiscriminate fishing and other exploitation of marine resources threatens the aquatic ecosystem and economy of coastal States in the sub-region.

Indeed like other developing sub-regions of the world, the history of Maritime Safety, Security and Environmental Protection profile of the West and Central African Sub-region is replete with incidents and accidents that have exposed the inadequacy of response capability in the sub-region.

There was clearly the need for an enduring institutional framework for tackling these major threats to merchant shipping in the West and Central African sub-region; viz: piracy, armed robbery and other unlawful acts against shipping, defective response to maritime accidents and marine-source pollution

RESPONSE OF MOWCA MEMBER STATES

In response to these serious Maritime Safety, Security and Environmental Protection challenges facing the sub-region of West and Central Africa, the 11th General Assembly of Ministers of MOWCA held in June 2001, in Abuja, Federal Republic of Nigeria, approved a proposal to establish **an Integrated Sub-regional Coast Guard network for the entire MOWCA sub-region from Mauritania to Angola.**

In approving the proposal, the MOWCA member states appreciated the fact that a number of member States, through their respective Naval Commands, Marine Police and Merchant Marine Administrations, perform Coast Guard duties. However these activities are not co-ordinated for a regional response in case of crises transcending national boundaries.

In the absence of a sub-regional agreement on **the right of hot-pursuit across national boundaries**, the sub-region lacks an effective means to pursue and interdict pirates and armed robbers involved in the act.

The Sub-regional Coast Guard Network is envisaged as a Sub-regional Network of National Coastguard Organizations coordinated by four (4) MOWCA Zonal Coastguard Centres and a Principal Coastguard Centre, to implement International conventions, codes and regulations regarding the suppression of seaborne terrorism, respond to maritime accidents, combat piracy, armed robbery and other unlawful acts against shipping, while generally enhancing safety, security, and environmental protection.

Through regular policing of the coastal waters of the sub-region, the MOWCA **Integrated sub-regional coast guard network**, is aimed at generating economies of scale in providing the West and Central African sub-region with a cost-effective, rapid response mechanism in cases of unlawful acts against ships (including fishing vessels), maritime accidents, environmental pollution and other distress calls in the Sub-region's coastal waters.

Based on a Memorandum of Understanding (MOU) to be adopted by the MOWCA Member States, the coastguard resources, both human and equipment, of each of the member States in a zone would be assessed, harmonized and made ready to respond to emergencies requested by any member State. In this respect, the project would include joint contingency plans and mock exercises.

The MOU would include a **sub-regional agreement on the right of hot-pursuit across national boundaries, as an effective means to pursue and interdict pirates and armed robbers involved in the act.**

The Project has the support of MOWCA Member States through resolutions at the General Assembly of Ministers of MOWCA. **It has the support of IMO in the conduct of an assessment and evaluation study as well as Development Partners for training and logistics support.** .

PROJECT STATUS

The MOWCA Sub-regional Coast Guard Project was reviewed at the 2nd and 3rd sessions of the Bureau of Ministers of MOWCA, in May 2002 and 2003;

In March 2003, a meeting to promote sub-regional co-operation and co-ordination for combating piracy and armed robbery against ships was organized by IMO/Republic of Ghana in collaboration with MOWCA, in Accra, from 17 to 19 March 2003. The meeting inter-alia:

- agreed to the establishment of a Working Group of MOWCA to co-ordinate the development of a sub-regional integrated Coast Guard Network from Mauritania to Angola as a basis for regional co-operation to, among others, combat piracy and armed robbery against ships in the sub-region;
- invited IMO to provide technical assistance for carrying out a feasibility study on this proposed integrated Coast Guard Network and submit it to the MOWCA Working Group
- requested MOWCA member Governments to examine, amend, as appropriate, and at an appropriate time endorse/agree the sub-regional/regional MOU on co-operation, based on the draft framework given at appendix 5 of MSC/Circ.622/Rev.1, as amended by the meeting and submit their comments to the MOWCA Working Group for finalization;
- and urged MOWCA to co-ordinate these activities in consultation with Governments in the sub-region and finalize the MOU, as appropriate, for conclusion and adoption by MOWCA member Governments.

At the 12th General Assembly of Ministers of MOWCA, held in Luanda, Angola, 27-30 October 2003, the Ministers reviewed the recommendations of the IMO/MOWCA meeting held in Accra and requested its Secretary-General to continue with efforts to seek full support of the IMO and Development Partners for the project.

A report of the above mentioned IMO/MOWCA meeting was submitted to the Maritime Safety Committee (MSC) of IMO, at its 78th Session held in May, 2004. The MSC recommended the MOWCA Coast guard project for support by IMO. The Council of the IMO approved the recommendations of the MSC at its meeting held in June 2004.

In particular, the IMO agreed to provide technical assistance for carrying out a feasibility study on the proposed integrated Coast Guard Network and submit it to the MOWCA Working Group. *The Terms of Reference for the Study is attached as appendix 2.*

In October 2004, the Secretary-General of MOWCA convened in Abidjan, the Republic of Cote D'Ivoire, a MOWCA Working Group of Experts which, among others, considered and made recommendations for advancing the Coast Guard project.

The recommendations of the Working Group were submitted to the 4th Session of the Bureau of Ministers of MOWCA, held in Luanda, Republic of Angola, 22-24 March, 2005.

The 4th Bureau of Ministers agreed to divide the sub-region into four Coastguard Zones to ensure that not more than five coastal member States are in a Coastguard Zone in order to ensure a more effective zonal coordination.

The Recommended Coastguard Zones/Centres are:

Zone I: Mauritania, Senegal, Gambia, Guinea Bissau, Cape Verde

CG Centre Dakar, Senegal

Zone II: Guinea, Sierra Leone, Liberia, Cote D'Ivoire and Ghana

CG Centre Abidjan, Cote D'Ivoire

Zone III: Togo, Benin, Nigeria, Cameroon, Equatorial Guinea

CG Centre Lagos, Nigeria

Zone IV: Gabon, Sao Tome and Principe, Congo, Congo DR, Angola

CG Centre Pointe Noire, Congo

The Principal Coordinating Centre is yet to be confirmed by the MOWCA Bureau of Ministers

The 4th Bureau also approved the Secretary-General's report on development of cooperation with Development Partners on the implementation of the sub-regional Coast Guard network.

The Bureau expressed its deep gratitude to the Republic of Korea, under the Korean International Cooperation Agency (KOICA) for confirming its assistance to MOWCA in its 2005 Cooperation programme meant for the implementation of the network. These comprise the provision of vehicles to MOWCA's Coastguard Coordinating Centres and a Training Tour of Korea by a team of 35 MOWCA experts 25 April – 10 May 2005.

The Training Tour of the Republic of Korea was designed to share Korea's developmental experience in the area of seaport and coast guard management. It involves lectures and field trips to Korean seaports and coast guard operational sites.

Development of cooperation with MOWCA's Development Partners is on-going.

FUTURE WORK

The political will of member States of MOWCA to establish an Integrated sub-regional Coast Guard network, has already been expressed through Decisions/Resolutions at the General Assemblies of Ministers of MOWCA Member States held in Abuja, Nigeria, May 2001 and Luanda, Angola October, 2003.

On-going work involves the following:

- To conduct a detailed evaluation and assessment study and prepare a comprehensive document on the operational feasibility of the sub-regional Integrated Coastguard network for the entire MOWCA sub-region; from Mauritania to Angola. *The IMO has agreed to finance a Consultant to conduct the feasibility study.*
- To convene the MOWCA Working Group to work with the IMO Consultant and draft an MOU for consideration and adoption by Member States specifying the terms of Cooperation and the Organizational and Operational structures of the Coast Guard network. *The MOU would include provisions advocating the right of hot-pursuit across national boundaries as an effective means of pursuing and interdicting perpetrators involved in unlawful acts against shipping.*
- To convene a three (3) day thematic meeting of MOWCA member States, Partners and Consultants. This meeting will be preceded by a preparatory meeting of the MOWCA Technical Committee of Experts.
- To present to the 13th General Assembly of Ministers of MOWCA scheduled for Dakar, Republic of Senegal, a comprehensive report on the Status of the Project and present for consideration and adoption by the Member States the draft MOU on the Coast Guard network.

To invite Development Partners to extend technical and financial assistance to MOWCA in improving human resource and ICT capacity for the project as well as equipping the Coast Guard Coordinating Centres. To prepare contingency plans and conduct joint mock exercises.



CLAMO FAST ACTION BINDER: PIRACY

NAVAL OPERATIONS

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U.S. NAVY

NWP 1-14M

U.S. MARINE CORPS

MCWP 5-12.1

U.S. COAST GUARD

COMDTPUB P5800.7A

THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS

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DEPARTMENT OF HOMELAND SECURITY AND
U.S. COAST GUARD**



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3.5 REPRESSION OF PIRACY

International law has long recognized a general duty of all nations to cooperate in the repression of piracy. This traditional obligation is included in the 1958 Geneva Convention on the High Seas and the 1982 LOS Convention, both of which provide:

[A]ll States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

3.5.1 U.S. Law

The U.S. Constitution (Article I, Section 8) provides that:

The Congress shall have Power... to define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations.

Congress has exercised this power by enacting 18 USC 1651, which provides that:

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

U.S. law authorizes the president to employ “public armed vessels” in protecting U.S. merchant ships from piracy and to instruct the commanders of such vessels to seize any pirate ship that has attempted or committed an act of piracy against any U.S. or foreign flag vessel in international waters.

3.5.2 Piracy Defined

Piracy is an international crime consisting of illegal acts of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft in or over international waters against another ship or aircraft or persons and property on board. (Depredation is the act of plundering, robbing, or pillaging.)

3.5.2.1 Location

In international law piracy is a crime that can be committed only on or over international waters (including the high seas, exclusive economic zone, and the contiguous zone), in international airspace, and in other places beyond the territorial jurisdiction of any nation. The same acts committed in the internal waters, territorial sea, archipelagic waters, or national airspace of a nation do not constitute piracy in international law but are, instead, crimes within the jurisdiction and sovereignty of the littoral nation.

3.5.2.2 Private Ship or Aircraft

Acts of piracy can only be committed by private ships or private aircraft. A warship or other public vessel or a military or other state aircraft cannot be treated as a pirate unless it is taken over and operated by pirates or unless the crew mutinies and employs it for piratical purposes. By committing an act of piracy, the pirate ship or aircraft, and the pirates themselves, lose the protection of the nation whose flag they are otherwise entitled to fly.

3.5.2.3 Mutiny or Passenger Hijacking

If the crew or passengers of a ship or aircraft, including the crew of a warship or military aircraft, mutiny or revolt and convert the ship, aircraft or cargo to their own use, the act is not piracy. If, however, the ship or aircraft is thereafter used to commit acts of piracy, it becomes a pirate ship or pirate aircraft and those on board voluntarily participating in such acts become pirates.

3.5.3 Use of Naval Forces to Repress Piracy

Only warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on governmental service and authorized to that effect, may seize a pirate ship or aircraft.

3.5.3.1 Seizure of Pirate Vessels and Aircraft

A pirate vessel or aircraft encountered in or over U.S. or international waters may be seized and detained by any of the U.S. vessels or aircraft listed in paragraph 3.5.3. The pirate vessel or aircraft, and all persons on board, should be taken, sent, or directed to the nearest U.S. port or airfield and delivered to U.S. law enforcement authorities for disposition according to U.S. law. Alternatively, higher authority may arrange with another nation to accept and try the pirates and dispose of the pirate vessel or aircraft, since every nation has jurisdiction under international law over any act of piracy.

3.5.3.2 Pursuit of Pirates into Foreign Territorial Seas, Archipelagic Waters, or Airspace

If a pirate vessel or aircraft fleeing from pursuit by a warship or military aircraft proceeds from international waters or airspace into the territorial sea, archipelagic waters, or superjacent airspace of another country, every effort should be made to obtain the consent of the nation having sovereignty over the territorial sea, archipelagic waters, or superjacent airspace to continue pursuit (see paragraphs 3.11.2.2. and 3.11.3.3). The inviolability of the territorial integrity of sovereign nations makes the decision of a warship or military aircraft to continue pursuit into these areas without such consent a serious matter. However, the international nature of the crime of piracy may allow continuation of pursuit if contact cannot be established in a timely manner with the coastal nation to obtain its consent. In such a case, pursuit must be broken off immediately upon request of the coastal nation, and, in any event, the right to seize the pirate vessel or aircraft and to try the pirates devolves on the nation to which the territorial seas, archipelagic waters, or airspace belong.

Pursuit of a pirate vessel or aircraft through or over international straits overlapped by territorial seas or through archipelagic sea lanes or air routes, may proceed with or without the consent of the coastal nation or nations, provided the pursuit is expeditious and direct and the transit passage or archipelagic sea lanes passage rights of others are not unreasonably constrained in the process.

3.6 PROHIBITION OF THE TRANSPORT OF SLAVES

International law strictly prohibits use of the seas for the purpose of transporting slaves. The 1982 LOS Convention requires every nation to prevent and punish the transport of slaves in ships authorized to fly its flag. If confronted with this situation, commanders should maintain contact, consult the standing rules of engagement and Coast Guard use of force policy, and request guidance from higher authority.

3.7 SUPPRESSION OF UNAUTHORIZED BROADCASTING

The 1982 LOS Convention provides that all nations shall cooperate in the suppression of unauthorized broadcasting from international waters. Unauthorized broadcasting involves the transmission of radio or television signals from a ship or off-shore facility intended for receipt by the general public, contrary to international regulation. Commanders should request guidance from higher authority if confronted with this situation.

3.8 SUPPRESSION OF INTERNATIONAL NARCOTICS TRAFFIC

All nations are required to cooperate in the suppression of the illicit traffic in narcotic drugs and psychotropic substances in international waters. International law permits any nation that has reasonable grounds to suspect that a ship flying its flag is engaged in such traffic to request the cooperation of other nations in effecting its seizure. International law also permits a nation that has reasonable grounds for believing that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another nation is engaged in illegal drug trafficking to request confirmation of registry and, if confirmed, request authorization from the flag nation to take appropriate action with regard to that vessel. Coast Guard personnel,

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Handbook on the Law of Naval Operations

A.R. Thomas and James C. Duncan
Editors

Naval War College
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1999

3.4 RIGHT OF APPROACH AND VISIT

As a general principle, vessels in international waters are immune from the jurisdiction of any nation other than the flag nation. However, under international law, a warship, military aircraft, or other duly authorized ship or aircraft may *approach* any vessel in international waters to verify its nationality.²⁰ Unless the vessel encountered is itself a warship or government vessel of another nation, it may be stopped, boarded, and the ship's documents examined, *provided* there is reasonable ground for suspecting that it is:

1. Engaged in piracy (see paragraph 3.5).
2. Engaged in the slave trade (see paragraph 3.6).
3. Engaged in unauthorized broadcasting (see paragraph 3.7).
4. Without nationality (see paragraphs 3.11.2.3 and 3.11.2.4).
5. Though flying a foreign flag, or refusing to show its flag, the vessel is, in reality, of the same nationality as the warship.²¹

The procedure for ships exercising the right of approach and visit is similar to that used in exercising the belligerent right of visit and search during armed conflict described in paragraph 7.6.1. See Article 630.23, OPNAVINST 3120.32B, and paragraph 2.9 of the Coast Guard's MLEM for further guidance.

3.5 REPRESSION OF PIRACY

International law has long recognized a general duty of all nations to cooperate in the repression of piracy. This traditional obligation is included in the 1958 Geneva Convention on the High Seas and the 1982 LOS Convention, both of which provide:

20. *Mariana Flora*, 24 U.S. (11 Wheaton) 1, 43-44 (1826); 4 Whiteman 515-22; 2 O'Connell 802-03. See also Zwanenberg, *Interference with Ships on the High Seas*, 10 Int'l & Comp. L.Q. 785 (1961); 1 Oppenheim-Lauterpacht 604; McDougal & Burke 887-93; 2 Moore 886; and 1 Hyde sec. 227. This customary international law concept is codified in art. 110, 1982 LOS Convention.

21. 1982 LOS Convention, art. 110. Sovereign immunity of warships is discussed in paragraph 2.1.2 (p. 110); the belligerent right of visit and search is discussed in paragraph 7.6 (p. 387).

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[A]] States shall cooperate to the fullest possible extent in the repression of piracy on the high seas²² or in any other place outside the jurisdiction of any State.²³

3.5.1 U.S. Law. The U.S. Constitution (Article I, Section 8) provides that:

The Congress shall have Power ... to define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations.²⁴

Congress has exercised this power by enacting title 18 U.S. Code section 1651 which provides that:

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

U.S. law authorizes the President to employ "public armed vessels" in protecting U.S. merchant ships from piracy and to instruct the commanders of such vessels to seize any pirate ship that has attempted or committed an act of piracy against any U.S. or foreign flag vessel in international waters.²⁵

3.5.2 Piracy Defined. Piracy is an international crime consisting of illegal acts of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft in or over international waters against

22. The international law of piracy also applies within the exclusive economic zone. 1982 LOS Convention, art. 58(2). Art. 19 of the High Seas Convention and art. 105 of the 1982 LOS Convention permit any nation to seize a pirate ship or aircraft, or a ship or aircraft taken by and under the control of pirates, and to arrest the persons and seize the property on board. The courts of the seizing nation may also decide upon the penalties to be imposed and the disposition of the ship, aircraft or property, subject to the rights of third parties acting in good faith.

23. High Seas Convention, art. 14; 1982 LOS Convention, art. 100.

24. Congressional exercise of this power is set out in 18 U.S.C. sections 1651-61 (1988) (piracy), 33 U.S.C. sections 381-84 (1988) (regulations for suppression of piracy), and 18 U.S.C. section 1654 (privateering). While U.S. law makes criminal those acts proscribed by international law as piracy, other provisions of U.S. municipal law proscribe, as criminal, related conduct. For example, U.S. law makes criminal arming or serving on privateers (18 U.S.C. sec. 1654), assault by a seaman on a captain so as to prevent him from defending his ship or cargo (18 U.S.C. sec. 1655), running away with a vessel within the admiralty jurisdiction (18 U.S.C. sec. 1656), corruption of seamen to run away with a ship (18 U.S.C. sec. 1657), receipt of pirate property (18 U.S.C. sec. 1660), and robbery ashore in the course of a piratical cruise (18 U.S.C. sec. 1661). See Menefee, "Yo Heave Ho!": Updating America's Piracy Laws, 21 Cal. West. Int'l L.J. 151 (1990).

25. 33 U.S.C. secs. 381 & 382 (1988). These sections also authorize issuance of instructions to naval commanders to send into any U.S. port any vessel which is armed or the crew of which is armed, and which shall have "attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel," U.S. or foreign flag, or upon U.S. citizens; and to retake any U.S. flag vessel or U.S. citizens unlawfully captured in international waters.

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another ship or aircraft or persons and property on board. (Depredation is the act of plundering, robbing, or pillaging.)²⁶

3.5.2.1 Location. In international law piracy is a crime that can be committed only on or over international waters (including the high seas, exclusive economic zone, and the contiguous zone), in international airspace, and in other places beyond the territorial jurisdiction of any nation. The same acts committed in the internal waters, territorial sea, archipelagic waters, or national airspace of a nation do not constitute piracy in international law but are, instead, crimes within the jurisdiction and sovereignty of the littoral nation.²⁷

3.5.2.2 Private Ship or Aircraft. Acts of piracy can only be committed by private ships or private aircraft. A warship or other public vessel or a military or

26. The 1982 LOS Convention defines piracy as follows:

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

1982 LOS Convention, art. 101. The High Seas Convention, art. 15, defines piracy in essentially identical terms. Municipal law definitions, however, vary. *Compare* paragraph 3.5.1, note 24 (p. 222). The international law of piracy is neither clearly nor completely set forth in the law of the sea conventions. See the discussions in 2 O'Connell 966-83; Rubin, *The Law of Piracy*; and *Essays on Piracy*, 21 Cal. West. Int'l L.J. 105-79 (1990).

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing an act of piracy. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act. High Seas Convention, art. 17; 1982 LOS Convention, art. 103.

O'Connell correctly notes that "it is the repudiation of all authority that seems to be the essence of piracy." 2 O'Connell 970.

27. In recent years, piracy has been prevalent in the Strait of Malacca, Singapore Strait, Gulf of Thailand, South China Sea, coastal waters off West Africa and Baja California, the Persian Gulf, and the Caribbean. The impact of modern piracy on the U.S. Navy is described in Petrie, *Pirates and Naval Officers*, Nav. War Coll. Rev., May-June 1982, at 15. See also Ellen, *Contemporary Piracy*, 21 Cal. West. Int'l L.J. 123 (1990).

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other state aircraft cannot be treated as a pirate unless it is taken over and operated by pirates or unless the crew mutinies and employs it for piratical purposes.²⁸ By committing an act of piracy, the pirate ship or aircraft, and the pirates themselves, lose the protection of the nation whose flag they are otherwise entitled to fly.²⁹

3.5.2.3 Private Purpose. To constitute the crime of piracy, the illegal acts must be committed for private ends. Consequently, an attack upon a merchant ship at sea for the purpose of achieving some criminal end, e.g., robbery, is an act of piracy as that term is currently defined in international law. Conversely, acts otherwise constituting piracy done for purely political motives, as in the case of insurgents not recognized as belligerents, are not piratical.³⁰

3.5.2.4 Mutiny or Passenger Hijacking. If the crew or passengers of a ship or aircraft, including the crew of a warship or military aircraft, mutiny or revolt and convert the ship, aircraft or cargo to their own use, the act is not piracy.³¹ If, however, the ship or aircraft is thereafter used to commit acts of piracy, it

28. High Seas Convention, art. 16; 1982 LOS Convention, art. 102.

29. However, the nationality of the vessel is not affected by its piratical use unless such is specifically provided for in the law of the country of the vessel's nationality. High Seas Convention, art. 18; 1982 LOS Convention, art. 104. It should be noted that it is not a precondition for a finding of piracy that the ship in question does not have the right to fly the flag, if any, which it displays. Additionally, the mere fact that a ship sails without a flag is not sufficient to give it the character of a pirate ship, although it could be treated as a ship without nationality. 2 O'Connell 755-57; 9 Whiteman 35-37.

30. "So long as the acts are those which are normally incidental to belligerent activity they would not be characterized as piracy, even though the actors may have only the most slender claims to international authority. . . . [I]t would be a false characterization of illicit acts to describe them as piracy when the intention of the insurgents is to wage war as distinct from committing random depredation." 2 O'Connell 975 & 976; 2 Restatement (Third), sec. 522, Reporters' Note 2, at 85. *See also*, Green, *The Santa Maria: Rebels or Pirates*, 37 Brit. Y.B. Int'l L. 465 (1961). Therefore, terrorist attacks on shipping for the sole purpose of achieving some political end are arguably not piracy under current international law. *See* paragraph 3.10 (p. 228). Terrorist acts committed on board or against a vessel are proscribed by the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome Convention), 10 March 1988, 27 I.L.M. 668 (1988), (entered into force for the United States on 6 March 1995), codified at 18 U.S.C. sec. 2280 (1994). Acts of terrorism against an oil rig or platform anchored on the continental shelf are addressed in the Protocol to the Rome Convention. *See* Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf, 10 March 1988, 27 Int'l Leg. Mat'ls 685 (1988), implemented by the United States in 18 U.S.C. sec. 2281 (1994). *See also* Omnibus Diplomatic Security and Anti Terrorism Act of 1986, Pub. L. No. 99-399, Title IX, sec. 906, codified at 33 U.S.C. sec. 1226 (1994), authorizing the Secretary of Transportation to take action including establishing safety and security zones on U.S. waters including the EEZ to prevent or respond to acts of terrorism.

31. Although it is a crime if it occurs on a U.S. flag vessel or aircraft under 18 U.S.C. sec. 1656. *See also* paragraph 3.5.2.3. (p. 224).

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becomes a pirate ship or pirate aircraft and those on board voluntarily participating in such acts become pirates.³²

3.5.3 Use of Naval Forces to Repress Piracy. Only warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on governmental service and authorized to that effect, may seize a pirate ship or aircraft.³³

3.5.3.1 Seizure of Pirate Vessels and Aircraft. A pirate vessel or aircraft encountered in or over U.S. or international waters may be seized and detained by any of the U.S. vessels or aircraft listed in paragraph 3.5.3. The pirate vessel or aircraft, and all persons on board, should be taken, sent, or directed to the nearest U.S. port or airfield and delivered to U.S. law enforcement authorities for disposition according to U.S. law. Alternatively, higher authority may arrange with another nation to accept and try the pirates and dispose of the pirate vessel or aircraft, since every nation has jurisdiction under international law over any act of piracy.³⁴

32. In international law certain types of acts, perhaps technically falling within the definition of piracy in paragraph 3.5.2 (p. 222), are generally recognized as not being piracy. Their general character is simply not of a nature so offensive and harmful to international maritime commerce and to the community of all nations as to warrant the designation of the perpetrators as enemies of the human race. Here a rule of reason is applied. For example, a mere quarrel followed by acts of violence or depredations occurring between fishermen in international waters ought not be regarded as an incident of piracy. Likewise, efforts (however unlawful) of conservationists to detain or disrupt whaling vessels on their high seas operations ought not generally be treated as piracy, but may violate U.S. criminal laws. *See also* Gehring, *Defense Against Insurgents on the High Seas: The Lyla Express and Johnny Express*, 27 JAG J. 317 (1973).

33. High Seas Convention, art. 21; 1982 LOS Convention, art. 107. U.S. Coast Guard cutters are warships. Paragraph 2.1.1, note 3 (p. 109).

In many cases, circumstances may be such that there is no reason to doubt the piratical nature of a ship or aircraft. Where, however, the situation is not so clear, before action may be taken against "pirates" it must first be ascertained that they are in fact pirates. A warship may exercise the right of approach and visit (*see* paragraph 3.4 (p. 221)) at any time to verify the nationality of another vessel and, if there are reasonable grounds to do so, to determine if it is engaged in piracy.

It is within the general authority of the naval commander to protect innocent shipping in international waters from piratical attack. This authority, with respect to U.S. citizens and U.S. flag vessels is specified in U.S. Navy Regulations, 1990, arts. 0914 and 0920; authority is derived from an amalgam of customary international law, treaty obligation, statute and Navy Regulations with respect to foreign flag vessels. Guidance for dealing with piracy is contained in the fleet commanders' basic operational orders, and for Coast Guard units, in the MLEM 12-13. The commander's specific authority to use force in such circumstances is derived from the standing rules of engagement promulgated by the operational chain of command. When circumstances permit, higher authority should be consulted. *See* para. 8c(5), *Standing Rules of Engagement for U.S. Forces*, Annex A4-3 (p. 277).

34. High Seas Convention, art. 19; 1982 LOS Convention, art. 105; 1 Restatement (Third), secs. 404 & 423 (an exercise of universal jurisdiction to prescribe and to enforce), and sec. 404 Reporters' Note 1, at 255. *See also* paragraph 3.11.1.5 (p. 234).

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3.5.3.2 Pursuit of Pirates into Foreign Territorial Seas, Archipelagic Waters, or Airspace. If a pirate vessel or aircraft fleeing from pursuit by a warship or military aircraft proceeds from international waters or airspace into the territorial sea, archipelagic waters, or superjacent airspace of another country, every effort should be made to obtain the consent of the nation having sovereignty over the territorial sea, archipelagic waters, or superjacent airspace to continue pursuit (see paragraphs 3.11.2.2. and 3.11.3.3). The inviolability of the territorial integrity of sovereign nations makes the decision of a warship or military aircraft to continue pursuit into these areas without such consent a serious matter. However, the international nature of the crime of piracy may allow continuation of pursuit if contact cannot be established in a timely manner with the coastal nation to obtain its consent. In such a case, pursuit must be broken off immediately upon request of the coastal nation, and, in any event, the right to seize the pirate vessel or aircraft and to try the pirates devolves on the nation to which the territorial seas, archipelagic waters, or airspace belong.

Pursuit of a pirate vessel or aircraft through or over international straits overlapped by territorial seas or through archipelagic sea lanes or air routes, may proceed with or without the consent of the coastal nation or nations, provided the pursuit is expeditious and direct and the transit passage or archipelagic sea lanes passage rights of others are not unreasonably constrained in the process.³⁵

3.6 PROHIBITION OF THE TRANSPORT OF SLAVES

International law strictly prohibits use of the seas for the purpose of transporting slaves.³⁶ The 1982 LOS Convention requires every nation to prevent and punish the transport of slaves in ships authorized to fly its flag.³⁷ If confronted with this situation, commanders should maintain contact, consult applicable standing rules of engagement and Coast Guard use of force policy, and request guidance from higher authority.

35. *But see* Lowe, *The Commander's Handbook on the Law of Naval Operations and the Contemporary Law of the Sea*, in Robertson at 126.

36. Convention to Suppress the Slave Trade and Slavery, Geneva, 25 September 1926, 46 Stat. 2183, T.S. No. 778, 2 Bevens 607, 60 L.N.T.S. 253; Protocol Amending the Slavery Convention of 25 September 1926, New York, 7 December 1953, 7 U.S.T. 479, T.I.A.S. 3532, 182 U.N.T.S. 51; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Geneva, 5 September 1956, 18 U.S.T. 3201, T.I.A.S. 6418, 266 U.N.T.S. 3. This obligation is implemented in 18 U.S.C. sec. 1581-88 (1988). See 1 Restatement (Third), secs. 404 & 423, and Reporters' Note 1, at 253; and Sohn, *Peacetime Use of Force on the High Seas*, in Robertson at 39-59.

37. 1982 LOS Convention, art. 99. The Slavery Convention, Amending Protocol, and Supplementary Convention, note 36, do not authorize nonconsensual high seas boarding by foreign flag vessels. Nevertheless, such nonconsensual boarding was generally authorized in art. 22(1) of the 1958 High Seas Convention and reaffirmed in art. 110(1)(b) of the 1982 LOS Convention.

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DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

OPNAVINST 3120.32C CH-6
N09B17/DNS-32
MAY 26 2005

OPNAV INSTRUCTION 3120.32C CHANGE TRANSMITTAL 6

From: Chief of Naval Operations
To: All Ships and Stations (less Marine Corps addressees not having Navy personnel attached)

Subj: STANDARD ORGANIZATION AND REGULATIONS OF THE U.S. NAVY

Encl: (1) Revised pages 3-74, 4-33, 6-53, and 6-54

1. Purpose. To provide updated guidance on
 - a. Functions, duties and responsibilities of the Nuclear Weapons Handling Supervisor.
 - b. Lookout assignment and duties.
 - c. Embarked unit augmentation to afloat food service operations.
2. Action. Remove pages 3-74, 4-33, 6-53, and 6-54, and replace with enclosure (1) of this change transmittal.


A. T. CHURCH III
Vice Admiral, U. S. Navy
Director, Navy Staff

OPNAVINST 3120.32C
11 April 1994630.23 VISIT AND SEARCH, BOARDING AND SALVAGE, AND PRIZE CREW
BILL

a. PURPOSE. To set forth an organization to which personnel shall be assigned for visiting and searching, boarding and salvaging, and placing a prize crew on board ship on the high seas; and to prescribe appropriate responsibilities and procedures.

b. RESPONSIBILITY FOR THE BILL. The Operations Officer is responsible for this bill and shall advise the Executive Officer of required changes or other matters affecting the bill.

c. GENERAL. Under certain circumstances U.S. Navy ships are authorized to approach and visit ships encountered inside the territorial waters of the U.S. or in international waters. In addition, there are limited circumstances in which U.S. Navy ships may become involved in salvage operations or the taking of a prize. This bill describes generally the circumstances under which these situations may occur and prescribes responsibilities of officers and crew assigned to carry out such operations.

d. INFORMATION.

(1) APPROACH AND VISIT. As a general rule, vessels in international waters are immune from the jurisdiction of any nation other than the flag nation. However, under international law, a warship may approach any vessel in international waters to verify its nationality. In addition, unless the vessel encountered is itself a warship or non-commercial government vessel of another nation, it may be stopped, boarded and the ship's documents examined, provided there is reasonable ground for suspecting that it is:

- (a) Engaged in piracy;
- (b) Engaged in the slave trade;
- (c) Engaged in unauthorized broadcasting;
- (d) Without nationality; or

(e) Though flying a foreign flag, or refusing to show its flag, in reality, of the same nationality as the warship.

(2) VISIT AND SEARCH. Under the law of armed conflict, belligerent warships or aircraft may visit and search a merchant vessel for the purpose of determining its true character, i.e., enemy or neutral, nature of cargo, manner of employment, and other facts bearing on its relation to the conflict. Such visits

OPNAVINST 3120.32C
11 April 1994

occur outside neutral territorial seas. This right does not extend to visiting or searching warships or vessels engaged in government non-commercial service. In addition, neutral merchant vessels in convoy of neutral warships are exempt from visit and search, although the convoy commander may be required to certify the neutral character of merchant vessels' cargo.

(3) SUPPORT FOR LAW ENFORCEMENT. U.S. naval units provide support to the United States Coast Guard (USCG) and other U.S. law enforcement agencies, primarily in the area of drug interdiction. When a naval unit is operating under USCG tactical control with a Law Enforcement Detachment (LEDET) embarked, the support may include providing a platform for approach, visit, and arrest/seizure of suspect vessels pursuant to the law enforcement authority of the USCG. Detailed guidance is found in the various Operation Orders (OPORDs) governing the affected naval units.

(4) Additional information pertaining to the above is found in NWP-9, The Commander's Handbook on the Law of Naval Operations, chapters 3 and 7 (NOTAL).

e. RESPONSIBILITIES AND PROCEDURES

(1) THE EXECUTIVE OFFICER shall:

(a) Designate, subject to the approval of the Commanding Officer, an Examining Officer to train and direct the visit and search party in accordance with the rules and procedures prescribed in NWP-9 and appropriate provisions of applicable OPORDs.

(b) Designate, subject to the approval of the Commanding Officer, a Boarding Officer to train and direct the boarding and salvage party.

(c) Designate, subject to the approval of the Commanding Officer, a Prize Master to organize, train, and direct the prize crew.

(d) Coordinate all departments in organizing, training, and equipping personnel necessary for the various parties and crews required by this bill.

(2) HEADS OF DEPARTMENTS shall require division officers to assign and equip qualified personnel for the parties and crews prescribed by this bill.

(3) DIVISION OFFICERS shall:

(a) Assign qualified personnel.

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11 April 1994

(b) Post all assignments required by this bill on division watch, quarter, and station bills.

(c) Ensure that designated division personnel participate in required training and equip themselves with the basic equipment.

f. APPROACH AND VISIT

(1) DUTIES OF THE EXAMINING OFFICER. Personnel in the boat sent by U.S. naval vessels may carry arms. The Examining Officer shall inquire of the master and, if necessary, the crew regarding the nature of the vessel and its activity, relative to the circumstances which gave rise to the approach and visit; i.e., piracy, slave trade, etc. The Examining Officer shall recommend to his/her Commanding Officer one of the following actions:

(a) That the ship be released (if ownership of the ship has been recently transferred).

(b) That the ship be detained or seized and sent in for adjudication (if papers, questioning of personnel, search, and inspections do not result in satisfactory proof of ship's innocence).

(2) PAPERS TO BE EXAMINED. The ship's papers to be examined are:

(a) A certificate of registry or bill of sale (if the ship has been transferred recently from enemy to neutral ownership).

(b) The crew list.

(c) The passenger list.

(d) The ship's log (to determine whether the ship has deviated from her direct course).

(e) The bill of health.

(f) The ship's clearance papers.

(g) The certificate of charter.

(h) The invoices or manifests of cargo.

(i) The bills of lading.

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11 April 1994

(j) A consular declaration certifying the innocence of the cargo may be included but is not considered conclusive evidence of innocence.

(3) REPORTS. The Examining Officer's report to the Commanding Officer of the visiting warship shall include the following information:

- (a) Name and nationality of visited ship.
- (b) Registry Number.
- (c) Gross tonnage.
- (d) Port and date of departure and destination.
- (e) Number of passengers.
- (f) General character of cargo.
- (g) Any additional remarks and recommendations.

(4) RECORD OF ACTION TAKEN. After the Commanding Officer of the visiting ship is advised of the findings, appropriate entries shall be written in the visited ship's log as follows:

If the visited ship is cleared by the visiting ship's Commanding Officer:

The _____ (given name, nationality and class of ship, as steamer or sailing ship) was visited by me at _____ (give hour and date). I have examined the papers concerning the ship and her cargo, produced by the master, which show that her voyage is lawful. The circumstances have been reported to the Commanding Officer of the visiting ship, who has directed that the ship be allowed to proceed on her voyage.

The ship is accordingly allowed to proceed on her voyage.

Entered _____ (give hour, date, and geographical position when entry is made).

(Signed name) _____
(Grade) _____, U.S. Navy Examining Officer

Note

The name of the visiting ship and the name or grade of its Commanding Officer shall not be disclosed.

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If the visited ship is to be detained for search or other appropriate action:

The _____ (give name, nationality and class of ship, as steamer or sailing ship) was visited by me at _____ (give hour and date). I have examined the ship's papers concerning the ship and her cargo, produced by the master, which were _____ (irregular; fraudulent; defaced; in part destroyed; in part concealed; apparently regular but owing to suspicions having been aroused by (state reasons), a search appeared to me to be warranted. The circumstances have been reported to the Commanding Officer of the visiting ship, who has directed that the ship be detained for the following reason _____ (state reason, whether one of those noted immediately above or any other reason justifying detention).

The ship is accordingly detained.

Entered _____ (give hour, date and geographical position when entry is made).

(Signed name) _____
(Grade) _____, U.S. Navy Examining Officer

Note

The name of the visiting ship and the name or grade of its Commanding Officer shall not be disclosed.

(5) BOARDING AND SALVAGE

(a) General. Should the inspections by the Examining Officer or other circumstances reveal a need for further detention or seizure, the boarding and salvage party shall be directed by the Commanding Officer to board and take command of the ship, restrain the crew, and conduct salvage operation as necessary.

The composition of the boarding and salvage party shall be dictated by the size and mission of the visited ship. A portion of the boarding and salvage party shall consist of the rescue and assistance party.

The boarding and salvage party shall be alert for attempts at sabotage such as scuttling, fire, explosions, damage to power plant, and equipment, and contamination of fuel oil, water, and provisions.

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30 November 1998

(b) Duties of the Boarding Officer. The Boarding Officer shall organize, train, and equip the boarding and salvage party and direct boarding and salvage operations on board ships to be taken as prizes or the salvage of any abandoned ship.

(6) SPECIFIC DUTIES OF COMMANDING OFFICER OF CAPTURING VESSEL AND OF PRIZE MASTER

(a) Commanding Officer of Capturing Vessel

1. Section 7657 of Title 10, United States Code, specifies duties of the Commanding Officer of the capturing vessel as follows:

a. Secure the documents of the captured vessel, including the log, and the documents of cargo, together with all other documents and papers, including letters, found on board;

b. Inventory and seal all the documents and papers;

c. Send the inventory and documents and papers to the court in which proceedings are to be held, with a written statement -- (1) Showing that the documents and papers are all the papers found, or explaining why any are missing, and (2) Showing that the documents and papers are in the same condition as found, or explaining why any are in different condition;

d. Send as witnesses to the prize court the master, one or more of the other officers; the supercargo, purser, or agent of the prize; and any other person on board who is interested in or knows the title, national character, or destination of the prize; or if any of the usual witnesses cannot be sent, send the reasons therefore to the court; and

e. Place a competent prize master and a prize crew on board the prize and send the prize, the witnesses, and all documents and papers, under charge of the prize master, into port for adjudication.

2. In the absence of instructions from higher authority as to which port to deliver the prize for adjudication, the Commanding Officer of the capturing vessel shall select the port most convenient in view of the interests of possible claimants.

3. If the captured vessel or any part of the captured property is not in condition to be sent in for adjudication, the Commanding Officer of the capturing vessel

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11 April 1994

shall have a survey and an appraisal made by competent and impartial persons. The reports of the survey and the appraisal shall be sent to the court in which proceedings are to be held. Property so surveyed and appraised, unless appropriated for the use of the United States, shall be sold under authority of the commanding officer present. Proceeds of the sale shall be deposited with the Treasurer of the United States or in the public depository most accessible to the court in which proceedings are to be held and subject to its order in the cause.

(b) Prize Master

1. Section 7658 of Title 10, United States Code, specifies that the prize master shall take the captured vessel to the selected port. On arrival he/she shall:

a. Immediately deliver to a prize commissioner the documents and papers and the inventory thereof;

b. Make affidavit that the documents and papers and the inventory and the prize property are the same and are in the same condition as when received, or explain any loss or change in this condition;

c. Report all information regarding the prize and her capture to the United States attorney;

d. Deliver witnesses to the custody of the United States marshal; and

e. Retain custody of the prize until it is taken therefrom by process from the prize court.

(7) PRIZE CREW AND THEIR DUTIES. The prize crew is organized and trained to navigate, operate, and administer a seized, captured, or abandoned ship with or without the cooperation of the crew; to bring it safely into port; and to deliver it to the appropriate authorities for examination or adjudication.

(a) The Prize Master shall, when ordered by the Commanding Officer, command the prize or abandoned ship and prize crew in all operations, subject to the orders of the Commanding Officer of this ship or other higher authority. He/she shall discharge the responsibilities prescribed in U.S. Navy Regulations for a commanding officer.

(b) The Prize Crew Executive Officer shall organize and train prize crew personnel. He/she shall act as Prize Crew Master when the prize crew is mustered or drilled. When on board

OPNAVINST 3120.32C
11 April 1994

a prize or abandoned ship, he/she shall discharge the responsibilities prescribed for an executive officer.

(c) The Prize Crew First Lieutenant shall organize, train, and command the deck force, Marine detachment, and supply personnel of the prize crew during drills on board a prize or abandoned ship. He/she shall have the responsibilities and authority prescribed for a head of detachment.

(d) The Prize Crew Operations Officer shall organize, train, and command the communications and navigation personnel of the prize crew during drills on board a prize or abandoned ship. He/she shall have the responsibilities and authority prescribed for the Operations Officer and Navigator.

(e) The Prize Crew Engineer Officer shall organize, train, and command the engineering and damage control personnel of the prize crew during drills on board a prize or abandoned ship. He/she shall have the responsibilities and authority prescribed for the Engineer Officer.

(f) The Prize Crew Medical Officer shall organize, train, and command the medical personnel of the prize crew during drills on board a prize or abandoned ship. He/she shall have responsibilities and authority prescribed for the Medical Officer. In the event that a hospital corpsman must be assigned to direct the medical personnel of the prize crew, the ship's Medical Officer shall be responsible for functions of organization and training, and the assigned hospital corpsman shall be responsible, under the Prize Crew Executive Officer, for providing medical treatment for personnel of the seized ship and the prize crew.

g. SUPPORT FOR LAW ENFORCEMENT

(1) GENERAL. The USCG is the primary U.S. maritime agency charged with the enforcement of all federal laws on the high seas and in waters subject to the jurisdiction of the United States. When USCG LEDETs are embarked on U.S. Navy platforms, the U.S. Navy supports the USCG in its law enforcement responsibilities (primarily drug interdiction) on a not-to-interfere basis with fleet operations and readiness. Similar support is also provided to other U.S. law enforcement agencies when authorized by DOD. When operating from U.S. Navy ships, the OIC of the LEDET is responsible for directing and executing searches, arrests, or seizures of suspect vessels. Such actions are based on USCG directives and policy. The Commanding Officer, however, remains responsible for his/her ship and retains the authority to allow, disallow, suspend, or terminate any law

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U.S. Department of
Homeland Security
**United States
Coast Guard**



***U.S. COAST GUARD MARITIME
LAW ENFORCEMENT
MANUAL (MLEM)
COMDTINST M16247.1E
AUGUST 2010***

Note: The U.S. Coast Guard Maritime Law Enforcement Manual (MLEM) is designated For Official Use Only. Copies are available from CLAMO and from the U.S. Coast Guard Operations Law Group at U.S. Coast Guard Headquarters (2100 Second Street, S.W., Washington, D.C. 20593)

CLAMO can also provide an excerpt of provisions of the MLEM relating directly to piracy, counter-piracy operations and U.S. Coast Guard law enforcement operations relating to piracy and violence in navigation. Email CLAMO@CONUS.ARMY.MIL for details.



CLAMO FAST ACTION BINDER: PIRACY
DOMESTIC U.S LAW, POLICY MATERIALS & AGREEMENTS

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SELECTED PIRACY AND RELATED OFFENSES UNDER U.S. LAW

18 U.S.C.A. § 1651 - Piracy under law of nations

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

Venue of offenses committed on high seas, see 18 U.S.C. § 3238.

18 U.S.C. § 1656 - Conversion or surrender of vessel

Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of \$50 or over; or

Whoever yields up such vessel voluntarily to any pirate--

Shall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 1657 - Corruption of seamen and confederating with pirates

Whoever attempts to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or any goods, wares, or merchandise, or to turn pirate or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such; or

Whoever furnishes such pirate with any ammunition, stores, or provisions of any kind; or

Whoever fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or

Whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or

Whoever, being a seaman, confines the master of any vessel--

Shall be fined under this title or imprisoned not more than three years, or both.

18 U.S.C. § 2280 - Violence against maritime navigation

(a) Offenses.--

(1) In general.--A person who unlawfully and intentionally--

(A) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

(B) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

(C) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

(D) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

(E) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;

(F) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;

(G) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in subparagraphs (A) through (F); or

(H) attempts or conspires to do any act prohibited under subparagraphs (A) through (G),

shall be fined under this title, imprisoned not more than 20 years, or both; and if the death of any person results from conduct prohibited by this paragraph, shall be punished by death or imprisoned for any term of years or for life.

(2) Threat to navigation.--A person who threatens to do any act prohibited under paragraph (1) (B), (C) or (E), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title, imprisoned not more than 5 years, or both.

(b) Jurisdiction.--There is jurisdiction over the activity prohibited in subsection (a)--

(1) in the case of a covered ship, if--

(A) such activity is committed--

(i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;

(ii) in the United States; or

(iii) by a national of the United States or by a stateless person whose habitual residence is in the United States;

(B) during the commission of such activity, a national of the United States is seized, threatened, injured or killed; or

(C) the offender is later found in the United States after such activity is committed;

(2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and

(3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

(c) Bar to prosecution.--It is a bar to Federal prosecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term "labor dispute" has the meaning set forth in section 2(c) of the Norris-LaGuardia Act, as amended (29 U.S.C. 113(c)).

(d) Delivery of suspected offender.--The master of a covered ship flying the flag of the United States who has reasonable grounds to believe that there is on board that ship any person who has committed an offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action to take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of the master's intention to deliver such person and the reasons therefor. If the master delivers such person, the master shall furnish to the authorities of such country the evidence in the master's possession that pertains to the alleged offense.

(e) Definitions.--In this section--

“covered ship” means a ship that is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country.

“national of the United States” has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

“territorial sea of the United States” means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

“ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles or any other floating craft, but does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship which has been withdrawn from navigation or laid up.

“United States”, when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and all territories and possessions of the United States.

SELECTED JURISDICTION AND VENUE STATUTES

18 U.S.C. § 7 - Special maritime and territorial jurisdiction of the United States defined

The term “special maritime and territorial jurisdiction of the United States”, as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.

18 U.S.C. § 3238 - Offenses not committed in any district

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.

OTHER SELECTED U.S. LAWS RELATING TO PIRACY

33 U.S.C. § 381 - Use of public vessels to suppress piracy

The President is authorized to employ so many of the public armed vessels as in his judgment the service may require, with suitable instructions to the commanders thereof, in protecting the merchant vessels of the United States and their crews from piratical aggressions and depredations.

33 U.S.C. § 382 - Seizure of piratical vessels generally

The President is authorized to instruct the commanders of the public armed vessels of the United States to subdue, seize, take, and send into any port of the United States, any armed vessel or boat, or any vessel or boat, the crew whereof shall be armed, and which shall have attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel of the United States, or of the citizens thereof, or upon any other vessel; and also to retake any vessel of the United States, or its citizens, which may have been unlawfully captured upon the high seas.

33 U.S.C. § 383 - Resistance of pirates by merchant vessels

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.

33 U.S.C. § 384 - Condemnation of piratical vessels

Whenever any vessel, which shall have been built, purchased, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy as defined by the law of nations, or from which any piratical aggression, search, restraint, depredation, or seizure shall have been first attempted or made, is captured and brought into or captured in any port of the United States, the same shall be adjudged and condemned to their use, and that of the captors after due process and trial in any court having admiralty jurisdiction, and which shall be holden for the district into which such captured vessel shall be brought; and the same court shall thereupon order a sale and distribution thereof accordingly, and at its discretion.

33 U.S.C. § 385 - Seizure and condemnation of vessels fitted out for piracy

Any vessel built, purchased, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy, as defined by the law of nations, shall be liable to be captured and brought into any port of the United States if found upon the high seas, or to be seized if found in any port or place within the United States, whether the same shall have actually sailed upon any piratical expedition or not, and whether any act of piracy shall have been committed or attempted upon or from such vessel or not; and any such vessel may be adjudged and condemned, if captured by a vessel authorized as mentioned in section 386 of this title to the use of the United States, and to that of the captors, and if seized by a collector, surveyor, or marshal, then to the use of the United States.

33 U.S.C. § 386 - Commissioning private vessels for seizure of piratical vessels

The President is authorized to instruct the commanders of the public-armed vessels of the United States, and to authorize the commanders of any other armed vessels sailing under the authority of any letters of marque and reprisal granted by Congress, or the commanders of any other suitable vessels, to subdue, seize, take, and, if on the high seas, to send into any port of the United States, any vessel or boat built, purchased, fitted out, or held as mentioned in section 385 of this title.

33 U.S.C. § 387 - Duties of officers of customs and marshals as to seizure

The collectors of the several ports of entry, the surveyors of the several ports of delivery, and the marshals of the several judicial districts within the United States, shall seize any vessel or boat built, purchased, fitted out, or held as mentioned in section 385 of this title, which may be found within their respective ports or districts, and to cause the same to be proceeded against and disposed of as provided by that section.

December, 2008



UNITED
STATES
OF
AMERICA

COUNTERING PIRACY OFF THE HORN OF
AFRICA: PARTNERSHIP & ACTION PLAN



National Security Council

Countering Piracy Off the Horn of Africa: Partnership & Action Plan

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Executive Summary

Maritime piracy is a universal crime under international law which places the lives of seafarers in jeopardy and affects the shared economic interest of all nations. The United States will not tolerate a haven where pirates can act with impunity; it is therefore in our national interests to work with all States to repress piracy off the Horn of Africa.

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

This *Plan* implements the *National Strategy for Maritime Security* (September 2005) and the *Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea* (June 2007) as applied to piracy off the Horn of Africa. The *Strategy* affirms the vital national interest of the United States in maritime security, and recognizes that nations have a common interest in achieving two complementary objectives: to facilitate the vibrant maritime commerce that underpins economic security, and to protect against ocean-related criminal and dangerous acts, including piracy. Our *Policy* provides that we shall “[c]ontinue to lead and support international efforts to repress piracy . . . and urge other states to take decisive action both individually and through international efforts.” Accordingly, this *Plan* seeks to involve all nations, international organizations, industry, and other entities that have an interest in maritime security to take steps to repress piracy off the Horn of Africa.

This *Plan's* objective is to repress piracy off the Horn of Africa in the interest of the global economy, freedom of navigation, Somalia, and the regional states. Accordingly, this *Plan* focuses on immediate operational measures to prevent, disrupt, and punish acts of Somali pirate organizations. We intend this *Plan* to respond to the growing threat and to be mutually supportive of longer-term initiatives aimed at establishing governance, rule of law, security, and economic development in Somalia.

Describing the case for urgent action, this *Plan* then provides an overview of the threat. Subsequently, the *Plan* sets forth three distinct lines of action with specific measures in furtherance of each: 1) prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy; 2) disrupt acts of piracy consistent with international law and the rights and responsibilities of coastal and flag States; and 3) ensure that those who commit acts of piracy are

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held accountable for their actions by facilitating the prosecution of suspected pirates by flag, victim and coastal States, and, in appropriate cases, the United States.

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The Case for Action

For over 2,000 years, the nations of the world have considered pirates to be enemies of the human race (*hostes humani generis*). Accordingly, every nation has the legal authority to establish jurisdiction over piracy and punish the offenders, regardless of the nationality of the perpetrator or victim.

Piracy in the 21st century is a serious and growing problem. We live in an interdependent and interconnected global society supported by a global economy – and that economy simply cannot function if the world’s oceans are not safe and secure for maritime commerce. Accordingly, the nations of the world must work with international organizations and the shipping industry to confront and repress any persistent piracy threat to global shipping and the freedom of navigation upon which it depends.

Piratical attacks off the Horn of Africa constitute a threat to the lives and welfare of the citizens and seafarers of many nations. Nearly 12% of the world’s petroleum passes through the Gulf of Aden, which is one of the world’s most important waterways. A single piratical attack often 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, owner States, and cargo owner, transshipment, and destination States. Further, such attacks undermine confidence in global sea lines of communication, weaken or undermine the legitimacy of States, threaten the legitimate revenue and resources essential to the building of Somalia, cause a rise in maritime insurance rates and cargo costs, increase the risk of environmental damage, and endanger the lives of seafarers who may be injured, killed, or taken hostage for ransoms.

The National Strategy for Maritime Security (September 2005) (“the *Strategy*”) declares our vital national interest in maritime security, and recognizes that nations have a common interest in achieving two complementary objectives: to facilitate the vibrant maritime commerce that underpins economic security, and to protect against ocean-related terrorist, hostile, criminal, and dangerous acts, including piracy. In furtherance of this “common interest,” the *Strategy* mandates “full and complete national and international coordination, cooperation, and intelligence and information sharing among public and private entities ... to protect and secure the maritime domain.” The United States’ *Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea* (June 2007) (Annex 1, “the *Policy*”) provides that we shall “[c]ontinue to lead and support international efforts to repress piracy and other acts of violence against maritime navigation and urge other states to take decisive action both individually and through international efforts.”

This *Plan* implements the United States' national strategy and policy to foster international cooperation and integration among all nations, international organizations, industry and other entities that have an interest in maritime security to ensure the full range of lawful and timely actions necessary to repress piracy off the Horn of Africa.

Overview of the Threat

Piracy off the Horn of Africa is growing in frequency, range, aggression, and severity at an alarming rate. Somali pirates operate along a 2,300-mile coast and in 2.5 million square miles of ocean. Since late 2007, Somali pirates have attacked and harassed vessels transiting up to 450 miles offshore in the Indian Ocean and in the Gulf of Aden, a natural chokepoint providing access to the Red Sea and the Suez Canal. Somali-based piracy against chemical and oil tankers, freighters, cruise ships, yachts, and fishing vessels poses a threat to global shipping. This combination of illicit activity and non-existent rule of law offers a breeding ground for higher levels of instability, organized crime, and other transnational threats.

Somali pirates operate from well-equipped and well-armed bases ashore along the Indian Ocean coast of Central Somalia and Puntland, from the port towns of Caluula, Eyl, Hobyo, and Haradheere. They depart from these bases typically using four or five pirates in small, lightweight, fiberglass molded skiffs powered by one or more outboard motors and able to attain speeds in excess of 30 knots. These skiffs usually hunt for vulnerable vessels with a low freeboard traveling under 15 knots during daylight.

Once they target a vessel, pirates typically coordinate a two- or three-pronged simultaneous attack from multiple directions. Pirates are typically armed and fire upon their targets with small arms, automatic weapons, and rocket-propelled grenades, which they likely obtain through the constant and largely unimpeded stream of illegal weapons transiting through Somalia in violation of the 1992 United Nations embargo on arms into Somalia (U.N. Security Council Resolution 733 (1992)). Depending on the characteristics and compliance of the victim vessel, pirates can board and commandeer a vessel in less than 20 minutes from the initial attack. If the hijacked vessel is of low ransom value, such as a fishing vessel or cargo dhow, pirates may use it opportunistically as a "mother ship" to launch additional attacks on larger, more lucrative merchant vessels.

In many cases, merchant vessels have been able to fend off pirates or avoid attacks using relatively simple best practices - such as increased surveillance, transiting at night, charging fire hoses, speeding up and evasive maneuvering. In other cases, the pirated vessel has allowed itself to become a victim by stopping. Vessels with low power and low freeboard require additional measures to avoid capture - such as embarked security teams, employing boarding obstacles such as razor wire, and rehearsing lockdown procedures. Although pirates brandish weapons and have fired upon ships, it is contrary to their interest to intentionally harm the

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hostages needed to leverage the maximum ransom, or actually disable the ship because they need it to bring their hostages to the coast near their safe havens ashore.

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Ransom payments are the lifeblood of Somali pirates: each ransom paid further emboldens these pirates and perpetuates the threat. Somali pirates have yet to display an interest in stealing cargo or reusing pirated ships for other purposes (other than temporarily as mother ships). Instead, Somali pirates have created highly visible hostage-for-ransom situations. The pirates have brought seized vessels, cargoes, and crews from the high seas into Somali territorial waters near one of their main land bases of operation where they have access to food, water, khat, weapons, ammunition, and other resources during ransom negotiations. Pirates aboard the seized ship negotiate ransoms with the ship's owner or agent using the ship's communication equipment. Shipping interests typically pay ransoms in cash ranging from \$500,000 to \$2 million, with the overall income from piracy ransoms estimated to exceed \$30 million in 2008. High profits with low costs and little risk of consequences in a failed and starving State ensure that Somali pirate groups have almost unlimited human resources and do not lack for recruits and support.

Objectives

This *Plan* implements the *Strategy* and the *Policy* as applied to piracy off the Horn of Africa. The *Policy* recognizes that responses to piracy will vary according to geographic, political, and legal environments, as well as available U.S. and international resources, and that the scope of the mission and the defined nature of the threat will affect the choice of response. This *Plan* describes a tailored response to piracy off the Horn of Africa.

The U.S. objective is to repress this piracy as effectively as possible in the interests of the global economy, freedom of navigation, Somalia, and the regional states. Accordingly, this *Plan* focuses on immediate operational counter-measures to prevent, disrupt, and punish acts of Somali pirate organizations. Achieving this objective will ultimately require action on land to reinforce measures taken at sea and to deprive the pirates of ransom proceeds. Moreover, achieving this objective will require cooperation, coordination, and integration among military, law enforcement, judicial, diplomatic, and commercial interests in and beyond the affected region.

This *Plan* recognizes that piracy off the Somali coast is only one manifestation of the tragic events Somalia has experienced for almost 20 years. Consequently, long-term actions to establish governance, rule of law, security, and economic development in Somalia are necessary to repress piracy fully and sustainably in the region. We intend for this *Plan* -- consistent with international law and with full respect for the sovereignty, territorial integrity, political independence and unity of Somalia -- to reduce the incidents of piracy, thereby decreasing the impact on global commerce, and preventing the lack of security in Somalia from reaching out beyond its shores.

Global Partnership

A guiding principle of the *Strategy* is that success in securing the maritime domain will not come from the United States acting alone, but through a powerful coalition of nations maintaining a strong, united front. The need for coordinated multilateral cooperation stems from the fact that most of the world's maritime domain is under no single nation's sovereignty or jurisdiction. Thus, effective management and policing of the domain require international cooperation of all interested States. Moreover, Somali territorial waters and the adjacent shore are largely ungoverned, allowing piracy to flourish and spill out into the international maritime domain.

Globalization and its attendant economic interdependency made possible largely by maritime shipping make imperative the coordinated efforts and actions of States, international organizations, and industry to repress piracy off the Horn of Africa. Maritime patrol forces alone cannot provide a complete response to this particular threat.

In the short term, *an effective global partnership must:*

- Implement a consequence delivery system aimed at Somali pirates;
- Improve and share counter-piracy best practices with industry;
- Support and assist those States willing to repress piracy at sea and/or deliver or facilitate the delivery of consequences ashore; and
- Enhance the legal and political framework necessary to disrupt and dismantle piratical organizations ashore.

Lines of Action

Consistent with the President's *Policy*, this *Plan* directs three distinct lines of action. Nested in these lines of action are five essential implementation pillars - improving operational and intelligence support to counter-piracy operations; strengthening judicial frameworks for detention and prosecution of pirates; disrupting pirate financial operations; strengthening commercial shipping self-defense capabilities; and pursuing diplomatic and public information efforts to discourage piracy.

1. Prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy

Preventing pirate attacks is both safer and more cost effective than interrupting attacks in progress or rescuing hostages after an attack has occurred. Further, the massive maritime operating area coupled with the short time necessary for pirates to conduct attacks reduces the opportunities for timely response by patrol forces. U.N. Security

Countering Piracy Off the Horn of Africa: Partnership & Action Plan

Council Resolution 1846 specifically “[c]alls upon States, in cooperation with the shipping industry, the insurance industry and the IMO [International Maritime Organization], to issue to ships ... advice and guidance on avoidance, evasion, and defensive techniques and measures to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia[.]” We will lead and support the following prevention and precautionary measures:

- a. **Establish and Maintain a Contact Group** – We will immediately establish a Contact Group of countries that have the political will, operational capability, and/or other resources to devote to combating piracy off the Horn of Africa. The Contact Group will meet as necessary and at appropriate levels to develop and coordinate international policy initiatives, share and disseminate information, provide national forces to engage in, support, or help build the capacity of regional partners to undertake counter-piracy operations, and advocate for other mechanisms to repress piracy. The Contact Group will coordinate with other similar groups, international organizations, and industry to strengthen our collective international ability to prevent, interdict, prosecute, and eventually eradicate piracy. As a priority, the Contact Group should establish a single contact point for ships operating in the Horn of Africa.
- b. **Strengthen and Encourage the Use of the Maritime Security Patrol Area (MSPA) in the Gulf of Aden** – In August 2008, Commander, U.S. Naval Central Command, established an MSPA in the Gulf of Aden to focus efforts to counter destabilizing activities and improve security in the region while long-term initiatives mature. Combined Maritime Forces (CMF) warships and aircraft patrol this area and preliminary data indicates that the pirate success rate for hijacking is only slightly lower inside the MSPA than outside. The United States will encourage other nations to assign more forces, such as law enforcement and naval air and surface assets, in order to increase coverage within the MSPA; in return, the United States, within legal constraints, will share information and coordinate with non-CMF member navies that are acting to repress piracy. The United States will also encourage the maritime industry to increase its use of the MSPA, in order to enhance its effectiveness.
- c. **Updating Ships’ Security Assessment and Security Plans** – The International Ship and Port Facility Security Code (ISPS) requires ships security assessments (SSA) and ships security plans (SSP) to be periodically reviewed, audited, and amended in response to experience or changing circumstances. Recognizing that it is essential that all civilian and commercial vessels operating off the Horn of Africa take immediate and continued risk-based measures to mitigate the threat of pirate attacks and boardings, we urge all Contracting Governments to ensure

that vessels flying their flag and operating within 500 nautical miles of Somalia or in the Gulf of Aden review and amend their SSPs as needed. The United States supports the integration of the full spectrum of appropriate passive and active security measures into vessel SSPs. Accordingly, for the Gulf of Aden, we:

- Encourage vessels to operate at fastest speed (those operating under 16 knots with a low freeboard (less than six meters) should consider themselves at extremely high risk).
- Encourage vessels that are unable to out run pirate vessels to change course repeatedly (consistent with safe navigation) and conduct nighttime transits.
- Encourage vessels to take measures including, where necessary, changing their operational procedures to make it more difficult for pirates to board their vessels while underway near the Horn of Africa.
- Encourage the design and modification of vessel structure to prevent or delay gaining vessel control in the event that pirates board the vessel. Examples may include safe-areas for crews to muster and physical barriers to control areas.
- Encourage all vessels to use appropriate non-lethal measures such as netting, wire, electric fencing, long-range acoustical devices, and fire hoses to prevent boarding.
- Support the establishment of international standards of training and certification for professional shipboard security consultants and third party security providers.
- Encourage the embarkation of properly certified unarmed security consultants on vessels transiting the region. Such consultants should be encouraged to provide security measures, including intelligence reports for vessels in transit, onboard training and non-lethal use of force capabilities, and night vision equipment.
- Recognize that in appropriate circumstances properly screened and certified third-party security providers with firearms, operating in compliance with applicable coastal, port, and flag State laws may be an effective deterrent to pirate attacks off the Horn of Africa.

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- Encourage all vessels transiting the Gulf of Aden and the waters off the Somali coast to identify themselves and, if applicable, their escorts, before entering the Gulf of Aden region, by contacting the designated coordination center without making this information subject to interception by persons supporting the pirates.
 - Reiterate the warnings and recommendations provided to mariners in recent Maritime Advisories, including the distress calling procedures, and encourage mariners to heed all similar future communications.
- d. **Strategic Communication** - We will lead and support a global public information and diplomatic campaign to highlight the international cooperation, coordination, and integration undertaken to repress piracy off the Horn of Africa, while emphasizing its destructive effects on trade, human and maritime security, and the rule of law. Part of our message will be that the Contact Group will help the Transitional Federal Government of Somalia develop strategies and capacity to protect Somali fishing rights in its territorial waters.

2. Interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states

- a. **Support and Contribute to a Regionally Based Counter-Piracy Coordination Center (CPCC)** - In order to best mobilize and leverage all of the military, diplomatic, international, law enforcement, and industry stakeholders with persistent counter-piracy resources in the region, we will support and contribute to the operation and maintenance of a 24x7 CPCC in the region. We will work with all stakeholders to establish a single, centralized service to receive reports of piracy and suspicious vessels, alert maritime interests, gather and analyze information regarding piracy off the Horn of Africa, provide a secure common operating picture for stakeholder governments and the shipping industry, and, as appropriate, coordinate the dispatch of available response assets, taking into account existing capabilities.
- b. **Seize and Destroy Vessels Outfitted for Piracy and Related Equipment** - International law provides that a ship or aircraft is a pirate ship or aircraft if persons in dominant control intend to use it to commit an act of piracy. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons violating that act. Consistent with applicable U.N. Security Council resolutions and subject to the availability of

resources, we may conduct and urge others to conduct operations in international waters and in the territorial sea of Somalia targeting the interdiction of vessels intended to be used or that have been used to commit piratical acts, and also in the territory of Somalia to suppress piracy. Thus, apparently stateless (unregistered) skiffs and other vessels outfitted for piracy (e.g., possessing grappling hooks, rocket propelled grenades, automatic weapons, outboard engines over 50hp) are subject to boarding, search, and seizure under international law in the same manner as those that have completed piratical acts or that have themselves been seized by pirates. We will seize and destroy any implements of piracy and, in appropriate cases, seize and destroy vessels outfitted for piracy. In cases involving the seizure or destruction of pirate vessels, we will deliver those individuals to States willing and able to ensure they are prosecuted, including, as appropriate, to authorities ashore in Somalia, including in Puntland and Somaliland. We will seek, as necessary, agreements and arrangements with regional States to facilitate the expeditious disposition of such persons, and welcome recent arrangements between Kenya and the UK.

- c. **Persistent Interdiction-Capable Presence** - Consistent with other U.S. mission requirements, U.S. Navy and/or U.S. Coast Guard forces operating in the region provide persistent interdiction through presence, can conduct maritime counter-piracy operations, and shall coordinate counter-piracy activities with other forces operating in the region to the extent practicable. When in range, these forces will prevent suspected pirate vessels from operating, respond to reports of piratical attacks with the objective of disrupting such attacks by presence, and, in appropriate circumstances, terminate the act of piracy and any included hostage situation with intent to deliver any surviving pirates ashore for prosecution once appropriate mechanisms for consequence delivery are in place. Effective and prompt consequence delivery mechanisms are essential towards making this successful.
- d. **Support Shiprider Programs and Other Bilateral and Regional Counter-Piracy Agreements and Arrangements** - We will support and participate in the development of Shiprider programs and other bilateral and regional counter-piracy agreements and arrangements. In particular, we will fully support the effort of the IMO to conclude and implement a sub-regional arrangement concerning the repression of piracy and armed robbery at sea in the Western Indian Ocean, the Gulf of Aden, and the Red Sea. Once effective, the IMO-sponsored arrangement is expected to enhance the ability of participants to take measures to repress piracy and armed robbery at sea; embark law enforcement officials (shipriders) on patrol ships or aircraft of other participants; facilitate coordinated, timely, and effective information flow among the participants to

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enhance operational coordination; collect, collate, and analyze incident information reported by participants; facilitate the provision of assistance between participants; and facilitate review of national legislation for the prosecution, conviction, and punishment of those involved in acts of piracy and armed robbery at sea.

- e. **Disrupt and Dismantle Pirate Bases Ashore** - Piracy at sea can only be abated if pirate bases ashore are disrupted or dismantled. We have obtained appropriate authority from the United Nations Security Council and agreement from Somali authorities to do so. We will work with concerned governments and international organizations to disrupt and dismantle pirate bases to the fullest extent permitted by national law.
 - f. **Disrupt Pirate Revenue** - We will coordinate with all stakeholders to deprive pirates and those supporting the pirates of any illicit revenue and the fruits of their crime, advocating the development of national capabilities to gather, assess, and share financial intelligence on pirate financial operations, with the goal of tracing payments to and apprehending the leaders of pirate organizations and their enablers. To this end, we will collaborate with governments and the shipping industry to develop a consistent response to the payment of ransom demands. There are substantial long-term risks in surrendering to the ransom demands of pirates. Paying ransoms puts other seafarers at increased risk, enables the pirates to apply the financial leverage to increasing capability and capacity, incentivizes piracy, and ultimately provides support to criminal organizations. Any strategic communications strategy must convey these concerns. We will improve our ability to collect and share intelligence on pirate financial operations, coordinating with other stakeholders to trace pirate revenues. We will consider taking action to apprehend, prosecute, and punish persons or entities that aid and abet or conspire with pirates in violation of national law.
- 3. Ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates by flag, victim, and coastal states, and, in appropriate cases, the United States**

Somali-based piracy is flourishing because it is currently highly profitable and nearly consequence-free. Establishing an effective consequence delivery system is essential to

the success of any counter-piracy operations. Effective delivery of consequences must follow interdiction activities.

- a. **Conclude agreements and arrangements to formalize custody and prosecution arrangements** - We will seek agreements and arrangements with States in and beyond the region to facilitate expeditious investigation, prosecution, and punishment, as appropriate, for any captured, suspected pirates. We will also seek agreements and arrangements with States in the region to allow the use of their territory as a holding area before delivering captured pirates to other States that have an interest and willingness to prosecute the captured, suspected pirates. We welcome the willingness of Kenya to receive and prosecute pirates and will support and encourage other stakeholders to support Kenya in that endeavor.
- b. **Support and encourage the exercise of jurisdiction under the SUA Convention** - The United States will support and encourage the exercise of relevant and appropriate jurisdiction of flag, port, and coastal States, as well as States of the nationality of victims and perpetrators of piracy, through the prosecution of any persons having committed an act of piracy. We will urge other States Parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA), to use the Convention as a vehicle for the prosecution of such acts as violations of article 3 of the Convention. This model enables a framework under articles 7, 8 and 10 of the Convention whereby masters of ships may deliver suspected SUA offenders to a coastal State Party, which is obliged to accept custody unless it can articulate why the Convention is not applicable and extradite the offenders to an interested State or submit the case to its own authorities for the purpose of prosecution. We will also consider providing appropriate available investigative and logistical support and assistance to States that are willing to assist in holding suspected pirates, investigation of their offenses, and their removal to appropriate venues for prosecution. We will endeavor to assist any willing State in the development of legislation, regulations, procedures, and infrastructure necessary to meet SUA obligations in this context.
- c. **Support and encourage the use of other applicable international conventions and customary international law** - The United States will also support and encourage the exercise of relevant and appropriate jurisdiction through the framework of other applicable international conventions. For example, the 1979 Hostage Taking Convention, the 2000 Transnational Organized Crime Convention, and the 1999 Terrorist Financing Convention may apply to piracy cases in some circumstances. In cases of States that are not Parties to these

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conventions or to the SUA Convention, we will fully support and encourage the exercise of relevant and appropriate jurisdiction over interdicted pirates in accordance with customary and treaty-based international law. We will also continue to discuss with other concerned and interested States the possibility of an international court or tribunal to prosecute captured pirates, if necessary.

- d. **Enhance capabilities of regional States to accept suspected pirates for prosecution, extradition, and incarceration** - We will work with interested parties to identify the nature and scope of international assistance needed to enhance the capacities of relevant States in the region, in particular in connection with the arrest, detention, prosecution and fair trial of persons accused of being involved in piracy. We will also pursue bilateral assistance programs for judicial capacity building efforts, including through the establishment of hybrid systems in which international experts could assist national courts in the region.

Monitoring and Review

We will monitor progress towards our objective under this *Plan* and will encourage our global partners to share their results and experiences with us. The Secretary of State and Secretary of Defense shall establish a high-level inter-agency, operational task force to coordinate, implement, and monitor the actions centered in this *Plan*. Subject to the availability of resources, the Departments of State, Defense, Homeland Security, Justice, Transportation, Treasury, and the Director of National Intelligence shall contribute to, coordinate, and undertake initiatives in accordance this *Plan*.

Annex 1: United States Maritime Security (Piracy) Policy



For Immediate Release
Office of the Press Secretary
June 14, 2007

Memorandum from the President

MEMORANDUM FOR THE VICE PRESIDENT

THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
THE SECRETARY OF HOMELAND SECURITY
ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
DIRECTOR OF NATIONAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
COUNSEL TO THE PRESIDENT
ASSISTANT TO THE PRESIDENT FOR HOMELAND SECURITY AND COUNTERTERRORISM
DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION
DIRECTOR, NATIONAL COUNTERTERRORISM CENTER

SUBJECT: Maritime Security (Piracy) Policy

The attached Policy for the Repression of Piracy and Other Criminal Acts of Violence at Sea (Piracy Policy) is approved for immediate implementation, consistent with applicable law and subject to the availability of appropriations. The policy shall be appended to the National Strategy for Maritime Security as Annex B.

This policy responds to the emergence of high-risk maritime areas that threaten U.S. interests. Recent instances of piracy have highlighted the need for this policy in order to coordinate U.S. Government response and to promote international solutions. This policy advances our commitment to cooperate with other states, regional and international organizations, and the maritime industry in order to counter this threat. The United States has long been a leader in the protection of navigational rights and freedoms. Our objectives consistently have been to promote and facilitate peaceful international uses of the oceans. We recognize that all nations have an interest and responsibility in protecting those rights and freedoms.

GEORGE W. BUSH

###

Attachment Tab 1 Policy for the Repression of Piracy and Other Criminal Acts of Violence at Sea

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Annex B

Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea

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I. PURPOSE

This document establishes United States Government policy and implementation actions to cooperate with other states and international and regional organizations in the repression of piracy and other criminal acts of violence against maritime navigation.^[1]

II. BACKGROUND

Piracy is any illegal act of violence, detention, or depredation committed for private ends by the crew, or the passengers, of a private ship and directed against a ship, aircraft, persons, or property on the high seas or in any other place outside the jurisdiction of any state. Piracy also includes inciting or facilitating an act of piracy, and any act of voluntary participation in the operation of a ship with knowledge of facts making it a pirate ship. Piracy is a universal crime, and all states are obligated to cooperate to the fullest possible extent in the repression of piracy.^[2]

Piracy threatens U.S. national security interests and the freedom and safety of maritime navigation throughout the world, undermines economic security, and contributes to the destabilization of weak or failed state governance. The combination of illicit activity and violence at sea might also be associated with other maritime challenges, including illegal, unlawful, and unregulated fishing, international smuggling, and terrorism.

Criminal and terrorist activities not defined as piracy also occur at sea and similarly threaten U.S. economic and national security interests. These acts of violence endanger the safety of maritime navigation and may involve weapons of mass destruction. The prevention, interdiction, and punishment of those acts occurring in territorial seas are generally the responsibility of the coastal state. Prevention and punishment of acts occurring in international waters likely will require international cooperation and adequate domestic legal systems, most recently reflected in the 2005 Protocols to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.

The policy set forth in this annex fosters both increased interagency coordination and international cooperation and is consistent with, supports, and builds upon existing maritime security efforts for piracy repression.

III. POLICY

The United States strongly supports efforts to repress piracy and other criminal acts of violence against maritime navigation. The physical and economic security of the United States -- a major global trading nation with interests across the maritime spectrum -- relies heavily on the secure navigation of the world's oceans for unhindered legitimate commerce by its citizens and its partners. Piracy and other acts of violence against maritime navigation endanger sea lines of communication, interfere with freedom of navigation and the free flow of commerce, and undermine regional stability.

Piracy endangers maritime interests on a global scale, and the responsibility for countering this threat does not belong exclusively to the United States. Consequently, the United States will engage states and international and regional organizations to develop greater resources, capacity, and authorities to repress piracy and maximize inclusion of coalition assets in piracy repression operations.

Piracy repression should include diplomatic, military, intelligence, economic, law enforcement, and judicial actions. Effectively responding to piracy and criminal activity sends an important deterrent message and requires coordination by all departments and agencies of the U.S. Government in order to ensure that those responsible are brought to justice in a timely manner.

It is the policy of the United States to repress piracy, consistent with U.S. law and international obligations, and to cooperate with other nations in repressing piracy through the following actions:

- Prevent pirate attacks and other criminal acts of violence against U.S. vessels, persons, and interests;
- Interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states;
- Reduce the vulnerability of the maritime domain to such acts and exploitation when U.S. interests are directly affected;
- Ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates and ensure that persons suspected of committing acts of violence against maritime navigation are similarly held accountable by flag and littoral states and, in appropriate cases, the United States;
- Preserve the freedom of the seas, including high seas freedoms;
- Protect sea lines of communication; and
- Continue to lead and support international efforts to repress piracy and other acts of violence against maritime navigation and urge other states to take decisive action both individually and through international efforts.

Responses to these threats will vary according to geographic, political, and legal environments. The scope of the mission and the defined nature of the threat also will affect the choice of response.

IV. IMPLEMENTATION

The Assistant to the President for National Security Affairs and the Assistant to the President for Homeland Security and Counterterrorism shall lead an interagency process to accomplish the following tasks:

- Incorporate this policy into the Maritime Operational Threat Response Plan (Protocols), as appropriate;
- Oversee the development of specific guidance and protocols for the prevention of and response by the United States Government to piracy and other acts of violence against the safety of maritime navigation;
- Review existing U.S. laws against or relating to piracy and prepare for consideration such amendments as may be necessary to enhance our ability to prosecute pirates in U.S. courts;^[3] and
- Seek international cooperation, consistent with the International Outreach and Coordination Strategy of the National Strategy for Maritime Security, to enhance the ability of other states to repress piracy and other criminal acts of violence against maritime navigation and to support U.S. anti-piracy actions.

^[1] The National Security Strategy (2006) and the National Strategy for Maritime Security identify these maritime threats.

^[2] Articles 14-15, Convention on the High Seas (1958), and Articles 100-101, Law of the Sea Convention (1982).

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[3] U.S. Constitution, Article I, Section 8; 18 USC 7(1) (Special Maritime and Territorial Jurisdiction of the United States); 18 USC 111 (Assault on Federal Officials); 18 USC 113 (Assault on the high seas); 18 USC 371 (Conspiracy); 18 USC 844(i) (Use of explosive against property used in foreign commerce of the United States or against any property used in an activity affecting foreign commerce of the United States); 18 USC 1651 (Piracy on the high seas); 18 USC 1659 (plundering a ship); 18 USC 2111 (Robbery on high seas); 18 USC 2280(a)(1)(A),(B), and/or (H) (Maritime violence/hijacking of a ship); 18 USC 2232 (Assaults on U.S. nationals overseas); 18 USC 2232a (Use of WMD against U.S. nationals outside of the U.S.)

Presidential Documents

Executive Order 13536 of April 12, 2010

Blocking Property of Certain Persons Contributing to the Conflict in Somalia

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that the deterioration of the security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, which have repeatedly been the subject of United Nations Security Council resolutions (including Resolution 1844 of November 20, 2008; Resolution 1846 of December 2, 2008; Resolution 1851 of December 16, 2008; and Resolution 1897 of November 30, 2009), and violations of the arms embargo imposed by the United Nations Security Council in Resolution 733 of January 23, 1992, and elaborated upon and amended by subsequent resolutions (including Resolution 1356 of June 19, 2001; Resolution 1725 of December 6, 2006; Resolution 1744 of February 20, 2007; Resolution 1772 of August 20, 2007; Resolution 1816 of June 2, 2008; and Resolution 1872 of May 26, 2009), constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia, including but not limited to:

(1) acts that threaten the Djibouti Agreement of August 18, 2008, or the political process; or

(2) acts that threaten the Transitional Federal Institutions, the African Union Mission in Somalia (AMISOM), or other international peace-keeping operations related to Somalia;

(B) to have obstructed the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;

(C) to have directly or indirectly supplied, sold, or transferred to Somalia, or to have been the recipient in the territory of Somalia of, arms or any related materiel, or any technical advice, training, or assistance, including financing and financial assistance, related to military activities;

(D) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the activities described in subsections (a)(ii)(A), (a)(ii)(B), or (a)(ii)(C) of

this section or any person whose property and interests in property are blocked pursuant to this order; or (E) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that, among other threats to the peace, security, or stability of Somalia, acts of piracy or armed robbery at sea off the coast of Somalia threaten the peace, security, or stability of Somalia.

(c) I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by subsection (a) of this section.

(d) The prohibitions in subsection (a) of this section include but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(e) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term “person” means an individual or entity;

(b) the term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term “Transitional Federal Institutions” means the Transitional Federal Charter of the Somali Republic adopted in February 2004 and the Somali federal institutions established pursuant to such charter, and includes their agencies, instrumentalities, and controlled entities; and

(e) the term “African Union Mission in Somalia” means the mission authorized by the United Nations Security Council in Resolution 1744 of February 20, 2007, and reauthorized in subsequent resolutions, and includes its agencies, instrumentalities, and controlled entities.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 8. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 9. This order is effective at 12:01 a.m. eastern daylight time on April 13, 2010.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

THE WHITE HOUSE,
April 12, 2010.

ANNEX

Individuals

1. Abshir ABDILLAH I [born circa 1966]
2. Hassan Abdullah Hersi AL-TURKI [born circa 1944]
3. Hassan Dahir AWEYS [born 1935]
4. Ahmed Abdi AW-MOHAMED [born 10 July 1977]
5. Yasin Ali BAYNAH [born circa 1966]
6. Mohamed Abdi GARAAD [born circa 1973]
7. Yemane GHEBREAB [born 21 July 1951]
8. Fuad Mohamed KHALAF [born circa 1965]
9. Bashir Mohamed MAHAMOUD [born circa 1979-1982]
10. Fares Mohammed MANA'A [born 8 February 1965]
11. Mohamed SA'ID [born circa 1966]

Entity

1. al-Shabaab

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KENYA CONCERNING THE CONDITIONS OF TRANSFER OF SUSPECTED PIRATES AND ARMED ROBBERS AND SEIZED PROPERTY IN THE WESTERN INDIAN OCEAN, THE GULF OF ADEN, AND THE RED SEA

The United States of America and the Republic of Kenya (hereinafter, “the Participants”),

DEEPLY CONCERNED about the crimes of piracy and armed robbery against ships in the Western Indian Ocean, the Gulf of Aden, and the Red Sea, and the grave dangers to the safety and security of persons at sea, to the protection of the marine environment, and to the economies of States arising from such acts;

TAKING INTO ACCOUNT United Nations Security Council Resolution 1846 (2008), which calls upon all States, and in particular flag, port and coastal States, States of nationality of both victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible, for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control to such victims, witnesses, and persons detained as a result of operations conducted under the resolution;

FURTHER TAKING INTO ACCOUNT that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”), to which the Participants are party, provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation;

NOTING that United Nations Security Council Resolution 1846 (2008) urges States parties to the SUA Convention to fully implement their obligations under said convention and cooperate with the Secretary-General and the International Maritime Organization (IMO) to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

NOTING FURTHER that the United Nations General Assembly in its resolution 63/111, adopted 5 December 2008, encouraged States to cooperate to address threats to maritime safety and security, including piracy and armed robbery at sea, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing, and responding to such threats and called upon States to give immediate attention to adopting, concluding, and implementing cooperation agreements at the regional level;

RECALLING Resolution A.922 (22) of the Assembly of the IMO, 29 November 2001 (hereinafter, “the 2001 Resolution”), which adopted and set out in its annex the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (hereinafter, “the Code of Practice”);

CONSIDERING that the 2001 Resolution invited governments to develop, as appropriate, agreements and procedures to facilitate co-operation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;

REAFFIRMING the importance of customary international law of the sea as reflected in the 1982 United Nations Convention on the Law of the Sea (hereinafter, "UNCLOS");

RECALLING the Communiqué of 11 December 2008 of the International Conference on Piracy around Somalia, which stressed the importance of enhancing coordination and cooperation in the fight against piracy, and welcomed the recent efforts of States and organizations to establish means for that cooperation;

WELCOMING the adoption of United Nations Security Council Resolution 1851 (2008); and

DESIRING to improve effective cooperation of their respective authorities in the prevention, interdiction, prosecution, and punishment of those persons engaging in piracy and armed robbery against ships;

Have reached the following understanding:

Section 1

Purpose and Scope

The Participants intend to cooperate to the fullest possible extent in the repression of piracy and armed robbery against ships with a view towards interdicting vessels or boats suspected of engaging in these acts, ensuring that persons committing or attempting to commit such acts are successfully apprehended and prosecuted, and that victims and witnesses, particularly those who have been subjected to violence, are properly cared for, treated, and repatriated.

Section 2

Definitions

For the purposes of this Memorandum of Understanding, unless the Participants decide otherwise:

- a. "Piracy" has the same meaning as in Article 101 of the 1982 United Nations Convention on the Law of the Sea.
- b. "Armed robbery against ships" means acts as defined in paragraph a. of this Section when committed in a coastal State's territorial sea.
- c. "Covered act" means any of the conduct defined in paragraphs a. and b. of this Section that occurs at sea in the Western Indian Ocean, Gulf of Aden, or Red Sea.

d. "Security force officials" means uniformed or otherwise clearly identifiable members of the law enforcement and/or military services of the Participants, or of third States conducting counter-piracy operations in the vicinity of Somalia pursuant to U.N. Security Council resolutions, or as may be mutually decided by the Participants.

e. "Security force vessels and aircraft" means vessels and aircraft of the Participants, or of third States as may be mutually decided by the Participants, on which Security Force Officials may be embarked, clearly marked and identifiable as being on government service and authorized to that effect, including any boat or aircraft embarked on or supporting such vessels and aircraft.

Section 3

Transfer of Persons Suspected of Having Committed Covered Acts

1. Upon reasonable request of the United States, the Republic of Kenya will accept custody of any person suspected of committing or attempting to commit a covered act and interdicted by security force officials, along with any relevant or related evidence or property.

2. The Republic of Kenya will:

a. Detain the persons, evidence, and properties described in paragraph 1 of this Section and submit them to its competent authorities for investigation in a manner consistent with its domestic law and the Code of Practice; and

b. Subject to the completion of an appropriate investigation, submit cases to Kenyan authorities for the purpose of prosecution or take appropriate action to extradite and/or repatriate persons described in paragraph 1 of this Section;

c. For the purposes of ensuring that the United States is able to provide timely assistance to the Republic of Kenya with attendance of witnesses from security force officials and the provision of relevant evidence, notify the United States of its intention to initiate criminal trial proceedings against any transferred person and the timetable for provision of evidence and the hearing of evidence; and

d. Provide and facilitate reasonable access in the Republic of Kenya by representatives of the United States to any person, living or dead, transferred consistent with this Memorandum of Understanding.

3. The United States will:

a. Support and assist the Republic of Kenya in the conduct of investigations and prosecutions, including, as necessary, facilitating the presence of necessary witnesses and other evidence held by security force officials at relevant Kenyan proceedings, consistent with this Memorandum of Understanding;

b. Endeavor to provide the Republic of Kenya with any and all relevant unclassified evidence in its possession in accordance with any reasonable requirements established by the Republic of Kenya, including statements or affidavits by security force officials;

c. Provide the Republic of Kenya with records regarding any transferred person, living or dead, at the time of transfer to Kenyan authorities describing the physical condition of the person while in the custody or control of the United States, and the basis for the person's interdiction by or encounter with security forces; and

d. Investigate and resolve allegations of improper treatment of persons while under the custody, control, or care of the United States.

4. The Participants recognize that multiple States, including the flag State, the State of suspected origin of the perpetrators, the State of nationality of persons on board the ship, and the State of ownership of cargo, may have legitimate interests in cases arising under this Section. Therefore, the Participants will cooperate with such States, and coordinate such activities with each other to facilitate a successful investigation and prosecution.

5. The Participants confirm that they will treat persons transferred to their territory under this Memorandum of Understanding humanely and in accordance with their obligations under applicable international human rights law, including the 1966 International Covenant on Civil and Political Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Section 4

Medical and Decedent Affairs

1. The Participants will cooperate to the fullest possible extent in medical and decedent affairs arising from operations in furtherance of the repression of covered acts.

2. Upon request of the United States, the Republic of Kenya will:

a. Facilitate the expeditious provision of emergency medical services for any person injured at sea as a direct result of operations to repress covered acts;

b. Accept custody of and furnish appropriate storage for the remains of any person deceased as a result of or incident to a covered act; and

c. Permit representatives of the United States to be present during any examinations or treatment of persons described in this Section, living or dead, as necessary for medical, investigative, or other purposes, including the performance of any required autopsies and identification of the deceased.

3. Upon request of the Republic of Kenya, the United States will assist and consult with Kenyan officials regarding medical treatment, forensic examination, preparation of a death certificate,

and, as appropriate, repatriation of human remains with respect to the implementation of this Section.

Section 5

Logistics and Transit

The Republic of Kenya will permit, after notification to and coordination with appropriate officials and in accordance with the applicable laws, on the occasions and for the duration appropriate for the proper performance of the operations under this Memorandum of Understanding:

- a. the temporary mooring of security force vessels at national ports in accordance with international norms for the purposes of resupplying fuel and provisions, medical assistance, minor repairs, weather and other logistics and related purposes;
- b. entry of additional security force officials;
- c. entry of vessels involved in the commission or attempted commission of covered acts escorted from waters seaward of the Republic of Kenya's territorial sea by security force officials;
- d. security force aircraft to land and temporarily remain at international airports for the purposes of resupplying fuel and provisions, medical assistance, minor repairs, weather, and other logistics and related purposes;
- e. security force aircraft to disembark and embark security force officials;
- f. the escort of persons interdicted for covered acts, other than Kenyan nationals, escorted by security force officials through and exiting out of Kenyan territory; and
- g. security force aircraft to disembark, embark, and depart out of Kenyan territory in accordance with existing arrangements between the Participants, with persons interdicted for covered acts, other than Kenyan nationals.

Section 6

Liaison

The Participants intend for requests and other communications related to the implementation of this Memorandum of Understanding to be made between the United States Embassy in Nairobi and the Kenyan Ministry of Foreign Affairs.

Section 7

Consultations

Any disputes arising from the implementation of this Memorandum of Understanding will be settled by consultation.

Section 8

Claims

Any claim for damages, injury or loss resulting from an operation carried out under this Memorandum of Understanding should be resolved in accordance with the laws of the Participant whose authorities conducted the operation, and in a manner consistent with international law.

Section 9

Implementing Arrangements

1. For purposes of the application of these provisions, operational, administrative and technical matters may be the subject of implementing arrangements to be approved between competent Kenyan and United States authorities.

2. Implementing arrangements may cover *inter alia*:

a. The identification of competent law enforcement authorities of the Republic of Kenya to whom United States may transfer persons.

b. The detention facilities where transferred persons will be held.

c. The handling of documents, including those related to the gathering of evidence, which will be handed over to the competent law enforcement authorities of the Republic of Kenya upon transfer of a person.

d. Points of contacts for notifications.

e. Forms to be used for transfers.

f. Provision of technical support, expertise, training and other assistance in order to achieve the purposes of this Memorandum of Understanding.

Section 10

Miscellaneous Provisions

Nothing in this Memorandum of Understanding is intended to:

a. Create or establish a binding international agreement;

b. Preclude the Participants from entering into any agreements, arrangements or other forms of cooperation to repress covered acts, or those acts described in the UN Convention Against

Transnational Organized Crime, 2000, and, as appropriate, its Protocols, and the International Convention for the Suppression of the Financing of Terrorism, 1999;

c. Contradict any bilateral or multilateral agreement or other cooperative mechanism concluded by the Participants to repress covered acts;

d. Alter the rights and privileges due to any individual in any legal proceeding;

e. Create or establish any waiver of any rights that either Participant may have under international law to raise a claim with the other Participant through diplomatic channels;

f. Prejudice in any manner the positions of either Participant regarding the international law of the sea; or

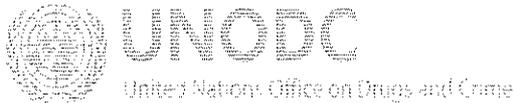
g. Preclude or limit either Participant from requesting or granting assistance in accordance with the provisions of any applicable mutual legal assistance agreement or similar instrument.

Section 11

Final Understandings

1. This Understanding will commence on the date of signature by both Participants.
2. The Participants may modify this Understanding in writing with any modifications to be effective on the date of signature by both Participants.
3. A Participant may withdraw from this Understanding at any time, but should give not less than six (6) months notice in writing to the other Participant through the diplomatic channel of its intent to withdraw.

SIGNED at Washington January 16, 2009, in duplicate.



European Commission



1 July 2009

This document contains guidance for countries requesting transfer of piracy suspects to Kenya, as well as a statement from the Kenya Department of Public Prosecutions (DPP). The guidance was drafted by DPP prosecutors, the EU/Kenya liaison officer for EU NAVFOR, the legal advisor to the Combined Maritime Forces, and an agent for the U.S. Naval Criminal Investigative Services during a UNODC led workshop held on 25 June 2009.

The DPP and UNODC strongly recommend that all countries and ships adhere to this guidance if contemplating transfer of piracy suspects to Kenya. Successful transfers and prosecutions depend on cases compiled according to Kenyan standards and procedures. The attached guidance is intended to assist countries and ships in complying with the Kenyan legal process, which is crucial for successful prosecution of piracy suspects within Kenya.

UNODC will translate this document for interested parties upon request. Any questions regarding this document or transfer and prosecution of piracy suspects can be directed to Alan.Cole@unodc.org

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Cole".

Alan Cole

Counter Piracy Programme Coordinator
United Nations Office on Drugs and Crime
Nairobi, Kenya

GUIDANCE FOR THE TRANSFER OF SUSPECTED PIRATES, ARMED ROBBERS AND SEIZED PROPERTY TO KENYA

Communication Check List

Communication with Kenyan authorities regarding piracy suspects is essential.

1. The following should be conveyed to the Kenyan Director of Public Prosecutions immediately.¹
 - ✓ Number of detained persons, including:
 - Name
 - Date of birth (if known)
 - Nationality
 - Residence
 - ✓ Brief synopsis of facts, including:
 - Location of incident
 - Allegation of piracy
 - Evidence against each suspect
 - Potential witnesses
 - Exhibits
 - Any other information that might bear on the prospect of prosecution for piracy
 - ✓ Initial estimate of when transfer of persons, seized property, and supporting evidence to Kenyan authorities could potentially occur.

Contact:

Mr. Keriako Tobiko

Director of Public Prosecutions

Telephone: +254-20-2732090

+254-20-230061

Fax: +254-20-243524

Email: lunjemu@hotmail.com (Lucy, office assistant)

Mr. Jacob Ondari

Head of DPP Counter Piracy Unit

Telephone: +254-07-22777128 (mobile)

Email: nyakundijo@yahoo.com

2. Identical information should be conveyed to the Kenyan Ministry of Foreign Affairs as soon as possible.

Contact:

Mrs. Beatrice Karago

Principal State Counsel at the Ministry of Foreign Affairs

Telephone: +254-020-318888 ext. 228

+254 0723 845 724 (mobile)

Fax: +254 20 240066

Email: bkarago@mfa.go.ke

¹ Under Kenyan law, suspects must appear before a judge within 24 hours of detention. Detention by a foreign ship may trigger this requirement if suspects eventually enter the Kenyan judicial process. To avoid this procedural problem, Kenyan prosecutors need the following information immediately in order to petition the court for an extension.

GUIDANCE FOR THE TRANSFER OF SUSPECTED PIRATES, ARMED ROBBERS AND SEIZED PROPERTY TO KENYA

Evidence

Important Considerations:

- Every person who provides a witness statement will be required to appear in Kenyan court.
- Avoid using critical ship personnel for evidence collection.
- Consider tailored to minimize the number of people required to give witness statements to Kenya.

Evidence collection can likely be achieved by four people:

1. Exhibit Custodian
 - ✓ Seize all exhibits at scene (dhow or skiff)
 - ✓ Handle exhibits
 - ✓ Store exhibits
 - ✓ Transfer exhibits to Kenyan Police
2. Photography and Video Manager
 - ✓ Take all videos and photos that will be handed to Kenya
 - ✓ Be able to clearly identify all people and objects
 - ✓ Ensure all physical evidence is photographed before being moved or seized
 - ✓ Show size and scale when appropriate
3. Operational Witness
 - ✓ If possible, appoint an appropriate officer to witness/observe the piracy incident
 - ✓ Personally observe all relevant actions on board the warship, including:
 - Distress call
 - Grounds to suspect piracy
 - Actions of suspect vessels
 - Positions of ships relative to TTW
 - Decision and basis to board
 - Description of boarding operation
 - Post-incident transfer of seized property and persons
 - ✓ This person should be key witness of what the warship observed, heard, and did
4. Primary Boarding Witness
 - ✓ Witness all key parts of boarding

The role of each witness at various stages of the piracy event is described within the Transfer Guidance.



Telegrams: "SHERIA" Mombasa
Telephone: Mombasa 2222011
When replying please quote

ATTORNEY-GENERAL'S CHAMBERS
P.O. Box 82427,
MOMBASA

Ref. No.

....., 20.....

25 June 2009

After consulting with Kenyan law enforcement officials, judicial officers, and public prosecutors, the Attorney General of Kenya requests that any international parties intending to transfer piracy suspects to Kenya for the purpose of prosecution comply with the following guidelines.

The purpose of the guidelines is:

- to provide Kenyan authorities with the necessary information to assess whether to accept transfer of piracy suspects;
- to streamline the process of accepting transfers of piracy suspects; and
- to facilitate successful piracy prosecutions in Kenya by assuring all transferred cases are in a uniform, DPP preferred format.

This document is not intended to modify or supersede any official statements or agreements made by the Kenyan government. Further, Kenya continues to reserve the right to accept or refuse transfer of piracy suspects on a case by case basis. The decision to accept or refuse cases will continue to be at the complete discretion of the government of Kenya.

A handwritten signature in black ink, appearing to read 'Jacob Ondari', written over a horizontal line.

Jacob Ondari, Assistant Deputy Public Prosecutor
Head of Anti-Piracy Unit
For Attorney General of Kenya

GUIDANCE FOR THE TRANSFER OF SUSPECTED PIRATES, ARMED ROBBERS AND SEIZED PROPERTY TO KENYA

Key Points:

- The guidelines within this document are based on discussions with Kenyan prosecutors. Compliance is crucial to ensure successful prosecutions. Failure to comply with the guidelines could result in dismissal or acquittal of the case, or in Kenya declining to accept transfer of the suspects.
- The detention of suspected pirates must be immediately communicated to the Director of Public Prosecutions of Kenya if there is any possibility that the individuals may be transferred there. To avoid procedural problems regarding length of detention, it is important that the Kenyan prosecutors be able to seek a judicial extension in within 24 hours of suspect detention.
- The number of witness statements should be kept to a minimum. All witnesses who give statements will be required to testify in Kenya. If possible, try to select a small number of individuals and ensure they witness all key events.

Introduction

1. This Guidance is designed to be consistent with the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (IMO Resolution A.922(22) adopted on 29 November 2001). It will cover *inter alia* the following matters:

- a. The appropriate point of contact in Kenya for notification of an intention to transfer persons.
- b. The evidence which will be handed over to the competent law enforcement authorities of Kenya upon transfer of a person.

2. The aim of this Guidance is to assist in the efficient and timely transfer of persons and to ensure that the competent Kenyan authority is provided with sufficient admissible evidence, under Kenyan Law, to ensure that transferred persons are successfully prosecuted for crimes of armed robbery at sea or piracy.

Appropriate point of contact in Kenya for notification of an intention to transfer persons

3. If there is an intention to transfer persons to Kenya for prosecution they will notify that intention to the Kenyan Ministry of Foreign Affairs¹ as soon as possible. Prior to this the Kenyan Director of Public Prosecutions should be informed as soon as a

¹ Or any such department as may be specified at a later date by the Kenyan Ministry of Foreign Affairs.

suspect has been detained where there is a possibility of transfer; provide the following information to both:

- a. The number of persons to be transferred to Kenya. Names, dates of birth, nationality and residence of such persons should also be provided if known at this time.
- b. A brief synopsis of the facts of the case, including; location of incident; allegation of piracy; evidence against each piracy suspect; potential witnesses; exhibits; and any other information having a bearing on whether there is a realistic prospect of conviction on a charge of piracy.
- c. An initial estimate of when the transfer of persons, seized property and supporting evidence to the competent Kenyan law enforcement authority will occur. The location and method of conducting the transfer will be arranged on a case-by-case basis.

Applying relevant Kenyan Law concerning offences of Piracy and Armed Robbery at Sea

4. This Guidance will not attempt to outline the many provisions of Kenyan law, both substantive offences and procedural rules of evidence, which would be relevant during a prosecution of persons in relation to charges of piracy or armed robbery at sea. However, it is important to outline key provisions of the Penal Code of Kenya² to understand what acts are capable of amounting to offences under Kenyan law. It would be a futile exercise to transfer persons to Kenya if the acts that you suspect such persons of committing do not amount to offences within the domestic law of Kenya.

Relevant Kenyan Law – summary

Piracy and Armed Robbery at Sea

5. Section 69(1) of the Penal Code of Kenya establishes an offence of piracy, namely:

‘Any person who, in territorial waters or upon the high seas, commits any act of piracy *jure gentium* is guilty of the offence of piracy.’

6. While recognizing that piracy is contrary to the Laws of Nations, Section 69 does not define the elements of the ‘piracy’; therefore the definition of piracy is that found at international law. Kenya became a Party to the 1982 United Nations Convention on the

² Penal Code of Kenya is available at <http://www.kenyalaw.org/kenyalaw/klr_app/frames.php>.

Law of the Sea (UNCLOS) in 1989³, and the definition of piracy within UNCLOS, Article 101⁴, which is also considered to reflect customary international law, is:

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

7. The meaning of pirate ship for the purposes of UNCLOS, Article 101(b) is defined in UNCLOS, Article 103⁵.

8. For the purposes of transfers the persons detained for transfer must be suspected of engaging in piracy as defined by UNCLOS Article 101.

Parties to offences of Piracy

9. The Kenyan Penal Code in Articles 20 to 23 defines who may be a Party to a criminal offence. Persons subject to transfer to Kenya could fall within the definition of a principal offender⁶ which is widely drawn under Kenyan law or as a joint offender

³ UNCLOS table of ratifications is available at http://www.un.org/Depts/los/reference_files/status2008.pdf

⁴ UNCLOS text available at

http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

⁵ A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

⁶ Article 20(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-

(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) every person who aids or abets another person in committing the offence;

(d) any person who counsels or procures any other person to commit the offence; and in the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

(2) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(3) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part is

pursuing a common purpose⁷. It is therefore unnecessary to prove that each transferred person played a decisive or direct role in a particular piratical attack on a merchant ship (e.g. on board the attacking skiff and firing a weapon) so long as there is evidence that they participated in the commission of the offence as either a principal or a joint offender.

Overarching approach to evidence preservation and collection

10. Evidence preservation should be an instinctive consideration for all those involved in the operation with certain subject matter experts taking a lead in evidence collection.

Attendance of Witnesses for a Trial in Kenya - approach

11. Every person who provides a witness statement to Kenya, that the prosecutor relies upon in court⁸, will be required to attend court to give evidence in person. Therefore the approach to evidence 'collection' should be tailored to reduce the likelihood that a large number and/or critical personnel will be required to attend court. To this end the minimum possible personnel should make statements. This can, in part, be achieved by adopting the following approach:

a. **Appoint Exhibit Custodian.** This person should be responsible for seizing all exhibits at the scene (dhow or skiff), handling the exhibits, storing the exhibits and transferring exhibits to the Kenyan Police (i.e. they will be one of the first persons on the scene and be present at the transfer). The exhibit custodian should be trained in properly seizing exhibits in accordance with Kenyan requirements, handling them in a manner that will preserve any DNA evidence⁹, and storing them securely. It is envisaged that a single person will fulfil this role. Any handling of exhibits by other persons should be avoided.

b. **Appoint Photography and Video Manager.** Ideally one person should be appointed to take all the video and photographic evidence that will be handed to Kenya. This will ensure only one person has to adduce this evidence in court. An additional individual should be appointed to take back-up photographs; these would only form part of the evidence package if the photographs taken by the 'photography manager' later prove inadequate. It is important that the 'photography manager' is trained in using the equipment and can take images which are evidentially useful by *inter alia*: clearly identifying persons, ensuring

guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

⁷ Article 21, When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

⁸ Could include individuals who only provide evidence of exhibit handling for continuity purposes.

⁹ E.g. storing weapons in paper bags to prevent 'sweating' of exhibits.

physical evidence is photographed in situ before being seized; show size/scale when appropriate.

c. Appoint an Operational Witness: Where possible, an appropriate officer¹⁰ should be designated to act as the key observer/witness to the piracy incident. This individual may be identified in advance or when the piracy incident first arises. This Operational Witness must ensure they personally witness all relevant actions on board the warship including, but not limited to: first indication of piracy incident (e.g. distress call); grounds to suspect pirate ship or persons are pirates; actions of suspect vessels; state position of all ships relative to TTW; decision and basis to board; describe boarding operation; and post-incident transfer of seized property and persons. The Operational Witness is the key witness of what the warship observed, heard, and did.

d. Appoint Primary Boarding Witness (PBW): Where possible, appoint a single member of the boarding team to act as the key observer/witness of the boarding. The PBW will be a fundamental witness in any case against the pirates and it is therefore imperative that a suitably competent person is selected to perform the role. So far as possible, that PBW should personally witness all key parts of the boarding.

Stages of Piracy incident – Evidence preservation and collection

12. In approaching any anti-piracy incident, which must always be considered as potentially requiring the collection of evidence for transfer to Kenya, key stages can be identified. These stages require different considerations to ensure that evidence is properly identified, preserved and collected.

STAGE 1: Piracy alert - Securing of suspect vessel by boarding

13. When a ship first becomes aware of a piracy incident those key individuals responsible for evidence collection should be immediately alerted (e.g. exhibit custodian, photography and video manager, operational witness and primary boarding witness). The following actions should be taken to ensure that evidence relating to this stage of the incident is preserved and can later be collected and recorded in a statement and exhibited:

a. Chronological Information: To assist with the compilation of a thorough statement of witness by the operational witness a full operational narrative should be commenced and voice recording equipment should be activated. The narrative should include the grounds for the suspicion that the vessel is suspected of being engaged in piracy (e.g. vessel observed carrying out attack, skiff observed with boarding ladder and weapons on board).

¹⁰ The officer must have warfare training to ensure they can provide evidence of operational decisions and navigational and boarding decisions.

b. Positional Evidence: Locations (Lat/Long), course and speed of relevant vessels (own, pirate vessel(s) and any victim merchant ship) should be recorded using the most accurate navigational information available. This could be done manually or using an electronic chart system. If the latter is used an appropriate screen shot should be saved and exhibited by the 'operational witness' as an accurate representation of the data¹¹. This evidence is important for proving where the incident took place (high seas or territorial waters).

c. Proving the dhow/skiff boarded and persons on board were involved in an attack: If the warship receives an alert that a merchant ship is being attacked it is likely that the ship's helicopter will be first on the scene to provide evidence of this part of the incident. Skiffs are so small that they are difficult to track at range using a warship's radar. If the skiff/dhow is later boarded by the warship it is vital to be able to prove that these vessels were the same ones that were involved in the attack. The aircrew should therefore ensure that, when possible, they provide continuous tracking of the suspect vessel, with no break in observation, from the scene of the attack to the interdiction of the vessel by the warship. Photographs, or a detailed description, of the suspect vessel found at the scene of the attack should be recorded (this can then be compared against the description of the vessel interdicted). If a unit (air or warship) from another State is the only asset that has observed the pirate vessel at the scene of an attack it should be requested to track it until it can be interdicted¹², providing positional information and a description of the vessel.

d. Video/photography: When any incident comes within visual range of the warship, all available resources should, if practicable, be used to record events. The appointed 'video and photography manager' should ensure, where safe to do so, that a continuous video recording or series of photographs is maintained until the boarding team have secured the dhow/skiff. The video or photographs should capture images of the dhow/skiff at range to set the context for the boarding and the behaviour of the vessel in response to instructions from the warship to stop and be boarded. The video or photographs should also focus in on individuals on board the vessel, thereby providing identification evidence as well as recording evidence of their behaviour.

¹¹ The Operational Witness must ensure they can provide first hand evidence as to the veracity of the information by ensuring they are personally aware of such information as the incident arises.

¹² It may become necessary to take a statement of witness from this warship or aircraft if own personnel cannot prove, from their own observations, that the vessel interdicted was the same one that was involved in the attack.

STAGE 2: Securing suspect pirate vessel – Preservation and Collection of evidence

Immediate actions by Boarding Team – Evidence Preservation

14. The boarding team should take appropriate steps to preserve the scene until the evidence 'collection' team can be transferred from the warship to the dhow/skiff. To this end the Boarding team should:

- a. Ensure the Primary Boarding Witness (PBW) is able, so far as possible, to: make a note of the original positions of person on the vessel (particularly on a skiff) before they are moved to facilitate a boarding¹³; witness any significant events on the dhow/skiff including movement or disposal of potential evidence; and interaction between the suspects, between the suspects and victims, and suspects and boarding team. Disposal of any evidence prior to the arrival of the evidence collection team must be avoided whenever possible.
- b. Every person onboard the skiff/dhow (victim and suspects) should be given a unique identifying reference number by the PBW (e.g. 7 of 10). This number should, ideally, be written on a label and physically attached to the person using a method in which the person can not remove it without visibly damaging it (thereby preventing suspects swapping numbers)¹⁴.
- c. If suspects are in 2 or more vessels, their original location should be recorded before they are moved to another vessel.
- d. Not move or handle weapons/ammunition unless it is necessary to do so for safety reasons (e.g. to make weapons safe). Ideally, evidence should remain in situ until the arrival of the Photograph Manager and Exhibits Custodian. If weapons are handled, a record should be kept (ideally by the PBW) of who handled which weapon in the event that DNA or fingerprints found on the weapon need to be eliminated. Weapons are essential to the prosecution process and therefore must only be disposed of if they prove a danger to the ships or individuals thereon. If weapons are disposed of then pictures should be taken prior to their disposal and reasons for their disposal must be given in the form of a statement of witness.
- e. If ammunition poses an immediate risk to life it should be disposed of without delay and a note made by the PBW of what action has been taken and the reason for it. If the ammunition requires disposal but not immediately (i.e. unsafe to be transfer to own ship but does not present an immediate danger), it

¹³ It would assist if the PBW drew, and later exhibited, a sketch plan of the vessel indicating where persons onboard were prior to boarding and where weapons were found.

¹⁴ Ideally patient (medical) identification bracelets should be used as these can be marked and cannot be removed and transferred between suspects without being damaged. If these are not held a tie-wrap with an annotated identity disk can be used, secured around the wrist of the person.

should be photographed by the Photography Manager and recorded in situ by the PBW before being disposed of.

- f. If any weapons or piratical paraphernalia are found during disarming/force protection searches of suspects the PBW should make a note of which suspect (by reference to identifying number) had possession of such items.
- g. Keep suspects from talking to each other as much as possible.

Actions by following securing of dhow/skiff - Evidence Collection

15. The following personnel will be required:

- o Photography and Video Manager.
- o Exhibit Custodian.
- o Primary Boarding Witness.
- o Individual trained in questioning/interviewing witnesses, accompanied by translator.

Photography and Video Manager

16. Recording the details of all the physical evidence and suspects through photography is essential and it is important that the Photographic Manager conducts this thoroughly once onboard the dhow/skiff. Depending on the circumstances, it would be preferable to begin with videoing the dhow/skiff, everyone on board the skiff and dhow, as well as property onboard.

17. Photographs should then be taken of the following using a high quality digital camera:

- a. Suspects and Victims. Photographs should be taken of suspects front on and in profile. Photographs should include pirate number and personal details written clearly on a board held by suspect.
- b. Vessels: Vessel(s) hull and internal structure (to confirm or deny presence of equipment for lawful activity such as fishing nets and fish in the hold);
- c. Piratical equipment: Ideally piratical equipment should be photographed in situ. Such equipment would include, but not be limited to, weapons, ammunition, boarding ladders, and grappling hooks.

18. A photograph log specifying image number and what each image shows should be maintained. This will help with: witness identification, ensuring that suspects are properly referenced against their unique reference number (e.g. Image 12 = Cabdi Xaamud Qaasim, Ref 7 of 12); matching images with places on the vessels; and locating property to a position on the vessel.

19. The Photography and Video Manager should write a statement of witness, exhibiting¹⁵ the video tape and the memory card from the camera.

Exhibit Custodian

20. The Exhibit Custodian should seize relevant property, giving each exhibit a unique reference number. The exhibit should be properly labelled; it is recommended that an exhibit tag be attached to the exhibit and used to record all personnel who handle the exhibit. As continuity of evidence is an important aspect of the Kenyan criminal justice system the minimum number of people should handle exhibits; ideally only the Exhibit Custodian.

21. Exhibits should be properly bagged. In the case of exhibits which may be subjected to DNA or fingerprint testing it is important that they are placed in paper bags (tape sealed) to ensure the exhibit does not 'sweat'.

22. Exhibits are not to be left unattended and are to properly stored by the evidence custodian in a secure place with controlled access. A comprehensive log of all exhibits should be maintained by the Exhibits Officer.

Primary Boarding Witness

23. The PBW should continue to observe the suspects during the evidence collection phase to gain an understanding of the group dynamic (particularly if victims are suspected to be amongst the group of persons). The PBW should also direct the Photographic Manager and Exhibits Custodian to any matters which are of significance to the case of piracy.

Questioning

24. It will be important to obtain basic information from all persons onboard the dhow/skiff by questioning them, such as:

- Name (full names and names known by)
- Age
- Nationality
- City of Residence
- Clan (if relevant)
- Role of vessel
- Languages Spoken
- Next of Kin information

¹⁵ Details of the camera used, time dates, serial number (if any) of memory card and video tape, a statement that the images were not altered, adjusted or manipulated in any way and the tape/memory card has been held securely.

25. If there is any suspicion that some of the persons on board may be victims of piracy, all persons onboard should be questioned more thoroughly. No coercive or forcible means are to be used to question suspects or witnesses. Any information supplied must be on a purely voluntary basis. Any information provided is to be noted as coming from a specific person (use of the unique reference number for each suspect should continue). The questions will be case specific but should be designed to improve an understanding of what happened on board the dhow prior to the arrival of the warship. Witnesses should be questioned individually and away from other witnesses.

26. Efforts should be made to obtain statements from foreign witnesses (crew of dhow that has been pirated), including obtaining future contact details (e.g. place of residence). Statements should be taken on the standard witness forms in the witnesses' own language. If practicable, an English translation of the statement, signed as a true translation by the translator, should accompany the statement when it is transferred to the Kenyan Police.

STAGE 3: Transfer to Kenyan Police

27. The transfer of suspects to the Kenyan Police, as the competent Kenyan law enforcement authority, must be accompanied by the following documentation:

- Original copies of all statements of witness.
- Copy of all detainee records (to include, so far as possible, the physical condition of the transferred person, medical treatment provided, time of transfer to Kenyan authorities, the reason for suspect's detention, time detention commenced and any decisions taken with regard to suspect's detention).
- Original copy of photographic log (description of what each image shows).
- All exhibits must be accompanied by:
 - Original copy of statement(s) to provide full continuity of exhibits from seizure to transfer to Kenyan officials;
 - Original copy of the exhibits log;
- Any other relevant evidence.

28. A record should be made of all evidence handed to the Kenyan Police. Copies are to be retained of all original documentation transferred.



UNODC

United Nations Office on Drugs and Crime

18 November 2009

PIRACY SUSPECT TRANSFER PROCEDURES FOR MOMBASA, KENYA

INTRODUCTION

This document contains guidance for navies planning to handover piracy suspects to the Kenyan Authorities in Mombasa. It draws upon experience over many handovers and has been agreed with the Kenyan DPP and Police. The procedures allow for efficient handovers and minimize the risk of the Kenyan authorities rejecting suspects for prosecution.

They should be read in conjunction with The Attorney General's Guidance for the Transfer of Suspected Pirates, Armed Robbers and Seized Property to Kenya dated 1 July 2009.

PRIOR TO WARSHIP ARRIVAL

The warship CO should ensure (where possible) that prior to arrival at the Port of Mombasa:

- All exhibits are bagged, labeled and photographed;
- All statements covering the incident have been prepared and (where possible) translated into English;
- The identification of the pirates has been established as far as is possible;
- All suspected pirates have undergone a medical examination and where necessary have received the appropriate medical treatment;
- All suspected pirates are given a meal prior to arrival in Kenya (this reduces the complaints made by the pirates when first interviewed by Kenya authorities);
- All suspected pirates are kept out of sight as the vessel approaches the jetty;
- All information on the incident, including video and photographs has been transmitted to the authorities via EULO or UNODC.

ON ARRIVAL AT MOMBASA

On arrival at the port the warship will be met by the Kenya authorities who will be made up of the following agencies and personnel:

Prosecutors: One Senior Prosecutor plus 2 other prosecutors

Kenya Police Officers: There will be no more than 10 Police Officers including the OIC, Senior Investigators, Exhibit Handling Team and a Police Forensic Officer – an interpreter may also be in attendance

The EULO (for EU transfers) or UNODC will be able to provide a list of the names of those prosecutors and police who should be allowed to board the warship on arrival. **Only those named should be allowed to board the warship.** Additional police officers and Port Security personnel will also be in attendance to secure the port and convey the suspect pirates and exhibits to the Port Police Station. There is no requirement for them to board the warship.

Transfer Briefing

The warship should provide the Kenya authorities with a short presentation on:

- The factual events surrounding the capture of the suspected pirates (this presentation should be by way of PowerPoint or similar if possible);
- The legal situation that the Captain believed existed when he/she exercised the power to arrest and detain the suspected pirates.

Consideration of Evidence and Exhibits

At the completion of the brief the prosecutors should be provided with all the statements and photographs. The prosecutors should then be invited to examine them to determine whether they consider that the offence of piracy has occurred under Kenya law. A suitable quiet place should be provided. If adequate evidence has been provided in advance this should be a formality.

Whilst the prosecutors are examining the brief the police officers will examine and document all exhibits that form part of the case. Commencing this process whilst the prosecutors are examining the brief will help reduce the time the hand over will take.

When the prosecutors have completed their examination of the evidence they will inform the warship CO of their decision. If the decision is to accept the suspected pirates into Kenyan custody the Police Exhibit Handling Team will commence to remove the exhibits from the vessel whilst the Prosecutors and the Police Investigators should be taken to where the suspected pirates are being held.

The Senior Prosecutor and Senior Police Officer (and an interpreter if necessary) will then question the suspected pirates as to their identity and their treatment in custody. If the Kenyan authorities believe that the suspected pirates have been mistreated in anyway this may jeopardize the transfer. Once the Kenyan authorities are satisfied that the suspect pirates have been properly treated, they should be directed to sign the relevant documents releasing the suspect pirates from the warship to the Kenyan authorities.

Transfer to Kenyan Custody

Personnel from the warship should then escort the suspect pirates to the jetty where the Kenya Police will take formal custody of them. Kenya Police already on board the ship may assist the crew if required. The arrests should take place on the jetty NOT the warship.

When escorting the suspect pirates off the warship, personnel should bear in mind that the international press will be present on the jetty. The CO will want to consider what image they project during the hand over. In the past a low-key transfer has worked best: heavily armed personnel have never proved necessary as the suspects have always been compliant.

Once all the suspected pirates and the exhibits have been removed from the ship the Kenyan authorities will take the suspects to the Port Police Station. Once the police have left the press, if not controlled, may attempt to board the vessel.

If the CO of the warship wishes to invite the Kenyan authorities for a tour and refreshments, it is strongly recommended that such an invitation not be extended until the suspected pirates and all the exhibits are removed from the vessel.

Conclusion

The CO of the warship remains in control of all persons on board his ship regardless of who they are: the Kenyan DPP and Police have no legal authority on board a foreign warship.

Handovers that follow a set timetable, tightly controlled by the warship, have been shown to be the speediest and least disruptive to the ship's routine.

UNODC will translate this document for interested parties upon request. Any questions regarding this document or transfer and prosecution of piracy suspects can be directed to Alan.Cole@unodc.org

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USCG's MARSEC 104-6 (Rev. 3) is designated Sensitive Security Information (SSI) & not publicly available. PSA 2-09 (Rev. 1) contains a non-SSI version of guidance provided in MARSEC 104-6.

International Port Security Program
U.S. Coast Guard

Date: May 12, 2010
Contact: LCDR James T. Fogle
(202) 372-1038

Port Security Advisory (2-09)(Rev 1)

There are several areas in the world where acts of piracy and armed robbery against ships are prevalent. On May 12, 2010, the Coast Guard published Maritime Security (MARSEC) Directive 104-6 (Rev. 3), *Guidelines for U.S. Vessels Operating in High Risk Waters*, providing direction to owners and operators of U.S. vessels to respond to emerging security threats. The MARSEC Directive applies to U.S. flagged vessels operating in certain areas determined to be high risk.

For vessels to which MARSEC Directive 104-6 (Rev. 3) **does not apply**, the U. S. Coast Guard recommends that those vessels increase their security level while transiting or operating in areas where acts of piracy and armed robbery at sea are prevalent. The following security measures were directed to **U.S. Flagged Vessels** operating in high risk waters in MARSEC Directive 104-6 (Rev. 3) and may be considered by foreign flag vessels:

1. Vessel Security Plans (VSP) for vessels that operate in high risk waters must have security protocols for terrorism, piracy, and armed robbery against ships. If not, the VSP must be amended. VSP protocols which pertain to terrorism, piracy, and armed robbery against ships should cover the need for enhanced deterrence, surveillance and detection equipment; crew responses if a potential attack is detected or is underway; and communication procedures including the use of the Ships Security Alert System (SSAS), coordination with counter-piracy organizations that could be of assistance, and information control of sensitive security information (SSI).
2. Vessels operating, anchored, or berthed in high risk waters shall implement measures equivalent to Maritime Security Level (MARSEC) Level 2. Whenever possible, ships should avoid routes that transit through areas where attacks are known to have taken place.
3. Pirates continue to adapt to piracy counter measures, moving their operations further offshore to find targets of opportunity. They frequently change their tactics to achieve success. Due to the dynamic nature of piracy, counter piracy measures in the MARSEC Directive will be reviewed annually, or more frequently as necessary, to validate security measures. When necessary, region-specific guidance or requirements will be developed.
4. Company Security Officers (CSO) are encouraged to review the Worldwide Threat to Shipping and Piracy Activity Weekly Warning reports published by the Office of Naval Intelligence (ONI), weekly, and the ICC Commercial Crimes Services, monthly. Other current information is provided on websites maintained by the Maritime Security Center-Horn of Africa (MSCHOA), the U.K. Maritime Trade Operations (UKMTO), the U.S. Maritime Liaison Officer (MARLO), the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP), and the U.S. Maritime Administration (MARAD) website. These reports will help CSOs determine where recent incidents involving terrorism, piracy, and armed robbery against ships have occurred. These reports may be accessed at the following web sites:



http://www.nga.mil/portal/site/maritime (NG-IA)	http://www.icc-ccs.org (ICC) (IMB PRC)
http://homeport.uscg.mil/piracy (U.S. Coast Guard)	http://www.nmic.navy.mil/Intelligence_Community/piracy/piracy.html (ONI)
http://www.mschoa.eu (MSC HOA)	http://www.rncom.mod.uk/templates/MaritimeOperations.cfm?id=902 (UKMTO)
http://www.cusnc.navy.mil/marlo/ (MARLO)	http://www.recaap.org/index_home.html (ReCAAP)
http://www.marad.dot.gov/news_room_landing_page/horn_of_africa_piracy/horn_of_africa_piracy.htm (MARAD)	

5. This Directive does not preclude the employment of increased security measures by vessel masters above and beyond those recommended or required herein for designated HRW or other waters if, in the master's best judgment, such measures are warranted.

To supplement MARSEC Level 2 requirements, the following additional security measures must be implemented by vessel operators and owners to prevent and suppress acts of terrorism, piracy, and armed robbery against ships for vessels operating in HRW:

Prior to entering High Risk Waters

- (a) Conduct a risk assessment (or review your existing risk assessment) on your vessel and route utilizing the most current intelligence and information available.
- (b) Contact and provide voyage plans to the appropriate regional liaisons in the region. When operating in regions with no liaisons, operators are encouraged to contact the nearest coastal state.
- (c) Unless otherwise directed or advised by on-scene military forces, plan voyages using the International Recommended Transit Corridor (IRTC) and follow the Gulf of Aden Group Transits (GOA GT) if vessel speed ranges from 10 to 18 knots. For vessels making less than 10 knots, contact UKMTO for routing guidance. Information on IRTC and GOA GT can be found on the MSCHOA website.
- (d) Establish counter-piracy protocols (in the VSP or piracy annex) commensurate to the threat and vulnerability (risk) of the vessel that can be practiced and implemented by the crew in accordance with 33 CFR 104.230. When developing VSP protocols or piracy annexes, owners and operators are encouraged to consider incorporating Industry best management practices (BMPs). For the HOA/GOA region, BMPs are posted on the Maritime Security Centre-Horn of Africa website: www.mschoa.eu and U.S. Coast Guard's Homeport site: homeport.uscg.mil/piracy.

Protocols shall include:

- (1) Hardening the vessel against intrusions
- (2) Non-lethal methods for repulsing intruders.
- (3) Ship operations & maneuvers to evade attack.
- (4) Communications Procedures: Internal protocols for internal shipboard communications & external communications before, during and after an incident.



- (5) Protection of the crew.
 - (6) Procedures to take if the ship's security is compromised.
 - (7) Procedures for crew in hostage situations.
 - (8) Company policy/procedures for confronting intruders.
 - (9) Training program establishing frequency for drills and exercises.
- (e) Establish refuge area(s) where crewmembers may go in the event of an attack. The refuge area should provide crew with survival essentials comparable to what is provided in a lifeboat, including means of external communications suitable for the space utilized.
 - (f) Prepare by ensuring crew is well briefed, trained in counter-piracy procedures, and well rested.
 - (g) For vessels with a freeboard less than 15 meters (49.2 feet), make the vessel difficult to scale. Installation of equipment may not interfere with access to or deployment of the vessel's primary lifesaving equipment (liferafts, lifeboats, etc.) or create an especially hazardous condition.
 - (h) Reinforce or cover all side ports located below the main deck with locking mechanisms which cannot be disengaged by automatic fire to prevent unauthorized access to the vessel.
 - (i) Equip vessel with non-lethal means to disrupt, disorient, and deter boarders.
 - (j) Outfit the vessel with enhanced detection equipment that will allow crewmembers and/or security personnel to become aware of potential pirate activity, in time to implement counter-piracy protocols.
 - (k) Modify access to the wheelhouse with locking mechanisms which cannot be disengaged by automatic fire to prevent unauthorized access.
 - (l) Consider supplementing ship's crew with armed or unarmed security personnel. Security personnel shall meet the training requirements in 33 CFR 104.220 and the guidelines set forth in Port Security Advisory (PSA) 5-09 (series); Minimum Guidelines for Contracted Security Services in HRW. If transiting the Horn of Africa region, all vessels shall supplement ship's crew with armed or unarmed security based on a vessel-specific piracy threat assessment conducted by the operator and approved by the Coast Guard.

During transits of a High Risk Area

- (a) Send position reports regularly (recommended at least every 6 hours) to the appropriate regional operation center.
- (b) Ensure regular reports are provided to the owner/operator.
- (c) Use of AIS is recommended at all times; limit information to the vessel name, position, course, speed, navigational status, and safety-related information. Current intelligence does not support the contention that pirates are using AIS to identify vessels.
- (d) Comply with International Rules of the Road for Prevention of Collision at Sea; navigation lights should NOT be turned off at night.
- (e) Maintain a vigilant counter-piracy watch and ensure all shipboard counter-piracy precautions are in force. Augment watches as necessary to perform lookout duty, including lookouts astern and other locations on the vessel to cover radar blind spots.
- (f) Maintain highest practical speed in HRW. If capable, maintain speed 16 knots or greater.
- (g) Minimize external communications (radios, handsets) to essential safety and security related communication.
- (h) Activate supplemental security team watches, if so equipped.
- (i) If the master thinks a threat is developing, contact appropriate regional operation center. If no operation center is available, notify the owner/operator.



- (j) Man the engine room with a licensed engineer. While in high risk waters, this includes manning of automated engine rooms. If, due to the degree of automation used on board, manning the engine room is not practicable during transits of HRW, equivalent measures may be proposed.
- (k) Secure, control access, and regularly inspect restricted areas (bridge, engine room, steering gear room, and crew quarters) keeping in mind any adverse impact these may have to safety in the event of an accident. In any instance where there is a conflict between safety and security, the safety requirement should be paramount.
- (l) Ensure ladders and outboard equipment are stowed or on deck.
- (m) Ready non lethal means to discourage attack and or defend the vessel. For example, fire pumps and fire hoses, or equivalent, may be pressurized and ready for discharge overboard.
- (n) Avoid anchoring or drifting in high risk waters.
- (o) If a vessel is at anchor or in port in High Risk Waters, the provisions of Policy section paragraph 4.b should be implemented and all deck lighting should be illuminated at night. Prior to leaving port, the ship should be thoroughly searched and all doors or access points secured or controlled.
- (p) Follow any guidance from on-scene military forces that have counter-piracy intelligence that may aid the master in avoiding or thwarting piratical attacks.

If attacked or boarded

For Vessel:

- (a) Activate the Ship Security Alert System (SSAS). The SSAS shall be used in all instances when attacks occur aboard U.S. vessels, regardless of the location or duration of the attack.¹
- (b) Make a “Mayday” call on VHF Ch 16.
- (c) Inform regional liaison or counter-piracy organization for the region.
- (d) When/if time permits, inform your company.
- (e) Implement procedures established in the counter-piracy plan.
- (f) Ensure that the Automatic Identification System (AIS) is operating. If the AIS was previously turned off for the transit, turn it back on.
- (g) Send a distress message via Digital Selective (DSC) system and Inmarsat-C, as applicable.
- (h) Unless directed otherwise, all crew with exception of bridge team and security personnel should go to pre-planned piracy refuge areas.
- (i) Exercise information control to only essential personnel or agencies with a need to know. Information about vessel movements, capabilities, or the incident itself should be considered Sensitive Security Information and therefore should not be released to family, friends, or media. Email and phone use should be strictly monitored to ensure critical information isn’t leaked to the public.
- (j) If possible, deny use of ship’s communications equipment by pirates.
- (k) Heavy wheel movements are suggested for consideration to “ride off” attacking craft as they approach, with caution given to the effect on speed. Information from analysis of more recent attacks has shown that **maintaining highest practical speed** (which we still assess, along with sea state and weather) is a major determinant in defeating attacks. Masters are therefore advised to undertake maneuvers to increase pirate exposure to wind

¹ When an SSAS is activated, the alert is received by the Coast Guard Regional Command Center in Norfolk, VA and authenticated with the Company Security Officer. The Coast Guard coordinates a response and provides interagency notifications and coordination.

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and waves but, understanding the vessel's maneuvering characteristics, to be very mindful of helm movement effect on speed.

- (l) The vessel recordkeeping requirements as per 33 CFR 104.235 shall be adhered to.

For Company:

- (a) Upon notification of a pirate attack, notify and coordinate with U.S. Government authorities through the USCG ATLANTIC AREA Command Center at 1-757-398-6700.
- (b) All suspicious activities and events, including attacks by pirates, are to be reported to the National Response Center in accordance with 33 CFR Part 101.305. Activation of SSAS alerts in response to pirate attacks will need to be followed up by separate notification to the National Response Center by the owner or operator.

Post incident

- (a) Continue to exercise information control to only essential personnel or agencies with a need to know. No information about vessel movements, capabilities, counter piracy action / tactics employed or the incident itself should be released. Email, internet, and phone use should be strictly monitored to ensure Sensitive Security Information is not leaked to family, friends, or media.
- (b) If a vessel is attacked or boarded by pirates, several agencies will require access to the vessel and crew to conduct a series of investigations, including but not limited to the FBI and USCG. U.S. Government agencies will attempt to coordinate these interviews and investigations to avoid duplicative efforts that may negatively affect the crew or impact the vessel's ability to return to service. The vessel crew is expected to treat the vessel as a crime scene, preserve any evidence that may be useful to the investigations, and cooperate with investigators. The Coast Guard's authority to investigate the incident includes but is not limited to 14 U.S.C. § 89, 14 U.S.C. § 95, 14 U.S.C. § 141, as well as 46 U.S.C. Chapter 701.
- (c) If the vessel is damaged or the crew capacity is diminished as a result of a piratical attack, the USCG may require an inspection to ensure the adequacy of the vessel and crew for the ships intended continued operation. The Coast Guard's authority to inspect the vessel includes but is not limited to 46 U.S.C. Chapters 33 and 63 and 14 U.S.C. 89.
6. This MARSEC Directive and associated Annex in no way precludes the employment of additional or increased security measures by Company Security Officers (CSO) or Vessel Security Officers (VSO) for the safety and security of the vessel.
7. Nothing in the MARSEC Directive shall constrain the master's ability or authority to make operational decisions to protect the lives of the crew, protect the vessel, or its cargo.
8. The MARSEC Directive does not authorize deviation from compliance with U.S. or foreign requirements on the carriage of weapons aboard merchant vessels.
9. The MARSEC Directive does not authorize deviation from compliance with U.S. or International safety requirements, but temporary deviations from existing certificates will be considered given that the owner/operator proposes a suitable equivalent level of safety.

For submission of pirate specific vessel security assessments, and counter-piracy plans, contact the Marine Safety Center at (202) 475-3445 or email to securityplaninfo@uscg.mil. For questions or concerns pertaining

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to this MARSEC Directive and acknowledgement of receipt of the directive, contact the Vessel Security Program Manager for (CG-543) at 202-372-1038 or email to CG543@uscg.mil.

THE CONDITIONS OF ENTRY APPLICABLE TO VESSELS OUTLINED IN PORT SECURITY ADVISORY 03-10 REMAIN IN EFFECT.

U.S. Department of
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**United States
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International Port Security Program
U.S. Coast Guard

Date: June 18, 2009
Contact: LCDR James T. Fogle
(202) 372-1038

Port Security Advisory (3-09)

SUBJECT: GUIDANCE ON SELF-DEFENSE OR DEFENSE OF OTHERS BY U.S. FLAGGED COMMERCIAL VESSELS OPERATING IN HIGH RISK WATERS

1. Purpose

This document is intended to provide guidance to U.S. flagged commercial vessels and embarked personnel, including contract security personnel, not entitled to sovereign immunity and operating in High Risk Waters (HRW),¹ for employment of force in self-defense or defense of others, as well as defense of the vessel. This guidance does not apply to U.S. flagged vessels entitled to sovereign immunity. It does not apply to U.S. Government personnel, civilian or military, embarked on non-sovereign-immune U.S. flagged commercial vessels to provide vessel security. This document restates existing law in this area. It does not establish new standards or duties with respect to the right of self-defense or defense of others. The examples provided herein are included merely to illustrate how the outlined principles could apply to the issue of piracy. Actual situations will vary, based on the specific circumstances of a ship's defensive measures and capabilities at hand, and the facts of the situation confronted. This document does not prescribe rules of engagement. Rather, it provides guidance intended to aid companies in the development of their vessel security plan submissions for operating within HRW. This guidance should not be read to mandate specific actions at particular points of time. Nothing in this document prevents an individual from acting in self-defense or defense of others. In addition to the right of self-defense and defense of others, 33 U.S.C. § 383 provides authority for the master and crew to respond to a piratical attack, authorizing them to "oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel..."

2. Definitions

The following definitions apply for the purpose of this guidance:

- a. Self-defense or defense of others means the act of thwarting an attack upon oneself, another person, or both by using force, up to and including deadly force.
- b. Defense of the vessel means the act of using force to prevent damage to or theft of a vessel or its property. It is a concept separate from defending individuals embarked aboard the vessel. That is intended to be covered within the definition self-defense or defense of others.
- c. Imminent means may occur at any moment, ready to take place, impending, threateningly or menacingly near or at hand.
- d. Imminent danger means an attacker poses an imminent threat of great bodily harm or death to oneself or others.

¹ This guidance anticipates that contracted security personnel may be embarked on U.S. flagged merchant ships operating in HRW, but may also or alternatively be embarked on U.S. flagged vessels (not entitled to sovereign immunity) providing a security escort for a U.S. flagged merchant ship operating in HRW. See USCG Minimum Guidelines for Contracted Security Services in High Risk Waters for additional guidance relevant to contracted security personnel.



Examples of imminent danger include, but are not limited to, aiming or firing weapons at a U.S. flagged vessel with individuals embarked, or an attempted armed, non-consensual boarding, without legal authority, of a U.S. flagged vessel by another vessel (other than U.S. or foreign warships, law enforcement vessels, or other vessels clearly marked as being on non-commercial government service). It might also include the act of brandishing weapons directed at crewmembers or security personnel, where there is a reasonable belief that the attacker(s) also has the means and opportunity to inflict great bodily harm or death on the individual or others in the vicinity.

The determination of imminent danger is fact dependent, and the law may be broader than the paradigm outlined above. Although the law may allow for other considerations, or use slightly differing terminology based on an individual's particular circumstances, the Coast Guard uses the following as a helpful training tool for its members to explain the concept: Imminent danger would exist when an attacker manifests apparent intent to cause great bodily harm or death to oneself or others, as demonstrated by the following elements, each of which is present at the same time:

(1) Means. The attacker has the apparent ability, either physically (relative size, strength, expertise, or other attributes) or through the use of an object(s), to inflict great bodily harm or death to oneself or others. Physical means can include in some circumstances the use of hands or feet to choke or beat an individual. Objects can include weapons (e.g., firearms, explosives, knives, etc.), as well as other devices under the control of the attacker;

(2) Opportunity. The combination of circumstances by which an attacker apparently can cause great bodily harm or death to oneself or others (e.g., access to a weapon that is within range to be used against oneself or others); and

(3) Act. The attacker makes an overt movement which induces one to reasonably believe that he is manifesting a threat to cause great bodily harm or death to oneself or others (e.g., an attacker points or discharges a firearm or other weapon at crewmembers or security personnel, or employs or prepares to employ climbing gear for an armed, non-consensual boarding).

e. Great bodily harm means an injury to the body that results in unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. It is synonymous with "serious bodily injury", "serious bodily harm", "serious physical injury", or "grievous bodily injury".

f. Force means the affirmative application of techniques or actions, typically listed within the vessel security plan, directed against a specific vessel or person(s).

g. Non-deadly force means any force other than deadly force.

h. Deadly force means any force that is likely to cause great bodily harm or death.

i. Warning shot means a signal to a vessel to stop. The term does not include shots fired as a signal that the use of deadly force is imminent, a technique that should not be employed.



3. Guidance

a. Guiding principles

Vessel masters retain control of and authority over their vessels, crewmembers, and embarked security personnel at all times. Any use of force employed in accordance with the guidance set forth herein is subject to the direction of the vessel master. Only that force reasonably necessary under the circumstances should be used. Nothing in the application of this guidance shall be construed as to necessarily require personnel to meet force with equal or lesser force.

b. Self-defense or defense of others

In the exercise of self-defense or defense of others, crew and security personnel may use all available means to apply that force reasonably necessary to defend themselves or others from harm, including the use of deadly force if required.

c. Use of deadly force

Subject to the above, deadly force may only be used in self-defense or defense of others, when an individual has the reasonable belief that the person or persons to which the deadly force would be directed poses an imminent danger of death or great bodily harm. The objective when using deadly force in self-defense or defense of others is defense of life. The use of deadly force in self-defense or defense of others may include the use of ordnance fired into a vessel, if necessary for self-defense or defense of others. Accordingly, when confronted with a person or vessel that poses an imminent danger of death or great bodily harm, personnel and vessels to which this guidance applies may use reasonable force, up to and including deadly force, in self-defense or defense of others.

d. Use of non-deadly force

Subject to the above, non-deadly force may be used in the following circumstances:

- (1) for self-defense or defense of others.
- (2) for defense of the vessel.
- (3) to prevent the theft or, intentional damage to, or destruction of property (including the U.S. flagged vessel) that the master, crew, or security personnel are authorized to protect.

Non-deadly force tactics could include maneuvers by the vessel, deployment of sonic blasts, use of fire hoses to flood a vessel threatening to attack, the use of disabling fire by properly trained personnel, or other non-lethal means employed by crewmembers or security personnel, directed at a vessel or persons threatening attack.

e. Retreat

Although not required under the law, retreat (e.g., to a safe room) may be an appropriate alternative to the use of force and may be the most reasonable choice under the circumstances. This is particularly appropriate where disengaging temporarily from a confrontational situation may reduce tensions, mitigate risk, reduce a potential threat, and provide time for the arrival of additional assets or personnel, including military or law enforcement assets or personnel. U.S. flagged vessels and embarked persons, including crew and security personnel, are not required to retreat to avoid situations in which the use of force, including deadly force, is appropriate.

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f. Defense of the vessel and other property

Masters always retain the inherent right to use force in defense of the vessel. Masters must inform the crew and security personnel of their authority to employ force in defense of the vessel. Masters may restrain the authority of the crew and security personnel to employ force in defense of the vessel. If a master withholds from the crew or security personnel any use of force authority for defense of the vessel, the master must approve the withheld portion prior to its use in defense of the vessel. Defense of the vessel alone does not justify deadly force. Unless otherwise directed by a master, the crew and security personnel may use non deadly force in defense of the vessel. Masters should consider all the circumstances when employing force, and resort to deadly force only when there is imminent danger of death or great bodily harm.

g. Use of signals

Signals, including firing of warning shots, may be employed, but are not required. Warning shots are not a use of force, and should not be used if they will endanger any persons or property. Moreover, warning shots should not be used as a signal that the use of deadly force is imminent.

4. The conditions of entry applicable to vessels outlined in Port Security Advisory 1-09 remain in effect.

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International Port Security Program
U.S. Coast Guard

Date: November 4, 2009
Contact: LCDR James Fogle
(202) 372-1038

Port Security Advisory (4-09)(Rev 2)

The Coast Guard has received a number of questions from U.S. vessel operators and company security officers over concerns about compliance with U.S. law when placing firearms on board their vessels to defend against or deter pirate attacks in high-risk waters. The Coast Guard has worked closely with the Department of Justice, and the Department of State's Directorate of Defense Trade Controls (the agencies responsible for the International Traffic in Arms Regulations [ITAR]), and Customs and Border Protection (CBP) (the agency responsible for enforcement of ITAR), to provide guidance for owners, operators, and security teams of U.S.-flagged vessels who want to place firearms aboard vessels. This guidance does not address foreign-flagged vessels. The Department of State's Directorate of Defense Trade Controls website <http://www.pmdtcc.state.gov/> provides additional guidance as well as links to forms and the electronic licensing process. The website of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provides guidance on federal firearms regulations http://www.atf.gov/pub/fire-explo_pub/2005/p53004/index.htm.

Restrictions for U.S.-Flagged Vessels (Inbound and Outbound)

U.S. operators or persons carrying, possessing, or transporting firearms aboard U.S.-flagged vessels in any location must comply with all applicable laws, including state laws, the Gun Control Act, the National Firearms Act, and International Traffic in Arms Regulations (ITAR) in 22 C.F.R. Parts 120-130.

ITAR

The export of shotguns with barrel lengths over 18 inches is governed by the Department of Commerce. However, certain shotguns with combat features fall under the control of the ITAR. All other firearms and ammunition exported from the United States by U.S. flagged vessels are subject to ITAR. For firearms to be exported, the operator of a vessel, who must be a U.S. person defined in accordance with 22 C.F.R. 120.15, can obtain a temporary export license (DSP-73) in accordance with 22 C.F.R. § 123.5.

A DSP-73 temporary export license is valid for up to four years and may be used for multiple entries and exits of the firearms from the U.S. and would require the operator to identify and list on the license application the firearms or other defense articles (e.g., ammunition) to be temporarily exported for use aboard the vessel. The license application must also list each foreign country for each port of call that will be visited within those four years. Prior to exportation, an Electronic Export Information (EEI) must be filed in the Automated Export System (AES) and the DSP-73 decremented by CBP. A license obtained by the operator could allow the operator to stow the firearms on board the vessel in a U.S. port and keep them stored aboard the vessel until required for use within High Risk Waters by the crew or contracted security. The temporary export license would not allow transfers of the firearms to any other vessel, although the crew could be changed. In order to apply for this license, the operator must register with the Department of State, Office of Defense Trade Controls (DDTC).

Another option under ITAR is for the security teams or crew to export their own firearms and ammunition under the personal use exemption detailed in 22 C.F.R. § 123.17. This exemption allows U.S. persons to export up to three non-automatic firearms and 1000 rounds of ammunition for their personal use. It only applies to non-automatic firearms not greater than .50 caliber. No license is required, but all conditions to qualify for the exemption must be met. *See* 22 C.F.R. § 123.17(c). Among other conditions, the personal use exemption requires

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that the arms “be for that person’s exclusive use and not for reexport or other transfer of ownership.” 22 C.F.R. § 123.17(c)(3). In order to claim the license exemption, the individual must file an EEI in AES and make the claim at least 24 hours prior to each departure from the United States. *See* 22 C.F.R. § 123.22. The owner must also declare an intention to return the arms on each return to the United States. For more information on AES, see www.aesdirect.gov.

The exporter is encouraged to contact DDTC if they have any questions or concerns. Contact information can be found on the DDTC website: <http://www.pmddtc.state.gov/>.

Gun Control Act, National Firearms Act, Regulations

ITAR restrictions notwithstanding, U.S. law places additional restrictions on the purchase, possession, transfer, and transport of firearms within the United States and across state lines. The federal laws governing firearms are the Gun Control Act (18 U.S.C. § 921 *et seq.*) and the National Firearms Act (26 U.S.C. § 5801 *et seq.*) and their implementing regulations at 27 C.F.R. Parts 478-479. For example, firearms regulated under the National Firearms Act must be registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and transferred only with the approval of ATF. These firearms include machine guns, short-barrel rifles, short-barrel shotguns, silencers, and destructive devices. The Gun Control Act sets out classes of persons who are forbidden from possessing or transporting firearms or ammunition in or affecting commerce. *See* 18 U.S.C. § 922(g).

State and Local Laws

State laws may impose independent restrictions on firearms and should be researched before bringing firearms into a port. The ATF compiles a compendium of the State laws and makes it available on its public website: <http://www.atf.gov/firearms/statelaws/28thedition/index.htm>.

Foreign Purchase

If U.S. operators or persons purchase weapons in a foreign country for their use and stow them aboard the vessel in a foreign port, there would be no U.S. licensing requirements while they are abroad (although firearms brokering prohibitions would still apply). Prior to bringing the firearms into the United States, however, the owner of the firearms would have to ascertain whether a legal exception applied to the general restrictions on importation. The Gun Control Act generally bars importation of firearms, subject to certain exceptions, *see* 18 U.S.C. §§ 922(l) and 925(d), and the National Firearms Act forbids the importation of certain firearms, including machineguns, short-barrel rifles, short-barrel shotguns, silencers, and destructive devices. There are also restrictions on importing surplus military firearms, non-sporting firearms, and firearms from proscribed countries (18 U.S.C. § 925(d)(3); 27 C.F.R. § 447.52).

If importation were permissible under those laws, the owner would have to register with the Department of State and obtain a DSP-61 temporary import license. The DSP-61 alone would not be sufficient to excuse compliance with the Gun Control Act and the National Firearms Act. It is mandatory that the DSP-61 be presented to U.S. Customs and Border Protection (CBP) and be properly decremented upon importation and exportation. Upon exportation, the EEI must be filed in AES and the DSP-61 decremented by CBP. Alternatively, the operators/security teams may, if legally permitted, permanently import the foreign-bought firearms through a federally licensed firearms importer or dealer, using ATF Form 6. However, if the operator/security team wishes to temporarily export the firearm from the United States, they must file a DSP-73 (unless the firearm qualifies for the exemption under 22 C.F.R. §123.17). (See the ITAR section above for more information on the DSP-73 license and exemptions).

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Summary

Operators must ensure compliance with all U.S. laws and regulations in order to purchase and transport firearms to the ship for loading.

For U.S. flagged vessels inbound or outbound, if the U.S. persons aboard complied with the Gun Control Act, the National Firearms Act, and applicable state law, the most flexible ITAR solution would be for the vessel operator to obtain a DSP-73 temporary export license, which would allow the vessel to import and export the listed firearms into and out of the United States over a four-year period, but the temporary export license would not authorize transfers of the firearms to other individuals. Although a personal exemption under ITAR, 22 C.F.R. § 123.17, could also be used, it would need to be reissued for every trip. Like the temporary export license, it would not allow for the transfer of weapons to other individuals.

Although this PSA addresses compliance with U.S. law, vessel owners, operators and security companies must still comply with foreign Port State requirements when calling on a port. Prior to entering a foreign port with firearms aboard, and also when security teams are utilizing a personal exemption and flying into a port state with their weapons, vessels should contact the local embassy for assistance in determining the individual port state's requirements for transporting firearms within that country. Close coordination between the ship's agent and the local embassy will help ensure local laws are not inadvertently violated.

**THE CONDITIONS OF ENTRY APPLICABLE TO VESSELS OUTLINED IN PORT SECURITY
ADVISORY 7-09 REMAIN IN EFFECT.**

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International Port Security Program
U.S. Coast Guard

Date: June 18, 2009
Contact: LCDR James T. Fogle
(202) 372-1038

Port Security Advisory (5-09)

SUBJECT: MINIMUM GUIDELINES FOR CONTRACTED SECURITY SERVICES IN HIGH RISK WATERS

For U.S. vessels subject to 33 CFR Part 104 and MARSEC Directive 104-6, contracted security services supplementing ship's crew shall meet or exceed the following standards to demonstrate competency and adequacy to perform the assigned task:

1. Security personnel operating on U.S. vessels subject to 33 CFR Part 104 must possess a Transportation Worker Identification Credential (TWIC). Individuals who do not possess a TWIC due to ineligibility under the immigration and nationality requirements of 49 C.F.R. § 1572.105ⁱ will be allowed to perform security duties on these U.S. vessels only if:
 - the individual's security duties are strictly limited to operations in high risk waters designated by MARSEC Directive 104-6 ;
 - the individual possesses personal identification that meets the requirements of 33 CFR 101.515;ⁱⁱ and
 - the individual has undergone a terrorism check (Terrorist Screening Data Base) by the U.S. Government.

Vessel operators interested in pursuing this option should contact U.S. Coast Guard Headquarters, Cargo and Facilities Branch, CDR David W. Murk at (202) 372-1171 or David.W.Murk@uscg.mil.

2. If required by the MARSEC Directive, security personnel shall be embarked at all times while underway in the applicable High Risk Waters (HRW), in accordance with the vessel's approved Vessel Security Plan (VSP). They should be embarked in sufficient time for them to familiarize themselves with the vessel prior to entering HRW.
3. The intent of contracted security services is to provide point protection of the vessel and crew upon which embarked against attack, unauthorized boarding, or both. These security personnel should not be assigned any additional duties which would conflict with their security mission.
4. Contracted security personnel may employ force in self-defense or in the defense of others, or in defense of the vessel or property. For additional guidance on self-defense or defense of others or defense of the vessel or property, see U.S. Coast Guard Port Security Advisory 3-09 "Guidance for Self-Defense and Defense of Others."
5. If unauthorized individuals attempt to or successfully embark the vessel, the vessels master, designated crewmember (if one is designated by the ship), or security personnel should immediately contact the appropriate regional liaison/operations center providing number of attackers, description of arms, status and location of crew, and other pertinent facts. Contacts include UKMTO (for Horn of Africa), MARLO (for Horn of Africa, Arabian Sea, Gulf of Oman, and the Persian Gulf), ReCAAP (for Asia), or the appropriate coastal state response organization.
6. If contracted security personnel are to be armed with firearms, U.S. citizens must meet the requirements of 18 U.S.C. § 922(g)ⁱⁱⁱ and foreign citizens must meet a substantially equivalent standard and the requirements of all port states visited while the armed security remains onboard. The contracted security company must be appropriately licensed and bonded in a state and meet any requirements imposed by all

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foreign countries visited. Security personnel must meet the minimal licensing and training requirement for the state or foreign country in which they are licensed. All armed security personnel must have undergone training on the firearms they are carrying, weapons safety, and the employment of force in self-defense, and the defense of others.

7. All contracted security personnel shall meet the training requirements for security personnel in 33 CFR 104.220^{iv}. Contracted security personnel shall also possess the training, understanding, and capability to effectively defend the vessel and crew while in HRW, and in accordance with the approved VSP.
8. Contracted security personnel shall display proper identification at all times, such as a laminated badge with a photograph that clearly identifies them as part of the contracted security service.
9. Security services shall have a communications plan that provides contracted security personnel with a means for effective and continuous communication among themselves, with the crew, and with the appropriate regional liaison/operations center.
10. The security services' means of continuous communication shall be intrinsically safe where required by the vessel's cargo or operations.
11. Security personnel shall be fluent in English and be capable of properly communicating with the vessel operators, crew and authorities and be capable of understanding the VSP.
12. Contracted security personnel shall be provided with sufficient shelter and accommodations to protect against severe weather conditions such as high heat, oppressive sunshine, and extreme cold, and for appropriate rest.
13. Contracted security personnel may not stand a scheduled watch for more than 12 hours in a 24-hour period.

The conditions of entry applicable to vessels outlined in Port Security Advisory 1-09 remain in effect.

ⁱ 49 CFR 1572.105 - Immigration status.(a) An applicant applying for a security threat assessment for an HME must be— (1) A citizen of the United States who has not renounced or lost his or her United States' citizenship; or (2) A lawful permanent resident of the United States, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101); or (3) An individual who is— (i) In lawful nonimmigrant status and possesses valid evidence of unrestricted employment authorization; or (ii) A refugee admitted under 8 U.S.C. 1157 and possesses valid evidence of unrestricted employment authorization; or (iii) An alien granted asylum under 8 U.S.C. 1158, and possesses valid evidence of unrestricted employment authorization. (b) To determine an applicant's immigration status, TSA checks relevant Federal databases and may perform other checks, including verifying the validity of the applicant's social security number or alien registration number.

ⁱⁱ 33 CFR 101.515 – Requirements include “this personal identification must, at a minimum, meet the following requirements: (1) Be laminated or otherwise secure against tampering; (2) Contain the individual's full name (full first and last names, middle initial is acceptable); (3) Contain a photo that accurately depicts that individual's current facial appearance; and (4) Bear the name of the issuing authority. (b) The issuing authority in paragraph (a)(4) of this section must be: (1) A government authority, or an organization authorized to act of behalf of a government authority; or (2) The individual's employer, union, or trade association.”

ⁱⁱⁱ 18 USC 922(g) - It shall be unlawful for any person—

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien— (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;

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- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that— (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence;
—to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

^{iv} 33 CFR 104.220- Training requirements include “knowledge, through training or equivalent job experience, in the following, as appropriate: (a) Knowledge of current security threats and patterns; (b) Recognition and detection of dangerous substances and devices; (c) Recognition of characteristics and behavioral patterns of persons who are likely to threaten security; (d) Techniques used to circumvent security measures; (e) Crowd management and control techniques; (f) Security related communications; (g) Knowledge of emergency procedures and contingency plans; (h) Operation of security equipment and systems; (i) Testing and calibration of security equipment and systems, and their maintenance while at sea; (j) Inspection, control, and monitoring techniques; (k) Relevant provisions of the Vessel Security Plan (VSP); (l) Methods of physical screening of persons, personal effects, baggage, cargo, and vessel stores; and (m) The meaning and the consequential requirements of the different Maritime Security (MARSEC) Levels. (n) Relevant aspects of the TWIC program and how to carry them out.”

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Date: July 24, 2009

Contact: LCDR James T. Fogle
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Port Security Advisory (6-09)

Subject: Procedures for Obtaining a Name-Based Terrorism Check For Security Personnel Operating in High Risk Waters (HRW) In Accordance With Port Security Advisory (PSA) 05-09 (Rev 1)

1. OVERVIEW

This document outlines procedures for submitting names of contracted security personnel who do not possess a TWIC.

2. GATHERING INFORMATION

The following information will be necessary to conduct the name-based check:

- Legal Name (Last, First, Middle, Suffix)
- Date of Birth (Month Day Year (no spaces; 12121970))
- Gender
- Place of birth
- Citizenship
- Any known aliases
- Current street address

3. INITIAL SUBMISSION OF INFORMATION

- a. Information gathered must be contained in a spreadsheet and submitted to the Coast Guard no later than July 30, 2009. To do this, go to the main Homeport web site, and follow the path:

Missions>Domestic Vessels>Domestic Vessel Policy> Name Based Terrorist Check

- b. Download the spreadsheet, fill in the required information and forward to COMDT (CG-544) via email to CDR D.W. Murk, david.w.murk@uscg.mil and LT D.S. Brennan, devon.s.brennan2@uscg.mil.
- c. After receiving the information, COMDT (CG-544) will compile lists and transmit them to TSA who in turn will conduct the name-based terrorism check. TSA will determine whether or not an individual poses or is suspected of posing a security threat and report positive results to the Coast Guard. A positive result indicates that the name may match a name on one of the watch lists.

4. RESULTS OF INITIAL TERRORIST CHECK

- a. TSA will communicate a positive threat assessment to the Coast Guard which will result in that person being barred from providing security on a U.S. flagged vessel. The Coast Guard will notify the relevant vessel owner/operator of positive results utilizing the contact information provided during the submission process.
- b. COMDT (CG-544) will post a list of contract security personnel who have successfully completed the name-based check to the secure (pass-word protected) side of Homeport that will be accessible to Company Security Officers (CSOs) and Vessel Security Officers (VSOs). After logging into the Homeport web site, select Missions >Domestic Vessels>Domestic Vessel Policy>Name based terrorist check. The estimated turn-around time is 3-4 business days.
- c. All personnel already performing security duties as of the date of this PSA will continue to have access to the vessel while the assessment is being performed. For security personnel not already performing security duties, results of the name based check must be received prior to commencing security duties aboard U.S. flagged vessels in high risk waters (HRW).

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5. SUBSEQUENT SUBMISSION OF CONTRACT SECURITY PERSONNEL INFORMATION
 - a. Following the initial submission deadline, subsequent lists will be submitted to TSA on a bi-monthly basis using the instructions above. New submissions can be forwarded to the Coast Guard at anytime; however, the information will only be transmitted to TSA weekly.
 - b. When submitting new security personnel for vetting, do not include any personnel whose information has previously been submitted.

6. CONTRACT SECURITY PERSONNEL NO LONGER WORKING IN HRW
 - a. If no further work is contemplated by the member, the relevant CSO and VSO should notify the Coast Guard in order for their name(s) to be removed from the list of approved personnel upon completion of duties (end of contract) as contracted security personnel aboard U.S. flagged vessels in HRW.
 - b. Send information to COMDT (CG-544) utilizing the email addresses listed in section 3.b of this Port Security Advisory.

7. THE CONDITIONS OF ENTRY APPLICABLE TO VESSELS OUTLINED IN PORT SECURITY ADVISORY 1-09 REMAIN IN EFFECT.

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Date: October 19, 2009
Contact: LCDR James Fogle
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Port Security Advisory (8-09)

PORT STATE RESPONSE TO REQUEST FOR INFORMATION REGARDING CARRIAGE AND TRANSPORT OF SELF-DEFENSE WEAPONS ABOARD U.S. COMMERCIAL VESSELS

U. S. Coast Guard Maritime Security Directive 104-6 (series) requires **U.S. flagged vessels** operating in the Horn of Africa (HOA) and Gulf of Aden (GOA) regions to evaluate their vulnerability and provide additional armed or unarmed security as needed. Port Security Advisory (4-09) - International Trafficking in Arms Regulations (ITAR) Guidance to U.S. vessel owners, operators, and security teams - provided additional guidelines on the laws associated with arming security personnel on vessels. In May 2009, The U.S. Department of State sent a demarche on behalf of the U.S. commercial shipping industry to determine port state laws and restrictions on the carriage of self-defense weapons for vessels operating in high risk waters. The U.S. interagency is committed to providing U.S. vessel owners, operators, and security teams with as accurate and up-to-date information as possible, therefore the list of port state responses will be updated as new information is received.

At the time of this posting only five nations have responded. It is anticipated that the responses will either be favorable, favorable with stipulations/restrictions or unfavorable. The U.S. Department of State has committed to continue to work with the rest of interagency interests and industry to identify high priority ports and to ask port states for a response to the demarche. U.S. vessel owners and operators affected by this Port Security Advisory are requested to provide the Coast Guard with specific port call information so that a prioritized list of ports can be compiled.

U.S. vessels considering operating in High Risk Waters with armed security are directed to review the port state responses often. The information will be posted on the U.S. Coast Guard's Homeport, as well as U.S. Department of Transportation (DOT)/ Maritime Administration (MARAD)'s Maritime Advisories websites:

U.S. Coast Guard
<http://homeport.uscg.mil/piracy>

U.S. Maritime Administration
http://www.marad.dot.gov/news_room_landing_page/maritime_advisories/advisory_summary.htm

THE CONDITIONS OF ENTRY APPLICABLE TO VESSELS OUTLINED IN PORT SECURITY ADVISORY 7-09 REMAIN IN EFFECT.

Note: This is an unofficial summary of responses from Bryant Maritime Consulting

Country	High Priority Ports	Weapons Allowed Aboard	Armed Security Transit Allowed	Special Requirements	Comments
Highest Priority Ports Provided By Industry					
Djibouti	Djibouti	Yes	Yes	Armed Security as part of the crew permitted without fee. Embarking or disembarking security teams in Djibouti results in a fee. Transit to and from an airport with weapons also results in a fee.	All Private Security Firms must have a special license. The license fee is \$15K/month, 80K/6 Month or 150K/year. These fees are in US dollars, and are for a one month, six month or year from the time fee is paid. A transit fee of \$500 per trip is charged for transits of weapons to and from airports or seaports.
Oman	Muscat, Salalah	Yes	Yes	Contact Local Port Authority	Contact Local Port Authority
Egypt	Suez				
Kenya	Mombasa	Yes	Yes	The Kenya Maritime Authority is the agency responsible in Kenya to determine whether a declaration is required to carry weapons into Kenya aboard a non-naval vessel. Port Police Senior Superintendent stated that his office would have to coordinate.	While possible to get permission to transport to/from the sea-port, the Superintendent of police indicated it is more difficult than carrying them in on a vessel.
South Africa	Durban	Yes	Yes	All firearms in South Africa must be registered, a temporary import export license is required. For transport to/from an airport an import/export license is required.	
Sudan	Port Sudan				
Other High Priority Ports Provided By Industry					
United Arab Emirates	Fujairah	No	No		Persons or vessels entering with arms will be arrested.

Singapore	Singapore	Yes	Yes		Singapore indicated that arms would be allowed on a case-by-case basis. If disembarking crews would have to make arraignments with Singapore police
Bangladesh	Chittagong				
Brazil					
Cameroon	Doula				
China					
Mexico					
Pakistan	Karachi, Port Quasim				
Sierra Leon	Freetown				
Tanzania	Dar Es Salaam				
Trinidad & Tobago					
Other Countries in receipt of the DOS Demarche who have responded					
Latvia		No	No		
Mauritius		Yes	Yes	Weapons must be declared, Customs would confirm that weapons are in the custody of the crew, and that same weapons are aboard upon departure, or weapons could be turned over to customs while in port. Armed Security transiting would require Government transport of the weapons	

Sweden	No	No	Although there are no provisions for non-military carriage of weapons, the desk officer, Security Department, Peace Support Operations Section, the Swedish MFA indicated that "each individual case" to bring firearms into country would be evaluated.	Established procedure for transporting weapons to/from the airport and the Freeport in order to join commercial vessels. It was indicated that this is a relatively common practice facilitated by contacting the Malta Police Weapons Office who in turn issue a special permit to transport the weapons.
Malta	Yes	Yes	Weapons must be declared to Customs upon arrival at Freeport. If the weapons are left on the ship the only possible requirement would be to place the weapons "under bond" while the ship remains in port. For transport to/from airport contact Malta police.	
Nicaragua	Yes	Yes	Weapons must be declared, personnel must have permission to carry weapons. Security Teams would have to surrender arms to Nicaraguan authorities upon entering port.	
Other Countries in receipt of the Demarche who have not Responded				
Bahrain				
Canada				
Cape Verde				
Chile				
Columbia				
Cuba				
Dominican Republic				
EU				
Haiti				
Indonesia				
Jordan				

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Date: October 19, 2009
Contact: LCDR James Fogle
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Port Security Advisory (9-09)

EXPECTED COURSES OF ACTION FOLLOWING ATTACKS BY PIRATES IN THE HORN OF AFRICA REGION

BACKGROUND

Following an attack by pirates in the Horn of Africa region, several outcomes are likely. For the benefit of **U.S. Flagged vessels**, this Port Security Advisory (PSA) attempts to differentiate between those outcomes and provides the expected courses of action for each as they relate to the vessel, its crew / master, and the vessel owner or operator. More than one outcome may result from any given attack and potential effects on the materiel condition of the vessel and/or cargo should be considered in all scenarios. This PSA is intended to apply to acts, or attempted acts, of piracy and/or armed robbery at sea in the Horn of Africa region. The post incident guidance provided within Maritime Security (MARSEC) Directive 104-6 (Rev. 2) applicable to U.S. flagged vessels, and Port Security Advisory (2-09) remains valid.

In most instances where U.S. government action is needed, the Maritime Operational Threat Response (MOTR) process will be initiated. This is a facilitated, collaborative process between federal departments and agencies that examines each situation and tailors the U.S. government response. Because each situation, and therefore each response, is unique, it is not possible to predict the actions to be taken in any given situation. However, the following provides some guidelines as to what vessels and companies should expect.

ANTICIPATED POSSIBLE EVENTS

- Vessel attacked or boarded by pirates;
- Pirate attack successfully thwarted;
- Pirate(s) capture vessel or crew
- Pirate(s) injured/killed aboard vessel;
- Pirate(s) injured/killed off the vessel;
- Pirate(s) captured or surrenders;
- Crewmember(s) killed/injured during pirate attack;

EXPECTED COURSES OF ACTION

Vessel Attacked or Boarded by Pirates

Vessel - The vessel should immediately activate emergency communications including the Ship Security Alert System (SSAS). The vessel should also immediately notify UKMTO (or MARLO if UKMTO is unavailable) and implement procedures established in the vessel's anti-piracy plan required by the MARSEC Directive 104-6 (Rev. 2). Exercise information control, limiting to only essential personnel or agencies

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with a need to know. UKMTO will notify military units operating in the area which will in turn respond appropriately.

Company - While the incident is on-going, coordinate with U.S. government authorities through the USCG ATLANTIC AREA Command Center at 1-757-398-6700 or as otherwise directed. The Command Center will serve as the U.S. government liaison with the company until an initial MOTR conference. Exercise information control, limiting to only essential personnel or agencies with a need to know. After the event is resolved, follow up with USCG ATLANTIC AREA for debriefings and any additional actions needed. A Vessel Security Vulnerability Assessment may be initiated to identify any possible lessons learned.

As a result of an attack/boarding, the following scenarios may result and the below expected courses of action should follow:

Pirate Attack Successfully Thwarted:

The vessel should de-activate the SSAS after the threat of attack is over. Notify UKMTO, USCG ATLANTIC AREA Command Center at 1-757-398-6700, and the company. A Vessel Security Vulnerability Assessment may be warranted to identify lessons learned as a result of the incident.

No MOTR conference is anticipated under normal circumstances. There may be requests for informational briefings for those Federal departments and agencies that would typically participate in a MOTR.

Pirates Capture Vessel or Crew

If able, notify UKMTO (or MARLO if UKMTO is unavailable) and USCG ATLANTIC AREA Command Center at 1-757-398-6700. UKMTO will notify military units operating in the area which will in turn respond appropriately. The U.S. Government will initiate the MOTR process.

Companies should communicate with the U.S. Government as per above.

Pirate(s) Injured/Killed Aboard Vessel:

Provide first aid / medical care as able. Notify UKMTO and USCG ATLANTIC AREA Command Center at 1-757-398-6700. Simultaneously with the MOTR process, UKMTO will notify military units operating in the area which will in turn respond appropriately. Medical evacuation, if needed, should be coordinated through the appropriate Rescue Coordination Center (RCC), and the RCC should be notified that the patient is an unarmed, suspected pirate.

Pirate(s) Injured/Killed Off the Vessel:

If the injured or killed pirate is not aboard, notify UKMTO. There is no requirement to put the vessel crew at risk in order to provide aid to the suspected pirate(s). UKMTO will notify military units operating in the area which will in turn respond appropriately.

**U.S. Department of
Homeland Security
United States
Coast Guard**



**International Port Security Program
U.S. Coast Guard**

Pirate(s) Captured or Surrenders:

Notify UKMTO and USCG ATLANTIC AREA Command Center at 1-757-398-6700. Simultaneously with the MOTR process, UKMTO will notify military units operating in the area which will in turn respond appropriately.

Crewmember(s) Injured/Killed/ During Pirate Attack:

Provide first aid / medical care as able. Notify UKMTO and USCG ATLANTIC AREA Command Center at 1-757-398-6700. UKMTO will notify military units operating in the area which will in turn respond appropriately. Medical evacuation, if needed, should be coordinated through the appropriate Rescue Coordination Center.

THE CONDITIONS OF ENTRY APPLICABLE TO VESSELS OUTLINED IN PORT SECURITY ADVISORY 7-09 REMAIN IN EFFECT.



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Piracy off the Horn of Africa

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Summary

Pirate attacks in the waters off the Horn of Africa, including those on U.S.-flagged vessels, have brought new U.S. and international attention to the long-standing problem of piracy in the region. The International Maritime Bureau (IMB) recorded 111 attacks in the waters off the Horn of Africa in 2008, almost double the number in 2007. As of September 14, 2009, the U.S. State Department reported 156 attacks had occurred in those waters since January 2009, with 33 successful hijackings. Attacks remain concentrated in the Gulf of Aden between Yemen and the northern coast of Somalia and along Somalia's eastern coastline. However, in July 2009, the United Nations Secretary General warned that "as a result of the military presence in the region, pirates have employed more daring operational tactics, operating further seawards, towards the Seychelles, and using more sophisticated weaponry." Pirate attacks continue to threaten commercial shipping and relief shipments bound for East Africa and the Horn, amid a regional humanitarian crisis that experts are calling the worst since 1984.

The increase in pirate attacks off the Horn of Africa is directly linked to continuing insecurity and the absence of the rule of law in war-torn Somalia. The absence of a functioning government in Somalia remains the single greatest challenge to regional security and provides freedom of action for those engaged in piracy along the Somali coast. Some observers also have alleged that the absence of coastal security authorities in Somalia has allowed illegal international fishing and maritime dumping to occur in Somali waters, which in turn has undermined the economic prospects of some Somalis and may be providing economic or political motivation to some groups engaged in piracy. The apparent motive of many active Somali pirate groups is profit, and piracy has proven to be a lucrative activity for many thus far. Ransoms paid to Somali pirates and their supporters, estimated at over \$30 million in 2008, may exacerbate ongoing fighting and further undermine security in the region.

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

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

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Recent Developments

The summer months of 2009 saw a steep decline in the number of new pirate attacks in the waters off the Horn of Africa, after the blistering pace of attacks earlier in the year focused international attention on the challenges posed by piracy and insecurity in the region. Overall, the 156 pirate attacks in the Gulf of Aden and the waters off Somalia's eastern coast during the first nine months of 2009 exceeded the number of attacks—111—recorded in the region during all of 2008. Attacks remained concentrated in the Gulf of Aden, in spite of increased international maritime security efforts in those waters. The United Nations Secretary General warned that “as a result of the military presence in the region, pirates have employed more daring operational tactics, operating further seawards, towards the Seychelles, and using more sophisticated weaponry.”¹ Data attributed to the International Maritime Bureau (IMB) stated that, as of late August 2009, approximately 104 non-U.S. crew members on 6 hijacked vessels remained in Somali captivity.²

The monsoon season weather credited with the summer decline in attacks began to improve in late August, and attacks have resumed. Warnings issued by the IMB's Piracy Reporting Center in August highlighted a rash of pirate attacks in the Bab el Mandeb strait and advised ships to transit at least 600 nautical miles from Somalia's eastern coast. The U.S. Department of Transportation Maritime Administration (MARAD) issued a September 2009 advisory warning U.S. vessels to “anticipate an increase in piracy attacks now through late December due to calmer weather favorable for small boat activity.” The advisory further states that:

Despite the increase in presence and effectiveness of naval forces in the region, as well as the effectiveness of defensive and protective measures, pirate activity has continued and a number of commercial and civilian ships have been successfully attacked and seized. There are indications that pirates in the area continue to adapt their techniques and procedures in order to achieve success in capturing vessels, both in the [Gulf of Aden] as well as in the open ocean off the east coast of Africa, particularly in the increased distances that they are able to operate effectively off the east coast of Somalia potentially utilizing mother ships. Naval vessels patrolling the [Maritime Security Patrol Area] provide a measure of deterrence through their presence, but this is limited due to the vast area of the [Gulf of Aden] and is even less effective in the open waters east of Somalia. Given the high volume of shipping in the region, the safety of all ships cannot be guaranteed due to the often long response times due to the considerable distances involved.³

The United States participated in meetings of the multilateral Contact Group on Piracy off the Coast of Somalia in March, May, and September 2009 (see “Contact Group on Piracy off the Coast of Somalia” below). At the September meeting, the Group approved a U.N. Multi-Donor Trust Fund to support the cost of prosecution and incarceration of piracy suspects by regional countries such as Kenya, which has taken responsibility for prosecuting most pirate suspects. The Contact Group's next meeting is scheduled for January 2010. Within the Group, U.S. officials have led the efforts of a working group seeking to improve awareness and implementation of self-defense best practices in the shipping and insurance industries. Since May 2009, the United States and several other governments have signed a Commitment to Best Management Practices to

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

² Mike Cohen, “Ship Hijackings Off Somalia May Resume After Monsoon,” *Bloomberg*, August 26, 2009.

³ U.S. Department of Transportation Maritime Administration Advisory #: 2009-07, Gulf of Aden, Red Sea and Indian Ocean Transit, September 9, 2009.

Avoid, Deter or Delay Acts of Piracy (the so-called “New York Declaration”), including popular ship registry countries such as Panama, Liberia, the Bahamas, and the Marshall Islands. Japan also has announced a \$14 million contribution to an United Nations International Maritime Organization (IMO)⁴ administered trust fund to support capacity building initiatives for regional signatories of the Djibouti Code of Conduct anti-piracy agreement (see “International Maritime Organization and the Djibouti Code of Conduct” below).

As international coordination of anti-piracy efforts has improved at sea and in the region in recent months, U.S. civilian and military officials have continued to stress the importance and difficulty of finding solutions to the problem of instability ashore in Somalia. To that end, the African Union (AU) has extended the mandate of their peacekeeping force in the country, known as the African Union Mission to Somalia (AMISOM), and the United Nations Security Council continues to consider proposals to send a U.N. force to Somalia to replace AMISOM. The U.N. Security Council has pledged \$72 million for AMISOM, and the United States has provided training, logistics support, and assistance worth over \$135 million to AMISOM in the past two years.⁵ AMISOM forces repeatedly have come under attack from Islamist groups opposed to the presence of foreign troops in Somalia, including the Al Qaeda influenced group known as *Al Shabaab* and a newer group, Hizbul Islam. A recent attack, a suicide truck bombing of an AMISOM base in Mogadishu on September 17, killed 21, including the AMISOM Deputy Force Commander and 16 other peacekeepers, and injured 40. Al Shabaab claims that the attack was committed in retaliation for a September 14 raid, alleged to have been conducted by U.S. special forces, in which Al Qaeda suspect Saleh Ali Saleh Nabhan reportedly was killed.

The U.S. government and international donors have expressed support for the new unity government formed between the TFG and the Alliance for the Reliberation of Somalia (ARS), which returned to Mogadishu in early 2009 with elected ARS leader Sharif Sheikh Ahmed as its president. Elements of the ARS based abroad, as well as groups and factions in Somalia, have vowed to continue fighting against the new government, and violence has surged since May. In response, the United Nations, the League of Arab States, the African Union, and the regional Intergovernmental Authority on Development (IGAD) issued a joint statement in June condemning the insurgents as a threat “not only to the country, but to the IGAD region and the international community.”⁶ The international Contact Group on Somalia continues to work on a multilateral basis to support Somali efforts to reach reconciliation agreements and implement the country’s Transitional Federal Charter. An April 23 donors conference netted \$213 million in pledges of support for AMISOM and TFG plans to support police and security forces.⁷ On May 26, 2009, the United Nations Security Council unanimously adopted Resolution 1872, granting new authorization for members states to participate in the training and equipping of the TFG security forces in accordance with Resolution 1772 (2007) (see “United Nations Security Council” below).

⁴ The International Maritime Organization is a United Nations agency with over 168 member governments. Based in the United Kingdom, its members develop regulations for international shipping related to safety, the environment, and maritime security. It also serves as a global coordinating body for legal issues, technical co-operation, and maritime security including anti-piracy efforts. For more information, see: <http://www.imo.org/>.

⁵ Remarks by U.S. Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, Security Council Debate On Somalia, July 9, 2009.

⁶ U.N. Political Office for Somalia, “Joint Statement on the Assassination of Somali Security Minister,” June 18, 2009.

⁷ Agence Europe, “EU/SOMALIA: With \$213 million promised, international community surpasses expectations,” April 24, 2009.

The U.S. government, working through AMISOM partners, has provided TFG security forces with small arms and ammunition and funds to purchase weapons. This effort has raised concerns among some observers who claim that weapons provided to the TFG are being resold and benefiting insurgents.⁸ According to U.S. officials, the United States has provided training to TFG security personnel and funds to the TFG to purchase weapons and ammunition. In mid-2009, the Administration arranged for “urgent” shipments of approximately 40 tons of small arms and ammunition to TFG forces in response to growing attacks from its enemies. As of June 2009, U.S. officials stated that the total value of the program was under \$10 million.⁹ In June 2009, State Department spokesman Ian Kelly said:

At the request of [the TFG] government, the State Department has helped to provide weapons and ammunition on an urgent basis. This is to support the Transitional Federal Government’s efforts to repel the onslaught of extremist forces, which are intent on destroying the Djibouti peace process and spoiling efforts to bring peace and stability to Somalia through political reconciliation. Any State Department assistance to the TFG underscores our longstanding policy of supporting the Djibouti peace process. This is also supported by the international community and follows on to our participation in International Contact Group meetings in Somalia.¹⁰

In April 2009, U.S. Secretary of State Hillary Clinton indicated that U.S. diplomats planned to engage with Somali Transitional Federal Government (TFG) officials and leaders from the semi-autonomous region of Puntland (shaded in **Figure 1**) and the Eyl district to “press these leaders to take action against pirates operating from bases within their territories.” Puntland authorities reportedly have taken some limited action in response (see “The Pirates” below).

The Obama Administration requested \$40 million in 2009 supplemental Peacekeeping Operations (PKO) funding to provide “non-lethal equipment, logistical support, and basing facilities for the African Union Mission to Somalia and to support Somali security sector reform.” The Administration also sought authority to transfer up to \$50 million in supplemental Contributions for International Peacekeeping Activities (CIPA) funding to the PKO account for Somalia, if necessary. For FY2010, the Administration is requesting \$67 million in PKO funding for Somalia, along with \$2 million in Nonproliferation, Antiterrorism, Demining, and Related Programs funding for small arms and light weapons destruction programs (NADR-SALW) and \$40,000 for International Military Education and Training (IMET) programs. For more information about political developments in Somalia and U.S. policy, see CRS Report RL33911, *Somalia: Current Conditions and Prospects for a Lasting Peace*, by Ted Dagne.

On March 16, 2009, United Nations Secretary General Ban Ki-moon released his report to the Security Council required by Resolution 1846 on the security of international navigation off the coast of Somalia (S/2009/146). His next 1846 report is due in November 2009. The Secretary General reported to the Security Council on the Situation in Somalia in July 2009 and, as noted

⁸ See claims made by Peter Pham cited in Fawzia Sheikh, “As Washington Crafts Somalia Review, Arms Deal Draws Criticism,” *Inside the Pentagon*, Vol. 25, No. 34, August 27, 2009.

⁹ A June 2009 background briefing from an unnamed senior U.S. State Department official described the effort as providing “small arms and limited munitions,” explaining that the United States has provided “funds for the purchase of weapons; and we have also asked the two units that are there, particularly the Ugandans, to provide weapons to the TFG, and we have backfilled the Ugandans for what they have provided to the TFG government.” U.S. State Department, “Background Briefing on U.S. Assistance to the Somalia Transitional Federal Government,” Washington, DC, June 26, 2009.

¹⁰ U.S. State Department Daily Press Briefing, Washington, DC, June 25, 2009.

above, included warned of the increasing range of pirate attacks and provided an update on international anti-piracy efforts.¹¹

Background

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

Worldwide rates of piracy began to increase in the early 1990s, peaking at roughly 350 to 450 reported attacks per year during the period 2000-2004, then declining by almost half by 2005. In 2007, almost half of the world's reported pirate attacks took place in African waters, mainly near Nigeria and Somalia. The number of attacks in Somali waters doubled in 2008, accounting for an estimated 40% of the 293 pirate attacks reported worldwide.¹² The recent increase in pirate attacks off Somalia is likely to cause the total number of worldwide pirate attacks to increase in 2009, but not necessarily back to the levels of 2000-2004. Nevertheless, high profile attacks in the Gulf of Aden and the west Indian Ocean have brought renewed international attention to the problem of piracy in waters off the Horn of Africa.

The U.S. National Maritime Security Strategy, issued in 2005, stated that the "safety and economic security of the United States depends upon the secure use of the world's oceans," and identified "well organized and well equipped" pirates and criminals as threats to international maritime security. The bombing of the *U.S.S. Cole* in 2000 in the Yemeni harbor of Aden and the bombing of the French oil tanker *MV Limburg* in 2002 illustrated the threat of potential maritime terrorism in the region. The United States, working with its international partners, established a combined naval task force in 2002 to meet the terrorism threat (Combined Task Force 150),¹³ and increased bilateral military and security assistance to regional navies. However, prior to the establishment in 2008 of the new Combined Task Force 151 (see "Combined Task Force 151" below), the United States had not assigned any naval assets the sole task of performing anti-piracy operations in the Horn of Africa region.

Similarly, until 2008, the international community did not respond to the threat of piracy in the waters off of Somalia in a coordinated, dedicated manner. In December 2008, the European Union launched EU NAVFOR Operation ATALANTA, representing the first naval operation under the framework of the European Security and Defense Policy (ESDP). Similarly, NATO has launched a dedicated anti-piracy mission, Operation Ocean Shield, and other navies have deployed ships to provide security for vessels bearing their flags. The development of a collaborative regional response in East Africa in 2009 has mirrored regional reactions to the threat of piracy in the Strait of Malacca between Malaysia, Singapore and Indonesia, which are credited

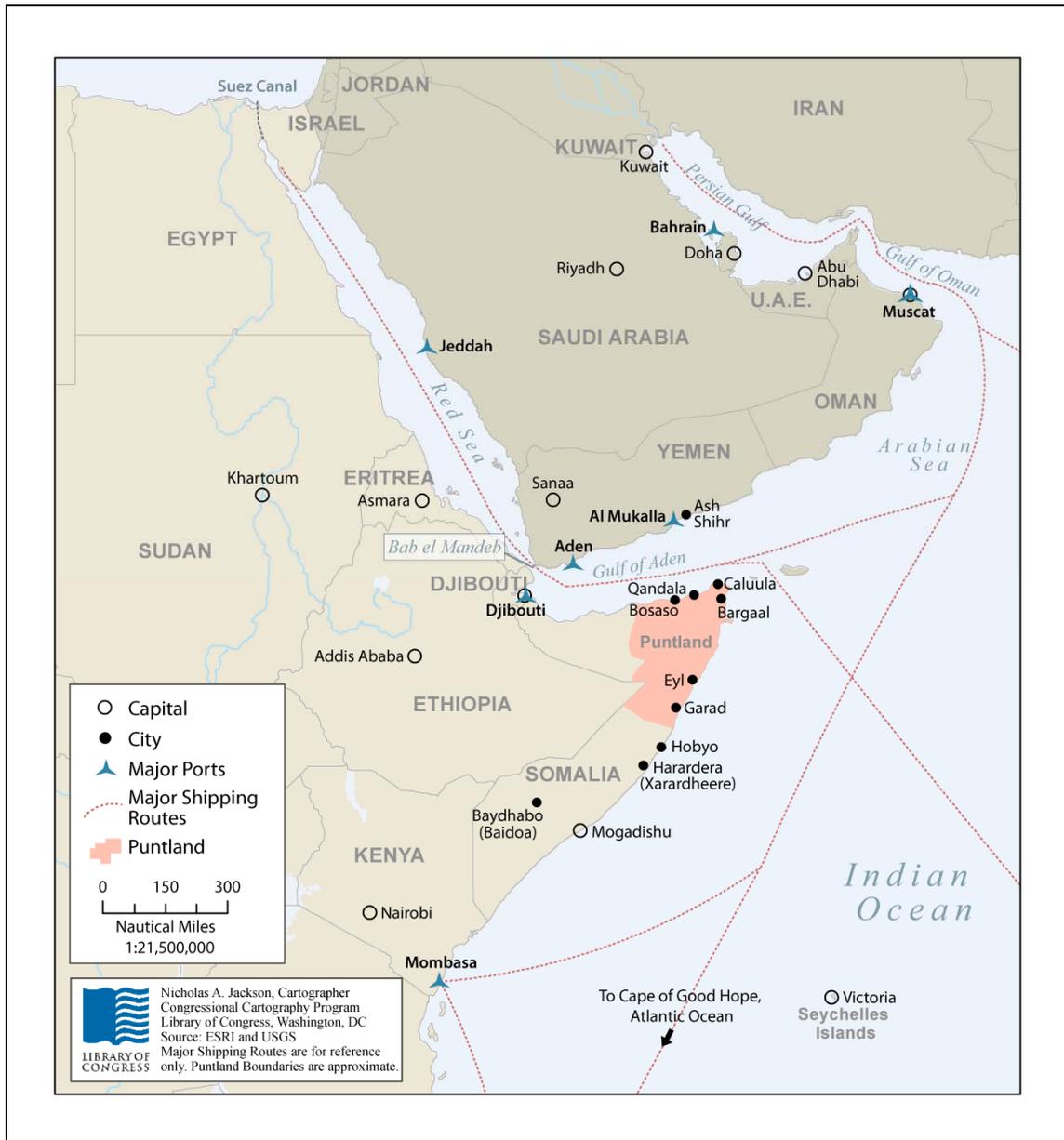
¹¹ Report of the Secretary-General on the situation in Somalia, S/2009/373, July 20, 2009.

¹² Much of the statistical information on pirate attacks found in this report has been provided by the International Maritime Bureau, a division of the International Chamber of Commerce.

¹³ See the U.S. Navy's website for CTF 150, available at: <http://www.cusnc.navy.mil/command/ctf150.html>.

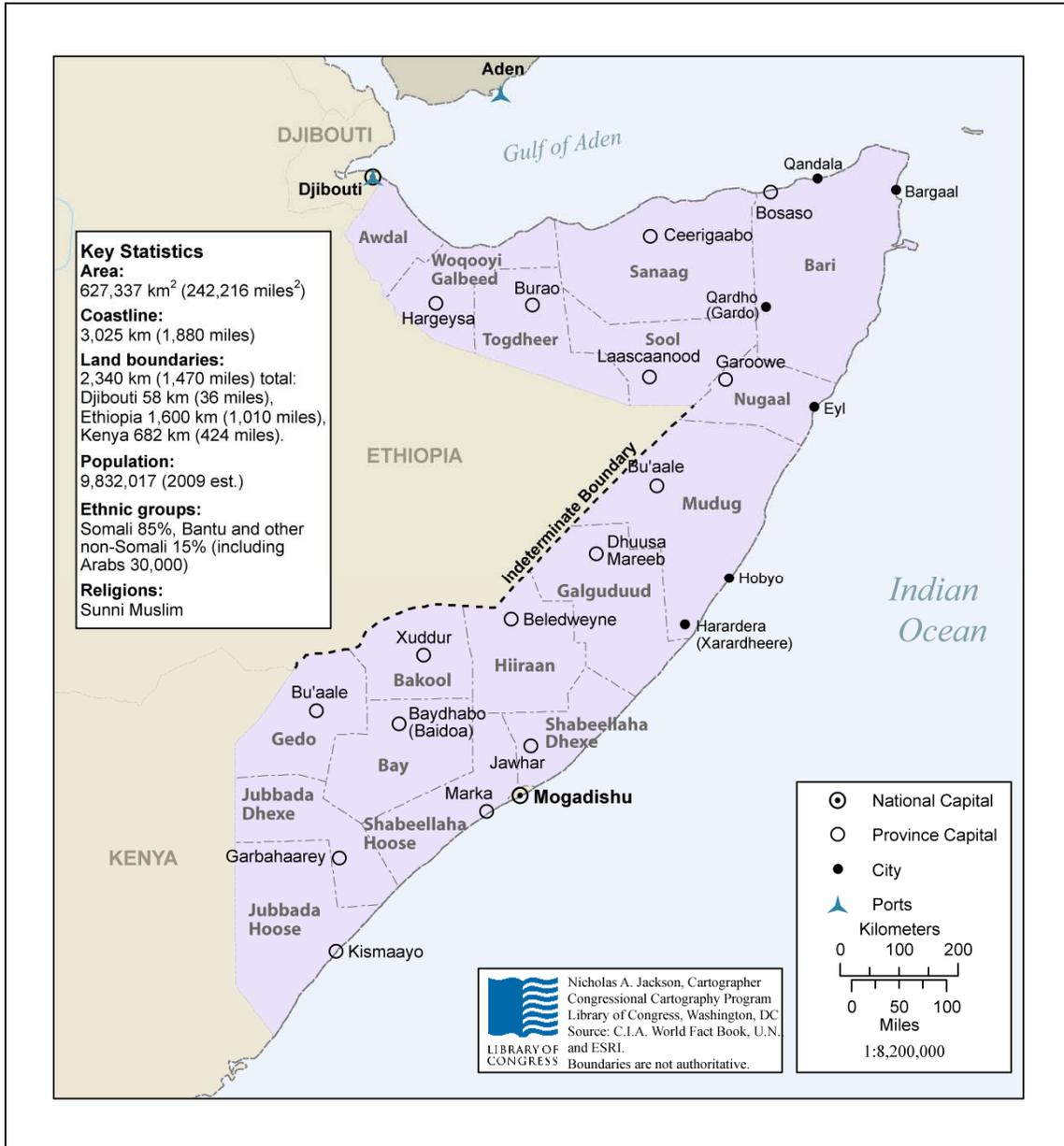
with having drastically reduced the instance of piracy in Southeast Asia since 2005 (see “International Maritime Organization and the Djibouti Code of Conduct” below). Eradicating piracy in the Horn of Africa region may prove to be a more daunting task. The vast areas of the western Indian Ocean and the Gulf of Aden where the pirates operate are remote, Somalia remains largely ungoverned, and regional states have relatively weak naval capabilities.

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



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

Figure 2. Somalia Map



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

Piracy off the Horn of Africa: Profile

The Pirates

Several groups of pirates currently operate in Somali waters, according to reports from the United Nations Secretary General and an experts group convened by the Secretary General's Special Representative for Somalia in November 2008.¹⁴ Organized predominantly along clan lines and based in distinct, remote port towns, the groups have varying capabilities and patterns of operation, making generalized responses more difficult. The two primary groups identified by Secretary General Ban Ki-moon in his March 2009 report were a pirate network based in the Puntland region district of Eyl and a pirate network based in the Mudug region district of Harardera (Xarardheere). The Secretary General and the Special Representative's experts group also report that smaller pirate groups also operate from the Somali ports of Bosaso, Qandala, Caluula, Bargaal, Hobyo, Mogadishu, and Garad.¹⁵ The Secretary General has warned that some of the pirate groups "now rival established Somali authorities in terms of their military capabilities and resource bases." Other reports indicate that there may now be three distinct pirate groups, the Northern gang, based in Eyl; the Central gang, based in Hobyo; and the Southern gang, based in Harardera.¹⁶ Pirate groups have operated from these remote communities, each heavily dependent on fishing, since the early 1990s.

The northern semi-autonomous region of Puntland (shaded in **Figure 1**) appears to be home to the most active and capable pirate networks, and some regional and local government officials there are alleged to have facilitated and profited from piracy prior to recent efforts by regional leaders to crack down on piracy-related corruption. In April 2009, Puntland security forces began to launch raids on pirate bases, and the region's courts have tried and convicted suspected pirates.¹⁷ Local authorities also initiated *wa'yigelin*, a "sensitization campaign" and have offered general amnesty to those that renounce piracy. Puntland's regional authorities have developed a basic coast guard, but accounts suggest that the equipment and capabilities of this small force remain very limited. Several of the pirate groups have adopted names to suggest that they are acting in a maritime security capacity, and some reports suggest that some of the pirates may have previously received training by Somalia's former navy and by foreign security firms and been given semi-official status to intercept foreign fishing vessels and extract fines. Today, the pirates are collectively referred to by Somalis as *burcad badeed* (sea bandits).¹⁸ Nevertheless, piracy appears to have become an attractive pursuit for young men, creating potential legal complexities for regional and international governments seeking to try young pirate suspects for alleged crimes.

¹⁴Report of the Secretary-General pursuant to Security Council Resolution 1846 (2008), S/2009/146, March 16, 2009; and, International Expert Group on Piracy off the Somali Coast, Final Report: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah, November 10-12, 2008, Nairobi, Kenya.

¹⁵ The Special Representative's experts group report identified the following specific pirate group leaders (clan, location in parentheses): Isse Mahmuud and Leelkase (Darood, Eyl), Omar Mahmuud (Darood, Garad), and the Habargedir (Hawiye, Hobiya, Harardera, and Mogadishu).

¹⁶ International Crisis Group, *Somalia: The Problem with Puntland*, Africa Briefing No. 64, August 12, 2009.

¹⁷ *All Africa*, "Anti-Piracy Campaign Begins Today in Puntland," April 24, 2009; and, *All Africa*, "Puntland Nabs 15 Pirate Suspects, Seizes 5 Boats," May 18, 2009.

¹⁸ *Ibid.*

Motives

According to the final report of the experts group convened in November 2008 by U.N. Special Representative to Somalia Ahmedou Ould-Abdallah, “poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia.”¹⁹ While the profitability of piracy appears to be the primary motivating factor for most pirates, other observers argue that since conditions in Somalia make survival difficult for many and prosperity elusive for most, the relative risk of engagement in piracy seems diminished.²⁰

Somali pirates interviewed by international media sources frequently link their piracy activities to trends such as illegal fishing and dumping in Somali waters that have emerged as the country has lost its ability to patrol its waters over time.²¹ While these explanations may mask the opportunistic piracy of some, reports suggest that illegal fishing and dumping have disrupted Somalia’s coastal economy. For example, a July 2005 report from the United Kingdom Department for International Development (DFID) estimated that Somalis lost \$100 million to illegal tuna and shrimp fishing in the country’s exclusive economic zone in 2003-2004.²²

The international Contact Group on Piracy off the Coast of Somalia (CGPCS) (see “Contact Group on Piracy off the Coast of Somalia”) stated at its inaugural meeting that “piracy is symptomatic of the overall situation in Somalia including the prevalence of illegal fishing and toxic waste dumping off the coast of Somalia, which adversely affects the Somali economy and marine environment.”²³ The CGPCS also reaffirmed “its respect for Somalia’s sovereignty, territorial integrity, and sovereign rights over natural resources” and underscored that the group’s participants “ensure that their flagged vessels respect these rights.”

Paradoxically, the regional fishing industry reportedly has been damaged significantly by the threat of piracy. According to some reports, tuna catches in the Indian Ocean fell 30% in 2008, in part because of fishing vessels’ fears of piracy. This has had a major impact on countries like the Seychelles, which rely on the fishing industry for up to 40% of their earnings.²⁴

The use of force by international naval patrols to apprehend or kill pirate suspects has raised the prospect that revenge may become a motivating factor for pirates whose associates are killed or

¹⁹ International Expert Group on Piracy off the Somali Coast, Final Report: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah, November 10-12, 2008, Nairobi, Kenya.

²⁰ The dire economic and security situation in Somalia is illustrated by the continuing outflow of refugees and migrants to neighboring countries. The U.N. High Commissioner for Refugees estimates that as many as 50,000 people, predominantly Somalis, crossed the Gulf of Aden to Yemen in 2008. The deaths of hundreds of migrants in a boat accident off the northern Somali coast in April 2009 illustrate a pattern of similar accidents which continues. “More Somali Migrants Drown off Yemeni Coast,” UN IRIN, March 1, 2009.

²¹ The U.N. experts group noted the tendency of pirates to characterize their actions as an alternative livelihood or as retribution for illegal international activities in Somali waters: “The pirates also firmly believe that they have every right and entitlement to attack illegal fishing vessels operating in their territorial waters as their fishing resources are being pillaged daily by international shipping vessels from Asia and Europe.” International Expert Group on Piracy off the Somali Coast, Final Report, p. 15.

²² DFID, “Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries,” July 2005.

²³ Statement of the Contact Group on Piracy off the Coast of Somalia, New York, January 14, 2009.

²⁴ “Somali Piracy ‘Reduces Tuna Haul,’” *BBC*, January 22, 2009.

captured. The April 14, 2009, attack on the U.S.-flagged *MV Liberty Sun* allegedly was carried out with the intention of damaging or sinking the ship and injuring or killing its crew in retaliation for the deaths of three Somali pirates during U.S. military efforts to secure the release of the detained captain of the *MV Maersk Alabama* days earlier (see “Threats to U.S. Flagged Vessels and the *MV Maersk Alabama* Incident” below).²⁵

Tactics and Demands²⁶

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

Somali pirates initially focused on attacking ships in the western Indian Ocean, off Somalia’s eastern coast. When ships operating on that route shifted further out to sea, Somali pirates shifted their focus to the Gulf of Aden, where there is a concentration of merchant ships (an estimated 33,000 per year)²⁷ operating in a more constrained waterway that is relatively close to Somalia’s northern shore. Most recently, now that international naval forces are patrolling the Gulf of Aden with some effectiveness, Somali pirates have shifted some of their focus back to the Indian Ocean, and are now able to operate hundreds of nautical miles from the Somali coastline, often with the support of so-called ‘mother ships.’ These ‘mother ships’ are larger fishing vessels often acquired or commandeered by acts of piracy, and tend to operate out of the Somali ports of Bosaso and Mogadishu and the Yemeni ports of Al Mukalla and Ash Shihr.

U.S. and international officials suspect that in some cases, Somali businessmen and international support networks provide pirate groups with financing and supplies in return for shares of ransom payments. The IMB has disputed claims that pirates receive intelligence support in order to target specific vessels, arguing that “the suggestion that vessels are targeted in advance using shore based intelligence is spurious.... Further, there is no information in the public domain that would enable pirates to precisely locate a targeted vessel at sea and then to mount a successful attack off the Horn of Africa.”²⁸ The pirates refuel and purchase logistical supplies like fuel and engine parts

²⁵ An alleged pirate commander named Abdi Garad told reporters, “This attack was the first against our prime target. We intended to destroy this American-flagged ship and the crew on board but unfortunately they narrowly escaped us. The aim of this attack was totally different. We were not after a ransom. We also assigned a team with special equipment to chase and destroy any ship flying the American flag in retaliation for the brutal killing of our friends.” *Agence France Presse*, “Pirates stage rocket attack on US freighter,” April 14, 2009.

²⁶ The U.S. government has provided mariners with descriptions of common pirate tactics and instructions for response. See, for example, U.S. Department of Transportation Maritime Administration, “Somali Pirate Tactics,” December 2008. Available at http://www.marad.dot.gov/documents/HOA_Somali%20Pirate%20Tactics_15DEC2008.pdf.

²⁷ Assistant Secretary Andrew J. Shapiro, U.S. State Department, Bureau of Political-Military Affairs, “Taking Diplomatic Action Against Piracy,” Remarks to the Global Maritime Information Sharing Symposium, National Defense University, Washington, D.C., September 16, 2009.

²⁸ International Chamber of Commerce- International Maritime Bureau, “Shipping Industry dismisses reports of targeted Somali pirate attacks,” May 15, 2009.

in Yemen, according to U.S. naval officials.²⁹ According to the NATO Shipping Center, Somali pirates returning from raids in the Gulf of Aden often stop at the port of Caluula on the northeast tip of Somalia before proceeding to their safe havens on the Indian Ocean coast.³⁰

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

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

While pirate attacks may involve violence and the use of weaponry, most Somali pirate groups have not shown a willingness to wantonly harm captives taken in the course of their raids. Pirates in other parts of the world who engage in these types of attacks might be more likely to kill or seriously wound merchant ship crew members, since extracting ransom payments is not their objective. Negotiations for ransom involve the use of satellite telephones, third-party intermediaries in Somalia and abroad, and public relations efforts to influence interaction with property owners and foreign officials. Most navies have avoided rescue operations that could endanger the lives of hostages, preferring instead to engage in hostage negotiations or wait for shipping companies to negotiate ransom. According to reports, a rescue operation by French naval forces, designed to free a family held hostage onboard a small sailboat off the Somali coast, resulted in the death of the vessel's owner, a French citizen, during an exchange of fire between the pirates and naval personnel.³¹

Prior to the U.S. military resolution of the *MV Maersk Alabama* seizure and other French military operations, the most sensational cases of piracy to date had been resolved through the payment of large sums of money to different pirate syndicates.³² The Ukrainian ship *MV Faina* was released for a reported \$3.2 million ransom in February 2009 after being held for nearly 6 months by pirates based in Harardera (Xarardheere). The seizure of the ship, carrying T-72 tanks and a

²⁹ Comments by Admiral Mark Fitzgerald in "Work with Yemen Government on Somali Piracy: U.S. Admiral," *Reuters*, March 9, 2009.

³⁰ Report of the UN Secretary General, S/2009/146, paragraph 6, page 2.

³¹ Others onboard were rescued safely.

³² The French military also has reportedly undertaken a number of raid and rescue operations since April 2008 to free its citizens held aboard seized ships.

significant amount of ammunition and small arms, led several governments, including the United States, to dispatch naval forces to the region to monitor the ship and its cargo. The Saudi oil supertanker *MV Sirius Star* was released for a reported \$3 million ransom to Eyl-based pirates in January 2009 following its seizure in November 2008. The hijacking of the *Sirius Star* illustrated the threat piracy may pose to international energy supplies as well as the capabilities of some Somali pirates to operate far out to sea against large vessels. Ransom payments are considered to be problematic by some observers because they encourage pirates to continue their attacks with the expectation that insurance and shipping companies will decide that ransoms are cost effective relative to the insured values of personnel and cargo (see “Threats to Commercial Shipping and Global Trade” below).

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

The effective use of force against pirate strongholds in coastal towns would likely require significant military planning and the investment of considerable resources in order to avoid or minimize civilian casualties. The number of naval ships that would be needed to completely halt piracy in the Gulf of Aden and the waters of Somalia’s Eastern Coast is probably much larger than the force that has been operating there recently, approximately 30 combatant ships as of early September 2009. According to some estimates, as many as 60 might be required to fully suppress piracy in the Gulf of Aden alone. The adjoining area of concern in the Indian Ocean off Somalia’s eastern coast, which has been measured at more than 1 million square miles, is much larger than the Gulf of Aden, so completely halting piracy in that area would likely also require an even larger number of ships.

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

Piracy off the Horn of Africa: Impact

The strategic location of the Horn of Africa increases its importance for international security and commerce. The northern coastline of Somalia lies to the south of the Gulf of Aden, a key transit zone for ships passing to and from the Red Sea and the increasingly active port of Djibouti. The U.S. Department of Energy estimated that, as of 2006, as many as 3.3 million barrels of oil per day were transiting the Bab el Mandeb strait between the Gulf of Aden and the Red Sea.³³ The

³³ U.S. Department of Energy, Energy Information Administration, Country Analysis Brief: World Oil Transit Chokepoints, January 2008.

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

On average, at least one U.S. commercial vessel transits the area each day. Many of these US-flag vessels carry Department of Defense cargo bound for Operations Iraqi and Enduring Freedom. U.S.-flag vessels transiting the region also carry humanitarian cargoes generated by U.S. AID or international organizations to the Horn of Africa, including Djibouti, Somalia and other countries in East Africa or South Asia.³⁴

Threats to Commercial Shipping and Global Trade³⁵

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

In May 2008, insurance underwriters at Lloyds of London designated the Gulf of Aden a "war-risk" zone subject to a special insurance premium based on the advice of the U.K. insurance community's Joint War Committee. In response London-based ocean marine insurers have raised premium rates for ships making the voyage through the Gulf of Aden and the Suez Canal. These levels of increase can only be estimated because of the competitive nature of the ocean marine insurance business. One group of London insurance brokers and underwriters estimates extra premiums at \$10,000 to \$20,000 per trip through the Gulf.³⁶ U.S. rates, however, apparently have not changed. According to representatives of the American Institute of Marine Underwriters (AIMU), U.S. ocean marine insurers have not had to pay ransom for any act of piracy; therefore, they say, hull and cargo insurance rates for vessels leaving the United States remain the same.

London-based shipping firms are usually prepared to pay ransom when the demanded sums are considered low, ranging from \$500,000 to \$2 million, compared with the value of the ships and cargo. Such payments are reimbursed because the hull insurance policies issued in London explicitly cover the peril of piracy.³⁷ (Hull insurance forms used by American insurers generally

³⁴ U.S. Department of Transportation, Maritime Administration, Statement of Acting Deputy Administrator James Caponti before the Sub-committee on Coast Guard and Maritime transportation of the Committee on Transportation and Infrastructure, United States House of Representatives, on International Piracy, February 4, 2009, p. 3.

³⁵ For more information about the commercial impact of piracy, see CRS Report R40081, *Ocean Piracy and Its Impact on Insurance*, by Rawle O. King.

³⁶ *Piracy Threat Hikes Insurance Premiums: Insurers to Raise Rates in High-Risk Areas After Piracy Heists Off Somali Coast*, November 20, 2008, located at <http://www.msnbc.msn.com/id/278262>.

³⁷ Robert F. Worth, "Pirates Seize Saudi Tanker off Kenya: Ship Called the Largest Ever Hijacked," *New York Times*, November 18, 2008, p. A. 6.

exclude coverage for the peril of piracy.) However, when the ransom demanded exceeds the value of the cargo, the shippers typically do not pay the ransom. Some firms have developed specific insurance products to address piracy-related ransom costs.³⁸

Ship operators (and their governments) might judge that the costs of paying occasional ransoms are less than the costs of taking steps to prevent occasional hijackings such as rerouting or arming merchant ships. Some assert that payment of ransoms has tended to keep the level of violence associated with piracy off Somalia relatively low, and while individual ransom payments can be significant, the small percentage of ships operating in the area successfully attacked and captured lowers the overall risk in the eyes of some commercial entities. As such, the payment of occasional ransoms might be viewed by ship operators (and their governments) as a regrettable but tolerable cost of doing business, even if it encourages more piracy.

The increase in pirate attacks is occurring at a time when the shipping industry is showing vulnerabilities in its financial health. One development is that the frequency of hiring dry bulk carriers, a key industry component, has decreased; the “hire” rates dropped over 90% in late 2008.³⁹ (In some cases, the hire rate has dropped because the financial industry stopped financing some trade due to the global economic downturn.)⁴⁰ In addition, many ship owners and other key industry participants reportedly absorbed severe losses from the global financial crisis. Some major dry bulk shippers lost money speculating on the market in shipping derivatives that offered potential for strong investment returns.⁴¹ Shipping derivatives were developed to manage risk stemming from fluctuations in freight rates, vessel prices, interest rates, and foreign exchange rates, more effectively, in a cheaper and more flexible manner. Many shippers made derivative bets mistakenly on the direction of dry bulk rates during 2008.

In addition to the generalized threat that piracy poses to the security of shipping lanes, the incidence of piracy has important second order effects on the costs, patterns, and benefits of regional and international shipping and trade. Egypt’s Suez Canal serves as a vital shipping link between the Mediterranean Sea and Red Sea, and the revenue derived from ships transiting the Canal is an important source of funding for Egypt’s government. Canal authorities report that shipping traffic and resulting revenue have declined over the last year, due both to decreased economic activity and the piracy threat to the Canal’s approaches in the Gulf of Aden. Rerouting vessels to avoid the Gulf of Aden and other waters near the Horn of Africa adds additional transit days and fuel costs to shipping companies. The costs vary by type of ship and frequency of voyage, according to the U.S. Department of Transportation.⁴²

³⁸ Stuart Collins, “Insurers increase war rates for several high-risk areas” *Business Insurance*, Volume 43; Number 31, September 7, 2009.

³⁹ Robert Wright, “Shipping in Crisis: Sector Must Navigate Rates Challenge,” *Financial Times*, November 19, 2008, p. 18.

⁴⁰ *Ibid.*

⁴¹ A derivative is a financial instrument whose price is dependent upon or derived from one or more underlying assets. The derivative itself is a contract between two or more parties. Its value is determined by fluctuations in the underlying asset. The most common underlying assets include stocks, bonds, commodities, currencies, interest rates, and market indexes.

⁴² For example, circumnavigation rather than transiting the Gulf of Aden/Suez Canal increases the annual operating cost of an oil tanker “by reducing the delivery capacity for the ship from about six round-trip voyages to five voyages, or a drop of about 26%. The additional fuel cost of traveling via the Cape of Good Hope is about \$3.5 million annually.” U.S. Department of Transportation Maritime Administration, *Economic Impact of Piracy in the Gulf of Aden on Global Trade*, December 2008.

Threats to Humanitarian Aid Deliveries

Piracy also threatens the delivery of vital humanitarian assistance to the Horn of Africa, much of which arrives by sea.⁴³ Almost 5 million Ethiopians required emergency humanitarian assistance in the first half of 2009, and the U.S. Agency for International Development (USAID) estimates that 6.2 million will require food aid in the latter half of the year. The United States provided over \$600 million in humanitarian assistance to Ethiopia in FY2008, and has provided over \$355 million to date in FY2009.⁴⁴ In neighboring Somalia, an estimated 3.2 million Somalis, approximately 43% of the population, required food aid in the latter half of 2008, and some 3.8 million are expected to require emergency assistance in 2009. U.S. humanitarian assistance to Somalia totaled \$270 million in 2008 and over \$150 million to date in FY2009.⁴⁵ The Obama Administration requested \$200 million in FY2009 supplemental International Disaster Assistance (IDA) funding and \$300 million in FY2009 supplemental P.L. 480, Title II humanitarian assistance, in part to address food and water shortages in Somalia, Ethiopia, and Sudan. For FY2010, the Administration is requesting \$40 million in P.L.480 funding for Ethiopia and \$30 million for Sudan.

Food insecurity in the region, caused by drought and instability, has been heightened by high food and fuel prices in the region. Officials from the World Food Program (WFP), which ships tens of thousands of metric tons of food monthly to the Horn of Africa region, reports that it has become more expensive to ship assistance to Mogadishu, and that their ability to deliver relief is significantly hampered. A combination of rising costs, rising demand, and insufficient funding recently prompted WFP to announce that it would be closing feeding centers in Somalia. Canada, NATO, and European Union forces assumed WFP escort responsibilities in late 2008 (see “NATO: Operation Ocean Shield” and “European Union: Operation ATALANTA” below).⁴⁶

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

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

⁴³ Food insecurity in the region is also exacerbated by banditry, roadblocks, inter-clan fighting, and attacks on aid workers.

⁴⁴ USAID, Complex Emergency – Ethiopia, Situation Report #11, September 17, 2009.

⁴⁵ USAID, Complex Emergency – Somalia, Situation Report #8, August 25, 2009.

⁴⁶ Christian Fraser, “On Patrol with the Pirate Hunters,” BBC, November 21, 2008.

In response, the United States Navy dispatched the *U.S.S. Bainbridge*,⁴⁷ an Arleigh Burke-class destroyer, and reconnaissance aircraft to the area in order to monitor the small craft where Captain Phillips was being held. Federal Bureau of Investigation personnel worked with naval personnel to conduct hostage negotiations for the captain's release. On April 11, after officials determined that Phillips' life was in immediate danger, U.S. special forces mounted a successful rescue operation with the authorization of President Barack Obama. Three pirates were killed by snipers in the U.S. rescue operation; a fourth, a young Somali named Abdiwali Abdiqadir Muse, has been indicted and has pled not guilty to piracy, conspiracy, hostage taking, and weapons charges before the United States District Court in the Southern District of New York.⁴⁸ Some analysts expressed concern that the rescue operation would trigger the use of increasingly violent tactics in future pirate attacks.

A leader of the pirate group based in the town of Eyl who held Phillips reportedly vowed revenge, telling reporters that, "this matter will lead to retaliation and we will hunt down particularly American citizens travelling our waters. Next time we get American citizens ... they [should] expect no mercy from us." An attack on a second U.S.-flagged vessel, the *MV Liberty Sun*, on April 14 appeared to be an attempt by pirates to make good on that threat. A pirate leader told reporters after the *Liberty Sun* attack that, "We were not after a ransom. We also assigned a team with special equipment to chase and destroy any ship flying the American flag in retaliation for the brutal killing of our friends."⁴⁹

Potential Financing of Regional Conflict and Terrorism Concerns

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

Observers have expressed apprehension that some of the revenue from ransoms paid for the release of ships and hostages may be used to finance an influx of more weapons to the area for pirates or others. According to some experts, some of the same boats used for pirate attacks are used to carry refugees and economic migrants from Somalia to Yemen, and many return carrying

⁴⁷ The *U.S.S. Bainbridge* is named for Captain William Bainbridge, the commander of the *U.S.S. Philadelphia* who was held in captivity in the Barbary state of Tripoli from 1803 to 1805 after the *Philadelphia* ran aground in Tripoli harbor during anti-piracy operations. The captivity of Bainbridge and his crew significantly escalated the military confrontation between the United States and the Barbary pirates, whose threats to U.S. vessels in the Mediterranean were a key factor in the early development of the United States Navy. For more information, see <http://www.bainbridge.navy.mil/sitepages/history.aspx>.

⁴⁸ See complaint *U.S. v. Abduwali Abdukhadir Muse*, 09-MG-1012, U.S. District Court, Southern District of New York, April 21, 2009; and Alexandra Marks, "Teen Somali to be Tried as Adult," *Christian Science Monitor*, April 21, 2009.

⁴⁹ *Agence France Presse*, "Pirates stage rocket attack on US freighter," April 14, 2009.

arms.⁵⁰ U.S. Navy officials have not found that fighters associated with *Al Shabaab* have financial ties to piracy at present, but the potential for personnel linkages may remain.⁵¹ To the extent that ransom payments and new arms further empower criminal pirate groups, the challenge that such groups pose to local authorities at present and to reconstituted national authorities in the future could grow.

U.S. and International Policy Responses

Piracy in the waters off the Horn of Africa is a symptom of the wider instability that has plagued Somalia and the region since the early 1990s. At present, the internationally recognized Transitional Federal Government (TFG) is working to form a functional unity government and to reconstitute national security and law enforcement entities. The Bush and Obama Administrations have supported reconciliation efforts in Somalia and have taken a leadership role in coordinating diplomatic and military responses to the threat of piracy in the region, in coordination with the United Nations Security Council. Funds pledged at the April 23 donors conference for Somalia in Brussels are intended in part to support the development of security forces by the TFG, and such forces, once developed, may improve local authorities' ability to act against pirates ashore. Some caution, however, that assistance provided to TFG forces may in some cases be transferred to the insurgent groups.⁵²

To date, U.S. and international efforts to respond to the threat of piracy have taken on a multi-faceted approach. In order to provide a short term response to the immediate threat to international navigation in the region's waters, the United Nations Security Council has authorized third party governments to conduct anti-piracy operations in Somali territorial waters and ashore, but only with authorization from and in coordination with the TFG. Among CTF-151, the EU's Operation ATALANTA, NATO's Operation Ocean Shield, and other navies' "national escort" operations, approximately 30 combatant ships are currently patrolling in the region. Regional bodies such as the African Union, the Arab League, and ad hoc groupings such as the participants in the December 2008 International Conference on Piracy in Nairobi, Kenya, have held consultative meetings and issued policy statements condemning piracy in the region and providing guidance for the development of coordinated, collaborative regional responses.

U.S. Policy

The U.S. National Maritime Security Strategy, issued in 2005, stated that the "safety and economic security of the United States depends upon the secure use of the world's oceans," and identified "well organized and well equipped" pirates and criminals as threats to international maritime security. In June 2007, the Bush Administration adopted a Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea that stated that it is the policy of the United States to "[c]ontinue to lead and support international efforts to repress piracy and other acts of

⁵⁰ International Crisis Group, *Somalia: The Trouble with Puntland*, Africa Briefing No. 64, August 12, 2009.

⁵¹ Vice Admiral William Gortney, the commander of U.S. Naval Forces Central Command told the House Armed Services Committee on March 5, 2009, that "We look very, very carefully for a linkage between piracy and terrorism or any kind of ideology and we do not see it. It would be a significant game changer should that linkage occur. But we have not seen it. We watch very carefully for it."

⁵² Jeffrey Gettleman, "In Somalia, a Leader Is Raising Hopes for Stability," *New York Times*, September 17, 2009.

violence against maritime navigation and urge other states to take decisive action both individually and through international efforts.” In December 2008, the Bush Administration issued an implementation plan based on that policy to address piracy threats in the Horn of Africa region. The U.S. National Security Council (NSC) “*Countering Piracy off the Horn of Africa: Partnership and Action Plan*” set out the objective “to repress this piracy as effectively as possible in the interests of the global economy, freedom of navigation, Somalia, and the regional states.”⁵³ In pursuit of that objective, the plan outlined three “lines of action” for U.S. policy:

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

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

The Obama Administration has endorsed the Bush Administration’s overarching strategic approach with regard to the piracy threat, and over the course of 2009 Administration officials have outlined new implementation plans. In addition to providing expanded material assistance to the Somali Transitional Federal Government (TFG) in support of its efforts to provide security ashore, U.S. officials and military personnel have engaged with leaders and officials from the regions of Puntland to encourage them to take action against piracy and to improve coordination with international efforts. The United States remains a leading participant in the multilateral CGPCS, and has supported the “New York Declaration” initiative to establish benchmark best practices for governments, shipping companies, and insurance firms with regard to maritime security and piracy.⁵⁴

The December 2008 *Plan* called for U.S. “bilateral assistance programs for judicial capacity building efforts” for regional states, and the Administration welcomed the September 2009 establishment of a trust fund to support regional prosecutions, but has not announced any U.S. contribution.⁵⁵ Comments from officials⁵⁶ suggest the Administration shares the view expressed

⁵³ U.S. National Security Council, “Countering Piracy off the Horn of Africa: Partnership and Action Plan,” December 2008. Available at: http://www.marad.dot.gov/documents/Countering_Piracy_Off_The_Horn_of_Africa_-_Partnership__Action_Plan.pdf.

⁵⁴ U.S. State Department, “The United States Signs “New York Declaration,” Washington, DC, September 9, 2009.

⁵⁵ Donna Hopkins, Plans and Policy Team Leader, U.S. State Department Bureau of Political-Military Affairs, Office of Plans, Policy, and Analysis, “Safeguarding the Seaways: Counter-Piracy Contact Group Meets in New York,” *Dipnote*, September 17, 2009. Available at: http://blogs.state.gov/index.php/entries/seaways_counter-piracy/.

in the Bush Administration Action Plan that U.S. anti-piracy efforts are intended “to be mutually supportive of longer-term initiatives aimed at establishing governance, rule of law, security, and economic development in Somalia.”

United Nations Security Council

Resolution 1816 (June 2008) authorized states acting in cooperation with and with prior notification of the TFG to “enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea” and to “use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery.”⁵⁷ The initial authorization lasted for six months from June 2008. Resolution 1838, adopted in October 2008, called on states with military capabilities in the region to contribute to anti-piracy efforts and clarified the standing of the authorization contained in Resolution 1816 with respect to international law.⁵⁸

At the request of the TFG, the mandate established in Resolution 1816 was extended for 12 months in December 2008 in Resolution 1846.⁵⁹ In December 2008, Resolution 1851 expanded the mandate by authorizing states and regional organizations that are acting at the TFG’s request to “undertake all necessary measures that are appropriate *in Somalia* [italics added] for the purpose of suppressing acts of piracy and armed robbery at sea.”⁶⁰ Both resolutions require any authorized international measures to be undertaken in accordance with humanitarian and human rights laws. Other provisions of Resolution 1851 have guided developments since December 2008 and may inform future U.S or international initiatives (see “Contact Group on Piracy off the Coast of Somalia”, “United Nations Office on Drugs and Crime”, and “Oversight of U.S. Military Forces and U.S. Foreign Assistance” below).

Resolution 1846 authorized the provision of technical assistance to TFG personnel and forces “to enhance the capacity of these States to ensure coastal and maritime security” in accordance with procedures outlined in Resolution 1772.⁶¹ Under paragraphs 11 and 12 of Resolution 1772, the supply of technical assistance to Somali “security sector institutions” is authorized provided that prior case-by-case notification is made to the U.N. arms embargo Committee for Somalia.⁶² Resolution 1851 provides similar authorization to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking authorized anti-piracy operations in Somali waters. The transfer of weaponry to Somali maritime security forces would require separate authorization from the Security Council. The African Union’s Peace and Security Council and the TFG long requested that the broader U.N. arms embargo be amended or lifted in order to improve the capabilities of forces fighting Islamist insurgents. On May 26, 2009, the United Nations Security Council unanimously adopted Resolution 1872, granting new

(...continued)

⁵⁶ Secretary of State Hillary Clinton, “Announcement of Counter-Piracy Initiatives,” Washington, DC, April 15, 2009.

⁵⁷ S/Res/1816 (2008) available at: <http://www.un.org/Docs/sc/unscreolutions08.htm>.

⁵⁸ S/Res/1838 (2008) available at: <http://www.un.org/Docs/sc/unscreolutions08.htm>.

⁵⁹ S/Res/1846 (2008) available at: <http://www.un.org/Docs/sc/unscreolutions08.htm>.

⁶⁰ S/Res/1851 (2008) available at: <http://www.un.org/Docs/sc/unscreolutions08.htm>.

⁶¹ S/Res/1772 (2007) available at: <http://www.un.org/Docs/sc/unscreolutions07.htm>.

⁶² For more information, see the Committee web page at: <http://www.un.org/sc/committees/751/>.

authorization for members states to participate in the training and equipping of the TFG security forces in accordance with Resolution 1772.

Contact Group on Piracy off the Coast of Somalia

Based on Resolution 1851, the Bush Administration led the formation of a multilateral Contact Group on Piracy off the Coast of Somalia (CGPCS) made up of 24 member governments and five regional and international organizations.⁶³ The Contact group held its first meeting in January 2009 and identified six tasks for itself: 1) improving operational and information support to counter-piracy operations, 2) establishing a counter-piracy coordination mechanism, 3) strengthening judicial frameworks for arrest, prosecution and detention of pirates, 4) strengthening commercial shipping self-awareness and other capabilities, 5) pursuing improved diplomatic and public information efforts, and 6) tracking financial flows related to piracy.⁶⁴ In support of these goals, four working groups make recommendations at periodic meetings of the Contact Group secretariat on relevant military/operational, judicial, diplomatic, and public information aspects of regional and international anti-piracy efforts. The goals of the working groups' efforts are to improve operational coordination, information sharing, and the effectiveness of legal enforcement activities among all regional and international actors combating piracy in the region.

The CGPCS met in March and May 2009 to begin planning a series of coordinated responses. The latest plenary meeting of the CGPCS was held in New York in September 2009, and its membership has grown to 45 member governments, seven regional organizations, and two observers.⁶⁵ The participants approved the creation of a U.N.-administered trust fund to help defray the costs assumed by regional states for the prosecution of piracy suspects. The next meeting is planned for January 2010.

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

United States Naval Forces Central Command (NAVCENT) commands the Combined Maritime Forces operating in the Arabian/Persian Gulf, Gulf of Oman, Gulf of Aden, Red Sea, Arabian Sea, and Indian Ocean. In January 2009, the command established Combined Task Force 151 (CTF-151), with the sole mission of conducting anti-piracy operations in the Gulf of Aden and the waters off the Somali coast in the Indian Ocean. That role had previously been filled by CTF-150, which continues to perform counterterrorism and other maritime security operations as it has since 2001-2002. In August 2008, CTF 150 and partner forces agreed to the establishment of a Maritime Security Patrol Area (MSPA) in the Gulf of Aden to serve as a dedicated, more secure transit zone for merchant vessels. The MSPA has been credited in part with lowering the success rate of Somali pirates in the Gulf of Aden transit zone. Within the MSPA, eastbound and

⁶³ Resolution 1851 "encourages all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast."

⁶⁴ Statement of Contact Group on Piracy off the Coast of Somalia, New York, January 14, 2009.

⁶⁵ U.S. State Department Bureau of Political-Military Affairs, "Contact Group on Piracy off the Coast of Somalia: List of Participants, Fourth Plenary Meeting," New York, NY, September 10, 2009.

westbound Internationally Recommended Transit Corridors (IRTC) have been established “to de-conflict commercial transit traffic with Yemeni fishermen, provide a measure of traffic separation, and allow maritime forces to conduct deterrent operations in the [Gulf of Aden] with a greater degree of flexibility.”⁶⁶ All U.S.-flagged vessels transiting the Gulf of Aden have been directed to plan their voyages using the IRTC.⁶⁷

The list of countries participating in CTF-151 is fluid and consists of personnel and approximately two dozen ships from the United States, the United Kingdom, Canada, Denmark, France, Germany, Greece, Italy, the Netherlands, Pakistan, Saudi Arabia, Spain, South Korea, Turkey and Yemen, among others. Task force operations are coordinated from the NAVCENT command center in Bahrain. U.S. Coast Guard Law Enforcement Detachments (LEDETs) operate aboard CTF-151 vessels and perform support and advisory missions during boarding operations and provide training to task force personnel on evidence procedures, maritime law, and related issues. As of August 2009, NAVCENT reported that, since January 2009, CTF-151 and other cooperating naval forces had “encountered 527 pirates; 282 of which were disarmed and released, 235 disarmed and turned over for prosecution, and 10 were killed.”⁶⁸

Other countries, most notably Russia, China, and India, have deployed naval forces to the region to participate in monitoring and anti-piracy “national escort system” operations. From an operational perspective, while these countries do not formally and fully coordinate their policies with CTF-151, there are ongoing communication efforts. A military coordination mechanism known as Shared Awareness and De-confliction (SHADE) coordinates the activities of coalition forces and Russia, China, India, and Japan. Naval observers and officials in the United States have noted the engagement of China with particular interest, as Chinese naval operations in the Horn of Africa region demonstrate the Chinese government’s desire and ability to protect international shipping lanes far from China’s shores.

NATO: Operation Ocean Shield

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

In March 2009, NATO launched a new anti-piracy mission, Operation Allied Protector, under the command of Standing NATO Maritime Group 1 (SNMG1). According to NATO, the forces participating in Operation Allied Protector acted to “deter, defend against and disrupt pirate activities.” The Maritime Group was originally scheduled to perform temporary anti-piracy missions as it transited the Horn region en route to South East Asia and as it returned in June 2009.⁶⁹ In April 2009, NATO officials cancelled the planned SNMG1 visits to Singapore and

⁶⁶ U.S. Department of Transportation, Maritime Administration Advisory # 2009-07, Gulf of Aden, Red Sea, and Indian Ocean Transit, September 9, 2009.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ The task force is scheduled to visit Karachi, Pakistan, Singapore, and Perth, Australia, before returning to the Horn of Africa Region.

Australia and extended the Operation Allied Protector mission until June 20, 2009. As of late March 2009, the following ships were participating in SNMG1 and Operation Allied Protector: *NRP Corte Real* (flagship, Portugal), *HMCS Winnipeg* (Canada), *HNLMS de Zeven Provinciën* (The Netherlands), *SPS Blas de Lezo* (Spain), and the *USS Halyburton* (United States).

In August 2009, NATO replaced Operation Allied Protector with a new anti-piracy mission, Operation Ocean Shield, under the command of Standing NATO Maritime Group 2 (SNMG2). Like its predecessor missions, Operation Ocean Shield has a primary responsibility to deter and respond to piracy. A new component of the mission is participation in capacity building efforts with regional governments. In relation to this new mission, the Group flagship has hosted maritime officials from the Puntland regional government and visited the Somali port of Bosaso in the northern province of Bari (see **Figure 2**, “Map of Somalia”) for consultations with officials responsible for port security and maritime transportation.⁷⁰ As of August 2009, the following ships were participating in SNMG2 and Operation Ocean Shield: *HMS Cornwall* (flagship, United Kingdom), *HS Navarinon* (Greece), *ITS Libeccio* (Italy), *TCG Gediz* (Turkey), and *USS Laboon* (United States).

European Union: Operation ATALANTA

In December 2008, the European Union launched EU NAVFOR Operation ATALANTA, its first naval operation under the framework of the European Security and Defense Policy (ESDP). Forces participating in Operation ATALANTA have been tasked with provide protection for WFP vessels and merchant vessels and are authorized to “employ the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where they are present.”⁷¹ In June 2009, the European Council extended the mandate for Operation ATALANTA for one year from its original deadline of December 2009. According to the European Union, the operation will involve up to twenty ships and over 1,800 personnel over its full term. As of September 2009, the Netherlands, Spain, Germany, France, Greece, Italy, Sweden, Belgium, and Luxembourg have made permanent contributions of forces and personnel to the operation, and other EU member states support the operation’s headquarters.⁷² In coordination with the deployment, EU NAVFOR also has established an online center known as Maritime Security Center-Horn of Africa (MSC-HOA) for transiting ships to record their ships’ movements voluntarily and to receive updated threat information.⁷³ Similar voluntary tracking and reporting services are provided by the United Kingdom Maritime Trade Operations office in Dubai and the U.S. Navy’s Maritime Liaison Office in Bahrain.

⁷⁰ NATO Allied Maritime Component Command, “NATO works with Somali officials,” August 14, 2009. Available at: http://www.manw.nato.int/page_operation_ocean_shield.aspx.

⁷¹ European Union Council Secretariat, “Fact Sheet: EU naval operation against piracy (EU NAVFOR Somalia - Operation ATALANTA),” EU NAVFOR/04, March 2009.

⁷² EU NAVFOR Somalia - Operation ATALANTA, “Fact Sheet: EU Naval Operation Against Piracy,” September 17, 2009.

⁷³ Information on the Maritime Security Center-Horn of Africa (MSC-HOA) is available at: <http://www.mschoa.eu/Default.aspx>.

International Maritime Organization and the Djibouti Code of Conduct

The International Maritime Organization (IMO)⁷⁴ has had an international anti-piracy program since the late 1990s and has successfully engaged on a multilateral basis in other regions to improve anti-piracy cooperation. At present, cooperative mechanisms for managing the security of the waters near the Horn of Africa are being developed as called for by the IMO⁷⁵ and as encouraged by Resolution 1851.⁷⁶ The IMO began sponsoring consultation meetings on piracy for the Horn of Africa region in 2005, which led to the development of a draft cooperative framework agreement in early 2008.

In January 2009, representatives of 17 regional governments met at an IMO-sponsored meeting in Djibouti and adopted a Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the western Indian Ocean and the Gulf of Aden.⁷⁷ As of late January 2009, nine regional governments⁷⁸ had signed the Code of Conduct, which remains open for signature by other parties. Three regional facilities—the Maritime Rescue Coordination Centre in Mombasa, Kenya, the Sub-Regional Coordination Centre in Dar es Salaam, Tanzania, and a regional maritime information center that is to be established in Sana'a, Yemen—are planned to support the information sharing components of the agreement. The parties also agreed to resolutions on technical cooperation and the establishment of a regional training center in Djibouti. In September 2009, Japan made an initial contribution of \$14 million to a trust fund dedicated to supporting the IMO's Djibouti Code-related training and capacity building operations.

A similar cooperative framework developed by the IMO, the littoral states of the Strait of Malacca, and other Asian governments has been in force since 2006. Known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (ReCAAP),⁷⁹ the agreement established procedures for coordinating responses to piracy and sharing best practices among law enforcement and security personnel. The ReCAAP Information Sharing Center (ISC) in Singapore now serves as the principal clearinghouse for piracy reporting

⁷⁴ The International Maritime Organization is a United Nations agency with over 168 member governments. Based in the United Kingdom, its members develop regulations for international shipping related to safety, the environment, and maritime security. It also serves as a global coordinating body for legal issues, technical co-operation, and maritime security including anti-piracy efforts. For more information, see: <http://www.imo.org/>.

⁷⁵ IMO Resolution A.1002(25) "calls Upon Governments in the region to conclude, in co-operation with the Organization, and implement, as soon as possible, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships."

⁷⁶ Resolution 1851 "encourages all states and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to consider creating a center in the region to coordinate information relevant to piracy and armed robbery at sea off the coast of Somalia."

⁷⁷ Meeting minutes available at: <http://www.fco.gov.uk/resources/en/pdf/pdf9/piracy-djibouti-meeting>.

⁷⁸ Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania, and Yemen signed the code of conduct in January.

⁷⁹ Text available at: <http://www.recaap.org/about/pdf/ReCAAP%20Agreement.pdf>. Sixteen signatories include the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, and the Socialist Republic of Vietnam.

and response coordination.⁸⁰ These steps, taken in conjunction with other regional agreements between Malaysia, Indonesia and Singapore to coordinate anti-piracy patrols in the Straits of Malacca and surrounding waters, have been successful in reducing piracy in that region. The negotiation of the bilateral and multilateral initiatives in the Straits of Malacca region highlighted several issues that may be of interest to parties seeking to establish similar programs in the Horn of Africa region, namely the importance of addressing local concerns over sovereignty, territorial water rights, and the presence of foreign military forces in regional waters.

United Nations Office on Drugs and Crime: “Shipriders” and Capacity Building

Under the auspices of Resolution 1851 and in conjunction with the judicial working group of the (CGPCS), the United Nations Office on Drugs and Crime has launched a project to facilitate regional law enforcement participation in anti-piracy enforcement efforts off the coast of Somalia.⁸¹ The program was encouraged in language included in Resolution 1851 and focuses on providing judicial capacity building assistance to regional states and facilitating so-called “shiprider” arrangements in which regional law enforcement personnel are seconded to international vessels to perform anti-piracy arrest and investigation functions. The United States has shiprider agreements with a number of Western Hemisphere governments to facilitate maritime security operations in waters of shared concern.

In general, shiprider arrangements are designed to address the logistical and legal challenges inherent in multilateral naval enforcement efforts in remote areas or where the capacity of regional governments does not allow for the provision of sufficient security. With regard to current operations in the Horn of Africa region, long transport times, limited military resources, legal limitations on the operations of military personnel, and complex differences in jurisdictional standards and requirements would complicate the arrest and prosecution by the varied non-regional forces operating under Resolution 1851. In order to help regional governments meet the added resource requirements that the arrest, detention, and prosecution of Somali pirate suspects would create, the UNODC plans to provide judicial capacity building assistance, in coordination with other donors. UNODC Executive Director Antonio Maria Costa testified before the House Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight on the shiprider concept and proposed U.N. support in May 2009.⁸²

Private Sector and Shipping Industry Responses

Private sector and shipping industry responses to the threat of piracy in the waters off the Horn of Africa have varied. In addition to altering financial decisions based on higher insurance costs, some accounts suggest that shipment navigation patterns have changed in response to the threat of

⁸⁰ A diagram of ReCAAP-ISC reporting and response procedures is available at: http://www.recaap.org/about/pdf/Information_Flow_Response_chart.pdf.

⁸¹ Resolution 1851 “invites” states and regional organizations “to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (“shipriders”) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under [the] resolution.”

⁸² Transcript, UNODC Executive Director Antonio Maria Costa testimony before the House Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight, May 14, 2009.

piracy, with some vessels preferring to circumnavigate the southern Cape of Good Hope rather than risk attack in the Gulf of Aden. Crews also have developed a number of unique countermeasures and best practices in their attempts to ward off and resist pirate attacks. The use of water cannons, fire hoses, and passive sonic defenses has become more widespread, and industry surveys suggest that ships that operate at speeds above 15 knots⁸³ and that have higher freeboards⁸⁴ have proven less susceptible to pirate attack, thus far. Debates about the use of armed guards continue among shipping industry representatives, government officials, and observers worldwide (see “Options for Improving the Immediate Security of Merchant Ships”).

The IMO and other bodies such as the International Chamber of Commerce International Maritime Bureau (ICC-IMB) have developed detailed guidance and recommendations for governments and commercial vessels seeking to prevent, deter, and respond to pirate attacks.⁸⁵ The IMB also has established a 24-hour piracy reporting center in Kuala Lumpur, Malaysia, which seeks to serve as the global, one-stop shop for piracy reporting and piracy threat information distribution for commercial vessels. The IMB also works with other regional information centers to collect and disseminate threat and situation reporting. For the Horn of Africa region, the IMB and European Union Maritime Security Center-Horn of Africa (MSC-HOA) issue periodic “Industry Updates” detailing recent trends in pirate attacks and making recommendations to vessels transiting regional waters.⁸⁶

Issues for Congress and Policy Options

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

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

Like terrorism, acts of piracy in African waters pose a transnational security threat that emanates from areas plagued by conflict, weak governance, and economic insecurity. Continuing conflict in Somalia and Yemen illustrate the unstable regional context surrounding new anti-piracy operations. Regional security forces currently have limited maritime capability, and many

⁸³ One knot is unit of measurement equivalent to one nautical mile per hour or 1.15 miles per hour.

⁸⁴ The term ‘freeboard’ refers to the distance between the waterline and the main deck of the ship.

⁸⁵ Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia, Version 2, August 2009. Available at: http://www.icc-ccs.org/images/stories/pdfs/bmp_21-8-2009.pdf.

⁸⁶ Available at: http://www.icc-ccs.org/index.php?option=com_content&view=article&id=344&Itemid=233.

governments have prioritized the development of their armies at the expense of navies or coast guards. That has changed to some extent in recent years, as international studies have highlighted the threat to local economies posed by illegal fishing, in addition to more traditional maritime security threats. Regional coordination and intelligence sharing also is weak.

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

Legislation in the 111th Congress

The 111th Congress has explored other options for protecting maritime traffic in the region. H.R. 3376, the U.S. Mariner and Vessel Protection Act of 2009, introduced in July by Representative Frank Lobiondo, aims to address the use of force and the right of self-defense of U.S. mariners against acts of piracy. Sec. 3505 of the House version of the National Defense Authorization Act for FY2010, H.R. 2647, would require vessels carrying cargo for the Department of Defense in areas of high risk of piracy to be equipped with non-lethal defense measures to protect the vessel. H.R. 2647, Sec. 3506, would further require the Secretary of Defense to embark military personnel on board U.S.-flagged vessels carrying cargos owned by the U.S. government if a vessel is traveling in a high risk area and is determined by the Coast Guard to be at risk of being boarded by pirates. The Senate version of the bill did not include these measures.

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

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

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

U.S. military engagement in the region is divided among two geographic combatant Commands. U.S. Central Command’s area of responsibility (AOR) includes the waters of the Gulf of Aden and those off the eastern Somali coast, while the AOR of the new U.S. Africa Command

(AFRICOM), which became fully operational in October 2008, encompasses the African continent.⁸⁷ To date, much of the U.S. military's anti-piracy response has been conducted at sea, by Central Command (CENTCOM). On land, AFRICOM provides security assistance to several regional maritime security forces, few of which have "blue water capacity." CENTCOM provides similar assistance to the Yemeni coast guard.

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

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

As mentioned above, the United States conducts an array of maritime security assistance programs in East Africa and Yemen. In Kenya, for example, the United States provides maritime security assistance to both the Kenyan Navy and an array of agencies, including the Kenya Wildlife Service, revenue authority, and police, to address an array of threats, from smuggling and illegal fishing to terrorism. The U.S. also began support for a regional Maritime Center of Excellence in Mombasa in early 2009; courses at the Center are attended by participants from throughout East Africa. Several African countries, including Djibouti, Kenya, Tanzania, and Yemen, have received U.S. support for the installation of radar systems that provide enhanced maritime domain awareness. Congress expanded the Department of Defense's Section 1206 "train and equip" authority in FY2009 to include assistance for civilian maritime security forces. Several FY2009 Section 1206 programs aim support increased maritime capacity to address terrorist threats in the waters affected by Somali piracy, including programs for Djibouti, Yemen, Mozambique, Mauritius, Tanzania, and the Seychelles. In August 2009, AFRICOM and the government of the Seychelles announced an agreement with that will allow the U.S. military to operate P-3 Orion aircraft and unmanned aerial vehicles from the Seychelles in an effort to improve maritime surveillance in regional waters.⁸⁸

U.N. Security Council Resolution 1851 "calls on Member States to assist the TFG, at its request and with notification to the Secretary-General, to strengthen its operational capacity to bring to

⁸⁷ AFRICOM's AOR includes all African countries except Egypt, which remained in the AOR of CENTCOM after that command transferred responsibilities for the Horn of Africa countries to AFRICOM in 2008. For more information see CRS Report RL 34003, *U.S. Africa Command: U.S. Strategic Interests and the Role of the U.S. Military in Africa*, by Lauren Ploch.

⁸⁸ U.S. AFRICOM/Republic of Seychelles, Office of the President, "Seychelles President James Michel Hails Strengthening of Surveillance Cooperation with the United States," August 20, 2009.

justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea.” The Obama Administration may seek to expand current assistance programs for regional and Somali actors subject to congressional appropriations and authorization and in accordance with United Nations Security Council resolutions. As noted above, the Obama Administration requested \$40 million in 2009 supplemental Peacekeeping Operations (PKO) funding to provide “non-lethal equipment, logistical support, and basing facilities for the African Union Mission to Somalia and to support Somali security sector reform.”⁸⁹ While those funds are likely to be directed toward improving Somali capacity to counter threats from insurgents and terrorists, to the extent that assistance improves the overall ability of government forces to operate effectively and assert security control, it may have positive implications for anti-piracy operations in the future. The Administration is requesting \$67 million in FY2010 PKO funding for Somalia.

Although some press reports in April 2009 quoted unnamed U.S. officials as stating that the U.S. military may consider launching military attacks against pirate strongholds, in testimony before the House Armed Services Committee in March 2009, Stephen Mull, then-Acting Undersecretary of State for International Security and Arms Control stated that although the United States supported the inclusion in Security Council Resolution 1851 of authorization for anti-piracy operations on land, there were, at that time “no plans to conduct counter-piracy operations on land.”⁹⁰ Various parts of the U.S. government continue to encourage Somali figures in the Transitional Federal Government and in the region of Puntland to take action against pirate safe havens ashore. Overall, the Administration has signaled any major changes from the December 2008 National Security Council *Partnership and Action Plan*, which states that the United States “will work with concerned governments and international organizations to disrupt and dismantle pirate bases to the fullest extent permitted by national law.”

Piracy, Law Enforcement, and International Cooperation

Several United Nations instruments address the problem of piracy, including the Convention on the High Seas,⁹¹ the Convention on the Law of the Sea (UNCLOS),⁹² and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention).⁹³ The United States is a signatory to the Convention on the High Seas and the SUA Convention, but not to UNCLOS. A “global diplomatic effort to regulate and write rules for all ocean areas, all uses of the seas and all of its resources” resulted in the convening of The Third United Nations Conference on the Sea in 1973 and the adoption of UNCLOS in 1982.⁹⁴ UNCLOS generally

⁸⁹ According to the Administration justification for the supplemental request, “funding may also be directed towards Security Sector Reform (SSR) efforts. Some funding will pay for equipment and logistical support for training efforts for Somali troops by Tanzania, Uganda, Rwanda, and other nations in the region that will implement the training activities.” The Administration also is seeking authority to transfer up to \$50 million in supplemental Contributions for International Peacekeeping Activities (CIPA) funding to the PKO account for Somalia, if necessary.

⁹⁰ Testimony of then-Acting Undersecretary of State for International Security and Arms Control Stephen Mull before the House Armed Services Committee, March 5, 2009.

⁹¹ Convention on the High Seas, 13 U.S.T. 2312; T.I.A.S. 5200; 450 U.N.T.S. 82. Signed at Geneva, April 29, 1958. Entered into force September 30, 1962.

⁹² United Nations Convention on the Law of the Seas (UNCLOS), 21 I.L.M. 1261. Convention adopted December 10, 1982. Entered into force November 16, 1994 (the United States is not a party to the Agreement).

⁹³ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, T.I.A.S. Signed at Rome, March 10, 1988. Entered into force March 1, 1992 (for the United States March 6, 1995).

⁹⁴ The United Nations Convention on the Law of the Sea (A historical perspective), available at (continued...)

incorporates the rules of international law codified in the Convention on the High Seas, but also comprehensively addresses the use of other areas of the sea including, for example, the territorial seas, natural resources, and the seabed.

The Convention on the High Seas, to which the United States is a party, and UNCLOS both address piracy by stating that “[a]ll states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”⁹⁵ The term “piracy” is defined in UNCLOS (Article 101) as:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed-
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).⁹⁶

Article 110 of UNCLOS authorizes warships to visit and/or inspect ships on the high seas that are suspected of engagement in piracy. Although the United States is not party to UNCLOS, the Convention on the High Seas also authorizes the right of visitation/inspection of vessels suspected of being engaged in piracy.⁹⁷ States, under both the Convention on the High Seas and UNCLOS, are authorized to seize a pirate ship, or a ship taken by piracy and under the control of the pirates, and arrest the persons and seize the property on board.⁹⁸ The courts of the State whose forces carry out a seizure may decide the penalties to be imposed on the pirates.⁹⁹

The SUA Convention further expands on the judicial treatment of pirates. Its main purpose is “to ensure that appropriate action is taken against persons committing unlawful acts against ships.”¹⁰⁰ Unlawful acts include, but are not limited to, the seizure of ships; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.¹⁰¹ The SUA Convention calls on parties to the agreement to make its enumerated offenses “punishable by appropriate penalties which take into account the grave nature of those

(...continued)

http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

⁹⁵ Convention on the High Seas at Article 14; UNCLOS at Article 100.

⁹⁶ UNCLOS at Article 101. (The definition is, with a minor grammatical change, the same definition found in the Convention on the High Seas (Article 14).

⁹⁷ Convention on the High Seas at Article 22.

⁹⁸ Convention on the High Seas at Article 19; UNCLOS at Article 105.

⁹⁹ *Id.*

¹⁰⁰ International Maritime Organization statement on aims for the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Available at <http://www.imo.org/>.

¹⁰¹ *Id.*

offenses.”¹⁰² The United States criminalizes acts of piracy¹⁰³ and foreigners or U.S. citizens that commit acts of piracy are subject to imprisonment for life.¹⁰⁴ While it appears that U.S. law is sufficient to address the criminality of piracy, this may not be the case in other countries. Additionally, even with comprehensive criminal laws, the logistics related to the enforcement of the laws may be an impediment to their utilization.

Questions regarding legal jurisdiction, due process for detained pirate suspects, and the role of foreign military forces in anti-piracy law enforcement activities may complicate current U.S. and international operations against pirates in the Horn of Africa region. The most immediate legal concern associated with anti-piracy operations are jurisdictional questions that arise based on the location of pirate attacks and/or international naval interventions, the nationalities of crew members, and the countries of registry and/or ownership of any seized vessels.¹⁰⁵ Multiple governments may be able to assert legal jurisdiction depending on the specifics of the incident. But many governments lack sufficient laws and judicial capacity to effectively prosecute suspected pirates. The disposition of property and insurance claims for vessels involved in piracy also raises complex legal questions. A developing legal issue concerns the prosecution of juveniles participating in acts of piracy. Recent reports suggest that some of the Somali pirates are teenage minors,¹⁰⁶ and therefore could have a defense of infancy in certain jurisdictions that may assert jurisdiction over the offense.¹⁰⁷

To date, some of these legal and law enforcement challenges have been addressed through the establishment of bilateral agreements by the United States, the United Kingdom, the European Union and others with governments in the Horn of Africa region, particularly with Kenya. Some agreements concluded to date define procedures for the detention, transfer, and prosecution of captured pirate suspects. For example, suspected pirates captured by U.S. military forces now may be transferred to Kenyan custody for prosecution according to the terms of a bilateral memorandum of understanding signed in January 2009. As of September 2009, 100 suspected pirates captured by warships from France, Germany, Italy, Spain, Sweden, the United Kingdom, and the United States are being prosecuted in Kenyan courts.¹⁰⁸ The United States has provided capacity building assistance to Kenya’s Department of Public Prosecutions since 2005, and a resident legal advisor from the U.S. Department of Justice (DOJ) is providing the Kenyan government with assistance in piracy cases. DOJ has conducted several piracy workshops for prosecutors, police, and maritime security personnel. Other international donors have become increasingly engaged, and U.N. Office on Drugs and Crime (UNODC) is currently implementing a substantial capacity building program funded by the European Commission. As noted above

¹⁰² Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation at Article 5.

¹⁰³ 18 U.S.C. § 1651 *et seq.*

¹⁰⁴ 18 U.S.C. §§ 1651 and 1652.

¹⁰⁵ For one review and discussion of these legal questions from a U.S. military point of view, see Cmdr. James Kraska and Capt. Brian Wilson, “Fighting Piracy,” *Armed Forces Journal*, February 1, 2009 (expressing view that international and regional cooperation, not armed force, is the long-term solution to piracy).

¹⁰⁶ See <http://www.smh.com.au/world/fate-of-teen-pirate-uncertain-20090414-a5ih.html>.

¹⁰⁷ For example, under common law, children under the age of seven are conclusively presumed to be without criminal capacity, those who have reached the age of fourteen are treated as fully responsible, while as to those between the ages of seven and fourteen there is a rebuttable presumption of criminal incapacity. In addition jurisdictions have adopted juvenile court legislation providing that some or all criminal conduct by those persons under a certain age (usually eighteen) must or may be adjudicated in the juvenile court rather than in a criminal proceeding. LaFave & Scott, *Criminal Law* §4.11 (2d ed. 1986).

¹⁰⁸ The U.S. State Department provided CRS with documents on the status of piracy trials in Kenya in September 2009.

(see “United Nations Office on Drugs and Crime: “Shipriders” and Capacity Building”), efforts also are underway to establish mechanisms for regional law enforcement personnel to serve as shipriders on coalition vessels and to expand the anti-piracy law enforcement and judicial capacities of neighboring states.

Options for Improving the Immediate Security of Merchant Ships

Risk Reduction and Best Practices

The U.S. Department of Transportation Maritime Administration (MARAD) issues detailed guidance to U.S. mariners transiting the waters off the Horn of Africa region to help ensure their safety and security.¹⁰⁹ Its latest guidance, issued September 9, 2009, includes instructions for U.S. flagged vessels seeking escort support from the U.S. Navy and Combined Maritime Forces participating in coalition naval security operations in the region.¹¹⁰ As noted above, international bodies such as the International Maritime Organization¹¹¹ and the International Maritime Bureau¹¹² also have revised their recommendations for actions that merchant ships and their crews can take to reduce their risk of being attacked and captured.

These include measures that can be taken before and during pirate attacks. For example, rerouting ships, if possible, allows ships to avoid waters where Somali pirates are known to operate. This option can lengthen operating routes and increase shipping costs, but perhaps not as much as paying an occasional ransom. Recommendations suggest that transit of high-risk areas is not recommended at times of day when Somali pirates historically have been more likely to stage attacks, namely in early morning or dusk hours. In transit, effective watch procedures are recommended, since early detection of impending attacks increases the likelihood that avoidance and suppression measures will succeed. Higher ship operating speeds and evasive maneuvers have proven effective in many cases, as have denial systems such as barbed and razor wire and specialized electrical fences for ships. Crew preparation, training, and responses also are credited with reducing risks of successful pirate attacks.

Arming Merchant Ships¹¹³

Arming merchant ships can be done by either giving arms to the ship’s crew, or by hiring armed security teams to ride on the ships. Some observers and industry representatives have advocated for these options as a means of ensuring that there is an immediate security presence aboard vessels to serve as a deterrent or to respond to pirate attacks. Supporters argue that the large

¹⁰⁹ U.S. Department of Transportation Maritime Administration Advisories are available at: http://www.marad.dot.gov/news_room_landing_page/maritime_advisories/advisory_summary.htm.

¹¹⁰ U.S. Department of Transportation Maritime Administration Advisory #: 2009-07, Gulf of Aden, Red Sea and Indian Ocean Transit, September 9, 2009.

¹¹¹ International Maritime Organization, “Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships,” MSC1/Circ.1334, June 23, 2009.

¹¹² International Maritime Bureau-Piracy Reporting Center, Best Management Practices, August 2009. Available at: http://www.icc-ccs.org/images/stories/pdfs/bmp_21-8-2009.pdf.

¹¹³ Most of the concerns listed here are discussed in John W. Miller and Paulo Prada, “Attack Raises Debate On Guns For Sailors,” *Wall Street Journal*, April 11, 2009; and Keith Bradsher, “Rescue Fuels Debate Over Arming Crews,” *New York Times*, April 13, 2009.

geographic distances and limited responsiveness of international naval assets to piracy attacks makes the provision of on-ship security necessary. Others contend that the training of crew members to safely handle weapons does not pose an undue financial or practical burden to shipping companies. However, some merchant ship owners and operators are strongly averse to arming merchant ships, for practical and financial reasons.

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

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

Financial concerns may also mitigate against arming merchant ships. Hiring armed security teams might be more expensive than paying occasional ransoms. Liability for fatal shootings aboard a ship can be a complex legal matter that can lead to expensive lawsuits. Since many ports restrict vessels from having weapons on board, commercial ships that often make calls at multiple ports along their operating routes could find it difficult to operate along certain routes. Reports suggest that private companies providing armed guards and shipping companies using armed security teams are grappling with these and other related issues in an effort to avoid legal trouble. Hugh Martin, general manager of security firm Hart Security UK has stated that "the amount of effort we put in to ensure we are legal is colossal."¹¹⁴

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

The MSC agreed that flag States should strongly discourage the carrying and use of firearms by seafarers for personal protection or for the protection of a ship...the use of unarmed security personnel is a matter for individual shipowners, companies, and ship operators to decide. The carriage of armed security personnel, or the use of military or law-enforcement officers (duly authorized by the Government of the flag State to carry firearms for the security of the ship) should be subject to flag State legislation and policies and is a matter for the flag State to authorize, in consultation with ship owners, companies and ship operators.¹¹⁵

¹¹⁴ Katharine Houreld, "Private Ship Escorts Guard Against Pirates," *NavyTimes.com*, June 5, 2009. For additional discussions of issues relating to arming of merchant ships, see Keith Bradsher, "Rescue Fuels Debate Over Arming Crews," *New York Times*, April 13, 2009; and John W. Miller and Paulo Prada, "Attack Raises Debate On Guns For Sailors," *Wall Street Journal*, April 11, 2009.

¹¹⁵ Revised guidance on combating piracy agreed by IMO Maritime Safety Committee, Maritime Safety Committee - 86th session: 27 May - 5 June 2009.

International Traffic in Arms Regulations (ITAR)

The International Traffic in Arms Regulations (ITAR) may be an area of concern for ship owners desiring to arm their vessels in self-defense against acts of piracy. Section 38 of the Arms Export Control Act (ACEA)¹¹⁶ authorizes the President to control the export and import of defense articles and defense services. The President, through Executive Order 11958, as amended, delegated the statutory authority to promulgate regulations with respect to exports of defense articles and defense services to the Secretary of State. The resulting regulations are known as the International Traffic in Arms Regulations.¹¹⁷

ITAR requires U.S. persons¹¹⁸ to obtain a license in order to export or import items identified on the United States Munitions List.¹¹⁹ As defined by regulation, the term “export” includes “sending or taking a defense article out of the United States¹²⁰ in any manner.”¹²¹ Objects covered by the term “defense article” are found on the United States Munitions List¹²² and are classified into 21 separate categories. Categories I and III appear to be most relevant in a discussion regarding protection from acts of piracy because they include firearms (category I) and ammunition (category III) that could be used in the defense of a vessel. Based on the definitions of export and defense articles, a ship owner would be required to obtain a license for the temporary export of firearms and ammunition, or other covered armaments, for use in the defense of a vessel.

There is an exception to the licensing requirement under ITAR for the temporary export of not more than three non-automatic firearms and not more than 1,000 cartridges. To comply with this exception a U.S. person: (1) must declare the temporary export of the firearms and submit to an inspection by a customs officer; (2) must retain the firearms with the person (i.e., not mail the firearms to the destination); and (3) maintain the firearms for that person’s exclusive use and not for reexport or transfer of ownership.¹²³ The regulation makes a distinction between U.S. persons and crew members of vessels, but how the distinction would affect the status of the vessel as an entity is unclear.¹²⁴ This exception may be an option available to owners as a way to arm their vessels, without obtaining an export license since the term “U.S. person” is defined to include a corporation, business association, and partnerships, as well as other entities. Additionally, it would appear that individual crew members would be able to temporarily export firearms under the exception. However, crew members utilizing privately owned weapons to defend corporate property could raise significant legal liability issues for both the individuals and the corporation.

¹¹⁶ P.L. 90-629, 90 Stat. 744 (22 U.S.C. § 2778) (Arms export control is addressed in Chapter 39 of Title 22 of the *United States Code* (22 U.S.C. §§ 2751-2799aa-2)).

¹¹⁷ 22 C.F.R. §§ 120-130.

¹¹⁸ A ‘U.S. person’ is defined at 22 C.F.R. § 120.14 and § 120.15, as a “natural person who is a lawful permanent resident as defined by 8 U.S.C. § 1101(a)(20) or who is a protected person as defined by 8 U.S.C. § 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state, local) entity.”

¹¹⁹ 22 C.F.R. pt. 121.

¹²⁰ The term ‘United States’ is defined at 22 C.F.R. § 120.13, as “when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possession of the United States, the District of Columbia, the Commonwealth of the North Mariana Islands, any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.”

¹²¹ 22 C.F.R. § 120.17(a).

¹²² 22 C.F.R. § 121.1.

¹²³ 22 C.F.R. § 123.18(c).

¹²⁴ *Id.*

The ITAR licensing requirement exception does not supersede prohibitions against exports to certain countries, including, but not limited to countries identified by the United Nations Security Council through a United Nations Arms Embargo.¹²⁵ Additionally, a license to export defense articles, or in the alternative obtaining an exemption from the licensing requirement, does not address or satisfy requirements of foreign countries that may exist with respect to operating a vessel in their territorial waters while carrying weapons. The vessel's owner is responsible for knowing and respecting the laws of the foreign country.

Convoys

Some observers argue that U.S. and international naval vessels should provide convoy protection services to ships transiting the Horn of Africa region, particularly the Gulf of Aden. Supporters argue that the direct participation of coalition or other naval assets in merchant ship convoys would eliminate the risks posed by unescorted travel through the Gulf of Aden or areas along the eastern coast of Somalia by cutting down the response times to attempted attacks. However, merchant ship operators may be reluctant to use a convoy system because it can require merchant ships to wait in a certain location for the next scheduled convoy to begin. The delays associated with this waiting can impose costs on ship operators that could be greater than the cost of paying an occasional ransom. The establishment and maintenance of a convoy system over the long term, in the absence of broader efforts to address the root causes of the piracy problem, could pose unacceptable costs for international navies.

Escorts by Navy Ships

As of September 2009, the current MARAD advisory indicates that U.S.-flagged vessels may contact U.S. military headquarters in Bahrain to request escort services. Navy or Coast Guard vessels could escort U.S.-flagged commercial ships traveling in the Gulf of Aden, just as U.S. Navy vessels escorted U.S.-flagged ships (including reflagged Kuwaiti oil tankers) in the Persian Gulf in 1987-1988 (aka Operation Earnest Will) so as to protect them from potential Iranian attack during the Iran-Iraq war.

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

¹²⁵ 22 C.F.R. § 126.1.

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

Armed Security Details of U.S. Military Personnel

An alternative to having U.S. Navy (or Coast Guard) ships escort U.S.-flagged commercial ships would be to provide a small security detail of armed U.S. military personnel to each U.S.-flagged ship for the duration of its transit through the Gulf of Aden. The detail would board each U.S.-flagged ship at the start of its transit through the high-risk zone and depart the ship at the end of its transit through the high-risk zone. One person who has suggested this alternative—a retired U.S. Navy vice admiral—asserted that “A few well-armed teams aboard a few ships could accomplish this mission” of protecting U.S.-flagged commercial ships traveling through the area.”¹²⁶ An August 2009 news report states that France has placed military personnel aboard tuna fishing boats in the Indian Ocean and Belgium has offered eight-person military teams at a cost of \$162,000 per week.¹²⁷ Some U.S. corporate officers have argued that military teams should protect U.S.-flagged in order to avoid “regulatory shortfalls, liability concerns, and international reluctance to permit armed merchant vessels into their ports.”¹²⁸ Section 3506 of the House-passed version of H.R. 2647, the FY2010 Defense Authorization act, would require the Secretary of Defense to embark military personnel on board U.S.-flagged vessels carrying cargos owned by the U.S. government if a vessel is traveling in a high risk area and is determined by the Coast Guard to be at risk of being boarded by pirates. The Senate version of the bill did not include these measures.

Maritime War Risk Insurance and Implications of “Armed Crews”

Federal law (Title XII of the Merchant Marine Act of 1936, as amended) authorizes the federal government to administer a maritime war risk insurance program that insures or reinsures, as a last resort, ocean-going commerce should private ocean marine insurance markets prove insufficient. Available statistics suggest that the insurance industry’s financial resources are adequate, given policyholder surplus levels, and there is ample supply of coverage for ocean-going vessels, albeit at an elevated insurance premium level.¹²⁹ As a result, despite the dramatic

¹²⁶ John B. Perkins III, “Protect Our Mariners,” *Washington Times*, August 30, 2009: B1.

¹²⁷ Christopher Torchia, “Western Nations Weigh Arming Civilian Ships,” *NavyTimes.com*, August 13, 2009.

¹²⁸ Testimony of Arthur J. Volkle, Jr., Vice President, American Cargo Transport, Inc., before the House Committee on Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation, May 20, 2009.

¹²⁹ According to the A.M. Best Company, the U.S. property/casualty insurance industry’s reported surplus, a measure of claims-paying capacity or capital, declined by about \$62.3 billion or 12%, at year-end in 2008 to \$455.6 billion from \$517.9 billion at year-end 2007. While not all of the \$455.6 billion is allocated to ocean marine insurance, the level of (continued...)

increase in piracy off the coast of Somalia and increased premiums for sending a cargo shipment through the Gulf of Aden, some may contend that Congress does not need to amend the existing federal insurance statutory construct.

Others have urged arming ship crew as a risk mitigation option; Congress might consider steps to allow armed crews on some ships or support the use of military personnel in response to the current wave of piracy. Ocean marine insurers are conflicted on the “armed crew” issue. Some insurers believe traditional negotiations after an act of piracy—that lead to prompt formula-based ransom payments and a professional understanding between ship owners and the pirates about not damaging the ship or cargo in exchange for expedited payments—are the best approach to minimizing the cost of ocean marine transportation in piracy zones. Acts of piracy are actually declining in other areas although piracy still poses a threat to shipping and trade. Some might contend that arming ship crews would introduce new forms of armed conflict and increase the risks to cargo, vessels, and crew associated with piracy. Still other insurers would support increased levels of oversight and investigation into the piracy situation in an effort to ensure that international commerce remains stabilized, particularly at a time of global economic crisis.

Toward a Long-Term Solution: "Piracy is a Problem that Starts Ashore"¹³⁰

Some Members of Congress have called on the Administration to develop a “comprehensive approach” to Somalia that responds to the threat of piracy in the context of a broader initiative to stabilize the country and support transitional government institutions. Some U.S. officials support a similar approach. In January 2009, Dr. Jun Bando, Maritime Security Coordinator and U.S. AFRICOM Liaison for the U.S. Department of State Bureau of African Affairs argued that “a durable solution for ending piracy in the Horn of Africa will require improving security, stability, rule of law, and economic opportunity in Somalia, as well as solidifying political progress by forming a unity government and advancing the peace process.”¹³¹

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

Vice Admiral William Gortney

Commander, U.S. Naval Forces Central Command

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

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

(...continued)

industry-wide surplus suggests U.S. private insurers have the overall financial resources to cover potential losses from incidences of ocean piracy.

¹³⁰ United States Navy, Commander, Combined Maritime Forces Public Affairs, “Combined Maritime Forces Issues New Alert to Mariners,” April 7, 2009.

¹³¹ Dr. Jun Bando, Maritime Security Coordinator/U.S. Africa Command Liaison, U.S. Department of State Bureau of African Affairs, “International Response to Piracy Expanded, Unified,” *DipNote*, January 30, 2009.

multilateral anti-piracy initiatives, and improving coordination in the U.S. interagency.¹³² The Administration's interagency Counter-Piracy Steering Group continues to lead the efforts of over 75 bureaus, offices, and embassies engaged in anti-piracy operations. The State and Defense Departments lead the Steering Group and the Departments of Transportation (U.S. Maritime Administration [MARAD]), Justice, Homeland Security, Treasury, and USAID are members. Enhanced U.S. assistance to the Somali Transitional Federal Government and engagement with regional Somali representatives also aims to strengthen the ability and willingness of Somalis to secure regions where pirates currently enjoy safe havens.

In the short term, the international community has responded to the threat of piracy in the waters off the Horn of Africa with multinational naval patrols, diplomatic coordination efforts, and enhanced private security efforts by members of the commercial shipping industry. In the longer term, U.S. officials and international experts believe that addressing the threat of piracy will require the strengthening of regional security capabilities, improved intelligence gathering and sharing, more effective and capable law enforcement, and enhanced multilateral coordination, both at sea and on land. By all accounts, pirates will likely continue to find sanctuary in Somalia until basic governance and security conditions there improve, a prospect threatened by ongoing conflict.

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¹³² U.S. State Department Bureau of Political-Military Affairs, "Fact Sheet: United States Actions To Counter Piracy Off the Horn of Africa," September 1, 2009.

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Piracy: A Legal Definition

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Prepared for Members and Committees of Congress

Summary

Pirate attacks in the waters off the Horn of Africa, including those on U.S.-flagged vessels, have brought continued U.S. and international attention to the long-standing problem of piracy in the region. The United States has been an active participant in piracy interdiction and prevention operations focusing on the Horn of Africa region. As part of anti-piracy operations, the U.S. military has detained individuals accused of acts of piracy against U.S.-flagged vessels. In some instances these individuals have been released, others have been transferred to Kenya for criminal prosecution in the Kenyan courts, and some have been brought to the United States for criminal prosecution in the federal courts.

The U.S. Constitution gives Congress the power “To define and punish Piracies and Felonies committed on the high seas, and Offenses against the Law of Nations.” Since 1819, U.S. law has defined piracy not as a specific act, but rather “as defined by the law of nations.” The U.S. Supreme Court, in *United States v. Palmer* and *United States v. Smith*, has upheld Congress’s power to define piracy in terms of the law of nations. The Court has found that piracy, under the law of nations, requires a robbery at sea. In addition to U.S. law, contemporary international agreements, including the Convention on the High Seas, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention), and the United Nations Convention on the Law of the Sea (UNCLOS), address piracy. The United States is party to the first two agreements, and the third (UNCLOS) is generally accepted as reflecting customary international law.

The United States Navy, after thwarting two separate alleged acts of piracy, transferred suspected pirates to Norfolk, VA, for criminal trials in the U.S. District Court for the Eastern District of VA, on charges of piracy. One of the trials, *United States v. Hasan*, ended with the defendants found guilty on numerous charges, including piracy. The other case, *United States v. Said*, is on appeal based on a court ruling dismissing the charge of piracy. A common issue between the two cases, and yet the greatest distinction, is how the two trial courts interpreted the definition of piracy under 18 U.S.C. § 1651.

The *Said* court stated that the act of piracy, as defined by the law of nations, requires a robbery on the high seas. Thus, it appears that absent an actual robbery at sea, individuals may not be found guilty of the act of piracy under 18 U.S.C. § 1651, but may be tried for other offenses, including the offenses of attack to plunder a vessel, or committing violence against a person on a vessel. In *Hasan*, the trial court ruled that the act of piracy, as defined by the law of nations, is reflected by Article 110 of UNCLOS and thus does *not* require an actual robbery at sea to be convicted of piracy.

The divergent U.S. district court rulings may create uncertainty in how the offense of piracy is defined. Congress may provide guidance to the courts by clarifying the definition of piracy under 18 U.S.C. § 1651. However, in the absence of legislative clarification, the courts may arrive at differing interpretations.

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This report first examines the historical development of the offense of piracy, as defined by Congress and codified in the United States Code. The focus then turns to how contemporary international agreements define piracy. Finally, the report highlights developments in two trials involving charges of piracy in the federal district court in Norfolk, VA, *United States v. Said* and *United States v. Hasan*, specifically focusing on how the courts interpreted the definition of piracy under 18 U.S.C. § 1651.

U.S. Legal Framework

The U.S. Constitution, Art. I, § 8, cl. 10, provides that Congress has the power “To define and punish Piracies and Felonies committed on the high seas, and Offenses against the Law of Nations.” Utilizing this authority, Congress has enacted legislation addressing piracy for over 200 years. For example, in 1790, Congress, in an act “for the punishment of certain crimes against the United States,” addressed the offense of piracy, stating:

That if any person or persons shall commit upon the high seas, or in any river, haven, basin or bay, out of the jurisdiction of any particular state, murder or robbery, or any other offence which if committed within the body of a county, would *by the laws of the United States* be punishable with death; or if any captain or mariner of any ship or other vessel, shall piratically and feloniously run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship or goods committed to his trust, or shall make a revolt in the ship; every such offender shall be deemed, taken and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death; and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought.²

In 1818, the U.S. Supreme Court, in *United States v. Palmer*,³ examined the offense of piracy as established under the Act of 1790. The case presented a series of questions, over which the lower court was divided, including what acts constituted the offense of piracy.⁴ The primary question was whether Congress intended for actions that would constitute robbery on land but committed on the high seas be considered piracy.⁵ It was argued that because the offense of robbery committed on land would not receive the death penalty, it would not be considered piracy when

¹ For a comprehensive discussion on the U.S. approach to piracy, see CRS Report R40528, *Piracy off the Horn of Africa*, by Lauren Ploch et al.

² Act of April 30, 1790, § 8; 1 Stat. 112 (emphasis added).

³ 16 U.S. (3 Wheat.) 610 (1818).

⁴ *Id.* at 626.

⁵ *Id.* at 627.

committed on the high seas.⁶ The argument relied on the inclusion of the qualifying statement “would by the laws of the United States be punishable with death” in the Act of 1790. After an extensive discussion of statutory interpretation, the Court held that the “meaning of the term robbery, as used in the statute, we think no doubt can be entertained. It must be understood in the sense in which it is recognized and defined at common law.”⁷ Therefore, robbery committed on the high seas constituted the act of piracy, and as such, was punishable by death.

A second question in *Palmer* addressed whether the crime of robbery committed by a non-U.S. citizen on the high seas and on a vessel belonging to the subjects of a foreign state could be considered piracy.⁸ The Court stated “[t]he constitution having conferred on congress the power of defining and punishing piracy, there can be no doubt of the right of the legislature to enact laws punishing pirates, although they may be foreigners, and may have committed no particular offence against the United States. The only question is, has the legislature enacted such a law?”⁹ Again examining the intent of Congress in enacting the legislation, the Court concluded that nations provide for offenses and punishments based on their own policies, but that no general words of a statute should be construed in a manner to make acts by foreigners against a foreign government unlawful under U.S. law.¹⁰ As such, the Court held that:

The court is of the opinion that the crime of robbery, committed by a person on the high seas, on board of any ship or vessel belonging exclusively to subjects of a foreign state, on persons within a vessel belonging exclusively to subjects of a foreign state, is not a piracy within the true intent and meaning of the act for the punishment of certain crimes against the United States.¹¹

Thus, after *Palmer*, piracy punishable in U.S. courts was the act of robbery, as recognized and defined by common law, committed on the high seas. However, the crime of robbery by a non-U.S. citizen committed on the high seas on board a vessel owned by subjects of a foreign state was not considered piracy under the Act of 1790, and as such, was not punishable in the courts of the United States.

In 1819, arguably in response to *Palmer*, Congress passed an act “to protect the commerce of the United States, and punish the crime of piracy,” which stated:

That if any person or persons whatsoever, shall, on the high seas, commit the crime of piracy, *as defined by the law of nations*, and such offender or offenders, shall afterwards be brought into or found in the United States, every such offender or offenders shall, upon conviction thereof, before the circuit court of the United States for the district into which he or they may be brought, or in which he or they shall be found, be punished with death.¹²

⁶ *Id.*

⁷ *Id.* at 630.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 632.

¹¹ *Id.* at 633-34.

¹² Act of March 3, 1819, § 5; 3 Stat. 510 (emphasis added). (The footnotes accompanying the Act include a reference to *Palmer*: “Footnote (a): The decisions of the courts of the United States upon prosecutions for piracy, have been: Piracy.-A robbery committed on the high seas, although such robbery, if committed on land, would not, by the laws of the United States, be punishable with death, is piracy, under the act of Congress of 1790 ; and the circuit courts have jurisdiction thereof. United States v. Palmer, 3 Wheat. 610; 4 Cond. Rep. 352. The crime of robbery, as mentioned in (continued...)”)

The new language included a significant departure from the Act of 1790; the crime of piracy was defined not in specific terms, but rather “as defined by the law of nations.” Additionally, Congress addressed the question of whether a non-U.S. citizen could be punished for an act of piracy on the high seas against a foreign owned ship, with the inclusion of statutory language stating “offenders shall be brought into or found in the United States” and if convicted of the alleged crime, “punished with death.”¹³ Shortly after enactment of the new piracy statute, the Supreme Court had opportunity to address the constitutionality of the statute and definition in *United States v. Smith*.¹⁴ Smith, a member of a crew of a private armed vessel,¹⁵ was charged with piracy by the plunder and robbery of a Spanish vessel on the high seas.¹⁶ A jury found a special verdict that if “plunder and robbery” constituted piracy under the Act of 1819, then Smith was guilty of piracy; but if “plunder and robbery” did not constitute piracy, then Smith was not guilty. The circuit court, on the question of whether “plunder and robbery” constituted piracy by the law of nations and thus punishable under the Act of 1819, was divided and the question was certified to the Supreme Court.¹⁷ The question before the Supreme Court was whether the Act of 1819 was “a constitutional exercise of the authority delegated to Congress upon the subject of piracies.”¹⁸ In an attempt to determine whether the Act of 1819 sufficiently defined the offense of piracy, as well as the jurisdictional reach of the United States, the court stated:

So that, whether we advert to writers on the common law, or the maritime law, or the law of nations, we shall find that they universally treat of piracy as an offence against the law of nations, and that its true definition by that law is robbery upon the sea. And the general practice of all nations in punishing all persons, whether natives or foreigners, who have committed this offence against any persons whatsoever, with whom they are in amity, is a conclusive proof that the offence is supposed to depend, not upon the particular provisions of any municipal code, but upon the law of nations, both for its definition and punishment.¹⁹

Thus, the Supreme Court held that an act punishing “the crime of piracy, as defined by the law of nations” was within Congress’s constitutional authority to “define and punish” since it adopted by reference the sufficiently precise definition of piracy under international law, that is, the act of “robbery upon the sea.”²⁰

(...continued)

the act, is the crime of robbery as recognised and defined at common law. Ibid. The crime of robbery, committed by a person who is not a citizen of the United States, on the high seas, on board of a ship belonging exclusively to subjects of a foreign state, or on persons in a foreign vessel, is not piracy under the act, and is not punishable in the courts of the United States. Ibid.”)

¹³ *Id.*

¹⁴ 18 U.S. (5 Wheat.) 153 (1820).

¹⁵ Thomas Smith, and others, were part of the crew of a private armed vessel, the *Creollo*, commissioned by the government of Buenos Ayres, a colony then at war with Spain. Smith, and the others, mutinied and left the *Creollo* while in the port of Margaritta. They seized a vessel, the *Irresistible*, a private armed vessel commissioned by the government of Artigas, which was also at war with Spain. Utilizing the *Irresistible*, they committed an act of piracy against a Spanish vessel while on the high seas.

¹⁶ *Id.* at 154.

¹⁷ *Id.* at 155.

¹⁸ *Id.* at 153.

¹⁹ *Id.* at 162.

²⁰ *Id.* at 153, 160, 162.

In 1820, Congress reenacted parts of the 1819 Act, including the definition of piracy in Section 5, quoted above.²¹ The next statutory changes to the offense of piracy concerned the authorized punishment. The death penalty was replaced by “imprisonment at hard labor for life” in 1897,²² and then “imprisonment for life” in 1909 when the offense was stated as:

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.²³

The 1909 definition remains unchanged and is currently codified at Title 18, Section 1651 of the United States Code.

International Agreements

Several United Nations instruments address the problem of piracy, including the Convention on the High Seas,²⁴ the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention),²⁵ and the Convention on the Law of the Sea (UNCLOS).²⁶ The United States is a signatory to the Convention on the High Seas and the SUA Convention, but not to UNCLOS. A “global diplomatic effort to regulate and write rules for all ocean areas, all uses of the seas and all of its resources” resulted in the convening of the Third United Nations Conference on the Sea in 1973 and the adoption of UNCLOS in 1982.²⁷ UNCLOS generally incorporates the rules of international law codified in the Convention on the High Seas, but also comprehensively addresses the use of other areas of the sea including, for example, the territorial seas, natural resources, and the seabed. Although the United States is not a signatory to UNCLOS, it is generally viewed as a codification of customary international law.²⁸

The Convention on the High Seas, to which the United States is a party, and UNCLOS both address piracy by stating that “[a]ll states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”²⁹ The term “piracy” is defined in UNCLOS (Article 101) as:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed-

²¹ Act of May 15, 1820; 3 Stat. 600 (An act to continue in force “An Act to protect the commerce of the United States, and punish the crime of piracy,” and also to make further provisions for punishing the crime of piracy).

²² Act of January 15, 1897; 29 Stat. 487.

²³ P.L. 60-350; Act of March 4, 1909; 35 Stat. 1145 (An Act: To codify, revise, and amend the penal laws of the United States).

²⁴ Convention on the High Seas, 13 U.S.T. 2312; T.I.A.S. 5200; 450 U.N.T.S. 82. Signed at Geneva, April 29, 1958. Entered into force September 30, 1962.

²⁵ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, T.I.A.S. Signed at Rome, March 10, 1988. Entered into force March 1, 1992 (for the United States March 6, 1995).

²⁶ United Nations Convention on the Law of the Seas (UNCLOS), 21 I.L.M. 1261. Convention adopted December 10, 1982. Entered into force November 16, 1994 (the United States is not a party to the Agreement).

²⁷ The United Nations Convention on the Law of the Sea (A historical perspective), available at http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

²⁸ For a discussion on policy issues related to ratification of UNCLOS, see CRS Report RS21890, *The U.N. Law of the Sea Convention and the United States: Developments Since October 2003*, by Marjorie Ann Browne.

²⁹ Convention on the High Seas at Article 14; UNCLOS at Article 100.

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).³⁰

Article 110 of UNCLOS authorizes warships to visit and/or inspect ships on the high seas that are suspected of engaging in piracy. Although the United States is not party to UNCLOS, the Convention on the High Seas also authorizes the right of visitation/inspection of vessels suspected of being engaged in piracy.³¹ States, under both the Convention on the High Seas and UNCLOS, are authorized to seize a pirate ship, or a ship taken by piracy and under the control of the pirates, and arrest the persons and seize the property on board.³² The courts of the State whose forces carry out a seizure may decide the penalties to be imposed on the pirates.³³

The SUA Convention further expands on the judicial treatment of pirates. Its main purpose is “to ensure that appropriate action is taken against persons committing unlawful acts against ships.”³⁴ Unlawful acts include, but are not limited to, the seizure of ships; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.³⁵ The SUA Convention calls on parties to the agreement to make its enumerated offenses “punishable by appropriate penalties which take into account the grave nature of those offenses.”³⁶ The United States criminalizes acts of piracy,³⁷ and foreigners or U.S. citizens who commit acts of piracy are subject to imprisonment for life.³⁸

Contemporary Proceedings

The international community has responded to the threat of piracy in the waters off the Horn of Africa with multinational naval patrols, diplomatic coordination efforts, and enhanced private security efforts by members of the commercial shipping industry. However, questions regarding legal jurisdiction, due process for detained pirate suspects, and the role of foreign military forces in anti-piracy law enforcement activities may complicate current U.S. and international

³⁰ UNCLOS at Article 101. (The definition is, with a minor grammatical change, the same definition found in the Convention on the High Seas (Article 14).

³¹ Convention on the High Seas at Article 22.

³² Convention on the High Seas at Article 19; UNCLOS at Article 105.

³³ *Id.*

³⁴ International Maritime Organization statement on aims for the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, available at <http://www.imo.org/>.

³⁵ *Id.*

³⁶ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation at Article 5.

³⁷ 18 U.S.C. § 1651 *et seq.*

³⁸ 18 U.S.C. §§ 1651 and 1652.

operations against pirates in the Horn of Africa region. The most immediate legal concern associated with anti-piracy operations is jurisdictional questions that arise based on the location of pirate attacks and/or international naval interventions, the nationalities of crew members, and the countries of registry and/or ownership of any seized vessels.³⁹ Multiple governments may be able to assert legal jurisdiction depending on the specifics of the incident. Political will may be present in some countries, but many governments lack sufficient laws and judicial capacity to effectively prosecute suspected pirates. The disposition of property and insurance claims for vessels involved in piracy also raises complex legal questions. A developing legal issue concerns the prosecution of juveniles participating in acts of piracy. Recent reports suggest that some of the Somali pirates are teenage minors,⁴⁰ and therefore could have a defense of infancy in certain jurisdictions that may assert jurisdiction over the offense.⁴¹

The challenge of locating and sustaining jurisdictions willing and able to prosecute piracy suspects and detain pirate convicts persists. To date, some of these legal and law enforcement challenges have been addressed through the establishment of bilateral agreements by the United States, the United Kingdom, the European Union, and others with governments in the Horn of Africa region, particularly with Kenya. Some agreements concluded to date define procedures for the detention, transfer, and prosecution of captured pirate suspects. For example, suspected pirates captured by U.S. military forces now may be transferred to Kenyan custody for prosecution according to the terms of a bilateral memorandum of understanding signed in January 2009.⁴² However, rather than transfer suspected pirates to Kenya or the United States for trial, the U.S. military has in some instances confiscated their weapons and released them, allowing them to return to land.⁴³

The United States Navy, after thwarting two separate alleged acts of piracy, transferred suspected pirates to Norfolk, VA, for criminal trials in the U.S. District Court for the Eastern District of Virginia on charges of piracy. One of the trials, *United States v. Hasan*, ended with the defendants found guilty on numerous charges, including piracy. The other case, *United States v. Said*, is on appeal based on a court ruling dismissing the charge of piracy. A common issue between the two cases, and yet the greatest distinction, is how the two trial courts interpreted the definition of piracy under 18 U.S.C. § 1651.

³⁹ For one review and discussion of these legal questions from a U.S. military point of view, see Cmdr. James Kraska and Capt. Brian Wilson, "Fighting Piracy," *Armed Forces Journal*, February 1, 2009 (expressing view that international and regional cooperation, not armed force, is the long-term solution to piracy).

⁴⁰ See <http://www.smh.com.au/world/fate-of-teen-pirate-uncertain-20090414-a5ih.html>.

⁴¹ For example, under common law, children under the age of seven are conclusively presumed to be without criminal capacity; those who have reached the age of 14 are treated as fully responsible; while as to those between the ages of seven and 14, there is a rebuttable presumption of criminal incapacity. In addition, jurisdictions have adopted juvenile court legislation providing that some or all criminal conduct by those persons under a certain age (usually 18) must or may be adjudicated in the juvenile court rather than in a criminal proceeding. LaFave & Scott, *Criminal Law* § 4.11 (2d ed. 1986).

⁴² Even though an agreement exists for Kenya to prosecute individuals turned over by the United States, the *Associated Press* reported that Kenya released 17 suspected pirates because the U.S. Navy failed to provide video and photographic proof related to the alleged attack on the MV *Amira*. See the *Associated Press*, "Kenyan Court Frees 17 Suspected Somali Pirates," *CBS News.com*, November 5, 2010, available at <http://www.cbsnews.com/stories/2010/11/05/ap/africa/main7025856.shtml>.

⁴³ Dana Hughes and Kirit Radia, "U.S. Navy Ship Grabs More Pirates, Lets Them Go," April 2, 2010, <http://abcnews.go.com/WN/pirates-captured-released/story?id=10270726&page=1>.

In *United States v. Said*, the United States is attempting to prosecute individuals in federal district court for acts of piracy committed in the Horn of Africa region.⁴⁴ The case involves an attack on the USS *Ashland*, a U.S. Navy amphibious transport dock ship, on April 10, 2010, in the Gulf of Aden. The government has alleged that the defendants approached the USS *Ashland* and shot a firearm at the ship. The USS *Ashland* responded by returning fire, destroying the skiff the defendants were traveling in, and killing one of the skiff's passengers. The crew of the USS *Ashland* observed the remains of an AK-47 style firearm, among other items, in the burning skiff and took the defendants into custody.

The defendants were charged, among other offenses, with a violation of 18 U.S.C. § 1651, in that they “committed the crime of piracy as defined by the law of nations.”⁴⁵ The defendants argued that the charge of piracy should be dismissed because they “did not board or take control of the USS *Ashland* and did not obtain anything of value from the vessel.”⁴⁶ The government argued in response that piracy has “historically included different types of conduct and is not limited to the common law definition of robbery on land” and that “any unauthorized armed assault or directed violent act on the high seas is sufficient to constitute piracy.”⁴⁷

In resolving the defendants' motion to dismiss the charge of piracy, the United States District Court for the Eastern District of Virginia turned to the text of 18 U.S.C. § 1651. Noting that the statutory language of § 1651 “is devoid of any guidance on the scope of piracy under the law of nations,” the court turned to *Smith* to discern the definition of piracy.⁴⁸ The court found that according to the Supreme Court in *Smith*, as discussed above, the definition of piracy, under the law of nations, was “robbery or forcible depredations on the high seas, *i.e.*, sea robbery.”⁴⁹

The court then turned its attention to contemporary international law and international agreements to determine if the definition of piracy under the law of nations has evolved. After examining various international sources, including the Convention on the High Seas and UNCLOS, discussed above, the court found “that despite the fact that the crime of piracy is generally recognized in the international community, *Smith* is the only clear, undisputed precedent that interprets the statute at issue.”⁵⁰ Ultimately, the court granted the defendants' motion to dismiss the charge of piracy, but the other charged offenses including the use of firearm during a crime, assault with a dangerous weapon on federal officers and employees, and acts of violence against persons on a vessel remain valid.

However, in *United States v. Hasan*, the United States successfully prosecuted five Somalis for piracy, among other offenses.⁵¹ The case involved an attack on the USS *Nicholas*, a U.S. Navy frigate, on April 1, 2010, on the high seas between Somalia and the Seychelles. The government alleged that the defendants, utilizing a large seagoing vessel and two small assault boats, approached and attacked the USS *Nicholas*, mistakenly believing that it was a merchant ship,

⁴⁴ *United States v. Said*, No. 2:10cr57, 2010 WL 3893761 (E.D. Va., Aug. 17, 2010).

⁴⁵ *Id.* at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 11.

⁵⁰ *Id.* at 14.

⁵¹ *United States v. Hasan*, ___ F.Supp.2d ___, 2010 WL 4281892 (E.D. Va., Oct. 29, 2010).

with a rocket-propelled grenade and AK-47 assault rifles. The USS *Nicholas* returned fire, gave chase, and apprehended the defendants.

As in the *Said* case, the defendants in *Hasan* were charged, among other offenses, with a violation of 18 U.S.C. § 1651.⁵² The defendants argued that the charge of piracy should be dismissed because “general piracy requires a robbery on the high seas, and that, because robbery requires the ‘taking’ of property, the Government’s failure to allege any actual taking precludes a conviction for general piracy.”⁵³ The United States District Court for the Eastern District of Virginia, in considering and ultimately denying the defendants’ motion to dismiss the charge of piracy, acknowledged that the court was faced with a “straightforward question: what is the definition of piracy under the law of nations?”⁵⁴

The court examined both the *Palmer* and *Smith* cases for guidance on what constitutes piracy under 18 U.S.C. § 1651, noting that the Supreme Court held that “incorporating the definition of piracy under the law of nations, Congress had defined piracy as clearly as if it had penned the elements of the offense itself” and “because piracy under the law of nations was ‘robbery upon the sea’ ... the Act of 1819 ‘sufficiently and constitutionally’ defined piracy under the law of nations.”⁵⁵ Additionally, the court looked to foreign case law in an attempt to define piracy under the law of nations. Citing a case before the Privy Council of England in 1934, *In re Piracy Jure Gentium*, the court noted that the Privy Council concluded that an actual robbery “is not an essential element in the crime of piracy jure gentium. A frustrated attempt to commit a piratical robbery is equally piracy jure gentium.”⁵⁶ Further, the court examined a 2009 case, *Ahmed v. Republic*,⁵⁷ in which 10 Somalis were convicted of piracy in the Kenyan courts after being turned over by the U.S. Navy. The Kenyan Principal Magistrate’s Court stated that “[d]escribing piratical acts as including violence, detention, and the causing of harm or damage, the court invoked the definition of piracy under Article 101 of the LOS Convention [UNCLOS] for the proposition that the law consists of those acts.”⁵⁸ On appeal, the Kenyan High Court affirmed the Principal Magistrate’s Court interpretation of piracy and inclusion of the provisions from the LOS Convention, stating that “even if the Convention had not been ratified and domesticated, the Learned Principal Magistrate was bound to apply international norms and Instruments since Kenya is a member of the civilized world and is not expected to act in contradiction to expectations of member states of the United Nations.”⁵⁹

The court then turned its attention to contemporary international law and international agreements, that is, the Convention on the High Seas and UNCLOS. The court stated that “a comparison of the two treaties reveals that UNCLOS defines piracy in exactly the same terms as

⁵² *Id.*

⁵³ *Id.* at 7 (internal citation omitted).

⁵⁴ *Id.* at 8.

⁵⁵ *Id.* at 36-37.

⁵⁶ *In re Piracy Jure Gentium* (1934) A.C. 586 (1934).

⁵⁷ *Ahmed v Republic*, Crim. App. Nos. 198, 199, 201, 203, 204, 205, 207 & 207 of 2008 (H.C.K.. May 12, 2009) (Azangalala, J.).

⁵⁸ *Republic v. Ahmed*, Crim. No. 434 of 2006, at 155 (Chief Mag. Ct. Nov. 1, 2006) (Jaden, Acting Sr. Principal Mag.).

⁵⁹ *Ahmed* at 10-11 (citing Martin Dixon, *Textbook on International Law* 76-77 (1990)).

the 1958 High Seas Convention, with only negligible stylistic changes, and represents the most recent international statement regarding the definition and jurisdictional scope of piracy.”⁶⁰

Ultimately the court concluded “that both the language of 18 U.S.C. § 1651 and Supreme Court precedent indicate that the ‘law of nations’ connotes a changing body of law, and that the definition of piracy in 18 U.S.C. § 1651 must therefore be assessed according to the international consensus definition at the time of the alleged offense.”⁶¹ Thus, the court adopted the definition of piracy as found in Article 101 of UNCLOS as being the accepted definition of piracy under the law of nations and, as such, denied the defendants’ motion to dismiss the charge of piracy.⁶² With the denial of the motion to dismiss, the trial moved forward and the defendants were found guilty on 14 counts each of piracy, attack to plunder a vessel, assault, and related charges.⁶³

Conclusion

While the definition of piracy has remained fairly consistent over the past 200-plus years, two recent federal district court trial rulings may create uncertainty. Two strikingly similar cases involving alleged acts of piracy against U.S. Navy warships resulted in opposite outcomes with respect to two trial courts’ interpretations of the offense of piracy under 18 U.S.C. § 1651. Arguably, in light of international treaties addressing the act of piracy adopted by the United States since *Smith*, *Hasan* is the stronger of the two decisions.

If the definition of piracy is robbery at sea, it may restrict the ability of the government to charge individuals as pirates under 18 U.S.C. § 1651. Though, as illustrated by the *Said* case, it appears that there are various other offenses in Title 18 that may be applicable to acts of violence on the high seas. For example, 18 U.S.C. § 1659, Attack to Plunder a Vessel, having a penalty of 20 years’ imprisonment; 18 U.S.C. § 2291(a)(6), Acts of Violence Against Persons on a Vessel, having a penalty of 20 years’ imprisonment; and 18 U.S.C. § 2291(a)(9), Conspiracy to Perform Acts of Violence Against Persons on a Vessel, having a penalty of 20 years’ imprisonment, would appear to be viable offenses rather than the offense of piracy. However, if the definition of piracy under 18 U.S.C. § 1651 is to include the definition of piracy under Article 110 of UNCLOS, convictions for acts of piracy may be more attainable.

The divergent U.S. district court rulings may create uncertainty in how the offense of piracy is defined. Congress may provide guidance to the courts by clarifying the definition of piracy under 18 U.S.C. § 1651. However, in the absence of legislative clarification, the courts may continue to arrive at differing interpretations.

⁶⁰ *Hasan* at 45.

⁶¹ *Id.* at 52.

⁶² *Id.* at 81.

⁶³ Steve Szkotak, “Jury finds Somalis guilty of piracy,” *Associated Press*, November 24, 2010.

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United States Government Accountability Office
Report to Congressional Requesters

September 2010

MARITIME SECURITY

Actions Needed to Assess and Update Plan and Enhance Collaboration among Partners Involved in Countering Piracy off the Horn of Africa



GAO

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September 2010



Highlights of [GAO-10-856](#), a report to congressional requesters

Why GAO Did This Study

Somali pirates operating off the Horn of Africa have attacked more than 450 ships and taken nearly 2,400 hostages since 2007. A small number of U.S.-flagged vessels and ships have been among those affected. As Somalia lacks a functioning government and is unable to repress piracy in its waters, the National Security Council (NSC) developed the interagency *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)* in December 2008 to prevent, disrupt, and prosecute piracy off the Horn of Africa in collaboration with international and industry partners. GAO was asked to evaluate the extent to which U.S. agencies (1) have implemented the plan, and any challenges they face in doing so, and (2) have collaborated with partners in counterpiracy efforts. GAO examined counterpiracy plans, activities, collaborative practices, and data, and interviewed industry and international partners and officials at U.S. agencies and the Combined Maritime Forces in Bahrain.

What GAO Recommends

GAO recommends that the NSC reassess and update its *Action Plan*; identify metrics; assess the costs, benefits, and effectiveness of U.S. counterpiracy activities; and clarify agency roles and responsibilities. The NSC did not comment. The Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury provided comments to clarify facts in the report.

View [GAO-10-856](#) or [key components](#). For more information, contact John Pendleton at (202) 512-3489 or pendletonj@gao.gov or Stephen L. Caldwell at (202) 512-9610 or caldwells@gao.gov.

MARITIME SECURITY

Actions Needed to Assess and Update Plan and Enhance Collaboration among Partners Involved in Countering Piracy off the Horn of Africa

What GAO Found

The U.S. government has made progress in implementing its *Action Plan*, in collaboration with international and industry partners, but pirates have adapted their tactics and expanded their area of operations, almost doubling the number of reported attacks from 2008 to 2009, and the U.S. government has yet to evaluate the costs, benefits, or effectiveness of its efforts or update its plan accordingly. The United States has advised industry partners on self-protection measures, contributed leadership and assets to an international coalition patrolling pirate-infested waters, and concluded prosecution arrangements with Kenya and the Seychelles. Officials credit collaborative efforts with reducing the pirates' rate of success in boarding ships and hijacking vessels in 2009. However, from 2007 to 2009, the most recent year for which complete data were available, the total number of hijackings reported to the International Maritime Bureau increased, ransoms paid by the shipping industry increased sharply, and attacks spread from the heavily patrolled Gulf of Aden—the focus of the *Action Plan*—to the vast Indian Ocean. The *Action Plan*'s objective is to repress piracy as effectively as possible, but the effectiveness of U.S. resources applied to counterpiracy is unclear because the interagency group responsible for monitoring the *Action Plan*'s implementation has not tracked the cost of U.S. activities—such as operating ships and aircraft and prosecuting suspected pirates—nor systematically evaluated the relative benefits or effectiveness of the *Action Plan*'s tasks. GAO's prior work has shown that federal agencies engaged in collaborative efforts need to evaluate their activities to identify areas for improvement. Moreover, as pirates have adapted their tactics, the *Action Plan* has not been revised. Without a plan that reflects new developments and assesses the costs, benefits, and effectiveness of U.S. efforts, decision makers will lack information that could be used to target limited resources to provide the greatest benefit, commensurate with U.S. interests in the region.

The U.S. government has collaborated with international and industry partners to counter piracy, but it has not implemented some key practices for enhancing and sustaining collaboration among U.S. agencies. According to U.S. and international stakeholders, the U.S. government has shared information with partners for military coordination. However, agencies have made less progress on several key efforts that involve multiple agencies—such as those to address piracy through strategic communications, disrupt pirate finances, and hold pirates accountable—in part because the *Action Plan* does not designate which agencies should lead or carry out 13 of the 14 tasks. For instance, the Departments of Defense, Justice, State, and the Treasury all collect information on pirate finances, but none has lead responsibility for analyzing that information to build a case against pirate leaders or financiers. The NSC, the President's principal arm for coordinating national security policy among government agencies, could bolster interagency collaboration and the U.S. contribution to counterpiracy efforts by clarifying agency roles and responsibilities and encouraging the agencies to develop joint guidance to implement their efforts.

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Abbreviations

<i>Action Plan</i>	<i>Countering Piracy off the Horn of Africa: Partnership and Action Plan</i>
BIMCO	Baltic and International Maritime Council
Contact Group	Contact Group on Piracy off the Coast of Somalia
CPCC	Counter-Piracy Coordination Center
FBI	Federal Bureau of Investigation
INTERCARGO	International Association of Dry Cargo Shipowners
INTERTANKO	International Association of Independent Tanker Owners
ISPS	International Ship and Port Facility Security Code
ITF	International Transportation Workers Federation
NSC	National Security Council
SIGTTO	Society of International Gas Tanker and Terminal Operators Limited
U.K.	United Kingdom

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United States Government Accountability Office
Washington, DC 20548

September 24, 2010

The Honorable John F. Tierney
Chairman
Subcommittee on National Security and Foreign Affairs
Committee on Oversight and Government Reform
House of Representatives

The Honorable John L. Mica
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Piracy off the Horn of Africa has been growing in frequency and severity over the past several years and threatens one of the world's busiest shipping lanes near key energy corridors and the route through the Suez Canal. Since 2007, more than 450 ships have reported pirate attacks in this area, and Somali pirates have taken nearly 2,400 hostages and received over \$100 million in ransom payments.¹ Although only a few U.S.-flagged vessels—notably the *MV Maersk Alabama* in April 2009—have been attacked, pirates have attacked or attempted attacks on chemical and oil tankers, freighters, cruise ships, fishing vessels, and even warships. In addition to jeopardizing the lives and welfare of the citizens of many nations, piracy contributes to regional instability and creates challenges for shipping and freedom of navigation. With Somalia's lack of a functioning government, this illicit but profitable activity has raised concerns that piracy ransom proceeds may undermine regional security and contribute to other threats, including terrorism.

The international community has taken several steps to respond to the growing piracy problem. The United Nations Security Council has adopted several resolutions addressing an international response to piracy off the Horn of Africa.² In 2008, the United States, the North Atlantic Treaty

¹According to the International Maritime Bureau, pirate attacks in the Gulf of Aden, Red Sea, Arabian Sea, Indian Ocean, and off the coast of Oman have been attributed to Somali pirates.

²For example, Resolution 1816 authorized governments to enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, but only with authorization from the Somali Transitional Federal Government. S.C. Res. 1816, U.N. Doc. S/RES/1816 (June 2, 2008).

Organization, the European Union, regional naval forces, and others began patrolling waters near Somalia. In January 2009, a multinational naval task force—Combined Task Force 151—was established under the U.S.-led Combined Maritime Forces with a specific mission to conduct counterpiracy operations. Additionally, in January 2009, a multilateral Contact Group on Piracy off the Coast of Somalia (Contact Group) was formed pursuant to United Nations Security Council Resolution 1851 to coordinate international counterpiracy efforts.³

Recognizing that vibrant maritime commerce underpins global economic security and is a vital national security issue, the United States has developed policies and plans to collaborate with its international and interagency partners to address piracy off the Horn of Africa and to mobilize an interagency U.S. response. In December 2008, the National Security Council (NSC) published the *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)*.⁴ This plan implements the *National Strategy for Maritime Security* (September 2005) and the *Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea* (June 2007) as applied to piracy off the Horn of Africa. Consistent with the U.S. policy to continue to lead and support international efforts to repress piracy and to urge other states to take decisive action both individually and through international efforts, the *Action Plan* seeks to involve all nations, international organizations, industry, and other entities with an interest in maritime security to take steps to repress piracy off the Horn of Africa.⁵ The interagency initiatives of the *Action Plan* are to be coordinated and undertaken by the U.S. Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury, and the Office of the Director of National Intelligence, subject to the availability of resources.

³S.C. Res. 1851, U.N. Doc. S/RES/1851 (Dec. 16, 2008).

⁴The White House NSC is the principal forum used by the President of the United States for considering national security and foreign policy matters with his senior national security advisors and cabinet officials and is part of the Executive Office of the President of the United States. The function of the Council is to advise and assist the president on national security and foreign policies. The Council also serves as the president's principal arm for coordinating these policies among various government agencies. On May 26, 2009, President Obama merged the White House staff supporting the Homeland Security Council (HSC) and the National Security Council into one National Security Staff (NSS). The HSC and NSC each continue to exist by statute as bodies supporting the president.

⁵In the context of this report, the term "states" refers to nations or countries involved in counterpiracy efforts.

Over the last few years, we have completed a number of reviews that examine issues related to piracy off the Horn of Africa. In December 2007, we reported that the vast areas at risk for piracy off the Horn of Africa combined with the small number of ships available for patrolling them make protecting energy tankers and other commercial vessels difficult.⁶ In February 2008, we reported that several challenges limit U.S. and international stabilization, humanitarian, and development efforts in Somalia and recommended that the United States develop a more detailed strategy to address these challenges.⁷ In June 2008, we evaluated the *National Strategy for Maritime Security* and its supporting plans and determined that the implementation status of the eight supporting plans varied.⁸ In September 2009, we reported on the Department of the Treasury's collaboration with interagency partners to safeguard the financial system against illicit use and combat national security threats, and recommended mechanisms to improve interagency collaboration.⁹ Also in September 2009, we reported on the key actions agencies need to take to enhance interagency collaboration on national security issues.¹⁰ A list of our related GAO products is included at the end of this report.

Interested in U.S. efforts to respond to piracy, your offices asked us to review the extent to which the U.S. government agencies: (1) have made progress in implementing the *Action Plan* to counter piracy off the Horn of Africa and any challenges they face; and (2) are collaborating with each other, and with international and industry partners to counter piracy off the Horn of Africa.

⁶GAO, *Maritime Security: Federal Efforts Needed to Address Challenges in Preventing and Responding to Terrorist Attacks on Energy Commodity Tankers*, [GAO-08-141](#) (Washington, D.C.: Dec. 10, 2007).

⁷GAO, *Somalia: Several Challenges Limit U.S. and International Stabilization, Humanitarian, and Development Efforts*, [GAO-08-351](#) (Washington, D.C.: Feb. 19, 2008).

⁸GAO, *Maritime Security: National Strategy and Supporting Plans Were Generally Well-Developed and Are Being Implemented*, [GAO-08-672](#) (Washington, D.C.: June 20, 2008).

⁹GAO, *Combating Illicit Financing: Treasury's Office of Terrorism and Financial Intelligence Could Manage More Effectively to Achieve Its Mission*, [GAO-09-794](#) (Washington, D.C.: Sept. 24, 2009).

¹⁰GAO, *Interagency Collaboration: Key Issues for Congressional Oversight of National Security Strategies, Organizations, Workforce, and Information Sharing*, [GAO-09-904SP](#) (Washington, D.C.: Sept. 25, 2009).

To assess U.S. government progress and challenges in implementing the *Action Plan* for countering piracy off the Horn of Africa, we reviewed the *Action Plan*, the *2007 Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea*, relevant U.S. laws, and United Nations Security Council resolutions. We also reviewed program documents, analyzed data on the incidents of piracy off the Horn of Africa for the years 2007 through June 2010, and interviewed officials from the Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury, and the Office of the Director of National Intelligence as well as component agencies including the Federal Bureau of Investigation (FBI), Coast Guard, and National Maritime Intelligence Center to discuss implementation of the *Action Plan* and collaboration with partners in counterpiracy efforts. We selected these departments and agencies because the *Action Plan* states they shall contribute to, coordinate, and undertake initiatives in accordance with the plan. We also reviewed prior GAO work related to results-oriented government and evaluated the extent to which the interagency Counter-Piracy Steering Group followed select key practices for achieving results.¹¹ In addition, we met with international and industry partners involved in developing best practices for protecting ships from pirate attack, working with the international Contact Group, and participating in naval patrols off the Horn of Africa. We discussed data-collection methods, processes for data entry, and the steps taken to ensure reasonable accuracy of the data with both the International Maritime Bureau and the Combined Maritime Forces. We determined the data to be sufficiently reliable for the purposes of this report.

To identify the extent to which U.S. government agencies are collaborating with each other, and with international and industry partners, we evaluated the extent to which department and agency actions incorporate key practices for enhancing and sustaining collaboration on complex national security issues.¹² In addition, we observed information sharing forums; reviewed program documents; and interviewed agency, international, and industry officials about collaboration efforts. We conducted this performance audit from October 2009 to September 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and

¹¹GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

¹²[GAO-09-904SP](#).

conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The scope and methodology used in our review are described in further detail in appendix I.

Background

The 1958 Geneva Convention on the High Seas and the United Nations Convention on the Law of the Sea share the same definition of piracy, and, under that definition, piracy consists of any of several acts, including any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship and directed against another ship, aircraft, persons, or property onboard another ship on the high seas; or against a ship, persons or property in a place outside the jurisdiction of any state.¹³ Additionally, according to both conventions, all states have the duty to cooperate to the fullest extent possible in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state. Furthermore, both conventions authorize states to seize pirate ships or a ship under the control of pirates and arrest the persons and seize the property onboard, on the high seas or in any other place outside the jurisdiction of any state. In addition, a single piratical attack often affects the interests of numerous countries, including the flag state of the vessel, various states of nationality of the seafarers

¹³The Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, 84 U.N.T.S. 11, which has been ratified by the United States, attempted to codify the rules of international law relating to the high seas and contains provisions determined to be generally declaratory of established principles of international law by the United Nations Conference on the Law of the Sea. The United States has not ratified the United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3. Both conventions define piracy as any of the following acts: (1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (a) on the high seas, against another ship or aircraft, or against persons or property onboard such ship or aircraft; (b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2.

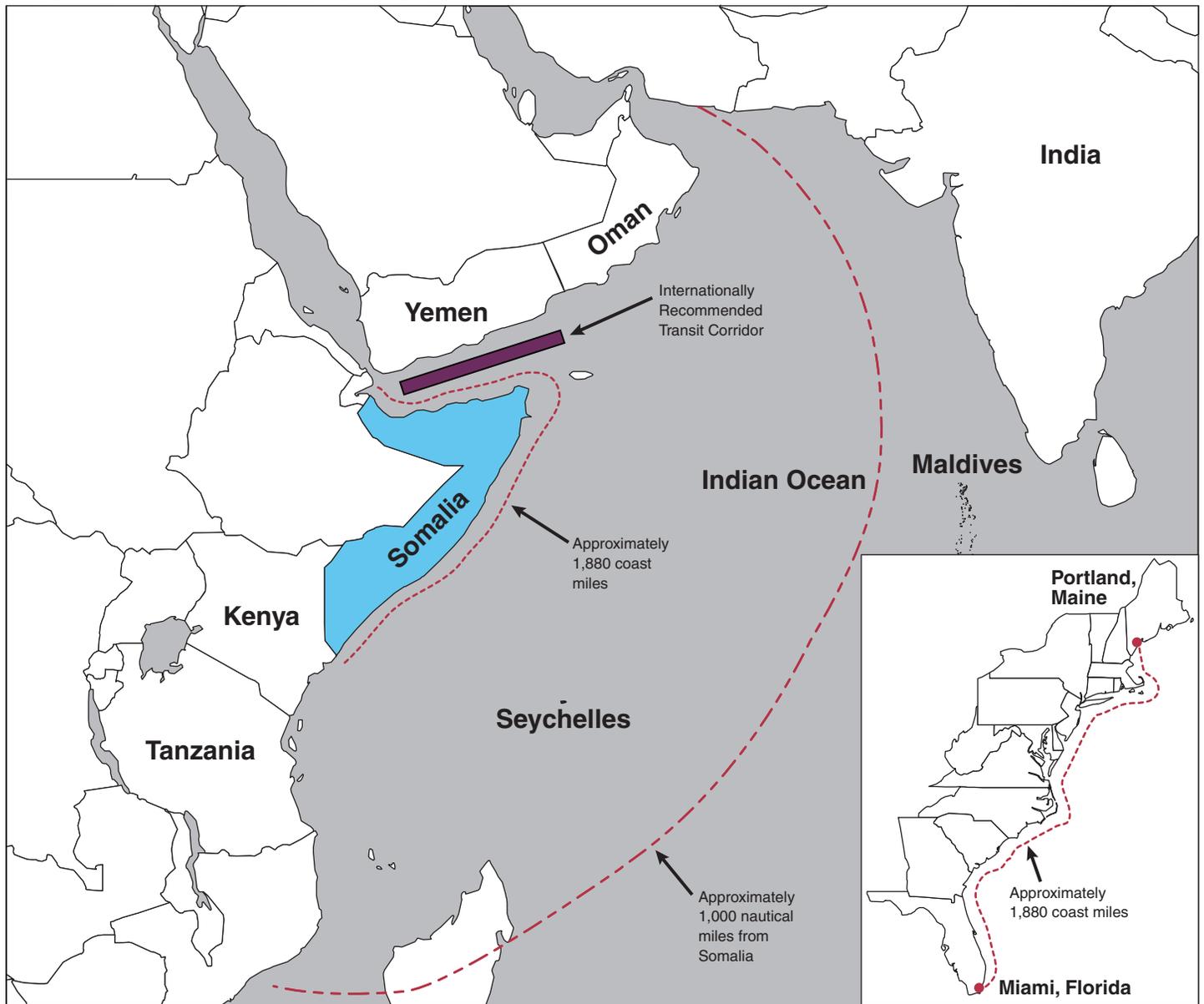
taken hostage, regional coastal states, owner states, and cargo owner, transshipment, and destination states.¹⁴

Somali pirates attack and harass vessels transiting the Indian Ocean and in the Gulf of Aden, a natural chokepoint that provides access to the Red Sea and the Suez Canal and through which over 33,000 ships transit each year.¹⁵ Pirates operate from land-based enclaves along the 1,880-mile coastline of Somalia, which is roughly equivalent to the distance from Portland, Maine, to Miami, Florida. Figure 1 illustrates the vast area in which incidents of piracy are occurring, 1,000 nautical miles from Somalia's coast. Figure 1 also shows the location of the Internationally Recommended Transit Corridor in the Gulf of Aden, where coalition forces have established naval patrols to help ensure safe passage for transiting vessels.

¹⁴The flag state is the country in which the vessel is registered. In general, flag states have the authority to enforce their own as well as international regulations, such as those relating to security standards, with respect to such vessels. Most ships are not registered under the same flag as the nationality of the owner. As of 2008 only 422 of the 1154 U.S.-owned commercial ships were registered in the United States with the remaining 732, or 63 percent, registered in other countries. Panama and Liberia have the two largest registries and together register 23.5 percent of commercial vessels worldwide. Panama has 6,323 ships registered, 85 percent of which are foreign-owned; Liberia has 2,204 ships registered, 96 percent of which are foreign-owned. Coastal states are countries with a sea coast. Some regional coastal states include Kenya, Seychelles, Tanzania, and Yemen.

¹⁵According to the World Shipping Council, more than 7 percent of the world's total ocean trade transited the Suez Canal in 2007. The alternative to using the Suez Canal is to travel an additional 4,900 nautical miles around the African continent.

Figure 1: Somalia and a Comparison to the Eastern Coast of the United States



Source: GAO (data), Map Resources (map).

To conduct their attacks, Somali pirates generally use small skiffs, carrying between four and eight persons armed with AK-47 rifles or similar light arms and, at times, with rocket-propelled grenades. Once they target

a vessel, pirates typically coordinate a simultaneous two- or three-pronged attack from multiple directions. Depending on the characteristics and acquiescence of the victim vessel, pirates can board and commandeer a vessel in less than 20 minutes. Pirate vessels usually are equipped with grappling hooks, ladders, and other equipment to assist the boarding of a larger craft. Pirate vessels vary in sea-worthiness and speed with some able to travel at speeds between 25 and 30 knots and operate in high sea conditions, while others have more restricted capabilities. According to the Office of Naval Intelligence, Somali pirates do not typically target specific vessels for any reason other than how easily the vessel can be boarded. Pirates patrol an area and wait for a target of opportunity. Vessels that travel through the high-risk area at a speed of less than 15 knots and have access points close to the waterline are at higher risk of being boarded and hijacked. According to a June 2010 self-protection guide published by maritime industry organizations, there have been no reports of pirates boarding ships proceeding at speeds over 18 knots. Figure 2 shows U.S. authorities boarding a suspected pirate skiff.

Figure 2: U.S. Visit, Board, Search, and Seizure Team Boards a Suspicious Boat in the Indian Ocean



Source: U.S. Navy.

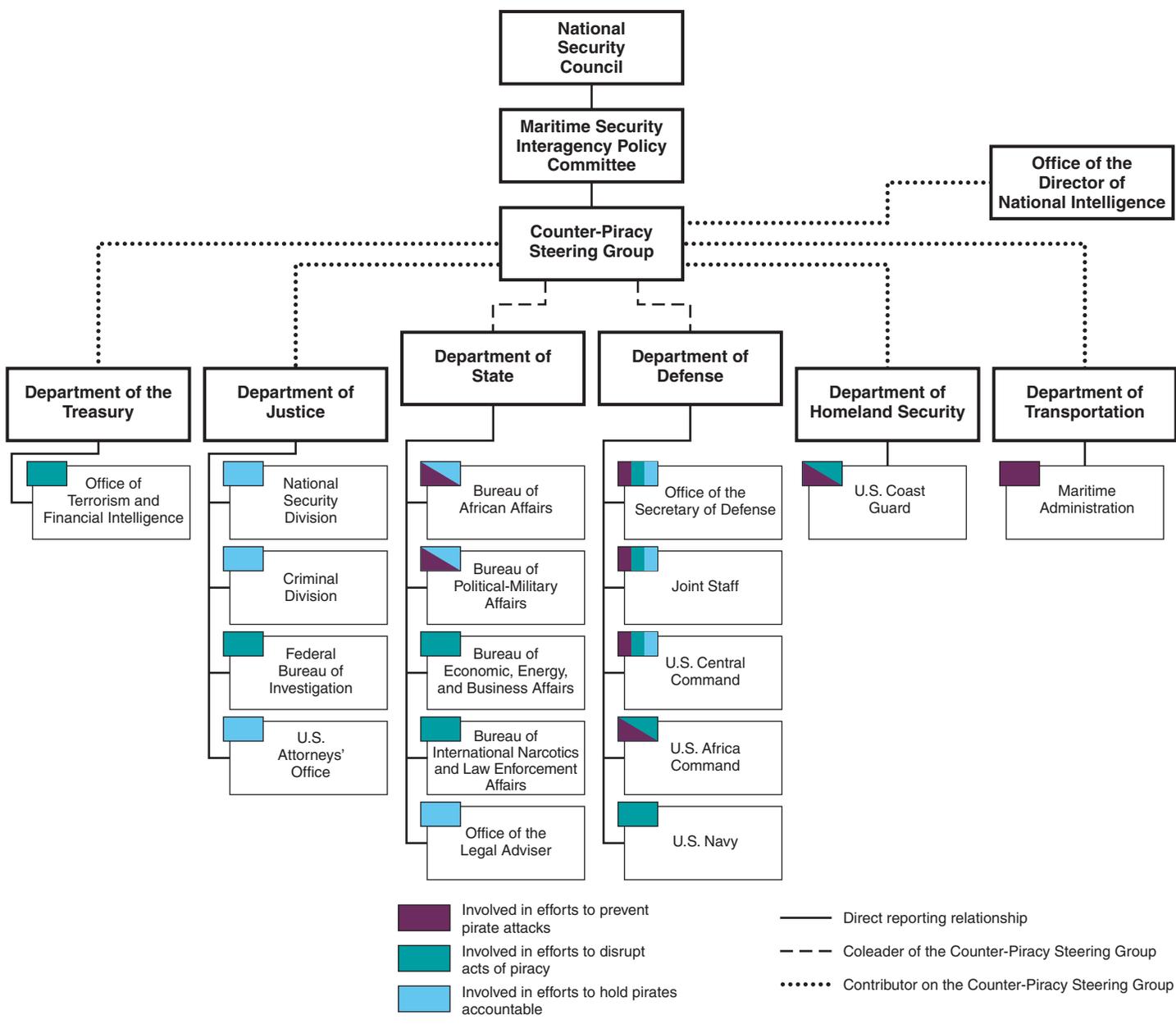
Unlike pirates in other parts of the world, Somali pirates kidnap hostages for ransom and, up to this point, have not tended to harm captives, steal cargo, or reuse pirated ships for purposes other than temporarily as mother ships. Mother ships are typically larger fishing vessels often acquired or commandeered by acts of piracy that pirates use to store fuel and supplies, and tow skiffs, which allow them to operate and launch attacks further off shore. This “hostage-for-ransom” business model is possible in part because the pirates have bases on land in ungoverned Somalia where they can bring seized vessels, cargoes, and crews and have access to food, water, weapons, ammunition, and other resources during ransom negotiations. In an ungoverned state with widespread poverty, the potential for high profits with low costs and relatively little risk of consequences has ensured that Somali pirate groups do not lack for recruits and support. Moreover, some U.S. and international officials suspect that Somali businessmen and international support networks may provide financing, supplies, and intelligence to pirate organizations in exchange for shares of ransom payments.

In addition to posing a threat to the lives and welfare of seafarers, piracy imposes a number of economic costs on shippers and on governments. Costs to shippers include ransom payments, damage to ships and cargoes, delays in delivering cargoes, increased maritime insurance rates, rerouting vessels, and hardening merchant ships against attack. According to officials at the Departments of State and Defense, governments incur costs by conducting naval patrols, as well as the costs of transporting, prosecuting, and incarcerating suspected and convicted pirates.

The United States’ *National Strategy for Maritime Security*, issued in 2005, declares that the United States has a vital national interest in maritime security. The strategy recognizes that nations have a common interest in facilitating the vibrant maritime commerce that underpins economic security, and in protecting against ocean-related terrorist, hostile, criminal, and dangerous acts, including piracy. The *National Strategy for Maritime Security* also requires full and complete national and international coordination, cooperation, and intelligence and information sharing among public and private entities to protect and secure the maritime domain. The 2007 *Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea* states that it is the policy of the United States to “continue to lead and support international efforts to repress piracy and urge other states to take decisive action both individually and through international efforts.”

In December 2008, the NSC developed the *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)* to implement the 2005 strategy and the 2007 policy as applied to piracy off the Horn of Africa. The *Action Plan* establishes three main lines of action for interagency stakeholders to take to repress piracy in collaboration with industry and international partners: (1) prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy; (2) disrupt acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states; and (3) ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates by flag, victim, and coastal states, and, in appropriate cases, the United States. The NSC—including the Maritime Security Interagency Policy Committee—develops policy for the U.S. response to piracy off the Horn of Africa. The *Action Plan* directed the Secretary of State and Secretary of Defense to establish a high-level interagency, operational task force—the Counter-Piracy Steering Group—to coordinate, implement, and monitor the actions centered in the *Action Plan*. In addition, the NSC directed that the Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury and the Office of the Director of National Intelligence contribute to, coordinate, and undertake initiatives in accordance with the *Action Plan*, subject to available resources. Figure 3 shows the U.S. departments and agencies involved in implementing the three lines of action contained in the *Action Plan*.

Figure 3: U.S. Agencies Involved in the Response to Piracy off the Horn of Africa



The Department of State (State) is involved in efforts to prevent acts of piracy and hold pirates accountable, primarily by leading U.S. interaction with international partners working through the Contact Group, building

regional judicial capacity to prosecute suspected pirates, and encouraging states to prosecute when their interests are involved. Additionally, State is involved in efforts to disrupt acts of piracy by tracking ransom payments and following financing issues related to piracy. Within Defense, U.S. Naval Forces Central Command is involved in prevention, interdiction, and prosecution efforts by contributing forces to the Combined Maritime Forces, an international maritime coalition. Within the Combined Maritime Forces, Combined Task Force 151 conducts counterpiracy operations in international waters, including the Red Sea, the Gulf of Aden, the Gulf of Oman, the Arabian Gulf and the waters off the Somali coast in the Indian Ocean. The Naval Criminal Investigative Service supports and assists interdiction and prosecution efforts by conducting incident investigations, supervising detention of suspected pirates, assisting U.S. and international prosecutions, debriefing released crews, and providing criminal intelligence information. U.S. Africa Command assists in preventing piracy through strategic communication efforts and building partner capacity in regional states and would plan and, if authorized, conduct any land-based military activities in Somalia to interrupt pirate operations. U.S. Africa Command also conducts counterpiracy naval patrols and interdiction efforts in its area of responsibility. Treasury is involved in disrupting pirates' revenue sources by examining pirate financial activity and implementing an executive order to block the assets of certain persons. Justice is involved in holding pirates accountable through prosecution as well as judicial capacity-building in African states. The Coast Guard, under Homeland Security, helps prevent piracy through its work with and regulation of the U.S. shipping industry and assists in interrupting piracy by providing law enforcement units and boarding teams on Navy vessels. Transportation's Maritime Administration assists with preventing piracy by working with the shipping industry to develop best practices for the industry to protect itself from piracy. In addition, within the intelligence community, the Office of Naval Intelligence—as part of the National Maritime Intelligence Center—provides maritime intelligence assistance.

The international community, shipping industry, and international military forces also have been involved in taking steps to prevent and disrupt acts of piracy off the Horn of Africa, and facilitate prosecutions of suspected pirates. Over the past few years, the United Nations adopted a number of United Nations Security Council resolutions related to countering piracy in the Horn of Africa region, including resolutions 1816 which authorizes states to enter the territorial waters of Somalia in coordination with the Somali Transitional Federal Government, for the purpose of repressing acts of piracy and armed robbery at sea, and to use all necessary and appropriate means to repress acts of piracy and armed robbery within

Somali territorial waters.¹⁶ In January 2009, the Contact Group on Piracy off the Coast of Somalia (Contact Group) formed under the auspices of United Nations Security Council Resolution 1851, and facilitates discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. In addition, in February 2009 organizations representing the interests of ship owners, seafarers, and marine insurance companies worked to publish the first version of voluntary commercial vessel self-protection measures to avoid and respond to pirate attacks, referred to as “best management practices.” In May and September 2009, 10 countries signed the New York Declaration, and committed to (1) promulgate the internationally recognized best management practices for self-protection to vessels on their registry and (2) ensure that vessels on their registry have adopted and documented appropriate self-protection measures in their ship security plans when carrying out their obligations under an existing international agreement.¹⁷

The United States also has provided forces and leadership to the Combined Maritime Forces, which is a coalition of 25 contributing nations that are working to conduct maritime security operations in the region. In January 2009, the Combined Maritime Forces established Combined Task Force 151, a multinational naval task force with the sole mission of conducting counterpiracy operations in the Gulf of Aden and the waters off the Somali coast in the Indian Ocean. That role previously had been filled by Combined Task Force 150, which continues to perform counterterrorism and other maritime security operations as it has since 2001. There are 11 nations that have participated and several others that have agreed to send ships or aircraft or both to participate in Combined Task Force 151. In addition, the United States has contributed assets to the North Atlantic Treaty Organization’s counterpiracy effort since its inception. Its current effort, Operation Ocean Shield, focuses on at-sea counterpiracy operations and offers assistance to regional countries in developing their own capacity to combat piracy activities. Moreover, as

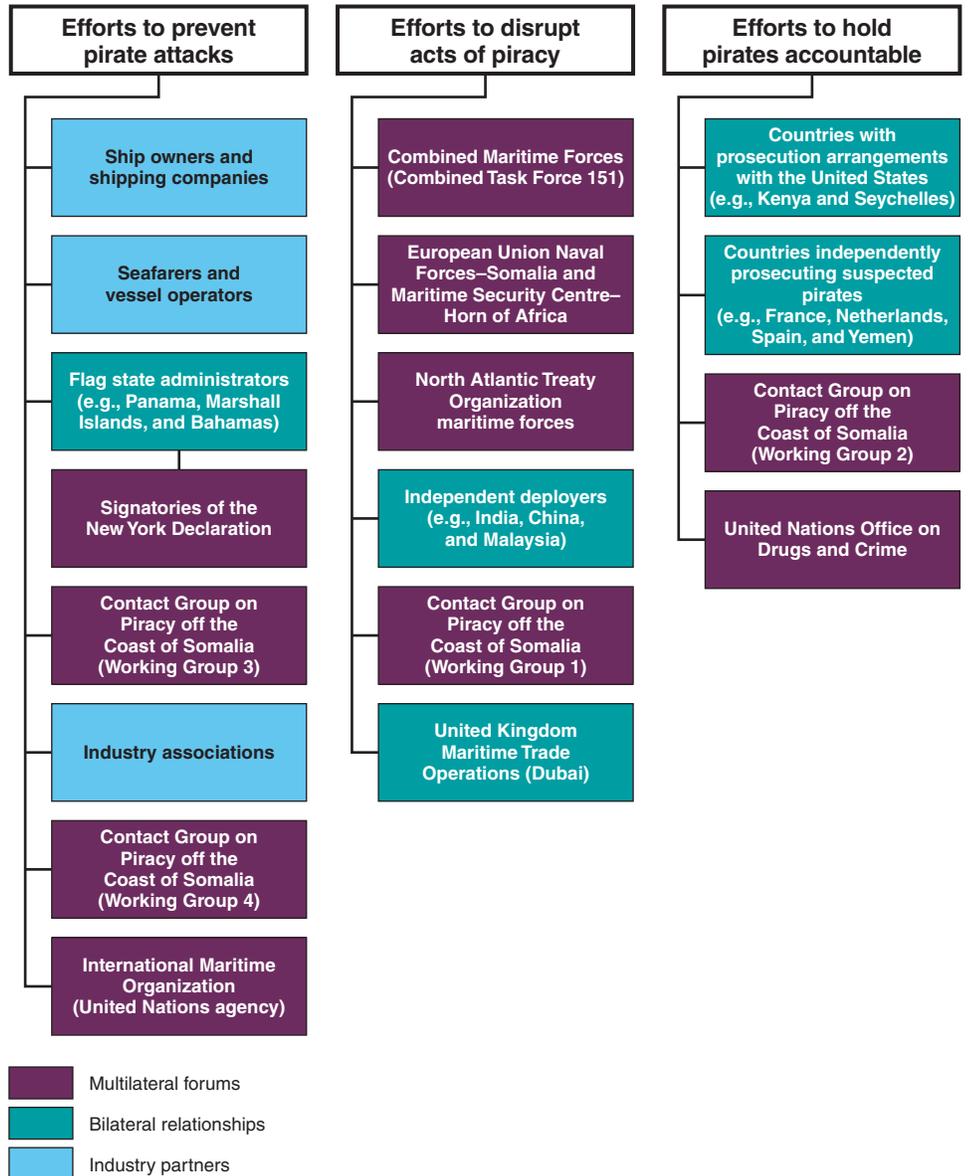
¹⁶S.C. Res. 1816, U.N. Doc. S/RES/1816 (June 2, 2008). The authorities provided by that resolution were renewed in 2009 with the adoption of United Nations Security Council Resolution 1897, U.N. Doc. S/RES/1897 (Nov. 30, 2009).

¹⁷According to the declaration, the signatory countries will ensure, when carrying out their obligations under the International Ship and Port Facility Security (ISPS) Code that vessels on their registry have adopted and documented appropriate self-protection measures in their ship security plans. The ISPS Code is a part of the International Convention for the Safety of Life at Sea, 32 U.S.T. 47, T.I.A.S. No. 9700. See app. III for complete listing of countries that have signed the New York Declaration.

part of the Combined Maritime Forces, the United States also works with the European Union, which conducts counterpiracy operations and escorts World Food Programme vessels delivering humanitarian aid to countries in the region, as well as independent deployers not part of the coalition that escort vessels and patrol area waters.

Figure 4 shows many of the key international and industry partners involved in the response to piracy off the Horn of Africa with whom the United States collaborates and coordinates. More information on international and shipping-industry partners is included in appendix III.

Figure 4: International and Industry Partners Involved in the Response to Piracy off the Horn of Africa



Source: GAO.

According to officials at State and Justice, the United States will consider prosecuting suspected pirates in appropriate cases when U.S. interests are directly affected, such as what occurred when suspected pirates attacked

the U.S.-flagged ships MV *Maersk Alabama*, USS *Nicholas*, and USS *Ashland*.¹⁸ When suspected pirates are captured by U.S. forces and Justice determines not to prosecute the case in the United States, the United States works with the affected states and regional partners to find a suitable venue for prosecution. In January 2006, 10 suspected pirates were captured by U.S. forces after they hijacked the Indian-flagged dhow Safinal Bisarat and used it to attack the Greek-owned and Bahamian-flagged Delta Ranger.¹⁹ This was the first incident where U.S. forces captured suspected pirates in the region and transferred them into the custody of Kenya. As of July 2010, the United States had formalized two arrangements with regional states—Kenya and the Seychelles—to facilitate the transfer and prosecution of suspected pirates.²⁰ The United Nations Office on Drugs and Crime, the International Maritime Organization, and individual governments have assisted in developing the judicial capacity of regional states.

¹⁸In April 2009, Somali pirates seized the MV *Maersk Alabama* approximately 250 nautical miles southeast of the Somali town of Eyl. The pirates held the captain hostage for five days. U.S. naval forces rescued the captain, killing three suspected pirates and taking one into custody. In March 2010 pirates attacked the USS *Nicholas* while it was operating west of the Seychelles in international waters. The USS *Nicholas* captured five suspected pirates after exchanging fire, sinking a skiff, and confiscating a suspected mother ship. In April 2010 pirates fired upon the USS *Ashland* about 330 nautical miles off the coast of Djibouti. The USS *Ashland* captured six suspected pirates after exchanging fire and sinking their skiff. The United States also has brought charges related to the November 2008 attack on the Danish-owned MV *CEC Future* that was carrying cargo belonging to a U.S. company against one of the suspected pirates involved in the attack on the USS *Ashland*.

¹⁹A dhow is a type of vessel used for coastal trading off the Horn of Africa.

²⁰Although Kenya announced its intent to withdraw from its arrangement with the United States in April 2010, that decision was later reversed. The United States formalized its arrangement with the Seychelles in July 2010.

The United States Has Taken Steps to Implement Its Counterpiracy Plan, but Has Not Evaluated Its Efforts or Updated Its Plan

U.S. agencies have made progress implementing the NSC's *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)* to lead and support international efforts to counter piracy, but the effort faces several implementation challenges. The United States has made the most progress on working with partners to implement efforts to prevent attacks, such as by encouraging the shipping industry to transit in areas patrolled by international navies. However, the U.S. government has had less success in other areas. For example, the United States has not disrupted pirate bases on shore, and the international community has made only limited progress to disrupt pirates' revenue and prosecute suspected pirates. While many stakeholders credit international, industry, and U.S. government efforts with contributing to a decline in the percentage of successful attacks that resulted in a vessel boarding or hijacking, since 2007 pirates have increased their total number of attacks, become more organized, and greatly expanded their area of operations. Meanwhile, the *Action Plan* has not been updated to address these changes since it was published in December 2008, and the U.S. government has not evaluated the costs or effectiveness of its counterpiracy efforts or reported on the results of the interagency effort.

U.S. Government Has Taken Steps to Implement Planned Efforts to Prevent, Disrupt, and Prosecute Pirate Attacks but Faces Challenges

In collaboration with their international and industry partners, U.S. agencies have taken steps across the three lines of action established in the *Action Plan* to: (1) prevent attacks by reducing the vulnerability of the maritime domain, (2) disrupt acts of piracy in ways consistent with international law and the rights and responsibilities of coastal and flag states, and (3) ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates. The *Action Plan* establishes the U.S. role in countering piracy as a collaborative one, seeking to involve all countries and shipping-industry partners with an interest in maritime security. For U.S. agencies, the *Action Plan* states that, subject to available resources, the Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury, and the Office of the Director of National Intelligence will contribute to, coordinate, and undertake initiatives in accordance with the *Action Plan*. The NSC also establishes some limits to the scope of the plan by focusing on immediate measures to reduce the incidents of piracy, rather than longer-term stabilization of Somalia that the *Action Plan* asserts is needed to fully repress piracy.

Our review focused on the steps U.S. agencies have made to repress piracy off the Horn of Africa, but given the international nature of the issue, our analysis frequently refers to the related efforts of international and

industry partners. We found that, of the 14 total tasks established within the three lines of action in the *Action Plan*, substantial progress has been made in implementing 4 tasks, the majority of which are related to preventing piracy. The United States has made some progress toward implementing 8 other tasks, including all of the tasks involved in facilitating the prosecution of suspected pirates. Little or no progress has been made with regard to 1 task that relates to disrupting acts of piracy, and we did not assess 1 task because agencies decided it would duplicate the efforts of international partners and should not be implemented. Figure 5 summarizes the results of our assessment. For more detailed information about U.S. agencies' efforts to implement the *Action Plan* and our analysis of their progress, see appendix II.

Figure 5: Interagency Progress in Implementing the National Security Council's (NSC) *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)*

Tasks	GAO assessment ^a	Status
Prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy		
Establish and maintain a Contact Group		U.S. government helped establish in January 2009; Coast Guard and Maritime Administration lead working group on industry self-protection.
Strengthen and encourage the use of the Maritime Security Patrol Area		U.S. government has made progress working with international and industry partners, but has limited influence on commercial vessels that are not flagged with the United States.
Updating ships' security plans		Coast Guard has approved piracy annexes to ship security plans for 100 percent of U.S.-flagged vessels identified as transiting high-risk waters, including those in the Horn of Africa.
Strategic communication		U.S. government has issued counterpiracy statements and supported international efforts; however, governmentwide plan not finalized and lack of U.S. presence on land in Somalia inhibits full implementation.
Disrupt acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states		
Support a regionally based Counter-Piracy Coordination Center (CPCC)	Not applicable ^b	U.S. government has no plans to support the establishment of a CPCC since it would duplicate the reporting and monitoring functions performed by other organizations.
Seize and destroy pirate vessels and related equipment, and deliver suspected pirates to prosecuting states		U.S. and international forces have seized nearly 100 pirate vessels and their related equipment but released 57 percent of captured suspects for reasons including difficulties in meeting evidence standards and/or securing prosecution venues. ^c
Provide interdiction-capable presence		U.S. Navy and Coast Guard contribute assets and leadership to coalition forces patrolling off the Horn of Africa with an average of 4-5 ships in the region each day.
Support shiprider programs and other agreements		The United States has supported an arrangement to bolster regional capabilities to counter piracy, but U.S. agencies have not established shiprider programs because they question the benefits to facilitating prosecutions.
Disrupt and dismantle pirate bases ashore		Action not authorized by the President at this time; lack of U.S. presence in Somalia hinders implementation.
Disrupt pirate revenue		In April 2010, President Obama signed an executive order that blocks assets of certain designated individuals, including two suspected pirates. ^d But, U.S. efforts to track financial assets or transactions are hampered by a lack of government and financial institutions in Somalia.
Facilitate the prosecution of suspected pirates by flag, victim, and coastal states, and, in appropriate cases, the United States to ensure that those who commit acts of piracy are held accountable for their actions		
Conclude prosecution agreements		U.S. government concluded arrangements with Kenya and the Seychelles and is attempting to conclude others; but faces challenges in finding additional regional partners that are willing and able to prosecute.
Support the exercise of jurisdiction under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation		The United States exercised jurisdiction under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation to prosecute one pirate in the United States.
Support the use of other applicable international conventions and laws		The United States is using other laws to exercise jurisdiction and prosecute 11 suspected pirates for attacks on the USS <i>Nicholas</i> and USS <i>Ashland</i> .
Enhance regional states' capacity to prosecute		U.S. agencies provide assistance to countries in the region for law enforcement and judicial capacity building and reform, the focus of which includes, but is not limited to, piracy. Naval Criminal Investigative Service special agents have testified in Kenyan courts, and provided training and operational support to officials in the Seychelles.

-  Substantial progress
-  Some progress
-  Little or no progress

Source: GAO.

^aWe assessed “substantial progress” for those tasks where all components specified by the NSC were implemented; “some progress” for tasks where components were partially implemented or agencies had taken steps toward implementation; and “little or no progress” where agencies had made minimal or no effort toward implementing the components of the task.

^bWe did not rate U.S. government progress on this task because, according to Defense officials, there are no plans to establish a Counter-Piracy Coordination Center since it would duplicate existing international efforts.

^cAccording to the Department of Defense’s May 2010 report to Congress entitled “Piracy off the Somali Coast and within Somalia” U.S. forces have transferred 24 suspected pirates to Kenya for prosecution.

^dExecutive Order 13536 blocks all property and property interests within U.S. jurisdiction of persons listed in the Annex to the order and provides the authority for the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons that threaten the peace, security, or stability of Somalia, including those who support or engage in acts of piracy off the coast of Somalia. Property and property interests within U.S. jurisdiction include property in the possession or control of any United States person in the United States or overseas. United States person is defined as “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.” As of July 2010 this order listed two individuals connected to pirate activity.

U.S. Agency Efforts to Prevent Acts of Piracy

In collaboration with its international and industry partners, the U.S. government has made substantial progress overall toward implementing *Action Plan* tasks aimed at preventing acts of piracy. First, the United States has been a key contributor among the 49 countries participating in the Contact Group, including leading a working group on industry self-protection.²¹ Second, State, Defense, Coast Guard, and the Maritime Administration, in collaboration with international and industry partners, also have made substantial progress on the second task to encourage commercial vessels to transit high-risk waters through the Maritime Security Patrol Area, which includes the Internationally Recommended Transit Corridor patrolled by international naval forces. Third, the U.S. government has made substantial progress to ensure shippers update U.S.-flagged vessels’ ship security plans to address the pirate threat, and in encouraging the crews of commercial vessels to use industry-developed self-protection measures to prevent piracy, often referred to as “best management practices.” These practices include adding physical barriers

²¹As of June 2010, 49 countries, 7 international organizations, and 3 industry observers were participating in the Contact Group on Piracy off the Coast of Somalia. For a list of participating countries, see app. III.

to obstruct pirates from boarding a vessel and taking evasive maneuvers to fend off attack.²²

Despite these and other actions to prevent attacks, U.S. government and shipping industry officials stated that ensuring all vessels transiting the area implement best management practices remains a challenge. The Coast Guard has developed regulations mandating self-protection measures, but these regulations only apply to U.S.-flagged vessels, which comprise a small portion of the total shipping traffic transiting the region.²³ The shipping industry has developed a document outlining self-protection measures, but implementation is voluntary. While government and shipping industry officials lack data on the extent to which best management practices are used, they estimate that about a quarter of the vessels are not using one of the easiest and least costly of the best practices, registering their passage with a naval coordination center in the region, which raises questions about the extent of their implementation of the other practices. Coast Guard, the Maritime Administration, and shipping industry officials stated it may be challenging to find additional ways to encourage the remaining vessels to self-protect from attack.

Regarding the *Action Plan's* fourth task aimed at preventing piracy, we determined that U.S. agencies have made some progress on strategic communication, described in the *Action Plan* as a global information campaign to highlight the destructive elements of piracy and the international efforts to coordinate a response to the problem. While U.S. agencies have taken steps in this area, State has yet to finalize a strategic communication plan to coordinate interagency communications efforts to counter piracy. Defense officials stated that the lack of a U.S. presence in Somalia presents additional challenges to efforts to communicate with the Somali population to discourage piracy and for measuring the effectiveness of U.S. communication efforts.

²²The Coast Guard and Maritime Administration facilitated an industry-led effort to develop measures to protect ships from pirate attack, first published as “Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia” in 2009 and most recently updated in June 2010. According to Coast Guard and shipping industry officials, registering a vessel’s transit through the region with the Maritime Security Centre–Horn of Africa provides an indication of whether the vessel owner or operator is likely to be following other best management practices. Additional information on U.S. agency efforts to help prevent acts of piracy can be found in app. II.

²³The Coast Guard reports that, at any given time, there are about six to eight U.S.-flagged vessels operating in the region. More information about Coast Guard’s regulations and guidance regarding piracy is provided in app. II.

U.S. Agency Efforts to Disrupt Acts of Piracy

While the United States and its international partners have made substantial progress overall on the task of providing forces and assets capable of interdicting pirates off the Horn of Africa and have made some progress on the tasks related to seizing and destroying pirate vessels, supporting regional arrangements to counter piracy, and disrupting pirate revenue, U.S. agencies have made little or no progress toward implementing the task related to disrupting and dismantling pirate bases. We found that the U.S. Navy and Coast Guard have made substantial progress contributing assets and leadership to coalition forces patrolling the Gulf of Aden and Indian Ocean. According to Defense officials, typically, more than 30 ships from coalition, European Union, North Atlantic Treaty Organization, and independent forces patrol the region at any given time, with the United States contributing between 4 and 5 ships per day on average. In addition, consistent with the *Action Plan*, U.S. forces have responded to and successfully interdicted pirate attacks. For example, in April 2009, U.S. forces successfully terminated the hostage situation that occurred when pirates attacked the U.S.-flagged MV *Maersk Alabama* and kidnapped the vessel's captain. U.S. forces intervened and freed the captain after killing all but one of the pirates conducting the attack.

However, as pirate activity has expanded to the larger Indian Ocean, U.S. and international military officials stated that providing an interdiction capable force similar to that provided in the Gulf of Aden is not feasible. Though coalition forces developed guidance for improving coordination of forces in the Indian Ocean, Defense officials emphasized that there are not enough naval vessels among all of the combined navies in the world to adequately patrol this expansive area for pirates. Moreover, Defense officials acknowledged that there are other competing U.S. national interests in the region, such as the ongoing wars in Iraq and Afghanistan as well as counterterrorism missions that require the use of the limited naval and air assets that are used to monitor and gather intelligence for counterpiracy operations.

In addition, the U.S. government has made some progress to seize and destroy pirate vessels and equipment, and deliver suspected pirates for prosecution. For example, U.S. forces have contributed to coalition forces that confiscated or destroyed almost 100 pirate vessels. However, U.S. forces have encountered more difficulty in delivering captured suspected pirates to states willing and able to ensure they are considered for prosecution. From August 2008 to June 2010, international forces subsequently released 638 of 1,129 suspected pirates, almost 57 percent of those captured, in part because of the difficulty finding countries that

were willing or able to prosecute them. Further, the United States has made some progress on the task to disrupt pirate revenue. In April 2010, President Obama signed an executive order²⁴ that blocks assets of certain persons, including two suspected pirates, who have engaged in acts that threatened the peace, security or stability of Somalia.²⁵ However, according to officials at Treasury, the department charged with implementation, the executive order applies only to assets subject to U.S. jurisdiction, and U.S. efforts to track and block pirates' finances in Somalia are hampered by the lack of government and formal banking institutions there and resulting gaps in intelligence.

The U.S. government has made some progress on the task to support "shiprider" programs and other agreements. The United States has supported some bilateral and regional counterpiracy arrangements, most notably the International Maritime Organization's effort to conclude a regional arrangement, generally referred to as the Djibouti Code of Conduct.²⁶ This arrangement contains provisions related to information sharing regarding pirate activity among the signatories, reviews of national legislation related to piracy, and provision of assistance between signatories.²⁷ However, U.S. agencies have made little progress on the second part of this task to develop shiprider programs, in which regional law enforcement officials accompany naval patrols to collect evidence to support successful prosecutions. Justice officials explained that the potential benefits do not warrant the resource investment the programs would require. Specifically, the presence of shipriders would not

²⁴Executive Order 13536, Blocking Property of Certain Persons Contributing to the Conflict in Somalia (Apr. 12, 2010), blocks all property and property interests within U.S. jurisdiction of persons listed in the Annex to the Order, including two individuals determined to be principal organizers and financiers of pirate activities. The order provides authority for the Secretary of the Treasury, in consultation with the Secretary of State, to designate other persons determined to have engaged in acts that threaten the peace, security, or stability of Somalia, including those who support or engage in acts of piracy.

²⁵Representatives of the shipping industry have raised concerns that the executive order could be used to block ransom payments to secure the release of captive crews, and the U.S. government has engaged with the shipping industry to address their concerns and questions regarding the executive order. See app. II for additional information on Executive Order 13536.

²⁶International Maritime Organization, Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden, IMO Doc. C 102/14, Annex at 5 (Apr. 3, 2009). This is generally referred to as the Djibouti Code of Conduct.

²⁷See app. III for more information about the Djibouti Code of Conduct.

significantly enhance the ability of regional countries to prosecute suspected pirates.

State and Defense officials report that no steps have been made to disrupt and dismantle pirate bases ashore in part because the President has not authorized this action, the United States has other interests in the region that compete for resources, and long-standing concerns about security hinder the presence of U.S. military and government officials in Somalia. While the United States has not supported the creation of a Counter-Piracy Coordination Center, as called for in the *Action Plan*, we did not provide a progress assessment for this task since government and industry officials have stated that existing organizations and coordination centers²⁸ currently fulfill the incident reporting and monitoring functions, and that establishing a new center would duplicate those efforts.

U.S. Agency Efforts to Facilitate Prosecution of Suspected Pirates

While the United States has made some progress on implementing the tasks established in the *Action Plan* to hold pirates accountable, the United States and its international partners have only prosecuted a small number of pirates overall for a variety of reasons. As of July 2010, Kenya and the Seychelles were the only regional partners that accepted transfers of suspected pirates from U.S. forces for purposes of prosecution. According to officials from State, the reluctance of affected states to prosecute and limited judicial capacity in the region are barriers to the ability of the U.S. government to make substantial progress on the task of concluding prosecution arrangements. Officials also noted that the facts and circumstances of each encounter differ, with not all cases eliciting evidence that could be brought to court. As already described, these factors contributed to the release of almost 57 percent of the suspected Somali pirates that international forces encountered from August 2008 to June 2010. The United States has made some progress on the task to support and encourage the exercise of jurisdiction under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation as a framework to prosecute suspected pirates. For example, the United States has used the convention while prosecuting one pirate in

²⁸The shipping industry is encouraged to share vessel transit information through the Horn of Africa with naval organizations. Specifically, the United Kingdom Maritime Trade Operations is the first point of contact for ships in the region and provides the daily interface between vessel captains and naval forces. The Maritime Security Centre–Horn of Africa is the planning and coordination authority for European Union forces in the Gulf of Aden and Somali Basin. The Maritime Liaison Office exchanges information between the Combined Maritime Forces and industry within the region.

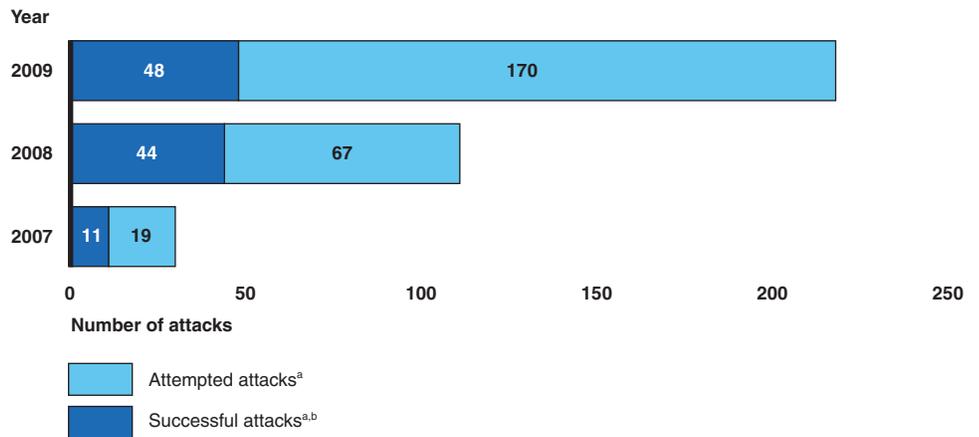
the United States.²⁹ The U.S. government has also supported and encouraged the use of other applicable conventions and laws by exercising jurisdiction over 11 suspected pirates who attempted an attack on U.S. warships.³⁰ However, Defense, State, and Justice officials reported that the United States and its international partners have faced significant challenges in encouraging countries to prosecute pirates, due to a lack of political will or judicial capacity, such as an inadequate number of attorneys to prosecute the cases. Lastly, on the task to enhance the capabilities of regional states to accept suspected pirates for prosecution, the U.S. government has provided assistance to several regional states, and the United States has contributed to international efforts to build regional judicial capacity. For example, according to State officials, the United States has worked with the government of Tanzania to allow pirates to be prosecuted there even when cases lack a domestic connection. However, regional states continue to have a limited capacity to prosecute suspected pirates and incarcerate convicted pirates.

Pirates Have Increased the Number of Attacks, Expanded Their Area of Operations, and Become More Organized

While many stakeholders anecdotally credit international, industry, and U.S. government efforts with preventing and disrupting piracy off the Horn of Africa, from 2007 through the first half of 2010 piracy has evolved in many ways—pirates increased their attacks, claimed more hostages and revenue from shipping industry’s ransom payments, expanded their area of operations, and became more organized. As figure 6 illustrates, the total number of reported pirate attacks increased from 30 in 2007 to 218 in 2009. These reported attacks include four attempts on U.S.-flagged vessels in 2009, one of which was successful—the attack on the MV *Maersk Alabama*.

²⁹The United States used the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation while prosecuting Abduwali Abdukhadir Muse. As of June 25, 2010, Muse pled guilty to charges associated with an April 2009 pirate attack on the U.S.-flagged MV *Maersk Alabama*, a commercial container vessel, and sentencing is scheduled for October 2010.

³⁰Since the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation does not apply to attacks on warships, the United States is using other authorities to exercise jurisdiction and prosecute 11 suspected pirates for attacks on the USS *Nicholas* and USS *Ashland*.

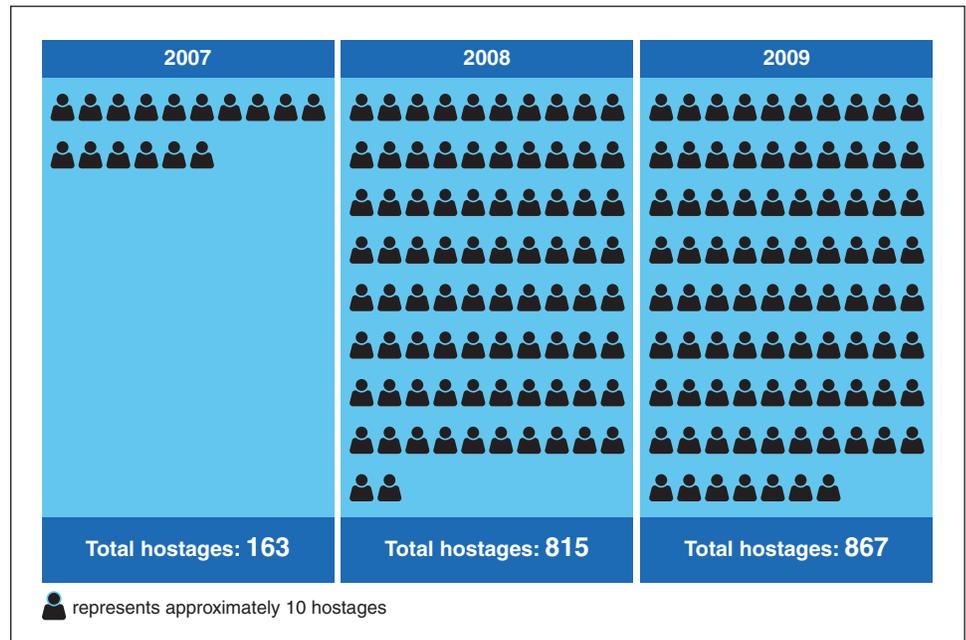
Figure 6: Successful and Attempted Pirate Attacks off the Horn of Africa, 2007-2009

Source: GAO analysis of International Maritime Bureau data.

Note: Successful attacks include those that resulted in vessel boardings or hijackings. The types of vessels attacked included: bulk carriers, container ships, fishing vessels, passenger ships, research vessels, roll-on roll-off ships, supply ships, tankers, tugs, and yachts.

However, the rate of successful attacks, or the proportion of total reported attacks that resulted in vessel boardings or hijackings, decreased from around 40 percent in 2008 to 22 percent in 2009. U.S. and international officials interpret this as a sign that the efforts of the shipping industry, governments, and the international naval patrols to prevent or disrupt attacks are having a positive effect on the situation. In addition, in the first 6 months of 2010, reports of total attacks declined to about 100 attacks, as compared with 149 attacks during the first half of 2009. However, other data show that piracy remains a persistent problem. For example, as figure 7 shows, the number of hostages of various nationalities captured by Somali pirates from 2007 to 2009 more than quintupled. The total number of hostages includes 21 hostages from the U.S.-flagged *MV Maersk Alabama* in 2009. Furthermore, in the first half of 2010, pirates took 529 hostages compared to 510 in the first half of 2009.

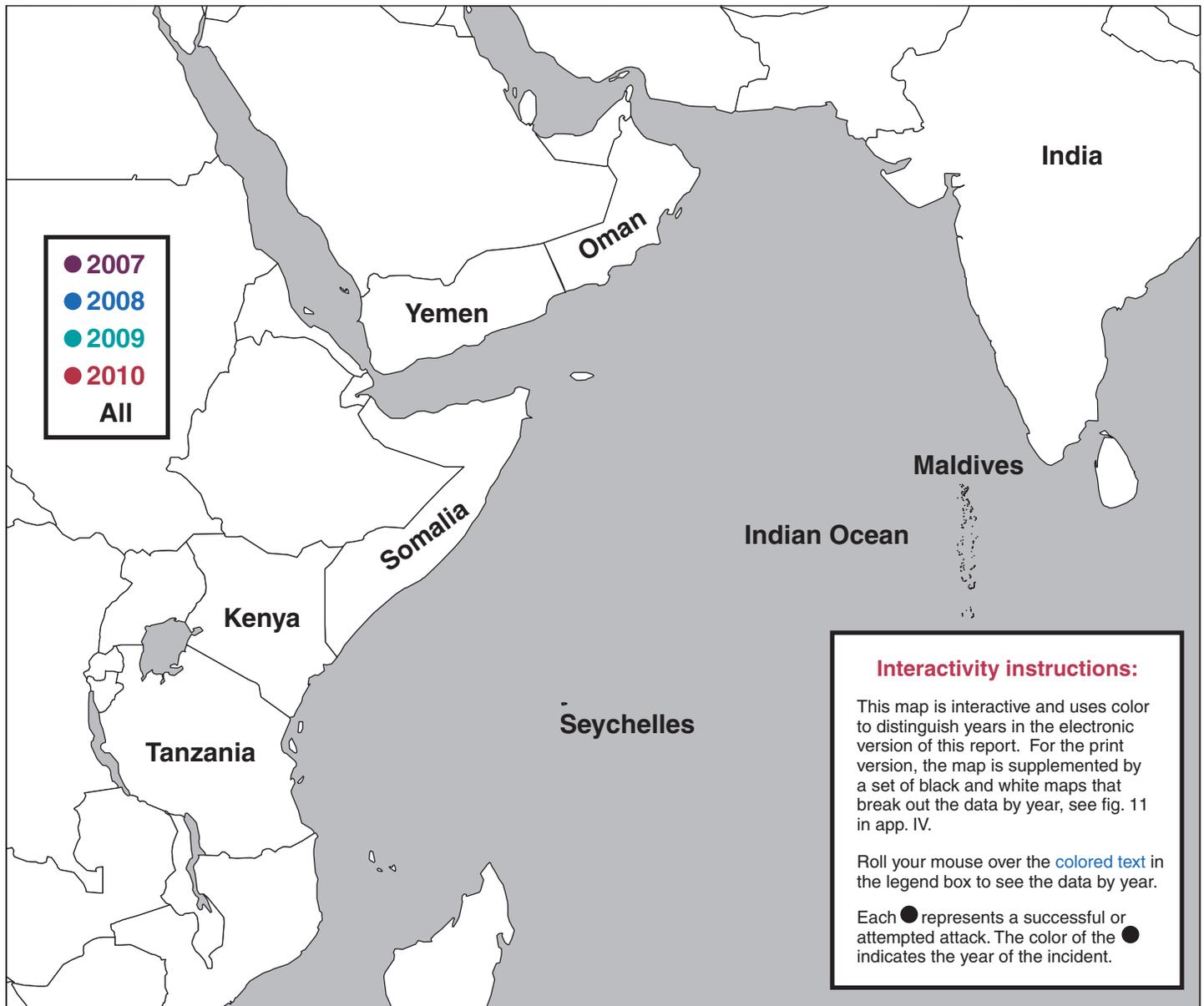
Figure 7: Total Hostages Captured by Somali Pirates, 2007-2009



Source: GAO analysis of International Maritime Bureau data.

In addition, pirates have expanded their area of operations with an increasing number of attacks occurring in the Indian Ocean, an area much larger to patrol than the Gulf of Aden. By the end of 2008, when the NSC issued its *Action Plan*, approximately 83 percent of the 111 reported pirate attacks off the Horn of Africa that year took place in the Gulf of Aden, an area just over 100,000 square miles, with the remainder off the coast of Somalia. However, just a year later in 2009, only 53 percent of the 218 total attacks occurred in the Gulf of Aden as Somali pirates expanded their area of operations to the broader Indian Ocean. Pirates now threaten an area of nearly 2 million square nautical miles in the Somali Basin, Gulf of Aden, and Northern Arabian Sea. Figure 8 shows the number and location of pirate attacks off the Horn of Africa reported to the International Maritime Bureau in 2007, 2008, 2009, and the first half of 2010.

Figure 8: Successful and Attempted Pirate Attacks off the Coast of Somalia, January 2007 to June 2010



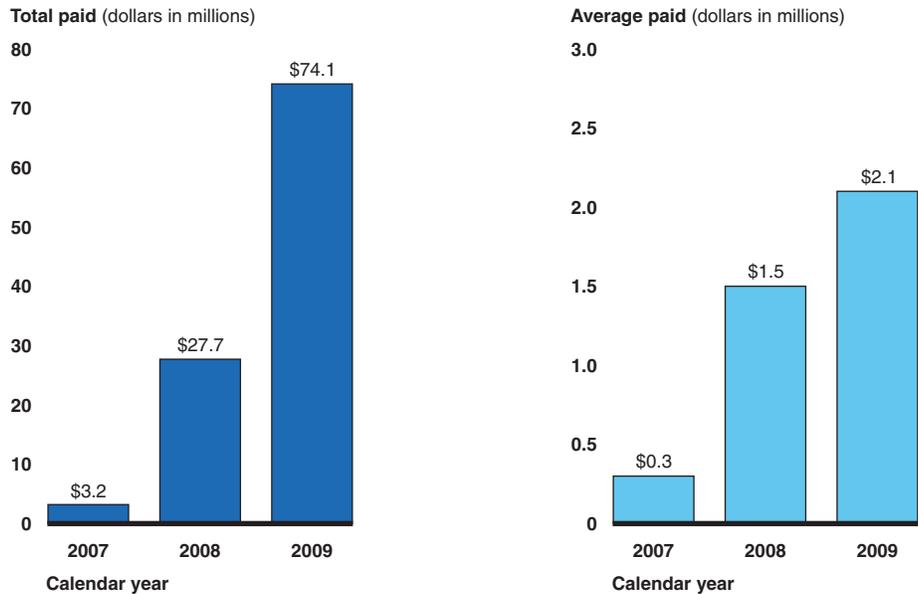
Source: GAO analysis of International Maritime Bureau data (data); Map Resources (map).

While the *Action Plan* cites attacks as far as 450 miles from Somalia's coast, in April 2010 the International Maritime Bureau reported that pirates had increased their capability to attack and hijack vessels to more than 1,000 nautical miles from Somalia using mother ships, from which they launch smaller boats to conduct the attacks.³¹ International officials stated that piracy in the Indian Ocean is more challenging due to the great expanse of water, and requires a different approach than that used in the Gulf of Aden. One U.S. Navy analysis estimated that 1,000 ships equipped with helicopters would be required to provide the same level of coverage in the Indian Ocean that is currently provided in the Gulf of Aden—an approach that is clearly infeasible.

Although U.S. and international officials have expressed concern that international support networks may be providing pirate groups with financing, supplies, and intelligence in return for shares of ransom payments, as of March 2010 the intelligence community assessed that Somali pirates are not receiving funding or coordination from non-U.S. foreign sources outside Somalia, aside from ransom payments. Defense supports FBI and Treasury efforts to monitor whether there is U.S.-based support for piracy. Figure 9 shows that from 2007 to 2009 the estimated amount of total ransom payments paid to pirates by the shipping industry increased from about \$3 million to \$74 million, with the average amount of ransoms paid per vessel increasing from \$300,000 to more than \$2 million.³²

³¹For example, in March 2010, pirates hijacked a bulk carrier about 1,350 nautical miles east of Somalia, taking 21 crew members hostage. In May 2010, pirates hijacked a fishing vessel about 1,350 nautical miles east of Somalia, taking 28 crew members hostage.

³²According to officials from Lloyds Market Association, the vessels' owner typically negotiates and pays the ransom to the pirates and then declares a "general average." General average refers to certain extraordinary sacrifices made or expenses incurred to avert a peril that threatens the entire voyage. In such a case, the party sustaining the loss confers a common benefit on all the parties to the maritime adventure, and, as a result, has a right to claim contribution from all who participate in the venture. A general average adjuster determines which entities had a share in the voyage and their proportional interest. The insurance companies that cover the ship, crew and cargo reimburse the owner for their share of the cost. If the parties had kidnap and ransom coverage, the cost of delivery and ransom may be covered by the kidnap and ransom insurer.

Figure 9: Total and Average Ransom Payments to Somali Pirates, 2007-2009

Source: GAO analysis of Office of Naval Intelligence data.

A December 2008 United Nations report revealed characteristics of structural organization in piracy operations, including evidence of pirate leaders and financiers who supply the equipment and provisions for other pirates to carry out the attacks, and that ransom payments are distributed according to organizational roles. In addition, State, Defense, and FBI officials observed that piracy off the Horn of Africa has become more organized, and Defense officials said that gathering more information about pirate organizations that could be used to identify pirate leaders would be beneficial. FBI officials noted that pirate organizations lack the sophistication associated with other types of organized crime, such as the American mafia. These officials stated that the FBI continues to investigate potential ties Somali pirates may have to individuals outside of Somalia. Moreover, U.S. officials have expressed repeated concerns that funds generated by piracy have the potential to attract extremists or terrorists located in the region to become involved in piracy. Treasury, Justice, State, and Defense are monitoring piracy on an ongoing basis to determine if there is a link between pirates and extremist organizations, but as of July 2010 had found no credible link.

The U.S. Government Has Not Evaluated the Costs, Benefits, or Effectiveness of Its Counterpiracy Efforts, Reported Results, or Updated Its *Action Plan* Accordingly

The *Action Plan*'s objective is to repress piracy in the interest of the global economy, among other things, but the effectiveness of U.S. resources applied to counterpiracy is unclear because the interagency group responsible for monitoring the *Action Plan*'s implementation was not specifically charged with tracking the cost of U.S. activities or systematically evaluating the relative benefits or effectiveness of the *Action Plan*'s tasks and neither the interagency steering group nor the federal agencies involved have performed these tasks. Our prior work has shown that federal agencies engaged in collaborative efforts need to evaluate activities to identify areas for improvement. Moreover, as pirates have adapted their tactics, the *Action Plan* has not been revised.

The U.S. government is not systematically tracking the costs or the benefits and effectiveness of its counterpiracy activities to determine whether its investment has achieved the desired results or should be revised. According to officials at State and Defense, the interagency Counter-Piracy Steering Group, which is jointly led by these two agencies and charged with monitoring implementation of the *Action Plan*, has not been systematically monitoring the cost or evaluating the benefits or effectiveness of U.S. counterpiracy efforts. In commenting on a draft of this report, Defense stated that the interagency group was not performing these functions because it was not specifically charged to do so in the *Action Plan*. Instead, State officials told us the group primarily provides a forum for U.S. agencies to coordinate efforts before multilateral Contact Group meetings or discuss ongoing initiatives such as the development of the April 2010 executive order on Somalia. Officials from Justice, Treasury, Coast Guard, and State reported that the NSC's Maritime Security Interagency Policy Committee, a high-level interagency group that is focused on maritime issues, generally tracks U.S. progress toward implementing the *Action Plan* and discusses status updates on piracy provided from the various agencies. However, the officials were not aware of systematic efforts to track the costs, or evaluate the benefits or effectiveness of U.S. counterpiracy activities. Table 1 describes selected costs we identified that may be incurred by U.S. agencies for counterpiracy efforts.

Table 1: Selected Types of Costs Incurred by the U.S. Government to Counter Piracy

Costs	Departments or agencies bearing costs
General costs	
Personnel	Defense, Homeland Security, Coast Guard, Justice, FBI, State,
Information technology	Transportation, Maritime Administration, Treasury
Training	
Efforts to prevent piracy	
Contact Group meeting logistics and coordination	Coast Guard, Maritime Administration, State
Military coordination (e.g., Shared Awareness and Deconfliction meetings)	Defense
Outreach to industry	Coast Guard, Defense, Maritime Administration, State, Treasury
Anti-Piracy Assistance Teams	Defense, Maritime Administration
Review of ship security plans	Coast Guard
Efforts to disrupt acts of piracy	
Operational costs of maritime assets	Coast Guard, Defense
Industry liaison	Defense
Flying hours for maritime patrol and reconnaissance aircraft	Defense
Law enforcement support	Coast Guard, Defense, Naval Criminal Investigative Service
Holding pirates on board naval vessels	Defense
Personnel costs for intelligence gathering and analysis (including implementation of the piracy aspects of Executive Order 13536)	Defense, Justice, State, Treasury, Naval Criminal Investigative Service
Interagency coordination (Global Maritime Operational Threat Response process)	Homeland Security
Efforts to prosecute pirates	
Bilateral efforts to secure prosecution venues	State
Transportation of suspected pirates for prosecution	Defense, Justice
Evidence collection and case development	Coast Guard, Defense, Justice, Naval Criminal Investigative Service
Prosecution of suspected pirates	Justice
Judicial capacity-building (direct and indirect)	Justice, State, Naval Criminal Investigative Service
Incarceration of pirates prosecuted by the United States	Justice

Source: GAO analysis of information provided by U.S. agencies.

While most of the agencies involved had not systematically tracked the cost of their counterpiracy efforts, Defense developed a partial estimate. Defense officials estimated that U.S. Central Command's counterpiracy operations for fiscal year 2009 totaled approximately \$64 million for costs associated with 773 U.S. Navy ship steaming days, flight hours to support ships operating in the area, port costs, and those related to detaining and delivering suspected pirates to proper authorities.³³ However, officials said this estimate does not include estimates for costs incurred for counterpiracy operations by other combatant commands such as U.S. Africa Command. In addition, Defense officials noted the deployment of naval forces in support of the counterpiracy operations takes the ships, crew, aircraft, intelligence assets, and other forces away from other global missions such as counterterrorism and counternarcotics efforts.

In addition to not tracking the costs of U.S. counterpiracy efforts, U.S. agencies also are not evaluating the benefits of U.S. counterpiracy efforts to U.S. interests. While the *Action Plan* discusses the United States' national security interest in maintaining freedom of navigation of the seas in order to facilitate vibrant maritime commerce, the extent to which counterpiracy benefits U.S. interests and maritime commerce has not been evaluated. The Maritime Administration reports that piracy may pose costs to the maritime industry for protecting vessels from being attacked or hijacked. For example, industry may incur costs for rerouting ships to avoid pirate-infested waters, higher insurance premiums, or enhancing vessel security by hiring private security guards or installing nonlethal deterrent equipment. Ultimately, according to the Maritime Administration, any costs incurred would be passed along to the taxpayer and the consumer. However, agencies are not systematically evaluating the extent to which the U.S. investment in counterpiracy operations is benefiting maritime commerce or weighing these benefits against the costs incurred to conduct counterpiracy operations. In addition, data show that the number of U.S. ships operating in the region is low. The Coast Guard reports that, at any given time, there are about six to eight U.S.-flagged vessels operating in the region and the chance of a commercial vessel being attacked by pirates in the Gulf of Aden is estimated to be less than 1 percent. Furthermore, according to the Maritime Administration, vessels carrying commerce to the United States are less susceptible to piracy

³³This figure does not reflect a number of other costs including, but not limited to life-cycle costs for the applicable ships and aircraft, as well as lost opportunity costs for other maritime security missions. We did not independently verify the data that support Defense's \$64 million estimate.

given their high speed. Moreover, in 2009, the Congressional Research Service reported that despite the increased threats and estimates of rising costs associated with piracy off the Horn of Africa, the effect on the insurance industry appeared negligible and U.S. insurance rates had not changed.³⁴

The *Action Plan* also establishes objectives related to repressing piracy and reducing incidents of piracy, but it does not define measures of effectiveness that can be used to evaluate progress toward reaching those objectives, or assess the relative benefits or effectiveness of the *Action Plan*'s tasks to prevent, disrupt, and prosecute acts of piracy. Further, the *Action Plan* does not specify what information the NSC or other designated interagency groups should use to monitor or evaluate to determine progress, or assess benefits or effectiveness. Agency officials have cited several challenges associated with measuring the effectiveness of U.S. efforts, including the complexity of the piracy problem, difficulty in establishing a desired end-state for counterpiracy efforts, and difficulty in distinguishing the effect of U.S. efforts from those of its international and industry partners. Nevertheless, U.S., international, and industry officials we spoke with attributed the decrease in the pirates' rate of successful attacks in 2009 and shift to the Indian Ocean to U.S. and international prevention and interdiction efforts. We previously have reported that performance information is essential to the ability of decision makers to make informed decisions, and that specifying performance metrics can be one tool in evaluating the effectiveness of government efforts in a changing environment.³⁵ Identifying measures of effectiveness and systematically evaluating the effectiveness of agency efforts could assist the U.S. government in determining the costs and benefits of their activities to ensure that resources devoted to counterpiracy efforts are being targeted most effectively, and whether adjustments to plans are required.

Without information on the magnitude of U.S. resources devoted to counterpiracy operations, or the benefits or effectiveness of its actions, the U.S. government is limited in its ability to weigh its investment of resources to counter piracy off the Horn of Africa against its other

³⁴Congressional Research Service, *Ocean Piracy and Its Impact on Insurance*, R40081 (Washington, D.C.: Feb. 6, 2009).

³⁵GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996).

interests in the region. The lack of systematic evaluation of costs, benefits, and effectiveness also makes it difficult for agencies to target and prioritize their activities to achieve the greatest benefits. We have previously reported that agencies should identify the human, information technology, physical, and financial resources needed to initiate or sustain a joint effort among multiple agencies, as one means of enhancing interagency collaboration.³⁶ In addition, a discussion of resources, investments, and risk management is an important characteristic of national strategies that can enhance their usefulness to resource and policy decision makers and resource managers.³⁷

Moreover, despite the expansion of pirate attacks over a vastly larger geographic area, increased ransom demands and payments, and better organized pirate activities since the *Action Plan* was written, according to U.S. government officials, there are no plans to reassess the *Action Plan* in order to determine whether it should be revised. Currently, the *Action Plan* does not specifically address how to counter pirates in the broader Indian Ocean or what methods to use to meet its objective of apprehending leaders of pirate organizations and their financiers. U.S. agencies have reported taking some steps to respond to the changing methods and location of pirate attacks. For example, the Navy issues weekly updates on piracy incidents to inform mariners and naval forces, which in 2010 have cautioned that pirates are operating at considerable distances off the coast of Somalia. Defense officials also have worked with coalition partners to develop a coordination guide for operations in the Somali Basin and have described measures they have taken to interdict and destroy pirate mother ships. However, according to Coast Guard, Treasury, and Justice officials, as of April 2010, the Maritime Security Interagency Policy Committee affirmed the overall course of U.S. counterpiracy efforts and did not identify a need to modify the current approach to countering piracy. Furthermore, the *Action Plan* contains tasks such as those to create a Counter-Piracy Coordination Center and support shiprider programs that are no longer being pursued by U.S. agencies because they have determined that these tasks are not needed or would not be beneficial. We have established in prior work that federal efforts are implemented in dynamic environments in which needs must be

³⁶GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

³⁷GAO, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, [GAO-04-408T](#) (Washington, D.C.: Feb. 3, 2004).

constantly reassessed, and that agencies can enhance and sustain collaborative efforts by, among other things, developing mechanisms to report on results.³⁸ By continually evaluating its approach to countering piracy off the Horn of Africa and reporting on results of its counterpiracy efforts to key stakeholders, the United States may be in a better position to hold agencies accountable for results and achieve its ultimate goal of repressing piracy.

U.S. Agencies Have Worked Collaboratively with Partners but Could Take Key Steps to Enhance and Sustain Collaboration in Counterpiracy Efforts

U.S. agencies have generally collaborated well with international and industry partners to counter piracy, but they could implement other key collaborative practices for enhancing and sustaining collaboration among U.S. interagency partners. According to U.S., international, and industry stakeholders, U.S. agencies have collaborated effectively with international and industry partners through mechanisms and organizations to counter piracy off the Horn of Africa. The United States also has collaborated well with international military partners and industry groups. Within the U.S. government, while agencies have implemented some collaborative practices, other practices could be implemented to further enhance collaboration. The U.S. government has not made substantial progress on those *Action Plan* tasks that involve multiple agencies and those in which the NSC has not clearly identified roles and responsibilities or coordinated with U.S. agencies to develop joint guidance.

U.S. Agencies Have Collaborated Effectively with International and Industry Partners

U.S. agencies, primarily State and Defense, have collaborated with international partners through two new organizations established to counter piracy off the Horn of Africa: the Contact Group on Piracy off the Coast of Somalia (Contact Group) and the Shared Awareness and Deconfliction meetings. As previously discussed, the *Action Plan* directed U.S. agencies to establish and maintain a Contact Group, which serves as an international forum for countries contributing to the counterpiracy effort to share information. State orchestrates U.S. participation in the Contact Group, coordinating with officials from Defense, Justice, Homeland Security, Transportation, and Treasury. As part of the Contact Group, the United States has participated in six plenary meetings with international partners in counter piracy efforts since January 2009. These

³⁸GAO, *Agency Performance Plans: Examples of Practices That Can Improve Usefulness to Decisionmakers*, [GAO/GGD/AIMD-99-69](#) (Washington, D.C.: Feb. 26, 1999) and [GAO-06-15](#).

meetings have facilitated international military coordination, provided guidance to international efforts, and established a trust fund to support counterpiracy efforts. As part of the Contact Group's efforts, the Coast Guard and the Maritime Administration cochair a working group focusing on coordinating with the shipping industry, which has reviewed and updated best management practices for industry self-protection, encouraged continued communication between industry and government organizations such as the Maritime Security Centre–Horn of Africa, and is developing guidance for seafarer training regarding pirate attacks. In addition, officials told us that State has participated in the working group on strategic communication and assisted in developing draft strategic communication documents considered by the group.

The United States also has worked to establish collaborative organizations, share information, and develop joint guidance for international military partners working to counter piracy. As the leader of the Combined Maritime Forces, in 2008 the U.S. Navy, along with other international partners, established the Shared Awareness and Deconfliction meetings that are intended to provide a mechanism for militaries active in the region to share information on their movements and make efficient use of the limited naval assets patrolling pirate-infested waters. We observed one of these meetings that occur every 4 to 6 weeks with representatives from the European Union, North Atlantic Treaty Organization, and the shipping industry, as well as with nontraditional partners from countries such as Russia and China. According to U.S. and international officials, these meetings have improved coordination and led to the creation of the Internationally Recommended Transit Corridor within the Maritime Security Patrol Area as well as coordination guides for military operations in the Gulf of Aden and the Somali Basin. The coordination guides provide joint guidance to participating international forces intended to ensure the most effective use of the military assets in the region by outlining shared practices and procedures.

The United States has also worked to support information sharing efforts on investigative and prosecutorial techniques. In July, 2010, the Naval Criminal Investigative Service hosted a workshop on counterpiracy investigations that was attended by over 50 representatives from the United States, international military, law enforcement, and industry organizations. According to Defense officials, this workshop facilitated development of a draft investigators manual designed to help standardize counterpiracy operations.

U.S. agencies, primarily the Coast Guard and the Maritime Administration, have worked with industry partners to facilitate collaborative forums, share information, and develop joint guidance for implementing counterpiracy efforts. Industry partners play an important role in preventing and deterring pirate attacks since they are responsible for implementing self-protection measures on commercial vessels. According to officials, in late 2008 the Coast Guard and the Maritime Administration encouraged industry groups to develop best practices for industry to counter piracy and hosted several meetings with U.S. and international industry groups. According to U.S. and shipping industry officials, these meetings resulted in the industry-published best management practices guide.³⁹ This document has provided critical guidance to ship owners and operators on how to protect themselves from pirate attacks. In addition, for those ship owners who choose or are required to carry armed security teams, the Coast Guard and State have worked to identify viable methods for doing so in accordance with applicable U.S., international, and port-state laws.⁴⁰ The Coast Guard has communicated methods for taking arms on ships and the responses from international partners to the shipping industry through two port security advisories. As the U.S. agency responsible for implementing national and international maritime security regulations on U.S.-flagged vessels, the Coast Guard also has hosted four collaborative forums with industry partners to address piracy issues since April 2009. These meetings have provided a forum to discuss changes required to ship security plans to address the piracy threat, the evolving piracy situation, and U.S. efforts to assist in protecting U.S.-flagged vessels. For example, the Coast Guard facilitated a meeting with industry representatives and officials from State and Treasury in April 2010 to discuss the executive order on Somalia, which has implications for the shipping industry's ability to pay ransoms to secure the release of captive crews. Further, the Maritime Administration developed training courses to

³⁹The document provides guidance including actions to take before transiting the region, such as installing razor wire and planning for additional watch duty, and actions to take in the event of a pirate attack, such as reporting to authorities and using evasive maneuvers. "Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area," version 3, June 2010, http://www.marad.dot.gov/documents/Piracy_Best_Management_Practices_3.pdf (downloaded July 13, 2010).

⁴⁰According to Maritime Administration officials and shipping industry representatives, challenges remain that have made it difficult for U.S.-vessels to transit the area with security teams carrying weapons onboard, including restrictions in national or port-state laws in the region.

inform vessel crews about how to help prevent piracy and steps to take if taken hostage.

In addition, the Maritime Administration and the Military Sealift Command have created a new collaborative mechanism for working with industry in the form of Anti-Piracy Assistance Teams. When requested by the owner of a U.S.-flagged vessel, a team consisting of the Maritime Administration and the Naval Criminal Investigative Service personnel will assess a ship's security and offer advice on ways to improve. When the teams visit a vessel, Maritime Administration officials meet with company officials to discuss their security efforts and document these efforts so they can be shared with other ship operators. Lastly, U.S. Central Command has used the Maritime Liaison Office based in Bahrain as an additional mechanism to exchange information between naval forces and industry. This office serves as a conduit for information focused on safety of shipping and conducts outreach with the shipping industry, such as through newsletters to encourage the use of self-protection measures.

U.S. Agencies Have Implemented Some Collaborative Practices but Could Enhance Efforts by Incorporating Others

U.S. government agencies have implemented some collaborative practices in working with interagency partners to counter piracy but could enhance efforts where less progress has been made by incorporating other key practices. Several key practices that can enhance interagency collaboration include developing an overarching strategy, establishing collaborative mechanisms to share information with partners, assigning roles and responsibilities, and developing joint guidance to implement interagency efforts. Consistent with key practices, the NSC established its *Action Plan*, which serves an overarching strategy to guide U.S. interagency efforts and provides a framework for interagency collaboration.⁴¹ The *Action Plan* creates an interagency task force that is intended to coordinate, implement, and monitor the actions contained in the plan.

In addition, the U.S. departments and multiple component agencies involved in counterpiracy efforts have also implemented another key practice—using collaborative organizations to share information. Collaborative organizations that provide adequate coordination mechanisms to facilitate interagency collaboration and achieve an integrated approach are particularly important when differences exist

⁴¹[GAO-09-904SP](#).

between agencies that can impede collaboration and progress toward shared goals by potentially wasting scarce resources and limiting effectiveness.⁴² Within the NSC, which includes committees with agency secretaries, deputy secretaries, and assistant secretaries, are existing forums for discussing and coordinating interagency efforts that officials have reported discuss counterpiracy efforts. Additionally, as called for in the *Action Plan*, State and Defense established the Counter-Piracy Steering Group, which includes representatives from the U.S. departments and component agencies involved in counterpiracy efforts.

Furthermore, in certain circumstances, such as a pirate attack on a U.S.-flagged vessel, the U.S. government uses the existing Maritime Operational Threat Response process to facilitate a discussion among U.S. agencies and decide on courses of action, which is outlined in an October 2006 plan that is part of the *National Strategy for Maritime Security*.⁴³ For example, when the MV *Maersk Alabama* was attacked in April 2009, facilitators utilized established protocols to activate the process and bring together the appropriate government officials. Figure 10 shows U.S. authorities responding to the MV *Maersk Alabama* incident in 2009. According to U.S. and Maersk officials involved, over the course of several meetings—some of which included Maersk representatives—U.S. officials decided on actions to take in response to the attack, resulting in the release of a U.S. merchant marine captain that had been taken hostage by pirates.⁴⁴ U.S. and Maersk officials considered the outcome of the *Alabama* incident to be a success. Officials from Defense, State, Coast Guard, the Maritime Administration, and Justice have reported that this process has been an effective tool in responding to this and other piracy incidents. In addition, the Coast Guard established a new collaboration mechanism—a weekly interagency conference call—to coordinate operational efforts among the

⁴²[GAO-09-904SP](#).

⁴³The Maritime Operational Threat Response is an interagency process used during maritime security incidents. The response is coordinated by a newly established Global Maritime Operational Threat Response Coordination Cell, a Department of Homeland Security office located at the U.S. Coast Guard headquarters, and follows documented protocols that, among other things, provide guidance on conducting coordination activities.

⁴⁴According to a facilitator of the process, under normal circumstances, Coast Guard officials liaise with industry representatives during an incident and the Maritime Operational Threat Response meetings are restricted to U.S. government officials. Due to the unique circumstances of the *Alabama* incident, Maersk representatives were allowed to participate in some of the meetings.

agency partners working to counter piracy, which we observed during this review.

Figure 10: U.S. Personnel Respond to the MV *Maersk Alabama* Incident in 2009



Source: U.S. Navy.

U.S. officials used the Maritime Operational Threat Response process to coordinate the response to the kidnaping of a U.S. merchant marine captain, who was held hostage by pirates for 5 days in the Indian Ocean aboard the lifeboat pictured above.

Although the NSC and U.S. agencies have taken these collaborative steps, the NSC could incorporate two other key practices—assigning roles and responsibilities and developing joint implementation guidance—to further enhance interagency collaboration in counterpiracy efforts. As of July 2010, the NSC had only assigned roles and responsibilities for implementing 1 of the 14 *Action Plan* tasks. The *Action Plan* recognizes that, consistent with other U.S. mission requirements, the U.S. Navy and the Coast Guard provide persistent interdiction through their presence and can conduct maritime counterpiracy operations. In addition, the *Action Plan* states that those forces shall coordinate counterpiracy activities with other forces operating in the region to the extent practicable and sets out a number of specific actions to be taken in various piracy situations. Although the *Action Plan* states that the Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury, and the Office of the Director of National Intelligence shall contribute to,

coordinate, and undertake initiatives in accordance with the *Action Plan*, the NSC did not clearly identify roles and responsibilities for specific agencies that will ensure the implementation of the other 13 tasks in the *Action Plan*. Establishing roles and responsibilities can help agencies clarify which agencies will lead or participate in activities, help organize their joint and individual efforts, and facilitate decision making.⁴⁵

Agencies could enhance collaboration by developing joint guidance to implement and coordinate actions on several *Action Plan* tasks. Joint guidance helps ensure that agencies involved in collaborative efforts work together efficiently and effectively by establishing policies, procedures, information-sharing mechanisms, and other means to operate across agency boundaries.⁴⁶ Effective joint guidance also addresses how agency activities and resources will be aligned to achieve goals.

Implementing Key Practices Could Enhance Efforts Involving Multiple Agencies Where Less Progress Has Been Made

In the absence of clearly identified roles and responsibilities and joint implementation strategies, agencies involved in countering piracy have made comparatively more progress in implementing those *Action Plan* tasks that fall firmly within one agency's area of expertise, such as those to establish a Contact Group, update ship security plans, and provide an interdiction-capable presence, than they have on those tasks for which multiple agencies may be involved. For example, State, which has the authority and capability to work with international partners in establishing the Contact Group, has made substantial progress toward implementing that task. Furthermore, the *Action Plan* calls for commercial vessels to review and update their ship security plans in order to prevent and deter pirate attacks. Officials explained that because the Coast Guard has responsibility for enforcing U.S.-regulated commercial-vessel compliance with maritime security requirements, the agency took the lead on implementing this task and has made substantial progress. Similarly, Defense has primary responsibility for providing a persistent interdiction-capable presence in the region and has made substantial progress as lead on that task.

In contrast, there are several tasks in the *Action Plan* for which multiple agencies have relevant authorities, capabilities, or interests, and on which less progress has been made. The NSC did not identify roles and

⁴⁵ [GAO-06-15](#).

⁴⁶ [GAO-06-15](#) and [GAO-09-904SP](#).

responsibilities for implementing these tasks and officials have acknowledged that the agencies have not developed joint guidance to ensure their efforts work together efficiently and effectively. For example, the NSC included efforts related to developing a strategic communications strategy, disrupting pirate revenue, and holding pirates accountable as essential to implementing the *Action Plan*.

- **Strategic communication:** The *Action Plan* calls for the United States to lead and support a global public information and diplomatic campaign to highlight, among other things, the international cooperation undertaken to repress piracy off the Horn of Africa, as well as piracy's destructive effects on trade, human and maritime security, and the rule of law. In addition, according to the *Action Plan*, any strategic communication strategy must also convey concerns about the risks associated with paying ransoms demands. Multiple agencies are involved in communicating with various audiences about piracy. State communicates with international partners about international cooperation; Defense communicates with military partners about international military cooperation and with African audiences to discourage piracy; the Naval Criminal Investigative Service communicates with U.S. and international law enforcement partners about law enforcement, investigative, and analytical cooperation; and the Coast Guard and the Maritime Administration communicate with the shipping industry about self-protection measures and ransom concerns. However, there is no governmentwide strategic communication plan in place to guide agency efforts, optimize effects, and enhance the achievement of goals. According to State officials, State has drafted a governmentwide counterpiracy strategic communication plan for interagency review but as of July 2010, the department was still awaiting comments from interagency partners and did not have an estimated date for when the plan would be finalized, though Treasury officials had provided comments. Meanwhile agencies have taken varying approaches to strategic communication. Defense has developed a classified plan for its activities, and according to Coast Guard officials, the Coast Guard suspended its effort to develop a plan upon learning that State was drafting a governmentwide plan. As a result, U.S. agencies have not implemented all the strategic communication efforts called for by the *Action Plan*, and it is not clear that the agencies' efforts are coordinated or as effective as possible in communicating the intended messages about piracy.
- **Disrupting pirate revenue:** According to the *Action Plan*, the goal for disrupting pirate revenue is to trace ransom payments and apprehend

leaders of pirate organizations and their enablers. Multiple agencies are involved in collecting information on pirate finances. Justice collects information on financial assets entering the United States related to piracy. According to officials, Treasury examines financial activities and reviews intelligence, law enforcement, and publicly available information, to map illicit financial networks and to determine appropriate action, including potential designation of an individual or entity pursuant to the April 2010 executive order on Somalia. State officials described their work with international partners to gather information on illicit financial networks, while Defense officials told us they collect intelligence on pirate financial activities by questioning captured pirate suspects. However, the NSC did not clearly identify any agency with specific responsibility for disrupting pirate revenue. As a result, officials at Justice, State, and Defense agree that information their agencies gather on pirate finances is not being systematically analyzed, and it is unclear if any agency is using it to identify and apprehend pirate leaders or financiers. In addition, though Justice, State, and Defense officials reported that Somali piracy exhibits characteristics of international organized crime, currently pirate attacks prosecuted by the United States are not investigated by the FBI's Organized Crime Section but instead by the Violent Crimes Section. In the absence of clearly identified roles and responsibilities, and with competing priorities, officials indicated agencies have not taken initiative to develop joint guidance to ensure these disparate efforts work together efficiently and effectively. Similarly, officials acknowledged there is no supporting plan or joint guidance to direct U.S. interagency efforts to collect and analyze criminal intelligence on pirates. However, State is in the process of creating a Counter-piracy Finance Working Group intended to facilitate closer interagency coordination of efforts to combat the financial flows and support networks of piracy off Somalia. According to Justice officials, as of July 2010, the United States has not apprehended or prosecuted the leaders of any pirate organizations or their enablers as called for in the *Action Plan*.

- Facilitating prosecution of suspected pirates: The *Action Plan* contains several tasks related to facilitating the prosecution of suspected pirates by parties with an interest in prosecution, but it does not identify clear roles and responsibilities for U.S. agencies needed to ensure implementation of these tasks. In some cases, U.S. officials said roles are apparent where an agency's mission aligns with the *Action Plan's* tasks, such as State's diplomatic work with regional partners to conclude prosecution arrangements. However, a lack of defined roles and joint guidance to implement U.S. efforts to facilitate prosecutions

poses challenges for prosecuting suspected pirates when each agency's role is less clear. For example, absent defined roles and responsibilities and interagency guidance, U.S. officials explained that they had to dedicate time during a high-level interagency meeting of the Maritime Security Interagency Policy Committee to arrange details, including cost sharing, for the transportation of suspects after the spring 2010 pirate attacks on the USS *Ashland* and USS *Nicholas*. State officials told us that prior to these attacks the U.S. government had limited experience being involved with the prosecution of Somali pirates and had not established the necessary interagency procedures for transferring suspects and sharing costs among the agencies involved.

By enhancing interagency collaboration, the NSC can reduce the risk of leaving gaps in its counterpiracy efforts or the risk that agency efforts may overlap, which could waste resources that could be applied to combat other threats to national security, such as terrorism. Clarifying roles and responsibilities and developing joint implementing guidance could also help agency officials—who must balance their time and resources among many competing priorities—more fully and effectively carry out their roles in helping to repress piracy and avoid duplication of effort.

Conclusions

Given that the President identified piracy as a threat to U.S. national security interests and that it is a complex problem that affects a variety of stakeholders, the U.S. government has taken a collaborative approach in its counterpiracy plans. The U.S. government has taken many steps to implement the *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)*, but still faces a number of challenges to meeting the *Action Plan's* objective of repressing piracy, including inherent limits on its ability to influence industry and international partners and persuade other states to consider prosecuting suspected pirates. In addition, the United States must address the problem of piracy in an environment in which counterpiracy efforts compete with other high-priority U.S. interests in the region, and the NSC acknowledges that longer-term efforts to stabilize Somalia are needed to fully address the root causes of piracy. In the face of such challenges, the NSC's *Action Plan* provides a roadmap for federal departments and agencies to follow in implementing efforts to counter piracy. However, the U.S. government is not tracking the costs, benefits, or effectiveness of its counterpiracy activities and thus lacks information needed to weigh resource investments. In addition, without a systematic evaluation of interagency efforts to compare the relative effectiveness of various *Action Plan* tasks, key stakeholders lack a clear picture of what effect, if any, its efforts have

had. Establishing performance measures or other mechanisms to judge progress and evaluating performance information could provide U.S. government stakeholders with more specific information to update the *Action Plan* and better direct the course of U.S. government plans and activities to repress piracy. Without updating U.S. government plans and efforts to reflect performance information and the dynamic nature of piracy, the U.S. government is limited in its ability to ensure that efforts and resources are being targeted toward the areas of greatest national interest.

Federal agencies have made great strides to collaborate with each other and with international and shipping-industry partners, but could benefit from greater specificity in the *Action Plan* about their roles and responsibilities and development of joint implementing guidance, especially with regard to those *Action Plan* tasks that require a variety of stakeholders to implement. Without specific roles and responsibilities for essential aspects of its *Action Plan*—including developing a U.S. government strategic communication plan, disrupting pirate revenue, or facilitating prosecution of suspected pirates—U.S. agencies have either developed their own approaches to these tasks or developed no approach at all. In addition, developing joint implementing guidance could help agencies work together more effectively and potentially improve progress toward U.S. goals.

Recommendations for Executive Action

To improve U.S. government efforts to implement the *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)*, enhance interagency collaboration, provide information to decision makers on results, and better target resources, we recommend that the Special Assistant to the President for National Security Affairs, in collaboration with the Secretaries of Defense, Homeland Security, Justice, State, Transportation, and the Treasury take the following four actions:

- reassess and revise the *Action Plan* to better address evolving conditions off the Horn of Africa and their effect on priorities and plans;
- identify measures of effectiveness to use in evaluating U.S. counterpiracy efforts;
- direct the Counter-Piracy Steering Group to (1) identify the costs of U.S. counterpiracy efforts including operational, support, and personnel costs; and (2) assess the benefits, and effectiveness of U.S. counterpiracy activities; and

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- clarify agency roles and responsibilities and develop joint guidance, information-sharing mechanisms, and other means to operate across agency boundaries for implementing key efforts such as strategic communication, disrupting pirate revenue, and facilitating prosecution.

Agency Comments and Our Evaluation

We provided a draft of this report for review to the Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury; and the National Security Council (NSC). The NSC did not provide comments on the report or our recommendations. Defense provided written comments to clarify facts in the report which are reprinted in their entirety in appendix V. Defense, Homeland Security, Justice, State, Transportation, and Treasury provided technical comments which we incorporated as appropriate.

In written comments, Defense stated that the department does not agree that using percent of seized suspected pirates who were delivered for prosecution is an appropriate measure of program success. Defense also commented that the metric does not take into account that it is up to individual countries within the coalition to determine the validity of evidence and decide whether to prosecute. We did not state that the percent of suspects delivered for prosecution was an appropriate measure of program success. In the draft report, we stated that the *Action Plan* establishes objectives related to repressing piracy and reducing incidents of piracy, but does not define measures of effectiveness that can be used to evaluate progress toward reaching those objectives. In the absence of defined measures of effectiveness, we made qualitative assessments of U.S. government progress in implementing the *Action Plan* tasks by reviewing program documents, analyzing data, and interviewing agency officials. We determined that the U.S. government had made some progress on the *Action Plan* task to seize and destroy pirate vessels and related equipment and deliver captured suspected pirates for prosecution. In response to Defense's comments, we have modified the report to explicitly recommend that the NSC identify measures of effectiveness to use in evaluating U.S. counterpiracy efforts. We also revised the summary text contained in figure 5 for this line of action to better incorporate some of the prosecution challenges discussed in appendix II and more fully address the rationale for our assessment.

Defense also provided comments to better depict the contributions of the Naval Criminal Investigative Service to counterpiracy operations which we incorporated throughout the report. And finally, Defense stated that U.S. Special Operations Command does not conduct counterpiracy operations and stated in its technical comments that it is a force provider to other

combatant commands who are responsible for conducting counterpiracy operations. As a result, we modified the draft to eliminate reference to the U.S. Special Operations Command as incurring costs for counterpiracy operations.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 7 days from its date. At that time, we will send copies of this report to the Special Assistant to the President for National Security Affairs; the Attorney General; the Secretaries of Defense, Homeland Security, State, Transportation, and the Treasury; and interested congressional committees. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact either John H. Pendleton at (202) 512-3489 or pendletonj@gao.gov or Stephen L. Caldwell at (202) 512-9610 or caldwells@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.



John H. Pendleton
Director, Defense Capabilities
and Management



Stephen L. Caldwell
Director, Homeland Security and Justice

Appendix I: Scope and Methodology

To address our objectives, we analyzed data, reviewed documentation, and interviewed officials from the U.S. government agencies that the National Security Council (NSC) specifically tasked to contribute to, coordinate, and undertake initiatives in accordance with NSC's 2008 *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)*. We met with and gathered information from officials representing the various agencies tasked with implementing the *Action Plan* and who participate on the committees within the NSC.¹ We also conducted work with international and industry partners involved in the response to piracy off the Horn of Africa.²

To assess the extent to which the U.S. government has made progress in countering piracy off the Horn of Africa and the challenges it faces, we reviewed the *Action Plan*, the 2007 *Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea*, the 2005 *National Strategy for Maritime Security*, relevant U.S. laws, United Nations Security Council resolutions on piracy off the Horn of Africa, as well as our prior work related to Somalia, maritime security, interagency collaboration, and combating illicit financing. To assess the implementation status of the actions called for in the *Action Plan*, we reviewed program documents, analyzed data, and interviewed agency officials. Our assessments are based on data from multiple sources, are qualitative in nature, and are derived from consensus judgments. We assessed “substantial progress” for those tasks where all components specified by the *Action Plan* were implemented; “some progress” for tasks where components were partially implemented or agencies had taken steps toward implementation; and “little or no progress” where agencies had made minimal or no effort toward implementing the components of the task. We provided a “not applicable” assessment for one task in the *Action Plan* that agency officials and our analysis revealed to have been overtaken by events and no longer relevant for U.S. counterpiracy efforts. We provided a summary of our progress assessments to the agencies and incorporated their comments as appropriate. We also reviewed our prior work related to results-oriented government³ and evaluated the extent to which the

¹During the course of our review, we made several requests to meet with staff from the NSC to discuss the *Action Plan* and its implementation but they did not respond to our requests.

²See below for a complete listing of agencies and partners we obtained information from during our review.

³GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

interagency Counter-Piracy Steering Group charged with coordinating, implementing, and monitoring the actions in the NSC plan followed select key practices for achieving results including monitoring and evaluating efforts, using performance information to improve efforts and revise plans as needed, and reporting on results. In addition, we met with international and industry partners involved in developing best practices for protecting ships from pirate attack, working with the international Contact Group, and participating in naval patrols off the Horn of Africa to gain their perspective on the challenges and progress in countering piracy, the effectiveness of counterpiracy actions, implementation of best management practices for protecting ships, and how conditions off the Horn of Africa are evolving. To gain insight on trends in pirate activity since the United States and coalition partners began counterpiracy operations, we obtained and analyzed data on the incidents of piracy off the Horn of Africa for the years 2007 through June 2010 from the International Chamber of Commerce's International Maritime Bureau. The International Maritime Bureau operates a Piracy Reporting Center that collects data on pirate attacks worldwide. According to its officials, there are some limitations with International Maritime Bureau data because they rely on ship officials to provide the information, which can vary, and some information is not provided due to sovereignty issues regarding investigations. However, we reviewed internal controls and measures used by the bureau to protect the reliability and accuracy of their data on pirate attacks and attempted attacks and discussed the reliability of the bureau's data with international, industry, and government subject-matter experts involved in counterpiracy operations and determined that the bureau's data were the best data available on pirate attacks and attempted attacks. Therefore, we determined the data were sufficiently reliable for the purpose of describing the context of piracy as a threat to seafarers and the geographical scope of pirate attacks off the Horn of Africa. To identify the results of interdiction efforts led and supported by the United States we obtained and reviewed data from the Combined Maritime Forces for the years 2008 to June 2010. There are some limitations with Combined Maritime Forces' data because these data are compiled from military and nonmilitary sources and reporting. Although efforts are made to correlate and confirm the accuracy of these data, Combined Maritime Forces cannot fully guarantee their accuracy. We discussed data-collection methods, processes for data entry, and the steps taken to ensure reasonable accuracy of the data with both the International Maritime Bureau and the Combined Maritime Forces. We determined the data to be sufficiently reliable for the purposes of this report. To identify the amount of ransoms being paid to Somali pirates we reviewed monthly ransom data from the Office of Naval Intelligence for 2007 through 2009. Due to the classified

nature of the sources and methods used to develop this data, we did not independently verify the reliability of this information.

To identify the extent to which U.S. government agencies are collaborating with each other and with international and industry partners, we synthesized key practices for enhancing and sustaining collaboration on complex national security issues from our prior work.⁴ We then evaluated the extent to which department and agency actions incorporate select key practices including (1) developing overarching strategies and mutually reinforcing plans, (2) assigning roles and responsibilities, and (3) creating collaborative organizations that share and integrate information. To obtain information on the nature and extent of collaboration on counterpiracy efforts among agencies, international and industry partners, we reviewed the NSC's *Action Plan*, and department and agency program documents; and interviewed agency, international, and industry officials. To gain insight into new and existing coordination mechanisms applicable to piracy, we observed the weekly interagency conference calls on counterpiracy efforts, attended a Shared Awareness and Deconfliction meeting in Manama, Bahrain, and reviewed program documents.

U.S. Government Agencies

For both of our objectives, we interviewed and, where appropriate, obtained documentation from officials with the following U.S. government agencies:

Department of Defense

- Within the Office of the Under Secretary of Defense (Policy): the Assistant Secretary of Defense for Special Operations/Low-Intensity Conflict and Interdependent Capabilities (Counter-Narcotics and Global Threats), the Oceans Policy Advisor in the Office of the Assistant Secretary of Defense for Global Strategic Affairs (Countering Weapons of Mass Destruction), and the Office of the Assistant Secretary of Defense for International Security Affairs (African Affairs)
- Under the Joint Chiefs of Staff: J5 (Strategic Plans and Policy Directorate) for Oceans Policy / Counterpiracy, J3 (Operations Directorate), and J2 (Joint Staff Intelligence Directorate), Piracy Lead

⁴GAO, *Interagency Collaboration: Key Issues for Congressional Oversight of National Security Strategies, Organizations, Workforce, and Information Sharing*, [GAO-09-904SP](#) (Washington, D.C.: Sept. 25, 2009).

- Office of General Counsel
- Under United States Africa Command: the Strategy, Plans and Programs Directorate; the Intelligence and Knowledge Development Directorate; the Operations and Logistics Directorate, Information Operations Division; the Command, Control, Communications, and Computer Systems and Chief Info Officer Directorate; and the Outreach Directorate, Strategic Communications Division
- Under United States Central Command: the Maritime Liaison Office (Bahrain); and the Naval Forces Central Command's Maritime Operational Center (Bahrain), Chief of Staff, Judge Advocate General's Corps U.S. Naval Forces Central Command (Bahrain), and Naval Criminal Investigative Service (Bahrain)
- United States Special Operations Command
- Under the Department of the Navy: the Naval Criminal Investigative Service and the Office of Naval Intelligence

Department of Homeland Security

- United States Coast Guard's offices of Assessment, Integration, and Risk Management; Counterterrorism and Defense Operations; International Affairs and Foreign Policy Advisor; Public Affairs; Vessel Activities; Prevention Policy; Maritime and International Law; Policy Integration; Law Enforcement; Operations Law; and the Patrol Forces Southwest Asia (Bahrain)

Department of Justice

- National Security Division
- Criminal Division's Office of Overseas Prosecutorial Development Assistance Training and Narcotic and Dangerous Drug Section
- Federal Bureau of Investigation's Criminal Investigative Division, Violent Crimes Section and Organized Crime Section
- United States Attorneys' Office

Department of State

- Office of the Secretary of State
- Bureau of African Affairs' Office of East African Affairs and Office of Regional Security Affairs
- Bureau of Political-Military Affairs' Office of Plans, Policy and Analysis and Office of International Security Operations
- Office of the Legal Adviser for Law Enforcement and Intelligence; Oceans, International Environmental and Scientific Affairs; Attorney-

Adviser (specializing in law of the seas); and Attorney-Adviser (specializing in United Nations issues)

- Bureau of International Narcotics and Law Enforcement Affairs' Office of Anti-Crime Programs, Money Laundering/Terrorism Financing Unit
- Bureau of Democracy, Human Rights, and Labor's Office of Country Reports and Asylum Affairs and Office of Africa and Eurasia
- Bureau of Oceans and International Environmental and Scientific Affairs' Office of Ocean and Polar Affairs
- Bureau of Economic, Energy and Business Affairs' Office of Transportation Policy and Office of Terrorism Finance and Economics Sanctions Policy
- Foreign Policy Advisor from the Department of State to the U.S. Naval Forces Central Command (Manama, Bahrain), and the Permanent Representative to the International Maritime Organization from the Department of State / U.S. Embassy–London U.S.

Department of Transportation

- The Maritime Administration's Office's of the Chief Counsel, Office of International Activities, Associate Administrator for National Security, Associate Administrator for Environment and Compliance and its Office of Security, and the Office of Financial Approvals and Marine Insurance's Division of Marine Insurance

Department of the Treasury

- Office of Terrorism and Financial Intelligence's offices of Terrorist Financing and Financial Crimes, Foreign Assets Control, and Intelligence and Analysis

Office of the Director of National Intelligence

- National Maritime Intelligence Center

International, Industry, and Nongovernmental Organizations

We also interviewed and, where appropriate, obtained documentation from the following:

International Partners

- International Maritime Organization (London, U.K.)

- European Union Naval Forces (Northwood, U.K.), Maritime Security Centre–Horn Of Africa Industry Liaison, Chief of Staff, J4 Movements and Transport, and Industry Liaison
- Combined Maritime Forces (Manama, Bahrain), Coalition Forces' Chief Air Coordination Element and Shared Awareness and Deconfliction Meeting
- North Atlantic Treaty Organization (Northwood, U.K.), Maritime Air Operations, N2 Intelligence Division, N3 Operations Division, and North Atlantic Treaty Organization Shipping Centre
- United Kingdom Foreign & Commonwealth Office, Ministry of Defense, and Department for Transport

Industry Partners

- APL Maritime; Baltic and International Maritime Council (BIMCO); Chamber of Shipping of America; International Association of Dry Cargo Shipowners (INTERCARGO); International Association of Independent Tanker Owners (INTERTANKO); International Chamber of Shipping; International Group of P&I Clubs; International Maritime Bureau; International Transportation Workers Federation (ITF); Lloyd's Market Association; Maersk Line Limited; National Academy of Sciences, Transportation Research Board, Marine Board; Society of International Gas Tanker and Terminal Operators Limited (SIGTTO); and the World Shipping Council.

Maritime Experts

- Former Commander of the Combined Maritime Forces (Combined Task Force 151), former United States Navy Judge Advocate General, Royal United Services Institute for Defence and Security Studies, International Institute for Strategic Studies, and the Royal Institute of International Affairs (Chatham House).

We conducted this performance audit from October 2009 to September 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: U.S. Government Agency Progress in Implementing the National Security Council's *Action Plan*

In December 2008, the U.S. National Security Council (NSC) published its *Countering Piracy off the Horn of Africa: Partnership and Action Plan (Action Plan)*, which laid out 14 tasks to implement three lines of action to prevent, disrupt, and prosecute acts of Somali piracy. We assessed the extent to which U.S. government agencies involved in countering piracy¹ have made progress implementing the *Action Plan*. In addition to the information provided earlier in this report, this appendix contains further details on the steps that those agencies have taken—or have yet to take—to implement various tasks called for under each of the plan's three lines of action: (1) prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy; (2) disrupt acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states; and (3) facilitate the prosecution of suspected pirates by flag, victim, and coastal states, and, in appropriate cases, the United States to ensure that those who commit acts of piracy are held accountable for their actions.

We based our assessment on reviews of agency plans, status reports, and interviews with U.S. government, international, and industry officials involved in counterpiracy efforts.² The scope and methodology used in our review are described in further detail in appendix I.

¹These include the Departments of Defense, Homeland Security, Justice, State, Transportation, and the Treasury, and the Office of the Director of National Intelligence as well as component agencies including the Federal Bureau of Investigation, Coast Guard, and National Maritime Intelligence Center.

²We provided an assessment of “substantial progress” for cases where all components under a task specified by the NSC were implemented; “some progress” for cases where components were at least partially implemented or agencies demonstrated effort had been made toward implementation; and “little or no progress” where there was minimal or no result or effort made toward implementing any components of that specific task.

Progress in Implementing Actions to Prevent Pirate Attacks by Reducing the Vulnerability of the Maritime Domain to Piracy

Substantial Progress Has Been Made to Establish and Maintain a Contact Group

In concert with the United Nations and international partners, the U.S. government has made substantial progress in helping to establish and maintain a Contact Group of countries willing and able to help combat piracy off the Horn of Africa. The *Action Plan* calls for the immediate establishment of a Contact Group to combat piracy off the Horn of Africa, which would meet as necessary to develop and coordinate international policy initiatives, share information, provide resources for building regional capacity to counter piracy, and advocate for other mechanisms to repress piracy. In January 2009, the Contact Group on Piracy off the Coast of Somalia (Contact Group) was formed in response to United Nations Security Council Resolution 1851, and, as of June 2010, it had 49 member nations as well as international organization partners. The Contact Group established a multidonor trust fund to help offset the cost of prosecuting suspected pirates, and in April 2010, members approved \$2.1 million for programs in the Seychelles and Somalia.

The Department of State (State) orchestrates U.S. participation in the Contact Group, coordinating with officials from the Departments of Defense, Justice, Homeland Security, Transportation, and the Treasury. In addition, the Coast Guard and the Maritime Administration cochair the working group on industry self-protection, which facilitated development and adoption of best management practices for self-protection, in coordination with industry and the International Maritime Organization. Military, industry, and international officials credit these self-protection measures, in part, for the reduction in successful pirate attacks in the Gulf of Aden from 2008 to 2009. According to agency officials, the Department of Defense (Defense) and State have participated in various other working groups, including military coordination and judicial efforts.

Substantial Progress Has Been Made to Strengthen and Encourage the Use of the Maritime Security Patrol Area

The U.S. government has made substantial progress on strengthening the use of the Maritime Security Patrol Area in collaboration with its international partners, though there are limits to the reach of government influence on commercial vessels. The *Action Plan* calls for the United States to strengthen the use of the Maritime Security Patrol Area—the area patrolled by coalition Combined Maritime Forces and other navies—by encouraging other countries to assign naval forces and assets to the area, coordinating and sharing information with the other navies, and urging members of the shipping industry to use the Maritime Security Patrol Area.³ State has encouraged multinational military coordination through bilateral channels and the Contact Group. The U.S. Navy has contributed to both to the Combined Maritime Forces and North Atlantic Treaty Organization patrols. In addition, the United States contributes to Shared Awareness and Deconfliction meetings, established to share information with and coordinate the counterpiracy patrols of coalition forces and independent countries. International officials also told us that Combined Maritime Forces, North Atlantic Treaty Organization, and European Union forces are coordinating surveillance and patrol of the Internationally Recommended Transit Corridor, the recommended route within the Maritime Security Patrol Area for commercial vessels transiting the Gulf of Aden.

Defense, Coast Guard, the Maritime Administration, and the Maritime Liaison Office have used a variety of methods to encourage commercial vessels to use the Maritime Security Patrol Area and coordinate with naval patrols, such as publishing advisories, maintaining informational Web sites, and sponsoring information-sharing meetings. The Coast Guard requires that U.S.-flagged vessels register their transit plans through the Horn of Africa region with the Maritime Security Centre–Horn of Africa and notify the United Kingdom Maritime Trade Operations office in Dubai, which both monitor the transit of vessels in the region. However, U.S.-flagged vessels comprise a small proportion of the ships that transit the high-risk waters off the Horn of Africa, and , and the Coast Guard regulations mandating self-protection measures only apply to U.S.-flagged vessels. While the U.S. government encourages commercial vessels from other flag states to take advantage of the monitoring provided by navies patrolling the Maritime Security Patrol Area, Defense, Maritime Administration, shipping industry, and international officials estimate that approximately 20 to 25 percent of the shipping traffic in the region does

³See app. III for international partners contributing to counterpiracy operations.

not register its transit with patrolling forces. These officials also told us that, as pirates have expanded their area of operations into the Indian Ocean, coalition forces faced increased challenges in disrupting attacks given the unfeasibility of establishing secured transit corridors in this area similar to that used in the Gulf of Aden.

Substantial Progress Has Been Made to Update Ships' Security Assessments and Plans

The Coast Guard has achieved substantial progress in ensuring that ship security plans for U.S.-flagged vessels have been updated with piracy annexes, and the United States is encouraging other countries to implement similar measures. The *Action Plan* calls for the United States to urge other nations to update their ship security plans and to encourage vessels in the Gulf of Aden to take specific protective measures. In May 2009, the Coast Guard promulgated the second revision of Maritime Security Directive 104-6, which requires that all U.S.-flagged vessels transiting high-risk areas have an approved security plan to prevent and defend against pirate attacks.⁴ Furthermore, the Coast Guard and the Maritime Administration have taken steps to implement this task by issuing guidance to support industry efforts to prevent attacks.⁵ For example, the Coast Guard's Port Security Advisories provide information on using armed security teams to protect vessels transiting high-risk waters.⁶ As of July 2010, the Coast Guard had approved the additional security measures submitted by each of the 211 U.S.-flagged vessels identified as traveling through high-risk waters, 108 of which travel through the Horn of Africa region. The Coast Guard ensures those U.S.-flagged vessels transiting high-risk waters have an updated plan by monitoring the movement of U.S.-flagged vessels, checking for approved plans, and investigating compliance when vessels are at certain ports.

⁴The Coast Guard issued a third revision of Maritime Security Directive 104-6 in May 2010.

⁵As of June 2010, the Coast Guard had issued eight Port Security Advisories related to piracy, and the Maritime Administration had issued four maritime security advisories on this topic.

⁶Port Security Advisories 4-09 and 8-09 provide information to those ship owners who choose or may be required to use armed security teams to protect vessels transiting high-risk waters off the Horn of Africa. While the Coast Guard requires that U.S.-flagged vessels transiting the Horn of Africa have a security team onboard, the decision about whether the security team will be armed is left to the ship owner. Many members of the shipping industry have raised concerns about having weapons onboard commercial vessels. While there is no consensus about whether or not to arm security teams, the United States has worked with partners to facilitate the arming of vessels when owners have chosen this approach as part of their security plan, but challenges remain.

However, U.S.-flagged vessels comprise only a small proportion of the ships that transit the area, and according to officials the influence of the U.S. government on international ships is limited.

To encourage international implementation of self-protection measures by commercial vessels, the United States has signed and promoted the nonbinding New York Declaration. According to the declaration, the signatory countries will ensure, when carrying out their obligations under the International Ship and Port Facility Security (ISPS) Code, that vessels on their registry have adopted and documented appropriate self-protection measures in their ship security plans.⁷ These plans specify how each vessel will employ the applicable self-protection measures. While officials acknowledge that best management practices do not provide guaranteed protection against a hijacking, officials at the International Maritime Organization and the Maritime Security Centre–Horn of Africa, established by the European Union Naval Force, estimate that the majority of ships hijacked in the Gulf of Aden were not following one of the easiest and least costly of self-protection measures, registering their voyage through high-risk waters with the centre. Although U.S., international, and industry officials told us that no data are available on the extent to which ships transiting high-risk waters are following best practices, U.S., international military, and industry officials estimate that approximately 70 to 80 percent of ships are using best management practices to deter piracy. However, the United States and its international partners still face challenges urging compliance with these practices among the remaining 20 to 30 percent of vessels.

Some Progress Has Been Made in Strategic Communication to Counter Piracy

In collaboration with the Contact Group, U.S. departments and agencies involved in strategic communication efforts have made some progress in implementing actions called for in the *Action Plan*. The *Action Plan* calls for the U.S. government to lead and support a global public information and diplomatic campaign to highlight the international cooperation, coordination, and integration undertaken to repress piracy off the Horn of Africa while emphasizing the destructive effects of piracy on trade, human and maritime security, and the rule of law. Agency officials have stated that the lack of a U.S. presence in Somalia presents challenges to efforts to communicate directly with the Somali population to discourage piracy and

⁷The ISPS Code is a part of the International Convention for the Safety of Life at Sea, 32 U.S.T. 47, T.I.A.S. No. 9700.

makes it difficult to measure the effectiveness of strategic communication efforts.

High-level U.S. government officials have warned of the threat of piracy in public statements, and the Coast Guard and the Maritime Administration have actively shared information with members of the shipping industry to encourage self-protection from attack. For example, in April 2009 the Secretary of State outlined four steps State was taking in the aftermath of the hijacking of the MV *Maersk Alabama*, primarily diplomatic engagement with international partners and Somali government officials, and work with the shipping and insurance industries. Further, the Coast Guard held a series of roundtable discussions with the shipping industry to address concerns about ransom payments following the issuance of an April 2010 executive order that prohibits persons under U.S. jurisdiction from making payments to persons designated under the Order, and State and the Department of the Treasury (Treasury) officials also told us they established guidance for and communicated with the shipping industry after the executive order was issued.

In addition, according to officials, Defense and State lead interagency meetings held, in part, to gain U.S. consensus on piracy-related strategic communication issues prior to meetings with international partners. State officials also reported contributing to interagency strategic communication efforts of the Contact Group and have created a publicly available maritime security Web page, which includes information on piracy.

The Department of Defense has developed a strategic communication plan, but it is a classified document for internal use. State officials told us they have drafted a plan to coordinate interagency strategic communication on counterpiracy efforts, including outreach to domestic and foreign audiences to inform them about U.S. and international efforts to combat piracy off the coast of Somalia, but at the time of this report, the draft was still undergoing review by interagency partners and had not been finalized.

Progress in Disrupting Acts of Piracy Consistent with International Law and the Rights and Responsibilities of Coastal and Flag States

Progress Assessment Is Not Applicable for Efforts to Support and Contribute to a Regionally Based Counter-Piracy Coordination Center

The United States has not worked to create a Counter-Piracy Coordination Center as called for in the *Action Plan*, but a progress assessment toward this task was considered not applicable given changing circumstances and the status of other ongoing counterpiracy efforts since the time of the plan's publication. The *Action Plan* calls for the creation of a Counter-Piracy Coordination Center to establish a single, centralized service to receive reports of piracy and suspicious vessels, alert maritime interests, gather and analyze information regarding piracy off the Horn of Africa, provide a secure common operating picture for stakeholder governments and the shipping industry, and as appropriate, coordinate the dispatch of available response assets. However, according to Defense officials, creating such a center would duplicate existing capabilities provided by international partners. Subsequent to the publication of the *Action Plan*, Defense officials determined that existing efforts were in place to meet the goals outlined for a coordination center. Three organizations are currently involved in carrying out the tasks outlined for a single coordination center, each of which covers the functions of a Counter-Piracy Coordination Center. The Maritime Security Centre–Horn of Africa is a coordination center for transiting ships to voluntarily record their ships' movements and to receive updated threat information. It also coordinates available response assets to provide support and protection to mariners. The United Kingdom's Maritime Trade Operations office in Dubai serves as the first point of contact for reporting an attack. The Maritime Liaison Office in Bahrain serves as the link between the commercial maritime community and U.S. and coalition military forces. Other mechanisms exist to coordinate stakeholder governments, such as the Contact Group and its associated working groups, and to coordinate military patrols, such as the Shared Awareness and Deconfliction meetings.

Some Progress Has Been Made in Seizing and Destroying Pirate Vessels and Equipment, and Delivering Suspects for Prosecution

The United States has made progress toward seizing and destroying pirate vessels and equipment but has had limited progress delivering suspected pirates for prosecution. The *Action Plan* calls for the seizing and destroying of vessels outfitted for piracy and related equipment, and states the U.S. government may conduct and urge others to conduct counterpiracy operations in international waters around Somalia. According to data from the U.S.-led Combined Maritime Forces, coalition and other international partners destroyed or confiscated nearly 100 pirate vessels and confiscated more than 380 weapons, including small arms and rocket propelled grenades between August 2008 and June 2010. Coalition forces also report that international partners confiscated approximately 140 items of pirate paraphernalia, including automatic weapons, grappling hooks, ladders, and global positioning system devices in that same time period.

According to military officials, interdicting forces determine a vessel to be potentially used for piracy upon sight, given the presence of certain gear and weaponry and the absence of typical fishing gear. Military officials also told us that, once piracy equipment is seized and destroyed, U.S. forces follow international protocols and, in the event suspects are not detained, release the vessel and those onboard with sufficient fuel and provisions to reach shore.⁸ According to international military officials, European Union and North Atlantic Treaty Organization forces also are monitoring pirate bases on shore from warships, and then seizing and destroying pirate skiffs and equipment as they leave bases. However, military and international officials told us that the seizing of pirate paraphernalia provides only a temporary obstacle to pirate operations. U.S. efforts to deliver suspected pirates to states for prosecution are hampered by a lack of states that are willing and able to prosecute. The *Action Plan* states the U.S. government will deliver suspected pirates to states that are willing and able to prosecute in those cases where pirate vessels are seized or destroyed. As of June 2010, international forces had encountered more than 1,100 suspected Somali pirates since August 2008 but had delivered only approximately 40 percent to states for prosecution. According to a report issued by the Department of Defense in May 2010, U.S. military forces have transferred 24 suspected pirates for prosecution to Kenya, the only country with which the United States had an

⁸IMO, Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden, IMO Doc. C 102/14, Annex at 5 (Apr. 3, 2009).

arrangement to accept pirate transfers at the time. According to State and Department of Justice (Justice) officials, Kenya is only willing to accept cases with strong evidence, such as cases in which suspects are caught in the act of committing piracy. According to Combined Maritime Forces officials, when suspected pirates are interdicted at sea and are not engaged in an act of piracy, but are in possession of pirate equipment, interdicting forces typically will detain the suspected pirates, confiscate their equipment, and then release the suspects. Additionally, officials stated that because of evidence standards and the limited options for prosecution, interdicting forces are left with little choice but to catch and release the suspected pirates.

As of June 2010, approximately 57 percent of the suspects that international forces encountered were caught and released. Furthermore, military officials told us there have been cases of suspects being encountered multiple times at sea, so the practice of catching and releasing suspects could allow multiple attempts at piracy. Although Defense officials we spoke with had varied opinions on whether repeat offenders were a credible issue, since biometric data—such as fingerprints—are not systematically gathered to track such cases, U.S. and international forces cannot determine whether they are finding repeat offenders.

Although, as noted in the *Action Plan*, piracy is a universal crime that any state could potentially prosecute, most states, including the United States, in practice will consider prosecuting suspected pirates in appropriate cases when it is in their national interest to do so. However, according to State officials, some countries lack sufficient domestic law to support prosecution of suspected pirates. Others may have the domestic legal frameworks, but lack the resources or political will to take action. State officials also told us that logistical difficulties exist in prosecuting piracy cases such as evidence collection and preservation at sea, bringing in merchant mariners or naval personnel to provide testimony and difficulty proving intent in cases where suspects were not caught in the act. Finally, some countries that might otherwise provide a venue for prosecution may also have concerns that acquitted suspects or convicted pirates who are released after serving a prison sentence may seek asylum. Officials from State told us the U.S. government has prosecuted cases against every suspected pirate captured who attempted an attack on a U.S. vessel. Currently, a total of 12 suspects from attacks on the MV *Maersk Alabama* (April 2009), USS *Nicholas* (March 2010) and USS *Ashland* (April 2010) are being tried in the United States. The U.S. government will approach other affected states for prosecution in cases interdicted by U.S. forces where

there is no interest for the U.S. government to prosecute. According to officials at State, preference for prosecution is given to the flag state of a vessel. State officials also said they are encouraging regional countries to prosecute.

Substantial Progress Has Been Made to Provide Persistent Interdiction-Capable Presence

Since the *Action Plan* was issued, the U.S. military and Coast Guard have made substantial progress in providing an interdiction-capable presence by providing resources to a counterpiracy task force under the U.S.-led Combined Maritime Forces, and the U.S. Navy has contributed to North Atlantic Treaty Organization counterpiracy operations. According to the *Action Plan*, the U.S. Navy and Coast Guard forces operating in the region provide persistent interdiction through presence, can conduct maritime counterpiracy operations, and shall coordinate counterpiracy activities with other forces to prevent, respond to, and disrupt pirate attacks. Since the Combined Maritime Forces' counterpiracy task force was established in January 2009, the U.S. Navy has provided patrol ships, aircraft, surveillance assets, medical response units, as well as leadership for the international naval coalition conducting counter piracy operations in the Gulf of Aden and Indian Ocean. According to Defense officials, from June 2009 to June 2010, the U.S. Navy had an average of four to five ships present daily in the Horn of Africa, with two or three of those ships having embarked air assets. Defense officials told us as many as eight U.S. Navy ships could be present on any given day, with Navy ships supporting Combined Maritime Forces and North Atlantic Treaty Organization counterpiracy operations, and other maritime coalition and U.S. national efforts. For example, U.S. Marine Corps aviation units have provided support to counterpiracy operations during transits of the area and, according to agency officials, the Coast Guard has assigned deployable specialized forces and a cutter to the combatant commander to support counterpiracy operations. In addition, the Naval Criminal Investigative Service also supports maritime counterpiracy operations by providing special agents afloat to assist boarding teams and lead immediate investigations into piracy incidents on the high seas.

U.S., international, and industry officials credit the reduction in the rate of successful pirate attacks from approximately 40 percent in 2008 to 22 percent in 2009, in part, to international patrols in the Gulf of Aden. The U.S. military also initiated and contributes to tactical military coordination and information sharing with international partners through Shared Awareness and Deconfliction meetings that optimize patrol coverage of the transit corridor in the Gulf of Aden and aid with coordination of coalition and independently deployed counterpiracy forces. However,

coalition officials acknowledge U.S. and international forces face challenges in interdicting pirate incidents as pirates have adapted their tactics and expanded their area of activity to the much larger and harder-to-patrol Indian Ocean. Pirates have attacked several vessels more than 1,000 nautical miles from Somalia and now threaten an area of nearly 2 million square nautical miles. Analytic estimates from Defense officials show that full coverage of the area affected by piracy would require more than 1,000 ships equipped with helicopters—a level of support Defense officials say is beyond the means of the world’s navies to provide. With current resources, Combined Maritime Forces officials estimate 25 to 30 international ships conduct counterpiracy patrols in the Horn of Africa at any given time. In addition, military officials noted it is hard to predict how long countries will sustain counterpiracy investments, since countries participate in Combined Maritime Forces patrols at will. The *Action Plan* also states that effective and prompt consequence-delivery mechanisms are critical to the success of interdiction efforts. However, challenges related to judicial capacity and securing prosecution venues may complicate interdiction efforts.

Some Progress Has Been Made in Supporting Shiprider Programs and Other Bilateral and Regional Counterpiracy Agreements and Arrangements

The U.S. government has discussed shiprider programs with several countries but no counterpiracy shiprider programs have been finalized for this region. The *Action Plan* calls for supporting and participating in the development of shiprider programs and other bilateral and regional counterpiracy agreements and arrangements. Shiprider arrangements would allow foreign law enforcement officials to operate from U.S. naval vessels and facilitate the prosecution of suspected pirates. For example, shipriders from the country that would prosecute suspected pirates would be able to arrest the suspects and collect evidence directly, thereby facilitating the prosecution of the suspected pirates.

According to officials at State, they determined, in discussion with Kenyan officials, that a shiprider program would not facilitate prosecution of suspected pirates in Kenya because Kenyan law requires suspects to be presented before a magistrate within 24 hours of being taken into custody by a Kenyan official, including a shiprider. This requirement would be challenging to meet when suspected pirates are interdicted far out in the Indian Ocean. A shiprider provision was therefore not included in the prosecution arrangement facilitating transfer of suspects between the United States and Kenya for prosecution. According to officials at State, the Seychelles has a similar law and therefore a shiprider provision was not included in its arrangement with the United States. While State and Justice officials told us there are ongoing discussions regarding arrangements with other countries, such as Mauritius and the Philippines,

the U.S. government faces challenges in finding willing partners for such programs. Officials acknowledged that shiprider programs may not be as beneficial for counterpiracy efforts as the authors of the *Action Plan* intended.

The U.S. government also has been involved in the International Maritime Organization's effort to conclude a regional arrangement, called the Djibouti Code of Conduct. This arrangement includes sections that address topics similar to those addressed in the *Action Plan*. For example, the code contains provisions related to information sharing regarding pirate activity, reviews of national legislation related to piracy, and the provision of assistance between the signatories. The code also includes a section addressing the possibility of using shipriders. Coast Guard and State officials were involved in the development of the code and have also expressed support for implementing elements of the code.

Little or No Progress Has Been Made to Disrupt and Dismantle Pirate Bases Ashore

The U.S. government has not taken any action toward disrupting and dismantling pirate bases ashore, for a number of reasons including that the President has not authorized this action, the United States has other interests in the region that compete for resources, and long-standing concerns about security hinder the presence of U.S. military and government officials in Somalia. The *Action Plan* states that piracy at sea can be abated only if pirate bases ashore are disrupted or dismantled. Additionally, the plan states that the appropriate authority to disrupt and dismantle pirate bases ashore has been obtained from the United Nations Security Council and Somali authorities, and states that the United States will work with concerned governments and international organizations to disrupt and dismantle pirate bases to the fullest extent permitted by national law. However, as of April 2010, such action had not been authorized by the President. In addition, Somalia has lacked a functioning central government since 1991. Further, the United States closed its embassy in Mogadishu in 1991, and there is currently no official U.S. military or civilian presence in that country. While the international community, including the United States, continues to provide humanitarian and development assistance to Somalia, challenges have limited efforts to establishing peace, security, stability, and an effective and functioning government. According to officials at State and Defense, U.S. agencies allow travel to Somalia; however, general practice has severely limited the U.S. presence in Somalia since 1994. Furthermore, State officials told us that there has been no recent travel to Somalia other than a short trip by a senior official made in February 2008. Defense and State officials said that the United States has a number of other higher

priority interests in Somalia and in the region, which compete for military and civilian resources and that may ultimately affect counterpiracy decisions.

Some Progress Has Been Made toward Disrupting Pirate Revenue

While Treasury, State, and Justice have each taken steps to achieve some progress toward disrupting pirate revenue, challenges inhibit further implementation of this task. The *Action Plan* states that the U.S. government will coordinate with all stakeholders to deprive pirates and their supporters of any illicit revenue and the fruits of their crime, advocating the development of national capabilities to gather, assess and share financial intelligence on pirate financial operations, with the goal of tracing payments to and apprehending the leaders of pirate organizations and their enablers. Treasury served as the lead agency for implementing an executive order signed by the President in April 2010 that blocks all property or interests in property within U.S. jurisdiction of any persons that are listed in the order and allows for designation of other persons that threaten the peace, security, or stability of Somalia, including those who support or engage in acts of piracy off the coast of Somalia. However, Treasury officials told us the order applies only to assets that pass through U.S. financial institutions or come into the possession or control of persons in the United States or U.S. citizens or permanent residents, which limits the potential effect of the executive order on piracy revenue. As a result, it is not clear the extent to which designating pirates in the executive order will achieve the goal of disrupting pirate revenue.

While officials told us the U.S. government has reserved the right to take enforcement action against private companies for paying ransoms to individuals designated in the executive order, only two pirates have been designated thus far. Representatives of the shipping industry have stated that ship owners have no viable option for rescuing crews being held hostage other than to pay ransoms, and they fear that a failure to pay ransoms could escalate pirates' violence against crew members. State and Treasury officials told us they have communicated to shipping industry representatives that Treasury and Justice have discretion to decide whether or not to take enforcement action for any violation of the order, and that a decision to take enforcement actions will depend on the facts of each case.

Treasury officials told us their efforts to disrupt pirate revenue also have been limited by the lack of sufficient information on pirate networks in Somalia and on the flows of pirate finances, including ransom payments. According to officials at State, the U.S. intelligence community has the

strongest understanding of pirate financing, but no U.S. agencies have dedicated resources toward the issue. Federal Bureau of Investigation (FBI) and State officials told us that information related to pirate organizations may be collected in the course of pursuing other U.S. interests in the area, but piracy is not among their top priorities and is unlikely to be assigned resources. As a result, according to FBI officials, the FBI Organized Crime Section is not working to build a case against pirate leaders and enablers. State officials described the need to better use intelligence to target efforts by the U.S. government and other stakeholders, but also acknowledged that the poor security situation in Somalia poses challenges for gathering the intelligence needed to disrupt pirate financing. Ultimately, officials from multiple agencies told us U.S. agencies face resource constraints in disrupting pirate financing given higher-priority concerns such as counterterrorism.

In addition, the absence of a formal financial sector in Somalia is a major challenge to filling intelligence gaps. Treasury officials stated that the lack of a formal financial sector in Somalia and the pirates' reliance on informal financial systems presents a challenge because many of the tools they normally would use to track financial activity are implemented through formalized financial systems.

State has taken several actions to raise the issue of pirate financing among international partners and to address misconceptions within the shipping industry about the U.S. position on ransoms. The U.S. government has helped elevate the issue of pirate financing within the Contact Group, including releasing a paper to participants. State and Justice also have worked with partner governments and international organizations, such as Interpol and the United Nations, to develop collaborative events linking experts on pirate financing, and sponsored a workshop in Kenya with the United Nations Office on Drugs and Crime that covered money laundering and organized crime.

Progress to Ensure That Those Who Commit Acts of Piracy Are Held Accountable for Their Actions by Facilitating the Prosecution of Suspected Pirates by Flag, Victim, and Coastal States, and, in Appropriate Cases, the United States

Some Progress Has Been Made toward Concluding Arrangements to Formalize Custody and Prosecution

The U.S. government has made some progress in concluding prosecution arrangements for Somali piracy cases, by securing prosecution arrangements with Kenya and the Seychelles, and is working toward similar arrangements with other countries. The *Action Plan* calls for the U.S. government to conclude agreements and arrangements to formalize custody and prosecution arrangements both in and outside the region. In January 2009, the U.S. government formalized an arrangement with Kenya to facilitate transfers of piracy cases from U.S. forces. The United States has transferred 24 suspected pirates to Kenya for prosecution, and Defense officials told us one conviction has been secured thus far. In July 2010, the U.S. government also concluded an arrangement with the Seychelles for transfers of piracy cases from U.S. forces. In addition, State officials said that discussions are ongoing with countries that have a regional or commercial interest in countering piracy, such as Mauritius, the Philippines, and Tanzania, and it is taking steps to conclude further arrangements. As of May 2010, according to agency officials, State had encouraged 17 countries to consider prosecution of suspected pirates. However, State officials told us that the lack of prosecution venues is a primary challenge to prosecuting pirates, which may undermine interdiction efforts. According to State and Justice officials, challenges to establishing prosecution arrangements include limited regional capacity and interest of states outside the region to prosecute suspected pirates.

In addition the relatively low rate of prosecutions contributes to the perception that pirates operate with relative impunity. As of June 2010, international forces had encountered more than 1,100 suspected Somali pirates since August 2008 but had delivered only approximately 40 percent to states for prosecution. Although Kenya announced its intent to withdraw from its arrangement with the United States in April 2010, that decision was later reversed, and more than 100 piracy cases were being processed through the Kenyan criminal justice system as of June 2010.

Some Progress Has Been Made to Support and Encourage the Exercise of Jurisdiction under the Convention for the Suppression of Unlawful Acts

The United States has made some progress in using the United Nations Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation⁹ to exercise jurisdiction to prosecute suspected pirates, but this effort involves several challenges. The *Action Plan* calls for the United States to use—and encourage other countries to use—appropriate jurisdiction of flag, port, and coastal states, as well as states of the nationality of victims and perpetrators of piracy, through the prosecution of any persons having committed an act of piracy, and states that the United States will urge other states party to the convention to use it as a vehicle for the prosecution of acts violating the convention. For example, the United States has exercised jurisdiction under the convention to prosecute one pirate in the United States. U.S. officials told us that State, Justice, Defense, and the Coast Guard have been involved in efforts, through the Contact Group and the International Maritime Organization, to encourage use of the Convention to prosecute suspects. However, U.S. agency officials cited hurdles to prosecuting pirates, such as limits to affected countries' willingness and capacity to prosecute pirates, and difficulties associated with collecting evidence in the maritime environment.

Some Progress Has Been Made to Support and Encourage the Use of Other Applicable International Conventions and Customary International Law

The United States has taken some steps to support and encourage the use of other applicable international conventions and customary international law as they relate to prosecuting piracy. The *Action Plan* calls for the U.S. government to support and encourage the use of relevant and appropriate jurisdiction through the framework of applicable international conventions, in addition to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, such as the 1979 Hostage Taking Convention, the 2000 Transnational Organized Crime

⁹Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1678 U.N.T.S. 221 (Mar. 10, 1988).

Convention, and the 1999 Terrorist Financing Convention, and customary international law. For example, the U.S. government has exercised jurisdiction over 11 suspected pirates who attempted attacks on the USS *Nicholas* in March 2010 and the USS *Ashland* in April 2010.

The *Action Plan* also anticipates ongoing discussion with other states on the possibility of an international court to prosecute suspected pirates, if necessary. However, the U.S. government does not support creation of a dedicated piracy court because of the amount of time, resources, and infrastructure that would be required. State officials said that the U.S. government is interested in solutions for challenges to prosecution, including the possibility of a hybrid court combining a piracy chamber within a national system. However, they said despite interest expressed by members of the Contact Group and other nations, no countries have offered their prosecutors or territories for use in establishing a dedicated international court.

Some Progress Has Been Made toward Enhancing Regional States' Capabilities to Accept Suspected Pirates for Prosecution, Extradition, and Incarceration

The Departments of Justice and State have achieved some progress in providing assistance to several regional countries, and the United States is contributing to international efforts to develop regional judicial capacity. The *Action Plan* calls for the United States to work with interested parties to identify the nature and scope of international assistance needed to enhance the capacities of regional states in connection with the arrest, detention, prosecution, and fair trial of persons accused of involvement in piracy, and to pursue bilateral programs to provide judicial capacity-building efforts. State has created an assessment tool to identify gaps in regional states' maritime capabilities including judicial capacity. The U.S. government provides support to regional partners for building judicial capacity. For example, the resident legal advisor at the U.S. Embassy in Nairobi has provided assistance to Kenya, Tanzania, and the Seychelles. This advisor, a position within Justice's Office of Overseas Prosecutorial Development, Assistance and Training but supported by State, told us he provided assistance in developing piracy cases, and helped develop guidance for U.S. forces on evidence collection and transferring piracy cases to Kenya. Naval Criminal Investigative Service special agents have testified in Kenyan courts, and provided counter-piracy training and operational support to officials in the Seychelles. In addition, the U.S. government, in conjunction with the United Nations Office on Drugs and Crime, has sponsored conferences focused on piracy for law enforcement and judges from countries in the Horn of Africa region.

Further, the United States has contributed \$250,000 to the United Nations counterpiracy effort for regional capacity-building. In April 2010, the Contact Group board that administers a trust fund for prosecution issues, which includes the United States, approved \$2.1 million for five projects primarily to support the prosecution of suspected pirates in Somalia and the Seychelles. However, Justice and State officials told us that regional states continue to have a limited capacity to prosecute suspected pirates and incarcerate convicted pirates. Although State officials said that they were attempting to include a funding request for future operations, in the current budget cycle, counterpiracy operations at State have no dedicated budget.

Appendix III: International and Shipping-Industry Partners Involved in Counterpiracy Efforts

Table 2: International Partners Involved in Counterpiracy Efforts

	Contact Group on Piracy off the Coast of Somalia	New York Declaration signatories ^a	Djibouti Code of Conduct signatories ^b	Combined Task Force 151	North Atlantic Treaty Organization—Operation Ocean Shield	European Union Naval Force Somalia—Operation Atalanta	Independent deployers	Countries prosecuting suspected pirates
Australia	✓			✓				
Austria	✓							
Bahamas	✓	✓						
Bahrain				✓				
Belgium	✓					✓		
Canada	✓							
China	✓						✓	
Comoros			✓					
Cyprus	✓	✓				✓		
Czech Republic	✓							
Denmark	✓			✓				
Djibouti	✓		✓					
Egypt	✓		✓					
Ethiopia	✓		✓					
Finland	✓					✓		
France	✓					✓		✓
Germany	✓				✓	✓		
Greece	✓				✓	✓		
India	✓						✓	
Indonesia	✓							
Iran							✓	
Ireland						✓		
Italy	✓				✓	✓		
Japan	✓	✓					✓	
Jordan				✓				
Kenya	✓		✓					✓
Republic of Korea	✓	✓		✓				
Liberia	✓	✓						
Lithuania	✓							
Luxemburg						✓		

	Contact Group on Piracy off the Coast of Somalia	New York Declaration signatories ^a	Djibouti Code of Conduct signatories ^b	Combined Task Force 151	North Atlantic Treaty Organization—Operation Ocean Shield	European Union Naval Force Somalia—Operation Atalanta	Independent deployers	Countries prosecuting suspected pirates
Madagascar			✓					
Malaysia	✓						✓	
Maldives			✓					✓
Malta						✓		
Marshall Islands	✓	✓						
Mauritius	✓							
Mexico	✓							
Morocco	✓							
Netherlands	✓				✓	✓		✓
Nigeria	✓							
Norway	✓					✓		
Oman	✓							
Pakistan	✓			✓				
Panama	✓	✓						
Portugal	✓							
Russia	✓						✓	
Saudi Arabia	✓		✓				✓	
Seychelles	✓		✓				✓	✓
Singapore	✓	✓		✓				
Somalia TFG	✓		✓					✓
Spain	✓				✓	✓		✓
Sudan			✓					
Sweden	✓					✓		
Tanzania			✓					
Thailand				✓				
Turkey	✓			✓	✓			
Ukraine	✓							
United Arab Emirates	✓							
United Kingdom	✓	✓		✓	✓	✓		

	Contact Group on Piracy off the Coast of Somalia	New York Declaration signatories ^a	Djibouti Code of Conduct signatories ^b	Combined Task Force 151	North Atlantic Treaty Organization—Operation Ocean Shield	European Union Naval Force Somalia—Operation Atalanta	Independent deployers	Countries prosecuting suspected pirates
United States	✓	✓		✓	✓			✓
Yemen	✓		✓				✓	✓

Source: GAO.

^aOther countries occasionally contribute to Standing North Atlantic Treaty Organization Maritime Group 2, the North Atlantic Treaty Organization group implementing Operation Ocean Shield.

^bThe Djibouti Code of Conduct is open for signature by the 21 countries in the region. As of March 2010, 13 countries had signed the Code of Conduct.

Contact Group on Piracy off the Coast of Somalia

In January 2009, the Contact Group on Piracy off the Coast of Somalia (Contact Group) was formed in response to United Nations Security Council Resolution 1851 to facilitate discussion and coordination of actions among countries and organizations working to suppress piracy off the coast of Somalia. The participating countries established four working groups in which all Contact Group parties may participate. Working Group 1 addresses activities related to military and operational coordination and information sharing and the establishment of the regional coordination center, and is chaired by the United Kingdom with the support of the International Maritime Organization. Denmark chairs Working Group 2, which addresses judicial aspects of piracy with the support of United Nations Office on Drugs and Crime. The United States chairs Working Group 3 to strengthen shipping self-awareness and other capabilities, with the support of the International Maritime Organization. Egypt chairs Working Group 4 which focuses on improving diplomatic and public-information efforts on all aspects of piracy. As of June 2010, 49 countries, 7 international organizations, and 3 industry observers participate in the Contact Group.

New York Declaration

First open for signature in May 2009, the New York Declaration is a commitment by countries to promulgate the internationally recognized best management practices for self-protection to vessels on their registry and ensure that vessels on their registry have adopted and documented appropriate self-protection measures. As of July 2010, 10 countries had signed the declaration.

Djibouti Code of Conduct

The Djibouti Code of Conduct recognizes the problem of piracy and armed robbery against ships in the Horn of Africa region. Signatories declare their intention to cooperate to the fullest extent possible, consistent with their available resources and related priorities, their respective national laws and regulations, and international law in the repression of piracy and armed robbery against ships. Among other things, under the code, participants should set up national focal points to facilitate coordinated, timely, and effective flow of information about piracy and armed robbery against ships. Additionally, according to the code, each participant intends to review its national legislation to ensure it has laws in place to criminalize piracy and armed robbery against ships and adequate provisions for the exercise of jurisdiction, conduct of investigations, and prosecution of alleged offenders. The code is open for signature by the 21 countries in the region and, as of March 2010, 13 of the 21 countries had signed.

Combined Maritime Forces and Combined Task Force 151

Under the leadership of the commander of the U.S. Naval Forces Central Command and U.S. 5th Fleet, the Combined Maritime Forces is a 25-nation coalition that is focused on countering terrorism, preventing piracy, reducing illegal trafficking of people and drugs, and promoting safety of the maritime environment. Established in 2002, the Combined Maritime Forces patrol more than 2.5 million square miles of international waters to conduct both integrated and coordinated operations. Additionally, the Combined Maritime Forces conducts maritime security operations in the Arabian Gulf, Red Sea, Gulf of Oman, and parts of the Indian Ocean. This expanse includes three critical points in high-risk waters at the Strait of Hormuz, the Suez Canal, and the Strait of Bab al Mandeb at the southern tip of Yemen.

In January 2009, the Combined Maritime Forces established Combined Task Force 151 with the sole mission of conducting counterpiracy operations in the Gulf of Aden and the waters off the Somali coast in the Indian Ocean. This is a multinational naval task force made up of countries willing and able to participate in counterpiracy operations. So far, 11 countries have contributed forces to Combined Task Force 151 and several others that have agreed to send ships or aircraft or both to participate in counterpiracy operations.

North Atlantic Treaty Organization—Operation Ocean Shield

Operation Ocean Shield is the North Atlantic Treaty Organization's contribution to international efforts to combat piracy off the Horn of Africa. This operation builds on the North Atlantic Treaty Organization's previous counterpiracy operations which began in late 2008 when the North Atlantic Treaty Organization began providing escorts to United Nations World Food Programme vessels transiting the high-risk waters off the Horn of Africa. The North Atlantic Council approved Operation Ocean Shield in August 2009. This operation focuses on at-sea counterpiracy operations, support to the maritime community to take actions to reduce incidents of piracy, as well as regional-state counterpiracy capacity building. This operation is designed to complement the efforts of existing international organizations and forces operating in the area. This operation is being implemented by the Standing North Atlantic Treaty Organization Maritime Group 2, made up of vessels from eight different member countries that routinely contribute to the group and other countries that occasionally contribute.

European Union Naval Force Somalia—Operation Atalanta

The European Union is conducting Operation Atalanta to help deter, prevent, and repress acts of piracy and armed robbery off the coast of Somalia. This operation began in late 2008 following the adoption of Resolutions 1814, 1816, 1838, and 1846 by the United Nations Security Council. The operation's objectives are to protect World Food Programme vessels, humanitarian aid, and African Union Military Mission in Somalia shipping; help deter, prevent, and repress acts of piracy and armed robbery; protect vulnerable shipping; and monitor fishing activities off the coast of Somalia. This operation is being implemented by 14 countries with operational support provided by a team at the Northwood Operation Headquarters. Operation Atalanta has been extended by the European Council until December 2012.

Independent Deployers

Independent deployers are countries that are not part of the coalition forces. These countries deploy naval forces to the region under national auspices to escort their ships through high-risk waters and to monitor counterpiracy operations, and may coordinate with coalition patrols.

Countries Prosecuting Suspected Pirates

Although the *Action Plan* considers piracy to be a universal crime that any country can prosecute, in practice, most countries, including the United States, will consider prosecuting suspected pirates in appropriate cases when it is in their national interest to do so. A single piratical attack often affects the interests of numerous countries, including the country in which the vessel is flagged, the various countries of nationality of the seafarers taken hostage, regional coastal countries, the country of the vessel or cargo owner, and transshipment and destination countries.

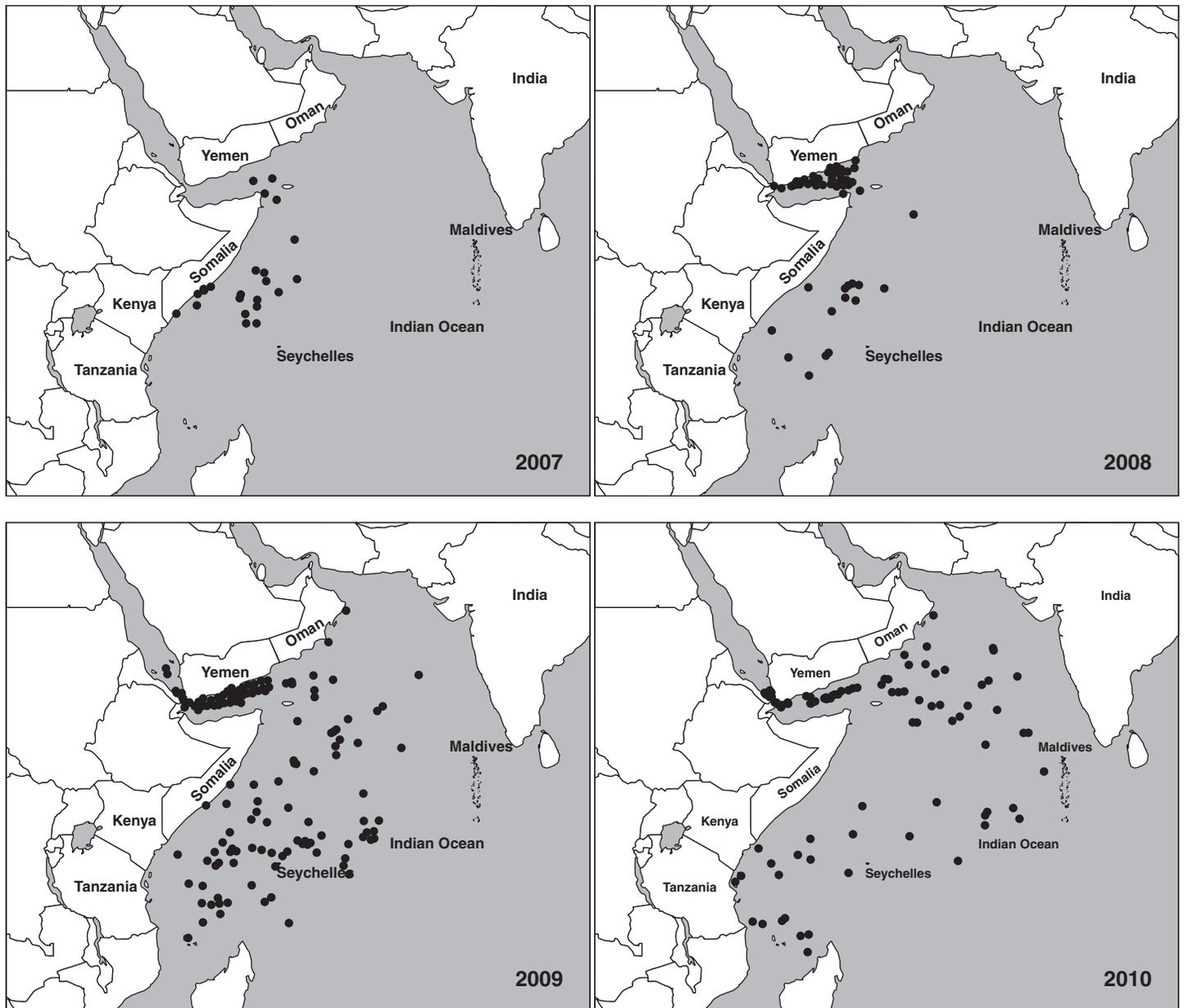
Shipping-Industry Partners

Various organizations representing interests of the shipping industry have been involved in efforts to prevent or respond to piracy off the Horn of Africa. For example, the 12 shipping industry organizations actively involved in the development of the “Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia” represent the interests of ship owners, seafarers, marine insurance companies, and others, and included: the International Association of Independent Tanker Owners, International Chamber of Shipping, Oil Companies International Marine Forum, Baltic and International Maritime Council, Society of International Gas Tanker and Terminal Operators, International Association of Dry Cargo Shipowners, International Group of Protection and Indemnity Clubs, Cruise Lines International Association, International Union of Marine Insurers, Joint War Committee & Joint Hull Committee, International Maritime Bureau, and International Transport Workers Federation.

Appendix IV: Successful and Attempted Pirate Attacks off the Coast of Somalia, January 2007 to June 2010

Pirates have expanded their area of operations with an increasing number of attacks occurring in the Indian Ocean, an area much larger than the Gulf of Aden. Defense officials report that pirates now threaten an area of nearly 2 million square nautical miles in the Somali Basin and Gulf of Aden. Figure 11 shows the number and location of pirate attacks off the Horn of Africa reported to the International Maritime Bureau in 2007, 2008, 2009, and the first half of 2010.

Figure 11: Successful and Attempted Pirate Attacks off the Coast of Somalia, January 2007 to June 2010



Source: GAO analysis of International Maritime Bureau data (data); Map Resources (map).

Appendix V: Comments from the Department of Defense



SPECIAL OPERATIONS/
LOW-INTENSITY CONFLICT
& INTERDEPENDENT CAPABILITIES

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

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SEP -9 2010

Mr. John Pendleton
Director
Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Pendleton:

Thank you for the opportunity to review the U.S. Government Accountability Office (GAO) draft report GAO-10-856, "Maritime Security: Actions Needed to Assess and Update Plan and Enhance Collaboration among Partners Involved in Countering Piracy off the Horn of Africa," dated September 2010.

We noted in our technical comments several areas whereby the significant contributions of the Naval Criminal Investigative Service (NCIS) to our counter-piracy efforts could be depicted more accurately. The Department does not agree that using percent of seized suspected pirates who were delivered for prosecution is an appropriate measure of program success. The metric does not take into account that fact that it is up to individual countries within the coalition to determine the validity of the evidence to determine whether to prosecute. Additionally, it should be noted that U.S. Special Operations Command does not conduct counter-piracy operations.

Your consideration of these comments is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Wechsler".

William F. Wechsler
Deputy Assistant Secretary of Defense
Counternarcotics and Global Threats

Appendix VI: GAO Contacts and Staff Acknowledgments

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In addition to the contacts above, Dawn Hoff, Assistant Director; Patricia Lentini, Assistant Director; Elizabeth Curda; Susan Ditto; Nicole Harms; Barbara Hills; Brandon L. Hunt; Farhanaz Kermalli; Eileen Larence; Tom Melito; Tobin McMurdie; John Mingus; Susan Offutt; Terry Richardson; Mike Rohrback; Leslie Sarapu; Amie Steele; Gabriele Tonsil; Suzanne Wren; and Loren Yager made key contributions to this report.

Related GAO Products

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Security Council

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Report of the Secretary-General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results

Summary

The Security Council, in its resolution 1918 (2010) of 27 April 2010, requested the Secretary-General to present a report on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results.

In response, the Secretary-General has identified seven options for the Security Council to consider:

- Option 1: The enhancement of United Nations assistance to build capacity of regional States to prosecute and imprison persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia
- Option 2: The establishment of a Somali court sitting in the territory of a third State in the region, either with or without United Nations participation
- Option 3: The establishment of a special chamber within the national jurisdiction of a State or States in the region, without United Nations participation



S/2010/394

- Option 4: The establishment of a special chamber within the national jurisdiction of a State or States in the region, with United Nations participation
- Option 5: The establishment of a regional tribunal on the basis of a multilateral agreement among regional States, with United Nations participation
- Option 6: The establishment of an international tribunal on the basis of an agreement between a State in the region and the United Nations
- Option 7: The establishment of an international tribunal by Security Council resolution under Chapter VII of the Charter of the United Nations

Option 1 is already ongoing and has achieved some success. In particular, Kenya opened a new high security courtroom on 24 June 2010 in Shimo La Tewa, Mombasa, which was built by the United Nations Office on Drugs and Crime Counter-Piracy Programme. This courtroom will be used to hear piracy cases and to try other serious criminal offences. The Security Council may wish to consider continuing, and building on, the role it has played in its resolutions to enhance option 1. A potential host State would need to be identified for each of the other options. It would be necessary to ascertain the preferences of that potential host State, including whether it would accept international participation in such mechanism, and, if so, in what form. The advantages and disadvantages of the options are therefore analysed in the light of general considerations that apply.

The need for sufficient arrangements for imprisonment in the region, ideally in Somalia, may be as critical as the options for prosecution. This is particularly so given the large numbers of suspects apprehended by naval States. The need for such imprisonment arrangements to be developed is likely to be a significant factor in any process to seek to identify a potential host State for a new judicial mechanism.

The Security Council request emphasizes the important goal of achieving and sustaining substantive results. A key consideration in this respect would be the need for sufficient political and financial commitment among States, in difficult economic times, not only to establish a new judicial mechanism, but also to sustain it. A new judicial mechanism to address piracy and armed robbery at sea off the coast of Somalia would be addressing a different situation to that addressed by the existing United Nations and United Nations-assisted tribunals. Such a mechanism would face ongoing criminal activity and potentially a large caseload, with no predictable completion date.

Option 1: The enhancement of United Nations assistance to build capacity of regional States to prosecute and imprison persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia

This option involves consolidating and building on the successes already achieved, such as the opening of the new high security courtroom in Shimo La Tewa, Mombasa, to hear piracy cases and to try other serious criminal offences. The enhancement of the capacity of regional States would involve both sustaining and increasing the capacity of those States already conducting prosecutions, and encouraging further regional States to accept the transfer of suspects for prosecution. This would require political engagement with regional States, including potentially through the Contact Group on Piracy off the Coast of Somalia, and sustained funding for United Nations programmes, including through the International Trust Fund to Support Initiatives of States Countering Piracy. It is also likely to require

arrangements to be in place for the imprisonment in third States of those convicted, and the repatriation of those not convicted. Improving the standards of prisons in Somalia, in particular in the regions of Puntland and Somaliland, is likely to be key to making progress. Sufficient funding for assistance programmes in Somalia will be essential to developing the long-term solution of prosecution and imprisonment by Somalia. The Security Council may wish to consider continuing, and building on, the role it has played in its resolutions to enhance option 1.

Option 2: The establishment of a Somali court sitting in the territory of a third State in the region, either with or without participation by the United Nations

The purpose of this option would be to provide a secure environment in which a Somali court could conduct prosecutions. This would require an agreement between Somalia and the host State, and, if established with United Nations participation, would also require an agreement with the United Nations. Although the special court would be within Somalia's national jurisdiction, the legislative and criminal procedural framework necessary for conducting piracy prosecutions is currently fragmented, and substantial assistance would be needed to enable prosecutions to be conducted to international standards. Identifying a regional State willing and able to provide the facilities for hosting a Somali court may present challenges. Assistance to the Somali court under this option would not benefit the host State's criminal justice system. Advantages may include enabling Somalia to play a role in the solution to the problem of piracy; and capacity-building of the Somali judicial system, thereby contributing to strengthening the rule of law in Somalia. Disadvantages may include the time necessary for its establishment; and higher costs than those for option 3, given the substantial assistance likely to be necessary. Discussions in Working Group 2 on legal issues of the Contact Group have raised issues concerning the adequacy of Somalia's piracy laws and the capacity of Somalia's judicial system. These issues may need to be addressed in order for this option to be feasible. The advantages of this option would also need to be weighed against the advantages of assisting Somali courts to prosecute within Somalia, if feasible.

Option 3: The establishment of a special chamber within the national jurisdiction of a State or States in the region, without United Nations participation

The first consideration under this option is whether the State concerned is conducting or could potentially conduct a sufficient number of piracy prosecutions to justify a special chamber dedicated to such prosecutions. Somalia may be the one State at present where, in the regions of Puntland and Somaliland, there may be a sufficient volume of prosecutions to justify a special chamber. At present, however, there appears to be insufficient donor confidence in the standards of these prosecutions to fund United Nations assistance programmes at the same levels as in other regional States. A special chamber in a State in the region would have the advantages of being part of an existing jurisdiction with established crimes and procedures; cost-effectiveness; and proximity for the purpose of transfer of suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment. Possible disadvantages may include drawing resources from the State's criminal justice system more broadly; "two-tier" justice; and limited capacity.

Option 4: The establishment of a special chamber within the national jurisdiction of a State or States in the region, with United Nations participation

Participation by United Nations selected judges, prosecutors and/or staff in such a chamber would require an agreement between the State concerned and the United Nations. As with option 3 above, the first consideration would be whether there are or could potentially be sufficient piracy prosecutions in that State to justify a special chamber dedicated to such prosecutions. The advantages of this option may include being part of an existing jurisdiction with established crimes and procedures; capacity-building for the host State, and possibly other regional States; proximity for the purpose of the transfer of suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment. Although this option would be relatively cost-effective, it would be likely to be more expensive than option 3. If the host State were Kenya or Seychelles, this option would benefit from their expertise. The disadvantages may include drawing resources from the State's criminal justice system more broadly; and limited capacity. Participation by United Nations judges in the regional States that are conducting piracy trials, or are considering doing so, might in many cases necessitate changes to criminal procedures because these regional States currently have single judge trials.

Option 5: The establishment of a regional tribunal on the basis of a multilateral agreement among regional States, with United Nations participation

This option would require a multilateral treaty to be negotiated among regional States, ideally including Somalia. Participation by United Nations judges, prosecutors and/or staff would require an agreement with the United Nations. The practice of United Nations selected judges being in the majority in chambers in which they sit would need to be assessed in the context of a regional tribunal comprising regional judges. Advantages of this option may include capacity-building for the participating regional States; proximity for the purpose of the transfer of suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment; and possibly greater capacity than a special chamber within a national jurisdiction. Disadvantages may include the need to establish the jurisdiction of a new tribunal, including the crimes and procedures; the time necessary to establish the tribunal; and, likely, higher costs than a special chamber within a national jurisdiction. A risk might be that such a regional tribunal may draw expertise and resources from the jurisdictions of regional States conducting prosecutions.

Option 6: The establishment of an international tribunal on the basis of an agreement between a State in the region and the United Nations

This option would require an agreement between the United Nations and the State concerned to establish an international tribunal with both United Nations and national components. The practice has been to establish such tribunals with United Nations selected judges in the majority. For the reasons set out in connection with option 3, there may be challenges associated with the establishment of a tribunal with Somalia at present. Whether to seek to establish such a tribunal with any other regional State, rather than pursuing options 3 or 4, would require careful assessment. If the host State were Kenya or Seychelles, the tribunal would benefit from their growing expertise, but may also draw such expertise and resources from prosecutions

within their national jurisdiction. Advantages of this option may include capacity-building for the host State, although probably less so than option 4; and proximity for the purpose of the transfer of suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment. Disadvantages may include the need to establish the jurisdiction of a new tribunal, including the crimes and procedures; the time necessary to establish the tribunal; and, likely, higher costs than a special chamber within the State's national jurisdiction.

Option 7: The establishment of an international tribunal by Security Council resolution under Chapter VII of the Charter of the United Nations

An international tribunal established by Security Council resolution under Chapter VII would comprise entirely United Nations selected judges, prosecutors and staff, and might or might not be located in the region. Inclusion of United Nations selected judges from the region, including Somalia, would promote regional capacity-building. If judges, prosecutors and/or staff were drawn from Kenya or Seychelles, the tribunal would benefit from their experience, but their inclusion may risk inhibiting those States' capacity to prosecute nationally. Although the time necessary for the Council to negotiate the necessary Chapter VII resolution may be relatively short, an assessment of the overall time required in connection with this option would include the time required to identify and negotiate with a potential host State. The advantages of this option may include greater capacity than a special chamber within a national jurisdiction; and the Council's ability to require the cooperation of third States with the tribunal through its resolution under Chapter VII. Disadvantages may include higher costs; and, if not located in the region, lack of proximity for the purpose of the transfer of suspects by patrolling naval States, and the transfer of those convicted to third States, if imprisonment is to take place in the region.

Further options raised by members of the Contact Group on Piracy off the Coast of Somalia

Some members of the Contact Group also raised the options of amending the statutes of the International Criminal Court (ICC), the International Tribunal for the Law of the Sea and the African Court on Human and Peoples' Rights. Possible amendment of the Rome Statute of the ICC was not taken up by the States parties at the first review conference, which took place in June 2010 in Kampala. The International Tribunal for the Law of the Sea and the African Court on Human and Peoples' Rights are courts that determine inter-State disputes and have no criminal jurisdiction. Amendment of their statutes was therefore considered not to be an option.

The role of Somalia

Whichever of the options, if any, may be favoured by the Security Council, the longer-term need to assist Somalia and its regions to develop the capacity to prosecute and imprison to international standards will be key in sustaining results in the fight against impunity for those responsible for acts of piracy and armed robbery at sea off the coast of Somalia.

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I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1918 (2010) of 27 April 2010. The Security Council requested the Secretary-General to present a report on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results.

2. This report describes, in section II, the nature and extent of the problem of piracy and armed robbery at sea off the coast of Somalia and its causes. Section III sets out the applicable law. Section IV describes the current United Nations approach to assisting States to prosecute and imprison persons responsible for acts of piracy and armed robbery at sea within their national jurisdictions. Section V analyses various options for furthering the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia. Section VI provides a conclusion. The annexes to the report contain detailed information on the existing practice of the United Nations in establishing and participating in United Nations and United Nations-assisted tribunals (annex I), and on relevant discussions in the Contact Group on Piracy off the Coast of Somalia (annex II).

3. In this report, the term “United Nations participation” is used to refer to the participation by judges, prosecutors and/or staff selected by the United Nations in a judicial mechanism. It is to be distinguished from “United Nations assistance”, which refers to technical assistance by the United Nations to assist a State or judicial mechanism to build its capacity. The International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are referred to as “United Nations tribunals” because they are subsidiary organs of the Security Council and therefore form part of the United Nations Organization. Tribunals that do not form part of the United Nations Organization, but are established on the basis of an agreement between the United Nations and the State concerned, are referred to as “United Nations-assisted tribunals”. These United Nations-assisted tribunals are sometimes also referred to as “hybrid” or “mixed” tribunals, as in the above request of the Security Council, owing to their mix of international and national components.

II. Nature and extent of piracy and armed robbery off the coast of Somalia

A. The situation in Somalia

4. Acts of piracy and armed robbery at sea off the coast of Somalia are a symptom of the instability and lack of rule of law in Somalia. The lack of effective governance has persisted since the overthrow of the government of Siad Barre on 31 January 1991. This situation has had a profound negative impact on the

population, which has not enjoyed the benefits of the rule of law for two decades. The Transitional Federal Government of Somalia is attempting to establish its governance structures and the rule of law, including through the development of the security and justice sectors. However, in most of south-central Somalia, militia groups are still in control, limiting the capacity to establish law and order. Pirate attacks are severely constraining the importation of goods into the country. The prices of food have risen, and investment in the local economy has been affected as building materials and other raw materials have become less available. Unemployment is widespread. These conditions have led many young Somalis to join armed groups and militias, or to be drawn into criminal activity, including piracy.

5. Insecurity in south-central Somalia has made it almost impossible for the judicial system to function. The United Nations Development Programme (UNDP), in cooperation with the Transitional Federal Government Ministry of Justice and the Supreme Court, is identifying immediate, short- and long-term needs in the justice system, including the appointment of judges, and providing training for judicial staff. Over the past two years, the United Nations, UNDP, the African Union Mission for Somalia (AMISOM), the Transitional Federal Government and other partners have been working on strengthening the police and security forces. The United Nations Office on Drugs and Crime (UNODC) and UNDP are working to improve prison standards in the Puntland and Somaliland regions of Somalia.

6. A sustainable response to the situation in Somalia, and therefore to piracy and armed robbery at sea, requires the establishment of effective governance, the rule of law, credible security sector institutions, and alternative livelihoods for the Somali people. This requires the Transitional Federal Government and the regional authorities to lead in the prioritization and coordination of efforts. For this purpose, in January 2010, the United Nations Political Office for Somalia (UNPOS), the Department of Political Affairs of the United Nations Secretariat, and the International Maritime Organization (IMO) assisted in the establishment of the Somali Counter-Piracy Technical Coordination Mechanism in Kampala, also referred to as the Kampala process.¹ The Kampala process comprises technical representatives from the Transitional Federal Government, and the regions of Puntland and Somaliland, as well as representatives from relevant United Nations offices, and is intended to improve the flow of information between the Somali central and regional authorities and their cooperation with the international community on counter-piracy initiatives. It seeks to establish a consolidated approach among the authorities through sharing information and coordinating activities in the areas of legislative review, prisons, fisheries and maritime safety and security.

¹ See the communiqué of the fifth plenary meeting of the Contact Group on Piracy off the Coast of Somalia (28 January 2010), which refers to the Contact Group welcoming the agreement that led to the creation of the mechanism (available at www.norway-un.org/News/Latest_news/COMMUNIQUE-Contact-Group-on-Piracy-off-the-Coast-of-Somalia).

B. Incidents of piracy and armed robbery at sea off the coast of Somalia and the naval operations

7. Piracy attacks around the world have continued to escalate in recent years, owing almost entirely to rising incidents of piracy off the coast of Somalia. The number of attacks off the coast of Somalia has steadily increased since 1991, and over the past two years has increased from 111 vessels attacked in 2008 to 217 vessels attacked in 2009.² Bearing in mind that each incident involves a number of individuals, it is clear that there are large numbers of persons involved. There were 30 attacks during the first quarter of 2010.³ According to the United Nations Office on Drugs and Crime, the pirates operate from around 70 camps on beaches on the Somali coast, which is approximately 1,800 miles long. Their methods have become increasingly sophisticated, indicating greater planning, financing and organization. To reach far out to sea, they make use of larger vessels that have been captured as “mother ships” to tow smaller and faster boats close to the point of attack. The mother ships are often loaded with fuel, water and food. Pirates often now have Global Positioning Satellite (GPS) equipment and heavier weapons, including rocket-propelled grenades.

8. While the number of attacks remains high, increased naval patrols off the Horn of Africa and in the Gulf of Aden have effectively reduced the success rate of these attacks. In 2007, 63 per cent of attacks were successful; in 2008, 34 per cent were successful; in 2009, 21 per cent were successful; and the figure for 2010 is likely to be below 20 per cent.² The decrease in success is attributable to the additional defensive measures put in place by merchant ships, their more cautious navigational routes, and effective naval operations. Nevertheless, as at 15 May 2010, some 450 mariners were being held hostage on vessels captured by pirates off the coast of Somalia. The involvement of naval vessels from more than 30 States represents one of the largest peacetime naval operations ever. Many States take part in one of three naval operations in the region: the European Union naval operation Atalanta (directed from Northwood, United Kingdom of Great Britain and Northern Ireland), the North Atlantic Treaty Organization (NATO) (also directed from Northwood) and the Coalition Maritime Forces (directed from Bahrain). In addition, many States have sent naval vessels to the region under national command.

9. Although the number of patrolling naval States involved is high, the number of ships on patrol off the coast of Somalia at any one time may be no more than 10. This is because they need to refuel and replenish their supplies, and the distance to their home State is often great. Given the vast area of ocean affected, maritime patrol aircraft play an important role in identifying pirates, directing naval ships to interdict, and advising merchant ships to alter course. These aircraft are based in Seychelles, Kenya and Djibouti. In order to be effective, naval operations apprehending suspects should result in prosecutions. The risk otherwise is that suspects are released at sea, or repatriated, and return to commit further acts of piracy or armed robbery at sea.

² Statistics provided at the Seychelles Regional Conference on Piracy, held in May 2010.

³ See ICC International Maritime Bureau, “Piracy and Armed Robbery against Ships, report for the period 1 January-31 March 2010” (available at www.icc-ccs.org).

III. Applicable law

10. The international legal regime applicable to piracy consists of the 1982 United Nations Convention on the Law of the Sea,⁴ other international and regional instruments, relevant Security Council and General Assembly resolutions, and national implementing legislation.

A. International and regional instruments

11. The international legal regime applicable to piracy is set out primarily in the United Nations Convention on the Law of the Sea, which codifies customary international law.⁵ In accordance with article 100 of the Convention, the primary obligation for all States is to cooperate to the fullest possible extent in the repression of piracy.⁶ The definition of piracy is contained in article 101 of the Convention.⁷ It includes any illegal acts of violence, detention or depredation committed for private ends by the crew or passengers of a private ship against another ship, or persons or property on board that ship. In order to constitute acts of piracy, such acts have to be committed on the high seas, outside the jurisdiction of any State, or within the exclusive economic zone of any State.⁸ The definition also includes any act of inciting or of intentionally facilitating any of the aforementioned acts.⁹ Some acts of piracy may also constitute offences under other international legal instruments, such as the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention),¹⁰ the 1979 International Convention against the Taking of Hostages¹¹ and the 2000 United Nations Convention against Transnational Organized Crime.¹²

12. There is universal jurisdiction over acts of piracy on the high seas and in the exclusive economic zones of States.¹³ This means that any State may seize a pirate ship on the high seas or in the exclusive economic zone of any State, arrest the persons on board, and prosecute them.¹⁴ Universal jurisdiction is “permissive”,

⁴ The 1958 Convention on the High Seas contains provisions relating to piracy very similar to those of the United Nations Convention on the Law of the Sea.

⁵ The United Nations Convention on the Law of the Sea was adopted by the Third United Nations Conference on the Law of the Sea and opened for signature on 10 December 1982 (available at www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm).

⁶ See International Law Commission, *Articles Concerning the Law of the Sea with Commentaries*, 1956 (II) *Yearbook of the International Law Commission*, art. 38; the International Law Commission observed in its commentary that “[a]ny State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law. Obviously, the State must be allowed a certain latitude as to the measures it should take to this end in any individual case”.

⁷ See United Nations Convention on the Law of the Sea, art. 101, for its definition of piracy (available at www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm).

⁸ See United Nations Convention on the Law of the Sea, art. 58, para. 2.

⁹ See United Nations Convention on the Law of the Sea, art. 101, paras. (b) and (c). The definition does not refer to attempts to commit acts of piracy, or to conspiracy relating to acts of piracy.

¹⁰ Adopted by the International Maritime Organization at Rome on 10 March 1988; some States have taken the view that the SUA Convention was intended to apply to acts of terrorism only.

¹¹ See General Assembly resolution 34/146.

¹² See General Assembly resolution 55/25.

¹³ See United Nations Convention on the Law of the Sea, art. 105.

¹⁴ See United Nations Convention on the Law of the Sea, art. 58, para. 2, and art. 105.

which means that States are entitled to exercise jurisdiction, but are not obliged to do so. Acts when committed within the territorial sea of a State, which would be piracy if committed on the high seas, are referred to as “armed robbery at sea” or “armed robbery against ships”.¹⁵ The United Nations Convention on the Law of the Sea does not contain any provisions on armed robbery at sea, and universal jurisdiction does not apply to these acts. The coastal State has jurisdiction over such acts committed in its territorial sea.¹⁶

13. At the regional level, the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct) is a non-binding instrument primarily for cooperation among States in the region. It was concluded under the auspices of IMO on 29 January 2009.¹⁷ The signatories to this Code have committed themselves to reviewing their national legislation to ensure that there are national laws in place to criminalize piracy and armed robbery at sea, and adequate guidelines for the exercise of jurisdiction, and the conduct of investigations and prosecutions of alleged offenders. They have committed to capacity-building through cooperating among themselves in the repression of piracy and armed robbery at sea, and sharing information. IMO has undertaken a broad capacity-building initiative to assist the signatories in the implementation of the Djibouti Code of Conduct.¹⁸ It has also adopted a series of other guidance documents on how to prevent, prepare for, and react to incidents of piracy and armed robbery at sea,¹⁹ including the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships.²⁰

B. Security Council and General Assembly resolutions

14. The Security Council has established an additional framework for States cooperating with the Transitional Federal Government to combat piracy and armed robbery at sea. In resolution 1816 (2008) of 2 June 2008, the Security Council called on all States to “cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia”, consistent with applicable international law. In the same resolution, the Security Council decided that, for a period of six months, States cooperating with the Transitional Federal Government in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the Transitional Federal Government to the Secretary-General, may “[e]nter the territorial waters of Somalia for the purpose of repressing acts of piracy

¹⁵ See International Maritime Organization resolution A 26/Res.1025 (2009) for a definition of armed robbery.

¹⁶ Armed robbery at sea also constitutes an offence under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention).

¹⁷ It has 15 signatories: Comoros, Djibouti, Egypt, Ethiopia, Jordan, Kenya, Madagascar, Maldives, Mauritius, Saudi Arabia, Seychelles, Somalia, the Sudan, United Republic of Tanzania and Yemen.

¹⁸ A multi-donor Djibouti Code Trust Fund has been established in this regard.

¹⁹ See www.imo.org; IMO adopted a revised version of its Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships, Guidance to ship-owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery at sea, and the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships.

²⁰ See International Maritime Organization resolution A 26/Res.1025 (2009).

and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law”, and “[u]se, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery”. This authorization has been extended for successive one-year periods pursuant to Security Council resolutions 1846 (2008) of 2 December 2008 and 1897 (2009) of 30 November 2009.

15. In resolution 1846 (2008), the Security Council also noted that the SUA Convention provides for parties to create criminal offences, establish jurisdiction and accept delivery of persons responsible for, or suspected of, seizing or exercising control over a ship by force or threat thereof or any other form of intimidation. It urged States parties to the SUA Convention to fully implement their obligations under this Convention, and to cooperate with the Secretary-General and IMO to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia. In resolution 1851 (2008) of 16 December 2008, the Security Council decided that for 12 months States and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia, for which prior notification had been provided by the Transitional Federal Government to the Secretary-General, could “undertake all necessary measures that are appropriate in Somalia, for the purposes of suppressing acts of piracy and armed robbery at sea” in accordance with “applicable international humanitarian and human rights law”. Further, Security Council resolution 1897 (2009) called on States to assist Somalia, at the request of the Transitional Federal Government and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, to bring to justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea, consistent with applicable international human rights law.

16. The General Assembly has also called upon States to take appropriate steps under their national law to facilitate the apprehension and prosecution of suspected pirates²¹ and urged all States, in cooperation with IMO, to actively combat piracy and armed robbery at sea by adopting national legislation.²² The Security Council, in its resolution 1918 (2010), noted with concern that “the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates”.

C. National law and implementation of the international regime

17. Piracy is a crime that has existed in national jurisdictions, in some cases, for hundreds of years.²³ The elements that are needed within the national jurisdiction for successful prosecutions are criminal offences of piracy and armed robbery at sea; criminal responsibility of those who participate in, or attempt to commit, such offences; provisions establishing national criminal jurisdiction over piracy offences committed on the high seas; and the necessary evidentiary and procedural provisions to conduct prosecutions.

²¹ See General Assembly resolution 64/71, para. 72.

²² *Ibid.*, para. 74.

²³ The legislation of the United States is over 100 years old, whereas the piracy law of Seychelles is only two months old.

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18. The general legal framework that applies to the criminal trial procedure, and the rules of evidence, are determined by the traditions of the State concerned. The prosecutions of those suspected of piracy have taken place in States from common law, civil law and Islamic law traditions. This variation is a natural consequence of the existence of universal jurisdiction over acts of piracy. While it has been suggested that it may be unsatisfactory to have individuals who commit similar offences off the coast of Somalia facing different forms of trial, this same variation applies to persons accused of other extraterritorial offences, including transnational organized crime, terrorism and drug smuggling. Further, the national court determines the sentence in accordance with its own traditions. In general, most legal systems reflect the seriousness of the crime of piracy with an appropriately serious penalty.

IV. Current approach to prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia

A. National prosecutions

19. Prosecutions of acts of piracy are currently ongoing in 10 States: Kenya, Seychelles, Somalia (in the Somaliland and Puntland regions), Maldives, Yemen, the Netherlands, United States of America, France, Spain and Germany. The prosecutions taking place in the regional States either follow apprehension and transfer by patrolling naval States, or arrest by the law enforcement or military forces of the prosecuting State. The following table sets out the numbers of each as at May 2010.²

	<i>Prosecutions following arrest by patrolling naval States</i>	<i>Prosecutions following arrest by own forces</i>	<i>Total</i>
Kenya	123	0	123
Somalia (Somaliland)	20	80	100
Somalia (Puntland)	60	148	208
Seychelles	11	20	31
Yemen	Not known, but some reported	Not known	60 (estimate)
Total			528

20. The figures in the table do not indicate the numbers of suspects who are apprehended by patrolling naval States but released. The commanders of the European and NATO naval forces off the coast of Somalia estimate that around 700 suspects apprehended by the ships under their command have been released between January and June 2010. The principal reason cited is lack of evidence sufficient to support prosecution. The majority of these suspects have apparently been released owing to a lack of sufficient evidence for prosecution. This is an issue that would arise irrespective of whether prosecutions are conducted in national courts or in a new judicial mechanism. Some have been released by patrolling naval States that do not have transfer arrangements with regional States, and have adopted a policy of seizing the weapons and then freeing the suspects. Some suspects have been released owing to a failure of the naval patrolling State to find a State, either in

the region or elsewhere, that will agree to accept the transfer of the suspects for trial.

21. In Kenya, there have been 14 prosecutions of 123 suspects since 2006. Nine of these prosecutions concern suspects transferred by the European Union; three prosecutions concern suspects transferred by the United States; two prosecutions concern suspects transferred by the United Kingdom. Two prosecutions are complete: 10 pirates transferred by the United States have each been sentenced to eight years of imprisonment, and eight pirates transferred by the United Kingdom have each been sentenced to 20 years of imprisonment. The opening of a new high security courtroom on 24 June 2010 in Shimo La Tewa, Mombasa, built by the UNODC Counter-Piracy Programme, will enhance Kenya's capacity to conduct piracy prosecutions and prosecutions of other serious criminal offences. In Seychelles, there have been three prosecutions since January 2010. One prosecution concerns suspects transferred by the European Union, and two prosecutions concern suspects arrested by Seychelles. Judicial proceedings have commenced in all of these cases.

22. There are around 40 prosecutions taking place outside the region. In general, patrolling naval States have returned suspects to their own jurisdictions for prosecution where they have a strong national interest, e.g., its flag vessel was attacked, or the crew members were its nationals. However, in practice, most prosecutions take place in the above-mentioned regional States. There are significant logistical challenges for the patrolling naval States in returning suspects for trial in their own jurisdictions. There are concerns about the human rights implications of lengthy detention at sea, and the challenges involved in ensuring prompt access to legal advice and judicial scrutiny while at sea. There are also worries about potential claims for asylum by suspects if brought to the territory of patrolling naval States for prosecution. Finally, some patrolling naval States believe that by providing warships, which are expensive and resource-intensive, they are contributing sufficiently to international counter-piracy efforts.

23. For these reasons, a number of patrolling naval States, and the European Union, have negotiated arrangements directly with regional States that allow for the transfer of suspects and all related evidence to regional States. So far, Canada, China, Denmark, the United Kingdom, the United States and the European Union have transfer arrangements with Kenya,²⁴ and the United Kingdom and the European Union have transfer arrangements with Seychelles. Under these transfer arrangements, the patrolling naval State or organization apprehends and detains suspects at sea, and requests their transfer to the receiving State. The receiving State decides whether to accept the transfer, including on the basis of a preliminary assessment of the available evidence.²⁵ The arrangements also provide for the treatment of the suspects in accordance with international human rights standards. Other patrolling naval States and organizations are currently also seeking such arrangements with regional States. There remains a strong need to identify additional States to accept transfers of suspects. Seychelles, with very limited prison capacity, has made the acceptance of suspected pirates conditional on agreement that they be transferred to Somalia to serve any sentence.

²⁴ The Government of the United Kingdom signed on 11 December 2008 a memorandum of understanding with Kenya for the transfer of pirates.

²⁵ Both Kenya and Seychelles have refused the transfer of suspects in cases where the evidence was insufficient to provide a realistic prospect of conviction.

B. United Nations assistance

24. A number of United Nations offices are involved in the field in assisting States to prosecute and imprison persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including UNODC, UNDP, UNPOS and IMO.

25. UNODC runs assistance programmes in Kenya, Seychelles and the Puntland and Somaliland regions of Somalia. Kenya and Seychelles also benefit from assistance provided by the European Union and the States that have concluded transfer arrangements with them. The assistance provided by the European Union and these States is principally delivered under the UNODC Counter-Piracy Programme, although some of them also provide substantial assistance on a bilateral basis. IMO provides assistance to regional maritime authorities to develop measures to reduce the chance of piracy attacks, and supports UNODC assistance to States in the region to review and improve their counter-piracy legislation. UNDP's work in the Somali courts, and on Somalia's counter-piracy legislation with UNODC and IMO, is critical to long-term efforts to see fair and efficient trials held there.

26. UNODC assistance and capacity-building programmes are largely focused on Kenya and Seychelles, and are in practice linked to these States' transfer arrangements with patrolling naval States and the European Union, because these patrolling naval States and the European Union provide financing. The assistance provided to each State is dependent on the particular needs that are identified in that State. The assistance benefits the national criminal justice system as a whole, not just piracy prosecutions of suspects transferred by naval States, and aims to ensure that the trials and detention are fair and efficient. The main elements of the programme are legislative review and assistance, support to the police, prosecution and judiciary, the provision of logistics and information technology, witness and trial support, prison repairs and refurbishments, training of maritime authorities, prison management and officers, and the development and sharing of regional expertise on these matters. The opening of the high security courtroom in Shimo La Tewa, Mombasa, built by UNODC, will enhance Kenya's capacity to prosecute piracy cases and to prosecute other serious criminal offences. UNODC's development of handover guidance manuals with Kenya and Seychelles has improved the quality of evidence being collected and transferred by patrolling naval States, and should assist in ensuring successful prosecutions. The UNODC programme in Kenya was commenced with funding of \$2.3 million, designed to last 18 months and to cover around 30 prosecutions, each with multiple accused. Its programme in Seychelles was commenced with funding of \$1.1 million, designed to last 18 months, and to cover prosecutions of around 40 suspects.

27. UNODC is currently also working with the United Republic of Tanzania, Mauritius and Maldives, which are considering undertaking piracy prosecutions. UNODC has completed an assessment mission to Mauritius and Maldives, and has been asked to conduct an assessment mission in the United Republic of Tanzania. It is anticipated that the programme in the United Republic of Tanzania will produce capacity to conduct a similar number of piracy prosecutions as Kenya. UNODC estimates that if Kenya, Seychelles, the United Republic of Tanzania and Mauritius can all be engaged and fully supported, their capacity to prosecute should reach 600 to 800 suspects per year.

28. UNODC assistance in Somalia has three main components: prison reform, legal reform and capacity-building in relation to prosecutions, complementing the work of UNDP, which is engaged in training for the judiciary and police, as well as refurbishment of court infrastructure, in each of the regions of Somalia. The work of UNODC is currently funded to approximately \$1.2 million by the International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. It is notable that Somalia, in the regions of Puntland and Somaliland, has prosecuted and imprisoned more of those responsible for acts of piracy than all other States combined. UNODC, however, has concluded that significant further assistance is necessary for these prosecutions to meet international standards, in particular in relation to standards of evidence adduced and the provision of legal representation to defendants.

C. Imprisonment and repatriation

29. Imprisonment of those convicted for acts of piracy and armed robbery at sea off the coast of Somalia is a critical issue. It is estimated that the imprisonment requirement by the end of 2011 might be as high as 2,000 persons.²⁶ This number is much higher than that generated by all of the existing tribunals. Currently, the States conducting prosecutions are detaining the suspects pending trial, and imprisoning those who are convicted. The sentences may be lengthy. In Kenya, for example, sentences of 8 and 20 years have been imposed. As the Chair of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia said in his speech to the General Assembly on 14 May 2010, it is apparent from the experience over the last year that the long-term burden of prosecution is not the prosecution itself, but the consequent imprisonment.

30. Many States in discussions in Working Group 2 on legal issues of the Contact Group considered that it is in the interests of those convicted, and of the enforcing State, that they serve their sentences in the region because of cultural, linguistic and family considerations. For small regional States such as Seychelles, the relative burden of imprisonment is greater than for larger States. The 31 suspects currently held on remand pending trial in Seychelles account for nearly 10 per cent of the prison population. In Kenya, the 123 individuals detained either as suspects or following conviction account for 0.2 per cent of the prison population.

31. All States in the region that are conducting prosecutions, or are considering doing so, have raised the issue of the need to share the burden of imprisonment with third States. Given the origin of most of the suspects, imprisonment in Somalia would be the ideal. Apprehending and prosecuting States considering entering into enforcement of sentence agreements with Somalia in the future are likely to seek assurances about the standards of detention. Additionally, the existing transfer arrangements between patrolling naval States and regional States require the regional State to obtain the permission of the naval State before any transfer of the individuals concerned to any third State. Although Somalia, specifically the Puntland region, has indicated a willingness to accept Somalis convicted in other jurisdictions for imprisonment,²⁷ assistance is needed to bring prisons up to

²⁶ There are nearly 600 suspected or convicted pirates detained around the world at the present time.

²⁷ The Puntland region has also indicated that it will accept the transfer of Somali suspects for prosecution.

international standards.²⁸ UNDP and UNODC are completing construction of a new prison in Somaliland. UNDP will complete construction of a new prison in Puntland by the end of 2010, and UNODC is refurbishing an existing prison in Puntland. UNODC is working with the authorities of the regions of Puntland and Somaliland to train staff to improve the conditions of detention.

32. Repatriation is a further important issue raised by regional States conducting prosecutions or considering doing so. This situation arises either where a prosecution does not proceed, for example, for lack of evidence, or the accused is acquitted. These States request assurance that such individuals can be repatriated, usually to Somalia, and that the costs of such repatriation should not fall to them.

D. The Contact Group on Piracy off the Coast of Somalia and the International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia

33. The Contact Group on Piracy off the Coast of Somalia²⁹ was established on 14 January 2009, to facilitate discussion and coordination of actions among States and organizations to suppress piracy off the coast of Somalia. The Security Council, in resolution 1851 (2008), encouraged “all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among States, regional organizations and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast”. The Contact Group leads and coordinates the efforts of States and relevant organizations to counter piracy and armed robbery at sea off the coast of Somalia.

34. The terms of reference for the International Trust Fund were negotiated in the Contact Group on Piracy off the Coast of Somalia, and were formally endorsed by the United Nations Controller and the Contact Group on 27 January 2010. The International Trust Fund has the principal purpose of meeting expenses associated with the prosecution and detention of suspected pirates, as well as other activities related to implementing the objectives of the Contact Group, including supporting relevant legal capacity-building activities. It has received a total of \$2,973,900 since its establishment, and has disbursed \$2,437,372 to fund a total of six projects supporting prosecution and detention-related activities in Kenya, Seychelles and Somalia, and one project implementing a strategy to enable the Transitional Federal Government to raise awareness among Somali populations of the risks associated with involvement in piracy and other criminal activities, as well as of alternative livelihood options.

²⁸ The prisons suffer from severe overcrowding, in part owing to the deterioration or collapse of buildings that date back to the colonial era.

²⁹ The Contact Group on Piracy off the Coast of Somalia currently has 47 States and 7 intergovernmental organizations (African Union, European Union, INTERPOL, IMO, League of Arab States, NATO, and the United Nations Secretariat) that participate in the meetings; shipping industry groups also attend as observers. See annex II to the present report for more details on the Contact Group and the International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia.

V. Consideration of options as requested by the Security Council

A. Considerations common to those options involving United Nations participation in new judicial mechanisms

Preliminary considerations

35. A potential host State would need to be identified for any of the possible new judicial mechanisms set out in subsection B below. It would then be necessary to ascertain the preferences of that potential host State, including whether it would accept international participation in a new judicial mechanism, and if so, in what form. The advantages and the disadvantages of the options are therefore analysed in the present report in the light of general considerations that apply. The need for sufficient arrangements for imprisonment in the region, ideally in Somalia, may be as critical as the options for prosecution. This is particularly so given the large numbers of suspects apprehended by patrolling naval States. The need for such imprisonment arrangements to be developed is likely to be a significant factor in any process to seek to identify a potential host State for a new judicial mechanism.

36. The Security Council's request emphasizes the important goal of achieving and sustaining substantive results. A key consideration in this respect would be the need for sufficient political and financial commitment among States, in difficult economic times, not only to establish a new judicial mechanism, but to sustain it. A new judicial mechanism to address piracy and armed robbery at sea off the coast of Somalia would address a different situation to that addressed by the existing United Nations and United Nations-assisted tribunals. Such mechanism would face ongoing criminal activity and potentially a large caseload, with no predictable completion date.

37. A key decision, if a new judicial mechanism were to be established, would be whether its purpose would be to prosecute as many suspects as possible who are apprehended off the coast of Somalia, or to focus on those who finance or plan acts of piracy and armed robbery at sea, or both. Until more is known about the extent to which acts of piracy and armed robbery at sea are organized, or are opportunistic, it is difficult to determine whether focusing prosecutions on those who finance and organize these acts would help to prevent them occurring. Further, if a new judicial mechanism were to have jurisdiction over those who finance and organize, it would be dependent on the cooperation of the States where such persons are located for the investigation and transfer of suspects.

Mandates and legal bases

38. If a decision were made to establish a new judicial mechanism with United Nations participation, whichever option is chosen, the Secretary-General would need a mandate from a political organ of the United Nations. The legal basis for a new judicial mechanism would depend upon the particular option chosen, but in general terms it would be either a Security Council resolution adopted under Chapter VII of the Charter of the United Nations, or an agreement negotiated between the United Nations and the State or States concerned. In the latter case, the process would be triggered by a Security Council resolution requesting the Secretary-General to enter into discussions and negotiations with the State or States, and to report further to the Council. To determine what kind of United Nations

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participation there should be in the judicial mechanism, the key first step would be to assess the needs of the mechanism and/or the State or States concerned.

Jurisdiction

39. The crime that would form the basis of the judicial mechanism's jurisdiction would be piracy as defined in article 101 of the United Nations Convention on the Law of the Sea, which reflects customary international law. This crime would need to be reflected in the national law of the host State, or in the jurisdiction of the new mechanism, depending upon the option in question. It would need to be determined whether the jurisdiction should also include the crime of armed robbery at sea. As a crime that takes place within the territorial sea of a State, it is not defined under international law, but in the national jurisdictions of individual States, and naturally falls within the jurisdiction of the territorial State where the crime takes place. If this crime were to be included within the jurisdiction of a new judicial mechanism, therefore, it would need to be determined whether the crime should be limited to acts taking place within the territorial sea of Somalia, or should extend, for example, to acts taking place within the territorial sea of the host State or other regional States. In any of these cases, the question of the consent of the territorial State would arise.

Primacy or complementarity

40. A further important consideration is whether any new judicial mechanism should have primacy over national jurisdictions or whether the principle of complementarity should apply. In respect of acts of piracy on the high seas, or in areas beyond the territorial jurisdiction of any State, all States have jurisdiction under the United Nations Convention on the Law of the Sea and customary international law to apprehend suspected pirates and to prosecute them. Moreover, there may be, for example, strong reasons for a particular State to assert jurisdiction, e.g., where its nationals, or a vessel flying its flag, are victims of an act of piracy. In respect of acts of armed robbery at sea, which take place within the territorial sea of a State, it might be natural for the territorial State to wish to have the first option of prosecuting.

41. In the light of the foregoing, and considering that there are large numbers of suspects, it would need to be considered whether a new judicial mechanism with United Nations participation should have primacy over national jurisdictions. The application of the principle of complementarity may be more appropriate. In that case, a new judicial mechanism would have jurisdiction only if there were no State willing and able to investigate and prosecute. Given the circumstances in which suspects are apprehended at sea and transferred by naval ships, real practical difficulties may face the judicial mechanism in making a rapid determination of whether there are any States willing and able to investigate and prosecute.

Geographic limits of jurisdiction

42. Defining the geographic limits of the jurisdiction of the judicial mechanism would be essential if its jurisdiction were not to be global. Security Council resolution 1918 (2010) refers to acts of piracy and armed robbery at sea off the coast of Somalia, but that general reference would not be sufficient to determine the geographic limits of the criminal jurisdiction of a judicial mechanism. The

possibilities for determining the geographic jurisdiction would include specifying a particular area of the ocean off the coast of Somalia, extending into the Gulf of Aden and out into the Indian Ocean, delimited by coordinates of longitude and latitude. Acts of piracy have now taken place up to 1,200 nautical miles from the coast, and therefore, if all such acts are to be within the jurisdiction of any judicial mechanism, the area delimited would need to be extremely large.

43. An alternative for limiting the geographical jurisdiction, discussed by Working Group 2, was to define it in terms of acts of piracy or armed robbery at sea that originate in Somalia. Although this approach may appear to be a possibility, the difficulties of defining the elements that determine whether an act originates in Somalia would be considerable. Such definition would require proof of the origin of an act in order for a judicial mechanism to assert jurisdiction.

Temporal jurisdiction

44. A new judicial mechanism would also require temporal limits on its jurisdiction. This would include a commencement date. One of the questions that arose in the context of Working Group 2 on legal issues of the Contact Group on Piracy off the Coast of Somalia was whether a judicial mechanism could prosecute crimes that occurred before its establishment. It is evident from the experience of the existing tribunals that in principle this is the case. In relation to established crimes, such as piracy, there would be no risk of the mechanism prosecuting acts that were not crimes at the time when committed. If the judicial mechanism were to have jurisdiction over any newly formulated crimes, care would be needed to ensure that the new mechanism did not prosecute acts that took place prior to the establishment of the mechanism and its jurisdiction, which could be contrary to the principle of *nullum crimen sine lege*. It is difficult to envisage at this stage an end date for the temporal jurisdiction of such a judicial mechanism. This issue may need to be resolved in the future, in the context of consideration of a completion and residual strategy, and taking into account Somalia's future capacity to conduct prosecutions itself.

Personal jurisdiction

45. There are hundreds of piracy incidents happening off the coast of Somalia each year, each involving a number of individuals. If the jurisdiction of a new mechanism were to extend to all apprehended suspects, its capacity to prosecute potentially large numbers would be key. A critical difference between the existing tribunals and a possible judicial mechanism for piracy and armed robbery at sea off the coast of Somalia is that the existing tribunals first investigate and decide whether to issue an indictment before issuing an arrest warrant and requesting the transfer of the suspect to the tribunal. Any potential host State and/or judicial mechanism would therefore need to consider whether it should be obliged to receive all such suspects from patrolling naval States, or whether it would either have a right of refusal of particular transfers, or could place a limit on the total numbers of suspects received in any given time period.

Juveniles

46. A significant number of suspects apprehended may be, or may claim to be, juveniles. The Security Council would need to consider whether special provision

should be made for their treatment. If the precedent of the statute of the Special Court for Sierra Leone³⁰ were followed, a new judicial mechanism would not have jurisdiction over anyone who is under the age of 15 at the time of the alleged commission of the offences. The requirement would be that those between the ages of 15 and 18 at the time of the alleged commission of the offences are treated with dignity and a sense of worth, and in accordance with international human rights standards, in particular the rights of the child. Account should be taken as far as possible of the desirability of promoting rehabilitation and reintegration, and avoiding imprisonment. Many suspects apprehended have no identification papers, and sometimes no precise knowledge of their own age. There may be real practical difficulties, therefore, in determining their age with any certainty.

Time necessary for the establishment and commencement of functioning

47. Experience of the existing United Nations and United Nations-assisted tribunals³¹ demonstrates that the time necessary for the establishment and the commencement of functioning of any judicial mechanism after a mandate has been given by a political organ of the United Nations varies, and may be considerable. This period has varied from around one year to around nine years until the commencement of functioning. Discussions in Working Group 2 suggested that the speed of setting up any new mechanism would be a key consideration. Although the view was expressed in those discussions that establishing a special chamber within a national jurisdiction might be among the most rapid options, United Nations experience suggests that this is not necessarily the case. The shortest timelines were achieved when the Security Council established ICTY and ICTR as subsidiary bodies.³²

Costs and financing

48. Experience has demonstrated that considerable political and financial commitment by States is necessary to establish and sustain a new judicial mechanism.³¹ Costs of the existing tribunals and other judicial mechanisms have ranged from around \$14.3 million (the East Timor Special Panels for a biennium)³³ to \$376.2 million (ICTY for a biennium).³⁴ The most expensive have been ICTY and ICTR, which are international tribunals that have prosecuted relatively large numbers of indictees charged with complex international crimes. Mechanisms based in the national jurisdiction of a State have proved relatively less expensive. Potential costs were a key concern raised within Working Group 2.

49. The fact that the crimes of piracy and armed robbery at sea are not complex international crimes may mean that proceedings are shorter than those in the existing tribunals and special chambers. However, the high numbers of suspects and the ongoing nature of the problem will have an impact on the costs and the potential duration of any new judicial mechanism. Further, although the crimes are not complex, experience has shown that there may be difficult evidentiary challenges to overcome when evidence is gathered by a patrolling naval State and transferred to a

³⁰ See annex I for more details on the Special Court for Sierra Leone.

³¹ See annex I.

³² See annex I for more details on the time needed to establish the various existing tribunals.

³³ For Special Panels in East Timor, see annex I.

³⁴ For ICTY, see annex I.

regional prosecuting State. This evidentiary factor may have an impact on the costs and success of any new judicial mechanism.

50. The basis of funding would also be an important consideration. Funding from United Nations assessed contributions would spread the financial burden, and provide predictable financing that enables forward planning. The responsibility of financing voluntarily funded tribunals has in practice fallen on a relatively small group of States, and has given rise to management challenges when funds run low. Sufficient and sustained financial commitment by States is one of the key issues that would need to be considered in establishing any new judicial mechanism. Some of the existing tribunals have requirements for contributions to the funding by the affected State. In the situation of piracy and armed robbery at sea off the coast of Somalia, many States, particularly regional States, and the international community as a whole, are affected. Any State that is willing to host a new judicial mechanism would, in fact, be taking on a task that is to the benefit of the international community. There may therefore be strong grounds for the view that any willing host State should not have to bear unreasonable financial costs nor other burdens.

51. The current bilateral arrangements between certain patrolling naval States and the European Union and Kenya and Seychelles demonstrate that financing may in practice be provided by those States and organizations that are able to transfer suspected pirates for prosecution under such arrangements.³⁵ If a new judicial mechanism were to enter into arrangements to receive suspects from patrolling naval States and organizations, it should be considered whether such transfers of suspects should be linked to financing by those States and organizations. A further issue that was discussed in Working Group 2 was the possibility of the shipping industry contributing to the costs of furthering the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia. The terms of reference of the International Trust Fund were drafted to allow for this.³⁶

52. As the costs of even the least expensive of the options for a judicial mechanism are significant, it is clear that using the International Trust Fund to finance any such mechanism may risk severely depleting it. Consideration would therefore need to be given as to how to protect funds in the International Trust Fund intended for supporting national prosecution and imprisonment projects. Further, insofar as the International Trust Fund is used for projects to strengthen the rule of law in Somalia, allowing its use to finance a new judicial mechanism would risk drawing funds away from addressing the cause of Somalia's instability, to deal with a symptom of that instability.

Cooperation

53. An additional major consideration would be the need for any new judicial mechanism, or in the case of a special chamber within a national jurisdiction, the host State, to negotiate and enter into agreements with third States on enforcement of sentences, and the relocation of those acquitted, and of witnesses, if necessary.³⁷

³⁵ It is understood that there is no such requirement in the bilateral transfer arrangements, but that in practice the naval States fund technical assistance and capacity-building in the receiving States.

³⁶ Although, notably, no such contributions have yet been received by the international Trust Fund.

³⁷ The United Nations would not participate in any national jurisdiction or new judicial mechanism that imposes the death penalty.

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Sentence enforcement agreements would most appropriately be concluded with States in the region, ideally close to or within Somalia. Any judicial mechanism with United Nations participation would need to ensure that prison conditions would be to international standards, and that enforcement agreements between the judicial mechanism or host State and third States contain provisions to this effect, and for the protection of human rights. It would need to be considered whether the prisons being developed in the Puntland and Somaliland regions of Somalia with UNDP and UNODC assistance will meet international standards. Enforcement agreements should provide for the monitoring of their implementation in third States by the mechanism or host State. Agreements would also be required between the judicial mechanism or host State and the patrolling naval States to provide a legal basis for the transfer of suspects to the mechanism, to deal with the transfer of evidence to the mechanism, and to provide for the protection of the human rights of those apprehended, detained at sea and transferred.

Completion and residual issues

54. The political and financial commitment needed for the establishment and functioning of a judicial mechanism does not end with the closure of that mechanism. Experience of the existing tribunals demonstrates that there are certain essential functions that must continue beyond the life of any criminal judicial mechanism. These include the supervision of enforcement of sentences, the review of judgments, the continued protection of witnesses, and management of the archives. These are potentially long-term functions that may require some form of residual mechanism to succeed the judicial mechanism. These functions could well require continued United Nations participation with a view to ensuring that they are carried out to international standards. Even in the options that are based in a national jurisdiction, where the court or special chamber will continue indefinitely, the termination of United Nations participation at some stage would be likely to require a continued United Nations presence after that termination to monitor the carrying out of the functions to international standards.

B. Consideration of options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia

Option 1: The enhancement of United Nations assistance to build capacity of regional States to prosecute and imprison persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia

Political support

55. Option 1 is already ongoing and has achieved some success. Kenya's opening of a new high security courtroom, built by the UNODC Counter-Piracy Programme, will enhance Kenya's capacity to conduct piracy prosecutions and prosecutions of other serious criminal offences. Strong political support for the roles played by Kenya and Seychelles has been important, and will be key as their cooperation with the international community continues to develop. To increase capacity to prosecute the large number of suspects apprehended by patrolling naval States, more States in the region should be encouraged to receive transfers of suspects for prosecution. This will require political engagement with regional States by the international

community, including potentially through the Contact Group on Piracy off the Coast of Somalia. While assistance programmes for Kenya and Seychelles are adequately funded for the next year, further funding will be necessary to ensure that these programmes can continue and that assistance can be extended to other States in the region that are willing to accept the transfer of suspects for prosecution. It will be essential that the attention of the international community on this problem is sustained, and that financial support continue.

Advantages and disadvantages

56. One of the main advantages of option 1 is that it is already functioning and has demonstrated that it is effective. Prosecutions of nearly 600 suspected pirates have been conducted, or are ongoing, in 10 national jurisdictions over the past two years. This capacity compares favourably with the existing tribunals. National trials are also relatively rapid, taking around 12 to 18 months to complete from the time of arrest. The financial costs of assistance to national trials and imprisonment are modest compared to the costs of any of the other options. Assistance to national jurisdictions benefits the criminal justice system of the State as a whole, not only piracy prosecutions. Achieving this in Somalia over the longer term is likely to be key to enabling Somalia to play a role in the solution to piracy and armed robbery at sea off its coast. The other options all involve new judicial mechanisms, even where based in a national jurisdiction, and may tend to draw resources and experience from the existing national criminal justice systems.

57. Possible disadvantages of this option include the fact that patrolling naval States do not know at the time of apprehending suspects at sea whether they will be able to transfer them to a prosecuting State. The most common reason for the release of suspects is lack of sufficient evidence to support prosecution, rather than lack of a regional State to accept them. This may, however, also be a disadvantage in relation to any of the other options below, and guidance on the collection and the transfer of evidence to any new mechanism is likely to be required. Not all patrolling naval States have arrangements for transfer of suspects to regional States, and thus may adopt policies of disarming and releasing them at sea. The establishment of a new judicial mechanism under any of the options below may open possibilities for further patrolling naval States to enter into arrangements for the transfer of suspects for prosecution. The fact that current arrangements for the transfer of suspects depend on only two regional States makes the situation vulnerable if political circumstances change. There is a need to increase the number of regional prosecuting States, and to share the burden of both prosecution and imprisonment.

Cooperation

58. To assist the regional States conducting prosecutions, and to encourage further regional States to accept the transfer of suspects for prosecution, urgent attention is required to address the problem of imprisonment of the large numbers convicted, who are mainly Somalis. Additionally, those not prosecuted and those acquitted should be repatriated. To address this problem, third States willing to accept such persons should be identified and assistance provided, as needed, to improve prison conditions. Ideally, Somalia should receive the majority, and, to this end, UNODC and UNDP are providing assistance to improve standards of prisons in the Puntland and Somaliland regions of Somalia. Agreements between the prosecuting States and

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third States, principally Somalia, will need to be concluded for this purpose. Continued financing for these projects is essential if the problem of imprisonment in the region is to be effectively addressed.

59. Agreements on the enforcement of sentences concluded by the existing tribunals are on a request and acceptance basis in relation to any specific case. There is no obligation to accept any particular convicted person, nor indeed to accept any at all. Given the large numbers of persons convicted, it is not clear that such agreements would be effective to relieve the burden on the prosecuting States, and to encourage further States to accept suspects for prosecution. One issue for consideration, therefore, is whether agreements for the enforcement of sentences with third States, and in particular Somalia, should oblige these States to receive all of those put forward for imprisonment.

The role of Somalia

60. A long-term solution to the problem of prosecuting and imprisoning those responsible for acts of piracy and armed robbery at sea should lie in Somalia itself. The regions of Puntland and Somaliland are conducting prosecutions, and imprisoning, but significant assistance is needed to improve standards. Currently, far less financing is provided for assistance programmes in Somalia than for Kenya and Seychelles. Donors have sufficient confidence in trials and imprisonment in Kenya and Seychelles to direct their financing to those States, but given the fractured nature of the law on piracy within Somalia, and significant issues concerning Somali judicial and prosecutorial capacity, appear at this stage not to have sufficient confidence to direct the same level of financing to Somalia. Although the regions of Puntland and Somaliland face significant challenges in meeting international standards, it may be preferable for the international community to increase its funding to assist Somalia to achieve international standards rather than to risk any decline in Somalia's efforts to investigate and prosecute piracy itself.

Security Council

61. The Security Council may wish to consider continuing, and building on, the role it has played in its resolutions³⁸ to enhance option 1, as follows:

- (i) Commending Kenya, Seychelles and other States engaged in prosecutions for their role;
- (ii) Commending the work of UNODC and UNDP in assisting States in the region to conduct prosecutions and to imprison those convicted;
- (iii) Commending the work of the Contact Group on Piracy off the Coast of Somalia in leading and coordinating international efforts on prosecution and imprisonment of acts of piracy, and encouraging further such work;
- (iv) Commending patrolling naval States for their role in suppressing acts of piracy, and encouraging them to work with UNODC and regional States to ensure that evidence collected is sufficient to provide a sound basis for prosecutions;

³⁸ See Security Council resolutions 1816 (2008), 1846 (2008), 1851 (2008), 1897 (2009) and 1918 (2010).

- (v) Urging further States in the region to accept the transfer of suspects from patrolling naval States for prosecution;
- (vi) Urging all States, in particular flag, port and coastal States, and States of the nationality of victims and perpetrators, to conduct prosecutions;
- (vii) Calling upon all States to ensure that they have the relevant jurisdiction, offences, and procedures to enable them to prosecute acts of piracy off the coast of Somalia;
- (viii) Encouraging States to consider the financing of assistance to States in the region, including through the International Trust Fund, to conduct prosecutions and to imprison those convicted;
- (ix) Encouraging States to consider financing assistance, including through the International Trust Fund, to enhance the standards of prosecution and imprisonment in Somalia and its regions;
- (x) Encouraging the shipping industry to contribute to the International Trust Fund.

Option 2: The establishment of a Somali court sitting in the territory of a third State in the region, either with or without United Nations participation

62. An option not specifically mentioned in Security Council resolution 1918 (2010), but discussed in the Contact Group on Piracy off the Coast of Somalia,³⁹ would be a Somali court sitting in the territory of another regional State, either with or without participation by the United Nations.⁴⁰ Such a court, like the Lockerbie court,⁴¹ would be an example of a national court exercising its national jurisdiction, but sitting in the territory of a third State. The national jurisdiction in this event would be that of Somalia, not the host State. The host State would be providing a secure environment for the trials to take place under Somali law. The necessary arrangements to enable such a court to be established would be a matter for Somalia and the host State to negotiate. If it were established with participation by United Nations selected judges, prosecutors and/or staff, this would also require agreement between the United Nations, Somalia and the host State.

63. Ideally, the host State should be in the region, so that it would have the advantage of proximity for the purpose of the transfer of apprehended suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment. Identifying such a host State may present challenges. That State would be providing all facilities necessary for the Somali court to function in its territory, without necessarily receiving any capacity-building benefits for its own criminal jurisdiction.

³⁹ As raised by Portugal in a non-paper during the Working Group 2 discussions and the informal meetings hosted by the Netherlands and by France in a non-paper at meeting of the Contact Group on 10 June 2010.

⁴⁰ A member of the Contact Group has informally floated the idea of possible European Union support to such a Somali court or special chamber.

⁴¹ The Lockerbie court did not have participation by the United Nations or a regional organization.

Advantages and disadvantages

64. This option would have the advantage of assisting in the strengthening of the Somali judiciary, thereby contributing to the long-term efforts to achieve peace and stability in Somalia. Although in principle such an option might be expected to be among the most cost-effective, similar to the special chamber options below, in practice, the extent of United Nations assistance likely to be necessary would be considerable. Costs would therefore be likely to be higher than the special chamber options, and the time necessary for the court to commence functioning may be significantly longer.

65. Discussions in Working Group 2⁴² raised significant issues concerning the adequacy of Somalia's piracy laws and the capacity of Somalia's judicial system. Although such option would have the advantage of enabling Somalia to play a direct part in the solution to prosecuting acts of piracy, it may not be a possibility at present. This conclusion is also supported by the findings of the assessment mission to the region of Working Group 1 of the Contact Group on Piracy off the Coast of Somalia.⁴³ Further, UNDP has underlined in Working Group 2 the wide range of challenges that the Somali judicial system continues to face.⁴⁴ Although there is some judicial capacity in Somalia and among the Somali diaspora, the challenge of establishing a Somali court meeting international standards in a third State would be considerable at present. Further, any advantages that such a court may enjoy would be outweighed if it were to draw limited judicial resources from Somalia's courts.

Cooperation and residual issues

66. As a Somali national court, sentences would most naturally be enforced in Somalia. However, for capacity reasons, enforcement agreements with third States may still be necessary. In addition, as a national court exercising national jurisdiction, there would be no question of a need for a residual mechanism to carry out residual functions.

The role of Somalia

67. For this option to be feasible, the issues above would need to be addressed. It could be borne in mind at such time in the future as Somali judicial capacity is sufficiently strengthened. It would need to be considered at that time whether it would be preferable to attempt to establish a Somali court in the territory of a third State, or to focus on working towards the long-term goal of assisting courts sitting in Somalia to meet international standards, and to receive the transfer of suspects from patrolling naval States.

⁴² See annex II.

⁴³ See the report of Working Group 1 of the Contact Group entitled "Regional Counter-Piracy Capability Development Needs Assessment and Prioritization Mission to East Africa and the Gulf of Aden", p. 12 (20 October 2009) (unpublished).

⁴⁴ See conclusions of the Chairman of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia, 5th meeting (Copenhagen, 17-18 May 2010).

Option 3: The establishment of a special chamber within the national jurisdiction of a State or States in the region, without United Nations participation

68. This option would involve a State or States in the region setting up a special court or chamber within its national court structure to prosecute acts of piracy and armed robbery at sea off the coast of Somalia. This option would not involve participation by United Nations selected judges, prosecutors and/or staff, but is likely to need technical assistance from UNODC and other relevant United Nations offices. It would therefore not require any mandate from a political organ of the United Nations or the negotiation of an agreement with the State concerned.

69. None of the regional States conducting prosecutions has a special chamber to deal with piracy and armed robbery at sea. As noted above, Kenya has opened a new high security courtroom in Shimo La Tewa, Mombasa. This courtroom will be used for piracy trials, but also trials of other crimes, and thus would not be a special chamber for piracy prosecutions. One consideration would be whether there are, or could potentially be, sufficient piracy prosecutions to justify a special chamber exclusive to piracy. Even in Kenya, which has 12 ongoing piracy prosecutions, the new courtroom at Shimo La Tewa will not be exclusive to piracy prosecutions. The regional State where the volume of prosecutions might justify a special chamber is Somalia. The courts in Puntland and Somaliland regions of Somalia handle piracy cases more regularly than any other State conducting prosecutions.

Advantages and disadvantages

70. A host State in the region would have the advantage of proximity for the purpose of the transfer of apprehended suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment. This option is likely to be among the most cost-effective, and would have the further advantage of being within an existing and functioning jurisdiction, with established crimes and criminal procedures. United Nations assistance to the State may help it to consider whether any improvements or amendments to the law are necessary, e.g., to determine the geographic limits of the jurisdiction, or to introduce crimes of financing or organizing acts of piracy and armed robbery at sea. An important question would be whether the jurisdiction should extend to offences committed within Somalia's territorial sea, and the need for Somalia's consent.

71. A possible risk may be that the special chamber would draw resources from the criminal justice system more broadly, and may lead to a risk of "two-tier justice" if the standards of fairness and efficiency in the special chamber exceed those of other criminal courts. A further disadvantage may be limited capacity of such a chamber.

Cooperation and residual issues

72. If the host State is not Somalia, it would be critical for it to negotiate and conclude agreements with other States for the enforcement of sentences. Arrangements or agreements would also be necessary between the host State and the patrolling naval States to provide a legal basis for the transfer of suspected pirates, the transfer of evidence, and also for the protection of the rights of the detainees. Important considerations would include whether the host State should be obliged to receive transfers from patrolling naval States, whether the host State should have the option of refusing any particular transfer, or whether there should be limits on the

numbers transferred in any given time period. As the special chamber would be within the national jurisdiction of a State, without United Nations participation, there would be no question of a completion or residual strategy.

Option 4: The establishment of a special chamber within the national jurisdiction of a State or States in the region, with United Nations participation

73. This option for a special chamber within a national jurisdiction might, for example, involve the participation of United Nations selected judges within that chamber, United Nations selected prosecutors and/or staff. The legal basis for United Nations participation in a special chamber within a national jurisdiction would be an agreement between the United Nations and the host State. Implementing legislation by the host State may well be required. If the host State were one of those that is already conducting prosecutions, such as Kenya and Seychelles, there would be an additional advantage of drawing on their growing expertise.

74. The United Nations would first need to determine with the host State what form of international participation it would accept. This would include taking fully into account not only its capacity-building needs, but also its culture and legal traditions. Experience has demonstrated that, in circumstances where international participation is needed, it is likely to go beyond participation by judges in trial chambers, and extend to a more comprehensive approach involving prosecutors and/or staff. United Nations experience further shows that where a State has accepted participation by international judges, a framework should be established under which international standards of fair trial can be attained. A way of achieving this in practice has been to ensure that the international judges are in the majority in the chambers in which they sit, so that their contribution to the process and decision-making is effective. If, over time, the capacity of the national components of the special chamber is sufficiently enhanced and international standards are met, the international components may be phased out.

75. It is not clear how such participation by United Nations selected judges would work in the context of, for example, Kenya and Seychelles, or the United Republic of Tanzania and Mauritius. Even if these States were willing to accept international participation, they are all common law jurisdictions that conduct trials with a single judge. United Nations participation could not, of course, be to the exclusion of national judges. A special chamber with United Nations participation might, therefore, entail a departure from the normal structure of criminal proceedings in the host State. Care would be needed to ensure that, if international prosecutors and staff are deployed, these are limited to the needs of the host State, and there is no replication of international and national efforts, which would add to the costs. Ideally, the international judges, prosecutors and/or staff should aim to impart their knowledge and expertise so that in the longer term, their positions could be phased out and taken by nationals.

Advantages and disadvantages

76. A host State in the region would have the advantage of building on an existing judicial system with an established jurisdiction, including crimes and criminal procedures. Further, it would have the advantage of proximity for the purpose of the transfer of apprehended suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment. In addition to technical assistance already

provided to regional prosecuting States, United Nations participation within a national jurisdiction, if needed, would help to build capacity in that jurisdiction. Further, if United Nations selected judges, prosecutors and/or staff for deployment in a special chamber included individuals drawn from other States in the region, this would enhance regional capacity-building. If it were possible for Somali judges, prosecutors, and/or staff to be among those selected, this would also help to strengthen Somalia's judicial system, and form part of the long-term efforts to achieve peace and stability in Somalia. As with option 3, another advantage is that the special chamber would be established within an existing and functioning jurisdiction. It is also likely to be among the most cost-effective options, however, probably less cost-effective than option 3, which has no United Nations participation.

77. A possible risk may be that the special chamber would draw resources from the host State and other regional States. Moreover, a disadvantage may be the limited capacity of such a chamber to prosecute large numbers. Similar to option 3, a risk may be that financing and assistance are drawn away from the host State's criminal justice system more broadly, leading to "two-tier justice". The same question whether the jurisdiction should extend to offences committed within Somalia's territorial sea and the need for Somalia's consent would arise. Its capacity to prosecute large numbers may be similarly limited, and the same important decision would be needed as to whether the host State should be obliged to receive transfers from patrolling naval States, or should be able to limit the numbers of suspects received.

Cooperation and residual issues

78. A bilateral agreement between the United Nations and the host State would not provide a vehicle for agreeing cooperation and burden-sharing among States. The host State would need to negotiate and conclude agreements with other States dealing with enforcement of sentences. Arrangements or agreements would also be necessary between the host State and the patrolling naval States to provide a legal basis for the transfer of suspected pirates, the transfer of evidence, and the protection of the rights of the detainees.

79. As the special chamber would be within the national jurisdiction of a State, and there is currently no foreseeable end to the ongoing problem of piracy and armed robbery at sea off the coast of Somalia, it would be a matter for the host State to determine whether the special chamber should have a limited lifespan, or should be of indefinite duration. In the event that the host State does set a finite limit on the life of the special chamber, a completion and residual strategy would be necessary. If the host State does not set a limit on duration of the special chamber, the special chamber would not need a completion and residual strategy, but some form of continued United Nations presence may be necessary with a view to ensuring that international standards are maintained.

Option 5: The establishment of a regional tribunal on the basis of a multilateral agreement among regional States, with United Nations participation

80. A regional tribunal established on the basis of a multilateral agreement among States in the region should, ideally, include participation by Somalia. The agreement would provide the legal basis for the establishment of the regional tribunal, and would set out its jurisdiction. If United Nations assistance or participation is needed

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and requested, discussion with the regional States would be necessary to determine whether it should be limited to technical assistance, or should also involve participation by United Nations appointed judges, prosecutors and/or staff. All such discussions should be held in close consultation with the African Union.

81. For the United Nations to participate in such a regional tribunal would require a Security Council resolution to request the Secretary-General to participate in negotiations with the regional States with a view to becoming parties to the multilateral agreement. The United Nations would need to determine with the regional States what form of international participation the tribunal would need. Although experience has demonstrated that, in circumstances where international participation has been provided for, there should be a framework within which international standards may be attained, normally through United Nations selected judges being in the majority, it would need to be considered whether this would be appropriate in a regional tribunal.

Advantages and disadvantages

82. This option would have the advantage of capacity-building in the region if judges, prosecutors and/or staff were drawn from jurisdictions in the region. If it were possible for this to include Somali nationals, it would also help to strengthen Somalia's judicial system and form part of the long-term efforts to achieve peace and stability in Somalia. As a tribunal based in the region, it would have the advantage of proximity for the purpose of the transfer of apprehended suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment.

83. As a new judicial mechanism, a regional tribunal would not be within an existing jurisdiction, with established crimes and procedures. The tribunal would not be able to benefit, for example, from the expertise built up by the judicial systems in Kenya and Seychelles, because it would not be embedded in either of those jurisdictions. It could only benefit from that expertise if it were to draw judges, prosecutors and/or staff from those jurisdictions. This, however, may deplete the expertise of Kenya and Seychelles and inhibit their capacity to prosecute nationally.

84. The multilateral agreement establishing the regional tribunal would need to set out the crimes, and any geographic limits on jurisdiction. The crime of piracy is well established under the United Nations Convention on the Law of the Sea and customary international law and should not present a difficulty of definition. However, if the jurisdiction were to include crimes of financing and organizing acts of piracy and armed robbery at sea, which are not established under the Convention, definitions would need to be negotiated among the participating States, and the United Nations if participating.

85. Unlike a special chamber within a national jurisdiction, a regional tribunal would not have a pre-existing territorial jurisdiction. The participating States and the United Nations would need to determine the geographic limits of the jurisdiction, and whether the territorial seas of the participating States, possibly including Somalia, should be within the jurisdiction or not. Given the large numbers of potential suspects to be prosecuted, a regional tribunal may have the advantage of greater human and financial resources, and therefore possibly greater capacity, compared to a special chamber within a national jurisdiction. Nevertheless, it would still be important for the participating States, and the United Nations, if

participating, to determine whether the tribunal should be obliged to receive transfers of suspects from patrolling naval States, or should be able to limit the number of suspects received.

86. A regional tribunal is unlikely to be as cost-effective as a special chamber within a national jurisdiction. The recruitment in the region and internationally of judges, prosecutors and/or staff would either need to be based on the United Nations common system for staffing and salary levels, or an appropriate regional equivalent. The tribunal, as a new institution, may need premises and incur other costs that a special chamber within a national jurisdiction would not have.

Cooperation and residual issues

87. A multilateral agreement among regional States would provide a vehicle for agreeing on cooperation and burden-sharing among those States. If one of the participating States is also the host State of the regional tribunal, the multilateral agreement may provide the basis upon which that State obtains the agreement of the others to enforce sentences in their territories. This, of course, would complicate the negotiations and could well add to the time necessary for its conclusion. As was noted in the Contact Group on Piracy off the Coast of Somalia, the time required to negotiate the appropriate multilateral agreement might be considerable.

88. While a multilateral agreement among the regional States may provide the basis for cooperation and burden-sharing among them, it would not provide any basis for requiring cooperation from third States. Arrangements between the regional tribunal and the patrolling naval States would be necessary to provide a legal basis for the transfer of suspected pirates, and could also regulate the transfer of evidence to the tribunal and minimum standards for the treatment of those detained and transferred. Such arrangements might also provide for patrolling naval States to contribute to the financing of the tribunal.

89. As it is unlikely that the regional States would wish to establish a regional tribunal indefinitely, a completion and residual strategy would need to be developed at some stage. Some form of residual mechanism would be needed to carry out the residual functions after the closure of the tribunal. If there were United Nations participation in such tribunal, it would be likely to continue beyond the life of the tribunal with a view to ensuring that international standards are maintained.

Option 6: The establishment of an international tribunal on the basis of an agreement between a State in the region and the United Nations

90. In order to establish an international tribunal through an agreement between the United Nations and a State, the Security Council would need to request the Secretary-General to negotiate and conclude an agreement with an identified State. This would lead to the establishment of a United Nations-assisted tribunal with national participation, on the lines of the Special Court for Sierra Leone and the Special Tribunal for Lebanon.⁴⁵ Implementing legislation may well be needed in the host State. The agreements to establish the existing United Nations-assisted tribunals have all been concluded with the affected State. It would follow that this option would most naturally be pursued with Somalia, as the State in which the

⁴⁵ For discussion of the Special Court for Sierra Leone and the Special Tribunal for Lebanon, see annex I.

problem of piracy originates. However, the fractured nature of the law in Somalia, and significant issues concerning Somali judicial and prosecutorial capacity, mean that Somali participation in a United Nations-assisted tribunal may not be a possibility at present, as set out in option 3. This option would therefore most appropriately be pursued with a third State, ideally in the region, that would also be the host State. Given that such a State would in practice be only one of many States affected by the problem of piracy and armed robbery at sea, whether to seek to establish such a tribunal rather than pursuing options 3 or 4, involving the establishment of a special chamber within a national jurisdiction, would require careful assessment.

Advantages and disadvantages

91. A tribunal under this option would typically include the participation of both United Nations selected judges and national judges, international and national prosecutors, and would in practice include international and national staff. This would have the advantage of capacity-building in the host State, although perhaps to a lesser extent than option 4. If the host State were one of those that is already conducting prosecutions, such as Kenya and Seychelles, there would be an advantage of drawing on their growing expertise. However, that goal may be more effectively achieved through pursuing options 3 or 4 with either of those States, if they were willing to accept a special chamber. There may, in that event, be no particular advantage in a United Nations-assisted tribunal, which may be likely to be more time-consuming to establish and less cost-effective. Regional capacity-building through the participation of judges, prosecutors and/or staff from other jurisdictions in the region would be beneficial, but would perhaps be unlikely under this option unless there were a clear benefit to the host State.

92. As with option 4, experience has demonstrated that if United Nations participation is necessary, it is likely to go beyond judges in trial chambers, and to extend to a more comprehensive approach involving prosecutors and/or staff. Moreover, to establish a framework under which international standards of fair trial can be attained, it may be that United Nations judges would need to be in the majority in the chambers in which they sit, so that their contribution to the process and decision-making is effective. Unlike option 4, there would be no phasing out or passing of control to the national judges over time in a United Nations-assisted tribunal.

93. Whether or not the agreement to establish such a tribunal should incorporate aspects of the national law of the host State in order to set out the jurisdiction, including the crimes, would be a matter for discussion and negotiation between the host State and the United Nations. If the crimes established under national law are not incorporated into the jurisdiction of the tribunal, they would need to be defined in the agreement. Further, if crimes of financing and organizing were to be included within the tribunal's jurisdiction, they would need to be defined in the agreement, unless appropriate offences are already established in the national jurisdiction. The agreement would need to set out the geographic limits of the tribunal's jurisdiction, and whether it would include the territorial sea of the host State. If the agreement were not concluded with Somalia, another important point would be whether the jurisdiction should extend to offences committed within Somalia's territorial sea, and the need for Somalia's consent.

94. A United Nations-assisted tribunal may well have greater human and financial resources, and therefore capacity, to prosecute large numbers of suspects than does a special chamber within a national jurisdiction. However, given the large numbers of suspects, it would still be important to decide whether the tribunal should be obliged to receive transfers from patrolling naval States, or whether it should be able to limit the number of suspects received.

Cooperation and residual issues

95. A bilateral agreement between the United Nations and a State would not provide a vehicle for agreeing on cooperation and burden-sharing with third States. The tribunal would need to negotiate and conclude agreements with third States, ideally in the region, for the enforcement of sentences. Arrangements or agreements would also be necessary between the tribunal and the patrolling naval States to provide a legal basis for the transfer of suspected pirates, the transfer of evidence, and also for the protection of the rights of the detainees.

96. Unless the United Nations is prepared to establish a United Nations-assisted tribunal for an indefinite period, a completion and residual strategy would be needed at some stage, including the establishment of a residual mechanism to carry out the residual functions of the tribunal after its closure.

Option 7: The establishment of an international tribunal by Security Council resolution under Chapter VII of the Charter of the United Nations

97. For the Security Council to establish an international tribunal as a subsidiary body would require a resolution or resolutions adopted under Chapter VII of the Charter of the United Nations. A preliminary question for the Security Council to consider, therefore, would be whether acts of piracy and armed robbery at sea off the coast of Somalia constitute a threat to international peace and security in the region such that the Council would be acting under Chapter VII. The existing Security Council resolutions⁴⁶ determine that the situation in Somalia constitutes a threat to international peace and security in the region, and that incidents of piracy and armed robbery at sea exacerbate that situation.

Advantages and disadvantages

98. If the Security Council does act under Chapter VII to establish a tribunal, it would be entirely international, with all of its judges, prosecutors and staff selected by the United Nations. However, the tribunal might nevertheless serve a capacity-building function if at least some of the United Nations selected judges, prosecutors and staff were from the region. Ideally, this would include Somali nationals. It would be beneficial for the tribunal to draw on the expertise built up, for example, in Kenya and Seychelles, but recruitment from those jurisdictions may have the disadvantage of inhibiting their capacity to prosecute nationally. In addition, it would be advantageous if the international tribunal were located in the region in order to take advantage of proximity for the purpose of the transfer of apprehended suspects by patrolling naval States, and the transfer of those convicted to third States for imprisonment.

⁴⁶ Most recently Security Council resolution 1897 (2009).

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99. It would fall to the Security Council to negotiate and adopt a statute governing the tribunal's jurisdiction, including the crimes. The crime of piracy is well established under the United Nations Convention on the Law of the Sea and customary international law and should not present a difficulty of definition. However, if the jurisdiction were to include crimes of financing and organizing acts of piracy and armed robbery at sea, which are not established under the Convention, definitions would need to be negotiated by the Security Council. The geographic limits of the tribunal's jurisdiction, and whether the territorial seas of the regional States, including Somalia, should be within the jurisdiction or not, would have to be determined. As the Council would be acting under Chapter VII of the Charter, it would be able to determine these matters.

100. The temporal limits of the tribunal's jurisdiction would need to be decided, and whether this jurisdiction should extend to all persons committing piracy and armed robbery at sea, or whether it should be restricted to a category of the "most responsible", e.g., those who finance or plan acts of piracy. A related question would be whether, if the jurisdiction is not so restricted, the tribunal should be obliged to accept all transfers of suspects apprehended by patrolling naval States. Compared to a special chamber within a national jurisdiction, an international tribunal under Chapter VII of the Charter would be likely to have greater human and financial resources, and therefore capacity, to prosecute potentially large numbers of suspects.

101. The option of an international tribunal established by the Security Council is not likely to be among the most cost-effective. As a new judicial mechanism, it would require premises, and may incur other such costs that a special chamber within a national jurisdiction may not have. In addition, as a subsidiary organ of the Security Council, it would be required to follow the United Nations common system for staffing and salaries. The total cost would be likely to exceed the costs of a special chamber in a national jurisdiction in the region. The resource implications of the Council establishing a tribunal under Chapter VII would fall to the General Assembly to consider.

102. Security Council action under Chapter VII of the Charter of the United Nations may have the advantage of moving rapidly to the establishment of an international tribunal. However, an assessment of the overall time required in connection with this option would include the time necessary to identify and negotiate with a potential host State.

Cooperation and residual issues

103. The international tribunal would need to enter into agreements for the enforcement of sentences with third States. It would remain to be determined whether the international tribunal should enter into transfer agreements with the patrolling naval States, or whether the Security Council would wish to determine this matter in its resolution under Chapter VII.

104. Unless the Security Council intends to establish a permanent international tribunal, at some stage it would require a completion and residual strategy. A residual mechanism would have to be established to carry out the residual functions following the closure of the tribunal.

C. Further options raised by members of the Contact Group on Piracy off the Coast of Somalia

105. Further options have been raised by members of the Contact Group, but have been considered not to be feasible. The possibility of amending the Rome Statute of the International Criminal Court (ICC) to include the crime of piracy was raised in Working Group 2, but was considered not to be feasible. It is notable that such amendment was not taken up during the first Review Conference of the Rome Statute, which took place in June 2010, in Kampala.

106. Possible amendment of the statute of the International Tribunal on the Law of the Sea was also discussed in Working Group 2 on legal issues of the Contact Group on Piracy off the Coast of Somalia. It is a tribunal established under the Convention, which determines disputes among States arising out of the Convention. As the Convention is a multilateral Convention that took many years to negotiate and to enter into force, amendment was considered not to be feasible.

107. Amendment of the statute of the African Court on Human and Peoples' Rights,⁴⁷ located in Arusha, Tanzania, was also raised as a possibility. It is a court that determines African Union States' compliance with the African Charter on Human and Peoples' Rights. To modify its jurisdiction so that it would be able to prosecute acts of piracy and armed robbery at sea off the coast of Somalia would of course require substantial amendment of the treaty basis of the Court by its States parties. This would be a matter for the States of the African Union to consider. It is not apparent that any discussions are ongoing among the States of the region, nor among African States more broadly, to consider such amendment.

VI. Conclusion

108. The Security Council requested the Secretary-General to present a report on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers, possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results.

109. In response, the Secretary-General has identified seven options for the Security Council to consider. In the absence of a potential host State, these options have been analysed in terms of general considerations that apply. The work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing tribunals, and the time and resources necessary, have also been taken into account.

110. A potential host State would need to be identified for any of the possible new judicial mechanisms. It would be necessary to determine the preferences of that potential host State, including whether it would accept international participation in

⁴⁷ It commenced functioning on 25 January 2004 with the ratification by 15 member States of the Protocol to the African Charter on Human and Peoples' Rights.

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such a mechanism, and, if so, in what form. The need for sufficient arrangements for imprisonment in the region, ideally in Somalia, is as critical as the options for prosecution. This is particularly so given the large numbers of suspects apprehended by naval States. A new judicial mechanism to address piracy and armed robbery at sea off the coast of Somalia would be addressing a different situation to that addressed by the existing United Nations and United Nations-assisted tribunals. Such a mechanism would face ongoing criminal activity and, potentially, a large caseload, with no predictable completion date.

111. Whichever of the options may be favoured by the Security Council, assisting Somalia and its regions in the longer term to develop the capacity to prosecute and imprison to international standards will be essential in sustaining results in the fight against impunity for those responsible for acts of piracy and armed robbery at sea off the coast of Somalia.

Annex I

Existing practice of the United Nations in establishing and participating in United Nations and United Nations-assisted tribunals, and the experience of other relevant judicial mechanisms

1. The International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are subsidiary organs of the Security Council, and therefore are United Nations tribunals. The following are the United Nations-assisted tribunals: the Special Court for Sierra Leone and the Special Tribunal for Lebanon, which are independent international courts with important elements of national participation; and the Extraordinary Chambers in the Courts of Cambodia, which forms part of the national court structure of Cambodia, but has important elements of United Nations participation.

2. The other relevant judicial mechanisms discussed below are the special panels in East Timor, the trial panels in Kosovo, the War Crimes Chamber of the State Court of Bosnia and Herzegovina, and the Lockerbie court. International participation in the panels in East Timor and Kosovo was legislated for by the United Nations administrations that had legislative and executive authority for those territories — the United Nations Transitional Administration in East Timor (UNTAET) and the United Nations Interim Administration Mission in Kosovo (UNMIK). The Bosnia War Crimes Chamber is a special chamber within the national jurisdiction of Bosnia, established by national law. The Lockerbie court is discussed because of its relevance as an example of a national court sitting in the territory of a third State.

A. Why were the existing tribunals and other judicial mechanisms established?

3. The particular circumstances vary, but each of the United Nations and United Nations-assisted tribunals was established as a temporary measure in a situation where the State or States concerned have been unable or unwilling to conduct trials themselves for reasons connected with recent armed conflict or with terrorist acts. These tribunals were established to achieve accountability for serious international crimes committed during the conflicts, or for terrorist acts, that were at the heart of the situation in the affected States, which rendered them unable or unwilling to prosecute. Each tribunal has the purpose of achieving accountability for these acts, but also a broader purpose of contributing to peace and stability, and national reconciliation in the State concerned. In the case of the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, both located within the country concerned, the relevant resolutions state that the purpose for establishment also includes the strengthening of the national judicial system.

4. International participation in the trial panels in East Timor and Kosovo was introduced to enable the prosecution to meet international standards of serious international crimes that had taken place during the conflicts there. The panels were established soon after the end of the conflicts, in circumstances where the domestic judicial systems were severely depleted, lacked capacity to deal with serious international crimes, and were perceived not to be independent. Building capacity

was one of the principal aims. The establishment of the Bosnia War Crimes Chamber was also intended primarily to provide the national judiciary with the capacity to conduct trials of serious international crimes according to international standards. A very large number of serious international crimes had been committed in Bosnia during the inter-ethnic conflicts there, which the State was unable to prosecute in the situation pertaining post-conflict. It would not have been feasible for ICTY to conduct prosecutions of all such cases, and so the Bosnia War Crimes Chamber was conceived as a part of the ICTY completion strategy some 10 years after the conflicts had ended. The aim was to build the capacity of judges, prosecutors and staff. International participation is being phased out over time.

5. The Lockerbie court was a Scottish court sitting in the territory of the Netherlands in order to provide a “neutral” location for the trial of the two Libyan defendants. It was therefore quite different to the other judicial mechanisms discussed above, but is included in this report as an example of a national court sitting in the territory of a third State.

B. United Nations and United Nations-assisted tribunals

1. International Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda

6. ICTY and ICTR were established directly by the Security Council, and their statutes adopted, in resolutions¹ under Chapter VII of the Charter of the United Nations. Their judges are elected by the General Assembly from a list submitted by the Security Council.² The Prosecutor of each is appointed by the Security Council upon nomination by the Secretary-General. Unlike the United Nations-assisted tribunals, the resolutions and the statutes do not make any special provision for participation by the affected States. ICTY and ICTR are in this sense entirely international tribunals.³

7. ICTY and ICTR each have limited territorial and temporal jurisdiction. ICTY has jurisdiction over persons responsible for genocide, crimes against humanity, and war crimes,⁴ committed in the territory of the former Yugoslavia since 1991. It has concurrent jurisdiction with national courts, but may assert primacy. It has indicted 161 individuals. In practice, there will be no further indictments for these crimes because ICTY is pursuing its completion strategy.⁵ ICTR has jurisdiction over persons responsible for genocide, crimes against humanity and war crimes⁶ committed in the territory of Rwanda, and over Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994. ICTR also has primacy over national courts. It has

¹ See Security Council resolution 827 (1993) for ICTY, and Security Council resolution 955 (1994) for ICTR.

² Although in recent years, as the tribunals approach their completion, the judges' terms have been extended by the Security Council and the General Assembly without elections being held.

³ Although in practice there are nationals of the affected States working in both tribunals.

⁴ Grave breaches of the Geneva Conventions of 1949, and violations of the laws or customs of war.

⁵ See Security Council resolutions 1503 (2003) and 1534 (2004).

⁶ Violations of art. 3 common to the Geneva Conventions of 1949 and of Additional Protocol II thereto of 1977.

indicted 92 individuals. It is also pursuing its completion strategy, and will issue no further indictments for these crimes. Since 2004, ICTY and ICTR have been directed to concentrate their efforts on the senior leaders suspected of being most responsible for crimes within their jurisdiction, with a view to the referral of accused not bearing this level of responsibility to competent national jurisdictions.⁷ In practice, therefore, prosecutions are concentrating on the military or political leaders who planned or ordered crimes to be committed, rather than on those who committed offences on the ground.

2. Special Court for Sierra Leone

8. The Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court for Sierra Leone⁸ was negotiated at the request of the Security Council.⁹ The Special Court for Sierra Leone has limited territorial, temporal and personal jurisdiction. It is limited to persons who bear the greatest responsibility for the crimes set out in its statute, committed in the territory of Sierra Leone since 30 November 1996. The crimes set out in the statute include crimes under international law and under Sierra Leonean law: crimes against humanity, war crimes,¹⁰ and offences against young girls, owing to the prevalence of child soldiers in the conflict in Sierra Leone, the Special Court for Sierra Leone statute makes specific provision for their treatment.¹¹ The Special Court for Sierra Leone has concurrent jurisdiction with the national courts of Sierra Leone, but as with ICTY and ICTR, it has primacy. It has indicted 13 individuals. As with ICTY and ICTR, the requirement to prosecute those who bear the greatest responsibility has meant that prosecutions have concentrated on military and political leaders who planned or ordered crimes to be committed.¹² In practice there will be no further indictments for the above crimes because the Special Court for Sierra Leone is also pursuing its completion strategy. It is probably conducting its final trial, that of Charles Taylor, the former President of Liberia.¹³

9. The Special Court for Sierra Leone Trial and Appeals Chambers comprise a majority of judges appointed by the Secretary-General and a minority appointed by the Government of Sierra Leone. The Secretary-General appoints the Prosecutor,

⁷ See Security Council resolution 1534 (2004); under both statutes, criminal responsibility extends to those who planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the crimes.

⁸ Done at Freetown on 16 January 2002.

⁹ See Security Council resolution 1315 (2000).

¹⁰ Violations of art. 3 common to the Geneva Conventions and of Additional Protocol II, thereto of 1977, other serious violations of international humanitarian law.

¹¹ See art. 7 of the statute of the Special Court of Sierra Leone; the Court has no jurisdiction over anyone who was under the age of 15 at the time of alleged commission of the offences in question. Those who were between 15 and 18 years of age at the time of the alleged commission of offences are to be treated with dignity and a sense of worth, and in accordance with international human rights standards, in particular the rights of the child. Account must be taken of the desirability of promoting rehabilitation, reintegration and the assumption of a constructive role in society. Convicted juveniles are not subject to imprisonment, but may receive care or supervision orders, community service, counselling, foster care, training programmes, approved school, and programmes of disarmament, demobilization and reintegration into society.

¹² Criminal responsibility extends to those who planned, ordered, instigated or aided and abetted in the planning, preparation or execution of the crimes.

¹³ Although there is an outstanding indictment in respect of Jonny Paul Koroma, he is suspected to be dead.

and the Government of Sierra Leone appoints a Sierra Leonean Deputy Prosecutor. Provision is made in the Agreement for consultation between the Secretary-General and the Government of Sierra Leone on all of these appointments.

3. Special Tribunal for Lebanon

10. The Agreement between the United Nations and the Lebanese Republic on the establishment of the Special Tribunal was negotiated at the request of the Security Council.¹⁴ Following obstacles in the constitutional process for its ratification by the Lebanese Parliament, and in response to a request from the Prime Minister of Lebanon, the Security Council acted under Chapter VII of the Charter of the United Nations to bring its provisions into force.¹⁵

11. The Special Tribunal for Lebanon has jurisdiction over persons responsible for the attack of 14 February 2005 that resulted in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of 22 others. The Tribunal may also have jurisdiction over persons responsible for related attacks, subject to certain conditions. It is unique among the United Nations and United Nations-assisted tribunals in that the applicable law is stated to be Lebanese criminal law, not any provisions of international law.¹⁶ The Tribunal and the national courts of Lebanon have concurrent jurisdiction, but the Tribunal has primacy. It has not issued any indictments to date. As with the Special Court for Sierra Leone, the international judges are in the majority in each of the chambers of the Special Tribunal for Lebanon. All judges are appointed by the Secretary-General, but the Lebanese judges are appointed by him from a list of 12 presented by the Government of Lebanon on the proposal of the Lebanese Supreme Council of the Judiciary. The Secretary-General appoints the Prosecutor, and the Government of Lebanon appoints a Lebanese Deputy Prosecutor. Unlike any of the other United Nations and United Nations-assisted tribunals, the Defence Office is also an organ of the Tribunal. The Head of the Defence Office is appointed by the Secretary-General. There is provision in the Agreement for consultation between the Secretary-General and the Government on all of these appointments.

4. Extraordinary Chambers in the Courts of Cambodia

12. The Agreement between the United Nations and the Royal Government of Cambodia concerning the Extraordinary Chambers in the Courts of Cambodia¹⁷ was negotiated at the request of the General Assembly.¹⁸ Unlike the other United Nations and United Nations-assisted tribunals, the Extraordinary Chambers in the Courts of Cambodia forms part of the national court structure. It is a Cambodian national court, based on the French civil law system, with a special jurisdiction, and

¹⁴ See Security Council resolution 1664 (2006).

¹⁵ See Security Council resolution 1757 (2007).

¹⁶ See art. 2 of the Special Tribunal for Lebanon statute. The offences extend to those who participate as an accomplice, organize or direct others to commit the crimes, or contribute in any other way to their commission by a group of persons acting with a common purpose. Superiors in a chain of command may also be criminally responsible where they fail to take all necessary and reasonable measures within their power to prevent them.

¹⁷ The Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, done at Phnom Penh on 6 June 2003.

¹⁸ See General Assembly resolution 57/228 A and 57/228 B.

with United Nations participation. It is an example of a special chamber within a national jurisdiction.

13. The Extraordinary Chambers in the Courts of Cambodia was established by a provision of Cambodian national law that specifies that it will come to an end when it has carried out its mandate. It applies a mixture of international and Cambodian law. Its jurisdiction is limited to the senior leaders of Democratic Kampuchea, and those most responsible, for genocide, crimes against humanity, and grave breaches of the 1949 Geneva Conventions, and various crimes under the Cambodian Penal Code, including homicide, torture, religious persecution and the destruction of cultural property. The temporal limit of its jurisdiction is the period from 17 April 1975 to 6 January 1979. Its rules of procedure are those of Cambodian law, with some adjustments to ensure consistency with international standards. There is no question of concurrent jurisdiction or primacy over national courts because the Extraordinary Chambers in the Courts of Cambodia is a national court of Cambodia. In practice, the limited jurisdiction means that the Extraordinary Chambers in the Courts of Cambodia is likely to try around 10 individuals considered to be senior leaders and those most responsible for the crimes within its jurisdiction, who in practice are political or military leaders who allegedly planned or ordered the commission of the crimes. To date, it has indicted five individuals.

14. All of the judges are appointed by the Cambodian Supreme Council of the Magistracy, although the international judges are nominated by the Secretary-General. Unlike the other United Nations-assisted tribunals, the international judges are in the minority in each of the chambers of the Extraordinary Chambers in the Courts of Cambodia. There are two co-investigating judges, one international and one national; and two co-prosecutors, one international and one Cambodian. Concerns about the adequacy of the provisions for international participation led the then-United Nations Legal Counsel to withdraw from the negotiations with the Government of Cambodia in 2002, which led to the General Assembly requesting in early 2003 that negotiations resume without delay.¹⁹ The concern is dealt with in the Agreement through the so-called “super majority” decision-making rule.²⁰ In effect, this means that in circumstances where the judges’ views divide along national and international lines, the national judges would require an affirmative vote of at least one of the international judges to carry the decision.

15. Uniquely for a United Nations or United Nations-assisted tribunal, participation in the Extraordinary Chambers in the Courts of Cambodia by the United Nations is run as a technical assistance project, through the United Nations Assistance to the Khmer Rouge Trials (UNAKRT), which forms the international component of the Administration of the Extraordinary Chambers in the Courts of Cambodia. The Director of Administration is Cambodian, and the Deputy Director is international and is the most senior UNAKRT official. In this sense, the Administration of the Extraordinary Chambers in the Courts of Cambodia is “double-headed”, as is the Office of the Co-Investigating Judges and the Office of the Co-Prosecutors. This inevitably presents challenges in terms of efficiency, and differences of approach and emphasis, but also offers great opportunities for capacity-building and a genuine interchange of views and ideas.

¹⁹ See General Assembly resolution 57/228.

²⁰ See art. 4 of the Agreement.

C. Special Panels established in East Timor and Kosovo, the Bosnia War Crimes Chamber, and the Lockerbie court

1. Special Panels for serious crimes in East Timor

16. Following a failed proposal to establish an international tribunal for crimes committed in East Timor in 1999, UNTAET established Special Panels within the domestic District Court and Court of Appeals in Dili to try those responsible for serious international crimes, and selected common crimes, which took place in East Timor since January 1999. UNTAET derived its authority from Security Council resolution 1272 (1999) of 25 October 1999, adopted under Chapter VII of the Charter of the United Nations. It was endowed with overall responsibility for the administration of East Timor and empowered to exercise all legislative and executive authority, including the administration of justice. As such, the United Nations was able to legislate for international participation in East Timor's domestic jurisdiction without the need for an agreement to be negotiated between the United Nations and the East Timor authorities.

17. The Special Panels were established to address a severely depleted judicial system, in which there was an absence of adequate criminal legislation, court infrastructure, trained judges, prosecutors, and court administrators. The Special Panels consisted of two Trial Panels and one Appeals Panel, each composed of two international judges and one East Timorese judge. In cases of special importance or gravity, Special Panels composed of three international judges and two East Timorese judges could be established in the Appeals Court. A Transitional Judicial Service Commission composed of three East Timorese and two international members recommended candidates for the Special Panels positions to the Transitional Administrator, who made appointments. From 2000, a public prosecution service was established with an international Deputy General Prosecutor. The administrative support system of the Special Panels was headed by the Judge Coordinator, an international staff member. Security Council resolution 1543 (2004) determined that 10 priority cases should be focused on, and that trials and other activities should be concluded as soon as possible, and no later than 20 May 2005. By that date, in the space of five years, 391 persons were indicted, and 55 trials were conducted involving 87 defendants.

2. UNMIK trial panels

18. A proposal to establish a Kosovo War and Ethnic Crimes Court, an ad hoc tribunal sitting in Kosovo, modelled on ICTY, was abandoned in September 2000 because Member States became increasingly concerned about the cost of a free-standing court, and feared that it would not be possible to provide the necessary security in Kosovo. From 2000, under the authority of UNMIK, international judges were deployed to trial panels in Kosovo's courts, and prosecutors were deployed to Kosovo's public prosecutors' offices, with the aim of strengthening the independence of the judiciary and the proper administration of justice. An exodus of judges and legal professionals during the conflict in Kosovo had left an inexperienced judicial system, about which concerns were raised of ethnic bias. The international judges and prosecutors focused on cases involving war crimes, inter-ethnic violence, and other serious crimes. Authority for these deployments derived from Security Council resolution 1244 (1999) of 10 June 1999, adopted under Chapter VII of the Charter of the United Nations, which authorized the

Secretary-General to establish an interim administration for Kosovo with legislative and executive powers. As the interim administration, the United Nations was able to legislate for this international participation in Kosovo's domestic jurisdiction without the need for an agreement to be negotiated between the United Nations and the Kosovo authorities.

19. The early experience of these deployments of international judges and prosecutors to trial panels within Kosovo was not encouraging in terms of their impact on the proper administration of justice. The fact that the international judges were in the minority in the trial panels was regarded as leading to their having marginal influence on the judicial process and standards of justice. UNMIK therefore amended its legislation to enable at least two international judges to sit in three judge trial panels where necessary. These international panels in practice became the norm, and the earlier panels with a majority of national judges were abandoned. In March 2003, a Criminal Division within UNMIK was established that was composed exclusively of international prosecutors and international lawyers supporting the prosecutors, which worked in parallel with domestic prosecutorial services. International participation in trials continues to this date, and, since January 2009, UNMIK has handed responsibility for this to the European Union.

3. War Crimes Chamber in the State Court of Bosnia and Herzegovina

20. The War Crimes Chamber of the State Court of Bosnia is a further example of a special chamber within the national jurisdiction of a State, with international participation, although not United Nations participation. Security Council resolution 1503 (2003) of 28 August 2003 provided that an essential prerequisite for achieving the objectives of the ICTY completion strategy was the establishment of a special chamber within the State Court of Bosnia and Herzegovina to receive cases referred from ICTY against lower or intermediate rank accused. The Bosnia War Crimes Chamber was established in 2003 by national legislation, with the intention that its international components would be phased out and ultimately become national. It began functioning in 2005, and as a national court will continue indefinitely, including after the international components are phased out.

21. The Bosnia War Crimes Chamber is composed of six Trial Panels and two Appellate Panels. Initially, each Panel was composed of two international judges and one national judge, with the national judges presiding. Since January 2008, most of the Panels dealing with war crimes have reversed this composition so that there are two national judges and one international judge. The goal is to change the composition of all trial and appellate Panels in this fashion. There are both national and international prosecutors working within the Special Department for War Crimes, which is within the State Prosecutor's Office of Bosnia and Herzegovina. The Registry for War Crimes, which provides administrative, financial and logistical support, and coordinates the activities of the State Court, also consists of national and international staff. The Criminal Defence Office is staffed by nationals and headed by an international Director. It keeps a roster of defence lawyers, organizes their training, and provides for legal advice, research, and support.

22. Initially, the international judges and prosecutors were appointed by the European Union High Representative for Bosnia and Herzegovina. Since 2006, appointments have been made nationally by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina in coordination with the President of the State

Court and the Chief Prosecutor. The international judges are seconded by their Governments, and are given short-term, renewable contracts, usually for one or two years.

23. The applicable substantive and procedural law is national. The Bosnia War Crimes Chamber has jurisdiction over four categories of war crimes, crimes against humanity and genocide cases. Jurisdiction is limited to offences committed within Bosnia and Herzegovina, and include indictments referred from ICTY in accordance with Rule 11 bis of the ICTY Rules of Procedure and Evidence (i.e., the accused not meeting the threshold of being senior leaders most responsible), other cases investigated but not indicted by the ICTY Prosecutor, and cases investigated nationally by the Bosnian authorities. The Bosnia War Crimes Chamber deals with a very high volume of cases. As of 30 April 2010, there were 439 cases before the Bosnia War Crimes Chamber. It has been estimated that around 6,000 accused fall within its jurisdiction in total.

4. The Lockerbie court

24. The Lockerbie court was the Scottish High Court of Justiciary, which sat at Camp Zeist, part of the decommissioned United States Soesterberg Air Base outside Utrecht in the Netherlands. It prosecuted two Libyan suspects accused of the bombing of Pan Am flight 103 over Lockerbie, Scotland. The Government of the United Kingdom and the Government of the Netherlands concluded an agreement regulating the sitting and functioning of the Lockerbie court in the Netherlands. Under the agreement, the Netherlands undertook to host the Lockerbie court and to provide premises for the trial, and the Lockerbie court was endowed with full juridical personality. The Netherlands allowed the detention of the accused within the premises of the Lockerbie court in accordance with Scots law and practice for the purposes of the trial, and, in the event of conviction, pending their transfer to the United Kingdom for imprisonment. The jurisdiction of the Lockerbie court was limited to the trial of the two accused. They were charged with the offences of conspiracy to murder, murder, and contravention of aviation security legislation in the United Kingdom. The applicable substantive and procedural law was Scots law. The United Kingdom bore all the costs relating to the establishment and sitting of the Lockerbie court in the Netherlands, and reimbursed all costs incurred by the host country.

D. Practical considerations in the establishment and functioning of the United Nations and United Nations-assisted tribunals, and of other relevant judicial mechanisms

25. This section sets out various practical considerations that have arisen in relation to the establishment and functioning of the United Nations and United Nations-assisted tribunals, and other relevant judicial mechanisms discussed above.

Cooperation

26. A particularly important form of cooperation for each of the tribunals is the enforcement of sentences in third States. The United Nations and United Nations-assisted tribunals have detention facilities for suspects, but do not have prison facilities for those convicted. Further, the host States of these tribunals are generally

not prepared to enforce sentences. All of the United Nations and United Nations-assisted tribunals, with the exception of the Extraordinary Chambers in the Courts of Cambodia, are therefore dependent on the willingness and ability of third States to enter into agreements with them on the enforcement of sentences. The existing tribunals have identified third States and negotiated these agreements after establishment, but are finding it increasingly difficult to do so. Moreover, such agreements concluded by existing tribunals do not oblige the third State to accept any particular convicted person, but only to consider the request. In practice, finding such third States willing and able to enter into such agreements, and able to provide prison conditions to international standards, has not proved easy. The tribunals also require cooperation from third States in order to enter into agreements on the relocation of witnesses, if this is necessary.

27. Each of the United Nations and United Nations-assisted tribunals is also heavily dependent on cooperation by States to be able to investigate and secure the arrest and transfer of indictees. All States have a legal obligation under Chapter VII of the Charter of the United Nations to cooperate with ICTY²¹ and ICTR.²² In relation to the Special Court for Sierra Leone, the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia, each of the States concerned has an obligation to cooperate with the relevant tribunal under the provisions of its agreement with the United Nations.²³

Length of time needed for establishment and functioning of judicial mechanisms

28. The length of time needed from the initial request or decision by a political organ of the United Nations to the establishment and subsequent functioning of the tribunals has varied, but it has generally been a matter of years, rather than weeks or months. The time periods for ICTY and ICTR were the shortest. Their statutes were drafted by the Secretary-General within periods of 60 days, and submitted to the Security Council in response to requests by the Council.²⁴ They each began functioning around one year later. For the Special Court for Sierra Leone, it took two years of negotiation from the initial request by the Security Council until the conclusion of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court for Sierra Leone.²⁵ It commenced functioning in July 2002, some two years after the initial request.²⁶ For the Extraordinary Chambers in the Courts of Cambodia, it took six years from the initial request by the General Assembly until the conclusion of the Agreement between the United Nations and the Royal Government of Cambodia concerning the

²¹ See Security Council resolution 827 (1993), and art. 29 of the ICTY statute.

²² See Security Council resolution 955 (1994), and art. 28 of the ICTR statute.

²³ See art. 17 of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court for Sierra Leone; art. 15 of the Agreement between the United Nations and the Lebanese Republic on the establishment of the Special Tribunal for Lebanon; and art. 25 of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Extraordinary Chambers in the Courts of Cambodia.

²⁴ The Secretary-General was requested to prepare reports in Security Council resolutions 808 (1993) for ICTY and 935 (1994) for ICTR.

²⁵ From 2000 to 2002.

²⁶ The Secretary-General was requested to negotiate an agreement with the Government of Sierra Leone to create an independent special court in Security Council resolution 1315 (2000). The United Nations and the Government of Sierra Leone concluded such an agreement on 16 January 2002.

Extraordinary Chambers in the Courts of Cambodia.²⁷ It started functioning on 11 September 2006, some nine years after the initial request by the General Assembly. The negotiation of the Agreement between the United Nations and the Lebanese Republic on the establishment of the Special Tribunal for Lebanon took one year to negotiate.²⁸ It commenced functioning on 1 March 2009, some three years after the initial request by the Security Council.

Composition of any new judicial mechanism

29. The composition and status of each of the United Nations and United Nations-assisted tribunals varies. In each, the judges selected by the United Nations either comprise the entirety of the judges (ICTY and ICTR), or they are in the majority in the chambers to which they are assigned (Special Court for Sierra Leone and Special Tribunal for Lebanon). In the case of the Extraordinary Chambers in the Courts of Cambodia, the “super majority” voting rule means that a decision cannot be taken without the support of at least one of the international judges. ICTY and ICTR, which are entirely international in nature, and which sit outside the affected countries, face a challenge in ensuring that they leave a strong legacy of an enhanced capacity to prosecute serious international crimes, and a strengthened rule of law in the affected countries. Experience from the Bosnia War Crimes Chamber demonstrates that, in a national judicial system that has had time to recover from conflict, a well-planned comprehensive approach of capacity-building of the national system, combined with international participation in each of the organs of the court, can be successful. It can enable a gradual move to national ownership through national judges being in the majority in the chambers, and then to a phasing out of the international components altogether over time. Conversely, international participation in trial panels in Kosovo, introduced soon after the conflict was over, when the judicial system was barely functioning and international judges were not in the majority in trial panels, was seen as insufficient, and increased internationalization was regarded as necessary to improve the administration of justice.

Jurisdiction

30. The existing United Nations and United Nations-assisted tribunals have a limited temporal jurisdiction, and either a limited geographical jurisdiction, or a jurisdiction limited to specific events. Unlike the Bosnia War Crimes Chamber and other relevant judicial mechanisms, each of the United Nations and United Nations-assisted tribunals will indict only a limited number of individuals, primarily being

²⁷ The General Assembly, by its resolution 56/169, urged the Cambodian Government and the United Nations to conclude an agreement without delay. Such an agreement was concluded on 6 June 2003. However, the General Assembly had been seized with this matter since June 1997, when the Cambodian Co-Prime Ministers requested United Nations assistance in organizing the process for the Khmer Rouge trials.

²⁸ The Security Council, in its resolution 1664 (2006), requested the Secretary-General to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character. The Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon was signed by the Government of Lebanon on 23 January 2007 and by the United Nations on 6 February 2007. The United Nations had been seized with this matter since April 2005, when the Security Council adopted resolution 1595 (2005), establishing an international independent investigation Commission on the death of former Lebanese Prime Minister Rafiq Hariri and the death or injury of 22 others.

those who are the senior leaders or those bearing most responsibility for the crimes within the jurisdiction. The personal jurisdiction of the Special Tribunal for Lebanon is not limited to senior leaders and those most responsible, but the number of those involved in the attacks within (and potentially within) its jurisdiction are likely in practice to be limited. Each of the tribunals, except the Extraordinary Chambers in the Courts of Cambodia (which is a national court), has concurrent jurisdiction with national courts, but can assert primacy at any stage of national proceedings.

Primacy or complementarity

31. The relationship between international and national criminal jurisdiction can be organized either by giving concurrent jurisdiction, but with the right of the international tribunal to assert primacy over particular cases, or by the principle of complementarity. ICTY, ICTR, the Special Court for Sierra Leone and the Special Tribunal for Lebanon all have concurrent jurisdiction with national courts, but may assert primacy. The right to assert primacy avoids simultaneous exercise of jurisdiction over an accused, which would be contrary to the principle of *non bis in idem*. ICC, a court established by a multilateral treaty, has jurisdiction based on the principle of complementarity. This principle means that it can only investigate and prosecute international crimes falling within its jurisdiction when national jurisdictions are unable or unwilling to do so. There is no question of primacy or complementarity in the case of the Extraordinary Chambers in the Courts of Cambodia because it is embedded in a national court of Cambodia.

Financing

32. The United Nations and the United Nations-assisted tribunals require significant financial support both at the commencement stage, and for their continued operations. The initial annual costs were: ICTY: \$10.8 million; ICTR: \$13.4 million; Special Court for Sierra Leone: approximately \$19.4 million (\$19,425,781); and Special Tribunal for Lebanon: \$51.4 million. The initial costs for the Extraordinary Chambers in the Courts of Cambodia were \$100.4 million for the first four years; that is, from 2006 to 2009 (of which \$78.7 million was for the international component, and \$18.7 million was for the national component). The costs of each of these tribunals to date have peaked at the following amounts: ICTY: \$376.2 million (for the biennium 2008-2009); ICTR: \$292.9 million (for the biennium 2008-2009); Special Court for Sierra Leone: \$36,124,200 (budget for 2008); Special Tribunal for Lebanon: \$55,347,730 (budget for 2009); and Extraordinary Chambers in the Courts of Cambodia: \$92.3 million (for the biennium 2010-2011, of which \$69.1 million is for the international component and \$23.2 million is for the national component). The current costs of these tribunals are: ICTY: \$290.9 million (for the biennium 2010-2011); ICTR: \$245.3 million (for the biennium 2010-2011); Special Court for Sierra Leone: \$20,674,600 (budget for 2010); Special Tribunal for Lebanon: \$55,347,730 (budget for 2010); and Extraordinary Chambers in the Courts of Cambodia: \$92.3 million (for the biennium 2010-2011).

33. Funding for the Bosnia War Crimes Chamber and the Special Department for War Crimes is provided by the European Commission, the Government of Bosnia and Herzegovina, and voluntary financing by States. Management of the Bosnia War Crimes Chamber is handled internally by a management committee, but funding oversight is provided by representatives of the Bosnian authorities and diplomatic

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representatives of donor States in Sarajevo. The average annual cost of the Bosnia War Crimes Chamber from 2005 to 2009 was 13 million euros. The Bosnian Government is gradually assuming a greater proportion of the financing, and, in 2008, its contribution (8.6 million euros) exceeded international contributions (5.1 million euros) for the first time. The Government of Bosnia and Herzegovina is expected to begin funding the Bosnian War Crimes Chamber and the prosecution department entirely from 2010.

34. The Special Panels in East Timor were funded through UNTAET and subsequently the United Nations Mission of Support in East Timor (UNMISSET), which received both United Nations-assessed contributions and voluntary contributions from States. For the period from 2003 to 2005, the total operating cost of the Special Panels in East Timor was approximately \$14.3 million. The financing of the Trial Panels in Kosovo, including of the international judges, was divided between the budget of UNMIK, which is financed from United Nations-assessed contributions, and the domestic budget of Kosovo. The salaries of the international prosecutors and administrative and other support staff (interpreters, court recorders and legal officers) came from the UNMIK budget.

35. ICTY and ICTR, as subsidiary organs of the Security Council, are funded from United Nations-assessed contributions. The United Nations-assisted tribunals are all financed from voluntary contributions.²⁹ In practice, this has proved to be a problematic basis for financing international justice. It has caused regular funding challenges and difficulties of forward planning. A relatively small number of States forms the principal donors to these tribunals, which therefore carry the bulk of the financial responsibility, and now do so in difficult economic times when there is competition for scarce resources.

Oversight

36. The oversight of the financing and non-judicial aspects of the work of the United Nations and United Nations-assisted tribunals at United Nations Headquarters also takes various forms. As ICTY and ICTR are funded through assessed contributions, they are under the financial control of the General Assembly, acting through its Fifth Committee. The Security Council, as their parent body, also plays an important role in considering matters such as any necessary amendments to their statutes, and extensions to the terms of office of the judges and the Prosecutors. All such matters are considered in detail at the working level by the Security Council Informal Working Group on International Tribunals, which, with the assistance of the Office of Legal Affairs, drafts all necessary resolutions for adoption by the Security Council. The Working Group is currently heavily engaged in considering the ICTY and ICTR completion strategies and the need for a future residual mechanism to continue certain essential functions of the tribunals after their closure.

37. The Special Court for Sierra Leone and the Special Tribunal for Lebanon have Management Committees comprising representatives from the Permanent Missions of the Governments that are the principal donors to the tribunal concerned. These Committees determine the tribunals' budgets, and provide policy direction and advice on all non-judicial aspects of the tribunals' operations. The Special Court for

²⁹ The financing of the national component of the Extraordinary Chambers in the Courts of Cambodia is the responsibility of the Royal Government of Cambodia, and 49 per cent of the financing of the Special Tribunal for Lebanon is borne by the Government of Lebanon.

Sierra Leone Management Committee is also heavily engaged in consideration of the Court's completion strategy and the establishment of a future residual mechanism. The Extraordinary Chambers in the Courts of Cambodia does not have a Management Committee, but has a Steering Committee that does not have budgetary authority. It also comprises representatives from the Permanent Missions of the Governments that are the principal donors, and it provides guidance on non-judicial matters. Budgetary authority lies with a broader grouping of interested States that meet infrequently. These Committees are advised and assisted in their relationship with the respective tribunals by the Office of Legal Affairs. Experience suggests that a strong link between the tribunal and an active management committee, with budgetary authority, provides the most efficient and effective means of budgetary oversight and policy guidance to the voluntarily funded tribunals and other judicial mechanisms.

Completion and residual issues

38. For all tribunals that are not of a permanent character, there will inevitably be a need to consider a strategy for the completion of the tribunal's work and for the carrying out of the residual functions following its closure. Such functions include the protection of witnesses, the monitoring of sentence enforcement, hearing applications for review of judgment, and the management of the archives. Depending on the circumstances, some tribunals also require the authority to try fugitives not brought to justice before closure. It is clear that some of these functions, e.g., the protection of witnesses and the monitoring of sentence enforcement, could potentially last for several decades. Establishing a tribunal requires sustained political and financial commitments going beyond the anticipated lifespan of the tribunal itself. For special chambers within the national jurisdiction of a State, the special chamber itself may or may not be indefinite, depending on the wishes of that State. A special chamber with a definite lifespan would face the same residual issues as a tribunal, and would equally require some form of residual mechanism to carry out the residual functions. A special chamber with an indefinite lifespan would not require a completion strategy or residual mechanism, but unless the United Nations is prepared to take on an open-ended commitment to its participation in any such chamber, its participation would at some point need to be brought to an end. In that circumstance, some form of continued United Nations presence may be necessary with a view to ensuring that residual functions are carried out by the national chamber to international standards.

Annex II

Contact Group on Piracy off the Coast of Somalia

1. The Contact Group on Piracy off the Coast of Somalia was established on 14 January 2009 to facilitate discussion and coordination of actions among States and organizations to suppress piracy off the coast of Somalia. It was established after the Security Council, in its resolution 1851 (2008), encouraged “all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among States, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast”.

2. The Contact Group operates through four working groups: Working Group 1 (convened by the United Kingdom with the support of the International Maritime Organization (IMO)) addresses activities related to military and operational coordination and information sharing and the establishment of the regional coordination centre; Working Group 2 (convened by Denmark with the support of the United Nations Office on Drugs and Crime (UNODC)) addresses legal issues related to piracy; Working Group 3 (convened by the United States with the support of IMO) addresses shipping self-awareness and other capabilities; and Working Group 4 (convened by Egypt) works on improving diplomatic and public information efforts on all aspects of piracy.

Consideration by the Contact Group on Piracy off the Coast of Somalia of national prosecutions, imprisonment by States and United Nations assistance

3. In the five meetings that have been held since January 2009, Working Group 2 of the Contact Group has addressed a number of important legal issues relevant to the efforts of States to combat piracy and armed robbery at sea off the coast of Somalia. The main purpose of those discussions was to encourage the prosecution and the imprisonment of suspects within national legal systems. Issues such as the international legal framework applicable to piracy, national laws on piracy and armed robbery at sea, legal and practical challenges to national prosecutions, the apprehension and the detention of suspected pirates at sea, capacity-building, the use of force, and applicable human rights considerations were discussed. The discussions focused on being as practical as possible, and resulted in a “toolbox” of relevant resources and precedents that States and organizations may use to strengthen their capacity to combat piracy and armed robbery at sea.

4. UNODC prepared and circulated a report based on the responses to a questionnaire on legal and practical challenges to national piracy prosecutions. The report provides an analysis of the different legal elements that are needed, including the criminalization of piracy and armed robbery at sea or other relevant offences, the liability of persons for these offences in the case of participation or attempts, provisions establishing sufficient criminal jurisdiction to allow for the national prosecution of offences that happen on the high seas, and evidentiary and procedural requirements in national laws. All of these elements may impact on the apprehension and successful prosecution of suspects.

5. Working Group 2 has identified and addressed a series of impediments to national prosecutions of those suspected of piracy and armed robbery at sea, including legal and/or practical impediments for patrolling naval States, States

affected by piracy and armed robbery at sea, and States willing to prosecute suspected pirates. For example, practical tools, such as guidance regarding the collection and transfer of evidence by patrolling naval States, have been shared, and there have been discussions on how best to ensure that witnesses attend trials. INTERPOL has provided information on its efforts to ensure the collection and the dissemination of information. States that are currently prosecuting suspects report on progress in those cases, and any challenges they face.

6. The meetings have been used as a forum by States to urge other States to exercise their jurisdiction in cases where they have an interest, for example, where their flag vessel has been attacked, or their nationals are victims. The regional States' need for capacity-building has been a major element in discussions, and UNODC has briefed Working Group 2 extensively on its programme to support ongoing prosecutions, detention and imprisonment. IMO has briefed on its implementation of the Djibouti Code of Conduct. Other issues considered concern the use of force in a maritime law enforcement context, and the application of human rights obligations to the apprehension, the detention and the transfer of those suspected of piracy and armed robbery at sea.

Consideration by the Contact Group on Piracy off the Coast of Somalia of possible judicial mechanisms

7. The consideration of possible judicial mechanisms in Working Group 2 gave rise to a number of non-papers by States, to two informal meetings hosted by the Government of the Netherlands, and to a discussion paper prepared by the Chair of Working Group 2, which was considered by the Contact Group at its plenary meeting on 28 January 2010. In that meeting, the Chair noted that States and organizations continue to have different views on the need to establish any additional mechanism for prosecution, and stressed that Working Group 2 had agreed that the discussion regarding models for such mechanisms should be undertaken without prejudice to the position of States and organization on the need for any such mechanism. The Chair wrote to the Office of Legal Affairs on 9 June 2010, enclosing his conclusions of the Working Group 2 meetings, his discussion paper and the other relevant non-papers and documents.

8. The importance of the need to find a host State for any new judicial mechanism was underlined, as was the need for any such State to have arrangements with third States so that it does not become a "haven", but is able to repatriate or transfer to third States those persons who are acquitted, those serving sentences, and those who have served their sentences. It was noted that the crime of piracy is of a different nature and scope to the serious international crimes normally dealt with by international tribunals, and that suspected pirates brought before any such new international tribunal would be unlikely to meet the criterion of being the "most responsible" for the crimes in question, which is a threshold applied by most of the current international tribunals. There was broad agreement that it may not be viable to extend the competence of the International Criminal Court to include the crime of piracy, nor to amend the competence of the International Tribunal on the Law of the Sea.

9. Three categories of possible models for a new judicial mechanism were identified: an international tribunal; a regional tribunal; and a tribunal based in the national jurisdiction of a State in the region. Under the first category, the possibilities identified were an international tribunal established pursuant to a Security Council

resolution adopted under Chapter VII of the Charter of the United Nations, or a “hybrid” tribunal following the model of the Special Court for Sierra Leone or the Special Tribunal for Lebanon, based on an agreement with the United Nations. Under the second category, the possibilities identified were a regional tribunal established through a multilateral agreement negotiated among the States of the region, or the use of an existing court, such as the African Court on Human and Peoples’ Rights, located in Arusha, Tanzania. It was noted that the time required to negotiate the appropriate treaty basis for either of these options might be considerable. Under the third category, the possibilities identified were a Somali court located in a third State in the region, or a special piracy chamber within the national jurisdiction of a State in the region. It was recognized that the Somali court option would have the advantage of enabling Somalia to play a direct part in the solution to prosecuting acts of piracy. However, the fractured nature of the law on piracy in Somalia, and significant issues concerning Somali judicial and prosecutorial capacity, meant that this option may be unlikely to be viable at present.

10. The option of a specialized piracy chamber within the national jurisdiction of one or more States in the region, supported by financial or technical assistance by the international community, was considered to follow the precedent of the Bosnia War Crimes Chamber. The Chair noted in his conclusions of the meeting in November 2009 that this would be the most feasible model, depending on one or more regional States, including Somalia, being willing and able to undertake prosecutions when it becomes possible.

11. The Chair travelled to the region in November 2009 for consultations with States and organizations. There were differing views on the need to establish any new judicial mechanism. He did not receive a clear indication from any State of a willingness to host a new judicial mechanism. Regional States and organizations emphasized that the focus should be on supporting existing mechanisms through capacity-building or other assistance. The particular kind of support offered should depend on the needs of States in the region willing to prosecute, and should add value to the already existing mechanisms. The possibility for transferring prisoners from the prosecuting State for imprisonment in a third State would be one important way of burden-sharing.

International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia

12. The International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia was established on 27 January 2010 through endorsement by the Contact Group on Piracy off the Coast of Somalia and the United Nations Controller. The overall purpose of the International Trust Fund is to support the implementation of the Member States’ initiatives regarding combating piracy and armed robbery at sea off the coast of Somalia. It also provides a means to States and the shipping industry to make financial contributions.

13. The International Trust Fund has received \$2,973,900 since its establishment, and has recommended the disbursement of \$2,437,372 to fund a total of six projects supporting prosecution and detention-related activities in Kenya, Seychelles and Somalia, and a strategy to enable the Transitional Federal Government to raise awareness among Somali populations in general, and young people in particular, of the risks associated with involvement in piracy and other criminal activities.



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Report of the Secretary-General on Somalia

I. Introduction

1. The present report is submitted pursuant to the statement by the President of the Security Council of 31 October 2001 (S/PRST/2001/30) and Security Council resolution 1872 (2009), and as specified in paragraph 20 of resolution 1910 (2010), in which the Council requested me to report on all aspects of the resolution every four months. This report provides an update on major developments in Somalia since my report of 11 May 2010 (S/2010/234) and assesses the political, security, human rights and humanitarian situation as well as progress made in implementing the United Nations strategy for Somalia. The report also covers the operational activities of the United Nations and the international community, as well as developments in counter-piracy activities.

II. Main developments in Somalia

A. Political developments

2. The reporting period was characterized by tensions within the transitional federal institutions, as well as increased concern on the part of the Somalis and the international community regarding the performance of the Transitional Federal Government in providing security and other basic services to its people. These concerns resulted in several high-level meetings of the Intergovernmental Authority on Development (IGAD), the African Union, and the United Nations, which highlighted both the urgency for the transitional federal institutions to work as credible institutions and the need to address the urgent financial needs of the African Union Mission in Somalia (AMISOM).

3. In May, there were several internal disputes between the Parliament and the Cabinet. As a result, on 16 May, the President, Sheikh Sharif Sheikh Ahmed, dissolved the Cabinet. The Speaker of Parliament also resigned on 17 May and was later replaced by the former Finance Minister, Sharif Hassan. The President later rescinded his decision, however, and reinstated the Prime Minister and his Government on 20 May. On 3 July, the Prime Minister, Omar Abdirashid Ali Sharmarke, announced a newly reshuffled Cabinet of 39 members, including five members from Ahlu Sunnah Wal Jama'a (ASWJ) and new members from the Somali diaspora.



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4. Despite these political complications and the difficult security environment, the United Nations, the African Union, IGAD and the international community continued efforts to promote peace and security in Somalia. My Special Representative continued working with all parties to ease the political tensions and implement the internationally endorsed strategy for Somalia. As part of my efforts to move the political process in Somalia forward and to sustain international attention to the political, security, humanitarian assistance and development needs of Somalia, the Government of Turkey and I jointly convened the Istanbul Conference from 21 to 23 May 2010. The meeting was effective in highlighting the international community's concern over and commitment to Somalia. There were several appeals from many of the participants for the President and his Government to put in place a credible government and minimize internal disputes. The Istanbul Declaration adopted at the Conference, reflected a consensus within the international community on a number of points, including the need for more effective action by the Transitional Federal Government; encouragement for groups outside the Djibouti Agreement to join the peace process; and the necessity of building Somalia's security forces and strengthening the capacity of AMISOM to secure key strategic areas in Mogadishu. The Istanbul Declaration encouraged the Somali private sector to play a positive role in the peace process. As a follow-up, the United Nations Political Office for Somalia (UNPOS) co-chaired on 8 June a meeting with the Islamic Development Bank and Turkey, at which a task force was established to undertake recovery activities in the areas of basic services, livelihoods, infrastructure and energy.

5. In response to increased insurgent activities against the Transitional Federal Government, the IGAD Assembly of Heads of State and Government held its fifteenth extraordinary session in Addis Ababa on 5 July. It noted with concern the deteriorating security situation in Somalia, and decided to immediately deploy 2,000 additional peacekeepers under AMISOM. It further agreed to work with all concerned parties, including AMISOM and the Security Council, to substantially raise the AMISOM troop level for deployment throughout Somalia.

6. Further indications of the regional impact of the instability in Somalia were the suicide attacks on 11 July, targeting an Ethiopian restaurant and a sports club in Kampala during the FIFA World Cup final. Over 70 people were killed and many more injured. The Kampala attacks, later claimed by Al-Shabaab, revealed, for the first time, Al-Shabaab's ability to plan and execute terrorist attacks outside Somalia's borders — against countries and entities that threaten its insurgency and radical ideology. The attacks demonstrated that Al-Shabaab remains a serious security threat for Somalia, the subregion and the wider international community. It should be noted that, following the Kampala attacks, the leaders of Uganda and Burundi have reiterated their determination to continue supporting stabilization efforts in Somalia.

7. Shortly after the IGAD summit, the African Union Assembly held its fifteenth ordinary session in Kampala from 25 to 27 July. Somalia dominated discussions at the Summit, during which African leaders expressed a strong sense of urgency for the Transitional Federal Government to do more in enhancing its governance structures and to resolve internal disputes within its leadership structures. The African leaders lauded AMISOM for its efforts at supporting the Transitional Federal Government. The summit endorsed the decisions of IGAD and mandated the African Union Commission to plan new phases for strengthening AMISOM.

8. On the sidelines of the African Union summit, the United States Assistant Secretary of State for African Affairs, Ambassador Johnnie Carson, facilitated a mini-summit on Somalia on 26 July, attended by the Presidents of Djibouti, Kenya, Somalia, Uganda and the United Republic of Tanzania, the Prime Minister of Ethiopia, the Chairperson of the African Union Commission, my Deputy Secretary-General and other representatives of the United Nations. The participants discussed ways to support the implementation of the proposals made by IGAD, particularly to increase support to AMISOM and the Transitional Federal Government. In that connection, the United States offered to facilitate the deployment of an additional 2,000 troops under AMISOM.

9. Despite the rifts between the Cabinet and Parliament, Somalia's Independent Federal Constitution Commission continued working on the draft constitution from Djibouti. On 1 July, the Commission formally launched a consultation process on the draft constitution, which entails a series of civic education and public initiatives, scheduled to last until September 2010. The first draft constitution is expected to be issued by December 2010. In that context, the Commission and representatives of the Consortium Partners held a seminar with members of civil society on 3 and 4 July to build a shared understanding of the constitution-making process, the consultation process and the role of civil society in civic education and public consultations. Meanwhile, the Chairman of the Commission stated that a number of contentious issues, including the adoption of a presidential versus a parliamentary system of government, the role of sharia, and the status of Mogadishu in the context of federalism, would be referred to the consultation process for further deliberation.

10. Major political developments in other parts of Somalia included the "Presidential election" of 26 June in "Somaliland", which was described as free, fair and transparent by international observers. On 1 July, the National Electoral Commission declared Ahmed Mohamed Mohamoud "Silanyo", of the opposition party Kulmiye (Peace, Unity and Development), the winner with 49.59 per cent of votes. The result was endorsed by the Supreme Court on 11 July, and President Silanyo was sworn in on 27 July. The new President has appointed a Cabinet composed of 20 ministers and six vice-ministers, three of whom are women. On 5 July, the "Puntland" Parliament held its first meeting, at which it reviewed the 2009 budget and discussed the completion of judicial reforms.

B. Security situation

11. During the reporting period, volatility and insecurity increased in Mogadishu. AMISOM and the Transitional Federal Government frequently engaged the insurgents, in response to increased mortar fire and direct attacks against Villa Somalia and the seaport. Sporadic mortar fire into the airport continued. Mortars also impacted regularly near the United Nations common compound and the UNICEF compound.

12. AMISOM military operations to secure positions in key districts in Mogadishu led to fierce battles, including fighting on 4 July between Al-Shabaab and Government/AMISOM forces in the Abdiyaziz district, as well as an attack by Al-Shabaab in Bondere on 22 July. In other parts of the capital, the military stalemate largely continued, with disparate militia controlling most neighbourhoods in Mogadishu. There was a sharp decline in the number of Government and

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AMISOM casualties, most likely as a result of improved security measures and counter-improvised explosive device procedures. The frequency of attacks with improvised explosive devices has however led to an increase in civilian casualties during the reporting period.

13. Beyond Mogadishu, sporadic clashes between Al-Shabaab and ASWJ continued in the central regions, albeit with no significant changes in control of territory. Al-Shabaab continued to control the town of Kismaayo and its seaport, while its positions in the Juba Valley and along the Kenyan border continued to be attacked sporadically by local clan militia associated with the Transitional Federal Government and by the rival Ras Kamboni group.

14. Meanwhile, Hizbul Islam was severely weakened following the severance of ties in May with the Ras Kamboni group. This has undermined Hizbul Islam's efforts to gain positions from Al-Shabaab in various regions in southern central Somalia. During the reporting period, it was alleged that Al-Shabaab and Hizbul Islam militia were responsible for several security incidents in border towns inside Kenya.

15. The security situation in "Puntland" has generally become more volatile for several reasons, including inter-clan disputes and continuing targeted assassinations of government officials. Further exacerbating the situation was the increased activity of a clan militia located in the foothills of the Golis mountain range, believed to have close connections to Al-Shabaab. On 23 July, that militia attacked five villages and a military checkpoint along the main road between Boosaaso and Garoowe, which triggered fierce clashes with "Puntland" forces.

16. The situation in "Somaliland" has remained stable during the reporting period, with the exception of a few security incidents related to the "presidential" elections held in June. However, isolated clashes were reported in the disputed Sool and Sanaag regions, in particular the Buuhoodle border area between a group known as the Sool, Sanaag and Cayn militia and "Somaliland" troops.

17. Continuing insecurity has hampered United Nations operations in Somalia by limiting freedom of movement for United Nations staff and contractors. In July, Al-Shabaab seized the compound of the World Food Programme (WFP) and the houses of six national staff in Wajid and attempted to loot non-food items from the WFP compound in Buaale. United Nations security missions continued in the central regions to assess the security conditions and obtain assurances from local authorities for an expansion of United Nations operations from Gaalkacyo to Dhuusamarreeb and to the coastal town of Hobyo.

C. Piracy

18. Piracy attacks continued to have a negative impact on maritime safety and navigation off the coast of Somalia, constraining economic prospects, compromising business confidence and worsening security in the area. The international naval presence in the region has made considerable progress in containing the threat of piracy, but much more needs to be done, notably to address the root causes of the problem by restoring stability and the rule of law inside Somalia. On 14 May, the President of the General Assembly convened an informal meeting of the Assembly, on international maritime piracy. I called for strong, concerted action against piracy

and suggested possible avenues for a collaborative international response to the problem. On 12 and 13 July, the Government of Seychelles convened a symposium on piracy, which received international pledges to support local and regional efforts to re-establish the rule of law in the Indian Ocean region.

19. The Contact Group on Piracy off the Coast of Somalia held its sixth plenary meeting on 10 June with the participation of 53 countries and organizations. As at 10 June, the Board of the trust fund supporting initiatives of States countering piracy off the coast of Somalia had unanimously approved seven projects amounting to more than \$2.4 million. Six of the projects will help to strengthen judiciary and correctional institutions in Seychelles and Kenya, as well as in “Puntland” and “Somaliland”.

20. On the basis of a request by Working Group 1 of the Contact Group, a Somali counter-piracy technical coordination mechanism, referred to as the “Kampala process”, was established in January 2010. This mechanism involves the Transitional Federal Government and “Puntland” and “Somaliland” officials at the technical level. The mechanism has developed terms of reference for coordination between the three entities on counter-piracy monitoring, internal coordination and information-generation and -sharing. UNPOS, in collaboration with partners, will provide secretariat functions, based in Hargeysa, to improve coordination among regional counter-piracy offices and advance an integrated law reform strategy.

21. Pursuant to Security Council resolution 1918 (2010), on 26 July I submitted a report (S/2010/394) on possible options for prosecuting and imprisoning suspected Somali pirates. As requested by the Security Council in resolution 1897 (2009), I intend to submit, by October a comprehensive report on piracy covering the current situation off the coast of Somalia and the efforts undertaken by all relevant actors, including the International Maritime Organization, the Office of Legal Affairs, the United Nations Office on Drugs and Crime, the United Nations Development Programme (UNDP) and UNPOS.

D. Humanitarian situation

22. Fighting between insurgents and Government forces in Mogadishu continued to adversely affect civilians. According to the World Health Organization, approximately 1,600 civilian casualties were admitted to the two main hospitals in Mogadishu from 20 March to 11 July. That figure includes almost 400 children under the age of 5 and 48 registered deaths. Meanwhile, Mogadishu’s already weak health services are struggling to cope with the casualties.

23. The countrywide above-average rains during the April to June Gu rainy season improved the food security situation, thus reducing the number of people in need of emergency food assistance. The United Nations Food Security Analysis Unit is currently conducting a nationwide needs assessment which will be completed by September. The previous assessment, conducted six months ago, found that 3.2 million people, or 43 per cent of the population, were in need of emergency food assistance. WFP continues to provide assistance to 1.8 million people in all areas of Somalia with the exception of areas under Al-Shabaab control. The ongoing conflict, particularly in Mogadishu, displaced 179,000 people in the first quarter and 75,000 in the second quarter of 2010. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), in July 16,600 people were displaced

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from Mogadishu, 8,800 of whom fled the city, while 7,700 moved to relatively calmer districts within Mogadishu. Somalis continue to flee into neighbouring countries: more than 50,000 refugee arrivals were registered by UNHCR by July, bringing the total number of Somali refugees in the region to more than 600,000.

24. On 19 and 20 July, the “Puntland” authorities undertook security sweeps in Boosaaso, which led to the round-up and forced removal of some 900 internally displaced persons and the deportation of foreigners suspected of having connections with the insurgency or of being potential targets for recruitment by the insurgents. In the course of the operation, refugees and asylum-seekers identified by UNHCR were handed over to the office for registration and documentation, while displaced persons from southern and central Somalia were released in Galguduud Province. An inter-agency response was organized in Gaalkacyo to provide humanitarian relief to the deportees and Somalis forcefully removed from Boosaaso, prior to their onward journey to Galguduud. It is estimated that “Puntland” hosts more than 100,000 internally displaced persons, mainly from southern Somalia.

25. The forced movement of people, combined with the rains, has limited people’s access to clean water and basic health services. Over 200 health facilities across Somalia reported 14,895 cases of acute watery diarrhoea from May to July, of which 1,100 involved children under 5. In addition, access to water for the 366,000 internally displaced persons in the Afgooye corridor has decreased from 14 litres per person per day to 11.7 litres, for lack of funding.

26. Non-governmental organizations and United Nations agencies have maintained operations in southern Somalia and continue to provide support to internally displaced persons in the areas of health and education. United Nations agencies and non-governmental organizations have expanded their programmes and are monitoring the impact of the suspension of WFP food aid on malnutrition rates. Activities such as immunization coverage, access and quality of nutrition services for severely malnourished children have significantly affected school enrolment rates, particularly among internally displaced persons. In addition, UNHCR has coordinated the distribution of non-food items and shelter items throughout Somalia.

27. In June, an in-depth review of the consolidated appeals process was conducted, in the light of the limited access and funding available in 2010. The overall requirements have now been reduced by 15 per cent, from the original requirement of \$689 million to \$596 million. As at 26 July, the consolidated appeals process had received \$337 million, of which 52 per cent (\$174 million) was a carry-over from 2009. During the first half of 2010, only \$151 million in new funding had been received for the consolidated appeals process, compared to \$237 million in new funding during the same period in 2009.

28. The reduced funding has affected humanitarian programmes across all areas of intervention. Consequently in June 2010 the Common Humanitarian Fund for Somalia allocated \$20 million in funding for projects in the sectors of nutrition, health, water, sanitation and hygiene, and agriculture and livelihoods to support regions with the most urgent humanitarian needs, namely Mudug and Galguduud, the Afgooye corridor and Banadir, Bay and Lower Juba.

E. Human rights and protection of civilians

29. The intense fighting in Mogadishu in June and July heightened the suffering of the civilian population, highlighting the need for all parties to pay greater attention to the principles of international human rights and humanitarian law relating to the protection of civilians. Shelling of residential areas continued to cause casualties, and many people were reportedly trapped in their homes for days as massive shelling hindered humanitarian access and caused thousands to flee. The United Nations, the African Union and AMISOM continued discussions on collaboration with regard to strengthening the protection of civilians and reducing casualties.

30. A United Nations team visited Dadaab refugee camp in Kenya and interviewed a cross-section of individuals who had fled southern and central Somalia. The testimonies gathered illustrate patterns of violations and abuse, including the failure by all parties to the conflict to protect civilian populations; the use and recruitment of children; and threats, intimidation and other abuses by insurgent groups.

31. From April to early July, UNPOS received reports of nine executions by firing squad or stoning in areas controlled by Al-Shabaab, mostly for alleged spying, adultery or murder; five cases of amputation; and reports of some 28 individuals flogged. Seven cases of beheading were reported, five of which were workers allegedly involved in reconstruction work at the Parliament.

32. Media houses in Mogadishu were caught between orders from Hizbul Islam, which directed all radio stations to stop playing music, and instructions from the Banadir administration of the Transitional Federal Government, which urged radio stations to continue their operations as usual. Other cases reported include the detention and questioning by the Transitional Federal Government of a reporter and a cameraman who took pictures of their wounded colleague caught in the crossfire on 1 July, as well as an arrest warrant issued against a Somali journalist associated with an article in the *New York Times* on the recruitment of children by Transitional Federal Government forces in June.

33. In May, UNHCR called on all States to uphold their international obligations towards refugees, insisting that all returns to southern and central Somalia must be “on a strictly voluntary basis” given the deteriorating security situation on the ground. The statement was made after more than 100 Somalis were forcibly returned to Mogadishu from Saudi Arabia. Nevertheless, Somalis continue to be deported, and it is estimated that 8,000 Somalis may have been deported to Somalia since the beginning of the year.

34. Monitoring networks recorded some 138 incidents of rape, attempted rape/sexual assault, forced prostitution and domestic violence for the period from May to July 2010. Assessments revealed a high prevalence of sexual violence in settlements of internally displaced persons, mainly in “Somaliland”, where victims were generally of minority clan origin and bereft of clan protection. It should be noted that gender-based violence remains grossly under-reported, particularly in southern and central Somalia.

35. Human trafficking both inside and outside Somalia remains a serious concern. In May, a report by the International Organization for Migration (IOM) highlighted the widespread nature of trafficking and the vulnerabilities of internally displaced persons and economic migrants, particularly women and children. Together with

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“Somaliland” and “Puntland” authorities and civil society, IOM is developing counter-trafficking programmes.

F. Child protection

36. Children continue to be affected by the conflict in southern and central Somalia. The recruitment and use of children in armed conflict is still an issue of major concern, and it is estimated that thousands of children are associated with Al-Shabaab and Hizbul Islam groups. In July, there were consistent reports of the forced recruitment by Al-Shabaab of several hundreds of children, some as young as 9, for training and combat purposes. In addition, there are reportedly hundreds of children present within the forces of the Transitional Federal Government, with numerous media reports highlighting the recruitment of Somali children, including those from Kenyan refugee camps. On 15 June, President Sharif, in a public statement, instructed the Army Chief to investigate the alleged presence of children in the armed forces and to demobilize any under-age recruits without delay. Meanwhile, the United Nations has discussed with senior officials of the Transitional Federal Government the possibility of setting up a task force and developing an action plan for the release of children from the armed forces.

37. Since the beginning of 2010, the United Nations has received reports of more than 100 cases of children killed or injured as a result of indiscriminate shelling, bombing and cross-fire during fighting between insurgents and Transitional Federal Government forces.

III. Resource mobilization

38. The financial constraints facing many of the Member States have had a major impact on funds being committed to supporting the Transitional Federal Government and AMISOM. While 76 per cent (\$149.6 million) of the total pledges made at the Brussels Conference in April 2009 have been received, the United Nations does not have resources to adequately pay the police and civil servants and to reimburse countries contributing troops to AMISOM.

39. Experience with the payment of stipends to Somalia police has confirmed that a credible financial mechanism has been put in place for transferring money for salaries and key basic services for the Transitional Federal Government. In July 2010, UNPOS completed payment of subsistence allowance for four months to 784 officers who underwent a three-week refresher course at the Mogadishu Police Academy. This experience may form the basis for a viable mechanism to pay stipends in the future. There has also been a rise in the number of Member States using this financial mechanism in recent months. The United Nations also continues to work with the Transitional Federal Government on accountability and ensuring that resources provided are channelled to areas of critical need.

40. I am grateful to the Government of Norway for the \$200,000 contributed to the United Nations-administered trust fund in support of Somali transitional security institutions, to cover the expenses related to the attack in Mogadishu on 3 December 2009. I would also like to recognize the \$1.5 million contributed by the United

Kingdom to the trust fund in support of AMISOM, for a radio communication system for AMISOM soldiers.

41. The troop allowances for troop contributors to AMISOM are currently being funded by the European Union. During my recent visit to Burundi, the President, Pierre Nkurunziza, called for a more predictable system for the payment of troop-contributing countries. This message was reinforced during my meeting with President Yoweri Museveni, on 31 May in Uganda, as well as during my discussion with the Chairperson of the African Union, President Bingu wa Mutharika, during my official visit to Malawi in May. The Chairperson of the African Union Commission, Jean Ping, has also explained to me the extreme difficulties the AMISOM troops face with the current funding mechanism. There seems to be a broad consensus on the need to align the troop allowances paid to AMISOM contingent personnel with those applicable to United Nations peacekeepers, but this has yet to materialize. It appears that potential troop-contributing countries have no incentive to deploy their troops to dangerous terrain with inadequate reimbursement.

42. The United Nations and AMISOM are exploring ways to address the persistent lack of funds to pay stipends to Somalia police officers. As noted in my last report, the Government of Japan provided \$10 million. These funds have been used to pay arrears to all trained police officers to 31 May 2010. However, an additional \$5.4 million is required to cover payments from July through the end of the year. It is critical that all training packages include provision of stipends from now onward.

IV. Implementation of resolution 1910 (2010)

A. Establishment of the United Nations “light footprint” in Mogadishu

43. Despite the fluctuating security situation, the United Nations has continued to maintain a substantive presence in parts of Somalia, as well as a robust intermittent presence through missions inside the country. My Special Representative and other senior United Nations officials have made frequent visits to Mogadishu, and are in the process of establishing a more sustainable political presence to maintain close contact with the Transitional Federal Government and other key Somali actors. Since March, the Mine Action Service has secured accommodation for staff members in an interim camp, which is shared with some components of the United Nations Support Office for AMISOM (UNSOA), the Department of Safety and Security and agencies, as availability allows.

44. A permanent facility, currently being constructed by the Mine Action Service, is to be completed by October 2010 and will accommodate additional international staff. UNSOA will shortly begin construction of offices and accommodation, while the United Nations country team has identified a site for an additional United Nations compound at the boundary of the airport. Secure facilities within the airport terminal area are currently used by UNPOS and the country team for meetings with Somali officials. The establishment of offices for United Nations international staff outside the Mogadishu Airport is not possible under the current security conditions.

45. Meanwhile, the compounds of the United Nations country team and UNICEF in Mogadishu have continued to serve as accommodation and office space for

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national staff members, and a new WFP facility at the seaport has been approved by the Department of Safety and Security for use as accommodation and office space. An expansion of the number of national staff members currently engaged in critical programme activities in Mogadishu is being considered, on the basis of permissibility for national staff to reside outside United Nations compounds.

46. Missions outside Mogadishu Airport remain highly risky and dependent on AMISOM transport and protection, a situation likely to continue in the foreseeable future. However, the mandated tasks and priorities of AMISOM bind most of its capacity, which limits the support it can provide to United Nations operations. Discussions are ongoing on the gradual increase of protection measures to enhance the safety of United Nations personnel and operations in Mogadishu.

47. UNPOS is in the process of deploying full-time international political presence in Hargeysa and Garoowe to enhance its engagement with the regional authorities. UNPOS will have to rely on the infrastructure established by the United Nations country team in Hargeysa, Garoowe, Gaalkacyo and Boosaaso and is thus currently negotiating co-location arrangements with the country team.

B. Review of the strategy for Somalia and the United Nations coordinated approach

48. As indicated in my report to the Security Council of 11 May 2010, optimal coordination and joint programming between leading United Nations actors on Somalia are critical to maximize the impact of United Nations activities. To that end and in line with my policy on integration of United Nations operations, from 31 May to 11 June the United Nations Headquarters Integrated Task Force on Somalia undertook a mission to review, together with United Nations field-based presences, the United Nations strategy for Somalia and proposals for better coordination of United Nations efforts.

49. I am currently reviewing the report of that mission. In the meantime, I have emphasized to all United Nations departments and agencies working on Somalia the need to speak with one voice and act in a coherent and coordinated manner. I have also asked my Special Representative to take immediate measures to strengthen coordination between UNPOS and the United Nations country team and UNSOA within the framework of an agreed common vision, objectives and priorities, including support to AMISOM. I intend to develop proposals for an integrated United Nations presence, for the attention of the Security Council.

C. Strengthening the political process

50. UNPOS continued to work closely with the Transitional Federal Government to advance the peace process. UNPOS senior officials conducted several visits to Mogadishu, during which they held consultations with President Sharif and other Somali officials. Similar consultations were held in Nairobi during visits by Somali officials. UNPOS also intensified its engagement with the “Somaliland” and “Puntland” authorities and, inter alia, undertook several visits to both regions and established a range of contacts on the ground.

51. Following a formal request from the Transitional Federal Government, a United Nations needs assessment mission has examined the conditions for the conduct of internationally supervised constitutional referendum and elections, as envisioned in the Transitional Federal Charter. The mission held consultations with several interlocutors in Nairobi, including donors, and with the President of "Puntland". It also held a two-day retreat in Nairobi with the Transitional Federal Government, including the Speaker, the Minister of Constitution and Federal Affairs, as well as the chairpersons of the Independent Federal Constitution Commission and the Parliamentary Constitutional Committee. A report on the outcome of the mission is being finalized.

52. UNPOS established a gender unit in May, to ensure comprehensive gender mainstreaming across its programmes and plans, notably to increase women's participation in Somalia's peacebuilding, political and reconciliation process.

D. Progress towards the strengthening and full deployment of AMISOM

53. In accordance with Security Council resolution 1863 (2009), UNSOA is managing the logistical support package for AMISOM and conducting periodic inspection and verification of all United Nations-owned and contingent-owned equipment in Mogadishu. While the United Nations support package is funded from assessed contributions, AMISOM and its troop contributors also receive financial support from the United Nations trust fund in support of AMISOM. A further strengthening of this mechanism is critical to guarantee the reimbursement of contingent-owned equipment costs and to provide support in areas not financed from assessed contributions. A major challenge faced by the Secretariat is that, despite making generous contributions, most donors have placed caveats preventing any expenditure towards the military component of AMISOM. As a result of this and very minimal additional contributions, funds for contingent-owned equipment reimbursement have been exhausted and the United Nations is unable to reimburse AMISOM troop contributors.

54. UNSOA has improved the living conditions of AMISOM troops, having made significant progress in building accommodation, kitchens and related facilities. Construction projects of prefabricated offices, living accommodation and support facilities, worth \$8 million, will be completed in September 2010 to accommodate 4,100 AMISOM personnel.

55. Some progress has also been made in the construction of the AMISOM permanent headquarters and a level II hospital, following completion of the procurement process in May. While the urgent need for accommodation in conformity with United Nations standards for military forces has been met, the current range of United Nations-provided facilities in Mogadishu does not comply with the minimum operating security standards of the United Nations in security Phase V. In order to support the African Union request to relocate AMISOM civilian personnel to Mogadishu, UNSOA is constructing prefabricated buildings comprising three suites, offices and living accommodation for support staff, and one reinforced bunker.

56. In response to the African Union/IGAD decision to deploy 2,000 additional troops, UNSOA has initiated preparations to assist the rapid deployment of those

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troops. Meanwhile, UNSOA has augmented the provision of medical equipment to AMISOM to enhance its medical capacities up to a level II field hospital.

57. UNSOA has stepped up its support to secure AMISOM tactical communications; it will provide hand-held radios and install mobile radios in armoured vehicles and armoured personnel carriers. Furthermore, UNSOA has continued to provide training in explosive ordnance disposal to AMISOM.

58. Starting on 1 July 2010, the mandate and functions of the United Nations planning team in Addis Ababa were transferred to the newly established United Nations Office to the African Union. That team helped to formulate the first AMISOM mission implementation plan, to update strategic directives for AMISOM, and to develop the AMISOM police concept of operations.

E. Strengthening of the Somali security institutions and development of a national security strategy

Policy and coordination

59. Under the co-chairmanship of the Prime Minister of the Transitional Federal Government and the Special Representative of the Secretary-General, the Joint Security Committee met on 7 and 8 August in Nairobi. Discussions focused on achieving progress, covering several areas, including support to the Somali security forces and police and the security ministries. The Committee also reviewed and adopted its revised terms of reference, reaffirmed its commitment to the protection of civilians and emphasized the need to avoid civilian casualties through training, information gathering, the provision of appropriate operational equipment and the application of the relevant rules of engagement in conformity with international law. The Committee welcomed the renewed commitment of AMISOM to mentor Transitional Federal Government forces and its efforts to establish a safe zone in Mogadishu. The Committee also encouraged the United Nations, through UNPOS and in partnership with the African Union, to play a catalytic role in mobilizing resources from the international community in support of the Transitional Federal Government and AMISOM. The Joint Security Committee recommended that the international community gradually move its offices back to Mogadishu.

60. UNPOS has continued to coordinate efforts in the following areas: standardizing training for both the police and military; setting up of a military training camp in Somalia; ensuring the establishment of a coordinated mechanism to effect and monitor the payment of stipends; and enhancing the capacity and strategic role of the Joint Security Committee and its working groups. UNPOS also continued to support the Transitional Federal Government in developing long-term options for paying salaries to the security forces from the Transitional Federal Government budget.

Military

61. UNPOS continued to assist the Transitional Federal Government in the development of its armed forces. While the focus is currently to help the national security forces to consolidate and address immediate security threats, significant progress is required in coordinating international assistance and building a common approach to material and training support.

62. The European Union training mission currently consists of 55 military trainers at Bihanga Camp, Uganda, and 20 staff at its Kampala headquarters. The mission aims to train over 1,000 national security force recruits by September, including 97 ASWJ soldiers, followed by another 1,000 recruits. The United States is committed to providing 18 months' worth of stipends to 1,000 soldiers to be trained by the European Union training mission. To date, no donor has offered to continue this commitment. Regrettably, most training pledges made to the Transitional Federal Government to date do not include stipends, which makes desertions and defections highly likely.

Police

63. The United Nations continued to help the Transitional Federal Government to develop a professional and accountable police force, while also supporting police services in "Somaliland" and "Puntland". The initial target of 10,000 Transitional Federal Government police officers, set in the Djibouti peace agreement, was lowered to 7,000 by the Somalia Police Commissioner, in consultation with the Police Technical Working Group of the Joint Security Committee; the Committee endorsed this reduction on 8 August.

64. By mid-July, 4,511 Somalia police officers had been trained under the umbrella of the international community. A total of 500 additional police recruits will be trained in Djibouti for three months, beginning in August 2010. Regarding the 1,100 officers trained in Somalia in 2008 and the 925 officers trained in Ethiopia in 2009-2010, AMISOM will assess the training received and advise on the need for refresher courses, prior to their full integration into the Somalia police force.

Justice and corrections

65. Support to the justice sector, particularly in southern and central Somalia, has proceeded slowly during the reporting period, which saw a change at the helm of the Ministry of Justice. The Chief Justice and the Attorney-General agreed in April to programme the resumption of activities supported by UNDP, including a training programme for judges and prosecutors and the provision of essential equipment, including furniture and legal resources, as well as the rehabilitation of the main justice compound in Mogadishu. The Chief Justice confirmed that the Appeals and Regional Courts at the Banadir Court Compound are operational, as are eight District Courts within areas under the control of the Transitional Federal Government, subject to the day-to-day security situation. The Chief Justice reported that, early in 2010, there were 37 judges, 11 prosecutors and 29 clerks and registrars, as well as 42 ancillary staff employed in those Courts.

66. UNDP is currently undertaking a comprehensive judicial training programme for "Somaliland" and "Puntland" judges and prosecutors, of whom fewer than 5 per cent currently have recognized legal qualifications. It is expected that all judges in both regions will have completed an eight-month course by the end of 2011. It is important to note that prison facilities in "Puntland" are increasingly strained, owing to the rising number of pirates in detention, adding pressure to an already weak penal system. The "Puntland" prison population has grown by approximately 10 per cent per month, the majority of prisoners being detained without due process. UNDP supported the establishment of a prison headquarters in "Puntland" to improve coordination, planning and internal oversight. Medical

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supplies and communications equipment were also provided to the penitentiary authorities in “Puntland”.

Disarmament, demobilization and reintegration and community security

67. Basic preconditions remain unmet for the implementation of a conventional disarmament, demobilization and reintegration programme in southern and central Somalia. The priority remains to assist the Transitional Federal Government in developing responses for several hundred “transitional” fighters who have abandoned the insurgency.

F. Humanitarian, recovery and development activities

68. Since May, WFP deliveries of over 25,000 tons of food aid have benefited 1.3 million Somalis. Despite the temporary suspension of WFP activities in parts of southern Somalia, it continues to provide food assistance to more than 500,000 people in Mogadishu. During the first half of 2010, WFP and its partners provided emergency food assistance to 100,860 acutely malnourished children and 80,000 pregnant or lactating women. Humanitarian agencies in Somalia reached an estimated 60 per cent of all affected children with severe acute malnutrition, making Somalia one of only three countries in east and southern Africa with such a coverage rate.

69. During the reporting period, Child Health Days reached more than 1.5 million children and 1.3 million women of childbearing age. The Child Health Days have allowed children under 1 to receive the third dosage of diphtheria, pertussis and tetanus vaccine, and for the first time in the past 20 years Somalia has achieved 51 per cent coverage of this vaccine. Meanwhile, seven hospitals were provided with emergency services, including comprehensive emergency obstetric care, in seven regions of southern and central Somalia. From January to July, clean water was delivered to 1.3 million people affected by forced displacement, mainly in southern and central Somalia.

70. Since early in 2010, access to education has increased through the construction of 153 classrooms, rehabilitation of 106 learning spaces and installation of 40 school tents. By mid-year, 57,000 additional children had access to primary education in emergency areas and nearly 2,500 teachers were trained. In total, 109,682 children, of whom almost 51,000 were girls, received basic education. WFP provided school meals to some 64,000 children in primary schools.

71. Rehabilitation of Mogadishu port by WFP continued, including the provision of generators, the supply and installation of port fenders, and the construction of a 64,000-litre water tank, as well as the dredging of berths and the removal of wreckage to facilitate access. Those works have enhanced the effectiveness of the port. In addition, rehabilitation of the Boosaaso port in “Puntland” has begun to improve the functionality of the port.

72. During the reporting period, the United Nations Humanitarian Air Service transported an average of 1,350 aid workers and 16 tons of equipment and supplies on a monthly basis. However, funding resources previously available ran out at the end of July, and the United Nations is urgently seeking \$5.5 million to maintain those vital humanitarian flights until the end of 2010.

73. The United Nations continued to work closely with the “Somaliland” and “Puntland” Mine Action Centres and relevant authorities to ensure effective and coordinated mine action activities. Since my last report, the Mine Action Service has trained six humanitarian explosive ordnance disposal and survey teams to conduct survey identification, marking, removal and destruction of explosive remnants of war in southern and central Somalia. Mine risk education activities continued and 149,979 beneficiaries throughout Somalia benefited from awareness messaging during the first half of 2010.

74. In June, the United Nations supported a study tour to Rwanda for 19 officials of the Transitional Federal Government, on the development and implementation of reconciliation, recovery and reconstruction programmes, as well as implementation of public administration and public finance management reforms. Also in June, the United Nations conducted public financial management training for auditors, accountants and the budget department of the Ministry of Finance in Garoowe, “Puntland”, while 72 civil servants graduated from the United Nations-supported “Somaliland” Civil Service Institute.

V. Observations/recommendations

75. The reporting period was marked by internal tensions within the Transitional Federal Government and institutions, which diverted attention from the implementation of the key transitional tasks. I appeal to the Government and the Parliament to resolve political disputes and to take concrete steps towards the fulfilment of commitments on the basis of clear benchmarks and timelines and through a systematic and genuine process of consultation and dialogue. It is important that the Transitional Federal Government develop credible government structures to deliver services to its people. The Cabinet must remain focused on implementing the critical tasks ahead, prior to the end of the transitional period in August 2011.

76. In order to support the Transitional Federal Government in addressing some of its most daunting challenges, notably extending its authority and combating the threat of extremism, I appeal to the international community to provide urgent military and financial support and other resources to the Transitional Federal Government. I also strongly encourage donors to scale up their utilization of the Government’s PricewaterhouseCoopers facility in the delivery of assistance. I am encouraged by the successful accountability measures introduced by the Government and the tracking mechanisms established by my Special Representative, which are important not only for resource mobilization but also for harnessing the political support needed to advance the Somalia peace process.

77. As Somalia’s transition period approaches its end, I am concerned that the transitional agenda remains largely unfulfilled. Unity within the transitional federal institutions remains critical for confidence-building among Somalis and the international community. Now is the time for the transitional federal institutions to show determination to complete the transitional tasks. I am pleased to note the significant progress made in preparation of the draft constitution, and I encourage the transitional federal institutions to initiate an inclusive consultative process and use all possible means to complete this critical transitional task.

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78. I am encouraged by the efforts of the Joint Security Committee to coordinate security sector development initiatives. I appeal to the international community to reinforce its support for the training, equipping and sustenance of the Somalia police force and national security forces, including by establishing coordinated mechanisms to perform and monitor the regular payment of stipends.

79. The horrific suicide attacks in Kampala remind us of the danger that the insurgents pose to Somalia, to the subregion and beyond. I extend my heartfelt condolences to the Government of Uganda and other affected Governments, and to the families of the victims.

80. I acknowledge the critical role that the African Union and IGAD play in supporting the Somali peace process. I am pleased to note the increased level of coordination between the United Nations and those important regional organizations. I pay special tribute to AMISOM, which continues to operate in a very difficult environment. I wish to reiterate my call to the international community to urgently lend AMISOM the support it needs to effectively discharge its mandate.

81. Eighteen months after the establishment of existing United Nations funding arrangements to AMISOM, substantial resource gaps continue to adversely affect its effectiveness, and possibly discourage potential troop contributors. It is my belief that the support package for AMISOM should be identical to the support provided to United Nations peacekeeping operations. It is also my belief that rapid action should be taken to ensure parity between the reimbursement rate for AMISOM contingent personnel and United Nations contingent personnel. I intend to hold further consultations with the African Union, the European Union and major donors before presenting proposals to the Security Council to resolve the lack of sustainable funding for reimbursement of the costs of contingent-owned equipment, and to secure long-term commitment to provide troop allowances to AMISOM personnel.

82. Humanitarian organizations are struggling to provide vital assistance to 3.2 million people in Somalia, including internally displaced persons. Resources for key sectors such as water, health and nutrition are less than 40 per cent funded. I call on the donor community to continue its critical support to the people of Somalia. I also call on all parties to the conflict to respect humanitarian principles and allow the delivery of assistance to populations most in need.

83. I remain deeply concerned about the devastating impact of the conflict on the civilian population and the lack of respect for international human rights and humanitarian law. My new Special Representative will continue discussions with the Transitional Federal Government, IGAD and AMISOM on the issue of protection of civilians. I remind all parties to the conflict that those found responsible for war crimes will face justice. In that regard, I support the proposal to document the most serious violations committed, as an essential step in the fight against impunity and for the creation of justice and reconciliation mechanisms.

84. I reiterate my commitment to ensuring maximum coordination of United Nations efforts on Somalia, in line with my policy of integration of United Nations operations. I am pleased that the United Nations team in Nairobi has increased its coordination efforts under the leadership of my new Special Representative. Some of the measures put in place include the establishment of a Senior Policy Group on Somalia, bringing together the Special Representative of the Secretary-General, the

Resident and Humanitarian Coordinator for Somalia, and the Director of UNSOA, to ensure an integrated, coherent United Nations approach to the challenges confronting Somalia. In addition, I intend to take steps towards establishing an integrated United Nations presence in Somalia.

85. I wish to express my deep appreciation to my former Special Representative, Ahmedou Ould-Abdallah, for his unwavering dedication and commitment to advancing the cause of peace and stability in Somalia and to raising the profile of the Somali conflict. His efforts contributed to the Djibouti Agreement, which has served as a strong foundation for the political and security strategy of the United Nations for Somalia. I am particularly grateful for his close engagement with the Somali diaspora, whom he constantly reminded of the benefits of a peaceful and stable Somalia, and for his reminding us constantly of our obligations to the people of Somalia.

86. I call on the Somali people and the international community to lend unwavering support and cooperation to my new Special Representative. I pay tribute to the men and women serving in UNPOS, UNSOA, the United Nations country team, and other relevant organizations, as well as to members of the non-governmental humanitarian community who operate under difficult conditions.

BMP3

Best Management Practice 3

Piracy off the Coast of Somalia and Arabian Sea Area



Produced and supported by:



BMP3

Best Management Practices to
Deter Piracy off the Coast of
Somalia and in the Arabian Sea Area

(Version 3 – June 2010)

***Suggested Planning and Operational
Practices for Ship Operators, and
Masters of Ships Transiting the Gulf of
Aden and the Arabian Sea***

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Section 1

Introduction

- 1.1** The purpose of the Industry Best Management Practices (BMP) contained in this booklet is to assist ships to avoid, deter or delay piracy attacks off the coast of Somalia, including the Gulf of Aden (GoA) and the Arabian Sea area. Experience, supported by data collected by Naval forces, shows that the application of the recommendations contained within this booklet can and will make a significant difference in preventing a ship becoming a victim of piracy.
- 1.2** For the purposes of the BMP the term 'piracy' includes all acts of violence against ships, her crew and cargo. This includes armed robbery and attempts to board and take control of the ship, wherever this may take place.
- 1.3** Where possible, this booklet should be read with reference to the Maritime Security Centre – Horn of Africa website (www.mschoa.org), which provides additional and updating advice.
- 1.4** This BMP3 booklet updates the guidance contained within the 2nd edition of the Best Management Practice document published in August 2009.
- 1.5** This booklet complements piracy guidance provided in the latest IMO MSC Circulars

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

Section 2

Somali Pirate Activity – The High Risk Area

- 2.1** The significant increase in the presence of Naval forces in the Gulf of Aden, concentrated on the Internationally Recommended Transit Corridor (IRTC), has significantly reduced the incidents of piracy attack in this area. With Naval forces concentrated in this area, Somali pirate activity has been forced from the Gulf of Aden out into the Arabian Sea. It is important to note, however, that there remains a serious threat from piracy in the Gulf of Aden.
- 2.2** Somali based pirate attacks have taken place both close to land and at extreme range from the Somali coast, and continue to do so.
- 2.3** The **High Risk Area** for piracy attacks defines itself by where the piracy attacks have taken place. For the purposes of the BMP, this is an **area bounded by Suez to the North, 10°S and 78°E**. While to date attacks have not been reported to the extreme East of this area, they have taken place at almost 70°E. There remains the possibility that piracy attacks will take place even further to the East of the High Risk Area. Attacks have occurred to the extreme South of the High Risk Area. A high state of readiness and vigilance should be maintained even to the South of the Southerly limit of the High Risk Area and the latest advice from MSCHOA on the extent of pirate activity always sought (contact details are contained in Annex A). **It is recommended that the BMP is applied throughout the High Risk Area.**

Section 3

Risk Assessment

- 3.1** Prior to transiting the High Risk Area, Ship Operators and Masters should carry out a risk assessment to assess the likelihood and consequences of piracy attacks to the vessel, based on the latest available information (see Annex A for useful contacts, including MSCHOA and UKMTO). The output of this risk assessment should identify measures for prevention, mitigation and recovery, which will mean combining statutory regulations with supplementary measures to combat piracy.

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

- 3.2 Crew Safety:** The primary consideration should be to ensure the safety of the crew. Care should be taken, when formulating measures to prevent illegal boarding and external access to the accommodation, that crew members will not be trapped inside and should be able to escape in the event of another type of emergency, such as, for example fire.



- 3.3 Freeboard:** It is likely that pirates will try to board the ship being attacked at the lowest point above the waterline, making it easier for them to climb onboard. These points are often on either quarter. Experience suggests that vessels with a minimum freeboard that is greater than 8 metres have a much greater chance of successfully escaping a piracy attempt than those with less. A large freeboard will provide little or no protection if the construction of the ship provides assistance to pirates seeking to climb onboard.

A large freeboard alone may not be enough to deter a pirate attack.

- 3.4 Speed:** One of the most effective ways to defeat a pirate attack is by using speed to try to outrun the attackers and/or make it difficult to board. To date, there have been no reported attacks where pirates have boarded a ship that has been proceeding at over 18 knots. It is possible however that pirate tactics and techniques may develop to enable them to board faster moving ships. **Ships are recommended to proceed at Full Sea Speed in the High Risk Area.** If a vessel is part of a 'Group Transit' (see section 8.3 on page 17 for further details of Group Transits) within the International Recommended Transit Corridor (IRTC), speed may be required to be adjusted.

In the Gulf of Aden, ships capable of proceeding in excess of 18 knots are strongly recommended to do so. Within the remainder of the High Risk Area ships are reminded that speed is extremely important in avoiding or deterring a pirate attack. It is recommended that reference should be made to the MSCHOA website for the latest threat guidance regarding pirate attack speed capability.

- 3.5 Sea State:** Pirates mount their attacks from very small craft, even where they are supported by larger vessels or 'mother ships', which tends to limit their operations to moderate sea states. While no statistics exist, it is likely to be more difficult to operate these small craft effectively in sea state 3 and above.
- 3.6 Pirate Activity:** The risk of a piracy attack appears to increase immediately following the release of a hijacked vessel and/or following a period of poor weather when pirates have been unable to operate.

Section 4

Typical Pirate Attacks

- 4.1** Commonly, two or more small high speed (up to 25 knots) open boats or 'skiffs' are used in attacks, often approaching from either quarter or the stern. Pirates appear to favour trying to board ships from the port quarter.
- 4.2** The use of a pirate 'mother ship', carrying personnel, equipment, supplies and smaller attack craft, has enabled attacks to be undertaken at a greater range from the shore. Pirates are also using larger long range attack craft to attack at much greater distance from the Somali Coast.



- 4.3** Somali pirates seek to place their skiffs alongside the ship being attacked to enable one or more armed pirates to climb onboard. Pirates frequently use long lightweight ladders to climb up the side of the vessel being attacked. Once onboard the pirate (or pirates) will generally make their way to the bridge to take control of the vessel. Once on the bridge the pirate/pirates will demand that the ship slows/stops to enable further pirates to board.

- 4.4** Attacks have taken place at most times of the day. However, many pirate attacks have taken place early in the morning, at first light. Attacks have occurred at night, but this is less common.
- 4.5** It is not uncommon for pirates to use small arms fire and Rocket Propelled Grenades (RPGs) in an effort to intimidate Masters of ships to reduce speed and stop to allow the pirates to board. In what are difficult circumstances, it is very important to maintain Full Sea Speed, increasing speed where possible, and using careful manoeuvring to resist the attack.
- 4.6** The majority of attempted hijacks have been repelled by ship's crew who have planned and trained in advance of the passage and applied the BMPs contained within this booklet.

Section 5

Implementing BMP

5.1 Not all measures discussed in this booklet may be applicable for every ship type. Therefore, as part of the Risk Assessment, it is important to determine which of the BMP will be most suitable for individual ships.

5.2 An essential part of BMP that applies to all ships is liaison with Naval forces. This is to ensure that Naval forces are aware of the sea passage that a ship is about to embark upon and how vulnerable that ship is to pirate attack. This information is essential to enable the Naval forces to best use the assets available to them. Once ships have commenced passage it is important that they continue to update the Naval forces on progress. The three key Naval organisations to contact are:

5.2.1 The Maritime Security Centre – Horn of Africa (MSCHOA) is the planning and coordination authority for EU forces (EU NAVFOR) in the Gulf of Aden and the Somalia Basin. (See contact details at Annex A.)

5.2.2 UKMTO is the first point of contact for ships in the region. The day-to-day interface between Masters and Naval forces is provided by UKMTO, who talk to the ships and liaise directly with MSCHOA and the Naval commanders at sea. UKMTO require regular updates on the position and intended movements of ships. They use this information to help the Naval units maintain an accurate picture of shipping. (See contact details at Annex A). A copy of the UKMTO Vessel Position Reporting Form is attached at Annex B.

5.2.3 The Maritime Liaison Office Bahrain (MARLO) operates as a conduit for information exchange between the Combined Maritime Forces (CMF) and industry within the region. (See contact details at Annex A).

Section 6

Company Planning

- 6.1** It is strongly recommended that ship operators register for access to the restricted sections of the MSCHOA website (www.mschoa.org) prior to entering the High Risk Area as it contains additional and updated information.
- 6.2** On entering the UKMTO Voluntary Reporting Area (or High Risk Area) – an area bounded by Suez to the North, 10°S and 78°E – ensure that a UKMTO Vessel Position Reporting Form is sent (this can be done by either the ship or ship operator).
- 6.3** 4-5 days before the vessel enters the International Recommended Transit Corridor (IRTC), ensure that a 'Vessel Movement Registration Form' has been submitted to MSCHOA (either on line, by email or by fax –see contact details at Annex A)
- 6.4** Review the Ship Security Assessment (SSA) and implementation of the Ship Security Plan (SSP), as required by the **International Ship and Port Facility Security Code** (ISPS), to counter the piracy threat, including the addition of UKMTO (as a recognised emergency response authority), as an SSAS recipient.
- 6.5** The Company Security Officer (CSO) is encouraged to see that a contingency plan is in place for a passage through the High Risk Area, and that this is exercised, briefed and discussed with the Master and the Ship Security Officer (SSO).
- 6.6** Be aware of any specific threats within the High Risk Areas that have been promulgated (by for example Navigational Warnings on SAT C or alerts on the MSCHOA website – www.mschoa.org).

- 6.7 Offer the Ship's Master guidance with regard to the recommended routeing through the High Risk Area and available methods of transiting the IRTC (eg Group Transit or national convoy where these exist). Reference should be made to the MSCHOA website for the latest routeing guidance (see contact details at Annex A).
- 6.8 Conduct crew training sessions prior to transits and debriefing sessions post transits.
- 6.9 The provision of carefully planned and installed **Self Protection Measures** (SPMs) prior to transiting the High Risk Area is very strongly recommended. Suggested SPMs are set out within this booklet. The use of SPMs significantly increases the prospects of a ship resisting a pirate attack.
- 6.10 Consider additional resources to enhance watch-keeping numbers.
- 6.11 The use of additional private security guards is at the discretion of the company, but the use of armed guards is not recommended.

Section 7

Masters' Planning

- 7.1** On entering the UKMTO Voluntary Reporting Area (or High Risk Area) – an area bounded by Suez to the North, 10°S and 78°E – ensure that a UKMTO Vessel Position Reporting Form is sent (this can be done by either the ship or ship operator).
- 7.2** 4-5 days before the vessel enters the Internationally Recommended Transit Corridor (IRTC) ensure that a 'Vessel Movement Registration Form' has been submitted to MSCHOA (either online, by email or fax – see contact details at Annex A).
- 7.3** Prior to entry into the High Risk Area it is recommended that the crew should be briefed on the preparations and a drill conducted prior to arrival in the area. The plan should be reviewed and all personnel briefed on their duties, including familiarity with the alarm signal signifying a piracy attack, an all clear and the appropriate response to each.
- 7.4** Masters are advised to also prepare an emergency communication plan, to include all essential emergency contact numbers and prepared messages, which should be ready at hand or permanently displayed near the communications panel (eg telephone numbers of MSCHOA, IMB, PRC, CSO etc – see list of Contacts at Annex A).
- 7.5** Define the ship's AIS policy: The Master has the discretion to switch off the AIS if he believes that its use increases the ship's vulnerability. To provide Naval forces with tracking information within the Gulf of Aden it is recommended that AIS transmission is left on, but is restricted to ship's identity, position, course, speed, navigational status and safety-related information. Outside of the Gulf of Aden, in other parts of the

High Risk Area, the decision on AIS policy is again left to the Master's discretion, but current Naval advice is to turn it off completely. If in doubt this can be verified with MSCHOA.

- 7.6** If the AIS is switched off it should be activated at the time of an attack.

Section 8

Prior to Transit – Voyage Planning

- 8.1** Vessels are encouraged to report their noon position, course, speed, and destination to UKMTO while operating in the Voluntary Reporting Area, which is also the High Risk Area, using the UKMTO Vessel Position Reporting Form (see Annex B).
- 8.2** Vessels are also encouraged to increase the frequency of such reports to six hourly intervals when within six hours of entering or navigating within the IRTC.
- 8.3** Inside the Gulf of Aden
- i. It is strongly recommended that ships navigate within the IRTC, where Naval forces are concentrated. Westbound ships should navigate to the northern part portion of the corridor, and eastbound ships should navigate in the southern part of the IRTC.
 - ii. Naval Forces, coordinated by MSCHOA, operate the ‘Group Transit’ scheme within the IRTC. This scheme groups vessels together by speed for maximum protection for their transit through the IRTC. Further guidance on the Group Transit scheme, including the departure timings for the different groups, are included on the MSCHOA website or can be obtained by fax from MSCHOA (see contact details at Annex A). Use of the Group Transit scheme is recommended. Masters should note that warships might not be within visual range of the ships in the Group Transit, but this does not lessen the protection afforded by the scheme.



- iii. Ships may be asked to make adjustments to passage plans to conform to MSCHOA routeing advice. Ships joining a Group Transit should:
 - Carefully time their arrival to avoid a slow speed approach to the forming up point (Point A or B)
 - avoid waiting at the forming up point (Point A or B).
 - Note that ships are particularly vulnerable to a pirate attack if they slowly approach or wait at the forming up points (Points A&B).

- iv. Ships should avoid entering Yemeni Territorial Waters (12 miles) while on transit as it is not possible for international Naval forces (non-Yemeni) to protect ships that are attacked inside Yemeni Territorial Waters.

8.4 The High Risk Area (Outside the Gulf of Aden)

- i. Great care should be taken in voyage planning in the High Risk Area given that pirate attacks are taking place at extreme range from the Somali Coast. It is important to obtain the latest information from MSCHOA before planning and executing a voyage. Details can be obtained from the MSCHOA website or by fax (see contact details at Annex A).
- ii. Masters should update UKMTO on their intended movements using the UKMTO Vessel Position Reporting Form (see Annex B).

Section 9

Prior to Transit - Self Protection Measures

9.1 The guidance within this section primarily focuses on preparations that might be within the capability of the ship's crew, using equipment that will normally be readily available. The guidance is based on experience of piracy attacks to date and may require amendment over time if the pirates change their methods. Owners of vessels that make frequent transits through the High Risk Area may consider making further alterations to the vessel beyond the scope of this booklet, and/or provide additional equipment, and/or manpower as a means of further reducing the risk of piracy attack.

9.2 Watchkeeping and Enhanced Vigilance

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

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



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

9.3 Closed Circuit Television (CCTV)

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

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

- further CCTV monitors could be located at the Safe Muster Point/Citadel (see page 33)
- recorded CCTV footage may provide useful evidence after an attack.

9.4 Manoeuvring Practice

Where navigationally safe to do so, Masters are encouraged to practice manoeuvring their ships to establish which series of helm orders produce the most difficult sea conditions for pirate skiffs trying to attack, without causing a significant reduction in the ship's speed.

9.5 Alarms

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

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

9.6 Upper Deck Lighting

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

- Weather deck lighting around the accommodation block and rear facing lighting on the poop deck, consistent with

Rule 20(b) of the International Regulations for the Preventing Collision at Sea.

- search lights for immediate use when required
- it is, however, recommended that ships proceed with just their navigation lights illuminated, with the lighting described above extinguished. Once pirates have been identified or an attack commences, illuminating the lighting described above demonstrates to the pirates that they have been observed.

Navigation lights should not be switched off at night.

9.7 Deny Use of Ship's Tools and Equipment

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

9.8 Protection of Equipment Stored on the Upper Deck

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

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

9.9 Control of Access to Accommodation and Machinery Spaces

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

- All doors and hatches providing access to the accommodation and machinery spaces should be secured to prevent them being opened by pirates gaining access to the upper deck of the vessel
- careful consideration should be given to the means of securing doors and hatches
- it is recommended that once doors and hatches are secured, a designated and limited number are used for routine access when required, as controlled by the Officer of the Watch
- consideration should be given to blocking or lifting external ladders on the accommodation block to prevent their use and to restrict external access to the bridge
- where the door or hatch is located on an escape route from a manned compartment, it is essential that it can be opened by a seafarer trying to effect an exit by that route. Where the door or hatch is locked it is essential that a key is available, in a clear position by the door or hatch
- where doors and hatches are required to be closed for watertight integrity, ensure all clips are fully dogged down in addition to any locks.

9.10 Enhanced Bridge Protection



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

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

- Kevlar jackets and helmets available for the bridge team to provide a level of protection for those on the bridge during an attack. (If possible, jackets and helmets should be in a non-military colour)
- while most bridge windows are laminated, further protection against flying glass can be provided by the application of security glass film
- fabricated metal (steel/aluminium) plates for the side and rear bridge windows and the bridge wing door windows, which may be rapidly secured in place in the event of an attack
- the after part of both bridge wings (often open) can be protected by a wall of sandbags.

9.11 Physical Barriers

Pirates typically use ladders and grappling hooks with rope attached to board vessels underway, so physical barriers should be used to make this difficult. Before constructing any physical barriers it is recommended that a survey is conducted to identify areas vulnerable to pirates trying to gain access; this may require constructing significant lengths of barriers to protect the ship. A robust razor wire barrier is particularly effective if constructed outboard of, or overhanging, the ship's structure so as to make it difficult for pirates to hook on their boarding ladder (or grappling hook) to the ship's structure.



- Razor wire (also known as barbed tape) creates an effective barrier when carefully deployed. The barbs on the wire are designed to have a piercing and gripping action. Care should be taken when selecting appropriate razor wire as the quality (wire gauge and frequency of barbs) and type will vary considerably. Lower quality razor wire is likely to be less effective. Three main types of razor wire are commonly available – Unclipped (straight strand), Spiral (like a telephone cord) and Concertina (linked spirals). Concertina razor wire is recommended as the linked spirals make it the most effective barrier. Razor wire should be constructed of high tensile wire, which is difficult to cut with hand tools. Concertina razor wire coil diameters of approximately 730 mm or 980 mm are recommended.



- It is important that the razor wire is properly secured and it is recommended that clips or wire ties are used every 50 cm, alternating between the upper and lower strands. Try not to leave gaps in the razor wire coverage as these are likely to be exploited by pirates. A double roll of Concertina razor wire provides a very effective barrier. When deploying razor wire personal protective equipment to protect hands, arms and faces must be used. Moving razor wire using wire hooks (like meat hooks) rather than by gloved hand reduces the risk of injury. It is recommended that razor wire is provided in shorter sections (eg 10metre section) as it is significantly easier and safer to use than larger sections which can be very heavy and unwieldy.
- coating gunwhales and other potentially vulnerable structures with 'anti-climb' paint may also be considered
- electrified barriers are not recommended for hydrocarbon carrying vessels, but following a safety assessment can be appropriate and effective for some other types of vessel

- it is recommended that warning signs of the electrified fence or barrier are displayed - inward facing in English/language of the crew, outward facing in Somali
- the use of such outward facing warning signs might also be considered even if no part of the barrier is actually electrified.





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

9.12 Water Spray and Foam Monitors

The use of water spray and/or foam monitors has been found to be effective in deterring or delaying pirates attempting to board a vessel. The use of water can make it difficult for a pirate skiff to remain alongside and makes it significantly more difficult for a pirate to try to climb onboard.



Picture courtesy of NATO (2008)

Manual operation of hoses and foam monitors is not recommended as this is likely to place the operator in a particularly exposed position.

- It is recommended that hoses and foam monitors (delivering water) should be fixed in position to cover likely pirate access routes. Some ships have used spray rails using a GRP(Glass Reinforced Plastic) water main, with spray nozzles to produce a water curtain to cover larger areas



- heating the water used to deter pirates has also been found to be very effective in deterring attacks
- once rigged and fixed in position it is recommended that hoses and foam monitors are in a ready state, requiring just the remote activation of fire pumps to commence delivery of water. Actual foam supply should not be used (unless an additional quantity for this specific purpose is carried) as this will be depleted relatively quickly and will leave the vessel exposed in the event that the foam supply is required for firefighting purposes
- observe the water and foam monitor spray achieved by the equipment, once fixed in position, to ensure effective coverage of vulnerable areas
- improved water coverage may be achieved by using baffle plates fixed a short distance in front of the nozzle.



9.13 Safe Muster Points/Citadels

Any decision to navigate in areas where the vessel's security may be threatened requires careful consideration and detailed planning to best ensure the safety of the vessel and crew. Consider establishing either an internal 'Safe Muster Point' or a secure 'Citadel'. The guidelines for each are as follows:

(i) Safe Muster Point Guidelines:

A safe muster station is a designated area chosen to provide maximum physical protection to the crew. In the event of a pirate attack, those members of the crew not required on the bridge or MCR will muster. A Safe Muster Point is a short-term safe haven.

(ii) Citadel Guidelines:

A Citadel is a designated pre-planned area purpose built into the ship where, in the event of imminent boarding by pirates, all crew will seek protection. A Citadel is designed and constructed to resist a determined pirate trying to gain entry. Such a space would probably have, but not be limited to, its own self-contained air-conditioning, emergency rations, water supply, good external communications, emergency shut-down capability for the main and auxiliary engines, and remotely operated CCTV cameras.

A Citadel is to provide longer term protection of the crew.

Ship Operators and Masters are strongly advised to check directly with MSCHOA regarding the use of Citadels (see contact details in Annex A).

The whole concept of the Citadel approach is lost if any crew member is left outside before it is secured.

Section 10

If a Pirate Attack is Imminent

- 10.1** Follow the ship's pre-prepared contingency plan.
- 10.2** Activate the Emergency Communication Plan and report the attack immediately to the single primary point of contact in the event of an attack, which is UKMTO. (MSCHOA acts as a back-up contact point in the event of an attack).
- 10.3** Activate the Ship Security Alert System (SSAS), which will alert your Company Security Officer and Flag State. Post-attack reports should be communicated as quickly as possible to contacts listed at Annex A using the report form in Annex C.



- 10.4** If the Master has exercised his right to turn off the Automatic Identification System (AIS) during transit of the piracy area, this should be turned on once the ship comes under pirate attack.
- 10.5** Sound the emergency alarm and make a 'pirate attack' (PA) announcement in accordance with the ship's emergency plan.

- 10.6** Make a 'Mayday' call on VHF Ch. 16 (and backup Ch. 08, which is monitored by naval units). Send a distress message via the DSC (Digital Selective Calling) system and Inmarsat-C, as applicable. Establish telephone communication with UKMTO.
- 10.7** Prevent skiffs closing on the ship by altering course and increasing speed where possible. Pirates have great difficulty boarding a ship that is:
1. Making way at over 18 knots.
 2. Manoeuvring – it is recommended that, as early as possible, Masters undertake continuous small zigzag manoeuvres to further deter boarding while maintaining speed. Consider increasing the pirates' exposure to wind/waves and using bow wave and stern wash to restrict pirate craft coming alongside. (Masters and the Officer of the Watch should be fully familiar with the handling and manoeuvring characteristics of the vessel and should not wait until attacked to practice their evasive maneuvering techniques). Particular attention should be given to the effects of varying helm orders and the impact these can have on the ship's speed.
 3. Activate water and spray and other appropriate defensive measures.

10.8 All crew who are not involved in counter-piracy operations should be mustered, either at their designated Safe Muster Point, or the Citadel if the ship is appropriately constructed.



Section 11

If Boarded by Pirates

- 11.1** Try to remain calm.
- 11.2** Before the pirates gain access to the bridge, inform UKMTO and, if time permits, the Company.
- 11.3** Offer no resistance to the pirates once they reach the bridge. Once on the bridge the pirates are likely to be highly agitated, so remaining calm and cooperating fully will greatly reduce the risk of harm.
- 11.4** If the bridge/engine room is to be evacuated the main engine should be stopped all way taken off the vessel if possible, and the ship navigated clear of other ships. All remaining crew members should proceed to the designated Safe Muster Point with their hands visible and on their heads.



- 11.5** If the ship is constructed with a Citadel and the Ship's Security Plan (SSP) involves the evacuation of all persons to the Citadel, ensure that the main engine is stopped, the vessel has adequate sea room to drift and the Citadel space is properly secured.
- 11.6** Owners and Seafarers are reminded that they should check directly with MSCHOA regarding the latest guidance regarding the use of Citadels. Irrespective of the latest guidance it should be remembered that the whole concept of a Citadel approach is lost if any crew member is left outside before it is secured.
- 11.7** Leave any CCTV running.

DO NOT use firearms, even if available.

DO NOT make any sudden movements around pirates.

DO NOT use flash photography.

DO NOT use flares of other pyrotechnics as weapons.

Section 12

In the Event of Military Action

- 12.1** In the event that military personnel take action onboard the ship, all personnel should keep low to the deck and cover their head with both hands, with hands visible.
- 12.2** Do not use flash photography.
- 12.3** Be prepared to be challenged on your identity. Brief and prepare ship's personnel to expect this and to cooperate fully during any military action onboard.
- 12.4** Be aware that English is not the working language of all Naval forces in the region.





Section 13

Post Incident Reporting

- 13.1** Following any piracy attack or suspicious activity, it is vital that a detailed report of the event is reported to UKMTO, MSCHOA, and the IMB.
- 13.2** This will ensure full analysis and trends in piracy activity are established and will enable assessment of piracy techniques or changes in tactics, in addition to ensuring appropriate warnings can be issued to other Merchant shipping in the vicinity.
- 13.3** Masters are, therefore, requested to complete the standardised piracy report form contained in Annex D.
- 13.4** Ship Operators and Masters are also encouraged to forward a copy of the completed standardised piracy report (contained in Annex D) to their Flag State.

Section 14

Updating Best Management Practices

14.1 The Industry Organisations engaged in producing this Booklet will endeavour to meet regularly and will ensure the BMPs are updated as necessary, based upon operational experience and lessons learned.



ANNEX A

Useful Contact Details

1) UKMTO

- Email: UKMTO@eim.ae
- Telephone: +971 50 552 3215

2) MSCHOA

- Via Website for reporting: www.mschoa.org
- Telephone: +44 (0) 1923 958545
- Fax: +44 (0) 1923 958520
- Email: postmaster@mschoa.org

3) NATO SHIPPING CENTRE

- Website www.shipping.nato.int
- Email: info@shipping.nato.int
- Telephone: +44(0)1923 956574
- Fax: +44(0)1923 956575

4) MARLO

- Email: Marlo.bahrain@me.navy.mi
- Office: +973 1785 3925
- Duty (24hrs): +973 3940 1395

5) IMB

- Email: piracy@icc-ccs.org
- Telephone: +60 3 2031 0014
- Fax: +60 3 2078 5769
- Telex: MA34199 IMBPC1

ANNEX B

UKMTO Vessel Position Reporting Form

Masters and Owners should check with the MSCHOA website for the latest information regarding the UKMTO Voluntary reporting areas at <http://www.mschoa.eu> or with UKMTO.

UKMTO Vessel Position Reporting Form (*Transmit at least Once Daily*)

1	Ship Name	
2	Flag	
3	IMO Number	
4	INMARSAT Telephone Number	
5	Time & Position	
6	Course	
7	Passage Speed	
8	Freeboard	
9	Cargo	
10	Destination and Estimated Time of Arrival	
11	Name and contact details of Company Security Officer	
12	Nationality of Master and Crew	

ANNEX C

Piracy Definitions

1. It is important to try to harmonise common definitions and guidelines for Piracy attacks & suspicious activity because common reporting within the industry will ensure:
 - 1.1 Harmonised data assessment.
 - 1.2 Provision of consistent reporting.
 - 1.3 Harmonised Intelligence gathering.
 - 1.4 Better accuracy in assessing the efficiency of (Naval) counter piracy operations and BMP effectiveness as well as defining future end dates to operations.
2. 'Piracy' is defined in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (article 101). However, for the purposes of these BMP, it is important to provide clear, practical, working guidance to the Industry to enable accurate and consistent assessment, of suspicious activity and piracy attacks.
3. The following are the BMP Guidelines to assist in assessing what is a Piracy attack and what is suspicious activity
 - 3.1 A piracy attack may include (but is not limited to) actions such as the following:
 - 3.1.1 The use of violence against the ship or its personnel, or any attempt to use violence.
 - 3.1.2 Attempt(s) to board the vessel where the Master suspects the persons are pirates.
 - 3.1.3 An actual boarding whether successful in gaining control of the vessel or not.

3.1.4 Attempts to overcome the ship's self protection measures by the use of:

- i. Ladders.
- ii. Grappling hooks.
- iii. Weapons deliberately used against or at the vessel.

4. Guidelines for defining suspicious activity:

4.1 Action taken by another craft may be deemed suspicious if any of the following occur (the list is not exhaustive):

4.1.1 A definite course alteration towards the craft associated with a rapid increase in speed, by the suspected craft, which cannot be accounted for as normal activity in the circumstances prevailing in the area.

4.1.2 Small craft sailing on the same course and speed for an uncommon period and distance, not in keeping with normal fishing or other circumstances prevailing in the area.

4.1.3 Sudden changes in course towards the vessel and aggressive behavior.



5. Guidance Note:

5.1 In helping to evaluate suspicious activity, the following may be of assistance to determine the nature of a suspect vessel:

1. The number of crew on board relative to its size.
2. The Closest Point of Approach (CPA).
3. The existence of unusual and non-fishing equipment, eg ladders, climbing hooks or large amounts of fuel onboard.
4. If the craft is armed in excess of the level commonly experienced in the area.
5. If weapons are fired in the air.

5.2 This is not an exhaustive listing. Other events, activity and craft may be deemed suspicious by the Master of a merchant vessel having due regard to their own seagoing experiences within the High Risk Area or Gulf of Aden areas and information shared amongst the international maritime community. The examples above are to be treated only as guidance and are not definitive or exhaustive.

ANNEX D

Follow-up Report

PIRACY ATTACK REPORT VESSEL PARTICULARS/DETAILS:

1	Name of Ship:
2	IMO No:
3	Flag:
4	Call Sign:
5	Type of Ship:
6	Tonnages: GRT: NRT: DWT:
7	Owners (Address & Contact Details):
8	Managers (Address & Contact Details):
9	Last Port/Next Port:
10	Cargo Details: (Type/Quantity)

Details of Raiding Party

24	Number of Pirates/Robbers:
25	Dress/Physical Appearance:
26	Language Spoken:
27	Weapons Used:
28	Distinctive Details:
29	Craft Used:
30	Method of Approach:
31	Duration of Attack:
32	Aggressive/Violent:

Further Details

33	Action Taken by Master and Crew and its effectiveness:
34	Was Incident Reported to the Coastal Authority? If so to Whom?
35	Preferred Communications with Reporting Ship: Appropriate Coast Radio Station/HF/MF/VHF/INMARSAT IDS (Plus Ocean Region Code)/MMSI
36	Action Taken by the Authorities:
37	Number of Crew/Nationality:
38	Please Attach with this Report – A Brief Description/Full Report/Master – Crew Statement of the Attack/Photographs taken if any.
39	Details of Self Protection Measures.

ANNEX E

The following guidance for vessels engaged in fishing has been provided by the following national fishing industry associations:

OPAGAC – Organizacion de Productores Asociados de Grandes Atuneros Congeladores

ANABAC – Asociacion Nacional de Armadores de Buques Atuneros Congeladores

ADDITIONAL GUIDANCE FOR VESSELS ENGAGED IN FISHING, IN THE GULF OF ADEN AND OFF THE COAST OF SOMALIA

I. RECOMMENDATIONS TO VESSELS IN FISHING ZONES

- 1. Non-Somali fishing vessels should avoid operating or transiting within 200 nm of the coast of Somalia, irrespective of whether or not they had been issued with licenses to do so.**
- 2. Do not start fishing operations when the radar indicates the presence of unidentified boats.**
- 3. If polyester skiffs of a type typically used by pirates are sighted, move away from them at full speed, sailing into the wind and sea to make their navigation more difficult.**
- 4. Avoid stopping at night, be alert and maintain bridge, deck and engine-room watch.**
- 5. During fishing operations, when the vessel is more vulnerable, be alert and maintain radar watch in order to give maximum notice to the Authorities if an attack is in progress.**
- 6. While navigating at night, use only the mandatory navigation and safety lights so as to prevent the glow of lighting attracting**

pirates, who sometimes are in boats without radar and are just lurking around.

7. While the vessel is drifting while fishing at night, keep guard at the bridge on deck and in the engine-room. Use only mandatory navigation and safety lights.
8. The engine must be ready for an immediate start-up.
9. Keep away from unidentified ships.
10. Use VHF as little as possible to avoid being heard by pirates and to make location more difficult.
11. Activate the AIS when maritime patrol aircraft are operating in the area to facilitate identification and tracking.

II. IDENTIFICATION

1. Managers are strongly recommended to register their fishing vessels with MSCHOA for the whole period of activity off the coast of Somalia. This should include communicating a full list of the crewmen on board and their vessels' intentions, if possible.
2. Carry out training prior to passage or fishing operations in the area.
3. Whenever fishing vessels are equipped with VMS devices, their manager should provide MSCHOA with access to VMS data.
4. Fishing vessels should avoid sailing through areas where they have been informed that suspected pirate 'mother ships' have been identified and should use all means to detect, as soon as possible, any movement of large or small vessels that could be suspicious.
5. Fishing vessels should always identify themselves upon request from aircraft or ships from Operation ATALANTA or other international or national anti-piracy operation.



6. Military, merchant and fishing vessels should respond without delay to any identification request made by a fishing vessel being approached (to facilitate early action to make escape possible, especially if the vessel is fishing).

III. IN CASE OF ATTACK

1. In case of an attack or sighting a suspicious craft, warn the Authorities (UKMTO and MSCHOA) and the rest of the fleet.
2. Communicate the contact details of the second master of the vessel (who is on land) whose knowledge of the vessel could contribute to the success of a military intervention.

Recommendations only for Purse Seiners

3. Evacuate all personnel from the deck and the crow's nest.
4. If pirates have taken control of the vessel and the purse seine is spread out, encourage the pirates to allow the nets to be recovered. If recovery of the purse seine is allowed, follow the instructions for its stowage and explain the functioning of the gear to avoid misunderstanding.

ANNEX F

Organisations

i. BMP3 Signatories



BIMCO

BIMCO is an independent international shipping association, with a membership composed of ship owners, managers, brokers agents and many other stakeholders with vested interests in the shipping industry. The association acts on behalf of its global membership to promote higher standards and greater harmony in regulatory matters. It is a catalyst for the development and promotion of fair and equitable international shipping policy BIMCO is accredited as a Non-Governmental Organisation (NGO), holds observer status with a number of United Nations organs and is in close dialogue with maritime administrations regulatory institutions and other stakeholders within the EU the USA and Asia. The association provides one of the most comprehensive sources of practical shipping information and a broad range of advisory and consulting services to its members www.bimco.org



ICS

International Chamber of Shipping

The International Chamber of Shipping (ICS) is the international trade association for merchant ship operators. ICS represents the collective views of the international industry from different nations, sectors and trades. ICS membership comprises national shipowners' associations representing over 75% of the world's merchant fleet. A major focus of ICS activity is the International Maritime Organization (IMO) the United Nations agency with responsibility for the safety of life at sea and the protection of the marine environment. ICS is heavily involved in a wide variety of areas including any technical, legal and operational matters affecting merchant ships. ICS is unique in that it represents the global interests of all the different trades in the industry: bulk carrier operators, tanker operators, passenger ship operators and container liner trades, including shipowners and third party ship managers.



IGP&I. (The International Group of P&I Clubs).

The thirteen principal underwriting member clubs of the International Group of P&I Clubs ('the Group') between them provide liability cover (protection and indemnity) for approximately 90% of the world's ocean-going tonnage. Each Group club is an independent, non-profit making mutual insurance association, providing cover for its ship-owner and charterer members against third party liabilities relating to the use and operation of ships. Each club is controlled by its members through a board of directors or committee elected from the membership Clubs cover a wide range of liabilities including personal injury to crew, passengers and others on board, cargo loss and damage, oil pollution, wreck removal and dock damage. Clubs also provide a wide range of services to their members on claims, legal issues and loss prevention, and often play a leading role in the management of casualties www.igpandi.org



IMB

ICC International Maritime Bureau

The main objective of the International Maritime Bureau's Piracy Reporting Centre (PRC) is to be the first point of contact for the shipmaster to report an actual or attempted attack or even suspicious movements thus initiating the process of response. The PRC raises awareness within the shipping industry, which includes the shipmaster, ship-owner, insurance companies, traders, etc, of the areas of high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies on board ships. They work closely with various governments and law enforcement agencies, and are involved in information sharing in an attempt to reduce and ultimately eradicate piracy.



INTERCARGO

INTERCARGO is the short name for the International Association of Dry Cargo Ship-owners. Since 1980, it has represented the interests of owners, operators and managers of dry cargo shipping and works closely with the other international associations to promote a safe, high quality, efficient and profitable industry.



INTERTANKO

INTERTANKO is the International Association of Independent Tanker Owners. INTERTANKO has been the voice of independent tanker owners since 1970, ensuring that the oil that keeps the world turning is shipped safely, responsibly and competitively. Membership is open to independent tanker owners and operators of oil and chemical tankers, i.e. non-oil companies and non-state controlled tanker owners, who fulfil the Association's membership criteria. Independent owners operate some 80% of the world's tanker fleet and the vast majority are INTERTANKO members. As of January 2010, the organisation had 250 members, whose combined fleet comprises some 3,050 tankers totalling 260 million dwt. INTERTANKO's associate membership stands at some 330 companies with an interest in shipping of oil and chemicals. www.intertanko.com



INTERNATIONAL SHIPPING FEDERATION

The International Shipping Federation (ISF) is the principal international employers' organisation for the shipping industry, representing all sectors and trades. ISF membership comprises national shipowners' associations whose member shipping companies together operate 75% of the world's merchant tonnage and employ a commensurate proportion of the world's 1.25 million seafarers. Established in 1909, ISF is concerned with all labour affairs, manpower and training, and seafarers' health and welfare issues that may have an impact on international shipping.

ITF (International Transport Workers Federation)



ITF (International Transport Workers Federation) The International Transport Workers' Federation (ITF) is an international trade union federation of transport workers' unions. Any independent trade union with members in the transport industry is eligible for membership of the ITF. The ITF has been helping seafarers since 1896 and today represents the interests of seafarers worldwide, of whom over 600,000 are members of ITF affiliated unions. The ITF is working to improve conditions for seafarers of all nationalities and to ensure adequate regulation of the shipping industry to protect the interests and rights of the workers. The ITF helps crews regardless of their nationality or the flag of their ship.



The International Parcel Tankers Association

The International Parcel Tankers Association was formed in 1987 to represent the interests of the specialised chemical/parcel tanker fleet and has since developed into an established representative body for ship owners operating IMO classified chemical/parcel tankers, being recognised as a focal point through which regulatory authorities and trade organisations may liaise with such owners. IPTA was granted consultative status as a Non-Governmental Organisation to the International Maritime Organization (IMO) in 1997 and is wholly supportive of the IMO as the only body to introduce and monitor compliance with international maritime legislation.



JHC (Joint Hull Committee)

The Joint Hull Committee (JHC) was founded in 1910 and comprises underwriting representatives from both Lloyd's syndicates and the IUA company market. It discusses all matters connected with hull insurance, and represents the interests of those writing marine hull business within the London market. It liaises widely with the broad maritime sector. The JHC, from time to time, issues circulars to the market which are of relevance to the hull underwriting community and these may include new model wordings, information about developments in shipping, and notices of briefings.

Joint War Committee JWC (Joint War Committee)

The Joint War Committee (JWC) comprises underwriting representatives from both Lloyd's syndicates and the IUA company market. It discusses all matters connected with hull war insurance, and represents the interests of those writing marine hull war business within the London market. JWC takes advice from independent security advisers and from time to time, issues updates to its published Listed Areas. These are the areas of perceived enhanced risk for those writing the range of perils insured in the war market where coverage may be arranged against the risks of confiscation, derelict weapons, piracy, strikes, terrorism and war.



Oil Companies International Marine Forum (OCIMF)

The Oil Companies International Marine Forum (OCIMF) is a voluntary association of oil companies having an interest in the shipment and terminalling of crude oil and oil products. Our mission is to be the foremost authority on the safe and environmentally responsible operation of oil tankers and terminals, promoting continuous improvement in standards of design and operation. www.ocimf.com



SIGTTO

(The Society of International Gas Tanker and Terminal Operators) was established in 1979 to encourage safe and responsible operation of liquefied gas tankers and marine terminals handling liquefied gas, to develop advice and guidance for best industry practice among its members and to promote criteria for best practice to all who either have responsibilities for, or an interest in, the continuing safety of gas tankers and terminals. The Society is registered as a 'not for profit' entity in Bermuda and is owned by its members who are predominately the owners of assets in the LPG/LNG ship and terminal business. The Society has observer status at the IMO. www.sigtto.org

ii. BMP3 is supported by:



EU NAVFOR. (The European Union Naval Force).

EUNAVFOR is the main coordinating authority which operates the Maritime Security Centre (Horn of Africa). Operation Atalanta includes the deployment of a major EU Naval Task Group into the region to improve maritime security off the Somali coast. Additionally the mission also encompasses a broad range of liaison, both regionally and with industry, to help establish best practices and to disseminate information through its 24/7 manned Maritime Security Centre-Horn of Africa (MSC-HOA) and through the website www.mschoa.org



MARLO The Maritime Liaison Office

The Maritime Liaison Office (MARLO) mission is to facilitate the exchange of information between the United States Navy, Combined Maritime Forces, and the commercial maritime community in the United States Central Command's (CENTCOM) Area of Responsibility. MARLO operates as a conduit for information focused on the safety and security of shipping and is committed to assisting all members of the commercial maritime community. To help combat piracy, MARLO serves as a secondary emergency point of contact for mariners in distress (after UKMTO) and also disseminates transit guidance to the maritime industry.



Maritime Security Centre Horn of Africa (MSCHOA)

The Maritime Security Centre – Horn of Africa (MSCHOA) aims to provide a service to mariners in the Gulf of Aden, the Somali Basin and off the Horn of Africa. It is a Coordination Centre dedicated to safeguarding legitimate freedom of navigation in the light of increasing risks of pirate attack against merchant shipping in the region, in support of the UN Security Council's Resolutions (UNSCR) 1814, 1816 and 1838. Through close dialogue with shipping companies, masters and other interested parties, MSCHOA will build up a picture of vulnerable shipping in these waters and their approaches. The Centre, which is manned by military and merchant navy personnel from several countries, will then coordinate with a range of military forces operating in the region to provide support and protection to mariners. There is a clear need to protect ships and their crews from illegitimate and dangerous attacks, safeguarding a key global trade route. www.mschoa.org



Operation Ocean Shield

Operation Ocean Shield is NATO's contribution to international efforts to combat piracy off the Horn of Africa. The operation develops a distinctive NATO role based on the broad strength of the Alliance by adopting a more comprehensive approach to counter-piracy efforts. NATO's counter piracy efforts focus on at-sea counter-piracy operations, support to the maritime community to take actions to reduce incidence of piracy, as well as regional -state counter-piracy capacity building. The operation is designed to complement the efforts of existing international organisations and forces operating in the area.



NATO Shipping Centre (NSC)

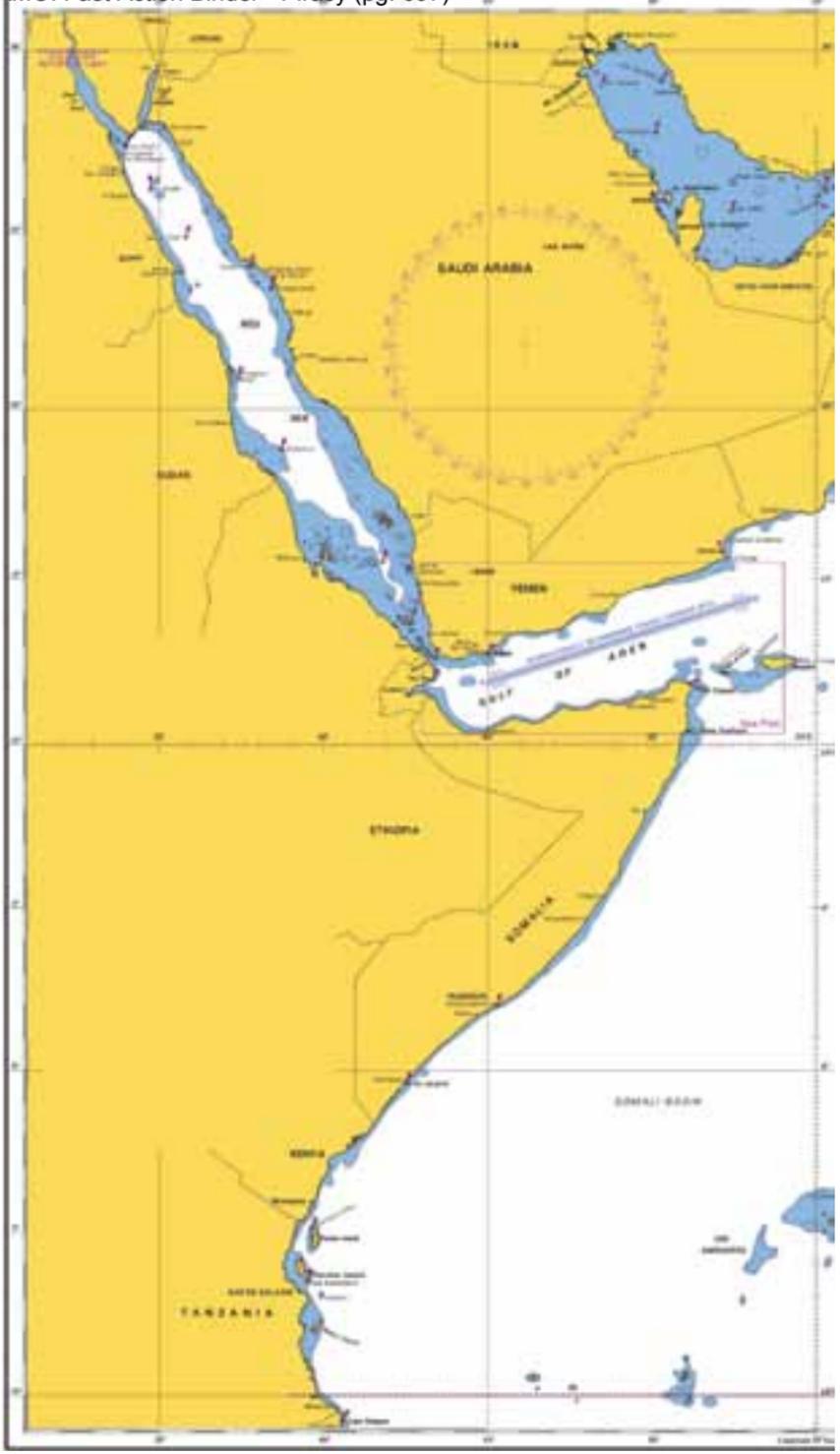
NATO Shipping Centre (NSC) provides the commercial link with NATO's Maritime Forces. The NSC is NATO's primary point of contact with the maritime community and is used by NATO as the tool for communicating and coordinating initiatives and efforts with other military actors (most notably UK MTO, MSCHOA and MARLO) as well as directly with the maritime community, and thereby supporting the overall efforts to reduce the incidence of piracy. www.shipping.nato.int

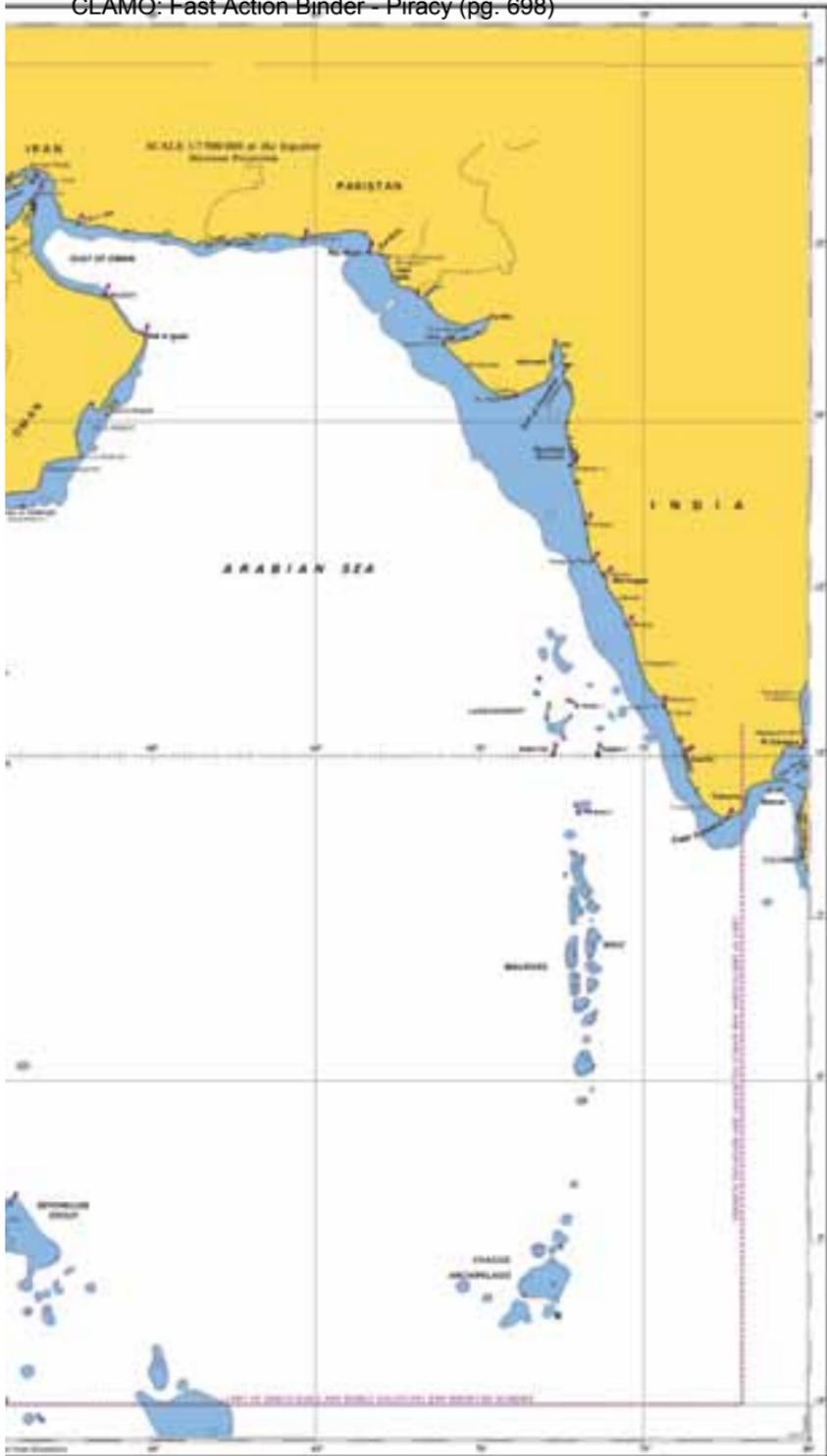


UKMTO

(The UK Royal Navy's Maritime Trade Organisation)

The UK Maritime Trade Operations (UKMTO) office in Dubai acts as the primary point of contact for merchant vessels and liaison with military forces in the region. UKMTO also administers the Voluntary Reporting Scheme, under which merchant vessels are encouraged to send regular reports, providing their position/course/ speed and ETA at their next port while transiting the region bound by Suez, 78°E and 10°S. UKMTO subsequently tracks vessels and the positional information is passed to CMF and EU headquarters. Emerging and relevant information affecting commercial traffic can then be passed directly to ships, rather than by company offices, improving responsiveness to any incident and saving time. For further information or to join the Voluntary Reporting Scheme, please contact UKMTO or MSCHOA Email: ukmto@eim.ae







WITHERBY **Seamanship**
INTERNATIONAL

UKMTO

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Center for Law and Military Operations

The Judge Advocate General's Legal Center and School

600 Massie Road

Charlottesville, Virginia 22903-1781

[CLAMO Website](#)