

**ASSURING THE FREEDOM OF AMERICANS
ON THE HIGH SEAS: THE UNITED STATES
RESPONSE TO PIRACY**

(112-17)

HEARING
BEFORE THE
SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
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FIRST SESSION

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¹Mr. Pendleton did not provide verbal testimony during the hearing.



U.S. House of Representatives
Committee on Transportation and Infrastructure

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March 11, 2011

MEMORANDUM

TO: Members, Subcommittee on Coast Guard and Maritime Transportation

FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation

RE: Hearing on "Assuring the Freedom of Americans on the High Seas: The United States' Response to Piracy"

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will hold an oversight hearing to review the efforts of the Federal government to safeguard U.S. and international interests against acts of piracy off the Horn of Africa and other high risk waters on Tuesday, March 15, 2011, at 10:00 a.m. in room 2167 Rayburn House Office Building.

BACKGROUND

Current Trends

There are currently no known U.S. citizens being held captive by Somali pirates. However, American citizens have been captured and killed in the recent past. In 2009, pirates boarded the U.S.-flagged MAERSK ALABAMA and captured the vessel's captain, Richard Phillips. The captain was later freed and his captors killed by Navy SEALs. In February 2011, Jean Adam, Scott Adam, Phyllis MacKay, and Bob Riggle were killed aboard their sail yacht the QUEST by pirates who had hijacked the vessel.

Although the MAERSK ALABAMA was boarded, Somali pirates have yet to successfully take control of a single U.S.-flagged commercial vessel. However, U.S.-

flagged vessels are incurring additional costs to employ anti-piracy best management practices (BMPs). Nevertheless, piracy still impacts U.S. trade, as much of the global supply chain passes through the Gulf of Aden and is carried aboard foreign-flagged vessels.

Piracy continues to be a major threat to international shipping, especially off the Horn of Africa. Between 2007 and September 2010, Somali pirates attacked more than 450 ships and taken nearly 2,400 hostages. In 2010, the estimated cost of piracy to the international economy was \$7 to \$12 billion.

In all, the International Maritime Bureau (IMB) reports 87 attacks worldwide thus far in 2011, including 13 hijackings. Sixty one of these attacks and all of the hijackings are credited to Somali pirates. Two hundred forty three hostages have been taken and seven killed. Somali pirates now hold 33 vessels and 711 hostages.

Since 2008, there have been several notable instances of attempted and successful attacks by Somali pirates. Below are details on some of the more high profiles cases:

M/V MAERSK ALABAMA: The *M/V MAERSK ALABAMA*, a U.S.-flagged cargo ship, was attacked by Somali pirates in April 2009. The crew sequestered themselves in the engine room while Captain Richard Phillips and three other crew members attempted to negotiate with the pirates. The men on deck with Phillips managed to lure one of the pirates below deck and take him hostage. The pirates on deck then took Captain Phillips hostage and retreated to a life raft. The *USS BAINBRIDGE* arrived on scene carrying a contingent of Navy SEALs and began negotiating for the Captain's release. When it appeared that the pirates were preparing to execute Phillips, the operational commander ordered the use of deadly force and three SEAL snipers fired simultaneously, killing all three pirates aboard the life raft. Phillips was recovered uninjured. The sole surviving pirate was tried in Federal court and sentenced to 34 years in prison.

M/V LIBERTY SUN: The *M/V LIBERTY SUN*, a U.S.-flagged cargo ship, was attacked by pirates in April 2009. Pirates fired rocket-propelled grenades (RPGs) and automatic weapons at the ship, which sustained some damage. The ship increased speed and began evasive maneuvers, which succeeded in forcing the pirates to break off the attack. The U.S. Navy responded, though the pirates had already departed, and escorted the ship to its destination in Mombasa, Kenya. None of the crew were taken hostage or injured during the assault.

USS NICHOLAS: The *USS NICHOLAS*, a guided missile frigate, was attacked by pirates in April 2010 and took small arms fire. *NICHOLAS* fired back and gave chase, ultimately capturing five pirates, one skiff, one mother ship, and small arms.

USS ASHLAND: The USS ASHLAND, a Dock Landing Ship (LSD), was also attacked by Somali pirates in April 2010. Six pirates fired on the ASHLAND with small arms. The ASHLAND fired back, setting the pirates' skiff ablaze and ultimately sinking it. All six pirates were apprehended.

M/V MAGELLAN STAR: The German-owned, Antigua and Barbuda- flagged M/V MAGELLAN STAR was attacked in September 2010. The crew managed to kill the ship's engines, call for help, and barricade themselves in a safe room before the pirates took control of the vessel. The U.S. Marine Corps' Maritime Raid Force retook the vessel with no shots fired. Nine pirates were apprehended and the crew was liberated.

Sailing Vessel QUEST: The Sailing Vessel QUEST was attacked hijacked by pirates in February 2011. Jean and Scott Adam from California and Phyllis MacKay and Bob Riggle from Washington state, all American citizens, were onboard at the time and were taken hostage. The U.S. Navy and Combined Task Force 151 (CTF-151) forces responded and began to negotiate for the hostages release. Two pirates boarded the USS STERETT to conduct negotiations. The pirates still aboard the QUEST fired a rocket-propelled grenade (RPG) at the STERETT, but it missed. Gunfire was heard aboard the QUEST. U.S. Navy SEALs rushed aboard the ship and engaged the pirates. However, all four hostages were killed. Two pirates were found dead and two more were killed by the Navy SEALs, one with a knife in hand-to-hand combat. 13 pirates were captured alive in addition to the two already aboard STERETT.

Other Recent Hijackings of Yachts: Two British yachters were released in November 2010 after 388 days in captivity. Paul and Rachel Chandler had been captured approximately 800 nautical miles off the Coast of Somalia. They reported being held in small cells while waiting for their family and friends to come up with an estimated \$1 million in ransom.

At least two other pleasure yachts have been hijacked by Somali pirates in the past month. In the first, a Danish family of five and two Danish crew were taken hostage and moved to a bigger ship with other captives, where they remain awaiting ransom payments. In the second, a Dutch couple locked themselves in a safe room as pirates boarded their vessel. A private security company later boarded the vessel and engaged in a firefight with the pirates. No one was injured or killed on either side and the couple was safely rescued.

U.S. Efforts to Combat Piracy

Prevention

National Security Council (NSC) Piracy Plan – In December 2008, the NSC issued its “Countering Piracy Off the Horn of Africa: Partnership and Action Plan”, which outlines the strategies the U.S. will pursue to mitigate piracy. The Plan directs three “lines of action”:

1. **Preventing Pirate Attacks by Reducing Vulnerabilities:** The Plan calls for an international naval force to patrol waters off the Horn of Africa and share intelligence on pirate activities; the establishment of a Contact Group of countries willing to work together to coordinate responses to piracy; and for vessels to adopt best management practices to avoid pirate attack.
2. **Interrupt Acts of Piracy:** The Plan calls for the U.S. and international partners to interdict pirate vessels and intervene in pirate attacks. The Plan also supports disrupting pirate bases in Somalia and depriving pirates of illicit revenues.
3. **Hold Pirates Accountable:** The plan calls for the establishment of agreements with African and other nations to prosecute captured pirates.

Domestic Efforts for Commercial Vessels – Title 46, United States Code Chapter 701 mandates U.S. vessels comply with all Maritime Security (MARSEC) Directives, including 104-6. Directive 104-6 mandates that Vessel Security Plans include antipiracy measures. Industry has identified additional BMPs to prevent pirate attacks from succeeding.

The Coast Guard, in conjunction with the Maritime Administration (MARAD) and the Department of State (DOS), has provided additional guidance and policy to U.S.-flagged ships. This guidance includes warnings about high risk waters, legal guidance on the use of private security companies, and any other pertinent information. Much of this material is distributed via Port Security Advisories (PSAs), which are all available on the Coast Guard’s Homeport website:

MARSEC Directive 104-6, the BMPs, and other PSAs have been continuously updated based on lessons learned from attempted and successful pirate attacks. The Coast Guard also hosts a regular roundtable for industry where interagency partners report on developments and new initiatives and industry is afforded the opportunity to both ask questions and raise concerns.

Domestic Efforts for Pleasure Vessels – There is currently only limited authority to force pleasure vessels, such as personal yachts, to comply with security guidance.

However, the Coast Guard has worked to get applicable information out to the pleasure vessel community through two Notices to Mariners (one before the QUEST Incident, one directly following). These notices were posted online and sent to U.S. Sail, the National Boating Federation, and several other organizations representing recreational boaters.

Response

Combined Task Force 151 – In 2009, U.S. Naval Forces Central Command established CTF-151 which is a multi-national naval force that executes the counter-piracy mission in and around the Gulf of Aden, Arabian Sea, Indian Ocean and the Red Sea. As the current situation in Somalia affects all maritime commerce in the Gulf of Aden indiscriminately, the U.S. has been highly successful in finding allies willing to help combat Somali piracy. It consists of naval and maritime assets from approximately 20 coalition nations and operates as a subsidiary to Combined Maritime Forces, which is a multinational coalition that is led by U.S. Naval Forces Central Command.

CTF-151's mission represents the U.S.' emphasis on partnership and global responsibility, as it orders its forces, "...to actively deter, disrupt and suppress piracy in order to protect global maritime security and secure freedom of navigation for the benefit of all nations." This mission directly supports UN Security Council Resolution 1816, which "...*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..." CTF-151's command shifts between partner nations and is currently held by Pakistan Navy Commander Abdul Aleem.

Coast Guard Involvement – U.S. Central Command (CENTCOM) is the military operational command responsible for counter piracy efforts in the Gulf of Aden. While the Coast Guard does not conduct independent operations in the area, it is a force provider for CENTCOM, which has requested one Coast Guard Law Enforcement Detachment (LEDET) for deployment on primarily U.S. Navy ships in support of CTF-151.

LEDETs are highly skilled law enforcement teams with expertise in law enforcement tactics, case package preparation, and chain of custody for evidence and apprehended suspects. These teams conduct interdiction operations either independently or with Navy Vessel Board, Search, and Seize (VBSS) teams. They also support Special Operations Forces during high interest rescue missions. A LEDET participated in the M/V MAGELLAN STAR incident in September 2010, assisting the Marine Corps' Maritime Raid Force with space accountability, evidence preservation, and case package preparation.

International Coordination

The Coast Guard works closely with several international organizations and other nations to share information on best management practices, international and foreign laws governing shipboard security measures, and instances of actual or attempted piracy.

International Maritime Organization (IMO): As the U.S. representative to the IMO, the Coast Guard sits on the Contact Group on Piracy off the Coast of Somalia and chairs Working Group 3 on Shipping Awareness. The U.S. also participates in Working Groups 1 (Military Coordination), 2 (Prosecution), and 4 (Communication).

Maritime Security Centre – Horn of Africa (MSC-HOA): The Coast Guard also coordinates closely with the EU's Maritime Security Centre – Horn of Africa (MSC-HOA). MSC-HOA provides 24 hour manned monitoring of vessels transiting through the Gulf of Aden, as well as an interactive website that allows the Centre to communicate the latest anti-piracy guidance to industry. Shipping companies and operators also use the website to register their movements through the region.

Additionally, MSC-HOA coordinates group transits through high risk areas overnight when attacks are reduced. This enables military forces to clear the area ahead of the merchant ships. As part of this initiative, MSC-HOA will also identify particularly vulnerable shipping and coordinate appropriate protection arrangements with either EU NAVFOR or other forces in the area.

International Maritime Bureau (IMB): The Coast Guard also works closely with the International Maritime Bureau (IMB) to report and receive reports of piracy and share information related to preventing pirate attacks. The IMB is a specialized division of the International Chamber of Commerce (ICC). The IMB is a non-profit organization, established in 1981 at the recommendation of the IMO to act as a focal point in the fight against all types of maritime crime and malpractice.

International Prosecution Agreements: The U.S. has also established partnerships for prosecuting pirates after they have been arrested. A prosecution agreement currently exists with the Seychelles. It relieves the U.S. judicial system of the financial and administrative burdens associated with prosecuting pirates.

Modern Piracy

Although American interest in piracy can be traced back to the Barbary Wars of the early nineteenth century, recent attention has been focused on Somalia. Since the collapse of the central government in 1991, Somalia has not been able to control or regulate its waters. Foreign fishing vessels took advantage of the situation and greatly depleted local fishing stocks. With their traditional livelihood being challenged, many locals began to take up arms. From these humble beginnings, Somali piracy has transformed into a lucrative industry in which massive merchant vessels and their crews

are seized offshore and then ransomed for sums of money (approximately \$85 million in 2010 alone).

Somali pirates typically operate from well-equipped and well-armed bases ashore. They depart from these bases in small, lightweight, and fast fiberglass skiffs with 4 to 5 people. Though the pirates were originally untrained and unprofessional, they have now established at least one "pirate academy" to train new recruits. Their typical armament includes small arms, automatic weapons, and rocket-propelled grenades. Two or three skiffs (which are hard to detect on radars) launch simultaneous and multiple attacks, ideally on slow moving vessels with low freeboard (distance from the waterline to the ship's deck). Attacks have recently involved as many as seven skiffs. Once on board, the pirates hold the vessel, crew and cargo hostage until ransoms are collected.

The pirates have also begun using captured vessels as mother ships. The mother ships of choice have been larger fishing vessels or captured commercial vessels with the original crew still held captive onboard to prevent attacks from military assets in the region. These mother ships allow the pirates to operate larger weapons, remain at sea during rough weather, and extend their reach a thousand miles or more into the Indian Ocean.

Large merchant vessels usually carry small crews that are dispersed and isolated throughout the ships. Unless security precautions are taken, the heavily armed pirates can usually sweep the vessel and intimidate the crew into submission. The ships are then anchored and guarded with the crew still aboard until demands for ransom have been met. The leaders of these pirate gangs determine the ransom sums. These leaders, unlike their underlings, tend to be wealthy elites and warlords who employ hundreds of pirates. Most ransom requests are negotiated by an independent third party outside of Somalia.

Geography makes these attacks effective and of strategic concern to the U.S. and other countries. Somalia is situated at the mouth of the Gulf of Aden, which is the gateway to the Suez Canal. Eleven percent of the world's oil passes through these waters on its way from the Middle East to Europe and the U.S.

Modern Piracy: Elsewhere in the world

Straits of Malacca: Prior to the rise of piracy off the Horn of Africa, the Straits of Malacca were the most high risk waters for piracy in the entire world until roughly 2005. Located between Malaysia, Indonesia and Singapore, the Straits of Malacca is the shortest shipping route between the Middle East and Asian markets. Its geography naturally funnels the 50,000 ships that pass through it annually (40% of the world's trade) into a long, narrow transit bordered by land that is largely remote and uninhabited. These conditions have proven ripe for piracy since the 15th Century. However, piracy has fallen off by 95% since its peak in 2004, mostly as a result of concerted efforts by both Indonesia and Malaysia to keep the Straits of Malacca open as a viable trade route.

Piracy: U.S. and International Law

Constitutional Authority

Article I, Section 8 of the Constitution explicitly gives Congress the authority “To define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations,” as well as “grant Letters of Marque and Reprisal,” though the latter provision has not been used since the War of 1812.

U.S. Law

Title 18, United States Code § 1651 declares:

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.

Title 33, United States Code Chapter 7 gives the President the authority to use public vessels to suppress piracy, order the commanders of those vessels to seize pirate vessels, and commission private vessels for seizure of pirate vessels. It also gives mariners the right to defend their vessel against attacks by pirates:

Defining Piracy Under the “Law of Nations”:

Article 15 of the 1958 U.N. Convention on the High Seas, which the U.S. has signed and ratified, defines piracy as 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 on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft or against a ship, aircraft, persons or property in a place outside the jurisdiction of any State. The definition also includes 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 and any act of inciting or of intentionally facilitating an act of piracy.

Article 19 goes on to define piracy as a “universal crime,” and Article 21 gives military and government ships and aircraft the authority to enforce these sections.

The President’s June 2007 Policy for the Suppression of Piracy and Other Criminal Acts of Violence at Sea uses the same definition, as does United Nations Convention on the Law of the Sea (UNCLOS) (though the U.S. is not a party to UNCLOS). As such, this definition of piracy under the law of nations is accepted by the U.S. and the vast majority of the international community.

The United States has also ratified and implemented the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation, 1988. The Convention requires all parties to develop detailed and practical technical measures to ensure the security of passengers and crews on board ships, including legislation to prosecute crimes committed against crew and passengers on vessels operating on the high seas. The Convention also requires signatories to accept delivery of individuals suspected of carrying out unlawful acts including piracy into custody and to extradite the offenders to an interested State for prosecution or to initiate prosecution in the recipient country.

Issues

Executive Order 13536

The President signed Executive Order 13536 (EO-13536) in April 2010. EO-13536 declared that "...the persistence of violence in Somalia, and armed robbery at sea off the coast of Somalia...constitute an unusual and extraordinary threat to the national security and foreign policy of the United States..." It goes on to state the U.S. will seize assets from anyone determined to be committing these acts and will prosecute those providing materiel support.

The EO specifically names eleven individuals, two of whom are known to head pirate gangs. Mohamed Abdi Garaad controls approximately 800 pirates that are divided into thirteen operational groups. Abshir Abdillahi boasted to the New York Times a year before EO-13536 was signed that he had personally seized over twenty-five ships. This Executive Order effectively outlaws cooperation with pirates or support of their activities.

EO-13536 drew criticism from both industry and labor. Both are concerned that the provision on materiel support will make ransom payments liable for prosecution. Industry is concerned they will be liable for ransom payments if any of the money ever trickles back to the two individuals in the EO at any point. Labor is concerned this EO will prevent future ransom payments, which will result in prolonged captivity or death for captured mariners. The Department of the Treasury's Office of Foreign Assets Control (OFAC) made it clear at the latest piracy roundtable that liability will not be waived. However, discussions are underway to establish a mechanism by which industry can determine if they will be liable as a result of any specific ransom payment.

The Department of State (DOS) just recently began efforts to track the flow of currency within Somalia. As part of this effort, DOS is attempting to establish Work Group 5 within the Contact Group on Piracy off the Coast of Somalia. As of right now, there is little visibility on where ransom money goes after it is paid. There is concern these efforts are coming too long after the EO and that new findings will be used to hold companies liable for ransom paid before there were adequate means to track the money beyond the initial transaction. There is also concern the Federal government is only now

investigating money movements within a country known to harbor members of several extremist organizations.

Prosecution

International Prosecution: The U.S. previously had a bilateral prosecution agreement with Kenya through which the U.S. transferred approximately 25 pirates to Kenya for trial. However, Kenya formally withdrew from that agreement in September 2010. While the U.S. still has a prosecution agreement with the Seychelles, it is only a bilateral agreement and can only be invoked when U.S. forces actually capture and deliver the pirates. Other nations must secure their own bilateral agreements for prosecution or prosecute in their own courts. Many have not done either and elect instead to release suspected pirates back into Somalia.

Domestic Prosecution: On March 24, 2010 a U.S. jury in Norfolk, VA, handed down the first guilty verdict for acts of piracy since the 19th Century. Five Somalis were found guilty of piracy for their role in attacking the USS NICHOLAS. U.S. District Judge Mark S. Davis upheld the conviction.

However, on August 17, 2010, Judge Raymond A. Jackson, sitting two floors below Davis in the same courthouse, dismissed the piracy charges levied against the Somalis who attacked the USS ASHLAND, claiming that he must interpret the piracy statute as it was meant at the time it was enacted in 1819. He cited an 1820 Supreme Court case that ruled piracy is defined only as robbery at sea. Finding no evidence of robbery against the ASHLAND, he ruled there was no piracy. The government filed an appeal before the 4th U.S. Circuit Court of Appeals.

One of the pirates has since entered into a plea bargain with the prosecution. He pled guilty to plundering a vessel, engaging in an act of violence against persons on a vessel, and to using a firearm during a crime of violence. On November 30, 2010 he was sentenced to 30 years in prison. The other pirates involved in the attack on the ASHLAND face similar charges even if they cannot be charged with piracy.

Private Security

Industry has increasingly turned to private security companies to protect their ships, crews, and cargo. This upswing comes in the wake of several nations rethinking their stance on allowing armed private security personnel to enter their waters and or ports. International consensus seems to be shifting towards private security solutions because they are effective at stopping pirate attacks, do not require costly military involvement, and do not require mariners to take up arms on their own. MARSEC Directive 104-6 encourages U.S. vessels to consider using private security for these same reasons.

Two issues currently hinder the use of private security and drive up the cost for industry. First, several nations prohibit armed private commercial vessels from entering their ports. Department of State is the lead agency charged with helping industry determine the legality of armed security within foreign nations and waters. Second, the International Traffic in Arms Regulations (ITAR) restricts the export of weapons that are not governed under military sales to foreign countries. The Department of Justice and the Department of State's Directorate of Defense Trade Controls are responsible for ITAR and Customs and Border Protection (CBP) is responsible for enforcement of ITAR. To comply with the port state laws and ITAR, several shipping companies have paid to have weapons flown off the ship via helicopter prior to entering port or have thrown the weapons overboard and purchased new ones at a later date.

Lack of Security Measures Aboard Foreign-Flagged Vessels

Other nations do not require robust security plans and measures aboard their ships. The U.S. recently proposed an amendment to the International Ship and Port Facility Security (ISPS) Code that would have required IMO nations to mandate adherence to guidance similar to the Coast Guard's MARSEC Directives for U.S.-flagged vessels. It failed to pass. As it stands right now, there is nothing to mandate foreign-flagged ships even adopt best management practices or that those practices be updated regularly based on lessons learned.

Coast Guard Authorization Act of 2010, Sec. 912: Use of Force Against Piracy

The Coast Guard Authorization Act of 2010 (P.L. 111-281) provided liability relief to the owner, operator, charterer, captain, and crew of U.S.-flagged vessels for actions they take to defend their vessel against pirate attacks. The Act directs the Secretary of Homeland Security to develop standard rules for the use of force for self-defense of vessels of the United States not later than 180 days after the date of enactment. The request for comments was placed on the Federal Registry on January 18, 2011 and closed for comments on March 1, 2011. The Coast Guard is now compiling input and anticipates establishing standards shortly.

Insurance

Commercial Vessel Insurance: Piratical activity near the Horn of Africa has resulted in increased insurance premiums (some in the insurance industry estimates a ten fold hike) for commercial vessels operating in the area. Large merchant ships generally carry three separate types of insurance. Marine — or hull — insurance covers physical risks, like grounding or damage from heavy seas. War risk insurance covers acts of terrorism, and, increasingly, piracy. A third type of policy, protection and indemnity, covers issues with the crew. While policy requirements and increases in the cost of insurance policies are forcing the maritime industry to consider measures to avoid or mitigate piracy attacks, they are not mandated by law to do so.

Recreational Vessel Insurance: Typical insurance for yachts and private vessels does not cover acts of piracy in the Gulf of Aden or near the Horn of Africa. Mariners are expressly warned of this exemption when they seek a policy. A few companies have agreed to provide coverage, but it is contingent upon the vessel transiting the area with a military escort and an embarked armed security team.

WITNESSES

Admiral Kevin Cook
Director of Prevention Policy for Marine Safety, Security, and Stewardship
United States Coast Guard

Mr. William Wechsler
Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats
Department of Defense

Mr. Kurt Amend
Principal Deputy Assistant Secretary of State for Political and Military Affairs
Department of State

Mr. Stephen L. Caldwell
Director, Maritime Security and Coast Guard Issues
Government Accountability Office

**ASSURING THE FREEDOM OF
AMERICANS ON THE HIGH SEAS:
THE UNITED STATES RESPONSE TO PIRACY**

TUESDAY, MARCH 15, 2011

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

The subcommittee met, pursuant to notice, at 10:00 a.m. in room 2167, Rayburn House Office Building, Hon. Frank A. LoBiondo, (chairman of the subcommittee) presiding.

Mr. LOBIONDO. The committee will come to order. The subcommittee is meeting this morning to review efforts by the United States and the international community to respond to piracy on the high seas, and hopefully help prevent future attacks.

Since the subcommittee's last hearing on this topic, Somali pirates have vastly expanded the range of their attacks on merchant vessels to encompass much of the western Indian Ocean. But even more alarming, the pirates have dramatically increased the number and viciousness of their attacks. This includes the recent hijacking of the U.S. sailing vessel, *Quest*, which ended in the ruthless murder of four United States citizens.

I believe I speak for all of us who are on this subcommittee when I express my sincerest and deepest condolences to the families of the victims, and my outrage at this brutal violence against American citizens. As I said at our last hearing, piracy cannot be tolerated by the United States. I really think we need to re-emphasize that. We just cannot tolerate it. And the international community.

This hearing provides us with a chance to examine ways to respond to that ongoing threat. Piracy has become a multimillion-dollar industry, as a result of ransoms that continue to be paid out by vessel ownership groups. I do not think we are tracking ransom payments to the extent that we should be.

As a result, I am extremely concerned piracy could be benefitting the terrorist groups operating in Somalia, and that these groups could use their profits to carry out terrorist acts here, at home, and abroad. At the same time, I am worried the Federal Government may hold vessel owners criminally liable for ransoms they pay to free captive mariners.

Many in the maritime community are looking at ways to enhance security of merchant vessels, including the placement of armed security personnel aboard ships. A vessel's crew has every right

under U.S. and international law to defend themselves and their vessel. However, I do have some concerns about the guidance going out to these mariners, and hope to hear more about how we keep them informed of the latest avoidance and response measures.

The United States has placed Navy and Coast Guard assets in the region, and has partnered with other nations to protect vessels in the area. I applaud the services for taking action, but I am concerned about the effectiveness of these efforts. We know that several of the pirates captured by the naval forces of other countries are not being prosecuted. Instead, they are only returned to shore, where they are free to resume their illegal activity. I am interested in learning more about the procedures by which suspects are being prosecuted.

Piracy is recognized internationally as a crime against all nations, and to which all nations must respond. It is incumbent on us to examine ways to minimize, if not end, this threat and its impact on both world commerce and our own national economy.

I want to thank the witnesses for appearing here today, I look forward to their testimony. With that, I would like to yield to Mr. Larsen for any remarks he would like to make.

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

Piracy, particularly off the Somalia coast, is a disruptive threat to world shipping.

Tragically, just last month, piracy also became deadly for Jean and Scott Adam of Marina del Rey, California, and their friends, Phyllis Macay and Bob Riggle of Seattle, Washington. I, too, extend my sympathies to the families.

These four individuals posed a threat to no one. They were not mariners involved in international trade. The Adams were living a lifelong dream. Ms. Macay and Mr. Riggle were friends joining in the adventure. While the circumstances of their deaths are still being investigated, we do know that they were killed by their Somali captors while their release was being negotiated. But for these pirates, these four U.S. citizens would be alive and well today.

It is clear that today's pirate is no Jack Sparrow. Although piracy has been a threat to seafaring nations for thousands of years, the emergence of aggressive and persistent attacks off the Horn of Africa is especially concerning.

The killing of these four hostages aboard the *Quest* certainly increased the attention of the international community on piracy, and the international community has increased its focus on piracy.

The stats are startling. The New York Times reported in late February that more than 50 vessels were currently captive, ranging from Thai fishing trawlers to European tankers, super-tankers, with more than 800 hostages. These hostages represent mariners and sea-farers that are only doing their jobs. Once captured, these hostages can be held in deplorable conditions for months before release.

It is time for the international community to stop this injustice. The Gulf of Aden and the adjoining Indian Ocean constitute a critical shipping corridor. GAO's September report, about which we will hear more a little bit later, their report on piracy states that over 33,000 ships pass through the Gulf of Aden annually. This in-

cludes tanker ships moving 10 to 15 percent of world petroleum shipments. For vessels headed west, the alternative route is around the tip of Africa, and adds 4,900 nautical miles to the transit.

The rise of piracy in the region puts mariners in danger, and poses an economic burden on ocean carriers and shipping companies. In fact, according to a Chatham House report, insurance premiums in the London insurance market for traveling through the Gulf rose tenfold in 2008.

Several factors have contributed to the frequency of these attacks: a large number of high-value targets passing through the Gulf; global proliferation of the small arms trade; and, most significantly, persistent civil violence, lawlessness, and economic dislocation in Somalia. Somalia does not have a functioning government. And with pirates having virtually an unlimited ability to operate from Somalia, piracy cannot be eliminated solely from the sea. So I am particularly interested to hear what the State Department witness will say on this subject.

Last week, Bloomberg reported that China and Russia will be leading a new effort at the U.N. to curb the threat of piracy off the coast of Somalia, and defeat Al Qaeda-linked terrorists fighting to seize control of that nation. According to this report, Russia had circulated a draft resolution that would commit the U.N. Security Council to “urgently begin talks on the creation of three courts for piracy cases.” I would be interested to hear what the progress of this, and the likelihood of this resolution is.

The international community has stepped up efforts to combat piracy. CTF 151, a multinational effort led by the U.S., the European Union operation, Atalanta, the NATO operation, which the U.S. also supports, and independent deployers are patrolling the area and providing greater protection to ships traveling through the Gulf. I would be interested to hear what our Department of Defense witness has to say about giving us an update on these efforts.

And the International Maritime Bureau’s piracy reporting center and MARAD have helped inform the maritime community about piracy and how to implement best practices for ships to evade and defend themselves from pirate attacks, and I look forward to the Coast Guard’s comments on this effort.

GAO’s report from last September discusses several challenges, and I think describes a mixed bag of success. Prosecution of alleged pirates remains logistically difficult, although I note that on February 16th the pirate associated with the attack on the *Maersk Alabama* was sentenced to 33 years by a New York district judge.

The pirates have greatly expanded their areas of attack to an area as large as the lower 48 States. There have been a steady increase in the number of attacks and the rate of success has declined. But the number of hostages being held is increasing, and the ransoms being paid are increasing.

These issues raise important questions for our panel. Are the efforts of the U.S. and the international community succeeding, or are they failing? Are the rules of engagement changing, and do we need to change with it? In light of the recent killings, is transit in this area becoming more or less dangerous?

When it come to piracy in the 21st century, there is no X that marks the spot to point us in the right direction. But there are sev-

eral ways that U.S. policymakers can help combat piracy: encourage the international commercial maritime industry to adopt best practices; continue advances in the use of defensive technologies on ships; help coastal States in pirate-prone areas boost their coastal monitoring and interdiction capabilities; and provide resources to the Coast Guard and MARAD, so they can continue to advise the industry on how to strengthen its own security.

With that, Mr. Chairman, I thank you again for holding this hearing, and I look forward to our witnesses.

Mr. LOBIONDO. Thank you, Mr. Larsen. Mr. Landry, do you have a statement?

Mr. LANDRY. Thank you, Mr. Chairman. I will be brief. I thank you for calling this hearing, and our witnesses, for giving their time to testify.

Article 1, section 8 of our Constitution clearly gives Congress the ability to define and punish piracy and felonies committed on the high seas, and offenses against the law of nations. And while piracy was a great concern to our founding fathers, many had thought this had been a bypass in history.

However, we have not—seen a resurgence of piracies in ways not seen since the 19th century. Last year, piracy caused between \$7 billion to \$12 billion in damage to our world's economy. Shipping in the Suez Canal is down 10 percent, due to piracy concerns, an amount equal to the downturn in the canal's usage caused by the downturn in the world's economy.

It appears this trend will continue in 2011. Already this year there have been 87 pirate attacks worldwide, including 61 off the Horn of Africa, and Somalia pirates now hold 33 vessels and 711 hostages. As someone whose district is directly dependant upon international shipping, I am very concerned about this trend. Any reduction in international shipping commerce will ultimately impact the 28,000 men and women who work in my maritime district.

As such, I look forward to your testimony, and working with you all to address these issues. Thank you. I yield back the balance of my time.

Mr. LOBIONDO. Thank you, Mr. Landry. Now we will move on to our witnesses today. Our witnesses include: Admiral Kevin Cook, director of prevention policy; Mr. William Wechsler, deputy assistant secretary of defense for counternarcotics and global threats; Mr. Kurt Amend, principal deputy assistant secretary of state for political and military affairs; and Mr. Stephen Caldwell, director of maritime safety and Coast Guard issues for GAO. I would like to welcome you all for being here today, and, Admiral Cook, I look forward to your testimony.

TESTIMONY OF KEVIN S. COOK, DIRECTOR OF PREVENTION POLICY FOR MARINE SAFETY, SECURITY, AND STEWARD-SHIP, U.S. COAST GUARD; WILLIAM F. WECHSLER, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR COUNTER-NARCOTICS AND GLOBAL THREATS, U.S. DEPARTMENT OF DEFENSE; KURT AMEND, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF STATE FOR POLITICAL AND MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE; AND STEPHEN L. CALDWELL, DIRECTOR, MARITIME SECURITY AND COAST GUARD ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Admiral COOK. Well, good morning, Mr. Chairman, Ranking Member Larsen, and distinguished members of the subcommittee. With your permission, Mr. Chairman, I would like to have my written testimony entered into the record.

Mr. LOBIONDO. Yes, without objection.

Admiral COOK. Thank you. I appreciate the opportunity to appear before you and discuss maritime piracy and the Coast Guard's role in addressing the threat to freedom of the seas, to the safety of shipping, and, most importantly, to the safety of mariners.

We were all saddened by the death at the hands of pirates of four U.S. citizens on board the sailing vessel *Quest*. This underscores the importance for all mariners, recreational and commercial, to understand the risks associated with operating in areas where piracy is prevalent.

The Coast Guard continues to be a leader in coordination with U.S. interagency and industry partners, with the International Maritime Organization, or IMO, and through the international contact group on piracy off the coast of Somalia, working to strengthen preventative measures from merchant ships, and to develop international regimes for prosecution of apprehended pirates.

Although many nations have provided naval forces to the region to counter the piracy threat, it remains critical for individual vessels to take appropriate measures to reduce the vulnerability to attacks. The responsibility for combating maritime piracy is a shared one. Responsibility is shared among vessel owners and operators, governments, and the international community.

Beyond coordination, the Coast Guard shares responsibility through our law enforcement detachment boarding teams, which operate at the request, and in support of, the U.S. central command's mission to deter, disrupt, and suppress piracy.

Helping to share the responsibility with the industry, the Coast Guard continues to update its requirements for U.S. flag commercial ships to modify their security plans, plans which are required by the Maritime Transportation Security Act of 2002. Vessel owners and operators are required to conduct a risk assessment for each vessel prior to entering high-risk waters, including the identification of counterpiracy measures. Plans must be submitted to the Coast Guard for approval under the commandant's authority in his maritime security directive, MARSEC 104.6.

The ships most vulnerable to piracy, those with low freeboard and/or slow, include provisions for armed private security teams, among other measures. Beyond U.S. flag direction, the Coast Guard has a unique role to play internationally.

The Coast Guard is co-chair, with the Maritime Administration, of working group three, dedicated to shipping self-awareness under the contact group on piracy off the coast of Somalia. The contact group was created on January 14, 2009, pursuant to the U.N. Security Council resolution 1851. This international forum brings together countries, organizations, and industry groups to coordinate political, military, and other efforts to bring an end to piracy, and to ensure that pirates are brought to justice. Nearly 600 countries and multiple international organizations participate in the contact group.

Through working group three, the Coast Guard has facilitated the shipping industry's development of preventative measures to reduce vulnerability to attack, known as industry best management practices for vessels operating off the Horn of Africa region.

And just recently, on February 28, 2011, the working group convened and chartered an effort to develop formal guidelines for armed security teams for adoption by other flag state administrations. The international shipping community is changing their position on armed security teams, and we welcome that change.

Also internationally, by delegation from the State Department, the Coast Guard provides head of the United States delegation for international maritime organization meetings and activities. The IMO has passed resolutions establishing a framework for international cooperation, updated counterpiracy guidance, and promoted judicial mechanisms, so that pirates, once caught, face meaningful and just punishment under the rule of law. "Piracy: Orchestrating the Response," will be the theme for IMO's focus this year.

In closing, Mr. Chairman, I want to assure you that the Coast Guard is committed to fulfilling its statutory and regulatory responsibilities for the safety and security of U.S. merchant vessels and crews. We will remain engaged with the industry in implementation of counterpiracy measures identified in our MARSEC directive, as well as within the international maritime community, through our role at IMO and the contact group.

The Coast Guard's oversight of the U.S. flag fleet is the international gold standard, and we will continue to make improvements wherever possible. We will also continue to use formal-notice-to-mariner warnings and all other communication channels to ensure recreational boaters are aware of piracy risks.

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

Mr. LOBIONDO. Thank you, Admiral Cook.

Mr. Wechsler?

Mr. WECHSLER. Thank you, Mr. Chairman, Representative Larsen, and other distinguished members of the subcommittee. I appreciate this opportunity to testify about the growing problem of piracy on the high seas. I have submitted a written statement for the record. I will briefly summarize that this morning.

I would like to begin, as you all did, by expressing my sincere condolences to the friends and families of the four victims of the recent pirating of the sailing vessel, *Quest*: Jean and Scott Adam, Phyllis Macay, and Robert Riggle. Congressman Larsen, I understand that Ms. Macay and Mr. Riggle were from your State of

Washington, as you noted. This tragedy stands as a stark reminder of what is at stake, as we continue to grapple with this complex challenge.

Mr. Chairman, as you stated, we cannot just tolerate piracy. We also, as you stated, believe that freedom of navigation is critical to our national security and international commerce, and is a core principle of the law of the sea. Piracy endangers innocent mariners, disrupts commerce, causes economic damage, and perpetuates instability ashore.

Disrupting piracy will continue to be a challenge for several reasons. First and foremost, the root causes of Somali piracy lie in the poverty and instability in that troubled country. Somalia simply lacks the criminal justice institutions necessary to deter piracy. Since January 2010, Somali pirates received as much as \$85 million in the form of ransom payments. In a country where the per capital GDP is about \$600, the prospect of these large ransoms has led to the development of a complex network of pirate facilitators and financiers. In the long run, the international community's ability to confront the Somalia-based piracy problem will be directly linked to Somalia's ability to provide effective governance.

Secondly, the geographic area affected is vast. Today, Somali pirates operate in an area covering approximately 2.5 million square nautical miles. Actually, larger than that in recent days. That is comparable, as a map that we provided, to the size of the continental United States, a vast area. The sheer size of this area makes it difficult for naval assets to reach the scene of a pirate attack quickly enough to make a difference. To adequately patrol such an area would require more ships than are currently in the inventory of all of the world's navies.

Further complicating this challenge is the fact that these pirate vessels easily blend in with ordinary, legitimate shipping when they are not engaged in acts of piracy.

Third, even when pirates are captured, as was noted previously, they are often not prosecuted and held accountable. Although piracy is a crime of universal jurisdiction, many States lack the appropriate domestic laws to prosecute pirates. Other States may have appropriate domestic legal frameworks, but lack the prosecutorial and judicial capacity to hold pirates accountable. And worse yet, other States simply lack the political will to take action.

Finally, as the members of this subcommittee know, the Department of Defense has many other urgent priorities around the globe. In the Horn of Africa our existing and planned counterterrorism activities remain vital to confronting terrorism in the region. Many of the resources most in demand for counterpiracy activities, such as intelligence, surveillance, and reconnaissance assets, are the same assets that are urgently required elsewhere.

These multidimensional challenges illustrate that there will be no simple solution to this problem. However, it is worth noting that, of the more than 33,000 vessels that transit the Gulf of Aden each year, less than one-half of 1 percent of these are attacked. And, fortunately, these attacks have succeeded only about a third of the time.

In support of the National Security Council's action plan, DoD's primary role is to interrupt and terminate acts of piracy. We play

a supporting role in preventing pirate attacks by reducing the vulnerability of the maritime domain, and facilitating the prosecution of suspected pirates.

The United States is most actively engaged in counterpiracy operations through combined task force 151, a component of combined maritime forces, and one of 3 international counterpiracy coalitions made up of navies of more than 30 nations—as was noted, NATO's operations, Ocean Shield, and the European Union's operation, Atalanta. Combined maritime forces also regularly host international coordination meetings in Bahrain to share information and deconflict counterpiracy efforts in the region.

The Department of Defense is also working with the international contact group for piracy off the coast of Somalia on numerous initiatives related to industry, operations, public diplomacy, and legal issues. We are supporting the Departments of State and Treasury in efforts to make piracy less lucrative by going after the funding.

We will continue to work with regional States to develop their capacity to patrol the seas and hold pirates accountable. We will also work, when possible, with local authorities in Somalia to address the on-shore components of piracy. Many of these efforts complement our development and counterterrorism goals in the region.

While much remains to be done, we are seeing concrete results of these efforts. Since August 2008, international efforts have led to the destruction or confiscation of more than 100 pirate vessels, and the confiscation of numerous weapons, including small arms and rocket-propelled grenades. The international community has also turned over nearly 800 pirates to various countries for prosecution.

Countering piracy in the region must be a shared responsibility with the shipping industry, as was noted by my Coast Guard colleague. By following the best management practices, the majority of pirate attacks can be thwarted without any need for military intervention. These practices range from hardening the vessel to maintaining professional civilian armed services team on board, and can mean the difference between a successful and a failed pirate attack.

I would also note that, in all cases where armed private security teams have been used, crews have successfully kept pirates from boarding their vessel. I am very pleased with the comment from my Coast Guard colleague, who stated today that industry's views on this question have been changing recently.

Many have questioned whether there are connections between piracy and international terrorism. At the moment, the motivations of Somali pirates appear to be solely financial, rather than ideological. While I must caution about the extent of our intelligence and knowledge in Somalia and with the pirates is limited, at this point, as best as we can tell, we do not see operational or organizational alignment between al-Shabaab or other terrorists and the pirates. But we do see interactions mostly of a coercive nature that benefit terrorists. We need to ensure that piracy does not evolve into a powerful funding source for violent extremist organizations.

Finally, Mr. Chairman and members of the subcommittee, we recognize the problem of piracy is not just a problem for Somalia.

In recent years, pirate activity has also occurred in west Africa, the Straits of Malacca, and elsewhere. Although the complete elimination of piracy is unlikely, we believe that we can and must reduce piracy attacks through deterrents, disruption, interdiction, and punishment. Doing so will require a coordinated effort amongst the U.S. Government, private industry, and our international partners. We are confident that progress can be made in that fashion.

Thank you for the opportunity to testify, and I welcome your questions and comments.

Mr. LOBIONDO. Thank you.

Mr. Amend?

Mr. AMEND. Mr. Chairman, distinguished members of the subcommittee, it is an honor to appear before you this morning to describe the Department of State's contributions to our government's efforts to combat piracy off the coast of Somalia, to answer any questions you might have, and to identify ways we might do better. And if I could ask that the written testimony I provided be included in the record of today's proceedings.

Let me begin by saying that, since this committee met on the same subject in February of 2009, and notwithstanding an increase in international awareness of and efforts to deal with piracy, it seems as though the problem has only grown worse. The ruthless killing to which others have referred already this morning of four Americans on board the *Quest* on February 22nd underscores the increasing risks to recreational and commercial mariners in the region, and the pernicious effects of this kind of transnational crime.

At Secretary Clinton's direction, we have begun an intensive internal review of our counterpiracy strategy, a process that will be finalized shortly. Throughout our strategy re-think, we will consult closely with Congress, as well as with a number of executive departments and agencies. Our goal is to develop a recalibrated strategy that, once implemented, will enhance the safety and security of Americans on the high seas.

As we move forward, we will consider a range of actions. We will continue to collaborate with key international partners by discouraging the payment of ransoms, by stressing compliance by the shipping industry with self-protection best management practices, by encouraging the prosecution of suspected pirates in national courts, by soliciting contributions of military forces for counterpiracy operations, and by seeking financial contributions to the contact group's trust fund to defray the expenses associated with prosecution and incarceration of pirates.

At the same time, we will follow a dual track, a diplomatic approach in Somalia, and examine appropriate counterpiracy assistance to stem piracy from Somalia's shores. We will work with port States in the shipping industry to help them develop and implement creative ways to protect their ships and their mariners. We will consider how best to support U.N. efforts to build judicial and incarceration capacity in the region, and to develop new options for regional incarceration to include a specialized prosecution mechanism in the region.

Not least, we will consult closely with the Department of Defense, our colleagues at the Department of Defense, and in the intelligence community, to explore ways to disrupt and dismantle pi-

rate operations, both at sea and on shore. And we will focus more intently on the life blood of piracy, the formal and informal financial flows that nurture and sustain this form of criminal behavior. We will coordinate closely with intelligence, financial, and law enforcement communities to identify and remove from operation pirate leaders, organizers, and financiers—the pirate kingpins, if you will.

In doing all of this, we are mindful that the root cause of piracy has been, and will likely continue to be, State failure in Somalia. Until good governance, stability, and a modicum of economic development prevail on land, piracy at sea will remain a threat.

Our focus will thus be on the kinds of near and medium-term actions that will increase significantly risks to the pirates, while reducing by equal measure any potential rewards that they think they may gain.

This concludes my opening remarks, and I look forward to your questions.

Mr. LOBIONDO. Mr. Caldwell?

Mr. CALDWELL. Chairman LoBiondo, Ranking Member Larsen, other Members of the Committee, Mr. Landry, thank you very much for having GAO up here to testify on piracy. Allow me to introduce my colleague behind me, John Pendleton, who is from our defense team and worked with me jointly on this work.

Before I proceed, I would also like to share my condolences with the victims of piracy.

GAO's contribution to this discussion is our review of the NSC action plan, and the U.S. Government's progress against that. We show that progress in a so-called report card on page five of our statement. And, in addition to that, in our September report we also recommended that the action plan be revised.

We recommended three specific revisions: first, to address changes in piracy operations and tactics; second, to start gathering information on the cost and effectiveness of counterpiracy operations; and then, finally, to clarify agency roles with the specific lines of actions that were in the action plan.

Since September, when we issued that report, the piracy situation has continued to deteriorate, and I have some graphics that I would like to share with the committee, if possible. [Graphics shown.]

The first graphic here shows the area of piracy off of Somalia. The dark rectangle you see is the internationally recommended transit corridor. The dotted line that you see off the coast is 1,000 miles out, an area where piracy is now occurring.

The next chart shows a mileage comparison of the coast of Somalia to the coast of the eastern U.S., a distance stretching from Portland, Maine, to Miami, Florida.

Next is a series of maps showing the expansion of piracy. First we have 2007, where the pirates focus their attacks relatively close to the coast of Somalia. Next is 2008, where the pirates focus their attacks on the heavily transited Gulf of Aden.

Then, in 2009, the pirates continued attacks in the Gulf of Aden, but moved further off Somalia, as naval vessels began to patrol the transit corridor.

Then, in 2010, you can see the pirates continue to attack further out, spreading both eastward and southward, aided somewhat by the use of hijacked mother ships.

And finally, in 2011 here, so far pirates continue to attack further out, using mother ships, spreading northward toward the Straits of Hormuz, which is a key oil tanker route.

Then, finally, we have a slide showing the totality of all the attacks over the last several years.

Next is a bar chart showing the number of attacks from 2007 to 2010, which shows that total attacks have stabilized or actually declined in the last 2 years, but the pirates' success rate is starting to rebound.

And then this final graphic here shows the rapid increase in the number of seafarers that have been held hostage, particularly the growth between 2007 and 2008. And then, more recently, between 2009 and 2010.

In our view, this deteriorating situation for piracy, again, calls for a more urgent need to revise the plan along the line of our recommendations. Based on our most recent communications with the NSC, they do plan to revisit and update the action plan along the lines that we have discussed. In addition, as indicated by Mr. Amend here, State Department plans to revisit some of its plans and efforts. Both of these are hopeful signs, but we recognize that revising plans by themselves will not end piracy. The U.S. will need to take additional steps, both long-term and short-term, and in conjunction with our allies and with industry, to mitigate piracy.

In closing, thank you very much. I will be happy to respond to any questions.

Mr. LOBIONDO. Thank you. Mr. Larsen, you want to kick it off?

Mr. LARSEN. Thank you, Mr. Chairman. Mr. Caldwell, with regards to your charts and the numbers, in my statement I said it's sort of a mixed bag of success. It is sort of like fighting drugs sometimes in the U.S. If you crack down on meth, the price of meth goes up, because you start cutting off the supply, or you raise the cost of the transaction, as a result.

And it seems that that argument could be used to explain the numbers that you are pointing out. We are out there, we are on the water, we are making it more difficult, so we are seeing more attacks, more hostages, we are seeing ransoms go up, the average ransom go up. Is that an accurate assessment?

Mr. CALDWELL. Yes. I think there is two things at play. One is that the Gulf of Aden and the transit corridor there is a fairly narrow area, much easier to patrol for naval vessels. And I think the pirate success rate started to decline in 2009, as those naval vessels moved into that area. That is also the year that the pirates started—I think maybe late 2009 they started to shift further out, through the use of mother ships, and things like that.

In terms of the ransoms, certainly it has proven to be a profitable business model for the pirates. And as some of the other witnesses have said, until you start to get at the profit that is motivating this, I think it will be pretty hard to stop it.

Mr. LARSEN. Mr. Amend, with regards to the profit motive, and what the State Department is doing in conjunction with either Department of Justice or Department of Treasury to get at the fin-

anciers of piracy—because these folks in the skiffs are, you know, they are the frontline folks, but they are not driving piracy, it seems. It seems the financiers are driving piracy.

What are we doing about identifying who these people are with the big money to cut them off?

Mr. AMEND. Thank you, that is an excellent question. What we are doing through the multilateral diplomatic effort, the contact group, 60-nation-member contact group, we are working to establish a fifth working group that will focus solely on financial flows, and to pull together the Departments of Treasury, the intelligence community, and Justice, and our international partners to share information, but then to attempt to identify the informal and financial—informal and formal financial flows, and to—

Mr. LARSEN. Can I ask a question about that? Because you established the contact group in 2009. You had four working groups.

Mr. AMEND. That is right.

Mr. LARSEN. And now you are only getting—now you are telling me now you are only getting to this fifth group to look at financial flows. Why was that not established in 2009, with the other 4 working groups?

Mr. AMEND. The initial establishment was four working groups to focus on naval operations, best management practices, public diplomacy efforts, and then the kind of legal mechanisms that we want countries to embrace to allow them to prosecute. And only recently have we focused on the financial aspect. But I think this is a good sign. We—State Department hosted, on March 1st, an ad hoc meeting. A number of nations attended, and have pledged their interest in taking this a step further.

Mr. LARSEN. I think it is a good sign, too. Has there been a reluctance over the last 2 years from the Department of Treasury to be involved in this?

Mr. AMEND. No, I would not say that. I think only now as pirates have pivoted and proved to be very adept and shift their tactics, I think we have recognized that we need to shift tactics, and to look at other ways to attack the more senior leaders in the structure, in the networks themselves, that are behind this.

Mr. LARSEN. I may come back to this in a second round. But, Admiral Cook, with regards to the shift in the international shipping community's view on private armed security guards, can you talk about—can you tell us when that might be a ratified decision, and we can start seeing that implemented?

Admiral COOK. Congressman, I will tell you the way it is right now. The U.S. stepped out in this regard, and actually, we were criticized internationally for doing that.

And then, as the piracy issue continues to evolve—and then I would say that the *Quest* was a punctuation point for several of the countries thinking about this—and it just happened to occur a week or so ahead of the last contact group meeting that I co-chaired, where this sentiment was finally expressed. We put it on the agenda to drive it, but in other meetings we weren't able to get the countries to reciprocate and look at this.

So, they are at the stage now, I would say, if I could put a pulse on the international community, where they are accepting the reality that this is what needs to be done. But there are complica-

tions with countries' national legislation for flag states, such as Germany. Germany prohibits the use of arms on their ships. And we have had several ship owners that have reflagged their ships to other flags.

So, I would say it will not be a seamless incorporation. The contact group does not have standing—like the IMO does, under the U.N. It is termed an ad hoc group, although you can tell by the representation it is quite robust.

And so I would say by September we will have the framework available, and then the countries will be able to either adopt it or adapt it. But while this is going on, I can tell you that there is an increase in the number of private security teams from different flag state authorizations, and some shipping companies who maybe reluctantly are doing this without true flag state concurrence.

Mr. LARSEN. Thank you. Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Harris, do you have questions?

Dr. HARRIS. No.

Mr. LOBIONDO. Admiral Cook, most of the cost to combat and deter piracy is being borne by the United States and maybe a few other countries who have some capacity or will to deal with this. I think, meanwhile, flag-of-convenience nations, which register most of the ships that are coming under attack, do not seem to be providing much, if any, contributions in the anti-piracy effort.

Has consideration been given to try to talk to them, force them, develop a means to require flag-of-convenience states to pay their fair share for the cost of naval and military operations to pursue the pirate ships?

Admiral COOK. Mr. Chairman, I certainly do not want to deflect the question. I think that—more appropriately, I think that would be under the defense moniker where, you know, the navies are working together under a combined task force, and also drawing in whatever other support that they can.

The Coast Guard has not approached those flags to specifically pay for naval protection. What we have done is, though, continued to press for those flag states to pressure their ship owners to provide long-range information and tracking, LRIT, information to the Maritime Safety Center Horn of Africa, which is the EU body which tracks ships through the high-risk waters, so that we actually have a better understanding of the picture, and naval vessels can do a better distribution of their resources. But as far as directly asking them to do something momentarily, that has not been done, sir.

Mr. LOBIONDO. For the State Department, Mr. Amend, would you want to take a stab at that last question? I mean is this something the State Department is looking at, at all?

Mr. AMEND. Yes, it is. This is one option among the range of options that we are considering. And, again, there are a number of aspects to it, host governments that are less enthusiastic about it, but will continue to look at, yes.

Mr. LOBIONDO. For Mr. Wechsler, as compared with other flag states there are relatively few number of U.S. flag vessels that are transiting the waters in the Horn of Africa. Is the Department of Defense currently tracking the movements of suspected pirates—are you able to do that at all—that are based at sea?

Mr. WECHSLER. We are able to do that in part, and our limitations are a result of just the sheer size of the area at sea that we are dealing with. Where we know of the pirates, where we do have information of the pirates, we are able to move rapidly and take appropriate action, as we have most recently, as have some of our partner nations.

South Koreans, the Indians have recently taken quite powerful action. And it should be noted that the Pakistanis currently lead 151. So there are a number of countries that do take action. And we take action when we are close to a U.S. flag vessel that is attacked by pirates. And we have also taken action when it is not a U.S. flag vessel, but we are the closest, and we are abiding by our responsibilities under the law of the sea.

Mr. LOBIONDO. Are you able to supply, on a timely basis, intelligence information to U.S. flag vessels when you are coming on it?

Mr. WECHSLER. Yes, there are procedures, and it all depends on the specific circumstances of the vessel that is in the process of being attacked, or has been attacked. When we have a mechanism to communicate directly with the people on the ship, we most certainly do so.

The ability for us to do so will have a lot to do with whether or not the ship is abiding by all the best practices that have been established, whether they have a safe room, whether that room has communications, whether they were able to get there, whether they were able to delay the pirates from taking their ship, from a variety of the evasive actions that they were—that they should be taking.

Mr. LOBIONDO. Mr. Amend, I wanted to come back to part of your statement, where you said we have not gotten to any of these folks on shore, on land-based. I mean it seems that with the vast area that was outlined at sea, that getting to some of these bad actors on land is the way to go.

I mean is there anything you can—we might be getting into an area we cannot talk about here, but since you mentioned it during your statement, I mean, it is an obvious area we need to get to. How does this—

Mr. AMEND. Right. And here I think I need to be mindful of the views of my colleague and those of the Department of Defense on the various—the range of options that are out there.

There are certainly—there are diplomatic concerns with the—any action that might bring the fight on shore, because of the potential blowback to—and the way that we would exacerbate an already difficult situation on land where there has been no functioning government in Somalia for 20 years now, where we are concerned about a range of issues, humanitarian, economic development, and other issues.

But I really cannot—I think probably in this forum, that is probably as much as I can say.

Mr. LOBIONDO. I understand that, and I will maybe switch gears with one of my other committees at another time, the intelligence committee, where we can take this up.

But I just say collectively, out of frustration, so what about if a commercial vessel was boarded and taken? And what if it had a crew of 30? And what if they were all slaughtered?

And what about if—you know, go through these—I mean what will it take for us to finally say, “We are not going to try to hold hands and serve warm milk and cookies and figure out how to solve this problem,” because at a certain point there has got to be a breaking point for the US of A to say, “We have had enough, and if we are not going to get cooperation from other nations”—I am not talking about putting troops on the ground there or anything else. We have all kinds of other means.

Mr. AMEND. Mr. Chairman, I would say that we are at that point. I think the February 22nd tragedy has galvanized Secretary Clinton and those of us at the State Department to take a really hard and cold look at the range of options that are before us. So I think that we are in that process. We are looking at what is out there, and what could be done.

Mr. LOBIONDO. On—switching gears a little bit, still for you, the Executive Order 13536 names 11 individuals, 2 of whom are known to be head of pirate gangs. It effectively outlaws cooperation with these individuals, or support of their activities. The maritime community is very concerned that the prohibition on providing material support will make ransom payments liable for prosecution.

Will the industry be held liable for ransom payments they made in the past, if they are later found to have ended up in the hands of one of the 11 individuals listed in the Executive order?

Mr. AMEND. Mr. Chairman, I do not think there is a clear answer to that. I don't know that that—we would know, until that has been tested. And I will go back to the Department and try to develop a fuller written response to that question. But I do not know.

Mr. LOBIONDO. And are you or someone in the Department actively trying—attempting to track ransom payments?

Mr. AMEND. Well, I think that is part of the effort that I described earlier, in response to Congressman Larsen's question. Working with Treasury, and the intel community, and Justice, and others, we are trying to do that, trying to do a much better job of that now.

Mr. LOBIONDO. Thank you. Mr. Caldwell, you mentioned in your statement that growing ransom proceeds may undermine regional security and contribute to other threats, including terrorism. Are there any indications that terrorist organizations are using piracy as a source of revenue?

Mr. CALDWELL. Mr. LoBiondo, we at GAO do not have independent intelligence capabilities. And the word we are getting from the DoD and the intelligence community is that there is no clear nexus now between piracy and terrorism.

But even as Mr. Wechsler said, in the work he has done with DoD and drug interdiction, these different forces feed on each other for instability, whether it is greed or political ideology, and sometimes these groups start cooperating, or change their motivation.

So, it is certainly a concern. I think we know the long-term solution to Somalia is governance on land. And when you have these organizations, whether they are terrorist or whether they are pirate and criminal, their interest is to prevent and undermine such governance.

Mr. LOBIONDO. Mr. Larsen—Mr. Landry, do you now have a question?

Mr. LANDRY. Yes, sir.

Mr. LOBIONDO. You exited for a moment there,

Mr. LANDRY. Yes, sir.

Mr. LOBIONDO. OK.

Mr. LANDRY. I just have a few questions for the admiral.

Does the Coast Guard have the authority to deploy maritime safety and security teams internationally to deter piracy?

Admiral COOK. Could you repeat the question for me, please, Congressman?

Mr. LANDRY. Does the Coast Guard have the authority to deploy maritime safety and security teams internationally to deter piracy?

Admiral COOK. Well, we have the authority, but we respond to the combatant commanders under Department of Defense. So, unless we were doing a law enforcement action independent from a Coast Guard cutter, we reserve our resources to be deployed with the Department of Defense, under their combatant commander's direction.

Mr. LANDRY. Could you deploy those members aboard U.S. flag merchant vessels?

Admiral COOK. That could be done, although it is a significant resource issue, and I think that has been discussed in several other forums, that we do not have the capacity to meet the needs of U.S. flag merchant ships with armed teams from the Coast Guard.

Mr. LANDRY. OK. Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Cravaack, do you have any questions?

Mr. CRAVAACK. Yes, Mr. Chairman, I do. Good morning. Thank you all for coming today. Admiral, thank you for the great work all your Coast Guard people do for us on a daily basis that we know nothing about. And thank you for all the men and women of the great Coast Guard.

I do have a couple of questions. I do apologize for getting in late. I was at another committee meeting. And I do have a question for Director Caldwell.

I am a little concerned about some of the possibilities—and I have read conflicting information, so I really do not—I am looking for your guidance here on some of the money that might be transferred from piracy to, like, al-Shabaab in the African region. Could you comment a little bit more about that, fill me in a little—what you are seeing and what you are hearing?

Mr. CALDWELL. We do not have any intelligence information, Mr. Cravaack, that is independent from the executive branch. And the official story is that there is not a clear nexus between al-Shabaab and the pirates.

But there certainly is a concern that that cooperation could grow. Both of them are involved in illicit activities, and if, under certain circumstances it becomes in their interest to cooperate, to undermine any type of governance, in Somalia, that it could occur, sir.

Mr. CRAVAACK. Thank you, sir, for that. Do you have any idea if there is any foreign terrorist organizations that are funding these operations? They have to get their money from somewhere, because I understand they do have some pretty heavy weapons.

Mr. CALDWELL. I am probably not the expert on that, but the pirates are getting the money from the ransoms. So they do not need independent funding. The pirates have got a very clear source of

funds, and it is through the shippers, or whoever is paying the ransom, the insurers, through kidnap and ransom insurance. And the business model that they have, at this point, does not require any additional money coming in from other sources.

Mr. CRAVAACK. OK. Thank you, sir. Is there anybody else on the panel who can comment on this regarding terrorist organizations versus the pirates that are off the coast, as of right now?

Mr. WECHSLER. Sir, what I would say is, first, with an important caveat about the limits of our intelligence and information on this question. And then, secondly, what I would say is that, to the best of our knowledge right now, we do not see them—those two entities, the terrorists and the pirates—being operationally or organizationally aligned.

We do, from time to time, see a relationship of coercion, which ends up with money from pirates potentially going to terrorist organizations. That is the best that we have at the moment.

Mr. CRAVAACK. So there may be a window of opportunity there. OK. Thank you very much, gentlemen. I appreciate your testimony today. I yield back, sir.

Mr. LOBIONDO. OK. Mr. Harris, do you have anything?

Dr. HARRIS. Just one brief question, Mr. Chairman. Again, thanks to the panel for coming to testify.

As I read over, Mr. Amend, your testimony, on the bottom of page seven it talks basically about how we are going to try to deal with this through diplomatic terms. And it says, “We are examining appropriate counterpiracy assistance, enhancing youth employment programs.”

Now, I have got to tell you, I mean, it kind of rings—you know, sounds like midnight basketball or something. I mean tell me that the United States is not depending on youth employment programs to stop the slaughter of—that occurred aboard the *Quest*. Tell me that. Assure me that we are not depending upon enhancing youth employment programs in a country where there is not even a real government.

Mr. AMEND. Congressman Harris, we are not depending, I am here to tell you that.

Dr. HARRIS. Thank you very much. I hope the next time you come to us, you make it a little clearer in here that that is—you know, that is one of the things we are counting on. Thank you. Yield back the time.

Mr. LOBIONDO. Mr. Larsen?

Mr. LARSEN. Mr. Amend, in the Coast Guard authorization bill we provided protection for U.S. citizens in U.S. courts for actions taken to defend against piracy. However, U.S. ships call at numerous foreign ports, as you know. And there is a potential that an action could be brought in a foreign court for acts on the high seas that were legally justified under U.S. law.

So, can you answer for me, would the U.S. defend U.S. citizens against charges in a foreign court?

Mr. AMEND. Absolutely. I think we would vigorously attempt to seek that they would not be held liable for any act that would be taken in self-defense. Absolutely.

Mr. LARSEN. And how would that be accomplished?

Mr. AMEND. Well, through diplomatic means. I think we would put pressure on the host government not to pursue that kind of an action.

Mr. LARSEN. So U.S. citizens defending themselves against piracy on the high seas can rely upon U.S. Government to defend them?

Mr. AMEND. I think we would step forward and try to defend them.

Mr. LARSEN. Thanks. I have a question about the cost of addressing piracy, Mr. Caldwell. You noted that there—that we do not really know what we spend, what we have been spending on combating piracy, and that was in your September 24, 2010, report. Do you have any update on that question?

Mr. CALDWELL. We do not. The indication we had from the NSC is that that is one of the things they will consider as they revise their action plan.

I do want to give the Department of Defense credit, because they were one of the departments that at least tried to come up with an estimate for us, based on steaming days of ships, and things like that.

If I could, I will take this opportunity to add one other thing, in terms of the armed security teams on ships. That is a very efficient way to do things, because instead of having billion-dollar naval ships moving around pursuing pirates, you have got relatively small teams on merchant ships. And I wanted to point out something from an industry perspective, because I do deal with the industry quite a bit.

Some of the industry's initial concerns were that these armed security teams would lead to escalating violence, and I think, actually, the opposite has occurred. It is the escalating violence that has led to the increased use of these armed security teams. And a lot of the countries that initially opposed such teams, are now more actively supporting them, particularly countries—say the Philippines or Korea, where some of their seafarers have been killed.

Mr. LARSEN. About 30 percent of the seafarers are actually Filipino. Is that about right?

Mr. CALDWELL. Yes, they have a very high percentage. But a lot of those are working on cruise ships, which generally are not going through the pirate waters.

One other thing about the flag states, and Mr. LoBiondo's comments about their contribution. Some of the flag states recognize they do not have navies, so they are not going to be able to contribute naval forces. But they seem to be the countries that are more amenable to allowing armed security teams on board.

Mr. LARSEN. Right. With regard to marine insurance, the general—my statement and from other sources said that, according to a Chatham House report, insurance rates, at least through the London insurers, has increased. But your report specifically says that rates in the United States have not increased. Can you explain the difference there?

Mr. CALDWELL. No, sorry. I am not quite sure.

Mr. LARSEN. Thank you.

[Laughter.]

Mr. CALDWELL. That is the simple answer. There is other insurance, such as K&R insurance, which is not mentioned in a lot of the documents. Kidnapping and Ransom insurance is taken under a confidential agreement. So there is no public information on those rates and whether they are increasing. That is probably one source of these ransoms that are being paid.

Mr. LARSEN. OK. Can you get back to us with any other information about that?

Mr. CALDWELL. We can take that for the record.

Mr. LARSEN. Would you do that, please?

Mr. CALDWELL. We can come up with an explanation. Yes, sir.

Mr. LARSEN. Thank you very much. Admiral Cook, can you talk about the difference between the vessels' security plans that were established under the MTSA versus what are commonly known as the best management practices, and the extent that there are differences that were required of U.S. flag ships versus what the BMPs are being implemented on foreign flag ships, and how wide that difference is? And if it is too wide, how can we close it?

Admiral COOK. Congressman, fundamentally, they are quite similar. Ultimately, though, in the BMPs, the best management practices, it makes a recommendation against the use of armed security teams. So that is a fundamental difference, right there. But basically—

Mr. LARSEN. So, in other words, in the vessel safety plans it says what compared to—on that issue—compared to BMPs?

Admiral COOK. It says that because the owner is required to do the risk assessment based on the type of vessel and the area that it will be going—for example, the thing that is—really works against a ship is a low freeboard and a slow speed.

Mr. LARSEN. Right.

Admiral COOK. You know, they are obviously a target for piracy. So, in that case, the owner has a higher threshold to identify what mitigation procedures they would need, and that would—they would allow—we would allow them to use armed teams. Not arm the crew, but armed teams, so that the crew can remain focused on navigation and running the engine room.

So—but generally, though, in concept, both of them target ways to prevent unwelcome entry by anyone, you know, pirates, of course, in particular. They highlight opportunities for non-lethal—talks about ship operations to evade pirates: increase your speed, in some cases you might alternate courses, so that it is more difficult to track the ship.

Communication procedures need to be discussed within the ship's crew and externally. For example, the ships have ship security alert systems, which are kind of those buttons like you picture in a bank, where a silent alarm goes off. In, for example, U.S. flag ships, the alarm goes off in our Coast Guard Atlantic area command center in Virginia, which enables us to then directly contact the ship—we do not contact the ship—the ship security officer back in the office, and see if their ship is located where the beacon is saying, and whether they might be involved in activities where they would be subject to piracy.

And then, measures to protect the crew. For example, you have heard the term "citadel," which would be a hardened room some-

where inside the ship where the crew could then retreat. And it also requires some type of drills and exercise regime, so that the crew is well practiced into the communications, or the entry into the citadel, and those kind of things that would ultimately protect them in the final measure.

So they are very similar, but they very much depart on the armed guard part.

Mr. LARSEN. OK. I have further questions, but I will—

Mr. LOBIONDO. Admiral Cook, with the Coast Guard authorization bill last year we got some language about liability relief for owners and operators. And the Coast Guard is establishing standards for use of force for self-defense of vessels. Can you give us any idea when those standards will be published.

Admiral COOK. Yes, Congressman. We went ahead and leveraged a document called a port security advisory that we already had in place, because there was a need from our U.S. flag shippers to know where their limits were, as far as use of force.

And so, that document has been out for over a year. So when we saw the authorization act, we said this is an opportunity to test that port security advisory against the language for the authorization act, and publish it in the Federal Register with the language from the authorization act surrounding it, and ask for comments. The comment period closed on March 1st. The industry is generally very supportive of the language, and it walks through items such as use of force, use of deadly force, a variety of things that you would need to have on your mind like who is in charge—the master is always in charge—those types of things which are drawn out, which give them the framework, then, to do self-defense, and know that they will not be held civilly liable.

So, we are expecting that that can be turned around here as we work in a couple of comments. Very soon we will be passing it over to the Department as soon as we can.

Mr. LOBIONDO. Mr. Landry, do you have anything else?

Mr. LANDRY. No, sir, Mr. Chairman. Thank you.

Mr. LOBIONDO. Mr. Larsen?

Mr. LARSEN. Thank you. Thank you, Mr. Chairman. Mr. Amend, with regards to the potential of sanctions against known piracy financiers, is that something that is in the State Department toolbox, and something the State Department is willing to do, to sanction individuals?

Mr. AMEND. Yes, I think. Again, our review is not yet complete. I do not want to get too far ahead. But I cannot say at this point. The review process is not yet complete, and so I would not want to get cross-wise with our senior leadership.

Mr. LARSEN. OK. But—and this is the review you mentioned in your testimony? Sort of—you did—the contact group was set up in 2009.

Mr. AMEND. Right.

Mr. LARSEN. You have done 2 years of work on that, there has been some success, there has been some challenges, and now you are looking at all this again, and part of what you are looking at in the future is whether or not you can identify, and second, when you—if you can identify, whether you should or you should not apply, or try to sanction—

Mr. AMEND. Well, and—

Mr. LARSEN [continuing]. Piracy financiers.

Mr. AMEND. To think creatively about a number of options, to include what you just mentioned, and to see how they could be sequenced in a way that would allow us to achieve a near and medium-term success.

Mr. LARSEN. Yes, OK. So on March 21st, there is a plenary session of the contact group bringing together the work—

Mr. AMEND. Right.

Mr. LARSEN [continuing]. Of the working groups, where presumably, there will be discussion and—on the recommendations that come out of the working groups.

Is there anything that you all will be discussing that you might find helpful, getting support from this committee, this subcommittee, on?

Mr. AMEND. No. I appreciate that offer. I think our focus, in large part, will be to pull together the thinking on proposals made by the U.N. about new judicial mechanisms in the region that might be more effective, to focus on the subject of financial flows, informal and formal financial flows. But let me take that question back and share that with my colleagues and respond in writing.

Mr. LARSEN. I would—well, you have got a very short period of time to do that.

Mr. AMEND. It is very—it is a narrow window.

Mr. LARSEN. Absolutely.

Mr. AMEND. But we can move quickly.

Mr. LARSEN. I look forward to your quick response.

Mr. AMEND. Yes.

Mr. LARSEN. And I hope that is interagency, you are talking to an interagency group about that.

Mr. AMEND. Yes, absolutely.

Mr. LARSEN. With regards to prosecution, it might have been Mr. Wechsler who noted that there have been 800—for the sake of the law, 800 alleged pirates turned over for prosecution. How many have actually been prosecuted or awaiting prosecution? Because my understanding is that number is not very high.

Mr. AMEND. I defer to information that is provided by the U.N., office on drugs and crime. It describes countries regionally and then internationally, currently detained and those that have been prosecuted.

And I think your observation is accurate, that a few numbers have been prosecuted, significant numbers have been detained. Or up to 800, I think, is the round figure that we see.

Mr. LARSEN. So up to 800 are current in detention?

Mr. AMEND. Yes, and let me just give you an example. In the region, Somaliland, 88 all have been convicted; Puntland, 260, of which 200 have been convicted; Yemen, 120, all convicted; Oman, 12, all convicted. More broadly, Netherlands, 10, 5 of which have been convicted, and on down the list.

Mr. LARSEN. And what do you find the challenge to prosecution being?

Mr. AMEND. The key challenge is, as I think was mentioned earlier, piracy is a crime of universal jurisdiction. And we seek diplomatically to get countries to take on national prosecutions, to

prosecute—to accept—take receipt of and then prosecute under their national laws, pirates. That is difficult. And a number of countries have stepped forward. Kenya, for example, I think has taken up to around 100 now.

But it is an ongoing effort. It is an ongoing challenge to get countries to do this. Some are reluctant.

Mr. LARSEN. You have all noted, as the chairman has noted and I have as well, that—the tragedy of the *Quest*, the sailing vessel *Quest*. Do you—any of you—have an assessment on whether this has changed the rules of engagement for the pirates, if they can be looked at monolithically?

[No response.]

Mr. LARSEN. I know it is a rather open-ended—but I would rather—if someone can volunteer—

Mr. WECHSLER. It is—with the caveat that this is an ongoing investigation, and so we are still learning a lot about what the individual motivations were of those specific pirates—but as a general proposition, our initial assessment is that this was in individual circumstances, and does not necessarily indicate a wide-ranging change of behavior, talking about this specific incident.

That said, the wider trends, we do have concerns about the use of force by pirates more widely.

Mr. LARSEN. Yes, yes.

Mr. LOBIONDO. Mr. Amend, the U.S., for a while, had a bilateral prosecution agreement with Kenya. And I guess we transferred, what was it, 25 or so pirates to Kenya. Kenya formally withdrew September of 2010. Do we know why they withdrew from the agreement?

Mr. AMEND. My understanding is that they said that they had reached capacity. But since the suspension of that agreement, on a case-by-case basis, the Kenyans have accepted suspected pirates. And so we continue to work closely with the government there, notwithstanding the fact that we had an agreement that has been suspended, to, on a case-by-case basis, to seek their support in accepting new suspected pirates as incidents occur.

Mr. LOBIONDO. Has Kenya released pirates without prosecuting?

Mr. AMEND. That I do not know, but I can get an answer back to you.

Mr. LOBIONDO. So would you also be able to comment whether their withdrawal from the bilateral prosecution agreement has hindered prosecution efforts?

Mr. AMEND. Well, I think, as a general principle, we would like countries to accept pirates—affected states to accept pirates and prosecute them. And so we certainly were disappointed. But we continue to work closely with the Kenyan Government so that they will make the right decision.

Mr. LOBIONDO. And I am assuming we are—State Department is attempting to prevent other nations from just sort of catch-and-release programs, so to speak?

Mr. AMEND. That is right. That is right.

Mr. LOBIONDO. OK. Thank you. Mr. Larsen, do you have more questions?

Mr. LARSEN. Mr. Wechsler, we have heard testimony from you and the others about the expansion of the area that the pirates

have gotten into, about the size of the lower 48 States. We have heard from you that if you took all the ships in the navies around the world, that number would not be enough to patrol this area adequately.

So, without, obviously, getting into too much operational detail for obvious reasons, what kind of options do we have, beyond what we are doing on the water, for degrading their capacity to operate in such a large area?

Mr. WECHSLER. In addition to gaining better intelligence, which is always a preferred way to attack such problems on the sea—if you are cued by intelligence, it makes your work much, much better than if you are going around, hoping to come across a pirate, which we try not to do.

But in addition to that, I would go back to the first order of statements that I and a bunch of my colleagues here have made, which is to make the ships—the vessels themselves much harder targets for the pirates. There is a significant number of steps that can be done to make these targets harder. And we have seen the success to date when targets have been made harder, that pirates cannot take them, will not take them, try and fail to take them.

And those steps, as compared to having a lot of naval vessels, is a much more cost-effective way to address this problem on the sea.

That all said, as you have said, and as we have said, the true solution to this problem is going to be on land, not on sea.

Mr. LARSEN. With regards to issues within your area, on the intelligence side, as the State Department goes to phase two, or whatever you are calling it, looking at this, rethinking, will you be advocating, from a defense side, Defense Department, will you be advocating for more access to the use of intelligence assets in order to help with this problem?

Mr. WECHSLER. Yes, there is a lengthy and comprehensive process for the global employment of forces and for other intelligence-related processes to deploy and prioritize those assets. We make sure that the effort against piracy is included in that process, so that it can be ranked.

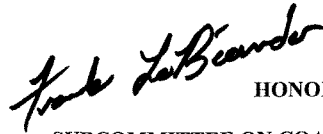
I do have to say, though, sir, as I said in my testimony, when we are fighting a war in Afghanistan, and when ISR assets are in great demand in that war, that will understandably be our highest priority. And we are short of ISR assets, compared to demand, quite significantly. And that is the unfortunate situation in the Department of Defense.

Mr. LARSEN. And there is no doubt about that, and there is no doubt we have heard that from Secretary Gates many times, as well.

I think, Mr. Chairman, that is—those are my questions.

Mr. LOBIONDO. OK. I think that will wrap us up. I would like to thank our panel very much. I do not imagine this will be the last we will be dealing with this. We look forward to some updates from you. And I thank you for being here. The committee is adjourned.

[Whereupon, at 11:14 a.m., the subcommittee was adjourned.]



STATEMENT OF THE
HONORABLE FRANK A. LoBIONDO
CHAIRMAN
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
OVERSIGHT HEARING
ASSURING THE FREEDOM OF AMERICANS ON THE HIGH SEAS: THE UNITED
STATES' RESPONSE TO PIRACY
MARCH 15, 2011

The Subcommittee is meeting this morning to review efforts by the United States and the international community to respond to piracy on the high seas and prevent future attacks. Since the Subcommittee's last hearing on this topic, Somali pirates have vastly expanded the range of their attacks on merchant vessels to encompass much of the western Indian Ocean. But even more alarming, the pirates have dramatically increased the number and viciousness of their attacks.

This includes the recent hijacking of the U.S. sailing vessel QUEST, which ended in the ruthless murder of four U.S. citizens. I believe I speak for all of us on the Subcommittee when I express my sincerest condolences to the families of the victims and my outrage at this brutal violence against American citizens. As I said at our last hearing, piracy cannot be tolerated by the United States and the international community. This hearing provides us with the chance to examine ways to respond to the ongoing threat.

Piracy has become a multimillion dollar industry as a result of ransoms that continue to be paid out by vessel ownership groups. I do not think we are tracking ransom payments to the extent that we should be. As a result, I am extremely concerned piracy could be benefiting the terrorist groups operating in Somalia and that these groups could use their profits to carry out terrorist acts here at home and abroad. At the same time, I am worried the Federal government may hold vessel owners criminally liable for the ransoms they pay to free captive mariners.

Many in the maritime community are looking at ways to enhance security of merchant vessels, including the placement of armed security personnel aboard ships. A vessel's crew has every right under U.S. and international law to defend themselves and their vessel. However, I do have some concerns about the guidance going out to these mariners and hope to hear more about how we keep them informed of the latest avoidance and response measures.

The United States has placed Navy and Coast Guard assets in the region and has partnered with other nations to protect vessels in the area. I applaud the Services for taking action, but I am concerned about the effectiveness of these efforts. We know that several of the pirates captured by the naval forces of other countries are not being prosecuted. Instead, they are only returned to shore where they are free to resume their illegal activity. I am interested in learning more the procedures by which suspects are being prosecuted.

Piracy is recognized internationally as a crime against all nations and to which all nations must respond. It is incumbent on us to examine ways to minimize, if not end, this threat and its impact on both world commerce and our own national economy.

I thank the witnesses for appearing today and look forward to their testimony.

I would like to note that Mr. Coble's 80th Birthday is this Friday and thank him for his service on the Subcommittee. Mr. Coble has been on this Subcommittee and its predecessor, the Merchant Marine Subcommittee, since 1987. He also spent five and a half years in the Coast Guard on active duty and then another 22 years in the Reserves. Happy birthday, Master Chief Coble.

Testimony
Principal Deputy Assistant Secretary Kurt Amend
Bureau of Political-Military Affairs
U.S. Department of State
Before the House Committee on Transportation and Infrastructure's
Sub-Committee on Coast Guard and Maritime Transportation
Hearing on "Assuring the Freedom of Americans on the High Seas:
The United States Response to Piracy"
March 15, 2011

Mr. Chairman and Members of the Committee: thank you for inviting me to discuss the national security problem of piracy in the waters off the shores of Somalia. We strongly condemn the recent killing of four U.S. citizens, whose yacht, the QUEST, was seized by pirates off the coast of Oman, and we extend our deepest sympathy to the victims' families. This deplorable act emphasizes the need for more energetic international effort to respond to piracy in the Arabian Sea, Gulf of Aden, and the Indian Ocean region.

As I speak to you today, close to 600 mariners from around the world are being held hostage in the region, some for as long as six months. Pirates currently hold around 28 ships, most for ransom and a few for use as a mother ship – a ship that launches and re-supplies groups of pirates who use smaller, faster boats for attacks. In recent months the use of mother ships has extended the pirates' reach far beyond the Somali Basin, rendering them more difficult to interdict and more effective operating in seasonal monsoons that previously restricted their activities.

Somali piracy is an organized criminal enterprise that, if left unchecked, has the potential to more significantly impact global trade. Its root cause is state failure in Somalia, and cannot be resolved exclusively through military means. In 2010 we witnessed the highest number of successful pirate attacks and hostages

taken on record. Pirate attacks so far this year are significantly higher than 2010 levels. The ruthless killing of Americans on board the QUEST potentially represents a significant departure from the way pirates have conducted attacks in recent years and underscores the increasing risks to recreational and commercial mariners in the region. At the Secretary of State's direction, we have begun an intensive internal review of our approach to piracy, a process that should be finalized shortly. We will consult closely with Congress as we move forward to more effectively address this regional threat and its pernicious global consequences.

Well before the attempted seizure of the U.S.-flagged MAERSK ALABAMA in 2009, the U.S. Government emphasized the need for active international coordination on this complex problem. In January 2009, we helped to establish the Contact Group on Piracy off the Coast of Somalia, which now includes over 60 nations and international, and industry organizations that meet frequently to coordinate national and international counter-piracy actions. Through the Contact Group and in our bilateral relations, we have focused our efforts on five key areas to combat piracy: coordinating multi-national naval patrols off the Horn of Africa; implementing best management practices to prevent pirate boarding; pursuing means to prosecute suspected pirates and incarcerate those convicted; impeding the financial flows of pirate networks; and discouraging ransom payments.

The United States has a long tradition of opposing the payment of ransom and not making concessions to hostage-takers. We work hard to deny hostage takers the benefits of concessions through negotiation and we are working diligently to discourage other governments and private entities from paying the escalating ransoms that enable the pirates' predatory behavior. We are also

increasingly focused on finding methods to deny pirate instigators and financiers the means to benefit from ransom proceeds. The increase in attacks over the last year is a direct result of the enormous amounts now being paid to pirates. Every ransom paid, which now averages \$4 million per incident and has reached as much as \$9.2 million dollars, further institutionalizes the practice of hostage-taking for profit and funds its expansion as a criminal enterprise.

We are collaborating with the law enforcement and intelligence communities, as well as our international partners in an attempt to develop methods to detect, track, disrupt, and interdict illicit financial transactions connected to piracy and the criminal networks that finance piracy. Individuals involved in piracy typically operate outside the formal financial system, conducting their transactions in cash and through informal money transmitters. This makes tracking the financial flows within and between countries extremely challenging. With the cooperation of our international partners, we are beginning to improve our understanding of the trail of ransom payments and the interaction of ransom monies with our understanding of both formal and informal financial systems, such as the *hawala* system, that facilitate piracy.

In an effort to prevent attacks, the United States established Combined Task Force (CTF) 151 to conduct counter-piracy naval patrols in the region to secure freedom of navigation for the benefit of all nations. CTF 151 operates in the Gulf of Aden and off the eastern coast of Somalia, covering an area of over one million square miles. It is a multinational task force that has been commanded at different times by the U.S. Navy, the Korean Navy, and the Turkish Navy, and is currently led by Pakistan's Navy. In addition to CTF 151, NATO's Operation Ocean Shield, which the U.S. Navy also participates in, is conducting multinational counter-piracy patrols, as is the European Union, through Operation ATALANTA.

These maritime forces also work with other national navies in the area such that on any given day an average of 25 naval vessels from among the 25 participating countries are engaged in counter-piracy operations in the region, including countries new to these kinds of effort like China and Japan. Their operations are coordinated through regular meeting in a forum called Shared Awareness and Deconfliction, which take place at the headquarters of the U.S. Naval Forces Central Command (USNAVCENT) in Bahrain. These meetings are a very successful model for operational coordination. USNAVCENT worked with partners to set up the Internationally Recommended Transit Corridor (IRTC) through the Gulf of Aden, a secure transit zone for commercial shipping that is heavily patrolled by naval forces. While this has been successful in reducing to a minimum the number of attacks occurring in that space, it has unfortunately pushed pirate activities outside that corridor.

Unfortunately, an insufficient number of ships, helicopters, and overhead surveillance assets limit the ability of naval forces to respond effectively to attacks beyond the IRTC. Some states are hindered by strict domestic law provisions that require them to release suspects if a prosecution venue is not identified in 24 hours. International naval cooperation will continue to be necessary for the foreseeable future to help protect shipping and interdict pirate attacks, but naval presence on its own likely will be insufficient to prevent or measurably deter piracy beyond the IRTC. There is simply too much open water to patrol.

Most important to our efforts has been the shipping industry's increasing implementation of industry-developed "best management practices" to prevent pirate boardings in the first place. These guidelines were developed to identify self-protection measures that have proven successful in preventing boarding and seizure, and rescues by naval forces when boarded. They include practical

measures, such as proceeding at full speed through high risk areas, ensuring additional lookouts are placed on watches, using closed circuit television to safely monitor vulnerable areas, employing physical barriers such as razor wire, reporting positions to military authorities, engaging in enhanced voyage planning, and mustering the crew inside the vessel. These measures, when properly implemented, remain the most effective manner to protect against pirate attacks. We are continuing to stress the importance of these measures, which have a proven ability to deter and thwart attacks.

When attacks do occur, however, the international community needs effective and appropriate ways of dealing with captured pirates. When pirates are captured, coalition naval forces often release them for lack of prosecutable evidence or a national venue for prosecution. Piracy is a crime of universal jurisdiction, so all states are authorized under international law to prosecute cases of piracy, whether or not that state has a direct link to the event. In practice the issue is not so simple, as the globalized, multinational nature of modern shipping significantly complicates the question of responsibility for prosecution. Many of the countries affected by piracy – for example, the state of registry of the ship or, alternatively, the state whose citizens may be a pirated ship's owner, operator, captain, or crew members – have proven unwilling or unable to prosecute cases, and as a result, too many suspected pirates are released without consequence, and often simply rearm and re-attack. Regional states that have accepted suspects for prosecution are becoming less willing to do so, citing limits to their judicial and prison capacities and meager financial support from the international community. Navies are increasingly frustrated with the unwillingness or inability of governments to prosecute suspected pirates they capture and are often forced to hold suspects for extended periods while diplomatic efforts are launched to identify

prosecution venues. The international community is currently studying alternative prosecution mechanisms that might be located in the region.

The United States encourages affected states to assume prosecution responsibility, and has actively prosecuted pirates involved in attacks on U.S. vessels where there has been sufficient evidence to support the case. To date, that totals 26 persons involved in 4 attacks: the April 2009 attack on the MAERSK ALABAMA, and attacks in April of last year on the USS NICHOLAS and the USS ASHLAND, and most recently, fourteen men from Somalia and Yemen have been indicted on federal criminal charges for their involvement in the attack that resulted in the killing of the four Americans on the QUEST. Still, one of our major efforts is to find creative ways to increase the ability and willingness of other states to undertake what should be a national responsibility to hold criminals accountable for attacks on national interests.

In spite of these efforts, piracy has grown worse, both in terms of frequency and of scope. In the coming weeks, we will work with other executive departments and agencies to develop new approaches that seek to overcome the ongoing challenges of piracy. As we move forward, we will be looking into several possible courses of action.

On the diplomatic front we will seek to increase our cooperation and coordination with international partners. We will continue to discourage the payment of ransoms; stress compliance by shipping industry with self-protection best management practices; encourage the prosecution of suspected pirates in national courts; encourage contributions of military forces and basing rights for counter-piracy operations; and seek financial contributions to the Contact Group's Trust Fund to Support Initiatives of States Countering Piracy off the Coast of

Somalia to defray the expenses associated with prosecution and incarceration of pirates.

At the same time we will continue to pursue our diplomatic dual-track approach in Somalia to support the most important approaches for countering piracy: building governance, security, and economic livelihoods on land in Somalia. On track one, we continue to support the Transitional Federal Government (TFG) and the Djibouti Peace Process, as well as the African Union Mission in Somalia (AMISOM). On track two, we are expanding engagement with partners outside the Djibouti Peace Process who seek stability in Somalia, including those in Somaliland, Puntland, and parts of South Central Somalia. In coordination with international partners, we will evaluate the utility of increased partnerships with regional governments of Somaliland and Puntland, as well as with local and regional administrative units throughout South Central Somalia, who are opposed to and are willing to address piracy and governance concerns. We will seek to leverage the influence of Somali women and the wider Somali diaspora community in discouraging this criminal enterprise that is interfering with political reconciliation and economic recovery from decades of civil war in Somalia.

Achieving the necessary governance improvement throughout Somalia will be the work of generations, but this cannot deter us from supporting every improvement we can for the sake of greater stability in Somalia and, in the process, combat piracy. We are examining appropriate counter-piracy assistance, enhancing youth employment programs, and engaging directly with local leaders on the need to stem piracy from Somalia's shores.

We will continue to work with port states to articulate and publish guidelines for the transit of armed security teams on U.S. commercial ships, and with industry to help them develop and implement creative ways to protect their ships and seamen and develop post-incident care for hostages released from pirate captivity.

We are looking closely at the suggestions contained in the January 20 report of Jack Lang, the Special Adviser to the UN Secretary General on Legal Issues Related to Piracy, including whether there should be a specialized prosecution mechanism in the region, and if so, how to deal with the lack of related capacity for pre-trial detention and post-conviction incarceration.

We are actively consulting with our colleagues from the Department of Defense and other countries to explore options to actively disrupt or dismantle pirate operations, both at sea and ashore. It is important, however, that any efforts against piracy be considered in conjunction with our political and counterterrorism efforts and objectives in East Africa.

We also plan to intensify our counter-piracy public affairs/public diplomacy efforts and will undertake an aggressive public information campaign to discredit piracy inside Somalia and Yemen and beyond by emphasizing the economic and human damage it causes.

One of our most important goals is the disruption of piracy-related financial flows. On March 1st, the Departments of State, Transportation, and Homeland Security convened an Ad Hoc meeting of the Contact Group to develop a strategy and process to undertake coordinated international efforts in intelligence, financial, and law enforcement communities to identify, track, and remove from operation pirate leaders, organizers, and financiers. We will explore options to disrupt these facilitators in coordination with our partners in the Contact Group. We are pleased

that the Government of Italy and Government of the Republic of Korea agreed to help orchestrate this effort under the umbrella of the Contact Group, and the United States will lend our strong support and assistance to this important work.

We firmly believe that the U.S. must intensify counter-piracy intelligence efforts. We need to elevate the priority of collection, analysis, and exploitation of human and signals intelligence related to piracy operations, financial flows, and logistical support, both inside and outside Somalia. And we need to find ways to share piracy-related intelligence with law enforcement organizations, both domestic and international.

In rethinking our approach to piracy, we are mindful that piracy to a great extent should be seen as a symptom of the more intractable problem of state failure in Somalia. Until good governance, stability, and a measure of economic development prevail on land, which will take years, piracy will continue to threaten shipping and recreational sailing in the region. Pirates – of which there does not appear to be any shortage – will continue to compensate for naval operations and ship operators' reliance on best management practices. Some nations will likely continue to fail to prosecute or incarcerate suspected pirates in their national courts and prisons, owing to a lack of judicial capacity, domestic legislation, or political will. Still, as Secretary Clinton said during her testimony to the Senate appropriations committee two weeks ago, we need to do more to combat the scourge of piracy, and we are committed to doing so.

Thank you very much. I will be pleased to take your questions.

**Questions for the Record Submitted to
Principal Deputy Assistant Secretary of State Kurt Amundson by
Representative Rick Larsen (#1)
Subcommittee on Coast Guard and Maritime Transportation
House Committee on Transportation and Infrastructure
March 15, 2011**

Question:

Please provide additional information on methods to deny pirate instigators, financiers, and accomplices the means to conduct financial transactions that allow them to benefit from ransom proceeds. This response should address:

- A. What Federal departments or agencies are participating in addressing pirate financing and supply chain issues, and what resources are being devoted to address ransom proceeds, including to whom they go and how they are used?
- B. What resources are Federal departments or agencies devoting to identify and address the financing of pirate activity, from sources either inside or outside of Somalia?
- C. What actions are Federal departments or agencies undertaking in cooperation with the international community?
- D. Is the international community, especially member states of the African Union, cooperating in efforts to address financing, including capital exchanges that sustain pirate activity and shield the use of ransom proceeds?
- E. Please summarize the main challenges to successfully identify, address, and cease the financing of pirate activities?

Answer:

Disrupting the financial flows related to piracy off the coast of Somalia presents several challenges. Several factors make disrupting piracy-related financial flows extraordinarily difficult, including the

payment of ransoms in cash, the lack of a formal financial sector in Somalia, the absence of a U.S. Government presence within Somalia, the suspected reliance of pirates on informal value transfer systems to move funds within and outside of Somalia, the lack of overall capacity in the region to pursue financial crimes, and the lack of clarity about the amount of ransom proceeds that leave the country.

To date, the State Department has been coordinating interagency efforts to identify the most effective means of disrupting these flows and targeting pirate financiers. Agencies throughout the USG, including the Departments of the Treasury, Defense and Justice as well as the Drug Enforcement Administration, the Central Intelligence Agency, the National Security Agency, and the Office of Naval Intelligence have participated in these efforts. A number of executive departments and agencies are considering a variety of intelligence, law enforcement, and capacity building options, many of them classified or law enforcement sensitive, for strengthening our efforts.

The Department of State is also working with the international community to address the financing of piracy. In the Financial Action Task

Force's (FATF) Typologies Working Group, the United States is co-chair of a project examining the financial aspects of piracy and kidnapping for ransom. The project team will submit its report soon, with the objective of discussion and adoption of the report by the FATF Typologies Working Group at FATF's June plenary meeting, and, ultimately, discussion by the full FATF plenary and publication.

The Department helped produce a request by the Contact Group on Piracy off the Coast of Somalia (CGPCS) at its November 2010 plenary session to further examine the financial aspects of piracy. On March 1 the Department of State hosted an Ad Hoc meeting of the CGPCS in Washington on this issue. The meeting attracted over 150 participants from 46 countries, 10 international organizations, and the private sector. Representatives from seven African Union member states and the AU secretariat participated.

The primary conclusion of the meeting was that disrupting piracy-related financial flows should be a key element of the international community's overall counter-piracy strategy. The Department has also identified several areas for further work, including: enhancing intelligence

and law enforcement information sharing and coordination; identifying and implementing new and existing law enforcement, regulatory and anti-money laundering tools; developing regional capacity; and strengthening government's partnership with the private sector on piracy-related financial issues. The Government of Italy agreed to lead an international effort to study ways to tackle this problem and the Republic of Korea volunteered to host a follow-on ad hoc meeting. The CGPCS endorsed these efforts at its March 21 plenary session.

In addition, the State Department has provided the primary funding for a workshop by the United Nations Office of Drugs and Crime (UNODC) Global Program on Money Laundering, which will be held on May 17-18 in Nairobi, Kenya. The workshop will focus operationally on disrupting the financial flows of piracy and is designed to further engage countries in the region. Representatives from law enforcement and financial intelligence units, among other technical experts, are expected to attend.

**Questions for the Record Submitted to
Principal Deputy Assistant Secretary of State Kurt Amend by
Representative Rick Larsen (#2)
Subcommittee on Coast Guard and Maritime Transportation
House Committee on Transportation and Infrastructure
March 15, 2011**

Question :

Please provide additional information on prosecutions of suspected pirates.
This response should address:

- A. How many suspected pirates have been captured and detained by U.S. entities?
- B. Of the suspected pirates detained by U.S. entities, how many have been prosecuted, what was the outcome of the prosecution, what was the sentence of the successful prosecutions, under what laws were the prosecutions conducted, where are convicted pirates incarcerated, and what will become of convicted pirates upon the completion of the incarceration?
- C. What other countries have prosecuted suspected pirates? What have been the outcomes of those prosecutions?
- D. What countries are reluctant to prosecute suspected pirates, and why?
- E. What steps has the U.S. undertaken, or does it plan to undertake, to achieve increased prosecutions in other countries? Does existing law allow U.S. authorities to take action against parties that aid or abet pirates but that do not directly engage in pirate activities themselves?
- F. In your prepared testimony, you state that the “international community is currently studying alternative prosecution mechanisms that might be located in the region.” What are those alternatives, and when do you expect the study to be complete?

Answer:

The United States has pursued the prosecution of all suspects alleged to have attacked U.S. vessels where there has been sufficient evidence to support a prosecution. To date, a total of twenty-six persons have been indicted or prosecuted for four attacks:

- M/V MAERSK ALABAMA – The surviving suspect in the April 2009 attack was convicted and is serving a sentence of 33 years and 9 months for two felony counts of hijacking maritime vessels, two felony counts of kidnapping, and two felony counts of hostage taking. He is incarcerated in New York.
- USS NICHOLAS - All five defendants charged in the April 2010 attack were convicted in November 2010 and received life sentences plus 80 years for piracy and additional charges including attack to plunder a vessel, assault with a dangerous weapon in the special maritime jurisdiction, conspiracy to use firearms during a crime of violence, and use of a firearm during a crime of violence. They are serving their sentences in Norfolk, VA.
- USS ASHLAND - Six suspects were charged in the April 2010 attack. One of the defendants has pled guilty; the five remaining defendants are awaiting trial.

- S/V QUEST - Fourteen men, thirteen from Somalia and one from Yemen, have been indicted on federal criminal charges for their suspected involvement in the S/V QUEST attack. One minor involved in this attack was repatriated to Somalia without being charged.

Upon completion of their sentences, a determination of their disposition will be made, including deportation to their country of nationality where appropriate.

According to the United Nations Office of Drugs and Crime, seventeen other countries have arrested and are trying over 900 additional pirates in their national courts including:

- Belgium (1)
- France (15)
- India (104)
- Germany (10)
- Japan (4)
- Kenya (136, 50 convicted)
- Madagascar (12)
- Malaysia (7)
- Maldives (34)
- Netherlands (10, 5 convicted)
- Oman (12 convicted)
- Republic of Korea (5)
- Seychelles (47, 41 convicted)
- Somalia
 - TFG (18 convicted)

- Puntland (over 300, over 240 convicted)
- Somaliland (88 convicted)
- Spain (2)
- Tanzania (12, 6 convicted)
- Yemen (120)

Despite the number of prosecutions to date, many countries continue to resist prosecuting suspected Somali pirates – or pursuing prosecution of additional suspects, beyond the number they have already taken. In the region, lack of prison capacity and the expense of long term incarceration is perhaps the most common reason states like Kenya and Seychelles have resisted accepting more suspects for prosecution. Kenya, for example has complex relations with its neighbor Somalia and the growing number of pirates in Kenyan jails raises tribal tensions, contributes to jail overcrowding, and strains the capacity of the justice system. Other countries such as Germany have expressed concerns that Somali pirates, once released from jail or upon acquittal, would be able to make asylum claims under their domestic law that would prevent these states from returning them to Somalia. Still other states, despite repeated calls by the UN Security Council, have not criminalized piracy under their domestic law. Finally, some of the most common flag states (so-called flags of convenience) and crew states do not have sufficient judicial capacity.

Through diplomatic channels, the U.S. takes every opportunity available to urge “affected states” – flag states, states of nationality of crew or owners of vessels – to prosecute suspected pirates who attack their national interests. In addition, the United States has concluded Memoranda of Understanding with Kenya and the Seychelles to facilitate the transfer and prosecution of suspected pirates in those states’ national courts. Kenya terminated the MOU in September 2010, but has agreed to continue to consider the transfer of suspected pirates for prosecution on a case by case basis. The MOU with Seychelles remains in effect.

The Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, commonly known as “the Lang Report,” included among its recommendations a proposal that the international community establish specialized pirates courts in Puntland and Somaliland, as well as an extraterritorial Somali court elsewhere in the region, such as in Arusha, Tanzania. The United States actively supports creative ways to better address the continuing challenges the international community faces in ensuring that suspected pirates are brought to justice, but we have also emphasized the need to ensure that this is accomplished in a timely and cost-effective manner. We are working with the international

community to explore how domestic and international elements might be combined to enhance our ability to prosecute pirates, for example supplementing national prosecution efforts with international personnel and other assistance. However, as we explore these potential additional mechanisms, there continues to be broad general consensus that we must continue to support and enhance the domestic prosecution-related programs in the region that are already underway. We continue to believe one of the most vital aspects remains Somalia's long term ability to construct its own active and independent judicial system.

**Questions for the Record Submitted to
Principal Deputy Assistant Secretary of State Kurt Amend by
Representative Rick Larsen (#3)
Subcommittee on Coast Guard and Maritime Transportation
House Committee on Transportation and Infrastructure
March 15, 2011**

Question:

Please provide additional information on existing and possible sanctions associated with piracy control activities off the coast of Somalia and in the Horn of African region. This response should address:

- A. What sanctions are currently in place to address piracy in the area? How effective are they? Are they sustainable?
- B. What additional sanctions are being considered that affect the Transitional Federal Government?
- C. What sanctions are available to address individuals engaged in or supportive of pirate activity?
- D. What sanctions have been implemented against individuals in response to pirate activity or to deter pirate activity?

Answer:

On April 13, 2010 President Obama issued Executive Order 13536 (the "E.O.") targeting those determined to have engaged in acts that threaten the peace, security, or stability of Somalia, obstructed the delivery of humanitarian assistance to or within Somalia, supplied arms or related materiel in violation of the United Nations arms embargo on Somalia, or provided support for any of these activities. The E.O. also includes a determination by the President that piracy threatens the peace, security or stability of Somalia. This determination provides authority to target for

sanctions those who engage in or support acts of piracy off Somalia's coast, including but not limited to those who provide weapons, communication devices, or small boats and other equipment to pirates.

Executive Order 13536 is the only U.S. sanctions regime currently in place targeting piracy activities off the coast of Somalia. The E.O. blocks the property and property interests of specific individuals and entities listed in its Annex, and, therefore, imposes targeted sanctions only; it does not impose any broad-based sanctions against the people or the country of Somalia. The Annex to the E.O. currently lists eleven individuals and one entity. Two of the eleven individuals listed in the Annex to the E.O. – Abshir Abdullahi “Boyah” and Mohamed Abdi Garaad – were found to have engaged in or supported acts of piracy off Somalia's coast. Soon after the designation, Puntland authorities detained Abshir Abdullahi “Boyah” and he remains in custody.

The E.O. authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate and block the property of additional individuals and entities who meet the criteria set forth in the E.O. (as described above). The Department of the Treasury, in consultation with the

Department of State, continues to work vigorously to identify and target individuals and entities that meet the criteria for designation as set forth in the E.O., including those individuals or entities that engage in or support acts of piracy off Somalia's coast.

In addition to our domestic sanctions, there is a robust United Nations Security Council (UNSC) sanctions regime that aims to restore peace and security in Somalia. In resolution 1844 (2008) the UNSC authorized its Somalia Sanctions Committee (the "Committee") to list individuals and entities that engage in or provide 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 Transitional Federal Institutions (TFIs) of Somalia or the African Union Mission in Somalia (AMISOM) by force; act in violation of the general and complete arms embargo against Somalia imposed by resolution 733 (1992), as elaborated and amended by subsequent resolutions; or obstruct the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia. UN Member States are to impose an asset freeze, travel ban, and targeted arms embargo on those listed by the Committee.

The United States proposed the two individuals listed in the Annex of the E.O. who have engaged in or supported acts of piracy off Somalia's coast for listing by the UN Somalia/Eritrea Sanctions Committee. To date, the Committee, which operates by consensus, has not accepted those nominations, and these are the only two pirates that have been proposed for listing at the UN.

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Coast Guard
and Maritime Transportation, Committee
on Transportation and Infrastructure,
House of Representatives

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MARITIME SECURITY

Updating U.S.
Counterpiracy Action Plan
Gains Urgency as Piracy
Escalates off the Horn of
Africa

Statement of Stephen L. Caldwell, Director
Homeland Security and Justice Issues

and

John H. Pendleton, Director
Defense Capabilities and Management





Highlights of GAO-11-449T, a testimony before the Subcommittee on Coast Guard and Maritime Transportation, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

Somali pirates have attacked 640 ships and taken more than 3,150 hostages since 2007. A few U.S.-flagged vessels have been affected—most recently the *SV Quest*, a private yacht on which four Americans were killed in February 2011. The growing frequency and severity of attacks renew the urgency to address the piracy threat. As Somalia is unable to repress piracy, the U.S. National Security Council (NSC) developed the interagency *Countering Piracy off the Horn of Africa: Partnership and Action Plan* in December 2008 to prevent, disrupt, and prosecute piracy in collaboration with international and industry partners. In September 2010, GAO issued a report evaluating the extent to which U.S. agencies (1) have implemented the plan, and the challenges they face, and (2) have collaborated with partners. This testimony is based on the September 2010 report and its objectives, and work GAO conducted in March 2011 to update report findings.

What GAO Recommends

GAO is not making new recommendations in this statement. GAO previously recommended that the NSC (1) update its *Action Plan*; (2) assess the costs and effectiveness of U.S. counterpiracy activities; and (3) clarify agency roles and responsibilities. A National Security Staff (NSS) official provided a statement that an interagency group is reviewing U.S. piracy policy, costs, metrics, roles, and responsibilities. Agencies also commented to clarify information in this statement.

View GAO-11-449T or key components. For more information, contact Stephen Caldwell at (202) 512-9610 or caldwells@gao.gov, or John Pendleton at (404) 679-1816 or pendletonj@gao.gov.

March 15, 2011

MARITIME SECURITY

Updating U.S. Counterpiracy *Action Plan* Gains Urgency as Piracy Escalates off the Horn of Africa

What GAO Found

As GAO reported in September 2010, the U.S. government has made progress in implementing its plan for countering piracy, in collaboration with industry and international partners. However, piracy is an escalating problem, and the U.S. government has not updated its plan as GAO recommended. 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 a prosecution arrangement with the Seychelles. Many stakeholders credit collaborative efforts with reducing the pirates' rate of success in boarding ships and hijacking vessels, but since 2007 the location of attacks has spread from the heavily patrolled Gulf of Aden—the focus of the *Action Plan*—to the vast and much harder to patrol Indian Ocean. Also, from 2007 to 2010 the total number of reported hijackings increased sevenfold, and, after dropping in 2008 and 2009, the pirates' success rate rebounded from 22 percent in 2009 to almost 30 percent in 2010. In addition, the number of hostages captured and the amount of ransom paid increased sharply, and pirate attacks have grown more violent. The *Action Plan*'s objective is to repress piracy off the Horn of Africa as effectively as possible, but as pirate operations have evolved, changes to the plan have not kept pace. The United States has not systematically tracked the costs of its counterpiracy efforts and is unable to determine whether counterpiracy investments are achieving the desired results. According to a statement by an NSS official, the United States is reviewing U.S. piracy policy to focus future U.S. efforts. These recent steps are encouraging because the growing frequency and severity of piracy off the Horn of Africa provides a renewed sense of urgency for taking action.

GAO's September 2010 report found that U.S. agencies have generally collaborated well with international and industry partners to counter piracy, but they could take additional steps to enhance and sustain interagency collaboration. According to U.S. and international stakeholders, the U.S. government has, among other things, collaborated with international partners to support prosecution of piracy suspects and worked with industry partners to educate ship owners on how to protect their vessels from pirate attack. However, agencies have made less progress on several key efforts that involve multiple U.S. agencies—such as those to address piracy through strategic communications, disrupt pirate finances, and hold pirates accountable. For instance, the departments of Defense, Justice, State, and the Treasury all collect or examine information on pirate finances, but none has lead responsibility for analyzing that information to build a case against pirate leaders or financiers. In September 2010, GAO recommended that the NSC identify roles and responsibilities for implementing these tasks, and develop guidance to ensure agency efforts work together efficiently and effectively. In March 2011, an NSS official stated that an interagency policy review will examine roles and responsibilities and implementation actions to focus U.S. efforts for the next several years. It is too early to assess this effort's effectiveness in bolstering interagency collaboration in U.S. counterpiracy efforts.

Chairman LoBiondo, Ranking Member Larsen, and Members of the Subcommittee:

I am pleased to be here today to discuss the U.S. response to piracy off the coast of Somalia. The killing of four Americans in February 2011 by Somali pirates has renewed a sense of urgency to address the growing frequency and severity of piracy off the Horn of Africa. Piracy threatens ships and mariners transiting one of the world's busiest shipping lanes near key energy corridors and the route through the Suez Canal. Since 2007, 640 ships have reported pirate attacks in this area, and Somali pirates have taken more than 3,150 hostages and, according to the Department of Defense (DOD), received over \$180 million in ransom payments. While few U.S.-flagged vessels have been attacked—notably the MV *Maersk Atabama* in April 2009, and the SV *Quest* in February 2011—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. This illicit but profitable activity has raised concerns that piracy ransom proceeds may undermine regional security and contribute to other threats, including terrorism. See figure 2 in appendix I for a map depicting the vast area in which incidents of Somali piracy are occurring.

Since 2008, the international community has taken steps to respond to the growing piracy problem, including patrols by the United States, the North Atlantic Treaty Organization, the European Union, and others in waters near Somalia; the establishment of a multinational naval task force with a specific mandate to conduct counterpiracy operations; and several United Nations Security Council resolutions such as the one that led to the formation of a multilateral Contact Group to coordinate international counterpiracy efforts.¹ Recognizing that vibrant maritime commerce underpins global economic security and is a vital national security issue, the United States has also developed policies and plans to collaborate with its international partners and to mobilize an interagency U.S. response. In December 2008, the National Security Council (NSC) published the

¹See, for example, S.C. Res. 1851, U.N. Doc. S/RES/1851 (Dec. 16, 2008).

*Countering Piracy off the Horn of Africa: Partnership & Action Plan.*²

The *Action Plan* seeks to involve all nations, international organizations, industry, and other entities with an interest in maritime security in taking steps to repress piracy off the Horn of Africa. The interagency initiatives of the *Action Plan* are to be coordinated and undertaken by DOD, as well as the U.S. Departments of Homeland Security, Justice, State, Transportation, and the Treasury, and the Office of the Director of National Intelligence, subject to the availability of resources. The international community, shipping industry, and international military forces also have been instrumental in efforts to prevent and disrupt acts of piracy off the Horn of Africa and facilitate prosecutions of suspected pirates. Our recent report on this subject, published in September 2010, includes more information on the U.S. agencies and 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.³

My statement today is based largely on our September 2010 report, in addition to more recent work we conducted in March 2011 to update the findings in that report. Today, as with our report, I would like to focus on two issues: first, the extent to which U.S. agencies have implemented the *Action Plan* and challenges they face in doing so, and second, the extent to which U.S. agencies have collaborated among partners in counterpiracy efforts. For our September 2010 report, we examined counterpiracy plans, activities, collaborative practices, and data; met with officials at six U.S. agencies and the Combined Maritime Forces in Bahrain; and interviewed industry and international partners. Details on the scope and methodology used for that review can be found in appendix I of the report. Selected updates for my statement today include a review of data on the nature and extent of pirate attacks, hostages taken, and ransom payments made since our published report. We assessed the reliability of the attack and hostage

²The 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 NSC is to advise and assist the president on national security and foreign policies. The NSC 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 in statute as bodies supporting the president.

³GAO, *Maritime Security: Actions Needed to Assess and Update Plan and Enhance Collaboration among Partners Involved in Countering Piracy off the Horn of Africa*, GAO-10-856 (Washington, D.C.: Sept. 24, 2010).

data by reviewing the data and interviewing knowledgeable officials as well as relevant subject matter experts; though the sources and methods used to develop the ransom data are classified, we compared it to information provided by other sources. We found these data to be sufficiently reliable for providing a context for piracy off the Horn of Africa. We also contacted officials from Coast Guard, DOD, Justice, State, Transportation, and the Treasury on actions taken since our last report. We also provided a copy of this testimony to the NSS for comment. We conducted this work in accordance with generally accepted government auditing standards.

Since the publication of our report, the piracy situation off the coast of Somalia has continued to deteriorate. According to a variety of sources,⁴ pirates are expanding their area of operations—north toward the straits of Hormuz, east toward the coast of India, and south to the coasts of Mozambique and Madagascar—principally through the increasing use of larger vessels known as “mother ships.” In addition, the total number of reported pirate attacks has increased from 30 in 2007 to 219 in 2010. In addition, pirates are taking an increasing number of hostages and escalating the level of violence and abuse toward those captives. Officials also have cited reports of pirates using seafarers on the hijacked mother ships as “human shields” to fend off attacks from naval vessels. Pirates also are holding out for higher ransoms, which is leading to longer negotiations and, hence, longer periods of captivity for those taken hostage. Finally, officials report that pirates continue to show evidence of organization, with well-defined networks and hierarchies of financiers, senior leaders, and seagoing pirate crews. Appendix I provides maps and graphics demonstrating several of these trends.

⁴ Sources include documents and statements from U.S. government and foreign officials, international organizations, and shipping industry representatives involved in counterpiracy operations and analysis. For a listing of such sources, see appendix I of our September 2010 report.

**The United States Has
Taken Steps to
Implement Its
Counterpiracy Plan
but Needs to Evaluate
Its Efforts and Update
Its Plan**

As we reported in September 2010, the U.S. government has made progress implementing its *Action Plan* for countering piracy, in collaboration with international and industry partners. However, the effort faces several implementation challenges, and piracy remains a persistent problem. At the time of our September 2010 review, U.S. agencies had not evaluated the costs or effectiveness of their counterpiracy efforts or updated the *Action Plan*. In commenting on our testimony statement, the NSS told us that an ongoing interagency review is examining the U.S. piracy policy needed to guide U.S. efforts. We continue to believe that actions are needed to update the *Action Plan* to respond to the evolving pirate threat, and enhance and sustain interagency collaboration in U.S. efforts, but currently it is too early to assess the interagency effort.

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.⁵ 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. The NSC also establishes some limits to the scope of the plan by focusing on immediate measures to reduce the incidents of Somali piracy, rather than longer-term stabilization of Somalia that the *Action Plan* asserts is needed to fully repress piracy.

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 a prosecution arrangement with the Seychelles.⁶ However, the U.S. government has made less progress on tasks related to seizing and destroying pirate vessels and equipment and delivering suspected pirates for prosecution, and disrupting pirate revenue and bases ashore. Figure 1 summarizes the results of our assessment. For more detailed information about U.S.

⁵The flag state is the country in which the vessel is registered.

⁶The U.S. government previously had concluded a prosecution arrangement with Kenya to accept transfers of suspected pirates. According to officials at State, Kenya terminated its arrangement with the United States and other partners in September 2010, but continues to consider accepting transfers of suspects on a case-by-case basis.

agencies' efforts to implement the *Action Plan* and our analysis of their progress, see appendix II of our September 2010 report.

Figure 1: Interagency Progress in Implementing the National Security Council's *Countering Piracy off the Horn of Africa: Partnership and 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 over 500 gross tons identified as transiting high-risk waters off 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 more than 100 pirate vessels and their related equipment but only delivered 39 percent of captured suspects for reasons including difficulties in meeting evidence standards and/or securing prosecution venues.
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 four to five 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. ^c 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 an arrangement with the Seychelles and is attempting to conclude others; but faces challenges in finding additional regional partners that are willing and able to prosecute. ^d
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 25 suspected pirates for attacks on U.S. vessels.
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.

"We 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.

"We did not rate U.S. government progress on this task because, according to DOD officials, there are no plans to establish a Counter-Piracy Coordination Center since it would duplicate existing international efforts.

"Executive 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." According to Treasury officials, as of March 2011 this order listed two individuals connected to pirate activity.

Many stakeholders anecdotally credit international, industry, and U.S. government efforts with preventing and disrupting piracy off the Horn of Africa, but despite these efforts from 2007 through 2010 pirates greatly expanded their area of operations, the number of pirate attacks increased, the number of hostages captured rose substantially, and the size of ransom payments grew. Appendix I includes graphics illustrating the following developments:

- **Area of Operations.** Pirates have expanded their area of operations—north toward the straits of Hormuz, east toward the coast of India, and south to the coasts of Mozambique and Madagascar—and now threaten an area of approximately 2 million square miles, an area much larger and harder to patrol than the Gulf of Aden alone. (See figure 3 in appendix I.) Pirates are expanding their reach principally through the increasing use of vessels known as "mother ships." Mother ships are often acquired or commandeered by acts of piracy and are used to store fuel and supplies and to tow skiffs. These mother ships enable pirates to launch attacks farther off shore and to operate in rougher seas. A year after the NSC issued its *Action Plan*, reported pirate attacks in the Gulf of Aden dropped from approximately 83 percent of the 111 reported pirate attacks in the region to 53 percent as Somali pirates expanded their area of operations to the broader Indian Ocean. We reported in September 2010 that countering piracy in the Indian Ocean is more challenging due to the great expanse of water, and it 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.

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- **Pirate Attacks.** The total number of reported pirate attacks increased from 30 in 2007 to 219 in 2010. (See figure 4 in appendix I.) Since 2007, there have been at least eight reported attempted attacks on U.S.-flagged vessels, two of which involved pirates successfully boarding or hijacking vessels—the attacks on the MV *Maersk Alabama* and SV *Quest*. Although we reported in September 2010 that total attacks in the first half of 2010 had declined as compared with the same period in 2009, since the issuance of our report, total attacks in 2010 reached levels similar to 2009. Additionally, while we previously reported the rate of successful attacks had dropped from 40 percent in 2007 to 22 percent in 2009, the rate had rebounded to almost 30 percent at the end of 2010. Pirates have maintained the same success rate of attacks for January and February 2011.
 - **Hostages Captured.** Somali pirates captured more than six times the number of hostages in 2010 than in 2007. (See figure 5 in appendix I.) Such data show that piracy remains a persistent problem. Moreover, in a February 2011 meeting of agency and international partners, officials stated that, since the time of our report, the level of violence has increased, the average length of time hostages spend in captivity has grown, and more incidents of hostage abuse have been reported. Officials have also cited reports of pirates using seafarers on the hijacked mother ships as “human shields” to fend off attacks from naval vessels.
 - **Ransom Payments.** From 2007 to 2010 the estimated amount of total ransom payments paid to pirates each year by the shipping industry grew from about \$3 million to more than \$75 million, with the average amount of ransoms paid per vessel increasing from \$300,000 in 2007 to more than \$4 million in 2010, according to DOD. As ransoms continue to rise, pirates continue to have an incentive to carry out attacks. Furthermore, negotiation periods are lengthening, and hostages are being held for greater lengths of time. Officials now report the average length of time needed to negotiate ransoms has increased from 2 to 6 months. In addition, pirates have shown evidence of organization—with well-defined networks and hierarchies of financiers, senior leaders, and seagoing pirate crews—leading some U.S. officials to express concerns that funds generated by piracy may attract extremists or terrorists located in the region. However, as of July 2010, U.S. agencies monitoring piracy had found no credible link between pirates and extremist or terrorist organizations.

U.S. agencies have reported taking some steps to respond to the changing methods and location of pirate attacks, including weekly updates on piracy incidents to mariners and naval forces, and efforts among coalition partners to improve coordination in the Somali Basin. At the time we published our September 2010 report, the *Action Plan* did not specifically address certain aspects of pirate operations, such as the expansion to the broader Indian Ocean or how to apprehend leaders of pirate organizations and their financiers, and U.S. government officials told us that there were no plans to reassess or revise the *Action Plan*. As a result, we recommended 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 reassess and revise the *Action Plan* to better address evolving conditions off the Horn of Africa and their effect on priorities and plans. In following up with cognizant departments on the current status of their counterpiracy efforts, all of the departments provided comments to clarify information in this statement, and an NSS official provided the following information:

As part of a broader U.S. approach toward the region, the Maritime Security Interagency Policy Committee (MSIPC) is conducting an ongoing review of U.S. piracy policy.⁷ During this review, the MSIPC is focusing on the *Countering Piracy off the Horn of Africa: Partnership and Action Plan* and as part of this effort, departments and agencies are examining and developing metrics, roles and responsibilities, and implementation actions to serve as the focus of U.S. efforts for the next several years. In addition, the level of effort and opportunity costs associated with counterpiracy work is continuously monitored. The MSIPC has been focused, most recently, on addressing the costs associated with bringing suspected pirates either to the United States for prosecution or transferring them to third party nations.

We also reported in September 2010 that as pirates operations had evolved, the U.S. government had not systematically tracked the cost or effectiveness of its counterpiracy activities to determine whether its investment had achieved the desired results or should be revised. Specifically, we found that government agencies were not tracking:

⁷The Maritime Security Interagency Policy Committee (MSIPC) is a high-level interagency group that is focused on maritime issues.

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- **Costs of Counterpiracy Efforts.** The *Action Plan* did not specifically charge the interagency group responsible for monitoring implementation with tracking the cost of U.S. activities and neither the interagency steering group nor the federal agencies involved were performing these tasks. We also reported that DOD provided a partial estimate of counterpiracy operations undertaken by the U.S. Central Command which totaled about \$64 million in fiscal year 2009⁸ and that a key cost of counterpiracy operations was the diversion of ships, crew, aircraft, intelligence assets, and other forces from other global missions such as counterterrorism and counternarcotics efforts. (See our September 2010 report for a list of selected types of costs incurred by the U.S. government to counter piracy.)
 - **Measures of Effectiveness.** The *Action Plan* did not define measures of effectiveness that could be used to evaluate progress toward reaching its objectives or to assess the relative effectiveness of the *Action Plan's* tasks to prevent, disrupt, and prosecute acts of piracy. 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, we reported that identifying measures of effectiveness and systematically evaluating agency efforts could assist the U.S. government in ensuring resources are being targeted most effectively, weighing its investment of resources against its other interests in the region, and determining whether adjustments to plans are required.

As a result, in our September 2010 report, we also recommended that the NSC, in collaboration with the same federal departments, identify measures of effectiveness to use in evaluating U.S. counterpiracy efforts; and direct the Counter-Piracy Steering Group to identify the costs of U.S. counterpiracy efforts including operational, support, and personnel costs; and assess the effectiveness of U.S. counterpiracy activities. In commenting on the draft of our September 2010 report, DOD stated that the interagency group charged with monitoring implementation of the *Action Plan* was not tracking costs and effectiveness because it was not specifically charged to do so in the *Action Plan*. Officials from Coast Guard, Justice, State, and the Treasury also were not aware of any

⁸We did not independently verify the data that support DOD's \$64 million estimate.

systematic efforts to perform these functions. When preparing for this hearing, State officials informed us that the Secretary of State has since directed an internal review and re-evaluation of State's approaches and actions to counter piracy to determine the options for more effectively addressing this regional threat and its widespread consequences. According to State officials, identifying costs and effectiveness, as we recommended, is to be a critical component of this evaluation. Similarly, the NSS statement indicated that the policy review underway by the MSIPC is examining and developing metrics, and addressing the costs associated with U.S. action toward prosecuting suspected pirates. While recent steps to begin implementing our recommendations are encouraging, it is too early to tell what impact, if any, these efforts will have on the United States' ability to respond to the dynamic nature of piracy. We continue to believe that with continual evaluation of U.S. efforts the United States may be in a better position to 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

As we reported in September 2010, U.S. agencies have generally collaborated well with international and industry partners to counter piracy; however, U.S. agencies could implement other key practices to further enhance and sustain collaboration among U.S. interagency partners. Industry partners play an important role in preventing and deterring pirate attacks because they are responsible for implementing self-protection measures on commercial vessels. Our September 2010 report includes more detail on the extent of this collaboration, but we will highlight a few examples here:

- **Collaboration with International Partners.** U.S. agencies, primarily State and DOD, have collaborated with international partners through two organizations established to counter piracy off the Horn of Africa. First, the Contact Group on Piracy off the Coast of Somalia (Contact Group) serves as an international forum for countries contributing to the counterpiracy effort to share information that has facilitated international, military coordination and established a trust fund to support prosecution efforts. As part of the Contact Group's efforts, the Coast Guard and the Maritime Administration co-chair a working group on shipping industry coordination, which has reviewed and updated best management practices for industry self-protection, and is developing guidance for seafarer training regarding pirate attacks. Second, in 2008, as the leader of the Combined Maritime Forces, the U.S. Navy, along with other international partners, established Shared Awareness and Deconfliction meetings that are

intended to provide military coordination and information sharing for naval patrols of pirate-infested waters.

- **Partnering with Industry.** 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. Most recently, the Coast Guard issued an updated version of Maritime Security Directive 104-6 in January 2011 amending the area at high risk of piracy and the Maritime Administration issued an advisory in February 2011 that addressed the piracy threat to yachts and recreational craft. 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.⁹ In addition, the Maritime Administration has developed training courses to inform vessel crews about how to help prevent piracy and steps to take if taken hostage.

U.S. government agencies have incorporated other key collaborative practices, including developing an overarching strategy and establishing mechanisms to share information with partners. As we reported in September 2010, the NSC's *Action Plan* serves an overarching strategy to guide U.S. interagency efforts and provides a framework for interagency collaboration.¹⁰ 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 process¹¹—part of the *National Strategy for Maritime Security*—to facilitate a discussion among U.S. agencies and decide on courses of action. For example, this response

⁹According to Maritime Administration officials and shipping industry representatives, challenges remain that have made it difficult to 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.

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).

¹¹The Maritime Operational Threat Response is an interagency process used during maritime security incidents. The response is coordinated by a 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.

process was activated for both the MV *Maersk Alabama* and SV *Quest* incidents.

Although the NSC and U.S. agencies have taken these collaborative steps, we reported in September 2010 that 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.¹² As of July 2010, the NSC had assigned roles and responsibilities for implementing one of the 14 *Action Plan* tasks, providing persistent interdiction to be performed by the U.S. Navy and Coast Guard. 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. Agencies could enhance collaboration by developing joint guidance to implement and coordinate actions on several *Action Plan* tasks. Effective joint guidance also addresses how agency activities and resources will be aligned to achieve goals. In the absence of clearly identified roles and responsibilities and joint implementation guidance, 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 Coast Guard's enforcement of U.S.-regulated commercial-vessel compliance with maritime security requirements and DOD's interdiction efforts.

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 has not identified roles and 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:

- **Strategic Communication.** Multiple agencies are responsible for communicating with various audiences about piracy, but there is no governmentwide strategic communication plan in place to guide agency efforts. According to State officials, State has drafted a governmentwide counterpiracy strategic communication plan for interagency review but as of March 2011, the department had not finalized this plan.

¹²GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: Oct. 21, 2005), and GAO-09-904SP.

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- **Disrupting Pirate Revenue.** Multiple agencies collect or examine information on pirates' financial activities, including DOD, Justice, State, and the Treasury. However, officials 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. U.S. efforts to track and block pirates' finances in Somalia are hampered by the lack of government and formal banking institutions there. According to Justice officials, as of July 2010, the United States had not apprehended or prosecuted any pirate leaders or enablers as provided for in the *Action Plan*.
 - **Facilitating Prosecution of Suspected Pirates.** Agencies face challenges facilitating prosecution of suspected pirates without defined roles and joint guidance. For example, after pirate attacks on the USS *Ashland* and USS *Nicholas*, which resulted in the apprehension of suspects, the U.S. government lacked interagency procedures for transferring suspects and sharing costs among the agencies involved, according to U.S. officials.

In September 2010, we reported that 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. We also recommended that the NSC, in collaboration with the same federal departments, 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. Doing so 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. Agency officials we contacted to prepare for this hearing were unaware of efforts to clarify agency roles and responsibilities or develop joint guidance for implementing key efforts. Commenting on our testimony statement, however, the NSS provided a statement indicating that an ongoing MSIPC policy review is examining roles and responsibilities and other implementation actions to guide U.S. counterpiracy efforts. The recent statement from the NSS official is encouraging and we continue to believe that actions are needed to enhance and sustain interagency collaboration in U.S. counterpiracy efforts, but currently it is too soon to know the impact of the MSIPC review.

In closing, Mr. Chairman and Members of the Subcommittee, while U.S. agencies have taken a collaborative approach in counterpiracy planning and have taken many steps, the U.S. government faces escalating challenges to meeting its objective of repressing piracy. These challenges include inherent limits on the United States' ability to influence industry and international partners and to encourage other states to prosecute 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, as the NSC has acknowledged, longer-term efforts to stabilize Somalia are needed to fully address the root causes of piracy. Such challenges, along with the growing frequency and severity of piracy off the Horn of Africa, provide a renewed sense of urgency to implement our recommendations to update the counterpiracy *Action Plan* and take other steps to prevent, disrupt, and prosecute acts of piracy.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

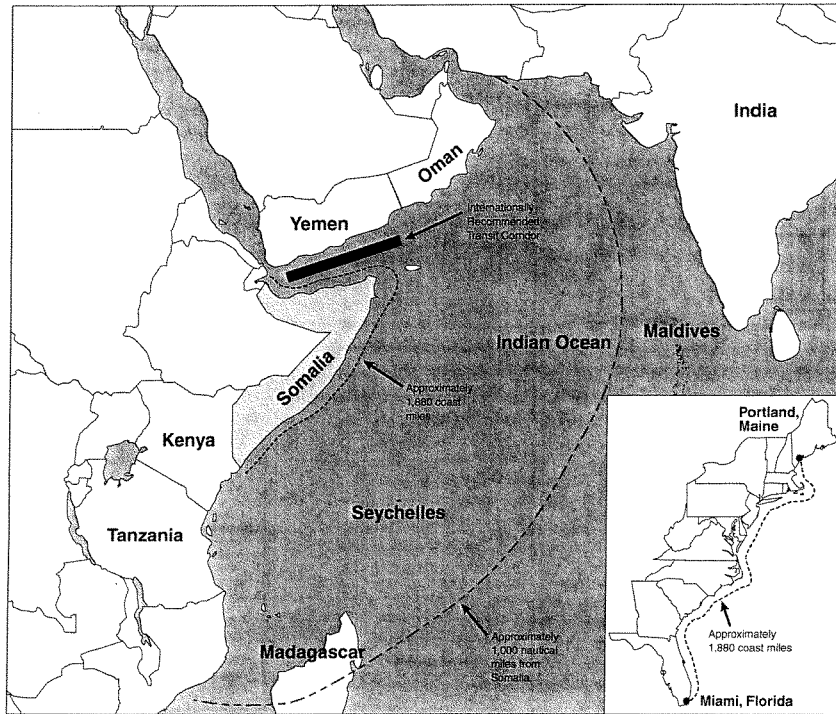
GAO Contacts and Staff Acknowledgments

For questions about this statement, please contact Stephen L. Caldwell at 202-512-9610 or caldwells@gao.gov, or John H. Pendleton at 404-679-1816 or pendletonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the contacts named above, Susan Ditto, Geoffrey Hamilton, Dawn Hoff, Brandon L. Hunt, Farhanaz Kermalli, Ronald La Due Lake, Patricia Lentini, John Mingus, Amie Steele, and Suzanne Wren made key contributions to this report. A full list of staff acknowledgements for the September 2010 report can be found in appendix VI of that report.

Appendix I: Maps and Statistics on Piracy off the Coast of Somalia

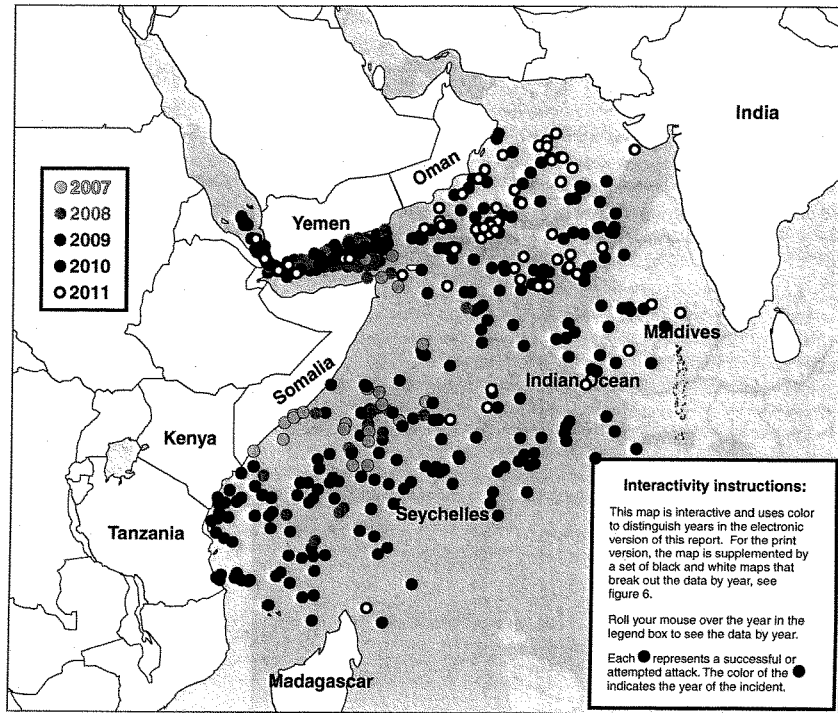
This appendix provides several examples of the vast area in which pirates operate and how piracy off the coast of Somalia has continued to escalate. Pirate attacks have expanded from being close to the eastern Somali shoreline in 2007, to targeting ships in the Gulf of Aden in 2008, and since 2009 expanding east into the Indian Ocean, south toward Madagascar, and north toward Oman. In addition, pirates have captured more ships and taken more hostages each year from 2007 through 2010.

Figure 2: Somalia and a Comparison to the Eastern Coast of the United States



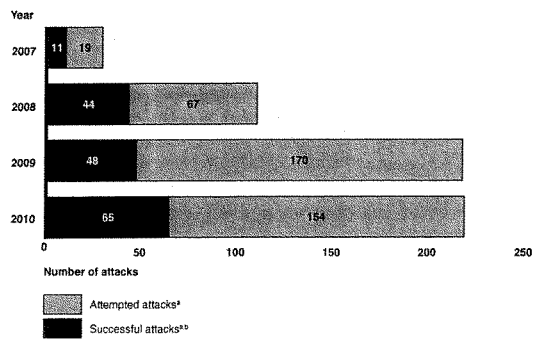
Source: GAO (data), Map Resources (map).

Figure 3: Successful and Attempted Pirate Attacks off the Coast of Somalia, January 2007 to February 2011



Source: GAO analysis of International Maritime Bureau data (data); Map Resources (map).

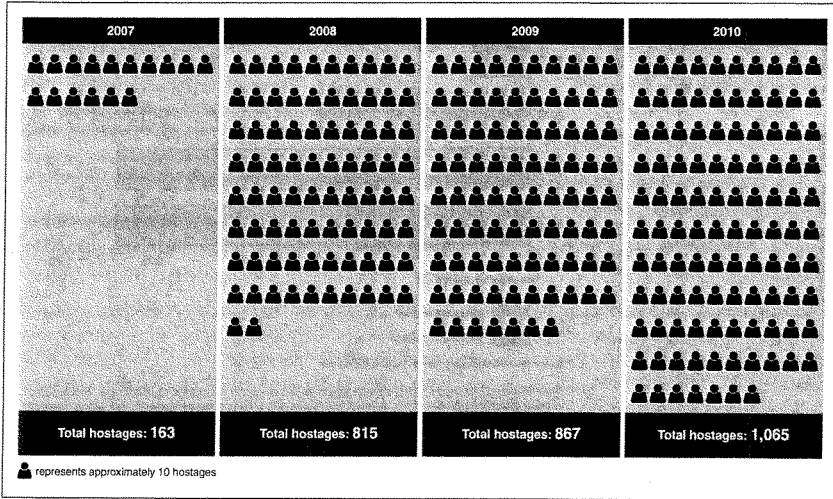
Figure 4: Successful and Attempted Pirate Attacks off the Horn of Africa, 2007 to 2010



Source: GAO analysis of International Maritime Bureau data.

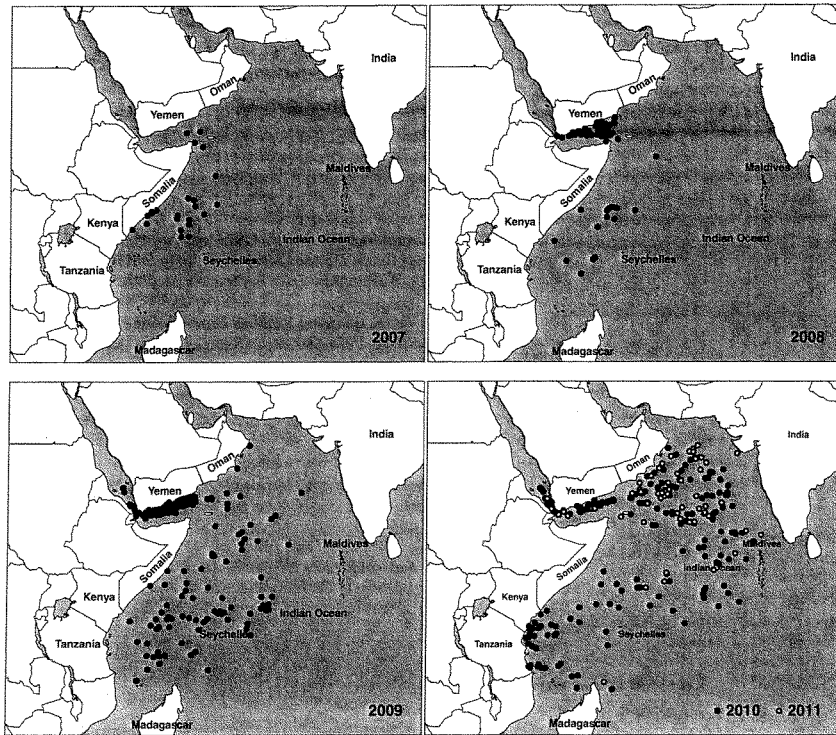
Note: Successful attacks include those that resulted in vessel boardings or hijackings. The types of vessels attacked included: bulk carriers, container ships, fishing vessels, passenger ships, research vessels, roll-on roll-off ships, supply ships, tankers, tugs, and yachts. These numbers are based on information provided by individual vessels and therefore may be understated.

Figure 5: Total Hostages Captured by Somali Pirates, 2007 to 2010



Source: GAO analysis of International Maritime Bureau data.

Figure 6: Successful and Attempted Pirate Attacks off the Coast of Somalia, January 2007 to February 2011



Source: GAO analysis of International Maritime Bureau data (data); Map Resources (map).

Related GAO Products

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**TESTIMONY OF RADM KEVIN S. COOK
DIRECTOR OF PREVENTION POLICY**

**ON ASSURING THE FREEDOM OF AMERICANS ON THE HIGH SEAS:
THE UNITED STATES RESPONSE TO PIRACY**

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

MARCH 15, 2011

Good Morning Mr. Chairman and distinguished members of the Committee. Thank you for calling a hearing on this important problem facing not only U.S. vessels and citizens, but all who navigate high-risk waters. As we've seen in recent days, piracy can yield tragic results and demands a response in order to prevent and deter this crime.

Piracy is a universal crime under international law because it places the lives of seafarers in jeopardy and affects the shared economic interests of all nations. A single incident of piracy 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, vessel owners' states, and cargo shipment and transshipment states. In the case of Somalia-based piracy, increasingly brazen attacks across 2.5 million square miles of ocean from land-based enclaves along an under-governed and economically devastated 2,300 mile coast pose a threat to global shipping. Eliminating piracy and other transnational threats requires stronger law enforcement capacity and rule of law in Somalia.

Small vessels are the vessel of choice for pirates to conduct their attacks. Commonly, two or more small, high-speed "skiffs" are used in attacks often approaching from the vessel's quarter or stern. These vessels are fast, readily available, relatively inexpensive, and blend in well with other small vessels commonly operating in the area. Analysis of successful attacks indicates that low-speed and low-freeboard ships are exploited by the pirates. Pirate "mother ships" carrying personnel, equipment, and smaller assault craft have enabled successful attacks more than 800 nautical miles from the coast of Somalia. Currently, 30 vessels and as many as 623 mariners are being held captive by pirates in the Horn of Africa region where pirate attacks continue to be on the rise.

Deterrence and Prevention Aboard Commercial Vessels

Domestically, the Maritime Transportation Security Act (MTSA) of 2002 provides the legal authority for the Coast Guard to regulate safety and security in order to protect cargo, ships, and most importantly seafarers. Under this authority, the Coast Guard developed requirements for U.S. ship owners and operators to assess and plan for a wide range of security threats, including threats of piracy. This plan, known as a Vessel Security Plan, must be submitted to the Coast Guard for approval.

The regulatory requirements of MTSA apply to U.S.-flagged vessels engaged in commercial service but not to non-commercial or recreational vessels that are not engaged in commerce. In light of the recent events involving the U.S. sailing vessel QUEST, where four U.S. citizens were killed by pirates, the Coast Guard has updated its special notice to mariners strongly advising against all operations of U.S. yachts and sailing craft in areas at high risk for piracy. The hijacking and tragic killing of the four persons aboard the QUEST underscores the grave dangers of operating in these high-risk areas, especially by recreational vessels that are likely not equipped to thwart attacks from pirates.

The MTSA gives the Commandant of the Coast Guard the authority to issue Maritime Security (MARSEC) Directives addressing security issues. MARSEC Directives can be global or regional in scope. Consistent with this authority, the Commandant issued MARSEC Directive 104-6 on 10 February 2006. This Directive provides direction to Company Security Officers of U.S. commercial vessels that engage in international voyages to, or through, areas with a high risk for terrorism, piracy, or armed robbery against ships. Due to the dynamic nature of piracy, countermeasures in MARSEC Directive 104-6 are reviewed and validated continuously. There have been five revisions to MARSEC Directive 104-6 to date. Among other revisions, the Coast Guard, in consultation with other federal agencies and with industry, has increased the size of designated high-risk waters to extend farther off the coast of Somalia in response to the expanding threat of piracy in the Horn of Africa region.

Recognizing that the U.S. response to piracy is an issue of government-wide concern, the Coast Guard took the lead in forming a Piracy Action Team. The team consists of representatives from the Department of State, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of Transportation/Maritime Administration, the Office of Naval Intelligence, the Department of Commerce, the Department of Justice, the Military Sealift Command, the Office of Global Maritime Situational Awareness, the Overseas Security Advisory Council, the United States Agency for International Development, the Naval Criminal Investigative Service, U.S. Customs and Border Protection, the Transportation Security Administration, U.S. Africa Command, U.S. Central Command, U.S. Transportation Command, and the Coast Guard Atlantic Area.

The Coast Guard coordinates regular conference calls through which members keep each other informed of events affecting their agencies, discuss areas of mutual concern, and collaborate on guidance documents for U.S.-flagged ships, such as Port Security Advisories (PSAs). Numerous PSAs have been published on the Coast Guard Homeport website on topics including self-defense and the defense of others, carriage of weapons onboard vessels, minimum guidelines for security personnel, screening of security personnel, transport of weapons into foreign ports, and post-attack coordination. Each PSA was developed with the support of the interagency Piracy Action Team.

The Coast Guard has also conducted numerous outreach activities, or “roundtables,” over the past 20 months for the shipping industry and workers affected by U.S. government anti-piracy guidance. These activities – typically well attended by members of the interagency Piracy Action Team – ensure that the shipping industry and labor have the benefit of first-hand information exchange.

To comply with section 912 of the Coast Guard Authorization Act of 2010 (CGAA), the Coast Guard sought input (January 26 to March 1, 2011) from the public and representatives of industry and labor in order to determine if the current authorization in 33 U.S.C. 383, resistance of pirates by merchant vessels, and the guidance published by the Coast Guard in PSA 3-09¹, provided an adequate framework for standard rules for the use of force for self-defense of U.S. vessels. Section 912 of the CGAA states

¹ Port Security Advisory 3-09 provided “Guidance on Self-Defense or Defense of Others By U.S. Flagged Commercial Vessels Operating in High Risk Waters

that “an owner, operator, time charterer, master, mariner, or individual who uses force or authorizes the use of force to defend a vessel of the United States against an act of piracy shall not be liable for monetary damages for any injury or death caused by such force to any person engaging in an act of piracy if such force was in accordance with standard rules for the use of force in self-defense of vessels prescribed by the Secretary [of the department in which the Coast guard is operating].”

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

Several elements are critical to the effective and lawful implementation of a counter-piracy plan: (1) ensuring that affected states take the necessary steps to ensure their domestic jurisprudence allows for the exercise of jurisdiction under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) if they are a party to that instrument, and if not, under the provisions set forth in Articles 100-107 of UNCLOS; (2) supporting and encouraging the use of other applicable international instruments, i.e., treaties and bi-lateral agreements, and customary international law; (3) securing agreements and arrangements with regional partners to formalize custody and prosecution arrangements for cases in which victim states cannot establish jurisdiction; and (4) enhancing capabilities of regional states to accept suspected pirates for prosecution, extradition, and incarceration in these limited cases. The Coast Guard is actively engaged with the federal interagency Piracy Action Team in ongoing efforts to support each of these elements.

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

Through WG3 of the Contact Group, the Coast Guard, in coordination with the Maritime Administration, worked in concert with the shipping industry to develop preventive measures that reduce that industry’s vulnerability to attack through the creation, dissemination, and implementation of industry Best Management Practices (BMPs) for vessels operating in the Horn of Africa region. The WG3 participants have also been instrumental in developing guidelines for company security officers to prepare for attacks, and the development of guidance regarding the post-attack care of seafarers.

Counter-piracy Enforcement and Prosecution

Coast Guard forces (boarding teams) are currently operating in support of U.S. Central Command (CENTCOM) based on a formal Request For Forces. CENTCOM has operational control of these forces and has directed they conduct operations with Combined Task Force 151 (CTF 151).

CENTCOM established CTF 151 in January 2009 to conduct counter-piracy operations in response to the growing threat of piracy. CTF 151's mission is to "Deter, disrupt, and suppress piracy in order to support UN Security Council resolutions, protect global maritime commerce, prevent future attacks, enhance maritime security, and secure freedom of navigation for the benefit of all nations."

Coast Guard Law Enforcement Detachments (LEDETS) also currently operate in support of CTF 151. LEDETS augment Navy Visit Board Search and Seizure (VBSS) teams near the Horn of Africa and provide training in maritime laws, boarding policies and procedures, evidence collection and preparation, and tactical procedures. It is important to understand that both the Coast Guard and Navy have independent authority to conduct counter-piracy operations against any vessel engaged in piracy, including conducting boardings, searches, and seizures.

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

Consistent with international law, any vessel engaged in piracy may be subject to the jurisdiction of the United States regardless of whether the vessel is foreign flagged. Piracy is a felony offense under U.S. law. 18 U.S.C. §1651 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." This statute applies to any person in international waters. The U.S. Department of Justice (DOJ) recently used this statute to prosecute five defendants in the case of US v. Hasan, et al. On November 24, 2010 all five defendants were found guilty on all 14 charged counts, including Count I, piracy under the law of nations. The five defendants were convicted of the crime of piracy under the law of nations (18 U.S.C. 1651), and other assault and firearms related charges, as a result of an attack on the USS NICHOLAS on April 1, 2010.

In addition to being the subject of domestic legal regimes, piracy is a crime of universal jurisdiction under conventional and customary international law. Accordingly, every nation has the legal authority to establish jurisdiction and punish the offenders, regardless of nationality of the perpetrator or the victims or of the vessels involved.² This has been a basic tenet of customary international law for centuries, and is also enshrined in treaties such as the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea. United Nations Security Council Resolutions 1846 and 1851, issued in December 2008, have authorized certain states and international organizations - for which advance notification has been provided by the Somalia Transitional Federal Government to the United Nations Secretary-General - to enter Somali waters and territory to repress piracy.

² See 1982 United Nations Convention on the Law of the Sea, arts. 100-107

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

The IMO is also engaged in efforts to combat the Somali piracy threat. By designation of the State Department, the Coast Guard serves as the Head of the United States Delegation for IMO meetings and activities. The IMO has passed resolutions establishing a framework for international cooperation, updated counter-piracy guidance to industry, and, perhaps most importantly, promoted prosecution so that pirates, once interdicted, face meaningful and just punishment under the rule of law. United Nations Security Council Resolution 1851 specifically encourages nations to employ the operative provisions of the SUA Convention, to which the United States is a party. All states within a 1,000 nautical mile radius of the Gulf of Aden are signatories to the Suppression of Unlawful Acts (SUA) Convention, with the notable exceptions of Somalia, Eritrea, and Ethiopia.

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

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

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STATEMENT FOR THE RECORD

MR. WILLIAM F. WECHSLER

DEPUTY ASSISTANT SECRETARY OF DEFENSE
COUNTERNARCOTICS AND GLOBAL THREATS
U.S. DEPARTMENT OF DEFENSE

BEFORE THE
SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

MARCH 15, 2011

Mr. Chairman, Representative Larsen, and other distinguished members of the subcommittee, I appreciate this opportunity to testify about the growing problem of piracy on the high seas.

Over the last several years, we have seen an upswing in the number of reported pirate attacks worldwide and an expansion in the area of pirate operations. As recently as 2007, the Gulf of Guinea off the coast of West Africa was the most active part of the world for piracy, but most pirate activity is now conducted by Somali pirates in the broader Horn of Africa region. Since the Department of Defense last testified to this sub-committee on the challenge of piracy on May 20, 2009, we have seen a decrease in the number of attacks carried out by Somali pirates in the Gulf of Aden. Unfortunately, we have also seen an increase in their overall area of operations. Somali pirates not only operate in the U.S. Central Command area of responsibility, but the expansion in their overall area of operations has seen pirate attacks reach into both the U.S. Africa Command and U.S. Pacific Command's areas of responsibility.

Somali pirates are less likely to operate in the Gulf of Aden as a result of the successful implementation of the Internationally Recommended Transit Corridor where U.S. and international forces regularly patrol. Instead, Somali pirates are using pirated ships to expand their area of operations as far east as the Kavaratti Islands near India, northward into the Gulf of Oman, and southward into the Mozambique Channel. Currently, Somali pirates are holding 28 vessels and close to 600 crewmembers hostage.

Regardless of geographic scope, reducing incidents of piracy is important for both the United States and the international community. As a general matter, freedom of navigation is critical to our national security and international commerce, and it is also a core principle of customary international law as codified in the Convention on the Law of the Sea and one that all nations have a stake in supporting. Piracy endangers innocent mariners, disrupts commerce, causes economic damage to shipping companies, and perpetuates instability ashore.

Recent incidents—including the heinous murder of four Americans on the pirated sailing vessel (S/V) QUEST—have increased public and international attention to piracy. At the Department of Defense, we continue to work closely with other agencies and departments to develop and implement a comprehensive counter-piracy strategy.

The Department of Defense supports the National Security Council’s “Countering Piracy Off the Horn of Africa Partnership and Action Plan,” in which our main role is to interrupt and terminate acts of piracy. We play a supporting role in preventing pirate attacks by reducing the vulnerability of the maritime domain, as well as ensuring those who commit piratical acts are held accountable by facilitating the prosecution of suspected pirates by affected States and, in appropriate cases, by the United States.

The United States is not alone in this effort. More than 30 other nations have conducted or are currently conducting counter-piracy operations in the broader Horn of Africa region. Most countries participate in one of the three international coalitions: Combined Task Force 151 (CTF 151), NATO’s Operation OCEAN SHIELD, and the European Union’s Operation ATALANTA. The Combined Maritime Forces (CMF) regularly hosts Shared Awareness and Deconfliction (SHADE) meetings in Bahrain to provide a working-level opportunity for navies to come together to share information and deconflict counter-piracy efforts in the broader Horn of Africa region. The array of forces involved and their coordination efforts remain impressive. Several countries unaffiliated with these coalitions are also sending ships to the region and are playing an increasingly important role.

The United States is most actively engaged in counter-piracy operations through CTF 151. This multinational task force was established in January 2009 to conduct counter-piracy operations under a mission-based mandate throughout the CMF area of responsibility. In addition to the United States, the following 14 countries currently participate in CTF 151: Australia, Bahrain, Canada, France, Jordan, Republic of Korea, Netherlands, Pakistan, Saudi Arabia, Singapore, Spain, Thailand, Turkey, and the United Kingdom. CTF 151 is currently commanded by the Pakistan Navy; in recent years, it has been commanded by the U.S., Republic of Korea, and Turkey.

We are seeing concrete results from our efforts. Since August 2008, international efforts have led to the destruction or confiscation of more than 100 pirate vessels and the confiscation of numerous weapons, including small arms and rocket-propelled grenades. The international community has also turned over nearly 800 pirates to law enforcement officials in various countries for prosecution. We support the Departments of State and Justice in their ongoing efforts in this area.

The Department of Defense is also working with the international "Contact Group on Piracy Off the Coast of Somalia" on numerous initiatives related to industry, operational, public diplomacy, and legal issues. In terms of expanding its focus, recent discussions include exploring the possibility of pursuing the criminals who are funding pirates, demanding ransoms, and laundering the illegal proceeds from the ransom payments. Since January 2010, Somali pirates received approximately \$75-85 million in the form of ransom payments. In a country where the average annual per capita GDP is about \$600, these ransoms are enormously enticing. We need to find a way to make piracy a less profitable choice. We support the Departments of State and Treasury in their ongoing efforts in this area.

Disrupting piracy will continue to be a challenge for several reasons. First, as Under Secretary of Defense for Policy Michèle Flournoy testified in 2009 to the Senate Armed Services Committee, "the root causes of Somali piracy lie in the poverty and instability that continue to plague that troubled country, and addressing these root causes will be a lengthy, complicated and difficult process." Pirates can operate freely and with impunity from coastal fishing villages as long as they have the support of the local Somali clan leadership. Although regional governments in Somaliland and Puntland have demonstrated some capacity to provide services, including law enforcement services, in most respects Somalia remains ungoverned, allowing pirates to use coastal villages as safe havens. In the long run, the international community's ability to combat Somali pirates in the broader Horn of Africa region will be directly linked to our ability to help the Somalis themselves increase government capacity and find appropriate ways to meet the population's basic needs. In general, Somalia lacks enforcement, prosecution and incarceration capabilities to effectively address this piracy phenomenon. As a result, not

only can pirates operate freely from coastal fishing villages, but the astronomical increase in ransoms paid out have made this a lucrative business venture leading to the development of a complex network of pirates, facilitators, and financiers.

Second, the geographic area affected is vast: Somali pirates now operate in a total sea space of approximately 2.5 million square nautical miles, making it difficult for naval or law enforcement ships and other assets to reach the scene of a pirate attack quickly enough to make a difference. This area has increased from approximately 1 million square nautical miles in just the last two years. In that vast expanse of ocean, tracking a few dozen low-tech pirate skiffs and intervening to stop attacks that can last only a few minutes is exceptionally difficult. Even more challenging is that these pirate vessels easily blend in with ordinary, legitimate shipping when they are not engaged in acts of piracy. In a recent trend, pirates are attacking dhows for use as “motherships” from which to launch additional pirate attacks further out at sea and during inclement weather (i.e., monsoon season). These vessels also blend in with the legitimate elements in the maritime landscape. The scale of this challenge, therefore, cannot be addressed as a military or law enforcement mission alone. In order to have 100% coverage of 2.5 million square nautical miles, it would require more ships than are currently in the inventory of the world’s navies. It is worth re-emphasizing this point: the long-term solution to piracy in the Horn of Africa region does not rest in the maritime domain alone.

Third, even when pirates are captured, often they are not successfully prosecuted and held accountable. Although piracy is a crime of “universal jurisdiction” – meaning that any state can, under international law, may prosecute any piratical act - the reality is that gaps remain in the ability of many States to prosecute them. Some States still lack the appropriate domestic laws to prosecute pirates, which undermines our effort to create an effective legal deterrent. Other States have appropriate domestic legal frameworks, but lack the prosecutorial and judicial capacity to hold pirates accountable. Worse yet, other States lack the political will to take effective action.

Finally, we believe strongly that the merchant shipping fleet can be another able and important partner to combat piracy. Although the merchant shipping industry has

made significant improvements in on-ship security measures over the last couple years, much more is needed to be done. Ships from all over the world transit the Gulf of Aden and use the shipping lanes along the east coast of Somalia, but many in the industry assume unrealistically that there is no need for more robust shipboard private security measures because military forces will always be present to intervene if pirates attack. As a result, many in the industry have been unwilling to invest in the basic security measures that would render them less vulnerable to attack. Further, the insurance industry has not created valid financial incentives to encourage full implementation of Best Management Practices, which have proven effective to help vessels evade or deter pirate attacks.

At the moment, Somali piracy appears to be motivated solely by money, not by ideology. Some have raised a possible connection with violent extremists groups in the region, and, while we presently do not know the answer, we remain vigilant in looking for any connections that may develop. Nonetheless, we know that in other contexts, narcotics production and other forms of criminal activity are sometimes “taxed” by extremist groups, as in Afghanistan. We need to ensure that piracy does not evolve into a funding source for violent extremist organizations.

These varied and multi-dimensional challenges should make it clear that there will be no simple solution to the growing problem of piracy in the greater Horn of Africa region. That said, a few statistics help keep the problem of Somali piracy in perspective. Each year, more than 33,000 vessels transit the Gulf of Aden, and in 2010, there were 135 attempted or actual pirate boardings, which resulted in 50 successful hijackings. In other words, pirates continue to attack less than one-half of one percent of shipping in the Gulf of Aden, and their attacks have succeeded only about one third of the time. That does not mean that we can ignore piracy in the region, of course.

The relatively low incidence of pirate attacks has implications for how we allocate military assets. As the members of this subcommittee know, the Department of Defense has urgent priorities around the globe, particularly in Afghanistan and Iraq. In the Horn of Africa, our existing and planned counterterrorism activities remain vital to that global

struggle against violent extremism. Many of the resources most in demand for counter-piracy activities, such as intelligence, surveillance and reconnaissance assets, are the same assets that are urgently required elsewhere.

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

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

Effective merchant private ship security includes an array of passive and active defensive measures. Effective passive security measures can include developing a comprehensive security plan; increasing sailing speed; conducting risk assessments; removing external ladders; posting lookouts at all times; limiting external lighting; rigging barriers (such as barbed wire and fencing) in low freeboard areas; securing hatches to limit access to crew and control spaces; creating “safe rooms”; and maintaining good communications with maritime security authorities. Rigging fire hoses to repel boarders and maintaining professional civilian armed security teams on board are active defensive measures that can mean the difference between a successful and a failed pirate attack. We note that in all cases where armed private security teams have been used, they have successfully kept pirates from boarding their vessel.

As part of the Department of Defense’s broader counter-piracy mission set, we will continue to be prepared to respond, as appropriate, when U.S.-flagged vessels and U.S. citizens are involved. But this is a context in which our actions will be most effective

when private partners take proactive measures themselves. Most pirates are opportunistic criminals: whenever possible, they will focus on the easy targets and avoid the difficult targets. Our main task is to assist commercial carriers in making their ships into hard targets.

We will continue to work with partners and regional States to develop their capacity to patrol the seas and protect their own shipping, and we will encourage them to fill gaps in their legislative frameworks so that they can prosecute pirates in their own domestic systems. We will also work with regional States to increase prosecutorial and judicial capacity to try pirates since effective and fair prosecutions are part of creating a long-term deterrent. And we will work, when possible, with local authorities in Somalia to address the on-shore components of piracy, which includes tracking the on-shore investors and safe-havens that enable piracy on the high seas.

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

Mr. Chairman and members of the subcommittee, we recognize that the problem of piracy is not just a problem for Somalia. In recent years, pirate activity has also occurred in West Africa, the Strait of Malacca, and other places around the globe. Although the complete elimination of piracy on the high seas would be as difficult to achieve as the complete elimination of all robberies and assaults, we believe that we can, and must, reduce the likelihood of successful pirate attacks through deterrence, disruption, interdiction, and punishment. This will require coordinated international action and a variety of innovative public-private partnerships, but we are confident that progress can be made.

Thank you for the opportunity to testify, and I welcome your questions and comments.