



Piracy off the Horn of Africa

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Summary

Recent attacks, including those on U.S.-flagged vessels, in the waters off the Horn of Africa have brought new U.S. and international attention to the long-standing problem of piracy in the region. The International Maritime Bureau recorded 111 attacks in the waters off the Horn of Africa in 2008, almost double the number in 2007. As of April 20, 2009, The International Maritime Bureau had counted 84 attacks since January: approximately 300 non-U.S. crew members on 18 hijacked vessels remain in Somali captivity. Previously concentrated in the Gulf of Aden between Yemen and the northern coast of Somalia and along the country's eastern coastline, attacks on merchant ships are now taking place over an area of more than 1 million sq. miles in the Gulf and the west Indian Ocean, posing a significant threat to commercial shipping. Pirate attacks also have threatened relief shipments bound for East Africa and the countries of the Horn, amid a humanitarian crisis in the region that experts are calling the worst since 1984.

The increase in pirate attacks off the Horn of Africa is directly linked to continuing insecurity and the absence of the rule of law in war-torn Somalia. The absence of a functioning government in Somalia remains the single greatest challenge to regional security and provides freedom of action for those engaged in piracy along the Somali coast. Some observers also have alleged that the absence of coastal security authorities in Somalia has allowed illegal international fishing and maritime dumping to occur in Somali waters, which in turn has undermined the economic prospects of some Somalis and may be providing economic or political motivation to some groups engaged in piracy. The apparent motive of many active Somali pirate groups is profit, and piracy has proven to be a lucrative activity for many thus far. Ransoms paid to Somali pirates and their supporters, estimated at over \$30 million in 2008, may exacerbate ongoing fighting and further undermine security in the region.

The U.N. Security Council issued four resolutions (1816, 1838, 1846, and 1851) in 2008 to facilitate an international response to piracy off the Horn of Africa. At present, Resolution 1851 has authorized international naval forces to carry out anti-piracy operations in Somali territorial waters and ashore, with the consent of Somalia's Transitional Federal Government (TFG). In January 2009, a multilateral Contact Group on Piracy off the Coast of Somalia (CGPCS) was established to coordinate antipiracy efforts. U.S., NATO, European Union, regional, and other naval forces are currently patrolling waters near Somalia in coordination with a U.S.-led Task Force. On April 23, international donors pledged over \$250 million to support African Union peacekeepers and planned efforts to strengthen nascent TFG security forces.

Some members of the 111th Congress have expressed concern about the threat posed by piracy, and President Obama has stated that his Administration is resolved to halt the rise of piracy in the Horn of Africa region. On April 15, the Obama Administration outlined preliminary plans for a more robust policy response to the threat of piracy and pledged to continue working through multilateral coordination and enforcement mechanisms established during the Bush Administration. Most experts believe that the reestablishment of government authority in Somalia is the only guarantee that piracy will not persist or reemerge as a threat. Congress may seek to influence U.S. policy through oversight of U.S. military operations and diplomacy and through foreign assistance appropriations and authorizations. Also see CRS Report RL33911, *Somalia: Current Conditions and Prospects for a Lasting Peace*, by Ted Dagne and CRS Report R40081, *Ocean Piracy and Its Impact on Insurance*, by Rawle O. King.

Contents

Recent Developments.....	1
Background	3
Piracy off the Horn of Africa: Profile.....	5
The Pirates	5
Motives.....	6
Tactics and Demands.....	7
Piracy off the Horn of Africa: Impact	10
Threats to Commercial Shipping and Global Trade.....	10
Threats to Humanitarian Aid Deliveries.....	12
Potential Financing of Regional Conflict and Terrorism Concerns	12
U.S. and International Policy Responses.....	13
U.S. Policy.....	13
United Nations Security Council	15
Contact Group on Piracy off the Coast of Somalia.....	15
Combined Task Force 151 and Other Naval Forces.....	16
NATO: Operation Allied Provider and Operation Allied Protector	17
European Union: Operation ATALANTA	17
International Maritime Organization and the Djibouti Code of Conduct.....	18
United Nations Office on Drugs and Crime: “Shipriders” and Capacity Building.....	19
Private Sector and Shipping Industry Responses.....	19
Issues for Congress and Policy Options	20
Oversight of U.S. Military Forces and U.S. Foreign Assistance	21
Piracy, Law Enforcement, and International Cooperation.....	22
Options for Improving the Immediate Security of Merchant Ships.....	25
Risk Reduction and Best Practices.....	25
Arming Merchant Ships	25
Convoys.....	26
Maritime War Risk Insurance	26
Toward a Long-Term Solution: "Piracy is a Problem that Starts Ashore"	27

Figures

Figure 1. The Horn of Africa, Surrounding Waters, and Key Locations	4
Figure 2. Somalia Map.....	5

Contacts

Author Contact Information	28
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Recent Developments

On April 8, 2009, Somali pirates seized the U.S.-flagged commercial shipping vessel *MV Maersk Alabama* approximately 250 nautical miles south east of the Somali town of Eyl. Press reports suggest that the 20-member crew of U.S. citizens overtook their Somali captors some time after the ship was seized and attempted unsuccessfully to free the ship's captain, Vermont resident Richard Phillips. In response, the United States Navy dispatched the *U.S.S. Bainbridge*,¹ an Arleigh Burke-class destroyer, and reconnaissance aircraft to the area in order to monitor the small craft where Captain Phillips was being held. Federal Bureau of Investigation personnel worked with naval personnel to conduct hostage negotiations for the captain's release. On April 11, after officials determined that Phillips' life was in immediate danger, U.S. Special Forces mounted a successful rescue operation with the authorization of President Barack Obama. According to the International Maritime Bureau (IMB), as of April 15, approximately 300 non-U.S. crew members on 18 hijacked vessels remained in Somali captivity.

Three pirates were killed by snipers in the U.S. rescue operation; a fourth, a young Somali named Abdiwali Abdiqadir Muse, now faces piracy, conspiracy, and weapons charges before the United States District Court in the Southern District of New York.² Since the beginning of 2009, over 130 pirates have been delivered to Kenyan judicial authorities for trial. Some analysts have expressed concern that the rescue operation could trigger the use of increasingly violent tactics in future pirate attacks.

A leader of the pirate group based in the town of Eyl who held Phillips reportedly vowed revenge, telling reporters that, "this matter will lead to retaliation and we will hunt down particularly American citizens travelling our waters. Next time we get American citizens... they [should] expect no mercy from us." An attack on a second U.S.-flagged vessel, the *MV Liberty Sun*, on April 14 appeared to be an attempt by pirates to make good on that threat. A pirate leader told reporters after the *Liberty Sun* attack that, "We were not after a ransom. We also assigned a team with special equipment to chase and destroy any ship flying the American flag in retaliation for the brutal killing of our friends."³

The attack on the *Alabama* was one of several to occur during a recent resurgence in pirate activity in the west Indian Ocean, where Somali pirates have relocated some of their operations to avoid more robust international naval patrols to the north in the Gulf of Aden. Experts suggested that the higher volume of foreign patrols, bad seasonal weather, and a series of sizeable ransom payments in recent months contributed to a downward trend in pirate attacks in the region from December 2008 through early March 2009. However, a number of recent pirate attacks, including operations conducted hundreds of nautical miles from the Somali coast in the Indian Ocean, have underscored the persistent threat of piracy to international ships transiting the region's waters.

¹ The *U.S.S. Bainbridge* is named for Captain William Bainbridge, the commander of the *U.S.S. Philadelphia* who was held in captivity in the Barbary state of Tripoli from 1803 to 1805 after the *Philadelphia* ran aground in Tripoli harbor during anti-piracy operations. The captivity of Bainbridge and his crew significantly escalated the military confrontation between the United States and the Barbary pirates, whose threats to U.S. vessels in the Mediterranean were a key factor in the early development of the United States Navy. For more information, see <http://www.bainbridge.navy.mil/sitepages/history.aspx>.

² See complaint *U.S. v. Abduwali Abdukhadir Muse*, 09-MG-1012, U.S. District Court, Southern District of New York, April 21, 2009; and Alexandra Marks, "Teen Somali to be Tried as Adult," *Christian Science Monitor*, April 21, 2009.

³ *Agence France Presse*, "Pirates stage rocket attack on US freighter," April 14, 2009.

In response, on April 15, 2009, U.S. Secretary of State Hillary Clinton outlined the Administration's preliminary plans for developing a more robust anti-piracy policy. According to Secretary Clinton, U.S. diplomats will engage with Somali Transitional Federal Government (TFG) officials and leaders from the semi-autonomous region of Puntland in the Eyl district to "press these leaders to take action against pirates operating from bases within their territories." The Administration sent an envoy to attend an April 23 policy and donors conference on Somalia in Brussels and called for the next meeting of the international Contact Group on Piracy off the Coast of Somalia to be held in early May 2009 (see "Contact Group on Piracy off the Coast of Somalia" below). Lastly, U.S. officials plan to redouble efforts to work with the shipping and insurance industries "to address gaps in their self-defense measures." U.S. naval personnel have suggested that international security efforts will not be able to guarantee safe passage across the entire vast area of ocean in which the pirates are now operating and have emphasized the importance of finding a solution to the problem ashore.

To that end, the African Union voted in March 2009 to extend the mandate of their peacekeeping force in the country, known as the African Union Mission to Somalia (AMISOM), for three months while the United Nations Security Council continues to review a proposal to send a U.N. peacekeeping force to Somalia to replace AMISOM. AMISOM forces have come under attack in recent months from Islamist groups opposed to the presence of foreign troops in Somalia, including the Al Qaeda influenced group known as Al Shabaab. Meanwhile, a nascent unity government formed between the TFG and the Alliance for the Reliberation of Somalia (ARS) has returned to Mogadishu, and has elected ARS leader Sharif Sheikh Ahmed as its president.

Negotiations continue among the unity government participants and with opposition groups to determine the makeup of an expanded parliament. Elements of the ARS based abroad, as well as groups and factions in Somalia, have vowed to continue fighting against the new government, and violence has surged. The international Contact Group on Somalia continues to work on a multilateral basis to support Somali efforts to reach reconciliation agreements and implement the country's Transitional Federal Charter. The April 23 donors conference netted over \$250 million in pledges of support for AMISOM and TFG plans to establish police and security forces. The Obama Administration has requested \$40 million in 2009 supplemental Peacekeeping Operations (PKO) funding to provide "non-lethal equipment, logistical support, and basing facilities for the African Union Mission to Somalia and to support Somali security sector reform." The Administration also is seeking authority to transfer up to \$50 million in supplemental Contributions for International Peacekeeping Activities (CIPA) funding to the PKO account for Somalia, if necessary. For more information about political developments in Somalia and U.S. policy, see CRS Report RL33911, *Somalia: Current Conditions and Prospects for a Lasting Peace*, by Ted Dagne.

On March 16, United Nations Secretary General Ban Ki-moon released his report to the Security Council required by Resolution 1846 on the security of international navigation off the coast of Somalia (S/2009/146). In January, the International Maritime Organization convened a meeting of 17 regional States, which adopted the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (see "International Maritime Organization and the Djibouti Code of Conduct" below).

Background

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

Worldwide rates of piracy began to increase in the early 1990s, peaked at roughly 350 to 450 reported attacks per year during the period 2000-2004, and then declined by almost half by 2005. In 2007, almost half of the world's reported pirate attacks took place in African waters, mainly near Nigeria and Somalia. The number of attacks in Somali waters doubled in 2008, accounting for an estimated 40 percent of the 293 pirate attacks reported worldwide.⁴ The recent increase in pirate attacks off Somalia will cause the total number of worldwide pirate attacks to increase, but not necessarily back to the levels of 2000-2004. Nevertheless, recent high profile attacks in the Gulf of Aden and the west Indian Ocean have brought renewed international attention to the problem of piracy in waters off the Horn of Africa.

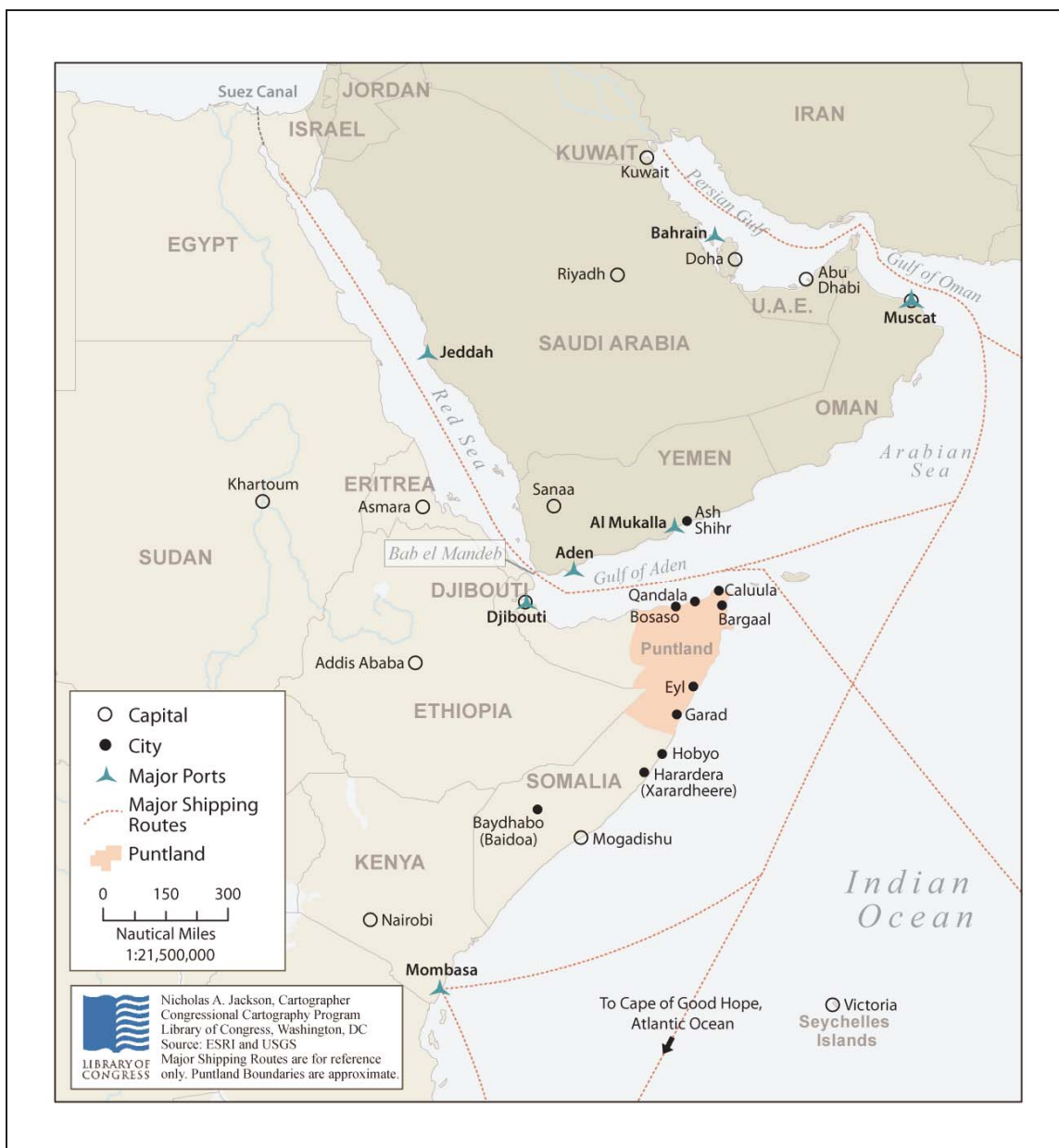
The U.S. National Maritime Security Strategy, issued in 2005, stated that the “safety and economic security of the United States depends upon the secure use of the world’s oceans,” and identified “well organized and well equipped” pirates and criminals as threats to international maritime security. The bombing of the U.S.S. *Cole* in 2000 in the Yemeni harbor of Aden and the bombing of the French oil tanker *MV Limburg* in 2002 illustrated the threat of potential maritime terrorism in the region, and the United States, working with its international partners, established a combined naval task force (Combined Task Force 150)⁵ in addition to increasing bilateral military and security assistance to regional navies. However, until the establishment of Combined Task Force 151 (see “Combined Task Force 151”) in 2008, the United States did not assign any naval forces the sole task of performing anti-piracy operations in the Horn of Africa region.

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

⁴ Much of the statistical information on pirate attacks found in this report has been provided by the International Maritime Bureau, a division of the International Chamber of Commerce.

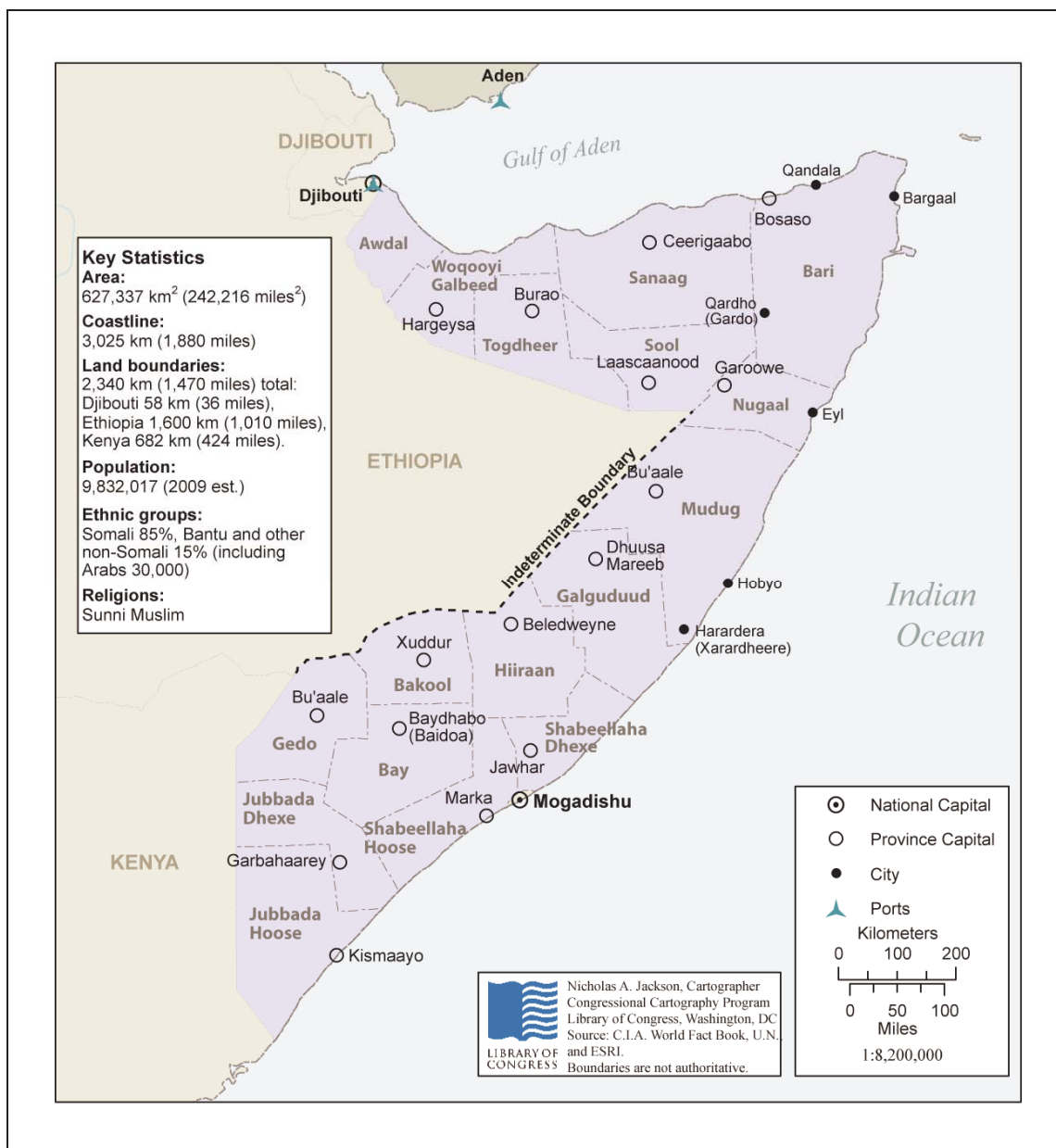
⁵ See the U.S. Navy’s website for CTF 150, available at: <http://www.cusnc.navy.mil/command/ctf150.html>.

Figure 1. The Horn of Africa, Surrounding Waters, and Key Locations



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

Figure 2. Somalia Map



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

Piracy off the Horn of Africa: Profile

The Pirates

Several groups of pirates currently operate in Somali waters, according to reports from the United Nations Secretary General and the experts group convened by the Secretary General's Special

Representative for Somalia.⁶ Organized predominantly along clan lines and based in distinct, remote port towns, the groups have varying capabilities and patterns of operation, making generalized responses more difficult. The two primary groups identified by the Secretary General in his March 2009 report were a pirate network based in the Puntland region district of Eyl and a pirate network based in the Mudug region district of Harardera (Xarardheere). The Secretary General and the Special Representative's experts group also report that smaller pirate groups also operate from the Somali ports of Bosaso, Qandala, Caluula, Bargaal, Hobyo, Mogadishu, and Garad.⁷ The Secretary General has warned that some of the pirate groups "now rival established Somali authorities in terms of their military capabilities and resource bases."

The northern semi-autonomous region of Puntland appears to be home to the most active and capable pirate networks, and some regional and local government officials there are alleged to have facilitated and profited from piracy prior to recent efforts by regional leaders to crack down on piracy-related corruption. Puntland's regional authorities have developed a basic coast guard, but accounts suggest that the equipment and capabilities of this small force remain very limited. Several of the pirate groups have adopted names to suggest that they are acting in a maritime security capacity. Piracy also appears to have become an attractive pursuit for young men, creating potential legal complexities for regional and international governments seeking to try young pirate suspects for alleged crimes.

Motives

According to the final report of the experts group convened in November 2008 by U.N. Special Representative to Somalia Ahmedou Ould-Abdallah, "poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia." While the profitability of piracy appears to be the primary motivating factor for most pirates, other observers argue that since conditions in Somalia make survival difficult for many and prosperity elusive for most, the relative risk of engagement in piracy appears to have been lowered in many areas.⁸

Somali pirates interviewed by international media sources frequently link their piracy activities to trends such as illegal fishing and dumping in Somali waters that have emerged as the country has lost its ability to patrol its waters over time.⁹ While these explanations may mask the

⁶Report of the Secretary-General pursuant to Security Council Resolution 1846 (2008), S/2009/146, March 16, 2009; and, International Expert Group on Piracy off the Somali Coast, Final Report: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah, November 10-12, 2008, Nairobi, Kenya.

⁷ The Special Representative's experts group report identified the following specific pirate group leaders (clan, location in parentheses): Isse Mahmuud and Leelkase (Darood, Eyl), Omar Mahmuud (Darood, Garad), and the Habargedir (Hawiye, Hobiya, Harardera, and Mogadishu).

⁸ The dire economic and security situation in Somalia is illustrated by the continuing outflow of refugees and migrants to neighboring countries. The U.N. High Commissioner for Refugees estimates that as many as 50,000 people, predominantly Somalis, crossed the Gulf of Aden to Yemen in 2008. The deaths of hundreds of migrants in a boat accident off the northern Somali coast in April 2009 were the latest instances in a pattern of similar accidents. "More Somali Migrants Drown off Yemeni Coast," UN IRIN, March 1, 2009.

⁹ The U.N. experts group noted the tendency of pirates to characterize their actions as an alternative livelihood or as retribution for illegal international activities in Somali waters: "The pirates also firmly believe that they have every right and entitlement to attack illegal fishing vessels operating in their territorial waters as their fishing resources are being pillaged daily by international shipping vessels from Asia and Europe." International Expert Group on Piracy off (continued...)

opportunistic piracy of some, reports suggest that illegal fishing and dumping have disrupted Somalia's coastal economy. For example, a July 2005 report from the United Kingdom Department for International Development (DFID) estimated that Somalis lost \$100 million to illegal tuna and shrimp fishing in the country's exclusive economic zone in 2003-2004.¹⁰

The international Contact Group on Piracy off the Coast of Somalia (CGPCS) (see "Contact Group on Piracy off the Coast of Somalia") stated at its inaugural meeting that "piracy is symptomatic of the overall situation in Somalia including the prevalence of illegal fishing and toxic waste dumping off the coast of Somalia, which adversely affects the Somali economy and marine environment."¹¹ The CGPCS also reaffirmed "its respect for Somalia's sovereignty, territorial integrity, and sovereign rights over natural resources" and underscored that the group's participants "ensure that their flagged vessels respect these rights."

Paradoxically, the regional fishing industry reportedly has been damaged significantly by the threat of piracy. According to some reports, tuna catches in the Indian Ocean fell 30 percent in 2008, in part because of fishing vessels' fears of piracy. This has had a major impact on countries like the Seychelles, who rely on the fishing industry for up to 40 percent of their earnings.¹²

The use of force by international naval patrols to apprehend or kill pirate suspects has raised the prospect that revenge may become a motivating factor for pirates whose associates are killed or captured. The April 14 attack on the U.S.-flagged *MV Liberty Sun* allegedly was carried out with the intention of damaging or sinking the ship and injuring or killing its crew in retaliation for the deaths of three Somali pirates during U.S. military efforts to secure the release of the detained captain of the *MV Maersk Alabama* days earlier.¹³

Tactics and Demands¹⁴

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

(...continued)

the Somali Coast, Final Report, p.15

¹⁰ DFID, "Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries," July 2005.

¹¹ Statement of the Contact Group on Piracy off the Coast of Somalia, New York, January 14, 2009.

¹² "Somali Piracy 'Reduces Tuna Haul,'" *BBC*, January 22, 2009.

¹³ An alleged pirate commander named Abdi Garad told reporters, "This attack was the first against our prime target. We intended to destroy this American-flagged ship and the crew on board but unfortunately they narrowly escaped us. The aim of this attack was totally different. We were not after a ransom. We also assigned a team with special equipment to chase and destroy any ship flying the American flag in retaliation for the brutal killing of our friends." *Agence France Presse*, "Pirates stage rocket attack on US freighter," April 14, 2009.

¹⁴ The U.S. government has provided mariners with descriptions of common pirate tactics and instructions for response. See, for example, U.S. Department of Transportation Maritime Administration, "Somali Pirate Tactics," December 2008. Available at http://www.marad.dot.gov/documents/HOA_Somali%20Pirate%20Tactics_15DEC2008.pdf

coastal Somalis lend their fishing boats, equipment, and navigational expertise to teams of would-be pirates from inland communities.

Somali pirates initially focused on attacking ships in the western Indian Ocean, off Somalia's eastern coast. When ships operating on that route shifted further out to sea, Somali pirates shifted their focus to the Gulf of Aden, where there is a concentration of merchant ships (about 20,000 per year) operating in a more constrained waterway that is relatively close to Somalia's northern shore. Most recently, now that international naval forces are patrolling the Gulf of Aden with some effectiveness, Somali pirates have shifted some of their focus back to the Indian Ocean, and are now able to operate hundreds of nautical miles from the Somali coastline, often with the support of so-called 'mother ships.' These 'mother ships' are larger fishing vessels often acquired or commandeered by acts of piracy, and tend to operate out of the Somali ports of Bosaso and Mogadishu and the Yemeni ports of Al Mukalla and Ash Shihr.

U.S. and international officials suspect that in some cases, Somali businessmen and international support networks provide pirate groups with financing, supplies, and intelligence on the movements of ships in regional ports in return for shares of ransom payments. The pirates refuel and purchase logistical supplies like fuel and engine parts in Yemen, according to U.S. naval officials.¹⁵ According to the NATO Shipping Center, Somali pirates returning from raids in the Gulf of Aden often stop at the port of Caluula on the northeast tip of Somalia before proceeding to their safe havens on the Indian Ocean coast.¹⁶

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

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

While pirate attacks may involve violence and the use of weaponry, most Somali pirate groups have not shown a willingness to wantonly harm captives taken in the course of their raids. Pirates in other parts of the world who engage in these types of attacks might be more likely to kill or

¹⁵ Comments by Admiral Mark Fitzgerald in "Work with Yemen Government on Somali Piracy: U.S. Admiral," *Reuters*, March 9, 2009.

¹⁶ Report of the UN Secretary General, S/2009/146, paragraph 6, page 2.

seriously wound merchant ship crew members, since extracting ransom payments is not their objective. Negotiations for ransom involve the use of satellite telephones, third-party intermediaries in Somalia and abroad, and public relations efforts to influence interaction with property owners and foreign officials. Most navies have avoided rescue operations that could endanger the lives of hostages, preferring instead to engage in hostage negotiations or wait for shipping companies to negotiate ransom. According to reports, a recent rescue operation by French naval forces, designed to free a family held hostage onboard a small sailboat off the Somali coast, resulted in the death of the vessel's owner, a French citizen, during an exchange of fire between the pirates and naval personnel.¹⁷

Prior to the U.S. military resolution of the *MV Maersk Alabama* seizure and other French military operations, the most sensational cases of piracy to date had been resolved through the payment of large sums of money to different pirate syndicates.¹⁸ The Ukrainian ship *MV Faina* was released for a reported \$3.2 million ransom in February 2009 after being held for nearly 6 months by pirates based in Harardera (Xarardheere). The seizure of the ship, carrying T-72 tanks and a significant amount of ammunition and small arms, led several governments, including the United States, to dispatch naval forces to the region to monitor the ship and its cargo. The Saudi oil supertanker *MV Sirius Star* was released for a reported \$3 million ransom to Eyl-based pirates in January 2009 following its seizure in November 2008. The hijacking of the *Sirius Star* illustrated the threat piracy may pose to international energy supplies as well as the capabilities of some Somali pirates to operate far out to sea against large vessels. Ransom payments are considered to be problematic by some observers because they encourage pirates to continue their attacks with the expectation that insurance and shipping companies will decide that ransoms are cost effective relative to the insured values of personnel and cargo (see "Threats to Commercial Shipping and Global Trade" below).

The use of force by international naval forces to apprehend pirates and to free hostages in recent months has raised the prospect of an escalation in the pirates' use of force. As noted above, pirate leaders have vowed to retaliate for the recent deaths of some of their operatives at the hands of U.S. and other international naval forces. The use of force against suspected pirate vessels also may be problematic because of the difficulty inherent in distinguishing a pirate mother ship from a legitimate commercial ship. According to reports, in November 2008, a ship from the Indian navy attacked what it thought was a pirate mother ship, only to discover, after the attack was conducted, that the targeted ship was an innocent Thai commercial trawler. The effective use of force against pirate strongholds in coastal towns would likely require significant military planning and the investment of considerable resources in order to avoid or minimize civilian casualties. The number of naval ships that would be needed to completely halt piracy in the Gulf of Aden and the waters of Somalia's Eastern Coast is probably much larger than the 12 to 20 that have been operating there in recent months. As many as 60, for example, might be required to suppress piracy in the Gulf of Aden. The adjoining area of concern in the Indian Ocean off Somalia's eastern coast, which has been measured at more than 1 million square miles, is much larger than the Gulf of Aden, so completely halting piracy in that area would likely also require a large number of ships.

¹⁷ Others onboard were rescued safely.

¹⁸ The French military also has reportedly undertaken a number of raid and rescue operations since April 2008 to free its citizens held aboard seized ships.

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

Piracy off the Horn of Africa: Impact

The strategic location of the Horn of Africa increases its importance for international security and commerce. The northern coastline of Somalia lies to the south of the Gulf of Aden, a key transit zone for ships passing to and from the Red Sea and the increasingly active port of Djibouti. The U.S. Department of Energy estimated that, as of 2006, as many as 3.3 million barrels of oil per day were transiting the Bab el Mandeb strait between the Gulf of Aden and the Red Sea. The Indian Ocean waters off the southeast coast of Somalia are home to busy shipping lanes for trade between Asia and East Africa, as well as for ships making longer voyages around South Africa’s Cape of Good Hope. Ship traffic to and from the Kenyan port of Mombasa is particularly vulnerable to security disruptions in the west Indian Ocean.

Threats to Commercial Shipping and Global Trade¹⁹

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

In May 2008, insurance underwriters at Lloyds of London designated the Gulf of Aden a “war-risk” zone subject to a special insurance premium. London-based ocean marine insurers have raised rates for ships making the voyage through the Gulf of Aden and the Suez Canal. These levels of increase can only be estimated because of the competitive nature of the ocean marine insurance business. One group of London insurance brokers and underwriters estimates extra premiums at \$10,000 to \$20,000 per trip through the Gulf.²⁰ U.S. rates, however, apparently have not changed. According to representatives of the American Institute of Marine Underwriters (AIMU), U.S. ocean marine insurers have not had to pay ransom for any act of piracy; therefore, they say, hull and cargo insurance rates for vessels leaving the United States remain the same.

¹⁹ For more information about the commercial impact of piracy, see CRS Report R40081, *Ocean Piracy and Its Impact on Insurance*, by Rawle O. King.

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

London-based shipping firms are usually prepared to pay ransom when the demanded sums are considered low, ranging from \$500,000 to \$2 million, compared with the value of the ships and cargo. Such payments are reimbursed because the hull insurance policies issued in London explicitly cover the peril of piracy.²¹ (Hull insurance forms used by American insurers generally exclude coverage for the peril of piracy.) However, when the ransom demanded exceeds the value of the cargo, the shippers typically do not pay the ransom.

Ship operators (and their governments) might judge that the costs of paying occasional ransoms are less than the costs of taking steps to prevent occasional hijackings such as rerouting or arming merchant ships. Some assert that payment of ransoms has tended to keep the level of violence associated with piracy off Somalia relatively low, and while individual ransom payments can be significant, the small percentage of ships operating in the area successfully attacked and captured lowers the overall risk in the eyes of some commercial entities. As such, the payment of occasional ransoms might be viewed by ship operators (and their governments) as a regrettable but tolerable cost of doing business, even if it encourages more piracy.

The increase in pirate attacks is occurring at a time when the shipping industry is expressing concerns about its financial health. One development is that the frequency of hiring dry bulk carriers, a key industry component, has decreased; the “hire” rates have dropped over 90% in the last six months.²² (In some cases, the hire rate has dropped because the financial industry has stopped financing trade due to the global economic crisis.)²³ In addition, many ship owners and other key industry participants apparently face severe losses from the global financial market crisis. Some major dry bulk shippers lost money speculating on the market in shipping derivatives that offered potential for strong investment returns.²⁴ Shipping derivatives were developed to manage risk stemming from fluctuations in freight rates, vessel prices, interest rates, and foreign exchange rates, more effectively, in a cheaper and more flexible manner. Many shippers made derivative bets mistakenly on the direction of dry bulk rates during 2008.

In addition to the generalized threat that piracy poses to the security of the shipping lanes described above, the incidence of piracy has important second order effects on the costs, patterns, and benefits of regional and international shipping and trade. Egypt’s Suez Canal serves as a vital shipping link between the Mediterranean Sea and Red Sea, and the revenue derived from ships transiting the Canal is an important source of funding for Egypt’s government. Canal authorities report that shipping traffic and resulting revenue have declined in recent months, due both to decreased economic activity and the piracy threat to the Canal’s approaches in the Gulf of Aden. Rerouting vessels to avoid the Gulf of Aden and other waters near the Horn of Africa adds additional transit days and fuel costs to shipping companies. The costs vary by type of ship and frequency of voyage, according to the U.S. Department of Transportation.²⁵

²¹ Robert F. Worth, “Pirates Seize Saudi Tanker off Kenya: Ship Called the Largest Ever Hijacked,” *New York Times*, November 18, 2008, p. A. 6.

²² Robert Wright, “Shipping in Crisis: Sector Must Navigate Rates Challenge,” *Financial Times*, November 19, 2008, p. 18.

²³ *Ibid.*

²⁴ A derivative is a financial instrument whose price is dependent upon or derived from one or more underlying assets. The derivative itself is a contract between two or more parties. Its value is determined by fluctuations in the underlying asset. The most common underlying assets include stocks, bonds, commodities, currencies, interest rates, and market indexes.

²⁵ For example, circumnavigation rather than transiting the Gulf of Aden/Suez Canal increases the annual operating cost of an oil tanker “by reducing the delivery capacity for the ship from about six round-trip voyages to five voyages, (continued...) ”

Threats to Humanitarian Aid Deliveries

Piracy threatens the delivery of vital humanitarian assistance to the Horn of Africa, much of which arrives by sea.²⁶ In addition to the 7.2 million Ethiopians currently receiving emergency humanitarian assistance, the U.S. Agency for International Development (USAID) estimates that an additional 4.9 million will require food aid in the first half of 2009. As of April 2009, The United States provided over \$600 million in humanitarian assistance to the country in FY2008, and has provided over \$111 million to date in FY2009.²⁷ In neighboring Somalia, an estimated 3.2 million Somalians, approximately 43 percent of the population, required food aid in the latter half of 2008. U.S. humanitarian assistance to Somalia totaled \$270 million in 2008 and over \$157 million to date in FY2009.²⁸ The Obama Administration has requested \$200 million in FY2009 supplemental International Disaster Assistance (IDA) funding and \$300 million in FY2009 supplemental P.L. 480, Title II humanitarian assistance, in part to address food and water shortages in Somalia, Ethiopia, and Sudan.

Food insecurity in the region, caused by drought and instability, has been heightened by high food and fuel prices in the region. Officials from the World Food Program (WFP), which ships tens of thousands of metric tons of food monthly to the Horn of Africa region, reports that it has become more expensive to ship assistance to Mogadishu, and that their ability to deliver relief is significantly hampered. Canada, NATO, and European Union forces have assumed WFP escort responsibilities since late 2008 (see “NATO: Operation Allied Provider and Operation Allied Protector” and “European Union: Operation ATALANTA” below).²⁹

The continuing threat of piracy to ongoing relief efforts was illustrated clearly in April 2009, when pirates hijacked the *MV Maersk Alabama* and attacked the *MV Liberty Sun*, both U.S.-flagged and crewed cargo vessels contracted by the WFP to deliver USAID food assistance off the southeast coast of Somalia. The *Maersk* had delivered food aid to the port of Djibouti and was en route to the port of Mombasa, Kenya when it was seized by Somali pirates.

Potential Financing of Regional Conflict and Terrorism Concerns

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

(...continued)

or a drop of about 26 percent. The additional fuel cost of traveling via the Cape of Good Hope is about \$3.5 million annually.” U.S. Department of Transportation Maritime Administration, *Economic Impact of Piracy in the Gulf of Aden on Global Trade*, December 2008.

²⁶ Food insecurity in the region is also exacerbated by banditry, roadblocks, inter-clan fighting, and attacks on aid workers.

²⁷ USAID, *Complex Emergency – Ethiopia*, Situation Report #6, April 9, 2009.

²⁸ USAID, *Complex Emergency – Somalia*, Situation Report #4, January 15, 2009.

²⁹ Christian Fraser, “On Patrol with the Pirate Hunters,” BBC, November 21, 2008.

permitted ready access to the arms and ammunition used by the pirates and driven in part the phenomenal growth in piracy.”

Observers have expressed apprehension that some of the revenue from ransoms paid for the release of ships and hostages may be used to finance an influx of more weapons to the area for pirates or others. U.S. Navy officials have not found that fighters associated with Al Shabaab have financial ties to piracy at present, but the potential for personnel linkages may remain.³⁰ To the extent that ransom payments and new arms further empower criminal pirate groups, the challenge that such groups pose to local authorities at present and to potentially reconstituted national authorities in the future could grow.

U.S. and International Policy Responses

Piracy in the waters off the Horn of Africa is a symptom of the wider instability that has plagued Somalia and the region since the early 1990s. At present, the internationally recognized Transitional Federal Government (TFG) is working with the Alliance for the Reliberation of Somalia (ARS) on efforts to form a unity government and reconstitute national security and law enforcement entities. The Bush and Obama Administrations have supported reconciliation efforts in Somalia and have taken a leadership role in coordinating diplomatic and military responses to the threat of piracy in the region, in coordination with the United Nations Security Council. Funds pledged at the April 23 donors conference for Somalia in Brussels are intended in part to support the development of security forces by the TFG, and such forces, once developed, may improve local authorities’ ability to act against pirates ashore.

To date, U.S. and international efforts to respond to the threat of piracy have taken on a multi-faceted approach. In order to provide a short term response to the immediate threat to international navigation in the region’s waters, the United Nations Security Council has authorized third party governments to conduct anti-piracy operations in Somali territorial waters and ashore, but only with authorization from and in coordination with the TFG. Regional bodies such as the African Union, the Arab League, and ad hoc groupings such as the participants in the December 2008 International Conference on Piracy in Nairobi, Kenya, have held consultative meetings and issued policy statements condemning piracy in the region and providing guidance for the development of coordinated, collaborative regional responses. Recent pirate attacks such as the seizure of the *MV Maersk Alabama* also may precipitate changes in U.S. policy and priorities among Administration officials and Members of Congress.

U.S. Policy

The U.S. National Maritime Security Strategy, issued in 2005, stated that the “safety and economic security of the United States depends upon the secure use of the world’s oceans,” and identified “well organized and well equipped” pirates and criminals as threats to international maritime security. In June 2007, the Bush Administration adopted a Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea that stated that it is the policy of the United

³⁰ Vice Admiral William Gortney, the commander of U.S. Naval Forces Central Command told the House Armed Services Committee on March 5, 2009, that “We look very, very carefully for a linkage between piracy and terrorism or any kind of ideology and we do not see it. It would be a significant game changer should that linkage occur. But we have not seen it. We watch very carefully for it.”

States to “[c]ontinue to lead and support international efforts to repress piracy and other acts of violence against maritime navigation and urge other states to take decisive action both individually and through international efforts.” In December 2008, the Bush Administration issued an implementation plan based on that policy to address piracy threats in the Horn of Africa region. The U.S. National Security Council (NSC) “*Countering Piracy off the Horn of Africa: Partnership and Action Plan*” set out the objective “to repress this piracy as effectively as possible in the interests of the global economy, freedom of navigation, Somalia, and the regional states.”³¹ In pursuit of that objective, the plan outlined three “lines of action” for U.S. policy:

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

In support of the 2007 policy and 2008 plan, the Bush Administration formed an interagency counter-piracy task force that “addresses the full spectrum of anti- and counter-piracy efforts, from piracy prevention to interruption and termination of acts of piracy, to ensure the accountability of pirates.” The State Department and Defense Department are the principal members of the task force and work with other U.S. government agencies to coordinate U.S. policies and engagement in the multilateral initiatives that have been developed since mid-2008. To date, the task force has overseen efforts to implement elements of the December 2008 NSC *Action Plan*, which pledges U.S. support for the establishment of an international Contact Group on piracy (established January 2009, see “Contact Group on Piracy off the Coast of Somalia”) and a regional counter-piracy coordination center (under development, see “International Maritime Organization and the Djibouti Code of Conduct”).

The Obama Administration has not announced new overarching strategic priorities with regard to the piracy threat, although Secretary of State Hillary Clinton has outlined preliminary plans for a more robust policy response. According to Secretary Clinton, U.S. diplomats will engage with Somali Transitional Federal Government (TFG) officials and leaders from the semi-autonomous region of Puntland in the Eyl district to “press these leaders to take action against pirates operating from bases within their territories.” The Administration sent Acting Assistant Secretary of State for African Affairs Phillip Carter to the April 23 policy and donors conference on Somalia in Brussels and has called for a meeting of the international Contact Group on Piracy off the Coast of Somalia in early May. Lastly, U.S. officials plan to redouble efforts to work with the shipping and insurance industries “to address gaps in their self-defense measures.”

The Obama Administration’s FY2009 supplemental request appears to anticipate the delivery of some security assistance to the region, contingent upon continued progress in Somali reconciliation negotiations. The December 2008 *Plan* called for U.S. “bilateral assistance programs for judicial capacity building efforts” for regional states. Comments from Obama Administration officials suggest that their Administration shares the view expressed in the Bush Administration Action Plan that U.S. anti-piracy efforts are intended “to be mutually supportive of longer-term initiatives aimed at establishing governance, rule of law, security, and economic development in Somalia.”

³¹ U.S. National Security Council, “Countering Piracy off the Horn of Africa: Partnership and Action Plan,” December 2008. Available at: http://www.marad.dot.gov/documents/Countering_Piracy_Off_The_Horn_of_Africa_-_Partnership__Action_Plan.pdf.

United Nations Security Council

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

At the request of the TFG, the mandate established in Resolution 1816 was extended for 12 months in December 2008 in Resolution 1846. In December 2008, Resolution 1851 expanded the mandate by authorizing states and regional organizations that are acting at the TFG’s request to “undertake all necessary measures that are appropriate *in Somalia* [italics added] for the purpose of suppressing acts of piracy and armed robbery at sea.” Both resolutions require any authorized international measures to be undertaken in accordance with humanitarian and human rights laws. Other provisions of Resolution 1851 have guided developments since December 2008 and may inform future U.S. or international initiatives (see “Contact Group on Piracy off the Coast of Somalia”, “United Nations Office on Drugs and Crime”, and “Oversight of U.S. Military Forces and U.S. Foreign Assistance” below).

Resolution 1846 authorized the provision of technical assistance to TFG personnel and forces “to enhance the capacity of these States to ensure coastal and maritime security” in accordance with procedures outlined in Resolution 1722. Under paragraphs 11 and 12 of Resolution 1722, the supply of technical assistance to Somali “security sector institutions” is authorized provided that prior case-by-case notification is made to the U.N. arms embargo Committee for Somalia.³² Resolution 1851 provides similar authorization to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking authorized anti-piracy operations in Somali waters. The transfer of weaponry to Somali maritime security forces would require separate authorization from the Security Council. The African Union’s Peace and Security Council and the TFG have requested that the broader U.N. arms embargo be amended or lifted in order to improve the capabilities of forces fighting Islamist insurgents.

Contact Group on Piracy off the Coast of Somalia

Based on Resolution 1851, the Bush Administration led the formation of a multilateral Contact Group on Piracy off the Coast of Somalia (CGPCS) made up of 24 member governments and 5 regional and international organizations.³³ The Contact group held its first meeting in January 2009 and identified six tasks for itself: 1) improving operational and information support to counter-piracy operations, 2) establishing a counter-piracy coordination mechanism, 3) strengthening judicial frameworks for arrest, prosecution and detention of pirates, 4)

³² For more information, see the Committee web page at: <http://www.un.org/sc/committees/751/>.

³³ Resolution 1851 “encourages all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast.”

strengthening commercial shipping self-awareness and other capabilities, 5) pursuing improved diplomatic and public information efforts, and 6) tracking financial flows related to piracy.³⁴ In support of these goals, four working groups are to make recommendations to the Contact Group secretariat on relevant military/operational, judicial, diplomatic, and public information aspects of regional and international anti-piracy efforts. The goals of the working groups' efforts are to improve operational coordination, information sharing, and the effectiveness of legal enforcement activities among all regional and international actors combating piracy in the region. The latest meeting of the CGPCS was held in Cairo in March 2009 and the next meeting reportedly will be held in early May 2009.

Combined Task Force 151 and Other Naval Forces

United States Naval Forces Central Command (NAVCENT) commands the Combined Maritime Forces operating in the Arabian/Persian Gulf, Gulf of Oman, Gulf of Aden, Red Sea, Arabian Sea, and Indian Ocean. In January 2009, the command established Combined Task Force 151 (CTF-151), with the sole mission of conducting anti-piracy operations in the Gulf of Aden and the waters off the Somali coast in the Indian Ocean. That role had previously been filled by CTF-150, which continues to perform counterterrorism and other maritime security operations as it has since 2001-2002. In August 2008, CTF 150 and partner forces agreed to the establishment of a Maritime Security Patrol Area (MSPA) in the Gulf of Aden to serve as a dedicated, more secure transit zone for merchant vessels. The MSPA has been credited in part with lowering the success rate of Somali pirates in the Gulf of Aden transit zone.

As of April 2009, CTF-151 consisted of personnel and nearly two dozen ships from the United States, the United Kingdom, Canada, Denmark, France, Germany, Greece, Italy, Malaysia, Netherlands, Saudi Arabia, Spain, Turkey and Yemen.³⁵ U.S. naval commanders expect that Bahrain, Jordan, Japan, Singapore, the Republic of Korea, Sweden, Belgium and Poland also will participate in CTF-151 operations in the near future. Task force operations are coordinated from the NAVCENT command center in Bahrain. NAVCENT commanders told Congress in early March that CTF-151 and other cooperating naval forces had disarmed and released 121 pirates, disarmed and turned over for prosecution 117 pirates, and were holding nine pirates pending final disposition.³⁶

Other countries, most notably Russia, China, and India have deployed naval forces to the region to participate in monitoring and anti-piracy escort operations. From an operational perspective, while these countries do not formally and fully coordinate their policies with CTF-151, there are ongoing communication efforts. Naval observers and officials in the United States have noted the engagement of China with particular interest, as Chinese naval operations in the Horn of Africa region demonstrate the Chinese government's desire and ability to protect international shipping lanes far from China's shores. As of April 2009, a Chinese destroyer and frigate were departing to replace two Chinese navy destroyers that have been deployed for anti-piracy operations since late December 2008.³⁷ A supply ship that is currently deployed is reportedly scheduled to stay on

³⁴ Statement of Contact Group on Piracy off the Coast of Somalia, New York, January 14, 2009.

³⁵ Vice Admiral William Gortney, Commander, U.S. Naval Forces Central Command, Testimony before the House Armed Services Committee, March 5, 2009.

³⁶ Ibid.

³⁷ Cui Xiaohuo, "New fleet sails to fight Somali pirates," *China Daily*, April 2, 2009.

scene with the new task force, which will have the same helicopter and naval special forces team capabilities as its predecessor.

NATO: Operation Allied Provider and Operation Allied Protector

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

In March 2009, NATO launched its second anti-piracy mission, Operation Allied Protector, which is being carried out by Standing NATO Maritime Group 1 (SNMG1). According to NATO, the forces participating in Operation Allied Protector will "deter, defend against and disrupt pirate activities" as they transit the region. The Maritime Group was originally scheduled to perform temporary anti-piracy missions as it transited the Horn region en route to South East Asia and as it returned in June 2009.³⁸ In April 2009, NATO officials cancelled the planned SNMG1 visits to Singapore and Australia and extended the Operation Allied Protector mission until June 20, 2009. A scheduled visit to Karachi reportedly will go ahead as planned. As of late March 2009, the following ships were participating in SNMG1 and Operation Allied Protector: *NRP Corte Real* (flagship, Portugal), *HMCS Winnipeg* (Canada), *HNLMS de Zeven Provinciën* (The Netherlands), *SPS Blas de Lezo* (Spain), and the *USS Halyburton* (United States). NATO officials reportedly were seeking to extend the authority of participating ships to detain captured pirates as of late April 2009.

European Union: Operation ATALANTA

In December 2008, the European Union launched EU NAVFOR Operation ATALANTA, its first naval operation under the framework of the European Security and Defence Policy (ESDP). Forces participating in Operation ATALANTA have been tasked with provide protection for WFP vessels and merchant vessels and are authorized to "employ the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where they are present."³⁹ According to the European Union, the force consists of twenty ships and over 1,500 personnel. Greece, France, Spain, Germany and Italy have contributed forces and personnel to the operation for its full term of twelve months. Other EU member states and third party countries are expected to contribute over time. In coordination with the deployment, EU NAVFOR also has established an online center known as Maritime Security Center-Horn of Africa (MSC-HOA) for transiting ships to record their ships' movements voluntarily and to receive updated threat information.⁴⁰ Similar voluntary tracking and reporting services are provided by the United Kingdom Maritime Trade

³⁸ The task force is scheduled to visit Karachi, Pakistan, Singapore, and Perth, Australia, before returning to the Horn of Africa Region.

³⁹ European Union Council Secretariat, "Fact Sheet: EU naval operation against piracy (EU NAVFOR Somalia - Operation ATALANTA)," EU NAVFOR/04, March 2009.

⁴⁰ Information on the Maritime Security Center-Horn of Africa (MSC-HOA) is available at: <http://www.mschoa.eu/Default.aspx>.

Operations office in Dubai and the U.S. Navy's Maritime Liaison Office in Bahrain. Between CTF-151, Operation ATALANTA and Operation Allied Protector, almost 50 combatant ships are currently patrolling in the region.

International Maritime Organization and the Djibouti Code of Conduct

The International Maritime Organization (IMO)⁴¹ has had an international anti-piracy program since the late 1990s and has successfully engaged on a multilateral basis in other regions to improve anti-piracy cooperation. At present, cooperative mechanisms for managing the security of the waters near the Horn of Africa are being developed as called for by the IMO⁴² and as encouraged by Resolution 1851.⁴³ The IMO began sponsoring consultation meetings on piracy for the Horn of Africa region in 2005, which led to the development of a draft cooperative framework agreement in early 2008.

In January 2009, representatives of 17 regional governments met at an IMO-sponsored meeting in Djibouti and adopted a Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the western Indian Ocean and the Gulf of Aden.⁴⁴ As of late January 2009, nine regional governments⁴⁵ had signed the Code of Conduct, which remains open for signature by other parties. Three regional facilities---the Maritime Rescue Coordination Centre in Mombasa, Kenya, the Sub-Regional Coordination Centre in Dar es Salaam, Tanzania, and a regional maritime information center that is to be established in Sana'a, Yemen---are to support the information sharing components of the agreement. The parties also agreed to resolutions on technical cooperation and the establishment of a regional training center in Djibouti. The Contact Group on Piracy off the Coast of Somalia (CGPCS) intends to adopt interim measures to facilitate regional coordination until a dedicated coordination center to support the Djibouti Code of Conduct is established.

A similar cooperative framework developed by the IMO, the littoral states of the Strait of Malacca, and other Asian governments has been in force since 2006. Known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (ReCAAP),⁴⁶ the agreement established procedures for coordinating responses to piracy and

⁴¹ The International Maritime Organization is a United Nations agency with over 168 member governments. Based in the United Kingdom, its members develop regulations for international shipping related to safety, the environment, and maritime security. It also serves as a global coordinating body for legal issues, technical co-operation, and maritime security including anti-piracy efforts. For more information, see: <http://www.imo.org/>.

⁴² IMO Resolution A.1002(25) "calls Upon Governments in the region to conclude, in co-operation with the Organization, and implement, as soon as possible, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships."

⁴³ Resolution 1851 "encourages all states and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to consider creating a center in the region to coordinate information relevant to piracy and armed robbery at sea off the coast of Somalia."

⁴⁴ International Maritime Organization, "High-level meeting in Djibouti adopts a Code of Conduct to repress acts of piracy and armed robbery against ships,"

⁴⁵ Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania, and Yemen signed the code of conduct in January.

⁴⁶ Text available at: <http://www.recaap.org/about/pdf/ReCAAP%20Agreement.pdf>. Sixteen signatories include the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, (continued...)

sharing best practices among law enforcement and security personnel. The ReCAAP Information Sharing Center (ISC) in Singapore now serves as the principal clearinghouse for piracy reporting and response coordination.⁴⁷ These steps, taken in conjunction with other regional agreements between Malaysia, Indonesia and Singapore to coordinate anti-piracy patrols in the Straits of Malacca and surrounding waters have been successful in reducing piracy in that region. The negotiation of the bilateral and multilateral initiatives in the Straits of Malacca region highlighted several issues that may be of interest to parties seeking to establish similar programs in the Horn of Africa region, namely the importance of addressing local concerns over sovereignty, territorial water rights, and the presence of foreign military forces in regional waters.

United Nations Office on Drugs and Crime: “Shipriders” and Capacity Building

Under the auspices of Resolution 1851 and in conjunction with the judicial working group of the (CGPCS), the United Nations Office on Drugs and Crime has launched a project to facilitate regional law enforcement participation in anti-piracy enforcement efforts off the coast of Somalia.⁴⁸ The program was encouraged in language included in Resolution 1851 and focuses on providing judicial capacity building assistance to regional states and facilitating so-called “shiprider” arrangements in which regional law enforcement personnel are seconded to international vessels to perform anti-piracy arrest and investigation functions. The United States has shiprider agreements with a number of Western Hemisphere governments to facilitate maritime security operations in waters of shared concern.

In general, shiprider arrangements are designed to address the logistical and legal challenges inherent in multilateral naval enforcement efforts in remote areas or where the capacity of regional governments does not allow for the provision of sufficient security. With regard to current operations in the Horn of Africa region, long transport times, limited military resources, legal limitations on the operations of military personnel, and complex differences in jurisdictional standards and requirements would complicate the arrest and prosecution by the varied non-regional forces operating under Resolution 1851. In order to help regional governments meet the added resource requirements that the arrest, detention, and prosecution of Somali pirate suspects would create, the UNODC plans to provide judicial capacity building assistance, in coordination with other donors.

Private Sector and Shipping Industry Responses

Private sector and shipping industry responses to the threat of piracy in the waters off the Horn of Africa have varied. In addition to altering financial decisions based on higher insurance costs,

(...continued)

Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, and the Socialist Republic of Viet Nam.

⁴⁷ A diagram of ReCAAP-ISC reporting and response procedures is available at: http://www.recaap.org/about/pdf/Information_Flow_Response_chart.pdf.

⁴⁸ Resolution 1851 “invites” states and regional organizations “to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (“shipriders”) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under [the] resolution.”

some accounts suggest that shipment navigation patterns have changed in response to the threat of piracy, with some vessels preferring to circumnavigate the southern Cape of Good Hope rather than risk attack in the Gulf of Aden. Crews also have developed a number of unique countermeasures and best practices in their attempts to ward off and resist pirate attacks. The use of water cannons, fire hoses, and passive sonic defenses has become more widespread, and industry surveys suggest that ships that operate at speeds above 15 knots⁴⁹ and that have higher freeboards⁵⁰ have proven less susceptible to pirate attack, thus far. Debates about the use of armed guards continue among shipping industry representatives, government officials, and observers worldwide (see “Options for Improving the Immediate Security of Merchant Ships”).

The IMO and other bodies such as the International Chamber of Commerce International Maritime Bureau (ICC-IMB) have developed detailed guidance and recommendations for governments and commercial vessels seeking to prevent, deter, and respond to pirate attacks. The IMB also has established a 24-hour piracy reporting center in Kuala Lumpur, Malaysia, which seeks to serve as the global, one-stop shop for piracy reporting and piracy threat information distribution for commercial vessels. The IMB also works with other regional information centers to collect and disseminate threat and situation reporting. For the Horn of Africa region, the IMB and European Union Maritime Security Center-Horn of Africa (MSC-HOA) issue periodic ‘Industry Updates’ detailing recent trends in pirate attacks and making recommendations to vessels transiting regional waters.⁵¹

Issues for Congress and Policy Options

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

Most defense analysts acknowledge that while the unprecedented level of naval patrols in the area -- conducted by more than fifteen nations -- has deterred some attacks, the area is simply too vast to prevent all incidents. When the *MV Maersk Alabama* was attacked on April 8, 2009, the closest naval vessel, the *U.S.S. Bainbridge*, was approximately 300 nautical miles away. Similarly, the *U.S.S. Bainbridge* was only able to arrive on the scene of an aborted April 14 attack on the *MV Liberty Sun* a reported 6 hours after the attack ended. The continuing anti-piracy operations of international navies also comes at significant cost, as governments around the world weigh the budgetary impact of the current economic downturn and military requirements in other theaters of operation.

Like terrorism, acts of piracy in African waters pose a transnational security threat that emanates from areas plagued by conflict, weak governance, and economic insecurity. Regional security forces currently have limited maritime capability, and many governments have prioritized the development of their armies at the expense of navies or coast guards. That has changed to some extent in recent years, as international studies have highlighted the threat to local economies

⁴⁹ One knot is unit of measurement equivalent to one nautical mile per hour or 1.15 miles per hour.

⁵⁰ The term ‘freeboard’ refers to the distance between the waterline and the main deck of the ship.

⁵¹ Available at: http://www.icc-ccs.org/index.php?option=com_content&view=article&id=344&Itemid=233.

posed by illegal fishing, in addition to more traditional maritime security threats. Regional coordination and intelligence sharing also is weak.

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

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

U.S. military engagement in the region is divided among two geographic combatant Commands. U.S. Central Command's area of responsibility (AOR) includes the waters of the Gulf of Aden and those off the eastern Somali coast, while the AOR of the new U.S. Africa Command (AFRICOM), which became fully operational in October 2008, encompasses the African continent.⁵² To date, much of the U.S. military's anti-piracy response has been conducted at sea, by Central Command (CENTCOM). On land, AFRICOM provides security assistance to several regional maritime security forces, few of which have "blue water capacity." CENTCOM provides similar assistance to the Yemeni coast guard.

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

U.S. military operations in the region are not limited to anti-piracy efforts. The United States has conducted anti-terrorism activities in the Horn of Africa and in Yemen for over a decade, including the naval Combined Task Forces established as part of Operation Enduring Freedom. Djibouti has hosted a semi-permanent Forward Operating Site, known as the Combined Joint Task Force – Horn of Africa (CJTF-HOA) since 2003, with over 1,500 U.S. military personnel in residence. The command authority for CJTF-HOA, formerly under CENTCOM, was recently transferred to AFRICOM. Its efforts initially focused primarily on countering violent extremism in the region, but the Task Force's activities have expanded in recent years to include a wide variety of activities aimed at building the capacity of regional militaries to respond to more general threats, such as natural disasters and armed conflict. CJTF-HOA personnel provide training to the region's security forces on counter-terrorism, maritime security, and peacekeeping.

As mentioned above, the United States conducts an array of maritime security assistance programs in East Africa and Yemen. In Kenya, for example, the United States provides maritime

⁵² AFRICOM's AOR includes all African countries except Egypt, which remained in the AOR of CENTCOM after that command transferred responsibilities for the Horn of Africa countries to AFRICOM in 2008. For more information see CRS Report RL 34003, *U.S. Africa Command: U.S. Strategic Interests and the Role of the U.S. Military in Africa*, by Lauren Ploch.

security assistance to both the Kenyan Navy and an array of agencies, including the Kenya Wildlife Service, revenue authority, and police, to address an array of threats, from smuggling and illegal fishing to terrorism. The U.S. also began support for a regional Maritime Center of Excellence in Mombasa in early 2009; courses at the Center are attended by participants from throughout East Africa. Several African countries, including Djibouti, Kenya, Tanzania, and Yemen, have received U.S. support for the installation of radar systems that provide enhanced maritime domain awareness. Congress expanded the Department of Defense's Section 1206 "train and equip" authority in FY2009 to include assistance for maritime security forces.

U.N. Security Council Resolution 1851 "calls on Member States to assist the TFG, at its request and with notification to the Secretary-General, to strengthen its operational capacity to bring to justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea." The Obama Administration may seek to expand current assistance programs for regional and Somali actors subject to congressional appropriations and authorization and in accordance with United Nations Security Council resolutions. As noted above, the Obama Administration has requested \$40 million in 2009 supplemental Peacekeeping Operations (PKO) funding to provide "non-lethal equipment, logistical support, and basing facilities for the African Union Mission to Somalia and to support Somali security sector reform."⁵³ While those funds are likely to be directed toward improving Somali capacity to counter threats from insurgents and terrorists, to the extent that assistance improves the overall ability of government forces to operate effectively and assert security control, it may have positive implications for anti-piracy operations in the future.

Although some press reports in April 2009 quoted unnamed U.S. officials as stating that the U.S. military may consider launching military attacks against pirate strongholds, in testimony before the House Armed Services Committee in March 2009, Stephen Mull, Acting Undersecretary of State for International Security and Arms Control stated that although the United States supported the inclusion in Security Council Resolution 1851 of authorization for anti-piracy operations on land, there were, at that time "no plans to conduct counter-piracy operations on land." In April, Secretary of State Hillary Clinton appeared to imply that the United States would encourage Somali figures in the Transitional Federal Government or in the region of Puntland to take action against pirate safe havens ashore. The December 2008 National Security Council *Partnership and Action Plan* stated that the United States "will work with concerned governments and international organizations to disrupt and dismantle pirate bases to the fullest extent permitted by national law."

Piracy, Law Enforcement, and International Cooperation

Several United Nations instruments address the problem of piracy, including the Convention on the High Seas,⁵⁴ the Convention on the Law of the Sea (UNCLOS),⁵⁵ and the Convention for the

⁵³ According to the Administration justification for the supplemental request, "funding may also be directed towards Security Sector Reform (SSR) efforts. Some funding will pay for equipment and logistical support for training efforts for Somali troops by Tanzania, Uganda, Rwanda, and other nations in the region that will implement the training activities." The Administration also is seeking authority to transfer up to \$50 million in supplemental Contributions for International Peacekeeping Activities (CIPA) funding to the PKO account for Somalia, if necessary.

⁵⁴ Convention on the High Seas, 13 U.S.T. 2312; T.I.A.S. 5200; 450 U.N.T.S. 82. Signed at Geneva, April 29, 1958. Entered into force September 30, 1962.

⁵⁵ United Nations Convention on the Law of the Seas (UNCLOS), 21 I.L.M. 1261. Convention adopted December 10, 1982. Entered into force November 16, 1994 (the United States is not a party to the Agreement).

Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention).⁵⁶ The United States is a signatory to the Convention on the High Seas and the SUA Convention, but not to UNCLOS. A “global diplomatic effort to regulate and write rules for all ocean areas, all uses of the seas and all of its resources” resulted in the convening of The Third United Nations Conference on the Sea in 1973 and the adoption of UNCLOS in 1982.⁵⁷ UNCLOS generally incorporates the rules of international law codified in the Convention on the High Seas, but also comprehensively addresses the use of other areas of the sea including, for example, the territorial seas, natural resources, and the seabed.

The Convention on the High Seas, to which the United States is a party, and UNCLOS both address piracy by stating that “[a]ll states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”⁵⁸ The term “piracy” is defined in UNCLOS (Article 101) as:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed-
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).⁵⁹

Article 110 of UNCLOS authorizes warships to visit and/or inspect ships on the high seas that are suspected of engagement in piracy. Although the United States is not party to UNCLOS, the Convention on the High Seas also authorizes the right of visitation/inspection of vessels suspected of being engaged in piracy.⁶⁰ States, under both the Convention on the High Seas and UNCLOS, are authorized to seize a pirate ship, or a ship taken by piracy and under the control of the pirates, and arrest the persons and seize the property on board.⁶¹ The courts of the State whose forces carry out a seizure may decide the penalties to be imposed on the pirates.⁶²

The SUA Convention further expands on the judicial treatment of pirates. Its main purpose is “to ensure that appropriate action is taken against persons committing unlawful acts against ships.”⁶³

⁵⁶ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, T.I.A.S. Signed at Rome, March 10, 1988. Entered into force March 1, 1992 (for the United States March 6, 1995).

⁵⁷ The United Nations Convention on the Law of the Sea (A historical perspective), available at http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

⁵⁸ Convention on the High Seas at Article 14; UNCLOS at Article 100.

⁵⁹ UNCLOS at Article 101. (The definition is, with a minor grammatical change, the same definition found in the Convention on the High Seas (Article 14).

⁶⁰ Convention on the High Seas at Article 22.

⁶¹ Convention on the High Seas at Article 19; UNCLOS at Article 105.

⁶² *Id.*

⁶³ International Maritime Organization statement on aims for the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Available at <http://www.imo.org/>.

Unlawful acts include, but are not limited to, the seizure of ships; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.⁶⁴ The SUA Convention calls on parties to the agreement to make its enumerated offenses “punishable by appropriate penalties which take into account the grave nature of those offenses.”⁶⁵ The United States criminalizes acts of piracy⁶⁶ and foreigners or U.S. citizens that commit acts of piracy are subject to imprisonment for life.⁶⁷ While it appears that U.S. law is sufficient to address the criminality of piracy, this may not be the case in other countries. Additionally, even with comprehensive criminal laws, the logistics related to the enforcement of the laws may be an impediment to their utilization.

Questions regarding legal jurisdiction, due process for detained pirate suspects, and the role of foreign military forces in anti-piracy law enforcement activities may complicate current U.S. and international operations against pirates in the Horn of Africa region. The most immediate legal concern associated with anti-piracy operations are jurisdictional questions that arise based on the location of pirate attacks and/or international naval interventions, the nationalities of crew members, and the countries of registry and/or ownership of any seized vessels.⁶⁸ Multiple governments may be able to assert legal jurisdiction depending on the specifics of the incident. But many governments lack sufficient laws and judicial capacity to effectively prosecute suspected pirates. The disposition of property and insurance claims for vessels involved in piracy also raises complex legal questions. A developing legal issue concerns the prosecution of juveniles participating in acts of piracy. Recent reports suggest that some of the Somali pirates are teenage minors,⁶⁹ and therefore could have a defense of infancy in certain jurisdictions that may assert jurisdiction over the offense.⁷⁰

To date, some of these legal and law enforcement challenges have been addressed through the establishment of bilateral agreements by the United States, the United Kingdom, the European Union and others with governments in the Horn of Africa region, and particularly with Kenya. Some agreements concluded to date define procedures for the detention, transfer, and prosecution of captured pirate suspects. For example, suspected pirates captured by U.S. military forces now may be transferred to Kenyan custody for prosecution according to the terms of a bilateral memorandum of understanding signed in January 2009. As noted above (see “United Nations Office on Drugs and Crime: “Shipriders” and Capacity Building”), efforts also are underway to establish mechanisms for regional law enforcement personnel to serve as shipriders on coalition vessels and to expand the anti-piracy law enforcement and judicial capacities of neighboring states.

⁶⁴ *Id.*

⁶⁵ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation at Article 5.

⁶⁶ 18 U.S.C. § 1651 *et seq.*

⁶⁷ 18 U.S.C. §§ 1651 and 1652.

⁶⁸ For one review and discussion of these legal questions from a U.S. military point of view, see Cmdr. James Kraska and Capt. Brian Wilson, “Fighting Piracy,” *Armed Forces Journal*, February 1, 2009 (expressing view that international and regional cooperation, not armed force, is the long-term solution to piracy).

⁶⁹ See <http://www.smh.com.au/world/fate-of-teen-pirate-uncertain-20090414-a5ih.html>.

⁷⁰ For example, under common law, children under the age of seven are conclusively presumed to be without criminal capacity, those who have reached the age of fourteen are treated as fully responsible, while as to those between the ages of seven and fourteen there is a rebuttable presumption of criminal incapacity. In addition jurisdictions have adopted juvenile court legislation providing that some or all criminal conduct by those persons under a certain age (usually eighteen) must or may be adjudicated in the juvenile court rather than in a criminal proceeding. LaFave & Scott, *Criminal Law* §4.11 (2d ed. 1986).

Options for Improving the Immediate Security of Merchant Ships

Risk Reduction and Best Practices

The U.S. Department of Transportation Maritime Administration issues detailed guidance to U.S. mariners transiting the waters off the Horn of Africa region to help ensure their safety and security.⁷¹ Its latest guidance, issued April 20, 2009, includes instructions for U.S. flagged vessels seeking escort support from the U.S. Navy and Combined Maritime Forces participating in coalition naval security operations in the region.⁷² As noted above, international bodies such as the International Maritime Organization⁷³ and the International Maritime Bureau⁷⁴ also have outlined several actions that merchant ships and their crews can take to reduce their risk of being attacked and captured.

These include measures that can be taken before and during pirate attacks. For example, rerouting ships, if possible, allows ships to avoid waters where Somali pirates are known to operate. This option can lengthen operating routes and increase shipping costs, but perhaps not as much as paying an occasional ransom. Recommendations suggest that transit of high-risk areas is not recommended at times of day when Somali pirates historically have been more likely to stage attacks, namely in early morning or dusk hours. In transit, effective watch procedures are recommended, since early detection of impending attacks increases the likelihood that avoidance and suppression measures will succeed. Higher ship operating speeds and evasive maneuvers have proven effective in many cases, as have denial systems such as barbed and razor wire and specialized electrical fences for ships. Crew preparation, training, and responses also are credited with reducing risks of successful pirate attacks.⁷⁵

Arming Merchant Ships⁷⁶

Arming merchant ships can be done by either giving arms to the ship's crew, or by hiring armed security teams to ride on the ships. U.S. government officials traditionally have expressed concern that merchant ships with armed crew members could pose security or terrorism risks visiting U.S. ports. Many merchant ship owners and operators are strongly averse to arming merchant ships, for practical and financial reasons.

⁷¹ U.S. Department of Transportation Maritime Administration Advisories are available at: http://www.marad.dot.gov/news_room_landing_page/maritime_advisories/advisory_summary.htm.

⁷² Advisory #: 2009-05, East Coast Of Somalia And Gulf Of Aden Transits, April 20, 2009.

⁷³ International Maritime Organization, "Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships," MSC/Circ.623/Rev.3, May 29, 2002. Available at: http://www.imo.org/includes/blast_bindoc.asp?doc_id=941&format=PDF.

⁷⁴ International Maritime Bureau-Piracy Reporting Center, Advice to Masters, April 2009. Available at: http://www.icc-ccs.org/index.php?option=com_content&view=article&id=309&Itemid=97.

⁷⁵ International Maritime Organization, "Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships," MSC/Circ.623/Rev.3, May 29, 2002. Available at: http://www.imo.org/includes/blast_bindoc.asp?doc_id=941&format=PDF. See also: International Maritime Bureau-Piracy Reporting Center, Advice to Masters, April 2009. Available at: http://www.icc-ccs.org/index.php?option=com_content&view=article&id=309&Itemid=97.

⁷⁶ Most of the concerns listed here are discussed in John W. Miller and Paulo Prada, "Attack Raises Debate On Guns For Sailors," *Wall Street Journal*, April 11, 2009; and Keith Bradsher, "Rescue Fuels Debate Over Arming Crews," *New York Times*, April 13, 2009.

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

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

Financial concerns may also mitigate against arming merchant ships. Hiring armed security teams might be more expensive than paying occasional ransoms. Liability for fatal shootings aboard a ship can be a complex legal matter that can lead to expensive lawsuits. Since many ports restrict vessels from having weapons on board, commercial ships that often make calls at multiple ports along their operating routes could find it difficult to operate along certain routes.

Convoys

Convoys escorted by naval ships are an option, though merchant ship operators may be reluctant to use them because it can require merchant ships to wait in a certain location for the next scheduled convoy to begin. The delays associated with this waiting can impose costs on ship operators that could be greater than the cost of paying an occasional ransom. The establishment and maintenance of a convoy system over the long term, in the absence of broader efforts to address the root causes of the piracy problem, could pose unacceptable costs for international navies.

Maritime War Risk Insurance

Federal law (Title XII of the Merchant Marine Act of 1936, as amended) authorizes the federal government to administer a maritime war risk insurance program that insures or reinsures, as a last resort, ocean-going commerce should private ocean marine insurance markets prove insufficient. Available statistics suggest that industry resources are adequate, given the property and casualty insurance industry surplus and the relatively low cost of insurance premiums.⁷⁷ As a result, despite the increased activity of pirates, some may contend that Congress does not need to amend the existing federal insurance statutory construct. Others, however, may urge increased levels of oversight and investigation into the situation in an effort to ensure that international commerce remains stabilized, particularly at a time of global economic crisis.

⁷⁷ According to the A.M. Best Company, the U.S. property/casualty insurance industry's reported surplus, a measure of claims-paying capacity or capital, declined by about \$62.3 billion or 12%, at year-end in 2008 to \$455.6 billion from \$517.9 billion at year-end 2007. While not all of the \$455.6 billion is allocated to ocean marine insurance, the level of industry-wide surplus suggests U.S. private insurers have the overall financial resources to cover potential losses from incidences of ocean piracy.

Toward a Long-Term Solution: "Piracy is a Problem that Starts Ashore"⁷⁸

In the short term, the international community has responded to the threat of piracy in the waters off the Horn of Africa with multinational naval patrols, nascent diplomatic coordination efforts, and enhanced private security efforts by members of the commercial shipping industry. In the longer term, U.S. officials and international experts believe that addressing the threat of piracy will require the strengthening of regional security capabilities, improved intelligence gathering and sharing, more effective and capable law enforcement, and enhanced multilateral coordination, both at sea and on land. By all accounts, pirates will likely continue to find sanctuary in Somalia until basic governance and security conditions there change.

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

Vice Admiral William Gortney

Commander, U.S. Naval Forces Central Command

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

Some Members of Congress have called on the Administration to develop a "comprehensive approach" to Somalia that responds to the threat of piracy in the context of a broader initiative to stabilize the country and support transitional government institutions. Some U.S. officials recently have supported a similar approach. In January 2009, Dr. Jun Bando, Maritime Security Coordinator and U.S. AFRICOM Liaison for the U.S. Department of State Bureau of African Affairs argued that "a durable solution for ending piracy in the Horn of Africa will require improving security, stability, rule of law, and economic opportunity in Somalia, as well as solidifying political progress by forming a unity government and advancing the peace process."⁷⁹

Beginning in January, the Obama Administration signaled its intention to continue working with U.S. partners in the Contact Group on Somalia⁸⁰ and the Contact Group on Piracy off the Coast of Somalia toward those goals. In response to recent attacks on U.S.-flagged and -crewed vessels, U.S. Secretary of State Clinton indicated on April 15, 2009 that a more robust anti-piracy policy is now being developed. The Administration's interagency steering group on piracy was scheduled to convene on April 17 to discuss changes to U.S. strategy. Enhanced diplomatic engagement with Somali Transitional Federal Government officials and leaders from the semi-autonomous region of Puntland also will be launched with the aim of encouraging local Somalis to take steps to secure regions where pirates currently enjoy safe havens.

⁷⁸ United States Navy, Commander, Combined Maritime Forces Public Affairs, "Combined Maritime Forces Issues New Alert to Mariners," April 7, 2009.

⁷⁹ Dr. Jun Bando, Maritime Security Coordinator/U.S. Africa Command Liaison, U.S. Department of State Bureau of African Affairs, "International Response to Piracy Expanded, Unified," *DipNote*, January 30, 2009.

⁸⁰ The Contact Group participants are as follows: Italy, Kenya, Norway, Sweden, Tanzania, the United Kingdom, the United States, and representatives of the African Union, the European Union Council President and Commission, the Inter-governmental Authority on Development, the Arab League, and the United Nations.

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