



House of Commons  
Foreign Affairs Committee

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# Piracy off the coast of Somalia

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## The Foreign Affairs Committee

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## Summary

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Over the last four years, Somali piracy has grown into a major problem for the international community, representing a threat to vital trading routes and to national and international security. As a state whose strengths and vulnerabilities are distinctly maritime, the UK should play a leading role in the international response to piracy. Despite nine UN Security Council resolutions and three multinational naval operations, the counter-piracy policy has had limited impact. The number of attempted attacks, the cost to the industry and the cost of the ransoms have all increased significantly since 2007.

The shipping industry has largely focused on non-lethal defence measures, with some success. However, in the face of a continuing threat from pirates, over the last 12 months there has been a perceptible shift toward using more robust defence measures. We heard compelling evidence in support of using private armed guards, and welcome the Prime Minister's recent announcement that they will be allowed on UK shipping. The guidance published by the Government offers practical advice, but does not provide clear and full guidance on the legal use of force.

NATO, the EU and the Combined Maritime Task Force have all established naval operations to counter piracy. Alongside self-defence measures on shipping, these have contributed to a significant decrease in the ratio of successful hijackings to attempts, but have so far been unable to contain the growth in the overall number of attacks and the area in which pirates can operate. There have recently been welcome signs that naval forces are taking more robust action. However, the risk to pirates of serious consequences is still too low to outweigh the lucrative rewards from piracy. The UK has contributed naval assets to all three of the naval operations at different times, but the FCO Minister could not offer a guarantee that this commitment would not be cut in future. It is difficult to see how the UK could continue to play a "leading role" in the international response without a visible commitment of at least one British naval vessel to one of these operations at all times.

Even when pirates are detained by naval forces, it has been estimated that around 90% are released without charge. Gathering evidence to secure a successful prosecution for piracy is clearly challenging, but when pirates are observed in boats with guns, ladders and even hostages, it beggars belief that they cannot be prosecuted. We accept that there are difficulties inherent in bringing pirates back to the UK for prosecution, and transferring suspects to be prosecuted in local courts should remain the preferred option. However, there is no legal reason preventing the UK from asserting jurisdiction over suspected pirates, if no other state is willing to do so.

Over the last four years, average ransoms have risen from \$600,000 to \$4.7 million per vessel and ransoms paid in 2011 have totalled an alarming \$135m, which should be a matter of deep concern to the British Government and to the entire international maritime community. The Government has been right to act at an international level to ensure that the payment of ransoms remains legal in order to ensure the safety of the crew. However, the Government has been disappointingly slow to track financial flows from piracy. We are surprised by the continuing lack of information available about those funding and

profiting from piracy, and welcome the Government's new initiative for a centre based in the Seychelles to focus on pirate financiers.

The UK has channelled much of its counter-piracy work through international organisations, which is commendable and has achieved good results in the Gulf of Aden. It does not appear, however, that international efforts have been as decisive, timely or effective in curbing Somali piracy in the Indian Ocean. The Government's overall approach to tackling the problem of Somali piracy through a number of different departments is correct but lacks clear leadership and the Government should provide a statement clarifying which department has the overall lead on countering piracy.

It has become a truism that the long-term solution to piracy lies on land in Somalia. In addition to supporting the work of the Transitional Federal Government to establish order, the Government should step up its work with grassroots organisations and communities in Somalia to discourage piracy and to develop alternative means of employment.

Paul and Rachel Chandler, who were hijacked and held hostage by Somali pirates in 2009–10, have made a number of criticisms of the FCO's handling of their case, particularly about the level of support provided to their family. The FCO should review its communication and other procedures to provide support to family members of British hostages abroad in the light of these criticisms.

# Conclusions and recommendations

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## Impact of piracy off the coast of Somali

1. Piracy off the coast of Somalia has escalated over the last four years and is a major concern for the UK. The threat is not primarily to UK ships as very few have been captured. Rather, the threat is to the UK's economy and security. Piracy affects the UK's banking, insurance and shipping industries, and threatens the large volume of goods which are transported to the UK by sea. In light of these concerns, and as a state whose strengths and vulnerabilities are distinctly maritime, the UK should play a leading role in the international response to piracy. (Paragraph 20)

## Response from industry: self defence

2. We commend the maritime industry's work on Best Management Practices and note their success in reducing ships' vulnerability to attack. (Paragraph 24)
3. We conclude that the Government should engage with the shipping industry to explore options for the industry to pay for vessel protection detachments of British naval or military personnel on board commercial shipping. (Paragraph 25)

## Private armed security guards

4. We recommend that the Government provide in its response to this report any assessment it has made of the likelihood of smaller vessels transiting the area, and to comment upon fears that pirates will increasingly focus attacks on smaller and less well-defended vessels and vessels carrying inflammable materials. (Paragraph 28)
5. We conclude that for too long the Government failed to respond to the urgent need for armed protection. However, we welcome the Prime Minister's recent announcement that the Government's position would be reversed and that private armed guards will be permitted on UK-flagged vessels. We agree that the evidence in support of using private armed security guards is compelling and, within legal limits and according to guidance, shipowners should be allowed to protect their ships and crew by employing private armed security guards if they wish to do so. (Paragraph 31)
6. The Government should in its response to this report assess the risk that private armed security guards, and possibly the masters of ships on which they operate, might face extradition to another state following an incident involving the use of weapons, particularly where that state may not be able to assure a fair trial. The Government should set out the steps it intends to take to minimise this risk. (Paragraph 36)
7. We conclude that the guidance on the use of force, particularly lethal force, is very limited and there is little to help a master make a judgement on where force can be used. The Government must provide clearer direction on what is permissible and what is not. Guidance over the use of potentially lethal force should not be left to

private companies to agree upon. We recommend that the change of policy be accompanied by clear, detailed and unambiguous guidance on the legal use of force for private armed guards defending a vessel under attack. This guidance should be consistent with the rules that would govern the use of force by members of the UK armed forces in similar circumstances, and should include:

- the circumstances in which private armed security guards faced with a clear threat of violence may respond with force, including lethal force, where proportionate and necessary, and
- examples of a “graduated response” to an attack, including confirmation that nothing in UK law or the CPS guidance requires a victim of pirate attack to await an aggressor’s first blow before acting in self-defence.

We recommend that the Government take this forward as a matter of urgency, as we understand that private armed guards are already being deployed on some UK-flagged vessels. (Paragraph 37)

8. We recommend that the Government work with the naval operations to issue clear guidance for private armed guards on what to do in the event of a naval intervention, and to provide the Committee with a copy of this guidance in its response to this report. (Paragraph 38)
9. We conclude that it is vital to ensure that armed guards are properly trained and deployed in sufficient numbers. We urge the Government in its response to this report quickly to bring forward proposals for a national regulatory structure (whether governmental or industry based self-regulation) that would provide a measure of quality assurance. (Paragraph 40)
10. We conclude that the Government should take a more proactive approach to facilitate an effective and safe legal regime for the carriage and use of weapons for the purposes of deterring piracy. We recommend that the Government actively engage with port and coastal states surrounding Somalia to establish an agreement on the carriage and transfer of weapons by private armed guards so that they can be securely removed from vessels once they have exited the high risk area. (Paragraph 43)

### Naval response: policing the Indian Ocean

11. We conclude that a unified command structure, while it may be the ideal, is of a lower priority than securing the widest possible international participation in counter-piracy operations in the Indian Ocean and the Gulf of Aden, and the maximum number of assets patrolling the waters. The Government should be rigorous, however, in eliminating any duplication between operations. (Paragraph 47)
12. We conclude that naval forces have so far been unable to make the oceans safe from Somali piracy. Recognising that a substantial increase in conventional naval and air assets is unlikely, we urge the Government to think of novel ways of detecting skiffs and thus improving response times to incidents in Indian Ocean, by exploring



technologies such as micro satellite surveillance and/or lighter than air persistent wide area surveillance, such as that being developed by US forces for Afghanistan. (Paragraph 52)

13. We conclude that the cautious approach to military operations when hostages are involved is appropriate and agree that protecting the safety of hostages is paramount. However, if the use of violence against hostages continues to increase this may change the balance of risk in favour of military intervention in the future. (Paragraph 54)
14. Implementation of the Strategic Defence and Security Review (SDSR) is not a matter for us, but we urge the Government to continue to provide at least one vessel to counter piracy operations at all times, and to host the European Union Naval Force Somalia (EUNAVFOR) and NATO HQs at Northwood for the life of those operations. We recommend that in its response to this report the Government comment upon concerns expressed by the UN Contact Group on Piracy off the Coast of Somalia that the provision of military forces is likely to fall short. (Paragraph 57)
15. We recommend that the Foreign Office provide in its response to this report an update on the Italian prosecution against the pirates captured by UK forces following their successful boarding of the hijacked ship the Monte Cristo. (Paragraph 62)
16. We conclude that simply returning suspected pirates to their boats or to land, while it may temporarily disrupt their activities, provides little long term deterrence and has demonstrably failed to prevent an annual increases in both the number of pirates going to sea and in the number of attacks. We urge the Government to keep naval forces' Rules of Engagement under regular review to ensure that they can respond flexibly to changes in the pirates' tactics. (Paragraph 63)

### International co-ordination

17. We conclude that the profile of international efforts needs to be raised further. We welcome the Prime Minister's announcement that the UK will host an international conference and recommend that in its response to this report, the Government provide further information on the conference, including details of who will be invited and what it expects to achieve. (Paragraph 69)

### The UK's comprehensive response: cross-departmental co-ordination

18. We conclude that the Government's comprehensive approach to tackling the problem of Somali piracy aimed at solutions on land and at sea is the correct one. However, we recommend that the FCO provide in its response to this report a statement clarifying which department is responsible for each aspect of the Government's response to Somali piracy, and which department has the overall lead on the UK's response to piracy off the coast of Somalia. (Paragraph 73)

## Bringing pirates to justice

19. We conclude that gathering evidence to secure a successful prosecution for piracy is challenging. However, not all claims made by the Government about the difficulty in securing evidence were wholly convincing: when pirates are observed in boats with guns, ladders and even hostages, it beggars belief that they cannot be prosecuted, assuming that states have the necessary laws in place and the will to do so. We urge the Government to pursue alternative means of securing suitable evidence (such as photos or video recordings of pirates with equipment, and supplying witness testimony by videolink). We urge the Government to engage with regional states to agree consistent and attainable rules on evidence required for a piracy prosecution. (Paragraph 81)
20. We recommend that the Government take steps to ensure that all aspects of international piracy are adequately covered by UK law. (Paragraph 84)
21. We conclude that the Government was right to oppose the establishment of an extra-territorial Somali court as proposed in the Jack Lang report to try Somali pirates in a third country. We recommend that the Government set out in its response to this report its views on the more recent proposals for specialised anti-piracy courts established within regional states under ordinary national law. (Paragraph 92)
22. We recommend that the FCO take more concerted action to re-establish the transfer arrangement with Kenya, and should be prepared to exert more pressure on other states in the region to accept piracy suspects for prosecution. We recommend that the Government provide to the Committee in its response to this report a list of current transfer agreements and those under negotiation, and with an update on its efforts to re-establish the Kenyan Memorandum of Understanding. (Paragraph 99)
23. We recommend that the FCO include in its future agreements with Kenya and other states a right to monitor the status of detainees it transfers from its control to those states to prosecute for piracy. (Paragraph 101)
24. We recommend that in its response to this report the Government provide the Committee with an explanation of why jurisdictional issues were seen as an obstacle to the UK prosecuting pirates for their role in the Chandlers' case. (Paragraph 106)
25. We conclude that prosecuting pirates in local courts should remain the preferred option. However, we also conclude that there is no legal reason for the UK not to assert jurisdiction and try pirates in our national courts, and we urge the Government to consider this as an option if no other country will take suspected pirates captured by UK ships. (Paragraph 107)
26. We conclude that pre- and post-sentencing transfer agreements are a pragmatic approach but there are too few of them. We recommend that the Government pursue more vigorously its efforts to increase prison capacity in the region and in Somalia itself. We also recommend that the Government investigate whether it would be feasible to transfer pirates from the UK back to Somalia to serve their sentences after prosecution in the UK. (Paragraph 110)

## Ransoms

27. We conclude that the fact that ransom payments in 2011 have already totalled \$135m, another all-time record, should be a matter of deep concern to the British Government and to the entire international maritime community. We conclude that the Government should not pay or assist in the payment of ransoms but nor should it make it more difficult for companies to secure the safe release of their crew by criminalising the payment of ransoms. (Paragraph 115)

## Financial tracking

28. We conclude that the Government has been disappointingly slow to take action on financial flows relating to ransom payments, particularly given the information available from British companies involved. (Paragraph 118)
29. The Serious Organised Crime Agency (SOCA) should make it a priority to address rumours of ransom money making its way into the UK's financial system. (Paragraph 118)
30. We conclude that the Government's laudable principle not to become involved in ransom payments should not extend to the point of failing to collect, analyse, and act upon information concerning ransom payments made by British companies or private individuals. We recommend that the Government establish a mechanism through which intelligence and information about ransom payments and pirate groups and negotiations can be communicated to the Government by those involved. (Paragraph 119)
31. We recommend that the FCO publish details on the new maritime intelligence and information co-ordination centre, including its mandate, funding, and when it is expected to begin operations. (Paragraph 120)

## International response to the crisis in Somalia

32. The UK should be very wary of international claims to deliver a solution on land in Somalia. International capacity to rebuild a Somali state is extremely limited. We conclude that the UK should continue to act through the United Nations and European Union programmes to pursue peace and stability in Somalia. We urge the Government to push for a concerted international effort to capitalise on the African Union Mission in Somalia's (AMISOM) recent military gains against al-Shabab by supporting the Transitional Federal Government (TFG) in its efforts to extend its control, build the rule of law combat corruption and encourage development. (Paragraph 132)

## UK response

33. We recommend that the Government develop its engagement with civil society organisations in Somalia to strengthen local responsibility and involvement in international efforts to counter piracy off the coast of Somalia. We recommend that in its response to this report, the Government provide more details of the

community engagement projects which it announced in October 2011. (Paragraph 141)

### **FCO support for victims and families**

34. We recommend that the Government review the medium in which information on piracy such as travel warnings is released, in order to ensure that it is accessible to different users, including yachtsmen. We further recommend that the Government intensifies its efforts to draw to the attention of seafarers the information that is available on the Maritime Security Centre Horn of Africa (MSCHOA) and NATO websites about specific sea areas at risk of pirate attack. (Paragraph 146)
35. We recommend that the Government review its handling of the Chandlers' case to ascertain whether improvements could be made for the future, and we request that the Government present its conclusions in its response to this report. (Paragraph 149)
36. We are disappointed that Paul and Rachel Chandler did not feel that their family was adequately supported during their ordeal. We recommend that the FCO review its communication and other procedures to provide support to family members of British hostages abroad, and provide its conclusions to the Committee in response to this report. (Paragraph 150)

### **Conclusion**

37. We conclude that for too long there has been a noticeable gap between the Government's rhetoric and its action. Despite nine UN Security Council resolutions and three multinational naval operations, the counter-piracy policy has had limited impact. The number of attacks, the costs to the industry and the price of the ransoms have all increased significantly since 2007. (Paragraph 154)
38. We conclude that decisive action is now required on a number of fronts to contain the problem in the short to medium term, so that long term solutions can be found. We recommend that the FCO gives high priority to the international conference on piracy to be hosted by the UK in February 2012 and provides the Committee with a full and detailed account of decisions taken and UK and international actions that arise from it. (Paragraph 155)

# 1 Introduction

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1. Over the last four years, piracy off the coast of Somalia has become an international phenomenon, plaguing shipping in the Indian Ocean and resisting attempts by the international community to contain it. Despite a high level international response that has included nine UN Security Council resolutions and three different multi-national naval operations, the numbers of vessels affected each year keeps growing: in 2007, there were 55 attempted and successful attacks by Somali pirates. By 2010, that had almost quadrupled to 219. Over the same period, over 3,500 seafarers have been held hostage, and 62 have been killed.<sup>1</sup>

2. In January 2011, Jack Lang, a former French Foreign Minister who now advises the UN on piracy, warned that Somali pirates were becoming the “masters” of the Indian Ocean.<sup>2</sup> The first three months of this year saw piracy attacks worldwide hit an all time high, largely driven by piracy off the coast of Somalia. From January to March 2011, the International Chamber of Shipping recorded 97 by Somali pirates, averaging more than one a day. Fifteen ships were successfully hijacked and 299 crewmen taken hostage. The rise in attacks coincided with an increase in violence, with seven seafarers killed and 34 injured worldwide.<sup>3</sup> We note that some observers have attributed the recent rise in piracy off the west coast of Africa in the Gulf of Guinea to copycat attacks, and that this is also a concern. However, while lessons should be learned from the experience with Somali piracy, such as the importance of swift intervention, piracy in the Gulf of Guinea has on the whole followed a different model to that of Somali piracy.

3. On 10 June 2011, the Committee announced its inquiry into the FCO’s response to this disturbing phenomenon. It had the following terms of reference:

The Foreign Affairs Committee has announced that the Committee will examine the role of the FCO in support of UK and international action to combat the increasing levels of piracy off the coast of Somalia. In particular, the Committee will look at:

- The adequacy of international and domestic law and jurisdiction
- Co-ordination at the international level, particularly the UN
- Consular assistance, including the UK’s policy on the payment of ransoms
- FCO support for anti-piracy projects on land in Somalia
- UK naval involvement in EU, NATO and other anti-piracy operations.

As part of this inquiry, the Committee took evidence from representatives of the insurance and shipping industries, experts on marine law and on Somalia, British victims of Somali

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1 “Deaths of seafarers in Somali pirate attacks soar”, *Reuters*, 20 June 2011, reuters.com

2 “In Race between Pirates and International Community, Pirates Clearly Winning, Secretary-General’s Top Legal Adviser on Piracy Warns Security Council”, Department of Public Information, Security Council, 6473<sup>rd</sup> Meeting (AM), 25 January 2011, un.org/news

3 “Attacks off the Somali coast drive piracy to record high, reports IMB”, International Chamber of Commerce, 14 April 2011, icc-ccs.org

piracy, the European Union Naval Force (EUNAVFOR) and the Ministry of Defence, as well as the Minister with responsibility for counter piracy. The Committee also conducted a visit to the Permanent Joint Headquarters in Northwood and received briefing from staff of one of the multinational counter-piracy naval operations, EUNAVFOR's Operation Atalanta.

4. We note the House of Lords' European Union Committee 2009 report on piracy, which focused on the EU Operation Atalanta, and we have no wish to duplicate its work.<sup>4</sup> This report will focus on the work of the Foreign and Commonwealth Office and the UK Government's contribution to international counter-piracy efforts.

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4 European Union Committee, 12<sup>th</sup> Report of Session 2009–10, *Combating Somali Piracy: the EU's Naval Operation Atalanta*, HL103

## 2 Somali piracy

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### Who are the pirates and how do they operate?

5. Somali pirates are usually characterized in one of two ways. The first description of the pirate groups accords to a broadly sympathetic narrative in which they are former fishermen who were forced to protect their waters from illegal fishing and dumping of waste following the breakdown of order in Somalia. Some of the pirate groups encourage this description, even naming some of their groups as the ‘coastguard’ and making reference to the acts of piracy as a kind of ‘tax’ on the illegal fishing vessels.<sup>5</sup> However, the UN Monitoring Group on Somalia<sup>6</sup> noted that only 6.5% of Somali piracy attacks have been against fishing vessels: the vast majority of piracy over the last four years has been against larger, merchant vessels carrying goods between east and west.<sup>7</sup> An alternative view of the pirate groups is less romantic, depicting the groups as “simple maritime criminals”,<sup>8</sup> many of whom were never fishermen but rather were attracted by the lucrative illegal gains from piracy, and who have established a large-scale criminal enterprise which is actively harming development in Somalia. Captain Reindorp, Head of the Defence Crisis Management Centre at the Ministry of Defence (MoD), agreed with this view, stating: “The early days of what press reports and academic works describe as subsistence pirates, who go to sea because they have had their livelihood taken away from them, are long gone.”<sup>9</sup>

6. There are thought to be between 1,500 and 3,000 pirates operating off the coast of Somalia.<sup>10</sup> Saferworld, a non-governmental organization which works with grassroots organisations in Somalia, conducted focus groups in Somalia to find out more about the pirates and the Somali communities’ view of piracy. Their respondents describe the pirates as men with few options, who are lured by the benefits of crime:

today’s pirates range in age from about 15 to 30 and are almost entirely male. [...] most pirates are uneducated and unskilled and many come from rural communities where they find it increasingly difficult to make a living from tending livestock. For these young men, [...] piracy offers the possibility of getting rich quick and enjoying associated benefits of a more affluent lifestyle, marriage and increased khat use.<sup>11</sup>

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5 See, for example, “Robbery on the High Seas Too Lucrative to Refuse”, *Spiegel Online*, 16 June 2011, [spiegel.de](http://spiegel.de), “Somali pirates tell their side: they only want money”, *New York Times*, 30 September 2008, [nytimes.com](http://nytimes.com).

6 A UN panel of experts that monitors compliance with the embargoes on the delivery of weapons and military equipment to Somalia and Eritrea, and investigates all activities—including in the financial and maritime sectors—which generate revenue that is then used to break the Somalia and Eritrea arms embargoes. (<http://www.un.org/apps/news/story.asp?NewsID=39196>)

7 “Somali Pirates’ Rich Returns”, *Bloomberg Businessweek*, 12 May 2011, [Businessweek.com](http://businessweek.com). This trend was corroborated by a submission to our inquiry, which put attempted attacks against fishing trawlers at 3%, compared to 27% against bulk carriers, Ev 17 para 1.1.

8 Q 131

9 Q 130

10 Estimations vary as to the number of pirates. The Jack Lang report estimates that there are around 1,500, while the Economics of Piracy report provides estimates for 1,500 and 3,000 pirates.

11 Ev 115 para 6. Khat is a leaf stimulant popular across East Africa.

7. Captain Reindorp noted that these men are merely the ‘foot soldiers’ of piracy who are at the bottom of an investment chain.<sup>12</sup> Somali investors (who, as one witness to this inquiry noted, “could be serious businessmen or, as we found recently, a 19-year-old with his cousin”) finance pirate operations and receive a return once ransoms are delivered.<sup>13</sup> Many experts also believe that some groups have sponsors abroad who receive a substantial share of the proceeds.<sup>14</sup> The role of investors is considered in greater detail in paragraphs 116–118.

8. The pirates’ area of operation has now extended far beyond the coast of Somalia into the Indian Ocean; for the purposes of this report, ‘piracy off the coast of Somalia’ and ‘Somali piracy’ will be taken to refer to piracy committed by groups whose base of operations is on the Somali coast. The piracy conducted by Somali groups is not traditional maritime piracy, which involves hijacking a ship and stealing it and/or its cargo. Somali pirate groups capture vessels in order to hold the ship, cargo and crew hostage and to demand a ransom from the ship owners or their families. As stated by European Union Naval Force (EUNAVFOR) Operation Commander Major General Howes:

This is not piracy in the classic sense that Emperor Augustus, Pliny and raiders off the Barbary Coast in 1753 would recognise. It is hostage and ransom.<sup>15</sup>

9. Captain Reindorp provided a description of how pirates attack:

Most attacks occur either from a single skiff, a small vessel, or from two skiffs—generally not more than that. Each skiff contains between two and six pirates. They are armed with a range of weapons, normally small arms, ranging from the traditional AK47s to RPGs.<sup>16</sup> They will manoeuvre one of the skiffs to come alongside the vessel and they will throw up a line on a hook, a grappling rope or some form of apparatus by which they can climb up on to the freeboard of the ship. If they are detected during that, they will usually fire at the ship, generally in and around the bridge, aiming either to get the master to slow down or to clear their way on to the freeboard. Once they have got on to the ship, they will proceed to the bridge and take it over.<sup>17</sup>

10. However, Captain Reindorp cautioned that there was no “typical attack” and that Somali pirates had proven to be very adaptable. Following a successful attack, pirates will steer the vessel toward anchorages on the Somali coast and open a negotiation with the shipowner or, in the case of private yachts, they will contact the hostages’ families. Negotiations are usually conducted via satellite phone and can typically take between three and 12 months.

11. One example of the pirates’ flexibility is their adoption of ‘motherships’, vessels that are larger than skiffs and can carry fuel and food, allowing pirates to extend both the time they

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12 Q 130

13 Q 62

14 See, for instance, “*The Economics of Piracy*”, Geopolicity, May 2011, geopolicity.com.

15 Q 84

16 AK47s are automatic rifles; RPGs are Rocket Propelled Grenades.

17 Q 113



can spend at sea and their area of operations. Such motherships are often themselves pirated vessels. Motherships have become a focus of anxiety in the industry. A number of submissions called for governments to act against motherships, and Baltic Exchange (a maritime membership organisation) told us about their effect:

some Baltic Exchange members have had cause to extend the zone where they consider their vessels to be under threat to 1,400 miles around the region. The use of motherships also makes pirate operations ‘weather-proof’ as they are able to provide shelter to pirate skiffs. As the monsoon season approaches pirate attacks would normally abate. This year, for the first time, there has been no reduction in the number of attacks as a consequence of seasonal change.<sup>18</sup>

12. We note the recent abductions of European tourists and aid workers close to the Somali border in Kenya, prompting speculation in the media that Somali pirates may be expanding their activities. In the first of these attacks, a British man was killed and his wife, Judith Tebbutt, abducted. She is still being held hostage. In the interests of her safety, we will not comment further on these abductions in this report.

### **Violence**

13. Several submissions to our inquiry expressed concern about violence against hostages, including the use of torture.<sup>19</sup> Until recently, while hostages undoubtedly underwent difficult experiences and psychological pressure, they were not routinely physically harmed by pirates. However, over the last year there have been growing numbers reporting violence and mistreatment. Fifteen seafarers have died so far in 2011, including the killing of four US hostages on the hijacked yacht the *Quest* during a negotiation.<sup>20</sup> One witness attributed this disturbing change to “an increasing degree of criminality, as opposed to desperation, if you like, in the piracy problem”.<sup>21</sup>

### **Impact of piracy off the coast of Somalia**

14. Somali piracy is a major issue for the world economy. 90% of the world’s traded materials moves by sea, and 40% of this—around 28,000 ships annually—passes through the Indian Ocean, Gulf of Aden and Arabian Sea.<sup>22</sup> Globally, when the cost of insurance premiums, prosecutions, deterrent and security equipment and the macroeconomic impact on regional states is taken into account, the annual cost of piracy has been estimated at between \$7 and \$12 billion.<sup>23</sup> Graham Westgarth, Chairman of INTERTANKO, the international association of independent tanker owners, was quoted in March as saying:

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18 Ev 109, para 4.2

19 Save our Seafarers Ev 129; Nautilus International Ev 102, para 2.2; Chamber of Shipping Ev 62, para 5

20 “Piracy News and Figures”, International Maritime Bureau Piracy Reporting Centre, [icc-ccs.org](http://icc-ccs.org).

21 Q 24

22 Ev 128

23 “The Economic Cost of Maritime Piracy”, One Earth Future Working Paper, December 2010, [oceansbeyondpiracy.org](http://oceansbeyondpiracy.org). See also Ev 114, para 3.1

Piracy is out of control. The pirates' extended reach through the use of hijacked merchant ships (so-called mother ships) means that for tankers coming from the Gulf, there is no longer an optional route to avoid the risk of hijacking.<sup>24</sup>

15. Somali piracy also has the potential further to destabilize an already precarious situation in Somalia and affect the surrounding region. FCO Minister Henry Bellingham noted that piracy “perpetuates instability in Somalia and threatens the economies and well-being of other states in the region.”<sup>25</sup> Major General Howes agreed, stating that Somali piracy was “becoming a vector of instability” in the region, and that:

in Nairobi, there is a very noticeable increase in criminality and violence as a consequence of the Somali diaspora and the very significant sums of money that are starting to flow in there. There is a geopolitical dimension to this.<sup>26</sup>

16. Somali piracy may also pose a potential threat to international security. There are fears that piracy may contribute to further conflict and acts of terrorism. Some observers have suggested that some of the ransom money is going to the al-Qaeda linked terrorist group al-Shabab to fund its fight against the UN-backed Transitional Federal Government (TFG).<sup>27</sup> A recent note by the International Institute for Strategic Studies noted a “growing synergy” between pirates and al-Shabab, stating that although the groups remained separate in aims and ideology, al-Shabab’s need for new funding sources and its control of the port of Kismayo has allowed for “taxation and limited co-operation between the groups”.<sup>28</sup> However, the Committee has received no evidence of a link between piracy and terrorism and Dr McCafferty, Head of Counter-Terrorism and UK Operational Policy at the MoD, told us that “there has not been any evidence of a link between the pirates and al-Shabab, the terrorists in Somalia”.<sup>29</sup> Mark Brownrigg, Director General of the Chamber of Shipping, also noted Somalia’s positioning at the edge of the Gulf of Aden in terms of energy imports and energy security for the world.<sup>30</sup>

17. Other witnesses and submissions drew our attention to the “human cost” of piracy; over 3,500 seafarers have been taken hostage and 62 have been killed in the last four years, leading the campaign group Save our Seafarers to state that: “Those employed on ships trading these routes are exposed to the acute risk of suffering severe harm at the hands of the Somali pirate criminals.”<sup>31</sup> Nautilus International<sup>32</sup> noted that as a consequence of these

24 “Piracy: High Crime on the high seas”, *Lloyds*, 28 Mar 2011, [lloyds.com](http://lloyds.com)

25 Q 235

26 Q 92

27 This has been noted in public by a number of US figures, including former U.S. ambassador to the United Nations John Bolton (see: “Treat Somali Pirates Like Terrorists”, *Washington Post*, 14 October 2011), CIA director Leon Panetta (see “Somali militants aiming to attack abroad: CIA chief”, *AFP*, 8 June 2011), and Baroness Ashton, who told us that links between al Shabab and pirates were “a worry at the present time”; see oral evidence taken before the Foreign Affairs Committee on 21 November 2011, HC (2010–12) 1642-i, Q 41.

28 International Institute for Strategic Studies, ‘IISS Strategic Comments’, Vol 17, Comment 40, November 2011

29 Q 193

30 Q 18

31 Ev 129

32 A trade union and professional organisation representing maritime professional staff.

risks, the International Transport Workers Federation resolved in June 2011 to establish a planning task force on a call for seafarers to refuse to sail in the area.<sup>33</sup>

### **Impact on the UK**

18. Piracy off the coast of Somalia has so far directly affected very few British citizens. Paul and Rachel Chandler, who gave evidence to our inquiry, are high profile exceptions to this, but since 2007 only three British owned and registered ('flagged') ships have been hijacked:

- the yacht Lynn Rival was hijacked on 23 October 2009, the yacht's British owners, Paul and Rachel Chandler, were taken hostage and held on shore for over a year before being released on 14 November 2010;
- the chemical tanker MV St James' Park was hijacked on 28 December 2009 with a non-British crew of 26 on board. It was released on 14 May 2010, and
- the vehicle carrier MV Asian Glory was hijacked on 1 January 2010 with a non-British crew of 25 on board. It was released on 11 June 2010.<sup>34</sup>

Two further vessels that were managed by UK companies but sailed under different states' flags were hijacked in 2009 and 2010.<sup>35</sup>

19. Industry organisations argued that Somali piracy particularly affects British economic interests. The submissions we received emphasised the UK's interests as a maritime and trading nation, as well as one with substantial commercial interests through insurance, banking and legal sectors. This argument was put most strongly by Baltic Exchange, a maritime association:

Given the particular importance of the global maritime industry to the UK economy, combating piracy should be a major priority for the UK Government. The UK sits at the centre of the global shipping trade. A report by Oxford Economics (commissioned by Maritime UK) recently calculated that the total contribution of the maritime services sector to the UK economy (including direct, indirect and induced impacts) stands at £26.5bn or 1.8% of GDP. Aside from direct shipping interests, the maritime sector constitutes a major component of the UK insurance, banking and legal sectors. Whilst the number of ships travelling through the Gulf of Aden under a British flag is relatively low compared to other nations, a very large proportion of ships travelling that route are insured in the UK, regardless of their nationality. The cost of ransoms to insurers per year is currently estimated at \$350 million per year. The global indirect economic cost of piracy has been estimated as being between \$8 billion and \$12 billion, and the UK will account for a sizeable portion of that figure. Piracy is therefore very much a British problem.<sup>36</sup>

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33 Ev 106; International Transport Workers' Federation, Seafarers Section Meeting, 'Motion on Somali Piracy', 13–14 June 2011

34 HC Deb, 26 January 2010, col 838W

35 The Ariana, a bulk carrier with a Maltese flag was hijacked in 2009 and the Talca, a Refrigerated Cargo ship sailing under a Bermudan flag was hijacked in 2010. See written evidence from the International Maritime Bureau, Ev 131.

36 Ev 107, para 2.2

The Chamber of Shipping, a trade association for the UK shipping industry, also emphasised the particular vulnerability of the UK as “both as an island and a maritime trading nation”, which “is exposed to the risks of piracy owing to the high levels of essential imports of all types which transit the High Risk Area through the Gulf of Aden and across the Indian Ocean”.<sup>37</sup>

20. In a speech to the Chamber of Shipping, the The Minister Henry Bellingham noted that the turnover of the British shipping industry is worth £10.7 billion of the UK’s GDP, and stated that “the crimes committed on the high seas off the coast of Somalia [...] have a direct impact on the UK’s security, prosperity and the lives of British people.”<sup>38</sup> **Piracy off the coast of Somalia has escalated over the last four years and is a major concern for the UK. The threat is not primarily to UK ships as very few have been captured. Rather, the threat is to the UK’s economy and security. Piracy affects the UK’s banking, insurance and shipping industries, and threatens the large volume of goods which are transported to the UK by sea. In light of these concerns, and as a state whose strengths and vulnerabilities are distinctly maritime, the UK should play a leading role in the international response to piracy.**

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37 Ev 62, para 3

38 Henry Bellingham MP, Parliamentary Under-Secretary of State, speech to the Chamber of Shipping, 12 Oct 2011

### 3 The British and international response

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21. In October 2011, the Prime Minister labelled Somali piracy “a complete stain on our world,” and urged the international community “to come together with much more vigour” to tackle the problem.<sup>39</sup> This sentiment echoed that of UN Secretary General Ban Ki-moon, who earlier this year described the threat posed by Somali pirates as “completely unacceptable” and said that it required an urgent and co-ordinated response.<sup>40</sup>

#### Response from industry: self defence

22. The shipping industry has long called for more international action against Somali piracy, which has had serious consequences for the shipping and insurance industries. Insurance premiums have more than doubled as Lloyd’s widened the risk area to most of Indian Ocean, and defensive measures and/or re-routing has added further to the cost of transiting the region.<sup>41</sup> However, Somali piracy has also constituted a business opportunity for some new and existing British companies, a number of which are involved in insurance, security, airdrops, negotiation consultancy and the transfer of ransom money, as well as what has been referred to as a ‘gold rush’ of new private maritime security firms.

#### Best Management Practices

23. The shipping industry has been criticised in the past for failing adequately to respond to the problem of piracy and being unwilling to take expensive but necessary defensive measures.<sup>42</sup> Mark Brownrigg, Director General of the Chamber of Shipping, disagreed, stating that that the industry was doing its part:

We are not complacent; this is a serious issue that faces our members and other members and crews on a regular basis. We have given significant attention to it in the industry over the past three years and put significant manpower and resource into engaging from the preventive viewpoint to begin with.<sup>43</sup>

24. Best Management Practices (BMPs) are the most prominent example of a constructive industry response to piracy. BMPs are guidelines developed by shipping industry organisations in co-operation with the naval operations, to assist ships to avoid, deter or delay piracy attacks off the coast of Somalia. These include recommendations on speed, information on typical pirate attacks, and ‘self protection measures’ including watchkeeping, manoeuvring practice, water spray and foam monitors and citadels—fortified safe rooms to which the crew can retreat and await military assistance. Ship owners are urged to install more effective security equipment on board, such as motion detection equipment, vessel tracking systems, CCTV, alarms and access control systems,

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39 “Somali piracy: Armed guards to protect UK ships”, *BBC News online*, 30 October 2011, [bbc.co.uk/news](http://bbc.co.uk/news)

40 “Piracy situation “unacceptable” says UN Secretary-General Ban Ki-moon”, *IMO Press Briefings*, 4 February 2011, [imo.org/MediaCentre](http://imo.org/MediaCentre)

41 “The Economic Cost of Maritime Piracy”, *One Earth Future Working Paper*, December 2010, [oceansbeyondpiracy.org](http://oceansbeyondpiracy.org)

42 For instance, see Q 89.

43 Q 36

and to register with international monitoring and advice centres in the region.<sup>44</sup> The establishment of BMP guidance appears to have had a positive effect. In 2008, ships targeted by pirates managed to beat off an assault half the time. Now, more than three quarters of the assaults end in failure.<sup>45</sup> UN Secretary General Ban Ki-moon noted in his October 2010 report on piracy that ships following BMP had a significantly lower risk of being hijacked.<sup>46</sup> **We commend the maritime industry’s work on Best Management Practices and note their success in reducing ships’ vulnerability to attack.**

### ***Vessel protection detachments***

25. Some voices in the shipping industry have also called on states to provide small teams of naval or military personnel, called Vessel Protection Detachments (VPDs), to be placed on board their commercial shipping. Some states, including France, Spain, Israel and Italy,<sup>47</sup> already provide VPDs to some of their shipping, and Netherlands, Germany and Norway are reportedly considering providing them. VPDs are also being considered for use on World Food Programme shipments rather than providing a dedicated warship as an escort.<sup>48</sup> Industry witnesses expressed a strong preference for VPDs over private armed guards; Nautilus International stated that VPDs “would ensure there are no concerns regarding training and authority, and we believe this would be cost-effective and provide direct protection to merchant vessels.”<sup>49</sup> Mark Brownrigg, Director General of the Chamber of Shipping, echoed this enthusiasm, stating that “we would far prefer to have military guards” and “the industry has expressed itself as willing to pay for that in different ways.”<sup>50</sup> The Minister acknowledged industry enthusiasm for VPDs but cautioned that resources are scarce:

We have done it before. We have done it in different strategic areas. It is all a question of availability of resources. At the moment, our armed forces are very heavily committed. If a stage was reached when our armed forces were less committed, I am sure that the MoD would look at a request for providing VPDs.<sup>51</sup>

Vessel protection detachments are an attractive option, but we acknowledge that resources are extremely limited at present. **We conclude that the Government should engage with the shipping industry to explore options for the industry to pay for vessel protection detachments of British naval or military personnel on board commercial shipping.**

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44 Best Management Practices Version 4 was published in August 2011 and can be found on the Maritime Security Centre Horn of Africa website, see [mschoa.org](http://mschoa.org).

45 “Piracy: No stopping them”, *Economist*, 3 February 2011

46 UNSC, Report of the Secretary General Pursuant to Security Council Resolution 1897 (2009), S/2010/556, 27 October 2010

47 Italy announced on 11 October that it would deploy vessel protection detachments in 2012.

48 Q 261

49 Ev 104, para 4.7

50 Q 32 and Q 37

51 Q 260

### Private armed security guards

26. Until recently, it was widely judged that the risks of Private Armed Security Guards (PASGs) on board ships outweighed the benefits, and the International Maritime Organisation, the UK Government and industry organisations all discouraged their use. However, over the last 12 months, the use of PASGs has become increasingly accepted by the mainstream maritime industry. It is estimated that between 15% and 25% of vessels transiting the region already have PASGs on board, sometimes in violation of the flag states' policies.<sup>52</sup> British security companies are exploiting this business opportunity: according to one witness, "probably over 50% of the armed security is provided by UK nationals or foreign companies run by UK nationals".<sup>53</sup> Hitherto, UK policy has not allowed the use of PASGs on board British-flagged ships, but on 30 October 2011 the Prime Minister announced that this policy would be changed and on 6 December, the Department for Transport issued guidance on the use of private armed guards.

### Concerns

27. A number of submissions and witnesses raised fears that the levels of both deliberate and accidental violence would escalate as a result of allowing armed guards on ships. Dr McCafferty, Head of Counter-Terrorism and UK Operational Policy at the MoD, speaking before the change in government policy, observed that "like everywhere else, the more guns there are around, although there is a deterrent effect, you also have the increased opportunity or potential for the wrong people to be shot."<sup>54</sup> He added:

the pirates have proven incredibly agile in changing their tactics. It may well be that if you put armed protection detachments on to vessels, you find yourselves in an arms race. It may deter some pirates; it may just encourage pirates, in acts of desperation, to arm themselves more.<sup>55</sup>

28. Nautilus International, a crew members' organization, agreed, and raised the fear that the use of such guards on some vessels could mean that other vessels are selected for attack on the basis that they do not carry armed guards (for example, LNG carriers and oil tankers),<sup>56</sup> thereby displacing rather than solving the problem. In this regard, we note that in its latest guidance the Government states that only passenger ships and cargo ships of 500 gross tonnage and above are eligible to have armed guards. **We recommend that the Government provide in its response to this report any assessment it has made of the likelihood of smaller vessels transiting the area, and to comment upon fears that pirates will increasingly focus attacks on smaller and less well-defended vessels and vessels carrying inflammable materials.**

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52 Q 87

53 Q 65

54 Q 121

55 Q 157

56 Ev 105, para 4.10

### *Calls for change*

29. Despite the concerns expressed above, the continuing armed threat in the Indian Ocean has, for some, shifted the balance in favour of using private armed security. The undeniable success of armed guards—several witnesses highlighted the fact that so far no ship with armed guards on board has ever successfully been pirated—gives considerable force to arguments in favour of their use. According to Maritime Asset Security and Training Ltd (MAST), a privately owned UK security company providing maritime security services, alternative security methods are not sufficient for all vessels:

Statistics show that a ship that is fully compliant with BMP is most unlikely to be subject to a successful attack. That said, even with the use of BMP, there remain ships which are very vulnerable to attack (e.g. those with low freeboard and steaming speed). In these circumstances the use of armed guards is appropriate.<sup>57</sup>

Andrew Voke, Chairman of Lloyds Marine Committee, reflected the industry’s move towards positive engagement with private armed security guards, noting that “as insurers, there is a credit for using armed guards on your vessel”.<sup>58</sup>

30. A number of European countries have their policy on national flagged ships under review. Earlier this year, the International Maritime Organisation produced revised guidance changing its position from discouraging the use of private armed security guards and adopting a more neutral stance, while emphasising that the decision was one for individual flag states.<sup>59</sup> Major General Howes, speaking on behalf of EUNAVFOR, also appeared in favour of ships taking responsibility for their own protection by hiring PASGs, noting that “they make boarding very difficult. Climbing up a rope when someone is shooting at you? Not easy”, and calling armed guards “a significant and effective deterrent to pirate boarding.”<sup>60</sup>

### *Government policy*

31. When the Minister gave evidence to us in July, government policy was strongly to discourage the use of private armed guards on British flagged ships. However, he did indicate to us that this position was changing:

Our view is that the UK Government should not encourage such measures, but we should also not discourage them; we should be neutral. It should be a decision for the shipping industry on a case-by-case basis.<sup>61</sup>

He also told us that the FCO had engaged with the Department for Transport to help it to understand the implications of a change in policy and that a review was underway.<sup>62</sup> We were informed that the Department for Transport would produce a report with proposals

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57 Ev 108, para 3.4

58 Q 41

59 See IMO Document MSC.1/Circ.1406/Rev.1 and its annex, imo.org.

60 Q 106 and Q 87

61 Q 257

62 Q 256



and that a Written Ministerial Statement to the House would follow.<sup>63</sup> Following a meeting of the Commonwealth states at which piracy was discussed, on 30 October 2011 the Prime Minister announced that private armed guards would be allowed on British-flagged shipping. Just over a month later, on 6 December the Parliamentary Under-Secretary of State Mike Penning MP made a Written Ministerial Statement to the House and published interim guidance on the use of private armed guards. **We conclude that for too long the Government failed to respond to the urgent need for armed protection. However, we welcome the Prime Minister's recent announcement that the Government's position would be reversed and that private armed guards will be permitted on UK-flagged vessels. We agree that the evidence in support of using private armed security guards is compelling and, within legal limits and according to guidance, shipowners should be allowed to protect their ships and crew by employing private armed security guards if they wish to do so.**

### *Interim Guidance*

32. In his Written Ministerial Statement, Mike Penning announced that private armed guards would be permitted on UK-flagged shipping in “exceptional circumstances”, which he defined as:

- when the ship is transiting the high seas throughout the High Risk Area (an area bounded by Suez and the Straits of Hormuz to the North, 10°S and 78°E); and
- the latest “Best Management Practices” is being followed fully but, on its own, is not deemed by the shipping company and the ship’s master as sufficient to protect against acts of piracy; and
- the use of armed guards is assessed to reduce the risk to the lives and well being of those onboard the ship.<sup>64</sup>

The Government published two documents, alongside this statement: *Guidance to UK Flagged Shipping on Measures to Counter Piracy, Armed Robbery and Other Acts of Violence against Merchant Shipping*, and *Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances*. The former covers general advice and recommended practices to deter an attack; the latter offers more specific guidance on the use of armed guards when transiting the High Risk Area off the coast of Somalia and in the Indian Ocean. Ship owners that wish to use private armed guards must now provide to the Department for Transport a Counter-Piracy Plan, which will supplement the usual Ship Security Plan. The plan must include a statement that ship owners have followed the Interim Guidance.

33. Included in the interim guidance are recommendations on selection of a private security company; the size, composition and equipment of the security team; the Master’s authority; the storage, handling and use of firearms; what to do when under attack; and post incident reporting.

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63 Q 258 and Ev 71

64 HC Deb, 6 December 2011, cols 23–24WS

### *Rules on the use of force by private armed security guards*

34. Private armed security guards face a number of challenges in determining whether to use armed force in defending a vessel against a possible armed attack by Somali pirates, including ensuring the safety of the crew and ship, and the use of reasonable force to repel an attack. In addition, they must clearly distinguish between fishermen armed to protect themselves from pirates and pirates engaged in an attack. According to a paper by the law firm Ince & Co, “there has undoubtedly been at least one incident where an armed security team have engaged a fishing boat with devastating effect.”<sup>65</sup> Owners of commercial vessels registered in the UK to sail under the Red Ensign flag must consider the applicable laws on the legal use of force by private armed security guards on board.<sup>66</sup> The Interim Guidance on the use of private armed guards states that the rules on the use of force should be agreed between the shipping company and the private security company, and should provide guards with guidance on dealing with these challenges.

35. It is legal in the UK to use force in self defence or in the prevention of crime so long as the force used was necessary and proportionate in the circumstances.<sup>67</sup> The level of force considered reasonable varies according to the circumstances of the case. The Interim Guidance refers the reader to guidance provided by the Crown Prosecution Service (CPS) on lawful self-defence. This states that in some cases witnesses to violent crime with a continuing threat of violence “may well be justified in using extreme force to remove a threat of further violence”, and further notes that there is no rule in law to say that a person must wait to be struck first before they may defend themselves.<sup>68</sup> However, the Interim Guidance assumes a more professional and planned approach, and advises that the security team must use “minimum force necessary” to prevent the illegal boarding of a vessel and protect the lives of those on board, and that the rules should allow for a “graduated response, each stage of which is considered to be reasonable and proportionate to the force being used by the attackers”.<sup>69</sup> However, it also notes that:

The decision to use lethal force must lie with the person using the force where they believe there to be a risk to human life. Neither the Master nor the security team leader can command a member of the security team against that person’s own judgement to use lethal force or to not use lethal force.<sup>70</sup>

36. The CPS guidance on self defence was not written with private armed security guards in mind, particularly those defending vessels against heavily armed pirates in the Indian Ocean. For instance, the CPS states that there are various public interest factors that could

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65 “Piracy—Issues arising from the use of armed guards”, Ince & Co, [incelaw.com](http://incelaw.com)

66 UNCLOS Article 92

67 The use of force in self defence is governed by the common law, while the use of force in the prevention of crime is governed by section 3 of the *Criminal Law Act 1967*. The *Criminal Justice and Immigration Act 2008*, Section 7, established a statutory framework (based on existing case law) for assessing reasonableness. An amendment to this section is currently under consideration in the *Legal Aid, Sentencing and Punishment of Offenders Bill* passing through the House.

68 See *R v Deana*, 2 Cr App R 75

69 Department for Transport, *Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances*, November 2011, paras 8.3 and 8.5

70 Department for Transport, *Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances*, November 2011, para 5.6

weigh in favour of prosecution if someone is hurt, including whether the violence was premeditated and the defender had armed his or herself in anticipation of an attack, stating that if “a dangerous weapon, such as firearm, was used by the accused this may tip the balance in favour of prosecution.”<sup>71</sup> The Interim Guidance also warns that adherence to the rules would not in itself serve as a defence if criminal charges were brought, and that the applicable laws on self defence “will depend on the court where charges are brought, which may depend on where the offence took place and/or where the victim (or possibly the alleged perpetrator) is from”.<sup>72</sup> **The Government should in its response to this report assess the risk that private armed security guards, and possibly the masters of ships on which they operate, might face extradition to another state following an incident involving the use of weapons, particularly where that state may not be able to assure a fair trial. The Government should set out the steps it intends to take to minimise this risk.**

37. The Government should not offload responsibility onto ship owners to deal with the most difficult aspects of handling private armed guards. The question anyone would ask is that if a private armed guard on board a UK flagged vessel sees an armed skiff approaching at high speed, can the guard open fire? **We conclude that the guidance on the use of force, particularly lethal force, is very limited and there is little to help a master make a judgement on where force can be used. The Government must provide clearer direction on what is permissible and what is not. Guidance over the use of potentially lethal force should not be left to private companies to agree upon. We recommend that the change of policy be accompanied by clear, detailed and unambiguous guidance on the legal use of force for private armed guards defending a vessel under attack. This guidance should be consistent with the rules that would govern the use of force by members of the UK armed forces in similar circumstances, and should include:**

- **the circumstances in which private armed security guards faced with a clear threat of violence may respond with force, including lethal force, where proportionate and necessary, and**
- **examples of a “graduated response” to an attack, including confirmation that nothing in UK law or the CPS guidance requires a victim of pirate attack to await an aggressor's first blow before acting in self-defence.**

**We recommend that the Government take this forward as a matter of urgency, as we understand that private armed guards are already being deployed on some UK-flagged vessels.**

### *PASGs and naval intervention*

38. We also note that PASGs themselves may be at risk in the event of an intervention by naval forces: Major General Howes warned of “a clear risk of our killing those individuals: if a man is armed, a man is armed [...] once pirates are on the ship, we do not want to have

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71 Crown Prosecution Service, *Self-Defence and the Prevention of Crime*, cps.gov.uk

72 Department for Transport, *Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances*, November 2011, paras 8.6 and 8.7

to discriminate.”<sup>73</sup> The interim guidance advises ships to remain in contact with the naval forces in the area and to inform them of the presence of armed guards on the ship. However, it does not provide information for private armed guards on what to do in the event of a naval intervention. **We recommend that the Government work with the naval operations to issue clear guidance for private armed guards on what to do in the event of a naval intervention, and to provide the Committee with a copy of this guidance in its response to this report.**

### *Regulation*

39. Crew safety is paramount and that the use of private armed security guards should not compromise their security. A number of submissions to our inquiry expressed concern about “cowboy” security companies operating off the coast of Somalia. The Security Association for the Maritime Industry (SAMI) has stated that:

There are more than 60 MSC [Maritime Security Companies] offering armed protection for the region, but the level of service is inconsistent and sometimes illegal. It is clear that there is a requirement for some form of quality control of MSCs.<sup>74</sup>

Andrew Voke, Chairman of Lloyd’s marine committee, agreed, and expressed regret that “there is no kitemark to tell us who is good and bad”,<sup>75</sup> while Stephen Askins explained that PASGs also wanted a system of accreditation:

The industry wants to be able to distinguish between the good and the bad, and the companies want to put blue water between themselves and those they would regard as the cowboy element.<sup>76</sup>

UK-based private armed security guards, maritime or otherwise, are not subject to government regulation. The Minister has stated that “it is down to the industry to analyse its own risks, decide what security it needs, and who it wants to provide it.”<sup>77</sup> However, the Government is conducting a review of industry-based regulation in the UK including for UK vessels at sea. It has also promoted the International Code of Conduct for Private Security Service Providers, a Swiss initiative which aims to establish an industry standard based on international humanitarian and human rights law, and is working to establish a mechanism and standards to monitor compliance with the code.<sup>78</sup> A number of witnesses, including the Minister, noted the work of the Security Association for the Maritime Industry (SAMI), a non-profit body that aims to provide accreditation and regulation of private armed security companies. The Government’s Interim Guidance recognises this problem, noting that:

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73 Q 106

74 Security Association of the Maritime Industry, see: [marsecreview.com](http://marsecreview.com).

75 Q 41

76 Q 66

77 Henry Bellingham MP, Parliamentary Under-Secretary of State, speech to the Chamber of Shipping, 12 Oct 2011

78 HC Deb, 21 November 2011, col 53W

The Government does not currently recognise an accreditation process for PSCs operating in the maritime security sector. Shipping companies must, therefore, be extra vigilant in selecting an appropriate PSC to provide armed security onboard their ships.

The Guidance goes on to provide a number of recommendations as to the selection, size and training of a private security team.

40. The question of whether PASGs should be self-regulated or subject to government regulation is one that has been considered by the Committee on a number of occasions. When Lord Malloch Brown, then Minister of State for Africa, Asia and the United Nations, appeared before our predecessor Committee's human rights inquiry in 2007, he stated that options for regulation were being considered. The Government subsequently announced that it would pursue a form of industry self regulation. We note our predecessor Committee's recommendation that PASGs should be government-regulated.<sup>79</sup> **We conclude that it is vital to ensure that armed guards are properly trained and deployed in sufficient numbers. We urge the Government in its response to this report quickly to bring forward proposals for a national regulatory structure (whether governmental or industry based self-regulation) that would provide a measure of quality assurance.**

### *Licensing of weapons*

41. A change of policy to permit the presence of private armed security guards on vessels would need to be reflected in changes to the UK licensing regime for weapons. According to Stephen Askins, a maritime lawyer, the current system is "simply not formulated with such a problem in mind." This has led to some companies allegedly flouting the law:

Most of the companies are simply ignoring UK licensing laws. BIS and HMRC are waking up to the fact that a whole host of maritime security operators are shifting a large number of weapons around on any given day and are simply not abiding by UK law to do it.<sup>80</sup>

Furthermore, carrying private armed security guards on shipping automatically presents problems relating to carriage of weapons in other port states, some of which, such as South Africa and Egypt, have responded negatively toward foreign licensed arms in their territory.<sup>81</sup> According to Baltic Exchange, the difficulties involved in ensuring compliance with local licensing laws has resulted in:

anecdotal evidence of ships taking armed guards on board for journeys through the Gulf of Aden which subsequently have to dump weapons overboard prior to landing in a port hostile to the principle of weapons being carried on board ships.<sup>82</sup>

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79 Foreign Affairs Committee, Seventh Report of Session 2008–09, *Human Rights Annual Report 2008*, HC 557, para 136

80 Q 65

81 See Ev 109, para 3.6 and "Somali piracy: Armed guards to protect UK ships", *BBC News Online*, 30 October 2011, [bbc.co.uk/news](http://bbc.co.uk/news)

82 Ev 109, para 3.6

42. Submissions from the security industry, including SAMI, MAST and Baltic Exchange suggested that change to licensing laws was urgently required. the Security Association for the Maritime Industry (SAMI), a non-for-profit organisation told us that:

Unanimously, *private maritime security companies (PMSC)* believe that they do not have adequate legal structure for their work. [...] SAMI believes that current international and domestic law and jurisdiction on maritime security, lack clarity.<sup>83</sup>

43. The Interim Guidance published by the Government urges Companies to ensure that they stay within the law with regard to transiting foreign territorial seas and ports with firearms on board, but provides little further clarification other than stating that “All laws and requirements of the port state must be respected and complied with fully”.<sup>84</sup> In the case of transiting foreign territorial seas with weapons, it recommends that the companies “consider the need to take legal advice”. **We conclude that the Government should take a more proactive approach to facilitate an effective and safe legal regime for the carriage and use of weapons for the purposes of deterring piracy. We recommend that the Government actively engage with port and coastal states surrounding Somalia to establish an agreement on the carriage and transfer of weapons by private armed guards so that they can be securely removed from vessels once they have exited the high risk area.**

### Naval response: policing the Indian Ocean

44. Counter-piracy naval patrols began in 2008, in part as a response to a call from UN Secretary General Ban Ki-moon for assistance in protecting World Food Programme (WFP) shipments of aid to Somalia. There are currently three international operations dedicated to counter-piracy operations in the Gulf of Aden and Indian Ocean:

- NATO Operation Ocean Shield, launched in August 2009. Ocean Shield succeeded two shorter counter-piracy operations dating from October 2008 to protect WFP ships. Counter-piracy operations at sea are its main focus, but it also conducts capacity building efforts to assist regional states, upon their request, in developing their own ability to combat piracy activities;
- EUNAVFOR Operation Atalanta, launched in December 2008. This is the first ever EU naval operation. Launched after only 10 weeks of planning, it took over protection of WFP shipments but quickly expanded to a more general anti-piracy role. Its original mandate was for one year, this was extended in 2009 and 2010 to the end of 2012 and is likely to be extended further, and
- Combined Task Force 151 (CTF-151), a US-led multinational task force and established in January 2009, it took over counter-piracy tasks from CTF-150, which continues to perform other marine security operations. Its mission is actively to deter, disrupt and suppress piracy in order to protect global maritime security and secure freedom of navigation for the benefit of all nations.

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83 Ev 112

84 Department for Transport, *Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances*, November 2011, para 6.11

In addition to the multi-national operations, a number of countries run their own anti-piracy operations off Somalia, including Russia, India, China, South Korea, Japan, Malaysia and Singapore. China and Russia have assisted EU forces in escorting WFP relief shipments.<sup>85</sup>

### Co-ordination

45. This number of differing operations naturally raises concerns about the degree of duplication and co-operation between those operations. A regular co-ordination meeting, named the Shared Awareness and Deconfliction (SHADE) mechanism, was established in Bahrain in December 2008 to improve co-ordination and minimize duplication between the various counter-piracy operations. However, this initiative has not satisfied all states or organisations; some of whom, including India, continue to call for a single counter-piracy UN operation.<sup>86</sup> In its written submission, crew members' association Nautilus International asserted that "whilst the level of coordination amongst military forces providing protection to shipping is extremely good, it falls short of what could be achieved under a single unitary command structure."<sup>87</sup>

46. In response to this criticism, the Minister, Major General Howes and Captain Reindorp all praised the SHADE mechanism: "It is very effective. It is probably the best example of maritime security co-operation that we have ever seen". Captain Reindorp, explained the reasons behind the different operations:

Some will not want to play with the EU, obviously because they are not European; some will not wish to be part of NATO; and some will not wish to be part of any of them, and that is where you get the independent players, such as China, Japan and South Korea.<sup>88</sup>

Major General Howes agreed that while he would not have started from the current situation, "a strong element of pragmatism has developed over the past three years, since the surge of international endeavour in the Indian Ocean." Adding that "On a tactical, day-by-day level, the forces engaged in the counter-piracy effort will work and co-operate very closely".<sup>89</sup> However, he complained that although many states are taking part in one or more of the counter-piracy operations, some flag states still did not co-operate with international efforts at all:

There are 140 flag states, of which about 40 do not even report their movements, so our ability to manage what we call a white picture—to understand what shipping is doing what in this area and to warn people—is reduced.<sup>90</sup>

47. We commend the generally strong international co-operation between counter-piracy operations. **We conclude that a unified command structure, while it may be the ideal, is**

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85 'Piracy off the Horn of Africa' Congressional Research Service, 27 April 2011, R40528, p.3

86 See, for instance, "Shri G K Vasani Calls for a Unified UN Force to Tackle Piracy", Safety4Sea.com, 29 June 2011.

87 Ev 103, para 4.2

88 Q 141

89 Q 79

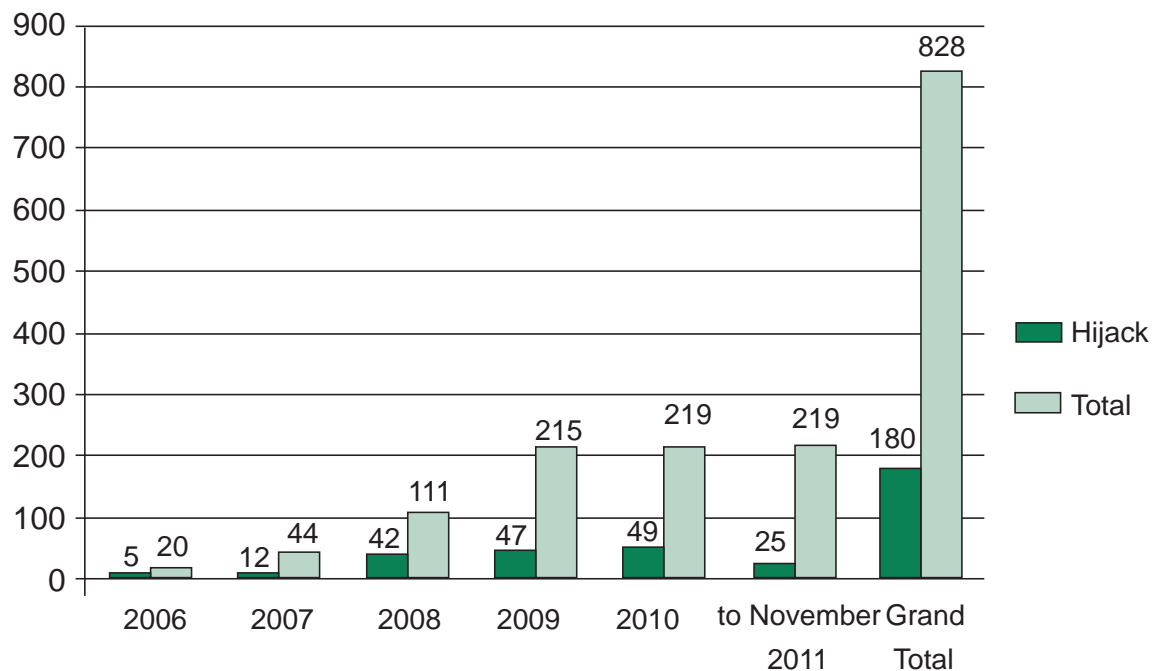
90 Q 90

of a lower priority than securing the widest possible international participation in counter-piracy operations in the Indian Ocean and the Gulf of Aden, and the maximum number of assets patrolling the waters. The Government should be rigorous, however, in eliminating any duplication between operations.

### Effectiveness of naval response

48. Since naval operations began at the end of 2008, they have achieved some significant success. Although the number of attempted attacks has almost doubled to 219 per year, the proportion of successful attacks has fallen dramatically, due to a combination of self-defence measures and the effects of the naval patrols.

### Graph comparison of total attacks by Somali pirates and total hijackings:



Source: International Maritime Bureau, 9 November 2011<sup>91</sup>

49. No World Food Programme (WFP) ship has been hijacked since NATO and EUNAVFOR began providing them with escorts in 2008, which has allowed the WFP to deliver over 674,000 tons of food for Somali people.<sup>92</sup> EUNAVFOR also provides escorts to UN chartered vessels supplying the African Union Mission in Somalia (AMISOM),<sup>93</sup> and recently announced its 100<sup>th</sup> successful AMISOM escort.<sup>94</sup>

91 Ev 132

92 See EUNAVFOR, 'Mission', eunavfor.eu.

93 AMISOM is mandated to conduct Peace Support Operations in Somalia to stabilize the situation in the country in order to create conditions for the conduct of humanitarian activities and an immediate take over by the United Nations.

94 "EU NAVFOR complete 100<sup>th</sup> AMISOM escort", EUNAVFOR Press release, 2 June 2011, eunavfor.eu

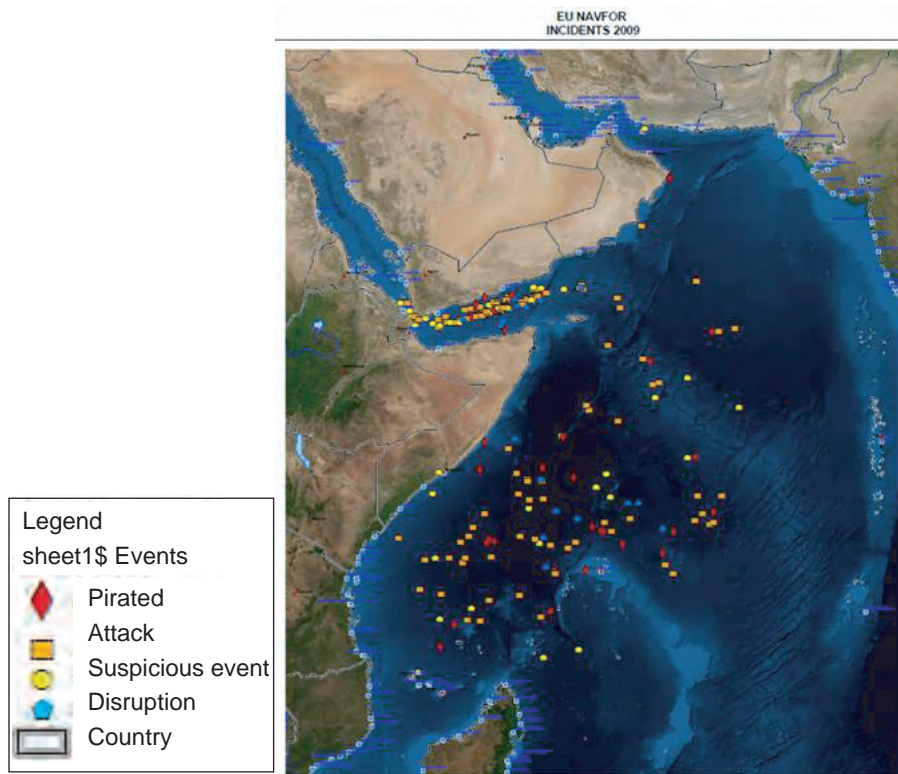


50. In addition to success in protecting UN shipping, in 2008 naval forces established the Internationally Recognised Transit Corridor (IRTC) through the Gulf of Aden, where many of the attacks were taking place. Commercial shipping is now organized into transit groups and naval forces maintain a high concentration of assets in the IRTC that can respond quickly to distress calls. Major Howes told us that the IRTC had ensured that there had not been a successful pirate attack in the Gulf of Aden since September 2008. Mark Brownrigg, Director General of the Chamber of Shipping, stated that the IRTC:

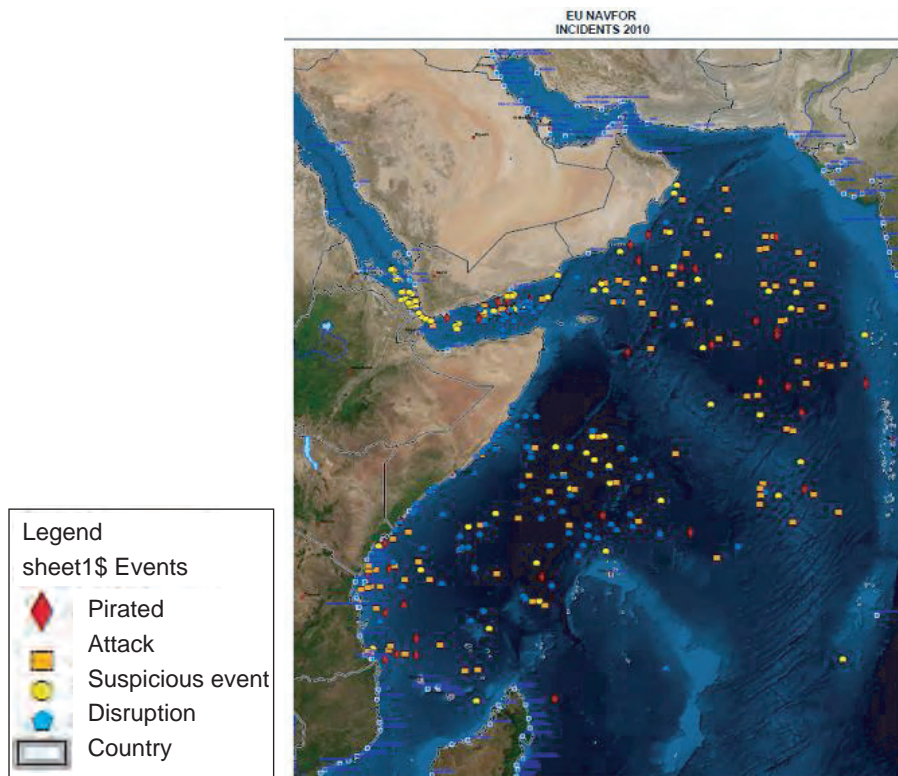
is a far less hostile place since the group transit system was established through that corridor. From the industry, both UK and international, we would say that that has most emphatically made a difference.<sup>95</sup>

51. However, a side-effect of this success in the Gulf of Aden has been to displace pirate activity into the Indian Ocean:

## PIRACY INCIDENTS 2009



## PIRACY INCIDENTS 2010



Source: EUNAVFOR

At 2.6 million square miles, the Indian Ocean presents a much greater challenge as an area of operations. Naval forces have found it difficult to monitor pirates and to respond swiftly to attacks, and impossible to achieve levels of security comparable to the IRTC. According to Major General Howes, “typically there are somewhere between five and eight assets in the Indian Ocean, and perhaps the same in the Gulf of Aden”,<sup>96</sup> whereas 83 would be needed to provide response conditions of half an hour, as they have achieved in the IRTC.<sup>97</sup> Major General Howes emphasised that aircraft substantially increased the amount of ocean that could be monitored.<sup>98</sup> However, he admitted: “Are we able to police the entire area effectively? No, we are not.”<sup>99</sup> This has led to concern from shipping organisations, one of which stated: “[...] for trade and merchant shipping there is now no longer a ‘safe way’ through the Indian Ocean.”<sup>100</sup>

52. We commend the naval operations' success in reducing piracy in the Internationally Recognised Transit Corridor in the Gulf of Aden and in securing the delivery of vital supplies to Somalia. However, this success has not been replicated in the Indian Ocean, where the limited assets are unable to guarantee a safe route for ships transiting the much larger region. We note that autumn 2011 has not witnessed the expected surge in piracy incidents, and the number of successful attacks has fallen from its peak at the start of the year but it is not yet clear if this is a temporary lull or a sign of improvement. However, the number of ships and hostages held and the price of ransoms have all reached new highs during 2011. **We conclude that naval forces have so far been unable to make the oceans safe from Somali piracy. Recognising that a substantial increase in conventional naval and air assets is unlikely, we urge the Government to think of novel ways of detecting skiffs and thus improving response times to incidents in Indian Ocean, by exploring technologies such as micro satellite surveillance and/or lighter than air persistent wide area surveillance, such as that being developed by US forces for Afghanistan.**

### *Hostages*

53. One of the most difficult issues for naval forces and governments is what action should be attempted when hostages have already been taken. Captain Reindorp explained UK Government policy:

Standard policy is to hold off, monitor what goes on and take what action that we can, but our prime overriding interest once a ship has been boarded is the safety of the lives on board—of the hostages—and quite a few incidents show that to take precipitate action is the wrong course.<sup>101</sup>

In their evidence to us, Paul and Rachel Chandler, whose yacht was hijacked by Somali pirates in 2009, disagreed with this approach based on their own experience:

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96 Q 80

97 Qs 92 & 93

98 Qs 80 and 94

99 Q 80

100 Ev 62, para 5

101 Q 118

When we encountered a warship we hoped they would take action, despite us being forced to tell them to back off. We believed then and still do now that such operations should be considered as enforcement, not rescue operations, and that the risk to our lives should not outweigh the benefits of sending a clear message, ‘*We will not tolerate this activity.*’<sup>102</sup>

54. A number of other governments have intervened in situations where their citizens were held hostage. For instance, South Korean commandos re-took the Samho Jewelry after it had been hijacked and released the crew, although the captain was shot and wounded by the pirates during the raid. However, other attempts at intervention have led to the deaths of hostages, including on the French yacht the Tanit in 2009, where one hostage was killed during a rescue operation. After a pirate died during a failed intervention earlier this year by the Seychelles coastguard on the hijacked cargo ship the Beluga Nomination, a hostage was killed in retaliation.<sup>103</sup> Stephen Askins, a maritime insurance lawyer, expressed concern about the consequences of intervention on hijacked ships:

People have talked about the number of deaths caused during those hijackings, but a significant number have been caused as a direct result of military action, so if we are going to get involved in military action, you have to expect that there will be casualties. If you are sensible, you can get a ship out [through negotiation] in 70 or 80 days, with no one hurt, and people would much prefer that.<sup>104</sup>

**We conclude that the cautious approach to military operations when hostages are involved is appropriate and agree that protecting the safety of hostages is paramount. However, if the use of violence against hostages continues to increase this may change the balance of risk in favour of military intervention in the future.**

### **UK commitment**

55. The UK has contributed vessels to all three multinational operations at different times, and hosts the operation HQ for EUNAVFOR’s Operation Atalanta and NATO’s Maritime HQ at the Permanent Joint Headquarters at Northwood in the UK. While the Minister told us that the MoD considers piracy a “key priority” for the UK, the requirements of other naval operations take precedence. According to Captain Reindorp:

At the moment, counter-piracy is not what we would consider a standing task, so it is not something on which we are directed politically to focus on a 365-day basis. Nor is it a contingent task that we are currently doing on an enduring basis for a limited time period. It fits outwith those two parameters.<sup>105</sup>

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102 Ev 77, para 12

103 “Sailor dies in clash with pirates north of Seychelles”, *BBC News Online*, 1 February 2011, [bbc.co.uk/news](http://bbc.co.uk/news)

104 Q 49

105 Q 150

### Vessels dedicated to EU and NATO counter piracy operations:

Date	Unit	Force assigned to
08 January 2007–27 July 2007	HMS MONTROSE	(NATO) SMNG2
22 August 2007–21 December 2007	HMS NORTHUMBERLAND	(NATO) SNMG2
21 January 2008–1 August 2008	HMS SOMERSET	(NATO) SNMG2
23 October 2008–5 December 2008	HMS CUMBERLAND	(NATO) Op ALLIED PROTECTOR
8 December 2008–28 February 2009	HMS NORTHUMBERLAND	(EU) Op ATALANTA
25 June 2009–20 August 2009	HMS CORNWALL	(NATO) Op ALLIED PROTECTOR
21 August 2009–8 November 2009	HMS CORNWALL	(NATO) Op OCEAN SHIELD (replaced Op ALLIED PROTECTOR)
26 January 2010–2 July 2010	HMS CHATHAM	(NATO) Op OCEAN SHIELD
29 August 2010–3 December 2010	HMS MONTROSE	(NATO) Op OCEAN SHIELD
25 September 2010–6 December 2010	RFA FORT VICTORIA	(UK) Op CAPRI
5 January 2011–15 April 2011 & 11 June 2011–10 July 2011	HMS RICHMOND	(EU) OP ATALANTA

### Vessels dedicated to Royal Navy Operations in the Arabian Gulf, the Gulf of Aden and the coast of Somalia that did not have counter-piracy as a primary task but which may have undertaken counter-piracy roles:

Date	Unit
1 January 2007–3 March 2007	HMS CAMPBELTOWN
21 January–26 August 2007	HMS CORNWALL
1 May 2007–27 May 2007	HMS SUTHERLAND
10 May 2007–19 December 2007	HMS RICHMOND
1 October 2007–3 April 2008	HMS ARGYLL
15 October 2007–23 May 2008	HMS CAMPBELTOWN
1 April 2008–22 October 2008	HMS CHATHAM
20 March 2008–3 October 2008	HMS MONTROSE
15 September 2008–7 December 2008	HMS NORTHUMBERLAND
15 August 2008–27 February 2009	HMS LANCASTER
20 November 2008–3 July 2009	HMS PORTLAND
19 January 2009–29 July 2009	HMS RICHMOND
26 May 2009–3 December 2009	HMS CUMBERLAND
12 June 2009–30 November 2009	HMS KENT
30 September 2009–9 April 2010	HMS MONMOUTH
22 October 2009–27 May 2010	HMS LANCASTER
1 February 2010–5 August 2010	HMS ST ALBANS
20 April 2010–10 December 2010	HMS NORTHUMBERLAND
26 May 2010–2 December 2010	HMS SOMERSET
28 October 2010–25 April 2011	HMS CORNWALL
25 September 2010–16 April 2011	HMS CUMBERLAND
11 January 2011–28 July 2011	HMS IRON DUKE
26 March 2011–	HMS MONMOUTH

Source: Supplementary evidence from the FCO.<sup>106</sup>

At its latest meeting, the Contact Group on Piracy off the Coast of Somalia “expressed its grave concern that the provision of military forces for the anti-piracy operations is likely to fall short of the numbers required; and called upon States to remedy this situation.”<sup>107</sup>

### *Effects of the Strategic Defence and Security Review*

56. The Strategic Defence and Security Review (SDSR) will result in fewer UK assets, particularly frigates and destroyers and in the loss of all the UK’s specialist maritime patrol aircraft with only maritime helicopters suitable as lower capability substitutes in the area concerned. The Chamber of Shipping and Nautilus International both expressed concern that the Review will have an adverse impact upon the British contribution to the counter-piracy efforts.<sup>108</sup> In response to these concerns, Dr Campbell McCafferty, Head of Counter-Terrorism and UK Operational Policy at the MoD stated that “there is no intention for the Ministry of Defence or for HMG to reduce what they are doing in terms of counter-piracy”.<sup>109</sup> He also highlighted that in coalition operations the balance of assets continually changes, “so it is not the case that if you take away any British asset it leaves a gap”.<sup>110</sup> Chris Holtby also noted that the UK was having some success in encouraging its partners to do more and in burden-sharing among new members contributing to the multinational operations such as Thailand, Indonesia and South Africa.<sup>111</sup> The Minister stated that although the Government could not give an “absolute cast-iron guarantee” that particular assets would be used:

given what is at stake for the UK, I have every confidence that the UK will be able to keep up its leadership role and the naval platforms in the area. For example, although our ship that is currently tasked to Atalanta will shortly be coming out of theatre, we will still have a vessel within the NATO force, and I would be very surprised indeed if we did not at all times have a vessel as part of one of the forces providing counter-piracy work.”<sup>112</sup>

The Minister also stressed that:

the role the UK is taking is not only a matter of the vessels that we have deployed, but the leadership role that we are supplying, the lead that we have provided on strategy and the thinking behind a number of the different strands.<sup>113</sup>

Since then, Nick Harvey MP, Minister of State (Armed Forces), has stated that “The proposed reductions in budget have so far had limited impact on our at sea counter piracy work.”<sup>114</sup>

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107 “UN-backed group calls for adequate support in tackling piracy off Somali coast”, *UN News Centre*, 18 November 2011, un.org

108 Ev 105, para 7.1 and Defence Committee, 6th Report of Session 2010–12, *The Strategic Defence and Security Review and the National Security Strategy—Volume II*, Ev w35

109 Q 139

110 Q 138

111 Q 244

112 Q 242

113 Q 238

114 HC Deb, 30 November 2011, col 981W

57. It is difficult to see how the UK could continue to play a “leading role” in the international response without a visible commitment of UK assets. **Implementation of the Strategic Defence and Security Review (SDSR) is not a matter for us, but we urge the Government to continue to provide at least one vessel to counter piracy operations at all times, and to host the European Union Naval Force Somalia (EUNAVFOR) and NATO HQs at Northwood for the life of those operations. We recommend that in its response to this report the Government comment upon concerns expressed by the UN Contact Group on Piracy off the Coast of Somalia that the provision of military forces is likely to fall short.**

### *Are naval forces’ tactics robust enough?*

58. Naval forces have been repeatedly criticised in the media, and in one submission to our inquiry, for failing to take ‘robust’ action against the pirates.<sup>115</sup> It is not always clear exactly what is meant by ‘robust’ action, but there is clear frustration that the mandate to ‘deter and disrupt’ (sometimes referred to by critics as ‘catch and release’) does not go far enough, and also contributes to the perceived failure of naval forces to tackle the pirates’ use of motherships.

59. The actions of UK forces have been compared to those of other nations who are reportedly more willing to use a greater degree of force in responding to piracy. According to Baltic Exchange, this has resulted in UK shipping being more vulnerable to attacks:

Other nations (in particular Russia, India and China) have taken a particularly uncompromising line against pirate vessels. The UK, by contrast, has taken a more cautious line [...] Whilst pirate attacks are opportunistic by nature, it is clear that there is a correlation between the nature of a nation’s military reaction to the pirate threat and the likelihood of concerted attacks against ships under that nation’s flag.<sup>116</sup>

Major General Howes acknowledged that the more robust approach of some flag states had had a deterrent effect:

[...] South Koreans, the Russians and the Indians. Their actions and recourse to significantly more kinetic means than we have applied are matters for them. Has it deterred the pirates? Yes. We have clear recognition of that [...] the fact that ships are not pirated close to the Indian subcontinent is not accidental.<sup>117</sup>

### *The rules of engagement and international law*

60. The limits constraining naval action are governed by the rules of engagement (RoE), which are drawn up by the MoD and are based upon international and national law. There appears to be considerable confusion over these limits, and both international law and the rules of engagement are regularly blamed for a perceived failure of naval forces to take robust action. However, according to Douglas Guilfoyle, a specialist in the international

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<sup>115</sup> Ev 77

<sup>116</sup> Ev 108, para 3.3

<sup>117</sup> Q 96

law of the sea, there is nothing in international law that prevents states either from boarding vessels suspected of piracy (such as motherships)<sup>118</sup> or using reasonable force in self-defence, defence of others or in the prevention of a particularly serious crime involving a grave threat to life.<sup>119</sup> He further told us that:

There is no absolute requirement that one exhaust all non-lethal methods before turning to potentially lethal force; warning shots are expected where possible but are not (and could not be) an absolute requirement. In some situations an imminent and serious threat will make the use of lethal force as a first recourse unavoidable, reasonable and necessary [...] In practice, many navies have lawfully targeted and killed suspect pirates on precisely this basis, especially in situations of hostage rescue or where piracy suspects present an imminent threat but have not yet fired a weapon.<sup>120</sup>

61. The naval operations' rules of engagement (RoE) are not published, and witnesses could not comment on them in detail. It appears, however, that steps are being taken to strengthen forces' mandate to act. The Minister told us that there had recently been "a change in the EU Atalanta operating plan to look at enhanced boarding capability",<sup>121</sup> and Lord Wallace of Saltaire, speaking on behalf of the FCO in the House of Lords, confirmed last month that this had been achieved, stating that: "The Government welcome the stronger mandate to act, which has been given to our navy alongside others, including against motherships and hijacked ships at sea".<sup>122</sup> Both Mr Bellingham and Dr McCafferty, Head of Counter-Terrorism and UK Operational Policy at the MoD, highlighted the changing tactics regarding motherships:

the international community and the international navies operating in the Indian Ocean have also changed tactics and looked to increase the capabilities that they have available to them, such as increased ability to board what we call complex ships—ships with many decks—which is what the mothership would look like. It is a much more complicated business, but we have adapted our tactics and our forces to be able to cope with that.<sup>123</sup>

62. British naval forces have recently taken part in two successful interventions, the first on an Italian hijacked ship the MV Monte Cristo after the crew had conveyed to forces that they were safe in a citadel, and the second on a mothership believed to be involved in the same hijacking.<sup>124</sup> The two operations resulted in the arrest of 15 suspected pirates, who were handed to Italian authorities for prosecution. We welcome this evidence of greater capacity and willingness to board hijacked vessels and motherships and take action against the pirates where the safety of hostages is assured. **We recommend that the Foreign Office**

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118 See UNCLOS arts 92(1) and 110.

119 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

120 Ev 82

121 Q 248

122 HL Deb, 25 October 2011, cols 144WA

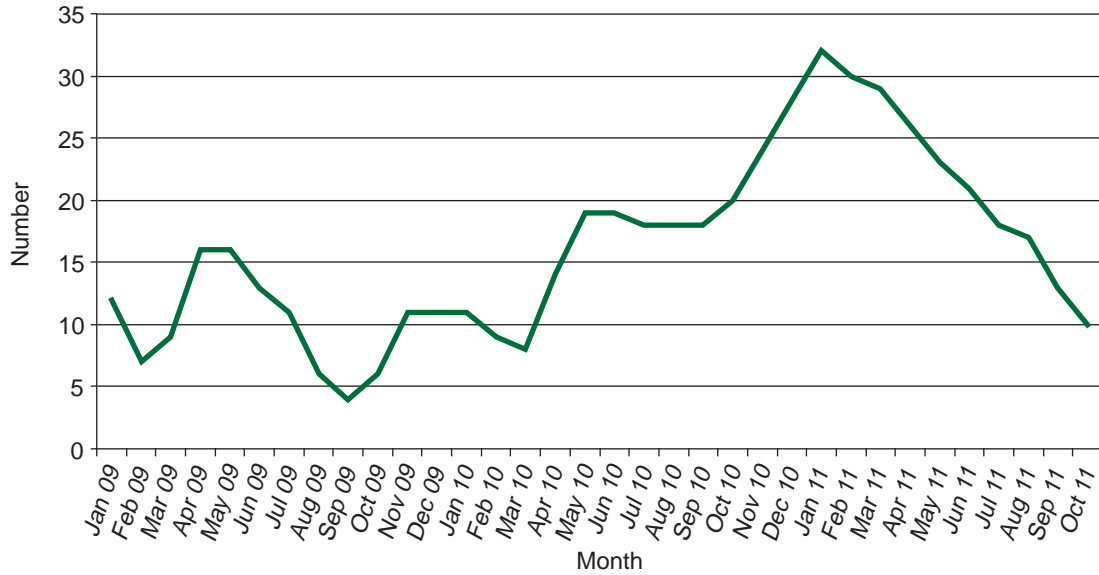
123 Q 117

124 "Navy frees hostages from pirates in Indian Ocean", *MOD Defence News*, 12 October 2011, mod.uk

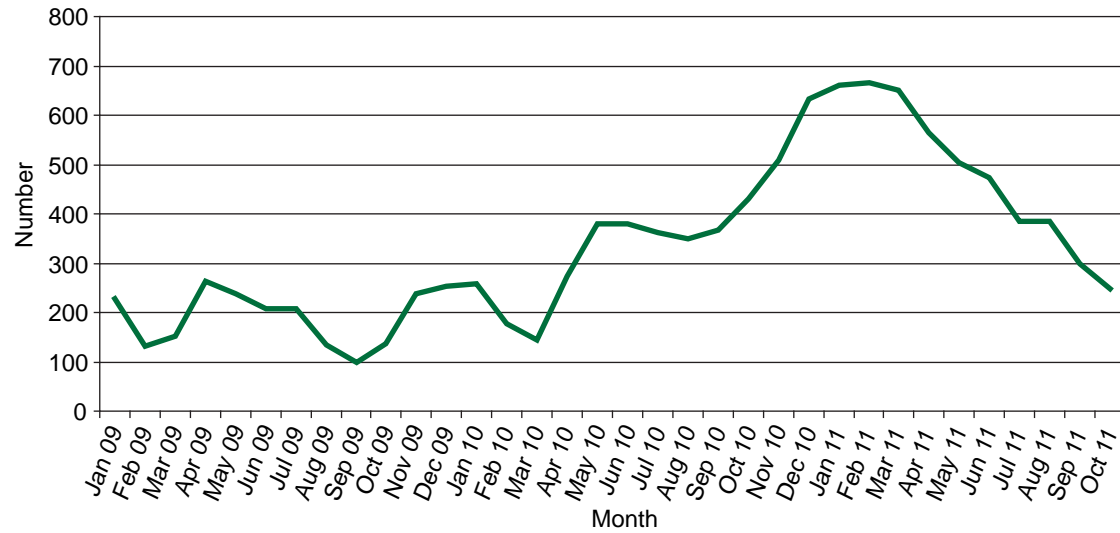


provide in its response to this report an update on the Italian prosecution against the pirates captured by UK forces following their successful boarding of the hijacked ship the Monte Cristo.

### Number of Ships Held



### Number of Hostages Held



Source: EUNAVFOR Operation Atalanta

63. The risk to pirates of encountering serious consequences is still too low to outweigh the lucrative rewards from piracy and the continuing increase in the annual number of hijackings shows that more action is required if the threat is to be contained. Better containment requires a continued evolution of tactics, including the deployment of many assets as possible and using to the full extent the legal powers granted under international

law. We welcome the strengthening of the forces' mandate to act, but note that there is still some way to go to satisfy industry perceptions. **We conclude that simply returning suspected pirates to their boats or to land, while it may temporarily disrupt their activities, provides little long term deterrence and has demonstrably failed to prevent an annual increases in both the number of pirates going to sea and in the number of attacks. We urge the Government to keep naval forces' Rules of Engagement under regular review to ensure that they can respond flexibly to changes in the pirates' tactics.**

## International co-ordination

64. Piracy off the coast of Somalia is indisputably an international issue, and has been the subject of various international efforts to contain and solve the problem. Somali piracy has been the subject of nine UN Security Council (UNSC) resolutions, which have authorised the international community to take action against Somali piracy in Somalia's territorial waters, airspace and on land, and have called for all states to ensure national piracy laws are adequate.<sup>125</sup> Resolution 1851 called for the establishment of the Contact Group on Piracy off the Coast of Somalia (CGPCS), which was created on 14 January 2009. The voluntary group now consists of over 70 countries and organisations and meets three times a year at the UN to co-ordinate political, military, and other efforts to counter piracy. In addition, the Contact Group has five working groups which meet more regularly to develop national policies and programs:

- Working Group 1: *Military and Operational Coordination, Information Sharing, and Capacity Building*, chaired by the United Kingdom, focuses on force generation, operational coordination and capacity-building;
- Working Group 2: *Judicial Issues*, chaired by Denmark, focuses on judicial mechanisms for deterring piracy;
- Working Group 3: *Strengthening Shipping Self-Awareness and Other Capabilities*, chaired by the United States, works closely with the commercial shipping industry to enhance awareness and improve capabilities;
- Working Group 4: *Public Information*, chaired by Egypt, seeks to make clear to the world, and especially to the Somali public, the damage being done by pirates, and
- Working Group 5: *Financial Flows*, newly established in June this year, chaired by Italy, focuses on the illicit financial flows associated with piracy in order to disrupt the pirate enterprise ashore.<sup>126</sup>

65. The UN Security Council has also commissioned and debated a report from former French Foreign Minister Jack Lang, now the UN Secretary General's Special Adviser on the legal aspects of piracy. The London-based International Maritime Organisation (IMO), the United Nations specialized agency with responsibility for the safety and security of shipping sponsored initiatives that led to the Djibouti Code of Conduct, which called on

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<sup>125</sup> UNSCRs 1816, 1838, 1846, 1851, 1897, 1918, 1950, 1976, 2015 all deal directly with the issue—others on Somalia mention it in passing.

<sup>126</sup> See "International Response: Contact Group", US Department of State, state.gov.

governments in the region to commit to implement anti-piracy actions, and has conducted a review of national legislation to prevent, combat and punish acts of piracy and armed robbery at sea. It has also published revised guidance for private armed guards. There have also been various state-led and regional initiatives to counter piracy, including a recent international conference in September 2011 co-hosted by the Seychelles and the South Asia and Africa Regional Port Stability Co-operative.

66. The FCO states that it has pursued a prominent role in the co-ordinated response at the UN:

The UK is taking a very active role. We are very active on the Contact Group on Piracy off the Coast of Somalia. We chair the Committee on Operational Military Co-ordination and the Regional Capability Development Committee. We are very active on the International Contact Group on Somalia and have also helped to promote debates at the United Nations on the issue of Somalia and piracy.<sup>127</sup>

The Minister also noted the FCO's action at a regional or bilateral level: "We have an ongoing dialogue with the EU and our development partners, and we are working closely with industry and other key parties."<sup>128</sup>

67. While acknowledging the success of the naval operations in the Gulf of Aden, a number of figures in the shipping industry believe that governments are still failing to act decisively against Somali piracy. According to one shipowner: "Governments need to protect the world's shipping lanes by showing political will, not political indifference".<sup>129</sup> In March 2011, 22 major maritime organisations launched a new campaign called 'SOS—SaveOurSeafarers' calling for "committed action" from governments to crack down on piracy.<sup>130</sup> Four of those organisations, the International Chamber of Shipping (ICS), BIMCO, INTERTANKO and INTERCARGO, representing 90% of the world's merchant fleet, wrote a joint letter to Ban Ki-moon, UN Secretary-General, in August 2011 to demand a "bold new strategy", accusing the international community of failing to take the problem seriously and allowing the Indian Ocean to "resemble the Wild West".<sup>131</sup>

68. On Monday 14 November, the Prime Minister announced that Britain will host a "major conference" in London next year to focus attention on piracy issues.<sup>132</sup> The FCO stated that the conference would aim to "tackle the underlying causes of these issues and delivering (sic) a new international approach to Somalia".<sup>133</sup>

**69. We conclude that the profile of international efforts needs to be raised further. We welcome the Prime Minister's announcement that the UK will host an international conference and recommend that in its response to this report, the Government provide**

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127 Q 235

128 Q 235

129 "Piracy: High crime on the high seas", *Lloyds*, 28 Mar 2011, [Lloyds.com](http://Lloyds.com)

130 See [saveourseafarers.com](http://saveourseafarers.com).

131 Letter from the Chairmen of the Chamber of Shipping, BIMCO, INTERTANKO and INTERCARGO to Ban Ki-moon, UN Secretary General, dated 11 August 2011.

132 Prime Minister David Cameron, Lord Mayor's banquet speech, 14 November 2011

133 'Prime Minister announces conference on Somalia', FCO Press Release, 15 November 2011

further information on the conference, including details of who will be invited and what it expects to achieve.

### The UK's comprehensive response: cross-departmental co-ordination

70. The UK's approach to countering piracy off the coast of Somalia involves up to eight government departments.<sup>134</sup> The FCO leads on the Government's overall strategy towards Somalia, and chairs a cross-departmental working group on Somalia and a cross-Whitehall ministerial working group on piracy. The issue has also been considered in the National Security Council.<sup>135</sup>

71. According to the Foreign Secretary:

The FCO works closely with the Ministry of Defence, the Department for Transport and the Department for International Development on the issue of Somali piracy.<sup>136</sup>

In addition, the FCO is responsible for the Government's response to any hostage situation involving British citizens abroad, including those held by pirates.

72. The Government's co-ordinated approach has received a mixed response in submissions from industry. The Chamber of Shipping praised the Government's reaction to piracy as "positive and prompt. A clear FCO lead was established from the start and good cross-departmental dialogue and co-ordination of policy have been a notable feature, as have close liaison with industry and very strong civil/military operational links".<sup>137</sup> However, Baltic Exchange tempered its praise, stating that although the main government departments have worked "relatively well" together:

the omission of a clear, single and transparent strategy suggests an absence of joined-up thinking across departments. A single strategy is necessary to draw together the many strands of this immensely complicated problem, to clarify the role of each interested party and to renew confidence in the Government's approach to tackling piracy amongst the shipping community.<sup>138</sup>

**73. We conclude that the Government's comprehensive approach to tackling the problem of Somali piracy aimed at solutions on land and at sea is the correct one. However, we recommend that the FCO provide in its response to this report a statement clarifying which department is responsible for each aspect of the Government's response to Somali piracy, and which department has the overall lead on the UK's response to piracy off the coast of Somalia.**

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<sup>134</sup> The FCO website lists: the Foreign and Commonwealth Office, Ministry of Defence, Cabinet Office, Department for Transport, the Department for International Development, Home Office, Treasury and Ministry of Justice. See [fco.gov.uk](http://fco.gov.uk).

<sup>135</sup> Ev 71

<sup>136</sup> Foreign Affairs Committee, *Developments in UK Foreign Policy*, oral evidence from the Foreign Secretary on 16 March 2011, HC(2010–12) 881-i

<sup>137</sup> Ev 62, para 2

<sup>138</sup> Ev 108, para 2.3

## Bringing pirates to justice

74. Around nine out of 10 piracy suspects detained by forces engaged in multinational operations are released without trial.<sup>139</sup> The fact that most pirates are simply returned to their boats or to Somali land has engendered strong criticism from the shipping industry. According to the Chamber of Shipping, “the repeated images of pirates being released without trial by naval forces, including by the Royal Navy, causes understandable derision”.<sup>140</sup> However, Henry Bellingham warned that these release statistics can be misleading, and that most of those released were not actually captured during an attack:

It is also worth bearing in mind that most of the so-called catch and releases have been the result of disruption activities with naval vessels going in quite a lot closer to the shore and intercepting skiffs. Of the cases of actual attacks on vessels and attempted acts of piracy that resulted in capture by the Navy, very few have resulted in catch and release, because if an attack has been made on a vessel, you have the evidence.<sup>141</sup>

The Foreign Secretary also argued that disrupting pirates without detaining them still has merit:

Though unsatisfactory as an outcome, the pirates are at least temporarily disrupted as any equipment which could be used in a piracy attack, such as expensive engines, ladders or weapons, is seized and, most likely, destroyed.<sup>142</sup>

75. The perceived failure to prosecute piracy suspects has been the subject of considerable criticism from some in the industry, who believe that prosecutions would constitute an important deterrent to the pirates. This criticism was voiced by Baltic Exchange, which accused the UK of holding a particularly poor record:

the UK has gained a degree of notoriety within the international shipping community for its failure to prosecute those caught red-handed in the act of piracy. Once captured, pirates caught by UK forces are widely perceived simply to receive sustenance and medical assistance before being returned to the mainland unmolested. Seventeen countries (including France, Germany, Spain and the United States) placed more than 850 pirates on trial in the 12 months prior to April 2011”.<sup>143</sup>

The Government has recently confirmed that in the past two years 21 pirates have been transferred to other states by the Royal Navy for prosecution, and between April 2010 and 11 November 2011, 60 further suspected pirates were released after being encountered during boarding operations because “it was assessed that a successful prosecution was

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139 *Piracy off the Horn of Africa*, US Congressional Research Service, 27 April 2011, R40528. Major General Howes stated that for EUNAVFOR it was 87%, see Q 99.

140 Ev 63, para 12

141 Q 264

142 Foreign Affairs Committee, *Developments in UK Foreign Policy*, oral evidence from the Foreign Secretary on 16 March 2011, HC(2010–12) 881-i

143 Ev 108, para 3.2

unlikely”.<sup>144</sup> Since making this statement, a further seven suspected pirates have been detained by Royal Navy forces and transferred to the Seychelles for prosecution.<sup>145</sup>

76. In response to this criticism, the Minister argued that prosecutions are indeed taking place, stating that “I can understand the frustration of catch and release occurring, but it is worth saying that more than 1,000 pirates are now in custody around the world, so there is no impunity”.<sup>146</sup>

### **Practical difficulties**

77. Captain Reindorp described the considerable practical challenges of detaining and transferring suspects who are captured in the Indian Ocean:

You could be doing this 1,800 miles out into the Indian Ocean; it would take you five or six days to get a pirate back if you had to steam him back, and you may not want to send your one and only helicopter off to do that, because that might be better used looking out for and trying to deter and interdict pirate operations. This is not simply an issue of jurisdiction; it is also an issue of practice, which comes from the unique maritime environment in which it is happening.<sup>147</sup>

He expanded on the choice between allocating resources to pursuing prosecutions, rather than conducting deterrent operations:

whilst all this is going on, a ship is not performing its primary role which is deterring pirates, so you have to decide whether you are going to chase an ever-decreasing possibility of a successful prosecution or go back and deter pirates.<sup>148</sup>

### **Evidence**

78. We heard repeatedly that a major obstacle to achieving more prosecutions was the difficulty in gathering sufficient evidence of the act of piracy. Dr McCafferty stated that:

with a burglar in your house, you have evidence of burglary. The challenge in the Indian Ocean, as we’ve said, is catching the pirates in the act with the evidence. Where we have been able to put evidence together, the UK has been successful in prosecuting pirates, albeit a small number. The challenge is always finding enough evidence that will convince the local authorities or countries in the region to try to prosecute.<sup>149</sup>

As Dr McCafferty noted, the pirates are able to dispose of evidence quickly and permanently: “when they see a naval vessel approaching, they will often throw the

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144 HL Deb, 23 November 2011, col256WA. Prior to April 2010, information on the number of individuals encountered who were suspected pirates was not held centrally.

145 “Royal Navy saves Spanish vessel from pirate attack”, Ministry of Defence press release, 2 December 2011

146 Q 235

147 Q 188

148 Q 273

149 Q161

paraphernalia overboard, and then we do not have the evidence which with to chase a prosecution”.<sup>150</sup>

79. In addition to concrete evidence, witness testimony from those hijacked or under attack is important. The Minister told us that “The captain of a vessel has to be prepared to give evidence and you have to have crew members”.<sup>151</sup> However, this evidence is not always easy to secure: Captain Reindorp stated that even in cases in which the UK had captured pirates and liberated hostages, the released hostages were unwilling to testify or to travel to courts in the region. He also noted that “There have been occasions when we take a boat and the first thing that the pirates do is pretend that they are hostages. Actually, it is really quite difficult to differentiate between the two”.<sup>152</sup>

80. It is even more difficult to obtain evidence that suspects *intend* to commit acts of piracy. Distinguishing between pirates and ordinary Somali fishermen is not as easy as is sometimes supposed. Captain Reindorp described the problem:

We have to be able to differentiate four Somali gentlemen in a small boat with AK47s, which they will usually say that they carry for self-protection from pirates, from pirates, who may well also look like four Somali gentlemen in the same boat, with exactly the same weapons.<sup>153</sup>

Even if suitable evidence is found, a number of states in the region do not have laws against going equipped or with intent to commit piracy, but only against an act of piracy itself. The Minister told us that four states in the region had a law against going equipped or going with intent, and that “what we want is for countries like Kenya, Tanzania and Mauritius to change their laws as well”.<sup>154</sup>

**81. We conclude that gathering evidence to secure a successful prosecution for piracy is challenging. However, not all claims made by the Government about the difficulty in securing evidence were wholly convincing: when pirates are observed in boats with guns, ladders and even hostages, it beggars belief that they cannot be prosecuted, assuming that states have the necessary laws in place and the will to do so. We urge the Government to pursue alternative means of securing suitable evidence (such as photos or video recordings of pirates with equipment, and supplying witness testimony by videolink). We urge the Government to engage with regional states to agree consistent and attainable rules on evidence required for a piracy prosecution.**

### ***Jurisdiction***

82. The international law surrounding piracy prosecutions is often considered complicated due to the possible involvement of a number of states’ citizens and ships. This complexity has been blamed for the low ratio of captures to prosecutions and led some to call for a

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150 Q 129

151 Q 246

152 Q 273

153 Q 249

154 Q 249

change in international law. However, according to, Douglas Guilfoyle, a specialist in the international law of the sea:

It is commonly assumed that if, for example, a Royal Navy warship captures Somali piracy suspects on the high seas in the act of attacking a Dutch flagged merchant ship crewed by Ukrainian and Philippine nationals then questions of jurisdiction and applicable law will be unclear and complex. This is not the case. Any State in the world may exercise universal jurisdiction to prosecute any pirate irrespective of any 'nexus' between that prosecuting State and the pirate, the victims or the vessel attacked. Such a prosecution will occur under the prosecuting State's own national law of piracy.<sup>155</sup>

Under modern international law as codified in the UN Convention on the Law of the Sea (UNCLOS), any State can assert jurisdiction to try suspected pirates in their national courts. The International Maritime Organisation told us that its Legal Committee had taken the view that "the development of a new multilateral instrument might be premature, or unnecessary, in light of the existing international legal framework on piracy, which was generally considered to be adequate".<sup>156</sup>

### *Effectiveness of national laws*

83. Complications arise where national laws do not include laws against piracy, or do not adequately reflect international law. As Douglas Guilfoyle explained:

The difficulty is thus not one of jurisdiction (permission to prosecute) but one of national law and co-operation between national legal systems (ability to prosecute).<sup>157</sup>

He further notes that "universal jurisdiction means every State *may* (not must) prosecute a pirate";<sup>158</sup> and "unlike some other international crimes, the law of piracy does not oblige States to have an adequate national law to conduct prosecutions."<sup>159</sup> One consequence of the upsurge in piracy in the Indian Ocean has been to expose the fact that many regional and other affected states do not have adequate national laws against piracy. An expert report noted that piracy laws in Somalia itself have been described as "critically out of date, containing numerous inconsistencies and deficiencies".<sup>160</sup> The IMO Legal Committee called in November 2010 for all states "to have in place a comprehensive legal regime to prosecute pirates, consistent with international law".<sup>161</sup>

84. It is far from clear even that the UK's law is adequate. Unlike other states such as Australia and the Seychelles, the UK has not directly incorporated the provisions of

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155 Ev 80

156 Ev 130

157 Ev 80

158 Ev 80

159 Ev 80

160 Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts, 21 June 2011, UN Doc S/2011/360 ('Modalities Report'), para. 14.

161 Ev 129



UNCLOS into its statutory criminal law.<sup>162</sup> **We recommend that the Government take steps to ensure that all aspects of international piracy are adequately covered by UK law.**

85. Once naval forces have detained pirate suspects, it must be decided where, if anywhere, they are to be prosecuted. As established above, any state can in theory prosecute suspected pirates; the challenge lies in finding a state that is both willing to do so and has adequate national laws. Since the pirates are overwhelmingly Somalis, the natural choice would be to send them for prosecution in Somalia. However, at present Somalia's own judicial capacity is too limited to be considered at present as a destination for transfer, even in the relatively stable areas of Somaliland and Puntland. According to the Lang Report,<sup>163</sup> there are only 120 judges in Somaliland and 76 judges in Puntland, and only 5% of them are legally trained; a UN Modalities Report<sup>164</sup> refers to a further 20 legally trained judges in Mogadishu and estimates that it will require three years of capacity building before trials in Somalia meet international standards.<sup>165</sup> We note that since the Minister gave evidence to our inquiry, the Security Council appears to be prioritising (in the short-term at least): "the establishment of specialized anti-piracy courts in Somalia and other States in the region with substantial international participation and/or support".<sup>166</sup>

86. Chris Holtby, Deputy Head of Security Policy Department in the Foreign and Commonwealth Office, noted that in addition to evidential problems, prosecutions of those who were not caught 'red-handed' were not pursued because of a lack of prison capacity:

The fundamental capacity concern in the region is that there is not enough prison space to hold all the pirates. That is why these states are primarily focusing on cases in which pirate attacks have taken place.<sup>167</sup>

87. States are understandably reluctant to fill their prisons with Somali pirates; as noted by Douglas Guilfoyle, "running a piracy trial is expensive, imprisoning a group of persons for 6–25 years each much more so".<sup>168</sup> For this reason, in return for agreeing to prosecute pirate suspects, states have been provided with financial and other assistance in support of prison and judicial capacity. For instance, the agreement between the EU and Mauritius was accompanied by EU and UNODC agreements offering financial support to its court and prison sectors.<sup>169</sup>

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162 s 26(1) Merchant Shipping and Maritime Security Act 1997 declares that in any piracy proceedings within the UK relevant provisions of UNCLOS shall be 'treated as constituting part of the law of nations'. This affects the common law crime of piracy (which adopts the definition found in international law): *Re Piracy Jure Gentium* [1934] AC 586.

163 UN Doc S/2010/30 (25 January 2011)

164 UN Doc S/2011/360 (21 June 2011)

165 Ev 100

166 UNSCR 2015, para 16

167 Q 255. The Minister Henry Bellingham has since stated that he believes that "it is prison space rather than court capacity which remains the key capacity constraint", HC Deb, 11 July 2011, Col 131W.

168 Ev 98

169 Statement by High Representative Catherine Ashton on the signature of the EU-Mauritius Transfer Agreement of Suspected Pirates, 16 July 2011, A 285/11.

### *Proposals for an International Piracy Tribunal*

88. In January 2011, French former Foreign Minister Jack Lang presented his report on piracy off the coast of Somalia to the UN Security Council, which called for the ‘Somaliaization’ of the counter-piracy process, and a move toward a situation whereby Somalia was responsible for ensuring the effectiveness of prosecutions. In the report, Mr Lang called for:

- supplementing Somali legislation on piracy;
- constructing two prisons in Somaliland and Puntland;
- establishing a Somali extraterritorial jurisdiction court in Arusha, in Tanzania, later to be transferred to Mogadishu, and
- establishing two further special courts—one in Puntland and the other in Somaliland.

89. While Mr Lang’s proposals were broadly welcomed, the specific recommendation of an extra-territorial Somali court has met with a mixed response in Security Council meetings. Russia, France and Portugal have spoken strongly in favour of it; the US and the UK strongly against it, questioning whether a court in Tanzania would be practicable in such a short time frame. The FCO has opposed the establishment of such a court, stating that “The costs of bringing [an extra-territorial] court up to standard and using it on an ongoing basis would be huge: we reckon that about \$100 million a year would be needed”.<sup>170</sup> The Minister argued strongly against the proposition:

First, this money would be much better spent in the region; within the region we could get a huge amount of value for one tenth of that sum. Secondly, it is illegal under the Somali constitution to have courts to try Somalis outside Somalia. I also had a long conversation about this with Mohamed Omaar, who is the TFG Foreign Minister. He made it very clear to me that this was an absolute red line as far as the TFG were concerned.<sup>171</sup>

90. A follow-up report by the UN Office of Legal Affairs noted several significant complications in establishing an extra-territorial Somali court: it could require changes to the Somali constitution; it would require an adequate Somali piracy law and a sufficient number of Somali judges (neither of which exist at present); it would also require a treaty to be concluded with Tanzania; and the report noted doubts as to whether the proposed use of the facilities of the International Criminal Tribunal for Rwanda in Arusha would be viable given the greater number of suspects involved.<sup>172</sup> Douglas Guilfoyle also questioned the viability of an international court, noting that delays would occur while rules of evidence and procedure were established, and that an international court would not deliver capacity building benefits for regional states’ justice systems. He also noted that “any type of international tribunal would not solve the issue of where convicted pirates would serve

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170 Q 277

171 Q 278. TFG stands for the Transitional Federal Government (of Somalia).

172 UN Document S/2011/360, 15 June 2011

their sentences. It would simply shift the problem from national authorities to the tribunal.”

91. Existing international courts cannot readily be used to handle piracy cases:

neither the International Criminal Court (ICC) nor the International Tribunal for the Law of the Sea (ITLOS) presently has jurisdiction over piracy. Adding piracy to the jurisdiction of either institution would involve amending a major multilateral treaty or concluding an optional protocol—either is a long and complex undertaking, normally involving a lapse of years if it succeeds at all.<sup>173</sup>

However, the idea of establishing specialized courts within national jurisdictions in the region to deal with piracy cases has been gaining favour. UN Security Council Resolution 2015, passed on 24 October 2011, states the Council’s intention to consider the establishment of anti-piracy courts and to further consult with Somalia and regional States on the kind of international assistance required to help make such courts operational.<sup>174</sup>

**92. We conclude that the Government was right to oppose the establishment of an extra-territorial Somali court as proposed in the Jack Lang report to try Somali pirates in a third country. We recommend that the Government set out in its response to this report its views on the more recent proposals for specialised anti-piracy courts established within regional states under ordinary national law.**

### ***Transfer agreements***

93. Some states have prosecuted captured suspects in their own national courts, especially in cases which involved one or more of their own citizens. However, it is more common to transfer the suspects to courts in the region. The Government has stated a strong preference for suspects to be tried in local courts:

it is in the interests of trying to solve this problem, of sending a very strong signal to the pirates and the communities that are supporting them that they are prosecuted in the region and detained in the region. It is the same argument that I have applied to the Court Service in this country. If someone commits a serious crime and they are tried near their own community, it will have a bigger deterrent effect and it is going to send a much stronger signal than if they are tried—in this case—many thousands of miles away.<sup>175</sup>

94. To this end, the UK signed a bilateral Memorandum of Understanding (MOU) with Kenya for the transfer of pirates on 11 December 2008, and a bilateral MOU with the Seychelles on 27 July 2009 to accept the handover of pirate suspects.<sup>176</sup> The EU followed suit, conducting an exchange of letters on the transfer of suspects for prosecution with Kenya in March 2009<sup>177</sup> and with the Seychelles in October 2009.<sup>178</sup> Work continues on

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173 Ev 99

174 UN Security Council Resolution 2015 (2011), 24 October 2011

175 Q 273

176 ‘Prisoner transfer agreements’, FCO website, fco.gov.uk

177 Official Journal of the European Union, 25.3.2009, L 79/49. See eur-lex.europa.eu.

extending these agreements to other countries in the region: the EU announced a European Union-Mauritius Transfer Agreement of Suspected Pirates in July 2011, and similar arrangements with Mozambique, South Africa, Tanzania and Uganda are being developed.<sup>179</sup> The Minister expressed his hope that other countries would join them, including landlocked states in the region that nevertheless rely on the security of port states.<sup>180</sup>

95. As part of the process of agreeing these arrangements, changes in some of those states' laws have been required in order to allow them to prosecute the transferred suspects. The Minister told us that countries such as Kenya, Tanzania and the Seychelles did not originally have a national law offence covering piracy on the high seas, so they had had to change their law to make it an offence under their jurisdiction. He also stated that the UK was now working on getting those countries to institute an offence of going equipped or going with intent to commit piracy. The Seychelles had already done so.<sup>181</sup>

### *Kenyan agreement*

96. To date, Kenya has accepted by far the most suspects but it suspended its agreements with the UK and EU in late 2010 and now only accepts suspects on a case by case basis. Kenya's government was reportedly unhappy with the lack of support provided for prosecuting and holding pirates. According to Major General Howes:

Bluntly, when we negotiated that agreement, Kenya had no sense of the volumes that they were going to be confronted by. They feel aggrieved that they are the only people, as they see it, who are stepping up their international obligations, but they will not apply any regional leverage on the likes of Tanzania to do the same, which is vexing. They see it as our job.<sup>182</sup>

A recent ruling in Kenya's courts that the Kenyan penal code does not allow for the trial of individuals indicted for committing acts of piracy outside Kenya's territorial waters has thrown into doubt Kenya's ability to continue to accept the transfer of suspects. The Kenyan government appealed the judgment in October 2011 and is awaiting the outcome of the appeal.<sup>183</sup>

97. Despite the lapse of the agreements, both government and EU witnesses informed the Committee that Kenya was still accepting pirate suspects "on a case-by-case basis, depending on identifying a Kenyan nexus—something that identifies it as Kenyan".<sup>184</sup> Dr McCafferty stated that although there "was concern at the time that this was a big hole in

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178 Official Journal of the European Union, 2.12.2009, L 315/37, See eur-lex.europa.eu.

179 Foreign Affairs Council Conclusions 22 March 2010

180 Qs 264 and 289

181 Q 235

182 Q 100

183 See Ev 83–84 and, for example, "Kenya: Ruling on Piracy Trials Illegal, Top Court Told", *All Africa*, 18 October 2011, [allafrica.com](http://allafrica.com).

184 Q 163

the armoury”, the Kenyans have continued to consider prosecutions and the UK “would still look to use Kenya if we had a locus there.”<sup>185</sup>

98. The UK has not had cause to request that the Kenyan government accept captured suspected pirates since the lapse of the MoU but still hopes to re-establish an agreement.<sup>186</sup> The Minister met Kenyan Prime Minister Odinga on 7 July, and told us that Kenya was willing to discuss re-establishing the Memorandum of Understanding.<sup>187</sup>

**99. We recommend that the FCO take more concerted action to re-establish the transfer arrangement with Kenya, and should be prepared to exert more pressure on other states in the region to accept piracy suspects for prosecution. We recommend that the Government provide to the Committee in its response to this report a list of current transfer agreements and those under negotiation, and with an update on its efforts to re-establish the Kenyan Memorandum of Understanding.**

100. The UK has so far transferred 14 pirate suspects to Kenya for prosecution, eight of whom have been convicted and six are currently on trial. They have all been held in Shimo Le Tewa prison, Mombasa.<sup>188</sup> The Minister informed us that the Memorandum of Understanding (MOU) under which the prisoners were transferred contained assurances that the persons accepted for transfer would be held in accordance with international human rights standards, including the 1966 International Convention on Civil and Political Rights and 1984 Convention Against Torture and other Cruel, Inhuman or degrading treatment or Punishment. Douglas Guilfoyle told us that “on paper, such assurances are readily achieved but in practice post-transfer monitoring may be required.” The Minister informed us that no FCO officials have visited the transferred men, because “The FCO cannot provide support to other countries’ nationals unless there are separate arrangements in place.” He said, however, that “There were no complaints of ill treatment by the suspected pirates detained by the Royal Navy either before or after their transfer”. The UK now receives reports from the UN Office on Drugs and Crime (UNODC), which carries out regular monitoring of prisoners through its own officers and alongside the non-governmental organisation MEWA.<sup>189</sup>

101. The Committee has not received information to suggest that there are any problems with the wellbeing of suspected and convicted pirates the UK has transferred to Kenya. However, we are concerned that the FCO seems to indicate that it would not have a right of access to those piracy suspects that they have transferred. **We recommend that the FCO include in its future agreements with Kenya and other states a right to monitor the status of detainees it transfers from its control to those states to prosecute for piracy.**

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185 Q 166

186 Q 276 and Ev 73

187 Ev 72

188 Ev 73–74

189 Ev 73

### *Transfers in practice*

102. Even when a transfer agreement is in operation, there is no guarantee that the state will accept pirate suspects from naval forces. Major General Howes described in illuminating detail how, once EU naval forces detain suspects, they must undertake a negotiation with one or more states to obtain agreement to accept them for prosecution:

First, they are taken. We [at EUNAVFOR HQ] ask the captain whether we will be able to produce an evidence pack, such that we have a chance of prosecution. It takes him time to make that judgment. The habeas corpus rules, whatever the nationality of the ship that is responsible for the disruption, will determine how long they can be held for. If it is a Spanish ship, you have 24 hours, so you have to decide within 24 hours whether you are going to release people or whether you can transfer them.

We immediately start negotiating with, for example, Kenya. You have to unlock Kenyan bureaucracy—and it is invariably on a Friday—and say, ‘Will you take this prisoner?’ They will want to know what the evidence pack is. Before we do that, though, if it is, say, a British flagged ship, we will say, ‘Right. Do you have an interest in this? Are you prepared to take them?’ If it is a Dutch ship, we say, ‘Are you prepared to take them?’ If the pirates have murdered a Dutch national, the answer will probably be yes. [...]

Sometimes the answer is, ‘Yes, we’ll take them’—bang! Done. Deal cut. Otherwise you are racing against the deadline of having to release people, because there are laws that say, ‘This is what you’ve got to do. You can’t hold them.’ I think the record of someone being held at sea without recourse to judgment or legal representation is 47 days. That infringes their human rights.<sup>190</sup>

103. The Ministry of Defence confirmed that a similar process takes place when UK ships capture suspects, and highlighted the legal advice available to the commander of the ship, who makes the final decision about whether the evidence is enough to prosecute. While this process goes on, the commander must also decide whether to detain the suspects on board, rather than holding them on their own vessel. The Ministry of Defence informed us that:

Ordinarily, unless there was a threat to life, we would not look to take the pirates on board the naval vessel, unless we believed that there was a strong possibility of prosecution. [...] We might subsequently be unable to follow through on that and then we would release the pirates, as you are aware.<sup>191</sup>

The Minister recognised that the process was convoluted, but he appeared optimistic that progress was being made:

We want a standardised situation for when the commander of a vessel intercepts pirates, if he thinks there is enough evidence and that is confirmed by the chain of command, as I have mentioned. [...] That could well be something like a software

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190 Q 105

191 Q 179

programme that shows at any one time what capacity is available and which country is next in line to take prisoners. [...] I would hope that within six months we will have seen an important step forward.<sup>192</sup>

### Prosecution in the UK

104. No piracy suspects have been brought to the UK for prosecution to date. This is in contrast to a number of other states operating counter-piracy patrols in the region:

Country	Number Held	Notes	
Belgium	1		
Comoros	6		
France	15		
Germany	10		
India	119		
Japan	4		
Kenya	143	50 Convicted	
Madagascar	12		
Malaysia	7		
Maldives	37	Awaiting deportation in absence of law under which to prosecute	
Netherlands	29	5 convicted	
Oman	22	All convicted	
Seychelles	6	All convicted	
Somalia	Puntland	290	Approximately 240 convicted
	Somaliland	30	All convicted
	South Central	18	Status of trial unclear
Republic of Korea	5		
Spain	2		
Tanzania	12	6 convicted	
United Arab Emirates	10		
United States	28	8 convicted	
Yemen	120	All convicted	
<b>TOTAL STATES: 20</b>	<b>983</b>		

Source: United Nations Office on Drugs and Crime, 3 November 2011

105. The UK's record has been criticised by some who have given evidence to the inquiry. Stephen Askins stated: "I think that it is significant that the UK has not prosecuted a single pirate in the last three years."<sup>193</sup> The Government defended its record, noting that it had delivered successful prosecutions in Kenya,<sup>194</sup> and that other states had prosecuted in their national courts in cases where their own nationals had been affected, while there has never been a pirate arrested in a case that has had that strong UK 'nexus'.<sup>195</sup> The Minister assured the Committee that in such circumstances "it would be inconceivable that they would not be brought back here to be prosecuted".<sup>196</sup> He went on to state:

192 Q 289

193 Q 51

194 Q 284

195 Q 165

196 Q 269

If the pirates have committed a pirate offence and it is in the UK's interests to prosecute them, then we will do so. I made that absolutely crystal clear. I have recently written to the Lord Chancellor and Secretary of State for Justice about that very point.<sup>197</sup>

106. The Minister denied that the Government feared pirates would claim asylum, but noted that prosecutions would require considerable resources.<sup>198</sup> The Minister clarified what was meant by the UK's interest: "If a UK national was injured, that would be indicative of pretty overwhelming evidence that it is in the public interest to prosecute".<sup>199</sup> The only recent case in which British citizens have been held by Somali pirates is that of Paul and Rachel Chandler. They informed us that seven of the pirates that hijacked their vessel had later been arrested while attempting to attack a French trawler and are now on trial in Mombasa. According to their written submission:

The Metropolitan Police are investigating the possibility that they may also be tried for their part in the attack on Lynn Rival. We have been told by the Met that there is ample evidence, but jurisdiction remains to be negotiated.<sup>200</sup>

**We recommend that in its response to this report the Government provide the Committee with an explanation of why jurisdictional issues were seen as an obstacle to the UK prosecuting pirates for their role in the Chandlers' case.**

107. There are clearly difficulties inherent in bringing pirates back to the UK for prosecution. **We conclude that prosecuting pirates in local courts should remain the preferred option. However, we also conclude that there is no legal reason for the UK not to assert jurisdiction and try pirates in our national courts, and we urge the Government to consider this as an option if no other country will take suspected pirates captured by UK ships.**

108. Another way to alleviate the burden of prosecuting suspected pirates is through post-sentencing transfer of pirates back to Somalia to serve their sentences. The FCO informed us that the government of Seychelles recently signed such an agreement with the governments of Puntland, Somaliland and the Transitional Federal Government to enable pirates convicted in the Seychelles courts to be repatriated to Somalia to serve their sentences.<sup>201</sup> The Minister expected further progress on this type of agreement throughout the region, stating that :

I would be very disappointed if I was not able to report to this Committee in six months that we had seen really serious progress in the post-trial transfer agreements.<sup>202</sup>

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197 Q 245

198 Q 270

199 Q 272

200 Ev 77, para 10

201 Ev 72

202 Q 286



109. In support of the Seychelles agreement with the governments of Puntland, Somaliland and the Transitional Federal Government, UNODC counter-piracy projects have delivered additional capacity of 360 beds in Hargeisa prison in Somaliland; extra prison capacity of 200 spaces by early 2012 in Puntland; and a new prison in Garowe which will deliver 500 beds by mid to late 2013.<sup>203</sup> The UK has contributed £2,376,623 to UNODC counter-piracy projects in Puntland and Somaliland that have included prison building.<sup>204</sup>

110. Naval forces continue to be limited by the lack of any guarantee that states will agree to accept suspects for prosecution and a limited prisons capacity: they are asked to act as police without being given the benefit of prisons. **We conclude that pre- and post-sentencing transfer agreements are a pragmatic approach but there are too few of them. We recommend that the Government pursue more vigorously its efforts to increase prison capacity in the region and in Somalia itself. We also recommend that the Government investigate whether it would be feasible to transfer pirates from the UK back to Somalia to serve their sentences after prosecution in the UK.**

## Ransoms

111. The amount of ransom money being paid to the pirates is a key indicator of the degree of success or failure of the international maritime operation against piracy. Once a ship has been successfully hijacked, a ransom is usually paid to secure its release. Average ransom payments to Somali pirates have increased sevenfold over the last five years, turning piracy into a multi-million dollar business. FCO figures show average ransoms rising from around \$600,000 in 2007 to close to \$5m in 2011. One witness described the inflation as “like being in a housing boom”.<sup>205</sup> The latest information from Northwood HQ is that ransom payments in 2011 have already totalled \$135m—a further substantial increase and a new record.<sup>206</sup>

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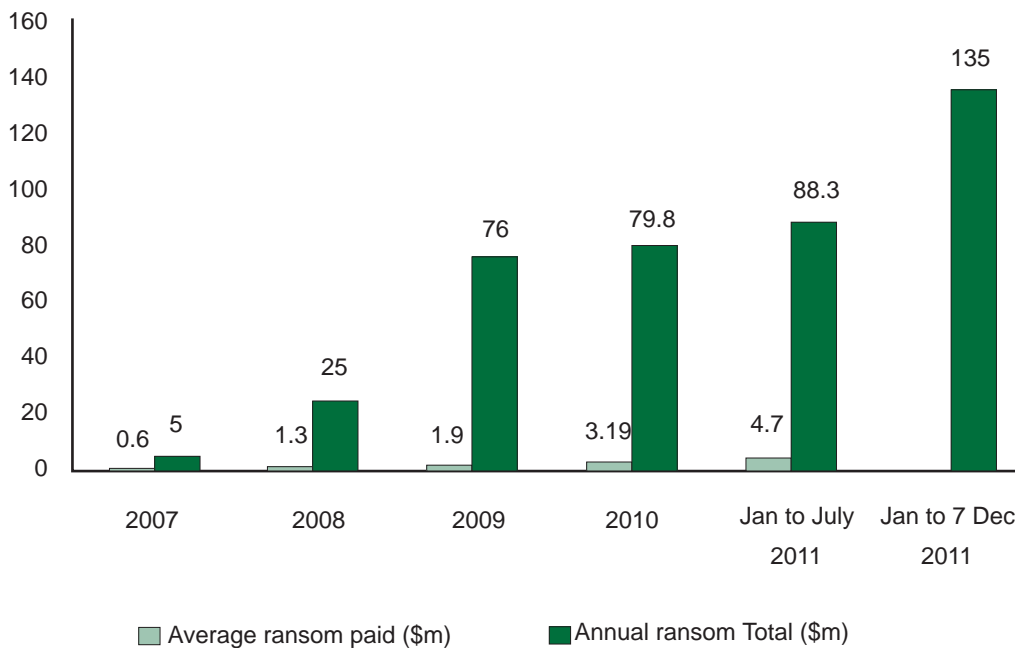
203 Ev 72

204 Ev 69

205 Q 59

206 Information supplied by the NATO operation at Northwood HQ.

Chart showing ransoms paid each year to Somali pirates



Source: 2007-July 2011 figures from the FCO, see Ev 70; December 2011 figures from NATO at Northwood

We were informed that ransoms are generally paid via airdrop by vessel owners or operators, or their insurance companies, many of whom have contracts with negotiators and crisis management consultancies. The nationality of the crew and the owners, the speed with which the shipowner paid the ransom and the type of vessel involved can all impact upon the ransom price demanded.<sup>207</sup> The highest ransom alleged to have been paid is \$12 million.<sup>208</sup> We note that ransom prices have reportedly fallen recently following an incursion by Kenyan troops into Somalia beginning in October 2011, as the pirates have sought quickly to conclude deals in advance of expected battles between the Kenyan troops and Somali militants.<sup>209</sup>

112. The shipping and insurance industries have faced criticism that, by paying such large ransoms, it is encouraging and funding further piracy. Appearing before the US Senate Appropriations Committee earlier this year, Secretary of State Hilary Clinton expressed exasperation that:

a lot of major shipping companies in the world think it's the price of doing business. They pay the ransom and they just go on their merry way. That has been a huge problem.<sup>210</sup>

However, submissions to the inquiry from the maritime industry stressed that companies had little choice. According to Stephen Askins, a marine insurance lawyer:

207 Q 59

208 Between \$10 million and \$12 million was reported to have been paid for the release of the Tanker Zirku in June 2011. Prior to this, the South Korean oil tanker the Samho Dream was widely reported in 2010 to have been released for \$9.5 million.

209 "Kenya's Somali incursion cuts piracy costs in Indian Ocean", *Business Daily*, 9 November 2011, [businessdailyafrica.com](http://businessdailyafrica.com)

210 "US looking at new moves on Somalia piracy: Clinton", *Reuters*, 2 March 2011, [reuters.com](http://reuters.com)

we would much rather they were not being paid, but the reality of the situation is that there is no other way to secure the release of the crews. [...] We therefore have to go past the moral consequences, engage with the pirates and pay them a ransom.<sup>211</sup>

Other submissions referred to ransom payments as “humanitarian”. When questioned about the extent to which the industry co-operates to share information on ransoms and to limit their prices, Mark Brownrigg stated that “We are certainly open to those sorts of discussions and interchanges, as necessary, but at the moment I think it is very much on an individual company-to-company basis. There is no collective engagement”.<sup>212</sup>

113. Ransom payments are not illegal under UK law except for cases in which there was evidence that the payment would trigger another crime. The Government has stated, for instance, that “payment of a ransom to a United Nations designated terrorist group or individual would contravene the al-Qaeda and Taliban sanctions regime established by UN Security Resolution 1267 (1999)”.<sup>213</sup> This approach is not shared by all states, some of which are known to have paid ransoms, and/or become involved in the ransom negotiation process when their citizens are held hostage. However, evidence from industry has been broadly supportive of the UK’s approach. According to Stephen Askins:

In a commercial sense, we would rather there was minimum government involvement in the negotiation process. They can help where help is called for, but generally we get it, we understand it, we have a process and, on a commercial level, it works.<sup>214</sup>

114. Despite its stance discouraging the payment of ransoms, the UK has taken steps at the UN to ensure that such payments remain legal. The UK placed a technical hold on a US proposal last year to add two known pirate ‘kingpins’, Abshir Abdillahi and Mohamed Abdi Garaad, to the list of people subject to sanctions under UN Security Council Resolution 1844. The resolution imposes a travel ban and an asset freeze on people who “engage in or provide support for acts that threaten the peace, security or stability of Somalia”, the US proposal was the first time that it had been used against pirates. The Minister explained that the UK had opposed this because of concerns that, unlike other countries, the UK legal system does not have a defence of duress, so “prosecutions could well occur when the payment was made to save lives”.<sup>215</sup> The Government’s position has been praised in some submissions, which expressed serious concern about possible international attempts to prohibit the payment of ransoms, which “would further endanger the seafarers held captive and any prohibition would serve only to drive ransom payments underground”.<sup>216</sup>

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211 Q 47

212 Q 23

213 HC Deb, 13 June 2011, col 603W

214 Q 48

215 Q 294

216 Ev 63

115. It is true that the high payments encourage and fund further piracy. However, the Government should address this through the recovery of ransoms and prosecution of those who have profited rather than by blocking payments, which would endanger seafarers' lives and would be likely to result in driving the practice underground. We commend the Government for its work at an international level to ensure that the payment of ransoms is not made illegal. **We conclude that the fact that ransom payments in 2011 have already totalled \$135m, another all-time record, should be a matter of deep concern to the British Government and to the entire international maritime community. We conclude that the Government should not pay or assist in the payment of ransoms but nor should it make it more difficult for companies to secure the safe release of their crew by criminalising the payment of ransoms.**

### Financial tracking

116. An estimated \$300 million has been paid to Somali pirates over the last four years and, aside from a French operation on land following an attack on some of its citizens, none of this ransom money has been recovered. There is very little solid information about where this money goes, in large part because ransom payments are in the form of physical cash and the money trail generally grows cold after the ransom is delivered.<sup>217</sup> Most observers agree that it is to some extent shared between the pirate 'foot soldiers' and investors. However, there are also fears that the money reaches corrupt Somali officials, Somali terrorist groups such as al-Shabab, and international criminal groups who fund the piracy from abroad and channel the proceeds out of Somalia into banks in Dubai and even London.<sup>218</sup>

117. As the amounts of money involved have increased, international attention has shifted toward efforts to understand the financial flows involved in piracy, both as a way of tackling piracy through apprehending investors and due to concerns that ransom money is funding organized crime or terrorism. INTERPOL, EUROPOL, and UNODC are all involved in addressing the financial aspects of Somali piracy, and in July 2011, the UN Contact Group on Piracy off the Coast of Somalia established a working group to focus on the illicit financial flows associated with piracy in order to disrupt the pirate enterprise on shore.<sup>219</sup> A Financial Action Task Force report developing a typology on the financial flows related to maritime piracy was co-authored by the United States and the Netherlands, with UK officials working closely with them.<sup>220</sup>

118. The House of Lords European Union Committee pursued this matter with the Foreign Office in the wake of its inquiry into the EU's counter-piracy operation. The Committee noted the lack of information available on ransoms that are collected in the UK, stating that "We remain baffled that so little is done by the authorities to seek detailed

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217 "Organised Maritime Piracy and Related Kidnapping for Ransom", Financial Action Task Force report, July 2011, page 5 para 4

218 See, for example, "Chasing the Somali piracy money trail", *BBC News Online*, 23 May 2009, [bbc.co.uk](http://bbc.co.uk).

219 Ninth Plenary Session of the Contact Group on Piracy off the Coast of Somalia, Communiqué, 14 July 2011, [state.gov](http://state.gov)

220 Letter from Henry Bellingham MP, Parliamentary Under Secretary of State, Foreign and Commonwealth Office, to Lord Roper, Chair, Select Committee on the European Union, 17 March 2011, [parliament.uk/hleuf](http://parliament.uk/hleuf).

information about their activities from those involved”.<sup>221</sup> When asked by our Committee about the involvement of the Serious Organised Crime Agency, the Minister admitted that:

It is fair to say that we were possibly slow to look at this area as a priority. [...] Serious sums of money are washing around different world financial centres and systems. Understanding where that money goes, disrupting it and going after the kingpins is incredibly important. We have had some success, but there is much more to do.

We are surprised by the continuing lack of information available about those funding and profiting from piracy. **We conclude that the Government has been disappointingly slow to take action on financial flows relating to ransom payments, particularly given the information available from British companies involved.** The Committee has seen no evidence of ransom money making its way into the UK’s financial system; however, we note that such rumours exist, which carry a reputational risk for the UK’s banking system and crime agencies. **The Serious Organised Crime Agency (SOCA) should make it a priority to address rumours of ransom money making its way into the UK’s financial system.**

### **Engagement with industry on ransoms**

119. British companies have built up expertise in a variety of counter-piracy businesses, including insurance, negotiation and ransom consultancy and even delivering ransoms in cash to pirates. In submissions to this inquiry, companies have expressed willingness to share information on ransom payments with the Government. However, the Committee has heard concerning reports of a lack of interest on the part of government agencies when information about ransom drops has been provided to them.<sup>222</sup> **We conclude that the Government’s laudable principle not to become involved in ransom payments should not extend to the point of failing to collect, analyse, and act upon information concerning ransom payments made by British companies or private individuals. We recommend that the Government establish a mechanism through which intelligence and information about ransom payments and pirate groups and negotiations can be communicated to the Government by those involved.**

120. On 12 October 2011, in a speech to the Chamber of Shipping, the Minister announced the formation of a new “maritime intelligence and information co-ordination centre” to be based in the Seychelles. This UK initiative would bring together military and law enforcement capabilities in fighting piracy by facilitating the tracking of pirates and enforcement action against pirate financiers and leaders, and was “a sign of the commitment of this Government to prioritise action against pirate kingpins”.<sup>223</sup> **We recommend that the FCO publish details on the new maritime intelligence and information co-ordination centre, including its mandate, funding, and when it is expected to begin operations.**

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221 Letter from Lord Roper to James Brokenshire MP, Parliamentary Under-Secretary of State in the Home Office, 8 June 2011, [parliament.uk/hleuf](http://parliament.uk/hleuf).

222 Submissions received in confidence.

223 Henry Bellingham MP, Parliamentary Under-Secretary of State, speech to the Chamber of Shipping, 12 Oct 2011

## 4 Somalia: a solution on land

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### The origins of piracy: breakdown in Somalia

121. Following the fall of General Mohamed Siad Barre's dictatorial regime in 1991, Somalia has been in a state of almost perpetual conflict. It now suffers from multiple and diverse challenges, including a government that has been unable to project its power beyond parts of the capital Mogadishu; ongoing conflict between the government and the Islamist terrorist group al-Shabab which controls much of the southern region; a famine that has put 4 million people in crisis, with 750,000 people reported to be at risk of death in the next four months;<sup>224</sup> and the displacement of around 2 million of its population of only 9 million, making it the third largest refugee-producing country in the world after Afghanistan and Iraq.<sup>225</sup> The combination of these problems and the resulting humanitarian catastrophe has led to Somalia being considered the most failed of the world's failed states.<sup>226</sup>

122. Somalia is divided into three main regions, with stark differences between them in terms of governance and conflict:

- Somaliland: A former British protectorate, Somaliland is a relatively well-governed and peaceful region in the north of Somalia. It has an established democratic government which has upheld the rule of law and is seeking independence from the rest of Somalia.
- Puntland: A semi-autonomous region on the horn of east Africa, Puntland has its own government that is seeking a federal role in the Somali state. It suffers from extreme poverty and some conflict. Much Somali piracy operates from Puntland and the area south of it toward Galmudug.
- South central Somalia: Containing the capital, Mogadishu, until recently much of south central Somalia was held by the main terrorist group, al-Shabab. The region is mired in conflict between the Transitional Federal Government (TFG) (supported by up to 12,000 African Union troops)<sup>227</sup> and al-Shabab. A recent incursion by Kenyan troops across Somalia's southern border to pursue suspected perpetrators of recent kidnappings in Kenya has further heightened the state of conflict.

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224 In September 2011, it was reported that 750,000 were at risk, see "Somalia famine: UN warns of 750,000 deaths", *BBC News Online*, 5 September 2011. In November, the prediction was reduced to 250,000 see "Somali famine zones downgraded by UN", *BBC News Online*, 18 November 2011. For more information see: UN Food Security and Nutrition Analysis Unit, [fsnau.org](http://fsnau.org).

225 Q 195 and "UNHCR issues warning over treatment of Somali refugees", United Nations Refugee Agency, [unhcr.org](http://unhcr.org)

226 For four years in a row, Somalia has topped the Foreign Policy Magazine's Failed States Index. See [foreignpolicy.com](http://foreignpolicy.com).

227 African Union Mission in Somalia, AMISOM. On 30 September 2011 the UN Security Council extended AMISOM's mandate to October 2012 and urged states to increase its numbers to the authorised strength of 12,000. SC/10399



123. Many submissions to our inquiry, including the Government's, noted that piracy at sea is a symptom of the breakdown of state authority in Somalia and the inability of its government to establish law and order within its borders or off its coast. The long-term solution to piracy therefore lies on land. As Major General Howes said of the naval operations:

We are treating the symptom only. We are containing a problem that emanates directly as a consequence of instability in Somalia, so the only way this is going to be resolved is over a long period of time with a comprehensive approach that reduces the insecurity in that country.<sup>228</sup>

## International response to the crisis

124. The international community has a history of difficult and controversial engagement with Somalia. In 1994, US-led UN troops in Somalia were withdrawn following a notorious battle in Mogadishu in which left 18 US soldiers dead and between 350 and 1,000 Somali gunmen and civilians believed killed.<sup>229</sup> An intervention of Ethiopian troops in 2006 on the invitation of the Transitional Federal Government to oust Islamist opposition forces was also controversial, and the troops withdrew as part of the 2008 Djibouti agreement. Nevertheless, the humanitarian catastrophe and the two security threats of terrorism and piracy have served recently to re-focus international attention onto Somalia again. States and organisations in the region, as well as the United Nations and the European Union, have registered a new sense of urgency in responding to the crisis.

## Political engagement

125. Numerous attempts have been made to establish a political agreement to bring about an end to the conflicts in Somalia, and this remains a key priority at the UN, which has established a UN Political Office for Somalia (UNPOS), headed by the Special Representative of the Secretary General, Augustine Mahiga, and a UN Contact Group on Somalia. The UN-backed Transitional Federal Government (TFG) is the result of a peace process that began in Kenya in 2001, following a dozen failed initiatives. The TFG is recognised internationally and aspires to govern the entire Somali territory but it has little control beyond parts of the capital, and continues to be troubled by infighting and allegations of corruption. Earlier in 2011, elections that had been planned under the 2008 Djibouti Peace Process were delayed until 2012, a deadline which some observers still consider unrealistic.<sup>230</sup>

126. It is not clear how much legitimacy the Transitional Federal Government has in the eyes of Somalis. One recent media report stated that "The transitional government is seen by many Somalis as simply another militia, and a foreign-backed one at that".<sup>231</sup> Sally Healy, a specialist on Somalia at Chatham House, told us that the TFG is "only a

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228 Q 92

229 See "1993: US forces killed in Somali gun battle", *BBC News Online*, 4 October 2003, [bbc.co.uk](http://bbc.co.uk).

230 Under the Kampala peace accord, agreed in June 2011, elections of the president and speaker were postponed for a year from August 2011.

231 "Don't aim too high", *The Economist*, 15 October 2011, [economist.com](http://economist.com)



government in name”.<sup>232</sup> Nevertheless, the TFG is still supported by most of the international community, including the UK. The FCO Minister Henry Bellingham took a much more positive view of the TFG, stating that “we are confident that the TFG will now start reaching out to the different constituent parts of Somalia and actually start making a difference, giving the people of Somalia some hope for the future”.<sup>233</sup>

127. In addition to supporting the TFG, international engagement has broadened to include the governments of the Somaliland and Puntland regions, which have had some success in establishing institutions and a degree of order. Somaliland, in particular, is seen as a successful and stable example. Although it has not been recognised as an independent state, it has strived to act as a good international partner.<sup>234</sup>

### Security

128. There is ongoing conflict within Somalia between the main opposition force, the Islamist al-Shabab, and the Transitional Federal Government. Al-Shabab controls large portions of south central Somalia and, until recently, parts of Mogadishu. The TFG is backed up by around 9,000 African Union troops (AMISOM). 2011 has seen a number of gains by AMISOM, including a major breakthrough in August when al-Shabab withdrew from Mogadishu. An incursion in October by Kenyan troops has claimed some success as well, and appears to be threatening al-Shabab’s stronghold in the port of Kismayo. However, it is not clear that the intervention has been welcomed by the TFG, and some observers fear that Kenya will be embroiled in the conflict for a long time.<sup>235</sup> Even where it has ceded territory, al-Shabab remains a major ongoing threat to stability, as demonstrated by a recent suicide bombing in a TFG compound in Mogadishu that killed 72 people.

129. States in the region—particularly Uganda, Burundi and Kenya—have taken the lead in responding militarily to establish security in Somalia. The UN has called for others to support AMISOM through contributions. The EU, for example, has so far provided AMISOM with contributions worth over €258 million through its African Peace Facility. The UK also supports the work of AMISOM and will support AMISOM with approximately £27.3 million over this financial year”.<sup>236</sup> The EU also has a small military mission in Uganda to contribute to the training of Somali security forces (EUTM).<sup>237</sup>

### Development co-operation and humanitarian aid

130. The EU is the largest overall donor to Somalia. The EU has committed €215.4 million for development aid for the period 2008 to 2013, which is complemented by funding sourced

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232 Q 196

233 Q 313

234 Q 196

235 See, for instance, “France to support Kenya’s incursion into Somalia”, *BBC News Online*, 25 October 2011, [bbc.co.uk](http://bbc.co.uk).

236 International Development Committee, *Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda*, Ev 75–76

237 Agreed on 25 January 2010, and launched in May 2010.

through various thematic programmes.<sup>238</sup> According to EUNAVFOR, EU assistance to Somalia since 2003 has included:

Development aid from the European Commission (EDF)

- €409,472,071 million of development aid from 2003
- €215.8 million for 2008–2013 (EDF, Somalia Special Support Programme—initial envelope)
- €175 million for 2012–2013 (EDF, Ad-hoc Review)

Ongoing development assistance in focal sectors

- €52 million Governance & Security
- €36 million Education
- €48 million Economic Growth

Humanitarian aid from the European Commission for Somalia (ECHO)

- €43.8 million for 2008, €45 million in 2009 and €35 million for 2010 (possibly €30 million in 2011)
- €198 million since 2005 for Somalia<sup>239</sup>

131. In addition to ongoing humanitarian assistance, a famine in the Horn of Africa has heightened Somalia's need for international humanitarian aid in 2011. The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) reported on 15 November 2011 that funding for the 2011 Consolidated Appeal Process for Somalia had reached US\$800 million, out of the \$1 billion requirement.<sup>240</sup> UNOCHA also noted that the UK's 2011 contribution to the Somalia appeal had risen by over \$55 million compared to that of 2010, making it one of the biggest contributors to the fund.<sup>241</sup> However, ongoing conflict and a ban on some UN agencies by al-Shabab had made it difficult to ensure the delivery of aid to all areas in Somalia. On 13 December 2011, UNOCHA stated that the crisis in the Horn of Africa remains the largest humanitarian crisis in the world, and launched its Consolidated Appeal Process for 2012, seeking a record \$1.5 billion for Somalia.<sup>242</sup>

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238 European Union External Action Service, 'EU ENGAGEMENT IN SOMALIA', April 2011, EU Somalia/12

239 EUNAVFOR Operation Atalanta, 'Media Information', 21 November 2011, eunavfor.eu

240 UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Somalia: Famine & Drought, Situation Report No. 24', 29 November 2011. The report notes that the Somalia Consolidated Appeal 2011 is one of the most comprehensively funded humanitarian appeals.

241 UNOCHA, 'Humanitarian Funding Analysis for Somalia: Drought and Famine Scale-Up' August 2011

242 Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Valerie Amos, Press Briefing, 14 December 2011

132. The ongoing problems in Somalia are of such scale that no single state can hope to have a meaningful impact alone. **The UK should be very wary of international claims to deliver a solution on land in Somalia. International capacity to rebuild a Somali state is extremely limited. We conclude that the UK should continue to act through the United Nations and European Union programmes to pursue peace and stability in Somalia. We urge the Government to push for a concerted international effort to capitalise on the African Union Mission in Somalia's (AMISOM) recent military gains against al-Shabab by supporting the Transitional Federal Government (TFG) in its efforts to extend its control, build the rule of law combat corruption and encourage development.**

### **Counter-piracy projects**

133. In addition to the stabilisation work above, the UN runs a number of counter-piracy projects in Somalia, largely focused on the more stable areas in Somaliland and Puntland. These include improving prison conditions and welfare, providing capacity-building and training programmes to prison staff, building courtroom facilities, and contributing to the building of prisons. In addition, the UNODC has a Somalia-wide law reform project, which covers the incorporation of piracy provisions into Somali law and the brokering of post trial transfer agreements, as well as the training of judges.<sup>243</sup>

### **UK response**

134. The UK Government regards Somalia as a key priority.<sup>244</sup> The Prime Minister recently stated that Somalia “directly threatens British interests”,<sup>245</sup> and Henry Bellingham, FCO Minister, told us that the Government’s Somalia strategy “recognises that what happens in Somalia matters to the UK. In addition to counter-terrorism, we have a range of interests in the country, including piracy/maritime security threats”.<sup>246</sup> The Minister also informed us that Somalia continued to present “one of the most significant terrorist threats to the UK”. The Foreign Secretary announced in 2010 that the FCO intends to open an Embassy in Somalia as soon as conditions allow.

135. The UK is a member of the UN Contact Group on Somalia and has instigated a number of UN debates on Somalia and piracy. It has hosted visits from Ministers from the TFG, Somaliland and Puntland governments. In March 2011, DfID announced that it was substantially increasing aid to Somalia to an average of £63 million per year until 2015 as part of a shake-up of development spending.<sup>247</sup> Due to the deteriorating humanitarian situation, and enhanced need, DfID spending on Somalia is expected to increase to at least £84.5 million for this financial year.<sup>248</sup> According to a letter from the Foreign Secretary to the Committee, the FCO provided over £6 million of support in the last financial year to continue building counter-piracy capacity in the region. According to the Foreign

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243 Ev 69

244 Henry Bellingham, statement at the United Nations Security Council Somalia Open Debate, 11 March 2011

245 Prime Minister David Cameron, Lord Mayor’s banquet speech, 14 November 2011

246 Ev 71

247 DfID Bilateral Aid Review Results: Country Summaries

248 HC Deb, 3 November 2011, Cols 790–91W

Secretary, the funding represented a total of 12 separate piracy-related projects recently taken forward in Kenya, the Seychelles and in Somalia itself, including support for courts, prisons, police and coastguards.<sup>249</sup> The UK has dedicated over £3 million to UNODC counter piracy projects in Somalia itself.<sup>250</sup>

### **Criticism of the approach in Somalia**

136. A number of submissions criticised the failure of the international community to engage with Somali society to provide a sense of legitimacy and local ownership of the political settlements and development projects. Both Saferworld, an NGO that works with Somali civil society organizations, and World G18 Somalia, a UK-based diaspora group, noted the lack of trust between the local Somali communities and the international community. According to Saferworld, the lack of structured and substantive consultation with Somali civil society has created a ‘trust deficit’ between local, national and international actors. Furthermore, Saferworld argued that this “impacts negatively on the effectiveness of aid programmes, undermines Somali civil society, and contributes to a sense of alienation among Somali communities from the decision-making processes that affect their lives”. Saferworld and World G18 Somalia also criticised the UK’s approach in channeling its funding through international NGOs, seeing this as a “lack of meaningful engagement” with Somalis and the Somali diaspora.<sup>251</sup> In December 2011, the Government stated that both the FCO and the Department for International Development would be willing to consider applications from UK diaspora organisations representing any region of Somalia, and that the FCO has already made grants to some Somali diaspora organisations.<sup>252</sup>

137. This engagement is particularly important with regard to countering piracy. Sally Healy told us that:

Somalis tend not to have a very benign view of outside interventions in their country, and I think that anti-piracy activities need to recognise that that is likely to be the case. It is important that any anti-piracy activities give some indication that we actually care about Somalia and its people, and the protection issues that are at stake, rather than simply being concerned with shipping interests, although obviously we should be driven by UK interests.<sup>253</sup>

From the limited information available, it appears that there exists an ambiguous and shifting relationship between Somali pirates and the local communities, local and national politicians, and al-Shabab. For leaders in Puntland and south central Somalia, piracy is a concern, but it is not a priority, and their limited resources are better spent on creating and maintaining stability.<sup>254</sup> There are mixed reports of the relationship between al-Shabab and

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<sup>249</sup> Foreign Affairs Committee, *Developments in UK Foreign Policy*, oral evidence from the Foreign Secretary on 16 March 2011, HC(2010–12) 881-i

<sup>250</sup> Ev 69. See written evidence for further details and a breakdown of donations.

<sup>251</sup> Ev 116, paras 11 and 14 and Ev 125, paras 3 (f) and 5

<sup>252</sup> HL Deb, 9 December 2011, col WA204

<sup>253</sup> Q 195

<sup>254</sup> Q 196

pirates. While there are some reports that al-Shabab has been co-operating to some extent with pirate groups, Sally Healy told us:

The al-Shabab group, which controls a lot of the southern areas and at least the port of Kismayo appears up to now to be against pirates and piracy. The group itself has a very different agenda, and it seems to regard the buccaneering and this manner of raising money as an improper activity that goes against the moralistic and strict version of Islam that it follows.<sup>255</sup>

138. There are also mixed reports of the views of local communities in Somalia about the piracy that operates from their coastline. There are those who are supportive of the pirates, seeing piracy as just a way of earning a living. Some are “very alive to the big pirate economy that has developed, and [...] quite cynical about it, and feel that their own contribution to it is just one of many that are kind of cashing in on a bit of a bonanza”.<sup>256</sup> However, there are also reports of clans moving against pirate groups in their area, because of the negative economic impacts: although some gains from piracy trickle down and support a ‘pirate economy’, ransoms also cause house price booms and inflation.

139. There was some disagreement among our witnesses about what measures should be taken to improve the situation in Somalia, and to counter piracy off its coast. World G18 Somalia and Saferworld both mentioned the need to provide employment and development alternatives to piracy, and Sally Healy agreed, noting that the fishing industry had “huge potential” to offer alternative employment. However, Dr Alec D Coutroubis and George Kiourktsoglou were more sceptical, arguing that there was limited opportunity to develop sources of legitimate income, and that “even if there were, the income (per capita) generated by these alternative professional activities would pale compared to the cash generated via piracy ransom payments”, and that the solution to piracy lies in a more comprehensive “nation (re)building process”.<sup>257</sup>

140. We note that engagement on the ground in Somalia is difficult at present due to the security situation there, which impedes both the commissioning and monitoring of projects. However, the FCO announced in October 2011 that the Government would commit £2 million to “community engagement and economic development projects” in coastal regions, spreading messages on the dangers of piracy and providing “small scale but high impact programmes to offer real alternatives to piracy”. In addition, Henry Bellingham announced he had held preliminary discussions to engage industry partners in “innovative community engagement schemes”.<sup>258</sup>

**141. We recommend that the Government develop its engagement with civil society organisations in Somalia to strengthen local responsibility and involvement in international efforts to counter piracy off the coast of Somalia. We recommend that in its response to this report, the Government provide more details of the community engagement projects which it announced in October 2011.**

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255 Q 196

256 Q 210

257 Ev 123, paras 5.4 and 5.5

258 Henry Bellingham MP, Parliamentary Under-Secretary of State, speech to the Chamber of Shipping, 12 Oct 2011

## 5 FCO support for victims and families

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142. The FCO is the department responsible for the Government's reaction when UK citizens are taken hostage overseas, including hostages held by Somali pirates. The Minister told us that the FCO's travel advice is "clear", and that "we are unable to provide consular assistance in Somalia". He further stated that for British citizens taken hostage in Somalia, as elsewhere, "in accordance with HMG's long standing policy we would not facilitate or negotiate the payment of a ransom. Consular staff would remain in contact with families of the hostages while they remained kidnapped".<sup>259</sup>

143. The FCO provides warnings in its travel advice about piracy attack in the region. At present, FCO advice states:

Sailing vessels are particularly vulnerable to attack due to their low speed and low freeboard. We advise against all but essential travel by yacht and leisure craft on the high seas in the Gulf of Aden, Arabian Sea and part of the Indian Ocean, as bounded by the latitude and longitude coordinates above [15°N in the Red Sea, 23°N in the Arabian Sea, 78°E and 15°S in the Indian Ocean].<sup>260</sup>

### *Paul and Rachel Chandler*

144. Paul and Rachel Chandler's yacht, the Lynn Rival, was hijacked in October 2009 while sailing west from the Seychelles toward Tanga, in northern Tanzania. It is one of about 10 hijackings of yachts in the Gulf of Aden and Indian Ocean since 2007.<sup>261</sup> The couple were forced to sail toward Somalia before being transferred to another ship and taken on shore. They were held hostage by the pirate group for just over a year.

145. The FCO led the Government's response to the Chandlers' abduction, and both the FCO and the Ministry of Defence were criticised in the press for their handling of the case. In their appearance before us, Paul and Rachel Chandler made a number of criticisms of the FCO's approach.

### *Warnings*

146. At the point when the Chandlers' yacht was hijacked, it was 60 nautical miles off the west coast of the main island in the Seychelles and still within the Seychelles archipelago. This hijacking was much closer to shore than might have been expected. However, the planned journey to Tanzania would have involved passing through the high-risk area. Rachel Chandler stated that they had checked all available travel warnings when they were in the UK six weeks before their trip. The FCO states that its Travel Advice for the Seychelles before the kidnapping contained the following warning:

reports of the hijacking of vessels by Somali pirates in the northern and western fringes of Seychelles exclusive economic zone waters; for example near Assumption

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259 Ev 68

260 "Piracy in the Indian Ocean", Foreign and Commonwealth Office, see [fco.gov.uk](http://fco.gov.uk)

261 "To sail the Gulf of Aden is like playing Russian Roulette", EUNAVOR website, 2 November 2011, [eunavfor.eu](http://eunavfor.eu)

Island. These incidents have happened hundreds of miles from Mahé and the main tourist areas. In response, Seychelles has deployed its Coast Guard, is stationing small units of its Defence Force to the outer islands and some remote inner islands, and is receiving assistance from the international community.

The Chandlers stated that they did not recall seeing the FCO advice against travel before they left the Seychelles, and recommended that piracy advice be available in a low bandwidth to allow travellers to access it in areas with poor internet connection, in the same way that they can access weather warnings.<sup>262</sup> **We recommend that the Government review the medium in which information on piracy such as travel warnings is released, in order to ensure that it is accessible to different users, including yachtsmen. We further recommend that the Government intensifies its efforts to draw to the attention of seafarers the information that is available on the Maritime Security Centre Horn of Africa (MSCHOA) and NATO websites about specific sea areas at risk of pirate attack.**

### *Securing their release*

147. The Chandlers and their family in the UK were involved in lengthy negotiations to secure their release. A ransom of \$440,000 was paid, although it did not immediately result in their release. Paul and Rachel Chandler told us that the FCO had no role in securing their release from their captivity, attributing their eventual liberation to work done by their family, pro bono consultants and members of the Somali diaspora community.<sup>263</sup> They further suggested that the FCO was not the correct department to handle their case, and that the police would have been more appropriate.<sup>264</sup>

148. The FCO responded to this criticism, telling us that it was actively involved in efforts to secure Paul and Rachel Chandler's release. However, when asked if the Government knew of the details of how the Chandlers were freed, the Minister admitted to not knowing the details of their release; and Chris Holtby, Deputy Head of Security Policy Department at the Foreign and Commonwealth Office, stated that "in so far as the Chandlers have wanted to share it with consular officials, then they know, but payment of ransom is not a matter for government".<sup>265</sup> The Minister provided further details in a letter to us following his appearance, explaining that in the Chandlers' case:

as with any kidnap case, a dedicated team from across Whitehall met regularly to monitor developments and agree actions. COBR also met on a number of occasions during the kidnap. We did everything we could to secure their release within the terms of our policy on ransom payments, and discussed regularly the options available to HMG for securing Paul and Rachel's safe release as quickly as possible. For example, we used our contacts in the region to gain information and bring influence to bear on the hostage-takers.<sup>266</sup>

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262 Q 321

263 Q 360 and Ev 77 -78,

264 Q 344, and evidence received in confidence.

265 Q 308 and Q 310

266 Ev 71

However, the letter went on to state that:

The FCO did not make or facilitate the payment of a ransom and we therefore have little information about what finally secured the couple's release.<sup>267</sup>

149. We acknowledge that the FCO cannot comment publicly on all aspects of its work on the Chandlers' case. However, we are surprised and concerned that the FCO was able to provide us with so little detail on this case, particularly given that during the Chandlers' captivity the FCO were the department responsible. **We recommend that the Government review its handling of the Chandlers' case to ascertain whether improvements could be made for the future, and we request that the Government present its conclusions in its response to this report.**

### *Support for the family*

150. The Minister informed us that FCO consular staff remained in frequent touch with Paul and Rachel Chandler's family throughout their ordeal, and the family attended meetings in the FCO to meet operational staff, and to link by Video Telephone Conference with the British High Commission in Nairobi.<sup>268</sup> However, in their written and oral evidence, the Chandlers appeared to criticise strongly the FCO's support for their family, characterising it as merely "tea and sympathy",<sup>269</sup> and stating that:

We were disappointed to learn that the assistance from the FCO was, if anything, negative. The support and advice to our siblings, who were always likely to be on the receiving end of begging phone calls, was distressingly inadequate.<sup>270</sup>

However, the Chandlers praised the FCO's support once they arrived in Kenya and on their travel and arrival in Britain, where they were provided with FCO accommodation for a brief period. **We are disappointed that Paul and Rachel Chandler did not feel that their family was adequately supported during their ordeal. We recommend that the FCO review its communication and other procedures to provide support to family members of British hostages abroad, and provide its conclusions to the Committee in response to this report.**

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267 Ev 71

268 Ev 71

269 Q 347

270 Ev 78, para 29



## 6 Conclusion

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151. Since the end of the Second World War, vessels transiting the Indian Ocean have been relatively safe from attack. It is wholly unacceptable that a comparatively small number of criminal groups engaged in piracy have rendered the Indian Ocean a 'no go' area for smaller vessels such as yachts, and one in which larger shipping needs to hire private armed guards to guarantee safe passage.

152. This year has seen a reduction in the number of successful attacks, and the surge in piracy attacks that was expected in autumn 2011 does not appear to have materialised. It remains to be seen whether this is indicative of an improving trend as a result of better defence and naval action, or whether it is merely a lull while pirates adapt to a changing situation. The fact that the number of attacks, hostages, and ships held, as well as the overall ransom figures, have all reached record highs at times this year should serve as a caution against any complacency in the UK's counter-piracy response.

153. A combination of unarmed ships, owners that are willing to pay millions in ransom to have their ships returned, too few naval forces to respond, and relative impunity in Somalia for their crimes, has created a compelling business model for Somali pirates that offers enormous financial incentives and few real disincentives. It is commendable that the Government has proceeded through international co-operation, particularly in the swift establishment in 2008 of the Internationally Recommended Transit Corridor which has effectively secured shipping in the Gulf of Aden. It does not appear, however, that subsequent international efforts have been as decisive, timely or effective in curbing Somali piracy in the Indian Ocean. Meanwhile, Somali pirates have proven nimble and adaptable to change. As a consequence, piracy off the coast of Somalia has proliferated and grown into a thriving business.

154. **We conclude that for too long there has been a noticeable gap between the Government's rhetoric and its action. Despite nine UN Security Council resolutions and three multinational naval operations, the counter-piracy policy has had limited impact. The number of attacks, the costs to the industry and the price of the ransoms have all increased significantly since 2007.** The threat is not primarily against British merchant ships, very few of which have been successfully attacked, nor is it one of terrorism. It is rather that Somali piracy threatens the UK's economy through the banking, insurance and shipping industries, and the British and foreign flagged ships we depend upon for trade. Despite this, piracy is not a priority task for Royal Navy forces and the UK has at times barely dedicated even one ship to counter-piracy activities. The naval operations have been further limited by the failure to prosecute detained suspects and rules of engagement that required strengthening earlier this year.

155. Looking forward, proposals focusing on pursuing financial transactions related to piracy have potential, and pursuing stability on land in Somalia is theoretically the solution, although UK and international leverage there is limited. Private armed guards seem to be the best way quickly to improve the situation, but the Government was slow to permit armed guards on UK shipping and its guidance lacks critical detail. **We conclude that decisive action is now required on a number of fronts to contain the problem in the short to medium term, so that long term solutions can be found. We recommend that**

**the FCO gives high priority to the international conference on piracy to be hosted by the UK in February 2012 and provides the Committee with a full and detailed account of decisions taken and UK and international actions that arise from it.**

# Formal Minutes

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**Tuesday 20 December 2011**

Members present:

Richard Ottaway, in the Chair

Mr John Baron  
Sir Menzies Campbell  
Ann Clwyd

Mike Gapes  
Sir John Stanley

Draft Report (*Piracy off the coast of Somalia*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 35 read and agreed to.

Paragraph 36 read, amended and agreed to.

Paragraphs 37 to 56 read and agreed to.

Paragraph 57 read, amended and agreed to.

Paragraphs 58 to 91 read and agreed to.

Paragraph 92 read, amended and agreed to.

Paragraphs 93 to 105 read and agreed to.

Paragraph 106 read, amended and agreed to.

Paragraphs 107 to 110 read and agreed to.

Paragraph 111 read, amended and agreed to.

Paragraphs 112 to 114 read and agreed to.

Paragraph 115 read, amended and agreed to.

Paragraphs 116 to 131 read and agreed to.

Paragraph 132 read, amended and agreed to.

Paragraphs 133 to 154 read and agreed to.

Paragraph 155 read, amended and agreed to.

Summary read, amended and agreed to.

*Resolved*, That the Report, as amended, be the Tenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered,* That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 13 July and 11 October.

[Adjourned till Tuesday 17 January 2012 at 10.00 am.]

## Witnesses

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### Wednesday 22 June 2011

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**Andrew Voke**, Chairman, LMA Marine Committee, Lloyds Market Association; and **Mark Brownrigg OBE**, Director-General, the Chamber of Shipping Ev 1

**Stephen Askins**, Marine Lawyer, Ince & Co LLP Ev 7

**Major General Buster Howes OBE**, Operation Commander European Union Naval Force Somalia Ev 13

### Wednesday 29 June 2011

**Captain David Reindorp RN**, Head of Defence Crisis Management Centre and **Dr Campbell McCafferty**, Head of Counter-Terrorism and UK Operational Policy, Ministry of Defence Ev 21

**Sally Healy OBE**, Associate Fellow, Chatham House Ev 30

### Wednesday 6 July 2011

**Mr Henry Bellingham MP**, Parliamentary Under-Secretary of State, Minister for Africa, the UN, Overseas Territories and Conflict Issues, and **Mr Chris Holtby**, Deputy Head of Security Policy Department, Foreign and Commonwealth Office, and **Captain David Reindorp RN**, Head of Defence Crisis Management Centre, Ministry of Defence Ev 37

### Monday 24 October 2011

**Rachel Chandler and Paul Chandler**, victims of piracy Ev 53

## List of written evidence

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1	Chamber of Shipping	Ev 62
2	Stephen Askins, Ince & Co LLP	Ev 64
3	Mr Henry Bellingham MP, FCO	Ev 68, 70, 75
4	Rachel Chandler and Paul Chandler	Ev 76
5	Paul Chandler	Ev 79
6	Dr Douglas Guilfoyle, Specialist Adviser	Ev 80, 97
7	Nautilus International	Ev 102
8	Baltic Exchange	Ev 107
9	BCB International Ltd	Ev 109
10	Security Association for the Maritime Industry (SAMI)	Ev 111

11	Maritime Asset Security & Training Ltd (MAST)	Ev 113
12	Saferworld	Ev 115
13	Dr Alec Coutroubis and George A Kiourktsoglou	Ev 117
14	World G18 Somalia	Ev 124
15	SOS—SaveOurSeafarers	Ev 128
16	International Maritime Organization (IMO)	Ev 129
17	International Maritime Bureau	Ev 131

# Oral evidence

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## Taken before the Foreign Affairs Committee on Wednesday 22 June 2011

Members present:

Richard Ottaway (Chair)

Mr Bob Ainsworth  
Mr John Baron  
Mike Gapes  
Andrew Rosindell

Sir John Stanley  
Rory Stewart  
Mr Dave Watts

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### Examination of Witnesses

*Witnesses:* **Andrew Voke**, Chairman, LMA Marine Committee, Lloyds Market Association, and **Mark Brownrigg OBE**, Director-General, the Chamber of Shipping, gave evidence.

**Q1 Chair:** I welcome members of the public to this first session of the Committee's inquiry into Piracy off the coast of Somalia. We reached the conclusion that this is an important subject that needs to be looked at, and we will be doing a report at the end of our inquiries. I am very pleased to welcome Andrew Voke, Chairman of the Lloyds Market Association Marine Committee and Mark Brownrigg, Director-General of the Chamber of Shipping. I welcome you both; it is very good to see you here.

Is there anything you want to say by way of an opening salvo, or any central point you want to make?

**Andrew Voke:** From my perspective, yes. I have a few comments, just to introduce the LMA and its role and jurisdiction, and maybe just to make a couple of comments about the questions or the subjects that the Committee wants to look at.

The Lloyds Market Association is the association that provides technical and professional support to the Lloyds underwriting community and to all the managing agents in Lloyds. The LMA also co-operates with the London market companies that are not Lloyds members, but it is important to understand that the LMA will express the views of the market but has no formal jurisdiction over the market. The LMA also is responsible for co-ordinating the company market and Lloyds market on a joint war committee, a joint hull committee and a joint cargo committee, which are really the issues presented here. From my perspective, I chair the LMA for this year. Also with me are Richard Tomlin, who is one of the war leaders in the market, and is a member of the joint war committee, and Neil Roberts, who works for the LMA secretariat, who is responsible for the liaison with the Foreign Office and the Navy on issues relating to piracy.

Probably just in summary, given the points that you asked us to consider, and on canvassing the views of the LMA membership before we attended this hearing, the general view of insurers in Lloyds is that we endeavour to support the marine market and ship owners who trade in the marine market, but rarely are we in a position to drive policy for ship owners. For instance the adequacy of international and domestic law and jurisdiction is a subject that we would view to be outside of the LMA's remit, and outside of

something that we would be comfortable in commenting on. We are the beneficiary of it, but it is not something that we would comment on. The same goes for most of the formal questions that you have asked in terms of FCO support for anti-piracy projects in Somalia, consular assistance and so on. We respond to the environment in which our ship owners find themselves. They are our clients and we probably have long-term relationships with them; we insure all their trade around the world. When they find themselves in a situation in which their vessels are going through the Gulf of Aden and therefore are targeted, we are obliged to provide them with a solution to that.

The marine market responds to the sue and labour requirements within the existing coverage, and the mechanism is that if a ship owner who has a 12-month policy finds that one of his vessels is going through the Gulf, we are obliged to continue and provide coverage for him. We just have the option to negotiate a premium.

**Mark Brownrigg:** You have received a general memorandum from us, and all I would say in my opener is that this is an extremely important issue for us as an industry, for seafarers and for world trade. I am delighted now to move to questions.

**Q2 Chair:** Thank you, Mark. You have pre-empted the first question, which is just how important do you think this is. Is it a major issue for the shipping industry or is it just an increase of the cost of doing business?

**Mark Brownrigg:** This is a major issue for the world economy. The current estimate for the financial impact on the world economy is at least \$7 billion. The figure could be higher than that depending on how you look at it. There is a breakdown of that, which I can pass on. Similarly, for world trade, some 23,000 ships move through the high-risk area across the north of the Indian Ocean and that rises to about 28,000 if you look at the Indian Ocean across the piece during the year. For the world economy and world trade, it is highly significant. Is it important for individual companies? That will depend on the circumstances of the trade and the individual company. It will depend, obviously, on whether they are unfortunate enough to

be the target of an incident or a hijacking. It is very difficult to pinpoint that in an individual context. All one can say is that it has become part of the economic picture with which companies have to deal as a natural matter, but it brings with it huge uncertainties and huge risk factors.

**Q3 Chair:** Mark, has it resulted in any change of practice?

**Mark Brownrigg:** Significantly, yes. You will be aware of the best management practices. Those have come in in the past four years or so and have been the subject of several iterations. If you have any sense whatever, you do not enter the Indian Ocean without having taken account of a whole range of things—to make your ship safer and to review your voyage planning and your company approach. It has changed practices in the way in which the shipping companies and individual ships report and maintain links with Government authorities and naval units in the area.

**Q4 Chair:** How are you engaging with stakeholders in this? As a result of those concerns, who are you talking to and who are you asking for help from?

**Mark Brownrigg:** We have two forms of engagement, one is direct in a UK context and another is broader in the international context. Obviously, the whole of the international industry is extremely concerned about this. From the UK viewpoint—the UK has been one of the leaders in all of this—the industry has had close contact with the FCO, the MOD, the Navy, the Department for Transport and all relevant Government engagements here. It has had very close contact also with the European Union Naval Force, the EUNAVFOR, which is led in this country and is responsible for pulling together the military effort from Europe to try to restrict piracy operations.

**Q5 Chair:** There is a sense that industry should be playing its part here, and there is this business of registering with the monitoring centres to ascertain that vessels are following the best management practice. To what extent is that actually happening? Are members of your industry getting involved, registering and engaging in best management practice?

**Mark Brownrigg:** My members are British-based companies, but the principles are adopted by the international industry associations, including the International Chamber of Shipping, which has members in about 45 countries. You may know that there is a regular review by the EUNAVFOR office of whether individual ships are complying with the best management practices recommended. In the UK, we know of very few, if any, situations where the best management practices are not being applied. That is our sense, and that has been borne out in the regular reviews.

More widely, across the international industry, I would say that all responsible shipping companies entering the Indian Ocean, and particularly that northern corridor, know the situation, but there will unfortunately be a proportion of the world fleet entering that area that is not fulfilling that role, and it should be. That may be as much as 20% or 25%.

**Q6 Chair:** Is there any reason why they are not? As I understand it, if you comply with best practice, you have a better chance of getting through unscathed.

**Mark Brownrigg:** That is absolutely our understanding and is borne out by the advice we have received from the military, and I have no doubt you will receive that again later today. It is a matter of differing levels of the market. People at the lower end are going to be less likely to be there. We hope it is a small amount. As part of the international industry, we are doing everything we can to spread the message about the vital importance of complying with the best management practices. We have been reviewing those and producing new editions on a regular basis across the international associations. We attribute vital importance to compliance with those.

**Q7 Mr Ainsworth:** First, Mr Brownrigg, can we talk about the costs of piracy? First, there are the human costs. Will you give the Committee an idea of the scope, the numbers of people involved, the kind of conditions in which they are left and the type of length of their period of captivity?

**Mark Brownrigg:** The last report I saw said that there were 440 seafarer hostages.

**Mr Ainsworth:** Presently?

**Mark Brownrigg:** Presently.

**Q8 Mr Ainsworth:** So right now there are 440.

**Mark Brownrigg:** As of the end of last week, in the report I saw. That will include a number who are from the fishing communities and local seafarers. Of the deep-sea seafarers there are 318—that is what stands out. There are 20 ships being held at the moment. If I separate out the deep-sea, the commercial and the others, 14 ships are being held, according to that report last week.

The conditions in the early days were much more benign than they are now. There is clear evidence over the past year of an increase in mistreatment, even torture, in the way in which some hostages are kept. I cannot say what proportion that is. People can be held for quite lengthy periods, up to eight or nine months, or possibly longer. Equally, some will be shorter. It is difficult to generalise. That is the picture.

**Q9 Mr Ainsworth:** Do you think the treatment of the hostages is just a disregard for humanity, or part of a negotiating tactic, or that the conditions are actually getting worse?

**Mark Brownrigg:** It has probably shifted over the period of the problem. In the early days, one was able to say that there had been very few deaths—there still have been—but there was little harm to hostages, other than the fact of being hostage, and I do not underestimate that at all. We work closely with the unions on all of that, too. You could say that they were broadly, given the difference of circumstances, not badly treated. That does not mean they were well treated. There has been a radical shift, as we perceive it, over the past year. An increasing degree of international criminality has entered into the scene, whereby this is now quite a good business model for a certain criminal element. That has brought with it sourcing, possibly from outside the fishing community



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22 June 2011 Andrew Voke and Mark Brownrigg OBE

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and more from urban areas, but we have seen substantial worsening of the situation that you are highlighting.

**Q10 Mr Ainsworth:** What about the monetary costs? How much is this costing the shipping industry and where do those costs come from? Are they overwhelmingly from insurance premiums?

**Mark Brownrigg:** The costs I gave a moment ago break down into insurance premiums, rerouting ships and purchasing security equipment—the cost of naval forces is of course not a cost to the industry—and there are costs to the regional economies as well. Those are the major elements.

On the costs to a shipping company, I think you are going to have more expertise than mine on the hostage context later today, but a range of ransoms have been paid to seek release, the upper limits of which have been up to between \$9 million and \$10 million, I think, and the costs have been much less than that at the lower end. The human cost is almost impossible to identify. One can try to mitigate it and prepare people for the risks—one of course seeks to mitigate the risks. You have to put into perspective what proportion are attacked and what proportion are held. In the industry context, if you take a ship out of service for a day, charter hire and all sorts of knock-on implications put the costs extremely high pretty quickly, which emphasises all the more the importance of pre-emptive actions.

**Q11 Mr Ainsworth:** Mr Voke, how much money is the insurance industry making out of the problem?

**Andrew Voke:** A guess at the war premiums generated specifically by it would probably be about \$120 million to the London market, which is significantly less than the amount going out at the moment. If you are then asking, why we are providing coverage for it, it is because we are providing coverage to our existing client base, with whom we have a far-reaching and long-term relationship because we see the rest of their business. A number of underwriters have attempted to stop providing the coverage, and will be happy then to pass it on to another market, because the premiums generated are at the moment inadequate, and even if they are constantly readdressed and recalculated, the problem is worsening almost at a pace that you can't keep up with.

To put it in perspective, when the underwriters are presented with a vessel going into the region, they will take into consideration the safety measures—whether there is security, whether it is compliant with BMP and what the ship owner has done to mitigate the loss—and it will be priced accordingly. The absolute ceiling for the worse risk would be about 0.1% of the vessel value, so a \$60 million vessel would have a premium of \$60,000—that is the absolute ceiling. A much more realistic price for insurers would be something like half or 30% of that. They are not big premiums because we are reflecting our existing relationships and portfolios of business from those clients.

**Q12 Mr Ainsworth:** The Lloyds Market Association has joined the Save our Seafarers campaign, yet you

tell the Committee that you cannot answer policy questions on British jurisdiction and what is appropriate now.

**Andrew Voke:** Personally, whilst we are supportive of it, I do not really have detailed enough knowledge. Mr Roberts could, if you wanted him to, say a few words and give much more comment on it.

**Q13 Mr Ainsworth:** Do you feel that the British Government are doing what they should? Should they do more? What's your position on that? Do you think we should prosecute pirates in the UK?

**Andrew Voke:** You are asking the LMA, which is the association for the marine market, for its view on a specific issue on which I imagine there would be a breadth of views among the membership to start with, and realistically the LMA relates to the insurance element in the environment in which our ship owners find themselves. On one hand, we all welcome any steps taken to make the situation in the environment much safer and to prevent loss of life, but we respond to the ship owners' issues—from the point of view that we will get multiple requests from multijurisdictional ownerships to provide insurance for them.

**Mr Ainsworth:** But it is the LMA itself that joined the campaign—

**Andrew Voke:** Yes, but the LMA is welcome.

**Mark Brownrigg:** Can I help? The UK Chamber is also a subscriber to that campaign and, indeed, the International Chamber was one of its founding members, so maybe that can help. Many of the calls that the Save our Seafarers campaign is making coincide with those that we would make at national level, too. It starts with strong military action against motherships to prevent the spread of this problem away from Somalia and the recognised corridor. It certainly lays emphasis, as you implied a moment ago, on the importance of the right jurisdictional extent and prosecution and ensuring that people who have clearly committed crimes are not then released.

**Q14 Mr Ainsworth:** I read your brief. I just wondered why the LMA could not comment on that and then decided to join the campaign. That confused me. I am just wondering to what extent the insurance industry is part of the problem and to what extent it is part of the solution. That is what I am trying to understand.

**Andrew Voke:** First, Mr Roberts has just reminded me that, while we are supportive of any loss mitigation, we have not joined the campaign, because it relates to crew and Lloyds covers physical damage hull and physical damage cargo. Crew is therefore not generally part of the insurance product or the protections that we offer.

Having said that, however, we were, for instance, involved in the drafting and constant upgrading of BMP, so the LMA made some suggestions and incorporated some suggestions into BMP to give its input.

**Q15 Chair:** Do you vary premiums following implementation of BMP?

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22 June 2011 Andrew Voke and Mark Brownrigg OBE

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**Andrew Voke:** Yes. Premiums are evaluated on the risk, and a BMP-compliant ship owner is a better risk than a non-compliant ship owner.

**Q16 Sir John Stanley:** Mr Brownrigg, obviously I do not have the figures that you referred to, which you said you had last week, but I do have figures that have been produced for me by the House of Commons Library, which have essentially been derived from the published figures of the International Maritime Organisation. They appear to show that, in terms of the total number of ships being held and the total number of people being held hostage, the levels are nearly at an all-time peak. If that is the case—perhaps you can confirm whether you agree with that—does that not demonstrate that the international action that has been taken so far has been insufficient overall? Does it not demonstrate that, so far, the pirates are effectively winning?

**Mark Brownrigg:** Far be it from me to quote the IMO back to you, but at the Maritime Safety Committee in May, which as it so happens was looking precisely at the armed guards issue, the opening statement of the secretary-general said that there were 27 ships with a total of 574 seafarers being held hostage. That said, the numbers have been significantly higher before. Frankly, this is a bit cyclical. It partly depends on the weather—I do not think that it is that now—but different things have an impact. I am cautious about getting into a figures game.

If you ask me whether the military contribution made a difference, the answer is emphatically yes. The fact is that, for a substantial period, that main corridor through the Gulf of Aden has been a far safer or less hostile place. It is still a risk, but it is a far less hostile place since the group transit system was established through that corridor. From the industry, both UK and international, we would say that that has most emphatically made a difference. In a way, the fact that the incidents have been pushed out around the edge of the Indian Ocean and, when the motherships are out there, across the centre, too, demonstrates that a little.

**Q17 Sir John Stanley:** Yes, but that is precisely my point. We all know that there has been an impact in the Gulf of Aden checkpoint, if you can put it like that. However, this is like trying to squash a mattress flat; it has actually gone up elsewhere and there has been a huge extension in the range of the operation of the pirates, almost right across the Indian Ocean. There is now an issue about whether that is being copycatted off the West African coast, too. The greater the degree of success that is seen, unfortunately, the more that will encourage other groups to try to do the same thing elsewhere in the worldwide shipping lanes.

**Mark Brownrigg:** I don't disagree with anything you have said, though West Africa has seen its version of this for many decades longer than this, in a way. It is a slightly different variant, but you are quite right that there is that danger. Equally, just because the bubble comes up elsewhere on the mattress doesn't mean that you do not try to make the mattress flat. The more you can contain it back towards Somalia, which is why I laid emphasis a moment ago on ensuring that the motherships' threat is removed, the better. That

then brings into question all sorts of thoughts, such as rules of engagement and the degree of commitment to actually removing the threat. Of course, at this point, we know that other risks come into play and that there are human dimensions to those risks, too. I am glad to say that our thinking—I think—is very much along the same lines as our UK unions and the international unions, which is that the mothership situation was beyond the point where you could just ignore it and hope that it would go away. So, if your question was leading to whether we should just give up on this and go away—

**Q18 Sir John Stanley:** Quite the reverse; absolutely not. I am seriously questioning whether we are doing anything like enough and in the right way.

**Mark Brownrigg:** I would say that we would welcome more attention. We are very conscious at this time particularly, but even beforehand, of the question of resources that are available for this. We are very conscious of the stretch that currently applies to our forces abroad, and that these sorts of pressures are felt at home as well. However, we believe that it will be in our direct interest and that of world trade to spare as much as we can to address this issue. As I indicated at the beginning, this is a major route for world trade. If you think of its positioning in terms of energy imports and energy supplies for the world, alone, that is evident, but it is also on the thoroughfare for manufactured goods, both East and West.

**Q19 Chair:** Have you considered rerouting?

**Mark Brownrigg:** You can reroute, and absolutely, anyone entering is invited and recommended to consider their voyage planning. To the degree that the threat has spread through the Indian Ocean, rerouting still has significant risks attached to it, and of course, the costs are huge. The diversion of a large container ship via the Cape, for example, which is the only sensible way unless you are going to go all the way around the other way, costs somewhere between \$185,000 and \$300,000.

**Q20 Mr Watts:** Part of the problem with giving in to ransom demands is that they often lead to further ransom demands and encourage people to do what you don't want them to. It seems that the amount of ransom has dramatically increased in recent years. Do insurance companies talk to each other about the level of ransom that they are prepared to pay?

**Andrew Voke:** It is important to understand that insurers indemnify the ship owner, as I said, under the sue and labour clause. It is not just the hull insurers; ultimately, the cargo insurers have an interest in the venture, too, because it will be treated as a general average. To that extent, we have no direct involvement in the negotiations at all. We are very much a second party and when a negotiation is completed, we will be indemnifying the amount of payment, but not the cost of the negotiation or the cost of the people who go and physically move the ransom demand, and so on. There is discussion among insurers, because a number of insurers are involved in each risk, and therefore there is constant cross-fertilisation in terms of who is involved; but we are not the front line for negotiating.

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**Q21 Mr Watts:** Who is doing the negotiation?

**Andrew Voke:** I think that is probably a better question for you to answer, Mark; who negotiates on your behalf?

**Mark Brownrigg:** It is individual companies and their legal representatives.

**Q22 Mr Watts:** Is it your view then that perhaps it would be better if there was more co-ordination between the insurance companies and the owners?

**Andrew Voke:** Are you suggesting we put a ceiling on—

**Q23 Mr Watts:** I am merely suggesting you talk to each other about the problems and come to some conclusions, because it seems to me that the likelihood, unless you do that, is that the ransom price is going to be jacked up continually. It looks, by the figures that we have seen, as if that is exactly what is happening.

**Mark Brownrigg:** I think it is a little more complicated than that. We are working with the insurance sector and others, as you have heard, in the development of preventive measures, and in monitoring the increase, if you like, or stages of development of the problem. We are certainly open to those sorts of discussions and interchanges, as necessary, but at the moment I think it is very much on an individual company-to-company basis. There is no collective engagement, which is where I come from on behalf of the UK shipping industry.

**Q24 Mr Watts:** Is torture and violence a tactic that is used by the pirates to secure the ransom that they are seeking? That was an earlier question you touched on; I just wondered if you could go a bit further and give us some indication. In recent years is there evidence that violence or torture is being used to jack up the price or to make it more likely that they would succeed in their ransom demands?

**Mark Brownrigg:** I could not answer that with certainty. It would seem a logical conclusion to draw. As I said earlier on, we perceive this as part of an increasing degree of criminality, as opposed to desperation, if you like, in the piracy problem, and of course within that treatment, or maltreatment, is included separation of crews, division of crews and even keeping some on shore and some at sea. So it is a serious problem from a humanitarian view point, both for the seafarers and their families behind them.

**Q25 Mr Watts:** Do the insurance companies keep information about the way that, perhaps, some of the crews are being treated as a secret? Is there any sort of agreement about what information will come out to the general public about the treatment of crews?

**Mark Brownrigg:** Not from our view point.

**Andrew Voke:** As I was saying, we are after the event. The ship owner will of course make it known to his insurers that his vessel has been seized, and at that point the ship owner's representative will be negotiating. As to those charged with the negotiation, there are a few people being used quite extensively, so therefore they are aggressive negotiators, and they are completely aware of the levels of past payments.

Once the negotiation has been concluded, under the terms of the policy we are then obliged to make good the costs, because we will receive back the vessel and the cargo, and it is then split between the two; but specific details of the seizure and the crew conditions are not something we are privy to. We are simply advised by the ship owner "I have my vessel under seizure, and this is who has been appointed to negotiate on our behalf". As I said, equally, we do not fully indemnify the ship owner. We will pay for the actual costs of the ransom, but the negotiation costs and delivery costs are not for our account, because that is not strictly under policy terms.

**Q26 Mr Watts:** Who will bear the cost that is not being paid by your insurance? Will it be paid by another insurance company or the ship owner?

**Andrew Voke:** There are two possibilities: either the ship owner, or, if the ship owner has sought separate coverage for that under a traditional kidnap and ransom policy, that would respond to costs.

**Q27 Mr Watts:** What is the norm?

**Andrew Voke:** I would say up to this point, it is more likely the ship owner. Again, we would not necessarily know what is happening to the costs that are not presented to us. Sometimes, we would be the beneficiary of some other insurance that would sit in front of us, but generally, we would not know about that.

**Q28 Chair:** How involved are the insurance companies in negotiating ransoms, or is that contracted out?

**Andrew Voke:** It sits with the ship owner. It is his responsibility to his crew. We will be kept abreast of what is going on. There will be some discussion on quantum as the negotiation goes on.

**Q29 Chair:** If one of Mr Brownrigg's members says, "I can get the ship out for £5 million", do you say, "Sorry, that is too high", and offer them £3 million?

**Andrew Voke:** In all cases, I think that the negotiators have a strong sense of where the price will end up.

**Q30 Chair:** There is a going rate now, isn't there?

**Andrew Voke:** Yes, the going rate for the day.

**Q31 Rory Stewart:** I am a bit perplexed by this, because I am very new to the subject. It seems astonishing that so little progress is being made. As long ago as October 2008 the British commander in the region was calling for armed security guards. We are nearly three years on and nothing seems to have happened.

Looking at a situation like this, when you see so little progress being made, it is very easy to become cynical and think that none of the major players is that serious about it, because the ship owners think that it is a cost they can bear, most of the victims are third-world nationals, the insurers may not be making a profit, but they are probably not making such a loss that it is worrying them, and the pirates are having a good time. Structurally, where is the will in all this, from the

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industry or from governments, for anyone to really grip it?

**Mark Brownrigg:** Most of what you just said does not affect people who have managed to pre-empt. The armed guards issue, if that is where you are starting and what you would like us to address, was mooted some long time ago, quite early on, when people were not ready to go there, for a whole load of good reasons. Some of those reasons would be the fear of escalation of the level of violence. I mentioned earlier that, in the early days, the violence was less strong. The suggestion in the early days, and still now, was that a far higher headcount of an armed guard team is required than is often put on. You may see three or four people as part of a team, whereas the military would advise that that needs to be 12 to 14 to make a ship generally safe.

**Q32 Rory Stewart:** Can I interrupt? Is it not true that, so far, there have been no successful attacks against ships carrying proper private security companies? That argument on numbers is a bit misleading.

**Mark Brownrigg:** It would be wrong of me to try to be absolute in my response to you. I did know of one case where the unarmed guards jumped off the ship. It is difficult to know what the true position is. It is clear that in many cases where armed guards have been seen—in some cases on flags that would not hesitate to use military force directly anyway—attacks have not happened.

All I can say is that there are a number of points of confusion in the armed guard process, which have caused people to take their time in reaching that decision, not least of which is the fact that one has seen examples of companies taking armed guards and then not following the best management principles, because they feel they are safe, because they have armed guards. There are also questions of command and control between the armed guards and the master of the ship and in the interface between the military and a ship with armed guards during an incident. All of that is the backdrop that underlies the hesitation to address this.

The seafarers are with us on that. They were worried about shooting matches on ships where the cargo is often not suited to heavy shooting matches around it, frankly. We accept at this stage that a number of companies believe it to be in their best interests. It is not a majority, but a number believe it to be in their best interests and offer their crews active security protection. We accept that. For that reason, the Chamber has shifted on that. We are now taking the line that we know it is unlawful to carry private armed guards. Let me say from the start that we would far prefer to have military guards. We would far prefer to have vessel protection detachments within the military. Clearly, resources are not going to allow that to happen.

**Q33 Chair:** Members of the Army?

**Mark Brownrigg:** Members of the Army, Navy or the Marines, or whatever it is, within the military family. We now are calling for UK law to allow their carriage under defined circumstances. We believe that if armed

guards are to be carried, they need to be properly trained and accredited. That prompts the question of standards. We believe that their use should be subject to exceptional permission or exemption from the current debar for defined periods and under defined circumstances. If you are a regular trader through the corridor, for example, you might get an exemption or licence for a year. If you are very occasional, you would have to get it on a more voyage-related basis. We have shifted to acknowledge that reality, and we believe that is a way forward.

Finally on that, even if you armed every ship perfectly, it is not our judgment that that would resolve the issue. It may provide a short-term disincentive, but if you found an escalation in terms of armaments on board pirate ships, you would get into all sorts of difficulties for the future. We believe, therefore, that arming is not a panacea in itself. You need, above all, a combination of preventive measures: military support in the areas where it is to achieve the success that we believe has been achieved with fairly limited resources, and an acknowledgement of the need in a number of circumstances for armed private security. That is where we have come to in our approach.

**Q34 Rory Stewart:** Two things about that story are a bit surprising. One is why it took so long for you to reach that conclusion. If the problem is very serious, the arguments you made against armed guards—such as problems of co-ordination, command and control, and escalation—would not seem to be overwhelming. Indeed, you have decided, three years later, that they are not, and, therefore you have changed your policy. Why did it take so long?

**Mark Brownrigg:** That assumes that the issue facing piracy has been static. There has been significant intensification in the past year: the spread, the increase in violence and so on. I do not think it is unnatural to have allowed other people's policies to have developed in response to what they perceive is a more dangerous situation. We are adamant that, even where companies choose that this is the right thing to do, the best management practices are still the best means of avoiding hijack and attack. Best management practices are absolutely at the top of the list of preventive and avoidance measures. Armed guards come lower down, but they are increasingly being considered as an important element in the package.

**Q35 Rory Stewart:** Is there any danger of your members deciding not to sail under a UK flag, because they are anxious about the UK's restrictions on the use of armed guards, and they wish to sail under other countries' flags that give them more freedom of movement?

**Mark Brownrigg:** We in the UK have been very fortunate; we have had various attacks or threats but very few actual hijacks. We have not to my knowledge had people leave the flag for that reason, which I think was your direct question.

**Q36 Rory Stewart:** Given that the UK has had relatively few attacks on its own flag vessels and that

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relatively few UK nationals have been taken, why should the UK be in the lead on the issue?

**Mark Brownrigg:** Okay, fair question. I would go back to the pre-emptive approach that we have adopted, which is very important. I do not wish to come across as complacent. We are not complacent; this is a serious issue that faces our members and other members and crews on a regular basis. We have given significant attention to it in the industry over the past three years and put significant manpower and resource into engaging from the preventive viewpoint to begin with. That has been our approach, but there are points where only the military or only a military engagement can achieve success. We have seen success in the corridor; if there is enough commitment and engagement, we could see success again on the motherships front. That is where we stand.

**Q37 Mike Gapes:** I want to take up your point about your preference for the military rather than private guards. Given your earlier remarks about the complications of flags and, presumably, crews of different nationalities and so on, is there an issue here about which military and which state would necessarily be engaged? Have you given any consideration to certain states being prepared to provide military even if they were not the actual flag carrier, because they had goods on the vessel that might be in their national interest?

**Mark Brownrigg:** What we would wish to have is an arrangement that was satisfactory and comfortable for the UK Government in terms of endorsement of military action on board a commercial unit. That is what we are talking about at the end of the day, and it is a preference. It is not necessarily a preference that we think is going to run. We would prefer to have British, of course, and the industry has expressed itself as willing to pay for that in different ways.

**Q38 Mike Gapes:** If the British Government were not prepared to do that, but another state was, because

something was being carried that it regarded as in its vital national interest, would you be prepared to consider that?

**Q39 Chair:** A variation on that question: would that owner change the flag in order to permit that to happen?

**Mark Brownrigg:** That would be an individual company decision, but I know that one or two other European countries have made military available. France has.

**Q40 Mike Gapes:** But only to their own vessels.

**Mark Brownrigg:** Well, this is the point. I do not have a direct answer to that at this point.

**Mike Gapes:** Okay.

**Q41 Chair:** Does the use of guards affect insurance premiums?

**Andrew Voke:** Absolutely. There is a growing industry of private contractors. Unfortunately, there is no kitemark to tell us who is good and bad, but, as insurers, there is a credit for using armed guards on your vessel. At a guess, on foreign business, where it is permissible, probably 25% of vessels have armed guards, but of course there is slightly an adverse selection issue, because the London market would see the bigger, more valuable vessels and more important risks, so those are at a higher premium to be delivered. Yes, it is growing, and there are a lot of private contractors.

**Chair:** Thank you both very much. We are now moving on to the next witness. I feel that we have only just scratched the surface, but that is probably because this is our first session and you are helping us to get into the subject. I am sorry if it has been slightly superficial. Your answers have been very helpful and if we have any more questions, we will probably come back to you in one way or another.

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### Examination of Witness

*Witness:* **Stephen Askins**, Marine Lawyer, Ince & Co, gave evidence.

**Q42 Chair:** I welcome our second witness today, Stephen Askins, who is a partner in the well known marine law firm Ince & Co. Welcome, Mr Askins. You have had the advantage of seeing how these things work. Is there anything you would like to say by way of opening remarks, to put things in context before we get into the questions?

**Stephen Askins:** I have been listening with interest. It is important to understand that this has been an evolving situation and to put it into the commercial context of what has been going on. Back in 2008, when piracy kicked off, the shipping market was at an all-time high. When everything collapsed at the back end of 2008, shipping rates fell 97% in three weeks. What was seen almost as a tariff during the summer of 2008 has fast become a very difficult problem. It is absolutely right to say that we have seen ransoms and the amount of time that vessels are held increase, and

there was some talk with the previous witnesses about mistreatment of crew.

I keep a six-ship rolling average—not very scientific, but it identifies short-term trends. At the beginning of the year, it had reached 250 days, which means that on average the last six ships were being held for 250 days each. That fell during March, which coincided with the pirates telling us that they wanted to free more ships—there were probably 40 ships being held at that time. That has been corroborated by the fact that ships have been released and the rolling average has dropped to about 150 days. It reached a low of about 109 days a couple of months ago, but vessels are still being held. One in particular, the Iceberg, has been held for 15 months, and others have been held for eight, nine or 10 months, but we have seen a downward trend, where the ships captured this year have been released more quickly.

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There is no doubt at all that there is a corollary between the time spent there and the amount you pay. If you want to get your ship out more quickly, there is a premium to pay, and there is a very good reason for that: at the end of the day, they are assets that earn a significant amount of money a day, so their staying there costs money. A ship owner can make a pragmatic choice about how much he wants to pay to free his ship and crew more quickly.

It is interesting that there have been more reports of mistreatment of crew at a time when the duration of hijackings has increased. We are involved at the coal face—we advise owners in hijackings and interview the crews afterwards—and in my experience, which is not universal, you are more likely to see torture and really serious mistreatment of crew in a long hijacking, whereas that is not the case in a short hijacking. I just thought I would mention that to pick up on what the previous witnesses said.

**Q43 Chair:** That is useful background information. Would you consider yourself an expert on the UN Convention on the Law of the Sea?

**Stephen Askins:** Sitting in the same room as Mr Douglas Guilfoyle? Absolutely not.

**Q44 Chair:** He suggested I ask you a question about it.

**Stephen Askins:** I obviously know my way round the applicable UN treaties and the various international law as a background, but I am a commercial lawyer and am very much involved in dealing with the very real practical problems.

**Q45 Chair:** Let me try this on you: do you feel that the Navy is using its powers under the convention to the full?

**Stephen Askins:** The whole business of catch and release—the fact that we are failing to prosecute and incarcerate pirates—is a very serious part of the problem. We on the commercial side deal with reward—we can control the ransoms. Risk, I'm afraid, is down to the politicians and their military.

I was struck by a UN report issued last July that said that 600 pirates had been caught and released in the first six months of last year—that must now be at least 1,300 or 1,400 pirates. When we interview crew, they tell us stories of pirates who have been held by the military and simply released, and are still free to carry out acts of piracy. If it is right that there are only about 3,000 or 3,500 pirates out there and in the past 15 months there have been 1,500 on warships at some time, it seems extraordinary that we are not prosecuting them properly.

I am afraid that we see it as either coming down to not enough domestic law in place to prosecute, or a lack of political will to follow through. I am not sure we can blame the Navy—it must respond to the mandate given by politicians—but something is not quite right in terms of our not being able to prosecute and incarcerate pirates.

**Chair:** That is what our inquiry is about, to try to get to the bottom of that.

**Q46 Andrew Rosindell:** Mr Askins, how do you feel the FCO is performing in dealing with this increasing problem? Does the FCO have sufficient contact with the owners of ships with British interests? Is it there to deal with a situation effectively when an emergency occurs? In your assessment, how effective is its performance in dealing with this problem?

**Stephen Askins:** I have not been involved in the hijacking of a UK-flagged vessel where direct contact with the FCO may have occurred. I have had indirect contact with the FCO about hijackings, in particular in the context of ransom drops. We had a recent incident when we had a large ransom sitting on a runway in a country, when that country was looking for political top cover. Our understanding was that they made a reference back to the FCO and asked for support from the UK Government on what they saw as a humanitarian exercise.

There is a bit of inconsistency: paying a ransom is legal under English law, yet the understandable stance of the Government is that they do not condone the payment of ransoms. Therefore, sometimes the message that goes out to other countries does complicate—or can, in the context I had—the delivery of a ransom. The inevitable consequence is that it costs more, because we have to start again, and the crew end up spending more time stuck on the ship.

I do not have direct experience of dealing with the FCO. In fact, much of this happens below Government level. It is dealt with—and allowed to be dealt with—by commercial interests.

**Q47 Andrew Rosindell:** Do you feel the policy of not condoning the payment of ransom is the right one, either from a moral perspective or in commercial interests?

**Stephen Askins:** Actually, I do. From a moral point of view, we understand all the arguments about the payment of ransoms. Goodness me, we would much rather they were not being paid, but the reality of the situation is that there is no other way to secure the release of the crews. There is certainly no appetite for wholesale military action against 25 ships held off the coast of Somalia. We therefore have to go past the moral consequences, engage with the pirates and pay them a ransom.

**Q48 Andrew Rosindell:** Do you feel that other countries handle such situations better than we do? Which countries would you give as examples of handling it better?

**Stephen Askins:** No. When a hijacking takes place, it is down to the owner. You will have interference from governments, agencies or police forces, depending on the country you are in. In some countries, the police will take a greater lead. Certainly, the consular support of the countries where the crew are from will want to know that the negotiation process is being handled properly. Generally in our experience, when they learn that it is being handled properly, they will back off and allow that process to continue to its end.

Different countries have different political pressures. With some countries it is more difficult because an opposition party will seize on the plight of a crew and use that for political means, which gives rise to

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various pressures. In a commercial sense, we would rather there was minimum government involvement in the negotiation process. They can help where help is called for, but generally we get it, we understand it, we have a process and, on a commercial level, it works.

**Q49 Andrew Rosindell:** How about raiding ships that have been hijacked? Is that a policy you would like our Government to pursue?

**Stephen Askins:** I am an ex-Royal Marine, so my heart and head sometimes clash on these matters. The Citadel procedure works well; and that is catered for in best management practice. Where you have a ship where the crew are known to have locked down and have good communications with the warships, and there is an understanding of what's going on, in those cases there have been some very successful rescues of ships, and that works very well. There is a danger, though, that that is seen as a policy by ship owners to do it in circumstances where it is not very sensible, where there is no military support or help.

In terms of raiding a vessel, with hostages in harm's way, I have seen that on the Samho Jewelry, where the captain was hurt. We had the incident on the Tanit, the recent incident on the Quest, and there was the Beluga Nomination. People have talked about the number of deaths caused during those hijackings, but a significant number have been caused as a direct result of military action, so if we are going to get involved in military action, you have to expect that there will be casualties. If you are sensible, you can get a ship out in 70 or 80 days, with no one hurt, and people would much prefer that.

**Q50 Mr Ainsworth:** You have suggested to the Committee almost that there is a solution to this, which is that there is a finite number of pirates—3,000—and that we can prosecute our way out of it. Can we just explore that, because I think it is enormously important? Somalia is in a state of chaos and it has been for 20-odd years. People are completely desperate. We have a trail of illegal immigration from Somalia into this country, where people are prepared to pay thousands and thousands of pounds to get here. Do you seriously think that prosecution in such circumstances, in a western country, is a deterrent and that it is the line that we ought to be pursuing?

**Stephen Askins:** I think if we had done that two years ago, when the number of pirates was very small, it may have been a sensible way forward.

**Q51 Mr Ainsworth:** The numbers of potential illegal immigrants or asylum seekers were not small two years ago. They were every bit as big as they are now.

**Stephen Askins:** I am certainly not going to get into a debate about immigration into the country, but I can see that if I were a young Somali pirate, spending five years in a Dutch prison and then claiming asylum in Rotterdam is probably a much better option than trying to live in downtown Harardhere or Hobyo. I understand that. If you are asking for my personal opinion, in terms of catch and release, I think that it

is significant that the UK has not prosecuted a single pirate in the last three years.

**Q52 Mr Ainsworth:** As a matter of policy?

**Stephen Askins:** I don't know whether it is a matter of policy or a matter of law, but it hasn't happened.

**Q53 Mr Ainsworth:** But you think we should?

**Stephen Askins:** Yes, I do actually. I think that countries should play their part in prosecuting pirates, because there is very little risk otherwise to the pirates. As I say, my concern is that it may be two years too late, because there are so many of them and it has become so lucrative that there are more young men who are willing to do it. However, I can fully see the problems. A prosecution is one thing, but I can see that incarceration is another. I have read the reports by the United Nations on the difficulties that are faced. I can afford the luxury of sitting here, thinking—

**Q54 Mr Ainsworth:** You'd advocate it in any case?

**Stephen Askins:** Yes, that's right.

**Q55 Chair:** Is there an international option? Should we be setting up an equivalent of the International Criminal Court for piracy?

**Stephen Askins:** In my personal opinion, no, we shouldn't.

**Q56 Chair:** Why not?

**Stephen Askins:** I'm not sure that every country would sign up to it, and I'm not sure which sort of model you would follow if you set up an international court. I know that there are precedents, which we can all point to, but generally they are about prosecuting senior people and leaders.

**Q57 Chair:** I'm not saying that it should be the ICC, but using the ICC model. The people of Oman should not take this as a serious suggestion, but say we rented a chunk of coastline on Oman and set up a court there to try people and a detention centre—is that workable?

**Stephen Askins:** It may be, as long as it can be done quickly.

**Chair:** There seem to be jurisdiction problems in Kenya.

**Stephen Askins:** Yes. Jurisdiction is one of the difficulties, isn't it?

**Q58 Mr Watts:** I am surprised by what appears to be the lack of co-ordination among insurance companies, shipping companies, and governments on this issue. Is it fair to say that there does not seem to be any serious attempt to bring those groups, who all have a vested interest in resolving this problem, together? Secondly, this might be a ridiculous suggestion, but is there any thought about convoy systems for actually getting ships through the most dangerous parts? Perhaps ships could travel together in convoy, rather than in isolation. Is that feasible?

**Stephen Askins:** I'll start with that question first, because it is easier to answer. I am sure that General Howes will explain this later, but there is a convoy system in the Gulf of Aden. There are two areas: the

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Gulf of Aden, which is quite benign at the moment, and the problem area of the Arabian Sea up towards the Straits of Hormuz. Pirates have clearly identified tankers as lucrative targets. There is a group transit scheme through the internationally recognised corridor, which is a zonal marking system, which allows ships of the same speed to go through in groups. There are also national convoys being run by the Chinese and the Russians. There is a convoy going through probably every day or every other day at least, both East-West and West-East. Ships are availing themselves of that. It ends at the end of the Gulf of Aden. We were involved in a case the other day where a ship came out of the convoy and was hijacked two days later. You still have the bigger problem.

I listened to the comments made about co-ordination. There is an enormous amount of co-ordination among the stakeholders. I gave you a diagram of the stakeholders earlier. There is a great degree of co-operation among the commercial stakeholders in trying to resolve this. It could be better, but in terms of co-ordination with the Government, I am not sure what else we would need from the Government to be able to do what we have to do in negotiating the release of a vessel.

Clearly, there are campaigns such as Save our Seafarers, and industry bodies imploring governments and navies to do more, but in terms of direct co-ordination between the Government and commercial interests, as I have said, we have been doing this long since the international community woke up to what was going on and I am not totally sure what co-ordination you think there would need to be between the companies and the Government that is not already there.

**Q59 Mr Watts:** Perhaps, for example, on ransom levels. It seems that they are going up. Why are they going up? It appears to me that one company is paying more than another company. Whatever is the highest rate becomes the going rate.

**Stephen Askins:** I remember writing an article about a year ago, which asked, "How high will they go?" To some extent, it is what is in the pirates' imagination. It is like being in a housing boom where your estate agent adds on money for the next house in the street that he is selling. It sometimes feels very like that. There are various factors that come into play, for example, the nationality of the crew, the nationality of the owners—anything with a US flavour will attract a greater premium and a European crew will attract a greater premium—and the size of the ship. If it is a tanker or if the ship has oil on board, those are recognised as high-value assets for which more money will be demanded.

You are absolutely right: in the negotiation process, there are some conflicts between the insurers and the negotiators and the other interests. Ransoms are paid by the property underwriters, which means the underwriters of the hull and of the cargo. Neither of those interests are interested by time. The third-party liability insurers, the P&I clubs, who traditionally insure for loss of life and injury to crew, play no part in the ransom payments at all. That is a deliberate

decision by the international group to do that. One of the questions that the industry should ask is whether we are doing that in the right way and whether there are other ways that we could be doing that. Should we be taking a pragmatic approach to this? The problem is that the ransoms will go up, to which you say that they are going up otherwise.

The really worrying thing, however, is that as this going rate goes up, we might end up with some small, low-value ships that are being left behind, because the demand of the pirate exceeds the value of the ship and the cargo together. In those circumstances, who pays to get the ship out, because the insurers will not pay 100% of the ship's value? They will pay as long as the demand is below the total loss value of the ship and cargo.

**Q60 Mr Baron:** Mr Askins, I will come on to combating piracy by disrupting financial flows, but before I do, I have one final question on this issue. You will accept that the problem is international by nature; surely, therefore, the solution is international as well. Why are you so reticent about greater international co-operation when it comes to the legal answer to this problem? If your figures are correct, and I have no reason to doubt them, we had half the pirates on ships at one stage, yet we release them. It seems as though nobody is willing to grasp the nettle. Unless we have some international aspect to the solution, the problem is going to continue.

**Stephen Askins:** I did not mean to suggest that I disagreed with that. Of course, there has to be an international solution, but that is the international risk part of the equation; I am on the commercial end. Anything that the international community can do to make the problem better, I would be fully behind, if that means some kind of international effort in making it easier to prosecute, but whatever the international effort is, that still has to come down to national law and national governments. I am certainly not suggesting that I do not think there should be an international aspect to this.

**Q61 Mr Baron:** I agree that the will must come from the politicians, but surely there has to be some international legal co-operation? Otherwise, we are all going to be looking at each other, hoping somebody makes the first move.

**Stephen Askins:** I totally agree. That is exactly what the working groups and the IMO are trying to do. The whole debate is geared towards whether we have a court in Brussels or in a real estate in Oman. Or do we just give more financial support to the Seychelles, Kenya and Tanzania and hope they do more prosecuting for us? I totally agree with that, but they do seem to be overwhelmed at the moment.

**Q62 Mr Baron:** There is the matter of tackling the financial flows, trying to disrupt and hurt the pirates where it really hurts them, which is through the ransoms paid and the financial flows. By their nature, pirates are a wily lot. They are changing methods of payments and making various other intriguing efforts to cover their trail. Do you think we are doing enough



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to disrupt these flows? Are international efforts robust enough? It is not an easy task, is it?

**Stephen Askins:** No, it certainly is not. There is a lot of talk about where the money goes. Our view is that of a \$5 million ransom, a percentage will go to the gangs that held the ship; the first guy on board will get a bigger reward. There is always a small group of investors controlling and making decisions, and they could be serious business men or, as we found recently, a 19-year-old with his cousin. Then there is a chunk of money, probably about 30%, that goes into the community. There is a lot of talk about money flowing out into Dubai and Nairobi, but as far as I am aware, apart from the French chasing a ransom ashore after the *Le Ponant*, not one dollar has been recovered from the piracy ransoms. The logical conclusion is that enough cannot be being done. If money is haemorrhaging out into places such as Nairobi and Dubai, that is where the international focus has to be, in trying to disrupt that flow of money, but I think an awful lot of it stays in Somalia.

**Q63 Mr Baron:** The situation is not helped by a worrying recent trend whereby, because the ransoms are going up so much, to a certain extent the operations do not need seed funding; they are becoming self-funding operations. What more should the international community do on that? We have heard reports that the Financial Action Task Force is producing a report, I think due this month, and we know that the US has made one prosecution, I believe; but at the same time, as you say, not one penny or cent has been recovered. That is a pretty poor record, given that the problem has been growing for the best part of three years.

**Stephen Askins:** To be honest, that is not something that I get involved in. You would think that people have got to follow the UK's lead in terms of their own money-laundering legislation. It has to be robust but it has to be robust across the board. If you have a soft centre somewhere, the money will haemorrhage through that soft centre.

**Q64 Mr Baron:** Okay. I accept your brief is limited, but are there any recommendations that you would make on this front? Are there any stones we should be looking under, any corners we should be shining the torchlight on, any shadows that we should be dispelling? Is there anything that we, as a Committee, should be trying to put a spotlight on?

**Stephen Askins:** I would look at the report to see where they think the money is being spent—two reported obvious examples are Kenya and Dubai. I would be shining a torch more strongly on those areas to see what is being done to trace the money.

**Q65 Mike Gapes:** You heard our discussion with the previous witnesses about private security guards. What is your view on that?

**Stephen Askins:** I heard Mr Stewart's comments, too, and he absolutely grasped why the problem is still there. It is part of the evolution. Last year the shipping community felt that things were getting better. The military were spinning some good results, but at the back end of the year—November, December and

January—the number of attacks and hijackings was incredibly high. A pollster tracking the trend would say, I think, that the shipping community felt that the risk of being caught was too great and that they should start putting security guards on ships.

The trend is definitely upwards—I have been to lots more meetings and given lots more advice on armed guards in the past few months than I did in the previous two years—but it remains the case that some very important maritime nations such as Greece, Japan and Germany do not allow weapons on their ships. We have heard Cyprus in the past few days say that it may legislate for that, and there are some real problems, to which I alluded in the letter I sent to you this morning.

Probably over 50% of the armed security is provided by UK nationals or foreign companies run by UK nationals—in other words companies set up abroad to provide maritime security. There is a great pool of people in Poole and Hereford, and places like that. A lot of the maritime security companies are simply people brokers; very few of them have strings of employees on their books. Some do, and some don't, but a lot of them subcontract armed security work on a case-by-case basis. There is a finite number of them. Most of the companies are simply ignoring UK licensing laws. BIS and HMRC are waking up to the fact that a whole host of maritime security operators are shifting a large number of weapons around on any given day and are simply not abiding by UK law to do it. That is the problem. You have a community of ship owners who want armed guards, you have some very professional people who want to provide armed guards, and you have a batch of law in the middle of it, some of which is necessarily robust, that was simply not formulated with such a problem in mind. That is causing all sorts of problems.

**Q66 Mike Gapes:** In the past few years there has been a discussion, and this Committee called for regulation of the private security industry in the context of the large number of companies that were in places such as Iraq. The previous Government decided not to go down the legislative route, but instead to go down a kind of self-regulation route. Is this the same problem, or is it different because it is maritime?

**Stephen Askins:** I think it is exactly the same problem. The industry wants to be able to distinguish between the good and the bad, and the companies want to put blue water between themselves and those they would regard as the cowboy element. We do need that, but I am pleased to say that in the past few months we have seen a nascent trade organisation called the Security Association for the Maritime Industry.

Slowly, a lot of the maritime security companies have got their heads out of the trough and are recognising that, unless they self-regulate, regulation is going to come. Cyprus has given a clear signal that that is the way it wants to go. At the moment, however, it is a very low bar for entry. Companies have to sign up to the Geneva code, the private security companies' code of conduct, and you would hope that they will raise the bar and that we will begin to see some degree of robust vetting of such companies. It is certainly

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something that people need. I think it would be better to be self-regulated, but that is a personal view.

**Q67 Mike Gapes:** We understand that the British Government are reviewing their policy on private armed security on ships. What do you hope will come out of that review?

**Stephen Askins:** I do not know how many UK-flagged vessels are going through the Gulf of Aden and the high-risk areas in the Indian Ocean. At the end of the day, owners can make a decision as to whether they want to have the risk of armed guards on board their ship. If they want them and if there are some competent and professional people around, it seems to me that we should make it easy for them to do that. Allowing them to go on to UK ships is a start, but as I said it is only a small part of the equation. Anything that helps us and helps them to provide a professional service, which is needed and which fills a large gap, is to be encouraged.

**Q68 Mike Gapes:** You mentioned some countries that have strict restrictions on armed personnel on merchant vessels. What is the perception from the pirate's point of view? Do they make calculations based upon the nationality or the flag of a vessel or whether naval forces might be involved as well as private security? Are they that sophisticated in their approach?

**Stephen Askins:** Anecdotally, they have a healthy regard for the Russians and the Chinese—there is no doubt about that. However, I have never been in the camp that believes that they are somehow targeting vessels. It is all very opportunistic. Pirates have managed to attack US and other warships for whatever reason, so there is a degree of lack of sophistication on board the boats and a degree of desperation. They are a long way from help and when they are desperate they will press home an attack on any vessel.

**Q69 Mike Gapes:** Bearing in mind what you said about the Russians and the Chinese, do the pirates also make the calculation that they are more likely to lose their lives in certain contexts as opposed to being taken captive and then released and not prosecuted?

**Stephen Askins:** If pirates got on to a Russian vessel, and it was a citadel situation where the crew were all hidden, and the pirates thought that the Russian navy was coming, they would get off pretty quickly. They cannot read, so there is no suggestion that they are recognising ships or flags or anything like that.

**Q70 Mike Gapes:** Finally, is there any truth in reports that the shipping industry does not accurately or fully report the use of violence and torture by pirates in order to minimise the impact?

**Stephen Askins:** I do not think it is a deliberate policy. You have to put yourself in the mind of a ship owner. When the ship is released, there are two or three days of high tension before it arrives at a port of refuge, and in my experience—we would insist on this—they are met by the owner's representatives. We normally ensure that there is a doctor and a psychologist there. You try to give the crew immediate medical help, and

there is no doubt at all that some of them are in a pretty sorry condition. I do not think, however, that there is a case of an owner deliberately wanting to keep things from the public. By definition, ship owners keep things to themselves and to their chest. They have a reactive policy in terms of media relations in those circumstances—they are not going to go to the press to announce a bad-news story—but I do not think that you should read anything into that, bad or otherwise.

Another point on that is that although everyone focuses on Save our Seafarers, there is also the Maritime Piracy Humanitarian Response Programme, which is backed by all the industry, including the insurers, the international group and EUNAVFOR. That is a very impressive initiative, which aims to give support to the victims of hijackings and their families in the medium and long term.

**Q71 Chair:** You've been digging into this for some years. Have you picked up any anecdotal stories of where the motherships are getting their logistical support from? I am sure that they are not going all the way back to Somalia to refuel, get fruit and veg, repair their engines and get spare parts. Are ports in any other countries providing a haven for these ships?

**Stephen Askins:** I don't think so. When you are a gang and you have caught a big vessel, there is a degree of self-help, so they will send out a commercial vessel to provide fuel to the fishing vessel that is acting as a mothership. The mothership is able to go closer to the shore, and they do bring food and water and goats.

**Q72 Chair:** From Somalia?

**Stephen Askins:** From the shore, yes. I have heard anecdotally that there are people supplying fuel into Mombasa, because there is lots of local trade and people need marine diesel. I am sure that some of that is provided to the pirates.

**Q73 Chair:** They are going cross-country to Somalia from Kenya?

**Stephen Askins:** Or coming out of Mombasa.

**Q74 Chair:** By sea?

**Stephen Askins:** Sorry, I meant Mogadishu, not Mombasa. Mogadishu is still a busy port that needs marine diesel, and there are ships and small boats going in and out of there and trading legitimately up and down the coast. I am sure that they play a part in distributing fuel, but otherwise the pirates are quite capable of taking lubricants from one commercial ship to put it on to another or fuel from one to another. It is a sort of "rob Peter to pay Paul" process.

**Q75 Chair:** There is no way that this can be throttled by international effort?

**Stephen Askins:** I do not know. Given that in every photograph I have seen of a pirate, they have a Yamaha outboard on the back of the vessel, you would have thought that someone is trying to focus on where the boats and the engines are coming from. The bottom line is that a great majority of people still fish legitimately. Pirates probably fish legitimately when

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they are not being pirates, so it is very difficult to then distinguish whether you are attacking them with their pirate hat on or their fisherman hat on.

**Q76 Chair:** May I just take you back to one point that you mentioned? You said that there had been some successful raids. Which country did the successful raiders come from?

**Stephen Askins:** In terms of the military intervention? I am sure that General Howes is more up to speed on

that, but the Dutch on the Taipan; the Russians on the Moscow University; the Koreans on the Samho Jewelry. There have been successful attacks by various nations, but I think that it is probably a question that the General is better able to answer.

**Chair:** Thank you very much indeed. We have kept you from the wealth-creation process, but your taking the time to come to see us was very much appreciated.

**Stephen Askins:** My pleasure. Thank you.

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### Examination of Witness

*Witness:* **Major General Buster Howes OBE**, Operation Commander European Union Naval Force Somalia, gave evidence.

**Q77 Chair:** I welcome Major General Howes to the third session on this first day of evidence taking. General Howes, it is very nice to see you. Is there anything you want to say by way of an opening remark or shall we go straight into questions?

**Major General Howes:** I am mindful of the fact that you communicated that there is much to discuss. I only want to say that I am here giving evidence as a European officer. I am the operational commander of the EUNAVFOR, and my responses to your questions will be firmly through that lens.

**Q78 Chair:** That is helpful. Is there anything you want to say about general scene setting?

**Major General Howes:** There is much that I would say, but I suspect that it will come out.

**Q79 Chair:** Let us talk about the various command structures. As I understand it, there are three command structures. Do they overlap with each other? How do they interact with each other? How do they co-operate, and how do you avoid them tramping over each other's feet?

**Major General Howes:** It is probably fair to use the proverbial metaphor, "If one was going to set off to Dublin, one wouldn't start from here". The C2 structure looks complicated. Unity of command is a military principle. You are right. There are three coalitions: the Coalition Maritime Force, which is largely run through American auspices, NATO and the one that I represent—the European one. Then there are a whole series of independent actors, who are co-ordinated through a SHADE mechanism. That works at a tactical level, and it is focused largely on deconfliction.

But a strong element of pragmatism has developed over the past three years, since the surge of international endeavour in the Indian Ocean. On a tactical, day-by-day level, the forces engaged in the counter-piracy effort will work and co-operate very closely. We have very similar missions. Small nuances differ. We seek to force generate—force generating ships is a process that takes anything up to two years, but typically about 18 months—to avoid feast and famine. We offset when Europe has had more success in eliciting force contributions to ensure that we do not suddenly have a bull market and then suddenly famine.

We have synchronised our doctrine to a large degree conceptually—the way we see our actions developing in the future. Our intelligence understanding of what the pirates are doing and are likely to do are all pretty coincident. There is a strong congruence and close co-operation between those organisations. Except perhaps in the areas where there is key leader engagement influence—both port visits and the way that we seek to engage in the region where there might be some overlap—I do not believe that there are inefficiencies otherwise.

**Q80 Chair:** The House of Lords European Union Committee looked at Operation Atlanta, and said that it proved itself a credible force in combating pirates in the Gulf of Aden and the Indian Ocean, but it is worried that it had capability shortfalls. Do you think that that is a fair comment?

**Major General Howes:** I acknowledge that there are 2.6 million square miles of water. You could fit the whole of Europe into the space that we are seeking to police, and typically there are somewhere between five and eight assets in the Indian Ocean, and perhaps the same in the Gulf of Aden. There is a considerable surge of ships there currently because of all the other interests, of which you will be well aware. The pirates do not discriminate; they see a warship, and a warship is a warship. The fact that Yemen and other areas are unstable and the world is taking an interest in that means, at the moment, a lot of ships are there.

Are we able to police the entire area effectively? No, we are not. You have a map in front of you.<sup>1</sup> The locus of a modern warship on the scale of that map and what it can actively survey and influence in an hour is about a pinprick. If it has a helicopter, it is about three times the size of a full stop. That gives you an idea of the scale.

We seek to optimise those scarce assets through clever use of surveillance and the maritime patrol and reconnaissance aircraft. The P3, in particular, which is the most sophisticated form, is able to interrogate 360,000 square miles of ocean in an hour. Partly through intelligence analysis, which gives us an idea of where the pirate will operate, we cue our assets accordingly and, partly through careful use of our

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<sup>1</sup> Not printed.

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surveillance devices, we can position our ships to best effect.

**Q81 Chair:** The P3?

**Major General Howes:** It is a kind of maritime patrol aircraft. It is the most capable one.

**Q82 Chair:** Where are they based?

**Major General Howes:** At the moment, they are based in Djibouti. We sometimes chop them down into the Seychelles. We run the Luxembourg charter on our behalf to commercial aircraft, with less capability and less endurance. For some time, we have been negotiating with Oman and those discussions continue in order to better locate those surveillance assets. You will see from the map that I have handed out—the key indicates what the coloured dots denote—that the problem has been displaced as a consequence of the actions of the military forces and indeed the track that commercial vessels now adopt and is largely in the North Arabian Sea. It would be better in terms of time on station and endurance if we could place those assets nearer the problem as it is currently perceived.

**Q83 Chair:** You are working on that?

**Major General Howes:** We are.

**Q84 Chair:** I come to a point that I put to Mr Askins earlier on about the UN Law of the Sea Convention, which gives you powers to operate. Does it give you enough power? Are you using the powers to their full extent?

**Major General Howes:** Yes, we are. The UN Law of the Sea was not written with this problem in mind. I suspect Mr Askins is better qualified to answer—we are playing ping-pong on the questions that we refuse to answer—but unpacking those laws would then invite people to deliberate on things like jurisdiction in Antarctica, the ownership of the Sandwich Islands and a whole load of other things. If you tried to tease out a bit of UNCLOS, you would be in real difficulty. They provide us with some problems. This is not piracy in the classic sense that Emperor Augustus, Pliny and raiders off the Barbary Coast in 1753 would recognise. It is hostage and ransom. The mandate of all three major coalitions within the auspices of UNCLOS does not allow us to do very much beyond disrupting pirates in the act. We can disrupt them, but the problems of prosecution and the leverage those laws give us to actually prosecute are limited.

**Q85 Chair:** Do we need to amend the Convention or, indeed, to have a convention focusing on this particular problem?

**Major General Howes:** We are engaged in a constabulary task, and that is the fundamental guiding principle that constrains what we can do. So force can only be applied in self-defence and in a wholly proportionate and minimal fashion.

**Q86 Chair:** I know that you are representing the EU, but do you think that any national jurisdictions need to have a fresh look at the problem to give more powers to respond?

**Major General Howes:** We have looked at this. I am not being evasive; I am just trying to think of a sensible answer. Does UNCLOS give us all we want? No, it doesn't, but it is such an involved area that I am not necessarily sure that, in any sort of bounded fashion, one could address the bit we wanted to. If you could have a codicil to UNCLOS, which specifically engaged in some of the risks, our ROE are sufficient, so that is not the issue.

Within the bounding laws, what we can do is entirely sufficient. The laws themselves apply certain restrictions, but our national laws also apply restrictions. There are no nations in Europe that have capital punishment. If they did—and we are hunting criminals notwithstanding the fact that these people have not been tried—presumably there would be less concern about applying lethal force. But this is a constabulary task. That is where the restriction lies, not in the broader terms of UNCLOS.

**Chair:** We are not trying to catch anyone out here. We are just genuinely trying to see whether there is anything more to be done.

**Q87 Mr Watts:** I do not know, Major General, whether you were in when I was riding my hobby horse of co-operation and co-ordination, but the map demonstrates the scale of the problem you face, which is a tremendous task. We have heard that the Russians and the Chinese have convoy systems for guiding their ships through the difficult places. Is there not a need for all countries to sit down and work out some sort of system for working together to guide international freight through these seas together—using all their resources together, rather than in isolation?

**Major General Howes:** We absolutely do that. There is something called the Internationally Recommended Transit Corridor with which you will be familiar, and which runs through the constrained area of the Gulf of Aden. Because it is constrained, that was obviously the first fishing point for them. They knew that 23,000 ships were going to transit through—\$1 trillion worth of trade passes through the Gulf of Aden a year; 48,000 ships transit the Indian Ocean, but that is a much larger area, so go for the narrow aperture and attack ships there.

The first effort of the international community collaboratively across the coalitions to systemise their response was essentially to set up a series of boxes that are picketed by warships. This is about applying those assets most efficiently, such that we can respond anywhere within that picketed box within half an hour. In theory, if a ship is attacked and is able to fend that pirate attack off for that period of time, we will come to its assistance.

There has not been a successful pirate attack in the Gulf of Aden since September 2008,<sup>2</sup> because the IRTC works very well. There have been a series of disruptions of pirate action groups operating there, and they have made attempts to pirate vessels, but they have not been successful. Clearly, the consequence of the success of that is that the problem is displaced.

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<sup>2</sup> Note by witness: the actual date is September 2010.

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You will see, probably on the other side of your map, that those measles are in an area that is euphemistically known as “the fan”. That is because they can’t gain purchase successfully in the Gulf of Aden. The other reason why the Gulf of Aden is attractive to them is that it is not subject to the monsoon disruptions. The weather conditions in the Indian Ocean are such that it is impossible to launch skiffs, which are the attack vessels.

Most recently, we have seen piracy displaced into the southern end of the Red Sea. That is particularly problematic because there is no international water at that point—the sovereign waters of Eritrea, Yemen and Djibouti overlap—so we are allowed, as military forces, the right of innocent passage there. We are allowed to go to the assistance of a ship when it’s attacked or when we’re requested to intervene, but otherwise we can’t conduct patrols there, so the fact that it has now gone east and west means that the IRTC as a deterrent is effective, but as a disruptive force it is not.

I heard you asking the previous witness about private armed security. Our estimate is that between 15% and 25%, conservatively, of the vessels passing through the Bab el-Mandeb now have private armed security guards on board, which is a significant and effective deterrent to pirate boarding. One could perhaps say that if that becomes the norm and the majority of commercial ships in the future have those capabilities on board, we may be in a position to apply some of our assets elsewhere. We try very hard to sweat the asset as hard as we can.

The Russians and the Chinese run convoys because, bluntly, they have been more interested in looking after their ships as opposed to other ships. They do brigade them up. The risk of running convoys is that people hang around the gathering point at either end: they are sometimes vulnerable in consequence. However, both models, because they produce an element of uncertainty, add value. The convoy system is a harder one to co-ordinate, which has a bearing on how assets are also used.

**Q88 Mr Watts:** There are routes that you are trying to guide ships into. From a look at the map, there doesn’t seem to be a pattern there; they seem to be all over the place.

**Major General Howes:** In the Indian Ocean, they are all over the place, for a number of reasons—partly because they go where they will. One of the things about the sea is that people will do as they will.

**Q89 Mr Watts:** That goes back to co-ordination then.

**Major General Howes:** It also goes back to enforcement. It is not us co-ordinating assets. There are people who do not observe even the minimums of best management practice. You can wag your finger at them as much as you like, but it is their risk—the sea is a global common. The fact that those measles appear rather randomly relates to the patterns of trade. Some of those vessels are going into the ports that they have to go into while the jetstream, if you like, is displaced east towards the Indian littoral. At some stage, they need to go into Dar es Salaam and

Mombasa, and if they are picked off 1,000 nautical miles off the coast, you’ll have a dot there.

**Q90 Rory Stewart:** If this is a constabulary operation and you’re doing this needle in a haystack stuff, and a lot of the problems are being caused by people who are not taking even the most basic precautions to co-ordinate or protect themselves, surely the answer, similar to a constabulary operation in Britain, would be to push far more responsibility on to the ship owners and to really ramp up the pressure on them to protect themselves and get out of the situation in which they are abrogating responsibility? It seems to make no sense, with so few vessels in such a large area, for you to be running round chasing this; surely it makes much more sense for the vessels to protect themselves?

**Major General Howes:** It does. I do not argue with anything you say. It is nice to see you again, Rory. We have three effects to achieve: to deter, to disrupt and to protect. We do the deter tactically quite well; strategically, we don’t, because the cost-benefit analysis for the pirates is so extreme in terms of their impoverished state and what they stand to earn, that it is very, very hard to get that into their fat heads. We disrupt successfully. Protection, I completely concur, is better done by the ships themselves.

The fourth iteration of best management practice is about to be published. A year ago, I would have been similarly vexed by the lack of seriousness with which the industry seemed to be taking the issue, but they are a lot better now. We have a sophisticated and continuing dialogue with the industry, both with BIMCO, IMO—all the big actors—but also with individuals within them. Six months ago, they were really truculent about what we were not doing. Speaking briefly as a national naval officer, I was confronted by people saying, “Well, if the Navy doesn’t do this, what is it for?” but they have reluctantly recognised the issue.

There is a dynamic tension here: they are commercial actors and the whole business of arming themselves goes completely counter to their whole tradition and method. There are 785,000 seafarers in the world, 35% of whom are Filipinos. It is a pretty miserable life and the people who engage in it do what they do, but expecting them to do much more than that is sometimes problematic. However, they are getting better at adopting BMP, and the big organisations that I have talked about are getting better at holding people’s feet to the flames.

There would probably be merit, if one could achieve it, in making some sort of conditionality to do with seaworthiness. There is a definition of seaworthiness, and you have to be certified to put to sea and be insured, but the current definition does not include anti-piracy-worthiness. We have had a discussion about how one might do this. We have also had discussions about how one might hold back insurance payment if a ship was pirated—and they almost invariably are, if they are not following BMP. If people are following all the systems that we in consultation with the industry have articulated, they are usually okay. It is the low, slow, inattentive vessels which will come up on MSCHOA or UKMTO, the

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two monitoring organisations, to say, “Help, help, there are pirates on the bridge.” Game over. There is nothing to be done. We can subsequently try to disrupt, but there is nothing to be done. Once they follow BMP, though, they are usually all right.

Some of the flag nations, of which I have a list, appear to be just non-co-operative. There are 140 flag states, of which about 40 do not even report their movements, so our ability to manage what we call a white picture—to understand what shipping is doing what in this area and to warn people—is reduced.

One of the obvious things to try to do is to see and avoid. If you can fingerprint a pirate action group and you know that it is operating in a certain area and that innocent vessels are sailing towards it or in that vicinity, you warn them and try to move them around the threat. You can only do that if you have a reasonable understanding of who is where, and 40 of the 140 flag nations are disinclined to tell us where their ships are going. That is about 10% only of those ships operating in the high-risk area, but it is still 10%.

**Q91 Sir John Stanley:** I have two questions. First, have you made any requests for either deployment of air assets or additional maritime assets to Diego Garcia? If so, what response did you get?

**Major General Howes:** Not to my knowledge, sir.

**Q92 Sir John Stanley:** Second question: if you went to your staffs and said, “The political masters have asked you to come up with a statement of what military naval air assets you need in order to be able to deal with—effectively, extinguish—this problem,” what would be the order of their response as to what you need in terms of air assets, naval assets, and types of trained personnel and vessels?

**Major General Howes:** If I might, I would start by taking issue with the fact that there is a military solution to this problem. We are treating the symptom only. We are containing a problem that emanates directly as a consequence of instability in Somalia, so the only way this is going to be resolved is over a long period of time with a comprehensive approach that reduces the insecurity in that country. There are lots of impoverished countries in this region, but they do not have a systemic piracy problem because they are able to cauterise it.

We contain the symptom. I add one codicil to that, though, which is that it is also becoming a vector of instability. You can visit the region, particularly places such as Kenya and Tanzania, and see that, for example, in Nairobi, there is a very noticeable increase in criminality and violence as a consequence of the Somali diaspora and the very significant sums of money that are starting to flow in there. There is a geopolitical dimension to this. The trade into Mombasa has been seriously impacted: three years ago there were 53 cruise liners there; two years ago there were three; and last year there was one, and it was attacked. Mombasa services five hinterland African countries; Dar es Salaam services eight; 85% of Uganda’s trade comes through Dar es Salaam. There is a big regional dynamic to this. In my

judgment, the Indian Ocean is not going to become less important over the next 20 years.

If you ask me a very blunt maritime question as to how many naval assets I would need to blanket the Indian Ocean in order to give me a one-hour response time equivalent-ish to that which I currently, across the coalitions, can manage in the IRTC, I would say that I need 83 helicopter-equipped frigates or destroyers. As far as MPRA is concerned, these reconnaissance aircraft—

**Q93 Mr Ainsworth:** You’ve only got five?

**Major General Howes:** Yes, between five and eight in the Indian Ocean. Sorry, I should have said a 30-minute response time, not an hour. As far as the aircraft are concerned, we have five, which is more than normal—we usually have three—and five is about all I need. As long as I can get the information, I can process it into intelligence and disseminate it. We are never going to raise that sort of level of capability. There are other ways of doing it and of applying pressure. You are, I think, visiting the headquarters later this week?

**Chair:** A week tomorrow.

**Major General Howes:** We will unpack those for you. We are in an unclassified forum now, but we can explain in greater detail what we envisage doing to apply more effectively particular capabilities at particular times in order to erode the pirates’ sense of impunity.

There is a psychological dynamic to this, which bears both on the confidence of the seafarer and the way they behave and, more particularly, on the pirates. There is a tendency to see them as unitary actors—that there is a strategic purpose behind what they do. There is not. Like all asymmetric threats, they are very nimble. They have an intellectual cunning and they are adaptable. They sometimes outthink us in terms of, “If we do this, what will they then do?” They can certainly react more quickly than we can. There is no guiding principle behind it, and there certainly is no doctrine. One of the reasons that they are unpredictable is because, very often, they probably do not know what they are going to do next.

**Q94 Sir John Stanley:** I take your point that you made at the outset: the key thing is Somalia and the state of that country. Personally, I do not see any remote possibility whatever of the international community being able to make any significant deployment that would change the shape of Somalia in the foreseeable future, so we are left with the military issue that you are trying to grapple with.

If I have understood you correctly, you are saying that, provided you can get your full air asset deployments, you have the coverage you need, but obviously you have a huge shortfall of surface naval vessels. If you were starting from scratch, would you go for the existing structure of surface naval vessels—conventional frigates, destroyers and helicopter-bearing vessels—or would you want to use non-helicopter-bearing vessels that are used by specialist forces, with much higher speed capabilities through water?

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**Major General Howes:** A helicopter is an enormous force multiplier. A pirate can be very tenacious. I refer to the point that Mr Askins made. In 2008, they had a different model—I do not know whether you have unpacked this. They would set off from the Somali coast in skiffs and whalers, crammed with food, water, ladders, weapons and fuel, and they would navigate by guess and by God off the coast. A prudent mariner would steam for nine days and have 10 days loiter time, at which point he would hope to get lucky and catch a ship; he would give himself one day's fudge factor and 10 days to get back. Somalis do not do that: they steam for 30 days until they run out of everything, at which point, in desperation, crazed with thirst and emaciated, they will go for anything. They will have a crack at a ship with a 49-foot freeboard doing 18 knots at night. That is not a trivial undertaking. Sorry—I've lost the thread of the question.

**Q95 Sir John Stanley:** I was asking whether you would do your force multipliers by the conventional grey warriors—frigates and destroyers—or whether you would go for far more high-performance vessels?

**Major General Howes:** The butt of that is whether you can put a helicopter above them quickly. The pirates will chase commercial ships and fire small-arms rounds and/or RPG to try to force them to stop, but when military forces appear, they will soon pull away. They are desperate, but they are not mad. So a helicopter—this business of response in half an hour or an hour—is a huge advantage.

Fast patrol boats probably have utility in close inshore waters, but you are thinking more in terms of coastguard, I would suggest, than in policing the open waters of the Indian Ocean. There are big seas out there and the sea-keeping capabilities of small, fast craft are an issue. Not only is it a pretty difficult existence, but the sea conditions are such that it is difficult to optimise the utility of one of those ships. It just does not have the sea-keeping capabilities.

I touched on the fact that there is a problem of ships being interdicted heading into Mombasa 1,000 nautical miles away. This is a consequence of the pirate mothership model, which has developed since November last year. That is a great concern, because if we are to build capacity, realistically we are only ever going to build modest coastguard capacity, which will help defray the international commitment to this endeavour. But if the ships are being pirated 1,000 nautical miles away, that is never going to answer the question. It takes ocean-going navies with a full panoply of capabilities, to be able to communicate their radars and so on, to be able to intercept people in the deep ocean.

**Q96 Mr Ainsworth:** We are not allowed in international waters to do what Pompey the Great did to clear the Barbary Coast. However, there are nations that operate more robustly than we do. You will have read in the national press what a bunch of pansies we are and how Nelson is turning in his grave. Do you think that you need those more robust activities or rules of engagement? Do you think that they are effective? How far are we off the international ceiling

in terms of what we are allowed to do in international law?

**Major General Howes:** Mr Askins mentioned the South Koreans, the Russians and the Indians. Their actions and recourse to significantly more kinetic means than we have applied are matters for them. Has it deterred the pirates? Yes. We have clear recognition of that. If you look at your measles chart, the fact that ships are not pirated close to the Indian subcontinent is not accidental. Pirates are leery about straying too close in to those waters, so that works.

Without wishing to sound unctuous, I would say that the law is the law. The experience of things like Breadbasket and Abu Ghraib is pretty clear when you start to try to be flexible with that. I am very clear where we stand in terms of both our ROE and the application of lethal violence. If the law changes, we will exploit the full flexibility of that, but at the moment it sits pretty clearly and we are doing what we can. There is a reputational issue, which I completely acknowledge, and navies throughout Europe are bearing the brunt of that. It is not that they are invertebrates; I suggest that the 1,700 or so men and women in the Indian Ocean are a hell of a lot more frustrated than the readers of *The Sun* by the things that they are currently unable to do.

**Q97 Mr Ainsworth:** We have heard even this afternoon that we need new rules of engagement, particularly to tackle motherships. You must have had pretty detailed discussions with the people whom you are trying to protect. Have you heard sensible propositions for new rules of engagement that would enable you to do that?

**Major General Howes:** We have. I am not at liberty to discuss detail on rules of engagement, but we have achieved some flexibility in how we specifically address motherships.

The mothership problem materialised because we had essentially constrained the ability of pirates to disperse their skiffs and whalers off the coast of Puntland. They scratched their heads and thought, "If we can't get off the beach a lot of the time because the waves prevent us—the sea state is such that we can't deploy, and during the south-east and north-west monsoon we are constrained—and the international forces have a way of putting a full-court pressing on it which constrains us further, what are we going to do? Well, we will set up camps afloat and we will pirate one ship after another, which means that we have to return back to the shore camp less often." Oh dear—that's a complication for us.

The further complication is that every pirated ship has hostages on board, so our ability to disrupt such ships with the impunity with which we would disrupt a skiff with just pirates on board is compromised. We applied an algorithm or a sort of a logic that was very much informed by what we felt we could do with pirated ships, in the anchorages, which had hostages on board. The thing about a motor vessel—one of the large commercial ships—which is pirated and then used as a pirate mothership, is that it presents the pirate with a range of the logistic challenges that confront us. You are back to the tyranny of distance and 2.6 million square miles of water—for example, he has to fuel

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that ship. It might give him radar, sea-keeping, endurance and some advantages, but it presents him with some pretty substantial disadvantages, one of which is the fact that we can track it, so the see and avoid thing becomes easier, as opposed to a dhow, which is a hell of a lot harder to track, not least because there are, illustratively, half a million of them in the Indian littoral waters alone.

The spectrum of pirate ships goes: skiff, whaler, dhow, fishing vessel, motor vessel. They ran hard and fast with motor vessels, with significant effect for a considerable period of time. We have now responded and are better able to counter that. We have also become more sophisticated in our understanding of how they respond. A motor vessel is a prize, so if they are using it for pirate purposes and we seek to disrupt or attack it, they will fight back, principally because the ship is worth a lot of money to them. They will fight back much less robustly for a dhow, because they are 10 a penny.

We also have started to appreciate that the hostages on board are not always hostages, partly because you get Stockholm syndrome among people living in close proximity, but sometimes they never were. Sometimes the dhows sail from Yemen and offer their services, and you get Somali pirates on board and Yemeni crew, and they are all working together.

In the business of only being able to liberate ships with hostages on board, with very specific capabilities because of the risks to those hostages, we are starting to be more pragmatic. We have given greater freedoms of action to force commanders to disrupt as they judge, and that has not caused problems to date.

**Q98 Mr Ainsworth:** You have given us a great insight to the complexities, the tactical gains and shifts that go on over a period of time. How sustainable is the project? What does victory look like? Is victory achievable? This appears to be war without end, doesn't it? No end is possible, is it? We will change and adapt and find ways of dealing with the motherships, but how sustainable is the operation? Is there any chance of suppressing piracy in the foreseeable future? Will any change of rules of engagement or anything help?

**Major General Howes:** I don't have an end state, Mr Ainsworth. My end state is currently when my mandate runs out, which is December 2012. It would be surprising to me, for a raft of reasons, not least the reputation of Europe, if we stepped away from this mission at that juncture, but that is a matter for Member States.

I concur with you. What does better look like? What does good enough look like? Is it conceivable that the industry will, to use a good current expression, "man up" to the point that they can protect themselves? Possibly. There is a strong psychological dynamic in all this. We also go back to the circumstances in Somalia. The Transitional Federal Government, ropery though they are, are making progress, but we will not have demonstrable peace in our time, or in a decade. I suspect that the international community is probably on this hook for some time.

**Q99 Mr Ainsworth:** One last question: from your perspective, is prosecution the answer?

**Major General Howes:** I think that prosecution, in terms of force on mind, has a significant effect. I started off quite cynical. Human rights legislation requires pirates to be incarcerated in properly found facilities, where they get three meals a day, and they are taught English and so on. I visited a prison in Mombasa, where they are held under the Kenyan transfer agreement. They don't like being in prison—who does?

The problem is partly the information operation, which I think is a weakness across the piece—that is, how we engage in Puntland, Somaliland and Somalia to exploit the traditional clan anxieties over piracy itself. They have a significant impact. The pirate camps have been squeezed in recent months by traditional clan influence and rejection from the north and by al-Shabab in the south. There have been instances in places, such as Eyl and Garacad, where the locals, as we have seen at times in Afghanistan, have taken things into their own hands and thrown the pirates out. If we could find ways of engaging with those people better to exploit that, and if we could find ways of showing the young pirate, who thinks that by going to sea he's going to tap into a land of milk and honey, that about 50 of them a month drown or perish at sea, and some end up in prison for extended periods of time—not long enough, perhaps, but for extended periods of time—that would be a good thing.

If we put more inside, that would be a good thing. At the moment we capture and release 87% of those we seize, because we have to. I can only speak for the EUNAVFOR, but we will do everything we can to achieve a prosecution. If we seize people and build the evidence pack, we are good at it—we absolutely understand what countries require—but very few nations in Europe will take Somali pirates regularly. Britain has taken none; others have taken some, but we all understand why.

**Q100 Mike Gapes:** You referred to visiting Mombasa. Are we still sending pirate suspects to Kenya, or has the agreement with the EU broken down?

**Major General Howes:** The agreement has broken down, but on an ad hoc basis, we can still negotiate that. There have been 10 transfers. I have the figures here; something like 70-something—79—pirates have been processed through the Kenyan system. The chief prosecutor and one of the judges whom I met were concerned about a jurisdictional technicality in terms of the way that Kenya was dealing with these pirates, and the whole thing was referred to the Kenyan High Court. There were procedural difficulties because they needed the test case involved to require them to move the pirate, so there was a big fuff that delayed the whole thing.

For a range of reasons, Kenya has become nervous about re-signing that agreement, but they are still prepared to take them on a case-by-case basis. Bluntly, when we negotiated that agreement, Kenya had no sense of the volumes that they were going to be confronted by. They feel aggrieved that they are



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the only people, as they see it, who are stepping up their international obligations, but they will not apply any regional leverage on the likes of Tanzania to do the same, which is vexing. They see it as our job.

**Q101 Mike Gapes:** Can I probe you on that? You said 87% of the pirates whom you detained have been released and not prosecuted.

**Major General Howes:** Correct.

**Q102 Mike Gapes:** That is the EUNAVFOR figure.

**Major General Howes:** I think our statistics are very similar to others.

**Q103 Mike Gapes:** How many pirates are actually being prosecuted?

**Major General Howes:** About 130, I think.

**Q104 Mike Gapes:** Final question: are the suspects being released because of the reluctance to have them come to European states and because you cannot find anywhere else to put them for prosecution?

**Major General Howes:** We have an agreement with the Seychelles, and we are seeking to close an agreement with Mauritius. We are also in negotiation with Tanzania, and then there is Kenya. We have constructed two prisons, one in Puntland and one in Somaliland, and you will be aware of Jack Lang's report.

**Chair:** We are not, actually. Jack Lamb?

**Major General Howes:** Jack Lang, the French Minister, produced a report on the whole business of the legal jurisdictional prison issue.

**Chair:** Perhaps we are aware of it actually.

**Major General Howes:** He made a series of recommendations that the European Union is still considering. I don't think I answered your question.

**Q105 Mike Gapes:** No. Are we releasing them because of a reluctance to send them to Europe?

**Major General Howes:** No. Let me very quickly unpack what happens. First, they are taken. We ask the captain whether we will be able to produce an evidence pack, such that we have a chance of prosecution. It takes him time to make that judgment. The habeus corpus rules, whatever the nationality of the ship that is responsible for the disruption, will determine how long they can be held for. If it is a Spanish ship, you have 24 hours, so you have to decide within 24 hours whether you are going to release people or whether you can transfer them.

We immediately start negotiating with, for example, Kenya. You have to unlock Kenyan bureaucracy—and it is invariably on a Friday—and say, “Will you take this prisoner?” They will want to know what the evidence pack is. Before we do that, though, if it is, say, a British flagged ship, we will say, “Right. Do you have an interest in this? Are you prepared to take them?” If it is a Dutch ship, we say, “Are you prepared to take them?” If the pirates have murdered a Dutch national, the answer will probably be yes. You must be familiar with the *Quest*. Those individuals are now in American courts.

Sometimes the answer is, “Yes, we'll take them”—bang! Done. Deal cut. Otherwise you are racing

against the deadline of having to release people, because there are laws that say, “This is what you've got to do. You can't hold them.” I think the record of someone being held at sea without recourse to judgment or legal representation is 47 days. That infringes their human rights.

**Q106 Mr Watts:** You have certainly dealt with the issue of private security forces. How do private security guards interact with you and with other Member States?

**Major General Howes:** This is a developing area. The European and British position is not to endorse private armed security companies, but clearly no ship with armed men on board has ever been successfully pirated, and that fact is not lost on the industry.

Best practice as far as that is concerned is obviously very important, and Mr Askins touched on what is being done to regulate it. We are keen to understand the situation when we seek to intervene in a ship with armed men on board, because there is a clear risk of our killing those individuals: if a man is armed, a man is armed.

Right now, we are in the business of trying to tie down a doctrine for how these people behave. For example, you will be familiar with the fact that citadels are part of best management practice. The principle that we apply is that everyone locks themselves down there, and that, although the quality of those citadels is variable, that they can still steer or immobilise the ship and they have communications and can tell us that everyone is inside that citadel. If PAMSCs—private armed people—are on board, our advice will be that everyone goes into that citadel, because once pirates are on the ship, we do not want to have to discriminate.

Typically, industry will probably have four armed individuals on a ship, whatever the scale, because of the cost of armed security. That number is below what we recommend—we have metrics—not least because of endurance: if a ship is transiting for a long period of time, how awake will those four people be? Once pirates are on board, the chances of those individuals being able to hold them at bay are limited. The advantage of having private armed people is that they make boarding very difficult. Climbing up a rope when someone is shooting at you? Not easy.

**Q107 Mr Watts:** Would I be putting words in your mouth if I said the European position had stopped that dialogue before now, but you have now changed your position in light of the success of the private security industry and are now engaging with it in a way that you had not in the past?

**Major General Howes:** We are engaging with the industry, not the private security companies, just as we would when talking about best management practice.

**Q108 Mr Watts:** But you had not been doing that before.

**Major General Howes:** No, we have talked about BMP throughout and this is another permutation of it. It makes sense to avoid ending up with a Blackwater-type situation, so an element of pragmatism is involved.

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**Q109 Mr Watts:** What more could the shipping industry do to protect itself? What is it not doing?

**Major General Howes:** It could implement the measures that are all recognised and agreed more evenly. That is the first point. It could report its presence, because the better our situational awareness, the better able we are to intervene and disrupt where it is warranted.

**Q110 Mr Watts:** I do not want to put words in your mouth, but the industry is not doing all it can.

**Major General Howes:** The major blocs of the industry are working very hard to raise their game. On the issue that you touched on previously, at the moment they are trying hard to codify the whole issue of armed security. Part of our narrative to them is, "Don't see that bit as the golden answer. You need to do this as a system of systems. There is a whole series of processes."

The fact is that the 15% to 25% of vessels that are travelling through the Fan with armed security are largely doing so unlawfully. They are doing it because they see it as the lesser of evils. Governments around the world are now scrambling to catch up to decide whether they are going to legitimise the practice and how they are going to do it. That presents governments, not least the UK Government, with a

whole series of challenges. I am sure the Attorney-General has a view on that.

**Q111 Mr Baron:** Some suggest that there is a link between terrorism and the Somali pirates. The FCO's official position is that no such link exists. What is your take on that?

**Major General Howes:** We see no evidence to suggest that it does. In the ungoverned spaces of Somalia it would be counter-intuitive to assume that there aren't advantages. The clan system is very complex and rather opaque, although there are individuals who know about it—we had a man working for us for five years who is an expert on this. Is it likely that one hand washes the other? To a degree. Do we have evidence of that? No.

**Chair:** Thank you very much, General. The mere fact that we've overrun our time—

**Major General Howes:** I'm sorry about that.

**Q112 Chair:** That's alright. It shows that what you were saying was absolutely absorbing, and we really appreciate your taking the time. We look forward to seeing you next week. Will we be seeing you?

**Major General Howes:** I have moved things around, so, yes, you will. I will be able to be a lot more candid. These have been fairly generalised responses.

**Chair:** That's good. Thank you very much indeed.

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## Wednesday 29 June 2011

Members present:

Richard Ottaway (Chair)

Mr Bob Ainsworth  
Sir Menzies Campbell  
Ann Clwyd

Rory Stewart  
Mr Dave Watts

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### Examination of Witnesses

*Witnesses:* **Captain David Reindorp RN**, Head of Defence Crisis Management Centre, and **Dr Campbell McCafferty**, Head of Counter-Terrorism and UK Operational Policy, Ministry of Defence, gave evidence.

**Q113 Chair:** I welcome members of the public to this sitting of the Foreign Affairs Committee. We are doing an inquiry into piracy off the coast of Somalia, and the purpose of today's session is to question MOD officials and serving officers on the UK's involvement in NATO and the Combined Task Force counter-piracy operations and its overall counter-piracy work. The first two witnesses in this session are Captain David Reindorp, Head of the Defence Crisis Management Centre in the MOD, and Dr Campbell McCafferty, Head of Counter-Terrorism and UK Operational Policy, also MOD. I extend a very warm welcome to you both. I am very pleased that you have been able to accept our invitation to come here today. Perhaps you would like to start by describing what happens in an attack on a ship when pirates try to take it over. Can you talk us through a situation?

**Captain Reindorp:** Perhaps I can start by saying there is no such thing as a standard pirate attack, so what I will give you is a generic example. Most attacks occur either from a single skiff, a small vessel, or from two skiffs—generally not more than that. Each skiff contains between two and six pirates. They are armed with a range of weapons, normally small arms, ranging from the traditional AK47s to RPGs. They will manoeuvre one of the skiffs to come alongside the vessel and they will throw up a line on a hook, a grappling rope or some form of apparatus by which they can climb up on to the freeboard of the ship. If they are detected during that, they will usually fire at the ship, generally in and around the bridge, aiming either to get the master to slow down or to clear their way on to the freeboard. Once they have got on to the ship, they will proceed to the bridge and take it over. I think the only other point to bear in mind is that, although you hear lots of talk about motherships, we have not yet seen motherships be used in an actual attack. That is simply because they are not very manoeuvrable and they cannot get alongside a ship.

**Q114 Chair:** Is it obvious when a boat coming alongside is a pirate vessel, or are some of them innocent?

**Captain Reindorp:** As someone who has been the master of a ship, the captain of a ship, I would say that you generally know where you expect someone to come alongside you and where you do not expect that. I would suggest that in the middle of the Indian Ocean or the Gulf of Aden, you do not expect it, so yes, to my mind, it would be particularly obvious.

**Q115 Chair:** So you would be pretty entitled to treat anyone coming close as suspicious?

**Captain Reindorp:** There are close passes. Particularly in that part of the world, there are lots of small craft around, and they frequently do not get out of your way, so taking action based on a close pass would perhaps be a bit too precipitate, but you should certainly not be expected to ignore it.

**Q116 Chair:** One of the issues that we will be looking at when we have had all the evidence is what reaction there should be from a ship, which is vulnerable, if a boat is coming alongside. Of course, it would be disastrous if it was an innocent boat and a counter-attack took place. That is the problem.

Dr McCafferty, would you like to say anything on that point? Do not feel obliged to answer every question.

**Dr McCafferty:** No, I certainly won't. I think what we demonstrate today is what Lord Levene said is a closely integrated civ-mil relationship in the Ministry of Defence, so I will not answer every question. *[Interruption.]* I think we might be moving them out of London.

All I would say, Chairman, is that your final point is exactly correct. The difficulty in identifying a pirate attack, and separating pirates from fishermen going about their normal business, is absolutely key to how you deal with piracy in the Indian Ocean.

**Q117 Chair:** They are using motherships; how do we respond to this development? I gather that the three forces each have a slightly different approach to dealing with this. What are the guidelines now to ships going through the area in relation to motherships?

**Dr McCafferty:** It is all covered in the best management practices. As Captain Reindorp said, you will not actually see the motherships do the attacks; it still remains the skiffs, because of their manoeuvrability. I think it is fair to say that, as the pirates have changed tactics and used motherships to get around monsoon seasons and to launch attacks further out, the international community and the international navies operating in the Indian Ocean have also changed tactics and looked to increase the capabilities that they have available to them, such as increased ability to board what we call complex ships—ships with many decks—which is what the mothership would look like. It is a much more complicated business, but we have adapted our tactics and our forces to be able to cope with that.

**Q118 Chair:** If the Navy is aware that a ship has been boarded, do you then stand off? I seem to recall that you do not go back on to fight it out.

**Captain Reindorp:** No, standard policy is not to do that. Standard policy is to hold off, monitor what goes on and take what action that we can, but our prime overriding interest once a ship has been boarded is the safety of the lives on board—of the hostages—and quite a few incidents show that to take precipitate action is the wrong course.

**Q119 Chair:** Where are the ships taken once they are caught?

**Captain Reindorp:** They are taken to a variety of anchorages off the coast of Somalia. There are probably four or five in operation at any one time, but they do move.

**Q120 Rory Stewart:** Coming in behind that, given the way in which the attacks are generally mounted—the classic attack you described—presumably, three or four armed men on a boat would make it quite difficult for a pirate to climb up a ladder, and therefore if these companies were to employ private security, they would significantly enhance their ability to deter an attack?

**Captain Reindorp:** Statistics can be interpreted in many ways, but I think it is safe to say that any ship that follows best management practice, which can include a variety of things such as manoeuvring and posting extra lookouts to enable the ship to turn and, if necessary, run away—and those sorts of general guidelines stands a statistically much higher chance of avoiding capture. The statistics also show that any ship that employs on-board protection, private or public, has a much greater chance of avoiding seizure. In fact, I think I am correct in saying that no ship with a VPD—vessel protection detachment—on board has been successfully seized.

**Q121 Rory Stewart:** The implications of that, Campbell, is that if no vessel with such a unit has ever been seized, surely that is a very good reason to say that ship owners should be pushing ahead to have more security teams?

**Dr McCafferty:** I think it is definitely something we need to keep under review, and the Department for Transport in the United Kingdom has the lead for that policy. The challenge comes, as I said, in that like everywhere else, the more guns there are around, although there is a deterrent effect, you also have the increased opportunity or potential for the wrong people to be shot.

**Q122 Sir Menzies Campbell:** How many knots does one of these skiffs make?

**Captain Reindorp:** They tend to have quite large outboard motors on the side. I would not hazard a guess at the speed that they can go, but I think we can assume that they would be faster than the average merchant ship that they would approach—I mean, these things can do up to 30 or 35 knots. A lot of that, of course, is dependent on sea state.

**Q123 Sir Menzies Campbell:** Not many warships could do 35 knots.

**Captain Reindorp:** Not many, sir, no.

**Q124 Sir Menzies Campbell:** The obvious form of retaliation is to use weapons, but are there other means, such as steam hoses and things of that kind, which if properly directed—courageously directed, because you may have to expose yourself to use them—that offer possible alternatives?

**Captain Reindorp:** There is a variety of possible alternatives, which range from ranging razorwire and barbed wire across the most vulnerable parts of your ship to access to rigging fire hoses and having a water curtain over the side of the ship. There are also non-lethal sonic weapons, which I know some elements in the shipping industry have used. Yes, there are quite a few ways.

**Q125 Sir Menzies Campbell:** Finally, is it your judgment, from your experience, that the shipping companies are alive to the possibility of using those various means, or are some of them, to put it rather bluntly, simply careless?

**Captain Reindorp:** It would only be my judgment, but I think you could generalise and say that there are two camps: there is the majority, who are aware of the security measures available and will take them based upon a risk assessment—only they can determine that the risk their ship faces justifies their taking those sort of actions; and there are perhaps one or two shipping companies, or individual shipping entities or masters, who are either not aware or choose not to take those measures under any circumstances.

**Q126 Mr Ainsworth:** Dr McCafferty, you said that as the pirates have changed their methodology and increased their use of motherships, so navies in the area had upgraded their capabilities. Do we ever board motherships? Have we ever boarded one?

**Dr McCafferty:** I am not sure. We are straying into difficult realms here: the boarding of motherships is generally an SF capability, so I am not able to comment.

**Q127 Mr Ainsworth:** So you do not do it? The purpose of the question is that if we tell people that as they changed their methodologies, so we upgraded our capability, we are giving people the impression that there is a naval solution to this problem, but there isn't, is there? We do not board motherships, do we. I am not aware of any instance where we have boarded a mothership, so why give that impression?

**Dr McCafferty:** I think it is fair to say that, while we as the UK have not boarded motherships, we have put in an enhanced boarding capability that would allow us to, should we be in a position where there was a mothership, with evidence of piracy. The challenge comes from the fact that the ships that do the attacks—where there is clear evidence of piracy—are skiffs rather than motherships. That probably explains why we have not boarded a mothership.

**Q128 Mr Ainsworth:** Yes, but the problem, in effect, is that until there is actually an attack in progress,

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there is little we can do. Even if we boarded a mothership, what would we do? Is not that the horrible truth that the world needs to know?

**Dr McCafferty:** I think that is right. There is a large number of fishermen in the Indian Ocean, so you have to look for evidence that demonstrates that they are pirates and not fishermen going about their business, but it is not the first time that military forces have dealt with agile adversaries, who change their tactics.

**Q129 Mr Ainsworth:** There were a few Icelanders who mucked us about a few years ago, weren't there?

**Dr McCafferty:** Certainly in Iraq we saw people who would put weapons down, because then they were not presenting a threat and therefore we could not prosecute in the way that we would normally. It is the same with pirates: when they see a naval vessel approaching, they will often throw the paraphernalia overboard, and then we do not have the evidence which with to chase a prosecution.

**Q130 Ann Clwyd:** Can you describe a typical pirate? In the public mind, pirates still have a romantic, swashbuckling image. What kind of people are they? What motivates piracy?

**Captain Reindorp:** The early days of what press reports and academic works describe as subsistence pirates, who go to sea because they have had their livelihood taken away from them, are long gone. We must differentiate between what we call "foot pirates"—I know it is a tautology—and pirate leaders and investors. Your average foot pirate who goes to sea is somebody who is prepared to take quite a considerable risk in order to gain what to us would be a negligible reward. They are generally not terribly well educated and they have quite a difficult life ashore, but actually, these days, they are part of a very structured business model. They are the bottom part of an investment chain whereby a group of investors have got together, financed the creation of a pirate capability and sent it to sea in order to prey on innocent merchant ships on the high sea and bring them back for financial reward.

**Q131 Ann Clwyd:** Some of the work that NATO has been doing has been to correct misinformation. What kind of misinformation was being given to the Somali people and how do you correct it?

**Captain Reindorp:** It is not my area of expertise, but I think the work that NATO has been doing has been to separate the image that you brought up of the pirate as a sort of Robin Hood type, robbing the rich to give to the poor—generally a moralistic actor—from what he actually is, which is a simple maritime criminal.

**Dr McCafferty:** Colin Freeman, in his article on the BBC website today, highlights the fact that the Somali people themselves are beginning to see this as difficult for them, because what starts at sea—the kidnapping—can move to land and then aid workers, journalists and people who are generally there to help the overall situation become potential victims as well. It is those sort of messages that NATO is trying to get out.

**Q132 Sir Menzies Campbell:** We tend to see this as pirate skiff against merchant ship, but if the people in the skiffs are at the bottom of the food chain, is there any way in which we can cut the chain higher up—for example, if large sums of money are handed over by way of ransom, can we keep tabs on these and stop money laundering and things of that kind? Is that the sort of interruption we would be looking to do as well as to deal with the front line?

**Dr McCafferty:** It is something that the international community see as a key priority—changing that risk-reward calculus, not for the foot soldier but for the pirate ganglord. Tracing money is at the nexus of a whole lot of criminal activity. If you can pinpoint that, you would actually solve a lot of problems with organised crime. People are well aware of the opportunities that money laundering presents, but unfortunately it is not simple. Some of the new money laundering laws that they are trying to bring in to the region should make some of that a lot easier.

**Q133 Chair:** Dr McCafferty, you are the Head of Counter-Terrorism. If a British ship was hijacked, do you follow closely the release effort?

**Dr McCafferty:** Apart from, obviously, the Lynn Rival and the Chandlers, it has been UK-flagged vessels that have been hijacked. Although my job title is Counter-Terrorism and UK Operational Policy, it would not be the Counter-Terrorism team that would look after it; it would be Captain Reindorp and his team who would follow what happened.

**Q134 Chair:** I am sorry, I thought that one was military and one was more operational. I will put the question to you both, then. How much knowledge do you have about ransom payments?

**Captain Reindorp:** The best way to answer that, sir, would be to say "as much as we need to do the job that we do". Once a ship is taken, there are two ways of releasing it: one is for the ransom to be paid, and the other one is for it to be released through military means. That is not something that my team would deal with. Releasing a ship is a hostage rescue situation, managed from a Special Forces cell.

**Dr McCafferty:** The Foreign Office counter-terrorism directorate lead on all UK hostage situations, which would include hostages who were taken by pirates.

**Chair:** I had some detailed questions on that, but I will save them for another occasion.

**Q135 Mr Watts:** Can you tell us something about the commitment of assets and forces to dealing with this problem? Perhaps you could give us some indication whether you expect the assets and forces to go down, to increase, or to stay about the same?

**Captain Reindorp:** Are you talking about UK forces?  
**Mr Watts:** Yes.

**Captain Reindorp:** In respect of UK forces, the MOD remains committed to contributing to the international effort—and it is an international effort, not a UK or a coalition-type effort—on counter-piracy, particularly Somali piracy. Our current intention is to continue to retain command of the EU Operation Atalanta, and General Buster, who you saw last week, is the commander of that. We currently intend to do that

until the expiry of the current mandate, which is December next year—December 2012. We also intend to commit forces to the Coalition Maritime Force grouping, which may be available for counter-piracy. CMF is one of three international coalitions that are currently ranged against the pirates.

**Q136 Mr Watts:** What will be the impact of scrapping the four frigates?

**Captain Reindorp:** The impact of scrapping the four frigates is that there will be four frigates less. The impact in terms of counter-piracy—

**Q137 Mr Watts:** So would the answer to the first question be that you see assets and forces going down rather than staying the same?

**Captain Reindorp:** Assets will go down.

**Q138 Mr Watts:** So you, as the British contribution, will have fewer resources, forces, etcetera to deal with this problem? Okay.

Turning to air surveillance, what impact will the abolition of Nimrod have on your ability to track pirate activity?

**Dr McCafferty:** What you have to remember is that all the operations that Captain Reindorp referred to—the EU Operation Atalanta, the NATO Operation Ocean Shield, and the CMF operation—are coalition operations. The coalition commander decides what assets he requires, then he makes a request for assets from the members of that coalition. In counter-piracy there is also a number of non-aligned nations supplying assets, so it is not the case that if you take away any British asset it leaves a gap. As I said, this is a coalition and you change the balance of the assets in a coalition all the time. It is normal practice in coalitions.

**Q139 Mr Watts:** Can you guarantee that after the loss of the four frigates and Nimrod, some of the coalition partners will provide more facilities to bridge that gap? That that has been agreed—it is going to happen.

**Dr McCafferty:** I do not think we would say that it has been guaranteed; priorities change all the time. At the minute we have assets—particularly maritime assets—working in what we call Operation Ellamy and the Libya operations that we would not have had six months ago. At all times, every nation has to look at its operational priorities and the assets it has, and then allocate them appropriately. However, as Captain Reindorp said, there is no intention for the Ministry of Defence or for HMG to reduce what they are doing in terms of counter-piracy. It still remains an important operation.

**Q140 Mr Watts:** There is a decision to reduce UK assets, and you tell us that you are now dependent on other coalition partners to bridge that gap. If they fail to do that, or wish to do it for their own operational reasons, there could well be a reduction in the assets available to deal with this problem in the future.

**Dr McCafferty:** There could be.

**Q141 Mr Watts:** It is a bit confusing when you look at the command structure, because there seems to be three different organisations with different engagement rules. How do you bring that together? How is such a confused structure managed?

**Captain Reindorp:** There are three key coalitions: there is the European Naval Force one, Operation Atalanta; there is the NATO one; and there is the Coalition Maritime Forces—CMF-150. As you say, each has a different command structure, and there is a variety of reasons why they need that, largely to do with the contributing nations. Some will not want to play with the EU, obviously because they are not European; some will not wish to be part of NATO; and some will not wish to be part of any of them, and that is where you get the independent players, such as China, Japan and South Korea.

Probably the best co-ordination mechanism is something introduced by the EU naval forces, which is known as SHADE—the shared awareness and deconfliction environment. It meets regularly; it generally works out of Bahrain, which is the home of the headquarters of the Coalition Maritime Force, but the chairmanship is rotating. Although, the last time round, the CMF US-led forces hosted SHADE, I am pretty sure in saying that NATO actually chaired it, and one or two others, including sometimes the single players—the non-aligned nations—have been given the opportunity to co-chair SHADE. It is very effective. It is probably the best example of maritime security co-operation that we have ever seen. You have upwards of 25 nations and industry and the insurance world, and so on, coming together in a single location to talk, share their problems and agree a co-ordinated way forward.

**Q142 Mr Watts:** Would it not be better if they all had the same engagement rules? What stops that?

**Captain Reindorp:** The idea of NATO, the European Union, the Russians, the Chinese and the Iranians all having the same rules of engagement is not sensible, I'm afraid.

**Q143 Mr Watts:** Okay. Finally, can I go on to your involvement, if any, with local clans? Do we engage with the local clans in Somalia to set out what the dangers are of their pirates taking part in such activities? Could we do more, or do you think that that is a lost cause and that, no matter what we do to talk to them, it is not going to have any impact?

**Captain Reindorp:** Here, I have to fall back on my role, which is strategic advice and the direction of UK operations. We per se—the UK—do not get individually involved. I am aware that both NATO and the EU have done that, and they have done it with some success. As to whether more would be beneficial, yes, more will always be beneficial. It is a question of applying what assets you have in the best possible way.

**Q144 Chair:** Going back to the question about the different command structures and rules of engagement, is there an overlap or duplication of effort between the EU and NATO operations—leaving aside the third one and the independents?

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**Captain Reindorp:** When you get three coalitions plus a series of independent actors working together, there will always be areas of overlap. Seeking clearly defined boundaries—saying, “You have one part of the ocean. You have another part. You have a third part. You individual guys all mill around in the middle.”—will not work, because they will all bring, for the right or wrong reasons, their own agendas. One of the purposes of SHADE and one of things it is very good at doing, on an informal basis—bear in mind that SHADE has no authority or power—is to attempt to deconflict and to ensure that what assets are available are broadly shared in non-overlapping areas.

**Q145 Chair:** Is there a problem, though, with different structures?

**Dr McCafferty:** I do not think that there is any evidence to suggest that there is a problem. You look at it and it appears clumsy. SHADE has been a pragmatic approach to bring together the actors in the area, and that has removed the duplication.

**Q146 Chair:** If you were starting with a blank sheet of paper, would you set up the structure that we have now?

**Captain Reindorp:** If I was starting to put it together now, I would have a different end point in mind, but I would accept the current position as a good compromise.

**Q147 Chair:** That is an answer to a different question. What about the question I asked? If you were starting again, what would you do?

**Captain Reindorp:** I think, in ideal policy terms, perhaps; but as a practitioner, probably not.

**Q148 Rory Stewart:** Can I keep pushing on that? Unity of command is central. Can you tell us what on earth the reason is? I can understand Russia and China, but Russia and China do not belong to any of these three coalitions, so that is a red herring. Why on earth can the countries in the current three coalitions not create one coalition?

**Chair:** We have the Minister, who can perhaps answer that, coming next week.

**Dr McCafferty:** I suppose the simple answer is that you would have to look at what the principal reason is. If I am right, the EU mission was set up to look after the World Food Programme and to protect its ships. The Coalition Maritime Forces mission is broader than counter-piracy. It looks at counter-terrorism and counter-proliferation in the Gulf. You would have to go back and get the three coalitions to concentrate on one set of objectives. They all have missions that go beyond counter-piracy. It is not impossible, and perhaps that is something you need to look at as you move forward, but you need to go back to the genesis of the three operations to see why there are three.

**Q149 Sir Menzies Campbell:** Do any of them come with caveats imposed by their national Parliaments? As you know, that happens with land forces in NATO and has been a particular bone of contention in Afghanistan. Do we have maritime caveats?

**Captain Reindorp:** I am fairly sure we do. We impose national caveats on any coalition contribution we make, so it is fair to assume that others would, too. Would we know what they are? Probably not.

**Q150 Rory Stewart:** To continue on that, the UK has a range of naval commitments, and Dr McCafferty talked about matching resources to priorities. How does anti-piracy compare with the UK's other naval commitments? Can you give us a rough ballpark figure of how many UK naval resources and how much time is directed towards piracy, rather than other kinds of operation around the world? A third? 10%? 5%? How important is it to the UK Navy?

**Captain Reindorp:** At the moment, counter-piracy is not what we would consider a standing task, so it is not something on which we are directed politically to focus on a 365-day basis. Nor is it a contingent task that we are currently doing on an enduring basis for a limited time period. It fits outwith those two parameters.

**Q151 Rory Stewart:** Will you explain to the amateur what those two definitions mean?

**Dr McCafferty:** A standing task would be something that you do for the defence of UK maritime integrity, which would be a task to which frigates are attached for the entire period. There is another task called Atlantic Patrol Task North, which is in the Caribbean and is there for disaster relief during the monsoon season. It deals with counter-narcotics, so that is a task that carries on. We currently have Libya, which is a task to which we have committed a frigate. Piracy is another task that we do when those assets have been allocated.

**Q152 Rory Stewart:** Those are the priorities. Is it one way of saying that piracy is a lower priority than your standing and contingent tasks? Do the other commitments take precedence?

**Captain Reindorp:** Yes.

**Q153 Rory Stewart:** What are the implications of those commitments for the amount of resources that we have left to deploy against piracy?

**Dr McCafferty:** Obviously, if you have higher priorities, you put your resources towards those higher priorities. If resources become available, you move to the next level. There is no military commander in the country who will not ask for more resources. We have to live within a budget, and we have to work with the resources and the operational priorities that we have.

**Q154 Rory Stewart:** We were talking earlier about vessel protection. What is your sense of the UK's guidance and policy on vessel protection?

**Captain Reindorp:** The first point to make clear is that that is not an MOD part of ship, if I may use a naval term; it is a Department for Transport part of ship. We are currently engaged with the Department for Transport and helping it to understand the implications of a change in its current policy. Its current policy is driven by extant UK law, which forbids the carriage of private weapons onboard Red Ensign-flagged ships.

**Dr McCafferty:** The Home Office would have the lead on that.

**Q155 Rory Stewart:** To repeat, under UK law you currently cannot carry a weapon on a UK-registered ship?

**Captain Reindorp:** My understanding of UK law is that the carriage of private weapons onboard most ships is illegal. There are one or two exceptions, of which I am not aware, but I know that they exist.

**Q156 Rory Stewart:** If we were able to overcome that prohibition—if the law changed and it became possible for ships to defend themselves properly—what would be the remaining role for the Navy? Let's say these ships got to a situation where they could effectively prevent a pirate from climbing up a rope on to their deck. What would the British Navy be doing?

**Dr McCafferty:** If you stopped the pirate attacks, we wouldn't be doing counter-piracy.

**Q157 Rory Stewart:** Your assessment is that it's unlikely to stop the pirate attacks?

**Dr McCafferty:** To go back to what I said right at the start, the pirates have proven incredibly agile in changing their tactics. It may well be that if you put armed protection detachments on to vessels, you find yourselves in an arms race. It may deter some pirates; it may just encourage pirates, in acts of desperation, to arm themselves more.

**Q158 Rory Stewart:** Is there any evidence of that? I agree, as a hypothetical situation, but given what we know about the pirates—given their resources, given the kind of kit they use—there's not much evidence that they are likely to get to a high-tech stage, is there?

**Captain Reindorp:** There is very good evidence that they are adaptive. We have seen them adapt their tactics on several occasions. The use of motherships is a change in their tactics which allows them to overcome the monsoon periods which had previously seen fallow periods. Monsoons had strong winds, strong waves: no piracy. The use of motherships allows them to overcome that. So that is evidence of adaption, yes.

**Q159 Rory Stewart:** If I put this in very stupid, blunt terms, for my final question: if we look at, for example, fighting the Taliban in Afghanistan, the major concern of the military is not that the Taliban are going to be able to get F-16 fighter jets. They tend, much like your pirates, to rely primarily on Kalashnikovs, RPGs or IEDs of various sorts. The likelihood is that there will be—and continue to be—a massive asymmetry between the potential of the West, our navies, and wealthy shipowners, and these pirates. In Afghanistan, the problem is not usually defending a fixed position. It does not usually involve doing the equivalent of preventing people from climbing on to your deck. The threat is of a different sort. The asymmetric threat isn't one that would lead to well-defended vessels being boarded.

**Captain Reindorp:** I think the problem is that we are perhaps focusing on the military as a solution to the

problem, but that will only ever be a palliative. It will address the symptoms, but it will not address the cause. To try to drill down into your question, it doesn't have to be simply that pirates get better weapons. It could equally be that they choose to execute their hostages, which is a situation that we would not wish to get into, and would make it even more difficult for us to have whatever effect that we can.

**Q160 Chair:** In the Caribbean, the US law enforcement agencies have been using shipriders. Are there any lessons that can be learned from them?

**Captain Reindorp:** I am reasonably au fait with what they are doing. Shipriders are put onboard ships where a bilateral sort of agreement exists between the US and the ships that they board. There isn't that sort of bilateral agreement for counter-piracy, so while it is a model, it is not really an exemplar.

**Q161 Mr Watts:** The Committee previously heard that some 94% of pirates that are arrested are released. Is that a correct figure? I think most people would think it strange, if they found someone burgling their house, that they would be arrested and then released the following day. Isn't this an incentive for pirates to continue?

**Dr McCafferty:** It may be semantics, but with a burglar in your house, you have evidence of burglary. The challenge in the Indian Ocean, as we've said, is catching the pirates in the act with the evidence. Where we have been able to put evidence together, the UK has been successful in prosecuting pirates, albeit a small number. The challenge is always finding enough evidence that will convince the local authorities or countries in the region to try to prosecute.

**Captain Reindorp:** That is one of the key parts. To go back to your analogy, if you find a burglar in your house, there is a defined mechanism and route for him to be dealt with. Unfortunately, there is not one of those with piracy.

**Q162 Mr Watts:** Is there anything legally that prevents us from trying these people in the UK?

**Captain Reindorp:** Not that I am aware of, but I am not a lawyer.

**Q163 Mr Watts:** So where would we normally prosecute pirates?

**Dr McCafferty:** We would look to prosecute in Kenya. Because the problem is on their borders, they have taken large numbers of pirates from the international community for prosecution. They do that on a case-by-case basis, depending on identifying a Kenyan nexus—something that identifies it as Kenyan. Similarly, we have an agreement for the Seychelles to take any pirates that we capture where there has been a Seychelles nexus. The Foreign Office works continually with partners in the region to look for other countries that will take pirates. We do that through the form of MOUs. However, as I say, it is a Foreign Office rather than a Ministry of Defence lead.

**Q164 Mr Watts:** Why should they prosecute pirates when we do not?



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**Dr McCafferty:** I do not think that it is the case that we do not. Certainly if there was a case where there was a strong UK nexus, where it was a UK crew or a UK master, then we would look to prosecute. There would be a number of policy challenges around that, but we would look to prosecute. With the other pirates, the reason that the regional partners do it is that they see it—much as I was describing from the BBC article—as a local or a regional issue that they have to tackle.

**Q165 Mr Watts:** Is the prosecution of pirates something that we should give further thought to and perhaps take more effective action in the future?

**Dr McCafferty:** It is another area that could be reviewed. As I said, there is no legal reason why we do not: there has never been a pirate arrested in a case that has had that strong UK nexus.

**Q166 Mr Ainsworth:** Continuing with Kenya and others, what is the current status of the agreement with Kenya? Is it extant?

**Dr McCafferty:** There is no extant MOU. The MOU was that they would take pirates on a case-by-case basis depending on the evidence that we gathered and whether or not they felt there was a Kenyan locus in the incident. The MOU expired—I cannot remember the precise date—and there was concern at the time that this was a big hole in the armoury. However, since then, the Kenyans have continued to look at prosecutions on a case-by-case basis, and so we have carried on and would still look to use Kenya if we had a locus there.

**Q167 Mr Ainsworth:** Is it not true that we have only ever taken 20 to Kenya for prosecutions? We were the first to have an agreement with Kenya, yet there are other nations that have sent more to Kenya for prosecution than the UK.

**Dr McCafferty:** I think 20 is the right number for the UK. However, as you rightly identified, they do have large numbers of pirates being prosecuted there from other nations. It is not a deliberate decision not to take pirates to Kenya. It all is to do with the evidence that we collected when we were involved in a piracy incident, or the evidence we have seen of piracy. It is to do with the evidence collected and whether there is a case that can be made and whether that case has a locus in Kenya. It is not a deliberate policy not to go to Kenya.

**Q168 Mr Ainsworth:** Do we have an agreement with the Seychelles?

**Dr McCafferty:** My understanding is we have a formal MOU with the Seychelles.

**Q169 Mr Ainsworth:** How many have been sent to the Seychelles for prosecution?

**Dr McCafferty:** No one from the UK has been sent to the Seychelles as yet.

**Q170 Mr Ainsworth:** What people do not necessarily understand—we had evidence last week where we were told that prosecution was potentially the answer to this. Are there circumstances where

there is evidence to pursue a prosecution, yet we are not pursuing one, because we do not have a regional agreement or because we are not prepared to bring those people back to the UK?

**Dr McCafferty:** I am not aware of any. The case tends to stand or fall on the identification of the evidence and the local nexus.

**Q171 Mr Ainsworth:** So you would not feel that prosecution is—

**Dr McCafferty:** I think that prosecution has to play a part in this, because it is a constabulary action. Anything that we can do to build up the number of regional partners that are willing to take on prosecutions, and perhaps take on appropriate cases ourselves, all has to be part of the answer, because, as I say, it is a constabulary action, rather than a military action. The challenge is gathering the evidence.

**Q172 Mr Ainsworth:** What amount of effort are we putting into new agreements and partnerships, and what countries are we targeting?

**Dr McCafferty:** That is probably a question for the FCO. I am not trying to be evasive, but they will be able to give you a much clearer answer in terms of who they are working with.

**Q173 Mr Ainsworth:** Can I ask one question on a different issue? I do not know whether there is an answer. This is what Captain Reindorp said earlier. Why is it the area of special forces only on hostage rescue?

**Dr McCafferty:** We have to be very careful with what we say about special forces operations. I think the simplest answer is that it is the complexity of the operation, the absolute centrality of the safety of the hostages and the additional training and judgment that the special forces bring that means that, for most hostage rescue operations, you would look to special forces.

**Q174 Mr Ainsworth:** That is hard and fast?

**Dr McCafferty:** They would be the first port of call.

**Q175 Mr Ainsworth:** But they can't be, because there aren't that many of them. They are not necessarily in the right area at the right time.

**Dr McCafferty:** That is always going to be an issue, but if you look at the hostage rescue attempts that we have had recently not just in Afghanistan, but also in the Indian Ocean with the Americans and the French, and the fact that most hostages have been killed during hostage rescue attempts, that policy might well be correct.

**Mr Ainsworth:** I agree.

**Q176 Sir Menzies Campbell:** Who makes the decision about when to prosecute?

**Dr McCafferty:** First, the commander of the ship and the people who have done the boarding would look for the evidence and gather it together, then they would seek legal advice from the UK maritime component commander, who is based in Bahrain. Naval lawyers there will look at the evidence that has been gathered and decide—

**Q177 Sir Menzies Campbell:** The Judge Advocate, or at least what was once the Judge Advocate.

**Captain Reindorp:** Yes. That evidence pack would be presented to whom we think would consider prosecuting. They then have to decide whether the evidence is sufficient—whether they are willing, on the evidence that we can present to them, to accept the case for prosecution—so there is a transactional nature to this business.

**Q178 Sir Menzies Campbell:** And while we are doing that, the alleged pirates—given the presumption of innocence—must be kept in custody?

**Captain Reindorp:** Yes.

**Q179 Sir Menzies Campbell:** Do we do that on board the ship that has picked them up, or is there some land installation?

**Captain Reindorp:** There are different ways of doing it, but each will be determined by the legal constraints that we are forced to operate under. We will abide by whatever direction we are given.

**Dr McCafferty:** Ordinarily, unless there was a threat to life, we would not look to take the pirates on board the naval vessel, unless we believed that there was a strong possibility of prosecution. If it looked as though their ship was sinking then we would, obviously, take them on board, but ordinarily we would only take them on board if we felt there was a strong case for prosecution. We might subsequently be unable to follow through on that and then we would release the pirates, as you are aware.

**Q180 Sir Menzies Campbell:** That puts a very heavy responsibility on the officer in command of the ship. Not only does he have to manoeuvre the ship and carry out the operations, but he must then form a judgment as to the extent to which the evidence that is discovered is sufficient to be referred upwards for the possibility of prosecution.

**Captain Reindorp:** He would, though, make that decision based on recommendations and expertise provided to him. The ship's CO will not decide unilaterally; he will have a very well briefed, very knowledgeable legal team, sometimes on board the ship, sometimes on reachback at the various headquarters, sometimes back to us in the Ministry of Defence. However, you are right: it would be his call, based on his judgment of that legal advice.

**Q181 Sir Menzies Campbell:** Who decides where to prosecute?

**Dr McCafferty:** Once we see the evidence, it may point towards one of our regional partners. A process of negotiation would then begin with their criminal justice system to find out if they accept that the evidence we have is sufficient for prosecution.

**Q182 Sir Menzies Campbell:** Not only do you need a forum to prosecute, you need to have a place to put people who may be convicted. How is that arrived at, and is it necessarily the same as the forum in which the prosecution takes place?

**Dr McCafferty:** If the Kenyans—to use Kenya as an example—had taken the case on and were

prosecuting, the ship would take the pirates to Kenya and there would be a handover, at which point they would be arrested. It would then be for the Kenyans to detain them until trial and, if found guilty, for their sentence.

**Q183 Sir Menzies Campbell:** That must depend on whether this Kenyan court has jurisdiction.

**Dr McCafferty:** That is the key point. I talked about how the Kenyans have to decide whether there is a Kenyan locus. The question they ask themselves is, “Do we have jurisdiction in this case?”

**Q184 Sir Menzies Campbell:** Do I take it that if there is any question of a prosecution by the British authorities, we have to ask ourselves if we have jurisdiction?

**Dr McCafferty:** That is correct. We would, hypothetically, be looking for a key UK nexus such as UK hostages or UK casualties. That would give us the jurisdiction.

**Q185 Sir Menzies Campbell:** This may be an impossible question to answer, but do we go looking for the nexus? What is our attitude? Are we activist in the issue of prosecution, or do we take a less committed view?

**Dr McCafferty:** I do not think there is a commander on a ship in the Indian Ocean working in counter-piracy who does not want to see the end of piracy. It is not that we take the easy option. The professionalism of our commanders is such that they are trying to get the evidence and trying to move towards prosecution.

**Q186 Sir Menzies Campbell:** You have given us a very clear account of what is obviously a very complicated process—not even one process, but a set of processes. What I derive from your evidence is that there is an overwhelming need to simplify this, so that the connection between capture, prosecution and, if necessary, sentencing, can be dealt with much more expeditiously, without having to have negotiations with partners who may prove very difficult to negotiate with, for a variety of reasons, political and otherwise.

**Dr McCafferty:** A lot depends on the strength of the evidence, and that is where the legal advice that comes to the commander, based on experience of what has happened previously, is absolutely key. The Royal Navy would not take pirates on board a ship unless they felt that there was a strong possibility of a prosecution, because of that aspect of having to detain them potentially for long periods of time if you got into a protracted negotiation. Everything is designed to reduce the likelihood of that.

**Q187 Sir Menzies Campbell:** That brings us full circle and comes back to my point about the enormous responsibility you place on the captain of the ship, because it is he who, even with legal advice on board or if he can call back and ask for legal advice, ultimately signs the bottom line. That is true, isn't it?

**Captain Reindorp:** It is, yes.

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**Q188 Mr Watts:** Most of the attacks will be in international waters, but it seems to me that there would be jurisdiction if a British ship was boarded by pirates. What does Kenya get out of this? Why has Kenya been identified as a place where we send pirates? It generally would not have many ships in international waters or any jurisdiction. Why have we chosen Kenya?

**Captain Reindorp:** If I can give you a practitioner's view of international law as it sits, from a ship driver's perspective rather than a lawyer's perspective, my understanding is that piracy has universal criminal jurisdiction. Virtually any nation is required to support every nation in suppressing piracy. That includes prosecution, from seizing and taking to prosecution and incarceration. On the one hand you can say that you need a nexus, but on the other hand you can say that there is a universal jurisdiction here.

The issue turns for me, as a practitioner, on one of simple practice. You could be doing this 1,800 miles out into the Indian Ocean; it would take you five or six days to get a pirate back if you had to steam him back, and you may not want to send your one and only helicopter off to do that, because that might be better used looking out for and trying to deter and interdict pirate operations. This is not simply an issue of jurisdiction; it is also an issue of practice, which comes from the unique maritime environment in which it is happening.

**Q189 Ann Clwyd:** Can you tell us a bit more about how crews from other countries may act as hostages but are not hostages at all and are, in fact, hand in glove with the pirates? Do you have any evidence of that?

**Dr McCafferty:** I do not think we have evidence of that. What we have seen on a number of occasions is the pirates, as part of this move to using larger motherships, using vessels that they have pirated, and the crew from that pirated vessel is coerced into crewing the ship so that the pirates can go off and pirate other vessels. I am not sure that we have seen any evidence of pirated crews or hostages joining the pirates and working with them.

**Captain Reindorp:** We have seen evidence of it working the other way, where you get on board a vessel that has been pirated and the pirates suddenly decide that they are hostages. That presents another practical challenge, particularly if you do not have the ability to understand the language and they have thrown their weapons overboard, or, indeed, everyone else on the boat has an AK47 as well, whether they are an innocent fisherman or a suspected pirate.

**Q190 Ann Clwyd:** That makes it very difficult for naval crews trying to determine what to do in those circumstances.

**Captain Reindorp:** Yes indeed. That is a classic indication of why a military solution is both practically and theoretically not the answer to this problem.

**Q191 Ann Clwyd:** Do you have any information about where pirate ships are being serviced and refuelled?

**Captain Reindorp:** There are known locations where they are taken. The anchorages are well known, although I cannot list them off the top of my head. We have intelligence on where their infrastructure is, but I would not want to go into it in this forum.

**Q192 Chair:** We are quite interested in this point, but I can recognise why you do not want to go into it. Would you think about how this information could be given to us?

**Captain Reindorp:** You are going to visit General Buster's HQ, are you not?

**Chair:** We are.

**Captain Reindorp:** He would be perfectly placed to help you understand that question.

**Q193 Chair:** That is helpful. Dr McCafferty, you are also responsible for counter-terrorism, as we discussed. Do you see any link between terrorism and medium-level crime?

**Dr McCafferty:** A large number of intelligence agencies around the world are trying to find that link. There has not been any evidence of a link between the pirates and al-Shabab, the terrorists in Somalia. From the pirate perspective, they have in their eyes a working business model that allows them to take pirate ships. If the linkage to al-Shabab in particular changed that risk-reward calculus for them quite substantially, that link to terrorism would change entirely the international community's view.

Where you might see the link is in the terrorist financing. I do not think there is a crossover of money, but on Mogadishu high street, there is not a pirate money launderer beside the terrorist money launderer; there is probably a money launderer. If we could get intelligence that allowed us to take out that crossover, then you might well start to have an impact on both terrorism and piracy. As I said, I think people are looking hard for those links.

**Chair:** Rory wants to ask a question and he has made it clear to me that it is a short one, preferably with short answers.

**Q194 Rory Stewart:** It seems to me that we are not succeeding in defeating the pirates. We are just pushing the problem round the ocean. You are very doubtful that these boats will be able to defend themselves; you do not think there is a military solution. The root cause lies in Somalia and we do not have a solution to that. It is not a priority for us in terms of our tasks and not that much UK shipping is being attacked. So why are we bothering?

**Dr McCafferty:** Looking at Somalia as a whole—this is partially with my counter-terrorist hat on—I think Somalia presents a growing threat to the United Kingdom. What we are doing in terms of counter-piracy is part of that wider Somalia strategy. We have to find a way to improve conditions in Somalia, working with the Transitional Federal Government there—the TFG—in a way that stabilises things. That might take decades but we need to contain and allow those benefits to be seen in order to protect the UK from those security threats.

**Chair:** Thank you both very much. In a short space of time you have given us a lot of information. The

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fact that I have let the session overrun by nearly 20 minutes is a tribute to the quality of the information you have given us. Thank you both very much indeed. It is much appreciated.

### Examination of Witness

*Witness:* **Sally Healy OBE**, Associate Fellow, Chatham House, gave evidence.

**Q195 Chair:** I welcome our second witness today, Sally Healy, Associate Fellow of the Africa programme at Chatham House. Sally, thank you very much for coming along. Would you like to say something by way of an opening statement?

**Sally Healy:** Yes, I would like to say a few words. I am an independent Somali analyst at Chatham House. I am not a specialist on maritime affairs; I am more of a specialist on Somali affairs, and I hope that we can have a conversation about Somali perspectives on this problem and how to tackle it. Having said that, Somalia is, of course, a very difficult country to visit or spend time in. I can only say that my information is built on a long connection with the country and on conversations with Somalis and sometimes with researchers who are doing work on piracy issues. I try to gather information from any perspective, but it is not necessarily first hand.

There are three need-to-know things that I want to say at the beginning. First, Somalia is very much still a country in crisis. Although some bits of it are more stable than others, the humanitarian situation at the moment is very acute, particularly in the south. Of a population of just 9 million, 2.5 million people need food aid, 1.5 million people are displaced inside Somalia, and three quarters of a million Somalis are registered as refugees in neighbouring countries. From a population of 9 million, that really is a country in crisis, although ironically—or not ironically—piracy tends to be off one of the more stable areas of the country.

The second issue that I wanted to mention is that Somalis tend not to have a very benign view of outside interventions in their country, and I think that anti-piracy activities need to recognise that that is likely to be the case. It is important that any anti-piracy activities give some indication that we actually care about Somalia and its people, and the protection issues that are at stake, rather than simply being concerned with shipping interests, although obviously we should be driven by UK interests.

Thirdly, the record of external interventions of all kinds in Somalia is very poor, whereas we know that there are other approaches that Somalis can manage themselves, such as the success that we find in Somaliland in particular, where they have ways of managing peace and security and dealing with crime and punishment in ways that are not very familiar to us. However, those often produce more results than the external interventions that we lead, and the kind of results that we look for from Somalia.

I hope that we can talk a little about disincentives in terms of anti-piracy activities. Somalis would say that they want to know more about what the incentives are and where the carrots are in the strategy. These are two sorts of incentives: incentives for local communities or pirates themselves, and incentives for

local administrations, of which there are several rather than one. What incentives they have or might get to limit piracy—

**Q196 Chair:** Do elaborate now, if you like. You were suggesting that we might like to go into disincentives and incentives. Please do.

**Sally Healy:** There are at least four sets of players in the Somali context. We can start with Somaliland, which is the most stable area of the country in the north-west. There is no piracy off Somaliland. It is the unrecognised bit that has been running its own affairs for a long time and would like to be recognised, but it is not recognised by the UK or anyone else at the moment. The Somalilanders are containing and stopping piracy. They have pirate captives in prison, charged and convicted, and they are dealing with piracy because they want to be recognised as good international partners. They are highly motivated and they do it. They have extremely limited resources, but they capture pirates and stop piracy off their waters. It is an extraordinary example of what can be done with next to nothing.

Coming round clockwise, we come to Puntland next. It is, again, a stable area of Somalia—not the worst bit by any manner of means—but it is the area off which most of the piracy activity is taking place, as well as a bit further south, in Galmudug. I would say that the Puntland authorities, certainly at the formal level, are against piracy and they would like to stop it. We had a Minister from Puntland at Chatham House recently who spoke very firmly about the need to kill the pirate leaders and deal gently with the foot soldiers, as he called them, but he did say that piracy was not the top priority. The Puntland authorities, which have very few resources, give top priority to keeping peace among themselves and keeping Puntland stable. Piracy is a problem out there that they would like to tackle, but they feel they have not got the means, and when all is said and done there are more pressing issues for them than tackling piracy on the high seas.

Those are the first two bits of Somalia, shall we say—Then there is the southern part of the country

**Chair:** Mogadishu is the capital.

**Sally Healy:** Well, the third bit—well, south central; the large part of south central. The Transitional Federal Government are only a government in name, and of course they would be committed to stopping piracy because they are very much a creature of the international community, but I think they are unable to follow up their words with deeds in any serious way. The al-Shabab group, which controls a lot of the southern areas and at least the port of Kismayo appears up to now to be against pirates and piracy. The group itself has a very different agenda, and it seems to regard the buccaneering and this manner of

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raising money as an improper activity that goes against the moralistic and strict version of Islam that it follows. We have all these different approaches for administrations, who I think could and should be incentivised to deal with piracy.

**Q197 Chair:** Would it make sense, instead of sending prisoners down to Kenya, to send them to Somaliland, who seem quite keen to expand what seems like a little industry that they have got going there?

**Sally Healy:** That would be a bit tough on them, because they would end up with a very large number of Somalis, whom they do not regard as their nationals, sitting in their prisons. Although I dare say there could be an aid programme to assist those prisons, I think they would probably feel like a dumping ground if that were done.

**Q198 Chair:** Even if they were funded properly to do that?

**Sally Healy:** I am sure they would need to be funded. I think there are plans afoot to develop the justice system and prisons in Puntland, but we inevitably get caught up in the standards of justice and prisons that could result from any actions from foreign forces such as our own. I dare say those standards are a great deal higher than any that obtain in any of these Somali territories that are managing their own peace and justice with very minimal resources. I heard a terrible anecdotal tale of a Somali pirate who was imprisoned—I am not sure whether he had been convicted—but once he had been imprisoned he asked if he could bring his wife now.

**Chair:** Right. It's better than living at home, I suppose.

**Q199 Sir Menzies Campbell:** Can you remind us why Somaliland has not been recognised? Would the prospect of recognition be an encouragement for the authorities there to be yet more active?

**Sally Healy:** The reasons given are that Somaliland would need to be recognised in the context of an African decision; the diplomatic practice is that Africa should be the continent where such a decision is initiated and that other countries might follow. The reason why it is not making much headway in Africa is that the only separations we have had in Africa are ones where the capital city agrees to the separation, as we had with Ethiopia and Eritrea and now with Sudan. Things could change, but the story at the moment is that Africa is looking for a solution to Somalia's problems that encompasses the entire territory.

**Q200 Sir Menzies Campbell:** Were the prospect of recognition to be seen as some kind of reward or incentive, do you think that that might have any impact?

**Sally Healy:** That is the situation that obtains at the moment. The Somalilanders are trying to be good international citizens, and are controlling their territorial waters. There is no piracy off Somaliland. They are actually doing it with that hope and

expectation; but whether the beneficiaries of their anti-piracy activities are going to be able to deliver on the recognition is another matter.

**Q201 Sir Menzies Campbell:** Could you also summarise the colonial history of Somaliland?

**Sally Healy:** It was a British protectorate, which gained independence for five days in 1960 and then formed a union with the rest of Somalia.

**Q202 Sir Menzies Campbell:** Who was the colonial power in relation to Somalia?

**Sally Healy:** It was a UN Trust Territory under Italian administration.

**Q203 Mr Ainsworth:** You have answered the questions that we had about Somaliland and the incentives, which appear to be the desire for international recognition, and therefore compliance—or the attempts to the best of their ability, which are very successful, to deal with piracy. Puntland is the centre of the problem, and you talked about incentives. What would we have to do to get Puntland into a position where it was prepared to take, and was capable of taking, effective action against piracy?

**Sally Healy:** It's a very difficult question, first of all, and I don't have a ready answer. But the kind of issues that matter would include some sort of recognition that there has been a plunder of Somali resources.

**Mr Ainsworth:** Fish.

**Sally Healy:** Yes, the fishery resources. There are substantial maritime resources that are worth a lot of money, and they have been systemically taken for a very long time from the Somali waters.

**Q204 Mr Ainsworth:** But what do you mean by a recognition? The fact that the ships have taken away fish has been going on for a long time, and it does not only happen in Puntland; it happens in a lot of other places as well.

**Sally Healy:** It has happened all around the Somali territorial waters. If there were activity that protected those waters in some way, or said that from now on these waters are recognised as Somali waters and are to be exploited by Somali people and that all this effort that we are putting into it is going to achieve and protect those waters for Somali exploitation, you might find—it would not happen instantly—that you would be able to have a conversation on that basis with Somalis about ways of making the most of, and engaging in, their own fishing industry, which they are not able to do. It would not happen overnight, but the ideal would have to be to turn the entrepreneurial spirit of the pirates into activities that were more like trawlermen.

**Q205 Mr Ainsworth:** I can see the advantage of that—at least it would deprive pirates of a moral argument that “You took our fish and therefore this is what we are doing”—but surely a lot of these guys have been pretty much involved in criminality for quite a long time, which is very profitable for some of them?

**Sally Healy:** Do you mean the pirate leaders?

**Q206 Mr Ainsworth:** The pirates and the facilitators. It will not be enough, even over a time scale, to lure them away from a very profitable criminal activity.

**Sally Healy:** First, there are all the disincentive structures going on—all the things that are already going on to try to deter, prevent, stop and send people to prison and so forth—that ought to be making the business more difficult. If it does not have any impact at all on its profitability that raises a different kind of question. However, if at the same time there was a different way of tackling the problem, and saying, “There are resources here, and they could be yours if you co-operate in stopping all of this piracy,” that would at least be the beginning of a conversation or the basis of a deal. At the moment there doesn’t seem to be one, other than Puntland saying, “Well, if you give us the resources we’ll do it, but we haven’t got the resources, and we have a lot of other things we’ve got to do with the little we have.”

**Q207 Mr Ainsworth:** So who, specifically, are the people and organisations we ought to be talking to about this? Are there recognisable people and organisations that could potentially give you some improvement? Are we doing that, to your knowledge?

**Sally Healy:** To my knowledge there is willingness on the part of the UK, and others, to engage with authorities other than the Transitional Federal Government, so in that way a start has been made down that road, certainly with Somaliland, and to some extent with Puntland. The trouble with Puntland is that it is a more dangerous place to visit than Somaliland. They have a lot of kidnapping, particularly of foreigners; there has been a bad track record, so that’s a disincentive for people to go and have the kinds of conversations that people have in Hargeisa, for example.

I think, however, that efforts along those lines could be made. There are authorities—there are ministries and so forth in Puntland, and it seems to me that if they are there the only sensible thing to do is engage with them. It’s certain that you cannot engage with them via Mogadishu. It has to be a starting place for having the kind of conversation that one would want to have, so that the Puntlanders could do the things that we’ve seen the Somalilanders do, essentially with their own resources; through their knowledge of communities; and through the kind of control that they are able to exercise, which is somehow different from the kind of control that we expect, in terms of use of force.

**Q208 Mr Ainsworth:** Is there a desire for self-government in Puntland?

**Sally Healy:** The Puntlanders are self-governing, and they see themselves as a federal state of a federation that hasn’t yet been formed. It’s a little bit unusual, but that’s their status.

**Q209 Mr Ainsworth:** But are they not looking for independence from this mess to the south of them?

**Sally Healy:** No. They are hoping for a place in the sun in a united Somalia, and they don’t think Somaliland should separate either.

**Sir Menzies Campbell:** How are they on borrowing powers?

**Chair:** It all sounds rather attractive.

**Q210 Rory Stewart:** This is a bit of an unfair question because you’re not a Somali, but you know more about them than any of us. What would be your best guess of what a Somali would think of this kind of conversation, this strategic discussion? If they were sitting in the room listening to this kind of policy talk, how would they respond to the way in which they are being treated or discussed?

**Sally Healy:** The answer to that is that they say, “Where are we in this conversation? Where are the carrots? This won’t succeed if it is done to us; it has to be done with us.” There are Somalis who are well aware that this is a crazy way to be carrying on, and they are very aware of the large sums of money that are being spent on these operations, and by the private security firms and the insurance business. They are very alive to the big pirate economy that has developed, and they’re quite cynical about it, and feel that their own contribution to it is just one of many that are kind of cashing in on a bit of a bonanza.

That doesn’t mean that they think it has a long-term future. I think that, probably at the grass-roots level—as opposed to the sorts of Somalis I might meet in the diaspora—quite a lot of these pirates feel that they are just earning a living. It’s an extraordinarily risky way to earn a living, but if you look at the options for a young Somali who has grown up in a country without a government their entire life, an option might be to join al-Shabab, in which they may or may not get paid or survive. They could join the government’s security forces, to which the same applies. Many of them, as you know, are trafficked, or traffic themselves, to try to escape from Somalia. Huge numbers of them die at sea. If you look at the range of unpleasant, risky options that are available, piracy does not stand out quite so dramatically as it would if you or I decided to take to the seas to earn our living.

**Q211 Rory Stewart:** If you look at somewhere such as Afghanistan, drugs are huge. At times drugs have been half the entire gross domestic product of Afghanistan and almost half of the provinces of the country have been involved. How important is piracy to Somalia and the Somali economy?

**Sally Healy:** I don’t really know what it is in percentage terms, but I don’t think it is a huge driver at the moment. The extraordinary thing about the Somali economy is that it is a global phenomenon that embraces a large and reasonably prosperous diaspora spread across the Middle East and the western world. Sums of money are exchanged in remittances and in business. There is a vigorous livestock trade out of Somalia, too. I do not get the feeling that the contribution of piracy or funds from piracy is enormous.

**Q212 Rory Stewart:** That raises the question—this goes to what Campbell McCafferty was saying—of how important solving piracy is to solving the problems in Somalia. At the moment, huge amounts of resources are being put into piracy. Is that a correct

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allocation of resources? When I said that few UK ships or captives are being taken, his main justification for it was that we have to do it because Somalia matters and working on piracy helps Somalia. Presumably, you would argue that that is a misallocation of resources.

**Sally Healy:** I do not think I have heard the argument that this is a solution to Somalia's problems. It is supposed to be a containment strategy, but it seems to me that if it isn't done in partnership with Somali people to achieve a result—

**Q213 Rory Stewart:** It's not really that. It's about the allocation of resources. If it is not that important to Somalia's economy or Somalia's problems, is it justified, for the sake of argument, to spend 10 times more on dealing with piracy than on dealing with the internal problems of Somalia?

**Sally Healy:** I would think not, but my impression is that the safety of the high seas is the motivation, rather than the settlement of Somalia's problems, but I might have been reading or hearing different information.

**Q214 Rory Stewart:** From the perspective of Somalia, dealing with piracy is not a significant contribution to stability in Somalia, so you would pursue other measures. That is the main justification.

**Sally Healy:** Yes.

**Q215 Ann Clwyd:** If the pirates have, for example, succeeded in driving away foreign fishing vessels, that is a tremendous contribution to the local economy. I imagine that the pirates would be quite popular, particularly among the fishermen.

**Sally Healy:** What I have heard is that there is a visible difference to the amount of fish that have recovered in the ocean, but you are not going to make a lot of money through subsistence fishing. If we are talking about financial incentives for people to move away from a lucrative new form of activity, such as piracy on this scale, you have to think in terms of industrial fishing, rather than people fishing at the local level. There might be more fish to eat, but we need to think about livelihoods and ways for people to make a halfway-decent living that doesn't involve criminality and high risks.

**Q216 Ann Clwyd:** If foreign fishing vessels were coming there from all over the place, surely the kind of fishing that they were able to carry out was more than subsistence fishing.

**Sally Healy:** The foreign ones always have done more than subsistence fishing, but I do not think that the Somalis did. It is 20 years since Somalia broke down and for the previous 10 years, before Siad Barre went away, the country was in a very fragile and poorly governed state, with a lot of civil wars going on. So I don't think that there has really been a time that the fishing industry, which I think is a growing industry globally, has really had a chance to get going in Somalia. The maximum that it had would have been back in the '70s. I just thought that there was a huge potential. These aren't things that can appear overnight, but if we are talking about getting out of this sort of "fix" of how to stop the attractions of the

money making that is attained through piracy, the only obvious resource that one can see is those very fishing resources which are at stake.

**Q217 Mr Watts:** I think you have dealt with some of the questions that I was going to raise. It seems that there is general acceptance that we will not deal with this problem at sea and that somehow it must be resolved on land, but then you talked about the problems that exist in Somalia at the moment. Has piracy helped to focus the world's attention on the problems of Somalia, or is it a distraction?

**Sally Healy:** Piracy has refocused attention, but it has refocused it in a very one-dimensional way. I think that terrorism is also playing a part in focusing attention on Somalia and fortunately the two issues remain distinct as far as I can understand. The profound problems are problems of governance, and restoring stability and government in the country. The refocusing of attention has been a good thing on balance. There is an urgency now, particularly among the neighbours, that there didn't used to be, that Somalia can't just stay like this. Something else has got to happen.

International attention to Somalia has been a bit fitful. It must be said that in some of the periods when Somalia was not having that much attention paid to it, a lot of stabilisation took place. There are ways in which Somalis can settle things, and that is beginning to be understood. The fact that the international community are no longer focusing all their attention on the Transitional Federal Government and expecting them to be the silver bullet and the answer to all the problems means that there is a more nuanced and useful understanding of the difficulty that Somalia is in, and the diaspora is potentially a great help in understanding that.

**Q218 Mr Watts:** Do you think that the British Government have got a joined-up policy on this? Are you aware of many anti-piracy projects in Somalia that are aimed at weaning people away from piracy, giving them alternatives and building up support against piracy? Is that something that you are aware of? Is that happening?

**Sally Healy:** I don't have detail on those things, but it is clear that the relationship with Somaliland is one that would—I have already said that they are dealing with the piracy, so you could say that it is not a factor. The stability of Somaliland and the economic benefit to Somaliland and aid investment is part of—

**Q219 Mr Watts:** That is being driven from inside. It has not been helped and assisted by us or by other countries, has it?

**Sally Healy:** Yes, it has. There is definitely enthusiasm for helping to build prosperity in Somaliland. It is terribly difficult, because it is not a recognised country, but there is definitely a determination to give more development assistance and I think that the same applies to Puntland, but it is much harder to deliver it there. There are UN programmes and things of that sort, so there are international efforts.

**Q220 Mr Watts:** But are they linked into this particular issue of piracy? You talked about incentives and you said that the Somali people want to see some incentives and asked, "What's in it for us?" Are we doing enough to make sure that what we are doing is linked into that requirement to do something about piracy?

**Sally Healy:** To me, it is a question of how that is being packaged. Somalis want jobs and prosperity the same as anyone else. You could try to help to create jobs and prosperity for a number of reasons: because you don't want people to join Shabab; because you don't want people to be pirates; because you don't want people to take to the high seas and come to Europe. These things are multiple. They don't have to have an anti-piracy label on them. The objective would have to be that there are better livelihoods than capturing people and holding them to ransom. There have to be better ways of earning a living than that. But there are, as I said, many worse alternatives in Somalia.

**Q221 Mr Watts:** Finally, can I just put my pessimistic hat on and suggest that some people may believe that this is so entrenched that it is a way of life, and that there is nothing that can be done to turn the situation around because there will always be an advantage in acting as a pirate rather than some of the other things we are talking about?

**Sally Healy:** I would say that this piracy is relatively new. There has been an awful lot of kidnapping and extortion going on in Somalia for a long time on the land by people against all sorts of foreigners. Aid workers have come in for it. Even among Somali communities themselves, there have been high levels of kidnap and extortion. It is a very unpleasant aspect of the difficulties Somalis have faced. They have had to overcome it by whatever means possible, usually through clan arrangements and coming to settlements to prevent it happening. I think that the piracy is relatively new. It is obviously terribly lucrative. It is obvious that the international community is alarmed by it, but not very good yet at knowing how to create incentives to stop it, although it has done better perhaps at trying to raise the cost of it.

I don't think it is completely dyed in the wool. I think, in the long run, certainly in the war economy that existed in Mogadishu, the war lords got to the point in the end where they wanted to be in business. People who have made large sums of money want to go legit in the end, because you can do more and you can do better. I do not think that anybody who is investing in piracy is thinking that it is something that they will pass on to their grandchildren. I can only see it as a kind of get-rich-quick strategy and, in principle, it should be possible to find other ways of using your capital. That would be with my very optimistic hat on of course.

**Q222 Mr Ainsworth:** The truth of it is that we just do not feel that we have a solution to Somalia, and therefore we have effectively tried to contain it, haven't we? We have just left it to fester. Are there things that we just do not understand about the root causes of the problem: things that we ought to be

undoing? You talked about decimation of the fish stocks, but there must be far more root causes to deep-seated instability in Somalia than that.

**Sally Healy:** Yes, there is a long history of very bad government. That is one of the things in the background. Because the state that did exist was such an unpleasant one, there is not a great deal of enthusiasm about having a new kind of state restored in the image of the old one. I think that the western, or the foreign, approach of trying to get people together and set up a power-sharing government has had very limited results because the thing that has been missing all the time is some sense of legitimacy. The smaller clan-based entities that have worked better in Somalia are those where there is a relationship between the people in power and the people on the ground—a simple formula of accountability between rulers and ruled, however basic the set-up. That is what has systematically escaped the western efforts when they have had this big conferencing, have argued for months and then have dished out jobs among themselves. That is not connected to anyone; it is not connected to real lives on the ground. These newer entities, such as Somaliland and Puntland, do have that character and they also have a lot of support, including financial support, from diaspora communities.

I think that the diaspora communities in the long run are going to be part of the answer for building stability in Somalia, but this is a model that is not like governments that we are used to dealing with, and I think that is why it has been such a difficult one for the international community to grasp and deal with. Although the problems are arguably worse with Shabab and piracy, I think that the approach that is being taken now is less one of, "Oh come on, let's just make a government and then we can all go home and rest," because it is understood that that way of going about making a government is not producing results.

**Q223 Mr Ainsworth:** How worried should we be about the spread of instability? We read in the newspapers the other day of many more thousands of people fleeing to Kenya. Is Somalia at risk of destabilising the entire region? Is that something that we ought to be mutually worried about?

**Sally Healy:** It continues to be a very destabilising factor in the south, but if Shabab is being reduced in its scope, which seems to be the case, by the efforts of the neighbours, AMISOM and so forth, it means that there will be shorter-term upheaval, but in the longer term a more stable set-up might emerge. I think that there are two things going on at once in relation to Kenya. One is the impact of the drought, and I am sure that people will be fleeing in the hope of getting humanitarian assistance, and there has also been conflict in south-central fairly recently between Shabab and other forces, and inevitably that has produced movements of people. So there is upheaval going on, and yes there are more and more refugees, and Kenya will need a lot of help in dealing with that, but a static situation in the south of Somalia as it is is not a stable solution in the long run either.



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**Q224 Rory Stewart:** Again, this is a bit unfair because you are not a specialist on crime, but generally there is not a strong correlation between poverty and crime in the way that you are suggesting. The experience with drug programmes around the world is that alternative livelihoods are not sufficient. The fundamental driver of this activity is usually insecurity—lack of governance and lack of rule of law. Indeed, Somaliland itself, in its ability to deal with piracy, illustrates that. The real problem is governance, and the problem underlying governance is the problem of legitimacy, and the problem of legitimacy is essentially that there are no proper political solutions, because the United States, Ethiopia and the African Union forces have, in various ways for 20 years, been trying to impose their own vision on what should happen. Presumably, the only long-term solution is for the outsiders to take their foot off, extract themselves, interfere less, allow political negotiations with Shabab to happen and stop allowing obsessions with terrorism and with piracy to contort and disrupt the political process.

**Sally Healy:** That would be my kind of vision, but I do not think that it is one that is necessarily shared by neighbours who feel that they have vital interests at stake and that, if they do not stand up against Shabab, it will take over in Mogadishu, with very damaging results, in their view. These are genuine conflicts of interest. Large areas of Somali territory—Puntland and Somaliland, which is a very large part of the territory—are under stable government and are not under Shabab, and they are offering a different model. What Somalia is, where it is going and what it is going to be is being contested among Somalis, as well as by the neighbours, so it is not quite the case that there is a sort of innocent Somalia or uncontested Somalia just being contested by outsiders. There is also contestation within Somalia about the way to be and the way to stabilise the country.

**Q225 Rory Stewart:** But surely the grand political settlement for Shabab has to happen, ultimately. That has to be central to the whole thing.

**Sally Healy:** Possibly, but some would argue that Shabab is not part of the future in Somalia and that its support could dissipate and erode if it was no longer in a strong position. There are people who say that it rules through force or it rules through fear. There are different views about its strength and the strength of its support. What we do know about Somalia is that Somalis can change allegiance and form new coalitions on new lines quite rapidly, so it is difficult to say for sure.

**Q226 Rory Stewart:** But I am not asking you to say for sure. I am asking you to come out and say that being open to that form of political settlement and negotiation would be useful in resolving this. It may well turn out that it does not have much power, much support or much legitimacy, but so long as the entire approach is to say, “These people are the enemy—we don’t negotiate with them,” that does not seem likely to lead to any sustainable, legitimate solution.

**Sally Healy:** I agree that having a door open to that kind of a negotiation approach is the right way, but I

do not think it can be said for certain that that holds the key to a settlement.

**Q227 Chair:** On the subject of neighbours, the economies of Kenya and Uganda have been affected by this. There is a drop in shipping. Might they actually make a move themselves? Their economies have been affected. Are they just going to acquiesce in this?

**Sally Healy:** They are much more actively engaged in Somalia than they used to be. A few years ago, it was essentially Ethiopia that was involved in shaping developments in Somalia. It then got caught up in the Ethiopia-Eritrea dynamics, which was very unhelpful. The fact that Uganda has put its troops into AMISOM has given Uganda an entirely new involvement in Somalia that it used not to have. The Kenyans are much more actively involved in the south than they were in the past, because they are worried about Shabab. My feeling is that there is a deepening and a widening of regional engagement, precisely for the reasons that you say, but I do not think that they can force a solution on Somalia, any more than UNOSOM or the Ethiopians could, or AMISOM can. But they are involved and I think that the way that more of the neighbours are involved, rather than it being simply an Ethiopia-Somali confrontation, is a positive factor.

**Q228 Chair:** Have you been to Somalia recently?

**Sally Healy:** I have been in Somaliland. I have been in Hargeisa, Berbera and Boroma.

**Q229 Chair:** Is Somaliland safe to visit?

**Sally Healy:** Yes.

**Q230 Chair:** Puntland?

**Sally Healy:** I have friends who go to Puntland. Foreigners visit Puntland, and I was with someone—an Englishman—a couple of weeks ago who lives in Garowe. Not to mention all sorts of Somalis who come and go. But not so many for Mogadishu.

**Q231 Chair:** Have we touched on all the points? Is there anything that you feel that we haven’t covered?

**Sally Healy:** I think not. One thing I didn’t quite mention, but it comes back to an issue we have covered, is the issue of employment. We had a meeting, as I mentioned, with a Puntland Minister at Chatham House, and I asked him about the motivation for stopping piracy. He talked about the need for forms of employment—activities that the footsoldiers could do—but he also said that when a young pirate gets lucky and is part of an operation that takes a ship, there is a whole bunch of subsidiary economic activity that comes along, with people offering transport, water and food for the hostages, someone else offering translation services, and other people getting in touch about ransom delivery operations. It shows that there is a whole chain of other people who are getting involved in this. I found it helpful to show that, yes, of course it is criminality, but a whole bunch of people are starting to make a living out of it in small ways.

**Q232 Chair:** A proper local economy.

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**Sally Healy:** Yes, indeed. And the local economy aspect is one that has got to be thought about when we consider how we are going to deal with this.

**Q233 Chair:** I think Rory was half-hinting at this: should we be too fussed at this? Hardly anyone has lost their lives, and it is just redistribution of wealth going on, although a rather unusual one.

**Q234 Rory Stewart:** Eventually it has to be dealt with, with security and a state. That's what Somaliland shows: it cannot be dealt with otherwise, whatever the Puntland Minister says, because that's what Afghan Ministers say about drugs. They say, "Give us more jobs, build more factories, people will

stop doing it". Until there's a proper functioning state that can establish itself—security, rule of law, governance, legitimacy—these kinds of activities are not going to disappear.

**Sally Healy:** Unless there is a better way of investing your money. A more lucrative—

**Rory Stewart:** It's never worked anywhere in the world. And it is chaotic.

**Chair:** Anyway, the British interests take the matter very seriously, and so do we. Sally, thank you very much indeed, that was really riveting and very helpful to us. We really appreciate the time you have taken to come along. Thank you.

**Sally Healy:** My pleasure.

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## Wednesday 6 July 2011

Members present:

Richard Ottaway (Chair)

Mr John Baron  
Mike Gapes  
Andrew Rosindell

Mr Frank Roy  
Rory Stewart  
Mr Dave Watts

### Examination of Witnesses

*Witnesses:* **Mr Henry Bellingham MP**, Parliamentary Under-Secretary of State, Minister for Africa, the UN, Overseas Territories and Conflict Issues, and **Mr Chris Holtby**, Deputy Head of Security Policy Department, Foreign and Commonwealth Office, and **Captain David Reindorp RN**, Head of Defence Crisis Management Centre, Ministry of Defence, gave evidence.

**Chair:** I welcome members of the public to this third evidence session of the Committee's inquiry into piracy off the coast of Somalia. We are having a hard look at this topic and today our key witness, eagerly awaited, is Henry Bellingham, the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs who is responsible for this area of policy. He is accompanied by Captain David Reindorp, the Head of Defence Crisis Management at the Ministry of Defence, who appeared before us—was it last week or the week before?

**Captain Reindorp:** Last week.

**Q235 Chair:** I also welcome Chris Holtby, the Deputy Head of the Security Policy Department at the Foreign and Commonwealth Office.

Minister, given that hardly any of our ships have been snatched down there, why do we have such a high profile in this area?

**Mr Bellingham:** First, Chair, may I make a very short statement, by way of introduction?

**Chair:** Of course.

**Mr Bellingham:** I thank the Committee for giving me the opportunity to give this update. I read the earlier evidence with great interest. Partly to answer your question, we are a great maritime nation; the impact of Somali piracy is costing world trade between \$7 billion and \$10 billion a year, so it obviously poses a threat to our interests; and it threatens the lives of United Kingdom seafarers. It also perpetuates instability in Somalia and threatens the economies and well-being of other states in the region. We are therefore playing a leading role, which I shall probably have a chance to explain in a moment.

Your Committee heard the week before last from Major General Buster Howes about the excellent work that the European Union is doing in leading the international response and the key roles of the Royal Navy and Royal Marines. I understand that you visited Atalanta at the Permanent Joint Headquarters at Northwood, and I am sure that you will agree with me that the capability is very impressive. It is also a very good example of co-ordination between different groups: there is no shared command, but they are working incredibly well together.

I think that progress has been made—there has not been a hijack for the past eight months in the Gulf, in spite of the 20,000-odd vessels that navigate through it—but, of course, there is displacement into the wider

ocean, and that is why we are not complacent. The UK is taking a very active role. We are very active on the Contact Group on Piracy off the Coast of Somalia. We chair the Committee on Operational Military Co-ordination and the Regional Capability Development Committee. We are very active on the International Contact Group on Somalia and have also helped to promote debates at the United Nations on the issue of Somalia and piracy.

On the legal aspects, there are obviously significant legal challenges on piracy, particularly relating to prosecution, and I have been particularly active in pursuing that with some of the regional states. The first problem we had with various countries such as Kenya, Tanzania and the Seychelles was that international piracy on the high seas was not an offence under their law, so they had to change their law to make it an offence under their jurisdiction. That was the first important move, but the second move is that most of those countries do not have an offence of going equipped or going with intent, so we are working with them to try to change that. Of course, if they do not have an offence in their own legal system of going equipped or with intent, unless an act of piracy has been actually carried out, they will not accept the pirates for trial and possibly detention if successfully prosecuted. We work alongside those partners. I can understand the frustration of catch and release occurring, but it is worth saying that more than 1,000 pirates are now in custody around the world, so there is no impunity.

Obviously, the shipping industry has a key role to play. You heard from General Howes the week before last when he pointed out that scarcely any successful hijacks have been carried out of vessels that were following best management practice.

Lastly—perhaps I should have said this at the beginning—we are dealing with the symptoms. The only way to sort out piracy is on land. A fractured, chaotic state such as Somalia—a failed state with no governance and with institutions that have no legitimacy—will not be able to control the problem. It is probably instructive to look at what is happening in West Africa, where there have been piracy problems but where functioning states have been able to get a grip of them.

Finally, since I became a Minister I have set up a cross-Whitehall ministerial working group on piracy. We have an ongoing dialogue with the EU and our

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development partners, and we are working closely with industry and other key parties. That is a snapshot, Chair. I hope it provides a useful platform for further discussions.

**Q236 Chair:** So the answer to the question I leapt in with is that we are there because we are a major maritime nation?

**Mr Bellingham:** We are there because we are a major maritime nation, yes, but we are also playing a critical role in the peace process in Somalia. I mentioned the International Contact Group and the debates that we have helped to launch in the UN. Obviously, the curse of piracy is one of the drivers of the instability and problems in Somalia, so the two work hand in hand. I believe that the key thing is to go back to the cause of the problem, which is on land.

**Q237 Chair:** There are not one but three command structures, all with a slightly different take on the subject. Do you think it would be more efficient to have a unified command structure and why are we a member of all three?

**Mr Bellingham:** I have had a chance to look at this in quite a lot of detail, and I agree with Buster Howes. If we were starting from scratch, we would probably have different arrangements in place. On the other hand, we have to bear in mind that although we have Atalanta, the Combined Maritime Force and NATO, a number of countries are outside those structures and are inside on only an ad hoc basis.

What is impressive is the shared awareness and deconfliction mechanism, based in Bahrain. When I was at Permanent Joint HQ at Northwood visiting Atalanta, a number of senior naval officers said to me that that was an absolute exemplar of maritime security and co-operation. In spite of the fragmented arrangements that you rightly allude to, the level of co-operation is first class. If we start trying to change those structures in any fundamental way now, that would not necessarily be the right thing to do. We would have to carry our European and NATO counterparts with us. What we have in place we have got working very well, and I think we can get it working even better.

**Q238 Chair:** We had a good visit to Northwood the other day with EUNAVFOR, so your comments resonate with us.

We have the SDR and no one can deny that there is going to be a reduction in hardware for the armed forces. How sustainable is it to go on supplying into the future the level of commitment that we have supplied? Can we keep up the tempo, or will we have to slow up a bit?

**Mr Bellingham:** The Navy has a number of standing tasks. The protection of the UK in home waters, the protection of the deterrent, and the two standing Atlantic patrol tasks: North, which is the Caribbean and counter-narcotics; and South, which is the Falklands and West Africa. Then there are the contingent tasks that are carried out on an enduring basis. There are two vessels in the Gulf, and two supporting the operations in Libya. There are 19 vessels to go round. As far as Somalia is concerned,

counter-piracy is not one of the standing tasks, but that is something that the MOD and the NAC will keep under constant review.

I stress that the role the UK is taking is not only a matter of the vessels that we have deployed, but the leadership role that we are supplying, the lead that we have provided on strategy and the thinking behind a number of the different strands. At the same time, we are saying to many of our partners in the EU and NATO that we have commitments elsewhere that they do not have—Libya is the obvious example, but there is also the Gulf—and we want them to pull their weight in terms of deployment.

**Q239 Chair:** Do you think we will keep up the flow of ships that we have had in the past?

**Mr Bellingham:** The FCO will be doing all we possibly can to make sure that that is the message going from our part of the Government to the MOD. Obviously, we provide the headquarters for Atalanta. You heard Buster Howes say the week before last that he would be very surprised indeed if that function did not continue. In spite of what has happened in terms of the downsizing, we will still have one of the most formidable navies in the world—probably the third most competent, efficient and professional navy in the world. That is why the issue of Somalia and piracy is going before the NSC; it is exactly the sort of thing that it will look at.

**Q240 Chair:** That sounds like a probably rather than a definitely.

We have received reports that there has been a shortage of RFAs and problems with refuelling the ships there. Can you cast any light on that?

**Mr Bellingham:** I was not aware that there had been a problem. I was aware of some of the excellent work done by RFAs, which in many ways are a suitable platform because they have the helicopter capability, as do frigates and destroyers as well, of course. Buster Howes pointed out that the helicopter is certainly a force multiplier. I will refer to Captain David Reindorp on the specific question about refuelling.

**Captain Reindorp:** To put it in perspective, sir, there is always a shortage of RFAs. It does not matter where you are, in which part of the ocean, doing what particular task, there is always a shortage of ships to refuel from. To the best of my knowledge, though, I do not think that Atalanta or NATO has suffered from an inability to refuel.

**Q241 Chair:** There was a suggestion that it was limiting the time on patrol.

**Captain Reindorp:** It may do, but an RFA will simply provide fuel and occasionally a small proportion of food or other logistics. At some stage, each ship on patrol will need to return to harbour. If there has been any reduction of time on task, it will be relatively short.

**Q242 Mr Watts:** Minister, we heard from previous witnesses that the downsizing of the Navy would have an impact on the operation, yet you seem to indicate that you are fairly confident that that would not be the case. Previous witnesses said that we would be more

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reliant on our partners to provide the vessels that we need to do the job. Which is it, and why are you so confident that other nations will provide the facilities we need if we downsize?

**Mr Bellingham:** I am confident we are going to be able to keep up the pressure on those other nations. I did not say that I was confident that they would necessarily come up with the goods and step up to the plate, but that is an ongoing narrative that we are going to have to have with them.

I am confident, Mr Watts, that the MOD regards Somali piracy and the work off the Horn of Africa and deep into the ocean as a key priority. It is not a standing task, as you know, which means that it is one of those functions and responsibilities that has to take second priority after the key standing task, but given what is at stake for the UK, I have every confidence that the UK will be able to keep up its leadership role and the naval platforms in the area. For example, although our ship that is currently tasked to Atalanta will shortly be coming out of theatre, we will still have a vessel within the NATO force, and I would be very surprised indeed if we did not at all times have a vessel as part of one of the forces providing counter-piracy work.

**Q243 Mr Watts:** You say you are confident, but there will be fewer vessels and we have not so far secured any further assets from our partners. If it is a key task, are we not putting the cart before the horse in the sense that we should say either, "We want to do this," or, "We don't want to do it."? Should we not find the resources or make sure that resources are in place before we continue down a road that we may not have the resources to deliver?

**Mr Bellingham:** I have every confidence that the work that is being carried out in the counter-piracy operations will continue apace. As I said, the UK will continue to have a very important role. We are going to go on providing the leadership in key areas; a huge amount of the strategy work is being done by the UK; and I can assure you that I, the Foreign Secretary and the Defence Ministers spare no effort in putting pressure on our European counterparts and our NATO allies who may not have the other commitments that we have at the moment. Of course, those other commitments are contingent commitments being carried out on an enduring basis, as the Navy puts it, but I hope they will not continue for ever.

**Q244 Mr Watts:** I think, from your answer, that there is no guarantee that those resources will be in place at this stage.

**Mr Bellingham:** I do not think that any government can give an absolute cast-iron guarantee on particular assets that will be used, but we can give a guarantee that we will continue to provide the leadership. I would be very surprised indeed if that leadership role, the work that we have done so far and the success that we have had would not be continued without a Royal Navy vessel being part of those operations.

**Chris Holtby:** May I add something to what the Minister said? We recognise in the work we do in the Contact Group that continued force flow is an issue, but as the Minister said, we have been encouraging

our partners to do more. Already in the last year or so, we have had new contributors coming forward, such as Thailand, Indonesia and South Africa, so there is a broadening of the coalition. They all come together through the SHADE mechanism that the Minister has already mentioned. In fact, it is a cohesive international effort—some burden sharing if you like.

**Q245 Andrew Rosindell:** Minister, it is a pleasure to see you this afternoon. Government briefings often state that pirates have to be caught red-handed before they can be prosecuted, and that is often used as the reason why so few get prosecuted. In international law, though, prosecution is permitted when people are intending to commit piracy. Are you satisfied that the UK is fully using international law and the rules of engagement to deal with this situation?

**Mr Bellingham:** Thank you for that question, Mr Rosindell. There are four key points that I would like to make in that. First, UN Security Council Resolutions 1851 and 1950 are based on UNCLOS, as you rightly point out. What those resolutions and that part of the UN Convention on the Law of the Sea looks at is pirate activity on the high seas—activity on the high seas for pirate ends. It has not been designated as an armed conflict.

There is not an issue around the actual rules of engagement as such. The issue, of course, is what happens when the pirates are apprehended—caught. If the pirates have committed a pirate offence and it is in the UK's interests to prosecute them, then we will do so. I made that absolutely crystal clear. I have recently written to the Secretary of State for Justice about this very point.

As far as the regional players are concerned, as I said in my opening statement, we have had quite a long slog with countries such as Kenya, Tanzania, Seychelles and Mauritius. They have now, in many cases, stepped up to the plate, particularly Seychelles and Mauritius, but first we had to persuade them to change their law—previously, piracy was an offence under their penal code only if it took place in their territorial waters. That was the first step. Now, piracy does not have to take place against a Kenyan vessel for it to be triable in Kenya, because it is now an offence under Kenyan law. We now need to see their law changed to match our law where going equipped with intent is an indictable offence.

**Q246 Andrew Rosindell:** Are we being robust enough in dealing with this serious problem on the high seas, particularly in the Indian Ocean? Do you know of any EU or NATO commanders who have asked us to be more robust in how we are handling this? Are there lessons to be learned from the way in which Russia, China and India deal with this situation?

**Mr Bellingham:** There are a couple of points. First, the UK has not designated this an armed conflict. The current rules of engagement allow sufficient force to be used in self defence. In other words if a naval vessel is fired on it can fire back. It can use proportionate force. What the Navy does not do,

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because this is not an armed conflict, is take pre-emptive action if it sees a skiff with pirates on it. That is not something that we would do because it is not envisaged under the UN security council resolutions or under this part of UNCLOS. Captain Reindorp said in his evidence that he knows that at any one time, as part of the counter-piracy operations, there will be x-hundred Royal Navy personnel on our vessels who are frustrated. The last thing that they want to do is to put in a lot of effort and to use their intelligence and professionalism to apprehend pirates. If no actual piracy act is being committed, gathering the evidence can be challenging, especially when they chuck the weapons overboard and claim to be fishermen.

You have to remember, Mr Rosindell, that to make a prosecution stack up, you need sufficient evidence. The captain of a vessel has to be prepared to give evidence and you have to have crew members. Unless there is sufficient evidence, is it in the UK's interests to bring pirates back here to prosecute? I suggest it is not. But what we are very keen to do is to get these other countries to change their law so that when we tranship pirates to Kenya, Tanzania, Seychelles or Mauritius, there is a good chance of a successful prosecution. But the key thing also is to build the judicial and custodial capacity in those countries. If we build that capacity by helping them, they will be much more inclined to assist. The channels have to be gone through—it has to be done very quickly—before we get a positive decision from the Kenyan or Tanzanian authorities saying, “Yes, we will take this particular batch of pirates.”

**Q247 Andrew Rosindell:** Finally, Minister, I have two points—the first leading on from the point you just made. Of course, we have our own territory in that region of the world—British Indian Ocean Territory. Is there no way we could make use of that territory as a base for tackling piracy in the Indian Ocean? Possibly, we could have prosecutions ourselves, bearing in mind that we have Crown territory in that region. That is the first point. Secondly, is there any scope at all for military action against pirates on land? Have you encountered that as a possibility?

**Mr Bellingham:** First, as far as Diego Garcia is concerned, you are absolutely right. British Indian Ocean Territory is a UK Overseas Territory, which is leased to the Americans. Royal Navy vessels obviously go there from time to time. I am quite sure that if they had to go there as part of these operations, to reprovision or refuel, they would do exactly that. We have a very good relationship with the Americans. They are our close allies, of course. On the point about building a court there, I would certainly be prepared to have a look at that, but I think what is more important is to use our money—the DFID money—that goes in through UNODC to build court capacity in the region. When this problem is eventually sorted out, they will then have a legacy of good courts and better prisons—better facilities all round.

You asked about taking action against pirates on land. Security Council Resolutions 1851 and 1950 authorise operations throughout Somali territory. It is important to bear in mind that they authorise action against

pirates, not against terrorists. There would have to be agreement among our partners and changes to the operating plans, and a number of considerations would have to be looked at before that was entered into.

**Captain Reindorp:** May I add one point to that? I have not been to Diego Garcia, but I understand that you cannot get a ship alongside. There is a long runway, but very little else. I also understand that the chief prosecutor is a naval officer who is sent out there on a three-year posting. It is really very basic. To build some sort of infrastructure—a courthouse, jail or whatever—would be quite a large undertaking.

**Q248 Andrew Rosindell:** If we are spending that money in other countries, why not our own territories?

**Captain Reindorp:** It is almost certainly not practical is my answer to that. To go back to your previous question, you introduced the word “robustness”. Three phrases are often conflated when talking about pirates: “more robust”, “rules of engagement” and “international law”. All three are different; all three have different meanings. From our perspective, the rules of engagement are perfectly adequate for the job that we have. They are based on domestic and international law. If you wanted to be more robust and if you wanted to change ROE, you have to change domestic and international law. At the moment, our law is firm on the level of force that can be used in a constabulary operation, which limits you to self-defence. Anything else moves away from that and would be quite a large undertaking.

**Mr Bellingham:** And you would have to have a designation of armed conflict for that to happen, or, as the captain says, a change in the law. But I think it is fair to say that we keep all this under review. This is a situation that we take incredibly seriously. You heard from Captain Reindorp last week about the operating plan. I said in a parliamentary answer about a month ago that there was a change in the EU Atalanta operating plan to look at enhanced boarding capability. For operational reasons, we cannot go into detail here, but that is an example of how the threat is changing the whole time. The pirates have raised their game through the use of motherships, and our response has to change accordingly.

**Q249 Chair:** May I take you back to an answer you gave to Mr Rosindell, in which I think you confirmed that an intent to commit an act of piracy was an indictable offence. Is that right?

**Mr Bellingham:** Under UK law, going equipped or with intent is an indictable offence, but it is not an offence in other countries. I think only four countries in fact have a law that enables you to prosecute for intent or going equipped—I think India is one of them, isn't it, Chris?

**Chris Holtby:** Seychelles.

**Mr Bellingham:** And the Seychelles have now changed their law. So what we want is for countries like Kenya, Tanzania and Mauritius to change their laws as well.

**Captain Reindorp:** If I may, to add a little context to this discussion of “intent to commit”, we have to be able to differentiate four Somali gentlemen in a small

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boat with AK47s, which they will usually say that they carry for self-protection from pirates, from pirates, who may well also look like four Somali gentlemen in the same boat, with exactly the same weapons.

**Q250 Chair:** That is a good point. So how do you make that judgement?

**Captain Reindorp:** That is where you get stories about having to catch them red-handed. Because in order to build sufficient evidence, it almost comes down to that.

**Q251 Chair:** But if you saw a skiff with four pirates with arms on board approaching a merchant vessel, at what point do you decide that that is an intent to carry out an act of piracy?

**Captain Reindorp:** I suppose in that instance, it's when they start to brandish their weapons and if indeed they start to fire them, but again, in that part of the world merchant ships frequently go past small Somali vessels with AK47s in them. It is a judgment call.

**Chair:** I'd say firing them was more than intent, actually.

**Q252 Mr Roy:** Could you clarify that point, Captain and Minister? In articles 101 and 103 of UNCLOS, it states quite clearly that if it is known that a ship is, "intended by the persons in dominant control to be used for the purpose of committing" a pirate act, then that should therefore be enough. It is important to know that the article 101 definition of piracy also includes as piracy, "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". Crucially, that means that a pirate ship is defined as being a ship that those in control intend to use to commit the act. That is not really what you just said, because you said that you have to prove otherwise and that is not the case. Can you just clarify that, what articles 101 to 103 say?

**Mr Bellingham:** I can certainly clarify that, Mr Roy. What is in these articles has to then be transferred into the national law of the country in question. You have this body of articles, and we have moved it into our law, and we are trying to persuade regional countries to do exactly the same.

**Q253 Mr Roy:** Sorry, are you saying that our national law is different from articles 101 to 103 of the United Nations?

**Mr Bellingham:** No, our law mirrors this. But the law of various countries like Kenya, and until recently the Seychelles, did not incorporate this particular principle.

**Q254 Mr Roy:** But you will agree, then, that the effect of this article is that a ship does not need to have already committed an act of piracy to be a pirate ship?

**Mr Bellingham:** Under the UN article, that is absolutely right. This means we have an incredibly strong case when we go to countries like Kenya—and the Seychelles have taken a position on this—and

other countries, and we say they have to ask them to change their law. There is a very powerful reason for them doing so, because it would be in line with the article. I don't know if you would like to add anything to that, Chris?

**Chris Holtby:** First, it has to be prosecuted under national law. But it still remains a case of evidence in each individual case. So you would have to prove in the national courts that that ship was equipped specifically for piracy.

**Q255 Chair:** Let us go back to our skiff with four men and AK47s, and probe the question of intent. If they had a boarding ladder and a grappling hook with them, would that show intent? Would that define them as pirates, rather than innocent fishermen carrying guns to protect themselves?

**Captain Reindorp:** It probably would not define them as pirates—there could still be innocent explanations—but I agree you would be moving further away from the presumption of innocence. The level of proof actually required is set by the prosecutors and the lawyers that you are dealing with.

**Chris Holtby:** May I move into a slightly different paradigm? If there were infinite prison capacity in the region, we would be able to find states in the region that would be willing to prosecute every case of intent. The fundamental capacity concern in the region is that there is not enough prison space to hold all the pirates. That is why these states are primarily focusing on cases in which pirate attacks have taken place.

**Chair:** That is very helpful. It is an area we are planning to come to, but you have nicely set the tone.

**Q256 Mr Baron:** I think we all accept that pirates nowadays do not go running around the ocean with a skull and crossbones. Does that not raise the importance of having maritime private security companies on vessels? The figures suggest that most are British anyway. I know the FCO is conducting a review, but the fact that to our knowledge no vessel with guards on board has been successfully hijacked suggests it is a policy we should adopt.

**Mr Bellingham:** I agree with you wholeheartedly. The shipping industry's thinking on that has been moving quite slowly, but it has gathered pace. In reply to Question 90, Buster Howes said that a year or so ago he had been quite frustrated with the shipping industry's attitude, but he thinks that everything has now moved on quite significantly.

I agree that there isn't a single recorded incident of a vessel with private military armed security on board that has been successfully pirated. I am working with the Shipping Minister, Mike Penning, who is the Department for Transport lead on this issue, because the Department's guidelines currently strongly discourage the use of armed security on vessels. We want the Department to change those guidelines to, at the very best, neutral.

There are implications for using prohibited firearms on UK vessels, which is why I have also written to the Home Secretary on the changes that would have to be made to the firearms legislation. It can either be done through primary legislation or through secondary legislation, through which the Home Secretary could

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issue a permit to companies registered with the trade association that provides the oversight and regulation for that industry.

**Q257 Mr Baron:** To be clear, the Government support this idea and it is a question of how we get from here to there?

**Mr Bellingham:** The Government recognise that armed private security companies are a fact of life. Some 25% of ships in the region have them on board. Many shipping lines have been pressing us very hard on that issue. Nautilus International, the trade union, has been particularly vocal. Our view is that the UK Government should not encourage such measures, but we should also not discourage them; we should be neutral. It should be a decision for the shipping industry on a case-by-case basis.

**Q258 Mr Baron:** It was reported in the press that the Committee was going to be given a copy of the Government's review of this issue for UK-flagged ships. We have not received anything. When will the review be available, and, if we go down the route at which you are hinting, will changes to legislation be required?

**Mr Bellingham:** The Department for Transport, which is the lead Department, will come up with some proposals alongside the review. The Department will announce that the consultation has taken place across the industry. Obviously, it will explain what the different trade associations—the Chamber of Shipping and other organisations such as the IMO—are saying. It will also announce its proposals, having discussed with the Home Office how we can achieve them. Do you know the timing of the review, Chris?

**Chris Holtby:** Discussions are ongoing between the DFT and the Home Office, which are the primary Departments involved. In May, the Maritime Safety Committee of the IMO issued a framework for international legislation or guidelines on this area. It is important that we do not act alone and that we go in step with our international partners, particularly as many UK companies use flags of other nations. We have that international framework now, and we are looking at how it can be reflected in national law. There is no set timeline, but, given the legal risks if arms are used on board vessels, both Departments realise the urgency of this issue.

**Q259 Mr Baron:** Very briefly, before I go on to the vessel protection detachments, can I press you on that slightly? These maritime private security firms work on ships flagged to other nations. Are you going to be drawing lessons from that experience when you look at this in undertaking your review?

**Mr Bellingham:** Yes, very much so. The starting premise is that these armed private security company detachments have been extremely successful. There are issues around best practice, having enough personnel on board and making sure that this is not a reason for neglecting best management practice and using the convoy system. A fear has been expressed in some quarters that if this becomes the norm, some of the other good practices that are now embedded would be neglected in the interests of trying to get

vessels through these waters more quickly. I would certainly say that we can learn quite a lot from the countries that allow this to happen at the moment.

**Q260 Mr Baron:** Moving on to vessel protection detachments, we know that other countries such as France make use of them. Many would argue that it is safer and more effective to draw upon the family of the armed services to provide some sort of protection—that might be from the Marines or detachments of the Army—on vessels. What is your take on that? Is the budget so tight that that option is not on the table, given that most would agree that they would prefer it to security companies?

**Mr Bellingham:** France and Spain use VPDs on a regular basis, as do other countries—I understand that Israel, for example, does so on a regular basis—and we have done it before. We have done it in different strategic areas. It is all a question of availability of resources. At the moment, our armed forces are very heavily committed. If a stage was reached when our armed forces were less committed, I am sure that the MOD would look at a request for providing VPDs, which are military detachments. If the opportunity arose, it would be a welcome step forward, but I do not believe it is practical at the moment.

**Q261 Mr Baron:** It is down to a lack of resources—that is what it comes down to.

**Mr Bellingham:** It is not so much a lack of resources; it is down to the lack of availability of the relevant troops. I don't know whether you want to add anything, Captain.

**Captain Reindorp:** Again, if I can add a bit of context, allowing for a certain number of UK ships going through that area at any one time, we would have to find roughly 500 Royal Marines—they would have to be marinised troops; they cannot just be Army infantry, unless of course they are given adequate training—to do that. That does not take into account the 500 that we would be preparing to take over from them, and the 500 that would be recovering from having been there, and it does not take into account the extra training that would be required. That is a considerable burden and at the moment if you wish to do that, they would have to stop doing something else.

**Chris Holtby:** Again, this is an issue that the Contact Group has taken on as being a means of increasing capability and sharing the burden. There are countries that are now prepared and offering to provide VPDs to supplement what the warships are doing. In particular, we are looking at the challenge of trying to provide the majority of escorts of the World Food Programme and AMISOM forces by using VPDs, rather than having a dedicated warship always alongside those vessels, bearing in mind the individual risk assessments in each case. The African Union, the United Nations and the World Food Programme are working with us on that, and there are countries that are interested in doing that.

**Q262 Mike Gapes:** Let me take you back to the question of the private armed security people on ships. We currently have a voluntary self-regulation code for the private security companies, which was introduced



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by the previous Government and is carried on now. Would a wide extension of the use of private security companies on British flagged vessels, as might happen as a result of the change, require a reconsideration of that code or potentially even moving towards a legislative code?

**Mr Bellingham:** Thank you for that question, Mr Gapes. This is one of the areas that I lead on in the Foreign Office, and quite a lot of work was done on setting up the Geneva code for private military security companies. The result of that was our decision not to follow the route of the previous Government and have statutory regulation, but to go down the route of having regulation within the sector itself. Aerospace Defence and Security—ADS—is the regulatory body for private military security companies. It would cover security companies providing security at sea as well. There is also the Security Association for the Maritime Industry, which will not be an oversight regulatory body like ADS, but will nevertheless insist on best practice.

Furthermore, it is worth pointing out that the UK Government are one of the biggest procurers of the services of private military security companies. It is in our interests to demand high standards and to insist that the Geneva code is being followed. The Geneva code lays down very tight requirements for training, conduct, financial oversight, corporate governance, transparency and everything else. Chris has just told me that we are looking at similar steps to those in the Geneva code—to extend it further into the maritime area.

**Q263 Mike Gapes:** Would that be legislative steps?

**Mr Bellingham:** It would not be legislative; it would be on the same voluntary basis as the Geneva code. As I say, I don't think that the UK Government have bought in any services from the maritime military security companies yet, but we are a big buyer of services from the private military security companies. As a purchaser of services, we can demand the highest possible standards.

**Chris Holtby:** In the preparation of the Geneva document—the Montreux document—it was quite clear that the maritime sector was much more complex legally than the land sector. In the land sector, you have one set of laws in your country, but in the maritime sector you have various different jurisdictions and everything else. That is why, at that time, a decision was taken to exclude the maritime sector.

There are companies operating in the maritime sector that have signed up to the code and therefore regard themselves as bound by its conditions. The Minister has referred to the work that we are doing to try and find a solution that will govern the whole sector, which could be to extend the conditions of the code of conduct to the whole sector. But there are various permutations, and the work of the International Maritime Organisation in this area should be taken into account too.

**Q264 Mr Roy:** Can I bring us to the subject of prosecutions, or the lack of them, as seems to be the case? At present, nine out of 10 suspected Somali

pirates captured by the Royal Navy are released. Last year, in one month alone, there were reports of three cases in which Royal Navy vessels encountered motherships with both suspect pirates and hostages aboard. The Navy liberated the hostages but released the pirates. Why?

**Mr Bellingham:** I mooted this earlier: to mount a successful prosecution, for a start, you must have sufficient evidence; you must also have sufficient capacity in terms of detention facilities, trial facilities and prison facilities in the region. It is easy to point to the number of catch and releases, but I would also point to the fact that 1,000 pirates are in detention at the moment.

It is also worth bearing in mind that most of the so-called catch and releases have been the result of disruption activities with naval vessels going in quite a lot closer to the shore and intercepting skiffs. Of the cases of actual attacks on vessels and attempted acts of piracy that resulted in capture by the Navy, very few have resulted in catch and release, because if an attack has been made on a vessel, you have the evidence.

I am incredibly keen to help build capacity in the region and I have been putting a lot of effort into that. We must obviously have buy-in from the front-line countries—Seychelles, Mauritius, Tanzania and, particularly, Kenya; we also want to get Mozambique and South Africa on board. Furthermore, one should bear in mind that Mombasa is the main port for five landlocked countries and Dar es Salaam is the port of access for eight such countries. Many countries in Africa have strong, growing economies that will be frightened if the piracy menace is not controlled. We want to get buy-in from some of those countries as well. The reluctance of Kenya, which signed the MOU and then pulled out of it, was simply the result of its concern that it would basically be shouldering the whole burden. The key thing is to get that capacity.

**Q265 Mr Roy:** That does not answer the question, Minister. The question was: why, in one month alone last year, did the Royal Navy capture three ships with their hostages still on board and release the pirates without taking any action? Why is it still the case that nine out of 10 of those people who are held by the Royal Navy are then released?

**Mr Bellingham:** Some of those disruptions have been close into shore, where there would not have been enough evidence. The ones that you allude to are cases where hostages have been released after a successful pirate attack that the Navy has prevented from going any further. There has to be evidence.

**Q266 Mr Roy:** The pirates were released, not just the hostages.

**Mr Bellingham:** I entirely appreciate that, but there has to be sufficient evidence.

**Q267 Mr Roy:** Is there not enough evidence when you have a boat full of hostages, with people holding them hostage? Is that not enough evidence to say that those are the bad guys and they deserve to be prosecuted?

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**Mr Bellingham:** There are two points, Mr Roy. I sympathise deeply—I would like to see every single pirate prosecuted—but, first, if the UK was going to take those pirates back to the UK, we would have to be satisfied that there was going to be enough evidence for a successful prosecution, and that means people giving evidence. It means the captain of the ship that was pirated giving evidence, and probably independent witnesses giving evidence as well. They have to be prepared to do that.

The same applies to taking pirates to a country such as Kenya, Tanzania or wherever it might be. As you know, the first person in this very important decision-making chain would be the commander of the vessel; he would then talk to probably the lawyer in the Atalanta force; it would then be referred through to the MOD, in the case of the UK, and they would have to take a decision on whether it was in the UK's interest to prosecute. They would also have to work with the authorities in, say, Kenya to ask the Kenyans to take a batch of pirates. If the Kenyans say no, they will not take them, and there is nowhere else they can be taken, and if we decide there is not enough evidence to take them to the UK, they are unfortunately—I find this as frustrating as you do—released.

**Q268 Mr Roy:** I get your point about making sure that you have some type of evidence before you bring them back to the UK, but if I asked you how many of those people have been brought back to the UK—five, 10 or zero—what would the answer be? Because I know what the answer is.

**Mr Bellingham:** We have not taken any pirates back to the UK yet.

**Q269 Mr Roy:** None so far. Why then is it that countries such as the United States, France and Germany have brought pirates back to their own country to put them on trial? That is good enough for the Americans, the French and the Germans, but not good enough for the British. Why?

**Mr Bellingham:** In each of those cases, as I understand it, French, American or German citizens were harmed. There was overwhelming evidence of a crime having been committed against nationals of those countries. If that happened in the case of the UK, I think it would be inconceivable that they would not be brought back here to be prosecuted.

**Q270 Mr Roy:** Minister, is not the reason for the concern of the British Government that, once here, the pirates will claim asylum?

**Mr Bellingham:** That is not the reason why we do not bring pirates back here. We have a criminal justice system that is fair, but you have to remember, Mr Roy, that under our system the defendant is innocent till proven guilty, and many QCs on large amounts of legal aid money will be being paid to defend those people—quite rightly so, because they have legal rights. It has to be in the UK's interests and there has to be enough evidence to make that prosecution in the public interest.

**Q271 Mr Roy:** But no one has been brought back here. Yes, they are innocent till proved guilty, but we have not even got to that point, because no one at all has been brought back to this country, where they are innocent till proved guilty. That is the truth—no one.

**Mr Bellingham:** Mercifully and thankfully—largely because of the professionalism of our Navy—a UK citizen has not yet been harmed by pirates.

**Q272 Mr Roy:** Is that the criterion then: that you would bring pirates back only if one of our UK nationals has been injured?

**Mr Bellingham:** If a UK national was injured, that would be indicative of pretty overwhelming evidence that it is in the public interest to prosecute. If you have a case of a ship being pirated and the hostages released, and there is evidence of piracy—obviously, by definition—but you have to ask the question: how will that stand up in court. Are there witnesses? If we simply bring pirates back to this country and prosecute them without witnesses, I suggest to you that those pirates would not be convicted.

**Q273 Mr Roy:** If Brits are kidnapped and then released, after the Royal Navy has captured the ship, you are saying that, because they have not been harmed, you will not bring the prosecution to the United Kingdom.

**Mr Bellingham:** We look at every single case on its merits. The final point I wish to make is that it is in the interests of trying to solve this problem, of sending a very strong signal to the pirates and the communities that are supporting them that they are prosecuted in the region and detained in the region. It is the same argument that I have applied to the Court Service in this country. If someone commits a serious crime and they are tried near their own community, it will have a bigger deterrent effect and it is going to send a much stronger signal than if they are tried—in this case—many thousands of miles away.

**Captain Reindorp:** If I may, I wish to give a little context that may help to understand the situation. This is a very emotive issue. It is particularly emotive for all the servicemen and women who are out there at the moment risking their lives to do this. They find it very frustrating, quite frankly, to be blamed for something that is not within anybody's gift to solve. If I add a little bit of context, that may help to understand why they are frustrated and why this image has built up.

You need a defined and acceptable—acceptable to the UK—legal finish to any seized pirate. We have certain standards that we must abide by—nothing to do with the military, they are the laws of the land that we are subject to and signed up to. Part of that legal finish is sufficient evidence, and the other part is a willing and suitable prosecutor and potential jailer. Finding those is not always easy. It is not always easy for a variety of reasons. We have discussed previously the discrimination between an innocent Somali fisherman who may or may not happen to have an AK47. Possessing an AK47 on the high seas is not illegal.

We have had many occasions when, even when we have seized pirates and have released the hostages, those hostages are not willing to testify. They do not

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want to come back to the UK, or do not want to go to Kenya, or do not want to go anywhere to testify against the pirates. We have no ability to compel them to do so. Even if they did, we would almost certainly have to release them back to, for instance, Yemen for a while, before they went wherever they had to go to appear as witnesses. If you release someone into Yemen, the chances of getting them back again are almost negligible. Nor is there always a clear distinction between hostages and pirates. There have been occasions when we take a boat and the first thing that the pirates do is pretend that they are hostages. Actually, it is really quite difficult to differentiate between the two.

The final point I will leave you with is one of simple calculus: whilst all this is going on, a ship is not performing its primary role which is deterring pirates, so you have to decide whether you are going to chase an ever-decreasing possibility of a successful prosecution or go back and deter pirates.

**Q274 Mr Roy:** If you free nine out of 10 of those you arrest, does that not indeed frustrate the people in your service?

**Captain Reindorp:** Absolutely, but the answer is as the Minister has said: we need more legal courses.

**Q275 Mr Roy:** Minister, is deterrence prioritised over prosecution? Has the decision been made that the type of equipment required to prosecute is not worth it? If not, what criteria can inform the decision to prosecute?

**Mr Bellingham:** Are you talking about prosecuting in the UK?

**Q276 Mr Roy:** Anywhere.

**Mr Bellingham:** What happens obviously is that the initial assessment is made by the commander of the vessel, who will then feed it through the chain. The first key ingredient is whether there is enough evidence. Secondly, where can the pirates be taken to? I am doing outreach with the regional countries. For example, I shall be spending at least two hours tomorrow with Raila Odinga, the Kenyan Prime Minister, and shall be doing all I possibly can to persuade him to reactivate the MOU. I am going to do that because I shall be able to tell him that more countries in the region are providing key capacity. If the decision through the chain that I have described is a) there is enough evidence and b) there is somewhere to take the pirates to, hopefully we will be able to find a solution to the problem to which you have alluded and on which you rightly have challenged us, and that we all feel needs to be sorted out.

I will just add one other thing: a lot of work has been done in the Caribbean with drug suspects, and the Navy—the standing North Atlantic patrol—often intercepts vessels carrying drugs. There has not yet been a case of any of those drug runners being brought back to the UK, because we invariably take a decision to have them dealt with in the region. There is regional capacity to do that in the Caribbean, and we want to have the same capacity to deal with the pirates in this region.

**Q277 Mr Roy:** Lastly on that subject, why has the UK Minister not supported a proposal by UN Special Adviser Jack Lang for an extraterritorial Somali court, and would you support calls for an international court?

**Mr Bellingham:** I had two meetings with Jack Lang, who is a very eminent former Cabinet Minister. His report contains a lot of really good recommendations, and we certainly agree with what he has to say about building capacity in the region—prison capacity. I also went to have a look at the court in Arusha, which is currently the International Criminal Tribunal for Rwanda. First of all, the court needs a lot of money spending on it. The costs of bringing the court up to standard and using it on an ongoing basis would be huge: we reckon that about \$100 million a year would be needed.

**Q278 Chair:** For what period?

**Mr Bellingham:** Well, if the court was opened next year, say, there would be initial costs, but going forward the figure would be certainly not far short of that. The panoply of legal infrastructure currently at Arusha—detention facilities, translation facilities, defence lawyers and so on—is a big operation. There are two key points. First, this money would be much better spent in the region; within the region we could get a huge amount of value for one tenth of that sum. Secondly, it is illegal under the Somali constitution to have courts to try Somalis outside Somalia.

I also had a long conversation about this with Mohamed Omaar, who is the TFG Foreign Minister. He made it very clear to me that this was an absolute red line as far as the TFG were concerned. It does not mean that we do not need to look at the suggestion very carefully, because Jack Lang's report has a lot to recommend it. That particular suggestion was discussed by the UN Security Council on 21 June and you are probably aware that only Russia and France supported using Arusha, so the Security Council has reached its decision. That does not mean that we cannot come back to it at some stage in the future, but I think all those possible pitfalls would still apply.

**Q279 Chair:** The advice we have had, incidentally, is that the UNODC valuation advised Mr Lang that it would cost \$25 million over three years, rather than \$100 million.

**Mr Bellingham:** Can you explain why my figures were way above that, Chris?

**Chris Holtby:** When Jack Lang went on his initial mission to the region, he came up with a few models. One of the models was costed at \$25 million. The cost of running the Arusha tribunal last year was \$121 million. Because the current tribunal and the structures there cannot cope with large-scale piracy trials as well, we are looking at creating something analogous to it, so the costs could be of a broadly similar order. The costs of the Lockerbie court, which is the only other delocalised court we have dealt with so far, were about £150 million. That was dealing with one individual, rather than large-scale processing.

**Q280 Chair:** How do these figures compare with the ransoms being paid?

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**Mr Bellingham:** The amount paid in ransom so far—I think you have probably seen the figures—is estimated at \$275,000, but \$1 million has been paid so far. I would suggest that the figure is probably underestimated, but we could safely say that in the region of \$300 million has been paid over in ransom so far.

**Q281 Chair:** Makes a court look rather cheap, doesn't it?

**Mr Bellingham:** I would still come back to the point that we have the Somali Government constitution to get round, and there is also the fact that the money that we have put into countries such as the Seychelles and Kenya, and the work we put into court and detention facilities in Somaliland and Puntland, has been in the order of small numbers of millions, but that money has gone a long, long way. My suggestion would be that what we want to try and do is to build a legacy in the surrounding countries, so that once this problem has been sorted out, they will have better detention facilities, better court facilities and better prison facilities.

**Chris Holtby:** One of the things that Jack Lang said very clearly was, "Even if we create an international court, we would still need more prisons in the region. Please, get on and build them." Creating the tribunal would not address that problem.

**Q282 Chair:** We have the full spec of what he called for, and we are well aware of it.

**Chris Holtby:** For prisons, that is correct, but not for the court.

**Q283 Mr Baron:** To make it absolutely clear, as a Committee we are not impugning the reputation or the actions of the armed forces. Having served myself, I can understand their frustration. In turn, though, you have to understand our frustration and explain why the prosecution rate for piracy seems to be so low and why other countries seem to succeed in prosecuting whereas we cannot. You seemed to suggest earlier that it is a question of evidence, yet we have had a situation in which hostages and pirates are caught on the same boat, which in most courts of law would go a long to satisfy the evidence requirement. It is looking more and more as though it is not a question of evidence, but just that there is no legal end game when it comes to prosecution. Is that more the issue than the question of evidence? That is certainly what you seem to be suggesting.

**Mr Bellingham:** I come back to my earlier point. The majority of cases of catch and release have taken place close to the coast, where navies have gone in to disrupt the passage of skiffs, the smaller vessels. Very often evidence has been chucked away, and although people have been apprehended, a decision has been taken that, although they may have been going equipped and with intent, it would be completely impractical to take them into custody on the vessel and transfer them for prosecution. In cases where there is significant evidence, a decision has to be made on whether the evidence will stand up in court.

I come back to the point about witnesses. I have heard from the Chamber of Shipping and the IMO that to

get a successful prosecution you need crew members who have been hostages to give evidence.

**Q284 Mr Baron:** France, Germany and other countries seem to do it. Why are we alone in being apparently incapable of taking such opportunities?

**Mr Bellingham:** In all those cases, citizens of those countries had been harmed, and in some cases killed. In those cases the countries in question took a view that it would be completely in the public interest to bring the defendants back to France, Holland or America to launch an action against them. Those defendants are currently in custody awaiting trial—I think one trial has started, but it is going to be a long, drawn-out process. Those countries decided that there is sufficient evidence and sufficient witnesses to go down that particular route. We have not, and, mercifully, we have not yet had a British citizen harmed or, worse still, killed.

**Chris Holtby:** The UK has delivered successful evidence prosecution cases to Kenya, which has prosecuted pirates, so we are delivering on those lines.

**Mr Bellingham:** And we will do much more of that as we build capacity in the region.

**Q285 Mr Watts:** Isn't the whole policy in a mess? Let me give an example. It seems to me that, ideally, you would like to resolve the matter on land, as you have said, but that is not going to happen in the foreseeable future. We see from the figures that arresting pirates and bringing them to trial is not successful. The only thing that seems to be successful is having armed guards on ships. We can see that the pirates do not target ships from India, Russia and China; they leave those ships alone and concentrate on those that have no armed guards. Wouldn't it be better to stand down the Navy, stop doing all the other things, and just put some armed guards on all of our ships?

**Mr Bellingham:** I do not think that we can go down any one route. Just putting armed guards on vessels and standing down the Navy would not be in the UK's interest. The Navy, as we know, is an incredibly professional service. We need a multi-pronged approach, and a wider Somalia policy is essential. I am a "glass half full" person when it comes to my assessment of Somalia. AMISOM is making very good progress and will soon have control over the whole of Mogadishu. We are working in Somaliland, which is a quasi-independent province within Somalia. Through our aid programme, we are helping to build capacity and governance there, and they have eradicated piracy completely.

Puntland is an area where we do not have so much influence, but a lot of aid work is going on. When we had the Puntland Minister at a Wilton Park conference earlier in the year, he said that there were a number of communities in Puntland where the former fishing villages had been host to pirate activities, but the Government now had control of those villages. If you have a state that is no longer fractured and that can provide governance and control, you solve the piracy problem. In the meantime, you have to deal with the symptoms at sea, and it is a multifaceted approach.

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I think that international navies have a vital role to play. If they were not there, the costs to world shipping would be even greater. Military security companies on board have a role to play, and that is why we are going to change our advice—hopefully—once a review has been completed. Looking at operating plans in terms of the motherships is also important. It is a fluid situation, Mr Watts, and one that is changing the whole time.

The one thing we must keep stressing is that, as far as piracy is concerned, a lot depends on the willpower and determination of the shipping industry to keep up the pressure. It has to drive the highest possible standards—the best management practice and convoy system. Bear in mind also that 40 flag countries are not part of the Maritime Co-ordination Framework, so that is roughly 10% of all vessels in the region, as General Howes told you. If we can get perhaps half of them to come into the co-ordination framework, that would help. So, this is multifaceted. I do not think that we should give up. The UK has huge interests at stake here, and we must do everything that we possibly can to keep up the pressure and go on providing that lead.

**Q286 Mr Watts:** Let us go back to the low rate of prosecutions. We have heard that as soon as these pirates are arrested, there is a race against the clock. Are we doing all we can to put in place relationships with other states and procedures to make sure that they are dealt with as quickly as possible? What are the human rights issues, for example in relation to Kenya? When suspects are transferred to Kenya, are there human rights considerations that we need to take on board? Is that part of the reason for some of the delay?

**Mr Bellingham:** The front-line countries are consistently improving their performance. The setback, unfortunately, was when Kenya signed the MOU and then pulled out. I am hoping that my discussions tomorrow with the Kenyan Prime Minister will help to move that forward. As I said earlier, Kenya was worried that it was going to be shouldering an unfair burden. However, I think that all the countries in the region realise that this is a threat to their future, and I would be very disappointed if I was not able to report to this Committee in six months that we had seen really serious progress in the post-trial transfer agreements. Getting the law changed in the Seychelles was very important, as was getting the transfer of those who had been convicted to prisons in the region, particularly in Somalia and Puntland.

You asked about human rights. If the Royal Navy is operating anywhere in the world, you would expect it to respect the highest standards. This is not an armed conflict; this is a constabulary or gendarmerie-type operation. Therefore, the Royal Navy will look at these issues. Once a prisoner has been transferred to Kenya or Tanzania—we are doing this for UNODC—we make sure that the detention and court facilities, and the judicial system that is in place around this area of law, are, if not up to western standards, of a much higher standard than in the region generally.

**Q287 Mr Watts:** Do we visit them?

**Mr Bellingham:** Yes, we certainly do. I have not visited them, and I do not know whether Chris has, but we have diplomats who have visited the facilities in Kenya and all these countries.

**Q288 Mr Watts:** And do they visit the suspects—the people we have handed over—as well?

**Mr Bellingham:** They certainly will have observed trials taking place and they will have seen the facilities in the prisons.

**Chris Holtby:** The UN Office on Drugs and Crime sponsors a programme to visit all prisoners and keep an eye on their welfare.

**Q289 Mr Watts:** Finally, Minister, can you just run through the states with which we have managed to negotiate transfer for prosecution agreements? Which ones are we currently negotiating with?

**Mr Bellingham:** The situation is that the Seychelles are in front of the pack, because they have changed their law so that going equipped or going with intent is an offence under their law. They were taking prisoners at an earlier stage. Mauritius has signed an MOU. Tanzania, we are working on. When I was in Tanzania recently, I had a fruitful discussion with the Foreign Minister and the President about this issue. They said that they realised the threat to their shipping and economy, and that they were behind the curve. They wanted to get an MOU in place as soon as possible. We have spoken to the South Africans and we will speak to the Mozambique Government. I will not restrict this to the maritime countries. As I mentioned, there are many landlocked African countries that have extremely strong economies.

Although Kenya signed the MOU, I stress that it is still dealing with pirates on a case-by-case basis. We want a standardised situation for when the commander of a vessel intercepts pirates, if he thinks there is enough evidence and that is confirmed by the chain of command, as I have mentioned. We need an efficient, fit-for-purpose system within the region. That could well be something like a software programme that shows at any one time what capacity is available and which country is next in line to take prisoners. We are trying to organise it on a professional, efficient basis. I would hope that within six months we will have seen an important step forward. I do not want to look at this too optimistically, but the discussions I have had with those countries indicate to me that they realise that this evil menace on the high seas is a threat to their economies, and they want to do something about it.

**Q290 Mike Gapes:** May I take you on to the question of the payment of ransoms? It is difficult to predict exactly how much has been paid or will be paid. I have seen figures of more than \$200 million. Clearly the amount paid in some cases is considerable—in some cases \$5 million plus. I understand that it is not illegal, under international law, to pay ransoms, although some countries have made it illegal. It is not illegal under UK law to pay ransoms, but our Government discourage their payment. Will you clarify why that is the case, given that it is not illegal and that large numbers of shipping

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companies and others are prepared to pay—and wish to pay—ransoms, rather than lose the vessel or crew?

**Mr Bellingham:** There are two key areas here. The first is the actual payment of the ransom. You are right to point out that it is not illegal to pay a ransom under UK law, although it might be in some circumstances, such as if there was evidence that the payment would trigger another crime. Generally speaking, a ransom payment in this country is not illegal, but we strongly discourage it because, as we all know, paying ransoms simply encourages further acts of piracy or hostage taking—whatever it might be. We are firm on that.

Paragraph 14 of the evidence that was given to you by the British Chamber of Shipping states that it was concerned by “US legislative actions to curtail piracy by means of an Executive Order signed by US President... which has the potential to block payments to certain individuals on the grounds that they may be contributing to the conflict in Somalia; the order included the names of a few known pirates.” That was following on from a UN Security Council resolution. Some countries have implemented the resolution. As you will see, the International Chamber of Shipping, the Lloyds Market Association and other bodies remain “very concerned that any attempt to prohibit the payment of ransoms would further endanger the seafarers held captive”.

We need to think outside the box. One of the things that we could do would be to make more effort to look at those flows of money after the payment of ransom. Learning more about the financial flows and taking action to disrupt them are going to be very important. We are gathering plenty of evidence and we want to use it to ensure that some of the kingpin pirates are brought to justice. Two of them have been convicted and imprisoned already, and there is another who has been extradited. I think that the shipping industry has a very important role to play in helping to gather the evidence.

In this area, there are other EU partners who have a lot of expertise and knowledge, which they have used in campaigns against Mafia gangs, for example, or criminal gangs. We want to try and get them to play a part in this agenda as well so that we can build up that expertise.

**Q291 Mike Gapes:** What I take from what you are saying is that you think that we should do more to discourage the payment of ransoms and to get our European partners and others also to discourage the payment of ransoms. However, there is clearly a view coming from organisations that represent seafarers and also from many of the companies involved that they would be very concerned about that approach because of the consequences it might have for them—with people or crews taken hostage, or the shipping.

**Mr Bellingham:** You are absolutely right. This is paragraph 14 of the evidence that was given by the Chamber of Shipping, which you have a copy of.

**Q292 Mike Gapes:** What is the Government’s position? I am trying to pin this down exactly. There is clearly a conflict here. If a vessel is taken with British hostages and we are not prepared—perhaps because of consequences for their lives—to use a full military

assault to try to rescue them, and if no efforts are made to pay a ransom, how long do you think it will be before those hostages are released?

**Mr Bellingham:** First, if hostages are actually taken—this is a Foreign Office lead—it would be a matter for special forces involvement. In certain circumstances, a hostage release operation would be mounted. In the case of the Chandlers, as is well known from media coverage, that was looked at, but when it was considered by people who have far more experience of this than me, it was decided that there would be too great a risk to the hostages. The Chandlers then got taken into captivity and a ransom was eventually paid. We discouraged the payment of a ransom. The problem, basically, is that if we adopted that UN Security Council resolution into our own law, it would prevent the payment of those ransoms if they were going to go to well known pirates. That would mean that the only way around it would be to use the payment under duress clause. It might be quite difficult to do that under our law because we have an independent prosecution authority.

**Q293 Mike Gapes:** I am still unclear. The thrust of what you are saying is that we do not pay ransoms and we do not encourage the payment of ransoms.

**Mr Bellingham:** Correct.

**Q294 Mike Gapes:** Yet, there are circumstances—you mentioned the Chandlers; there are others—where individuals would potentially be detained for a very, very long time, and if no ransom had been paid and there were no other circumstances for their liberation, presumably they would continue to be detained potentially for years, certainly many months. Other governments seem to have a slightly different approach to this. I am trying to clarify: is it a nod-and-wink policy that officially we do not do it but if somebody does it, we will live with the consequences, or is it a real effort to say, “Absolutely, under no circumstances should anybody pay any ransom”?

**Mr Bellingham:** No, because paying ransoms is not against our law. That is the point. We would have to change our law. The reason why the industry was very concerned about the UN Security Council resolution on the payment of ransoms that might get to known pirates, is that it would mean that we would make changes to our legal system. What they were particularly concerned about was that countries that have incorporated this into their law have a defence of duress.

Now, other countries have a different prosecution system from ours. Basically, in America there is Executive control over prosecution policy; we have an independent set of prosecution authorities in this country. The industry is very concerned that if the legal situation were changed, prosecutions could well occur when the payment was made to save lives.

We are into a very difficult area, but can I assure you that we have to weigh up two things. We have to weigh up all the policy and the efforts to counter piracy, to look at the risk-reward ratio. At the moment, the balance of the equation is in favour of reward, not risk. If we increased the level of risk to the pirates, we might disincentivise piracy. This is one ingredient,

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and I can assure you that we will keep it under review, but it will mean fairly fundamental changes.

**Q295 Mike Gapes:** But we have been told of a specific case in which the ransom was waiting on the runway ready to be sent off, but the people who were sending it wanted political cover, which the FCO refused to give. Therefore the whole deal fell through and those people were detained. Several months later, the payment was made and the people were released. There is a level of ambiguity here, isn't there?

**Mr Bellingham:** I do not agree there is ambiguity. Unless we change our law to make the payment of ransoms illegal, our policy of discouraging it will continue. I will give you a good example of what happened the other day, which has been widely covered in the press. People who were carrying a ransom arrived at Mogadishu airport with, I think, US\$2.5 million. They were apprehended by the TFG and were up in the court the following day, where they were convicted and given lengthy prison sentences. We dealt with that as a consular case. We did not say that the TFG were wrong to prosecute those people for paying a ransom, which is against their law. In that case, there has been a presidential pardon—the men have been released, but the money has been confiscated by the TFG, and I understand the assets as well, such as vehicles and aircraft.

**Q296 Mike Gapes:** A final question: can I take it from your answer that we are not going to outlaw the payment of ransoms in all circumstances?

**Mr Bellingham:** We keep this under review. Some countries have adopted the Security Council resolution, but we have not done so yet. It would require a change in our law. We keep it under review. As I say, we have to weigh up the peculiar circumstances of our legal system. But if we adopted the resolution, those paying a ransom to save people's lives might end up being prosecuted, which might not be in the public interest.

**Q297 Chair:** Does the UK track ransom payments?

**Mr Bellingham:** We are trying to understand much more about the financial flows and therefore disrupt them. Yes, we are strongly supporting two major organisations—Interpol and the UNODC—that are doing exactly that, for which they have a number of new policies and protocols in place. It is slow work, but so far, two key Somali kingpins have been convicted and are serving custodial sentences. Another kingpin financier is awaiting extradition from Dubai to Belgium. The work is ongoing.

We have very advanced money-laundering laws in the UK, as well as all the training that goes with that. We put money into UNODC—as a big contributor to the UN, we do that anyway—but DFID have put some extra money in to work with the regional countries to implement new money-laundering laws in, say, Kenya, as well as training. There is no point in having the laws—

**Q298 Chair:** Can we concentrate on the UK?

**Mr Bellingham:**—if you haven't got regional financial investigators. We are certainly doing all we can in the UK.

**Q299 Chair:** So the answer is yes—you do track money through these organisations.

**Mr Bellingham:** It is fair to say that we were possibly slow to look at this area as a priority. But in the early days of payment of ransoms we were talking about a few million US dollars; we are now talking about a total amount of about \$300 million. Serious sums of money are washing around different world financial centres and systems. Understanding where that money goes, disrupting it and going after the kingpins is incredibly important. We have had some success, but there is much more to do.

**Q300 Chair:** Is SOCA involved when ransom money is paid?

**Mr Bellingham:** SOCA certainly are involved, yes. We have a strong SOCA presence in Nairobi, and there is liaison between SOCA—

**Q301 Chair:** Is SOCA involved when ransom payments go through the UK?

**Mr Bellingham:** SOCA certainly are involved in trying to track payments.

**Q302 Chair:** Are they involved when ransom money goes through the UK?

**Mr Bellingham:** If there was evidence of ransom money; there would need to be evidence. Of course it's very difficult when money is paid over in cash to unknown individuals, who then launder it through property, through assets in the region. Does some of the money end up in London? We do not have evidence that money has ended up in London, but we are doing our best to make sure that we understand much more about these flows, so that if money does end up here, we are able to get at the guys who are the recipients.

**Q303 Chair:** So you don't know if SOCA is involved?

**Mr Bellingham:** SOCA are treating this as a priority, but they don't yet have evidence that could lead to a prosecution.

**Chris Holtby:** SOCA clear all payments that could be regarded as suspicious, as part of their normal work, across all financial transactions. That is a routine matter for SOCA.

**Q304 Chair:** Isn't that inconsistent with the policy of discouraging payment?

**Chris Holtby:** No.

**Q305 Chair:** Why not?

**Chris Holtby:** They are not asked to take a judgment on whether or not it is a matter of policy. They are asked whether or not it is legal.

**Q306 Chair:** But if you have a Government Department that is sanctioning payments, yet it is the policy of the Government to discourage payments, I would say that was inconsistent.

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**Mr Bellingham:** They are not exactly sanctioning those payments, because if they had evidence that those payments resulted from a ransom situation, they would be able to take action.

**Q307 Chair:** Don't you think it makes you look a bit weak? There you are saying, "We don't approve of this payment," but none the less, you are thoroughly aware that it is happening.

**Mr Bellingham:** We are aware that payments are made. We do not have evidence of money finding its way through the financial service institutions in the City. We don't have evidence that there is money ending up in London. If there was evidence of this, then we would be able to go after the guys. That is why we are making this a bigger priority, putting more money into Interpol, into UNODC, understanding more about how these financial flows are structured. DFID are looking at a project to embed some experts into this who have serious knowledge. We can't tell you anything about that at the moment, because it is still ongoing, but there may be an announcement coming up at some stage in the near future from DFID on that.

**Q308 Chair:** Are you aware of the details of how the Chandlers were freed?

**Mr Bellingham:** I am not personally aware of that.

**Q309 Chair:** Is anyone in the Foreign Office aware of it?

**Mr Bellingham:** Do you want to comment on that, Chris?

**Chris Holtby:** The Chandler family have kept in regular contact with consular officers in the Foreign Office, but we were not in any way engaged in any of the ransom negotiations or payments.

**Q310 Chair:** Is anyone at the Foreign Office aware of the details?

**Chris Holtby:** In so far as the Chandlers have wanted to share it with consular officials, then they know, but payment of ransom is not a matter for Government.

**Q311 Chair:** Is it classified?

**Chris Holtby:** I don't think it would be a classified issue, but—

**Q312 Chair:** I am just wondering if there is anything you could share with us.

**Mr Bellingham:** We could certainly look at that. If there is information that is available and is not classified, we could come back to you on that. We could let you know.

**Chair:** We now move on to Somaliland. We have just 15 minutes left.

**Q313 Mike Gapes:** You have already referred to Somaliland's—in your words—quasi-independence. Given that it is quasi-independent, how do we engage with Somaliland and with Puntland on these issues, given that the Transitional Federal Government is so weak that it doesn't control large parts of Somalia? Related to that, is it not time we were more positive towards the fact that we have a democratic

Government in Somaliland? It has good governance and is about the only part of Somalia which is functioning.

**Mr Bellingham:** I can certainly understand the enthusiasm that a lot of people have for recognising Somaliland as an independent country. What I said was, that it is a quasi-independent country. It has home rule. It is autonomous, but any recognition of Somaliland as an independent country is a matter for the people of Somaliland. It is also a matter which the AU would have to lead on. It would be wrong for the UK to get involved or pre-empt this. It would also undermine our wider Somali strategy because our strategy is not just about engagement with the TFG. It is a much wider strategy, which is why are taking a lead in the International Contact Group on Somalia. It is why we have the cross-departmental working group on Somalia, which obviously includes piracy. We are looking at how we can add value to different parts of Somalia.

Somaliland is somewhere where we have a good relationship. There is a large diaspora in this country. They had presidential elections early this year, which went very smoothly and there was a transfer of power. Somaliland is a place where we are putting in quite a lot of aid. For example, part of the money we put into UNODC focused on improving prison conditions, staff housing and training programmes for prison staff in Somaliland. It supported also the completion of the prison in Hargeisa. We gave a substantial amount of money for that. The fact that Somaliland does not host any pirate activity is an indication of that.

I would like to see Somaliland as the exemplar for the rest of Somalia. We would like to see Puntland coming the same way, and I think there is a good chance that the positive progress in Puntland will lead to further significant steps forward. The TFG have extended their transition for another year, and we are confident that the TFG will now start reaching out to the different constituent parts of Somalia and actually start making a difference, giving the people of Somalia some hope for the future. What the people of Somalia, particularly in South and Central, must have is some confidence in the legitimacy of the Government and some incentive to move away from the enticements of al-Shabab. In fact, the Captain has just told me that Royal Fleet Auxiliary Cardigan Bay is currently operating off the coast of Somaliland with the Somaliland coastguard. That leads on to the other point: building some regional capacity not just in terms of prisons in Somaliland, but coastguard capacity.

I come back to the point I made earlier, which Mr Stewart so eloquently put when talking about fractured failed states. If you have a fractured failed state, you will have problems like piracy.

**Q314 Rory Stewart:** Minister, thank you for your endurance of our marathon session. Just to follow up, it does seem as though the fundamental problem is that Somalia is in a mess. It was in a mess before the Government collapsed in the early '90s. It is in even more of a mess now. Perhaps some wise policy needs to start from humility. We need to acknowledge that there is a limited amount that the United Kingdom can



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really do to resolve such situations. It is very tempting to say, “Well, we are doing this splendid DFID project,” or “We are building some prisons,” or “We are encouraging people to talk to each other,” but if you were to step back, detach and look at the past 20 or 30 years, maybe we need to begin by acknowledging that there may be things that we cannot do.

**Mr Bellingham:** I do not think that we can win this from a military point of view. The lessons are that the Somalis do not take at all well to outside foreign intervention. We have to work with the grain of what the Somali people aspire to, and I think that they aspire to having control of their own lives. The reason why so much of South and Central is under the control of al-Shabab is because they have filled a void and they provide order. Where there is order, business can operate.

One of the things that struck me about Somalia—and I have not been there yet—is that, in South and Central, even in the areas where al-Shabab is holding forward, business continues for SMEs, enterprise is going on, and we are getting aid in there through local organisations. At the moment, there is the big problem of refugees moving to Kenya, and there are big problems over the drought, but it is interesting to reflect that, when the Islamic courts were in charge of Somalia, there was no piracy problem because they told the communities that going down the piracy route was against the Koran, that it was completely evil and wrong and that, if they did it, they would suffer the most appalling consequences under the sharia law system that they had in place.

Somali people respect authority; they greatly resent a lack of legitimacy, which is why we have to work with the TFG. They are not the only game in town, which is why our wider Somali policy envisages a whole-Somali approach. I am a glass half full person on Somalia—there is a very good chance that the TFG will be able to provide services throughout Mogadishu in the near future. AMISOM has done an absolutely fantastic job. The TFG forces coming into theatre, trained by the EU training mission, have performed incredibly well.

What was interesting at the recent AU summit, which I attended last week, was that, although Libya and Sudan dominated, there was still a lot of focus on Somalia. There is a real determination within the regional community, particularly IGAD, to play an important role. Along with President Museveni, it was absolutely pivotal in brokering the Kampala accord, which is leading to the political bureau being set up. There will be a Mogadishu summit that Special Representative Mahiga will preside over next week.

We are not just working along; we are working with European partners and particularly with regional partners, who understand how, if the problem is not solved—with Sudan going, I hope, in the right direction and some of the other disasters in Africa, like Côte d’Ivoire, being sorted out—we will have this appalling, ongoing failed-state situation on the Horn of Africa, causing a huge amount of economic damage to the whole region, to say nothing of the refugees and the human suffering.

**Q315 Rory Stewart:** Finally, a plea for the idea that the international community, in dealing with the issues, may not be able to solve the problems, but should at least not make the situation worse. Obviously, as you have explained, you have a difficult problem with al-Shabab. On the one hand, there is horrible human rights abuse and links to radical Islam and, on the other hand, a certain amount of support, legitimacy and attempts to control piracy. The international community has got itself into a situation where it is in some ways paralysing the situation and continuing the conflict. It is doing it by pumping money into one side in the conflict, which is not necessarily the cleanest, most uncorrupt and most credible part of the Somali situation. It is in many ways getting in the way of any kind of political settlements or negotiations that might take place. Do you think we could see a situation in which the international community begins to extract itself, rather than digging itself ever deeper with the risk that it makes the situation worse—not better—by doing so?

**Mr Bellingham:** I am more positive and optimistic than you, Mr Stewart. I think that the Kampala accord presents a way forward in the short term. The political bureau that is going to sit in Mogadishu will be made up of a number of international partners. The key role of the political bureau is to make sure that the milestones that are now in place for the TFG to achieve are met—that the conditions are put in place, that their feet are held to the fire and that they actually deliver services. One of the key aspects of that is getting them to reach out to the more moderate clans to make their Government more inclusive, because until they do that and give the people of Somalia some hope that they can offer a federal Government within a loose federal system, there is no way forward.

I would be optimistic that the much more subtle, multifaceted international approach will pay dividends, whereas in the past the approach was much more blunt, as you are aware. That is perhaps what you fear will happen again in the future. Our approach is much more nuanced and carefully thought out. It is a question of bringing in regional partners and of looking at where we can add value in the parts of Somalia that are going well, but it is also about being under no illusions as to the power of al-Shabab. On the other hand, there are communities where an alternative is now in place to al-Shabab, and they see that—not al-Shabab—as their future.

**Q316 Rory Stewart:** How is that different from people who, for example, say in Afghanistan all the same things about the Karzai Government? They say that we need to hold their feet to the fire, make them meet the milestones, reach out to the moderate tribes and bring in the regional partners. Why should it be any more successful in Somalia than it has been in other parts of the world? What is the cause for optimism?

**Mr Bellingham:** There is a narrative that you can repeat in the context of both countries. There are two reasons why I am optimistic. I suppose you could say the same about Afghanistan, but the Somali people have been through so much. The appalling plight of refugees and the problems with drought have been

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conflict multipliers. There are so many reasons for listening to the diaspora, who are optimistic. Those guys are making serious money in the UK and remitting it back to Somalia.

On the point of cleaning up the TFG. There was a lot of infighting, and the rows between Sheikh Sharif, the Speaker and the Prime Minister were hugely distracting. Many members of the TFG were more interested in drawing their salary than trying to make a difference. There is now a new Prime Minister, there is a political bureau overseeing the TFG's work, and the Foreign Minister, who you may have met, has a positive vision for the country. We now have a Government who are working together and delivering. Finally, the brave troops of AMISOM are making progress on the ground. If, when the troops free up an area, the TFG can move in, open a medical centre, get a school going and allow markets to start flourishing

again, people will say that there is an alternative way forward. Although the Somalis are from many different clans, they are basically a people who have an entrepreneurial drive. The vast majority—outside of Somaliland, where I agree there is an aspiration for independence—are incredibly wedded to the idea of a loose federal country, of one Somalia.

**Chair:** Thank you, Minister. As you are aware, in the main Chamber after the debate on phone hacking there is a debate on the Select Committee reports on Afghanistan, so some of us had better slip away and put a few notes together for that.

Thank you very much indeed for coming along. There may be one or two loose ends, in which case we will drop you a line, if you wouldn't mind dealing with them. Your efforts are much appreciated, as are those of Mr Holtby and Captain Reindorp.

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## Monday 24 October 2011

Members present:

Richard Ottaway (Chair)

Mr Bob Ainsworth  
Ann Clwyd  
Mike Gapes

Mr Frank Roy  
Sir John Stanley  
Mr Dave Watts

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### Examination of Witnesses

*Witnesses:* **Rachel Chandler** and **Paul Chandler**, victims of piracy, gave evidence.

**Q317 Chair:** I welcome members of the public to the fourth evidence session of the Committee's inquiry into piracy off the coast of Somalia. The purpose of the session is to obtain evidence from Mr and Mrs Chandler, who experienced Somali piracy first hand. As a fellow yachtsman, I welcome you to the Committee. Is there anything you would like to say by way of an opening statement, or should we go straight into questions?

**Paul Chandler:** Thank you for your welcome. We are happy to go straight into questions.

**Q318 Chair:** Thank you. May I say to members of the public and the media that after the first seven or eight questions, or the first few groups of questions, we will be going into a private session? That is because a British hostage is still being held in Somalia at the moment, and we have no wish to inflame the situation if exaggerated stories were to come out of the session. As and when that hostage is released, we will put the transcript into the public domain.

Mr and Mrs Chandler, you were hijacked, or captured, less than 24 hours after leaving the Seychelles. Had it crossed your mind that there was a risk? Had you taken any advice on what could happen?

**Rachel Chandler:** Before we left the Seychelles, we consulted all our usual sources of information about the route we were taking. We spoke to fellow yachtsmen who had been on that route, and to other yachtsmen who had taken that trip in the weeks before. There was one yacht which even left the day before, and none of us anticipated that there was a high risk of piracy at that time on that route.

On the day we left, we went through all the normal formalities—harbour master, customs, immigration and coastguard—and at no time did they issue any warning to us. I think they simply didn't know that that group of pirates were there at the time; otherwise, why didn't they warn us, or why wasn't the coastguard out there tracking them down and heading them off?

**Q319 Chair:** Did your insurers give you any advice?

**Paul Chandler:** We notified our insurers of our route on a regular basis and they were aware of our exact intended route, including that our next port of call would have been Tanga in Tanzania. They accepted it and carried on the insurance as per normal.

**Q320 Chair:** Is there any piece of equipment or advice, with hindsight, that you could have had that would have been useful?

**Rachel Chandler:** There is nothing a small yacht can do to prevent robbery and attack from pirates in fast skiffs, armed with AK47s, rocket launchers, or whatever. We do not have the speed. As a British-flagged vessel, of course, we are not able to carry arms. It is not legal to do so. Paul and I are not trained to use arms, so it is not something that is credible anyway.

**Q321 Chair:** You said that no information was made available by the Foreign Office. Were you looking for information from the Foreign Office? Did you look at its website at the time or anything like that?

**Paul Chandler:** Yes, we did. We did considerable research in this country a month or six weeks beforehand. But while we were in the Seychelles we continued. There is one thing that we would have benefited from and that is a low bandwidth source of information. A lot is provided on the internet now. You say looking at the Foreign Office website; well, when you go into the best internet café in the Seychelles, which is run by Cable & Wireless, you think if Google's homepage loads in 40 seconds, it is worth staying on and slogging away for a few hours. Otherwise, you just give up. Communications in a lot of the world are not as good as we are used to here. So when I say low-tech, meaning low bandwidth, information, for example, hurricane and cyclone warnings are made available on the internet in text-only form, which can be downloaded in a matter of microseconds, even over a mobile phone link. Whereas for the websites which give piracy information, you have to wade through the usual click here, look at all these beautiful pictures and so on, and it is very difficult. It was very difficult at that time to keep up to date on information.

**Q322 Chair:** So it is not a user-friendly website for people who are overseas, basically, in fairly remote locations such as the area of piracy.

**Rachel Chandler:** It has improved in the last two years, certainly the NATO website has.

**Q323 Chair:** Since you were captured?

**Rachel Chandler:** Since we were captured, yes.

**Q324 Chair:** What is your reaction to the comment by the Seychelles tourist board that you did receive a piracy warning? Were they putting out warnings at all?

**Paul Chandler:** It was not true. They rather shot themselves in the foot by claiming that we would have

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been warned by the marina that we were staying in, which in fact we had never visited.

**Q325 Chair:** There are people who say, “Well, you take the risk upon yourselves by going through areas like this.” To what extent should governments be responsible for incidents like this?

**Rachel Chandler:** Wherever you travel in the world and whatever you do anywhere, you face risks. The risks we faced where we were at the time, given the information that we had, were no greater than the risks one faced travelling in many parts of the world. That said, there are limits to what anybody can expect governments to be able to do to prevent crime. But I see it as a fundamental role of government, wherever they are, to do their best to prevent crime. We do not blame the Seychelles government for what happened to us. They are victims of the piracy as much as any of us are. Obviously we expect them to do their best to limit it, as one expects all nations of the world who have an interest in international trade to do.

**Q326 Sir John Stanley:** Good afternoon. Can we just be clear on one point? Did you access the Foreign Office’s travel advice for the Seychelles before you left? The letter we have had from the Foreign Office Minister Henry Bellingham starts: “The FCO travel advice for the Seychelles before the kidnapping contained the following warning: ‘reports of the hijacking of vessels by Somali pirates in the northern and western fringes of Seychelles exclusive economic zone waters; for example near Assumption Island’.” Did you access that FCO travel advice or did you, for the technical reasons you have explained—the length of time it would have taken you to access it—basically give up on trying to access it? Did you or did you not access it?

**Rachel Chandler:** We were not heading to the north-west of the Seychelles, which is where it says it was reporting a problem. I do not recall seeing that advice.

**Q327 Sir John Stanley:** Do you remember accessing any FCO travel advice before you left the Seychelles, or, because of the technical reasons, did you give up trying?

**Rachel Chandler:** I do not recall accessing it in the run-up to leaving the Seychelles. I accessed it during September, when we were back in the UK.

**Q328 Sir John Stanley:** If you accessed what has been stated here, did that leave you with any concerns as to whether you should attempt this particular journey to Tanzania?

**Rachel Chandler:** I do not recall seeing that advice and being aware that, at the time—in September—there were warnings to the north-west of the Seychelles, but I should repeat that we were heading to the south-west of the Seychelles, not the north-west.

**Q329 Sir John Stanley:** Do you feel, with the benefit of hindsight, that the British Foreign Office did all it reasonably could to warn you, or do you feel that in terms of travel advice and warning it let you down?

**Paul Chandler:** If the report that you have quoted from was available on the Foreign Office website, it would have been most appropriate for it to make it available in the harbourmaster’s office at Port Victoria, or with some authorities there saying, “Hang on. Should you ring the British High Commission?” or something like that. If it put it on its website and relied on us to find it, it is asking a bit much, given the technical problems of communication that I have mentioned.

**Q330 Sir John Stanley:** When you were in the Seychelles, were you in touch with the British High Commission?

**Rachel Chandler:** We were registered on the LOCATE system, so we did what we felt was appropriate.

**Q331 Sir John Stanley:** Did they know in the British High Commission of your intended journey to Tanzania?

**Rachel Chandler:** No, they didn’t invite us to tell them our travel plans to that extent.

**Q332 Sir John Stanley:** So you simply registered as visiting yachtspeople.

**Rachel Chandler:** In the Seychelles, yes.

**Q333 Sir John Stanley:** Right, and are you satisfied that, having merely registered—having not made contact—it wasn’t really a matter for the British High Commission officials to warn you? Or do you think, knowing the travel advice for that particular part of the world, that the British High Commission should have taken steps to get in touch with you?

**Paul Chandler:** If they were concerned, if they thought there was a risk and they knew there were sailors in Port Victoria who were departing—people were departing every day—I think they should have informed the harbourmaster, the immigration authorities, the customs authorities or the coastguard, all of whom we checked out with. I would have thought that if there was a problem, they would have been aware of it.

**Q334 Sir John Stanley:** Lastly, if you had seen the text of the Foreign Office travel advice that the Minister has given to us—if you had picked it up on the website, or if the British High Commission in the Seychelles had told you about it—do you think you would have said, “Well, it’s not really in the area we’re going to so we’ll take the risk,” or “No, we aren’t going to chance our arm”?

**Rachel Chandler:** If there was advice that had suggested that sailing south-west from the Seychelles to the Amirante Islands and on to Tanzania was high risk from the point of view of a piracy attack, we would not have gone.

**Sir John Stanley:** Thank you.

**Q335 Mr Ainsworth:** It is good to see you alive, and safe and well. I was the Defence Secretary at the time of your capture, Mr and Mrs Chandler, so it really is very good to see you here.

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I have some questions that I want to ask you in the private session, but just for the avoidance of doubt: with your evidence we've been provided with a map<sup>1</sup> that seems to indicate—I want this not to cause any difficulties—that you left Mahe and sailed west-north-west. Is that just an error on the map? You said your intention was to sail south-west. What was your actual direction, having left?

**Paul Chandler:** The map is correct. We were heading approximately south-west towards one of the Amirante islands, but unfortunately that day the wind came from the south-west, so we had to go at approximately 45° to that, either more or less due west or more or less due south. From the weather forecast, the wind was forecast to veer, so we thought we would head on the westerly heading and then later on we would tack and turn south. At the point where we were attacked, we were perhaps 15 miles further north than we would ideally have been, but the map shows the correct position.

**Q336 Mr Ainsworth:** It was not your intention to travel north-west; your intention was to travel south-west.

**Rachel Chandler:** We were about to revert to our original intended course at the time of the attack, because the wind had dropped.

**Chair:** It is the yachtsman's curse; it always comes from the direction you want to go in.

**Q337 Mr Ainsworth:** We landlubbers struggle to understand such difficulties.

**Q338 Mr Watts:** Just to be absolutely clear, before you left on this trip you had planned it. You contacted your insurance company and it knew the route that you were taking. You received no advice that there was any danger whatever, and it raised no issues with you over that route.

Did you check the Foreign Office advice at that stage and, if you did, what was the advice given prior to September? Even if you did not, you must know what it is now, because you must know what you should have had.

**Rachel Chandler:** As far as I recall, there was no advice for sailing from the Seychelles on the Foreign Office website that would have suggested that sailing between the Seychelles and Tanzania was at high risk of piracy attack.

**Q339 Mr Watts:** You deliberately checked. You went online and checked it out.

**Rachel Chandler:** I regularly check the Foreign Office website for advice on countries in the area that we travel in.

**Q340 Mr Watts:** Have you managed to secure a copy of any advice now that you are back? I would think you would have checked.

**Rachel Chandler:** Yes.

**Q341 Mr Watts:** As far as you know, there is still no advice there. If there was information, it would not have been helpful—

**Rachel Chandler:** There is very clear advice now.

**Q342 Mr Watts:** Do you know what advice was given prior to September, before your capture?

**Rachel Chandler:** Before our capture, as far as I know, there was no advice to cruising yachts that said, "Do not sail" either in the Seychelles or from the Seychelles in the direction that we were heading. Obviously, there was advice relating to Somalia and the coast of Somalia.

**Q343 Mr Roy:** Henry Bellingham, the Foreign Office Minister, has stated: "FCO Consular staff remained in close touch with Paul and Rachel's family throughout their ordeal and the family attended meetings in the FCO to meet operational staff, and to link by Video Telephone Conference with the British High Commission in Nairobi." Do you believe that the Foreign Office did all that it could, and is there anything that it could have done for the family that it did not?

**Paul Chandler:** There is a great deal it could have done in terms of importance, but the first thing I would like to say, if I may, is that I do not think that the Foreign Office was the appropriate agency to be in the lead in this matter. It contacted the family essentially four days after the news was out in the public domain.<sup>2</sup> In those four days, the family were bewildered, uncertain and unadvised. Perhaps "hounded" is not the right word, but the press and the media were pressing them for information and comment.

To my mind, the Foreign Office could and should have done three things: it should have advised the family at the earliest possible moment about the general situation in Somalia and the position of kidnapping of hostages for ransom. It should have advised the family not to speak to the media, because it was well known at that stage, and it is well admitted by the media, that by far the best thing for hostages is a press blackout. If our family had been advised of that by the Foreign Office early, it would perhaps have had significant beneficial consequences. It could have been open with the family and said, "We can't help." We did not expect help, from our position in Somalia, because we know there is, essentially, no political way into a failed state; there were no political levers. The Foreign Office could have told the family, "We can't help practically. We can't help because of policy. But here's a man who can help. You need help. The private sector can help. Perhaps you should contact these people."

**Q344 Mr Roy:** So you are saying that the FCO should not have been in the lead? Who should have been?

**Paul Chandler:** In my opinion, the lead organisation should be the one with the best expertise. As I understand it, expertise in criminal kidnapping rests with the police rather than the Foreign Office. Given that the Foreign Office does not directly have that expertise, it was not provided at the level it should have been.

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<sup>1</sup> Not printed.

<sup>2</sup> See Ev 79.

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**Q345 Ann Clwyd:** It is good to see you in the flesh. You must have had a dreadful ordeal. I am wondering why you have decided to go so public. Is it because you want lessons learned? Do you think that is important in case anybody else is in the same situation as yourselves?

**Rachel Chandler:** You mean in terms of writing the book about what happened? It was for a number of reasons: one, to set the record straight; two, to get it off our chests. The third one I have forgotten, but it is essentially about telling people how it is possible to survive such an ordeal if nothing else. Hopefully, it is also about inspiring them to know that ordinary people can come through something like this.

**Q346 Ann Clwyd:** Do you feel particularly angry with the Foreign Office?

**Paul Chandler:** No. My criticism—I suppose it is mainly me who has voiced it—is not really about the Foreign Office or its individuals, at least not seriously; it is disappointment at the fact that the wrong agency was put in charge. That was a worry for me at the time, in Somalia, and I said as much in one of my phone calls to Rachel's brother. I said, "For goodness' sake, talk to the police, not the FCO." I am not being critical of the FCO in making that comment. If you want to know about criminal kidnapping, why would you go to the FCO? I know there has to be a lead in these things in government, but I think, and the family have said, that if things had been the other way around between the organisations, they would have had much more practical support and help in being, essentially, the victims of extortion. We were just the hostages; our family were the victims of extortion.

**Q347 Ann Clwyd:** But you do feel that the Foreign Office response was derisory—I think you say that somewhere in one of your statements. Did you mean for your family, yourselves or both?

**Paul Chandler:** For our family.

**Rachel Chandler:** What the Foreign Office did provide was, essentially, tea and sympathy. In doing so, I think it rubbed our family up the wrong way. In some sense, its attempts to placate our family just did not work.

**Q348 Mr Roy:** In your written evidence to us, you tell us that some of the pirates who took part in hijacking your yacht were arrested doing the same thing later on to another yacht, and they are currently on trial in Mombasa. You said, "The Metropolitan Police are investigating the possibility that they may also be tried for their part in the attack on Lynn Rival. We have been told by the Met that there is ample evidence, but jurisdiction remains to be negotiated." Could you tell us exactly what you mean by "jurisdiction remains to be negotiated"?

**Paul Chandler:** At the time we made that written evidence submission, the department of the Metropolitan Police that had been collecting evidence and putting the case together informed us that it was in talks with the Kenyan authorities and the British authorities as to how it might be processed, and they reached some sort of tentative agreement. They have told us since then that they have provided a file to the

Crown Prosecution Service, which now has to decide whether to take the matter further. But I gather there is a problem about whether you carry out a trial in Kenya jointly with the Kenyan authorities; whether the Kenyan authorities provide a facility for British authorities to do it; or whether they are handed over to the British authorities and taken to a British territory for trial. I do not know the detail, but I gather that was what had to be resolved.

**Q349 Mr Roy:** Are you at all worried that there is resistance from the Kenyan side to handing the pirates over?

**Paul Chandler:** I do not think so.

**Rachel Chandler:** No, they are on trial for the attack on the Cap Saint Vincent, the French trawler, and we are happy for due process to occur. Then the question is whether they can be brought to trial for our attack on top of it.

**Q350 Mr Roy:** On the point about your own attack, would you like to see the pirates prosecuted in the United Kingdom and, if so, would you be willing to give evidence in the United Kingdom?

**Paul Chandler:** Yes, I would like to see them prosecuted by the United Kingdom—not necessarily physically in the UK—and yes, we would be happy to give evidence.

**Q351 Chair:** When this is over, I read that you are going to set sail again and go off again. It is not a case of once bitten, twice shy?

**Rachel Chandler:** No. Cruising is our chosen lifestyle, and we want to continue cruising for as long as we are able to. We are certainly not defeated by what happened to us.

**Chair:** Thank you. I now propose that we move into a private evidence session.

**Resolved, That the Committee should sit in private. The witnesses gave oral evidence. Asterisks denote that part of the oral evidence which has not been reported at the request of the Foreign & Commonwealth Office and with the agreement of the Committee.**

**Chair:** Thank you very much. I would like to think that you two, more than anybody, will understand why we have had to go into private session now.

**Q352 Mr Ainsworth:** I was very interested—more than most—in your comments about your views on the rules of engagement and what should have happened at sea at the time of your transfer to the container ship from the Lynn Rival. You indicate that despite the fact that you had been forced to say that the ship should back off, you do not believe that. You did not believe it at the time and you do not believe it now; it should not have done, and some enforcement action should have been taken. I want just to try and tease that out and get your views on it. Is it about a specific, or is it a generality about rules of engagement?

**Paul Chandler:** It is a generality. I feel very strongly that the lives of two people should not be weighed so highly in the equation, which is why I use the term enforcement rather than hostage rescue. I do not

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expect the might of the British Government to rescue me. As Rachel said, we did not blame anybody for what happened to us. We did not expect anybody to go beyond reasonable efforts to try to rescue us.

**Q353 Mr Ainsworth:** The Wave Knight is not a warship; it is part of the Royal Fleet Auxiliary. As you know, that means that there are no heavy calibre weapons and no helicopter. There was no element of surprise, because the Wave Knight had been trying to delay that container ship, so that you could not be transferred to it. The pirates were fully aware of where it was and that it had been trying to interdict them for some time. In those circumstances, what do you think should have been done? There was a detachment of Royal Marines on board, but there were considerable numbers of armed pirates on board the container ship.

**Paul Chandler:** It is not for us to say what military plans should be carried out. The decision that leads to the fact that it needs to be carried out by special forces rather than Marines, in order to minimise the risks to our lives, is what I think is the wrong one.

**Q354 Mr Ainsworth:** I understand what you are saying, but I am trying to clarify this, because the Royal Navy were pretty heavily attacked at the time in the press, and since.

**Rachel Chandler:** We regret that.

**Q355 Mr Ainsworth:** If Marines were to mount an attack on alert pirates on board a container ship that was heavily armoured, it might not only have been your lives that were at risk. I have no idea how they would have gone about that. I cannot think how they would have done it, other than to try to board that ship by skiff or something like that. It might have been them who were annihilated in the process.

**Paul Chandler:** I do not think they would have been that foolish.

**Rachel Chandler:** In my mind, the time to mount an attempt to rescue us would have been between the time when the seven pirates went off to attack the French trawler—we were then discovered by the helicopter from the Spanish warship—and approached the following morning—

**Q356 Mr Ainsworth:** This was after you had been transferred to the container ship.

**Rachel Chandler:** No, this was before. This was on the evening of the fifth day. The Spanish helicopter found us when it overflew. We had just three pirates left on board at that time. The following morning there was the German warship—the Karlsruhe. In my naive mind at the time, I thought it was the time for a rescue attempt. I do not know where the Marines or the Wave Knight were in relation to Lynn Rival at the time before we got to the Kota Wajar, but that would have been the time to attempt a rescue of us, in my mind. Once we got to the Kota Wajar and were in the process of being transferred—I fully accept that the Kota Wajar was full of pirates and hostages and a Singaporean-flagged ship—no way was a rescue going to happen.

**Q357 Mr Ainsworth:** Having cleared that up, can I ask one other question? It was not clear from your evidence that that was what you were suggesting. What was the pirates' reaction at the time that the Wave Knight was in close proximity? What was their reaction to the potential of a rescue?

**Paul Chandler:** I would say that they were nervous, but they were not frightened, if you understand what I mean. They did not think that they were going to be attacked, but they were nervous, because they are not used to being faced by people with guns. Warning shots were being fired and there were exchanges of searchlight beams, but they were not thinking, "We are going to have to fight here." You can read something into the fact that they were standing on the deck of Kota Wajar firing AK47s at a warship.

**Rachel Chandler:** Well, the Wave Knight.

**Paul Chandler:** Well, they would see it as a warship; it is big and grey. They were reasonably confident that they were not going to be attacked.

**Q358 Mr Ainsworth:** So you got a sense that they knew what the game was and that they were going to be able to carry on their business.

**Paul Chandler:** Yes, but when there were only three of them on Lynn Rival and the two of us, they were nervous and frightened.

**Rachel Chandler:** After the helicopter had overflowed, and when in the morning the warship was obvious, they were incredibly nervous—they were beside themselves.

**Mr Ainsworth:** There were people en route.

**Rachel Chandler:** They realised that there was a serious threat and risk that a rescue attempt could happen.

**Q359 Sir John Stanley: \*\*\***

**Paul Chandler: \*\*\***

**Q360 Sir John Stanley:** Are you saying to the Committee that the Foreign Office played no part whatever in facilitating the settlement?

**Paul Chandler:** Absolutely. It was, however, prepared to help after our release. It wasn't even prepared to contribute anything—not that it could have done, perhaps—to getting us out, once a deal had been done, but once we landed on safe soil in Nairobi, it was wonderful. *[Interruption.]* I mean it. I mean that sincerely.

**Q361 Sir John Stanley:** Do you think that the Foreign Office comprehensive stand-off, as far as you were concerned, was due to Government policy of not negotiating release of money to hostage takers, or do you believe that the Foreign Office policy was due to a sense of inadequacy as to its ability to influence the situation your way? What do you attribute the Foreign Office stand-off position to?

**Rachel Chandler:** I assume that it was due to a strong interpretation of the policy that it does not negotiate or facilitate negotiations with kidnappers. I hope that it was not due to total incompetence. My feeling is that, as Paul said earlier in response to the question about assistance to our family, it would help in hostage situations if the Foreign Office were able to

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assist with the initial crisis management that a family needs. If it is private individuals, a family needs to be able to organise itself to deal with the crisis. If it does not, and it flounders, the situation just worsens and the outcome is likely to be more expensive.

**Q362 Sir John Stanley:** As we know, other governments such as the French and Italian governments take a very different position. Obviously, I am familiar with the public position of the British Government, particularly when we had to face the series of kidnappings in Beirut some time ago. Do you think that if the Foreign Office had been proactive, your release could have been secured more quickly and conceivably less expensively for you personally?

**Paul Chandler:** I certainly think that if they had advised our family to shut up and not speak to the press on day one, it might have shortened our period in captivity. The commercial aspect of this is that both sides in the usual piracy situation expect to follow a process and negotiate a settlement, and I think the pirates are wedded to that. In a kidnapping situation where you have not chosen your target—you don't know that it's the daughter of a wealthy tycoon; it's just a random selection—when you think that you have got as much money as you are likely to get, you are going to settle. The period it took to get to that was possibly considerably delayed by the media interest engendered in the first few days.

**Q363 Sir John Stanley: \*\*\***

**Rachel Chandler: \*\*\***

**Q364 Chair: \*\*\***

**Rachel Chandler: \*\*\***

**Q365 Mr Watts:** Can you describe the structure and nature of the pirate group you were engaged with, and tell us whether you had any contact with senior investors or pirate groups within the groups that you met? Did you come into contact with the main players, or were you dealing with people lower down the food chain?

**Paul Chandler:** That is a good question and we can answer only on the basis of our experience in our meetings and our reading of the situation over quite a long time. In our case, it seems that there were not any big players. There was a man who led the attack on us, and right throughout the 13 months there was a sense, which got stronger, that he was the man making the decisions and that it was he who in the end had to decide to release us. There were two or three people—two in particular—who were sort of mentoring him although they did not outrank him. They visited the site occasionally; it was almost as if they were buddies. Perhaps they each had 12 loyal men because it needed 30 or 35 to guard us over that long period; perhaps it was the coming together of three groups.

Two translator-negotiators were brought in to deal with our family and I almost got the sense that they were hired in—it was almost like office services being outsourced. They had a certain authority when it came to telling the gangs to look after us and give us water, batteries for the radio and whatever. There was no

sense, however, that they had the authority to influence vital decision making. My reading of the situation was of a gang of 30 to 35 people, and a leader who was this bully called Buggas. If there were financiers behind that, they were very low key and not involved in decision making. I could be completely wrong, but I strongly have that sense. That may not be representative of the piracy position as you move around to Puntland, towards the Gulf of Aden. It may be that they were just a group thinking, "Oh, we can do that too", and they got enough together to form a group and go out.

**Q366 Mr Watts:** We have heard from previous witnesses that the groups tend to be democratic, in the sense that there is no leader. Was it your sense that although there was obviously someone in charge of the attack and the capture, major decisions were taken by the group? Or were they taken by the one person?

**Paul Chandler:** One person, but he had to satisfy the group.

**Q367 Mr Watts: \*\*\***

**Paul Chandler: \*\*\***

**Q368 Mr Watts:** Can I ask you a question that relates to questions put by some of my colleagues earlier? It seems that you think that perhaps the Foreign Office are not the best people to deal with this and that the police have more understanding about ransom. Then you are not quite sure whether the Navy are the right group of people, if you are going to intercede; you are not quite sure if there should be special forces. On the ransom side of it, you are saying that the local guy was able to be more effective. That is a fairly damning indictment of British policy, in the sense that what you are saying virtually is that the whole structure for dealing with this is wrong and it needs to be thought out again. Am I putting words in your mouth when I say that?

**Paul Chandler:** Well you are, but yes, I do think that.

**Rachel Chandler:** The whole situation is such a mess. The Somalis are in a Catch-22 situation, whereby you have the lawlessness on land so you have the thriving piracy. You will not be able to do anything to stop the lawlessness on land unless you contain the piracy, because the pirates rule on land—essentially, the militias are being funded through the piracy. There is no easy solution and policy has to be directed at finding ways forward and improvements in the situation. On the one hand, there must be containing of the piracy and strengthening or improving what our Navy is trying to do in collaboration with all the other navies out there that are trying to do something. Of course, one aspect of that is building up the coastguard and the local efforts to contain the piracy, to protect all the different countries in the region that are affected by it. But you also have to have the carrot aspect, trying to help the Somali people who want to improve their security and have more peace and prospects, because at the moment their situation is just so hopeless. It is a question of tackling it on many different fronts. It is not obvious that there is a holistic approach in British Government policy or, indeed, in UN policy.



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**Q369 Mr Watts:** Many people might take the view that the Foreign Office and the British Government should tell or advise private citizens not to go anywhere within the catchment area where there may be a problem, that that advice should be given to everyone, and that insurers should be forced to make the same sort of representation. Is that something that you would endorse? If not, why not? It was a terrifying event for you, but, frankly, an awful lot of resources, time and effort are going into allowing people to cruise in areas that are not safe.

**Paul Chandler:** It is very difficult to go down the route of blacklisting countries. We visited countries and when we were in Yemen, we went up to Sana'a, and a month after we were there, the Foreign Office moved it up one level and said, "Don't go to Yemen, if you can possibly avoid doing so." It is very difficult when there are no grey areas and you move it up into an area. What is the traveller to do? A lot of the world would be in that category. For example, the recent Foreign Office advice on sailing in the Seychelles was not to go beyond 30 miles. That is nonsense. Are we to assume that if you are 29 miles out you are hunky-dory and it's fine, but that if you are 31 miles out you are going to get attacked? Or are you to assume that if you are attacked, wherever you are, the Navy will come to rescue you if you are only 29 miles out? It is nonsense and it is very difficult to know how it could be otherwise. I think that the best thing is for the Foreign Office to be as honest as it can in reporting facts in particular and in giving advice.

**Chair:** A ship was recently snatched two miles off the coast of Yemen.

**Q370 Mike Gapes:** In paragraph 27 of your written submission to us, you say that the issue was handled by the Foreign and Commonwealth Office "as a counter-terrorism matter, rather than criminal kidnapping." Why do you think that was?

**Rachel Chandler:** I think you have to ask the Foreign and Commonwealth Office, because to us, we were kidnapped by Somali pirates and all they want is money. That is their mantra—"All we want is money." So to us, it was criminal kidnapping.

**Q371 Mike Gapes:** In the time that you were captured and held, did you have any evidence of any relationship or interaction between the pirates and, for example, the al-Shabab group or any other terrorist groups?

**Paul Chandler:** They were frightened of al-Shabab and they did not like them, because they did not like the discipline that al-Shabab would have imposed. I would not say that they were scared of a fight with them, but they seemed occasionally to be worried that al-Shabab would come and seize us.

**Q372 Mike Gapes:** Is that because they thought that al-Shabab would then release you, or because al-Shabab would take the money by becoming your captors and hostage takers?

**Rachel Chandler:** They did not want to lose their prize—simple as that.

**Q373 Mike Gapes:** We have been told that al-Shabab is strongly against piracy as a whole and that it has a religious and moral code that says it is wrong.

**Rachel Chandler:** But they don't do much to stop kidnapping, do they?

**Q374 Mike Gapes:** Do you think that the people you were with had any contact with people in al-Shabab, or were they just afraid of them in the sense that they were a potential threat to them?

**Paul Chandler:** They were very aware of al-Shabab and of the boundaries. They occupied a zone of central Somalia, whereas al-Shabab controlled the south to a greater or lesser extent and would occasionally make forays into the central area. I suspect that al-Shabab takes a rake-off from the piracy operations and stays out of that area; it is a sort of informal arrangement, because, as we have seen, al-Shabab is not powerful enough to control the areas that it occupies.

**Q375 Mike Gapes:** That is just your impression; you have no evidence for that?

**Paul Chandler:** No evidence. Certainly, the guys in the gang did not like the idea of going to fight with or against al-Shabab.

**Q376 Mike Gapes:** You had no contact with anyone in the time that you were there who you might think was a link to or associated with al-Shabab.

**Rachel Chandler:** Not that we know of.

**Q377 Mr Roy: \*\*\***

**Rachel Chandler: \*\*\***

**Q378 Mr Roy: No idea?**

**Rachel Chandler: No.**

**Paul Chandler:** Speculation has suggested that it was the Somali diaspora and/or the TFG. Either of those sounds a likely contributor.

**Q379 Chair: TFG?**

**Paul Chandler:** The Transitional Federal Government.

**Q380 Mr Watts: \*\*\***

**Rachel Chandler: \*\*\***

**Q381 Mr Watts: \*\*\***

**Paul Chandler: \*\*\***

**Q382 Mr Ainsworth: \*\*\***

**Paul Chandler: \*\*\***

**Q383 Mr Watts:** That may be something shared by other individuals. Do you believe that the British Government are right not to pay ransoms?

**Rachel Chandler: Yes.**

**Paul Chandler:** In principle, but as with all policy statements, it is something that a government aspire to, and every situation should be considered as a unique one. But in principle, I do not think that taxpayers' money should be used to pay ransoms.

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**Q384 Mr Watts:** You do not think that the British Government have been involved, in any shape or form, in providing the ransom.

**Paul Chandler:** They say they have not. That is all I can say.

**Q385 Mr Watts:** Governments say lots of things. Where the money came from is quite mysterious.

**Paul Chandler:** Yes. The Somali government do not have hypothecation any more than ours do.

**Q386 Chair: \*\*\***

**Rachel Chandler: \*\*\***

**Q387 Mr Ainsworth: \*\*\***

**Paul Chandler: \*\*\***

**Q388 Mr Ainsworth: \*\*\***

**Paul Chandler: \*\*\***

**Rachel Chandler: \*\*\***

**Q389 Mr Ainsworth: \*\*\***

**Rachel Chandler: \*\*\***

**Q390 Mr Ainsworth:** Going back to your desire that action should be taken for enforcement purposes rather than hostage rescue. Governments cannot do anything secretly. These things do go on, I am certain. However, if you have a policy it becomes public. You appear to be espousing the view that there ought to be robust enforcement intervention, and those rights should be delegated fairly low, so they are not held in special forces or those who are trained for hostage rescue, for the purpose of deterring piracy, irrespective of the risk to hostages.

**Paul Chandler:** Not irrespective of it. No, I am suggesting there is perhaps a parallel to the enforcement of any set of laws: that you devolve it to an organisation set up for that purpose, the police force, for example.

**Q391 Mr Ainsworth:** The current situation is that there are people who are trained in hostage rescue and there are relatively few of them. They are the people authorised for this kind of thing. We have seen that even US navy SEALs attempted a rescue in Afghanistan and the hostage was killed during the rescue. If you were to say that British forces—far wider—any Royal Marine Navy officer should attempt for enforcement purposes an attack in those circumstances, you would have to expect that the incidence of death would be considerably higher. The risk would go up exponentially.

**Paul Chandler:** I think that is right. If you reduce the overall number of hostages from a peak of say 800 or so, which it reached last year, down to what one could say was an acceptable level of piracy—perhaps 20 or 30, I don't know, perhaps even 10—

**Q392 Mr Ainsworth:** Then the overall good offsets it.

**Paul Chandler:** That is my view.

**Q393 Mr Watts:** Is that the view that your family held?

**Paul Chandler:** Probably not.

**Q394 Mr Watts:** I put that question because it is something that politicians have to consider. If that went wrong, would your families have taken the same view? Or would they be quoted in the morning papers saying that this should never have happened? I think they may have had a different view from you. I don't want to put words in your mouth.

**Paul Chandler:** Mr Ainsworth mentioned the Linda Norgrove situation. I thought it was very good of her father to come out and say that the right thing was done, even though it did not work out.

**Rachel Chandler:** My preference is prevention. What I would like to see the Navy doing more of is aggressively tracking down the pirate groups before they get to the stage of having hostages, and we then have the dilemma of what to do about trying to rescue them. I still cannot believe that with all the resources available, and surveillance resources in particular, that the group of pirates who took us had been at sea at least four or five days before they got to us. That is a very empty sea. We were at sea for five days between the Seychelles and the Somali coast and we saw nothing until we saw that warship—actually the French trawler. I cannot understand how, with all the resources that we have, they got to that position.

**Q395 Mr Ainsworth:** We cannot police those waters effectively. That is what you are saying.

**Rachel Chandler:** We appear not to have the resources and the co-ordination to be able to track them down; but that has to be the answer for prevention. To stop these groups of pirates, ideally we would destroy their bases and destroy their equipment before they even got off the beaches. Once they set out to sea and they are beyond the reasonable range of fishing boats there are not that many fishermen off that coast of Somalia. I agree that in the Gulf of Aden it is a totally different matter, because you have fishermen everywhere, but in that part of the Somali basin I do not understand why it is not possible to monitor and track down these groups.

**Paul Chandler:** That is where I would really like to see the robustness—not so much in attacking vessels when hostages have been taken, but in dealing with them.

**Q396 Mr Ainsworth:** Attacking them—killing them? Before they've—

**Paul Chandler:** No, no; do not put those words into my mouth. There has been a report to the United Nations suggesting that there are 3,000 to 3,500 pirates active on the sea. People say there is an inexhaustible supply of replacements. Well, I do not think that is actually true. There are a lot of disaffected young men, certainly, but perhaps the risk balance as they see it can be changed a little.

The other thing that is said is that well over 1,000 pirates have been through naval hands in the last two years, I think, and essentially have been released. This is where I think it goes wrong, because if you took those well over 1,000 pirates out of the 3,000 to 3,500, you would have had quite a big impact on the

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problem, and you would be starting to change the balance, as it is seen by the youngsters in Somalia.

You have heard legal expert evidence that states that the law is not a problem. The law of the sea is the closest thing we have to international law. Yet as far as I can see the UN must be throwing up its hands and saying, "Why don't you member states get out there and enforce it?" I know there are difficulties, and I know it is not that simple, but I think a more robust approach could and should be taken.

**Q397 Chair:** Do you think the law is there? You have the problem: because it looks like a pirate, is it a pirate?

**Paul Chandler:** I think you have to say we are putting responsible people in charge of a multi-million pound warship, and we can trust them in the first instance to say, "Well, no, that's not a ladder salesman, I'm sorry." That's the excuse some of them use. I don't think it is that difficult to tell. As Rachel says, it is different in the Gulf of Aden, where you have a lot of small fishing vessels, but nobody who is 1,300 km from Somalia is going to be a fisherman without a refrigerated hold in his ship.

**Q398 Chair:** We have lots of clever lawyers advising us on this very point. I think we could talk around it for a long time.

Can I take you back, before I hand you over to Ann, about the media? You said that you didn't think taxpayers' money should be used to pay ransoms. I am sure my constituents would agree. Do you think the Foreign Office should facilitate payment of ransoms?

**Rachel Chandler:** I think that the Foreign Office is probably not best placed to actively process advancing negotiations, and it comes back to what they can do in a case like ours—and ours is quite an unusual case, although sadly we do have further cases. In a case like ours, where it is private individuals, who do not have automatic access to the kidnap and ransom expertise, I think that the Foreign Office could immediately help the family to proceed. Essentially, it should clearly say to the family, "We cannot help you; you need help from professional expertise in kidnap and ransom."

**Q399 Chair:** \*\*\*

**Paul Chandler:** \*\*\*

**Q400 Chair:** \*\*\*

**Rachel Chandler:** \*\*\*

**Paul Chandler:** \*\*\*

**Q401 Chair:** \*\*\*

**Paul Chandler:** \*\*\*

**Q402 Ann Clwyd:** There are various views on the role of the media. Should there be a total black-out when people are kidnapped, or is it helpful to have media coverage? You yourselves took part in one or two videos. I do not know how many.

**Rachel Chandler:** Not voluntarily, of course.

**Paul Chandler:** We were at gunpoint.

**Rachel Chandler:** The advice from kidnap and ransom experts in the commercial sector is a media black-out. I have no doubt that the media coverage of our case encouraged our kidnapers to believe they could get millions of dollars for us—far more than we could raise.

**Q403 Ann Clwyd:** Is that because the media coverage gave the idea that you were very high value?

**Rachel Chandler:** Exactly. In their society, they expect that the family—in their view, our family is the British people—would all rally round. The British people are very wealthy in their view and, relatively speaking, they are. So they saw no problem in our raising millions of dollars.

**Paul Chandler:** It is interesting to note the case of Colin Freeman who was kidnapped. He is open in his book and he was openly apologetic when he met us. He said, "I am the biggest hypocrite because, within hours of my being kidnapped, my editor had been ringing around and there was a complete news black-out." So the industry looks after its own, and it knows the value of that.

Having said that, I believe that freedom of speech in its widest sense is the fundamental freedom that we enjoy. I do not like to see it curtailed in any way, and there are prices that we have to pay for that freedom. As a final point, by reporting the words of pirate representatives the media were directly aiding and abetting criminals in a criminal act. The legal minds around this table could probably have a field day discussing that, but there is a line and perhaps they crossed it in that case. I do not know but, as Rachel said, it certainly helps their cause to have a lot of media interest overseas.

**Q404 Ann Clwyd:** Do you feel that you might have been released earlier if there had been no media coverage?

**Rachel Chandler:** Definitely our family feel that the negotiations were delayed because of media interest, both in that it encouraged our captors to believe that they could make a lot more money out of us than our family felt was possible and also because, each time there was media interest, it encouraged them to hang on.

**Q405 Chair:** Paul and Rachel, thank you very much indeed. Those were the questions that we wanted to ask you. Is there anything that you would like to say before we finish? I really appreciate you coming along here. We do many inquiries. Some are very robust, but this is quite a delicate one, and we are keen to get it right. We wanted to hear all sides of the story. Anyway, we really appreciate it, so thank you very much indeed.

**Paul Chandler:** Thank you for inviting us.

# Written evidence

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## Written evidence from the Chamber of Shipping<sup>1</sup>

### RESPONSES TO THE SOMALI PIRACY CRISIS 2008–11

1. The international threat to innocent merchant ships and their crews from “piracy” has long been a key concern of the Chamber, although the majority of incidents prior to 2007 concerned robbery often with associated violence and the use of force, in ports and the territorial seas of third states. Since then, the rise in Somali piracy and the hijacking of major international trading merchant ships has represented an unprecedented development and escalation of the piracy threat—with increased frequency of attacks, successful hijackings and has led to the emergence of a Somali “business model” of holding ships and crews for ransom. These factors constitute a unique international piracy phenomenon which is proving very difficult to counter.

2. UK government action, including early ministerial responses, on the Somali problem was positive and prompt. A clear FCO lead was established from the start and good cross-departmental dialogue and co-ordination of policy have been a notable feature, as have close liaison with industry and very strong civil/military operational links.

3. The UK—both as an island and a maritime trading nation—is exposed to the risks of piracy owing to the high levels of essential imports of all types which transit the High Risk Area through the Gulf of Aden and across the Indian Ocean. In March 2011, an impact study jointly commissioned by the Chamber and the Oil Companies International Marine Forum (OCIMF) to quantify the economic impacts of Somali piracy highlighted the UK’s particular dependence and exposure to piracy and a copy has been sent to the Committee secretariat as background.

4. The shipping industry believes the conduct of Operation Atalanta has been methodical and determined—and its leadership and several innovations inspired. The EUNAVFOR’s Maritime Security Centre Horn Of Africa (MSCHOA) web-based reporting and FEXWEB military communication links are examples of this. The industry has placed on record in different fora on several occasions its appreciation for what has been delivered and achieved by the military.

5. Regrettably, however, threat levels have not been reduced and the success of military operations in one area; the Gulf of Aden, have in recent months caused the piracy threat to be displaced and dispersed over a wider area. So for trade and merchant shipping there is now no longer a “safe way” through the Indian Ocean. At the same time there have been worrying developments in pirate tactics and an increasing use of violence.

6. The industry accepts there are no easy or short-term solutions to the threat currently posed by Somali pirates. We are engaged in many strands of activity. The most obvious objectives are to:

- Optimise vessel self-protection measures by implementation of Best Management Practices (BMPs—Version3).
- Improve Rules of Engagement and take action against “mother ships”, from which skiffs operate, which have facilitated the spread of pirate attacks away from Somalia.
- Optimise civil/military operational links and information flow including, threat, positional and incident reporting.
- Address the concerns and confidence of seafarers and to reduce the risks to which they are exposed.
- Call for the maintenance of Operation Atalanta, and other coalition force levels.
- Support jurisdictional efforts and encourage UK prosecutions.
- Support international, regional and national capacity-building.

### OPERATIONAL LIAISON, COALITIONS AND CO-ORDINATION OF COUNTER-PIRACY EFFORTS

7. Chamber links were quickly established in December 2008 with the headquarters of EUNAVFOR and Operation Atalanta in Northwood and remain very strong. We support the location of the headquarters close to the shipping industry in London. Operational command has changed regularly and substantial time and effort has been involved in ensuring that the operational commanders are fully briefed on the industry aspects of counter-piracy.

8. In addition, since 2008 Merchant Navy Liaison Officers (MNLOs) have been seconded from UK and other companies to work in the headquarters, alongside their military colleagues. This successful initiative provides vital commercial and operational advice and has been replicated in UK Maritime Trade Operations (MTO) Dubai where a second MNLO is now stationed.

9. The Chamber has responded to the piracy threat through the UK’s Shipping Defence Advisory Committee (SDAC), a joint industry/governmental committee established in 1937 and which has continued to provide a structure for the delivery of military/civil co-operation since then. The role of SDAC was recognised in the

<sup>1</sup> The Chamber of Shipping is the trade association for the UK shipping industry with 137 members; it represents 917 ships of 27 million gross tonnes.

National Security Strategy (NSS) published in October 2010 and it continues to manage joined-up national inputs and responses on the Somali problem very effectively. The SDAC is co-chaired by the Chairman of the Chamber's Defence and Security Committee (currently Dr Grahaeme Henderson, Vice-President Shell Shipping) and Rear Admiral Philip Jones, Assistant Chief of Naval Staff.

10. In addition, the Chamber has maintained engagement with relevant NATO and UN bodies including CMF and SHADE in Bahrain, the UN Contact Group on Piracy off the Coast of Somalia, the Djibouti Code of Conduct and, most importantly, the International Maritime Organisation (IMO)—both through the FCO and through international shipping associations such as the International Chamber of Shipping (ICS) and the Oil Companies International Marine Forum (OCIMF).

11. Operationally, the industry-led Best Management Practices (BMPs) have proved to be effective in preventing successful attacks, but non-compliance with BMPs by a proportion of the world's fleet continues to be a serious problem. On almost every occasion, EUNAVFOR records show that captured vessels are not complying with the agreed reporting and self-protection requirements.

#### LEGAL ASPECTS AND THE PAYMENT OF RANSOMS

12. The Chamber has strongly advocated the prosecution of captured pirates but has recognised the legal complexities. The repeated images of pirates being released without trial by naval forces, including by the Royal Navy, causes understandable derision. Were sufficient "British interests" present in a piracy incident in the future, the Chamber would want to see pirates either fast-tracked for prosecution in East Africa or prosecuted in UK.

13. In the meantime, the industry will continue to assist the jurisdictional processes, which are being followed in Kenya and the Seychelles although the available capacity in those countries is understood to be extremely limited.

14. An additional and unwelcome development for shipping companies in 2010 concerned US legislative actions to curtail piracy by means of an Executive Order signed by US President on 13 April, which has the potential to block payments to certain individuals on the grounds that they may be contributing to the conflict in Somalia; the order included the names of a few known pirates. The Chamber met at that time with the International Chamber of Shipping, Lloyds' Market Association, the International Group P & I Clubs and London marine hull and cargo insurers and dialogue established with the US authorities. This group remains very concerned that any attempt to prohibit the payment of ransoms would further endanger the seafarers held captive and any prohibition would serve only to drive ransom payments underground. The Chamber welcomed the UK Government's opposition to the ban and considers it essential that the Government should continue to support the industry's position. The situation is being carefully monitored with FCO and the insurance industry. No direct links are thought to exist between pirates or pirate groups and terrorist organisations and the industry believes military counter-piracy operations are distinct and should remain separate from anti-terrorist operations.

15. We are not aware of any geographical spread or contagion of Somali piracy beyond the groups based and operating from Somalia. Were the Somali model to be replicated in another sea area, governments would need to act decisively to prevent the "model" taking root elsewhere.

#### CAPACITY-BUILDING AND LONGER-TERM SOLUTIONS

16. In 2006 the Chamber made a submission to the Transport Committee inquiry into piracy which stated: "The principal responsibility for addressing the piracy and armed robbery problem lies with the state in whose territory such criminals operate and are based... a range of responses is required including inter-governmental arrangements to combat international crime and piracy on the high seas and a co-ordinated approach by UK Government." The same can be said to apply to the Somali problem and so our dialogue with both the military and FCO in the last 12 months has increasingly focused on possible shore-based initiatives and capacity-building measures in Somalia.

17. The industry has been approached several times with a suggestion that a financial contribution be made to Somali trust funds. The Chamber participates in a dialogue on capacity-building but views this as being principally an issue for governments.

#### CONCLUSION AND RECOMMENDATIONS

18. The outbreak of criminality and maritime lawlessness that have developed off Somalia since 2008 and proven a challenge to the EU military operation Operation Atalanta and we have to acknowledge that despite a major military operation the piracy threat has not been reduced or contained. The current threat has been dispersed to areas where the weather conditions have permitted pirate attacks to be launched from small skiffs, firstly to the north and east of the north Indian Ocean, and south into the Mozambique Channel. In recent weeks and with the return of the SW monsoon the threat has now reverted to the more sheltered waters of the Gulf of Aden, including the Bab al Mandeb straits.

19. The timescale of returning this vitally important but immense sea area to normality is stretching into the distance and it is increasingly difficult to see what single military solution can now be applied. The Chamber is convinced of the need for the shipping industry to persevere and continue to improve:

- Vessel self-protection measures by implementation of industry-agreed Best Management Practices (BMPs) Version 3 and subsequent versions which have repeatedly proven to be the first and best form of defence.
- Both quantitative and qualitative aspects of civil/military operational links, to deliver faster information flow including, threat, positional and incident reporting processes.
- Measures to address the concerns and confidence of seafarers and the risks to which they are exposed, including the aftercare of those involved in hijack situations.
- Industry liaison by the provision of Merchant Navy Liaison Officers (MNLOs) to assist their military colleagues.

20. Governmental action is required to:

- Improve Rules of Engagement and take action against mother ships.
- Resource the supply of Vessel Protection Detachments (VPDs) of military personnel to vulnerable UK interest ships.
- Resource UK command of, and units to, Operation Atalanta and to other coalition force initiatives.
- Support jurisdictional efforts and encourage UK prosecutions of incidents involving UK interest.
- Adjust UK legislation to allow private maritime security companies to provide Privately Contracted Armed Security Personnel (PCASP) to UK ships and companies when required by owners of the most vulnerable ships. And to provide a robust national accreditation structure to ensure all such companies and personnel act at all times in accordance with the law.
- Support international, regional and national capacity-building.

20 June 2011

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### **Supplementary written evidence from Stephen Askins, Ince & Co LLP**

#### **INTRODUCTION**

1. These are brief submissions written following my appearance in front of the FAC on 22 June 2011. This letter provides an outline of the issues which we, as commercial lawyers, are forced to address and to provide the Committee with copies of schematic diagrams which help explain the inter-relationship of some of the stakeholders involved.

2. I am a maritime lawyer working for an international law firm with offices across Europe and the Far East. My specialisation is contentious maritime law (litigation as opposed to transactional law) and advising the stakeholders in a maritime adventure on all aspects of maritime law. This work includes the normal contractual charterparty disputes, cargo and insurance claims which are part and parcel of maritime trade. It is a quirk of history that most maritime matters are determined under English Law and that London is often the preferred jurisdiction for maritime matters involving international companies. I also specialise in “Admiralty” matters which arise as a result of one-off maritime incidents including collisions, groundings, pollutions, fire etc. Indeed, Ince & Co has built a worldwide reputation on the back of headline Admiralty cases they have dealt with in this area over the years.

3. Piracy and terrorist attacks at sea are simply another facet of our (and my) expertise. In this particular area we advise the stakeholders on the legal and practical consequences of a maritime hijacking. In particular, this involves working with an owner’s crisis management team in giving support and advice from the immediate aftermath of a hijacking through to the release of the vessel and its recovery to a port of refuge.

4. One of the schisms in the industry relates to the deployment and use of armed guards provided by dedicated maritime security companies. In this area I advise maritime security companies, owners and their insurers on the contractual consequences of the deployment of armed guards and the use of lethal force.

#### **THE COMMERCIAL STAKEHOLDERS**

5. Attached at Annex 1 is a schematic diagram of the key stakeholders involved each time a laden vessel undertakes a voyage. It is the interaction of those stakeholders and the contractual relationships between them which can give rise to a number of potential conflicts when resolving the issues that arise in a hijacking.

6. Typically (although by no means in every case) an oceangoing vessel will be owned by a one ship owning company which may be registered in country A, managed by a management company in country B but fly the flag of country C. It will be chartered to a time charterer (on a day-by-day basis) or to a voyage charterer (for

an agreed sum for a journey between two or more specified ports). The owners will be under an obligation to deliver the cargo to the port of discharge, normally in the quickest way possible.

7. The vessel will go to sea with the owners having protected themselves with a dedicated insurance regime:

- (a) Third party liability cover (for such things as pollution, cargo damage, and personal injury and death to crew) is provided by a Protection and Indemnity Club (P & I Club).
- (b) Until recently the practice in the London insurance market was that the Hull and Machinery insurers would provide cover for piracy claims. Increasingly, that risk is now being taken on by War Risk underwriters who are able to exclude certain areas and then charge an additional premium for transit of high risk areas such as the Gulf of Aden and Indian Ocean.
- (c) Owners are also increasingly looking to take out a dedicated Kidnap and Ransom cover which will be capped to agreed limits but will cover the ransom and ancillary expenses payable to secure the release of the vessel, cargo and crew.

8. Cargo interests will also have their own insurance to provide cover for piracy risks under the relevant cargo policy.

#### CONTRACTUAL ISSUES/BMP

9. It is usual that the vessel is chartered under one of a number of standard-form charterparties, amended to suit the needs of the owners and charterers. Cargo will be loaded on the vessel and the owners will then have a direct contract with cargo interests (the “contract of carriage”) to deliver that cargo to the destination. The terms of the charter do not generally allow the owners to refuse transit of the high risk areas but may allow the owners to impose on charterers the costs of any additional protection measures such as razor wire or even armed guards and additional insurance premium. However, those costs are operational costs which, in a depressed market, owners may be unable to shift onto charterers. With profit margins at a minimum, the cost of hardening a ship may prove hard to meet.

10. When a vessel goes to sea, the owner agrees that it will be “seaworthy” at the commencement of the voyage, although this duty is normally watered down by contractual agreement and by the incorporation of international convention into the contract of carriage, such that the duty is not absolute. If, for example, an accident or incident arises which gives rise to losses by the cargo interests then, in general terms, if the vessel is unseaworthy and that the unseaworthiness was causative of the loss then the owner could be liable for the cargo interests’ losses unless he can show that he exercised “due diligence” to make the vessel seaworthy at the commencement of the voyage.

11. The Best Management Practice Guidelines, which are now in their 4th Edition (“BMP4”), set out guidelines (rather than set rules) regarding the best practices for dealing with the threat of hijacking by pirates. BMP4 is backed by most of the relevant industry and military bodies, who encourage all vessels to adhere to the guidelines set out within the document. Key elements of BMP4 include the completion of a pre-transit risk assessment and the adoption of ship protection measures (“hardening”) designed to make it harder for pirates to succeed in hijacking a vessel.

12. In the context of a charterparty or a contract of carriage, a contractual obligation to adhere to BMP4 is potentially more onerous on the owners and, for that reason, owners will be reluctant to allow it to be an express obligation in these contracts. This does not necessarily stop the other stakeholders from asking whether a hijacking is the result of a failure to adhere to BMP4 and, if so, whether the vessel or owners had the right systems in place to ensure compliance. If owners failed in this respect, then they are exposed to the argument that their vessel was unseaworthy which would be a breach of the implied warranty of seaworthiness. Because liability still then depends on any breach being causative of the loss, however, this is still a difficult case to be made against the owners.

13. Underwriters of marine insurance will often include “warranties” in their policies; these must be complied with if an assured is to avoid losing the benefit of the insurance policy. For example, an owner may warrant that he will use the Group Transit Scheme whilst transiting the Gulf of Aden. Failure to comply with such a warranty, even where such non-compliance does not give rise to a loss, can have serious consequences and, as such, an inclusion of a warranty makes the terms of the policy more onerous.

14. Although BMP4 sets out typical hardening measures, the measures that may be appropriate for one ship may not be suitable for another vessel and BMP therefore avoids being overly prescriptive. As such, it does not lead itself to easily be included as a warranty in an insurance policy. It may be that underwriters can include a specific warranty such as “will follow military convoy” or “razor wire is to be fitted around vessel” but a more wide ranging warranty that the “vessel will comply with BMP4” would be deeply unattractive to an owner. An underwriter who tried to insist on such a warranty would undoubtedly find their product much less attractive than a comparable policy which did not contain such a warranty.

#### ARMED GUARDS

15. A number of issues arise in the context of the deployment and use of armed guards, many of whom are UK nationals (ex Royal Marines or British Army) sub-contracted to both UK and non-UK registered companies. These include:

- (a) Licensing. At Annex 2 is a schematic diagram of the regime in the UK governing the purchase and export of weapons and the export licensing requirements, as laid down in the Fire Arms Act 1968 (as amended) and the Export Regulations Order 2008. This legislation was formulated before the needs of the maritime security sector to deal with counter-piracy were anticipated. At the time of my appearance in June 2011 the system attached to the licensing of weapons was highly bureaucratic and it took several months from the initial application until a company could receive an individual trade control licence (“SITCL”)—which is needed for each movement of named weapons between third party countries. The need for a SITCL was seen as a first step to obtaining an open trade control license (“OITCL”). Fortunately the process has now been streamlined: it is now possible to apply for an OITCL which will take a matter of weeks (rather than months) to process and can be applied for by both companies and individuals. A worrying number of companies are still exporting weapons from countries such as Djibouti and Malta repeatedly moving these weapons between third party countries in the littoral states around the Indian Ocean/Arabian Sea: whilst they will have to obtain the necessary documentation and licences required by the authorities of those states that are used, many are failing to recognise the need to comply with UK Export Regulations which may also apply.
- (b) Movement of weapons through the various ports. A uniform approach is not adopted by all of the countries involved. A failure to comply exposes the vessel and master to criminal or administrative sanction.
- (c) Rules for the use of force. These have developed on a company by company basis, although this is now being addressed by the maritime security sector led by the nascent trade association SAMI (Security Association for the Maritime Industry). The key issues include those arising from the use of lethal force in self defence and the protection of property. With the recent announcement from the UK Government we may see an acceleration of this process which is to be welcomed. We now expect a review of the law surrounding the use of armed weapons.

#### PAYMENT OF RANSOMS

16. Fundamentally the payment of a ransom to criminals is not illegal as a matter of English Law; this was effectively confirmed in a recent Court of Appeal decision here in London. (*Amlin v Masefield* [2011] EWCA Civ 24.)

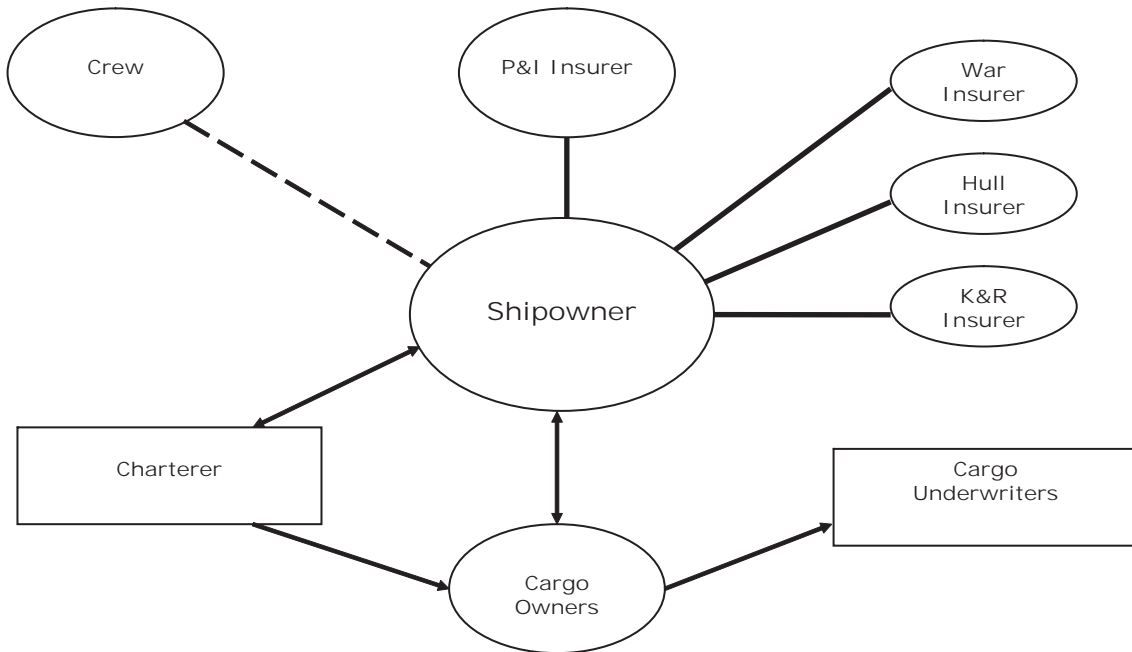
17. A ransom needs to be funded before a deal can be done with the pirates. The lead in any negotiation is taken by the owners, who are likely to have to self-fund the ransom before turning to their insurers for an indemnity under the relevant policy. It is rare for cargo interests or charterers to contribute at this stage. The ransom funds are then gathered in US dollars, sometimes in London but often at the place where the owners are based. It is then flown to an airport outside the UK where it can be transferred to a delivery aircraft before being flown to the ship to be parachuted alongside. Movement through London is done with the consent of SOCA and UKBA. Depending on the nationality of those involved in the payment of the ransom, clearance is also obtained from OFAC (part of the US Treasury) to ensure compliance with the relevant US Executive Order.

18. Finding countries which will support what is a humanitarian exercise to release the crew is becoming increasingly difficult. There are very few companies that can carry out this operation and most are run by UK nationals. It is not a straight forward process and the recent high profile arrest of the British team in Mogadishu is a prime example of how things can go wrong.

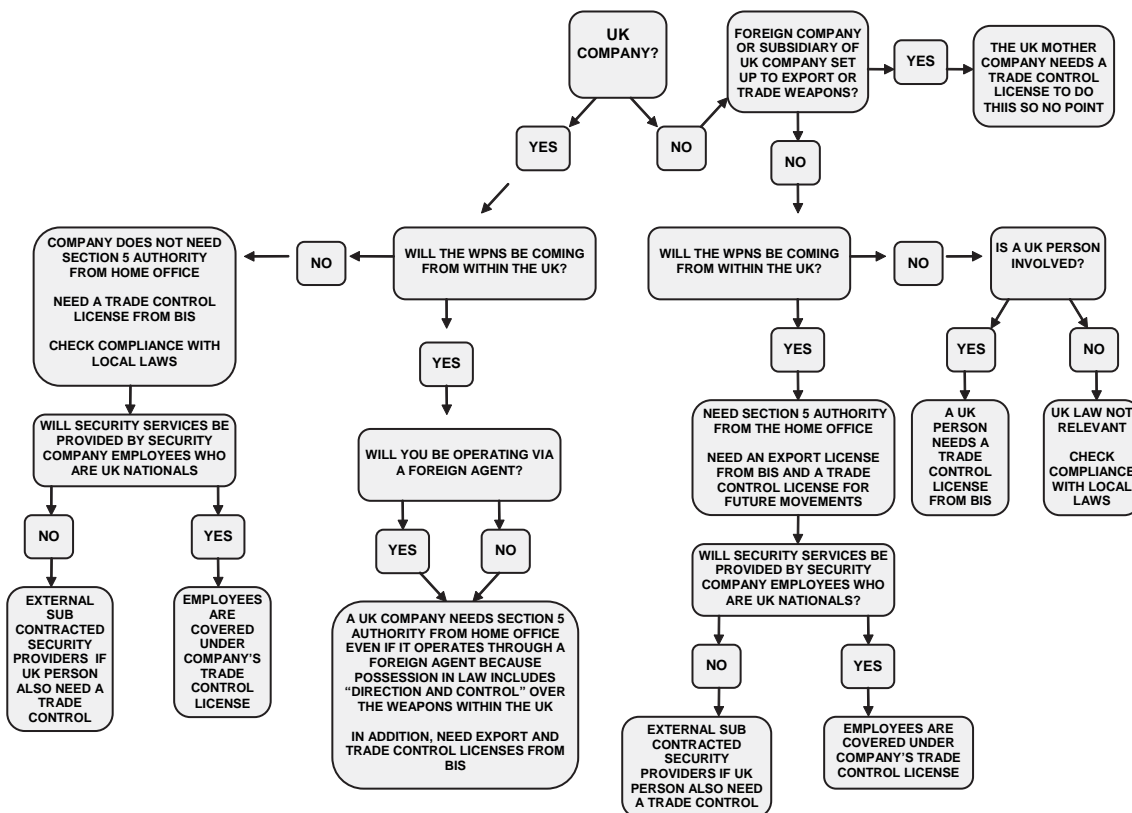
*4 November 2011*



COMMERCIAL STAKEHOLDERS



ANNEX 2 – WEAPONS TRADE AND EXPORT: UK REGULATION PROCEDURE FLOW DIAGRAM



**Written evidence from Mr Henry Bellingham MP, Minister for Africa, the UN, Overseas Territories and Conflict Issues, Foreign and Commonwealth Office**

Following the Foreign Secretary's letter of 27 April 2011 to the Foreign Affairs Committee and ahead of my evidence session with the Committee on 6 July, you requested information on some consular and policy issues linked to Somali Piracy.

Specifically, your consular questions were as follows:

Given that there is currently no British representation in Somalia, what assistance is given by the FCO to the following:

- (a) Those arrested and sentenced for smuggling ransom money into Somalia;
- (b) British hostages held by Somali pirates, and
- (c) Ships with British interests (ie British ship owners, operators or crew) captured by Somali pirates?

Our travel advice is clear, we are unable to provide consular assistance in Somalia. However our priority in this case was to ensure the well being, safety and security of the group. We sought and received those assurances, as well as seeking clarification on the legal process from the Somalia authorities. A non-consular member of staff from our High Commission in Nairobi was able to visit the group before sentencing, and we were in contact with their families and employer.

For British hostages held by Somali pirates, in accordance with HMG's long standing policy we would not facilitate or negotiate the payment of a ransom. Consular staff would remain in contact with families of the hostages while they remained kidnapped.

If a ship with British interests (owners, operators or crew) were captured by pirates then consular assistance would be provided to the families of any crew members captured. Our posts in the region, in close cooperation with EUNAVFOR, actively outreach to the local yachting community and British businesses operating in the region—such as shipping and dive companies—to explain the risks and the limitations on consular assistance we can provide. The FCO carries Indian Ocean piracy specific travel advice on its public website. This travel advice is reviewed and amended after consultation with EUNAVFOR and the shipping industry as necessary.

The Committee also asked for an update on the ongoing review into HMG policy on the use of private armed guards onboard UK-registered shipping.

At present, published policy is to strongly discourage the deployment of private armed guards on board UK flag vessels, but ministers across Government are now considering amending it to a position which recognises that engaging armed personnel is an option for UK flagged ship owners to combat piracy in exceptional circumstances. It is recognised, however, that any change in Government policy or legislation, requires detailed consideration of the complex legal and administrative issues involved. This work is ongoing and is being led by the Department for Transport in close coordination with the FCO, Ministry of Defence, Home Office and the Association of Chief Police Officers. Officials are discussing with industry partners and international interlocutors how best to address the need to maintain standards/ensure quality control in the provision of such services.

The Home Office is currently looking at the applicability of UK firearms legislation on board UK flag ships on the high seas and, if appropriate, whether it is feasible to authorise (and monitor) the possession of "prohibited" firearms in these circumstances.

The Department for Transport was fully involved with the discussions at the International Maritime Organisation meeting in May which produced interim guidelines for ship-owners and flag states. The Department for Transport is considering the detail from a national perspective and is looking at issues such as maritime training required with the Maritime and Coastguard Agency.

Regarding the embarkation of law enforcement officers from regional states as "shipriders", the UK has considerable positive experience on their use in the light of their deployment on Royal Navy warships in the Caribbean. The UK continues to encourage regional states to deploy shipriders on warships in the Indian Ocean, not least in order to simplify questions of jurisdiction (the shipriders can assume jurisdiction on behalf of the regional state from the outset), but regional states so far remain non-committal, including due to continuing gaps in prison capacity until such a time as post-trial transfer to Somali prisons becomes a reality.

I have enclosed a breakdown of the £5.3 million contribution the Government gave to the UN Office on Drugs and Crime during the last financial year, including the countries where the money has been spent and the projects the contribution has gone towards.

I have also enclosed a summary of key statistics for the Committee's interest.

5 July 2011

## Enclosure 1

## SUPPORT FOR UNODC WORK

UNODC's counter-piracy work is designed to meet needs identified by the Contact Group in the area of judicial, prison and legal support. It provides targeted support and capacity building to regional states who agree to undertake piracy prosecutions to ensure that trials and detention are fair, humane, efficient and take place within a sound rule of law framework. The UK recently made a contribution of £5.3 million to support UNODC projects. These projects include the following judicial and prison capacity-building programmes in Kenya, Seychelles and Somalia.

## KENYA

In Kenya, UNODC support focuses on three key areas: prisons and staff, including refurbishing six prisons to ensure that basic health and welfare facilities are in line with international minimum standards and training over 600 prison staff to ensure good prison practice; support to the police by equipping police stations to effectively gather evidence and prepare case work on piracy-related cases; and support to prosecutions by training Kenyan officials on prisoner handover agreements, the law of the sea, advocacy and evidential issues. UK has provided £599,606 of funding for this work.

## SEYCHELLES

UNODC projects in the Seychelles are focused on the courts, police and prisons. Support is being provided to the Seychelles court system to promote effective trials and ensure that prosecutors and judges receive capacity-building and training specific to piracy prosecutions and international law. The Seychelles police receive training on the effective and secure handling of evidence, as well as training to develop the necessary case management skills for preparation of piracy prosecutions in accordance with due process. Seychelles prisons are receiving basic health and welfare infrastructure in line with international minimum standards, and prison staff being trained to manage high-risk prisoners effectively. UK has provided £621,500 of funding for this work.

## SOMALIA

Within Somalia, we are supporting the following UNODC activities:

- In *Puntland*, UNODC supports the Ministry of Justice, through the construction of a courtroom and equipment for Bosasso prison and the provision of capacity-building and training programmes for piracy prosecutions. It has also begun to build a new prison. UK has provided £1,238,468 of funding for this work.
- In *Somaliland* the UNODC focus is on improving prison conditions, including staff housing, providing capacity-building and training programmes to prison staff, and improving prison security and welfare standards. It has also supported the completion of the prison in Hargeisa. UK has provided £1,138,155 of funding for this work.
- UNODC work *across Somalia* includes its law reform project, which covers the incorporation of piracy provisions into Somali law and the brokering of post trial transfer agreements (PTTs), such as the recent PTTs signed with the Government of Seychelles by Puntland, Somaliland and the TFG. The work also covers training for Somali judges. UK has provided £656,106 of funding for this work.
- The UK has also provided funding to regional UNODC projects of £1,120,375. This funding has gone toward UNODC work on ensuring that regional piracy prosecutions are undertaken with full respect for the rule of law, including the facilitation of the attendance of foreign witnesses at piracy trials and preparatory assistance frameworks are developed for regional states willing to undertake piracy prosecutions eg Tanzania and Mauritius.

## Enclosure 2

## SOMALI PIRACY—KEY FACTS

- Over 1,000 Somali pirates are awaiting trial, or serving custodial sentences, in 20 countries.
- Somali pirate attacks increased in the first half of 2011, but the pirate success rate of one success per five attacks (20%) is well below the historical average. This reflects:
  - (of primary importance) a marked increase in the implementation of Best Management Practice and ship self-protection measures by merchant vessels;
  - a number of successful uses of “citadels” (safe rooms);
  - an increase in the number of disruptions conducted by international counter-piracy forces, and
  - there have also been an increasing number of incidents in which armed private security guards have played a role in successfully repelling attacks.

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- The critical Gulf of Aden trade artery—the key UK commercial interest and original pirate focus—remains largely secure for UK and other international shipping, with no successful pirate attack since *November 2010*.

*Ransoms*

US\$	2007	2008	2009	2010	2011	Total
Number	8	19	39	25	19	105
Average paid	600k	1.3m	1.9m	3.19m	4.7m	
Annual Total	5m	25m	76m	79.8m	88.3m	US\$274.3m

*Attacks*

	Unsuccessful attacks	Pirated	Total
2008		2	12
2009		46	163
2010	10	47	174
2011	117	19	120

- At anchorage:
  - 17 ships currently held, and
  - 393 hostages currently held.
- Detention:
  - 134 days average length of detention, and
  - 446 days longest length of detention.

*Operating Area*

- 3,900km coastline of Somalia.
- 2.6m square miles size of Area of Operations.
- 23,000 ships transit the Gulf of Aden per year.
- 97 WFP & 102 AMISOM escorted since Dec 08 (EU).
- During 2009, approximately 23,000 ships, with \$952 billion of trade transited the Gulf of Aden. Of these ships less than 0.01% was hijacked. On average, 40,000 ships per year transit the wider Indian Ocean.

## POPULATION AND HUMANITARIAN STATISTICS:

- Population: 9.3 million (2011 UN Population Division);
- Average life expectancy: 48 years (2009 UNDP Human Development Report);
- Total number of Internally Displaced Persons: 1.46 million (April 2011);
- Over 700,000 Somalis have sought refugee status in other countries, and
- People needing emergency humanitarian or livelihood assistance: 2.4 million (Jan 2011).

## ECONOMIC FIGURES:

- GDP per head \$200 (2001); 43% of the population living on less than a \$1 per day;
  - Exports: \$460 million (2008 figures);
  - Global diaspora remittances to Somalia: Approx \$1 billion p.a, and
  - International aid: \$250 million (2007).
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**Supplementary written evidence from Henry Bellingham, MP, Minister for Africa, the UN, Overseas Territories and Conflict Issues, Foreign and Commonwealth Office**

## SOMALIA/PIRACY

I was grateful for the invitation to attend the Foreign Affairs Committee's evidence session on Somali piracy on 6 July, and to be given the opportunity to explain the Government's positive and forward looking role in combating piracy emanating from Somalia.

I am pleased to be able to write to you now with further written evidence, including one issue raised during the session as well as a number of questions sent to us afterwards.

*Was the FCO aware of how the Chandlers were freed, and are you willing to share these details with the FAC?*

Paul and Rachel Chandler were kidnapped in October 2009. We are not able to go into operational detail but in this case, as with any kidnap case, a dedicated team from across Whitehall met regularly to monitor developments and agree actions. COBR also met on a number of occasions during the kidnap. We did everything we could to secure their release within the terms of our policy on ransom payments, and discussed regularly the options available to HMG for securing Paul and Rachel's safe release as quickly as possible. For example, we used our contacts in the region to gain information and bring influence to bear on the hostage-takers. FCO Consular staff remained in close touch with Paul and Rachel's family throughout their ordeal and the family attended meetings in the FCO to meet operational staff, and to link by Video Telephone Conference with the British High Commission in Nairobi.

The FCO did not make or facilitate the payment of a ransom and we therefore have little information about what finally secured the couple's release. Although there is no UK law against third parties paying ransoms to criminals, we counsel them against doing so because we believe that making concessions only encourages future kidnaps. HMG officials made the Government's policy very clear to the Chandler's family. We informed them that we could not in any way be associated with either the ransom negotiations or the payment of a ransom. The family understood and respected the Government's policy; they had secured the pro-bono assistance of a Private Security Company to assist them with the ransom negotiations. Information provided by the Chandler's family linked to this issue is the subject of Consular confidentiality and cannot be released by the FCO.

The couple were released in November 2010 and met by the British High Commissioner and members of his staff when they arrived in Nairobi. Because of the dangerous security situation in Somalia the FCO Travel Advice at that time advised (and still advises) against all travel to the country. The UK does not offer consular assistance in Somalia for this reason and consequently FCO staff did not travel to Somalia to meet the Chandlers. On arrival in Kenya they were taken to the High Commissioner's Residence and given a full medical check, media advice and the opportunity to make calls to family in the UK. After a short stay in Nairobi they returned to the UK on a commercial flight accompanied by FCO Consular staff who arranged for transfer through the VIP suite at Heathrow Airport. The couple were then taken to a Government property, with FCO provided security, where they were reunited with other family members.

*When will the review of British policy on armed guards on board British flagged ships be completed?*

A full evaluation of the UK's policy on the use of armed guards has been carried out which identified key legal and operational issues that need to be addressed before any changes to the UK's policy can be made. At present a key question is the applicability of the UK Firearms Act 1968 and the section 5 authorisation process onboard UK flagged ships.

The Department for Transport is working with all relevant partners to draft guidance for ship-owners and private military security companies (PMSCs) as a precursor to PMSCs being employed on UK flagged ships. Once the legal and operational issues have been addressed which support a change in policy, a written Ministerial Statement will be made to the House.

*In the course of oral evidence session, references were made to the "cross-Whitehall ministerial working group on piracy" [Q235] and a "cross-departmental working group on Somalia, which obviously includes piracy" [Q313]. For clarity, could you confirm whether these are two separate groups? How often has each group met over the last year?*

I have chaired two cross-Whitehall ministerial working group meetings on Somali piracy—the most recent being at EUNAVFOR's HQ at Northwood in June, with another planned for September.

The cross-departmental working group on Somalia is a separate group chaired by FCO Officials and meets regularly to deliver the UK's Somalia strategy.

*How often has the issue of Somali piracy come up in the National Security Council? Is Somali piracy considered a threat to Britain's security?*

The National Security Council agreed a cross-government Somalia strategy in September 2010, and most recently discussed Somalia, including piracy, on 11 July 2011

The September 2010 NSC underlined the importance of concentrated UK effort on Somalia, which continues to present one of the most significant terrorist threats to the UK. In recognition of this, I chaired a meeting with colleagues from the MOD, DFID and the Home Office on 13 September 2010. Attendees endorsed a cross-government Somalia strategy which is clear about the scale of the challenge but recognises that what happens in Somalia matters to the UK. In addition to counter-terrorism, we have a range of interests in the country, including piracy/maritime security threats; and also Somalia's impact on regional stability; the humanitarian situation; Somali migration to, and the large Diaspora in, the UK; and our long-standing relationship with Somaliland. An ongoing policy of attempting to contain these symptoms is unfeasible. The underlying causes of conflict will need to be addressed.

*Is the letter about the prosecution of pirates from Henry Bellingham to the Lord Chancellor and Secretary of State for Justice referred to in Q245 as well the to the Home Secretary referred to in Q256 of his oral evidence to the Committee publicly available?*

As the formulation of Government policy on this issue is ongoing, it would be inappropriate to release this letter or other correspondence between Ministers. Once a policy decision has been reached, a written Ministerial statement will be made to the House.

*What role does the Government want the shipping industry to play in tracking financial flows?*

We are working with shipping companies and other relevant parties to ensure all applicable evidence is made available to law enforcement officials. This is helping build evidence against key individuals linked to acts of piracy, including through financing. Interpol has recently issued three international arrest warrants against such individuals. We also supported a recent meeting between Interpol and UK maritime insurers, lawyers and risk consultants to develop formal ways of enhancing information sharing.

The Government is also encouraging the shipping industry to participate actively in the newly formed Contact Group on Piracy off the Coast of Somalia working group tackling the financial flows of piracy.

*How many prison places are expected to be made available under new agreements with countries in the region and over what timeframe?*

Pirate suspects and prisoners are expected to form part of the general prison population, and it is unlikely that specific accommodation will be devoted to pirate suspects/prisoners.

The new EU prisoner transfer agreement with Mauritius has been accompanied by a package of financial and expert support which could provide up to 300 additional prison spaces.

Current negotiations with Tanzania on a prisoner transfer agreement include discussion on technical and financial support to the Tanzanian court and prison sectors.

The Government of Seychelles recently signed an agreement with the Governments of Puntland, Somaliland and the Transitional Federal Government to enable pirates convicted in the Seychelles courts to be repatriated to Somalia to serve their sentences. In support of this, and also to enable trial and detention wholly within the Somali legal system, UN Office on Drugs and Crime counter-piracy projects have delivered additional capacity of 360 beds in Hargeisa prison in Somaliland. UNODC projects in Puntland will deliver an extra prison capacity of 200 spaces by early 2012, and the building of a new prison in Garowe will deliver 500 beds by mid to late 2013. Other projects are also being considered.

*Can the Minister provide an update on his efforts following his evidence session with the Committee to persuade the Kenyan Prime Minister to re-activate the Memorandum of Understanding between the EU and Kenya?*

I met with Kenyan Prime Minister Odinga on 7 July. PM Odinga re-affirmed Kenya's willingness to play their part in the international effort to counter-piracy, including accepting suspected pirates for trial on a case by case basis—including recently 24 from a Danish warship.

Kenya has volunteered to host a regional and international conference on piracy in October this year, where they are willing to discuss re-establishing the Memorandum of Understanding. UK officials will be discussing this specific issue with senior Kenyan officials and politicians ahead of this planned conference.

*What contact has the FCO had with British security companies and negotiators providing services relating to defending ships or securing their release?*

British Private Military Security Companies (PMSCs) are entitled to the same support as other UK companies, in so far as their activities are legitimate and do not conflict with HMG's foreign policy goals. Although there is no UK law against third parties paying ransoms to criminals, we counsel them against doing so as we believe making such concessions only encourages further hijackings. We therefore have no direct contact with security companies who contravene this policy and facilitate ransom payments.

Officials from the Department for Transport and the Department for *Business, Innovation and Skills* meet regularly with PMSCs who provide armed security onboard merchant ships to ensure they are aware of legal and technical requirements, including BIS authorisation of arms export licences.

*What assistance does the Government provide to British hostages held by Somali pirates immediately upon their release?*

The level of assistance provided to British nationals, kidnapped and subsequently released by Somali pirates, will vary and is dependent on the wishes of the individuals released and their families. The circumstances in each case are likely to be different, and the level of assistance offered and provided would need to be assessed on a case by case basis.

For example, the release of a British national taken from a commercial vessel will differ from a British national held on land in Somalia. In the commercial case if release is secured through the payment of a ransom arranged by the ship's owners, it is likely the crew member would remain on the ship and continue their journey and that further Government assistance would not be required. The FCO Consular assistance provided to hostages released on land will again depend on the circumstances of release and the security situation in Somalia at the time.

*How many members of the British Navy have been committed to counter-piracy action off Somalia?*

Since 8 January 2007 the Royal Navy has assigned 12 vessels to participate *solely* in counter-piracy operations, with each vessel averaging 220 crew. During this period an additional 23 vessels have participated in counter-piracy operations whilst en route to or returning from other missions. A full breakdown of Royal Navy ships participating in counter-piracy operations can be found at annex A.

*Does the UK-Kenya MOU still stand even though the EU-Kenya agreement has lapsed? If not, what human rights protections would be put in place if piracy suspects were to be transferred from British control to Kenya on an "ad hoc" basis (ie outside the lapsed EU agreement or the UK's MOU), as other EU states have done?*

The UK-Kenya Memorandum of Understanding (MoU) lapsed after the Kenyan Government issued formal notification, in accordance with the terms of the MoU, that it was withdrawing from the agreement. The Kenyan Government has stated that it will still consider accepting suspected pirates captured by international naval forces for trial and possible detention on a case by case basis. The UK has not had cause to request that the Kenyan Government accept captured suspected pirates since the lapse of the MoU.

If the UK were to make such a request it would seek formal documented assurances from the Kenyan Government that any persons accepted for transfer would be treated in accordance with international human rights standards as laid out in the original MoU, ie International Human Rights Law, including the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

*Have any UK representatives visited the 14 suspects captured by Britain and transferred to Kenya for prosecution to monitor their condition, either:*

- (a) before trial;
- (b) after prosecution?

Whilst no UK representative has visited the 14 individuals, the UK works closely with the UNODC, which carries out regular monitoring of prisoners through its own officers as well as an NGO MEWA, as part of their wider counter piracy programme. UNODC officials visit Shimo Le Tewa prison (Mombasa) on a regular basis (approximately weekly). This also applies for suspected pirates handed over by EU Naval Forces.

As a matter of routine, the UNODC informs the Somali authorities of suspected pirate detentions and we are aware of substantive engagement subsequently by Somali authorities (especially by the Puntland administration). Once the suspects have been successfully prosecuted and sentenced then the prisoners are the responsibility of Kenyan Government and the Somali authorities.

Once the suspects are in Kenyan jurisdiction, Kenya undertakes to ensure that whilst they are in custody, they are held in conditions which meet international human rights standards (both pre and post trial).

The UK can provide consular assistance only to British Nationals. It may also provide assistance to dual nationals where there are special humanitarian reasons to do so, and to unrepresented EU and Commonwealth citizens in certain circumstances. The FCO cannot provide support to other countries' nationals unless there are separate arrangements in place.

*Does the UNODC sponsored programme visiting transferred prisoners referred to in Mr Holtby's answer to Q288 report back to the UK on the treatment of those individuals that Britain has transferred?*

UNODC and NGO MEWA officials visit Shimo La Tewa prison on a regular basis and we have received reports from UNODC of their wellbeing and treatment, including those handed over by the UK. The pirates have raised a range of issues which have needed to be addressed, including welfare issues. UNODC then work with prison officials to rectify these issues. UNODC have also entered an agreement with a local NGO "MEWA" who regularly visit and provide basic toiletries, prayer mats and clothing. MEWA are an established NGO based in Mombasa. The contract between UNODC and MEWA currently runs until the end of the year.

*Have any complaints been made by those 14 Somali pirate suspects about their treatment, either before or after their transfer to Kenya? Where are they currently held?*

There were no complaints of ill treatment by the suspected pirates detained by the Royal Navy either before or after their transfer. The eight suspects transferred from HMS Cumberland were convicted on the 11 March 2010 and are currently serving their sentences in Shimo Le Tewa prison, Mombasa. The six suspected pirates

handed over by HMS Lancaster are currently awaiting trial and are being held on remand in Shimo Le Tewa prison, Mombasa.

*Have any Governments in the region ever asked the British Government for a view on whether they should allow the physical transfer of ransom payments through their territory?*

No formal request has ever been received from a regional Government for the Government's views on allowing physical payments to be made through their territory, but our firm policy of counselling against the payment of ransoms is well known and regularly repeated.

2 September 2011

## Annex A

### VESSELS DEDICATED TO EU AND NATO COUNTER PIRACY OPERATIONS

<i>Date</i>	<i>Unit</i>	<i>Force assigned to</i>
08 January 2007–27 July 2007	HMS MONTROSE	(NATO) SMNG2
22 August 2007–21 December 2007	HMS NORTHUMBERLAND	(NATO) SNMG2
21 January 2008–1 August 2008	HMS SOMERSET	(NATO) SNMG2
23 October 2008–5 December 2008	HMS CUMBERLAND	(NATO) Op ALLIED PROTECTOR
8 December 2008–28 February 2009	HMS NORTHUMBERLAND	(EU) Op ATALANTA
25 June 2009–20 August 2009	HMS CORNWALL	(NATO) Op ALLIED PROTECTOR
21 August 2009–8 November 2009	HMS CORNWALL	(NATO) Op OCEAN SHIELD (replaced Op ALLIED PROTECTOR)
26 January 2010–2 July 2010	HMS CHATHAM	(NATO) Op OCEAN SHIELD
29 August 2010–3 December 2010	HMS MONTROSE	(NATO) Op OCEAN SHIELD
25 September 2010–6 December 2010	RFA FORT VICTORIA	(UK) Op CAPRI
5 January 2011–15 April 2011 & 11 June 2011–10 July 2011	HMS RICHMOND	(EU) OP ATALANTA

### VESSELS DEDICATED TO OPERATION CALASH / TELIC / KIPION\*

<i>Date</i>	<i>Unit</i>
1 January 2007–3 March 2007	HMS CAMPBELTOWN
21 January–26 August 2007	HMS CORNWALL
1 May 2007–27 May 2007	HMS SUTHERLAND
10 May 2007–19 December 2007	HMS RICHMOND
1 October 2007–3 April 2008	HMS ARGYLL
15 October 2007–23 May 2008	HMS CAMPBELTOWN
1 April 2008–22 October 2008	HMS CHATHAM
20 March 2008–3 October 2008	HMS MONTROSE
15 September 2008–7 December 2008	HMS NORTHUMBERLAND
15 August 2008–27 February 2009	HMS LANCASTER
20 November 2008–3 July 2009	HMS PORTLAND
19 January 2009–29 July 2009	HMS RICHMOND
26 May 2009–3 December 2009	HMS CUMBERLAND
12 June 2009–30 November 2009	HMS KENT
30 September 2009–9 April 2010	HMS MONMOUTH
22 October 2009–27 May 2010	HMS LANCASTER
1 February 2010–5 August 2010	HMS ST ALBANS
20 April 2010–10 December 2010	HMS NORTHUMBERLAND
26 May 2010–2 December 2010	HMS SOMERSET
28 October 2010–25 April 2011	HMS CORNWALL
25 September 2010–16 April 2011	HMS CUMBERLAND
11 January 2011–28 July 2011	HMS IRON DUKE
26 March 2011—	HMS MONMOUTH

\* These vessels were assigned to Operation CALASH / TELIC / KIPION which are / were the names used for Royal Navy Operations in the Arabian Gulf, the Gulf of Aden and the coast of Somalia (Op KIPION has now replaced Op. CALASH and Op TELIC). The vessels undertaking Op. CALASH / KIPION cover a number of roles which include, but are not limited to, counter piracy (other duties include Counter Terrorism duties). During the vessels' time as part of CALASH / KIPION the ships are likely to have spent some time off the Somalia coast conducting counter piracy duties. Those vessels that were assigned to Op TELIC (UK operations



in Iraq) would not have undertaken counter piracy duties as their primary role, but could have been involved in these roles while transiting to and from the upper Arabian Gulf.

**Further supplementary written evidence from Henry Bellingham MP, Minister for Africa, the UN, Overseas Territories and Conflict Issues, Foreign & Commonwealth Office**

I wrote to you following the Foreign Affairs Committee's session on Somali piracy on 6 July to provide further evidence on Somalia, piracy and the case of Paul and Rachel Chandler. Since then, Paul and Rachel Chandler have published a book that contains criticism of the Government's response to their abduction.

The Chandlers suffered terribly during their abduction and subsequent 388 days of captivity and I want to ensure we make every effort to provide answers to the concerns that they have raised. The attached document provides detail, beyond the information I provided in my previous letter, which addresses the concerns contained in the Chandlers' book.

As I outlined in my previous letter, we are unable to provide substantial operational detail regarding the Government's response to kidnap cases. The current case of Judith Tebbutt, who is currently held in Somalia, underlines the importance of this policy. The release of operational detail concerning the Chandler case risks undermining efforts to secure Judith Tebbutt's safe release. In particular, details about the negotiation of a ransom, details of intermediaries that played a role in efforts to secure their release, and information about where they were held could all have a negative impact on the Tebbutt case.

I am content that HMG officials did everything they could within the terms of our policy on ransom payments in order to secure the Chandlers' release. Nonetheless, I am keen that we recognise the Chandlers' concerns and incorporate any lessons into current and future cases of kidnap involving UK nationals.

7 October 2011

**Annex A**

FOREIGN AFFAIRS COMMITTEE SESSION ON TUESDAY 11 OCTOBER: PAUL AND RACHEL CHANDLER

- On Tuesday 11 October the FAC will hold a further piracy session where they will examine the experiences of Paul and Rachel Chandler when their yacht was hijacked by pirates on 23 October 2009. The couple were held hostage by Somali pirates until their release on 13/14 November 2010. The session will focus on the initial naval response to the hijacking, the Chandlers' experience as hostages, and efforts by the FCO and others to secure their release.
- Minister Bellingham wrote to the FAC following the piracy evidence session on 6 July but since then Paul and Rachel Chandler have released their book and provided evidence to the FAC. The Chandlers have expressed concern that:
  - they received no piracy warnings for the route they were taking and there was no information on the risk available from the FCO or the naval counter-piracy task forces;
  - the case was handled as a counter terrorism matter rather than a criminal kidnapping meaning the family did not have the benefit of police expertise;
  - FCO assistance was "negative" and the support and advice to siblings and family was "distressingly inadequate";
  - "FCO's efforts to keep the family informed were derisory".

ADDITIONAL EVIDENCE ABOUT THE GOVERNMENT RESPONSE

*Travel Advice*

1. The FCO Travel Advice for the Seychelles before the kidnapping contained the following warning: "reports of the hijacking of vessels by Somali pirates in the northern and western fringes of Seychelles exclusive economic zone waters; for example near Assumption Island. These incidents have happened hundreds of miles from Mahé and the main tourist areas. In response, Seychelles has deployed its Coast Guard, is stationing small units of its Defence Force to the outer islands and some remote inner islands, and is receiving assistance from the international community. Mariners are encouraged to register with the Maritime Security Centre (Horn of Africa) at <http://www.mschoa.eu/>." Both the MSCHOA site and the EUNAVFOR ([www.eunavfor.eu](http://www.eunavfor.eu)) website were established in early 2009. The web-sites offer free and succinct piracy advice to mariners, including a dedicated section for yachts and a facility to register specific voyages with the UK Maritime Trade Organisation (UKMTO) who monitor all regional shipping. This information was available to all national and international yachting organisations and in the public domain.

*Consular support*

2. FCO Consular staff remained in frequent touch with Paul and Rachel's family throughout their ordeal. We used our contacts in the region to gain information and bring influence to bear on the hostage-takers and

kept the family informed about developments. The family secured the pro-bono assistance of a private security company to assist them with the ransom negotiations.

#### *Police support*

3. Officers from the Metropolitan Police Hostage Crisis Negotiation Unit (HCNU) provided the family with advice and support on handling contacts with the pirates for the first three months before the family started ransom negotiations with the pro-bono assistance of a private security company. In the initial months, particular coaching was provided to Stephen Collett, who the family had designated as the person to carry out contact with the pirates. Specific negotiation support for handling telephone calls was provided to Mr Collett in person on at least four occasions. In addition the HCNU were in telephone contact with Mr Collett on approximately 35 occasions (including extensively over the Christmas period) where they offered advice in relation to the calls he had been receiving. Other immediate family members (Rachel Chandler's sister Sarah Collett and Paul Chandler's sister Jill Marshment) were also given direct advice on how to handle telephone calls from pirates. Police officers also hosted Mr Collett and other family members at their offices in New Scotland Yard on three separate occasions and accompanied FCO colleagues to other meetings with the family.

#### *Media support*

4. There was significant media interest throughout this case. FCO Consular staff alerted the family ahead of the first media reports and provided advice about media handling. The pirates became adept at using the media to pressure the family and released videos of the couple through the BBC, ITN and Sky. We persuaded media organisations on a number of occasions not to report unhelpful speculation and also not to broadcast a video of Paul and Rachel Chandler. Following sustained media pressure, and in consultation with their private security company and media adviser, the family decided to take out an injunction against any mention of the case because they judged that publicity was raising the pirates' hopes securing a ransom.

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### **Written evidence from Rachel Chandler and Paul Chandler, S/Y Lynn Rival**

#### **BACKGROUND**

1. In March 2009 we sailed to the Seychelles from Cochin, southern India. We had consulted our usual sources of information on cruising security issues: a mix of published information and local knowledge gleaned from fellow cruising sailors. We were not aware of any Somali piracy attacks in or around the Seychelles. Soon after we arrived we became aware of one or two sporadic attacks on shipping near the Seychelles. Over the following months we noted increased warship presence in the area and local press coverage suggested the Seychelles Coastguard had by then got the resources to deter pirate attacks.

2. On 22 October 2009 we departed from the Seychelles having carried out all the normal exit formalities (Harbourmaster, Customs, Immigration and Coastguard) and at no time received any piracy warnings for the route we were taking. There was no information made available in any form from either the FCO<sup>2</sup> or the naval counter-piracy task forces. Our insurers were aware of our detailed route.

#### **ATTACK AND KIDNAP**

3. We were attacked within the Seychelles archipelago, although technically on the high seas, just 60nm west of the main island, at about 2.30am the following morning. Rachel was on-watch and on deck. Paul was down below, and activated our EPIRB (emergency position indicating beacon) after hearing gunshots.

4. Our attackers approached in two skiffs (narrow, open boats) with powerful outboard engines (40/60hp) (see attached EUNAVFOR photo of "attack skiffs").<sup>3</sup> A third boat arrived about 10 minutes later: an open ex-lifeboat type (sometimes referred to as a "whaler"), with inboard diesel engine, carrying barrels (oil drums) of supplies: water, diesel and petrol. We call this a "motherboat". (See attached photo "motherboat", copyright unknown.)<sup>4</sup> We had no means of defence or evasion—Lynn Rival's maximum speed under power in the sea conditions at the time is about 5 knots; the skiffs appear capable of over 25 knots.

5. There were 10 attackers in total (four men in each skiff plus two in the motherboat), each armed with AK47s, plus RPGs. They spoke very little English. They had no equipment except a handheld gps, hard-wired to show the direction to their base on the Somali coast, and a stock of batteries. This was not a sophisticated operation.

6. Our attackers were wary of any flashing electronic equipment and demanded that we turn off our flashing EPIRB. They made us take off our lifejackets and destroyed our MOB (man overboard) wrist-tags. They demanded our cash and valuables, our Satphone (which they immediately used to contact their associates) and did not allow us to do any navigation. They didn't understand how the short wave radio worked. The leader attempted to use the VHF radio (when in range) but was not obviously successful.

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<sup>2</sup> We were registered on the FCO's "locate" system.

<sup>3</sup> Not printed.

<sup>4</sup> *Ibid.*

7. We were forced to motorsail to Somalia. At first we hoped that our attackers would realise that we were of little value and leave us in search of bigger prey, but it soon became clear that they had turned into kidnappers, anticipating that the British Government, if not our family, would raise the millions they expect from a piracy raid. We could do nothing to disabuse them of this belief.

8. Our attackers had clearly been at sea for some days and helped themselves to showers and clean clothing, emptying our fresh water tank. Our progress was slow as initially they expected us to tow all three of their boats. We ran out of diesel so had to re-fuel from their supplies. After five days Lynn Rival's engine was faltering and our attackers called up help, arranging for a ship to come and pick us up.

9. From the time of our attack and up to this point we saw no shipping whatsoever. In the afternoon of the fifth day our captors spotted a ship on the horizon. Seven of them went off in the two attack skiffs and did not return. In the evening following the departure of the seven we were overflown by a helicopter (which we now know to have been from the Spanish warship ESPS Canarias). As soon as it was heard our three remaining captors joined us below decks and stayed out of sight. The following morning Paul was forced to have an exchange by VHF radio with F212 (which we now know to be the German warship FGS Karlsruhe), essentially asking them to go away or we would be killed.

10. We now know that shortly after the time the seven men left Lynn Rival seven Somali pirates in two skiffs attacked a French trawler, the Cap Saint Vincent and were repulsed by French soldiers on the trawler. According to EUNAVFOR reports they were found by the helicopter from the Spanish warship, ESPS Canarias, and apprehended by the German warship FGS Karlsruhe. The seven are now on trial in Mombasa. The Metropolitan Police are investigating the possibility that they may also be tried for their part in the attack on Lynn Rival. We have been told by the Met that there is ample evidence, but jurisdiction remains to be negotiated.

11. After six days at sea with our attackers on board we were transferred (shortly after midnight) to the Kota Wajar, a previously hijacked container ship, under the gaze of a warship. The "warship" manoeuvred very close to the container ship, perhaps to within less than 100 metres and at one time illuminated Lynn Rival with a searchlight. We heard gunfire from the container ship at this time. Prior to our transfer Paul had, at gunpoint, had VHF exchanges with A189, presumed to be the "warship", now known to be RFA Wave Knight. Again the gist was—go away or we will be killed. The Kota Wajar sailed back to the pirates' anchorage and after 36 hours we were taken ashore. (See attached "Seychelles-Somalia" chart showing details of our passage from the Seychelles to Somalia.)<sup>5</sup>

12. As we saw and heard no sign of any vessels or aircraft until the evening of our fifth day under hostile control we assumed that the 20 minutes for which the EPIRB had been on was insufficient for the position information to be obtained. (See appendix for further information on this.) When we encountered a warship we hoped they would take action, despite us being forced to tell them to back off. We believed then and still do now that such operations should be considered as enforcement, not rescue operations, and that the risk to our lives should not outweigh the benefits of sending a clear message, "*We will not tolerate this activity.*"

13. At the time there was considerable coverage in the media, much of it critical of the Royal Navy, including reports that RFA Wave Knight was carrying a detachment of Royal Marines, and that an SBS squadron was delayed in transit to the area. It was also reported that HMS Cumberland arrived at the scene too late to become involved.

14. From the press reports it is apparent that there was the political will to take action and that a special forces operation was authorised. From the time our situation was confirmed to our transfer to the Kota Wajar only 29 hours elapsed. To launch a hostage rescue mission in the middle of the ocean, some 4,000 miles away from home is something few nations could contemplate. To do it within 29 hours unfortunately proved impossible.

#### CAPTIVITY

15. We were held on land in various locations, generally close to the village of Amaara, some 70km inland from the coast. Our pirate gang leader—called Buggas—remained in charge throughout. At first we were accompanied by a "translator" called Omar who spoke some English and ensured we had what we needed to survive. We were guarded by a gang of about 30. Two senior gangsters visited from time to time and seemed to be advising or mentoring Buggas. There were other occasional visitors, but no obvious authority beyond Buggas.

16. Generally the gang were relaxed in their environment. The local community knew we were there. We were told that Al Shabaab were a threat but only on a few occasions did it seem real. A more likely concern was capture by another local gang. We were aware of inter-gang and inter clan fighting from time to time.

17. The process of negotiation was chaotic. They were clearly amateur kidnappers, though they understood the power of the media. They expected our family to negotiate, or appoint a negotiator. When our family did not respond they made us beg on video and sent it to Channel 4. We were unable to have a rational discussion

<sup>5</sup> Not printed.

with Omar or any of the gangsters. They had supreme confidence in their ability to extort millions from us simply because we are European.

18. During the first two months of captivity we often heard reconnaissance aircraft. Our captors also told us that British soldiers were in Somalia looking for us. They were scared of a rescue attempt. We were separated and Paul was forced to make begging phone calls to members of our family.

19. After three months Omar was sacked as translator and Ali took over. Ali spoke better English and seemed more realistic. He had more understanding of the west and came to accept that our family could pay only a limited (to them small) amount of money. The gangsters were less aggressive once Ali took over, but he still failed to get us released. He organised phone calls with various individuals, and he hoped to raise money from a number of sources, notably the Somali diaspora and Transitional Federal Government.

20. In June Rachel's brother was allowed to speak to us to say that an agreement had been reached with Ali. Our family were handing over \$440,000 for our release. We were not released and heard no more. From August onwards it seemed we had been abandoned by all but Buggas. We heard no more from Ali and did not see the other two senior gangsters.

21. \*\*\*<sup>6</sup>

22. More details of our capture and captivity can be found in our book, *Hostage: a year at gunpoint with Somali gangsters*, to be published by Mainstream on 1 September.

#### RANSOM AND RELEASE

23. Our family have confirmed that \$440,000 was raised by them and air-dropped to the gang on 17 June 2010 in the expectation of our release but our captors reneged on the agreement.

24. It was always apparent to us that the gulf between the gang's expectations and the amount of money we could raise was unbridgeable. There needed to be pressure from the elders of the clan, sufficient to overcome the reluctance of Buggas to accept a lower sum and loss of face. The longer things went on the harder it became for Buggas to concede defeat—he had already spent a lot of money guarding us and would be seen as a complete failure by his gangsters and peers alike.

25. \*\*\*

26. \*\*\*

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#### ROLE OF UK GOVERNMENT

27. During our time in captivity we had no contact with the FCO or any other government officials, either directly or indirectly. Our case was evidently discussed at high level within Government and at an early stage the FCO took the lead role. It was handled as a counter-terrorism matter, rather than criminal kidnapping. This meant our family did not have the full benefit of Metropolitan Police expertise on kidnapping, as would ordinarily be the case in a criminal matter. And, as retired people caught up in organised crime that is primarily directed at commercial shipping, we did not have access to the K&R handling expertise applied when a ship is hijacked.

28. We know nothing about media reports that the FCO blocked a payment of ransom early in our capture.

29. We realise that, once we were within Somalia, the Government could do little directly to help us; but they could and should have done more to support our close family members, either directly or indirectly. We were disappointed to learn that the assistance from the FCO was, if anything, negative. The support and advice to our siblings, who were always likely to be on the receiving end of begging phone calls, was distressingly inadequate. The FCO's efforts to keep our family informed were derisory. We have not been made aware of anything helpful being done "behind the scenes". We do not believe the British Government was involved in securing our release.

30. After our release we received excellent support from the FCO, both in Nairobi and London, up to the point we were ready to face the outside world. We have cooperated fully with all official requests for debriefing and sincerely hope that lessons will be learned.

#### APPENDIX

1. It was a surprise to learn, soon after returning to the UK, that our EPIRB had actually been detected and the position of our distress was known. The chain of events which we expected to follow activation of our EPIRB is summarised below:

- The EPIRB sends a distress signal in short bursts, every 50 seconds or so.
- The signal is picked up by a GEOSAR satellite and relayed to earth.

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<sup>6</sup> Asterisks in the memorandum denote that part of the document which has not been reported, at the request of the Foreign & Commonwealth Office and with the agreement of the Committee.

- Within a few minutes an alert with details of the EPIRB (but not the position) is passed via the UK MCC at RAF Kinloss to the MRCC at Falmouth. Lynn Rival's details and our UK contacts are known by the authorities.
- Within the next two hours (the average is about 45 minutes), the signal is picked up by a LEOSAR satellite which establishes the position of the EPIRB to within about 5km. This information is issued to both Falmouth, as above, and to the Seychelles Coast Guard (via the Indian MCC in Bangalore).
- The Seychelles Coastguard takes over coordination of search and rescue.
- An EGC (*Enhanced Group Call*) to all vessels in the area, sent over the Inmarsat satellite communications system.
- Aircraft and coastguard vessel search of the area. (After all we were less than 60 miles from Mahe.)

2. As we saw and heard no sign of any vessels or aircraft until the evening of our fifth day under hostile control we assumed that the 20 minutes for which the EPIRB had been on was insufficient for the position information to be obtained.

3. What actually occurred was: (times are local, four hours ahead of GMT):

- The EPIRB worked and at 03:05 (ie 35 minutes after the attack) the alert was received at Falmouth.
- By 03:55 Falmouth knew the position of Lynn Rival to within 5km. Seychelles assumed search and rescue co-ordination.
- Falmouth checked with our UK contacts and the Seychelles authorities and established that Lynn Rival had indeed left Port Victoria the previous morning.
- At 06:20 Falmouth noted that Seychelles had not requested an EGC and arranged it themselves.
- At 13:31 Seychelles search aircraft reported nothing seen.
- At 13:38 Falmouth pointed out to Seychelles that they sent their plane to the wrong position (10 miles in error). Seychelles reported no further air based action.
- At 22:30 a Seychelles naval vessel was "expected" to reach the distress position.

4. So, the EPIRB worked and despite it being on for only a short time the authorities knew our position within an hour and a half of the attack. A search plane was sent to the area 11 hours after the attack, seven and a half hours after dawn. Unfortunately by then we had motored perhaps 18 miles towards Somalia. Together with the Seychelles error of 10 miles, that probably put us out of visual range. If only they had sent the plane soon after dawn; or even if they had revisited to the correct position, surely we would have been found. Of course it may have made no difference to our ordeal. But the navy would have had five extra days to mount an enforcement operation; perhaps sufficient time to come up with a plan which would have been successful.

5. Of course we do not generally expect or rely on outside assistance, as we often sail in areas where SAR facilities are less developed. It is ironic that we were so, so close to a developed port, with access to air and marine resources, yet the system appears to have failed. Had we had a "normal" accident; perhaps a fire, or striking a submerged container, it could well have been a matter of life or death.

31 August 2011

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#### **Supplementary written evidence from Paul Chandler**

I would like to clarify my statement, within my response to Q343, that "... (the FCO) contacted the family essentially four days after the news was out in the public domain." This was based on:

- My assumption that the news was in the public domain late on 29 October, following our telephone 'interview' with ITN whilst aboard the Kota Wajar. [It may well have been earlier as we are aware that a report of our kidnap was passed from a private sector source to UKMTO on 24 October; but we are not aware whether this information reached the wider media.]
- My understanding that the FCO's first attempt at giving face-to-face support and practical advice to the family as a whole occurred (at a meeting) on 3 November. I am aware that there had previously been individual telephone contact between the FCO and some family members but as far as I am aware no useful advice in any shape or form was given.

26 October 2011

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**Written evidence from Dr Douglas Guilfoyle<sup>7</sup>**

LEGAL ISSUES RELATING TO COUNTER-PIRACY OPERATIONS OFF THE  
COAST OF SOMALIA

1. SCOPE OF THE PRESENT MEMO

I have been asked by the committee Chairman to prepare a memo addressing:

- the law applicable aboard a warship conducting counter-piracy operations;
- an explanation of the relevant provisions of the UN Convention on the Law of the Sea (UNCLOS);
- the applicable law in a piracy trial in a regional State, and
- the criminal law of England and Wales as it applies to piracy.

In addition I offer some observations on the applicable UN Security Council Resolutions and the potential role of the Suppression of Unlawful Acts against the Safety of Maritime Navigation Convention 1988 (the SUA Convention).

The memo is intended to provide an overview of the issues involved, accessible to non-lawyers. It has been prepared solely as a briefing document and should not be considered either an exhaustive expert opinion or as a formal legal advice.

I attach two annexes dealing with legal issues arising under UNCLOS and the SUA Convention in greater detail.<sup>8</sup> A separate note summarises the state of international cooperation regarding piracy prosecutions.

2. INTRODUCTION

It is commonly assumed that if, for example, a Royal Navy warship captures Somali piracy suspects on the high seas in the act of attacking a Dutch flagged merchant ship crewed by Ukrainian and Philippine nationals then questions of jurisdiction and applicable law will be unclear and complex. This is not the case. Any State in the world may exercise universal jurisdiction to prosecute any pirate irrespective of any “nexus” between that prosecuting State and the pirate, the victims or the vessel attacked. Such a prosecution will occur under the prosecuting State’s own national law of piracy.

Universal jurisdiction means every State **may** (not must) prosecute a pirate, but it can only do so under its own national law. Unlike some other international crimes, the law of piracy does not oblige States to have an adequate national law to conduct prosecutions.

The difficulty is thus not one of jurisdiction (permission to prosecute) but one of national law and cooperation between national legal systems (ability to prosecute). A warship capturing pirates may face a number of practical difficulties, including knowing how to assemble evidence in a manner useful to the prosecuting State and securing the attendance of witnesses who live great distances from the trial venue. These are not, however, strictly international law problems. At best international law can facilitate cooperation in such situations (through what are called mutual legal assistance arrangements); it cannot provide one-size-fits-all solutions or cure gaps in national law.

Criminal trials are always governed exclusively by the law of the State where the trial is held. Within broad limits set by international law, everything done in counter-piracy operations must be geared to fit relevant national legal processes both aboard the capturing warship and in the State accepting pirates for trial. Marrying these two processes may not always be easy, but has demonstrably worked in practice as evidenced by the more than 1,000 pirates who have been convicted or are on trial or on remand in more than 20 States.

3. THE APPLICABLE INTERNATIONAL LAW

3.1 *Introduction*

The United Nations Convention on the Law of the Sea (UNCLOS) sets out the applicable legal framework for counter-piracy operations on the high seas (for this purpose, being all waters outside the 12 nm territorial sea).<sup>9</sup> It is accepted as codifying the relevant customary international law of piracy, meaning even States not party to UNCLOS accept and are bound by these rules. What follows is a summary outline of the applicable law. I address first the definition of piracy at international law, then the duties and powers of States regarding piracy and I offer some concluding observations on practical questions, including evidence.

Annexe I reproduces the relevant provisions of the Convention and provides a more detailed commentary.

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<sup>7</sup> BA (Hons), LLB (Hons) (ANU); LLM, PhD (Cantab). Lecturer, Faculty of Laws, University College London. Admitted before the Supreme Court of the Australian Capital Territory, the Supreme Court of New South Wales and the High Court of Australia. I note that I am not licensed to practice law on my own account and nothing in the present memo should be taken as constituting solicitor-client legal advice.

<sup>8</sup> These were previously published in: Chatham House, *Piracy and Legal Issues: Reconciling Public and Private Interests*, 1 October 2009, [http://www.chathamhouse.org.uk/files/15221\\_011009piracy\\_law.pdf](http://www.chathamhouse.org.uk/files/15221_011009piracy_law.pdf).

<sup>9</sup> See, for example: UNSC Resolutions 1848 and 1851 (2008), 1897 (2009), 1950 (2010), 1976 (2011) preamble; UNSC Res 1838 (2008), preamble and para 3.

### 3.2 *The definition of piracy*

Under UNCLOS Article 101 piracy is:

- an illegal act of violence, detention or depredation;
- on the high seas;
- committed for private ends, and
- by a private vessel against another vessel.

The last three of these elements are limitations. First, piracy can occur only on the high seas, the same acts within territorial waters are usually termed “armed robbery at sea” and are within the jurisdiction of the coastal State. While geographically arbitrary, the distinction is made on the basis that on the high seas unlawful violence threatens all shipping and so it makes sense to vest all States with a special jurisdiction to act. This does, however, mean that State powers to take enforcement action against piracy apply **only** on the high seas. Pirates may theoretically escape pursuit by retreating into territorial waters. This presents no problem in the case of Somalia: foreign vessels now rarely transit Somalia’s territorial waters, and UN Security Council resolutions (discussed below) authorise enforcement action there.

Second, there is some debate over the “private ends” requirement. It is commonly said that this means that terrorism cannot be piracy because it is politically motivated. This is presently the view of the IMO. Some consider that the distinction made is between public and private violence: that is, any violence on the high seas which is not State-sanctioned is unlawful irrespective of motive. This is consistent with the rule that warships cannot commit piracy unless they mutiny (Article 102, UNCLOS). At present, the point is moot. Somali pirates are currently purely profit-motivated actors.

Third, piracy must be committed by one private vessel against another vessel (be it a private or public vessel). This requirement excludes crimes committed solely aboard one ship from being piracy, but does include as piracy attacks from private vessels against warships. Again, this is irrelevant in the Somali context where attacks always involve two or more vessels.

It is important to note that the Article 101 definition of piracy also includes as piracy “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” (Article 101(b)). Crucially, “pirate ship” is defined (under Article 103) as being either:

- a ship “**intended** by the persons in dominant control to be used for the purpose of committing” a pirate act, or
- a ship which “has been used to commit any such act, so long as it remains under the control of the persons guilty of that act”.

The effect is that states have jurisdiction over an offence of participation in a vessel intended for use in future piracy attacks (“cruising with pirate intent”). A ship does not need to have already committed an act of piracy to be a pirate ship, and therefore cruising with pirate intent would satisfy the Article 103 definition. This is analogous to the national law offence of going prepared to commit burglary.

However, the mere fact it is theoretically possible to treat as a pirate someone who has not yet committed an attack does not mean it will be easy to prove that this was their intent or that a given State’s national law will necessarily provide for such an offence.

Art 101(c) also extends universal jurisdiction to cover and “any act of inciting or of intentionally facilitating” piracy (Art. 101(c)).

Whether these ideas of acting with pirate “intent” or “inciting and facilitating” are wider or narrower than common law concepts of conspiracy to commit a crime or aiding and abetting a crime is debatable. However, an international convention is unlikely to use the term conspiracy as it is not a concept known to all legal systems.<sup>10</sup> The better view is that international law allows States—at the level of national criminal law—to extend their jurisdiction over “cruising with intent” and acts of “facilitation” in accordance with their own national legal traditions. Reform of the relevant international law would not necessarily lead to greater clarity: it provides at best a broad framework within which a State’s ability to act ultimately rests on national legal and political mandates.

### 3.3 *State powers and duties to act against piracy*

On the high seas, any government vessel may board a vessel suspected of piracy as an exception to the ordinarily exclusive jurisdiction of the flag State.<sup>11</sup> Where evidence of piracy is discovered the State vessel may seize the suspect vessel, arrest persons on board, and subject them to the jurisdiction of that State’s

<sup>10</sup> For example, international criminal law only expressly uses the term “conspiracy” in relation to genocide: Art. 3(b), Convention on the Prevention and Punishment of the Crime of Genocide 1948. The Nuremberg Tribunal also had jurisdiction over conspiracy to commit crimes against the peace: Art 6(a), Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal. London, 8 August 1945. The word “conspiracy” is not used at all in the Rome Statute of the International Criminal Court.

<sup>11</sup> UNCLOS arts 92(1) and 110

courts.<sup>12</sup> This does not require the consent of the flag State of the vessel seized, or any other potentially affected State. As noted, these powers apply only on the high seas and do not permit pursuing pirates into foreign territorial waters.<sup>13</sup>

Where such acts of boarding, inspection or seizure are resisted rules on the use of force are relevant. The international law of maritime policing operations generally:

“requires that the use of force must be avoided as far as possible and, where ... unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply ...”

This is not as restrictive as it may sound to the lay person. There is no absolute requirement that one exhaust all non-lethal methods before turning to potentially lethal force; warning shots are expected where possible but are not (and could not be) an absolute requirement. In some situations an imminent and serious threat will make the use of lethal force as a first recourse unavoidable, reasonable and necessary. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials summarise the general position well:

“[l]aw enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, [or] to prevent the perpetration of a particularly serious crime involving grave threat to life ...”<sup>14</sup>

In practice, many navies have lawfully targeted and killed suspect pirates on precisely this basis, especially in situations of hostage rescue or where piracy suspects present an **imminent** threat but have not yet fired a weapon.

Customary international law permits any State subsequently finding a pirate within its territory to prosecute him or her as an exercise of universal jurisdiction.<sup>15</sup> This jurisdiction equally covers cases where pirates are transferred into that State’s territory by agreement. The mere existence of such jurisdiction, however, does not necessarily oblige States to use it.

While UNCLOS requires that States **must** “cooperate to the fullest possible extent in the repression of piracy” (article 100), it only provides that a seizing warship **may** send pirates for trial before national courts (article 105). The inference is that States have no duty to enact relevant offences into national law and have “a certain latitude” to cooperate in suppressing piracy by means other than prosecution.<sup>16</sup>

### 3.4 Gaps in the UNCLOS regime

UNCLOS has gaps in geographic coverage (noted above) and does not on its face allow warships to summarily dispose of suspect pirate crafts and weapons—it refers only to **courts** deciding the fate of craft used for piracy and property aboard (Article 105). These gaps have been remedied by UN Security Council Resolutions (discussed below).

A further gap between articles 100 and 105 is that no express rule governs the transfer of suspected pirates from a seizing State to a nearby port State. Nonetheless, any State could accept such a transfer and assert universal jurisdiction over such received suspects. All relevant State practice supports such a power of transfer, though not a duty to accept transfers. Indeed, all State practice is against the idea that any one State is under an automatic duty to prosecute certain pirate attacks (eg there is no rule the flag State must accept for trial pirates caught attacking one of its vessels).

Unlike the case of war crimes, the existence of universal jurisdiction over piracy does not oblige States finding a suspect within their territory to either prosecute that suspect or extradite them to a State willing to do so.<sup>17</sup>

### 3.5 UN Security Council Resolutions and gaps in the law

#### Geographical limitations

Relevant UN Security Council Resolutions authorise operations within Somalia’s territorial sea, airspace and land territory where: (a) the consent of the Transitional Federal Government has been obtained; and (b) that consent has been notified to the UN Secretary General. However, few States will have a national law allowing the prosecution of crimes committed in a foreign State’s territorial sea (absent a close nexus, such as an attack

<sup>12</sup> UNCLOS art 105

<sup>13</sup> See: L Lucchini and M Voelckel, *Droit de la mer*, Tome 2, vol 2 (Pedone, Paris, 1996), 165; Craig H. Allen, *Maritime Counterproliferation Operations and the Rule of Law* (Prager, Westport, 2007), 168.

<sup>14</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, art 9, <http://www2.ohchr.org/english/law/firearms.htm>

<sup>15</sup> See: *Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v Belgium) (Judgment) [2002] ICJ Rep 3, President Guillaume (Separate Opinion) para 5 and Judges Higgins, Kooijmans and Buergenthal (Joint Separate Opinion) para 61; I Brownlie, *Principles of Public International Law*, (7th edn, Oxford University Press, Oxford, 2008) 229.

<sup>16</sup> [1956] II Yearbook of the International Law Commission 282 (on latitude); Lucchini and Voelckel (n 23) 158–9 (on lack of national offences).

<sup>17</sup> Strictly, there is no absolute duty to prosecute under such treaties. It is a duty to submit the case to national prosecutorial authorities for consideration in accordance with ordinary national procedures. See further Annex II.



on a national or flag vessel).<sup>18</sup> These Security Council measures were highly controversial and were: (a) expressly tied to the threat to international peace and security posed by the situation in Somalia; and (b) expressly said not to be a precedent for dealing with piracy in general.<sup>19</sup>

#### Summary disposal of weapons and vessels

Resolutions 1846, 1851 and 1897 all call upon “States, regional and international organizations ... to take part actively in the fight against piracy” including by “seizure and disposition of boats, vessels, arms and other related equipment used [or where there are grounds for suspecting such use] in ... piracy ... off the coast of Somalia”.<sup>20</sup> This grants a power to summarily dispose of equipment suspected of being intended for use in piracy, and cures any gap in UNCLOS Article 105.

#### Transfer mechanisms

Relevant Security Council Resolutions have suggested that acts committed by Somali pirates may fall within the Suppression of Unlawful Acts against the Safety of Maritime Navigation Convention 1988 (SUA). This would have the potential advantage that States could avail themselves of the “extradite or prosecute” obligations in SUA and masters of vessels could use a power found in SUA Article 8 to deliver suspects to a port State without prior negotiation or consent. In practice, no State has relied on SUA’s “extradite or prosecute” obligations. No navy has attempted to use SUA Article 8 to “force” a transfer and it may be that the power was only designed to assist masters of private vessels who had overpowered and detained a suspect. SUA issues are discussed in greater detail in Annex II.

I note some written submissions refer to the SUA Protocol 2005. I cannot see its relevance. The SUA Protocol 2005 is aimed chiefly at the proliferation of weapons of mass destruction, the use of ships as “floating bombs” and similar offences. It contains a regime for seeking flag-State permission to board suspect vessels. This would be a step back in the case of piracy, as there is a unilateral right of boarding without flag State consent under UNCLOS Article 110.

#### Could a new Security Council Resolution allow a more “robust” response?

It has been put in evidence and submissions that perhaps more “robust” action could be taken against pirates—such as shooting or sinking all suspect skiffs or mother ships on sight. I would view a UNSCR allowing the summary sinking of any small craft found in the Indian Ocean and Gulf of Aden without showing any grounds for suspicion as highly legally dubious and almost certainly politically impossible to achieve. If the aim would be to have totally unrestrained power to sink any small vessel in a defined area, then the lives of all innocent users of this vast maritime space are put at risk. The cost of getting it wrong is high, as India discovered in the *INS Tabar* incident in which a mother ship was sunk with the loss of 14 Philippines nationals who were being held hostage aboard.<sup>21</sup> Other than being tragic loss of life, it created a severe diplomatic incident. Similar episodes in maritime law enforcement have resulted in international litigation. Any unrestrained shoot-on-sight policy would also be inconsistent with the right to life, rules of safety of life at sea and elementary considerations of humanity. If the suggestion is that there should be a power to use lethal force on “reasonable suspicion” of suspect pirates posing a threat to life, then that power already exists under international law as described above.

#### 4. THE APPLICABLE LAW IN A PIRACY TRIAL IN A REGIONAL STATE

As stated above, the law governing any criminal trial is that of the territory where the trial takes place. The fact that piracy may have been committed by foreign nationals, against foreign nationals and aboard a foreign flagged vessel (all with different nationalities) has no impact on the applicable law. A piracy trial in Kenya or the Seychelles will be governed by local rules of evidence, local rules of criminal procedure and will be for a crime committed under the national criminal law. In practice, navies have developed “templates” or “guidelines” to assist them in collecting evidence in a manner useful to prosecution before the courts of regional partners. To take a simple example, it was common naval practice to throw the weapons of suspected pirates overboard. In Kenyan trials where the use of a firearm is alleged, the firearm should be produced. If this type of information is not known in advance, prosecutions may be compromised.<sup>22</sup> Given Kenya’s prominence in the evidence, a brief discussion of the applicable law there may assist.

Until 1 September 2009 the relevant offence in Kenyan law was found in section 69 of the Penal Code, Chapter 63 of the Laws of Kenya. This provided: “any person who in territorial waters or upon the high seas,

<sup>18</sup> *Archbold: Criminal Pleading Evidence & Practice* (2011 Ed.), §25–6 suggests: “that by the municipal law of England piracy may be committed within the territorial waters of a state” but cites only insurance law cases to this end. It is notorious that the definition of “piracy” in insurance law is different from that in criminal law. It is, in my opinion, doubtful a court would uphold the *Archbold* view.

<sup>19</sup> See generally: UNSC Res 1816 (2008), paras 7 and 9; UNSC Res 1846 (2008), paras 10 and 11; UNSC Res 1851, paras 6, 7 and 10; and UNSC Res 1897, paras 6, 7 and 8.

<sup>20</sup> UNSC Res 1846, para 9, UNSC Res 1851, para 2; compare UNSC Res 1897, para 3

<sup>21</sup> “Thai Company Says *INS Tabar* Sank Its Vessel”, *The Times of India* (online), 26 November 2008, <http://http://timesofindia.indiatimes.com>

<sup>22</sup> Guilfoyle, “Combating Piracy: Executive Measures on the High Seas” (2010) 53 *Japanese Yearbook of International Law* 149, 156

commits any act of piracy *jure gentium* [ie piracy as defined by international law] is guilty of the offence of Piracy.” A difficulty with such drafting is that it leaves it to the judge and case law to discern what the international law offence is and then import it into national law. Indeed, interpreting such language has led to contradictory lower-court decisions in the US as to the correct definition of “piracy by law of nations”.<sup>23</sup> There was also a specific local difficulty in that Kenyan law contained a general presumption—seemingly in conflict with the drafting of section 69 and its reference to the high seas—that Kenyan criminal law did not extend to events beyond the territorial sea.

The offence of piracy in Kenyan law was updated and clarified in sections 369–71 of the Merchant Shipping Act 2009, which also repealed the old Penal Code offence. However, the lack of a transitional clause clearly stating that cases commenced under the Penal Code offence could continue after its repeal has caused some confusion. In one case in Kenya 17 suspects were acquitted on the theory that the offence they were charged with under the Penal Code no longer existed.<sup>24</sup> It is an odd legal approach and the point of law is under appeal.

##### 5. THE CRIMINAL LAW OF ENGLAND AND WALES AS IT APPLIES TO PIRACY

In the case of warships when the Royal Navy engages in counter-piracy actions on the high seas my understanding is that, constitutionally, it acts under the reserve powers of the Crown and not in the exercise of any statutory function. In any event, its activities are governed by UK law and UK international obligations, including the European Convention on Human Rights.<sup>25</sup> Thus, when the Royal Navy has shot at pirates it has been on the basis of self-defence or defence of others under English criminal law. The same rights of self-defence apply to any merchant vessel under the UK flag (setting aside the question of the right to carry guns on such a vessel).

It would be possible to prosecute a pirate in English courts, where piracy is an offence under statute law. The essential provision is s.26, Merchant Shipping and Maritime Security Act 1997,<sup>26</sup> which provides:

- (1) For the avoidance of doubt it is hereby declared that for the purposes of any proceedings before a court in the United Kingdom in respect of piracy, the provisions of the United Nations Convention on the Law of the Sea 1982 that are set out in Schedule 5 shall be treated as constituting part of the law of nations.
- (2) For the purposes of those provisions the high seas shall (in accordance with paragraph 2 of Article 58 of that Convention) be taken to include all waters beyond the territorial sea of the United Kingdom or any other state.

The offence of “piracy by law of nations” or “piracy *jure gentium*” is a common law crime recognised in many Commonwealth jurisdictions.<sup>27</sup> As noted above, it involves judges discerning the current definition of piracy at international law and applying it as national law. The leading case on point is *Re Piracy Jure Gentium* [1934] AC 586. This will, however, assist prosecutors little as the case was not a full criminal trial, but an appeal from the courts of Hong Kong to the Privy Council on a point of law. Their lordships in *Re Piracy Jure Gentium*, therefore, did not offer a comprehensive definition of the offence but did note that it included “frustrated attempt”.<sup>28</sup> Piracy has been recognised as recently as 2007 in House of Lords cases as, exceptionally, being originally a crime incorporated into British law from international law without an implementing statute.<sup>29</sup>

In sum, piracy is clearly an offence under English law.<sup>30</sup> However, any court applying the Merchant Shipping and Maritime Security Act 1997 will have to interpret the common law offence of “piracy by law of nations” to include the offence defined in Articles 101–103 of UNCLOS (see above and Annex 1) but otherwise with limited guidance from the case law.

A clearer and more direct incorporation of the relevant UNCLOS provisions into statute law might be an improvement. I note that at least two common law jurisdictions have taken this approach: Australia and the Seychelles.<sup>31</sup>

<sup>23</sup> *US v Said et al* (unreported decision of US District Court, Eastern District of Virginia, 17 August 2010); *US v Hassan et al* (unreported decision of US District Court, Eastern District of Virginia, 29 October 2010).

<sup>24</sup> *In Re Dashi & 8 Others* [2009] Electronic Kenya Law Reports (eKLR), [kenyalaw.org/Downloads\\_FreeCases/78571.pdf](http://kenyalaw.org/Downloads_FreeCases/78571.pdf)

<sup>25</sup> See generally: Guilfoyle, “Counter-Piracy Law Enforcement and Human Rights,” (2010) 59 *International and Comparative Law Quarterly* 146.

<sup>26</sup> The great majority of relevant earlier statutes have been repealed, if often belatedly. I note that it was only in 2003 that Parliament abolished (in Schedule 32, Criminal Justice Act 2003 c 44) the sentence of transportation for piracy previously found in the Piracy Act 1837 c 88. Only ss 2 and 4 of that act remain in force.

<sup>27</sup> See, for example, s 74(1), Criminal Code of Canada (R.S.C., 1985, c C-46) (“Every one commits piracy who does any act that, by the law of nations, is piracy.”)

<sup>28</sup> [1934] AC 586, 600

<sup>29</sup> *R v Jones (Margaret) and others* [2007] 1 AC 136, 148 (suggesting such direct incorporation of new international crimes into national law would violate human rights law, but not casting doubt on piracy as the exception).

<sup>30</sup> See further: *Archbold: Criminal Pleading Evidence & Practice* (2011 Ed.), Chapter 25.

<sup>31</sup> See: ss 51–56, Crimes Act 1914 (Commonwealth of Australia) as amended, [http://www.austlii.edu.au/au/legis/cth/consol\\_act/ca191482/](http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/). On 19 March 2010, the Seychelles enacted a new offence embodying the UNCLOS definitions of piracy in section 65 of its Penal Code.

## THE LAW OF PIRACY—TREATY PROVISIONS AND EXPLANATORY NOTE

**The UN Law of the Sea Convention 1982**

## ARTICLE 58

**Rights and duties of other States in the exclusive economic zone**

...

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

...

## ARTICLE 86

**Application of the provisions of this Part**

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

## ARTICLE 100

**Duty to cooperate in the repression of piracy**

All 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.

## ARTICLE 101

**Definition of piracy**

Piracy consists of any of the following acts:

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

## ARTICLE 102

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

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

## ARTICLE 103

**Definition of a pirate ship or aircraft**

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

## ARTICLE 104

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

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

ARTICLE 105

**Seizure of a pirate ship or aircraft**

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

ARTICLE 106

**Liability for seizure without adequate grounds**

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

ARTICLE 107

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

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

ARTICLE 110

**Right of visit**

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

- (a) the ship is engaged in piracy;
- (b) the ship is engaged in the slave trade;
- (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
- (d) the ship is without nationality, or
- (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

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

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

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

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

EXPLANATORY NOTE ON THE LAW OF PIRACY

1. The High Seas Convention 1958 (HSC) and the United Nations Convention on the Law of the Sea 1982 (UNCLOS) define piracy in almost identical terms. This note shall principally refer to UNCLOS. The HSC continues to be relevant for those States not a party to UNCLOS.<sup>32</sup> The provisions of these treaties, in particular Articles 100 to 107 of UNCLOS, provide the legal framework for the repression of piracy under international law.<sup>33</sup>

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<sup>32</sup> Presently 6 States and the Holy See are parties to the HSC but **not** to UNCLOS (Afghanistan, Cambodia, the Holy See, Iran (Islamic Republic of), Israel, United States of America, Venezuela). A further 23 States are parties to neither (Andorra, Azerbaijan, Bhutan, Burundi, Democratic People's Republic of Korea, Ecuador, El Salvador, Eritrea, Ethiopia, Kazakhstan, Kyrgyzstan, Libyan Arab Jamahiriya, Liechtenstein, Niger, Peru, Rwanda, San Marino, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan).

<sup>33</sup> The preambles to UNSC Resolutions 1848 and 1851 (2008), 1897 (2009), 1950 (2010), 1976 (2011) all reaffirm "that international law, as reflected in [UNCLOS], sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities"; see also operative paragraph 3, UNSCR 1838 (2008).

## THE DUTY TO COOPERATE TO SUPPRESS PIRACY

2. Article 100 of UNCLOS provides “All 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.” The International Law Commission in its commentary on the equivalent provision in the HSC noted that: “Any State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law. Obviously, the State must be allowed a certain latitude as to the measures it should take to this end in any individual case.”<sup>34</sup> Doubt has been expressed historically as to whether this duty extends to requiring that States have an adequate national criminal law addressing piracy.<sup>35</sup> While the wording of Article 100 may be open to the interpretation that all states should have such a law, the Security Council has noted that it remains the case that many States do not.<sup>36</sup>

## THE DEFINITION OF PIRACY

3. Article 101, UNCLOS defines piracy 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, or
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

This provision should be read in conjunction with Article 103 of UNCLOS, which contains the definition of a pirate ship or aircraft.

4. The further legal issues arising under the treaty provisions relevant to piracy are:

- the geographic scope of the offence;
- limitations inherent in the definition (including the “two vessels” and “private ends” requirements);
- the relationship between the treaty definition and customary international law;
- the extent of powers granted to suppress piracy, and
- whether there are any limitations or rules of priority in exercising jurisdiction over pirates.

These are addressed below.

## THE GEOGRAPHIC SCOPE OF THE OFFENCE

5. Piracy may be committed anywhere seaward of the territorial sea of a State.<sup>37</sup> Equally, the jurisdiction and powers granted to States to suppress acts of piracy apply in all seas outside any State’s territorial waters.

6. However, the reference in Article 101 to piracy occurring on the “high seas” may be slightly misleading. Article 86, UNCLOS *prima facie* excludes the Exclusive Economic Zone (EEZ) from being part of the high seas. This might suggest that piracy in the EEZ is a matter for the coastal State. However, Article 58(2) provides that “Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part”. This makes it plain that the provisions of the high seas regime (including all provisions on piracy) “apply to the exclusive economic zone in so far as they are not incompatible with” UNCLOS provisions on the EEZ.<sup>38</sup>

7. Within the EEZ the coastal State enjoys sovereign rights “for the purpose of exploring and exploiting, conserving and managing ... natural resources” and jurisdiction over certain other subject matters (Article 56, UNCLOS). Nothing in Article 56 is incompatible with the UNCLOS provisions on piracy, and therefore under Article 58(2) the general law of piracy applies to all pirate attacks outside territorial waters. If acting in another States’ EEZ a government vessel engaged in suppressing piracy is obviously obliged to have “due regard” for the coastal State’s rights in matters of natural resources, marine pollution, etc in any action it takes.<sup>39</sup>

<sup>34</sup> [1956] II YbILC, 282

<sup>35</sup> As many States have not had historically, and still do not have laws adequately criminalising piracy. See: Joseph W. Bingham (reporter), “Harvard Research in International Law: Draft Convention on Piracy”, *AJIL* Sup 26 (1932), 755–756, 760. This work remains relevant as it influenced the International Law Commission’s drafting of relevant treaty provisions, which largely endorsed the Harvard findings: [1956] II YbILC, 282. On the modern position see Laurent Lucchini and Michel Voelckel, *Droit de la mer*, Tome 2, vol. 2 (Pedone, 1996), 158–9.

<sup>36</sup> Preamble to UNSCR 1976 (2011).

<sup>37</sup> This is consistent with the position adopted in Article 4(4) of the Djibouti Code of Conduct, discussed below.

<sup>38</sup> See, eg: Lucchini and Voelckel, *Droit de la mer*, Tome 2, vol. 2, 165.

<sup>39</sup> Art 58(3), UNCLOS

## LIMITATIONS WITHIN THE UNCLOS DEFINITION OF PIRACY

8. The most obvious limitation within the UNCLOS definition is that it only covers, under Article 101(a)(i), attacks committed from a private vessel against another vessel.<sup>40</sup> It therefore does not cover the seizure of a vessel from within by passengers, stowaways or its own crew.<sup>41</sup> Hijackings such as the *Achille Lauro* incident would therefore not be piracy under the treaty-law definition.<sup>42</sup>

9. UNCLOS makes it quite clear that government vessels cannot commit piracy, unless the crew mutinies and uses the vessel to carry out acts of violence against other ships (Article 102). Outside of mutiny any unlawful acts of violence by a government vessel against another craft are a matter of State responsibility, not the law of piracy.

10. Some slight ambiguity is introduced by the words “any illegal acts of violence or detention, or any act of depredation” in Article 101(a). One could ask under what system of law acts must be “illegal”; or whether there is a meaningful difference between the use of the words “acts of violence” (plural) and “act of depredation” (singular). The ordinary meaning, object and purpose of these words would suggest a broad approach should be taken. Piracy has always been an international crime enforced by national laws, the exact terms of which have varied between jurisdictions. It may be difficult to give these words the kind of clear and precise meaning that would accord with modern expectations that criminal offences should be precisely drafted in advance. It is perhaps better to consider Article 101(a)(i) as setting out the jurisdiction of all States to: (1) prescribe and enforce a national criminal law of piracy; and (2) take action to suppress and prosecute piratical acts of violence on the high seas.

11. Much more controversy has been caused by the words “for private ends” in Article 101(a). It has often been held that the requirement that piracy be for “private ends” means that an act committed for “political” motives cannot be piracy. Thus some commentators hold that “terrorism” can never be “piracy”. An alternative view holds that the relevant distinction is not “private/political” but “private/public”.<sup>43</sup> That is, any act of violence on the high seas not attributable to or sanctioned by a State (a public act) is piracy (a private act).<sup>44</sup> This approach accords both with the drafting of the relevant UNCLOS provisions, which make it clear that a public vessel cannot commit piracy, and with some modern case-law indicating that politically motivated acts of protest can constitute piracy.<sup>45</sup> I consider the second view preferable, but the point is open to debate. In any event, the question is irrelevant in the Somali context. Seizing private vessels in order to demand large ransoms from private companies—without any claim to be acting on behalf of a government or making demands of any government—can only be an act “for private ends”.

## THE RELATIONSHIP BETWEEN TREATY LAW AND CUSTOMARY INTERNATIONAL LAW

12. It is sometimes suggested that the HSC/UNCLOS definition of piracy is narrower than pre-existing customary law. These arguments are not relevant for present purposes. Criminal activities off Somalia fall within the treaty definition, which is therefore perfectly adequate to deal with the present situation. Further, for the reasons set out below, I do not consider that there is now any difference between the crime as defined in treaty law and in customary law.

13. For the sake of completeness only, then, I note that it has been suggested that the customary international law of piracy: (1) extended to acts in territorial waters; or (2) extended to events occurring aboard only one vessel. The first idea, that the international law of piracy ever extended to acts occurring in one State’s territorial waters, is entirely without merit. This suggestion usually relies on old national cases where the term “piracy” covered both national offences (occurring within the prosecuting States’ waters) and the international crime.<sup>46</sup> Few or none of these cases, on close inspection, assert jurisdiction over *foreign* territorial waters. A State may of course enact a national crime called “piracy” applicable to its own territorial waters. The second idea, that piracy in international law might cover mutiny or the internal seizure of a vessel is one based on national case law and national offences applicable aboard the enacting States’ flag vessels,<sup>47</sup> has never received wide support and was rejected in both the HSC and UNCLOS.<sup>48</sup>

<sup>40</sup> The reference to “a place outside the jurisdiction of any State” in Article 101(a)(ii), UNCLOS is intended to cover events on islands which are *terra nullius* and not part of any State’s territory. See: [1956] II YbILC, 282

<sup>41</sup> [1956] II YbILC, 282

<sup>42</sup> Which fact prompted the drafting of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988, as discussed below.

<sup>43</sup> For example: M Halberstam, “Terrorism on the high seas” (1988) 82 AJIL 269, 276–284; Michael Bahar, “Attaining Optimal Deterrence at Sea” (2007) 40 Vanderbilt Journal of Transnational Law 1, 32; D. Guilfoyle, *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009), 36–40. Note also the change in the French text from “buts personnels” in Article 15, HSC to “fins privées” in Article 101, UNCLOS.

<sup>44</sup> Historically there was a debate about the status of insurgents in a civil war and whether they could be classed as pirates if they: (1) attacked the vessels of the government they were attempting to overthrow; or (2) enforced a blockade on government ports against “neutral” shipping. There is no suggestion Somali pirates are insurgents engaged in either activity. On the debate see: I A Shearer (ed), D P O’Connell, *The International Law of the Sea* (Oxford: Clarendon, 1984), vol. 2, 975–6; Hersch Lauterpacht, “Insurrection et piraterie” (1939) 46 Revue Générale de Droit International Public 513.

<sup>45</sup> *Castle John v. NV Mabeco*, (Belgium, Court of Cassation, 1986) 77 International Law Reports 537

<sup>46</sup> O’Connell, *International Law of the Sea*, vol. 2, 966–7

<sup>47</sup> British courts historically accepted that piracy included “any armed violence at sea which is not a lawful act of war”: *In Re Piracy Jure Gentium* [1934] AC 586, 598. UK law now follows the narrower UNCLOS definition under s.26, Merchant Shipping and Maritime Security Act 1997 c 28.

<sup>48</sup> O’Connell, *International Law of the Sea*, vol. 2, 970–3

14. In any event, the great majority of commentators now accept that UNCLOS has codified customary international law on the point. The consistent acceptance and re-enactment of the HSC/UNCLOS definition in treaties, regional instruments and UN Security Council resolutions, UN General Assembly resolutions and IMO resolutions and documents all strongly suggest it is now the accepted general rule and has prevailed over any earlier, inconsistent rules of customary law.<sup>49</sup>

#### THE EXTENT OF POWERS GRANTED TO SUPPRESS PIRACY

15. A warship or military aircraft, or other ship or aircraft clearly marked and identifiable as being on government service and authorized to that effect (Article 107, UNCLOS) on the high seas has the power:

- to visit any vessel that it has a reasonable ground for suspecting of being engaged in piracy and, if suspicions are not resolved by an inspection of its papers, proceed to search it (Article 110, UNCLOS), and
- to seize any pirate vessel and arrest any suspected pirates (Article 105, UNCLOS);

subject to a duty to compensate a vessel for any loss or injury suffered as a consequence of inspection/arrest where suspicions of piracy prove unfounded and the vessel “has not committed any act justifying them” (Articles 106 and 110(3), UNCLOS).

16. Piracy includes “any act of voluntary participation in the operation of a ship ... with knowledge of facts making it a pirate ship” (Article 101(b), UNCLOS). A pirate ship is one “intended by the persons in dominant control to be used” in a pirate attack or which has been used in such an attack and is still under the same control (Article 103, UNCLOS). Thus a warship has a clear right of visit and inspection where it suspects a vessel is under the control of persons intending to use it for a *future* pirate attack.<sup>50</sup> Indeed, it may arrest persons on the basis that they intended a future pirate attack.

17. By definition, the powers of visit, seizure and arrest are granted on the high seas (or in the exclusive economic zone of a State as discussed above) and thus do not extend to pursuing pirates into foreign territorial waters without the coastal State’s consent. Without such consent, the exercise of law-enforcement powers by a pursuing warship over a fleeing pirate vessel within foreign territorial waters would *prima facie* be unlawful.<sup>51</sup>

#### EXERCISING JURISDICTION OVER PIRATES: LIMITATIONS OR RULES OF PRIORITY

18. UNCLOS Article 105 refers only to the power of *the seizing State* to try a seized pirate. However, as a matter of customary international law, every State has jurisdiction to prosecute a pirate subsequently present within their territory irrespective of any connection between the pirate, their victims or the vessel attacked and the prosecuting State (universal jurisdiction).<sup>52</sup>

19. In addition to the existence of universal jurisdiction at public international law, States may also have jurisdiction over suspected pirates on other bases as a matter of national law. Following ordinary principles of criminal jurisdiction, the State of the suspected pirate’s nationality, the State of nationality of the suspected pirate’s victim and the flag State of any involved vessels may all also have valid claims of jurisdiction over a suspected pirate. An act of piracy, like any number of other offences, may provide a number of States with equally valid claims to exercise jurisdiction over an offence.<sup>53</sup>

20. The general international law of jurisdiction provides no rule of priority between competing potential jurisdictions.<sup>54</sup> It is sometimes suggested that before proceeding to exercise universal jurisdiction the prosecuting State should, for example, offer the suspect for prosecution to the State where the offence was committed or to their State of nationality.<sup>55</sup> Such suggestions are at best *de lege ferenda*. While they might be sensible as a matter of policy, they are not binding as a matter of law.<sup>56</sup>

21. The law of piracy under UNCLOS does not place any express responsibility upon a seizing State to try an arrested pirate. It simply provides that the seizing State “may” decide upon the penalties to be imposed, i.e.,

<sup>49</sup> *North Sea Continental Shelf Cases*, [1969] ICJ Rep. 1969, 3 at 41

<sup>50</sup> This results from applying the definition in Article 103 to the powers granted in Article 105 and 110, UNCLOS.

<sup>51</sup> While there has been some scholarly support for such a right, it has not found acceptance in State practice: Lucchini and Voelckel, *Droit de la mer*, Tome 2, vol. 2, 165; O’Connell, *International Law of the Sea*, vol. 2, 978. UNSCRs 1816 (operative paragraph 7), 1846 (operative paragraph 10) and 1851 (operative paragraph 6) obviously provide a mechanism for “co-operating States” to enter the territorial waters and land territory of Somalia, based both on the consent of Somalia and the authority of Chapter VII.

<sup>52</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment, ICJ Reports 2002, p 3, President Guillaume (Separate Opinion), para. 5 and Judges Higgins, Kooijmans and Buergenthal (Joint Separate Opinion), para 61; Ian Brownlie, *Principles of Public International Law*, 7th ed (Oxford University Press, 2008), 229; Bingham, “Harvard Research” (n.4 above), 852–6; Lucchini and Voelckel, *Droit de la mer*, Tome 2, vol. 2, 182

<sup>53</sup> A pirate vessel does not necessarily lose its nationality (Article 104, UNCLOS), and may still be subject to its flag State’s jurisdiction *in addition* to the jurisdiction of the State of the seizing warship.

<sup>54</sup> Robert Cryer, et al, *An introduction to international criminal law and procedure* (Cambridge University Press, 2007), 37

<sup>55</sup> Paragraph 3, Resolution of the Institute of International Law on Universal Criminal Jurisdiction, 2005, [http://www.idi-iiil.org/idiE/resolutionsE/2005\\_kra\\_03\\_en.pdf](http://www.idi-iiil.org/idiE/resolutionsE/2005_kra_03_en.pdf); Stephen Macedo (ed), *The Princeton Principles on Universal Jurisdiction* (Princeton University, 2001), 32

<sup>56</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment, [2002] ICJ Rep. 3., Dissenting opinion of Judge ad hoc Van den Wyngaert, paragraph 56.

including prosecution (Article 105). On its face, this is a discretionary power not an obligation.<sup>57</sup> However, in exercising this discretion a State should bear in mind its duty to “cooperate to the fullest possible extent in the repression of piracy” (Article 100). The effect of Article 100 on Article 105 is perhaps open to debate, but I would suggest that it may require that serious consideration should always be given to prosecution where practicable. Nothing in Article 105, however, affects the right of a State with custody of a suspected criminal to either prosecute that person (if they have jurisdiction at international law) or transfer them to another State for prosecution (subject to applicable human rights law).

22. In the absence of an applicable “extradite or prosecute” obligation, the general law of piracy contains no express obligation for a capturing State to submit a pirate to their competent national authorities for investigation/trial if they cannot persuade another State to take them. In the absence of clear obligations or rules of priority, States can only seek to cooperate to determine the disposition of suspects and which State (if any) claiming jurisdiction will prosecute them.<sup>58</sup>

23. Questions of “extradite or prosecute” obligations arising under the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 are discussed below.

## Annex II

### THE SUA CONVENTION—TREATY PROVISIONS AND EXPLANATORY NOTE

#### Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988

##### ARTICLE 1

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

##### ARTICLE 2

1. This Convention does not apply to:

- (a) a warship; or
- (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes, or
- (c) a ship which has been withdrawn from navigation or laid up.

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

##### ARTICLE 3

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

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

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

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

<sup>57</sup> Lucchini and Voelckel, *Droit de la mer*, Tome 2, vol. 2, 176

<sup>58</sup> See UNSCR 1816 (operative paragraph 11) and UNSCR 1846 (operative paragraph 14). Note the similar approach in: Article 7(5), Convention for the Suppression of the Financing of Terrorism 1999; Article 42(5), UN Convention against Corruption 2003; Article 4(3), OECD Convention Against Bribery 1997.



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set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

#### ARTICLE 4

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

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

#### ARTICLE 5

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

#### ARTICLE 6

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

- (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
- (b) in the territory of that State, including its territorial sea, or
- (c) by a national of that State.

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

- (a) it is committed by a stateless person whose habitual residence is in that State; or
- (b) during its commission a national of that State is seized, threatened, injured or killed, or
- (c) it is committed in an attempt to compel that State to do or abstain from doing any act.

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

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

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

#### ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

- (a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

#### ARTICLE 8

1. The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

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

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

#### ARTICLE 9

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

#### ARTICLE 10

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

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

#### ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

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

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

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

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 6 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

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

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

## ARTICLE 12

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

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

## ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, and
- (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

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

## ARTICLE 14

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

## ARTICLE 15

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

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

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

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

## EXPLANATORY NOTE TO SUA 1988

## HISTORICAL ORIGINS

24. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) was inspired by the *Achille Lauro* incident in which a vessel was internally hijacked and a hostage aboard was killed. The sponsoring governments who first introduced a draft text for the Convention (Austria, Egypt and Italy) cited as part of their reason for doing so the restrictions inherent within the definition of piracy: that it necessarily involved an act for private ends, and in requiring an attack from one vessel against another it could not cover the internal seizure of a vessel.<sup>59</sup>

25. The original sponsoring governments were quite right to point out that the law of piracy did not extend to internal hijacking. As noted above, the view that politically motivated attacks can never be piracy is widely held but not necessarily correct. However, it is important to note that the stated aim of the sponsoring governments was to produce a "comprehensive" convention that did not rest on arbitrary distinctions.

26. Another relevant inspiration for the SUA Convention was General Assembly Resolution 40/61, which called upon the IMO to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures". The SUA Convention is thus commonly considered a "terrorism suppression" convention. It is important to note, however, that the word "terrorism" appears only in its preamble. A terrorist motive does not form any express element of the crime set out in the treaty. Further, the purpose of the terrorism suppression conventions was to proceed by criminalising typical terrorist acts or tactics, given that no consensus on a universal definition of terrorism could be reached.

<sup>59</sup> IMO Doc. PCUA 1/3 (3 February 1987), Annexe, paragraph 2

27. The principal reasons the SUA Convention was seen as necessary were first, as noted above, the law of piracy did not cover internal hijacking of vessels; and second, that while there existed treaties concerning the hijacking and sabotage of airplanes<sup>60</sup> no similar conventions yet existed for the shipping industry. It is unsurprising, then, that the SUA Convention is closely modelled on the conventions concerning offences aboard or against aircraft. The sponsors' explicit aim was to devise a comprehensive convention that would cover all forms of violence against shipping.

28. The present note is not intended to cover any of the Protocols to the SUA Convention, being the two Protocols for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf of 1988 and 2005, and the Protocol to the SUA Convention 2005. The first two are not relevant for the obvious reason that they concern only offences against fixed platforms. The 2005 Protocol to the SUA Convention adds a number of further offences to the list of offences covered by the Convention,<sup>61</sup> and creates: both (1) a system by which flag States might permit high-seas boarding of their flag-vessels by third States; and (2) rules governing the conduct of such boardings in order to repress any offences covered by the Convention or the Protocol.<sup>62</sup> These boarding provisions could be used to combat violence at sea, including acts of piracy which *also* constituted a SUA offence. However, the boarding provisions may be of limited relevance for present purposes for two reasons. First, the conditions for the entry into force of these boarding provisions have not yet been met. Second, in any case where piracy is suspected, States already have an automatic right to board foreign flag vessels as an exception to the general rule of exclusive flag State jurisdiction. While the boarding provisions of the SUA Protocol 2005 could be used to achieve the same end, they would not therefore strictly be needed.

#### THE BASIC OFFENCE, ITS LIMITS AND RELATIONSHIP TO PIRACY

29. Article 3 of the SUA Convention creates a number of offences. Most relevant for present purposes is Article 3(1)(a), stating that "[a]ny person commits an offence if that person unlawfully and intentionally ... seizes or exercises control over a ship by force or threat thereof or any other form of intimidation". There is no requirement that the seizure be internal or be politically motivated. Thus any pirate seizure of a vessel off Somalia will clearly fall within this definition. Attempting, abetting and threatening such an offence are equally crimes under the Convention (Article 3(2)).

30. The only case in which the Convention would not apply is where the offence was committed solely within a single State's territorial sea *and* the vessel was not scheduled to navigate beyond that territorial sea *and* the suspected offender was subsequently found within that coastal State's territory. This follows from Article 4, which states that the Convention applies either "if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States" or "when the offender or the alleged offender is found in the territory of [another] State Party". As piracy attacks of Somalia are now generally (or invariably) committed far outside territorial waters, Article 4 is no obstacle to the SUA Convention's application.

31. It is perhaps important to note that the SUA Convention does not expressly cover the crime of piracy and that its offences are not coterminous with the crime of piracy as defined under UNCLOS. The SUA Convention creates a separate offence as among State parties. However, the type of piracy commonly committed off Somalia involves both an attack from one vessel against another *and* acts of violence intended to seize control of a ship. Such acts can clearly constitute both piracy and an offence under the SUA Convention. Not all piracy will fall within the SUA Convention, of course. An act of theft ("depredation") that did not endanger the safety of a vessel, and was committed by one vessel against another, could be an example of piracy which would not be a SUA Convention offence. Conversely, as noted, the internal hijacking of a vessel would be a SUA Convention offence but not piracy. The crimes are distinct but may overlap on some sets of facts. The relationship between piracy as defined under UNCLOS and the SUA Convention is returned to below.

#### JURISDICTION UNDER THE CONVENTION

32. Unlike the law of piracy, the SUA Convention creates an express obligation upon parties to create appropriate domestic offences. Under Article 6 States parties *must* make the offences in Article 3 a crime under national law when committed:

- (a) against or on board their flag vessels;
- (b) within their territory, including their territorial sea, or
- (c) by one of their nations.

In addition States parties *may* establish criminal jurisdiction where a relevant offence is committed, *inter alia*, against one of their nationals or in an effort to compel their government to do or abstain from doing any given act.

<sup>60</sup> Convention for the Suppression of Unlawful Seizure of Aircraft 1970, 860 UNTS 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971, 974 UNTS 177

<sup>61</sup> See Article 3, SUA Convention and Article 3bis(1)(a) and (b), Protocol to the SUA Convention 2005 (not in force).

<sup>62</sup> Article 8bis, Protocol to the SUA convention 2005 (not in force)

33. The most important jurisdictional provisions are those dealing with the obligation to either extradite or submit the case for consideration by prosecutorial authorities (commonly, if misleadingly, called an obligation to “extradite or prosecute”). Where a State subsequently finds a suspect or offender within its territory (the territorial State) and another State party or parties have jurisdiction under Article 6, then the territorial State:

shall ... if it does not extradite him, be obliged ... to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.<sup>63</sup>

To this end each party *must* establish jurisdiction “over the offences set forth in Article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with” the obligations described in paragraph 32 above.<sup>64</sup> (Note also paragraph 41 below on the status of warships.)

34. Thus parties must establish jurisdiction, for example, over offences committed by other State parties’ nationals or on other State parties’ vessels where the offender is present within their territory and not extradited to another State party having jurisdiction. Put simply, the test for State Party A is:

- (1) is the suspect within the territory of State A?
- (2) has another State party established jurisdiction in accordance with Article 6 over the offence committed by the suspect?
- (3) has State A extradited the suspect to one of these States?

If not, State A *prima facie* appears obliged to submit the suspect to its authorities for the purpose of prosecution and is also under an obligation to have taken measures to establish its jurisdiction in such cases. This may be described as a limited form of universal jurisdiction (“quasi-universal jurisdiction”), as it allows the prosecution of individuals lacking relevant “links” to the prosecuting State.

35. It is sometimes suggested that the obligation described in paragraphs 33–34 is only triggered by an extradition request. This is a widely supported view but it is not the only possible view; others are discussed below. I note that the issue is presently before the ICJ for consideration.<sup>65</sup> However, despite the discussion below, any controversy over the exact nature of “extradite or prosecute” obligations will have little practical impact in piracy cases. Once a piracy suspect is within the territory of a State it may have jurisdiction over that person:

- (a) as a matter of universal jurisdiction over piracy, and/or
- (b) as a matter of jurisdiction under the SUA Convention.

At international law, even if there was some defect in jurisdiction arising under the SUA Convention, valid jurisdiction would still exist over the crime as one of piracy.

36. Returning to the SUA Convention, two interpretations of Article 10 may be possible. Article 10(1), first sentence, reads in full:

The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

The ILC Special Rapporteur on the obligation to extradite or prosecute takes the view that States have a single obligation and a free choice of means as to how they will fulfil it: thus it is “presumed that after fulfilling a part of the obligation—either *dedere* [to extradite] or *judicare* [to submit for prosecution]—the State was released from fulfilling the other” half of the obligation.<sup>66</sup> On this view, no request to extradite is required to give rise to an obligation to submit a suspect for prosecution. Both obligations exist simultaneously, as alternatives.

37. The Special Rapporteur’s view is perhaps sustainable on grammatical grounds as regards the SUA Convention.<sup>67</sup> One could start by holding that the basic obligation is expressed in the words: “The State Party ... shall ... be obliged ... to submit the case ... for the purpose of prosecution”. As this is a grammatically complete sentence one may thus see the words “if it does not extradite him” as introducing an exception or qualification, modifying its meaning. On this view, the obligation logically exists without any extradition request first having to be made. Thus the only way a State Party is freed of its primary obligation to prosecute is if it extradites.

38. A second view is that the drafting is strictly sequential: ie (1) if the State party does not extradite; then (2) it must submit the individual for prosecution.<sup>68</sup> This second approach is supported by the fact that

<sup>63</sup> Article 10(1), SUA Convention

<sup>64</sup> Article 6(4), SUA Convention

<sup>65</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, proceedings instituted 17 February 2009

<sup>66</sup> International Law Commission, Report of the Fifty-Eight Session (2006), UN Doc. A/61/10, paragraph 217

<sup>67</sup> Although he did not make the argument in this manner either in general or as regards the SUA Convention in particular.

<sup>68</sup> See: International Law Commission, Report of the Fifty-Eight Session (2006), UN Doc. A/61/10, paragraph 225 where some ILC members took the view that only “failing an extradition, [did] an obligation to prosecute” arise.

extradition necessarily follows a *request*. One could thus suggest that it is impossible to conclude that a State has not extradited a person until a relevant request is denied. Therefore, the argument goes, it is implicit in the wording of obligations such as Article 10 that a request is required to trigger the obligation. This appears to be a widely held view.

39. At least under the SUA Convention this debate seems somewhat hypothetical. Article 7 provides that a State finding a suspect on its territory is required to commence a preliminary investigation and, if it considers the circumstances so warrant, take the suspect into custody while a decision is made about extradition or prosecution. That investigating State is required to communicate with States having jurisdiction under Article 6, but it is not required to defer to their jurisdiction. Instead Article 7(5) provides that an investigating State Party “shall promptly report its findings to the said States and shall indicate *whether it intends to exercise jurisdiction*” (emphasis added). These last words in particular appear consistent with the first view of Article 10: that a State has a free choice whether to extradite or prosecute. Article 7 thus supports the view, absent an extradition request, a State could validly prosecute a person suspected of a SUA Convention offence found within its territory.

40. Any view that a State Party could *never* commence a criminal prosecution until it had received and declined an extradition request would not only be contrary to the object and purpose of the treaty but would contradict the plain words of Article 7. One should also note that the SUA Convention does not contain the wording found in some other Conventions only obliging a State that does not extradite a suspect to submit the case to its prosecuting authorities “at the request of the requesting Party”.<sup>69</sup>

41. The question arises whether a suspect held aboard a warship is within that flag State’s “territory” for the purposes of the SUA Convention duty to extradite or prosecute. That is, if the warship cannot find a State to take the suspect must it, as discussed at paragraphs 33–34, “without exception whatsoever ... submit the case without delay to its competent authorities for the purpose of prosecution”? The question may not have a clear answer. While a warship is not “territory” in the sense of being a “floating island”,<sup>70</sup> it is an object (or space) with a special status at international law. It is convenient to make a brief comparison with ordinary flag vessels. On the high seas all vessels are subject to the jurisdiction of their flag State, a status which the Permanent Court of International Justice said could be “assimilated to” the flag State’s jurisdiction over its territory.<sup>71</sup> Human rights bodies or courts have found vessels flagged to, or under the effective control of, a State fall within its “jurisdiction” under human rights treaties having principally territorial application.<sup>72</sup> A State’s sovereign control over a warship is much stronger than in the case of other flag vessels: warships on the high seas enjoy complete immunity from the jurisdiction of other States.<sup>73</sup> It should therefore be uncontroversial that—on the high seas—a warship may form part of the flag State’s “jurisdiction” on a basis very similar to “territory”. However, simply because it is possible for “territorial” obligations to apply on board a warship on the high seas that does not necessarily mean that they will do so in all cases. If the “extradite or prosecute” obligation does apply one should note two things. First, it is an obligation to submit the case to competent authorities for a decision, not an absolute obligation to prosecute. Second, despite the reference to “extradition” any such obligation must be considered satisfied where a suspect is put off in the port of a SUA Convention party, as described below and as anticipated by the Security Council, under Article 8 of that Convention.

#### PUTTING SUSPECTS OFF IN PORT UNDER THE SUA CONVENTION

42. Article 8(1) of the SUA Convention provides that:

The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

Nothing in this provision expressly requires that it actually be the master of the attacked ship that delivers a suspect to a receiving State under Article 8. Indeed, the Security Council appears to have presumed that Article 8 would cover such delivery from a seizing warship to a receiving State.<sup>74</sup> Nonetheless, the term “master” does not ordinarily encompass the commander of a warship and it may be that the provision only contemplates cases where the master of a private vessel has a suspect aboard and wishes to be relieved of responsibility for them.<sup>75</sup>

43. The only qualifications upon this provision appear to be procedural:

(1) the flag State must ensure that the master “whenever practicable, and if possible before entering

<sup>69</sup> See: Article 6(2), European Convention on Extradition 1957; Article 16(10), United Nations Convention against Transnational Organized Crime 2000.

<sup>70</sup> O’Connell, *International Law of the Sea*, vol. 2, 736–7

<sup>71</sup> *Lotus Case*, [1927] PCIJ Ser. A No. 10, 25

<sup>72</sup> Eg *PK et al v Spain*, Committee Against Torture, Decision, 21 November 2008, UN Doc. CAT/C/41/D/323/2007, paragraph 8.2; *Medvedyev v France*, European Court of Human Rights (Application No. 3394/03), Judgment, 10 July 2008

<sup>73</sup> Article 95, UNCLOS

<sup>74</sup> Operative paragraph 15, UNSCR 1846; preamble, UNSCR 1851. To the extent that Article 2(1)(a) may suggest otherwise, it is possible that the Security Council has provided an authoritative interpretation.

<sup>75</sup> Robin Geiss and Anna Petrig, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford, 2011), 188–9

the territorial sea of the receiving State” gives notice that he intends to deliver a suspect to the authorities of the receiving State (Article 8(2)), and

(2) the flag State must furnish the receiving State with any relevant evidence (Article 8(4)).

44. A receiving State is under a primary obligation to accept delivery of a suspect. A receiving State may only refuse to accept delivery of a suspect under Article 8(3) of the SUA Convention “where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery”. In such a case it must give “a statement of the reasons for refusal”. Once a delivered suspect is received within its territory, the obligations under Articles 7 and 10 described above apply.

45. Under Article 8(5), a receiving State may request that “the flag State” accept delivery of the suspect. It is not clear whether this means the flag State of attacked vessel or the flag State of the vessel delivering the suspect. Common sense would suggest the former is intended, but the wording of Article 8(1) suggests the latter. In such cases the relevant flag State “shall consider” such a request but has no primary obligation to accept delivery. If it declines to accept delivery, it must provide a statement of its reasons for so doing.

#### CONCLUSIONS: THE RELATIONSHIP BETWEEN THE LAW OF PIRACY AND THE SUA CONVENTION

46. The SUA Convention does not cover piracy per se, but as noted above some elements of the crime of piracy or acts constituting piracy under UNCLOS may also be offences under the SUA Convention.

47. The law of piracy contains a duty to cooperate in the suppression of piracy, but a discretion as to whether to prosecute suspected pirates. The SUA Convention places express obligations upon State Parties both to have adequate national laws implementing SUA Convention offences and to either extradite or prosecute suspects found within their territory, irrespective of where the offence was committed.

48. The definition of piracy is restricted by the “two vessels” requirement (which excludes internal hijackings) and by the “private ends” requirement.<sup>76</sup> The SUA Convention is a comprehensive treaty drafted to avoid any such restrictions.

49. However, only the law of piracy provides an exception to the exclusive jurisdiction of the flag State and can justify the stopping, searching, arrest or seizure of suspect pirate vessels and persons aboard on the high seas. The SUA Convention does not provide any such right of enforcement on the high seas (although the 2005 Protocol contains a mechanism for seeking the flag State’s *permission* for such a boarding).

50. It is entirely possible that one could use Article 8, SUA Convention to disembark a suspected person in port and for the port State to try them either as a pirate or for a SUA Convention offence. This outcome is expressly anticipated by the relevant Security Council Resolutions.<sup>77</sup>

51. Piracy is a crime of universal jurisdiction. Articles 6(1) and (2) of the SUA Convention require some jurisdictional “link” between the suspected offender and the State Party prosecuting them. However, Article 6(4) of the SUA Convention requires a State party to exercise jurisdiction over a person within its territory suspected of having committed a crime under the SUA Convention if it does not extradite them to a State having jurisdiction under Articles 6(1) or 6(2). This creates a limited form of “quasi-universal” jurisdiction as described in paragraph 34 above.

#### Further written evidence from Dr Douglas Guilfoyle<sup>78</sup>

#### INTERNATIONAL COOPERATION IN THE PROSECUTION OF SOMALI PIRATES

##### 1. INTRODUCTION

The present memo provides a synopsis of current international efforts to prosecute suspected Somali pirates and the further judicial/prosecutorial options that have been discussed.

Several recent United Nations reports are relevant here, and I draw on them extensively:

— the UN Secretary-General’s report of 26 July 2010 on legally available options (“Options Report”);<sup>79</sup>

<sup>76</sup> Doubts about the scope of the “private ends” restriction are discussed at paragraph 11.

<sup>77</sup> This may, however, create some slight ambiguity in interpreting Article 8(5), SUA Convention as noted at paragraph 45. See also n 42.

<sup>78</sup> Lecturer, Faculty of Laws, University College London. I note that I am not licensed to practice law on my own account and nothing in the present memo should be taken as constituting solicitor-client legal advice.

<sup>79</sup> UN Secretary-General, “Report of the Secretary-General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results”, 26 July 2010, UN Doc S/2010/394 (“UNSG Report”).

- the report to the UN Secretary-General of his special advisor on Somali piracy, Mr Jack Lang of 24 January 2011 (“the Lang Report”) which recommended the “Somaliaization” of the judicial response,<sup>80</sup> and
- report of the Secretary-General on the modalities for the establishment and implementation of specialized Somali anti-piracy courts of 21 June 2011 (“Modalities Report”).<sup>81</sup>

In assessing any option for prosecuting pirates the following factors should be considered:

- the high number of suspects to be dealt with—on UN Office on Drugs and Crime figures at least 1,011 pirates have been sent for trial in three years, so any prosecution mechanism must be able to deal with suspects in large volumes;
- imprisonment—a key problem in willingness to conduct piracy trials for some States is not the cost of the trial, but the cost of many years of post-conviction imprisonment.<sup>82</sup> Similarly, no international tribunal since Nuremberg has had its own prison, and all must rely on prisoner transfer agreements with volunteer States;
- institutional costs—the phrase “tribunal fatigue” is now widely used to describe the international community’s reluctance to pay for new international tribunals which are widely seen as (rightly or wrongly) slow and extremely expensive;
- any new legal regime will have teething problems—any new law created to deal with piracy prosecutions (be it for national or international prosecutions) inherently comes with the prospect of delay and uncertainty as a justice system gains experience in using it;
- the absence of “automaticity”—no prosecuting State will agree in advance to take automatically **all** piracy cases referred to it and without significant resources it is unlikely an international or Somali tribunal could be established on such a principle, and
- delay—the more ambitious the proposal, the longer it will take to implement.

## 2. PROSECUTION BEFORE NATIONAL COURTS

Any new mechanism for prosecuting pirates will have to demonstrate it offers a convincing advantage over the status quo of prosecution before national courts to win wide support.

As noted above over 1,011 pirates are being tried before 20 States. Some capturing flag States are conducting trials before their national courts and under their own national laws; others have transferred suspects to partners in the region for prosecution under that partner State’s national laws. Transfers for prosecution in practice have occurred under a variety of ad hoc and standing arrangements.

On either approach, minimum legal guarantees must be in place to prevent a person being sent to face treatment amounting to torture, persecution on prohibited grounds, cruel and inhuman treatment or a flagrant denial of fundamental rights (eg the right to a fair trial). On paper, such assurances are readily achieved but in practice post-transfer monitoring may be required.<sup>83</sup> Such arrangements need to be robust enough to survive judicial scrutiny: I understand such a judicial review case has been brought in Germany.

A key problem in finding States willing to conduct prosecutions has been the question of post-sentencing imprisonment. Running a piracy trial is expensive, imprisoning a group of persons for 6–25 years each much more so. An option being examined is the possibility of returning convicted pirates to Somalia (ie the stable regions of Puntland and Somaliland) to serve their sentences.

An emerging possibility, therefore, is the double-transfer of suspects: first from the State of capturing warship to a trial State; and then, post-conviction, from the trial State to a third State for incarceration. The Seychelles has concluded the first transfer agreement with the Transitional Federal Government (TFG) of Somalia. This agreement refers to further implementing agreements, which the Seychelles has concluded with authorities in Puntland and Somaliland. The only difficulties with such arrangements are: (1) they do not usually oblige the “imprisoning State” to accept all prisoners for transfer; and (2) they may be limited by requirements that the capturing flag State consent to any such transfer.

Overall, though, a focus on national prosecutions has advantages. First, it is easily the cheapest and most flexible option. The cost of prosecution before any international or “hybrid” tribunal will almost certainly exceed the cost of national trials. Further, trials in national court systems may require some assistance, but will not usually necessitate establishing new facilities from scratch. Second, national prosecutions work. Few pirates delivered into national criminal justice systems have been acquitted. Third, national prosecutions rely on stable and known evidentiary criteria and rules of procedure (as opposed to an international tribunal having to establish new rules). Fourth, as this process has been underway for some time prosecutors—especially in Kenya

<sup>80</sup> J Lang, “Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia”, 24 January 2011, UN Doc S/2011/30 (“Lang Report”)

<sup>81</sup> “Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts”, 21 June 2011, UN Doc S/2011/360 (“Modalities Report”)

<sup>82</sup> Lang Report, para 111; UNSG Report, para 110

<sup>83</sup> D Guilfoyle, “Counter-Piracy Law Enforcement and Human Rights”, 59 *International and Comparative Law Quarterly* (ICLQ) (2010) 141–169



and the Seychelles—have already developed significant experience prosecuting pirates within their own national systems. This experience may not translate easily into any newly created mechanism.

### 3. INTERNATIONAL ASSISTANCE

The UN Office on Drugs and Crime has taken the lead in assisting States conducting piracy prosecutions. This can take a number of forms, whether provided by the UNODC or other agencies:

- assistance in legislative reform to update statutory piracy offences;
- bringing prisons and remand centres up to international minimum standards (including measures to reduce overcrowding, such as conducting case reviews to identify and release those who have been on remand for longer than the maximum possible sentence that could be imposed if found guilty);
- refurbishment of court rooms;
- mentoring of regional prosecutors by experienced prosecutors from other jurisdictions, and
- assistance with the cost of witness attendance (I note this is often organised by capturing flag States and at least in some cases paid for by industry).

### 4. ALTERNATIVE PROSECUTION MECHANISMS

The other options that have been discussed are:

- an international tribunal (established either by UN Security Council Resolution, regional treaty or amendment of the statute of the International Criminal Court or the International Tribunal for the Law of the Sea);
- a “mixed” or “hybrid” tribunal established within a national legal systems but including international elements (such as some of the judges, prosecutors and court administrators being appointed by the UN);
- “dedicated piracy chambers plus”, being prosecution within a dedicated chamber of a national court exclusively set aside for piracy trials with the advantage (the “plus”) of international assistance short of direct participation (ie mentoring, training, assistance with infrastructure and trial costs, etc);
- “Somaliaization” in the form of conducting prosecutions before Somali national courts and incarceration of pirates convicted before Somali courts and elsewhere, and
- “Somaliaization” in the form of an extra-territorial dedicated Somali piracy court sitting in the territory of a third State, possibly Tanzania where the Lang report recommends the use of the facilities of the ICTR.

It must be noted that without a very high level of resources none of these options alone could involve “automaticity”: a commitment to take **all** piracy suspects captured. If the present prosecution rate is seen as too low—but has still resulted in 1,011 suspects being put on trial over three years—then any proposal for a single prosecution mechanism would have to anticipate taking a very high number of cases. In all likelihood, finite resources will dictate the pursuit of a number of options in parallel.

#### 4.1 *An international piracy tribunal*

This idea is no longer on the agenda, having failed to attract consensus in the Security Council or more widely. An international tribunal would hold out the possible advantage of simplicity: one forum, involving one set of rules, meeting all relevant human rights standards, to which all pirates could be sent. This advantage could only be achieved at a very high cost, if at all.

There is no present international tribunal that handles cases in the volume that piracy trials would require. Further, there is no uniform law of international criminal procedure—meaning there would be delays in establishing the applicable rules of evidence and procedure, and then further delays as those rules were tested (and appealed) in court. Paying international staff on UN rates to run a tribunal would also be more expensive than national prosecutions. Further, one central institution would likely not deliver the same capacity-building benefits for regional justice systems.

I note that neither the International Criminal Court (ICC) nor the International Tribunal for the Law of the Sea (ITLOS) presently has jurisdiction over piracy. Adding piracy to the jurisdiction of either institution would involve amending a major multilateral treaty or concluding an optional protocol—either is a long and complex undertaking, normally involving a lapse of years if it succeeds at all. ITLOS in particular would be poorly suited to the task: it is not a criminal court, it is staffed by judges not recruited for criminal law experience, and the court building has no facilities for prisoners. Giving the ICC jurisdiction over piracy would also be inconsistent with its mandate to prosecute those most responsible for the crimes of greatest concern to the international community (ie genocide, war crimes and crimes against humanity). Indeed, the Court **must** decline cases which are “not of sufficient gravity to justify further action by the Court”.<sup>84</sup> The ICC is geared to

<sup>84</sup> Art 17(1)(d), Rome Statute of the International Criminal Court 1998, 2187 UNTS 90

conduct a limited number of highly complex trials against high-ranking individuals. The characteristics of most piracy trials will be the exact opposite.

In theory, a piracy court could be established under a treaty by affected States. Given that such a court would only be able to exercise delegated national jurisdiction (ie it would be a pooling of the rights of jurisdiction each member could exercise individually), it is hard to see how this would be an improvement on national prosecutions. Further, a treaty would need to be negotiated, judges appointed, a headquarters found, and there would have to be agreement to fund it.

As noted, any type of international tribunal would not solve the issue of where convicted pirates would serve their sentences. It would simply shift the problem from national authorities to the tribunal.

#### 4.2 A “mixed” or “hybrid” tribunal

Such tribunals are established within a national legal system but involve a significant international component (usually in the form of a number of UN-appointed judges, prosecutors and perhaps administrative staff). Historically, such tribunals have only been successful to the extent the international community has been prepared to fund them. The Special Panels for Serious Crimes in East Timor, for example, were only able to prosecute 87 of 391 indicted suspects before being disbanded, largely due to insufficient resources.<sup>85</sup> Successful hybrids, such as Special Tribunal for Sierra Leone have required very considerable financial assistance.

It is not clear that this option would offer many unique advantages over others. Incorporating international legal staff or judges into a national court system may also require amendments to national law and will obviously require the consent of the host State. The consent issue is not minor. Outside of post-conflict situations, a potential host State may dislike the usual requirement for a majority of international judges on trial and appeal chambers in order to secure international minimum standards as it may imply local justice is sub-standard.

#### 4.3 “Dedicated piracy chambers plus” or a “regional piracy court/centre”

The idea of a specialised chamber or courtroom in a national system dealing exclusively with piracy cases but with international assistance (in terms of training, financing or other logistical support) has attracted some support.<sup>86</sup> A variant on the idea is that a national judicial system might act as a “regional piracy court”. That is, a State might accept a greater than usual number of piracy cases under the label of being a “regional piracy court” and receive appropriate international assistance to that end, but otherwise continue to function as it ordinarily would.

Neither model (if there is a difference between them) is necessarily significantly different to what is already occurring. A key question is whether any national court system has accepted (or would be prepared to accept) a sufficient volume of piracy cases to justify dedicating a permanent chamber to it.

It is quite clear, however, that no State is willing to automatically accept all piracy cases presented to it. Indeed, while willing to conduct trials, the Seychelles has made it clear it will be able to imprison only a few of the pirates that it convicts. This position follows from its limited 200-bed prison capacity and the physical difficulty (on a small island) of much expanding that capacity.

#### 4.4 “Somaliaization”: national prosecutions and incarceration within Somalia

It is clearly desirable that Somalia prosecutes and imprisons more of its own nationals suspected and convicted of piracy. This would hopefully have advantages of local legitimacy and “messaging”, and it is generally considered desirable that convicted persons serve their sentence as close to their family and community as possible.

This may not, however, be an immediate option even in the relatively stable areas of Somaliland and Puntland. First, judicial capacity in both regions is low. The Lang Report notes there are few judges in Somaliland (120 judges) and Puntland (76 judges) and that only 5% of them are legally trained; the Modalities Report refers to a further 20 legally trained judges in Mogadishu.<sup>87</sup> The Modalities Report also estimates it will require three years of capacity building before trials in Somalia meet international standards.<sup>88</sup> It has been suggested that recruiting lawyers from the Somali diaspora could help ease this capacity gap. Second, piracy laws in Somalia are also assessed as being “critically out of date, containing numerous inconsistencies

<sup>85</sup> S Ratner, J Abrams, And J Bischoff, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (3rd ed, Oxford: Oxford University Press, 2009), 248–9; and compare S De Bertodano, “East Timor: Trials and Tribulations” in C Romano, A Nollkaemper and J Kleffner (eds), *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford: Oxford University Press, 2004), 79–97 at 86–92.

<sup>86</sup> Contact Group on Piracy off the Coast of Somalia Working Group 2, “Chairman’s Conclusions: 4th Meeting of Working Group 2 on Legal Issues”, 26–27 November 2009, available online at [http://www.marad.dot.gov/documents/WG2-4th\\_Meeting\\_chair-conclusions-November\\_26-27-2009-mtg.pdf](http://www.marad.dot.gov/documents/WG2-4th_Meeting_chair-conclusions-November_26-27-2009-mtg.pdf).

<sup>87</sup> Lang Report, para. 116; Modalities Report, Annex III, para 6; see also “Report of the Secretary-General on Somalia”, UN Doc. S/2011/277, 28 April 2011, paras 21, 81–83 (on nine-month training programs being provided by the UNDP to Somaliland and Puntland judges).

<sup>88</sup> Modalities Report, para 38

and deficiencies”.<sup>89</sup> Third, while there is a 1,000 bed prison-building program on the agenda, it will take two years through and can only go ahead if UNODC secures sufficient funding.<sup>90</sup>

#### 4.5 “Somaliazation”: an extra-territorial Somali court

This is one of the Lang Report’s preferred options. The only comparable institution in international legal history was the Lockerbie court: a Scottish court, sitting in the Netherlands to try Libyan nationals. Its creation was complex and expensive. Many of a court’s incidental powers—summoning evidence, ordering persons arrested for contempt, etc—are direct exercises of sovereignty and would require the conclusion of a treaty to allow their exercise in foreign territory. In the Somali case, apart from the problems of lack of spare judicial capacity to staff such a court and the necessary law reform, it is not clear such a court could sit outside Somalia without amending the Somali constitution first.

Further, all levels of Somali government are unanimous in their opposition to: an extra-territorial court; dedicated “piracy only” courts in Somalia; or a “hybrid” court in Somalia with international judges sitting in Somalia on piracy cases.<sup>91</sup> They are all, however, supportive of judicial and rule of law capacity building which could be used for a greater number of piracy trials. Without Somali support, the extra-territorial court option is clearly—all other legal problems aside—unworkable. One should also note that Somaliland has generally expressed willingness only to prosecute or incarcerate pirates who are from that region.

### 5. PROSECUTING THE FINANCIERS AND “PIRATE BOSSES”

It is worth noting briefly that the Modalities Report suggest that the consultations conducted by the UN Office of Legal Affairs:

“suggest that the identities of key leaders of pirate networks and their locations and political connections are widely known. Many of them are reportedly within Somalia. Further, the consultations indicate that increased attention to the investigation and prosecution of the relatively small number of individuals who provide the leadership and financial management of piracy may be both a strategically effective and a cost-effective means of supplementing the current prosecution efforts. Those consulted recognized that more sophisticated investigative, prosecutorial and judicial expertise was needed for these more complex crimes.”<sup>92</sup>

The obvious difficulty is that if such persons are largely located in Somalia, that territorial jurisdiction obviously lacks the expertise needed to prosecute them.

### 6. CONCLUSIONS

There is no easy, one-size-fits all solution to prosecuting Somali pirates. A central judicial institution tasked with prosecuting any and all piracy cases sent to it would be embarking on a challenging experiment: an open-ended commitment to prosecute more individual suspects than any internationally-established or funded institution ever has. Wide political support for such an expensive undertaking is not readily apparent. In my assessment, the only realistic option is prosecution before a variety of national courts—including, where possible—prisoner transfer mechanisms to send as many as possible convicted pirates to Somalia to serve their sentences. While it may seem counter-intuitive that a decentralised system of prosecution is preferable to a single central institution, it would certainly be cheaper and any central institution could not of itself solve the problem of where to detain those convicted.

My personal view is that the looming bottleneck in prosecuting Somali pirates is prison beds. If it is thought we should send more convicted pirates home to serve sentences in Somalia, then adding 1,000 prison beds to Somalia’s capacity will be enough for about three years at present rates of detention. If the view is we should prosecute *more* pirates, then these prison places could well be over-subscribed before they are built.

If the view is taken that the only thing that usually successfully represses criminality is development of a strong local rule of law culture and infrastructure, then continued assistance to Puntland and Somaliland is required. Indeed, on an optimistic view, training and support to prosecutors, judges, police forces and custodial services initially targeted at the narrow problem of piracy may have wider beneficial effects on rule of law capacity building.

4 July 2011

<sup>89</sup> Modalities Report, para 14

<sup>90</sup> *Ibid*, paras 29 and 38

<sup>91</sup> *Ibid*, paras 52–55 (including suggestions that the only option envisaged in consultation with Mr Lang was “Strengthening existing court structures” within Somalia).

<sup>92</sup> *Ibid*, para 64

## Written evidence from Nautilus International

### 1. INTRODUCTION

- Nautilus International is the trade union and professional organisation representing almost 23,000 shipmasters, officers, cadets, ratings and other maritime professional staff working at sea and ashore.
- The Union welcomes the Committee’s decision to conduct an inquiry into the problem of piracy off Somalia. The threat facing merchant seafarers has grown dramatically in recent times, and a number of our members have been attacked, held hostage or otherwise involved in incidents.
- Nautilus believes that piracy has not attracted the political attention it deserves and that responses to the problem are often inadequate or mis-directed.
- In particular, Nautilus has serious concerns about key aspects of the issues under consideration by this inquiry—namely the inadequacy of international and domestic law and jurisdiction, shortcomings in coordination at the international level, particularly the UN, unease about policy on the payment of ransoms, and future of alarm at the UK naval involvement in EU, NATO and other anti-piracy operations.

### 2. THE PROBLEM

2.1 Nautilus has been concerned about the problem of modern-day piracy and armed attacks on shipping for more than 30 years. In its current form, piracy emerged as a significant threat to seafarers during the late 1970s and by 1983 it had become so serious that the International Maritime Organisation commissioned a report into the incidence of piracy and armed robbery on merchant ships. Since that time, the number of our members that have been killed, injured, held hostage or threatened has run into the hundreds—and the toll amongst the world seafarer population is many, many times greater.

2.2 There is no shortage of statistics to underline the scale of the problem and Nautilus is confident that the committee will be presented with considerable evidence to show the way in which it has deteriorated over the past two years in particular. The most recently released statistics show that 62 seafarers have died in the past four years as a direct result of piracy in the Gulf of Aden and Indian Ocean. In the same period, more than 3,500 have been kidnapped and held hostage and in recent months there has been increasing evidence of escalating violence and intimidation of kidnapped crews—including cases in which they have been tortured, used as human shields, or forced to operate their vessel as a pirate “mother ship”.

2.3 For merchant seafarers, the problem of piracy is not simply confined to the immediate threat of attack and kidnap but also to health, safety and general welfare. Merchant seafarers are civilian personnel, responsible for the safe and efficient transport of more than 90% of world trade, but they have become increasingly exposed to unacceptable risks of attack. In turn, this creates serious psychological problems of stress and anxiety for serving seafarers and their families at home. At any one time, there are more than 100,000 seafarers either preparing to go through the high-risk area or actually transiting these waters.

2.4 Nautilus is also concerned that the increasing risk of attack is having a profoundly adverse impact on seafarer recruitment and retention, at a time of growing national and international shortages of skilled and experienced maritime professionals. Research amongst our members showed that more than one in 10 considered the threat of an attack to have a significant impact on their feelings about working at sea, whilst 88% said they were concerned about the potential threat of a terrorist attack on their ships.

2.5 Whilst this inquiry is focussed on the problem off Somalia, Nautilus wishes to stress the global nature of piracy. Over the past 18 months, Somalia has accounted for around 60% of all attacks—with significant numbers occurring off West Africa, in the Far East and South America. The global nature of the phenomenon adds to the pernicious impact of piracy on the psychological wellbeing of our members.

2.6 It is also important to note that pirate attacks are not only a threat to the safety of seafarers, but also to the marine environment. With a massive escalation in the nature of weapons being used in attacks, there is a growing risk of an incident in which a ship carrying dangerous cargo—such as oil or chemicals—will suffer serious damage that could lead to pollution, loss of life or environmental devastation.

2.7 Nautilus is also concerned that the spread of piracy and the apparent ease with which very large vessels with valuable cargoes can be overcome serves as an effective advertisement to terrorists and criminals and raises serious wider questions about the security of shipping and global supply chains. As we warned the House of Commons transport committee in 2006, the long-term implications of continued failure to check the global spread of piracy and armed attacks on ships engaged in peaceful commercial trade presents profound implications.

### 3. THE ADEQUACY OF INTERNATIONAL AND DOMESTIC LAW AND JURISDICTION

3.1 Nautilus believes that the growth of the piracy phenomenon over the past three decades has been met with a wholly inadequate and complacent response by flag states, coastal states, shipowners and relevant authorities. Despite the steady and marked deterioration in the problem and disturbing associated “security”

incidents, such as the attack on the French tanker *Limburg* off Yemen in 2002, the legal and regulatory reactions have been slow and generally ineffective.

3.2 Nautilus has raised repeated concerns about shortcomings in the International Ship and Port facilities Security Code, which was drawn up following the 9/11 attacks. Whilst the Code has certainly improved matters, Research among members shows widespread concern about the lack of adequate crewing levels to fulfil the associated shipboard requirements. Our survey showed that whilst almost 60% considered that the ISPS Code has improved security on ships and in ports—a significant number noted wide variations in the standards. A further 55% considered that the post of shipboard security officer is a valuable one—although many warned that it had been seriously devalued by being a delegated position rather than a dedicated one. Asked what measures would be most effective in improving security and reducing the risk of attack, almost two-thirds pointed to increased manning. One officer commented: “People can’t be security patrollers and do their proper jobs as well.”

3.3 It should be noted that whilst the internationally-agreed best management practices include advice for proactive lookouts, there is no specific associated requirement for additional crews to conduct such duties and to deploy recommended systems such as deck lighting, netting, razor wire, electrical fencing, fire hoses, and surveillance and detection equipment.

3.4 Nautilus believes it is essential that flag states and shipowners should recognise the considerable additional workload demands associated with the ISPS Code and the post of ship security officer (as well as the extra duties arising from application of Best Management Practices). Neither the Code, nor the international regulations for the safe manning of ships, nor the UK’s “M. Notice” on reducing the risk of attack, properly reflect the impact on work and rest hours created by shipboard security duties and Nautilus believes this has an adverse impact on the health and safety of seafarers, as well as on the practical application of effective measures onboard. We consider that there is a clear case for regulation that would improve crewing levels to ensure that increased onboard security requirements, such as extra lookouts and deck patrols, can be effectively complied with.

3.5 Several United Nations instruments address the problem of piracy, including the Convention on the Law of the Sea and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA). Nautilus is concerned at the lack of widespread international support for the 1988 SUA Convention. Drawn up in response to the terrorist attack on the passengership *Achille Lauro* in 1985, the convention entered into force in 1992 and gives states the ability to take appropriate action against those who could be judged to be in breach of the convention by, for example, hijacking vessels, committing acts of violence against seafarers, or using arms onboard merchant ships. The 2005 SUA Protocol has 20 ratifications, representing 30% of the world fleet and entered into force on 28 July 2010. The convention can do much to bridge many of the jurisdictional gaps inherent in the transnational crimes involved in attacks on merchant ships and their crews and Nautilus believes its effectiveness could be increased by further ratifications—not least by countries in the regions where piracy is a particular problem.

3.6 Nautilus believes that the international nature of the crime of piracy and/or attacks on merchant shipping, combined with the globalised nature of the industry itself, creates immense jurisdictional problems. More than 50% of our UK-resident members work onboard non-UK registered ships and therefore frequently fall outwith domestic regulation. This can create complex questions—for example, in determining whether the presence of one or two British seafarers onboard a foreign-owned, foreign-registered ship is of significance in determining a Royal Naval response to incidents. Similarly, the complex and opaque operating structures of much of the industry—such as flags of convenience and “brassplate” shell companies that have no genuine link to the country of vessel ownership and the nationality of the crew—help to erode accountability and responsibility and generate extremely difficult complexities from the jurisdictional perspective. Diplomatic sensitivities and concerns over national sovereignty often provide obstacles to cooperation between relevant authorities or at regional and international level, whilst many governments lack adequate laws and judicial capacity to effectively prosecute suspected pirates. Although the establishment of bilateral agreements by the UK, the EU, the US and others with governments in the high-risk piracy region has helped to ease procedures for detention, transfer, and prosecution of captured pirate suspects, there are still clear shortcomings in the processes.

#### 4. COORDINATION AT THE INTERNATIONAL LEVEL, PARTICULARLY THE UN

4.1 As mentioned above, Nautilus believes the international community was far too slow in responding to the threat of piracy in a coordinated and concerted manner. It was not until late 2008 that the US deployed naval assets with the dedicated task of combating piracy in the region, and NATO began its Operation Ocean Shield mission against piracy and the European Union launched its EU Navfor Operation Atalanta.

4.2 Nautilus has strongly supported the deployment of naval forces into the high-risk areas and believes their presence has done much to deter and disrupt the threat of attacks on merchant ships. However, we continue to be concerned that whilst the level of coordination amongst military forces providing protection to shipping is extremely good, it falls short of what could be achieved under a single unitary command structure. As well as EU Navfor, NATO and CTF-151, a number of other countries—including Malaysia, Japan, Russia, China, and India—have deployed naval units in the area that are not party to formal naval operation coordination efforts. At present ships operate under different “rules of engagement”, which prevents a consistent

response to pirates when they are caught in the act. United Nations Resolutions, which reiterate governments' authority to act, have been interpreted differently by the various nations that have warships in the area.

4.3 Nautilus is concerned at the significant spread of piracy far beyond Somali waters and well into the Indian Ocean and strategically and economically significant waterways. This has made effective policing of vast ocean areas even more difficult and Nautilus believes that there needs to be a clear UN resolution that would support the use of more direct intervention to proactively tackle the problem. We have proposed the idea of "blockading" pirate ports, rather than trying to catch them in the open ocean. We also consider that clearer and more coordinated processes for bringing captured pirates to justice could be put in place.

4.4 Nautilus believes that authority for such action exists under the United Nations Security Council Resolution 1816 (June 2008) which gave authority for states 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". Resolution 1851 expanded this mandate further by authorising states to "undertake all necessary measures that are appropriate in Somalia for the purpose of suppressing acts of piracy and armed robbery at sea".

4.5 Nautilus is concerned that the sometimes fragmented approach to policing piracy and the spread of attacks across the Indian Ocean has generated increased pressure for the shipping industry to adopt "self-help" measures including the use of private security teams. Again, the adequacy of national and international regulation has been severely tested—lagging far behind the "on the ground" deployment of armed guards on vessels and creating jurisdictional and practical problems for operators and crews. There continue to be grave unanswered questions about liability and responsibility associated with the use of weapons onboard merchant ships.

4.6 Nautilus believes that high-risk areas need to be made safe and that appropriate measures must be taken to ensure seafarers can carry out their duties in an environment in which the protection of their safety is paramount. Any measures that are taken should be assessed against the straightforward criteria, do they improve the safety of seafarers or not? If they do and there is evidence to prove they do, then Nautilus will support those measures. However, any measures that are likely to pose an additional threat to our members' wellbeing will not have our support.

4.7 Our preference would be for military VPDs (Vessel Protection Detachments). This would ensure there are no concerns regarding training and authority, and we believe this would be cost-effective and provide direct protection to merchant vessels. We understand that such deployments are under consideration by other EU nations, including the Netherlands, Germany and Norway.

4.8 We also believe there should be absolute clarity on the type of weapons private security guards can use. In discussing the UK's proposed guidelines, it was initially unclear what would be permitted. Nautilus also believes that whilst the industry and regulators have put the focus on armed guards onboard ships, there is still significant room for consideration of other, more passive yet highly effective, forms of defence against piracy and armed attacks.

4.9 In the case of armed private security guards, Nautilus believes that they can contribute to increased safety, but only in very limited and clearly defined circumstances. For example, their use:

- should not compromise the right seafarers have not to sail into high-risk areas defined by the agreements currently in place through the UK's Warlike Operations Area Committee and between the International Transport Workers' Federation and shipowners' bodies who are party to the International Bargaining Forum's framework collective bargaining agreement;
- should be associated with agreed clear lines of responsibility that would include written rules of engagement which are clearly understood by the master and the armed guards, a written procedure for the control of weapons and ammunition when in and out of piracy waters and on entry to territorial waters of port states to be visited, and flag state laws to protect and indemnify the Master and seafarers from prosecution;
- must not remove the obligation of ships to operate the Best Management Practices that have been agreed on an international basis across the shipping industry;
- must not remove the necessity to ensure citadel arrangements are in place should a vessel be boarded by pirates;
- should be covered by a system of external accreditation agreed by stakeholders in the maritime industry to ensure armed guards operate to the very highest standards. Such accreditation must relate to the requirements of maritime security and the specific nature of ships and shipping, and
- should be conditional upon the clarification of insurance and P&I arrangements covering the crew so that seafarers do not lose the protection that is afforded in the event of death or injury.

4.10 We believe the risks of allowing the use of armed guards are significant; hence the need to ensure the above criteria is applied in full. Nautilus is concerned that whilst there are some clear benefits in using armed guards, there is also a risk that this will increase the overall threat level—both in terms of an escalation of

violence and the utilisation of weapons, and also in the potential for vessels to be selected for attack on the basis that they do not carry armed guards (for example, LNG carriers and oil tankers). The use of armed guards therefore needs to be closely monitored and if there is evidence that the overall level of danger has increased, mechanisms must be in place to urgently review the situation.

## 5. CONSULAR ASSISTANCE, INCLUDING THE UK'S POLICY ON THE PAYMENT OF RANSOMS

5.1 Nautilus International has consistently expressed serious concerns over statements made by UK government ministers on the subject of ransom payments. This concern has been exacerbated by the so-called New York declaration, supported by the US and some major flag states.

5.2 There is no dispute that the number of crew members held for ransom has risen sharply and that ransom demands are much higher than they were even one year ago. Ministers appear to have accepted that, in most cases, negotiations on ransom payments are made between pirates and the shipping company affected, and not necessarily the countries of origin of the hostages or the flag state of the ship. However, there have been repeated statements that the UK will “not make substantive concessions to hostage-takers” and would even seek to dissuade or prevent shipowners from paying ransoms to secure the release of hijacked ships and their crews.

5.3 Nautilus fears that any attempt to make the payment of ransoms illegal would jeopardise the safety of seafarers held captive. We believe pirates will carry through threats to kill and/or cause environmental damage if they are not paid—a concern that would appear to be justified in the wake of the escalation of violent attacks in recent months.

5.4 Whilst we have received more recent assurances that, despite the UK's long-standing policy of opposition to paying ransoms, the government recognises the legitimate concerns of the shipping industry, and will continue to take these into account in its ongoing deliberation on this issue and related discussions with our international partners. Nevertheless, Nautilus remains concerned about the government's position—and the potential for future restrictions on ransom payments were a link to terrorism be shown to exist. At no stage has any minister provided us with the requested assurances or information on what the alternative to non-payment of ransoms would be.

## 6. FCO SUPPORT FOR ANTI-PIRACY PROJECTS ON LAND IN SOMALIA

6.1 There is widespread consensus on the fact that the long-term solution to Somali piracy lies ashore. There can be no doubt that the dysfunctional nature of Somalia and the absence of an effective rule of law in the country has helped to fuel the growth of piracy and provided relative freedom of action for the gangs that attack merchant shipping. Nautilus has therefore welcomed UK government assurances that efforts to secure a land-based solution to the problem are being intensified. We hope that these efforts can be maintained and levels of assistance and relief programmes can be protected at a time of immense pressure on government spending.

## 7. UK NAVAL INVOLVEMENT IN EU, NATO AND OTHER ANTI-PIRACY OPERATIONS

7.1 Nautilus has warmly welcomed and supported the UK's involvement in naval operations to combat piracy. However, we are gravely concerned at the impact of the cutbacks flowing from the Strategic Defence and Security Review (SDSR) will have a seriously adverse impact upon the important contribution made by the Royal Navy and Royal Fleet Auxiliary. Even before these fleet and manpower reductions were made, concerns had been raised about the capability shortfalls—not least what had been identified as “insufficient” tanker support to enable vessels in the Atalanta, NATO and CTF forces to refuel in mid-ocean.

## 8. SUMMARY

- Nautilus International has serious concerns about the way in which piracy and armed attacks on merchant shipping adversely affects the health, safety and welfare of merchant seafarers.
- Nautilus believes the growth of piracy also presents potentially catastrophic consequences for the security of world trade and the environment.
- Contemporary piracy has been a growing problem for more than 30 years, and the response from governments has been slow, complacent and largely inadequate.
- Attacks are not only increasing in number, but also in their intensity and the levels of violence and intimidation being used against seafarers.
- The regulatory response has failed to encompass “human element” issues and the negative impact of additional security duties on the stress and workload experienced by seafarers.
- The regulatory response has lagged behind actual developments and is further complicated by the multinational nature of the maritime industry and the abuse of multiple jurisdictions
- The deployment of various naval forces has been welcome, and has clearly prevented many hijackings. However, there is considerable scope for improvements in coordination and rules of engagement.

- Nautilus is concerned that defence spending cuts are having a negative impact on the RN and RFA contribution to counter-piracy operations.
- Nautilus is disturbed at the way in which Somali piracy has shifted focus from the Gulf of Aden to the wider area in the east coast of Somalia and Indian Ocean—increasing the “policing” problems and suggesting a need for a different and proactive strategy to counter piracy.
- Nautilus is concerned at repeated ministerial objections to the payment of ransoms and remains concerned at the potential for payments to be blocked, further jeopardising the health and safety of seafarers
- Nautilus believes the UK government must protect assistance programmes in Somalia to support work to secure a long-term solution to the factors that give rise to piracy.

Finally, Nautilus wishes to draw the committee’s attention to the need for urgent and effective action to tackle this problem. The following is a statement adopted last week by union delegates attending the International Transport Workers’ Federation Seafarers’ Section meeting in Argentina. This makes it clear that there is a very real possibility of the ITF calling for a boycott of the high-risk area, with serious consequences for world trade and the UK economy. Unless governments and major flag states take effective action to stop piracy, Nautilus believes that the ITF has no other option than to advise its affiliated seafarer unions that it is not safe for their members to proceed into the high-risk area:

**International Transport Workers’ Federation**

**Seafarers’ Section Meeting**

**Buenos Aires, 13–14 June 2011**

**Motion on Somali Piracy**

The Seafarer Affiliates of the ITF gathered in Buenos Aires, 13–14 June 2011, having had a full and wide ranging debate about the current situation in the pirate infested waters off the Somali coast, Indian Ocean, Arabian Sea and Gulf of Aden (“the area”), including two leading industry speakers from the field of maritime security and intelligence.

NOTE that the situation has reached levels which ITF Seafarer affiliates cannot tolerate any longer.

BELIEVE that the time has come to make a determined stand against the scourge of Somali piracy.

NOTE also that thousands of seafarers have been subjected to gunfire, beatings, confinement, *and* in some cases torture and murder. In 2010 alone, 4,185 seafarers were attacked, 1,090 were held hostage for many months and currently approximately 19 vessels and 411 crew are being held captive.

RECALL that, despite the violent nature of these crimes against seafarers, the human cost of piracy is underreported and not known by the public.

BELIEVE that unless action against these maritime thugs is taken now the problem is going to escalate and spread to other parts of the world.

BELIEVE also that no seafarer should have to risk their lives for their job.

CONCLUDE and condemn that some governments appear to have accepted that a certain level of piracy can be tolerated.

DETERMINE that unless Governments including Flag States redouble their efforts to eradicate the problem of Somali piracy, the ITF Seafarer Affiliates believe the moment is fast approaching when we can no longer accept the increased risk and unsafe situation for our members to sail in the area.

CALLS on all the ITF and its Seafarer Affiliates to intensify their efforts in support of the campaign to stop piracy and stand ready to support the call for seafarers to refuse to sail into the area.

THEREFORE resolves to establish a high level strategic planning task force to begin as a matter of urgency the necessary planning to implement the call to refuse to sail into the area.

27 June 2011

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## Written evidence from the Baltic Exchange

### SUMMARY

The Baltic Exchange makes the following recommendations:

- HMG should develop an overarching counter-piracy strategy across government departments;
- HMG should clarify aspects of international and domestic law and jurisdiction that remain unclear and which, until clarified, will continue to frustrate effective action;
- HMG should support, encourage and facilitate the prosecution of prisoners, both in the UK and in other nations by agreement;
- HMG should clarify and strengthen rules of engagement against pirate vessels to enable UK actions against pirate vessels to be as effective as actions by other nations;
- HMG should work to standardise rules in international ports regarding the legal transportation of armed guards to and from vessels to facilitate the more frequent use of armed guards;
- HMG should prioritise international actions at the OECD and elsewhere to remove financial incentives for piracy;
- The UK's policy on the payment of ransoms should remain unchanged, and
- UK naval involvement in EU, NATO and other anti-piracy operations should give priority to targeting the new tactic of using captured merchant vessels as mother-ships.

### 1. THE BALTIC EXCHANGE

1.1 The Baltic Exchange welcomes the Foreign Affairs Select Committee's timely inquiry into the role of the FCO in support of UK and international action to combat the increasing levels of piracy off the coast of Somalia.

1.2 The Baltic Exchange is a membership organisation at the heart of the global maritime marketplace. We provide independent daily shipping market information, maintain professional ship-broking standards and resolve disputes. We have a total membership of nearly 600 companies and more than 2,000 individuals. Approximately 400 Baltic member companies are based in the UK. Membership of the Baltic Exchange is not just limited to shipbrokers, charterers and ship-owners, but also includes financial institutions, maritime lawyers, insurers, educators and related professional services associations.

1.3 The Baltic Exchange is headquartered in London with a regional office in Singapore. Baltic Exchange members are central to world trade, arranging for the ocean transportation of industrial bulk commodities from producer to end user. The bulk freight market relies on the co-operation of shipbrokers, ship-owners and charterers, as well as supporting professional services in the City of London, to ensure the free flow of international trade.

1.4 The Baltic Exchange represents the interests of its members on specific policy issues to governments and NGOs around the world, but recognising the historic location of much of the Baltic's member base in the UK, it is particularly focused on raising awareness of the value of shipping to the UK economy and encouraging the maintenance of the competitiveness of the UK as a location for the international shipping industry.

### 2. THE UK GOVERNMENT AND PIRACY OFF THE COAST OF SOMALIA

2.1 There are three aspects to any Governmental strategy to reduce piracy. The first is to take effective measures to protect ships and to bring those committing piracy to justice. The second is to remove the financial incentives for piracy. The third is to institute a long-term programme to bring order to Somalia, re-institute the rule of law and remove the economic incentives for Somalis to take to piracy. This submission will focus on the first and second of these aspects.

2.2 Given the particular importance of the global maritime industry to the UK economy, combating piracy should be a major priority for the UK Government. The UK sits at the centre of the global shipping trade. A report by Oxford Economics (commissioned by Maritime UK) recently calculated that the total contribution of the maritime services sector to the UK economy (including direct, indirect and induced impacts) stands at £26.5 billion or 1.8% of GDP.<sup>93</sup> Aside from direct shipping interests, the maritime sector constitutes a major component of the UK insurance, banking and legal sectors. Whilst the number of ships travelling through the Gulf of Aden under a British flag is relatively low compared to other nations, a very large proportion of ships travelling that route are insured in the UK, regardless of their nationality. The cost of ransoms to insurers per year is currently estimated at \$350 million per year.<sup>94</sup> The global indirect economic cost of piracy has been estimated as being between \$8 billion and \$12 billion<sup>95</sup> and the UK will account for a sizeable portion of that figure. Piracy is therefore very much a British problem.

<sup>93</sup> Oxford Economics, April 2011—"The economic impact of the UK's Maritime Services Sector" <http://www.maritimeuk.org/Content/Resources/Maritime%20UK%20statistics.pdf>

<sup>94</sup> One Earth Future, December 2010—"The Economic Cost of Maritime Piracy": [http://www.oneearthfuture.org/index.php?id=120&pid=37&page=Cost\\_of\\_Piracy](http://www.oneearthfuture.org/index.php?id=120&pid=37&page=Cost_of_Piracy)

<sup>95</sup> *Ibid.*

2.3 Because of the complexity of the problem of piracy and the potential impact across the UK economy, it is difficult to isolate the role of a particular department in terms of its contribution to the Government's approach to the problem. The matter is further complicated by the lack of a coherent cross-Governmental strategy on Piracy. Whilst the three principal departments engaged in combating piracy (the Foreign Office, the Ministry of Defence and the Department for Transport) have seemed to work together relatively well on this issue, the omission of a clear, single and transparent strategy suggests an absence of joined-up thinking across departments. A single strategy is necessary to draw together the many strands of this immensely complicated problem, to clarify the role of each interested party and to renew confidence in the Government's approach to tackling piracy amongst the shipping community.

2.4 Matters pertaining to the shipping industry are generally regarded as being the preserve of the Department for Transport. However, given that UK shipping is only one of a number of sectors affected by piracy and given the international dimension of the problem, in this instance it might be most efficient to appoint the FCO to act as the lead department in coordinating a cross-Government strategy. We consider the creation of such a strategy to be absolutely essential.

### 3. THE ADEQUACY OF INTERNATIONAL AND DOMESTIC LAW AND JURISDICTION

3.1 There are a number of areas in which restrictions on UK military activity as a consequence of vagaries around domestic and international law and legal jurisdiction severely limit the ability of UK authorities to act in a manner which might deter future pirate attacks. Specific areas for action include:

- (1) removing prisoners to the UK for prosecution;
- (2) rules of engagement against pirate vessels, and
- (3) inconsistent rules in international ports regarding the legal transportation of armed guards to and from vessels.

#### *Removing prisoners to the UK for prosecution*

3.2 Irrespective of the cost involved and any effort by pirates to resist prosecution, no captured pirate should be set free without having first felt the full force of the law. However, no pirate or pirate leader has yet been removed to the UK for the purpose of prosecution for their crimes. Indeed, the UK has gained a degree of notoriety within the international shipping community for its failure to prosecute those caught red-handed in the act of piracy. Once captured, pirates caught by UK forces are widely perceived simply to receive sustenance and medical assistance before being returned to the mainland unmolested. Seventeen countries (including France, Germany, Spain and the United States) placed more than 850 pirates on trial in the 12 months prior to April 2011.<sup>96</sup> Prosecution would send an important deterrent message back to Somalia that an additional risk exists of arrest and detention. Whilst the UK has hitherto relied on agreements with other nations (Kenya particularly) to prosecute those accused of piracy, Baltic Exchange members believe that the United Kingdom should directly contribute to the creation of that deterrent factor as effectively as other countries are doing so already.

#### *Rules of engagement against pirate vessels*

3.3 Other nations (in particular Russia, India and China) have taken a particularly uncompromising line against pirate vessels. The UK, by contrast, has taken a more cautious line. Whilst the number of incidences of pirate attacks have increased over the past 12 months, there is a great deal of anecdotal evidence which suggests that the number of attacks against ships visibly under the control of more uncompromising nations has shrunk. There is no discernible difference between the ships of one nation or another, bar their national association (flag, name or ownership)—Russian ships are not, for example, necessarily better defended. Whilst pirate attacks are opportunistic by nature, it is clear that there is a correlation between the nature of a nation's military reaction to the pirate threat and the likelihood of concerted attacks against ships under that nation's flag. The Foreign Office should work in concert with the Ministry of Defence to review the legal framework and the rules of engagement of UK naval forces to effect, where possible, a more aggressive approach by the Navy to piracy.

#### *Inconsistent rules in international ports regarding the legal transportation of armed guards to and from vessels*

3.4 The use of armed guards on ships remains a live issue, both in the UK and internationally. The International Maritime Organisation (IMO) endorsed the use of armed guards on ships in appropriate circumstances and published interim guidance for their use in May 2011.<sup>97</sup> This guidance rightly stipulates that the use of armed guards should not be considered as an alternative to the use of Best Management Practice (BMP). All members of the International Chamber of Shipping are required to comply with BMP, which constitutes a range of non-lethal ship self-protection measures to deter or delay acts of piracy. These include the employment of razor wire, electrified barriers, anti-climb paint and water sprays. Statistics show that a ship that is fully compliant with BMP is most unlikely to be subject to a successful attack. That said, even with the

<sup>96</sup> [http://azstarnet.com/news/world/article\\_f41879d9-31dd-5891-bf00-1c5ea88bda54.html](http://azstarnet.com/news/world/article_f41879d9-31dd-5891-bf00-1c5ea88bda54.html)

<sup>97</sup> <http://www.imo.org/MediaCentre/PressBriefings/Pages/27-MS-C-89-piracy.aspx>

use of BMP, there remain ships which are very vulnerable to attack (eg those with low freeboard and steaming speed). In these circumstances the use of armed guards is appropriate.

3.5 The UK Government, led by the Department for Transport, is currently working on proposals to clarify the legal position of armed guards on-board British-registered ships.

3.6 The biggest barrier to the use of armed guards on board ships exists not in British law, but in the inconsistency in the stance taken by individual ports with regard to weapons on board vessels. South African ports, for example, have taken a particularly hard line against weapons on board ships. This raises questions about how armed guards can legally be transferred on to ships in South African ports and away from ships seeking to dock there. There is anecdotal evidence of ships taking armed guards on board for journeys through the Gulf of Aden which subsequently have to dump weapons overboard prior to landing in a port hostile to the principle of weapons being carried on board ships. The shipping industry therefore finds itself in the unfortunate position of not being allowed to adequately protect itself. There needs to be greater clarity and consistency internationally on the use of armed guards on board ships to facilitate their employment under the appropriate licensing safeguards.

#### 4. UK NAVAL INVOLVEMENT IN EU, NATO AND OTHER ANTI-PIRACY OPERATIONS

4.1 The Foreign Office has played an admirable role thus far in leading the international response to the scourge of piracy. In particular, the FCO played a pivotal role in the founding of EU NAVFOR.

4.2 The FCO should use its international leadership position to effect a change in strategy to target the use of captured merchant vessels as pirate mother-ships. This has been a very significant development in the last year and has resulted in a marked escalation in the number of pirate attacks. The use of mother-ships has also given the pirates an unlimited range of operation meaning that attacks by Somali-based pirates are no longer restricted to the Gulf of Aden. As a consequence, some Baltic Exchange members have had cause to extend the zone where they consider their vessels to be under threat to 1,400 miles around the region. The use of mother-ships also makes pirate operations “weather-proof” as they are able to provide shelter to pirate skiffs. As the monsoon season approaches pirate attacks would normally abate. This year, for the first time, there has been no reduction in the number of attacks as a consequence of seasonal change.

4.3 No apparent strategy currently exists for disabling mother-ships. The creation of such a strategy is essential to stemming the increase in piracy and limiting the regional contagion of an increase in the range of piratical operations. Such a switch in targeting should not require a major escalation in the commitment of military forces.

#### 5. CONSULAR ASSISTANCE, INCLUDING THE UK’S POLICY ON THE PAYMENT OF RANSOMS

5.1 The UK’s policy on the payment of ransoms should remain unchanged. The payment of ransoms is generally the only option for retrieving ships, their crew and their cargo. Removing this ability would threaten the well-being of crews unnecessarily.

#### 6. CO-ORDINATION AT THE INTERNATIONAL LEVEL

6.1 The FCO has played a key role in the coordination of anti-piracy activity at an international level. The FCO’s Chairmanship (in the person of Chris Holtby) of Working Group 1 of the international Contact Group on Piracy off the Coast of Somalia has been important in coordinating international activity. This will hopefully continue following Mr Holtby’s scheduled departure from his role.

6.2 HMG should prioritise international actions to remove financial incentives for piracy. Restricting the use of ransom money would contribute in this regard. The OECD is purported to have a work-stream on money-laundering and the proceeds of piracy. However, the level of activity and the degree of progress being made are unclear. Indeed, there has been little sign of any significant output. Progress in this regard would therefore be welcome.

27 June 2011

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### Written evidence from BCB International Ltd

#### SUMMARY

- Industry Best Management Practice (BMP) is not currently meeting the perceived needs of the merchant fleet as evidenced by the increasing calls for the use of armed personnel on board merchant vessels.
- Military Naval support is effective on a local scale but not on a regional scale and there are insufficient resources in military terms to attempt to cover the vast geographical operating environment.
- The perceived vulnerability of the merchant fleet may act as encouragement to others considering acts of piracy or, more concerning, as potential targets for acts of terrorism.

- The use of armed personnel is fraught with difficulties in terms of C2 and legality and runs the risk of militarising the merchant fleet with no proper standards or regulations in place. Equally the provision of armed personnel carries with it the risk of an “arms race” between the protagonists.
- No comprehensive studies of proactive non-lethal counter piracy systems has taken place to date meaning that their efficacy is unknown despite the ability of non-lethal systems to offer a potential solution to industry (both in terms of security firms offering guard services and the merchant fleet).
- Selecting armed personnel as a generic solution before a thorough consideration and appraisal of the alternatives runs the risk of channelling the industry into a single lethal option.

Jonathan Delf was educated at Royal Holloway University London. From 1996 to 1998 he served with the Royal Navy as a Warfare Officer on board HMS Coventry, HMS Hurworth and HMS London. He subsequently transferred to the British Army where he served as a Commissioned Officer with an Infantry Regiment (Royal Anglian Regiment) in operational theatres including Northern Ireland, Sierra Leone and Afghanistan until 2008. He now serves as a Reserve Officer with 104 Regiment Royal Artillery (V). As project manager for BCB International’s “Buccaneer” non-lethal air pressurised launcher system he advises the project board with respect to the tactical deployment of non-lethal devices. He advises BCB International Ltd’s Research and Development Department with respect to capability, development and specification of the “Buccaneer” in order to meet end user requirements.

1. BCB International Ltd is an established and long term supplier to the UK MoD. BCB International Ltd manufactures a comprehensive range of security related products to military and security forces globally. BCB International has won two Queen’s Awards for Export Achievement as well as the acclaimed Wales Innovation Award 2010. It is approved to ISO 9001:2008 International Quality Standard.

2. On 7 June 2011 the Rt Hon Alun Michael MP submitted written Parliamentary questions with respect to what evaluation the Secretary of State for Transport’s Department had under taken of non-lethal equipment to counter acts of piracy [Hansard 58151].

3. The Parliamentary Under-Secretary of State, Mike Penning MP, replied that: “The industry-developed document ‘Best Management Practices’ sets out a range of non-lethal ship self-protection measures which can help avoid, deter or delay acts of piracy off the coast of Somalia, in the Gulf of Aden and throughout the Indian Ocean. The recommendations included in BMP are wide ranging and include the use of non-lethal equipment to inhibit boarding by pirates, such as razor wire, electrified barriers, anti-climb paint and water sprays; and the use of binoculars and night vision optics to assist in identifying potential threats. The Department for Transport has previously evaluated a number of these measures as part of a research and development programme, and the results were communicated to industry”.

4. It is submitted to the Foreign Affairs Committee that the BMP, whilst welcome, have not sufficiently protected vessels transiting high risk areas. The advice contained within the BMP is predominantly passive and/or reactive in nature. In some cases the advice suggested is beyond the capability of the vessel (high speed manoeuvring) or is only applicable once the vessel is being boarded (vessel hardening) or indeed has been boarded. Evidence that the current BMP are not providing a sufficient solution is demonstrated both by the increasing number of attempted pirate attacks taking place, successful pirate attacks and by the growing demands from the marine industry to be able to employ armed personnel on board vessels transiting these regions.

5. Of particular concern to the Foreign Affairs Committee will be the high risks entailed with the prospect of trade in international waters becoming increasingly “militarised” through any provision of armed personnel. The impact of such an environment upon the tactics and modus operandi of the pirate groups will be self-evident. As pirates encounter lethal resistance from merchant vessels the natural conclusion will be an escalation of lethal force being applied by both parties. In the worst case scenario it seems logical to conclude that pirate attacks may well involve pre-emptive use of lethal force as the norm rather than the exception.

6. More concerning is the implication that once faced with well trained, professional armed personnel the pirates will look to armed extremist groups, such as Al Qaida, for advice, training, equipment and support in executing their acts of piracy. Pushing these normally disparate groups together by means of necessity and mutual gain is likely to have long lasting and serious ramifications for global sea trade.

7. Whilst the provision of international military Naval support is not to be discounted in terms of deterring acts of piracy, the geographical scale of the problem means that the use of military forces can never be a single solution to the issue. Naval support can be effective in localised areas whilst those forces are in place, but cannot realistically cover the entire region in sufficient time or numbers.

8. Currently industry, both in the UK and abroad, has developed several innovative and practical non-lethal devices that through a layered approach could significantly assist the merchant fleet. Consideration and support for these solutions has, as demonstrated by the Parliamentary Under Secretary of State’s reply to questions in the House, been somewhat lack lustre. Provision however of non-lethal proactive defensive devices has the capability to fill the gap between passive protective measures and the application of lethal force. Lethal force is most commonly supported due to its ability to cause an effect at range from the vessel under attack, thereby providing an intermediate layer of defence between visual identification and vessel hardening. Lethal force however entails all of the problems mentioned above with the additional complexities of international, and

domestic law. The application of non-lethal effects at range from a vessel or platform maintains the spirit of the BMP in terms of non-lethal deterrents whilst filling the capability gap in terms of a layered approach.

#### RECOMMENDATIONS

We believe it would be precipitous for the UK Government to introduce legislation which allows the carriage of armed guards on board UK Flag vessels without first properly conducting a comprehensive evaluation of the effectiveness and adequacy of self-protective measures available to the industry, including non-lethal devices. This would allow confidence that all potential protective measures had been exhausted before lethal force was selected as the preferred recommendation to industry, or equally, in the event of an attack on a vessel, the response would be both incremental and proportional to the threat.

A failure to consider the value of an incremental and proportional response could very well lead to a situation whereby lethal force is used in error with the resultant backlash of public opinion precluding its use thereafter.

1 July 2011

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### Written evidence from the Security Association for the Maritime Industry (SAMI)

#### SUMMARY

- Peter Cook, a former Royal Marine, set up *The Security Association for the Maritime Industry (SAMI)*, launched May 2011.
- With broad support from the maritime industry, including flag States and the shipping industry, SAMI will regulate private maritime security companies, using both the IMO and the maritime industry guidelines.
- To date, SAMI represents 32 international private maritime security companies, 19 of those are British registered companies. Our members undertake over 450 escorts per month in the high risk area, 85% of those are armed transits.
- Somali-based piracy continues to stretch out across the Indian Ocean Region and pirates are becoming more tenacious and violent.
- More shipping companies are turning to armed security for protection.
- Private maritime security companies do not have adequate legal “clarification” for the practice of purchasing and for the movement of weapons and ammunition.
- UN and IMO do not formally recognise, nor formally consult with private maritime security companies. A formal recognition and consultation process is required.
- SAMI was represented at the 3rd Senior Leadership Forum, at OHQ ATALANTA, Northwood on 22 June 2011 and is actively seeking new ways of collaborative counter-piracy liaison with EUNAVFOR, NATO and the Combined Maritime Forces (CMF).

#### ABOUT PETER COOK

1. Peter Cook was a student at the London Nautical School, before joining the Royal Marines in 1981. He spent 24 years as a Royal Marine, rising to the rank of Major. Peter was involved in all aspects of maritime security, from maritime counter terrorism to formulating counter piracy policy and procedures. On leaving the Corps in 2005, he managed the London office of a hedge fund, which established the first hedge fund in Dubai. Peter then formed his own consultancy, focusing on maritime security.

2. Peter has consulted for many organisations across the maritime sector, including, BIMCO, Marine Remote Sensing Solutions (MARSS), Carnival Corporation, Typhon and Miller Insurance Services.

3. Peter is Founder and Director of *The Security Association for the Maritime Industry (SAMI)*, which is the maritime security industry’s independent regulatory body. After three years in development, SAMI has become the voice of the maritime security industry. Under Peter’s leadership, SAMI will develop its membership, with backing and support from international public and private sector maritime organisations.

4. Peter is also Chairman of the *Maritime Security Review (MSR)*, which is a web-based media platform, providing authoritative information across the spectrum of maritime security, around the globe.

5. Peter is a regular contributor to the maritime trade press, broadsheet and broadcast press. He is a member of the ASIS International Private Security Company Standards Technical Committee and the A|D|S Security in Complex Environments Group. Peter is advisor to the Marshall Islands Maritime Administrator, at the International Maritime Organisation (IMO).

#### ABOUT THE SECURITY ASSOCIATION FOR THE MARITIME INDUSTRY (SAMI)

The Security Association for the Maritime Industry (SAMI) has been developed over the past three years, and was formally launched in May 2011.

*Key facts about SAMI*

- We represent 32 *Private Maritime Security Companies (PMSC)*, 19 of those are British registered companies.
- Our PMSC members conduct unarmed and armed transits in the High Risk Area.
- We are currently in the process of establishing an internationally recognised “*SAMI Standards and Accreditation*” process, for vetting PMSCs, this will incorporate existing IMO and maritime industry guidance. Only those PMSCs that meet our standards, will be accredited with full membership. It is expected that the accreditation process will commence in Q4 2011.
- We are in discussions with the *National Security Inspectorate (NSI)* about the practicalities of screening PMSCs on a global scale.
- Our working group, *Rules for the Use of Force (RUF)*, involving legal counsel, has begun work on a standardised set of practical rules for PMSCs. These will be ready for review by flag States and the maritime industry by the end of Q4 2011.
- We will be funded by subscription of the PMSC members and the benefactors of the improved security standards and regulatory structure, including ship owners, flag States and the insurance sector.
- We are an NGO and *not for profit* organisation. Our core values are honesty, integrity and transparency.

*A global solution for the future*

SAMI will build a regulatory framework that will manage the compliance of global private maritime security in the future. As western navies are shrinking, the volume of trade moving by sea increases annually. The world’s unquenchable thirst for oil and gas, draws prospectors to untapped reserves, many of which lie offshore, near to unstable States. The paucity of natural resources will be underscored as the global population climbs past 7 billion, stressing the vulnerability of the world’s 8,000+ ports, as supply chain nodes. Against this backdrop, maritime crime will become very lucrative. SAMI will establish the structure for private maritime security to manage this problem effectively and professionally.

**In Response to the Key Issues, set by the FCO Select Committee**

THE ADEQUACY OF INTERNATIONAL AND DOMESTIC LAW AND JURISDICTION

Unanimously, *private maritime security companies (PMSC)* believe that they do not have adequate legal structure for their work. Most British PMSCs conduct their business in the littoral states surrounding the *High Risk Area*, this often involves the practice of purchasing and the movement of weapons and ammunition. SAMI believes that current international and domestic law and jurisdiction on maritime security, lack clarity.

*Recommendations*

1. The British Government should provide clear and appropriate advice to British registered maritime security companies on the legality of their operations, including the purchase and movement of weapons and ammunition.
2. SAMI will support and contribute to a Government initiative, that will help resolve the legality of private maritime security operations.

CO-ORDINATION AT THE INTERNATIONAL LEVEL, PARTICULARLY THE UN

*Private maritime security companies (PMSC)* are undertaking considerable work in the Indian Ocean region to protect the international shipping industry, yet they currently have no formal status or recognition by the UN and IMO. Nor is there any formal method of consultation with the maritime security industry. SAMI believes that the maritime security sector’s voice should be represented. To this end, SAMI is currently seeking “consultative status” at the IMO, with the backing of key flag States, to represent the maritime security industry.

SAMI’s 32 members collectively undertake around 450 embarked ship escorts per month in the high risk area (85% of those transits are armed), and the demand is increasing significantly.

*Recommendation*

1. The British Government should seek formal representation of the private maritime security companies with the UN and IMO.

FCO SUPPORT FOR ANTI-PIRACY PROJECTS ON LAND IN SOMALIA (AND SOMALILAND)

One of SAMI’s first members, Triton, under the leadership of Director, Simon Jones has begun a new venture to establish coastguard protection for Somaliland. SAMI fully supports this work and will continue to back this type of constructive initiative.

*Recommendation*

1. The Foreign and Commonwealth Office should consider Triton's Somaliland coastguard project (and others like it), with the longer term view towards gaining support and expertise from the private maritime security industry.

## UK NAVAL INVOLVEMENT IN EU, NATO AND OTHER ANTI-PIRACY OPERATIONS

On Wednesday 22 June 2011, SAMI was invited to attend, for the first time, the 3rd Senior Leadership Forum, at OHQ ATALANTA, Northwood. SAMI applauds the vision and foresight of Major General Buster Howes on formally recognising the wider contribution of private maritime security companies.

SAMI expects to continue to represent the maritime security industry at Northwood and will work with EUNAVFOR, NATO and Combined Maritime Forces (CMF) to seek new ways of collaborative anti-piracy operations.

*Recommendation*

1. British Government, EU or NATO led anti-piracy operations and initiatives can seek the collaborative support from the professional private maritime security companies via SAMI.

30 June 2011

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**Written evidence from Maritime Asset Security & Training Ltd (MAST)**

## EXECUTIVE SUMMARY

- MAST's experience and exemplary professional track record show that armed private security is making an effective contribution to deterring piracy off the Somali coast at a fraction of the cost of other international efforts and the ransoms currently being paid.
- It is imperative that Private Military and Security Companies (PMSC's) should operate to high standards and within the law.
- UK national standards for fair and transparent regulation of PMSC's should be put in place quickly in line with the International Code of Conduct for Private Security Companies signed in Geneva in 2010.
- MAST welcomes the appointment of Aerospace Defence and Security as the government's partner in this area and the government's intention to use its leverage to promote compliance with the International Code.

## EVIDENCE

1. *Introduction*

1.1 Maritime Asset Security and Training Ltd (MAST) is a privately owned UK security Company that provides specialist global security services for the maritime community. It has been in business since 2005.

1.2 MAST specializes in providing an innovative, lateral-thinking approach to a wide range of security services. The Company has offices in the UK, Malta, Djibouti, Oman and Sri Lanka and provides a wide range of maritime security services. It is a signatory to the International Code of Conduct for Private Security Service Providers, signed in Geneva on 9 November 2010, a full Member of the British Association of Private Security Companies and a Member of the International Marine Contractors Association and the Association of Diving Contractors.

2. *MAST and Piracy off the Coast of Somalia*

2.1 MAST has been conducting both armed and unarmed transits of the Gulf of Aden and Indian Ocean since November 2008. It currently has permission to operate from seven littoral or regional states.<sup>98</sup> To date the company has supplied services to over 60 different shipping companies and completed in excess of 1,000 transits. It has experience of working with companies operating vessels from over 15 flag states.

MAST welcomes the Committee's decision to hold an inquiry into UK and international action to combat the increasing levels of piracy.

3. *The Cost of Counter-Piracy Measures*

3.1 MAST has an exemplary record of proving that the concept of armed security can work. Oceans Beyond Piracy<sup>99</sup> has estimated that during 2010 \$238 million was paid in ransoms to Somali pirates, with the average ransom payment increasing from US\$150,000 in 2005 to US\$5.4 million in 2010. The same organization

<sup>98</sup> Djibouti, Oman, Sri Lanka, Mauritius, Kenya, South Africa and Malta.

<sup>99</sup> [www.oceansbeyondpiracy.org](http://www.oceansbeyondpiracy.org)

believes that around \$2 billion is spent each year on naval operations off the coast of Somalia. If the costs of insurance premiums, prosecuting piracy, international organizations dedicated to reducing piracy, deterrent and security equipment, and the macroeconomic impact on the economies of the region are added to the mix, the total estimated cost of piracy is of the order of US\$7–12 billion per year.

3.2 MAST's experience suggests that properly regulated private security operations can provide a cheaper and more effective alternative to the current mix. So far, no vessel carrying private armed security guards has been taken by pirates. The company believes the average cost of an armed transit through Somali waters is of the order of US\$34,000. At a conservative estimate, 20,000 vessels pass through the region each year. The cost of placing armed guards on all of them would be of the order of US\$680 million. Of course, this figure does not tell the whole story—the deterrent effect of international naval forces and many other factors need to be taken into account. But it does suggest that the private security industry can make a substantial contribution to reducing the cost of counter-piracy measures within an improved concept of operations.

#### *4. International and Domestic Law and Jurisdiction*

4.1 MAST believes the security industry's contribution to countering piracy needs to be situated within a sound legal and regulatory framework. The company is careful to respect Port, State and Flag State Law as well as International Maritime Legal norms as well as the sensitivities of the shipping community and many governments to the concept of armed security.

4.2 MAST is well equipped to chart its way through these complex legal waters. One of its Directors is legally trained, and external guidance is regularly sought from respected international law firms. The Company also retains the services of ADRg Ambassadors LLP, a consultancy involving former British Ambassadors and Mediation experts who provide political and strategic advice. In relation to the International Ship and Port Facility Security Code, the Company is an appointed Company Security Officer for several yacht managers and an approved Ship Security Officer Course provider by the UK Maritime and Coastguard Agency.

4.3 MAST believes opinion is moving in favour of a growing role for the private security industry in countering Somali Piracy. However, given the varied and complex legal regimes involved, it believes the best way forward is likely to be respect for existing law rather than attempts to draw up a new and/or comprehensive legal framework. That said, areas of Flag and Nation State law need urgent clarification. These include the import and carriage of firearms for maritime security purposes and the circumstances in which vessels carrying security guards can enter ports on key shipping routes.

4.4 The IMO recently published new Industry Guidelines for the Use of Private Security Contractors as Additional Protection in Waters affected by Somali Piracy.<sup>100</sup> MAST fully embraces these guidelines and a copy of the Company's response to them can be made available to the Committee on request. The Guidelines place responsibility on governments to ensure freedom of navigation and protect the right of innocent passage and suggest the provision of Military Vessel Protection Detachments deployed to protect vulnerable merchant ships should be the preferred option when considering armed guards. However, they make it clear that the use, or not, of armed guards onboard merchant ships has to be a matter for individual ship operators to decide following their own voyage risk assessment. This provision is an important evolution in IMO policy that MAST believes reflects a growing recognition of the commercial and security realities. The Company hopes the Committee will take account of these realities in its consideration of relevant legal frameworks and of UK naval involvement in anti-piracy operations.

#### *5. Regulation*

5.1 MAST believes that effective regulation of PMSC's is the key to building confidence in their contributing to countering the threat of piracy off Somalia, to developing effective and safe operational practices, and to ensuring respect for the law.

5.2 In MAST's view, the International Code of Conduct for Private Security Contractors<sup>101</sup> provides a sound basis for such regulation. However, international regulation is likely in practice to be cumbersome and ineffective. MAST therefore believes the design and introduction of regulatory frameworks should be taken forward on a national basis as a matter of urgency. It is vital that those involved in developing and implementing national standards to have the credibility to make them effective.

5.3 With this in mind MAST welcomes the government's decision to appoint Aerospace Defence and Security (ADS) and its Security in Complex Environments special interests group (SCEG) as its partner in developing and implementing UK national standards for PMSC's.<sup>102</sup> MAST will play its full part in that process and welcomes the government's intention to use its leverage as a key buyer of PMSC services to promote compliance with the International Code and to encourage other PMSC clients to do likewise.

4 July 2011

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<sup>100</sup> MSC 89/J/5 of May 2011

<sup>101</sup> See Para 1.2 above.

<sup>102</sup> <http://www.fco.gov.uk/en/news/latest-news/?id=619162882&view=PressS>



### Written evidence from Saferworld

#### PIRACY IN THE GULF OF ADEN: TACKLING THE ROOT CAUSES

1. Debates on the international community's response to piracy off the coast of Somalia tend to focus on military solutions, such as EU naval Operation Atalanta, in which the UK plays an active role. However, the UK Government has recognised that, "... piracy off the coast of Somalia cannot be solved purely at sea using military means. Piracy is a symptom of deep rooted instability on land."<sup>103</sup>

2. It follows that the most effective and sustainable means of preventing piracy will be to address the root causes of conflict and instability in Somalia. However, efforts to bring about peace and stability in Somalia and Somaliland will be successful only if they are based on an understanding of the perceptions of ordinary Somalis and involve them in the design and delivery of those responses. The pervasive 'trust deficit' between local, national and international actors in Somalia should be addressed by getting 'back to basics' and asking Somalis more broadly what constitutes effective support towards achieving peace and stability, listening to the responses and engaging with them seriously.

#### CAUSES OF PIRACY OFF THE COAST OF SOMALIA

3. In 2010, Saferworld supported a series of focus group discussions conducted by Bosasso-based NGO Somali Relief Society (SORSO) in order to better understand how Somalis perceive the many issues they face. Bosasso is a commercial hub on the coast of Puntland which is affected by pirate activity, and the focus groups highlighted, among other things, local people's perceptions as to the causes of this piracy. This research focused on a limited geographical area, and so its results may not apply to the whole of the Somali coast, however it provides some insights into popular perceptions of piracy around Bosasso.

4. The problem of piracy in Bosasso is perceived by local people to have started as fishermen sought to protect Somali waters from large illegal fishing boats whose size and advanced technology allowed them to catch large quantities of fish while severely damaging much smaller Somali boats and nets. Following the collapse of the Somali Government and the state's inability to patrol and protect its waters, young fishermen took up this role but soon began demanding payments for their services. Today, that relatively small protection racket has been transformed into a multi-million dollar criminal enterprise.

5. The causes of piracy, like the causes of conflict in Somalia, are complex. In this submission, we report two key problems which local people in Bosasso cited as contributing to the prevalence of piracy: high levels of unemployment, and weak security and justice institutions.

#### *Unemployment*

6. Focus group respondents cited high unemployment, particularly among young men, as the principal cause of piracy. According to the focus groups, today's pirates range in age from about 15 to 30 and are almost entirely male. Respondents said that most pirates are uneducated and unskilled and many come from rural communities where they find it increasingly difficult to make a living from tending livestock. For these young men, respondents believed that piracy offers the possibility of getting rich quick and enjoying associated benefits of a more affluent lifestyle, marriage and increased khat use. Focus group participants argued that the payment of high figure ransoms by international shipping companies has exacerbated the problem, aiding the recruitment of young men by piracy gangs and attracting further investment into the 'business' from overseas. Participants expressed a good degree of resentment that so much money is paid in ransoms to pirates by foreign parties, particularly as they do not see that money invested in building the capacity of Somalia's coastguard to effectively patrol and protect the Somali seas or even back into developing the affected communities.

#### *Weak security and justice institutions*

7. While the lack of alternative economic opportunities provides an incentive for young men to become pirates, focus group participants argued that Puntland's weak security and justice systems are unable to adequately tackle the perpetrators. Participants believed that in Bosasso, the understaffed, undertrained and poorly equipped state security and justice system provides few disincentives in the form of arrest and prosecution. They reported that levels of public trust in local police forces are low, not helped by perceptions of clan bias, corruption and infiltration by criminal gangs. Participants also cited the prison system as a key problem; Puntland has no juvenile justice law or dedicated institutions to support child protection within the justice system or even rehabilitate young offenders, meaning that young convicts—some of whom may only be guilty of anti-social behaviour—are placed in prisons with more serious criminals. As a result, participants argued, they often emerge more firmly embedded in criminal networks than when they went in.

#### TACKLING THE PIRACY PROBLEM AT SOURCE

8. The factors mentioned above offer only a glimpse of the causes of instability in Somalia on land and at sea. However, they serve to illustrate why tackling piracy off the coast of Somalia requires more than a

<sup>103</sup> Foreign and Commonwealth Office, *Government response to "Combating Somali Piracy: the EU's Naval Operation Atalanta"* (2010), <http://www.parliament.uk/documents/lords-committees/eu-sub-com-c/SomaliPiracy/GovtResSomaliPiracy.pdf>

military approach but also long-term investment to address the country's economic, social, political and security problems, which are both causes and effects of ongoing conflict. The research conducted in Bosasso indicates that this should include, among other things, reform of Somali security and justice services, and the creation of more economic opportunities, particularly for young people. Unless stability can be achieved by tackling the root causes of conflict and instability in Somalia, the chances of preventing piracy off the coast in the long term will remain slim.

9. DFID's recently published operational plan for Somalia says it will "help Somalis tackle poverty and conflict", and Saferworld commends its ambition to "work with bilateral and multilateral partners, such as the UN and the World Bank, to develop a more coherent international approach to political, security, development and humanitarian issues in Somalia."<sup>104</sup>

10. However, there is a perception amongst many Somalis that decisions that affect their lives are often internationally driven, with little local consultation. This was evidenced in the reactions to the recent Kampala Accord on political transition in Somalia, in which Somali civil society organisations argued that, "the international community should refrain from imposing solutions on the Somali people and instead assist them in solving their problems."<sup>105</sup>

11. The continuing lack of structured, substantive and ongoing consultation with Somali civil society by national and international decision-makers has created a 'trust deficit' between local, national and international actors. This trust deficit fuels a culture of suspicion among all actors, which undermines opportunities for them to engage meaningfully with one another—engagement which is crucial if sustainable solutions to Somalia's social, economic, political and security problems are to be found.

12. The lack of a sense of meaningful engagement and broad Somali ownership of international interventions impacts negatively on the effectiveness of aid programmes, undermines Somali civil society, and contributes to a sense of alienation among Somali communities from the decision-making processes that affect their lives.

13. Involving Somalis in the decisions that affect their lives is not just a moral issue: conflict and insecurity is a product of people's choices and, to a large degree, plays out at the local level. Achieving lasting stability and sustainable security will rely not only on the consent of local people, but also their active input into and ownership of efforts to prevent and reduce violence. Without first understanding people's perceptions and opinions, and then actively involving them in developing and implementing solutions to the conflict and insecurity they experience, peace and stability will remain elusive goals.

#### ENGAGING WITH SOMALI CIVIL SOCIETY

14. The exclusion of Somalis from many key decision-making processes contributes to their lack of ownership over policies that directly affect their country and their lives. For example, recent dialogue between Somali civil society and the EC revealed a long-standing frustration among many that donor money is channelled largely through international NGOs, while local NGOs play the role of implementing partners and have limited opportunities to influence planning processes or proactively set the agenda. Indeed, DFID's operational plan for Somalia states that "Most of our support to Somali NGOs will be through international NGOs".<sup>106</sup> In order to address this lack of meaningful engagement with Somali civil society, local partners should be given a chance to input into policy priorities as well as to contribute directly to the delivery of programmes.

15. Members of Somali civil society believe they can make a positive difference in the lives of their fellow citizens and on the broader security situation if they are more substantively involved in decision-making and implementation of development and humanitarian programmes. Somali 'Non-State Actors Platforms' offer one example of a channel through which international policymakers can open a dialogue with grassroots Somali voices to inform decision-making and begin building trust between different actors. The EC and DFID fund Saferworld to support three platforms of "non-state actors" (NSAs), in Somalia and Somaliland,<sup>107</sup> comprised of a broad range of actors whose voices are not often heard in the international policy arena—including local business leaders, the media, traditional elders, professional associations, and community groups with diverse geographic, clan, and sector representation.

16. The platforms provide a way to feed information from the ground 'up' to policy makers and provide a structure that the international community can engage with to ensure increased communication with broader Somali society. This helps begin to address the perception, widely held in Somali society, that decisions relating to Somalia's development are made either in Nairobi or in western capitals, without a full appreciation of what is happening on the ground or the participation of those that the decisions most affect.

<sup>104</sup> Department for International Development, *Summary of DFID's work in Somalia 2011–15*

<sup>105</sup> Somalia South Central Non State Actors, "Civil society actors in Mogadishu reject the Kampala Accord", 20 June 2011, <http://www.soscensa.org/what-we-do/activities/news/article.php?article=8>

<sup>106</sup> *Ibid.* p 2

<sup>107</sup> Somalia South Central Non-State Actors (SOSCENSA); Puntland Non-State Actors Association (PUNSAA); Somaliland-Non State Actors Forum (SONSAF)

17. Piracy is one of the many issues which the NSAs have discussed. In a recent statement delivered to a UN Security Council delegation in Nairobi in May 2011 by a representative speaking on behalf of the NSAs and other Somali civil society actors, they made the following observations on counter piracy efforts:

- Despite significant local and international initiatives, piracy continues unabated and its impact is increasingly damaging to affected communities. It is time to try something different and more sustainable. Efforts to counter piracy must, therefore, be undertaken both at sea and on land, in order to effectively counter the threat to communities and foreign nations. Somali civil society suggest:
- International anti-piracy efforts would attract greater support from Somalis if these efforts are accompanied by international action to end illegal fishing and dumping of toxic waste off Somalia's coast.
  - The living conditions of coastal communities and rural villagers must be enhanced through provision of quality, accessible primary social services, including basic infrastructure, fishery facilities, local markets, etc.
  - Civil society groups should be actively involved in counter-piracy initiatives to inform the communities of the negative impact of these activities.”

18. Saferworld believes it is vital that the views of Somali civil society are considered as part of the decision-making process in the UK and elsewhere on how piracy should be addressed. The civil society statement to the UN Security Council, a transcript of which has been submitted in full to this inquiry,<sup>108</sup> offers an example of how policy dialogue can begin to bridge the divide between legitimate, representative Somali civil-society and national and international decision-makers.

#### BUILDING STABILITY IN SOMALIA: RECOMMENDATIONS FOR THE UK GOVERNMENT

19. The UK Government will imminently publish its Building Stability Overseas Strategy which will explain how the UK will fulfil its Strategic Defence and Security Review commitment to supporting conflict prevention. Saferworld recommends that this upstream approach to addressing threats at source should also be applied to the international community's efforts to prevent piracy off the coast of Somalia.

20. As the UK Government acknowledges, the problem of piracy off the coast of Somalia “will be solved only on land”.<sup>109</sup> Only by considering the views of ordinary Somalis in the policy-making process can the root causes of conflict and insecurity be effectively addressed, and piracy be tackled “upstream”.

Saferworld recommends that the UK Government:

- ensure its interventions are informed by a thorough understanding of the perceptions of Somali communities affected by conflict and piracy;
- involve legitimate, representative Somali civil society in the design and delivery of programmes in Somalia and Somaliland, and
- apply its approach to upstream conflict prevention to the problem of piracy off the coast of Somalia by using its diplomatic, defence and development tools to support efforts to build stability on land, not just military means to tackle piracy at sea.

July 2011

#### Written evidence from Dr Alec Coutroubis and George A Kiourktsoglou

##### EXECUTIVE SUMMARY

The following report contains the results of our research on Somali Piracy and more specifically:

1. A statistical profile of the types of commercial vessels, both attacked and pirated.
2. A statistical profile of the crew nationalities of the vessels both attacked and pirated.
3. Evidence of a statistical nexus between the flag of a commercial vessel and the corresponding probability (risk) of attack by Somali pirates.
4. A conceptual model/tool to better understand the Somali phenomenon from a business perspective.
5. Last but not least, we present a potential high-level strategic approach to “treat” the “disease” and not only the “symptoms”.

##### INTRODUCTION / BIONOTES

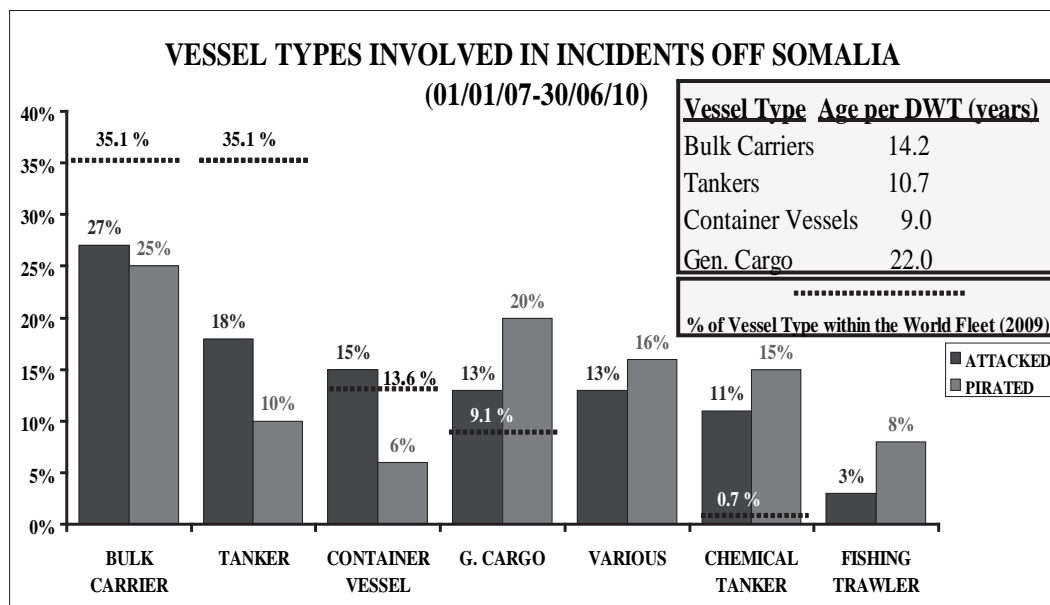
*Dr Alec D Coutroubis* (BSc (Hons), DIC, MSc, DBA, MBA, PhD, FCMI, CEng, CSci, MChemE, FIMarEST, FHEA) is a Principal Lecturer & Teaching Fellow at the University of Greenwich and Visiting Professor of Shi Management at ALBA Graduate Business School, Greece. He has published extensively on numerous topics relating to Maritime Engineering, Marine Management and Education through a number of Books, Monographs as well as numerous popular press publications.

<sup>108</sup> Not printed.

<sup>109</sup> House of Commons Hansard, 14 June 2011, column 617

*George Kiourktsoglou* obtained his B.Sc. in Mechanical Engineering in 1992 from the Aristotelian Technical University of Thessaloniki in Greece. As an intern, he worked for the Israeli Public Corporation of Electricity. Having concluded his military service he went to the USA to study Nuclear Engineering and Applied Physics at Cornell University. From the latter he graduated in 1996 with an M.Sc. From 1996 till 2009 he worked for Royal Dutch Shell both in Greece and abroad, assuming various roles in Downstream Marketing, Strategy, Negotiations and eventually in Health, Safety, Environment and Security (HSSE). Sponsored by Shell Hellas, he graduated in 2006 from Alba in Athens with a Diploma in Management and two years later with an MBA in Shipping from the same College. Currently he is doing research, as a Ph.D candidate at the University of Greenwich. His field of interest is Maritime Security with a special focus on the “Piracy around the Gulf of Aden and the Horn of Africa”. George is a member of the American Nuclear Society, the Chartered Management Institute and the Institute of Marine Engineering, Science Technology in London. He speaks Greek, English, German, Japanese and French.

1. STATISTICAL PROFILE OF THE TYPES OF COMMERCIAL VESSELS, BOTH ATTACKED AND PIRATED OFF SOMALIA



Data Source: International Maritime Organisation, IMO. *Monthly Reports on acts of piracy and armed robbery against ships (January 2007 till June 2010)* [WWW] <http://www.imo.org> [Accessed 15 December 2010].

Comments

1.1 Based on the analysis, the commercial vessel type most frequently *attacked* off Somalia is the Bulk Carrier (27%), followed by the Tanker (18%), the Container Vessel (15%), the General Cargo Vessel (13%), the Chemical Tanker (11%) and last but not least the Fishing Trawler (3%). Existing experience teaches that fishing vessels are mostly targeted because following their capture by pirates, they are being used as “Mother Ships” (a term indicating a pirate ship of geographically “extended” operational capability).

1.2 Interestingly, the vessel type most frequently *pirated* is still the Bulk Carrier (25%), followed this time by the General Cargo Vessel (20%), the Chemical Tanker (15%), the Tanker (10%), the Fishing Trawler (8%) and the Container Vessel (6%).

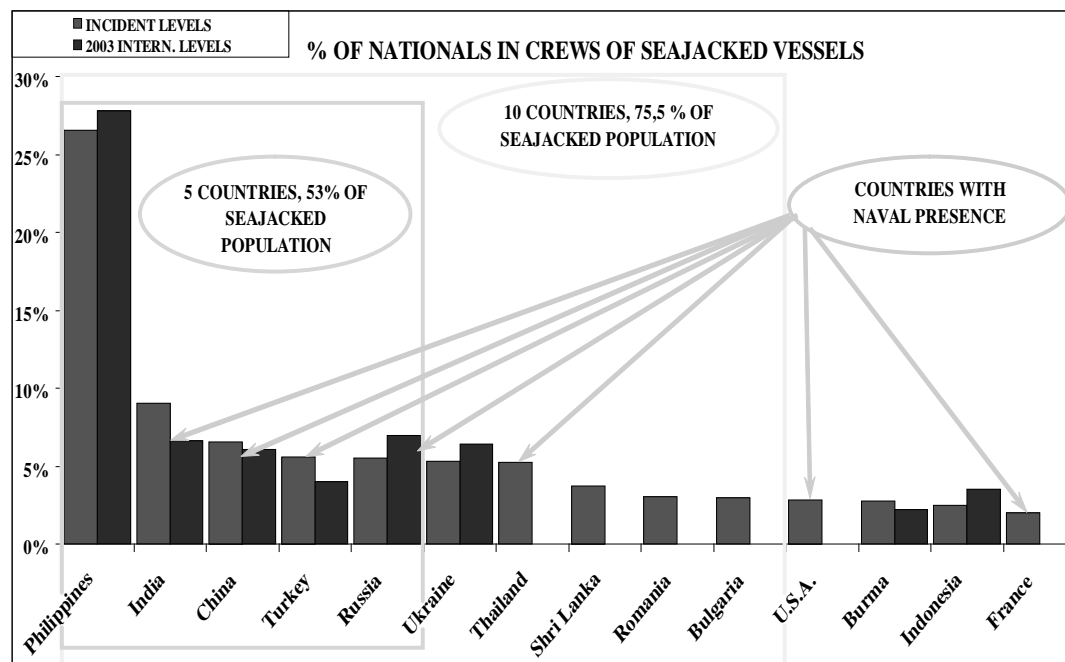
The authors would also like to draw attention to the following facts:

- (a) Comparatively, far less Dry Cargo Vessels and Tankers are attacked (27%, 18%) and eventually pirated (25%, 10%) compared to the percentages of these two types in the international fleet of vessels (35.1%, 35.1% respectively).
- (b) Interestingly, far more General Cargo Vessels and Chemical Tankers are attacked (13%, 11%) and eventually “seajacked” (20%, 15%) compared to their percentages in the international fleet (9.1%, 0.7% respectively).

1.3 In the case of the General Cargo Vessels, a plausible explanation may lie in the fact that this vessel type features an average age per dwt (as ship sizes grow over time and younger (larger) vessels join in, the *Average Age per dwt* tends to be more characteristic of a fleet than the traditional *Average Age*) of 22 years, more than double the average age per dwt of Container Vessels (9.0 years) and Tankers, (10.7 years) in the global fleet. This finding is also in line with an observation of the authors in one of their previous articles the “*Age profiles of Attacked and Pirated vessels off East Africa*” (A Coutroubis, G Kiourktsoglou, 2010). In that analysis, the corresponding research indicated that “almost one out of every five (18.5%) vessels attacked is more than 25

years old, but more than one out of every three (>33%) vessels pirated belongs to the same range of age, suggesting that the crime perpetrators are more effective when they attack older vessels”.

## 2. STATISTICAL PROFILE OF THE CREW NATIONALITIES OF THE VESSELS BOTH ATTACKED AND PIRATED



*Data Source:* The Global Labour Market for Seafarers Working Aboard Merchant Cargo Ships (2003) and Various Internet based Press Reports

### Comments

2.1 Filipinos represent 27.8% of the international seafarer population and 26.6% of the seajacked crews.

2.2 Correspondingly, Indians represent 6.6% of the seafarer population and 9% of seajacked crews.

2.3 Last but not least, the Chinese nationals feature almost an “utter balance” within the two groups with 6.1% and 6.6% respectively.

2.4 The research does not imply that the crew composition and the training are not factors of value to be considered when combating piracy. It simply suggests that the crew nationality does not appear to be an “operational driver” in the case of successful seajacks.

Amongst secondary observations the following ones conspicuously stand out:

2.5 The five nations (Philippines, India, China, Turkey and Russia) that provide international shipping with more than half of its seafarers (51.5%) bear (through their nationals—seafarers) the main brunt (53.22%) of seajacks off the coast of Somalia.

2.6 Among 48 countries in the seajacked crew population from 2007 until June 2010, three out of four seafarers are nationals of 10 countries (Philippines, India, China, Turkey, Russia, Ukraine, Thailand, Sri-Lanka, Romania and Bulgaria).

2.7 It seems that the presence of a country’s Navy (India, China, Turkey and Russia) off Eastern Africa has no impact whatsoever on the number of its nationals that fall victims of Somali seajacks.

2.8 A remarkable observation though demands some extra attention:

Although more than one out of four seafarers employed onboard seajacked vessels is a Filipino, this island country and indeed maritime nation has no naval presence off Somalia.

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3. EVIDENCE OF A STATISTICAL NEXUS BETWEEN THE FLAG OF A COMMERCIAL VESSEL AND THE CORRESPONDING PROBABILITY (RISK) OF ATTACK BY SOMALI PIRATES

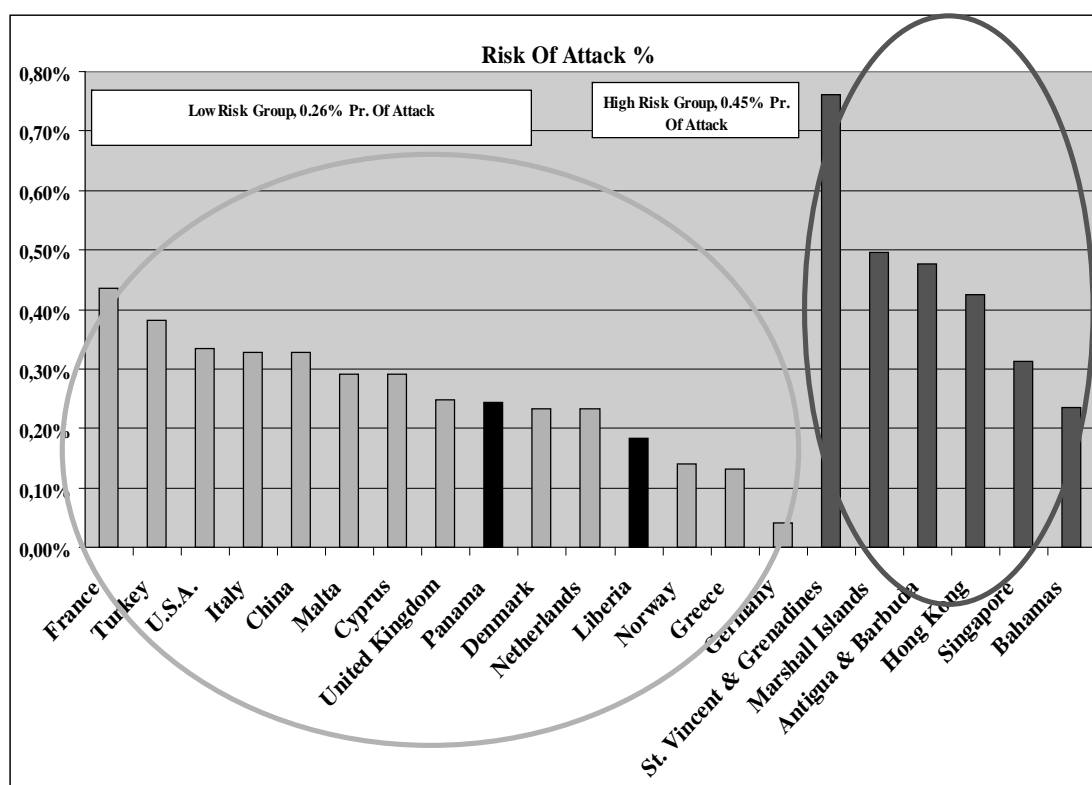
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	<i>Flag</i>	<i>Canal Total passages</i>	<i>Incidents</i>	<i>Naval Fleet</i>	<i>Risk of Attack</i>	<i>Risk of Attack</i>
1	France	2,292	10	1	0.44%	
2	Turkey	2,363	9	1	0.38%	
3	U.S.A.	3,588	12	1	0.33%	
4	Italy	3,657	12	1	0.33%	
5	China	2,440	8	1	0.33%	
6	Malta	8,571	25	1	0.29%	
7	Cyprus	6,186	18	1	0.29%	
8	United Kingdom	8,859	22	1	0.25%	0.26%
9	<i>Panama</i>	33,672	82	1	0.24%	
10	Denmark	4,722	11	1	0.23%	
11	Netherlands	3,019	7	1	0.23%	
12	<i>Liberia</i>	18,542	34	1	0.18%	
13	Norway	4,571	7	1	0.15%	
14	Greece	6,065	8	1	0.13%	
15	Germany	7,424	3	1	0.04%	
<hr/>						
1	St. Vincent & Grenadines	2,100	16	0	0.76%	
2	Marshall Islands	4,842	24	0	0.50%	
3	Antigua & Barbuda	3,575	17	0	0.48%	0.45%
4	Hong Kong	6,355	27	0	0.42%	
5	Singapore	5,755	18	0	0.31%	
6	Bahamas	6,810	16	0	0.23%	
	<b>Total</b>	<b>145,408</b>	<b>386</b>			
	<b>Inter. Fleet</b>	<b>166,208</b>				

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*Data Source:*

1. International Maritime Organisation, I.M.O., Monthly Reports on acts of piracy and armed robbery against ships from January 2000 till December 2009.
2. Canal Suez Authority, Annual Reports from 2000 till 2009.
3. E.U. NAVFOR Somalia.



### Comments

3.1 It is widely believed that Pirates simply patrol an area, wait for a target of opportunity, and attempt to board. In our analysis we attempted to assess whether this belief holds true (and under what circumstances).

3.2 For the purpose of the analysis two groups of registries were created. In the first group were included the national registries which have Naval presence (either directly or indirectly through an allied force) off the Somali Basin and in the broader area of the Gulf of Aden whereas in the second group those that do not.

3.3 The first group ("The Low Risk") includes the following 15 countries: France, Turkey, U.S.A., Italy, China, Malta, Cyprus, United Kingdom, Panama, Denmark, Netherlands, Liberia, Norway, Greece and Germany.

3.4 The second group ("The High Risk") includes the following six countries: St. Vincent and Grenadines, Marshall Islands, Antigua and Barbuda, Hong Kong, Singapore and the Bahamas.

3.5 The rationale for including Panama and Liberia in the first group, although they have no Naval presence in the area, is because at least 74% of the Panama flagged vessels and 76% of the Liberian flagged vessels belong to nationals of countries that have Naval presence around the Horn of Africa.

3.6 For each registry the analysis also took into consideration the total number of vessel passages through the Suez Canal (both directions) over the last 10 years. It is believed that for the analysis of Somali piracy, the number vessel-passages by registry is more appropriate than the global breakdown of registrations, as it actually reflects better the flag distribution of vessels physically present in the region.

3.7 Based on this information it was calculated that for the perceived "Low Risk" group, the risk (probability) for their vessels to be attacked by pirates is on average 0.26%, whereas for the "High Risk" group on average the risk (probability) is almost twice as high and equals 0.45%.

3.8 In order to test whether there is a statistical link between the vessel's flag and the possibility of it being attacked the data were subjected to statistical tests (linear regression). The linear model features a very high correlation coefficient value of +0.88 and, given that a perfect correlation would yield the maximum value of +1.0, it appears to capture well the realities of piracy attacks in this region.

3.9 Although Panama (0.24% risk of attack) and Liberia (0.18%) have suffered the highest absolute numbers of Piratical Incidents, in percentage terms (taking into account the large number of vessels registered under these flags), they appear being between two and four times safer than St. Vincent and Grenadines (0.76%), Marshall Islands (0.50%) and Barbuda (0.48%). In terms of risk of attack these two registries rank along with Greece (0.13%), Norway (0.15%), the Netherlands and Denmark (0.23%), United Kingdom (0.25%) and Cyprus (0.29%).

3.10 Finally, looking at global ship registration trends over the last 10 years we observed no significant changes, which suggests that *ship owners have not yet realized that some flags are more (or less) "secure" against Somali piracy than others.*

#### 4. A CONCEPTUAL MODEL/TOOL TO BETTER UNDERSTAND THE SOMALI PHENOMENON FROM A BUSINESS PERSPECTIVE

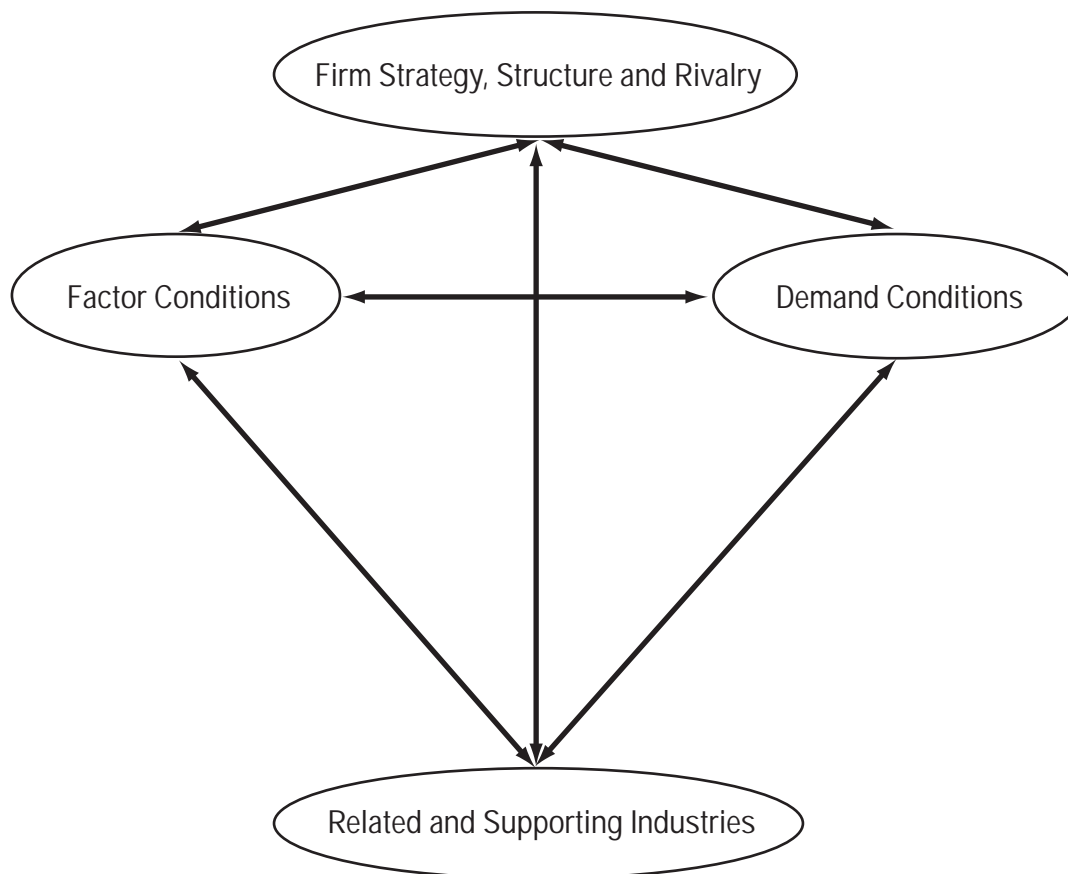
4.1 In this case we investigate Somali Piracy not as a mere criminal activity that challenges and eventually breaches the international Law of the Seas, but rather as an elaborate business model, that has far reaching tentacles in (Geo)-Politics, Business, Trade and Shipping.

4.2 To begin with and based on Michael E Porter's theory of the "Competitive Advantage of Nations", the piracy business model is analysed in terms of its "National Determinants". The latter are the four broad attributes of the Somali Nation that have all along nurtured the environment in which piracy has come to flourish:

- 4.2.1 Its "Factor Conditions" or "Factors of Production" which refer to human resources (pirates, investors, facilitators/negotiators of ransoms), knowledge resources (sources of information and intelligence on vessels and trade patterns), physical resources (equipment), capital resources ("Seed Capital" for the initial support of a piracy mission) etc;
- 4.2.2 Its "Demand Conditions" which are directly related to the local clan system's need for income and continuity, but also the mechanisms through which the local needs and aims resonate in the Piracy Industry;
- 4.2.3 Its "Relating and Supporting Industries" which actually nurture (the disruptive in some cases) innovation and upgrade featured by the pirates. The most prominent among these industries is the financial one. It provides the venture(s) with the necessary means for the transfer and legalisation of the crime proceeds;
- 4.2.4 Its "Structure and Domestic Rivalry" or alternatively the context within which a piracy organisation was created and is still managed.

4.3 We claim in our research that the piracy venture has evolved to a point of no return because it has ceased long ago to be just an opportunistic source of alternative income. Somali Piracy has created its own self sustained evolutionary system, the so called "Piracy Diamond", which cannot be undone merely through the resurrection of mainstream, legitimate business and production. The business venture has intriguingly merged a set of disparate, mainly local (and international in some cases) stakeholders, like kingpins, semi trained ex-security personnel, money launderers, politicians and others, into a mosaic powered by diverse drivers like geography, international trade, poverty, lawlessness and lack of central political authority. Its mechanism has gone by now "supercritical", which means that even if some of its initial "comparative advantages" were neutralised, it would still keep on its developing course using its self-developed "competitive advantages". These were created and sustained through a highly localised process that is still developing. The role of the entire nation in this process seems to be as strong as, or stronger than ever.





Source: Michael E Porter, *The Competitive Advantage of Nations*.

## 5. HIGH-LEVEL STRATEGIC APPROACH TO “TREAT” THE “DISEASE” AND NOT ONLY THE “SYMPTOMS”

5.1 Somalia gave pirates the initial head-start through its nature as a failed state. Its geography (jutting out of Africa into the Indian Ocean, neighbouring simultaneously the Arab Peninsula and the Straits of Hormuz) and its topology (coastline of 2,896 kilometres), along with its utter lawlessness and the lack of a robust central government provided the fledgling venture with a set of “*comparative advantages*” over similar cases (like for instance the piracy in the Malacca Straits).

5.2 On a different vein, the “*competitive advantages*” of Somali Piracy were created and sustained through a highly localised process that is still developing. The role of the entire nation seems to be as strong as, or stronger than ever (Michael E Porter, 1990). Any theory of national advantage in a similar case starts from premises that strongly diverge from any previous work or naturally endowed privileges (like the above “*comparative advantages*”).

5.3 “Where governments have become deeply complicit through their impotence in criminal activities, perpetuation of state failure is essential for the criminal enterprise to operate.” This is where Somali Piracy’s “*competitive advantages*” come to surface.

5.4 The main theme of the international discussion around Somali Piracy is that the answer to the puzzle will come “from ashore” through the development of alternative sources of income for the locals (Stig Jarle Hansen, 2009), (Second Line of Defence, 2011). With all due respect to the good-will of the international community, it is the view of the authors that this is a manifestly simplistic argument given that:

- 5.4.1 There are no (and neither will be) available sources of legitimate income bar the traditional ones of agriculture, fishing and (to a lesser degree) trade (Dr Alec Coutroubis & George Kiourktsoglou, 2010);
- 5.4.2 Even if there were, the income (per capita) generated by these alternative professional activities would pale compared to the cash generated via piracy ransom payments.

5.5 However, based on our research, there is one determinant that could reverse under the right conditions the truly remarkable progress of Somali Piracy. This would be the gradual replacement of local rivalries (among politicians, clans and disparate militias) by a nation-(re)building process. Such a process could divert substantial physical and mental effort from illegitimate activities towards a creative virtuous circle. An approach that focuses on humanitarian aid and development could be far less costly than the current support of the Transitional Federal Government (TFG). More interestingly, a “Somalia left to itself is in many respects less

threatening than a Somalia that is being buffeted by the winds of international ambitions to control the country” (Bronwyn E Bruton, 2010). At the same time a progressive degeneration of local rivalries would steal from Piracy its most important determinant(s), the lifeline of indispensable human, financial and technical resources. Somali Piracy is the product of opportunistic alliances that are simultaneously very fragile and very shifting. They can fall apart very quickly under the right conditions. The international community needs to be looking at how it can foster the conditions that would speed the collapse, particularly of Al-Shabaab, since this organisation is the only one in the Somali mosaic which is backed by an ideology (the creation of a Muslim Caliphate). One of our conclusions is that it is not worth the effort for the international community to set up (and support) a structured on-shore counter piracy effort (RIA Novosti, 2011) since the same goal of crime eradication can be much more efficiently and effectively achieved by the locals.

5.6 It has to be a grassroots reconciliation that will take place over many years (this is the main reason the authors believe that the scourge will not disappear overnight). The international community has tried in unison, time and again, to hold reconciliation conferences where the leaders of warring factions were brought together; basically the “*warlord community*” (Bronwyn E Bruton, 2010). It is within this context that Somaliland (the north-western region of Somalia which achieved independence from Britain on 26 June 1960) has yet to receive international diplomatic recognition as a state, although it has achieved a level of security and stability unmatched by the rest of Somalia (CNN, 2011). International sponsors tried to get Somali factions into a room to make peace, but it always turned into a cake-cutting exercise. It is doubtful whether the kind of reconciliation that Somalia needs will be “imparted” by the international community. Most probably it’s going to take place over the course of many years and it will be self-induced. Additionally, it will be based on economic necessity (potentially a typical case of “*making virtue out of necessity*”) rather than an agreement that is brokered in a conference room.

5.7 On the face of it, Somalia’s history shows very clearly that in the absence of international intervention, the country has been quite “*inoculated*” (a word used by intelligence operatives) against al-Qaeda and international terrorist organisations of sorts but not against local rivalries. We believe that unless these national hostilities get reasonably and effectively addressed by the Somalis themselves the high seas piracy off Eastern Africa will keep on festering for a long time to come.

22 July 2011

### Written evidence from World G18 Somalia

#### 1. WORLD G18 SOMALIA

World G18 Somalia (WG18S) is a UK-based network which seeks to unite all in the Somali diaspora, most of whom are now citizens of the UK or other countries and also those who support initiatives to bring development and peace to Somalia. Our name indicates our determination to represent those associated with all 18 of Somalia’s regions. Only through a collective voice can the views of those who know Somalia best be heard by the International community, UK-based NGOs and other players. WG18S is not engaged in political campaigning, nor does it support any Somali political or religious faction. We have followed public submissions made to the Foreign Affairs Committee (FAC).

#### 2 SUMMARY OF RECOMMENDATIONS

- (a) Six coastal villages associated with piracy, benefitting from special support to encourage elders to renounce piracy, to serve as exemplars to other villages.
- (b) All fishing craft capable of sailing beyond an agreed distance from the shore be registered with local and regional authorities.
- (c) The *Atalanta* naval force and warships of other states charged by the UN to combat piracy to enforce UN SCR 1816 should also be tasked to deter the incursion into Somali territorial waters by foreign fishing fleets.
- (d) A survey of the sections of the seabed off Somalia, the source of beached toxic waste, should be set up at the earliest opportunity.
- (e) The reversal of current DFID policy which bars UK passport holders, even those born in Somalia, from travelling to Somalia to work on ODA projects for fear of kidnap.
- (f) The UK aid programme for Somalia should work more closely with the diaspora.

#### 3. EVENTS TO DATE

The FAC has been well briefed on the origins of piracy but we summarise our views on this in Annex 1.

This submission is based on these widely agreed observations:

- (a) The collapse of Somalia’s last functioning government in 1991 left 3,330 km of coastline of prime fisheries unguarded. Foreign fishing fleets took advantage despite efforts by Somali fishermen to deter them. Some of these fleets paid gunmen to warn off these fishermen.

- (b) A joint study of this illegal, unregulated and unreported activity (IUU) undertaken by the International Maritime Organisation (IMO) and the Food & Agricultural Organisation (FAO) was submitted to the UN but it had little initial impact; the voices of Somali fishermen count for little against powerful fishing nation states. Further, some argue that the IMO and the FAO, for different reasons, find it hard to exercise much clout with the UN Security Council.
- (c) Well recorded incidents of the dumping of toxic waste from industrialised countries off Somalia's shores, since washed ashore, led to sickness among coastal communities.
- (d) The pace of growth of Somali-based piracy and its comparative ease was complemented by initial supine response from the maritime community. This encouraged the Somali pirates to embark on more adventurous expeditions.
- (e) Tribal and village leaders in coastal communities felt helpless to stop this growth. Peter Lahr, an observer, summed it up like this "*You can wait for Social Welfare, you can starve or you can try to do something else to feed your family. In Somalia that is mostly Piracy*".
- (f) Efforts by the UN and its agencies and development NGOs to assist communities were hampered by local knowledge that this was the same UN and international community that was advocating sanctions, mandating naval anti-piracy fleets and either unable or unwilling to control the IUU activity. The international community has a big job to regain local trust.
- (g) We agree with claims that no more than 30% of all ransom payments are retained within the local community. Further, even these sums are by no means widely shared.
- (h) There are no coastal villages which host pirate activity which can claim to have statistically advanced towards any of the eight UN Millennium Development Goals.
- (i) The *Human Cost of Somali Piracy Report*, commissioned by the One Earth Future Foundation argues that the plight of seafarers is under-reported and misunderstood by the public. However, despite over 1,000 seafarers taken hostage and about 500 claimed to have been used as human shields, very few deaths have been recorded. On the other hand, the human cost of the continuing fighting and the drought in Somalia has claimed the lives of Somalis of a totally different magnitude.

#### 4. THE ROLE OF DIASPORAS IN RE-BUILDING SOMALIA

As British or European citizens, accountable and responsible individuals living in UK and Europe, we have an important role which should be more widely recognised and encouraged. Remarkably, even though we have taken up citizenship in the UK and in other European countries, we continue to send remittances to our families' villages, valleys and communities. Since the collapse of the Somali government 21 years ago, the worldwide diaspora has been recognised as the largest annual donors to Somalia. Independent analysts assess Diaspora remittances in 2010 to top \$1 billion. It is unfortunate that it has been working in parallel with official aid channels and not sufficiently working with these.

Our submission sets out the case for closer cooperation and the elimination of obstacles to such progress. It is predicated also on our belief, shared with many others making submissions, that the solution to piracy lies onshore, not offshore. For reasons stated above in 2f, the international community cannot hope to succeed in any new initiative without genuine welcome from the host community. The Diaspora has a key role to play here.

#### 5. CONTACTS, TRUST AND COMMITMENT

To win the hearts and minds of the coastal communities, we must offer attractive alternatives to piracy for local sustainability, even survival. The Diaspora which is in constant contact with all major coastal communities is well-placed to use their contacts to assess needs, build trust and generate commitment from them to take up these alternative routes to piracy, towards community sustainability. The Diaspora has already established a sense of trust with these communities through regular remittances and it maintains close supervision of how these UK-earned funds are deployed in Somalia. We argue that we can be trusted to extend that degree of supervision to the deployment of government Overseas Development Aid (ODA). It should be noted that many of us are of the generation born outside Somalia and our mindset is more that of our host community (UK or other European country) even though we retain strong continuing links with Somalia.

#### 6. PROPOSED PILOT PROGRAMME

The proposal identifies six coastal villages currently closely linked to piracy. In partnership with the village elders and also with regional authorities and the international community, WG18S members who are connected with each village will assess the necessary features of a Development Benefits package which if deployed in the village would strengthen the determination of the elders to reject pirate gangs wishing to use the village and its nearby shoreline.

The package will include:

- Education: schools and necessary equipment to improve access to primary education.
- Health: medical clinics to check and improve infant and maternal mortality rates and other health indicators.

- Agriculture: irrigation and agricultural advances.
- Employment: job creation.

We will work with the UNDP<sup>110</sup> to monitor progress towards defined UN Millennium Development Goals (MDG), the worldwide initiative (2000–15) for all countries but which has made uneven progress in Somalia for obvious reasons. The programme will have similarities with the Millennium Village Project (MVP) with which we have made contact. As indicated, this proposal will cover only six villages so its success can be clearly monitored and promoted. This will assist identify short term project success which will form vital trust-building elements in the programme. Improvements in health, education and employment—the prerequisites for an improved quality of life—must be so clear that the community elders will themselves be seen to have “delivered” on the bargain, a bargain which involves the removal of pirate teams and their planners from the villages. We recognise that this targeted approach will be accused of favouritism and also would be a course of action which the UN, always under pressure to show an even-handed approach, could not initiate.

Nevertheless, the planned outcome is to generate pressure on the elders of other coastal villages to follow the action taken by their peers in the chosen six villages.

Also, we will propose that all fishing craft capable of sailing beyond an agreed distance from the shore be registered with local and regional authorities to assist honest fishermen identify themselves with EUNAVFOR and other naval forces. These may assume that unregistered ships in Somali territorial waters are hostile and that in any encounter, they may take appropriate action. We support the efforts of the international community including the European Union *Atalanta* naval force now charged by the United Nations to combat piracy in the region and to enforce UN SCR 1816, we wish to see that it should be tasked also to deter the incursion into Somali territorial waters by foreign fishing fleets.

Also, with regard to beached toxic waste, we continue to be disappointed by the lack of international concern on this matter. We urge the setting up of a survey of the seabed to take place at the earliest opportunity.

These proposals have been widely agreed by the diaspora community since the publication in 2008 of the Somali Joint Statement which we drew up. It has gathered the support of many UK communities as well as those in Norway, Sweden, Denmark, the Netherlands, Italy, Australia, Canada and the United States of America. It is posted on our website.

CHOICE OF COASTAL VILLAGES

Target Village	Hobbio	Eyl	Luqhaya	Garacad	Lasquoray	Hiis
Education needs						
Health needs						
Environment needs						
Employment needs						
Major diaspora contact						
Village contacts						
Govt and Intl. Community						

7. SAMPLE CHECKLIST ISSUES

The programme will cover the following initiatives:

- Health
  - Health checks on all women and children and recording for later regular check-ups.
- Education
  - Introduction of books and seconded teachers.
  - Combat attraction of Child Soldier option.
- Agriculture
  - Targeted irrigation projects to offer sustainable agriculture.

<sup>110</sup> United Nations Development Programme.

- 
- Employment
    - Fishing development and marketing for marine resources.
    - Youth programme into positive changes.
  - Environment
    - Clearing the toxic dumps buried in Somalia coast.
  - Constabulary
    - Register all fishing boats in the six coastal towns.
    - Train coast guards in Puntland similar to those in Somaliland.
  - Gender
    - Consolidate the vision of women's role in society and ensuring their voice heard.
    - Maximising their full participation in rebuilding their country.

## 8 OVERCOMING OUTSTANDING OBSTACLES

We believe that WG18S is a suitable partner for the international community. We have committed our own personal funds to assist development projects in Somalia and we should be seen as trustworthy enough to advise on the distribution of official Overseas Development Aid (ODA). Because of our origin, our sense of identity, influence, connections with local people and knowledge of their culture, our proposal should be encouraged. To assist in this, we ask DFID to review policy which bars UK passport holders like ourselves from travelling to Somalia to work on ODA projects lest they be kidnapped. Such cases involving people like us are too rare to influence such a decision.

## 9. WORLD G18 SOMALIA

The meeting held by WG18S on 7 August endorsed these proposals and we have received much encouragement from those in Somalia, especially those in the targeted coastal villages.

*16 August 2011*

### Annex 1

#### SOMALIA IT MAY BE FAILED STATE BUT THEY ARE NOT FAILED SOCIETY!

Piracy off the Somali coast did not begin with a group of bandits looking for money or the best way to make money off the ships that travel through the Gulf of Aden. It began with fishermen who were tired of foreign fishing fleets taking advantage of the instability in their country, dumping toxic waste and illegally fishing in Somali waters. These activities hampered the economic, environmental and health of both the country and its people.

The value of this illegal, unreported and unregulated (IUU) activity is estimated between \$4–\$9 billion. With no effective authority exercised over Somalia's territorial waters, these fishing fleets have taken control of its 3,300km coastline with its abundant marine resources. It is estimated that annually about 700 international vessels illegally enter Somali territorial waters exploiting species of high value catch such as deep-water shrimp, lobster, tuna and shark.

In addition to the illegal fishing, the dumping of toxic waste into these waters by foreign companies has been well documented. The 2005 United Nations Environmental Program (UNEP) Report referred to such dumping by industrialised nations for their cost-saving benefit. It is calculated that it costs a European country \$2.50/tonne to dump toxic waste in Somalia and \$250/tonne to dump it safely in Europe. This practice has been ongoing since the outbreak of Somalia's civil war but firm evidence only became available after the 2004 tsunami which washed ashore the containers and barrels of toxic waste. This led to outbreaks of diseases among villagers.

To combat initial foreign incursions, local fishermen sought to drive their ships away but reports indicate that they would regularly be sprayed with boiling water and their nets destroyed. Some smaller boats were crushed, killing their crews. Later, the fishermen took up arms to protect themselves, leading to more effective counter measures and in turn further retaliatory methods. This spiral led to the start of Somalia's piracy problem associated with lawlessness and greed for even higher ransom payments. Initially only in tens of thousands of dollars, then escalating to hundreds of thousands until in 2008 when an astonishing \$3.5 million was secured on a single ship. Countries and shipping companies are most often very willing to pay these ransoms because the value of the ships and its crew members outweigh the ransom being demanded.

These changes have transformed the pirates from simple opportunists into sophisticated professional operators, a situation likely to continue unless action is taken to halt it. However, with the continuation of conditions motivating young men to enter piracy, it is likely that pirate numbers will increase. This will lead to even more hijackings, higher ransom demands and more human casualties.

With two-thirds of Somali youth without jobs and almost 75% of Somali households surviving on less than \$2 a day, piracy provides a chance to make a living in the face of such desperation. Piracy reportedly generated over US\$30million between January and November 2008. Through this, young Somali men have the opportunity to join the country's economic elite.

#### THE INTERNATIONAL COMMUNITY

The international community through the UN Security Council has adopted resolutions aimed to counter piracy attacks. Also it has authorised the deployment of naval ships through NATO, the UN, other alliances or independent. These cost up to US\$100k per day so with more than 40 vessels on patrol, the aggregate annual operational cost is about \$1.5 billion, far greater than the US\$3million paid into the UN anti-piracy trust fund.

#### SOMALI DIASPORA RECOMMENDATION

The international community's attempts thus far have not been effective, failing to target the root causes of piracy in Somalia which is not a sea-born phenomenon but rather a land-based one. Thus, despite the international community's deployment of naval warships, this has not tackled the land-born root cause of piracy.

Clearly Somalia needs the restoration of a powerful authoritative government in Somalia, to direct the restoration of stability and security. Also, the international community should introduce a roster of naval escorts for ships of the World Food Programme (WFP) en route to and from Somalia's ports, enabling the orderly distribution of their cargoes.

Also, the international community naval forces should flag their determination to prevent foreign ships dumping toxic waste or fishing illegally in Somali waters. Those found culpable should be prosecuted. Also, there should be better coordination and communication between the many naval ships off Somalia's coast. A regional tribunal should be set up charged with providing all logistics to prosecute and punish those so captured.

#### CONCLUSION

Piracy will be eliminated only by changes on land, not on the sea; when the youthful pirates secure steady jobs. After all, piracy is an income-generating industry, not a way of life.

The world campaign against Somali piracy should also seek to re-establish the now-dormant Somali fishing industry and provide funds to build roads, schools, and clinics in the affected areas—all to provide employment for ex-pirates. Ultimately, piracy will cease when the jobless are gainfully employed.

Finally, the international Community could reflect on the fact that just 10% of the amount they pay naval ships and ransom payments could easily encourage Somali coastal communities to reject piracy using peaceful means.

Piracy Working Group

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### Written evidence from SOS—SaveOurSeafarers

#### EXECUTIVE SUMMARY

A group of 30 international maritime associations, representing almost the entire worldwide shipping industry, is calling upon the governments of maritime nations to take a firmer more decisive stand against Somali piracy and eliminate the piracy threat.

#### INTRODUCTION

The submission is made by a not-for-profit campaign group SOS SaveOurSeafarers ([www.SaveOurSeafarers.com](http://www.SaveOurSeafarers.com)) established by a broad consortium of 30 international maritime associations, representing shipowners, shipmanagers, trade unions and insurers. The campaign is part of a wider campaign which seeks to combat piracy and calls on governments to take a firmer stance in tackling maritime piracy in the Gulf of Aden, Arabian Sea and Indian Ocean. It seeks to increase public awareness of the problem, of the risk to the global economy, and of the danger 1.5 million seafarers face as they undertake their duties when going through high-risk areas. To this end we would request that the recently issued video,<sup>111</sup> be shown to the Foreign Affairs Committee.

#### FACTUAL INFORMATION

The maritime industry is responsible for the movement of 90% of the world's traded materials—fuel, food, manufactured goods and aid. Some 40% of this trade is at constant risk from criminal activity in the Indian Ocean, Gulf of Aden and Arabian Sea due to the failure of governments to exercise jurisdiction. In the last five years there have been a total of 540 pirate attacks in this area, 174 ship hijackings and 3,600 seafarer hostages taken. There have been 210 pirate attacks so far this year in this area resulting in 25 ship hijackings

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<sup>111</sup> [http://www.youtube.com/watch?v=WLqWVpPALz0&feature=channel\\_video\\_title](http://www.youtube.com/watch?v=WLqWVpPALz0&feature=channel_video_title)

and over 400 seafarer hostages. The length of time hostage ships are held can be anywhere up to six to 10 months with some held for even longer periods. In the last five years, over 60 innocent seafarers have died as a direct result of piracy, through mental and physical abuse and violence inflicted by criminal pirate gangs.

Those employed on ships trading these routes are exposed to the acute risk of suffering severe harm at the hands of the Somali pirate criminals. When these pirates are caught 80% are released to attack again due to the failure of governments, especially the flag states, to exercise jurisdiction.

#### INDUSTRY ACTION

The industry liaises closely with the naval forces and provides on-loan personnel to assist the military operation.

The broad maritime industry (shipping and shipping users) has compiled a booklet on Best Management Practice (BMP) for those with ships coming into areas at risk from pirate activity. It has already been ascertained that ships following BMP have a lower chance of being boarded by pirate gangs, BMP is already on its fourth edition and is distributed to be placed on all ships and in all shore offices. BMP stresses compliance and the industry is working with the naval forces to ensure the fullest possible compliance of all ships passing through this area.

#### RECOMMENDATIONS FOR GOVERNMENT ACTION

We are asking all governments worldwide, as well as specifically the UK Government, to take a firmer stance to help tackle piracy by prioritising these key actions:

- Stop ships and the seafarers on them being attacked, which can be achieved in part by reducing the effectiveness of the easily-identifiable mother ships. This includes more robust rules of engagement, including authorising land-based action against pirate store-camps, thereby leaving the pirates without resources before they even put to sea. Further moves could be made by naval forces to hamper the movement of pirates to and from shore and to and from mother ships.
- Authorise the naval forces to hold pirates and deliver them for prosecution and punishment. The current “catch and release” policy is caused by the governments refusing to exercise their jurisdiction and prosecute and imprison pirates.
- Have in place under national laws an efficient and effective legal framework which is fit to fully criminalise all acts of piracy, including the intent to commit piracy, and acts of violence against ships and seafarers. These laws should recognise governments’ obligatory duty to suppress piracy in accordance with all international conventions. Piracy laws should be sufficiently wide to implicate all those who benefit financially from ransom payments including negotiators, organisers and financiers, whether within or outside Somalia.
- Fully co-operate and share information between national and international law enforcers and military to help trace, capture and prosecute pirates, pirate gangs, negotiators, organisers and financiers behind their criminal networks.
- Increase the naval assets in this area or at the very least maintain the status quo.
- Get governments to follow the recent lead of Italy and the Netherlands in facilitating military armed guards on board ships, or at least acknowledge the need to employ private guards in absence of military forces as and when risk analysis suggests their need. We welcome the forthcoming UK decision to temporarily stop discouraging armed guards on UK ships and further the very recent decision to take more robust action against pirates.
- Provide greater protection and support for seafarers.

We would be happy to discuss specific suggestions for updating UK law to help achieve these priorities.

*17 October 2011*

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#### **Written evidence from the International Maritime Organization (IMO)**

On behalf of the Secretary-General, I thank you for your letter of 16 September 2011 requesting the submission of written evidence to the Foreign Affairs Committee (FAC) inquiry into piracy off the coast of Somalia.

The International Maritime Organization (IMO) is the specialized agency of the United Nations responsible for measures to improve the safety and security of international shipping and to prevent marine pollution from ships.

With reference to the question on IMO’s position on whether changes to international law are required in order to tackle Somali piracy, please be advised that the Legal Committee of IMO, at its 97th and 98th sessions (15–19 November 2010 and 4–8 April 2011, respectively), examined legal issues relating to piracy. The Legal Committee, at its 97th session, agreed that there was a need for all States to have in place a comprehensive legal regime to prosecute pirates, consistent with international law.

The view was also expressed by the Committee, at its 98th session, that the development of a new multilateral instrument might be premature, or unnecessary, in light of the existing international legal framework on piracy, which was generally considered to be adequate.

With regard to IMO's work on the use of private armed guards and security on board ships in piracy-infested areas, the Maritime Safety Committee (MSC) of IMO, at its eighty-ninth session (11–20 May 2011), adopted resolution MSC.324(89) on Implementation of best management practice guidance. In addition, the Intersessional Maritime Security and Piracy Working Group of the MSC (13–15 September 2011) approved four MSC circulars for dissemination.

I hope that the attached information is of assistance to the inquiry.

10 October 2011

#### IMO WORK ON LEGAL ISSUES RELATED TO PIRACY

1. The Legal Committee of IMO has, for the past several sessions, considered a variety of issues related to the problem of piracy.

2. In respect of national legislation, in December 2008, IMO Member States were requested, by means of a Circular letter, to submit to the Legal Committee samples of their national legislation, if any, which is in place to prevent, combat and punish acts of piracy and armed robbery at sea, as well as any pertinent information regarding such national legislation.

3. This exercise helped IMO to understand to what extent the piracy provisions of the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention for the Suppression of Unlawful Acts against the Safety of Navigation, 1988 (SUA 1988) had been fully, partially or indirectly implemented in the national laws of States, focusing on the definition of piracy (or equivalent acts) and the extent of jurisdiction.

4. A preliminary analysis by the Secretariat of the legislation received was presented to the Committee, and reached the following conclusions:

- few States fully incorporate the definition of piracy contained in article 101 of UNCLOS;
- few States incorporate the concept of universal jurisdiction contained in article 105 of UNCLOS, which allows every State to seize pirate ships and arrest alleged pirates;
- few States make piracy an independent/separate criminal offence—rather, it is subsumed within more general categories of crime, such as robbery, kidnapping, violence against persons, etc, and
- all of these factors, alone or in combination, make the legislation less effective in achieving successful prosecutions.

5. The Legal Committee, at its 97th and 98th sessions (15–19 November 2010 and 4–8 April 2011, respectively), examined legal issues relating to piracy. The Legal Committee, at its 97th session, agreed that there was a need for all States to have in place a comprehensive legal regime to prosecute pirates, consistent with international law. The view was also expressed, at its 98th session, that the development of a new multilateral instrument might be premature, or unnecessary, in light of the existing international legal framework on piracy, which was generally considered to be adequate.

6. IMO, the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS) and the United Nations Office on Drugs and Crime (UNODC), in an effort to co-operate more effectively in addressing the problem of piracy, consolidated the material collected by each agency on piracy legislation. DOALOS has since made this material publicly available on its website (<http://www.un.org/depts/los/piracy/piracy.htm>).

7. Another common objective of UNODC, IMO and DOALOS was to identify the key elements that could be included in national law for full implementation of international instruments which apply to piracy (UNCLOS, SUA 1988 and the Hostages Convention). The purpose of this exercise was, therefore, to assist States in the uniform and consistent application of the provisions of the international conventions relating to piracy.

8. The Legal Committee, in April 2011, considered documents provided by the three agencies and agreed that the key elements contained therein might be useful to States which were either developing national legislation on piracy, or were reviewing existing legislation on piracy.

9. This information has been circulated to Member States by means of Circular letter No.3180, as attached, with the understanding that:

- it does not constitute definitive interpretations of the instruments referred to therein;
- it should not be considered as limiting, in any way, the possible interpretations by State Parties of the provisions of the instruments in question, and
- the information might be supplemented by reference to other materials, including relevant commentary by legal experts and judicial opinions which may be available.

10. The Legal Committee, at its 97th session, also considered the Report of the UN Secretary-General which contains a number of possible options for prosecuting and imprisoning persons responsible for acts of piracy



and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers, possibly with international components; a regional tribunal; or an international tribunal and corresponding imprisonment facilities.

11. Among the views expressed was that the crisis had been provoked in the first place more by the unstable political situation on Somali land than by the absence of viable legal mechanisms to fight piracy; therefore, the first priority was the stabilization of Somalia, which would take time.

12. In addition, the Legal Committee agreed that:

- national-based solutions in the region, coupled with capacity building in the countries involved, was most desirable, and
- the enhancement of UN assistance to build the capacity of regional States to prosecute and imprison pirates was the preferred solution.

13. The Committee noted that some support was also given to the establishment of a Somali chamber outside Somalia, as well as the establishment of a special chamber within the national jurisdiction of a State or States in the region.

14. As a separate matter, a representative of IMO has been attending the meetings of Working Group 2, established in 2009 under the auspices of the Contact Group on Piracy off the Coast of Somalia, and updating it on the latest developments of the IMO Committees regarding piracy.

#### RECENT WORK OF IMO ON THE ISSUE OF PRIVATE ARMED GUARDS ON SHIPS

1. Regarding the use of armed guards and security of ships in piracy-infested areas, the IMO Maritime Safety Committee (MSC), in May 2011, adopted resolution MSC.324(89) on Implementation of best management practice guidance. In addition, the Intersessional Maritime Security and Piracy Working Group of the MSC approved the following MSC circulars, as attached, for dissemination:<sup>112</sup>

- MSC.1/Circ.1408—Interim recommendations for port and coastal States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area;
- MSC.1/Circ.1406/Rev.1—Revised interim recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area;
- MSC.1/Circ.1405/Rev.1—Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area, and
- MSC-FAL.1/Circ.2—Questionnaire on information on port and coastal State requirements related to privately contracted armed security personnel on board ships, which is aimed at gathering information on current requirements.

2. The circulars provide interim guidance and recommendations to be taken into account when considering the use of privately contracted armed security personnel (PCASP) if and when a flag State determines that such a measure would be lawful and, following a full risk assessment, appropriate.

3. The interim guidance and recommendations are not intended to endorse or institutionalize the use of armed guards. Therefore, they do not represent any fundamental change of policy by the Organization in this regard. It is for each flag State, individually, to decide whether or not PCASP should be authorized for use on board ships flying their flag. If a flag State decides to permit this practice, it is up to that State to determine the conditions under which authorization will be granted. The use of PCASP should not be considered as an alternative to Best Management Practices and other protective measures.

#### Written evidence from the International Maritime Bureau

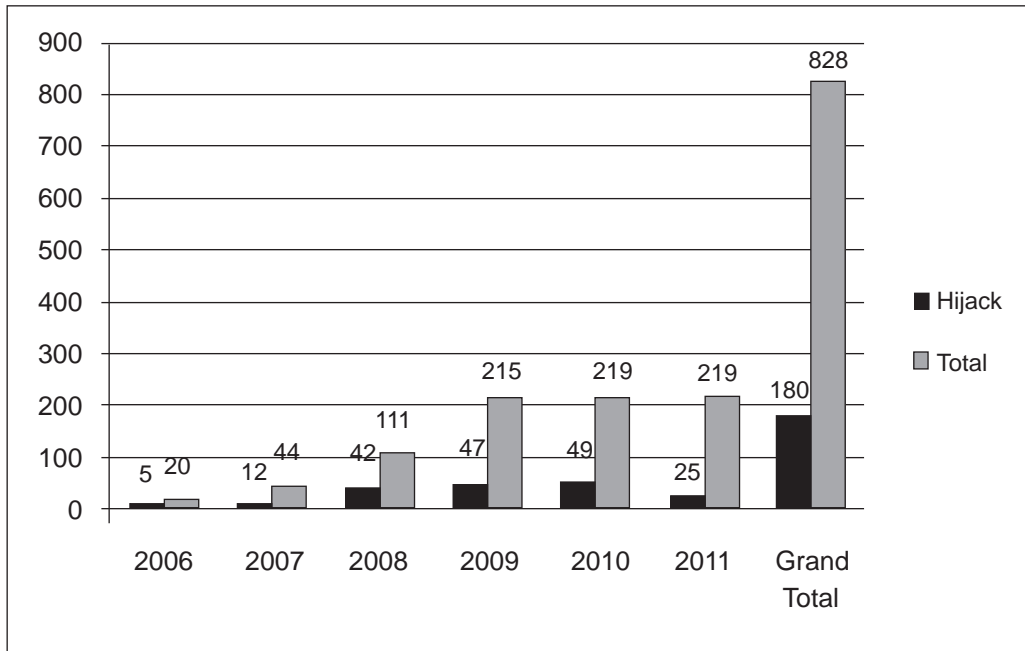
Table for UK flagged or managed vessels hijacked by Somali pirates:

<i>year</i>	<i>ship name</i>	<i>type</i>	<i>manage by</i>	<i>flag</i>	<i>type attack</i>	<i>Total</i>
2009	Ariana	Bulk Carrier	United Kingdom	Malta	Hijacked	1
	Lynn Rival	Yacht	United Kingdom	United Kingdom	Hijacked	1
	St James Park	Tanker	United Kingdom	United Kingdom	Hijacked	1
<b>2009 Total</b>					<b>3</b>	
2010	Asian Glory	Vehicle Carrier	United Kingdom	United Kingdom	Hijacked	1
	Talca	Refrigerated Cargo	United Kingdom	Bermuda	Hijacked	1
<b>2010 Total</b>					<b>2</b>	

<sup>112</sup> Not printed.

Table and graph comparison of total attacks by Somali pirates and total hijackings (the hijacks are included in the total attack figures):

<i>Year</i>	<i>Hijack</i>	<i>Total</i>
2006	5	20
2007	12	44
2008	42	111
2009	47	215
2010	49	219
2011	25	219
<b>Grand Total</b>	<b>180</b>	<b>828</b>



9 November 2011

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