

U. S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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

DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

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

ON THE

PIRACY AGAINST U.S. FLAGGED VESSELS: LESSONS LEARNED

BEFORE THE

SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

U. S. HOUSE OF REPRESENTATIVES

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

Counter-piracy operations are primarily a maritime law enforcement activity that the Coast Guard is trained and equipped to support. We are the competent authority for the U.S. government on more than 30 bilateral agreements with foreign partners. These agreements underpin a wide range of Coast Guard operations including counter-drug, migrant interdiction, fisheries enforcement, and Proliferation Security Initiative missions. The Coast Guard understands the domestic and international legal frameworks and the associated boarding and enforcement requirements necessary to ensure the successful negotiation and implementation of agreements to facilitate counter-piracy operations on the water and the delivery of legal consequences to the pirates ashore. The Coast Guard's international training teams and deployable law enforcement detachments offer tailored maritime law enforcement training that can be easily integrated in regional capacity building initiatives, and which is tied directly to at-sea operations. Domestically the Coast Guard works with and regulates the U.S. merchant fleet to reduce its vulnerability to acts of piracy.

Maritime piracy is a universal crime under international law because it places the lives of seafarers in jeopardy and affects the shared economic interests of all nations. In addition to placing the lives and safety of seafarers in jeopardy, a single piratical attack affects the interests of numerous countries, including the flag State of the vessel, various States of nationality of the seafarers taken hostage, regional coastal States, owners' States, and cargo shipment and transshipment States. In the case of Somalia-based piracy, increasingly brazen attacks in 2.5 million square miles of ocean from land-based enclaves along an under-governed and economically devastated 2,300 mile coast pose a threat to global shipping. Eliminating piracy and other transnational threats requires stronger law enforcement capacity and rule of law in Somalia.

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

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

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

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

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

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

In addition to being the subject of domestic legal regimes, piracy is a crime of universal jurisdiction under conventional and customary international law. Accordingly, every nation has the legal authority to establish jurisdiction and punish the offenders, regardless of nationality of the perpetrator or the victims, or of the vessels involved.¹ This has been a basic tenet of customary international law for centuries, and is also enshrined in treaties such as the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on Law of the Sea. United Nations Security Council Resolutions 1846 and 1851, issued in December 2008, have provided Chapter VII authorities to certain states and international organizations, for which advance notification has been provided by the Somalia Transitional Federal Government to the UN Secretary-General, to enter Somali waters and territory to repress piracy.

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

Of course, legal authority alone does not ensure success. Victim states must have the political will to prosecute. Furthermore, combating the threat of piracy requires well-coordinated interagency and international use of the lawful authority in operations that account for the unique problems presented by the logistics and geography of the region, as well as the vast expanse of ocean on which pirate attacks have taken place. The coordinated application of legal authorities

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

must also address the complex challenges of evidence collection and potential prosecutions under differing legal regimes, and the dangers to innocent seafarers and hostages inherent in any response actions intended to wrest control of a victim ship from pirates.

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

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

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

The Coast Guard was instrumental in facilitating broad international support for using the SUA Convention as a mechanism for effective consequence delivery. Under international law, an act of piracy is defined as a criminal act of violence, detention, or depredation committed for private ends by the crew or the passengers of a private ship in or over international waters against another ship or persons and property on board. The SUA Convention applies more broadly to acts of violence against ships regardless of the motive of the actor, but covers acts of piracy. It is designed to ensure appropriate action is taken against persons committing unlawful acts against ships, including, the seizure of ships by force; acts of violence against persons onboard ships; and the placing of devices on board a ship which are likely to destroy or damage it. Most importantly, though, the SUA Convention establishes a framework whereby masters of ships may deliver suspected offenders to a coastal State that is party to the SUA Convention. The

coastal State is then obliged under the SUA Convention, with few exceptions, to accept custody and either extradite the suspected offender or submit the case to their competent authorities for the purpose of prosecution.

In support of the United States' objectives, the Coast Guard is contributing to ongoing efforts to secure arrangements with regional partners to facilitate the expeditious investigation, prosecution and, as appropriate, punishment of apprehended pirates. On January 16, 2009, the United States, and the Government of Kenya completed a MOU concerning the conditions of transfer of suspected pirates, armed robbers, and seized property in the western Indian Ocean, the Gulf of Aden, and the Red Sea. The United Kingdom and European Union have concluded similar MOUs with the Government of Kenya.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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