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Maritime Piracy in Somalia

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Measures of day to day confrontation
with the risk of piracy

by

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Abstract

The current thesis examines the issue of maritime piracy as exercised by Somali nationals with a special focus on the post 2005 era and the response of the international community; both on state and industry level as presented and analyzed, in order to give the reader a sound and in depth understanding of the problem. Somalia based maritime piracy constitutes an issue of paramount importance for international shipping and cooperation and contribution of all interested parties is of vital importance in order to achieve a globally accepted and enforced policy aiming to the securitization of international seaborne trade.

Introduction

The first decade of the 21st century found the international maritime industry unprepared for what would later prove to be the worst nightmare for hundreds of thousands of people working in the industry and their families. When the civil war in Somalia started in 1991, it seemed as another internal conflict of the African continent with all collateral damages for the people of Somalia; but no one would predict the underlying risks of such a conflict in a country of excess geostrategic position not only for the country itself, but for the international community; for international security and stability; for international peace. Until 2005, when Somali abandoned their pacific lives of fishermen and turned into pirates initiating their piratical attacks against merchant vessels and their crews on an extended and organised level in the area of the Gulf of Aden.¹

Ever since the situation seems to be out of the control of the international community with hundreds of attacks taking place yearly and thousands of seafarers living the horrific experience of hostage, giving pirates an important advantage during the negotiations with the owners and operators of the vessels.

In the current thesis, the main objective is to identify and describe the options of ship owners and managers to defend the integrity and security of their employees, their assets and their business over all. Data and information by international organizations, international and national associations, interviews with person in key positions and corporate information have been assembled in order to create a solid ground of understanding of the problem of Somalia based piracy and the underlying risks for the international navigation and the solution at the discrepancy of shipowners and ship operators.

It should be noted that the current examines the problem of piracy from a broader perspective than a strictly legal one; all kind of information and insights obtained have been evaluated and presented a way to make piracy seen not strictly as legal issue, but from a more practical point of view, making the composition of this thesis a rather difficult task, considering the sensitivity of many of the collected material. Nevertheless the current was conducted with full respect to scientific rules and ethic codes, in order to present the problem and its proposed by the maritime industry solutions in an unbiased way.

In the first chapter of the current, definitions of the most fundamental, concerning this thesis, terms are made with a view to constitute the basis of better understanding of the roles of individual involved in the problem and the situation as well. Also a historical review of some terms, has been found of great significance for the better understanding of the roles of people involved in the industry's leadership.

¹ See Appendix 1

The second chapter is analyzing the emergence of piracy in this specific area of the world and the historical background of it with a view to provide a better understanding of the problem. Searching for solutions of a problem, one must look at its routes. And this is the case of this chapter. Furthermore in this chapter a profile analysis of the offenders is performed, in order to conclude to the current condition and the size of the problem of Somalia based piracy

The international community's response to the problem is presented in the third chapter with a main focus on the states' and international bodies' response to the problem from the time of its emergence. National and multinational military operations initiated in response to the increasing incidents of maritime piracy committed by Somali nationals are being analysed in a conclusive way in order to constitute solid ground of understanding for what is elaborated later in chapter 4.

In chapter 4, an analysis of the international maritime community initiatives as a consequence both of Somalia based piracy and the international community's response to this matter. The main considerations and petitions of the industry are being discussed and the respective response of the international community and the flag states in particular.

Commencing this research, in chapter 5 the conclusions made during the composition of this thesis are presented.

Chapter 1: Piracy and Ship management. Definitions

The current chapter examines the definition of piracy both from a legal and historical perspective; piracy off coast of Somalia is the main concern in this thesis, thus a deep though conclusive examination of the causes and the special circumstances that coincide in the country contributing to the appearance and development of piracy is critical to apprehend the problem, for which solution are examined in later chapters.

1.1 Definition of piracy. The offence and the offenders

First and foremost a definition of piracy is necessary to comprehend the nature of such acts and their characteristics.

Etymologically the word is routed by the Greek word *πειρατεία* (pee-rha-tee-a), which is the act, committed by the person called *πειρατής* (pee-rha-tees). The word means the robber. In principle the word *πειρατής* (pee-rha-tees) describes the person, who commits the unlawful acts of attack and robbery against a vessel without the permission of any authority and violating the national law of the flag state of the vessel and the crew subject to his unlawful acts.² The term differs from the Latin routed term of corsair by the fact that the latter commits his acts of attack and seizure of vessels and crews serving as employees of a national authority for strategic reasons.³ The Greek term *πειρατής* (pee-rha-tees) is routed by the verb *πειρώ*, *πειρώμαι* (pee-rho, pee-rho-me) synonym to *attempt, try*⁴; the Latin routed term corsair is routed by the Latin word *cursus*, meaning the race, the struggle⁵.

From the above etymological approach, assumptions can be made regarding the phenomenon of *piracy* and its historical background. Additionally the invention and adoption of each of the terms shows the significance and the historical coincidence of each type of acts against merchant vessels in respect to the reigning power over the seas and seaborne trade.

Another significant remark regarding the definition of piracy is that the etymological approach, although it is valid, remains rather vague and particularly sea-wise oriented. Therefore a legal examination of the term is necessary to lead to sound scientific conclusions.

Hence the necessity of the international community to establish a globally respected legal environment to ensure peace and prosperity worldwide, the United Nations has

² Μπαμπινιώτης, Γ., Λεξικό της νέας Ελληνικής Γλώσσας, Κέντρο Λεξικολογίας, Αθήνα, 1998, pp. 1379

³ Ibid pp. 951

⁴ Ibid pp.1379

⁵ Ibid pp. 951

urged its member States to adopt and ratify the United Nations Convention on the Law of the Seas (UNCLOS, 1986), which constitutes so far the most widely respected convention on legal matters concerning sea and air authority and jurisdiction. In the post World War II era, international community was determined to set a legal framework globally respected to prevent all kinds of actions such as the recent precedents of the war; thus the formation of the United Nations organization and its specialized services were set in this direction.

Respectively the United Nations, aiming to synchronization of international legislation in order to settle all matters regarding authority and control over seas and airspace initiated a series of multilateral conferences; the first two were held in Geneva, Switzerland, in 1958 (UNCLOS) and 1960 (UNCLOS II); the third and most productive one was held in New York and Geneva lasting from 1973 until 1982 (UNCLOS III or UNCLOS, 1982). It should be outlined that the last conference proved to be the most productive and constructive conference regarding sea and airspace international legislation, especially from a political point of view, hence that 160 member states of the UN attended this nine year long conference that concluded with the UN Convention on the Law of the Seas conference in Montego Bay, Jamaica on December 10th, 1982. (www.un.org)⁶

Since the adoption of UNCLOS 1982, 162 UN member states have ratified⁷ the treaties included, portraying the ability of the international community to bridge any kind of differences for the sake of international peace and stability, hence *bona fides* exists and is not limited to political announcement vague of any substantial actions.

Hence that UNCLOS 1982 constitutes the international legislation framework over sea and airspace authority and control; therefore the definition of piracy is of special significance for this thesis, since it is considered as the most widely accepted legal definition of such act:

“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 (...), and directed:*
 - (i) *on the high seas, against another ship (...), or against persons or property on board such ship (...);*
 - (ii) *against a ship (...) persons or property in a place outside the jurisdiction of any State;*
- (b) *any act of voluntary participation in the operation of a ship (...)*

⁶The UN Law of the Sea, A historical perspective

http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Third%20Conference

⁷ According to UN records, by June 3rd, 2011 162 UN member states have ratified the UNCLOS 1982.

http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm

*with knowledge of facts making it a pirate ship (...);
(c) any act of inciting or of intentionally facilitating an act
described in subparagraph (a) or (b)."*

(UNCLOS, 1982)⁸

The aforementioned Convention also describes the occasion a vessel is regarded as a pirate vessel:

"Article 103

Definition of a pirate ship (...)

A ship (...) is considered a pirate ship (...) 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 (...) has been used to commit any such act, so long as it remains under the control of the persons guilty of that act."

(UNCLOS, 1982)⁹

Interesting enough is the fact that UNCLOS deals with piracy, not only in defining its unlawfulness, but also clarifying that in case such event takes place the prosecuting jurisdiction is neither exclusive for the flag state of the vessel that subjects to such an event, nor for the flag state of the vessel that is used to facilitate such unlawful acts, but to every State, which is able to take action against such an event for the sake of international peace and security and prosecute criminals according to its national legislation.¹⁰

Even liability of possible damages caused on a suspected vessel employed by pirates on action to resolve and liberate such a vessel, by the acting State is predicted and solved according to art. 106 of UNCLOS 1982; solving the case where inadequate grounds for seizure of such vessel exist and naming the State taking action (i.e. vessel seizure) liable to the flag state of the vessel.¹¹ Furthermore it is stated that only war vessels and aircrafts are allowed to perform any kind of operation in order to liberate a vessel from its captivity; in case other vessels or aircrafts are employed for the same objective, they must be clearly identifiable as means for such operations.¹²

The UN Convention on the Law of the Seas is the principal international maritime regime enacted worldwide.

⁸ Art. 101, UNCLOS, 1982

⁹ Ibid Art. 103

¹⁰ Ibid Art. 105

¹¹ Ibid Art. 106

¹² Ibid Art. 107

1.2 Additional legislation

The International Maritime Organization (IMO), being the UN special branch on maritime safety, security and environmental pollution, is the agency with greatest relevance with the issue of piracy. Therefore and under the aegis of the organization, continuous legislative research is being held, whilst interaction and communication among its member States is strongly encouraged aiming to the protection of international peace and security navigation.¹³

In 2010 piracy became one on the key issues in the agenda of IMO and further examination of IMO initiatives proves the determination of the international political and maritime community to set a universally respected legislation to prevent and discourage acts of piracy worldwide and in the area off coast of Somalia in particular.

A milestone in the involvement of the IMO with the issue of piracy other unlawful acts against vessels was the incident of the seizure of cruiser MS Achille Lauro by members of the Palestinian Liberation Front (PLF), which resulted to the execution of a passenger of the vessel, Leon Klinghoffer, on October 7, 1985. The incident triggered the initiation of the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (SUA Convention, 1988).¹⁴

In fact the SUA Convention of 1988 has complementary role to the provisions of art. 101-107 of UNCLOS, regarding the unlawful seizure of a vessel and other unlawful acts committed against a vessel, its crew and/or passengers; the perception of acts of piracy as acts of terrorism, such as the case of MS Achille Lauro¹⁵, should not be confused with plain acts of piracy, though jurisdictional issues over the captured vessel are dealt according to UNCLOS 1982. Even SUA Protocol of 2005 complies and respects the UNCLOS 1982 definition of piracy, including though further unlawful actions against vessels, crews, passenger and property on board. It should be mentioned that neither SUA Convention of 1988, nor SUA Protocol of 2005 refer to the term *piracy*, but refer to such an unlawful act indirectly by referring to acts that a *person commits unlawfully and intentionally*(SUA Convention, 1988 and SUA Protocol, 2005).¹⁶ The latter seems equivalent to article 101 of UNCLOS reference to *private ends* on behalf of the offender.

¹³ The History of International Maritime Organization

<http://www.imo.org/About/HistoryOfIMO/Pages/Default.aspx>

¹⁴ IMO Legal Committee, Agenda item 8, 98th Session, 18th February 2011 (LEG 98/8, p. 2, par.4 &5)

¹⁵ Daphna Berman, *Klinghoffer daughters recall personal tragedy at commemoration of terror victims outside Israel*, 9 May 2008, Haaretz Newspaper
<http://www.haaretz.com/klinghoffer-daughters-recall-personal-tragedy-at-commemoration-of-terror-victims-outside-israel-1.245471>

¹⁶ In both texts this is the sequence in which these acts are described and indirectly describe the offence of piracy. (see SUA Convention of 1988 and SUA 2005 Protocol)

The IMO Secretariat and its Legal Committee realize the fact that States are facing various difficulties in incorporating UNCLOS and SUA provisions regarding piracy in their national laws. However SUA Convention provides a more detailed and specific understanding with regards to the prosecution of persons, suspected to have committed unlawful acts against vessels, crews, passengers and the on board property; though encouraging and not obligatory the SUA Convention is much more specific than article 105 of UNCLOS. However the latter states clearly that universal jurisdiction exists, hence piracy is considered to be a crime against humanity; on the contrary offences regarded by art. 6 of the SUA Convention may not subject to universal jurisdiction.

More specifically article 105 states regarding seizure of a *pirate ship* that:

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

(UNCLOS, 1982)¹⁷

Hence the universality of jurisdiction, since piracy is crime against humanity, no other basis of jurisdiction is required for a State to address charges against a suspect for the offence of piracy, making piracy an exclusion from the rule of flag state jurisdictional exclusivity over unlawful acts committed on board of a vessel bearing its flag.

Furthermore according to article 58 of UNCLOS, foreign state forces are allowed to operate within the Exclusive Economic Zone of another State in order to pursue, capture and prosecute suspects for having committed acts of piracy. Thus international maritime piracy is perceived as an unlawful act, prosecution of which can be enforced in and by all member States of UNCLOS and according to UNCLOS, 1982 doctrine of the universality of jurisdiction on cases of *piracy*.

1.3 Dominus navis et exercitor navis

In this part of the thesis a short historical review over the various roles and nominations of shipowners in some of the most renowned maritime and legal traditions. It is interesting indeed the fact that in a number of languages the term referring to the shipowner varies depending on his role in the management of the vessel.

However the main perceptions of the *owner* and the *charterer* are universal; wording though makes interesting conclusions regardless the language used. The universal

¹⁷ Art. 105, UNCLOS, 1982

perception over the role of the one carrying any of these two terms though seems to be more generic; according to Art. I(a) and Art. III(3) the *carrier* is liable, regardless whether he/she is the *owner* or the *charterer*, for due diligence of the master of the vessel operating under his services and for the carrier's interests.¹⁸

The perception of initially distinguishing the role and the liability of the *owner* and the *charterer* is common in European maritime legislation. According to *the Hague - Visby Rules, the Hague Rules as amended by the Brussels Protocol* (1968), legislators consider the *owner* or the *charterer* under the common spectrum of a sole individual, that of the *carrier*, however it is clear that the role of the *owner* differs from the *charterer* and accordingly the two individual liabilities. This distinction goes back to the Roman Legal terms of *dominus navis* and *exercitor navis*. (Wüstendörfer, 1922)¹⁹

According to the Roman Law, the *exercitor navis* was the one subject to an *actio exercitoria*. The *exercitor* is considered to be liable for due diligence on behalf of the master. Simultaneously the distinction between *dominus* and *exercitor* clarifies the liabilities of each and accordingly liability is borne by the *exercitor*. It has to be outlined the fact that a *dominus*, meaning the shipowner, is not necessarily an *exercitor*. These are two different and distinguished roles, not mutually excluding though.²⁰

Furthermore in some merchant navies, depending on the nationality of the individuals involved in merchant shipping, there is a significant relation or distinction between the two roles. For example Greek shipowners are traditionally combining the two roles, while the Danish have changed their role from owners to charterers/employers of vessels. Of course this kind of generalizations could be dangerous for a scientific research, since they are usually made as remarks over experience.

In Greek the terms in use are *πλοιοκτήτης* (*pleeo-ktee-tis*: *ship-owner*) and *εφοπλιστής* (*ef-oplee-stis*: *in fact means the employer, but the term is closer to the german word Ausrüster*). In German, there is the same distinction in use and therefore there is the term *Reeder* (*the owner*).²¹ This entire analysis belongs to Spiliopoulos, K. (1929), when he attempted to discriminate those involved into ship owning and ship management. In the book *Πλοιοκτήτης και εφοπλιστής*, there is a comparative analysis of the latest legislation of at the time available in Europe after the ratification and adoption of the Hague Rules of 1907, regarding the official declaration of piracy as an act against international peace and humanity and the legal recognition of the differentiation between the *carrier* and the *owner* according

¹⁸ Art. I(a) and III(3), The Hague – Visby Rules, The Hague Rules as amended by the Brussels Protocol, 1968

¹⁹ Würstendörfer, *Seeschifahrtrects*, in *Ehrenbergs Handbuch des gesamten Handelsrechts*, 1923, pp. 290

²⁰ Ibid Chapter VII

²¹ Σπηλιόπουλος, Κ. Β., *Πλοιοκτήτης και Εφοπλιστής*, Νέα Ελληνική Ήώς, Αθήνα, 1929

the provisions of the *Hague-Visby Rules* of 1922 and the liability each subject involved in the transportation operation respectively.

There is some interesting connection between the term describing the one employing and managing the vessel and the armament of the vessel and its provisions and the topic of piracy as a consequence. As stated by *Homer*, in *Odyssey*

in rhapsody ζ, verb 295: «νήα εφοπλισόμεθα». (neea efoplismetha)²²

This is translated in English: To equip the vessels. An etymology analysis of the above phrase gives the sense of the words in a more vivid way.

Nήα (neea): Vessels in ancient greek

Εφ + οπλισόμεθα (Ef + oplisometha): *Ef* ≈ *onto* + *oplisometha* = *to arm*. => *Εφοπλιστής (Efoplistis)* = *the person, who is in of the vessel's management, marketing and equipment.*²³

This is the first written evidence of the Greek term for the person in charge of crewing, managing and marketing the vessel for its transportation purposes. Originally the term is taking into account the need for the vessel to be armed in order to sail uninterrupted and safely. Apart from all the necessary navigational equipment, security equipment aboard was considered to be of vital importance and a responsibility of the person, who was in charge of vessel's navigability. This term is widely in use and has become a synonym to the other word, mentioned above – *πλοιοκτήτης (plio-ktitis)*, which actually means the *shipowner* (*ship* = *πλοίο* + *owner* = *κτήτης*). The reason for this confusion of terms is rooted to the Greek maritime tradition. Due to the fact that most people involved in the maritime trade were the same shipowners, ship managers and in most of the cases masters of their own or family vessels, this ambiguity of terminology has prevailed, once *plio-ktitis* and *efoplistis* were for centuries the same people.

A very characteristic proof of the extent this terminological ambiguity is projected in the language of the homeland of some of the most powerful shipowners worldwide, the *Union of Greek Shipowners (UGS)*, translation in the Greek language is in fact *Union of Greek Ship managers (E-no-sis El-lee-non Efo-plee-ston – Ένωσις Ελλήνων Εφοπλιστών)*. Similarly in France, the Association of Maritime Entrepreneurs of France in French is called *Armateurs de France*.²⁴ The route of the term is similar to those of the Greek term. The correlation of the term with the responsibility of the one liable and consequently responsible for the navigability of the vessel with the arming of her is obvious; linguistically the terms prove the

²² Ομήρου Οδύσσεια, μετ. Α.Γ. Σκαλίδης, Εκδόσεις Πάσσαρη, Αθήνα, 1873

²³ Μπαμπινιώτης, Γ., Λεξικό της νέας Ελληνικής Γλώσσας, Κέντρο Λεξικολογίας, Αθήνα, 1998, pp. 703

²⁴ The Union of French Shipowners, official website
<http://www.armateursdefrance.org/>

cultural and social environment of the era each term has been adopted. Traditions, ethics and habits of each period is projected on the language and consequently to the need of people to adopt specific terms in order to describe and express, what they wish to introduce and adopt in their lives as normalities.

In conclusion, apparently security matters are and have always been of utmost importance for shipowners and ship operators. Especially for ship operators, who are liable for all legal aspects during the operation of a vessel; although the master holds the first and foremost part of liability during the operation of the vessel, the ship operator is to be found liable for the operation of vessel in case of due diligence of the master or in case the master cannot guarantee and ensure the safety and the security of the vessel operation, due to excessive circumstances or due to order of the ship operator; the employment of armed guard and the adoption of the various self protection measures on board in order to prevent pirate attacks or in case this is not feasible, to protect the crew and the vessel by unlawful acts against their integrity. Following the core research question of the current thesis, ship operators are in charge of deciding the security measures to be taken in order to ensure the safe and uninterrupted navigation of their vessels. Further issues of liabilities are to be examined later in the current thesis

Chapter 2: Piracy and Somalia

In order to set a specific geographic scope of research for the current thesis and to achieve a hands on examination of one of the most prominent issues for the maritime industry nowadays, the current situation in Somalia and its correlation with the emergence of *piracy* events in the area off coast of Somalia and the development of entire criminal organizations of Somalis operating in an area of over 2 million square nautical miles in one the most important navigational ways of the world due to the traffic, the size and the nature of the trade routes passing through this area.²⁵

2.1 Somalia. Destabilization and criminality

In the early 1990s political conditions in Somalia had offered these circumstances necessary for the appearance and development of various acts of crime; unlawful acts under the spectrum of both the international and national law of every sovereign state in the world. However when these unlawful acts were not only committed in the expense of the people of Somalia and on Somali national boundaries and particularly waters, the offenders of those criminal activities draw the attention of the international community and provoked the response on behalf of the latter for crimes committed in international waters in particular. A short historical review is necessary in order to make more apprehensive the necessity of further research on the grounds the current thesis is moving.

2.1.1 Somalia. Historical overview

The formation of the Republic of Somalia, after the unification of the former British Somaliland and the former Italian Somaliland in July of 1960 was followed by the coup d' estat under the leadership of Mohammed Siad Barre establishing the Somali Democratic Republic. The regime of Barre ruled the country as an authoritarian strict socialist dictatorship renowned for its lack of respect towards human and civil rights and in general for all kind of austerity measures towards its people. However when the rule of the Barre regime came to an end in the beginning of 1991, the dissolution of the state and destabilization in the area were only a matter of time. On January 26, 1991, the Barre regime era ended after 22 years in control of the country. Clans and tribal differences were the ingredients of the post-Barre era and the Civil War, which followed his exile. The political and regional dissolution of the state has been epitomized by the formation of three regional governments in the country; in May 1991 clans in the north of the country declared the formation of the independent Republic of Somaliland; since 1998 on the Southern border of the Republic of Somaliland, the semi-autonomous state of

²⁵ This calculation is according to the EU Naval Force Somalia – Operation Atalanta official estimation of the geographic scope of their operations
<http://www.eunavfor.eu/about-us/mission/>

Puntland was created, making the state internationally known as Somalia, a state, which in fact is consisted of three states.²⁶

2.1.2 Somalia. Current political situation

The internationally recognized government is residing in Mogadishu in the southeastern region of the country, formally known *Somali Republic* entitled to represent the country to the UN and other international political organizations. As for the north section of the country, this is separated in two different regional regimes. Puntland is located northeast of the country and has been declared autonomous in 1998 under the official name *Puntland State of Somalia*. Northwest is the former British colony of Somaliland, which had been declared independent in 1998 and is formally introduced as *Republic of Somaliland*.²⁷

Map 1: Political map of Somalia

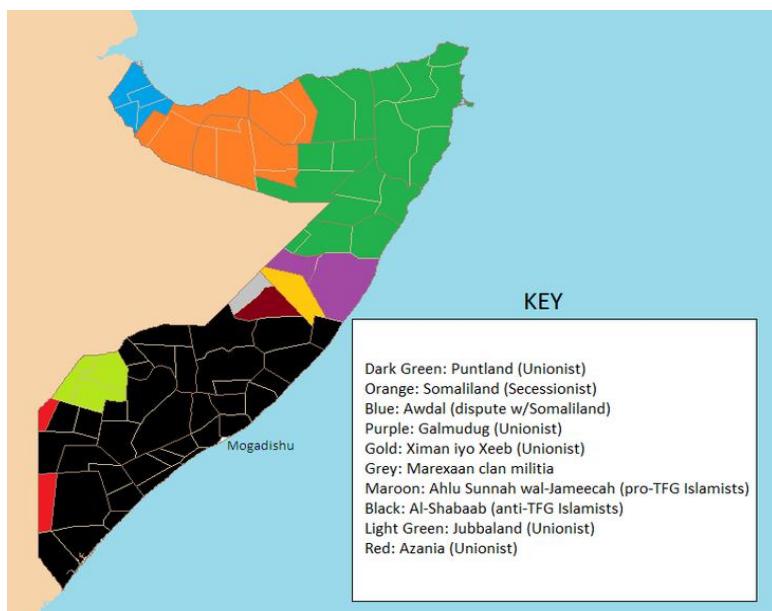


Figure 1: Political Map of Somalia

Source: INTERTANKO & INTERCARGO, 2011²⁸

As evident from the political map of Somalia, political situation in country is extremely complicated, since the country is in fact 10 areas in the country following tribal or factional identities, including the three aforementioned. Therefore the Civil War lasting since the fall of the Barre regime continuous making the political scenery in the country rather chaotic; constituting a prosperous ground for the development

²⁶ Somalia, CIA The World Factbook, 2011.

<https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>

²⁷ ibid

²⁸ Maps archive, INTERTANKO & INTERCARGO

of all kinds of criminal activities. Hence the geographical position of Somalia on the Eastern edge of Africa and the Southeast exit of the Gulf of Aden, piracy has become the main reason of international focus on Somalia over the recent years.

Therefore on January 23, 1992 the UN Security Council had expressed its serious concerns regarding the situation in the country and called all parties involved in the conflict to an immediate cease fire and to seek a peaceful and sustainable solution, as well as alerting the international community regarding the escalating situation in Somalia; the UN Security also outlined to all UN member States to avoid any implication that would probably have a negative effect in the escalation of the internal conflict in Somalia, considering Somalia as a sovereign and independent state. The only reference of the UN Security Council in international contribution is the invitation to provide all necessary humanitarian assistance in order to prevent a humanitarian crisis.²⁹

In view of the developments in Somalia, the UN and the Security Council repeated the suggestion for immediate cease fire and given the factual disobedience to all involved parties to the cease fire call, the UN Security Council decided the deployment of UN peace troops in the country in order to ensure the accomplishment of the humanitarian assistance program initiated by the UN Security Council resolution 746, March 17, 1992.

Unfortunately the UN initiatives to promote the implementation of international law and the repeated calls of the UN Security for respect of the Universal Declaration of Human Rights (1948) found no sufficient audience in Somalia with catastrophic results for Somali people and the state itself; according to various estimations the Civil War has resulted the 300,000 – 400,000 casualties.³⁰

In 2004 the change of leadership of the Somali Republic government, based in Mogadishu, resulted in significant initiatives to bridge the gap among all Somali states and form one state of federal form ending the long lasting bloodshed in the country with the introduction of the Transitional Federal Institutions (TFIs), this attempt so far has not been forthcoming; the history of all previous initiatives with the same objective were not fruitful, hence the enormous disputes among the tribal and local governments all over the country. The TFIs were introduced at a conference held in Nairobi, Kenya, including the Transitional Federal Charter (TFC), the Transitional Federal Parliament (TFP) and the Transitional Federal Government (TFG). However clans and tribes are significantly powerful in such level that the TFG

²⁹ UNSC Res. 733 (23 January 1992) UN Doc S/RES/733

³⁰ Although not specific data could be obtained regarding the death toll of the Somali Civil War, the UN seems to adopt these figures. An example is the publication of the statement of the then time President of the TFG of Somali Republic, Yoweri Museveni during a two – day visit in Uganda under the auspices of the UN Office for the Coordination of Humanitarian Affairs, Kampala, November 5th, 2004. <http://www.globalsecurity.org/military/library/news/2004/11/mil-041105-irin03.htm>

is controlling only some 25% of the entire territory of the country. In fact pirates are so powerful, that in some areas are the acting governments.³¹

2.2 Somali piracy

2.2.1 The offenders

The profile of pirates varies according to their position in the organization they belong. According to *Rear Admiral (Ret.) HN Antonios Papaioannou*, the first Force commander of the European Union Naval Force in Somalia- Operation Atalanta, pirate attacking groups are consisted of young men between 15-30 years old; most of the times these attacking groups are dispatched on high seas position for days and in some cases for weeks, awaiting for their potential target to approach them and then perform their attack.³²



Figure 2: Somali pirates weaponry confiscated by EUNAVFOR. Source: AP33

Open boats “skiffs” developing speed up to 25knots are being mostly used by pirates offering them a considerable advantage in comparison to their targets in terms of speed and maneuverability. However it has been repeatedly reported that pirates employ seized vessels as *mother vessels* to organize and support their attacks on high seas areas, showing exceptional knowledge of unconventional warfare tactics. Apart from patience, pirates are also equipped with supplies to set their ambushes for long periods; on the weaponry pirates are equipped with AK-47 and Rocket Propelled Grenades (RPG) weapons as well as with necessary tools in order to facilitate their embarkation on vessels. However it has been reported in

³¹ *Somalia*, CIA The World Factbook, 2011

³² Interview to the writer of the current thesis, Athens, August 1, 2011

³³ Associated Press©. <http://www.welt.de/english-news/article3052326/Im-a-successful-Somali-pirate.html>

various cases that pirates when boarding attacked vessels were extremely exhausted due to lack of provisions, while waiting off-shore their next victim vessel for days, if not weeks and demanded immediately their hostages to provide them with things of urgent need, such as drinkable water and food. In combination to the young ages of the attacking pirates, one can easily draw the conclusion that there is an entire generation of people, who were brought up in famine and disaster, do not face considerable ethical fragmentation regarding their survival.



Figure 3: Ladder used to embark on victim vessel. Source: ASGL©

With an annual GDP per capita close to \$600, ranking Somalia as No. 224 worldwide and life expectancy for men at 47.7 years, No. 211 worldwide.³⁴ According to the World Bank some 80% of the entire population of the country is living with less than € 1 per day.³⁵ It is clear that the situation in Somalia is so bad that despair is the ruling sense among the people of all constituencies. According to the *Failed States Index of Foreign Policy magazine*, Somalia remains the state in the worst condition worldwide and unfortunately, situation is so complicated that no optimist signs are visible in the near future.³⁶

An interesting remark should be made though regarding the Somali pirates and their skills. Although their seamanship was developed and cultivated in Somali fishing tradition, making the fishing industry for decades one of the pillars of the economy of the country, their significant adaptive skills in the new environment proved them as excellent seamen, hence the natural environment they obtain their criminal operations.

³⁴ Somalia, CIA The World Factbook, 2011

³⁵ Somalia, country brief, World Bank website

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SOMALIAEXTN/0,,menuPK:367675~pagePK:141132~piPK:141107~theSitePK:367665,00.html>

³⁶ Failed States Index, Foreign Policy magazine. <http://www.foreignpolicy.com/failedstates>

However according to *Rear Admiral (Ret.) HN Antonios Papaioannou*, there is strong evidence that pirate organizations also employ former Marine staff of the Somali Republic; these individuals got their naval and military education in war and naval schools in Europe, USSR and other countries and following the destabilization of the state enrolled or even lead the various militias in the country, who have excelled in criminal organizations controlling piracy attacks off coast of Somalia. Therefore measures such as the re-routing of vessels, that most shipowners were immediately advised to do by their national states or the flag states of their vessels have produced too little in the prevention of such unlawful acts.³⁷

On the contrary, pirates have expanded their operations, as explained later in this chapter, in other areas following tactics of unconventional warfare and achieving unforeseen levels of successful attacks against merchant vessels; the financial benefits of these operations for the pirates are immense, particularly considering financial situation in Somalia.

Cost of Somali Piracy in Ransoms			
Average Ransom	Total Number of Successful Hijackings	Cost of Ransoms	
2009	\$3.4 million	52	\$177 million
2010	\$5.4 million	44	\$238 million
Cost of Ransoms 2009 and 2010		\$415 million	

Source: *Oceans Beyond Piracy Organization*³⁸

Additionally it should be mentioned that according to General Counsel of INTERTANKO, Michele White, pirate organizations are most likely to be organized also on the landside in order to handle these significant amounts of money and insert them in the international banking system; money laundering is an important kind of crime that is prosecuted worldwide, however most of the times it is impossible to relate any physical person to amounts of money that have been laundered via the international banking system; pirates organizations are highly suspected to be involved in this kind of unlawful activities in order to utilize their incomes from their unlawful acts, which although are being shared among the members of these organizations, are being highly exploited by their leaderships.

³⁷ Interview to the writer of the current thesis, Athens, August 1, 2011

³⁸ Note that ransom costs are being covered by insurance and accounted in insurance premiums. However this model gives a conclusive picture of the size of the funds absorbed by Somali pirate organizations.

http://oceansbeyondpiracy.org/sites/default/files/documents_old/The_Economic_Cost_of_Piracy_Full_Report.pdf

These funds are aiming to cover the maintenance and supply needs of these organizations, in order to continue their activities, as well as to provide their leadership riches and power.³⁹

As a result of the Somali pirates' activities, they have gained a significantly influential role in the maritime industry; hence the so far inability of the international community to deteriorate their unlawful activities, pirates seem to be more confident and ambitious than ever, constituting a clear and present danger for international seaborne trade in one of the most significant areas of the world.⁴⁰

2.2.2 The victims

The targets of the pirates are the “low-‘n’-slow” vessels passing through the area of their operation. That means vessels of low height and speed, which is the case for all the crude carrier vessels exiting the Arab Gulf and for most of the Dry bulk carriers, particularly in fully laden condition. These are the targets with the highest risk factors of being captured. Also small general cargo feeder vessels and chemical tankers are being considered as vessel with excess risk factor as well. The main reason of increased vulnerability of these vessels to subject to pirate attack is their low cruising speed not exceeding 14-15knots per hour.

However risk assessment regarding the safety of the navigation of each vessel is strongly encouraged, regardless of the type of the vessel. Intimidation of masters and low levels of crew alertness for the probability of the occurrence of a pirate attack are two aspects that can possible increase the vulnerability of each vessel and alter its risk profile.

Furthermore crews constitute the main negotiation asset of pirates during the captivity of a vessel; pirates are very well aware of the significance of crew members lives, since crew members live are insured under P&I Club rules and specifically under Mutual War Risks Funds, for the occasion that injury or casualty occurs due to piracy.⁴¹ Thus it is to the interest of pirates and shipowners, needless to mention the crew, that pirates do not commit the crime of homicide against any of the crewmembers; such an event might consist the argumentation of underwriters to avoid paying any compensation to the shipowner, considering that the shipowner or his managers did not take all necessary actions to avoid such a calamity and

³⁹ Interview to the writer of the current thesis, London, July 8th, 2011

⁴⁰ p.10, *Lloyd's List Top 100 Most influential people in the Shipping Industry in 2010*, February 2011

⁴¹ In the case the vessel and her crew are underwritten under the rules of the Hellenic War Risk Fund, the crew is insured according to the UK P&I Club. More specifically the Hellenic War Risks Fund in par. 3.16: *Obligation to Sue and Labour, General Exclusions and Qualifications*, sets rather clearly that in order for “*the Owner to raise a claim upon the Association, it shall be the duty of the Owner and his agents to take and to continue to take all such steps as may be reasonable for the purpose of averting or minimising any loss, damage, liability, cost or expense in respect whereof he may be insured by the Association. In the event that an Owner commits any breach of this obligation, the Directors may reject any claim by the Owner against the Association arising out of the occurrence or reduce the sum payable by the Association in respect thereof by such amount.*”

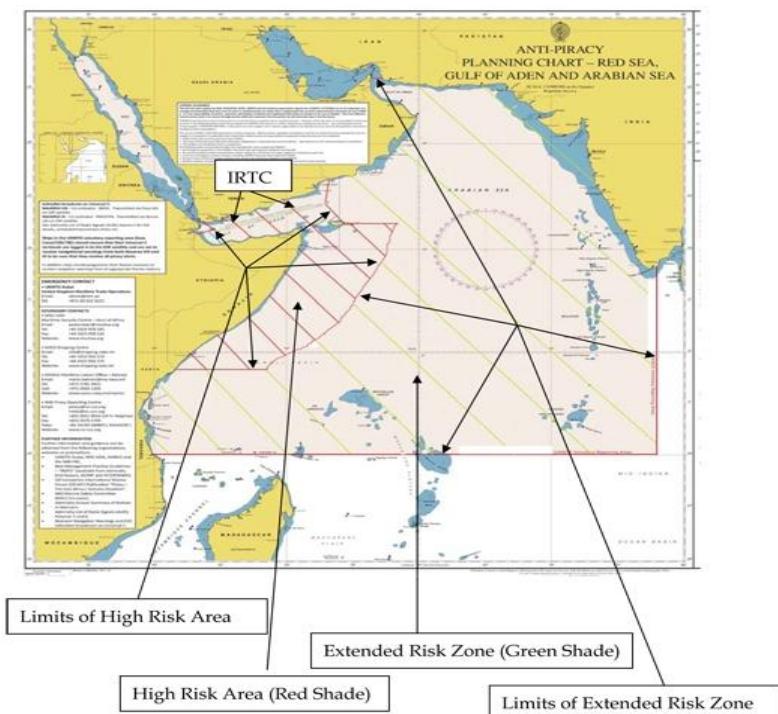
therefore are liable to this event.⁴² However unfortunately in a considerable number of occasions pirates have become quite temperate and violent towards their captives; such was the case of MV Beluga Nomination in February, 2011.⁴³

Thus ship operators are strongly encouraged to take all precautionary measures, in order to prevent such events. Precautionary measures will be further analyzed and examined in later chapters.

2.2.3 Range of activity

Somali pirates are performing their attacks against merchant vessels indiscreetly in one of the most significant sea areas of the world; having a great effect on international seaborne trade and maritime navigation, the location of Somalia on the Northeast edge of the African Continent and the vicinity to the highly significant area of the Arab Gulf constitute by definition the problem of piracy in the specific area as issue of international interest, apart from the humanitarian concerns regarding the current situation in Somalia.

Map 2: IBF High Risk Zone map



Source: IBF, March 2011⁴⁴

⁴² Ibid

⁴³ Feb 1st, 2011, *Sailor dies in clash with pirates north of Seychelles*, BBC website <http://www.bbc.co.uk/news/world-europe-12333214>

In this disorganized and destabilized political and social environment, clans and tribes have found the fertile ground to develop their criminal activities in such a level that nowadays have created an entire criminal industry that operates in the area from the western edge of the Horn of Africa at the Gulf of Yemen to the exit of the Arab Gulf, and off coast of Mumbai, India, to the coast line of the United Republic of Tanzania, of Mozambique, Swaziland and Madagascar.

More precisely as high risk zone should be considered *from the western border of the Zone runs from the coastline at the border of Djibouti and Somalia to position 11 48 N, 45 E; from 12 00 N, 45 E to Mayyun Island in the Bab El Mandeb Straits. The eastern border is set at 78 E, the southern border is set at 10 S and the Northern Border set at 26 N.*⁴⁵

Although in the past the high risk zone was limited to the zone formed on *the Western Border of this High Risk Area runs from the coastline at the border of Djibouti and Somalia to position 11 48 N, 45 E; from 12 00 N, 45 E to Mayyun Island in the Bab El Mandeb Straits. The Eastern Border runs from Rhiy di-Irisal on Suqutra Island to position 14 18 N, 53 E; from 14 30 N, 53 E to the coastline at the border between Yemen and Oman, together with a 400 mile zone off the eastern coast of Somalia, i.e. from Suqutra Island down to the Kenyan border in the South.*⁴⁶ The aforementioned area was considered as the high risk zone, until the end of March, 2011, when the prior had been adopted by the international shipping industry as the new high risk zone. The differentiation of the two zones is to the south towards the Kenyan borders and the sea area between South Africa and Madagascar, including Seychelles; to the east the high risk zone has expanded further to the Indian Ocean both north- and southbound, reaching the area off coast of Mumbai.

Apart from the particularly excessive size of the area affected by Somali piracy, the geographical position of it is of high significance as well. The importance for the entire worldwide economy due to the nature of cargoes transported via this area is incomparable to any other area of the world, where pirate attacks are being reported. Hence the countries of the Arab Gulf are some of the most important exporters of crude oil and liquefied natural gas (LNG) and that the main navigational seaway connecting Europe with Asia and Far East coincide the high risk zone as defined above, consequently the importance of piracy in the specific region is to be realized under an international spectrum; the majority of the developed countries are being affected by piracy risk. Therefore Somali – controlled piracy should not be treated as an exceptional case of unlawful acts, but following the spirit of article 105 of UNCLOS that perceives *piracy* as act against humanity and therefore introduces the universality of jurisdiction of persecution and prosecution against such acts. This is one of the main arguments of the international shipping community to national

⁴⁴Annex, *Revision of the IBF High Risk Area in the Gulf of Aden and Indian Ocean*, IBF summit, London, March 25, 2011

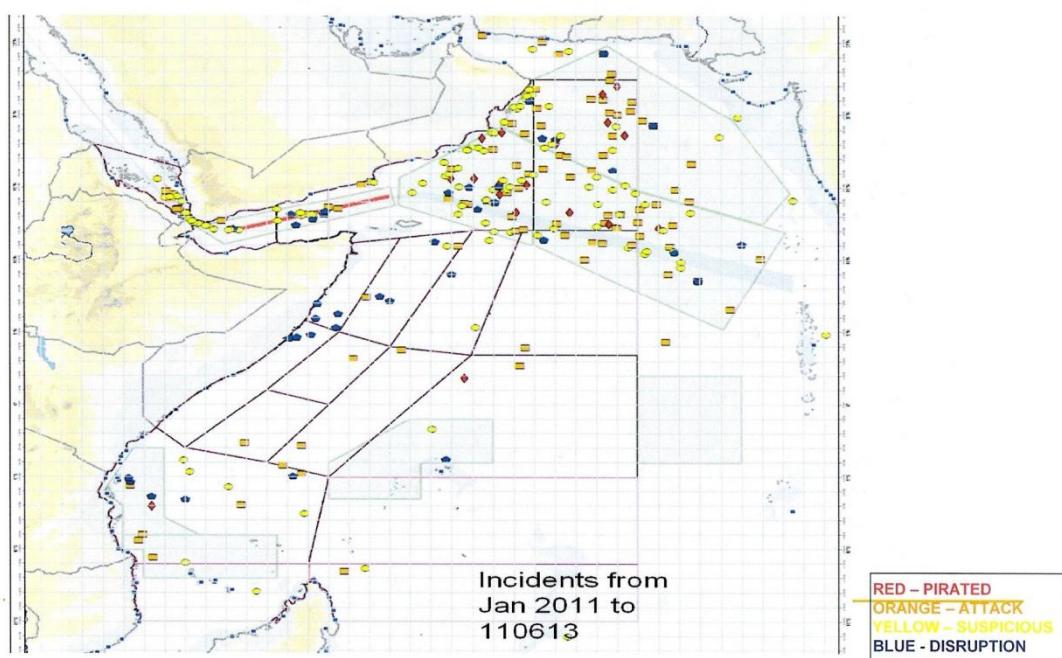
⁴⁵ *Revision of the IBF High Risk Area in the Gulf of Aden and Indian Ocean*, IBF summit, London, March 25, 2011.

⁴⁶ *ibid.*

governments in order to urge their contribution in the deterioration and elimination of such unlawful acts in the area, given the universality of their consequences.⁴⁷

In the following map, pirate activity only in the first half of the current year is depicted, making a more vivid description of the range and the scale of the activity of Somali pirates.

Map 3: Pirate attacks January – June 2011



Source: Save our Seafarers campaign⁴⁸

⁴⁷ According to the Maritime Security Centre – Horn of Africa, *up to 95% of EU member states' trade (by volume) transported by sea and 20% of Global Trade passing through the Gulf of Aden, EU NAVFOR provide considerable focus to safeguard trade through this strategic area.*

<http://www.mschoa.org/Pages/About.aspx>

⁴⁸ Save Our Seafarers Campaign is an initiative held by the ITF, ICS, INTERTANKO, INTERCARGO and BIMCO. The specific map is a result of the reported attacks on vessels of all types to MSCHOA.
<http://www.saveourseafarers.com/>

2.3 Conclusions on Somali Piracy

As evident from the aforementioned, Somali based piracy consists currently the one of the main concerns of the international maritime industry. However the size of the threat posed on international seaborne must and should not be considered as an issue for a specific sector of international economy; the oil and LNG reserves of the Middle East, which are being exported to the developed countries of the world, are being transported through this high risk zone with no exception; seaborne trade among Europe and the countries of Asia and the Far East is conducted through this high risk zone. Hence that 20,000, out of the 50,000 merchant vessels transporting the 90% of the world trade, are sailing through this high risk zone, Somali piracy is one of the most important issues the international community is called upon to take further action; especially taking into account the hundreds of thousands of seamen, who are serving this vital for the entire humanity industry; action in full compliance with the international law and human rights.⁴⁹⁵⁰ Because after all endangering international navigation is not only an issue of unlawful acts against international economy and the shipping industry itself; it is an issue of violation of fundamental human rights and therefore a crime against humanity.

⁴⁹ FC Onuoha, *Sea piracy and maritime security in the Horn of Africa: The Somali coast and Gulf of Aden in perspective*, African Security Review, 2009

⁵⁰ <http://www.marisec.org/shippingfacts/worldtrade/index.php>

Chapter 3: State initiatives against Somali piracy

Developments in Somali based piracy and the acknowledgment of the threats posed on international seaborne trade, have triggered the proactive reaction of the international community. A series of measures have been adopted to cope with the continuously increasing problem of piracy; both political and military measures have been taken over the last years. A short review is necessary in order to provide sound conclusions at this point.

3.1 United Nations and Somalia based piracy. Implication and initiatives

The United Nations and the UN Security Council are monitoring the case of Somali based piracy closely with significant concern as part of the humanitarian crisis in Somalia; fully respecting the national sovereignty, territorial integrity, political independence and unity of Somalia the UN has taken multidimensional political initiatives, not exclusively on Somali based piracy, but considering the incidence of piracy as an aspect strongly related to and affecting the current situation in the country.⁵¹⁵² The UNSC res. 1772/2007 was a product of the Security Council in close cooperation with the African Union, the Arab League, the Intergovernmental Authority on Development and the EU, represented by the European Commission; the African Union Mission on Somalia (AMISOM) is empowered to work towards the stabilization of Somalia, in order to make feasible for the UN humanitarian assistance towards the people of Somalia to fulfill its mission.⁵³ All these international organizations have allied their forces under the supervision of the UN and the UN Security Council in order to solve the problem in its roots.

The initial objective was international forces to work on a contingency plan in order to ensure a safe environment for international humanitarian aid. Therefore the UN Secretary General, Mr. Ban Ki-Moon, in his report on the situation in Somalia, had stressed out the importance of such a mission; the mission is solely on a voluntary basis, given the security issues that prevent the UN Department of Peacekeeping Operations from deploying peacekeeping forces in Somalia to facilitate the humanitarian mission of the World Food Program.⁵⁴

Therefore the UNSC has expressed its full support towards the AMISOM repeatedly and promulgated the legitimacy of its operations for the sake of internal stabilization in Somalia and international peace and security as well. It should be underlined the fact that fundamentalist groups, such as the *Al Shabaab*, apart from the atrocities, they have committed, they are considerably powerful and occasionally commanding

⁵¹ UNSC res. 1772 (20 August 2007) UN Doc S/RES/1772

⁵² UNSC Res. 1814 (15 May 2008) UN Doc S/RES/1814

⁵³ For more information regarding AMISOM, visit <http://www.amisom-au.org/default-1>

⁵⁴ UNSC 'Report of the Secretary General on the Situation in Somalia' UN Doc S/2007/658

significant areas. Especially the relations of *Al Shabaab* with other fundamentalist organizations and particularly with *Al Quaeeda* have drawn the attention of international community.^{55,56}

However a significant remark is to be made at this point regarding the role and the initiatives of the UN and the UNSC. Having the UN Department of Peacekeeping Operations not approved the deployment of international forces in Somalia, further than the AMISOM member states forces of Uganda and Burundi due to security matters, there is little done in terms of security and stabilization in the country. The forces of the TFG in cooperation with AMISOM troops occasionally achieve to deter the forces of *Al Shabaab*.⁵⁷

As a general observation, the UN, hence its legal entity, is a political organization that is not entitled to intervene in any State, regardless if it is a member state of the organization or not; therefore almost all resolutions and reports, referring to the situation of Somalia, the organization reaffirms "*its respect for the sovereignty, territorial integrity, political independence and unity of Somalia*".⁵⁸ Moreover all initiatives on behalf of the UN have been essentially political and remained on the stage of renouncing all acts of violation of international law and human rights.

However the most significant contribution of the UN and its affiliated organizations to deteriorate and further discourage acts of piracy committed by Somali nationals, was the orchestration of the bodies of the organization and its member states in order to adopt a common and unanimous response towards incidents of piracy; in the same spirit and hence its special role as protector of international law, the UN has examined and proposed the establishment of an international mechanism of prosecution and imprisonment of persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia. In that respect the UN has played a crucial in the introduction of an internationally respected and adopted scheme against Somali based pirates, whilst providing Somalia with the means to constitute an ally of international community against piracy; in the case means are either insufficient, or there is some kind of incapability on behalf of Somali state to take advantage of the offered means, the UN Secretary has proposed a series of options for the Somali state, with full respect to both national and international law.

In response to the UNSC res. 1918/2010, the UN Secretary General, had responded with his report of July 26, 2010, "*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*

⁵⁵ UNSC 'Report of the Secretary - General on the situation in Somalia' UN Doc S/2009/132

⁵⁶ Stephanie Hanson, *Al Shabaab*, Council on Foreign Relations, 10 August 2011
<http://www.cfr.org/somalia/al-shabaab/p18650>

⁵⁷ UNSC 'Report of the Secretary - General on the situation in Somalia' UN Doc S/2011/277

⁵⁸ UNSC Res. 1814 (15 May 2008) UN Doc S/RES/1814

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^{59,60,61}.

As evident from the above, the UN has no executive jurisdiction over piracy incidents off coast of Somalia. The UN's role is limited to juridical, legislative and political functions; given the casualties of which UN peacekeeping forces have suffered in the past in various areas of the world, the UN Department of Peacekeeping Operations is considering more carefully the deployment of peacekeeping forces. Taking also into account that pirates do not only distort peace, but are also intending to commit crimes against humanity. Thus the kind of response necessary to confront Somali pirates cannot be performed by a peacekeeping force. Nevertheless the UN initiatives must be recognized as most significant and essential for the international law amalgamation and endorsement.⁶²

3.2 International counter piracy military action

The UN Security Council expressing its determination towards the deterioration of acts of piracy off coast of Somalia has urged the international community to take further military action in order to assist the delivery of the international humanitarian aid to the people of Somalia and to secure the international navigation routes off coast of Somalia.

In response to UNSC res. 1814(2008) and res. 1816(2008), international community has responded by initiating counter piracy missions in the area off coast of Somalia and towards the port of Mogadishu, capital city of Somalia. Additionally Mogadishu is the biggest port of the country and therefore the designated destination for international humanitarian aid. Military forces have been dispatched in the area between north of 10 degrees south and west of 78 degrees east.

⁵⁹UNSC Res. 1918 (27 April 2010), UN Doc S/RES/1918

⁶⁰UNSC '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' UN Doc. S/2010/394

⁶¹UNSC 'Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts' UN Doc. S/2011/360

⁶²Church, G.V. et al., *SOMALIA ,Anatomy of a disaster*, 18 October 1993, TIME magazine <http://www.time.com/time/magazine/article/0,9171,979399-2,00.html>

3.2.1 EUNAVFOR Somalia - Operation Atalanta

The European Union alerted by the emergence and continuous increase of incidents of piracy off coast of Somalia, initiated the European Naval Force Somalia – Operation Atalanta under the political scheme of European Union's Common Security and Defense Policy of the Union in November 2008; in response to the *UN Security Council resolutions 1814(2008), 1816(2008), 1838(2008), 1846(2008)*, where the UNSC urged its member states to take measures on a voluntary basis in order to ensure the undisrupted transportation of the humanitarian assistance to the people of Somalia and the security of the international maritime routes that coincide the area of Somali based piracy operations.^{63,64,65,66}

The UN Security Council is recognizing the initialization of various international task forces in the area off coast of Somalia; both multinational and national.⁶⁷ The main concept is the protection of a vessel, its crew and the aboard property by illegal and violent seizure, in other words by the event of piracy, hence it is considered to be a crime against humanity as suggested by *article 105 of the United Nations Convention for the Law of the Seas (UNCLOS, 1986)*. Respectively the UNSC urged the States involved in task forces against acts of piracy in the specific area to act with great attention respect to international law in order to prevent and suppress incidents of piracy.

In this environment and in compliance to all international laws the EU has initiated its military mission in the area in pursue of the aforementioned objectives in the interest of both the people of Somalia and the international maritime community. In compliance to the UN Security Council's resolutions, the Council of the European Union has a *Joint Action* and a *Decision* defining the duties of the European Naval Force, the range and the nature of its mission.^{68,69}

Particularly, *Council Joint Action 2008/651/CSFP* defines the nature of the mission and its objectives in Article 2:

“Article 2

Mandate

Under the conditions set by the relevant international law and by UNSC Resolutions 1814 (2008), 1816 (2008) and 1838 (2008), Atalanta shall, as far as available capabilities allow:

⁶³ UNSC Res. 1814 (15 May 2008) UN Doc S/RES/1814

⁶⁴ UNSC Res. 1816 (2 June 2008) UN Doc S/RES/1816

⁶⁵ UNSC Res. 1838 (7 October 2008) UN Doc S/RES/1838

⁶⁶ UNSC Res. 1846 (2 December 2008) UN Doc S/RES/1846

⁶⁷ Ibid

⁶⁸ Council Joint Action 2008/651/CSFP, *on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast* (10 November 2008)

⁶⁹ Council Decision 2009/907/CSFP, *amending Joint Action 2008/651/CSFP on a European Union military operation to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast* (8 December 2009)

- (a) provide protection to vessels chartered by the WFP, including by means of the presence on board those vessels of armed units of Atalanta, in particular when cruising in Somali territorial waters;
- (b) provide protection, based on a case-by-case evaluation of needs, to merchant vessels cruising in the areas where it is deployed;
- (c) keep watch over areas off the Somali coast, including Somalia's territorial waters, in which there are dangers to maritime activities, in particular to maritime traffic;
- (d) take the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where it is present;
- (e) in view of prosecutions potentially being brought by the relevant States under the conditions in Article 12, arrest, detain and transfer persons who have committed, or are suspected of having committed, acts of piracy or armed robbery in the areas where it is present and seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates, as well as the goods on board;
- (f) liaise with organisations and entities, as well as States, working in the region to combat acts of piracy and armed robbery off the Somali coast, in particular the 'Combined Task Force 150' maritime force which operates within the framework of 'Operation Enduring Freedom'."

Council Joint Action 2008/651/CSFP⁷⁰

According to the official promulgation of EUNAVFOR - Operation Atalanta legal basis:

"On the basis of Somalia's acceptance of the exercise of jurisdiction by Member States or by third States, as promulgated by UNSC Resolutions and Article 105 of the United Nations Convention on the Law of the Sea, persons having committed, or suspected of having committed, acts of piracy or armed robbery in Somali territorial waters or on the high seas, who are arrested and detained with a view to their prosecution shall be transferred:

- to the competent authorities of the flag Member State or of the third State participating in the operation, of the vessel which took them captive, or*
- if this State cannot, or does not wish to, exercise its jurisdiction, to a Member State or any third State which wishes to exercise its jurisdiction over the aforementioned persons and property.*

The Operation can liaise with organisations and entities, as well as States, working in the region in order to combat and repress acts of piracy and armed robbery off the Somali coast.

⁷⁰ Ibid Council Joint Action 2008/651/CSFP

The maritime force can arrest, detain and transfer persons who have committed, or are suspected of having committed, acts of piracy or armed robbery in the areas where it is present and seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates, as well as the goods on board.

All pirates will be tried in accordance with international human rights standards to guarantee in particular that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.”⁷¹

On the strategic part, the forces deployed in the area consist of 5 to 10 war vessels, 1 to 2 auxiliary vessels and 2 to 4 patrolling or reconnaissance aircrafts. Taking into account the shore based forces a total of approximately 2000 personnel are involved in the entire operation. The variation in the numbers of the dispatched forces depends on the monsoon seasons.

As for the nationalities of the involved forces, so far 22 out of the 27 member States of the EU have contributed in the EUNAVFOR both in equipment and personnel. Out of these, 13 states are contributing in operational level with war vessels and aircrafts at the convenience of the operation Atalanta; Germany, France, Netherlands, Belgium, Luxembourg, Portugal, Italy, Greece, Spain, Sweden, United Kingdom, Malta and Estonia; 9 member States of the EU have contributed in the form of military staff to provide assistance both in the operational Headquarters in Northwood, UK, and aboard of forces deployed in the area of operations of the EUNAVFOR; Cyprus, Romania, Bulgaria, Slovenia, Czech Republic, Hungary, Poland, Ireland and Finland. Further to EU member States in the mission initiated by the EU, there are another 4 non-EU member States facilitating the Operation against piracy in the area off coast of Somalia; Norway by providing a war vessel along with the other EUNAVFOR forces on a regular basis, Croatia, Ukraine and Montenegro.^{72,73,74}

The Indian Ocean monsoon is renowned as accompanied by rather intense meteorological phenomena that distress pirates operating in the area off coast of Somalia. However the ability of pirates to adopt in new conditions has been spectacular; pirates during the last years have adjusted to the challenges of each time. For example the monsoon defence strategy promulgated by States, as well as security consultancy companies, have been overruled by the pirates adoptability, with the utilization of seized vessels of significant size as mother vessels and of their crews as additional and auxiliary pirate troops, while expanding the geographical

⁷¹ EUNAVFOR Operation Atalanta, *Mission* (official website) <http://www.eunavfor.eu/about-us/mission/> (Accessed on August 20/08/2011)

⁷² Allied Maritime Command Headquarters of NATO, Northwood, UK <http://www.manw.nato.int/default.aspx>

⁷³ Ibid

⁷⁴ It is useful to mention that currently EUNAVFOR operates under the aegis of UNSC 1950 (23 November 2010) UN Doc S/RES/2010

radius of activity to the area off coast of India and Maldives in the Indian Ocean and the Northern coasts of South Africa and Madagascar. This is a region of 2 million square nautical miles (4million square kilometres). A reference to the radius of the activity of pirates is helpful to understand the size of the area the international counter piracy forces are called to patrol and secure from the risk of acts of piracy.⁷⁵

In order to manage to control all this area EUNAVFOR has established the Maritime Security Centre – Horn Of Africa (MSCHOA) under the direct command of the EUNAVFOR headquarters in Northwood, UK. EUNAVFOR strongly encourages shipowners and ship operators to register their vessels sail through the high risk areas. Therefore the MSC-HOA is 24 hours a day at the disposal of shipowners and ship operators to contact and register their navigational plans through the high risk zone, in order to communicate with EUNAVFOR the status and position of the vessel and respectively the military forces to ensure the safe sail of the vessels through the high risk area.⁷⁶

Hence the EUNAVFOR mission is to act preventively against piracy, EUNAVFOR is conducting surveys over the antipiracy precautionary measures and reporting to the MSCHOA for non-compliance of vessels with the international suggested precautionary measures; hence the information obtained so far by the international military forces, deployed in the areas, and intelligence obtained both by state services, but more importantly by the industry itself, these suggested precautionary measures seem to be effective in most cases.⁷⁷

3.2.2 Combined Maritime Forces (CMF) – Combined Task Force 151 (CTF –151)

The Combined Maritime Forces are the naval military forces deployed in the area under the command of the U.S. Vice Admiral, also serving as U.S. Navy Central Command and U.S. Fifth Navy Fleet with all three commands headquarters at the U.S. Naval Support Activity (NSA) in Bahrain. The Deputy Command is of the UK Royal Navy Commodore and other senior staff roles are shared among officers from Australia, France, Italy and Denmark. In total 25 States are taking part in this international military operation. The comprising states are Australia, Bahrain, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Japan, Jordan, South Korea, Kuwait, the Netherlands, New Zealand, Pakistan, Portugal, Saudi Arabia, Singapore, Spain, Thailand, Turkey, the United Arab Emirates, the U.S.A and the U.K.⁷⁸

The objective of the Combined Maritime Forces (CMF) is complex and multi-level. Segmentation among the various levels of the CMF objectives is necessary in order to promote the optimization of operations by specializing on different security issues in the area of the Middle East, the Arab Gulf, the area off coast of Somalia, where

⁷⁵ Ibid

⁷⁶ The Maritime Security Center – Horn of Africa (official website), *About MSCHOA and Op Atalanta*, <http://www.mschoa.org/Pages/About.aspx> (accessed on 25/08/2011)

⁷⁷ See Best Management Practices (BMP4), version 4, August 2011

⁷⁸ See Combined Maritime Forces (official website) – About <http://combinedmaritimeforces.com/about/>

some of the most important sailing routes are located. There are three missions in progress performed by the CMF three segmented Combined Task Forces (CTF). Maritime security and counter terrorism operations are the objectives of CTF-150; CTF-151 is the task force in charge of the counter piracy operations in the area of deployment of the CMF; CTF-152 is the task force designated on the Arab Gulf security and cooperation among the member States of the CMF.⁷⁹

Regarding the CTF-151, which is specialized in counter piracy operations, it should be regarded as part of the operation elaborating the establishment of a safe and secure maritime environment in the areas of coverage, while promoting international cooperation and security with respect to international law and the principles of justice and national sovereignty. Among its multidimensional objectives, CMF is also aiming to the endowment of regional States with necessary assistance to develop their maritime infrastructure and economies, motivating and enabling them to constitute eligible parts of international maritime trade, as well as significant counter piracy allies, since their own national economies and waters are being trespassed and respectively violated; their national sovereignty is being doubted by acts of piracy and a prompt response towards offenders of these states' national integrity is supported for the sake of international peace and security.⁸⁰

Although counter piracy action is based on the legal ground of the perception of *piracy*, as a crime against humanity, according to the *UN Convention for the Law of the Seas* (UNCLOS, 1982), CTF-151 includes military forces of states, which have not ratified the aforementioned text. The states, which have not ratified the Convention, though participating in CTF-151, are the United States of America, the United Arab Emirates and Turkey.⁸¹

By UNSC res. 1846 of 8 December 2008, the UN Security Council salutes the cooperation among UN member aiming to the deterrence of piracy in the area off coast of Somalia; this document constitutes the main legal ground for implication of states in persecution of pirates off coast of Somalia, even though they have not ratified the main international legislative document referring to the incident of piracy; it is clear though by articles 101 and 105 of UNCLOS(1986), that any member State of the UN is justified to persecute and prosecute individual suspected to have committed the crime of piracy.

Furthermore the CMF objectives are expanding to the protection of the various humanitarian missions in progress in the vicinity of the operation of the CMF;

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Oceans and the Law of the Sea, Division of Ocean Affairs and the Law of the Sea, *Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 3 June 2011*, http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm, (accessed on 25 July 2011)

including the humanitarian aid to the people of Somalia under the auspices of the UN World Food Program.

3.2.3 NATO involvement in counter piracy operations

The North Atlantic Treaty Organization (NATO) is also involved in counter piracy international response on seas off coast of Somalia. The organization has established the NATO Shipping Centre (NSC) in order to achieve communication between the NATO naval forces and the international maritime community; in fact NSC main purpose is to provide information exchange among the international merchant maritime community and NATO, including information regarding operations in progress of the Organization and the risks they include for international merchant navigation. The NATO Shipping Centre is a permanent establishment within the organization and provides coordination of military operations for NATO, as well as multinational forces.⁸²

As for the current role of NSC with regards to counter piracy action, “*the NSC supports NATO, national and multinational Naval Cooperation and Guidance for Shipping (NCAGS) operations and exercises. The NSC is part of the Allied Maritime Command Headquarters Northwood in the UK*”.⁸³

The NATO’s role in counter piracy operations, as mentioned in UNSC res. 1846 and as prescribed in the EU Council decision to initiate counter piracy activity in the area off coast of Somalia, is clearly coordinative. The Allied Maritime Command Headquarters, located in Northwood, UK, operate as the ashore command centre of the EU naval forces deployed in the area of Somali based piracy operation and in close cooperation with the MSC-HOA, process and communicate information, regarding the security of maritime navigation through the high area and the risks involved, with the international maritime community.

3.2.4 Indian Navy Involvement

The Republic of India taking into consideration the effect of incidents of piracy in the area off coast of Somalia and particularly the Gulf of Aden on its national interests has decided the involvement of the Indian Navy to protect and defend its interests and national sovereignty and integrity. Notwithstanding the financial interests of India on maritime trade using the routes through the Somali based piracy affected area, India considers with great concern the risk of piracy, given that Indian nationals are among the most popular nationalities for crew members in the international shipping community; approximately 6% (100,000 people) of

⁸² NATO Shipping Centre (official website) <http://www.shipping.nato.int/Pages/aboutus.aspx>

⁸³ Ibid

international maritime seafarers are of Indian nationality, constituting a serious reason for the Republic of India to consider a contingency plan regarding piracy.⁸⁴

Therefore since 23 October 2008, the Indian Navy incorporated with the international naval patrols in the area of the Gulf of Aden, in order to ensure the maintenance of uninterrupted seaborne trade in the area off coast of Somalia and security of international merchant shipping.⁸⁵

Moreover, the emergence of Somali based pirate attacks either inside, or in the vicinity of national waters of India, constitute for Indian Navy also a matter of national security; therefore counter piracy operations are of utmost importance for the Indian Navy.

3.3 Conclusions on State initiatives in response to Somali based piracy risk

The International Maritime Organization (IMO) being in close and constant communication with all multinational and national forces deployed in the area affected by Somali based piracy risk on the one hand, and in constant open dialogue with the international maritime community via the various international maritime associations operating under the auspices of the organization as Non-Governmental Organizations conveying to the organization the concerns and the problems of the industry, issues periodically *Reports on Acts of Piracy and Armed Robbery against Ships*. In the annual *Reports* of IMO on this matter, the organization enlists the all acts reported to have occurred or to have been attempted according to the area and time of occurrence.

Reviewing the aforementioned for 2008, 2009 and 2010, significant realizations can be made considering the data obtained. (See below table 2)

⁸⁴ Indian Navy, *Anti piracy Operations*, Indian Navy website
<http://indiannavy.nic.in/AntiPiracy.htm>

⁸⁵ Ibid

Table2: No. of reported incidents as per year and region of occurrence

Region of Occurrence	No. of reported incidents per year							
			2008		2009		2010	
	Attempted Unlawful acts	73	134	163	222	124	172	
East Africa	Committed unlawful acts	69		59		48		
	Attempted Unlawful acts	1	1	2	2	10	16	
Arab Sea	Committed unlawful acts	-		-		6		
	Attempted Unlawful acts	23	26	3	27	38	77	
Indian Ocean	Committed unlawful acts	3		24		39		
	Total No. of incidents per year	161		251		265		

Source: IMO⁸⁶

As evident from the above data, the various military forces deployed in the area of operation of Somali based piracy have resulted little in terms of deterrence of piracy risk in the area off coast of Somalia. Furthermore Somali based piracy has expanded east and northbound towards the Indian Ocean and the Arab Sea, making the areas in need of constant and systematic patrol against the risk of piracy impossible to be covered. It should be further outlined the fact that in each incident of act of piracy, the first victims are the members of the crew of the attacked vessels; the safety of the crew members is jeopardized daily by the probability of this kind of events and for the international shipping community, as well as for the international community in general, their safety remains on the top of the agenda. Therefore the international shipping community proclaims the need for further action to be taken and the right of the industry to defend itself against this threat posed on its activities and the thousands of people being employed in the industry.

⁸⁶ IMO, *Reports on Acts of Piracy and armed robbery against ships, Annual report 2008* (19 March 2009), MSC. 4/ Circ. 133. See also IMO, *Reports on Acts of Piracy and armed robbery against ships, Annual report 2009* (29 March 2010), MSC. 4/ Circ. 152 and IMO, *Reports on Acts of Piracy and armed robbery against ships, Annual report 2010* (1 April 2011), MSC. 4, Circ. 169.

Chapter 4: International Maritime Community actions and reactions

In this part of the current thesis, initiatives taken by the international maritime community in response to the emergence and spreading of piracy off coast of Somalia are being examined. For the sake of scientific precision it should be outlined the fact, that as international maritime community are regarded all these associations conveying and advocating the interests and rights of all parties involved in the international maritime industry; associations of shipowners, operators, seafarers, underwriters and legal advisors are considered as the components of the international maritime community. However it should be highlighted the fact that all members of the international maritime community and all their associations are in close and constant communication and cooperation with state governments and the international community via the International Maritime Organization institutions, in pursue of the establishment of a secure and safe environment for navigation with full respect to the international law.⁸⁷

4.1 International maritime community initiatives

The risk of piracy in the areas of East Africa, the Arab Sea and the Indian Ocean urges the international maritime community and industry to seek for efficient and sustainable solutions; solutions in compliance with the national law of the flag state of the vessel and the international law. The excessive size of the areas of attacks of Somali based pirates makes the efficient patrolling of these areas impossible, leaving the international shipping operations vulnerable to pirates, since merchant vessels are not carrying any kind of armory, due to international law order and the national laws of flag states; thus international maritime community stresses the necessity of self protection measures as the only viable and efficient solution to prevent incidents of piracy, particularly accounting that the majority of the piratical acts are committed in international waters.

4.1.1 Designated self protection measures guides

For decades the introduction and adoption of self protection measures for the security of vessels and their crews, apart from necessary, has also been continuous

⁸⁷ The five most respected organizations representing the international maritime community have incorporated in the Round Table of international shipping associations; BIMCO, INTERTANKO, INTERCARGO, ICS and ISF are in close cooperation in order to avoid any kind of disputes among the industry and to strengthen the arguments of the industry towards the international community by acting on a consensual basis.
<http://www.marisec.org/shippingfacts/home/roundtable>

for the international maritime community. The International Ship and Port Facilities Security Code (ISPS Code)⁸⁸, which was developed as a response to the threats imposed on international seaborne trade after the terrorist attacks of 9 September 2001 in the United States of America, was the last adjustment of international regulations on this field, after the adoption of the amendments on the International Convention for the Safety of Life at Sea (SOLAS Convention) in 2004.

In that respect, maritime security does not constitute a new area of concern for the industry. However two main differences occurred in the case of Somali based piracy; the duration and the consistency of the threat; in combination with the unprecedented size of the high risk zone, as well as with the frequency and the density of maritime traffic in the area and the significant capabilities pirates have obtained from experience enabling them to attempt and commit piratical acts against all kinds of vessels; all these constitute the environment the international shipping industry is called to deal with on a daily basis.

Therefore the international maritime industry has complied with UNSC res.1846/2008, which called upon the IMO and its member states to '*issue to ships entitled to fly their flag appropriate advice and guidance on avoidance, evasion and defensive techniques and measures to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia*'.⁸⁹

However events of excessive violence have shown the need for more decisive measures against piracy. The event of the execution by pirates of a member of the crew of *MV Beluga Nomination* on February 2011, in retaliation for the death of member of the pirates assault team by the coast of Seychelles and the maltreatment of the other members of the crew during their seizure have caused the reaction of the *Round Table of International Shipping Associations* to proceed to a rather severe and intense statement regarding the position of state governments towards the grave danger of piracy and to call national governments to take serious and effective action against piracy and to prevent such atrocities in the future.^{90,91}

It should be further mentioned that the international shipping community is in constant and close cooperation with state governments, providing the military forces

⁸⁸ The ISPS Code was adopted on 12 December 2002 and implemented by July 2004; it is adopted as a series of amendments of the International Convention for the Safety of Life at Sea (SOLAS) under the provisions of Chapter XI-2, adopted on 1 November 1974 and entered into force on 25 May 1980. See ISPS Code and SOLAS amendments 2002 Foreword and International Convention for the Safety of Life at Sea

⁸⁹ Par. 4, UNSC Res. 1846 (2 December 2008) UN Doc S/RES/1846

⁹⁰ See Note 42

⁹¹ Joint press release from the Round Table of international shipping associations and the ITF: Shipping industry outraged at execution and torture of seafarers by pirates, 2 February 2011. <http://www.itfglobal.org/press-area/index.cfm/pressdetail/5598> (See Appendix 2)

deployed in the area affected by Somali piracy with significant intelligence regarding suspicious movements and merchant navy traffic, assisting international military forces in the implementation of their objectives.

Moreover the *Round Table of International Shipping Associations* has made a step further in supporting the anti-piracy campaign; the *BMP4, Best Management Practices for Protection against Somalia based Piracy (August 2011)* is the fourth edition of a best management practices guide, providing ship operators and seafarers with useful and vital information regarding the secure navigation through the area of Somalia based piracy.⁹²

The BMP4 sets three fundamental requirements concerning the enforcement of the best management practices. First and foremost, the BMP4 sets as a requirement for efficiency of the best management practices the registration of the vessel's movement to the MSC-HOA in order to ensure ashore surveillance over the vessel navigation through the high risk area. Second, voluntarily, though equally importantly, registration of vessel's movement through the area to the UK Maritime Trade Operations (UKMTO) office in Dubai, providing the office with regular reports regarding their position and condition. Last, but not least, the BMP4 underlines the utmost importance of Ship Protection Measures, as described in its content.⁹³

A significant remark regarding BMP4 guide is that it contains useful guidance towards seafarers and ship operators with respect to the efforts of state initiatives, to information obtained by the international military forces deployed in order to deteriorate piracy in the area and "lessons - learnt" experience by vessels, which have been subjected to piracy attacks or even hijacks. Therefore the BMP4 is differentiated by its precedent guides in various points.

The three aforementioned requirements as set in the BMP4 constitute one of the differences from the precedent versions of BMP guide; for it is the first version of the BMP guide that sets any kind of requirements prior to the adoption of the suggested practices of the guide. However most importantly BMP4 is the first version of the Best Management Practices series that makes reference to the ship owners' discretion to adopt any other measures not referred in the guide, including additional manpower as means of further reducing the risk of piracy attack.⁹⁴ This point will be further elaborated later in this chapter.

The BMP includes suggestions regarding practical measures to be taken prior, during and after the sail through the high risk areas; routing, maneuvering practices,

⁹² BMP4, Best Management Practices for Protection Against Somalia based Piracy (August 2011)

⁹³ pp. V, Ibid

⁹⁴ Ibid

installation of physical barriers, such as razor rails, security lighting, CCTV systems steam hot water installations, dummy dolls, citadel.⁹⁵(See pictures below)



Figure 4: Dummy doll in seafarer's uniform, showing the alertness of crew on board



Figure 5: Hot steam water installation

Source: BMP 4, August 2011

The fact that the BMP guide is subject to constant updates and alterations, is restraining the incorporation of BMP to the SOLAS Convention, neither as a protocol, nor as an amendment; respectively BMP cannot be incorporated to the ISPS Code. However the guide constitutes the major point of reference of the

⁹⁵ Pp. 38, Section 8.13, BMP 4, "A Citadel is a designated pre-planned area purpose built into the ship where, in the event of imminent boarding by pirates, all crew will seek protection. A Citadel is designed and constructed to resist a determined pirate trying to gain entry for a fixed period of time. The details of the construction and operation of Citadels are beyond the scope of this booklet. A detailed document containing guidance and advice is included on the MSCHOA and NATO Shipping Centre website.

The whole concept of the Citadel approach is lost if any crew member is left outside before it is secured."

international maritime community for anti piracy precautionary measures; measures of the recognition and the approval of the international community and in compliance with the international law and the national law of flag states.

Practical methods against piracy are constantly and consistently communicated among the members of the international maritime community. Being persistent on the further adoption of these methods, international shipping associations have issued their own guides, in an attempt to convince their member about the utmost and vital importance of the implementation of these precautionary methods and practices for the contingency of a piratical act against their vessel and crews. In 2009 OCIMF issued its own guide of self protection measures aiming to the further encouragement and involvement of its members to adopt them, whereas on March of the same year, BIMCO has issued its *Piracy Clause for Time Charter Parties, in response to industry demand for a comprehensive contractual provision dealing with rights, obligations, responsibilities, liabilities and costs related to piracy under a time charter.*^{96,97}

Undoubtedly the various guides of self protection measures and methods will be further updated and enriched in the future, meeting the requirements of the industry to act proactively against the risk of piracy, as long as pirates progress in their tactics and expand the geographical range of their unlawful acts. These guides consist of designated precautionary methods mainly focusing on the preparation of seafarers against the contingency of a piratical attack.

It should be noted that international practice of the designated methods has shown the efficiency of these measures and therefore it is a fundamental goal for the international maritime community to achieve the universal application of these measures. Additionally it should also be noted the fact that all guides of self protection methods and practices are primarily considering the security and safety of crews, projecting the paramount importance of the human factor for the industry. Therefore it is of utmost importance for the industry to make its own contribution on the intelligence field and to reassess concurrent circumstances with a view to anticipate potential future developments of piratical operations, in order to enable the entire shipping community to put efforts in preventing such developments; in case this is not feasible, then the correct precautions should be taken, had they not been adopted, a number of piracy incidents would have other outcomes. Thus the *Joint War Committee* of Lloyd's has reinstated the high risk zone according to its own analysts.⁹⁸

Hopefully the enforcement of the methods and measures, included in all the aforementioned guides, will result in the creation of an entire generation of seafarers acquainted with all preventive and precautionary measures against piracy, that will constitute a significant factor of failed attacks on behalf of pirates and consequently will contribute to the deterioration, if not elimination, of incidents of piracy in the area of Somalia based piracy attacks.

⁹⁶ OCIMF, *Piracy – The East Africa/ Somalia Situation: Practical Measures to Avoid, Deter or Delay Piracy Attacks*, January 2009

⁹⁷ BIMCO *Piracy Clause for Time Charter Parties 2009*, Special Circular November 2009
(See Appendix 3)

⁹⁸ Lloyd's circular JW2010/009, 16 December 2010 (See Appendix 4)

Following the initiation of guides of precautionary and preventive methods by the international shipping community, the *International Sailing Federation* has issued guidelines for the safe navigation of yachts through the high risk zone for piratical attacks East of Africa and the Indian Ocean.

As evident from the above piracy is an issue of excess priority and significance for the entire international shipping community and this is reflected not only on the manifested initiatives of the international shipping associations, but also on the voluntary participation of shipping companies in the promotion and implementation of these initiatives.

4.1.2 The issue of armed guards

Violent acts of pirates against crew members of vessel during and after the attack on vessels constitute the major concern of the entire international shipping community. Therefore the community constantly seeks for the most efficient and effective measures to be taken in order to ensure the security and integrity of the hundreds of thousands of seafarers, serving the industry. However all measures mentioned above are not considered as efficient as the presence of armed guards on board vessels, sailing through the high risk area. Particularly after 2009, when the contingency of piracy in the area off coast of Somalia, the Gulf of Aden, the Arab Sea and the Indian Ocean was realized as an imminent danger, hence the multiplying incidents that took place in these areas the issue of armed guards is strongly debated among the international maritime community.

The Maritime Security Committee (MSC) of the IMO expressed its objections towards this proposition of some of the members of the international shipping community and strongly discouraged the implementation of such practice. The main arguments of the MSC are related to the law applicable in case of importation of firearms on board and the potential imposition of even greater risks to the safety and security of the crew on board with respect to the vessel's cargo. Offenders might feel provoked by this kind of practices and consequently revert with more dangerous weapons and more hostile behaviour prior and during the captivity of a vessel and her crew.⁹⁹

As a matter of fact the embarkation of armed security personnel or even the armament of the crew for counter piracy defence, constitute an alteration of the mission of the merchant vessel and her crew to transport goods worldwide or simply meet the agreements of the charter conducted for the specific time period or voyage; in that respect the vessel should be considered under the provisions of UNCLOS concerning special purpose vessels. Additionally rules of universal application would not be viable and *erga omnes* regarding the embarkation of armed personnel on the various types of merchant vessels, due to the type of their cargo. However two major points must remain of first priority; freedom and security of international seaborne trade.

⁹⁹ MSC. 1/Circ.1334, par. 59-63, 23 June 2009 (See Appendix 5)

As for the objections on behalf of the international maritime community on the proposition for the embarkation of armed security personnel on merchant vessels, these are related to legal matters, both of the flag state and the territorial waters/port state, depending on the position of the vessel and the concurrent conditions, and to crew safety and security matters. The International Transport Workers Federation (ITF) presses up the international shipping community by threatening to boycott maritime transportation operations through the Indian Ocean, aiming to 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 in the area.*”¹⁰⁰

However over the time, the position of the international maritime community tends to alter than the past with regards to the embarkation of armed security personnel; it is important to comprehend though, that international shipping associations are having only consultative role over the decisions of their members. Thus international maritime community tends to adjust to concurrent circumstances of each time; the expansion of the range of activity of Somali pirates, their adjustment with many of the practices adopted to confront them. Nonetheless the international maritime community is called to deal with the intensification of violence used on behalf of pirates prior and after the seizure of a vessel (See MV Beluga Nomination case).

Therefore the embarkation of armed security personnel, over the latest developments, has gained in terms of popularity among the international shipping community and all the international shipping associations have altered their original positions over this matter and have accepted, though not adopted officially- this security solution, as the only essentially effective measure of confrontation with pirates; of course this position might subject to further alterations in the future, international shipping community is severely endangered by pirates and effective, as well as efficient solutions are necessary to maintain this industry of vital importance for the entire humanity uninterrupted.

It is though widely agreed that the need for further governmental involvement in the persecution of piracy and the prosecution of pirates is urgent. Any event of successful action against piracy is welcomed and saluted by the entire international shipping community and is regarded as point of reference for future further governmental initiatives in the fight against piracy.¹⁰¹

One final remark, regarding the embarkation of security personnel, is the fact that, BMP 4 is the first best management practices guide that makes reference to Private Maritime Security Contractors, providing armed or unarmed security personnel to guard vessel for the contingency of piratical attack. This inclusion in the BMP 4 portrays rather clearly the tension of the international shipping community towards employment of security personnel to ensure the safe and innocent passage of their vessels through the high risk zones; especially taking into account the fact that the

¹⁰⁰ Andrew Guest, *ITF raises piracy stakes*, Tradewinds, 23 June 2011

¹⁰¹ Round Table Joint Press release, *Shipping industry reacts to successful action against pirate hijackers*, 25 January, 2011

particular version of best management practices guide is supported by the most international shipping associations than ever before, shows that its content is of wider acceptance making it of greater significance than any of its precedent versions.¹⁰²

4.2 Flag states initiatives aiming to the fortification of international shipping against piracy

Private Maritime Security Contractors (PMSCs) are private companies, providing risk evaluations and other security services worldwide, when and where requested by shipping companies. Developments on the piracy field, have undoubtedly favoured such companies; notwithstanding the fact that there existence and nature of services they provide are being widely debated among the international shipping community. Security services available from these companies, further to piracy risk evaluation and consultative services, regarding the implementation of the Best Management Practices guides, are armed security personnel and vessel escorting services with armed privately owned vessels.

Although such services tend to gain ground in the preference of many shipowners, there is a grey area in the operation of these companies. The right of shipowners and ship operators to ensure the security of the innocent passage of their vessels through the area of high piracy risk does not and cannot constitute the principle of a chaotic situation on high seas seaborne trade, where security would rely on the abilities of the crew; hence the armed security personnel are accounted as members of it and respectively covered by the P&I insurance of the vessel.

With respect to international law, national laws of most countries consider the carriage of weapons as a duty or armed and security state forces. Therefore according to national law of most flag states, the existence of firearms on board is strictly prohibited, as a deviation from the vessel's pacific civilian mission to transport goods or passengers. However international maritime community propagates its right to be enabled to accomplish its mission free of any kind of danger and interruption. In that respect many flag states have taken into serious consideration the allegations of the international shipping associations and have initiated a number of initiatives; both on national and multinational level. On national level, reforms of flag state regulations and of national law are to be made; however national bodies and procedures tend to stipulate reforms, regardless the urgent necessity of decisions to be made. On the multinational level though, states tend to be more reluctant in adoption of grandiose, though rigorous, initiatives, such as the *New York Declaration* of the Contact Group on Piracy off Coast of Somalia.

¹⁰² Pp 39,40, Section 8.14, 8.15BMP4, Best Management Practices for Protection Against Somalia based Piracy (August 2011)

4.2.1 Contact Group on Piracy off Coast of Somalia. The New York Declaration

In response to the international maritime and shipping communities' calls for further and more effective implication of governments in the fight against piracy and UNSC resolution 1851, representatives from Australia, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, Republic of Korea, The Netherlands, Oman, Russia, Saudi Arabia, Somalia TFG, Spain, Turkey, United Arab Emirates, United Kingdom, United States, and Yemen, as well as the African Union, the European Union, the North Atlantic Treaty Organization (NATO), the UN Secretariat, and the International Maritime Organization assembled in New York. Bearing in mind the encouragement of the UN Security Council "to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast" and the invitation to all member states of the UN to facilitate by all means all operations against piracy in the area off Coast of Somalia, the assembled parties composed the *Contact Group on Piracy off Coast of Somalia (CGPCS)* aiming to establish a dialectic among states and organizations and to coordinate actions against piracy in the area affected by Somalia based piracy, on January 14, 2009.¹⁰³

In the third plenary session of the CGPCS, on May 29, 2009, the group issued the *New York Declaration* recognising and express its commitment to the Best Management Practices to avoid, deter or delay acts of piracy; the first edition of BMP was released on February 2009.¹⁰⁴ By this declaration the group of contact expresses its confidence on the effectiveness of self protection measures and propagates the commitment of all undersigned parties of the *New York Declaration* to adopt the best management practices, as designated by the international maritime community, "for self protection to vessels on their registers."¹⁰⁵

The *New York Declaration*, though not a binding international legal document, in its fifth paragraph shows an interesting, and rather technical, approach on the matter of best management practices, making reference to the ISPS Code. However the most interesting aspect of this document is the fact that it has been undersigned almost spontaneously by the most popular flag states of the international shipping industry. As evident in Appendix 5, on May 29, 2009 the declaration was undersigned by the commonwealth of the Bahamas, the Republic of Liberia, the Republic of Panama, and the Republic of the Marshall Islands and on September 9, 2009 by the Republic of Cyprus, Japan, the Republic of Singapore, the United Kingdom of Great Britain and Northern Ireland (UK) and the United States of America (USA). It should be noted that the UK, expressed reservations regarding the fifth paragraph making

¹⁰³ Establishment of CGPCS, 14 January 2009

http://www.marad.dot.gov/documents/Establishment_of_CGPCS_1-14-2009.pdf

¹⁰⁴ *Best Management Practices to deter Piracy in the Gulf of Aden and off the Coast of Somalia*, February 2009 <http://www.marisec.org/piracy-gulf-of-aden-indian-ocean-industry-best-management-practice>

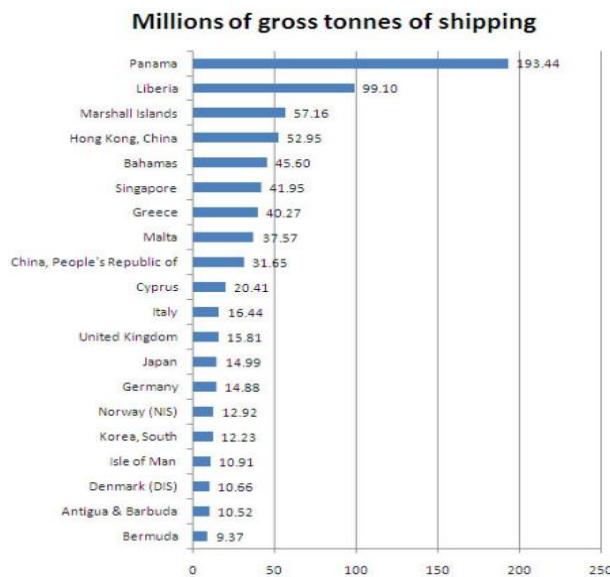
¹⁰⁵ CGPCS, *New York Declaration*, May 29, 2009

<http://oceansbeyondpiracy.org/matrix/activity/new-york-declaration> &

<http://www.state.gov/r/pa/prs/ps/2009/sept/128767.htm>

reference to the ISPS Code, and therefore was excluded by the undersigning of that particular paragraph.

Table 3: Top 20 largest shipping flags



Source: *IHS Fairplay*¹⁰⁶

In its essence the *New York Declaration* is a political document of low legislative significance, however it depicts the willingness of state governments to collaborate with international shipping community to incorporate best management practices in their national legislation in order to respond to the security needs of the industry.

Concluding the *New York Declaration* constituted the basis of adoption of the best management practices, as designated by the shipping community itself, by the IMO MSC. 1/Circ. 1335, which contributed to the universal adoption of the precautionary measures included in the BMP guide and the official acknowledgement of the significance of these measures.¹⁰⁷

4.2.2 Flag states – additional initiatives

Responding to the increasing claims of international shipping community members to ensure the security of their crews and vessels and the integrity of international

¹⁰⁶ Top 20 Largest shipping flags, October 2010

<http://www.marisec.org/shippingfacts/worldtrade/top-20-largest-shipping-flags.php>

¹⁰⁷ IMO MSC. 1/Circ. 1335, 29 September 2009

maritime navigation consequently, national governments tend to differentiate their positions towards the issue of armed security personnel.

Norway, on July 1, 2011 proceeded to a significant decision, by reforming its national legislation, regarding the embarkation of armed guards on board vessel flying the Norwegian flag. *“Regulations of 22 June 2004 No. 972 concerning protective security measures on board ships and mobile offshore drilling units shall be amended as(...) Regulations of 22 June 2004 No. 972 concerning security measures and the use of force on board ships and mobile offshore drilling units.”* By this amendment with immediate entry into force, as mentioned in the original announcement, is aiming to the support of proactive measures against piracy.¹⁰⁸

Along with the above reform, the Norwegian Directorate has issued a list of provisional guidelines regarding the use of armed guards on board Norwegian vessels.¹⁰⁹

Cyprus is alleged to become the first country of the EU to adopt special regulations with respect to the existence of armed guards on board of vessels under its flag and particularly to be enabled to open fire against pirates in order to discourage them attacking the vessel.¹¹⁰

Other states are in the same direction of reforming national legislation to allow armed guards on board of vessels under their flag. Germany and India are soon to announce to respective reforms in order to assist international maritime community to protect by piratical acts, whilst the UK is expected to proceed in such reforms as well.^{111,112}

¹⁰⁸ Norwegian Maritime Directorate, *Changes in reg. of 22 June 2004, nr. 972, concerning use of armed security guards*, 5 July 2011

<http://www.sjofartsdir.no/en/Safety/ISPS/Changes-in-reg-of-22-June-2004-nr-972-concerning-use-of-armed-security-guards/> &

<http://www.sjofartsdir.no/PageFiles/68738/Regulations%20concerning%20amendments%20o%20the%20Regulation%20of%202022%20June%202004%20nr.972.pdf>

¹⁰⁹ Norwegian Maritime Directorate, *Provisional guidelines – use of armed guards on board Norwegian vessels*, 5 July 2011

<http://www.sjofartsdir.no/PageFiles/68738/Provisional%20guidelines%20%E2%80%93%20use%20of%20armed%20guards%20on%20board%20Norwegian%20ships.pdf>

¹¹⁰ Lloyd's List, *Cyprus readies law on armed guards*, 17 June 2011 Nigel Lowry
<http://www.lloydslist.com/l/sector/regulation/article373300.ece>

¹¹¹ Die Zeit, *Sicherheitsfirmen sollen Schiffe vor Piraten schützen*, 17 August 2011
<http://www.zeit.de/gesellschaft/zeitgeschehen/2011-08/piraten-sicherheitsfirmen>

¹¹² Lloyd's list, *India opens way to deploying armed anti-piracy guards*, by David Osler, 31 August 2011 <http://www.lloydslist.com/l/sector/ship-operations/article378781.ece>

Chapter 5: Conclusions

The chaotic political situation in Somalia is responsible for the emergence of one of the largest, both from financial and geographical point of view, criminal industries of the world. With revenues accounting for billions of euros and thousands of victims, Somalia based piracy is a criminal industry, which contains dangers not only for the international maritime industry, but also for the international peace and security; chaos from Somali politics is definitely projecting on the field of international maritime security and safety.

Since the beginning of 2011, Somali pirates have become even more ruthless and violent, not hesitating to execute or torture their victims. International community in general, not only the maritime community, is alarmed and significantly troubled by the escalation of piracy activity and pressure upon governments is being forced in order to proceed in adoption of rapid and effective measures to deteriorate and eliminate maritime piracy in the area. Especially in the area of activity of Somali pirates, it is of utmost importance for aforementioned reasons to eliminate piracy immediately.

The major drawback in the fight against piracy is definitely the lack on determination of national governments to deal with the issue effectively and rapidly, demonstrating to all those, who are interested in posing threats over humanity that once the international community indiscreetly is disturbed, national governments have the strength and the capacity to oversee minor political interests and realize that worldwide peace and stability is a field, that demands efforts by every member of the international community in order to be realized. And in order to achieve these goals governments must elaborate bi – dimensionally; on the political field, governments have to cooperate with zealous and determination to facilitate the exit of Somalia from the humanitarian crisis, it is experiencing over the last 20 years, whilst on the piracy front, to constitute a common and solid stance against pirates and those, who support them; on the strategic field, state governments shall introduce more relaxed national laws regarding the carriage of arms and armed guards for defensive purposes, whilst increasing the number of military forces deployed in the area of Somalia based piratical activity, hence this is imminent threat on international stability and peace, in order to deteriorate and eventually eliminate this kind of incidents.

Reservations concerning the intensification of self protection measures are being expressed by the entirety of the international community, the main fear of which is the escalation of violence and its collaterals. By all means, action to be taken shall be in compliance to international law order, while focusing on the peace and prosperity of all members of the international community. And cooperation among governments is the major issue. In that respect serious political initiatives must be taken in order to ensure the viability and longevity of any solution in deteriorating piracy in the area off coast of Somalia, while focusing on the security and safety of

international seaborne trade and of the people working in this industry serving the entire humanity by exposing themselves in a difficult environment and lifestyle, proffering their most valuable services in an industry of vital importance for the entire humanity. A strong and determined front, consisted of serious political initiatives, is necessary more than ever against this phenomenon that constitutes an issue of universal interest and that poses so many dangers on the stability and security both on a regional as well as a global level. Governments must increase realize the severity of the issue and oversee minor issues for the sake of international peace and stability.

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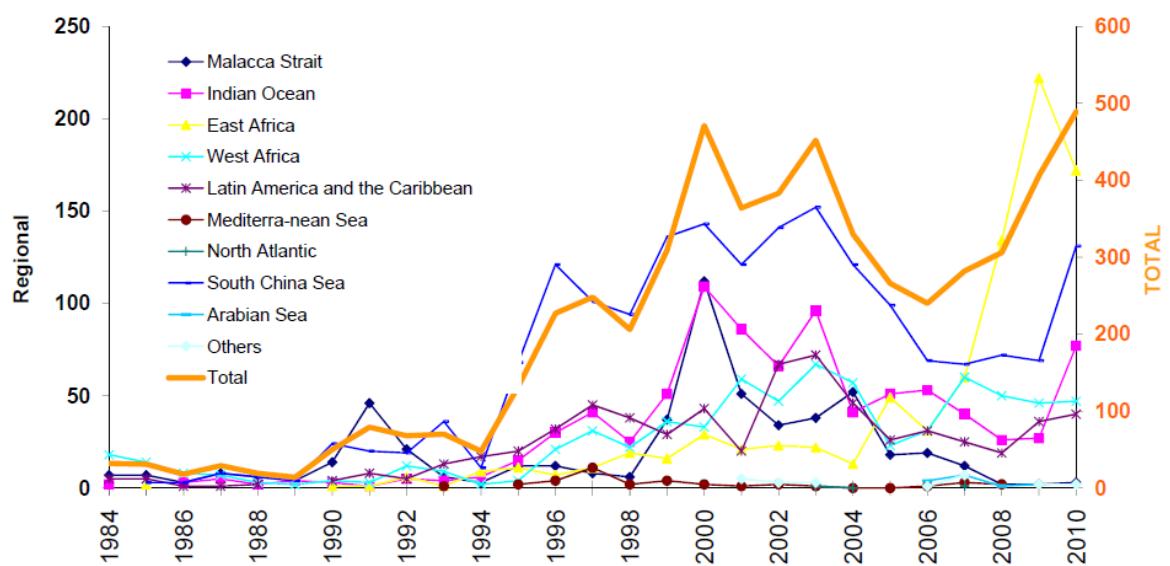
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Appendix 1

YEARLY STATISTICS OF INCIDENTS WHICH OCCURRED SINCE 1984 (WORLDWIDE)



Source: Annex4, MSC. 4/ Circ. 169

Appendix 2

Joint press release from the Round Table of international shipping associations and the ITF: Shipping industry outraged at execution and torture of seafarers by pirates

2 February 2011

BIMCO, the International Chamber of Shipping, INTERCARGO, INTERTANKO and the International Transport Workers' Federation are outraged that Somali pirates have executed, apparently in cold blood, a seafarer on the merchant ship Beluga Nomination which had been attacked and hijacked by armed pirates on 22 January in the Indian Ocean, 390 nautical miles north of the Seychelles. Three seafarers were reportedly taken aside for 'punishment' after an attempt by the Seychelles coastguard to free the hostage crew resulted in the death of a pirate. We express our deepest sympathy to the seafarers involved and to their anxious families.

The international shipping industry is truly disturbed at reports that pirates have been torturing seafarers physically and mentally, often in the most barbaric ways, including hanging them over the ship's side by ropes around their ankles with their heads under water and even subjecting them to the horrendous practice of keelhauling.

We wholeheartedly condemn these violent acts and once again strongly urge governments to empower their naval forces to take fast and robust action against pirates, and the vessels under their control, before passing ships are boarded and hijacked.

This latest particularly atrocious action appears to represent a fundamental shift in the behaviour of Somali pirates. The cold-blooded murder of an innocent seafarer means that ship owners and their crews will be re-evaluating their current determination to ensure that this vital trade route remains open – over 40% of the world's seaborne oil passes through the Gulf of Aden and the Arabian Sea. The shipping industry will be looking at all possible options, including alternative routes, which could have a dramatic effect on transport costs and delivery times - piracy is already estimated to cost the global economy between 5€-12 billion per year.

Appendix 3



SPECIAL CIRCULAR

No. 2 – November 2009

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BIMCO Piracy Clause for Time Charter Parties 2009

Introduction

In March 2009 BIMCO published its Piracy Clause for Time Charter Parties. The Clause was drafted in response to industry demand for a comprehensive contractual provision dealing with rights, obligations, responsibilities, liabilities and costs related to piracy under a time charter. The framework for the Clause was the well established CONWARTIME 2004 War Risks Clause – one of the few standard War Risks Clauses in widespread use that actually refers to piracy. BIMCO's primary objective in drafting the Piracy Clause was to consolidate into a single provision the contractual position of the parties in relation to the threat of piracy. The Clause addressed the owner's obligation to follow charterers' orders; the right to refuse to proceed if the risk to the vessel and crew is adjudged to be too great; the allocation of costs for additional security measures and insurances if the owners agree to proceed through a risk area; and the effect on hire if the vessel is detained by pirates.

Background to the revision

While there was little in the Clause to unsettle the established position reflected in many standard forms of time charter in respect of the issues referred to above, the reaction to the Clause from the industry was that it was perceived as being slanted in favour of the owners. The perception stemmed from the express provision in the Clause that if the vessel were to be detained by pirates then it remained on hire throughout the period of detention. Many charterers felt that with ships being held by Somalian pirates often for two or three months, this made the Clause too onerous towards them. However, there is a generally held belief that, even without the BIMCO Piracy Clause, the position under many standard time charter forms in respect of whether detention by pirates is an off-hire event, is that unless there are express words making it an off-hire event then it isn't one – and therefore the ship will remain on hire. Many charterers also appeared to overlook the fact that the bar was set at a very high level in terms of the master or owners making a "reasonable judgement" that the vessel was at risk in order to trigger the right to refuse charterers' orders and request an alternative voyage – it applies restrictively.

The measure of a successful BIMCO clause is that it comes into widespread and common usage in the industry through broad acceptance by parties. Primarily because of the concern by many charterers regarding the open ended off-hire provisions, the Piracy Clause for Time Charter Parties has not been successfully incorporated into charter parties – often leaving this important issue poorly addressed. For this reason, in June 2009, the Documentary Committee decided that an early review of the Clause should be undertaken to address the concerns expressed by end-users.

The revision

The resulting revision process has taken many months to conclude, with the Working Group responsible for the task taking carefully into account the many and often diverse views of

Documentary Committee members and others who contributed with comments. The basic principles established in the original Piracy Clause are still enshrined in the revised edition. The key change, however, is the introduction of a 90 day cap on the payment of hire should the ship be seized by pirates.

Are you properly covered?

As with all charter party clauses that deal with potential deviations, both owners should always check with their P&I insurers to verify that any contractually agreed deviation does not in any way prejudice their P&I cover. There are no hard and fast rules in respect of whether a P&I Club will deem a deviation to be reasonable (and therefore covered) and it is often determined on a case by case basis. Similarly, charterers should check with their insurers to verify that they are properly covered in respect of any indemnities they are required to provide to the owners under the Piracy Clause.

Summary of changes

The revised BIMCO Piracy Clause for Time Charter Parties retains the owners' right to avoid risk areas where there is a sufficient real danger of pirate attack to their vessel and to allocate the costs both for when the owners exercise their right under the clause not to follow charterers' orders and also when they agree to proceed through such areas. It is important to emphasise that the clause is intended to be used restrictively. It is not sufficient for the master or owner to refuse charterers' orders simply because of a general risk of pirate attack to shipping. The assessment of risk by the master must be made on the basis of his own vessel taking into account its characteristics, such as speed and freeboard, and other factors such as time of transit and additional security measures.

One of the key changes to the Clause, as mentioned above, is the placing of a cap on hire if the vessel is detained by pirates. The former open exposure for Charterers was one of the main reasons for the Clause being perceived by some sections of the industry as being more favourable to owners.

Another notable amendment is the broadening of the scope of the definition of piracy for the purposes of the Clause. The original definition used in the first edition was felt to be too narrow in its application if the Clause was to be used to address piracy globally and not just in the Gulf of Aden. The definition in sub-clause (a) now extends to acts of "violent robbery". This change has been made to encompass armed robbery from vessels in Nigerian waters by politically motivated "brigands" – who by virtue of the political aspect to their crime would normally fall outside the conventional definition of piracy.

The following explanatory notes provide a background guide to the intention behind the BIMCO Piracy Clauses for Time Charter Parties:

Sub-clause (a) has been amended to reflect the way in which voyage orders are issued; namely, that charterers do not have to obtain the owners' or masters' prior written approval before issuing orders that would take the vessel through a potential risk area. The starting point of the revised Clause is that the charterers have issued orders and on the basis of those orders the owners/master has to judge whether the risk to the vessel and crew in complying with those orders is acceptable.

As mentioned above, the scope of the definition of piracy under the Clause has been broadened to include violent robbery. It is worth noting that this Clause applies whether or not the risk of piracy attack was known at the time the charter was concluded or occurred afterwards. This contrasts with the approach under the CONWARTIME War Risks Clause which is intended to apply only if such risks arose after the charter was concluded and was therefore not contemplated by the parties.

Sub-clause (b) has been amended to reflect the changes made to sub-clause (a) removing the previous prior written approval requirement. Sub-clause (b) now emphasizes that it deals with what should happen if the owners and/or master do not agree to proceed through the risk area. In such instances the owners are obliged to notify the charterers of their decision without delay and the charterers must thereafter provide alternative voyage orders. The charterers must indemnify the owners against any claims from bill of lading holders caused by the change of orders. This indemnity applies not only during the performance of the alternative voyage but also during the period following the owners declaration that the vessel will not proceed as ordered and the time the charterers issue new orders. Charterers should note that the provision of this indemnity will require extended cargo cover (to cover potential deviation claims from bills of lading holders).

Sub-clause (c) provides for the situation when the Owner agrees for the vessel to pass through the risk area. In sub-clause (c)(i) wording has been added to clarify that re-routing can take place within the risk area, rather than only encompassing an entirely different route. A further change made to sub-clause (c) in respect of the indemnity which has now been qualified to avoid the potential risk to charterers of double insurance – i.e., that the charterers would not only have to insure their own risk under the indemnity but would also have to meet the owners' insurance costs. To this end the amendment at the end of sub-clause (c) adds the phrase "save to the extent that such claims are covered by additional insurance as provided in sub-clause (d)(III)".

Sub-clause (d) allocates various costs that may be incurred when passing through a risk area. The additional costs for additional personnel and for preventive measures to reduce the risk of pirate attacks are for the charterers' account. However, the word 'reasonable' has been added for consistency with "reasonable preventive measures" in sub-clause (c).

The industry has questioned whether the term "additional insurance" is meant to include kidnap and ransom (K&R) insurance packages. This was never the intention of the drafting group as K&R insurance is felt to be a supplementary insurance and not part of the conventional insurances normally taken out by a ship owner. In theory a ship owner should be covered for piracy risks by his hull and machinery and war risks insurance (increasingly this risk is being moved to war risks insurance where an additional premium can be charged). The reference to "additional insurance" is intended to refer to extra insurance cover required by underwriters in addition to existing insurances in order to proceed with the voyage. The words "additional insurance" has been deleted from sub-clause (d)(i)) and "or additional insurance cover is necessary" has been added to the insurance provisions in sub-clause (d)(III) to clarify this.

It is worth noting that insurance "calls" are no longer referred to in this sub-clause as such calls should not be passed on to charterers because they are not necessarily related to the actual voyage but are raised at a later date.

Sub-clause (d)(iv) is new and has been introduced to deal with how and when payments under the Clause to the owners by the charterers should be effected.

Sub-clause (e) previously covered the issue of whether the vessel remains on hire if attacked, seized and detained by pirates. The Sub-clause now deals only with attacks on the vessel by pirates. If the vessel is seized by pirates following a successful attack then Sub-clause (f) applies. The reference to "time lost" if attacked refers to delays that may result due to deviation to avoid the attack or repairs to the vessel following an armed attack.

Sub-clause (f) deals with seizure of the vessel by pirates. It provides a cap on the charterers' exposure to hire payments in the event of seizure. The Working Group has chosen the period of 90 days for the cap simply because this is the current average period of time that vessels are held by Somalian pirates before release. It is important to note that the vessel does not go off-hire after 90 days. The charterers' obligations towards the vessel remain intact throughout the period of detention – it is only that the obligation to pay hire is suspended for the period after 90 days in

detention has lapsed until the vessel is released. This is an important distinction – it is a cap on hire alone.

Another important aspect of the revised draft is that a provision has been added to the effect that if the vessel as a result of being detained by pirates misses her redelivery date, the charterers are not liable. The sub-clause makes it clear that while a vessel will have to complete her contractual voyage if she has cargo on board (even if the charter period has expired, or will expire before the voyage ended), the charterers will not be liable for late redelivery. Again, this was felt to be an issue that addresses a potential imbalance in the first edition of the Clause because the issue was not addressed.

Throughout the entire period of seizure, the owners are obliged to keep the charterers closely informed of efforts made to have the vessel released.

Sub-clause (g) is new in the revised edition and provides, in line with the War Risks Clause, the owners a protection from a claim of unjustifiable deviation provided the vessel has complied with the provisions of the clause. An overriding provision has been added as a final sentence to ensure that in the event of a conflict between the provision of the Piracy Clause and other provisions in the charter party, the Piracy Clause will prevail.

BIMCO is confident that the revised Piracy Clause for Time Charter Parties addresses the shortcomings of the first edition and that the new Clause will be welcomed by the industry. The revised Piracy Clause for Time Charter Parties forms part of a suite of three Piracy Clauses issued by BIMCO. The other two Clauses in the suite are for single voyage charter parties and consecutive voyage charter parties/COAs. These additional Piracy Clauses are covered in separate Special Circulars.

* * * * *

The full text of the Piracy Clause for Time Charter Parties is set out below. To distinguish the revised Clause from the first edition, "2009" has been added to the end of the title of the Clause to indicate the year of amendment. The Clause may also be downloaded free of charge from the BIMCO web site at www.bimco.org and is also available as an additional clause to subscribers of BIMCO's online charter party editing system, *Idea*.

BIMCO Piracy Clause for Time Charter Parties 2009

- (a) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter "Area") which, in the reasonable judgement of the Master and/or the Owners, is dangerous to the Vessel, her cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), whether such risk existed at the time of entering into this charter party or occurred thereafter. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.
- (b) If in accordance with sub-clause (a) the Owners decide that the Vessel shall not proceed or continue to or through the Area they must immediately inform the Charterers. The Charterers shall be obliged to issue alternative voyage orders and shall indemnify the Owners for any claims from holders of the Bills of Lading caused by waiting for such orders and/or the performance of an alternative voyage. Any time lost as a result of complying with such orders shall not be considered off-hire.
- (c) If the Owners consent or if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:
 - (i) to take reasonable preventative measures to protect the Vessel, her crew and cargo including but not limited to re-routing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel or equipment on or about the Vessel;
 - (ii) to comply with the orders, directions or recommendations of any underwriters who have the authority to give the same under the terms of the insurance;
 - (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group, including military authorities, whatsoever acting with the power to compel compliance with their orders or directions; and
 - (iv) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;
- (d) Costs:
 - (i) If the Vessel proceeds to or through an Area where due to risk of Piracy additional costs will be incurred including but not limited to additional personnel and preventative measures to avoid Piracy, such reasonable costs shall be for the Charterers' account. Any time lost waiting for convoys, following recommended routing, timing, or reducing speed or taking measures to minimise risk, shall be for the Charterers' account and the Vessel shall remain on hire;
 - (ii) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the

manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers;

- (iii) If the underwriters of the Owners' insurances require additional premiums or additional insurance cover is necessary because the Vessel proceeds to or through an Area exposed to risk of Piracy, then such additional insurance costs shall be reimbursed by the Charterers to the Owners;
- (iv) All payments arising under Sub-clause (d) shall be settled within fifteen (15) days of receipt of Owners' supported invoices or on redelivery, whichever occurs first.
- (e) If the Vessel is attacked by pirates any time lost shall be for the account of the Charterers and the Vessel shall remain on hire.
- (f) If the Vessel is seized by pirates the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released. The Vessel shall remain on hire throughout the seizure and the Charterers' obligations shall remain unaffected, except that hire payments shall cease as of the ninety-first (91st) day after the seizure and shall resume once the Vessel is released. The Charterers shall not be liable for late redelivery under this Charter Party resulting from seizure of the Vessel by pirates.
- (g) If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail to the extent of such conflict, but no further.

Appendix 4

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Enquiries to: Neil Roberts **JW2010/009**

Increased Range of Somalia-Based Piracy

The recent amendments to the Listed Areas have extended the enhanced risk area eastwards to the edge of the established UKMTO reporting area. The decision was based on the Aegis synopsis which is attached together with maps of recent attacks which clearly highlight the problem - there are no practical limits on range given the use of mother ships.

Naval Support

There are three Combined Task Forces operating in the area as part of the Combined Maritime Forces under US 5th Fleet. The pool of vessels is a continuing dedicated presence but with differing tasks.

CTF 150 and CTF 152 conduct maritime security operations concentrating on counter-terrorist activity in the Gulf of Aden, Gulf of Oman, the Arabian Sea, Arabian Gulf, Red Sea and the Indian Ocean, but also targeted at drug trafficking and people smuggling.

CTF 151 is mandated to provide counter-piracy operations in the Gulf of Aden and off the eastern coast of Somalia.

EUNAVFOR Operation Atalanta CTF 465 has increased its force generation to its highest number of sea-borne and air assets combating piracy across the Gulf of Aden and Indian Ocean, recently deploying 11 warships during the transition period between the South West and North East Monsoon.

NATO's Operation Ocean Shield has up to six ships available as a continuing presence under Standing Maritime Group 2.

BMP

With the increased scale and range of pirate operations across the Indian Ocean the importance and significance in implementing Best Management Practice(BMP3) has become more pronounced as passive defence measures become the only defence in many cases.

Circular JW2010/008 gave underwriters concerned direct access to EUNAVFOR information on specific seized ships and that facility should prove helpful in ascertaining operating procedures applied by individual vessels, specifically in relation to BMP.

Neil Roberts

Secretary

AEGIS INTELLIGENCE REPORT

16th December 2010

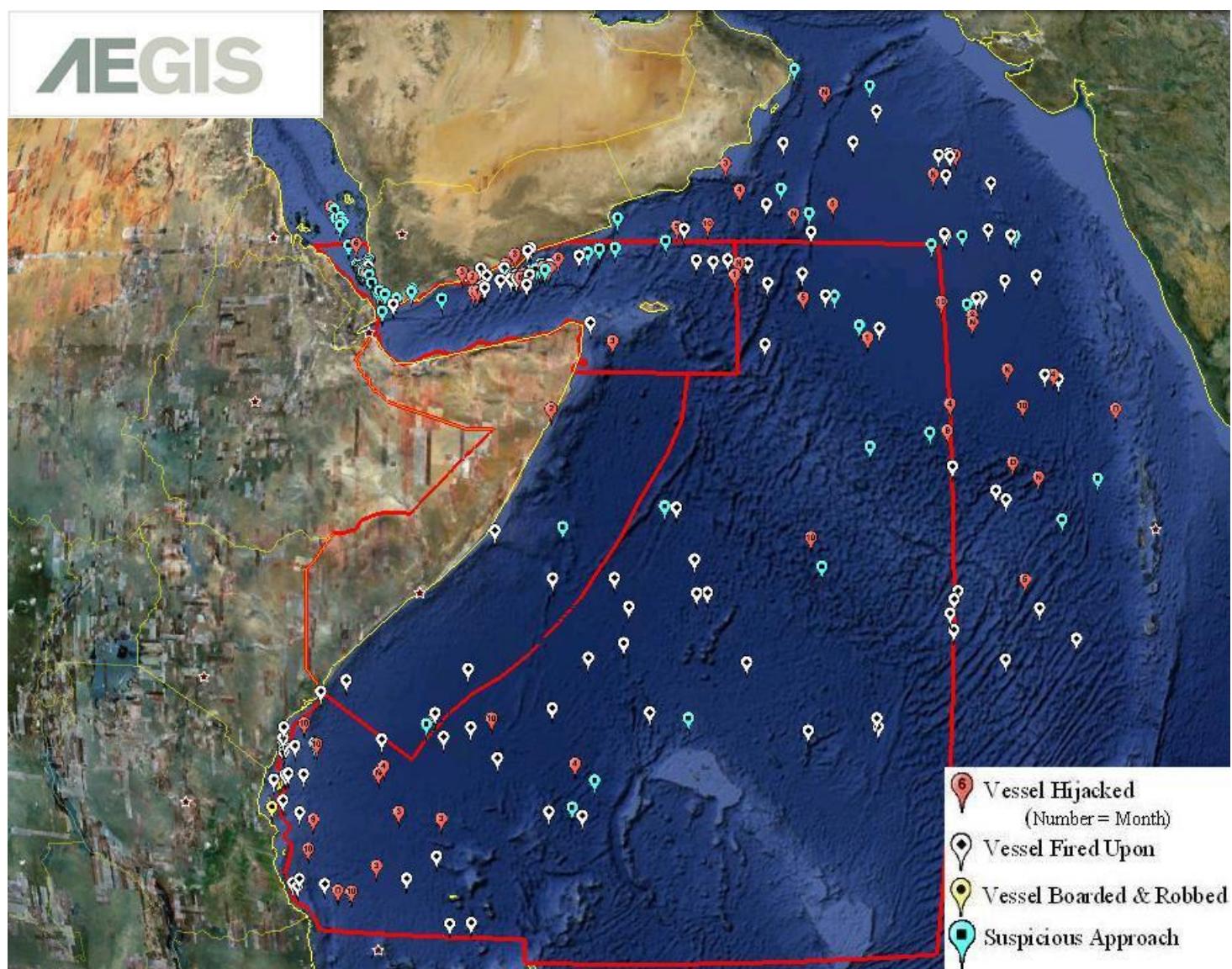
The capabilities of the Somali pirate gangs have continued to grow and develop since the upsurge in the summer of 2008. Hijacks remain at a broadly constant level despite international counter-piracy efforts and the widespread adoption of best management practice by vessel operators. Successful attacks are occurring at ever greater distances from the Somali coast. The use of previously captured commercial vessels as motherships has given the pirates even greater range and means that this trend is likely to continue.

- Over the course of 2010, 56 reported incidents – including 17 hijacks and 29 cases of vessels being fired upon – occurred either to the east of longitude 15° North or north of latitude 65° East, outside the current boundaries of the Indian Ocean Exclusion Zone. These include the 5 December 2010 seizure of the JAHAN MONI within 270 nautical miles of the Indian mainland, less than 70 nautical miles from the Maliku atoll (part of the Indian union territory of Lakshwadeep) and no more than 90 nautical miles from the Maldives.
- Of these, 11 hijacks (including six that were ultimately frustrated by the crew's retreat to a secure 'citadel') and 17 incidents of vessels being fired upon have occurred since the beginning of October.
- Aegis would recommend that the JWC list any waters anywhere in the world where this level of activity occurred. It indicates that there is a significant threat to commercial shipping and that the existing exclusion zones nearby are not sufficient to best protect commercial maritime assets.
- International naval forces have made notable efforts to deter and disrupt Somali piracy. However, while their mandates are in some cases wide, their resources are limited, particularly given the sheer quantity of ocean in which the Somali pirates operate; this means their energies are focused where they can have most effect – namely in a) protecting a restricted area (the Internationally Recognised Transit Corridor in the Gulf of Aden), b) protecting certain vessels (either individual food aid vessels, or several vessels at a time, through convoys), or c) interdicting close inshore. Therefore given current multinational naval force dispositions, it is unlikely that they can secure the waters north of latitude 15° North or east of longitude 65° East.

AEGIS INTELLIGENCE REPORT

Figure 1:

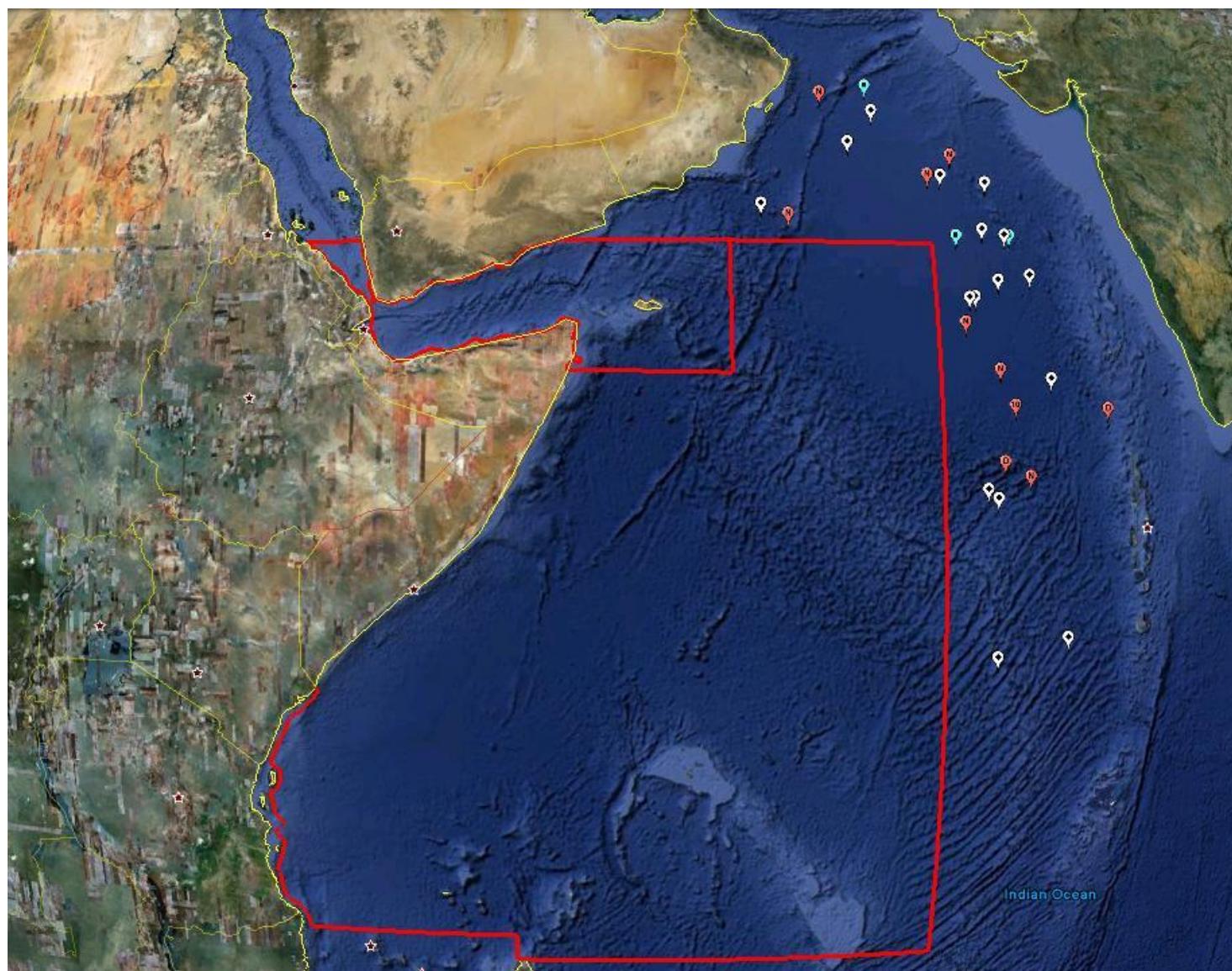
Somalia-based piracy, 1 Jan-15 Dec 2010



AEGIS INTELLIGENCE REPORT

Figure 2:

Somalia-based piracy outside boundaries of previous listed areas, 1 Sept - 15 Dec 2010



Appendix 5

INTERNATIONAL MARITIME ORGANIZATION
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E

Ref. T2-mss/2.11.4.1

MSC.1/Circ.1334
23 June 2009

PIRACY AND ARMED ROBBERY AGAINST SHIPS

Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships

1 The Maritime Safety Committee, at its eighty-sixth session (27 May to 5 June 2009), approved a revised MSC/Circ.623/Rev.3 (Guidance to shipowners and ship operators, shipmasters and crews for preventing and suppressing acts of piracy and armed robbery against ships) as given at annex.

2 The revision was carried out on the basis of the outcome of the comprehensive review of the guidance provided by the Organization for preventing and suppressing piracy and armed robbery against ships; and took into account the work of the correspondence group on the review and updating of MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22), established by MSC 84.

3 Member Governments and organizations in consultative status with IMO are recommended to bring this circular to the attention of shipowners, ship operators, shipping companies, shipmasters and crews and all other parties concerned.

4 This circular revokes MSC/Circ.623/Rev.2.

ANNEX

GUIDANCE TO SHIOPWNERS, COMPANIES¹, SHIP OPERATORS, SHIPMASTERS AND CREWS ON PREVENTING AND SUPPRESSING ACTS OF PIRACY² AND ARMED ROBBERY³ AGAINST SHIPS

Introduction

1 This circular aims at bringing to the attention of shipowners, companies, ship operators masters and crews the precautions to be taken to reduce the risks of piracy on the high seas and armed robbery against ships at anchor, off ports or when underway through a coastal State's territorial waters. It outlines steps that should be taken to reduce the risk of such attacks, possible responses to them and the vital need to report attacks, both successful and unsuccessful, to the authorities of the relevant coastal State and to the ships' own maritime Administration. Such reports are to be made as soon as possible, to enable necessary action to be taken.

2 It is important to bear in mind that shipowners, companies, ship operators, masters and crews can and should take measures to protect themselves and their ships from pirates and armed robbers. While security forces can often advise on these measures, and flag States are required to take such measures as are necessary to ensure that owners and masters accept their responsibility, ultimately it is the responsibility of shipowners, companies, ship operators, masters and ship operators to take seamanlike precautions when their ships navigate in areas where the threat of piracy and armed robbery exists. Planning should give consideration to the crew's welfare during and after a period of captivity by pirates or armed robbers. Before operating in waters where attacks have been known to occur, it is imperative for shipowners, companies, ship operator and masters concerned to gather accurate information on the situation in the area. To this end the information on attacks and attempted attacks gathered, analysed and distributed by the IMO, IMB's Piracy Reporting Centre

¹ The term "company" is defined in SOLAS regulations IX/1 and XI-2/1.

² The following definition of piracy is contained in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (article 101):

"Piracy consists of any of the following acts:

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

³ The Subregional meeting on piracy and armed robbery against ships in the Western Indian Ocean, Gulf of Aden and Red Sea area, held in Dar es Salaam, United Republic of Tanzania, from 14 to 18 April 2008, agreed to modify this definition. Consistent with the ReCAAP Agreement, the "private ends" motive has been added to the definition. The formulation "within internal waters, archipelagic waters and territorial sea" replaced "within a State's jurisdiction". The new formulation reflects the views of France, supported by other States participating in the meeting, that the definition for armed robbery against ships should not be applicable to acts committed seaward of the territorial sea. The new definition reads: "Armed robbery against ships" means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea.

and the ReCAAP Information Sharing Centre (ReCAAP ISC)², the Maritime Security Centre, Horn of Africa, Governments and others is vital information, upon which precautionary measures should be based.

3 These recommendations have been culled from a number of sources. Where conflicting advice has been apparent, the reason for choosing the recommended course has been stated.

The pirates'/robbers' objective

4 In addition to the hijacking of ships and the holding the crew hostage, and the theft of cargo, other targets of the attackers include cash in the ship's safe, crew possessions and any portable ship's equipment. When there has been evidence of tampering with containers, it may be an indication that the raiders may initially have gained access when the ship was berthed in port and then gone over the side, with what they could carry. The application of the ISPS Code is an important precautionary measure and a thorough checking of ships' compartments and securing them before leaving ports is therefore strongly encouraged.

Reducing the temptation for piracy and armed robbery

Cash in the ship's safe

5 The belief that large sums of cash are carried in the master's safe attracts attackers. In some cases this belief has been justified and sums have been stolen. While carrying cash may sometimes be necessary to meet operational needs and crew requirements and to overcome exchange control restrictions in some States, it acts as a magnet for attackers and they will intimidate and take hostage the master or crew members until the locations have been revealed. Shipowners should consider ways of eliminating the need to carry large sums of cash on board a ship. When this need arises because of exchange control restrictions imposed by States, the matter should be referred to the ship's maritime Administration to consider if representations should be made to encourage a more flexible approach as part of the international response to eliminate attacks by pirates and armed robbers.

Discretion by masters and members of the crew

6 Masters should bear in mind the possibility that attackers are monitoring ship-to-shore communications and using intercepted information to select their targets. Masters should however also be aware that switching off AIS in high-risk areas reduces ability of the supporting naval vessels to track and trace vessels which may require assistance. Caution should also be exercised when transmitting information on cargo or valuables on board by radio in areas where attacks occur.

7 It is up to the master's professional judgement to decide whether the AIS system should be switched off, in order for the ship not to be detected, when entering areas where piracy is an imminent threat, however the master should balance the risk of attack against the need to maintain the safety of navigation and, in particular, the requirements of COLREG Rule 7 on Risk of collision, and should act in accordance with the guidance in resolutions A.917(22) and A.956(23). The master should also be aware that other ships operating in high-risk areas may have taken a decision to

² The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) is a Government-to-Government Agreement that addresses the incidence of piracy and armed robbery against ships in Asia. The status of ReCAAP ISC is an IGO. Further details may be found at www.recaap.org.

switch off the AIS system. In the event of an attack, masters should ensure to the extent feasible that AIS is turned on again and transmitting to enable security forces to locate the vessel.

8 Members of the crew going ashore in ports in affected areas should be advised not to discuss the voyage or cargo particulars with persons unconnected with the ship's business.

Smaller crews

9 The smaller crew numbers now found on board ships also favour the attacker. A small crew engaged in ensuring the safe navigation of their ship through congested or confined waters will have the additional onerous task of maintaining high levels of security surveillance for prolonged periods. Shipowners may wish to consider enhancing security watches if their ship is in waters or at anchor off ports, where attacks occur. Shipowners may wish to consider providing appropriate surveillance and detection equipment to aid their crews and protect their ships.

Recommended practices

10 The recommended practices outlined below are based on reports of incidents, advice published by commercial organizations and measures developed to enhance ship security. The extent to which the recommendations are followed or applied are matters solely for the owners or masters of ships operating in areas where attacks occur. The shipping industry would also benefit from consulting other existing recommendations, including those given by the ReCAAP ISC³, the IMB Piracy Reporting Centre, BIMCO, ICS and other industry bodies.

11 Given that the masters are often required to follow multiple reporting procedures in these difficult circumstances, it is necessary to simplify these procedures as far as operationally feasible. It is therefore recommended that in the event of an occurrence masters should report all actual or attempted attacks of piracy and armed robbery or threats thereof, to:

- (i) the nearest RCC or regional piracy focal point where applicable (e.g., RECAAP ISC in the Asian region⁴),
- (ii) the flag State, and
- (iii) the IMB Piracy Reporting Centre⁵.

12 The recommended actions are defined as phases related to any voyage in a piracy and armed robbery threat area. The phases define the main stages in all situations of pre-piracy or armed robbery, attempted piracy or armed robbery and confirmed piracy or armed robbery. Depending on the development of any one situation, they may or may not materialize. A list of phases is given in Appendix 3.

³ The ReCAAP ISC collates and analyses information concerning piracy and armed robbery against ships, and publishes regular reports which identify patterns and trends, highlight good practices and recommend preventive measures.

⁴ See Appendices 2 to this circular regarding the information-sharing and incident-reporting processes generally and in the Asian region.

⁵ The IMB Piracy Reporting Centre is manned 24 hours a day and set up to receive and promulgate reports of attacks or attempted attacks worldwide.

The pre-piracy/armed robbery phase

13 Written procedures on how to prevent or suppress attacks of pirates and armed robbers should be found either in the ship's Safety Management System or in the ship security plan.

14 The entry into force of the ISPS Code and the ISM Code have made security assessments and risk assessments an integral part of the safety and security precautions. Measures to prevent and suppress piracy and armed robbery against ships should be part of either the emergency response procedures in the safety management system, or as a situation that requires increased alertness, should become a part of the procedures in the ship security plan.

15 All ships operating in waters or ports where attacks occur should carry out a security assessment as a preparation for development of measures to prevent attacks of pirates or armed robbers against ships and on how to react should an attack occur. This should be included as a part of the emergency response procedures in the safety management system or a part of the procedures in the ship security plan. The security assessment should take into account the basic parameters of the operation including:

- .1 the risks that may be faced including any information given on characteristics of piracy or armed robbery in the specific area;
- .2 the ship's actual size, freeboard, maximum speed, and the type of cargo;
- .3 the number of crew members available, their proficiency and training;
- .4 the ability to establish secure areas on board ship; and
- .5 the equipment on board, including any surveillance and detection equipment that has been provided.

16 The ship security plan* or emergency response procedures should be prepared based on the risk assessment, detailing predetermined responses to address increases and decreases in threat levels.

The measures should, *inter alia*, cover:

- .1 the need for enhanced surveillance and the use of lighting, surveillance and detection equipment;
- .2 controlling of access to the ship and the restricted areas on the ships by ships' personnel, passengers, visitors, etc.;
- .3 prevention of unauthorized intrusion by active and passive devices and measures, such as netting, wire, electric fencing, long-range acoustic devices, as well as the use, when appropriate, of security personnel on vessels transiting high-risk areas, and taking other measures to make it more difficult for pirates to board vessels. The safety of onboard personnel should always be taken into account when installing passive devices on board and awareness information should be provided;
- .4 monitoring the security of the ship;
- .5 crew responses, if a potential attack is detected or an attack is underway;

* Guidance can be found in the ISPS Code.
IAC/IRC/MSC.011/1334.doc

- .6 the radio alarm procedures to be followed; and
- .7 the reports to be made after an attack or an attempted attack.

Ship security plans or emergency response procedures should ensure that masters and crews are made fully aware of the risks involved during attacks by pirates or armed robbers. In particular, they should address the dangers that may arise if a crew adopts an aggressive response to an attack. Early detection of a possible attack may often be the most effective deterrent. Aggressive responses, once an attack is underway and, in particular, once the attackers have boarded the ship, could significantly increase the risk to the ship and those on board.

17 In accordance with the ship security plan, all doors allowing access to the bridge, engine-room, steering gear compartments, officers' cabins and crew accommodation should be secured and controlled in affected areas and should be regularly inspected. The use of surveillance equipment to monitor the areas as well as regular patrolling can be of merit. The intention should be to establish secure areas which attackers will find difficult to penetrate. Securing by locking or other means of controlling access to unattended spaces adjoining areas could also prove useful.

18 The shipowner, company, operator and master should bear in mind, the seafarer's need for shore leave and access to shore-based welfare facilities and medical care.

19 It is important that any response to an incident is well planned and executed, and those involved should be as familiar as possible with a ship environment. Therefore, those responsible within the security forces for responding to acts of piracy and armed robbery against ships, whether at sea or in port, should be trained in the general layout and features of the types of ships most likely to be encountered and shipowners in consultation with the flag State should cooperate with the security forces in providing access to their ships to allow the necessary onboard familiarization.

Routeing and delaying anchoring

20 If at all possible, ships should be routed away from areas where attacks are known to have taken place and, in particular, seek to avoid bottlenecks. When deciding on a ship's route the company should take into consideration the type of ship, the size and maximum speed as well as the freeboard and the dangerous nature of the cargo. If convoys are offered such a measure should also be considered to avoid serious attacks on ships at sea. If ships are approaching ports where attacks have taken place on ships at anchor, rather than ships underway, and it is known that the ship will have to anchor off port for some time, consideration should be given to delaying anchoring by longer routeing to remain well off shore or other methods by which the period during which the ship will be at risk is reduced. Contact with port authorities should ensure that berthing priorities are not affected. Charter party agreements should recognize that ships may need to delay arrival at ports where attacks occur either when no berth is available for the ship or offshore loading or unloading will be delayed for a protracted period.

Practise the implementation of the ship security plan

21 Prior to entering an area, where attacks have occurred, the ship's crew should have practised the procedures set down in the ship security plan. Alarm signals and procedures should have been thoroughly practised and training and drills carried out. If instructions are to be given over the ship's address systems or personal radios, they must be clearly understood by those who may not have fully mastered the language in which the instructions will be given.

22 In order to ensure higher vigilance upon entering the area where attacks occur, additional specific security briefings should be given to all ship personnel on the threats of piracy, re-emphasizing the procedures for reporting suspicious persons, objects or activities. Full or partial searches of the ship should be carried out regularly while in the area with heightened threat of attack.

23 It cannot be emphasized enough that all possible access points to the ship and any key and secure areas on it must be secured or controlled in port, at anchor and when underway in affected areas. Crews should be trained in the use of any additional surveillance or detection equipment installed on the ship. Planning and training must be on the basis that an attack will take place and not in the belief that with some luck it will not happen. Indications to attackers that the ship has an alert and trained crew implementing a ship security plan will help to deter them from attacking the ship.

Precautions at anchor or in port

24 In areas where attacks occur, the ships' masters should exercise vigilance when their ships are preparing to anchor or while at anchor. Furthermore, it is important to limit, record and control those who are allowed access to a ship when in port or at anchor. Photographing those who board the ship can be a useful deterrent or assist the identification of attackers who may have had access to the ship prior to their attack. Given that attackers may use knowledge of cargo manifests to select their targets, every effort should be made to limit the circulation of documents which give information on the cargoes on board or their location on the ship. Similar precautions should be taken in regard to the circulation of information on crew members' personal valuables and ship's equipment, as these items are also targeted by attackers.

25 Prior to leaving port, the ship should be thoroughly searched and all doors or access points secured or controlled. This is particularly important in the case of the bridge, engine-room, steering space and other vulnerable areas. Doors and access points should be regularly checked thereafter. The means of controlling doors or access points which would need to be used in the event of an emergency on board will need careful consideration. Ship or crew safety should not be compromised. Searches on board for intruders should be conducted in such a way that the safety of the crew performing these duties is not compromised.

26 Security guards employed in port or at anchorage on different ships should be in communication with each other and the port authorities during their watch. The responsibility for vetting such guards lies with the security personnel companies, which themselves should be vetted by the appropriate authorities.

Watchkeeping and vigilance

27 Maintaining vigilance is essential. All too often the first indication of an attack has been when the attackers appear on the bridge or in the master's cabin. Advance warning of a possible attack will give the opportunity to sound alarms, alert other ships and the coastal authorities, illuminate the suspect craft, undertake evasive manoeuvring or initiate other response procedures. Signs that the ship is aware it is being approached can deter attackers.

28 When ships are in, or approaching areas of known risk of piracy or armed robbery, bridge watches and look-outs should be augmented, bearing in mind that many attacks are mounted from astern. Additional watches on the stern or covering radar "blind spots" should be considered. Companies should consider investing in low-light binoculars for bridge staff and look-outs. Radar

should be constantly manned but it may be difficult to detect low profile fast moving craft on ship's radars. A yacht radar mounted on the stem may provide additional radar cover capable of detecting small craft approaching from astern when the ship is underway. Use of an appropriately positioned yacht radar when the ship is at anchor may also provide warning of the close approach of small craft.

29 It is particularly important to maintain a radar and visual watch for craft which may be trailing the ship when underway but which could close in quickly when mounting an attack. Small craft which appear to be matching the speed of the ship on a parallel or following course should always be treated with suspicion. When a suspect craft has been noticed, it is important that an effective all-round watch is maintained for fear the first craft is a decoy with the intention to board the ship from a second craft while attention is focused on the first.

30 In addition to the use of overt means of transmitting alerts, the ship security alert system could be used in the event of a piracy or armed robbery attack. It should, however, be borne in mind that certain non-disclosure issues prevail with regards to the configuration and locations of the system.

31 Companies owning or operating ships that frequently visit areas where attacks occur should consider the purchase and use of more sophisticated visual and electronic devices in order to augment both radar and visual watch capability against attackers' craft at night, thereby improving the prospects of obtaining an early warning of a possible attack. In particular, the provision of night vision devices, small radars to cover the blind stern arcs, closed circuit television and physical devices, such as barbed wire, may be considered. In certain circumstances non-lethal weapons such as acoustic devices, may also be appropriate. Infrared detection and alerting equipment may also be utilized.

Communications procedures

32 The master should ensure that an authorized person responsible for communications is on duty at all time when the ship is in, or approaching, areas where attacks occur. It should be ensured that ship-shore communication methods are tested and report intervals agreed prior to entering the high-risk area. The frequency of reporting should be maintained.

33 Shipowners should report attacks and attempted attacks to any national, regional or subregional reporting systems made available by Governments, including those run by security forces.

34 Where possible, ships raising alerts should specify that an act of "piracy/armed robbery" is in progress, in line with other distress categories such as "sinking" or "on fire". This could have a potential to improve the alerting process and speed of response.

35 Prior to entering areas where attacks have occurred and where the GMDSS installation on board does not have facility for automatically updating the "ship position" data from an associated electronic navigation aid, it is strongly recommended to enter the ship's position at regular intervals into the appropriate communications equipment manually. It is recommended that owners initiate the GMDSS INMARSAT "C" alarm programme before entering affected areas for use when appropriate.

36 When entering waters where piracy or armed robbery activities have been reported – especially if the AIS is turned off for security reasons – the ship should routinely transmit its position to the shipping company at given intervals, thereby giving the shipping company a first notice that something is amiss if the transmissions are interrupted. Masters should act in accordance with the guidance in resolution A.917(22) on Guidelines for the onboard operational use of shipborne automatic identification systems (AIS) and resolution A.956(23) on Amendments to the guidelines for the onboard operational use of shipborne automatic identification systems (AIS) (resolution A.917(22)) concerning the turning off of AIS. In the event of an attack, masters should ensure to the extent feasible that AIS is turned on and transmitting to enable security forces to locate the vessel.

Radio watchkeeping and responses

37 A constant radio watch should be maintained with the appropriate shore or naval authorities when in areas where attacks have occurred. Continuous watch should also be maintained on all distress and safety frequencies channels or frequencies which could have been determined by local authorities for certain areas. Ships should also ensure all maritime safety information broadcasts for the area monitored. As it is anticipated that INMARSAT's enhanced group calling system (EGC) will normally be used for such broadcasts using the SafetyNET service, owners should ensure a suitably configured EGC receiver is continuously available when in, or approaching areas where there is risk of attack. Owners should also consider fitting a dedicated receiver for this purpose, i.e. one that is not incorporated into a Ship Earth Station used for commercial purposes to ensure no urgent broadcasts are missed.

38 IMO recommends in MSC.1/Circ.1333 that Governments should arrange for RCCs to be able to pass reports of attacks to the appropriate security forces. As for the reports from the ship, see paragraphs 11, and 39 to 44, below.

39 If suspicious movements are identified which may result in an imminent attack, the ship is advised to contact the relevant RCC, the flag State or other relevant information centres such as the IMB Piracy Reporting Centre or the ReCAAP ISC. Where the master believes these movements could constitute a direct danger to navigation, consideration should be given to broadcasting an "All stations (CQ)" "danger message" as a warning to other ships in the vicinity as well as advising the appropriate RCC. A danger message should be transmitted in plain language using the "safety" priority. All such measures shall be preceded by the safety signal (Sécurité)⁶.

40 When, in his/her opinion, there is conclusive evidence that the safety of the ship is threatened, the master should immediately contact the relevant RCC or, in certain areas, with the radio stations which could have been recommended by local authorities, and if considered appropriate, authorize broadcast of an "All Stations" "Urgent Message" any radiocommunications service he/she considers appropriate or which could have been recommended by local authorities, e.g. INMARSAT, etc. All such messages shall be preceded by the appropriate Urgency signal (PAN PAN) and/or a DSC call using the "all ships urgency" category. If the Urgency signal has been used and an attack does not, in fact, develop, the ship should cancel the message as soon as it knows that action is no longer necessary. This message of cancellation should likewise be addressed to "all stations".

⁶ Specific guidance in respect of waters off the coast of Somalia has been issued as MSC.1/Circ.1332 and also MSC.1/Circ.1302.

41 Should an attack occur and, in the opinion of the master, the ship or crew are in grave and imminent danger requiring immediate assistance, the master should immediately authorize the broadcasting of a distress message, preceded by the appropriate distress alerts (MAYDAY, DSC, etc.), using all available radiocommunications systems. To minimize delays, if using a ship earth station, ships should ensure the coast earth station associated with the RCC is used. For ships subject to the ISPS Code, a distress signal should also be sent to the flag State using the most expeditious means for example the ships security alert system. All ships should however report the attack to the flag State to help the investigation of incidents involving ships entitled to fly their flag.

42 The ship may be able to send a covert piracy alert to an RCC. However, as pirates may be on board the ship and within audible range of the communication equipment, when the RCC sends an acknowledgement of receipt and attempts to establish communication, they could be alerted to the fact that a piracy alert has been transmitted. This knowledge may serve to further endanger the lives of the crew on board the ship. RCCs and others should, therefore, be aware of the danger of unwillingly alerting the pirates that a distress alert or other communication has been transmitted by the ship.

43 Masters should bear in mind that the distress signal is provided for use only in case of imminent danger and its use for less urgent purposes might result in insufficient attention being paid to calls from ships really in need of immediate assistance. Care and discretion must be employed in its use, to prevent its devaluation in the future. Where the transmission of the Distress signal is not fully justified, use should be made of the Urgency signal. The Urgency signal has priority over all communications other than distress.

Standard ships' message formats

44 The standard ships' message formats given in Appendix 4 should be used for all piracy/armed robbery initial and follow-up alert reports.

Lighting

45 Ships should use the maximum lighting available consistent with safe navigation, having regard in particular to the provisions of Rule 20(b) of the 1972 Collision Regulations. Bow and overside lights should be left on if it can be done without endangering navigation. Ships must not keep on deck lights when underway, as it may lead other ships to assume the ship is at anchor. Wide beam floods could illuminate the area astern of the ship. Signal projector lights can be used systematically to probe for suspect craft using the radar guidance if possible. So far as is practicable crew members on duty outside the ship's secure areas when in port or at anchor should avail themselves of shadow and avoid being silhouetted by deck lights as this may make them targets for seizure by approaching attackers.

46 Based on specific information on acts of piracy and armed robbery at sea in specific regions, ships may consider travelling blacked out except for mandatory navigation lights. This may prevent attackers establishing points of reference when approaching a ship. In addition, turning on the ship's lights as attackers approach could alert them that they have been seen, dazzle them and encourage them to desist. It is difficult, however, to maintain full blackout on a merchant ship. The effectiveness of this approach will ultimately depend in part on the level of moonlight, but primarily on the vigilance of the ship's crew. While suddenly turning on the ship's light may alarm or dazzle attackers, it could also place the crew at a disadvantage at a crucial point through temporary loss of their night vision.

Secure areas

47 In accordance with the ship security plan, all doors allowing access to the bridge, engine-room, steering gear compartments, officers' cabins and crew accommodation should be secured and controlled at all times and should be regularly inspected. The intention should be to establish secure areas which attackers will find difficult to penetrate. Consideration should be given to the installation of special access control systems to the ship's secure areas. Ports, scuttles and windows which could provide access to such secure areas should be securely closed and should have laminated glass, if possible. Deadlights should be shut and clipped tightly. The internal doors within secure areas which give immediate access to key areas such as the bridge, radio room, engine-room and master's cabin should be strengthened and have special access control systems and automatic alarms.

48 Securing doors providing access to, and egress from, secure or key areas may give rise to concern over safety in the event of an accident. In any situation where there is a conflict between safety and security, the safety requirements should be paramount. Nevertheless, attempts should be made to incorporate appropriate safety provisions while allowing accesses and exits to be secured or controlled.

49 Owners may wish to consider providing closed-circuit television (CCTV) coverage and recording of the main access points to the ship's secure areas, the corridors approaching the entrances to key areas and the bridge. The allocation of additional personnel to guarding and patrolling of restricted areas can be a useful preventive measure.

50 To prevent seizure of individual crew members by attackers – seizure and threatening a crew member is one of the more common means of attackers gaining control over a ship – all crew members not engaged on essential outside duties should remain within a secure area during the hours of darkness. Those whose duties necessarily involve working outside such areas at night should remain in regular communication with the bridge, it may be the first indication of an attack if the watchkeeper does not report in, if manning permits work in pairs, make irregular rounds on the deck and should have practised using alternative routes to return to a secure area in the event of an attack. Crew members who fear they may not be able to return to a secure area during an attack should select places in advance in which they can take temporary refuge.

51 There should be designated muster areas within the ship's secure areas where the crew can muster during an attack and communicate their location and numbers to the bridge.

Alarms

52 Alarm signals, including the ship's whistle, should be sounded on the approach of attackers. Alarms and signs of response can discourage attackers. Alarm signals or announcements which provide an indication at the point at which the attacker may board, or have boarded, may help crew members in exposed locations select the most appropriate route to return to a secure area. Announcements made by the crew should be made in the working language of the ship.

53 The crew initial familiarization checklist should specifically state the various alarms used on board the vessel, the response and muster station to each of these alarms. The alarms and alarm signals should be standardized throughout the fleet and not be specific.

Use of distress flares

54 The only flares authorized for carriage on board ship are intended for use if the ship is in distress and is in need of immediate assistance. As with the unwarranted use of the distress signal on the radio (see paragraph 43 above), use of distress flares simply to alert shipping rather than to indicate that the ship is in grave and imminent danger may reduce their effect in the situations in which they are intended to be used and responded to. Radio transmissions should be used to alert shipping of the risk of attacks rather than distress flares. Distress flares should only be used when the master considers that the attackers' actions are putting his/her ship in imminent danger.

Use of defensive measures

55 Experiences show that robust actions from the ship which is approached by pirates may discourage the attackers. Outrunning attacks may be an appropriate preventive manoeuvre. If the situation permits, the speed should be increased and maintained at the maximum level. Provided that navigational safety allows, masters should also consider "riding off" attackers' craft by heavy wheel movements and turning into wind so as to remove any lee from either side of the ship. Heavy wheel movements should only be used when attackers are alongside and boarding is imminent. The effect of the bow wave and wash may deter would-be attackers and make it difficult for them to attach poles or grappling irons to the ship. Manoeuvres of this kind should not be used in confined or congested waters or close inshore or by ships constrained by their draught in the confined deep water routes found, for example, in the Straits of Malacca and Singapore.

Use of passive and non-lethal devices

56 The use of passive and non-lethal measures such as netting, wire, electric fencing, and long-range acoustic devices may be appropriate preventive measures to deter attackers and delay boarding.

57 The use of water hoses should also be considered though they may be difficult to train if evasive manoeuvring is also taking place. Water pressures of 80 lb per square inch and above have deterred and repulsed attackers. Not only does the attacker have to fight against the jet of water but the flow may swamp his/her boat and damage engines and electrical systems. Special fittings for training hoses could be considered which would also provide protection for the hose operator. A number of spare fire hoses could be rigged and tied down to be pressurized at short notice if a potential attack is detected.

58 Employing evasive manoeuvres and hoses must rest on a determination to successfully deter attackers or to delay their boarding to allow all crew members to gain the sanctuary of secure areas. Continued heavy wheel movements with attackers on board may lessen their confidence that they will be able to return safely to their craft and may persuade them to disembark quickly. However, responses of this kind could lead to reprisals by the attackers if they seize crew members and should not be engaged in unless the master is convinced he can use them to advantage and without risk to those on board. They should not be used if the attackers have already seized crew members.

Firearms

59 With respect to the carriage of firearms on board, masters, shipowners and companies should be aware that ships entering the territorial sea and/or ports of a State are subject to that State's legislation. It should be borne in mind that importation of firearms is subject to port and coastal State regulations. It should also be borne in mind that carrying firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods.

Non-arming of seafarers

60 The carrying and use of firearms by seafarers for personal protection or for the protection of a ship is strongly discouraged. Seafarers are civilians and the use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. Carriage of arms on board ship may encourage attackers to carry firearms or even more dangerous weapons, thereby escalating an already dangerous situation. Any firearm on board may itself become an attractive target for an attacker.

61 It should also be borne in mind that shooting at suspected pirates may impose a legal risk for the master, shipowner or company, such as collateral damages. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he or she has acted in self defence. Also the differing customs or security requirements for the carriage and importation of firearms should be considered, as taking a small handgun into the territory of some countries may be considered an offence.

Use of unarmed security personnel

62 The use of unarmed security personnel is a matter for individual shipowners, companies, and ship operators to decide. The use of unarmed security personnel to provide security advice and an enhanced lookout capability could be considered.

Use of privately contracted armed security personnel

63 If armed security personnel are allowed on board, the master, shipowner, operator and company should take into account the possible escalation of violence and other risks. However, the use of privately contracted armed security personnel on board merchant ships and fishing vessels is a matter for flag State to determine in consultation with shipowners, operators and companies. Masters, shipowners, operators and companies should contact the flag State and seek clarity of the national policy with respect to the carriage of armed security personnel. All legal requirements of flag, port and coastal States should be met.

Military teams or law enforcement officers duly authorized by Government

64 The use of military teams or law enforcement officers duly authorized by the Government of the flag State to carry firearms for the security of merchant ships or fishing vessels is a matter for the flag State to authorize in consultation with shipowners, operators and companies. The carriage of such teams may be required or recommended when the ship is transiting or operating in areas of high risk. Due to rules of engagement defined by their Government, or in coalition with other Governments, boarding conditions should be defined by the States involved, including the flag State. The shipowner, operator and company should always consult the flag State prior to embarking such teams.

The phases of suspected or attempted piracy/armed robbery attack

Suspected piracy/armed robbery vessel detected

65 Early detection of suspected attacks must be the first line of defence. If the vigilance and surveillance has been successful, a pirate/armed robbery vessel will be detected early. This is the stage at which the security forces of the nearest littoral or coastal State must be informed through the ROC, using the ships' message format contained in Appendix 4. The ship's crew should be warned and, if not already in their defensive positions, they should move to them. Appropriate passive and active measures, such as evasive manoeuvres and hoses should be vigorously employed as detailed in the preparation phase or in the ship's security plan.

66 Shipowners, company, ship operator and master should be aware of any UN Security Council, IMO or any other UN resolutions on piracy and armed robbery against ships and any recommendations therein relevant to the shipowner, operator, master and crew when operating in areas where piracy or armed robbery against ships occur.

Being certain that piracy/armed robbery will be attempted

67 If not already in touch with the security forces of the littoral coastal State, efforts should be made to establish contact. Crew preparations should be completed and, where a local rule of the road allows ships under attack to do so, a combination of sound and light signals should be made to warn other ships in the vicinity that an attack is about to take place. Vigorous manoeuvring should be continued and maximum speed should be sustained if navigation conditions permit. Nothing in these guidelines should be read as limiting the master's authority to take action deemed necessary by the master to protect the lives of passengers and crew.

Pirate/armed robbery vessel in proximity to, or in contact with, own ship

68 Vigorous use of hoses in the boarding area should be continued. It may be possible to cast off grappling hooks and poles, provided the ship's crews are not put to unnecessary danger.

69 While giving due consideration to safety of crew, vessel and environment it is recommended that masters should not slow down and stop, as far as practicable, when pursued by or fired upon by pirates/armed robbers intending to board and hijack the vessel. Where the pirates/armed robbers operate from a mother ship, masters should consider steering away from the mother ship thus increasing the distance between the attacking craft and the mother ship.

Pirates/armed robbers start to board ship

70 Timing during this phase will be critical and as soon as it is appreciated that a boarding is inevitable all crew should be ordered to seek their secure positions and activate any systems for raising the alarm including the ship security alert system.

Pirates/armed robbers have succeeded in entering ship

71 Early detection of potential attacks must be the first line of defence, action to prevent the attackers actually boarding the second, but there will be incidents when attackers succeed in boarding a ship. The majority of pirates and armed robbers are opportunists seeking an easy target and time may not be on their side, particularly if the crews are aware they are on board and are

raising the alarm. However, the attackers may seek to compensate for the pressure of time they face by escalating their threats or the violence they employ. When attackers are on board the actions of the master and crew should be aimed at:

- .1 securing the greatest level of safety for those on board the ship;
- .2 seeking to ensure that the crew remain in control of the navigation of the ship; and
- .3 securing the earliest possible departure of the attackers from the ship.

72 The options available to the master and crew will depend on the extent to which the attackers have secured control of the ship, e.g., by having gained access to the bridge or engine-room, or by seizing crew members who they can threaten, to force the master or crew to comply with their wishes. However, even if the crew are all safely within secure areas, the master will always have to consider the risk to the ship the attackers could cause outside those areas, e.g., by using firebombs to start fires on a tanker or chemical carrier.

73 If the master is certain that all his/her crew are within secure areas and that the attackers cannot gain access or by their actions outside the secure areas they do not place the entire ship at imminent risk, then he/she may consider undertaking evasive manoeuvres of the type referred to above to encourage the attackers to return to their craft.

74 The possibility of a sortie by a well-organized crew has, in the past, successfully persuaded attackers to leave a ship but the use of this tactic is only appropriate if it can be undertaken at no risk to the crew. For an action like this to be attempted the master must have clear knowledge of where the attackers are on the ship, that they are not carrying firearms or other potentially lethal weapons and that the number of crew involved significantly outnumbers the attackers they will face. If a sortie party can use water hoses, they stand an increased chance of success. The intention should be to encourage the attackers back to their craft. Crew members should not seek to come between the attackers and their craft nor should they seek to capture attackers as to do so may increase the resistance the attackers offer which will, in turn, increase the risk faced by members of the sortie party. Once outside the secure area, the sortie party should always stay together. Pursuit of an individual attacker by a lone crew member may be attractive but if it results in the crew member being isolated and seized by the attackers, the advantage turns to the attackers. Crew members should operate together and remain in constant communication with the bridge and should be recalled if their line of withdrawal to a secure area is threatened.

75 If the crew do apprehend an attacker, he/she should be placed in secure confinement and well cared for. Arrangements should be made to transfer him/her to the custody of officers of the security forces of a coastal State at the earliest possible opportunity. Any evidence relating to these activities should also be handed over to the authorities who take him/her into custody.

The pirates/armed robbers begin to gain control and take one or more of the ship's crew into their custody

76 If the attackers have gained control of the engine-room or bridge, have seized crew members or can pose an imminent threat to the safety of a ship, the master or officer in charge should remain calm and, if possible, seek to negotiate with the attackers with the intention of maintaining the crew's control over the navigation of the ship, the safe return of any hostages they may hold and the early departure of the attackers from the ship. There will be many circumstances when compliance

with the attackers' demands will be the only safe alternative and resistance or obstruction of any kind could be both futile and dangerous. An extract from United Nations Guidance on surviving as a hostage is given in Appendix 4.

77 In the event of attackers gaining temporary control of the ship, crew members should, if it is safe and practicable, leave Close Circuit Television (CCTV) records running.

78 As there have been occasions when entire crews have been locked up, consideration should be given to secreting equipment within areas in which the crew could be detained to facilitate their early escape.

79 In the event of hijacking a ship, the shipping company should seek expert advice and assistance from professionals to the effect of the safe return of the crew, as handling these situations have shown to be time-consuming and stressful for all parties involved.

The pirates/armed robbers have stolen property/money, etc.

80 At this stage it is essential that the pirates/armed robbers are assured that they have been given everything they demand and a strong reassurance that nothing has been secreted may persuade the pirates/armed robbers to leave.

The pirates/armed robbers start to disembark from the ship

81 If the crew are in their secure positions, it would be unwise of them to leave this security until it is confirmed that the pirates/armed robbers have left the ship.

The pirates/armed robbers have disembarked from the ship

82 A pre-arranged signal on the ship's siren will alert the crew to the "all clear". The company Security Officer should be informed accordingly.

Action after an attack and reporting incidents

83 Immediately after securing the safety of the ship and crew a post attack report (Follow-up report, as shown in Ships' message formats in Appendix 5) should be made to the relevant ROC and, through them, to the security forces of the coastal State concerned. As well as information on the identity and location of the ship, any injuries to crew members or damage to the ship should be reported, as should the direction in which the attackers departed together with brief details of their numbers and, if possible, a description of their craft. If the crew have apprehended an attacker, that should also be reported in this report.

84 If an attack has resulted in the death of, or serious injury to, any person on board the ship or serious damage to the ship itself, an immediate report should also be sent to the ship's maritime Administration. In any event a report of an attack is vital if follow-up action is to be taken by the ship's maritime Administration. The shipowner, companies, ship operators, shipmasters and crew should cooperate with the investigators and provide the requested information.

85 Any CCTV or other recording of the incident should be secured. If practicable, areas that have been damaged or rifled should be secured and remain untouched by crew members pending possible forensic examination by the security forces of a coastal State. Crew members who came

into contact with the attackers should be asked to prepare an individual report on their experience noting, in particular, any distinguishing features which could help subsequent identification of the attackers. A full inventory, including a description of any personal possessions or equipment taken, with serial numbers when known, should also be prepared.

86 As soon as possible after the incident, a fuller report should be transmitted to the authorities of the coastal State in whose waters the attack occurred or, if on the high seas, to the authorities of the nearest coastal State. Due and serious consideration should be given to complying with any request made by the competent authorities of the coastal State to allow officers of the security forces to board the ship, take statements from crew members and undertake forensic and other investigations. Copies of any CCTV recordings, photographs, etc., should be provided if they are available.

87 Ships should take the necessary precautions, and implement the necessary procedures to ensure rapid reporting of any case of attack or attempted attack to the authorities in the relevant coastal States to enhance the possibility of security forces apprehending the attackers.

88 Any report transmitted to a coastal State should also be transmitted to the ship's maritime Administration at the earliest opportunity. A complete report of the incident, including details of any follow-up action that was taken or difficulties that may have been experienced, should eventually be submitted to the ship's maritime Administration. The report received by maritime Administrations may be used in any diplomatic approaches made by the flag State to the Government of the coastal State in which the incident occurred. This will also provide the basis for the report to IMO.

89 The format required for reports to IMO through maritime Administrations or international organizations is attached at Appendix 6. Indeed, at present the lack of adequate and accurate reporting of attacks is directly affecting the ability to secure governmental and international action. Reports may also contribute to future refining and updating any advice that might be issued to ships.

90 Reports to the RCC, coastal State and the ship's maritime Administration should also be made if an attack has been unsuccessful.

91 Using RCCs, as recommended by IMO in MSC/Circ.1073, will eliminate communication difficulties.

On leaving piracy/armed robbery high-risk/high-probability areas

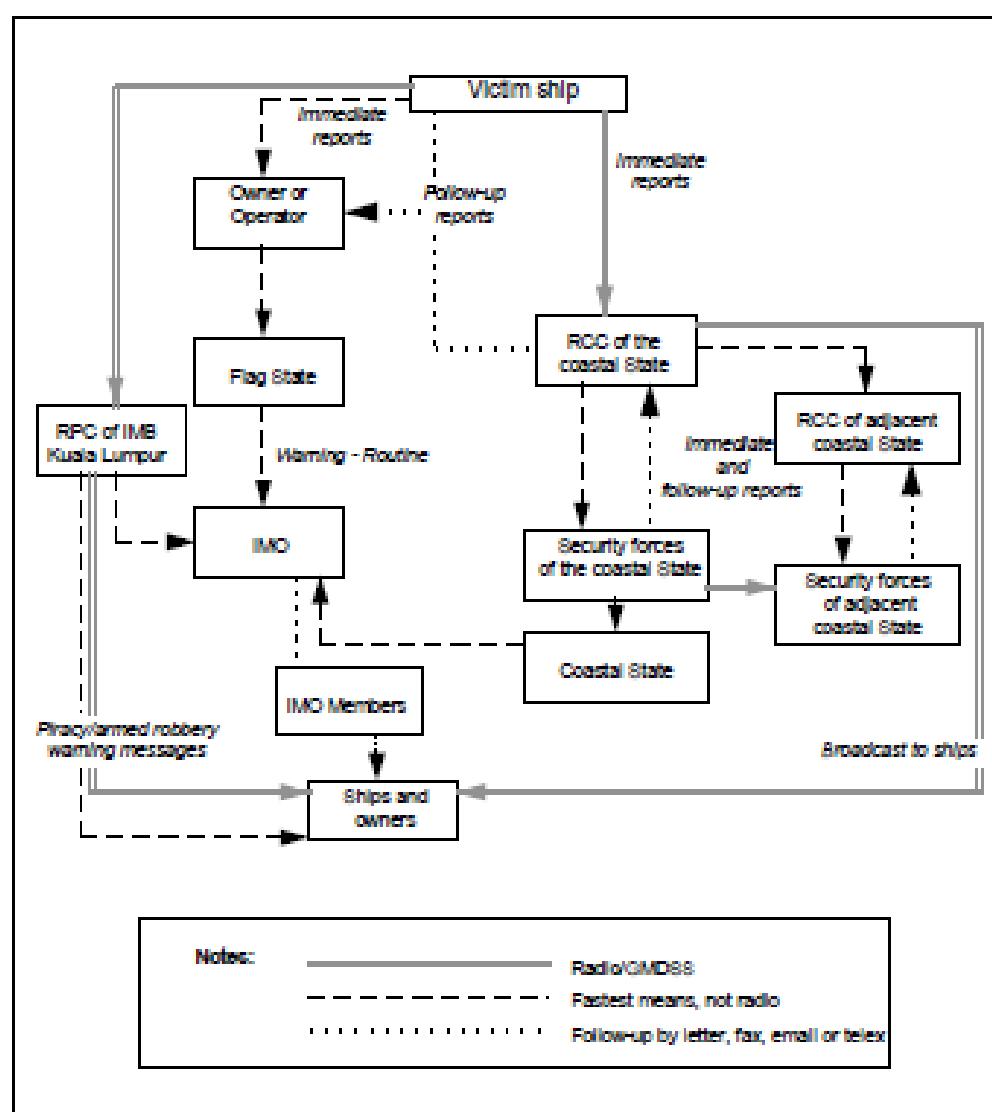
92 On leaving piracy/armed robbery threat areas, shipmasters should make certain that those spaces that need to be unlocked for safety reasons are unlocked, unrig hoses and revert to normal watchkeeping/lighting. However, though ships may be operating outside high-risk/high-probability areas, ship masters may, at their discretion, have ready their anti-piracy/robbery measures in view that the pirates/robbers may attack outside these areas.

Post-incident follow-up

93 A debriefing should be conducted by the owner/master, SSO and CSO to learn from the attack and identify areas of improvement. The debriefing should be conducted immediately after the incident so that the events are fresh and should involve the entire crew.

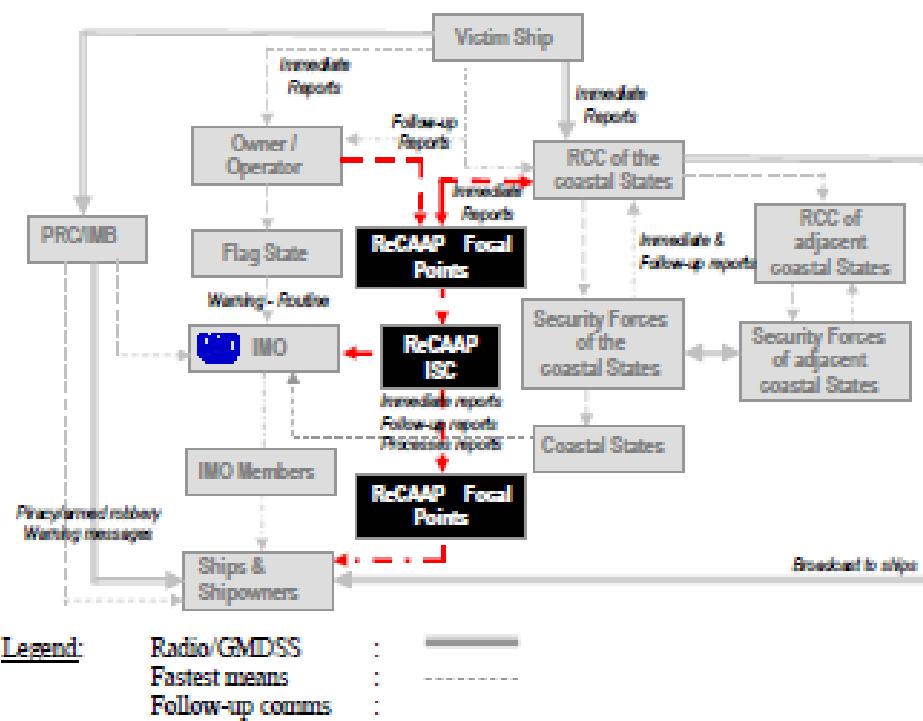
94 The shipowner should be aware that the seafarer may suffer from trauma or similar condition after being victimized under an attack from pirates or armed robbers. The shipowner should offer advice from professionals if the seafarer wishes such assistance. An important first step in reducing the risk from trauma is for masters to debrief crew immediately after the attack or release of a vessel in order to get crew to confront their experiences. An important second step is for counselling professionals to debrief crew as soon as possible after the attack or release of the vessel in order to assist the crew to manage their experiences.

APPENDIX I
STATISTICS, FLOW DIAGRAMS AND OTHER RELEVANT INFORMATION
Flow diagram for attacks in coastal waters



APPENDIX 2

Flow Diagram for Reporting Incidents in Asia



Notes:

1. In the Asian region, the RCCs of some ReCAAP Contracting Parties are also their ReCAAP Focal Points (FFPs). These Focal Points also disseminate incident information internally to their respective RCCs, maritime authorities and law enforcement agencies as appropriate.
2. Coastal States (in the context of this addendum) refer only to those who are Contracting Parties to the ReCAAP.
3. The incident reporting process in Asia does not change other reporting processes for incidents already in practice.

APPENDIX 3

**"PHASES" RELATED TO VOYAGES
IN PIRACY AND ARMED ROBBERY THREAT AREAS**

Phase Symbol	Phase Description
A	Approaching a piracy/armed robbery threat area (1 hour prior to entering)
B	Entering a piracy/armed robbery threat area
C	Inside a piracy/armed robbery threat area, but no suspect piracy/armed robbery vessel detected
D	Inside a piracy/armed robbery threat area: suspect piracy/armed robbery vessel detected
E	Certainty that piracy/armed robbery will be attempted
F	Pirate/armed robbery vessel in proximity to, or in contact with, own ship
G	Pirates/armed robbers start attempts to enter ship
H	Pirates/armed robbers have succeeded in entering ship
I	Pirates/armed robbers have one or more of the ship's personnel in their control/custody
J	The pirates/armed robbers have gained access to the bridge or the master's office
K	The pirates/armed robbers have stolen property/money etc
L	The pirates/armed robbers start to disembark
M	The pirates/armed robbers have disembarked
N	The pirate/armed robbery vessel is no longer in contact with the ship
O	Own ship leaves the piracy/armed robbery threat area

Appendix 4

EXTRACT FROM UN GUIDANCE ON SURVIVING AS A HOSTAGE

Introduction

Over the past few years the number of seafarer who have been kidnapped or taken hostage has increased substantially. Every hostage or kidnap situation is different. There are no strict rules of behaviour; however, there are a number of steps which you can take to minimize the effects of detention and enhance your ability to cope and to see the incident through to a successful release.

Survival considerations

These techniques have been successfully employed by others who have been taken hostage:

- No one can tell an individual whether he or she should resist or not if taken hostage/kidnapped. This decision must be made by each person's own assessment of the circumstances. Resisting the attempt may be extremely risky. You may be injured if you attempt to resist armed individuals. It is possible that you will immediately be blindfolded and drugged.
- Being taken hostage is probably one of the most devastating experiences a seafarer can undergo. The first 15 to 45 minutes of a hostage situation are the most dangerous. Follow the instructions of your captors. They are in a highly emotional state, regardless of whether they are psychologically unstable or caught in an untenable situation. They are in a fight or flight reactive state and could strike out. Your job is to survive. After the initial shock wears off, your captors are able to better recognize their position. Be certain you can explain everything on your person.
- Immediately after you have been taken, pause, take a deep breath and try to relax. Fear of death or injury is a normal reaction to this situation. Recognizing your reactions may help you adapt more effectively. A hostage usually experiences greatest anxiety in the hours following the incident. This anxiety will begin to decline when the person realized he/she is still alive – at least for now – and a certain routine sets in. Feelings of depression and helplessness will continue throughout captivity and most hostages will feel deeply humiliated by what they undergo during captivity. Most hostages, however, will quickly adapt to the situation. Remember your responsibility is to survive.
- Do not be a hero; do not talk back or act "tough". Accept your situation. Any action on your part could bring a violent reaction from your captors. Past experiences show that those who react aggressively place themselves at greater risk than those who behave passively.
- Keep a low profile. Avoid appearing to study your abductors, although, to the extent possible, you should make mental notes about their mannerisms, clothes and apparent rank structure. This may help the authorities after your release.

- Be cooperative and obey hostage-takers' demands without appearing either servile or antagonistic. Be conscious of your body language as well as your speech. Respond simply if you are asked questions by the hijackers. Do not say or do anything to arouse the hostility or suspicious of your captors. Do not be argumentative. Act neutral and be a good listener to your captors. Do not speak unless spoken to and then only when necessary. Be cautious about making suggestions to your captors, as you may be held responsible if something you suggest goes wrong.
- Anticipate isolation and possible efforts by the hostage-takers to disorient you. Your watch may be taken away so you are unable to determine whether it is night or day. Nevertheless, try to maintain a routine.
- Try to appear uninterested as to what is going on around you. Sleep, read a book, etc. When so occupied, you will be less influenced by what is going on around you, and hijackers do not bother people who are not a threat to them.
- Try to keep cool by focusing your mind on pleasant scenes or memories or prayers. Try to recall the plots of movies or books. This will keep you mentally active. You must try to think positively. Try to maintain a sense of humour. It will lessen anxiety.
- Ask for anything you need or want (medicines, books, paper). All they can say is no.
- Build rapport with your captors. Find areas of mutual interest which emphasize personal rather than political interests. An excellent topic of discussion is family and children. If you speak their language, use it - it will enhance communications and rapport.
- Bear in mind that hostages often develop a positive attitude towards their captors. This is known as "Stockholm Syndrome", after an incident involving hostages at a Swedish bank. In addition, as the hostage identifies with his/her captors, a negative attitude towards those on the outside may develop.
- You may be asked to sign notes verifying that you are alive or you may be asked to write a "confession" that you or the organization have been involved in nefarious activities. The decision to sign these is an individual one based on the situation. Some hostages refuse to sign unless the language of the note is changed. This may help bolster your morale and make you feel less helpless. It can also serve to command a certain degree of respect from the captors.
- Exercise daily. Develop a daily physical fitness programme and stick to it. Exercises will keep your mind off the incident and will keep your body stimulated. If possible, stay well-groomed and clean.
- As a result of the hostage situation, you may have difficulty retaining fluids and may experience a loss of appetite and weight. Try to drink water and eat even if you are not hungry. It is important to maintain your strength.
- Do not make threats against hostage-takers or give any indication that you would testify against them. If hostage-takers are attempting to conceal their identity, give no indication that you recognize them.

- Try to think of persuasive reasons why hostage-takers should not harm you. Encourage them to let authorities know your whereabouts and condition. Suggest ways in which you may benefit your captors in negotiations that would free you. It is important that your abductors view you as a person worthy of compassion and mercy. Never beg, plead or cry. You must gain your captors' respect as well as sympathy.
- If you end up serving as a negotiator between hostage-takers and authorities, make sure the messages are conveyed accurately. Be prepared to speak on the radio or telephone.
- Escape only if you are sure you will be successful. If you are caught, your captors may use violence to teach and others a lesson.
- At every opportunity, emphasize that, as a seafarer you are neutral and not involved in politics.
- If there is a rescue attempt by force, drop quickly to the floor and seek cover. Keep your hands over your head. When appropriate, identify yourself. In many cases, former hostages feel bitter about the treatment they receive after their release. Most hostages feel a strong need to tell their story in detail. If assistance in this regard is not provided, request a post-traumatic stress debriefing. Bear in mind that the emotional problems of a former hostage do not appear immediately. Sometimes they appear months later. Whatever happens, readjustment after the incident is a slow process requiring patience and understanding. As soon as the hostage realizes that he or she is a normal person having a normal reaction to an abnormal situation, the healing process can begin.
- Be patient.

APPENDIX 5
SHIPS' MESSAGE FORMATS

Report 1 - Initial message - Piracy/armed robbery attack alert

1 Ship's name and, callsign, IMO number, INMARSAT IDs (plus ocean region code) and MMSI

MAYDAY/DISTRESS ALERT (see note)

URGENCY SIGNAL

PIRACY/ARMED ROBBERY ATTACK

2 Ship's position (and time of position UTC)

Latitude	Longitude
Course	KTS

3 Nature of event

Note: It is expected that this message will be a Distress Message because the ship or persons will be in grave or imminent danger when under attack. Where this is not the case, the word MAYDAY/DISTRESS ALERT is to be omitted.

Use of distress priority (3) in the INMARSAT system will not require MAYDAY/DISTRESS ALERT to be included.

Report 2 - Follow-up report - Piracy/armed robbery attack alert

1 Ship's name and, callsign, IMO number

2 Reference initial PIRACY/ARMED ROBBERY ALERT

3 Position of incident

Latitude	Longitude
Name of the area	

4 Details of incident, e.g.:

While sailing, at anchor or at berth?

Method of attack

Description/number of suspect craft

Number and brief description of pirates/robbers

What kind of weapons did the pirates/robbers carry ?

Any other information (e.g., language spoken)

Injuries to crew and passengers

Damage to ship (Which part of the ship was attacked?)

Brief details of stolen property/cargo

Action taken by the master and crew

Was incident reported to the coastal authority and to whom?
Action taken by the Coastal State

- 5 Last observed movements of pirate/suspect craft, e.g.:
Date/time/course/position/speed
- 6 Assistance required
- 7 Preferred communications with reporting ship, e.g.:
Appropriate Coast Radio Station
HF/MF/VHF
INMARSAT IDs (plus ocean region code)
MMSI
- 8 Date/time of report (UTC)

APPENDIX 6

FORMAT FOR REPORTING TO IMO THROUGH MARITIME ADMINISTRATIONS OR INTERNATIONAL ORGANIZATIONS

- 1* Ship's name and IMO number
- 2 Type of ship
- 3 Flag
- 4 Gross tonnage
- 5 Date and time
- 6 Latitude Longitude
- 7 Name of the area**
- 8 While sailing, at anchor or at berth?
- 9 Method of attack
- 10 Description/number of suspect craft
- 11 Number and brief description of pirates/robbers
- 12 What kind of weapons did the pirates/robbers carry ?
- 13 Any other information (e.g., language spoken)
- 14 Injuries to crew and passengers
- 15 Damage to ship (Which part of the ship was attacked?)
- 16 Brief details of stolen property/cargo
- 17 Action taken by the master and crew
- 18 Was incident reported to the coastal authority and to whom?
- 19 Reporting State or international organization
- 20 Action taken by the Coastal State

* Corresponding to the column numbers in the annex to the IMO monthly circulars

** The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

"Piracy consists of any of the following acts:

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

APPENDIX 7
DECALOGUE OF SAFETY

1 Watch over the ship and the cargo

It is the duty of every Master to take care of the cargo and take precautionary measures for the complete safety of the ship, as well as that of the activities carried out on board by the crew or other persons employed on board. All crew members should co-operate in the vigilance, in their own interests, communicating any suspicious activity to the Officer of the Watch.

2 Illuminate the ship and its side

Keep the ship illuminated, particularly, the outer side and the whole length of the deck, using high powered floodlights. Bad visibility impedes the action of the watchmen, constituting a favourable factor for unlawful activities. Do not forget what is recommended in rules 2 and 30 of the COLREG.

3 Establish communication for outside support

Whenever possible, install a telephone line with easy access for the watchman or crew member on duty. Ask for assistance by the telephone.

Remember also the list of stations which will be on permanent watch on VHF - channel 16. These stations can forward the request for assistance to the competent authorities.

4 Control of accesses to the cargo and to living quarters

The Master's cabin is one of the main objectives of the assailants who are looking for money and the master keys to other living quarters, to steal the crew's personal effects of value and nautical equipment from the bridge. The cabins and other living quarters should be kept locked whenever their occupants are absent.

Normally cargo will only be the object of robbery or theft if the criminals have advance knowledge of the contents, through information collected by unscrupulous persons who have access to the bill of lading. Attempt to stow the containers with valuable cargo in a manner to obstruct their doors. Isolate the means of access to the ship and also the accesses to the internal areas, creating a sole way of entry and exit by the gangway, guaranteeing its control by the watchman posted there.

5 Keep the portholes closed

Open portholes can be an easy access to clever criminals: close them with the clips in place always when you leave. Try also, to keep the accesses to internal areas locked, guaranteeing the entry and exit by the gangway watchman.

6 Do not leave valuables exposed

Try to reduce the opportunities of robbery by putting all portable equipment which is not in use to its place of storage. Valuables left exposed tempt opportunistic thieves, keep them in safe place under lock and key.

7 Keep the gangways raised

At anchorages and in port, make the access difficult by keeping the gangways and rope ladders raised. In port, only leave the gangway to the dockside down.

8 In case of an assault

- I - do not hesitate to sound the ship's general alarm in case of a threat of assault;
- II - try to keep adequate lighting to permanently dazzle the opponents, in case of an attempt by strangers to climb the ship's side;
- III - raise the alarm, by VHF - channel 16, to the ships in the area and to the permanent watch system of the authorities ashore (cite the existing structure in the port). The efficiency of assistance by the security forces depends on an early alarm;
- IV - sound the alarm with intermittent blasts on the siren and use visual alarms with floodlights and signalling rockets;
- V - if appropriate, to protect the lives of those onboard, use measures to repel the boarding by employing powerful floodlights for dazzling the aggressors or using jets of water or signalling rockets against the areas of boarding; and
- VI - do not attempt any heroic acts.

9 Keep the contracted watchmen under the control of the officer of the watch

Demand a good watchman service. Make them identify all persons that enter and leave the ship. Recommend that the crew co-operate with the control. Do not allow the watchman to leave the gangway, unless he is relieved by another watchman or a crew member.

10 Communicate to the police any occurrence relating to robbery, theft or assault

Occurrences involving assault or robbery should be communicated to the Security forces, for the pertinent legal steps to be taken.

This information will make possible the study of measures to be adopted for the prevention and combat of these crimes, contributing to guaranteeing the safety of the crew and the ship.

Appendix 6

NEW YORK DECLARATION

On the eve of the Fourth Plenary Session of the Contact Group on Piracy off the Coast of Somalia to be held at United Nations Headquarters in New York on September 10, 2009, representatives from the United States, Japan, the Republic of Cyprus, the Republic of Singapore, and the *United Kingdom of Great Britain and Northern Ireland signed the New York Declaration, a commitment to best management practices to avoid, deter or delay acts of piracy.

NEW YORK DECLARATION

Commitment to Best Management Practices to Avoid, Deter or Delay Acts of Piracy

Introduction

The undersigned countries recognize the increasing problem of acts of piracy and armed robbery against vessels and seafarers on innocent passage. All acts of piracy and armed robbery against vessels and seafarers are condemned. The undersigned countries note with particular concern the acts of piracy and hijackings off Somalia and East Africa.

The significant efforts of the international community in trying to stop the acts of piracy and hijackings off the coast of Somalia and East Africa are fully recognized. The undersigned countries note with gratitude the international Naval operations taking place off the coast of Somalia and East Africa to prevent acts of piracy and hijackings.

The undersigned countries acknowledge that all vessels, including those on their registers, have an important role in taking self protection measures to reduce the risk of acts of piracy.

Internationally Recognized Best Management Practices to Avoid, Deter or Delay acts of Piracy

The undersigned countries fully recognize that self protection measures taken by vessels can be highly effective in avoiding, deterring or delaying piracy attacks. The undersigned countries are committed to promulgating internationally recognized best management practices for self protection to vessels on their registers.

International Ship and Port Facility Security (ISPS) Code

The undersigned countries recognize that self protection measures taken by vessels to avoid, deter or delay piracy attacks are an essential part of compliance with the ISPS Code. The undersigned countries will ensure when carrying out their obligations under the ISPS Code that vessels on their registry have adopted and documented appropriate self protection measures in

their Ship Security Plans as part of ISPS Code compliance.

Signed on September 9 2009 by;

Republic of Cyprus Japan Republic of Singapore

United Kingdom of Great Britain and Northern Ireland

Signed originally on May 29 2009 by:

The Commonwealth of the Bahamas Republic of Liberia

Republic of the Marshall Islands Republic of Panama

* The UK signed the New York Declaration but with the following caveat:

"The UK supports fully the objectives and content of the first four paragraphs of the New York Declaration. The UK is not yet in a position to accept the final paragraph on the direct link to the ISPS code, needing first to consult relevant organizations and bodies within the UK and outside, but with this exception is content to become a co-signatory to the remainder of the New York Declaration, and encourages all our international partners also to become co-signatories."