



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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March 11, 2011

MEMORANDUM

TO: Members, Subcommittee on Coast Guard and Maritime Transportation
FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation
RE: Hearing on "Assuring the Freedom of Americans on the High Seas: The United States' Response to Piracy"

PURPOSE

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

BACKGROUND

Current Trends

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

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

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

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

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

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

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

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

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

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

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

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

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

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

U.S. Efforts to Combat Piracy

Prevention

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

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

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

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

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

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

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

Response

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

CTF-151's mission represents the U.S.' emphasis on partnership and global responsibility, as it orders its forces, "...to actively deter, disrupt and suppress piracy in order to protect global maritime security and secure freedom of navigation for the benefit of all nations." This mission directly supports UN Security Council Resolution 1816, which "...*Urges* States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery..." CTF-151's command shifts between partner nations and is currently held by Pakistan Navy Commander Abdul Aleem.

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

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

International Coordination

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

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

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

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

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

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

Modern Piracy

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

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

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

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

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

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

Modern Piracy: Elsewhere in the world

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

Piracy: U.S. and International Law

Constitutional Authority

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

U.S. Law

Title 18, United States Code § 1651 declares:

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

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

Defining Piracy Under the “Law of Nations”:

Article 15 of the 1958 U.N. Convention on the High Seas, which the U.S. has signed and ratified, defines piracy as any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft or against a ship, aircraft, persons or property in a place outside the jurisdiction of any State. The definition also includes any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft and any act of inciting or of intentionally facilitating an act of piracy.

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

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

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

Issues

Executive Order 13536

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

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

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

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

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

Prosecution

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

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

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

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

Private Security

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

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

Lack of Security Measures Aboard Foreign-Flagged Vessels

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

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

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

Insurance

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

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

WITNESSES

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