



Shipping: piracy

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This Note gives a brief overview of the problems facing UK and world shipping from piracy and armed robbery at sea: in recent years there have been increasing incidents of piracy taking place in the waters off failed states, particularly Somalia. It gives a summary of action being taken by the UK Government and international organisations and also provides some historical background.

The [International Maritime Bureau](#) has interactive maps showing piracy incidents around the world from 2005 onwards.

Further information on shipping and ports matters can be found on the [Shipping Topical Page](#) of the Parliament website.

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1 Piracy in modern times

1.1 Locations and extent

Piracy is considered a serious problem by governments and the shipping industry alike. In January 1999 HM Foreign & Commonwealth Office (FCO) produced a paper which stated that modern piracy was “a real and growing problem”. It defined four types of piratical attack:

- Robbery, armed or otherwise, targeted mainly at money, crews’ personal effects, and ships’ equipment;
- Permanent hijacking of ships (most prevalent in the Far East), sometimes turning them into ‘phantom ships’ for use in cargo frauds;¹
- Hijacking ships to steal their cargoes; and
- Possible ‘state-involved’ hijacking.²

The FCO stated that the latter two of these were on the increase.

Piracy in the twentieth and twenty-first centuries has tended to come in fits and starts, with the most recent high-profile attacks coming on ships sailing off the Somali coast in East Africa and the Nigerian coast in West Africa. In the 1990s, the number of attacks increased with major ‘hotspots’ identified in the Caribbean and off the coast of South America; in the Indian Ocean and the South Pacific.

The International Maritime Bureau (IMB) collates information about piracy attacks. Its annual report is available by [contacting](#) the organisation directly. However, it does regularly update the ‘[piracy prone areas and warnings](#)’ section of its website. When viewed on 2 July 2010, the information was as follows:

Piracy Prone Areas and Warnings

Mariners are warned to be extra cautious and to take necessary precautionary measures when transiting the following areas:

South East Asia and Indian Sub Continent

Bangladesh: Attacks are still continuing. The area is listed as high risk. Pirates are seen targeting ships preparing to anchor. Most attacks reported at Chittagong anchorages and approaches.

Indonesia: Anambas/Natuna/Mangkai islands area, Belawan. Pirates normally armed with guns / knives and/or machetes. Generally be vigilant in other areas. Many attacks may have gone unreported.

Malacca Straits: Although the number of attacks has dropped due to the increase and aggressive patrols by the littoral states Authorities since July 2005, ships are advised to continue maintaining a strict anti piracy watch when transiting the straits. Currently, there are no indications as to how long these patrols will continue or reduce.

Malaysia: Off Tioman/Pulau Aur/South China Sea. Pirates armed with guns and knives attack vessels during the hour of darkness.

¹ ‘phantom ships’ are ships with no real identity – the vessel is registered on the basis of false information provided to the registration authorities about the vessel’s previous names and the owner’s identity

² FCO, *Focus International: Piracy and armed robbery at sea*, January 1999

Singapore Straits: Vessels should remain vigilant and maintain anti piracy watch. Pirates attack ships while underway or while anchored at Eastern OPL.

South China Sea: in the vicinity of Anambas/Natuna islands area.

Vietnam : Vung Tau

Africa and Gulf of Aden

Lagos (Nigeria): Pirates are violent and have attacked and robbed vessels/kidnapped crews along the coast, rivers, anchorages, ports and surrounding waters. A number of crew members were injured in some of the attacks. Vessels are also advised to be vigilant in other parts in Nigeria as many attacks may have gone unreported.

Conakry (Guinea): Pirates armed with automatic weapons are violent and aggressive in the attacks. In some attacks, pirates dressed in military uniforms

Gulf of Aden/Red Sea: Somali pirates continues to attack vessels in the northern Somali coast in the Gulf of Aden and southern Red Sea in the Bab El Mandeb TSS despite increased warships presence. These pirates are firing automatic weapons and Rocket Propelled Grenades (RPG) in an attempt to board and hijack vessels. Once the attack is successful and the vessel hijacked, they would sail the vessel towards the Somali coast and thereafter demanding a ransom for the release of the vessel and crew. All vessels transiting the area are advised to take additional precautionary measures and maintain strict 24 hours visual and radar anti piracy watch using all available means. Watch keeping crews should lookout for small suspicious boats converging to own vessel. Early sightings/detection and accurate assessment will allow Master to increase speed and take evasive manoeuvres to escape from the pirates and at the same time request for assistance from various Authorities/Agencies including the IMB PRC.

Since 1 February 2009, MSCHOA (www.mschoa.org) has established the Internationally Recommended Transit Corridor (IRTC). Military assets (Naval and Air) will be strategically deployed within the area to best provide protection and support to merchant ships.

Masters using the IRTC are not relieved of their obligation and should continue to maintain a strict 24 hour lookout using all available means to get an early warning of an approaching threat. Some vessels have been attacked/hijacked in the corridor.

Ships/Owners are advised to register their details on the MSCHOA website www.mschoa.org and obtain further information regarding the close support protection details for ships transiting the Gulf of Aden. Ships are encouraged to conduct their passage through the IRTC in groups based on their transit speed of 10, 12, 14, 16 and 18 kts.

Master are also advise to maintain a listening watch on VHF in order to hear the Maritime Advisory Calls from the warships in the area and in turn will also listen to merchant ships calling them. Masters are also advise to monitor the IMB Piracy Reporting Centre (PRC) broadcast and Warnings via Inmarsat C EGC Safety Net. All attempted and actual attacks and suspicious sightings reported to warships should also be reported to the IMB PRC.

Somalia: Somali pirates continue aggressively to attack vessels in the northern, eastern and southern coast of Somalia. The attacks have spread and taken place very far reaching up to off Kenya, off Tanzania, off Seychelles, off Madagascar and in the Indian Ocean beyond 69 degrees east longitude and Arabian Sea/off Oman. Somali

pirates are dangerous and are prepared to fire their automatic weapons and RPG (Rocket Propelled Grenade) at vessels in order to stop them. Pirates are believed to be using “mother vessels” to launch attacks at very far distance from coast. These “mother vessel” is able to proceed very far out to sea to launch smaller boats or skiffs to attack and hijack passing vessels. Attacks are taking place more than 1000 nm from the Somali coast (towards Indian west and south coast in the Indian Ocean). Recent attacks showed that pirates are also attacking vessels close to the coast of Tanzanian, Kenya, Somalia, Yemen and Oman. The IMB in cooperation with the MSCHOA advises that vessels not making scheduled calls to ports in Somalia should keep as far away as possible from the Somali coast, preferably more than 600 nautical miles from the coastline and when routing north/south consider keeping east of 60 E longitude until east of Seychelles until a more permanent and encouraging sign is seen. In view of recent attacks, all vessels are advised when proceeding to and from ports in South Africa, Tanzania, Kenya and Somalia should consider routing south of 10 S and east of 60 E, avoiding the area between the Somali coast and north and west of Seychelles. Mariners are advised to report any attacks and suspicious boats to the Piracy Reporting Centre. A 24hour visual and radar watch must be maintained as early sightings/detection and accurate assessment will allow Masters to take evasive actions and increase speed and at the same time request for assistance and escape.

South and Central America and the Caribbean waters

Brazil: Although the number of reported attacks has dropped in Santos, ships are advised to continue to be vigilant.

Peru: Callao: most attacks occurred at anchor despite vessel employing security watchmen.

Rest of the world

Arabian Sea/Off Oman – Sightings and calls from suspicious small boats. In some cases, boats chased ships with unknown intent. Attacks also reported off Oman and Arabian Sea where a number of vessels were attacked and hijacked. Pirates believed to be Somali pirates extending their attack areas.

Indian Ocean (West & Central) Off Seychelles / Off Madagascar - Suspected Somali pirates seen attacking and hijacking vessels in these areas. Pirates use ocean going fishing vessels /“ mother vessels to sail far from Somali coast to attack passing vessels with intent to hijack them. Smaller skiffs are launched from the pirate “mother vessel” to attack passing merchant vessels. Pirates are heavily armed with automatic weapons and RPG.

In January 2010 the IMB reported on the highest level of piracy and armed robbery at sea since 2003, with over half of all incidents attributed to Somali pirates:

A total of 406 incidents of piracy and armed robbery have been reported in the 2009 annual piracy report issued by the ICC International Maritime Bureau’s Piracy Reporting Centre (IMB PRC).

The last time piracy figures crossed 400 incidents was in 2003.

2009 is also the third successive year that the number of reported incidents have increased with 239, 263 and 293 incidents reported in 2006, 2007 and 2008 respectively.

The report states that worldwide in 2009, 153 vessels were boarded, 49 vessels were hijacked, 84 attempted attacks and 120 vessels fired upon – compared to 46 ships

fired upon in 2008. A total of 1052 crew were taken hostage. Sixty eight crew were injured in the various incidents and eight crew killed. The level of violence towards the crew has increased along with the number of crew injuries.

The total number of incidents attributed to the Somali pirates stands at 217 with 47 vessels hijacked and 867 crewmembers taken hostage. Somalia accounts for more than half of the 2009 figures, with the attacks continuing to remain opportunistic in nature.

In 2008, 111 vessels were targeted by Somali pirates resulting in 42 hijackings. Whilst the number of 2009 incidents has almost doubled, the number of successful hijackings is proportionately less. This can be directly attributed to the increased presence and coordination of the international navies along with heightened awareness and robust action by the Masters in transiting these waters. IMB Director, Captain Pottengal Mukundan stated that, "The international navies play a critical role in the prevention of piracy in Somalia and it is vital that they remain."

2009 has however seen a significant shift in the area of attacks off Somalia. While the 2008 attacks were predominantly focused in the Gulf of Aden, 2009 has witnessed more vessels also being targeted along the east coast of Somalia. Since October increased activity has been observed in the Indian Ocean with 33 incidents reported, including 13 hijackings. Thirteen of these last quarter incidents occurred east of the recommended east of 60° east – including four hijacked vessels. Many of these attacks have occurred at distances of approximately 1000 nautical miles off Mogadishu. Captain Mukundan continued, "Motherships have traditionally posed as fishing vessels or dhows to avoid detection. Reports of such crafts so far from the coast should be questioned and investigated".³

A further report in April 2010 indicated that in Q1 2010 Somali pirates were responsible for 35 of the 67 piracy incidents reported worldwide, though this was a significant drop on the 102 attacks reported for Q1 2009.⁴

Only two incidents of actual or attempted piracy have occurred in the UK (ports, territorial and international waters) since 1993. Both were while ships were berthed in Goole in July 2002; robbers escaped with goods on both occasions.⁵ Incidents involving UK-flagged ships have also been relatively rare: between 2003 and 2005 there were only 17 incidents on UK flagged ships⁶ and more recent figures show the small proportion of UK-flagged ships affected, compared with the total number of incidents:⁷

	<i>Number of attacks</i>	<i>UK registered</i>
2006	239	3
2007	263	3
2008	293	6
2009	380	3

³ IMB press notice, "[2009 worldwide piracy figures surpass 400](#)", 14 January 2010

⁴ IMB press notice, "[Worldwide hijackings rise as pirates expand area of operation](#)", 21 April 2010

⁵ "Ships' crews at mercy of pirates on deadly seas", *The Times*, 7 November 2005

⁶ [HL Deb 31 March 2008, c140WA](#)

⁷ [HC Deb 14 December 2009, c636W](#)

1.2 Maritime terrorism

In the twenty-first century, and particularly following the terrorist attacks on New York and Washington DC on September 11 2001, there has been a sharper focus on so-called 'jihad at sea'.⁸ A 2004 article in *Foreign Affairs* argued that "unlike the pirates of old, whose sole objective was quick commercial gain, many of today's pirates are maritime terrorists with an ideological bent and a broad political agenda".⁹ There exists the fear that ocean-going vessels carrying oil, natural gas or other hazardous cargo could be used as weapons – in the same way that civilian aircraft were on September 11. In a 2005 article for the *Journal of Counterterrorism & Homeland Security International* Ali Koknar argued that "the 'jihadi' seems to have borrowed a page from history" and pointed to the successful English defeat of the Spanish Armada in the sixteenth century where smaller, more nimble boats using fire as a weapon repelled the Spanish fleet.¹⁰

Koknar also argued that terrorist groups are well-organised:

According to the Lloyds List, the US and Norwegian intelligence agencies have identified some 15 to 23 freighters flying the flags of Yemen, Somalia, and the Pacific island of Tonga, believed to sail in the Mediterranean Sea, and in the Indian and Pacific oceans, as owned or controlled by the al Qaeda network. These ships could carry weapons of mass destruction and also could be used to help Osama bin Laden and his followers escape from pursuit in Afghanistan and in the northwestern tribal areas of Pakistan. The materials used to blow up the US embassies in Nairobi, Kenya and Dar es Salaam, Tanzania in August 1998 were delivered by one of these ships to the dock of Mombassa, Kenya, Bin Laden's brother-in-law is said to own a fishing fleet based in Madagascar.

In view of these reports, merchant crews themselves are being screened as a potential threat. The Philippines, home of Abu Sayyaf, is the world's biggest crew supplier, while Indonesia – the second biggest supplier of crews – is home to numerous radical Muslim groups. Many large modern ships are highly automated and can be operated by crews of 20 officers, which means a small number of well-trained terrorists can seize command of a big ship.¹¹

And well-trained:

Members of the Indonesian Jemaah Islamiah have been trained in seaborne guerilla tactics, such as suicide diving capabilities and ramming, developed by the Liberation Tigers of Tamil Eelam (LTTE). In arch 2004, terrorists of the Abu Sayyaf Group claimed responsibility for the February explosion and fire aboard a Filipino ferry, which left one passenger dead and more than 100 missing, announcing it the work of one of their suicide bombers.

Some regionally based terrorist groups have also developed, provided and solicited maritime terrorism training. The Popular Front for the Liberation of Palestine (PFLP), the Liberation of Palestine-General Command, and the Palestine Liberation Front based in Lebanon and Syria have Yugoslav-trained combat swimmers. Other pro-Palestinian groups, including the Democratic Front for the Liberation of Palestine,

⁸ for information on international terrorism in general and the evolution of al-Qaeda, see Library Standard Note [SN/IA/3716](#); related information can be found on the [Terrorism Topical Page](#) of the Parliament website

⁹ Gal Luft and Anne Korin, "Terrorism Goes to Sea", *Foreign Affairs*, November/December 2004

¹⁰ Ali M. Koknar, "Corsairs at Starboard: Jihad at sea", *Journal of Counterterrorism & Homeland Security International* (Vol. 11, No. 1), spring 2005; similarly, of course, the Byzantine empire had, a millennium before the English, great success defending its shores from invaders thanks to '[Greek fire](#)'

¹¹ *ibid.*

PFLP, and Islamic Jihad have received naval training in the vicinity of Sidon, Lebanon. Additionally, five of the seven US designated state sponsors of terrorism (Iran, Iraq, Libya, Sudan and Syria) are said to have developed indigenous maritime terrorist capabilities, and exported training to regional groups. Libya has provided training including a naval commando course, as well as training in small boat handling, navigation, and tactics to unknown terrorist customers.¹²

One question that concerns security experts is where a major maritime attack is most likely to occur. A June 2005 article in *Intersec* argued that while South East Asia was the most likely staging ground, there was no direct evidence linking pirates in the area with terrorist groups at that time.¹³

The previous Labour Government made it very clear in its response to the Transport Select Committee's 2006 report on piracy (see below) that there is no proven link between piracy and terrorism. It assured the Committee that:

The question of any piracy and terrorism link is kept under constant review by the appropriate autonomous intelligence agency which continually monitors and reassesses all received intelligence regarding piracy and maritime terrorism to see whether any links can be established. Until such a link can be established, it would be both premature and unhelpful to the shipping industry to change the official Government line.¹⁴

This was reiterated in a June 2008 report by the RAND Corporation for the US Air Force. A press notice accompanying the report stated:

Acts of piracy and terrorism at sea are on the rise, but there is little evidence to support concerns from some governments and international organizations that pirates and terrorists are beginning to collude with one another ... The objectives of the two crimes remain different -- piracy is aimed at financial gain while the goal of terrorism is political. Although both events are increasing, piracy is growing much faster and remains far more common than seaborne terrorism ... "The maritime environment will likely remain a favourable theatre for armed violence, crime and terrorism given its expanse, lack of regulation and general importance as a critical conduit for international trade," said Peter Chalk, author of the study ... "While there is no quick fix for eliminating all of this, we can rationally manage the threats within acceptable boundaries."¹⁵

1.3 Somalia

The most complete, and up-to-date overview of the UK Government's involvement in actions taken to combat piracy off the coast of Somalia is given in a [January 2010 report](#) by the European Scrutiny Committee. For a broader foreign policy-related overview, the US Congressional Research Service regularly updates its briefing paper on [Piracy off the Horn of Africa](#).

The May 2005 edition of *Jane's Defence Weekly* summarised the forms that more 'traditional' forms of piracy – such as robbery and hijacking – can take:

¹² *ibid.*

¹³ Arabinda Acharya, "Securing the seas in Southeast Asia", *Intersec* (Vol. 15, issue 6), June 2005

¹⁴ [Government Response to the Committee's Eight Report of 2005-06](#) (sixteenth special report of session 2005-06), HC 1690, 2 November, p10

¹⁵ RAND press notice, "[Increase In Piracy And Terrorism At Sea](#)", 5 June 2008; a [research brief](#) summarising the report is also available

Piracy covers a wide spectrum of seaborne crime. At the lower end are opportunistic attacks, which Captain Pottengal Mukandan, director of the IMB [International maritime Bureau], characterises as 'maritime muggings'. Petty theft of this kind has existed throughout history, but in the past would-be pirates could easily be frightened off by crew. "What differentiates the pirates of today is that the pirates are better armed, they expect greater returns and they are more determined, being prepared to injure or even kill the captain and crew if they cannot get what they want," according to Capt. Mukandan.

At the other end of the spectrum in the hijacking and theft of a vessel and its cargo. "Such crimes are planned well in advance, with ships usually targeted for their high value and easy disposal of their cargo," says Capt. Mukandan. "The attacks involve highly trained pirate gangs armed with knives and automatic weapons, who board the vessel with false ship's papers, cargo papers and passports. These pirates are capable of operating the vessel without the crew's assistance, and violence and intimidation of the crew are invariably a feature of such attacks. In a few cases, entire crews have been murdered. Vessels are also hijacked for the primary purpose of holding the crew for ransom."¹⁶

Incidents off the coast of Somalia in 2005, which have continued in the years since then, lead to renewed interest in the threats posed by piracy, not only to commercial shipping but to passenger liners as well. The IMB first warned of a rise in acts of piracy in the area in June 2005:

Since March 2005, there have been at least five attempted hijackings, two of which escalated into full blown acts of life-threatening piracy. This rise in threatening activity comes after a period of relative calm. Only two incidents of piracy were recorded in the whole of 2004.

Captain Pottengal Mukundan, Director of IMB stated: "IMB has received reports of pirates armed with automatic weapons and rocket propelled grenades. Innocent craft are approached by numerous pirate craft, arriving from different directions, firing indiscriminately at the bridge in an attempt to force the vessel to stop. In recent attacks at least one crew member was killed after pirates took control of a vessel".¹⁷

A further report in August 2005 stated that "acts of piracy are increasing at an alarming rate off the eastern coast of Somalia. Fifteen violent incidents have taken place since mid-March of this year". Further, the pirates appeared to be venturing further from shore – up to 100 miles from the eastern coast of Somalia in some cases. The report highlighted two particular examples:

Two recent attacks are examples of the extreme danger faced by vessels travelling in these waters. M V SEMLOW, a general cargo ship carrying 850 metric tons of rice as aid cargo, was hijacked on 26 June 2005. The pirates originally demanded a substantial sum for their release but backed down after the World Food Programme threatened to stop all deliveries of its cargoes to Somalia until the vessel was released. On 26 July 2005 an LPG tanker was attacked by pirates approximately 85 miles from the east coast of Somalia. Eight pirates armed with machine guns and rocket propelled grenades chased and fired upon the ship from two fibre glass speedboats. Fortunately, the ship managed to increase speed and get away with no injuries to the crew or the tanker. There have been a number of other attacks since then.¹⁸

¹⁶ Richard Scott, "Scourge of the seas", *Jane's Defence Review*, 11 May 2005

¹⁷ IMB press notice, "[Piracy heats up in Somali waters](#)", 21 June 2005

¹⁸ IMB press notice, "[Piracy increasing on Somali coast](#)", 15 August 2005

Captain Pottengal Mukundan, Director of the IMB, consequently called on naval vessels to come to the assistance of hijacked ships in the area. He said:

These attacks take place in international waters and we call upon the naval vessels in the region to come to the assistance of the hijacked ships. At the very least, they can prevent the hijackers from taking these ships into Somali waters. Once the vessels have entered these waters the chances of any law enforcement response is negligible. There is no national law enforcement infrastructure in Somalia. These waters have become a pirate's charter and unless the international community takes action against these criminals, vessels passing this coast face considerable danger.¹⁹

At the twenty-fourth session of the Assembly of the International Maritime Organization (IMO) on Wednesday 23 November 2005, a resolution was adopted on *Piracy and armed robbery against ships in waters off the coast of Somalia*, with the intention of bringing the issue to the attention of the United Nations Security Council. Amongst other things, the resolution:

...condemns and deplores all acts of piracy and armed robbery against ships and appeals to all parties, which may be able to assist, to take action, within the provisions of international law, to ensure that all acts or attempted acts of piracy and armed robbery against ships are terminated forthwith; any plans for committing such acts are abandoned; and any hijacked ships are immediately and unconditionally released and that no harm is caused to seafarers serving in them.²⁰

The situation has continued to worsen since then. An October 2008 Chatham House paper looked at the escalating problem of piracy off the coast of Somalia. In summary, it stated:

Piracy off the coast of Somalia has more than doubled in 2008; so far over 60 ships have been attacked. Pirates are regularly demanding and receiving million-dollar ransom payments and are becoming more aggressive and assertive.

The international community must be aware of the danger that Somali pirates could become agents of international terrorist networks. Already money from ransoms is helping to pay for the war in Somalia, including funds to the US terror-listed Al-Shabaab.

The high level of piracy is making aid deliveries to drought-stricken Somalia ever more difficult and costly. The World Food Programme has already been forced to temporarily suspend food deliveries. Canada is now escorting WFP deliveries but there are no plans in place to replace their escort when it finishes later this year.

The danger and cost of piracy (insurance premiums for the Gulf of Aden have increased tenfold) mean that shipping could be forced to avoid the Gulf of Aden/Suez Canal and divert around the Cape of Good Hope. This would add considerably to the costs of manufactured goods and oil from Asia and the Middle East. At a time of high inflationary pressures, this should be of grave concern.

Piracy could cause a major environmental disaster in the Gulf of Aden if a tanker is sunk or run aground or set on fire. The use of ever more powerful weaponry makes this increasingly likely.

¹⁹ IMB press notice, "[Unprecedented increase in piracy attacks off Somalia](#)", 20 October 2005

²⁰ IMO press notice, "[IMO Assembly calls for action on piracy off the coast of Somalia](#)", 23 November 2005; a [list of failed states](#) is compiled annually by *Foreign Policy* magazine

There are a number of options for the international community but ignoring the problem is not one of them. It must ensure that WFP deliveries are protected and that gaps in supply do not occur.²¹

In a post on the Spectator Coffee House blog in December 2008, Daniel Korski²² gave a view as to possible remedies:

In October 2007, two American destroyers sank two Somali pirate vessels after the pirates captured a Japanese tanker. Earlier in the summer, the UN Security Council voted in favour of a new measure that would allow the U.S. military to engage Somali sea pirates and both the EU and the U.S are running maritime operations around the Horn of Africa.

But none of these operations are likely to be successful. First, the swath of piracy-affected areas adjoining the Somali seafront is too large to be kept under surveillance by a dozen warships. Second, the maritime operations address the symptom not the disease. Stopping attacks is fine if it is followed up by policies stemming the problem at its cause; the failure to stabilize Somalia. But so far, there has been no such comprehensive approach.

The third problem is a legal one. Under anti-piracy laws established by the UN, countries can lawfully use whatever "necessary means" to stop piracy in international waters. The UN Security Council recognized Somali waters as the "high seas". But each country has approached the problem differently. The British recently brought eight captured pirates to Mombasa after Kenya agreed to prosecute the case as part of the international anti-piracy agreements. But Danish law does not allow for prosecution of pirates before Danish courts. So the US is suggesting that the UN authorize hot-pursuit into Somali waters and Somalia itself.

But this is likely to stoke anti-American sentiments. What the West needs to take these three steps.

First, to remove any doubt about jurisdiction, a specialized international anti-piracy court should be set up, preferably in Africa and associated with the African Union. Then the international community needs to take a leaf out of counter-insurgency theory and develop a "port blot strategy". The "ink blot strategy" holds that the British won in Malaya not by killing the communists, but by taking bits of Malaya and making life "so good" in these bits that people "did not want to fight the British any more" and then expanding these bits "like ink blots". The same needs to be done on the Somali coast. There is no appetite for a full-scale intervention in Somalia, but capturing and holding towns like Harardhere, Eyl and Bossaso in partnership with a locally-raised force ought to be possible.

If this goes hand-in-hand with recognition of Somaliland's independence and state-like status for Puntland -- and international aid to both -- there may be a possibility that the root causes of the piracy problem can be addressed.²³

The potential impact of these problems on international trade was given in an October 2008 report for *The Daily Telegraph*:

There is growing concern that the free passage of the Suez Canal, one of the great breakthroughs in international trade, is under threat from the spread of piracy off the coast of Somalia. The flow of millions of pounds, derived from ransom payments, into

²¹ Chatham House, [Piracy in Somalia: Threatening Global Trade, Feeding Local Wars](#), October 2008

²² Senior Policy Fellow at the European Council on Foreign Relations

²³ "[How to fight the pirates](#)", *Spectator Coffee House*, 16 December 2008

groups linked to fundamentalist Islamic movements in Somalia, has led to warnings that seaborne terrorism poses a serious risk to flow of consumer goods and oil from East to West.

A leading London think tank will issue a warning this week for a worldwide effort to tackle the problem. Otherwise, it says, international shipping could be forced to take the old route to Europe, a 20-day detour around the Cape of Good Hope. The development would add a significant premium to the shelf price of most consumer goods (...)

Among ship owners a reassessment of the gateway to the Suez Canal has taken on urgent tones. "Inquiries are being made into how to do smart transit. Can we go in convoy, can we get security people on board, can we shoot people?" said one City of London insurance broker.

At the root of the piracy problem is the chaos in Somalia where an al-Qaeda-allied insurgency, spearheaded by the Taliban-style Islamic Courts, has kept the country ungovernable despite a US-backed military intervention by Ethiopian troops. There have been more than 30 hijackings and 50 attempts this year. Lloyd's insurers put transit through the area on a war footing in the summer and the extra premiums ship owners must pay, has risen from zero last year to 0.25 per cent of the vessel's worth for each journey.²⁴

There were a number of further developments in 2009:

- In April and November Somali pirates attacked the US-flagged cargo ship the Maersk Alabama; the crew of the ship fought off the April attack but the captain – Richard Phillips – was set adrift in a lifeboat with some of the pirates and was later rescued by the US Navy;²⁵ the crew fought off the second attack in November.²⁶
- Following the April attack on the Alabama, it was reported that Maersk, one of the world's biggest container shipping lines, was considering possible rerouting to avoid the Somali coast;²⁷ and the Philippine Government announced that it was banning its seafarers from sailing through the Gulf of Aden.²⁸
- In October a British couple – Paul and Rachel Chandler – were taken hostage on their yacht; their captors have demanded a \$7 million ransom and have threatened to kill the couple, who are still being held; it was later reported that a Royal Navy vessel witnessed the kidnapping but was unable to prevent it.²⁹

²⁴ "Seaborne terrorists threaten Suez trade", *The Daily Telegraph*, 1 October 2008; for a more general overview of the impact of piracy on insurance, see: CRS, [Ocean piracy and its impact on insurance](#), 3 December 2008

²⁵ "Pirates aboard US ship seen off by crew", *Financial Times*, 9 April 2009; "US Navy rescues captain of hijacked ship", *Financial Times*, 13 April 2009

²⁶ "Pirates in second raid on ship", *Financial Times*, 19 November 2009

²⁷ "Alabama incident prompts Maersk to dodge Somalia", *Financial Times*, 15 April 2009; the group had previously rerouted some ships following a previous attack in December 2008

²⁸ "Philippines bans its sailors from Somali pirate waters", *Financial Times*, 21 April 2009

²⁹ "Pirates: pay up or we burn Britons' bones", *The Daily Telegraph*, 29 October 2009; ["Royal Navy witnessed Somali pirates kidnap British couple"](#), *The Independent*, 14 November 2009

- Following the end of the monsoon season, a number of vessels were attacked in late 2009 including the Spanish fishing boat Alkrana; a Greek-owned oil tanker, the Maran Centaurus and another crude carrier the BW Lion.³⁰

2 Measures to combat piracy

2.1 UK Government and EU Operation Atalanta

When the UK Government was asked in the House in March 2004 what steps it was taking to protect UK shipping from piracy, the then Transport Minister listed eight actions/measures, both on a national, but mostly international level that the government was undertaking.³¹ More recently, in June 2008, he listed the following actions:

The UK Government take a proactive role in working with our international partners, such as the International Maritime Organisation (IMO) and foreign governments and the shipping industry to develop international legislation and guidance for shipping transiting trade routes. At both Government and operational levels this includes collaborating with other navies and coastguards through a series of combined operations and strategic alliances to ensure that the vital sea lanes and choke points are safe to navigate. Also, the Government monitor and assess the risk of terrorism to sea lanes and, as appropriate, set the security level for UK and Red Ensign Group registered ships operating in these areas and advise industry accordingly.

The Government also issue guidance to industry in measures to counter piracy and armed robbery and safe distances of transit in piracy hotspots.

Recently, the UK co-sponsored the UNSC resolution addressing the problem of piracy off Somalia. Under the terms of resolution 1816 (2008), which was adopted unanimously, the Security Council decided that states co-operating with the Transitional Federal Government of Somalia (TFG) would be allowed, for a period of six months, to enter the country's territorial waters and use "all necessary means" to repress acts of piracy and armed robbery at sea, in a manner consistent with relevant provisions of international law.

Furthermore, the Government are committed to ratifying into UK law the 2005 protocols to the convention for the suppression of unlawful acts against the safety of maritime navigation, by way of the proposed Transport Security Bill. Notably, this Bill will provide powers to board ships that are suspected of being involved in acts of piracy.

The UK plays an active role in the IMO's Maritime Safety Committee and Subcommittee on the Safety of Navigation to prevent accidents at sea. In this forum we seek consensus on ships' routing measures to reduce the risk of groundings or collisions.

Where UK waters are concerned, moreover, the Government have a strategic approach to protecting the UK's seas and coasts which involves all of the following:

- we have put in place a network of shore-based stations around the UK coastline to monitor vessel traffic, using automatic identification system technology;

³⁰ "Somali pirates free Spanish boat", *Financial Times*, 18 November 2009; "Somali pirates seize oil supertanker", *Financial Times*, 1 December 2009

³¹ [HC Deb 8 March 2004, cc1245-46WA](#)

- we ensure that powerful tug boats (commonly referred to as “emergency towing vessels”) are available, so that they can assist ships which lose motive power;
- we have established arrangements whereby a ship requiring assistance, and whose condition needs to be stabilised, can be brought to a place of refuge;
- we have a highly effective structure for command and control of an incident, in which the Secretary of State's representative for maritime salvage and intervention (SOSREP) plays a major role;
- we have a fully developed national contingency plan, consistent with the international convention on oil pollution preparedness, response and co-operation 1990 (the “OPRC Convention”); and
- we participate actively in international assistance and co-operation arrangements of a bipartite, multipartite or regional nature, again consistent with the OPRC convention.³²

The government developed a new strategy in late 2004 to tackle the continuing high levels of piracy worldwide. The strategy is a joint initiative between the Department for Transport and the FCO and was agreed across Government. It has two aims: to strengthen the protection of UK seafarers from acts of piracy and violent maritime armed robbery around the world and to take a pro-active stance in assisting foreign states which have the highest concentration of attacks within their territorial waters. This strategy was summarised in a paper which was presented to the eightieth session of the IMO's Maritime Safety Committee meeting in May 2005. The [paper](#) asked that all other Member States of the IMO review or develop their own strategies for tackling piracy. In March 2007 the then Minister for Transport, Dr Stephen Ladyman, wrote to the Chairman of the European Standing Committee indicating that the UK has also offered technical assistance to the littoral states of the Malacca Straits to combat piracy. The UK is also supporting the development of the Maritime Organisation of West and Central Africa for an integrated coastguard network to improve safety and security in the region.³³

The Department for Transport and its predecessors have also provided since 1998 official guidance for all UK seafarers with regard to the measures that they should take to counter piracy, armed robbery and other acts of violence against merchant shipping. Marine Guidance Note 298 was last updated to take account of the changes brought in by the implementation of the International Ship and Port Facility Security Code on 1 July 2004. The key points covered in the note are:

- to be vigilant;
- reduce opportunities for theft;
- secure Restricted Areas at all times and establish safe secure area(s);
- maintain, exercise and regularly review your Ship Counter-piracy Plan; and
- report all incidents to the coastal and Flag State authorities (for UK flagged ships this is Transec within the Department for Transport).

³² [HC Deb 12 June 2008, cc417-418W](#)

³³ Letter from Stephen Ladyman to Sir Nicholas Winterton, 29 March 2007 (MGP 07/1244)

The UK Government has yet to ratify the [2005 Protocols to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation](#), which would create a number of new offences relating to committing acts of terrorism at sea and giving new powers to enforcement officers (e.g. members of the Royal Navy) as regards piracy. It is hoped that this will happen in the next Parliament.

More specifically as it relates to Somalia, the then Defence Minister, Bill Rammell, gave an overview of government policy in December 2009:

We are taking the situation off the coast of Somalia very seriously and have played an important role in developing the military response to pirate activity. We have key command roles within all of the international task forces and continue to develop our strategies in line with changing operational and political requirements. Piracy is a symptom of wider instability in Somalia and the MOD continues to work comprehensively with other Government Departments and the International community as part of a coherent strategy to address the root causes of piracy.

The UK is providing a sizeable contribution to the military effort in the region and has a leading role in countering pirate activity off the coast of Somalia:

- MOD has been at the forefront of the European Union mission-Operation Atalanta-since it was introduced in December 2008,
- providing the Operation Commander, the Operation HQ at Northwood, and a frigate for the first period of the operation.
- The Royal Navy has a long standing commitment of frigates and a tanker to the Combined Maritime Force conducting maritime security operations in the region.
- The Royal Navy is a contributor to the Standing NATO Maritime Groups, which at present are rotationally undertaking NATO's counter piracy mission-Operation Ocean Shield. The UK currently has command of Standing NATO Maritime Group 2.
- The Royal Navy manned UK Maritime Trade Organisation has been supporting Merchant Vessels transiting through the region since 2001.

The UK has a bilateral arrangement with the Kenyan and Seychellois Governments which allows the transfer of suspected pirates for prosecution. Kenya is currently prosecuting eight suspected pirates detained by a Royal Navy vessel. We are very grateful for their ongoing support.

Royal Navy vessels and coalition forces in the region seek to deter and disrupt pirate activity. Specifically, Royal Navy vessels can actively search for suspected pirate vessels. The Royal Navy can also take robust action to come to the aid of a victim vessel under attack by pirates in international waters. This can again range from deterring and disrupting the attack to the use of reasonable force to defend the victims. However, the safety of any hostages involved remains paramount.

If suspected pirates are encountered, a decision will be made by the UK Maritime Component Commander, based on legal advice, on whether or not they could be transferred to a regional state for prosecution. If there is insufficient evidence to be

confident of a successful prosecution, they will be released. Any piracy equipment found, such as ladders and weapons will be seized and disposed of accordingly.³⁴

In March 2010 the government confirmed that one UK flagged ship, Asian Glory, had been pirated on 1 January 2010 and was being used to support other ships under pirate control from its anchorage in Heredeere.³⁵

The Royal Navy's Rear Admiral Phil Jones [took charge](#) of the EU led counter-piracy naval operation off the coast of Somalia, called Operation Atalanta, on 8 December 2008; he was succeeded by Rear Admiral Peter Hudson who, on 14 June 2010, was succeeded by Major General Buster Howes. Operation Atalanta is described as follows:

This military operation, named EUNAVFOR Somalia - Operation ATALANTA, was launched in support of Resolutions 1814, 1816, 1838, 1846 which were adopted in 2008 and 1897 adopted in 2009 by the United Nations Security Council. Its aim is to contribute to:

- the protection of vessels of the World Food Programme (WFP) delivering food aid to displaced persons in Somalia;
- the protection of vulnerable vessels sailing in the Gulf of Aden and off the Somali coast and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast.

This operation - the European Union's first ever naval operation - is being conducted in the framework of the Common Security and Defence Policy (CSDP) of the EU.

Mandate

Operation ATALANTA's mission is to:

- provide protection for vessels chartered by the WFP;
- provide protection for merchant vessels;
- employ the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where they are present.³⁶

The Operation was scheduled to end on 13 December 2009, but has been extended until December 2012. Full details are available on the [Operation Atalanta website](#).

In April 2010 the House of Lords EU Select Committee published a report on the operation and concluded that it had:

...proved itself a credible force in combating piracy in the Gulf of Aden and the Indian Ocean. It has been highly effective in protecting World Food Programme and AMISOM logistics vessels, none of which has so far been taken by pirates. It has also successfully deterred and disrupted pirate threats to commercial shipping.³⁷

³⁴ [HC Deb 2 December 2009, c728W](#)

³⁵ [HL Deb 3 March 2010, c355WA](#)

³⁶ [EU naval operation against piracy \(EUNAVFOR Somalia - Operation ATALANTA\)](#), June 2010

³⁷ HL EU Select Committee, [Combating Somali Piracy: the EU's Naval Operation Atalanta](#) (twelfth report of session 2009-10), HL 103, 14 April 2010, para 65

However, their Lordships thought that there were some capability shortfalls within the operation – particularly around airborne surveillance, tanker support and access to medical facilities.³⁸

2.2 The UN, the IMO and NATO

The 1999 FCO briefing gives more information as to the role of the IMO and the actions available to domestic governments to deal with piracy. On the IMO it states:

Britain is an active member of the IMO, which is based in London. The organization has been working to combat piracy since 1983, when the IMO Assembly passed a resolution calling on governments to take urgent measures to prevent and suppress acts of piracy in or adjacent to their waters. In order to provide accurate and up-to-date statistics on the nature and extent of the problem, the IMO also called on its members to submit details of all attacks involving their ships. From these, it produces monthly and annual reports.³⁹

The IMO has undertaken several initiatives to counter piracy and armed robbery at sea:

IMO is implementing an anti-piracy project, a long-term project which began in 1998. Phase one consisted of a number of regional seminars and workshops attended by Government representatives from countries in piracy-infested areas of the world; while phase two consisted of a number of evaluation and assessment missions to different regions. IMO's aim has been to foster the development of regional agreements on implementation of counter piracy measures.

The Regional Co-operation Agreement on Combating Piracy and Armed Robbery against ships in Asia (RECAAP), which was concluded in November 2004 by 16 countries in Asia, and includes the RECAAP Information Sharing Centre (ISC) for facilitating the sharing of piracy-related information, is a good example of successful regional co-operation which IMO seeks to replicate elsewhere.

Today, the deteriorating security situation in the seas off war-torn Somalia and the Gulf of Aden (and in the increasingly volatile Gulf of Guinea) are at the heart of the problem.

In January 2009, an important regional agreement was adopted in Djibouti by States in the region, at a high-level meeting convened by IMO. The Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden recognizes the extent of the problem of piracy and armed robbery against ships in the region and, in it, the signatories declare their intention to co operate to the fullest possible extent, and in a manner consistent with international law, in the repression of piracy and armed robbery against ships.

The signatories commit themselves towards sharing and reporting relevant information through a system of national focal points and information centres; interdicting ships suspected of engaging in acts of piracy or armed robbery against ships; ensuring that persons committing or attempting to commit acts of piracy or armed robbery against ships are apprehended and prosecuted; and facilitating proper care, treatment, and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to acts of piracy or armed robbery against ships, particularly those who have been subjected to violence.

To assist in anti-piracy measures, IMO issues reports on piracy and armed robbery against ships submitted by Member Governments and international organizations. The

³⁸ *ibid.*, paras 69-71

³⁹ *op cit.*, *Focus International: Piracy and armed robbery at sea*

reports, which include names and descriptions of ships attacked, position and time of attack, consequences to the crew, ship or cargo and actions taken by the crew and coastal authorities, are now circulated monthly, with quarterly and annual summaries.⁴⁰

Specifically on Somalia, in December 2008 the UN Security Council passed [Resolution 1851](#) calling on:

... those States and organizations able to do so to actively participate in defeating piracy and armed robbery off Somalia's coast by deploying naval vessels and military aircraft, and through seizure and disposition of boats and arms used in the commission of those crimes.

Pursuant to resolution 1851 the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on 14 January 2009 to "facilitate discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia". The CGPCS will report its progress periodically to the Security Council.⁴¹

In August 2009 NATO launched Operation Ocean Shield, a counter-piracy measure designed to

- (1) Deter, disrupt and protect against pirate attacks, rendering assistance to ships in extremis as required.
- (2) Actively seek suspected pirates and prevent their continued activity through detention, seizure of vessels and property, and the delivery of suspects and evidence to designated law enforcement authorities, in accordance with NATO agreements.
- (3) Facilitate and support the development of regional states' capacity to conduct effective counter-piracy operations, in coordination with other related international efforts.
- (4) Coordinate NATO operations and initiatives with coalition maritime forces, EU naval forces, and other non-NATO forces conducting counter piracy operations off the Horn of Africa.⁴²

Ocean Shield has been extended to operate until the end of 2012. It succeeded two shorter-lived operations, Allied Provider and Allied Protector: Operation Allied Provider (October-December 2008) was set up in late 2008 to provide escorts to UN World Food Programme vessels transiting through the Gulf of Aden and waters off the Horn of Africa; succeeded by Operation Allied Protector (March-August 2009).⁴³

2.3 Prosecuting pirates

Towards the end of 2008, eight pirates captured by the Royal Navy were landed for trial in Kenya. The then Defence Minister, Kevan Jones, explained:

On 11 November Royal Marines from HMS Cumberland interdicted a Yemeni flagged fishing vessel which had been seized by suspected pirates in the Gulf of Aden. Eight suspected Somali pirates were held on board the Yemeni vessel and a Somali skiff during the investigation. They were then transferred by Royal Fleet Auxiliary vessel RFA Wave Knight to Kenyan authorities in Mombassa on 18 November. All Royal

⁴⁰ taken from the [IMO website](#), 17 February 2010

⁴¹ US State Department media note, "[Contact Group on Piracy Off the Coast of Somalia](#)", 14 January 2009

⁴² NATO Shipping Centre, [Operation Ocean Shield](#)

⁴³ information on all of these operations is available on the [NATO counter-piracy web page](#)

Navy counter-piracy operations are conducted in accordance with UK domestic and international law including the United Nations Convention on the Law of the Sea.⁴⁴

The former Foreign Secretary, David Miliband, later stated that the Somalis apprehended by the Royal Navy were transferred to Kenyan custody "on the basis of an exchange of letters between the British and Kenyan Governments specific to this incident".⁴⁵ When asked why they were transferred to Kenya rather than being tried within UK jurisdiction, Lord Davies of Oldham explained:

Kenya was the nearest country in the region possessing the requisite legal framework to prosecute them and which was willing to accept them. This enabled the prisoners to be transferred in good time to suitable detention facilities and for them to be seen in front of a judge in the shortest timescale possible. The Government consider it preferable for those accused of piracy to be prosecuted in the region in which they committed the offence.⁴⁶

On 30 January 2009 the European Scrutiny Committee published its fifth report; one of the issues it considered was piracy off the coast of Somalia. The Committee's report detailed the UK Government's actions with international partners to, *inter alia*, establish a framework for the prosecution of captured pirates:

STATUS OF FORCE AGREEMENT WITH SOMALIA

17.19 The Minister confirms that a Status of Forces Agreement (SOFA) between the EU and Somalia was adopted on 22 December 2008 by Written Procedure. She explains that the final version is not available but attaches a draft copy of the EU text after initial consultation with partners and undertakes to submit the final version once available. In the meantime, the Minister states that the SOFA "allows the EU to freely enter territory (including territorial waters and airspace) of Somalia and total freedom movement thereof; the right to detain pirates in Somalian waters; immunity of Somalian jurisdiction; immunity from all dues, customs etc."

STATUS OF FORCE AGREEMENTS WITH DJIBOUTI

17.20 The Minister also confirms that a SOFA between the EU and Djibouti was likewise adopted on 22 December 2008 by Written Procedure. She again explains that the final version is not available but attaches a draft copy of the EU text after initial consultation with partners and undertakes to submit the final version once available. In the meantime, the Minister states that the SOFA "gives the EU immunity from Djiboutian jurisdiction; the right to enter, and freedom of movement within, territory of Djibouti including territorial waters and airspace for the purposes of operation; exemption of customs, dues etc excluding visa purchases (currently 25 EU per person)."

EU KENYA EXCHANGE OF LETTERS

17.21 The Minister refers to letters that give the right to enter and freedom of movement within the territory (including territorial waters and airspace) of Kenya "strictly limited to the necessities of the operation." The Minister says that:

"EUNAVFOR personnel are given immunity from penal jurisdiction, and exemption from all dues, customs, etc. EUNAVFOR personnel will abstain from any activity or

⁴⁴ [HC Deb 20 November 2008, c671W](#)

⁴⁵ [HC Deb 26 November 2008, c1791W](#)

⁴⁶ [HL Deb 11 February 2009, c202WA](#)

action incompatible with the objectives of the operation and will respect Kenyan laws and regulations. Negotiations between the EU and Kenya on an agreement on the handover of pirates for trial are now in their final stages. The UK and Kenya concluded a similar agreement on 11 December."

The Government's view

17.22 In her Explanatory Memorandum of 15 January 2009 the Minister says that the Joint Action raises an issue of fundamental rights, and explains that Article 12(1):

"provides that persons having committed or suspected of having committed acts of piracy or armed robbery in Somali territorial waters or on high seas shall be transferred to the competent authorities of the flag Member State or to 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 jurisdiction, to a Member State or a third State which does wish to exercise its jurisdiction over them."

and that Under Article 12(2):

"these persons cannot be transferred to a third State, including Somalia, if the conditions of transfer have not been agreed with the third State in conformity with the applicable international law, notably international human rights law, in order to guarantee that no one is submitted to the death penalty, torture or any other cruel, inhuman or degrading treatment."

17.23 The Minister goes on to note that applicable international and human rights law would include Article 7 of the International Covenant on Civil and Political Rights, which she says provides that "No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The Minister further notes that the same provision is to be found in the Universal Declaration of Human Rights 1948, Article 5.⁴⁷

In June 2009 the then Minister outlined the assistance that being provided to Kenya to enable them to prosecute pirates:

The UK and EU have agreed memorandums of understanding covering the transfer of suspected pirates captured off the Horn of Africa to Kenya.

In order to assist Kenya with providing the facilities and legal processes related to the trial and detention of these prisoners, the European Commission recently approved assistance through the United Nations Office on Drugs and Crime to support trial and legal costs related to prosecution of piracy suspects in Kenya. The programme budget is €1.75 million. The programme began on 15 May 2009 and will run for 18 months.

The contact group on piracy off the coast of Somalia on 29 May 2009 endorsed the creation of an international trust fund to assist with the cost of prosecuting pirates and support regional development that is deemed important in counter-piracy work.⁴⁸

In June 2010 five Somali men were sentenced to five years in prison each by a Dutch court for the attack on the Dutch-Antilles-flagged *Samanyulo* in the Gulf of Aden in 2009. This was "the first piracy case to come to trial in Europe in modern times".⁴⁹

⁴⁷ European Scrutiny Committee, *Fifth Report of 2008-09*, HC 19-iv, 30 January 2009, Document 17

⁴⁸ [HL Deb 8 June 2009, cc133-134WA](#)

⁴⁹ "Somalis jailed for attack on ship", *Financial Times*, 18 June 2010; and: "[Five pirates jailed for 5 years for attack on cargo ship](#)", *The Scotsman*, 18 June 2010

There have been questions asked about why Kenya is prosecuting Somali pirates. In a feature for *FT.com Magazine* in January 2010 Christopher Thompson wrote:

Early last year, following a flurry of pirate attacks against civilian boats from around the world, Kenya undertook an “exchange of letters” with the EU and signed a “memorandum of understanding” with the US to bring suspected pirates 1,000km south to face justice. Yet the question of whether international law allows Somalis to be tried in Kenyan courts is as murky as the politics that have come to determine their fates.

The Kenyan government has, as yet, no formal acquittal process for suspected Somali pirates on trial. If set free, there is no mechanism either to let them remain in Kenya or send them back to their blighted homeland. They may well find themselves in a different sort of legal limbo.

Kadima, the defence lawyer, believes the real reasons behind the deal to hold piracy trials in Kenya are being kept secret. “Why Kenya? That’s the question many people are asking. How do you deal with the pirate problem – is it just dumping these people here in Kenya and sentencing them? Such a serious agreement, when we have so many problems ourselves, was not even tabled before parliament. No one understands why these people are being tried here.”

Mauritius was the first country approached by the EU, which originally hoped to build a dedicated jail there. But the request was turned down. Neither the EU nor the US deal has been put before the Kenyan parliament, and details of the US agreement have not been made public. Kenyan officials cite foreign “assistance” as the official quid pro quo for the country’s co-operation, including the provision of computers for the decrepit prosecutors’ offices and the refurbishment of prisons. One prosecutor in Mombasa said they had seen “nothing yet”. Meanwhile, a local judge said he had been told to clear his diary for dozens of trials to come.

According to E.J. Hogendoorn, the International Crisis Group’s Horn of Africa director, based in Nairobi, Kenya was chosen to host the trials simply because it was one of the few countries that had not come out against western efforts to try the pirates locally. “Basically, Kenya was the last country standing,” he said.

It was clear there was little appetite among the Europeans and Americans to try the men within their own legal systems. According to a Nairobi-based security consultant, earlier this year a Dutch patrol captured several pirates after it had come under attack – apparently the Somalis had mistaken the naval vessel for an oil tanker. Not knowing what to do with their captives after confiscating their weapons, the Dutch sailors put them back in their skiff. But the pirates were unable to leave: they had counted on siphoning fuel from a captured ship for the return voyage. The Dutch ended up filling the pirates’ fuel tank so that they could get back to Somalia.⁵⁰

Concerns have been expressed about the jurisdiction of countries such as France and the UK to prosecute piracy and about whether those being prosecuted could claim asylum. For example, during the crisis over the captured *Sirius Star*, *The Times* reported in November 2008 on the difficulties inherent to American and European vessels attempting to free the supertanker:

Both the US Navy Seals and Britain’s M Squadron, the Special Boat Service’s maritime counter-terrorist unit, have the expertise and the training to infiltrate a hijacked ship covertly. “The risks are just too great,” said Lee Willett, a maritime security expert at

⁵⁰ [“Pirates in the dock”](#), *FT.com Magazine*, 8 January 2010

the Royal United Services Institute. "I don't think there is a real military option. It's now more a matter of negotiating the size of the ransom."

A commando raid would be hard to justify unless the hostages' lives were imperilled, given the potential for large-scale loss of life. In addition, the legal implications are tangled.

France is the only country that has used commando forces to capture Somali pirates - once chasing them on to the Somali shore after a French luxury yacht and crew had been freed, and a second time covertly boarding a small yacht to free a French couple from their dozing captors.

Both times, ransom payments had been made, reducing the chances of a fightback from pirates who thought that their task was done. And because the crafts and crews were French and Paris had Mogadishu's permission, all governments involved had consented.

Even then, 12 pirates arrested in the first incident remain stranded in France amid a legal battle over Paris's jurisdiction to try their cases. Seven arrested in the second incident were handed over to Mogadishu for trial -a move that the Foreign and Commonwealth Office has explicitly cautioned against for fear of how the pirates would be treated.

The Foreign Office has also warned the Royal Navy not to bring pirates back to Britain where they could attempt to seek asylum and even take action over the legalities of their detention -hence the Navy's decision this week to deposit its recently captured pirates in Kenya.

A raid would require the permission of the Government whose flag it flies under, Liberia; the Government of the country that owns it, Saudi Arabia; the operating company, Vela International; and the governments of each hostage on board -Britain, Poland, Croatia and the Philippines. With the option to resolve the standoff peace-fully, it is unlikely that permission would be granted, given the potential loss of life and the cargo of two million barrels of crude oil, with its potential to create an environmental disaster.⁵¹

During the debate on the 2008 Queen's Speech, this question was addressed by the then Secretary of State for Justice, Jack Straw:

The hon. Member for Bournemouth, East (Mr. Ellwood) and the hon. and learned Member for Beaconsfield raised the issue of piracy. The law on piracy has not changed. Piracy on the high seas used to be a capital offence, and under the Merchant Shipping and Maritime Security Act 1997, which made the law of nations the United Nations convention on the law of the sea, it is still a serious one, with a maximum penalty of life. The hon. and learned Gentleman suggested that our Royal Navy officers might be impeded in arresting people committing piracy on the high seas because such alleged pirates could apply for asylum. People can apply for anything they want, but they would not be given asylum. Article 1F of the 1951 refugee convention states that it does not apply to a person

"with respect to whom there are serious reasons for considering that...he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee".

⁵¹ ["Risks of storming the Sirius are too great"](#), *The Times*, 20 November 2008

There is no question about the matter. Pirates could not conceivably have an application for asylum entertained. However, I shall ensure that my right hon. Friend the Secretary of State for Defence writes, either directly or through me, to both Members in more detail about the matter.

Mr. Ellwood: The Secretary of State does not need to write to me; he needs to write to the Navy and members of our armed forces, who need clarification. Despite all the Jack Sparrow films, piracy is not glamorous; it is an act of war. In an act of war, the armed forces are allowed to shoot at pirates, but if it is not an act of war but a criminal act, they are not allowed to shoot at them. The Navy is struggling with that confusion, which is why we need clarification from the Secretary of State.

Mr. Straw: That point runs into the whole issue of rules of engagement, but I will follow it up.

Andrew Mackinlay: My hon. Friend the Member for Keighley (Mrs. Cryer) and the hon. Member for Winchester (Mr. Oaten), who are both in the Chamber, and I held discussions with the Kenyan Government last week. On behalf of my colleagues may I tell the House how the Kenyan Government collaborated with the United Kingdom in bringing to trial in Mombasa pirates captured in the Indian ocean? That important collaboration should be acknowledged by the House and the Government. There is great strain on the Kenyan Government, who are the one beacon of justice and democracy available to the Royal Navy and the Indian navy in bringing pirates to justice, and the House should acknowledge that.

Mr. Straw: Of course I acknowledge that and I am grateful to my hon. Friend.⁵²

The *Merchant Shipping and Maritime Security Act 1997* mentioned by Mr Straw, above, was given Royal Assent in March 1997. As indicated by Mr Straw, section 26 of that Act states that, for the purposes of any proceedings before a court in the United Kingdom in respect of piracy, Articles 101-103 of the [United Nations Convention on the Law of the Sea 1982](#) shall be treated as constituting part of the law of nations. Essentially, this covers piratical acts in international waters, as opposed to territorial waters, which are covered under separate provisions of the *Aviation and Maritime Security Act 1990*. In April 2009 Chatham House published a paper on 'pirates and how to deal with them', this includes sections on arrest and detention and the European Convention on Human Rights and jurisdiction to prosecute pirates. The paper concluded that:

International law provides sufficient authority for public vessels to use force for the suppression of piracy in the high seas. Whichever vessels with public authority are used (whether naval or coastguard, or naval combined with police), they are undertaking a police function against the criminal activity of piracy. The degree of force used must not exceed that reasonably required in the circumstances.

For those states which are parties to the European Convention on Human Rights, there is no legal problem with their public vessels holding pirates on board for the purpose of taking them to a proper jurisdiction for arrest and prosecution. There may, however, be a problem in relation to the holding of pirates on their own vessels, and not allowing them to go, for the purpose of disruption of piracy, rather than of detention for prosecution.

There were no easy solutions to the problem of prosecution or extradition of pirates. Capacity-building in the region is the way forward. The huge difficulties must not be underestimated; these are not limited to the absence of relevant local legislation. The

⁵² [HC Deb 4 December 2008, cc223-224](#)

leadership of the country concerned may be complicit with the pirates. Prisons and prison systems – and judicial systems more generally – needed to be developed. Capturing countries must be able to receive credible human rights assurances from the states to which they hand over the pirates for prosecution.⁵³

2.4 Other views

There are some who have issued a word of caution for governments considering the seriousness of the piracy threat and how to tackle it. For example, Brooke Smith-Windsor of the Nato Defense College in Rome argued in the *Financial Times* in January 2010 that:

The practice of sounding the alarm over the threat to world shipping posed by piracy has become commonplace. Casual observers could be forgiven for thinking that second to climate change or terrorism, piracy is the greatest menace to the security and prosperity of the western world.

[...]

But just how serious is the problem? First, worldwide, the chance of experiencing a pirate attack is extremely rare. The numbers are actually down in many regions [...]. Second, where piracy does occur, the effectiveness of warships in tackling it is doubtful.

[...]

So, if public oratory and reality do not align, why does piracy account for so much of our security discourse? And what are the implications? The answers turn on three things: profit, purpose and the public purse.

Simply put, keeping piracy in the headlines and warships on alert contributes to the financial bottom line. From 2005, piracy has for the most part been transferred from a yearly hull insurance policy to a pricier "war risk" coverage per voyage. While insurers suggest the change is geared towards better management of risk based on clients' needs, sizeable profits have been reaped - about \$300m-\$500m in the Gulf of Aden in 2008 compared with roughly \$100m (£60m, €70m) paid in ransoms. Moreover, evidence suggests that most commercial shipping enterprises have been reluctant to invest in anti-piracy systems such as ship-wide alarms and anti-boarding devices. It has been more appealing to shift the burden to state-run navies.

Several navies, including those in Nato, have been willing to accept this. At a time when land and air forces are well employed in Afghanistan, counter-piracy missions have presented Nato maritime forces with an attractive opportunity to add to their repertoire of functions in the post-cold war era. A new Alliance Maritime Strategy to replace the 1984 version is under development with such security missions receiving much attention.

Yet, elected officials charged with stewardship of the public purse must judge between competing calls on how best to invest in Nato's navies. Basing an investment strategy substantially on the marginal menace of piracy is dubious when there are more pressing threats such as those from other navies or the proliferation by sea of weapons of mass destruction.⁵⁴

Others offer different suggestions for tackling the threat from piracy. For example, in October 2008 the press reported the remarks of Cdre Keith Winstanley, the senior Royal Navy

⁵³ Chatham House, [Pirates and How to Deal With Them](#), 22 April 2009, p8

⁵⁴ ["Piracy is a sideshow that could skew naval investment"](#), *Financial Times*, 18 January 2010

commander in the Gulf, who called for merchant shipping to hire mercenaries in response to the increasing danger of piracy. *The Daily Telegraph* reported:

At a time when a record number of ships have been hijacked off Somalia, Cdre Keith Winstanley said he believed that the situation had become so serious that civilian vessels should be armed.

He said that private security companies working in Iraq or Afghanistan could be better used guarding ships, which in pirate-infested regions needed a "visual deterrent" such as mounted heavy machine guns.

"This coalition headquarters is advocating that as an option," he told *The Daily Telegraph*.

If his suggestion were adopted, it would be the first time that merchantmen have been significantly armed since the Second World War.

With insurance rates for ships spiralling as the kidnapers move on to seizing major vessels - some worth \$5 million (pounds 2.9 million) or more in ransom - the problem is having an effect on international market prices.

There are 12 commercial ships with 240 crew being held by pirates along the Somali coast, the most prominent being a Ukrainian freighter with 33 T72 Russian tanks.

A flotilla of German, Danish, United States and now British ships has deterred up to 15 attacks in the last six weeks. The Type 23 frigate *Northumberland* has joined the force this week as the first dedicated British anti-pirate ship.

But Cdre Winstanley, who commands the 11 Royal Navy ships in the region from his headquarters in Bahrain's capital, Manama, said that greater efforts were needed to stop the surge in piracy.

"We have never seen as many ships hijacked or crews held hostage. Last year they went for large fishing dhows or small coastal vessels. Well now, they are attacking and seizing vessels over 70,000 tons," he said. With 22,000 shipping movements through the area each year it is important to the world economy to keep it secure.

Cdre Winstanley said: "There is a very active debate at the moment about whether or not the international shipping community employs armed security detachments.

"It is a measure we are encouraging people to at least consider. This has got to be a business decision and its going to cost money."

The commodore also advised ships to use "speed and manoeuvre" when accosted by the smaller pirate ships, which use AK47 assault rifles or rocket-propelled grenades to force the vessels to heave to. Some ships have rigged fire hoses as a last line of defence.

The naval coalition in the region has recently sunk two pirate skiffs, and destroyed or seized a large quantity of machine guns, RPGs and equipment such as large boarding ladders.⁵⁵

*Nautilus UK*⁵⁶ has a long-running campaign to raise awareness of, and obtain action against, the increasing instances at piracy at sea by the industry, the flag states and the coastal

⁵⁵ "Hire mercenaries to stop pirates, says Navy chief", *The Daily Telegraph*, 9 October 2008

⁵⁶ formerly Numast, the National Union of Marine, Aviation and Shipping Transport Officers

states. A briefing paper produced in September 2004 examined the piracy issue and recommended the following measures be taken:

- tighter control must be exercised over the operation of ship registries and to strip away the veils of corporate secrecy that can be used to cover terrorist or criminal activities;
- countries such as the UK, which are highly dependent upon foreign-flagged shipping, need to assess the security implications of this reliance;
- flag states and port states need to improve the standards of reporting and investigation of attacks on their ships and in their waters;
- the international community must develop multilateral cooperation agreements to reduce the risk of piracy and armed attacks on merchant ships, including coordinated patrols in high-risk areas, intelligence exchange, and hot pursuit following attacks;
- more countries must ratify and implement the international Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;
- the international community must consider the application of effective sanctions against flag states and port states that fail to deal with problems of piracy and armed attacks on ships under their administrative responsibilities;
- technical and practical assistance should be offered to developing nations to help improve standards of security in their ports and waters;
- port states and port authorities must develop measures such as seaborne patrols, protected shipping lanes, greater use of CCTV and restricted zone fencing around ports and berths;
- countries must urgently ratify and implement the ILO agreement on Seafarer Identity Documents to ensure that there are safeguards in place to verify the identity of an increasingly 'casual' maritime workforce;
- shipowners and flag states must recognise the workload demands associated with the ISPS Code and the post of Ship Security Officer. The additional duties created by the post, and by the recommended precautions to deter piracy and armed attacks on ships, must be reflected when determining safe manning certificates and in assessing compliance with hours of work and rest period requirements; and
- shipowners need to install much more effective security equipment onboard their vessels, including: motion detection equipment, vessel tracking systems, CCTV, alarms and access control systems.⁵⁷

3 Piracy in history and literature

Pirates have been a stock in trade of historians, novelists and poets alike for millennia. Some of the earliest references to piracy are believed to have been made in a letter that has come down from the fourteenth century BC, from the Egyptian pharaoh Akhenaten who referred to piratical raids by the Lukka people on the coastal towns in Cyprus and Syria. Both Akhenaten's father, Amenhotep III, and a later successor, Rameses II, experienced

⁵⁷ Numast, [In the firing line](#), 30 September 2004, pp23-24

Shardana pirate raiding parties on the land and attacks at sea. However, it is Homer's rendering of piracy in *The Odyssey*, written in about 800 BC, that seems generally to be considered the first account of note.⁵⁸

Later, piracy was to be a scourge of the Roman Republic and Empire, tackled most successfully in the first century BC by Pompey Magnus. Plutarch records in his *Life of Pompey* that "piratic power having got the dominion and control of all the Mediterranean, there was left no place for navigation or commerce" and that, consequently, the Romans decided "at last to send out Pompey to recover the seas from the pirates". Pompey's victory over the pirates came in 67BC:

Pompey in pursuance of his charge divided all the seas, and the whole Mediterranean into thirteen parts, allotting a squadron to each, under the command of his officers; and having thus dispersed his power into all quarters, and encompassed the pirates everywhere, they began to fall into his hands by whole shoals, which he seized and brought into his harbours. As for those that withdrew themselves betimes, or otherwise escaped his general chase, they all made to Cilicia, where they hid themselves as in their hive; against whom Pompey now proceeded in person with sixty of his best ships, not however until he had first scoured and cleared all the seas near Rome, the Tyrrhenian, and the African, and all the waters of Sardinia, Corsica, and Sicily; all which he performed in the space of forty days, by his own indefatigable industry and the zeal of his lieutenants.⁵⁹

Today, much of the interest in historical piracy tends to focus on the Elizabethan Age and the years immediately following it. There is some disagreement amongst historians as to what exactly constituted 'piracy' during this period. Some historians, such as Harry Kelsey, believe that the old British term 'privateer' was in fact simply a polite term for 'pirate':

Then as now, a pirate was a mariner who robbed from the ship of another mariner. There were varying degrees of piracy, and war could sometimes turn piracy into an act of patriotism, when pirates stole from the ships of the enemy. When pirates stole from one another, whether in war or in peace, the authorities usually looked the other way. The older British historians often used the word privateer to describe [merchants who also found piracy profitable], but that special term invests these sixteenth-century rascals with more dignity than their contemporaries were usually willing to give them.⁶⁰

Other historians, such as Glyndwr Williams, argue that the line between what was legal and illegal on the high seas and the definitions used to describe these activities are less clear:

...the distinction between an unlicensed buccaneer or pirate and a privateer was an uncertain one in this period. The commissions of the latter were often of dubious legal validity – sometimes outdated or bought from a foreign official. One obtained to cover an expedition of five vessels fitted out in Jamaica cost only ten pieces of eight. Unfortunately it was due to run for only three months, so it was altered by the buccaneers 'to make it last for three years'... Most relied on the intimidating authority flourished before the Governor of Panama by Captain Sawkins when he warned them

⁵⁸ there are many references throughout the *Odyssey*, including the account of the Phoenician slave woman in Book XV and the warning to Antinous in Book XVI; of course, there is the larger question, to be repeated much later in history, as to what constitutes a 'pirate' and what a trader or 'privateer'; allusion is made to this in Book IX when Polyphem, the hermit Cyclops, greets Odysseus and asks whether he is pirate or business man: "Strangers, who are ye? Whence do ye sail over the watery ways? Is it on some business, or do ye wander at random over the sea, even as pirates, who wander, hazarding their lives and bringing evil to men of other lands?" (trans.: A. T. Murray, 1919)

⁵⁹ Plutarch, "Life of Pompey" from *Roman Lives* (105-115AD (est.))

⁶⁰ Harry Kelsey, *Sir Francis Drake: The Queen's Pirate* (1998), p11

that the buccaneers would 'bring our Commissions ion the muzzles of our Guns, at which time he should read them as plain as the flame of Gunpowder could make them'.⁶¹

It is in this context that the British merchant adventurer Sir Francis Drake has been the subject of much revisionist history, to the effect that he was really "a rogue, an able seaman and a pirate". For example, in his 1998 biography of Drake, Harry Kelsey gives the following overview of Drake's career:

This son of a poor family from Tavistock had gone to sea as a boy, dabbled in piracy, and gained modest success as a merchant. Then with astonishing astuteness, he discovered a way to take advantage of the religious hostility that was beginning to intensify the national differences between Spain and England. Drake calculated that thefts from Spaniards, if grand enough, might not be punished by his queen. Thereupon he embarked on a series of pirate raids on undefended Spanish ships and ports, and in the process gained an enormous pile of booty, probably more than had ever been seen in England. Lavishly sharing this wealth with the queen and her closest councillors, he quickly pre-empted Spanish demands for punishment and retribution. Knighted and thus made a gentleman by royal command, he entered politics and business, aligning himself with the most influential men in the country. Within a few years he had married into a good family and had received a royal commission to carry out one more raid on Spanish ports and shipping.⁶²

Similarly, in an article for the *Osprey Military Journal*, Angus Konstam states that Drake:

...has gone down in history as an English national hero, the archetype sea dog of the Elizabethan age. Although remembered as one of his country's great naval commanders, his performance in the service of Queen Elizabeth I was less than glorious. At the moment of Elizabethan England's greatest danger, he deserted his post in search of plunder. A pirate at heart, he was unable to put his country's interests ahead of personal gain.⁶³

Konstam wonders, then, "how did such a rakish old sea dog become seen as a national hero rather than as a selfish deserter?"

Later, in the eighteenth century, with Drake and his like long dead, piracy was depicted by some of the age's greatest writers as an evil occupation. For example, in 1724, Daniel Defoe, in his work *A New Voyage Round the World*, described pirates as a "Crew of unresolv'd divided Rogues...never two Days of a Mind...had no Body to command, and therefore no Body to obey" and expressed the opinion that commerce in general was to be preferred to piracy.⁶⁴ Two years later, in 1726, Jonathan Swift levelled his lacerating pen at pirates-as-colonisers, labelling them an "execrable crew of butchers employed in so pious an expedition".^{65, 66} In contrast, 90 years or so later, Byron, typically, had recast the pirate as

⁶¹ Glyndwr Williams, *The Great South Sea* (1997), p82-83

⁶² op cit., *Sir Francis Drake: The Queen's Pirate*, p239

⁶³ Angus Konstam, "Sir Francis Drake: National hero or national disgrace?", *Osprey Military Journal* (vol. 3, issue 2), p23

⁶⁴ Daniel Defoe, *A New Voyage Round the World by a Course Never Sailed Before* (1724), p178

⁶⁵ Jonathan Swift, *Gulliver's Travels* (1726), pp343-344

⁶⁶ as Glyndwr Williams noted in his 1997 account of the 'Great South Sea' in the 16th to 18th centuries, Swift's condemnation "looks back to an earlier age, to the conquest of America and to Montaigne's accusation that the true savages were the Europeans. But there is also an anticipation of the anti-colonial critics of the later eighteenth century – of Raynal, Diderot and Georg Forster – moved by the flight of distant peoples as they endured a process of 'discovery' by Europe." (op cit., *The Great South Sea*, p213)

hero.⁶⁷ As the 19th century headed into its final decades the pirate had become a tender-hearted, somewhat buffoonish character as portrayed by Gilbert and Sullivan in their 1879 comic opera *The Pirates of Penzance*.⁶⁸

⁶⁷ perhaps most famously in *The Corsair* (1816); the opening lines of which give a feeling of how Byron romanticised the 'pirate life': "O'er the glad waters of the dark blue sea/ Our thoughts as boundless, and our souls as free/ Far as the breeze can bear, the billows foam/ Survey our empire, and behold our home!/ These are our realms, no limits to their sway –/ Our flag the sceptre all who meet obey." (l. 1-6)

⁶⁸ see, for example, the Pirate King's song in Act I: "When I sally forth to seek my prey/ I help myself in a royal way/ I sink a few more ships, it's true/ Than a well-bred monarch ought to do/ But many a king on a first-class throne/ If he wants to call his crown his own/ Must manage somehow to get through/ More dirty work than ever I do."