

**PIRACY ON THE HIGH SEAS: PROTECTING OUR
SHIPS, CREWS, AND PASSENGERS**

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION
AND MERCHANT MARINE INFRASTRUCTURE,
SAFETY, AND SECURITY

OF THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

MAY 5, 2009

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ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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PIRACY ON THE HIGH SEAS: PROTECTING OUR SHIPS, CREWS, AND PASSENGERS

TUESDAY, MAY 5, 2009

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND
SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3 p.m. in room SR-253, Russell Senate Office Building, Hon. Frank R. Lautenberg, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. This is the Surface Transportation Subcommittee, and the subject today is “Piracy on the High Seas.” I thank all of you, those of you who are appearing as witnesses, for being here today, for helping us understand what we have got out there by way of a threat and what we do to deal with it.

Many of us thought that pirates were something from the past, found only in history books and movies. The pirates are back on the high seas. And on April 8th, the U.S.-flag ship MAERSK ALABAMA was transporting food to hungry people in Kenya when it was attacked by four Somali pirates. The 20 crewmembers stood up to the pirates and eventually retook their ship. But their captain, Captain Phillips, was taken hostage.

So we look in wonderment. I had the chance to talk to Captain Phillips and his wife the other night, and she assured me that she had all the confidence in the world, that there wasn’t any doubt that the captain was going to stand up to these people and lead his ship and his crew and himself back home. We congratulate you for that.

The U.S. Navy’s Special Forces were called upon to secure the captain’s release, and they succeeded. Captain Richard Phillips and his Chief Engineer—Michael Perry from the ALABAMA are with us today, and I thank you both for being here and commend you for your bravery at sea.

But as the Nation focused on the ALABAMA incident, another attack on a U.S.-flag ship occurred. Only 5 days after the ALABAMA attack, Somali pirates again attacked a U.S.-flag ship, the LIBERTY SUN. The vessel and its crewmen were fired on by pirates, and they escaped by outmaneuvering them.

We have video footage, which you will see in a couple of minutes, from that attack that we are going to play today. And while the video is not Hollywood perfect, it certainly shows how the crew acted decisively to ward off the attack by the pirates.

Despite the LIBERTY SUN's daring escape, the ship was stuck at a port in Kenya as the attackers waited offshore for its return to the seas. They were waiting for their quarry to show up. It is outrageous. The LIBERTY SUN was docked in Kenya for nearly 3 weeks, and the ship finally left the port this past Sunday.

So, today, I hope the Navy can tell us how they can ensure safe passage in the future. In 2008, just last year, there were 111 pirate attacks off the Horn of Africa, almost double the number in 2007. And this year alone, there have already been 86 attacks.

As a result of these attacks, nearly 300 non-U.S. crewmembers are being held prisoner by Somali pirates. Pirates are now attacking ships over more than 2 million square miles of ocean, more than half the size of the United States. In addition to the lives they threaten, these pirates threaten supplies for American troops who are serving abroad, humanitarian relief bound for East Africa, and commercial shipping across the world.

These bandits have to be stopped. Violence and lawlessness will not be tolerated, whether on land, in the sky, or at sea. We have a duty to protect the ships that proudly fly America's flag, and our Nation's military is our partner in fulfilling that duty, and we are going to talk about that in just a little bit.

A timid approach, an agreement, acquiescence will not do it. We need to take bold action to keep our seas and our ship crews safe. And I understand that the Coast Guard is in the process of updating their security policies for commercial ships in the program known as the MARSEC security directive. This is long overdue, and it needs to be completed.

And the international community needs to have a strong, united front against these bandits of the sea. The International Maritime Organization has 168 member nations. They must all join together to prosecute and stop piracy in this region.

Now I look forward to hearing from our witnesses so that we can learn what appropriate steps we can take to eliminate these threats to our passengers, the ships, the crew, the cargo, and we are delighted to have you here. I just want to make mention of all of those who are here with us.

Mr. Philip Shapiro, who we will hear from first, president and CEO of Liberty Maritime Corporation, whose ship, the LIBERTY SUN, was attacked by pirates on April 14, 2009.

Captain Richard Phillips of the MAERSK ALABAMA, and his colleague Michael Perry, the Chief Engineer of the MAERSK ALABAMA. And we thank you both for showing us the way to get out of a situation like that.

Both the captain and the engineer—Captain Phillips and Mr. Perry—faced incredibly trying circumstances. I commend you for your leadership, your courage, and your commitment to your crew. The career of a merchant mariner is often underappreciated, but these incidents remind us of the role that you play in our Nation's security and commerce.

And Mr. Roy Kienitz, Under Secretary of Transportation for Policy at the U.S. Department of Transportation, is here. We welcome you.

And Rear Admiral Brian Salerno, Assistant Commandant for Marine Safety, Security, and Stewardship at the U.S. Coast Guard.

We have Ms. Theresa Whelan, who is the Deputy Assistant Secretary of Defense for African Affairs.

Now we are going to try and keep the testimony to 5 minutes. If you run over a little bit, you have a tolerant Chairman here, but not too much. And first, what we would like to do is hear from Mr. Shapiro.

And Mr. Shapiro also has a film that he is going to show us when he finishes his remarks, and it will not be charged to your time at the table.

**STATEMENT OF PHILIP J. SHAPIRO, PRESIDENT AND CEO,
LIBERTY MARITIME CORPORATION**

Mr. SHAPIRO. Thank you, Mr. Chairman.

Mr. Chairman, thank you for the opportunity to testify on the important issue of piracy. As you know, one of our vessels, the LIBERTY SUN, was attacked by pirates off the coast of Somalia on April 14, just 2 days after the incredible rescue of Captain Phillips of the MAERSK ALABAMA.

Thankfully, no one on the crew of the SUN was injured, despite the vessel having been hit by four rocket-propelled grenades and automatic weapons fire, and the SUN arrived safely in Mombasa, Kenya, on April 15.

The LIBERTY SUN was on a mission of mercy to deliver much-needed food aid to East Africa. The vessel carried 47,000 tons of food as a gift from the American people. The SUN's cargo alone is enough to feed more than a quarter of a million people for a year in several African countries, including Somalia.

Without revealing the operational details, for fear of assisting the pirates, I can say that one of our vessels is almost always in or near the danger area at any given time. And so, we take the threat of piracy very, very seriously. Our company and our crew implemented enhanced precautions to make our vessels difficult pirate targets prior to the recent incidents.

Captain Don Grosse and the rest of the crew followed the company's security plan and kept their cool under fire. No boarding occurred, and the crew did everything that could reasonably be asked of them.

We also wish to thank the U.S. Navy for their prompt and effective response to the incident. We are especially grateful to General Duncan McNabb and Vice Admiral Ann Rondeau of U.S. TRANSCOM, as well as Deputy Secretary of Transportation Admiral Tom Barrett and Admiral Thad Allen, the Commandant of the Coast Guard.

With your permission, Mr. Chairman, at this point, I would like to introduce and show a short video of the attack on the LIBERTY SUN, taken by the chief mate, Bill Kenneweg.

[Video begins.]

Mr. SHAPIRO. You can see here the skiff containing the boatload of pirates that is off the starboard side.

That was the first RPG hitting.

At this point, the vessel security plan is in effect. The crew is being mustered in the steering gear room and the engine control room, and the captain and some of the mates are staying on the bridge.

The captain tells one of the mates to go down to the secure room, and he says, "No, I am staying here with you." And they begin an evasive course. And they are yelling over a voice-activated phone to the engine control room, where the vessel is being steered from.

Commanding the movement of the rudders to begin the evasive maneuvering.

Saying, "stay on the phone so you hear the orders," if we have to move.

"Stay on the phone."

"Left 15," he is commanding a rudder movement.

At this point, they have already been hit by the four RPGs. They have been signaled by the pirates to stop, and they continue sailing and ignore them.

Now they see a second pirate boat that they hadn't seen.

[Video ends.]

Mr. SHAPIRO. Well, initially, you saw one of the skiffs, and the second one appears later in the video. As you can see, Mr. Chairman, pirate attacks come out of nowhere and end just as suddenly. The video is dramatic and showcases the type of risk our crewmen face every day when delivering food aid in this part of the world.

It also demonstrates the preparation, training, and courage of our crew in responding to lethal fire. The only thing they could not do was shoot back, Mr. Chairman.

And so, with the balance of my time, I would like to address what I regard as the pressing U.S.-flag piracy issues. First, we have heard some suggestions that U.S.-flag ship owners have not done enough to protect their vessels. That view, with all due respect, sir, is flat wrong.

Our company adopted every measure recommended by the International Maritime Organization and required by the Coast Guard's approved security plan for making the vessel a difficult piracy target and more. And the fact is, they did not board our vessel.

For example, the crew of the SUN had rigged fire hoses to cover the stern of the vessel to create a virtual floodwall of water coming off the ship. When the BAINBRIDGE arrived, their crew informed Captain Grosse that none of them had ever seen so much water coming off a vessel.

Critics have also charged that U.S.-flag vessels should carry firearms for the crew or private security teams. Please let me address this issue directly. Merchant vessels simply do not routinely carry firearms in this day and age. In my view, however, the MAERSK ALABAMA incident constitutes a game changer in this regard.

After the incident, self-proclaimed pirate leaders issued direct threats of violence against American merchant mariners. It is true that U.S.-flag vessels and their crews have an unquestioned right of self-defense under a United States statute dating back to 1819. However, more recently enacted State Department arms export regulations effectively prohibit the arming of vessels.

Additionally, ship owners risk being second-guessed in both U.S. and foreign courts for self-defensive measures that were common in 1819.

In light of the recent threats to U.S. merchant mariners, we respectfully request that Congress consider clearing the obstacles that currently block ship owners from arming our vessels in self-defense to protect our crews when it is appropriate.

I believe that U.S.-flag ship owners have done all they can within the law to protect their crews. I look forward to working together with you, sir, and other members of the Committee and other Congressional leaders to bring U.S. law up to date and give us the legal framework we need to be able to protect ourselves.

I also hope that we can come to an understanding that private industry cannot switch from a no firearms regime to an armed protection regime overnight. Our ships need protection now, not months from now.

In the interim, we will need either naval escorts or Government security teams for U.S.-flag vessels on high-risk transits. And in that regard, we are grateful to both the Department of Defense and the European Union for their cooperation, which we have received to date.

The piracy problem has correctly been described as an international problem that needs an international solution. But we should not let the complexity of that problem deter us from addressing what we can do in the United States right now to protect American merchant mariners on U.S.-flag vessels.

Thank you again, sir, for inviting me to appear here today, and I would be pleased to answer any questions you may have.

Thank you.

[The prepared statement of Mr. Shapiro follows:]

PREPARED STATEMENT OF PHILIP J. SHAPIRO, PRESIDENT AND CEO,
LIBERTY MARITIME CORPORATION

Mr. Chairman, thank you for the opportunity to testify before this Subcommittee on the important and pressing issue of piracy. As you know, one of our vessels—the LIBERTY SUN—was attacked by pirates off the coast of Somalia on April 14, just 2 days after the incredible rescue of Captain Phillips of the MAERSK ALABAMA. Thankfully, no one on the crew of the LIBERTY SUN was injured, despite the vessel being hit by four rocket propelled grenades (RPGs) and automatic weapons fire, and the SUN arrived safely in Mombasa, Kenya on April 15.

I am also very pleased to be in the company of the other distinguished guests on this panel and most especially Captain, Phillips and Michael Perry, the Master and Chief Engineer of the MAERSK ALABAMA. I look forward to their remarks as they and the other crew members of these ships are the true heroes in these incidents.

The LIBERTY SUN—like many other U.S.-flag vessels which transit the pirate danger zone—was on a mission of mercy—a mission to deliver much needed food aid to alleviate famine in East Africa. The LIBERTY SUN carried 47,000 metric tons of food as a gift from the American people to be distributed by the U.N. World Food Programme and other relief agencies. The SUN's cargo alone is enough to feed more than 250,000 people for a year in several African countries including Somalia.

Our company has five other U.S.-flag vessels that were specifically built to transport U.S. Government international food aid as efficiently and economically as possible. Without revealing operational details for fear of assisting the pirates, I can say that we almost always have one of our vessels in or near the danger area at any given time and so we take the threat of piracy very, very seriously.

In this whole incident, we are most proud of our U.S. citizen crew. In the case of the LIBERTY SUN, we had a typical geographically diverse crew with members hailing from Lynn, Massachusetts—Tracy City, Tennessee—Plano, Texas—Denham Springs, Louisiana and many places in between. Capt. Don Grosse and Chief Mate

Bill Kenneweg, whom you will see in a short video, are from Williamsburg, Virginia and Port Townsend, Washington, respectively.

These men and women are all trained to the highest levels of seamanship and technical skill by our country's service and maritime academies and by the continuing education systems of their unions—the Marine Engineers Beneficial Association or MEBA and the Seafarers International Union or SIU. Our 20-member crew performed exceptionally during the incident and in the highest traditions of the long and illustrious history of the U.S. merchant marine.

Our company and our crew implemented enhanced precautions to make our vessels difficult pirate targets prior to the recent incidents. Indeed, Liberty went well beyond the best management practices recommended by a consensus group of international ship owners' associations representing virtually the entire world's fleet.

Captain Don Grosse and the rest of the crew followed the company's security plan and kept their cool under fire. We don't know if those actions deterred a boarding. But we do know that no boarding occurred and the crew did everything that could reasonably be asked of them before, during and after the attack.

We also wish to thank the U.S. Navy for their prompt and effective response to the incident. We are especially grateful to General Duncan McNabb and Vice Admiral Ann Rondeau of the U.S. Transportation Command as well as Deputy Secretary of Transportation, Adm. Torn Barrett, who have been very supportive throughout this incident and in its aftermath. Many other leaders in government, like Adm. Thad Allen, the Commandant of the U.S. Coast Guard, have focused their time and attention to solving this serious problem and we thank them as well.

I could go on with many more thank you's and with my own description of what happened on the LIBERTY SUN. But a picture is worth a thousand words and video tells a tale that no words can tell. So, with your permission, Mr. Chairman, at this point I would like to introduce and show a short video of the attack on the LIBERTY SUN taken by the Chief Mate, Bill Kenneweg.

Initially, you will see one of the pirate skiffs from which rocket propelled grenades and automatic weapons were fired at the ship. And you will see the aftermath of one of the RPGs fired at the vessel. The voices you will hear in the video are those of Captain Don Gross, Chief Mate Bill Kenneweg and Lee Hall on the bridge or command center of the LIBERTY SUN.

You will note that Capt. Gross asks Kenneweg to join the rest of the crew in the designated safe area of the ship and that Bill tells the Capt. that he is staying by his side.

Then you will hear the two talking about maneuvering the vessel to make it more difficult for the pirates to board the vessel. Those instructions are in turn transmitted by phone to the engine room because control has been transferred there in accordance with the vessel's security plan.

I hope you will forgive some of the language which I understand may have been bleeped out in any event—even our highly trained crews are after all, sailors. Please also forgive some of the camera pointing—it's not easy for a crew member who is not a professional war photographer to get good camera angles when he is being shot at!

[show video]

As you can see, Mr. Chairman, pirate attacks can come suddenly and end just as suddenly. The consequences of that incident and the one aboard the MAERSK ALABAMA are, however, still with us.

So, Mr. Chairman, with the balance of my time I would like to address what I regard as the pressing issues facing U.S.-flag vessels with regard to piracy.

First, we have heard some suggestions since the incident that U.S.-flag ship owners have not done enough to protect their vessels. That view—with all due respect, Sir,—is flat wrong. Our company adopted every measure recommended by international organizations and required by the U.S. Coast Guard's approved security plan for making the vessel a difficult piracy target and more.

For example, the crew of the LIBERTY SUN had rigged fire hoses to cover the stern of the vessel where many boardings in fact occur to create a virtual flood wall of water coming off the vessel. When the BAINBRIDGE arrived, their crew informed Capt. Grosse that they had never seen so much water coming off of a vessel. For this and other reasons, Coast Guard Admiral Baumgartner praised our crew's execution of the security plan in testimony before a House Committee last week.

There has also been criticism in some quarters of the government to the effect that U.S.-flag vessels should carry fire arms for the crews or armed private security teams. Please let me address this issue directly.

Merchant vessels simply do not routinely carry fire arms in this day and age. Many key ports, like Singapore, bar weapons on board vessels as do many canals. The International Maritime Organization and ship owning associations all actively

discourage the carriage of arms for fear that they will escalate violence and put crews at increased risk of injury or death. The overwhelming weight of professional opinion has been, for better or worse, against arming crews or hiring private security detachments. Thus, given the threat as it existed before the MAERSK ALABAMA incident, the judgment of virtually all ship owners around the world was that carrying arms was counter productive because the risk of violent escalation far outweighed the deterrence or protective value of firearms.

In my view, however, the MAERSK ALABAMA incident constitutes a game changer in this regard. After the incident, self-proclaimed pirate leaders issued direct threats of violence against American merchant mariners. Indeed, the attack on the M/V LIBERTY SUN may very well have been an act of revenge for the killing of the three pirates in the ALABAMA incident.

Moreover, the U.S. Government has publicly announced that it will neither pay nor will it permit U.S. companies to pay ransoms. Although we understand and respect this policy, it may well mean that American merchant mariners face a greater risk of violence if they are seized as hostages as the MAERSK ALABAMA incident indicates.

Given these conditions, our company and other U.S.-flag companies, have renewed our focus on the issue of fire arms and the use of specially trained security personnel whether employed by the U.S. Government or by private contractors. Since the LIBERTY SUN incident, our company has been engaged in intense discussions with the U.S. Transportation Command, the Navy, DOT, the Coast Guard and other governmental agencies about how to achieve better protection for our crews from pirates. In that process, it has become obvious that prohibitions contained in U.S. and foreign laws and existing legal liability make arming crew members or having armed private security in the near term very difficult if we are to abide by current law.

I have also heard it said that there should be no issue because the vessel and its crew have an unquestioned right of self-defense. And, indeed, we agree. Vessels and crews have that right. However, the right of self defense cannot be exercised with the benefit of fire arms under existing law.

Today's U.S. legal framework actually prevents ship owners from arming their vessels for self-defense. While the maritime right of self defense is enshrined in U.S. law in a statute dating from 1817, more recently enacted State Department arms export regulations effectively prohibit the arming of vessels. Additionally, ship owners risk being second-guessed in U.S. courts for self defensive measures that were common in 1817. Mr. Chairant, in light of the recent threats to U.S. merchant mariners, we respectfully request that Congress consider clearing the obstacles that block ship owners from arming our vessels in self-defense to protect our crews when it is appropriate.

Mr. Chairman, I believe that U.S.-flag ship owners have done all they can within the law to protect their crews. The safety of our crews is paramount. We need to work together—private industry and government—to give those crews all of the protection they deserve.

I hope that we can work together with you, Senator Rockefeller, Senator Hutchison, Senator Thune and the members of this Committee and other Congressional leaders to bring U.S. law up to date and give us the legal framework we need to be able to protect ourselves.

I also hope that we all can come to an understanding that private industry cannot switch from a no-firearms regime to an armed protection regime overnight. Our ships need protection now—not 6 or 9 months from now. In the interim, we will need either naval vessel escorts or government security teams for U.S.-flag vessels on high risk transits. And in that regard, we are very grateful to both DOD and NATO for the cooperation we have received with regard to protecting the LIBERTY SUN when it leaves Mombasa and for other Liberty vessels entering the region.

Mr. Chairman and members of the Committee, we all have some work to do—but we can achieve much together. The piracy problem is, of course, much bigger than just protecting U.S. crews on the high seas. It has correctly been described as an international problem that needs an international solution. But we should not let the complexity of the international problem deter us from addressing what can be done in the United States right now to protect American merchant mariners on U.S.-flag vessels.

Thank you again for inviting me to appear here today. We greatly appreciate the opportunity to discuss these matters with you and I would be pleased to answer any questions you or your colleagues may have now or after the rest of the panel has made their statements.

Senator LAUTENBERG. Thank you very much, Mr. Shapiro.

I won't start the questions right now, but just to say the observation that one makes in seeing this video is that the pirates kept changing course and accelerating speed. And I assume that the LIBERTY SUN was able to outrun these people, even though they were in a light skiff that usually has plenty of power to accelerate rapidly.

Mr. SHAPIRO. Absolutely, sir. They were able to outrun it. The skiff is faster than the boat, the ship. The boat is much faster than a ship.

However, with the freeboard that we had, having discharged 17,000 tons in Port Sudan before we headed down to Mombasa, we had 32,000 tons still in the vessel. But this is a large bulk carrier, and there was 26 feet of freeboard. That is the distance between the water and the deck.

And with the water going over the sides from the water cannons and fire hoses, with the evasive maneuvering, we were not an easy target to board at that point, sir.

Senator LAUTENBERG. Very good. Well, thank you very much for your testimony and for bringing us that video.

And now I welcome Captain Phillips. We ask you to give your testimony and, again, try and keep it within the time limit—I will be the watchman here. But I won't be too harsh, I promise. Please.

**STATEMENT OF CAPTAIN RICHARD PHILLIPS, MASTER,
MAERSK ALABAMA**

Captain PHILLIPS. OK. Mr. Chairman and members of the Subcommittee, I am Captain Richard Phillips. I am a graduate of the Massachusetts Maritime Academy—

Senator LAUTENBERG. Pull that microphone a little closer, please.

Captain PHILLIPS.—OK—a member of the International Organization of Masters, Mates, and Pilots, and a licensed American merchant mariner. I was the Captain of the MAERSK ALABAMA when it was attacked by pirates off the coast of Somalia on April 8.

Thankfully, that episode ended with the successful return of the ship, its cargo of U.S. food aid for Africa, and, most importantly, my crew. All of us have returned home safely, and for that, we all appreciate the actions taken by the Administration, the Department of Defense, and, most especially, the U.S. Navy, the Navy SEALs, and the crew aboard the USS BAINBRIDGE.

I want to thank the management of Maersk and Waterman Steamship Corporation, who handled the situation, the crew, and our families with great care and concern. Equally important, I want to commend the officers and crew aboard the MAERSK ALABAMA, who responded with their typical professionalism in response to this incident.

The deck officers who are members of the Masters, Mates, and Pilots Union; the deck officers and engineers who are members of the Marine Engineers Beneficial Association; and the unlicensed crew who belong to the Seafarers International Union are dedicated, well-trained merchant mariners who acted to protect the interests of our country.

In fact, I want to make sure that everyone understands that due to the quick response by the crew, led by the Chief Engineer, Mike

Perry and Chief Mate, Shane Murphy, the pirates never took control of the MAERSK ALABAMA. Chief Engineer Perry, Chief Mate Murphy, and the entire licensed and unlicensed crew of the MAERSK ALABAMA did what American mariners are always ready to do—put themselves at risk to protect the vessel and its cargo.

I am honored to come before you and your Subcommittee, Mr. Chairman, to discuss my views on making commercial shipping safer and worldwide sea lanes more secure from the threat of piracy. I cannot, however, discuss various specific details of the MAERSK ALABAMA incident because it is itself an ongoing investigation and pending legal action against one of the pirates.

Therefore, the focus of my comments will be my beliefs based on my years of experience at sea as to what can or should be done to respond to piracy and to protect American vessels and crews.

I believe that the best solution for protecting U.S. and foreign vessels from the threat of piracy is to end piracy itself. I know that this will require an intensive international effort to address the root causes of piracy within Somalia. But unless the root causes of piracy are addressed, piracy will continue to expand and evolve into an even greater threat for American and foreign seamen.

I also ask that Congress consider what steps should be taken to address the issues of piracy. You remember that there are almost 300 foreign mariners who are still being held captive by pirates. Like the crew of the MAERSK ALABAMA, these merchant seamen were simply trying to do their jobs, but their families, unlike ours, are still living with the stress and pain of not knowing if or when their loved ones will be returned home safely.

Our Government should use every resource at its disposal to encourage the international maritime community to come together in a strong showing of support of international response to piracy. In this way, all mariners, American and foreign, will have the same protections and an equal chance to do their jobs in peace.

Of course, there is an immediate need to protect American vessels and their crews. This need to protect U.S.-flagged vessels, which are, by definition, an extension of the United States, should be met first and foremost by our Government. I believe that the most desirable and appropriate response to piracy is for the U.S. Government to provide protection through military escorts and/or military detachments aboard U.S. vessels.

That said, I am well aware that there may be a limit to any Government resources, even America's. In fact, due to the vastness of the area to be covered—and the areas of threat are continually growing larger—our Navy and a coalition of other navies currently positioned in the Gulf of Aden region may simply not have the resources to provide all the protection necessary to prevent and stop the attacks.

So what other things can be done? In my opinion, the targets—that is, the vessels—can be hardened to make them even more structurally resistant to pirates. In addition, more can be done to develop anti-piracy procedures. Tools and training for American crews beyond the up-to-date training they already receive at their educational training facilities jointly run by the maritime unions and shipping companies.

As for armed security details aboard vessels, I believe that this could be an effective deterrent. My preference would be Government protection forces. But as long as they are adequately trained, I would not be opposed to private security onboard. Of course, I realize that very clear protocols would have to be established and followed.

For example, as a captain, I am responsible for the vessel, cargo, and crew at all times, and I am not comfortable giving up command authority to others, including the commander of a protection force. In the heat of an attack, there can only be one final decision-maker. So command is only one of many issues that would have to be worked out for security forces to operate effectively.

Finally, I have heard a suggestion that all we have to do to counter piracy is just arm the crews. In my opinion, arming the crews cannot and should not be viewed as the final and only solution to this problem. Rather, arming the crew should be viewed as only one component of a comprehensive plan and approach to combat piracy.

It would be my personal preference that only a limited number of individuals aboard the vessel have access to effective weaponry and that these individuals receive special training on a regular basis. I realize that even this limited approach to arming the crew opens up a very thorny set of issues. I will let others sort out the legal and liability issues. However, we all must understand that having weapons onboard merchant ships fundamentally changes the model of commercial shipping, and we must be very cautious about how it is done.

While there is much discussion going on about how to deal with piracy, I would respectfully ask the Subcommittee to be mindful that seafarers I have met and worked with over my career are resourceful, hard working, adventurous, courageous, patriotic, and independent. There are a great many other masters, mates, engineers, and crew who have the knowledge and insight to help this Subcommittee and the Congress address the issue of piracy.

In fact, I am pleased to let you know that one such individual, Captain James Staples, is with me today and is available to answer some committee questions. Captain Staples is the master of an American-flagged commercial vessel, and he has the seafaring and command experience and perspective that the Committee may find useful.

Merchant mariners appreciate whatever help you can offer to make the sea lanes more secure and our work environment safer. But we realize that while preparation is absolutely critical, not every situation can be anticipated. And as merchant mariners, we accept this as a part of the seafarer's life.

So I will just close with a request for you to please continue to include us in your discussions and debates.

Thank you for this opportunity to speak, and I look forward, as does Captain Staples, to answering your questions.

[The prepared statement of Captain Phillips follows:]

PREPARED STATEMENT OF CAPTAIN RICHARD PHILLIPS, MASTER,
MAERSK ALABAMA

Mr. Chairman and Members of the Subcommittee:

I am Captain Richard Phillips. I am a graduate of the Massachusetts Maritime Academy, I have been a member of the International Organization of Masters, Mates & Pilots Union since 1979, and I am a licensed American merchant mariner. I was the captain of the MAERSK ALABAMA when it was attacked by pirates off the coast of Somalia on April 8. Thankfully, that episode ended with the successful return of the ship, its cargo of U.S. food aid for Africa and, most importantly, my crew. All of us have returned home safely and for that my entire crew and I are deeply appreciative of the actions taken by the Administration, the Department of Defense and, most especially, the U.S. Navy, the Navy SEALs and the crew aboard the USS BAINBRIDGE. All of the U.S. military and government personnel who were involved in this situation are clearly highly trained and motivated professionals. I want to use this opportunity to again say "thank you" to everyone involved in our safe return.

I want to thank the management of Maersk and Waterman Steamship Corp. who handled the situation, the crew and our families with great care and concern.

Equally important, I want to publicly commend all the officers and crew aboard the MAERSK ALABAMA who acted with their typical professionalism in response to this incident. The Deck Officers who are members of the Masters, Mates & Pilots Union, the Deck Officer and Engineers who are members of the Marine Engineers' Beneficial Association, and the unlicensed crew who belong to the Seafarers International Union are dedicated merchant mariners. They are typical of America's merchant seamen who are well-trained and ready to act to protect the interests of our country.

In fact, I want to make sure that everyone understands that due to the quick response by the crew, led by Chief Engineer Mike Perry and Chief Mate Shane Murphy, the pirates never—I repeat, never—took control of the MAERSK ALABAMA. The entire crew did what American mariners are always ready to do—put themselves at risk to protect their vessel and its cargo. Chief Engineer Perry, Chief Mate Murphy and the entire licensed and unlicensed crew of the MAERSK ALABAMA deserve our thanks and praise.

I am honored to come before you and your Subcommittee, Mr. Chairman, to discuss my views on making commercial shipping safer, and worldwide sea lanes more secure from the threat of piracy. Under your leadership, this Subcommittee can play a key role in focusing attention on this issue and in developing solutions to the problem of piracy.

I need to make clear at the outset that I am unable to discuss various specific details of the incident itself because of the ongoing investigation and pending legal action against one of the pirates. But I've had a lot of time to think about the difficult and complex issues of protecting vessel, cargo and crew in crime-ridden waters. Therefore, the focus of my comments will be my beliefs, based on my years of experience at sea, as to what can or should be done to respond to piracy and to protect American vessels and crews.

I should also say at the outset that my personal opinions may differ in some ways from other recommendations you have heard before and may hear from others. Nevertheless, I do believe that all of us in the maritime industry agree that we must work together to address this complex problem, and that we must keep the crew, cargo and vessel safe.

I believe for example that most people agree that the best solution to protecting U.S. and foreign vessels from the threat of piracy is to end piracy itself. This will require an intensive international effort to address the root causes of piracy within Somalia and that this effort will undoubtedly be long and difficult. But unless the root causes of piracy are addressed, it will continue to expand and to evolve into a greater and greater threat for American and foreign seamen.

Along these same lines, as Congress considers what steps should be taken to protect American vessels and crews, I would ask that you remember the approximately 300 foreign mariners who are still being held captive by pirates. Like the crew of the MAERSK ALABAMA, these merchant seamen were simply trying to do their job but unlike our families, their families are still living with the stress and the pain of not knowing if or when their loved ones will be returned home safely.

Unlike most nations of the world, the United States has the capability to protect its vessels and their crews from piracy. And our government should do so. But at the same time, we should use every resource at our disposal to encourage the international maritime community to come together in support of a strong international

response to piracy. In this way, all mariners, American and foreign, will have the same protection and a better chance of being able to do their jobs in peace.

Of course, until there is an international agreement to combat piracy or we get to the day when the threat of piracy no longer exists, there is an immediate need to protect American vessels and their crews. This need should first and foremost be met by our government because I believe it is the responsibility of our government to protect U.S.-flag vessels which are, by definition, an extension of the United States. So, it follows that the most desirable and appropriate response to piracy is for the U.S. Government to provide protection, through military escorts and/or military detachments aboard U.S. vessels. That said, I am well aware that some will argue that there is a limit to any government's resources—even America's. In fact, due to the vastness of the area to be covered—and the areas of threat are continually growing larger—our Navy and the coalition of other navies currently positioned in the Gulf of Aden region may simply not have the resources to provide all the protection necessary to prevent and stop the attacks.

So what other things can be done?

In my opinion, the targets—that is, the vessels—can be “hardened” even beyond what's being done today to make them even more structurally resistant to pirates. In addition, more can be done in terms of developing anti-piracy procedures, tools and training for American crews. I do however want to emphasize that contrary to some reports that I've heard recently, American mariners are highly trained and do receive up-to-date training and upgrading at the private educational training facilities jointly run by the maritime unions and their contracted shipping companies. I believe that discussions are underway now between the industry and government on the details of specific proposals to harden the vessels (the specifics of which should remain secret) and I am confident that we will soon have additional methods for protecting vessel and crew. And while they will be an improvement, there is no way they can be foolproof.

As for armed security details put aboard vessels, I believe that this idea could certainly be developed into an effective deterrent. My preference would be government protection forces. However, as long as they are adequately trained I would not be opposed to private security on board. Of course, I realize that very clear protocols would have to be established and followed. For example, as a captain, I am responsible for the vessel, cargo and crew at all times. And I am not comfortable giving up command authority to others . . . including the commander of a protection force. In the heat of an attack, there can be only one final decisionmaker. So command is only one of many issues that would have to be worked out in for security forces to operate effectively.

Finally, I've also heard the suggestion that all we have to do to counter piracy is “just arm the crews.” In my opinion, arming the crew cannot and should not be viewed as the final and only solution to this problem. Rather, arming the crew should be viewed as only one component of a comprehensive plan and approach to combat piracy. To the extent we go forward in this direction, it would be my personal preference that only a limited number of individuals aboard the vessel have access to effective weaponry and that these individuals receive special training on a regular basis. I realize that even this limited approach to arming the crew opens up a very thorny set of issues. I'll let others sort out the legal and liability issues. However, we all must understand that having weapons on board merchant ships fundamentally changes the model of commercial shipping and we must be very cautious about how it is done. Nevertheless, I do believe that arming the crew, as part of an overall strategy, could provide an effective deterrent under certain circumstances. I believe that a measured capability in this respect should be part of the overall debate about how to defend ourselves against criminals on the sea.

While there are many new ideas and much discussion going on about how to deal with piracy, I would respectfully ask the Subcommittee to be mindful that the seafarers I've met and worked with over my career are resourceful, hardworking, adventurous, courageous, patriotic and independent. There are in fact a great many other Masters, Mates, Engineers and crew who have the knowledge and insight to help this Subcommittee and the Congress address the issue of piracy. In fact, I am pleased to let you know that one such individual, Captain James Staples, is with me today and is available to answer the Committee's questions. Captain Staples is also the Master of an American flag commercial vessel and he has the seafaring and command experience and perspective that the Committee may find helpful.

In closing, I would say again that no one person has all the answers. Merchant mariners want whatever help you can offer to make the sea lanes more secure and our work environment safer. But we realize that while preparation is absolutely critical, not every situation can be anticipated. And, as merchant mariners, we ac-

cept this as a part of the seafarer's life. So, I will just close with a request for you to please continue to include us in your discussions and debates.

Thank you for this opportunity to speak and I look forward, as does Captain Staples, to answering your questions.

Senator LAUTENBERG. Thank you. I deliberately wanted to let you continue to give your statement.

[Laughter.]

Senator LAUTENBERG.—And now we have the Chief Engineer, Michael Perry, who was also on the crew of the MAERSK. Please proceed.

**STATEMENT OF MICHAEL A. PERRY, CHIEF ENGINEER,
MAERSK ALABAMA**

Mr. PERRY. I appreciate the opportunity to come before you to discuss measures that will protect our ships, crews, and passengers. My name is Michael Anthony Perry, and I was the Chief Engineer onboard the MAERSK ALABAMA on April 8, when it was attacked by pirates off the coast of Somalia.

I am the last in a long line of proud U.S. mariners. My grandfather was a sailor in the U.S. Navy. My father was a U.S. Merchant Marine throughout World War II. Attaining the rank of Lieutenant Commander, I served in the United States Navy for 23 years, receiving a meritorious commission in 1989. I am a member of the Marine Engineers Beneficial Association and have been a licensed U.S. Merchant Marine since 1995.

First and foremost, I would like to extend my gratitude toward my colleagues aboard the MAERSK ALABAMA, including my fellow licensed engineers, deck officers, and crew. The skills in training, and bravery were integral in maintaining the highest possible level of safety and security.

Further, the leadership and determination demonstrated by Captain Phillips attest to his strong character. Second, the personnel at Maersk and Waterman Steamship Corporation handed the situation with the highest level of class and professionalism. From the moment they knew the vessel had been boarded to the moment I arrived at home, I knew that me, my fellow crewmembers, and our families were their top priorities.

Finally, it goes without saying that the Administration, the Department of the Defense, and the U.S. Navy operated with skill, expertise that they have proven to possess time after time.

The views that I express in my testimony are my own, and I hope that all sectors of the industry will be considered and included when forming a comprehensive policy to address the issues of piracy.

As demonstrated by the incident involving the MAERSK ALABAMA, when called to action, U.S. Government military personnel are the best equipped and most able to provide security to U.S.-flagged vessels. They possess the training, the weaponry, and authority to provide the security needed in order to address the immediate threat.

Further, it is the obligation of the American Government to protect the vessels that fly the U.S. flag, carry U.S. mariners, and transport U.S. cargo. Military escorts or detachments should be im-

plemented as part of a comprehensive international plan to combat piracy.

Unfortunately, we have seen that the pirates' methods have become more sophisticated and unpredictable. This, coupled with the increase in pirate attack, has made the issue more urgent. Our Government must step up and act now to ensure that the U.S.-flag vessels that operate in these waters have the force resources necessary to protect the vessel, its cargo, and crew.

As demonstrated by the attack on the LIBERTY SUN, the pirates are no longer solely interested in financial transaction. They are willing to use deadly weapons, and that put the crew, cargo, and vessels in immediate danger.

I recommend that straightforward procedures be put in place. A well-trained watch team can spot danger far in advance, which, coupled with strengthened piracy procedures, would help to minimize the risk to the vessel, cargo, and, most importantly, the crew.

The long-term comprehensive solution calls for a response both at sea and ashore. The root cause of piracy must be addressed internationally. There are hundreds of mariners being held hostage aboard pirated vessels across the world, and the U.S. Government's resources alone are not enough to fix the problem.

I am very proud of my colleagues onboard the MAERSK ALABAMA. Although the crew was able to survive the incident relatively unscathed, the threat posed by the armed pirates was very real. In fact, Captain Phillips was taken hostage and spent 5 days aboard the lifeboat with an AK-47 in his back. Due to the heroic actions of the entire crew, however, the pirates were at no point in control of the vessel.

Although the U.S. Government threw the last punch in the fight, the battle was won much earlier by the combined efforts of the crew. I would like to express my gratitude to them. Overcoming extreme fatigue due to heat exhaustion, they willingly carried out their duties in order to rescue their shipmates throughout this 33-hour ordeal.

Thank you again for the opportunity to share my thoughts with you, and I look forward to answering any questions you may have. [The prepared statement of Mr. Perry follows:]

PREPARED STATEMENT OF MICHAEL A. PERRY, CHIEF ENGINEER,
MAERSK ALABAMA

Chairman Lautenberg, Ranking Member Thune, and Members of the Subcommittee:

I appreciate the opportunity to come before you to discuss measures that will protect our ships, crews, and passengers. My name is Michael Anthony Perry and I was the Chief Engineer on board the MAERSK ALABAMA on April 8th, 2009 when it was attacked by pirates off the coast of Somalia. I am the latest in a long line of proud U.S. Mariners. My grandfather was a Sailor in the U.S. Navy and my father was U.S. Merchant Marine throughout World War II. Attaining the rank of Lieutenant Commander, I served in the U.S. Navy for 23 years and received a meritorious commissioning in 1989. I am a member of the Marine Engineers' Beneficial Association (MEBA) and have been a licensed U.S. Merchant Marine since 1995.

First and foremost, I would like to extend my gratitude toward my fellow colleagues aboard the MAERSK ALABAMA including my fellow licensed engineers, deck officers, and crews. Their skills, training, and bravery were integral in maintaining the highest possible level of safety and security. Further, the leadership and determination demonstrated by Captain Phillips attests to his strong character. Second, the personnel at Maersk and Waterman Steamship Corp. handled the situation

with the highest level of class and professionalism. From the moment they knew the vessel had been boarded to the moment I arrived home, I knew that me, my fellow crew members, and our families were their top priority. Finally, it goes without saying that the Administration, the Department of Defense, and the U.S. Navy operated with the skill and expertise that they have proven to possess time after time.

The views that I express in my testimony are my own and I hope that all sectors of the industry will be considered and included when forming a comprehensive policy to address the issue of piracy. Through my years of service at sea, I hope to offer a firsthand account for you to take into consideration.

As demonstrated by the incident involving the MAERSK ALABAMA, when called into action, U.S. Government military personnel are the best equipped and most able to provide security to U.S.-flag vessels. They possess the training, weaponry, and authority to provide the security needed in order to address an immediate threat. Further, it is the obligation of the American government to protect the vessels that fly the U.S.-flag, carry U.S. mariners, and transport U.S. cargo. Military escorts or detachments should be implemented as part of a comprehensive international plan to combat piracy.

Unfortunately, we have seen that the pirates' methods have become more sophisticated and unpredictable. This, coupled with the increase in pirate attacks, has made the issue more urgent. Having a large freeboard and maintaining speeds above 15 knots is no longer sufficient to ward off attacks. Also, the utility of traditional "hardening" measures such as fire hoses has decreased due to advancing techniques used by the pirates. Rather, our government must step up and act now to ensure that the U.S.-flag vessels that operate in these waters have the force protection necessary to protect the vessel, its cargo, and crew. As demonstrated by the attack on the LIBERTY SUN, the pirates are no longer solely interested in a financial transaction. They are willing to use deadly weapons and that put the crews, cargo, and vessels in immediate danger. On Friday, May 1, a Portuguese warship reported stopping a pirate attack against an oil tanker involving explosives. This type of attack would be disastrous. The pirates have clearly raised the stakes.

While carriers are implementing new, advanced hardening measures more must be done in order to minimize or eliminate the threat posed by piracy. I recommend that straightforward procedures be put in place should the pirates be able to board a vessel in the future. A well-trained watch team can spot danger far in advance which, coupled with strengthened piracy procedures, would help to minimize the risk to the vessel, the cargo, and, most importantly, the crew.

The crews aboard U.S.-flag vessels are highly trained and have specific roles and responsibilities when at sea. Simply "arming the crew" would place an undue physical, mental, legal, and moral burden on the crew. Arming the crew should only be considered as part of a larger comprehensive strategy and only then as a last resort.

I am very proud of my colleagues aboard the MAERSK ALABAMA. Although the crew was able to survive the incident relatively unscathed, the threat posed by armed pirates was very real. In fact, Captain Phillips was taken hostage and spent 5 days aboard a life boat with an AK-47 in his back. Due to the heroic actions of the entire crew however, the pirates were at no point in control of the vessel. Going forward, strong preventative measures must be enacted in order to protect the lives of U.S. Merchant Mariners. In the short term, this can best be accomplished through military escorts and/or detachments.

The long-term comprehensive solution calls for a response both at sea and ashore. The root causes of piracy must be addressed internationally. There are hundreds of mariners being held hostage aboard pirated vessels across the world and the U.S. Government's resources alone are not enough to fix the problem.

Every mariner aboard the MAERSK ALABAMA deserves credit for the safe return of the ship and crew and I look forward to sailing with each and every one of them in the future.

Thank you again for the opportunity to share my thoughts with you and I look forward to answering any questions you may have.

Senator LAUTENBERG. Thank you very much.

We will hear now from the Honorable Roy Kienitz, who is the Under Secretary of Transportation for Policy from the U.S. Department of Transportation.

Mr. Kienitz, thank you.

**STATEMENT OF HON. ROY KIENITZ, UNDER SECRETARY OF
POLICY, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. KIENITZ. Thank you, Mr. Chairman, Senators.

Once again, a pleasure to be here today to add what we can to this.

The Department of Transportation is involved in these matters principally through the U.S. Maritime Administration, which is an agency that has liaison with and regulates in certain ways commercial—U.S.-flagged commercial shipping. And so, in my testimony today, I think I am principally going to reference the work that the Department of Transportation has done to help promulgate management practices throughout the industry for U.S.-flag vessels and at the international level to try to make commercial vessels resistant to piracy to the greatest degree possible.

Obviously, this problem right now, the worst place in the world is in the Gulf of Aden, which is one of the busiest shipping lanes in the world. On a given day, there might be 50 commercial vessels in this area. A very small percentage of these vessels are U.S.-flag vessels, but there still may be approximately one per day in the area.

Over the course of last year, our data show that we had probably about 55 United States ships pass through that area for a total of several hundred transits one way or another. Currently, at least 18 commercial ships are being held hostage in this region, and there were, I believe, 2 more successful ship takings this weekend, in the last several days. So that number may be higher now.

Ransom-taking obviously has been traditionally the economic model that the pirates are pursuing here, and we believe that that is what primarily motivates them.

Data we have looked at from this busy period has shown several things, the first of which was mentioned briefly. The ships most vulnerable to attack are those with low top speeds, both proceeding slowly through the highest-risk areas and unable to accelerate to a high rate of speed, which both—doesn't necessarily allow them to outrun the vessels but allows for aggressive maneuvering when attempts to board are occurring.

The second thing was also referenced by the gentleman, which is ships that are low to the water, with a low freeboard, make boarding over the side easier. So in the case of ships that have both of those characteristics, which is to say speeds under, say, 18 knots and low to the water, that is where we see the greatest success rate in pirate attacks.

Estimates are that it is perhaps one-third of one percent of the ships transiting through this area that are subject to attacks, but the effects are serious, nonetheless. Obviously, ship owners and captains and crew experience great risks.

There are also costs involved both due to increased staffing costs, increased insurance costs, and in some cases, some ship owners are diverting ships to avoid the region, including diverting around the southern end of Africa, which adds many days to the transit going that direction. And that can have a significant cost.

To address these challenges, the U.S., acting through our sort of commercial shipping arrangements, has been part of the leadership of the international effort to promulgate best management prac-

tices, and that is something that we have done by virtue of the U.N. process involving 25 other nations. And I might, for a moment, go through what some of those best management practices are.

For example, they fall into several categories. Number one, there are recommended defensive preparations for ships before they get anywhere near a high-risk area, and that includes putting together security plans, making sure the members of the crew are properly trained about what to do in a certain situation, making sure the proper communications channels are known to everyone onboard.

Second, there are protocols for proper communications with naval forces, both several days out from the highest-risk areas and while in the region. There are navies of at least 12 nations operating in this zone right now, and so there is obviously a significant coordination challenge that occurs there. And so, relatively streamlined procedures have been made available to ships of various nationalities in order to communicate their position and plans so the various navies are aware of them.

Obviously, there are operational practices that have been recommended while in high-risk areas—things like whether it is having the fire hoses prepared and to eject water over the side, extra manning for watches, particularly during dawn and dusk when attacks might be more difficult to detect, maneuvering during an attack, things like that.

Obviously, contingency plans about what to do if attacked or boarded. And finally, what are the protocols for personnel onboard ship if military action ensues as a result of a pirate attack?

Much of this activity is created through international institutions—the Maritime Security Center for the Gulf of Aden, which is located in the United Kingdom, as well as the United States Navy presence in Bahrain and the UK maritime office in Dubai.

Obviously, one potential set of security measures that has received significant attention, including here today, has been the presence of armed security onboard ships, whether provided by a government or a ship owner, or the arming of crews. Obviously, with the arming of crews, I think some of the obvious issues have been raised. Among those including many foreign ports don't allow vessels with armed crews to enter into their territorial waters, and so that could be a real hampering effect.

With private security forces, some ship owners have chosen voluntarily to embark armed security. And we saw an example of that with an Italian ship about 10 days ago. But that obviously raises issues. There are liability issues for the ship owners. There are liability issues for the masters, training issues.

And so, I think it is the job of the government here to try to provide guidance as best as possible to ship owners at a minimum about what the best practices are for deploying persons like this. I will leave questions of our diplomatic and military responses to the folks who know more about that.

Thank you, sir.

[The prepared statement of Mr. Kienitz follows:]

PREPARED STATEMENT OF HON. ROY KIENITZ, UNDER SECRETARY OF POLICY,
U.S. DEPARTMENT OF TRANSPORTATION

Chairman Lautenberg, Ranking Member Thune, and Members of the Subcommittee:

I am pleased to have the opportunity to appear before you today to discuss the serious threat stemming from the ongoing piracy problem on the high seas.

Throughout 2008 and continuing into 2009, the global piracy situation has grown substantially worse—particularly in an ever-expanding area off the coast of Somalia, where more than 20,000 vessels transit the region each year. The impact of piracy has been very significant but the American public has only recently been made more aware of the situation with the attacks on two American flag vessels, the MAERSK ALABAMA and the LIBERTY SUN (both of which were carrying food aid for Somalia).

Acts of piracy threaten freedom of navigation and the flow of commerce. Pirates frequently demand millions of dollars in ransom for the release of hostages, ships and cargoes. Press reports indicate that in 2008, pirates received an estimated \$30 million dollars in ransoms for the release of pirated vessels. In 2008, 42 vessels were seized by pirates operating off the coast of Somalia. Globally, 889 mariners were held hostage by pirates (815 in Somalia) as part of ransom demands. The International Maritime Bureau (IMB) reports that in 2008, globally, 11 mariners were murdered by pirates and another 21 are missing and presumed dead. The IMB also reported that during the same period, off the Horn of Africa, four mariners were killed and 14 are missing and presumed dead.

The vessels most vulnerable to piracy attacks are those traveling slowly (with limited speed capabilities) and with low freeboard—that is to say, there is not much height between the water and the deck level. At any given time during the past 9 months, more than a dozen vessels and their crews have been held hostage off the Somali coast. Currently, 18 commercial ships are being held for ransom by pirates in Somalia, along with more than 300 crewmembers. One reason for the success of piracy and ransom taking is that the government in Somalia is ineffective and this has enabled pirates to operate with virtual impunity.

The Gulf of Aden, which links the Mediterranean Sea and the Suez Canal with the Indian Ocean, is one of the busiest shipping choke points in the world. On average, 50 commercial vessels transit the Gulf daily. Many of these vessels are potential targets. More than 3.3 million barrels of oil pass through the Gulf of Aden every day, representing 4 percent of the world's total daily production and 12 percent of all the oil transported by water daily around the world by sea. In addition, numerous other cargoes and container freight pass through the Gulf daily.

Approximately 80 percent of the vessels transiting the Gulf of Aden carry cargo destined to and from Europe, East Africa, South Asia, and the Far East. However, a significant portion of cargoes is also destined to or from the United States. In addition, U.S. citizens serve as crew or are passengers on vessels transiting the area.

On average, at least one U.S. commercial vessel transits the area each day. Many of these U.S.-flag vessels carry Department of Defense cargo bound for Operations Iraqi and Enduring Freedom. U.S.-flag vessels transiting the region also carry humanitarian cargoes generated by the U.S. Agency for International Development (USAID) or international organizations to the Horn of Africa, including Djibouti and Somalia and to other countries in East Africa or South Asia.

As mentioned, piracy off the Horn of Africa significantly increased through 2008 and into 2009, with more than 150 attacks and 55 successful piracies. The cost and disruption to the flow of commerce overall are significant. Press reports indicate that, in addition to merchant mariners killed or presumed dead, hundreds, including American mariners, have been traumatized by being attacked and held hostage, and even by the uncertainties generated by the growing instability of the region.

Ship owners and operators are also adversely affected by rising daily operating costs, due to increased insurance premiums and operational delays caused by longer transit times or diversions to avoid the area. In many cases, there are additional costs related to transiting or circumventing the higher risk area. This is particularly true where vessels are diverted around the Cape of Good Hope in an effort to avoid the Gulf of Aden altogether, which increases labor costs, fuel consumption and the carbon footprint of marine transportation. Higher shipping costs also raise the costs of commodities for local populations.

The United States has been a leader in promoting collaborative international action to combat the current piracy crisis. Historically, it has been our Nation's long-standing policy to support freedom of the seas. In July 2008, the United States took a leadership role in the United Nations fight against piracy. This resulted in United Nations (UN) Security Council Resolution 1816, which authorized countries cooper-

ating with the Transitional Federal Government (TFG) of Somalia, for which advance notification has been provided to the Secretary-General, to enter Somali territorial waters to repress piracy. This was followed by additional Security Council Resolutions 1838 and 1846 in the fall of 2008. In December 2008, the United States drafted U.N. Security Council Resolution 1851, which authorizes countries cooperating with the TFG of Somalia to enter Somali territory to repress piracy. The Security Council subsequently, adopted this resolution.

U.N. Security Council Resolution 1851, also encouraged the establishment of an international cooperation mechanism—known now as the Contact Group on Piracy off the Coast of Somalia (CGPCS). The CGPCS has 28 nations as members, 6 international organization observers, with 7 additional countries pending requests to participate.¹ The Department of State leads the United States participation in the CGPCS. The CGPCS acts as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast, and specifically includes outreach to the commercial maritime industry. The CGPCS held plenary meetings in January at the United Nations in New York City and in Cairo in mid-March. The CGPCS will meet again on May 29 in New York City.

The CGPCS established four working groups that are providing recommendations to the CGPCS. Working Group #1 is addressing activities related to military and operational coordination and is chaired by the United Kingdom. Working Group #2 is addressing judicial aspects of piracy and is chaired by Denmark. The United States has the lead for Working Group #3, which focuses on shipping self-awareness and interaction with industry. The Department of Transportation's Maritime Administration (MARAD) and the Department of Homeland Security's U.S. Coast Guard have been co-leading efforts with this Working Group. Working Group #4 is tasked to offer recommendations to improve diplomatic and public information efforts and is chaired by Egypt. The U.S. will propose on May 29, the creation of Working Group #5 to explore the feasibility of tracking and freezing the assets of pirates and those who support them.

The U.N. Security Council resolutions called for greater cooperation between governments and industry to reduce the incidence of piracy. In January 2009, former Secretary of State Rice stated that, "Once a hostage situation develops, the stakes in military operations increase. Consequently, an important part of counter-piracy efforts must be measured in enhancing self-defense capabilities of commercial vessels, increasing the odds of success against pirates until warships arrive." This sentiment certainly still holds true today and we saw evidence of this in the highjacking of the MAERSK ALABAMA.

Because of its specialized knowledge, such as operation of our mobility sealift vessels, and established relationships with U.S. and international shipping, maritime unions, the marine insurance community and global maritime industry associations, MARAD has considerable experience in dealing with the diverse interests of the global maritime industry and is actively involved in the fight against piracy. MARAD operates a fleet of Ready Reserve Force (RRF) vessels which have transited the Gulf of Aden region in support of Operations Iraqi and Enduring Freedom (OIF/OEF). As OIF winds down, RRF vessels may be called upon to play a significant role again in support of the demobilization of forces, with a consequence of exposing the vessels and crews to threats from pirate attacks.

Further, many vessels supported by MARAD's Maritime Security Program (MSP), participate in the Agency's Voluntary Intermodal Sealift Agreement (VISA) and transit the Gulf of Aden on a routine basis. The MAERSK ALABAMA is one of the 60 vessels enrolled in the MSP. MARAD also has oversight over government cargoes transiting the region—particularly food aid and military cargoes that are carried mainly aboard U.S.-flag commercial vessels transiting the Gulf. Finally, as an interface between U.S. maritime labor and the Federal Government, MARAD also has great interest in protecting the welfare of U.S. mariners who sail aboard vessels in the region.

MARAD provides operational advice to U.S.-flag owners and operators, including counter-piracy measures and awareness, on a regular basis through MARAD

¹ The Contact Group for Piracy off the coast of Somali was created in New York City on January 14, 2009 and currently numbers 28 nations (Australia, Belgium, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, republic of Korea, The Netherlands, Norway, Oman Portugal, Russia, Saudi Arabia, Somalia TFG, Sweden, Spain, Turkey, United Arab Emirates, United Kingdom, United States, Yemen) and 6 international organizations (African Union, Arab League, European Union, North Atlantic Treaty Organization, United Nations Secretariat, International Maritime Organization) with 7 additional countries (Canada, Cyprus, Liberia, Nigeria, Malaysia, Panama, Singapore) pending requests to participate.

Advisories, through a comprehensive and frequently updated website, and through MARAD's electronic "MARVIEW" system which is available to registered users. We also play a key role in the training of merchant mariners through the development of International Maritime Organization (IMO) maritime security courses and workforce development. Working with the Coast Guard and IMO, Vessel Security Officer, Company Security Officer, and Facility Security Officer, courses were developed by the United States Merchant Marine Academy (USMMA). MARAD continues to certify maritime security training providers who meet the criteria established by the Coast Guard. To date, more than 50 training providers have been certified across the country. Efforts are also being made to include anti-piracy and security training in the academic programs at USMMA and the state maritime schools.

In late December 2008, the Department of State asked MARAD to assist with the CGPCS Industry Outreach Working Group. To this end, MARAD has met on numerous occasions with industry to help shape best management practices to counter piracy and to share industry concerns with U.S. Government agencies. In late December, the National Security Council published an action plan entitled, "Countering Piracy off the Horn of Africa: Partnership & Action Plan" (CPAP). MARAD was actively involved in developing this plan, and posted the CPAP on its website for the benefit of industry.

MARAD strongly supported the Military Sealift Command's proposal to create and implement "Anti-Piracy Assessment Teams" for commercial vessels. These teams consist of personnel from the Naval Criminal Investigative Service, and MARAD. On a voluntary basis, these teams board U.S.-flag vessels and offer recommendations on how to improve a vessel's physical defenses against piracy, and review security tactics, techniques and procedures. To date, a number of successful Anti-Piracy Assessment Team vessel assessments and recommendations have been completed. We expect this process to be embraced by the international community for similar implementation.

MARAD's continuing outreach to the maritime industry on the piracy issue has taken many forms. In addition to leading informal meetings and participating in international forums, MARAD has hosted several collaborative meetings with both the American and international maritime industry community and appropriate Federal agencies. For example, in October and November 2008, MARAD and the Department of State sponsored meetings with representatives from the maritime industry to specifically discuss piracy in the Gulf of Aden. Participants included company security officers from major U.S. flag carriers, including American President Lines (APL), Horizon Lines, Maersk, Intermarine, Interamerican Ocean Shipping, American Roll On/Roll Off, Crowley, American Overseas Marine, and Ocean Shipholdings. Flag states with U.S.-owned vessels or with vessels serving strategic U.S. interests also participated, including representatives from Denmark, Marshall Islands, Liberia and Panama. The U.S. Navy's Maritime Liaison Office Bahrain and the United Kingdom's Maritime Transport Office were also included. Topics specifically addressed at these meetings were maneuvering and speed, illumination, communication, duress terminology, armed force protection, and self-defense devices which may be used to deter piracy.

At the request of the maritime industry, MARAD facilitated extensive discussions on piracy with the Department of State, Department of Defense, Federal Bureau of Investigation (FBI), and the Department of Homeland Security's Transportation Security Administration (TSA) and Coast Guard. In November 2008, MARAD participated in a public hearing hosted by the Coast Guard, focused on piracy initiatives being considered by the International Maritime Organization's Maritime Safety Committee (MSC). In December 2008, MARAD staff played an instrumental role in several other international planning events related to piracy. MARAD participated in the NATO Senior Civil Emergency Planning Committee (SCEPC) meeting held in Brussels, Belgium, which included piracy as an agenda item. MARAD chairs the NATO Planning Board on Ocean Shipping, which reports to the SCEPC.

On December 2, 2008, MARAD hosted a Piracy Round Table meeting to discuss industry "self-help" and best practices to counter piracy. This meeting brought U.S. Government agencies together with the maritime industry to develop a mutual understanding of the problem and to develop best practices recommendations. Members of the industry included shipping associations, registries, carriers, marine insurance companies and representatives from the European Union. U.S. Government representatives included personnel from the Coast Guard, Department of State, Department of Defense, Office of Naval Intelligence, USAID, the National Security Council, and the Homeland Security Council. MARAD established an Anti-Piracy portal on the Agency's website, which is continuously updated. MARAD Advisories are posted on this site as are any recent developments and key contact information.

MARAD hosted an international maritime industry Piracy Summit on December 11, 2008, with representatives from more than 50 industry associations, insurers, shipping companies, and labor to encourage them to further develop best management practices to combat piracy and to implement these strategies. Representatives from government included the Department of State, the Coast Guard, U.S. Transportation Command, Office of Naval Intelligence and Military Sealift Command.

In late December, MARAD joined the Department of State for discussions in London between representatives of European Union navies and maritime trade associations. The purpose of these discussions was to further develop and implement best management practices and to improve communication between maritime companies and military forces in the Gulf of Aden region. MARAD continues to meet with industry to finalize best management practices and share industry concerns with government agencies.

In early 2009, MARAD intensified its efforts in the fight against piracy to further improve coordination between industry and the various navies participating in the Gulf of Aden, to provide voluntary assessments of security on U.S. vessels, and to further establish best management practices to prevent piracy and to bring industry's perspectives and ideas to the interagency. Additional industry meetings, U.N. meetings, meetings hosted by the Baltic International Maritime Council (BIMCO) and a counter-piracy meeting held in Dubai and hosted by the Maritime Liaison Office in Bahrain, have all pursued these objectives. Since maritime labor is uniquely vulnerable to pirate attacks, with mariners having been killed or held hostage as part of ransom demands, MARAD has included maritime labor in many of the discussions and meetings.

The Maritime Administration led the U.S. delegation of Working Group #3 at the meeting of the Contact Group on Piracy off the Coast of Somalia in March of 2009 and presented the international industry developed (and MARAD facilitated) "Best Management Practices" (BMPs) to counter piracy. MARAD also supported the dissemination of counter piracy guidance and supported better coordination between military and civilian operators in the region.

MARAD has further developed its electronic information system "MARVIEW" and contributed to the Maritime Safety and Security Information System (MSSIS) for the purposes of providing more efficient piracy related data. MARAD is providing U.S. flag projected schedules in the waters off Somalia to the National Maritime Intelligence Center (NMIC) and vessel tracking information on U.S. flag carriers to appropriate military authorities.

Given limited military resources available to fully protect commercial shipping in the waters off Somalia, there is an increasing focus on the issue of shipping companies hiring private armed security personnel to protect their vessels while transiting the waters off Somalia. There are many complicated factors which must be addressed before the industry, as a whole, can adopt this recommendation. These include the need to develop appropriate standards for armed security providers, compliance with port state restrictions on arms aboard merchant vessel entering many ports in the world, and consideration of potential escalation of violence due to the presence of arms onboard commercial vessels, issues of safety for the crew and vessel, rules on the use of force, design constraints of vessels to carry additional personnel, union contract issues, insurance and liability issues and many other related factors. We recognize that in appropriate circumstances, on certain vessels determined to be at high risk, properly screened and certified third-party security providers with firearms, operating in compliance with applicable coastal, port and flag state laws can be an effective deterrent to pirate attacks.

The Government is examining the options of recommending, or possibly directing U.S.-flagged vessels to use armed security teams while transiting near Somalia. Some U.S.-flagged owners and operators have used armed security teams while transiting near Somalia and have found it to be an effective anti-piracy tool.

Most recently, MARAD has engaged the marine insurance industry to determine the effects of the piracy situation on insurance rates and to determine the effects on insurance if vessels carry armed security personnel aboard. MARAD will continue to work with industry to determine whether and to what extent armed security might be used aboard commercial vessels in certain circumstances.

It is clear that combating international piracy is no small effort, evidenced by its long history. Much work has already taken place, but much remains to be done, before international piracy can be eliminated. Due to its unique and positive relationship with U.S.-flag and international vessel owners, MARAD has maintained a vital role in the development of U.S. anti-piracy policy. Additionally, through its training role, MARAD provides a valuable service to the commercial fleet.

Mr. Chairman, the Department of Transportation stands ready to assist in any way possible to address piracy and any other issue that threatens the national and economic security of the United States and our allies.

Thanks you again for holding this hearing today. I will be happy to answer any questions you might have.

Senator LAUTENBERG. Thank you. Thank you very much.

Admiral Salerno, we anxiously await your testimony because the challenges have been raised on all sides here.

**STATEMENT OF REAR ADMIRAL BRIAN M. SALERNO,
ASSISTANT COMMANDANT FOR MARINE SAFETY, SECURITY,
AND STEWARDSHIP, UNITED STATES COAST GUARD,
U.S. DEPARTMENT OF HOMELAND SECURITY**

Admiral SALERNO. Thank you, sir.

Good afternoon, Mr. Chairman, distinguished Members of the Committee. I appreciate the opportunity to appear before you to discuss maritime piracy and the Coast Guard's role in addressing this threat to freedom of the seas and to the safety of shipping and, most importantly, to the mariners themselves.

In response to the threat of piracy off the Horn of Africa, the U.S. Coast Guard has been working very closely with our Government and industry partners, with the International Maritime Organization, and through the international Contact Group on Piracy off the Coast of Somalia to strengthen protective measures for merchant ships and to develop international regimes for the prosecution of apprehended pirates.

We have also been involved operationally by providing forces to U.S. Central Command, which have, in turn, been assigned to unseen counterpiracy efforts.

Although many nations have provided naval forces to the region to counter the threat of piracy, it remains equally important for merchant vessels to take appropriate measures to reduce their vulnerability to attacks. To best identify realistic measures, particularly in light of evolving pirate tactics, the Coast Guard has been working closely with the domestic and the international maritime industry, leveraging longstanding relationships forged in our transportation, safety, and security roles.

As new security guidance is developed, the Coast Guard updates its requirements for U.S.-flag vessels to modify their vessel security plans, plans which are required by the Maritime Transportation Security Act. The mechanism by which we convey specific anti-piracy planning requirements is the Maritime Security Directive.

The most recent directive pertaining to anti-piracy measures was issued approximately one year ago. We are presently updating that directive with new information and anticipate releasing it in the very near future.

It is important to note that the MAERSK ALABAMA and the LIBERTY SUN each had self-protective procedures and plans in place. Their crews were prepared, and they took the appropriate actions. It exemplifies the type of pre-planning that we want all U.S. ships to undertake.

Internationally, the International Maritime Organization has been very active on this issue. As head of the U.S. delegation to IMO, the Coast Guard has been deeply involved with other flag

states and industry NGO's to revise anti-piracy guidance applicable to the international merchant fleet.

The Coast Guard has also actively participated in IMO-sponsored regional initiatives to improve international governance, including the development of the Djibouti code for regional cooperation. We have assisted the State Department in the development of bilateral agreement with Kenya for the prosecution of apprehended pirates, and we have been heavily engaged in the Contact Group on Piracy off the Coast of Somalia.

In this latter effort, we co-led with the U.S. Maritime Administration a working group focused specifically on the industry's self-protection measures. Many of the details were just relayed by Under Secretary Kienitz.

When piracy events do occur, swift communication among involved U.S. Government agencies is extremely important. The mechanism for doing this is the Maritime Operational Threat Response protocol, or MOTR. MOTR has been used in over 600 cases since it was first established in 2005. However, the recent MAERSK ALABAMA and LIBERTY SUN cases were the first ones related to piracy.

Post-incident debriefs with the interagency indicate the process worked extremely well. It ensured complete coordination among multiple agencies having direct responsibilities for different aspects of the Government's response.

As mentioned earlier, the Coast Guard has forces in the region under the operational control of Central Command. Coast Guard law enforcement detachments have been specifically assigned to Combined Task Force 151, where they augment U.S. Navy vessel-boarding teams. These teams have been directly involved in the apprehension of pirates in several recent cases.

Our experience in law enforcement boardings—in particular, collecting evidence, providing witness statements, and handling suspects—has been an asset to CENTCOM. Coast Guard Activities Europe, a parent command located in Rotterdam, is responsible for the safety and security compliance of U.S.-flag vessels operating in Europe, the Middle East, and Africa.

Marine inspectors and investigators from this unit routinely interact with vessels operating in the region. This extends to performing immediate post incident interviews with the crews.

In closing, I would like to assure you that the Coast Guard is committed to fulfilling its statutory responsibilities for the safety of U.S. merchant vessels and crews.

Thank you for the opportunity to be here. I look forward to your questions.

[The prepared statement of Admiral Salerno follows:]

PREPARED STATEMENT OF REAR ADMIRAL BRIAN M. SALERNO, ASSISTANT COMMANDANT FOR MARINE SAFETY, SECURITY, AND STEWARDSHIP, UNITED STATES COAST GUARD, U.S. DEPARTMENT OF HOMELAND SECURITY

Good afternoon, Mr. Chairman and distinguished Members of the Committee. It is a pleasure to appear before you today to discuss piracy on the high seas.

Counter-piracy operations are primarily a maritime law enforcement activity that the Coast Guard is trained and equipped to support. We are the competent authority for the U.S. Government on more than 30 bilateral agreements with foreign partners. These agreements underpin a wide range of Coast Guard operations including

counter-drug, migrant interdiction, fisheries enforcement, and Proliferation Security Initiative missions. The Coast Guard understands the domestic and international legal frameworks and the associated boarding and enforcement requirements necessary to ensure the successful negotiation and implementation of agreements to facilitate counter-piracy operations on the water and the delivery of legal consequences to the pirates ashore. The Coast Guard's international training teams and deployable law enforcement detachments offer tailored maritime law enforcement training that can be easily integrated in regional capacity building initiatives, and which is tied directly to at-sea operations. Domestically the Coast Guard works with and regulates the U.S. merchant fleet to reduce its vulnerability to acts of piracy.

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

Beyond disrupting shipping activities, these threats come at a great economic and human cost. In 2008 there were 293 incidents of piracy against ships worldwide—an increase of 11 percent from the previous year. As of mid-April, 16 ships and almost 200 mariners were being held captive by pirates in the Horn of Africa region where piratical attacks have tripled in recent years. As piratical activities increase, so do insurance costs for vessels transiting in high risk areas. The alternatives, however, are not inexpensive either. According to Lloyd's List, ships that elect to transit around the Cape of Good Hope to avoid piracy in the Horn of Africa will incur an additional \$250,000 in fuel costs per trip and an additional seven to 10 days of transit time. While these expenses are high, they may become sufficiently attractive to shipping companies to justify as the cost of doing business.

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

In addition to developing tactical plans to deter and respond to piracy, the Coast Guard uses its statutory authorities to address the piracy threat. This involves a two pronged approach that relies on both domestic and international law. Domestically, the Maritime Transportation Security Act of 2002 provides the legal authority for the Coast Guard to regulate safety and security of cargo, ships, and most importantly seafarers. Under this authority, the Coast Guard developed regulations that require U.S. ship owners and operators to assess and plan for a wide range of security threats, including threats of piracy. This plan, known as a Vessel Security Plan, is received and approved by the Coast Guard.

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

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

In addition to being the subject of domestic legal regimes, piracy is a crime of universal jurisdiction under conventional and customary international law. Accordingly, every nation has the legal authority to establish jurisdiction and punish the offenders, regardless of nationality of the perpetrator or the victims, or of the vessels in-

involved.¹ This has been a basic tenet of customary international law for centuries, and is also enshrined in treaties such as the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on Law of the Sea. United Nations Security Council Resolutions 1846 and 1851, issued in December 2008, have provided Chapter VII authorities to certain states and international organizations, for which advance notification has been provided by the Somalia Transitional Federal Government to the U.N. Secretary-General, to enter Somali waters and territory to repress piracy.

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

Of course, legal authority alone does not ensure success. Victim states must have the political will to prosecute. Furthermore, combating the threat of piracy requires well-coordinated interagency and international use of the lawful authority in operations that account for the unique problems presented by the logistics and geography of the region, as well as the vast expanse of ocean on which pirate attacks have taken place. The coordinated application of legal authorities must also address the complex challenges of evidence collection and potential prosecutions under differing legal regimes, and the dangers to innocent seafarers and hostages inherent in any response actions intended to wrest control of a victim ship from pirates.

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

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

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

The Coast Guard was instrumental in facilitating broad international support for using the SUA Convention as a mechanism for effective consequence delivery. Under international law, an act of piracy is defined as a criminal act of violence, detention, or depredation committed for private ends by the crew or the passengers of a private ship in or over international waters against another ship or persons and property on board. The SUA Convention applies more broadly to acts of violence against ships regardless of the motive of the actor, but covers acts of piracy. It is

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

designed to ensure appropriate action is taken against persons committing unlawful acts against ships, including, the seizure of ships by force; acts of violence against persons onboard ships; and the placing of devices on board a ship which are likely to destroy or damage it. Most importantly, though, the SUA Convention establishes a framework whereby masters of ships may deliver suspected offenders to a coastal State that is party to the SUA Convention. The coastal State is then obliged under the SUA Convention, with few exceptions, to accept custody and either extradite the suspected offender or submit the case to their competent authorities for the purpose of prosecution.

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

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

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

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

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

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

The second structure through which the Coast Guard is involved off Africa is through our office in Europe. Coast Guard Activities Europe is a 26 person unit located in Rotterdam, Netherlands. It is responsible for marine safety and security functions in Europe, the Middle East, and Africa. Marine Inspectors from this office

conduct incident investigations and inspect U.S.-flag merchant ships. Marine inspectors are critical in the event a U.S.-flag and Coast Guard-certificated vessel intends to implement hardening techniques that improve the vessels ability to mitigate pirate attacks. The Coast Guard must ensure that the security techniques do not impede safety of life at sea, interfere with the use or deployment of safety equipment, or otherwise impose a detriment to maritime safety. Additionally, Activities Europe provides International Port Security Liaison Officers who work with the U.S. Embassy, foreign government officials, and port representatives to share information and enhance port security.

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

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

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

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

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

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

During the recent MAERSK ALABAMA piracy case, the Coast Guard participated in interagency coordination via the Maritime Operational Threat Response (MOTR) process and was the lead agency responsible for industry outreach. The post inci-

dent debriefs with MAERSK and our MOTR partners indicate that the MOTR process worked very well.

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

In addition to co-chairing a working group, the Coast Guard has participated in plenary sessions of the Contact Group, and all of the Working Groups. Through this mechanism, we have worked in concert with the shipping industry to develop preventative measures that reduce their vulnerability to attack. There are numerous examples of these measures succeeding in thwarting piratical attacks in the Gulf of Aden and Horn of Africa region. While we are still examining the attacks on the U.S. vessels, MAERSK ALABAMA and LIBERTY SUN, I can tell you that the preventative measures they took before the events in accordance with their vessel security plans and industry best practices contributed greatly to a successful resolution in both cases.

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

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

Senator LAUTENBERG. Thank you very much, Admiral Salerno.

And now, Ms. Whelan, who is the Deputy Assistant Secretary of Defense for African Affairs. We look forward to your testimony.

**STATEMENT OF THERESA WHELAN, DEPUTY ASSISTANT
SECRETARY OF DEFENSE FOR AFRICAN AFFAIRS**

Ms. WHELAN. Thank you, Mr. Chairman and Members of the Committee.

I appreciate this opportunity to testify about the growing problem of piracy on the high seas. Reducing incidents of piracy is important both to the United States and to the international community. As a general matter, freedom of the seas is critical to our national security and international commerce, and it is also a core principle of international law, one that all nations have a stake in supporting.

Piracy endangers innocent mariners, disrupts commerce, and can cause severe economic damage to shipping companies and contribute to instability ashore. Recent pirate attacks in the Gulf of Aden and along Somalia's east coast have targeted U.S. and U.S.-supported ships transporting food aid and other humanitarian supplies to Somalia and other vulnerable societies, disrupting the flow of aid to those who need it most.

Recent incidents, including the dramatic rescue of Captain Phillips by the U.S. Navy, have increased public and international attention to piracy, and resolve has grown for finding durable solutions to this problem.

At the Department of Defense, we are working closely with other agencies and departments to develop comprehensive counterpiracy

strategies, and the United States is not alone in this effort. Already more than 28 other nations are conducting counterpiracy operations off the coast of Somalia.

From a Department of Defense perspective, our strategic goals with regard to Somalia piracy include deterrence, disruption, interdiction, and prosecution. Achieving these goals will be challenging for several reasons.

First, the geographic area affected is vast. The pirates operate in a total sea space of more than 1 million square nautical miles, making it difficult for naval or law enforcement ships and other assets to reach the scene of a pirate attack quickly enough to make a difference. In that vast expanse of ocean, tracking a few dozen low-tech pirate skiffs and intervening to stop attacks that can last only a few minutes is exceptionally difficult.

When they are not actively engaged in piracy, pirate vessels easily blend in with ordinary shipping. When they return to land, pirates become still more difficult to locate.

Second, there is no effective and reliable central governing authority or capacity in Somalia. Consequently, pirates can operate with impunity from coastal fishing villages as long as they have support of the local Somali clan leadership.

Third, even when pirates are captured, serious gaps remain in the international community's ability to prosecute them for their crimes and thus create an effective legal deterrent. Although all states may exercise jurisdiction over pirates as a matter of international law, some states still lack the appropriate domestic laws to prosecute pirates in their own courts when the act of piracy occurred on the high seas. Other states have appropriate domestic legal frameworks but lack the prosecutorial and judicial capacity to effectively hold pirates accountable.

These varied and complex challenges should make it clear that there will be no simple solution to the growing problem of piracy off the Somali coast. That said, a few statistics help keep the problem of piracy in perspective.

Each year, more than 33,000 vessels transit the Gulf of Aden, and in 2008, there were 122 attempted pirate attacks, of which only 42 were successful. In other words, pirates attack less than 0.5 percent of the shipping in the Gulf of Aden, and their attacks have succeeded only about a third of the time.

While it is important that we find effective ways to address the growing problem of piracy, with particular attention to preventing piracy from becoming a funding source for violent extremist groups, we need to ensure that effectively addressing piracy does not come at the expense of other ongoing critical defense commitments. We believe that this can be done.

Already we are taking effective steps to address the challenges outlined above. Through the creation of the Combined Task Force 151, which focuses exclusively on counterpiracy, we are actively seeking engagement from other states, and we are pleased that so many states are beginning to play a role in counterpiracy efforts.

Denmark, Singapore, South Korea, Turkey, and the United Kingdom have joined our efforts in CTF-151. Others have indicated they will do so as well. Canada, France, Germany, Greece, Italy, Japan, Malaysia, the Netherlands, the People's Republic of China,

the Russian Federation, Saudi Arabia, Yemen, and others have all contributed forces, either individually or through NATO or the European Union.

Most important in the short run, we are actively working with merchant shipping lines to help ensure that all vessels take appropriate measures to protect themselves from pirates. Here again, some statistics are instructive.

When we look at patterns of pirate attacks in the region, we see that of the unsuccessful pirate attacks, a full 78 percent were thwarted simply by effective action taken by the crews of the ships under attack. Only in 22 percent of unsuccessful attacks were military or law enforcement interventions related to the positive outcome.

This highlights the fact that the single most-effective short-term response to piracy will be working with merchant shipping lines to ensure that vessels in the region take appropriate security measures themselves.

In so vast an expanse of ocean and with so many other critical national security priorities, it is not possible for our military to prevent or intervene in each and every pirate attack. But with the appropriate onboard security measures in place, the vast majority of pirate attacks can be thwarted without any need for military intervention.

We will continue to be prepared to respond as appropriate when U.S.-flag vessels and U.S. citizens are involved, but the context in which our actions will be most effective exist when private partners take proactive measures themselves.

Most pirates are opportunistic criminals. When possible, they will focus on the easy target and avoid the difficult targets. Our main task is to assist commercial carriers in making their ships hard targets.

Thank you for offering me this opportunity to testify, and I welcome your questions or comments.

[The prepared statement of Ms. Whelan follows:]

PREPARED STATEMENT OF THERESA WHELAN, DEPUTY ASSISTANT SECRETARY OF
DEFENSE FOR AFRICAN AFFAIRS

Mr. Chairman and Members of the Committee, we appreciate this opportunity to testify about the growing problem of piracy on the high seas.

Piracy is a growing problem, but not a new one. Since humans first began to travel and move valuables by ship, there have been pirates. Julius Caesar himself was seized by pirates in 75 B.C., and released after ransom was paid. Piracy on the high seas was also a major preoccupation of the early American republic; by 1800, the young United States was paying about 20 percent of total Federal revenues to the Barbary States, as ransom and tribute.

International efforts to combat piracy also have an ancient pedigree. Since Roman times, pirates have been deemed *hostes humani generis*: the enemies of all humankind. As a matter of customary international law, piracy is the classic crime of "universal jurisdiction," meaning that every state has the right to capture and prosecute piracy on the high seas, even if its own ships or nationals are not involved.

In the modern era, piracy has become a relatively unusual crime, dropping to only 100 to 200 reported incidents annually during the 1970s and 1980s. In the 1990s, however, piracy began to increase, and we are now seeing a dramatic and sudden upswing in reported pirate attacks worldwide, as well as geographic shifts in areas of high pirate activity. As recently as 2007, the Gulf of Guinea was the most active part of the world for piracy, but pirate activity is increasingly now found along the Somali coast. In the first quarter of 2009, 102 incidents of piracy were reported to the International Maritime Bureau, nearly double the number of incidents reported

during the same period in 2008. And nearly all of that increase appears to stem from increased pirate activity off the coast of Somalia.

Reducing incidents of piracy is important both to the United States and to the international community. As a general matter, freedom of the seas is critical to our national security and international commerce, and it is also a core principle of international law, one that all nations have a stake in supporting. Piracy endangers innocent mariners, disrupts commerce, can cause severe economic damage to shipping companies and contribute to instability ashore. Recent pirate attacks in the Gulf of Aden and along Somalia's East Coast have targeted U.S. and U.S.-supported ships transporting food aid and other humanitarian supplies to Somalia and other vulnerable societies, disrupting the flow of aid to those who need it most.

Recent incidents—including the dramatic rescue of the captain of the MAERSK ALABAMA by the U.S. Navy—have increased public and international attention to piracy, and resolve has grown for finding durable solutions to this problem. At the Department of Defense, we are working closely with other Agencies and Departments to develop comprehensive counter-piracy strategies. And the United States is not alone in this effort: already, more than 28 other nations are conducting counter-piracy operations off Somalia, as are international organizations such as NATO and the EU.

We are seeing concrete results from our efforts: since August 2008, international efforts have led to the destruction or confiscation of 36 pirate vessels and the confiscation of numerous weapons, including small arms and RPGs. The international community has also turned 146 pirates over to law enforcement officials in various countries for prosecution.

From a Department of Defense perspective, our strategic goals with regard to Somali piracy include deterrence, disruption/interdiction, and prosecution.

Achieving these goals will be challenging for several reasons. First, the root causes of Somali piracy lie in the poverty and instability that continue to plague that troubled country, and addressing these root causes will be a lengthy, complicated and difficult process. At the moment, pirates can operate with impunity from coastal fishing villages as long as they have the support of the local Somali clan leadership. Though regional governments in Somaliland and Puntland have demonstrated some capacity to provide services, including law enforcement services, in most respects Somalia remains ungoverned, allowing pirates to use coastal villages as safe havens. Pirates also operate in a cash economy, making their profits difficult to track and interdict.

Conflict, instability and drought have caused a humanitarian crisis of long duration in Somalia, where an estimated 3.2 million people now rely on international food assistance to survive. In an environment where legitimate economic opportunities are scarce, piracy and other forms of crime can flourish. In the long run, effectively combating piracy off the Somali coast will be linked to our ability to help the Somalis themselves increase government capacity and find appropriate ways to meet the population's basic needs.

Second, the geographic area affected is vast: Somali pirates operate in a total sea space of more than a million square nautical miles, making it difficult for naval or law enforcement ships and other assets to reach the scene of a pirate attack quickly enough to make a difference. In that vast expanse of ocean, tracking a few dozen low-tech pirate skiffs and intervening to stop attacks that can last only a few minutes is exceptionally difficult. When they are not actively engaged in piracy, pirate vessels easily blend in with ordinary shipping. When they return to land, pirates become still more difficult to locate.

Third, even when pirates are captured, serious gaps remain in the international community's ability to prosecute them for their crimes and thus create an effective legal deterrent. Although all states may exercise jurisdiction over pirates as a matter of international law, some states still lack the appropriate domestic laws to prosecute pirates. Other states have appropriate domestic legal frameworks, but lack the prosecutorial and judicial capacity to effectively hold pirates accountable, or lack the political will required.

We appreciate Kenya's role in prosecuting suspected pirates captured the region. But Kenya should not bear the burden for the international community. Other affected nations must step up and prosecute pirates in their domestic courts as well, just as the United States has when our citizens were the victims of an attack.

Finally, although the merchant shipping industry has made significant improvements in on-ship security measures over the last few months, far more is needed. Ships from all over the world transit the Gulf of Aden and use the shipping lanes along the east coast of Somalia, but many assume unrealistically that there is no need for more robust shipboard security measures, because military forces will always be present to intervene if pirates attack. As a result, many in the industry

have so far been unwilling to invest in the basic security measures that would render them less vulnerable to attack.

These varied and complex challenges should make it clear that there will be no simple solution to the growing problem of piracy off the Somali coast. That said, a few statistics help keep the problem of Somali piracy in perspective. Each year, more than 33,000 vessels transit the Gulf of Aden, and in 2008, there were 122 attempted pirate attacks, of which only 42 were successful. In other words: pirates attack less than one half of one percent of shipping in the Gulf of Aden, and their attacks have succeeded only about a third of the time.

That does not mean that we can ignore piracy in the region, of course. To safeguard the principles of maritime freedom and the lives of innocent mariners, the U.S. Government is taking action to address the problem of piracy—particularly at a moment when attacks have been increasing, both in numbers and in ambition.

At the moment, Somali piracy appears to be motivated solely by money, not by ideology, and we do not see meaningful links between pirates and organized violent extremist groups, inside or outside Somalia. Nonetheless, we know that in other contexts, narcotics production and other forms of criminal activity are sometimes “taxed” by extremist groups, as in Afghanistan. We need to ensure that piracy does not evolve into a funding source for violent extremist organizations.

The relatively low incidence of pirate attacks has implications for how we allocate military assets. As the members of this Committee know, the Department of Defense has urgent priorities around the globe. We face two ongoing wars in Iraq and Afghanistan, and we continue multi-faceted overseas contingency operations against violent extremism. In the Horn of Africa, our existing and planned counterterrorism activities remain vital to that global struggle against extremism. Many of resources most in demand for counter-piracy activities, such as intelligence, surveillance and reconnaissance assets, are the same assets that are urgently required elsewhere.

While it is important that we find effective ways to address the growing problem of piracy—with particular attention to preventing piracy from becoming a funding source for violent extremist groups—we need to ensure that effectively addressing piracy does not come at the expense of other ongoing, critical military commitments.

We believe that this can be done. Already, we are taking effective steps to address the four challenges outlined above. Through the creation of Combined Task Force 151 (CTF 151), which focuses exclusively on counter-piracy, we are actively seeking engagement from other states, and we are pleased that so many states are beginning to play a role in joint counter-piracy efforts. Denmark, Singapore, South Korea, Turkey and the United Kingdom have joined our efforts; others have indicated that they will do so as well. In fact, Turkey has taken command over CTF 151 aboard USS GETTYSBURG. Canada, France, Germany, Greece, Italy, Japan, Malaysia, Netherlands, the People’s Republic of China, the Russian Federation, Saudi Arabia, Yemen and others have all contributed forces—either individually, or through NATO or the European Union.

Although not without challenges, coordination between allies and the merchant ships that transit the area has been impressive, with outstanding communications between industry and the EU’s Maritime Security Center for the Horn of Africa, which is based in Northwood, United Kingdom. The EU’s Maritime Security Center plays a key role in relaying critical information from merchant ships to operational forces. Moreover, the international array of forces and their ability to work together has been impressive, as demonstrated by the Combined Maritime Forces monthly Shared Awareness and Deconfliction (SHADE) meetings in Bahrain. These involve over 20 nations and ensure that our international responses will be as effective as possible.

Most important in the short run, we are actively working with merchant shipping lines to help ensure that all vessels take appropriate measures to protect themselves from pirates. Here again, some statistics are instructive: when we look at patterns in pirate attacks in the region, we see that of the *unsuccessful* pirate attacks, a full 78 percent were thwarted simply by effective action taken by the crews of the ships under attack. Only in 22 percent of unsuccessful attacks were military or law enforcement interventions related to the positive outcome.

This highlights the fact that the single most effective short-term response to piracy will be working with merchant shipping lines to ensure that vessels in the region take appropriate security measures themselves. In so vast an expanse of ocean, and with so many other critical national security priorities, it is not possible for our military to prevent or intervene in each and every pirate attack. But with appropriate on-board security measures in place, the vast majority of pirate attacks can be thwarted without any need for military intervention.

Effective merchant ship security includes both passive and active defense measures, and we are committed to working with commercial carriers who operate in the

region to undertake vulnerability assessments and disseminate best practices. Effective passive security measures can include developing a comprehensive security plan; including risk assessment; the removal of external ladders; posting lookouts at all times; limiting lighting; rigging barriers (such as barbed wire and fencing) in low freeboard areas; varying routes taken and avoiding high-risk areas when possible; securing hatches to limit access to crew and control spaces; creating “safe rooms” and maintaining good communications with maritime security authorities.

Active defense measures can range from rigging fire hoses to repel boarders to maintaining professional civilian armed security teams on board. While there is some concern within the shipping industry about armed security teams, we are working with industry representatives in conjunction with other agencies to explore how contracted security teams can be a useful and viable option for highly vulnerable ships, such as low-freeboard and slow vessels.

As part of this effort, it may be useful to develop incentives that will help encourage merchant ships to invest in security measures. These could range from tax credits to reduced insurance rates for ships with enhanced security. Ultimately, it may be appropriate to mandate some of these actions, beginning with passive self-defense. Regardless, we will continue to develop partnerships within the shipping industry to make sure that information on best practices is disseminated widely and that vessels have the information they need to adequately assess and mitigate risk.

We will continue to be prepared to respond as appropriate when U.S.-flag vessels and U.S. citizens are involved. But this is a context in which our actions will be most effective when private partners take proactive measures themselves. Most pirates are opportunistic criminals: whenever possible, they will focus on the easy targets, and avoid the difficult targets. Our main task is to assist commercial carriers in making their ships hard targets.

We will also continue to focus on longer-term efforts to prevent and punish piracy in the region. We will continue to work with allies and regional states to develop their capacity to patrol the seas and protect their own shipping, and we will encourage them to fill any gaps in their legislative frameworks, so that they can prosecute pirates in their own domestic systems. We will also work with regional states to increase prosecutorial and judicial capacity to try pirates, since effective and fair prosecutions are part of creating a long-term deterrent. And we will work when possible with local authorities in Somalia to address the on-shore components of piracy, tracking the on shore-investors and safe-havens that enable piracy on the high seas. Finally, the United States continues to work with the international community to better address the root causes of piracy that arise out of poverty and instability in Somalia.

Many of these efforts dovetail with our existing development and counterterrorism goals in the region. While none of them will be quick fixes, over the long term, increasing local government and law enforcement capacity and fostering sustainable economic development are all part of reducing the threat of violent extremism, as well as reducing the threat of piracy.

Mr. Chairman and Members of the Committee, we recognize that the problem of piracy is not just a problem of Somalia. In recent years, pirate activity has also occurred in the Caribbean, the South China Sea, and other places around the globe. Although the complete elimination of piracy on the high seas would be as difficult to achieve as the complete elimination of all robberies and assaults, we believe that we can, and must, reduce the likelihood of successful pirate attacks through deterrence, disruption, interdiction and punishment. This will require coordinated international action and a variety of innovative public-private partnership, but we are confident that progress can be made. Congress can help facilitate our efforts by encouraging and incentivizing the commercial shipping industry and their insurers to take appropriate passive and active measures to protect their ships.

Thank you for offering us this opportunity to testify, and we welcome your questions and comments.

Senator LAUTENBERG. Thank you very much, Ms. Whelan.

To my colleagues, what I propose to do is to give each member 6 to 7 minutes, including any part of that that they choose to do for an opening statement.

And what I will do is I will start off with some questions and then go to Senator Thune, who is the Ranking Member, and then Mr. Isakson and Mr. Udall.

Ms. Whelan, we heard your comments, listened with interest, and when you say only a third of the time were pirates successful

in some of these attacks, that is not very reassuring, I must tell you. And what I am trying to figure out is why the timidity to these acts of theft and brutality?

I mean, when they are shooting those guns, they are not saying, "Oh, these are only meant for the deck or for the bridge." They are out to kill people. That is what the threat is. And it is really hard to understand.

We know there was an incident with the Portuguese navy when they prevented takeover of one of their ships, captured all of the pirates, and took them home to Somalia. What does that say? It says, "All right, we paid the ransom. Now we gave you your lives back."

It is outrageous. They wouldn't have done the same, and we commend the courage and the ability of all the merchant mariners and all, particularly singling out those who avoided a takeover or responded as did the crew, the captain, and the engineer from the MAERSK ALABAMA.

Now, Ms. Whelan, recent comments by General Petraeus seem to suggest that it is outside the U.S. military's responsibility to protect our U.S.-flag vessels. Now is that the position of the Department of Defense? Or does the U.S. military have a different obligation?

Is an American-flagged ship something that resembles a piece of American territory, a sovereign condition, or do we say, as was suggested in your testimony—and I don't mean to add any sarcasm to it—but you said that we respond as it is appropriate to do so. That is not very comforting.

And so, what is the position of the Department of Defense? Don't they consider that an extension of American and I will use the term "territory" is to be protected? We have sent in crews all over the world. Marine helicopters have landed in foreign lands, picked people up off of the roofs of the embassy, done all kinds of things to protect our citizens. Why here are we saying that we are like an alarm company, and you sound the alarm, we will get there as soon as we possibly can?

I don't want to extend your remarks, but please give me your view of what it is that doesn't permit our naval forces to intervene or other forces, Air Force perhaps? I don't know.

Ms. WHELAN. Thank you for the question, Senator.

Of course, the United States Navy certainly has its Title 10 mission to advance U.S. national security interests by protecting and advancing and promoting freedom of the seas and free sea lines of communication. And certainly, under international law, we have the right to provide protection and use of proportionate force whenever necessary in order to protect U.S. citizens, U.S.-flag vessels, U.S. aircraft if they come under attack.

And as demonstrated in the case of the MAERSK ALABAMA, we moved quickly and expeditiously to do so as soon as there was notification that the MAERSK ALABAMA was under attack. So most definitely, we do, when we are able to do so, move on the Defense Department side to protect U.S.-flag vessels.

There are some legal issues with regard to whether or not a vessel is technically sovereign immune. Commercial U.S.-flag vessels

that are not carrying U.S. Government cargo are not sovereign immune.

Senator LAUTENBERG. Ms. Whelan, when is the Navy unable to provide that support? You say “when able.” That qualifier is very disturbing, I have got to tell you.

Ms. WHELAN. What I mean by “when able,” sir, is simply the physics of being in the right place at the right time in order to address an attack, whether the attack is in progress or at whatever stage. The issue with the MAERSK ALABAMA, we fortunately had our vessels in at least reasonable proximity so they could react quickly, although, unfortunately, they were not close enough to be able to react upon notification of the attack.

Normally, we—if notified of an attack, we can deploy helicopters and other mechanisms to improve the speed of our response. But there is a physics—

Senator LAUTENBERG. I hear you. And with all due respect, the comments by General Petraeus seem to suggest that that is not the Navy’s responsibility, talk about being short of resources. I think that letting our crews know that they are going to be protected by all of the might that the United States can bring to the situation.

And to suggest that—and by the way, the largest percentage of ships in those waters is material being sent by the Government to relieve hunger and suffering in these areas. So we say, “OK, we will pay you to carry this. But listen, if it gets taken along the way, that is your risk.”

I am going to defer my questions now for my colleague, Senator Udall from New Mexico.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Mr. Chairman.

And I very much appreciate you, Mr. Chairman, having this hearing. I would like to put my full statement in the record and then ask a few questions and make a few comments here.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

Thank you, Mr. Chairman, for calling this hearing.

I welcome the opportunity to hear testimony from two members from the crew of the M/V MAERSK ALABAMA, which suffered a Somali pirate attack last month.

I am especially pleased that Captain Phillips is able to testify to this committee today. His presence may not have been possible without the highly skilled Navy Seals and sailors of the USS BAINBRIDGE who participated in his dramatic rescue off the coast of Somalia.

I would like to state my appreciation for America’s merchant mariners who are not often recognized for the work they do. The merchant marine is important to not only our economy but also our national defense. Although Captain Phillips was rescued, hundreds of those merchant seaman taken hostage in pirate attacks are still being help in captivity.

I also want to express my deep gratitude for the men and women of the U.S. Navy. In particular, I want to thank the 2,400 sailors from New Mexico, one of whom currently serves on the USS BAINBRIDGE.

Thank you.

Senator UDALL. First, let me say to Captain Phillips, I thank the entire panel here today for your testimony. But I think, Captain Phillips, one of the things your capture and rescue has shown to

us is obviously your courage. And it has also shown us the courage and bravery of our naval forces and the USS BAINBRIDGE and the Navy SEALs that were involved in that.

And so, that is something that I think we should think about and contemplate and understand here. I am very proud that there is one New Mexican serving on the USS BAINBRIDGE, and we have, I think, 2,400 New Mexicans serving in the United States Navy.

So the issue I wanted to focus on with you has to do with what is—and it goes to what the Chairman is asking. What is the solution here? How do we get our ships protected?

And you mention in your testimony, you probably discussed it a little bit earlier, the idea that some have advocated all you have to do is arm the crew. And you have talked about the corresponding responsibilities of a captain when you have an armed crew and the tradeoffs there and the tension that goes on.

Could you talk a little further about what you think the solution really is in terms of this kind of shipping and whether you think arming the crew is the solution to the problem?

Captain PHILLIPS. Senator Udall, as I said, it is going to take a comprehensive, multifaceted plan to combat this. There is no silver bullet. There is no one way that will solve it. We talked about the international response that is required.

I believe arming the crew, and by this, I think there is a misnomer here. This isn't the "Wild West." Crews aren't walking around with holsters and guns in their pockets. The guns are under lock and key by the captain. He is the only one who has access to it. It is a misnomer that you can't bring certain weapons into these countries. I have been to these countries. I have done it.

But just arming the crew is not—that is just putting the onus on the crew. I believe the primary step would be military and/or civilian if they are properly trained, as the military are, as chief engineer Perry has mentioned. If they are properly trained, they are the primary preventer.

Armed crew would be backing them up, and by armed crew, I am meaning a limited number of trained crew and assets, which I don't want to go into, not to divulge anything.

The third thing would be more training and hardening of the ship. I am a firm believer in training, and I think we can do more on the ship side. But to put all the onus onto the ship and its crew will not solve it. We have to get the nonlethal capabilities, an LRAD, Long Range Acoustic Device. We have to have—we talked about other preventive measures, fire hoses. MAERSK ALABAMA had fire hoses. They go to where they aren't there.

We talked about speed. I think the parameters, you can throw them out the window. The MAERSK ALABAMA was going 18.3 knots when we were boarded. We had a freeboard very much close to the LIBERTY SUN. I was 3 miles from the LIBERTY SUN when the Navy got there, and our freeboard was probably around 22 to 25 foot, in that area.

So you can throw that parameter out because they had a wonderful, brand-new ladder, which I questioned them frequently about where did they get it? And if that is the evolution, a brand-new ladder doesn't cost as much here in Sears as it does to the Somalis.

And they are evolving, as one of the panel members said. They are now doing a night or what I call a “stealth attack,” which is our most vulnerable. And they have started that for the first time in the last few days.

So it is evolving. There is no silver bullet. Each of these steps must be taken. And in unison and in concert, that will help—not eliminate—that will help prevent these, and it will be a pre-incident and not a post-incident reply.

And I think Chief Engineer Perry or Captain Staples could further some of those items, but that is what I believe. There is not one answer. It is a comprehensive, faceted—multifaceted plan that will vastly, much lower than the 0.5 percent or so we have heard today, will make it close to zero, which I think we all want.

Senator UDALL. Captain Phillips, what would you say to other captains that are operating in the Horn of Africa and in the particular area today about what they should be doing, what precautions they should be taking? What recommendations do you make in that respect?

I ask this question thinking of, you know, we saw your rescue. But we also know today that there are 300 people that are captive, that are in a situation that you could have very well been in, and we don’t know when they are going to be freed. It is hard to tell.

And I am just wondering if you would, if there is any preventive advice you could give to other captains or what you would have to say to them?

Captain PHILLIPS. I would never presume to tell a captain anything, to be honest.

[Laughter.]

Senator UDALL. I thought you might say that. But please—

Captain PHILLIPS. But I will say—and Chief Engineer Perry and Captain Staples can say their word. But I would say the things that we have learned and many of the things we put in place, as Chief Engineer Perry can say, were done during our security drills, where we listened to what mariners thought. From the cook to the third mate to the third engineer to the QMED, we listened to everybody’s ideas when we did our drills and critiqued our drills.

And that is where a lot of the things that we came up with in our incident actually were derived from. It is the imagination, the capability as the individuality of the seamen. We actually came up on these ideas as a critique of our security drills.

Senator UDALL. Thank you very much.

And thank you, Mr. Chairman.

Senator LAUTENBERG. We establish one thing in these moments here is that you don’t have to be in a coastal State in order to be concerned about the well being of our sailors and our vessels and our reach to do the right thing.

With that, Senator Thune, also not from a seacoast.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. We are a long way from the coast, Mr. Chairman, but I appreciate you holding the hearing today.

And I want to thank the panel for your input and your insights.

This is not a new problem, of course. But I think the recent attack has really captured the Nation's attention and focus and sort of underscored the increasing violence and the range of Somali piracy that is operating off the Horn of Africa. And again, fortunately, thanks to the courageous efforts of Captain Phillips and his crew and the heroic actions of the U.S. Navy, the merchant mariners were returned safely to their families.

But piracy does continue to threaten the vital shipping interests and the freedoms of navigation for all nations, and the numbers have already been alluded to here today. There are 300 non-U.S. crewmembers on 18 hijacked vessels in Somali captivity currently, and the range of the pirates now expanding with the attacks on merchant ships taking place over more than 2.2 million square miles.

I think we all agree that the absence of stable government in Somalia remains the single greatest challenge to regional security, but that is probably not likely to change in the near term. And so, I think it is appropriate for us to consider what steps we can take to protect against the immediate threat of piracy, while we work with the international community to try and resolve the larger humanitarian issues in the region.

I do appreciate very much the testimony of our witnesses today, and I hope that you will continue to give us your best suggestions about how we can address the situation and further protect U.S. shipping interests.

I would like to pose a couple of questions, if I could, and start with Admiral Salerno. The Coast Guard establishes and enforces requirements for vessel security plans under the Maritime Transportation Security Act and the International Ship and Port Facility Security Code. Do these security plans include anti-piracy measures, and how frequently are those plans updated or adjusted?

Admiral SALERNO. Senator, both the MTSA and ISPS requirements both include vessel security plans. They do not specifically talk about piracy, but the language in each of them is written broadly enough so that piracy can be included as a security concern.

The way we have structured that under MTSA, the plans are on a regular refresh rate of every 5 years. However, when specific security threats are identified, the Maritime Security Directive can be issued, which would direct the updating of plans to address the specific threats.

That is exactly what we are doing in the case of piracy so that with the measures that have been identified, the best practices, some maybe unique U.S. practices would be conveyed to the U.S.-flag fleet. They would be directed to update their security plans.

What happens then is each company would assess their own ships' vulnerabilities, apply the appropriate measures, work it into their plans, train their crews, conduct drills, as was described by Captain Phillips routinely occurred on his ship. And that way, when a ship is entering a high-threat area, those measures are required to be put in place.

That is the basic process. It is something that you don't just do it once and you are done because pirate tactics do evolve. You have to continually watch this, update the Maritime Security Directives

as needed, and keep in constant dialogue with the industry, the people who are operating in the area, as well as naval forces and other government entities that have a stake in this.

Senator THUNE. So, typically, it would be every 5 years, but in circumstances like these, there is going to be, again, a continual statement?

Admiral SALERNO. That is correct, sir. That is right. It is done more frequently as needed.

Senator THUNE. The Coast Guard has deployed at least one law enforcement detachment to the U.S. task force currently patrolling off of the Horn of Africa, Combined Task Force 151. I am interested, and maybe you could explain to the Committee the role of the Coast Guard? How many, for example, boardings has it conducted? Does the Coast Guard law enforcement detachment function primarily as a reactionary force or as a protective force? And do you see the use of these teams or other military teams most effective as boarding teams, or could they be better used as protective teams onboard U.S. merchant vessels?

Admiral SALERNO. Senator, the Coast Guard is a force provider to geographic combatant commanders. So when our U.S. Coast Guard capabilities are in theater, they work for CENTCOM or, more specifically, NAVCENT. So we actually have two LEDETs working for NAVCENT. We have half a dozen patrol boats in the Northern Arabian Gulf and even have a high-endurance cutter currently assigned in theater.

Their tasking for the mission assignments actually come from the combatant commander, not directly from the Coast Guard. They are basically on loan. And the reason they are over there is because they have certain capabilities which are useful to the combatant commander.

In this case, the law enforcement detachments are located on U.S. Navy vessels, and they integrate with U.S. Navy VBSS teams. That is "visit, board, search, and seizure" teams. So when the boardings are conducted, it is a combined team of Navy and Coast Guard personnel.

So far, Coast Guard personnel have been involved in four interdictions of pirates and have apprehended I believe it is 28 pirates, which are pending disposition. I think some have actually been turned over to Kenya.

The capabilities they provide are really drawn from their law enforcement expertise. This is what we do domestically in the drug trade in the Caribbean and the Eastern Pacific. That is what they are trained to do, to apprehend pirates, make sure that they are accorded their rights, protect evidence and chain of custody, and make sure that we have a good, solid package that can be used in prosecution. So that is the value that they offer, sir.

Senator THUNE. Do you see that role as protective in nature, or is it more reactionary?

Admiral SALERNO. Well, the way they are being used now, it could be either. Predominantly, they are responding to—when they are onboard the Navy vessel and the Navy vessel is responding to an incident or a potential threat, that is when they are being inserted. And boarding either pirate skiffs or I don't know if they

boarded a mother ship, but that is basically the kind of activity that they would be used for.

They are not there to be used as a special—like a special forces team that would go and try to retake a ship that has been overcome by pirates. That would be left to other capabilities within the U.S. Government.

Senator THUNE. Mr. Shapiro, beyond ransom demands, the Congressional Research Service reports that Lloyd's of London has designated the waters adjacent to the Horn of Africa a "war-risk zone."

Mr. SHAPIRO. That is correct, sir.

Senator THUNE. And as a result, subject to special insurance premiums that could cost shippers \$10,000 to \$20,000 more per ship through the area. To what extent have insurance and operating costs for the U.S. merchant fleet operating in the area increased as a result of the piracy threat?

Mr. SHAPIRO. Well, Senator, they have increased dramatically over the last few weeks. Obviously, since the MAERSK ALABAMA, the rates have increased.

The problem, though, is not just related to the Gulf of Aden. We are now talking about the entire Indian Ocean coast of Africa. This is expanding well beyond the original million miles that they were talking about to an area much bigger.

And I think one of the witnesses, if I can just relate that, talked about the difficulty of getting naval assets to respond in a timely fashion. But an embarked security team that was on each American vessel going through that area would protect the crew and would prevent, I believe, the hijackings and the attempting hijackings that are taking place.

There is also a discussion about diverting to avoid that area. The problem for our company is we are bringing—our destination is that area. We are bringing cargo into the danger pirate zone to be distributed to governments there to relieve famine. So we don't have the ability to re-route our ships to another discharge port because we are bringing it to the area where the food is required.

Insurance costs go up, but insurance is not—I think, from my perspective, I am not as concerned about the cost of insurance, the increase in the cost of insurance as I am the protection and safety of our crew. They are American citizens, and they are entitled to be protected.

And I believe that fundamental to the notion of sovereignty is the obligation of a sovereign to protect its shipping. And if they can't do it, if our military can't do it, then we need to have the statutory framework, the legal framework in which we can arm our vessels with either private security or arming the vessels for the crew.

Although, personally, I must tell you, we do not, as a company, believe that the crew should be armed. Maybe one or two people or a few people, a select group of the crew. The way to protect these vessels is to put an armed security team on.

Mr. Kienitz spoke about the Italian cruise ship. Well, the Italian cruise ship had an Israeli security team on, and the reason it had an Israeli security team on is it is not encumbered by United States law, which prohibits you from putting on an armed security team.

Senator THUNE. Just maybe one more question, Mr. Chairman, if it is OK? And I direct this to Captain Phillips.

You mentioned earlier in response to questions about having security teams that you can only have one captain of the ship, which I appreciate in terms of the chain of command.

You are the person with ultimate responsibility for the vessel and its crew. As you think about the whole issue and others, ships are going to be moving through that area. Other vessels are going to be moving through that area.

What other options are there—in terms of protecting U.S. mariner interest in that region?

Captain PHILLIPS. Well, as I said, I believe it is a comprehensive, multifaceted program you would have to do, and we have talked about many things here. There are other nonlethal assets that are out there, and that is why I encourage more people in the industry to come forward because they have ideas, too.

But there is no silver bullet here, and I can't stress that enough. It has to be to the limit of the danger that we can use certain forces and assets. And I think one thing here is usually before an incident, you know at a certain time that you are in that incident. There is no question.

There are fishermen out there. There are other boats out there doing legal things. But by actions that we take on, as any captain would take, you have identified the threat and know what the threat is. In our case, we knew it well over a mile what the threat was by certain things we did.

So that is why I would say the thing that is most important is the force protection team, and this force protection team could be two or three people. And I think they would stop an incident before it ever got to even a boarding situation.

They would have that capability and ability, and that would eradicate the notion of that you are actually shooting at people who are doing legal things. As I said, well at a mile, you will know. Day before we were taken, we were chased by three boats and pirates also, and we knew then what the incident was.

So well before they get in any kind of range, you know what the situation is ongoing and what is happening.

Senator THUNE. And do you subscribe to the same view that Mr. Shapiro expressed about arming the crew?

Captain PHILLIPS. I subscribe to a multifaceted regime of, first, force protection team, two or three people, talented and trained; arming the crew to a certain extent. And again, it is not crew walking around with guns in their pockets. It is the captain with a much like some of us have at home, a gun cabinet. He unlocks the key, and there are certain—it doesn't have to be a lot of arms.

I believe in deterrence. I am a firm believer in making a hard target. I thought we were a pretty hard target, and we weren't. I believe, as we have talked about, evolving. Now there are night-time or stealth activities going on.

So that is why I say there is no one silver bullet. There is no one answer. It has to be multifaceted to evolve with the danger, and the danger is out there. And I believe with some of the things we have talked about that it will not stop. I don't think anything will eradicate it, but it will prevent and lower the number of incidences.

Senator THUNE. Thank you.

I am sure you are getting weary of answering all of these questions. So thank you for your indulgence.

Thank you all very much.

Thanks, Mr. Chairman.

Senator LAUTENBERG. Thanks, Senator Thune.

Captain Phillips, we all admired the courage that you and your chief engineer showed, and the composure that you showed in this circumstance. Of course, we didn't feel it and we didn't know what was going on in your mind, but we know the stories that are now legendary about you when you were in the water and out of the water. And fortunately, the Navy applied its resources, and they did one incredible job.

Now you said that you were aware a couple of days, 3 days before, that this pirate activity was around. Did I understand what you just said?

Captain PHILLIPS. No. Earlier, what I had just said is the day before we had an incident with three boats, and it was a pirate situation, yes. But the activity had increased. I mean, I am inundated on the ship, as all captains in that area are, with report, many-paged report. And to be honest, I can't even read them all. There are so many reports about incidences, everything that is happening, reported some mother ships.

Senator LAUTENBERG. Do you dial 911?

Captain PHILLIPS. I wish we had 911. We talked about that at the other committee, and there is no direct call to the Navy. I basically had to call UKMTO, United Kingdom Maritime Transportation—

Senator LAUTENBERG. Good thing you paid your cell phone bill, huh?

Captain PHILLIPS. Well, the company paid that bill, yes.

[Laughter.]

Senator LAUTENBERG. Because I don't get it. I mean, we now know that there is all kinds of radar attachment to aircraft to tell them when they are getting too close on the ground, too close in the air and so forth. And I don't know whether that kind of basic equipment is available for ships to say, "Hey, these guys are getting too close, and we ought to take a second look."

But it is odd to me. We have air marshals—everybody knows it, there is no secret—who carry guns. They are welcome on an airplane. Heaven forbid they have to shoot in that airplane. The damage can be total. And nevertheless, we feel a compulsion as a country to say that when people are flying on American airlines that we want to protect them to the fullest extent possible.

And yet here, it seems that we kind of say, "OK, listen, when available"—and I don't trivialize the Navy's obligations. They are severe and distant and very tough assignments. But part of their mission, I think, and I address this directly to Ms. Whelan—you are part of the policy team there—when does it suggest that for the mission that we are undertaking especially in this area, a humanitarian issue, that we have got American citizens who are doing their job under an American flag, at what point do we say it is our responsibility?

We have to have cops on the beat there because we know that there is trouble on these streets. What is wrong with organizing ourselves to protect these ships, whether they are two-person squads or helicopters nearby or what have you?

Ms. WHELAN. Senator, there is actually very active discussion underway right now within the interagency involving the Department of Defense, Coast Guard, DOT, NSC, State Department on exactly the issue you just raised. What is the most appropriate way to ensure the security of U.S.-flag vessels?

And there are a number of potential ways to address this problem. The U.S. Navy or the U.S. military certainly may have a role to play in this, but it is not necessarily the only solution to the problem.

There are, of course, resource, time, distance, space issues with regard to the U.S. Navy's ability to cover the vast amount of territory that we are talking about, and that was really the issue with regard to the ALABAMA. The BAINBRIDGE, the time-distance ratio between the ALABAMA and the BAINBRIDGE was such that the BAINBRIDGE responded as quickly as it possibly could.

And that is what I meant when I said the vessel is available. The BAINBRIDGE was one of several Navy vessels, U.S. Navy vessels and a number of international vessels patrolling in this area as part of the counterpiracy mission. But the location of the MAERSK ALABAMA when it was attacked versus the location of the BAINBRIDGE was just too far for the BAINBRIDGE to react to deter the attack.

But there have been numerous occasions when the U.S. Navy and other navies have reacted in response to distress calls and have successfully deterred attacks. They have chased them away either by the destroyer or the frigate or whatever vessel is there showing up on the scene or oftentimes, more effectively, with a helicopter that has been dispatched from a vessel being able to chase the pirates away.

This is one method of protection, but there are many others, as I think Captain Phillips—

Senator LAUTENBERG. Well, I never criticize the bravery, the courage, the loyalty to duty that our service people have, our military people. We have seen it in the present war in Iraq and Afghanistan. Our people are subject to the most difficult conditions.

And shouldn't we feel the responsibility to say those who are crewmembers, we are going to be looking out for you? Or do we say, listen, that is the risk of the business?

I don't think that is the way we want to react. I would ask both the captain and the engineer what kinds of things do you recommend others who are operating in the high-risk area off the coast of Somalia?

You know, this underlies the question of how valuable it is to America to be able to send ships out there, ships of mercy, military ships? To not be satisfied to stay within our borders, but rather to reach out and say to Americans across the globe, "You are an American citizen. We have obligations to tend to your needs, to protect your lives, to rescue you if you are taken advantage of no matter where that is."

Whether it is on the high seas or we know that the capability is there, the bravery is there of our troops. Is it easy to get crews today on your vessels, Captain?

Mr. SHAPIRO. It has been easy. I think people are getting a little more nervous in the last 3 weeks, Senator.

If I could just—I know you directed it at Captain Phillips, but I would just like to say I agree. This is a multifaceted approach, and we need to clean up along shore.

I am reminded of the Marine Corps hymn. “From the halls of Montezuma to the shores of Tripoli.” That was the Barbary pirates, the Barbary Coast. And they were cleaned out by I believe it was Thomas Jefferson.

There is an obligation of a sovereign to take care of their ships, and I think all I am asking for as a ship owner today flying the U.S. flag and employing wonderful American seafarers is to have the tools available that I can arrange for protection for them if our Government can’t. And that is why we are asking for a change in the legislative framework to allow us to do that.

Mr. PERRY. Senator, if I may answer your question?

Senator LAUTENBERG. Sure.

Mr. PERRY. I am the engineer, and to me, it is inevitable we are going to be boarded again. We can take all the action we want to prevent it and protect us, but they are going to come onboard the ship.

Having said that, to all sailors, to all shippers, the houses must be fortified, strengthened. More locks. We need at least three layers of doors coming down to safe rooms. All ships do not have safe rooms. We did not have a safe room in our plan. That was something we improvised right then and there.

Other ships have safe rooms. Everybody needs safe rooms. They need to know how to use them. They need at least three layers of armored doors to get there.

To the point of arming people or putting—I may have to have, and I am glad to see the Navy around. I may have to have them onboard, and I was glad that they were there. I will never, ever want to see a rented cop onboard my ship. They don’t have the vested interest that we have.

Having said that, there are people that should never, ever have a weapon. There are people that will never, ever pick up a weapon. I have sailed for them and with them. They will not unlock that safe no matter what. They have told me so.

There are people that are trained, people that are wired and know how to do these things that are willing to go through certification programs to continue to be certified to carry weapons. Let us say they must be within the officer corps of this merchant marine.

Those people need to be identified not by position, but by character. They need to be trained. They need to be certified. They need to be allowed to have a weapon. That weapon needs to be under lock and key in their cabin or in the safe room because when that third door gets breached and those people are coming in the safe room, I don’t want to have to meet them with a pocketknife.

Senator LAUTENBERG. The ballgame is over at that point.

Well, we thank each one of you for your appearance here and for your testimony. We will keep the record open for some time and submit questions in writing to you for which we would ask promptness in response.

My hat is off to all of you. I once sailed on a troop ship. It was in 1944. And we were a large ship, about 800 feet, I think, 8,000 soldiers aboard, and we went fast. That was our protection, and we went through some pretty funny waters there.

So speed, all kinds of things can be employed, but there is nothing—nothing, in my view—like making sure that someone who is trying to take your life stands a chance of losing theirs, and that goes beyond all the written codes and everything else.

Senator THUNE. Mr. Chairman, clarification, if I might? Am I right in what you are saying is that you don't have authority? We would need a change of the law to allow you to have firearms on the vessel?

Mr. SHAPIRO. Can I clarify that, Senator?

Senator THUNE. Yes.

Mr. SHAPIRO. There is an 1819 statute which permits vessels to defend themselves. The problem is twofold. There is a subsequent State Department arms regulation, which requires you to get a license in order to take a weapon out of the United States. And part of the requirements are that you get a certification from every port that you are going to that it is legal to import them.

Out of curiosity, I called indirectly the embassy from Kenya and found out that in order to bring a weapon into Mombasa legally, one has to have the handwritten permission, the personal permission of the minister of the interior.

So there are regulations which prevent us from going into certain ports, Captain, with weapons. Moreover, we can't go through certain canals and most canals with weapons unless they are declared. The crew is allowed to bring a single or I guess it is up to three weapons, correct? But it has got to be less than 50-caliber. It can't be an automatic weapon.

So I think the line of defense that is being talked about for weapons for officers is a last line of defense. I don't think that is the first line of defense, at least it is not from my point of view.

We need embarked security teams, armed escort security teams. I understand the issues that the captain and the chief have with surrendering command and control of their ship because the military embarked teams are not responsive to the captain. They respond to the military people that are onboard that they report to.

And I think with private, well-vetted, well-trained security, we would be able to have the captain and the chief in charge of the ship, which I think would solve the problem. It is not going to solve the entire problem, but it will certainly save American lives.

Senator THUNE. But the captain and you and the engineer both said as a last resort, if you had a gun case—not everybody packing heat on the vessel. But if you had a gun case, is that something that is allowable today?

Captain PHILLIPS. I have been on ships where we have had it and gone to many countries. I have been to Mombasa with a weapon. I won't say what kind. You do have to declare it, and then you have to put it in bond or seal it.

I haven't been to too many countries, including Japan, that caused a problem. It is basically you declare it. It goes in bond or in my safe usually, and it is locked up and sealed until you sail.

Senator LAUTENBERG. We can't continue to go like this, but I have one more thing. If we have had successful missions in preventing or interrupting piracy attacks, how come the numbers continue to escalate so rapidly of these attacks taking place? There is obviously not a sufficient deterrent out there. Maybe there can't ever be, with hungry people or what have you.

But certainly we are not offering deterrence in any way that would say to them, "Hey, you could pay a heck of a price for this, maybe your life." We don't do that.

We thank each and every one of you. You have contributed a lot to the debate, and we will follow on with this. Thank you very much for being here.

With that, this hearing is over.

[Whereupon, at 4:34 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA

I am excited about today's hearing and regret that I cannot be in attendance. I would like to thank Senator Lautenberg for calling this critical hearing to examine piracy on the high seas today. We both believe it is our duty to protect American mariners, vessels and right of access to the shipping lanes around the Horn of Africa. The Commerce Committee will use today's hearing to examine issues within its jurisdiction spanning the operations of the commercial maritime industry, the Coast Guard, and the safety and security of our merchant fleet and their crews.

I would also like to thank all of our witnesses for agreeing to testify today. I appreciate each of you taking the time to be here, and I'm honored to have two American heroes among us today. Joining us are the Master of the M/V MAERSK ALA-BAMA, Captain Richard Phillips, and the vessel's Chief Engineer, Mr. Michael Perry. These men have dedicated their lives to service at sea in support of our national and economic security. I want to personally thank you and your families for being with us and for the selfless service and countless sacrifices you make for our country.

As a maritime nation it is imperative that the United States and our trading partners maintain unimpeded access to the world's shipping lanes. It is this access that enables us to move commerce, provide humanitarian assistance and, when necessary, fight and win wars. It is unacceptable for our ships, crews, and passengers to be threatened and put at risk in international waters by various groups of unsophisticated pirates from unstable nations. I will not sit by as men in speed boats abuse the most powerful and advanced Navy in the world. We have the ability and responsibility to end all piracy; specifically around the Horn of Africa and along the Coast of Somalia.

With the full force of the U.S. Navy alongside a coalition of nearly twenty other nations, we can take back these critical shipping lanes. It is of the utmost importance that we keep our U.S. mariners, passengers and vessels free from harm and free to move about international waters.

Arming the crew is not an option. Instead the U.S. military should provide the support and protection of our men and women at sea. And let us not forget there are still roughly 18 vessels and another 300 people still being held hostage in Somalia.

I realize the maritime industry has been facing this threat for several years now, especially as attacks began to escalate in the summer of 2008. Our maritime community took responsibility and worked together to share best practices for avoiding and disrupting pirate attacks.

Yet this is not enough. U.S. officials and international experts believe that addressing the threat of piracy will require strengthening regional security capabilities, improving intelligence gathering and sharing, and enhanced multilateral coordination, both at sea and on land.

The absence of a functioning government in Somalia and the ability to prosecute captured pirates are the greatest challenges to maritime security in the region. By all accounts, pirates will likely continue to find sanctuary in Somalia until basic governance and security conditions there change.

The international community has responded with multinational naval patrols, diplomatic efforts, and enhanced private security by members of the commercial shipping industry. I believe we must do more. As a nation we have a responsibility to take action and protect our citizens. And as history shows, without a forceful response pirates reign supreme in the high seas.

Today our witnesses will paint a fuller picture of what we've done so far and guide us on the road ahead. We will bear witness to the personal impact of piracy on our citizens at sea, and listen to their advice on what more needs to be done.

I look forward to hearing from all the witnesses.

PREPARED STATEMENT OF DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

I would like to thank Senator Lautenberg for calling this hearing today, and I would also like to thank all of our witnesses for agreeing to testify.

The ability to access U.S.-flag Merchant Marine ships and seafarers is essential to our national and economic security interests, and provides an invaluable diplomatic and humanitarian assistance role for our Nation. In a time of national emergency or military conflict, the U.S. Merchant Marine becomes vital to our national security by projecting America's military power. U.S. ships transport more than ninety-five percent of all equipment and supplies supporting the deployment of armed forces. A strong, organic sealift capability that is available to the Defense Department on demand saves the tax payer over \$8 billion in capital outlay, and millions more in annual operating and maintenance costs.

The history of the twentieth century demonstrates our Nation's reliance on a strong U.S. Merchant Marine. In the Second World War, the U.S. Merchant Marine was crucial to getting our personnel, equipment and supplies to the various theaters around the globe.

The need was so great that the Merchant Marine grew from 55,000 to 215,000 trained mariners, in order to crew the surge of vessels that were being rapidly built to support the war effort. Likewise, in the first Gulf War, the U.S. Merchant Marine carried nearly 700,000 tons of equipment on 123 voyages. Today, the U.S. Merchant Marine has successfully supported simultaneous operations in Iraq and Afghanistan, moving nearly ninety-seven percent of all equipment and supplies. It is for these reasons that the U.S. Merchant Marine is considered the fourth arm of defense, as first characterized by President Franklin D. Roosevelt.

Merchant Mariners, trained in ship operations and as logistics professionals, ensure the economic security of the largest trading nation in the world by guaranteeing our access to foreign and domestic sources of raw materials, and domestic and foreign markets for sale of U.S. manufactured goods. Annually, our mariners move more than 2.3 billion tons of domestic and international cargo with \$2 trillion, in addition to 3.3 billion barrels of oil to meet our energy demands.

In addition, our U.S. Merchant Marines provide an effective humanitarian assistance. Domestically, merchant mariners provided critical support response following Hurricanes Katrina and Rita. Internationally, our U.S.-flag ships carry food aid and other supplies to countries in need. These types of diplomatic missions serve to support people in need, and projects our U.S. government's positive humanitarian presence overseas.

The U.S. Merchant Marine is an essential part of who we are as Americans, and must be protected from the interference of pirates on the high seas in international waters.

I look forward to hearing from all the witnesses here before this Committee today.

 PREPARED STATEMENT OF THE AMERICAN MARITIME OFFICERS, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, MARINE ENGINEERS' BENEFICIAL ASSOCIATION AND SEAFARERS INTERNATIONAL UNION

Mr. Chairman and Members of the Subcommittee:

The American Maritime Officers (AMO), the International Organization of Masters, Mates & Pilots (MM&P), the Marine Engineers' Beneficial Association (MEBA) and the Seafarers International Union (SIU) appreciate the opportunity to submit this statement in conjunction with your Subcommittee's hearing on piracy. The licensed and unlicensed merchant mariners our labor organizations represent crew working aboard United States-flag vessels that must operate in waters where the threat of piracy is the greatest. Consequently, the officers and members of our unions deeply appreciate your leadership, Mr. Chairman, in scheduling this hearing. We look forward to working with you and your Subcommittee to formulate responses to the threats posed by piracy which offer the greatest measure of protection for U.S.-flag vessels and their U.S. citizen crews.

In fact, American mariners working aboard U.S.-flag vessels operating in that region continue to face an immediate and ongoing threat from international pirates. As our American mariners simply attempt to do their jobs, their lives are in constant peril as these pirates decide when—not if—to take further aggressive action against commercial ships.

Consequently, our unions recently asked the Administration to continue to treat this situation and the ongoing threat posed by pirates with the utmost urgency. In a letter to the President dated April 24, 2009, we stated that it is our position that "the most effective step that must be taken to prevent further aggressive action against U.S.-flag commercial vessels and their crews is for our government to imme-

diately provide U.S.-flag vessels with the force protection necessary to prevent any further acts of piracy against them.” We strongly believe it is first and foremost the responsibility of the U.S. Government to provide the protection necessary to ensure the safety of life and property aboard United States-flag vessels. When a vessel flies the United States flag it becomes an extension of the United States itself, regardless of where in the world the vessel is operating.

Clearly, the actions taken by the Administration and, most specifically, the Department of Defense in response to the recent attacks against the U.S.-flag vessels MAERSK ALABAMA and LIBERTY SUN demonstrate that the United States Navy and its personnel have the capability and expertise to respond quickly and effectively. In both instances, the pirates never took control of the U.S.-flag vessel and, as everyone is now aware, the Navy SEALs executed a dramatic rescue of Captain Richard Philips, master of the MAERSK ALABAMA, which has attracted the worldwide praise it deserves.

This is important not only because no American ship, cargo or crew member was lost but because our country unequivocally demonstrated that we will protect our U.S.-flag fleet which contributes to the economic, political and military security of the United States. Our country cannot allow pirates to force the U.S.-flag off the high seas or to drive American citizens out of our industry. All too often the role that our organizations and the United States citizen merchant marine officers and crew we represent play in protecting the economic security of our Nation and supporting the Department of Defense and our troops overseas is overlooked. Without a United States-flag merchant fleet and without the American citizen licensed officers and crew who sail aboard these vessels, our armed forces overseas would be dependent on others for the supplies, equipment and other cargo they need to do their job to protect America’s interests.

In the case of the LIBERTY SUN and the MAERSK ALABAMA, the vessels and crews were on a mission of mercy, carrying U.S. food aid cargo to some of the world’s neediest people. These vessels and other vessels carrying American aid proudly fly the United States flag in foreign ports to help demonstrate that Americans are a compassionate people. It shows that American ships and their crews will work to make sure that the less fortunate of the world who need our aid will in fact receive our aid—U.S. produced agricultural commodities. The American taxpayer must have the assurance that the aid they provide to those in need will in fact reach the intended recipients and will in fact work to achieve its stated purpose. U.S.-flag ships and their crews play a key role in the process which must continue.

Notwithstanding the outcomes of the MAERSK ALABAMA and LIBERTY SUN incidents, it is important for all Americans to understand that the threat presented by piracy is a fact of life for American mariners and for seafarers around the world. It has recently been reported by the International Maritime Bureau (IMB) of the International Chamber of Commerce that compared to the first quarter of 2008, piracy incidents have almost doubled in the first quarter of 2009, from 53 to 102. According to the IMB, this increase is due almost entirely to increased pirate attacks off the Gulf of Aden and the east coast of Somalia, where 61 of the 102 attacks occurred.

We agree that the increased level of piracy in this region of the world is due largely to the political and economic conditions within Somalia. There is, at best, tremendous political instability which is coupled with severely depressed economic conditions that do not offer the level or measure of opportunity necessary to discourage individuals from pursuing this life of crime.

This is not, of course, a situation that can or will be solved quickly, or just by the United States. It will require a coordinated international effort to try to reverse the conditions within Somalia that have led to this increased level in piracy. But while the world works to confront the root causes of piracy, it is critical that the United States and the rest of the world act to address piracy itself—to develop an international approach that entails uniform response procedures when pirates are discovered in waters near a vessel; that includes a uniform approach to protecting vessels and crews; and which covers the prosecution for piracy and penalties for those convicted. We also believe that all flag nations, including those which do not have military forces to contribute to this effort, must therefore participate in this effort financially. They should pay their fair share to help offset the cost of protecting their flag vessels that the United States and other countries will incur.

It is also important to reach an international agreement that applies and enforces any new requirements equally to all vessels in order to ensure that U.S.-flag vessels are not economically disadvantaged. It is important to remember that shipping is a business; ship owners and operators, and cargo shippers are interested in moving their cargo from point to point safely and at the lowest possible cost. If the require-

ments necessary to respond to piracy are applicable only to U.S.-flag vessels, and these anti-piracy measures result in increased costs, it is logical to conclude that foreign flag vessels will achieve an unfair competitive advantage over their U.S.-flag counterparts. If the threat posed to merchant mariners by piracy is not given the same seriousness by all vessel owners and operators and flag states, and if these same vessel owners and operators and flag states choose to sacrifice the health and safety of their mariners for the bottom line, American vessel owners and operators will be disadvantaged as they try to do the right thing, and the number of U.S.-flag vessels will likely diminish, taking American maritime jobs with them. To the degree this happens, more and more of American cargo will be carried by foreign vessels that are more susceptible to pirate attacks, and more and more of American cargo will be at risk. Simply put, we believe that the response to piracy must be international, the steps taken and the requirements imposed must be applied to all vessels, and the costs of protecting vessels, cargo and crew must be borne equally and not disadvantage any one flag.

Nevertheless, as we said previously, the immediate threat to vessels and crews posed by piracy is real, and action must be taken now to protect U.S.-flag vessels and American mariners. Until and unless the international maritime community acts, there is no effective alternative to U.S. Government involvement and action working in concert with our shipping industry and maritime labor organizations. We agree with the statements made by Secretary of State Hillary Clinton: "We have to act swiftly and decisively to combat this threat. These pirates are criminals. They are armed gangs on the sea. And those plotting attacks must be stopped, and those who have carried them out must be brought to justice. Defending against piracy must be the joint responsibility of governments and the shipping industry."

Consequently, it is our position that as an essential first step, the U.S. Government should immediately provide protection for the United States-flag vessels that are and will be operating on sealanes where piracy remains a serious threat. This protection should entail military escorts or military security detachments placed aboard the vessel.

We further believe that the utilization of a private security detachment aboard a vessel may also provide necessary protection. In fact, a force protection detachment of a few highly qualified, experienced personnel, with armed forces background and training, to serve as first responders in the event pirates are detected can be effective in repelling the attack. These individuals can and should be equipped to take aggressive action when it is confirmed that pirates are approaching the vessel and an attack against the vessel may be imminent. However, it should be noted that there are serious concerns and risks associated with this approach throughout the maritime industry. The employment of private security detachments can, for example, raise command and liability issues which must be thoroughly considered before proceeding in this fashion.

Finally, Mr. Chairman, we would like to address the proposal that the answer to the threat posed by pirates is to simply arm the crew. We categorically reject the notion that this should be considered the best or even a primary solution to the problem of piracy. Rather, we believe that to the degree this option is considered, it should be considered as only one part of an overall, comprehensive response. Even then, it should entail no more than a few highly trained individuals who have extensive training and expertise in the use of weapons.

In conclusion, we again wish to express our appreciation for your efforts, Mr. Chairman, and the efforts of your Subcommittee to focus attention on this extremely serious problem and to bring shipping management, maritime labor and the U.S. Government together to begin discussing effective and appropriate responses to piracy. We stand ready to continue to work with you and your Subcommittee and ask that our statement be included in your hearing record.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
PHILIP J. SHAPIRO

Question 1. Do you have a position on the use of military armed guards versus the use of private security forces or arming the crew on your vessels to improve security while operating off Somalia? Can you please provide the Committee an assessment of the positives and negatives of each alternative?

Answer. Yes, Liberty Maritime's position is that the U.S. Government should protect U.S.-flag vessels on high-risk transits through the region where pirate attacks have occurred. As an initial matter, it is the traditional responsibility of the sovereign, the United States of America, to protect U.S.-flag vessels from pirate attacks on the high seas. Indeed, the United States Navy traces its origins under the Con-

stitution of the United States to battling the Barbary Pirates in the early years of the nineteenth century.

Next, considering the seriousness of recent pirate attacks where multiple pirate vessels armed with automatic weapons, rocket-propelled grenades, and most recently high-explosives, have been used to attack merchant vessels, Liberty Maritime's position is that the armed forces of the United States are much better equipped and trained to meet this evolving threat than private security. Additionally, in the event of a further escalation in the use of force by pirates, the U.S. Government will surely back-up military personnel embarked on U.S.-flag vessels. By contrast, private security forces simply do not have that capability. Considering the fact that most U.S.-flag vessels transiting the region are carrying U.S. Government cargoes, it is particularly ironic that the Navy has declined to protect these ships with embarked security teams.

Liberty Maritime's position is that private security represents a much less desirable alternative than the armed forces of the United States. Private security cannot provide personnel with the same training and weapons provided by the armed forces, nor do they provide the back-up in the event pirate forces threaten to overwhelm private security. Additionally, because of legal prohibitions of most of the countries in the region where Liberty Maritime vessels trade, it is practically impossible for Liberty Maritime to arrange for private armed security. For example, on a recent voyage of a Liberty Maritime vessel in the region we were unable to arrange for private armed security because of prohibitions by all of the relevant countries in the region. Therefore, as a matter of law and practice, the barriers Liberty Maritime has encountered have prevented the use of armed private security.

Furthermore, because the United States Navy indicated that it will not provide embarked military security on U.S.-flag vessels because it does not have the resources, Liberty Maritime recommends that the U.S. Coast Guard provide embarked military security for the U.S.-flag vessels on high-risk transits through the region. The U.S. Coast Guard has the capability and only awaits the tasking. Additionally, the Congress has recently provided supplemental funding to the U.S. Coast Guard for counter-piracy operations overseas. These resources should be devoted to protecting the lives of American merchant seamen serving on U.S.-flag vessels. Failing to apply this ounce of prevention risks putting American lives at risk and will likely require the U.S. Government to expend far greater resources in response to another hostage-taking like that which occurred on the MAERSK ALABAMA.

Question 2. During an era when it is routine to criminalize mariners, do you have any concerns about arming mariners for self protection, with respect to the inevitable response and treatment of mariners by the maritime law enforcement and military organization?

Answer. Yes. Leaving merchant mariners to their own devices and suggesting that they should simply be armed for self-defense ignores the responsibility of the U.S. Government to protect its citizens and the U.S.-flag fleet against pirates. Moreover, it subjects merchant mariners to legal proceedings in foreign countries for actions in self-defense they take against piratical acts. That is why we have proposed legislation that would immunize U.S. merchant mariners for actions taken in self-defense of piratical acts from legal actions in the United States.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
HON. ROY KIENITZ

Question 1. There are approximately 200 U.S.-flag vessels with U.S. crews that sail through the Horn of Africa region on an annual basis, which is about one vessel every other day. What would you say is the best use of U.S. resources to assist in keeping the sea lanes open for trade and protecting our U.S. mariners and vessels?

Answer. A risk-based matrix is the best way to ensure appropriate measures are being utilized to assist in keeping the sea lanes open for trade and protecting our U.S. mariners and vessels. Speed is the most important factor to avoid and prevent pirate boarding.

There are very few U.S.-flag vessels which operate near the HOA that have a top speed of less than 20 knots. MARAD estimates eight (8) such vessels operate off the HOA. Of those eight, only one operates full time in the west Indian Ocean. The others typically enter the region on a quarterly basis. For this small number of vessels, they should work with the Maritime Security Centre-Horn of Africa (MSC-HOA), the U.S. Coast Guard and the Maritime Administration to make sure they have the latest guidance and are using the most appropriate counter measures.

Question 2. Will you please outline for the Subcommittee your efforts to coordinate intelligence, capitalize on best management practices and disseminate mariner advi-

sory messages? What else can be done to assist and protect U.S. mariners and the maritime industry?

Answer. For U.S.-flag vessel owners and operators, the Maritime Administration sends Advisories concerning operational issues globally. Several advisories have been sent and updated based on input from the intelligence community. Our primary source is the National Maritime Intelligence Center (NMIC) in Suitland, MD for matters regarding piracy.

MARAD Advisories are not classified and are broadcasted using the services of the National Geospatial-Intelligence Agency, and distributed by e-mail. We also forward applicable updates from the NMIC, Combined Maritime Force, MARLO Bahrain, and the Maritime Security Centre-Horn of Africa (MSC-HOA)

The Maritime Administration communicates with the MSC-HOA Chief of Staff as needed via e-mail and telephone. The Maritime Security Centre-Horn of Africa uses a password protected website as their primary means of communication with commercial shipping including the U.S.-flag vessels. U.S.-flag vessels are required by the USCG to register on the website.

Question 3. The majority of our discussions have revolved around the immediate need for protecting our mariners, vessels and cargos. Please provide us with an explanation of the larger issue of piracy, as it relates to the specific impacts of the flow of commerce and associated costs.

Answer. For all of 2008, out of over 20,000 transits through the Gulf of Aden and the East Coast of Africa, there were 111 attacks and 42 successful hijackings. Although this risk may seem low with only about 0.6 percent of ships moving through the area coming under attack, the persistence and aggressiveness of the pirates demand active countermeasures by ship operators and governments to ensure freedom of the seas, which is essential to protect global commerce.

If an operator transits through the high risk area, it may opt for qualified security guards or deterrent equipment (*e.g.*, a sonic deterrent device or razor wire), and additional war risk and kidnap and ransom insurance. Rerouting around the Gulf of Aden area via the Cape of Good Hope could be another option for some carriers.

Rerouting around the Gulf of Aden area via the Cape of Good Hope is the other way that piracy causes specific impacts to the cost of shipping goods. This routing could add 14 days or more to the voyage depending on the destination which increases the fuel and operating expenses of the vessel. These costs do not include the disruption in the logistics chains to the users of cargo or the cost of chartering additional ships to maintain regular schedules.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO REAR ADMIRAL BRIAN M. SALERNO

Question 1. Please explain the Coast Guard's role at the International Maritime Organization to prevent and respond to acts of piracy?

Answer. The International Maritime Organization (IMO), a specialized technical body of the United Nations, has been a leading force in improving maritime safety internationally for decades. Most recently, it led numerous efforts aimed to suppress the piracy threat in the Horn of Africa. By delegation from the State Department, the Coast Guard provides the Head of the U.S. Delegation for IMO meetings and activities. The IMO works throughout the region to foster cooperation between stakeholder countries and to create the legal and operational framework for regional States to combat piracy. The IMO established a framework for international counter-piracy cooperation; updated counter-piracy guidance to industry and governments; and promoted judicial consequence delivery mechanisms so that pirates, once caught, face meaningful and just punishment under the rule of law.

Djibouti Code of Conduct

During the week of 19 January 2009, the Coast Guard led the U.S. delegation to a meeting convened by the IMO in Djibouti on regional cooperation to combat piracy and armed robbery against ships off the coast of Somalia and in the Gulf of Aden. At the meeting, the 21 regional nations adopted an agreement for cooperation in the interdiction, investigation and prosecution of pirates, as well as the establishment of information and training centers. The Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden (the Djibouti Code) specifically endorses the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) as the effective legal framework. The Djibouti Code also contains practical law enforcement measures, including a ship rider program to share scarce patrol resources and information sharing and operational coordination mechanisms. Al-

though not eligible to be a party to this instrument, the U.S. delegation played an important supporting role in the effort.

Nine of the twenty-one regional nations signed the agreement in Djibouti, allowing the Code of Conduct to immediately enter into force. Each signatory intends to review its national legislation with a view toward ensuring there are laws in place to criminalize piracy, and adequate guidelines for the exercise of jurisdiction, conduct of investigations, and prosecution of alleged offenders. Consistent with international law, signatories espouse an intent to fully cooperate in the arrest, investigation and prosecution of persons who have committed piracy or are reasonably suspected of having committed piracy; seize suspect ships and the property on board such ships; and rescue ships, persons, and property subject to acts of piracy.

Counter-piracy Guidance

Through the IMO Maritime Safety Committee (MSC), the Coast Guard, in close cooperation with our interagency and international partners, is leading efforts to enhance and update counter-piracy guidance to industry, encouraging all vessels to address the piracy safety and security threat via the existing domestic and international law architecture. The IMO guidance to ship owners, ship operators, masters, and crews on preventing and suppressing acts of piracy and armed robbery against ships is contained within MSC Circular 623 (Rev.3). The Coast Guard is leading the U.S. delegation to the 86th session of the MSC, which is meeting in London from 27 May to 5 June 2009. The MSC is expected to complete its review and approve a fourth revision to the guidance.

The 86th session of the MSC is also expected to approve revisions to existing recommendations to Governments for preventing and suppressing piracy and armed robbery against ships (IMO MSC Circular 622 (Rev. 1), as well as a Resolution updating guidance on evidence for prosecution of suspected pirates. The Coast Guard led development of the U.S. position on all documents and matters expected to be considered by the MSC (piracy is one of several items on the agenda), and will play a lead role during discussions and drafting conducted by the Committee.

ISPS Code

Following the 9/11 terrorist attacks, at the urgent request of the U.S., the IMO rapidly developed the International Ship and Port Facility Security or "ISPS" Code to better safeguard international shipping from acts of terrorists and others who would threaten commercial shipping and the safety of innocent seafarers. The Coast Guard worked tirelessly to effectively develop and implement the ISPS Code. The purpose of the ISPS Code is to provide a standard, consistent framework for evaluating risk. It enables governments to flexibly accommodate changes in threats to shipping with changes to reduce vulnerability of ships and port facilities through determination of appropriate security levels and corresponding security measures. The ISPS Code provides a valuable and time-tested mechanism for industry, in cooperation with the IMO, to harden targets against pirate attacks. The Coast Guard uses a variety of authorities, including the Maritime Transportation Security Act of 2002, to ensure the security of vessels via regulations at 33 CFR Part 104. The ISPS Code and 33 CFR Part 104 regimes provide the architecture necessary to implement security measures to address piracy threats.

Question 2. What is the current status of negotiations on acts of piracy and revitalization of the SUA Convention to assist in the prosecution of pirates?

Answer. The International Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), 1988, has 152 Parties, including nearly every country bordering piracy High Risk Waters, with the notable exceptions of Somalia, Eritrea, and Ethiopia. The SUA Convention provides excellent tools for use in combating piracy and bringing suspected pirates to justice, including mechanisms for the criminalization of piratical acts and the delivery of suspected pirates to appropriate jurisdictions for prosecution. However, in order to fully implement SUA, State parties must enact domestic implementing legislation, particularly with regard to the criminalization of piratical acts. Thus, not every State party to SUA is able to fully exercise the benefits of the Convention to which they are a party.

The U.S. has taken a lead role in advocating and supporting full implementation of the Convention through the creation of domestic criminal law frameworks by State parties. With U.S. support and intervention, the U.N. Security Council specifically recognized the value of SUA by express references in the relevant Security Council Resolutions (See UNSCR 1846 and 1851). Further, due to very strong U.S. leadership in the development of the Djibouti Code of Conduct, the signatories to that Code also recognized the value of SUA with similar language. Last, with U.S. support and intervention, the IMO has repeatedly encouraged ratification and effec-

tive implementation of SUA by its member States as a mechanism to suppress piratical acts.

Certain States have found SUA to be an effective tool during prosecutions of pirates. These countries include Denmark, Kenya, and the U.S. For example, Denmark stated it found the SUA mechanism for delivery of suspects to be helpful when transferring five suspected pirates to the Netherlands for prosecution. The U.S. Attorney for the Southern District of New York in Manhattan charged the suspected pirate, arrested after the MAERSK ALABAMA incident, under our domestic implementing legislation for SUA, 18 U.S.C. § 2280, (among other charges).

The United States will continue to aggressively promote the full implementation of SUA in all appropriate international forums.

Question 3. What was the reaction of our international partners when the Coast Guard suggested supplementing the crew with armed security forces?

Answer. To date, there has been little international enthusiasm for the U.S. position that the use of armed private security, in certain appropriate circumstances, can be an effective deterrent. Generally speaking, neither foreign governments, nor industry organizations have been willing to support our views in their entirety. However, there is a growing recognition that some individual international ship owners have either employed, or expressed interest in employing, armed private security teams. This has begun to somewhat alter the discussions, as certain major open registries seek to accommodate the needs of their registered ship owners. Additionally, there is a much broader recognition that military or law enforcement armed security, provided by governments, can be useful.

The present U.S. Government position on the issue, in relevant part, is:

“We recognize that in appropriate circumstances, on certain vessels determined to be at high risk, properly screened and certified third-party security providers with firearms, operating in compliance with applicable coastal, port and flag state laws can be an effective deterrent to pirate attacks off the Horn of Africa.”

Question 4. Is the Coast Guard concerned that the increased use of arms on board vessels will escalate the type of weaponry and the use of force by pirates?

Answer. No. The 14 April 2009 attack on the M/V LIBERTY SUN (U.S.) demonstrated the Somali pirates’ willingness and ability to employ Rocket-Propelled Grenades (RPGs) and automatic weapons fire against unarmed targets with U.S. citizens on board. This occurred before publication of MARSEC Directive 104-06 rev. 2, which called for armed or unarmed security. While there have been public reports of pirates threatening to retaliate against U.S. shipping post-MAERSK ALABAMA, there have been no changes seen in weaponry or use of force to date. The successful employment of defensive fire by an embarked private security team has not resulted in an escalation of the use of weapons by the pirates.

Question 5. In light of the lessons learned from the pirate attacks on the MAERSK ALABAMA and LIBERTY SUN, do you recommend any changes to Maritime Security Directive 104-06? If so, what specifically do you intend to address and when will a revised directive be issued to better assist in the protection of our crews?

Answer. MARSEC Directive 104-06 (Rev 2), was recently updated with input from the maritime industry. The Directive was published on May 11, 2009 and came into effect on May 26, 2009. This revision was based on the lessons learned from the pirate attacks on the MAERSK ALABAMA and LIBERTY SUN and includes security requirements for U.S. flagged vessel operating in high-threat areas, including the Horn of Africa. The Coast Guard will continue to monitor the issues related to piracy and if needed, update the MARSEC Directive.

Question 6. There are a lot of overlapping interests and responsibilities regarding the piracy issue, within the United States and internationally. How are you working to provide the commercial maritime industry with one single point of contact when an incident takes place and who will that contact person be? Is the industry receiving a consistent message on what they should be doing and who they should be working with in a given circumstance? Please provide examples.

Answer. The single point of contact for industry when an incident occurs is through the Ship’s Security Alert System (SSAS). When any piracy incident occurs on a U.S. vessel worldwide, the Ship Security Alert System (SSAS) should be activated by the ship’s crew and the regional liaison or anti-piracy organization for the region informed. The alert from the SSAS is received by the Coast Guard Regional Command Center in Alameda, CA, and authenticated with the Company Security Officer.

U.S. vessels operating in the Horn of Africa (HOA) high risk waters, owners and operators shall register with and provide movement plans on the Maritime Security

Center-Horn of Africa (MSCHOA) website. Additionally, they shall establish contact by e-mail or phone with U.K. Maritime Trade Operations (UKMTO) which maintains a 24/7 e-mail/phone watch and coordinates assistance in the event of an incident. If they are unable to contact UKMTO, the U.S. Maritime Liaison Officer (MARLO) should be contacted.

For U.S. vessels operating in the Arabian Sea, the Gulf of Oman, and the Persian Gulf, the Maritime Liaison Office (MARLO) located in Bahrain, facilitates the exchange of information between the United States Navy, Combined Maritime Forces, and the commercial maritime community in the Middle East. For vessels in Asia, the Regional Cooperation Agreement on Combating Piracy against Ships in Asia (ReCAAP) facilitates the exchange of information and is able to facilitate appropriate responses to incidents. The Coast Guard is then able to assist in the coordination of a response and provide inter-agency notifications.

When U.S. vessels are operating in regions with no liaison, operators are encouraged to contact the nearest coastal state as advocated in the MSC/Circ.623/Rev.3, (Guidance to shipowners and ship operators, shipmasters and crews for preventing and suppressing acts of piracy and armed robbery against ships) or the National Geo-Spatial Agency (NGA) Pub 117.

Industry is receiving a consistent message from the Coast Guard on who or what entity they should contact when an incident occurs. The procedures for notification of a piracy incident are provided in the MARSEC Directive 104-06. (Rev 2).

Question 7. Considering the Coast Guard's current mission requirements and current resources, what role do you see the Coast Guard playing in future counter-piracy operations?

Answer. The threats piracy poses to the United States, our international partners, and the industry and seafarers who make their living on the last global commons are multi-faceted. The response to these threats requires a broad array of legal authorities, operational capabilities, skills and competencies, and the support and expertise of numerous U.S. Government, international, and commercial entities. The Coast Guard has a unique role to play, and remains committed to working with our military, government, and industry partners to bring these criminals to justice and forge long-term solutions for regional maritime safety and security. Operating at all times as a military service and maritime law enforcement agency, the Coast Guard has authority to conduct counter-piracy operations against any vessel engaged in piratical acts, including conducting boardings, searches, seizures and arrests.

The Coast Guard uses its statutory authorities to address the piracy threat. This involves a two pronged approach that relies on both domestic and international law. Domestically, the Maritime Transportation Security Act of 2002 provides the legal authority for the Coast Guard to regulate safety and security of cargo, ships, and most importantly seafarers. Under this authority, the Coast Guard developed regulations that require U.S. ship owners and operators to assess and plan for a wide range of security threats, including threats of piracy. This plan, known as a Vessel Security Plan, is received and approved by the Coast Guard. When additional security measures are necessary to deal with a specific threat, it can issue a Maritime Security, or MARSEC, Directive. MARSEC Directives can be global or regional in scope. In April 2008, the Coast Guard issued MARSEC Directive 104-6 Rev. 1. This Directive provides direction to Company Security Officers of U.S. vessels that engage in international voyages to, or through, areas at risk for terrorism, piracy and armed robbery against ships.

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

Operationally, counter-piracy operations are primarily a maritime law enforcement activity for which the Coast Guard is trained and equipped to support. We are the competent authority for the U.S. Government on more than 30 bilateral agreements with foreign partners. The Coast Guard understands the domestic and international legal frameworks and the associated boarding and enforcement requirements necessary to ensure the successful negotiation and implementation of agree-

ments to facilitate counter-piracy operations on the water and the delivery of legal consequences to the pirates ashore. The Coast Guard's international training teams and deployable law enforcement detachments offer tailored maritime law enforcement training that can be easily integrated in regional capacity building initiatives. Domestically the Coast Guard works with and regulates the U.S. merchant fleet to reduce its vulnerability to acts of piracy.

Coast Guard forces are operating in support of U.S. Central Command (CENTCOM). CENTCOM has operational control of these forces and has directed they conduct operations with Combined Task Force 151 (CTF 151). Coast Guard Law Enforcement Detachments (LEDETS) currently operate in support of CTF 151. LEDETS augment Navy Visit Board Search and Seizure (VBSS) teams near the Horn of Africa and provide training in maritime laws, boarding policies and procedures, evidence collection and preparation, and tactical procedures. Both the Coast Guard and Navy have independent authority to conduct counter-piracy operations against any vessel engaged in piratical acts, including conducting boardings, searches, and seizures. The integration of Coast Guard boarding team personnel with Navy VBSS teams takes advantage of the unique competencies, capabilities, and authorities of our two services in a manner that offers a comprehensive boarding capability that is ready to address a broad spectrum of threats in the maritime domain. Coast Guard/Navy cooperation in counter-piracy operations is an example of how our two services are working together to ensure interoperability and readiness to operate as an effective force to address the international issue of piracy.

Question 8. What value has the Coast Guard contributed from the LEDETS participation in the counter-piracy operations around the Horn of Africa and the coast of Somalia?

Answer. Coast Guard LEDETS current serve as part of CTF 151, a multinational task force that conducts counter-piracy operations in and around the Gulf of Aden, Arabian Sea, Indian Ocean and the Red Sea. The Task Force was established to create a lawful maritime order and develop security in the maritime environment.

- Coast Guard LEDET are currently deployed to CENTCOM and are available, as directed, to support CTF 151 efforts to deter and disrupt acts of piracy. LEDETS are viewed as the subject matter experts in the conduct of boarding's by U.S. and coalition partners.
- CG LEDETS are currently embarked in U.S. combatants serving within CTF 151. Their role is to augment U.S. Navy and coalition VBSS teams, and provide training on:
 - Maritime Laws
 - Boarding policies and procedures
 - Evidence Collection and preparation
 - Tactical procedures
- CTF 151 describes counter-piracy activities as law enforcement related operations in which all forces will be expected to collect evidence, provide witness statements, and respect the rights of the apprehended as they are duly processed for trial.
- CG forces possess the requisite capabilities and skill sets to support the Combatant Commander's efforts to combat piracy in the region.

Recent Counter Piracy Events with Coast Guard LEDET Participation

February 2009—CG LEDET operating with USN VBSS teams from USS Vella Gulf apprehend 16 suspected pirates.

- The team conducted a boarding of a suspected pirate skiff and found several weapons. The seven suspected pirates were brought aboard Vella Gulf, where they were processed and then transferred to a temporary holding facility on board the supply ship USNS Lewis and Clark.
- Nine additional suspected pirates were apprehended after VBSS teams from Vella Gulf and Mahan boarded a vessel that contained assorted weapons and one rocket propelled grenade launcher. Those suspected pirates were also transferred to a temporary holding facility on board Lewis and Clark.
- In both events, the VBSS teams were comprised of Coast Guardsmen and Sailors and marks the first time CTF 151 has apprehended suspected pirates.

March 2009—CG LEDET operating with USN VBSS teams from USS Gettysburg apprehend six suspected pirates.

- At approximately 4:30 a.m., the Philippines-flagged Motor Vessel Bison Express sent a distress call to all ships in the area reporting they were being pursued by a small skiff containing six heavily-armed suspected pirates.
- The six suspected pirates were apprehended and transferred onto the amphibious assault ship USS Boxer.

April 17, 2009—CG LEDET operating with USN VBSS team apprehend eight suspected pirates.

- Danish-flagged dry cargo carrier M/V PUMA sent a distress call indicating an ongoing attack by a pirate speedboat while transiting the Gulf of Aden.
- PUMA's crew of three Danes and four Filipinos zigzagged the vessel and used flares to avoid the speedboat carrying five armed pirates. The speedboat returned to the Mother Ship.
- A Maritime Patrol Aircraft located the Mother Ship and speedboat, and directed a USN asset with embarked LEDET to intercept. Upon boarding, the LEDET discovered 80 people: 8 Somali Pirates and 72 people being smuggled into Yemen.
- The LEDET detained the Pirates, and confiscated automatic weapons, Rocket Propelled Grenades, and ammunition.
- Disposition for detained people, evidence, and pirate vessels are pending at this time. PUMA's crew was uninjured.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TOM UDALL TO
REAR ADMIRAL BRIAN M. SALERNO

Question. Our witnesses have focused this Committee's attention on the threat to merchant vessels from Somali pirates. I am concerned, however, about the vulnerability of cruise ships to pirate attacks, and not necessarily in the Horn of Africa region. What Federal and private sector efforts are being taken to ensure the safety of cruise ships and their passengers from pirate attacks?

Answer. The U.S. Coast Guard examines security measures for cruise ships that visit U.S. ports to verify that security plan implementation on these vessels meet the requirements of 33 CFR Subchapter H (Maritime Security) and the International Ship and Port Facility Security (ISPS) Code. Very few of these vessels operate in areas subject to pirate attack. Typically, these vessels visit Caribbean ports, Pacific ports in Mexico, and ports in Canada and Alaska and never visit high risk areas.

The Coast Guard works closely with the Cruise Line International Association (CLIA) on maritime security matters and meets regularly (at least once every 2 months) to discuss piracy, intelligence, and best practices. CLIA represents 24 major cruise lines which own or operate 97 percent of the cruise capacity in North America. CLIA recommended its members reduce ship exposure to high risk areas. CLIA reports that the few member vessels that transit high risk areas will soon cease transits of the Gulf of Aden and the waters off the Horn of Africa. The Coast Guard also provides updated threat information cleared for industry use to CLIA so they may inform their members of piracy threats worldwide.

Cruise ships possess a number of built-in features that deter piracy. These ships have very high freeboards, which create an obstacle for illegal boarding at sea by pirates. Additionally, cruise ships have top speeds in excess of 20 knots, and maneuvers at such speeds create an additional obstacle for pirates to overcome. Cruise ships have large crews that include dedicated full-time security personnel. Cruise ship security programs exceed the minimum requirements of the ISPS Code.¹ In addition, cruise ship companies have put in place additional and closely-guarded security provisions that are considered proprietary information. These security provisions may include armed security personnel having strong military and anti-terrorist training, and new technologies such as the Long Range Acoustical Device that was used by the SEABOURN SPIRIT to ward off pirates on November 5, 2005.

¹ Following the ACHILLE LAURO incident in 1985, the cruise industry took pro-active steps to deter terrorism. In 1986, IMO, with cruise line cooperation, created the first security plan requirement for cruise ships. When the ISPS Code created enhanced security plan requirements for all ships, the cruise industry had well-established security programs and was poised to comply with the new standards.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO
REAR ADMIRAL BRIAN M. SALERNO

Question 1. Some have suggested that arming crews or placing military personnel or armed security teams on board would help protect our sailors, vessels, and cargo. Others have said that insurance costs would be prohibitive.

Please specify the benefits, drawbacks, and any other complications affiliated with the following three options:

- Arming the crew;
- Shipping companies providing armed security personnel; and
- Posting U.S. military personnel on board U.S. flagged vessels transiting dangerous waters?

How would the Coast Guard deal with the complications of regulating the safety of life at sea complications affiliated with carrying additional personnel on board merchant vessels, for portions of a voyage?

Answer. The issues associated with embarking armed security personnel or arming vessel crews on board U.S. flagged vessels transiting high risk waters are addressed at length in the Coast Guard's Port Security Advisory (4-09) and Maritime Security Directive 104-6. Copies of these documents are available upon request, but in precis they maintain the U.S. position that vessel security is first and foremost the responsibility of vessel owners and operators. The largest challenge to such actions is actually two-fold: reluctance on the part of owners and operators to arm their crews, and difficulties with individual sovereign State laws respective of weapons.

In certain instances, *e.g.*, when shipping U.S. Government cargo, U.S. military personnel are already embarked on U.S.-flagged vessels in certain high risk waters, or vessel crews are trained and armed, under a claim of sovereign immunity.

U.S. Coast Guard Certificates of Inspection (COIs) for U.S. Flagged Vessels allow persons to be carried "in addition to the crew." As long as these limits are not exceeded, additional security personnel will be adequately covered by the International Convention of Safety of Life at Sea (SOLAS) required lifesaving equipment. If additional personnel are needed beyond these established limits, the "persons in addition to the crew" limit would need to be revisited, and possible additional equipment provided to be in compliance with SOLAS equipment requirements.

Question 2. It is frequently reported that one of the clear root causes of the piracy epidemic in the Gulf of Aden and off Somalia's Indian Ocean coast is the inherent instability of the Somali government. What steps, if any, has the Coast Guard taken to assist the Somali government in the training and development of a Somali coast guard that could help combat piracy and carry out all safety and security missions as well? Is the Coast Guard considering any additional activities in this regard?

Answer. The Coast Guard has not received a request from the Department of State or the Department of Defense to support this mission; therefore no assistance has been provided. Additionally, the Coast Guard can not unilaterally conduct operations in AFRICOM's area of responsibility (AOR) or in the country of Somalia without the permission of the President of the United States Representative. Since Somalia does not have a President of the U.S. Representative, AFRICOM is the cognizant authority to determine and request appropriate U.S. Forces.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
THERESA WHELAN

Question 1. Recently, General Petraeus, Commander U.S. Central Command, testified that the shipping industry should consider hiring armed guards to increase the security of U.S. vessels operating off Somalia. What is the Department of Defense (DOD) position on the use of military forces versus armed private guards as a preferred security mechanism?

Answer. In general, DOD does not support providing military forces as embarked security teams (ESTs) aboard commercial vessels. This course of action is tantamount to providing a service to the commercial shipping industry at no cost to the companies. The practical effect is that the U.S. taxpayer provides point security service to a private, for-profit entity, free of charge. Moreover, the logistics of transporting military members to a commercial vessel, transiting them through the high-risk area, and then transporting them back to the point of embarkation for the next vessel would both remove assets from service performing other critical missions and be highly inefficient.

Question 2. Why is the DOD reluctant to supplement the crew of U.S.-flag vessels operating in High Risk Areas off the Horn of Africa when there is a similar and existing mechanism for DOD vessels under Military Sealift Command or DOD charter?

Answer. Provision of point security for Military Sealift Command (MSC) or DOD-chartered vessels is qualitatively different than providing security for purely commercial enterprises. DOD provides military embarked security teams (ESTs) for MSC USNS government-owned ships and U.S. flag vessels chartered by MSC during certain transits. These ships are operated by the United States and used on exclusive government noncommercial service. We do so as a force protection measure, but it obviously also protects against piracy.

We have examined the issue concerning whether to provide ESTs for other U.S. commercial vessels. After the MAERSK ALABAMA incident, U.S. Naval Forces Central Command developed a risk matrix to evaluate ships at risk and what actions might be appropriate regarding such ships.

The conclusions reached were that DOD will not provide ESTs for other U.S. commercial vessels for several reasons. First, defense of the U.S. shipping industry is a shared responsibility. Industry has the ability to hire security teams; that is, the services are not uniquely military in nature and the threat that pirates create is one that private security forces can counter effectively. Second, the requirement to provide teams is better allocated to industry, as industry dictates which vessels enter the high-risk region (high/fast, which do not require security, or low/slow, which do require security), what cargo they carry, what destinations they sail to, what routes they take, etc. Industry controls the most important variables that make a vessel at risk. Third, our analysis indicates that DOD costs would be high, particularly in view of the staging and repositioning costs involved with the personnel and weapons.

Question 3. The DOD is using embarked security teams of up to 12 people to protect against pirate attacks on MSC chartered vessels, which sail through the Horn of Africa region. Please explain what specific training these forces receive to operate in the marine environment; what rules of engagement they operate under; and what their chain of command is while assigned to the ship.

Answer. DOD uses embarked security teams (EST) in dangerous waters, including the Horn of Africa region, to protect against pirate attacks on Military Sealift Command (MSC) chartered vessels. The following outlines specific training these ESTs receive to operate in the marine environment; the rules of engagement they operate under; and their chain of command while assigned to the MSC ship.

1. EST Training:

- All personnel assigned to ESTs complete expeditionary combat skills training. This prepares them for all facets of security operations ranging from extensive weapons training including small arms to crew-served weapons, convoy operations, and combat medical training. They also receive training on employment of warning shots and rules of engagement (ROE). Training includes both live fire ranges and the use of simulators.
- EST personnel conduct 2 weeks of intense weapons training.
- Other training involves mobile and fixed defensive operations, visit-board-search and-seizure, and maritime interception operations exploitation teams.

2. Rules of Engagement: ESTs operate according to the Chairman of the Joint Chiefs of Staff standing ROE:

- ESTs have the right and obligation to act in self-defense in response to a hostile act or demonstrated hostile intent.
- A hostile act is an attack or other use of force against the United States, U.S. forces or other designated persons or property.
- Hostile intent is the threat of imminent use of force against the United States, U.S. forces or other designated persons or property.

3. EST Chain of Command while embarked on the ship:

- Ultimate responsibility for safety and security of the ship, his or her crew, and the cargo rests with the ship's master.
- The ship's master plays a key role in determining what actions are necessary and appropriate for physical security of his or her ship, but the EST mission commander has overall responsibility for the EST and its security mission. All actions are coordinated between the tactical supervisor and the master. How-

ever, pre-planned responses can be executed automatically in accordance with established ROE.

- Weapons release authorization resides within the military chain of command of the EST. If the master disagrees with the military response, he or she would need to address it through the EST mission commander's military chain of command.

Question 4. The MSC owned vessels are sending specific members of their crews to the Naval Expeditionary Command for training in anti-piracy measures and small arms handling. What specific training is given; who is certifying it; and how are the members of the crew selected to participate?

Answer. Military Sealift Command (MSC) is not sending crew members to the Navy Expeditionary Combat Command (NECC) for training. The MSC has two small arms schools along with instructors in other locations, where the crewmembers are trained to Navy standards. Some of the unions have also set up small arms training to Navy standards. Each year they are required to train on the Navy small arms course. They also are required to do simulator training and to receive a quarterly use-of-force brief. The instructors certify the crew members' training. The company operating the vessel selects the crew members to receive the training.

Question 5. I understand from the Maritime Administration that there are only 15 U.S.-flag vessels in regular service and an additional five to eight tramp vessels servicing this region at any given time, for an estimated total of 200 to 225 transits per year. If the DOD were to supplement the crew with military forces, what would be the recommended number of service members per team, per vessel; how many teams would be required to fulfill this mission annually under the projected total transits listed above; and what would the estimated cost to the military be, to provide such teams to prevent piratical attacks on U.S.-flag vessels?

Answer. We note that the Maritime Administration (MARAD) has provided us with different information on the number of transits (over 350 transits by over 70 vessels). We have also seen at least nine U.S. vessels transiting the area at any one time, but we are always working to refine our numbers.

Moreover, as stated in response to an earlier question, DOD does not provide embarked security teams (ESTs) for non-U.S. Government contracted, U.S. commercial vessels for several reasons. First, defense of the U.S. shipping industry is a shared responsibility. Industry has the ability to hire security teams, especially since the services required are not uniquely military in nature and the threat that pirates create is one that private security forces can counter effectively. Second, industry is better poised to undertake the requirement to provide teams since they dictate what vessels enter the high risk region (high/fast, which don't need security, or low/slow, which do need security), what cargo they carry, what destinations they sail to, what routes they take, etc. Industry controls the most important variables that make a ship an at-risk vessel. Third, our analysis indicates that DOD costs for providing such security teams would be high, particularly because of the staging and repositioning costs involved with the personnel and weapons. This analysis indicates that a single team costs approximately \$1.7M per year and that with a two-to-one dwell, three teams are required to cover a 365 day commitment for a total of \$5.1M per team year—and this provides coverage for only one vessel. As we are still working to refine the number of vessels transiting through the region, it is difficult to determine the total cost for this mission.

In creating the ESTs for force protection, the manning was established at 12 per team to ensure proper 24-hour coverage in all expected threat conditions. At this point, there would be no change to this for anti-piracy operations because as stated above, we are still working to refine the numbers.

Question 6. What was the total cost to the military in the rescue operation of Captain Phillips of the M/V ALABAMA? What was the total cost to the military in the response to the M/V LIBERTY SUN? How were these costs determined and what is the breakdown by expense?

Answer. The combined incremental cost for the Navy's response to the M/V ALABAMA and M/V LIBERTY SUN piracy incidents is \$3.114 million. The majority of the costs are attributable to the M/V ALABAMA. The M/V LIBERTY SUN situation was resolved before naval forces reached the vessel. The \$3.114 million is composed of the below expenses.

Incremental fuel costs: \$1.191 million

Flying hours: \$1.6 million

SCAN EAGLE units: \$0.3 million

Linguists support, communications, and temporary duty: \$0.006 million

Combined Enterprise Regional Information Exchanges System support (CENTRIXS) to allow vital communication between coalition partners to coordinate and deconflict operations: \$0.017 million

These costs were derived from actual expenses incurred during the M/V ALABAMA and M/V LIBERTY SUN operational events. These costs do not include personnel salaries, benefits, etc., that would have been incurred in the ordinary course of operations.

Question 7. Since its inception, the U.S. Navy has impressively met its responsibility to protect and defend the right of the United States and our allies to move freely on the oceans. What is the DOD doing to maintain the free flow of commerce around the Horn of Africa and ensure U.S. mariners and maritime interests are protected?

Answer. In August 2008, when we saw an upsurge in piracy attacks, the Combined Maritime Forces initiated a maritime security patrol area and assigned warships to try to deter and prevent piracy incidents. In October 2008, U.S. Central Command emphasized the need to monitor U.S. vessels through the Gulf of Aden in an order to its naval forces. In addition, in January 2009 NAVCENT established a new Combined Task Force, designated CTF-151, with the exclusive mission of conducting counter-piracy operations in the Horn of Africa/Gulf of Aden region. The task force continues to disrupt pirate attacks, capture suspected pirates, and turn them over for prosecution. In addition, Combined Maritime Forces co-hosted a meeting in Bahrain with all the other navies operating off the coast of Somalia in order to de-conflict and coordinate operations. All of these initiatives are in support of protection of U.S. shipping and freedom of navigation off the coast of Somalia.

Question 8. Even after the MAERSK ALABAMA attack generated worldwide attention on the threat of piracy, several pirates involved in subsequent attacks were released after being apprehended because of legal uncertainties surrounding potential prosecution. In addition to the recent agreements with Kenya that provide for some prosecutions in that country, how are the United States and other countries working to ensure that suspected pirates will not be released in the future?

Answer. The challenges surrounding prosecution include transferring suspected pirates for prosecution where there are agreements with other nations to accept them for prosecution, the willingness of these states to accept them, and being able to provide evidence, *i.e.*, catching them in the act or having witnesses to testify. Our primary effort in this matter is through the Contact Group on Piracy Off the Coast of Somalia, which includes 28 countries and six international organizations. The Contact Group's Working Group 2—chaired by Denmark—makes efforts to identify practical and legally sound solutions to ensure prosecution of persons suspected of piracy. DOD sends a legal representative to the group (the other members of the U.S. delegation are from State, Justice, and Homeland Security).

The United States continues efforts to establish prosecution agreements with other relevant States, similar to the one we now have with Kenya. We also recognize, however, that in many cases, substantial legal and judicial capacity building is needed among states in the Horn of Africa region, and we are working with our international partners, in particular in the context of the Contact Group for Counter Piracy off the Horn of Africa, to build such capacities. This is a medium-to-long term effort, however. We anticipate that in the interim, effectively prosecuting a high volume of suspected pirates will continue to be challenging. Therefore we also continue to press victim states (states whose vessels or citizens have been involved in a piracy incident) to accept responsibility for trying the perpetrators of the piracy in their own countries. A certain number of suspected pirates will continue to be released, even when suitable prosecution venues have been established, when evidence is lacking or due to an otherwise weak case for prosecution.

At its next session, the Contact Group's Working Group 2 will: (1) draw up detailed terms of reference for an international trust fund to help defray the expenses associated with prosecution of suspected pirates; (2) develop a generic template for use by interdicting states in collecting evidence in a piracy incident (in order to assist states in fulfilling the relevant evidentiary standards); (3) share information about relevant bilateral arrangements and agreements between states with a view to assessing their functioning at a relevant point in time; (4) continue consideration of possible international or regional mechanisms for the prosecution of suspected pirates as an addition to options for national prosecution; and (5) continue gathering information on relevant national legal systems, including in coastal states, to ensure that nations have the ability to prosecute pirates.

Question 9. The Navy's response to the MAERSK ALABAMA pirate attack and kidnapping was situationally appropriate and successful, but was reactive in nature.

How can the Navy effectively provide preventative protection of U.S.-flag vessels and mariners, while keeping the sea lanes open?

Answer. Commander, U.S. Naval Forces, Central Command (NAVCENT) established the maritime security patrol area in the Gulf of Aden in August 2008, marking the beginning of a major, enduring commitment by Department of Defense to provide for the safe passage of both U.S.-flagged and other vessels passing through this region. In addition, in January 2009 NAVCENT established a new combined task force, designated CTF-151, with the exclusive mission of conducting counter-piracy operations in the Horn of Africa/Gulf of Aden region. NAVCENT has also established a shared awareness and deconfliction (SHADE) mechanism in order to coordinate and share information more effectively among the numerous entities (other States and international organizations) conducting counter-piracy operations in the same maritime region.

We have made efforts to disrupt pirate attacks, capture suspected pirates, and turn them over for prosecution. However, the best preventive efforts can be done by industry—not military forces. For example, from February 25 to April 20, 2009, 78 percent of the unsuccessful piracy attempts were the result of merchant vessel self-protection—only 22 percent were due to direct naval presence and/or intervention. While naval presence can be helpful, given the large ocean area in which the pirates operate, the Navy has and will continue to advocate that U.S. flag vessels and mariners follow best practices. The data on piracy incidents has made it clear that the most effective means of avoiding capture by pirates off Somalia is a robust program of self-protection by individual vessels.

Question 10. If the merchant ships begin embarking contracted armed security forces, what concerns or reservations will the DOD have when considering whether or not to assist a U.S.-flag vessel being attacked by pirates?

Answer. The presence or absence of embarked armed security forces aboard merchant vessels will have no bearing on DOD forces' decisions to assist U.S.-flagged vessels under attack. DOD does not view self-protection measures taken by commercial shippers to be a substitute for a robust response by our naval forces to an ongoing act of piracy against a U.S. vessel. Rather, DOD views self-protection measures by shippers and an enduring, interdiction-capable naval force as complementary, mutually supporting measures that, together, can significantly diminish the threat of pirates successfully taking U.S. vessels.

Question 11. Does the DOD classification of pirates as criminals affect how DOD responds to the actions of pirates?

Answer. It is international and U.S. law, not DOD, that has classified acts of piracy as criminal acts. As a result, our response must comply with a law enforcement paradigm authorizing actions against those engaged in piracy while at sea. Nonetheless, there are sufficient authorities enabling DOD to use force against suspected pirates, including in self-defense, and this paradigm has not negatively affected our operations.

Question 12. Does the DOD consider U.S.-flag vessels to be sovereign U.S. territory? Why or why not? When the cargo is government impelled or specifically military cargo does that make a difference?

Answer. A flag state exercises jurisdiction and control over ships flying its flag as reflected in article 94 of the Law of the Sea Convention. Although this is not equivalent to considering U.S.-flag vessels as sovereign U.S. territory, there are immunities for U.S. Government vessels.

DOD and the Department of State have taken the position, at least since 1985, that U.S. Navy Military Sealift Command (MSC) U.S.-flag chartered vessels are entitled to sovereign immunity. In practice (because of the administrative burden and advance notice required when filing diplomatic clearance requests), except in unusual circumstances the United States asserts full privileges of sovereign immunity only for MSC U.S.-flag time charters (this includes immunity from boarding and search of the vessel, jurisdictional control over persons on board, not flying the port state flag, and freedom from arrest and taxation), and only limited privileges of immunity for MSC U.S.-flag voyage charters (freedom from arrest and taxation). Though privately owned, MSC U.S.-flag chartered vessels are (1) operated by the Department of Defense (MSC), and (2) used for the time being exclusively for government noncommercial service.

Depending on the terms of the charter party (the contract), and the degree of operational control granted to the government thereby, it may be reasonable to assert that U.S.-flag chartered vessels (under charter by U.S. Government Departments other than DOD) and carrying only government cargo for government non-commercial purposes are also entitled to sovereign immunity.

U.S.-flag vessels that are chartered by private entities are NOT entitled to sovereign immunity as they are NOT operated by the U.S. Government and are being used in commercial service.

U.S.-flag liner service vessels are not entitled to sovereign immunity because they are not, even for the time being, used exclusively for government noncommercial service. They generally solicit and carry commercial as well as government cargo and thus remain in commercial service. Further, even if they are carrying only government cargo at a particular time, it is more difficult to argue that they are operated by the U.S. Government as there is very little operational control by the U.S. Government over the vessel. As a result, ownership of the cargo is only one necessary factor—the other factor is government control of the vessel. Without both factors, we cannot exert sovereign immunity over the vessel or voyage.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
THERESA WHELAN

Question 1. Given that merchant vessels carry supplies for our overseas military operations, how significant is the impact of piracy in the Horn of Africa region on U.S. military operations in the Middle East and South Asia?

Answer. Some assets are needed to combat piracy in the Horn of Africa region, but the impact on U.S. military operations in the Middle East and South Asia is not significant at this time. The additional intelligence, surveillance and reconnaissance that might be needed to more effectively hunt pirates, as well as the additional Special Forces that might be required to conduct other piracy-related missions in the AOR, could potentially impact the campaigns in Iraq and Afghanistan.

U.S.-flag vessels transiting the region carry Department of Defense cargo bound for operations Iraqi and Enduring Freedom and U.S.-flag vessels transiting the region carrying humanitarian cargoes destined for Somalia are also at risk. This is a particular issue because the food aid cargoes themselves are in the low and slow variety in most instances so they're very vulnerable.

Ultimately, there needs to be a balance of resources.

Question 2. Are pirate operations in the Indian Ocean and Middle Eastern waters supported by terrorist groups?

Answer. Even before the most recent spike in piracy off the Horn of Africa, relevant intelligence agencies were closely and persistently monitoring the piracy situation in Somalia to determine whether there is a link between piracy and terrorist organizations inside Somalia or elsewhere. The result of this ongoing analysis makes it clear that no such nexus exists. DOD recognizes the potential for the development for such links and will ensure that the intelligence community continues to closely monitor for their development. Similarly, we have no indications of the involvement of Somali warlords in the piracy equation.

Although Somali piracy currently appears to be motivated solely by money, not ideology and we see no meaningful links between Somali pirates and violent extremists, we must ensure that piracy does not evolve into a future funding source for terrorism. To this end, we will continue to work with the international Contact Group on Piracy Off the Coast of Somalia to determine ways to deter piracy of the coast of Somalia.

Question 3. Only a handful of those captured by Somali pirates have returned home safely. Captain Phillips was rescued by brave Navy Seals and sailors from the USS Bainbridge. Yet others were freed following ransom payments. Has the payment of ransoms for hostages and ships actually increased the risk of pirate attacks?

Answer. It remains true that commercial shipping companies and their insurers continue to pay ransoms to have their vessels released, thus providing a powerful incentive and the financial wherewithal to perpetuate the pirates' activities. The United States has actively pressured flag and victim States to take action to prevent the payment of ransom, but it remains a critical and largely unresolved enabling mechanism. U.S. policy is not to pay ransom under any circumstances.

We will coordinate with all stakeholders to deprive pirates and those supporting the pirates of any illicit revenue and the fruits of their crime, advocating the development of national capabilities to gather, assess, and share financial intelligence on pirate financial operations, with the goal of tracing payments to and apprehending the leaders of pirate organizations and their enablers. To this end, we will collaborate with governments and the shipping industry to develop a consistent response to the payment of ransom demands. There are substantial long term risks in surrendering to the ransom demands of pirates. Paying ransoms put other seafarers at increased risk, enable to pirates to apply the financial leverage to increasing capa-

bility and capacity, incentivizing piracy, and ultimately provides support to criminal organizations. Any strategic communications strategy must convey these concerns. We will improve our ability to collect and share intelligence on pirate financial operations, coordinating with other stakeholders to trace pirate revenue. We will consider taking action to apprehend, prosecute, and punish persons or entities that aid or abet or conspire with pirates in violation of national law.

We will also press our partners in the international Contact Group on Piracy off the Coast of Somalia to play a more aggressive role in stopping the payment of ransoms and otherwise facilitating the flow of money to pirates, because that, in fact, is what is enabling the pirates to get more arms and undertake even greater levels of attack.

