

COMBATING PIRACY AT SEA
A REASSESSMENT OF PUBLIC AND PRIVATE
RESPONSIBILITIES

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Foreword

Since 2008, at the request of the United Nations, the Netherlands has participated in anti-piracy operations off the coast of Somalia. The Dutch contribution initially focused on providing naval escorts for UN ships transporting food through Somali waters but now also includes preventive action against pirates off the coast of Somalia.

On 22 March 2010, the government asked the Advisory Council on International Affairs (AIV) to prepare an advisory report on international efforts to combat piracy and armed robbery at sea (see annex I). In its request for advice, the government noted that the international community is aware that the long-term solution to this problem lies not at sea but on land. Against this background, it asked the AIV to take a broad look at the problem of piracy in its report, rather than confining itself to the current problems off the coast of Somalia.

The central question is: 'How can the international community – and the Netherlands in particular – combat piracy and armed robbery at sea most effectively?'

The government also requested answers to the following subsidiary questions:

1. What can the international community learn from successful initiatives against piracy and armed robbery at sea, including in the Strait of Malacca?
2. What future trends does the Advisory Council predict in terms of the threat of piracy and armed robbery at sea?
3. How great is the actual and potential threat posed by piracy to the Netherlands (to security as well as to the economy)?
4. Besides the responsibility of states to combat piracy and armed robbery at sea, what responsibility do shipowners and the masters of vessels have in this respect?
5. Do NATO and the EU, along with the other states concerned, possess sufficient capabilities to deal with the threat of piracy in the long term? And what contribution can be expected of the Netherlands?
6. How can a contribution be made to building capacity in coastal states to enable them, in the long term, to combat piracy and armed robbery at sea without assistance from the international community?
7. What can be done to tackle impunity in relation to piracy and armed robbery at sea?
8. What steps could be taken to combat the funding of piracy?
9. Does the AIV believe, having regard to the many international initiatives in this area, that there is a need for a centre of expertise on piracy?

In the introduction, we raise a few supplementary questions concerning the division of public and private responsibilities in the fight against piracy. We also discuss the causes of piracy and the need for a more coherent approach to combating piracy at sea and on land.

Chapter I – The threat of piracy – discusses the background of the current threat in three regions and the implications for the Netherlands. To gain a better understanding of piracy as a criminal activity, this chapter also examines the business model underpinning piracy, and its links to organised crime.

Chapter II – Preventing piracy – describes the shipping industry’s own responsibility to protect ships against piracy and the problems and tensions that arise in this context. The use of private security companies (PSCs) that station armed or unarmed security teams on board merchant ships raises questions about existing government policy in this area. Besides shipowners and masters of vessels, insurance companies offering piracy insurance also have a responsibility to limit the threat of piracy to international shipping.

Chapter III – International cooperation in the fight against piracy – examines the results of international efforts to combat piracy and the lessons learned in this context. The International Maritime Organization (IMO) has played a key role in boosting regional cooperation, while the European Union has a wide range of military and civilian capabilities as well as financial resources at its disposal, which could contribute to a more coherent and systematic approach to combating piracy off the coast of Somalia.

In chapter IV – Prosecuting pirates – the AIV examines the responsibilities of governments under international law with regard to prosecuting those responsible for acts of piracy. In doing so, we consider the provisional results of prosecution in the Netherlands, the United States and Germany as well as efforts to increase the prosecution of Somali pirates at regional level in East Africa.

In chapter V – Conclusions and recommendations – the AIV presents its recommendations on how to effectively combat piracy and armed robbery at sea. These recommendations are further elaborated in the answers to the questions raised in the Dutch government’s request for advice.

The report was prepared by the AIV’s Peace and Security Committee (CVV), which consists of the following persons: Professor J.J.C. Voorhoeve (chair), Lieutenant General M.L.M. Urlings (ret.) (vice-chair), D.J. Barth, Dr I. Duyvesteyn, Dr B.T. van Ginkel, Professor M. de Goede, J.S.L. Gualthérie van Weezel, Dr P. van Ham, Dr C.M. Megens, Ms C.F. Meindersma, J. Ramaker and Lieutenant General H.W.M. Satter (ret.). Dr W.F. van Eekelen of the European Integration Committee (CEI) and Professor M.T. Kamminga of the Human Rights Committee (CMR) also participated in the preparation of the report. The civil service liaison officers were Ms H.M.J. Somsen, V.C. Roza and J.B. de Bourbon de Parme on behalf of the Ministry of Foreign Affairs and Dr S.J.G. Reyn, Commodore F. Sijtsma and Ms E.J.M. Troquete on behalf of the Ministry of Defence. The executive secretary was M.W.M. Waanders, assisted by D.A. Wegen, P. Koning and Ms J.C. McCall (trainees).

In preparing this report, the AIV spoke to a number of experts and paid a working visit to the EU Military Staff and the Permanent Representation of the Netherlands to the European Union in Brussels. A list of the persons consulted appears in annexe VIII. The AIV is very grateful to them for their input.

The AIV adopted this report during its meeting on 10 December 2010.

Introduction

There are various international definitions of piracy.¹ For the purposes of this report, the AIV uses the following definition:

‘The act of unlawfully appropriating or plundering vessels for private gain or hijacking vessels and holding those on board hostage for ransom, involving the threat or use of force.’

A distinction is made between armed robbery in territorial waters, which falls under the jurisdiction of the coastal state, and criminal acts on the high seas, which are referred to as piracy and fall under the UN Convention on the Law of the Sea (UNCLOS). For the purposes of this report, however, the term piracy also encompasses armed robbery in territorial waters.

Piracy not only infringes the freedom of the high seas but also undermines the international legal order. Historically speaking, it is clear that the rise and decline of piracy is linked, among other factors, to the development of political structures on land. In other words, a rise in piracy in a particular region is often indicative of a weakened government.

Over the centuries, the causes of piracy have remained largely the same, i.e. a lack of law enforcement in international and territorial waters, favourable geography, fragile states, corrupt authorities, economic inequality between rich and poor countries and the expansion of global maritime trade. It is impossible to eliminate these causes completely. However, a detailed examination of lessons learned from previous international anti-piracy initiatives can contribute to the development of a more coherent approach to tackling piracy at sea and on land.

Combating piracy raises several important questions regarding the division of public and private responsibilities:

- What is the relationship between the private responsibility of shipowners to protect their crews and cargo ships and the public responsibility of states to ensure free navigation in international waters?
- Is it advisable to use private security companies (PSCs) to protect cargo ships? If so, what powers should they be granted and what restrictions placed on them?
- What is the responsibility of insurance companies that provide piracy insurance for maritime shipping in high-risk areas?
- What form does the international effort to combat piracy take in Southeast Asia and the Horn of Africa? What key lessons have been learned with a view to developing an effective international anti-piracy strategy?
- What are the responsibilities of governments under international law as regards taking action against and prosecuting pirates?
- What considerations drive states to decide whether or not to prosecute pirates who have been captured? Are new international agreements needed to ensure that pirates are properly tried?

The AIV believes that its response to these questions in chapters II-IV serves as a basis for its answers to the questions raised in the government’s request for advice in chapter V.

1 Article 101 of the UN Convention on the Law of the Sea (UNCLOS). The International Maritime Bureau (IMB) uses a definition that also encompasses armed robbery in territorial waters.

I The threat of piracy: background and impact

I.1 Piracy and privateering: historical overview

Piracy has a long tradition and can be regarded as one of the world's oldest professions. In ancient Greece, piracy was widespread and was considered an entirely honourable way to make a living. After the fall of the Roman Empire, piracy flourished in the Mediterranean Sea throughout the Middle Ages. With the rise of the state as a form of political organisation, piracy became bound up with the power, fortunes and policies of states.²

Privateering was a form of naval warfare in which states authorised private individuals to capture enemy ships and goods. Privateers received an official document for this purpose, known as a letter of marque. The Sea Beggars (*Watergeuzen*) consisted of various groups of privateers holding such letters. Privateering was different from piracy in that privateers adhered to the rules of war. If a country experienced a great deal of trouble at the hands of privateers, it would denounce them as pirates, as in the case of the Dunkirk Privateers. Over time, various privateers turned to piracy. Suleyman Reis, Murad Reis and Claes Compaen are examples of Dutch privateers who joined the Barbary Pirates. Privateers and privateering form a *leitmotif* in Dutch history of the 16th and 17th centuries. During the first 30 years of its existence, for instance, the Dutch East India Company (VOC) operated as a privateering organisation rather than the successful trading company that it would later become.³

In the late 16th and 17th centuries – the ‘golden age of piracy’ – England was regarded as a nation of pirates and privateers, though it was almost impossible to distinguish between the two pursuits.⁴ At this time, powerful monarchs had no need of privateering or piracy and therefore sought to suppress such activities, while weak monarchs relied on the proceeds to finance their wars.⁵ From the 17th century onwards, however, privateering began to lose its status as an honourable profession, due to the growth of maritime trade and growing profit margins, especially in the area of foreign trade. European trading states now focused on establishing legal rules for the protection of maritime trade routes, thus extending their authority over the high seas at the expense of privateers and pirates.⁶

2 Birgit Mahnkopf, ‘Piratenhatz am Horn von Afrika. Zur politischen Ökonomie eines Piratenkonflikts und seiner geopolitischen Bedeutung’, *Internationale Politik und Gesellschaft* I/2010, p. 60.

3 NWO, ‘Succes Gouden Eeuw te danken aan kapers’, 1 April 2001, available at: <http://www.nwo.nl/nwohome.nsf/pages/NWOA_7GACDK> (consulted on 19 August 2010). ‘Kapers, piraten en boekaniers’, *Nederlands Dagblad*, 30 January 2009.

4 Bibi van Ginkel and Frans-Paul van der Putten, *The International Response to Somali Piracy: Challenges and Opportunities*, Martinus Nijhoff Publishers, Leiden, 2010.

5 N.A.M. Rodger, *The Safeguard of the Sea: A Naval History of Britain, Volume I: 660-1649*, HarperCollins, London, 1997, p. 116.

6 Birgit Mahnkopf, ‘Piratenhatz am Horn von Afrika. Zur politischen Ökonomie eines Piratenkonflikts und seiner geopolitischen Bedeutung’, *Internationale Politik und Gesellschaft* I/2010, p. 60.

The decline of piracy in the Atlantic and Mediterranean regions from the 17th century onwards was not mirrored in Asia. In the South China Sea and the Strait of Malacca, in particular, piracy remains a time-honoured practice whose relevance is undiminished.

1.2 Current piracy threat

To gain a clear understanding of the current piracy threat in various regions, it is useful to employ an explanatory analytical framework. Ong-Webb analyses the rationale for piracy in Southeast Asia on the basis of four characteristics. This framework can also be used to analyse modern piracy in other regions and to predict future trends:

1. *Economics*. Piracy can be largely attributed to marginalised social groups that do not benefit from increases in regional prosperity. It is regarded as an economic survival strategy.
2. *Sociology*. Piracy is rooted in the traditions of a society in which a large group of people depend on the sea, and in which piracy is regarded as a possible livelihood.
3. *Politics*. The scale of piracy is inversely proportional to the political will and capacity of states to enforce the rule of law at sea and on land and to protect their borders against security threats.
4. *Geography*. The 'geographical curse' of maritime Asia means it comprises states that boast: (1) long coastlines; (2) proximity to international shipping routes; (3) numerous islands with sheltered coves; and (4) dense tropical vegetation. These geographical factors work in the favour of pirates and organised crime and against states.⁷

The following sections discuss the main regions affected by piracy: Southeast Asia, West Africa and the Horn of Africa.

1.2.1 Strait of Malacca (Southeast Asia)⁸

The narrow Strait of Malacca connects the Indian Ocean to the South China Sea and is one of the most important and busiest shipping routes in the world. It is estimated that 80,000 people and 10,000 fishing boats occupy this strip of water between Indonesia, Malaysia and Singapore on a daily basis.⁹ The heavy traffic and limited room for manoeuvre leave ships vulnerable to attack by pirates. The natural **geography** of the Strait of Malacca – which includes large archipelagos, sheltered coves and sparsely populated islands – provides an ideal operating base for pirate gangs. These gangs focus primarily on small-scale robbery in or near ports, hijacking ships that disappear without trace along with their cargo, or hijacking ships for ransom.¹⁰

The region's **economic climate and standard of living** have also influenced the development of piracy. For instance, the large-scale migration of underprivileged Indonesian nationals

7 Graham Gerard Ong-Webb, 'Piracy in Maritime Asia: Current Trends', in Peter Lehr (ed.), *Violence at Sea: Piracy in the Age of Global Terrorism*, Routledge, New York, 2007, pp. 45-46.

8 For a map of the Strait of Malacca, see annexe II.

9 Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World*, Hurst Publishers, London, 2009, p. 72.

10 *Ibid.*, at pp. 80-81.

to more affluent areas in the hope of a better existence has ended in disappointment in many cases. One example of this is the industrial free-trade zone on the island of Batam, which was at the forefront of the country's economic development under former president Suharto and attracted many Indonesians looking for work. The present-day pirates on Batam are a product of this migration.¹¹

During the economic crisis and social unrest that dominated the end of the 1990s, combating piracy in the Strait of Malacca was not a top priority. Large-scale corruption in the political and military bodies responsible for maritime supervision, especially in Indonesia, formed an obstacle to the suppression of piracy on the high seas and armed robbery in and around the ports.

At the turn of the century, the **economic and political situation** in the region **stabilised**. Indonesia, Malaysia and Singapore took cautious steps toward cooperation and concluded agreements to improve land-based and maritime security. Since 2004, the Strait of Malacca has been protected by MALSINDO (Malaysia-Singapore-Indonesia) Malacca Straits Coordinated Patrols, which encompass coordinated naval and aerial ('eyes in the sky') patrols, land-based radar checks and intelligence cooperation. Thailand recently also joined these patrols. In 2006, Singapore established an information centre under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).¹²

Table 1: Reported attempts at piracy and armed robbery at sea in Southeast Asia¹³

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 ¹⁴
Indonesia	122	98	112	125	95	79	50	43	28	15	26
Malaysia	21	19	15	5	9	3	10	9	10	16	13
Singapore	5	6	3	2	8	7	5	3	6	9	2
Strait of Malacca	73	19	18	28	37	12	11	7	2	2	1

These figures reveal a sharp decline in piracy in the region during the first decade of the new millennium and appear to indicate that improved regional cooperation and national efforts to secure ports and coastal waters are bearing fruit. Another explanation for the decline in piracy in Southeast Asia is the damage suffered by pirates in the December

11 Eric Frécon, 'Piracy and armed robbery at sea along the Malacca Straits: Initial impression from fieldwork in the Riau islands', in Graham Gerald Ong-Webb (ed.), *Piracy, Terrorism and Securing the Malacca Straits*, Singapore: ISAS, 2006, p. 72.

12 Sam Bateman et al., 'Good order at sea in Southeast Asia', RSIS Policy Paper, Nanyang Technological University (April 2009), p. 20.

13 ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009. M. Bruyneel, 'Trends in piraterij op zee; verschillen tussen Zuidoost-Azië en Somalië', *Justitiële verkenningen* 8/09, vol. 35, December 2009, p. 45.

14 Attacks reported between 1 January and 30 September 2010.

2004 tsunami, the subsequent presence of military forces in the region and the economic reconstruction of coastal towns hit by the tsunami. Section III.4 analyses the lessons learned from regional cooperation in Southeast Asia in greater depth.¹⁵

*1.2.2 Nigeria (West Africa)*¹⁶

In Nigeria, most of the population has not shared in the **economic prosperity** resulting from the country's large oil reserves. The explosive rise in oil exports in the mid-1970s led to a substantial rise in the import of consumer goods via Nigerian ports. However, due to the inadequate facilities and security at these ports, foreign cargo ships became an easy target for theft and robbery by unorganised, opportunistic gangs. The rise in piracy and especially armed robbery immediately off the coast of Nigeria is connected to this rapid rise in prosperity and overseas trade on the one hand, and the country's huge income disparities on the other. Under the military regime of General Babangida, which lasted from the mid-1980s to the mid-1990s, armed attacks on (mainly foreign) ships were temporarily halted as a result of a nationwide anti-crime campaign.

During the second half of the 1990s, piracy and armed robbery at sea resurfaced due to **worsening social conditions** in Nigeria and an increase in violence and crime. Because foreign ships were increasingly taking measures to protect themselves against attacks by pirates, the well-organised, heavily armed pirate gangs in the area around the port of Lagos increasingly targeted local fishing boats, resulting in a general decline and loss of income for the Nigerian fishing industry. Another threat involved the hijacking of ships by armed militias in the Niger Delta as a means of putting political pressure on the Nigerian government and extorting money from Western oil companies.

The rise of armed militias like the Movement for the Emancipation of the Niger Delta (MEND) is directly connected to **oil extraction** in the Niger Delta and the local population's objections to oil drilling and the resulting damage to the local environment.¹⁷ The number of incidents involving the kidnapping of persons travelling by ship to offshore oil rigs has risen sharply in recent years. Royal Dutch Shell reported that 11 employees and contractors working for Shell were kidnapped for ransom in 2008 and that this figure rose to 51 in 2009.¹⁸ Some of these kidnappings were carried out by armed militias operating at sea. According to the International Maritime Bureau (IMB), however, the majority of pirate attacks on oil rig supply ships and fishing boats are not reported. The true number of pirate attacks is therefore higher than indicated in the

15 M. Bruyneel, 'Trends in piraterij op zee; verschillen tussen Zuidoost-Azië en Somalië', *Justitiële verkenningen* 8/09, vol. 35, December 2009, p. 50. Dutch Ministry of Foreign Affairs et al., Policy memorandum on combating piracy and armed robbery at sea, The Hague, August 2006.

16 For a map of the Gulf of Guinea, see annexe III.

17 S. Eklöf Amirell, 'Zeeroof in Afrika; mondiale en lokale verklaringen voor piratenactiviteiten in Nigeria en Somalië', *Justitiële verkenningen* 8/09, vol. 35, December 2009, pp. 14-19. Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World*, Hurst Publishers, London, 2009, pp. 111-122.

18 Royal Dutch Shell, 'Sustainability Report 2009 – Nigeria', available at: <<http://sustainabilityreport.shell.com/2009/ouroperationsinfocus/nigeria.html>> (consulted on 4 November 2010).

following table. The sums paid out in ransom for persons kidnapped by Nigerian pirates range from a few thousand to hundreds of thousands of euros.¹⁹

Table 2: Reported attempts at piracy and armed robbery at sea in Nigeria²⁰

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 ²¹
Nigeria	10	20	15	40	28	16	12	42	40	28	11

In 2009, the Nigerian government announced an amnesty scheme for militants in the Niger Delta who were willing to lay down their arms in exchange for a rehabilitation and training programme. At first, MEND and other militant groups responded positively to this offer and declared a ceasefire. At the beginning of 2010, however, MEND announced that it would no longer abide by the ceasefire, as it did not believe that the government would actually transfer control over the region's natural resources to the local population.²²

1.2.3 Somalia (Horn of Africa)²³

Until the end of 1980s, piracy and armed robbery at sea were almost non-existent off the coast of Somalia. Attacks on merchant ships first started in 1989 off the coast of Somaliland and were perpetrated by a group of northern rebels (the Somali National Movement) opposed to the military regime of Mohammed Siad Barre. With these attacks, the rebels highlighted their claim to sovereignty over Somalia's territorial waters. They also warned international shipping companies to refrain from working with the Somali regime.

After the fall of Barre's military regime in 1991, Somalia declined into a **failed state** that was de facto controlled by a network of clans divided over three relatively autonomous regions: Somaliland (in the north-west), Puntland (in the north-east) and Central Somalia (the central and southern regions). A combination of inter-clan rivalries, general lawlessness, the patronage system, arms proliferation, extremism, impunity, extreme

19 ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009. D. J. Nincic, 'Maritime Piracy: Implications for Maritime Energy Security', *Journal of Energy Security*, 19 February 2009, available at: <http://www.ensec.org/index.php?option=com_content&view=article&id=180:maritime-piracy-implications-for-maritime-energy-security&catid=92:issuecontent&Itemid=341> (consulted on 26 September 2010).

20 ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009. M. Bruyneel, 'Trends in piraterij op zee; verschillen tussen Zuidoost-Azië en Somalië', *Justitiële verkenningen* 8/09, vol. 35, December 2009, p. 45.

21 Attacks reported between 1 January and 30 September 2010.

22 BBC News, 'Nigeria militants "end truce in Delta oil region"', 30 January 2010, available at: <<http://news.bbc.co.uk/2/hi/africa/8488772.stm>> (consulted on 2 November 2010). Al Jazeera, 'Nigeria fighters call off ceasefire', 30 January 2010, available at: <<http://english.aljazeera.net/news/africa/2010/01/201013022452924104.html>> (consulted on 4 November 2010). BBC News, 'Nigeria offers militants amnesty', 26 June 2009, available at: <<http://news.bbc.co.uk/2/hi/africa/8118314.stm>> (consulted on 2 November 2010).

23 For maps of Somalia and the Gulf of Aden, see annexes IV and V.

poverty and unemployment led to a sharp rise in crime in large parts of the country, especially in Puntland and Central Somalia. This criminal activity also shifted from the land to the waters off the coast of Somalia, which were thus transformed into a lawless maritime area without an official navy or coastguard.²⁴

After 1991, the local traditional fishing industry initially experienced a revival. The fish in question was mainly exported to Yemen, since Somalis do not consume much fish. In addition, there was a sharp increase in the number of **foreign trawlers** from Europe and Asia fishing in Somalia's territorial waters and Exclusive Economic Zone (EEZ). Local warlords and clan leaders in Somalia stepped in to fill the power vacuum at sea and protect Somalia's territorial waters against intruders. They began issuing fishing licences to foreign trawlers and hired local fishermen to intimidate and extort money from foreign fishermen who were unwilling to purchase them. Information on pirate attacks on foreign trawlers off the coast of Somalia was scarce, as reporting an attack would raise questions about the legality of their fishing activities in Somali waters.

In addition to fishing by foreign trawlers, **toxic waste dumping** on or near the Somali coast is also cited as a reason for the rise of piracy. For instance, Januna Ali Jama, a spokesperson for pirates based in Puntland, has claimed that piracy for ransom is a response to the illegal dumping of toxic waste on Somalia's shores for the past 20 years:

'The Somali coastline has been destroyed, and we believe this ransom money is nothing compared to the devastation that we have seen on the shores.'²⁵

In 2005, the United Nations Environment Programme (UNEP) corroborated the claim about toxic waste dumping in reports following the December 2004 tsunami. Not only had the tsunami caused 300 fatalities and destroyed thousands of homes in Somalia, it noted, but large numbers of containers and barrels were now leaking toxic substances onto Somalia's beaches. Since the outbreak of the civil war at the end of the 1980s, European companies, in particular, have used Somalia as a dumping ground for toxic waste, either by means of illegal dumping or by concluding profitable waste dumping deals with local warlords.²⁶

24 S. Eklöf Amirell, 'Zeeroof in Afrika; mondiale en lokale verklaringen voor piratenactiviteiten in Nigeria en Somalië', *Justitiële verkenningen* 8/09, vol. 35, December 2009, pp. 19-25. Raymond Gilpin, 'Counting the Costs of Somali Piracy', United States Institute of Peace Working Paper, June 2009.

25 Al Jazeera, 'Toxic waste behind Somali piracy: Pirates say USD 8m ransom is reparation for years of hazardous waste dumping by firms', 11 October 2008, available at: <<http://english.aljazeera.net/news/africa/2008/10/2008109174223218644.html>> (consulted on 26 November 2010).

26 'Somalia's secret dumps of toxic waste washed ashore by tsunami', *The Times*, 4 March 2005, available at: <<http://www.timesonline.co.uk/tol/news/world/article418665.ece>> (consulted on 26 November 2010). B.M. Hussein, 'The Evidence of Toxic and Radioactive Waste Dumping in Somalia and its Impact on the Enjoyment of Human Rights: A Case Study', paper presented at the United Nations Human Rights Council, 14th Session, Panel Discussion on Toxic Waste, Geneva, 8 June 2010, available at: <http://www.wardheernews.com/Articles_2010/June/Bashir/Toxic_waste_dumping_in_Somalia_and_its_impact_on_human_rights.pdf> (consulted on 26 November 2010).

At the turn of the millennium, piracy on international shipping routes through the Gulf of Aden and the Somali Basin was still limited in scope and focused chiefly on foreign trawlers, small cargo vessels and private yachts. Pirates used small, high-speed motor boats, sometimes operated from larger mother ships. They conducted ransom negotiations from hijacked ships, which were often anchored just off the Somali coast, with their crews still on board.

An interesting example of this phenomenon is the August 2005 hijacking of three Taiwanese trawlers that were fishing off the coast of Somalia. The three vessels, with a total of 48 people on board, were forced to sail to an island close to the port of Kismaayo in southern Somalia. The pirates claimed that they belonged to the National Volunteer Coastguard of Somalia and that they were impounding the vessels on account of illegal fishing in Somali waters.²⁷ They imposed a fine of USD 5,000 per person for illegally entering Somali waters.²⁸ This case perfectly illustrates the effects of the absence of the rule of law in Somalia: the lack of maritime supervision (by the navy or coastguard) led to a rapid rise in illegal fishing in Somali waters, mainly by Asian and European fishermen. This in turn led to a loss of income for Somali fishermen, who responded by taking the law into their own hands by hijacking foreign trawlers and taking their crews hostage in order to extort financial compensation.

This laid the foundations for the current piracy threat, which chiefly consists of the hijacking for ransom of cargo ships on **international shipping routes** off the coast of Somalia and deep into the Indian Ocean. In the words of Abshir Abdillahi 'Boyah', a notorious pirate leader from Puntland:

'The piracy began because traditional coastal fishing became difficult after foreign fishing trawlers depleted local fish stocks. Traditional fishermen started attacking the trawlers until the trawler crews fought back with heavy weapons. The fishermen then turned to softer targets. We went into deep ocean and hijacked the unarmed cargo ships.'²⁹

In the middle of 2006, the **Islamic Courts Union (ICU)** seized control of Somalia's main cities, including the capital Mogadishu, and began to tackle the country's extensive crime problem. The ICU's regime in Somalia coincided with a brief drop in piracy in 2006 (see table 3). At the end of 2006, due to fears that Somalia would fall into the hands of Islamic fundamentalists, Ethiopian military forces invaded the country with the support of the United States, and ousted the ICU.

27 In 1972, Somalia claimed a 200-nautical-mile zone as its territorial waters. In 1989, it ratified the UN Convention on the Law of the Sea (UNCLOS), which differentiates between territorial waters (12 nautical miles) and an Exclusive Economic Zone (EEZ) (200 nautical miles). However, Somalia has so far not formally established an EEZ.

28 Peter Lehr (ed.), *Violence at Sea: Piracy in the Age of Global Terrorism*, Routledge, New York, 2007, p. 5.

29 David McKenzie, 'No way to stop us, pirate leader says', *CNN report*, 4 December 2008, available at: <<http://edition.cnn.com/2008/WORLD/africa/12/01/pirate.interview/index.html>> (consulted on 23 June 2010).

Table 3: Reported attempts at piracy and armed robbery at sea around the Horn of Africa³⁰

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 ³¹
Somali Basin	7	8	6	3	2	35	10	31	19	80	56
Gulf of Aden/ Red Sea	12	8	10	18	8	10	10	13	92	131	68

As from 2006, Somali pirates changed their modus operandi and began to concentrate on heavily armed attacks on unarmed cargo vessels, including attacks far from the Somali coast. In 2009, 211 attacks were reported, and 47 ships were hijacked, with a total of 867 hostages on board. In the first nine months of 2010, 124 attacks were reported, and 35 ships were hijacked, with a total of 682 hostages on board. At the same time, ransom payments for the release of hijacked ships and hostages have increased. The IMB estimates that in 2009 approximately USD 82 million was paid in ransom sums for the release of hijacked ships and their crews. In 2009, the average ransom payment per ship was USD 1.75 million, compared with USD 1.25 million in 2008. The highest reported ransom payment for a single ship in 2009 was USD 5.5 million, and the lowest USD 100,000. In November 2010, Somali pirates received record ransoms of USD 9.5 million for a South Korean oil tanker and USD 9 million for a Singaporean tanker.³²

Fishing boats are no longer the preferred target of Somali pirates, accounting for just 6.5% of reported attacks in 2009.³³ In addition, foreign trawlers now hardly ever venture into Somalia's EEZ owing to the threat of piracy. Research by the European Commission, for example, identified no trawlers from EU member states still fishing in the country's EEZ.³⁴

In 2009 and 2010, there was a sharp rise in Somali piracy in the Indian Ocean up to 1,000 nautical miles off the coast of Somalia and off the coasts of Kenya, the Seychelles, Tanzania and Madagascar. Somali pirates are expanding their area of operations in response to international maritime operations on the busy shipping route through the Gulf of Aden. In 2009, they carried out six attacks at a distance of more than 800 nautical miles off the coast of Somalia, three of which were successful. They

30 ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009 and Report for the period 1 January - 30 September 2010. M. Bruyneel, 'Trends in piraterij op zee; verschillen tussen Zuidoost-Azië en Somalië', *Justitiële verkenningen* 8/09, vol. 35, December 2009, p. 45.

31 Attacks reported between 1 January and 30 September 2010.

32 See: <http://www.lloyd.be/nieuws/id30195-Recordbedragen_aan_losgeld_voor_gekaapte_tankers.html> (consulted on 10 November 2010).

33 UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853, 10 March 2010, pp. 35-37. ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009 and Report for the period 1 January - 30 September 2010.

34 Ministry of Agriculture, Nature and Food Quality, 'Letter to Parliament outlining the Dutch government's position on tackling illegal fishing off the coast of Somalia' (in Dutch), The Hague, 7 October 2009.

have shown not only that they are capable of attacking ships farther from shore, using supply ships and small attack boats, but also that they are able to overpower larger and faster vessels.³⁵

Despite the protection afforded to merchant ships in the Internationally Recommended Transit Corridor (IRTC) through the Gulf of Aden, Somali pirates hijacked 20 ships, along with their crews, on this key shipping route in 2009 and another 15 ships in the first nine months of 2010.³⁶

Table 4: Reported hijackings at sea around the Horn of Africa³⁷

	2009	2010 ³⁸
Somali Basin	26	19
Gulf of Aden	20	15
Red Sea	0	1
Oman	1	0

1.3 Links to organised crime

Pirate gangs that operate at sea can only succeed with support from a land-based criminal network. Piracy is thus as much a land-based criminal activity as a sea-based one. The more revenue a pirate gang generates, the more organised it needs to be to protect its operations and invest its revenue wisely. As a result, an increasing number of actors and stakeholders fall under the gang's influence, enabling piracy to develop into a highly-organised 'industry'.³⁹ This section looks more closely at the link between piracy and organised crime in various regions.

1.3.1 Crime syndicates and piracy in Southeast Asia

In Southeast Asia, pirate attacks are carried out mainly at night by local fishermen, small-time criminals and former soldiers, as well as by well-organised crime syndicates. These syndicates often have better maritime capabilities than the local navy and coastguard. They focus on hijacking merchant ships and selling the stolen cargo on the black market at a huge profit. What is more, they subsequently use the hijacked vessels for other forms of organised crime, such as people smuggling, and arms and drug trafficking.⁴⁰

³⁵ UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853, 10 March 2010, p. 36. ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009.

³⁶ ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009 and Report for the period 1 January - 30 September 2010.

³⁷ ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009 and Report for the period 1 January - 30 September 2010.

³⁸ Attacks reported between 1 January and 30 September 2010.

³⁹ Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World*, Hurst Publishers, London, 2009, p. 162.

⁴⁰ Ralf Emmers, 'The threat of transnational crime in Southeast Asia. Drug trafficking, human smuggling and trafficking and sea piracy', UNISCI Discussion Papers 2003, no. 2, Madrid, p. 8.

In contrast to the Horn of Africa, there are no failed states in Southeast Asia, and crime syndicates therefore require a well-organised network to sell stolen goods or give hijacked ships new identities. In many cases, crime syndicates hijack ships with a specific cargo to order, based on close contacts between the client and the pirate leader/contractor. Piracy at this level remains what it has been for centuries: a well-organised industry. Crime syndicates commonly use local fishermen, small-time criminals and former soldiers as 'skilled' pirates on a needs basis. Examples include unemployed fishermen and taxi-boat captains in the Malay Archipelago, who are very familiar with the Strait of Malacca and therefore ideally suited to this type of work.⁴¹

1.3.2 Nigeria: illegal oil trading and piracy in the Niger Delta

In the Niger Delta, piracy is associated with armed militias fighting for a better distribution of oil revenues. The boundaries between piracy, armed militias and criminal gangs are very fluid in this oil-rich conflict zone. Militias like MEND are trying not only to extort money from oil companies but also to exert political pressure on the Nigerian government to invest 50% of oil and gas revenues from the Niger Delta in the region.⁴² The International Crisis Group (ICG) notes that the security situation in the Niger Delta has deteriorated further in recent years. In 2008, there were 92 attacks on drilling rigs, an increase of over 30% compared to 2007. These attacks have also spread to maritime targets, in particular to ships supplying oil platforms offshore.⁴³ In addition, the illegal oil trade is also a source of conflict and rising crime in the Niger Delta. Estimates vary regarding the scope of illegal oil trading by armed gangs and militias. The United Nations Office on Drugs and Crime (UNODC) estimates that about 10% of Nigeria's annual oil production (approximately 55 million barrels) is illegally tapped and sold. Furthermore, it appears that oil production is only operating at two-thirds of its full capacity due to theft, vandalism and violence in the Niger Delta.⁴⁴

The ICG further points out that the conflict and crime plaguing the Niger Delta are spreading to other coastal states along the Gulf of Guinea. Between November 2007 and January 2009, eight attacks by armed Nigerian gangs were reported off the coast of Cameroon and Equatorial Guinea, including an attack on a Cameroonian military vessel

41 Catherine Zara Raymond, 'Piracy in Southeast Asia. New trends, issues and responses', RSIS Working Papers no. 89, Institute of Defence and Strategic Studies, Singapore, 2005, pp. 6-7. Martin N. Murphy, 'Suppression of piracy and maritime terrorism. A suitable role for the navy?', *Naval War College Review*, vol. 60, no. 3, 2007, p. 26. Werner vom Busch and Tobias Tettig, *Covering maritime piracy in Southeast Asia*, Konrad Adenauer Stiftung, Singapore, 2006, p. 25.

42 IRIN, UN Office for the Coordination of Humanitarian Affairs, 'Nigeria: Rising risk in the delta', 15 August 2008. International Crisis Group, 'Nigeria: Seizing the Moment in the Niger Delta', Policy Briefing, Africa Briefing no. 60, 30 April 2009. 'Risky toughness. The army's tough approach to Delta militants could end up uniting them', *The Economist*, 18 September 2008, available at: <http://www.economist.com/node/12267373?story_id=12267373> (consulted on 2 November 2010).

43 International Crisis Group, 'Nigeria: Seizing the Moment in the Niger Delta', Policy Briefing, Africa Briefing no. 60, 30 April 2009. BBC News, 'Nigerian Pirates Grab French Ship', 6 January 2009, available at: <<http://news.bbc.co.uk/2/hi/africa/7813139.stm>> (consulted on 27 September 2010).

44 United Nations Office on Drugs and Crime, 'Oil theft lubricates corruption in West Africa', 10 July 2009, available at: <<http://www.unodc.org/unodc/en/frontpage/2009/July/illegal-oil-trade-in-nigeria-worsens-rule-of-law-in-west-africa.html>> (consulted on 2 November 2010).

in which the attackers killed 21 soldiers and captured a large quantity of arms and munitions.⁴⁵

1.3.3 Somalia: piracy as a business model

Recent reports from the UN Monitoring Group on Somalia and the UN Secretary-General paint a fairly bleak picture regarding the ability of the Transitional Federal Government (TFG) to provide security and basic services in Somalia.⁴⁶ This means that the TFG is as yet unable to exert its authority over the areas from which Somali pirates operate. A few local warlords and clans in Puntland (Eyl, Gara'ad and Laasqoray) and Central Somalia (Xarardhere and Hobyo) are responsible for most of Somali piracy. The pirate gangs consist of armed members of the warlords' militias, local fishermen and young unemployed men. Only a small number of gangs are organised along tribal lines; other gangs recruit pirates from all over, including Somali refugee camps. It is worth noting that fishermen are often press-ganged into joining such gangs on account of their navigational skills.⁴⁷ It is estimated that approximately 1,400 Somalis are directly involved in piracy off the coast of Somalia.⁴⁸

According to Sørensen, the level of organisation of Somali pirate gangs varies. Some groups have a strict hierarchical structure and are led by experienced pirates, while others operate on a more ad hoc basis.⁴⁹ It is also important to distinguish between piracy in the semi-autonomous region of Puntland and in Central Somalia. In the latter, piracy flourishes in the absence of any state structure and under the auspices of a handful of warlords and clan leaders. Puntland does have a functioning state structure, but the UN Monitoring Group on Somalia reports that it is increasingly turning into a criminal state. Piracy has become a key source of revenue in recent years and has accordingly become part of Puntland's socioeconomic structure. Research conducted by the UN Monitoring Group on Somalia indicates that key members of Puntland's government, including the president, the Minister of the Interior and the Minister for Internal Security, have received money generated from piracy and kidnappings. It is alleged that approximately 30% of money raised by ransoming ships and crews ends up in the pockets of Puntland's leaders.⁵⁰

45 International Crisis Group, 'Nigeria: Seizing the Moment in the Niger Delta', Policy Briefing, Africa Briefing no. 60, 30 April 2009, p. 5.

46 UN Security Council, *Report of the Secretary-General on Somalia*, 9 September 2010. *UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853*, 10 March 2010.

47 Raymond Gilpin, 'Counting the Costs of Somali Piracy', United States Institute of Peace Working Paper, June 2009. UNODC, *The Globalisation of Crime: A Transnational Organised Crime Threat Assessment*, Vienna, 2010, p. 199.

48 International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast: Final Report*, November 2009, p. 32.

49 Karl Sørensen, 'State failure on the high seas. Reviewing the Somali piracy', *FOI Somalia Paper: Report 3*, Stockholm, November 2008, p. 20.

50 *UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853*, 10 March 2010, pp. 39, 41-42, 72. Karl Sørensen, 'State failure on the high seas. Reviewing the Somali piracy', *FOI Somalia Paper: Report 3*, Stockholm, November 2008, p. 24.

One of most notorious pirate leaders in Puntland is Abshir Abdillahi 'Boyah' from the port of Eyl. He claims to command a militia of approximately 500 pirates, which has been responsible for at least 25 successful hijackings since the mid 1990s.⁵¹ Until recently, the authorities in Puntland took no action against Boyah and his militia, although local leaders and Islamic clergy in Eyl put pressure on them to abandon piracy, for example by calling on them to leave town and by urging local women not to marry them.⁵² At a meeting of local leaders in Eyl in May 2009, Boyah announced that he and 180 members of his militia had abandoned piracy.

In May 2010, Boyah was finally arrested by Puntland's security forces, along with 11 members of his militia, and was transferred to a prison in the port of Boosaaso.⁵³ It appears that, in arresting him, the government of Puntland was responding to UN accusations regarding its own involvement in piracy. It is unclear whether Boyah will actually be prosecuted.

Mohamed Hassan Abdi 'Afweyne' and his son Abdiquadir are two of the most influential pirate leaders in Central Somalia. Together, they were responsible for at least seven successful hijackings in 2009. The UN Monitoring Group on Somalia is concerned about indications that Afweyne and possibly other Somali pirate leaders can count on the support of Libya's President Muammar Gaddafi. In September 2009, Afweyne was invited to attend festivities in Tripoli marking the 40th anniversary of Gaddafi's regime. During a speech before the UN General Assembly on 23 September 2009, Gaddafi confirmed that he was in contact with Somali pirates and spoke in their defence. He also called on the member states to respect Somalia's EEZ.⁵⁴

The UN Monitoring Group on Somalia has found no evidence of cooperation between Somali pirate gangs and the Islamic fundamentalist groups al Shabaab and Hizbul Islam.⁵⁵ In March 2009, Vice-Admiral William Gortney, Commander of the US Naval Forces Central Command, made the following statement before a committee of the US House of Representatives:

51 *UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853*, 10 March 2010, pp. 41-42.

52 'For Somali Pirates, Worst Enemy may be on Shore', *The New York Times*, 9 May 2009.

53 'Pirate on US Treasury Dept wanted list arrested in Somalia, among 12 pirates arrested', *Fox News.com*, 20 May 2010, available at: <<http://www.foxnews.com/world/2010/05/20/pirate-treasury-dept-wanted-list-arrested-somalia-pirates-arrested>> (consulted on 10 August 2010).

54 *UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853*, 10 March 2010, pp. 38-39. Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World*, Hurst Publishers, London, 2009, pp. 101-111.

55 *UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853*, 10 March 2010, pp. 25, 28 and 37.

'We look very, very carefully for a linkage between piracy and terrorism or any kind of ideology and we do not see it. It would be a significant game changer should that linkage occur. But we have not seen it.'⁵⁶

Media suggestions that the proceeds from piracy off the Somali coast are being used to finance the armed struggle of al Shabaab and Hizbul Islam thus remain baseless for now. There is also no evidence for claims that al Qa'ida is involved in piracy in Somalia or that it pockets any of the proceeds.⁵⁷

The UN Monitoring Group on Somalia has drawn up a basic business model of piracy in Somalia. The gang leaders belong to certain clans in Puntland and Central Somalia, but participation in piracy and armed robbery at sea is basically open to any Somali with a firearm or a high-speed attack boat (skiff). A pirate's share of the proceeds depends on the type of firearm he supplies. Wealthy backers can also come from anywhere. According to Gilpin, the main investors are from the Somali interior and are not directly involved in piracy operations. Investors can count on a share of the ransom payments. The pirates' home base also shares in the proceeds of piracy. This applies in particular to village elders and local leaders, because they allow the pirates to anchor hijacked ships outside their ports. The business model thus guarantees every participant a predetermined share of the spoils.⁵⁸

After the ransom for a hijacked ship and its crew has been paid, everyone involved in the hijacking and all other interested parties receive their agreed share. The following figures have been compiled from various sources:

- armed pirates (roughly USD 15,000 per person);
- wealthy backers (roughly 30%);
- ransom negotiators who deal with foreign shipowners;
- entrepreneurs who supply a ship with food and drinking water during the hijacking;
- village elders and local leaders (5-10%); and
- armed militias and warlords that control the area from which the pirates operate (roughly 10%).⁵⁹

The profit (i.e. the money remaining once the abovementioned sums have been subtracted) is divided between the armed pirates and their leader. The pirates reinvest some of the profit in new weapons, boats and GPS and communication devices, which enable them to expand their activities to more than 1,000 nautical miles off the Somali coast. Somalia's piracy business model is sustained by a network of actors inside

56 CRS Report for Congress, 'Piracy off the Horn of Africa', Washington D.C., 19 April 2010, p. 18.

57 Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World*, Hurst Publishers, London, 2009, p. 110.

58 *UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853*, 10 March 2010, p. 99. Raymond Gilpin, 'Counting the Costs of Somali Piracy', United States Institute of Peace Working Paper, June 2009. BBC News, 'Chasing the Somali piracy money trail', 24 May 2009, available at: <<http://news.bbc.co.uk/2/hi/africa/8061535.stm>> (consulted on 23 June 2010).

59 Ibid.

Somalia and the country's flourishing arms trade.⁶⁰ Authoritative reports from the United Nations and independent think tanks do not corroborate published allegations that Somali piracy is funded by foreign interests.⁶¹

Despite the international arms embargo, large quantities of arms and munitions are imported into Somalia, primarily from Yemen and Ethiopia. The large supply of handguns, machine guns and grenade launchers perpetuates the armed conflict on land as well as piracy and armed robbery at sea.⁶² The lucrative international arms trade is having a disastrous impact on lawlessness and crime in large parts of Somalia.

1.4 Implications for the Netherlands

In the past two years, piracy off the coast of Somalia has attracted considerable media attention, both in the Netherlands and abroad. As a result of this focus, and the growing concerns of organisations representing shipowners and seafarers regarding the security risks associated with maritime navigation around the Horn of Africa, piracy has rapidly become a key security issue for the Netherlands as well. Since 2008, the Dutch government has contributed substantially to maritime efforts to combat piracy off the Somali coast. This section considers the nature and scale of the security risks to Dutch vessels and their crews and the economic implications of the pirate threat for the Netherlands.

1.4.1 Security risks

At present, there are 1,913 sea-going vessels, sea-going tugs and maritime construction vessels under Dutch ownership and control, of which 1,031 sail under a Dutch flag. It is estimated that 450 vessels sailing under a Dutch flag pass through the Gulf of Aden near Somalia every year.⁶³ According to the Royal Association of Netherlands Shipowners (KVNR), the number of Dutch shipping movements in the Gulf of Aden has dropped to 250-300 per year due to the threat of piracy. Shipowners often decide to make a detour via South Africa (although this is becoming less attractive due to high fuel prices) or no longer accept cargo that needs to be shipped past the Horn of Africa.⁶⁴ The AIV notes that it is not clear whether this drop can be attributed to the threat of piracy or other factors. As a result of the global economic crisis, for example, the turnover of the

60 UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853, 10 March 2010, pp. 46-49, 99.

61 Reports on the foreign funding of Somali piracy can in many cases be traced back to a single source – Andrew Mwangura – a former Kenyan seafarer, nicknamed the 'pirate whisperer', with close ties to pirates and seafarers off the coast of Somalia. 'Pirate whisperer brings news of kidnappings', *NRC Handelsblad*, 22 July 2009. 'Pirates stolen your supertanker off Africa? Here's the man to speak to', *The Scotsman*, 15 March 2008.

62 UN Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853, 10 March 2010, pp. 46-47.

63 Minister of Foreign Affairs and Minister of Defence, 'Letter to Parliament on NATO's Operation Ocean Shield' (in Dutch), The Hague, 26 April 2010.

64 See: <<http://www.kvnr.nl/CMS/showpage.aspx?id=433>> (consulted on 30 June 2010). Interviews with a delegation of Dutch shipowners and the KVNR, The Hague, 11 June 2010 and 8 December 2010.

Dutch maritime and coastal shipping industries fell sharply in 2009.⁶⁵

Before shipping any cargo, shipowners are required to carry out a risk analysis. For this purpose, they can use operational information from three international non-profit centres of expertise on piracy:

- The IMB Piracy Reporting Centre was established in Kuala Lumpur, Malaysia, in 1992. The centre is an initiative of the international shipping industry and cooperates with governments and law enforcement agencies in the global fight against piracy.
- The Singapore-based Information Sharing Centre is the regional centre of expertise on piracy for Southeast Asia. It was established following finalisation of the ReCAAP agreement in 2004.
- The Maritime Security Centre – Horn of Africa (MSCHOA) provides information and advice on piracy and anti-piracy in the Gulf of Aden, the Somali Basin and the Indian Ocean. MSCHOA is an EU initiative that cooperates closely with the international shipping industry. It has been based in Northwood, United Kingdom, since 2008.

There are also numerous private organisations and research institutes that sell intelligence on piracy. This information is not freely available, but Dutch shipowners are willing to pay for it in order to protect themselves.⁶⁶ The AIV would note that feedback from Dutch shipowners on the information and service provided by MSCHOA is not always positive, and this is probably why they collect intelligence from other sources.

The IMB reports that, since 2005, 29 Dutch vessels and four Antillean vessels have been attacked by pirates around the world. Two attacks on Antillean vessels under Dutch control resulted in a hijacking or kidnapping:

- The *Marathon* (on 7 May 2009) in the Gulf of Aden;
- The *UAL Tycoon* (on 11 August 2010) off the coast of Nigeria.⁶⁷

A third Antillean vessel, the *Samanyolu*, narrowly escaped being hijacked by Somali pirates on 2 January 2009. Five Somali suspects were subsequently arrested and extradited to the Netherlands to stand trial (see also section IV.3). Since 2005, no vessel sailing under a Dutch flag has been hijacked.

Piracy on the high seas is generally well organised, violent and aimed at hijacking the vessel and/or the cargo or kidnapping the crew. Armed attacks on vessels moored inside ports or anchored outside them are usually less organised and less violent, and the pirates involved are generally satisfied with a smaller haul. However, it is difficult to determine the exact scale of armed attacks inside ports, because shipowners and

65 According to Statistics Netherlands' StatLine of 31 March 2010, there was a 21% decline in revenue in 2009 compared to 2008.

66 Interviews with a delegation of Dutch shipowners and the KVNR, The Hague, 11 June 2010 and 8 December 2010. Interview with Commodore P.J. Bindt, former commander of the European Union's Operation Atalanta, The Hague, 11 June 2010.

67 ICC-IMB, *Piracy and Armed Robbery Against Ships*, Annual Report 2009 and Report for the period 1 January - 30 September 2010.

masters of vessels often fail to report such incidents in order to avoid bureaucracy and delays.⁶⁸

A key psychological aspect of piracy and armed robbery at sea is the anxiety it creates among seafarers and their families. According to Nautilus International, the trade union for maritime professionals, several Dutch seafarers have left their jobs in recent years due to the security risks. Fear of piracy is a major source of tension among seafarers' families.⁶⁹ Nautilus has concluded two agreements⁷⁰ with Dutch shipowners that entitle crew members to disembark if a shipowner does not use the protected corridor through the Gulf of Aden. In other high-risk areas, such as Nigeria, crew members are also entitled to disembark or refuse to sail without suffering repercussions in terms of their employment.

Dutch-flagged ships registered in Bonaire, St Eustatius or Saba (the BES islands) and ships registered in Aruba, Curaçao or St Maarten sailing either under an Antillean or their own flag, are at risk of piracy or armed robbery at sea. Each country is responsible for crime prevention in its own ports and territorial waters, within the framework of the relevant regulations of the Kingdom and its constituent countries. In international waters, public international law, in particular the UN Convention on the Law of the Sea and the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA Convention), applies. Given that they impose international obligations on the Kingdom, these conventions also apply – by virtue of the Charter for the Kingdom of the Netherlands – to its constituent countries.

1.4.2 Economic impact

At the end of 2007, the Dutch shipping industry employed roughly 24,200 people, including 22,400 seafarers. There were approximately 3,600 Dutch nationals aboard vessels sailing under a Dutch flag.⁷¹ In 2008, the value of the Dutch shipping industry to the national economy was EUR1.5 billion.⁷² The Netherlands has a relatively young and modern fleet with an average age of ten years. It includes fast ships with good on-board security provisions, making it a less attractive target for pirates. Nevertheless, the Dutch fleet also has a few vulnerabilities:

68 Ministry of Foreign Affairs et al., Policy memorandum on combating piracy and armed robbery at sea (in Dutch), August 2006.

69 Interview with Mr M. van den Broek, Assistant General Secretary of Nautilus International, The Hague, 27 August 2010.

70 Protocol on serving in dangerous areas and Protocol on rules for passing through the Gulf of Aden, Rotterdam, 3 May 2010.

71 'Report containing 2008-2009 information on the transport and logistics labour market for educational institutions' (in Dutch), Kenniscentrum Transport en Logistiek, December 2008, available at: <<http://www.vtl.nl/uploads/pdf/Arbeidsmarkt/Arbeidsmarktadvies%20VTL%202008.pdf>> (consulted on 1 November 2010). KVNOR, Key economic variables of Dutch maritime shipping (in Dutch), available at: <<http://www.kvnr.nl/cms/showpage.aspx?id=193>> (consulted on 1 November 2010).

72 See: <<http://www.rijksoverheid.nl/onderwerpen/zeevervaart-en-zeehavens/zeevervaart/economie>> (consulted on 25 November 2010).

- Vessels used for heavy cargo shipping and special shipping assignments (e.g. transporting oil platforms) are vulnerable because they sit low in the water and travel at slow speeds;
- Small vessels, which usually belong to small shipowners, do not have sufficient financial resources to take all the necessary self-protection measures, in accordance with anti-piracy best management practices.⁷³

In a short amount of time, the cost of insuring cargo vessels that rely on the shipping route through the Gulf of Aden has risen sharply. In 2008, the cost of supplementary 'piracy insurance' was still USD 500 per ship, but in 2009 it rose to an average of USD 20,000 per ship.⁷⁴ Most insurance companies also insist that shipowners take adequate on-board self-protection measures as a condition for providing coverage. One shipowner estimates the extra cost of securing his ships at EUR 150,000 per voyage for prevention measures (barbed wire, night-vision equipment, etc.) and employing PSCs (advice on routes, intelligence information and advice in the event of an attack). The same shipowner claims that the combination of preventive measures and employing unarmed guards works well, as none of his ships have ever been intercepted by pirates. Although they pass on these additional costs to their customers, shipowners claim that their profit margins are under increasing pressure.⁷⁵

Half the goods that flow in and out of the Netherlands are transported by sea. Maritime shipping is therefore an important sector of the Dutch economy. The transshipment of containers in Dutch ports forms the link between international shipping and other forms of transport, such as inland shipping and rail transport. Since the mid-1990s, the Dutch maritime shipping industry has profited from the growth in world trade, which doubled in size between 1994 and 2006. International maritime shipping is expected to keep growing, thanks to emerging markets like China, Brazil and India. Dutch shipowners are preparing to capitalise on this expected growth by placing orders for the construction of new ships.⁷⁶

In addition to the Dutch maritime shipping industry, the Netherlands' ports and the Dutch economy as a whole will also benefit from the continued growth of world trade. In the first half of 2010, for example, the port of Rotterdam processed 15% more goods than during the same period in 2009, and thus appears to be recovering strongly from the crisis of that year.⁷⁷ The vitality of the Netherlands' ports and maritime shipping industry is key to the competitiveness of the Dutch economy. The disruption by pirates

73 State Secretary for Transport, Public Works and Water Management, Policy letter on maritime shipping: 'Responsible navigation and a strong fleet' (in Dutch), The Hague, June 2008. Interviews with a delegation of Dutch shipowners and the KVNVR, The Hague, 11 June 2010 and 8 December 2010.

74 'Piracy could add USD 400m to owners' insurance cover costs', *Lloyd's List*, 21 November 2008.

75 Interviews with a delegation of Dutch shipowners and the KVNVR, The Hague, 11 June 2010 and 8 December 2010.

76 State Secretary for Transport, Public Works and Water Management, Policy letter on maritime shipping: 'Responsible navigation and a strong fleet' (in Dutch), The Hague, June 2008.

77 Port of Rotterdam Authority, Half-yearly Report 2010, available at: <<http://www.portofrotterdam.com/nl/actueel/Documents/halfjaarbericht.pdf>> (consulted on 25 November 2010).

of international maritime shipping in the Gulf of Aden, which is a major maritime artery for Europe and the Netherlands, therefore also threatens the economic security of the Netherlands.

It is difficult to calculate the economic damage caused by piracy on a worldwide basis. Maritime trade is worth more than USD 7 trillion a year.⁷⁸ Estimates of economic damage caused directly by piracy range from USD 1 billion to USD 16 billion a year – in other words, less than 0.25% of global maritime trade.⁷⁹ Direct economic damage includes the high insurance premiums for maritime shipping in high-risk areas, the cost of on-board self-protection measures, ransom payments for hijacked vessels and their crews, the cost of making detours to avoid high-risk areas and lost income as a result of refusing to transport certain cargoes. In global terms, the proportion of ships that experience attempted pirate attacks or armed robbery at sea is approximately 0.01-0.02%, although it is estimated that half of all cases are not reported.⁸⁰ This makes it difficult to calculate the economic damage caused by piracy.

78 Peter Chalk et al., 'Countering Piracy in the Modern Era', RAND Corporation, 2009, p. 2.

79 Stephanie Hanson, 'Combating Maritime Piracy', 7 January 2010, available at: <http://www.cfr.org/publication/18376/combating_maritime_piracy.html>. Raymond Gilpin, 'Counting the Costs of Somali Piracy', United States Institute of Peace Working Paper, June 2009.

80 M. Bruyneel, 'Trends in piraterij op zee; verschillen tussen Zuidoost-Azië en Somalië', *Justitiële verkenningen* 8/09, vol. 35, December 2009, p. 44.

II Preventing piracy: who is responsible for what?

In recent years, many preventive measures have been developed in response to the increased threat of piracy, particularly off the coast of Somalia. International shipping organisations have produced a handbook, entitled *Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area*, which is partly based on the advice and recommendations of the Maritime Security Centre – Horn of Africa (MSCHOA). The handbook contains lessons learned regarding the modus operandi of Somali pirates and describes ways for shipowners and masters of vessels to minimise the risk of being hijacked by pirates off the Somali coast.⁸¹

The key questions with regard to preventing piracy in the short term are:

- What is the relationship between the private responsibility of shipowners to protect their crews and cargo ships and the public responsibility of states to ensure free navigation in international waters?
- Is it advisable to use private security companies (PSCs) to protect cargo ships? If so, what powers should they be granted and what restrictions placed on them?
- What is the responsibility of insurance companies that provide piracy insurance for cargo shipping in high-risk areas?

II.1 Self-protection measures by shipowners

Shipowners bear primary responsibility for protecting their crews and ships against piracy. In a letter to the House of Representatives, the State Secretary for Transport, Public Works and Water Management explained that, in the context of 'due care', shipowners are obliged to take adequate preparatory measures, such as performing a risk analysis, considering alternative routes and, if necessary, refusing to transport the cargo in question.⁸² According to the Ministry of Transport, Public Works and Water Management, Dutch shipowners generally do their utmost to protect their own ships. First, under the prevailing EU and IMO regulations on protecting sea-going vessels against terrorist attacks, every shipowner must have a certified security plan for his ships. In addition, the government, representative organisations (e.g. shipowners' associations, shipmasters' associations and maritime trade unions) and insurance companies all advise shipowners to implement the current best management practices against piracy.

New electronic protection devices are being developed, such as long-range acoustic devices (LRADs), which produce a powerful sound at a frequency above the pain threshold of the human ear, and devices that transmit an electromagnetic pulse that can shut down the outboard motors of a pirate vessel before it reaches the ship. For the most part, however, shipowners use more conventional options, such as placing barbed wire along the ship's rail, sometimes in combination with an electric fence, as well as

81 'Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area', Version 3, June 2010, available at: <http://www.mschoa.org/bmp3/Documents/BMP3%20Final_low.pdf> (consulted on 8 November 2010).

82 State Secretary for Transport, Public Works and Water Management, 'Confidential Letter to Parliament presenting the strategy for dealing with requests for assistance in the case of piracy and armed robbery at sea' (in Dutch), The Hague, 4 September 2008.

water cannons, which are also used by fireboats and riot police. Ships passing through high-risk areas also have more guards on watch. New ships come with built-in 'safe rooms' or 'citadels' that crews can lock themselves into in the event of a hijacking while they wait for military or other assistance. In April 2010, for example, Dutch marines from HNLMS *Tromp* were able to retake the German merchant ship *Taipan* from Somali pirates after those on board had retreated to the safe room.⁸³

The question, however, is whether the above-mentioned self-protection measures constitute an adequate response to pirate attacks on the high seas. Security experts and shipowners are divided on this issue. To ensure the security and safety of seafarers and shipping companies, L'Honoré Naber advocates an anti-piracy strategy that encompasses all available measures, ranging from initial preparations to aftercare following an actual pirate attack. The handbook on best management practices against piracy off the coast of Somalia is excellent up to a point, but only offers a partial solution and its use is not obligatory. It is clear that many ships do not actually adhere to these practices. L'Honoré Naber's view is that shipowners and masters of vessels are responsible for continuously and efficiently protecting their own ships and that naval vessels are responsible for protecting key shipping routes against piracy.⁸⁴ Crew members often object to the focus on preventive measures on board, arguing that they are not trained security guards.⁸⁵ Some Dutch shipowners believe that the measures and best management practices described above do not deter pirates, but that the presence of armed guards on board does. They claim that pointing weapons across the ship's rail is the only way to de-escalate the situation and ensure that approaching pirates make an about-turn.⁸⁶

There is a conflict between the responsibility of shipowners to protect their own crews and ships and the government's policy forbidding armed self-protection on board, which is laid down in the Firearms, Ammunition and Offensive Weapons Act. A number of shipowners expect the Dutch government to adopt more sweeping measures to discourage piracy off the Somali coast. Their preferred option is to place Dutch military vessel protection detachments (VPDs) on board vulnerable ships. If this proves impossible, they will request permission to employ foreign soldiers to provide security on board (e.g. Yemeni soldiers for the passage through Yemeni waters in the Gulf of Aden). A third option is to employ private security companies to provide armed guards on board.⁸⁷

83 H.A. L'Honoré Naber, 'Hoe koopvaardij schepen te beschermen tegen zeeroverij?', *Justitiële verkenningen* 8/09, vol. 35, December 2009, p. 59. Video footage of the operation to liberate the merchant ship *Taipan* can be seen at: <<http://www.youtube.com/watch?v=lcqZKBjMnHl>> (consulted on 9 August 2010).

84 H.A. L'Honoré Naber, 'Hoe koopvaardij schepen te beschermen tegen zeeroverij?', *Justitiële verkenningen* 8/09, vol. 35, December 2009, pp. 61-62. Interview with H.A. L'Honoré Naber, director of *Safer Seas Consultancy*, The Hague, 27 August 2010.

85 Interview with M. van den Broek, Assistant General Secretary of Nautilus International, The Hague, 27 August 2010.

86 Interviews with a delegation of Dutch shipowners and the KVNVR, The Hague, 11 June 2010 and 8 December 2010. Interview with M. te Kulve, consultant at Kulve Security Services, The Hague, 9 July 2010.

87 Ibid.

The Minister of Defence has stated that he does not object in principle to stationing Dutch military VPDs on board merchant ships without a navy escort but that all the related logistical problems, legal restrictions and risks render this option unfeasible in practice. In an average year, this option would apply to seven or eight highly vulnerable ships sailing under a Dutch flag that cannot be protected by means of group transit or an individual escort through the Gulf of Aden.⁸⁸

II.2 Using private security companies to combat piracy

Following the rise of PSCs in conflict areas like Iraq and Afghanistan,⁸⁹ there is currently a growth in the number of PSCs offering their services to protect cargo ships against piracy, especially in the Gulf of Aden and off the coast of Somalia. A large number of PSCs are based in the United Kingdom and the United States and maintain close ties with the shipping industry and insurance companies. Since 2006, several British PSCs have joined forces in the British Association of Private Security Companies.⁹⁰ A simple search on Google produces a long list of big-name companies with websites describing their services. Such services include intelligence on high-risk areas, the provision of armed or unarmed security teams and a package of services tailored to hijackings, such as conducting ransom negotiations.

British and American PSCs often rely on the professional services of former soldiers, especially marines and members of special investigation units. In addition, some PSCs employ Yemeni soldiers and coastguard personnel (in Yemeni waters) as well as former soldiers from countries like India and Ukraine.⁹¹ According to security consultant Maarten te Kulve, the problem is that unscrupulous British and American companies and reputable companies both offer a very wide range of services. The main differences between these companies relate to the quality, discipline and experience of their security teams. According to Te Kulve, Dutch shipowners prefer to do business with reputable companies.⁹²

88 Minister of Defence, 'Letter to Parliament regarding a study of the stationing of military security teams on board merchant ships' (in Dutch), The Hague, 23 June 2009. Minister of Defence, 'Letter to Parliament regarding the protection of vulnerable ships in the Gulf of Aden and off the coast of Somalia' (in Dutch), The Hague, 8 October 2009. Statements by the Minister of Defence during the parliamentary committee meetings of 29 June 2009 and 29 June 2010 on piracy and the Atalanta and Ocean Shield operations.

89 See also AIV advisory report no. 59, *Employing Private Military Companies: A Question of Responsibility*, The Hague, December 2007.

90 Peter Hodge, 'Private security companies called in to combat Somali piracy', available at: <<http://kotare.typepad.com/thestrategist/2009/09/private-security-companies-gulf-of-aden-piracy.html>> (consulted on 11 August 2010). See: <<http://www.bapsc.org.uk>> (consulted on 2 September 2010).

91 See: <<http://goagt.org>> and <<http://www.issg-seamarshals.com/index.html>> (consulted on 2 September 2010). Lloyd's List, 'For hire: anti-piracy patrol boat with armed personnel', 15 September 2010, available at: <<http://www.lloydslist.com/ll/sector/ship-operations/article345017.ece>> (consulted on 21 September 2010).

92 Interview with M. te Kulve, consultant at Kulve Security Services, The Hague, 9 July 2010.

In November 2010, at the initiative of the Swiss government, 58 private security companies, including British and American PSCs, signed an International Code of Conduct for Private Security Service Providers in Geneva.⁹³ The code calls on PSCs to instruct their personnel to take all reasonable steps to avoid the use of force and to only use firearms in self-defence or defence of others against the imminent threat of death or serious injury. It also contains provisions on respecting human rights and incident reporting.

The stationing of private security teams on board cargo ships in the Strait of Malacca has long been controversial. Indonesia and Malaysia are opposed to it, especially when such ships pass through their territorial waters. In contrast, Singapore is in favour of using private security guards – even when armed – under certain circumstances.⁹⁴ Due to the rapid increase in piracy off the coast of Somalia, the debate is now focused on the advisability of stationing private armed guards on board cargo ships.

Supporters of private armed guards at sea argue that only weapons can deter pirates from attacking a ship. Other self-protection measures can impede or slow down an attack by pirates, but they cannot prevent one. In other words, only armed deterrence can contain and de-escalate pirate violence. However, this claim is difficult to verify, given that reports on the effectiveness of private armed guards are only made public in exceptional circumstances and that it is difficult in any event to demonstrate successful deterrence.

Opponents, including the International Maritime Organization (IMO) and the vast majority of international shipping companies, argue that stationing private armed guards on board cargo ships would actually increase the risk of armed confrontations with pirates and open the door to an escalation of violence and a civilian arms race at sea. Furthermore, the PSCs' rules of engagement are not clear regarding responsibilities during armed incidents.⁹⁵

II.3 Private armed guards on Dutch ships?

Protecting the safety of persons and property within its own territory, including territorial waters, is one of the state's primary responsibilities. For this purpose, the state has a monopoly on violence – the exclusive right to use force in a proportional manner. An individual may also use force with impunity where necessary 'to defend himself or another against an imminent, unlawful assault on their person or property' (self-defence). Within the state's legal order, the police act to ensure the safety of the people and their property, if necessary with the assistance of the armed forces.

93 See: <<http://www.news.admin.ch/NSBSubscriber/message/attachments/21143.pdf>> (consulted on 26 November 2010). 'Private security companies sign code of conduct', *Bloomberg Businessweek*, 9 November 2010, available at: <<http://www.businessweek.com/ap/financialnews/D9JCLSJ00.htm>> (consulted on 26 November 2010).

94 Sam Bateman, 'Riding Shotgun: Armed Security Guards onboard Merchant Ships', *RSIS Commentaries* 28, 5 March 2010, available at: <<http://www.rsis.edu.sg/publications/Perspective/RSIS0282010.pdf>> (consulted on 2 September 2010).

95 *Ibid.* <<http://www.rsis.edu.sg/publications/Perspective/RSIS0282010.pdf>> (consulted on 2 September 2010). Interview with Professor A. Soons, director of the Netherlands Institute for the Law of the Seas, The Hague, 9 July 2010.

Persons on board sea-going vessels are located either (1) within the jurisdiction of a coastal state (in territorial waters up to 12 nautical miles from the coast), in which case that state is responsible for protecting their safety (although this does not always happen, especially in the case of fragile states), or (2) on the high seas, in which case public international law, in particular international maritime law, and the law of the flag state apply. Due to the lack of a permanent international UN or UN-sanctioned police force, it is up to national agencies to jointly maintain the international legal order on the high seas. It should be noted that the right to self-defence also applies under international law.

The member states of international organisations other than the United Nations, such as the European Union and NATO, can carry out joint naval operations to protect specific maritime routes, as they are currently doing in the Gulf of Aden. In cases where they do so effectively, the safety of ships' crews (and their property) is theoretically guaranteed, although practical problems arise because the naval vessels commanded by these organisations cannot be everywhere at once. The navies of individual flag states and other states can also take responsibility for maritime safety.

The Royal Netherlands Navy helps to protect World Food Programme (WFP) ships by means of naval escorts combined with the presence of military VPDs on board the ship under protection. States may also decide to protect other individual cargo ships, such as large, slow-moving vessels, which are very vulnerable, by placing military VPDs on board without a naval escort. When a government decides to protect certain merchant ships with its own naval resources, the security problem theoretically disappears. However, the Dutch government emphasises that it is impossible to protect all merchant ships sailing under a Dutch flag and that the state cannot be expected to do so. On the other hand, Dutch ships can make use of the protection provided to group transits and supported transits by EU, NATO or CTF 151 ships on certain shipping routes as well as the escorts (group or otherwise) provided by the navies of countries like Russia, India and China.

As stated above, there is no international law enforcement body responsible for the high seas. Instead, this task is performed through the deployment of national resources. In very large maritime areas, where convoys and naval escorts are not practical, masters of vessels and their crews are therefore on their own. In such situations, they still enjoy the internationally recognised right to self-defence. This raises the question whether armed guards who are not members of the armed forces of a state should be permitted on ships and, if so, under what circumstances and conditions.

The need for private security is increasing, particularly for vulnerable cargo ships in the Indian Ocean. Piracy is becoming a very lucrative criminal enterprise. In some cases, pirates use a large hijacked ship as a mother ship and a base in international waters, employing smaller attack boats and relatively heavy weapons, including rocket launchers. The peaceful self-protection measures available have little effect under such circumstances. The Dutch shipowners interviewed by the AIV emphasised that employing armed guards and clearly displaying weapons has a preventive effect.⁹⁶ The principle of deterrence is just as applicable here as it is in national security policy.

96 Interviews with a delegation of Dutch shipowners and the KVNR, The Hague, 11 June 2010 and 8 December 2010.

The AIV has discovered that, in practice, a minority of ships that are not or cannot be protected by national or international authorities already rely on private armed guards. On Dutch vessels, carrying firearms or offensive weapons without a permit is a violation of the Firearms, Ammunition and Offensive Weapons Act. The AIV was unable to collect any specific information on this issue, since the shipping, insurance and security companies concerned did not wish to speak in detail on this subject. This growing illegal practice could give rise to grave abuses and risks.

Shipowners who implement all the necessary self-protection measures and best management practices against piracy but have to sail through high-risk areas and are unable to request protection from naval units must choose between: (1) refusing to transport the cargo; (2) exposing their crews to the dangers of piracy without additional protection; (3) taking an alternative route; (4) switching to a flag state that allows armed guards to be stationed on board; or (5) employing armed guards and keeping quiet about it. Obviously, options 2, 4 and 5 are highly undesirable, while options 1 and 3 are not practical in all situations and may be detrimental to Dutch merchant shipping.

It is likely that, in practice, the employment of armed guards is already more common than shipowners will admit. This can give rise to abuses. For example, a ship may switch its flag to a state that permits or turns a blind eye to this practice but also fails to regulate it in a responsible manner (e.g. Liberia and Panama). In some cases, shipowners employ PSCs without a licence and without clearly determining the rules of engagement, the chain of command, responsibility or reporting requirements for violent incidents. Using unknown, international PSCs invites abuses.

The government is responsible for preventing and combating these practices and should not close its eyes to the risks involved. When international organisations and states are unable to exercise their jurisdiction in practice, grey or black areas can arise, resulting in illegal situations. This creates grave risks for all concerned, which should not simply be tolerated.

The AIV therefore believes that stationing private armed guards on board ships should be permitted in exceptional situations. To this end, it would advise the government to formulate strict criteria for the certification of PSCs, in accordance with the AIV's advisory report on employing private military companies.⁹⁷ PSCs should comply with the rules of engagement, under the civilian command of the master of the vessel. In addition, they should satisfy the usual requirements of a bona fide company (financial accountability, anti-corruption measures and professional standards for security guards). The certification of such companies can be based on existing professional codes of conduct.⁹⁸ At the same time, it is important to determine the level of liability of the shipping company, the security company, the master of the vessel and the flag state. If all the conditions the flag state imposes on the use of private armed guards have been met, any international liability borne by the flag state can then be clearly defined and circumscribed.

⁹⁷ AIV advisory report no. 59, *Employing Private Military Companies: A Question of Responsibility*, The Hague, December 2007.

⁹⁸ For example, the International Code of Conduct for Private Security Service Providers, which was adopted at the initiative of the Swiss government.

II.4 The role of insurance companies

The increase in piracy around the Horn of Africa, Southeast Asia and West Africa has major implications for the types of insurance available to the international shipping industry. Since 2005, large insurance companies have been unwilling to cover the risk of piracy under their customary hull, cargo and liability insurance policies. Piracy in high-risk areas is classified as a war risk that requires a separate insurance policy. At first, this applied only to navigation through the Strait of Malacca; since May 2008, it has applied to navigation through the Gulf of Aden as well. At present, approximately 90% of piracy insurance policies on the London insurance market fall under the category of war risk.⁹⁹

Insurance companies do not provide information on the market share of piracy insurance and do not respond to inquiries about how they set insurance premiums.¹⁰⁰ Since 2008, in addition to insurance against war risks, insurance companies have also offered separate kidnap and ransom insurance for cargo ships passing through the Gulf of Aden. The specific purpose of this insurance is to raise and pay ransoms. It is estimated that it generates approximately USD 100 million a year in premiums.¹⁰¹ Insurance costs per voyage have recently fallen slightly, because the number of companies offering kidnap and ransom insurance has risen from three to six and is expected to keep rising. Premiums for this type of insurance could come down even further for ships that have invested in piracy prevention measures. Some insurance companies also offer discounts on insurance premiums for ships that have armed guards on board.¹⁰²

The AIV believes that the insurance industry also has a social responsibility to limit the threat of piracy to international shipping. Insurance companies should reward shipowners who take adequate self-protection measures for their ships and crews, with discounted insurance premiums. However, it would be inappropriate for insurance companies to encourage shipowners to station armed guards on board; this would exceed their powers. The AIV advises the government to reach an agreement with the insurance industry in this regard.

99 'High seas, high risk', *Insurance Times*, 17-24 December 2009, available at: <<http://www.lmalloyds.com/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=21930>> (consulted on 6 September 2010).

100 Interview with M. te Kulve, consultant at Kulve Security Services, The Hague, 9 July 2010.

101 'Piracy premiums take a breather but menace remains', *Reuters News*, 1 April 2010, available at: <<http://uk.reuters.com/article/idUKLNE63001I20100401>> (consulted on 6 September 2010).

102 Interviews with a delegation of Dutch shipowners and the KVNR, The Hague, 11 June 2010 and 8 December 2010.

III International cooperation in the fight against piracy

'Piracy is not a short-term problem limited to just one ocean region off Somalia. Success against it will require lots of international cooperation, plentiful assets, improved procedures and a significantly improved picture in real time of the areas involved.'¹⁰³

The international community is doing a great deal to promote international cooperation in combating piracy. The key questions in this context are:

- What form does the international effort to combat piracy take in Southeast Asia and the Horn of Africa?
- What key lessons have been learned with a view to developing an effective international anti-piracy strategy?

The United Nations Convention on the Law of the Seas (UNCLOS) imposes a general obligation on states to cooperate in the repression of piracy on the high seas, but this does not extend to the territorial waters of coastal states. UNCLOS lacks an arrangement or mechanism that would facilitate such cooperation and persuade recalcitrant coastal states to fulfil their obligations. Regional cooperation can only blossom when countries perceive it as being in their own interest.¹⁰⁴

Two international organisations that have tried to promote international cooperation in the fight against piracy in recent years deserve special mention: the International Maritime Organization and the European Union.

III.1 International Maritime Organization

The International Maritime Organization (IMO) is a specialised UN agency in the field of maritime security. Combating piracy and armed robbery at sea has been on the IMO's agenda since the early 1990s. For example, the organisation was central to the establishment of three regional anti-piracy agreements:

- The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) was initially concluded by 16 Asian countries to prevent and combat piracy and armed robbery at sea throughout Southeast Asia.¹⁰⁵ The agreement, signed in Singapore on 11 November 2004, was inspired by concerns about the increase in incidents of piracy and armed robbery at sea, especially in the Strait of Malacca, and a desire for better regional information sharing and cooperation.

103 Rear Admiral Ed Gilbert (ret.) of the US Coast Guard, available at: <<http://www.dodbuzz.com/2009/04/18/needed-international-counter-piracy-center>> (consulted on 1 October 2010).

104 Martin Murphy, 'Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy?', in Peter Lehr (ed.), *Violence at Sea: Piracy in the Age of Global Terrorism*, Routledge, New York, 2007, p. 167.

105 On 1 July 2010, the Netherlands became the second European country to accede to ReCAAP Minister of Foreign Affairs, 'Letter to Parliament on the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)' (in Dutch), The Hague, 15 February 2010.

- The Djibouti Code of Conduct focuses on cooperation in the fight against piracy and regional capacity building in the Horn of Africa. The code, which includes agreements on sharing information on acts of piracy, drafting national anti-piracy legislation and strengthening enforcement capacity and coastguard organisations, was signed by seven East African countries,¹⁰⁶ Yemen and Maldives in January 2009. Since then, Egypt, Sudan, Saudi Arabia, Comoros, Jordan and Mauritius have also signed the Code. The IMO has established a trust fund to help realise the Code's objectives.¹⁰⁷
- The Memorandum of Understanding on the Establishment of a Sub-Regional Coast Guard Network in West and Central Africa promotes close cooperation between national coastguard organisations in combating piracy and armed robbery at sea as well as cooperation against other threats, such as maritime terrorism, illegal maritime exploitation of coastal states' EEZs (e.g. fishing), drug trafficking, oil theft and smuggling, attacks on oil pipelines and accidents at sea. To this end, the IMO entered into cooperation with the Maritime Organisation of West and Central Africa (MOWCA), which resulted in the signing of the MoU by 14¹⁰⁸ of the region's 20 coastal states in July 2008.¹⁰⁹

The IMO's four regional offices in Côte d'Ivoire, Ghana, Kenya and the Philippines are helping to strengthen the maritime sector in Africa and East Asia. Donor countries, including the Netherlands, are funding a Technical Cooperation Programme for countries that require assistance to strengthen their maritime capacity and implement international rules on maritime security.¹¹⁰

III.2 European Union

Since December 2008, through Operation Atalanta, the European Union Naval Force (EUNAVFOR) has played a prominent role in combating against piracy off the coast of Somalia. The operation's mandate involves:

- the protection of vessels of the World Food Programme (WFP) delivering food aid to Somalia and vessels of the African Union Mission in Somalia (AMISOM);
- the protection of other vulnerable vessels off the coast of Somalia;
- the deterrence, prevention and repression of acts of piracy and armed robbery off the coast of Somalia; and

106 Djibouti, Ethiopia, Kenya, Madagascar, Seychelles, Somalia and Tanzania.

107 See: <http://www.imo.org/About/mainframe.asp?topic_id=1773&doc_id=10933> (consulted on 11 August 2010).

108 Benin, Cameroon, Cape Verde, Congo, Côte d'Ivoire, DRC, Gabon, Ghana, Guinea, Guinea-Bissau, Nigeria, Senegal, Sierra Leone and Togo.

109 James Kraska and Brian Wilson, 'Combating pirates of the Gulf of Aden: The Djibouti Code and the Somali Coast Guard', *Ocean & Coastal Management*, 2009, I-5. MOWCA Update 2/10, '14 MOWCA member states sign MoU', available at: <<http://www.mowca.org/new%20design/coast-guard-update0210.html>> (consulted on 10 October 2010).

110 IMO, 'IMO's contribution to sustainable maritime development', London, 2009, available at: <http://www.imo.org/TCD/mainframe.asp?topic_id=27> (consulted on 1 October 2010). Ministry of Foreign Affairs et al., 'Policy memorandum on combating piracy and armed robbery at sea' (in Dutch), August 2006.

- the monitoring of fishing activities off the coast of Somalia.¹¹¹

Operation Atalanta has permanent access to six to eight ships, including frigates, large patrol boats and a supply ship. Ideally, each ship also has a helicopter to expand its area of surveillance and provide rapid assistance in the case of a pirate attack. The operation commander also has three or four maritime patrol aircraft at his disposal to build up a picture of the area of operations as well as various medical resources. The European Union introduced the group transit system, in which one or more naval vessels check a particular navigation route through the Gulf of Aden for the presence of pirates prior to its use by a group of merchant ships. The system was later adapted to cater to highly vulnerable ships, which are unable to participate in group transits. For such ships, the chosen route is divided into smaller stretches or sections, and each section is protected by a naval vessel that keeps a close eye on the merchant ships, assisted by helicopters and maritime patrol aircraft. In an emergency, the naval units in the sector can thus intervene much more swiftly. The European Union introduced this additional protection for highly vulnerable ships – known as supported transit – in the autumn of 2009.¹¹²

Based on its understanding that military action against Somalia pirates at sea is not a long-term solution to the problem of piracy, the European Union is increasingly pursuing an integrated anti-piracy strategy off the coast of Somalia:

‘The European Union is committed to doing all it can to play its part in deterring and stamping out acts of piracy. We firmly believe that the road to enhanced maritime security lies in an integrated approach. This should translate into effective and permanent civilian/military cooperation, coupled with cross-sectoral coordination at civilian level. We have, in fact, already started to do this.’¹¹³

For example, the European Union was one of the founders of the Contact Group on Piracy off the Coast of Somalia (CGPCS), an international cooperative framework established in January 2009 in support of the Djibouti Code of Conduct. The CGPCS favours an integrated anti-piracy strategy and encompasses four working groups that focus on:

1. military and operational coordination, information sharing and regional capacity building;
2. legal issues: apprehending, prosecuting and imprisoning pirates (Counter-Piracy Programme of the UN Office on Drugs and Crime; UNODC);
3. self-protection against piracy in the shipping industry; and
4. public information in Somalia and the region.

111 See: <<http://www.eunavfor.eu/about-us>> (consulted on 11 August 2010).

112 Minister of Defence, ‘Letter to Parliament regarding a study on the stationing of military security teams on board merchant ships’ (in Dutch), The Hague, 23 June 2009. Minister of Defence, ‘Letter to Parliament regarding the protection of vulnerable ships in the Gulf of Aden and off the coast of Somalia’ (in Dutch), The Hague, 8 October 2009. Interview with Commodore P.J. Bindt, former commander of EU Operation Atalanta, The Hague, 11 June 2010.

113 Speech by EU Commissioner Joe Borg at a seminar on *Piracy and Armed Robbery against Shipping: To Prevent, Deter, Protect and Fight against an Actual Threat*, 21 January 2009.

The European Union works closely with the IMO on implementing the Djibouti Code of Conduct. For instance, it is contributing €5 million to the establishment of a regional training centre for national coastguard organisations in Djibouti, which will also train Somali coastguard personnel. In addition, it is supporting the establishment of a regional Information Sharing Centre on maritime security in the Yemeni capital Sana'a.¹¹⁴ In due course, this centre is expected to take over MSCHOA's current tasks.

Also important are the European Union's efforts to facilitate the trial and imprisonment of Somali pirates in the region by concluding transfer agreements with East African countries. The European Commission is also the largest donor to UNODC's anti-piracy programme for East Africa, which focuses on maintaining law and order, trying pirates and improving court and prison facilities in countries that try Somali pirates (see also section IV.5).¹¹⁵

The European Union is also involved in reconstruction and piracy prevention efforts in Somalia through programmes aimed at law enforcement and security, reconciliation and state building, education, economic development and agriculture. The majority of EU assistance to Somalia is channelled through UN institutions and non-governmental organisations (NGOs) operating in the country.¹¹⁶ In addition, the European Union is directly involved in reforming Somalia's security sector by training Somali recruits. In Uganda, the EU Training Mission is training soldiers for Somalia's government forces. The importance of reforming the Somali security sector is obvious, but building up the armed forces of a country with a fragile government also involves risks. It is therefore important to closely monitor the EU Training Mission's impact on the security situation in Somalia.

III.3 Other international organisations

United Nations

Since 2008, the UN Security Council has adopted various resolutions mandating international action to combat piracy off the Somali coast.¹¹⁷ For example, UN Security Council resolution 1851 (December 2008) authorises states and regional organisations to act in Somalia's territorial waters and even on land, stating that they may:

'undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea.'

Since 1995, the United Nations Political Office for Somalia (UNPOS) has sought to promote peace and reconciliation in the country under the leadership of the UN

114 European Commission, 'The European Union and Somalia EC Development Programme 2010'.

115 See: <http://www.unodc.org/documents/easternafrika//piracy/20100701_CPP_Brochure_3.pdf> and <<http://www.eunavfor.eu/2010/08/eu-kenya-co-operate-to-prosecute-pirates>> (consulted on 11 August 2010).

116 European Commission, 'The European Union and Somalia EC Development Programme 2010'.

117 In particular, UN Security Council resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008) and 1897 (2009).

Secretary-General's Special Representative for Somalia. UN Security Council resolution 1863 (2009) calls on the Special Representative to coordinate all UN activities in Somalia and to mobilise the necessary international support for reconstruction, economic development and training of Somali security forces.¹¹⁸

The United Nations ought to play a key role in the prevention of piracy on land. However, despite the mandate for international action against piracy laid down in various Security Council resolutions, the AIV notes that a systemic approach is unlikely to be possible in the near future. A repressive approach is therefore the only available strategy at this time, although attention should continue to focus on eliminating the underlying causes of the problem.

African Union

The rapid increase in piracy off the coast of Somalia and in the Gulf of Guinea has alerted the African Union to the need to develop a joint maritime strategy based on two pillars: economic development and maritime security. A report prepared by the Brenthurst Foundation, in consultation with the African Union, discusses the importance of maritime trade for the growth potential of African economies; over 90% of African trade goes by sea. A maritime development strategy for Africa can only succeed if it goes hand in hand with improved maritime security. The African Union has developed a Common African Defence and Security Policy but still needs to draw up a maritime security strategy within this framework.¹¹⁹

NATO

In Operation Ocean Shield, NATO focuses on the following anti-piracy tasks off the coast of Somalia: protecting merchant ships in the IRTC; carrying out patrols in the Somali Basin; providing individual escorts for ships on behalf of the United Nations; and tracking down mother ships used by pirates for their operations at sea. To carry out these tasks, NATO constantly maintains three to six ships from Standing NATO Maritime Groups (SNMGs) 1 and 2 in the area of operations.¹²⁰ The availability of maritime patrol aircraft is a problem for NATO. In general, NATO Operation Ocean Shield and EU Operation Atalanta work well together in the area of operations, but there is room for improvement as regards the sharing of scarce intelligence information.¹²¹

If requested by countries in the Horn of Africa, NATO is prepared to contribute to maritime anti-piracy capacity building, supplementing the efforts of other international

118 See: <<http://unpos.unmissions.org/Default.aspx?tabid=1912>> (consulted on 8 October 2010).

119 The Brenthurst Foundation, 'Maritime Development in Africa. An Independent Specialists' Framework', Discussion Paper 2010/03, Johannesburg, June 2010, available at: <<http://www.thebrenthurstfoundation.org/discussion-papers.htm>> (consulted on 8 October 2010).

120 Minister of Foreign Affairs and Minister of Defence, 'Letter to Parliament on NATO's Operation Ocean Shield' (in Dutch), The Hague, 26 April 2010.

121 Interview with Lieutenant General P.J.M. Godderij (ret.), former director of NATO's International Military Staff, The Hague, 14 October 2010. Interview with Commodore P.J. Bindt, former commander of EU Operation Atalanta, The Hague, 11 June 2010.

organisations. In this way, it can help to establish a coherent approach to the fight against piracy.¹²²

III.4 Lessons learned from regional cooperation in Southeast Asia

III.4.1 Balancing sovereignty and international cooperation

The main obstacle to regional cooperation in the fight against piracy in Southeast Asia is the concern held by individual coastal states that it will infringe their sovereignty or undermine their negotiating position in maritime boundary disputes with neighbouring countries. Indonesian Navy Chief of Staff Admiral Bernard Kent Sondakh expressed this concern as follows:

'Indonesia is always open for cooperation offered by others so long as they do not tend to internationalise the management of the Malacca Strait and as long as they are consistent with and respect Indonesian sovereignty and sovereign rights as a coastal state.'¹²³

However, pirates in Southeast Asia take little notice of national borders and state sovereignty. For a long time, organised crime syndicates in particular exploited the lack of regional cooperation as regards sharing information, protecting straits and tracking down hijacked ships and their cargoes. As a result, it was easy to obtain new identity papers for hijacked ships in other countries and give them a new lease of life under a new name. Likewise, captured cargo could be sold elsewhere without any risk that its origins would be traced.¹²⁴

The ReCAAP Information Sharing Centre's report on the first half of 2010 describes three incidents involving tugs that disappeared without trace after being hijacked by pirates in the vicinity of Malaysia and Indonesia. Thanks to the clear incident reporting system, the direct lines of communication between national ReCAAP focal points and effective cooperation between the maritime investigation agencies of the states parties, the three hijacked ships were tracked down, the hostages were freed and, in two of the three incidents, the pirates were arrested and tried.¹²⁵

III.4.2 Strengthening enforcement capacity and coastguard organisations

Under international maritime law, states are prohibited from combating armed robbery in the territorial waters of a foreign coastal state without its prior permission. This restriction also applies to straits that overlap with territorial waters. In the past, Indonesia, Malaysia and Singapore have clearly stated that they do not welcome

122 Interview with Lieutenant General P.J.M. Godderij (ret.), former director of NATO's International Military Staff, The Hague, 14 October 2010. Interview with Dr M. de Kwaasteniet, Representative of the Netherlands on the European Union's Political and Security Committee, Brussels, 7 October 2010.

123 Speech by the Indonesian Navy Chief of Staff, Admiral Bernard Kent Sondakh, at the Maritime Institute of Malaysia Conference, Kuala Lumpur, Malaysia, 12 October 2004.

124 Ralf Emmers, 'The threat of transnational crime in Southeast Asia. Drug trafficking, human smuggling and trafficking and sea piracy', UNISCI Discussion Papers no. 2, 2003, Madrid, p. 8.

125 See the Flow Diagram for Reporting Incidents in Asia in annexe V. ReCAAP Information Sharing Centre, 'Half Yearly Report: 2010, January to June, p. 2.

international military involvement in the protection of the Strait of Malacca and the Singapore Strait. Military involvement is therefore not an option, but do these countries see a need for other forms of international involvement in the protection of international shipping routes in the region?

Although UNCLOS grants coastal states jurisdiction over their territorial waters, it also imposes on them an obligation to ensure compliance with the law and maritime security in these waters. Fragile and weak coastal states are generally unable to meet this obligation. The cost of preventing piracy by means of maritime patrols in coastal waters can be a heavy financial burden, especially for countries with a long coastline. Such patrols entail a sizeable investment in ships and equipment, as well as a great deal of training and high operating costs.

Against this background, Indonesia and – to a lesser extent – Malaysia have invoked article 43 of UNCLOS as a basis for calling upon other states outside the region to share the cost of strengthening enforcement capacity and coastguard organisations in the Strait of Malacca and the Singapore Strait. In 1996 and 1999, moreover, Singapore hosted international conferences on security risks in the Strait of Malacca and the Singapore Strait. At these conferences, regional coastal states met with the IMO and with states that make intensive use of these shipping routes to examine the scope for international cooperation and fundraising with a view to protecting both straits. The outcome of these conferences was initially limited to the funding of several technical projects, mainly by Japan and the United States. For example, the United States helped establish 12 radar stations in Indonesia to monitor the Strait of Malacca.¹²⁶

III.5 Geopolitical interests in the fight against piracy

In addition to the EU's Operation Atalanta and NATO's Operation Ocean Shield, Combined Task Force 151 (CTF 151) is a third multilateral initiative, led by the United States, to combat piracy and protect shipping in the Gulf of Aden and the Somali Basin. At present, CTF 151 has between 5 and 10 ships and three maritime patrol aircraft in the area of operations. It is part of the Combined Maritime Forces, whose responsibilities also extend to counterterrorism and other security risks, such as drug trafficking, people smuggling and trafficking in women. Along with the United States, the members of the Combined Maritime Forces include Australia, Canada, Denmark, France, Germany, Italy, Pakistan, South Korea, Turkey and the United Kingdom.

China, India, Japan, Malaysia, Russia, Singapore and South Korea are also providing navy vessels to combat piracy off the coast of Somalia. However, there is no joint operational concept for them and the other participating countries. While Western countries are trying to protect the IRTC through the Gulf of Aden as effectively as possible with the available military capabilities, India and China still prioritise individual escorts through the Gulf of Aden for their own merchant ships.¹²⁷

126 Martin Murphy, 'Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy?', in Peter Lehr (ed.), *Violence at Sea: Piracy in the Age of Global Terrorism*, Routledge, New York, 2007, pp. 169-170. Sam Bateman et al., 'Good order at sea in Southeast Asia', *RSIS Policy Paper*, Nanyang Technological University, April 2009, p. 30.

127 Interview with Lieutenant General A.G.D. van Osch, Director-General of the EU Military Staff, Brussels, 7 October 2010.

In addition to deploying naval units at sea, it is vital to place a strong emphasis on intelligence and information sharing in order to combat piracy effectively. In the Mediterranean region, for example, only a few navy vessels are required for anti-terrorism purposes, as the countries concerned share a great deal of intelligence.¹²⁸

Several commentators have criticised what they describe as the 'armada of warships' off the coast of Somalia and argue that Western and Asian countries are pursuing a geopolitical agenda in the region. Birgit Mahnkopf believes that these countries are using their maritime presence in the region to exert political influence over the Horn of Africa. She also claims that Western concerns about the growing influence of China and India in Africa are a factor.¹²⁹ Other commentators place a stronger emphasis on the strategic importance of the Indian Ocean, where the United States, India and China, in particular, are trying to assert their geopolitical influence. According to Holmes, the international maritime presence off the coast of Somalia should be seen primarily in this light.¹³⁰

The AIV agrees with the conclusion that the large international maritime presence to combat piracy off the Somali coast can be partly explained by geopolitical considerations. Many countries' navies see the fight against piracy in the Horn of Africa as an opportunity to explore new forms of maritime cooperation. The AIV considers this a legitimate secondary objective, provided that the need for military anti-piracy capabilities in the Horn of Africa continues to drive international efforts in the region.

Finally, the AIV would note that the simultaneous deployment off the Somali coast of three different multinational maritime operations (EU Operation Atalanta, NATO Operation Ocean Shield and CTF 151), along with the national maritime presence of Russia and several key Asian states, is not efficient. Although coordination between the various operations has improved as a result of the monthly Shared Awareness and Deconfliction (SHADE) meetings in Bahrain, adopting a joint operational concept for all participating countries would be the best way to increase the effectiveness of anti-piracy efforts off the coast of Somalia. If agreement were to be reached on a joint operational concept, the next step would be to conclude agreements centralising the coordination of the operation, for example by assigning this responsibility to one multinational operation or one country on a rotational basis.

128 Interview with Lieutenant General P.J.M. Godderij (ret.), former director of NATO's International Military Staff, The Hague, 14 October 2010.

129 Birgit Mahnkopf, 'Piratenhutz am Horn von Afrika. Zur politischen Ökonomie eines Piratenkonflikts und seiner geopolitischen Bedeutung', *Internationale Politik und Gesellschaft* I/2010, p. 59.

130 James R. Holmes, 'The Interplay between Counterpiracy and Indian Ocean Geopolitics', in Bibi van Ginkel and Frans-Paul van der Putten, *The International Response to Somali Piracy: Challenges and Opportunities*, Martinus Nijhoff Publishers, Leiden, 2010, pp. 161-174.

IV Prosecuting pirates

This chapter focuses on the following two questions:

- What are the responsibilities of governments under international law as regards taking action against and prosecuting pirates?
- What considerations lead states to decide whether or not to prosecute pirates who have been captured? Are new international agreements needed to ensure that pirates are properly tried?

IV.1 Rights and duties of states

First, article 100 of UNCLOS imposes a general obligation on states to cooperate in the repression of piracy. Article 105 of the Convention further provides that a state that arrests pirates on the high seas is entitled – but not required – to try them. By contrast, the 1988 Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA Convention), to which the Netherlands is party, requires states to prosecute suspected pirates or extradite them to a country that has jurisdiction over the offence concerned (*aut dedere aut judicare*). Although piracy is not mentioned explicitly in the SUA Convention, it falls under the offences that the Convention seeks to suppress, which include seizing or exercising ‘control over a ship by force or threat thereof or any other form of intimidation’. Releasing suspected pirates against whom there is sufficient evidence of guilt without making any serious attempt to prosecute them is therefore a breach of the Convention.

Article 105 of UNCLOS does not provide that pirates may also be transferred to a third state in order to stand trial, but the SUA Convention does. In such cases, the transferring state should obviously demand a guarantee of a fair trial.

In addition, on the basis of various UN Security Council resolutions,¹³¹ states may also take action against pirates in Somalia’s territorial waters. Those cooperating with the country’s Transitional Federal Government (TFG) are authorised to enter its territorial waters and use ‘all necessary means’ to combat piracy. The possibility of taking action in Somali waters is an exception to prevailing international maritime law.¹³²

IV.2 Options for prosecuting pirates

More than half the pirates arrested since the launch of international anti-piracy operations off the coast of Somalia have been released by the same naval units that arrested them in the first place.¹³³ There are various reasons why states are often unwilling to prosecute Somali pirates. First, many states have yet to classify piracy as an offence in their national legislation. This makes it very difficult for them to try persons suspected of piracy. The UN Security Council has therefore called on member states to

131 In particular, UN Security Council resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008) and 1897 (2009).

132 Chatham House – Africa Programme and International Law Conference Report, ‘Piracy and Legal Issues: Reconciling Public and Private Interests’, London, 1 October 2009, p. 6.

133 Ibid., at p. 7.

criminalise piracy under their domestic law.¹³⁴ Second, many prosecutions are hampered by the complexity and costliness of conducting judicial inquiries at a great distance from the site of the offence as well as by the difficulty of furnishing proof in situations where pirates were not caught *in flagrante delicto*. Finally, many states are concerned that convicted pirates might apply for asylum after serving their sentences.¹³⁵

At the end of July 2010, UN Secretary-General Ban Ki-moon presented a report on possible options to further the aim of prosecuting persons responsible for piracy and armed robbery at sea off the coast of Somalia to the Security Council.¹³⁶ In this report, prepared at the request of the Security Council,¹³⁷ the Secretary-General identifies seven options with regard to the prosecution of pirates:

1. UN-assisted capacity building in regional states to prosecute and imprison pirates;
2. establishing a Somali court in a third country in the region (analogous to the Scottish Lockerbie tribunal at Kamp Zeist), either with or without UN participation;
3. establishing a special chamber within the national jurisdiction of a state or states in the region, without UN participation;
4. as option 3, but with UN participation;
5. establishing a regional tribunal on the basis of a multilateral agreement among regional states, with UN participation;
6. establishing an international tribunal on the basis of an agreement between a regional state and the United Nations; and
7. establishing an international tribunal on the basis of a Security Council resolution.

Option 1 Capacity building in regional states

Some initiatives have already been developed under this option. For example, Kenya has opened a new high-security courtroom, built by UNODC, which will be used to try piracy cases and other serious criminal offences. This option focuses on sustainable investment in the legal systems of various regional states and also aims to increase their involvement in the search for solutions to the problem of piracy. The required financial resources will have to be raised through the International Trust Fund to Support Initiatives of States Countering Piracy off the coast of Somalia. Developing initiatives aimed at improving conditions in Somalia's prisons, especially in the regions of Puntland and Somaliland, is also key to making progress in this area.

134 UN Security Council resolution 1918, 27 April 2010, UN Doc. SC/9913.

135 Chatham House – Africa Programme and International Law Conference Report, 'Piracy and Legal Issues: Reconciling Public and Private Interests', London, 1 October 2009, p. 7. E. Kontorovich, 'A Guantánamo on the Sea: The Difficulty of Prosecuting Pirates and Terrorists', *Californian Law Review*, Vol. 98, no. 1, 2010, pp. 262-263.

136 *Report of the Secretary-General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results ('Secretary General's report')*, UN Doc. S/2010/394, 26 July 2010.

137 UN Security Council resolution 1918, 27 April 2010, UN Doc. SC/9913.

It is important that the Netherlands also helps to achieve the objectives formulated under option 1. The AIV would also emphasise that these are *long-term* objectives. This option will not immediately lead to a decline in the number of acts of piracy or the establishment of a functioning legal system in Somalia. On the other hand, the initiatives developed under this option will be sustainable.

Option 2 Somali court in a third country

Implementing this option requires an agreement between Somalia and a third country that can provide a secure environment in which to establish the tribunal. If it is done with UN participation, an agreement with the United Nations will also be required. Moreover, it is important to provide the necessary assistance to ensure that Somalia's highly fragmented legal apparatus meets international standards.

The key question is how long it would take to implement this option and whether the related resuscitation of Somalia's public administration would in fact require so much investment that it would ultimately be equally possible to establish the tribunal in Somalia itself. This option has the advantage of involving Somalia in solving the problem, but one of its disadvantages is that investing in a tribunal in a third country will not have any lasting impact.

Option 3 Special piracy chamber without UN participation

A major consideration under this option is whether the state concerned has a sufficient number of piracy cases to justify the necessary investment. This is definitely the case in Somalia, but the international community has insufficient confidence in the country's justice system to fund this option. Investing in one of the other countries in the region seems a more logical choice. This would also contribute to regional capacity building and ensure that piracy cases continue to be tried in the region. A disadvantage is that it would create a 'two-tier' system of piracy cases and other prosecutions.

Option 4 Special piracy chamber with UN participation

See option 3. If the United Nations is to be involved in selecting and appointing judges and public prosecutors, this must be laid down in an agreement with the state concerned. With a majority of UN judges on the planned tribunals, in many cases changes will be required to third countries' judicial systems, which often only provide for single-judge chambers.

Option 5 Regional tribunal

First and foremost, this option would require the participating regional states – ideally including Somalia – to negotiate a multilateral treaty. One disadvantage of this option is that it will not produce immediate results. Quite apart from the length of the negotiations, it will also take time to establish such a tribunal. It is also likely to be a more expensive option than establishing special piracy chambers. On the other hand, this option would contribute to regional capacity building. Another advantage is proximity, for the purpose of transferring suspects and examining witnesses.

Option 6 International tribunal

This option concerns a hybrid international tribunal with both national and international components. The involvement of the host state is an important factor. It is very unlikely that this role would be given to Somalia, as Kenya and Seychelles are much more suitable for this purpose. This option also involves establishing a new tribunal, which will cost time and money.

Option 7 International tribunal based on a Security Council resolution

A Security Council resolution establishing a special tribunal can be negotiated fairly quickly, but a lot more is required before the international community has a functioning tribunal at its disposal. Negotiations would still have to be concluded with the host country and procedures drawn up for the selection of judges and the due process of law.

The AIV believes that it is important to thoroughly examine the purpose of the investments required when weighing up the various options. If the main objective is to end the culture of impunity that surrounds piracy, it is a simple matter to weigh up each option and examine its feasibility. In that case, key considerations will include the amount of time it takes for an option to start producing results, the related costs and the potential cooperation of the countries concerned. The security situation may also be a deciding factor in the choice of a particular option.

However, if we approach the problem from a broader perspective that includes the causes of piracy, our considerations will be different. In that case, the main issue is not how to end impunity but rather how to bring about a lasting solution to the problem of piracy. In this context, the direct involvement of Somalia and other states in the region carries significantly more weight.

The AIV believes that the international community should in any case invest in option 1 – capacity building in regional states – because it will help strengthen the region's legal systems (see section IV.5). Option 3 – a special piracy chamber without UN participation – is preferable to a special piracy chamber with UN participation (option 4), because it would allow the states concerned to operate more independently and invest directly in strengthening their own legal systems. Somalia's involvement in a Somali court in a third country (option 2) or an international tribunal (option 6) is important. For the time being, however, it appears to be unfeasible. The options of establishing a regional tribunal (option 5) or an international tribunal on the basis of a UN Security Council resolution (option 7) are the least attractive, because they do not do enough to strengthen national legal systems and are consequently less conducive to a lasting solution to the problem of piracy.

IV.3 Prosecuting pirates in the Netherlands

On 17 June 2010, Rotterdam district court pronounced judgment on five Somali nationals who had attacked the *Samanyolu* – a ship sailing under an Antillean flag – in the Gulf of Aden on 2 January 2009. Thanks to the intervention of a Danish naval vessel, the attackers were arrested on suspicion of piracy. The court sentenced them to five years' imprisonment. The Netherlands thus became the first Western country to successfully try Somali pirates.¹³⁸

Under article 4, paragraph 5 of the Dutch Criminal Code, the Netherlands has universal jurisdiction over piracy as referred to in articles 381-385 of the Criminal Code – namely acts of violence against vessels, persons or property on the high seas – and may exercise this jurisdiction if the Public Prosecution Service decides to institute criminal proceedings. This decision depends, among other factors, on whether a Dutch interest

¹³⁸ 'De piraat is veroordeeld – en wil daarna misschien wel asiel', *NRC Handelsblad*, 18 June 2010. Judgment of Rotterdam district court, BM8116, 10/600012-09, 17 June 2010.

is at stake or whether there is some other relevance to the Netherlands.¹³⁹ In this particular case, the court decided to institute proceedings because the Netherlands is involved in combating piracy and the ship was sailing under an Antillean flag.

The court further held that the defendants had not been brought before a court within a reasonable time (40 days after their arrest), a violation of article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). However, it also held that this had not jeopardised their right to a fair trial.

At sentencing, the court noted that piracy was a serious offence that should be dealt with forcefully and that a substantial prison sentence was therefore appropriate. The court also considered that conditions in Somalia were dire (lack of security, impunity, human rights violations, drought and famine) and that it could not ignore them in this case. These conditions were a mitigating factor but certainly did not justify the offences. Finally, the court also took into consideration that it had not been legally established that the defendants belonged to a larger organised group of pirates.¹⁴⁰

IV.4 Prosecuting pirates in other Western countries

United States

In the United States, three separate criminal cases are currently pending against Somali nationals suspected of piracy. The first case, which also happens to be the first piracy case in the United States since 1861, concerns a Somali national named Abdiwali Abdiqadir Muse, who was involved in the hijacking of the US-flagged container ship *Maersk Alabama* and the kidnapping of its captain in April 2009. In the United States, the offence of piracy carries a life sentence. This is a much heavier punishment than in the Netherlands, where piracy carries a maximum sentence of 12 years (or 15 years in cases involving the use of lethal force). In light of the defendant's admission of guilt and the remorse he expressed, the public prosecutor dropped the piracy charge but retained the charges relating to conspiracy and kidnapping. The defendant is expected to receive a prison sentence of between 27 years and 33 years and nine months.¹⁴¹

On 29 July 2010, in Norfolk, Virginia, a hearing took place in a case against six Somali nationals suspected of piracy, who were arrested after firing on the US navy ship USS

139 Minister of Justice and Minister of Defence, 'Letter to Parliament on legal aspects of piracy' (in Dutch), The Hague, 23 March 2009.

140 Judgment of Rotterdam district court, BM8116, 10/600012-09, 17 June 2010.

141 R. Rivera, 'Somali Man Pleads Guilty in 2009 Hijacking of Ship', *New York Times*, 18 May 2010, available at: <http://www.nytimes.com/2010/05/19/nyregion/19pirate.html?ref=piracy_at_sea> (consulted on 17 August 2010). T. Hays, 'Piracy Suspect Pleads Guilty in NY Court to Hijack', ABC News, 18 May 2010, available at: <<http://abcnews.go.com/US/wirestory?id=10681531&page=2>> (consulted on 17 August 2010).

Ashland in the Gulf of Aden on 10 April 2010.¹⁴² The suspects are accused of piracy under the law of nations, attacking to plunder a vessel, assault with a dangerous weapon, engaging in an act of violence against persons on a vessel, conspiracy to use weapons during a crime of violence and using a firearm during a crime of violence.¹⁴³ On 17 August 2010, a federal court in Virginia threw out the piracy charge against the six defendants, as they had not robbed, boarded or seized control of the ship in question, but upheld the other charges. On 29 November 2010, one of the defendants was sentenced to 30 years in prison on three charges: attacking to plunder a vessel, engaging in an act of violence against persons on a vessel and using a firearm during a crime of violence.¹⁴⁴

In November 2010, five Somali nationals were convicted of piracy following an attack on the US navy ship *USS Nicholas* in the Indian Ocean on 31 March 2010. The court in Norfolk, Virginia, may impose a life sentence on the five defendants, who faced the same charges as those in the abovementioned case concerning the *USS Ashland*.¹⁴⁵

Germany

In June 2010, Amsterdam district court approved the extradition of ten Somali nationals suspected of piracy to Germany. They are accused of involvement in an attack on the German container ship *MV Taipan*, whose crew included two German nationals, on 5 April 2010 as well as attempted kidnapping and extortion. A Dutch unit of marines put an end to the hijacking after the crew members had locked themselves into a safe room on board the ship. The Netherlands has no direct interest in prosecuting the suspects.¹⁴⁶

142 US District Court for the Eastern District of Virginia, *United States v. Said*, Case 2:10-cr-00057-RAJ-FBS, 17 August 2010, available at: <<http://ia360702.us.archive.org/1/items/gov.uscourts.vaed.253001/gov.uscourts.vaed.253001.94.0.pdf>> (consulted on 18 August 2010). Federal Bureau of Investigation – Norfolk, 'Alleged Somali Pirates Indicted for Attacks on Navy Ships', 23 April 2010, available at: <<http://norfolk.fbi.gov/dojpressrel/pressrel10/nf042310.htm>> (consulted on 18 August 2010).

143 '11 Alleged Pirates Arrive In US For Prosecution', CNN, 23 April 2010, available at: <<http://edition.cnn.com/2010/CRIME/04/23/pirates.us.prosecution/index.html>> (consulted on 18 August 2010).

144 'Somalis No Longer Face Federal Piracy Charges', *New York Times*, 17 August 2010. 'US judge drops piracy charges against six Somali men', BBC News, 17 August 2010, available at: <<http://www.bbc.co.uk/news/world-us-canada-11007464>> (consulted on 18 August 2010). Radio Netherlands Worldwide, 'US sentences Somali pirate to 30 years in prison', 29 November 2010, available at: <<http://www.rnw.nl/africa/bulletin/us-sentences-somali-pirate-30-years-prison>> (consulted on 1 December 2010).

145 Federal Bureau of Investigation – Norfolk, 'Alleged Somali Pirates Indicted for Attacks on Navy Ships', 23 April 2010, available at: <<http://norfolk.fbi.gov/dojpressrel/pressrel10/nf042310.htm>> (consulted on 18 August 2010). 'Rechtbank VS veroordeelt vijf Somalische piraten', *Trouw*, 24 November 2010.

146 'Somali pirates will be extradited to face trial in Germany', *Deutsche Welle*, 4 June 2010, available at: <<http://www.dw-world.de/dw/article/0,,5651951,00.html>> (consulted on 20 August 2010.) 'Operation Kehrbesen', *Der Spiegel*, 19 April 2010, available at: <<http://www.spiegel.de/spiegel/print/d-0131095.html>> (consulted on 20 August 2010). 'Mutmaßliche Piraten in Deutschland eingetroffen', *Stern*, 10 June 2010, available at: <<http://www.stern.de/panorama/auslieferung-mutmassliche-piraten-in-deutschland-eingetroffen-73063.html>> (consulted on 20 August 2010).

The Dutch justice authorities transferred the following confiscated items to Germany: five AK-47 assault rifles, two rocket launchers, a wide variety of ammunition and two grappling hooks. One of the suspects is a minor who will be tried under juvenile law.¹⁴⁷

German law is compatible with UNCLOS and makes provision for the prosecution of pirates. Although the word piracy does not actually appear in German law, the offence falls under 'attacks on maritime traffic',¹⁴⁸ which carry a minimum sentence of five years. However, if somebody dies during such an attack, the courts may also impose a life sentence. The *Taipan* case can be conducted entirely according to German law, since the offence took place on a German ship with German crew members and accordingly falls under German jurisdiction. The defendants face a maximum sentence of 15 years in prison.¹⁴⁹

IV.5 Prosecuting pirates in East Africa

The European Union and a small number of UN member states are seeking to promote the prosecution of Somali pirates in the region by concluding agreements on the transfer of suspects and evidence with coastal states in East Africa, as described in the UN Secretary-General's report to the Security Council (see section IV.2). Such agreements have been made possible by UN Security Council resolutions on the issue. Kenya and Seychelles are the first East African countries to demonstrate willingness to try Somali pirates. The authorities in Somaliland and Puntland have also promised to cooperate.¹⁵⁰

At present, judicial capacity in East Africa remains very weak, and international assistance aimed at trying pirates in the region remains vital. This is why, for example, the Netherlands is contributing €800,000 for judicial capacity building in Seychelles.

UNODC Counter-Piracy Programme

On 1 May 2009, UNODC and the European Commission launched a counter-piracy programme with the following objectives:

1. fair and efficient trials and imprisonment of Somali pirates in regional centres in Kenya, Seychelles and other countries in the region;

147 'Holland liefert mutmaßliche somalische Piraten aus', *Financial Times Deutschland*, 4 June 2010, available at: <<http://www.ftd.de/politik/international/:holland-liefert-mutmassliche-somalische-piraten-aus/50122628.html>> (consulted on 20 August 2010).

148 Article 316C of the German Criminal Code.

149 'Mutmaßliche Piraten in Deutschland eingetroffen', *Stern*, 10 June 2010, available at: <<http://www.stern.de/panorama/auslieferung-mutmassliche-piraten-in-deutschland-eingetroffen-73063.html>> (consulted on 20 August 2010). 'Deutschland darf somalische Piraten vor Gericht stellen', *Der Spiegel*, 4 June 2010, available at: <<http://www.spiegel.de/panorama/justiz/0,1518,698806,00.html>> (consulted on 20 August 2010).

150 Chatham House – Africa Programme and International Law Conference Report, 'Piracy and Legal Issues: Reconciling Public and Private Interests', London, 1 October 2009, p. 9. UN Security Council resolution 1918, 27 April 2010, UN Doc. SC/9913. Interview with Professor A. Soons, director of the Netherlands Institute for the Law of the Sea, The Hague, 9 July 2010.

2. humane and secure imprisonment of convicted pirates in Somalia (Somaliland and Puntland); and
3. in the longer term, fair and efficient trials for pirates in Somalia.¹⁵¹

From its regional office in Nairobi, UNODC remains in close contact with the navies responsible for combating piracy off the coast of Somalia, international donors and the judicial authorities in countries that try Somali pirates. UNODC is able to draw on criminal law specialists with expertise in the field of piracy, in support of countries in the region. It recently carried out assessment missions in Tanzania, Mauritius and the Maldives, which are considering the possibility of trying Somali pirates.¹⁵² The UNODC programme is focused in particular on bringing police investigation procedures up to a professional standard, training and supporting public prosecutors and judges, and improving court and prison facilities.

In addition to the European Commission, Australia, Canada, Denmark, France, Germany, the Netherlands and the United States also provide financial support for judicial capacity building in East Africa. As a result, Kenya and Seychelles receive USD 9.3 million in funding via UNODC.¹⁵³

Kenya

Kenya has concluded transfer agreements with the European Union, Canada, China, Denmark, the United Kingdom and the United States for the purpose of trying Somali nationals suspected of piracy. In May 2010, Kenya's Minister of Foreign Affairs, Moses Wetangula, announced that the country would not be able to try new Somali suspects without additional financial support. Moreover, the Kenyan government believes that other countries in the region should also share the burden of trying and imprisoning Somali pirates. This announcement prompted the European Union to boost its diplomatic efforts to conclude transfer agreements with other countries in East and Southern Africa as soon as possible.¹⁵⁴

Kenya has brought criminal proceedings against a total of 123 Somali nationals suspected of piracy in 14 separate cases. Nine of these cases concern suspects transferred to Kenya by the European Union, three concern suspects transferred by the United States and the other two concern suspects transferred by the United Kingdom.

151 See: <http://www.unodc.org/documents/easternafrika//piracy/20100701_CPP_Brochure_3.pdf> (consulted on 7 September 2010).

152 *Secretary-General's report*, p. 16.

153 See: <http://www.unodc.org/documents/easternafrika//piracy/20100701_CPP_Brochure_3.pdf> (consulted on 7 September 2010). 'Piratenrechtbank geopend in Kenia', *NRC Handelsblad*, 24 June 2010.

154 'Q&A: What do you do with a captured pirate?', BBC News, 24 June 2010. See: <<http://news.bbc.co.uk/2/hi/africa/8664623.stm>> (consulted on 16 August 2010). Interview with Dr M. de Kwaasteniet, Representative of the Netherlands on the Political and Security Committee of the European Union, Brussels, 7 October 2010.

Five of the abovementioned 14 cases have already ended. In four cases, the defendants received prison sentences ranging from five to 20 years.¹⁵⁵ The most recent judgment concerns the acquittal of 17 Somali nationals suspected of attacking an Egyptian ship in the Gulf of Aden in May 2009. The suspects were arrested following a joint operation by the US and South Korean navies. The Kenyan court ruled that the public prosecutor had produced insufficient evidence of piracy in this case.¹⁵⁶

Since 2009, Kenyan law has provided for the prosecution of armed robbery in territorial waters as well as piracy on the high seas, in accordance with UNCLOS. Under the new Merchant Shipping Act 2009, foreign nationals can also be prosecuted for piracy. The maximum sentence for piracy in Kenya is life imprisonment.¹⁵⁷

In June 2010, a court funded by the international community opened in Mombasa. The new court will enable Kenya to expand its efforts to prosecute piracy and other serious crimes.¹⁵⁸

Seychelles

Seychelles has brought criminal proceedings against 40 Somali nationals suspected of piracy in four separate cases. One case concerns suspects transferred to Seychelles by the European Union; the other three concern suspects arrested by Seychelles. Two of the four cases have already ended. In July 2010, the Supreme Court of Seychelles imposed a ten-year prison sentence on 11 Somali pirates who attempted to hijack one of the island state's coastguard vessels. Eight of the pirates were convicted of piracy, and three of aiding and abetting piracy.¹⁵⁹ In November 2010, a court imposed a six-year prison sentence on 11 Somali pirates who had attacked a Spanish fishing boat 350 nautical miles off the coast of Somalia. A French naval vessel had arrested the 11 pirates following their failed attack on the fishing boat and subsequently handed them over to Seychelles.¹⁶⁰

155 *Secretary-General's report*, pp. 14-15. 'Seven Somalis sentenced to five-year [sic] in jail in Kenya on piracy charges', *People's Daily Online*, 7 September 2010. EU NAVFOR press release, 'Verdict for the third EU NAVFOR case in Kenya', 30 September 2010.

156 'Kenya court acquits 17 piracy suspects', *Gulf Times*, 6 November 2010, available at: <http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=396712&version=1&template_id=39&parent_id=21> (consulted on 11 November 2010).

157 See sections 370-371 of the Merchant Shipping Act 2009. See: <<http://faolex.fao.org/docs/pdf/ken94222.pdf>> (consulted on 8 September 2010).

158 See: <http://www.unodc.org/documents/easternafrika//piracy/20100701_CPP_Brochure_3.pdf> (consulted on 7 September 2010). 'Piratenrechtbank geopend in Kenia', *NRC Handelsblad*, 24 June 2010.

159 *Secretary-General's report*, pp. 14-15. 'Elf Somalische piraten veroordeeld tot tien jaar', *Trouw*, 26 July 2010. Statement by HE Mr Ronald Jumeau, Permanent Representative of the Republic of Seychelles to the United Nations at the meeting of the Security Council on the Situation in Somalia (Piracy), New York, UNHQ, 25 August 2010.

160 EU NAVFOR press release, 'Verdict for the first EU NAVFOR case in Seychelles', 4 November 2010.

As a result of a recent amendment to its Criminal Code, Seychelles can now prosecute pirates under universal jurisdiction. Furthermore, it can prosecute suspects who are not caught *in flagrante delicto* for complicity in piracy, as in the abovementioned case.¹⁶¹

Somalia

As a condition of their continued involvement in the domestic prosecution of Somali pirates, Kenya and Seychelles have insisted that those convicted of piracy be transferred to Somalia to serve their prison sentences. That is why prison reform in Somalia, especially in Somaliland and Puntland, is one of UNODC's key objectives.

It is worth noting that Puntland and Somaliland prosecute large numbers of suspected pirates themselves (i.e. 208 and 100 suspects respectively).¹⁶² However, UNODC believes that these piracy trials do not come close to complying with international legal standards. It also believes that considerable international support for criminal law reform and capacity building in the justice sector and the police is needed in all regions of Somalia in order to ensure due process for suspected pirates in the longer term.

161 AFP, 'Seychelles to set up courts to fight piracy: UN', 5 May 2010. Statement by HE Mr Ronald Jumeau, Permanent Representative of the Republic of Seychelles to the United Nations at the meeting of the Security Council on the Situation in Somalia (Piracy), New York, UNHQ, 25 August 2010.

162 *Secretary-General's report*, pp. 14 and 17.

V Conclusions and recommendations

Modern-day piracy, as described in chapter I, shares a key similarity with European piracy of the 16th and 17th centuries: it is closely bound up with anarchy, fragile states and the corresponding impunity. The most effective and durable anti-piracy policy therefore requires a focus on strengthening state authority, good governance, law enforcement and economic development in fragile coastal states. The AIV notes that developing such policy requires substantial, long-term efforts from a large number of public and private actors.¹⁶³ However, short-term measures to combat piracy are also required.

Based on the conclusions outlined below, the AIV has formulated the following policy recommendations regarding effective public-private cooperation to combat piracy and armed robbery at sea, in both the short and the long term:

1. Through the permanent presence of naval vessels, helicopters and maritime patrol aircraft in the Gulf of Aden and the waters to the east of Somalia, the international community is making an important contribution to the security of international shipping in this area. The participating states are thus fulfilling their responsibility to uphold the rule of law at sea. However, it is impossible to fully protect the voluminous shipping traffic in the Gulf of Aden, the Somali Basin and the Indian Ocean.
2. Shipowners and masters of vessels bear primary responsibility for protecting cargo ships against piracy and implementing self-protection measures and best management practices. They are also responsible for registering their ships with the Maritime Security Centre – Horn of Africa (MSCHOA) prior to passing through the Gulf of Aden and for using navigation routes recommended by the MSCHOA.
3. Shipowners, insurance companies and the government are jointly responsible for implementing effective preventive measures. Insurance companies should reward shipowners who take adequate self-protection measures with reduced insurance premiums. The government should ensure that all ships sailing under a Dutch flag are equipped with sufficient on-board security measures to protect themselves against piracy, for example by introducing a periodic inspection for older and/or vulnerable ships.
4. In special cases, in which preventive security measures and the option of group transits or supported transits through the Gulf of Aden do not provide sufficient guarantees for the safe passage of highly vulnerable ships¹⁶⁴ sailing under a Dutch flag, the Minister of Defence should opt to station a Dutch military vessel protection detachment (VPD) on board. This would be contingent on the conclusion of agreements with coastal states in the region (preferably Djibouti and Oman) on the embarkation and disembarkation of Dutch military personnel.
5. Stationing Dutch military VPDs on board highly vulnerable ships on other navigation routes in the Somali Basin and the Indian Ocean involves more operational restrictions than doing so in the Gulf of Aden. Given the security risks in this vast

¹⁶³ See also AIV advisory report no. 64, *Crisis management operations in fragile states: the need for a coherent approach*, The Hague, March 2009.

¹⁶⁴ Highly vulnerable vessels are vessels for heavy cargo shipping and special shipping projects that are usually characterised by low freeboards, slow navigation speeds and limited manoeuvrability.

maritime area, the AIV advises the government to grant masters of highly vulnerable vessels the authority to employ private armed guards to deter pirates, but only in exceptional circumstances and under strict conditions (e.g. regarding the use of force and compliance with international human rights and humanitarian law instruments). First, however, the government should start to certify and regulate private security companies (PSCs). Dutch shipowners and masters of vessels would then only be permitted to use the services of certified PSCs.

6. It is too soon to discuss an exit strategy for international maritime operations in the Gulf of Aden and the waters east of Somalia. This means that the Netherlands, too, will have to contribute to the suppression of piracy in the region in the years ahead. A substantial increase in the international maritime presence is neither likely nor desirable. To combat piracy and armed robbery at sea effectively, measures aimed at improving the situation in Somalia and the region are required.
7. The simultaneous deployment of three multinational operations (EU Operation Atalanta, NATO Operation Ocean Shield and CTF 151), along with the maritime presence of several individual countries, is not efficient. There is a need for a joint operational concept and a central coordinating mechanism for all maritime operations in the Gulf of Aden, the Somali Basin and the Indian Ocean. The government should raise this issue within the European Union and NATO.
8. The International Maritime Organization (IMO) should play a key role in international efforts to build regional anti-piracy capacity in African coastal states. The realisation of the objectives of the Djibouti Code of Conduct depends on the willingness of international donors, including the European Union and the Netherlands, to make sufficient funds available.
9. The Dutch government should be willing to work with Somaliland to strengthen the local coastguard. It should also examine the scope for implementing policies to discourage piracy in Puntland, especially the creation of alternative forms of employment for unemployed fishermen and former pirates, which could lay the foundations for socioeconomic development in Puntland's coastal areas. The Netherlands should also argue at EU level for a coherent and dynamic anti-piracy strategy in Puntland and for more cooperation on capacity building in Somaliland.
10. In the short term, there is no possibility of working with Somalia to try suspected pirates. Instead, the emphasis should be placed on trying Somali pirates in the region. UNODC's efforts to assist in the trial and detention of Somali pirates in East Africa deserve broad international support.
11. There is no need for a new centre of expertise on piracy, but there is a need to develop and improve operational doctrines for combating piracy within NATO and the EU's operational staffs. The government should push for the creation of a joint EU-NATO operational staff tasked with combating piracy.
12. MSCHOA needs to improve its communications strategy as regards shipowners and masters of vessels. Furthermore, there is a need for a communications strategy to better inform the population in Somalia's coastal areas about the activities of the EU and NATO naval vessels off the coast.
13. All the Kingdom partners, including Aruba, Curaçao and St Maarten, as well as the BES islands (Bonaire, St Eustatius and Saba), which have become Dutch public bodies, must implement the international agreements on combating piracy. In view of the provisions of the Charter for the Kingdom of the Netherlands, the AIV recommends that the Council of Ministers for the Kingdom put anti-piracy on the agenda.

These conclusions and recommendations are further elaborated below in response to the government's questions.

Government question

What future trends does the Advisory Council predict in terms of the threat of piracy and armed robbery at sea?

Southeast Asia

The Strait of Malacca, a narrow waterway connecting the Indian Ocean to the South China Sea, was the most dangerous area for seafarers at the start of the millennium. Since 2004, Indonesia, Malaysia and Singapore have taken measures – both individually and jointly – to combat the proliferation of piracy in the Strait. Reports by the ICC International Maritime Bureau (IMB) show a steady decline in the number of acts of piracy in the Strait of Malacca over the past ten years. In particular, the influence of transnational crime syndicates on piracy has been tempered thanks to tighter maritime supervision and increased regional information sharing and cooperation between maritime and land-based investigation agencies in Southeast Asia.

The following factors will help to determine future trends regarding the threat of piracy in Southeast Asia:

- Now that piracy in the Strait of Malacca is almost under control, the threat appears to be shifting to the South China Sea, especially in the vicinity of the islands of Anambas and Mangkai between Indonesia, Malaysia and Singapore. The IMB has urged Indonesia to increase its maritime patrols in this area.¹⁶⁵ The AIV believes that the countries in the region should be able to respond effectively to this changing threat, thanks to their strengthened coastguard organisations, the conclusion of the ReCAAP agreement and the presence of the Information Sharing Centre in Singapore.
- The international financial and economic crisis has had little or no negative impact on the economies of Southeast Asia. If countries like Indonesia and Malaysia should experience a sharp economic downturn and a rise in unemployment, poor residents in coastal areas may rediscover piracy – chiefly in the form of armed robbery at sea – as an alternative source of income.

Somalia

In 2008, Somalia surpassed Southeast Asia as the region with the highest number of acts of piracy. At first, Somali pirates mainly targeted foreign fishing boats in Somali waters, but since 2006 they have concentrated on hijacking merchant ships on international shipping routes and kidnapping crews for ransom. The main reasons for the success currently enjoyed by Somali pirates are:

- the impunity and poverty pervading Somalia, which encourages young, unemployed men, in particular, to take up piracy as a source of income;
- the large number of shipping movements in the Gulf of Aden, including ships with very valuable cargoes (e.g. oil tankers);
- the possibility of anchoring hijacked ships just off the Somali coast without hindrance and using them as a base for conducting ransom negotiations with shipowners; and
- the shared interest that shipowners, insurance companies and those on board have in agreeing to pay a ransom in the case of a hijacking.

¹⁶⁵ ICC-IMB, *Piracy and Armed Robbery Against Ships*, Report for the period 1 January - 30 September 2010. 'Asian shipowners call for tougher action over South China Sea piracy', *Lloyd's List*, 20 September 2010.

What started as a mission to protect World Food Programme (WFP) ships taking UN food aid to the Somali capital Mogadishu has developed into a large international maritime presence consisting of three multinational coalitions (EU Operation Atalanta, NATO Operation Ocean Shield and CTF 151) and several individual countries, including China, India, Japan, Malaysia, Russia, Singapore and South Korea operating under a UN Security Council mandate. A significant portion of the available maritime capabilities is used to secure the Internationally Recommended Transit Corridor (IRTC) through the Gulf of Aden, in order to grant ships the safest possible passage through this waterway. Nevertheless, one in every 250 ships passing through the Gulf of Aden is attacked by pirates.¹⁶⁶ The MSCHOA in Northwood, United Kingdom, plays a key role in providing information and advice to owners and masters of vessels sailing through the Gulf of Aden, the Somali Basin and the Indian Ocean.

How will the problem of piracy off the coast of Somalia develop in the next few years? The AIV believes that the domestic situation in Somalia currently gives little cause for optimism as regards the possibility of combating piracy on land. Nevertheless, any lasting solution to the problem will ultimately have to be found in Somalia itself. The Transitional Federal Government (TFG) is currently unable to provide security and basic services or to impose its authority in the areas from which the pirates operate. Most pirates are from Puntland, a semi-autonomous region in north-eastern Somalia. Piracy has become a major source of income for an increasing number of people. In addition to the pirates themselves, armed militias led by local warlords, village elders, local leaders and businessmen also share in the proceeds of piracy. The United Nations has even accused key members of Puntland's government, including the president, of receiving money derived from piracy and ransom payments. A heartening exception to the rule is Somaliland, which is taking firm action against piracy, thus ensuring that pirate gangs no longer operate from this region.

Somali pirates have shown that they can swiftly adapt to the international maritime presence in the region by continuously expanding their sphere of activity, which now extends up to 1,000 nautical miles off the coast of Somalia. At the same time, they continue to successfully attack vulnerable ships in the Gulf of Aden, despite the fact that it is home to the largest concentration of international naval vessels in the region. When attacks on merchant ships are executed especially swiftly, the requested military assistance usually arrives too late. This highlights the importance of self-protection and preventive measures by shipowners. In most cases, navy units can do little against pirates once they have boarded the ship that they are attacking, unless the crew have locked themselves into a safe room and disabled the ship's steering mechanism.

Nigeria

Western diplomatic missions in Nigeria and Shell Nigeria predict that piracy will increase and become more politically motivated in the next few years. Armed militia members from the Niger Delta who took advantage of the Nigerian government's 2009 amnesty programme are mostly disappointed, because the government's promised post-amnesty initiatives have thus far amounted to very little. There is therefore a real danger that these men will take up arms again and, as a result, that the threat of piracy will continue

¹⁶⁶ 'Red Sea and Gulf of Aden lead piracy hotspots', *Lloyd's List*, 15 July 2010.

to increase, either as a form of political pressure or a profitable business venture.¹⁶⁷

There is a genuine concern that the precarious situation in the Niger Delta, both on land and at sea, could also undermine the security and stability of neighbouring Cameroon and Equatorial Guinea. Over the past three years, armed militias and gangs from Nigeria have carried out several attacks off these countries' coasts and therefore pose a security risk to the entire Gulf of Guinea.

Government question

How great is the actual and potential threat posed by piracy to the Netherlands (to security as well as to the economy)?

Since 2005, no ship sailing under a Dutch flag has been hijacked. In the past five years, however, pirates have attacked 29 Dutch ships on the high seas or in territorial waters around the world. In contrast, two attacks on Antillean ships operated by the Netherlands did result in a hijacking or kidnapping.

Clearly the threat of piracy causes various problems for Dutch shipowners and crews. Without performing a thorough risk analysis of the navigation route prior to departure and implementing self-protection measures on board the ship, it is not safe or advisable to head out onto the high seas. This entails additional costs. Dutch shipowners also incur additional costs by purchasing piracy insurance and, in some cases, separate kidnap and ransom insurance. Seafarers and their families suffer psychological stress as a result of the security risks. Even though the risk of being attacked by Somali pirates in the Gulf of Aden is just 1 in 250 and even if the shipowner has implemented adequate self-protection measures, every voyage through a high-risk area still tests crews' resilience. The AIV advises shipowners and crews to establish a support group for family and friends of seafarers along the lines of that which exists for members of the armed forces who are deployed abroad.

A large part of the Dutch fleet consists of relatively young and modern ships with good on-board security arrangements. However, a small part of the fleet, especially ships used for heavy cargo shipping and special shipping projects, is vulnerable to piracy due to their low freeboards or slow navigation speeds. Another category of vulnerable ships consists of small vessels mostly belonging to small shipowners who do not have sufficient financial resources to implement all the necessary self-protection measures on board.

The AIV notes that piracy in the Caribbean is not a major problem at present but that ships from all the constituent parts of the Kingdom of the Netherlands are confronted with piracy in African and Asian waters. Compliance with obligations arising under UNCLOS and the SUA Convention on the prevention, suppression and prosecution of criminal acts on the high seas is thus a matter for the Kingdom. In view of the provisions of the Charter for the Kingdom of the Netherlands, the AIV recommends that the Council of Ministers of the Kingdom put anti-piracy on the agenda.

¹⁶⁷ Conversations with diplomatic representatives of Canada, the United Kingdom and the United States in Nigeria and Shell Nigeria, July 2010. 'Nigeria offers militants amnesty', BBC News, 26 June 2009, available at: <<http://news.bbc.co.uk/2/hi/africa/8118314.stm>> (consulted on 2 November 2010). 'Nigeria militants "end truce in Delta oil region"', BBC News, 30 January 2010, available at: <<http://news.bbc.co.uk/2/hi/africa/8488772.stm>> (consulted on 2 November 2010).

The Dutch maritime shipping industry and Dutch ports are vital to the competitiveness of the Dutch economy. Half of all the goods flowing in and out of the Netherlands are transported by sea. The disruption of international maritime shipping by pirates in the Gulf of Aden (a major maritime artery for Europe and the Netherlands) therefore also threatens the Netherlands' economic security.

It is difficult to calculate the economic damage caused by piracy to Dutch maritime shipping or the Dutch economy. Where possible, shipowners pass on the additional costs of protecting and insuring their ships against piracy to their clients. According to the Royal Association of Netherlands Shipowners (KVNR), the number of Dutch shipping movements in the Gulf of Aden has dropped from 450 to 250-300 per year due to the threat of piracy. The AIV notes that it is unclear whether this drop should be attributed to the threat of piracy or other factors. As a result of the global economic crisis, for example, turnover in the Dutch maritime and coastal shipping industries fell sharply in 2009. Economic fluctuations make it almost impossible to quantify the economic damage caused by piracy.

Government question

Besides the responsibility of states to combat piracy and armed robbery at sea, what responsibility do shipowners and the masters of vessels have in this respect?

Efforts to combat piracy and armed robbery at sea depend on the shared responsibility borne by public and private actors. Shipowners and masters of vessels must fulfil their responsibilities by implementing self-protection measures from the handbook on best management practices to deter piracy, using navigation routes recommended by MSCHOA and reporting every movement through the Gulf of Aden in advance to that organisation. In the period from August to December 2009, over a quarter of all merchant ships sailing through the Gulf of Aden were not registered with MSCHOA.¹⁶⁸ By the end of 2010, the proportion of unregistered ships had fallen to 15%. According to the Dutch government, the owners of ships hijacked in the Gulf of Aden either had not registered them with MSCHOA or had not properly implemented the best management practices to deter piracy.¹⁶⁹

The government must ensure that all ships sailing under a Dutch flag are equipped with sufficient security measures to protect themselves against piracy. More specifically, it should make agreements with the Dutch maritime shipping industry on improving security measures on board vulnerable ships. The AIV would encourage the government to consider introducing a periodic inspection for old and/or vulnerable ships. In addition, it goes without saying that the Dutch authorities should ensure compliance with international law and regulations, especially of the IMO and the European Union, with respect to the protection of ships.

168 Interview with Commodore P.J. Bindt, former commander of EU Operation Atalanta, The Hague, 11 June 2010. Minister of Defence, 'Letter to Parliament concerning the final evaluation of the deployment of HNLMS Evertsen in Operation Atalanta' (in Dutch), The Hague, 11 June 2010.

169 Minister of Foreign Affairs and Minister of Defence, 'Letter to Parliament on NATO Operation Ocean Shield' (in Dutch), The Hague, 26 April 2010. Interview with Commodore P.J. Bindt, former commander of EU Operation Atalanta, The Hague, 11 June 2010.

The AIV concludes that self-protection measures – from barbed-wire fences along a ship's rail to advanced electronic equipment such as long-range acoustic devices – and strict adherence to security protocols on board are the core responsibilities of shipowners and masters of vessels in combating piracy.

The AIV believes that national and international organisations representing the shipping industry should remind shipowners and masters of vessels of their responsibilities when they fail to comply with official guidelines. Implementing self-protection measures and complying with MSCHOA's maritime security measures in the Gulf of Aden is not a matter of individual choice but a social responsibility. The AIV further believes that insurance companies can and should encourage shipowners to implement self-protection measures on board ships by rewarding them with reduced insurance premiums. We would advise the government to conclude agreements with the insurance industry in this area.

The AIV notes that shipowners are turning more and more to the expertise and services offered by PSCs, owing to the increased threat of piracy off the coast of Somalia. In its advisory report on the employment of private military companies,¹⁷⁰ the AIV observed a somewhat similar trend in the armed forces of Western countries, which are becoming increasingly dependent on private companies to support military operations in crisis areas. At that time, the AIV concluded that 'employing such companies becomes increasingly problematic as the services concerned move closer towards the active use of force and core military tasks'.

Given that over 400 acts of piracy have been reported off the Somali coast since the beginning of 2008, it is becoming increasingly doubtful whether implementing self-protection measures and adhering to best management practices form an adequate deterrent to piracy. At the same time, the AIV notes that a minority of shipowners are still failing to adequately carry out their responsibilities. A number of Dutch shipowners and the KVNR believe that stationing armed security guards on board vulnerable ships is the best way of protecting them. They accordingly requested the Minister of Defence to make Dutch military VPDs available for this purpose. However, the minister rejected this option on account of the logistical problems, legal restrictions and risks associated with a military deployment of this nature.

In practice, some shipowners – including Dutch shipowners – have started stationing private armed security guards on board merchant ships off the coast of Somalia. The AIV notes this practice with concern, for it means that PSCs are currently operating in an unregulated manner on the high seas without any kind of government supervision. The use of PSCs can lead to violent incidents at sea, in which it is unclear who is responsible for the use of force and how they can be held accountable. The Minister of Justice argues that shipowners who employ private armed security guards on ships registered in the Netherlands are violating the Firearms, Ammunition and Offensive Weapons Act and risk prosecution.

The AIV believes, above all, that the government should make self-protection measures compulsory on ships sailing under a Dutch flag and should ensure compliance with this requirement. In addition, it recommends requiring all Dutch ships sailing through the Gulf of Aden to register in advance with and use navigation routes recommended

170 AIV advisory report no. 59, *Employing private military companies: a question of responsibility*, The Hague, December 2007.

by MSCHOA. Ships used for heavy cargo shipping and special shipping projects, which usually distinguish themselves by their low freeboards, slow navigation speeds and limited manoeuvrability, are especially vulnerable to attack by pirates. The AIV further believes that, in special cases, where preventive security measures and the option of group transits or supported transits through the Gulf of Aden do not provide sufficient guarantees for the safe passage of highly vulnerable ships sailing under a Dutch flag, the Minister of Defence should opt to station a Dutch military VPD on board. This would only apply in cases where MSCHOA has determined that the ship concerned has implemented the best management practices against piracy and is highly vulnerable to attack by pirates, unable to participate in a group transit or a supported transit and ineligible for an individual naval escort. The Dutch government should conclude status of forces agreements (SOFAs) with various coastal states in the region, preferably Djibouti and Oman, to regulate the embarkation and disembarkation of Dutch military personnel. In the AIV's view, it is not self-evident that the government should bear all the costs of deploying Dutch military VPDs in the Gulf of Aden.

Deploying Dutch military VPDs in the area of operations east of Somalia, the Somali Basin and the Indian Ocean is subject to more operational restrictions than in the Gulf of Aden, owing to the vast size of this area and the limited number of naval vessels deployed there. Nonetheless, the security risks facing ships in this area are similar to those in the Gulf of Aden. The AIV therefore advises the government to grant masters of highly vulnerable vessels sailing under a Dutch flag the authority, in exceptional circumstances and under strict conditions (e.g. regarding the use of force and compliance with international human rights and humanitarian law instruments),¹⁷¹ to employ private armed guards to deter pirates in the area of operations east of Somalia. Under section 4 of the Firearms, Ammunition and Offensive Weapons Act, the Minister of Justice may grant an exemption from the prohibition on possessing and carrying heavy firearms and ammunition, but not for the purpose of self-defence. We therefore advise the government to amend this provision to permit the carrying of heavy firearms and ammunition for the purpose of self-defence against pirates.

If the government follows the AIV's advice on the conditional deployment of PSCs on highly vulnerable ships sailing under a Dutch flag in the area of operations east of Somalia, we also advise it to start certifying and regulating PSCs in order to guarantee the quality of the services they provide. Dutch shipowners would then only be allowed to use the services of certified PSCs. The International Code of Conduct for Private Security Service Providers, an initiative of the Swiss government, could be useful in this regard. For instance, it calls on PSCs to instruct their personnel to take all reasonable steps to avoid the use of force and to use firearms only in self-defence or in the defence of others against the imminent threat of death or serious injury. It also contains provisions on respecting human rights and incident reporting.

171 See also the International Code of Conduct for Private Security Service Providers, available at: <http://www.news.admin.ch/NSBSubscriber/message/attachments/21143.pdf> (consulted on 26 November 2010).

Government question

Do NATO and the EU, along with the other states concerned, possess sufficient capabilities to deal with the threat of piracy in the long term? And what contribution can be expected of the Netherlands?

The navies of the countries that are helping to secure the waters off the coast of Somalia are responsible for protecting ships in the IRTC and taking preventive action against pirate ships in the Gulf of Aden, the Somali Basin and the Indian Ocean. For this purpose, they have maritime capability (currently about 25 naval vessels, including frigates, landing craft with special marine units and supply ships) and air capability (currently eight maritime patrol aircraft and an unknown number of helicopters) at their disposal. In September 2010, the commander of EU Operation Atalanta announced that the available maritime resources would be deployed further east in the Indian Ocean in response to the increase in the number of attacks by Somali pirates there. According to Major General Buster Howes, this would further constrain the pirates' freedom of movement at sea and provide international maritime shipping with the best possible protection.¹⁷²

The AIV believes that the European Union and NATO should coordinate their decision-making on anti-piracy operations off the coast of Somalia more closely, rather than competing with each other to acquire limited military resources from member states to combat piracy. This would require a new coordination mechanism for planning and implementing joint EU-NATO operations in crisis areas.¹⁷³

The Netherlands has so far played a significant role in the EU and NATO operations off the coast of Somalia, thus amply fulfilling its international responsibilities. Nevertheless, along with other participating European countries, the Netherlands has reached the limit of its maritime capacity for combating piracy. The Netherlands and the Royal Netherlands Navy will therefore have to work hard just to maintain their current maritime efforts in the coming years. However, with the arrival of four new ocean-going patrol vessels in a few years' time, the Royal Netherlands Navy will acquire a new resource that can be deployed more efficiently to combat piracy than the much larger air-defence and command frigates (LCF).

The AIV concludes that, by introducing group transits and supported transits, the international community and the European Union, in particular, have made an important contribution to the protection of the international shipping route through the Gulf of Aden. At the same time, it is clearly impossible for the navies of the participating states to fully protect the voluminous shipping traffic in the Gulf of Aden and, especially, in vast expanse of the Somali Basin and the Indian Ocean. A substantial increase in the international maritime presence is neither likely nor desirable. In order to combat piracy effectively, measures aimed at improving the situation in Somalia and the region are required.

The AIV further believes that the simultaneous deployment of three multinational maritime operations (EU Operation Atalanta, NATO Operation Ocean Shield and CTF 151), along with

172 EU NAVFOR press release, 'Atalanta Area of Operation Extended', 22 September 2010, available at: <<http://www.eunavfor.eu/2010/09/eunavfor-atalanta-area-of-operation-extended>> (consulted on 24 September 2010).

173 See also AIV advisory report no. 67, *NATO's new Strategic Concept*, The Hague, January 2010.

the national maritime presence of Russia and several key Asian states off the Somali coast, is not efficient. Better results could be achieved if all the parties were to develop a joint operational concept and conclude agreements centralising the coordination of the operation, for example by assigning this responsibility to one multinational operation or one country on a rotational basis. The government should raise this possibility in the European Union and NATO. Any such joint operational concept should also place more emphasis on intelligence gathering nearer the Somali coast and information sharing. At present, the European Union, CTF 151 and Japan are all using military patrol aircraft for this purpose.

Government question

What can the international community learn from successful initiatives against piracy and armed robbery at sea, including in the Strait of Malacca?

In order to combat piracy in an effective and lasting manner, it is important to first analyse the underlying causes. The causes of piracy in the Strait of Malacca were as follows:

- social unrest and economic hardship, especially in Indonesia and Malaysia, at the end of the 20th century;
- corruption in the political and military bodies responsible for maritime supervision, especially in Indonesia; and
- concerns about the infringement of national sovereignty, which stood in the way of regional maritime cooperation.

The IMO and pilot states like Japan and the United States deserve credit for helping Indonesia and Malaysia, in particular, invest in enforcement capacity (ships and equipment) and coastguard training in the Strait of Malacca. Just as important is the fact that the IMO has gradually established broad support for regional maritime cooperation. What started with a series of international conferences on security problems in the Strait of Malacca in the 1990s resulted in the finalisation in 2004 of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), involving 16 Asian countries. Information sharing through the ReCAAP Information Sharing Centre in Singapore and international cooperation in tracking down missing ships are at the heart of ReCAAP (see flow diagram in annexe V). In July 2010, the Netherlands became the second European country to accede to ReCAAP.

The successful suppression of piracy in the Strait of Malacca can be attributed to a coherent approach that takes account of the domestic social, economic and governmental problems that give rise to piracy (especially in Indonesia and Malaysia), the prioritisation of international cooperation in protecting the waterway (through MALSINDO) and valuable information sharing and joint search operations (through ReCAAP).

The AIV would note that regional anti-piracy cooperation agreements should strike the right balance between the sovereignty of the participating coastal states and the advantages of international cooperation. The European Union is ideally placed to apply its expertise in this area in support of the conclusion and implementation of regional cooperation agreements on combating piracy around the Horn of Africa (Somalia) and in West Africa (Nigeria and the Gulf of Guinea).

Broadly speaking, the AIV believes that the successful suppression of piracy in the Strait of Malacca should be replicated in other regions. However, the circumstances

in Southeast Asia are very different from those in Somalia and Nigeria. It is therefore unlikely at present that efforts to combat piracy in the vicinity of Somalia and Nigeria will be as successful.

Somalia has been ravaged by violent militias for the past 20 years. International efforts, led by the United Nations and the African Union, to pacify the country and enable a transitional government (TFG) to provide security and basic services have so far had little effect. As long as there is little prospect of greater stability or the start of law enforcement in Somalia, piracy off the coast will remain a serious security risk in an area the size of Western Europe (i.e. measured from northern Norway to southern Spain).

In its development cooperation policy, the Netherlands prioritises security and the rule of law in fragile states because of the direct link to its own security.¹⁷⁴ The AIV believes that, in the long term, only a coherent approach to security, governance and reconstruction, led by the United Nations and with a key role for the European Union, can help Somalia get back on its feet.

Nigeria is involved in a prolonged conflict over oil extraction in the Niger Delta by Western oil companies. The local population in the region feels that it is suffering all the disadvantages of oil extraction (e.g. environmental damage) and enjoying none of its advantages (e.g. investment in the region). Armed militias in the Niger Delta carry out attacks on oil rigs and sea-going vessels in the area, both to put political pressure on the Nigerian government and to extort money from Western oil companies. A successful strategy for combating piracy off the coast of Nigeria is impossible without a lasting political solution to the conflict in the Niger Delta.

Government question

How can a contribution be made to building capacity in coastal states to enable them, in the long term, to combat piracy and armed robbery at sea without assistance from the international community?

Through its technical cooperation programme and other initiatives, the IMO is helping to strengthen the maritime sector and implement international rules on maritime security, especially in Africa and East Asia. The programme brings together countries that require assistance and donors (countries, international organisations and NGOs) and is founded on three complementary principles:

- the precedence of the needs of developing countries and local ownership;
- the commitment of donors to sustainable maritime development; and
- the promotion of uniform implementation of the IMO's rules and standards.¹⁷⁵

In 2009, the IMO also established a trust fund to help realise the objectives of the Djibouti Code of Conduct, such as formulating national anti-piracy legislation and strengthening enforcement capacity and coastguard organisations in the Horn of Africa.

174 Minister of Foreign Affairs and Minister for Development Cooperation, 'Letter to Parliament on the Letter to the House of Representatives outlining development cooperation policy' (in Dutch), The Hague, 26 November 2010.

175 IMO, 'Technical cooperation: IMO's response to the 2005 World Summit', London, 2005, available at: <http://www.imo.org/TCD/mainframe.asp?topic_id=27> (consulted on 4 October 2010).

The AIV considers that targeted investments by the international community to strengthen enforcement capacity and coastguard organisations in weak or fragile states may ultimately serve a dual purpose: protecting secure international shipping routes and helping to stabilise weak or fragile coastal states. It believes that priority should be given to fragile coastal states in East Africa and Yemen (the countries that have signed the Djibouti Code of Conduct) as well as in West Africa (Nigeria, Equatorial Guinea and Cameroon).

The AIV believes that, given the IMO's experience in regional anti-piracy cooperation in Asia and its regional presence in Africa (Kenya, Ghana and Côte d'Ivoire), the organisation should play a key role in international efforts to build regional capacity aimed at anti-piracy in African coastal states. In addition, the IMO is well equipped to integrate the suppression of piracy and armed robbery at sea into an all-embracing strategy for protecting and securing coastal waters.

The AIV further believes that NATO should not take on any tasks in the field of maritime capacity building in the Horn of Africa, as the IMO and the European Union are better equipped to do so.

One source of concern is the fact that the IMO's ambitions to bolster the maritime sector and maritime security in African coastal states and realise the objectives of the Djibouti Code of Conduct depend entirely on the willingness of international donors, including the European Union and the Netherlands, to make sufficient funds available.

The AIV notes that the international community faces a difficult choice: whether to prioritise financial and technical assistance to weak African coastal states so they can build up a maritime sector that will eventually be able to guarantee maritime security on its own or whether to continue prioritising the costly deployment of naval units to protect strategic shipping routes off the coast of Somalia in the years ahead. The AIV believes that it is too soon to discuss an exit strategy for international maritime operations in the Gulf of Aden and the waters to the east of Somalia. This means that the Netherlands, too, will have to contribute ships for the suppression of piracy in the region in the coming period. The international community needs more time to make a positive impact on developments in Somalia and simultaneously help states in and around the Horn of Africa strengthen their own enforcement capacity and coastguard organisations. In addition, the European Union and the Netherlands should not hesitate to work with Somaliland on training and equipping its own coastguard. The United Kingdom is already fully engaged in this. We believe that the British example is worth following.

Working with the authorities in the semi-autonomous region of Puntland (from where most Somali pirate gangs operate) is more problematic than working with Somaliland due to the suspected involvement in piracy of members of Puntland's leadership. The Netherlands should argue at EU level for a more coherent and dynamic anti-piracy strategy in Puntland. The cooperation of Puntland's government is desirable, but if it proves fruitless or counterproductive the emphasis should shift to the local level and the areas of Puntland where piracy is most prevalent. The creation of alternative employment for unemployed fishermen and former pirates is at the core of policy aimed at discouraging piracy, since it lays the foundations for the socioeconomic development of Puntland's coastal areas. Potential examples of specific EU assistance to Puntland would include modernising the port of Boosaaso and certifying fish and seafood from Puntland so that they can be exported directly to the European Union.

Government question:***What can be done to tackle impunity in relation to piracy and armed robbery at sea?***

The AIV welcomes the fact that the Netherlands is the first Western country to have successfully tried Somali pirates. This required a great deal of effort and flexibility from the authorities concerned. However, it remains to be seen what the deterrent effect of this judgment and future judgments in other Western countries will be. The AIV believes that trials in the region will have a stronger deterrent effect and that they therefore should generally be preferred. In the case of Somalia, the most attractive option in theory – trying pirates in their own country – is not possible at present owing to the lack of a functioning legal system.

The AIV believes that UNODC's efforts to support the trial and imprisonment of Somali pirates in East Africa deserve broad international support. By donating €800,000 to improve judicial capacity in Seychelles, the Netherlands has highlighted the importance of prosecuting Somali pirates in the region. However, the international community will have to do more in order to convince other countries in the region to prosecute and imprison Somali nationals suspected of piracy. Western countries that have opted to try Somali pirates themselves can serve as an example to East African countries and thus have more credibility when trying to encourage those states to try Somali pirates as well.

Another problem relates to the issue of where convicted Somali pirates should serve their sentences. It is understandable that Kenya and Seychelles have made their continued cooperation in the prosecution of Somali pirates conditional on those convicted of piracy being transferred to Somalia to serve their prison sentences. The AIV agrees with UNODC that priority should be given to prison reform in Somalia, especially in Somaliland and Puntland, in order to ensure that convicted pirates can be imprisoned there in a secure and humane manner. However, the Council believes that the United Nations should keep a close eye on such reforms and the actual prison conditions of Somali pirates. The UN should conclude an agreement on this issue with the authorities in Somaliland and Puntland.

Government question***What steps could be taken to combat the funding of piracy?***

The AIV has found no reason to suppose that piracy receives large-scale funding from foreign investors. Published allegations to this effect have not been corroborated by authoritative reports from the UN and independent think tanks. For the most part, modern piracy off the coast of Somalia started out as petty crime at sea. Some experienced pirates have improved their level of organisation over the years, enabling piracy to develop into a well-organised business sector. Piracy is financed and maintained according to a business model under which various Somali participants and interested parties each receive a predetermined share of the ransom money.

The Somali piracy business model is maintained by ransom payments from shipowners and insurance companies. In 2009, for example, an estimated USD 82 million in ransom money was paid to Somali pirates, and the average ransom payment per ship is still rising. In November 2010, Somali pirates received record ransom payments of USD 9.5 million for a hijacked South Korean oil tanker and USD 9 million for a hijacked Singaporean tanker. Various international actors, including Interpol and the British House of Lords, have expressed concern that large ransom payments are being transferred

to Somali actors in cash and that this money may be falling into the hands of terrorist organisations. There is currently no evidence of organised cooperation between pirate gangs and Islamic fundamentalist groups in Somalia.

The AIV believes that the government's question on how to combat the funding of piracy should be tackled in two parts:

1. Is checking the flow or following the trail of piracy proceeds and ransom payments a viable way to combat piracy?
2. What steps could be taken to undermine the piracy business model?

Piracy proceeds and ransom payments

Various parties are currently examining whether checking the flow or following the trail of ransom payments could provide insight into the structure and functioning of pirate gangs. US Secretary of State Hillary Clinton has announced that she intends to examine the possibility of freezing or seizing pirates' assets.¹⁷⁶ In January 2010, at the first Conference on Maritime Piracy Financial Investigations, Interpol Secretary-General Ron Noble stated:

'Following the money trail provides a formidable opportunity to understand the structure and functioning of maritime piracy networks.'¹⁷⁷

In practice, however, freezing or seizing pirates' assets and following the piracy money trail have proved to be extremely difficult.

Ransom payments for hijacked ships are not illegal, although governments try to discourage them.¹⁷⁸ As soon as pirates receive such payments, they become proceeds of crime, which governments are entitled to trace and seize. Following the money trail after a ransom has been paid is complicated, if not impossible, because Somalia barely has a functioning banking sector. Its economy is largely based on cash transactions, and pirates are unlikely to deposit their profits in a bank.¹⁷⁹ The Financial Action Task Force (FATF), the international body responsible for promoting regulation to tackle money laundering and terrorist financing, is currently considering whether it can take action regarding piracy-related money trails.¹⁸⁰ If so, it will examine whether there are patterns

176 'Clinton announces plan to seize assets to thwart rise of piracy', *Guardian*, 16 April 2009, available at: <<http://www.guardian.co.uk/world/2009/apr/16/hillary-clinton-piracy-asset-seizure-somalia>> (consulted on 9 November 2010).

177 Speech by Interpol Secretary-General Ron K. Noble at the Conference on Maritime Piracy Financial Investigations, 19 January 2010, available at: <<http://www.interpol.int/Public/ICPO/speeches/2010/SGMaritimePiracy20100119.asp>> (consulted on 9 November 2010).

178 UK House of Lords, European Union Committee, 'Combating Somali Piracy: the EU's Naval Operation Atalanta', 12th Report of Session 2009-10, April 2010, p. 81.

179 UK House of Lords, European Union Committee, 'Money Laundering and the Financing of Terrorism', Vol. II, 19th Report of Session 2008-09, July 2009, p. 91.

180 *Ibid.*, at p. 47.

and trends in the ways that pirate gangs launder or invest their proceeds. This is a very challenging task, given that Somalia lacks a formal banking sector or a properly functioning public sector that could provide information on this subject.¹⁸¹

The AIV believes that the international community should tread carefully when dealing with suspicious money trails to and from Somalia. According to experts, an earlier attempt to freeze the assets of the Somali monetary transfer network al-Barakaat, on suspicion of links to terrorist financing, caused a lot of damage to the Somali economy and may even have exacerbated the domestic situation. This is because the measures also hit areas and refugee camps that were highly dependent on remittances from abroad.¹⁸² To date, there is still no conclusive evidence of al-Barakaat's involvement in terrorist financing.¹⁸³

Undermining the piracy business model

International crime syndicates that provide hijacked ships with new identities and sell captured goods used to operate in Southeast Asia. Their initial success in the Strait of Malacca was based on three factors: poor maritime supervision by the local navy and coastguard, corruption in political and military bodies and insufficient regional cooperation. By jointly tackling these three problems, the countries in the region were able to undermine the piracy business model in the Strait of Malacca.

In Somalia, the circumstances in which piracy was able to develop into a major criminal business sector were very different. For the last 20 years, there has been no maritime supervision off the coast of Somalia, with the exception of Somaliland, while the situation on land is characterised by general lawlessness, arms proliferation, extremism, extreme poverty and unemployment. Undermining the piracy business model in Somalia is a long-term project that starts with removing the incentives for young unemployed Somalis to take to the sea toting weapons. Creating alternative employment for unemployed fishermen and former pirates could be a first step towards the socioeconomic development of Somalia's coastal areas.

Government question:

Does the AIV believe, having regard to the many international initiatives in this area, that there is a need for a centre of expertise on piracy?

181 Ibid., at p. 63.

182 Interview with J. Hemmer, Netherlands Institute of International Relations Clingendael, The Hague, 28 May 2010. M. Turner and E. Alden, 'US decision to close bank will hit Somalis', *Financial Times*, 9 November 2001. Donald G. McNeil, 'How Blocking Assets Erased a Wisp of Prosperity', *The New York Times*, 13 April 2002. Cindy Horst and Nick van Hear, 'Counting the Cost: Refugees, Remittances and the War against Terrorism', *Forced Migration Review* 14 (2002), pp. 32-34.

183 In 2004, the 9/11 Commission stated: 'notwithstanding unprecedented cooperation by the UAE, significant FBI interviews of the principal players involved in al-Barakaat (including its founder), and complete and unfettered access to al-Barakaat's financial records, the FBI could not substantiate any links between al-Barakaat and terrorism.' John Roth, Douglas Greenburg and Serena Wille, *Monograph on Terrorist Financing*, National Commission on Terrorist Attacks upon the United States, Washington, August 2004, p. 84.

In the past two decades, three international, non-profit centres of expertise on piracy have been established in response to the rise of piracy in various regions:

- The IMB Piracy Reporting Centre was established in Kuala Lumpur, Malaysia, in 1992. The centre is an initiative of the international shipping industry and cooperates with governments and law enforcement agencies in the global fight against piracy.
- The Singapore-based Information Sharing Centre is the regional centre of expertise on piracy for Southeast Asia. It was established following the finalisation of ReCAAP in 2004.
- MSCHOA provides information and advice on piracy and anti-piracy in the Gulf of Aden, the Somali Basin and the Indian Ocean. The centre is a joint initiative of the European Union and the international shipping industry. It has been based in Northwood, United Kingdom, since 2008.

There are also numerous private organisations and research institutes that sell piracy-related intelligence. This information is not freely available, but Dutch shipowners are willing to pay for it in order to protect themselves.

The AIV believes that there is no need for a new centre of expertise on piracy but that the information and services provided by the abovementioned non-profit centres of expertise to shipowners and masters of vessels need to be improved. The Council has observed that Dutch shipowners' feedback on the information and services provided by MSCHOA is not always positive and accordingly advises the government to propose, at EU level, an independent assessment of MSCHOA's communications strategy in respect of shipowners and masters of vessels. In addition, there is a need for a communications strategy to better inform the population in Somalia's coastal areas about the activities of the EU and NATO naval vessels off the coast, such as monitoring fishing activities.

The AIV further believes that the international verification and exchange of operational knowledge and experience (lessons learned) need to be improved. Given that the commanders of naval vessels often spend a relatively short time at sea before being relieved by new commanders, it is important to ensure that the international community does not keep reinventing the wheel. The AIV would conclude that the task of developing and improving operational doctrines for combating piracy should be dealt with by the operational staffs of NATO and the EU rather than any new centre of expertise. The Council would advise the government to argue within the EU and NATO for the creation of a joint EU-NATO operational staff for the purpose of combating piracy.

Request for advice

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Date 22 March 2010
Re Request for advice on piracy

Dear Mr Korthals Altes,

The Minister of Justice and the Minister of Transport, Public Works and Water Management join us in requesting the Advisory Council on International Affairs to advise the government on international efforts to combat piracy and armed robbery at sea.

Since 2008, when the United Nations requested the member states to provide naval escorts for World Food Programme (WFP) ships taking food to Somalia, the Netherlands has gained considerable experience in combating piracy and armed robbery at sea. Not only did the Dutch navy afford protection to twenty WFP vessels, thus enabling over 100,000 tons of food to be safely conveyed to the Somali people, the Netherlands has also gained experience, as a participant in the NATO operation Allied Protector and the EU operation Atalanta, in international patrols of the Internationally Recommended Transit Corridor (IRTC) in the Gulf of Aden, actively protecting merchant ships, warding off attacks by pirates and armed assailants, searching suspect vessels and capturing suspected pirates.

The international community responded en masse to the United Nations' call for action to repress piracy and armed robbery at sea in Somali waters by all necessary means. UN Security Council Resolution 1816 (2008) authorised states cooperating with the Transitional Federal Government of Somalia to enter the territorial waters of Somalia for this purpose. The Maritime Security Centre (Horn of Africa) in Northwood (UK) plays a coordinating and advisory role in international efforts to combat piracy.

The international community is also aware that the long-term solution to the problem of piracy and armed robbery at sea lies not at sea but on land, where capacity building is required. The necessary initiatives towards this end have already been put in place. The Contact Group on Piracy off the Coast of Somalia, for instance, is discussing ways of helping to build and reinforce regional capacity to combat the problem. In this context, a study on the regional need for capacity building is currently being discussed. The European Commission is setting up various programmes to support regional capacity building. Support of this kind is also expected to be an upcoming agenda item for both the EU and NATO.

In addition to these efforts, a number of countries in the region have agreed anti-piracy measures. These have been laid down in the Djibouti Code of Conduct, which has been signed by eight East African countries and by Egypt and Yemen, under the auspices of the International Maritime Organisation (IMO). The signatories aim to implement national anti-piracy legislation, as well as to set up or strengthen enforcement capacity and coastguard organisations. The Code of Conduct was modelled on the Southeast Asian Regional

Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which was the first instance of an effective regional approach to piracy. The Netherlands supports the implementation of the Djibouti agreements. Under the Code of Conduct, coordination and information centres will be set up in three strategic locations (Mombasa, Dar es Salaam and Yemen) to exchange intelligence on piracy.

Some time ago, most piracy and armed robbery at sea was concentrated in the Strait of Malacca, but the problem was effectively tackled as a result of joint action by countries in the region. In recent years, international attention has shifted to Somali waters where attacks of this kind have increased exponentially. An increase in piracy is also being seen in the Gulf of Guinea and the Caribbean. It is against this background that the government requests the Advisory Council to take a broad look at the problem of piracy in its report, rather than confining itself to the current problems off the coast of Somalia. Rapid developments as described above are taking place in the East African region. The government's central question is, 'How can the international community – and the Netherlands in particular – combat piracy and armed robbery at sea most effectively?'

The government would also appreciate answers to the following subsidiary questions:

1. What can the international community learn from successful initiatives against piracy and armed robbery at sea, including in the Strait of Malacca?
2. What future trends does the Advisory Council predict in terms of the threat of piracy and armed robbery at sea?
3. How great is the actual and potential threat posed by piracy to the Netherlands (to security as well as to the economy)?
4. Besides the responsibility of states to combat piracy and armed robbery at sea, what responsibility do shipowners and the masters of vessels have in this respect?
5. Do NATO and the EU, along with the other states concerned, possess sufficient capacity to deal with the threat of piracy in the long term? And what contribution can be expected of the Netherlands?
6. How can a contribution be made to building capacity in coastal states to enable them, in the long term, to combat piracy and armed robbery at sea without assistance from the international community?
7. What can be done to tackle impunity in relation to piracy and armed robbery at sea?
8. What steps could be taken to combat the funding of piracy?
9. Does the Advisory Council believe, having regard to the many international initiatives in this area, that there is a need for a centre of expertise on piracy?

The Advisory Council is requested to present its advisory report in the summer of 2010.

Yours sincerely,

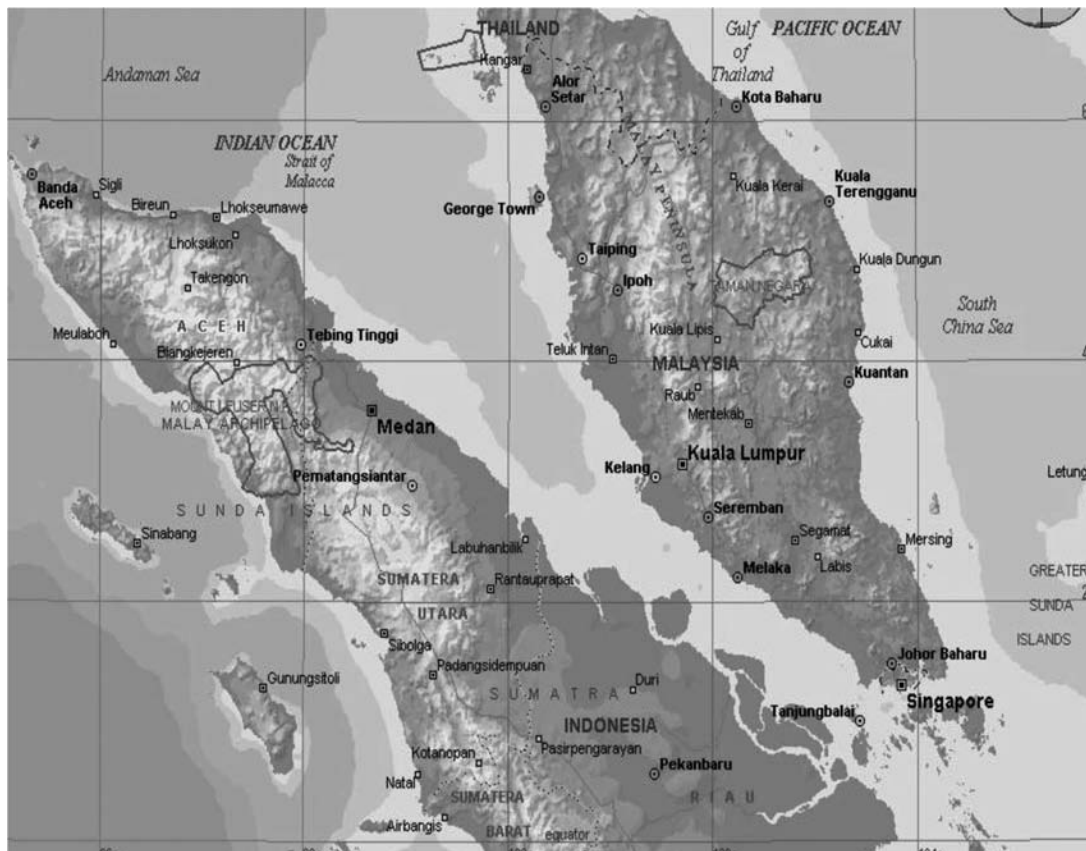
(signed)

Maxime Verhagen
Minister of Foreign Affairs

(signed)

Eimert van Middelkoop
Minister of Defence

Strait of Malacca



Source: <<http://www.heatingoil.com/blog/terror-alert-for-oil-tankers-in-asia%E2%80%99s-malacca-strait304/>>.

Gulf of Guinea



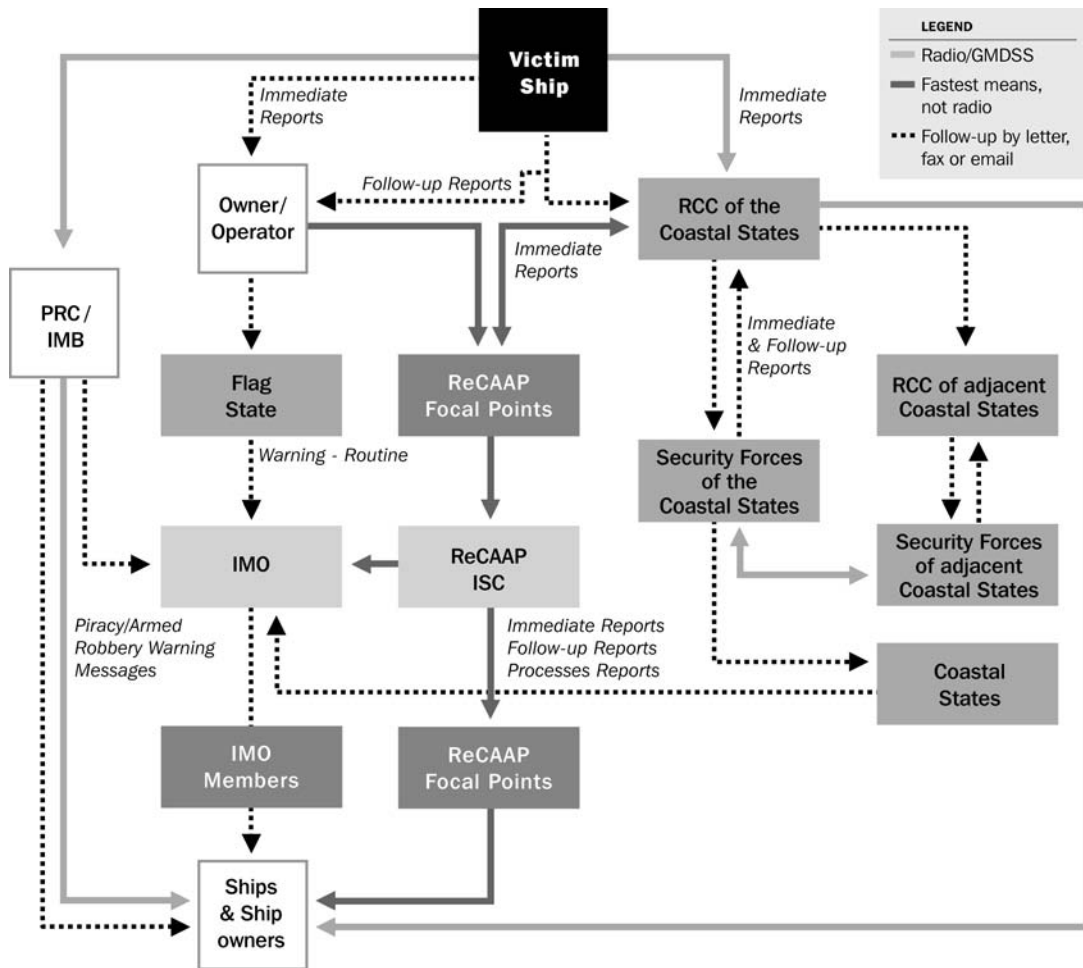
Source: <[http://en.wikipedia.org/wiki/File:Gulf_of_Guinea_\(English\).jpg](http://en.wikipedia.org/wiki/File:Gulf_of_Guinea_(English).jpg)>.

Somalia and Gulf of Aden



Source: United Nations, Department of Peacekeeping Operations, Cartographic Section (Map No. 3690).
Source: <http://en.wikipedia.org/wiki/File:Gulf_of_Aden_map.png>.

ReCAAP Flow Diagram for Reporting Incidents in Asia



Source: ReCAAP Information Sharing Centre, 'Half Yearly Report of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia', January-June 2010.

Annexe VI

Definition of terms

al Shabaab	Militant Islamic fundamentalist group that controls large parts of southern and central Somalia.
BES islands	Bonaire, St Eustatius and Saba.
Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area	Guide to the modus operandi of Somali pirates and ways for shipowners and masters of vessels to minimise the risk of being hijacked off the coast of Somalia.
Djibouti Code of Conduct	Code of conduct aimed at cooperation in the fight against piracy and regional capacity building in the Horn of Africa.
Exclusive Economic Zone	An area stretching up to 200 nautical miles from the coast, in which the coastal state is entitled to exploit marine resources, fish and carry out scientific research. A coastal state that establishes an EEZ is responsible for the area's conservation.
Firearms, Ammunition and Offensive Weapons Act	Act establishing rules on the manufacture, trade, transportation, stockpiling and carrying of firearms, ammunition and offensive weapons.
Gulf of Aden	Maritime waterway bordered by Yemen to the north and Djibouti and Somalia to the south.
Group transit	Anti-piracy strategy whereby one or more naval vessels inspect a particular navigation route through the Gulf of Aden for the presence of pirates prior to its use by one or more merchant ships.
Hizbul Islam	Militant Islamic fundamentalist group in southern and central Somalia.
Internationally Recommended Transit Corridor	Protected corridor for international maritime shipping traffic in the Gulf of Aden.
Kidnap and ransom insurance	Insurance for ships passing through the Gulf of Aden, specifically intended for raising the money to pay ransoms.
Niger Delta	Oil-rich delta at the mouth of the Niger River in Nigeria, situated on the Gulf of Guinea.
Piracy	Unlawfully appropriating or plundering vessels for private gain or hijacking vessels and holding those on board hostage for ransom, involving the threat or use of force.
Piracy insurance	Insurance covering loss of income owing to piracy.

Private security company	Company that provides security services over and above the security provided by states and government agencies.
Puntland	Semi-autonomous region in north-eastern Somalia.
ReCAAP (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia)	Agreement aimed at preventing and combating piracy and armed robbery at sea in Southeast Asia.
Rules of engagement	Rules determining where, when and how force may be used in military operations or police action.
Safe room/citadel	A fortified space on board a ship to which the crew can retreat when attacked by pirates, while maintaining control over the ship, in anticipation of military or other assistance.
Shipowner	Person who equips and puts into service one or more ships.
Somali Basin	Maritime area to the east of Somalia in the Indian Ocean.
Somaliland	Semi-autonomous region in north-western Somalia that is pushing for international recognition of its independence.
Strait of Malacca	Maritime waterway connecting the Indian Ocean to the South China Sea.
SUA Convention	Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation.
Supported transit	Anti-piracy strategy for vulnerable ships that are unable to participate in group transits. Under this scenario, the chosen route is divided into smaller stretches or sections, and each section is protected by a naval vessel that keeps a close eye on the merchant ships and can intervene quickly in the case of pirate attacks.
Territorial waters	An area stretching up to 12 nautical miles from the coast, in which the coastal state is responsible for ensuring compliance with the rule of law and maritime security.
Transitional Federal Government of Somalia	Internationally recognised transitional government of the Republic of Somalia.
Vessel protection detachment	Armed or unarmed security guards on board of vessels.
United Nations Convention on the Law of the Sea	Convention aimed at combating illegal activity at sea and granting states the right to establish universal jurisdiction on the high seas.

List of abbreviations

AMISOM	African Union Mission in Somalia
AU	African Union
BES	Bonaire, St Eustatius and Saba
CGPCS	Contact Group on Piracy off the Coast of Somalia
CTF 151	Combined Task Force 151
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EEZ	Exclusive Economic Zone
EU	European Union
EU NAVFOR	European Union Naval Force
FATF	Financial Action Task Force
GPS	Global Positioning System
KVNR	Royal Association of Netherlands Shipowners
IMB	ICC International Maritime Bureau (specialised division of the International Chamber of Commerce)
IMO	International Maritime Organization
IRTC	Internationally Recommended Transit Corridor
LCF	Air-defence and command frigates
LRADs	Long Range Acoustic Devices
MALSINDO	(Malaysia-Singapore-Indonesia) Malacca Straits Coordinated Patrols
MEND	Movement for the Emancipation of the Niger Delta
MOWCA	Maritime Organisation of West and Central Africa
MSCHOA	Maritime Security Centre – Horn of Africa
NATO	North Atlantic Treaty Organisation
PSC	Private Security Company
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
SHADE	Shared Awareness and Deconfliction
SNMG	Standing NATO Maritime Group
SUA	Suppression of Unlawful Acts
TFG	Transitional Federal Government of Somalia
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime

UNPOS	United Nations Political Office for Somalia
VOC	Dutch East India Company
VPD	Vessel Protection Detachment
WFP	World Food Programme

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