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ON
FUTURE SECURITY AND DEFENCE CAPABILITIES

THE CHALLENGE OF PIRACY: INTERNATIONAL
RESPONSE AND NATO'S ROLE

REPORT

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“All countries are increasingly reliant on the vital communication, transport and transit routes on which international trade, energy security and prosperity depend. They require greater international efforts to ensure their resilience against attack or disruption.” -- NATO Strategic Concept, Adopted by the Heads of State and Government in Lisbon, November 2010

“Treating the causes of instability and terrorism at the source is better and cheaper than dealing with the consequences, as Somalia’s piracy demonstrates.” – General Sir David Richards, Chief of the Defence Staff of the British Army

“Pirata est hostis humani generis.” -- Cicero

I. INTRODUCTION

1. Not long ago, piracy was popularly seen as a historic and often-romanticised phenomenon of the 17th and 18th centuries, or as else considered under a new definition, where the loot pirates plundered was data on the Internet. However, maritime piracy has re-emerged in recent years as a modern transnational threat. Despite the danger of the activity, it is profitable, and piracy has been judged worth the risk by thousands of people living in desperately poor and often unstable countries.

2. Piracy has emerged as a particular threat in the waters around the Horn of Africa, where Somalia, a country with a 3,300-kilometer coastline, Africa’s longest, has lacked a central government able to control most of the country’s territory since 1991. This unique situation enabled piracy to grow and evolve into a profitable criminal enterprise with little threat of prosecution. However, it is also a challenge in the Gulf of Guinea in West Africa and has been a significant challenge in Southeast Asia and elsewhere.

3. Approximately 90% of world trade is conducted by ships traveling from port to port, while 95% of this maritime trade passes through key maritime choke points including the Straits of Malacca and Singapore, the Suez Canal and Bab-el-Mandeb, the Strait of Gibraltar, the Strait of Hormuz, the Turkish Straits, and the Panama Canal. It is the enormous economic impact of a small group of people threatening one of the world’s primary trade routes that has drawn an expensive international commitment to countering piracy off the coast of Somalia. Despite a decrease in successful pirate hijackings, overall ransoms increased from US\$110 million in 2010 to \$170 million in 2011, according to the United Nations. Shipping insurance for the Gulf of Aden increased tenfold in 2008 alone (Berube, 2009). The full economic cost of piracy was recently estimated at \$7 billion annually by Oceans Beyond Piracy, an initiative of the American governance NGO One Earth Future. There is also a terrible human cost to piracy, with hundreds of sailors kidnapped every year and held hostage for months at a time. Some hostages lose their lives every year in captivity pirate attacks.

4. Due to the unaffordable disruption to one of the main global maritime trade routes, the attacks on ships and citizens from many different nations, and the raids on ships delivering World Food Programme (WFP) humanitarian assistance to Somalia, a strengthened international response to piracy off Somalia came together in late 2008. NATO deployed its first-ever counter-piracy mission, Operation Allied Provider, off the coast of Somalia in October 2008. The European Union and other countries also deployed naval ships to the region on counter-piracy missions, leading NATO to collaborate closely with partners as part of a broad coalition. NATO Counter Piracy Task Force 508, Operation Ocean Shield, is the third iteration of NATO’s counter-piracy mission; its current mandate runs until the end of 2014.

5. Over three years into this effort, the international community has been able to mitigate the rise in piracy in the Horn of Africa region, but has failed to decisively deter it or significantly change

the dynamics that have allowed piracy to boom in the region. While pirate attacks were initially concentrated in the relatively narrow area of the Gulf of Aden, actual and attempted attacks there have decreased since 2009. However, pirates have refocused on the Somali Basin, the Southern Red Sea, and the Arabian Sea, using captured ships as pirate “mother-ships” to launch raids against other vessels. This maritime area covers about 2.5 million square miles, an area roughly 50% larger than the territory of the European Union. Given that approximately 20-30 military vessels are deployed at any given time in the region, the counter-piracy mission has been compared to “policing Europe with thirty police cars.”

6. The rise of modern piracy in coastal waters is related to the weakness of the local states. As such, international military efforts cannot solve the problem, only manage it, because they do not address the root cause. That requires improving local state capacity and economic opportunity. In Somalia, this has been an elusive goal for two decades, however. This year has seen a renewed international commitment to improving governance in Somalia, but huge challenges remain.

7. This Assembly first highlighted the challenges posed by the boom in piracy off the coast of Somalia in a 2009 report of the Committee on the Civil Dimension of Security ([169 CDS 09 E](#)). The aim of this report of the Defence and Security Committee is to assess the effectiveness of the counter-piracy efforts several years into the mission and to discuss options both for improving the operational response and more broadly for promoting a long-term solution to this challenging situation.

II. THE THREAT FROM PIRACY

8. Merchant ships traveling beyond the reach of law enforcement and national jurisdictions have long been a target for enterprising criminals. Pirates were a scourge of the booming colonial Caribbean economy, while acts of piracy in the Mediterranean drew the United States into one of its first wars against the Barbary states of North Africa two centuries ago.

9. The Law of the Sea has been better codified since the 1982 United Nations Convention on the Law of the Sea ratified by the majority of the world’s nations. It defines piracy as “illegal acts of violence or detention [...] committed for private ends by the crew or the passengers of a private ship [...] and directed: on the high seas, against another ship [...] or against persons or property on board such a ship”, or the aiding of such acts, and provides for universal jurisdiction for prosecuting acts of piracy.¹ The principle of universal jurisdiction for piracy is considered a rule of customary international law, meaning it applies even to states that have not ratified the Convention.

10. The International Maritime Bureau (IMB), a division of the International Chamber of Commerce (ICC), established a 24-hour Piracy Reporting Centre in 1992 which keeps records of incidents of actual and attempted piracy. According to statistics kept by the IMB, piracy and armed robbery against ships has been on the rise globally for the past decade, jumping from 263 reported incidents in 2007 to 445 incidents in 2010. Not all incidents are reported. Somali pirates operating in the Gulf of Aden and beyond are now responsible for more than half of the incidents – 237 out of 439 globally in 2011, according to the IMB. That year, they hijacked 28 vessels, took 470 seafarers hostage, kidnapped 10 people, and killed 8 (ICC International Maritime Bureau, 2012).

11. The Somali pirates have made the most headlines, but piracy and maritime armed robbery remains an issue elsewhere. Forty per cent of world trade goes through the Strait of Malacca in

¹ Piracy technically requires ships to be in international waters; the related crime of armed robbery of ships can occur in territorial waters. Due to the unique political situation, and UN authorisation for foreign navies to intervene in Somalia’s territorial waters, this distinction matters less in Somalia.

Southeast Asia, which saw a surge in piracy in the 1990s. Indonesia, Malaysia and Singapore launched the joint Operation “Malindo” in 2004, providing seven vessels each to police the strait, and helped cut pirate attacks (Bellamy, 2011). Maritime armed robbery and piracy have also emerged in West Africa, in Bangladesh’s port of Chittagong, in Ecuador, and elsewhere.

12. Piracy, in West Africa especially, is receiving increasing attention. Insurers have recently designated the coastal waters of Nigeria and Benin a danger zone. Those two countries have begun to co-ordinate counter-piracy efforts but although Nigeria has a large marine force, armed robbery against ships has plagued the Niger Delta for years. Piracy is linked to insurgent movements in the Delta, and the oil industry has been the main target. A Shell executive said in February that about 150,000 barrels of crude a day is stolen by robbers in the Delta (Lindijer, 2012). The United Nations Security Council adopted Resolution 2039 on 29 February 2012, urging Gulf of Guinea countries to develop and implement maritime safety strategies, establish legal frameworks to prosecute piracy, and to co-operate to counter piracy.

13. This report focuses on the Somali piracy problem because its magnitude and special conditions led to a comprehensive international response, including a NATO operation. In these other locations, more capable national governments have jurisdiction, whereas Mogadishu’s ability to counter piracy was insignificant and the Transitional Federal Government (TFG) requested help. However, piracy elsewhere reflects many of the same conditions as in Somalia – weak state capacity to establish maritime security, the profitability of organised crime – and should be monitored as a global threat to maritime security and trade. International support to counter piracy could be required elsewhere; there has already been discussion in national capitals in connection with West Africa. More broadly, Allies should reconsider what role NATO has to play in maritime law enforcement.

A. POLITICAL AND DEVELOPMENTAL CHALLENGES IN THE HORN OF AFRICA

14. The Horn of Africa piracy problem has its origins on land. East Africa’s developmental challenges include mass poverty and hunger, frequent drought, and tribal and religious conflict. Two of the world’s newest nations, Eritrea (in 1993) and South Sudan (in 2011) have been born out of intra-state conflict in the region. In Somalia, violence, lawlessness and a lack of legal economic opportunities have plagued the country since the Mohamed Siad Barre’s communist Somali Democratic Republic collapsed into civil war in 1991, although the northern regions of the country are more stable than is often recognised. Somaliland, the northern part of the country on the Gulf of Aden, once the British Somaliland colony, declared independence in 1991. While Somaliland remains unrecognised, it functions as a de facto independent state. Puntland and Galmudug, regions in central Somalia, declared themselves autonomous states within Somalia in 1998 and in 2006 respectively.

15. Amongst civil war and famine, a US-led military coalition entered Somalia in December 1992 on a humanitarian mission. But in an October 1993 operation in the capital of Mogadishu, two American helicopters were shot down, 19 soldiers killed, and their bodies dragged through the streets. After this battle, the foreign military and humanitarian intervention was scaled back. Nearly two decades later, southern Somalia remains a dangerous conflict zone, dominated by al-Shabaab, a militant Islamist group with links to al-Qaeda which has imposed harsh sharia law on territory it controls.

16. East Africa was hit hard by famine last year, killing thousands, and while the worst of the famine appears to be over, the situation is still acute for many people. The humanitarian response in Somalia was limited due to the danger posed by al-Shabaab, which tried to prevent famine relief.

17. However, al-Shabaab has suffered serious setbacks this year due to offensives by the African Union Mission in Somalia (AMISOM) in Mogadishu and by the Ethiopian and Kenyan

militaries along those countries' borders with Somalia. Under a "road map" concluded last year, a new constitution and new institutions were to be set up in Somalia by August. The London Conference on Somalia held in February reflected a renewed improved international commitment to the transition towards more representative government and improving security in Somalia.

B. THE GROWTH IN PIRACY OFF THE HORN OF AFRICA

18. The lack of governance in Somalia left an opening for piracy, which began to accelerate and draw significant attention in 2005. Fewer incidents were recorded in 2006, which is ascribed to the harsh rule of the Islamic Courts Union in Mogadishu, which cracked down on piracy but splintered after international intervention. Incidents attributed to Somali pirates grew from 51 in 2007 to 111 in 2008, 218 in 2009, 219 in 2010, and 237 in 2011. They however decreased to 70 in 2012 (as of 30 August), which demonstrates improvements in the region.

19. Piracy has been concentrated along the coast of the Puntland region, although pirate activities have shifted southwards in the last two years and are now more concentrated in Galmudug region directly to the south of Puntland.

20. A recent Chatham House paper concluded that piracy has likely made a significant contribution to economic development in Puntland's provincial capitals of Garowe and Bosasso, even if the pirate ports themselves remain poor, and that Puntland's elites are therefore unlikely to move decisively against piracy (Shortland, 2012). Jack Lang, the United Nations Special Advisor to the Secretary-General on Legal Issues Related to Piracy Off the Coast of Somalia, warned in his January 2011 report to the Secretary-General that "the piracy-driven economy is gradually overtaking the traditional economy, owing to the development of activities on land in support of the pirates, the lack of job-creating investments in a context of widespread insecurity, and the destructive effect of piracy on Somali society which creates a vicious circle." He argued that it was important for the international community to strengthen its response to piracy before its "professionalization, spread and escalation" reached "a point of no return" (Lang, 2011). The United Nations recently estimated that approximately 3,500 Somalis are currently working as pirates, with 1,000 more in custody in about 20 countries (Bockmann, 2012).

21. According to the Oceans Beyond Piracy report, approximately 99% of the \$7 billion total cost of piracy was for the recurring costs of ship protection rather than for a more permanent solution to the problem. The greatest such cost is increased fuel consumption for increased speeds in transiting the high risk area, at US\$2.7 billion. Military operations cost \$1.27 billion, security measures including armed guards and ship hardening cost \$1.06 billion to \$1.16 billion, re-routing cost \$486 million to \$680 million, insurance cost \$635 million, extra labour costs totalled \$195 million, and \$160 million was paid in ransom. Ransoms have continued to increase, from an average of \$150,000 per ship in 2005 to an average of \$5.4 million per ship in 2010, while the average duration of captivity has also increased to more than three months. Only \$38 million was spent on prosecution, imprisonment, and improving Somali and regional pirate-fighting capacity (Bowden, 2012).²

C. RESPONSE OF THE INTERNATIONAL COMMUNITY AND THE SHIPPING INDUSTRY

² While *The Economic Cost of Somali Piracy* is perhaps the most in-depth analysis of its subject, the methodology and findings of this oft-cited report has been thoroughly criticised by journalism website *Somalia Report*, as well as many in the shipping and risk analysis communities. *Somalia Report* argues that Oceans Beyond Piracy fails to include non-Western counter-piracy initiatives such as the United Arab Emirates-sponsored Puntland coast guard, among other problems, and argues that "there are enough 'profits' or 'taxation thereof' made from piracy insurance, anti-piracy business and piracy mitigation to easily fund the demise of piracy" (Archer, V. and R.Y. Pelton, 2012).

22. The international community responded to the surge in piracy off the Horn of Africa in 2008, as pirates were interfering with aid efforts to Somalia. This response has included an unprecedented maritime naval deployment, efforts at self-protection by the shipping industry, and strengthened international and regional initiatives.

23. NATO's initial mission in the area, Operation Allied Provider, deployed three ships from October to December 2008 to provide escort to the World Food Programme and the African Union convoys, taking over from national deployments by Canada, Denmark, France and the Netherlands. Several United Nations Security Council Resolutions culminated in UNSCR 1846 on 2 December 2008, authorising states and regional organisations co-operating with the Somali Transitional Federal Government (TFG) to enter Somalia's territorial waters and use "all necessary means [...] to fight piracy and armed robbery at sea off the Somali coast, in accordance with relevant international law" and in UNSCR 1851 on 16 December 2008, condemning and deploring acts of piracy and armed robbery and calling upon "States, regional and international organisations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia [...] by deploying naval vessels and military aircraft and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use."

24. Three international task forces are currently active in the region, as well as individual national missions. NATO's mission was transferred to the EU Naval Force operation Atalanta in December 2008, and Atalanta has operated continuously since its launch. In January 2009, the Combined Maritime Forces (CMF), a US-led, Bahrain-based grouping of 25 nations including countries from the Middle East, East Asia and Oceania as well as 13 NATO members, launched the counter-piracy mission Combined Task Force (CTF) 151. NATO returned to the area in April 2009 on a new counter-piracy mandate, Operation Allied Protector. The mandate was enhanced and the mission renamed Operation Ocean Shield in August 2009. Other countries including China, India, Iran, Japan, the Republic of Korea, Malaysia, Oman, Russia, Saudi Arabia, Yemen and recently Ukraine have independently contributed to counter-piracy efforts, escorting national and other merchant vessels.

25. The Contact Group on Piracy off the Coast of Somalia, established in January 2009, brings together nearly 70 nations, international organisations and maritime trade organisations to help co-ordinate policy and find solutions to the problem. The Group meets three times a year at the UN, while its five Working Groups meet regularly, focusing on Military and Operational Coordination, Information Sharing, and Capacity Building; Judicial Issues; Strengthening Shipping Self-Awareness and Other Capabilities; Public Information; and Financial Flows. Disrupting financial flows of pirate networks is a more recent priority, the fifth Working Group, created after UNSC Resolution 1950 in November 2010, stressed taking action against "the illicit financing of acts of piracy and the laundering of its proceeds."

26. By signing the International Maritime Organization's Djibouti Code of Conduct in January 2009 or later, 19 of 21 eligible coastal nations in the western Indian Ocean and Gulf of Aden have agreed to co-operate in anti-piracy measures. Centres will be established in Mombasa, Kenya, Dar es Salaam, Tanzania, and Sana'a, Yemen for information exchange. The Djibouti Regional Training Centre, under construction, will host training of counter-piracy forces from across the region. France (because of its overseas regions Mayotte and Réunion), and Mozambique - are eligible but have not yet signed. South Africa ratified the Code on 15 May 2012, becoming the 19th State to sign the co-operation Convention.

27. The shipping industry has itself taken significant measures - to keep sailors and goods safe. Indeed, the industry's measures may be most responsible for the drop in successful hijackings. Along with navies, shipping groups developed a set of Best Management Practices. Ships should register with the EU's Maritime Security Centre – Horn of Africa (MSCHOA) prior to entering the

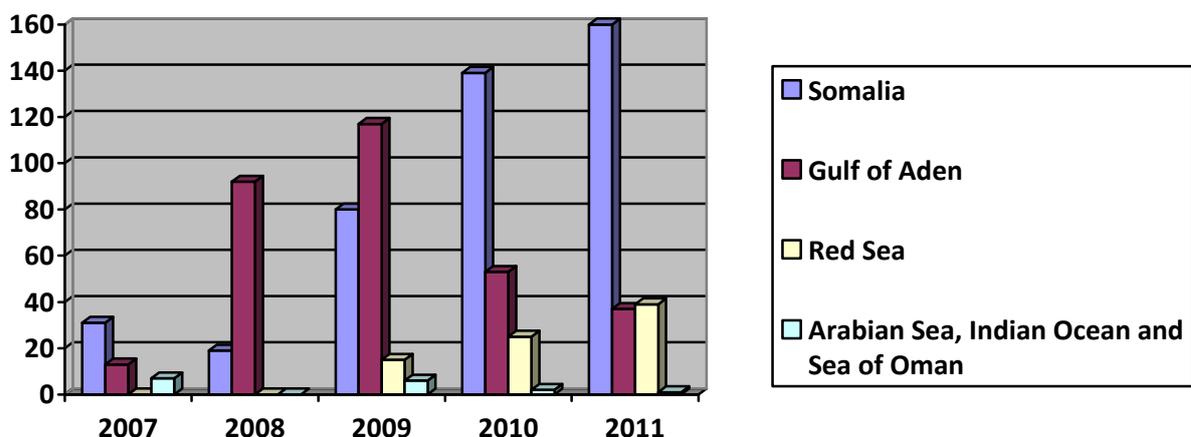
High Risk Area and report regularly to the United Kingdom Maritime Trade Office in Dubai (UKMTO) on their position, course, and speed as they travel through the area. The centre monitors vessels as they follow the Internationally Recommended Transit Corridor (IRTC) through the Gulf of Aden. Naval and air military assets provide protection and support to ships transiting the corridor. Ship Protection Measures should also be implemented, including building citadels (safe rooms) on ships where sailors can protect themselves from the pirates, radio for help, and hardening ships with simple measures such as razor wire. An estimated 20% of ships transiting the region fail to employ these Best Management Practices, and they are the victims of the majority of successful pirate attacks.

28. The industry has increasingly made use of private security guards on board merchant vessels. A quarter of vessels registering with MSCHOA declare they have guards, and not a single ship with private armed guards aboard has been reported pirated. However, the deployment can be limited by the national regulations of a ship's flag state. Not all armed guards aboard ships are private. Several nations have placed military forces aboard commercial vessels under their flags, while EUNAVFOR places such Vessels Protection Detachments (VPDs) on board World Food Programme (WFP) and African Union Mission in Somalia (AMISOM) ships.

D. CHANGING PIRATE TACTICS

29. While pirate attacks fell slightly globally from 445 in 2010 to 439 in 2011, Somali pirate attacks rose from 219 to 237. However, while Somali piracy looked as strong as ever in early 2011, by the end of the year there was a definite decrease in attacks. Indeed, important decrease of Somali piracy attacks have been reported for 2012, as the International Maritime Bureau noted that piracy attacks in the region have sharply fallen in the first half of the year, totalizing 70 incidents in Somalia (as of 24 September 2012) compared to 225 worldwide. Somali pirates also successfully hijacked fewer ships: 13 in 2012 and 28 in 2011- compared with 49 in 2010. The IMB attributes this to both increased hardening measures and the international naval effort to disrupt piracy. The total number of ships currently held by pirates is 11 (with 188 hostages), as of 24 September, and according to the IMB, a low point compared to recent years (ICC International Maritime Bureau, 2012).

Pirate Incidents Attributed to Somali Pirates by International Maritime Bureau 2007-2011



30. The area of pirate activity off Somalia has grown since 2008, with the adaptation of "mother-ship" tactics to make piracy a threat further out to sea, in the Somali Basin, as far south as Mozambique, and closer to the Indian Ocean island nations of The Seychelles and Maldives. The increased security in the Gulf of Aden is a positive development, even if pirates are diverted further out to sea, as it is part of a maritime choke point and key energy and trade transit lane formed with

the Suez Canal and Red Sea. This choke point can only be avoided by going around the Cape of Good Hope in southern Africa. Re-routing to stay closer to the coast of India, Pakistan, Iran and Oman in order to avoid pirates is a cheaper adjustment for ships to make.

31. The proliferation of armed guards on ships has arguably also led pirate networks to focus more on land-based kidnapping operations, which cannot be defined as piracy (Oremus, 2012). In some cases, pirate networks are kidnapping the foreigners and holding them for ransom; however, there have also been reports that pirate networks have purchased hostages from al-Shabaab. Al-Shabaab has long conducted kidnapping around its area of influence but has been more likely to use hostages as human shields than to try to extract ransoms. This makes for a more bureaucratically complex response as al-Shabaab is considered a terrorist organisation rather than an organised crime network. Two Spanish *Médecins Sans Frontières* (MSF) aid workers, Montserrat Serra and Blanca Thiebaut, abducted from a Somali refugee camp in Kenya in October 2011 by al-Shabaab, were sold to a Harardheere-based pirate network for a reported \$200,000 (Archer, 2012). In January 2012, US Special Operations forces rescued aid workers Jessica Buchanan, an American, and Poul Hagen Thisted, a Dane, who had been kidnapped by a pirate network in the town of Galkayo in October while working for the Danish De-mining Group, and killed their nine captors.

III. COUNTER-PIRACY MISSIONS

32. NATO's counter-piracy mission CTF 508 Operation Ocean Shield coexists with that of two other multinational forces, the EU's CTF 465 Atalanta and the Combined Maritime Force's CTF 151, plus independent national deployments. In total, roughly 20-30 ships and 5-10 Maritime Patrol Aircraft (MPAs) are operating in the area at any given time. Given the operating area, this force is stretched thin; according to NATO officials it has been assessed that a minimum of 17 MPAs is required for an acceptable level of surveillance.

33. To date, out of the Alliance's members, Canada, Denmark, Greece, Italy, the Netherlands, Portugal, Turkey, the United Kingdom and the United States have contributed ships to Ocean Shield; Spain contributed a ship to the earlier Allied Protector mission. Norway has also contributed a Maritime Patrol Aircraft to Ocean Shield. Other Allies who are also members of the European Union have contributed to counter-piracy mission through Atalanta or through both, while Canada, Turkey and the United States are also active in the Combined Maritime Forces mission. Belgium, France, Germany, Greece, the Netherlands, Portugal, Spain, and the United Kingdom, along with non-EU member Norway, have provided naval assets to Atalanta, while Luxembourg has provided privately operated Maritime Patrol Aircraft to the mission. Many other EU members as well as Croatia, Montenegro, Serbia and Ukraine have provided staff to EUNAVFOR Operational Headquarters at Northwood, in the United Kingdom.

A. NATO OPERATION OCEAN SHIELD

34. The core functions of NATO were identified in the 2010 Strategic Concept as collective defence, crisis management, and co-operative security. The new Maritime Strategy adopted in January 2011 outlines maritime security is another NATO mission. "The maintenance of the freedom of navigation, sea-based trade routes, critical infrastructure, energy flows, protection of marine resources and environmental safety are all in Allies' security interests," the strategy states. "The world's oceans and seas are an increasingly accessible environment for transnational criminal and terrorist activities, including the transport and deployment of weapons of mass destruction and associated materials. Criminal activity in the maritime environment includes the growing range and rate of pirate attacks, which raise concern about the safety of vessel crews and private citizens" (NATO, 2011).

35. NATO has been deployed off the Horn of Africa on a counter-piracy mission for over three years, beginning with Operation Allied Provider and Operation Allied Protector. Operation Ocean Shield was approved by the North Atlantic Council in August 2009 and its mission has been extended to the end of 2014. The mission has four main objectives: deterring and disrupting pirate operations at sea, co-ordinating international counter-piracy efforts, enhancing the maritime community's capacity to counter piracy effectively, and developing a regional counter-piracy capability. The Chicago Declaration, adopted in May 2012, calls for enhanced actions at sea to improve NATO's effectiveness, notably increasing partnerships. Examples of this have been the NATO-Russia maritime exchange in June and an exchange with China in August. These actions also include destroying pirate boats (at sea and on land), pre-emptive actions against pirates and naval operations putting more emphasis on pirates groups.

36. Ocean Shield has deployed an average of four or five ships and maritime patrol aircraft off the Horn of Africa. It relies on two Standing Maritime Groups rotating duty to fulfil its counter-piracy mission. The NATO forces protect ships passing through the IRTC and escort the WFP and AMISOM shipping. They also patrol and monitor the Somali coastline and intercept suspected pirate vessels moving offshore.

37. The operational command for Ocean Shield rests with Allied Maritime Command (MC) Headquarters (HQ) Northwood, also the location of command for EUNAVFOR Atalanta. Since November 2011, MC Northwood is no longer under the command of Allied Joint Command Lisbon, but reports directly to Supreme Headquarters Allied Powers Europe (SHAPE). Interestingly, this is the first example of implementation of NATO's new Command Structure agreed at the Defence Ministers' meeting in June 2011.

38. The NATO Shipping Centre (the link between NATO naval forces and the merchant shipping community) shares information with this community including the locations of hijackings and suspected pirate groups, as well as best practices guidance.

39. Helping regional states with capacity-building, upon their request, and to help them counter piracy themselves is the extra mission which distinguishes Ocean Shield from its predecessor Allied Protector. In practice, this has not been a focus of the NATO mission, with only limited training of coast guards at port visits.

40. While a total of 96 pirate vessels were neutralised by NATO in 2011, NATO's overall impact on piracy around Somalia cannot be easily separated from that of the other multinational missions, as they co-operate closely.

41. Crucially, Ocean Shield has been a practical opportunity for NATO to improve co-operation and partnerships with a host of countries and international organisations.

42. While Ocean Shield is a smaller NATO mission, compared with a major operation like Afghanistan, it does have importance, and not only in its effect on piracy. It has helped define NATO's role in the maritime domain, contributing to thinking on the new maritime strategy. While the mission itself is not particularly controversial, there is an on-going debate within NATO as to what role the Alliance should play in marine law enforcement, as opposed to defence and crisis management at sea. This is a debate that the new maritime strategy has not entirely put to rest.

B. EUNAVFOR ATALANTA AND THE COMPREHENSIVE APPROACH

43. The European Union's EUNAVFOR Atalanta mission is arguably the most significant player in counter-piracy operations, due to the size of the deployment and the EU's political ability to offer a more comprehensive approach. Atalanta took over from NATO's initial counter-piracy mission

Operation Allied Provider to provide naval escorts for World Food Programme vessels and patrolling Somali waters in December 2008. Aid protection remains the mission's first goal, but Atalanta encompasses broader piracy prevention and shipping protection and the monitoring of fishing activities off the coast of Somalia. The EU makes another major contribution in running the Maritime Security Centre – Horn of Africa (MSCHOA).

44. The EUNAVFOR mission typically consists of five to ten surface vessels, one to two auxiliary ships and two to four patrol aircraft, a total of military personnel of 1,500 including land-based staff. The EU has been able to secure agreements with Kenya, Mauritius and the Seychelles for the transfer of captured pirates, and as of early 2012, Atalanta has transferred 111 suspected pirates to competent authorities for prosecutions, with 56 convictions. The EU, unlike NATO, places vessel protection detachments of troops on board WFP vessels and other vessels under escort and has trained AMISOM troops for vessel protection.

45. The European Union's engagement with Somalia goes beyond the naval mission. The EU has since April 2010, supported the Transitional Federal Government with EU Training Mission Somalia, training soldiers in Uganda. In July 2012, the EU has also launched a civilian Regional Maritime Capacity Building (RMCB) mission to enhance the sea-going maritime capacity of Djibouti, Kenya, the Seychelles and Tanzania, to support the development of a coastal police force in the Puntland, Somaliland, and Galmudug regions of Somalia, and to train and protect judges in Puntland. The regional training mission, EUCAP Nestor, consists of a Common Security and Defence Policy (CSDP) civilian mission complemented with military expertise that has an initial mandate of two years and its Headquarters in Djibouti. Strengthening the Djibouti Regional Training Centre will be part of this effort. In March 2012, the EU activated a Brussels-based Operations Centre for the Horn of Africa to co-ordinate its three CSDP missions: Atalanta, the Training and the Maritime Capacity Building missions.

C. OTHER ACTORS

46. The 25-nation naval partnership Combined Maritime Forces was established after September 11, 2001, with the Combined Task Force 150 mission, supplementing an extent of the US Navy mission in the region to promote maritime security and counter terrorism. Australia, Bahrain, Japan, Jordan, the Republic of Korea, Kuwait, New Zealand, Pakistan, Saudi Arabia, Singapore, Thailand and the United Arab Emirates join 13 NATO Allies in the grouping. Combined Task Force 151 was established in January 2009 specifically to counter piracy, and with NATO, EUNAVFOR, and independent national missions, helps patrol the IRTC. As a less institutionalised grouping, the Combined Maritime Forces has a somewhat looser organisation than NATO or the EU and the size of its deployment contributions to the counter-piracy mission is more variable.

47. Countries with independent national counter-piracy missions include China, India, Iran, Japan, the Republic of Korea, Malaysia, Oman, Russia, Saudi Arabia and Yemen. Japan opened its first foreign military base in July 2011 in Djibouti. Malaysia has been able to contribute expertise from its experience fighting piracy in its own territorial waters around the Strait of Malacca. China's efforts have received particular attention because they constitute a historic step out of its own region for the navy of the rising superpower. Chinese naval officers are now receiving special counter-piracy training at the Naval Command College in Nanjing. The Seychelles has offered China use of its port for supplying naval vessels involved in the counter-piracy mission, although Beijing has not yet made a final decision regarding the offer.

D. SOMALIA: A POSITIVE EXAMPLE OF NATO-EU CO-OPERATION AND OF CO-OPERATION WITH GLOBAL PARTNERS

48. Given the number of actors involved, international co-operation on counter-piracy has been very positive overall. Co-operation between the different task forces and national deployments has been co-ordinated through frequent Shared Awareness and Deconfliction (SHADE) meetings in Bahrain to share best practices and prevent counter-piracy players from coming into conflict. The process has been successful, moving from deconfliction to co-ordination and sometimes co-operation. The establishment of the International Recommended Transit Corridor is one major accomplishment of SHADE. The group also uses MERCURY, a secure Web-based communication system, to co-ordinate activities in real time. All of the militaries active in counter-piracy, except that of Iran, are involved in SHADE and MERCURY.

49. The counter-piracy operations parallel NATO and the European Union missions in the same operational space. The two organisations share 21 members (soon to be 22 with Croatia's accession to the EU expected in July 2013) but well-known political blockages have historically made co-operation difficult. The NATO counter-piracy operations and operation Atalanta, however, have worked together fairly well. Colocation of command at Northwood has been helpful. Given the colocation and lessons learned from the piracy missions, there is an opportunity to create a Centre of Excellence on Counter-Piracy at Northwood. NATO also has enhanced co-operation with the Combined Maritime Forces. Representatives of the three task forces have bi-weekly military-to-military meetings, and liaison officers facilitate day to day co-ordination.

50. One positive aspect of the counter-piracy response for NATO is that it has fostered operational co-operation and strengthened ties not only with the European Union but also with a host of crucial emerging powers, such as China and India, and other important nations such as Japan and Russia.

51. NATO has conducted successful joint operations against pirates with the other task forces and with Japanese forces. The Japanese Self-Defence Forces deploy marine patrol aircraft and naval vessels which have co-ordinated with NATO.

52. Counter-piracy was identified as a practical co-operation project between NATO and Russia in their Joint Review of 21st Century Common Security Challenges. The NATO-Russia Council held an anti-piracy seminar in St. Petersburg last year and in January 2012 endorsed a "road map" on anti-piracy and counter-terrorism co-operation until 2014. NATO and EU warships have held joint exercises with the Russian Navy in the Gulf of Aden.

53. Co-operation with other independently operating countries such as China and India has primarily consisted of consultation. China's counter-piracy deployment has also been an excellent opportunity for the Chinese military and NATO to begin to understand one another better. Beginning in November 2009, the two forces have had sustained contact, with NATO and China mission commanders visiting each other's flagships, sharing experiences and discussing concerns.

54. The Seychelles and Kenya are regional countries (other than Somalia) most involved in counter-piracy. Both have prosecuted pirates, but unfortunately have little capacity in their jails and courts to take more. Kenya was the key prosecuting country earlier in the mission and has taken responsibility for more than 100 suspected pirates, but stopped accepting more in 2010. Counter-piracy co-operation has been a major priority for the Seychelles. NATO has trained the Seychelles Coast Guard on several occasions and on 21 February 2012, UK Foreign Secretary William Hague announced the creation of the Regional Anti-Piracy Prosecutions Intelligence Coordination Centre (RAPPICC) in the Seychelles. The goal of the centre is to target pirate king-pins who finance operations, co-ordinating intelligence to help with prosecutions. The British and Dutch governments will fund the centre, which is also supported by Interpol.

55. Djibouti is perhaps the centre of anti-piracy operations, as it guards the Bab-el-Mandeb and hosts the forward operating base of US Africa Command (AFRICOM), the French Armed Forces, the EUNAVFOR Force HQ Support Area, and the Japanese counter-piracy mission. The Defence and Security Sub-committee on Transatlantic Defence and Security co-operation (DSCTC) visited Djibouti in November 2012.

IV. CONCLUSIONS

A. ASSESSING THE INTERNATIONAL EFFORT

56. The international community has made a military commitment to manage piracy off the Horn of Africa. It has succeeded in this relatively narrow mission. Numbers are encouraging, as Somali piracy's decline has been officially reported. According to the International Maritime Bureau, pirate attacks in Somalia have sharply fallen in the first half of 2012, decreasing of 54% compared to 2011. In 2012, there were 70 reported piracy incidents in Somalia, and pirates hijacked 13 ships. In 2008 Somali pirates attacked 111 ships and hijacked 42, in 2011 they attacked 237 ships and hijacked 28. Merchant ships are safer because of a combination of the international governmental response and the hardening measures their operators have taken. No World Food Programme ships have been pirated since the launch of the NATO and EU missions.

57. However, piracy has only been clearly deterred in the relatively well-policed Gulf of Aden, where the number of attacks has significantly dropped. Ransoms have risen as hijackings have become more difficult. Regional pirate attacks still hit a record high in 2012, especially in West Africa and Somalia. Concerns are rising in the Gulf of Guinea, as attacks are increasing in this region due to military efforts in Somalia. An uptick also recorded in attacks in the southern Red Sea across the Bab-el-Mandeb from the Gulf of Aden.

58. Management is indeed the goal of the counter-piracy operations, as there is broad understanding that a comprehensive solution to piracy is complex and requires change on land. One of the major flaws in the international response has been the failure to consistently prosecute pirates. Many – Jack Lang bluntly says “virtually all” (Lang, 2011) – suspected pirates have been freed by their captors without facing justice because the countries involved in the mission have not criminalised piracy and do not invoke universal jurisdiction to try the pirates themselves, because countries in the region have a limited capacity to try pirates, and because no comprehensive legal response to the Somali piracy problem has been set up. One key to deterrence is effective prosecution because if captured, pirates are more likely to be released than to be imprisoned, they have little incentive to refrain from piracy.

59. One significant concern regarding Somali piracy is that the ransoms could be used to fund terrorism. Al-Shabaab, already affiliated with al-Qaeda, announced that it had merged with the infamous terror organisation in February 2012. It controls large parts of Somali territory, has carried out terror attacks such as a bombing which killed 76 in Uganda in 2010, and its ranks reportedly include dozens of Americans and Britons. There is no conclusive evidence that ransoms are being used to fund al-Shabaab terrorism. Such evidence could potentially increase pressure for states to make it illegal for ship-owners to pay ransoms, and which could induce the pirates to increase violence against seafarers in order to still get ransoms, possibly even lead to cuts in seaborne trade (Donald, 2011).

B. OPERATIONAL LESSONS LEARNED

60. NATO has now been active in combating piracy off Somalia for more than three years. Allied navies gained significant experience in doing so, both in handling piracy and in co-operating with partners.

61. Operationally, NATO and the other task forces have been effective when they respond to pirate incidents, rescuing crew and detaining suspected pirates with minimal loss of life. Military forces typically get no more than ten minutes' warning from ships which are under attack by pirates, the Sub-Committee on Transatlantic Defence and Security Co-operation was told during a visit to Northwood in November 2011. Forces thus have to rescue ships in distress which pirates have already boarded. Policing the Somali Basin requires greater surveillance and intelligence in order to target mother-ships operating far from shore. Forces have been increasingly engaged in destroying pirate ships, both mother-ships and attack skiffs, in recent months as the rules of engagement have been modified as necessary.

62. NATO has struggled to fulfil its force requirements for the mission, according to NATO officials, although dedicating assets from NATO's two Standing Maritime Groups, which have alternated duty, ensuring a continuous presence in the region. As a law enforcement mission, Ocean Shield has been a lower priority for defence spending than the war in Afghanistan or the crisis response in Libya. It competes for scarce national resources with the similar EU mission. While political will is necessary to strengthen the counter-piracy mission, the recognised reality that the piracy threat can only be solved on land, the perception that the international community has recently turned the tide against the pirates, and mission fatigue all make a decision to devote more resources difficult. However, greater use of aerial surveillance, including both Maritime Patrol Aircraft and Unmanned Aerial Vehicles, and the use of Vessel Protection Detachments would enhance the impact of Ocean Shield. According to NATO officials, additional shortfalls in key enablers include medical support, fuel tankers, helicopters and linguists. If countering piracy is a priority for NATO members, they should devote more of such resources to the mission.

63. Arguably, while NATO's standing military structure, integrated military command, surveillance assets and experience give it a comparative advantage in military engagement with the pirates, the European Union does have the stronger toolbox for enhancing regional capacity through a comprehensive approach. Even closer co-ordination between the two organisations on capacity-building as well as military operations against the pirates should be encouraged.

64. In March 2012, with the approval of the Somali government, EU Foreign Ministers authorised an enhanced operations concept (CONOPS) for Atalanta which allows for the neutralisation of pirate assets on the coast, as they extended the mandate of the mission into 2014. In December 2011, the Council had instructed Atalanta's commander to draw up plans to target pirate infrastructure such as boats, trucks, fuel and supplies via helicopter from the sea. A French frigate capable of carrying 16 helicopters immediately joined Atalanta after the March decision. Pirates themselves would not be targeted, only their equipment, but there is always the possibility that airstrikes will result in casualties.

65. Following this EU decision, an on land attack was carried out during the night of 14 May 2012. EU Forces were transported by helicopter to the key-supply pirate base near Harardheere's port and destroyed valuable equipment, including several boats. No Somalis were injured during the operation and EU NAVFOR Operation Commander, Rear Admiral Duncan Potts, stated that the attack would "further increase the pressure on, and disrupt pirates' efforts to get out to sea to attack merchant shipping and dhows". This mainland attack was the first and only one to date, but concerns are still expressed regarding hostages' casualties and re-localisation of pirate bases within local communities to avoid EU air raids. Despite these concerns, the destruction of piracy equipment through land attacks would reduce pirate's ability to launch attacks. As the Danish piracy strategy points out "Contrary to the current engagement, such initiatives would bear greater resemblance to efforts that are associated with actual military operations [...] and could as such pose significant risks to the deployed troops as well as to civilians. Thus, there is also a risk that the adaptation of pirates to the risk of international forces conducting military strikes on ground targets near the Somali coast could make the situation even more difficult and dangerous for the

hostages.” (Danish Ministries of Foreign Affairs, Justice, Defence, and Economic and Business Affairs, 2011).

66. There has not yet been a NATO decision to engage Somali pirate networks on land, although all three task forces have increasingly focused on monitoring pirate activity on the coast and deploying vessels nearby to prevent the pirates from launching attacks in open waters. With the EU broadening its mission, NATO should at least be discussing such a step. During the 2012 NATO PA Spring Session in Tallinn, the Assembly's Defence and Security Committee discussed solutions to piracy, which emphasised creating better condition on land. It was “recommended that NATO consider an expanded mandate in its mission to allow the targeting of pirate capacities along the coast”, as Rear Admiral Hank Ort stressed the psychological value for the international community to have the capability of carrying land strikes against pirates. He suggested that it would be military feasible for NATO to concentrate its efforts on sea mission's effectiveness as long as the EU is in charge of land actions in order to avoid duplication.

C. THE PROS AND CONS OF SECURITY GUARDS ON MERCHANT SHIPPING

67. The use of armed guards on ships transiting Somalia's coastal waters has clearly grown. The privatisation of security on the high seas, just as on land, has pros and cons. No ship passing through the Somali pirate high risk area under the watch of private security guards or a military vessel protection detachment has yet been reported hijacked. Armed private security guards employed by ship-owners, are paid for by the private sector and consumers, rather than taxpayers. Private security is a flourishing business, a sector that has actually profited from the rise in piracy.

68. Some argue that the presence of armed guards increases the possibility of violence and damage to the ship in the event of a pirate attack, but others disagree. “While many expected these teams to be made up of undisciplined ‘cowboys’ that would increase the violence at sea, from what we have gathered and observed the opposite has happened,” US Assistant Secretary of State Andrew J. Shapiro said in a recent speech: “In most engagements between armed security teams and pirates, the situation ends as soon as pirates are aware these teams are on board [...] Pirates break off the attack and turn their skiffs around and wait for another less protected target.” The US State Department recommends countries legalise the use of armed guards in ship protection, although it does advise that the security teams be placed under the full command of the ship's captain (Shapiro, 2012).

69. However, private security guards operate in an ambiguous legal environment. While presence is less problematic if they remain only a deterrent, concerns arise about what laws govern them firing back against or arresting pirates. Their professionalism is not guaranteed by a state. For these reasons, some countries do not allow them aboard ships under their national flags, or passing through their territorial waters.

70. The United Nations has in the past expressed concerns that private security contractors threaten human rights and should be better regulated. Its specialised agency responsible for shipping, the International Maritime Organization (IMO), issued an updated and revised interim guidance on the use of privately contracted armed security personnel in May 2012, noting that flag state jurisdiction and regulations apply and port and coastal states' laws may also apply to vessels carrying guards. It recommends that flag states establish policies on whether and under which conditions to authorise guards. The guidance noted that guards should not be considered an alternative to the Best Management Practices and that its recommendations were not intended to endorse or institutionalise the use of guards. NATO, like the IMO, does not have a declared standpoint for or against private guards, but recommends applying the Best Management Practices and declaring the presence of guards to MSCHOA.

71. Shipping companies' use of private security guards brings to bear the important question of where the monopoly on violence of the state ends and how far the responsibility of the government reaches in protecting its citizens. In some cases, including in the Netherlands, the government has proclaimed that the state bears sole responsibility for protecting its merchant fleet (without prejudice to the obligation that the merchant fleet has to adhere to the Best Management Practices). The state then has a responsibility to supply sufficient military capacity to protect its merchant fleet against pirate attacks. Problems may arise when ship-owners do not believe the state is meeting its obligations. Is the fact that the military of a country is unable to meet the industry's demand for protection a reason to break with the monopoly on violence and admit the use of private security guards? This question is answered differently by various NATO member states and legal experts. The debate is evolving very rapidly, but currently, the Netherlands, France, Belgium and Portugal are against the usage of private security guards on board of merchant-ships, as is India. Italy and the United Kingdom have recently announced they will accept the use of private security guards. Spain, one of the earliest countries to allow private guards, now allows them to use machine guns against pirates, who carry AK-47s as a standard weapon. In Denmark, the licensing of private security guards is made on ad hoc basis by government institutions.

72. In the past year, several countries have debated this issue within their Parliaments. The UK, Norway, Spain, Italy and Germany, might be changing existing legislations to allow the use of private armed guards aboard ships. These countries are currently in a "legal grey zone", as they neither allows or prohibit such practice under their flags. In Germany, draft legislation has been introduced to elaborate a licensing procedure for security companies aboard German ships. Ship owners welcomed the draft legislation. There are financial considerations to take into account while debating the use of private armed guards versus military personnel aboard ships, but the government is still encompassing safety risks of such use. Indeed, the draft legislation limits security personnel to the use of semi-automatic firearms. The debate is on-going; some changes in numerous national legislations can be expected within the next year, as there is a paradigm shift in national views on this issue.

73. The protection of the merchant-fleet by the flag state could be approached in three stages. In the first stage, the armed forces of a flag state are responsible for the protection of the merchant fleet. In most instances this will be the navy. Protection can be achieved by the periodic deployment of a naval contribution to the NATO, EU or CMF counter-piracy operations. A flag state can decide to place a Vessel Protection Detachment (VPD) on board merchant ships navigating through unsafe waters.

74. In case that the armed forces are unable to deploy sufficient number of VPDs, a flag state could acquire extra VPD-capacity by engaging reservists or by hiring personnel from high-quality private companies. These reservists or private security guards should be deployed by the Ministry of Defence under a temporarily military status. The costs of militarising these reservists or private security guards can be (partly) averted to the ship-owner. The advantage of this policy is that it creates extra manpower for the armed forces to be able to meet the demand of the merchant fleet, but that the monopoly on the use of violence still rest with the state. In this second stage, the decision to use violence will be taken by the military commander on board. This avoids the complicated issue of the legal responsibility of the ship's captain who could otherwise be confronted with decisions to use violence against pirates.

75. The third stage of measures to protect the merchant-fleet of a flag-state is the use of private security guards with the consent of the flag-state but without the further intervention of the flag-state. Various ship-owners are advocating this third stage solution as it is a flexible and efficient way to protect merchant-shipping. However, as has been touched upon, the use of private security guards has drawbacks and legal uncertainties.

76. The issue continues to be debated, with a trend towards countries legalising the use of private security guards. Armed security on the high seas has likely become an irreversible feature of shipping wherever piracy flourishes. It has its risks and costs, and should be seen as a temporary palliative to a problem that cannot be solved through use of force.

D. OTHER RECOMMENDATIONS FOR ADDRESSING PIRACY

77. **Ultimately, the solution to piracy is in creating better conditions on land and disincentive piracy as a lucrative option.** This is an aspirational solution in Somalia, the prototype of a failed state. The broader East Africa region shares Somalia's issues including development and environmental challenges. Somalia's fragmentation and civil war adds an additional challenge. Instability in Yemen offers a spectre of further anarchy in the Gulf of Aden littoral although concerns there have focused on terrorism rather than piracy.

78. However, Somalia is a strategically important country and the international community must continue to invest there. This is a real year of transition for Somalia, as the Transitional Federal Government's mandate, already extended several times has come to term on 20 August 2012. A new government and a 275-member parliament took oath in a climate of cautious optimism. Presidential elections were held on 10 September and Somali's elected Hassan Sheikh Mohamud from the Peace and Development Party in the first elections since 1991.

79. Somalia is not a completely anarchic environment; there are real government structures in the northern half of the country and tribal structures throughout. Working with the Puntland and Somaliland governments is necessary for progress in combating piracy on land in Somalia, as the writ of Mogadishu does not extend to these regions. British Development Minister Andrew Mitchell made an unprecedented visit to Puntland State in January, and further such engagement should be encouraged. The governments of Somaliland and Puntland both have trained counter-piracy forces, with Puntland's Maritime Police Force supported by the United Arab Emirates. The international community should increase its practical co-operation with the regional authorities while leaving decisions about the ultimate political status of the regions to the Somalia's political processes. This strategy was endorsed at the London Conference, although not yet by NATO.

80. Piracy is a criminal enterprise, counter to traditional Somali culture and Islam and is unpopular with much of Somali society for its impact on their communities. And yet it endures because of its profits, which are far greater than a Somali can earn as a fisherman or a farmer. A few thousand people have a major impact by engaging in piracy. But they have enablers on land and are able to find shelter because the state lacks capacity or incentive to do more to eliminate the problem. The founding myth of the pirates is that they started by guarding Somali territory against illegal fishing by foreigners. This grants them limited local legitimacy. Part of the battle against piracy is thus convincing more Puntlanders to reject piracy, with arguments and incentives. Thus NATO's mission has included anti-piracy radio broadcasts into Somalia.

81. The London Conference heralded a new international push to solve Somalia's problems. It was followed by the Second Istanbul Conference on Somalia entitled "Preparing Somalia's Future: Goals for 2015" (June 2012). Several nations have recently opened embassies to Somalia. Turkish Airlines started operating regular flights to Mogadishu in March 2012. The African Union is a major player operating its AMISOM peacekeeping mission with roughly 10,000 troops, the majority from Uganda and Burundi, under a United Nations mandate. Somalia's neighbours Ethiopia and Kenya are both conducting military operations against al-Shabaab on Somali soil.

82. However, even without dealing with the root economic causes of piracy, there are improvements which can be made to the counter-piracy mission. We should recognise that even a far more capable Somali state and a Somali society more hostile to piracy would still have difficulty eliminating such a profitable organised crime business.

83. **A better legal framework for the prosecution of pirates must be developed.** The details of prosecution for pirates detained on the high seas or in Somali territorial waters remain - convoluted, and, along with the size of the area of pirate operations and the inability to counter the pirates on land, are the weak point of the counter-piracy effort. *The New York Times* recently described one piracy case, “The pirates [captured by the US Navy] are Somali [...] the vessel [...] is Greek-owned but operates under a Bahaman flag. They were detained in international waters, but in the so-called exclusive economic zone of Oman. And they had commandeered an Iranian fishing vessel and held the crew hostage [...] the United States had asked several countries to consider taking the cases, but not the most obvious venue – Iran. The tensions between Washington and Tehran have precluded such dialogue” (Chivers, 2012).³

84. Piracy can be prosecuted by any country, even one completely unrelated to the act of piracy, under universal jurisdiction if that country has criminalised piracy. Somali pirates have been tried and convicted on piracy charges in remote countries including the Netherlands and the United States in recent years. The shipping industry’s SaveOurSeafarers campaign supports trying pirates in the countries whose navies capture them. More often, the naval forces contact countries in the Horn of Africa region. However, the capacity of their legal systems are limited, and too often, navies have been forced to practice a “catch and release” policy in which pirates who cannot be tried are released onshore in Somalia. For example, after the Danish warship *Absalon* captured 25 pirates in January 2012, Denmark was able to convince the Seychelles and Kenya to prosecute four pirates each, but released the remaining 17 on the Somali coast. The counter-productive nature of releasing pirates is obvious, but avoiding it requires some country to take responsibility for prosecution.

85. Releasing suspected pirates is unacceptable. Trying pirates in Somalia or other nearby countries is ideal. If they cannot be tried regionally, they should be tried in the countries whose navies capture them. Counter-piracy coalition members should adapt anti-piracy laws which allow them to take universal jurisdiction to prosecute piracy.

86. One possibility for a more systematic approach that could be pursued is the creation of a regional legal centre which could try captured pirates and incarcerate those convicted, a solution supported by the United States (Chivers, 2012). UN Special Advisor Jack Lang recommended in his January 2011 report on piracy that the UN could support the establishment of prisons in Puntland and Somaliland with a minimum capacity of 500 prisoners each and operate them for three years for under \$6.75 million. He also recommended the creation of three special courts to deal with piracy under Somali jurisdiction – one in Puntland and one extraterritorial in Arusha, Tanzania, which would eventually be transferred to Mogadishu, both of which would have universal jurisdiction in piracy cases, and one in Somaliland, at a slightly lesser priority since the local government would only agree to try pirates of Somaliland origin or those charged with crimes in its territorial waters. While Tanzania has expressed willingness to host a court within the premises of the International Criminal Tribunal for Rwanda in Arusha, Somali authorities have opposed the establishment of an extraterritorial court. The United Nations Development Programme and United Nations Office on Drugs and Crime are spending \$24.4 million over three years to improve court systems in Puntland and Somaliland (United Nations, 2011).

87. Ideally, pirates will be prosecuted and jailed in Somalia itself. The UN is constructing a prison which can hold 500 pirates in the Puntland capital Garowe, to open next year, while prisons in Bosasso, Puntland and Hargeisa, Somaliland, are being upgraded. Western funding, above all £9 million of British funding, has helped make these improvements (Pflanz, 2012).

³ Ultimately, the pirates in this case were transferred to the Seychelles for prosecution, but due to the Seychelles’ limited prison capacity this move necessitated the transfer of convicted pirates to a prison in Somaliland.

88. **NATO countries can also help regional state actors develop the capacity to counter piracy.** This is indeed part of the mission. Real positive steps have been made, with a focus on Somalia, Djibouti, Kenya, the Maldives, Mauritius, the Seychelles and Tanzania, if more often through EU, UN or bilateral channels than through NATO. But regional state capacity to counter piracy remains weak in comparison to the scope of the piracy problem. Given that Somalia and most of its neighbours are low-income developing countries, they will likely need financial assistance and training to improve capacity.

89. Piracy is a long-term challenge, like other types of crime. It requires significant investment to fight effectively. This is a security problem that can only be solved in co-operation with local stakeholders and with patience. If there is an upside to the Somali pirate epidemic, it is that it has refocused the attention of the world on a ravaged country of ten million people which remains a major global security problem, and has promoted international investment towards improving the situation in Somalia.

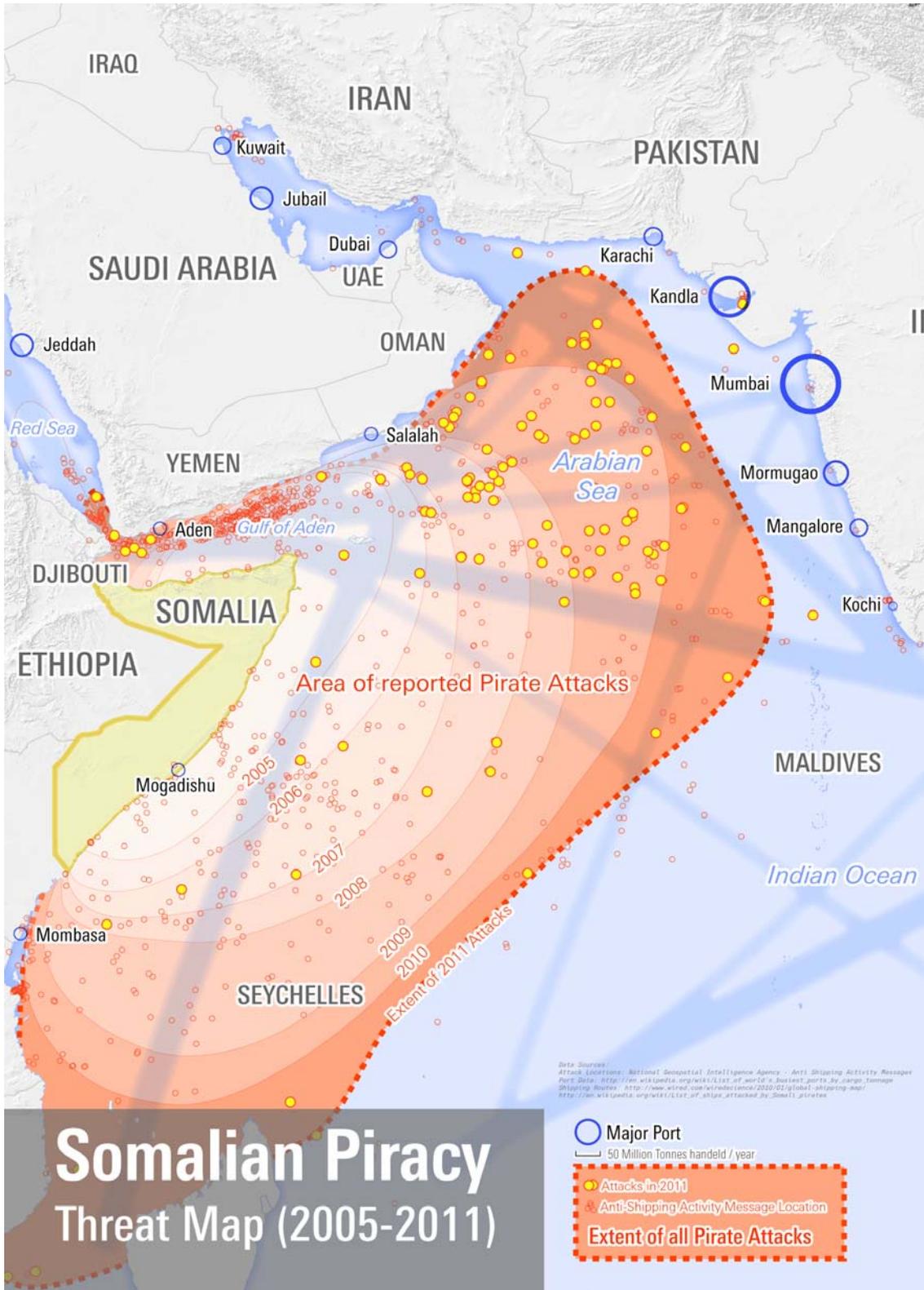
APPENDIX 1 : MAPS

MAP OF SOMALIA



(Source: The Economist)

SOMALI PIRACY THREAT MAP



(Source: Geopolicity)

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