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United States
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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

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ON

INTERNATIONAL EFFORTS TO COMBAT MARITIME PIRACY

BEFORE THE

**SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN
RIGHTS, AND OVERSIGHT**

COMMITTEE ON FOREIGN AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

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RADM Baumgartner appears before the Committee on behalf the Commandant to testify on Coast Guard policy and programs relevant to international piracy. He does not appear or offer testimony in his capacity as the Judge Advocate General of the Coast Guard.

Good afternoon Chairman Delahunt and distinguished Members of the Subcommittee. I am Rear Admiral William Baumgartner appearing today on behalf of the U.S. Coast Guard. I welcome the opportunity to appear before you to discuss the significant expansion of piratical acts off the coast of Somalia, and the Coast Guard contribution to ongoing efforts to address this threat to freedom of navigation, and the safety of international shipping and those seafarers who are the lifeblood of our international economy.

Piracy is as old as society itself, dating back more than 2,000 years. The struggle against piracy was a constant concern of merchant countries, which very early led to the adoption of the first example in human history of an extraterritorial law and a universal crime. Indeed, pirates have been declared *hostes humani generis* (“enemies of the human race”).¹ Acts of piracy have always placed the lives of seafarers in jeopardy and affected the shared economic interest of all nations. Even a single piratical act affects the interests of many nations, including the flag State of the victim vessel, the various countries of nationality of each of the seafarers held hostage, regional and coastal States, and the States of the vessel and cargo owners as well as destination and trans-shipment States.

In the case of Somalia-based piracy, increasingly brazen attacks in 2.5 million square miles of ocean from land-based enclaves located all along an under-governed and economically devastated 2,300 mile coast pose a serious threat to global shipping. Eliminating piracy and other transnational threats requires stronger law enforcement capacity and rule of law in Somalia.

The Straits of Malacca and the Gulf of Aden present very different challenges and potential solutions when it comes to the problem of countering piracy threats.

Regional States in and about the Straits of Malacca have the capability, capacity and operational expertise to respond to acts of piracy and legal regimes to effectively deliver legal consequences to pirates when they are apprehended. Coordinated patrols by the maritime forces of Indonesia, Malaysia, Singapore, land-based actions taken by these countries, and increased security on vessels transiting the Straits of Malacca have resulted in a significant reduction in piratical acts in that vector. Indeed, when acts of piracy were on the rise in the Straits of Malacca, nations in that area expressed their intent to respond to the threat through locally coordinated responses without the need for international assistance from outside the region.

Unlike the Straits of Malacca, States in the area of the Gulf of Aden and Horn of Africa largely lack the maritime capabilities and capacity to respond to acts of piracy on the high seas and in their territorial seas. Somali authorities do not yet have the judicial or law enforcement capabilities to address piracy.

Because piracy is a universal crime under international law, every nation has the legal authority to establish jurisdiction over piracy and punish the offenders, regardless of nationality of the perpetrator or the victims, or of the vessels involved.² This has been a basic tenet of customary international law for centuries, and is also enshrined in treaties such as the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on Law of the Sea. United Nations Security Council Resolutions 1816 and 1846 effectively extended this international law to Somali territorial waters and, authorized states that are cooperating with the Somali Transitional Federal

¹ Piracy off the Coast of Somalia, International Expert Group on Piracy off the Somali Coast, 21 Nov 2008

² See 1982 United Nations Convention on the Law of the Sea, arts. 100-107.

Government (TFG) to conduct counter-piracy operations there. Resolution 1851 further expanded authorities for counterpiracy operations in Somalia.

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

Additionally, response to such incidents must take into account the ability of pirates in the region to be supported from and flee to friendly enclaves ashore, as well as the interests of various stakeholders in the outcome of any piracy incident, from the flag State of the victim vessel and States of nationality of the innocent seafarers to regional partners whose security is directly threatened by these brazen attacks.

-Ultimately, piracy can only be successfully eliminated through an integrated maritime and land-based approach to increase security, stability, and economic development in Somalia.

Military efforts to deter, counter, and punish acts of piracy can be successful only as part of a multinational effort bolstered by the support and assistance of international institutions, the commercial shipping industry, and other non-governmental organizations. In particular, I would like to commend the International Maritime Organization (IMO) for its leadership in responding to this and other threats to commercial shipping and seafarers. Following the 9-11 terrorist attacks, the IMO rapidly developed the International Ship and Port Facility Security or "ISPS" code to better safeguard international shipping from acts of terrorists and others who would threaten commercial shipping and the safety of innocent seafarers. The purpose of the ISPS code is to provide a standard, consistent framework for evaluating risk. It enables governments to offset changes in threats to shipping with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures. The ISPS code provides a valuable and time-tested mechanism for industry, in cooperation with the IMO, to harden targets against pirate attacks.

Additionally, the IMO has been addressing piracy in its Maritime Safety Committee and other forums as the Somalia situation has intensified. I will speak to some of those efforts, in which the Coast Guard and other U.S. government agencies have been active participants, shortly.

Through the millennium, maritime trade has been critical to the economic vitality and security of nations. That is even more evident today. The unimpeded flow of maritime commerce is the lifeblood of the global economy. As of 2008, seaborne trade accounted for approximately 80 percent of global trade in terms of volume and 70 percent in terms of value. The Gulf of Aden, which spans the Horn of Africa and Somalia's north coast, is a vital shipping lane connecting the Middle East, Europe, Asia, and North and South America. More than 20,000 ships and nearly 12 percent of the world's petroleum transit the Gulf of Aden each year. These ships present valuable prey to pirates. Since the end of 2007, piracy activity has shifted away from the Mogadishu port

area and into the Gulf of Aden.³ Actual and attempted hijackings and piratical acts by Somali pirates more than doubled in 2008, with more than 60 incidents recorded through October 2008, as compared to 25 cases in all of 2007.⁴

Pirate attacks are not only increasing in number, they are also extending farther out to sea. Since late 2007, pirates using small arms and rocket-propelled grenades have attacked vessels up to 450 miles from the Somali coast, further highlighting the increasing risk to commercial shipping interests in the region. High profile hijackings—like those conducted against the U.S. container ship **MV Maersk Alabama**, the oil-laden Saudi supertanker, and a Ukrainian ship carrying tanks, small arms, and ammunition—have demonstrated just how vulnerable even the biggest ships are to piracy.

In 2008, an estimated \$30 million in ransoms were paid to pirates for vessels hijacked off the coast of Somalia and in the Gulf of Aden, emboldening their activity and perpetuating the threat. Most often, the pirates literally "get away" with their illegal conduct. Cases in which pirates have been apprehended and actually brought to justice for their crimes are the exception rather than the rule—the decision to try Abdul Wali-i-Musi notwithstanding. Most often, even in cases in which pirate attacks have been thwarted or the pirates apprehended, the pirates escape prosecution and eventually return to their criminal, but successful, business model: pirating vessels and demanding huge ransoms. Left unchecked, high profits, low costs, and little risk of legal or other consequences ensure continued growth in piratical activity in the Horn of Africa.

In response to this threat, the National Security Council has released the *National Strategy for Countering Piracy off the Horn of Africa: Partnership and Action Plan*. The Coast Guard was actively involved with interagency partners in developing this important national strategy document. The National Strategy is realistic and acknowledges that lasting solutions to the piracy problem require significant improvements in governance, rule of law, security and economic development in Somalia. However, in light of the current threat, there are steps that can be taken in the near term to deter, counter, and reduce the risk of attacks by pirates in the Horn of Africa. The National Strategy lays out operational objectives in three lines of action. The Coast Guard has a meaningful role to play across each line of action as I will briefly summarize.

The first line of action focuses on preventing pirate attacks by reducing the vulnerability of the maritime domain to piracy. It is supported by four preventative and precautionary measures that include: (1) establishing a senior level Contact Group of nations that have the political will, operational capability, and resources to combat piracy off the Horn of Africa; (2) strengthening and encouraging the use of the Maritime Security Patrol Area (MSPA) in the Gulf of Aden; (3) updating Ship's Security Assessment and Security Plans to harden commercial shipping against pirate attacks; and (4) establishing strategic communications plans to emphasize the destructive effects of piracy on trade, human and maritime security, and to encourage the rule of law.

Within this first line of action, the Coast Guard, in close cooperation with the IMO as well as our sister agencies, is leading efforts to enhance and update counter-piracy guidance to industry; requiring U.S. vessels and encouraging all vessels to address the piracy safety and security threat via

³ Piracy in Somalia – Threatening Global Trade, Feeding Local Wars – Chatham House, October 2008

⁴ Somalia: Piracy and the Policy Vacuum. Africa Focus Bulletin, November 22, 2008.

<http://www.africafocus.org/docs08/som0811.php>

the existing domestic and international law architecture; carrying out a range of industry engagement activities; and directly contributing to regional capacity building and cooperation efforts. Precautionary measures include such simple tactics as:

- transiting the threat area at maximum safe speed (vessels traveling at less than 16 knots with low freeboard are known to be at heightened risk of attack);
- for vessels that are unable to outrun pirate vessels, changing course repeatedly, consistent with safe navigation, and conducting night-time transits through threat areas to reduce risks;
- incorporating vessel designs and modifications that prevent or delay pirates from gaining control of a vessel in the event that pirates are able to successfully board, such as safe-areas where crews can muster and effective physical barriers to vessel control areas;
- using non-lethal defensive measures such as netting, wire, electric fencing, long-range acoustical devices, and fire-hoses for deterrence when safe and feasible; and
- employing properly certified security consultants on vessels transiting the region to provide guidance on security measures, onboard training in non-lethal response techniques for vessel personnel, specialized equipment such as night vision equipment to better detect potential threats before an attack is imminent, and other response and prevention measures.

These and other relatively low-tech solutions have already proven effective at “hardening” merchant shipping targets. Even if such tactics cannot entirely prevent pirate attacks, they may prolong the time it takes for pirate groups operating from small craft to gain control of a target vessel long enough for naval or law enforcement response assets in the area to successfully intervene. Industry plays an important role here and must take responsibility for the safety and security of vessels and their crews through appropriate and well-conceived modifications to vessel designs, security plans, and operations in high threat areas.

The second line of action looks to interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states. It is supported by six elements that include: (1) supporting and contributing to a regional counter-piracy coordination center that alerts shipping to pirate activity, gathers and analyzes information, and dispatches resources; (2) seizing and destroying vessels outfitted for piracy and related equipment; (3) providing persistent interdiction-capable presence to support counter-piracy operations; (4) supporting shiprider programs and other bilateral and regional counter-piracy agreements and arrangements; (5) disrupting and dismantling pirate bases ashore under the authority already granted by the United Nations Security Council and in cooperation with regional partners; and (6) disrupting pirate revenue through the development of national and international capabilities to gather, assess, and share financial investigation information on pirate financial operations, with the goal of tracing payments to pirate organizations and apprehending their leaders and enablers.

Counter-piracy operations are primarily a maritime law enforcement activity that the Coast Guard is trained and equipped to support. We are the competent authority for the U.S. government on more than 30 bilateral agreements with foreign partners. These agreements underpin a wide range of Coast Guard operations including counter-drug, migrant interdiction, fisheries enforcement, and Proliferation Security Initiative missions. The Coast Guard understands the domestic and international legal frameworks and the associated boarding and enforcement requirements necessary to ensure the successful negotiation and implementation of agreements to facilitate counter-piracy operations on the water and the delivery of legal consequences to the pirates ashore. The Coast

Guard's international training teams and deployable law enforcement detachments offer tailored maritime law enforcement training that can be easily integrated in regional capacity building initiatives, and which is tied directly to at-sea operations.

The U.S. Central Command (CENTCOM) has stood up Combined Task Force (CTF) 151, whose mission is to deter, disrupt, and suppress piracy in order to support United Nations Security Council resolutions, protect global maritime commerce, prevent future attacks, enhance maritime security, and secure freedom of navigation for the benefit of all nations.

The role of Coast Guard law enforcement detachments is to augment and train U.S. Navy vessel boarding search and seizure teams in various Maritime Interdiction Operations mission areas, including maritime law, boarding policies and procedures, evidence collection and preparation, and tactical procedures.

Piracy boiled down to its most basic elements is criminal activity by armed thugs deployed from small boats and fishing vessels. Should the President direct the Secretary of Defense to undertake counter-piracy maritime law enforcement operations, the Coast Guard is ready to assess requirements and offer relevant capability to our partners. As both a military service and a service with broad law enforcement authority, the Coast Guard is uniquely capable of bridging defense and law enforcement functions. We train and operate with the Navy every day, which enables seamless integration into maritime contingency operations. Should the Joint Staff forward a request for Coast Guard forces, we will work closely with Secretary Napolitano to determine the appropriate contribution of capability while remaining ever cognizant of our domestic responsibilities.

With some notable exceptions, including cases in which authorities in Kenya agreed to prosecute pirates,⁵ pirates operating off Somalia suffer few consequences, even when apprehended. Although some of our European partners are prosecuting some piracy cases domestically, all too frequently the navies or other forces that apprehended pirates have faced significant legal and logistical challenges in transporting pirates, evidence and witnesses to appear in their courts. In cases where their interests are not directly threatened, some of them lack the domestic legislation to even apprehend pirates caught in the act, leading to at-sea and on-shore releases of pirates. Many victim States have been unwilling to favorably consider prosecution, even when their domestic legislation permits it. At the same time, the vast majority of regional states, who should not bear the burden of prosecution for the international community, did not have the necessary arrangements in place to receive pirates, along with evidence and witnesses, for trial in their courts. Thus, pirates are often not held accountable for their crimes and quickly resume their piratical activities. The profits available from this criminal activity, coupled with the extremely low risk that apprehension will result in any meaningful consequences, further encourages pirates to keep plying their illegal trade.

⁵ Examples of cases in which pirates have been brought to justice include a 2006 case in which the U.S. Navy apprehended a group of 10 Somali pirates that had hijacked an Indian vessel, and a November 2008 case in which the Royal Navy captured 8 Somali pirates who had attacked a Danish ship. In both of these cases, authorities in Kenya agreed to prosecute the pirates. In the 2006 case, all ten of the pirates received seven year sentences. The prosecution against the 8 pirates who the Royal Navy apprehended in November 2008 was scheduled to resume in January 2009 [NOTE: no need to list them, but there are 4 other cases where Kenya has taken pirates for domestic prosecution. They've taken 52 by our count.].

To counter this problem, the third line of action in the Piracy Action Plan is intended to ensure that those who commit acts of piracy are held accountable for their actions by facilitating prosecution of the suspected pirates in a just forum. This is supported by four elements: (1) concluding agreements and arrangements to formalize custody and prosecution arrangements with regional and other partners; (2) supporting and encouraging the exercise of jurisdiction under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and implementation of appropriate domestic legislation; (3) supporting and encouraging the use of other applicable international instruments and customary international law; and (4) enhancing capabilities of regional states to accept suspected pirates for prosecution, extradition, and incarceration.

The IMO has been a leading force within the United Nations to combat the piracy threat in the Horn of Africa. By delegation from the State Department, the Coast Guard provides the Head of the U.S. Delegation for IMO meetings and activities. The IMO works throughout the region to foster cooperation between stakeholder countries, and to create the legal and operational framework for regional States to combat piracy. IMO has passed resolutions establishing a framework for international cooperation; updated counter-piracy guidance to industry previously discussed; and, perhaps most importantly, promoted judicial consequence delivery mechanisms so that pirates, once caught, face meaningful and just punishment under the rule of law.

A component of the proposed consequence delivery system advocates application of the SUA Convention. The SUA Convention was adopted in 1988, in part as a direct response to the terrorist hijacking of the cruise ship ACHILLE LAURO and murder of the American citizen Leon Klinghoffer off the coast of Egypt in 1985. The SUA Convention is designed to ensure that appropriate action is taken against persons committing unlawful acts against ships, including, among other acts, the seizure of ships by force; acts of violence against persons onboard ships; and the placing of devices on board a ship which are likely to destroy or damage it.

Under international law an act of piracy is defined as a criminal act of violence, detention, or depredation committed for private ends by the crew or the passengers of a private ship in or over international waters against another ship or persons and property on board. The SUA Convention applies more broadly to acts of violence against ships regardless of the motive of the actor, but covers acts of piracy. The SUA Convention also establishes a framework whereby masters of ships may deliver suspected offenders to a coastal State that is party to the SUA Convention. The coastal State is then obliged under the SUA Convention, with few exceptions, to accept custody and either extradite the suspected offender or submit the case for the purpose of prosecution. The Coast Guard was instrumental in building broad support for using the existing SUA Convention to combat Somali-based piracy, and for ensuring that the SUA Convention was recognized in the two most recent United Nations Security Council Resolutions addressing piracy. All of the States within a 1,000 nautical mile radius of the Gulf of Aden are signatories to the SUA Convention, with the notable exceptions of Somalia, Eritrea, and Ethiopia.

Securing arrangements with regional partners to facilitate the expeditious investigation, prosecution and, as appropriate, punishment of apprehended pirates is an important part of our consequence delivery plan. On January 16, 2009, the United States and the Government of Kenya completed a Memorandum of Understanding concerning the conditions of transfer of suspected pirates, armed robbers, and seized property in the western Indian Ocean, the Gulf of Aden, and the Red Sea. This new arrangement is extremely encouraging and builds significantly on Kenya's past efforts to bring

pirates to justice. However, the primary responsibility for prosecuting suspected pirates rests with victim states, not states in the region.

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

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