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ONGOING EFFORTS TO COMBAT PIRACY ON THE HIGH SEAS

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BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

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MAY 5, 2009

ONGOING EFFORTS TO COMBAT PIRACY ON THE HIGH SEAS

TUESDAY, MAY 5, 2009

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:38 a.m. in room SR–325, Russell Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Lieberman, Reed, E. Benjamin Nelson, Webb, Hagan, Inhofe, Sessions, Thune, Martinez, Wicker, Burr, and Collins.

Committee staff members present: Richard D. DeBobes, staff director; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Creighton Greene, professional staff member; Michael J. Kuiken, professional staff member; Gerard J. Leeling, counsel; and Russell L. Shaffer, counsel.

Minority staff members present: David M. Morriss, minority counsel; and Dana W. White, professional staff member.

Staff assistants present: Mary C. Holloway, Jessica L. Kingston, Christine G. Lang, and Brian F. Sebold.

Committee members' assistants present: Jay Maroney, assistant to Senator Kennedy; Christopher Caple, assistant to Senator Bill Nelson; Jon Davey, assistant to Senator Bayh; Jennifer Stout, assistant to Senator Webb; Julie Holzhueter and Roger Pena, assistants to Senator Hagan; Anthony J. Lazarski, assistant to Senator Inhofe; Lenwood Landrum and Sandra Luff, assistants to Senator Sessions; Jason Van Beek, assistant to Senator Thune; Brian W. Walsh and Erskine W. Wells III, assistants to Senator Martinez; Chris Joyner, assistant to Senator Burr; and Rob Epplin and Chip Kennett, assistants to Senator Collins.

OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN

Chairman LEVIN. Good morning, everybody. Today we have four witnesses before the committee to discuss the government's efforts to combat piracy on the high seas. We're delighted to have with us: Under Secretary of Defense for Policy Michèle Flournoy; Director of Strategic Plans and Policy on the Joint Staff Admiral Sandy Winnefeld; Senior Advisor to the Under Secretary of State for Political Affairs Ambassador Steve Mull; and Acting Deputy Administrator of the Maritime Administration (MARAD) James Caponiti.

The recent surge in piracy off the coast of Somalia and in the Gulf of Aden has moved the issue of piracy on the high seas out of the history books and off the movie screens and onto the front

pages of the world's newspapers. Piracy must be an urgent part of our National security dialogue. The April pirate attack on the U.S. flag ship Maersk *Alabama* a few weeks ago and the ensuing rescue operation of ship Captain Richard Phillips, orchestrated by our Nation's military, and particularly our Navy and Navy SEALs, underscores the value of the Armed Forces in confronting and stopping piracy.

However, the success of that rescue mission has tended to form the public debate toward a military solution to the piracy problem. While it is widely agreed that the naval forces of the world do have a critical role to play in deterring and combating pirates, the problem is more complex and requires a holistic approach combining military efforts with deterrence, collaboration with allies, and ongoing diplomatic outreach, just as is the case in dealing with Iraq or Afghanistan.

Piracy, although generally considered a scourge of the world's oceans, has its origins on land and has usually been defeated on land as a result of political and economic changes that have evolved over time. Today, policymakers are searching for solutions to combat piracy and, more broadly, to address the situation in Somalia, a failed state that lacks a functioning government capable of enforcing laws or policing and securing its territory.

It is imperative that the international community come together to confront and solve this growing problem. Ultimately, the solution resides ashore, not just through action on the open seas. The available responses from Washington and the international community include supporting the Somali Transitional Federal Government, building the capacity of Somali security forces, and creating a more robust African Union peacekeeping mission.

Discussions of how to proceed are inevitably complicated by the memory of the American people, who have not forgotten that the U.S. Armed Forces were sent to Somalia once before. While the long-term solution involves engaging broadly on Somalia's myriad issues ashore, we must consider near-term solutions to protect ships, cargoes, and, most importantly, seafarers from the proliferation of piracy in the region.

Currently the primary mechanism for military involvement in the issue is Combined Task Force-151 (CTF–151), which has brought together naval forces of our allies and is sharing the water space with nations as diverse as Pakistan, Russia, India, and China. The task force has focused the attention of many nations in pursuit of our joint interests of enhancing the safety of commercial maritime routes and international navigation in the Gulf of Aden. Late last week, the North Atlantic Treaty Organization (NATO) extended its contribution of as many as 10 ships to the counterpiracy mission.

We cannot expect CTF–151 to do all the work in the maritime environment. The global commercial industry, to include the shipping companies and their insurers, must respond as well. Industry needs to develop effective piracy countermeasures, including training and equipping of a ship's crew, rather than relying on ransom payments that enable pirates to build infrastructure and to bolster their efforts.

The venue to develop consensus for these efforts seems to be the contact group for piracy off the coast of Somalia, a U.S.-foreign group designed to internationalize the response. This group is scheduled to meet next week. Our committee hopes our witnesses will speak to the goal of these discussions.

Another aspect of the overall strategy involves the prosecution of suspected pirates. Earlier this year, the United States signed a bilateral agreement with the Government of Kenya which established a mechanism by which alleged pirates could be held accountable through criminal prosecution. While this agreement may show some promise over time, we have in recent weeks seen our partner nations release pirates back to the very fishing towns in Somalia from which they came. The committee is interested to hear from our witnesses how the United States is working with other nations to address the criminal prosecution of suspected pirates.

Today the committee hopes to learn from our witnesses the current role of the U.S. Armed Forces and the details of the whole-of-the-government approach that is necessary in order to adequately combat the threat. Also, we hope our witnesses will speak to the appropriate role of the military in countering piracy, what works and what does not in terms of military tactics, techniques, and procedures; how our commanders assess the effectiveness of the CTF–151 mission thus far; whether the CTF–151 mission is sustainable over time; whether the necessary international and domestic authorities are in place to effectively combat piracy; and what adjustments need to be made to current strategies.

We'll also be interested in learning what plans are under consideration to address the situation inside Somalia, what role the United States may be asked to play, and what requests we are making of our partners.

Senator Inhofe.

STATEMENT OF SENATOR JAMES M. INHOFE

Senator INHOFE. Thank you, Mr. Chairman.

It's pretty remarkable that, in this first decade in the 21st century, that we should be having a hearing on the issue of piracy, particularly involving pirate attacks on the coast of Africa. We can almost look back in time 200 years to the first decade of the 19th century and ask our predecessors for their advice. Today we hear from representatives of the Obama administration, while in their day, 200 years ago, pirate attacks off Africa were a problem for then the new Thomas Jefferson administration.

So both now and then, our resolve is being tested. Our determination as a Nation not to pay ransom—keep in mind, this was 200 years ago—to pirates and their sponsors ashore, the international terrorists of their day, helped establish the enduring character of America by demonstrating that we would not tolerate attacks on American property and citizens anywhere in the world, no matter how far from our shores. So that's still true today, hopefully.

The decision of the United States to fight the pirates was carefully considered, based on a keen appreciation as a seafaring nation that paying ransom to pirates or other terrorists simply emboldens

them and increases the risk to our national security. That was 200 years ago and the same is true today.

I recently returned from a trip to Djibouti, where I had the opportunity to discuss the pirate situation in detail with Admiral Fitzgerald, the commander of the U.S. Navy force in Africa, and Rear Admiral Kurta, commander of the Combined Joint Task Force-Horn of Africa. So I come to this hearing with some background in working in that area in the Horn of Africa, as well as other parts of Africa.

The threat of pirate attacks in the Gulf of Aden and off Somalia's coast has been steadily growing since last August. However, the recent attacks on the U.S.-flagged vessel the Maersk *Alabama* and the dramatic and extraordinarily professional rescue of Captain Richard Phillips by Navy SEALs last month has sharpened the seriousness of this issue for the United States. I look forward to hearing details of this, as many details as you are able to provide in an open meeting, as to the rescue of Captain Phillips.

I think the success of that operation is something that other countries have looked at and have admired us for. I understand that the Somali tribes have sworn revenge against the United States and other U.S. vessels. Let's just not forget what happened 200 years ago. We made a determination that you can't negotiate with these people, and if there's a way that they could inflict harm on us they would be doing it anyway.

So I would like the witnesses to discuss the details of our new coalition task force off Somalia and how it coordinates with other navies, including those of the European Union (EU), Russia, China, India, and Saudi Arabia, among others, and the challenges faced by these efforts at sea.

I've also been concerned about a lot of the pirate activity off the west coast of Africa, in the Sea of Guinea, with the recent finds out there. I notice no one right now is talking much about that, but it's a topic that needs to be a part of this debate and this discussion.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

Secretary Flournoy.

STATEMENT OF HON. MICHÈLE A. FLOURNOY, UNDER SECRETARY OF DEFENSE FOR POLICY

Ms. FLOURNOY. Mr. Chairman, Senator Inhofe, and distinguished members of the committee, we very much appreciate this opportunity to testify today about the growing problem of piracy on the high seas. We are currently seeing a dramatic upswing in reported pirate attacks, particularly off the coast of Somalia. In the first quarter of 2009, 102 incidents of piracy were reported to the International Maritime Bureau, almost double the number during the same period in 2008. Reducing incidents of piracy is important both to the United States and to the international community. Freedom of the seas is critical to our National security and international commerce. It's also a core principle of international law. Piracy endangers innocent mariners, disrupts commerce, and can cause severe economic damage to shipping companies and contribute to instability ashore.

From a Department of Defense (DOD) perspective, our strategy goals with regard to Somalia piracy include deterrence, disruption and interdiction, and prosecution. But achieving these goals will be challenging for several reasons. First, the geographic area affected is vast. The pirates operate in a total sea space of more than a million square nautical miles, making it difficult for naval or law enforcement assets to reach the scene of a pirate attack quickly enough to make a difference. In this vast expanse of ocean, tracking a few dozen low-tech pirate skiffs and intervening to stop attacks that can last only a few minutes is exceptionally difficult. When not actively engaged in piracy, pirate vessels often blend in easily with ordinary shipping, and when they return to land-based sanctuaries in Somalia pirates become even harder to locate.

Second, the root causes of Somali piracy lie in the poverty and instability that continue to plague that troubled country. In an environment where legitimate economic opportunities are scarce, piracy and other forms of criminal activity flourish. As you know, there is still no effective central government or law enforcement capacity in Somalia, and pirates consequently operate with relative impunity from coastal fishing villages. Pirates also operate in a cash economy, making their profits difficult to track and interdict.

A third challenge is that serious gaps remain in the international community's ability to create an effective legal deterrent by prosecuting pirates for their crimes. International law allows all States to exercise jurisdiction over pirates, but some States still lack appropriate domestic legislation or lack the prosecutorial or judicial capacity to prosecute pirates in their own courts.

Fourth and finally, many in the merchant shipping industry continue to assume unrealistically that military forces will always be present to intervene if pirates attack. As a result, many have so far been unwilling to invest adequately in basic security measures that would render their ships far less vulnerable.

Mr. Chairman, these varied and complex challenges mean that there will be no simple or single solution to the growing problem of piracy off the Somali coast. That said, a few statistics are important to help keep the problem in perspective. Consider piracy in the Gulf of Aden between Somalia and Yemen. Each year more than 33,000 vessels transit the Gulf of Aden and in 2008 there were 122 attempted pirate attacks, but only 42 of those were successful.

In other words, pirates attacked under one half of 1 percent of shipping in the Gulf of Aden and their attacks succeeded only about a third of the time. This pattern appears to be similar throughout the region.

That doesn't mean that we can ignore the problem, of course. Pirate attacks are increasing in both number and in ambition and, although Somali piracy currently appears to be motivated solely by money, not ideology, and we see no meaningful links between Somali pirates and violent extremists, we must ensure that piracy does not evolve into a future funding source for terrorism.

But the relatively low incidence of pirate attacks does have implications for how we allocate military resources. As the members of this committee in particular know, DOD has urgent priorities around the globe. Many of the resources most in demand for counter-pirate activities, such as intelligence, surveillance, and re-

connaissance (ISR), are the same assets that are also urgently required for regional counterterrorism activities as well as ongoing operations in Afghanistan and Iraq.

We must find more effective ways to address the growing problem of piracy, but we must also ensure that this does not come at the expense of other critical commitments. We believe this can be done. DOD is working closely with other agencies and departments in our government to develop a comprehensive regional counter- piracy strategy and we are effectively seeking engagement from other states, as you mentioned, particularly the creation of CTF–151.

Twenty eight States have already begun to assist and we are seeing concrete results. Since August 2008, international efforts have led to the destruction or confiscation of 36 pirate vessels and the confiscation of numerous weapons. The international community has also turned over 146 pirates to law enforcement officials in various countries for prosecution.

We and our allies are also working directly with merchant shipping lines to undertake vulnerability assessments and disseminate best practices. Our goal is to encourage all vessels to take appropriate security measures to protect themselves from pirates.

Here again, some statistics are instructive. When we look at patterns in pirate attacks in the region, we see that of unsuccessful attacks, a full 78 percent were thwarted by actions taken by the crews of the ships under attack. Military or law enforcement interventions played a role in thwarting pirates in only 22 percent of unsuccessful attacks. This highlights the fact that the single most effective short-term response to piracy will be working with merchant shipping lines to ensure that the vessels in the region take appropriate security measures.

These include both passive and active defense measures. Passive measures include maintaining good communications with maritime security authorities, varying routes, avoiding high-risk areas, removal of external ladders, posting lookouts, limiting lighting, rigging barriers, and so forth. Active defense measures can range from rigging fire hoses to repel pirates to maintaining professional civilian armed security teams on board.

While there is some concern in the shipping industry with regard to security teams, we and other agencies are working with industry representatives to determine whether this might be a viable option for highly vulnerable ships, such as low freeboard and slow vessels.

As part of this effort, it may be useful for Congress to consider developing incentives to encourage merchant shipping to invest in security measures. These could range from tax credits to reduced insurance rates for ships with enhanced security. Ultimately, it may be appropriate to mandate some of these actions.

We will continue to respond when U.S.-flag vessels and U.S. citizens are attacked by pirates. But when ships have effective onboard security measures in place, the vast majority of attempted pirate attacks can be thwarted without any need for military intervention. Most pirates are opportunistic criminals. Wherever possible, they will focus on the easy targets and avoid the difficult ones. Our main task is to help commercial carriers turn their ships into hard targets.

We will also continue longer-term efforts to prevent and punish piracy. We will work with allies and regional states to develop their capacity to patrol the seas and protect their own shipping, and we will encourage them to take any steps necessary to prosecute pirates in their own courts. And we will work, when possible, with Somali authorities to address the on-shore components of piracy, tracking pirate investors and safe havens.

Finally, we will work over the long term to address some of the root causes of piracy in the region, the ongoing poverty and instability in Somalia.

Many of these efforts dovetail with our existing development and counterterrorism goals in the region and, while there are no quick fixes, over the long term increasing local governance capacity and fostering sustainable economic development in Somalia are crucial both to reducing piracy and to countering the threat of violent extremism. We are confident that progress against piracy can be made through an enhanced public-private partnership with the shipping industry in the near term.

Thank you again for offering us this opportunity to testify and we look forward to your questions. Thank you.

[The joint prepared statement of Ms. Flournoy and Admiral Winnefeld follows:]

JOINT PREPARED STATEMENT BY MICHÉLE FLOURNOY AND ADMIRAL JAMES A. WINNEFELD

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

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

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

In the modern era, piracy has become a relatively unusual crime, dropping to only 100 to 200 reported incidents annually during the 1970s and 1980s. In the 1990s, however, piracy began to increase, and we are now seeing a dramatic and sudden upswing in reported pirate attacks worldwide, as well as geographic shifts in areas of high pirate activity. As recently as 2007, the Gulf of Guinea was the most active part of the world for piracy, but pirate activity is increasingly now found along the Somali coast. In the first quarter of 2009, 102 incidents of piracy were reported to the International Maritime Bureau, nearly double the number of incidents reported during the same period in 2008. And nearly all of that increase appears to stem from increased pirate activity off the coast of Somalia.

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

Recent incidents—including the dramatic rescue of the captain of the Maersk-*Alabama* by the U.S. Navy—have increased public and international attention to piracy, and resolve has grown for finding durable solutions to this problem. At the Department of Defense, we are working closely with other agencies and departments to develop comprehensive counterpiracy strategies. And the United States is

not alone in this effort: already, more than 28 other nations are conducting counter-piracy operations off Somalia, as are international organizations such as the North Atlantic Treaty Organization (NATO) and the European Union (EU).

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

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

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

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

Second, the geographic area affected is vast: Somali pirates operate in a total sea space of more than 1 million square nautical miles, making it difficult for naval or law enforcement ships and other assets to reach the scene of a pirate attack quickly enough to make a difference. In that vast expanse of ocean, tracking a few dozen low-tech pirate skiffs and intervening to stop attacks that can last only a few minutes is exceptionally difficult. When they are not actively engaged in piracy, pirate vessels easily blend in with ordinary shipping. When they return to land, pirates become still more difficult to locate.

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

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

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

These varied and complex challenges should make it clear that there will be no simple solution to the growing problem of piracy off the Somali coast. That said, a few statistics help keep the problem of Somali piracy in perspective. Each year, more than 33,000 vessels transit the Gulf of Aden, and in 2008, there were 122 attempted pirate attacks, of which only 42 were successful. In other words: pirates attack less than one half of 1 percent of shipping in the Gulf of Aden, and their attacks have succeeded only about a third of the time.

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

At the moment, Somali piracy appears to be motivated solely by money, not by ideology, and we do not see meaningful links between pirates and organized violent extremist groups, inside or outside Somalia. Nonetheless, we know that in other

contexts, narcotics production and other forms of criminal activity are sometimes "taxed" by extremist groups, as in Afghanistan. We need to ensure that piracy does not evolve into a funding source for violent extremist organizations.

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

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

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

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

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

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

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

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

As part of this effort, it may be useful to develop incentives that will help encourage merchant ships to invest in security measures. These could range from tax credits to reduced insurance rates for ships with enhanced security. Ultimately, it may be appropriate to mandate some of these actions, beginning with passive self-de-

fense. Regardless, we will continue to develop partnerships within the shipping industry to make sure that information on best practices is disseminated widely and that vessels have the information they need to adequately assess and mitigate risk.

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

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

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

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

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

Chairman LEVIN. Thank you very much, Secretary Flournoy.

Admiral Winnefeld.

STATEMENT OF VADM JAMES A. WINNEFELD, JR., USN, DIRECTOR FOR STRATEGIC PLANS AND POLICY, JOINT CHIEFS OF STAFF

Admiral WINNEFELD. Good morning, sir, and good morning, Senator Inhofe. Thank you for the opportunity to speak before the committee on the subject of piracy in the coastal waters of Somalia, and I will try not to be redundant with Under Secretary Flournoy's statement.

But, building on that statement, I'd like to give you a sense of structure regarding how we synchronize our efforts along military, civilian, and industry and legal lines. Simply stated, we think of this problem in three layers, in increasing order of complexity. First would be anti-piracy, which would include deterrence and defense. Second would be counter-piracy, which would be disruption, interdiction, and prosecution. Then finally would be influencing the conditions ashore in Somalia that support piracy, to which Under Secretary Flournoy alluded very clearly.

Our efforts in anti-piracy include providing the best possible information exchange with vessels and industry entities before those

vessels sail to the Gulf of Aden or to the Somali Basin, and also providing them with the best possible information while they're there. We also encourage, as Under Secretary Flournoy mentioned, ships to employ both passive and active defenses, which are essentially the most effective way of preventing this thing. We influence the information environment as best we can. We do what we can to provide a deterrent presence in a very large area with the ships that we have. As a last resort, we sometimes provide direct support to individual ships.

The majority of ships, notably those with high access points and reasonable rates of speed, are able to defend themselves quite well without any kind of assistance using the relatively simple passive measures that we've discussed. For ships that are more vulnerable, steering well clear of the area is probably the best defense, but there are also other measures that those ships can take that would reduce their vulnerability.

Our efforts in counter-piracy involve hunting pirates wherever we can, being prepared to conduct hostage rescue when our interests, capabilities, and allowable risk intersect, and planning for potential operations ashore should they become necessary.

As Secretary Gates and Admiral Mullen have both stated, the challenges associated with hunting pirates in over a million square miles of ocean area, about four times the size of Texas, is extremely challenging. Moreover, as Secretary Flournoy has mentioned, some nation has to be willing to accept the pirates that we might apprehend in the course of hunting them. Our international partners, the State Department, and other members of the inter-agency have played an essential role in engaging Kenya and other nations in facilitating the prosecution of pirates, which is absolutely essential to getting at the counter-piracy aspects of this. We do stand at risk of overwhelming Kenya's limited capacity in this regard and we do definitely seek other nations who are willing to help with the prosecutorial aspects of this.

I won't go into detail. At the moment I'm happy to answer questions regarding the challenges associated with forcibly regaining control of ships or with operations ashore, but these challenges are substantial and they include the potential for unintended consequences and the fact that anti-piracy, no matter how it is done, is very asset-intensive, including ISR assets that are very much in demand in our other ongoing operations, including two wars.

Regarding the third dimension, changing conditions ashore in Somalia, I think we would all agree that this is the fundamental end state that would eliminate piracy in the region and I won't repeat Under Secretary Flournoy's clear remarks in that regard.

So while our instincts and our tradition as a maritime nation lead us to want to quickly eliminate this threat, piracy off the Horn of Africa is not a problem we will cure overnight. Nor is there a single solution. However, by exposing piracy to the broadest range of solutions, including the efforts of our many partner nations, our goal is to make continued progress towards reducing the number of ships that are willing to become pirated ships and reducing the number of Somalis who are willing to become pirates.

Thank you very much to the members of the committee and for your ongoing support to our men and women in uniform, and I look forward to your questions and comments on piracy.

Chairman LEVIN. Thank you so much, Admiral.

Ambassador Mull.

STATEMENT OF HON. STEPHEN D. MULL, SENIOR ADVISOR TO THE UNDER SECRETARY OF STATE FOR POLITICAL AFFAIRS

Ambassador MULL. Thank you very much, Mr. Chairman and Senator Inhofe. I too share everything that Under Secretary Flournoy had to say. There's a broad range of consensus within the interagency of the administration on how we work together in approaching this problem.

In the interest of your time, I would ask that my testimony be submitted for the record and I'd be happy to summarize it very briefly.

As you and Senator Inhofe mentioned, the funny thing about piracy is it features a convergence of our first foreign interest as a country at the very beginning of our Nation's history, freedom of the seas, with the very real 21st century threat of asymmetric security threats. This is all through the prism of needing to keep energy and humanitarian supplies flowing simultaneously through one of the most destitute, yet strategically important, corners of the world.

Our strategic goals in fighting this problem include restoring freedom of the seas to that area and doing that through stronger international cooperation, which is going to be absolutely essential to success; and then, longer term, building on the improved international cooperation to create a longer lasting maritime security regime in the region. We have approached these strategic goals with a number of tactics, all of which have been formulated within a whole-of-government approach within the administration and also very closely with our international partners.

First, we've worked very aggressively within the United Nations (U.N.) Security Council to pass a number of Security Council resolutions giving us additional authority to undertake military actions against pirates in the region. Most recently, in December we passed U.N. Security Council Resolution 1851 with a unanimous vote, giving us those authorities to do so.

Second, the United States took the lead in forming an international contact group to combat piracy, composed of key states in the region, as well as key international contributors to this effort. This group has now grown to feature more than 30 nations that participate in this and 6 international organizations which also contribute. Working with our military partners, we've established a zone, a maritime security protective area, which can be more systematically patrolled by contributing militaries. We have persuaded our international partners to contribute and to devote more military assets to this undertaking. We have worked with the government of Kenya and are currently working with other governments in the region to take on more responsibility for prosecuting the pirates that we apprehend. And of course, we ourselves have shouldered our share of the burden by bringing to New York the surviving pirate from the attack on the *Alabama* to prosecute him.

As Under Secretary Flournoy and Admiral Winnefeld mentioned, we are also working very closely with industry and insurers to make sure that they are full partners in adopting the kind of self-defense measures that are going to be absolutely necessary for our efforts to succeed. More broadly, as the Senators have mentioned we continue our efforts to work for a resolution of the political crisis in Somalia, which of course is the root cause for all of this.

We've had some success in our efforts to adopt these measures. There have been 17 successful interdictions of pirates in the region so far in 2009. That's compared to only six interdictions in all of 2008. There's been a significant drop in the success rate of piracy attacks, as Under Secretary Flournoy mentioned.

But there are obvious challenges: the wide swath of sea that needs to be patrolled; and the differing standards and levels of prosecution that all of the participating States in these efforts apply to the question of arresting and prosecuting pirates.

Nevertheless, despite these successes, there has been an uptick in the gross number of piracy attacks. Secretary Clinton a few weeks ago asked that we do more in response to this upsurge, and this week we are convening a meeting of all the major military contributors to this effort in London. That will be followed by a full meeting of the contact group later this month at the U.N. in New York.

At these meetings we're pursuing a number of goals. First, we'd like to get more forces on the sea to help pick up patrolling duties. We want a more unified approach in terms of what to do with pirates once we apprehend them and to get more of a commitment of victim states to take their share of the responsibility for prosecuting the pirates and bringing them to justice, so that the burden of this is not just on countries like Kenya, which have already stepped up to the plate.

We are also working very closely with the Treasury Department to examine what we might do to stop the flow of pirate assets. We will address this, and we will have a proposal for our partners in the contact group, later this month.

We will also press our partners in the contact group to play a more aggressive role in stopping the payment of ransoms and otherwise facilitating the flow of money to pirates, because that in fact is what is enabling the pirates to get more arms and to take on even greater levels of attack.

At the same time we are engaging, we are intensifying our efforts to support international efforts to enable the African Union peacekeeping forces to step up to the plate and play a stronger role in stabilizing the situation in Somalia, even as we work with our international partners to increase the amount of aid to the struggling government there.

It's a difficult problem, but with the clear international authorities that we already have and the consensus that's already there in the international community to do something, I'm optimistic that we're going to continue to make progress. But it's going to be a difficult road that we're going to be working on very carefully in the weeks ahead.

I'll stop there. Thank you very much and I look forward to taking your questions.

[The prepared statement of Ambassador Mull follows:]

PREPARED STATEMENT BY AMBASSADOR STEPHEN D. MULL

Chairman Levin, Ranking Member McCain, and members of the committee: Thank you for inviting me today to provide an overview of our initiative to suppress piracy off the coast of Somalia.

Over the past year, concern has grown over the threat that piracy poses to international security, to the global economy, and as we have seen recently, to U.S. citizens and commercial interests. In addition to the Maersk *Alabama* incident, attacks on ships in this region have disrupted both U.S.—and U.S.-supported United Nations (U.N.) World Food Program transports delivering aid to some of the world's most vulnerable populations; placed innocent mariners from countries across the globe in immediate danger; posed environmental threats as pirated ships may be damaged or run aground; and jeopardized commercial shipping interests. The vast majority of Somali pirates are motivated by money, not ideology, and the continued payment of ransoms fuels this affront to human security and dignity.

Fighting piracy is an important element of our strategic objectives in Somalia, which focus on helping Somalia regain political and economic stability, eliminating the threat of terrorism, and responding to the humanitarian needs of the Somali people. American leadership in efforts to combat piracy off the coast of Somalia is entirely consistent with our traditional interest in ensuring freedom of navigation and safety of the seas, which have long been cornerstones of U.S. foreign policy and which is now an urgent priority for Secretary of State Clinton. Furthermore, beyond protecting our citizens and ensuring the security of maritime trade and access to the critical energy resources upon which our national and the global economies depend, collaboration with both traditional and nontraditional partners on counterpiracy efforts in this region offers strategic opportunities to strengthen existing alliances and coalitions and to create new ones. We hope to be able to leverage our collaborative counter-piracy efforts into increased security cooperation in the maritime domain with nontraditional partners such as China, India, and Russia, and bring added focus to regional capacity-building programs.

The United States has a multifaceted strategy to suppress piracy that many Departments and agencies are working hard to implement, and the Department of State is working with interagency partners to integrate our maritime and land-based efforts in Somalia into a comprehensive strategy. Our strategic goals are to protect shipping, particularly Americans and U.S.-linked ships; capitalize on international awareness and mobilize cooperation to address the problem; and create a more permanent maritime security arrangement in the region. Significant factors affect our pursuit of these goals, including the enormous difficulties inherent in patrolling, or even monitoring through technical means, such a huge expanse of open sea; and, of course, the broader problem of Somalia itself. Legal challenges also exist, including inadequate domestic legal authorities in some states as well as a lack of willingness on the part of some to prosecute suspected pirates.

In light of these complexities, we seek to use every means at our disposal to pursue our goals. We have worked effectively with the United Nations to obtain Security Council resolutions that maximize our ability to take appropriate action. We created and will continue to work through the Contact Group for Piracy off the coast of Somalia (Contact Group) to internationalize the problem and its solutions. We actively support the North Atlantic Treaty Organization and European Union counterpiracy missions, and the U.S. Navy created Combined Task Force 151 to focus U.S. naval forces on counterpiracy efforts. We secured a formal arrangement with Kenya to accept pirates for prosecution, and our Department of Justice has asserted America's willingness to prosecute when our people and interests have been attacked. We continue to work with and through our interagency partners to improve U.S. and international commercial shipping self-protection capability. And we are working with United Nations agencies like the International Maritime Organization and the U.N. Office on Drugs and Crime, as well as partners in the region, to support the capacity development of their coastal security forces.

Concerned by the recent upsurge in pirate activity, Secretary Clinton has directed us to do more. We are seeking emergency consultations with Contact Group partners and are finding notable receptivity to our outreach. Through this venue, we will intensify our efforts to persuade victim states to prosecute pirates. We are working both internally and with other countries to develop the ability to deny pirates the benefits of concessions, including tracking and freezing of their ill-gotten gains. We are working to expand the regional capacity to prosecute and incarcerate pirates, both by helping to fund multilateral programs to build judicial capacity and by direct unilateral assistance to countries who have expressed a willingness to

adapt their laws and processes to accommodate prosecution and detention. We will continue to press the importance of a no concessions policy when dealing with pirates. We are working in political-military channels to ensure that military counter-piracy operations are as robust and well-coordinated as possible, and we are intensifying our efforts to support Somali assistance processes. We are also exploring strategies to actively seek the release of captive ships and hostages, some of whom have been held for months.

We've had some success. Naval patrol interventions are increasingly active; international naval forces have intervened to stop dozens of attempted piratical attacks in the past nine months, and we're seeing a significant upswing in the number of countries willing to commit assets to the effort. On the other hand, we face political and legal obstacles to a shared understanding of the imperative for prosecution in and by victim states, and significant logistical issues in prosecution by countries who actually have the will to prosecute pirates. Regional states face challenges with regard to detention and prosecution. Tracking and freezing pirate ransoms is even harder than tracking terrorist finances, given that pirates are most often paid off in the form of air-dropped bags of cash. The shipping industry—as well as some of our partners—has vigorous objections to, and few incentives for, arming their ships and crews. We need to make progress in these areas.

Fortunately, we sense a growing international consensus to do more, and we'll keep working at it. Ultimately, we hope these cooperative efforts will result in a new maritime security regime that will feature enhanced regional capacity and cooperation. We are considering now what such a regime would include, but anticipate that it would entail voluntary multilateral cooperation and collaboration that would not require any new U.N. mandate. For instance, we envision a maritime security sector assistance framework building on programs already in place to provide, among other capacity building efforts, training and equipment to regional coast guards, supported by a consortium of donor and regional states; international coastal and naval exercises to improve interoperability; and pooling of surveillance assets and information sharing to develop a shared maritime security picture. The regional approach was highly successful in combating piracy in straits of Malacca, and although the situation off the coast of Somalia is quite different because of the incapacity of the Somali government, the need for a coordinated regional approach is apparent. In fact, it is urgent, and we would like to see such an approach applied to other maritime security challenges, including smuggling, trafficking in persons, and disaster response.

As Secretary Clinton emphasized in her recent public statement, we recognize that there will be no long-term solution to piracy in the region unless progress is made in addressing the larger political, security and governance challenges facing Somalia, its government and its people. We also recognize that sustainable change in Somalia requires a political solution that is authored and implemented by Somalis themselves and not by outsiders. In this regard, the United States continues to support the U.N.-led Djibouti peace process, which has facilitated important progress on the political and security fronts in recent months, and to work with a broad international group of donors. The United States also remains committed to supporting the Somali security sector and the African Union Mission in Somalia (AMISOM). Secretary Clinton dispatched a high-level envoy, Acting Assistant Secretary Phillip Carter, to the Donors' Conference on Somalia in Support to the Somali Security Institutions and AMISOM, where we will reaffirm our commitment to building security and governance in Somalia.

We are also working directly with the Transitional Federal Government of Somalia and regional authorities to develop both incentives to actively suppress pirate activities and disincentives to support for this malignant enterprise that threatens Somali and regional security and sustainable development. We are exploring the feasibility of tracking and freezing pirates' assets, and encouraging implementation of the U.N. sanctions already in place. None of this is easy, but it is all worth doing for the sake of the security and prosperity of Americans and the international community.

Mr. Chairman, Ranking Member McCain, and members of the committee: I want to thank you for this opportunity to provide an overview of our efforts. I am happy to answer any questions you may have.

Chairman LEVIN. Thank you very much, Ambassador. All the statements will be made part of the record.

Mr. Caponiti.

STATEMENT OF JAMES A. CAPONITI, ACTING DEPUTY ADMINISTRATOR/ASSISTANT ADMINISTRATOR, MARITIME ADMINISTRATION

Mr. CAPONITI. Good morning. Thank you, Mr. Chairman, Mr. Inhofe, and members of the committee. I'm pleased to have the opportunity to appear before you today to discuss the ongoing piracy problem in the waters off of Somalia, and I've submitted a more detailed statement for the record.

Throughout 2008 and continuing into 2009, the global piracy situation has grown substantially worse, particularly in an ever-expanding area off of the coast of Somalia, where more than 20,000 vessels transit the region each year. Although the impact of piracy is significant, the American public has only recently become more aware of the situation with the attacks on the two American vessels, the Maersk *Alabama* and the *Liberty Sun*, both of which were carrying food aid for Somalia.

Acts of piracy threaten freedom of navigation, and the flow of commerce off the Horn of Africa, and piracy disrupts the flow of critical humanitarian supplies. The vessels most vulnerable to piracy attacks are those traveling slowly, with limited speed capabilities, and with low freeboard, that is to say, there is not much height between the water and the deck level, what we call low and slow.

Currently, 18 commercial ships are being held for ransom by pirates in Somalia along with more than 300 crew members. Those are estimates, sir.

The Gulf of Aden, which links the Mediterranean Sea and the Suez Canal with the Indian Ocean, is one of the busiest choking points in the world. An average of more than 50 commercial vessels transit the Gulf daily and this includes on average about one U.S. commercial vessel transit. Also, due to a worldwide crewing shortage and the weak dollar, U.S. citizen mariners have been serving on foreign flag ships at an increasing rate, though we don't have accurate visibility on numbers.

Many U.S. flag vessels transiting the region carry DOD cargo bound for Operations Iraqi and Enduring Freedom, and U.S. flag vessels transiting the region also carry humanitarian cargoes destined for Somalia. This is a particular issue because the food aid cargoes themselves are in the low and slow variety in most instances, so they are very vulnerable.

It has been our Nation's longstanding policy to support freedom of the seas and the United States has been a leader in promoting international action to combat the current piracy crisis. Secretary Flournoy went through a lot of detail on the government's initiatives on this, including the standing up of the contact group. The contact group itself is established with four working groups, which are providing recommendations on a variety of issues. The United States has the lead for working group number 3, which focuses on shipping self-awareness and interaction with industry, and MARAD has been co-leading that effort of this working group in close collaboration with the U.S. Coast Guard.

MARAD is uniquely qualified to assist with working group 3 because of the agency's specialized knowledge that we get through the operation of our own mobility sealift vessels. We have estab-

lished relationships with U.S. and international shipping, the maritime unions, the marine insurance community, the global maritime industry associations, and we have oversight over government cargoes transiting the Somali region under our preference cargo programs.

MARAD also plays a key role in the training of merchant mariners through the development of International Maritime Organization maritime security courses and workforce development. Efforts are also being made to include anti-piracy and security training in the academic programs at the U.S. Merchant Marine Academy, which we operate, and the State maritime schools, which we assist.

In addition, MARAD provides operational advice to U.S. flag owners and operators, including counter-piracy measures and awareness, on a regular basis through MARAD advisories, a comprehensive and frequently updated web site, and MARAD's electronic MARVIEW system, which is available to registered users.

Since the fall of 2008, MARAD has been at the forefront of outreach and interaction with the industry and other Federal agencies by hosting more than a dozen meetings in both national and international forums to help shape the best management practices, to counter piracy, and to share industry concerns. In early 2008, MARAD continued to intensify its efforts in the fight against piracy and to further improve coordination between industry and the various navies participating in the Gulf of Aden, and to provide voluntary assessments of security on U.S. vessels through a cooperative program that we have with the Military Sealift Command, which is assisted by the Naval Criminal Investigation Service; and to further establish the best management practices to prevent piracy and to bring industry's perspectives and ideas to the interagency.

Also this year, MARAD led the U.S. delegation of working group number 3 at the plenary of the contact group on piracy off the coast of Somalia, and we presented the international industry development the best management practices to counter piracy. MARAD also supported the dissemination of counter-piracy guidance and remains engaged with international organizations and experts as the development and implementation of BMPs continues to evolve.

We've made enhancements to our electronic information system that I mentioned before, MARVIEW, and we've contributed to the maritime safety and security information system for the purpose of providing more efficient piracy-related data and vessel tracking to the National Maritime Intelligence Center.

Given limited military resources available to fully protect commercial shipping in the waters off Somalia, there is an increasing focus on the issue of shipping companies hiring private armed security personnel to protect their vessels while transiting the waters off Somalia. This may be a solution that all vulnerable ships need to look at. The high and fast ships probably don't need to worry as much about this.

But there are many complicated factors which must be addressed before the industry as a whole can adopt this recommendation about armed security teams. The issues to be considered are: the development of appropriate rules, regulations, and standards for armed security providers; the existence of port state restrictions on

arms aboard merchant vessels entering many ports in the world; potential escalation of violence due to the presence of arms on board commercial vessels; issues of safety for the crew and for the vessel; rules on the use of force; design constraints of vessels to carry additional personnel; union contract issues; insurance, liability, and legal constraints; as well as many other factors.

It is clear that combatting international piracy is no small effort, evidenced by its long history. Much work has already taken place, as you've heard from all the witnesses today, but much remains to be done before international piracy can be eliminated. Due to its unique and positive relationship with U.S. flag and international vessel owners, MARAD has maintained a vital role in the development of U.S. anti-piracy policy.

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

I want to thank the members of this committee and Chairman Levin for your leadership in holding this hearing today. I will be happy to answer any questions you might have. Thank you.

[The prepared statement of Mr. Caponiti follows:]

PREPARED STATEMENT BY JAMES CAPONITI

Good morning, Chairman Levin, Ranking Member McCain, and members of the committee. I am pleased to have the opportunity to appear before you today to discuss the serious threat stemming from the ongoing piracy problem in the waters off of Somalia. Throughout 2008 and continuing into 2009, the global piracy situation has grown substantially worse—particularly in an ever expanding area off the coasts of Somalia, where more than 20,000 vessels transit the region each year. Although the impact of piracy has been very significant, the American public has only recently been made more aware of the situation with the attacks on two American flag vessels, the Maersk *Alabama* and the *Liberty Sun*—both of which were carrying food aid for Somalia.

Acts of piracy threaten freedom of navigation and the flow of commerce. Off the Horn of Africa, piracy disrupts the flow of critical humanitarian supplies. Pirates frequently demand millions of dollars in ransom for the release of hostages, ships, and cargoes. Press reports indicate that in 2008, pirates received an estimated $30 million in ransom for the release of sea-jacked vessels. In 2008, 42 vessels were seized by pirates operating off the coast of Somalia. Globally, 889 mariners were held hostage by pirates (815 in Somalia) as part of ransom demands. The International Maritime Bureau (IMB) reported that in 2008, globally, 11 mariners were murdered by pirates and another 21 are missing and presumed dead. The IMB also reported that during the same period, off the Horn of Africa, 4 mariners were killed and 14 are missing and presumed dead.

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

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

Approximately 80 percent of the vessels transiting the Gulf of Aden carry cargo destined to and from Europe, East Africa, South Asia, and the Far East. However,

a significant portion of cargoes is also destined to and from the United States. In addition, U.S. citizens serve as crew or are passengers on vessels transiting the area.

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

As mentioned, seajackings off the Horn of Africa significantly increased in 2008 and 2009, with more than 150 attacks and 55 successful seajackings. Although only one-third of 1 percent of all the vessels transiting the Gulf of Aden are seajacked, the cost and disruption to the flow of commerce overall is significant. There is also a serious risk of an environmental disaster should a vessel be damaged or sunk during a hostile attack. Press reports indicate that merchant mariners have been killed or are presumed dead and that hundreds, including American mariners, have been traumatized by being attacked and held hostage, and even by the uncertainties generated by the growing instability of the region.

Ship owners and operators are also negatively impacted by rising daily operating costs due to increased insurance premiums and operational delays caused by longer transit times or diversions to avoid the area. In many cases, there are additional costs related to the higher wages which must be paid to crew transiting the higher risk area. Both the shipper and the consumer are ultimately impacted due to these higher operating costs and the delays in the supply chain. This is particularly true where vessels are diverted around the Cape of Good Hope in an effort to avoid the Gulf of Aden altogether, which also increases fuel consumption and the carbon footprint of marine transportation. Higher shipping costs also raise the costs of commodities for local populations.

The United States has been a leader in promoting collaborative international action to combat the current piracy crisis. It has been our Nation's long-standing policy to support freedom of the seas. In July 2008, the United States took a leadership role in the United Nations fight against piracy. This resulted in United Nations (U.N.) Security Council Resolution 1816 which authorized countries cooperating with the Transitional Federal Government (TFG) of Somalia, for which advance notification has been provided to the Secretary-General, to enter Somali territorial waters to repress piracy. This was followed by additional Security Council Resolutions 1838 and 1846 in the fall of 2008. In December 2008, the United States drafted U.N. Security Council Resolution 1851 which authorizes countries cooperating with the TFG of Somalia to enter Somali territory to repress piracy. This resolution was adopted by the Security Council.

U.N. Security Council Resolution 1851 also encouraged the establishment of an international cooperation mechanism—known now as the Contact Group on Piracy off the Coast of Somalia (CGPCS). The Contact Group for Piracy off the Coast of Somalia was created in New York City on January 14, 2009, and currently numbers 28 nations (Australia, Belgium, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, Republic of Korea, The Netherlands, Norway, Oman, Portugal, Russia, Saudi Arabia, Somalia TFG, Sweden, Spain, Turkey, United Arab Emirates, United Kingdom, United States, Yemen), and 6 international organizations (African Union, Arab League, European Union, North Atlantic Treaty Organization, United Nations Secretariat and International Maritime Organization) with 7 additional countries (Canada, Cyprus, Liberia, Nigeria, Malaysia, Panama, Singapore) pending requests to participate. The Department of State represents the United States on the CGPCS. The CGPCS acts as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast. The CGPCS met in January at the United Nations in New York City and in Egypt in mid-March. The CGPCS will meet again in late May.

The CGPCS established four working groups to provide recommendations to the CGPCS. Working Group #1 is addressing activities related to military and operational coordination and is chaired by the United Kingdom. Working Group #2 is addressing judicial aspects of piracy and is chaired by Denmark. The United States has the lead for Working Group #3, which focuses on shipping self awareness and interaction with industry. The Department of Transportation's Maritime Administration (MARAD) and the Coast Guard have been co-leading this Working Group. Working Group #4 is tasked with offering recommendations to improve diplomatic and public information efforts and is chaired by Egypt.

The U.N. Security Council resolutions called for greater cooperation between governments and industry to reduce the incidence of piracy. In January 2009, former-

Secretary of State Rice stated that, "Once a hostage situation develops, the stakes in military operations increase. Consequently, an important part of counter-piracy efforts must be measured in enhancing self-defense capabilities of commercial vessels, increasing the odds of success against pirates until warships arrive." This sentiment still holds true today, and we saw evidence of this in the seajacking of the Maersk *Alabama.*

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

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

MARAD provides operational advice to U.S.-flag owners and operators, including counterpiracy measures and awareness, on a regular basis through MARAD Advisories, through a comprehensive and frequently updated Web site, and through MARAD's electronic "MARVIEW system which is available to registered users. We have also contributed to the Maritime Safety and Security Information System (MSSIS) for the purposes of providing more efficient piracy related data.

MARAD also plays a key role in the training of merchant mariners through the development of International Maritime Organization (IMO) maritime security courses and workforce development. Working with the U.S. Coast Guard and IMO, Vessel Security Officer, Company Security Officer, and Facility Security Officer courses were developed by the U.S. Merchant Marine Academy. MARAD continues to certify maritime security training providers who meet the criteria established by the U.S. Coast Guard. To date, more than 50 training providers have been certified across the country. Efforts are also being made to include anti-piracy and security training in the academic programs at USMMA and the state maritime academies.

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

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

MARAD's continuing outreach to the maritime industry on the piracy issue has taken many forms. In addition to leading informal meetings and participating in international forums, MARAD has hosted several collaborative meetings with both the American and international maritime industry community and appropriate Federal agencies. For example, in October and November 2008, MARAD and the Department of State sponsored meetings with representatives from the maritime industry to specifically discuss piracy in the Gulf of Aden. Participants included company security officers from major U.S. flag carriers, including American President Lines (APL), Horizon Lines, Maersk, Intermarine, Interamerican Ocean Shipping, American Roll On/Roll Off, Crowley, American Overseas Marine, and Ocean

Shipholdings. Flag states with U.S.-owned vessels or with vessels serving strategic U.S. interests also participated, including representatives from Denmark, Marshall Islands, Liberia and Panama. The U.S. Navy's Maritime Liaison Office Bahrain and the United Kingdom's Maritime Transport Office were also included. Topics specifically addressed at these meetings were maneuvering and speed, illumination, communication, duress terminology, armed force protection, and self-defense devices which may be used to deter piracy.

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

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

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

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

In early 2009, MARAD intensified its efforts in the fight against piracy to further improve coordination between industry and the various navies participating in the Gulf of Aden, to provide voluntary assessments of security on U.S. vessels, and to further establish best management practices to prevent piracy and to bring industry's perspectives and ideas to the interagency process. Additional industry meetings, U.N. meetings, meetings hosted by the Baltic International Maritime Council and a counterpiracy meeting held in Dubai and hosted by the Maritime Liaison Office in Bahrain, have all pursued these objectives. Since maritime labor is uniquely vulnerable to pirate attacks, with mariners killed or held hostage as part of ransom demands, MARAD has included maritime labor in discussions and meetings, when feasible. The most recent MARAD industry and interagency meeting was held on April 23rd. MARAD led the U.S. delegation of Working Group #3 at the meeting of the Contact Group on Piracy off the Coast of Somalia in March of 2009, and presented the international industry developed (and MARAD facilitated) "Best Management Practices" to counter piracy. MARAD also supported the dissemination of counterpiracy guidance and better coordination between military and civilian operators in the region. The agency likewise provides U.S. flag projected schedules in the waters off Somalia to the National Maritime Intelligence Center and vessel tracking information on U.S. flag carriers to appropriate military authorities.

Given limited military resources available to fully protect commercial shipping in the waters off Somalia, there is an increasing focus on the issue of shipping companies hiring private armed security personnel to protect their vessels while transiting the waters off Somalia. However, there are many complicated factors which must be addressed before the industry, as a whole, can adopt this recommendation. These include the need to develop appropriate standards for armed security providers,

compliance with port state restrictions on arms aboard merchant vessels entering many ports in the world, and consideration of potential escalation of violence due to the presence of arms onboard commercial vessels, issues of safety for the crew and vessel, rules on the use of force, design constraints of vessels to carry additional personnel, union contract issues, insurance and liability issues and many other related factors.

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

Combating international piracy is no small effort. Much work has already taken place, but much remains to be done, before international piracy can be eliminated. Due to its unique and positive relationship with U.S.-flag and international vessel owners, MARAD has maintained a vital role in the development of U.S. anti-piracy policy. Additionally, through its training role, MARAD provides a valuable service to the commercial fleet. The Department of Transportation and the MARAD stand ready to assist in any way possible to address piracy and any other issue that threatens the national and economic security of the United States and our allies.

I want to thank you for your leadership in holding this hearing today. I will be happy to answer any questions you might have.

Chairman LEVIN. Thank you, Mr. Caponiti.

Let's try a 7-minute first round. There's still a vote scheduled for 10:50 and we'll try to work through that.

Secretary Flournoy, there's been reference to armed security personnel being on board. I guess that's still under consideration as to whether or not we make recommendations of that kind to the commercial shippers, particularly those who have vulnerable ships. Mr. Caponiti just laid out some of the issues that need to be resolved before a recommendation is made to the shipping industry.

It seems like such a simple approach, just have some armed security personnel aboard. They have them at shopping centers. Why not on ships? I know insurance rates probably go down on shopping centers if you have armed security personnel to protect a shopping center. But, we expect that folks will provide their own security.

Why should we not expect that ships that are vulnerable going into that area will provide their own security personnel? Why should that not now be an expectation, Secretary Flournoy?

Ms. FLOURNOY. I do believe that we should expect private industry to take the utmost care to ensure that all of their ships going through the area are as secure as possible. I think there are many measures short of private armed security that can be taken, that have proved very effective in many cases.

That said, if you have a particularly vulnerable ship, where you judge that other passive and active measures will not be enough to protect it, then I think this option of armed security teams is being put on the table. There is at least one U.S. company that has used those teams with a good record of success in actually turning away attacks. I think there's concern in the industry over some port restrictions. Some ports do not allow ships with armed security to go in, and I'm sure our colleague from the Department of Transportation may be able to elaborate on that.

The one thing I would say from a DOD perspective is that, given all of the full range of demands on DOD personnel in this area and for other missions, I think DOD would be reluctant to get into a standard practice of providing military security for private shipping. I think we are very concerned about both the personnel and

operational tempo implications and the costs of doing so, except in extraordinary cases.

Chairman LEVIN. So I assume then that DOD is trying to press the commercial shipping industry to take actions to secure their own ships with private security measures; is that fair?

Ms. FLOURNOY. Yes, we are working with our inter- agency partners to press both our own shipping industry and others to take as many active and passive measures as possible, and we believe that in most cases those will be adequate to deter or thwart successful attacks.

Chairman LEVIN. That would include, if it were necessary, to have private security?

Ms. FLOURNOY. At least to consider that as an option. I think we're deferring to industry to determine in what cases that makes sense and when it doesn't.

Chairman LEVIN. Well, when we say defer to industry, that's fine, but we have our own naval ships that get involved in these efforts. We have to, I think at least, make a recommendation to industry.

Ms. FLOURNOY. I think we are recommending that they take maximal security measures, particularly for the most vulnerable ships. I think exactly what that looks like will depend on the particulars of a given ship and its transit patterns and so forth. Possibly including armed security teams from the private sector.

Chairman LEVIN. Is there going to be a formal recommendation on that issue that's coming from the task force or from this contact group, on that specific issue, whether or not we recommend private security guards for vulnerable ships in that area? Can we expect that there will be a recommendation on that specific point, Mr. Caponiti?

Mr. CAPONITI. Sir, this is one of the issues that is being discussed. It's the most controversial issue that we have right now.

Chairman LEVIN. When will we know what the outcome of that discussion is? Can we expect that within a month there will be a resolution, yea or nay?

Mr. CAPONITI. I would doubt if we'll have it in a month. There's more opposition among the EU community than there is on the U.S. side. The issue of armed security is a very controversial one and it splits a couple of different ways. The U.S. industry is itself split on this.

Chairman LEVIN. I want to move away from the industry just for a minute. I want to talk about the government.

Mr. CAPONITI. Yes, sir.

Chairman LEVIN. Are we split?

Mr. CAPONITI. I don't believe so. I think we're looking at the range of issues. The Coast Guard in their maritime security directives is looking at this currently.

Chairman LEVIN. Can we expect from our government a recommendation? I know it's complicated, but we all deal with complicated issues.

Mr. CAPONITI. I think there will be a recommendation from our Government about the standards that perhaps should exist if a carrier chooses to use it.

Chairman LEVIN. "If a carrier chooses to use it," is not a recommendation.

Mr. CAPONITI. I think we would recommend that low and slow ships in some waters use it.

Chairman LEVIN. Use private security?

Mr. CAPONITI. We may get to that point where we recommend that certain ships of a certain size and speed use it in those waters. I think we will get to a point where we recommend it.

Chairman LEVIN. When can we expect that there will be a recommendation one way or the other, whatever the recommendation is, without getting into what it should be?

Mr. CAPONITI. Sir, I would expect that we would probably be able to have that in a relatively short time. I don't want to speak for the Coast Guard. I know they are actively looking at this right now.

Chairman LEVIN. Do we expect that within a month we could get a recommendation from our Government?

Mr. CAPONITI. I think it might be possible within a month, sir.

Chairman LEVIN. Secretary Flournoy, are you going to be involved in that recommendation? Is DOD going to be involved in that recommendation?

Ms. FLOURNOY. We will certainly be represented in the interagency process that decides which way to go.

Chairman LEVIN. I'm not an expert on the subject and I'm not trying to tell you what the recommendation should be, even though it seems pretty obvious to me that if you're going to have ships that are going into dangerous waters; we only have so many naval ships. We can't protect every ship, nor should it be expected that we will do that. So I would hope that we would have a recommendation that is clear. Whether it's mandatory or whether it's just a recommendation is a different issue. But, we should at least provide a recommendation to the private shipping world that's going into that area as to whether they ought to have private security and, if so, under what conditions, what are the most vulnerable ships, what are the times of the year, whatever the criteria are, because I think our Government can't just simply leave it up to the private shippers without a recommendation when our naval ships get involved, as they have. That's a public resource, and it's limited, as you point out, Secretary Flournoy. We have limits on how much we can do in that area because we have other needs for our Navy.

Thank you very much.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

In your written statement, Madam Secretary, you said, "Each year more than 33,000 vessels transit the Gulf of Aden and in 2008 there were 122 attempted pirate attacks, of which only 42 were successful." In other words, pirates attacked less than one-half of 1 percent.

Now, that makes it sound like that percentage is small enough we shouldn't be as concerned as we are today. I looked into the written statement of Mr. Caponiti and it says here that the International Maritime Bureau (IMB) reported in 2008 globally 11 mariners were murdered by pirates and another 21 are missing and

presumed dead. The IMB also reported that during this same period off the Horn of Africa four mariners were killed, and so forth.

I think the first thing we need to do is see if there's unanimity among all of us, the four of you and those of us here, that this is serious enough that the statistics will not minimize the concern that we should have. Do you agree with that?

Ms. FLOURNOY. Yes. I also went on to say that I do think this is an important problem that we need to pay attention to, but I was trying to put the frequency of attacks and the fact that most are unsuccessful into perspective. It's certainly a concern, and a problem that we need to address.

Senator INHOFE. Admiral, let me first of all say how much I enjoyed spending time with you on the USS *Stennis*, the aircraft carrier. I always remember because of the coincidence in the young lady who was a seaman. She was wrapped up in a refueling hose and pulled overboard and almost every bone in her body was broken. I saw her at Landstuhl, at the hospital, and she was saying all she wanted to do was get back to her ship.

Coincidentally, it was the *Stennis*, and her name was Stennis. So I want one of your staff people to tell me whatever happened to her and did she get back there?

[The information referred to follows:]

Latoya Stennis was stationed on *John C Stennis* a few years after Admiral Winnefeld was the XO. As we understand it, Senator Inhofe met her in Landstuhl in late 2001 or early 2002.

Ms. Stennis was transferred to the Temporary Disabled Retired List and discharged on 4 Sep 03. Regrettably from what we could determine, she was never able to return to duty aboard the *Stennis*.

Senator INHOFE. First of all, I really appreciate what the chairman is bringing out. This analogy with the shopping centers is something. My feeling is when I first saw this that we, the United States of America, should just have a zero tolerance policy for this type of behavior.

Now, I look at the bureaucracy that we're dealing with and I've never seen such a mess in my life. You have the U.N., African Union, AU, and the EU. It seems like everyone has to be in agreement on all these things. If we're going to sit around waiting for the U.N. to come to total agreement, although I think they've already done this, then it's going to be a long time before we resolve the problem.

Now, I agree with the chairman that we should get something really specific as to what we could do both in the public and private sectors. The one thing that I had thought, mistakenly I guess, that was the inhibiting factor was that most ports will not allow ships to come in if they are armed. Is this a problem or have we overcome this problem?

Ms. FLOURNOY. My impression is this is still very much a problem that limits us. But perhaps my colleague can comment.

Admiral WINNEFELD. It is very much a problem. For example, the embarked security that was on the *Bainbridge* carrying Captain Phillips in had to get off before they could go into Mombasa.

Senator INHOFE. Now, is this a policy by the individual ports? This is not some big authority that's dictating these standards.

Admiral WINNEFELD. Yes.

Senator INHOFE. I think one of the first things that should be done is to visit these ports and have the private sector that is using these ports make sure that particular problem is resolved if they want to continue with ships out there. Is there a problem with going to these ports to try to get that policy changed? How would you do it?

Admiral WINNEFELD. Well, sir, these are sovereign states and this is their right as a sovereign state.

Senator INHOFE. So it would be the private carriers probably that would have to do this?

Admiral WINNEFELD. They probably could intervene. I don't know if there's a role for the State Department.

Ambassador MULL. From the State Department's perspective, were there a U.S. Government policy to promote the use of armed security guards you can bet that the State Department and our embassies in each of these countries would be engaging with the governments to make it possible for us to implement that policy.

Senator INHOFE. I think we should do that, if that is an inhibiting factor out there.

Admiral, in your statement, you mentioned these things: information exchange; assistance to ships in this area; stating that we're talking about more than square miles, and of course, I know what a capacity problem that can be; counter-piracy; the asset-intensive actions that would take place.

I agree that we need to do something in terms of having them for the private sector to arm themselves, and then having a policy where we are able to use the Navy. But now it becomes a capacity problem. Particularly, we now find out we're going to be reducing our number of ships to 300, and I think perhaps this might argue for a change in that policy.

But in terms of just assets that are available to you, if we were to say to you, we want you to intervene and take over and provide some of the services that the chairman was talking about, what is your capacity? Could you do it? How much could you do?

Admiral WINNEFELD. You're talking about the embarked security teams?

Senator INHOFE. Yes, to provide security.

Admiral WINNEFELD. That is a significant capacity issue. When you look in the theater on any given day, there are somewhere around three to six U.S. flag vessels in the area where you could be vulnerable to pirate attack. If we were to put embarked security teams on all of those ships, to include the teams themselves, moving them to some port of embarkation, which is normally not near that area, and then riding the ship and disembarking them in another area, and then you multiply that out to determine how many teams we would need, and we have not done that math, but it's a significant number of teams. That would be a large dent, and cost as well.

Senator INHOFE. I understand the capacity problem and the cost problem. But to me it appears that just by having that policy would have a deterring effect on the incidents that are out there.

Admiral WINNEFELD. No doubt having military embarked security teams would deter incidents. But we believe that it's a capacity issue and we believe that this is something that private industry

needs to do for themselves. It would be conferring a significant benefit on a private industrial entity if we were to provide them basically the shopping mall security guards that they potentially would be providing themselves if that situation is reached.

Senator INHOFE. My time has expired, but I hope we have time for the second round. I want to get into the CTF–151 makeup and also the AU. Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Inhofe.

Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman.

Incidentally, in terms of the numbers that Senator Inhofe was talking about, one of you mentioned the number that I've seen in the press and it becomes part of the background, but it really is a stunning and shocking number, that the pirates still hold at least 18 ships and 300 people. I take it, Madam Secretary, that none of those are Americans to the best of our knowledge?

Ms. FLOURNOY. That's correct, Senator.

Senator LIEBERMAN. Are they widely dispersed nationals?

Ms. FLOURNOY. They are. There are multiple nationalities involved.

Admiral WINNEFELD. I can tell you about half of them are Filipino.

Senator LIEBERMAN. Because they're working on the ships.

Admiral WINNEFELD. Because there are so many Filipinos in the international work force.

Senator LIEBERMAN. Okay. Admiral, let me ask this question, and let me begin it from this point. We know on this committee that in the conduct of the wars we're involved in in Iraq and Afghanistan there is now a competition or stress on certain categories of Service people, particularly the so-called enablers: ISR, engineers, and certain aviators.

To what extent is our increased presence in the Gulf of Aden to deter piracy intensifying the stress on those positions or on others that might otherwise be assigned to Iraq and Afghanistan, and some other theater of conflict? I suppose I should have asked you first, Madam Secretary, and then we can go to the Admiral. Either way, whichever you'd like.

Admiral WINNEFELD. I would say, sir, that those ships have been drawn essentially from other missions that they would ordinarily be conducting in theater, for example in the Arabian Gulf or elsewhere.

Senator LIEBERMAN. Right.

Admiral WINNEFELD. In terms of a direct impact on the campaign in Iraq or the campaign in Afghanistan, there's not a huge detriment from those ships being there as opposed to our capacity to conduct operations in those two theaters. When you start getting into the additional ISR that you might need to more effectively hunt pirates, when you start getting into the additional Special Forces that might be required to conduct other piracy-related missions in the area of responsibility, then there would be an impact, and it wouldn't necessarily stress the force more, but you'd have to make the balance between stressing the force or detracting from an ongoing counterterrorism mission.

So it's a balance. As far as the ships go, they're doing fewer of the normal missions they would do.

Senator LIEBERMAN. Right. But you're saying in terms of personnel and equipment maybe there might be that kind of stress, just exactly the way you stated it.

Admiral WINNEFELD. Potentially, yes, sir.

Senator LIEBERMAN. Madam Secretary, do you want to add anything to that?

Ms. FLOURNOY. No, I would agree with that assessment.

Senator LIEBERMAN. The reason I ask, of course, is to make the point that insofar as the U.S. military has taken on an extra responsibility here, which the private shipping industry appears not to be taking on—not to say that either could take care of all of this—it does have costs. We have to find a way to increase the responsibility of the private shipping business to self-protect here.

I worry that they're making a calculation, I'm not suggesting evil at all, but from the statistics Secretary Flournoy gave, one-half of 1 percent of the ships traveling through these areas are intercepted by pirates. So if you're making a business judgment, the odds of having this problem are quite low, even though the financial consequences of a particular seizure may be high. But you start to balance that against the cost of putting security personnel on all your ships and maybe it's worth taking the risk.

But from a larger, if I can say, international citizenship point of view, a safety point of view, it's not the right decision. It does have effects on our national security, based on the fact that we have to put more forces in to fight pirates and try to deter them.

So I just want to make the point, and backing up my colleagues, I think we have to find a way, perhaps through some of the inducements you mentioned, like tax credits for money spent on self-protection on the ships by the shipping industry, to make sure this happens.

Incidentally, I presume the requirement that ships coming into various ports not have people carrying guns on them was done either to stop terrorism or lawlessness. As Chairman Levin and I discussed, ports want ships to come in, and surely there's a way to say that if the guns on board are being carried by security personnel then that shouldn't create a problem.

I want to go to a second point here, which is: To what extent does the instability of the Government of Somalia create this problem? Maybe I want to ask a general question first, Secretary Flournoy, which is: Who are these pirates and why is this problem escalating so now, or for the last year or 2? In other words, I presume they're organized criminal gangs without political motive.

Ms. FLOURNOY. Our assessment is their primary motivation is economic. The resurgence of these groups is really because of the very dire situation in Somalia. These are young men with no prospects of any real legitimate employment. When you look at the money they earn from participating in an attack, it may take care of their family for a year or more.

It's a high risk, but high payoff, business proposition for most of them. So I think addressing the lawlessness, the economic situation, and just the sheer desperation and destitution of many in Somali society has got to be part of this problem. Obviously, that's

something that's going to take a very long time and be a very complex challenge. But that is something we have to work on over time.

Senator LIEBERMAN. So you would say that the increase in piracy in the last couple of years is the result to a great degree of the instability in Somalia?

Ms. FLOURNOY. That and the fact that for the most part private industry has generally chosen to pay ransoms, and that has created a market.

Senator LIEBERMAN. That's the motivator.

Ms. FLOURNOY. Yes.

Senator LIEBERMAN. My time is up, but I'll be interested to hear as this goes on what the international community intends to do and what our government intends to do to try to make the government of Somalia more stable.

Chairman LEVIN. Thank you, Senator Lieberman.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

I've got to say this has been a most disturbing panel. It's very depressing to me and I think your testimony is very depressing. Secretary Flournoy, you're DOD policy, and I can tell you what the policy of the United States has been. During certain periods of time we've not been able to adhere to it, but the policy of the United States is millions for defense, not one cent for tribute.

Flag ships of the United States of America have a right to sail in the high seas, and we have a governmental duty, do we not, Admiral, to protect American flag ships on the high seas? Isn't that a Navy responsibility?

Admiral WINNEFELD. We have a responsibility to protect them where we can, with the assets that we have available, sir.

Senator SESSIONS. We have the responsibility to ensure that our ships have a right to traverse the high seas according to the laws and the historical rules of the high seas; isn't that right?

Ms. FLOURNOY. Sir, I would say that it's a shared responsibility. We certainly have a responsibility that we step up to, as was evidenced just a couple weeks ago; when they are in extremis, when they are attacked, we will protect them. We have ships out there every day seeking to deter the threat.

But they also have a responsibility to take the essential measures they can, the most effective measures, to protect themselves.

Senator SESSIONS. Well, I'm aware of that. We're not at every spot in the globe every minute. We can't guarantee immediate response to a danger. But we should not try to give away or excuse away the responsibility we have to protect ships on the high seas.

I remember at a commissioning ceremony not long after the *Cole* was attacked not far away from there, this area, and one of the sailors screamed out, and it still sends chills in me, "Remember the *Cole*." This is a responsibility we have. I want to make that point.

I am probably the only member of the Senate, or the House for that matter, that's ever prosecuted a piracy case. Admiral, Ambassador, we have piracy laws. If somebody takes over one of our ships on the high seas, they are subject under existing law to be prosecuted, and the venue for that prosecution I believe is the first port

to which they are brought within the United States. There's no problem about law.

Why we need the U.N. to pass some resolution is beyond me. I'm glad that they are concerned about it, but it's not necessary. We don't need treaties to defend our ships.

One of the problems with the private security guards, the shipowners I understand suggest—and I think they should have them—is that violence could occur, they could be sued and there could be liability. Has anyone thought about providing for a defense or an immunity for shipowners who are doing their best to defend the ships, who are subject to hijacking out on the high seas? Has that been discussed? Are any of you involved in that?

Admiral WINNEFELD. Sir, I would say that all of the issues that have been raised regarding embarked security teams paid for by merchant mariners, which we would not disagree with doing, are all being studied. I know that they really are being looked at in terms of what are the barriers to doing that.

Senator SESSIONS. Well, have you come forward with any suggestions to fix some of these barriers? Maybe Congress would be willing to accept your recommendations.

But all we're hearing is negotiations and talk, and no real action. There are 300 sailors being held, 20 or more ships, and I don't think we have reached any clarity of action. What are we going to do is the question.

Secretary Flournoy, you quote the piracy of Roman times. Appenine's history, the ancient history of Rome, talks about that. What he talked about was how ships were being seized in the Mediterranean and they were raiding the Italian coast, and had captured proconsuls of Rome. I think I remember this quote directly: ″When the Romans could stand the disgrace no longer,″ they got together, they formed a task force of hundreds of ships, I think. They issued orders to those around the Mediterranean to the Pillars of Hercules that no one should give comfort or aid to the pirates, and they went after them, thinking it would be about a 2-year process. Within 6 months they destroyed them.

They came back in the time of the early American Republic, and captured our ships. President Jefferson and others were mortified that we had to pay tribute to these pirates, but they had no alternative. We had no Navy. Eventually we got the ships, and Stephen Decatur landed at the shores of Tripoli, and that broke the piracy. I would suggest you see Mr. Oren's book on the Middle East when he details that history.

So this is a question of will. I'm just telling you, you need to figure out how to do it and get busy, and this will stop. When we've taken strong action, we have broken the back of piracy. It is not something we've got to live with. I hope that you'll get busy about it. I just find this bureaucratic talk here is not very encouraging to me.

I think the Obama administration needs to send a clear message that when the legitimate interests of this Nation are threatened we're prepared to defend our interests, and we're not going to pay tribute to pirates, and we're not going to allow Americans to be captured.

Maybe it's personal to me because of the Maersk *Alabama* and the connection to Alabama over this ship and the heroic actions of Captain Phillips and others on that crew. But I really expect more from you at this hearing, more progress, more concrete plans, and a determined will to break the back of this unacceptable activity.

We can do this. We have a Navy today and we can do it.

Thank you, Mr. Chairman.

Chairman LEVIN. Thank you, Senator Sessions.

Senator Reed.

Senator REED. Thank you, Mr. Chairman.

Secretary Flournoy, you indicated to Senator Lieberman that this is primarily an issue of money, poverty, et cetera. It strikes me that the gunmen who've taken these ships on aren't exactly rolling in luxury, that there's a financial infrastructure which could be attacked, as well as a physical infrastructure of ships and pirates and self- defense of our ships. What are we doing to sort of disrupt the financial infrastructure?

Correct me if I'm wrong, but I don't think any American ship has paid any tribute, and that's not the policy of the United States.

Ms. FLOURNOY. U.S. policy is not to pay ransom under any circumstances, and that is a policy that is very much in agreement with Senator Sessions' point.

Senator REED. In fact, the latest demonstration of policy is that when pushed to the extreme we will use lethal force to protect Americans.

Ms. FLOURNOY. Right. When the Maersk *Alabama* was taken, for example, we were very clear that we did not want a ransom paid for a U.S. ship, and we eventually took military action to resolve that situation and save an American citizen.

With regard to the finances, the U.S. Government has asked the Treasury Department in particular to try to turn its attention to trying to understand the financing behind piracy and, where possible, identify and disrupt those who may be sponsoring investment in some of the infrastructure and so forth.

It is more difficult than in some other criminal areas of activity, in that the ransoms are usually paid in cash. There's not a banking system in Somalia to speak of. Couriers are taking cash to people elsewhere. So it's a very difficult problem to get a handle on.

That said, we are really focused on trying to understand the financial infrastructure and ways to interdict it. So that is an area of focus.

Senator REED. Admiral, do you have a comment?

Admiral WINNEFELD. I was just going to pile on to Under Secretary Flournoy's point. The Treasury Department has the best people in the world at doing this, and we are actively engaged with them. It's a very frustrating problem for them because of the cash payments that Secretary Flournoy alluded to. But there are other methods that they're looking at that hold some promise.

So we are on this. It's a little bit tough to talk about in a public hearing.

Senator REED. I understand that.

Chairman LEVIN. Senator Reed, I'm wondering if I could just interrupt you. Forgive me.

The vote has just started. Senator Reed, if you could, when you're done with your questions, call on the next person in line. The staff will give you guidance on that. Then Senator Webb will be back at 11 o'clock to chair for about a half an hour. Thank you.

Senator REED [presiding]. One of the aspects, I think, of the political structure of Somalia is it's dominated by tribal arrangements. To what extent are you working through or with these tribal groupings to try to counteract this issue on the ground? I notice that when the Maersk *Alabama* was seized there were some discussions with tribal leaders on the ground to release the captured captain. We were not going to let the pirates go free. We were going to take them into custody, and that's where the negotiations broke down.

But, Ambassador Mull, you might want to comment.

Ambassador MULL. Yes, you're absolutely right, Senator, that throughout Somalia the clan structure is really the dominant force in governing the place or, one might say, misgoverning the place. The tribal leadership in the Puntland area, which is the northernmost coast of Somalia and has been the source of the vast majority of these pirate attacks, has begun exploring with us the possibility of our providing security assistance and additional resources to them to assist them to patrol their own people and to prevent acts of piracy before they begin.

We don't have an embassy in Somalia. We manage our relationship and activities in Somalia through our embassy in Kenya. We are reaching out to the leadership of Puntland to see how we might bring that kind of cooperation about.

The challenge, of course, is there's a great deal of corruption in Somalia. There's at least some anecdotal evidence that there is cooperation between some of the officials of the clan structure with some of the pirate rings that are operating out of Puntland. So we need to be very cautious that in assisting this government we're not in fact assisting the pirates and enabling even further attacks.

Senator REED. Thank you, Ambassador.

Admiral, CTF–151, could you just give me a rough idea of its composition and also the extent that our allies are prepared to sustain this effort over the longer term?

Admiral WINNEFELD. Yes, sir. CTF–151 was created by Central Command and Naval Forces Central Command specifically to counter piracy. It's growing day by day. I believe it has five current nations and around five or six that are exploring the notion of actually joining this command and control construct.

There are 28 total nations out there that are participating in the counter-piracy effort, and it's a complicated puzzle, if you will, of political arrangements. The EU has Operation Atlanta out there. NATO has Standing Naval Forces-Mediterranean that is out there. We have our partners in CTF–151. There are several independent partners; the Republic of Korea, China is even out there, and Russia has been out there.

It's a fairly loose compendium of nations that actually work very well together. There are several mechanisms that we have out there that coordinate efforts, that allocate space and communicate intelligence and other information. When you consider that the only overarching alternative you could get to would be a U.N.-led

operation, which they're not really interested in doing, this is a very effective operation, and I would give Admiral Bill Gortney, who is the Commander of Naval Forces Central Command, a lot of credit for keeping this together and working closely with our partners.

Senator REED. Thank you very much, Admiral. Thank you, Madam Secretary, and gentlemen.

Senator Collins.

Senator COLLINS. Thank you.

Madam Secretary, I'm very troubled by your statement in your testimony saying that the root cause of Somali piracy lies in the poverty that continues to plague this troubled country. These are criminals and if we treat this criminal activity as being attributable to poverty, we're going to be ineffective in dealing with it.

Similarly, when you had your exchange with Senator Lieberman you said that for the pirates this is a high-risk activity. But it really isn't. Think what happens. If they're successful, in most cases the ransom is paid. They're rewarded for taking what I would argue is a low risk. In the cases that you cited, the vast majority of cases where the attacks are repelled, there are no consequences for launching the attack. They're not prosecuted. They're not harmed. They're not shot.

So essentially, from my perspective, this is a low-risk activity for them. What happened with the extraordinary activities of our naval SEALs was unusual, that the pirates were killed. In most cases, when they're repelled they just go on to attack another ship, until ultimately they're successful.

So from my perspective, our policy is going to be ineffective until we treat this harshly, until we treat this as the criminal activity that it is. So from my perspective there are two things we need to do. One, we need to put pressure on the London-based insurance companies to stop paying ransom. Second, we need to have a more effective process for bringing these pirates to justice.

So those are the two issues I want you to address.

Ms. FLOURNOY. Senator, you are right, this is criminal activity and we do treat it harshly. When we catch pirates in the act, we turn them over for prosecution; 146 have been turned over for prosecution.

Senator COLLINS. But how many of them have actually been prosecuted?

Ms. FLOURNOY. I would have to get back to you on the exact figures.

[The information referred to follows:]

Kenya has taken a leadership role and continues to work constructively with the United States and others in the international community to prosecute suspected pirates apprehended off the Coast of Somalia. Kenya has accepted 110 suspected pirates for prosecution since 2006. Of those 110 individuals, 10 have been convicted and those convictions were recently upheld on appeal, (the 10 were delivered to Kenya in October 2006 from a seizure by the U.S. Navy in January 2006). The trials of the remaining suspects, most of whom were delivered to Kenya in 2009, are at varying stages with 61 prosecutions scheduled for August. We are unaware of any acquittals to date.

In addition to prosecutions in Kenya, additional suspects are being prosecuted in France (at least 9), the Netherlands (5), and the United States (1).

Although verified data are not available, we believe that the naval forces of various countries have delivered approximately 80 additional suspected pirates inter-

dicted off the coast of Somalia to Yemen (22), Iran (11), Puntland (36), and the Seychelles (12). Of the above, all successful prosecutions recorded to date have occurred in Puntland. Due to transparency issues with the Puntland legal system the ultimate disposition of these 36 suspect pirates remains unknown, but open source reporting corroborates their incarceration.

Specific information on the Kenyan prosecutions is more readily available because suspected pirates have been transferred pursuant to our agreement with the Government of Kenya and because we have an Embassy liaison that works closely with the prosecution's office. The additional information available on suspected pirate prosecution in other countries, however, requires corroboration from the public domain and is therefore approximate.

All data presented here is as of July 1, 2009, and includes activity subsequent to the May 5, 2009, hearing.

Ms. FLOURNOY. But the point is I think we are treating this seriously as criminal activity. What I was trying to say is when you look at the motivations of the pirates, in every case that we're able to identify where we have real data, it is economic in nature. I was trying to tie back to the fact that Somalia has virtually no functioning economy, which gives rise to a greater degree of criminality than we would expect if Somalia had a functioning economy, government, law enforcement capacity, and judicial capacity, et cetera, et cetera.

So the economic situation, the lawlessness in Somalia, only exacerbates the criminal activity. But we do treat this as criminal activity. We do not pay ransoms. The U.S. Government does not condone the paying of ransom by anybody. We do seek prosecution in every case where we have evidence, and so forth. So we are treating this very seriously.

We are also working with allies to press them to create the domestic legal infrastructure they need to pursue prosecution consistent with international law, which provides for that sort of umbrella, if you will. And we are pressing more countries to be part of the coalition in terms of being willing to take pirates and prosecute them beyond just Kenya.

So I think we are very much in line with your desire to treat this seriously and to prosecute pirates when we are able to apprehend them.

Senator COLLINS. I look forward to getting the specific statistics from you, because it's my understanding that very few of these pirates have actually been brought to justice. As long as they're being paid off and there's little risk of being caught and prosecuted, this activity's going to continue.

Thank you, Mr. Chairman.

Senator WEBB [presiding]. Thank you, Senator Collins.

I guess I'm next. Secretary Flournoy, let me begin by apologizing for having missed a portion of your responses, so I'm not sure whether you and other members of the panel have addressed some of the issues that I'm going to raise. But I'm going to go forward on those.

I would begin by first of all making a distinction with something that Senator Lieberman said, and then going on the record to agree with him on something else. I don't believe that this is any way an extra responsibility by the U.S. military. I think this is part of its historic role that's gone back for 200 years. It's a part of who we are as a Nation.

At the same time, I'm going to ask a question in a minute about the role of the international carriers in their own self-defense, what their responsibilities might be, because I think that Senator Lieberman raised a very legitimate question in that respect, and I'm going to follow on from a conversation that I had in the Foreign Relations Committee last week with the chairman of Maersk on that issue.

But it seems to me that we, at least in the national security area, the problem in some ways emanates perhaps from a failed state of Somalia, but it would seem to me that the problem has grown and become exacerbated by these huge ransoms that have been paid as a reward for this type of conduct, with almost no accountability on the other side. If you have people sitting on the peripheral areas of Somalia who can't afford a pair of Adidas and they know if they pick up a weapon and go out in international waters, it's almost like the dog catching the fire truck. They can go out and point a weapon at one of these huge vessels and end up with millions of dollars, as it now turns out. They just continue to escalate the ransom and they continue to receive the ransom.

There are countries that would as a matter of policy be willing to continue to pay those ransoms. That's one thing that we have heard. But we in the United States I believe need a clearly stated policy with respect to these sorts of attacks on our flag vessels or in areas where U.S. citizens are involved. The rest of that goes into in many cases sovereignty issues that are beyond what we ourselves as a Nation may want to agree with, but the place to start on this is with our own national policy.

Admiral, you're very correct to talk about the requirements of maritime security. But it would seem to me if we're looking at this logically we don't have to secure an area four times the size of Texas. The security begins at the target and emanates outward, not with the expanse of the ocean.

So really what we should be looking at are clear rules of engagement that everyone understands, including other countries, to address this principally as a problem with the use of force, and to refine those rules in two areas. One is the question of the use of force by non-military security personnel on board certain ships. Your own statistic, Secretary Flournoy, when you're talking about 78 percent of the foiled attacks came about because there was some sort of armed presence or some sort of resistance on a ship; is that correct?

Ms. FLOURNOY. Some defensive measure, not necessarily armed security.

Senator WEBB. Some sort of action from the ship.

Ms. FLOURNOY. Yes.

Mr. CAPONITI. Mostly just speeding up and turning, evading, frankly. And on occasion, yes, sir, an armed response or some other active measure, like a fire hose.

Senator WEBB. Well, a defensive action of some sort emanating from the target has an impact on the people trying to take the target. Even something as benign as speeding up and changing course can affect the ability of the people who are attempting to carry out these activities.

Mr. CAPONITI. Sir, if I could add, one thing that hasn't been made clear yet—and somehow this got lost in the message because we got hung up on the armed security issue—there are a set of best management practices out there that are tested and real and they're being followed by the industry. It's not that these carriers are not hardening themselves. It's in their own self-interest to harden themselves and they're doing what they can do. I can't say that emphatically enough.

There's a suspicion that perhaps 30 percent of the international community is not following best practices. But most of the responsible carriers are.

What we are trying to do as an international body is further disseminate, further make known, and put pressure on everybody to do what's right.

Senator WEBB. Right, but the definition of best practices is those practices that have been agreed upon in this international business community.

Mr. CAPONITI. Yes.

Senator WEBB. It's not necessarily best practices that we would define if we were looking at this from a different viewpoint in terms of putting armed security people on these ships.

Mr. CAPONITI. It's both benign and armed. There's a variety of mechanisms that are in place. The armed security is a real issue. For certain vessels in certain waters, it's probably a reality where we are, and we're getting hung up on the debate of that because the insurance carriers themselves say very clearly that they are more comfortable with embarked military security.

Senator WEBB. I'm not talking about military security.

Mr. CAPONITI. But they're more comfortable because there are rules of engagement.

Senator WEBB. I understand that, but you're not going to the point that I'm trying to make.

Mr. CAPONITI. Okay.

Senator WEBB. I understand that if we were to put embarked military security on ships at certain points that there's a wider group of international associations that would be comfortable with that, but that's not what I'm talking about.

What I'm saying is that, if you look at that issue and why it hasn't been agreed upon, and particularly from the testimony that we had last week on the Foreign Relations Committee, it's that there is not an agreement on that with respect to international shipping. In fact, they disagree with that. From the companies' perspective, they're concerned about liability issues on board the ship if you're allowing crew members who are not properly trained, or if you're going to have an incident on the ship where somebody goes into the weapons locker and gets a weapon, what's the liability for the shipping company itself; and then there is this issue of port visits.

I would suggest that all of those are eminently solvable and that it makes sense that if you have the option of the shipping companies to put security people on board ships at certain transit points if they decide that they are at risk, it would be their obligation to do so. When the chairman of Maersk was testifying before us, he

said it would have a minimal increase in terms of the cost of doing business.

The second area that I think we should be examining is the difference in our legal and military perspective between international waterways and conducting any sort of activities inside the territorial waterways or the shore in places like Somalia. What is the policy of DOD, Secretary Flournoy, on issues such as hot pursuit or preemptive strikes or considering these people as enemy combatants once they have engaged our forces and going to where they operate from?

Ms. FLOURNOY. Senator, the U.N. Security Council resolutions on the books actually include pursuit into Somali territorial waters. I would like to try to clarify U.S. policy in context because I think there have been a lot of questions.

First of all, we as a government do not condone the paying of ransom. We seek to end the paying of ransom.

Second, we will respond to U.S. ships in extremis.

Third, we will prosecute pirates as criminals whenever we catch them in the act and have the evidence to prosecute them. We do not catch and release pirates that we've caught in the act.

We will also interdict and try to confiscate any guns and material from those who we suspect may be pirates.

Senator WEBB. How about their boats? Is it our policy that we will confiscate their boats?

Ambassador MULL. We are confiscating their boats and sometimes destroying their boats.

Ms. FLOURNOY. Sinking weaponry and that kind of thing.

We also have a policy of pressing the shipping industry to adopt best practices, passive and active defense measures, to increase their security and reduce their vulnerability to attack. So I think there are a number of very clear and I would argue tough policies in place. But we are treating this as an act of criminality at this point, we do not see these people as enemy combatants per se.

Senator WEBB. Thank you.

Senator Wicker.

Senator WICKER. Thank you, and thank you to the panel.

We're having this hearing because of the Maersk *Alabama* and the incident that got so much publicity. Of course, we learned that there were over 100 attacks last year and more than 70 this year, but it was the Maersk *Alabama*, involving Americans and an American being held captive, that has captured the imagination of the American people and caused us to be here.

So I think one of the things that we should do, Mr. Chairman, is talk about lessons learned so far. What lessons did we learn from the Maersk *Alabama*? What lessons did we learn from the experience of the international community in the Straits of Malacca, where apparently several years back we had upwards of almost 100 attacks and now we only had 2 last year. Was that a matter of extreme poverty along the area of the Straits of Malacca, and has that poverty been eradicated? Would anyone suggest that that's why things got a little better there? Or is it the fact that the countries involved got together in an organized way and decided to put a stop to it?

I wonder if we could assess what lessons the pirates may have learned. Now, I know they're disorganized and I know this is not part of some international terrorist group. They're criminals. But they do listen to the media and they do know what is happening. It seems to me that one lesson they may have learned, one lesson I hope they learned, is don't mess with the United States; you may take a head shot if you take an American captain prisoner.

So if I'm a pirate today off the Horn of Africa, I may be thinking: If I know that's an American ship, then I want to stay away from that.

I was interested to learn last week that we don't fly our flags on the open seas. Actually, when we mentioned that in a bipartisan manner before the Foreign Relations Committee, there was some resistance by Captain Phillips himself and an executive from the Maersk corporation to the concept of actually flying our flag or putting a replica of the flag on the side of the ship. I wonder if you would comment about that.

But is there a way that we can make sure that when these folks in desperate financial straits from a failed country are thinking about embarking on such a course, that they look out there and say: Ah, that's an American ship; maybe we ought to wait for the next one to come along.

Ms. FLOURNOY. I'm going to let the admiral address the operational lessons learned from the specific issue with the Maersk *Alabama*. But if I could address your broader point. I do think that, although some of the pirate rhetoric after the Maersk *Alabama* was about seeking revenge, I actually do think the fact that we conducted a successful operation and pirates were killed, will have some deterrent effect on pirates seeking out American ships in the future.

But I think the most effective deterrent again is a clear set of active and passive measures that make the pirates believe that a particular ship is not an easy target, but a difficult target.

Second, to your point about the Straits of Malacca, what happened there was a group of regional countries getting together to increase their coordination with regard to surveillance, reconnaissance, communications, interdiction, and so forth. Unfortunately, given that Somalia is a failed state without an effective government and without any real capacity, that kind of solution is not as readily available in the Somali Basin at this time.

Admiral WINNEFELD. I just want to reinforce what Secretary Flournoy said. First of all, I wouldn't want to offer any good lessons to the pirates that they could use in their next attack. But I think one of the most important ones is ship self-defense. As we look at the risk assessment criteria that we would apply to a U.S. flag ship going through that area, at the time she went through she was in about the highest risk category you could possibly ask a U.S. ship to be in: low freeboard, as Jim said; relatively slow; and the amount of time she would be spending in the area, and the like.

It's interesting to note that when she went into Mombasa after the piracy event was over that—and I won't go into detail in a public hearing—she added about six or seven of the industry best practices to that ship that are aimed at preventing piracy. Not just the speed and maneuver, but other things you can do aboard your ship

that will make you more defensible. She's done that now, so I think there's a lesson there that was learned and capitalized on. So I think it's a positive message that that occurred, and we'd like to see all ships, especially U.S. flag ships, capitalizing on those lessons and doing the relatively simple things that they need to do to protect themselves, that would make most of this go away.

Again to reinforce Secretary Flournoy's point on the Straits of Malacca, it's a very good example of a relatively small and narrow body of water that's easier to police than the large Somali Basin and the Gulf of Aden, with nations that are on the littorals of that area that are willing and able to take steps, and they did, partly at our own encouragement, and they've been very, very effective, and it's a great example.

We'd like to see that happen in other parts of the world, particularly the Gulf of Guinea, as was mentioned by one of the other members. There are plenty of tactical lessons learned at the Special Forces level. It was a very well run operation. But you always want to draw the lessons out of something like that, and our guys are doing that.

Senator WICKER. It seems to me if you try to put yourself in the place of these young economically driven criminals that are taking these ships, given the response that the United States brought to this instance, I think they might be reluctant to attack a ship flying the American flag again.

Admiral WINNEFELD. I'd like to respond to that. I agree with you, sir. We would love to see them flying the American flag. I think, believe it or not, when we've asked sometimes it's an economic decision. On my own ships that I've commanded, you have to replace the flag about once every 2 weeks because there's so much wind out there it gets tattered. But we fly it all the time, and we'd love to see the merchants fly it all the time.

In terms of painting it on the side of the ship, I'm not sure that that's wise for a counterterrorism purpose. But out there on the high seas, particularly in that part of the world, we'd love to see them flying it, although I'm not certain that your average Somali pirate would understand what it means. I don't know if they recognize it, to be quite honest.

Senator WICKER. Thank you very much. There are other considerations which, Mr. Chairman, we should take into consideration. It just seems to me that if you have one set of folks willing to write a big check to get out of this and another country with the best trained sharpshooters in the world ready to take a head shot, it might be a reason for these young opportunistic criminals to think long and hard before attacking Americans.

Senator WEBB. Thank you, Senator Wicker.

I've been handed a note saying that Ambassador Mull has to leave at a certain point. I just wanted to note that for the record. You're welcome to stay as long as you wish.

Senator Ben Nelson.

Senator BEN NELSON. Thank you, Mr. Chairman.

Well, if we got Maersk to put on some of the best practices on their ship, does that mean we have 32,999 more to go? Probably not. That's just a rhetorical question.

I know trying to coordinate action on a broad basis with the EU and other nations makes a great deal of sense, and there is a time for diplomacy. But it seems to me there's also a time for action, and I hope we don't overanalyze this situation with the liability issues and all the other issues that have come up, because really the questions boil down to who takes the risk and who pays for the risk.

Thus far, that's been decided by certain commercial interests one way and perhaps by others the other way. But when the cost of the risk shifts to our government, almost entirely because of the inability of ships of American interests to take care of as much security as they possibly can, including having armed security on board, then that shift to the American Government is a shift to the American taxpayer.

We all watched the Maersk incident, and I fully concur with the plan, fully support it, and applaud the result, because I think that we took the right kind of action in as short a time as possible, given the circumstances. But do we know what the cost is to our budget? That's a question: Do we know what our costs are? When you add up all the costs of the military taking the action and having to come in to do that, do we know the cost?

Ms. FLOURNOY. I knew you were going to ask that question, sir. I don't have the figure yet, but we have our Comptroller working on trying to assess the cost of that operation, so we can weigh that against the costs of investing up front in better security measures.

[The information referred to follows:]

The combined cost for the Navy's response to the M/V *Alabama* and M/V *Liberty Sun* piracy incidents is $3.114 million. The majority of the costs are attributable to the M/V *Alabama*. The M/V *Liberty Sun* situation was resolved before naval forces reached the vessel. The $3.114 million is comprised of the below expenses.

Incremental fuel costs: $1,191 million
Flying hours: $1.6 million
SCAN EAGLE Units: $0.3 million
Linguists support, Communications, and Temporary Assigned Duty: $0.006 million
Combined Enterprise Regional Information Exchanges System support to allow vital communication between coalition partners to coordinate and deconflict operations: $0.017 million

These costs were derived from actual expenses incurred during the M/V *Alabama* and M/V *Liberty Sun* operational events.

Senator BEN NELSON. I don't want to diminish the importance of saving the captain and taking the action that we did. But it does have a financial impact and we need to know that, because we need to multiply that if we're not going to take the right kind of action with respect to the rest of the American commercial fleet.

Ms. FLOURNOY. The truth is, sir, many of the most effective defensive measures, passive and active, that we can take or that the shipping industry can take are relatively low cost. If Congress could think about ways to incentivize that investment upfront, that would be a very helpful development.

Senator BEN NELSON. Some of that $34 million that was spent in ransom somewhere along the line would have gone a long way to pay for it as well. So I think the commercial interests have to assume a lot of the costs. I don't like to have that shifted back to the taxpayer with incentives if we can just simply pursue the com-

mercial interests. They're the ones that stand to gain either risk or reward getting through that area.

If the Maersk had been an asset of a foreign country, not of the American commercial fleet, let's say, and the circumstances were the same, would our military have intervened? Admiral?

Admiral WINNEFELD. The circumstances, as you know, were quite unique, with the captain adrift in a lifeboat with pirates. I believe that you would find we would be willing to assist our partners as much as we could.

Senator BEN NELSON. Would we be the junior partner? In other words, if it was one of the EU ships, would we expect the EU to take the primary responsibility and we would assist? Or would we assist by taking primary responsibility?

Admiral WINNEFELD. The situation evolved slowly enough that we would have time to consult with our partners and come to an agreement on that, and it would be likely that if we were the first people on the scene in that case we would have done whatever we could to, for example, prevent the lifeboat from being reinforced from the shore and to prevent the lifeboat from making it to shore. But in terms of the actual action that was taken to rescue Captain Phillips in this case, we would consult closely with our partners to see what they wanted to do.

Senator BEN NELSON. Let's reverse it now. Let's say that we hadn't arrived first with the Maersk and the EU-based military operation arrived first. What would they have done?

Admiral WINNEFELD. I believe they would have done the same thing, sir. I think they would have prevented the lifeboat from proceeding ashore and would have prevented it from being reinforced.

Senator BEN NELSON. If enough time went by then we would arrive on the scene and we would have taken the action we took. What if it called for action faster than we were able to arrive? What might they have done?

Admiral WINNEFELD. It's always difficult to get into hypotheticals.

Senator BEN NELSON. Would they have taken the same kind of action? Would they have been bold enough to fire upon the pirates in the lifeboat?

Admiral WINNEFELD. I think it really depends on the situation. Our allies have demonstrated in several cases that they're willing to use force out there, just like we've been willing to use force when it directly impacts our own people or interests. So it varies from nation to nation, and I believe that we've got a good relationship with our partners out there that we can get the job done when it needs to be done.

Senator BEN NELSON. Is part of what we're attempting to do with developing this partnership with the other nations intended to bring everybody up to the same standard? I hope it's not to bring us down to the lowest standard.

Admiral WINNEFELD. Certainly not, no, sir. I would tell you, and Admiral Gortney would I believe say the same thing, that there's a continual effort. There are hosts of discussions and meetings that are held, and consultation among the various players that are out there, to talk about who's going to take which part of the water

space, the intelligence that's shared, and the like. It's a good cooperative relationship.

Senator BEN NELSON. I think it's important to do that. But as long as there are some prepared to go ahead and pay the ransom, we all still remain at a greater risk than we would otherwise, and I think it's important to press that upon those that are unlikely and perhaps even unwilling to step up and provide the same level of security and force that we are and others are.

Thank you, Mr. Chairman.

Thank you.

Senator WEBB. Thank you, Senator Nelson.

For the record, I thought that Senator Nelson's round of questioning was pretty illuminating, and your response as well, Admiral. If you look out at what's been going on in the past few months, there are a lot of surprises. I think there are probably military judgments that are a little bit different than longer ranging political judgments from governments on the use of force and these sorts of things.

It's been frequently noted that the Chinese Navy is operating in this region. But I think one of the most interesting stories came this morning when the South Koreans freed up a North Korean vessel. That's got to be a first in the last 50 years or so. So this issue is full of surprises.

Senator Inhofe, do you have any further questions?

Senator INHOFE. Well, I really don't. I thought we had other Republican members coming back, but apparently not.

Let me just mention one thing. I was coming back in when, Senator Webb, you used the word combatants. I know that one of the problems is to set up something where you know what you can do with these guys. I'm just asking for information. Could they be considered to be combatants, as opposed to just the normal criminal activity? Has anyone looked into that, Madam Secretary?

Ms. FLOURNOY. Sir, we think it's actually clearer and cleaner to treat them as criminals. There are international and domestic laws. We have available all the authorities we need to hold them accountable and prosecute them. I think it would actually muddy the waters to treat them as enemy combatants.

Senator INHOFE. I'm not suggesting it. I'm just only thinking that these people do have some things in common. They don't really represent a country.

One of you talked about the AU and what their attitude and activity is in this. Would any of you like to enlighten me as to what that is?

Ambassador MULL. Yes, sir. In our exchanges with the AU as a whole, their collective approach to this has really been to focus more on what they viewed as the root causes of piracy in fixing Somalia. They are very eager for as much international assistance as they can get from us and our partners around the world in helping their peacekeeping force in Somalia, helping their meager assistance programs in building up.

That said, individual members of the AU, most notably Kenya and also to an extent Djibouti, have been extremely forward-leaning in terms of accommodating us in trying to approach other di-

mensions of the problem, such as prosecuting pirates in their courts.

Senator INHOFE. With the problems in Africa that are demanding attention from African countries, such as Darfur, the problems that exist in the eastern Congo, and the problems down in Zimbabwe they don't really provide direct assistance. It's more of a clearinghouse for other African countries to do it.

Are they really a player in this, in terms of actively becoming involved in trying to stop some of the violence and the attacks?

Ambassador MULL. As an organization, sir, I'd say no, they are not particularly engaged in the piracy specific problem.

Senator INHOFE. On the CTF–151, does anyone want to go into a little bit of detail on that as to what their successes are and what are the problems they're having right now?

Ms. FLOURNOY. I'll defer that to the Admiral.

Admiral WINNEFELD. CTF–151 is a growing entity, sir. We have five or six nations involved directly in that right now, with five or six additional nations that have considered joining CTF–151. It is one of many in the mosaic of organizations that are out there which cooperate with each other.

As you're well aware, I'm sure, the different political reasons why a nation would align itself with a different entity out there are fairly obvious. EU nations are with Operation Atlanta; NATO is out there with some of its assets, including one of our ships; CTF–151, a collection of nations that have agreed to counter piracy under that CTF designation; and then the individual nations that are out there who chose to not affiliate themselves with any particular collective, if you will, the Russians, the Chinese, and the like.

I don't want to call it one big happy family, but they do work very well together and there are coordination meetings that are effective, in which shared awareness, shared intelligence, shared tactics, techniques, and procedures are active, and it's working well. Admiral Bill Gortney gets a lot of credit in my view for helping keep this together as well coordinated as it is.

Senator INHOFE. I find it really interesting, particularly as Senator Webb was talking about North and South Korea and what's it going to take to bring people together, and maybe this is it.

Ms. FLOURNOY. Senator, may I add a comment on this issue?

Senator INHOFE. Yes, of course.

Ms. FLOURNOY. I think this is a mission where we've had success, and it really is due to a pretty incredible level of international cooperation. While we as a Nation have had a long history with piracy and as a result of that have a very developed legal structure for dealing with this and having it in our mind set as part of our national security paradigm to deal with this and so forth, other countries do not.

There were some negative comments about the U.N. made before. The U.N. Security Council has been very willing to take action on this, put the resolutions in place that enable some of these other critical partners to come in despite the absence of developed legal authorities in their domestic context. That U.N. framework has enabled others to step in, act alongside us, and be very effective contributors to a coalition operation. I think we should recognize them for stepping up and helping.

Senator INHOFE. Okay. In my opening remarks I talked about all this discussion has been in East Africa, and of course we know there is a growing problem now in West Africa. Has anyone said anything about that? I'm talking about the Gulf of Guinea, I'm talking about the countries of Benin, Togo, Cote d'Ivoire, and Ghana and some of those countries that are now saying that they're having problems with piracy, they need help. They have talked about some of the 1206 and 1207 train and equip programs that might help them. Has anyone commented about that?

Admiral WINNEFELD. We haven't commented on it yet, sir, but it's a good time to do it. As you know, it is a very difficult problem in the Gulf of Guinea, particularly going against oil rig servicing craft and the like. Until the recent surge in piracy off of Somalia, the Gulf of Guinea was the most active area of the world for piracy in terms of numbers of incidents.

Senator INHOFE. Yes.

Admiral WINNEFELD. We have a very active program using 1206, using something we call the Africa Partnership Station, that is doing its newspaper route, if you will, around many nations, and doing a lot of training with our partners. It's an international effort where we are recurring and revisiting each year, and it's proving to be very effective in bringing some of these young African navies and coast guards up by their bootstraps to help them with the capacity and capability to counter piracy.

I would hasten to add that the number one target of that, the Nation of Nigeria, is a little bit more difficult to work with in that regard. They are very protective of their sovereignty although we have had experience with them. They've been aboard the Africa Partnership Station.

But it is an area we need to watch closely and continue our efforts. I would say that the 1206 is essential to our ability to contribute to their capacity.

Senator INHOFE. Good. Nigeria has always been a problem, all the way back to Sani Abacha and Obisanjo. I think it's more of a leadership problem than anything else.

Nobody else on my side, Mr. Chairman, is interested in pursuing this.

Senator WEBB. Thank you very much, Senator Inhofe.

We appreciate the testimony of all the witnesses today and the hearing stands adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR KAY R. HAGAN

ASSISTANCE TO LOCAL SOMALI GOVERNMENTS

1. Senator HAGAN. Secretary Flournoy, Secretary Gates referenced discussions within the administration to engage with local Somali clans and governments. Would this encompass training/equipping security forces in Puntland and Somaliland?

Secretary FLOURNOY. The U.S. is currently reviewing the Somalia strategy. At this time, the U.S. effort in Somalia remains focused on how the U.S. can best support Somali efforts to promote security and stability throughout the country. The U.S. does not have a physical presence in Somalia, and is constrained by lack of a bilateral partner in Somalia. The Department of Defense (DOD) does not conduct traditional military assistance, such as train and equip programs, with any element or security force in Somalia.

2. Senator HAGAN. Secretary Flournoy, does it involve engaging with former warlords?

Secretary FLOURNOY. No. The DOD is not involved in security sector reform efforts in Somalia.

3. Senator HAGAN. Secretary Flournoy, I believe the U.S. Government only recognizes the Transitional Federal Government (TFG) of Somalia. Would engaging with Puntland without the consent of the TFG or Somaliland send a negative signal?

Secretary FLOURNOY. DOD does not believe that working with Puntland or other legitimate governing authorities inside Somalia would be, by definition, prejudicial to or at odds with our support to the TFG. DOD believes it is possible, working in close coordination with the relevant elements of the Department of State, to engage directly with the Governments of Puntland and Somaliland as well as the TFG to advance our counter-piracy plans, while at the same time preserving and even affirming the role of the TFG in governing Somalia. Historically the TFG has been supportive of international counter-piracy efforts, including granting permission for those States conducting counter-piracy operations to enter Somalia's territorial waters.

4. Senator HAGAN. Secretary Flournoy, how are we mitigating potential issues associated with links to warlords and individuals linked to al Qaeda, al-Shabaab, or both?

Secretary FLOURNOY. Even before the most recent spike in piracy off the Horn of Africa, U.S. intelligence agencies were closely and persistently monitoring the piracy situation in Somalia to determine whether there is a link between piracy and terrorist organizations inside Somalia or elsewhere. This analysis has found no such nexus thus far. Nor is there any evidence that Somali warlords are connected to piracy, although the piracy does have a clear basis in Somalia's system of clans and sub-clans. DOD recognizes the possibility that relationships could still develop between the pirates on one hand and terrorists and warlords on the other, and will continue to work with the Intelligence Community to ensure we have an accurate understanding of the situation.

YEMEN—NAVAL CAPACITY BUILDING

5. Senator HAGAN. Secretary Flournoy and Ambassador Mull, the United States has provided tens of millions of dollars in assistance to the Yemeni Government over the past 9 years to include training to the Yemeni Coast Guard. To date, I have not read reports of the Yemeni Coast Guard playing an active role in the international counter piracy effort. Are there plans to provide additional capacity building assistance to the Government of Yemen, and, if there is any discussion of assistance, do we believe the Yemeni Government has the political will to assist in this fight, particularly in light of their large Somali refugee population?

Secretary FLOURNOY. The Yemen Coast Guard (YCG) has made progress in unilateral action and multilateral cooperation on counter piracy efforts in the past year. Although YCG lacks a blue-water capability, the YCG has made tangible contributions to regional maritime security by patrolling its territorial waters and monitoring its ports. On March 2, 2009 elements of the YCG successfully repelled an attack on a South Korean-flagged vessel, the Pro Alliance. In addition, the YCG was integral in Yemen's participation at international counter piracy forums, and has lobbied the international community to establish a regional maritime security and counter piracy coordination center in Yemen.

The growth of piracy in the Gulf of Aden in the past 18 months has negatively impacted Yemen's already frail economy and, as a result, forced Sana'a to take the issue seriously and expand its counter piracy efforts. While the Republic of Yemen Government (ROYG) has the political will to assist in counter piracy operations, the ROYG lacks the resources to adequately develop the maritime security capacity of the YCG. Consequently, the ROYG relies heavily on foreign military assistance, including from the United States, to train and equip the YCG.

Ambassador MULL. Due to its location across the Gulf of Aden from Somalia, Yemen is a country that has borne most of the brunt of the problem of piracy, a problem attributable to the lack of a functioning government in Somalia. The number of piracy incidents in the Gulf of Aden has increased dramatically in 2009 and many of these incidents occurred close to the Yemeni coast. The implementation of the Maritime Security Patrol Area (MSPA) in 2008 which concentrates shipping lanes in an area just outside Yemeni territorial waters has had as one consequence an increase in piracy attacks in this area.

Yemen's Coast Guard was created in 2001 to protect Yemen's ports and coastal areas (Yemen has an almost 2,000 km coastline) and has received both equipment and training from the United States. Yemen's Coast Guard is considered one of the most professional and competent units of Yemen's armed services and has welcomed offers of engagement and training from the U.S. and other western nations to undertake their mission.

The Yemeni Coast Guard does not currently have deep water boats capable of patrolling further out to sea (including to the MSPA) where most pirate attacks occur. The U.S. has provided four 42' Archangel fast response boats and twelve 25' Defender class boats to the Yemeni Coast Guard since 2001 as well as other logistical and maintenance equipment. All of the boats provided are for littoral coastal patrols consistent with the border security and counter terrorism function of the Coast Guard.

The Departments of State and Defense are currently looking into ways to assist the Yemenis in stepping up their anti-piracy efforts, as well as their efforts to combat arms, drug, and human smuggling in the Gulf of Aden.

Despite its capacity limitations, Yemen has conducted a number of counter-piracy operations, including the Yemeni Navy's recent recapturing of a Yemeni tanker that had been pirated on April 27. The Departments of State and Defense have in the past also supported the Yemeni Navy, and will continue to consider the merits providing future support. Yemen has approximately 50 pirates in custody awaiting trial, who have been captured by the country's own naval forces and also include pirates transferred to Yemen for prosecution by the Russian, Indian, and Danish navies in recent months. The Yemeni government is very forward leaning in its intention to combat piracy, to include its participation in the Contact Group on Piracy off the Coast of Somalia and frequent bilateral discussions with the United States on how best to work together in these efforts.

PIRACY IN THE GULF OF GUINEA

6. Senator HAGAN. Secretary Flournoy, Vice Admiral Winnefeld, Ambassador Mull, and Mr. Caponiti, while much focus has been on the acts of piracy off the coast of Somalia, earlier this year, I discussed the issue of piracy and oil bunkering in the Gulf of Guinea with Commander of U.S. Africa Command (AFRICOM), General Ward. Incidents of piracy in the Gulf of Guinea are reportedly on the rise—I suspect inspired by the reports of riches from ransom payments made to Somali pirates. Please comment on the threat of piracy in the Gulf of Guinea and whether the United States is working with our partners to address this threat.

Secretary FLOURNOY. As recently as 2007, the Gulf of Guinea was the most active part of the world for piracy, but pirate activity is increasingly now found along the Somali coast. To combat piracy in the Gulf of Guinea, the DOD has a very active program that we call the Africa Partnership Station (APS), which uses National Defense Authorization Act section 1206 funds to conduct training with our partners in the region. It's an international effort that we are renewing and revisiting each year, and it's proving to be very effective in helping modest African navies and coast guards expand capacity and capability to counter piracy. It is an area that we need to watch closely and in which we need to continue our efforts. Access to adequate funding streams is essential to our ability to contribute to their development.

Admiral WINNEFELD. Violence in the Gulf of Guinea maritime domain is very different from what is occurring off Somalia. It is largely concentrated in the territorial waters of Nigeria with some occasional spill-over into the Cameroon and Equatorial Guinea maritime domain as well as some offshore oil installations in international waters (but within the Nigerian Exclusive Economic Zone). Most incidents can be attributed to the militant unrest in the Niger Delta. The perpetrators are ultimately seeking a greater cut of oil wealth vice profit from ransom. This has been going on for much longer than the Somali problem.

We are working with several current partners (and looking for new partners) to address the threat. Our main effort is through building partner capability of African maritime defense and security forces through such activities as APS. APS uses U.S. Navy, Coast Guard, and interagency personnel, as well as persons from European allies, to help train African navies and coast guards, fisheries organizations, port security organizations, and others. Additionally there are initiatives being supported by DOD to help the African Union develop an integrated maritime security strategy. These capacity building efforts develop legitimate maritime activities, which, in turn, reduce the perceived benefits of illicit activities such as piracy.

Ambassador MULL. The Department of State has been deeply concerned by the recent escalation in piracy and armed robbery at sea in the Gulf of Guinea, which

negatively impacts regional stability and development and threatens U.S. investments, American citizens working in the region, and energy security.

The United States' approach to addressing the threat of piracy and armed robbery at sea in the Gulf of Guinea has focused on capacity-building and technical assistance to partner nations. Since fiscal year 2006, the United States has provided over $25 million in maritime security assistance to Gulf of Guinea countries (Cote d'Ivoire through Gabon). The United States is also encouraging increased engagement by the African Union and subregional organizations such as the Economic Community of Central African States, the Economic Community of West African States, and the Gulf of Guinea Commission on this issue. The United States has also advocated an increased role for the North Atlantic Treaty Organization (NATO) in African maritime security capacity building; in April, President Obama and NATO heads of state agreed to launch an initiative that will support maritime security capacity development for the African Union.

Mr. CAPONITI. The Maritme Administration issued "Marine Advisory 2008–01" on December 4, 2008, warning of piracy and criminal activity in the waters off of the coast of Nigeria. The Office of Naval Intelligence also lists all of the piracy and criminal activity in the waters off of the coast of West Africa in their weekly "World Wide Threats to Shipping" report which are also pushed to industry. The piracy in the Gulf of Guinea is more violent and robbery is the motivation, as compared to demanding ransom for hostages. The Gulf of Guinea does have U.S. flag vessel operating primarily in the offshore oil industry which have implemented security measures. The recently updated U.S. Coast Guard Maritime Security Directive also applies to those vessels.

QUESTIONS SUBMITTED BY SENATOR ROLAND W. BURRIS

U.S. POLICY TOWARDS AFRICA

7. Senator BURRIS. Ambassador Mull, in your testimony, you stated that the United States. has a multifaceted strategy to suppress piracy that many departments and agencies are working hard to implement, and the Department of State is working with interagency partners to integrate our maritime and land-based efforts in Somalia into a comprehensive strategy. What do you understand to be the U.S. policy regarding the continent of Africa—are you aware of a comprehensive policy or do we have the various ambassadors interpreting policy, and do we address each country individually?

Ambassador MULL. U.S. policy regarding the continent of Africa is described in the administration's fiscal year 2010 congressional budget justification. The tenets of our comprehensive policy towards Africa are democracy, good governance, peace and security, human rights, economic growth and prosperity, and investment in the education and health of people. Our policy takes into account transnational issues such as terrorism and trafficking in persons and in narcotics.

These overarching policy objectives for Africa were developed in close consultation with senior staff of the interagency community, including the National Security Council, the U.S. Agency for International Development, and the DOD. They are shared in Washington and with our Ambassadors. The administration's overarching policy objectives are projected through U.S. Ambassadors serving at Embassies in sub-Saharan Africa, who use them to set their own policy priorities.

We implement our policy at the country level as well as with sub-regional African organizations such as the Economic Community of West African States, with the African Union, and through the United Nations and other international organizations.

ARMING COMMERCIAL SHIPS

8. Senator BURRIS. Secretary Flournoy, in your testimony, you stated that although the merchant shipping industry has made significant improvements in onship security measures over the last few months, far more is needed. Is there a particular statute addressing commercial ships being armed and what is the U.S. policy toward the arming of commercial vessels?

Secretary FLOURNOY. There is no statute on arming commercial ships. With regard to U.S. Policy, the U.S. Coast Guard has issued its Maritime Security Directive, which has a requirement for armed or unarmed security teams if the vessel is at high risk of being pirated. Although the United States has not required any vessels to have armed security teams, we are working both domestically and internationally to overcome any obstacles to the use of such teams where appropriate.

QUESTIONS SUBMITTED BY SENATOR JAMES M. INHOFE

RESCUE OF CAPTAIN PHILLIPS

9. Senator INHOFE. Vice Admiral Winnefeld, the rescue of Captain Richard Phillips of the Maersk *Alabama* was a flawless special operations mission. Please give details to the extent you are able to do so in an open session. How did the Navy Sea, Air, and Land Forces (SEALs) get to the scene?

Admiral WINNEFELD. [Deleted.]

We can provide additional details, but it would require a higher classification brief. Please let us know when you would like us to brief you and we will be more than pleased to provide it.

10. Senator INHOFE. Vice Admiral Winnefeld, how long did it take from notification to arrival?

Admiral WINNEFELD. From notification to arrival at the scene, it took approximately 23 hours.

11. Senator INHOFE. Vice Admiral Winnefeld, other than the three snipers, how large a force was involved?

Admiral WINNEFELD. [Deleted.]

We can provide additional details on their composition, but it would require a higher classification brief. Please let us know when you would like such a brief and we will be more than pleased to provide it.

12. Senator INHOFE. Vice Admiral Winnefeld, what was the role of the Commanding Officer of USS *Bainbridge*?

Admiral WINNEFELD. The Commanding Officer was pivotal in the rescue of Captain Phillips. With guidance from the FBI, he negotiated with the pirates to protect the life of Captain Phillips. He ensured *Bainbridge* took decisive actions to prevent the lifeboat from getting ashore. Finally, he was the on-scene commander during the final stages of the rescue operation.

13. Senator INHOFE. Vice Admiral Winnefeld, how did the Commander of the Anti-Piracy Task Force, Combined Task Force (CTF)–151, fit into the chain of command?

Admiral WINNEFELD. Technically, this operation was not done by CTF–151, but instead it was done under U.S. national authority through Task Force-51 (TF–51). TF–51 and all the forces deployed in support of this operation were under the command and control of Commander, U.S. Central Command.

14. Senator INHOFE. Vice Admiral Winnefeld, what were the key decisions that allowed the mission to be successful?

Admiral WINNEFELD. There were many key decisions made during the operation, from decisions by the President to the decisions of the outstanding Sailors aboard USS *Bainbridge*.

The first key decision was Commander, U.S. Naval Forces Central Command immediately sending USS *Bainbridge* to the scene followed by the USS *Boxer*. Given the necessary guidance, their early presence helped influence the actions that resulted in the successful operation.

The second key decision was the use of the Maritime Operational Threat Response (MOTR) Plan to coordinate within the interagency. With two daily sessions until Captain Phillips was rescued, it proved a very useful means to coordinate the entire interagency on what was happening and what we should do.

The third key decision was made by the Secretary of Defense to deploy and place special operation forces aboard the USS *Bainbridge* to conduct this mission.

The fourth key decision was the President authorizing the use of requisite force.

Finally, the most important decisions were made by the Commanding Officer, the crew, and the Special Operations Forces aboard USS *Bainbridge*. The Commanding Officer and the crew kept the life boat at sea, without escalating the situation. The Commanding Officer and the crew were able to bring one suspected pirate aboard USS *Bainbridge* without the use of force. Finally, when a threat materialized against Captain Phillips, the Special Operation Forces judged the situation and, with the guidance given to them by their leaders, took the decisive action to protect Captain Phillips. All the Sailors aboard USS *Bainbridge* exercised their best military judgment under the authorized rules of engagement and proved that they are true professionals.

15. Senator INHOFE. Vice Admiral Winnefeld, what did we learn from the experience?

Admiral WINNEFELD. Constant communications and collaboration—among the interagency and among military forces—were essential to conduct this operation successfully. Moreover, patience in handling an extremely complex and dynamic hostage situation paid off.

16. Senator INHOFE. Vice Admiral Winnefeld, as a result of this operation, will the Task Force have SEALs permanently assigned?

Admiral WINNEFELD. There are no plans to assign U.S. Navy SEALs to CTF–151; however, there are SEALs readily available within the Central Command area of responsibility for short notice retasking if required.

17. Senator INHOFE. Vice Admiral Winnefeld, were the Rules of Engagement sufficient for the mission?

Admiral WINNEFELD. Yes the rules of engagement provided were sufficient (and proved successful) for this mission.

18. Senator INHOFE. Vice Admiral Winnefeld, some Somali tribes have threatened revenge because the pirates were killed. How do you assess that threat to both civilian crews and U.S. Navy sailors?

Admiral WINNEFELD. We have not seen any corroboration of the threat or indication that the pirates intended to carry it out. Of course, even without the threat, there is risk to civilian crews and U.S. Navy sailors from these armed pirates. We are constantly monitoring indications of risk to our Sailors or civilian crews.

CTF–151 OPERATIONS

19. Senator INHOFE. Vice Admiral Winnefeld, the United States established CTF–151 to combat piracy off Somalia in January. What nations are currently contributing to the task force?

Admiral WINNEFELD. Currently, six nations are contributing, or in the past have contributed, forces: Denmark, Republic of Korea, Singapore, Turkey, United Kingdom, and United States. Australia and Pakistan have indicated that they will contribute in the future.

20. Senator INHOFE. Vice Admiral Winnefeld, what other nations are conducing national operations to protect their shipping off Somalia and how does CTF–151 coordinate with ships from those other navies?

Admiral WINNEFELD. We have seen India, Iran, Japan, Malaysia, People's Republic of China, and the Russian Federation all deploy assets to protect their shipping. With the exception of Iran, which just arrived in theater, all ships are coordinating well with CTF–151, including passing unclassified information, meeting in Bahrain at the Shared Awareness and Deconfliction (SHADE) meeting, and working to repress piracy. Note, Malaysia has been invited to the SHADE meeting, but it has not attended yet.

21. Senator INHOFE. Vice Admiral Winnefeld, have there been any problems with the Russians, Chinese, Indian, or Pakistani navies?

Admiral WINNEFELD. No, there have not been any problems with the Russian, Chinese or Indian navies. In fact, as indicated above, all the navies have been working hard to coordinate operations and to meet to discuss tactics on how to best repress piracy. Note, the Pakistani Navy has not deployed to conduct counter-piracy operations off the coast of Somalia yet; when they do, we anticipate them to work well with us, as they have been a reliable partner in our counterterrorism task force 150.

22. Senator INHOFE. Vice Admiral Winnefeld, do we share intelligence with these non-NATO, non-European Union navies?

Admiral WINNEFELD. We share unclassified intelligence with those nations attending the SHADE meetings. We are also sharing classified intelligence with some of our non-European allies in accordance with our standard procedures.

23. Senator INHOFE. Vice Admiral Winnefeld, what would you expect the navies operating on national missions to do if a U.S-flagged ship came under attack and they were the closest warship?

Admiral WINNEFELD. In light of the obligation under international law for all ships to aid mariners in distress, we would expect other navies to assist U.S. flagged ships and we have seen that occur, most recently with the Maersk *Virginia* incident when the Italians assisted her on 22 May 2009.

24. Senator INHOFE. Vice Admiral Winnefeld, how big an area is the Task Force trying to police?
Admiral WINNEFELD. The Task Force operates in the Gulf of Aden and off the eastern coast of Somalia, an area over 1 million square miles.

25. Senator INHOFE. Vice Admiral Winnefeld, are there enough ships to be effective?
Admiral WINNEFELD. While we could always use more ships, the key to effectiveness so far has not been the number of ships, but instead the efforts taken by industry to evade capture. For example, for a 2 month period from 25 February to 20 April, we found that 78 percent of ships that evaded an attack did so because of their use of best practices (increased speed, evasive maneuvers, etc). Only 22 percent of the unsuccessful attacks were the result of military intervention.

26. Senator INHOFE. Vice Admiral Winnefeld, how is coverage enhanced by helicopters and do we have enough?
Admiral WINNEFELD. Helos increase our coverage area by a factor of 12 as compared to just warships. They are a great asset and we can always use more, but the number of helos is limited by the number of hangars we have available on the ships deployed.

27. Senator INHOFE. Vice Admiral Winnefeld, how are pirates being held at sea once they are captured?
Admiral WINNEFELD. We hold them aboard ships, after the crews have been trained on handling of suspected pirates. We have safeguards in place to ensure humane treatment of the suspected pirates.

28. Senator INHOFE. Vice Admiral Winnefeld, do U.S. crews have sufficient training and resources, including detention facilities, to hold pirates aboard ships?
Admiral WINNEFELD. Yes we have sufficient training and resources. Commander, U.S. Naval Forces Central Command has extensive training for the ships holding pirates, which includes in-depth use of force guidance, religious needs guidance and full-dress rehearsals (including reception, searching, evidence collection, medical, and eating). As for facilities, it depends on the ship class. Amphibious ships are designed to have extra personnel aboard and can handle the suspected pirates. Cargo ships have large spaces and are also able to hold suspected pirates. However, our frigates, destroyers and cruisers do not have excess capacity for berthing (that is, berthing size is based on crew size); as a result, although we have been able to hold suspected pirates aboard these classes of ships, admittedly it has been a challenge.

29. Senator INHOFE. Vice Admiral Winnefeld, how long can pirates be detained at sea?
Admiral WINNEFELD. We do not believe there is any maximum time under the law, but we can assure you that we try to get them off the ship as soon as possible.

30. Senator INHOFE. Vice Admiral Winnefeld, what do we do with pirates if we determine we don't have enough evidence to prosecute?
Admiral WINNEFELD. If the evidence is insufficient for prosecution, we release them. But before doing so, we will confiscate and destroy their weapons and other paraphernalia. We will destroy any skiffs as long as they have a means to travel safely back to shore.

31. Senator INHOFE. Vice Admiral Winnefeld, what is being done to dispose of suspected pirate vessels and weapons?
Admiral WINNEFELD. As indicated in question 30, if we release pirates, we will confiscate and destroy their weapons and other paraphernalia. We will destroy any skiffs as long as the suspected pirates have a means to travel safely back to shore.

32. Senator INHOFE. Vice Admiral Winnefeld, what is the role of the Coast Guard in conducting these operations?
Admiral WINNEFELD. The Coast Guard has done an outstanding job in providing law enforcement detachments, who have both conducted boardings and provided crucial training to our U.S. Navy boarding teams.

PIRACY SCORECARD

33. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, how many vessels and how many people are currently being held by pirates?

Secretary FLOURNOY. The number of vessels and people being held at any given moment varies, depending largely on sea and weather conditions and the consequent ability or inability of pirates to operate. In the recent past, the number of ships held has varied from as relatively few as 9 to as many as 18. The number of persons held hostage has ranged from 100 to nearly 300. As of today (May 5), there were 17 ships and 263 known hostages being held by Somali pirates.

Mr. CAPONITI. According to UKMTO there are currently 14 vessels and 212 crew being held by pirates.

34. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, is the United States involved in trying to provide relief supplies or negotiate for the release of these other vessels?

Secretary FLOURNOY. No, the United States has not intervened in the conduct of hostage negotiations involving ships of foreign registry and situations where foreign citizens are hostages. At times the DOD has provided humanitarian support, as necessary, to assist ships released by pirates to get underway.

Mr. CAPONITI. MARLO-Bahrain reports for all vessels currently being held that "Negotiations are in progress and due to crew safety owners are unable to disclose further." We do not know of any U.S. Government involvement since the official position of the U.S. Government is not to negotiate with terrorist or criminals.

35. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, how many vessels have been attacked and how many taken by pirates since January and what is the trend compared to last fall?

Secretary FLOURNOY. Since January of this year there have been 87 vessels attacked and 26 successfully taken. The only observable trends compared with last fall are the ebb and flow of the pirates' activity corresponding with the arrival and departure of the regions' monsoon seasons.

By way of comparison, during the same time period, January to May 2008, there were 17 piracy attacks, 9 of which were successful. This year-to-year contrast highlights the clear spike in piracy in the Horn of Africa region that occurred beginning in the fall of 2008.

Mr. CAPONITI. The,International Maritime Bureau Piracy Reporting Centre (IMBPRC)reported on May 12, 2009, that there had been a total of 114 attempts and 29 successful hijackings during 2009. During all of 2008 there were 111 attacks and 42 hijackings. The IMBPRC does not provide quarterly information.

36. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, how have pirates' operations changed since a larger naval presence has been established?

Secretary FLOURNOY. The presence of a larger, relatively concentrated naval force in the Gulf of Aden appears to have produced little change in the pirates' willingness to operate. Pirate attacks continue at a higher rate despite numerous arrests, indicating that the naval forces operating in the area off Somalia are having little deterrent effect other than contributing to a lower pirate success rate. Pirates also continue to operate off the east coast of Africa, where there is less likelihood of capture, but at distances much further out at sea than has previously been the case—up to 900 NM from the Somali coastline. These few cases may not represent a "trend" or pervasive, long-term change in pirate operations, but rather a response to shipping lanes shifting farther from the Somali coast.

Mr. CAPONITI. Piracy has continued in the Gulf of Aden (GOA) although the success rate is down due in part to the combination of increased multi-national naval presence, adverse weather conditions, and industry implementing best management practices. However, if the current trend in the number of successful seajackings continues, the 2009, will exceed 2008. Pirates have been switching their operation area from GOA to the east coast of Somalia since establishment of the Internationally Recommended Transit Corridor which was moved further south from the coast of Yemen and straightened to shorten the transit time earlier this year.

SHIPPERS AND INSURERS

37. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, what efforts have shipping companies and insurers made to address the increased threat of piracy?

Secretary FLOURNOY. International shipping organization and insurance underwriters adopted Best Management Practices (BMPs) that have since been accepted

by the Contact Group on Piracy off the Coast of Somalia (CGPCS) for further dissemination. CGPCS Working Group 3, which focuses on the commercial shipping, includes insurance underwriter representatives. Both the international shipping organizations and the insurance underwriters continue to promote the use of BMPs.

These recommended practices include conducting vulnerability assessments for individual vessels, conducting anti-piracy response drills, using recommended transit corridors, increasing lookouts while in high-threat areas, minimize deck lighting during hours of darkness, et cetera.

It also remains true, however, that commercial shipping companies and their insurers continue to pay ransoms to have their vessels released, thus providing a powerful incentive and the financial wherewithal to perpetuate the pirates' activities. The United States has actively pressured flag and victim States to take action to prevent the payment of ransom, but it remains a critical and largely unresolved enabling mechanism.

Mr. CAPONITI. The organizations that represent the vast majority of world shipping have collaborated in combating piracy. This includes the development of widely distributed BMPs. Insurers have also promulgated the BMPs and have kept rates reasonably low for those ship owners who follow them. In addition, industry representatives are working alongside the European Union-led naval force operations center, referred to as Maritime Security Center-Horn of Africa. Shipping companies and insurers are closely monitoring the situation in order to adapt as pirates change their tactics,

38. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, have insurance rates gone up or down since the larger navy presence has been established?

Secretary FLOURNOY. The insurance rates have leveled off after a slight increase. The rates are impacted by the number of successful pirate attacks. The Navy presence has a positive effect by decreasing the number of successful attacks.

Mr. CAPONITI. Insurance rates reflect the number and severity of successful attacks. It is possible that the larger international naval presence, may be having a positive effect on decreasing the number of successful attacks, and hence, lower insurance rates. However, it is also possible that combined effect of the embarkation of private security teams, employment of BMPs, and higher sea state due to the recent monsoon season may be contributing to that decrease. With no empirical or actuarial data available, it is difficult to ascertain the specific impact of any of these factors upon present insurance rates. Further, we do not know how many attacks would have been successful without the naval presence or in the absence of the other factors. The insurance industry has voiced a preference for a military presence over the use of private security guards.

39. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, how has the use of force to rescue Captain Phillips changed what shippers and insurers are doing?

Secretary FLOURNOY. DOD is aware that in the particular case of the Maersk *Alabama*, after it was liberated and put into port in Mombasa, Kenya, the vessel adopted several self-protection measures before it embarked for its return voyage out of Mombasa. DOD has no specific knowledge of similar actions taken by other shippers, but it appears the dramatic capture and release of Captain Phillips, and the subsequent successful evasion and escape from Somali pirates of the U.S.-flagged vessel *Liberty Sun*, graphically illustrated the need for and utility of robust self-protection measures.

Mr. CAPONITI. Due to post-incident threats from pirates in the media, the successful Captain Phillips rescue may have raised industry concerns over a possible escalation in violence. However, to date there is no evidence that industry concerns have materialized into more aggressive behavior or targeting by the pirates. The fact that the pirates were able to board the M/V Maersk *Alabama*, which was capable of faster speeds relative to other vessels boarded by pirates, also raised concerns that caused vessel owners to take additional security measures.

40. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, has there been an increase in willingness to use armed guards aboard merchant ships?

Secretary FLOURNOY. Historically there has been strong reluctance to employ armed security on board merchant ships, due to legal, liability and cost concerns as well as a fear over an escalation in violence. There has been no discernable increase in willingness to use armed security guards, but the issue is under debate in a variety of fora. The DOD continues to emphasize the importance of commercial ships taking measures to protect themselves from pirate attacks.

Mr. CAPONITI. As the pirates adapt their techniques and tactics, some U.S. flag carriers have opted to use private armed guards in response to the number and na-

ture of the hijackings. A number of foreign flag carriers, who elect to have armed security, are utilizing military personnel. Internationally, there remains significant reluctance to using private armed security.

41. Senator INHOFE. Secretary Flournoy and Mr. Caponiti, recently a cruise ship attack was averted by armed security guards on board the ship. Do you see a trend in using armed guards aboard high-value target ships like cruise ships?

Secretary FLOURNOY. The decision to employ armed guards is up to individual ship owners, subject to flag-state law and regulation. There is no readily available data to know what ships are employing armed guards, and no requirement for ships to reveal such information. No discernable trend is observable in the use of armed guards aboard high-value targets.

Mr. CAPONITI. The cruise line industry does not advocate the use of armed security guards, but does recognize some companies elect to hire them anyway. There is a trend among flag carriers to use private armed security guards, especially on the more vulnerable low and slow vessels.

MEMORANDUM OF UNDERSTANDING WITH KENYA FOR PROSECUTION

42. Senator INHOFE. Secretary Flournoy and Ambassador Mull, the United States and Kenya entered into a Memorandum of Understanding in January for the disposition and prosecution of pirates seized by the United States. What is the status of implementing that agreement?

Secretary FLOURNOY. The Memorandum of Understanding is operational, and, as of May 5, the United States has smoothly transferred seven suspected pirates to Kenya for prosecution. Cooperation with Kenyan authorities on the case has been excellent.

Ambassador MULL. The Memorandum of Understanding is operational. In February, we transferred seven suspected pirates to Kenya for prosecution in accordance with the memorandum of understanding. The transfer went smoothly and cooperation with Kenyan authorities on the case has been excellent.

43. Senator INHOFE. Secretary Flournoy and Ambassador Mull, what is the capacity of the Kenyan judicial system to manage these cases?

Secretary FLOURNOY. Kenya's judicial system has the ability to manage piracy cases, but with 6 cases involving approximately 53 individuals pending as of today (May 5), Kenyan capacity is being stretched. We are cognizant of the need to ensure that cases transferred to Kenya meet a high standard of evidence for prosecution, so that we do not overload an already crowded court docket and limited number of prosecutors. The United States continues to work with regional states in an effort to establish additional venues for the prosecution of Somali pirates. We defer to our colleagues at the Department of State for further detail on the state of the Kenyan judicial system.

Ambassador MULL. Kenya's judicial system has the ability to manage piracy cases but with seven cases involving 66 individuals pending as of May 22, Kenyan capacity is being stretched. We believe that the limit of Kenya's capacity to handle piracy cases will be determined largely by the quality of cases transferred to Kenya. With an already crowded court docket and limited numbers of prosecutors, it is essential that the U.S. and other partners of the Kenyan Government be highly selective in transferring suspects to Kenya. We should ensure that we transfer suspects only in cases where there is strong evidence for prosecution. Furthermore, we believe states whose ships or crews are directly affected by acts of piracy should take greater responsibility for prosecution, and we will continue to press them to do so.

44. Senator INHOFE. Secretary Flournoy and Ambassador Mull, seven pirates were turned over by the United States to Kenya in February. When will they go to trial and have we run into any problems?

Secretary FLOURNOY. Our understanding is that the trial is expected to begin in early July. I do not believe we have run into any problems related to this case and understand that while the prosecution of the suspected pirates is now under Kenyan authority, the U.S. is providing assistance to Kenya in relation to the prosecution of this case.

Ambassador MULL. The trial is expected to begin in early July. The prosecution of these seven suspected pirates now rests with the Government of Kenya, but the United States is providing assistance to Kenya in relation to the prosecution and we have not run into problems related to the case.

45. Senator INHOFE. Secretary Flournoy and Ambassador Mull, who pays for detaining the pirates once they get to Kenya and who is responsible for their treatment?

Secretary FLOURNOY. The Kenyan authorities are responsible for the costs of detention and for the treatment of the suspected pirates. In the Memorandum of Understanding each party confirms it will treat suspected pirates transferred to their territory humanely and in accordance with their obligations under applicable international human rights law.

Ambassador MULL. The costs of detention and responsibility for treatment lie with the Kenyan authorities. The Memorandum of Understanding with Kenya includes a provision under which each party confirms it will treat suspected pirates transferred to their territory humanely and in accordance with their obligations under applicable international human rights law.

46. Senator INHOFE. Secretary Flournoy and Ambassador Mull, have we provided, or offered, any assistance to Kenya or other nations to assist with these prosecutions?

Secretary FLOURNOY. Yes, the U.S. has provided assistance to Kenya to support these prosecutions. I understand from my colleagues at State that this assistance includes, but is not limited to, direct contact between legal experts and the Kenyan prosecutor's office, legal and logistical support on individual cases, and general training on trial advocacy and preparation.

Ambassador MULL. Yes. In addition to providing to Kenya a well-organized evidence package in the case of suspected pirates captured and transferred under the U.S.-Kenya Memorandum of Understanding, our legal expert in Kenya has been working closely with the Kenyan prosecutor's office to assist their efforts on piracy cases. Among other things, we have provided legal and logistical support on individual cases, general training on trial advocacy and preparation, as well as some supplies and equipment to assist in prosecuting these cases as efficiently as possible. In cooperation with the international community, we are considering additional ways through which we can support prosecutions and judicial capacity in Kenya or other states.

47. Senator INHOFE. Secretary Flournoy and Ambassador Mull, producing evidence and witnesses in Kenya presents obvious challenges, particularly if the victim vessel and crew are not from the United States. Are we able to get sufficient cooperation to support prosecutions?

Secretary FLOURNOY. The availability of witnesses from many parts of the world is one of the issues Kenya has highlighted to the international community as a major challenge. In instances where U.S. witnesses are required, the U.S. Government will make every possible effort to ensure they are available as needed. I understand the State Department has assisted the Kenyan authorities in reaching out to other countries to facilitate availability of their witnesses, and believe my colleagues from State can provide further detail about these efforts. In addition, the United States developed guidelines for collection of evidence related to piracy cases, designed to ensure collection of a solid evidence package and to minimize the number of witnesses from a ship that may have become involved in a piracy incident needed to appear at the trial.

Ambassador MULL. Ensuring the availability of witnesses from many parts of the world is one of the issues Kenya has highlighted to the international community as a major challenge for them. In instances where U.S. witnesses are required, we will make every possible effort to ensure they are available as needed. We have also been assisting the Kenyan authorities in reaching out to other countries to facilitate availability of their witnesses. The United Nations Office on Drugs and Crime has also provided assistance in facilitating the appearance of witnesses in Kenyan proceedings. In addition, the United States has developed a set of guidelines for those collecting evidence related to piracy cases that are designed both to ensure collection of a solid evidence package and help minimize the numbers of witnesses from a ship that may be needed to appear at the trial.

48. Senator INHOFE. Secretary Flournoy and Ambassador Mull, what guidelines apply to U.S. military personnel providing evidence in these trials?

Secretary FLOURNOY. The Memorandum of Agreement with the Republic of Kenya provides that the U.S. will support and assist the Republic of Kenya in the conduct of investigations and prosecutions. The prosecution of suspect pirates, and the delivery of consequences for criminal pirate activity, is an important component of U.S. Government policy to reduce instances of piracy in the Horn of Africa region. U.S. forces will at times be necessary to testify as witnesses and provide evidence in sup-

port of prosecutions that flow from counter piracy operations. The DOD will support and assist foreign nations willing to prosecute captured suspect pirates in the conduct of investigation and prosecution, including, when appropriate, facilitating the presence of witnesses and evidence consistent with U.S. arrangements with the prosecuting nation.

The U.S. Government has procedures to allow personnel to testify in foreign courts on matters concerning their official duties. Issues concerning witnesses and evidence are facilitated by Department of Justice personnel on-site in Nairobi, Kenya.

Ambassador MULL. I respectfully refer you to DOD for a definitive answer on guidelines regarding their personnel.

49. Senator INHOFE. Secretary Flournoy and Ambassador Mull, beyond Kenya and our own courts, what other countries are we working with to prosecute these pirates?

Secretary FLOURNOY. The United States has been working with regional states in an effort to establish additional venues for the prosecution of Somali pirates. However, many of these states are reluctant to accept pirates for prosecution since these states are largely immune to the deleterious effects of piracy in the region, and prosecuting suspected pirates is an expensive and resource-intensive undertaking. Moreover, many of these states lack the statutory basis on which to prosecute the crime of piracy. The United States has pressed, and will continue to press, countries with a direct interest in particular piracy cases, in particular flag and crew states, to prosecute suspected pirates.

Ambassador MULL. We believe states affected in a piracy incident, which may include the state whose flag is flown by the attacked ship, the state(s) from which the owners of the ship in question come, the state(s) from which the crew or passengers come, and possibly others, must take greater responsibility for prosecutions. We will continue to press this point with affected states as new cases arise.

STATUS OF THE SURVIVING PIRATE FROM THE ATTACK ON MAERSK ALABAMA

50. Senator INHOFE. Secretary Flournoy, the surviving pirate from the attack on the Maersk *Alabama* was taken from USS *Bainbridge* to New York. What is the status of his prosecution?

Secretary FLOURNOY. It is our understanding that the surviving pirate, Abduwali Abdukhadir Muse, has been indicted and is detained pending trial in the Southern District of New York. The charges against him include piracy, violence against maritime navigation, kidnapping, hostage-taking, and firearm possession. Any questions about the case should be directed to the Department of Justice, which is responsible for the criminal prosecution.

ACTIONS ASHORE IN SOMALIA

51. Senator INHOFE. Secretary Flournoy and Ambassador Mull, what is being done by the United States to solve the piracy problem ashore?

Secretary FLOURNOY. Finding a long-term solution to the piracy problem ashore in Somalia requires addressing Somalia's many governance and security issues. The United States continues to support Somali efforts to bring stability and security to Somalia, which we believe are requisite to shrinking the safe havens for pirates and creating viable and sustainable economic alternatives to piracy.

Ambassador MULL. Finding a long-term solution to the piracy problem ashore in Somalia requires addressing Somalia's many governance and security issues, as piracy at sea is a direct result of instability on land. The United States' main policy objective in Somalia is to create political and economic stability, and the U.S. has been a key supporter of the United Nations (U.N.)-led Djibouti Peace Process, which was successful this past January in electing pragmatist leaders into the TFG, expanding the Transitional Federal Parliament to include members of the opposition Alliance for the Re-liberation of Somalia (ARS), and fostering continued political dialogue and reconciliation. The U.S. continues to support the TFG, as well as economic development and livelihoods programs in all of Somalia, including in the northern areas of Puntland and Somaliland .

52. Senator INHOFE. Secretary Flournoy and Ambassador Mull, the current U.N. resolution appears to authorize use of all necessary means not only in the territorial sea of Somalia, but also ashore with the consent of the essentially nonfunctioning

government. How would we gain consent of the Somalia Government to take action ashore?

Secretary FLOURNOY. The TFG provided consent for all necessary measures in a letter before the resolution was passed. The resolution was referring to the consent that had already been received, and as a result, no further consent is required.

Ambassador MULL. U.N. Security Council resolution 1851 allows U.N. member states and regional organizations cooperating in the fight against piracy for which "advance notification has been given by the TFG to the U.N. Secretary-General" to undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG." The TFG itself asked that the Security Council issue this resolution, and has already provided the requisite notification to the Secretary-General certifying that the United States is cooperating on counter-piracy matters. With that understanding, we would endeavor to coordinate with the TFG prior to actions should on shore action be appropriate. We maintain clear and open channels of communication with the TFG through our Embassy in Nairobi, Kenya and other channels.

53. Senator INHOFE. Secretary Flournoy and Ambassador Mull, would that be necessary in a case of hot pursuit?

Secretary FLOURNOY. The TFG has already provided that consent.

Ambassador MULL. Yes. However, as indicated above, the TFG has already notified the Secretary-General that the United States is cooperating with it on counter-piracy matters.

54. Senator INHOFE. Secretary Flournoy and Ambassador Mull, are we conducting surveillance over the shoreline to identify pirate havens and logistics centers?

Secretary FLOURNOY. The U.S. Government is aware of the strong linkages between maritime and land based activities, and we are conducting regional surveillance, as available, to better understand these linkages and issues.

Ambassador MULL. I respectfully refer you to DOD for a definitive answer on whether the United States is conducting surveillance over the shoreline to identify pirate havens and logistics centers.

BROADER DIPLOMATIC ISSUES WITH SOMALIA

55. Senator INHOFE. Secretary Flournoy and Ambassador Mull, what is your assessment of the recent U.N.-sponsored peace deal signed last year that allowed for Ethiopian troops to withdraw?

Secretary FLOURNOY. The U.N.-sponsored Djibouti Process ultimately led to the emergence of a "unity" TFG and the withdrawal of the Ethiopian forces. These are important steps towards achieving a Somali-led solution to the continued instability in Somalia.

Ambassador MULL. The TFG and ARS agreed to the Djibouti Peace Agreement in June 2008 and formally signed the agreement in August of the same year. The agreement paved the way for the creation of the current TFG, which is the most inclusive and promising government Somalia has had in over 18 years of civil war. The U.S. was pivotal in negotiating the agreement and in advising the Somalis as they worked to form the current TFG in Djibouti in early 2009, and the relative success of the process helped to convince the Government of Ethiopian to withdraw its forces from Somalia in January 2009.

56. Senator INHOFE. Secretary Flournoy and Ambassador Mull, what affect has the withdrawal of Ethiopian troops had on the U.N. African Union Mission for Somalia?

Secretary FLOURNOY. The withdrawal of the Ethiopian troops shifted the focus of extremist elements from the Ethiopians to the African Union Mission in Somalia (AMISOM), which has come under increased attacks, but has been able to continue its mandate of securing key installations in Mogadishu.

Ambassador MULL. The January 2009 withdrawal of Ethiopian troops from Somalia has made the AMISOM, which is not a U.N. mission, more of a target for extremists in Somalia. Extremists, including designated Foreign Terrorist Organization al-Shabaab, used the presence of Ethiopian troops within Somalia as a rallying cry to gain support. Once the Ethiopians pulled-out, extremists lost their main justification for violence, and began to increasingly target AMISOM, describing the forces within AMISOM as "foreign fighters." AMISOM has demonstrated its determination to outlast these attacks by extremists, and the Mission continues to carry

out its mandate, which includes protecting the TFG and key installations and locations in Mogadishu.

57. Senator INHOFE. Secretary Flournoy and Ambassador Mull, have we identified other African Union nations willing and capable of providing additional troops?

Secretary FLOURNOY. Uganda and Burundi are the only troop contributors for AMISOM, which together make up a total troop strength of 4,300. I defer to my State colleagues to provide an update on their diplomatic efforts to identify possible other contributors to this mission.

Ambassador MULL. Currently, three Ugandan and two Burundian battalions are deployed to AMISOM, giving the Mission total force strength of approximately 4,300. We are in the process of facilitating the deployment of a third Burundian battalion that will increase the total AMISOM force strength to approximately 5,100. Other AU nations, such as Nigeria and Ghana, have publicly stated a willingness to contribute troops to the Mission, and the Department continues to approach African capitals in an attempt to recruit additional forces.

STRATEGIC GOALS IN AFRICA

58. Senator INHOFE. Secretary Flournoy and Ambassador Mull, what are the broader U.S. strategic goals with respect to Somalia, and for the entire Horn of Africa?

Secretary FLOURNOY. Throughout the Horn of Africa the U.S. policy is to promote political and economic stability and security while addressing humanitarian concerns. With regards to Somalia, the U.S continues to focus on the elimination of the terrorist threat, promotion of security and good governance, reduction of piracy, and mitigation of the dire humanitarian situation.

Ambassador MULL. U.S. policy goals in Somalia, as with the Horn of Africa at large, are to create political and economic stability, eliminate the threat of terrorism, and address often dire humanitarian circumstances. In the case of Somalia, the U.S. is committed to eliminating the threat of piracy off its coast, with the realization that a long-term solution to the piracy situation requires addressing Somalia's many governance and stability issues on land. We continue to work closely with other U.S. Government agencies and departments to develop joint approaches to these issues.

59. Senator INHOFE. Secretary Flournoy and Ambassador Mull, does our newly established AFRICOM have sufficient authorities and resources to initiate and support contingency operations, to include noncombatant evacuations, on the Horn of Africa?

Secretary FLOURNOY. Yes. USAFRICOM has the requisite authorities and in-place procedures to request necessary resources. DOD is in communication with the Department of State about potential contingency operations.

Ambassador MULL. We understand that AFRICOM has sufficient authorities and will request relevant resources from the DOD, as needed, to initiate and support contingency operations in Africa. The Department of State defers to the DOD for details regarding the authorities and resources of its combatant commands.

[Whereupon, at 11:37 a.m., the committee adjourned.]

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