Chapter Eight

Recent Legal Issues and Problems Relating to Acts of Piracy off Somalia

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I. Introduction – Piracy Problem off Somalia

Somali pirates use simple tactics and basic equipment to threaten crews, board vessels and force compliance: typically small, fast, open decked boats, deploy ladders to allow individuals to scale ships’ sides, seizing control through the threat or use of force with firearms in a poor, but functional, condition. It can take as little as 15 minutes from the time a vessel realises it is under attack to the point at which pirates board. What has been remarkable about Somali pirates is their proven ability to routinely use such rudimentary tactics to seize huge vessels, and to keep their crews hostage for protracted periods until payment of a ransom. The profile of vessels that the pirates routinely attack is so uniform that the Maritime Security Centre-Horn of Africa (MSCHOA) has been able to establish a set of criteria to identify what constitutes a vulnerable ship:¹ large ships with slow speed, poor manoeuvrability, and a low freeboard are the key features. Military forces use MSCHOA analysis to track high-risk shipping and position their scarce resources to have maximum effect. The pirates are believed to be based around three Somali clans, operating quasi-business enterprises with financiers, logistical support, specialist boarding teams, guards and negotiators. When a ship is seized it is brought to an anchorage close to the Somali shore, and the crew are guarded while a ransom is negotiated. In 2009, Somali pirates are believed to have obtained around USD 100

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¹ MSCHOA provides a service to mariners in the Gulf of Aden, Somali Basin and off the Horn of Africa, <www.mschoa.org/Pages/default.aspx>.

Unless indicated otherwise, all urls were last accessed on 12 August 2010.
million in ransom payments,² with the average payment rising from between USD 100,000 and USD 200,000 in 2005 to USD four million in 2010.³ Single payments have been reportedly as high as USD nine million.⁴

In 2009, the Piracy Reporting Centre of the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC) reported 406 cases of piracy and armed robbery worldwide. Piracy off Somalia accounted for more than half of these figures, with 217 incidents, 47 vessels captured by pirates and 867 crewmembers taken hostage. The number of incidents in 2009 off the coast of Somalia is almost double the 111 attacks recorded in 2008.⁵ In the first two quarters of 2010 there has reportedly been a relative decline in the number of piracy attacks off Somalia with 100 attacks reported, half the worldwide total. The halt in the year on year increase is, according to the IMB’s Director, down to two main reasons.⁶ The first is the action of the navies in the Gulf of Aden (GOA) and their protection of shipping through the Internationally Recognised Transit Corridor (IRTC). The second is down to the actions taken by merchant vessels themselves. By following industry Best Management Practice (BMP), they have reduced the likelihood of a successful attack.

The naval presence and success in the GOA has had the effect of moving the concentration of attacks from the dense maritime traffic in the IRTC towards the Indian Ocean and, to a lesser extent, the Southern Red Sea. The pirates have proved to be agile and adaptive, and their favoured method of using a single fast attack ‘skiff’ powered by outboard engines in a concentrated area in the vicinity of the IRTC has been eschewed in the Indian Ocean. In these waters the preferred modus operandi is to operate much further from the coast using larger vessels with inboard engines (whalers) or fishing dhows as a platform (mother ship) to launch faster skiffs, which they tow behind them. This permits the pirates to conduct operations up to at least 1,000 nautical miles from Somalia. The increasing piracy activity in the Indian Ocean presents different