

HOUSE OF LORDS

European Union Committee

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12th Report of Session 2009–10

**Combating Somali  
Piracy: the EU's  
Naval Operation  
Atalanta**

Report with Evidence

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- (Q) refers to a question in oral evidence
- (p) refers to a page of written evidence

## **SUMMARY**

Piracy in the Gulf of Aden and the Indian Ocean is a serious and ongoing threat to UK and EU interests. It could spread within the region, which is unstable.

The EU's Operation Atalanta, with its operational headquarters based in Northwood, UK, has made a strong contribution to combating piracy, in particular protecting World Food Programme (WFP) ships and coordinating with other maritime forces in the area. However there are a number of areas that need improvement and require action.

Naval vessels and their crews are very expensive resources in short supply. With more surveillance aircraft the Atalanta fleet could be far more effective and efficient. Similarly, the permanent availability of a tanker would prevent Atalanta vessels from having to return to port on a regular basis solely to refuel.

The WFP's use of small, slow ships makes them especially vulnerable to pirate attacks. As a result they require greater military protection and resources. The Government and the EU should insist that the WFP charter faster, larger and more modern vessels. It is even more efficient for military contingents to be placed on these vessels rather than having warships and their crew shadowing each delivery. It should be a condition of the award of a WFP contract that, when requested, the flag state allow these vessels to carry Atalanta military forces on board.

Military personnel placed on commercial shipping should be given specialised training. We agree with UK policy that private security guards should not be placed on commercial shipping because of the increased risks to crew and ships.

The insurance industry is not taking sufficient responsibility for ensuring that commercial shipping transiting the area complies with readily available, tried and tested procedures to reduce the risk of capture by pirates. At a minimum the industry should impose increased insurance premiums on ship operators who do not comply.

We agree with the increasingly robust action taken against pirates by Atalanta forces. There is a need to change the perceived risk/reward ratio for pirate activity.

We welcome the EU's agreements with Kenya and the Seychelles to prosecute pirates, and the negotiations now taking place with other states in the region. We wait to see the number of successful prosecutions that result.

There will be no solution to the problem of piracy without a solution to the root causes of the conflict on land in Somalia. We support the EU's efforts to deal with Somalia's problems by building up the security sector in line with democratic norms, providing humanitarian assistance and assisting the authorities in Somaliland and Puntland to strengthen their coastguards.

If the piracy problems of the Gulf of Aden and the Indian Ocean are not robustly tackled, there will be copy-cat piracy elsewhere on the world's shipping lanes adjacent to failed states or regions where a government's writ fails to reach.



# Combating Somali Piracy: the EU's Naval Operation Atalanta

## Introduction

1. During 2008, the EU and the UN Security Council became increasingly concerned about piracy off the east coast of Africa and in the Gulf of Aden. A large part of the world's maritime traffic passes through this trade route and piracy was posing an increasing threat. In particular, the World Food Programme (WFP) suffered several attacks on its ships taking vital humanitarian aid to Somalia, and it called upon the international community to provide protection. Shipping companies were also concerned about the protection and safety of their vessels, cargo and crew. Concurrently the humanitarian situation in Somalia worsened considerably. UN Security Council resolution 1838 noted reports that as many as 3.5 million Somalis would be in need of food aid by the end of 2008.
2. In a series of Security Council Resolutions, the UN called on the international community to act (see Box 2) and in December 2008 the EU established Operation Atalanta (see Box 1), its first-ever naval Common Security and Defence Policy (CSDP) operation. This was also the first military CSDP operation in which the UK had taken a leading role.
3. This report examines the mandate and effectiveness of EU Operation Atalanta as well as the key challenges facing it and how to address them.
4. This report was prepared by Sub-Committee C (Foreign Affairs, Defence and Development) whose members are listed in Appendix 1. Those from whom we took evidence are listed in Appendix 2. We are grateful to them all.
5. **We make this report to the House for debate.**

## BOX 1

### EU Operation Atalanta

The EU agreed to set up an Operation to combat piracy at the 10 November 2008 Council<sup>1</sup>. This Operation, named EUNAVFOR Somalia—Operation Atalanta, has been in operation since December 2008. It was originally set up for one year and the common costs were specified as 8.3 million euros for the initial year. On 8 December 2009, the Council of the EU decided to extend its mandate for another year (until 12 December 2010).

The EU's Council conclusions of 26 May 2008 had earlier expressed the Council's concern at the upsurge of pirate attacks off the Somali coast, which affected humanitarian efforts and international maritime traffic in the region and contributed to continued violations of the UN arms embargo.

Operation Atalanta operates in a zone comprising the south of the Red Sea, the Gulf of Aden, the Somali basin and part of the Indian Ocean, including the Seychelles. This is a vast area, comparable to that of the Mediterranean Sea.

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<sup>1</sup> Council Joint Action 2008/851/CFSP.

The Political and Security Committee (PSC) exercises political control and strategic direction of the EU military operation, under the responsibility of the Council of the European Union. The EU Military Committee (EUMC) monitors the correct execution of the operation. The Operation Commander, Rear Admiral Peter Hudson RN (UK), currently commands the operation from the Operational Headquarters (OHQ) at Northwood, United Kingdom.

More than twenty vessels and aircraft take part in Atalanta. On 7 April 2010<sup>2</sup>, the following EU Member States were making a permanent operational contribution to the operation: the Netherlands, Spain, Germany, France, Greece, Italy, Sweden, Belgium, Luxembourg and Portugal. A number of other EU military personnel supplement the team at the Northwood Operational Headquarters. Non-EU Member States Norway, Croatia, Montenegro and Ukraine also participate in the Operation.

## BOX 2

### The UN Framework

Operation Atalanta was launched in support of a series of United Nations Security Council Resolutions (UNSCR) on Somalia:

- Resolution 1814 (2008) called on the international community to take action to protect shipping involved in the transport and delivery of humanitarian aid to Somalia.
- In resolution 1816 (2008), the Security Council expressed its concern at the threat that acts of piracy and armed robbery against vessels posed to the delivery of humanitarian aid to Somalia, the safety of commercial maritime routes and international navigation. The Security Council authorised the states cooperating with the Somali Transitional Federal Government (TFG) to enter the territorial waters of Somalia and to use, in a manner consistent with relevant international law, all necessary means to repress acts of piracy and armed robbery at sea.
- Resolution 1838 (2008), commended the ongoing planning process towards a possible EU naval operation.
- Resolution 1897 (2009) renewed the Security Council's call upon states and regional organisations to take part in the fight against piracy off the coast of Somalia, in particular by "deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment ..."

### The mandate and effectiveness of Operation Atalanta

6. EU Operation Commander Rear Admiral Peter Hudson RN told us that one of the strengths of Operation Atalanta was the clarity of its mandate:
  - to support the World Food Programme (WFP) in its efforts to transport humanitarian aid into Somalia—a top priority;
  - to support the African Union (AU) mission, AMISOM<sup>3</sup>, by protecting its ships supplying the Transitional Federal Government (TFG) of Somalia in Mogadishu;

<sup>2</sup> Information from the EU Council website, [www.consilium.europa.eu](http://www.consilium.europa.eu)

<sup>3</sup> AMISOM is the African Union's Mission in Somalia, created in 2007 to implement a national security plan for Somalia, train Somali forces and assist in creating a secure environment for the delivery of humanitarian aid.

- to protect vulnerable shipping and work with industry groups on how they should go through the high risk areas;
- to deter, disrupt and break up pirate groups (Q 94).

Recently the mandate has been extended to include the monitoring of fishing activities.

7. We heard universal praise for the way in which Operation Atalanta was run. Dr Lee Willett (Royal United Services Institute for Defence and Security Studies—RUSI) noted that the Operation had been launched in the space of only 10 weeks, which for “something of this size and significance is quite an achievement”. The UK had been welcomed as the framework nation for the Operation due to the experience and credibility of the Royal Navy. Siting the headquarters at Northwood made sense; it already housed Navy and NATO operations, as well as being close to London, home of the International Maritime Organization (IMO) and a hub for the global shipping community (Q 164) (see also Kopernicki QQ 214, 216, Simmonds Q 216).
8. Witnesses expressed concern about the dangers of the possible spread of piracy, with copy-cat operations, if nothing was done. Jan Kopernicki (Shell Shipping and Oil Companies International Forum) said this had already happened on the West African coast (Q 217).
9. Our witnesses agreed that Operation Atalanta had been effective in the two main aspects of its mandate: protecting WFP and AU ships and deterring and disrupting piracy. Rear Admiral Hudson said that the EU Operation had a 100% successful record in protecting WFP vessels. In 2009 Atalanta had escorted 49 WFP ships carrying over 300,000 tonnes of food, as well as 14 African Union ships with supplies for AMISOM troops in Mogadishu. According to EU figures, the number of successful pirate attacks on larger merchant vessels had remained steady, with 46 in 2008 and 43 in 2009. He stressed that it was “quite a challenge” to identify reports of genuine but unsuccessful pirate assaults: a ship’s master might see a fishing vessel or an illegal activity, such as human smuggling, and report it as an attack (QQ 95, 101–4).
10. Jason Alderwick (International Institute for Strategic Studies—IISS) said that much progress had been made in international efforts to combat piracy in the region, which had previously been unchecked. Although the number of ships taken by pirates was broadly the same over the previous 12 months, the number of attempted attacks that had been thwarted had increased by at least 70%. This was a result both of the presence of military forces in the region and of ship owners, operators and other commercial parties taking the issue seriously. Dr Willett agreed that Atalanta was addressing the piracy problem, as well as providing a presence in the region and giving greater confidence to the shipping industry (QQ 160–1, 171).
11. **Piracy in the Gulf of Aden and the Indian Ocean is a serious and continuing threat to UK and EU interests. The EU acted rapidly and decisively in response to this threat by launching Operation Atalanta. This is a good example of the EU successfully conducting foreign and security policy. We welcome the lead role which the UK is playing in the Operation.**
12. **Operation Atalanta has proved itself a credible force in combating piracy in the Gulf of Aden and the Indian Ocean. It has been highly effective in protecting World Food Programme and AMISOM**

**logistics vessels, none of which has so far been taken by pirates. It has also successfully deterred and disrupted pirate threats to commercial shipping.**

13. **Piracy is deeply rooted in Somalia and could spread to other countries in the region unless determined steps are taken to address the problem of fragile states. There is piracy elsewhere in the world and it could spread further if the EU and its international partners do not show a determination to eliminate it.**
14. **We believe that Atalanta's mandate should be renewed in December 2010 and that the Government should continue to make the Operational Headquarters in Northwood available for this mission.**

### **A complex environment**

15. Mr Alderwick commented that Atalanta was operating in a "very complex environment". It was the second or third busiest channel for maritime transport in the world, in addition to the "myriad" local fishing boats in the Gulf of Aden (Q 162).
16. Rear Admiral Hudson told us that about 25,000 ships transited the area every year, principally through the Gulf of Aden, representing around 25 per cent of global trade. It was a "vital strategic artery". An important energy supply route led from the Gulf of Aden into Europe and across to America. Container ships bound for the far east also regularly used that route. On average between 75 and 100 ships transited every day, depending on the season and economic cycles. In the Somali Basin, the southern part of the area of operations, the traffic density was much lower, around 600 to 1,000 ships annually (Q 96).

### **Pirate organisation and tactics**

17. Pirates identify vulnerable ships which can more easily be attacked. Rear Admiral Hudson told us that a set of criteria had been established which were used to identify what constituted a vulnerable ship: its speed, manoeuvrability, freeboard<sup>4</sup> and cargo and the number of people on board. The maritime security centre then calculated whether the ship was high, medium or low risk (Q 94).
18. Rear Admiral Hudson commented that the pirates ran "adaptive organisations. They look at the conditions, they look at where the military forces are and that is how they are able to exploit the weaknesses in our armour". Following the success of the international forces and those of Puntland<sup>5</sup> authorities in the Gulf of Aden, the pirates had sought alternative criminal activity, including human smuggling. They were also moving out into the Somali Basin using long-range skiffs or "mother ships" towing attack skiffs behind them (Q 107) (see Appendix 4). Mr Alderwick said that while the pirate organisations were sophisticated, the conduct of pirate attacks was basic and the state of the pirates' weaponry was poor. However, they were becoming better at operating offshore, in particular by equipping their boats with additional or more powerful engines (Q 172). Atalanta sought to identify pirates based on the equipment they carried: in particular the

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<sup>4</sup> The distance from the waterline to the deck of a fully loaded ship.

<sup>5</sup> Puntland is a semi-autonomous region in the north east of Somalia.

quantity of fuel and presence of more powerful engines than were needed for fishing. Pirate equipment, including ladders and weaponry, was easy to detect (Rear Admiral Jones Q 8).

19. Mr Alderwick thought that one indication of the success of the operation had been the displacement “arguably” of activity by the pirates. Once the maritime forces in the Gulf of Aden “were galvanised”, activity was displaced further into the Somali Basin, causing a separate tactical and operational issue (Q 160).
20. The pirates were largely based around three clans, which tended to have their own “pirate companies”. They left from numerous pirate ports, including coves and harbours along the 3,000 km-long coast. They brought seized ships back to a central location, where they maintained the security of the ships and conducted ransom negotiations (Hudson Q 111). Some pirates were subject to the influence of Islamic tribes, including Al-Shabab and Al-Islamiya (Jones Q 10).
21. **A significant number of Somali pirates are organised in clan-based sophisticated criminal networks. However the method of attack has remained basic. Ironically, it is a measure of the success of Atalanta and other international forces in the Gulf of Aden that pirates have been forced to operate further offshore in the Indian Ocean. This increases the risk-to-reward ratio for the pirates as they have to use mother ships which are more easily identified by surveillance. The EU’s efforts to combat piracy must continue to be robust so as to increase this risk-to-reward ratio. Given the displacement of piracy further into the Indian Ocean, it is all the more important that Atalanta has the right capabilities, especially airborne surveillance.**

### Capability shortfalls

22. Despite praise for the Operation, our witnesses identified a number of specific shortfalls—in maritime surveillance, tankers and medical support. Rear Admiral Philip Jones, EU Operation Commander from December 2008 to June 2009, distinguished between strategic intelligence, to which Atalanta had sufficient access, and tactical “day-to-day” intelligence, which was “a constant challenge”. Identifying a pirate boat presented difficulties from a legal point of view. “A pirate is only a pirate when he is committing an act of piracy ... he may be a people smuggler overnight taking [Somalis] to Yemen, ... a fisherman the next morning and then, in the afternoon, go out to do some piracy, and it is only when he commits the act of piracy that he becomes liable to arrest and prosecution by the maritime forces” (QQ 7–10).
23. Given the difficulty of identifying pirate skiffs, Rear Admiral Jones stressed the importance of airborne surveillance platforms, including maritime patrol aircraft. These aircraft were “absolutely pivotal” because they could detect the movement of pirate vessels at greater range and more effectively than was possible using surface-borne radar and visual imagery. Ship-based helicopters were also able to cover a wide area and use a range of sensors to detect the movement of pirate vessels. However, there was a gap in the Operation’s knowledge of pirate activity on land in Somalia (QQ 7–10). Rear Admiral Hudson observed that maritime patrol aircraft were the asset that Atalanta, NATO and the coalition forces needed most. Those running Operation Atalanta had set a minimum threshold of three maritime patrol aircraft to enable a full daily sortie in the Gulf of Aden, but this requirement had not

been met. Tankers—to allow mid-ocean refuelling—and role two<sup>6</sup> medical facilities were also in short supply (QQ 135–136).

24. Mr Alderwick agreed that aviation assets were a “great force multiplier”, but that some states contributing to the EU Operation had at times been unable to supply a helicopter, although not in the UK’s case (Q 164). Dr Willett pointed out that capability shortfalls were best addressed on an international basis. The UK had limited military assets, and other nations should be encouraged to contribute. Luxembourg had offered a maritime patrol aircraft, which was operating in the Seychelles area. Saudi Arabia and Japan had each provided a tanker to support international naval operations in the region (Q 193).
25. Mr Kopernicki (Shell Shipping and Oil Companies International Forum) suggested that commercial tankers could be chartered for refuelling purposes. Many tankers were already fitted out with NATO-compatible connections. These tankers could augment the international naval forces’ fleet (Q 218). However, FCO Minister Baroness Kinnock of Holyhead stated that the use of commercial tankers was not currently assessed to be the best means of meeting requirements “either operationally or in particular most cost-effectively”. Charter costs for a medium ocean tanker were in the region of £11,000 per day and the tanker could itself become a potential target for pirates (p 83).
26. Admiral Hudson commented that the EU mission had no unmanned aerial vehicles (UAVs) of the type deployed in Afghanistan, but the US operated them from the Seychelles. Asked whether Atalanta should have UAVs, he commented that they were in scarce supply and other operational theatres had a higher demand for them (QQ 137–140). Atalanta had a good relationship with the EU Satellite Centre and used “a variety of sources to keep an eye on activity” (Q 116).
27. **We are concerned that Atalanta’s capability shortfalls are preventing it from being even more effective in tackling piracy. Airborne surveillance capabilities—including maritime patrol aircraft and helicopters—are crucial force multipliers for Operation Atalanta, as they facilitate the identification of suspected pirates. We welcome the support currently provided by Luxembourg operating out of the Seychelles, but regret that Atalanta still does not have access to sufficient surveillance assets. Unmanned aerial vehicles directly serving Atalanta would, in particular, be useful, but we recognise that they are needed as a higher priority in combat zones.**
28. **Tanker support is needed to enable ships participating in Atalanta and the NATO and coalition forces to refuel in mid-ocean in order to maximise the time they spend at sea combating piracy, rather than refuelling in port. Cover is currently insufficient. The Government and the EU should continue actively to encourage international partners to provide tankers so that continuous cover can be provided.**
29. **The EU should also explore with Member States how to increase access to medical facilities for surgical and non-surgical interventions where there is also a shortage.**

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<sup>6</sup> Role two medical facilities offer a range of clinical capabilities. For most NATO nations, surgical capability is their defining feature, whereas for the UK (and the US), their defining feature is “consultant-led resuscitation”, both surgical and non-surgical (MOD information).

### The World Food Programme

30. Mr Kopernicki told us that the WFP chartered small, old, very slow ships, requiring Atalanta to deploy large numbers of personnel and ships for long periods to steward them. If the WFP could be persuaded or financially assisted to use larger, more modern and faster ships, they would require far fewer troops and ships to patrol, releasing resources to carry out anti-piracy activity (Q 217). Chris Holtby (Deputy Head of Security Policy, FCO) told us that, where possible, armed vessel protection detachments (VPDs) were placed on WFP and other ships<sup>7</sup>. However, some flag states had not agreed to this, increasing their vulnerability to attack. Baroness Kinnock of Holyhead said that discussions were taking place between the WFP and the military on ways to improve the situation and the Government had raised the problem with the shipping industry (QQ 330–4).
31. **Protecting World Food Programme vessels delivering vital supplies to Somalia is an essential part of Atalanta’s mandate, which we fully support. However, the WFP’s use of small, slow ships requires greater military protection resources. The Government and the EU should strongly encourage the WFP to charter faster, larger and more modern vessels.**
32. **In addition shipping companies have a vested interest in such measures as they would free up Atalanta’s ships to protect their vessels transiting the area. The Government should consider establishing a partnership in which interested companies would make a voluntary financial or in-kind contribution to the WFP for chartering or purchasing satisfactory vessels. A “friend of the WFP label” could be established under the auspices of the EU or the IMO to recognise the contribution of shipping companies. This would serve as an indication of their commitment to corporate citizenship.**
33. **The WFP should also make it a condition of tender that, when requested, the flag state allow military personnel on board all WFP vessels used to supply Somalia. The Government should pursue this objective with the WFP and other donors, including the US as the primary donor.**

### Rules of engagement: detention and prosecution of suspected pirates

34. Atalanta military personnel can arrest, detain and transfer persons who are suspected of having committed or who have committed acts of piracy or armed robbery in the areas where they are present. They can seize the vessels of the pirates or vessels captured following an act of piracy or an armed robbery and which are in the hands of the pirates, as well as the goods on board. The suspects can be prosecuted by an EU Member State or by Kenya under an agreement signed with the EU on 6 March 2009 giving the Kenyan authorities the right to prosecute. An exchange of letters concluded on 30 October 2009 between the EU and the Republic of Seychelles allows the transfer of suspected pirates and armed robbers apprehended by Atalanta in the operation area. This arrangement constitutes an important new

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<sup>7</sup> The Ukraine has recently offered special forces units to be deployed on WFP ships. The EU has warmly welcomed this offer and is urgently considering ways of responding positively.

contribution to the counter-piracy efforts<sup>8</sup>. On 22 March 2010 the Council of the EU authorised High Representative Baroness Ashton of Upholland to open negotiations with Mauritius, Mozambique, South Africa, Tanzania and Uganda with a view to concluding further transfer agreements<sup>9</sup>.

35. Commander Clive Dow RN told us that Atalanta was a law enforcement operation rather than a war against pirates or an armed conflict. It abided by the law of the sea, under customary international law, the United Nations Convention on the Law of the Sea (UNCLOS) and the Suppression of Unlawful Acts Convention. The principle of “reasonable force” applied<sup>10</sup>. Lethal force could only be employed where there was a threat to life (QQ 112–3). On the rules of engagement, Rear Admiral Hudson assured us that Atalanta had the necessary flexibility to disrupt, deter and arrest pirates (Q 112).
36. Commander Dow said that Atalanta restricted its prosecutions of suspects to pirates who were caught in the act rather than those who looked suspicious on the basis of their equipment. This was due to the arrangements for prosecution, generally in Kenya and the Seychelles. Cases were selected to maximise the chances of conviction, based on witness evidence of an act of piracy. There was a comprehensive approach when it came to prosecutions across the military operations as well as in the political arena. The EU mission worked closely with the UN Office on Drugs and Crime, which was charged with assisting capacity building, not only in Kenya and the Seychelles, but in any other regional area where prosecutions might take place. However it focused its efforts on building capacity in Somalia, Somaliland<sup>11</sup> and Puntland. This ensured that prosecutions were efficiently managed and that human rights standards were met. However, this could not be done “in isolation” for pirates. Capacity building in regional jurisdictions had to apply to the whole system (QQ 113, 148).
37. We asked our witnesses whether human rights standards were being met for the transfer, prosecution and detention of suspected and convicted pirates. Lord Malloch-Brown (then FCO Minister) assured us that Government policy was not to allow transfer to third states of suspected pirates for prosecution unless the Government were satisfied that they would not be subject to cruel treatment, the death penalty or face a trial which was grossly unfair. The UK had signed a Memorandum of Understanding (MoU) with Kenya in December 2008, and the Government’s legal advisers were completely satisfied that suitable guarantees were in place on the sentencing of pirates and their conditions of detention. The EU had since then agreed a similar MoU with Kenya as well as an exchange of letters with the Seychelles authorities for the transfer of suspected pirates (Q 62, p87).
38. Baroness Kinnock of Holyhead said that there were 117 pirates in Kenyan prisons, 75 of whom were transferred by Atalanta for prosecution. A further 11 pirate suspects would be transferred to the Seychelles by Atalanta for prosecution (Q 283; p 83).

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<sup>8</sup> EU Factsheet on Operation Atalanta, February 2010. Available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/missionPress/files/100201%20Factsheet%20EU%20NAVFOR%20Somalia%20-%20version%2014\\_EN04.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/missionPress/files/100201%20Factsheet%20EU%20NAVFOR%20Somalia%20-%20version%2014_EN04.pdf)

<sup>9</sup> Foreign Affairs Council conclusions 22 March 2010

<sup>10</sup> The minimum force necessary to impose one’s rights under the relevant provisions: whether to board, search, seize, arrest, or detain (Commander Dow Q 113).

<sup>11</sup> Somaliland is an autonomous region in the north of Somalia.

39. Speaking of the different organisations operating to counter piracy in the area, Mr Alderwick said that the advantage of the EU was that it had a variety of political instruments; it could enter into political agreements with states in the region, both as a collective entity and through its Member States. By contrast, NATO was seen as a military organisation. The EU has put in place status of forces agreements with states in the region. These acted as a “force multiplier”, as Atalanta could operate out of Djibouti and Oman. The EU had also negotiated legal frameworks for the prosecution of pirates, such as that with Kenya. Atalanta had adopted a comprehensive and inter-agency approach, by engaging ship-owners, operators, the British Chamber of Shipping and the International Maritime Organisation (IMO). This approach was key to addressing the piracy issue (QQ 160–1).
40. **We welcome the fact that the rules of engagement of Operation Atalanta are sufficiently robust to allow it to carry out its mandate.**
41. **We welcome the agreements that the EU has signed with Kenya and the Seychelles for the transfer and prosecution of suspected pirates, and the Government’s assurance that these agreements safeguard the human rights of those detained. We commend Kenya and the Seychelles for showing leadership in addressing a regional problem, although we are concerned by recent reports that Kenya is considering no longer accepting suspected pirates from international naval forces. The Government and the EU should continue to assist both states in building the capacity of their judicial and penal systems to cope with the increased demand.**
42. **We also welcome the Council of the EU’s agreement to open negotiations on similar arrangements with other countries in the region.**

#### **Coordination with NATO and other maritime forces**

43. The EU Operation is part of a wider international effort to combat piracy in the Gulf of Aden, off the coast of Somalia and in the Indian Ocean. Two multinational forces operate in this zone in close coordination with the EU: US-led coalition CTF-151 and NATO. Russian, Indian, Japanese, Malaysian, South Korean and Chinese vessels are also present in varying degrees. Atalanta is in permanent liaison with all these forces. Mr Alderwick pointed out that the effectiveness of international cooperation had to be assessed bearing in mind that it had only been active for just over a year (Q 160).
44. Rear Admiral Hudson said that coordination in the region between the EU, NATO and coalition forces was working well (Q 127). Jan Kopernicki agreed that cooperation with other nations worked well, reflecting the broader engagement of Atalanta with the US Fifth Fleet base in Bahrain (where the combined task forces are based) and NATO deployments (Q 216).
45. **The EU’s in-theatre coordination with NATO, the US-led coalition and other navies is working well. We welcome the important role that other countries are playing in combating piracy. Coordination with the Chinese navy in particular is encouraging.**

#### **The shipping industry**

46. Dr Willett emphasised the role that navies played in advising the shipping industry on best practice prior to and during transit in the region in order to

mitigate the risk of pirate attacks. Mr Kopernicki told us that best practice guidance had been produced by the Oil Companies International Marine Forum (OCIMF)<sup>12</sup>. It includes guidance on how the ship is sailed and manoeuvred, including its speed, the use of defensive measures such as water hoses and razor wire and means of preventing grappling hooks gripping the vessel, and the use of low radars to detect the approach of small boats. Dr Willett emphasised how well the Internationally Recommended Transit Corridor (IRTC) through the Gulf of Aden is considered to be operating, with only two ships attacked since it was established. He highlighted that the owners of 25 per cent of ships still chose not to use the IRTC and that these ships included a high proportion of the vessels which were ultimately attacked (QQ 174–7, 226). Mr Kopernicki added that the owners of this substantial minority of ships tended to be small independent, often family-owned firms with one or two ships who decided not to use the IRTC but to take a chance (Q 228).

47. **We welcome the best practice guidance which has been produced and circulated by the Oil Companies International Marine Forum and other organisations. We believe that the benefits of adopting recommended best practice in mitigating the risk of piracy attacks need to be more actively promoted among the shipping industry. The Government, the EU and the shipping industry should work on this collaboratively.**

#### **Armed guards on commercial shipping**

48. Some ships carry personnel from private security companies. Our witnesses agreed that these individuals should not be armed, in line with industry best practice, as this would increase the risks to which individuals and ships would be subjected (Q 60). In contrast to their position regarding the use of VPDs on WFP chartered ships (see paragraph 30 above), Mr Holtby stated that the Government's clear position regarding the other ships transiting the region was that private guards should not take arms on board vessels. He considered that vulnerable ships could be supported by other means such as through military co-operation (Q 299).
49. Mr Alderwick said that Atalanta had adopted a comprehensive and inter-agency approach, by engaging ship owners, operators, Chambers of Shipping and the IMO, unlike other international forces in the region. This approach was key to addressing the piracy issue (see paragraph 39 above) (QQ 160–1). Mr Kopernicki thought that military-civilian cooperation had been significant as the problem went beyond normal military boundaries (Q 216).
50. **We endorse the view of the shipping industry, the IMO and the Government that private security guards should not be placed on commercial shipping as this would increase the risks to which the ships and crew were subject. However, military personnel from national armed forces are occasionally placed on commercial shipping on a case-by-case basis, and we believe this should continue. The Government and the EU should ensure that any such personnel receive prior specialised training to a high standard for this role.**

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<sup>12</sup> Piracy—The East Africa/Somalia Situation: Practical Measures to Avoid, Deter or Delay Piracy Attacks (OCIMF, 2009); see also Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia (Version 2—August 2009) produced by a number of organisations.

### The insurance industry

51. Rear Admiral Hudson expressed regret that little progress had been made in persuading insurance companies to offer a discount in respect of ships that adhered to best practice and self-protective measures (Q 105). Mr Alderwick suggested that, in order to encourage the shipping industry to conform to best practice, compliance with International Ship and Port Facility Security Code (ISPS) guidelines, IMO Best Management Practices or IRTC recommendations should be made a condition of being underwritten by the insurance industry (Q 202). David Croom-Johnson (Aegis Managing Agency) and Andrew Voke (LMA Marine Committee and Chaucer Underwriting) made clear their support for the promotion of best practice among the shipping industry in order to reduce risk but stated that the insurance industry was reluctant to mandate such an approach, and instead could only give advice, due to their obligations under competition law (QQ 258–261, 268). Mr Kopernicki agreed that the insurance industry would face difficulties in adopting such an approach but also suggested that the Protection and Indemnity (P&I) arm of the insurance industry could potentially be more amenable in this respect<sup>13</sup> (QQ 233–234).
52. **The insurance industry must accept a greater degree of responsibility for promoting adherence to best practice on deterring piracy by shipping companies. We strongly urge that the terms and conditions of insurance effectively reflect the need to discourage shipping companies from failing to follow recognised best practice.**

### Hostage taking and ransoms

53. Rear Admiral Hudson said that the piracy of ships for ransom had generated around \$80 million in 2009. Generally, hostages had been well treated notwithstanding the psychological impact. Tracing where the money went was a key part of the overall assault on piracy but he did not believe there were any direct links between terrorist organisations such as Al-Qaeda and piracy (Q 108). We understand that it is very difficult to ascertain the ultimate destination of proceeds of piracy. Although the Government have so far found no evidence of any operational or organisational link between piracy and terrorism,<sup>14</sup> there must be a danger of such links.
54. Lord Malloch-Brown (then FCO Minister) acknowledged the reality that ransom payments were made by ship owners to save the life of their crews, and confirmed that such payments were not illegal under international law. However, the Government would not endorse, condone or participate in such a transaction, in line with the common EU position (QQ 79–80).
55. Baroness Kinnock of Holyhead confirmed that the payment of ransoms was not a criminal offence under UK law; the Government's position was that such payments should be discouraged as they would only exacerbate the piracy problem<sup>15</sup>. Mr Holtby stated that once a ransom was received by

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<sup>13</sup> Protection and indemnity insurance (P&I) is a form of marine insurance against third party liabilities and expenses arising from owning ships or operating ships as principals. It is distinct from other forms of marine insurance such as hull and war risk insurance. Cover is provided by an insurance mutual, called a P&I Club, which is owned by its members who are the insured ship-owners.

<sup>14</sup> House of Lords Hansard 12 December 2009 cols 977–978

<sup>15</sup> See also: *Money laundering and the financing of terrorism* (19<sup>th</sup> Report of Session 2008–09, HL Paper 132), paragraph 170.

pirates it became criminal proceeds which could then technically be recovered (Q 340).

56. The insurance industry confirmed that the payment of a ransom was insurable and it was not illegal to insure such a payment<sup>16</sup> (Croom-Johnson Q 278). The FCO told us that the US had recently suggested that pirate individuals should be designated under the UN anti-terror sanctions regime, which could require States to freeze funds and financial assets associated with an individual. They noted the reported concerns of the shipping industry that such a move might render the payment of ransoms more complicated and thus potentially endanger the lives of crews (Q 340).
57. **We support the status quo whereby the payment of ransom to pirates is not a criminal offence under United Kingdom law. We recommend that the Government continue to monitor the potential risks of monies reaching terrorists.**
58. **We understand that skilled ransom negotiators can help to keep risk to life and vessels, as well as ransom payments, to a minimum. Where ship owners intend to pay a ransom to recover their vessel and crew, we recommend that they use experienced and effective ransom negotiators. Where insurance policies do not already insist on experienced negotiators, they should do so.**

#### **Addressing the root causes: the EU's comprehensive approach**

59. Baroness Kinnock of Holyhead confirmed that the EU was pursuing a “very comprehensive strategy” to tackle Somali piracy and its root causes, which were instability and lack of rule of law. The EU, the UK and other international partners were members of the Contact Group on Somalia which supported the efforts of the fledgling Transitional Federal Government, the UN Political Office on Somalia and the African Union military mission, AMISOM, towards the establishment of a peaceful environment. The EU was considering how it could increase its commitment to Somalia, including support for a general reinforcement of Somali capacity to meet security challenges. In the north of Somalia, in Somaliland and in Puntland, the UK, EU and UN were supporting programmes to deliver rule of law projects, and DfID was providing funding for alternative livelihoods. The EU had proposed a military training mission that would contribute to strengthening the Somali security forces (Q 295). The EU Foreign Affairs Council in Brussels adopted a Council Decision on 25 January 2010 to launch this mission. We were also told that the European Commission was funding the salaries of a 5,000-strong police service in Mogadishu (p 83).
60. Rear Admiral Hudson said that capacity building was a “big issue” in the Horn of Africa. Somali institutions and regional coastguard capabilities needed improvement. Initiatives included the IMO's Djibouti Code of Conduct, information sharing centres, and a coastguard training centre in Djibouti. The EU's major initiative was to build security assurance in Somalia and help the TFG in the transition to a proper federal government in Somalia. In the 2009 revision to the EU mandate Atalanta had taken on some modest capacity building in Kenya and Djibouti. It was working with

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<sup>16</sup> Masefield AG v Amlin Corporate Member Ltd [2010] EWHC 280 (Comm), 18 February 2010.

the Yemeni coastguard to build the capacity of coastguards in Puntland and Somaliland, without detriment to Atalanta's main operations (Q 106)<sup>17</sup>.

61. **It is clear that without addressing the root causes of the conflict in Somalia, piracy will continue to flourish. The EU is rightly taking a comprehensive approach, seeking to address political, economic and security aspects of the crisis in a holistic way. However, the causes of fighting and insecurity in Somalia are deep-rooted and complex. Progress on peace and security will largely depend on the Somalis themselves, including the actions of the fledgling Transitional Federal Government (TFG).**
62. **We fully support the EU's efforts to build up the security sector in Somalia, in particular the training of Somali police, in line with democratic norms, while providing funding for vital humanitarian assistance. The EU's actions are part of a joint effort by the UN and international partners. It will be important that the international community makes a long-term commitment to stabilising the country.**
63. **The UK and EU should also work with the autonomous authorities in Somaliland and Puntland to build up their coastguards and provide sources of legitimate employment for their people.**

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<sup>17</sup> The FCO has recently allocated £400,000 to improve the Somaliland Coast Guard's ability to provide for the safety of the coastal population of Somaliland. Information provided by the FCO.

## CONCLUSIONS AND RECOMMENDATIONS

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### The mandate and effectiveness of Operation Atalanta

64. Piracy in the Gulf of Aden and the Indian Ocean is a serious and continuing threat to UK and EU interests. The EU acted rapidly and decisively in response to this threat by launching Operation Atalanta. This is a good example of the EU successfully conducting foreign and security policy. We welcome the lead role which the UK is playing in the Operation (paragraph 11).
65. Operation Atalanta has proved itself a credible force in combating piracy in the Gulf of Aden and the Indian Ocean. It has been highly effective in protecting World Food Programme and AMISOM logistics vessels, none of which has so far been taken by pirates. It has also successfully deterred and disrupted pirate threats to commercial shipping (paragraph 12).
66. Piracy is deeply rooted in Somalia and could spread to other countries in the region unless determined steps are taken to address the problem of fragile states. There is piracy elsewhere in the world and it could spread further if the EU and its international partners do not show a determination to eliminate it (paragraph 13).
67. We believe that Atalanta's mandate should be renewed in December 2010 and that the Government should continue to make the Operational Headquarters in Northwood available for this mission (paragraph 14).

### Pirate organisation and tactics

68. A significant number of Somali pirates are organised in clan-based sophisticated criminal networks. However the method of attack has remained basic. Ironically, it is a measure of the success of Atalanta and other international forces in the Gulf of Aden that pirates have been forced to operate further offshore in the Indian Ocean. This increases the risk-to-reward ratio for the pirates as they have to use mother ships which are more easily identified by surveillance. The EU's efforts to combat piracy must continue to be robust so as to increase this risk-to-reward ratio. Given the displacement of piracy further into the Indian Ocean, it is all the more important that Atalanta has the right capabilities, especially airborne surveillance (paragraph 21).

### Capability shortfalls

69. We are concerned that Atalanta's capability shortfalls are preventing it from being even more effective in tackling piracy. Airborne surveillance capabilities—including maritime patrol aircraft and helicopters—are crucial force multipliers for Operation Atalanta, as they facilitate the identification of suspected pirates. We welcome the support currently provided by Luxembourg operating out of the Seychelles, but regret that Atalanta still does not have access to sufficient surveillance assets. Unmanned aerial vehicles directly serving Atalanta would, in particular, be useful, but we recognise that they are needed as a higher priority in combat zones (paragraph 27).
70. Tanker support is needed to enable ships participating in Atalanta and the NATO and coalition forces to refuel in mid-ocean in order to maximise the time they spend at sea combating piracy, rather than refuelling in port. Cover is currently insufficient. The Government and the EU should continue

actively to encourage international partners to provide tankers so that continuous cover can be provided (paragraph 28).

71. The EU should also explore with Member States how to increase access to medical facilities for surgical and non-surgical interventions where there is also a shortage (paragraph 29).

### **The World Food Programme**

72. Protecting World Food Programme vessels delivering vital supplies to Somalia is an essential part of Atalanta's mandate, which we fully support. However, the WFP's use of small, slow ships requires greater military protection resources. The Government and the EU should strongly encourage the WFP to charter faster, larger and more modern vessels (paragraph 31).
73. In addition shipping companies have a vested interest in such measures as they would free up Atalanta's ships to protect their vessels transiting the area. The Government should consider establishing a partnership in which interested companies would make a voluntary financial or in-kind contribution to the WFP for chartering or purchasing satisfactory vessels. A "friend of the WFP label" could be established under the auspices of the EU or the IMO to recognise the contribution of shipping companies. This would serve as an indication of their commitment to corporate citizenship (paragraph 32).
74. The WFP should also make it a condition of tender that, when requested, the flag state allow military personnel on board all WFP vessels used to supply Somalia. The Government should pursue this objective with the WFP and other donors, including the US as the primary donor (paragraph 33).

### **Rules of engagement; detention and prosecution of suspected pirates**

75. We welcome the fact that the rules of engagement of Operation Atalanta are sufficiently robust to allow it to carry out its mandate (paragraph 40).
76. We welcome the agreements that the EU has signed with Kenya and the Seychelles for the transfer and prosecution of suspected pirates, and the Government's assurance that these agreements safeguard the human rights of those detained. We commend Kenya and the Seychelles for showing leadership in addressing a regional problem. The Government and the EU should continue to assist both states in building the capacity of their judicial and penal systems to cope with the increased demand (paragraph 41).
77. We also welcome the Council of the EU's agreement to open negotiations on similar arrangements with other countries in the region (paragraph 42).

### **Coordination with NATO and other maritime forces**

78. The EU's in-theatre coordination with NATO, the US-led coalition and other navies is working well. We welcome the important role that other countries are playing in combating piracy. Coordination with the Chinese navy in particular is encouraging (paragraph 45).

### **The shipping industry**

79. We welcome the best practice guidance which has been produced and circulated by the Oil Companies International Marine Forum and the IMO. We believe that the benefits of adopting recommended best practice in

mitigating the risk of piracy attacks need to be more actively promoted among the shipping industry. The Government, the EU and the shipping industry should work on this collaboratively (paragraph 47).

### **Armed guards on commercial shipping**

80. We endorse the view of the shipping industry, the IMO and the Government that private security guards should not be placed on commercial shipping as this would increase the risks to which the ships and crew were subject. However, military personnel from national armed forces are occasionally placed on commercial shipping on a case-by-case basis, and we believe this should continue. The Government and the EU should ensure that any such personnel receive prior specialised training to a high standard for this role (paragraph 50).

### **The insurance industry**

81. The insurance industry must accept a greater degree of responsibility for promoting adherence to best practice on deterring piracy by shipping companies. We strongly urge that the terms and conditions of insurance effectively reflect the need to discourage shipping companies from failing to follow recognised best practice (paragraph 52).

### **Hostage taking and ransoms**

82. We support the status quo whereby the payment of ransom to pirates is not a criminal offence under United Kingdom law. We recommend that the Government continue to monitor the potential risks of monies reaching terrorists (paragraph 57).
83. We understand that skilled ransom negotiators can help to keep risk to life and vessels, as well as ransom payments, to a minimum. Where ship owners intend to pay a ransom to recover their vessel and crew, we recommend that they use experienced and effective ransom negotiators. Where insurance policies do not already insist on experienced negotiators, they should do so (paragraph 58).

### **Addressing the root causes: the EU's comprehensive approach**

84. It is clear that without addressing the root causes of the conflict in Somalia, piracy will continue to flourish. The EU is rightly taking a comprehensive approach, seeking to address political, economic and security aspects of the crisis in a holistic way. However, the causes of fighting and insecurity in Somalia are deep-rooted and complex. Progress on peace and security will largely depend on the Somalis themselves, including the actions of the fledgling Transitional Federal Government (TFG) (paragraph 61).
85. We fully support the EU's efforts to build up the security sector in Somalia, in particular the training of Somali police, in line with democratic norms, while providing funding for vital humanitarian assistance. The EU's actions are part of a joint effort by the UN and international partners. It will be important that the international community makes a long-term commitment to stabilising the country (paragraph 62).
86. The UK and EU should also work with the autonomous authorities in Somaliland and Puntland to build up their coastguards and provide sources of legitimate employment for their people (paragraph 63).

## APPENDIX 1: EU SUB-COMMITTEE C (FOREIGN AFFAIRS, DEFENCE AND DEVELOPMENT POLICY)

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### Sub-Committee C

The Members of the Sub-Committee who conducted this inquiry were:

Lord Anderson of Swansea  
 Lord Chidgey  
 Lord Crickhowell  
 Lord Hamilton of Epsom  
 Lord Inge  
 Lord Jay of Ewelme  
 Lord Jones  
 Lord Selkirk of Douglas  
 Lord Sewel  
 Lord Swinfen  
 Lord Teverson (Chairman)  
 Lord Williams of Elvel

Member of the Sub-Committee who participated in taking evidence in the previous session:

Baroness Symons of Vernham Dean (until November 2009)

### Declaration of Interests

Lord Hamilton of Epsom  
*Consultant to AYR Group (which flies aid helicopters into Somalia)*

Lord Inge  
*Adviser, Investcorps*  
*Chairman, Aegis Advisory Board*  
*Non-executive Chairman, Aegis (till February 2010)*  
*Adviser, King and Government of Bahrain*

Lord Selkirk of Douglas  
*Honorary Air Commodore to No. 603 (City of Edinburgh) Squadron, RAAF*  
*President of Scottish Veterans Garden City Association, a British Charity which provides houses for servicemen and servicewomen with an element of disability*  
*Holds some mining shares and piracy has the possible potential to affect such companies*

A full list of Members' interests can be found in the register of Lords' interests <http://www.publications.parliament.uk/pa/ld/ldreg.htm>

## **APPENDIX 2: LIST OF WITNESSES**

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The following witnesses gave evidence. Those marked \*\* gave both oral and written evidence; those marked \* gave oral evidence only.

\* Mr Jason Alderwick, Defence Analyst—Maritime, International Institute for Strategic Studies (IISS)

\* Mr David Croom-Johnson, Senior Marine Underwriter and Active Underwriter for Aegis Managing Agency

\*\* Foreign and Commonwealth Office

\*\* Baroness Kinnock of Holyhead, Minister of State, Foreign and Commonwealth Office

\* Mr Jan Kopernicki, Vice President Shipping of Shell International Trading and Shipping Company and Chairman of Oil Companies Marine International Forum

\*\* Lord Malloch-Brown, Minister of State, Foreign and Commonwealth Office

\* Ministry of Defence

\* Mr Neil Roberts, Senior Executive, Lloyd's Market Association

\* Mr Gavin Simmonds, British Chamber of Shipping

\* Mr Andrew Voke, Chairman of Lloyd's Market Association Marine Committee and Marine Director at Chaucer Underwriting

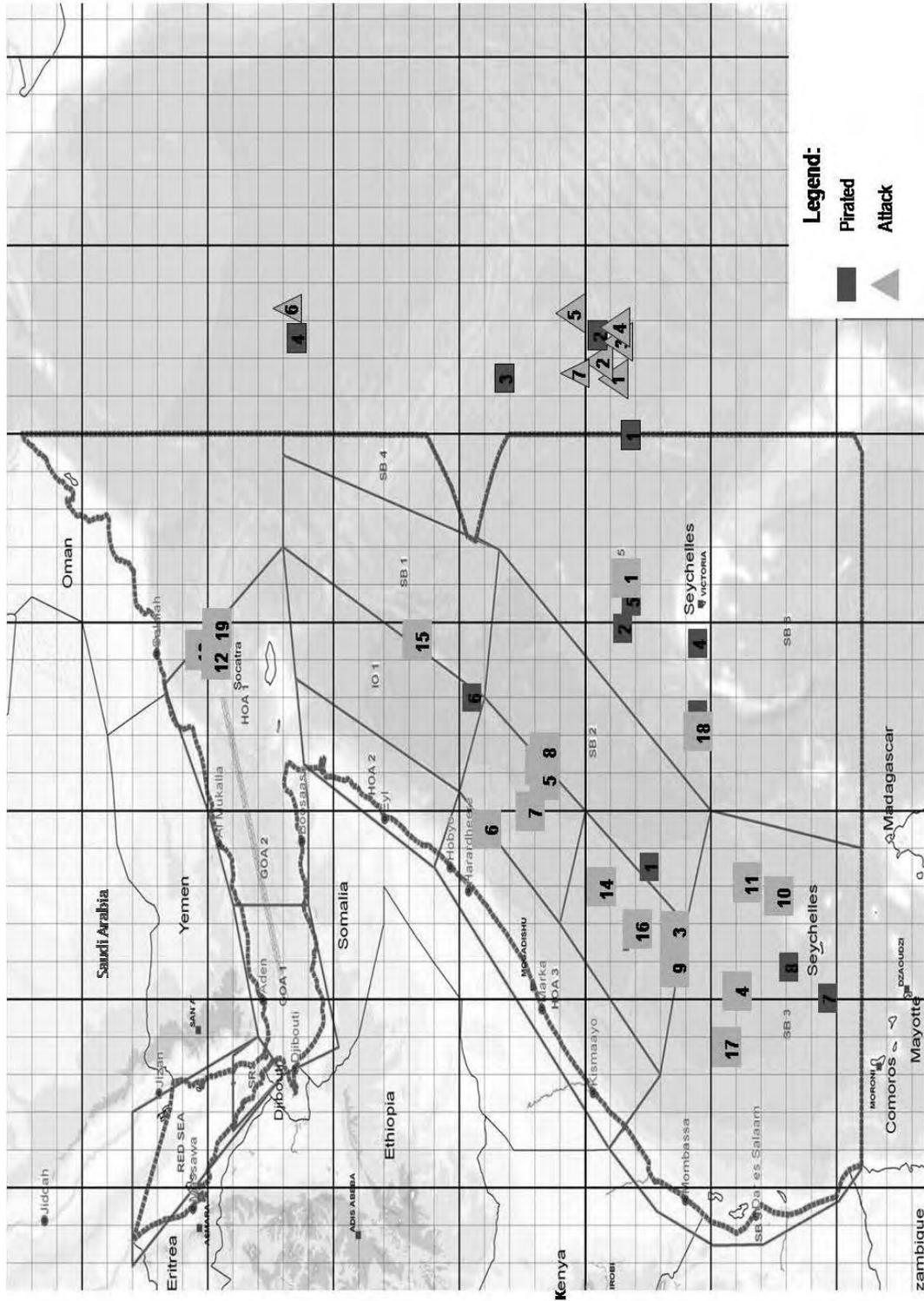
\* Dr Lee Willett, Head of Maritime Studies Programme, Royal United Services Institute for Defence and Security Studies (RUSI)

### **APPENDIX 3: GLOSSARY OF TERMS AND ABBREVIATIONS**

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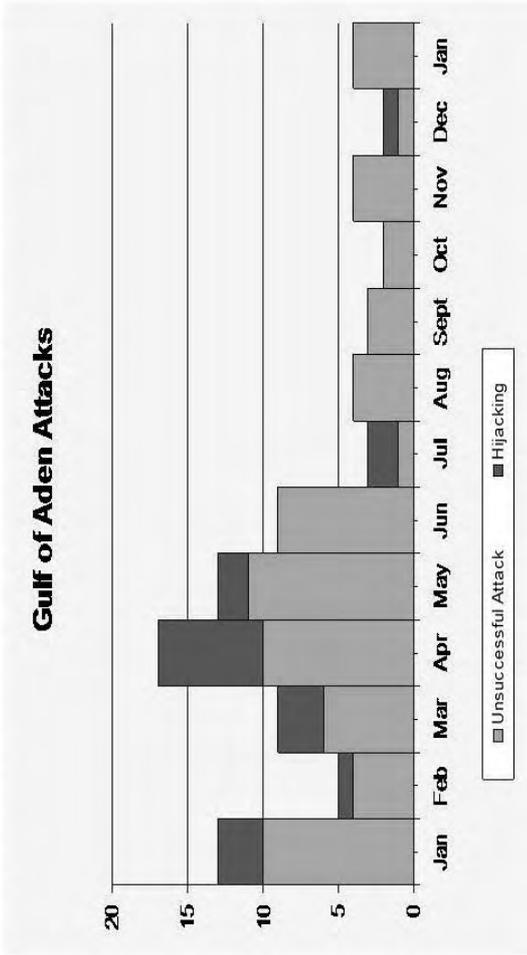
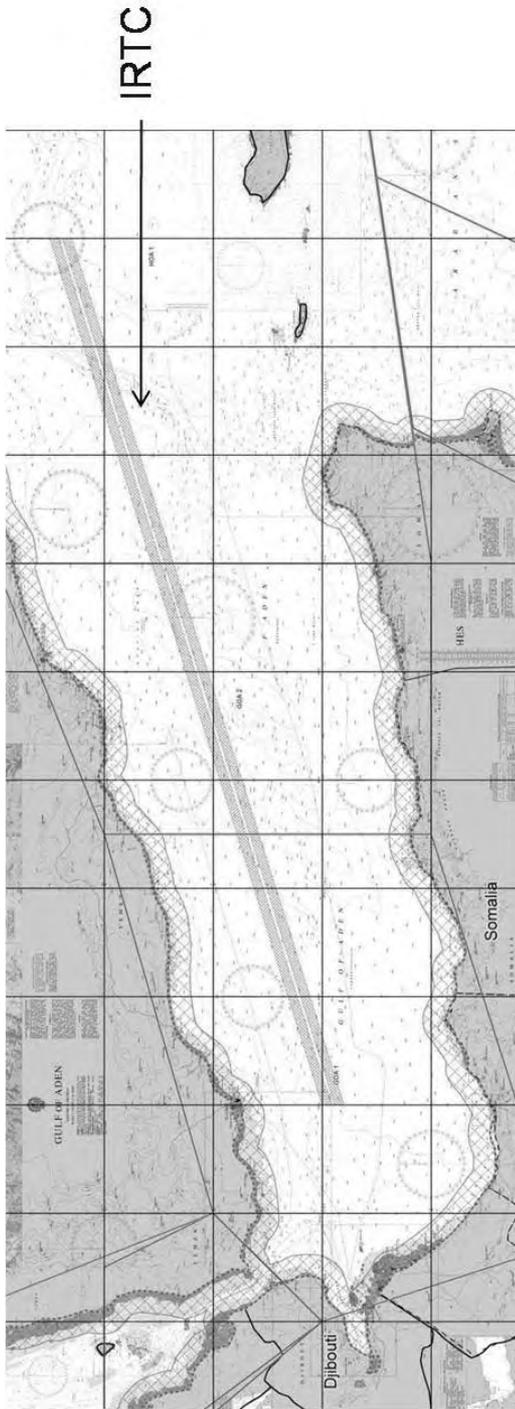
AMISOM	African Union Mission in Somalia
AU	African Union
CMF	Combined Maritime Forces
CSDP	Common Security and Defence Policy
DfID	Department for International Development
EU	European Union
EUMC	European Union Military Committee
EUNAVFOR	European Union Naval Force
FCO	Foreign and Commonwealth Office
IMB	International Maritime Bureau
IMO	International Maritime Organization
IRTC	Internationally Recommended Transit Corridor
ISPS	International Ship and Port Facility Security Code
LMA	Lloyd's Market Association
MOD	Ministry of Defence
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
OCIMF	Oil Companies International Marine Forum
OHQ	Operational Headquarters
P&I	Protection and Indemnity
PSC	Political and Security Committee
RN	Royal Navy
ROE	Rules of Engagement
TFG	Transitional Federal Government (in Somalia)
UAV	Unmanned Aerial Vehicle
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNSCR	United Nations Security Council Resolution
VPD	Vessel Protection Detachment
WFP	World Food Programme

FIGURE 1  
Incidents in the Somali Basin (2 Oct 2009–2 Mar 2010)



Source: Map provided by EUNAVFOR (European Union Naval Force)

**FIGURE 2**  
**The IRTC—Internationally Recommended Transit Corridor**



Source: Map provided by EUNAVFOR (European Union Naval Force)

# Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE EUROPEAN UNION  
(SUB-COMMITTEE C)

THURSDAY 12 FEBRUARY 2009

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Present	Anderson of Swansea, L	Swinfen, L
	Hamilton of Epsom, L	Symons of Vernham Dean, B
	Inge, L	Teverson, L (Chairman)
	Jones, L	

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## Examination of Witness

Witness: REAR ADMIRAL PHILIP JONES, RN, Operation Atalanta, Ministry of Defence, examined.

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**Q1 Chairman:** Admiral, can I welcome you to the Committee. As I quickly mentioned to you, the area of Somalia is one which the Committee has taken some interest in, given the complexity and the innovations that are happening there in terms particularly of EU policy, and so I am very pleased that you are able to join us. I need to tell you that the session is recorded and you will receive a transcript. If there is anything there that you do not feel is correct, you have the ability to come back to us and put that right. I wonder whether you want to make any brief introductory remarks before we start with the questions, or give any background, or whether you would like us to move into the questions.

*Rear Admiral Jones:* Thank you, my Lord Chairman. I have not made any prepared statement to make at the outset, and so I think I am happy to step straight into questions. I have seen some of the likely questions that you would ask and I think they cover a very comprehensive element of the operation. I suppose, perhaps just to put it in context, what I have been hugely seized with is how many novel issues we are dealing with here. It is the first ever EU maritime operation conducted under ESDP. I am the first ever UK commander of an EU operation under ESDP, so there are two very significant firsts there, and I think that the range of other navies that we are dealing with in the area has been an absolute first. It is many hundreds of years since we were working with Chinese naval vessels in these waters and the range of other navies that are contributing to counter-piracy makes it quite a unique experience, so I am well aware we are breaking new ground here and, I think, setting a trend for the future.

**Chairman:** Thank you for that. Perhaps I ought to warn you that as well as the questions we have here, and we will make sure there is discipline on our side, particularly also the area of intelligence and also command and control are additional ones which I think probably members will want to ask, but, Lord Anderson, perhaps I could ask you to start.

**Q2 Lord Anderson of Swansea:** Congratulations on all these firsts.

*Rear Admiral Jones:* Thank you.

**Q3 Lord Anderson of Swansea:** The actual genesis of the operation: why EU and who had the command before the EU took over in December, was it?

*Rear Admiral Jones:* Yes. The EU operation began on 13 December when we declared initial operational capability with the force having arrived in theatre. In a sense it took over from no-one; it was a new operation.

**Q4 Lord Anderson of Swansea:** It was not, like in Bosnia, a NATO element which moved on to the EU?

*Rear Admiral Jones:* No, not formally. There was a NATO Standing Maritime Group operating in the area for most of the autumn 2008. As I understand it, they had planned to be in that part of the world anyway and had extended their operation to take on an element of counter-piracy. That deployment was due to cease in December 2008 in any event. The ships were due to return to their normal operating area in the Mediterranean and that happened to coincide with the point at which we were able, after our initial planning, to commence the EU operation. In the end there was a useful degree of continuity with the counter-piracy effort effectively passing from NATO to the EU, but it had not been formally planned that way.

**Q5 Lord Anderson of Swansea:** In your professional judgment, does this tell us anything about the United States' attitude to EU operations, as, for example, set out by Vice President Biden at the Munich speech? Does it show it a greater confidence in the United States about what the EU is able to do?

*Rear Admiral Jones:* I believe it does. The very clear intent I was given, the very clear lines of support that were extended to me right from the outset, from

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*12 February 2009*Rear Admiral Philip Jones, RN

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coalition maritime forces in Bahrain, which is the US-led wider operation against terrorism, piracy, narcotic smuggling and people smuggling, was that they very much welcomed any additional force coming into the theatre, particularly a force with a focus on counter-piracy, which clearly Operation Atalanta have, and that they regarded it as a very helpful contribution that the EU was making to the wider international community efforts to counter-piracy and they certainly from my perspective applied no judgment as to whether that was the right thing to do or not. Going back to your earlier question—why the EU—I had a very profound sense while working with the EU Secretariat under the guidance of the EU Council, while setting up the operation, that it was a very strong sense from almost all Member States that this was an activity that needed countering—piracy—and that this was an opportunity to launch a maritime operation under the ESDP, for the first time, to capture the intent of a range of EU Member States who were not formally part of the coalition that was already operating in a theatre and, in some cases, not part of NATO either but could contribute in this way. The fact that we were able to stand up the operation so quickly has proved the intent that was there in Member States to do that.

**Q6 Lord Jones:** Admiral Jones, are you satisfied with the scope and wording of the current mandate of the European Union operation? What can you tell us about the Operational Plan for the EU mission itself?

*Rear Admiral Jones:* Thank you, my Lord. Yes, I am happy with the scope and wording of the current mandate. I had an opportunity to influence the shaping of the political direction that was given to the EU operation. My team were invited to work alongside the EU military staff in crafting the initiating directive within which we did our planning, and then, indeed, we effectively wrote the Operation Plan alongside the EU military staff, which was a very useful piece of joined-up activity, where we brought our maritime expertise within the operational headquarters to bear against our wider experience of writing operational plans for EU operations, and we have produced an OPLAN that I think is comprehensive, is clear and is standing the test of time. We are very much conducting operations against that OPLAN and finding that the prioritisation of tasking within it is exactly how we are doing operations on the ground, and that, I think, is testament to the good work that was done to set the plan up.

*Lord Jones:* My last question is a very simple one. Which side do you support this weekend! Thank you.

**Chairman:** Lord Hamilton, you wanted to raise intelligence.

**Q7 Lord Hamilton of Epsom:** We did not give you notice of this, but Lord Inge and I thought it was rather a critical element of the whole thing. You are sitting in Northwood. Where is your information coming from? Are you getting satellite imagery? How do you know what is actually happening in the theatre for which you have control? Can you actually identify pirate boats and say that somebody should be heading off? Can you tell us how that process is working as far as you are concerned?

*Rear Admiral Jones:* Yes. Thank you, my Lord. Firstly, there is a well-found structure within the EU military staff for establishing the intelligence support to an EU military operation. We have activated that. That pulls in the best efforts of intelligence support from all Member States to make sure that the operational headquarters has the best strategic intelligence available. That, I think, as you can imagine, is quite challenging for Somalia itself. There is not a lot of direct intelligence available for that, but certainly what is happening at sea we are able to tap in much more to the fairly sophisticated recognised maritime pictures that are available now to maritime forces based on satellite and wider surveillance. We have not had to do it all on our own; one of the key things about the co-ordination that is happening amongst all naval forces in the area is that there is a lot of shared intelligence taking place. We have liaison officers between my force at sea in the Gulf of Aden with all of the other task forces who are working there, both the Coalition Maritime Force and their two task forces, one counter-piracy, one counter-terrorism and counter-narcotics. We are working closely with both of them, and we also have access, through my liaison team working in Coalition Maritime Force headquarters in Bahrain, to much of the intelligence that they have available that they are sharing across the wider coalition—they have made that available to the EU—so in terms of strategic intelligence, I think we have a good enough picture in which to mount the operation. The tactical day-to-day intelligence is a constant challenge and we have a range of facilities in the Gulf of Aden to help us do that. We are finding increasingly that that which we gained from airborne surveillance platforms is absolutely crucial. The maritime patrol aircraft which fly both directly in support of the Atalanta Operation from their base in Djibouti, together with those who fly in support of other operations, but we also share their picture, are absolutely pivotal because they can see the movements of pirate vessels at a much greater range and much more effectively, looking down, than we can always get from surface-borne radars and visual pictures. We are finding also that helicopter flying from the surface ships doing counter-piracy are much more able to cover a wider area and use their whole range of sensors to detect the movement of pirate vessels. It is quite hard to pick up

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small pirate skiffs on a rough sea day until you are very close to them, so the detection of pirate activity and, hence, the ability to react to any pirate attacks is very dependent on that surveillance activity, and we are getting better and better experience at how to cue the warships on to potential pirate attack based on surveillance from other activities, but it is a constant challenge in the very large area of sea we are trying to do this in.

**Q8 Lord Hamilton of Epsom:** Can you identify a pirate boat? Presumably there is a risk of it being confused with somebody who is fishing, or is it a distinctly different craft?

*Rear Admiral Jones:* No, that is a very significant challenge. Understanding what a pirate is is a very significant legal challenge as well. A pirate is only a pirate when he is committing an act of piracy, and what we are finding frequently is that he may be a people smuggler over night taking Somalia personnel to Yemen for a fee, he may then turn into a fisherman the next morning and then, in the afternoon, go out to do some piracy, and it is only when he commits the act of piracy that he becomes liable to arrest and prosecution by the maritime forces there. We are becoming more adept at working out when is he likely to be a pirate, even while masquerading as a fishermen, based on the sort of equipment they are carrying in their vessels: if they have a lot of fuel, if they have engines on their boats to go faster than they need to for fishing, and particularly if they are carrying pirate equipment, which is fairly easy to detect—the ladders they use to get on board a ship, for example—and so we are, in our boarding and searching and investigating around the Gulf of Aden, much more able to detect what might be a pirate ship based on possession of that sort of equipment, and certainly weaponry, which you do not need to fish with, becomes a very clear indicator.

**Q9 Lord Hamilton of Epsom:** Were you comfortable with the Indian craft that was blown out of the water by the Indians? There was some question afterwards that there may have been hostages below deck.

*Rear Admiral Jones:* That incident happened just before Operation Atalanta launched, and it was at a time of a very significant rise in the number of pirate attacks on their ships and, frustratingly, many of them were successful at that stage. There were many fewer warships in the Gulf of Aden at that stage. We were watching all of those operations with a great degree of fascination. It was almost like a piece of joint mission preparation for us. We were witnessing other nations, other warships, experiencing pirate attacks and working out how to cope with them and using that to test our own methods. I think in many ways what that incident exposed, as I have just relayed, is how difficult it is to work out what is a

pirate ship and what is not and, in that particular case, what is a pirate mother ship and what is a hijacked ship that pirates are now on board. It is very difficult to work out, just by looking at the ship, just by talking to it on VHF radio, what you are actually dealing with. I think it is likely, with the gift of hindsight, that they might have made a wrong call that day, but I think we have all learned from that and used it to apply the techniques that the Indians used that day to our own surveillance, our own questioning, our own interrogation and our own use of rules of engagement to apply in a particular situation.

*Lord Swinfen:* What is the intelligence available to the pirates in the way of routes of merchant ships and the loads that they are carrying so that you can identify what may be a potential target to a pirate, and what would you like to do about it?

**Q10 Lord Inge:** Could I just add to that question. You talked about the intelligence you were given in Bahrain and elsewhere. Are there any capability gaps in that intelligence relating to what Lord Swinfen has just asked you?

*Rear Admiral Jones:* Thank you, my Lord. It is very difficult to know exactly what the pirates know and it is very difficult to know exactly what their sources of information are. We believe, depending on whereabouts in Somalia they are operating from, they are operating under different influences. We believe it is a very clan-based structure. Some of those clans are subject to the influence of the Islamic tribes—the Al-Shabab and Al-Islamiya—some are very clearly not: those operating in the less Islamicised areas in the north of Somalia. We go out of our way in all of our interaction with the merchant shipping community to try and protect the information they give to us about their likely transits. We ran a website called the Maritime Security Centre Horn of Africa, which has been one of the unexpected and very significant successes of the operation, where almost all of the shipping companies that transit through the Gulf of Aden register with this website and give us information about their transiting ships. In return we offer them, through this website, advice about self-protective measures their ships can take while transiting and also information about where our warships are likely to be such that we can offer the highest degree of protection to them. We take great steps to guarantee the security of that website, such that it is impossible to get onto it and register and get information from it unless you are a registered and verified ship owner, and so we do not believe that pirates get information that way, but the plethora of technologies available in the maritime domain in the last few years that enables ships to be tracked, the ability using some of those technologies to get access

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to that information on the world-wide web, is clearly making the whereabouts of merchant ships much more accessible in the public domain than was ever the case before, and that is a factor we have to think about. In answer to your question, my Lord, about where the intelligence gaps are, I think, as I suggested earlier, the biggest thing we do not know is exactly what is happening on the land in Somalia, what are the influence on the pirates, what is causing them to do what they do, what causes peaks and troughs in pirate activity? We have, for example, been in a bit of a trough lately, which has coincided with the start of Atalanta, a much reduced level of pirate attacks, and certainly a very much reduced level of successful pirate captures of ships. We have attributed that to a range of issues, one of which we think may be a rebalancing of the risk/reward calculation that the pirates make before they set out to sea to do an attack, but just literally in the last couple of days there has been a resurgence and they are back out at sea. The weather is better, they have many fewer ships that are currently held off the coast of Somalia awaiting release after ransom has been paid.

**Q11 Lord Inge:** What numbers are we talking about?

*Rear Admiral Jones:* We are down to, I think, about nine held off the coast, when we were about double that only about a month ago. Clearly, that is welcome, because each one of those has a crew of between 20 and 40, normally, who are held hostage for that period, so many of them are now free. We do not know what drives their judgment, we do not know what makes them come out, but we are attempting to play our part in loading that risk/reward balance with a lot more risk: i.e. the risk of detention, the risk of capture and the risk of suppression of their pirate activity, and we certainly think that is a factor.

**Q12 Lord Inge:** Are the merchant ships telling you when they have protective forces on board? In other words, some of the merchant ships now are putting armed guards on board as a reaction force. Are they telling you when that is on board, or not?

*Rear Admiral Jones:* Yes, they are, my Lord. That is an issue that we are often asked, whether we have a preference either way. We do not. It is entirely up to the merchant ship owners whether they want to do that. We attempt to offer to the merchant ships advice about how to take self-protective measures without the presence of a private security team on board. We have seen lots of evidence of where ships have resisted pirate attack without the presence of a team on board, but it is always helpful for us to know that they are there; it is another factor we can make in the judgment of vulnerability of a particular ship.

**Q13 Lord Swinfen:** Is the EU operation having a real impact in deterring piracy and have you been successful in protecting humanitarian shipments of the World Food Programme destined for Somalia?

*Rear Admiral Jones:* I will take the second one first, because that is easier. Protection of World Food Programme shipping is my principal specified task, it is the number one thing that I must do, and that is an element of the operation that was picked up by the EU as a very clear part of my mandate from a range of other nations who were doing that work. In the earlier part of 2008, the French Navy, Canadian Navy and the Dutch Navy were each in their own way contributing to that, and the NATO Standing Maritime Group that was there before at the end of the year was doing some of that too. We have picked that up and are doing that almost exclusively now, and my force commander in theatre will always allocate sufficient shipping from his task force to cover that. We have escorted every World Food Programme ship that has gone into Somalia since the middle of December and so far have successfully enabled each of those ships to arrive in port. Some of those are quite long transits: the ships are quite slow and quite old, some of them are covering quite large distances, depending on which port in Somalia they are going into, but we have a very good working relationship with the World Food Programme now, principally through their office in Nairobi, and my force commander is working with them to look at the long-term projection of the movement of their ships such that we can allocate ships to their protection. We have so far escorted 10 ships in the two months of the operation, which we think, on a rough calculation of the amount of food they are carrying and the amount of mouths they can feed, translates to about a million and a half Somalis fed with enough food during that period, so I think that has been a success story, but we are keenly aware that that is almost one of the most vulnerable things we do. That is when the ships get closest to the Somali coast. We take the ships right up to the harbour entrance, and so we are constantly looking at where the next threat to that particular element of the operation might come from. In terms of the impact of deterring piracy—that is my second specified task—that is something we are working very hard to do principally in the Gulf of Aden now, which is where most of the pirate attacks happen. We believe we are playing our part in deterring pirate attacks, and that is partly through the presence of warships. There is very clear anecdotal evidence that, if they see a warship, if they see a grey ship or a military helicopter that has clearly come from a warship, that is enough to deter a pirate attack, but very often they cannot see the warship. Down at the level they are at in their skiffs, they can probably only see a warship at about five miles away. If we are no closer than that to them they will not see us and we will not achieve the

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deterrent effect, so that is where we make copious use of maritime patrol aircraft and helicopters, and, again, there is good anecdotal evidence that those flying close to the pirate skiff, particularly if it is about to amount an attack, can very often be sufficient deterrent to cause them to stop; but there is another level of deterrents, again, that we are looking at now, which is how to deter them from leaving the coast at all. Detering the individual attack is one thing, but we need to deter them from even contemplating piracy, and that is back to the risk/reward balance, and I think there is a way to go yet before we can be confident that we are deterring them attempting it at all.

**Q14 Lord Swinfen:** On that particular point, if you have identified a pirate ship, are you allowed to follow them on shore and apprehend the individual?

*Rear Admiral Jones:* If we have apprehended pirates in the course of an act of piracy, then, yes, we are allowed to detain them and then seek a route to prosecution.

**Q15 Lord Swinfen:** But you cannot follow them on shore. If you are chasing them and they get to the shore before you capture them, are you allowed to follow them on shore?

*Rear Admiral Jones:* We do not have the capacity to do that, and neither do I have the clearance to do that at the moment, but, in any event, we tend not to get into those particular scenarios because, unless we have physically witnessed them doing an act of piracy, they are not pirates, and so we would not be in the game of chasing them away from a ship. Once we have got them away from the ship, we let them go, but we are trying to deter piracy rather than trying to arrest pirates. Sometimes the two come together, but, if not, we will just do the deterrence and not the detention.

**Q16 Lord Anderson of Swansea:** I am going to ask about short-falls and cost, but if you saw a ship with a ladder on it which could not be used for anything other than piracy, it is like what lawyers call “going equipped” and, presumably, they could then be apprehended?

*Rear Admiral Jones:* The policy we are employing, my Lord, is to cause that particular pirate capability to cease; so we will remove the pirate equipment from them. In fact, very often they do that before we get there: once they see a warship or a helicopter, they start ditching it over the side. If they need some encouragement, then we will get there and do that for them, but we then send them back on their way, making sure they have enough food and fuel to reach shore, but without their pirate equipment and without their weapons.

**Q17 Lord Anderson of Swansea:** First shortfalls and then, if I may, costs. On shortfalls you gave evidence to the Development Committee of the European Parliament, stating that nine EU Member States were involved to ensure that the force comprises up to six frigates and three to five maritime patrol and reconnaissance aircraft, but then you identified the main shortfalls as auxiliary support ships, such as those that carry fuel, which would extend to the patrol area, deployable force headquarters and Role 2 medical support facilities—that is field hospitals on board ship. That was given a month ago. Presumably that still broadly represents the current position?

*Rear Admiral Jones:* Yes, it does, my Lord, with one or two changes to that, obviously, as the force flow is evolving all the time. I do not have a dedicated EU tanker to support the task force at the moment. We have been able to mitigate that by tapping into resources of other maritime forces in theatre.

**Q18 Lord Anderson of Swansea:** You manage.

*Rear Admiral Jones:* We have managed that well. Even if we could not do that, we would be able to fuel the ships alongside in the ports in which they routinely go for logistic support, maintenance and crew rest, but, of course, the more I have to send them off to those ports the less time they are at sea doing counter-piracy.

**Q19 Lord Anderson of Swansea:** To what extent are the prospects improved? Do you see that many shortfalls are likely to be remedied in the near future?

*Rear Admiral Jones:* Yes, they will. On a fuel tanker the force commander in theatre, which is currently a Greek Navy commodore, is handing over force command to a Spanish Navy commodore in the first week of April. That will bring a small change in the composition of the task force—some ships will leave some ships will arrive. One of those arriving, the Spanish, to support the Spanish force commander, will include a tanker, so we will have our own dedicated tanker to support Atalanta through that period, and we are looking at a range of agreements with other regional states as well as coalition forces to provide tanker support. The question of the infrastructure to support the force headquarters ashore has moved on significantly since that evidence was given. We have established a much more robust and secure logistics base at Djibouti now where we have been aided very significantly by French forces at Djibouti and Djibouti national forces.

**Q20 Lord Anderson of Swansea:** Would you give us an update on the way the shortfalls are being tackled?

*Rear Admiral Jones:* Yes.

*Lord Anderson of Swansea:* Perhaps you can do that in writing, Chairman.

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**Q21 Chairman:** Do you think you can deal with that, Admiral, in a short way?

*Rear Admiral Jones:* Yes, I think so. I hope so anyway, if it is to your satisfaction, my Lord, and I hope it will be. We have now established about a 20 strong force headquarters support area in Djibouti which enables logistic support to the task force to be generated from that site, so any ship that needs logistic support, both there and in any port in the area, can draw on that expertise. We have a contract now in order to provide food and fuel and spare parts and personnel support through that headquarters support area, and that is now sustainable in some new-build office accommodation and with some established communication infrastructure to link back both to the operational headquarters at Northwood and to the force headquarters at sea.

**Q22 Chairman:** And hospital ships?

*Rear Admiral Jones:* That is an area that we do not have the capability for yet. We are aware that, in order to do sustained and potentially difficult counter-piracy operations, there is a risk of incurring some casualties—either causing them by pirates that we are deterring and disrupting or by, indeed, being subjected to attack by pirates against our own personnel. We have first-line medical support available in all of the ships at sea, and in one or two cases that is fairly sophisticated but it does not quite reach the level of surgical intervention, a theatre operating capability, blood supplies and emergency medivac that we would ideally want for high intensity counter-piracy. Again, some of those capabilities are available in other elements of the coalition forces there that we may be able to use, but my biggest concern is the breadth of area we are operating in. We may have that facility at sea, it may be available to us, but it may be several hundred, if not a thousand, miles away from where the incident happens and it is being able to connect quickly to that sort of support.

**Q23 Lord Anderson of Swansea:** A question on costing. How are the overall costs of the operation allocated between those states which participate and those which do not, and since much of the benefit goes not just to the World Food Programme but to commercial shipping, do insurers or the ships owners themselves make any contribution to the overall costs?

*Rear Admiral Jones:* The establishment of a cost structure for this particular EU operation has been, I think, remarkably simple—certainly those of my fellow EU op-commanders who run land operations tell me that—because there is a very significantly smaller amount of logistic infrastructure that you need to support a maritime operation, and so the establishment of a correct budgetary figure for what is EU common costs has been fairly easy to define.

That is based on the time-honoured principle that any nation supporting a coalition maritime effort effectively carries the cost for the routine operation and day-to-day running costs of that ship. That is true for coalition maritime forces, it is true for NATO as well, and so each Member State contributing a ship, effectively, pays for the running costs of that ship. We have identified one or two special areas where, clearly, additional costs that are attributable solely to this operation can be captured and covered by common costs. That includes, for example, extra diversions that the flagship has to do to support the work of the force commander.

**Q24 Lord Anderson of Swansea:** So no-one has a free ride?

*Rear Admiral Jones:* No.

**Q25 Lord Hamilton of Epsom:** How much are we talking about there?

*Rear Admiral Jones:* I think the common cost figure for the whole operation, for the whole year, is in the region of eight million euros.

**Q26 Chairman:** I think I am going to have to move on. Was there anything else?

*Rear Admiral Jones:* There was a second part to your question. At the moment, there is no charge made for any level of protection and support and escort that we are offering, and I think that is a policy we would very much like to stick to, it would be just too difficult to try and implement, and I think, although the EU have looked at that, as have other forces operating there, it is not a policy I can well define.

**Q27 Lord Inge:** You have touched on command and control up to a point. Bearing in mind how many nations are involved and everything else, how would you try and improve the command and control, because they will get more sophisticated as we get more sophisticated and you will need a command and control that is responsive and reactive and does not go to sleep at night, for example.

*Rear Admiral Jones:* Yes. I do think long and hard about this. Looking at the reality of the forces that are conducting counter-piracy in the area, I think it is probably unrealistic to expect that any greater degree of fusion of the command and control structure is going to happen. There is a very clear command and control structure for coalition maritime forces linking back through their task force commanders into Bahrain with a three-star US commander at their head. We have very strong links to that structure, as strong as I think they are going to be. There is a UK deputy to that coalition maritime commander who I work very closely with and we share liaison officers between the two headquarters, and the same would be true if NATO came back and operated in the

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region again. I do not think it is realistic politically to expect any closer linkage of the command and control than that. With many of the other navies operating on their own in the area—the Russians, the Chinese, the Indians, the Malaysians, the Saudis—they have come with a clear mandate to work on their own; their principal task is to protect their own flagships. They are interested in sharing information, they are interested in pooling capability and there is a fairly significant degree of what we call tactical deconfliction taking place between those operations on a daily basis: the ships are talking; the commanders are comparing operational patterns. My sense is we have taken that co-ordination about as far as we are going to get it politically, but I think it is more than enough for operations to take place, and I will give you an example of why I think that is sufficient. We are already seeing evidence of reactions to pirate attacks, which can involve, for example, an Op Atalanta maritime patrol aircraft being the first fixed-wing aircraft on the scene to establish a degree of surveillance and co-ordination. There may be a helicopter airborne from a coalition ship which becomes the first aircraft on the scene; the nearest warship may be Russian or Chinese. We have already seen evidence of co-ordination across those three force elements. With communications and understanding of operations, it has enabled successful counter-piracy to happen. So my sense is we have got sufficient co-ordination between the different task forces and ships at sea, we have got a degree of recognition of the wider strategic picture between the different strategic headquarters and the sense is we are not going to go any further. What I think we will see is, above that, a much greater ownership by the United Nations Contract Group on security off the coast of Somalia, which is now beginning to assert itself, and that brings together not only all of the Western nations involved in this, all of the regional nations, but also the organisations engaged in this too—NATO and the coalition—and they are looking at how to tackle the wider problem of piracy, not just at sea but in Somalia itself, on a fairly long and complicated mandate with many different lines of development, and I think that is welcome.

**Q28 Lord Inge:** It is, is it? I am very suspicious of the United Nations when they are in command and control positions. Are the UN looking to have a command and control responsibility, if they get involved, or you carry on as you are and they are just taking more interest?

*Rear Admiral Jones:* It is the latter, my Lord, very much so, and hopefully that will allay your concerns that they are not trying to engage in the tactical control of military forces; it is just to provide a sense

of cohesion for all the different lines of development to tackle piracy.

**Q29 Lord Inge:** Do you see the pirates themselves developing tactics that are better co-ordinated amongst themselves that makes it more difficult for you to carry out your operations?

*Rear Admiral Jones:* Yes, I do, my Lord. We have seen already they are agile and flexible and they learn from our operations. They have already started to shift their tactics to a degree to reflect the way in which we have responded to their first set of attacks. Although we are keenly aware that there is not a common Somali pirate, some of them are extremely sophisticated, well organised and synchronised; others are very low key, very easily deterred, attacks from people who we think are just out to have a go and there is not a degree of sophistication there, but at the high end level they are learning and adapting all the time.

**Q30 Lord Hamilton of Epsom:** Just to go back, the helicopter identifies the pirate ship and the nearest ship is a Russian one. Are you *de facto* tasking it but putting it in terms: “You might like to go and move in on this one, although we could not instruct you to do so”, for example, and they end up doing what you want but they do not come under your command structure. Is that as I understand it?

*Rear Admiral Jones:* Exactly. There is no sense that we in any way task them, and we very much make it clear, and the EU have pressed me quite hard on this, that we are not *de facto* incorporating Russian ships into our task force.

**Q31 Lord Hamilton of Epsom:** Why are you worried about that?

*Rear Admiral Jones:* They wanted to know that the EU was not relying on Russian ships to fulfil a particular part of the patrol area. We will be aware of their presence and the useful deterrent effect it brings, and I think that is how we use them, rather than specific tasks.

**Q32 Lord Hamilton of Epsom:** Surely, Admiral, the more we can actually incorporate the Russians into our efforts the better, whether they come under our command and control or not?

*Rear Admiral Jones:* Absolutely, my Lord, and I argue that case quite strongly. This is very much a co-ordinated effort, but there are some political constraints to the ability to visualise that co-ordination.

**Q33 Lord Hamilton of Epsom:** It must be from these Europeans who do not want Russia in the EU!

*Rear Admiral Jones:* I may refrain from answering that one!

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*Chairman:* You can give your answer to that question in writing, if you wish.

**Q34 Baroness Symons of Vernham Dean:** You will not be surprised to learn that we are revisiting old arguments in some cases. As I understand it, what you are telling us is that it would be less than sensible for you to be intervening where there is already a capability on the ground which is more than adequate to deal with the problem. If you know somebody is there and there is a suspected ship there, clearly you would just be doubling up or you would find that your resources were better used elsewhere, and to that degree there is co-ordination and co-operation. Is that the right interpretation?

*Rear Admiral Jones:* It is. Thank you for that. We are employing a tactic called “the group transit” as what we see as the most effective way to guarantee the safe passage of merchant ships through the Gulf of Aden. We cannot convoy them, because there are just too many of them and not enough of us—there are hundreds and hundreds of merchant ships transiting the Gulf of Aden every day—but what we do is make available to them, through the Maritime Security Centre Horn of Africa website, information about other merchant ships that are transiting, with a view to getting them to coalesce, as it were, to travel in loose company, and, in particular, to miss some of the more dangerous piracy hotspots at the most likely points of pirate attack, which is very often first thing in the morning at first light. In doing those group transits we then make the merchant ships aware of where EU Op Atalanta ships will be, again, ideally best placed to deter the most likely pirate attacks in the most high risk areas, but also we make those group transits available to other maritime forces operating in the area—the Russians, the Chinese, the Indians, the Saudis, the Malaysians. The coalition forces are all aware of those group transits and, collectively, we think we can position warships to offer the highest degree of deterrence. So in many ways we are incorporating their additional capability and we are using the deterrent effect of any warship to best suppress pirate activity.

**Q35 Chairman:** I think you have answered much of the next question in terms of the non-EU forces, but I would be particularly interested to understand how well the co-ordination between EU Member States and the EU forces works in terms of what you are doing.

*Rear Admiral Jones:* Between the EU Member States and their forces?

**Q36 Chairman:** No, I am sorry, between the different Member State contingencies as part of Atalanta.

*Rear Admiral Jones:* The EU Member States who are contributing ships to the force have each done so in full recognition that they are coming under EU command and have willingly done so accepting that they operate under my operational command, they operate under EU rules of engagement and that they will be tasked in accordance with the judgment of the force commander as to where he needs them to go, and there are no caveats placed on that, and that is working extremely well. We have five warships there at the moment; about to get a sixth. They are each from a different Member State and they are working extremely well and have each been tasked in different elements of the operation from World Food Programme protection through to deter and disrupt patrols in the Gulf of Aden, so I think that element of Member State commitment to the wider operation is working very well.

**Q37 Chairman:** What about in terms of resources as this operation goes on? Is one of the criticisms that individual EU Member States may be in other theatres of operation and that offering up equipment or forces is quite difficult to achieve? Has that been an issue here, or has that not been the case in this particular operation?

*Rear Admiral Jones:* The first thing to say is that we have got a force flow that will run right across the year of the operation and adequately sustain the force throughout. We are very keen to make sure people did not just rush in for the first few months to get the glory of being there when the operation launched and get the banner headlines and then retreat and move away. We have a number of Member States who are contributing forces that will not arrive until the second half of 2009, and I think that is very welcome. Secondly, we have encouraged all Member States to contribute in whatever way they can. Clearly, we are aware that a number of Member States are unlikely to be able to send a major warship to contribute to counter-piracy or unlikely to be able to send a maritime patrol aircraft, but we have encouraged them to look at whatever they can contribute. For example, we have a number of Member States who are contributing what we call better protection detachments, teams that we can put on World Food Programme ships to secure their safety as they close into Somali ports to unload their food aid. We have got some Member States who are sending medical teams to be embarked on our ships to provide medical cover when they cannot send a ship themselves. We have some Member States who have provided members of staff to either the operational headquarters at Northwood or the force headquarters in theatre and their expertise is hugely welcome, and we are clearly aware that we are helping to train them too in how something like an operational headquarters works. So we have got

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contribution from many more Member States than just the nine who are currently contributing live forces, but I am constantly going back to Brussels and saying we have not closed the door on force generation; we will run a series of force generation conferences and look to bring new people and new capabilities into the force all the time.

**Q38 Lord Hamilton of Epsom:** I think you have mainly answered question six, but what I would like to do is to follow up on Lord Anderson's point about this theoretical pirate ship having ladders, firearms and whatever on board. What you said was that your reaction to this would be that if they did not get rid of them, you would. There is, of course, an alternative, and that is that you get the forensic, you photograph them with all this kit on board, throwing it overboard, or whatever; you arrest the ship, you arrest the people on it and take them on to one of your ships; you sink this boat and you deliver these people back to Somalia with the forensic that you have got to go with it. If the Somali authorities do nothing about it, tough, but at least you have got rid of the boat. Are you not allowed to do that?

*Rear Admiral Jones:* On occasions we have done that, my Lord. We are getting increasingly sophisticated in our ability to capture evidence that might be used in the subsequent prosecution of pirates. This is very much a new area for our work. The ability to have appropriate legal instruments with which to prosecute detained pirates has been something that we have needed to set up almost from first principles, and, therefore, we are learning all the time about what sort of evidence you need in order to sustain subsequent trials of detained pirates. On occasions, in the course of detaining pirates and confiscating their equipment, they have also destroyed their boats, mainly just retaining one to send them back in. If we destroyed all of their boats, then we end up with pirates physically detained on board, and that instantly has an implication for what you are then going to do with them. We may have to divert our task to go and land them, we may have to go do fairly convoluted negotiations for where they are going to be landed and where they are going to be prosecuted. So very often we will send them back, having destroyed all of their useful equipment and just leave one boat for them to go back in, but that is very clearly covered in the rules of engagement and has become common practice for all ships across all operations, not just Atalanta, as way of dealing with pirates.

**Q39 Lord Hamilton of Epsom:** Might Somalia actually prosecute them?

*Rear Admiral Jones:* We have increasing evidence, and I am not an expert on what is happening in Somalia itself, that there are three very distinct areas of the

country. There is Somaliland, Puntland and then rump Somalia, effectively, that which sits on the coast of the Indian Ocean. There is evidence in both Somalia and Puntland, i.e. the two elements of the country that face the Gulf of Aden, that they have resurgent security structures, the emergence of coast guard organisations and a willingness to start taking responsibility themselves for their own waters, policing their territorial waters to eradicate pirates themselves and, indeed, to secure those waters for the safe use by all Somalis of their own territorial waters. That is, obviously, a hugely encouraging sign and all organisations, including the EU, are increasingly looking to how we can enhance our relationships with those emerging structures in order to eventually point towards the regional solution to safety, security and stability, which is, of course, what we are striving for.

*Chairman:* In this area, I remind the Committee Members we have Lord Malloch-Brown coming along in terms of the broader and maybe more political side of it.

**Q40 Lord Anderson of Swansea:** It is probably more DFID than FCO. I have visited Somaliland on several occasions on governance missions. Is it true that none of these pirates actually leave from Somaliland. It used to be the British Somaliland with its capital in Hargeisa. Are we able, either as UK, given our past connections, or as EU, prepared to train forces in Somaliland to do this job of apprehending pirates?

*Rear Admiral Jones:* On the first question, my Lord, I believe that to be the case. We obviously do not know exactly the origin of where a pirate first left the Somali coast, because very often they will cross the Gulf of Aden, hole up in some quiet, secluded bay somewhere in the exposed coast of Yemen and then come and look to attack ships in the north, so we do not always know where they have originally come from, but we believe that they come almost exclusively from the Puntland and Somalia coast, not Somaliland.

**Q41 Lord Anderson of Swansea:** The Port of Berbera could be used presumably?

*Rear Admiral Jones:* Yes, the Port of Berbera has already been used as a conduit in which we put both World Food Programme and also some World Food Programme ships have sailed from Berbera to elsewhere in Somalia, so it is becoming a much more stable area. In terms of how we might deal with them in future, how we might look to do capacity building measures with Somaliland, I think, my Lord Chairman, it may well be right to say that the Minister will be a better man to ask that.

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**Q42 Chairman:** You have already talked a little bit about the Marine Security Centre and Djibouti as well. Is there anything else in particular you think you would want to tell the committee about that, or have we really covered that in your own mind?

*Rear Admiral Jones:* The Maritime Security Centre Horn of Africa is something I just wanted to stress a little bit more, because we regard that not only as one of the huge success stories of Atalanta, but we have almost 4,000 shipping companies who have registered on that and we are also seeking to evolve it now, to make it more agile and more usable, web-page access, such that the shipping companies can use it more easily, but we also see that as one of the enduring elements of Op Atalanta that we eventually will seek to hand over once the operation ceases to possibly a regional co-ordination centre as a method of building security and stability in the region through the ability to control pirates and be aware of merchant ship movements, and we are looking to take that forward. That I think will be a significant element of the legacy of Op Atalanta. On Djibouti, I think it will continue to be a pivotal regional hub of all activity in support of Somalia. I was there recently visiting some of my ships, visiting the logistics support area and offering my thanks to both Djibouti forces and French forces in Djibouti for the way they are supporting our operations. While I was there, I was aware that the new government of Somalia and the newly elected President were also there having meetings; so Djibouti clearly plays a very pivotal role, supporting both the military operations in the Gulf of Aden but also the emerging structures of the transitional federal government in Somalia, so I think that will be a crucial hub of activity for a long time to come.

*Chairman:* Good.

**Q43 Baroness Symons of Vernham Dean:** Admiral, you have told us that your mission is the deterrence of piracy, although you have talked about the eradication of piracy as well. You describe the difficulties about arresting suspected pirates unless you have clear evidence that they have been engaged in piracy, as opposed to being engaged in it the day before yesterday. How difficult has that made it for you to arrest pirates? How many pirates have you been able to arrest? I have this uncomfortable feeling that it is great on the containment but then it pops up somewhere else because the same guys just go somewhere else; they have been able to hang on to some of their equipment and they can re-emerge somewhere else because we have not actually been able to capture them and take them off. Are there problems in doing that over human rights and the way in which you then do hand them over? Lord Hamilton was talking about blowing up their ships, and then you said, yes, what do you do with them?

What do you do with them and to whom can you hand them over and still be satisfied that their basic human rights are going to be well looked after? We have greatest respect for our Chinese and Saudi and Russian colleagues, but they do not necessarily have quite the same attitude to human rights as we do, so it is quite a complicated question about how you deal with that still be effective.

*Rear Admiral Jones:* It is, my Lady, and you have touched on one of the most difficult areas of setting up this operation today. There is, as yet, no pan-EU legal agreement for the landing of detained pirates for subsequent prosecution with any regional state. We do not have it for all EU ships, no matter what Member State they come from. Some individual participating Member States have those bilateral agreements. The UK, for example, has one with Kenya. So if a UK ship in my force contains pirates I know the route we will take in order to hopefully land them for subsequent prosecution, but we are working very hard and EU legal services in support of the EU Council in Brussels are almost daily sending fresh teams out to negotiate with a whole range of regional states looking for where the opportunities might be to negotiate these arrangements. These are not easy to arrange, because many of the regional states, while comfortable with the bilateral legal arrangement for the landing of pirates, are nervous with doing one with a whole organisation because they do not know exactly what they might be signing up to, because a whole range of countries might start using them. The coalition does not have one, NATO did not have one, but we think we are getting close, and that would really help, because you are absolutely right to say that in some cases some of the Member States' ships, if they detain pirates, will have to release them and at sea there is no method by which they can land them anywhere for subsequent prosecution and that is frustrating. That is clearly not an adequate deterrent to pirates because, again back to the risk/reward balance, they have a fairly strong sense that there is no risk of capture. If they knew that every time they are caught by a warship they will be landed, they will be prosecuted, they will be imprisoned, I think the level of deterrence could drive up. So we are optimistic that we are moving in the right direction here and a number of fairly positive negotiations are underway with a range of regional states, but, of course, as I am constantly reminded by the Member States of the EU, we have to make sure that those arrangements are conducted with regional states who have a policy for handling those pirates that is in accordance with the European Convention on Human Rights, and so they are nervous of arrangements with regional states that, for example, might have capital punishment as a potential sentence that they might commit the pirates to; so that is another complicating factor in negotiations.

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**Q44 Baroness Symons of Vernham Dean:** How many has the EU operation arrested, detained over the course of the last 12 months?

*Rear Admiral Jones:* EU ships have detained in two separate operations, one involving the French ship and one involving the German ship, about, I think, 15 to 20 pirates, but of course that in itself highlighted the two different routes we followed. The French have a bilateral arrangement for the landing and prosecution of pirates.

**Q45 Baroness Symons of Vernham Dean:** With whom?

*Rear Admiral Jones:* That was done under the national operational command.

**Q46 Baroness Symons of Vernham Dean:** But with whom?

*Rear Admiral Jones:* The French bilateral arrangement is with the authorities in Puntland, but the ship opts out of EU op-com to French national op-com to do that. The German ship in my force also detained some pirates in a counter-piracy operation and they were forced to release them at sea because there was no method for the German ship to prosecute.

**Q47 Baroness Symons of Vernham Dean:** Do you know what the Chinese or the Russians do?

*Rear Admiral Jones:* I do not, no. I am not aware that they have detained any pirates yet. Again, it is possible that we would not know that they had done so, depending on what route they take to land them, but we have not become aware of them detaining any yet.

**Q48 Lord Inge:** If we did detain some of them, we presumably then have to provide people to go and give evidence in the court, do we?

*Rear Admiral Jones:* We do, my Lord, and there is a trial, I think, either still underway or has recently been underway in Kenya of some of the pirates captured by a British warship under NATO op-com last year and we have had to send witnesses down to build the prosecution case of that trial.

**Q49 Lord Inge:** That must waste a lot of time?

*Rear Admiral Jones:* We just have to factor in the right structures to enable that to happen with minimum impact on the operation itself, but if that is what it takes in order to secure prosecution, then so be it.

**Q50 Lord Inge:** Do you know the results of those trials?

*Rear Admiral Jones:* I do not believe that particular one has concluded yet, but we are watching it carefully.

*Lord Hamilton of Epsom:* I think your answer to Lord Inge has answered mine too. I was wondering whether it was possible to cheat and whether you could actually transfer the prisoners from the German ship to our ship, drive them down to Mombassa and prosecute them?

**Q51 Lord Inge:** You would not imagine this was an ex-minister speaking, would you?

*Rear Admiral Jones:* My Lord, your suggestion is actually pretty sensible, because we have already started to look at a tactic whereby a particular EU ship might end up deterring and disrupting the pirate act, but without bringing the pirate on board that ship they have not yet detained them, so if we then have another ship nearby that can come in and join the action and do the detention we may be able to follow exactly that route. The problem, of course, as ever, will be a million square miles of ocean, six EU ships: what is the prospect of having the right EU ship available just over the horizon to come racing in? There are some constraints, again entirely understandably, about the length of time that we could detain a pirate at sea before landing him to a place where the sense of his legal rights can be guaranteed. We are under an obligation, if we detain them, to get them ashore as quickly as possible.

*Chairman:* I think it is a very cunning plan anyway.

**Q52 Lord Anderson of Swansea:** The Kenyan ports, Mombassa, or whatever, are a very long distance away with six ships. Has any consideration been given to seeking some sort of deal with Somaliland, which is still not internationally recognised, Somalia, providing a home port?

*Rear Admiral Jones:* We have not done that at the operational headquarters, my Lord. There may well be consideration with the EU legal services in Brussels to consider that option. Clearly, operationally that would work for me because the distance is much less, and if we were able to land detained pirates there it would have much less impact on the availability of the ship to return quickly to operations.

**Q53 Lord Anderson of Swansea:** It appears to make sense.

*Rear Admiral Jones:* It is a long haul down to Mombassa, as you say. When we plan a ship to go down there for World Food Programme escort we have to plan several days just for it to get there before it then does the operation, but I have to be guided by legal expertise in Brussels as to whether that is an appropriate negotiation to happen.

**Q54 Chairman:** I am aware of my time constraints, but can I ask, at the other end of this, we have seen on our own televisions when ransoms are paid and

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drops are made. Is there a role for Atalanta after the point of collection of ransom, or is that something that is just not possible?

*Rear Admiral Jones:* We have not been involved in that yet, although we are aware that other warships have been. In particular, the merchant vessel Faina, the Ukrainian ship with a lot of arms on board, that was held for a very long time, was effectively escorted away from Somali waters by the US warships that had been close to it throughout the period of its detention in order to make sure it safely got back on to the high seas and on to its next port. We have not been asked to get involved in that as yet, but we are aware that it is a request that could come our way. Clearly there is a concern amongst some ship owners and, indeed, the ports themselves that having been released by one clan of pirates having paid the ransom, as you move away from the coast you are potentially vulnerable to almost immediate recapture by another clan of pirates, and that would be an extremely unwelcome development in terms of international community perspective, so if a request was made for us to offer a degree of security for a ship moving away from the coast having been freed, we would certainly look favourably at our ability to offer that potential.

**Q55 Lord Hamilton of Epsom:** Do you have the capability with Royal Marines to actually take back a ship that has been seized by pirates, like dropping in from helicopters and that sort of thing?

*Rear Admiral Jones:* The capability that has been put in to certainly Royal Navy ships operating in both Atalanta and the coalition is at the highest end of boarding operations, and particularly non-compliant boarding operations, of anything we have ever deployed and a significant amount of capability has been configured towards that. The precise way in which we would consider how to do an operation like that is a consideration we that will be taken elsewhere, but the capability is there to consider that at the very least.

**Q56 Lord Anderson of Swansea:** Lessons learnt so far in the course of the operations? If you were now writing interim lessons learnt, what would be the main conclusions?

*Rear Admiral Jones:* I will have to do exactly that actually. I have to do a mid-operation review to the EU Military Committee in June, and that will form a large part of it. The ability to establish an intelligence-led operation, I think, has been the pivotal one. We were blessed at the start of Atalanta by having a number of ships that joined the force having already been in theatre. They were on national tasking or, indeed, working as part of coalition or NATO tasking and they came to us with a degree of awareness of operations in theatre. As each new ship comes in, sometimes having deployed all the way from its home port, it is taking a while to settle in and become familiar with the patterns of life and then, again, the ability to use intelligence to cue these valuable, priceless but small number of warships on to where real pirate activity is taking place is absolutely pivotal. So intelligence-led with a significantly enhanced degree of surveillance capacity in order to best use the discrete asset you have is probably the most significant lesson I have learned, alongside co-ordination. Again, everyone who is involved in this has a similar goal, and capturing the potential of all those participants in a common goal of countering piracy is certainly one of the huge lessons that have gone well.

**Q57 Chairman:** Admiral, thank you very much indeed. I am aware that you have talked at quite a pace and we have kept you here for a long time, but it has been an excellent session, I think, and certainly as a committee we have learnt a great deal; and I am sure we will want to congratulate you on the work that you have done, particularly something that has not been done before, and wish you every success in this particular area.

*Rear Admiral Jones:* Thank you, my Lord. I appreciate the opportunity very much.

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THURSDAY 19 MARCH 2009

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Present	Anderson of Swansea, L Chidgey, L Crickhowell, L Hamilton of Epsom, L Inge, L Jay of Ewelme, L	Jones, L Selkirk of Douglas, L Swinfen, L Symons of Vernham Dean, B Teverson, L (Chairman)
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**Examination of Witnesses**

Witnesses: RT HON LORD MALLOCH-BROWN, a Member of the House, Minister for Africa, Asia and the UN, MR CHRIS HOLTBY, Deputy Head of Security Policy Group, and Ms GILL ATKINSON, Head of Horn of Africa and East Africa Section, Africa Directorate, Foreign and Commonwealth Office, examined.

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**Q58 Chairman:** Minister, can I welcome you and thank you for coming to the Committee. I know we have a relatively short period of time, about 40 minutes, so I will not ask you if you want to make an opening statement; I will assume that we will go straight into questions. Just to remind you for the record that we are being recorded and televised this morning and we will give an opportunity for the transcript to be looked at to see if there is anything that is incorrect. Perhaps I could ask you to introduce yourselves.

*Ms Atkinson:* Yes, my name is Gill Atkinson. I am the Head of the Horn of Africa and East Africa Section in the Foreign Office.

*Mr Holtby:* My name is Chris Holtby. I am the Deputy Head of the Security Policy Group, covering *inter alia* maritime security issues.

*Lord Malloch-Brown:* Gill and Chris are the two who will probably speak, so we will not necessarily introduce the back benches. If we fall back on the reserves, here, we will have them introduce themselves—if the Minister is taken off the field!

**Q59 Chairman:** Yes, I wondered if we had the total Atalanta Task Force behind you there, Minister. Perhaps we could start off with the general question of your assessment of the effectiveness of the operation out there. One of the areas that we are particularly interested in is the co-ordination of intelligence between the EU operation and NATO and the other non-Allied navies. When Admiral Jones was here, there seemed to be from the EU side a reticence to allow over-co-operation between the vessels. We also understand that there might be an issue that because this is not a Berlin Plus operation, then although all the EU Atalanta vessels there are NATO members they are not allowed to use NATO communication facilities, which seems very strange and I would be interested to hear about that.

*Lord Malloch-Brown:* I may ask Chris to respond to that last point. Chris and I were just talking about this. He has just come back from an international co-

ordination meeting on this in Cairo yesterday. The basic view is that the co-ordination is pretty good. First, the two key forces in the area are the EU force and the American-led force, which is not NATO. NATO is now co-operating, but it is clear that it is an ESDP lead; it is a European force first, and NATO co-operates with it. There is continuous electronic co-ordination between all the ships in the area—I mean between both these two main forces and one or two ships which are there that are not part of these forces, notably the Chinese ships, for example. I was not aware of any constraints on uses of communications equipment or information, but, Chris, perhaps you could elaborate on that.

*Mr Holtby:* In this context, Berlin Plus is not relevant to what we are talking about. NATO is not playing a permanent part in this operation but will continue to cycle the standing NATO maritime groups through and has just decided that the first of those will come through in about two weeks' time for about 40 days. There are no NATO communication structures, as such, in the region at all; there are national structures. The issue is the communication between the EU force and the Combined Maritime Forces, the US framework force, based in Bahrain, and on that there is no problem at all, as the Minister has said. In fact, they are working hand in glove. I think the Admiral was very clear in his evidence that they are sharing intelligence very well between them.

*Lord Malloch-Brown:* On the broader point, my Lord Chairman, on the success of the operation more generally, and particularly of Operation Atalanta, the EU piece of it, obviously since it has begun it seems to have had a very effective deterrent effect; the number of attacks are down. Vessels which have been pirated in this period were so-called “unregistered” ones, which were either not following the best practice or were travelling outside the so-called “safer transit corridor”. There is a website that vessels can access on which they get both best practice and it allows them to register where they are. I was pleased to learn that it is a secure website so the pirates cannot

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access it for the co-ordinates of where they are. The fact is that we have had a significant deterrent effect by these arrangements and while compared to the volume of shipping the attacks were always a small minority of ships, they are well down this year. The one caveat is that those of you who, like me, associate pirate attacks with high storms because I have been made by my children to watch the *Pirates of the Caribbean* too many times, the fact is that this is bad pirating weather at the moment and before we know just how effective it is we need to go through a period of calmer seas to make sure that the attacks do not spike back up again in that period.

**Q60 Lord Hamilton of Epsom:** Is there an increase in the number of private contractors and what are their rules of engagement? Are they allowed to shoot at these people with machineguns? I gather things that played out noise just became laughable and had no effect on anybody at all.

*Lord Malloch-Brown:* The best defence is definitely ships which are hard to board, which do not have these easy ways to get on board. What are the rules on private contractors? I do not think they have a right to fire live ammunition.

*Mr Holtby:* Our legal adviser is here, but I think there is always a right to fire in self-defence. The shipping companies are united that they do not encourage ships to take on armed detachments which actually increase the risks to the individuals and to the ships. The industry has put out this booklet, which sets out their best practice, and it says very clearly, "We do not encourage ships to take on armed detachments". The one exception is where the EU force has embarked national military contingencies on the WFP shipments into Mogadishu, which is what the WFP wants. In terms of routine transit through the area, it is very much discouraged.

**Q61 Chairman:** If there is anything that your legal adviser would like to write to us about following Lord Hamilton's question that would be useful as additional reference.

*Mr Holtby:* Yes, of course.

**Q62 Lord Crickhowell:** I want to move on to the second question and rather enlarge on what we asked you in writing. What are the arrangements for dealing with pirates once captured in the EU operation? How do arrangements differ between different Member States? What legal protections and guarantees are in place to ensure their rights are respected and upheld? And what monitoring mechanisms are in place to ensure that countries which have agreed to receive and prosecute pirates implement their commitments on human rights? On top of that, I want to ask you how far does the protection of human rights of the pirates perhaps

obstruct the operation and prevent its effectiveness. There are two sides to the coin and it is all very well talking about the rights of the pirates, but if that is increasing the risk to legitimate sea-goers, then we are in some difficulty. Could you comment on both aspects?

*Lord Malloch-Brown:* On the latter point, much of what is behind that question lies this controversy at the beginning where we were extremely reluctant to bring pirates back to the United Kingdom for trial for fear that they would then try to claim refugee status. I, on behalf of the Foreign Office, approached the Kenyan Foreign Minister to secure his agreement to trials in Kenya. We are very clear; our policy is that we will not allow transfer to third States for prosecution unless we are satisfied that they will not be subject to cruel treatment, death penalty or face a trial which is grossly unfair. In November 2008 HMS Cumberland captured eight pirates and in the absence of a MoU, were transferred to Kenya authorities on an exchange of notes. However in December our MoU with the Kenyans was signed by Lord West in Kenya. The HMS Cumberland trial began in January and is currently underway. Our legal advisers are completely satisfied that we have got suitable guarantees on the standard of prisoner handling and sentencing. Since then, the Europeans have said they would not mind having one of those agreements too, so they have now negotiated basically the same MoU with the Kenyans. That, of course, has raised understandably on the Kenyan side an alarm that they are going to get their whole court system clogged up with pirates which, given these numbers, would not be the case. Therefore, the EU is now trying to negotiate a similar agreement with Tanzania so there are at least two choices of where pirates might be taken. Chris, do you want to add to that?

*Mr Holtby:* That is right, and the EU is already talking to other partners as well to see whether they may be able to offer similar arrangements.

*Lord Malloch-Brown:* I might add that the MoU specifically includes provision in it enabling access by international organisations to monitor prisoner conditions.

**Q63 Lord Crickhowell:** Well, that is fine, we are looking after the prisoner conditions, but I repeat the second question: are we satisfied that there is not such a concentration on that aspect that the ability to convict people or prevent them from entering into further engagements is made more difficult?

*Lord Malloch-Brown:* I think so and I do not think the pirates relish the prospect of a Kenyan jail sentence—they would probably prefer a British prison—so we are meeting that. We will need to see what the sentences are at the end of this current trial. I think that will give us a yardstick going forward.

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**Q64 Lord Hamilton of Epsom:** That is certainly very encouraging, but we were told by the Admiral that at that stage, as we only had a bilateral arrangement, you had the absurd situation where they tried to hold them until a British ship could come along and take them away, and they could not be transferred from a foreign ship to a British ship so they could go through that process. Will other nations, do you think, sign up with Kenya and Tanzania in the same way, so that eventually everybody can use those court facilities?

*Lord Malloch-Brown:* In addition to the EU, which was signed on 6 March, the United States also now has the same arrangement. So, that still would leave some countries that do not, but the bulk of countries are covered by this.

**Q65 Lord Hamilton of Epsom:** So, presumably, China and India will still be outside it?

*Lord Malloch-Brown:* They would still be outside it.

**Q66 Baroness Symons of Vernham Dean:** Minister, in our previous evidence, one of the things that I found very striking was not so much what we did with the pirates when we got them, but the number of arrests there were in the first place, which seemed to be alarmingly low. One of the reasons we were told that it was alarmingly low was because you have to have a witness to the act of piracy in the first place, and that when you capture a ship or think you have got a ship in your sights, it is very hard to identify it as a pirate ship. Can I ask you how many arrests have there been of pirates under this operation, and what can you tell us about this whole question of identifying a ship. When the ladders get heaved overboard, other equipment could be used for a whole range of other activities, so we were told, and very often the best that the forces can do is simply to take away equipment they think might be used for piracy and leave the pirates, rather thoughtfully, with food and fuel to get on to their next port of call where, no doubt, they collect more equipment and carry on. Some of us found this an alarming position to be in and that actually the cards were stacked against the operation and very much on the pirates' side.

*Lord Malloch-Brown:* You are certainly right that there has to be strong evidence, but there are what are gloriously called "pirate ship indicators", which include weaponry, grappling hooks and fishing dhows.<sup>1</sup>

**Q67 Baroness Symons of Vernham Dean:** But, Minister, if they buzz it all over the side before the ships get to them, it is not there any more.

<sup>1</sup> The indicator is to see a fishing dhow together with a fast boat such as a skiff. The fishing dhow is used as a mother craft, and the skiff is the pirate boat.

*Lord Malloch-Brown:* That is a fair point and I need to be able to answer your fundamental question here which is, "how many pirates have been seized?"

*Mr Holtby:* So, the Minister looks to me. At the beginning of this month, the figures that we have were that some 250 had been apprehended and, of those, 130 were disarmed and then released, and 110 or so were disarmed and then turned over for prosecution. This is the information we have had from Combined Maritime Forces in Bahrain.

**Q68 Chairman:** Could I just clarify whether that is Atalanta or is it the whole of the international effort?

*Mr Holtby:* That is the whole international effort, the Bahrain effort and the EU effort together. The additional point to add to this is that it is far easier for everyone if we disrupt and deter these attacks. We do need to arrest and put on trial where we can, but if we can deter the attacks that is a very good result for us. That was the sense, I think, of Admiral Jones's comment.

**Q69 Lord Hamilton of Epsom:** I am in a little bit of difficulty with that because if you deter them, then they come back again. If you capture them, charge them and imprison them then they are not there to do it again.

*Lord Malloch-Brown:* But I think the deterrence effect is not for disarming and letting them come back again, it is the fact of knowing that half the number of those who have been captured are facing trial and jail sentence. And, secondly, because there is now a flotilla of warships in the area, the costs of doing this have risen dramatically. Again, perhaps the central point to keep hold of is the statistic that I gave you in opening, Lord Hamilton, which is that the number of attacks is way down. Clearly, the deterrence is working and if we were to get 50% of those apprehended through a trial process, because the evidence is strongest against that group, combined with the presence of ships, and the result is that we are down to this very low level of attacks, I think you could say it works.

**Q70 Lord Jones:** Do we know how many pirates have been sentenced? Do we know how many have been sent down? Do we know of punishment?

*Lord Malloch-Brown:* This first trial is the *HMS Cumberland* one, which I referred to, and it is underway, so that will be the first result.

**Q71 Baroness Symons of Vernham Dean:** Minister, you did say that attacks were fewer.

*Lord Malloch-Brown:* Let me just correct something. Apparently there was a Kenyan trial of United States transfers who indeed have been sent to prison, so there is one case.

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**Q72 Baroness Symons of Vernham Dean:** You said that the numbers of attacks were very much lower. Can you tell us from the average number per month to what they are now, how many fewer are there?

*Lord Malloch-Brown:* You have those figures, Chris.

*Mr Holtby:* We have only got complete figures for 2008, which suggested that in the whole of 2008 there were 122 piracy events. This year the numbers have been smaller but, as the Minister said, we are still in the bad weather period so we are not yet over-confident that we have done this, but we want to see what happens in the coming weeks.

**Q73 Baroness Symons of Vernham Dean:** But so far this year, how many?

*Mr Holtby:* I have not got the figures to hand at the moment, I apologise.

**Q74 Chairman:** If you could provide that.

*Lord Malloch-Brown:* Yes, of course.

**Q75 Lord Chidgey:** Minister, could I take up the point you were making about the hopeful success of these new tactics. I just wanted to ask you if you have a view on the perhaps slightly alternative, more pessimistic view of this from some of the analysts who claim that a far larger fleet would be necessary to fully contain or even stop the pirate attacks, bearing in mind that, again, some analysts are saying there may be thousands of pirates wishing to get into this “game”, given the background of Somalia and its lawlessness anyway, and the fact of the existing arrangements with the corridor which obviously provides some protection for those travelling east-west, but not steaming north-south? So, it is not as easy as we would like to think and it is a big problem, and the cost of the sort of fleet that would be needed to give the overall protection is probably prohibitive. I wondered if there was a longer-term view than the welcome immediate success, bearing in mind the weather conditions?

*Lord Malloch-Brown:* There are two points: one, I was very struck by the statistic that the 2008 figures reflect because, in terms of cargo passing through the area, it was less than one% that was affected by pirate attacks. You could say that gives you plenty of ceiling for growth, but I think it is important to say that because inevitably the phenomenon, because of the attention it has received—I bet if I had asked you to guess, you would have thought it would be 10%, 20% or more—is contained. The real answer is that this is a product of conditions on land in Somalia and obviously what we have got to do is press on with our political-cum-development efforts to stabilise Somalia and to deal with the authorities in Somalia proper, but also in Puntland and Somaliland, to work with them on both a development but also a law and order strategy for dealing with this. Our expenditures

in Somalia on development and developing internal justice and security systems are quite significant, as you are aware. In that regard, we have to press on at that and the political progress has been moderately encouraging in that the new government in Somalia is reaching out and the new President Sharif is reaching out to a much wider range of former enemies to bring them into government. We are cautiously encouraged that we are finally getting some traction on a political strategy for the country.

**Q76 Lord Inge:** I would say good luck with Somalia!

*Lord Malloch-Brown:* Thank you, but there will be many more Ministers who sit here and say that!

**Q77 Lord Inge:** If I can be more philosophical, inevitably in any military campaign as the own forces react, the enemy reacts in a different way. What are you beginning to see in the change of the tactics of the pirates?

*Lord Malloch-Brown:* Chris is just back, literally yesterday, from the co-ordination meeting of all the group in Egypt—not just all the military forces involved, but the ship owners as well—so it might be worth him giving it straight from the horse’s mouth what the discussion at that point was.

*Mr Holtby:* So far, we are not seeing substantial changes in the modus operandi of the pirates. Still, we are seeing most attacks happening at either dusk or dawn and that is why the military operations have developed this means of operation of pushing the fleets through and timing their transit through the most dangerous areas in the period of darkness so they will be least vulnerable. Very important to this is that industry now, as a whole, has adopted best management practice, taking that all in, registering with the Maritime Security Centre. That means that with a relatively small number of ships, and I agree if we had huge numbers of ships we could be constantly patrolling, we can protect those that are transiting through at the most dangerous times. I can give some figures to support that, having failed a little bit earlier. But since the EU operation came in at the beginning of this year, last year we had 180 attacks and so far this year up to the middle of March we have had 22 approaches or attacks and only three hijackings, and there were 40 hijackings last year. So far we are proving that by working with industry and getting them to follow best practice, it is working. The concern we have is that the big companies are playing the game but so far some of the small operators are not necessarily doing that, and those are the ones who have not registered and who are most at risk.

**Q78 Lord Inge:** And we have seen no change in the pirates’ tactics?

*Mr Holtby:* Not so far.

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**Q79 Lord Jay of Ewelme:** I wanted to move on and ask questions about the arrangements if, alas, deterrence fails and ships and crew are captured. It is good to know that there have only been three, as I understand it, successful hijackings so far this year. The question is what can the EU operation do in cases where pirates have taken a vessel and crew captive, where the vessel is en route to a port, or in a port, with the crew effectively captive? What guidance is given to UK commanders in those circumstances and is there a common approach between the UK and other commanders? What is our and other countries' attitudes towards paying a ransom by ship owners in these circumstances?

*Lord Malloch-Brown:* The handling of hostage situations is a national responsibility. It is a curious, you might argue, anomaly of international law that paying a ransom is not illegal. Ship owners say that the ability to pay ransom is absolutely critical to saving the lives of their crews and are universally in favour of it, despite the fact that it, of course, amounts to both an incentive for further hostage taking and a huge tax on their operations. We are very clear that while we recognise this practice goes on, we will not be a party to it. We do not endorse or condone it, we do not participate in it, but it is a reality of this situation. Perhaps the other bit I should say, Lord Jay, is that more broadly on land-based operations, not so much the hostage end of it, but the United Nations Security Council Resolution 1851 adopted last December does authorise military operations against pirate bases on land in Somalia. While this authority has not been used at this point, it is very much something that is there in reserve and obviously I do not want to comment on it too much because of the operational sensitivity, but it should give pirates pause for thought because it means we can pursue them on land now.

**Q80 Lord Jay of Ewelme:** Thank you for that, Minister. On the ransom point, and you set out very clearly the UK's position and I can understand that—we do not like it but there is not a huge amount we can do to stop it, if a ship owner is determined to do it—is this a common EU position? You said this is a national issue but are others as strong or stronger than we are on the question of ransom paying?

*Lord Malloch-Brown:* Correct me if I am wrong, but in letter it is a common EU position. In spirit, there has always been slight differences of emphasis with some countries being more willing to throw in the towel and just accept that it is part of life in those waters. I do not think there is any government which willingly participates in it or endorses it but everybody, like us, feels they have to live with it.

**Q81 Lord Anderson of Swansea:** I think it is fair to say that all the bases for the pirates are in Somalia, rather than Yemen or Kenya, and there are peculiar political and economic problems there—failed state, save for Somaliland. So the bases are in Puntland and south of Mogadishu and economically the fishermen can probably earn at most \$1 a day, if they are operating as fishermen, but by human trafficking to Yemen, or more particularly by the piracy, they can earn \$2,000 or \$3,000 or more, presumably a small part of the total haul. How do we deal with the political factors? You have said there are some signs of hope but Lord Inge has said there has been anarchy since 1991, so they are very slim signs of hope, and what about the economic side?

*Lord Malloch-Brown:* Lord Anderson, you make a very powerful point about the difference in economic opportunity between \$1-a-day fishing and several thousand dollars a day or more as a pirate or human trafficker. Our approach is the same as it is for poppy farmers in Helmand in Afghanistan, or in many other situations where illegal activities offer hugely greater incentives than legal ones, which is to try and get the right combination of stick and carrot, as effective law enforcement as possible to raise the deterrent effect, raise the cost to people embarking on a life of crime. On the other side of the chart, we are trying to do as much as we can to bring development, political stability and internal police capability up in Somalia. In that sense, perhaps it is appropriate to just point out that last year we had over £25 million of humanitarian and development assistance to Somalia, which is increasing this year to £30 million. The EU Community Development Programme for Somalia over the 2009–13 period will be €215.8 million. Its priority sectors are good governance and security including disarmament, demobilisation and reintegration as well as broader work on education, economic development and livelihoods.

**Q82 Lord Anderson of Swansea:** It is probably fair to say that money can most effectively be spent in Somaliland, the former British protectorate. No pirates actually come from Somaliland itself. To what extent is the European Union prepared to work with the Government of Somaliland in this respect? Are we prepared, for example, to spend money on improving the facilities at the port of Berbera, which could be a fairly useful contribution to the operation?

*Lord Malloch-Brown:* Yes and no, to your first point, because this is the classic dilemma of British development assistance: do we spend it in safe, stable places which are no threat to anybody but where the return on the development pound is much greater because it will buy you more education or healthcare or economic growth, or do you spend it in failed and failing states because they are the ones that pose the threat to their own citizens as well as to the

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international community? It is worth noting that Douglas Alexander, in a recent speech launching his White Paper consultations for DFID, said that already DFID is spending 40% of its bilateral development resources on failed and fragile state situations and that is going to grow to 60% over the next few years. It is a genuine dilemma because, as an old development man, I would say that you get a much better return by spending it in stable, safe places where you are going to get a higher return, but it would not serve this broader purpose here which is to try and bring security and stability where it does not exist. Having said all that, obviously Somaliland is a small haven of stability. We have a significant programme there. If I recall correctly, it is about £9 million.

*Ms Atkinson:* We spend proportionately about three times as much per head on development in Somaliland as we do in Somalia itself.

**Q83 Lord Anderson of Swansea:** May I add one little question. The operation is due to expire after a year, in December. What will happen then?

*Lord Malloch-Brown:* We hope that it will be continued and we would offer to continue to provide the headquarters for it. We are rather proud of—and I think our Navy is rather enjoying—this mission.

*Lord Inge:* They need something to do!

**Q84 Lord Chidzey:** Picking up on the point you made earlier, Minister, about the piracy activities being part of the problem, rather than the problem itself in regard to the instability in Somalia, and you mentioned that President Sharif Sheikh Ahmed was thought to be doing the right things to try and bring stability back to that troubled country, I understand that the UN Security Council is meeting shortly—possibly tomorrow—with Somalia on the agenda, with the support for the President of AU, EU and presumably ourselves and the United States. I just want to ask you what position, if you can tell us, are we taking in this? Is it through the EU that we are looking to bring in some concrete help to the new regime, or are we taking a different independent line, or are we working with the United States?

*Lord Malloch-Brown:* Let me just say, politically, we are doing a large amount to help the process in several ways. First, the UN Special Representative for Somalia, as far as I can tell, seems to have an almost wholly British office, in that some of them are British Somalis, but we have seconded a number of individuals to his operation to try and give him the capacity to do it. There is a seconded British diplomat who had worked previously on Somalia out of our High Commission in Kenya; there are other individuals whom we have provided, so that his ability as facilitator of the peace negotiations is significantly enhanced. Secondly, through DFID, we

are looking at key sectors such as justice and security sector reform. Thirdly, I think I was one of the very first international officials to meet the new President—literally within 24 hours of him being elected—and I have subsequently met his Foreign Minister who until that point had been a British resident, and we are trying to give a combination of political encouragement and economic assistance to the country to move this forward. There does remain the one knotty issue of what is the best international peacekeeping presence, where there have been some differences of opinion around whether the best route is strengthening AMISOM, which we have helped do, we have made a total of £5.7 million available at the end of the year to AMISOM, we are giving a UN trust fund another £10 million to help defray the costs of AMISOM, and we have been encouraging Uganda and Burundi to put in extra battalions as well as reaching out to other potential African contributors. The Security Council resolution at the end of the year left open the prospect of turning to a UN force in the middle of this year. We are not theoretically closed to that and we respect that it will be the Secretary-General who will need to recommend whether that is a good or bad thing. We have been uncomfortable about it because we think it might attract and renew political divisions in Somalia, where the withdrawal of the Ethiopians, the relatively low profile of AMISOM, has had the effect we hoped for which has been to force the different internal parties to make peace with each other and not rely on the *deus ex machina* of outside forces to keep them apart. We would hate to disrupt that process by trying to mount unnecessarily a large new international UN peacekeeping force.

**Q85 Lord Selkirk of Douglas:** May I ask the Minister what action are the United Kingdom and the European Union taking to combat money laundering and other illicit financing channels used by pirates as well as their access to weaponry, such as small arms, light weapons and high-speed boats used for piracy? Can the Minister, as an extension to that question, give a general view as to what extent we are getting strong co-operation from the governments in the area.

*Lord Malloch-Brown:* Let me just say that we are doing all we can. Some of the operational detail is sensitive and you would understand that because we do not want to give people warning of what we are doing. There are, however—I think I also owe it to you to acknowledge—certain constraints in that a lot of the international money laundering arrangements deal with groups who are designated as terrorists, and these are not terrorists, they are criminals. Secondly, these are not people who, when they get a ransom, ask for it to be put through a prominent international bank. They take their money by the shipload in cash.

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So there have been some genuine issues on this. On small arms, we are doing all we can and it is worth pointing out again that the UK has been a real leader, precisely because of the prevalence of small arms in Africa, on this whole issue of a small arms treaty. Beneath that more global approach, we are doing everything we can to try and disrupt this in the local neighbourhood and we feel, correct me if I am wrong, that we have very full co-operation not just from Kenya and Tanzania, which I have mentioned, but also from Yemen and countries on the other side of the Gulf.

**Q86 Lord Swinfen:** Lord Malloch-Brown, you have said that the ransoms were paid in cash. Is a note taken of the numbers on the notes so that they can be traced? Is the money marked in any way? Also, is there any evidence that the money is being used to fund terrorism in any form?

*Lord Malloch-Brown:* On whether the money is marked, I do not want to make this more difficult for the next time, but I think yes would be a reasonable assumption to make, although I am not familiar with the exact details and I suspect that is something which may vary from situation to situation. On the issue of whether there is any evidence that it is funding terrorism, Ms Atkinson?

*Ms Atkinson:* There is no direct evidence.

**Q87 Chairman:** Perhaps I could just ask one final question on this. This is the first EU operation as such of this manner. We are all pleased that it is British-led in many ways but, given the amount of experience we have had so far, what is the benefit of it having been a European force that is now filling this role rather than NATO, which was previously doing it, or just a collection of different states. Is there—to use the cliché—real added value in Europe in this?

*Lord Malloch-Brown:* I think there is. While it is the first naval operation of this kind, it is the twenty-second or twenty-third ESDP operation. Frankly, Europe has developed a real niche capability in coming in to tricky situations which need these kind of arrangements, the others are all on land. From the Balkans to Chad to various other places these operations are building up quite a reputation. They are limited in size. If you want a very big operation, there is still no substitute for NATO, but in truth it has helped us a lot because we provide the headquarters, and we have provided a couple of ships at any one point—one in this operation and one also in the American-led operation. It would be very hard without this European approach to knit together a sufficient force to do this. Nobody's own navy at this stage really has sufficient spare capacity alone to put sufficient force into the Gulf. So, I think it is a useful, pragmatic, burden-sharing which has allowed us to

deploy a much more effective force than we could have done on our own or in other groupings.

*Chairman:* I am just going to take Lord Hamilton and then Baroness Symons but I have just realised the time so a very brief answer will do I am sure.

**Q88 Lord Hamilton of Epsom:** It is just a very quick one. Europe, like many other countries, is facing static or declining defence budgets, clearly you have got ships being deployed anyway but there are additional costs involved in this. If we could have it in writing afterwards, I would like to know what you estimate the costs to be because this is not a cost-free exercise.

*Lord Malloch-Brown:* I am happy to do that. As you rightly point out, it is what is additional to the regular operating costs of these ships. I see you writing a number there, Chris.

*Mr Holtby:* The likely cost for 12 months is going to be €8 million and the UK share of that will be about £1.2 million.

**Q89 Lord Hamilton of Epsom:** Carried by the defence budget?

*Mr Holtby:* No, that is carried by the peacekeeping budget.

*Lord Malloch-Brown:* Which is the shared pool funding between FCO, MoD and DFID.

**Q90 Baroness Symons of Vernham Dean:** Can you send us a note clarifying the position on the numbers of piracy attacks. I fully appreciate you have not always got the statistics readily available, but I remain a little bit confused because you talked at one point about 122 piracy events last year, then we had 180 attacks last year—I do not know if those are the same as piracy events—22 approaches so far this year and three hijacks. It seems to me not necessarily in those descriptions lining up like with like and I do not find them very convincing as they stand in backing up your point that there are many fewer incidents, and I think it would just be helpful if you could clarify those figures.

*Lord Malloch-Brown:* That is a very fair point. I was also slightly alarmed at the vagueness of these figures. We will get you something clear on it.

**Q91 Lord Anderson of Swansea:** Successful operation—does the international community view this as in any way a possible precedent for the piracy in the Gulf of Guinea?

*Lord Malloch-Brown:* Well, I am glad to hear that apparently this operation has been informed by lessons from the Straits of Malacca and therefore no doubt again in best practice, knowledge-learning ways, some of this could be transferable to the Gulf of Guinea. The Gulf of Guinea, which covers the area from Nigeria all the way down to Angola, is

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somewhat different in that the Niger Delta has these very difficult criminal attacks on oil rigs and so far the UK position has been to open a training facility in Lagos, the Joint Maritime Security Training Centre, that trains Nigerian naval officers and staff involved in this.<sup>2</sup> We have resisted either making contributions

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<sup>2</sup> The training is specifically for in-shore patrolling in the Delta Creeks, not off-shore.

of boats directly to the Nigerians, and the Nigerians have equally resisted an internationalisation of the handling of this. So, yes, in theory, but I think the situation at least at the moment is somewhat different in practice.

**Chairman:** Minister, Mr Holtby and Ms Atkinson, thank you very much indeed for your evidence. We will be discussing now how we can proceed with this inquiry, but it has been most useful.

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### **Supplementary memorandum from the Foreign and Commonwealth Office**

We were grateful for the opportunity to see the transcript from Lord Malloch Brown's appearance before your committee on 19 March. I am writing to offer clarification on two issues raised during the session.

First, Lord Hamilton asked about the legal situation covering the use of private contractors and their rules of engagement. There is nothing in UK law which prohibits the use of private military companies on UK flagged vessels, although the carriage of armed guards is discouraged under guidance issued by the IMO, as Mr Holtby noted during the evidence session. The law governing the deployment of force on vessels on the high seas depends on the law of the flag state concerned. If a private military company were deployed on a UK flagged vessel they would be subject to the jurisdiction of the United Kingdom, and would be subject to potential criminal investigation if they used force in a manner contrary to our criminal law.

Secondly, Baroness Symons sought clarity on the number of piracy incidents so far this year. According to figures provided by the EU Operation HQ, last year there were approximately 180 attacks including 40 hijackings. The latest figures available at the time of the Committee hearing were 22 approaches or attacks by pirates including three hijackings.

23 April 2009

### **Further supplementary memorandum by the Foreign and Commonwealth Office**

#### **Letter from the Rt Hon Lord Malloch-Brown, Minister of State at the time of writing**

I am responding to your letter of 3 June on the points raised by the European Union Committee House of Lords after its evidence session on Somalia on 19 March.

#### **ESCALATION OF ATTACKS**

Operation ATALANTA is achieving positive results in providing protection to World Food Programme (WFP) and other vulnerable shipping and has delivered a significant reduction in the number of successful attacks in the Internationally Recognised Transit Corridor in the strategically critical Gulf of Aden through close cooperation with the shipping industry. 36 shipments of WFP shipping have been escorted. HMS NORTHUMBERLAND escorted seven of these. This equates to 243,179 metric tonnes of food. Whilst successful pirate attacks continue, these overwhelmingly take place against vessels that have not followed the EU operation's advice and industry-agreed best practice or, increasingly, occur in the Somali Basin further to the south. It is harder to provide effective military protection to shipping in this area given the criss-crossing of trade routes and the size of the area for the military operations to cover, but best practice measures will still help to minimise risk in this sector. There are currently 11 ships and 203 hostages under pirate control. Of these 11 ships, two were registered with the Maritime Security Centre Horn of African (MSCHOA) and part of a group transit. International co-operation, both through the military and through the shipping industry adopting best practice, is likely to have had the effect of pushing pirates to operate further South East, including in Seychelles waters. This is why the EU has expanded its area of operations to cover this area.

#### **CHANGING TACTICS OF PIRATES**

There has been an increased incidence of attacks in the Somali Basin (South East of the Horn of Africa), in part as a result of the relative success of international efforts to combat piracy in the Gulf of Aden. The Basin is a much larger expanse of sea (the distance of coast from Horn of Africa to Kenyan border is roughly the same as from the UK to Gibraltar) and so security is much more difficult to deliver, even if merchant ships

travel much further out from the coast. But in broad terms, the tactics used are unchanged, with most attacks at the same time of day (dawn/dusk), the same type of equipment used, and the targeting of vessels travelling at a low speed and with a low freeboard (distance between waterline and deck).

#### COORDINATION OF FORCES

International naval operations are well-coordinated and increasingly effective. There are three major players; the EU naval operation (ATALANTA); Combined Maritime Forces (CMF), of which the US has overall command and UK is second in command; and NATO, who have deployed a taskforce under UK command. Countries outside these frameworks coordinate closely through the EUNAVFOR (EU Naval Force)/CMF jointly chaired "Shared Awareness and Deconfliction" (SHADE) mechanism. These countries China, India, Japan, Russia. This is designed to enable best use of resources and sharing of tasks.

Actions by the US Navy to free the captain of the Maersk Alabama (a US national) were taken in isolation and not as part of Operation ATALANTA, NATO or CMF. The same is true for the French rescue mission of those captured by pirates on the French yacht Tanit. All ships retain the ability to switch to national command should operation requirements call for it. This applies to the Royal Navy.

The Royal Navy continues to play a leading role in a number of counter-piracy operations off the Horn of Africa. Since the inception of the EU counter-piracy Operation ATALANTA in December 2008, the UK has been pleased to provide the Operation Commander (Rear Admiral Peter Hudson since 3 June, previously Rear Admiral Phil Jones) and the Operational Headquarters at Northwood, and will continue to do so until the end of its revised mandate. A warship has been offered in support of the operation for a period in 2010, and we will provide Maritime Patrol Aircraft and tankers as other operations allow (more details on extension below). The UK provides the Deputy Commander and a frigate to the US-Led Combined Maritime Forces, working in close coordination with the EU and NATO vessels to bring security to the region, which includes counter-piracy as well as counter-terrorism operations. The Royal Navy is also providing a frigate to Standing NATO Maritime Group 2, currently conducting counter-piracy operations off the coast of Somalia, and has a lead role in command at sea of this operation until June 2010. Additionally, deployed units passing through the Horn of Africa region are tasked to conduct counter piracy operations, especially the TAURUS amphibious task group, consisting of five ships, during the summer of 2009.

The EU Maritime Security Centre Horn of Africa (MSCHOA) provides reassurance to the commercial sector through its website. It has received prominent support and critical acclaim from the shipping industry. Over 4,000 users have subscribed, including 2,700 shipping companies. Over 5,800 merchant vessel movements have been registered with the website since its launch.

Despite the actions of the US and French in launching rescue missions, we have not seen an escalation in violence used by pirates.

#### FINANCING OF PIRACY

Consultations have begun within the Contact Group on Piracy off the Coast of Somalia (CGPCS) on financial aspects, examining whether there are realistic prospects of being able to apply sanctions on individuals engaged in piracy and being able to successfully trace ransom payments. This is a complex issue, due in particular to the informal "hawala" financial transfer systems that operate in East Africa and the Arab World. The Arab League, Oman, Saudi Arabia, UAE and Yemen are all members of the CGPCS and are being engaged on this issue.

#### PIRACY AND TERRORISM

There remains no concrete direct evidence linking terrorism/extremism to piracy. Financial flows are being looked into by the CGPCS as above.

#### THE CORE OF THE PROBLEM—SOMALIA

The solution to piracy off the coast of Somalia lies on land. We will continue to work with the international community to tackle problems at their root, notably through the provision of development assistance and support to the Djibouti peace process. We are encouraging the European Commission and other partners to increase targeted support for governance and economic development, in particular in coastal areas.

The UK's strategy for Somalia is aimed at the establishment of a government that can set a level of security and stability leading to improved prosperity and an eventual democratic transition. Although this transition will inevitably be slow and difficult, our assessment is that this remains the best means by which we can address the major symptoms resulting from the long history of instability. To this end, the UK provided £15.7 million in March for the African Union Mission to Somalia, both direct to the AU and through the UN Trust Fund. Moreover, the Department for International Development's budget for Somalia in 2009–10 is £21 million.

To enable the TFG to begin rebuilding the country and create functioning institutions, development of the security sector is critical. However, we continue to encourage the TFG maintain its focus on the political reconciliation track which is essential to sustainable progress in Somalia. To address piracy in the region, we will continue to assess how we can work with the TFG and the authorities in Somaliland and Puntland to deter individuals from piracy through sufficient deterrents and legitimate alternatives.

The UK, as chair of the Working Group 1 of the CGPCS, led a needs assessment and prioritisation mission to East Africa and the Gulf of Aden from 27 April to 15 May. The CGPCS recognises the importance of regional capability development to the medium and longer term solution to piracy in the region. The mission was implemented involving dialogue with regional partners as well as representatives of key international organisations such as the European Commission, the International Maritime Organisation, the UN Office for Drugs and Crime and the UN Political Office for Somalia. The mission focused on identifying priority needs for regional capability development, including the scope for international support. Work on this continues.

14 July 2009

**Further supplementary memorandum by the Foreign & Commonwealth Office**  
**Letter from Baroness Kinnock of Holyhead, Minister of State**

1. Thank you for your letter to Lord Malloch-Brown of 11 June, requesting further evidence about EU Operation Atalanta. I am replying to that request, and also to clarify an issue regarding responses provided to questions 17 and 29 raised by the House of Lords Sub-Committee meeting on the 19 March 2009.

**EU'S NAVAL MISSION TO COMBAT PIRACY**

2. Royal Navy ships participating in counter-piracy operations are trained and equipped to act within the required Rules of Engagement (ROE) to counter the threats they may face, including piracy. All Royal Navy vessels, acting either nationally or as part of a coalition, will always operate in accordance with international law, including the United Nations Convention on the Law of the Sea.

3. I do not agree with the conclusion of "*The Times*" article (4 June 2009) that the Royal Navy's ROE are insufficiently robust. As you rightly pointed out, we are able to detain pirates where there is evidence that they intend to commit, or are preparing, an act of piracy. Royal Navy ships can intercept pirate skiffs and take robust action to come to the aid of a victim vessel under attack by pirates in international waters. This can range from deterring and disrupting the attack to the use of reasonable force to defend the victims. Vessels can be boarded and any piracy-related equipment can be seized and destroyed.

4. The decision as to whether suspected pirates intercepted by UK vessels are detained and subsequently prosecuted is made by the Operation Commander. In consultation with his legal adviser, the Operation Commander considers the situation against the legal framework of the transfer arrangements with regional countries, namely Kenya or the Seychelles. Based upon the legislation and evidential threshold requirements of Kenya/Seychelles, and taking into account any capacity, if it is considered there is sufficient evidence on which to charge suspected pirates they will be detained and transferred accordingly. Conversely, if after thorough investigation there is insufficient evidence on which to charge suspected pirates either in Kenya, Seychelles or the UK, they will be released. Any piratical equipment, such as ladders and weapons will be seized or destroyed. We would, of course, wish to see every suspected pirate put on trial where there is sufficiently good evidence; however in practice this is not always possible.

5. To increase Kenya's capacity to assist Operation Atalanta, the UK is working with the international community to provide support to Kenya's judicial system. The European Commission is currently working on a €1.75 million project (assisted by the United Nations Office on Drugs and Crime) to assist Kenya's judiciary. The UK has also sent legal experts to the country to provide judicial guidance and support ongoing trials. We are also speaking to other regional states in order to set up similar arrangements to reduce the current burden on Kenya/Seychelles. The ideal longer term solution is trial and detention within Somalia (including within the Somali regions), but this will require sufficiently strong human rights safeguards and standards to

be in place before the Royal Navy could transfer suspects to Somali custody. In the meantime, other solutions will be required, and this is an issue that is being taken forward within the Contact Group on Piracy off the Coast of Somalia.

#### LEGAL PARAMETERS

6. The definition of piracy under the United Nations Convention on the Law of the Sea (UNCLOS) is the principal legal base for Operation Atalanta. The United Nations Security Council Resolutions (under Chapter VII of the UN Charter), whilst binding, are framed by reference to the international law of the sea (UNCLOS), and therefore give no additional legal basis for interdiction of suspect ships or detention of suspect pirates on the high seas. In the UK we have a common law offence of piracy, and the UNCLOS definition of piracy is recognised in UK's domestic law, as it is in the law of all EU member states. It is therefore considered that current UK legislation would in principle allow pirates apprehended in international waters to be prosecuted in the UK. That said, the logistical difficulties inherent in sending law enforcement officers to the scene and bringing suspects and evidence back to the UK for presentation before a UK court are such that we favour developing regional solutions to bringing pirates to justice. It is our understanding that the national laws of other EU member states are broadly similar to the UK, ie on the basis of customary international law, including fundamentally UNCLOS. The engagement of the military forces of each country are governed by commonly agreed rules of engagement which help underline the similarity of our approach as far as military action is concerned, although the UK is at the more active end of that military action spectrum. On the issue of prosecution, some member states e.g. France and Netherlands have already shown that they are able and willing to prosecute in national courts. But for many, including the UK, the real block is political, unwillingness to prosecute at home rather than in the region. In the right case, the possibility of prosecuting pirates in UK courts cannot be excluded.

#### CLARIFICATION OF 19 MARCH HOUSE OF LORDS SUB-COMMITTEE QUESTIONS ON ADAPTATION OF PIRATE TACTICS

7. In response to questions from the Sub-Committee on adaptation of pirate tactics, Admiral Jones said (Q29) that pirates were adapting their actions, while Mr Holtby of the Foreign and Commonwealth Office said (Q77) that "so far we are not seeing substantial changes in the modus operandi of pirates". On the basis of subsequent contacts between FCO, MOD and the EU Operational Headquarters, including Admiral Jones himself, I can confirm that both answers were correct insofar as the two respondents were addressing distinct aspects of this issue. Admiral Jones was referring to the extent to which pirates were altering their geographical area of operations (and continue to do so), while the FCO response referred to the pirates' means of attacking ships—pirate attacks continue to be predominantly against slow moving, low freeboard ships (i.e. ships with a short distance between the deck and sea).

8. The FCO and the EU OHQ are in agreement that the actual method and selection of pirate tactics have remained consistent. However pirates have expanded the geographical areas of piracy, in particular to avoid the areas of operation of international maritime forces, especially within the Gulf of Aden.

*19 October 2009*

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THURSDAY 14 JANUARY 2010

Present	Anderson of Swansea, L Chidgey, L Crickhowell, L Hamilton of Epsom, L Inge, L	Selkirk of Douglas, L Sewel, L Swinfen, L Teverson, L (Chairman) Williams of Elvel, L
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#### Examination of Witnesses

Witnesses: REAR ADMIRAL PETER HUDSON CBE, RN, Operation Commander, European Naval Force Somalia, and COMMANDER CLIVE DOW, RN, EU NAVFOR Legal Adviser, Ministry of Defence, examined.

**Q92 Chairman:** Admiral, can I welcome you and your colleagues to this session. Perhaps I can go through some notices that I do have to give out. This is clearly, as I know you are well aware, a public hearing; in fact we are being televised this morning. A couple of other things. We obviously take a transcript of the session, a copy of which we will send you, which you will be able to amend if we have recorded it incorrectly, although, obviously, it is not an ability to change the facts, as it were. I think you have had a copy of the sort of questions that we are likely to ask. I would expect the session to last for something like an hour and 10 minutes. I wonder, first of all, whether you would like to perhaps briefly introduce yourselves or whether you wish also to make a short opening statement of any kind.

*Rear Admiral Hudson:* My Lord Chairman, thank you very much for inviting me along today. It is a great pleasure to expand upon what we are doing in Operation Atalanta. As you know, we have been running now for just over a year. We started in December 2008 and I took command of this operation in June of last year from Admiral Jones, who I know appeared before the Committee in February of last year. Since then the mandate has been extended. We are now running until the end of this year, December 2010. We have had a slight revision to our Joint Action Plan with modest changes to some of the business that we are doing in theatre, and that is all part of this comprehensive approach which the EU is taking towards Somalia. I think our links with industry and with the other maritime forces in the area have improved. Therefore, across the European Union we are seen as making a difference, adding value to the operation and making progress. My objective in 2010 is to maintain that momentum and to make sure the outputs that we have delivered so well in 2009 are sustained. I have seen the brief summary of questions that was forwarded, so perhaps they will allow me to expand in a little bit more detail as we go through the session.

**Q93 Chairman:** Can I also put it into the context that we will be making a short report to the House on Somalia, particularly Operation Atalanta, in the

early part of this year of which this is a part. Can I ask what the Commander's role is as well, very briefly?

*Commander Dow:* Lord Chairman, good morning. Commander Clive Dow; I work primarily for the Chief of Joint Operations in the UK's Permanent Joint Headquarters also based at Northwood but, as part of that role, I act as part of the multi-national legal team that advises the Operational Commander for Op Atalanta.

**Q94 Chairman:** Thank you very much indeed. We would like to start off with the broader question of whether there is, in your own mind, sufficient clarity in the mission statement and the mandate for Operation Atalanta so that you can operate effectively, how you define "vulnerable ships", as set out in the November 2008 Joint Action, and, I suppose, most important of all, how do you decide your priorities with the resources that you have?

*Rear Admiral Hudson:* If I can start with the mission statement and clarity of the mission. I think it is one of the strengths of Operation Atalanta that our mandate is pretty unambiguous. We do not have aspirational tasking; we do not have wide aspirations to rebuild the Horn of Africa with a few frigates and destroyers. Our tasks are clear. We have a focus on humanitarian aid into Somalia, supporting the World Food Programme; we support the African Union's mission (AMISOM), looking after their logistics ships that run into Mogadishu to support the TFG, we look after vulnerable shipping and work with industry to reassure them on how they should go through the high risk areas and, of course, where we can we deter, disrupt and break up pirate groups. It is well bound, it is clear, it is understood and it is easily digestible by the various ships and ships companies. That is a real strength for our operation. Within those strands, of course, you mention vulnerable shipping, and that is a key part of it. After all, it was the vulnerable ships that were being seized in 2008 and the early part of 2009 which drove this operation. What we have established in our maritime security centre Horn of Africa at Northwood is a set of criteria that we use to identify what is vulnerable: its speed, its manoeuvrability, its free board, the cargo

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that it is carrying, the number of people on board. Those sort of things are put into a matrix in our maritime security centre and, whilst it chunders through, we work out whether they are high risk, medium risk or low risk. Naturally, the biggest one is free board and speed. We then promulgate those lists of ships to NATO and to the coalition forces, so that between the three of us, the three main groupings in the theatre, we have a common list of vulnerable ships. All the shipping companies know that, all the ships themselves know that, so if they wish to gain our protection, reassurance operating in the Gulf of Aden, they can do that through our security centre. In that aspect, I think it is quite successful, quite straightforward in identifying them. Looking at our priorities, from an EU perspective, my Lord Chairman, the greatest, of course, is humanitarian aid to Somalia. The comprehensive approach is to make sure that the populous of that country, that fractured, broken country, we can sustain as best we can. The World Food Programme is pivotal to that. Ensuring that their ships are not pirated, not attacked, is right at the top of the list of priorities.

**Q95 Chairman:** You still have a 100% effective record on that?

*Rear Admiral Hudson:* We do. In 2009 we escorted into the ports, principally Mogadishu but also some of the northern ports, nearly 50 ships (49) delivering over 300,000 tonnes of food, every one of those escorted by a frigate or destroyer, every one of those successfully delivered to the port. Likewise, African Union ships supporting the logistics train for AMISOM, 14 of those ships escorted with essential supplies for the AU troops in Mogadishu, again, without attack. That is the top of my priorities.

**Q96 Chairman:** To put the operation in context, I know the operational area is, regrettably, expanding all the time because of piracy operations, but can you give us an idea of how many maybe commercial vulnerable ships might pass through that area a day? I know that is a very broad statistic, but it puts it in context for us a little.

*Rear Admiral Hudson:* You are right to highlight that, my Lord. I think the annual average is about 25,000 ships that transit through the Gulf of Aden principally, it is geographically constrained and that is where the bulk of them flow, whether moving towards the Suez Canal or some of the ports in places like Saudi Arabia, 25,000 ships, representing about 25% of global trade. Understandably the energy supply route from the Gulf up into Europe and across to America dominates that package and the global container, the box ships that run out to the Far East also use that route considerably, so a vital strategic artery. On a day, on average, we are looking at between 75 and 100. It flows with the season and

obviously the economic cycles. We have seen, in 2009, a slight dip as the economic factors have reduced the amount of traffic flowing through that area, but that is the sort of figures that we are looking at. In the Somali Basin, which is the southern part of my area of operations, the traffic density is a lot less. The ships come out of the Gulf of Aden moving left towards the Gulf or south down towards Sri Lanka and out to the Far East. Those that run down towards South Africa and Madagascar are much fewer; so the density there is a lot lower, and we are seeing somewhere in the region of 600 to 1,000 ships, over a year, moving in the southern sectors.

**Q97 Lord Crickhowell:** You have described the vulnerable shipping analysis and so on. I am not clear how many of the total 25,000 ships identify themselves as possibly vulnerable and, therefore, get into your matrix of high, medium and low and how many are outside it and what the record then is, which is the central point of my question. Having identified the vulnerable, and then there are the others that are not vulnerable, how effective is the, presumably, extra protection that goes to the vulnerable ships as opposed to any others? Do we have a picture of the performance of the two different categories?

*Rear Admiral Hudson:* That matrix, as I said, my Lord, is based on our maritime security centre Horn of Africa website, and the ships take part of it. Our estimation is that about 70% of the ships that move through the Gulf of Aden, east or west, participate in our security centre, contribute and actively engage at any one time. We have got a sizeable minority, about 30%, who do not, for whatever reason, take our advice. Of that 70% we have somewhere in the region of 10 to 12 ships in any one day in the Gulf area in either direction that we would identify as vulnerable, for all the reasons that I outlined: manoeuvrability, speed, free board, and so on. Having identified the vulnerability, we have a range of options that we can employ to safeguard that ship ranging from, in specific circumstances, the placing of a vessel protection detachment of military personnel on the ship, very low speed ships, for instance, carrying oil rigs or heavy industrial equipment, towing them through in big barges—we could put a vessel protection detachment on board—right the way through to those that are still vulnerable but at the bottom end of the margin where we will keep a ship within a certain distance to keep a weather eye on it as it moves through the Gulf of Aden. We pinpoint them, we establish communications with the ship, we identify the risk areas and we make sure that, if anything is encountered, that ship is alerted to it. It is a focus on an individual as opposed to a collective group, which we do with the wider community who can come through at a lower risk threshold.

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**Q98 Lord Crickhowell:** The result is?

*Rear Admiral Hudson:* All the ships that we have identified as vulnerable, who have sought our support, have got through safely.

**Chairman:** Could we make sure that we do not move on to questions in the future. Lord Chidgey.

**Q99 Lord Chidgey:** Admiral, good morning. The communication between the ships that are part of your matrix, if you like, how vulnerable is the communication system to interception and, in fact, aiding the attempted piracy?

*Rear Admiral Hudson:* There are two strands. There is the straightforward commercial VHF, speaking on normal communications means, where we pass information and exchange identities, tell them who we are, just exchange information. Yes, any other ships can listen to it—pirates, for instance, would be able to listen to a VHF conversation—but in terms of merchant ships, it is quite difficult to get secure communications on to them. We can pass information through the UKMTO through Inmarsat channels, which are not overt, they are not readily interceptable, and we do do that, when we say, “Be in position X at time Y”—we pass that through Inmarsat channels—but when we meet the ship we do talk on ordinary VHF channels. In terms of co-ordination, we do have secure means of doing that at an unclassified level. It is based on an Internet, it is the same banking protocols that you and I would use to move our money around over the Internet, so it is as secure as that, and from our security centre we release passwords, we give various companies, shipping agencies, outside organisations, access through password control, and that is where we can identify any specific threats for downward dissemination through their own routes. It is overt ship-to-ship via Inmarsat and radio but a secure area where we pass wider tactical data.

**Q100 Lord Williams of Elvel:** You identified the broad number of ships passing through your area, if I may call it that, in a given year. Is there any seasonal variation that you have identified or is it constant month by month?

*Rear Admiral Hudson:* With regards to the Gulf of Aden, my Lord, it is fairly steady through the Gulf of Aden. The flows of energy, the flows of merchant trade with an area of just enough just in time, tends to be fairly steady through the Gulf of Aden, but into the Somali Basin, which is much more prone to the monsoons, in particular in the summer the south-westerly monsoon where the sea states are quite high, some of the smaller ships, for instance the cruise liner industry, tend to stay away from the Central Indian Ocean during the monsoon periods but, as I said, that southern portion of my area has a much lower density of merchant ships. The impact on my overall

operation is not that significant by the monsoon with regards to traffic flows.

**Q101 Lord Anderson of Swansea:** Admiral, you rightly point out the successes, the 100% rate of supplying of the World Food Programme to Somalia, the good record of vulnerable ships, yet overall the situation is deteriorating, is it not? I noticed that, comparing 2008 and 2009, in 2008 there were 45 attacks, 2009 117 attacks; 35 hijacks in 2008, 46 hijacks in 2009. Clearly, there are lessons to be learnt on the strengths and weaknesses. There was, I believe, a review of the 12-month operation last month. Are there any preliminary conclusions yet from that review in terms of strengths and weaknesses, what needs to be done, lessons learnt?

*Rear Admiral Hudson:* There are two phases to that question, my Lord. First, the number of attacks, successful seizures by pirates between 2008 and 2009, you are right to highlight, in terms of specific numbers of ships seized in 2008 against 2009, there is no great difference between the two. Our figures would say 46 in 2008 and 43 in 2009. There is no great change.

**Q102 Lord Anderson of Swansea:** The figures we have been given by NATO in terms of attacks: 45 attacks in 2008, 117 attacks in 2009.

*Rear Admiral Hudson:* In terms of attacks, yes, and success rates.

**Q103 Lord Anderson of Swansea:** Actually the seizures are up from 35 to 46.

*Rear Admiral Hudson:* I think, without querying NATO's figures, the general trend is a steady state. But the EU only having been there since 2008, our figures in 2009, we would say that 43 ships have been seized. Where is that ambiguity? Several ships are seized—dhows from countries like Yemen, Pakistan, India, Iran—by pirates to be used as mother ships out in the Somali Basin. Often we get early reports from the Yemeni coastguard or from agents in Pakistan that one of their ships has gone missing. There is an assumption in some areas to then assume that it has been pirated, whereas often we find out weeks, sometimes months, later that that has not been the case.

**Q104 Lord Anderson of Swansea:** That is constant, surely, year on year. It would not be a different type of reporting.

*Rear Admiral Hudson:* I think it is how we then apportion it to an actual hostage situation, a seized ship, as opposed to an ill-defined, yet to be confirmed seizure. Within the EU we have looked solely at the larger merchant ships which have been taken in 2009—of course we were not there in 2008—and that is what the figures that we have of 43 are based on. I

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think the point that I would stress is the relationship between seizures and attacks has changed slightly. Because of the profile of piracy in 2009, we now have a number of attacks reported by various agencies which, in the grand scheme of things, are not skiffs with pirates armed with RPGs, AK47s aiming to assault ships. There is a jitterishness about some of the masters, and with organisations like the International Maritime Bureau, our own security centre, the NATO Shipping Centre, we are trying to filter out what are alarmist calls and what are genuine attacks. It is quite a challenge to work out what is a pirate assault and what is a master seeing a fishing vessel or some other illegal activity—human smuggling across the Gulf of Aden—and raising it as an attack; but my focus is trying to drive down the number of ships that are ultimately seized, and that is where in terms of success our relationship with industry is extremely important, because those ships that adopt best management practice, those ships that take full self-protective measures, those ships which follow not just the advice of the EU but their own organisations, have reduced the risk significantly and have rarely—I will not say never—fallen foul of the pirates. If I could use the example of the Somali Basin: over the last three months we have seen around 13 ships using the Somali Basin, a spike after the monsoon period, and I would say something like two-thirds of those ships were operating in areas where we and NATO and other organisations advised them not to go. Therefore, if they are prepared to cut corners, if they are prepared to take the risk, occasionally they wear the consequences of it.

**Q105 Lord Anderson of Swansea:** Before coming on to the second part, presumably there would be insurance implications if ships go into areas where they are advised not to go?

*Rear Admiral Hudson:* We would like that to be the case, but at the moment there is not that sophistication in the insurance premiums where the insurance companies would say, “If you do not adhere to the following criteria, your insurance will go up.” There is a war risk area, a high risk area established in the Gulf of Aden and a large part of the Indian Ocean that ships in transit will pay a premium to go through it in case they are seized by pirates. We would like to see ships that take full best practice, full self-protective measures get a small discount, but that is beyond the means of insurance companies and we have made little progress.

**Q106 Lord Anderson of Swansea:** On the review?

*Rear Admiral Hudson:* The review at the end of 2009, as I mentioned, resulted in a small revision to our Joint Action Plan. The biggest review was: let us keep going. We will go for another year through until the end of 2010. Capacity building is a big issue in the

Horn of Africa. We could be here for five, 10, 15, 20 years unless, we can get some sort of way, whether it is the institutions in Somali, whether it is the coastguard capabilities of countries like Somalia, or the regional capabilities improved. There is a huge raft of initiatives in place—whether it is the IMO’s Djibouti Code of Conduct, the information sharing centres, the Coastguard Training Centre in Djibouti, whether it is the EU’s big initiative—to try and engender security assurance in Somalia and help the TFG go from transitional to a proper federal government in Somalia which would allow the institutes to mature. In my revision to the mandate I have taken on some modest capacity building, without detriment to my operations, for countries like Kenya, Djibouti, where we can, working with the Yemeni coastguard, supporting some of the coastguards in Puntland and Somaliland—I stress without detriment to the operations—and also to inform Somalia of activity such as fisheries in their notional EZ. Toxic waste is often used as an example of why piracy has arisen. As we go about our business we cover a lot of ground. We can feed that situational awareness back to Mogadishu.

**Q107 Lord Chidgey:** Building on some of the responses given to Lord Anderson, which were straying into this area, you will see from the notes you have we are rather interested to know a little more about the latest trends in terms of the frequency, type and location of pirate attacks in the Gulf of Aden and off the east coast of Africa, and particularly the trends in pirate tactics. You have covered the statistics at some length already, but I am quite interested to know, if I can put it this way—it may be an exaggeration to say so—is there some sort of philosophical development in the pirates’ activities in response to what we are collectively trying to do to constrain them and protect shipping? I am looking particularly at the criminal activities which, of course, are to a degree shore-based as well, and I want to try and develop that theme above the platform of the raw statistics of the number of attacks and the number of seizures.

*Rear Admiral Hudson:* My Lord, if I could split the area into two, because they have very different operating styles and the style of piracy has evolved differently in each. Starting with the Gulf of Aden, bound by Somalia to the south and Yemen to the north, I have to say, over the last six months the level of attacks in the Gulf of Aden has been very low, notwithstanding the disappointing seizure over New Year of two ships, one in the corridor and one just to the east of the corridor, they were the first seizures since June. We lost a dhow in July, but the first major seizure. In six months we have had a pretty good strike rate in the Gulf of Aden. Why is that? I think that the military co-ordination is much better, both

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within the military forces and within the merchant community. The pirates have seen their rewards against risk ratio skewed the wrong way and they have sought alternative criminal activity. Therefore, human smuggling into Somalia has become very appealing to them and we have seen a spike in the autumn of people being transited across the Gulf of Aden into Somalia. They pay \$150 a head. There are 24,000 by the UNHCR's estimation. The pirates have got another revenue stream. Also the Puntland authorities have taken a greater interest in their northern coasts and they have been effective. The Gulf of Aden has gone down, but it is like a balloon: it will pop up elsewhere. We have seen the pirates move out into the Somali Basin using mother ships, long-range skiffs towing attack skiffs behind them, using things such as the currents which run off the Somali coast to get out into the deep Indian Ocean. They loiter near those north/south shipping routes knowing that distance will always be my constraint and I cannot get to them as frequently as I would like. They have altered their patterns and eased back on the Gulf of Aden, concentrating their efforts in the Somali Basin. The weather has been good for that. I think that, as the north easterly monsoon cuts in, we may see them return to the Gulf of Aden. So these are adaptive organisations. They look at the conditions, they look at where the military forces are and that is how they are able to exploit the weaknesses in our armour.

**Q108 Lord Chidgey:** Can I ask a follow-up regarding the fate of the hostages and whether the pirates have any sort of collective view on this. We have heard reports, of course, of al-Qaeda type terrorists muscling in, I suppose, is one way of putting it in terms of the hostages held on the shore. Is that a trend, is that just opportunist, or is that part of the overall view of how to maximise the returns on this activity?

*Rear Admiral Hudson:* I do not believe we have any direct linkage between those terrorist organisations and piracy. Piracy we still see as personal financial avarice by some of the gangs in the northern and eastern sides of Puntland. That said, last year somewhere in the region of \$80 million was generated by these ransom ships and as Secretary of State Clinton, said in the early summer of last year, tracing the money, where does it go, is a key part of the overall assault on piracy. It is not part of my remit, but the crime agencies, Interpol and so on, are trying to find out where the money goes. The link between terrorism and piracy, at this stage we do not see such a link. Do we see any change in the way that the hostages are dealt with? I have to say that, generally, the hostages, notwithstanding the psychological impact of being held ransom for three or four months on a ship, have been reasonably well treated. We have

not seen huge overt violence towards them. Generally, the hostages are released in a fit state; the ships take a lot of damage but they are not ransacked. The pirates know that their commodity for trade is the people and that if they step over a certain threshold their trade will ease. Those have been generally well-treated. One or two of the pirates have come from inland areas of Somalia to try and get a piece of the pie, and they have been rather more aggressive in their dealings with hostages. We will have to see whether that trend changes in 2010.

**Q109 Lord Hamilton of Epsom:** Have any people died as a result of these activities on either side?

*Rear Admiral Hudson:* Hostages? Sadly, we have had some hostages killed in this process. Not many, but nevertheless some have been killed. I do not know the exact number, but they have.

**Q110 Lord Hamilton of Epsom:** By pirates?

*Rear Admiral Hudson:* By pirates, yes. When they seize the ship or when they break into the compartments some hostages have been killed or seriously injured, but I do stress the numbers are comparatively small. With regards to pirates, yes, pirates have lost their lives, not only in interaction with military forces but also the fact that they are six, eight, 1,000 miles off the coast in open skiffs does mean that when they breakdown sometimes they are at the mercy of the elements, and we have come across abandoned boats with nobody in. So it is a high risk game.

**Q111 Lord Williams of Elvel:** Admiral, you did mention gangs of pirates. Could you say something about the organisation of the pirates? These gangs: how large are the gangs? Do they have good onshore technology? Can you say a little more about that?

*Rear Admiral Hudson:* Our understanding of the pirates is that they are largely based around three clans. Of course, Somalia is a clan-based country, the Darod clan to the north, the Hawiye Clan in central Somalia and then the southern one based around Xarardheere tend to have their own organisations. They are known as companies, pirate companies. They have their own individual players, whether it is a negotiator, whether it is the individual who looks after the logistics, the individual who looks after the boats, the attack team. It is configured around a small company as an entity in these pirate hubs around the clans. They leave from a great deal of pirate ports—little coves and harbours along the coast. It is 3,000 kms long, so they have got lots of egress routes. But when they seize a ship they bring it back to a central location, of which we know of three or four, and it is from those locations that they maintain the security of the sea ships and then conduct the negotiations, and the negotiations are done with the insurance

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companies back in London, or Singapore, or wherever they may be, for the transfer of the ransom payments.

**Q112 Lord Hamilton of Epsom:** Under what circumstances can naval vessels operating as part of the EU operation engage and fire on suspected pirates?

*Rear Admiral Hudson:* I hope, my Lord, will understand that I will not go into the specifics of firing but I would say that the rules of engagement given by the European Union to the ships under my command are very accurate, strong, for this type of operation, and the range of operations, notwithstanding the issues of self-defence, which pervade all operations, we have the flexibility to do what we need to do to disrupt, deter and arrest pirates, and I would say that over the last 13 months that this operation has been running we have not come across a circumstance where rules of engagement have stopped us completing a specific strand of our mission. I do not know if Commander Dow wants to expand on that.

*Commander Dow:* The only thing I would add, my Lord, is that this is clearly a law enforcement operation rather than a war against pirate or an armed conflict such as we are engaged in elsewhere. There are constraints imposed by the law of the sea, either in customary international law or under the United Nations Convention on the Law of the Sea, that we follow. The principle is the use of reasonable force, reasonable force being the minimum necessary to impose your rights under those provisions: to board, search, seize, arrest, detain, what have you. Lethal force is available where there is a threat to life, in very much the same way as for any other law enforcement operation.

**Q113 Lord Hamilton of Epsom:** You say that it is not a war; it looks quite like one to many of us serving on the side. We were told in the last lot of evidence that actually you had to catch these people in the process of trying to kidnap a ship before you could do anything about them. If they were sailing about, clearly armed and prepared with ladders and machine guns and whatever else, you could not touch them.

*Commander Dow:* My Lord, that is a slightly separate question, and I will deal with it separately, to the question of law enforcement versus armed conflict. The international community, all those involved in counter-piracy operations recognise that the applicable framework is the United Nations Convention and the Suppression of Unlawful Acts Convention. Not every nation involved in counter-piracy operations is a signatory to both, or necessarily either, of those international law provisions but certainly over time with one or two exceptions that has been the framework for the use of

force that we have seen each nation employ, and certainly that is the agreed basis of EU rules of engagement. The question of prosecution of pirates is slightly different. You make a good point, my Lord, that it seems anomalous that we have to restrict our prosecutions to those who are caught in the act rather than go equipped, but that is much more a function of our regional arrangements for prosecution and, obviously, in order to provide the deterrent effect we need to select our prosecutions to maximise our chances of conviction, and that generally means in the regional courts, Kenya and the Seychelles and what have you, that we present those cases that clearly present witness evidence of an actual act of piracy.

**Chairman:** We will come on to the actual relationship with Kenya and the Seychelles later on.

**Q114 Lord Swinfen:** Admiral, you have indicated to us earlier that you know where these pirates are operating from. Why can we not go in and seize the equipment: act to prevent them committing acts of piracy?

*Rear Admiral Hudson:* I know where the clans are based, where the companies operate from, if I can use that language—the ports of Xarardheere, Hobyo, Garacad and Eyl are the principal four ports on the east coast of Somalia for pirate enterprises, organisations, however you describe them. The difficulty, my Lord, is that we know of 70 different pirate camps along the east coast of Somalia alone from where these skiffs depart, along a coast that is 1,500 miles long on the Indian Ocean side. So monitoring and controlling where they leave from is beyond the means of the few ships that I have at my disposal, or aircraft. The other point is, of course, they seize dhows off Yemen, they seize dhows in the Gulf of Oman, they seize dhows in the Gulf of Aden, which they then convert into mother ships and deploy out into the Somali Basin, again difficult to identify and pin down. If we see them coming off the coast we can intercept them; if we have the intelligence that they are departing we can intercept them; but we have very limited intelligence based ashore in Somalia, we have limited ISTAR facilities because quite naturally the focus is on other operational theatres. For all those reasons actually wading in and stopping these skiffs at sea is difficult. The other thing is my mandate goes to the high water mark, I do not operate inside Somalia, going into these towns and into these villages is not part of my operation.

**Q115 Lord Swinfen:** Would you like to be able to do it?

*Rear Admiral Hudson:* From a military perspective, it is something that, of course, we would be able to do but it draws resources, it draws assets, it draws a requirement and a whole different ballpark if you are

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going to do operations ashore, and with this operation, given that it is a crisis response operation, it would set a very different theme. At the moment our focus is humanitarian, it is on identifying and supporting vulnerable ships, it is after, where we can, determining and disrupting piracy. I am not going to be in a position where I can defeat piracy, and I have never given any such guarantee or obligation. So operating inside Somalia is not something that is part of my remit and I do not see it being so in the near future.

**Q116 Lord Swinfen:** Do you have satellite observations so you could see these skiffs, these vessels coming out from the shore?

*Rear Admiral Hudson:* We have a good relationship with the European Union Satellite Centre, which is funded through Brussels, and we do use a variety of sources to keep an eye on activity.

**Q117 Lord Inge:** How many times have you had to open fire?

*Rear Admiral Hudson:* Exact numbers off the top of my head, my Lord, I cannot say but we have on several occasions. Most recently, one of our Norwegian boarding parties were inspecting some dhows off the island of Socotra and one of those dhows opened fire, fire was returned and some of those pirates were fatally injured. We have opened fire. We do use warning shots and non-disabling fire on a reasonably regular basis. With regards to numbers, we have the dexterity to do those sorts of things.

**Q118 Lord Anderson of Swansea:** If a skiff is carrying equipment which is only referable to piracy—RPGs, Kalashnikovs, ladders, and so on—and not referable to fishing, why can they not be stopped?

*Rear Admiral Hudson:* My Lord, I think, there is a difference between stopping and prosecuting. There have been no dhows, certainly in my seven months in command, that have disappeared over the horizon waving the proverbial as they go. We have stopped every dhow that we want to stop. What we do with them thereafter is a bit of a challenge. They are not out to catch tuna, it is not a Sunday jaunt along the Somali coast; they are there for the purposes of committing piracy; but that is conspiracy to commit piracy.

**Q119 Lord Anderson of Swansea:** They are going equipped.

*Rear Admiral Hudson:* They are going equipped. The difficulty then is providing the evidence and proving that in a court, of which there are very few that will take a charge of conspiracy, in either the regional countries or, indeed, back in Europe. As Commander Dow said, whilst we can do it, and have on many

occasions when there is direct linkage with an attack or an assault on a ship, finding a skiff in the Somali Basin (and we have found 14 in the last three months) equipped to commit piracy and getting those individuals into a court is beyond our means at the moment.

**Q120 Chairman:** Could I intervene on that. Certainly in our evidence from Admiral Jones, he said that there were instances where that was found, where the equipment was effectively thrown over board, and maybe, if there was more than one ship, the ship itself was sunk and they were left in one ship with sufficient provisions to get back to shore. Is that still what happens?

*Rear Admiral Hudson:* That is what we do. My effect is to disrupt piracy, my Lord. When we encounter these skiffs, and we do stop them, they will either ditch, throw overboard their paraphernalia themselves or we will do it for them. If they have attack skiffs in tow, we will destroy them. We identify and spray paint the mother ships with all sorts of luminous paints, we dispose of the bulk of their food and fuel and we make sure that they are in a safety of life at sea and a sufficient state to get back to Somalia and they cannot commit any further acts of piracy. We estimate it is about two to two and a half weeks from the Central Indian Ocean by the time they get back, regroup, re-equip and come out again. In terms of the merchant community, it is a disruption activity which takes a group out of play. I would like, my Lord, to have them all before a judge, because they are not out fishing, but I can only work with the prosecution framework that is available to me and, in those circumstances, conspiracy is one step beyond what I can satisfactorily prosecute.

**Q121 Chairman:** We will come on to that.

*Commander Dow:* I would endorse all that from my legal perspective, but certainly my experience has also been, being involved in transferring suspected pirates for prosecution that we are dealing with limited military resources as well. It takes a long time to get a ship down to Mombassa or to Victoria, bring it alongside, go through the formal transfer procedures to the local enforcement authorities and then get the ship back on task. That is one aspect that limits our appetite necessarily for prosecutions. The prosecution arrangements themselves are robust—there is no doubt about that—but in order to deter we are interested in convictions rather than in passing every case through and relying on an arbitrary conviction rate in the local jurisdiction.

**Q122 Lord Chidsey:** I would probably address this question to the Commander because it deals with the ability you have under international law to act. Can I refer you back to the United Nations Security

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Council Resolutions in 2008 when this started to become an issue. They passed Resolution 1816 which, to paraphrase, authorised states co-operating with the TFG to use, in a manner consistent with relevant international law, all necessary means to repress acts of piracy and armed robbery at sea. That seems to me, as a non legal person, to give you absolutely every facility that you need to tackle this problem, but clearly there are issues here where it does not work. Would you like to develop this? Maybe the Security Council Resolution should say something more specific about how you should address this.

*Commander Dow:* It would be useful if they were more specific. In analysing the effect or the meaning of the UN Security Council Resolutions, it was clear that the Resolutions were passed on a basis that “all necessary measures” was qualified by “in accordance with existing international law”, referring back to the United Nations Convention framework and the concept of reasonable force and the law enforcement basis of counter-piracy operations generally, but even if we had the “all necessary measures” provision without qualification, I do not think it would take us very much further, in all honesty, my Lord, because we are dealing with a large area in which there are all sorts of activities, some legitimate, some unlawful, but not all of which we are empowered to take action over. For example, while piracy is a crime of universal jurisdiction and we might be empowered to take really quite aggressive action against pirates, human trafficking, for example, is not a crime of universal jurisdiction. We as a European force have no authority to take enforcement action against migrant smugglers, and it is extremely difficult to discriminate between the different types of activity—lawful, unlawful, which types of unlawful—and so we still would not be in a position where we could engage vessels on a lower standard of assurance about what it is we are dealing with. The way to deal with suspected pirates, as with most other unlawful activity at sea, is to get on board the vessel, find out what is going on and then act in accordance with your authorities.

**Q123 Lord Sewel:** Can we go back to one of the issues that you touched on in your opening remarks, and that is really your relationship with the commercial shipping companies. Clearly a good relationship with them is critical to the success of your operations. You did mention that some of them do not get in touch, some of them basically just ignore your advice. Why is that and how can it be improved?

*Rear Admiral Hudson:* That is an extremely good point, my Lord. If we can get our message from my maritime security centre and the other organisations that do this—for instance, NATO has its own small shipping centre, the organisations themselves publish

information and we could ensure that 100% of the ships followed this to the letter—I am sure that the number of successful attacks would go down. Why do not they follow it? There are a variety of reasons that have been put forward. Commercial confidence is one that some shipping companies are concerned about: they believe that their information will be accessible to all sorts of other companies. Ships go through who are running short and they fear that that will be exposed. A Turkish ship went through not so long ago and was seized; it was uninsured. There are a variety of factors. We continue to target them. I have recently reached agreement with the Suez Canal Authority in Egypt for the distribution of data, charts, information of all the ships that run south through the Suez Canal to try and plug this hole, but it is not mandatory, it is voluntary. We give as open access as we possibly can, but if they are determined not to expose the details of where and why and when, then ultimately it is the shipping company’s decision. I get back to my earlier point, my Lord, that those ships which have been seized, not all of them by any stretch of the imagination, but the majority are those that have not been following best management practice, self-protection measures or working with our security centre or other such organisations. The message is clear to them: if they are part of the club, they can reduce the risk.

**Q124 Lord Sewel:** Is there a role for the insurance companies?

*Rear Admiral Hudson:* I believe so, but it is quite difficult because insurance comes from across the globe and, whilst we have a very good relationship with insurance companies across Europe, including the big ones here in London, in the Far East, Africa, America and so on, we do not have as much exposure, and that threshold which we would like to see that states those ships that fully participate can get a discount has yet to be adopted by the insurance companies.

**Q125 Lord Hamilton of Epsom:** Are these commercial shippers using mercenaries and are they armed? To what degree is that happening?

*Rear Admiral Hudson:* Some of the shipping companies do use civilian armed security teams on board and, as always in an area of crisis, there are commercial gains. Some of these companies have exploited it and do charge to put teams on board as they transit through the Gulf of Aden, yes; the majority do not. It is not endorsed by the International Maritime Organisation and the bulk of shipping organisations do not encourage it either, but some of the companies do. Finally, on that point of guards, there are some national organisations, the French and the Spanish, for instance, which have tuna fleets, spread right the length of the Indian

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Ocean, we cannot give them close protection. French military and authorised endorsed civilian companies, endorsed by the French MoD, are now used on those fleets to provide protection.

**Q126 Lord Inge:** Could you say a little bit about the co-ordination with the NATO forces in the area and what capabilities they have got or have not got, or you would like or they would like from you, and is it successful to have two different organisations running two operations? I know it is a large area of the sea.

*Rear Admiral Hudson:* It is a huge piece of ocean: two million square miles. NATO, who today have three ships in the area, those three ships are very welcome in terms of the presence they deliver and output, but it is very important, my Lord, that we do not end up in the same area trying to do the same task and duplicate efforts.

**Q127 Lord Inge:** Do they have the same rules of engagement and everything else?

*Rear Admiral Hudson:* I do not know the details of the NATO rules of engagement, but, as we have heard, they are founded on exactly the same UN Convention, so there are no great differences in terms of specifics. Co-ordination on the ground is very good, the tactical co-ordination. Each of the three universal forces, my Lords, the EU, NATO and the coalition forces that operate out of Bahrain, have a one star in command in theatre, and between the three of them they make sure that their distribution of ships is as efficient as possible. Co-ordination in the Gulf of Aden and the Somali Basin, we would like to keep to it, and thus far it has worked well. NATO bring skills to the operation which the EU does not necessarily have in some fields.

**Q128 Lord Inge:** Such as?

*Rear Admiral Hudson:* Some of the intelligence analyst posts, some of their co-ordination skills that they use for maritime patrol aircraft, and so on, but I bring a lot of capability that NATO does not have either. I have the majority of ISTAR assets. Maritime patrol aircraft are EU aircraft. My maritime security centre is a world leader. We all bring capabilities and what we try and do is complement rather than compete, and in theatre it has worked well thus far.

**Q129 Chairman:** One of the things that came out from Admiral Jones was that there is a certain sensitivity at a political level within the EU that we should not become too dependent on the Russians or some of the other national neighbours. Is that sensitivity still there, or has that now become rather more pragmatic?

*Rear Admiral Hudson:* Dependent on the other nationals, I am not sure. What we have to make sure is that our output, which I stress again is irrespective of flag, irrespective of company, cargo, we will support any vulnerable ship in the area that is going about its lawful business as best we can. There are other operators. You have mentioned Russia, China, Japan, Malaysia, Korea, who have forces that are largely geared to the protection of their own flag ships and where the EU has a view from the European Union perspective, it is to ensure that if there is any burden sharing it is done on a universal basis, not necessarily a national basis. If China, for instance, wants to participate to a greater extent, it needs to look after the Panamanian flag ship just as much as the Chinese, and that is where the EU is keen to go. As I mentioned China, the indications are that she will do just that, which is very encouraging.

**Q130 Lord Anderson of Swansea:** To what extent is your operational effectiveness hampered by the communication problems between NATO and the European Union arising from the Cyprus/Turkey problem?

*Rear Admiral Hudson:* There is no doubt, my Lord, that when the operations stood up there were communications issues between the EU and NATO and, indeed, between the EU, NATO and CMF in Bahrain—they have their own membership, NATO does, the EU does—but, I think, over time we have managed to work around the majority of those. We have today amongst the European Union a wide area network EU WAN, to use the phrase, which allows us to exchange data freely amongst all the EU ships. We have a secure communications system that I alluded to, to Lord Chidgey, about Internet protocol security to allow real-time tactical information on intelligence to be passed securely. We now have access, through a NATO, CMF and EU Working Group, to make sure that tactical relevant intelligence is also passed as freely as we can. You are right to point out, my Lord, that when we stepped into this operation there were challenges, but I think where there is a will there is a way and generally we have got around it and day-to-day co-ordination is reasonably slick.

**Q131 Lord Inge:** If you had a reasonable wish-list, what capabilities would you like to be added to your task force?

*Rear Admiral Hudson:* There would be two areas there, my Lord. I think maritime patrol aircraft are in short supply across Europe, as we know. Those are the eyes in the sky. I use one example of a pirate group we identified right in the centre of the Indian Ocean, 800 miles away from my nearest warship, two and a half days to get out there, and despite the release of warnings to merchant ships, a ship was seized by that

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group before I could break it up. The more aircraft I have, the greater my update rates, the more information I can give to the merchant community, but they are scarce and I fully understand that. The second one that I would touch on actually is not an additional capability, it is political clearances. We have vessel protection teams, military personnel who can go on board vulnerable ships and provide protection, but because we struggle to get clearances from flag states—countries like Sierra Leone, the Marshall Islands, the Comoros Islands—to put military personnel on their flag ships, I am denied that opportunity and I have to have a frigate close by. If I can get a military team on board to provide security, I can do other jobs with my frigates. Those two areas are the areas I would like to see progress on.

**Q132 Lord Inge:** Does anybody back in London start talking to their embassies and say, “Come on?”

*Rear Admiral Hudson:* From the EU across the piece, we try and lobby—I mentioned some countries—to try and get the right man in the right place at the right time to say, yes. My difficulty is that none of them will sign up to unilateral embarkation of military teams regardless of the task. It has to be the name of the ship, the specific option, time is short before it deploys, and we never seem to get that loop squared away.

**Chairman:** That is something maybe we could bring up with the Minister.

**Q133 Lord Anderson of Swansea:** A year ago we were told there was a shortfall of auxiliary support ships which carry fuel, obviously, and deployable force headquarters and Role 2 medical support facilities in field hospitals. Have those shortfalls now been remedied?

*Rear Admiral Hudson:* Tankers, my Lord, are still very scarce. Today I have one. My Italian command ship is a tanker, the ITS Etna, and she is with me until April, and we have tankers, after the south-westerly monsoon, but NATO does not and we have not for long periods had tankers, CMF struggle with tankers, and it is an asset which is a key enabler for activity. We are reliant on other bodies to support us when we do not have our own, and they to us when we have them. Going back to the point of co-ordination, if I cannot bring my own tanker, then my relationship with NATO or CMF allows me to use some of their assets, and that is where we share our pools but it is a struggle to keep those going. Role 2 medical facilities: again, I have a full Role 2 capability today, but it is the first time for some period, and we continue to encourage Member States in Europe to provide such a facility. If we get into any difficulties, if we want to do certain types of operations, then often that is a key facility that we

require in theatre, so the absence of it does shape some of the operations that we can and cannot do.

**Q134 Chairman:** Can I be clear on a very important question by Lord Anderson there. Does the lack of tanker support, or a consistent tanker, mean you have to send ships back to Djibouti or into port when they should be out doing their job?

*Rear Admiral Hudson:* Just that. Frigates today are fuel hungry beasts and when you are in the middle of the Somali Basin you can only stay there for a finite period of time before you have to do a fuel stop in Mombassa or Victoria, or go back up to Djibouti or up to Salalah, so I get ships away from the operating theatre to fuel, which is not the way we should be doing business.

**Q135 Lord Selkirk of Douglas:** Perhaps I should express an interest as an Honorary Air Commodore to the City of Edinburgh Squadron. May I ask the Admiral, how great is the insufficiency of maritime aircraft? You have said there was an insufficiency. Can you give us some picture as to how many more aircraft would be required overall?

*Rear Admiral Hudson:* We have set our minimum threshold in our debates with Europe and Member States as three maritime patrol aircraft, the Atlantics, Auroras, the big aircraft, which would allow us, we believe, to keep a full sortie every day in the Gulf of Aden particularly during high threat periods around sunrise and sunset when the pirates attack, and that was our ambition. We do not have that at the moment. We have smaller aircraft, civilian aircraft, funded by Luxembourg, based out of the Seychelles which gives us eyes in the southern Somali Basin, but if I do not have three I cannot surge them into the Somali Basin as often as I would like, and with that expanse of ocean, it is eyes in the sky that will see the pirate skiffs and then I can alert the merchant community. If I could have a force structured that allowed me to keep aircraft in the south as well as the north, I could make differences to the deterrence and disrupt function, but they are in scarce supply.

**Q136 Lord Selkirk of Douglas:** In the interests of achieving maximum results, would you place this as a top priority or just a very high priority?

*Rear Admiral Hudson:* Of the assets that I am short of, notwithstanding the tankers, Role 2 medical facilities, and so on, aircraft would be at the top of my list, maritime patrol aircraft, and not just mine, NATO and the coalition forces. Aircraft are a key enabler for this theatre.

**Q137 Lord Hamilton of Epsom:** Do you have any drones operating in the area?

*Rear Admiral Hudson:* We do not have any UAVs in the European Union force.

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**Q138 Lord Hamilton of Epsom:** But there might be in the NATO?

*Rear Admiral Hudson:* The capabilities that NATO and the CMF bring, I think there are national and coalition capabilities which sometimes change command, if you get my drift, particularly from America. I do not have any in the EU, but with regards to the coalition forces, I could not comment.

**Q139 Lord Hamilton of Epsom:** Do you need an aircraft carrier to fly drones in the area?

*Rear Admiral Hudson:* No, the drones that are operated today internationally are the sort of drones that you see operating in Afghanistan, my Lord, have huge endurance and we can operate them from other sites. You will have seen press reports about the Americans operating drones out of the Seychelles. The necessity for an aircraft carrier is not there. The drones themselves can operate from the shore.

**Q140 Lord Hamilton of Epsom:** You could do with a few more of them then.

*Rear Admiral Hudson:* They are in scarce supply and I am pragmatic that other operational theatres have a higher demand.

**Q141 Lord Williams of Elvel:** Admiral, you are charged with monitoring fishing activities off the coast of Somalia. In practice what does that mean?

*Rear Admiral Hudson:* This, my Lord, came in at the end of last year when our Joint Action Plan was slightly refined. The reason we do that is that there is a perception in some quarters of Somalia that illegal fishing is rife off their coast; that their stocks are being pillaged and, therefore, some of their fishing communities are turning to piracy because of that. What we have agreed with the TFG, through the EU, is that as my ships—and they regularly transit to places like Mogadishu up to Berbera escorting World Food Programme ships—transit through the 200-mile boundary with Somali waters, if we see any fishing vessels, regardless of flag, regardless of whether they are licensed or not—that is not my role—we will pass it to Brussels so they can inform the appropriate authorities in Somalia, so they can get a more honest appreciation of what is happening in their waters rather than anecdotal evidence from disgruntled fishermen. I have to say that in the 12 months that we have been operating in that theatre we have seen very few fishing vessels inside the 200 miles, probably because they are frightened of being pirated, but my point of the TFG is that, in terms of wholesale pillaging of their economic or their natural environment, we do not see it. Nevertheless, I will try and give them evidence.

**Q142 Lord Williams of Elvel:** It is not because people might think these are pirates in disguise.

*Rear Admiral Hudson:* Yes.

**Q143 Lord Williams of Elvel:** Or is it because they may be pirates in disguise masquerading as fishing boats, it is to monitor the fishing activity itself?

*Rear Admiral Hudson:* And there is a lot of it, close in, 12 to 24 miles off Somalia. Subsistence fishing is the way I would describe it from the villages. I think the TFG is more concerned about the industrial fishing—the large tuna fleets that come into the Indian Ocean. From the EU perspective, all the EU fleets stay well outside the 200 miles, but if we see anything from any other fleets, we will pass that on. The point about pirates changing jobs as they go is true. In the Gulf of Aden they can be fishing one day and having a go the next to seize a ship, and we have seen them in the past, my Lord.

**Lord Sewel:** Extend the common fisheries policy.

**Q144 Chairman:** I was going to say, can you identify an undersized cod when you see one!

*Rear Admiral Hudson:* The dead fish police, as they say. The final point on fisheries: we are not there to monitor licenses, to say that is an unlicensed fishing boat, or a licensed fishing boat, or it is catching too many of them; we are just providing an appreciation of the activity in their waters as we go about our day-to-day operations. It is not a force driver.

**Q145 Lord Swinfen:** Do you have any concerns about EU states contributing enough forces so you can continue your mission during the coming year, and what forces is the United Kingdom contributing?

*Rear Admiral Hudson:* The forces assigned to me for 2010 are now largely in place. We had our Generation Conference at the end of last year and Member States have assigned forces, and against my minimum thresholds for ships that are required to do my output, we have met that. We have got a full switch which hits the nerve and for a large part of the time we are above that. Member States in terms of ships have been reasonably generous and supportive of this operation. We have issues, as I discussed, with aircraft and some of the issues with tankers and Role 2, but ships we are pretty much there and at the Force Generation Conference the United Kingdom declared that they would supply a frigate at the back end of 2010 to Atalanta. My next Force Generation Conference is in March of this year and I would expect the United Kingdom to identify dates when it will be available for me to start tasking. We do have one from the UK at the end of this year.

**Q146 Lord Crickhowell:** Commander Dow has given us a comprehensive account of the legal background and the desire to only take cases where you have got a good chance of getting a successful prosecution, but could you say a little more about the

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co-operation which we are getting in the handling of the pirates when you get hold of them in Kenya and the Seychelles? Is it working well? Is it co-operation at a high level?

*Rear Admiral Hudson:* Before I ask Commander Dow to look at the specifics, Kenya has been very supportive of this operation. We have nine groups of pirates, i.e. nine specific skiffs, mother ships, where we have arrested the pirates who are now being processed through the Kenyan judicial system—75 in total—and that works well. We have a good arrangement with their prosecutors, with the Director of Public Prosecutions and the Attorney General to ensure that the evidence that they require to ensure the smooth process through their courts is correctly captured by our ships. We train them to do that. In terms of our relationship with Kenya, it is pretty strong. With regards to the Seychelles, our Letters of Agreement are comparatively new, they were signed at the back end of last year, and as yet we have not transferred any pirates that we have arrested to the Seychelles for prosecution, although our aircraft that are based in Victoria have supported the Seychelles coastguard to arrest pirates and their evidence is part of that trials process. Kenya is mature: we have got a strong relationship; they are processing a lot of pirates on our behalf. The Seychelles is just about to get off the ground.

**Q147 Lord Crickhowell:** You are processing a large number?

*Rear Admiral Hudson:* Yes.

**Q148 Lord Crickhowell:** How many successful prosecutions have there been so far?

*Rear Admiral Hudson:* From an EU perspective, of those nine cases that I referred to, the first one was transferred to Kenya in April and they have yet to go through the full process, but several of them are well on the way and, touch wood, our first successful case, or otherwise—I am not prejudging the case—will conclude at the end of January or early February, so about a month away for this. Earlier this week one of the American cases was completed and the pirates were sentenced to seven years in jail. That sentence was handed down this earlier week, my Lord.

*Commander Dow:* All that I would add to that, my Lord, is that there is truly a comprehensive approach when it comes to prosecutions across the military operations as well as in the political arena. The EU mission works particularly closely with the UN Office on Drugs and Crime, which is charged with assisting capacity building, not only in Kenya and the Seychelles, but in any other regional area where prosecutions might take place, as well as concentrating its effort, obviously, on building capacity in Somalia, in Somaliland and Puntland, and that ensures not only the case management

happens in a way that is certainly favourable by comparison with some European jurisdictions—eight months to completion of a trial is not too bad, in my personal view—it also ensures that particularly across the EU mission where there is obviously a key concern that basic human rights standards are met, we work with those other agencies to make sure that we are at all times assured that prosecutions happen in a fair way and that the conditions for suspected pirates are satisfactory by basic standards. That cannot be done in isolation for pirates, however. If we are going to assist with capacity building in regional jurisdictions, that has to apply to the whole system. We certainly would not win any friends if we insisted on separate facilities, prisons for pirates that met exact European standards whereas the rest of the remand population suffered difficult conditions, or what have you. It is a big task overall.

**Q149 Lord Crickhowell:** Are all European countries participating in the force following the same practice used in Kenya or are some using other jurisdictions?

*Rear Admiral Hudson:* My Lord, the strength of the EU force Atalanta is that, regardless of the country which delivers the warship, if it is under my command we can access the Kenyan legal system, which is why, for instance, Norway, who is not a member of the EU but is a member of NATO, elected to deploy its frigate under my command rather than NATO command so that any suspected pirates detained by the Norwegians would then be subject to the judicial process. Regardless of country, it comes under me. There are countries in the EU, the United Kingdom being one, who have bilateral agreements with Kenya for the transfer of pirates, and that is for those individual countries, but from a European perspective, a ship, Atalanta, can have access to Kenya.

**Q150 Lord Crickhowell:** You said they can have access to Kenya. Are they all using Kenya, or are, shall we say, the French—I do not know what their position is—perhaps sending people elsewhere?

*Rear Admiral Hudson:* The process is defined, my Lord, that after the pirates are detained the first port of call for any subsequent prosecution will be either the country of the ship that has been assaulted—that is their call—or, indeed, the Member State that has arrested the pirates, detained the pirates. It is the call of that capital to decide what they will do with them. In general, the European Union, unless there is a very direct linkage with one of their ships, as you saw with Spain, when the *Alakrana* was seized, elects not to prosecute them in Europe, it comes back to me as the operational commander and then I approach Kenya to request they review the case and decide whether they should prosecute, but the first port of call is always back to the capital. In the Spanish instance,

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they decided to take them back to Madrid, but in general it comes back to me and then I will approach Kenya, and, of course, it is then a national call for Kenya as to whether they take them or not.

**Q151 Lord Swinfen:** Pirates caught outside the 200-mile limit: can you not court martial them and, if not, why not?

*Commander Dow:* No, my Lord, simply because we do not have the mechanisms in place to do that, nor do I think that it would be really a suitable use of the military court system. While I do not think any of the European states could claim to be regular prosecutors of pirates, it is something that is really the meat of the crown court or its equivalent, and I do not think there will be any appetite from a military perspective to keep them within the military court system for prosecution.

**Chairman:** Maybe some United States Republicans might, I am not sure, but I am not allowed to make party political comments, even American ones!

**Q152 Lord Anderson of Swansea:** An article in *Le Figaro* on 5 January was highly critical of the delays in the Kenyan court system, corruption, the dangers of Islamist and clan influence, the danger also of springing some of those who are in prison from prisons which are near the coast. Piracy is an international crime, to what extent can it be prosecuted internationally and is there any prospect at all, as one European official told me, of finding an island which can be properly fortified off the Yemen or Somali coast where people can be imprisoned safely?

*Commander Dow:* My Lord, you might be aware that there have been discussions broadly along those lines in the Contact Group on the problem of piracy and the Horn of Africa generally. My read-out from that is there is no appetite at the moment, or no consensus rather, on the creation of an international tribunal for the prosecution of piracy in the Horn of Africa. However, in looking at the regional state solution, there might be a number of innovative approaches that could be looked at further. One, for example, is to look at the Human Rights War Crimes Tribunal, just coming to an end in Tanzania, and whilst pirates might still be prosecuted under the local state's jurisdiction and according to its laws if the local state wished to go down that line, there might be provision for funding to be put in place, a prison to be built, or what have you, so that we could use a particular state's court as a clearing house for pirates in the region. I think that would be highly desirable, but then, again, as we have seen in our engagement with Kenya particularly and to a lesser extent with the Seychelles, Maldives and what have you, the local states, quite understandably, are interested in benefit

to their judicial system as a whole rather than merely concentrating on the issue of pirates. There is a lot of work to be done, but it is an idea that is being explored, my Lord.

**Q153 Lord Selkirk of Douglas:** Do you come across a lot of subterfuge, for example persons claiming merely to be fishermen who happen to have some arms stacked away in self-defence, or is it usually perfectly clear what their genuine purpose is?

*Rear Admiral Hudson:* I have to say of the majority of people we come across, it is perfectly clear what their purpose is. In that region of the world arms are common pieces of equipment and you see them on fishing vehicles all the time just to protect their nets and their fishing rights. We know they are perfectly legal because they welcome us on board and we have a chat, we give them first-aid packs, and so on and so forth, and we talk to them about their experiences. The guys who are out for other purposes, piracy, it is usually pretty clear what they are doing because of the equipment they need to do it, ladders, and so on and so forth. Occasionally there is that cross-over group that fish one day and pirate the next, or human smuggle to Yemen and try and attack on the way back south. Those are the ones we need to target.

*Commander Dow:* I would add to that, my Lord, that when we do arrest we do have the normal range of exculpatory statements from the suspected pirates about what they were doing right down to the fact that they were just engaging in an honest piece of migrant smuggling, or what have you, and were on their return journey.

**Q154 Lord Hamilton of Epsom:** There was evidence, when we first took evidence on this, that certain commercial companies were paying bribes to allow their ships free passage through the pirate areas. Is there evidence that that is still happening?

*Rear Admiral Hudson:* Not to my knowledge, my Lord. There are companies, as I said earlier, who will pay security teams.

**Q155 Lord Hamilton of Epsom:** No, this is to the pirate.

*Rear Admiral Hudson:* Not to my knowledge.

**Q156 Chairman:** Admiral, Commander, can I thank you very much indeed for a very, very instructive and interesting session, which I know has been enjoyed and that we found very useful for our study. I am so taken by the amount of international co-operation that has taking place in the Somali Gulf and Aden that is why I am going to a debate now on Copenhagen and the environment. Obviously you were far more successful in sorting out international

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issues there than maybe they were in Copenhagen and perhaps we could delegate that small issue to you as well. I know that we are looking forward to meeting you again at Northwood in March, and can

I thank you very much indeed for the evidence you have given today.

*Rear Admiral Hudson:* Chairman, thank you very much.

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THURSDAY 21 JANUARY 2010

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Present	Anderson of Swansea, L Chidgey, L Crickhowell, L Hamilton of Epsom, L Inge, L	Selkirk of Douglas, L Sewel, L Swinfen, L Teverson, L (Chairman) Williams of Elvel, L
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**Examination of Witnesses**

Witnesses: DR LEE WILLETT, Head of the Maritime Studies Programme, Royal United Services Institute for Defence and Security Studies (RUSI), and MR JASON ALDERWICK, Defence Analyst—Maritime, International Institute for Strategic Studies (IISS), examined.

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**Q157 Chairman:** Dr Willett and Mr Alderwick, can I welcome you to the Committee, and thank you very much for the time you have given us this morning. Perhaps if I could just go through a couple of housekeeping things, we are being webcast, and of course, this is a public evidence session. The notes that are taken of the meeting will be sent to you for you to look through, and of course, if there are any factual errors we have made in terms of transcription, then you will be able to change those, but obviously not things that have actually happened or are part of the process. As I mentioned to you before, you know or you have an idea of the sort of questions that we are going to ask, but you do not both have to answer all the questions, and I will leave it very much to you to decide who answers what questions, and whether you both have a contribution. Just to be clear, this is part of a very specific inquiry looking at the EU Atalanta Operation. It is a frustration to all of us that we are not able to look more deeply at the deep-rooted problem of Somalia as a whole, but it is primarily around the operation there. I do not know whether either of you have a short opening statement that you would like to make, but I am sure the Committee would be pleased if you would like to introduce yourselves, and just briefly to give a very quick background in this area, and your own studies.

*Mr Alderwick:* Certainly, good morning, My Lord Chairman. My name is Jason Alderwick, I am the Maritime Analyst at the International Institute for Strategic Studies, I have been there for four years. Prior to that, I was a Warfare Officer in the Royal Navy for eight years. My role at the Institute is effectively looking at naval and defence issues predominantly on the maritime side of things, and production of the Military Balance as well, but part of my role is looking at the wider implications of maritime issues and maritime securities.

*Dr Willett:* My Lord Chairman, good morning, I am Dr Lee Willett, and I am head of the Maritime Studies Programme at RUSI. I have been at RUSI for about 10 years now. Previously, I was Leverhulme Research Fellow at the University of Hull, and also

seconded to the naval staff at the Ministry of Defence as a research analyst there. My job at RUSI is to look at all things maritime, and that is an ever broader spectrum of issues, ranging from specifically naval issues to the wider issues of maritime security and issues relating to commercial shipping. I also take an interest in what the UK is doing at the moment in terms of nuclear deterrence, and the defence review is my remit. In terms of an opening statement, I did have a little point that I thought I might make, that perhaps might serve to get things going, particularly in relation to the questions that you have listed, and Mr Alderwick may have a view too. A personal view on this matter is that there is a need to focus very much on what navies can do in this, as opposed to what they cannot do, because there are some tasks that they just cannot solve. They cannot solve the issue of the Somali social, political, economic problems ashore. What they are there to do is to escort ships, to intervene, to intercept, detain, disrupt, and in so doing, what they can do is bring a measure of stability and security and more importantly confidence in the region that can help to buy space to begin to make wider improvements to the situation in Somalia and the region, but given the various issues that we will come to in due course, number of assets, the complexity of the problem, et cetera, I think we have to be realistic about what we can expect the naval forces in the region to be able to achieve.

**Q158 Chairman:** Thank you very much. Mr Alderwick, did you wish to add anything at this stage?

*Mr Alderwick:* Not at this stage, no.

**Q159 Lord Swinfen:** Are you satisfied that the navies can operate within the territorial waters of Somalia under present conditions legally?

*Dr Willett:* The various mandates under which the naval forces do operate do, according to those who are required to operate out there, give them the

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freedom that they need to be able to fulfil their mandate.

**Q160 Chairman:** I think we were told last week it was up to the high water mark, I am not sure whether there are any cones along it, but I suspect we know where that is. Perhaps we could start off again keeping on that general area of what is your overall assessment of the EU Operation Atalanta, the strengths and weaknesses, and what can be done to improve the operation's effectiveness, although as you will see, we will come on to more specifically some of the very specific issues around resources and capability shortfalls later on.

*Mr Alderwick:* Sir, I am happy to start on that one. I think again an important point to bear in mind is that this operation has effectively only been going now for 12 months, and a lot of progress has been made. By all means it is not perfect, but actually, in the context of where we were looking at in terms of maritime force intervention prior to Atalanta and the other Coalition Maritime Forces in the region, activity and piratical activity was effectively going on completely unchecked. So we are in a situation now where at least there are at least several task groups operating in the region. The first Task Group obviously that we are focusing on primarily is Atalanta, but we must remember the other international contributions being made through NATO and Coalition Maritime Forces as well as other third states that are contributing outside of that force architecture. So I think Atalanta initially has a very good story to tell, and events in the last 12 months have shown that EU Member States have been willing to contribute significant naval forces and command infrastructure to enable a relatively effective counter-piracy effort in the region. I think one of the main aspects of the success has been the fact that it is a fairly flat structured command organisation, so given the other military forces in the region that are involved in fairly detailed and bureaucratic institutional processes, in terms of decision-making, it is relatively straightforward in the EU context and in the Atalanta context for decisions to be made. The command structure is quite flat and able to respond fairly rapidly, so that is definitely a strength of the operation. Arguably one indication of the success of the operation has been the displacement of piracy activity. Predominantly, attacks were concentrated in the Gulf of Aden, but once the maritime forces within that region were galvanised, what you saw is increased activity displaced away from the Gulf of Aden further into the Somali Basin. Now that has caused a separate tactical and operational issue, but nonetheless, it is the case that counter piracy efforts are being effective and having an effect in that area. And this is despite the increase in the number of attacks that have taken place. So whilst you can say yes, the number of ships that have been taken

is broadly the same between this year and last year, with no measurable in numerical terms of statistics reductions, but what you can say is the number of attempted attacks which have been successfully thwarted has significantly increased. That is as a consequence of both the military forces in the region and shipowners, operators and other elements within the commercial organisation really taking the issue of piracy and transits through that region very seriously, and because of that again we are seeing a reduction in successful pirated events. One final element I would add is the EU is able to get to engage and has been engaged in the region through individual Member States and as a collective entity politically, as well as militarily, whereas other organisations do not enjoy the political relationships that the EU does have in the region, so that is, if you like, a force multiplier outside of the military context, where success can be made.

**Q161 Chairman:** Would you say that is, if you like, without the cliché, the added value area of the EU operation, in comparison maybe with the others?

*Mr Alderwick:* Certainly. If you were to compare Coalition Maritime Forces, I think that is where you could apply that, or indeed NATO, although there are individual Member States within NATO obviously that are EU Member States that are engaged, but there is more added value, I think, on the EU side, because of the softer elements of EU policy, rather than being seen as a purely military body, as NATO is. I think the EU has been very good in organising Status of Forces Agreements within the region, so that has been quite good as a force multiplier, so they are able to operate out of Djibouti, able to operate out of other areas, I think they are using ports in Oman as well to support operations, so again Status of Forces Agreements has been an interesting way of improving, if you like, their ability to operate in the region. Whilst I think we will come on to this at a later date, they have also successfully negotiated the legal framework from which to start prosecuting and giving due process to pirates that they have captured, although I am sure we will discuss that in a bit more detail later on, so I will not dwell on it here. My final point would be that I think the Atalanta mission itself has made a very strong effort to make this a comprehensive and inter-agency approach, whereas other force elements involved have not been as front footed or as willing, if you like, to engage shipowners, operators, the Chamber of Shipping and the IMO. These are the key elements that you need to bring on board if you really truly want to start addressing this issue. I think I will stop there.

*Dr Willett:* Just a couple of things to add if I may, My Lord Chairman. It is making a difference, and I think it is doing so in many different ways. One only has to recall 13 or 14 months ago, on the front page of the BBC website, every day there was a story of a new

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attack, an update, in fact that was changing even perhaps more than once a day. You will not find that issue there on the front page now. It does not mean the issue has gone away, but what it means is that the operation is doing something to address this matter politically, and I think there is an argument that is having a degree of political success therefore, it is being seen to be doing something, as well as providing a broader presence in the region. There is a very interesting debate about who started it and why, there was the World Food Programme escorting going on beforehand, and there are questions as to why the EU wanted to stand up the operation, was it for grand strategic political reasons in the region, there is always global tension between the French and the US about who is doing what and why, so you have a grand strategic power play out there between the French, the Americans and others as to having to be there, having to be seen to be there. So that is one important element to bear in mind, but while there is that tension, there is also the fact that this has brought significant political unity to navies and nations across the world. You may have the EU force, you may have the NATO force, you may have CMF, and you may, of course, have all the other nations that are there for individual purposes, the French, the Chinese, the Indians, etc, but the reality of the fact of them actually being there when they have to be in the same water space, trying to do the same thing in the same water space, is they have to start to get on. Naval forces have always, because of the open nature of the sea, had to co-operate when they are out there, and that is what they do, and they have a very good reputation for so doing, but bringing nations like the Russians or the Chinese into that equation, because they have to be seen to be there for their own political reasons, has meant that you have this opportunity to be able to increase co-operation amongst naval forces, and therefore increase the global benefit of what they are doing. I think another important fact to bear in mind is this helps to increase confidence in the shipping industry that something is being done at least. If one looks at the reasons why the EUNAVFOR may have been stood up in the first place, there is an argument that concerns the commercial shipping world about the threat meant that somebody from government, i.e. from the naval point of view, had to be seen to be doing something. There were very high level concerns amongst some big shipping companies about what was happening, and there was talk of having to reroute around the Horn, etc. That has not really happened, because NAVFOR, the NATO group and CMF are now focusing on it and doing something, so it has given that confidence back to the shipping industry. But of course, when one looks at the Gulf of Aden and compares it to the Somali Basin and Indian Ocean region, if you imagine a balloon and you push down

on one side of the balloon, it bulges up in another, the balloon effect, and until you change the ability of the governments as a whole to do something ashore and pop that balloon, then the air will still be in the balloon, if you like.

**Q162 Lord Chidgey:** Thank you, gentlemen. That was a very interesting overview, so to speak, but I think it is a good time to get on to specifics particularly. You have seen the questions, and I would like to ask on behalf of the Committee: specifically in your view, what is your assessment of the UK's approach and military contribution to Operation Atalanta? How does that specifically differ from other Member States that are contributing to the operation, and perhaps most importantly, has the UK and the EU underestimated the problem of piracy in recent years? I want to add on a supplementary before we start, if I may, to Mr Alderwick, who told us he spent eight years as a warfare officer in the Royal Navy. I am not a naval person, but I understand that it is one of the most challenging and sought-after positions to hold as a Royal Naval officer, warfare, fighting the ship. Now I want you to perhaps give us a little view, from that perspective, of how you think we are doing in this combatting piracy, and the Royal Navy's contribution, hands-on approach to it, what can we do better?

*Mr Alderwick:* Sure. Firstly, I would say that I would qualify my naval career—I was a Warfare Officer, but I was not a Principal Warfare Officer (PWO), so I was involved as a Gunnery Officer on board, so I was involved in fighting the ship, and have transited that area many times. However, I think I have a reasonably good understanding, if you like, of the operational picture that most of the in-theatre commanders now would be facing. I think firstly, I would say it is a very complex environment that they have to operate in. You have got effectively the second or third busiest choke point in the world, you have over 25,000 very large commercial operators transiting that region throughout the year, and on top of that, you have got a myriad of local fishing activity taking place in the Gulf of Aden, specifically off the Yemeni coast and off the northern Somali coast as well, so it is a very complex operating environment. What we have seen is the initial efforts to organise this activity, if you can imagine, two years ago, we were in a situation where all shipping was effectively funnelling through the straits of the Gulf of Aden, and now what you are seeing is that they have effectively corralled that shipping, too transit, along a single transit route, which they are then able to effectively police and control. Now again, this transit corridor, it was called the Maritime Security Patrol Area (MSPA), but it has since been the Internationally Recognised Transit (IRTC), is

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exactly that, it filters the ships through this pipeline and as a consequence they are easier to control. It is a series of group transits that take place and not convoys, and given the limited assets that are available to the commander in theatre, he is then able to take a far more pro-active approach in surveillance activities and disrupt activities without having to look further outside of his field of vision, if you like, what the other commercial ship operators are doing. So they have taken control of the commercial sector to the degree of at least co-ordinating their transiting times, and then they are using their assets to best effect. Now if you speak to anyone in theatre, I am sure they will say to you, "We need more assets, we need more platforms", and that is a legitimate call and cry that I think is very reasonable. I did not get to discuss some of the criticisms, if you like, or shortfalls in operational effectiveness, but one thing you could say is that contributing a frigate or a destroyer without a helicopter, for example, is pretty poor, in effect, the aviation is a key enabler, and what that will allow you to do is to engage in intelligence gathering and maritime patrol activities at greater distance from where you are on your vessel, and it is a great force multiplier. So if you are contributing a frigate, at least make sure it has got aviation facilities and a helicopter to do that.

**Q163 Lord Chidgey:** And they do not have that?

*Mr Alderwick:* Some of the contributing states have been unable at times to produce aviation assets.

**Q164 Lord Chidgey:** Is that because their frigates or whatever do not have the facility to carry a helicopter, or because they have not got it on?

*Mr Alderwick:* I think in most cases, they would have the aviation facilities, but not the helicopter, they cannot spare the helicopter, so that has happened. Not in the UK's case, I will say. If you look specifically at the UK contribution, I mean, clearly the UK was placed in the frame as the lead nation on this, in terms of providing the leadership, which the UK has done. The OHQ, the operational command is in Northwood. Effectively, a lot of the initial staffing, certainly in the earlier days, was drawn from the various what are termed battle staffs in the RN command organisation, so a lot of UK effort went into fulfilling the staff positions, and these have now been broadened out across respective EU contributing states. So the UK has, I think, had a strong command role clearly, and it has had an operational role. The continued operational role is open to discussion and debate, because there has not always necessarily been a UKRN frigate or destroyer dedicated to Operation Atalanta. What we have seen or what I have seen are effectively units being cycled through that region because there are other strategic

demands and military and naval tasks for our forces beyond the counter-piracy issue in the Gulf of Aden and Somali Basin. We have military forces operating in the Arabian Gulf, for example, and the UK has force commitments there, so we have not been able to generate a full platform all of the time for that specific mission, and I think that is where there is an argument for increased assets.

*Dr Willett:* Just to add a couple of points to that if I may, I think one of the reasons why the UK's prominent position as the framework nation for this was welcomed was because of the credibility and reputation of the Royal Navy, to be able to put on an operation like this, and to stand it up. It was stood up very quickly, it was stood up in 10 weeks, I think it was, which for something of this size and this significance is quite an achievement. With regard to the headquarters, of course, yes, the headquarters staff for the Royal Navy's own operations and the NATO operations in Northwood are already established, and therefore siting the EUNAVFOR there made sense, but also basing it in London, where it is near NATO operations on the same site, it is in London with the IMO, it is in London which is a significant global hub for the global shipping community, tends to make a lot of sense politically to have it in the same city, if you like. Of course, the UK has had a credible start to the operation with senior 2 Stars Admiral Jones and Admiral Hudson, very credible naval officers doing a very good job. I should imagine as the operation goes on, there will be some debate as to whether the EUNAVFOR command billet should become a rotational post, and I think one of the problems from the UK's point of view, as Mr Alderwick mentioned, is the fact that the Royal Navy does not always have the assets available to contribute in terms of a ship, and when it does have one available, the added complication it has is from a political point of view, when you have the NATO force going through, when you have the US-led CMF there as well, there is sometimes a tension that the Royal Navy faces as to which of the horses, if you like, it should back, in terms of where it should place its asset, because there are political reasons why some say it should go with the CMF forces, or with the NAVFOR, or with the NATO group. So there is a complex political challenge for the UK when deciding with whom to place the one asset that it may have every now and again, where to put that.

**Q165 Lord Chidgey:** Just quickly if I may, as a supplemental, it is quite intriguing, you speak with great authority, and it is actually quite depressing in a way because of the lack of availability of the assets; it is even more depressing to think of the current debates going on about the Strategic Defence Review which is coming up later this year, I imagine, and the

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implications of cuts in the Royal Navy on this particular operation. It sounds like a disaster waiting to happen.

*Dr Willett:* If one was to believe some of the comments that one sees in the press about cancelling the aircraft carriers and making £5 billion available to pay for more surface ships, to revive what has been referred to as the Nelsonian spirit of having a Royal Navy warship in every fathom of water, I think that is a false argument. Notwithstanding the current state of the national finances, a £5 billion saving on the aircraft carriers would go to line the bottom of that pit, and you will not suddenly find £5 billion available to be spending on more destroyers and frigates. I think where the issue from the Royal Navy's point of view with regard to the Strategic Defence Review lies for surface ships that could carry out this kind of task, is ensuring that the numbers of surface ships that we have at the moment, around about 25, does not decrease, and the challenge there from the Ministry of Defence's point of view is doing what it can to make the next generation of surface ships, future surface combatants, that will be the workhorses, the greyhounds, whichever analogy you want to use, affordable, so that the MoD or the Royal Navy does not run into the very easy obstacle politically of having very expensive ships that the Government or the Treasury say, well, you cannot afford that many of them. So there is a strong argument that when you have a requirement for conducting operations like this, lower end maritime security tasks, not just piracy, but a range of other things, there is an argument that alongside the Type 45, for example, that is a very high end destroyer, and alongside a number of the future surface combatants that will be there for that high end capability provision, that you want to have sufficient numbers of assets that can carry out maritime security tasks around the world. My final point on that though is that one of the concerns that the Navy in operational terms does have at the moment though is that requirements for operations like this in Somalia do risk degrading the Navy's ability to carry out high-end tasks. When you combine that with the argument that the Royal Navy should reduce its high-end assets to make some—the terrible term that is used is cheap-chips ships—to deploy to Somalia, that creates risks from the UK's point of view in the longer term for issues other than counter-piracy, when we have to plan for future scenarios that we cannot predict while risking, degrading our high-end war fighting capability at a critical time.

**Q166 Lord Chidgey:** Cutting the number from twelve to six of the T45s does not really help, does it?

*Dr Willett:* There are obviously particular reasons for that scenario.

**Chairman:** Can I just intervene? We cannot do a UK defence review in this particular area, but important points in terms of this particular operation.

**Q167 Lord Anderson of Swansea:** A little point of clarification for Mr Alderwick: you spoke of the narrow transit channel and said these were not convoys but group travel. I would like to know the precise difference, and presumably does that mean if the ships are travelling together that their speed is determined by the speed of the slowest?

*Mr Alderwick:* No, the opposite in fact. Speed is an important factor. What the analysis has led towards is effectively within the IRTC, the transit corridor, is a group transit system, and transit times are promulgated to vessels based on their service speed, and this is set basically at the highest speeds that those vessels can go. What they do is the slowest ones start first, the fastest ones start last, and they reach a singularity—not a singularity, but a set point in space and time, they transit the pirate area that has been determined to be where most of the attacks have occurred in the day, they transit that area at night, because at night, it is widely recognised that the pirates do not effectively try and board you and conduct their activities at night, so they are minimising, if you like, the risks during the transit time. Then at daybreak, when the pirates are up and out, dawn being sort of the traditional time to launch your attack, what you find is that all the commercial shipping have arrived at that point, that dawn point, pretty much together, so they are grouped together at that point in space and time, and then your maritime forces are effectively not sitting off the starboard bow of the container ships in convoy, they are away from that group, looking for the pirates, and actively trying to interdict, disrupt and deter at distance. So you do not wait for the problem to come to you, they are moving towards the problem. On the point of convoy systems, there just simply would not be enough assets to convoy the traffic that is going through there effectively, indeed there are recorded incidents of vessels being taken that are in a convoy system, where as you said the low and slow one is dragging behind the rest of the convoy and is taken, so that does happen.

*Dr Willett:* A couple of minor additions, if I may. It is my understanding that in terms of the IRTC in the Gulf of Aden, as Mr Alderwick rightly points out, the idea is for those ships to appear out of the darkness into the most risky area—at that gate, if you like, at the end of the corridor, in a way that they can then be best escorted from that point on, and the two ships that have been taken since the IRTC has been in operation were ones that were not operating as they had been required to do, and had slowed down in particular. The issue of convoys, of course, has been raised, and there are one or two nations that are

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continuing to convoy their own ships, and particularly in the Indian Ocean, and of course, the Indian Ocean is a much different situation because of its size compared to the Gulf of Aden. The method, the modus operandi, if you like, for the Indian Ocean and the Somali Basin area is to use intelligence led operations to assess where the risk is and the threat to a particular ship and then try to cover that ship. There is not the number of assets, and in particular, it is a much larger size, so they cannot consider an IRTC concept for the Somali Basin area.

**Q168 Lord Hamilton of Epsom:** Mr Alderwick made the point about the use of helicopters; can you just confirm with me that if the Royal Navy use one of their frigates with a Merlin helicopter on it, this would give them a range of 400 miles round that ship, which, of course, would be a fantastic force multiplier in terms of gathering intelligence?

*Mr Alderwick:* Absolutely. However, I cannot confirm with you the operational radius of the aircraft.

**Q169 Lord Hamilton of Epsom:** Is that because you do not know it, or because you think it is—

*Mr Alderwick:* I could get you the answer, but I would not want to misquote myself now by agreeing with you, but it would certainly be several hundred miles of operational radius, and more to the point, it is the ISR equipment on board the helicopter, the radar, the electro-optical equipment, that is the force multiplier, being able to see a small skiff at significant range again which would be classified here, but at significant range, and see pretty much what is in that skiff as well. That is what is important, because target discrimination, if you have anything up to 100 small contacts in a confined area, to all intents and purposes, they are fishing, you have to be able to try and readily identify the piratical activity, and that is very, very difficult.

*Dr Willett:* From a technology point of view too, it has its limitations, because it cannot address the issues of the way in which the Somali fishermen and pirates work. Many of them carry weapons on board their skiffs anyway, even if they have no intention of conducting piratical activity, so you may have a helicopter with the best systems in the world on, which will pick up an AK47, for example, but it does not mean that that skiff or those therein are imminently intending or intending at all to conduct pirate activity. It is understanding the way in which the society works, and the way the individuals work, and one of the gaps, if you like, going back to a previous question, is a lack of human intelligence in the region to understand what is happening. Again, that is not something that the Navy itself can do much about, but it is something that needs to be

borne in mind, that the technology itself does have its limits.

**Q170 Lord Hamilton of Epsom:** It has to be said that fishermen do not carry ladders for scaling the sides of ships.

*Mr Alderwick:* No, but they do carry grappling hooks and ropes which can scale ships as well, so what they would use as a primitive anchor could easily be used to try and board a ship as well. It is very difficult to discriminate.

**Q171 Lord Inge:** You have given us in great detail the positive impact that the operations have had. Could you just say what impact that is having on the pirates' tactics, and what capabilities they are using, and how they have changed their tactics; has there been a really serious reduction in the amount of successful operations?

*Mr Alderwick:* There has been a really serious reduction in successful operations, I think the success rate has been reduced by at least 70% of attempted attacks, and that is an industry/military benefit, I think. So there has been a serious reduction, absolutely.

**Q172 Lord Inge:** I am more interested in their changes of tactics.

*Mr Alderwick:* In terms of change of tactics, I mentioned earlier about, if you like, that the impacts in the Gulf of Aden have dispersed the activity, so it has forced the pirates now to operate further offshore, which involves greater risk. It has not necessarily resulted in a reduction in the number of vessels being taken, but it means now that a lot of the activity is being transferred to the Somali Basin, especially during the monsoon periods, when the monsoon periods are transitioning, and the sea states are more permissive to conduct boarding operations. In terms of the tactics they are using, if you read certain sources, you will say, oh, they are highly sophisticated operators; evidence to date and certainly all the people that I speak to that are involved directly in this operation, say that is simply not the case. This is not sophisticated. It is a sophisticated criminal network in terms of the piracy and the ransom payments, in terms of how the clans may organise themselves to conduct the activity, but conducting the physical operation of boarding the ships et cetera is pretty basic: it is grappling hooks, pilot ladders. The small arms that they are using, there is no change; I mean, some of the arms that have been confiscated and destroyed, frankly, you are taking your life into your own hands if you were to use the RPG yourself, the rocket propelled grenades. Indeed, the material state of the equipment they are using is very poor. That said, the skiffs that they are using, what has been found is if they are operating

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further offshore, they will operate with additional engines, with more powerful engines, so they are getting better, if you like, at operating further offshore, but in terms of fundamentally changing their tactics, other than going into the Somali Basin, it is pretty much the same techniques that they were using two or three years ago.

**Q173 Lord Inge:** Are you confident that our intelligence is as good and well co-ordinated as it should be?

*Mr Alderwick:* I think Dr Willett has touched on the lack of human intelligence that we have there. There is a severe shortage, I would say, of linguists as well. What is key is getting your boarding parties, the boarding capabilities you have on your ships, getting them off your ships to engage with the fishing community. If you are not linguistically qualified, if you do not speak Somali, that can be fairly difficult. I think specifically looking at the Atalanta Operation, there is no intelligence cell, there is no intelligence organisation that the EU has that can push direct military intelligence out. The operational intelligence that has accumulated on scene is examined back at the HQ and action is taken appropriately. I would say that looking at the wider forces, the NATO forces and the Coalition Maritime Forces, that certainly in a NATO context have a greater intelligence gathering and analytical capability, what you find is pragmatically, actions are being taken to ensure that intelligence is getting there. It may not be institutionally agreed, but pragmatism and military-to-military relationships here is what is playing a role, so they are getting intelligence, but not to the fullest extent that we would like.

*Dr Willett:* May I just add to that very quickly? One would always hope that intelligence and information sharing amongst the navies and amongst the various coalitions could be better, and I think maybe it is the case that there are long-standing political and cultural issues, divorced from just this particular circumstance, that mean that information sharing amongst the nations, as opposed to the navies, is perhaps not as good as it needs to be in the context of how much better the situation could be if the information sharing was more open. So there is a little concern there, I think, that it is not as open as it could be.

**Q174 Lord Inge:** That is surprising, given that we are talking about tactical intelligence and not strategic intelligence.

*Dr Willett:* I think at a naval level, at a very functional level, in terms of operational place and time when something has to happen, the navies are finding that it is incumbent upon themselves to work together and share information. Indeed, there is now an internet-based programme that they use for

sharing information that employs internet banking style security, that all sorts of nations are now involved in using, even the Chinese, to share information. But at a national level perhaps, there may still be some wider political sensitivities about sharing information between NATO, the EU and the CMF. May I just go back very briefly to the previous question about the tactics? There are two important things to bear in mind: one is the increase of motherships that we have seen, where the pirates are taking other vessels, dhows, fishing vessels, and in particular recently a cargo ship that they used then as a platform for other attacks. This enables them to go further out, and if you look at the geography of it, there are cases where they are now operating closer to the Indian shores than they are to the Somali shores. The level of violence, to add to Mr Alderwick's point, is the one tactic that is significant for the pirates, because the level of violence when they start these attacks is very significant, and not something that your average seafarer or person driving a yacht would be necessarily prepared for. But an important point on the tactics point of view is the other side of the coin, in what is being done to inform the shipping community of what tactics they should use, both in terms of best practice when they are preparing to transit the region and best practice when they are actually there and they are at risk of a pirate attack. How they sail the ship, the way in which they manoeuvre it, the speed at which they manoeuvre it, the speed at which they sail, what they can do in terms of stopping grappling hooks getting over the side, hoses, wire, et cetera. So there is a real emphasis amongst the navies in working with the shipping community to explain to them and work with them on what is best practice at a tactical level to stop the boardings.

**Q175 Lord Sewel:** Could we just very briefly return to the matter of factors affecting the probability of a successful pirate attack? I have taken from what you have said that if you go through the transit corridor in group travel, the probability for successful attack is low; if you freelance, it is high.

*Mr Alderwick:* Higher certainly, but proportionately—

**Q176 Lord Sewel:** Can you put some numbers on the difference?

*Mr Alderwick:* No, I cannot, not specifically for those that are not registered in terms of what the statistical average would be in terms of the increase. I can only go on, if I look at the instance where as Dr Willett said, specific instance of recent piracy events, you find that the owners and operators that have been taken have been in non-compliance in some way to the IRTC transit guidelines.

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**Q177 Lord Sewel:** We will come back to that later.  
*Dr Willett:* A widely used figure of how many ships do not choose to enter into the umbrella offered by the naval forces is about 25%, so that is quite a significant number, but then when you look at the numbers using it, and the fact that only two ships have been taken since the IRTC has been established, that shows how well the IRTC is working.

**Q178 Lord Swinfen:** You just about answered a question that I was going to ask later on, but you have been talking about the EU and NATO; how about Russia, China and India, who I gather also have warships in the area? Are they also in the intelligence circle, or are they operating on their own, and the corollary of this, how about the pirates' own intelligence? What do we know about that? What are they doing to find out what nice plump fat ships are passing through their area?

*Mr Alderwick:* On the intelligence side, there are some intelligence failings, and certainly the old rule of need-to-know needs to be changed to need-to-share, particularly with the third states that are not fully integrated in any command structure. What you are finding with the Indians, the Chinese and others is they are making themselves available to support operations that Atalanta are conducting, if they are not engaged in conducting at that time a specific convoy of their own flag state vessels. Also what you will find is that those states generally do not have any objections to a vessel requesting to join their convoy, if they are able to keep up as well. Intelligence sharing and communications within the operation: we were really hampered when Atalanta initially stood up, I remember speaking to people involved in the operation on a mobile phone, so that was largely unsecure; e-mail traffic was being conducted on Yahoo accounts, that kind of thing. It has moved on massively since then, but I am talking literally within the first 24 or 36 hours of standing up the operation. As Dr Willett says, now they are working with secure chat facilities across all contributing members, not just Atalanta members, but the Chinese have it, the Indians have it, the Russians I believe do have it now, but some of these nations do not have the capability to go live on the internet 24/7, as our ships do. So there are difficulties, but things are much more improved.

**Q179 Lord Swinfen:** What about the pirates' intelligence?

*Mr Alderwick:* Their intelligence; well, again, I would say it is a bit like a sweet shop, frankly. There are 25,000 ships going through the Gulf of Aden every year, they only have to sit offshore by two miles and they can see what is on offer, and select and hamper and harass as required, so I do not think they are running a sophisticated intelligence operation.

**Q180 Lord Swinfen:** Like the IRA saying that they have to be lucky only once, but we have to be lucky all the time.

*Mr Alderwick:* Exactly. I do not get an assessment that there is a very sophisticated intelligence operation. You know, there were rumours of Somalis operating in the UK shipping industry, feeding information back to clans based in Puntland, which were then conducting operations against specific ships. I certainly have not seen any evidence to suggest it is that orchestrated or organised. I just think a lot of these attacks are highly and hugely opportunistic, and frankly there is enough out there, there is easy meat out there for them to take advantage of.

**Q181 Lord Anderson of Swansea:** Interpreting the conversation of those who are captured, listening to and understanding the communication between the pirates themselves, is this adequate? Are we able to draw on the several hundred thousand Somali community in the UK, perhaps from other clans, who are able to assist us?

*Mr Alderwick:* There have been engagements by the naval forces, certainly on the Atalanta side, to engage with the Somali diaspora that are here in London. I do not know how regular and how continuous that engagement is, and whether or not there is a kind of formalised relationship. I would say it probably is not. I would lead you to the shortfall we have in linguistic support for the mission, I think that is an area that could be exploited that probably is not being exploited at this time.

**Q182 Lord Anderson of Swansea:** How do we then communicate to the pirates?

*Mr Alderwick:* Pretty primitively, if you are not a linguistic specialist.

**Q183 Lord Hamilton of Epsom:** Last week, Admiral Hudson came along, he would not tell us what the rules of engagement were. Do you understand what they are, and if you do, do you think that they are robust enough? Do different nations have different rules of engagement? Should there be common rules of engagement? Would it be desirable for the EU operation to be able to pursue pirates on land?

*Dr Willett:* As I understand it from my research in this area, the NAVFOR, the Atalanta nations argue that their RoE framework is both very robust and robust enough for what their mandate requires them to do. Each nation does have individual RoE within that that allows them to be able to chop from EU to national tasking as the circumstance requires, and indeed that is a benefit, because some nations would rather not do some things, or do not have the capacity to do some things, and other nations can fill that gap. Now the other forces, the NATO forces and

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the CMF, do operate on different rules of engagement, and as I understand it, the CMF forces in particular, but also some of the NATO forces, are operating by and large on national mandates. So the RoE from the EU's point of view certainly is regarded as being robust enough to give them what they want to do. Whether or not one could do more to that; well, of course, there is the issue of what the law allows you to do: the definition of being able to use lethal force, for example, is only if there is imminent threat to life, so arguments for developing an exclusion zone which is so far out that you could only assume that a vessel or pirate skiff out there was there to do one thing and one thing only, and that is conduct pirate attacks, and the argument that you could therefore assume that that vessel was there with hostile intent and could sink it, you cannot do that, because there is no imminent threat to life, so there is a limitation. Part of the problem this does create from an operational point of view is that when you have suddenly the risk of loss of life, if the pirates have taken a ship or are about to take a ship, the risk of naval forces fighting back in that circumstance, of course, increases the risk of loss of life for both hostages and forces trying to free them, so it is not an ideal solution either. In terms of pursuing the pirates on land as well, I think that creates a situation that is incredibly fraught with operational difficulties. The pirates blend very quickly and easily into the civilian population ashore. So the idea that you could use military forces to go ashore, to storm ashore and take out pirate camps, for example, the camps are indeed very, very primitive, and isolated in some cases, but when the pirates themselves blend very easily into the community, it makes the idea of going ashore to pursue pirates quite difficult. One only has to look at the examples of the French, I believe it was, who tried that on a couple of occasions, without, as I see it, significant success.

**Q184 Lord Hamilton of Epsom:** I have to say, My Lord Chairman, I found it very helpful that there was a programme on the wireless I think on Monday at 9.00, so I am sure no member of the Committee or indeed those giving evidence today was listening to it. This was the captain of a ship who had actually avoided being taken by pirates, at the mouth of the Gulf of Aden. He had had a very large number of AK47 bullets fired at his ship, two RPGs were fired at it, one of the rocket propelled grenades actually went into a fuel tank, which was very fortunately empty, and the other one went across the top of the bridge. Are we saying that this was only done to intimidate people on this ship, and they did not really want to kill anybody? I thought it was slightly unfortunate that part of the captain's account of what had happened is he said that if any people had been injured as a result of this attack, he would have

surrendered at once. As it was, he actually managed to get away, with quite good tactics and very good control of his ship. This strikes me that we are playing quite a rough game here; we do not seem to have convicted any pirates, we do not seem to have caught very many, and we seem to be fighting with one hand behind our backs.

*Dr Willett:* I would argue very briefly that I do not think it is in the pirates' interest to risk killing the crew. The assault, the tactics they use will be to encourage the crew not to fight back, to let them take the vessel as easily as they can. From a commercial point of view, the guidance still from the shipping industry bodies and from the EU is that taking weapons on board for example to defend yourself just increases the risk of loss of life and therefore is undesirable. It is almost at the point where if a pirate attack is about to happen and weapons are being fired and hooks are being thrown over, it becomes then something of a hostage issue to be dealt with further down the line. The guidance given to the ships is to do what you can to prevent the pirates getting on board for 30 minutes or so, which is the time that it takes for a helicopter to arrive on station to then scare the pirates off. So there is an element of deterrent on both sides, but the risk of concern over loss of life, as opposed to paying out a ransom, is where the key issue is.

**Q185 Lord Hamilton of Epsom:** The captain of the ship said that he did not want to see his crew armed, but on the other hand, he did not have the same reservations about carrying mercenaries who would be armed. Would you say that he was wrong on that?

*Dr Willett:* As I understand it, there are some nations or some ships that do carry private security companies on board. But again, this does increase the risk, because a weapon on board is perhaps one that will then be used. One could argue, I suppose, would that deter the pirates; well, the evidence at the moment suggests not, and one only has to look at situations with some of the attacks that have been where weapons have been fired on both sides, and people have been killed, that suggests that there is still significant risk to loss of life, whichever side is holding the weapon, which is undesirable. The point that I might like to make if I may with regard to the private security companies is I think there are other ways in which they could be used. There are private security companies that have capacity, ships, ex-special forces on their books trained; well, if they have that capacity, do we not have options then to encourage them to discuss with governments, whether that be the US or other national governments, to work with taskforces, with the navies, to have those assets made available to the Somalis, for example, to provide capacity building in terms of training the Somali pirates to become

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coastguards, for example; turn it around and use that private security company capacity to offer it as an asset to the Somali government.

**Q186 Lord Crickhowell:** Can I ask you a related question, one frequently asked by the public: you have had circumstances where perhaps a Royal Navy ship is very close alongside, when people are being taken, and people decide not to shoot; I can understand why, but it is a question the public does not understand, why. Would you comment?

*Mr Alderwick:* Specifically, I think you are alluding to the Chandler incident, where it was believed that they were all in position to intervene. When you start to make an intervention, once the pirates have seized the vessel and actually have hostages, then it becomes a very specialist military task. It is a Special Forces role to do that kind of intervention. It is not within the skillsets of the boarding parties and the boarding teams that are currently out there on operations. They do board, search, conducting generally unopposed boardings, so they do not have the skillsets to do it. Whilst they are trained to fire arms, they are not highly specialist marksmen. So as Dr Willett says, I think on balance the threat to life would be greater. There may also be times where in the public's eye, and in the media's eye certainly, the military forces have not been robust enough, they have not taken the initiative, but it may well be that other military forces are being tasked to be involved, such as special forces. Now in a UK context, anything involving special forces is embargoed in the media sense, so you may have a naval spokesman in a position whereby he cannot—it looks as if no action is being taken, because the issue that he has been asked to talk about is under the Special Forces Directorate, and is therefore not in the public domain, and he cannot talk about it. So he cannot say, "Things are being done, things were being done", he is left in the position whereby he is seen effectively not doing the right thing. If I could just go back to one of the questions on RoE, the incident you said where the seafarers had been subjected to repeated RPG attacks and small arms fire; had there been a military unit on station, that is clearly a case of imminent threat to life, and they would have taken robust military action without question. So the rules are robust enough, where there is threat to life, for military action to take place. I would say that what you have to remember is this is a constabulary operation, this is a criminal operation, this is not a military operation, and because of that, we have to operate virtually under civil constraints, unless there is this threat to life, and that does stop you taking action. Whilst the newspapers may shout and cry for stringing the pirates up, it is not the 17th century any more, and we cannot do that. It is not in anyone's interests to do that.

**Q187 Chairman:** I think you have lost the mood of the meeting!

*Mr Alderwick:* I am sorry, but we have to rely on international law, at the end of the day. It is not the 17th century any more. Do you understand what I am saying?

**Q188 Chairman:** This is a very, very important point. *Dr Willett:* One very small point to respond to that question directly. Mr Alderwick mentioned the issue of Special Forces; of course, they are at the sharp end. In that particular case of the Chandlers, special forces would have been the sharp end in terms of actually mounting any kind of rescue attempt, but of course, in terms of pursuing the pirates at that point, after the Chandlers had already been taken hostage, again the UK ship concerned was a support ship, and would not be the ideal kind of ship with which to go pursuing pirates, as it is not a warship. So the unfortunate circumstance of place and time with the wrong assets not quite being available at the right moment, and again the risk of the wrong kind of warship, with not quite the right kind of personnel on board, pursuing pirates that are jumpy, twitchy, prone to violence, with two people on board, was in risk assessment terms to be regarded as risking their lives further. At that point, it became a hostage rescue situation.

**Q189 Lord Williams of Elvel:** What would happen in practice if international law is in fact violated, if a dhow is blown up at sea? The pirates are not going to take us to court, are they? What actually would happen?

*Mr Alderwick:* You are right, those individuals probably would not be able to seek redress, mainly probably because they would be dead. However, you have to bear in mind, you are asking the commander of that ship to effectively carry out something that he would not in his eyes view as lawful, i.e. destroying that ship, or killing those pirates. So I just do not think there is the appetite to step out of bounds of the international legal framework, which we effectively want to endorse and support, the lawful use of the sea, etc, and I just do not think internationally it would wear well as being in our best interests to do that.

**Q190 Lord Anderson of Swansea:** In the crucial half an hour before the naval fifth cavalry come, how much effort is put into fortifying the bridge to protect the relatively small crews on these ships over that crucial period?

*Mr Alderwick:* Dr Willett said, I think, 25% are in non-compliance, so that works out at around about 3,000 or so.

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**Q191 Lord Anderson of Swansea:** But the rest have a protected bridge area?

*Mr Alderwick:* Yes, well, ballistically protected, no, but are they welding doors shut, are they putting barbed wire on doors, are they padlocking entrances, are they making sure that any ropes or entanglements that would provide you an opportunity to board your ship have been removed; yes, they are doing that. Do they have fire hoses rigged and on to stop you being able to come alongside a ship in your small pirate skiff, you get flooded, oh dear, you sink or you have to regroup and try again. So you can make robust efforts to deter them. Is your ship transiting at its best possible speed? Is it going as fast as it possibly can? Evidence suggests that some ships still transit the area at 8 knots, and if you do that, a 30 knot skiff or a vessel that is able to go that fast can easily approach you, and you can be boarded. So if you are manoeuvring at the maximum serviceable speed of the vessel, if you are using the sea state and swell conditions to make the boarding for the pirates as uncomfortable as possible, and offering up those other measures, then the likelihood of surviving this 30 minute limit is do-able.

**Q192 Lord Chidgey:** But is it not 30 minutes before they board, rather than 30 minutes before they take the bridge?

*Mr Alderwick:* No, from the start of the attack effectively it is 30 minutes. If the pirates have boarded the vessel and have got charge of the vessel—if they are on board and have not as yet got charge of the vessel and the crew, then it is still likely that a military intervention would take place, but as soon as that vessel is effectively under the command of the pirates, that is it.

**Q193 Lord Anderson of Swansea:** Capability shortfalls; you probably read the evidence of Admiral Hudson last week, he mentioned particularly that the availability of tankers would allow him to keep his ships at sea longer; he mentioned UAVs; he mentioned maritime patrol aircraft; and we have heard also in the past of hospital facilities for ships. What are the prospects of remedying these deficiencies?

*Dr Willett:* I think one important point there to make is that this needs to be viewed from an international point of view. A nation, for example the UK, is not suddenly going to find an increased number of maritime patrol aircraft or helicopters or surface ships to be available. It is encouraging other nations to provide assets, and one can look very recently at, for example, the Saudis' provision of a tanker or the Japanese provision of a tanker, for various operations in the region, as being important. It is encouraging other nations to come to the party

and to bring what they can. If you look at the MPAs, for example, if I am right, I stand to be corrected, even Luxembourg have provided a maritime patrol aircraft which is operating in the Seychelles area. So this is an international problem that is best supported by an international solution, so encouraging other nations to provide what they can I think is perhaps the most logical short-term solution.

**Q194 Lord Anderson of Swansea:** But to encourage is a fine principle, are we succeeding, are we giving Admiral Hudson the tankers which he needs?

*Dr Willett:* Perhaps naval officers or military officers will always argue they never quite have enough, but there is certainly a significant gap in terms of maritime patrol aircraft, I would argue. It would seem that nations are offering more; the French, I think the Spanish have maybe perhaps provided an asset as well, so we are getting there slowly, but nations and navies as a whole are very thinly stretched and have requirements elsewhere, so it is making little contributions as we can.

*Mr Alderwick:* Very briefly, I would agree with Dr Willett and in fact the list of shortfalls that I have got reads exactly as Admiral Hudson's list of shortfalls. I think what you can say is though—you asked, are we doing enough? Well, no, and there are shortfalls and they are well documented. But it is within the context of unprecedented naval action to date. There has never been this level of international action on this issue in the maritime sphere. I think that is an important message to take away. Yes, there are shortfalls, yes, we could do with more auxiliary support and all the other force multipliers, but actually, efforts to date have been pretty good.

*Dr Willett:* Sorry, half a sentence I should perhaps have added, if you break it down into what these assets can actually do, an MPA patrol aircraft would provide you with some surveillance and some warning of an impending attack, as could a helicopter. A helicopter could be deployed on station to perhaps deter the pirates from coming aboard, but if you actually are talking about the hard end point of stopping a boarding potentially, or prosecuting a pirate attack in some other way, a warship is what you need, and you can have all the intelligence and all the information that you like, but if you have nothing grey at the end of the day to go out there and actually prosecute the target, then the information does not deliver the value, the effect that it should.

**Q195 Lord Selkirk of Douglas:** I think in part you have already answered this question, but I would like to ask just in case you have anything to add: what is your assessment of the degree, speed and effectiveness of command and co-ordination

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between the EU's operational command at Northwood and the EU force commander in the field, and also among the national contingents of the EU operation?

*Mr Alderwick:* Good is what I would say, briefly. I mean, I think they have got secure voice and secure internet chat facilities. Essentially most of the players are NATO members as well, so a lot of the NATO equipment that is used to communicate is being used in the Atalanta Operation to enable communications, so I think communications is not necessarily an issue. Command and Control is not an issue within the Atalanta set-up. The problems arise when you are trying to operate with other nations that are not part of the set-up, that are outside of the Coalition Maritime Force framework, the NATO force framework and the Atalanta framework. You had in the past difficulties; now you have at least got realtime internet chat facilities between the different contributors. I think that is probably just enough; yes, you might like VTC, video teleconferencing or secure voice between everyone, that would give you an ability to respond a bit quicker, but actually, what the forces are engaged upon is not complex air defence or anti-submarine warfare, whilst the situation evolves relatively fast, it is not overtaking their ability to communicate with each other in most cases.

**Q196 Lord Selkirk of Douglas:** With regard to other countries like China and Russia, we have heard evidence that they are pursuing their own interests and protection of their own shipping, rather than more generally. Do you think there is scope for greater co-operation between NATO forces and also other countries like China and Russia?

*Dr Willett:* That is obviously a hugely significant political question, do they wish to do so. Part of the problem is this is like a 11-year olds' football match, and everybody wants to be in the same place, where the ball is, because everybody wants to be seen to be trying to get stuck in and be involved, so there are nations that are there because they have to be seen to be there. The Chinese are an interesting example, because obviously they have significant interests in the African region, and while this deployment is their first out of area deployment with a naval force, which is significant in itself, they obviously have keen interests in protecting their interests in that part of the world. But in terms of communication, the reality of actually being out there at sea tends to make nations think again. For example, if one was in a Chinese warship that is deployed a long way away from home, and had the issue of starting to run out of food, how do you feed your sailors, and there are American warships bobbing about, and British warships bobbing about, but you have no way or no time to get into port and no supply ship of your own nearby, an

option may be that you get on the net, speak to a friendly warship, which may happen to be a NATO or an EU warship, and ask for help. I think that reality is being borne out in this operation, in that there are ships there from different nations that have to find ways of co-operating when circumstances at a very tactical level make them do so.

*Mr Alderwick:* Could I also add that specifically with the Chinese and the Indians, I do not think there is an incident that has taken place whereby they have been in the vicinity and they have not gone to the assistance of another ship. There is that code of conduct out there that actually you will do something, come hell or high water, you will intervene if you can, and they certainly are doing that. There is a committee, I do not know if this was brought up in previous sessions, but the Shared Awareness and Deconfliction Committee that meets once a month, and that brings all the participants in the region together. At the moment, it is a co-chair between the Coalition Maritime Force and Atalanta, there are two co-chair positions, and there is also going to be an additional rotating chair appointment as well, and the Chinese have already indicated quite strongly that they would wish to be part of that. My understanding is that outside of their national commitments to convoy their flag state ships, when they are not in a situation where they are specifically escorting their own ships, they have said that they will potentially come into this IRTC arrangement of group transits and the force composition there. So I think as Dr Willett has said, thus far, things are developing, things are moving, increasing co-operation is happening, and that is one such example.

**Q197 Lord Williams of Elvel:** Just to talk about fishing for a moment, the mandate has now been extended to monitor fishing. First of all, in practice, what does that mean, and is it in your view valuable?

*Mr Alderwick:* It is an interesting one, as you said, the mandate has been re-extended, this is an additional tasking. There is no doubt that the fishing community has been affected both internally, if you like, with the political strife in Somalia itself, but externally, there is a perception, if you like, of other countries coming in on an industrial scale and exploiting the fishing stocks off the coast there. Who do you report to, I think; it is all right recording and monitoring, but who are you reporting to, and to what effect that will have is probably another point, because if you do not have the enforcement, the regulation capacity or the ability to license and control your Exclusive Economic Zone (EEZ), well, it is all great about reporting, but in terms of a positive effect, the results will be limited. I think early indications are that this is in the early stages, it will at least give both the Somali government, Puntland and Somaliland an idea, if you like, of the scale and scope of potentially unregulated

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fishing activity that is occurring. So from that point of view, we will be able to see how much business and revenue is being lost. But, until you are in a position to enforce and develop the capacity of Puntland or the TFG to regulate the waters, then I do not think it is going to be that significant.

**Q198 Lord Williams of Elvel:** There is a theory that some of the illegal fishing and indeed the dumping of toxic waste has actually encouraged Somali pirates; is there anything in that theory?

*Dr Willett:* Very much so, that is part of the theory. In fact, there were even pirates interviewed on the media last year, and they made exactly that point, that because Western ships were coming illegally into their waters and taking their fish, they had no other choice, but what is interesting, of course, is that illegal fishing and toxic dumping seem to have disappeared as an issue. You can make an interesting argument as to whether that is the presence of the warships or whether that is the presence of the pirates, or together, the deterrent effect of the two is stopping that. But what is interesting about the mandate issue I think is this, in that fishing stocks are now understood to be on the increase again, so does this, pardon the language, ring the dinner bell for the illegal fishing again? So is it therefore important that it is part of the mandate to monitor fishing areas, so that if the increase in illegal activity does start again, that it can be addressed.

*Mr Alderwick:* Could I just add to that? It is interesting actually that, as Dr Willett said, what is happening is that the industrial fishing that was taking place, simply because of the piratical activity, is now no longer there. Some ministers within the EU thought that the EU taskforce was effectively a fishery protection organisation, and should be used to support the EU fishing industry, to operate in the waters off the coast of Somalia; believe it or not, that is what has happened. I mean, it is simply not right that that is the case. There is anecdotal evidence to suggest that fishing stocks have recovered, but there is certainly no detailed scientific evidence to support this. We are talking about reports from game fishermen operating out of Mombasa, things like that, saying they have had record catches of certain types of game fish, that before you would maybe catch two or three a season, now you are catching 15. So that is the anecdotal evidence to suggest that the fish stocks have recovered. On the illegal dumping side, in the early 1990s, there was a lot of suspicion that this activity was taking place, and indeed, the UN Environmental Programme (UNEP) conducted a series of investigations and research reports I think in the late 1990s with the most recent one in 2005, and both those reports are fairly extensive, and found no evidence to suggest that illegal dumping was taking place. What is important to remember is that both

Somalia and to a certain extent Yemen have no capacity to control their pollution, to process their own waste as well, so there is an environmental issue just concerning the activity within that state itself. What you did find is that oil tankers would go through the region, and before maritime pollution laws were in effect, they would wash their tanks out, and you would get a lot of oil coming from offshore on to the shoreline, and again, there are reports of up to 30,000 tonnes a year being illegally discharged into the Somali Basin and the Gulf of Aden, so that would have a significant environmental impact. But I think what we have seen is that the consequences of this activity have almost become mythological, and they have been used by the pirates to justify their actions, but actually, the reality is it is plain old criminality here, and the explosion in piracy is as a consequence of low risk and high rewards, and nothing else.

**Q199 Lord Williams of Elvel:** Do pirates use fishing vessels, as it were, by night and then operate as pirate vessels during the day? Do they switch over from one to another very easily?

*Mr Alderwick:* Again, there is evidence to suggest that what you need are people with specialist skills if you are a pirate, so at least one person in the boat is what you would call a professional seafarer, a fisherman, so he may well be fishing by night, and conducting piracy by day, that is probable. But the vast majority of the pirates are illiterate, they are drawn from coastal towns, they are just drawn on the attraction to make more money in a single month than they could potentially make in more than 10 or 15 years of making an honest living.

**Q200 Lord Crickhowell:** Last week, Admiral Hudson and Commander Dow, the naval force legal adviser, gave us a great deal of detailed evidence about the problems of getting sufficient evidence to take the case to court, and talked about the legal structure set up in Kenya particularly and now the Seychelles. Would you have anything you would wish to add to the account they gave us, or any particular comments?

*Dr Willett:* Just a couple of points. The legal challenges are well documented, and one only has to look back a few years to see the issue that the French faced when they took some pirates, and took them back to France to try them, and had significant problems trying to find something in legal terms they could actually charge them with. I stand to be corrected, but I believe it was something like breaking and entering was the best that they could do. Of course, you then had the added political problem of some pirates in a jail in Paris which they might actually prefer to a jail in Kenya, and the issue of their options for then requesting political asylum when their time is up, that is another issue that the Western

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nations are therefore having to deal with. Much has been made of the Kenyan situation, and the utility of investing in Kenya and Somalia itself, if you like, to give them the capacity to do this. Capacity building is not just about building ships, it is about building a legal system to give them the capacity to be able to cope with this. There is the case that the Kenyan judicial system has been beefed up by outside investment to make it work, but there are cultural difficulties; for example, the Somalians might not like the idea of actually being tried by the Kenyans, there are regional tensions that one has to address. Now obviously the UK was the first to get involved with the Kenyans, as I understand it, and then the US and the EU. The ideal situation, I think, some analysts argue, would be to create a capacity internally in Somalia to do that, but the state of the Somali society at the moment means that there are many that raise the issue of the human rights of the pirates if they were to be given over to a non-functioning government, effectively.

*Mr Alderwick:* I would agree broadly with what Dr Willett is saying there, it is important that this is dealt with in a regional context. It is great that we have this multilateral framework to prosecute pirates, now it is clearly not as robust as we would like it, because what we have to do is increase our disruptive actions, i.e. confiscating boats and landing pirates ashore without the pirate paraphernalia, rather than going for full prosecution. If you want to conduct a full prosecution, and give due process, the Kenyan legal system requires you as the commander of the vessel, you as the boarding officer, you as the member of the boarding party that conducted the seizure, to appear in court to give evidence, and that ties up your warship alongside for a significant period. So what would you rather that warship do? From the taxpayers' perspective, we would rather it out there, deterring and disrupting, and not being involved in this process. So we have to get a fair balance: where a crime has taken place and they have potentially committed or executed lethal force, then I think you should pursue them to the nth degree, but whereby you are deterring and disrupting, you cannot prosecute everyone, or you will just overwhelm the Kenyan legal system. As is already the case arguably; there are already 75 detainees, suspected pirates awaiting prosecution; I think over 200 pirates have effectively had their gear confiscated and landed back ashore. So if you prosecuted everyone, you would not be able to do it. But I think another issue is an argument being advanced that is: okay, the international community, the international criminal court will set up something specifically to deal with the piracy problem. That to me does not seem very logical. Again, we want to keep this in a local and a regional context, and support the judicial frameworks within the respective countries to deal

with the problem themselves. There is no good creating something international to deal with this problem.

*Dr Willett:* It is strictly criminal activity, of course, and I would endorse Mr Alderwick's point there. The last problem this presents to you though is of course these problems with the judicial issues, the problems with the RoE in terms of what you as a navy can and cannot do at sea because of the legal issues, do continue to keep the cost benefit analysis in favour of the pirates. The pirates do not at the moment see any reason to change what they are doing. The risks to them are, okay, well, if we maybe get within the vicinity of a ship while we are conducting an attack, then we may come into contact with a warship and have an exchange of fire, but the presence of warships is limited, as we discussed, and the number of commercial ships is large, so the chances of getting caught in that way are quite slim; if you were to be prosecuted, there are problems. So what does not happen with any of this at the moment is it does not change the pirates' reasons for doing it, and of course, they still get paid at the end of what they are doing, and they get paid, for what others in Somalia earn, very, very well. So there is no reason as yet to stop them from doing that. Until you find a way of changing that cost/benefit analysis, by making some significant political steps forward on a lot of these issues, then the problem will unfortunately persist, because the pirates have nothing else to do.

**Q201 Lord Swinfen:** What do the Chinese, the Russians and the Indians do when they capture any of these people?

*Mr Alderwick:* The incidents that I have seen where that has taken place, and I confess, I have not come across every single incident that has happened, but my understanding is they have generally let them go. So they have deterred, disrupted and let them go. There have been cases where lethal force—the Talwar was a classic case of an Indian warship intercepting a pirate mother vessel that transpired to be, I believe, a Taiwanese fishing vessel with the crew still embarked as well as the pirates, but the Indians were fired upon, they took self-protection measures, and the resulting event was the loss of that ship and the crew, with the seafarers on board as well as pirates. So the answer is that they are not recording or releasing enough evidence for us to be able to say, we can tell you how many boardings they have conducted, we can tell you how much disruptive activity they have undertaken. I do not really know, to be honest.

**Chairman:** We are going to move on to Lord Sewel and insurance and ransoms.

**Q202 Lord Sewel:** Can I get there through a number of stages? First of all, it seems to me, the basic question we have to ask is: do we have an operational

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framework in place that minimises the probability of successful attacks? From what we have heard from you, the answer is yes, in that the transit corridor and group travel approach does provide a pretty robust framework. So the question then is, who is at risk, the answer is the people most at risk are the freelancers; so then the question becomes, how do we get the freelancers to behave in a more responsible way? That means a focus on what shipowners and I would have thought insurers, with pressure being put upon shipowners to make sure they do sort of conform with the operating methodology, and insurers being prepared to basically levy punitive insurance rates on owners who do not conform.

*Mr Alderwick:* I would agree, or arguably make it a precondition of being underwritten in the first place, that they are in compliance with ISPS guidelines, IMO guidelines or the IRTC recommendations.

**Q203 Lord Sewel:** Why is this not being pursued robustly and rigorously?

*Mr Alderwick:* Within some elements of the sector, it is. I think there is a commercial interest here as well. The premium rates are up, there is no doubt about it. It could simply boil down to that the impact of the problem commercially and economically is not significant enough to warrant those kind of measures, i.e. they are happy to effectively—the return in premiums is far outweighing the amount that you have to pay off in ransom demands.

**Q204 Lord Sewel:** Is it the insurance companies who are paying the ransom, or the owners?

*Mr Alderwick:* It depends whether they are carrying risk on the policy that covers kidnap and ransom. So it is not a clear-cut case.

**Q205 Lord Sewel:** But if you have 25% of the traffic not conforming to the—I mean, there is a significant opportunity to reduce risk further, is there not?

*Mr Alderwick:* Absolutely. I think it is about getting the message out there that if you do take the necessary preventative actions, if you do register with MSC (HOA) and the other forces in the region, then you do mitigate the circumstances. Some people ironically probably view this as a virtual casino, in terms of, well, the probability, and on balance, if I have a 1:600 chance of being pirated and I only transit with my ships through that region five times a year, 1:120 or something of that order of magnitude, then I might take the risk. You cannot be held responsible for those foolish business decisions. You cannot make those people necessarily responsible for their actions in that way.

**Q206 Lord Sewel:** Should we do anything to ride to their rescue when they do behave irresponsibly?

*Mr Alderwick:* You have an obligation, threat to life. It is the seafaring code really. You cannot be in a position to say, actually, you were only going eight knots to save fuel, to reduce your bunkerage capacity, therefore we are not going to assist you, we are not going to help you. Again, I think it would be pretty harsh if we did.

**Q207 Lord Swinfen:** Is the piracy and the increased insurance cost increasing the number of ships that are going round the Cape of Good Hope instead?

*Dr Willett:* I think there was a big concern 12 months ago that that would be the case. At the time, there were one or two major shipping companies who were saying publicly that that would be what they would do. Whether or not that was to encourage some kind of political response in terms of sending more ships to the region, I do not know. My analysis would be that there are some companies that do use that route, but the predicted increase in that happening has not come to pass.

**Q208 Lord Williams of Elvel:** To your knowledge, does anybody in authority actually talk to the insurers? Is there a dialogue going on, or is there a complete stand-off?

*Mr Alderwick:* The only dialogue I am aware of is from the maritime forces involved trying to engage and inform the insurance services, but other than that, no direct government involvement that I am aware of.

**Q209 Chairman:** Can I just be clear on one thing? One of your themes is that the pirate community is actually not very sophisticated, it is opportunistic, and because the risks are low, it is just a good thing to do commercially. But negotiations with a major insurance company and finding out where they are, or who they are—is that also not very sophisticated? Does each individual pirate band have that ability to do that, or do they have a godfather organisation that tends to sub-contract that?

*Dr Willett:* Evidence suggests, my understanding is that when you go up the chain—the pirates are the foot soldiers of what is a significant criminal activity, and there is evidence that there is a significantly robust framework higher up the chain of different individuals, different clans, different criminal organisations, from different nationalities, that goes quite a long way out of Somalia and elsewhere, to the Middle East, to Europe, etc. So there are very sophisticated people that are making quite a significant amount of money out of this. The pirates themselves may not get paid very, very much in terms of their share of the ransom, but the money clearly is going somewhere, so it is a very sophisticated business.

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**Q210 Chairman:** So that is potentially another sort of area of slight squeeze, if you like?

*Dr Willett:* What happens to the money when it gets ashore in Somalia and where it goes and who has it, I think is something that needs looking at.

**Q211 Chairman:** If we could move on then to the final question, which is Lord Chidgey, and I know I have done this to Lord Chidgey before, but I would also like to just add to the question he is going to ask: are we stuck with this forever? In the words of the United States generals in Afghanistan, are we here for 40 years or whatever?

*Dr Willett:* The key issue is it is an end state not an end date that we have to keep in mind, and until one changes the circumstances ashore and finds reasons to discourage the pirates from doing this, there is the issue of how long the commitment needs to be.

**Q212 Lord Chidgey:** Dr Willett, when you started off giving evidence to us this morning, you made a very strong point about the limitations on the EU operation, the operation out there, the maritime operation, and then towards the end of your evidence, you made the very interesting point that the cost/benefit analysis in terms of the pirates was such that there was nothing going on that would stop them committing acts of piracy, which really embraces the question on the order papers, so to speak: is the operation that we are undertaking just simply addressing the symptoms of the problem and not the causes? Would it be feasible for the international community to assist states in the region to build up their capacity to police their own territorial waters? If I can add on to the bottom of that question, would you support the concept of actually providing training to the Somali forces to actually police their own territorial waters?

*Dr Willett:* Absolutely, I do believe that the issue here is that the EU operation and the NATO and the CMF operation and/or the national presence is really just doing little more than addressing the symptoms, that is all it can do. Navies can use the free space of the sea to deploy there very easily politically, and to at least address a problem that was very political in its profile to start with, with concerns of the shipping company, with the visibility of the issue in the media. But as I mentioned at the start of my evidence, what you can do though is you can use the naval operation to increase confidence that something is being done, and there have been suggestions that the TFG, the Transitional Federal Government in Somalia, welcomes the idea, but, of course, it does not control very much of the country at all, there is the Puntland government and what they can do. So there is the

issue of how you generate a structure ashore that can start to take advantage of the space that the navies can create at sea. I certainly agree with the idea that you should be looking to use the other assets that you have in the region, for example the commercial private security companies, in other ways, there must be more that they can do. Can they be used for training purposes, and if they have vessels, which some of them do, can these ships be used as coastguard vessels or as training ships?

**Q213 Lord Chidgey:** Would you support an EU initiative to provide training for the Somali armed forces?

*Dr Willett:* As I understand it, the EU itself is already operating ashore. I would not be sure, off the top of my head, as to what they were actually doing, but there is—not an EUNAVFOR, but an EU effort ashore to be able to start doing something. The capacity building should not just be viewed in terms of building coastguards or navies, it is building legal systems, as we have discussed, but it is a significant activity. One does have things like AFRICOM being stood up with the increasing interest from the US, one does have things like increasing French investment in the region, so there are obviously nations that are very interested in doing this, but it obviously is a significant commitment. But ultimately, it is a balance between investing what you need to do in that part of the world from a financial point of view, from a naval point of view, and bearing in mind too that Somalia, of course, is just one area. What happens if we start having similar problems on the west coast of Africa, what do we do there? There are problems to do with piracy there, there are oil issues over there, but that is not a huge political concern at the moment. So I think it is important that one views the Somalia issue, that of course is now spilling over into Yemen and elsewhere, as an important issue, but bearing in mind that there may be others that come in due course, and we need to be prepared to deal with those, because the problem of the Somali issue, it sets a precedent; you got involved here, well, what about there? So it is always a challenge in terms of how you will spread your resources, both naval resources and financial resources, and that is something to be borne in mind.

**Chairman:** Dr Willett, Mr Alderwick, thank you very much indeed, we have stretched our questioning a little longer than I had expected, but it has been very useful indeed, and very comprehensive, and I hope you have enjoyed the experience yourselves. We will obviously, as I said, send you a transcript, and eventually the report to the government which we hope to get out in a couple of months' time, but thank you very much indeed for your time.

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 THURSDAY 25 FEBRUARY 2010
 

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Present	Anderson of Swansea, L Chidgey, L Crickhowell, L Inge, L Jay of Ewelme, L	Selkirk of Douglas, L Sewel, L (in the Chair) Swinfen, L Williams of Elvel, L
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 Examination of Witnesses
 

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Witnesses: MR JAN KOPERNICKI, Vice President Shipping of Shell International Trading and Shipping Company and Chairman of the Oil Companies Marine International Forum, and MR GAVIN SIMMONDS, Chamber of Shipping, examined.

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**Q214 Chairman:** Good morning. Thank you both very much for finding time to come to help us with this inquiry. I am particularly looking forward to the two sets of evidence we are having this morning because I know it could be potentially very helpful in us finding a way forward with this tricky problem of Somali pirates. A couple of housekeeping issues. First of all, this is a formal evidence-taking session of the Committee. A record will be taken. A transcript will be made available, which you can correct for any errors that have crept in. Also, it is technically being webcast. What that quite means I am not absolutely sure! I do have to say that in the other Committee I chaired we had it webcast for the entire period of my chairmanship, which was several years, and we never had any evidence that anyone ever listened. Of course, this Committee might be very different. I wonder if you would like to start by giving a brief statement in introduction and also to introduce yourselves.

*Mr Kopernicki:* Thank you, and thank you for giving us the opportunity this morning to discuss what is a very serious matter, where the industry is very concerned to find solutions. My name is Jan Kopernicki. In my day job I am Head of Shipping for Shell International. In other roles I chair the Oil Companies International Marine Forum, a grouping of some 80 oil companies around the world. This group prepares technical guidance and recommendations for shipping, and has assisted in the piracy aspect, rather curiously, but it seemed the right thing to do. I am also Vice-President of the United Kingdom Chamber of Shipping and Co-chair of the United Kingdom Shipping Defence Advisory Committee, a committee formed in 1937 to provide a focus between the military and the civilian sector in time of war. We are very supportive of what the European Community and the United Kingdom have done with Operation Atalanta and the related activities of NATO and CTF 151, the combination of military approaches but, more importantly, in our conversations this morning I think we want to stress the broader picture of addressing the land-side issues

in Somalia and to some extent Yemen, because the issue of piracy runs the risk now of being copycatted more broadly, and we are seeing shards of that already in West Africa. My Lords, I think we will come back to that in the later conversations but I just want to set the frame that, in addressing the focused issue, there is the beginnings of a broader and far more serious issue which is available.

**Q215 Chairman:** Mr Simmonds, do you want to make an opening statement at all?

*Mr Simmonds:* Thank you, my Lord, only to perhaps add that, through the UK Chamber of Shipping we have in the last two years maintained very close links with the MoD, Royal Navy and with EU NAVFOR, and we have encouraged very close operational liaison with the EU NAVFOR headquarters at Northwood. So we feel that we have very good connections with the military and we share common concerns and develop common responses to the piracy problem. By way of introduction, my role is with the UK Chamber of Shipping. I am Head of International Policy. Within that, the majority of my time at the moment is concerned with military issues, relationships with the military. I am Co-Secretary of the Shipping Defence Advisory Committee. We also have a very active working group that monitors the piracy situation all the time.

**Q216 Chairman:** Can I kick off and ask you briefly to give your overall assessment of Atalanta and then how you think it may be made even more effective.

*Mr Kopernicki:* I think the United Kingdom is to be congratulated in providing the home for the Atalanta development. Not just the Royal Navy but also the Foreign Office I think have been enormously successful in, first of all, bringing this to life very quickly, a very rapid start-up by any standards, and an excellent choice of location, having the benefit of an established naval base at Northwood, which just happens to also be the Permanent Joint Headquarters of the Navy and a significant NATO base, so you get all the connectivity, and a very good

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platform also for our European colleagues to work within. So a rapid start-up, a very good choice of location, and then an excellent choice of leaders, with Rear Admiral Philip Jones initially and Captain Richard Farrington, an absolute star in his role, and now another excellent Rear Admiral, Peter Hudson, in the role. So we have had very strong leaders appointed to the EU NAVFOR role. The other thing that has been significant is that there has been really good military-civilian co-operation, because the problem is one which straddles outside the normal military parameters. I would respectfully raise the question that I think a role of the Navy is to protect merchant assets and the flow of free trade, so perhaps it should be more within the normal Navy parameters but, very quickly, in the early days, when we met with Phil Jones, working through OCIMF and from the Chamber, we agreed to appoint Merchant Navy liaison officers into Northwood almost from the first day to work on mapping out the transit corridor that has proved so successful, and that process of civilian and military co-operation has continued very effectively. The other thing that has worked well is the co-operation with other nations, and that of course reflects the broader engagement of Atalanta, aka EU NAVFOR, with the NAVCENT, the American Fifth Fleet base in Bahrain, where the combined task forces are based, and the NATO deployments. They come under an umbrella, the so-called SHADE. I forget the exact meaning of the acronym but it is an informal collation of all the nations at an operational level, which just happens to be run by another very bright Royal Navy flag officer, Commodore Tim Lowe. Again, you see the quality of our Royal Navy people, bringing together these disparate groups from different nations, co-operating extremely effectively on the water. We now have the excellent example of the Chinese being granted a sector of that corridor to supervise, looking after American ships. This is a tremendous diplomatic development which goes far beyond the remit of just an anti-piracy campaign. In summary, it is an excellent start. The challenge is now the sustainability but, much more importantly, the issue is not running a navy running after pirates; it is sorting out the problem at source and what we can do to help with that while we manage the military disposition, which I think is being managed very well.

*Mr Simmonds:* I think that is very comprehensive. I would only add that we know that the operational base is established for the time being at Northwood, and we see it as a priority task to encourage the EU Council of Ministers to keep it there and not to allow it to be moved for any political purposes, because militarily it is very well located, obviously, within the UK headquarters but close to the shipping community in London, and that has facilitated the very good liaison. There are a couple of, I think, very

positive operational decisions that the Commanders at EU NAVFOR made in the early days. Mr Kopernicki has mentioned the international corridor. We also fully supported the tactic of introducing group transits, and the avoidance of any suggestion that the naval force was going to be large enough to provide a convoying system through the Gulf of Aden, so reflecting the assets available. This seemed to be and I think has proven to be the most effective way of those military forces being deployed. Also, there was what I think I can best describe as the inspired decision to set up a website so that the initial liaison between shipping companies and the EU headquarters was established through a website known as MSC HOA. This enabled the very rapid exchange of key operational information for intelligence and reassurance and the best management practices to be conveyed to individual shipping companies. It is a secure mechanism. It is regularly updated. It is very positive. If there were one criticism to perhaps observe about it, it is that websites tend to have a fairly commercial aspect as well, and it is perhaps a little surprising that some of the commercial interests have been able to put themselves so far forward on the website but as an intelligence and liaison tool it has been excellent.

**Q217 Chairman:** You have made some very positive points. I have to give you the opportunity to say whether you think there are any weaknesses.

*Mr Kopernicki:* Not a lot. We have been intimately involved from day one. This is something we see as a very good example of civilian/military/governmental partnership—and I would mention government departments too, which I omitted to mention. Given the situation that exists today, I think the Commanders are doing a very good job. Now, what is lacking? The World Food Programme issue is a concern. It is clearly a priority—no problem with that but what do they do? They charter old, very slow ships, which are small. The consequence of that is that the navies have to deploy large numbers of personnel and ships for long periods to steward these very slow, very small ships. It would substantially help the Commanders if we could somehow persuade the World Food Programme or assist them with some short-term cash—I do not think it is absolute money but it is just that they do not have large sums of cash at any one time, so they have to take cheap, small ships—to use larger, more modern ships which go faster, which would then require far fewer troops and ships to patrol, which would release other ships to do the broader anti-piracy activity which is required. So it is a practical thing we can do there. We are doing other things about improving the flash messaging of up-to-date intelligence to commercial ships, because it is clear that if you are in a ship in an area, you really want to know if there has been a problem near you.

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That is coming along well. We already have the very good UKMTO base—

**Q218 Lord Jay of Ewelme:** MTO?

*Mr Simmonds:* Maritime Trade Operations, which is a UK RN unit providing advice to commercial shipping.

*Mr Kopernicki:* They are based in Dubai and they are the communication point with ships at sea. So if you are a captain at sea, you ring up UKMTO and you have a chat. “What is the position today?” “Here is the position.” “I am going this way.” What would you advise?” “This has happened here, this has happened here, you should do this and that.” They plug back into Northwood very effectively. It is a total success story of the Royal Navy. What we as the industry are now doing is suggesting that we augment UKMTO. We have a plan under discussion now to provide, again, Merchant Navy liaison officers into UKMTO so that when captains ring up, they not only have somebody from the Navy they can talk with but there is a sea captain from a commercial firm—and we would send them on rotation—that they can talk with working alongside. It is another example of civilian-military co-operation. The other thing is that your Lordships will be very aware that, in addition to the problem in what I call the Somali corridor, which is very technically patrolled or controlled with this transit zone, the problem has expanded into the broader Indian Ocean area, really way out, 1,000 miles out, 62 East. I am routing my ships almost on the Indian coast and then turning sharp right to go along to pass South Africa. The concern has been expressed by the military about the ability to refuel their warships out in this area, and I think there is an opportunity there if the military would consider chartering. I have no interest in a commercial sense, but many tankers are already fitted out with NATO-compatible connections as a redundant provision in time of war. It would be a simple thing if the Navy considered using commercial tankers to augment their fleet oilers so their operational sustainability in deep ocean areas would be maximised, another practical opportunity. However, again, I do come back: the key thing for us is that, while everybody is doing an excellent job trying to handle the physical problem of pirates, addressing the mother ships, trying to follow the piece of string home to the shore, the issue is really one in Somalia and what we can do to link the various conversations. At the moment they seem to be a little bit separated between handling pirates at sea and handling the land side, and the more we can do to mesh those two and to begin to talk about helping the Somalis build a coastguard, some limited aid to begin to develop enclaves—one has to be very practical; it is a dysfunctional zone, so it is not a case of restoring normality in a Harry Potter wand stroke—in starting

enclaves of normality in certain areas and moving on from there. I think the European Community together with the United Kingdom and other interested countries, including the Gulf Co-operation Council and some of the African groups, really are working already quite well but there is more to do in that area.

**Q219 Lord Anderson of Swansea:** To clarify a point Mr Simmonds was making, we have not heard any evidence of a threat to move the location of the operation from Northwood. Is there in your judgement any such threat? On the World Food Programme, my understanding is that the World Food Programme ships have all got through but they are, as you say, very old, they are low in the water and they are easy to take. It seems on the face of it unlikely that there would be an attack on these ships because they would be harming the welfare of their own people. Is there a real threat to the World Food Programme ships? Could there not be some special measures by having, say, armed personnel on their ships if they are going to slow down the convoys?

*Mr Simmonds:* My Lord, responding to your first question, as we understand it, the EU NAVFOR operation has been extended through to the end of this year, and after that we judge that there will be a continuing need for some EU force in the area. I think at that stage we have sensed from the UK that there will be a question about whether the UK MoD can sustain the headquarters and I think there are a number of other EU navies who would be willing to share the load and take it over.

**Q220 Lord Anderson of Swansea:** Actually bidding to take over?

*Mr Simmonds:* I think we will see bidding in the middle of this year.

*Mr Kopernicki:* On the subject of the World Food Programme, the issue with the current low, small and slow ships is that they consume large numbers of military personnel and escorting ships. I think there are two things we would recommend. One, to use bigger ships so that they have fewer transits which require fewer ships to protect and fewer embarked marines, because you have to put marines on and off and you have to have ships around—it is stating the obvious; do forgive me, but my military friends tell me that this is a very high-maintenance activity at the moment, and they would dearly wish the WFP to use larger, faster ships. I do not know if they would be attacked if not protected. This piracy is an example of fairly organised criminality, and if they felt they could get some money from it . . . They have attacked all kinds of people.

**Q221 Lord Anderson of Swansea:** But they would be harming their own people by so doing.

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*Mr Kopernicki:* Yes, again, I have found in this situation that sometimes logic has not prevailed but I could not disagree with you.

*Chairman:* Let us get on to some more general issues.

**Q222 Lord Chidsey:** I know you have had previous sight of the sort of questions we are going to ask you so you will not be surprised that I want to ask you a little more about the further measures you feel the EU could take to stop piracy. Mr Kopernicki, you have actually already alluded to your feeling that the military side is more or less under control as far as it can be, but there is much more to do in the political and foreign policy and EU engagement issues. I wonder if you would like to develop that a little, from your very much engaged view of your ships being the sufferers here.

*Mr Kopernicki:* Thank you. First of all, I think the UK Government and one or two other European governments, and the United States as well, are pursuing this very constructively. There seems to be a core of governments who really understand this and are working with colleagues in the EU, the French not least, to try to develop aid-driven discussions to change things, but the situation on the ground is very difficult indeed. There is a list of things that are being talked about: a coastguard—I have heard the argument that that would train people to attack ships better but I think I would reject that and say some structured income which would feed people and would create some economic normality would seem logical. There seems a sound argument to perhaps focus on one or two areas of Puntland and Somaliland, for example, and try to get some sense of normality by putting aid into there. There are sources of aid available in EU funds, we understand, which could be deployed helpfully here. However, I think it also requires the involvement of the Gulf States particularly—there are religious and other regional aspects which are potentially useful and helpful in that discussion—as well as the African organisations. This is slow. On any measure, these developments will move slowly but the UN Contact Group on the piracy aspect is working fine. The slight worry is that people are talking about it continuing normally. It is almost “Do we need a building in which to house it because it is going to be permanent?” I am being slightly frivolous but there is a sense of it becoming institutionalised, and that worries me, because we would prefer this to be a temporary event. I think we need to link the pirate groups and the people working on the land side more, because in some of the governments you actually go to two parts of the same administration to have the different conversations. Yes, they do talk to each other but they are in compartments.

**Q223 Lord Chidsey:** If I can just ask a supplementary, we had some meetings earlier this week with some representatives of the TFG in Somalia, ministers and so forth, who were quite convinced that the problems you just stated were on the land side, providing income for the villagers and those involved in this but, given that the TFG does not even control the capital city of the country, let alone the rest of the land, is this not a very long-term aspiration that they would eventually bring law and order and civil administration to these areas?

*Mr Kopernicki:* Yes, I would solidly agree. This is very long-term indeed. The key issue is that one has to keep it on the agenda. In my day job in my company we work on scenarios a great deal and we look into the future. If you were to draw a scenario for this area, if this did not begin to resolve, you could see a continuing problem in that area and Yemen, the two, and that could bubble up to some great extent. Of course, this straddles the equivalent of the M4 in commercial terms for much of the Western world. Your option is to go southwards and drive from London to Swansea via Madrid. This is probably not a good thing. I think it is important to bring it up on the agenda, not to frighten people unnecessarily but it is legitimate to say this is a potential future extreme hotspot; it deserves attention now, however difficult. Then there is my West African issue. We are already seeing the copycats along the West African coast. The other thing is if it then spreads. Look at the model: you take some friends, you get a boat, you get an outboard and you go off and attack some ships. You come home with \$2 or \$3 million. It is quite a good business model, and others are looking at that.

**Q224 Lord Inge:** It has already been said really but I think you are, if I may say so, grossly over-optimistic about the problems of solving the problem on land. Somalia has a deep, deep history of corruption, of chaos and shambles, and to think you are going to solve that quickly I think is cloud cuckoo land.

*Mr Kopernicki:* I agree.

**Q225 Lord Anderson of Swansea:** I have lectured at two governance courses in Somaliland and so far as I am aware there is no piracy emanating from their coast at all and they are a relative haven of security and stability in the area. Would you agree with that?  
*Mr Kopernicki:* There are pockets of that, and the pirates are literally working off the beach. Literally.

**Q226 Lord Swinfen:** This must be having some effect on the Egyptian revenue from the Suez Canal. What are they doing to help in the situation, if anything?

*Mr Kopernicki:* Because of the effectiveness of the transit corridor, I do not know the exact figures but the general flow is being maintained through the corridor, with some diversions around the Cape. The

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Egyptians have been very helpful in working with us. One of the key problems with the industry is around persuading the quarter or third of ships who, for some unknown reason, will not follow these best practice guidelines. We, as the industry—and OCIMF started this—have published these booklets. This is the how-to-do-it book. They are free. We have printed 32,000 of them, I think, at the last count. We give them to everybody who wants them. All you have to do is either ring somebody or look on the website and be told what to do, and people will not. One quarter of the ships going through that area do not do it and a high proportion of the ones that are attacked are in that one quarter. The Egyptians have been very helpful in boarding ships at Suez and giving information to masters and talking to them, and helping in every way they can. That is probably the key thing to raise awareness. I am still staggered as to why many ship owners choose not to avail themselves of the transit corridor or to follow the guidelines which are available. It is free, it is available, and it protects lives. Why not do it?

**Q227 Chairman:** I think we have to jump in on that and say, what can be done to better encourage ship owners to follow the best practice rules?

*Mr Kopernicki:* That is a very interesting question.

**Chairman:** This is the key to it, in a sense, is it not? The transit corridor works well, because group transits work well, and you have this quarter of ships basically freelancing. How do you stop that?

**Lord Swinfen:** My Lord Chairman, we might ask the insurers.

**Q228 Chairman:** I am going to ask the insurers, yes.

*Mr Kopernicki:* It is an industry issue, and insurance is only one part of it. The shipping industry is very disaggregated, as you know. First of all, have the core of the main industry associations advertised? Have they beaten a path to every door? Yes, they have. Have they broadcast what to do? Yes, they have. All those things are done, so the question now is one of changing behaviours of small, independent, often family-owned firms with one or two ships, who think they will just get on with it and take a chance. There is a conversation I am aware of, a suggestion that perhaps by some control of insurance availability one could throttle behaviour and say, “If you do not follow these guidelines,” for instance, “your insurance in the event of an attack would not be valid.” Thus far the insurers have been slightly wary about that. I am a director of a protection and indemnity mutual club, the UK P&I club, and I have had this conversation with my colleagues there. There is a slight reluctance to impose that explicitly. I do wonder though, in today’s world, if somebody did

have an event and come for adjudication—because, in these insurance areas, matters which do not fall within the rules are brought to a board for adjudication—what the view might be. Raising insurance levels: I do not know if that would help. We certainly do not want to make it a war zone; I think that is not the correct answer. This is genuinely difficult and we are trying every which way we can but I cannot offer you, again, Harry Potter solutions.

**Q229 Lord Jay of Ewelme:** I wanted to press ahead with the same set of questions really. You talked a lot about what the Navy are doing and you talked a lot, and I thought it was very interesting, about the better co-ordination you are getting between the ship owners and the shipping companies and the Navy. I wonder if I could press you a little bit more on what you have just been saying about what more the industry itself can do to get its message across, to get people to observe its message in Somalia, and you yourself raised the issue of the copycat in West Africa. Are there things that you can do now to make it less likely that West Africa becomes as serious as Somalia has become? A slightly off-piste question: I was in Copenhagen recently listening to the hearing, to a Rear Admiral in the Danish Navy talking about the effect the melting of the Northern ice cap would have and the likely or possible shifts of sea lanes, going across the top of the world rather than around it. Is that the sort of thing you are thinking about which could reduce the number of ships—clearly, there are limits as to how much of this can be done—which are going past some of the more dangerous zones?

*Mr Kopernicki:* I think, first of all, on what we are doing as the industry, all sensible ship owners that I talk to are doing the things you would expect. It is now common practice to put razor wire around your ship in pirate areas, to have rotating water cannon, to have extra watches with infrared night sights, to mount low radars to pick up small boats approaching you. All sensible ship owners are doing this. The question now arises around what you do in deep ocean, because we have had cases of attacks in deep ocean, in the Indian Ocean, and that is where intelligence comes in and the co-operation between the military and the civilian sector around intelligence. That is coming along well but then you come to other areas, and you can do all these things but is it the case now that all shipping in all places will be at the hazard of pirates? We can do the defending bit but there is also a sorting out bit that needs to be done in the current problem to send the message that it is not worth pursuing this business model because, if you do, bad things will happen. That message needs to transmit to other places. It is already the case that, in looking at new ship designs, for instance, ship owners are now looking very positively at creating

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maximum freeboard, no catching points where you can climb, in the design stage already but, as is the case with motorcars, ships last 20 to 25 years. You can adapt them in dock but you will wait a bit till new designs come in. I will come to your northern sea route in a minute, if I may.

*Mr Simmonds:* We have been involved in a lot of workshops and projects discovering new ways of target-hardening ships. That continues on a day by day and a company by company basis. Ships do have, as has been described, razor wire; they also fit grilles; the ladders are cut away. So ships are substantially hardened. Could I just make a point which I think is an important one about the human factors? Again, one of the reasons why we cannot continue to further harden ships beyond a reasonable, and that is a high level, is because of the impact on the crews who are transiting these areas. Many ships are on "bus routes" and so are going backwards and forwards, and it is obviously not tenable in the long term to have trade routes which have a substantial proportion of their route accepted as being at high risk. So our policy approach is to insist and lobby the navies—and this is where the EU NAVFOR is a very good example—to respond to the need to provide for the protection of trade, and that is not an easy argument. I think also, just to elaborate, at the moment we have a situation where a limited number of military forces are providing the group transit system. The only alternative is really to move to some sort of convoy system whereby ships are protected all the time. This is obviously a task beyond the navy of a single country, and it is probably beyond the capability of even EU NAVFOR. What we do have in the Gulf of Aden and in the Indian Ocean is this very wide coalition. We continue to work on options for the coalition to produce better joined-up responses but it demands an extraordinarily high number of hulls, which navies just do not have these days.

*Mr Kopernicki:* May I respond on the northern sea route question? It is a fascinating question, interesting. Obviously, with the development of hydrocarbon reserves in northern Russia, the issue of short-cutting to Tokyo has come into play. You save 16 days, I think, and 8,500 miles by cutting across the top. There is one slight problem: it has only been done on a test basis by a tanker doing drops, a small, Polar class tanker. For trade, you would need at least Polar class, which is the ultimate ice-strengthened tanker, and because you need icebreakers, it is atomic icebreakers, so you go to Mr Atomflot to provide those, but, because icebreakers are only so wide, if you have large ships, you need pairs to get the beam through ice, and the ice is very unpredictable in those areas, both within a season and year to year. So at the moment—and we and others are doing studies on this—there is no immediate evidence that it is any

easier. On the other hand, the attraction of a short sea route with icebreaking solutions is potentially available.

**Q230 Lord Inge:** How did they solve the problem in the Malacca Straits?

*Mr Kopernicki:* The Malacca Straits is an interesting case. There were three countries principally involved: Malaysia, Indonesia and Singapore. Interestingly, Japan took a very positive view. It is an interesting case of thinking through the importance of your trade route. The Japanese took the view that, because they are energy-light and they depend on the flow of energy through this area, it was of relevant interest to Japan, so they fostered a UKMTO-type centre in Singapore, and the Singaporeans, with their colleagues in Malaysia, worked together as governments and as navies to increase patrolling significantly and essentially to clear the problem out. So it was a highly cooperative, tripartite governmental and naval solution with very high-quality support, obviously, from Singapore, Malaysia and Indonesia, but then this interesting view of the Japanese, and I think that interestingly transposes to our UK context now, as we are becoming a gas-light country, depending on flows into Pembroke, as an example, to keep the lights on in Birmingham. Should we not now be thinking that it is a legitimate security interest for us to consider the trade routes as far as the Gulf of Aden as part of our national concern? That in turn reflects the defence agenda and the importance of the Royal Navy.

**Q231 Lord Inge:** The First Sea Lord would love to hear that!

*Mr Kopernicki:* From a commercial point of view, as a major energy company, with my day job hat on, this is a serious issue and I think it bears thinking about. You do not have to think about exotic warships, and Mark Stanhope would prefer me not to say that I prefer to have simple ships, but I think intermediate ships, of intermediate technical quality, in some numbers, and restoring some balance to the availability of protection for British-oriented shipping is important.

**Q232 Lord Selkirk of Douglas:** I think you have really answered the essence of the question which I was about to ask about measures: what measures the insurance industry is taking to encourage shipping companies to follow international and EU best practice on reducing the risk of pirate attacks and what further measures could or should be taken. Can I add to that a supplementary question: how strong is your opposition to putting security guards on civilian ships? Is that very strong on grounds of principle or could there be certain circumstances in which that might be permissible?

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*Mr Kopernicki:* Let me start, and then hand over to Gavin. Not principle but practice. First of all, even if we were to say it is a great thing to do—and I do not have the numbers here—quite a lot of ships go through there every day, so you would have to think through how you are going to get all these accredited people on board. Let us talk about accreditation for a moment. If you have troops on board ships, our belief is that there are certain situations where it may be highly valid, but then they have to be part of an organised military envelope, so Royal Navy Marines deployed, or French Marines deployed, within a chain of command, with rules of engagement, responsible to a government. An example where we would think that is entirely appropriate: the other day my company had to move some bits for a refinery, a gas plant, in the Middle East through that Gulf corridor on one of these heavy-lift ships that go very slowly. We rang up Northwood and had a chat with them. They went through the risk profile. They said, “What you need is a close escort. That is the only way you can be properly protected. We will put some Marines on and a Corvette will accompany the ship through.” That is an example of a proper risk assessment, resulting in a logical solution. There is co-operation from the military to do that. It varies between a coalition approach, and there are some countries that protect their own ships. The Malaysians protect their gas carriers and their oil tankers, and the Iranians do, and so on. Then you come to the more generic discussion about arming. We do not support it. We think it is the wrong answer, for a number of reasons. One, there are no rules of engagement. Secondly, who are these people? We have talked to these security firms, and the quality is highly variable. Highly variable. I would not put them on my ships. I have investigated this, so I understand what the problem is. Thirdly, you create an elevation in the degree of conflict available, so what is now a merchant ship becomes a legitimate target, and you raise the stakes, and if you raise the stakes on the ship, you raise the stakes with the pirates, and you go up the chain. Also, while the pirates find it easy to shoot at you—and we have had Qinetiq do some work for the industry on how you target a ship and where bullets will fall, because we are concerned about protecting our crews—you firing at a little boat is actually very hard, unless you are in a military environment, with mounted weapons, and that is not the case here. So it is about the effectiveness, particularly at night, and particularly if the pirates have already boarded—and bear in mind these pirates board in minutes, in darkness, and if you are not aware of the boarding, you have an on-ship fire fight. Then, will the crews come along with it? These are civilians; they are not military. They may say, “We just don’t want to serve, thank you very much. If it’s that bad, I am not going.” The list goes

on. Where are you going to store weapons? A minor detail for those of us that carry oil and gas: bullets and oil and gas do not go very well together and we would rather not, but I did not want to put that at the head of the list. Our colleagues in America are very enthused with the subject. However, they operate a very small American flag fleet internationally, and the case of one ship where there was a celebrated rescue I think is the exception rather than the norm.

*Mr Simmonds:* I think there is only one thing to add. In our discussions with the FCO and TRANSEC, we cannot help but acknowledge the complexity of the legal problems around the carriage of weapons on board civilian ships. Whereas we have always thought it sensible to maintain a policy approach that does permit the carriage of weapons, as has been explained, under very exceptional conditions, internationally and between specific ports, the carriage of weapons and armed teams routinely between different states through the territorial seas and into the internal waters, the ports of foreign states, is not an easy legal area. In fact, we did mention the issue of Egypt and the key strategic position that Egypt obviously holds. There is, to give just one example of very strong opposition within Egypt to the carriage of any weapons in their territorial waters. To work that through and produce legitimate and operational solutions in other countries and jurisdictions is very difficult indeed, so we continue to see that it only has very exceptional, limited application.

**Q233 Lord Williams of Elvel:** Going back to the insurers, do you think they are being rather wet about possibly restricting cover, or are there serious technical problems in doing so?

*Mr Kopernicki:* It is difficult. The insurers: it is a constellation of bodies that constitute a ship’s insurance, so to get an effective solution, a lock, you would need a combined and consistent approach from all the stars in the constellation. Are they being wet? No. In a sense, they are only a reflection of the principals they serve. I think they are being realistic, in that it is not clear if it would actually do the job for this minority of ships that do not obey the rules. I am not certain that it would actually do the job even if you managed to create the lock. Yes, the ship might be out of class and all the rest, but you might then get down to 10 or 15% that still did not follow the rules and the pirates would grab them. It is an interesting question. For me, the protection and indemnity route is the most attractive because every ship has to have P&I insurance as a matter of law in order to get its various registrations. I wonder if that is not the route in, to say that if you go through a defined area—it has to be defined—and you do not follow substantial measures, then your cover might be withheld, but I think that is as far as you probably could go.

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**Q234 Lord Crickhowell:** Can I come in on this one? It is a very large number of years indeed since, as a Lloyd's insurance broker, I placed insurance on some quite big ships, indeed, the two largest tankers in the world at the time. I entirely understand what you were saying about a general policy but I am bound to say, if I were a broker going in to place the insurance on the ships, or indeed later, having to come along and say, "We have got a claim on the ship," I would expect both the underwriters I was dealing with—the principal underwriters, because these are the people one is dealing with, not the great vast mass of participants—and indeed, the P&I clubs, to ask some sharp questions about what the organisation, the company, was doing, whether they were observing the rules, and indeed, if they were not observing the rules, I would have thought the underwriters might have proved quite vocal about the issue. So while I understand the difficulty of a general policy, I am slightly puzzled by what seems to be your almost total dismissal, although you began to move to a more positive line in your last answer on the P&I clubs. I would have thought underwriters could influence things quite considerably.

*Mr Kopernicki:* I take your point, and indeed, we have devoted a lot of thought to this and it is not straightforward. The P&I route seems a sensible key because it is one that really matters to people. If you have a prang and you ring up Norwich Union and a telesales person says, "I'm sorry, you're not covered" because you did not do this or that, that seems quite a powerful argument but I have met some resistance in promoting that logic, because insurers are very reluctant to alienate their clients. That is as I see it. I have run up what I would like to think is a very well run shipping division. I have colleagues who do the same in big companies. We do all the right things, touch wood, and we risk-manage and all the rest, so we have a fairly positive conversation with our insurers but I agree with you, there is opportunity there, and I think you will have some interesting questions later in the morning but it is around finding something which is practical and relevant, and, for me, it would be to address that issue around how P&I is provided rather than just hull. Hull would be the other route but the P&I gives a sense of where you can have an adjudication and a conversation around a decision.

**Q235 Lord Swinfen:** We have been talking so far about prevention, and I want to turn to what happens now after pirates have attacked and captured a ship. What is your policy on the payment of ransoms? What advice do you give to ship owners on ransoms? Is the Chamber of Shipping ever consulted by ship owners when ships are captured? Probably Mr Simmonds can answer that. What considerations come into play when companies decide to pay a

ransom? Interestingly, how is a ransom paid, and can you track that payment?

*Mr Simmonds:* Thank you, my Lord. This is a very important and current area, and there is quite a lot of coverage in the media at the moment of the suggestion that the payment of ransom money should be made illegal. Our view is that there is within the whole Somali business model and the existing piracy problem a fragile status quo which at the moment does enable ship owners to recover, most importantly, their seafarers, the majority of which are recovered unharmed, leaving aside the traumatic effect of being held in captivity, and their ships and cargoes, again, unharmed and without the risk of deterioration of cargoes or the pollution of the seas by oil or chemicals or whatever else the ship may be carrying. So the status quo is fragile but it is working, and it is delivering our people and ships back. The payment of ransoms is not illegal under UK law. We have been following this very carefully for several years. It obviously would not help the situation, we feel, if that were to change through the United Nations monitoring group on Somali sanctions. Responding to the other part of your question, we have no specific policy as the Chamber. Very few UK ships, most fortunately, probably because of the way they are managed and because of the best practices, have fallen prey to pirate attacks. In the last eight weeks two have. We have been contacted by the owners of those ships. There is little information and we obviously need to be very careful that at this stage, before we know a proper investigation has been carried out and we know all the facts, about jumping to any conclusions. We see in the interim that the company should do a number of things: first of all, obtain clear, up-to-date legal advice about the payment of a ransom; work towards the release of their crew and ship using hostage negotiators, of whom, again, rather like the other elements of the security industry, there is a wide selection but there are very experienced and capable individuals who have recent experience of delivering successful outcomes. We know who those people are and we are in touch with them. They operate to the highest standards, and we encourage those people to be used to enable the ships to be released as quickly as possible. Very often, it does not happen very quickly, and the seafarers are held captive for a considerable period of time. The priority is the safe return of seafarers and, rather secondly, the ship, and that is the way it is done. In terms of the actual delivery of money, the practicality is that the insurance companies indemnify the ship owner against a claimable loss, so the ship owner will pay the ransom, and he will arrange to have it delivered by whatever means is possible—by land, sea, or air drop—these are the most sensible options, and considerable sums of cash have been delivered successfully.

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**Q236 Lord Swinfen:** In the form of cash?

*Mr Simmonds:* Yes. Then we are working very closely with SOCA and various other agencies to understand the flow of that cash. Most importantly, we have spent a considerable time establishing that the ransom money paid does not feed into terrorism. We think there is a very clear separation and the funding is being distributed locally. The information we have is that it is actually being accounted for very carefully between the pirates, with very small shares going to the guards and the lesser participants and proportionately much higher shares going to the ringleaders and the organisers, and it is obviously those ringleaders that we have heard most about and those are the ones that obviously should be targeted in the future.

**Q237 Lord Swinfen:** Would you consider payment of ransom to be bribery?

*Mr Simmonds:* No. I think there is a clear distinction. Ransoms are paid so that a ship owner can retrieve his crew and ship safely. Bribery indicates some sort of gain to be obtained from the whole process, and there is no gain. The ship owner's interest is recovering his ship and crew.

**Q238 Lord Swinfen:** I ask the question because there is a Bribery Bill going through Parliament at the moment and I wondered what effect it might have on that.

*Mr Kopernicki:* At first sight, paying ransoms is an anathema, something one desperately does not want to do, and we are very familiar with the argument that it might fuel further activity but, as Gavin has mentioned, the priority is around the safety of seafarers. That is the paramount priority. People often think it is the ship, and I can assure you, large companies included, we are concerned about our seafarers. We have young cadets on board, we have people, members of families. These are our people, and our first and passionate concern is to protect them.

**Q239 Lord Swinfen:** I do know that. I have a son-in-law who is a Master Mariner and my daughter went round the world with him for the first three years of their marriage, so I do know what it is like.

*Mr Kopernicki:* It comes back to addressing the root cause of the problem. Of the available solutions, it is one of the solutions which is, unfortunately, available. There is, as Gavin mentioned, a conversation emanating from Washington about suggestions to make payment of ransoms in some way illegal. The High Court has very helpfully ruled on that recently in this country, and there is a very good international discussion perhaps not to support the American move. I think it distracts from the more fundamental issue of addressing the root cause of the

problem, and the issue around mother ships departing from the shores and actually addressing the pirate issue. I think that is a much more fruitful avenue than preventing people paying ransoms. There is just one footnote to add. We do have the concern that if a view were taken that paying ransoms was illegal, the process would go underground, and that would be far, far worse. None of this is good but this is an extremely difficult situation and at the moment, thankfully, we have had very little loss of life in extraordinarily difficult situations.

**Q240 Chairman:** There is a difference between whether something is legal or illegal and a second decision of whether it is in the public interest to prosecute.

*Mr Kopernicki:* But some nations believe that their domain of influence extends quite widely and if they were to rule on a matter many organisations would be fearful of taking any action.

**Q241 Chairman:** Do you actually seek the consent of the Serious Organised Crime Agency before making ransom payments?

*Mr Kopernicki:* I have not had to pay a ransom payment, thankfully, so I do not know.

**Q242 Chairman:** You were nodding?

*Mr Simmonds:* I was nodding because it is my understanding that prior permission is always obtained as part of the legal process.

**Q243 Lord Anderson of Swansea:** Just a point of detail. Presumably the crews on these massive Shell tankers are very small. What is the feasibility of those crews seeking refuge in a reinforced bridge until help comes?

*Mr Kopernicki:* The citadel concept. You are quite right, a typical company ship might have 23 people on board, unless it is being used as a training ship, in which case you go up to 30-something. Citadels are a mixed blessing. We do not advocate them because when they board the pirates will get the people. The American case that was so touted about people locking themselves in the engine space is misleading. Once the pirates are on board they have all the time in the world to cut through any doors. They are armed and there is evidence of them learning about plastic explosives to blow doors open, so you have prisoners; you have not solved anything. The military are very wary of boarding in that situation. The general rule is that once the pirates have got on board, you do not attempt a rapid pursuit because there is a real risk of loss of life. That is not to say you might not have a planned assault at some later time. Rather than a citadel as such the whole focus, certainly in my company and for colleagues in other companies, is to be sure that the crew are protected

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while the pirates are firing bullets and RPGs, so we have created a core space in the ship and, as mentioned, we have had QinetiQ actually do the sums to protect the crew from incoming projectiles but still allow the crew to manage the ship and continue navigating the ship at speed.

**Q244 Lord Selkirk of Douglas:** Could I ask a brief question. You may not be able to answer it today but what would be very helpful is for us to have evidence as to what the scale of this problem is, whether it is diminishing or growing, and to what extent it is changing and, for example, how many of the major ships are covered by the convoy system, what percentage are covered and what percentage are not? Is there a need for more national navies to be involved in this matter and what do you think should be the response?

*Mr Kopernicki:* We would be happy to provide information, but pretty well all major shipping companies have found solutions, either conforming to the EU NAVFOR coalition envelope or using the navies of their nations, as I mentioned earlier. Is the

problem getting worse or better? It is stationary. We are watching it. It is almost weather dependent. We talk about the “car park” of taken ships and we count how many ships are in the car park. It is rather simplistic but you watch the car park diminish and you realise that if the car park is a bit empty the pirates are likely to be out again. At the moment it is criminality. We have mentioned we do not think it is linked to terrorism. That is what we are told. We do however worry that this is something ripe for taking by terrorist interests in the medium term. It surprises us that they have not availed themselves of this mechanism. I am glad of that of course, but it is surprising. I would be very happy, my Lord, to provide any information or digest that would be helpful.

**Q245 Chairman:** If you could that would be helpful to us. Thank you very much and thank you for your time and the evidence you have provided.

*Mr Kopernicki:* My Lords, I have brought for you the do-it-yourself protect-a-ship digest.

**Chairman:** Thank you very much.

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 THURSDAY 25 FEBRUARY 2010
 

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Present	Anderson of Swansea, L Crickhowell, L Chidgey, L Inge, L Jay of Ewelme, L	Selkirk of Douglas, L Sewel, L (in the Chair) Swinfen, L Williams of Elvel, L
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**Examination of Witnesses**

Witnesses: MR DAVID CROOM-JOHNSON, Senior Marine Underwriter and Active Underwriter for Aegis Managing Agency; MR NEIL ROBERTS, Senior Executive, Lloyd's Market Association; and MR ANDREW VOKE, Chairman of LMA Marine Committee and Marine Director at Chaucer Underwriting, examined.

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**Q246 Chairman:** Thank you very much for coming. I will repeat what I said before to your colleagues from the shipping industry. This is a formal session and a transcript will be taken. You will get a copy of the transcript and will be able to correct any errors. Lastly, it is being webcast. Would you like to introduce yourselves briefly and then if you wish to make any opening statements before we get on to the detailed questions and answers.

*Mr Croom-Johnson:* Thank you, my Lord Chairman. Just by way of introduction, my name is David Croom-Johnson and I am the current Chairman of the Marine Committee at Lloyd's which is part of the Lloyd's Market Association. I have with me two colleagues, Andrew Voke, who is taking over from me as Chairman of that Committee next month, and Neil Roberts, who is the secretariat for the Marine Committee of Lloyd's Market Association. The Marine Committee oversees the workings of the joint committees at Lloyd's which are involved in hull, cargo and war insurance that would be of interest to you as a Committee today. In an opening statement I would say that the primary function of marine insurance is to take on and manage risk on behalf of the shipping community and on behalf of cargo owners and, in doing so, to facilitate the smooth operation of world trade. As the gentlemen who are in front of you today, we represent what is really a broad church of marine insurance. Today we will give our views that are representative of what we believe are the views of the community in the London insurance market, but that of course is only part of a much wider and much larger global insurance market in which many of our competitors and peers around the world that will participate in marine insurance and potentially in offering insurance for risks such as piracy.

**Q247 Chairman:** Let me start the questions by really giving you the opportunity to give an assessment of what you think the overall effectiveness is of Operation Atalanta and how it could be made more effective if possible?

*Mr Croom-Johnson:* The insurance industry welcomes and is fully supportive of the work of Operation Atalanta. I do not want to repeat the views that the Chamber of Shipping and Mr Kopernicki outlined for you, but we believe that without the support and work that has gone on over the last 18 months by EU NAVFOR and NATO and the US-administrated CFT 150 and 151 certainly more vessels would have been taken and the situation would be far worse. It is probable that insurers who would be assuming some of the risk of the ship-owning community would be charging much higher premiums and more ship owners would be contemplating re-routing their vessels to avoid the region. Turning to how could the operation become more effective, I listened with interest to the views of the Chamber of Shipping. The one thing that we would probably add to that is a belief that we would like to see as one of the most single effective deterrents a much clearer prosecution of pirates once they have been taken. I have noted from some of the transcripts the evidence of Admiral Hudson and Commander Dow, who came before this Committee in January, the work that has gone on in Kenya and the Seychelles, but I think we would like to see a stronger mandate from the international community. Whether that would mean prosecutions at The Hague, or wherever, I think one of the things that we have noticed is that these pirates have had their weapons taken away from them and they have been set free maybe to reoffend at a later date. We are greatly encouraged by the co-operation between the EU NAVFOR, Atalanta, the NATO states and also the work on some of the individual countries like China and Malaysia with regards to the work that has gone on there. I think standardisation in the rules of engagement would be seen to be a helpful in that respect. Our belief is that some of the mother ships hold the key to the pirate attacks in their ability to have a much wider and further range from the coast than the smaller chase boats that have been used to take some of the vessels that we have seen.

*Mr Voke:* I think the insurers have a slightly odd position insofar as we are here to provide indemnity to the ship owners, so I would say, as David said,

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whilst we are fully supportive and welcome everything that has been done to a point, we are then left with whatever the situation is in terms of assessing a risk then to the ship owners. So ours is a little more a position of responding and assessing the risks as they are and those going forward.

*Mr Croom-Johnson:* Certainly some of the work that our War Committee at Lloyd's has undertaken in providing general advice with regards to the corridor areas of transit, etc, has sat within the exclusionary language that we proffer forward in the insurance policies that we have issued.

**Q248 Lord Williams of Elvel:** You sound as though you are slightly detached from what is going on operationally. You say you are assessing risk and that is your job. You do not believe in being more proactive. Are you, for instance, talking to government departments, are you talking to NATO?

*Mr Croom-Johnson:* No, as Andrew will have highlighted, our role as we see it is to sit behind our policyholders, behind the ship owners and the cargo owners themselves. The simple principle of insurance is one of indemnity, so we are there to indemnify them for their losses. We tend to take a supportive rather than a proactive approach.

**Q249 Lord Crickhowell:** Can I come in again with this question that I asked at the last session. I entirely accept what you are saying but, nonetheless, the discussion between the broker placing the risk and you is not entirely in those terms. Normally the underwriter has quite firm questions to ask and perhaps some quite strong views to express, and if he thinks that you are one of the minority who do not accept the guidance given in this handbook we have just been given, I would have thought you could be extremely difficult. It is not quite "We are there simply to assist our client." It is a much more intimate relationship. My experience is that pretty firm questions and answers are directed both ways.

*Mr Croom-Johnson:* Absolutely, my Lord. Andrew and I are both underwriters to whom you refer. We have risks that are put in front of us and it is up to us to ascertain what is a good and what is a bad risk, for us as insurers, so, yes, we go down the road of understanding whether ship owners are conforming to best management practice and of understanding the risk of whether a ship is a slow-steaming ship that would be part of the World Food Programme or one that is well-assessed. The underwriter has lots of ways in which he can then manage that risk. He can do it by applying warranties on the insurance policy. He can reject the risk in its entirety. He can accept the risk but obviously at different terms and conditions, he can charge more money for it and he can put restrictive exclusions into the insurance policies as a method of underwriting the risk itself.

**Q250 Lord Crickhowell:** Assuming that you are doing all these things, as I am sure you are, is it having any positive effect?

*Mr Croom-Johnson:* Yes, it can have positive effects. Certainly the substandard shipping that has been referred to which does not comply with those things probably finds it more difficult to buy insurance, but one thing I would stress is that there is no compulsion on an underwriter to apply specific warranties or specific exclusions. Lloyd's itself is made up of 35 insurance companies that are involved in underwriting marine hull and war risks insurance. Again, that is part of a much broader insurance market. One of the things that insurers have some fear of, and it has come about also when we were dealing with the insurances in the Malacca Straits, is we received several complaints from nation states and from our own Government with regards to restrictive practices, anti-competitiveness and, the formation of cartels, so insurers have to be extremely cognisant of those issues as well. I can sit here today and say yes, as an underwriter, if a ship is not conforming with best management practice, I probably would not insure it.

*Mr Roberts:* Could I offer an amplification on that, just to say that the joint War Committee issues its listed areas, which is areas which it perceives to be an enhanced risk, on an advisory basis, and the effect of those is to ensure that ship owners transacting in those areas will notify the underwriters and therefore they can have a voyage negotiation. Also it is a fiercely competitive market, as David says, and underwriters will be asking questions of their owners about what are they doing, and what they do with the information is up to them. I would hate you to be under the impression that we have not negotiated with anybody. At the association level we have a seat at SADC (Shipping Defence Advisory Committee) with the Chamber of Shipping and we do engage with various government departments when they ask us, including the US as well. GAO were over only on Monday to ask about the issue of piracy. However, on a day-to-day basis the underwriters would not get involved with government because obviously they have their day jobs.

**Q251 Lord Chidgey:** Your responses to the previous comments by Lord Crickhowell in particular. I just want to make sure that we have covered all the aspects that we have put before you in our written paper to you. I would like to give you the opportunity to see if there is anything else you want to add in terms of the questions on the contributions that the insurance industry is making to the success of the EU operation and reducing the risk of piracy. The example we gave in our comments to you was by weighting premiums. The wash-up question is what further measures could or should the insurance industry take?

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*Mr Voke:* Just to give a comment on the premiums. As David said, there are probably 20 syndicates in London who would consider themselves capable of having an opinion on the pricing of a risk. We are not the whole market. There is the international market and there is the continental market, etc. Pretty universally those underwriters will give significant credits to pricing for risks that they assume are risk averse, when something has been risk managed. There are many factors to risk management. It is not just relating to what you do to your vessel; it is how you are part of the whole safety procedure. Inevitably, though—and they are not represented at this table—there are some more maverick markets who look for the higher risk, higher premium, more the rolling of the dice type approach, and so, equally, there is a market that exists. It is really not so much in Lloyd's as a leadership position but there is a market that exists which will tackle what you would call those substandard risks.

**Q252 Chairman:** Where is that market located?

*Mr Voke:* They are all over the place but there are some in Europe. There are a couple of colleagues in Lloyd's.

**Q253 Lord Chidgey:** It sounds a bit like subprime mortgages all over again but carry on.

*Mr Voke:* Essentially, the mainstream shipping lines are financially benefited from the risk management that they take, but then there are degrees. There are some extreme degrees of protecting your vessels with razor wire, etc. However, the cost of doing that is considerably more than the cost of the insurance premium saving, for instance.

*Mr Croom-Johnson:* If I may just put the insurance market's position. We believe that we are insuring approximately 70% of the vessels that are crossing the Gulf of Aden. Mr Kopernicki referred earlier to the fact that the number of vessels that are being taken tend to be in the minority of vessels who are ignoring the principles of best management practice. Those are probably forming part of the 30% of the vessels that are maybe transiting the Gulf of Aden without insurance. Some of them are. One of the things that is worth noting is that the total amount of the additional premiums that are being charged for vessels crossing the Gulf of Aden currently probably would not pay for the total loss of a vessel and its cargo, so 25,000 transits are going across that of which probably about 18,000 are insured.

**Q254 Lord Jay of Ewelme:** In what period 25,000 transits?

*Mr Croom-Johnson:* Annually is the assessment.

**Q255 Lord Inge:** 18,000 are and 7,000 are not?

*Mr Croom-Johnson:* 7,000 are not.

**Q256 Lord Chidgey:** That is a huge proportion that are uninsured.

*Mr Croom-Johnson:* That will include things such as dhows and fishing vessels, etc, that may not be of the commercial value of things that would carry insurance.

*Mr Roberts:* If a vessel has been placed in our market with the supposition that it is following best management practices and it subsequently transpires that it was not then the claim would be disputed more than likely at the time it was made.

*Mr Croom-Johnson:* Dependent, Neil, on whether there was a warranty or subjectivity in that insurance policy.

*Mr Roberts:* Absolutely.

**Q257 Lord Chidgey:** It is a very interesting point about the number of vessels that are insured and those that are not. Have you got any breakdown of the number of vessels that go through that area which you would consider to be commercial vehicles rather than small dhows, fishing boats, that sort of stuff, so we can get a better idea what proportion of those are not insured?

*Mr Croom-Johnson:* I do not think the insurance market is in a position to know that with enough accuracy.

**Q258 Lord Jay of Ewelme:** Continuing on the same theme, you have moved a little bit from what the insurance industry is doing to what you think the shipping industry might be doing. We had a good discussion in the earlier evidence session about that. I just wondered sitting where you are, are there things that you are saying if only the shipping industry would do this it would really make life much easier or it would make things better for them or better for you? It is not clear to me the extent—and I guess you are talking to them the whole time—to which there are constant discussions between you and the industry about the kind of measures they might take to reduce the risk, the sorts of things you might want them to do. Can you say a bit about that sort of area and whether there are particular things that you are saying to yourselves if only the industry were doing this it would really make a big difference to the insurance premium and the risk?

*Mr Croom-Johnson:* Certainly we as an industry and both of our associations have had working groups with the Chamber of Shipping and with others, but we have also signed up to the principles of best management practice along with a lot of the ship-owning community and the international group of P&I clubs. Our joint Hull and War Committees have signed up to the principles of that. However, again, I

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have to stress that these things are advisory in the information that we give to the insurance community and it remains up to individual insurers to take their own views of what they assess risk to be. So whilst some of the things that as an association we would promote, such as the better training of crews in best management practice and ensuring that there were adequate drills on vessels, we would certainly advocate and promote.

**Q259 Chairman:** Are you saying or are you not saying that it is nothing to do with the role of the insurance industry to follow policies which are aimed at eradicating or reducing piracy?

*Mr Croom-Johnson:* We are supportive of any measure that eradicates or diminishes piracy around the world.

**Chairman:** Could you be a bit tougher than that?

**Q260 Lord Williams of Elvel:** You are not proactive in that. You are sitting back and saying if everybody does the right thing we are happy with that?

*Mr Voke:* It is actually quite difficult for an insurer to dictate to a ship owner how best to run his business and how best to protect against piracy.

**Q261 Chairman:** Mr Voke, I am going to intervene there. We know that the group transit and the transit corridor approach works pretty well. Why do the insurance companies not turn round to the ship owners and say, "Unless you make use of group transit and the transit corridor we are not going to insure you"?

*Mr Croom-Johnson:* I can answer that and probably the best way of answering it is our War Committee has an excluded area that basically conforms to all of the advice that is given by UKMTO and is embodied within best management practice. Our War Committee puts that out and has to do so on an advisory basis only because of, how can I put it, competition legislation. We would welcome an ability to put more spine into that by being allowed to mandate these things as associations, but currently we are extremely fearful of restrictive practices that continue within the insurance community.

**Q262 Lord Inge:** It is related partly to that, Lord Chairman. You said in your opening statement that you wished the rules of engagement were rather more robust in the use of force. Would you say what you mean by that?

*Mr Croom-Johnson:* Our understanding is that there is a UN mandate that would allow for the rules of engagement to be carried out on shore. Again, this is my own view, and I think it is a view that is held widely within the Lloyd's community that if we were more forceful in Operation Atalanta, which I think

only goes up the high water mark, and if that were extended to be in line with the UN mandate—

**Q263 Lord Inge:** That is not the rules of engagement. What you are actually saying is you want a greater degree of force and that is a considerable escalation of the amount of force that would be needed, my Lord Chairman, if you start talking about operations on land.

*Mr Croom-Johnson:* Neil, you may be good at answering that because I think there was a disparate view of the rules of engagement depending on whether you are under the UN mandate or other.

*Mr Roberts:* It seems clear there is a lack of harmonisation of the rules of engagement. Whilst it is difficult to get any one navy to tell you what they are, what they can tell you is that they are all different and even our own Navy varies.

**Q264 Lord Inge:** They are subject to the law. If a soldier fires his weapon at the wrong person he would be prosecuted for it, as you know.

*Mr Roberts:* For instance, at one stage certain navies were only protecting their own flag whereas the EU mission is to protect any flag.

**Q265 Lord Inge:** That is nothing about the rules of engagement. That is a different issue.

*Mr Roberts:* It is partly rules of engagement.

**Q266 Lord Inge:** In what way is it the rules of engagement?

*Mr Roberts:* It is the rule of operation.

**Q267 Lord Inge:** That is a different thing. The rules of engagement is the use of military force. It is a totally different argument.

*Mr Roberts:* They do vary among participating nations, is our understanding.

**Lord Inge:** It is quite an important point.

**Lord Anderson of Swansea:** The answer is do not argue with a senior military man on a definition of rules of engagement!

**Chairman:** That is not your only comment, Lord Anderson.

**Lord Anderson of Swansea:** Just a little point of clarification. I confess I did not understand the answer to the Chairman's question who asked simply why can you not say to people, "If you do not conform to certain rules we shall not insure you"?

**Lord Jay of Ewelme:** They do it to me!

**Q268 Lord Inge:** We are not surprised by that!

*Mr Croom-Johnson:* We can do. Some do; some do not, my Lord, I think, is probably the simple answer. As Chairman of an association committee in Lloyd's I cannot mandate to other insurance companies what risks they will or will not accept. I can give them

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advice. I can say that we as an association believe that if vessels are not conforming with best management practice you should not be insuring them or you should be taking precautionary measures in your warranties and subjectivities. We can advise them but we cannot mandate it.

**Q269 Lord Anderson of Swansea:** Presumably one consideration of that company may be that this may be a bad risk but overall we want to retain the goodwill of that particular client and we are prepared to make exceptions?

*Mr Croom-Johnson:* Indeed that may happen but bad risks make bad insurers which equals we will lose money and those insurers eventually will go bust.

**Q270 Lord Crickhowell:** Can I pick up one point that came out in the last session towards the end. You are not representing P&I clubs, but you will have heard the suggestion made that perhaps there was a greater role here for the P&I clubs. Would you like to comment on that particular point?

*Mr Croom-Johnson:* The P&I clubs themselves are obviously concerned with the third party liabilities of vessels so they are concerned with the main principle, which is the humanitarian aspect of this, which is the welfare of their crews and seafarers. One should add that they are also responsible for the environmental impact. For instance, if a loaded tanker was taken and then scuttled, they would be in the position of giving coverage for the third party liabilities arising out of the pollution incident, so they have an important role to play. Lloyd's are involved not only in the reinsurance of P&I clubs but also in the direct insurance of hulls and cargo, so we are more interested in the physical aspects of the loss, if I could put it in that respect, in terms of the hull and the vessel itself and the cargoes on board.

**Q271 Lord Crickhowell:** I understand that but the point that was being made in the earlier session was that perhaps the P&I clubs could add more to this influencing the way in which owners behave in a way that perhaps you for the reasons you have explained find difficult.

*Mr Croom-Johnson:* Personally, I cannot see it. I cannot see how they can bring to bear greater influence than, say, a hull and/or cargo insurer can. The reason why I say that is because we are commercial insurers in the hull and cargo insurance markets, so if it does not make commercial sense for us we will not insure it. The P&I clubs themselves are mutuals so they are mutual insurers owned by ship owners and they have a more mutual aspect to the risk rather than maybe a more hard-nosed approach to it from a commercial perspective from commercial insurers.

*Mr Voke:* It is difficult, my Lord, to see how the board of a P&I club is going to put something very restrictive upon its membership because, again, it represents its membership, so to say to its membership in isolation, "We are going to take a tougher view than the commercial insurance industry and other P&I clubs," would not be representative of the membership so it is difficult to see how they would enforce that.

*Mr Croom-Johnson:* And I fear, my Lord, that as sure as night follows day, if they did that, that risk would end up in the commercial market.

**Lord Crickhowell:** Yes.

**Q272 Lord Swinfen:** I want to go on to the question of ransoms. What is the industry's policy on the payment of ransoms to pirates? What considerations come into play when companies decide to pay ransoms? Have ship owners made claims for payment of ransoms and what has been the answer of insurance companies? Who is paying the ransoms that are being paid, either the ship owners or the insurance companies? How are those ransoms paid and can the funds be traced to the ultimate recipient?

*Mr Croom-Johnson:* To answer the question very simply, insurers do not pay ransoms because we are there to pay indemnity to our ship owners for amounts that they may have paid to recover their vessels and goods, so the principle of insurance is that we are there to indemnify our insurance for their losses.

**Q273 Lord Swinfen:** Are you not splitting hairs if you are talking about the amount they have to pay to recover their vessels and cargo?

*Mr Croom-Johnson:* We are not involved in any of the negotiations that have taken place between ship owners and all third parties or with pirates.

**Q274 Lord Swinfen:** Do you give any advice?

*Mr Croom-Johnson:* I do not believe that we as an association have given any advice to any ship owner in that respect.

*Mr Roberts:* As David says, we are not involved in those negotiations. It is a ship owner decision as to what they do.

**Q275 Lord Swinfen:** So you do not know and you cannot tell us how any money for the recovery of the vessel is paid?

*Mr Roberts:* We only have the reports we see in the press. These negotiations are very confidential and we really do not have an opinion on what they do. We get presented with a bill at one stage.

**Q276 Lord Swinfen:** But you can be presented with a bill which you will pay for the recovery of a vessel and its cargo?

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*Mr Roberts:* Yes. It is an obligation on owners generally to take those measures that will reduce their exposure to risk and any loss that they may suffer. It is one of the overriding principles of marine insurance law.

*Mr Voke:* It is perhaps also worth understanding that once a ransom payment has been made by the ship owner, the indemnity does not come from a single party. There may be multiple cargo interests. There may be three or four different marine hull interests, and other interested parties, who all have to contribute to make up that sum in accordance with the proportion that they would have enjoyed.

**Q277 Lord Swinfen:** I realise that but if a ship owner has to pay a fee of some sort to recover the ship and the cargo you will indemnify them for the payment of that fee on the grounds that your loss could be even greater?

*Mr Voke:* Under the rules of general average we are obliged to indemnify, yes.

*Mr Roberts:* In part, my Lord. The general average contribution amongst physical damage insurers will cover the owners for the ransom payment. It will not cover them for the extra expenses of engaging a legal team and/or negotiators. That is where the kidnap and ransom market is offering a product.

**Q278 Lord Swinfen:** Is the payment of a ransom as such insurable?

*Mr Croom-Johnson:* My Lord, it is. Currently it is (a) insurable and (b) it is not illegal for us to insure that. You may be aware that there was a case that came before the High Court. That decision came last week in the *Masefield* case which upheld that the payment of ransoms was not against public policy nor was it illegal for those ransoms to be paid and indemnified from their insurers.

**Q279 Lord Anderson of Swansea:** A number of vessels transiting the area employ armed personnel on board, some military naval and some private contractors. We understand that countries, for

example France, insist that ship owners arrange insurance for those naval or military personnel that form part of the vessel protection detachment and provide extensive indemnification for injuries and other matters which arise. Would your insurers so insure the armed military personnel on board ships?

*Mr Croom-Johnson:* I am not personally aware of that being insured within the marine insurance market within Lloyd's but potentially that could be insured in the kidnap and ransom market.

*Mr Roberts:* It could be.

*Mr Croom-Johnson:* But which I am unaware of having seen at the moment.

*Mr Roberts:* As David said, in principle, it could be. On the other hand, we do not really have that information. As far as we know, originally kidnap and ransom was a very niche product offered for high net worth individuals in South America and such places. The lines have been blurred slightly in now having an entire ship covered by such a policy. It is still not widely taken up. I would say last year the estimate was 7%. We think it is probably double that now.

**Lord Anderson of Swansea:** But we are told that France and other countries make it an obligation on ship owners to take out insurance in such cases.

**Lord Inge:** French ships you mean?

**Lord Anderson of Swansea:** Yes, French ships, so presumably that will be available through the French insurance market?

**Q280 Lord Crickhowell:** It is available in the P&I clubs. We have a useful note on the subject from the P&I clubs.

*Mr Croom-Johnson:* I would think the P&I clubs themselves may be happy to insure this as well.

**Q281 Chairman:** I think that is it. Thank you very much for your evidence and for the time that you have given us.

*Mr Croom-Johnson:* Not at all, my Lords. If there were any supplementary questions we would be happy to answer them.

**Chairman:** Thank you very much.

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Present	Anderson of Swansea, L	Jones, L
	Chidgey, L	Selkirk of Douglas, L
	Crickhowell, L	Sewel, L
	Hamilton of Epsom, L	Swinfen, L
	Inge, L	Teverson, L (Chairman)
	Jay of Ewelme, L	Williams of Elvel, L

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**Examination of Witnesses**

Witnesses: BARONESS KINNOCK OF HOLYHEAD, a Member of the House, Minister of State, MR CHRIS HOLTBY, Deputy Head of Security Policy, Foreign and Commonwealth Office, and COMMANDER BOB ANSTEY, RN, Ministry of Defence, examined.

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**Q282 Chairman:** We have a colleague who is a clerk in the Ugandan Parliament present. May I welcome you to this public session. I hope you find it an interesting and useful session. This is a public inquiry into the Somali piracy issue. It is fairly narrow in scope. The meeting is being recorded on web camera and video. You will have an opportunity to amend the transcript if you think it is inaccurate. Minister of State, could your colleagues introduce themselves to the Committee?

*Commander Anstey:* My name is Commander Bob Anstey. I am from the MoD and I work in the Global Commitments Section with responsibility for counter-piracy operations.

*Mr Holtby:* My name is Chris Holtby. I am from the Foreign Office. I am the Deputy Head of Security Policy, including responsibility for maritime security.

**Q283 Chairman:** We have an hour for this session and we will leave it to you as to who will answer each question. Minister, did you want to make an opening statement of any sort?

*Baroness Kinnock of Holyhead:* I would like to do so. It is very good of you to invite me here today. I am here on behalf of both the Foreign Office and the Ministry of Defence. My colleagues will make particular contributions at the appropriate moment that they will be better able to do than me. May I start by being clear that piracy off the coast of Somalia of course remains an extremely important issue for the British Government, as it is for your Lordships and the international community as a whole. It is for that reason that we are of course making substantial contributions, and both military and political efforts as well, in order to combat the threats of which you are very well aware. Our first line of defence lies with the shipping industry itself with which we have a close and strong working relationship. It was the shipping industry which led the production of best management practice guidelines to minimise risk. My Lords, these, coupled with our military operations and their patrolling of the Internationally

Recognised Transit Corridor, have led—and this is a very important point—to only two ships following best practice being hijacked in the critical Gulf of Aden trade artery since December 2008. This is two out of the 20,000 plus which transit the Gulf each year. This is a very important fact and a significant result but of course it does not mean that we can afford to be complacent at all. We recognise that the threat continues to evolve, as Admiral Hudson has already explained to you during his evidence in January and during, as I understand it, your visit to the OHQ at Northwood earlier this week. We recognise in particular the displacement of substantial pirate activity from the Gulf of Aden to the wider Indian Ocean, where it is in fact much harder to combat as effectively as in the Gulf and where intelligence indeed plays a more important role. So our second line of action is the military. We will continue to build on the excellent military co-operation which we have had up to now, not only between the three main coalitions—EU, NATO and Combined Maritime Forces, all of which include a strong UK contribution—but also we are involving very closely the Chinese, Indians, Japanese, Russians and others. They co-ordinate minute by minute through the Mercury IT platform provided by the EU force, which again I am sure you are familiar with and which you were shown at the OHQ, and also at a higher level through the Shared Awareness and Deconfliction meetings. The third line is a legal one, and we are grateful to the governments of Kenya and Seychelles who are prosecuting pirate suspects. The prosecution of pirates is important to both the disruption and the deterrence aspects of Atalanta's mandate and we need solid and reliable partners for prosecution in the region. My Lords, there are currently 117 pirates in Kenyan prisons, 75 of which were transferred to Kenya by EUNAVFOR. Of this total, 10 pirates transferred by the US have been sentenced for eight years.

**Q284 Chairman:** We will probably come on to that in some of the questions that we will ask.

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Commander Bob Anstey, RN

*Baroness Kinnock of Holyhead:* Yes. One final point I would make is that what we do recognise, of course, is that the solution lies in dealing with the issues on the land, issues of lawlessness, lack of governance and general lack of rule of law. Those are the kinds of issues we want to talk about and you may want to raise the issue of Paul and Rachel Chandler.

**Q285 Chairman:** Thank you for that statement, Minister. I was going to ask you for your assessment of the effectiveness of the operation. Clearly from that you are saying that you think it is quite good at the minute but we are rather crossing our fingers to see whether that will continue under the new weather regime. What are your assessments of its strengths and weaknesses? I am particularly interested in the outcome of the recent informal defence ministers meeting because there are normally no minutes or record of that. There was a press statement I think from the Spanish side that suggested that the operation was going to change quite radically. We certainly did not hear that at Northwood earlier in the week, so we are interested to hear about that as well.

*Baroness Kinnock of Holyhead:* If I may, I will just deal with the first part and then Bob will follow through on the second part of your question. I think we are pleased with the effectiveness of the EU operation. I think it is proving successful in terms of the essential safe delivery of the World Food Programme's humanitarian aid to Somalia, which is its core task, escorting 49 ships in 2009 and delivering more than 300,000 tonnes of aid. It has also, I think, had a remarkable effect, as I said earlier, in limiting the number of successful pirate attacks against merchant shipping. That is another important aspect of it, especially in the Gulf of Aden trade artery. Working closely with the shipping industry, I think we can say our assessment is that it is effective.

*Commander Anstey:* May I pick up a few of the strengths and weaknesses that we would like to highlight? I think Atalanta's main strength is the close liaison which it enjoys with the shipping industry. No doubt the Op Commander will have noted this as well: the take-up of the best management practice and the co-ordination within the Internationally Recognised Transit Corridor are held up as examples of that best practice. You may well have come across some of the merchant navy liaison officers on the OHQ staff itself, which is another example of where we are achieving that close co-ordination. I think the mere fact that we have military vessels in that region has generated a certain trust and reassurance for the merchant community. On the subject of co-operation, our co-operation with the Combined Maritime Force, the US-led counter-piracy effort and obviously the NATO

counter-piracy operation is highlighted, as the Minister mentioned, by the Shared Awareness and Deconfliction (SHADE) organisation where at a tactical level we are able to divide up a lot of the responsibility for counter-piracy operations so that we can avoid some of the replication that is potentially there. To date we have 22 countries which have participated within the SHADE, not just, I have to say, within those three counter-piracy missions but obviously some which are there on a national basis and have been brought within the SHADE, notably China within recent history. Again, liaison officers from each of those missions are embedded to ensure that happens. Finally, there is obviously the potential for the comprehensive approach, which the EU specifically brings to such an operation, where the EU military planners, both in Brussels and Northwood, have direct connection to the European Commission itself, enabling us to use some of the €2.5 million of development support money to target at penal and judicial structures, which is the other side obviously of what we are trying to do at sea. So there is that closer link there.

*Baroness Kinnock of Holyhead:* You mentioned the Spanish interventions and at the defence ministers meeting last week in Spain where my noble Friend Baroness Taylor attended there was what we can describe as fulsome praise for the achievements of the operation and the way that it was being planned and run from Northwood. I think we would have to echo that, recognising the achievements of the Commander, his staff and all the ships' crews engaged in this operation. The Spanish Presidency also said that they hoped that ministers would soon be able to agree to extend the mission beyond its current date of December 2010.

**Q286 Chairman:** If I may just press you on this a little, and it may be it was wrongly reported, but there was certainly a press report afterwards which seemed to be officially sanctioned in some way that the strategy would change so that it was more around prevention of pirate vessels getting off the coast, so you concentrated your resource, rather than looking after the whole of the Somali Basin and everywhere else as far as the Seychelles and around. Is that right or wrong?

*Mr Holtby:* We saw last night the report in the Spanish media but that is not based on the outcome of the ministerial meeting; this was not raised there. The operation will continue to conduct focused operations at key coastal locations at certain time—this is part of the existing strategy, so there is no change of tactics here. I think Admiral Hudson in his evidence to you in January explained why operations along the coast in any kind of blockade format simply were not practical.

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**Q287 Chairman:** I will take that as a “no”.

*Baroness Kinnock of Holyhead:* It just goes to prove that you cannot always believe what you read in the press!

**Q288 Lord Anderson of Swansea:** It is an impressive international operation. Do we believe there are any free loaders, any countries that do not pull their weight and, if so, what are we doing about it?

*Baroness Kinnock of Holyhead:* Personally I do not have the detail of which of those countries that I listed as working with us are living up to the pledges and promises that they have made.

**Q289 Lord Anderson of Swansea:** It is not actually promises, Minister, but people who are just not participating, leaving us to do the heavy lift and they have the fruits of the free passage.

*Baroness Kinnock of Holyhead:* I am not aware at all of that being the case. I think there is a sense that there is quite a good team working across NATO and the EU, as well as the individual countries.

*Commander Anstey:* At the operational level, I think it is a very shared effort and there is no suggestion that nobody is pulling their weight. Obviously I cannot speak for the political level and contributions.

**Q290 Lord Inge:** Are all nations in the EU which have military capability providing what they can? I did not get the impression that some were playing as much part in it as others when we were down at Northwood..

*Commander Anstey:* No, my Lord, I do not believe that all nations within the EU with a military capability are necessarily contributing to the operation.

*Baroness Kinnock of Holyhead:* I would imagine that the UK does have an EU role in this because of the nature, experience and expertise that we have.

**Q291 Lord Hamilton of Epsom:** Minister, you intimated that they are trying to extend the mandate of Atalanta and Northwood indicated to us that they were looking for two years; they thought they would probably get two. Would you think that we are talking about a minimum of five years for this operation to be running and it may well be much longer? Would that be a figure you would put your name to?

*Baroness Kinnock of Holyhead:* I do not have a notion of a figure.

**Q292 Lord Hamilton of Epsom:** It seems likely, does it not, that this is going to go on?

*Baroness Kinnock of Holyhead:* I think the current judgment would be that there is a lot of work that still needs to be done and hopefully we can reach a stage

where it will not be as necessary as it is now, but I think predicting that would be very difficult and probably not appropriate.

**Q293 Lord Hamilton of Epsom:** To follow that, the casualties to date, the number of people who have died in all of this, has been relatively minor. Do you think that number is going to grow exponentially as the pirates get more desperate and take hostages? If we think of the people who have been taken off this yacht, they are of a certain age and the wife is supposed to be suffering quite badly; she may well not live, even if she ever does get rescued, long enough.

*Baroness Kinnock of Holyhead:* I think, my Lords, the argument has to be that we have to keep offering this kind of protection and vigilance in the waters around Somalia and towards the Horn of Africa. It is, as I understand it, also quite a seasonal thing. The pressure from the pirates is greater at certain times of the year, depending on whether it is the rainy season or the dry season, so I think we are ready at different times for more activity. Predicting a level of activity is very difficult. Therefore, it means that we have to stay in place and do whatever we can.

*Commander Anstey:* My Lord, I think where you were coming to was the use of violence against those who are hijacked. From our side, there is an understanding at the moment that piracy is good business sense from their side and, therefore, that actually killing or injuring your hostages does not make for good business. At the moment, although we have seen threats made against hostages as a bargaining chip, seldom have those threats ever been carried out. There is a view that that might of course be a game changing moment perhaps, should they go into that different level, but at the moment there is no indication that they will.

*Baroness Kinnock of Holyhead:* And they never have, have they? There has never been anyone killed or seriously hurt.

*Commander Anstey:* There have been deaths within counter-piracy operations inadvertently.

**Q294 Lord Hamilton of Epsom:** Blue on blue?

*Commander Anstey:* Yes.

**Q295 Lord Chidgey:** Can we just now look at the wider aspects here, Minister? Can you tell us a bit about what you believe the EU's strategy is to tackle piracy in the Gulf and the Somali Basin? There is a sub-set of questions here which I would like to put to you as well. What does the Government believe are the root causes and what more could the EU be doing to address these causes? I am going to come back to this: what actions have African nations of the African Union and the Gulf States taken about piracy? What role is the UK playing as part of the wider

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international effort at the political and diplomatic level?

*Baroness Kinnock of Holyhead:* My understanding clearly is that the European Union is pursuing a very comprehensive strategy to tackle the piracy and of course the root causes of the Somali piracy are that instability and lack of rule of law on the land. With the EU, the UK and other international partners through the contact group, which I know you are all aware of, on Somalia supports the efforts of the Transitional Federal Government, the UN Political Office on Somalia and the African Union military mission, AMISOM, towards the establishment of a peaceful and secure environment in Somalia. What the EU has been discussing, and indeed I was in Brussels the week before last having these discussions with the individuals and units that are working on future plans, is how they can increase their commitment to Somalia, including support for a general reinforcement of Somali capacity to meet the security challenges that they face. In the north of Somalia, in Somaliland and in Puntland, the UK, EU and UN are supporting programmes to deliver rule of law projects—judiciary building and so on—including support for the police as well as prisons. DFID is very much engaged in providing funding for alternative livelihoods for some of these individuals. The EU has proposed a training mission that would contribute to strengthening the Somali security forces, and that means military training. It would be time-limited to one year and would enhance an ongoing Ugandan training mission, training 2,000 Transitional Federal Government troops in Uganda currently, and it is to support those efforts that the EU is now working and discussing. As you well know, and you have raised this with us, there are three specific concerns that we agreed to consult Parliament on over the conditions being met before a final decision in Brussels to launch the EU mission is taken and, indeed, you might welcome an update on the progress being made to satisfy these conditions. May I? Force structure and oversight arrangements to incorporate newly trained platoons: I think this is well in hand. The EU mission itself will provide the structure, working closely with the United States. Funds to pay salaries to the newly trained troops: of course that is an essential element of this because the danger is that if you train them, they then return and Al-Shabab is able to offer them more sweeteners than the transitional government. That is an important element of this. The EU Council Secretariat now proposes to designate a lead person, working to Baroness Ashton, whose role will be to co-ordinate these contributions and manage donors to ensure the right level and mechanisms for putting these salaries in place. It is a very complex and difficult set of challenges obviously but I think that every effort has

been made to work this through in an effective and speedy way. In terms of structures to manage these payments, the existing PricewaterhouseCoopers' mechanism will act as a management agency.

**Q296 Lord Chidgey:** Thank you very much for that. I have a couple of supplementaries to that, as I said a moment ago. Can I talk first of all to you about the AMISOM force? I am interested to see that we have a representative of the Ugandan Parliament here. I know that the Ugandan troops make up, I believe, the bulk of that particular force and are working very effectively. The problem is, as I understand it, the mandate, which does not permit AMISOM to work outside of Mogadishu, even if they were properly equipped to do so. I really would like to know what the Government's view on extending that is, if it is possible, but bringing security to the wider region because, as I think we know from the visit of the Somali ministers last week, the opportunity and effectiveness of the TFG to work outside of Mogadishu is extremely limited. Whilst I listened very carefully to the plans the Government has and the EU has, it sounds very good but it is not going to work unless it actually starts to happen and there does not seem to be a mechanism in place to establish the sort of priority we need to make these measures a reality in a reasonable time. I wonder, therefore, what we can do in the short-term to strengthen the TFG and in the short-term to strengthen the military, security and police measures to make it possible to bring security and civil administration to the region in order to tackle the actual pirate problem.

*Baroness Kinnock of Holyhead:* Clearly, my Lords, these are extremely difficult issues. The TFG are sitting in Mogadishu with sniper fire continuously; they are in place behind the presidential palace. I met the Peace and Security Commissioner at the African Union summit and he had been there the week before. In fact, someone who was accompanying him around the presidential palace in Mogadishu was killed. The security challenges are enormous, very difficult indeed. You only have Uganda and Burundi in the AMISOM force. One of the things I have been trying to do is to encourage more African countries to join because it is an AU mission. There are discussions ongoing on whether they could be bolstered by a United Nations force, were that possible, but there does not seem to be much of an appetite for that. Security issues are very difficult ones to manage, as you suggest, and actually getting them to be able to have some control outside of Mogadishu would be necessary. What we are trying to do is to support the judiciary and the police force and the livelihoods of some of the people in Mogadishu, but only last week there was ferocious fighting in Mogadishu and several thousand more people moving around and

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being displaced. It does not seem to be any more stable now, even though we are all trying to work towards a resolution of the huge problems. The African Union does not take any action, obviously, directly on piracy.

**Q297 Lord Swinfen:** Minister, you mentioned the police force in Mogadishu. Is there in fact a police force in Mogadishu?

*Baroness Kinnock of Holyhead:* A kind of security force, as I understand it. I do not know that they have uniforms or even how effective their operation is. That is something that perhaps I could look into in more detail and give you that information.

**Q298 Lord Swinfen:** It is just that I was rather surprised that they had a police force there.

*Baroness Kinnock of Holyhead:* It is more like supporting efforts to police; I should probably word it in that way.

**Q299 Lord Swinfen:** I am not going to press you on it. You took me by surprise.

*Baroness Kinnock of Holyhead:* It is so that the people can go about their business and go and buy food. Very few children are in school there. Infant mortality is phenomenally high. These are all the pressures that those people are living under. It is an attempt to bring some kind of security.

**Q300 Chairman:** Perhaps your officials could clarify that afterwards.

*Baroness Kinnock of Holyhead:* Yes, we will do that on security and policing efforts.

**Q301 Lord Sewel:** Briefly, I suppose on this day of all days it might be worth observing that there is a significant power to the south, is there not, in the Republic of South Africa. What is their involvement and contribution?

*Baroness Kinnock of Holyhead:* I am sure that in the discussions the Prime Minister will have today with President Zuma there will be discussion about Somalia. I think the whole international community and the African continent is very preoccupied with how they can manage this very destabilising effect that it has on the whole region. If you look at other countries in the Horn of Africa, it is not just Somalia; there are many problems.

**Q302 Lord Sewel:** At the moment, what is their contribution?

*Baroness Kinnock of Holyhead:* I am not aware other than diplomatic. Is there a financial contribution?

*Mr Holtby:* In terms of counter-piracy, the South Africans are not making a contribution at the moment.

*Baroness Kinnock of Holyhead:* Again, I can look into whether there is any funding or anything of that kind that they are doing.

**Q303 Lord Swinfen:** I want to change now to the criminal networks that are organising the piracy which we have been told about. What can you tell us about these networks? What happens to the financial proceeds from the piracy? Can the funds be traced to the ultimate destination? Are there any direct or indirect links between the piracy and terrorism? To what extent are the pirates operating from the Yemen as well as from Somalia?

*Mr Holtby:* Splitting it into those four questions, my Lord, in terms of their organisation, there are essentially two groups of pirates in Somalia: those based in Puntland in Eyl/Garacad and those in the south in Hobyo/Haradheere in the Mudug region. In general the pirates operating in the north are not as cohesive or organised as the southern group. In effect, they are a number of loosely affiliated cells; they are not a cohesive organisation. The southern group, from our information, is much more of an organised crime group with a core leadership that organises and finances the pirate attack groups. It is the southern group in particular that uses support ships to enable them to operate far out into the ocean. This gives them the element of surprise and success in their attacks that I think the Operational Commander has already briefed you on. There are three basic means of financing: there is a committee format; but also we have seen several individuals coming together; and, finally, one-man operations essentially. There is a whole range of pirate management techniques out there, from what we can see. In terms of the financial proceeds, the general pattern we have seen is for investors to form a syndicate or a committee with a formal written agreement between them; we have seen evidence of these written agreements. The committee then gets the largest percentage of the ransom. The remaining part of the ransom is split between the pirate leader, pirate attack leaders and the pirates themselves, plus fees for interpreters, negotiators and the others who are involved in this organisation. As for the use of it, we have certainly seen significant buying of property in Somalia and Kenya. We believe that many of the pirate committees have also transferred money through the Hawala system out through the regional hub in Dubai from where it can be remitted to various other parts of the world to backers. We have not seen any evidence as yet—and the Hawala system can be interpreted and seen in various ways—that any of this has come to the UK, but we are continuing to watch that situation. One thing that we have been clear about is that we are not really seeing any of this money actually going back to investment in the

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technology that they use. The equipment that they use seems to be still at a very basic level. My Lord, you also asked about the links between pirates and terrorism. To date we have no firm evidence at all that terrorists are using piracy as a means of raising funds, but we do keep a very close eye on this because it has obvious legal implications. There is also no evidence that the pirates are involved in pursuing political or terrorist agendas from the other side. What we cannot rule out is that there are individual links between some pirate groups and individuals linked with insurgent groups but we are not seeing it at all in any sort of organised way. The last part of your question was about Yemen, and I will be very quick. We certainly see what we believe to be individuals linked to piracy crossing to Yemen but not for piracy reasons; they are much more involved in the arms, drugs and people trafficking trades. We have not seen any credible evidence that pirates themselves are actually operating from Yemen. They also use Yemen to secure cheap fuel, which is of use to them.

**Q304 Lord Swinfen:** Thank you. That is very interesting. I notice you said that there was evidence of property being bought from the proceeds in Kenya. Is there anything in Kenya that is equivalent to our Proceeds of Crime legislation so that the Kenyan authorities can sequester the property and get it from them so that it does not make it worthwhile for the pirates? You also mentioned that there was evidence of some of the proceeds being transferred to Dubai. Does that mean that there are people in Dubai who are financing these operations as investors, and is there anything that can be done in Dubai to prevent this and to put pressure on them?

*Mr Holtby:* On your first question, my Lord, the Kenyan Government is currently in the process of pushing through money laundering legislation, which we warmly welcome. Once that is in place then various further steps will be possible. In terms of money moving through Dubai, a huge amount of money moves through Dubai for lots of different reasons. The Dubai authorities are keen to help where they can. They have limited resources; they have shown a positive willingness to support us, but we are very aware that piracy is only a tiny percentage of the overall financial flows through the Hawala system that goes through Dubai. In some ways it can be quite difficult to separate it out from all of those others.

**Q305 Lord Swinfen:** If it is going through Dubai, do we know where it is going?

*Mr Holtby:* It can be traced. It is harder for us to trace it going to everywhere in the world. What we can do is link it to the Hawala system that operates in the UK and that is why we have been able to say with a

fair degree of certainty that we do not think any of it is coming here.

**Lord Swinfen:** If it can be traced, that should make it less attractive to piracy in the first place.

**Q306 Lord Hamilton of Epsom:** Have you any evidence that bribes have been paid in advance by some of these ship owners before they even set sail to allow them through?

*Mr Holtby:* I think the Operational Commander was asked a similar question and certainly we share the same intelligence that he does and we have seen no evidence of that.

**Q307 Lord Hamilton of Epsom:** You say that there is no evidence of investment in technology. It is a remunerative business. Is it not just a matter of time before some of this money gets ploughed back into making the pirates more effective?

*Mr Holtby:* It could be, but they have been operating for quite some time already and they are very good at spending their money on 4 x 4s and houses and things like that. The committees are not really interested in making the boats better.

**Q308 Lord Hamilton of Epsom:** But in theory if Atalanta is succeeding, their income is dropping, or is it not dropping?

*Mr Holtby:* The overall level of hijacking is remaining roughly the same, although the difference between the groups is changing. I do not think Bob Anstey would disagree with me: that does not really provide a better incentive for them to invest in better equipment.

*Commander Anstey:* I think what we are seeing is that they will use the most basic equipment that will achieve the job and at the moment they have a fairly reasonable formula for hijacking. What we have seen, of course, is that although we have had some success in overall numbers of vessels hijacked, ransom payments have tended to go up over the last year, so as far as profit is concerned they are making more profit.

**Q309 Lord Hamilton of Epsom:** So the overall income is going up?

*Commander Anstey:* The overall income is I think at least remaining steady, if not increasing, because of the fact that the ransom payments and demands have gone up.

**Q310 Lord Inge:** Mine is a very simple question. What military capability gaps do you believe that Operation Atalanta still has? We were given things like maritime patrol aircraft, additional tankers, helicopters and UAVs, things like that. What are the

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key equipment enhancements you would like to see for Atalanta?

*Commander Anstey:* I think I would probably echo the Operational Commander that whilst we have sufficient ships to do our primary task of protecting the World Food Programme and assisting the IRTC, because we have been successful there we have pushed piracy out to the Somali Basin and that becomes a problem where just throwing in more ships does not necessarily assist because of the sheer volume of ocean. There it needs to be intelligence led and when we get into that stage we are obviously talking about maritime patrol aircraft facilities. I would suggest that the Operational Commander would never have too much of that. Cognisant of the fact that there is a limit on what countries can provide, just as we have done a co-ordinating role in the IRTC, in the Somali Basin, again we have established co-ordination for MPA between the various missions as well to try and share what intelligence there is.

**Q311 Lord Inge:** Have you got enough MPA then?

*Commander Anstey:* I believe the view at the moment is that to achieve what we need to achieve we have. Of course, as pirates push ever further out into the Somali Basin, that ratio is going to go up again, so I anticipate that we will continually face the challenge of coping and then having to push further.

**Q312 Lord Inge:** And therefore wanting more capability?

*Commander Anstey:* Yes.

**Q313 Lord Inge:** Are we ever going to be in the Royal Navy able to provide a frigate full-time for Atalanta or not?

*Commander Anstey:* Because we support the three missions, we will inevitably, I believe, have to do some form of time-share between them.

**Q314 Lord Crickhowell:** On the provision of tanker facilities, we have heard that one of the problems is that because the ships have to go back and refuel, that occupies quite a lot of time. We had a suggestion from the representative of the maritime industry that actually commercial tankers could provide the fuel and that there is scope for a much improved fuel supply by using the commercial ships that are available so that we did not have to rely purely on the forces' own tankers or the need to return to port. Is the possibility of using the actual oil tankers that are trading in the area as possible sources of fuel for the maritime forces being followed up?

*Commander Anstey:* My Lord, I do not believe that has been investigated in depth as yet, although it is a reasonable line of inquiry. The reason to date, of

course, that we have used ships of the RFA and their equivalent through other nations is because refuelling a ship at sea is a fairly complicated manoeuvre requiring fairly specialist equipment and, therefore, I would imagine there would be some form of alteration required to the tankers themselves to enable that. If it could be done without that, then it could appear to be better value for money but at the moment, as far as value for money for refuelling is concerned, using the ships which are already designed for that purpose provides the best value for money.

**Q315 Lord Crickhowell:** I thought the representative of the maritime industry, if my memory serves me right, said that there were facilities, that most tankers were equipped and able to do the job. I hope perhaps that this matter will be followed up. It was very much from that source that the proposal came and so obviously the commercial industry is prepared to help if it is taken up.

*Commander Anstey:* In which case we will investigate.  
**Lord Hamilton of Epsom:** Could you come back to us on that?

**Q316 Lord Jones:** What can be done to improve the availability of human intelligence for Atalanta and what are the obstacles to sharing intelligence between Atalanta and other maritime forces operating in the area, including NATO?

*Commander Anstey:* The specifics of human intelligence obviously stray into classification levels which we cannot necessarily discuss in an open forum. However, the pure dynamics of achieving human intelligence in a hostile land environment, such as Somalia, will make that more difficult. I am afraid I do not have any more information on what human intelligence channels we are pursuing at the moment. On your wider question of intelligence sharing throughout, one of the main aims of the SHADE organisation is to share that form of tactical information. I believe that your Lordships may have seen the Mercury IT system which has allowed for that fairly low level but widespread dissemination of intelligence outside the core missions and into national missions, such as the Chinese and the Russians. That has allowed for a greater speed of response where there is a potential pirate act occurring. Additionally, the way that we have co-located at present the OHQ and NATO command at Northwood and of course Permanent Joint Headquarters, which is within the command chain of our representative in the Combined Maritime Force, assists in that sharing of intelligence and wider still when we talk about sharing information and intelligence with the industry, the EU-sponsored Maritime Security (Horn of Africa) website is an effective way for those to tap in to whatever

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information is being provided and indeed they provide their own back. I think that having been recognised, the MSC(HOA) website actually won awards for its improvements to safety at sea. Inevitably, in that instance there will be those who do not register and who do not receive that information. At present that is up to about 25 to 30% of the ships which pass through that region. Although it is advertised to them and they are offered a chance and it is free, they decline to register their transit. As for other initiatives we use, for instance Egypt have now taken on board the task of briefing south-bound ships through Suez as to the piracy situation and we also hand out free piracy maps to show the areas where we know there is pirate activity and, of course, to illustrate where the Internationally Recognised Transit Corridor is as well.

**Q317 Lord Jones:** Today is a public forum, but we are striving for more human intelligence?

*Commander Anstey:* We are.

**Q318 Lord Sewel:** We know that politically there is difficulty in the EU-NATO relationship. Does that impinge on the effectiveness operationally or at the operational level are relationships perfectly adequate?

*Commander Anstey:* I believe at the operational level the relationships are superb actually. There is a high degree of co-ordination, I have to say facilitated in large part by certain members of both organisations being present, ourselves included. For any military operation on an international basis, there is a certain co-ordination that happens in the field, particularly with ships at sea; it is just part of life at sea. It matters not, particularly here where we quite often encounter the Chinese and the Russians; there is a shared view of life of mariners and I think that reflects in the way that the operation is run through the whole region.

**Q319 Lord Inge:** What would therefore be the priority for enhancements that you give? What would be your priority?

*Commander Anstey:* For enhancements in intelligence?

**Q320 Lord Inge:** Intelligence capability gathering or equipment: what would be the priority, UAVs or what?

*Commander Anstey:* I think it would probably go back to the continued support by MPA assets at the moment. UAVs, of course, are not as widely available, so we probably need to be more realistic about what we could get. I think we should continue striving for maximum support through the MPA.

**Q321 Lord Selkirk of Douglas:** Has Atalanta focused on deterring piracy, rather than seeking to prosecute suspected pirates? Do you agree with this balance of priorities? May I ask as an extension to that question whether the position will be made clear—I do not expect an answer this morning on this—that possession of stolen goods can and will be proceeded against? I think this is quite a complex area both of law and of practice, but it would be very helpful if a reply could be sent in due course.

*Baroness Kinnock of Holyhead:* The key task obviously, as I said at the outset, is that Atalanta ensures the protection of the World Food Programme and other vulnerable shipping, but obviously another part of the task is the disruption and prosecution of pirates, and that remains a key task. The operation has intercepted pirates on a regular basis and, indeed, has prosecuted suspect pirates. Assiduous analysis of evidence is made, witness statements are carefully followed through and if there is sufficient evidence, then detention takes place. The process, it seems to me, is one that is very clearly set out and followed. It is an approach which the British Government supports and obviously we are keen to see that as many pirate suspects as possible are prosecuted when appropriate.

**Q322 Lord Hamilton of Epsom:** I do not know how many of the people who are waiting to be convicted in Kenya have been and have been locked up. Certainly Northwood suggested that five years in a Kenyan jail was not much of a deterrent for a Somali pirate.

*Baroness Kinnock of Holyhead:* I think that the option of the Kenyan or Seychelles prisons is one that probably they would not choose, but it is what we have to do when they are arrested, detained and found guilty. I think what these two countries are doing is commendable, and we hope there will be others; we are making approaches to other countries such as Mauritius on these matters to see whether we can have further opportunities for the detention of prosecuted pirates. I do not know much about Kenyan jails, thankfully, but I can imagine it would not be a very pleasant experience. Certainly, if they have been prosecuted, then that seems to be the best way for us to deal with the problem.

**Q323 Lord Hamilton of Epsom:** Minister, we do not know much about Somali pirates either. The only thing I do know about them is that they are quite hard men and I very much doubt if they are much put off by a Kenyan jail and certainly not by a five-year jail sentence when the alternative is to earn millions of pounds kidnapping ships.

*Baroness Kinnock of Holyhead:* I am sure those are options that they carefully look at. I do not know if you are referring to when they are released. As I

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understand it, their equipment is destroyed; they are given enough fuel and supplies to return to land and that is something that we have to do under the International Convention for the Safety of Life at Sea. So there are international obligations, as I understand it. The Commander perhaps could expand on that, but I think due process has to be followed in the case of pirates who are captured, prosecuted and detained.

**Q324 Lord Anderson of Swansea:** The position at the moment on the prosecution side is bedevilled by ad hoc arrangements: our own arrangements with Kenya, with Seychelles, the EU and so on. Piracy is an international offence. Why is the United Nations so reluctant to set up an international tribunal and why have we not pursued the idea of an island, which I have heard is appropriate off the coast of Somalia or the Yemen, where there could be an international prison?

*Baroness Kinnock of Holyhead:* I have not heard of any suggestion of an international prison but, again, maybe it is something that has been discussed as a possibility. I think the process that we followed very clearly, and continue to do, and we are talking to the Tanzanians at the moment also, in establishing piracy prosecution centres and so on is something that we have to do.

**Q325 Lord Anderson of Swansea:** Why does the UN not do it?

*Baroness Kinnock of Holyhead:* The UN has not engaged with this. We have a number of different groupings: NATO, the EU and others working together and with the UK involved. I think the UN really in terms of Somalia does not have that level of engagement.

*Mr Holtby:* May I briefly supplement what the Minister has said? There have been proposals for an international tribunal to be set up, which we and quite a number of our partners do not think is an appropriate response to this, given the time it would take to set it up, the cost that it would take to run, and really when you look at the other issues that are being dealt with by tribunals, like Yugoslavia, Rwanda and others, the equivalence is not the same. What the UN and the UN agencies have done is engage with us in the process of support to the regional authorities; and particularly significantly in the last month, in February, the Seychelles announced that they were willing to look at in a fast timeframe the establishment of a regional prosecution centre and also building up their prison capacity. It is the UN Office on Drugs and Crime which is the agency there that is helping to build up the court system and the prison system to help this to be done, helping to

support Kenya, burden sharing with Kenya. We will look at other options as well, but the UN is playing a role in this.

**Q326 Lord Crickhowell:** That takes us very neatly into the next question about which you were given notice, which is what assistance is the EU providing to Kenya, the Seychelles and other partner nations to build up their judicial capacity and so on to deal with this problem? Minister, you have spoken about the importance of the prosecution of pirates. You have told us there are 117 in Kenyan jails at the moment. We know this is putting a huge burden on the Kenyan judicial system. Trials take a lot of people and a lot of time. I welcome what we have just heard about possible support from the UN for regional facilities in the Seychelles and so on. That is new information, I think, but what more can we do to support Kenya? Kenya has a very important role if we are going to have successful prosecutions and, with the best will in the world, they can only do it if they are helped along the way.

*Baroness Kinnock of Holyhead:* That is a very good case that you make, my Lord. Clearly what we are looking for in Kenya, Seychelles, Tanzania, Mauritius possibly, is to have solid and reliable partners. They are in the region and they have a vested interest in bringing more security and stability to the region. The UK and the European Commission with €2.5 million funding so far have supported a number of programmes, again delivered by the UN Office on Drugs and Crime. That work is to develop Seychelles and Kenyan judicial and penal structures in order that they can expand their capacity to accept pirates. I was in Kenya myself quite recently and I discussed these matters with ministers and others. Of course it is a difficult task for them to undertake and we are very well aware that they will need considerable support. So we are very keen to relieve the capacity pressures that Kenya and the Seychelles are currently facing. One way to do that would be to have more countries in the region involved. To have more regional countries accepting suspected pirates would take some of the strain away particularly from Kenya which has been doing it for a longer time. Of course, in line with their commitments in the Djibouti Code of Conduct, that is something that we can, I think, justifiably press for from the region. We are continuing a very serious dialogue as we speak with the Mauritians and the Tanzanians to see if we can get them to put in a similar effort as Seychelles and Kenya are doing. We are also providing technical support to Somalia itself through, as we mentioned earlier, the improvements of prison conditions and working with Puntland and Somaliland on transfer of convicted pirates back from Kenya and Seychelles to Somalia. There is a lot

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of work going on, very complex work, all directed at trying to resolve a very difficult problem. I should reinforce the point that strengthening the judicial structures is very important in this context.

**Q327 Lord Sewel:** There are lots of ways in which this operation has been a success but I really want to focus on the 20 to 30% of ships that do not sign up because they seem to be the problem really. They are the ones which are most likely to be successfully targeted. What more could be done with the ship owners to reduce that percentage and is there anything that the insurers could do and any pressure that could be put upon the insurance industry to encourage ship owners not to be delinquent?

*Baroness Kinnock of Holyhead:* Perish the thought! Of course, as the noble Lord suggests, we need to work very closely with the international shipping industry on these matters and encourage as much as we can the best practice that has been identified. We are very grateful to national and international shipping associations which have been assisting us in making that case for best practice across the industry. We welcome the fact that 75% of ships transiting the Gulf of Aden are adhering to the best practice code. That is very important but we need to see the remainder also following this practice. Regarding UK shipping, the Department for Transport regularly issues counter-piracy advice and recommendations to all UK flagged ships, most recently in January. Internationally the lead has been taken by the International Maritime Organization, supported by the Contact Group on Piracy. The key flag states—Bahamas, Liberia, Marshall Islands and Panama—as well as the UK and others—have also signed the New York Declaration committing us to press all the ships under their flag to comply. We are trying to use as many ways and avenues as possible to ensure that there is adherence by an increased number of shipping companies. Of course, best management practices need to be updated regularly, we are very well aware of that, and a top priority for the Contact Group is that we continue to follow very closely any need that becomes apparent for updating the best practices. Adoption of the suggested self-protection measures I think are without any doubt the most effective method, as the noble Lord suggests, of preventing a successful attack. On the final point about the insurance industry, which was specifically raised, there was evidence last week of how the premiums for ships that are compliant with best practice are reduced compared to others. I think as a Government we very much welcome that, but we hope that the difference in premiums for those that are and are not compliant could increase in order to provide an additional incentive for compliance.

**Lord Sewel:** I think the insurance point is really worth trying to press. Ultimately, if you have the insurers turning round and saying, “Look if you do not sign up and obey the rules, you ain’t getting no insurance forever whatever” that could have a pretty dramatic effect, I would have thought. I do not know how you get there, most likely it is impossible, but I would have thought it is not beyond the wit of governments to put some pressure on their own insurance industries to make life more difficult for those that do not sign up.

**Lord Crickhowell:** Before you answer, can I come in on that one? We had two lots of evidence last week. The evidence from the shipping industry was extremely powerful and encouraging. I have to say, and I say it as a former Lloyd’s broker and underwriter who used to place quite big risks in the market, that I was very disappointed with the evidence given by the representatives from Lloyd’s, which I thought was less than convincing. My own feeling of knowing what happens when you place big risks in the market is that they could be doing more than they suggested last week they were doing. Can I put that point to you that perhaps more pressure could be put on the insurance industry, not only in this country but in other countries as well where they operate, to play their part in reducing the 25%?

**Q328 Chairman:** I think that is a message to you. We could have a very brief comment on it, but I think that is something about which the Committee feels very strong about in this area.

*Mr Holtby:* My Lord, the evidence you received last week did seem to be quite honest and frank. I was particularly struck when they said that in the market there would always be someone who was willing to pick up a premium. I think the positive point from this, though, is that the majority of the insurance industry does work with us very closely and is keen actually to support measures that counteract piracy; and they are involved in the discussions with the military as well in trying to do that. We have been trying to get them to increase that difference in premiums, which I think would be a very clear message to the shipping industry.

**Q329 Lord Chidgey:** On the points of military assistance, one of the issues raised with us at Northwood was that some of the nations engaged in this, particularly the French and the Russians, are prepared to have an agreement to provide military protection on their merchant ships, so a group of marines maybe, four or five or maybe six, and as far as Northwood is concerned that is a very effective deterrent against piracy. The problem seems to be, and maybe you could comment on this, that some of the flag nations—for example Mauritius, the

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Seychelles and Marshall Islands—are not prepared to give authority for military personnel to provide escorts for the ships going to the danger zones. What is the Government's view and what action is the Government taking to try to persuade some of these nations to allow this procedure to take place?

*Baroness Kinnock of Holyhead:* I do not know if the Commander has anything to say on this. I suspect, again, that we may need to respond to these detailed questions in writing to the Committee.

**Q330 *Chairman:*** I think one of the things that clearly came out of Northwood, and it comes to the next question in many ways, particularly about the World Food Programme, was that these vessels are amazingly vulnerable and to have to have an actual warship, worth however much and with however many crew, to do something to escort these vessels when that could have been solved by going down the route of putting a detachment of a proper military part of Atalanta onboard would be a major way of making this operation far more efficient.

*Baroness Kinnock of Holyhead:* As I understand it, my Lord Chairman, there are discussions going on now between the WFP and the military on ways that we can improve this. I think the UK has already raised this also recently with the shipping industry.

**Q331 *Chairman:*** I think the issue, to make it clear, is that the flag state has to agree. Some nations do not worry about that too much—I think the Russians were mentioned—whereas we, no doubt under the international law, specifically ask the flag state for that permission. There does not seem to be very much listening by a number of the flag states.

*Mr Holtby:* Vessel protection detachments are routinely put on WFP shipments and others. As you say, some of the flag states have not yet agreed to that. This is an EU operation, it is an EU responsibility to do that, and I know the EU legal staffs in Brussels have been looking at that, pressed by the operation, and we support that.

**Q332 *Chairman:*** Are they looking at it or actually getting actively on the telephone to Mogadishu?

*Mr Holtby:* We know that it has been raised and we have already sent messages to the EU to say, “If you need us to do some of your lifting for you, we are willing to help” but we cannot go in there on their behalf.

**Q333 *Lord Inge:*** How long ago was it raised? How long has it been a pending issue?

*Mr Holtby:* The Operational Commander raised it earlier this year. Vessel protection detachments can be put on most of the ships with no problem. In a couple of cases it is more difficult.

*Chairman:* That is a slightly different point.

**Q334 *Lord Sewel:*** Why will not the WFP only charter ships that come from flag states that agree to have these detachments on them?

*Mr Holtby:* That is something that we could raise with the WFP. Certainly there was a discussion between the WFP and the military when they were talking about size of ships, but that is somewhat different. Were the operations to say specifically, “Can you only do it with the armed detachments?” I think WFP would have to consider that. That is a fair point.

**Q335 *Lord Hamilton of Epsom:*** I suspect that when it comes to the few WFP ships that it is possible to look to naval personnel to man them, but when you look at all the other 25,000 ships there are going through I do not think there are enough sailors to go round, certainly with the way that the EU has been cutting its defence budgets across the board. Do you agree with the advice of the IMO that if you are going to use security guards, they should not be armed?

*Mr Holtby:* My Lord, the very clear UK Government position is that arms should not be taken onboard vessels. If it is the case of a vulnerable ship, then we can support them by other means through military co-operation.

**Q336 *Lord Hamilton of Epsom:*** On Radio 4 a few weeks ago, there was a merchant captain who was attacked by pirates and they fired a very large number of AK47 runs at him and two RPGs, one of which went into an empty fuel tank. If he had had security guards onboard who were not armed, I do not quite know how they should have helped.

*Mr Holtby:* I think it is fair to say that the shipping industry is very concerned by suggestions that they should be armed. There has been talk of mandatory arming of ships by certain countries and they are worried that would lead to escalation in terms of the violence used and potentially when you have certain very sensitive cargos, engaging in fire-fighting is extremely dangerous.

*Chairman:* We move on to Lord Anderson and the World Food Programme, which really ties up this particular area.

**Q337 *Lord Anderson of Swansea:*** There are two questions. One, we understand that the Al-Shabab Al-Mujahideen movement on 1 March or thereabouts said that they would ban WFP operating in Somalia, including any contractors used by WFP. How seriously do we take this? Secondly, building on the previous questions about the vulnerability of WFP ships because they are lower in the water and

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slow moving and so on, we understand that the Ukrainians have offered to the EU a special forces detachment which it is suggested might go on WFP ships. Are we in favour of that?

*Baroness Kinnock of Holyhead:* On the WFP, clearly this is a very regrettable development and it even, as I understand it, includes proof that none of the food has been supplied by the US, which could be a very difficult fact for the WFP to ascertain in those circumstances, but they have been facing increasing attacks from Al-Shabab and other armed groups and it has meant that in southern Somalia food aid has been suspended and so, of course, the suffering has increased. WFP is extremely concerned about that and their offices have been temporarily closed in many parts of Somalia, particularly in southern Somalia, and they have moved their staff and equipment to safer places. I think that this is a very serious situation. When you consider the vulnerability and the needs of the population, then this is something that the WFP I know, and I have been personally following this, is concerned about.

**Q338 Lord Anderson of Swansea:** What steps are they taking to overcome it?

*Baroness Kinnock of Holyhead:* They are moving their staff into safety first of all, but, of course, they will now probably have to enter some kind of negotiations I would presume. Whether that is a feasible option for them, I do not know, but you cannot deliver food other than under humanitarian law and humanitarian law involves independence and neutrality. Delivering food with armed people and so on would not be what WFP would want to do. So they are, I am sure, looking very carefully at how they can ensure that the food can be delivered to the needy people, particularly in southern Somalia. On the issue of their vessels, these are quite slow, as I understand it, worryingly slow. It is a particular concern but, of course, they always have to make the judgment on the resources that they need for the food or the resources they need for faster, more expensive ships. That is what they are trying to grapple with.

**Q339 Lord Anderson of Swansea:** Specifically, if vehicle protection detachments, including possibly with Ukrainians, were put on World Food Programme ships, this would release other naval detachments for other work. Would that be something we would favour?

*Commander Anstey:* Yes, my Lord, we fully support the Operational Commander's desire for more vessel protection detachments. Anything that can be done to speed up this process, which we are suffering from at the moment about having to get flag state consent

and agreement from the troop contribution nations for the detachment, we would eagerly support. As you rightly say, at the moment putting a very capable warship effectively alongside a World Food Programme ship is not the best use of our assets and a longer piece of string for that would always be more useful.

*Chairman:* I notice that some of this is quite technical and clearly on the very technical bits you could come back to us later.

**Q340 Lord Hamilton of Epsom:** It was stated in a report in the Lords EU Committee last year, and affirmed in a judgment of the High Court on 18 February, that payment of a ransom is not itself a criminal offence under English law. What advice does the Government give to the shipping industry concerning the payment of ransoms? What is the Government's view about the possibility that it might be made an offence under US law, which is of concern to the shipping industry? Can the assembly of a ransom in the UK without the consent of the Serious Organised Crime Agency constitute a criminal offence under the Proceeds of Crime Act 2002? That is very technical.

*Baroness Kinnock of Holyhead:* I am very grateful, my Lord, for that simple and straightforward question! If I could address the first point that you raised on advice to the industry on ransom payments, of course, as the noble Lords will be aware, there is no UK law preventing third parties, such as ship owners, paying ransoms, but we continue to counsel against them doing so as we believe that making concessions to pirates would actually encourage and exacerbate the problem that we have with hijacking. As for the actions of private shipping companies, as long as they fall within the law, I would have to say they are a matter for them.

*Mr Holtby:* So far, there has been no designation of pirate individuals under UNSCR 1267, which is the al-Qaeda/Taliban sanctions regime, and so far none either under the UNSCR 1844 Somali sanctions regime. The US Government has been making proposals to add pirate individuals. We are already in active dialogue with the shipping industry and we know their concerns on this issue, particularly their concerns that if this was to be adopted it might complicate significantly payment of ransoms and potentially endanger the lives of crews. Their views are very well taken. This is an issue on which ministers will be taking a decision shortly as we expect this issue to be discussed at the UN in the middle of this month. On your question about SOCA, there is no UK law preventing the payment of ransoms, as my Minister has said. The assembly of a ransom in the UK therefore does not constitute a

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criminal offence. It is only when the pirates actually receive the ransom that it becomes a proceed of crime. It is at that point then that the ransom can be recovered and the pirates can be prosecuted under the Proceeds of Crime Act. That is the technical explanation.

**Q341 Lord Swinfen:** I am interested in what you have just said because last week the insurance companies told us that they did not pay ransoms. I asked them several times on this because they said they were prepared to make payments to ensure that the ships carried on their way to their destinations. What, therefore, is your definition of a ransom because in my book that is the payment of a ransom? How, therefore, if something was to go into United Kingdom law on the payment of ransoms, do you define a ransom?

*Mr Holtby:* The insurance industry's statement is correct insofar as they never pay the ransoms directly; it is always the shipping company that pays the ransom and they then go through a process of negotiation with the insurers in order to reclaim part or all of that back.

**Q342 Lord Swinfen:** But their policies do not cover the payment of ransoms?

*Mr Holtby:* The maritime insurance sector is quite complex and quite a lot of it is covered by the P&I clubs, which is not then Lloyd's, it is another part, so it is not in the Lloyd's policies.

**Q343 Lord Williams of Elvel:** You did touch on the question of the frigate earlier on. I was not entirely clear what you were saying. Is the UK Government going to provide a frigate for Atalanta later on in the year?

*Mr Holtby:* Yes, my Lord.

**Q344 Lord Williams of Elvel:** There have been rumours, suggestions, that the Operations Headquarters could be moved out of Northwood and into another Member State. Have you taken this on board? Do you have any comment?

*Baroness Kinnock of Holyhead:* If it is extended, my information is that it is likely that the UK will be invited to extend the current OHQ and to provide its

Commander and that would be a decision for the Government in place after the general election.

**Lord Hamilton of Epsom:** There is one final point and that is the range at which pirates can pretend to be fishermen. It seems to me to be absolutely ridiculous that we have people so far away from their home ports that even if they did catch any fish, they would be high by the time they got them home. I think this is all getting ridiculous. I think we are treating these people with kid gloves. I think it is all going to get worse and we have to toughen up on all of this.

**Lord Inge:** What he is saying, Minister, is blow them out of the water.

*Chairman:* Perhaps, having put an alternative strategy of piracy and containment to the Minister we could have a comment.

**Q345 Lord Hamilton of Epsom:** Would you like to comment on that?

*Baroness Kinnock of Holyhead:* On blowing them out of the water?

**Q346 Lord Hamilton of Epsom:** On the fishermen. The Navy are picking up ships at the moment that have not even got ice boxes in the holds and so these people pretending to be fishermen is absolutely absurd.

*Baroness Kinnock of Holyhead:* I think there is no option other than dealing with them in the way that we do because they are in fishing boats, that is what they have and they will travel as far as they can to get near to vessels that they may be able to hijack, so we just have to deal with that as it occurs. I do not know, my Lord, how you would say, "Let me inspect the boat for an ice box or any fish that you have caught". I do not think that would be an option if you were in a position where such a fishing vessel turned up alongside your ship.

*Chairman:* I am going to bring the session to an end at this point. We have had a response to your question, Lord Swinfen, I think we need to leave it at that. I am aware of the time as well. Minister, Mr Holtby, Commander Anstey, can I thank you very much indeed for coming before the Committee this morning. We are trying to conclude our report before Parliament dissolves for the general election, so if you have any tips on the date let us know! Thank you very much indeed for the evidence that you have given this morning.

**Supplementary memorandum from the Foreign & Commonwealth Office****Letter from Baroness Kinnock of Holyhead, Minister of State**

I was pleased to have been able to join you for your hearing on Operation Atalanta and counter-piracy off the coast of Somalia on Thursday 4 March 2010. Whilst providing evidence I promised to provide written responses on the following issues.

**USING COMMERCIAL VESSELS FOR REFUELLING PURPOSES**

HMG agrees that the use of commercial tankers for refuelling purposes is an option which should continue to be reviewed. But it is not currently assessed to be the best means of meeting our requirements either operationally or in particular most cost-effectively.

We would have to assess carefully the cost of any training needed as well as the administrative arrangements (including insurance) that would have to be put in place. Presently we assess that the use of Royal Fleet Auxiliary vessels or equivalent tankers from other countries allows the flexibility needed for the operation and provides the best value of money to the UK taxpayer. However we will continue to re assess the operational mechanisms for providing fuel at sea to ensure that the task force can meet its obligations.

Specific points that would need to be considered in using commercial tankers include:

- To undertake underway refuelling there would need to be the additional fitting of a Replenishment at Sea (RAS) rig (for a commercial tanker the cost is estimated at \$6.5 million).
- Tankers would be supplied on a commercial basis. Charter costs for a medium ocean tanker are in the region of £11,000 per day, although these rates are currently lower than historical average because of the current economic climate.
- Unlike a RFA, which can conduct near continuous (day and night) refuelling operations, commercial operators would aim to operate with a crew of around 30 which would only allow two RAS per day (day only).
- Additional training would be required for the civilian crew.
- Once a tanker is used for refuelling it becomes a potential target for pirate operations (not the case for RFA vessels). The EU cannot afford to use a warship as a permanent escort for such shipping and some shipping companies can be uncomfortable with Vessel Protection Detachments because of the danger of escalating any potential pirating.

**SECURITY AND POLICE IN MOGADISHU**

There is a police service in Mogadishu, whose salaries are funded by the European Commission. The application of traditional law enforcement activities is being attempted in those areas controlled by the TFG but it will be difficult to extend further this in Somalia until appropriate security is established. The Somali Police Force anticipates selecting, training and sustaining 10,000 active-duty police officers by July 2010. The current staffing strength of is approximately 5,000. The international community has plans, working with AMISOM and the UNDP, to train recruits to international standards.

**AL-SHABAAB CAUSING PROBLEMS FOR WORLD FOOD PROGRAMME (WFP)**

WFP withdrew from areas controlled by Al Shabaab in January this year citing Al Shabaab threats and exactions. Al Shabaab had also complained that WFP was distributing food aid during the harvest period disrupting markets. In spite of the better than average harvest, the withdrawal is expected to affect food aid for one million people. The WFP spokesman announced in March 2010 that they would continue their work and would not stop providing food aid to the displaced Somalis in camps. We are monitoring the situation carefully.

**ARRESTING PIRATES UNDER THE PROCEED OF STOLEN GOODS/CRIME ACT**

There is no UK law preventing the payment of ransoms. It is only when the pirates physically receive the money that the ransom becomes a proceed of crime. This then allows for the ransom to be recovered and the pirates prosecuted under the Proceeds of Crime Act 2002.

The Kenyan Government has recently introduced a Proceed of Crime Bill that is being fast-tracked through their parliament. Once the Bill is implemented it will make it easier for pirates to face prosecution in Kenya, and allowing property purchased from ransom payments to be recovered.

UPDATE

Since our meeting, I am pleased to be able to inform you that the eight pirate suspects handed over by the UK to the Kenyan authorities at the end of 2008 were sentenced to 20 years in prison on 10 March. A further 11 pirate suspects will be handed to the Seychelles from EUNAVFOR for prosecution this week.

I look forward to receiving the Committee's report.

*17 March 2010*

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# Written Evidence

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## Memorandum by the Foreign & Commonwealth Office

### Letter from the Rt Hon Caroline Flint MP, Minister for Europe at the time of writing

I am writing in response to the Committee's request for further information following my Explanatory Memorandum of 17 October on the Joint Action and to inform you of a Council Decision which will launch the EU military operation against acts of piracy and armed robbery off the coast of Somalia.

I am grateful to your Committee for clearing the draft Joint Action on the proposed operation before a final English language version was available (a copy of which has now been sent to you). I can confirm that the Joint Action was adopted by the General Affairs and External Relations Council (GAERC) on 10 November 2008. The Council Secretariat is now drafting the Operations Plan (OPLAN) for this mission. The will OPLAN describe the logistics of the proposed operation and the Rules of Engagement. We expect to receive this draft on 24 November.

I am providing as much detail as possible about the upcoming mission in this letter. I shall also update the Committee more fully once the draft OPLAN and Council Decision have issued. However, I hope that the Committee will understand that, given the pressing need to launch this operation and ensure that there is no gap in escorting World Food Programme shipping, I may need to agree the Council Decision at the GAERC on 8-9 December, before scrutiny has been completed.

The UK's offer to provide the Operation Commander, Rear Admiral Phil Jones and the Operational Headquarters, the Multinational Headquarters at Northwood has been formally accepted. You asked what the command and control arrangements would be and what interaction there will be with Combined Task Force 150 and NATO forces. The Member States will exercise political control and strategic direction of the EU military operation via the Political and Security Committee (PSC).

A covering mandate confirms that Operation Atalanta will "liaise with organisations and entities, as well as States, working in the region to combat acts of piracy and armed robbery off the Somali coast, in particular the 'Combined Task Force 150' maritime force which operates within the Framework of 'Operation Enduring Freedom'". At the operational level, the EU Operation Commander shall act as the contact point with, in particular, ship owners' organisations, as well as with the relevant departments of the UN Secretary General and the World Food Programme.

NATO has recently agreed a mandate for Standing NATO Maritime Groups to enable them to tackle piracy when transiting through the Gulf of Aden. There is also a specific mandate for Standing NATO Maritime Group 2, currently on deployment until December, to take action to counter piracy and escort World Food Programme aid ships. The end date of the operation will be 20 December but the UK is keen that this remains flexible so that there is no gap with the launch of Operation Atalanta. EU and NATO are determined that their activity must be fully co-ordinated.

The UK has offered a Royal Navy frigate for at least part of the operation, subject to ESDP force generation requirements and UK operational priorities. Enhanced Rules of Engagement have been issued to Royal Navy units; they can deter and disrupt those suspected of pirate activity and they can also seize and dispose of pirate property, including the sinking of unmanned pirate skiffs (small boats). But at present there is a lack in UK law of clear arrest and evidence gathering powers for Royal Navy officers, so if Royal Navy officers were to arrest pirates, there is a real risk that such prosecution would fail on procedural grounds if they had to be brought back to the UK for prosecution (although it is not our intention in this operation to bring pirates back to the UK). The Department for Transport plans to address this in a forthcoming Bill. For this operation our plan remains to hand over any detained pirates to a state in the region for prosecution, subject to obtaining suitable assurances from that state with respect to treatment, and work is in hand to enable this. Rules of Engagement for Operation Atalanta will be available when the OPLAN issues from the Council Secretariat and the Operation Commander on 24 November. Details of these will be included in the Council Decision.

Under the standard ATHENA mechanism that covers funding of ESDP operations, current estimates lead us to expect that the UK share of common costs for the entire one year operation to be approximately £1.2 million. Although naval operations to counter piracy directly are important and necessary, we also need

to focus on tackling the root causes of piracy in this area—instability in Somalia. This operation is thus part of a wider HMG effort to stabilise the region, with DFID already active with a £25 million programme. The European Commission is also providing significant funding which is being discussed with Member States in the light of this planned operation.

You will be aware of the incident on 11 November involving HMS CUMBERLAND who boarded a foreign flagged fishing vessel, now known to be Yemeni, which had been hijacked by Somali pirates. The Yemenis were innocent victims of Somali piracy. This was a successful example of the Royal Navy's on-going efforts to counter piracy, deterring an attack and rescuing a pirated vessel and its crew.

As you will also know, the Sirius Star, a Liberian flagged oil tanker operated by a Saudi-owned, Dubai based company VELA INTERNATIONAL, was hijacked on 15 November approximately 500 miles off the coast of Kenya. 25 crew were on board including two British Nationals. Discussions are currently underway to find a peaceful resolution and secure the safe release of the hostages. This incident only serves to underline the importance of the ESDP mission.

*19 November 2008*

### **Memorandum by the Foreign & Commonwealth Office**

#### **Letter from the Rt Hon Caroline Flint MP, Minister for Europe at the time of writing**

I am writing in response to the Committee's request for further information following my letter of 17 November. I should also like to bring to the attention of the Committee three draft Council Decisions to be adopted by the EU under the framework of the Common Foreign and Security Policy which will be critical to the success of the EU military operation against acts of piracy and armed robbery off the coast of Somalia. The EU Presidency is asking that these be agreed under Written Procedure on 19 December. As these decisions are important operationally, I hope you will understand the need to agree these Decisions during the recess period, thus overriding scrutiny.

The UN Political Office for Somalia (UNPOS) co-hosted a conference on piracy with the Kenyan Government on 10–11 December 2008. Lord West attended the Ministerial day of the conference in Nairobi. In his well received national statement Lord West stressed the need for a co-ordinated and comprehensive international response to the increased levels of piracy. The UK has continued to insist that all military activity is fully co-ordinated to ensure that the response is effective in dealing with the threat. However, the vast size of the geographical area means that it is impossible to effectively monitor the whole region. To reduce this risk the EU is seeking contributions from Non Member States, including those in the region, amongst other things to improve the gathering and sharing of information on pirate activity. The International Maritime Organisation is considering the establishment of a regional centre that will help in this regard. Once established this will need to work closely with other regional and international bodies.

In the margins of the Nairobi conference Lord West was able to sign a Memorandum of Understanding with the Kenyan Foreign Minister that will enable the UK to transfer captured pirates for prosecution in Kenya. With support from British legal advisers the EU is also seeking similar arrangements with Kenya. The draft Council Decision on the required exchange of letters, to action this agreement, is one of the attached documents which need the Committees approval. Discussion continues on potential strengthening of UK legislation in this area, but with agreements in place with regional countries this is now less of an operational priority.

The UN Security Council adopted on 16 December a US drafted resolution (UNSCR 1851) on piracy, which the UK co-sponsored. This calls for the establishment of an International Contact Group to all aspects of counter piracy as well as calling for the establishment of a regional information co-ordination centre. The resolution also authorises land operations against pirates. At all times the UK has pressed for relevant international human rights legislation to be upheld and this is reflected in the resolution. We are satisfied that the UN Convention on the Law of the Sea 1982 provides an adequate legal framework for counter piracy military operations and we are keen to maintain a distinction between piracy and other criminal or terrorist activity. The ICG will focus on the proposals made by experts at the Nairobi conference specifically attempting to address the cause of piracy to ensure that any response is comprehensive, effective and with a long term impact. The ICG will need to consider measures to build regional capacity to ensure that those States agreeing to accept and prosecute pirates are able to do so to internationally acceptable standards.

The other draft Council Decisions relate to Status of Forces Agreements (SOFA) with Djibouti and Somalia. These are relatively standard EU drafts, with some necessary amendments to reflect the maritime nature of the operation. Member States are being asked to agree these three documents, by written procedure, on

19 December. It is consistent with the incredibly rapid progress of this operation that I am forced again to ask the Committees approval for override action. I can confirm that full scrutiny process will be carried out on all the relevant EU processes as soon as we are able to do so.

*18 December 2008*

**Memorandum by the Foreign & Commonwealth Office**

**Letter from Chris Bryant MP, Minister for Europe**

I note the Committee has asked how the agreement between the EU and Kenya is working and are interested in hearing if negotiations on similar agreements are under way with other countries and the status of the agreement with the Seychelles. The arrangements are working well. Kenya has raised concerns regarding the number of suspected pirates handed over to them but are pleased with support from the international community that means Kenya is given the necessary assistance in order to effectively manage the issue of pirate suspects. Kenya also recognises that along with the Seychelles, they are proactively responding to a regional challenge.

With support from the UN Office of Drugs and Crime (UNODC), the EC has provided €1.75 million funding for a judicial capacity building programme. Assistance provided in relation to prosecution and prison standards is enhancing Kenya's capacity to deal with the high level of demand. We are grateful for the support being offered by Kenya and more recently by the Seychelles. Piracy is a challenge for the region, and all regional countries have committed themselves through the Djibouti Code of Conduct, signed in January 2009 to implement legislation against piracy and to then prosecute pirate suspects. A total of 117 suspect pirates have so far been transferred to Kenya for prosecution, of which 75 were transferred by the EU (Kenya has prisoner transfer agreements with other countries). Ten of those pirates have been convicted and 107 are on remand awaiting trial.

The Government of the Seychelles signed a bilateral Memorandum of Understanding (MOU) with the UK on 27 July 2009 to accept the handover of pirate suspects. This is an important, direct response to the threat of Somali piracy to the Seychelles' economic interests, which include maritime tourism and fishing. The EU in October 2009 agreed to an Exchange of Letters with the Seychelles allowing EU forces to handover pirate suspects to the Seychellois. The UK is continuing in its efforts to identify other countries that could accept suspected pirates for prosecution and detention, if found guilty. However this is a complex area as we need to satisfy ourselves that *inter alia* human rights assurances have been met. Discussions about prospects for establishing similar arrangements with a number of countries in the region are continuing but no formal negotiations are taking place.

*7 December 2009*