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COMMITTEE

U.S. NAVY

STATEMENT OF

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ON

INTERNATIONAL PIRACY ON THE HIGH SEAS

BEFORE THE

SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

U. S. HOUSE OF REPRESENTATIVES

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Good afternoon Chairman Cummings and distinguished members of the Subcommittee. I am Rear Admiral Ted Branch appearing today on behalf of the Chief of Naval Operations. As a member of the CNO's staff in the Operations and Plans Directorate, I am happy to have the opportunity to appear before your committee and discuss the U.S. Navy's counter-piracy efforts in the vicinity of Somalia.

Background

Somalia is a largely ungoverned country with a shoreline stretching over 1,500 miles – equal to the distance from Miami to Maine. The primary industry and livelihood of coastal Somalia has always been fishing, and Somalis are capable mariners. During the last year, and especially last summer and fall, piracy incidents and ransom payouts increased dramatically. The lack of governance, poor economic conditions, vast coastline, and numerous vessels along the coast created a situation allowing pirates to mix in with legal fisherman, evade coalition Navies, and take merchant vessels hostage with little or no consequences. It is estimated that 25,000 ships per year transit the area in question, and the pirates enjoyed complete freedom of movement both at sea and ashore. Merchant vessels were forced to comply with boardings by pirates brandishing automatic weapons and grenade launchers. Compliant vessels and crews were generally unharmed and, after days or weeks of negotiation, ship owners paid a ransom to have the ships released. As of late, and evident with the pirating of M/V FAINA (carrying Russian tanks, rocket propelled grenades and anti-air artillery) and M/T SIRIUS STAR (crude oil), the pirates appear emboldened. With the rewards so high (ransoms typically exceed \$1M dollars) and little to no risk of consequences, thus far, piracy has become an attractive way of life for people in war-torn Somalia. Flush with cash, pirates may upgrade their equipment (boats, weapons, boarding equipment), improve their tactics and procedures, and continue to adapt to coalition naval presence over time.

For the past several years, countries in the region and some states victim to piracy have largely been unwilling or unable to receive and prosecute captured pirates, so there was no legal deterrent or risk to those committing piracy. This inability to deal with apprehended pirates, or persons under control (PUCs), we believe, has been a significant impediment to stemming the rising tide of piracy. Even if a naval vessel was close enough to interdict the act of piracy before the pirates took hostages, there was a downside to apprehending the perpetrators. If there was no law enforcement recourse, the ship would generally have to house the PUCs for extended periods, and in many cases would have to eventually release them when they could not be prosecuted. Now, due to the diligent efforts of the State Department and international community, there are enhanced United Nations Security Council Resolutions on piracy and bilateral agreements in place for the detention and prosecution of PUCs. Even though no United States ships or seamen have been pirated, the U.S. Navy has taken a leadership role in counter-piracy operations.

U.S. Navy Leadership

In response to the increasing frequency of piracy in August of 2008, U.S. Naval Forces Central Command (NAVCENT) developed and is executing a counter-piracy campaign plan.

NAVCENT began by designating a Maritime Security Patrol Area in the Gulf of Aden where merchant vessels could transit with a higher probability of encountering naval vessels along the route. We had found that piracy usually did not happen in the vicinity of navy ships. NAVCENT also energized the commercial shipping industry and interfaced with the International Maritime Organization, providing “best practices” to mariners in order to avoid being pirated. Initially in the summer and early fall, relations between navies and industry were strained with each side believing the other could be doing more to prevent acts of piracy. However, through continued dialogue with concerned stakeholders, cooperation with industry is improving.

NAVCENT garnered the support and participation of several Navies who have contributed ships to the campaign. NATO, the European Union, and other countries acting unilaterally have agreed to participate or are already on station conducting counter-piracy operations near Somalia. Countries with naval ships who have or are participating in counter-piracy operations include the United States, the United Kingdom, Germany, France, Denmark, Greece, Italy, Turkey, Russia, Pakistan, India, Malaysia, China, and Saudi Arabia. The Republic of Korea and Japan have announced their intention of sending ships to the region to support this effort. On 13 January, NAVCENT stood up Coalition Task Force 151 focused on counter-piracy operations and commanded initially by a United States Navy Rear Admiral. Even with this high level of cooperation, the ocean area is vast and merchant ships are numerous. Piracy is not just a naval problem to solve – it is an international problem requiring an international solution.

Current Situation

The efforts by NAVCENT are bearing fruit. There are currently more than 20 ships operating in the region, demonstrating international willingness to provide assets and expend resources to help solve this problem. Recent failed piracy attempts have been caused by merchant ships taking evasive actions when being fired upon by pirates, rather than slowing down and allowing themselves to be boarded. In the last two months, there have been only 5 successful piracies out of 34 attempts. With increased coalition Naval presence, the merchant shipping industry following NAVCENT’s advice to limit their chances of being pirated, and local countries such as Kenya agreeing to incarcerate and try suspected pirates, we are making positive progress in lowering the level of piracy seen in August through November off the coast of Somalia.

Overview of Legal Authorities

Although I am not a lawyer, my legal advisors continue to rely on a number of legal authorities to provide guidance for U.S. Navy operations. They are:

International Legal Authority: Piracy has always been a crime of universal jurisdiction and international law has long recognized a general duty of all nations to cooperate in the suppression of piracy. This traditional obligation is included in the 1958 Geneva Convention on the High Seas (U.S. Party) and the 1982 UN Convention on the Law of the Sea (U.S. non-Party). Both provide that all States shall cooperate to the fullest possible extent in the suppression of piracy.

UNSCR 1846: United Nations Security Council Resolution (UNSCR) 1846, passed in December (renewing UNSCR 1816) and valid for 12 months, provides certain authorities for countering piracy off Somalia. It condemns piracy and calls upon States to increase cooperation in counter-piracy operations and subsequent disposition of PUCs. UNSCR 1846 also authorizes States cooperating with the Transitional Federal Government (TFG) to enter Somali territorial waters and use all necessary means consistent with international law in those waters to repress acts of piracy and armed robbery. This resolution also urges States to implement their obligations under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) to help in PUC disposition

UNSCR 1851: United Nations Security Council Resolution (UNSCR) 1851 also expresses concern over the payment of ransoms to pirates, and calls upon States to deploy naval assets and seize and dispose of boats, arms and related equipment used by pirates. UNSCR also contains language authorizing “all necessary means” to combat piracy at sea (within Somali territorial waters).

It should also be noted that other countries have encountered difficulty in prosecuting suspected pirates in their domestic courts. The Danes recently captured several suspected pirates and were unable to prosecute them on their own. Japan is currently reviewing its domestic legislation to make it more effective against suspected pirates; however, domestic politics are delaying any immediate action. The United Kingdom has proposed modifications to domestic legislation to facilitate prosecutions and recently reached an agreement with Kenya under which Kenya will accept jurisdiction of pirates captured by UK forces. Pirates recently captured by HMS CUMBERLAND have been turned over to Kenya, where they are currently on trial. In January 2009, the government of Kenya agreed to accept and try suspected pirates captured by the U.S. military, through a Memorandum of Understanding (MOU) signed by both the U.S. and Kenya. This MOU allows the international community a viable method to deter and punish acts of piracy.

SUA Convention: The SUA Convention may provide a framework for delivery of suspected pirates to coastal nations for subsequent prosecution or extradition. The SUA Convention was created in the wake of the *Achille Lauro* incident and addresses crimes against ships, crew and passengers. Offenses under the Convention include: seizing a ship by force, threat or intimidation, and performing certain acts that could endanger the safe navigation of the ship, such as performing acts of violence against persons on board, destroying or damaging a ship or cargo, causing damage to the ship, placing a device or substance on the ship that is likely to destroy it, destroying maritime navigation facilities,

or communicating false information. States Parties to the Convention are obligated to make SUA offenses punishable domestically. Additionally, a master of a State Party vessel may deliver suspects to another State Party. The receiving State is obligated to accept delivery of suspects and then either prosecute or extradite them to another SUA Party, unless it determines SUA is not applicable.

There are currently 150 State Parties to the SUA Convention, including the United States, Bahrain, Djibouti, Kenya, Oman, Qatar, Saudi Arabia, Sudan, UAE and Yemen. Understanding there may be some human rights concerns with specific nations, if these States would agree to apply SUA to the actions of the pirates and follow their obligations to accept delivery of suspects to prosecute or extradite, the use of SUA can help alleviate the PUC disposition issue. Some Parties to SUA believe that the SUA convention is not applicable to acts of piracy, viewing the SUA Convention as a counter-terrorism convention.

U.S. Legal Authority to Repress Piracy: The United States has implemented the SUA Convention in Title 18 U.S. Code section 2280, which prohibits, among other things, seizing control of a ship by force. In addition, the United States has long-standing laws against piracy, including Title 18 U.S. Code section 1651, which provides that, “Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.”

The long term solution requires a stable Somalia with a government that can effectively police her own citizens, and protect the rights of those ships sailing in international waters. Piracy is an international problem that requires an international solution.

I will be happy to take your questions.