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Barry Hart Dubner

Kimberly Chavers

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THE DILEMMA OF PIRITICAL RANSOMS: SHOULD THEY BE PAID OR NOT? ON THE HUMAN RIGHTS OF KIDNAPPED SEAMEN AND THEIR FAMILIES

Barry Hart Dubner * & Kimberly Chavers **

INTRODUCTION

Over the years, Professor Dubner has written many articles and even wrote the first book on sea piracy in 1977.¹ He has always looked at the problem from the perspective of the human rights of pirates (e.g., fair treatment, their ages, evidence presented against them, etc.). He has also looked at the topic from a different viewpoint; specifically, he was concerned about how piracy affected the environment as well as the innocent people being killed, such as the Vietnamese refugees who were being robbed, raped, and murdered by Thai pirates (e.g., fisherman off the coast of Thailand). He never considered the rights of seamen who are being held hostage and who are living under such severe conditions.

Professor Dubner's first introduction to the topic of ransoms came when he was invited to participate and speak at a meeting held at the Harvard University Kennedy School in December 2009. The meeting lasted about two-and-a-half days, and the twenty-two participants were invited from all over the world to help decide what to do about piracy off the coast of Somalia and elsewhere. One topic that was discussed was ransom payments. In the final analysis of the meeting, one of their conclusions concerned the payment of ransom by "ocean carriers, insurance companies, individuals, and states."² The group decided that the various persons involved, such as "ocean carriers, insurance companies, individuals, and states [should] cease paying ransoms."³ The thinking was, "[i]f every major shipping firm is on record forbidding the paying of ransoms, and/or if the leading maritime nations agree to deter their own firms from responding to ransom requests, the profits of piracy will ebb."⁴ "Admittedly, enforcing such a controversial and

* Barry Hart Dubner, Professor of Law, Barry University, Dwayne O. Andreas School of Law, Orlando, Florida; J.D., New York Law School; LL.M., University of Miami, School of Law; LL.M., New York University School of Law; J.S.D., New York University School of Law. Professor Dubner would like to thank and acknowledge his research assistant, Sarah Fredrickson, for her diligent and dedicated research.

** Kimberly Chavers, B.A., University of South Florida; J.D. Barry University, Dwayne O. Andreas School of Law, Orlando, Florida.

1. Barry H. Dubner, *THE INTERNATIONAL LAW OF SEA PIRACY, DEVELOPMENTS IN INTERNATIONAL LAW* (Martinus Nijhoff Publ. 1980).

2. Robert I. Rotberg, *Combating Maritime Piracy: A Policy Brief with Recommendations for Action*, WORLD PEACE FOUNDATION, Policy Brief #11, at 7 (Jan. 26, 2010), available at http://www.worldpeacefoundation.org/WPF_Piracy_PolicyBrief_11.pdf [hereinafter Rotberg].

3. *Id.*

4. *Id.* at 7-8.

contested compact will be difficult.”⁵ The various ocean carriers would feel a powerful economic incentive to recover their ships quickly and perhaps an equally powerful moral imperative to free their sailors rapidly. It was concluded that the crews truly suffer—both psychologically⁶ and physically⁷—from being held captive for months and years at a stretch.⁸ “But if there were reduced profits from piracy—if ransoms were harder to acquire—the pirates would turn elsewhere for gainful employment.”⁹

On June 22, 2012, an article by Michelle Weise Bockmann in the Bloomberg News stated that the supply of dollars for ransom payments from United Kingdom (UK) banks has dwindled since Prime Minister David Cameron created a United Nations (UN) task force¹⁰ in February 2012 in order to halt payments.¹¹ The feeling

5. *Id.* at 8.

6. *The Human Cost of Somali Piracy 2011*, ICC-INTERNATIONAL MARITIME BUREAU OCEANS BEYOND PIRACY, at 7–8 (June 22, 2012), available at http://www.oceansbeyondpiracy.org/sites/default/files/hcop_2011.pdf [hereinafter *Human Cost of Somali Piracy*].

Pirates inflict psychological abuse along with physical mistreatment as they seek to terrorize the hostages, their families, and the ship-owners in order to speed up the ransom negotiations. They may also do it to break down solidarity between crew members. This abuse can be quite severe, including threats of execution or acting out mock executions, attempts to divide the crew along existing lines of division, and repeated claims that the hostages have been abandoned and will never go home. The potential impact of this abuse should not be discounted; although this abuse is primarily psychological and not physical, it has significant potential for increasing suffering among hostages during and after their captivity.

Id. at 8.

7. *Id.* at 8. Hostages face varying degrees of mistreatment and criminal acts.

According to publicly available reports, [fifty-seven percent] of hostages faced mistreatment at the hands of pirates. . . . [Twenty-six percent] of hostages suffered abuse while [forty-three percent] were used as human shields. The assessment of abuse came from international media sources and includes extreme forms of violence against hostages. Abuse in this case is the equivalent of assault, attempted murder, and murder.

Id. at 7–8.

8. *Human Cost of Somali Piracy*, *supra* note 6, at 9–10.

The assessment of human shields was derived from mother ship reports by NATO, EU NAVFOR, piracy blogs (e.g. Captain, Eaglespeak), and open media sources. Human shields describe hostages kept on board mother ships and used as a form of security against attacks by naval forces or private armed guards. There are also reports that hostages may be used as shields during fights between pirate gangs in their disputes over “ownership” of hostages and ransoms.

Id. at 8.

9. Rotberg, *supra* note 2, at 8.

10. Michelle Wiese Bockmann, *Somali Pirates Battled in London as Banks Curb Dollar Supply*, BLOOMBERG BUSINESSWEEK (June 22, 2012), <http://www.businessweek.com/news/2012-06-22/somali-pirates-battled-in-london-as-british-banks-curb-dollars>.

Combined Task Force 151 (CTF-151) is one of three task forces operated by Combined Maritime Forces (CMF).

In accordance with United Nations Security Council Resolutions, and in cooperation with non-member forces, CTF-151’s mission is to disrupt piracy and armed robbery at sea and to engage with regional and other partners to build capacity and improve relevant capabilities in order to protect global maritime commerce and secure freedom of navigation. . . .

was that governments would spend “almost \$1.3 billion in 2011 on military interventions including naval patrols . . . seeking to restrict payments because they encourage more hijacking by pirates in Somalia, the world’s fifth-poorest nation.”¹² The end result is that the bank encouraged ship owners to get back the 227 seafarers and 12 vessels still being held hostage.¹³ The question becomes whether the pirates will take out their frustrations on the abducted crew if the ransom is not paid.¹⁴ This raises a follow-up question of whether seamen are worth as much as cargo on a ship? By not paying ransom suppliers, will piracy cease to exist? In order to answer the questions raised, it is important to understand the scope of the piracy situation today.

In conjunction with the North Atlantic Treaty Organization (NATO) and the European Union Naval Force Somalia (EU NAVFOR), and together with independently deployed naval ships, CTF 151 helps to patrol the Internationally Recommended Transit Corridor (IRTC) in the Gulf Aden.

CTG-151: Counter-piracy, COMBINED MARITIME FORCES, <http://combinedmaritimeforces.com/ctf-151-counter-piracy/> (last visited May 2, 2013).

11. Bockmann, *supra* note 10.

The fight against Somali pirates, responsible for hijacking about 170 vessels in four years, is starting to draw in British banks, until now a major source of the stacks of dollars used to pay ransoms. . . . Ransoms reached \$160 million last year, according to One Earth Future Foundation, a nonprofit group based in Broomfield, Colorado. . . .

Payments to pirates operating off Somalia averaged \$4.7 million a vessel this year, according to the European Union naval force patrolling the region. The pirates hijacked more than 170 ships since 2008 and took about 3,400 seafarers hostage, according to the IMB .

Cameron held a conference of more than 40 nations in February to discuss restoring stability to Somalia and announced the creation of the International Pirate Ransoms Task Force, which met for the first time May 30. Members include the U.K., U.S., and Panama and Liberia, which have the two biggest ship registries. U.K. banks are concerned they may face penalties in the future for being involved in such transactions, [Michele] White [the general counsel to the International Association of Independent Tanker Owners] said.

“The very existence of the task force is making the payments much more difficult,” she said, citing insurers and lawyers in London directly involved in ransom negotiations. “The ransom lawyers are on the very margins of their ability to raise physical dollars to pay ransoms.”

Id.

12. *Id.*

13. *Id.*

14. *Id.*

“The only way you release a crew is by payment,” said Cyrus Mody, the assistant director of the International Maritime Bureau in London, which tracks piracy. “It’s true that ransoms are the key fact that keep piracy going, but unless there’s another option available, then pirates are going to take out their frustrations on the crew if they aren’t paid.”

Id.

I. ON THE STATUS OF SEA PIRACY—STATISTICS DO NOT TELL THE ENTIRE TALE ON THE STATUS OF SEAMEN BEING HELD AS HOSTAGES

“There are 785,000 seafarers in the world, thirty-five percent of whom are Filipinos.”¹⁵ According to Major General Howes, “[Seafaring] is a pretty miserable life and the people who engage in it do what they do, but expecting them to do much more than that is sometimes problematic.”¹⁶

The International Chamber of Commerce (ICC) International Maritime Bureau (IMB)¹⁷ publishes statistics of piracy and armed robbery against ships each year, on a daily, quarterly, semi-annually and annual basis.¹⁸ From the period beginning January 1 to December 31, 2012, the IMB received a report of seventy-five incidents attributed to Somali pirates.¹⁹ The geographic area²⁰ of these incidents extends from the southern part of the Red Sea into the Gulf of Oman, up to twenty-six degrees north.²¹ In the past, incidents have been as far east as seventy-six degrees, extending south up to twenty-two degrees.²²

During the period of the IMB Report (January 2012–December 2012), there were a total of 585 seafarers taken hostage²³—six were killed and twenty-eight injured.²⁴ Further, thirteen attacks were reported in the Gulf of Aden and thirteen attacks were reported in the southern Red Sea.²⁵ During this same period, twenty-eight vessels were hijacked.²⁶

More importantly, as of December 31, 2012, suspected Somali pirates were holding eight vessels for ransom, with 127 crew members of different nationalities

15. FOREIGN AFFAIRS COMMITTEE, PIRACY OFF THE COAST OF SOMALIA, 2010–12, H.C. 1318, at Ev 15 (U.K.), available at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/1318.pdf> [hereinafter FOREIGN AFFAIRS COMMITTEE].

16. *Id.* (“There is a dynamic tension here: they are commercial actors and the whole business of arming themselves goes completely counter to their whole tradition and method.”).

17. *Piracy and Armed Robbery Against Ships Annual Report: Report for the Period 1 January – 31 December 2012*, ICC INTERNATIONAL MARITIME BUREAU, at 2 (Jan. 2013) [hereinafter ICCIMB 2012].

The ICC International Maritime Bureau (IMB) is a specialised [sic] division of the International Chamber of Commerce (ICC). The IMB is a non-profit making organisation [sic], established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice. The International Maritime Organization (IMO) in its resolution A 504 (XII) (5) and (9) adopted on 20 November 1981, has *inter alia*, urged governments, all interests and organization to cooperate and exchange information with each other and the IMB with a view to maintaining and developing a coordinated action in combating maritime fraud.

Id.

18. *Id.*

19. *Id.* at 20.

20. *Id.* (“Somali pirate attacks cover a vast area which includes the Gulf of Aden, southern Red Sea, off Yemen, off Oman/Gulf of Oman, Arabian Sea, off Somalia, off Kenya, off Tanzania, off Seychelles, off Madagascar, off Mozambique, Indian Ocean, off West and South India and off Maldives west coast.”).

21. *Id.*

22. ICCIMB 2012, *supra* note 17, at 20.

23. *Id.* at 11.

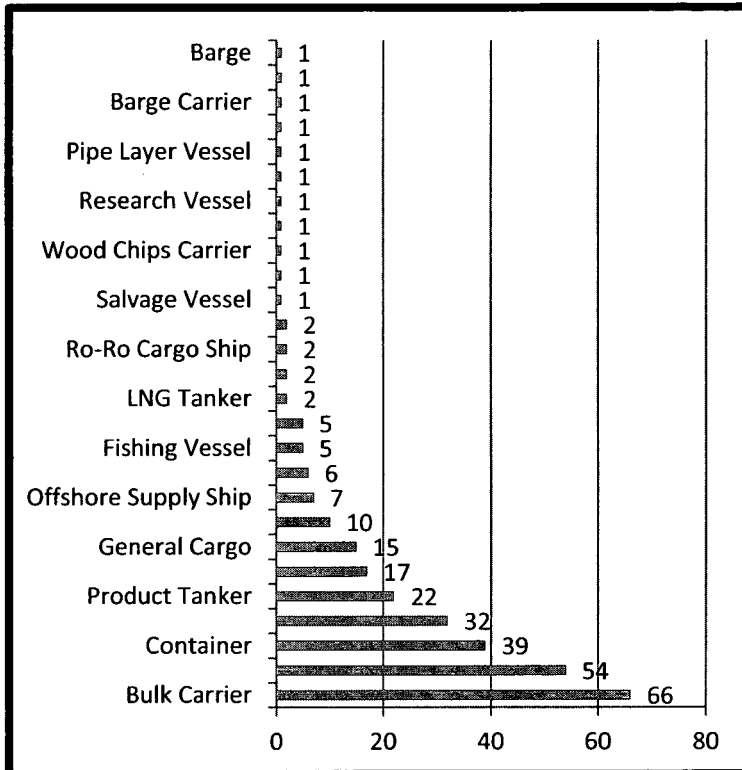
24. *Id.*

25. *Id.* at 5.

26. *Id.* at 11.

as hostages on board.²⁷ Furthermore, at the end of 2012, twenty-three of the kidnapped crew members were being held hostage on land.²⁸ “These Somali pirates are quite opportunistic in that they have attacked general cargo vessels, bulk carriers, all types of tankers, RORO vessels,²⁹ container vessels, fishing vessels, sailing yachts, tugs and dhows.”³⁰

TYPE OF VESSELS ATTACKED JANUARY–DECEMBER 2012³¹



27. *Id.* at 20, 34.

28. ICCIMB 2012, *supra* note 17, at 20.

29. *Roll-on/Roll-off*, THE FREE DICTIONARY, <http://www.thefreedictionary.com/roll-on%2Froll-off> (last visited May 2, 2013) RORO vessels denote “a cargo ship or ferry designed so that vehicles can be driven straight on and straight off.” *Id.*

30. ICCIMB 2012, *supra* note 17, at 13, 20.

Dhow is the generic name of a number of traditional sailing vessels with one or more masts with lateen sails used in the Red Sea and Indian Ocean region. . . . Typically sporting long thin hulls, dhows are trading vessels primarily used to carry heavy items, like fruit, fresh water or merchandise, along the coasts of the Arabian Peninsula, Pakistan, India, Bangladesh and East Africa. Larger dhows have crews of approximately thirty, smaller ones typically around twelve.

Dhow, WIKIPEDIA, <http://en.wikipedia.org/wiki/Dhow> (last visited May 2, 2013).

31. ICCIMB 2012, *supra* note 17, at 14.

As depicted in the graph above, bulk carriers were the leading type of vessel attacked in December 2012, followed by chemical tankers, container ships, tankers, etc.³²

Somali pirates use automatic weapons as well as Rocket Propelled Grenades (RPG) against merchant vessels in an attempt to board and hijack the vessels.³³ When the attack is successful, the pirates sail the vessels toward the Somali coast and thereafter demand a ransom for the release of the vessel and crew.³⁴ In addition, the pirates use “mother vessels” to launch attacks at distant places from the coast of Somalia.³⁵ “These ‘mother vessels’ usually hijack dhows or ocean going fishing vessels.”³⁶ The usual pirate skiff can only go out so far into the ocean; however, “[t]he ‘mother vessel’ is able to proceed very far out to sea to launch smaller boats or skiffs to attack and hijack unsuspecting passing vessels.”³⁷

A. The Environmental Cost of Prohibiting Ransoms

Ships could suffer serious damage that could lead to pollution, loss of life, or environmental devastation.³⁸ The scariest of these type of attacks would include a situation where a chemical tanker is attacked, the crew is disabled, and the ship leaks or causes chemical pollution to the environment.³⁹ No statistics show what type of chemicals these ships might carry.⁴⁰ Fortunately, to date, there have been no significant incidents involving an ecological disaster caused by pirate attacks.⁴¹ However, it is not difficult to imagine the extensive damage that might be caused in the aftermath of such an attack. Abhyankar states, “The IMB is convinced that, because there will be no second chance with an oil-spill, a pro-active attitude to the

32. *Id.* Professor Dubner has written in the past about marine environment and the threat that the massive escalation in the nature of weapons that are being used in pirate attacks, as well as the growing risk in connection therewith of ships carrying dangerous cargos, such as oils and chemicals.

33. *Id.* at 22.

34. *Id.*

35. *Id.*

36. *Id.*

37. ICCIMB 2012, *supra* note 17, at 22. “Many past attacks have taken place more than 1,000 nm from the Somali coast (towards Indian west and south coast in the Indian Ocean).” *Id.*

38. See generally Barry Hart Dubner, *Human Rights and Environmental Disaster—Two Problems that Defy the “Norms” of the International Law of Sea Piracy*, 23 SYRACUSE J. INT’L L. & COM. 1 (1997).

39. See generally *Id.*; ICCIMB 2012, *supra* note 17, at 20 (Since most of the attacks involve the use of weapons, this poses a serious threat not only to injury and death of seafarers but also the ship, cargo and environment.).

40. *Id.*

41. It is not for lack of considering this threat. See Charles Marts, *Piracy Ransoms—Conflicting Perspectives*, ONE EARTH FUTURE FOUNDATION (Aug. 13, 2010), available at <http://oncearthfuture.org/images/imagefiles/Ransom-%20Charlie%20Marts.pdf> (citing Abdi Guled & Abdi Shei, *Somali Pirates Haul in Record Ransom for Oil Tanker*, REUTERS (Jan. 18, 2010), <http://www.reuters.com/article/2010/01/18/us-somalia-piracy-idUSTRE60H3WB20100118>) (noting that a rival pirate faction threatened to set fire to a tanker unless they received a share of the captors ransom).

possibility is essential and it would be fool-hardy to the point of irresponsibility not to take all possible measures to prevent the first one.”⁴²

Known environmental concerns are just one additional way pirates could gain the upper hand in the future to demand ransom monies on their timeline. For example, by purposefully opening cargo hatches aboard a captured vessel laden with coal—an act that threatened to overheat the cargo—pirates have increased pressure on timely ransom negotiations.⁴³ “This type of overheating can lead to fire, which might destroy the vessel and cause extensive pollution.”⁴⁴ “Additionally, the difficulty of safely navigating a vessel to an anchorage along the Somali shore could result in accidental grounding and a catastrophic spill.”⁴⁵

Researchers have duly noted that “[a]n ecological disaster is likely to cause immediate and lasting problems as waters and coasts are damaged without easy, effective, or safe means of restoration.”⁴⁶ Also, as the average time of holding hostages increases and the time a vessel is held in captivity by pirates lengthens, the risk of an accidental disaster, likewise, is expected to increase.⁴⁷ From an environmental protection standpoint, “[a] prohibition on ransoms potentially removes the possibility of a relatively quick and minimally violent resolution to detainment and increases the threat of ecological disaster caused by dangerous cargo.”⁴⁸

As far as “trends” are concerned, a total of 297 incidents have been reported to the IMB piracy reporting center in 2012 compared to 439 incidents for the corresponding period in 2011.⁴⁹ Globally, twenty-eight vessels were hijacked and 585 crewmembers were taken hostage.⁵⁰ An additional 174 vessels were boarded with sixty-seven attempted attacks and twenty-eight vessels fired upon.⁵¹ At least six crew members were killed in 2012.⁵² The good news is that there has been a decrease in the overall number of incidents reported primarily due to a noticeable decline in Somali piracy activity, which is down from 439 in 2011 to 297 in 2012.⁵³ The number of vessels hijacked by pirates has also dropped from forty-five in 2011 to twenty-eight in 2012.⁵⁴ However, it was reported that in 2012, that 585 crew members were taken hostage by pirates.⁵⁵ As of December 31, 2012, the Somali

42. Marts, *supra* note 41, at 17 (citing Jayant Abhyankar, *Int’l Chamber of Commerce, Int’l Maritime Bureau, Piracy and Maritime Violence: A Continuing Threat to Maritime Industry* 10 (2002), available at <http://www.itopf.com/assets/documents/Abhyankar.pdf>).

43. *Id.* (citing *Piracy: Responding to a Piracy Incident* 2, INCE & CO., (2010), available at <http://incelaw.com/misc/Piracy-responding-to-a-piracy-incident/piracy-responding-to-a-piracy-incident>).

44. *Id.* (citing *The Pitfalls of The Carriage of Coal*, STEAMSHIP MUTUAL (May 2007), available at <http://www.simsi.com/Coal0407.html>).

45. *Hijacking of Saudi Supertanker Likely to Affect Gulf Crude Transport Economics*, IHS GLOBAL INSIGHT (Nov. 18, 2008), <http://www.ihsglobalinsight.com/SDA/SDADetail15000.htm>.

46. Marts, *supra* note 41, at 17.

47. *Id.*

48. *Id.*

49. ICCIMB 2012, *supra* note 17, at 11.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

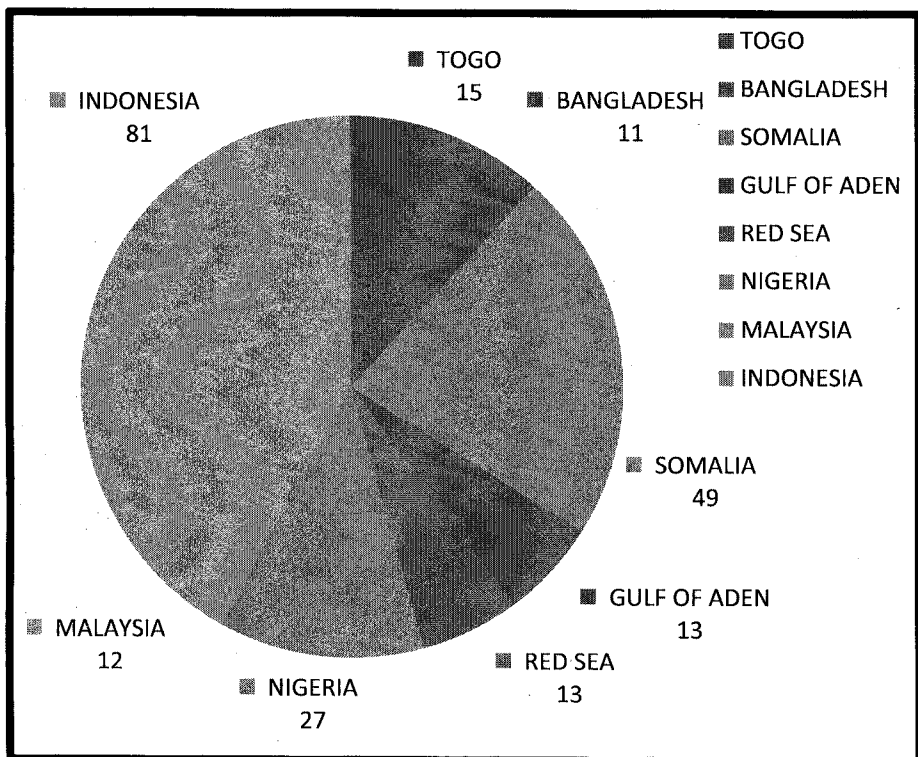
54. *Id.*

55. ICCIMB 2012, *supra* note 17, at 11.

pirates were holding eleven vessels and 127 crew members, forty-four of which have been held by different Somali pirate factions for more than two years.⁵⁶

From January 1, 2008 through December 31, 2012, statistics based on locations of actual and attempted attacks, by Somali pirates specifically, show that there were ninety-two attacks in 2008; 138 attacks in 2009; eighty attacks in 2010; seventy-seven in 2011 and twenty-six attacks in 2012.⁵⁷ The following chart indicates that eight locations contributed to almost seventy-five percent of the total 297 incidents reported in the period between January and December 2012.⁵⁸

LOCATIONS OF REPORTED VESSEL ATTACKS IN 2012^{59 60}



Forty-nine of the attacks occurred in Somalia, twenty-seven off the coast of Nigeria, and the rest in Togo, Bangladesh, the Gulf of Aden, the Red Sea, and

56. *Id.* at 34.

57. *Id.* at 5–6.

58. *Id.*

59. The following eight locations records just under seventy-five percent of attacks from a total of 297 reported attacks for 2012.

60. ICCIMB 2012, *supra* note 17, at 6.

Malaysia.⁶¹ Clearly, the Indonesian attacks were the most frequent.⁶² The types of arms used during the attacks included guns, common knives, and other weapons.⁶³

What types of violence did the hundreds of victim seafarers suffer? A total of 662 acts of violence to crew were reported in 2012; twenty-six were kidnapped, thirteen were threatened, four were assaulted, twenty-eight were injured, and six were killed.⁶⁴ The following tables indicate the breakdown of violence to crew from 2008 as well as types of violence by location.

TYPES OF VIOLENCE DONE TO CREW

JANUARY 2008–DECEMBER 2012⁶⁵

Types of violence	2008	2009	2010	2011	2012
Assaulted	7	4	6	6	4
Hostage	889	1050	1174	802	585
Injured	32	69	37	42	28
Kidnap/Ransom	42	12	27	10	26
Killed	11	10	8	8	6
Missing	21	8	-	-	-
Threatened	9	14	18	27	13
Total	1011	1167	1270	895	662

Ships of various nationalities were included in the 297 attacks in 2012.⁶⁶ There were forty-three attacks against ships registered in Singapore (open registry state), twenty-one attacks against ships registered in Marshall Islands, and seventeen attacks against ships registered in Hong Kong.⁶⁷ However, the countries that take the prize for the greatest number of ships being attacked are Panama and Liberia, incurring forty-nine and forty-five attacks respectively.⁶⁸ But of course, Liberia and

61. *Id.*

62. *Id.*

63. *Id.* at 10.

64. *Id.*

65. *Id.*

66. ICCIMB 2012, *supra* note 17, at 8.

67. *Id.* at 17.

68. *Id.*

Panama, as well as many other states, have what we call “Open Registry”⁶⁹ or flags of convenience.⁷⁰

TYPES OF VIOLENCE DONE TO CREW BY LOCATION

JANUARY–DECEMBER 2012⁷¹

Location		Hostage	Threatened	Assault	Injured	Killed	Kidnap
Southeast Asia	Indonesia	47	4	3	4		
	Malacca Straits	6					
	Malaysia	49			8		
	Philippines				1		
	Singapore Straits	19					
Far East	South China Sea	16					
	Vietnam	1			1		
India	Bangladesh	2	1		1		
Sub Continental	India		1				
North America	Ecuador	1					
	Haiti		1		1		
Africa	Benin	19					
	Cameroon	1					

69. Elizabeth R. DeSombre, *Convenient Fishing: Participation in International Fishery Management* (2002) (Paper for presentation at the International Studies Association Annual Meeting, March 2002) available at http://isanet.ccit.arizona.edu/noarchive/desombre.html#_ftnref9 (“Open registries are generally characterized as those that do not require citizenship of ship-owners or operators, levy no or minimal taxes, allow ships to be worked by non-nationals, and have neither the will nor capability to impose domestic or international regulations on registered ships.”).

70. Elizabeth R. DeSombre, *Globalization and Environmental Protection on the High Seas* (2003) (Paper for presentation at the American Political Science Association Annual Convention, August 2003) available at http://citation.allacademic.com/meta/p_mla_apa_research_citation/0/6/2/5/3/pages62530/p62530-6.php

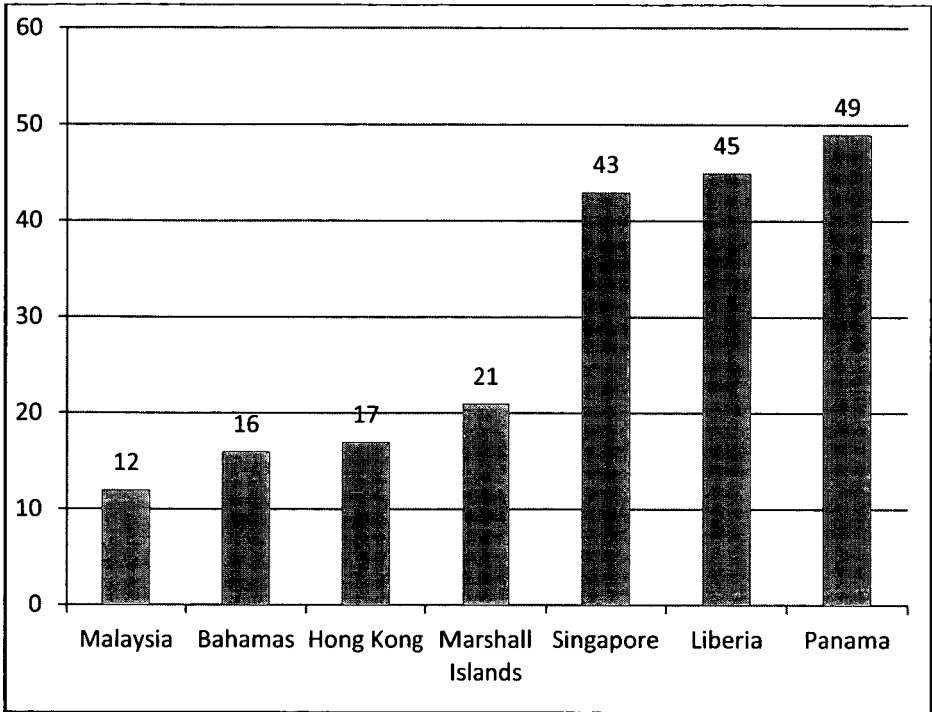
[The trend], the proliferation of ship registries, arose to meet [a] desire by ship-owners [to avoid] costly regulation as a way to keep operating costs low. For centuries ship registration was a reasonably simple process. The owner of a ship registered it in the country he (almost inevitably he) was a citizen of, and the ship’s operations were thus covered by the laws of that state, both domestic and international . . . [w]idespread use of such flags, however, came only with the decision by certain states beginning around the 1920s to create open registries, where ships were not required to have onerous ties to a state in order to register.

Id.

71. ICCIMB 2012, *supra* note 17, at 11.

	Dem. Republic of Congo				1		
	Egypt		3				
	Ghana		2		1		
	Guinea	8			1		
	Gulf of Aden*	38					
	Ivory Coast	25	1				
	Kenya	1					
	Nigeria	61		1	7	4	26
	Somalia	212			1	2	
	Togo	79			1		
Sub Total		585	13	4	28	6	26
Total					662		
*Gulf of Aden							
The above attacks attributed to Somali pirates							

**FLAG STATES WHOSE SHIPS WERE ATTACKED TWELVE TIMES OR MORE
JANUARY–DECEMBER 2012⁷²**



The significance of all of these statistics is that while the incidents of ships being captured has dropped, the “cost” of piracy has risen.⁷³ According to Oceans Beyond Piracy (OBP),⁷⁴ “there was a peak in pirate activity in early 2011 with over 700 hostages held aboard vessels off the coast of Somalia.”⁷⁵ In 2011, pirates

72. *Id.* at 11.

73. See generally *Human Cost of Somali Piracy*, *supra* note 6.

74. See, e.g., OCEANS BEYOND PIRACY, <http://oceansbeyondpiracy.org/pages/about-obp> (last visited May 17, 2013).

Oceans Beyond Piracy (OBP) is a project of the One Earth Future Foundation, a privately funded and independent non-profit organization located in Colorado, USA. OBP was launched in 2010 with the intent to develop a response to maritime piracy through: [m]obilizing stakeholders from the maritime community; [d]eveloping public-private partnerships to promote long-term solutions at sea and ashore; [and] [s]ustainable deterrence based on the rule of law OBP believes that the answers to the piracy problem should come from within the community of stakeholders. We work with an extensive—and growing—number of experts to find a solution to piracy. Through meetings and workshops we host, our research and analysis, and our development and encouragement of new cross-sector partnerships, we support the international community in its efforts to bring an end to contemporary maritime piracy.

Id.

75. *Human Cost of Somali Piracy*, *supra* note 6, at 3.

captured fewer seafarers reflecting a significant drop in the success rate of pirate attacks; however, the bad news is that the length of time that seafarers are detained has been increasing.⁷⁶

II. THE PROBLEMS FACING SEAFARERS BEING HELD HOSTAGE BY SOMALI PIRATES

The statistical success in thwarting acts of piracy off the coast of Somalia and elsewhere is clear.⁷⁷ As far as blocking acts of piracy, the numbers look favorable.⁷⁸ However, the human cost of Somali piracy has been abominable.⁷⁹ A very good attempt at summarizing the two main problems regarding the crimes committed by pirates against seafarers in the years of 2011 and 2012, and the assessment of the overall treatment of hostages based on post-incident reports based on twenty-three vessels that were released in either 2010 or 2011, describe the suffering caused by the pirates and incurred by the hostages as well as their family and loved ones.⁸⁰

There were 3,863 seafarers assaulted by pirates during the initial stages of attacks.⁸¹ Of those, 968 seafarers came in close contact with all pirates on board their vessels.⁸² 44% (413) of those who came in close contact with pirates were rescued from citadels by allied naval forces.⁸³ Some seamen waited hours, and in some cases days, to be rescued as pirates fought to breach the safe room on board the ships.⁸⁴ There were 1,206 individuals held captive in 2011 by pirate gangs.⁸⁵ These included in part: 555 seafarers who were attacked and taken hostage in 2011⁸⁶, 645 hostages captured in 2010 that remained in pirate hands in 2011, (including 123 hostages that had been held for over one year, and 26 hostages that had been held for over two years⁸⁷), 6 tourists, and 8 workers⁸⁸.

During the period involved in 2011, thirty-five hostages died; eight were killed by pirates during the attack after being taken captive, eight died from disease or malnutrition caused by lack of access to adequate food, water and medical aid, and

76. *Id.* at 3, 7 (“The fact that 645 people were taken in 2010 and remained hostage in 2011 highlights the large number of attacks in late 2010, an increase in the average length of time to negotiate the ransom, and in some cases, stalled negotiations.”); see also EU NAVFOR SOMALIA, <http://eunavfor.eu/mission/> (last visited February 22, 2013) (“Crews held hostage by pirates often face a prolonged period of captivity, the average being 5 months (145 days) but some hostages have been held for more than two years and eight months (1001 days).”).

77. See generally ICCIMB 2012, *supra* note 17, at 11.

78. Barry Hart Dubner & Sara Fredrickson, *On the Legal Issues Regarding the Prosecution of Sea Pirates (Including Human Rights): A Case of History Repeating Itself?*, 26 TEMP. INT’L & COMP. L.J. 233, 251 (2012).

79. See generally *Human Cost of Somali Piracy*, *supra* note 6.

80. *Id.* at 85–87.

81. *Id.* at 4.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Human Cost of Somali Piracy*, *supra* note 6, at 4.

86. *Id.*

87. *Id.*

88. *Id.*

nineteen died during rescue efforts by naval vessels or escape attempts, during which the majority of hostages were used as human shields by the pirates.⁸⁹

Account from a seafarer used as a human shield: "One day pirates drew us out (five of crew) to the open deck, told us to turn back and stand still facing the sea side. Then we heard how they reloaded their machine guns. We understood nothing. We saw US Navy not far and we were standing and waiting for about two hours that pirates open the fire. It was really horrible. After this incident I had blood spitting (like tuberculosis which in fact I never had) and later after the release I was explained by doctor that it was my body stress reaction." –Anonymous Seafarer

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Where did the hostages come from? Predominately, the victims came from non-OECD⁹¹ countries, especially from the Philippines (17%), China (9%), and India (8%).⁹² Only seven percent came from OECD countries.⁹³ It is estimated that 111 pirates were killed in 2011, based on data by open media sources; seventy-eight pirates died in direct encounters with naval forces, three died in clashes with Puntland security forces, and thirty died in fights with other pirates over ransoms and hostages.⁹⁴

89. *Id.*

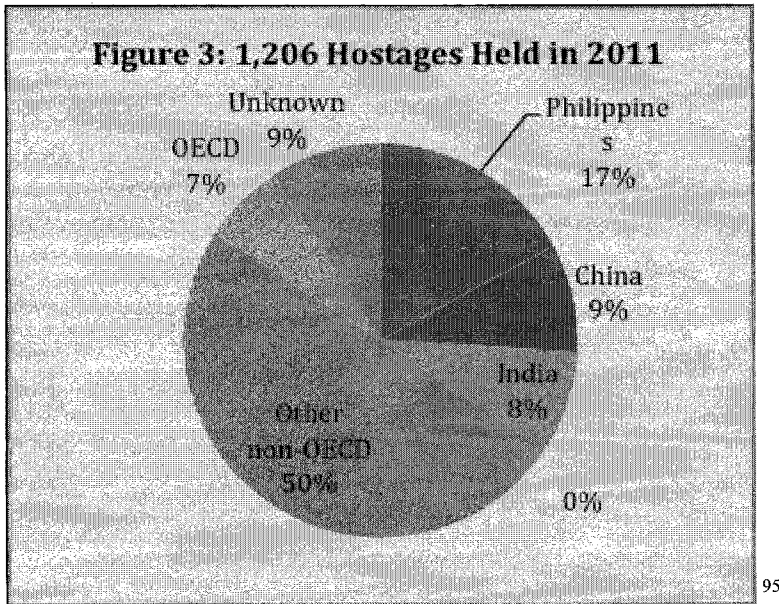
90. *Id.* at 8.

91. THE ORGANISATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT (OECD), <http://www.oecd.org/> (last visited Feb. 21, 2013). Eighteen European countries plus the United States and Canada joined forces to create an organization dedicated to global development and originally signed the Convention on the OECD on December 14, 1960. *Id.* Since then, fourteen countries have become members of the Organisation. Today, thirty-four member countries span the globe, from North and South America to Europe and the Asia-Pacific region. *Id.* They include many of the world's most advanced countries but also emerging countries like Mexico, Chile and Turkey. *Id.*

92. *Human Cost of Somali Piracy*, *supra* note 6, at 4.

93. *Id.*

94. *Id.*



As far as the treatment of the hostages is concerned, it could be characterized as abysmal. The Human Cost Booklet is based upon reports from twenty-three vessels that were released in either 2010 or 2011.⁹⁶ The reports set forth the experiences of the hostages that are no longer in pirate hands; however, there are no reports for hostages still in captivity.⁹⁷ As a result, their experiences are not included.⁹⁸

According to the reports, all hostages faced the risk of violence day upon day and a range of inhumane treatment in violation of their basic human rights, including the right to life, liberty, and security of person.⁹⁹ In addition, at least three seafarers from the twenty-three reporting vessels died after release as a direct result of their treatment during captivity.¹⁰⁰ All crews were subject to restricted freedom of movement and privacy, in addition to living under constant threat of physical and psychological abuse.¹⁰¹

Needless to say, living, hygiene, and sanitary conditions on board the hijacked ships declined rapidly and remained deplorable throughout captivity.¹⁰² Additionally, the reports indicate that the main triggers of physical and psychological abuse appeared to be pirates' basic ignorance in the workings of a ship, break down or slow progress in negotiations, disagreements among the hostages, and better treatment to some crews in exchange for information on the

95. *Id.* at 7.

96. *Id.* at 5.

97. *Id.*

98. *Human Cost of Somali Piracy*, *supra* note 6, at 5.

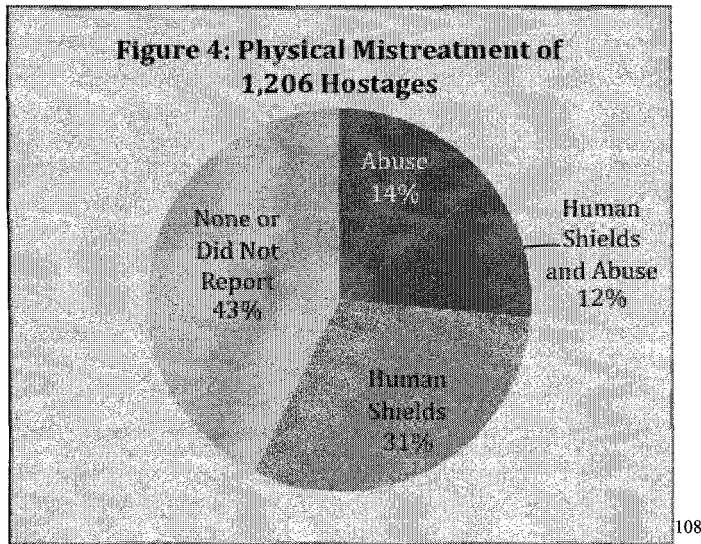
99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

others.¹⁰³ Notably, the reports do not take into account the stress, fears, and day-to-day deterioration in standards of living of the family members of the captive crews.¹⁰⁴ Only half of all hostages in 2011 were subject to moderate abuse by captors including punching, slapping, or pushing.¹⁰⁵ 10% of hostages suffered severe abuse which included being tied up in the sun for hours, being locked in a freezer, or having fingernails pulled out with pliers.¹⁰⁶ Without a doubt, reports suggest “nearly all hostages were in some form affected psychologically.”¹⁰⁷



103. *Id.*

104. *Human Cost of Somali Piracy*, *supra* note 6, at 5.

105. *Id.*

106. *Id.*

107. *Id.* Reports show that

[w]hile many [hostages] were able to cope after they were released, there was [sic] some needing more help. Due regard has been given to the sensitivities of the identities of the crews, vessels, owners, operators, and other parties involved in each hijacking case; hence the report only provides aggregate information on the treatment towards the hostages.

Id. “Hostages face varying degrees of mistreatment and criminal acts.” *Id.* at 7. The lack of publicity regarding hostages and

available data prompted the formulation of the Declaration Condemning Acts of Violence Against Seafarers (the Washington Declaration). [This] declaration commits flag state signatories to submit reports on seafarer welfare during captivity to the International Maritime Bureau (IMB). As of June 2012, four of the largest flag states—Liberia, the Marshall Islands, Panama, and the Bahamas—have signed on to the document. The intent . . . is [that] the declaration is to provide a reliable and anonymized resource of information for organizations seeking to help seafarers who have . . . been subject[ed] to pirate attack or who are at risk of attack.

Id. at 3. “While the Washington Declaration has provided some information on what happens in captivity, the extent of the specific crimes committed during the period of captivity is difficult to quantify due to the limited amount of publicly available information.” *Id.* at 7.

108. *Human Cost of Somali Piracy*, *supra* note 6, at 8.

As the reader will observe, this is really “not piracy in the classic sense that the Emperor E. Augustus, Pliny, and raiders off the Barbary Coast in 1753 would recognise [sic]. Instead, it is hostage and ransom.”¹⁰⁹

Although there is an Internationally Recommended Transit Corridor,¹¹⁰ which runs through the area of the Gulf of Aden, pirates know that there are plenty of ships to choose from to attack.¹¹¹ There are 23,000 ships passing through in transit each year containing over a trillion dollars worth of trade; and some “48,000 ships transit the Indian Ocean,” which is an even larger area.¹¹² The hostages could be held anywhere along the Somali coast or inland. However, it is difficult to police this area because there are 2.6 million square miles of water in the area.¹¹³ The question remains: Are the aforementioned statistics on human rights violations of hostages accurate given there is some concern if there is a full disclosure of the use of violence and torture by pirates in order to minimize the impact?¹¹⁴ In addition, information might be obtained from a group called “Save Our Seafarers” as well as “the Maritime Piracy Humanitarian Response Programme [MPHRP], which is backed by the [entire maritime] industry, including the insurers, the international group and EU NAVFOR [European Union Naval Force].”¹¹⁵ The following section of this article will address the effects ransom payments have had on the humanitarian efforts to rescue seafarers and hostages.

III. ON THE AMOUNT OF PAYMENTS OF RANSOM AND THE PROBLEMS AND CONNECTIONS THEREWITH

It is interesting to observe who receives the ransom monies before looking at the actual amounts paid and the relationship to the hostages being released or not tortured. According to Stephen Askins:¹¹⁶

109. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 14.

110. ICCIMB 2012, *supra* note 17, at 22 (corridor in Gulf of Aden officially named International Recommended Transit Corridor (IRTC)). New coordinates in effect February 1, 2009. Maritime Liaison Office Marlo, *Update to Internationally Recommended Transit Corridor (IRTC)*, <http://www.cusnc.navy.mil/marol/Guidance/Corridor.htm> (last visited Feb. 22, 2013). For full details on the updated IRTC, see Maritime Liaison Office Marlo. *Id.* See also Appendix B *infra*.

111. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 13.

112. *Id.* at Ev 14.

113. *Id.* at Ev 13.

114. *See id.* at Ev 12.

115. *Id.* See also EU NAVFOR, *supra* note 76.

[A]s part of the Comprehensive Approach to Somalia [(Somali-based piracy and armed robbery at sea off the Horn of Africa and in the Western Indian Ocean)], in December 2008 the EU launched the European Union Naval Force (EU NAVFOR) Somalia – Operation Atalanta within the framework of the European Common Security and Defence Policy (CSDP) and in accordance with relevant UN Security Council Resolutions (UNSCR) and International Law in response to the rising levels of piracy and armed robbery off the Horn of Africa and in the Western Indian Ocean.

Id. Specifically, “Operation Atalanta is the European Union’s counter-piracy operation off the coast of Somalia.” *Id.*

116. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 64. Stephen Askins is a maritime lawyer with a specialization in “contentious maritime law (litigation as opposed to transactional law) and advising stakeholders in maritime adventure on all respects of maritime law.” *Id.*; see also INCE & CO, Stephen Askins,

[O]f a \$5 million dollar ransom, a percentage will go to the gangs that held the ship; the first guy on board will get a bigger reward. There is always a small group of investors controlling and making decisions, and they could be serious business men or, as we found recently, a 19-year-old with his cousin. Then there is a chunk of money, probably about 30%, that goes into the community. There is a lot of talk about money flowing out into Dubai and Nairobi, but as far as I am aware, apart from the French chasing a ransom ashore after the *Le Ponant*, not one dollar has been recovered from the piracy ransoms. The logical conclusion is that enough cannot be being done. If money is haemorrhaging [sic] out into places such as Nairobi and Dubai, that is where the international focus has to be, in trying to disrupt that flow of money, but I think an awful lot of it stays in Somalia.¹¹⁷

A. How High Will the Ransom Payments Go?

Apparently, there is no limit to the amount of money that will be asked for ransom. The ransom amount is only limited by the imagination of the pirates.¹¹⁸ As Mr. Askins wisely stated:

It is like being in a housing boom where your estate agent adds on money for the next house on the street that he is selling. It sometimes feels very like that. There are various factors that come into play, for example, the nationality of the crew, nationality of the owners—anything with a US flavour will attract a greater

<http://incelaw.com/ourpeople/stephen-askins> (last visited Feb. 24, 2013). According to Chambers and Partners 2013, “Stephen Askins is recognised for his knowledge of piracy matters and has advised extensively on the use of armed security.” *Id.* His “primary area of expertise and experience is wet and dry shipping. Whilst in Greece he headed the local Admiralty team, acting for owners and their insurers in the aftermath of maritime incidents including salvage, wreck removal, collisions and piracy.” *Id.* As a partner at Ince Law,

[h]e advises on all areas of Admiralty law as well as on contractual issues arising out of charter parties and bills of lading. ‘With the rise in piracy Stephen has developed an expertise in advising owners and other stakeholders on the legal and practical considerations that arise as a result of a hijacked vessel. He speaks and writes extensively on this and on issues arising in the evolving maritime security sector. He was part of the GUARDCON drafting committee and appeared in front of the Foreign Affairs Committee looking into piracy off Somalia. More recently he has been part of the Industry Advisory Panel working with the International Task Force set up to the payment of ransoms. He has worked on many high profile maritime casualties and hijacking off both east and west Africa including the *Faina* during her hijacking off Somalia.

....

He was part of the team handling the *Prestige* oil spill and acted for salvors in the *MSC Napoli*.

Id.

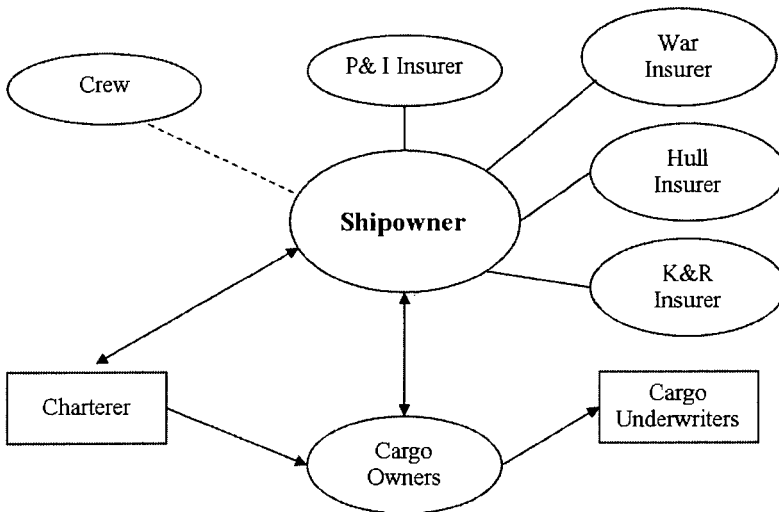
117. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 11.

118. *Id.* at Ev 10.

premium and a European crew will attract a greater premium—and the size of the ship. If it is a tanker or if the ship has oil on board, those are recognised [sic] as high-value assets for which more money will be demanded.¹¹⁹

According to Stephen Askins, during the negotiation process, there are certain “conflicts between the insurers and the negotiators and the other interests.”¹²⁰ To begin, “a ransom needs to be funded before a deal can be done with the pirates.”¹²¹ From the start, the ship owners are likely “to self-fund the ransom before turning to their insurers for an indemnity under the relevant policy.”¹²² “It is rare for cargo interests or charterers to contribute at this stage.”¹²³ However, once the insurers are involved, “ransoms are paid by the property underwriters.”¹²⁴ These are “the underwriters of the hull and of the cargo.”¹²⁵ Most notably, neither of those entities are interested by time.¹²⁶ Below is a schematic diagram of the key stakeholders involved each time a laden vessel undertakes a voyage.¹²⁷ “It is the interaction of those stakeholders and the contractual relationships between them which can give rise to a number of potential conflicts when resolving the issues that arise in a hijacking.”¹²⁸

COMMERCIAL STAKEHOLDERS



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119. *Id.*
120. *Id.*
121. *Id.* at Ev 66.
122. *Id.*
123. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 66.
124. *Id.* at 10.
125. *Id.*
126. *Id.*
127. *Id.* at Ev 67.
128. *Id.* at Ev 64.
129. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 67.

“The third-party liability insurers, the P&I clubs [property and insurance], who traditionally insure for loss of life and injury to crew, play no part in the ransom payments at all.¹³⁰ That is a deliberate decision by the international group to do that.”¹³¹ This begs the question as to whether ransom negotiations and payments are being paid properly or if we should approach this in a different manner, a more pragmatic approach.¹³² The real problem is, however, that as the going rate of ransom demands increases, we might end up with some small low-value ship that is being left behind, because the demand of the pirates is greater than the value of the ship and cargo together.¹³³ And in those circumstances, who will want to pay to get the ship back? The insurers are not likely to pay 100% of the ships value.¹³⁴ “They will pay as long as the demand is below the total loss of the ship and cargo.”¹³⁵ How does this attitude affect the crew or the hostages being held by the pirates? I think we all know the answer to that question—the previously discussed adverse effects on the crews and hostages.

According to Stephen Askins, “[t]here is certainly no appetite for wholesale military action against [twenty-five] ships being held off the coast of Somalia.¹³⁶ We therefore have to go past the moral consequences, engage with the pirates and pay them [their] ransom.”¹³⁷ One would think that paying the ransoms is the proper method of getting back the hostages. However, some government officials believe that paying the ransoms increases the risk of piracy rather than decreases the risk.¹³⁸ A little background is needed before discussing the current state of affairs with regard to payment of ransoms.

B. Ransom Payments Have Been Going Up

Once a ship has been successfully hijacked, a large ransom is usually paid in order to secure its release.¹³⁹ “The [a]verage ransom payments to Somali pirates have increased sevenfold over the last five years, turning piracy into a multi-million dollar business.¹⁴⁰ . . . [F]igures show average ransoms rising from around \$600,000 in 2007 to close to [\$5,000,000] in 2011.”¹⁴¹

As previously stated, one of the witnesses who testified before the foreign affairs committee described inflation as “being in a housing boom.”¹⁴² Why?

130. *Id.* at Ev 10.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 10.

136. *Id.* at Ev 8.

137. *Id.*

138. *Id.* at 56, ¶ 112.

139. See Bockmann, *supra* note 10. “‘The only way you release a crew is by payment,’ said Cyrus Mody.” *Id.*

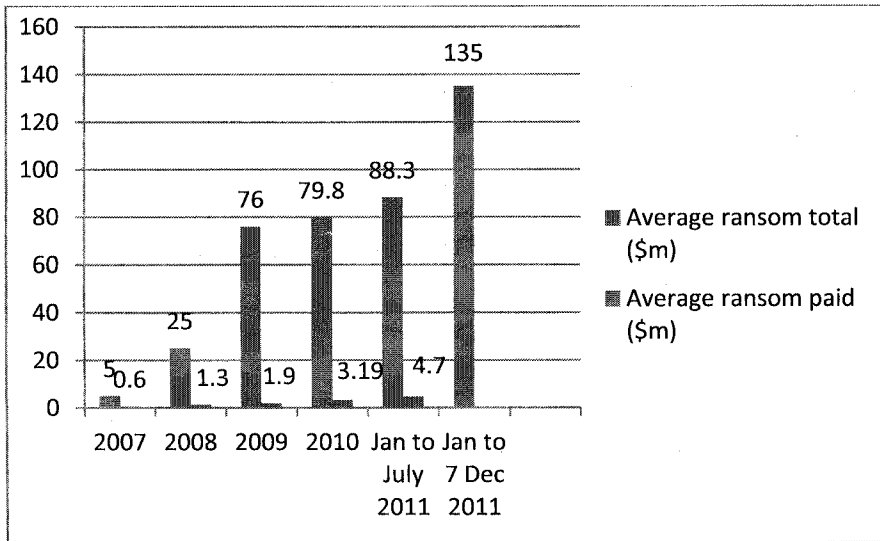
140. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 55, ¶ 111.

141. *Id.* “The latest information from Northwood HQ is that ransom payments in 2011” showed substantial increases from previous years and established new records. *Id.*

142. *Id.*

Because each year there is a new record regarding the amounts of payments being made.¹⁴³

RANSOMS PAID EACH YEAR TO SOMALI PIRATES¹⁴⁴



Ransoms are generally paid via air drop by vessel owners or operators, or their insurance companies, many of whom have contracts with negotiators and crisis management consultancies.¹⁴⁵ The nationality of the crew and the owners, the speed with which the ship owner paid the ransom, and the type of vessel involved all have an impact on the amount of ransom price is demanded.¹⁴⁶ The highest ransom paid as of March 2, 2011 was \$12,000,000.¹⁴⁷ Ransom payments have reportedly fallen recently, following an incursion by Kenyan troops into Somalia in 2011.¹⁴⁸ Pirates sought to conclude deals quickly, in advance of expected battles between the Kenyan troops and Somali militants.¹⁴⁹

C. Should We Pay Ransoms? Arguments For and Against This Policy

According to the Foreign Affairs Report, the shipping and insurance industries have faced criticism from government officials, because critics argue that by

143. See *id.* at 56 (chart showing ransoms paid each year to Somali pirates).

144. *Id.*

145. *Id.* at 56, ¶ 111.

146. *Id.*

147. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 56, ¶ 111. "Between \$10 million and \$12 million was reported to have been paid for the release of the Tanker Zirku in June 2011. Prior to this, the South Korean oil tanker the Samho Dream was widely reported in 2010 to have been released for \$9.5 million." *Id.* at n.208. \$11 million was paid for the Greek oil tanker MV Irene in 2011. *Id.*

148. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 56, ¶ 111.

149. *Id.*; see also Bernard Sanga, *East Africa: Kenya's Somali Incursion Cuts Piracy Costs in Indian Ocean*, BUSINESS DAILY (Nov. 9, 2011), <http://allafrica.com/stories/201111091257.html>.

paying such large ransoms, it encourages and funds more sea piracy.¹⁵⁰ In fact, Secretary of State Hillary Clinton appeared before the United States Senate Appropriations Committee in 2011 and expressed exasperation, proclaiming that “a lot of major shipping companies in the world think it’s the price of doing business. They pay the ransom and they just go along their merry way. That has been a huge problem.”¹⁵¹ On the other hand, submissions by the maritime industry to the Foreign Affairs Committee stressed the fact that, if the ransoms were not paid, there would be no other way to secure the release of the crews.¹⁵² These ship owners and insurance carriers have “to go past the moral consequences,” and get to the part of paying the ransom.¹⁵³

It was once believed that the fishermen who operated along the Somali coastline of the Indian Ocean became disgruntled and financially motivated because international trawlers were illegally fishing in Somali waters.¹⁵⁴ This led the fishermen to form the criminal gangs known today as the Somali pirates.¹⁵⁵ Even if Somali pirates tended to treat hostages well in the past and were only interested in ransom, it is obvious these pirates lacked any moral value of human life.¹⁵⁶ “These gangs dominate the piracy trade and have become increasingly violent as international navies attempt to crackdown on their activities.”¹⁵⁷ In 2012, Somali pirates proved their disregard for human life by killing in order to send a message to negotiators to heed to their ransom demands.¹⁵⁸ While this is believed to be the first time Somali pirates have killed a hostage because of a delay in ransom, Hassan Abdi, a pirate commander in Haradhere town, a key pirate center, said that the “killing was a message to the owners of the ship who paid no heed to our ransom demands. . . . More killings will follow if they continue to lie to us—we have lost patience with them. Two years is enough.”¹⁵⁹

Ransom payments are referred to in places as “humanitarian.”¹⁶⁰ As far as the Chairman of the Roundtable of International Shipping Associations (Roundtable) is

150. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 56, ¶ 112.

151. *Id.* (quoting *U.S. Looking at New Moves on Somalia Piracy: Clinton*, REUTERS (Mar. 2, 2011), <http://www.reuters.com/article/2011/03/03/us-somalia-piracy-usa-idUSTRE7217V820110303>).

152. *Id.* at 56–57, ¶ 112.

153. *Id.* at 57, ¶ 112.

154. *Somali Pirates Claim to Kill Hostage Over Ransom Delay*, NBCNEWS.COM (Apr. 28, 2013, 10:45 AM), http://worldnews.nbcnews.com/_news/2012/09/01/13610217-somali-pirates-claim-to-kill-hostage-over-ransom-delay?lite.

155. *See id.* “Somali pirates who have been holding a hijacked ship for nearly two years killed a Syrian hostage crew member and wounded another to protest delayed ransom payment, a pirate leader said.” *Id.*

The Panama-flagged, bulk cargo vessel owned by a company in the United Arab Emirates was hijacked in December 2010 off Seychelles after being fired at with rocket propelled grenades and small arms. The pirate group threatens more deaths, as they have lost their patience in waiting for a payment over a two-year span.

Syrian Hostage Killed by Somali Pirates Over Delayed Ransom, MARITIME EXECUTIVE (Sept. 3, 2012), <http://www.maritime-executive.com/article/syrian-hostage-killed-by-somali-pirates-over-delayed-ransom>.

156. *Syrian Hostage Killed by Somali Pirates Over Delayed Ransom*, *supra* note 155.

157. *Id.*

158. *Somali Pirates Claim to Kill Hostage Over Ransom Delay*, *supra* note 154.

159. *Id.*

160. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 57, ¶ 112.

concerned, governments should do more to protect seafarers against piracy.¹⁶¹ However, on behalf of the UK government, Prime Minister David Cameron indicated recently at a conference on Somalia that “creating an international task force to discourage the payment of ransoms to pirates and other groups to eliminate the profit motive” was not the proper method of dealing with this situation.¹⁶² In fact, the Roundtable thought that any action taken by government to discourage payment for ransom ignores the plight of those being held hostage and those that risk their freedom and their life working on ships in the region.¹⁶³ Despite all of the military engagements and the high level of compliance with the Best Management Practices (BMPs),¹⁶⁴ and although armed guards are being placed on ships, vessels are still being hijacked.¹⁶⁵

Importantly, “the only option available to ship-owners [that wish] to secure the release of hijacked seafarers is to negotiate a payment of a ransom.”¹⁶⁶ If governments decide “to hinder or prevent such ransom payments, [it is believed that this] would seriously and unnecessarily expose seafarers and deprive ship-owners of their last means of protecting . . . their employees at sea.”¹⁶⁷

161. See generally Letter from Yudhishthir Khatau, Chairman—BIMCO et al., to The Rt Hon David Cameron, Prime Minister of the United Kingdom, (Mar. 14, 2012) [hereinafter BIMCO Letter]. According to their website,

BIMCO [Baltic and International Maritime Council] is a shipping association providing a wide range of services to its global membership of stakeholders who have vested interests in the shipping industry, including ship-owners, operators, managers, brokers and agents.

The association’s main objective is to facilitate the commercial operations of its membership by means of developing standard contracts and clauses, and providing quality information, advice, and education.

BIMCO promotes fair business practices, free trade and open access to markets and is a strong advocate for the harmonisation and standardisation of all shipping related activity.

Accredited as a Non-Governmental Organisation (NGO) with all relevant United Nations agencies and other regulatory entities, BIMCO actively promotes the application of international agreed regulatory instruments.

About BIMCO, BIMCO, https://www.bimco.org/About/About_BIMCO.aspx (last visited Apr. 28, 2013).

162. BIMCO Letter, *supra* note 161.

163. *Id.*

164. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 65 (Best Management Practices (“BMPs”) are in their 4th edition (“BMP4”), which sets out guidelines (not rules) “regarding best practices for dealing with the threat of hijacking by pirates”); see also FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 19, ¶ 24:

BMPs are the most prominent example of a constructive industry response to piracy [that were] developed by shipping industry organizations in cooperation with the naval operations, to assist ships to avoid, deter or delay piracy attacks off the coast of Somalia. These include recommendations on speed, information on typical pirate attacks, and ‘self protection measures’ including watch-keeping, maneuvering practice, water spray and foam monitors and citadels—fortified safe rooms to which crew can retreat and await military assistance.

FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 19, ¶ 24.

165. BIMCO Letter, *supra* note 161.

166. *Id.*

167. *Id.*

To be specific, the immediate implications of hindering or preventing ransom payments would include [the following]: [a]ll of the seafarers currently held in captivity by Somali pirates would be left at the mercy of violent organized crime in a society where life has little value; [s]eafarers may very well refuse to sail in the high risk area when faced with the prospect of no release should they be taken hostage which would have a severe negative impact on world trade; [i]nsurance premiums for vessels would become prohibitive as the vessels and cargoes held would be lost at a significant cost to the insurance industry; [s]hips abandoned to their fate off the Somali coast will place the ocean environment at risk. The combination of risk and insurance rates would ultimately cause the majority of ships to avoid the region completely thus having an immeasurable impact on food aid and the regional economy, as well as on world trade costs.¹⁶⁸

“Should [any] government decide to criminalize ransom payments, ship-owners can no longer be expected to share a responsibility” for any government action beyond the ship-owners’ control.¹⁶⁹ “In those circumstances, the fate of the seafarers held for ransom will become the responsibility of governments, including any consequential collateral damage to life or property.”¹⁷⁰

Attention is also drawn to the United States (U.S.) Presidential Executive Order¹⁷¹ on banning ransom payments to known individuals.¹⁷² The Roundtable

168. *Id.*

169. *Id.*

170. *Id.*

171. Exec. Order No. 13620, 77 Fed. Reg. 43483, 43483–84 (July 20, 2012). Order titled “Taking Additional Steps to Address the National Emergency With Respect to Somalia” reads in part:

(a) All property and interests in property that are in the United States . . . are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

. . . any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia, including but not limited to:

(1) acts that threaten the Djibouti Agreement of August 18, 2008, or the political process;

(2) acts that threaten the Transitional Federal Institutions or future Somali governing institutions, the African Union Mission in Somalia (AMISOM), or other future international peacekeeping operations related to Somalia; or

(3) acts to misappropriate Somali public assets;

(B) to have obstructed the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;

(C) to have directly or indirectly supplied, sold, or transferred to Somalia, or to have been the recipient in the territory of Somalia of, arms or any related materiel, or any technical advice, training or assistance, including financing and financial assistance, related to military activities;

team pointed out that they “had significant co-operation and assistance from the U.S. Office of Foreign Asset Control (OFAC).”¹⁷³ The “concern is focused entirely on the possibility of ransom payments reaching the Special Designated individuals named in the U.S. Executive Order, in contrast to stopping all ransom payments, as implied by [Prime Minister David Cameron’s] statement.”¹⁷⁴ However, reflecting on the Maersk Alabama attack in 2009, where “twenty sailors [fell] under the control of four armed [pirates] . . . which was the largest kidnapping of American citizens in the last several years,” the Obama administration was put under pressure.¹⁷⁵ In response, “the [U.S.] has taken a hard line against kidnappings of

(D) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of acts of violence targeting civilians in Somalia, including killing and maiming, sexual and gender-based violence, attacks on schools and hospitals, taking hostages, and forced displacement;

(E) to be a political or military leader recruiting or using children in armed conflict in Somalia;

(F) to have engaged, directly or indirectly, in the import or export of charcoal from Somalia on or after February 22, 2012;

(G) to have materially assisted, sponsored, or provided financial, material, logistical or technical support for, or goods or services in support of, the activities described in subsections (a)(ii)(A) through (F) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(H) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

Id.

172. Jason Straziuso, *Obama Memo Triggers Confusion Over Legality Of Pirate Ransoms*, INSURANCE JOURNAL (Apr. 22, 2010), <http://www.insurancejournal.com/news/international/2010/04/22/109187.htm>. President Obama issued Executive Order 13536 on April 13, 2010, which

appears to make criminally punishable any act of providing financial aid directly or indirectly to any person or entity classified as a “Specially Designated National” (SDN) by the Office of Foreign Asset Control (OFAC), or to any person or entity that is determined by the Treasury and State departments to have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia.

Marts, *supra* note 41 (citation omitted).

173. BIMCO Letter, *supra* note 161.

174. *Id.*; The concerns referred to Marts asserts:

The OFAC [(Office of Foreign Assets Control)] list of Specially Designated Nationals (SDN) now includes at least two people who are linked to both piracy and terrorism. Upon issuance of Executive Order 13536, the President issued an accompanying statement to Congress making it clear that the Administration views piracy as a threat to U.S. national interests and seeks to undercut financial support for piratical activities.

Marts, *supra* note 41, at 24 (citations omitted).

175. Matthias Gebauer, *Somali Pirates Up the Ante*, BLOOMBERG BUSINESSWEEK: GLOBAL ECONOMICS (Apr. 9, 2009), <http://www.businessweek.com/stories/2009-04-09/somali-pirates-up-the-antebusinessweek-business-news-stock-market-and-financial-advice> (“The White House often risks the lives of hostages before it accepts blackmail from kidnappers. For the same reason, the US is quicker to try to free hostages by force.”).

American citizens.”¹⁷⁶ “Paying ransom—a routine strategy in Europe—[seems theoretically] out of the question in Washington, D.C.”¹⁷⁷

D. Are Ransom Payments Legal Under English and American Laws?

The answer to this question is yes.¹⁷⁸ Under English law:

[T]he option to pay a ransom is one that [has been] recognized . . . unambiguously and confirmed by the High Court and Court of Appeals in [the case of] *Masefield v Amlin*, where it was also recognized by the judiciary as a longstanding and important feature of the insurance market.” [Further,] Mr. Justice Steele [actually] acknowledged that there is no public interest in stopping ransom payments. [Moreover,] [t]he House of Lords EU [European Union] Affairs Committee likewise supported ‘the status quo whereby payment of ransoms to pirates is not a criminal offence under UK law.’¹⁷⁹

[So,] [r]ansom payments are not illegal under the UK law except for cases in which there was evidence that the payment [was utilized to] trigger another crime. [For example, the British] Government has stated . . . that ‘payment of a ransom to a United Nations designated terrorist group or individual would contravene the al-Qaeda and Taliban sanction regime established by UN Security Resolution 1267 (1999).’ [However,] [t]his approach is not shared by all states, some of which are known to have paid ransoms, and/or become involved in the ransom negotiation process when their citizens are held hostage. [With that said, the] industry has been broadly supportive of the UK’s approach. According to Stephen Askins: ‘[i]n a commercial sense, we would rather there was minimum government involvement in the negotiation process. They can help where help is called for, but

176. Matthias Gebauer, *Somali Swashbucklers: Pirates Extend their Hunting Grounds*, SPIEGEL ONLINE INTERNATIONAL (Apr. 9, 2009, 12:26 PM), <http://www.spiegel.de/international/world/somalia-swashbucklers-pirates-extend-their-hunting-grounds-a-618374.html>.

177. *Id.*

178. See *infra* notes 181–97 and accompanying text.

179. BIMCO Letter, *supra* note 161; In *Masefield AG v Amlin Corporate Member* (2011) EWCA Civ 24,

[T]he Court of Appeal was asked to decide (i) if the taking of a vessel and its cargo amounted to an actual total loss; and (ii) if ransom payments by ship-owners to pirates were as a matter of English law against public policy. In finding for Owners, the Court held that whilst each capture by pirates needed to be viewed on the facts, capture in itself was not sufficient to trigger an actual total loss. The Court also reaffirmed the decision at first instance that ransom payments to pirates are not against English public policy and therefore legal.

Philip Roche et al., *Shipping Newsletter—Legalseas*, NORTON ROSE (Apr. 2011), <http://www.nortonrose.com/knowledge/publications/49711/shipping-newsletter-legalseas>.

generally we get it, we understand it, we have a process and, on a commercial level, it works.”¹⁸⁰

There has been “concern about possible international attempts to prohibit the payment of ransoms, which ‘would further endanger the seafarers held captive and any prohibition would serve only to drive ransom payments underground.’”¹⁸¹ “[T]he fact that ransom payments in 2011 have already totalled [sic] \$135 [million], another all-time record, should be a matter of deep concern to the British Government and to the entire international maritime community.”¹⁸² “An estimated \$300 million has been paid to Somali pirates over the last four years and, aside from a French operation on land following an attack on some [of] its citizens, none of this ransom money has been recovered.”¹⁸³

“As the amounts of money involved have increased, international attention has shifted toward efforts to understand the financial flows involved in piracy, both as a way of tackling piracy through apprehending investors and due to concerns that ransom money is funding organized crime [and] terrorism.”¹⁸⁴ In conclusion, the Foreign Affairs Committee Report stated that “the government should not pay or assist in the payment of ransoms but nor should it make it more difficult for companies to secure the safe release of their crew by criminalizing the payment of ransoms.”¹⁸⁵ Also, after recognizing that the British Government was “disappointingly slow to take action on financial flows related to ransom payments,”¹⁸⁶ the report concluded that “the Government’s laudable principle not to become involved in ransom payments should not extend to the point of failing to collect, analyse [sic] and act upon information concerning ransom payments made

180. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 57, ¶ 113.

181. *Id.* at 57, ¶ 114.

182. *Id.* at 58, ¶ 115.

183. *Id.* at 58, ¶ 116.

184. *Id.* at 58, ¶ 117. “There is very little solid information about where this money goes, in large part because ransom payments are in the form of physical cash and the money trail generally grows cold after the ransom is delivered.” (citing *Organised Maritime Piracy and Related Kidnapping for Ransom*, Financial Action Task Force Report, July 2011, P 5, ¶ 4). *Id.* at 58, ¶ 116;

Most observers agree that it is to some extent shared between the pirate “foot soldiers” and investors. However, there are also fears that the money reaches corrupt Somali officials, Somali terrorist groups such as al-Shabab, and international criminal groups who fund the piracy from abroad and channel the proceeds out of Somalia into banks in Dubai and even London.

Id. at 58, ¶ 116.

185. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 58, ¶ 115.

186. *Id.* at 59, ¶ 118. As of June 2011, Mr. Henry Bellingham MP (Parliamentary Under-Secretary of State, Minister for Africa, the UN, Overseas Territories Conflict Issues) stated that

in the early days of payment of ransoms we were talking about a few million US dollars; we are now talking about a total amount of about \$300 million. Serious sums of money are washing around different world financial centres and systems. Understanding where that money goes, disrupting it and going after the kingpins is incredibly important. We have had some success, but there is much more to do.

Id. at Ev 49.

by British companies to private individuals”¹⁸⁷ The Committee also recommended that the British Government “establish a mechanism through which intelligence and information about ransom payments and pirate groups and negotiations can be communicated to the Government by those involved.”¹⁸⁸

E. On the Attempt to Curtail Piracy Ransom Payments

The representatives of seafarers (e.g., the British Chamber of Shipping) were concerned that the “US legislative actions to curtail piracy by means of an Executive Order signed by US President [Barack Obama], which [had] the potential to block payments to certain individuals [named in the Executive Order,] on the grounds that [those individuals contributed] to the conflict in Somalia.”¹⁸⁹ Some countries have implemented the United Nations Security Council’s resolution.¹⁹⁰ The International Chamber of Commerce, the Lloyds Market Association, and other such entities and persons, “remain[] very concerned that any [other] attempts to prohibit the payment of ransoms would further endanger the seafarers held captive.”¹⁹¹

A witness appearing before the Foreign Affairs Committee hearing stated that “[u]nless we change our law to make the payment of ransoms illegal, our policy of discouraging it will continue.”¹⁹² He went on to give an anecdotal example of an event that had occurred recently and was covered by the press, as follows:

People who were carrying a ransom arrived at Mogadishu airport with, I think, US\$2.5 million. They were apprehended by the TFG [(Temporary Federal Government)] and were up in the court the following day, where they were convicted and given lengthy prison sentences. We dealt with that as a consular case. We did not

187. *Id.* at 59, ¶ 119.

188. *Id.*

189. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 63.

190. The introduction to the Security Council’s Resolutions reads as follows:

United Nations resolutions are formal expressions of the opinion or will of United Nations organs. They generally consist of two clearly defined sections: a preamble and an operative part. The preamble generally presents the considerations on the basis of which action is taken, an opinion expressed or a directive given. The operative part states the opinion of the organ or the action to be taken.

United Nations Documentation: Research Guide, UNITED NATIONS, <http://www.un.org/Depts/dhl/resguide/scres.htm> (last visited May 3, 2013).

191. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 63. Because no direct links are thought to exist between pirate groups and terrorist organizations, the industry believes military counter-piracy operations are distinct and should remain separate from anti-terrorist operations. As such,

[a]n additional and unwelcome development for shipping companies in 2010 concerned US legislative actions to curtail piracy by means of an Executive Order signed by US President [Obama] on 13 April, which has the potential to block payments to certain individuals on the grounds that they may be contributing to the conflict in Somalia.

Id.

192. *Id.* at Ev 49.

say that the TFG were wrong to prosecute those people for paying a ransom, which is against their law. In that case, there has been a presidential pardon—the men have been released, but the money has been confiscated by the TFG, and I understand the assets as well, such as vehicles and aircraft.¹⁹³

The irony of the situation seems to be that the government of Great Britain is sanctioning payments on the one hand, “yet it is the policy of the Government to discourage payments,” certainly an inconsistent approach.¹⁹⁴ The response to that conclusion was made by Mr. Bellingham¹⁹⁵ where he stated that although the Foreign Office is “aware that payments are made,” they “do not have evidence of money finding its way through the financial services institutions in [London].”¹⁹⁶ He further stated:

We don’t have evidence that there is money ending up in London. If there was evidence of this, then we would be able to go after the guys. That is why we are making this a bigger priority, putting more money into Interpol, into UNODC, understanding more about how these financial flows are structured.¹⁹⁷

Many of the problems that hostages face come about because of the laxity of responsibility on behalf of the flag states. Much of the “complex and opaque operating structures of much of the industry—such as flags of convenience and ‘brassplate’ shell companies¹⁹⁸ that have no genuine link to the country of vessel ownership and the nationality of the crew.”¹⁹⁹ As such, this only:

[H]elp[s] erode [the] accountability and responsibility and generate extremely difficult complexities from the jurisdictional

193. *Id.*

194. *Id.*

195. *Id.* at Ev 37.

196. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 50.

197. *Id.*

198. “Brass plate” companies are also known as IBCs (international business companies) or “shell companies,” which are special purpose entities.

These companies are incorporated in small economies with international financial centers, have no physical presence in that jurisdiction, have all their assets, liabilities, and operations elsewhere, and are usually owned by nonresidents of the jurisdiction of incorporation. Typically, the requirements of the country of incorporation are minimal beyond payment of registration fees. The registration is usually undertaken by a local service provider who is the only contact and who has little or no idea of the activities of the companies. While service providers are required to know the name of the owner(s) in most jurisdictions, that information is not public and accounts do not need to be maintained or lodged.

Fourteenth Meeting of the IMF Committee on Balance of Payments Statistics: Note on the Application of the Residence Concept to Small Economies with International Financial Centers, STATISTICS DEPARTMENT INTERNATIONAL MONETARY FUND, available at <http://www.imf.org/external/pubs/ft/bop/2001/01-13.pdf> (last visited May 3, 2013).

199. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at Ev 103 (internal footnote added).

perspective. Diplomatic sensitivities and concerns [of the] national sovereignty often provide obstacles to cooperation between relevant authorities or at regional and international level, whilst many governments lack adequate laws and judicial capacity to effectively prosecute suspected pirates.²⁰⁰

CONCLUSION

The treatment of seafarers and their families is an abomination.²⁰¹ It was especially shocking to read an article that appeared in the *New York Times* dated July 17, 2012 regarding protections afforded to pirate kingpins.²⁰² According to the article, the corruption in Somalia exists to such an extent that President Sheikh Sharif Sheikh Ahmed issued a diplomatic passport to a top pirate leader in order to shield him from arrest.²⁰³ The United Nations refers to this type of corruption as a crime of “‘impunity’ enjoyed by pirate kingpins in Somali and abroad.”²⁰⁴ A “United Nations Monitoring Group on Somalia . . . report[ed] to the Security Council . . . that senior pirate leaders were benefiting from high level protection from Somali authorities”²⁰⁵ The pirate leader, Mohamed Abdi Hassan, had an authorized diplomatic passport when he presented it to the Malaysian immigration authorities.²⁰⁶ The Somali president defended the passport as part of the larger strategy to dismantle the pirate network.²⁰⁷ “The [UN] Monitoring Group . . . submitted two confidential cases to the Security Council documenting the flow of piracy proceeds via international accounts and singling out a Somali businessman

200. *Id.*

201. *Human Cost of Somali Piracy*, *supra* note 6, at 4.

202. *Somalia: President is Shielding Pirate Leader*, *U.N. Report Says*, N.Y. TIMES, July 17, 2012, at A6, available at http://www.nytimes.com/2012/07/18/world/africa/somalia-president-is-shielding-pirate-leader-un-report-says.html?_r=0.

President Sheikh Sharif Sheikh Ahmed, . . . has shielded a top pirate leader from arrest by issuing him a diplomatic passport, according to a United Nations inquiry, which criticizes the ‘climate of impunity’ enjoyed by pirate kingpins in Somalia and abroad. The United Nations Monitoring Group on Somalia said in a report to the Security Council that senior pirate leaders were benefiting from high-level protection from Somali authorities and were not being sufficiently sought by international authorities. The group said a diplomatic passport had been provided ‘with the authorization of’ Mr. Ahmed to Mohamed Abdi Hassan, a pirate leader also known as Afweyne, who presented it to authorities in Malaysia on a trip there in April. The report said Mr. Ahmed said the passport was “one of several inducements” for Afweyne aimed at dismantling his pirate network. Mr. Ahmed, in a letter to the chairman of the Security Council Sanctions Committee, called the report ‘one-sided’ and described its contents as ‘unsubstantiated allegations.’

Id.

203. *Id.*

204. *Id.*

205. *Somali Pirate Kingpins Enjoy “Impunity,”* REUTERS (July 17, 2012), <http://www.reuters.com/article/2012/07/17/us-somalia-un-piracy-idUSBRE86G0ZN20120717>.

206. *Id.*

207. *Id.*

with British citizenship who [was involved in] a piracy ring [and] runs a counter-piracy business.”²⁰⁸

As this is going on, seafarers languish in miserable conditions while the various governments decide if they want to allow monies to flow through to pirates in order to pay off ransoms.²⁰⁹ In addition, there have been billions and billions of dollars spent on piracy off the coast of Somalia in order to build prisons and set up various legal systems, as well as to improve the conditions of the life of the Somali people.²¹⁰ These are admirable goals. However, it is hard to sit back without a little degree of cynicism when thinking that some of this money could be used to simply buy out the few thousand pirates that exist.²¹¹ In any event, when asked whether ransom monies should continue to be paid, the answer is a resounding “YES!”

208. *Id.*

209. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 57, ¶ 114.

210. See Barry Hart Dubner & Ritvik Raturi, *On the Economics of International Sea Piracy-A Case of History Repeating Itself*, 20 MICH. ST. INT'L L. REV. 745 (2012).

211. FOREIGN AFFAIRS COMMITTEE, *supra* note 15, at 57, ¶ 6.

APPENDIX A**SOMALI PIRACY—KEY FACTS²¹²**

- Over 1,000 Somali pirates are awaiting trial, or serving custodial sentences, in 20 countries.
- Somali pirate attacks increased in the first half of 2011, but the pirate success rate of one success per five attacks (20%) is well below the historical average. This reflects:
 - (of primary importance) a marked increase in the implementation of Best Management Practice and ship self-protection measures by merchant vessels;
 - a number of successful uses of “citadels” (safe rooms);
 - an increase in the number of disruptions conducted by international counter-piracy forces, and
 - there have also been an increasing number of incidents in which armed private security guards have played a role in successfully repelling attacks.
- The critical Gulf of Aden trade artery—the key UK commercial interest and original pirate focus—remains largely secure for UK and other international shipping, with no successful pirate attack since November 2010.

RANSOMS

US\$	2007	2008	2009	2010	2011	Total
Number	8	19	39	25	19	105
Average Paid	600K	1.3m	1.9m	3.19m	4.7m	
Annual Total	5m	25m	76m	79.8m	88.3m	274.3m

212. *Id.* at Ev 69–70.

ATTACKS

	Unsuccessful Attacks	Pirated	Total
2008	10	2	12
2009	117	46	163
2010	127	47	174
2011	101	19	120

- At anchorage:
 - 17 ships currently held
 - 393 hostages currently held
- Detention:
 - 134 days average length of detention, and
 - 446 days longest length of detention.

OPERATING AREA

- 3,900 km coastline of Somalia.
- 2.6 [million] square miles size of Area of Operations.
- 23,000 ships transit the Gulf of Aden per year.
- 97 WFP²¹³ & 102 AMISOM²¹⁴ escorted since [December 2008] (EU).

213. The United Nations World Food Program (WFP):

is the United Nations' organization designated by the international community to provide humanitarian food aid. Worldwide, WFP feeds 90 million people in more than 70 countries annually. According to WFP, "At any given time, [it] has 30 ships at sea, 70 aircrafts in the sky and 5,000 trucks on the ground, moving food and other assistance to where it is needed most." Large storage facilities within proximity of the famine areas, like Djibouti, Kenya and South Africa, allow WFP to pre-position and stockpile food for a prompt response to the Somalia emergency. Piracy off the coast of Somalia is an additional obstacle to food delivery for the famine. Humanitarian aid vessels are not exempt from the threat piracy poses to the global shipping industry traversing the coastline waters of Somalia. Food aid traveling from Djibouti to Mogadishu must traverse the narrow straits of the Gulf of Aiden and the long Indian Ocean coastline to the Somali harbors in Mogadishu and Bossasso.

Pearl Alice Marsh, *Getting Humanitarian Food Aid to Somalia*, ONE, available at <http://www.one.org/us/2011/09/20/getting-humanitarian-food-aid-to-somalia/> (last visited May 3, 2013).

214. The African Union Mission in Somalia (AMISOM) was launched first in Mogadishu by the Peace and Security Council of the African Union, with the agreement of the United Nations, on 19 January 2007. Amison, European Commission, available at http://ec.europa.eu/europeaid/where/acp/regional-cooperation/peace/peace-support-operations/amisom_en.htm (last visited Apr. 13, 2013); Against Somalia's backdrop of doomed interventions, AMISOM spokesman, LT. Col. Paddy Ankunda stated the "mission [was] to support the PFG mission to stabilize the country [of Somalia], to create conditions for . . . reconciliation, reconstruction and

- During 2009, approximately 23,000 ships, with \$952 billion of trade transited the Gulf of Aden. Of these ships less than 0.01% [were] hijacked. On average, 40,000 ships per year transit the wider Indian Ocean.

POPULATION AND HUMANITARIAN STATISTICS

- Population: 9.3 million (2011 UN Population Division);
- Average life expectancy: 48 years (2009 UNDP Human Development Report);
- Total number of Internally Displaced Persons: 1.46 million (April 2011);
- Over 700,000 Somalis have sought refugee status in other countries, and
- People needing emergency humanitarian or livelihood assistance: 2.4 million (Jan 2011).

ECONOMIC FIGURES

- GDP per head \$200 (2001); 43% of the population living on less than \$1 per day;
- Exports: \$460 million (2008 figures);
- Global diaspora remittances to Somalia: [Approximately] \$1 billion p.a. and
- International aid: \$250 million (2007).

development.” Muhyadin Ahmed Roble & Rijal Farah, What is AMISOM? Somalia Report (July 5, 2012), http://www.somaliareport.com/index.php/post/3479/What_is_AMISOM.

APPENDIX B**EXCERPT FROM MARITIME ADVISORY²¹⁵**

1. THE INTERNATIONALLY RECOMMENDED TRANSIT CORRIDOR (IRTC) ANNOUNCED IN REF A IS IN EFFECT AS OF 01 FEB 2009 AT 0001Z.

2. ALL VESSELS THAT COMMENCED A TRANSIT THROUGH THE PREVIOUSLY ESTABLISHED CORRIDOR PRIOR TO 0001Z 01 FEB 2009 SHOULD COMPLETE THEIR TRANSIT USING THE PRE-EXISTING COORDINATES. DO NOT SHIFT TO THE IRTC IN MID TRANSIT.

3. ALL VESSELS COMMENCING TRANSITS AFTER 0001Z 01 FEB 2009 SHOULD USE THE IRTC.

4. THE IRTC EAST BOUND LANE BEGINS AT 045 EAST BETWEEN 11 48 NORTH AND 11 53 NORTH. THE LANE IS ORIENTED ALONG A STRAIGHT LINE COURSE OF 072 DEGREES AND TERMINATES AT 053 DEGREES EAST BETWEEN 14 18 NORTH AND 14 23 NORTH. THE IRTC WEST BOUND LANE BEGINS AT 053 DEGREES EAST BETWEEN 14 25 NORTH AND 14 30 NORTH. THE LANE IS ORIENTED ALONG A STRAIGHT LINE COURSE OF 252 AND TERMINATES AT 045 DEGREES EAST BETWEEN 11 55 NORTH AND 12 00 NORTH.

5. THE IRTC IS NOT MARKED OR DEFINED BY VISUAL NAVIGATIONAL MEANS, NOR IS IT INTENDED TO BE A DEDICATED TRAFFIC SEPARATION SCHEME, BUT IN ORDER FOR WARSHIP PATROLS TO BE EFFECTIVE, VESSELS TRANSITING THE GULF OF ADEN ARE STRONGLY RECOMMENDED TO ADHERE TO THESE GUIDELINES.

6. DURING A TRANSITION PERIOD FROM 01 TO 04 FEB, WARSHIPS PATROLLING THE AREA WILL MONITOR TRAFFIC TRANSITING BOTH THE PREVIOUSLY ESTABLISHED CORRIDOR AND THE NEWLY ESTABLISHED IRTC.

215. Update to Internationally Recommended Transit Corridor (IRTC), MARITIME LIAISON OFFICE MARLO, available at <http://www.cusnc.navy.mil/marlo/Guidance/Corridor.htm> (last visited May 3, 2013).

