International Piracy and Armed Robbery at Sea
Security Inquiry Report

April 2010

OFFICE OF THE INSPECTOR OF TRANSPORT SECURITY
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1. TERMS OF REFERENCE

The following Terms of Reference were issued on 2 February 2009.

Pursuant to subsection 11(1) of the Inspector of Transport Security Act 2006 (the Act), the Federal Minister for Infrastructure, Transport, Regional Development and Local Government, the Honourable Anthony Albanese MP, formally directed the Inspector of Transport Security (the Inspector) to inquire into International Piracy and Armed Robbery at Sea and its potential impact on maritime shipping and trade to and from Australia.

The Terms of Reference issued by the Minister primarily require the Inspector to inquire into:

- the impact or potential impact of current world wide acts of piracy on Australian registered and owned international trading ships and Australian seamen and passengers.
- the impact or potential impact on Australian maritime trade of international shipping operating through known piracy waters.
- the effectiveness of current security arrangements of Australian ships with particular emphasis being given to:
  > whether current Australian security measures/arrangements are contributing to positive security outcomes including minimising risk of piracy.
  > areas for improvement in security practices/arrangements and the achievements of risk mitigation.
  > whether current international and domestic legislation needs to be strengthened to provide an improved framework for actions to prevent and control piracy.
- the identification of areas of particular vulnerability together with options for improving security effectiveness in such areas and recommendations for strengthening system wide consistency and capabilities.
As part of the Inquiry the Inspector will inquire into:

- the ability of Australian ship operators and owners to undertake risk assessments and develop and implement security programs to minimise the risk of successful pirate attack.
- security training and ship crew awareness.
- security information and assistance provided to the Australian Government and Australian ship owners from international agencies.
- security information and assistance provided by countries whose maritime jurisdictions control high-risk piracy waters.
- security information and assistance provided from the country of registry of shipping affected by or potentially affected by piracy.
- the relationship between ship owner/operators and naval and other inter-government anti piracy patrols and arrangements, and

will conduct a security assessment of identified ship security practices aimed at reducing the risk to ships posed by piracy and armed robbery at sea.

The Inquiry may be undertaken in conjunction with a current United Nations inquiry into piracy to which the Inspector has been separately approached to contribute.

The Inspector of Transport Security Act 2006 (Commonwealth) provides a framework for the Inspector to conduct independent ‘no-blame’ inquiries and make recommendations in relation to transport security matters and offshore security matters, in order to better contribute to the improvement of transport security and the security of offshore facilities. The Act also provides the Inspector with the powers to perform his duties, the means to protect information gathered during an inquiry, and immunities from prosecution for those who cooperate with the Inspector's inquiries.
2. METHODOLOGY

The Inquiry was conducted by the Inspector of Transport Security, Mr Mick Palmer AO APM, and the Office of the Inspector of Transport Security.

The agreed Inquiry process included a domestic fact-finding assessment and a benchmarking assessment in selected overseas locations.

Internationally, Australian Embassy and High Commission staff in the countries visited provided valuable assistance to the Inquiry team and facilitated a wide range of meetings, site inspections and discussion forums.

Within Australia, between March and August 2009, a range of consultations and selected site inspections were conducted with relevant maritime industry stakeholders and federal government agencies. The details are outlined in Chapter 2.1.

The international benchmarking assessment involved missions to the United Kingdom (London), Austria (Vienna), France (Lyon), Kenya (Nairobi), the Philippines (Manila), Malaysia (Kuala Lumpur) and Singapore, where extensive discussions were held with a range of government and private industry stakeholders. The details are outlined in Chapter 2.2.

2.1 DOMESTIC INQUIRY PROCESS

Within Australia, a range of consultations and selected site inspections were conducted with the following government agencies and shipping industry stakeholders.

The cooperation and assistance provided by all agencies and stakeholders contributed significantly to the outcomes of the report.

- Department of the Prime Minister and Cabinet (PM&C)
- Attorney-General’s Department (AGD)
- Department of Foreign Affairs and Trade (DFAT)
- Australian Safeguards and Non-Proliferation Office
- Department of Defence
- Australian Federal Police (AFP)
2.2 INTERNATIONAL INQUIRY PROCESS

During the international phase of the Inquiry, meetings were held with key representatives of government and industry agencies, including particularly:
- International Criminal Police Organisation (INTERPOL)
- United Nations Office on Drugs and Crime (UNODC)
- International Maritime Organization (IMO)
- International Maritime Bureau (IMB)
- The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)
- European Union Naval Force (EU NAVFOR)
- Society of International Gas Tanker & Terminal Operators Ltd (SIGTTO)
- International Association of Independent Tanker Owners (INTERTANKO)
- Baltic and International Maritime Council (BIMCO)
- International Chamber of Shipping (ICS)
- International Transport Workers Federation (ITF)
- US Navy
- UK Naval Legal Services
- Security Policy Group – Foreign and Commonwealth Office UK.
A range of high-level operational and policy meetings and site inspections were conducted. The openness of discussion in all forums reflected the positive cooperative attitude and high levels of concern held by respective governments, agencies and other stakeholders.
3. DEFINITIONS OF PIRACY AND ARMED ROBBERY AT SEA

The definitions of piracy and armed robbery at sea adopted for this Inquiry are as follows.

3.1 PIRACY

Piracy in accordance with Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) is defined as:

(1) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or private aircraft, and directed:
   a) On the high seas, against another ship or persons or property on board such ship.
   b) Against a ship, persons or property in a place outside the jurisdiction of any State.
(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft, and
(3) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

3.2 ARMED ROBBERY

Armed Robbery against Ships, in accordance with the International Maritime Organization (IMO) Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, is defined as:

(1) Any unlawful act of violence or detention, or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship, or against persons or property on board such ship, within a State's jurisdiction over such offences.
3. DEFINITIONS OF PIRACY AND ARMED ROBBERY AT SEA

3.3 ALTERNATIVE PIRACY DEFINITION

An alternative piracy definition is from the International Maritime Bureau (IMB), which defines piracy as:

‘The act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act.’

The IMB definition does not make the distinction made by the UNCLOS definition that the act of piracy occurs only on the high seas; it places piracy and armed robbery against ships in the same category for their reporting purposes whether on the high seas, in territorial seas, at anchor in a port or alongside a wharf. The IMB definition is not used for this Inquiry; however, as the IMB is quoted frequently within the report, it needs to be noted when reading IMB statistical data and information provided.
4. EXECUTIVE SUMMARY

This Inquiry was conducted pursuant to a direction issued on 2 February 2009, in accordance with subsection 11(1) of the Inspector of Transport Security Act 2006 (the Act), to inquire into International Piracy and Armed Robbery at Sea, as a relevant transport security matter within the terms of the Act.

The direction was given by the Federal Minister for Infrastructure, Transport, Regional Development and Local Government, the Honourable Anthony Albanese MP, and arose from a concern to ensure that the Australian Government had an accurate understanding of the prevailing international piracy and robbery at sea environment and the potential implications for Australian-related shipping trade.

While the primary focus of the Inquiry was the threat of piracy to Australia and Australian shipping and crews, it included an international benchmarking assessment of the global piracy and armed robbery at sea situation.

Before the late 1990s, the most sophisticated of pirate attack profiles involved the seizing of a ship to steal its cargo for future resale. In many cases it involved the re-birthing of a ship, often called ‘a phantom ship’, under another name and registry. In these attacks the pirates sometimes confined the crew for a time and then set them adrift; on other occasions they are believed to have murdered their victims. Since the 1990s, however, hijack and ransom has become the pirate modus operandi causing most international concern, with the Gulf of Aden and West Indian Ocean region recognised as the epicentre of the contemporary global piracy problem.

Significant incidents of piracy are increasingly occurring in the Gulf of Guinea area of West Africa, centring on Nigeria. Other areas of continuing concern are the waters of the Indian subcontinent, Central America, the South China Sea and the Caribbean Sea.
4. EXECUTIVE SUMMARY

Fig. 1: Locations with the majority incidents of Piracy and Armed Robbery at Sea

<table>
<thead>
<tr>
<th>Location</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>121</td>
<td>94</td>
<td>79</td>
<td>50</td>
<td>43</td>
<td>28</td>
<td>15</td>
</tr>
<tr>
<td>Malacca Strait</td>
<td>28</td>
<td>38</td>
<td>12</td>
<td>11</td>
<td>7</td>
<td>2</td>
<td>2</td>
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<td>Malaysia</td>
<td>5</td>
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<tr>
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<td>47</td>
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<td>India</td>
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<td>15</td>
<td>5</td>
<td>11</td>
<td>10</td>
<td>12</td>
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<td>Nigeria</td>
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<td>16</td>
<td>12</td>
<td>42</td>
<td>40</td>
<td>28</td>
</tr>
<tr>
<td>Gulf of Aden/Red Sea</td>
<td>18</td>
<td>8</td>
<td>10</td>
<td>10</td>
<td>13</td>
<td>92</td>
<td>131</td>
</tr>
<tr>
<td>Somalia</td>
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<td>2</td>
<td>35</td>
<td>10</td>
<td>31</td>
<td>19</td>
<td>80</td>
</tr>
<tr>
<td>South America</td>
<td>34</td>
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<td>13</td>
<td>24</td>
<td>11</td>
<td>12</td>
<td>33</td>
</tr>
</tbody>
</table>

Source: International Maritime Bureau 2010

4.1 GULF OF ADEN AND THE SOMALI REGION

It is widely accepted that the failed state of Somalia is the centre of Africa-based piracy. The absence of effective and legitimate government across the country has resulted in the virtual destruction of the Somali economy and the creation of an environment within which many Somalis have little or no legal opportunity for employment. As a consequence, the opportunity to earn significant money from criminal activity may present as an attractive option, particularly to young Somali men.

Contemporary Somali-region piracy operations generally involve the use of small skiffs, carrying between four and eight persons, frequently armed with AK-47 rifles or similar light arms and, increasingly, with rocket propelled grenades (RPGs). The vessels are usually equipped with grappling hooks, ladders and other equipment likely to assist the boarding of a larger craft. The vessels may vary significantly both in degrees of sea-worthiness and in speed. Some have the capacity to travel at between 25 and 30 knots and to operate in quite high sea conditions; others have a much more restricted capacity.

Pirate crews generally carry sufficient fuel to enable them to remain at sea for extended periods although their provisions are usually quite meagre and unlikely to extend much beyond several litres of drinking water, raw fish when caught, and supplies of the mild narcotic ‘Khat’ to chew.
A strong Somali-held belief is that many Somalis started their piracy exploits as a response to illegal dumping of toxic waste off the Somali coast and commercial-level illegal fishing in the territorial seas of Somalia by fishermen from Europe, other African States, Central and East Asia. The dumping of toxic waste is alleged to have polluted traditional Somali fishing grounds, while the illegal fishing activities have been described as ‘vacuuming’ the sea, destroying the fishing fields and depriving the Somali fisherman of their traditional livelihood.

The Somali perspective is that, in retaliation, Somalis began ‘taxing’ these fishing vessels and progressed from there to capturing crews and stealing or ransoming the vessels, gaining skills and experience in piracy in the process.

The Somali pirates have now graduated to attacking all manner of vessels, including oil and other energy tankers, container, bulk and general cargo ships, and passenger cruise liners.

Ransom payments are routinely demanded, often in the range of US$2 million to US$4 million, and are required in cash, normally in US dollars due to its widespread acceptance as an alternative currency in Africa and the Middle East.

Much of the money obtained through ransom is paid to a number of warlords who sponsor the piracy efforts, with lesser amounts going to the pirates themselves. The extent of the involvement of the warlords has increased over time, enabling them to buy more sophisticated equipment and newer weaponry. Disturbingly, payments are also being made to obtain intelligence, such as the value of cargo, the likelihood of ransom demands being met by the ship owners, and the passage a vessel is following.

The organisation of piracy activity generally involves a number of persons in both the attack and detention phases, a protected stronghold in which the hijacked ship and its crew can be securely held (with corrupt government officials or a lack of good governance operating to allow the holding of the ship), the distribution and laundering of the ransom monies, and immunity after the release of the ship for those involved in the hijack. Local government officials have, according to some reports, become complicit in piracy operations and have granted pirate gangs semi-official ‘coast guard’ status in return for a portion of the proceeds (Financial Times 2010).

Pirates operating in the Gulf of Aden and off the Somali coast have become increasingly bold in attacking shipping, including frequently attacking shipping more than 500 Nautical miles (Nmiles) off the coast and in some cases as far as 1000 to 1200 Nmiles into the West Indian Ocean.

Some reports suggest that nationalities other than Somalis may now be involved in piracy activity, that some pirates—Somali or otherwise—are travelling to Kenya or other neighbouring countries and stealing or purchasing craft to use in their attacks, and that some may be flying to the Seychelles where they purchase or steal craft to launch an attack in West Indian Ocean waters previously thought to be of much lower risk (Axe 2008). Almost all persons currently in custody in Kenyan prisons on piracy-related charges are, however, understood to be from Puntland, a semi-autonomous region in the north of Somalia.
Attacks to the north and north-east of the Seychelles in late 2009 indicate that Somali pirates may be using the uninhabited islands in that region as temporary operating bases for piracy in the West Indian Ocean. These islands are around 600 Nmiles from the Somali coast and may be substituting for a mother ship type of operation to extend the range of the small craft used to attack shipping.

**Reports of pirate links with the Seychelles government**

Security companies have reported that the government of the Seychelles has done deals with the pirates which would allow them to operate as long as they do not affect the interests of the Seychelles.

One example of this, it is claimed, was the government’s release of 11 Somalis arrested after the attempted hijacking of two French tuna trawlers. The men were captured by the Seychellois coastguard vessel, Topaze, following information from a spotter plane of the EU’s anti-piracy task force Atalanta, earlier this month, but then swiftly released.

The government of Puntland, a breakaway region of Somalia, complained when two Seychellois light aircraft landed on its territory and freed 23 Somali pirates. The plane and the crew were released after paying a fine.

The Seychellois government denies any deal with the pirates. But Iderat Maritime, a leading shipping security company which lists Major-General Julian Thompson, the former commander of the Royal Marines, as one of its directors, stated that the government has probably reached an ‘understanding’ with the pirates. Information from within Somalia appears to confirm this.

Christopher Ledger, vice-chairman of Iderat Maritime, said: ‘These reports have been quite persistent and need to be looked at.’ (The Independent 2009)

Merchant ships and other craft have also been taken while navy forces, including helicopters and warships, were in close proximity to the ship under attack. A recent media release (Agence France Presse 2009) reported that the crew of a naval ship was forced to watch as a British couple were taken hostage from their yacht the Lynn Rival by Somali pirates on the 23 October 2009 for fear that any attempt to interdict the attack would have endangered the lives of the couple.

Increasingly, the pirates have proved their adaptability. Depending on the size of the target vessel, they are likely to use a number of small craft to facilitate their attacks by creating distractions or diversions and so increasing their chances of successfully boarding the target vessel. As part of this process the pirates often operate from mother ships, usually hijacked fishing trawlers or coastal dhows, in order to extend their endurance and range well out into the Indian Ocean.
4.2 The International Anti-Piracy Response in the Somali Region

Apart from the ongoing and fundamentally important diplomatic/political efforts to restore legitimate government and the rule of law to Somalia, the international anti-piracy response in the Gulf of Aden/Somali region comprises naval military, shipping industry and land-based programs, most of which are led by the United Nations (UN).

The response of the international community has been, pursuant to UN Security Council resolutions 1861, 1846 and 1897, to create a regime whereby any naval vessel can enforce the law of the sea rules on piracy in Somali territorial seas. Further, the UN resolutions facilitate the creation of a mechanism for international cooperation in combating piracy off the coast of Somalia and the development of the capacity of regional states to participate in such activities, particularly in the policing, judicial/prosecutorial and prison sectors.

Naval Military Responses

Militarily, there are two central naval initiatives: the European Naval Force (EU NAVFOR) and the US-led Combined Maritime Force (CMF), although the North Atlantic Treaty Organisation (NATO) and an increasing number of individual unaligned nations are providing warships to protect their own flag shipping.

EU NAVFOR, under operation ATALANTA, works to protect merchant shipping in the Gulf of Aden. Essentially, EU NAVFOR manages group transits through the Gulf waters and aims to coordinate ship movements and timings through the highest-risk areas (the strategy being to have ships move through the high-risk area at night when attack levels are lowest) with warships placed at the points where ships will be at either dawn or dusk. EU NAVFOR offers protection to all ships regardless of flag status and is available to Australian shipping transiting the Gulf waters. As part of this strategy, an International Recognised Transit Corridor (IRTC) has been created. Ships are encouraged to sail within the corridor. However, despite the widespread availability of IMO circulars, EU NAVFOR Gulf of Aden Transit Scheme information, industry best management practices and world media attention, some ship owners and operators still do not engage with this program.

The main purpose of the CMF is to counter terrorist activity, although one of its three task forces (CTF-151) is primarily focused on piracy in the Gulf of Aden and the Indian Ocean. CMF has no political arm and is simply a coalition of the willing. In 2009 Australia committed naval assets and a maritime patrol aircraft to participate in this program.
International naval military views expressed during the course of the Inquiry included the following.

- The piracy problem is not going away any time soon.
- Despite the presence of naval warships, piracy attacks are still occurring and, although overall attack numbers have decreased, significant numbers of successful hijacks are still occurring.
- The area of operation of the pirates is increasing. Attacks, including successful hijacks, are occurring over 1,000 Nmiles into the West Indian Ocean.
- The piracy problem cannot be solved at sea. Although the naval presence is important, maritime forces are dealing essentially with symptoms rather than causes. They can only ever be a part of the solution.
- More industry involvement and engagement is needed. ‘Self-protective’ defensive measures offer as the best means of preventing a successful attack.
- Criminal justice and legal jurisdictional issues are in need of further improvement and clarification. They need to be addressed as a matter of urgency if persons apprehended in the act of piracy are to be subjected to an effective fair trial and punishment process.

Although EU NAVFOR operates a central contact and control point, not all nations with naval assets operating in the Gulf of Aden and Indian Ocean region cooperate fully with EU NAVFOR area coordination efforts. Overall, many stakeholders perceive naval military cooperation as variable.

**SHIPPING INDUSTRY RESPONSES**

Across the maritime industry environment, responses also vary. The larger shipping companies and associations are generally committed to improving engagement with naval forces and implementing risk management measures. Many smaller operators, however, although generally sailing the ships at highest risk (slower, lower freeboard vessels), do not consistently practise the same levels of engagement. In some cases smaller operators appear to lack even a basic knowledge of piracy risk or shipboard defensive measures and options.

Industry reluctance to engage is aggravated by the extremely low mathematical or statistical risk of any particular ship being hijacked (considered on most analysis to be less than 0.1 per cent), the cost associated with many aspects of on board security and an absence of insurance incentives to improve ship security preparedness and levels of planning and protection.

Ransom payments are not in themselves a significant component of the potential ship and cargo insurance risk taken on by the insurance industry. Other insurance risks, with greater potential costs and claims, include death of a crew member, loss of the ship and cargo, and environmental damage, especially through an oil spill.
In addition, a ship owner may seek reimbursement contributions from the various interests involved in the ship’s voyage, under a concept known as ‘general average’. A general average declaration means the ship had to incur an extraordinary expense to save it from peril, and the owner, cargo owner and other interests, and their insurers, should contribute their proportionate share as beneficiaries of the ship being saved. A general average adjuster determines the proportionate cost of each interested party.

Despite these factors—the low risk of hijack, the cost of on board security and the absence of insurance incentives—the economic and human impacts of a successful hijack, especially the dangers and trauma to crew held hostage, have combined to cause significant industry reaction and international concern.

As a consequence, a new type of ‘hijack and ransom’ insurance cover has been developed. Such insurance policies stand outside the traditional hull and cargo and protection and indemnity (P&I) insurance markets. The policies normaly cover the full costs associated with a ship, crew and cargo being hijacked and held for ransom. The intent of such policies is to provide a level of surety to the ship owner that funds will be available as early as possible and that the insurer can provide specialised assistance in ransom negotiations and the earliest possible recovery of the ship, crew and cargo.

More broadly, there is recognition among most ship industry bodies that ship owners and operators need to conduct their own security assessments and be responsible for the implementation of their own security protection measures.

In regard to ‘at-sea security’, there is a strong majority preference across industry for ship riders and security guards, where present and on board ships, to be unarmed. Some shipping companies have reservations about even unarmed security presence on board their ships.

Overall, the role of security teams is seen as more appropriate to higher risk level vessels (that is, those with low freeboard and a maximum speed of less than 16 knots) with any armed presence being reserved for extreme high-risk situations and, wherever possible, using only government-authorised forces. The overwhelming international position is that armed security should be considered only as an option of last resort. Private agency security is widely recognised as potentially posing significant legal and professional standards issues which, due the unregulated nature of the private security industry, remain unresolved and are unlikely to be resolved.

**LAND-BASED RESPONSES**

While the primary focus of naval forces and the shipping industry in the Gulf of Aden and Somali region is on ships and at-sea risk, all stakeholders recognise that no meaningful solutions or deterrents can be developed and maintained without the creation of an effective land-based regional capacity to apprehend, investigate, prosecute, convict and imprison pirates or persons suspected of piracy within the region of their operations.
The lead agency in the land-based African strategy is the United Nations Office on Drugs and Crime (UNODC). The UNODC has identified the need for counter-piracy naval patrols in the Gulf of Aden and Somali region to be supported by a reliable onshore capacity to prosecute and imprison persons suspected of piracy in the region. The UNODC Counter-Piracy Programme has been implemented to achieve this purpose.

The overall objective of the UNODC program is to provide targeted support to countries participating in the Djibouti Agreement. The support is targeted at prosecution, police, judicial and prison services, with a particular focus on capacity and logistical needs associated with trying and detaining piracy suspects. The program has no role in the proactive suppression or interdiction of pirates operating off the Horn of Africa. Its activities focus on the land-based end-products and end-users in the international counter-piracy effort.

Until recently the program has concentrated its capacity-building efforts on Kenya due to the willingness of Kenya to prosecute suspected pirates apprehended in international waters.

Under the UNODC mandate, European Union and other donor country money is ‘to follow the pirates’. This means that no capacity-development activities that use donor funds will be undertaken in any country that has not formally agreed to accept suspected pirates, apprehended by international navies, for prosecution. This commitment usually takes the form of what is a quite complex legal document known as a ‘transfer agreement’ which is negotiated between those governments wishing to transfer captured suspected pirates from their naval vessels into the custody of Kenyan authorities.

The Djibouti Agreement, which gave rise to the UNODC program, resulted from a high-level meeting of 17 states from the West Indian Ocean, Gulf of Aden and Red Sea areas. The meeting was convened by the International Maritime Organization (IMO) on 26 January 2009 with a direct aim of addressing the problem of piracy and armed robbery against ships off the coast of Somalia and in the Gulf of Aden.

The Code of Conduct agreed at the 26 January meeting is open for signature by 21 countries in the region. To date, however, only nine countries (Djibouti, Ethiopia, Kenya, Madagascar, the Maldives, the Seychelles, Somalia, Tanzania and Yemen) have agreed to receive, prosecute and imprison persons convicted of piracy. Only Kenya and the Seychelles have acted upon this commitment though negotiations are continuing with the other countries.

The Kenyan transfer agreements currently require naval warships operating in the area to deliver captured suspected pirates to the Mombasa Port in Kenya, regardless of where the suspected pirates are actually apprehended. As a consequence, the number of persons suspected of piracy held in Kenyan prisons had, as at the end of 2009, grown to 127. This is placing significant strain on the court and prison system. The lack of delivery points available to naval assets was also creating resource and timeframe difficulties.

Australia is a donor country to the UNODC counter-piracy program. It has contributed an initial A$500,000 and expert assistance in Kenya and the Horn of Africa region.
The program in Kenya has concentrated on four broad areas: judicial, prosecutorial, policing and prisons. Each area is serviced from within the UNODC program by a subject matter expert whose role is to establish with relevant stakeholders those areas in particular need of reform or further development. Australia has participated in this aspect of the program by providing police and transport security personnel.

4.3 SOUTH EAST ASIA

Despite the focus on the Gulf of Aden Somali Coast region, piracy remains a global problem, with piracy and robbery at sea attacks occurring on many of the world’s waterways. Across the South East Asian region most recent attacks have been opportunistic and robbery-focused. The most prevalent areas for attack are off the coast of Vietnam, Thailand, the Philippines and in the South China Sea off the Anambas Islands. Most recent South China Sea piracy attacks have occurred off this island group, to the east of Singapore.

The Malacca Strait, a focal transit point for shipping travelling between Asia and the Indian Ocean and an important waterway for Australia, is an attractive location for pirates and armed robbers due to its confined waters and the large number of ships (approximately 50,000 a year) using the waters on a daily basis. As the Malacca Strait is within the territorial limits of Singapore, Indonesia or Malaysia, any attacks against ships are considered by those countries to be acts of armed robbery at sea rather than piracy and, by IMO definition, are treated as domestic matters.

Armed robbery at sea in the Malacca Strait is primarily opportunistic in nature. It frequently occurs while a vessel is at anchor or in port, and is theft-based rather than involving the taking of hostages. It is essentially driven by the extent of poverty in many coastal communities.

The incidence of armed robbery at sea in the Malacca Strait has been dramatically reduced due to the combined commitment of the governments of Singapore, Malaysia and Indonesia—recently joined by Thailand—to conduct anti-armed robbery patrols of the Strait and bordering waters. Clearly, however, the potential for piracy and robbery attacks on vessels remains and vigilance needs to be maintained.

4.4 INDIA AND THE SUBCONTINENT

Most piracy incidents off the coast of India, Sri Lanka and Bangladesh occur in port or at anchor within territorial seas. As with the Malacca Strait, they are incidents of armed robbery at sea both by definition and in fact.

Attacks in this region are mainly opportunistic in nature and theft-based—readily available portable items on board are stolen, primarily at night, using stealth to avoid detection.
4.5 WEST COAST OF AFRICA

On the west coast of Africa incidents of piracy have increased particularly adjacent to the Niger Delta region, which has become essentially ungovernable since the end of 2005.

The Nigerian government is struggling to restore law and order in the region. This has allowed piracy attacks off the Nigerian coast to flourish. The attacks, which frequently are quite violent, are primarily aimed at offshore oil facilities, and are undertaken by armed separatist groups with terrorist rather than criminal intentions.

Despite the fact that Nigeria as a petro-state is enormously wealthy, it has been consistently marked by poor economic performance and increasing inequality. The political situation is unstable, and frequent violent conflict between local groups against oil service companies working in the area and the Nigerian government has escalated and contributed to the development of an almost lawless state of affairs in the Niger Basin, which is clearly spawning the growth of piracy-related activity (Watts 2009).

4.6 CENTRAL AMERICA

Piracy attacks have occurred off both the east and west coast of Central America, encouraged by the concentration of shipping trade routes to and from the Panama Canal. The seas off Venezuela, Colombia, Guyana, Suriname, Ecuador, Peru and Nicaragua offer local bases from which pirates can stage their attacks on trading shipping.

Similarly, the Caribbean Sea area has suffered a number of opportunistic piracy and armed robbery attacks where cash and valuables have been taken. This area is a natural focal point for shipping as it is on the main sea route between the Panama Canal, eastern US ports and Europe.

4.7 CURRENT OUTLOOK AND INITIATIVES

As distinct from terrorism and insurgency, piracy is undertaken with a profit or economic motive. The degree of profitability (reward), the ease of success and the consequences for failure (risk) are the elements that combine to drive decisions on undertaking piracy-related activities. This risk/reward calculation provides a basis for understanding why piracy differs around the world and over time.
The following factors are likely to influence this calculation.

- The volume of sea traffic through a given area. High volumes of traffic in an area provide increased opportunity to target shipping and greater flexibility in the timing of attacks.
- In littoral waters, the presence of straits and archipelagos and the narrowness of sea passages. These factors may increase the ease of attack, as ‘choke points’ require ships to concentrate into sea lanes, and occasionally reduce speed for safe navigation, making them more vulnerable to attack.
- A lack of governance resulting from internal conflict and/or corrupt or incompetent governments within a coastal state.
- Lax coastal, port and wharf security.
- Commercial shipping companies’ use of reduced crew manning as a cost-cutting measure and an outgrowth of advanced technology.
- The willingness of ship owners and insurers to pay large ransoms for the return of the ship, crew and cargo.
- The global proliferation of guns and other weapons. This has allowed pirates to operate at a more sophisticated and violent level.

(Chalk 2008)

As with almost all theft, and fraud based crime, piracy offenders are essentially motivated by greed and opportunity. As a consequence, they are unlikely to be deterred unless the chances of being apprehended, successfully prosecuted and convicted combine to make the criminal enterprise unviable. In the East African environment this level of deterrence does not currently exist and will be difficult to achieve.

Despite the efforts of the UN, progress towards re-establishing legitimate government and the rule of law in Somalia is slow, with the problems appearing to be almost insurmountable. This position is unlikely to improve significantly in the short or medium term.

The UNODC Counter-Piracy Programme faces significant difficulties and obstacles. Progress is slow, although as at 1 October 2009 funding in the order of US$6 million had been allocated to the program, and police, judicial and prison reform and capacity enhancement is occurring.

Another relevant issue is the 2009 downturn in the global economy as a consequence of the financial crisis. This led to a reduction in the demand for certain types of commercial vessels, particularly bulk carriers. Since most hull and cargo insurance policies cover the entirety of the period during which a ship is held for ransom, some owners may have chosen to leave the ship in the hands of the pirates because they could recover daily ship costs while it was detained—such costs could not be recovered if the ship was not detained and no cargo offering for the ship was available.

There is, however, a general recognition across the international shipping industry that self-protection involving a risk management approach to threat mitigation offers the most appropriate and economically viable short to medium-term protection for international shipping and crews.
In response to this situation, the international shipping and insurance industry peak bodies, working in close cooperation, produced the *Best Management Practices Manual* (BMP), which has been adopted by the IMO and circulated to mariners as part of a coordinated self-improvement, self-protection strategy. The BMP outlines minimum acceptable standards that should be achieved by all shipping transiting the high-risk Somali piracy waters. However, as piracy is recognised by all stakeholders as a global rather than simply a Horn of Africa problem, these standards ideally should be adopted by ships at all times on the high seas or as a minimum while transiting any waters that pose a realistic piracy or armed robbery threat.

Drawing heavily upon the BMP, IMO Maritime Security Circulars, international maritime industry experience and other current industry and international government advice and information, the Inquiry developed a set of Advisory Guidelines for Australian shipping and Australian crew and potentially for foreign-registered ships carrying Australian cargo.

The Guidelines provide comprehensive advice and options for consideration by ship Masters, ship owners and operators for the better protection of ships, ships’ crews and cargo from piracy and related attacks. The Guidelines, summarised in Chapter 10 of this report, were publicly released as a separate document by the Minister for Infrastructure, Transport, Regional Development and Local Government on 3 December 2009 at the IMO Assembly in London.

A brochure that complements the Guidelines by providing basic counter-piracy and armed robbery at sea preventive guidance information has also been developed and made available to the Australian and international shipping industry. Translated into the nine Asian languages considered most relevant to international seafarers, the brochure will be offered to shipping carrying Australian import and export cargo to and from Australian security-regulated ports. Around 50 per cent of the world’s seafarers speak one of these nine Asian languages; some 30 per cent of world seafarers are from the Philippines alone.
Consistent with the terms of reference of the Inquiry, the following recommendations are intended to assist in strengthening system-wide consistency and capability of security arrangements impacting on Australian maritime trade.

It is recommended that:

1. The preventive options and measures contained in the Australian Shipping Counter Piracy and Armed Robbery at Sea Advisory Guidelines formally released by the Minister on 3 December 2009 should be considered for adoption by ship operators, Masters and owners.

2. Australian security-regulated ships undertaking international voyages as part of normal business activity should re-evaluate current security plans to ensure that mitigation strategies adequately address the risks posed to the ship, crew, passengers and cargo by maritime piracy and armed robbery at sea.

3. Consideration should be given to identifying a Federal Government agency to be the single or primary coordination point between the shipping industry and government to ensure clarity, timeliness and accuracy of information exchange and advice on piracy and armed robbery at sea.

4. The government should work with the shipping industry and maritime unions to facilitate a review of current welfare support practices and arrangements sufficient to ensure:
   a. the availability of medical, psychological and post-trauma counselling treatment and welfare support services to seafarers on Australian-registered shipping during and after piracy and armed robbery at sea attacks and any consequent hostage situations, wherever they may occur; and
   b. effective and timely communication with and support to families of such seafarers who are taken hostage, during the periods they are held captive.

5. Current ship security planning arrangements should be reviewed to ensure that both safety and security issues are considered and jointly applied to the security planning process and the achievement of the most effective ‘safe at sea’ environment outcomes relevant to counter piracy and armed robbery at sea preventive measures.
6. GLOBAL OVERVIEW

6.1 GEOGRAPHICAL SPREAD AND CONTEXT

While piracy and pirates have been around as long as people have used the seas and oceans for trade, the upsurge of piracy activity since the early 1990s—particularly in the Gulf of Aden and West Indian Ocean—has created serious international concern. Piracy has become endemic to the Gulf of Aden and West Indian Ocean with these regions having taken over from the Malacca Strait in terms of prevalence and high-risk incidents. Piracy is also increasingly being experienced in the Gulf of Guinea area of West Africa, centring on Nigeria. Other areas of concern are the waters of the Indian subcontinent, the South China Sea, Central America and the Caribbean Sea.

Common to some of these regions has been the absence of an effective law and order capability of the littoral states such that they are unable to properly control the illegal behaviours of their citizens.

The worldwide total number of reported piracy attacks in 2009, according to the International Maritime Bureau (IMB) statistics, was 406. However, despite the seriousness of the situation reflected by these figures, the percentage of the world maritime trading fleet (listed as being 53,005 ships as at 1 July 2009 by Lloyds Register Fairplay) subject to piracy attack is only in the order of about 0.1 per cent. Clearly this low percentage figure is likely to have a negative impact on the willingness of ship operators, insurance companies and other key stakeholders to be prepared to invest significant money and effort into combating the problem.

Arguably, the situation is further complicated, perhaps even aggravated, by the current world situation. ‘Since the end of the Cold War, non-traditional security issues that in the past were not perceived as being part of the international security agenda have become increasingly important. Over the past two decades, it has also become more and more apparent that many non-traditional threats, such as terrorism, transnational crime or environmental degradation cannot be addressed by one state alone’ (Liss 2009).
Additionally, in this period the naval presence of the United States and Great Britain has been significantly reduced and the once-proud Russian Navy is now considered by some commentators to be practically non-existent. According to some, the number of international pirate attacks has risen in direct inverse proportion to decreases in the international naval presence (Propeller Club of the US 2000).

The situation becomes even more confused and potentially dangerous when consideration is given to the number of countries that have extended their territorial seas out to 200 Nmiles but have failed to plan or implement a corresponding maritime patrol capacity (Propeller Club of the US 2000).

### 6.1.1 GULF OF ADEN AND SOMALIA

It is widely accepted that the failed state of Somalia is the centre of contemporary piracy and that this is a consequence of the absence of an effective government and little or no legal prospects of employment for many Somalis. This situation, together with a decline in the ‘rule of law’ in a number of other African states, can be better understood in the context of the decreased influence of the former Soviet Union and the United States in that continent.

Unemployed youth in much of Africa, and certainly in Somalia, have grown up in an unstable and frequently violent environment. In such an environment it is understandable that some Somalis have become involved in piracy activities. As a coastal-dwelling nation, Somalis are experienced at going to sea in small craft and, given that the prevailing circumstances create limited opportunities of education and employment, and little expectation of a long life, they are largely without fear when they engage in piracy activities.

The piracy operations generally involve one or two small skiffs or other craft of varying degrees of seaworthiness with sufficient fuel to enable them to remain at sea for extended periods. These craft are equipped with scaling devices of grappling hooks and ladders, and an assortment of knives, assault rifles and Rocket Propelled Grenades (RPGs). Provisions are very modest and do not extend much beyond several litres of drinking water, raw fish when caught, and supplies of the mild narcotic ‘Khat’ to chew.

Essentially, the Somali pirates operate along 1,632 Nmiles of coastline (with some 695 Nmiles within the Gulf of Aden) and extend some 1,000 Nmiles into the West Indian Ocean. There is also emerging evidence that Yemeni pirates are becoming involved in the lucrative piracy business. Somali pirates have attacked ships along the southern Kenya coast, north of the Comoro Islands and the Seychelles, and off Oman north to the Arabian Sea and well away from Somalia. The pirates are believed to source much of their heavy weaponry, such as RPGs, from Yemen (VOA News 2009; Strategy Page 2009; BBC News 2008).

A strong Somali position is that many Somalis started their piracy exploits as a response to illegal dumping of toxic waste off the Somali coast and commercial-level illegal fishing in the territorial seas of Somalia by fishermen from Europe, other African states, and Central and East Asia. The dumping of toxic waste is alleged to have polluted traditional Somali fishing grounds, while the illegal fishing activities have been described as ‘vacuuming’ the sea and destroying the fishing grounds, thereby depriving the Somali fisherman of their livelihood.
The Somali perspective is that in retaliation, Somalis began 'taxing' these fishing vessels and progressed from there to capturing crews, hijacking and ransoming the fishing vessels and, as a consequence, gaining skills and experience in piracy.

The Somali pirates have now graduated to attacking all manner of vessels, including oil and other energy tankers, container, bulk and general cargo ships, and passenger cruise liners.

Over the past two years, acts of piracy by Somali-based criminals off the Horn of Africa have become an increasingly serious problem. It is well recognised that the acts of piracy and armed robbery have had significant international consequences, including the disruption of critical humanitarian aid deliveries to Somalia and the surrounding region, increased shipping insurance premiums to near-prohibitive levels, and potential damage to the economies of countries heavily reliant on international shipping.

Whereas previously ships hijacked at sea might be re-birthed and on-sold or traded under false identity, the dominant modus operandi in Somalia is to hijack the vessel and hold it, its crew and its cargo for ransom. The ransom money is paid in cash, normally in US dollars due to its widespread acceptance as an alternative currency in Africa and the Middle East. A large portion of the money obtained through ransom is paid to a number of warlords and financiers who sponsor the piracy efforts, with lesser amounts going to the pirates themselves. The extent of warlord and financier involvement has increased over time. It has enabled the purchase of more sophisticated equipment (satellite phones, GPS) and newer weaponry, and, disturbingly, payments to obtain intelligence on shipping such as the type and value of cargo, the likelihood of ransom demands being met by the ship owners and the passage a vessel is following.

While estimates and actual ransom demands vary, various sources suggest that the disposition of ransom moneys is in the order of 30 per cent to the pirates, 30 per cent to the clan warlord/government officials, 20 per cent to the financier and 15 per cent in direct costs, with 5 per cent reserved for future operations.

An Agence France Presse media release on 19 January 2010, announcing the release of the Greek supertanker VLC Maran Centaurus, reported:

According to other sources in Harardhere, two pirates died when a dispute flared on Sunday, immediately after the Maran Centaurus’ ransom was delivered. Somalia’s pirates treat every successful hijacking like a private venture in which businessmen from all over the country can invest by offering financial or material assistance, buying and selling shares. The bigger the captured vessel, the more complex the shareholder structure. Squabbling over a ransom is not uncommon but yesterday night’s clashes are some of the most violent recorded in Somalia’s otherwise relatively united piratehood. The operators of the Maran Centaurus, the second largest vessel ever captured by pirates, confirmed the supertanker and its crew of 28 were freed yesterday and were heading for the South African port of Durban.
A number of the pirates on return to Somalia have been reported killed for their portion of the ransom payments. As a consequence, pirates are instead travelling down into Kenya and Tanzania where they are buying up coastal properties or otherwise converting the ransom cash into other assets or depositing the money into the ‘Hawala’ system, an informal value transfer system also known as Hundi. The AllAfrica news website on 6 October 2009 reported that pirates had been attacked by another pirate group after landing at Dhanane Somalia with US$1.5 million ransom paid for the bulk carrier Horizon-1 (Garowe Online 2009).

The African and Middle East Hawala money system allows cash to be converted through a remittance system outside the international banking environment. It is reputed to be an important component in the Somali domestic use of the ransom monies. Somali money is frequently held within Somalia within the Hawala system, which places the money outside any current process to track the ransom money once paid in cash. Under the Hawala system the money may be used to buy property and goods in other countries without any actual direct transfer of funds.

The money is traded between Hawalladers against incoming monies in foreign currencies and linked to the unique Somali business practice of ‘Franco Valuta’. The Franco Valuta system of remittances or wealth transfers from abroad is a well-established practice in which Somali migrants working abroad transfer their salaries via Somali traders, who then pay their relatives in Somali shillings, keeping the hard currency themselves to then purchase imports outside of the normal bank and government foreign exchange systems (Informaworld 2009).

Significantly, the Hawala remittance system has established thriving urban enclave economies within Somalia and brought political power to major businessmen operating in these sectors. Government sources within the region suggest that these businessmen are providing additional financing in support of piracy in Somalia.

Under these arrangements, groups of Somali men are provided with the means to attack and hijack a ship, including a skiff, fuel and weapons. A hijacked ship brought back to the Somali coast is then handed over to the warlord who, for a fee, puts a riding team on board to secure the ship and begin negotiations with the ship owner.

In terms of piracy ransom demands, the ransom rate has increased over time from several hundred thousand dollars to a current going rate of US$1 to $3 million, depending on the ship and crew. The pirates normally receive the ransom payment as cash at the point where the ship is being held. The payment is now understood to be frequently delivered by aircraft which drop it by parachute close to the hijacked ship for collection by the pirates. Commonly a number of money-counting machines are dropped with the ransom to speed up the manual counting and ransom-dividing process the pirates undertake before they will release a ship and crew.

The aircraft and parachute delivery method is the preferred method, since any alternative delivery method of such a large amount of cash is itself at risk of attempts at robbery while in transit. Somali region pirates have, to date, always released the ships and the crew after payment of the ransom and have not attempted to recapture the same ship after its release.
Hijack attempts usually involve the use of weapons in order firstly to subdue the ship and to gain access and then to control the crew as hostages. The pirates have publicly admitted they are aware that once they are on board a ship, any rescue attempt could place the lives of the hostage crew at risk and that military and police forces are unlikely to attempt to retake the vessel due to this danger. There is also the risk of the loss of the ship and cargo through grounding or other deliberate act along the Somali coast, with the potential for a significant environmental disaster, if any attempt is made to retake the ship.

Pirates operating in the Gulf of Aden and off the Somali coast have become increasingly bold in attacking shipping both within the Gulf of Aden and off the Somali east coast, including attacking shipping in the Indian Ocean over 1000 Nmiles off the Somali coast. Ships have been taken while navy forces, including helicopters and warships, were in close proximity to the ship under attack. The pirates have proved adaptable with the use of mother ships—usually hijacked fishing trawlers or coastal dhows—to extend their endurance and range well out into the Indian Ocean, and the use of diversionary and swarming tactics to good effect.

The international shipping industry has discussed the option of arming their crews. However, legal concerns aside, the industry fears that if they arm their crews the pirates may retaliate by re-arming with higher powered weapons and undertaking indiscriminate fire on a ship causing injury and death to the crew and damage to the ship. Pirates have also been known to seek out and punish those on board seen to be organising the preventive measures used by a ship. It is also highly likely that anyone identified as having fired on the pirates will be severely dealt with.

More recently, the potential relationships between pirates and known terrorist organisations have been a concern. In December 2009, a private UK-based consulting company raised its security level advice to shipping to ‘high’ in response to a threat from Al Qaeda on shipping. ‘The Arabian Peninsula section of Al Qaeda issued an internet alert on 27 December, announcing ‘retaliatory strikes’ in response to an alleged US attack on an Al Qaeda stronghold in Yemen last week, killing 50 insurgents’ (Sea Sentinel 2009).

It is significant that this pirate modus operandi has emerged despite a sizeable military presence in the region.

The European Union (EU) is actively engaged in the fight against piracy. Many European states had already been active in the region and became a part of the EU NAVFOR Somalia – Operation ATALANTA when it attained operational capacity on 13 December 2008. EU NAVFOR is supported by 12 European countries and ships are currently supplied by the United Kingdom, France, Germany, Greece, Spain, Sweden and Italy, and soon by the Netherlands. At any one time, Operation ATALANTA normally deploys four to six ships in the region, permitting their rotation and maintenance. On 6 March 2009, the European Union concluded an agreement with the Republic of Kenya for the transfer of suspected pirates detained by EU NAVFOR under Operation ATALANTA.
At the request of the UN, in late 2008 NATO commenced providing naval escorts to UN World Food Program vessels transiting through Somali waters under Operation Allied Provider (October–December 2008). This operation was succeeded by Operation Allied Protector (March–August 2009) and currently Operation Ocean Shield, which additionally offers training to regional countries in developing their own capacity to combat piracy activities.

Under the US-led Combined Maritime Force (CMF) a CTF-151 Task Force has been established as a result of piracy attacks in shipping lanes off the coast of Somalia. The CTF-151 objective is to combat the activity of Somali pirates. Australia has joined the task force and committed a naval vessel that operates under the command of CTF-151.

A number of the warships are from the Combined Task Force 150, a multinational coalition fleet formed under Operation Enduring Freedom to conduct maritime security operations in and around the Persian Gulf, the northern Arabian Sea, the Gulf of Oman, the Gulf of Aden, and parts of the Indian Ocean and the Red Sea.

A number of countries not aligned with the above-mentioned responses, such as Russia, China, South Korea and Japan, have sent naval vessels to the Indian Ocean region off the coast of Somalia to protect their own flagged merchant vessels and to provide escort services to them as they travel through the piracy high-risk waters. These naval vessels also work in cooperation with the other response agencies (ATALANTA, CTF-151) to assist with vessel escort convoys and to react and assist any vessel coming under pirate attack when they are not engaged in escorting their own flagged vessels. Japan and China have undertaken to offer protected escorts services to any vessel, regardless of its flag country, that requests such escorts through the Gulf of Aden.

Somali pirates have adapted to increased naval patrols and naval escorts of shipping within the International Recommended Transit Corridor (IRT) and are now expanding out into the Indian Ocean.

However, it is interesting to note that a number of suspected pirate skiffs have been found upturned and abandoned in the Indian Ocean off the coast of Somalia. It appears these capsizes may have been caused by a sudden change in weather conditions catching the small craft too far out to sea and unable to reach the safety of land. This may be a factor in increasing the use of larger mother ships to support piracy operations in the Indian Ocean.

Piracy incidents off the east coast of Somalia and in the Gulf of Aden surged in the first nine months of 2009, and had already overtaken the figure for 2008.

Disturbingly, the number of vessels fired upon in these regions has also increased. In 2008, there were 39 instances of vessels being fired upon by pirates. In 2009 this increased to 114 instances, a significant and disturbing increase of violent attacks on shipping in the area. Many of the attacks have involved the use of high-powered military automatic rifles and RPGs.

Somalia pirates use readily available AK47-style military high-powered and rapid-fire rifles and RPG-type unguided rocket launchers. The military weapons are available throughout the Middle East and Africa as a consequence of numerous wars and armed conflicts. The collapse of Somalia has provided opportunity for arms dealers to flourish.
The increasing availability of ransom money has provided pirates with the financial means to purchase additional high-powered weapons and to replace weapons and equipment that may have been lost in encounters with anti-piracy naval forces.

In 2008, according to IMB figures, 815 crew members were taken hostage from 42 vessels hijacked in the Gulf of Aden and off the east coast of Somalia. The total number of hostages taken in the area in 2009 was 867 crew members from 47 hijackings. While the number of vessel hijackings increased in 2009, the proportion of successful hijackings to attack incidents has reduced. This can be attributed to the increased naval presence and to ship awareness, preparedness and preventive actions undertaken when transiting the affected region.

In considering piracy-related statistics, it is important to recognise that there is widespread international concern about the level of non-reporting of piracy attacks. Some critics suggest this percentage may be as high as 40 per cent. Regardless of such estimates, IMB and other official piracy and robbery at sea figures are clearly likely to be conservative.

The growing incidence of piracy in the Horn of Africa region focused the attention of the world on Somalia. It became rapidly clear to the international community that any lasting solution to the problem would require the reinstatement of effective legitimate government, the rule of law and an effective justice system in Somalia. In the short term it was recognised that it would be essential to improve the capacity of states within the region to effectively investigate, prosecute, convict and imprison suspected pirates.

The United Nations Security Council (on Friday) renewed the mandate of a group monitoring the 16-year-old arms embargo imposed on Somalia, saying piracy might increase access to a fresh arsenal of weapons. A report by the monitoring group said there has been a steady demand for weapons and ammunition while security in Somalia has deteriorated. It said most weapons have come from commercial markets, particularly in Yemen, and sent to Somalia across the Gulf of Aden.

The monitoring group received a fresh 12-month mandate to investigate the arms flow into Somalia, and which parties or individuals finance the purchases in violation of the UN arms embargo.

The report has identified an overlap between piracy, contraband and arms trafficking across the Gulf of Aden. It said pirates operated and benefited from the complicity and protection of officials in the semi-autonomous Puntland region in Somalia.

The report said the pirates have been using some of the ransom money to buy and purchase new weapons to increase the effectiveness of their bold seizure of ships off the Somali coast. (TopNews 2008)

Under the United Nations Security Council (UNSC) Resolutions 1846 (2008), 1851 (2008) and 1895 (2009), states were given a broad mandate to ‘use all necessary means’ and ‘undertake all necessary measures’ within the territorial waters of Somalia and within Somalia to combat the threat of piracy and armed robbery off the coast of Somalia.

These Resolutions specifically authorised states to seize and dispose of vessels, arms, and other related equipment known or reasonably believed to be used in the commission of piracy and armed robbery at sea in Somali territorial seas.
To facilitate the coordination of the international response to the UNSC Resolutions, the UNSC specifically encourages all relevant states and regional organisations involved in dealing with the piracy problem to establish an international cooperative mechanism covering all aspects of the attempts to combat piracy and armed robbery at sea off Somalia’s coast (Resolution 1851).

Arising from this initial UNSC process the IMO convened a meeting of 17 regional states in Djibouti on 26 January 2009 to address the problem. This meeting developed a code of conduct intended to govern the suppression of piracy and armed robbery against ships in the West Indian Ocean and the Gulf of Aden. The details of this code have become known as the Djibouti Agreement.

The agreement’s intentions are now being pursued by the United Nations Office on Drugs and Crime (UNODC), which recognised the need for international naval patrols involved in counter-piracy activity off the Horn of Africa to be supported by reliable onshore capacity sufficient to enable the effective prosecution, conviction and detention of persons apprehended by naval forces on suspicion of piracy.

To facilitate this process, the UNODC established the Counter-Piracy Programme with a central office established in Nairobi, Kenya. The program became operational in May 2009.

The bulk of the financial support for this program has, to date, been provided by the European community, which has a significant naval presence patrolling the crucial piracy-affected waters.

As outlined in the November 2009 UNODC Counter-Piracy Programme booklet, the program has delivered a range of support to the Kenyan criminal justice system and significant improvements have been made to imprisonment conditions and operational efficiency.

Police training has been conducted, additional administrative and investigative equipment supplied, and procedures put in place for the proper handling of exhibits and the safe transportation of weapons seized from suspected offenders.

Prosecutorial workshops have been conducted covering the law of the sea, advocacy and legislation. Significant improvements and refurbishments have been completed at a range of regional prisons.

Under the UNODC mandate, however, donor country money is required to ‘follow the pirates’. It is not expected that there will be any capacity-development activities employing donor funds in a country that has not formally agreed to accept pirates from international navies for prosecution. To date, while negotiations are continuing with a number of other states within the region, only Kenya and the Seychelles have actually agreed to accept and process pirates, although nine states signed the Djibouti Agreement.
The situation in Kenya is further complicated by the requirement for any country not covered by the EU agreement to sign a memorandum of understanding (MoU) or what is known as a 'transfer agreement'. This MoU requires agreement between the governments of those states wishing to transfer persons apprehended as suspected pirates to the custody of Kenyan authorities. Due to the number of suspected pirates delivered to the Kenyan port of Mombasa by international naval ships, and the consequent increasing demands being placed on the Kenyan authorities, Kenya is increasing the number of preconditions contained in the MoU as part of any transfer agreements. These additional demands have the potential to make any transfer agreement increasingly unattractive and onerous and cause non-EU countries involved in the capture and handover of suspected pirates to reconsider the viability of the transfer agreement process.

The failure to establish a transfer agreement with any of the nine Djibouti Agreement countries will leave only two possible legal options available to the naval forces. Suspected pirates may be caught and released where there is insufficient evidence of an actual attack; however, where evidence exists, apprehended suspected pirates should be returned for prosecution to the country of the relevant naval force.

6.1.2 SOUTH EAST ASIA AND INDIAN SUBCONTINENT

Historically, South East Asia has been the focus of many piracy and armed robbery attacks, although attacks in recent years have been largely opportunistic and theft-motivated. The majority of those attacks have occurred off the coast of Indonesia, Vietnam, Thailand, the Philippines and southern China, with a high proportion of attacks occurring within port limits and anchorages.

Most of the incidents occurring off the coast of India, Sri Lanka and Bangladesh also occur in port, at anchor and within territorial seas close to ports. Some attacks have been violent although the majority occurred at night with the offenders stealing ships' stores and equipment and fleeing if discovered or disturbed.

Piracy incidents in the South China Sea are on the increase, with 13 attacks in 2009. This is the highest recorded number of incidents in the past five years (IMB 2010).

6.1.3 MALACCA STRAIT AND INDONESIA ARCHIPELAGO

The Malacca Strait is a focal point for shipping travelling between Asia and the Indian Ocean and beyond. Around 50,000 commercial internationally trading ships pass through the Strait each year. The confined waters of the Strait, plus the large number of ships using the waters on a daily basis, provide a ready source of potential targets for pirates and robbers.

Armed robbery at sea in the Malacca Strait is primarily opportunistic in nature and a symptom of the privation of coastal communities. Armed robbery in the Strait has significantly decreased in recent years due to the combined efforts of the governments of Singapore, Malaysia, Indonesia and Thailand under the Malacca Strait Patrols initiative.
Statistically it is relevant to note that neither Indonesia nor Malaysia class the pirate-like activity occurring within the Malacca Strait as acts of piracy, even though it has been widely reported as piracy in the popular and maritime press. The Malacca Strait is within the territorial sea limits of these two countries and by IMO definition any criminal attack upon a ship within territorial seas is classified as ‘Armed Robbery at Sea’. Consequently, Indonesia and Malaysia treat these acts as domestic crimes under their state jurisdiction and legislation.

The combined air and sea security patrols demonstrate what can be achieved through the combined efforts of states with a genuine commitment to reducing the threat of piracy and armed robbery at sea. The framework of this joint collaborative strategy operates to provide a layered approach to dealing with the problems of piracy and armed robbery at sea that actively enhances cooperation, the open exchange of information and broader regional capacity-building. The strategy could serve as an international best practice model.

The Indonesian archipelago consists of over 13,000 islands, their population based mainly along coastal areas in a developing economy with areas of poverty and hardship within the more remote communities. Unlike the geographically concentrated attacks reported in Nigeria and Somalia, acts of piracy in Indonesian waters are generally scattered throughout the Indonesian archipelago. According to ICC Commercial Crime Services (ICC 2008), there had been an increase in piratical attacks in the region with 23 reported incidents, although most were considered to be low-risk opportunistic theft of valuables and stores from vessels. Idarat Marine (2009) reported that:

Attacks in the South China Sea and the waters around Indonesia in the first quarter of 2009 were against vessels at anchor, whilst during the second quarter they were against vessels at sea ... [Some observers] believe that insurance and shipping industries now need to be prepared for a major escalation of the piracy problem in the South China Sea and off the coasts of Indonesia’s islands.

And research at the Institute of Southeast Asian Studies (Storey 2008) found that:

... another maritime blackspot in south east Asia... [is] the porous sea borders between Indonesia, Malaysia, and the Philippines ... 

The travails of Indonesia, the locus of the problem in south east Asia, provide an apt illustration of all three factors. According to the IMB, Indonesia is home to the most pirate-infested waters in the world. Between 2002 and 2006 approximately a quarter of all reported piracy and sea robbery attacks around the world, and nearly two-thirds of attacks in south east Asia, occurred in Indonesian waters, frequently in Indonesian ports and anchorages. In 2006, for instance, there were 21 incidents in Indonesian ports and anchorages, representing 42 per cent of all attacks in Indonesia ... 

Piracy in the southern Philippines has been a way of life for many centuries. Because of language barriers and a lack of communication equipment ship Masters are often either unwilling or unable to report attacks to the IMB-PRC. As a result the vast majority of maritime depredations in this area go unreported to the IMB. For instance in early January 2007 the Philippine authorities rescued dozens of fishermen who had been held for ransom off Tawi-Tawi. In March of the same year suspected MILF operatives held twenty fishermen hostage off Mindanao.
Many of these attacks occur within territorial seas and again highlight the issue of piracy versus armed robbery at sea from a jurisdictional and response perspective.

The Indonesian government has made significant progress in reducing the number of piracy attacks off its coast, with the number of reported attacks dropping each year.

### 6.1.4 NORTH WEST AFRICA AND NIGER DELTA

To date, Nigeria is experiencing the highest rate of piracy-related incidents in the West Africa region. Since the end of 2005, the Niger Delta, the major source of Nigerian oil and gas, has become essentially ungovernable. The destruction of lives, communities and oil facilities onshore, and attacks on offshore oil infrastructure and oil tankers, has contributed to a reducing employment base and lack of economic stimulation within the region. This has contributed over time to a near lawless state of affairs in the Niger Delta.

Political instability and violent conflict between local groups and against oil and oil-service companies working in the Niger Delta and the Nigerian government have escalated.

Nigeria, as a petro-state, is enormously wealthy, but is nevertheless marked by poor economic performance and growing inequality. In a situation in which vast petro-revenues are open to exploitation, popular disillusionment causes class, ethnic, religious and social tensions to turn violent as each social group attempts to take a share of the petro-spoils. The number of insurgency groups has grown and they are undertaking terrorist-type activities and attacking oil installations and oil tankers. The Nigerian government has struggled to restore law and order in the region. This has allowed piracy-style attacks off the Nigerian coast which are primarily aimed at offshore oil facilities and undertaken by armed separatist groups, to flourish.

There is ongoing debate as to whether such attacks can be regarded solely as acts of piracy, terrorism or self-determination, or a combination of these and other factors.

The Niger Delta attacks have proven to be the most violent with reports of deaths, injuries and disappearances over the last several years. Ships have been purposely damaged or disabled in some attacks. There is a growing indication that the West Africa region is becoming a piracy zone as rebels from Nigeria’s troubled Delta Region seem to be extending their activities outside their country’s borders’ (AllAfrica 2009).

Corporate Risk International (2009) reported that:

*Nigeria’s coastal waters ranked second highest in the world in the number of piracy attacks in the first quarter of 2009, when seven piracy incidents were recorded; unconfirmed reports indicated at least another 13 had occurred. Although piracy incidents off West Africa’s coast are most prevalent near Nigeria’s Niger Delta province and near the financial capital Lagos, recent incidents have also been recorded off the coast of Benin, Cameroon, and Equatorial Guinea ... In Nigeria, attacks for political purposes involve heavily-armed militants launching seaborne sabotage attacks on oil facilities and vessels. The aim is to cause the greatest amount of damage possible with the intention of forcing companies to suspend operations, and hostages may be taken and held for ransom if the opportunity arises.*
According to the IMB Annual Report for 2008 and 2009 Nigeria had the second-highest number of serious attacks on a worldwide basis. These incidents are often quite violent, with ships hijacked and crews frequently injured. Fourteen crew reported injured in 2008 and 44 in 2009 (IMB 2010).

6.1.5 CENTRAL AMERICA AND THE CARIBBEAN

Pirate attacks have occurred off both the east and west coastal areas of Central America. The concentration of shipping trade routes towards the Panama Canal from either side is a significant factor, as it provides a ready source of shipping for opportunistic pirate attacks.

The sea areas and ports of Venezuela, Columbia, Guyana, Suriname, Ecuador, Peru, Brazil and Nicaragua are vulnerable to pirate and robbery at-sea attacks. In 2008, 14 incidents were reported, increasing to 37 for 2009. Most incidents were carried out on ships anchored or berthed in port (IMB 2010).

The Caribbean archipelago has seen a number of opportunistic pirate attacks in recent years where cash and valuables were taken. This area is a natural focal point for shipping being on the main sea routes between the Panama Canal, eastern United States ports and Europe. The yachting press reports that private yachts have been subjected to robbery at sea incidents in Caribbean waters, anchorages and ports, though very few reports have been received by the IMB. Locally the incidents appear to be dealt with as a domestic criminal act by each state and are not reported to the IMO or IMB as acts of robbery at sea for statistical purposes.

The major problem for the Caribbean region is the drug and people-smuggling activities from the Caribbean islands towards the United States. The United States and Caribbean states governments constantly patrol the waters around the Caribbean to detect and stop such illegal activity.

6.2 PRIVATE YACHTS AND PLEASURE CRAFT

Globally, commercial shipping is not the only target of piracy activity. Those who travel in private yachts and pleasure craft are also being preyed upon. Over the past 20 years, yacht and pleasure craft ownership has increased significantly as people retire at a younger age and sail the world. Pirate attacks on private yachts and pleasure craft in 2008 and 2009 resulted in deaths in both the South China Sea and off the coast of Somalia.

Yacht attacks tend to be in littoral or territorial seas of a state when the yacht is transiting a coastal or archipelago sea area. These areas may be well away from normal sea routes and in areas associated more with tourism and leisure than industry. The robbers are normally opportunistic with the intent of stealing valuables and loose items, but they have proved they can be very dangerous if disturbed or approached. Yachts have been attacked and hijacked for resale or for use in illegal activity such as drugs or gun running. Yacht crew who have disturbed or confronted robbers on board their yacht have been attacked and injured or killed. Private yachts and pleasure craft have, however, been the target of hijack attack.
A high-profile example of the hijacking of a privately owned pleasure yacht occurred on 23 October 2009 when the yacht *Lynn Rival*, crewed by a British couple Paul and Rachel Chandler, was boarded by pirates and the Chandlers kidnapped and held for ransom. The yacht had left the Seychelles on 22 October 2009 and was believed headed for the Amirant Islands, around 150 Nmiles to the west of the main Seychelles island of Mahe. The yacht was sailing in waters some 60 Nmiles from Victoria in the Seychelles when it is believed the pirates surprised the couple below deck. The pirates moved the kidnapped couple onto a Singapore ship the *Kota Wajar*, which had been hijacked by pirates on 15 October 2009. As at 15 December 2009, the couple were still being held hostage against a ransom demand of US$7 million and were believed to have been moved inland on the Somalia mainland. As at 10 January 2010 the pirates were demanding US$3 million with a deadline of two months with the threat to kill the hostages (The Daily Telegraph 2010).

Despite the publicity given to this incident, a significant number of private yachts and pleasure craft still travel through high-risk piracy waters. Following the hijack of the *Lynn Rival*, the Inquiry received requests for copies of its counter-piracy advisory guidelines from people intending to sail private yachts and pleasure craft through the Gulf of Aden and Horn of Africa waters. However, relying on piracy and robbery at sea information, maps and warnings for commercial shipping may be of only limited value to private yachts and pleasure craft transiting or visiting sea, coastal and port areas outside recognised shipping sea routes and ports.

The IMB reported only nine piracy attacks on private yachts worldwide for 2008, though this cannot be regarded as finite with most yacht attacks being treated by the state or local authorities as a crime of theft and therefore not reported to the IMB for statistical purposes. While the IMB did not include private yacht attacks in its 2009 Report, the Yachtpals website (yachtpals.com) summary for 2009 cites five pirate attacks worldwide, and the Noonsite yacht website (noonsite.com) reported 10 attacks in the Caribbean, seven in South America, three in Europe, two in South East Asia, two in the Pacific, one in the Red Sea and one in the Indian Ocean. According to the websites, violent assaults were involved in a number of attacks, with crew threatened with weapons and a crew member thrown overboard. The motive in almost all cases was believed to be robbery.

Disturbingly, according to the Yachtpals website, the level of violence against yacht crews in 2009 escalated, with two yacht skippers being killed and four yacht crews held hostage for ransom or robbery.

The highest-risk area is the Caribbean. The yachting press made numerous reports of attacks and theft from yachts while they were sailing or anchored within the Caribbean. The other high-risk areas include South East Asia, the Seychelles, Central America and the West African coast, especially the Niger Basin.
7. THE AUSTRALIAN SHIPPING ENVIRONMENT

7.1 ENVIRONMENTAL SUMMARY

The threat of piracy to Australian shipping is considered low because almost all Australian-registered ships ply their trade in the coastal waters around Australia. However, the threat to Australian cargo carried on foreign-flagged and owned vessels that carry the bulk of all import and export into and out of Australia is as high as it is for any other international shipping country or ship owner or operator.

The majority of Australian-flagged shipping is operated and managed by third-party companies with specialist expertise in the shipping industry. These companies operate and manage the ships for major Australian companies who use the ships as part of their product supply chain, primarily in the carriage of bulk, liquid and container cargo.

The Australian maritime industry peak bodies include:

- the Australian Shipowners Association, which represents Australian ship owners;
- Shipping Australia, which represents Australian and international ship owners and operators, and shipping company agencies;
- Ports Australia, which represents the interests of port and marine authorities in Australia;
- the Maritime Union of Australia, which represents stevedoring workers, seafarers, divers and port workers, and is a key affiliate of the International Transport Workers’ Federation; and
- the Australian Workers Union, which represents a broad range of workers in manufacturing, transport, resources, health and government, including workers on offshore oil and gas rigs, platforms and floating production plants.

Most goods imported into or exported from Australia are shipped through the Gulf of Aden, the South China Sea or the Malacca Strait. This places Australia among the extended group of nations at risk from the threat of international piracy.
Australians working as crew on foreign-flagged and owned ships are as vulnerable as any other seafarers who work on international shipping routes around the world. Although to date no Australian has been taken hostage by pirates off the coast of Somalia, there have been cases of Australians working on foreign vessels that have come under fire in attempted hijackings by Somali pirates. There have also been cases in recent times of numbers of Australian passengers being on cruise ships that have been attacked and fired upon by pirates off Somalia.

Examples of attacks on cruise ships include:

- In April 2009, the MV MSC Melody was attacked some 500 miles east of Mogadishu in Somalia. The MV MSC Melody used defensive measures, including a water cannon and on-board ship security guards who fired pistols. During the attack 991 passengers were on board, including 69 Australians and 536 crew, of whom 5 were Australian.

- In December 2008, the MV Athena was attacked by Somali pirates using a swarming tactic involving some 29 pirate skiffs with upwards of six pirates per skiff. While the pirates made at least three attempts to board the ship, they were thwarted by on-board defensive measures, including fire hoses. At time of attack the MV Athena was carrying 641 passengers, of whom 389 were Australian.

- In November 2008, the MV Nautica was attacked in the Gulf of Aden by pirates in two skiffs, firing eight rifle shots towards the cruise ship. The MV Nautica used its speed to outrun the pirates. It was carrying 690 passengers at the time of attack, including 50 Australians and 386 crew.

The Australian trading fleet consists of 55 Australian-registered and Australian-crewed ships, of which 10 regularly trade overseas. The majority of Australian-registered ships trade solely on the Australian coast. Foreign-registered ships in the Australian trading fleet number around 39 ships; 28 of these normally trade overseas. Most of these foreign-registered ships have Australian crews and are managed by Australian companies (BITRE 2009).

As an island nation, Australia relies heavily on maritime trade. Some 99 per cent by weight of all Australian import and export cargo is transported by shipping. Most of Australia’s trade is carried in foreign-registered and crewed shipping. Around 3,800 ships are engaged in international shipping to and from Australia each year, carrying around 800 million tonnes of import and export cargo. The bulk of Australian trade cargo transits through South East Asian waters (A$87 billion in imports and A$100 billion in exports), including known piracy and robbery at sea risk areas. The next largest portion of trade cargo transits through the Gulf of Aden and Western Indian Ocean (A$29 billion in imports and A$21 billion in exports), which are currently high-risk piracy areas (BITRE 2009).

Australian floating processing, storage and offload units and oil rig tenders operating within Australia’s Exclusive Economic Zone and the Timor Gap Joint Petroleum Development Area are included in the above totals for the Australian trading fleet (BITRE 2009).

The following outline, essentially drawn from the December 2009 Shipping Australia website (www.shippingaustralia.com.au), summarises the Australian trade shipping environment.
There are 22,000 ship calls involving approximately 3800 different ships at over 70 Australian ports each year which exchange 900 million tonnes of cargo with a value in excess of AU$300 billion.

The work of the ships and all the services and people involved in supporting the ships trading in and out of Australia is fundamentally vital to the Australian economy.

Ships carry 99 per cent of Australia’s trade by weight and 74 per cent by value. (BITRE 2009)

The Australian end of the international maritime trading industry directly employs over 50,000 persons in Australia. Areas of employment include, among others, ship managers, agents, port services companies, stevedores, insurance and finance, banking, freight forwarding, customs brokerage, port managers, maintenance and repair of ships and marine equipment and the statutory authorities engaged in regulating the maritime industry.

It is important that the Australian shipping industry is not seen as just that section of shipping that relates to Australian ownership and crewing of Australian flagships.

Approximately 70 ships lifting Australian Merchant Shipping carries approximately 2.0 million tonnes of interstate and international cargo each year.

Australian ships represent about 70 per cent of Australian coastal cargoes and 2 per cent of Australia’s international cargoes. The rest of Australia’s overseas trade is carried by foreign owned vessels.

The world merchant fleet consists of approximately 90,000 ships aggregating 560 million GT (Gross tonnes), if ships of 100 GT and upwards are counted. The world’s major cargo fleet of 53,000 ships aggregates to over 530 million GT.

As of 1 July 2009, Lloyds Register Fairplay recorded that the world’s fleet was made up of 53,005 ships. (Shipping Australia Limited 2009)

### 7.2 SHIP DEVELOPMENT

The nature of services in the maritime industry varies with the types of ships and cargoes involved, such as dry bulk cargoes, tanker cargoes, unitised cargoes and containerised trades.

In recent decades ships have been subject to the same forces of aggregation, technology changes and reduced staffing as have other parts of industry.

In 1960 a cargo liner may have lifted 10,000 to 12,000 tonnes of cargo, steamed at 14 knots (26 km/h), carried a crew of around 40 persons and spent up to 15 days in each major Australian port.
A modern container ship serving major Australian ports might have a capacity for 4,000 20 feet (six metre) containers lifting around 50,000 tonnes or more of cargo and might steam at 20 knots (37km/h), carry a crew of about 20 persons and spend 15 hours in port. Such a ship would cost relatively more than its predecessor and require a larger dedicated shore-based infrastructure to assist its cargo work.

In 1950 a world service tanker might have lifted perhaps 15,000 tonnes of cargo in an average-sized ship. Today 310,000 tonne capacity ships are not uncommon and the largest tanker built is able to lift 574,000 tonnes of cargo. Coastal tankers distributing refined products around the Australian coast might have a cargo-lifting capacity of 60,000 to 80,000 tonnes.

### 7.3 REGULATORY AGENCIES

A range of national agencies regulate shipping and cargo entering Australian waters and to protect Australia’s maritime borders.

#### 7.3.1 AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

Australian Customs and Border Protection Service (ACBPS) manages the security and integrity of Australia’s borders. It works closely with other government and international agencies, in particular the Australian Federal Police, the Australian Quarantine and Inspection Service, the Department of Immigration and Citizenship and the Department of Defence, to detect and deter unlawful movement of goods and people across the border.

The agency is a national organisation employing more than 5,500 people in Australia and overseas, with its central office in Canberra. It has a fleet of ocean-going patrol vessels and contracts two aerial surveillance providers for civil maritime surveillance and response.

Australian Customs and Border Protection Service operates nationally through three programs:

- Passenger and trade facilitation
- Border enforcement
- Corporate operations.

< www.customs.gov.au >

#### 7.3.2 BORDER PROTECTION COMMAND

Border Protection Command (BPC) provides security for Australia’s offshore maritime areas. Combining the resources and expertise of the ACBPS and the Department of Defence, and working with officers from the Australian Fisheries Management Authority, the Australian Quarantine and Inspection Service, and other Commonwealth, state and territory agencies, BPC delivers a coordinated national approach to Australia’s offshore maritime security.
BPC is responsible for coordinating and controlling operations to protect Australia’s national interests against the following maritime security threats:

- illegal exploitation of natural resources
- illegal activity in protected areas
- unauthorised maritime arrivals
- prohibited imports(exports)
- maritime terrorism
- piracy
- compromise to bio-security
- marine pollution.

< www.bpc.gov.au >

### 7.3.3 OFFICE OF TRANSPORT SECURITY

The Department of Infrastructure, Transport, Regional Development and Local Government provides policy advice to the Australian Government on transport security matters and has responsibility for the development of a National Transport Security Strategy.

As a division of the Department, the Office of Transport Security (OTS) assists in the consultation with other Australian government agencies, state and territory governments and the transport industry, in order to:

- develop national threat and risk assessment strategies for transport security;
- develop and implement a Transport Industry Assurance Advisory Group as part of the Trusted Information Sharing Network for Critical Infrastructure Protection; and
- provide advice on international transport security developments and implications for Australian government policies and practices.

< www.infrastructure.gov.au >

### 7.3.4 AUSTRALIAN QUARANTINE AND INSPECTION SERVICE

The Australian Quarantine and Inspection Service (AQIS) manages quarantine controls at Australian borders to minimise the risk of exotic pests and diseases entering the country. AQIS also provides import and export inspection and certification to help retain Australia’s highly favourable animal, plant and human health status and wide access to overseas export markets.

< www.daff.gov.au >
7.3.5 DEPARTMENT OF IMMIGRATION AND CITIZENSHIP

The purpose of the Department of Immigration and Citizenship (DIAC) is to ‘enrich Australia through the well managed entry and settlement of people’. Its key objectives are to:

- manage the lawful and orderly entry and stay of people in Australia, including through effective border security; and
- promote a society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably.

The government looks to DIAC to ensure the integrity of Australia’s borders. Border security is a key component of Australia’s national security arrangements and the department works actively with other countries to curb the capacity of people-smugglers and terrorists to circumvent border controls.

< www.immi.gov.au >

7.3.6 AUSTRALIAN MARITIME SAFETY AUTHORITY

The Australian Maritime Safety Authority (AMSA) is Australia’s national safety agency with a primary role in maritime safety, protection of the marine environment and aviation and maritime search and rescue and is largely self-funded through levies on the commercial shipping industry.

AMSA’s role is to enhance safety and marine environment protection through:

- participating in the development and implementation of national and international marine safety and environment protection standards;
- monitoring compliance with operational standards for ships in Australian waters to promote their seaworthiness, safety and pollution prevention;
- administering training standards and competency of seafarers and coastal pilots;
- providing the national network of marine aids to navigation and navigation systems;
- operating Australia’s Rescue Coordination Centre to coordinate maritime and aviation search and rescue;
- maintaining maritime distress and safety communications services;
- providing two ground stations and Mission Control Centre for the Cospas Sarsat distress beacon detection system;
- administering the Australian Ship Reporting (AUSREP) system;
- managing Australia’s National Plan to combat pollution of the sea by oil and other noxious and hazardous substances;
- regulating, monitoring and coordinating emergency towage services consistent with the National Maritime Emergency Response Arrangements; and
- delivering related services including:
  > exercising occupational health and safety inspectorate functions;
> administering Australia’s ship registration system;
> conducting safety and pollution prevention public awareness and education campaigns;
and
> providing public access to ship safety and environment protection standards and policies.

< www.amsa.gov.au >

7.3.7 CIVIL POLICE AND EMERGENCY SERVICES

Foreign-flag vessels visiting Australian ports are subject to Australian law as are Australian ships. Civil authorities exercise the same jurisdiction with respect to visiting ships as they might in their work on shore.

7.3.8 DEFENCE AND ROYAL AUSTRALIAN NAVY

The Royal Australian Navy is committed to anti-piracy operations in the Gulf of Aden and off the Somali coast. As of 7 December 2009 a team of 25 Royal Australian Navy officers and sailors departed for the Middle East to form the command group of a Coalition Naval Task Force (CTF-150) engaged in maritime security operations throughout the region.

‘Our mission will be to sustain maritime security in the region, which includes ‘deterring and countering terrorist movements at sea, to keep the seas open and safe for international shipping’ (Commodore Menhinick, Commander of the Task Force).

Operation Slipper is Australia’s military contribution to the international campaigns against terrorism, countering piracy in the Gulf of Aden, and maritime security in the Middle East Area of Operations.

< www.defence.gov.au >
8. IMPACT ON SHIPPING AND MARITIME OPERATIONS

8.1 ECONOMIC AND OTHER IMPACTS

The world community has become heavily dependent on commercial shipping as the primary mechanism for global trade, commerce and industry. It is commonly stated that 90 per cent of world trade relies on international shipping. This is important to note given the huge size of the global economy today. The United Nations International Merchandise Trade Statistics show that the value of world export trade was US$15.7 trillion in 2008.

Maritime piracy and armed robbery at sea are crimes that primarily prey upon the maritime cargo supply chain of the world economy. The International Chamber of Commerce (ICC) estimates that financial losses incurred by such attacks against this supply chain average US$8 to US$16 billion annually. Losses such as this impact on the economic, financial, political and social aspects of the world community, with impacts lasting many years beyond the actual attacks.

The four elements of the maritime industry most affected by piracy and robbery at sea are the shippers (cargo owners), carriers (ship owners), insurers of the ships, and cargoes and the crews who sail in and operate the ships in high-risk areas of the world’s oceans, seas and ports.

The cost of piracy and robbery at sea can also be measured in human, political, economic and environmental terms.

8.1.1 COST TO THE SHIPPING INDUSTRY

A ship owner, operator or charterer essentially has three primary options for action against piracy and armed robbery at sea. They can avoid a danger area by rerouting the ship; they can refuse to accept cargo that places the ship at risk; or they can accept the risk of operating the ship through the area by enhancing on-board ship security.

All of these options have cost implications for the owner or operator. A range of other costs to the shipping industry are also outlined below.
Voyage diversion

Voyage diversion or rerouting may be a viable option for some cargoes, such as some bulk commodities where delivery times may have more flexibility. However, for just-in-time manufacturing components, high-value and time-sensitive goods and consumer merchandise, the added delay may be unacceptable to the shipper or buyer.

Voyage diversion to avoid known piracy waters will frequently incur additional operating costs as a consequence of longer voyage transit times. These costs will include fuel and crew costs, reduced profit from a voyage charter, cost of container availability and hire for container liner trades, and delay costs for a voyage or time charter caused by the diversion from the normal sea route.

Additional costs can be incurred by the need to operate outside a published fixed voyage time schedule, the failure to meet agreed port berth availability deadlines, and the need to operate outside agreed shipper or buyer contract timelines and state-imposed time-related cargo acceptance windows for certain import cargoes.

The Baltic and International Maritime Council (BIMCO) has introduced a piracy clause for ship Time Charter Parties. The intention behind the clause is to provide the owners with a right to avoid risk areas where there is a sufficiently real danger of pirate attack to their vessel, and to allocate the costs both for when the owners exercise their right under the clause not to follow charterers’ orders and when they decide to proceed through such areas.

Ship owners diverting ships face decreased revenue voyages per year due to the longer transit times for each individual voyage. This can have a significant impact on ship owner operational viability and profitability.

‘For example, routing a tanker from Saudi Arabia to the United States via the Cape of Good Hope adds approximately 2,700 miles to the voyage. This longer distance will increase annual operating cost of the vessel by reducing the delivery capacity for the ship from about six round trip voyages to five voyages, or a drop of about 26 per cent. The additional fuel cost of travelling via the Cape of Good Hope is about [US]$3.5 million annually.’ (USA MARAD 2008)

For the container liner trades the cost impost of a diversion can be intolerable to the ship owner or operator. A long route change could result in the need for an additional vessel in order to maintain the scheduled service and capacity commitments of the liner operation. Annual fuel increases for a large containership liner operation are in the order of US$80 to US$90 million. Added to this is the cost of chartering in an additional container ship, normally on a 12 or 24 month charter basis at daily rates from around US$10,000 to US$20,000, giving rise to annual costs of US$3.6 to US$7.2 million. The cost of hiring in additional cargo containers to cover for the unavailability of ship owner or operator containers still at sea on an extended voyage will be another high cost per year, as will be the relocation costs of additional containers associated with some liner trades.
'For example, a routing from Europe to the far East via the Cape of Good Hope, rather than through the Suez Canal, would incur an estimated additional $89 million annually, which includes US$74.4 million in fuel and US$14.6 million in charter expenses. In addition, the rerouting would increase transit times by about 5.7 days per ship. This would result in the need for an additional vessel to maintain the service frequency. However, these costs do not consider the disruption in the logistics chain.' (USA MARAD 2008)

‘AXS-Alphaliner reports that the decision on using the Cape of Good Hope route was based on a bunker fuel price of below US$350 per tonne. With prices having risen to above the $400 mark, despite an abundance of fuel, the shorter route becomes the better choice once again for the Maersk service.’ (Ports and Ships 2009)

A refusal by a ship owner or operator to operate in known piracy waters can also limit cargo opportunities available on the open charter market.

**Ship replacement**

Ship replacement occurs where high-risk shipping is replaced by lower-risk ships, such as ships with a higher freeboard and faster sea speed, in high-risk piracy and robbery at sea areas. Such replacement will create additional cost for the ship owner or operator as the ships are prepositioned into and out of a service or operating area to reduce ship owner or operator exposure to piracy risk.

**Increased insurance premiums**

Traditional maritime hull insurance has a ‘war clause’ providing cover for damage to the ship’s hull and crew injury or death from war, hijacking and other perils. The current Somali piracy situation as an example has significantly increased the ‘war risk’ insurance premiums to cover for the heightened risk of paying out under a war peril clause activated by a pirate hijacking.

The cost of the war risk component of a hull insurance policy for ships transiting the Gulf of Aden is estimated at between US$15,000 and US$50,000 per ship per voyage. A year ago, the cost of the additional insurance premium was believed to be only US$500 to US$1,000. It is estimated that the increased cost of war risk insurance premiums for the 20,000 ships passing through the Gulf of Aden could reach as much as US$400 million.

It should be noted that not all ships will seek the additional cover for a transit of the Gulf of Aden or off the east coast of Somalia. On one estimate, the insurance payout costs arising from hijacked vessels is in the order of US$100 million per year. If the estimated increased costs of insurance premiums is US$400 million per year there is no economic motivation for the insurance industry to provide incentives to ship owners for improved preventive security or to be involved in constructive efforts to reduce the incidents of piracy themselves.

‘More ship owners are inquiring about kidnap and ransom cover, for which a shipper now could pay up to US$30,000 in premium for US$3 million in coverage for one trip through the Gulf of Aden, the London unit of Chicago-based Aon Corp. said in a statement.’ (Business Insurance 2009)
‘In addition, insurance premiums on ships crossing through the Gulf of Aden have gone up substantially. According to a recent study, the additional insurance costs for ship-owners alone are at US$400 million annually.’ (Royal United Services Institute 2009)

‘Estimates of annual ransom paid to Somali pirate networks in 2008 vary from US$50 million to US$130 million.’ (United States Institute of Peace 2009)

If a ship and crew are hijacked and held hostage for ransom, the release of the ship and crew may be paid for by general average payments under a contract of carriage, and from protection and indemnity (P&I Club) insurance. Again in high-risk piracy areas, such as off the coast of Somalia, the insurance industry has increased insurance premiums or applied additional premiums on policies covering hull, cargo and crew for ships transiting or operating in such high-risk areas.

A number of marine insurers are currently offering special ‘Hijack and Ransom’ policies to specifically cover the costs associated with recovering a ship, cargo and crew from a pirate hijack for ransom situation. A ship owner taking out such insurance incurs a cost against the voyage that can only be recovered if the ship is hijacked and held for ransom.

Insurance costs of shipping lines have gone up considerably in the recent past as they have been forced to take ‘kidnap and ransom’ policy after the recent flare-up on pirate attacks on high seas, off the coast of Somalia. What has pushed up the costs to such a large extent is the fact that kidnap and ransom policies come with a very high premium.

Typically, shipping companies purchase a US$1-million insurance cover.

The insurance premium works out to $10,000–$15,000 per week.

The cover for kidnap and ransom is bought on a voyage-to-voyage basis, and not for a year like other policies.

‘Shipping companies are increasingly opting for an additional kidnap and ransom cover, besides taking the standard hull and machinery cover. It has become a necessity for the ships that pass through the Gulf of Aden, because of the increasing attacks from pirates,’ said Mr K Ramachandran, Executive Director, JB Boda Insurance Brokers. (Hindu Business Line 2009)

The per-voyage premium of US$10,000 to US$15,000 per week per US$1 million hijack and ransom (H&R) insurance equates to US$30,000 to US$45,000 per week to cover the average ransom cost of about US$3 million. If the total ship owner, hijack-related cost was to be covered by H&R insurance (about US$7 million), the weekly rate would increase to around US$70,000 to over US$100,000.

If full insurance cover was taken out, the premium costs for the average bulk carrier would equate to most of the likely voyage profit. This cost would be beyond the capacity of most ship owners. The high-value oil and container ships may have capacity within voyage profit to pay H&R insurance, but this may not be an option for a bulk carrier full of coal or grain. It almost certainly could not be considered by a ship owner if the ship was travelling empty en route to its next charter, as there would be no revenue to offset the insurance premium cost.
Increases in insurance premiums may not be able to be passed on in full, or at all, to the ship charterer or added to container shipping tariff rates due to market pressures, particularly in times of world economic downturn. The costs must then be absorbed by the ship owner or operator, reducing profitability.

**Ship safety and security issues**

A subject of concern expressed to the Inquiry was the possible contradiction between procedures and active and passive defensive measures necessary to counter piracy and robbery at sea attack on the one hand, and, the procedures and measures required for safety of life at sea on the other hand. Restricting access by locking external doors and access or escape hatches, and physical barriers around stairways, lifeboats and other lifesaving equipment may place lives at risk if such measures interfere with the safe egress from within the ship, hamper the ability to undertake onboard emergency response to any incident to protect the ship and crew, or delay or inhibit escape from the ship.

In implementing piracy and robbery at sea mitigation measures it is essential to ensure that any additional security requirements, above those otherwise required under the International Ship and Port Facility Security Code (ISPS Code), interrelate with existing onboard International Convention for the Safety of Life at Sea (SOLAS) regulations and Shipboard Management System procedures so as ensure safety is not inappropriately compromised and to, additionally, minimise demarcation, duplication and confusion between issues of safety and security.

Consideration should be given to the review of existing ship security planning arrangements, especially those that mitigate the risk of piracy and robbery at sea, to ensure that safety and security issues are both considered and jointly applied to achieve an effective ‘safe at sea’ environment that does not place the safety of the ship and its crew at risk from counter piracy and robbery at sea measures.

**Crewing costs and welfare concerns**

Crewing costs have increased in Somali piracy waters. A number of crews receive higher wages or bonuses to sign onto or remain on board ships due to transit or transiting high-risk piracy areas, such as in the Gulf of Aden. In some cases this cost is passed on to the charterer; however, the added crew cost is normally met by the ship owner or operator and reduces their profitability (Philippine Center for Investigative Journalism 2008).

In October 2008, the Philippine Overseas Employment Administration (POEA) issued a board resolution specifying that Filipino seafarers who passed by the specified Somali high-risk zone would get double pay and could even refuse to board the ship at the last port if they so wished.

> Last October 7, the POEA’s board of trustees issued Resolution No. 4 that doubled the daily compensation and death and illness benefits of Filipino crewmembers whenever their ships pass through the so-called ‘high-risk’ area in the Gulf of Aden. The resolution was to take effect immediately.

> The POEA also revised the standard employment contract for Filipino seafarers and gave them the option to get off any ship that plans to sail into waters beset by piracy and hijackings. (Philippine Center for Investigative Journalism 2008)
Related issues of major concern to maritime unions and the shipping industry are the physical and mental health impacts suffered by crews held hostage by pirates.

Disappointingly, these issues have not received the same levels of attention or publicity as have the economic impacts and the size of the ransom demands associated with successful hijacks.

The Inquiry found little evidence worldwide of either state governments or shipping industry bodies actively addressing these concerns, although the New York-based Seamen’s Church Institute, Disaster Psychiatry Outreach of the Mount Sinai School of Medicine and the New York Psychoanalytical Institute on the ‘Best Practices for the Maritime Shipping Industry in Post Piracy Trauma Assessment and Treatment’ are conducting a study to quantify the trauma on crews and to develop management practices to deal with the mental health consequences of piracy and robbery at sea attacks.

To be effective, such initiatives will need to be supported by government, industry and unions, not only to assist crew affected by attacks and hijackings but also to maximise the likelihood of their retention within the industry as valued and trained crew.

8.1.2 COST OF NON-REPORTING OF PIRACY AND ARMED ROBBERY AT SEA ATTACKS

In the highly competitive shipping market, ship owners or operators may decide not to report incidents of piracy or robbery at sea. They may prefer to cover the losses out of their own resources rather than paying increased and ongoing insurance costs after placing a claim or incurring delays due to an official investigation that can result in additional port costs of around US$10,000 to US$15,000 a day, plus potential impacts on charter arrangements or ship port schedules due to such delays.

With many pirate and robbery at sea attacks going unreported, calculating the amount of financial damage caused by these maritime crimes is difficult although, indicatively, ICC estimates range as high as US$16 billion annually.

Many ship owners and operators and ship Masters see little point in reporting minor encounters with pirates and robbers at sea to states that are unable to offer much by way of response to such attacks.

8.1.3 IMPACT ON COMPETITIVENESS OF THE USE OF ALTERNATIVE SOURCES OF SUPPLY

Another potential cost to ship owners or operators may come in the form of a reduced ability to compete in the world shipping marketplace. This could be a consequence of cargo buyers taking up the option to use alternative sources of supply of the same or similar products from other states that would not need to transit high-risk piracy areas to deliver the cargo to the destination port. Size, type and current location of the ship, charter patterns, and other shipping available in the market are likely to impact on shipping contract decisions.
There may also be an impact on the capacity of individual states to compete in the world market for supply of raw materials and finished products against shipments from and to areas not impacted by piracy. The shift in the import and export balance away from transport through known piracy risk areas may have cost implications for states and businesses where their current market share is reduced, or import or export costs increased, through the external impact of piracy on shipping.

The increased costs from piracy and robbery at sea may potentially serve as a non-tariff barrier to trade, with the added insurance costs and risks for trading in particularly dangerous sea areas and ports acting as an indirect economic boycott.

**8.1.4 IMPACT ON THE FISHING INDUSTRY**

Piracy and robbery at sea adversely affects fishing in some parts of the world. For example, tuna catches in the South West Indian Ocean, one of the world’s richest fishing grounds, fell by around 30 per cent in 2008 due, in part, to the negative impact of pirate activities off the Somali east coast on the regional commercial fishing industry.

The Indian Ocean Tuna Commission has stated that tuna fleets operating in the region have been hauling in far fewer fish compared to previous catches. The decline in catches, estimated at about 30 per cent, adversely affected a US$6 billion industry that provides roughly a quarter of the world’s supply of tuna. The extent to which piracy contributed to this decline cannot easily be estimated (BBC News 2009 B).

Fishing vessels have been attacked and a number hijacked off the Somali coast. Somali pirates have used hijacked fishing vessels as mother craft to extend their range and endurance out into the Indian Ocean.

Press reports in 2008 and 2009 have claimed that fishing vessels have been hijacked in the South China Sea, centring on the seas around Taiwan, but no official reporting is available.

**8.1.5 IMPACT ON HUMANITARIAN AID PROGRAMS**

Piracy off the Somali east coast presents a threat to humanitarian aid deliveries in the Horn of Africa. About 6.2 million Ethiopians currently receive emergency humanitarian assistance and an estimated additional 4.9 million required some level of assistance in the first half of 2009. In Somalia an estimated 3.2 million people or 43 per cent of the population require ongoing humanitarian assistance.

*The UN has repeatedly called on all parties in Somalia to ensure the safety of humanitarian aid workers, who are tending to the needs of some 3.2 million people, or 40 per cent of the population, made vulnerable by the combined effects of conflict, drought, high food prices and the collapse of the local currency. (UN News Service 2009)*
UN World Food Programme (WFP) ships have been attacked and hijacked off Somalia as they make their way along the coast and into Somali and Kenyan ports to deliver the food aid. EU NAVFOR has as one of its roles the protection of the WFP shipping. The use of warships to protect WFP shipping takes naval assets away from the Gulf of Aden International Recommended Transit Corridor (IRTC) and other patrol areas, weakening the naval response to pirate attacks on shipping in the Gulf of Aden, off the Somali east coast and the West Indian ocean.

8.1.6 IMPACT ON THE CRUISE SHIP INDUSTRY

Attacks on cruise ships in 2008 and 2009 off the coast of Somalia have prompted some cruise ship operators to avoid pirate activity by cancelling cruises that pass through the Gulf of Aden or off the Somali east coast or by diverting cruises from Europe to South East Asia and the Pacific via the Cape of Good Hope.

Although cruise ships have been the target of terrorism in the past, such as the 1985 hijacking of the Achille Lauro, to date there have been no incidents of pirates or robbers successfully hijacking a cruise ship and holding passengers and crew for ransom. However, several attacks on cruise ships have occurred and they remain an attractive, even though relatively difficult target.

Recent incidents include:

- In April 2009, the MV MSC Melody was attacked some 500 Nmiles east of Mogadishu, Somalia. The MV MSC Melody used defensive measures, including a water cannon and on-board ship security guards who fired pistols. During the attack there were 991 passengers on board, including 69 Australians and 536 crew, of whom five were Australian.
- In March 2009, the MV Balmoral was attacked off the Somali east coast by pirates in two skiffs firing weapons upon the cruise ship. The MV Balmoral used defensive measures including speed and aggressive manoeuvre to evade the pirates. At the time of attack the MV Balmoral had some 1200 British passengers on board.
- In December 2008, the MV Athena was attacked by Somali pirates using a swarming tactic involving some 29 pirate skiffs with upwards of six pirates per skiff. While the pirates made at least three attempts to board the ship, they were thwarted by on-board defensive measures, including the use of fire hoses. At the time of attack the MV Athena was carrying 641 passengers, of whom 389 were Australian.
- In November 2008, the MV Nautica was attacked in the Gulf of Aden by pirates in two skiffs, firing eight rifle shots towards the cruise ship. The MV Nautica outran the pirates by speed. It was carrying 690 passengers at time of attack, including 50 Australians, and 386 crew.
- In April 2008, the cruise yacht Le Ponant, an 88-metre sailing cruise ship with low speed and low freeboard, on a positioning voyage without passengers, was hijacked in the Gulf of Aden. Thirty crew were on board and held hostage until the ransom was paid.
Overall, cruise ships are probably in a better position than merchant vessels to prevent successful piracy attacks as they are faster than most cargo ships and their high hull sides make it difficult for pirates to board while under way at sea.

### 8.1.7 IMPACT ON PRIVATE YACHTS AND PLEASURE CRAFT

Private yachts and pleasure craft attacks have historically had a different profile to attacks on commercial shipping. Such attacks have tended to occur in littoral or territorial seas of a state when the yacht or craft has been transiting a coastal or inter-island sea area. These areas are often outside normal sea routes and in areas more associated with the tourism and leisure industry rather than maritime commerce.

As a consequence, the attacks have normally been robbery-motivated and often simply opportunistic, although the offenders have proven to frequently be very dangerous if disturbed or approached during the commission of offences.

Private yachts and pleasure craft have, however, been attacked and hijacked for re-sale. Some have been used in serious unlawful activity such as drug or gun running and, particularly in recent times, have been the targets of piracy attacks where the crew has been hijacked.

A high-profile example of such an attack occurred on 23 October 2009 when the yacht *Lynn Rival*, crewed by British couple Paul and Rachel Chandler, was apprehended and boarded by pirates and Mr and Mrs Chandler kidnapped and held for ransom.

![Map of Lynn Rival's journey](image)

A number of interesting issues arise as a consequence of the *Lynn Rival* hijack and kidnapping. These include:

- Pirates showing themselves to be tactically flexible. Recent hijackings of small fishing craft and the *Lynn Rival* itself indicate a change in tactics, with the crews of smaller hijacked vessels being taken ashore, perhaps to avoid a repeat of earlier French commando attacks against pirates to release French nationals from yachts held off the Somali coast.
• The use of one hijacked ship as a mother ship to attack and transport others. The Kota Wajar, a hijacked container ship, was used as a mother ship to attack and transport the Lynn Rival yacht crew to the Somali coast. The container ship was well away from where it was seized by pirates some 300 Nmiles to the north of the Seychelles and was either diverted to intercept the yacht or was specifically operating off the Seychelles in a mother ship capacity. The ship was well away from the normal course it would have taken if after its hijack it was steaming directly for the Somali coast.

• The use of hostages to negotiate the release of Somali pirates held in detention. Pirates holding the British couple are reported to have attempted to negotiate an exchange of the couple for a group of Somali pirates who had been apprehended and were being held by a German warship. This request was denied and the pirates detained by the German warship were handed over to Kenyan authorities.

8.1.8 THE ECONOMIC IMPACT OF GLOBAL PIRACY

Although the statistical risk of a commercial ship being subject to a hijack is very low (less than .01 per cent) the overall impact, including human, political, and potential environmental damage as well as economic cost, determines that piracy will remain an issue of significant international concern. In global economic terms, however, there are a variety of opinions of the impact which piracy is actually having upon the industry.

There is no quantitative research available on the total cost of global piracy. Estimates vary widely because of disagreement over whether insurance premiums, freight rates, and the cost of reroutings should be included with, for instance, the cost of ransoms. Some analysts suggest the cost is close to US$1 billion a year, while others claim losses could range as high as US$16 billion. Some experts such as Martin N. Murphy, author of a 2007 study on piracy and terrorism, warn against exaggerating the threat posed by maritime pirates. He notes that even US$16 billion in losses is a small sum in comparison to annual global maritime commerce, which is in the trillions of dollars. (Council of Foreign Relations 2009)

The estimated financial losses for the shipping industry as a result of piracy now average US$8 to US$16 billion annually; while the annual value of maritime commerce is US$7.8 trillion dollars. When compared, the losses are not a significant portion of the industry’s total value. (Emerging Markets 2009)

‘The economic impact of piracy is minimal,’ says Primera Maritime technical manager Dimitris Vintzielias. ‘A small percentage of the industry is affected, even if there has been a dramatic rise in incidents.’ In contrast, the credit shortage ‘is the worst I’ve seen in 35 years’ and caught much of the industry unawares, he notes. (Global National 2008)
8.2 SHIP CONSTRUCTION AND OPERATIONS

Commercial shipping is constructed of marine-grade mild or high-tensile steels and these cannot resist much more than a low-powered gun. The use of military-style high-powered rifles and heavier weapons, such as RPG rocket launchers, by Somali pirates has caused death and injury to crew, damaged ships’ bridges and accommodation and hull structure, and started fires on board.

Any attempt to reinforce the accommodation external areas, such as the bridge, would be a difficult and costly exercise, as well as adding significant weight to the ship and potentially reducing its earning capacity. Such armouring would probably have only minimal positive impact on safety and no impact on preventing boarding by pirates.

Access to the accommodation is governed by ship classification and flag state regulation design rules, with the main emphasis being on safe and alternative egress from the accommodation in case of emergency. Access to machinery and store spaces is designed for easy access of sometimes heavy and large engine parts and stores.

As a consequence there is a natural tension between measures implemented for safety reasons and those that may be considered to enhance security.

Current best management practices for preventing a piracy attack, however, provide advice on a range of physical measures that a ship owner or operator and a ship Master should consider as part of any risk mitigation strategy. The physical measures suggested are mainly of a temporary and portable nature and are able to be easily removed or dismantled when not required.

It may be desirable for ship owners and naval architects to consider the impact of piracy and robbery at sea on a ship at the design stage. It may be possible for them to build into the design of ships elements that are permanent or able to be quickly erected to limit access to the ship and improve the ability of a ship to resist and defend against a pirate or robbery at sea attack.

Design changes that have to be undertaken retrospectively are expensive and may require the ship to be out of service for a lengthy period.

8.2.1 NAVIGATION AND VISIBILITY

Some ships, such as those with high deck loads of containers or other cargo, or obstructions such as cranes and other equipment, may have limited vision from the bridge, especially in the forward sector of vision. While the ship must comply with the SOLAS Convention and IMO Resolution A708 regarding bridge visibility, the minimum forward visibility requirement of 500 metres from the ship bow may preclude the ability to sight small and low craft used by pirates.
Once a small craft comes into close proximity to the ship it may be difficult—depending on the type of ship and bridge vision—to identify it and keep it in view. This may be overcome by providing additional lookouts when in known high-risk areas. Such lookouts may have to be placed at alternative locations to the bridge to ensure an all-round visibility is maintained at all times. The use of low-light and infrared cameras may assist in retaining adequate visibility.

### 8.2.2 CREWING

Most modern ships have small crews, though numbers vary according to the size and type of ship, the marine legislative requirements of the country of registry, ship classification society rules and ship owner needs for safe navigation and operation of the ship. With the normal at-sea watch rotation for 24/7 operation, there is a limited availability of ship crew for increased surveillance and other preventive activities when operating within or transiting through known piracy waters, especially where the added surveillance role must be sustained for a period of time measured in days.

Small crew numbers have significantly reduced operating costs in normal commercial ship operations but may operate to limit the capacity of a ship’s crew to provide an effective range of preventive measures in high-risk piracy areas. Modern large ocean going ships have crews of around 21 persons, normally 18 persons on Australian ships, with smaller sized and coastal trading ships having crew sizes reduced to nine or 10 persons.

The cost of a ship’s crew is the single largest lifecycle cost for a ship. The downward trend in crew size has been occurring for some 30 years based on gradual technical and organisational change. Some of the latest ships have single-watch bridge systems to remove the need to employ a crew member for lookout duties during the night and at other times.

### 8.2.3 MARINE RADAR

Normal marine radar may not detect small craft such as low wooden or fibreglass craft used by pirates and robbers, especially in higher sea states. Its prime purpose is for the safe operation of the ship both from a ship collision avoidance and navigation perspective. This requires a powerful transmitter and slow scanner rotation to obtain the long ranges required to meet the above requirement. Small craft that are low in the water will provide a limited echo response and may be lost within the radar sea clutter image close to the ship in normal marine radar operations. Marine radars may also have blind sectors due to masts, funnels, derricks and cranes obstructing the radar signal.

The use of yacht-type radar to cover normal marine radar blind spots and provide enhanced, close quarters surveillance could be considered, although this would be an additional security cost. Yacht radars operating in the latest broadband frequency range provide important performance and safety benefits, including superior target definition and target separation in close quarters. The radar systems emit no harmful radiation outside the dome, allowing for flexible installation on a range of vessels, such as placement on ship side railings or bulwarks.
8.2.4 MODERN TECHNOLOGIES

The protection once afforded to merchant vessels by their modern size and speed is now offset by further technical advances that have reduced crew size and therefore reduced the capacity of the crew to defend the ship. The pirates on the other hand have taken advantage of recent technological advances where the range and availability of portable electronic equipment, such as radios, global positioning systems (GPS), satellite phones, modern small portable high-powered weapons and high-powered fast watercraft have improved the pirates’ tactics of speed, shock, surprise, fire power and rapid escape.

Somali pirates have the money to purchase and have ready access to the full range of the latest communication and navigation portable equipment to carry out their attacks. This includes GPS to monitor their own position and course along with the distance to a target with a known latitude and longitude position. GPS can also be used to provide data on the more likely track to be taken by a ship from one reference point to another.

It has been suggested that pirates monitor the Automated Identification System (AIS) signal sent out by all international trading ships to identify a target ship from among others in a given area, or that they use the AIS to identify the probable best target to attack based on ship type, registry, cargo carried and location. All of this information is readily available on AIS displays and on the Internet. This suggestion is supported by the apparent ability of pirates to locate a vessel over 1000 Nmiles from the coast of Somalia.

Pirates are also believed to be increasingly monitoring shipping radio traffic frequencies. By doing so, they can determine if there are any naval forces in the immediate area and if shipping in the area is alerted to their presence. Handheld UHF radios are also used by pirates to coordinate attacks among their own vessels and to communicate back to their shore bases. Mobile phones, discovered in the possession of captured pirates, are also used as a safe communication system. When in deep sea the pirates have also been known to use satellite mobile phones.

The Internet is also a valuable source of information for the pirates on the identity and schedules of ships transiting through their waters. The pirates can gain a diverse and, in some cases extensive, range of information from the Internet on such things as the current AIS position of the ship in latitude and longitude, course and speed, and ship details such as size and type of ship, ship layout and pictures, intended destination and cargo carried. The use of such sophisticated information enables the pirates and their mother craft to ‘detect and stalk’ potential targets with a greater degree of certainty as to the ‘risk–reward’ calculation versus sitting in an area of ocean waiting for a ship to come into view.
8.2.5 SHIPS REGISTERS AND FLAGS OF CONVENIENCE

The majority of the world’s 64 million gross tonnage shipping fleet operates under open ship registries or flags of convenience in such countries as Panama, Liberia, Malta, Bahamas, and Antigua and Barbuda. These open registry countries have minimal naval response capability to protect the shipping sailing under their flags. It is left to the rest of the world to undertake the policing role to protect the world’s shipping from piracy on the high seas, as is currently occurring in the Gulf of Aden and off the Somali east coast.
9. INTERNATIONAL AND DOMESTIC LEGISLATION

As part of its terms of reference, the Inquiry was required to determine whether ‘current international and domestic legislation needs to be strengthened to provide an improved framework for actions to prevent and control piracy’.

In conducting this assessment the Inquiry consulted with the Attorney-General’s Department (AGD), which has lead Commonwealth responsibility to provide legal advice to the government on Australia’s ability to interdict, prosecute and punish suspected pirates. As part of this responsibility the AGD has reviewed the current domestic and international legislative framework and is providing a legal opinion for consideration by government. As a consequence this report does not attempt to identify the adequacy of current legislative frameworks but simply lays out the existing provisions.

The following legislative outline draws heavily on advice of AGD, United Nations resolutions and IMO circulars, and is provided as guidance only. Any formal legal advice required by Australian government agencies should be sought from the AGD.

9.1 INTERNATIONAL LEGISLATION, CONVENTIONS AND RESOLUTIONS

9.1.1 UNITED NATIONS

In 2008 the United Nations (UN) Security Council passed Resolution 1816 (2008) (and its replacement, Resolution 1846 (2008)), which constituted a key initial response of the international community to piracy off the Somali coast. The Resolution allowed, inter alia, foreign ships to take actions within the territorial seas of Somalia to suppress piracy and armed robbery against ships in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law. However, this authority can be invoked only by those states cooperating with the Somalia Transitional Federal Government (TFG), according to notification received from the TFG by the UN. So far the authority applies to Canada, India, China, the Russian Federation, Turkey, the United States, the European Union and NATO.
With Resolution 1851 (2008), the Security Council went further and authorised ‘all necessary measures that are appropriate in Somalia’, for the purpose of suppressing piracy and armed robbery at sea upon the request of the TFG, in accordance ‘with applicable international humanitarian and human rights law’. The Resolution also encouraged states and regional organisations ‘to increase regional capacity with assistance of UNODC ... to arrange effective shiprider agreements’, and to implement the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and United Nations Convention against Transnational Organised Crime (UNTOC).

9.1.2 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) 1982

The concept of ‘freedom of the seas’ was first established in Roman times and is the principle that navigation on the high seas is open to all. The principle was brought into modern focus in the 17th century where it was agreed among the states that national rights were limited to a specified belt of water extending from a state’s coastline. The accepted distance was three Nmiles, the then distance of cannon shot fired from the shore. All waters beyond national boundaries were considered international waters, free to all states but belonging to none.

UNCLOS 1982 establishes a comprehensive legal framework to regulate all ocean space, its uses and resources. The Convention defines the rights and responsibilities of states in their use of the world’s oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. It contains, among other things, provisions relating to the territorial sea, the Contiguous Zone, the continental shelf, the exclusive economic zone and the high seas.

Following 12 years of negotiations, UNCLOS came into being in 1982. Not all states have ratified UNCLOS. The most noteworthy exception is the United States, due primarily to issues over part XI of the Convention dealing with seabed exploration.

The high seas

UNCLOS (Article 86) defines the high seas as: ‘all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State’.

The waters of the high seas are open to all states and no state may subject any part of the high seas to its sovereignty. No state has the right to prevent ships of other states from using the high seas for any ‘lawful purpose’.

The high seas has certain freedoms including navigation, over-flight, the laying of submarine cables and pipelines, construction of artificial islands, fishing and scientific research.

A flag state has exclusive jurisdiction over its ships on the high seas. Ships can sail under only one flag and have the nationality of the flag they fly. Warships and ships in government non-commercial service have immunity on the high seas.
Exceptions to the Principle of Exclusive Flag State Jurisdiction can be found in the IMO Law of the Sea Convention 1982, Customary International Law and UN Security Council Resolutions. Exceptions can also be by treaty or agreement between states, where flag states can waive their exclusive or primary jurisdiction over ships flying their flag.

**UNCLOS and territorial seas**

UNCLOS sets up a series of sea zones, with the differing zones providing different rights and obligations both for the individual states and for vessels that want to travel the waters of each state. As the following figure identifies, the important zones are described as:

- **territorial seas**, defined as 12 Nmiles from the mean low water mark on the shore;
- **Contiguous Zone**, a further 12 Nmiles for customs, immigration, tax and pollution purposes;
- **Exclusive Economic Zone (EEZ)**, 200 Nmiles from shore; and
- **Continental Shelf**, for exclusive resources such as fishing and oil/gas reserves.

![Sea Zones Diagram](image)

**Sovereignty of the coastal state**: UNCLOS Article 2(1): ‘The sovereignty of a coastal State extends, beyond its land territory and internal waters... to an adjacent belt of sea, described as the territorial sea’.

**Sovereignty over the territorial sea** is not as complete as sovereignty over territory and internal waters, as it is subject to the caveat of innocent passage. The breadth of the territorial sea must not exceed 12 Nmiles.

A state can claim less than 12 Nmiles if it so desires. In Australia the state and territory governments have a separate 3 Nmiles jurisdictional sea limit, based on old English law where 3 Nmiles was the limit of offshore cannon fire. In some areas where there is not 24 Nmiles between states, the territorial sea of each will be less than 12 Nmiles based on a rule of equidistance, negotiation between the states or settled by arbitration or the International Court of Justice.
A coastal state can make and enforce laws and regulations on matters such as:

- traffic and navigational safety
- pollution
- environment
- protection of cables and pipelines
- fishing and resources.

However, coastal states have a duty not to hamper innocent passage (Article 24). The coastal state has further limited criminal jurisdiction (Article 27) if the consequences or the type of crime affects it, or if requested to assist, or to suppress the traffic of illegal drugs.

**Contiguous Zone (CZ)**

- States may claim a CZ (Article 33).
- Over one-third of countries have chosen not to claim a CZ.
- CZ extends up to 24 Nmiles from the baseline.
- A coastal state does not have sovereignty over the CZ.

Article 33(1): In a zone contiguous to its territorial sea ’the coastal State may exercise the control necessary to:

a. prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

b. punish infringement of the above laws and regulations committed within its territory or territorial sea. [This is also known in short as the ‘FISC’ authorizations’].

**Rights and duties of the coastal state in EEZ**

Articles 55 – 75: Coastal states do not have sovereignty over the EEZ; however, the coastal state does have certain sovereign rights in relation to resources and physical environment in the EEZ such as:

- non-living resources:
  - oil, gas
- living resources:
  - fish
- other economic resources
- construction of artificial installations
- marine scientific research
- pollution control.
**Territorial sea—Regime of innocent passage**

The right of innocent passage is defined in UNCLOS (Article 17): ‘ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.’ This right can, on some occasions, be temporarily suspended by the coastal state (Article 25).

**Innocent passage**

Innocent passage is further defined in Article 18(1): ‘navigation for the purpose of traversing [the territorial] sea ... or proceeding to/from internal waters ...’, but such passage must be continuous and expeditious.

Innocent passage is defined in Article 19(1): ‘Passage is innocent so long as it is not prejudicial to the peace, good order or security of the Coastal State.’

In simplest terms any activities not directly bearing on direct passage can be viewed as non-innocent and subject to the law of the state in whose territorial seas the ship is currently located.

**UNCLOS and ‘pirates’**

Piracy is defined in UNCLOS (Article 101) as any of the following acts:

(a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft.

(ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

(b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.

(c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

The definition has certain limitations in that the acts must be crimes of violence against another party, be committed on the high seas by a private ship for private ends and must involve two ships.

A pirate ship is defined in UNCLOS (Article 103) as follows: ‘A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in Article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.’

The right of seizure of pirate ships under UNCLOS (Article 105) gives warships the right of arrest over pirate ships where: ‘On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board’.

...
It is important to note the limitations of the UNCLOS Convention where robbery, rather than piracy, has occurred. If the ship has not been taken by piracy, and therefore is not under the control of pirates, but rather is under the control of armed robbers, there is no power of arrest, as UNCLOS specifically refers to the Act of Piracy on the high seas and not illegal acts, such as robbery in territorial seas, even where the robbers move on to the high seas. Similarly UNCLOS does not cover acts of terrorism or other criminal acts against a ship, crew and passengers by those on board the ship itself, such as occurred on the *Achille Lauro*.

Another important limitation of UNCLOS is its form as a framework treaty where most of the provisions are not self-executing and can only be implemented through other treaties, such as the treaties adopted by the IMO. Examples of this IMO process are the MARPOL convention on marine pollution, the ISPS Code on ship and port security, the SUA Convention on maritime prosecution and extradition and the recent Resolutions and Circulars on piracy.

### 9.1.3 UN SECURITY COUNCIL RESOLUTIONS ON PIRACY OFF THE COAST OF SOMALIA

Special United Nations resolutions, such as the Security Council resolutions on piracy, can change the jurisdictional powers of states to operate within territorial seas.

The UN Security Council has made a number of resolutions relating to piracy off the coast of Somalia.

- **UNSCR 1816, 1838, and 1846** address repression of acts of piracy and armed robbery against vessels in the waters off the coast of Somalia and provides for states, under certain conditions, to enter the territorial seas of Somalia and take all necessary means to repress acts of piracy in a manner consistent with international law.

- **UNSCR 1838** calls upon states interested in the security of maritime activities to take part actively in the fight against piracy on the high seas off the coast of Somalia, in particular by deploying naval vessels and military aircraft in accordance with international law. UNSCR 1838 reinforces the obligation under international law for all states to cooperate to the fullest possible extent in the repression of piracy on the high seas.

- **UNSCR 1846** states that the fight against piracy includes the seizure and disposition of boats, vessels, arms, and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use. UNSCR 1846 also broadened the geographical scope to include the territorial sea of Somalia. States and regional organisations cooperating with the Somali Transitional Federal Government (TFG) in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary General, may enter into the territorial sea of Somalia for the purpose of repressing acts of piracy and armed robbery at sea; and use all necessary means to repress acts of piracy and armed robbery at sea.
UNSCR 1851 further decides that for a period of twelve months from the date of adoption of resolution 1846, states and regional organisations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia may undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG.

The Contact Group on Piracy off the Coast of Somalia was established out of UNSCR 1851 to facilitate discussion and coordination of actions among states and organisations to suppress piracy off the coast of Somalia.

9.1.4 UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME 2000

The purpose of this Convention is to promote cooperation to prevent and combat transnational organised crime more effectively. Australia ratified the Convention in May 2004 and it came into force for Australia in June 2004.

Under this Convention organised crime is defined as an ‘organised criminal group’ being a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Each state shall adopt such legislation and other measures to establish as criminal offences, when committed intentionally, the participation in an organised criminal group, laundering of the proceeds of crime, corruption and the obstruction of justice. Each state shall have in place frameworks for the seizure and confiscation of the proceeds of crime and the assets of the criminal group, and the prosecution of the organised criminal group.

The convention covers matters such as jurisdiction, extradition, mutual legal assistance, training and technical assistance and the promotion of best practices and policies aimed at the prevention of transnational organised crime.

Piracy and robbery at sea could be covered by this Convention. Those committing acts of piracy and robbery at sea would, in most cases, meet the definition of an organised criminal group, as normally more than three persons are involved, either directly or indirectly, and piracy and armed robbery at sea are serious crimes. Pirates and robbers tend to undertake their crimes in an organised and predetermined manner as a level of preparation is required prior to undertaking such criminal activity at sea. Piracy and robbery at sea can often be transnational in nature, as they are criminal acts committed by persons of one nation against persons and/or ship of another, perhaps in the waters of a third state.
Piracy can be multi-national, with groups outside the criminals’ own state assisting in the progress of the crime and perhaps benefiting from the proceeds of the crime. Ransom payments involve not only the shipping company and its lawyers but also external persons, both legitimate businesspeople engaged in activities such as negotiations and ransom delivery and others who support the criminals through financing the venture, providing advice and information and corrupt government officials. Ransom monies may end up in many countries, as those involved, directly or indirectly, pocket their share of the ransom and relocate money across the world to avoid identification and confiscation. A similar situation exists with pirates and robbers who hijack a ship in order to sell the cargo and perhaps re-birth the ship under a false identity and registration.

The crimes of piracy and robbery may commence as opportunistic and outside the definition of organised crime. However, the on-selling of stolen items such as passports, credit cards, ship equipment and cargo can change the crimes to a transnational crime involving organised criminal groups covered under this UN Convention.

9.1.5 UNITED NATIONS OFFICE ON DRUGS AND CRIME

The United Nations Office on Drugs and Crime (UNODC) has been engaged in the process of formulating an adequate response to the challenge of piracy off the Somali coast since the issue first came to prominence. The Office’s work has focused on ensuring an adequate judicial response to piracy, including support to both the formulation of effective policies in this regard and, at a more practical level, to the ongoing judicial processes in Kenya.

The UNODC has contributed to a series of events in the development of an international response to piracy, both at the International Expert Group on Piracy off the Somali Coast in Nairobi in November 2008 and at the following conference on piracy that took place in Nairobi in December 2008. UNODC experts have played a prominent role.

The UNODC involvement in the response to piracy was reaffirmed in the International Maritime Organisation’s Regional Conference on Piracy held in Djibouti in January 2009. The UNODC has participated in the Contact Group on Piracy off the Coast of Somalia that met in January and March 2009 and is acting as the Secretariat to its Danish-chaired Working Group on Legal Issues that had its first meeting on 5 March 2009.

9.1.6 INTERNATIONAL MARITIME ORGANISATION

The International Maritime Organization (IMO) is the United Nations specialised agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. Australia accepted the IMO treaty in February 1952 and the treaty came into force for Australia in March 1958.
In addition to conventions and other formal treaty instruments, the IMO has adopted several hundred recommendations dealing with a wide range of subjects. Some of these constitute codes, guidelines or recommended practices on important matters not considered suitable for regulation by formal treaty instruments. Although recommendations, whether in the form of codes or otherwise, are not usually binding on governments, they provide guidance in framing national regulations and requirements.

9.1.7 THE IMO CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION (SUA) 1988

The SUA Convention was adopted in 1988, in part out of international concern that grew during the 1980s about unlawful acts that threaten the safety of ships and the security of their passengers and crews. This concern stemmed from reports of crews being kidnapped and ships being hijacked, deliberately run aground or blown up by explosives.

Due to these developments, especially the 1985 hijacking of the *Achille Lauro*, the UN General Assembly adopted Resolution 40/61 in 1985, urging states to cooperate in contributing to the elimination of causes underlying terrorism. The General Assembly invited the IMO to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures.

The various definitions of terrorism include violence or the threat of violence, bombing, kidnapping and assassination carried out for political purposes.

The key distinctions between terrorism and piracy appear to be the contradictory motivations and objectives. In the former, the intention is to cause death, injury or damage for political purposes; in the latter, the intention is to forcibly seize property or persons to secure private or personal financial gain.

To supplement the UN efforts, the Maritime Safety Committee of the IMO issued a circular (MSC/Circ.443) on measures to prevent unlawful acts against passengers and crews on board ships. According to the circular, governments, port authorities, administrators, ship owners, ship Masters and crews should take appropriate measures to prevent unlawful acts that may threaten passengers and crews.

The SUA Convention was adopted in Rome in 1988. It broadened the scope of unlawful acts to include waters within national jurisdiction, in contrast to UNCLOS where the act must be for private purposes only and occur on the high seas only.

The SUA Convention is designed to ensure that appropriate action is taken against persons committing unlawful acts against ships, including, among other acts: the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship likely to destroy or damage it. The convention obliges contracting governments either to extradite alleged offenders or submit cases to their competent authorities for the purpose of prosecution.
The SUA Convention applies if the ship is navigating or is scheduled to navigate into, through, or from waters beyond the outer limit of the territorial sea of a single state, or the lateral limits of its territorial sea with adjacent states.

The SUA Convention covers acts of piracy but applies more broadly to acts of violence against ships regardless of the motive of the persons involved. Most importantly, however, the SUA Convention establishes a framework whereby Masters of ships may deliver suspected offenders to a coastal state that is party to the SUA Convention. The coastal state is then obliged under the SUA Convention, with few exceptions, to accept custody and either extradite the suspected offender or submit the case for the purpose of prosecution.

The SUA Convention does not adopt the expression ‘piracy’. However, it prohibits ‘unlawful and intentional acts’ against vessels, cargoes and persons on board vessels. Piracy and armed robbery fall into the category of unlawful and intentional acts as defined in Article 3 of the SUA Convention.

**IMO Resolution A.922 2001**: Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships. The purpose of this document is to provide IMO Member States with an aide-mémoire to facilitate the investigation of the crimes of piracy and armed robbery against ships.

**IMO Resolution A.1002 (25) 2007**: Piracy and Armed Robbery Against Ships in Waters off the coast of Somalia. The Resolution encourages states to address threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats.

The Resolution urges states to provide assistance in capacity-building in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, and to provide enforcement vessels and equipment.

### 9.1.8 IMO AND THE DJIBOUTI CODE OF CONDUCT

The first regional agreement between Arab and African countries on combating piracy was signed in Djibouti in January 2009 at a special meeting organised by the International Maritime Organization. Nine countries in the region affected by piracy—Djibouti, Ethiopia, Kenya, Madagascar, the Maldives, the Seychelles, Somalia, Tanzania and Yemen—signed an agreement to cooperate in preventing ship hijackings and apprehending suspected pirates for arrest and prosecution.

The Djibouti Code of Conduct, as the agreement is referred to, allows one signatory country to send armed forces into the territorial seas of another signatory country to pursue pirates and, in some cases, to jointly conduct anti-piracy operations. The nations have also agreed on the creation of piracy information centres to be set up in Kenya, Tanzania and Yemen, and an anti-piracy military training centre to be established in Djibouti.
The Code of Conduct calls on member states to enact new laws or change existing legislation to facilitate the arrest and prosecution of suspected pirates. A temporary solution has been suggested to give governments time to act by enabling one country currently without relevant laws to allow a country with relevant laws to prosecute.

In developing a mechanism to fight piracy in the Indian Ocean and the Gulf of Aden, the IMO followed the model of another regional government-to-government anti-piracy agreement called the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which has more than a dozen signatories and is credited with helping reduce the number of successful pirate and robbery at sea attacks in the Malacca Strait and elsewhere in South East Asia. The IMO views the sharing of piracy-related information through the ReCAAP Information Sharing Centre as a good example of successful regional cooperation that could be replicated in the Horn of Africa region.

While the worsening situation in the Gulf of Aden and off the Somali east coast has prompted more than a dozen countries to send warships to patrol the region, the intervention has had limited success because there are no international laws or treaties to determine the fate of pirates arrested by foreign navies outside Somali waters.

The Djibouti Code of Conduct is viewed as one of the first steps toward finding a means to transfer pirates to stand trial in a nearby country.

### 9.1.9 THE MARITIME SAFETY COMMITTEE

The Maritime Safety Committee (MSC) is a subsidiary body of the IMO that consists of all member states and is the highest technical body of the organisation. The functions of the MSC are to ‘consider any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographical information, log-books and navigational records, marine casualty investigations, salvage and rescue and any other matters directly affecting maritime safety’.

Maritime Security is regarded by the IMO as an integral part of the SOLAS Convention, and MSC Circulars on maritime security are issued from time to time to provide recommendations and guidance to government and industry on maritime security-related issues.

### 9.1.10 MARITIME SAFETY COMMITTEE CIRCULARS

A considerable number of IMO MSC Circulars make reference to pirates and robbery at sea. Some replace or amend earlier circulars while others are new or expand on matters raised in a previous circular. Below are circulars on piracy and robbery at sea considered current and more pertinent.

MSC Circular 1333 2009: Recommendations to governments for preventing and suppressing piracy and armed robbery attacks against shipping. The circular outlines the flow of information for a ship reporting an attempted or actual boarding incident and the relationships between the ship, shipping company, Maritime Rescue Coordination Centres as the prime international incident reporting bodies, and governments. It revised and replaced the earlier MSC Circ.622 of 1999.

MSC Circular 1334 2009: Guidance to ship owners and ship operators, ship Masters and crews on preventing and suppressing acts of piracy and armed robbery against ships. This circular aims at bringing to the attention of ship owners, Masters and crews the precautions to be taken to reduce the risks of piracy on the high seas and armed robbery against ships at anchor, off ports or when under way through a coastal state’s territorial seas. It revised and replaced the earlier MSC Circ.623 of 2002.

9.1.11 INTERNATIONAL SHIP AND PORT FACILITY SECURITY CODE

The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities. It was developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States.

The ISPS Code was adopted by the IMO through Chapter XI-2 of the IMO SOLAS Convention on the basis of work undertaken by the Maritime Safety Committee and its working groups.

The purpose of the Code is to provide a standardised, consistent framework for evaluating risk thereby enabling governments, ships and ports to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.

The applicability of the ISPS Code to piracy and armed robbery at sea is an ongoing debate. The Code views the ship as both a potential threat to a port and under threat itself. This has influenced the application of the Code into state legislation. The level to which a state or an individual ship has assessed the risk of piracy and armed robbery at sea and dealt with the risk through security measures is quite variable and non-quantifiable.

Piracy events continue to occur even though international and national maritime security conventions and regulations, such as the ISPS Code and its state equivalents, have been enacted.
9.1.12 COMITÉ MARITIME INTERNATIONAL

The Comité Maritime International (CMI) is a non-governmental international organisation, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects.

The Model National Law on Acts of Piracy or Maritime Violence was proposed by CMI on the systematic treatment of piracy and maritime violence through national law, jurisdiction and prosecution. It includes a very detailed definition of maritime violence.

9.1.13 IMB PIRACY REPORTING CENTRE

The IMB Piracy Reporting Centre (PRC) is located in Kuala Lumpur, Malaysia and is funded by voluntary contribution. The main objective of the PRC is to be the first point of contact for the ship Master to report an actual or attempted piracy or armed robbery at sea attack or even suspicious movements, thus initiating the process of response. The PRC operates on a 24/7 basis and will quickly pass on pirate and robbery attack information received from a ship anywhere in the world to the relevant naval, coastguard, police or other international and state authorities.

The main aim of the PRC is to raise awareness within the shipping industry, which includes the ship Master, ship owner, insurance companies, traders, etc, of the areas of high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies on board ships.

The PRC works closely with various governments and law enforcement agencies and is involved in collation of statistics and information-sharing in an attempt to reduce and ultimately eradicate the crimes of piracy and armed robbery at sea.

The PRC website contains up-to-date alerts and mappings of piracy attacks worldwide. It also offers free access to archived copies of piracy incident reports.

9.2 AUSTRALIAN DOMESTIC LEGISLATION

The following is a list of Australian legislation that governs piracy and armed robbery at sea. The Australian legislation was held to be world’s best practice when examined by the legal division of the UNODC during the review of piracy legislation that was undertaken in relation to the UNODC response to piracy off the Horn of Africa.
**9.2.1 COMMONWEALTH CRIMES ACT 1914**

**Part IV—Piracy**

**Section 51 Interpretation**

In this Part:

- **Act of piracy** means an act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft and directed:
  
a) If the act is done on the high seas or in the coastal sea of Australia—against another ship or aircraft or against persons or property on board another ship or aircraft, or
  
b) If the act is done in a place beyond the jurisdiction of any country—against a ship, aircraft, persons or property.

- **Australia** includes the External Territories.

- **Coastal sea of Australia** means:
  
a) The territorial sea of Australia.
  
b) The sea on the landward side of the territorial sea of Australia and not within the limits of a state or territory; and includes airspace over those seas.

- **High seas** means seas that are beyond the territorial sea of Australia and of any foreign country and includes the airspace over those seas.

- **Offence against this Part** includes:
  
a) An offence against a provision of this Part because of section 5.
  
b) An offence against section 6, 7 or 7A that relates to an offence against a provision of this Part.
  
c) An offence against subsection 86(1) because of paragraph (a) of that subsection, being an offence that relates to an offence against a provision of this Part.

- **Pirate-controlled ship or aircraft** means a private ship or aircraft which is under the control of persons that:
  
a) Have used, are using or intend to use the ship or aircraft in the commission of acts of piracy, or
  
b) Have seized control of the ship or aircraft by an act of piracy.

- **Place beyond the jurisdiction of any country** means a place, other than the high seas, that is not within the territorial jurisdiction of Australia or of any foreign country.

- **Private ship or aircraft** means a ship or aircraft that is not being operated for naval, military, customs or law enforcement purposes by Australia or by a foreign country, and includes a ship or aircraft that has been taken over by its crew or passengers.

- **Ship** means a vessel of any type not permanently attached to the sea-bed, and includes any dynamically supported craft, submersible, or any other floating craft, other than a vessel that has been withdrawn from navigation or is laid up.
Section 52 Piracy

- A person must not perform an act of piracy.
- Penalty: Imprisonment for life.

9.2.2 THE AUSTRALIAN CRIMES (SHIPS AND FIXED PLATFORMS) ACT 1992

The Australian Crimes (Ships and Fixed platforms) Act 1992 places into law in Australia the SUA Convention.

The offences in relation to ships and fixed platforms are seizure, acts of violence, destruction or damage, placing of destructive devices, destroying or damaging navigational facilities, giving false information, causing death, grievous bodily harm or injury to a person and making a threat to endanger a ship or fixed platform.

The schedules to the Act include both the IMO Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the IMO Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

9.2.3 MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY ACT & REGULATIONS 2003 (MTOFSA)

The purpose of MTOFSA is to safeguard against unlawful interference with maritime transport and offshore facilities, and applies to approximately 70 ports, 300 port facilities and 53 Australian ships involved in international and interstate trade, plus various offshore facilities such as oil rigs and floating production platforms.


MTOFSA establishes a regulatory framework centred on the development of security plans for ships, ports, port facilities, port service providers and offshore facilities.

MTOFSA, and ISPS Code, are primarily concerned with the security of:
- ships approaching and/or entering territorial seas and/or a port;
- ports and port facilities; and
- offshore facilities.

The focus is on the both the ship as a risk to a port and the risk to a ship while in a port. Around 50 per cent of the regulatory requirements of MTOFSA, as is the ISPS Code, are concerned with land-based port security.

The ship access control requirements of MTOFSA are primarily based on access from shore to ship while alongside or by boat/helicopter when within port limits or territorial seas. Both the ship and port must have undertaken risk assessments and developed security plan provisions to adequately address access control to the ship.
Since 2007 the Maritime Security Identity Card (MSIC) has been in place to provide further controls for persons requiring unsupervised access to a port, port facility, ship or offshore facility.

**In Part 1, Division 5, Unlawful Interference with Maritime Transport or Offshore Facilities – Section 11** defines the meaning of unlawful interference with maritime transport or offshore facilities as:

a) Committing an act, or causing any interference or damage, that puts the safe operation of an offshore facility, or the safety of any person or property at the offshore facility, at risk.

b) Taking control of a ship or offshore facility by force, or by threat of force, or any form of intimidation.

c) Causing damage to a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk.

d) Doing anything on board a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk.

Unlawful interference as defined above would include all forms of actual or attempted unauthorised access onto a ship where the safety of the ship and crew is placed at risk, including acts or attempted acts of piracy and armed robbery at sea.

**In Part 13, Section 208, Severability – additional effect of the Act:** Subsection (4) states that the Act has the same effect that it would have if its operations were expressly confined to acts or omissions taking place in the course of, or in relation to, trade or commerce, in part, between Australia and places outside Australia.

That is, the Act applies to ships on the high seas and in foreign waters and ports, in particular when engaged in commercial trade between Australia and a foreign country or port.

Subsection (6) of the Act also has the effect that it would have if its operations were expressly confined to acts or omissions taking place outside Australia; again a reference to the Act applying to ships on the high seas and in foreign waters and ports, particularly where the ship voyage does not originate in Australia.

Subsection (7) the Act also has the effect that it would have if its operations were expressly confined to matters in relation to which the Commonwealth is under an obligation under an international agreement or matters that are of international concern.

The Act applies in meeting Australia’s international maritime obligations, not only under the ISPS Code but also under UNCLOS, the SUA Convention and other IMO Maritime Circulars and resolutions to which Australia is bound by treaty or agreement.

Matters of international concern would include any maritime matters affecting one or more states as expressed through recognised international agencies and forums including the UN, IMO, IMB and international maritime peak body organisations, and would take into account the current concerns regarding piracy and armed robbery at sea.
9.2.4 COASTAL SEA ROUTES OUTSIDE AUSTRALIAN TERRITORIAL SEAS

A number of common coastal sea routes around the Australian coast involve travelling outside Australian territorial seas—that is, outside the 12 nautical mile territorial, or jurisdictional, limit. Waters outside of the 12 Nmile limit are considered international waters and on the high seas (see UNCLOS Convention).

These routes include the main ferry routes between Melbourne and Burnie/Devonport, where the bulk of the voyage from Victoria to Tasmania is in international waters. Other sea routes include open high sea passages of the Great Australian Bight, travel along most of the West Australian coast and the Gulf of Carpentaria/Arafura Sea area. The east Australian coastal southbound route used by most Australian coastal trading vessels takes advantage of the East Australian Current and places ships outside the territorial limit at most points along the coast as the ships follow the 200 fathom line to take best advantage of the current.

Such sea routing outside the 12 Nmile territorial limit is required to take the shortest distance between ports for a number of reasons: economy of voyage time and operating cost; avoidance of shallow water, shoals, reefs and other hazards; to take advantage of favourable or avoid adverse coastal currents; and to steer clear of the dangers of operating close in to a lee shore in severe weather conditions such as prevails along the Tasmanian, Victorian, South Australian and West Australian coasts due to regular high south westerly sea and wind conditions from the Antarctic.
10. ADVISORY GUIDELINES

Advisory Guidelines (the Guidelines) for Australian shipping and Australian crew and for foreign-registered shipping carrying Australian import and export cargo into or through high-risk piracy and robbery at sea areas have been developed as a consequence of this Inquiry process.

The Guidelines have been released as a separate accompanying document and have been made available to Australian ship owners and operators, seafarers, unions and shipping representative bodies, and to foreign-registered shipping carrying Australian import and export cargo through high-risk piracy and robbery at sea areas of the world. Copies are made available to international stakeholders upon request.

The Guidelines provide a broad range of advice for both piracy on the high seas and robbery at sea in the territorial seas of a state. They are based on United Nations Resolutions, international shipping industry best management practices, IMO Maritime Safety Circulars, other current industry and government information, and the findings of the Australian Piracy and Armed Robbery At Sea Inquiry.

While the current piracy and hijacking for ransom in the Gulf of Aden and off the Somali coast is a particularly serious threat to world trade, it is not the only threat to international shipping from piracy and robbery at sea. As a consequence, the Guidelines outline the preventive measures recommended to detect, deter and prevent piracy and robbery at sea attacks across the world’s oceans, seas and ports. While the primary focus of this advice is on international commercial shipping, advice is also provided for fishing vessels and private yachts and pleasure craft transiting piracy-risk waters.

The absolute discretion of a ship Master to adopt appropriate measures to avoid, deter or delay piracy and other at-sea attacks, and to otherwise protect the safety of the ship and crew, is recognised and respected.
10. ADVISORY GUIDELINES

10.1 ADVISORY GUIDELINES BROCHURE

On advice from the Australian shipping industry and international shipping representatives engaged during the Inquiry process, a supportive brochure, suitable for quick reference and for wider distribution to ships, crews and other interested parties, has been produced. The brochure provides a summary of the primary guidance information on piracy and robbery at sea preventive measures contained in more detail in the Advisory Guidelines.

The guidance information in the brochure is intended to be applicable to any ship or operator, but as with the full Guidelines, the degree of relevance may vary according to the individual ship risk assessment and the operational profile of the ship.

Copies of the brochure have been made widely available across the Australian maritime industry and at Australian security-regulated ports serving internationally trading commercial shipping.

The brochure aims to provide crew members with an understanding of the practical measures likely to detect, deter and delay pirate and robbery at sea attacks. It includes information on international piracy reporting agencies and where to obtain additional information and advice.

The brochure has initially been translated into the nine languages considered most relevant to crews of ships engaged in international trade (Filipino, Hindi, Chinese Simplified, Indonesian, Japanese, Korean, Malay, Thai, Vietnamese). It will be made available to foreign shipping in Australian ports to enable non-English-speaking crew members to benefit from the advice provided.


For ease of reference, core information from the brochure is presented below.

10.1.1 DEFENSIVE MEASURES

Identify any high-risk piracy or robbery at sea areas and ports prior to undertaking the intended voyage. Establish the type of risk that may be encountered and undertake a risk assessment to identify appropriate preventive measures for your ship.

- Develop operational procedures and put in place any physical preventive measures to enable the detection and deterrence of piracy and robbery at sea attack against your ship.
- Maintain a good lookout, increase lookouts in high-risk areas, undertake regular security rounds and maintain vigilance while at anchor or in port.
- Prepare your defensive measures and procedures prior to entering a high-risk area.
- Practice and test procedures and defensive measures prior to entering a high-risk area.
• Develop lines of communication, code words and alarm signals to inform crew of a potential or actual attack.
• Control access to the accommodation and other work areas. Secure doors and limit the number of access points.
• Consider the use of barriers, gates and fencing to restrict access to the main and upper decks, especially decks to the accommodation.
• A designated Crew Muster Point or Citadel should be considered for the safe location of all crew not required for preventive measures or safe navigation, and to which all crew can safely withdraw if required.
• Crew required to undertake work duties outside secure areas of the ship should be restricted to a minimum and steps taken to ensure such crew are in constant communication with the bridge.
• If under attack at sea increase speed and manoeuvre to create wash and minimise any lee position from which attackers may attempt to board.
• Water spray directed along the hull and foam monitors can be effective in deterring or delaying pirates or robbers from boarding the ship. Manual operation of hoses is not recommended as it places crew in an exposed and vulnerable position. Hoses should be rigged in a fixed position and pumps ready for immediate use if required.
• In the Gulf of Aden and off Somalia make use of the Group Transit Scheme for the international transit corridor within the Gulf of Aden and report to the UKMTO Dubai when entering the Voluntary Ship Reporting Scheme limits.

10.1.2 COMMUNICATIONS AND REPORTING

• Alert other shipping in the area of suspicious activity or a potential or actual attack on your ship by VHF channel 16.
• If under attack consider whether a distress message should be transmitted by all available means, especially any attack that threatens the safety of the crew.
• If under piracy attack - In the Gulf of Aden and off Somalia alert UKMTO Email: <ukmto@eim.ae> and MSC-HOA Email: <postmaster@mschoa.org>.
• If under piracy attack on the high seas alert the nearest maritime Rescue Coordination Centre.
• If under robbery attack in Territorial Waters alert the State Coastal Maritime Emergency Response Agency.
• At anchor and when in port report any robbery at sea attack or incident to the relevant Port Authority, Coast Guard or Police.
• Use the SSAS alarm to alert the shipping company of an attack on the ship.
• Report any attack or incident to the IMB Piracy Reporting Centre who provide 24/7 response. Email: imbkl@icc-ccs.org / piracy@icc-ccs.org or the 24 Hours Anti Piracy HELPLINE Tel: + 60 3 2031 0014.
IMO: <www.imo.org> - Maritime Safety Circulars have been issued by the IMO providing guidance to ship owners and operators and ship Masters on preventing and suppressing acts of piracy and armed robbery at sea on a global basis, and specific advice for ships in waters off the coast of Somalia.

Shipping industry Best Management Practices are currently available at:

- MSC(HOA): www.mschoa.eu – register to obtain access to Registered Users Area.

Note that the Best Management Practices provides Somali piracy preventive measures advice. Most of the preventive measures can and will be effective in other parts of the world for piracy and robbery at sea. Caution should be used while doing so and each ship must identify the risks to the ship and then assess and implement preventive measures to counter the identified risks, using the IMO circulars and Best Management Practices as a guide.

The IMO Circulars and industry Best Management Practices are updated from time to time and ship owners, operators and Masters are reminded of the need to regularly check for updated versions of all accessible and relevant advice available to them on the web and from other information sources.
Although the maritime piracy problem is currently at its most severe in the Gulf of Aden and off the east coast of Africa, piracy is a global problem that potentially affects all nations with a reliance on maritime trade.

Piracy continues to be experienced in the Gulf of Guinea area of West Africa, off the Indian subcontinent and in South East Asia, Central America and the Caribbean Sea. Additionally, despite the positive initiatives that have been implemented in the Malacca Strait and the consequent improved levels of maritime safety and security in that region, the region remains at risk from incidents of piracy and armed robbery at sea.

The International Maritime Bureau (IMB) reported that worldwide in 2009 there were 406 ship attacks, 49 ship hijackings and 1052 crew members held hostage.

Although the statistical risk of a trading ship being hijacked is extremely low (less than 0.1 per cent), the impact of a successful hijack in human, economic, political and potentially environmental terms determines that piracy will remain an issue of considerable international concern.

Australia as an island nation relies heavily on maritime trade, with some 99 per cent by weight and 74 per cent by value of all Australian import and export cargo transported by shipping.

According to the Bureau of Infrastructure, Transport and Regional Economics, there are some 22,000 ship calls in Australia each year, involving approximately 3,800 different ships at over 70 ports (BITRE 2009). These ships exchange some 900 million tonnes of cargo with a value in excess of A$300 billion. The Australian maritime trading industry directly employs over 50,000 persons in Australia. An effective maritime trading environment is vital to the Australian economy. The implications of these factors are that global piracy is as potentially serious for Australia as for any other country.

As earlier stated in the report Australia is however quite well-positioned in international terms. Australia’s legislative framework has adequate legal mechanisms in place to enable UN Resolutions and IMO Circulars on piracy and armed robbery at sea to be given full effect and to enable Australia to meet its international treaty obligations in full. Indeed, Australian legislation was held to represent world’s best practice when examined by the legal division of the UNODC during a review of piracy legislation.
More broadly the Australian Government has actively contributed to the international response to maritime piracy and armed robbery at sea by becoming a donor country to the UNODC Counter-Piracy Programme in East Africa, providing subject matter experts to it and contributing naval/air military assets to the US-led Counter Terrorism Task Force (CTF-151), which has direct counter-piracy responsibilities in the region.

From a shipping industry perspective, many international ship owners and operators, including Australian shipping companies, have already implemented significant measures to safeguard their crews, cargoes and ships. Most Australian ship owners and operators have put in place preventive security structures and measures to meet their identified ship security risks, including piracy and armed robbery at sea risks.

Where the capacity exists under import or export contracts to dictate shipboard safety and security standards, the Australian shipping industry has implemented internal measures to assess prospective ship charter operators for security awareness and compliance as part of the contract of carriage process.

However, this Inquiry recommends that Australian security-regulated ships undertaking international voyages as part of normal business activity should re-evaluate current security plans to ensure that mitigation strategies adequately address the risks posed to the ship, crew, passengers and cargo by maritime piracy and armed robbery at sea (Recommendation 2).

Despite the demonstrated commitment of the Australian Government to the international counter-piracy response, ship industry stakeholders raised a number of issues during the Inquiry that warrant mention.

A common concern frequently raised by the Australian shipping industry and ship operators was the current lack of genuine piracy and security-related information sharing, interaction and assistance provided to them by Australian government agencies.

Australian ship operators’ advice to the Inquiry was that they have most regular interaction with the Australian Maritime Safety Authority (AMSA), although normally such interaction is likely to only involve discussions on security-related issues if they have relevance to a safety issue.

However, it is important to note that since maritime piracy emerged as an international issue of concern AMSA has actively issued a number of Marine Notices directly related to maritime piracy and armed robbery at sea.

A single coordinating agency responsible for collecting, collating and disseminating appropriate maritime piracy and armed robbery at sea security-related information, including preventive measures advice, has been requested broadly across the Australian maritime industry. This Inquiry supports this request and recommends that consideration be given to identifying a federal government agency to carry out these roles (see Recommendation 3).

The Inquiry determined that the initial focus on maritime piracy and armed robbery at sea in the Gulf of Aden and off the coast of Somalia had been directed and coordinated by international maritime industry peak body groups, such as ICS, INTERTANKO, BIMCO, INTERCARGO acting on behalf of their respective maritime industry members.
These groups made presentations to both the UN and IMO and had direct involvement in the Somali Piracy Working groups and with anti-piracy naval forces off Somalia. Almost all of this involvement initially occurred to the total exclusion of any direct state involvement.

The industry groups have provided a continuous and updated flow of information and advice to their maritime industry members, with this advice being incorporated into IMO Circulars (MSCs) and best management practice measures. The information contained in these publications was heavily drawn upon in the development of the Inquiry Guidelines.

The lack of an immediate state response to piracy incidents off the Somali coast was largely due to the fact that the piracy attacks occurred on the high seas and outside the direct jurisdiction of any state. Additionally, many governments did not appear to initially appreciate the magnitude and seriousness of the piracy threat off Somalia and were slow to respond, either directly or via the UN Security Council and the IMO.

A series of UN Resolutions and IMO Circulars have progressively increased the level of response to the piracy issue off Somalia and a number of states have responded to these by forming anti-piracy naval forces such as NATO Allied Protector, EU Operation ATALANTA and the US-led Counter Terrorism Task Force 151.

To date little direct international assistance has been provided to Somalia due to security concerns caused by the absence of an effective government, policing or any legitimate legal framework. A number of East African regional states have signed an agreement (The Djibouti Agreement) that allows them to have Somali pirates arrested at sea by state naval forces and transferred to their custody for prosecution under their piracy laws. At the time of writing this report, only two countries, Kenya and Seychelles, have put in place systems to allow this to occur.

South East Asia’s Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) model of regional cooperation is an example of what can be achieved by states working in close collaboration for a common cause, such as piracy and armed robbery at sea, and may offer as a way forward for the African states. Representatives from ReCAAP have recently travelled to a number of East African states to hold discussions with relevant stakeholders on how they can establish a similar ReCAAP-style program within their region.

Agreements such as the ReCAAP model provide a focus on the problem of piracy and armed robbery at sea and promote awareness and the means to resolve issues of joint concern. They also promote the levels of trust and understanding essential to an effective collaborative joint response.

Crew welfare was raised by stakeholders, both in Australia and internationally as an important but inadequately addressed issue. In particular, the impact on the physical and mental health and wellbeing of the crew of a ship taken hostage has to date not received the attention it deserves. The average hijack has lasted 70 days but some crews have been held as hostages for up to nine months. Clearly this prolonged confinement is likely to have caused significant stress both for the seafarers and family members waiting for information and for their release.
At the time of writing this report, the only known activity in this area was an academic study under way in the United States as referred to in the body of this report.

This Inquiry recommends that the shipping industry and maritime unions review current practices and arrangements to ensure there is in place a welfare support framework (see Recommendation 4).

To be effective, any crew welfare initiatives will need to be supported by government, industry and unions, not only to assist crew affected by attacks and hijackings but also to maximise the likelihood of their retention within the industry as valued and trained seafarers.

Another concern raised by the Australian shipping industry and major import/export companies is the potential impact on business transport cost and delays in delivery of goods due to piracy and armed robbery. Ships carrying Australian import and export cargo through Gulf of Aden waters are facing higher transport costs from insurance premiums and crew wage increases in the wake of current piracy activities, and higher operating costs and delivery delays from ships rerouting via the Cape of Good Hope and/or the Panama Canal.

An example of this impact was the delivery delay that affected the Victorian Government’s new commuter trains being shipped from Italy during 2009. The shipping company was forced to take an alternative route to avoid attacks on the more direct Suez Canal/Gulf of Aden shipping route to Australia (Herald Sun 2009).

In summary, piracy remains a global problem requiring an international response.

Australia has been at the forefront of the international intervention in the UNODC’s Somalia Counter-Piracy Programme by contributing funding, military assets and personnel to assist the international community and the UNODC to deal with the problem.

Through the distribution of the Australian Shipping Counter Piracy and Armed Robbery at Sea Advisory Guidelines developed by the Inquiry, the Australian Government has provided industry with assistance and guidance on a range of defensive and protective preventive measures. This Inquiry recommends that all ship operators, Masters and owners consider these Guidelines for adoption (see Recommendation 1).

It is important to recognise, however, that the continuing threat of piracy and armed robbery at sea, coupled with the proven record of pirates and robbers to constantly change their method of operation and modes of attack, will require shipping owners and operators to maintain a constant level of preparedness and awareness of the threat posed to them and to consistently update their knowledge of appropriate preventive measures and industry best practice.
12. ACRONYMS

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<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACBPS</td>
<td>Australian Customs and Border Protection Service</td>
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<td>AFP</td>
<td>Australian Federal Police</td>
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<tr>
<td>AGD</td>
<td>Attorney General's Department</td>
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<tr>
<td>AIS</td>
<td>Automatic Identification System</td>
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<tr>
<td>AMSA</td>
<td>Australian Maritime Safety Authority</td>
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<tr>
<td>AQIS</td>
<td>Australian Quarantine and Inspection Service</td>
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<td>ASA</td>
<td>Australian Shipowners Association</td>
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<tr>
<td>BIMCO</td>
<td>Baltic and International Maritime Council</td>
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<tr>
<td>BMP</td>
<td>Best Management Practices</td>
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<td>BPC</td>
<td>Border Protection Command</td>
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<td>CMF</td>
<td>Combined Maritime Force</td>
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<tr>
<td>CMI</td>
<td>Comité Maritime International</td>
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<tr>
<td>CS</td>
<td>Coastal state</td>
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<td>CZ</td>
<td>Contiguous Zone</td>
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<td>DFAT</td>
<td>Department of Foreign Affairs and Trade</td>
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<td>DIAC</td>
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<td>European Union Naval Force</td>
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<td>GoA</td>
<td>Gulf of Aden</td>
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<td>GPS</td>
<td>Global Positioning Service</td>
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<td>H&amp;R</td>
<td>Hostage and Ransom</td>
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<td>Acronym</td>
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<tr>
<td>ICC</td>
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<td>ICS</td>
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<td>International Association of Independent Tanker Owners</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>Nautical Miles</td>
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<td>Department of the Prime Minister and Cabinet</td>
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<td>PRC</td>
<td>IMB Piracy Reporting Centre</td>
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<tr>
<td>ReCAAP</td>
<td>The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia</td>
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<tr>
<td>RPG</td>
<td>Rocket Propelled Grenade</td>
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<td>SIGTTO</td>
<td>Society of International Gas Tanker &amp; Terminal Operators Ltd</td>
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<tr>
<td>SUA</td>
<td>Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation</td>
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<tr>
<td>TFG</td>
<td>Somalia Transitional Federal Government</td>
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<td>United Nations</td>
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<td>UNCLOS</td>
<td>United Nations convention on the Law of the Sea</td>
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<tr>
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<td>United Nations Security Council</td>
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<tr>
<td>UNTOC</td>
<td>United Nations Convention against Transnational Organised Crime</td>
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<td>WFP</td>
<td>World Food Programme</td>
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