

ASEAN-China Senior Officials' Meeting on the DOC on 20 July 2011 in Bali, Indonesia. The Meeting shared the view that this was a significant outcome and a step forward in the implementation of the DOC, further contributing to the promotion of peace, stability and prosperity in the region, especially on the occasion of the 20th anniversary of the ASEAN-China Dialogue.⁴

President Obama, Premier Wen Jiabao Discuss South China Sea. President Barack Obama and China's Premier Wen Jiabao reportedly discussed issues related to the South China Sea, as well as economic issues, in discussions on the fringes of the November 2011 East Asia Summit in Bali. (At the summit, Premier Wen opposed the involvement of "outside forces" in jurisdictional disputes, insisting that rival claims should be settled bilaterally.⁵) Following the Obama-Wen meeting, National Security Adviser Thomas Donilon told reporters that the United States took no position on the contending claims in the area but had "an interest in the freedom of navigation, the free flow of commerce, the peaceful resolution of disputes."⁶

Continuing U.S. Efforts to Combat Piracy; Piracy Now Spreading to Gulf of Guinea

U.S. efforts aimed at combating piracy continue on several fronts.¹

Criminal Proceedings in U.S. Courts. As of October 2011, at least twenty-six Somali men have been charged with piracy in U.S. courts. Most piracy-related proceedings have been in the U.S. district court in Norfolk, Virginia.²

—In March 2011, a judge in Norfolk sentenced five Somalis to life in prison for piracy and related crimes in connection with their role in the failed attack on a U.S. Navy frigate, the USS *Nicholas*. The U.S. attorney described their piracy convictions as the first in a U.S. court in over 190 years.³

—In April 2011, Ali Mohamed Ali, a Somali accused of negotiating a ransom payment in connection with the 2008 hijacking of the M/V *CEC Future*, a Danish ship carrying cargo for McDermott International, Inc., a U.S. company, was indicted and arrested at Dulles Airport in Virginia. A second pirate, Jama Idle Ibrahim, was sentenced in the District of Columbia to twenty-five years for his role in the same attack. Ibrahim's sentence will run

⁴ ASEAN Chairman's Statement on the ASEAN Post Ministerial Conference (PMC) + 1 Sessions, Bali, Indonesia, July 21–22, 2011, at <http://www.asean.org/documents/44thAMM-PMC-18thARF/PMC-CS.pdf>.

⁵ Ben Blanchard & Olivia Rondonuwu, *U.S. and China Disagree over Handling of Maritime Claims*, WASH. POST, Nov. 19, 2011, at A7.

⁶ Keith B. Richburg, *President, Wen Talk Economics and Sea Dispute*, WASH. POST, Nov. 20, 2011, at A18; see also David Nakamura & William Wan, *In Asia Visit, Obama's Eyes Are on China*, WASH. POST, Nov. 12, 2011, at A8.

¹ John R. Crook, *Contemporary Practice of the United States*, 100 AJIL 455, 487 (2006), 100 AJIL, 690, 700 (2006), 102 AJIL 155, 169 (2008), 103 AJIL 132, 146 (2009) 103 AJIL 741, 750 (2009), 104 AJIL 489, 500 (2010), 105 AJIL 122, 131 (2011).

² Del Quentin Wilber, *Alleged Ransom Negotiator Is Indicted*, WASH. POST, Aug. 19, 2011, at A10.

³ U.S. Atty's Office (E.D. Va.) Press Release, *Five Somalis Sentenced to Life Plus 80 Years in Prison for Piracy Against USS Nicholas* (Mar. 14, 2011), at <http://www.justice.gov/usao/vae/news/2011/03/20110314hasannr.html>; *Virginia: 5 Somali Pirates Sentenced to Life in Prison*, N.Y. TIMES, Mar. 15, 2011, at A23; Dana Hedgpeth, *Life Terms for Men Who Attacked Ship*, WASH. POST, Mar 15, 2011, at A3.

concurrently with a thirty-year sentence previously imposed on account of his participation in a failed attack on a U.S. Navy vessel.⁴

—In August 2011, a second alleged ransom negotiator, Mohammad Saali Shilbin, was indicted for allegedly assisting pirates who captured a German vessel, the *Marida Marguerite*. He was previously charged with serving as the hostage negotiator in the pirating of the yacht *Quest* that led to the deaths of four Americans. He was captured by U.S. military personnel and FBI agents in April 2011.⁵ In November 2011, Shilbin's lawyer moved that the charges against him be dismissed because, inter alia, he had not been properly extradited from Somalia and it was too dangerous for the lawyer to go to Somalia to gather evidence needed for his defense.⁶

—Six Somali pirates have been sentenced to life terms for their role in the seizure of the yacht *Quest* and the ensuing deaths of four U.S. citizens in February 2011. Two were sentenced in August 2011 and four in October.⁷

Diplomatic Efforts Against Piracy. The United States continues to participate actively in the Contact Group on Piracy off the Coast of Somalia. An October 2011 U.S. Department of State press release describes this body's activities.

Piracy off the coast of Somalia is a crime of growing global concern. Piracy has significant and direct implications for every nation, from rising danger to seafarers to impacts on humanitarian aid deliveries and global commerce. To address this shared security challenge, the United States is actively pursuing a broad, coordinated, and comprehensive multilateral approach to combating piracy focused on security, prevention, and deterrence.

The United States is proud to be a founding partner in the Contact Group on Piracy off the Coast of Somalia. Established in January 2009 pursuant to the UN Security Council Resolution 1851, the Contact Group is a voluntary *ad hoc* international forum of more than 70 countries, organizations, and industry groups with a common interest in bringing pirates, their financiers and facilitators, to justice.

Among its accomplishments to date, the Contact Group has:

- Facilitated the operational coordination of an unprecedented international naval effort from more than 30 countries working together to protect transiting vessels.
- Partnered with the shipping industry to improve and promote the full implementation of Best Management Practices that merchant ships and crews can take to avoid, deter, delay, and counter pirate attacks.

⁴ *US Court Sentences Somali Pirate to 25 Years*, VOICE OF AMERICA, Apr. 7, 2011, at <http://www.voanews.com/english/news/usa/US-Court-Sentences-Somali-Pirate-to-25-Years-119412939.html>; Eric Tucker, *2nd Somali Facing U.S. Charges in Piracy Case*, WASH. POST, Apr. 22, 2011, at A12.

⁵ Wilber, *supra* note 2; Joseph Goldstein, *F.B.I.'s Man on the Pirate Beat, Seeking Confessions*, N.Y. TIMES, Aug. 22, 2011, at A15.

⁶ Brock Vergakis, *Accused Pirate's Attorney Wants Charges Dismissed*, CBS NEWS, Nov. 1, 2011, at http://www.cbsnews.com/8301-501369_162-20128693/accused-pirates-attorney-wants-charges-dismissed/.

⁷ U.S. Atty's Office (E.D. Va.) Press Releases: Two Somali Pirates Sentenced to Life in Prison for Attack that Resulted in Murder of Four U.S. Citizens (Aug. 22, 2011), at <http://www.justice.gov/usao/vae/news/2011/08/20110822mohamednr.html>; Two Somalis Sentenced to Life in Prison for Acts of Piracy Against the S/V *Quest* (Oct. 3, 2011), at <http://www.justice.gov/usao/vae/news/2011/10/20111003omarnr.html>; Two More Somalis Sentenced for Acts of Piracy (Oct. 4, 2011), at <http://www.justice.gov/usao/vae/news/2011/10/20111004alnr.html>.

- Worked to build the capacity of Somalia and other countries in the region to combat piracy, in particular by contributing to the UN Trust Fund Supporting Initiatives of States Countering Piracy off the Coast of Somalia; and
- Launched a new Working Group aimed at disrupting the pirate enterprise ashore, including its associated financial networks, through approaches similar to those used to address other types of organized transnational crime networks.

To learn more about U.S. support for international efforts against piracy, visit www.state.gov/t/pm/ppa/piracy/index.htm and www.thecgpcs.org.⁸

The Contact Group has launched a website, www.thecgpcs.org, which is operated by the government of Korea with support from the United Kingdom and the United States. The website is intended to serve “as a repository of Contact Group documents and other counter-piracy related materials; a cyber secretariat offering a virtual workspace for Contact Group participants; and a real-time information center for industry, academic researchers, and the general public regarding the Contact Group’s ongoing efforts.”⁹

Security Council Resolutions on Piracy. In October 2011, the United States joined in the unanimous adoption of Security Council Resolution 2015.¹⁰ Inter alia, the resolution calls for states that have not criminalized piracy to do so and urges strengthened antipiracy measures by authorities in Somalia. The U.S. Department of State applauded the Council’s action.

The United States welcomes the UN Security Council’s unanimous call to all nations in the world to continue their cooperation in the investigation and prosecution of all persons responsible for acts of piracy, armed robbery at sea, and Kidnap for Ransom off the coast of Somalia. This includes key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks. We also welcome the further practical steps taken by the Council in support of national, regional and international efforts to prosecute pirates, and to enhance related prison capacity.¹¹

U.S. Concern at Increasing Piracy in Gulf of Guinea. While pirates based in Somalia have been the primary concern for the United States and other nations, an increasing number of attacks are occurring in the Gulf of Guinea. As of September 2011, the International Maritime Bureau has recorded nineteen pirate attacks there, compared with none in 2010.¹² In October 2011, Ambassador Susan Rice, the U.S. permanent representative to the United Nations, discussed this situation in a statement to the Security Council.

In recent years, the number of reported incidents of piracy and maritime armed robbery in the Gulf of Guinea has increased alarmingly. While attacks are underreported, we do know that, in this year alone, at least two dozen maritime armed robbery and piracy attacks were reported in the Gulf of Guinea, with a particularly sharp increase in incidents off the coast of Benin.

⁸ U.S. Dep’t of State Press Release No. 2011/1811, Taking Diplomatic Action Against Piracy (Oct. 26, 2011), at <http://www.state.gov/r/pa/prs/ps/2011/10/176233.htm>.

⁹ U.S. Dep’t of State Press Release No. 2011/1678, Contact Group on Piracy off the Coast of Somalia Launches New Website (Oct. 6, 2011), at <http://www.state.gov/r/pa/prs/ps/2011/10/175125.htm>.

¹⁰ SC Res. 2015 (Oct. 24, 2011).

¹¹ U.S. Dep’t of State Press Release No. 2011/1810, UN Security Council Unanimously Urges Pursuit of Somali Piracy Kingpins (Oct. 26, 2011), at <http://www.state.gov/r/pa/prs/ps/2011/10/176231.htm>.

¹² Rick Gladstone, *Armed Pirates Hijack a Fuel Tanker off Benin and Take 23 Crew Members Hostage*, N.Y. TIMES, Sept. 15, 2011, at A6.

Such attacks—whether within territorial waters or on the high seas—threaten regional and maritime security and the safety of seafarers, as well as impede economic growth across West and Central Africa. Maritime attacks have included assaults on coastal cities and even an attack on the presidential palace in Malabo, the coastal capital of Equatorial Guinea. Illicit maritime trafficking of goods, drugs, and persons also undermines governance and unravels the fabric of fragile societies.

The impact of maritime crime on local economies is substantial. It has become a crippling problem in countries including Benin, Cameroon, Cote d'Ivoire, Gabon, Ghana and Nigeria. Militants in the Niger Delta have demonstrated the capacity to reach offshore oil facilities in recent years, threatening the secure supply of the over 2 million barrels of oil that emanate from that region every day. The increasing frequency of attacks against the shipping sector in Benin is a particular concern.

Beyond its impact on the oil sector, by one estimate, attacks on off-shore oil facilities result in the estimated loss of \$2 billion annually to the broader regional economy, including the fishing industry and commercial shipping, which is obviously a very high price for a region with urgent development needs and fragile economies. In . . . early August, only 50 ships were at anchor in Cotonou's port—instead of the usual 150—and Benin has experienced a dramatic drop in the customs fees and other port revenues on which the government relies for 55 percent of its revenue.

There are important differences, thus far, between piracy and maritime attacks in the Gulf of Guinea and those along the coast of Somalia. In the Gulf of Guinea, attackers primarily seek to steal valuable commodities which are often sold illicitly in West and Central Africa. Cargo and valuables are what the attackers typically want—not necessarily the ships, themselves, or the crew and passengers. Somali pirates usually strike on the high seas, then utilize safe havens onshore, where they hold ships and people hostage. In the Gulf of Guinea, criminals often operate closer to shore, usually with a goal of robbery rather than hostage-taking, and have mainly left crews and passengers unharmed.

Clearly, the primary responsibility for patrolling and securing territorial waters rests with individual countries in the region. Each country should make maritime security a national priority, both as a matter of law enforcement and to enable continued economic development.

Yet the international community, too, must do more to support regional and national efforts. The United States supports the work ECOWAS and the Economic Community of Central African States to strengthen coordination among countries in the region. Since 2007, the United States has provided approximately \$35 million in coastal radars, equipment, boats, and associated maritime security training to our West and Central African partners.

The United States is committed to collaborating with our African and other international friends to build national and regional maritime capacity through programs like the Africa Partnership Station and the Africa Maritime Law Enforcement Partnership. Earlier this year, in exercises hosted by ECCAS, the United States Navy worked with Belgium, Cameroon, France, Gabon, Nigeria, Sao Tome & Principe, the Republic of Congo, and Spain to help local forces improve their capacity to counter illicit maritime activities.¹³

¹³ U.S. Mission to the United Nations Press Release No. 2011/204, Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at a Security Council Meeting on Piracy in the Gulf of Guinea (Oct. 19, 2011), at <http://usun.state.gov/briefing/statements/2011/175866.htm>.