

U.S. Department of State - RVOC 2001

Personnel:

Tom Cocke retired early August this year. He is grateful for all of the words of appreciation.

Liz Tirpak will come on board as a State employee this November. In addition to vessel clearances, she will coordinate U.S. involvement in international marine science initiatives, science capacity building projects and bilateral marine science agreements. She looks forward to being able to further support the U.S. science community and reassures the operators that State will continue to facilitate vessel clearances. Once all the positions are filled, there will be three persons at State directly involved in clearances. Liz's colleagues will include Ms. Roberta Barnes (202-647-0240), and a second full-time civil service agent (GS-14, position to be posted at www.opm.gov). Ms. Margaret Hayes, (202-647-3262) the new Director for the Office of Oceans Affairs (which houses the vessel clearance office), has been very supportive.

2001 Ship Clearances:

As of 10/22/01, 111 cruises/327 clearance requests have been submitted (compared to 121 cruises/330 clearance requests in 2000)

Liz emphasized the importance of the following:

- 6-Month advance notice, perhaps difficult to manage, is rapidly becoming a prerequisite
- Substantial scientific collaboration with research institutions in coastal states is also helpful to expedite clearances. Background information submitted with prospectuses should clearly illustrate the collaboration, including foreign national points of contact.
- Transmitting requests electronically is useful for transmittal purposes and it is not necessary to provide paper copies. Post cruise reports must still be submitted via mail with the appropriate number of copies. Operators should be aware of the delays in overnight transmittals to the Department due to recent anthrax scare.
- DOS plans to provide up-to-date country-specific requirements (NTRVOs) and threat assessments via the State website. UNOLS will be notified as soon as these updates are posted.

Other DOS MSR activities:

U.S. – Russia Science Agreement – Liz will ensure language regarding vessel clearances is also included in this agreement. A similar dialog may be necessary with Mexico and other areas where clearance procedures are unnecessarily delayed or rejected.

Piracy:

- DOS is reviewing its current MSR clearance procedures when ships propose to enter waters in countries in which U.S. has no diplomatic presence. Looking to the U.N. Convention on the Law of the Sea (which the U.S. considers part XIII customary international law), we find little guidance, beyond Article 246 Section 4.
- A paper regarding sources of piracy information was distributed (attached) – look to the new State Department website for updates to this list of reference materials.
- The U.N. Informal Consultative Process on Oceans and Law of the Sea – In May 2001, States met in New York to review the portions of the Convention relating to MSR & Piracy. Recommendations resulting from this meeting will be incorporated in a resolution for consideration at UNGA this fall. The U.S. is working to strengthen the connection between the two topics (that MSR is directly affected by piracy today). Language that could potentially raise the piracy issue to the attention of the U.N. Security Council is likewise being considered. Japan has suggested a rewrite to the MSR booklet, first published by the U.N. in 1991 (draft resolution attached).
- Rome Convention – undergoing review, and guidance for the conduct of investigations is being reviewed for adoption at the November meeting of the International Maritime Organization Council (attached).

September 13, 2001

**PIRACY AND ARMED ROBBERY AGAINST SHIPS:
A REFERENCE DOCUMENT**

DEFINITIONS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

The IMO's recently revised definitions of these terms are as follows:

- "Piracy" means unlawful acts as defined in Article 101 of the 1982 UN Convention on the Law of the Sea.
- "Armed robbery against ships" means 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 person or property on board such a ship, within a State's jurisdiction over such offenses.

(Paragraph 2 of the IMO Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, annexed to MSC/Cir .984, 20 December 2000.) .

GENERAL BACKGROUND

The increasing number and seriousness of attacks particularly against merchant shipping in transit and in port by hijacking, homicide, robbery and theft, and the consequential increased risk of collision and major environmental damage increasingly threaten peaceful maritime commerce in many areas of the world. These attacks are most prevalent in South East Asia and the Far East, in Brazil and Ecuadorian ports; in and around the Indian sub-continent; in certain ports in West Africa, notably Nigeria, and in east and north-east Africa, especially in the waters off Somalia.

In its annual piracy review for 2000, the International Maritime Bureau (IMB--which characterizes all such attacks as piracy) reported that pirate attacks have soared to a 10- year high, and four and one-half times higher when compared with 1991. 469 pirate attacks were reported during 2000, 57% higher than in the whole of 1999. Violence used in the attacks rose to new levels in 2000, with 72 seafarers killed and 99 injured during 2000, up from three killed and 24 injured in 1999. http://www.iccwbo.org/ccs/news_archives/2001/piracy_report.asp.

For calendar year 2000, the IMO had reported to it 471 attacks, an increase of 52% over calendar year 1999. The total number of attacks reported to the IMO since 1984 through May 2001 had increased to 2309. Most of the attacks reported to the IMO during 2000 were reported to have occurred in the coastal States' territorial waters while the ships were at anchor or berthed. In many of the reports received by the IMO, the crews were violently attacked by groups of five to ten people carrying knives or guns. During 2000, the IMO noted 72 crew members of the ships involved were killed, 129 wounded, and five are missing; two ships were hijacked, three ships are missing, and one was

- October 1999 Singapore Piracy Seminar archived at <http://www.sils.org/seminar/1999-piracy-00.htm>.
- Project on Insurgency, Terrorism and Security, Piracy--An Old Profession, 1997, archived at <http://paladin-san-francisco.com/libpirac.htm>.

In addition, a number of regional meetings have been held over the years to help address this problem.

- The IMO sent its first group of experts to the Malacca Strait area in March 1993 (MSC 62/INF.3) and again in October 1998 (MSC 70/15/1/Add.1 and MSC 71/15/2)
- The IMO sent a mission to China, Hong Kong and the Philippines in 1994 to study the situation in the South China Sea (MSC 63/INF.15).
- The IMO sent missions of experts to Brazil in October 1998 (MSC 71/15/3, Annex 1) and to Abuja, Nigeria 4 October 1999 (MSC 72/17/2, Annex 1).
- The IMO held regional seminars and workshops on piracy and armed robbery against ships in October 1998 in Brasilia for Latin American and Wider Caribbean countries (MSC 71/15/3, Annex 2); in 1999 in Singapore for countries in the South East Asia region 3-5 February 1999 (MSC 71/15/4) and in Lagos, Nigeria for West and Central African countries (6-8 October 1999) (MSC 72/17/2, Annex 2); and in March 2000 for the Indian Ocean region in Mumbai, India (MSC 72/17/3 and MSC 73/14/1).
- Japan convened a Regional Conference on Combating Piracy and Armed Robbery Against Ships 28-30 April 2000, attended by heads of authorities responsible for conducting law enforcement activities against piracy and armed robbery against ships, providing assistance to ships and persons in distress as a result of such attacks. The Conference report "Asia Anti-Piracy Challenges 2000" may be found in MSC 73/INF.4, Annex 2. The Conference also adopted the "Tokyo Appeal" (MSC 73/INF .4, Annex 3), developed a Model Action Plan for Maritime Policy Authorities and Private Maritime Related Concerns to Combat Piracy and Armed Robbery Against Ships (MSC 73/INF.4, Annex 4), and published a List of Authorities to report immediate and post-attack incidents (MSC 73/INF .4, Annex 5).
- Further the ASEAN Regional Forum (ARF) held a workshop on anti-piracy, organized by the Indian Coast Guard in Mumbai 18-20 October 2000, attended by representatives from Australia, Brunei, Cambodia, China, Indonesia Japan, the Republic of Korea, Malaysia, Myanmar, the Philippines, the Russian Federation, Singapore, Thailand, the United States, Viet Nam and the European Union, as an expert from the International Maritime Bureau. See <http://www.dfat.gov.au/arf/index.html>.
- A Regional Experts Meeting on Combating Piracy and Armed Robbery against ships was held in Kuala Lumpur 14-15 November 2000, with support from the Japanese

- Directives for Maritime Rescue Co-ordination Centres (MRCCs), MSC/Circ.967, 6 June 2000. Archived at <http://www.imo.org/circs/msc/72/967.pdf>
- Interim Procedures for MRCCs on Receipt of Distress Alerts, MSC/Circ.959, 20 June. 2000. Archived at <http://www.imo.org/circs/msc/72/959.pdf>
- Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, MSC/Circ.984, and 20 Dec. 2000 (pending adoption by the IMO Assembly in November 2001). Archived at <http://www.imo.org/circs/msc/73/984.pdf>

Additional guidance for dealing with piracy and armed robbery against ships includes:

- Oil Companies International Marine Forum (OCIMF), "Piracy and Armed Robbery Against Ships--Code of Practice for countermeasures for use by Terminal Operators and other Shore Authorities," 1st ed. 2000. See http://www.ocimf.com/home_frset.htm.
- BIMCO, The Baltic and International Maritime Council, The BIMCO ShipMaster's Security Manual, 1998, with revisions 2000. See <http://www.bimco.dk/> under "BIMCO Publications A/S", "Security Manual".
- U.S. Department of Transportation, National Planning Guide on Port Security, 1997. Archived at <http://www.uscg.mil/hq/g-m/nmc/security/portplan.htm>.
- International Chamber of Shipping & International Shipping Federation, "Pirates and Armed Robbers -A Master's Guide," 3d ed. 1999 (MSC 72/INF.3). Archived at <http://www.marisec.org/pubs/pubcat.htm/pirates>.
- UK Department of Environment, Transport and Regions, "Piracy and Armed Robbery," Marine Guidance Note (MGN) 75, 1998. Archived at <http://www.shipping.detr.gov.uk/mgn075/index.htm>.
- ICC, International Maritime Bureau, Weekly Piracy Reports. Archived at http://www.iccwbo.org/ccs/imb_piracy/weekly_piracy_report.asp.
- Australian Department of Foreign Affairs and Trade, Travel Information: Piracy at Sea, 30 January 2001, archived at <http://www.dfat.gov.au/consular/advice/piracy.html>.

Some other useful references:

- Dana R. Disson, Piracy in Asia: A Growing Barrier to Maritime Trade, The Heritage Foundation Backgrounder No.1379, June 22, 2000, archived at <http://www.heritage.org/library/backgrounder/bg1379.html>.

destroyed. On three occasions the attackers used explosive devices. (IMO document MSC 74/17. See also <<http://www.marisec.org/piracy>> the ISF/ICS "Maritime Security Report 2000".)

When these criminals seize a vessel, the vessel's original flag is often removed and replaced with that of another State. This is a problem not only for flag States, their crews and ship owners, but for the coastal States as well. Piracy and armed robbery at sea impacts both commercially and privately held vessels. Reports of increasing involvement by organized criminal gangs, working across borders, points to the need to view such armed attacks in a broader context.

Many of these attacks on the high seas or in an EEZ can be classified as traditional acts of piracy, over which all States may exercise jurisdiction. Other attacks, however, do not legally qualify as piracy. When they occur in port or at anchorage they are most likely proscribed and punishable by local criminal law. When the acts endanger the safety of navigation and occur on board foreign flag ships while underway in the territorial sea, international straits or international waters, these acts are frequently not proscribed nor punishable by the criminal laws of the coastal State.

CURRENT RESPONSES

The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, with its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 10 March 1988, was adopted under the IMO's auspices. These instruments can fill many of the jurisdictional gaps highlighted when the acts endanger the safety of international navigation and occur on board national or foreign flag ships while underway in the territorial sea, international straits or international waters. The Convention requires States parties to criminalize such acts under national law and to cooperate in the investigation and prosecution of their perpetrators. While the Convention has been in force since 1 March 1992, except for China, none of the States in whose waters these acts are occurring are party. See <http://www.imo.org/imo/convent/status.htm>.

The International Maritime Organization has issued the following instruments for use in preventing and suppressing piracy and armed robbery at sea:

- Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships, MSC.Circ.622/Rev.16 June 1999. Annexed is a Draft Regional Agreement on Co-operation in preventing and suppressing act of piracy and armed robbery against ships (Appendix 5). Archived at <http://www.imo.org/circs/msc/piracy/622rev1.pdf>.
- Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships, MSC/Circ.623/Rev.1, 16 June 1999. Archived at <http://www.imo.org/circs/msc/piracy/632rev1.pdf>.

Government and the Nippon Foundation. It was attended by delegations from Cambodia, China, India, Indonesia, Japan, Malaysia, Myanmar, the Philippines, the Republic of Korea, Singapore, Thailand, Viet Nam and Honk King, China.

- The Council for Security Cooperation in the Asia Pacific (CSCAP) Maritime Cooperation Working Group agreed at its November 2000 in Beijing to a detailed CSCAP Memorandum No. 5 on Cooperation for Law and Order at Sea, published February 2001. See <http://www.cscap.org/publicat.htm>. This memorandum recommended harmonizing piracy laws and jurisdiction, and advocated anti-piracy agreements and information exchange, and builds upon CSCAP Memorandum No. 4, Guidelines for Regional Maritime Cooperation, archived at <http://www/aus-cscap.anu.au/mem04.html>.
- The Southeast Asia Program in Ocean Law (SEAPOL) held a meeting on "Emerging Actors and Networks of Institutions Regarding Piracy in Southeast Asia," in Tokyo in November 2000, and a Workshop on Piracy and Law Enforcement in conjunction with its Inter-Regional Conference in Bangkok on March 22, 2001. See <http://www.seapol.org>.
- A high level meeting of Coast Guard agencies in the Northwest Pacific Region took place in Tokyo 20-21 December 2000. The representatives adopted a Joint Statement on the Establishment and Development of Cooperative Relationships among the Korea National Maritime Police Agency, the Federal Border services of the Russian Federation, the U.S. Coast Guard and the Japan Coast Guard. Piracy and armed robbery against ships was identified as a field of concern.
- In March 2001, the IMO completed an assessment mission to South East Asia, held in Jakarta and Singapore. See MSC 74/17/1 and <http://www.imo.org/imo/briefings/2001/fax8.htm>.
- The Asia Pacific Economic Cooperation (APEC) Transportation Working Group (TTP-WG), through its Experts Group on Maritime Safety (EGMS) and Transportation Security Experts Group (TSEG) have addressed this problem at its recent meetings, most recently in Miyazaki Japan, 16-20 October 2000, Sydney, Australia 6-8 March 2001, and in Brunei 2-4 April 2001. It is anticipated that the Transportation Ministerial to be held in October 2001 in Peru will address these issues. See http://www.iot.gov.tw/apec_tptwg, <http://www.apec.dotrs.gov.au>, and <http://www.apecsec.org.sg>.

The United Nations Open-ended Informal Consultative Process on the Oceans considered the problem of piracy and armed robbery at sea during its second session on May 10, 2001. The results of those consultations will be viewable at the UN law of the sea website <http://www.un.org/Depts/los> and are expected to be considered by the UN General Assembly when considering the annual resolution on law of the sea during the fall of 2001.

Operationally a few steps have been taken:

- In October 1992 the Piracy Reporting Center in Kuala Lumpur , Malaysia, was established by the International Maritime Bureau of the International Chamber of Commerce.
- In 1992 Singapore and Indonesia established coordinated patrols to prevent and suppress piracy in the Singapore Straits.
- In 1995 Malaysia established its Maritime Enforcement Coordination Center in Lumut.
- Indonesia and Malaysia have 24 hour communications link, engage in occasional joint patrols, have a "hot pursuit" agreement and utilize the Border Committee
- An automatic satellite ship tracking system has been developed for installation on ships. See <http://www.shiploc.com>. See also <http://www.maritimesecurity.com>.

**U.S. SUGGESTIONS FOR STRENGTHENING PIRACY LANGUAGE IN
DRAFT RESOLUTION (9/18/01) ON OCEANS AND THE LAW OF THE SEA**

Preamble

19. We suggest breaking this into two paragraphs to include important material from the ICP report and to give greater emphasis to the problems caused by piracy and armed robbery at sea:

19.

Expressing deep concern once again at the continued increase in the number of incidents of piracy and armed robbery at sea, which constitutes a threat to international peace and security by harming seafarers jeopardizing the safety of shipping and consequently the integrity of marine and coastal environments, and interfering with the conduct of marine scientific research,

19bis.

Further concerned that this threat is exacerbated by the involvement of transnational organized crime, which emphasizes the need for capacity building and cooperation of all States and international bodies as well as business sectors to prevent and combat this nefarious activity,

Operative Paragraphs

22. Again, we suggest strengthening the text on piracy and armed robbery at sea, as follows:

22.

Urges all States and relevant international bodies to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea by adopting measures for prevention; investigating or cooperating in the investigation of such incidents; bringing the alleged perpetrators to justice, in accordance with international law; training seafarers, port staff and enforcement personnel in combating piracy; augmenting surveillance to ensure safety of navigation and scientific research; and guarding against fraudulent ship registrations;

23. Insert the word "level" after "regional."

23 bis. Insert the following language, which appeared in last year's resolution as Operative Paragraph 34.

Calls upon States, in this context, to cooperate fully with the International Maritime Organization, including by submitting reports on incidents of piracy and armed robbery to the organization and by implementing its guidelines on preventing attacks of piracy and armed robbery;

ANNEX 18**DRAFT ASSEMBLY RESOLUTION****CODE OF PRACTICE FOR THE INVESTIGATION OF THE CRIMES OF
PIRACY AND ARMED ROBBERY AGAINST SHIPS**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

RECALLING ALSO the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf,

NOTING resolution *A/RES/55/7* on "Oceans and the law of the sea", by which the United Nations General Assembly, at its fifty-fifth session, urged all States, in particular coastal States, in affected regions to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea, including through regional co-operation, and to investigate or co-operate in the investigation of such incidents wherever they occur and bring the alleged perpetrators to justice in accordance with international law,

NOTING ALSO the approval by the Maritime Safety Committee of MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.1 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships,

BEARING IN MIND the rights and obligations of States under the international law of the sea, including the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS),

RECOGNIZING WITH DEEP CONCERN the grave danger to the safety of life at sea, maritime safety and the protection of the marine environment arising from acts of piracy and armed robbery against ships.

RECOGNIZING ALSO that the number of acts of piracy and armed robbery against ships continues to increase world-wide.

BEING AWARE that the fight against piracy and armed robbery against ships is often impeded by the absence of effective legislation in some countries for the investigation of reported cases of piracy and armed robbery against ships.

BEING ALSO AWARE that, when arrests are made some Governments are lacking the legislative framework and adequate guidelines for investigation necessary to enable conviction and punishment of those involved in acts of piracy and armed robbery against ships,

TAKING INTO ACCOUNT the recommendations made at regional seminars and workshops organized by IMO within the context of the 1998 anti-piracy project, that the development of a Code of practice for the investigation and prosecution of acts of piracy and armed robbery against ships should be pursued on a priority basis to ensure an appropriate punishment for the crime of piracy and armed robbery against ships,

BEING CONVINCED of the apparent need for a Code of Practice to be adopted and promulgated as soon as possible,

BEING ALSO CONVINCED of the need for Governments to co-operate and to take, as a matter of the highest priority, all necessary action to prevent and suppress any acts of piracy and armed robbery against ships,

1. ADOPTS the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships set out in the Annex to the present resolution;
2. INVITES Governments to co-operate in the interests of the safety of life at sea and environmental protection by increasing their efforts to suppress and prevent acts of piracy and armed robbery against ships;
3. ALSO INVITES Governments to develop, as appropriate, agreements and procedures to facilitate co-operation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;
4. ENCOURAGES Governments to apply the provisions of international instruments aiming at improving the safety of life at sea and the prevention and suppression of acts of piracy and armed robbery against ships;
5. REQUESTS the Secretary-General to bring this resolution and the annexed Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships to the attention of Member Governments, the United Nations and other international organizations concerned for information and appropriate action;
6. URGES Governments to take actions, as set out in the annex to the Code of Practice, to investigate all acts under their jurisdiction of piracy and armed robbery against ships. and to report to the Organization pertinent information on all investigations and prosecutions concerning these acts;
7. FURTHER URGES all Governments responsible for ports, anchorages and sea areas to inform the Organization of specific advice available to ships on the subject of piracy and armed robbery against ships for promulgation by the industry to such vessels.

ANNEX

CODE OF PRACTICE FOR THE INVESTIGATION OF THE CRIMES OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

1 PURPOSE OF THIS DOCUMENT

The purpose of this document is to provide IMO Member States with an *aide-memoire* to facilitate the investigation of the crimes of piracy and armed robbery against ships.

2 DEFINITIONS

For the purpose of this Code:

2.1 "Piracy" means unlawful acts as defined in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

2.2 "Armed robbery against ships" means 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 a ship, within a State's jurisdiction over such offences.

2.3 "Investigators" means those people appointed by the relevant State(s) to intervene an act of piracy or armed robbery against a ship, during and/or after the event

3 PRIOR CONSIDERATIONS

Legislation

3.1 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences.

* The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

"Piracy consists of 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 inciting or of intentionally facilitating an act described in subparagraph (a) or (b). "

3.2 States are encouraged to ratify, adopt and implement the practical applications of the 1982 United Nations Convention on the Law of the Sea, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Navigation and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

Action by coastal/port States

3.3 To encourage masters to report all incidents of piracy and armed robbery against ships, coastal/port states should make every endeavour to ensure that these masters and their ships will not be unduly delayed and that the ship will not be burdened with additional costs related to such reporting.

Coastal State agreements

3.4 Coastal states are encouraged, where appropriate, to enter into bilateral or multilateral agreements to facilitate the investigation of piracy and armed robbery against ships.

4. TRAINING OF INVESTIGATORS

4.1 Training of investigators should cover the primary purposes of an intervention/investigation:

- .1 In any cases where persons on board have been abducted or have been held hostage, the primary objective of any law enforcement operation or investigation must be their safe release. **Their rescue must take precedence over all other considerations.**
- .2 Arrest of offenders.
- .3 Securing of evidence, especially if an examination by experts is needed.
- .4 Dissemination of information which may help prevent other offences.
- .5 Recovery of property stolen.
- .6 Co-operation with the authority responsible for dealing with any particular incident.

4.2 Investigators must be trained and experienced in conventional investigative techniques, and should be as familiar as possible with a ship environment. Maritime knowledge will of course be an advantage, and access to persons with knowledge on maritime procedures useful, but it is investigative skills which are vital.

4.3 Trainers may wish to emphasize that offenders could still be at the scene of crime when investigators arrive on scene.



5 INVESTIGATIVE STRATEGY

5.1 It is essential that those employed by security force agencies to investigate piracy or armed robbery against ships have demonstrated investigation skills and competencies, as well as maritime knowledge/experience. Offenders are ultimately land-based, and it is likely that it is on land they will be most vulnerable to detection. Associates may be prepared to give information against them, for example, and it is there that they will be spending the proceeds of their crime. It is also probable that offenders will be involved in other offences such as carrying of illegal immigrants, and useful intelligence may be lost if investigators are too compartmentalized in their approach.

5.2 Conventional detective methods offer the best chance to identify and apprehend pirates and perpetrators of armed robbery.

5.3 It may be appropriate to link anti-piracy measures to anti-smuggling patrols or efforts to prevent drug smuggling or unlawful drug trafficking, so minimizing duplication of effort and leading to saving of resources. Wherever possible, inter-agency approach to investigation should be adopted.

Overall **management/other liaison/co-operation**

5.4 It is important to identify the person and/or organization in charge of an investigation. Confusion or delay in the early stages will, at best, result in delayed investigative opportunities and loss of evidence. At worst, it may increase the danger to any crewmen held captive by the offenders, possibly resulting in avoidable loss of life or injury.

5.5 Recognition should be given to the different national interests that may be involved in each case including: the flag state of the ship; country in whose territorial waters the attack took place; country of suspected origin of the perpetrators; country of nationality of persons on board; country of ownership of cargo; and country where the crime is committed. In cases of piracy and armed robbery against ships outside territorial waters, the flag State of the ship should take lead responsibility and in other cases of armed robbery the lead should be taken by the State in whose territorial waters the attack took place. In all cases it should be recognized that other States will have legitimate interests and therefore liaison and co-operation between them is vital to a successful investigation.

5.6 It is important to involve relevant organizations (e.g. Interpol, ICC/International Maritime Bureau) at an early stage, where appropriate, to take account of the possibility that transnational organized crime may be involved.

5.7 If in the course of the investigation there is an unavoidable need to change the investigators in charge a full debriefing should take place.

6 DEALING WITH AN INITIAL REPORT

When information is received that a ship is under attack, or a recently committed major offence is reported and the ship is accessible, investigators should attend without delay. The responsibilities of those who first attend crime scenes will be the following:

Preservation of life

- .1 They must secure medical treatment for all persons injured.

Prevention of the escape of offenders

- .2 They must be alert to the possibility that, in some circumstances, offenders may still be in the vicinity.

Warnings to other ships

- .3 Whenever practicable warnings should be issued to other ships in the vicinity which may be vulnerable to attack.

Protection of crime scenes

- .4 Recovery of forensic material from a crime scene has the potential to provide evidence to identify offenders. Equally, interpretation of what happened at the scene will help investigators and determine the outcome of the investigation. It is therefore vital that crime scenes be protected until the attendance of appropriately qualified personnel to examine them. This point must be fully understood by the master, crew and shipowner of any ship involved.
- .5 The initial phases of the law enforcement and emergency services' response present the greatest risk of scene contamination. Personnel co-ordinating the law enforcement response should be aware of the risk of contamination and advise persons attending scenes, including other law enforcement officials and naval personnel, accordingly.
- .6 They must ensure that the authorities in the country with lead responsibility for investigating any crime are informed of the details of the incident and given the opportunity to conduct an investigation into it. Any evidence, details of action taken, etc should be passed to the State with the lead responsibility.

Securing evidence

- .7 Focused questioning at the crime scene may lead to information which, by being rapidly passed to all appropriate authorities, could lead to the identification or arrest of offenders e.g. description of offenders, description of ship and direction last seen heading in.
- .8 Law enforcement officials first attending a scene must appreciate the importance of their role in gathering and passing on as quickly as possible, relevant evidence even if the offenders have escaped. Mistakes or omissions at the outset may have serious implications for the subsequent investigation.
- .9 Investigators should bear in mind that recovery of property during the investigation is important as it may become evidence in the event of any prosecution.

7 THE INVESTIGATION

Proportionality

The course of an investigation will to a large extent depend on the circumstances of the offence. In this regard the investigating agency will wish to take account of the "seriousness" of the incident. This will range from stolen property to the loss of life. Consequently, action to be pursued should be proportionate to the crime committed and consistent with the laws that were violated. The following will, however, be common to all piracy and armed robbery investigations:

Establishing and recording of all relevant facts

- 1 All relevant facts must be recorded in a systematic way. Most law enforcement agencies use multi-purpose crime reporting forms, but officers dealing with offences at sea must be sure to include the additional information which may subsequently prove essential in legal proceedings in these cases e.g. weather, sea state, position, direction of travel and speed of the ship, a detailed description of the ship and so forth.
- .2 Photographs and videotapes taken of and on a ship will help investigators and witnesses subsequently explain what happened.
- .3 Investigators must bear in mind that laws governing offences committed at sea allow, in some circumstances, for legal proceedings in countries other than those where initial investigators may be based. Investigations must therefore be sufficiently comprehensive and detailed to explain what happened to courts other than the investigators' own, possibly several years after the offences have been committed. The *modus operandi* of investigators has to be described in the investigation report.

Recording of individual witness accounts

- .4 These should be recorded in a formal manner acceptable for use in subsequent court proceedings. These accounts will form the basis of any prosecution case and untrained personnel should not be used for this important task.
- .5 Witness accounts must be recorded at the earliest opportunity, as memories do fade and accounts may be influenced by contact with other witnesses and media reports.
- .6 Where witnesses speak different languages to the investigators, as will happen frequently in piracy cases. their accounts must be recorded in their own languages and through use of properly qualified interpreters when this can be done within a reasonable timescale. Investigators should be aware that an account signed by a witness, or indeed the suspect, in a language foreign to that person may be valueless in court proceedings. It is important, therefore, to establish the legal requirements for the validity or evidence in each case.

- .7 Experience has proved that witnesses in piracy cases, and particularly those who have been subjected to violence, are likely to be exceptionally distressed. Their experience will have been all the worse if they have been held captive for a long period and/or been in fear of death, and the situation will be exacerbated still further if they are far from home. Investigators should bear these factors in mind and deal with them sympathetically and patiently if they are to elicit all relevant facts.
- .8 Witnesses should be interviewed separately from each other when this can be done within a reasonable timescale to protect the integrity of the individual accounts of the incident.
- .9 Investigators should focus upon obtaining specific descriptions of the individuals involved in the piracy incident, particularly noting any distinguishing characteristics of the "leader".
- .10 If more than one offender is involved, investigators should attempt to obtain particular information from the witnesses about the actions of each individual offender, rather than be satisfied with the general statements about what "the hijackers" or "the pirates" did on the ship.

Detailed forensic examination of scenes

- .11 Detailed forensic examination of the crime scene, particularly in serious matters including homicides, offers investigators the best opportunities to establish crucial information and evidence which may ultimately result in the case being detected.
- .12 Investigators should secure particular objects or places on the ship where the offenders may have left fingerprints or other latent prints of value.
- .13 Investigators will be well advised to take advantage of the full range of specialist services available to them.
- .14 Investigators should take into consideration the need not to detain ships or impede work on board the ship longer than what is strictly necessary when carrying out the forensic examination.

Search of intelligence databases

- .15 Crimes must not be treated in isolation.
- .16 Offenders may be responsible for similar offences not yet solved, but when the evidence from all those cases is accumulated and considered opportunities to identify offenders may emerge. Appropriate databases, including those held by the International Maritime Bureau in Kuala Lumpur, Malaysia should be searched to identify series of offences. However, usage of private databases has to be compatible with the law governing the investigation. Consideration should be given to contacting Interpol in case they have any information on the offenders.

- .17 Equally, offenders may have convictions the details of which could link them to crimes under investigation.

Distribution of information and intelligence to appropriate agencies

.18 An important product of an effective investigation, even if it does not lead to any arrests, should be the generation of intelligence, and systems should be in place to ensure that potentially useful intelligence is disseminated to all appropriate parties. These might include law enforcement agencies, naval authorities, coastguards, harbour masters and others who may need it and could act on it according to their national regulations.
