

The Human Cost of Somali Piracy 2011

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- Republic of Liberia
- Republic of the Marshall Islands
- Republic of Panama
- Commonwealth of the Bahamas

First and foremost, this report is the result of the ship owners and operators and, above all, the crews who have taken their time and relived their experiences to make this report possible for the benefit of their fellow seafarers.

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Executive Summary

The original Oceans Beyond Piracy (OBP) Human Cost of Piracy report, released in June 2011, reported statistics collected during 2010. Subsequently, there was a peak in pirate activity in early 2011 with over 700 hostages held aboard vessels off the coast of Somalia. Throughout 2011, however, pirates captured fewer seafarers, reflecting a significant drop in the success rate of pirate attacks. This is welcome news, but the period of time that seafarers are detained is increasing. Possibly as a result of this change, the public's attention to the plight of seafarers has declined as well, though there remain far too many who continue to endure captivity or face the risk of attack in the High Risk Areas of the Indian Ocean. Additionally, complexities and sensitivities continue to surround reporting on piracy incidents, which limit public knowledge of the plight of seafarers. As a result, maritime piracy and its impact continue to be poorly understood by the general public.

As described in the 2010 report on the Human Cost of Somali Piracy, there was scant official information previously available to the public on pirates' treatment of hostages during captivity. As a result, the figures described in the Violence Faced by Hostages section of this report came from a mix of sources. This lack of publicly available data prompted the formulation of the Declaration Condemning Acts of Violence Against Seafarers (the Washington Declaration). The Washington Declaration commits flag state signatories to submit reports on seafarer welfare during captivity to the International Maritime Bureau (IMB). As of June 2012, four of the largest flag states—Liberia, the Marshall Islands, Panama, and the Bahamas—have signed on to the document. The intent of the declaration is to provide a reliable and anonymized resource of information for organizations seeking to help seafarers who have either been subject to pirate attack or who are at risk of attack.

This joint OBP/IMB report is broken into two sections. In the first section, OBP presents the types of crimes committed by pirates, the rates of mistreatment, and the hostage and pirate casualties in 2011. The analysis is based on a review of publicly available documents. The figures describing the number of people attacked by pirates include seafarers aboard vessels as reported by official sources including the IMB, European Union Naval Force (EU NAVFOR), and the US Navy's Office of Naval Intelligence (ONI), with a few exceptions for incidents reported by open sources. It is strongly suspected that there are many others, especially local fishing vessels and dhows, which are attacked but not typically reported. We used a combination of official sources and open media sources to determine these rates.

In the second section, the IMB begins with a general overview of Somali piracy. It then describes the treatment of hostages in 2010 and 2011 based on reports from 23 of the 77 vessels held by pirates in that period of time. The information contained in this section is the result of the Washington Declaration and is drawn from reports submitted to the IMB by Flag States, ship owners and operators, seafarers of ships hijacked and released by Somali pirates, as well as the Maritime Piracy Humanitarian Response Programme (MPHRP). Due regard is given to the sensitivities of the identities of the seafarers, vessels, owners, operators, and other parties involved in each hijacking case; as such, the information on the treatment of the hostages is presented in an aggregated and anonymous format.

Primary Findings of the Report

Part 1: Analysis of the Human Cost of Somali Piracy in 2011

The first part of the report assesses crimes committed by pirates in 2011. These were committed against seafarers transiting the High Risk Area in 2011 who were on ships that were fired upon, boarded, or hijacked; seafarers taken hostage in 2010 but still held in 2011; sailors aboard personal yachts attacked by pirates; and people on shore, including humanitarian aid workers and tourists, who were kidnapped and held for ransom.

- 3,863 seafarers were assaulted by pirates during the initial stages of an attack by firing weapons including assault rifles & rocket-propelled grenades (RPGs).
- 968 seafarers came in close contact with armed pirates aboard their vessels. 413 (44%) of those who came in close contact with pirates were rescued from citadels by naval forces after waiting for hours (and in some cases days) often as pirates fought to breach the safe room.
- 1,206 individuals were held captive in 2011 by pirate gangs. These included:
 - 555 seafarers who were attacked and taken hostage in 2011
 - 645 hostages captured in 2010 that remained in pirate hands in 2011 including
 - 26 hostages have been held for over 2 years
 - 123 hostages have been held for over 1 year
 - 6 tourists and aid workers
- 35 hostages died in 2011:
 - 8 were killed by pirates during the attack or after being taken captive
 - 8 died from disease or malnutrition caused by lack of access to adequate food, water, and medical aid
 - 19 died during rescue efforts by naval vessels or attempting to escape, the majority of which were being used as human shields by the pirates
- The hostages held in 2011 predominately came from non-OECD countries, especially from the Philippines (17%), China (9%), and India (8%). Only 7% came from OECD countries.
- It is estimated that 111 pirates were killed in 2011 based on data from open media sources:
 - 78 died in direct encounters with naval forces
 - 3 died in clashes with Puntland security forces
 - 30 died in fights with other pirates over ransoms and hostages

Part 2: Analysis of the Treatment of Hostages

This section assesses the overall treatment of hostages based on post-incident reports from 23 vessels that were released in either 2010 or 2011. These reports describe the experiences of

hostages that are no longer in pirate hands. There are no reports available for hostages still in captivity; as a result their experiences are not included in this section.

- All hostages faced the risk of violence day upon day and a range of inhumane treatment in violation of their basic human rights, including the right to life, liberty, and security of person.
- At least three seafarers from the 23 reporting vessels died after release as a direct result of their treatment during captivity.
- All crews were subject to restricted freedom of movement and privacy in addition to living under constant threat of physical and psychological abuse.
- The reports indicate that the living, hygiene and sanitary conditions onboard the hijacked ships declined rapidly and remained deplorable throughout captivity.
- The main triggers of physical and psychological abuse appeared to be:
 - Pirates' basic ignorance in the workings of a ship,
 - A break down or slow progress in negotiations,
 - Disagreements among the hostages, and
 - Better treatment to some crews in exchange for information on the others.
- The report does not take into account the stress, fears, and the day-to-day deterioration in standards of living of the family members of the captive crews.
- Half of all hostages in 2011 were subject to moderate abuse by captors including punching, slapping, or pushing hostages. 10% of hostages suffered severe abuse which included being tied up in the sun for hours, being locked in a freezer, or having fingernails pulled out with pliers.
- Nearly all hostages were in some form affected psychologically. While many were able to cope after they were released, there was some needing more help.
- Due regard has been given to the sensitivities of the identities of the crews, vessels, owners, operators, and other parties involved in each hijacking case; hence the report only provides aggregate information on the treatment towards the hostages.

Part 1: Analysis of the Human Cost of Somali Piracy in 2011

Piracy as defined in the United Nations Convention on the Law of the Seas is:

(a) any illegal act 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:

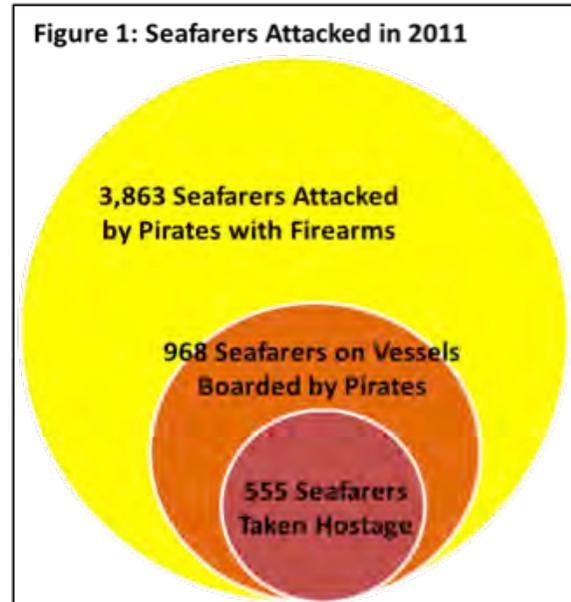
(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(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)¹.

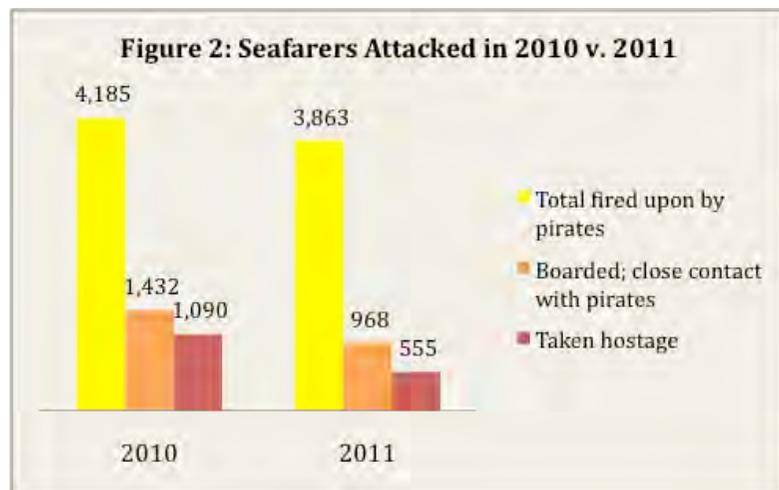
In order to illustrate the human cost of Somali piracy, this section looks at piracy as a series of violent crimes against seafarers and other victims. As such, this section of the report considers the specific crimes committed by members of pirate gangs including: 1) assault, 2) kidnapping, and 3) murder. Data includes all such crimes committed by Somali pirates regardless of whether the crime occurred on the high seas, in territorial waters, or on land.



1.1 2011 Piracy Attacks:

Thousands of people are attacked each year by Somali pirates seeking financial gain. In 2011, at least 3,863 seafarers were assaulted by armed pirates seeking to hijack their vessel and kidnap them. Of these, 968 (25%) seafarers came into close contact with pirates that succeeded in boarding their vessel; 413 of those who came in close contact with pirates were rescued from safe rooms or citadels by naval forces after waiting for hours (and in some cases days) in terror, often as pirates actively fought to breach the safe room. The remaining 555 (14%) were ultimately kidnapped and taken hostage (see Figure 1)².

The number of seafarers subjected to armed attacks decreased in 2011 by 8% from the previous year, as is shown in Figure 2. The most notable change was a 50% decrease in the number of seafarers kidnapped by pirates and taken hostages. There were 2,895 seafarers subjected to weapon-fire in these unsuccessful attacks. In this scenario, pirates fired assault rifles and RPGs at both their place of work—the bridge—and their living quarters.

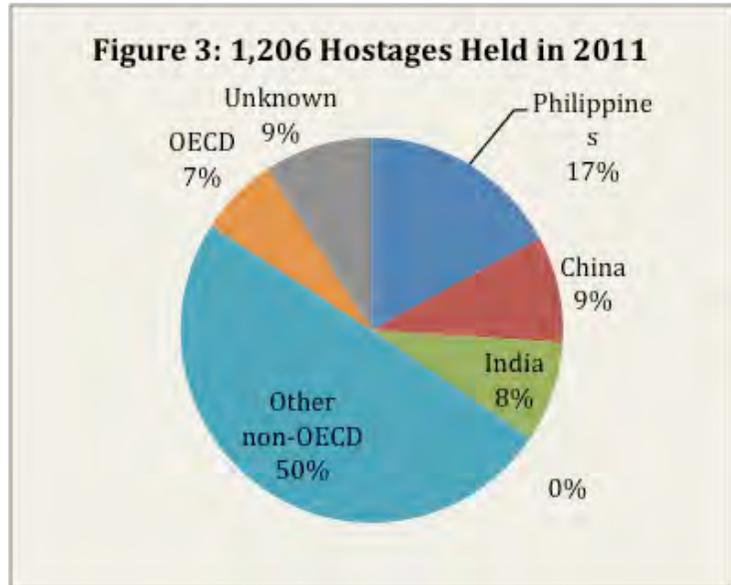


Although not as traumatic to the seafarer as a hostage situation, these unsuccessful attacks—the maritime equivalent of attempted murder—are dangerous criminal acts and should not be overlooked in terms of their psychological impact on seafarers, especially for those who have to transit the area multiple times.

Another development in 2011 was the capture and ransoming of hostages taken onshore. These individuals are not counted in official piracy statistics because most maritime agencies do not consider attacks on shore to be acts of piracy. OBP, however, does count these as victims of piracy when they are kidnapped or held by known pirate groups. Six people were kidnapped in 2011.

1.2 2011 Hostages:

The hostages held by Somali pirates are subjected to a range of violent crimes. In addition to the risks associated with the initial assault, these people are kidnapped and denied their right to liberty. The victims lack adequate protection under the law because, in addition to the lack of effective policing (or government) in Somalia, off-shore authority is fragmented, there is no lead law enforcement agency designated to protect seafarers and other victims of piracy, and it is unclear who should prosecute pirates following apprehension.



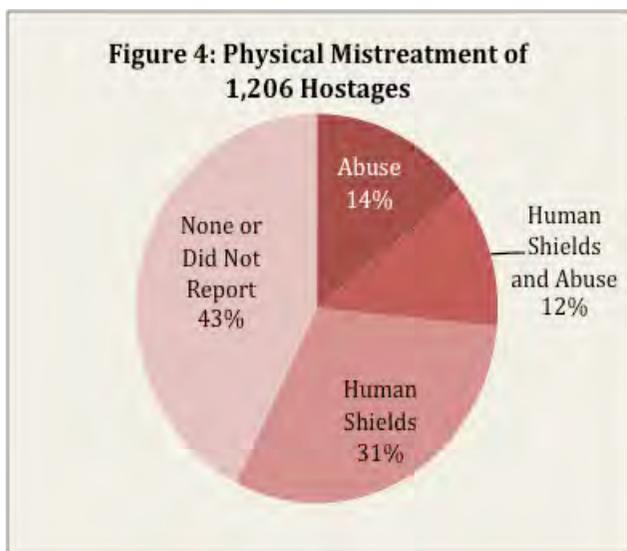
Somali pirates held 1,206 people hostage in 2011. This number represents 561 people captured in 2011 and 645 people who were taken captive in 2010 and remained in pirate hands for some or all of 2011. The fact that 645 people were taken in 2010 and remained hostage in 2011 highlights the large number of attacks in late 2010, an increase in the average length of time to negotiate the ransom, and in some cases, stalled negotiations. The victims are citizens of more than 47 countries, the vast majority of which are from Asia—especially the Philippines, China, and India. Only 7% of the hostages came from OECD nations³.

1.3 Violence Faced by Hostages:

Hostages face varying degrees of mistreatment and criminal acts. While the Washington Declaration has provided some information on what happens in captivity, the extent of the specific crimes committed during the period of captivity is difficult to quantify due to the limited amount of publicly available information. This section assesses the public reporting on the treatment of all hostages held in 2011 based on a combination of official sources as well as open media sources. Part 2 of this report will provide the first official analysis of the treatment of hostages by Somali pirates based exclusively on reports received directly from Flag States, ship owners, and crew members. It will discuss the specific treatment of hostages aboard 23 vessels held and released in 2010 and 2011.

1.3.1 Physical and Psychological Mistreatment:

According to publicly available reports, 57% of hostages faced mistreatment at the hands of pirates. As is shown in Figure 4, 26% of hostages suffered abuse while 43% were used as human shields. The assessment of abuse came from international media sources and includes extreme forms of violence against hostages. Abuse in this case is the equivalent of assault, attempted



murder, and murder. The assessment of human shields was derived from mother ship reports by NATO, EU NAVFOR, piracy blogs (e.g. GCaptain, Eaglespeak), and open media sources. Human shields describe hostages kept on board mother ships and used as a form of security against attacks by naval forces or private armed guards. There are also reports that hostages may be used as shields during fights between pirate gangs in their disputes over “ownership” of hostages and ransoms⁴.

The estimates shown in Figure 4 indicate greater rates of extreme abuse than are described in Part 2 of this report, which found that 10% of hostages faced extreme abuse aboard the 23 vessels that submitted post-incident reports.

Account from a seafarer used as a human shield:

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

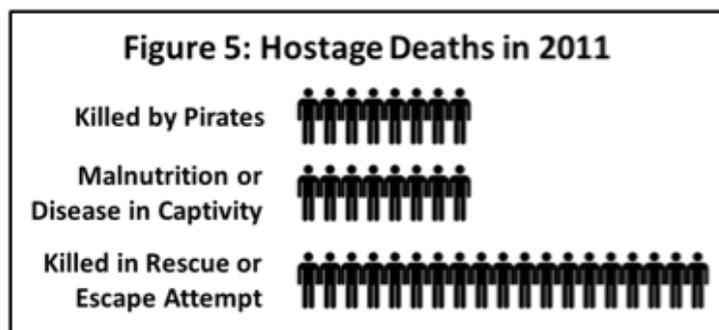
—Anonymous Seafarer

Additionally, there are many local dhows and fishing vessels that are captured and used as mother ships that go unreported because they do not notify the official piracy reporting centers of these attacks. The crews of these vessels may be injured or killed in the initial attack or in encounters with navies and armed guards, but there is no evidence of these occurrences aside from the occasional news story to show the full extent of these unverified incidents.

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

1.3.2 Hostage Fatalities:

One of the significant changes in 2011 was the increased number of hostage deaths. Deaths were assessed using EU NAVFOR, Compass Risk Management, and open media sources. Of the 1,206 hostages, 35 (3%) are reported to have died in 2011. There were many causes of death, including being killed by pirates either in the initial attack or after being taken captive, disease or



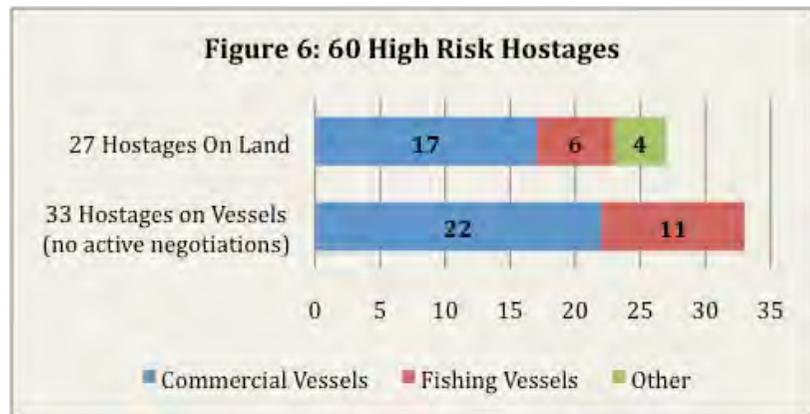
malnutrition, failed escape attempts, or getting caught in crossfire during a rescue effort by a naval vessel. In cases where seafarers were killed during rescue attempts, they were being used as human shields by pirates.

1.4 Duration of Captivity:

The average length of captivity for hostages held in 2011 was eight months, which is 50% more than the 2010 average. There are 26 hostages that have been held for more than two years and 123 hostages that have been held for more than one year as of 31 May 2012. The risk of being subjected to violent crimes and mistreatment increases with prolonged periods of captivity, including increased rates of assault and abuse, increased risk of disease and malnutrition, greater likelihood of giving up hope (for example, a hostage committed suicide in 2010 during a prolonged captivity), and being transferred from gang to gang.

1.5 High Risk Hostages:

While most ship owners work diligently to secure the release of their seafarers, there are others who do not have the capacity to do so. When the ship owner cannot meet the pirates’ monetary expectations, negotiations cease leading to extended periods of captivity and greater uncertainty for the hostages. This compounds the hostages’ challenge of maintaining hope and resilience. Additionally, non-seafarers, including recreational sailors from private yachts and people kidnapped on land, may not have a ship owner, an insurance policy, or other means of producing a ransom, and they cannot rely on their home state because most governments refuse to negotiate with pirates. As a result, they are held for longer than the average hostage while money for their release is raised by family and friends. There are 60 hostages that we include in this category, as are described here:



- Twenty-two crewmembers from the *MV Iceberg I* remain in pirate hands. The owner of this vessel went out of business, leaving the hostages in the difficult situation of not having a ship owner to negotiate their release. Pirates have held these hostages for two years and two months as of 31 May 2012. They have withstood the death of two crewmates, countless physical and psychological challenges, and uncertainty over when they will be released. It is believed that all 22 remain on the vessel, but there are rumors that the vessel is damaged on the beach and leaking unsafe liquids.
- Four fishermen from the *FV Prantalay 12* have been held for two years and one month. They are held on land because the vessel sank in seasonal storms in July 2011. There are reports that the hostages are in poor health, but that the pirates will not release them without a ransom. However, it does not appear that ransom negotiations are in process.
- Seven Indian crewmembers from the *MV Asphalt Venture* remain in captivity after one year and eight months. Although pirates had released most of the crew, they held all Indian nationals in response to the Indian Navy’s arrest of 61 pirates on another ship. The pirates now demand the release of apprehended Somalis in exchange for the Indian crew. It is unclear how this situation will be resolved because the Indian government does not negotiate with pirates.

- Two recreational sailors from the *SV Choizil* have been held on land for one year and six months. As they were taken from a personal yacht, they do not have a ship owner or insurance company positioned to negotiate their ransom.
- Six crewmembers taken off the *MV Leopard* have been held on land for one year and five months. There are no reported negotiations underway for their release.
- Eight fishermen from the *FV Alfordous* have been held for one year and four months. There is no information on their condition or prospects.
- Three hostages from the *FV Abdi Khan* have been in pirate hands for one year and two months with no information on their condition or prospects.
- Four South Korean hostages remain in captivity even after a ransom was received for their vessel, the *MT Gemini*. These hostages are now being held on land and the pirates are now demanding the release of six pirates jailed in South Korea. These four victims have been held for one year and a month.
- Two Médecins Sans Frontières (MSF) workers were abducted in Dadaab, Kenya, by al-Shabab while providing humanitarian assistance to Somali refugees. Al-Shabab subsequently “sold” them to a pirate gang. As with the hostages from private yachts, these two women do not have a ship owner or insurance company to negotiate their ransom, though they are prominently displayed on MSF’s website in an effort to bring about their release. The hostages have been moved around, sometimes held on land and other times aboard hijacked vessels, in order to reduce the likelihood of a rescue. They have been held captive for eight months.
- Two Seychellois fishermen from the *FV Aride* have been in captivity for seven months. Their vessel was sunk in February 2012 and the two victims are now held on land.

1.6 Effects of Confinement

What does not necessarily show up in the statistics is the impact of confinement on hostages. This problem is better captured in interviews with the people directly impacted. OBP is working in coordination with MPHRP to conduct research in the Philippines on the impact of piracy on seafarers and their families. The following is a brief account of the experience of one family interviewed. The seafarer was captured by Somali pirates while transiting the Arabian Sea on a vessel heading to the United States from Iraq. During his seven months of captivity, the seafarer suffered physical and psychological abuse from the pirates that had lasting and life-altering effect. He described one form of psychological abuse as follows:

For months, we were exposed to many types of violence during captivity. Pirates were killing each other in front of us. We were even shown horrible videos made by the pirates. One video shows how the pirates beheaded other members of a rival pirate gang. They would tie up the other pirate like a pig and then behead the pirate. They were using a knife to behead the other pirate. It was really horrible. I could not sleep for several nights. The pirates told us that the same thing will happen to us if the ransom is not paid.

When the seafarer’s wife heard that her husband’s vessel was hijacked, she said she did not and could not sleep for one straight week. She said, “I would kneel for hours in a small chapel.” Their only child, a 10-year-old boy with special needs, was also deeply affected as he was looking for his father during those 7 months. “The boy,” the mother said, “would hide under the chair for hours.”

Upon his release, the seafarer stopped working in the maritime sector due to a physical medical condition that he believed was due to the physical abuse during captivity. While he earns

significantly less now compared to working at sea, he no longer faces the risks posed by Somali piracy. The family had to give up the tutor of their son who has special education needs due to their reduced income.

1.7 Long-term Impacts:

The impacts of pirates' abuse does not necessarily end upon hostages' release, but can cause varying degrees of long-term distress. While there is no significant body of research that tracks the impact of piracy on seafarers, existing research on violent crimes strongly suggests that some of the people exposed to piracy will have lasting problems. Fortunately, most people are able to recover from this distress with basic treatment from a health professional. Groups like MPHRP are working to increase the capacity of health professionals and other support teams working with seafarers experiencing distress. Dr. Colm Humphries, a clinical psychologist who has worked with MPHRP to provide training to first responders, stated that more comprehensive information on the events that occur during captivity is needed to more accurately understand what happens during piracy and what is the course of that experience in the average person. This will more effectively identify and address the impact of piracy and aid development of evidence based support for those who have experienced pirate attacks.

"As far as you know later after the release and after having another contract with the same Owner one of our fellows committed suicide. Owner had promised him to compensate his losses and sick pay if he would work another contract. But vessel was approaching Gulf of Aden again and this guy signed off. Owner refused to pay him money (which our fellow desperately needed for treatment of his daughter) and he killed himself."
—Anonymous Seafarer

Additionally, Dr. Humphries emphasized that the degree of resiliency both during and after an incident can be improved with increased awareness of the risks associated with piracy⁵. MPHRP is also developing training courses which will better prepare seafarers by raising this awareness.

1.8 Increase in Violence:

There were a number of changes in 2011 that caused the degree of violent crimes surrounding Somali piracy to increase relative to 2010 and earlier years. Pirates hold more hostages onshore without a vessel; use greater firepower in their attacks, especially when they encounter vessels carrying private armed security; and changed their preference for mother ships from commercial vessels to local dhows, increasing the negative impact on regional and local seafarers. Additionally, more aggressive counter-piracy efforts from private security and naval forces have increased the level of violence faced by pirate gangs.

1.8.1 Hostages Held Ashore:

Pirates increased the number of hostages held on land rather than on hijacked vessels. This is due to the larger number of hostages taken without a vessel (which includes people from private sailing yachts), kidnapped tourists and aid workers, crews from inoperable vessels, and hostages not released with the receipt of the ransom. The risks for hostages held on land are even greater than those aboard vessels due to pirates' heightened insecurity⁶. Pirates prefer to keep hostages aboard anchored vessels where they find it easier to prevent rescue attempts. When circumstances require them to keep hostages on land, they are more likely to move them from place to place to avoid rescue attempts, especially after US Navy SEALs rescued two aid workers from the Danish Demining Group in January 2012. To avoid these rescues, the hostages may also be split up. Furthermore, hostages on land lack the relative comfort provided by a vessel including shelter, provisions (until they run out), bathrooms, and kitchens.

1.8.2 Private Security:

A commonly discussed change in counter-piracy efforts is the increasing use of private armed security. In 2010, there were still many organizations that opposed the use of armed guards because of the risk that they would increase the degree of violence. Today, there is growing acceptance of their use because they have successfully defeated hijacking attempts. Private armed security teams are reported to have prevented 81 (43%) of the 189 attempted hijackings in which pirates fired upon vessels⁷. However, the concern that private security increases violence appears to prove true in some ways. Publicly available reports on pirate engagements with security suggests that pirates do not automatically retreat when they are fired upon, but instead are engaging armed guards in firefights that put the crews at greater risk of being shot⁸. Additionally, there are indications that some of those vessels carrying armed guards may neglect Best Management Practices (BMP) measures, such as by maintaining a policy slow-steaming or routing directly through the High Risk Area rather than avoiding piracy “hotspots”, both of which increase the likelihood of an encounter and shootout with pirates.

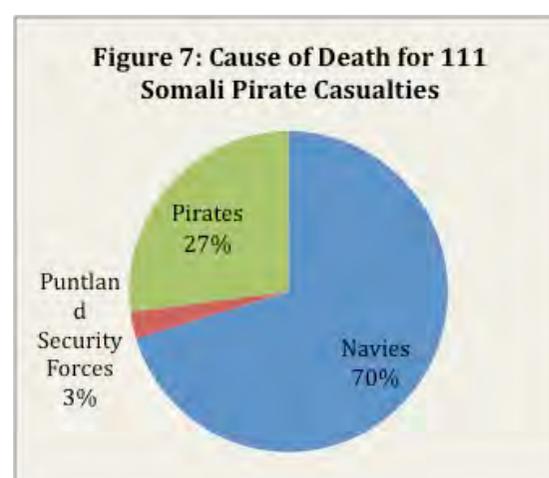
1.8.3 Increased Regional Costs:

There are many regional seafarers and fishermen that are adversely affected by both pirates and counter-piracy actions. In 2011, pirates changed their mother ship preference from hijacked commercial vessels, which naval vessels can more easily identify, to smaller dhows, which predominately originate and carry crews from regional countries. Pirates commonly use the crew on those vessels as human shields, which is especially dangerous considering the majority of hostage deaths result from encounters with naval forces. The majority of these vessels do not report attacks or hijackings to official piracy reporting centers, making it difficult to quantify the number of people taken hostage, injured, or killed. Only four regional fishing vessels reported their hijacking to the IMB in 2011 while open media sources indicate that at least eight dhows were rescued by naval forces or released after hijacking a new dhow to serve as a mother ship⁹. This likely underestimates the number of regional dhows used as mother ships in 2011 given that a listing of vessels held by Somali pirates at the end of 2010 by Ecoterra includes 16 regional dhows used as mother ships that were not listed in official reports¹⁰.

The use of local vessels additionally can cause confusion over pirates posing as fishermen. This has led, in at least one case, to armed security teams firing upon and either injuring or killing innocent fishermen, such as the two Indian fishermen killed by Italian marines aboard the *MV Enrica Lexie* in 2012. This is particularly relevant in areas of dense fishing activity along the coast of Somalia and regional countries¹¹. Fishermen’s safety is a growing concern because the proliferation of pirates across the High Risk Area pushes commercial vessels closer to the coastal fishing grounds as they seek to avoid pirate attacks, and it is here that incidents like the *MV Enrica Lexie* are more likely to occur.

1.8.4 Somali Pirate Casualties:

While rescue operations can be dangerous for hostages being used as human shields, they are



ⁱ Best Management Practices for Protection against Somalia Based Piracy recommends vessels transiting the High Risk Area proceed at Full Sea Speed, or at least 18 knots where capable, to reduce the risk of pirate attack. Outside of the High Risk Area, a policy of slow-steaming may be promoted to minimize fuel consumption and reduce environmental impacts.

significantly more dangerous for the pirates themselves. A combination of reports from the IMB, EU NAVFOR, NATO, and open media sources show that 111 pirates were killed in 2011. At least 78 pirates were killed during clashes with navies. This was more than a third of all pirates reported to have been killed. There were also 3 killed during encounters with Puntland security and police officials. An additional 30 pirates were reported as killed during conflicts with other pirates over hostages and ransoms¹².

It is likely that these figures underestimate the total number of pirate casualties because they do not include those lost at sea or killed during encounters with private security¹³. It is also likely that this excludes many of those killed by other pirates. Based on media reports, violence between pirates appears to be growing with negative impacts on seafarers and civilians who may be killed or injured in crossfire¹⁴. In one case, a pirate gang attacked a captive vessel in an effort to steal it from the original hijackers. A seafarer from that vessel described the situation: “the pirates warned us that the group will use us as human shield if they succeeded to board this ship. Bullets were flying in every direction.”¹⁵

The willingness of pirates to accept these risks shows either their ignorance of the dangers associated with piracy or the level of their desire to capture a vessel and negotiate a ransom, and pirates’ acceptance of these risks appears to correlate with an increased acceptance of violence inflicted on their hostages to acquire payment.

1.9 Reporting Constraints:

The full impact of Somali piracy on seafarers, fishermen, sailors, aid workers, and tourists cannot be wholly assessed due to a lack of complete reporting on the issue. Not all vessels reported equally to every official source, leading to differences in the numbers reported by the IMB, EU NAVFOR, ONI, and Oceanus, which were the primary resources for this section of the report. We relied heavily on the numbers reported by the IMB, but also cross-checked these numbers against vessels reported by the other three sources, some of which were additional, as is shown in the following table:

Hostages taken in 2011	
IMB	470
EU NAVFOR	436
ONI	458
Oceanus	507
OBP Compiled Total	555

Additionally, there are many areas where the numbers listed on piracy attacks and crimes are underreported. There are many local dhows and fishing vessels that are fired upon or hijacked without notifying the UK Maritime Trade Operations (UKMTO), Maritime Security Center – Horn of Africa (MSCHOA), or the IMB. Media stories about naval vessels rescuing these dhows while they are acting as mother ships, such as the US Navy’s rescue of an Iranian dhow in January 2012 indicates that numerous dhows are taken by pirates for use as mother ships, with little regard for the well-being of the crews. The lack of reporting on these vessels inhibits public understanding of the degree of violence faced by all fishermen and seafarers.

1.10 Conclusion:

Although the number of hostages taken in 2011 decreased, the violence faced by seafarers, both those unfortunate enough to be captured, as well as the thousands of seafarers who transit through the High Risk Areas continues to grow. A disconcerting trend has seen certain hostages separated from their vessels and taken ashore, or denied freedom when a ransom is paid because

of their nationality. The dangers for the “High Risk Hostages” are most concerning, both because of the violence they face and the uncertainty over when, or if ever, they will be released. The risk has also expanded to affect tourists and humanitarian aid workers who have become victims of Somali pirate gangs. Additionally, growing violence between pirate gangs has adverse effects both on hostages and on Somali civilians. It is hoped that this report will renew interest in the issue of violence against seafarers and will encourage the public to support better care for seafarers before, during and after incidents of piracy.

Part 2: Analysis of the Treatment of Hostages in 2010 and 2011

This report details the experiences aboard 23 of the 77 vessels hijacked in 2010 and 2011. These reports were submitted to the IMB by Flag States, ship owners or operators, seafarers, and by the Maritime Piracy Humanitarian Response Programme (MPHRP). Due regard has been given to the sensitivities of the identities of the seafarers, vessels, owners, operators, or other parties involved in each hijacking case and hence the report only provides aggregate information on the treatment towards the hostages under captivity.

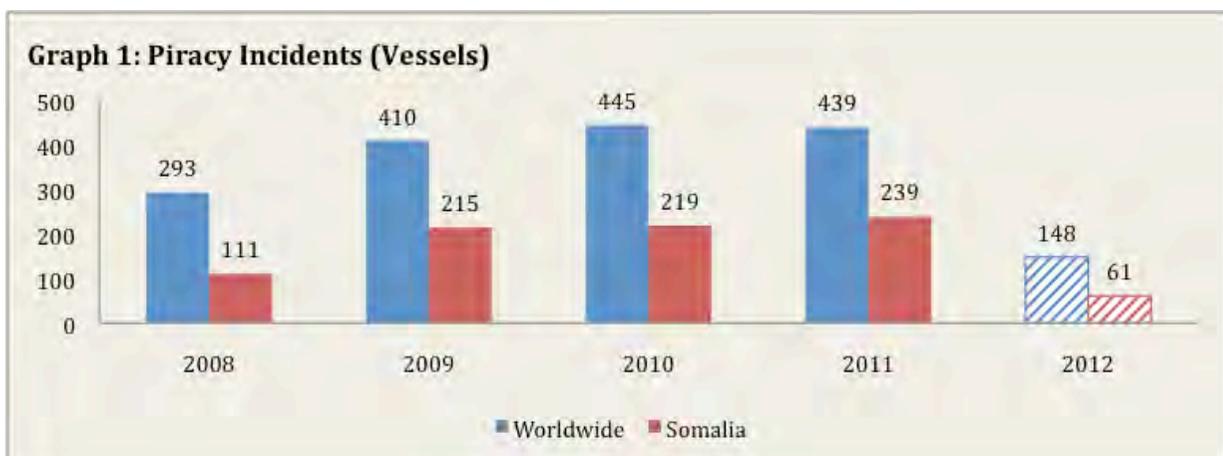
The information contained in these reports revealed that all of the captive seafarers were subject to violations of their basic human rights, the most significant being the right to life, liberty and security of person. Specifically, all hostages were subjected to confinement and loss of privacy, loss of self-esteem and dignity, malnourishment, psychological abuse, and the threat of physical violence. It reveals that the physical abuse towards the hostages included slapping, punching, or pushing in 50% of the cases. There was also extreme abuse in 10% of the submitted reports. While there are quotes that describe the abuse as torture, it is not within the scope of this paper to determine whether these acts may be legally defined as torture, as is outlined in Appendix B. Nearly all hostages were affected psychologically, and a few seafarers were so affected by the captivity that they chose not to return to their seafaring profession.

The report does not take into account the stress, fears, or the deterioration in standards of living of the hostages’ family members. It also does not account for the additional stress faced by hostages in having no regular contact with their families, and thus not knowing how the families are coping in their absence including, in some cases, the lack of financial support during their long months in captivity.

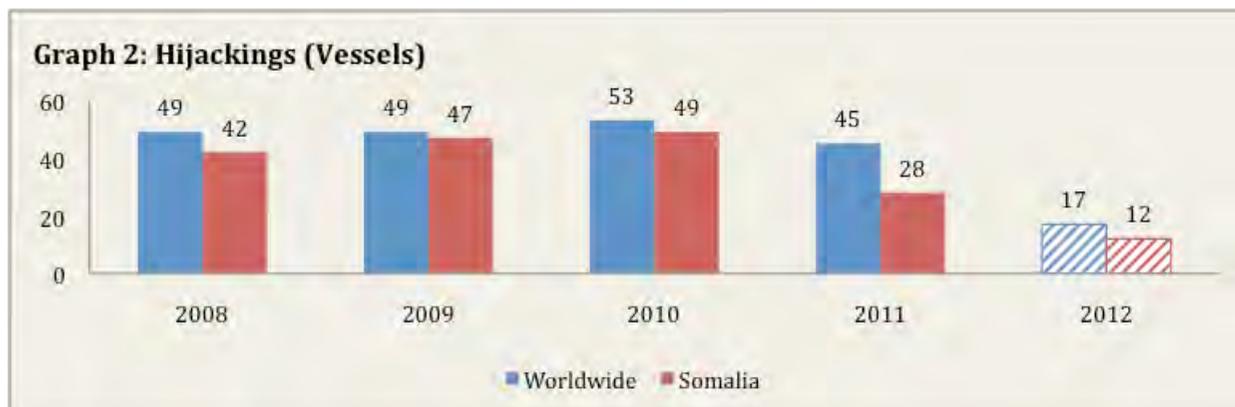
Seafarers aboard these 23 vessels were held hostage for an average of six and a half months (196 days).

2.1 Facts and Figures on Somali Piracy:

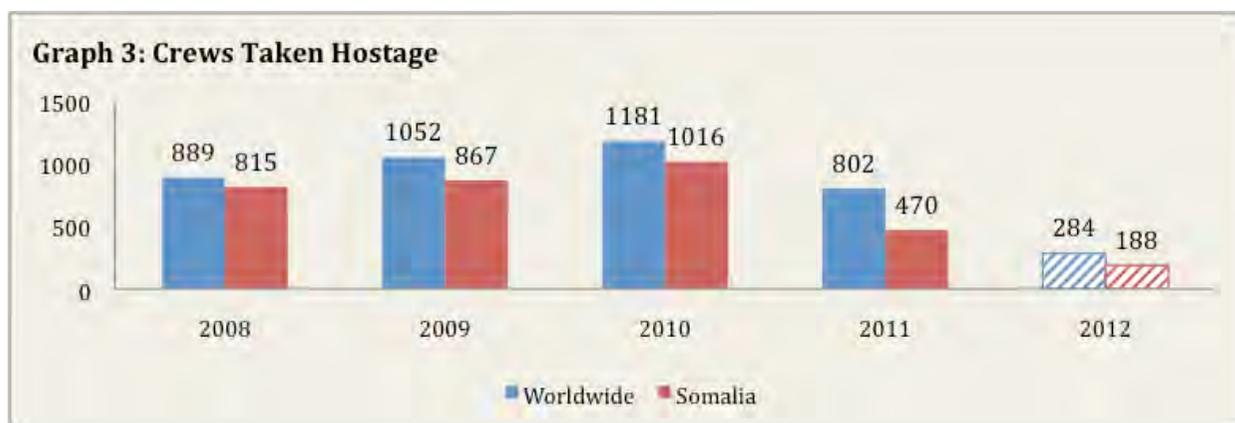
Somali piracy along with the associated hijackings has prevailed for a number of years. However in 2008, piracy off the coast of Somalia escalated to levels previously unheard in modern times. Not only did the Somali pirates attack an unprecedented number of vessels they also continue to threaten a vast sea area as well as some of the busiest trade and energy routes. The following graph compares the total number of incidents reported worldwide to the total number of incidents attributed to Somali pirates. The numbers shown for 2012 cover all incidents through 31 May 2012.



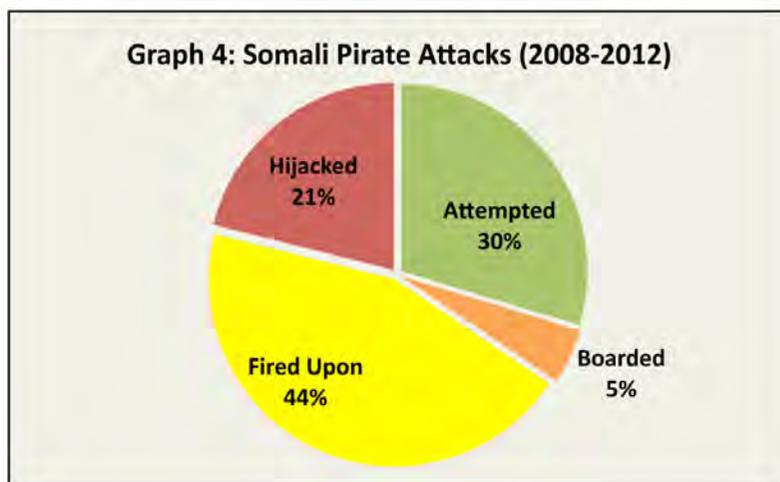
The second graph compares the total number of hijackings worldwide compared to the numbers hijacked by Somali pirates.



The third graph compares the total number of seafarers taken hostage worldwide to those taken hostage by Somali pirates.



The fourth graph shows the numbers and the types of attacks carried out by the Somali pirates since 2008. “Attempted” attacks describe pirate skiffs that approach but do not fire upon a vessel as are reported by the shipmaster as a threat; these are not included in Part 1 of this report despite the increased stress and anxiety they cause



The following table shows the growth of Somali piracy since 2008. The table shows the threat of Somali piracy is still present; as long as this threat remains, the seafarer will always feel at risk and

THE HUMAN COST OF SOMALI PIRACY, 2011

under stress while sailing through these high risk waters.

Table 1: Somali Piracy 2008-2012

	2008	2009	2010	2011	2012 (Jan-May)	Total
Ships attacked	111	215	219	237	61	843
Ships hijacked	42	47	49	28	12	178
% success rate	38%	22%	22%	12%	20%	21%
Hostages	815	867	1016	470	188	3,356

The second table identifies the approximate percentage of crews who were subject to varying types of violence while under captivity based on reports received by the IMB following the release of 23 vessels in 2010 and 2011.

2.2 Aggregate Data Collected:

Table 2: Extent of Mistreatment

Type of treatment while under captivity	% of hostages affected
Confinement & Loss of Privacy	100%
Loss of self-esteem and dignity	100%
Hunger, malnourishment	100%
Psychological stress & abuse	100%
Threat of physical violence	100%
Physical violence (slapping, punching, pushing)	50%
Physical violence (extreme abuse)	10%

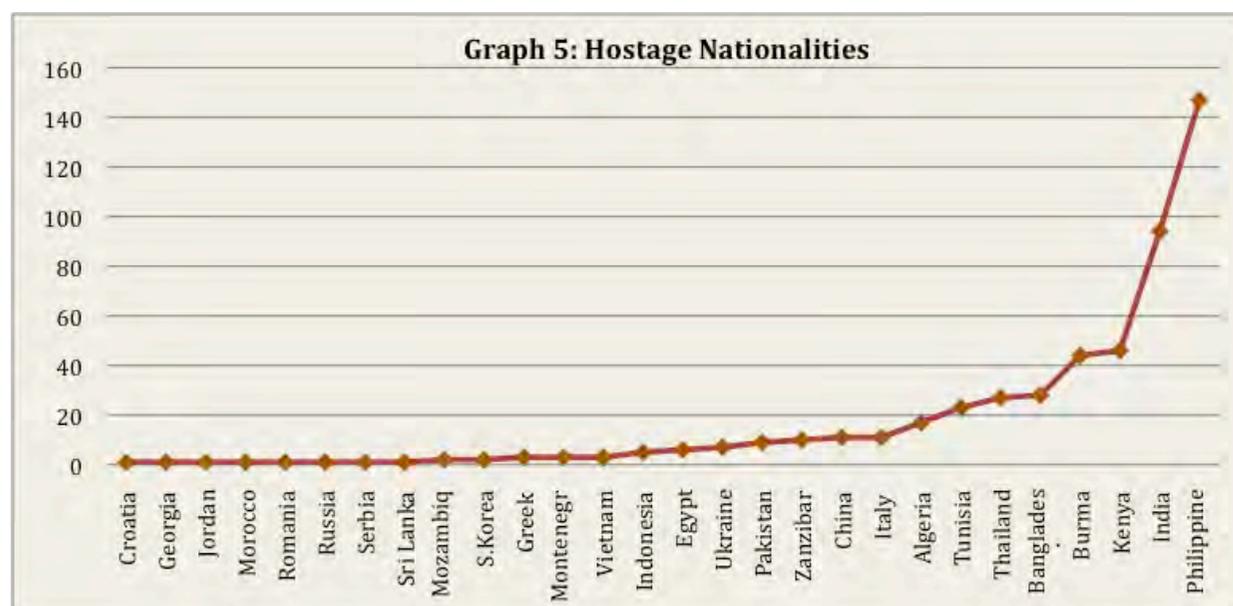
This report is a compilation of information received from a number of sources including Flag States, ship owners, operators, and some of the crewmembers held onboard 23 of the 77 vessels hijacked between 2010 and 2011. It also includes information submitted by MPHRP.

In compiling the information, care has been taken to ensure that all identities are kept confidential. The sensitivities in disclosing the identities of the seafarers, their ranks, their vessels and their owners have been respected throughout the report and hence these have not been disclosed. To maintain this confidentiality, ranks are generally not specified. Seafarer wives, children, or other people aboard the vessel are counted as supernumeraries.

Discrepancies were noticed in the reporting of the treatment especially in the detail reported by the different sources. To an extent, this is to be expected as recollections of such events will naturally vary depending upon the perspective and level of stress faced by the interviewee. Nevertheless, this is acknowledged as being a limiting factor in this report. Substantially, though their narratives remain similar. It is believed that the aggregate information presented in this report represents the baseline; the actual treatments could have been much worse.

2.3 Hostages and Nationalities:

This section looks at the nationalities of the seafarers and supernumeraries on the vessel at the time of the hijacking, and seeks to determine if the pirates showed any leniency towards a particular group of hostages. The reports show that pirate negotiators and security guards rarely differentiated between nationalities or ranks in their treatment of the hostages. However, pirates appear to give Muslim hostages marginally better treatment regardless of their nationality.



Additionally, one report suggested that seafarers from traditional labour-providing nations were sometimes treated worse than those from certain European countries, who were kept more confined. The reports indicated that, when present, supernumeraries were not mistreated.

There were 547 seafarers held hostage aboard the 23 vessels. They came from 28 different countries as is shown in graph five above. The greatest number of hostages came from countries that have traditionally provided the labor required for working ships.



2.4 Physical and Psychological Abuse of Hostages:

This section looks at the physical and psychological abuse that the hostages suffered during captivity. More than half of the hostages were physically abused in at least one instance. The abuse in these cases ranged from pushing and slapping to being punched. Approximately 10% of hostages were subjected to extreme abuse resulting in lasting physical and psychological injuries. These incidents included assaulting hostages with tools including sticks, wires, rifle butt, plastic tie-ups, cigarette butts, and pliers that were used to squeeze fingers and pull out finger nails. Hostages were also forced to stand for extended periods in the burning sun. This abuse resulted in severe bruising and swelling of arms and legs, extreme pain in back and spine, severe sun burn, broken teeth and eye damage to such a degree that surgery was required upon release, humiliation, giving up on life and the desire to commit suicide.

“At 2 am were both woken and pushed to the bridge deck outside the bridge. Our hands were tied together with plastic cable ties and our feet were tied in the same way. Then we were double tied with nylon rope which then was used to pull our hands and feet together behind our backs. We were left like this for some time and they tightened the ropes every so often. After a while a pirate went to my colleague and opened his jeans and took a cable tie and wrapped it around his genitals and pulled it tight. Then they came to me and did the same thing though they also removed my underwear and wrapped the cable around my testicles and pulled it tight. We were like this for 20 minutes or so both crying out in pain until an older pirate released us and as we couldn’t walk they carried us back to the cabin. The next day we saw that the pirate who helped us was badly beaten by the younger pirates.”

—Anonymous Seafarer

Nearly all the reports indicate that the majority of the physical abuse towards the hostages was due to the pirates’ lack of understanding or misperceptions of operations. The abuse was also used to

show the hostages that the pirates had absolute power over the hostages' lives. The abuse increased when pirate guards and negotiators mistrusted or became paranoid about hostages' actions. This most often occurred when guards or negotiators suspected hostages of trying to communicate with the outside world without their permission, of providing inaccurate information on the quantities of fuel oil and fresh water remaining on board, or when the hostages had difficulties starting the main engines due to lack of pump-able fuel. Increases in abuse also occurred when negotiations appeared to be breaking down or had come to a complete halt. The reports suggest the best way for hostages to avoid abuse was to avoid pirates and comply with their commands as much as possible; however, this is not a failsafe strategy for the reasons listed.

2.4.1 Examples of Extreme Abuse

There are many examples of extreme abuse which is sometimes referred to as torture. Reports indicate that on one hostage was hung over the side of the vessel by his legs so that his head was just above the water line. On another vessel the pirates forced two hostages to stand in a cargo net with the intention of lowering them into the water using the crane. Luckily the crane did not work and the crew was spared. In yet another incident, hostages were forced at gun point to choose and appoint who would go underwater to clean the propeller.

Hostages were regularly tied up and made to stand in the sun and on one occasion made to strip and stand in the ships' freezer compartments, kept at -18°C, for 40 minutes.

"The pirates used to burn us with cigarette ends, used to tie us with chains and leave us on the deck in scorching heat—about 50 Celsius above zero. The company did not care for us at all and the pirates used to become furious about this fact and start torturing us."
 –Anonymous Seafarer

"Two crew were tied together under 40° heat. After that they tied the rope around me and started pulling. After two hours the two were released from this torture. I was tied with hands on the banister of the vessel, and had to stay in this condition for 8 hours and 20 minutes under 40° heat."
 –Anonymous Seafarer

"There were some times when they would put all 18 people in chains and we were tied to the deck, and pirates brought some urine in bottles and poured it over all crew members. Then they brought a bucket of flour, and then threw that on our bodies. We had to be in this condition for 24 hours."
 –Anonymous Seafarer

There are also incidents that describe the ignorance and inflexibility in the pirates' attitudes toward the hostages. In one case, the pirates required the vessel to be moved to another anchorage for a short duration. When informed that there would not be sufficient fuel to return, the hostages were beaten and then forced to operate the vessel. On the return journey when there was insufficient pump-able fuel the engines would not start. The pirates severely beat a few hostages and, out of fear of losing their lives, the hostages finally opened the fuel tanks and manually scooped out, collected and transferred the fuel to start the engines.

On another vessel, pirates demanded that the hostages run the diesel generators using crude oil. When the hostages refused and tried to explain that it would spoil the generators, they were slapped, kicked, tied up and made to stand in the sun, stripped and beaten with wooden sticks and iron rods. In this incident, the pirates also squeezed the hostages' fingers using pliers.

2.5 Psychological Abuse:

All the reports indicate that the hostages were subject to some form of psychological abuse. The psychological abuses appeared to increase when the pirates or negotiators felt that the progress of the negotiations was not going well or when it had stalled. The pirates repeatedly told the hostages

"When the company was not answering our calls and letters for help, then - pirates forced us to call our families for help."
 –Anonymous Seafarer

"Another time we saw one of our fellows (after having some bad news) went to the toilet having his belt in hand. For us his intention was so clear and we took his belt and laces off him and calmed him down."
 –Anonymous Seafarer

that their office and families had abandoned them and that no one cared for them. The pirates then often tried to apply psychological distress to the families of hostages' who were told that their loved ones would be killed or beaten.

Weapons were also fired close to or directed at a hostage's head and then fired on an empty chamber. Seafarers report that this terrified them and served as a constant reminder that they might not survive the experience.

There were reports in which crews were divided and some taken ashore, sometimes for nearly a month. There was an incident in which a senior crewmember was isolated for nearly a month while the remaining crew was informed that he was dead. There were a couple of occasions when certain senior ranks were relieved of their duties and junior ranks were made to replace them.

One report also suggests that as part of the pirate tactics, a senior pirate or, as stated in the report, a "psychologist" would come onboard the vessel and talk to certain hostages for hours to try to make them turn on their fellow crewmembers. In that case, one hostage succumbed to the pirate's pressure and this created considerable friction and misunderstanding among the hostages that resulted in extreme physical and psychological abuse to the remaining crewmembers.

"Some of us became very aggressive and irritable but one guy was sitting all day long just whispering "We are gonna die" and he could had such attacks few times a day."
—Anonymous Seafarer

"One crew was taken out, they started to intimidate him, put the automatic machine gun on his chest. We did not know what kind of bullet was inside when they fired. But fortunately the bullet was not true; but as a result, they burned his chest."
—Anonymous Seafarer

2.6 Hygiene, Living, and Sanitary Conditions on the Vessels:

All reports indicated that the living, hygiene and sanitary conditions onboard the vessel deteriorated as the length of captivity increased. This exacerbated the hostages' challenge of maintaining hope and morale.

Pirates ransacked and looted the cabins early on after the hijacking, with subsequent groups of pirate guards continuing to steal goods until the vessel was stripped of nearly all amenities. Most of the hostages' possessions, including their clothing, were stolen.

This led to the seafarers having to survive their period of captivity with one or two sets of clothes and no facilities for washing except sometimes in salt water and on deck.



The pirate's favourite location to keep hostages is the bridge. Some reports also suggest that hostages were made to share cabins (four to a cabin) or on some occasions the engine room. The overall cleanliness and hygiene in the accommodation rapidly deteriorated. Pirates spat and left food around and did not use toilets properly. Most reports indicated the pirates did not allow the hostages to clean the accommodation regularly. The hostages were not allowed

"Spending long time within such small room we became furious and were fighting each other quiet often. Plus some of crew was very provocative trying to build their own system of seniority (like in prison) intimidating the others."
—Anonvmous Seafarer

"The crew stayed and slept on the bridge for days. If they wanted to use the toilet they had to ask permission and it wasn't always given so they learnt to keep the empty water bottles. The pirates went through the cabins and took any money, clothes and valuables."
—Anonvmous Seafarer

access into all areas of the accommodation. The conditions in which they were forced to live for months grew unhygienic and were completely different from what they were used to normally at sea. The lack of hygiene or adequate food and exercise contributed to a number of skin and health issues, both major and minor, which remained untreated for the duration of their captivity. A report indicates that some of the pirate guards appeared to have skin diseases and had open wounds which looked unpleasant and infectious.



Normal ship routines and watches were not allowed by the pirates. Bridge and engine room watches were not maintained except when essential and required. At times the engine room crewmembers were forced to work on a 12-hours-on, 12-hours-off routine, during which time they were not allowed to leave the engine room, even to use the toilets, forcing the hostages to use the sludge tanks to relieve themselves.

The hostages were deprived of basic freedom of movement. All movement was subject to the permission of the pirate guards and ensured that the hostages were totally dependent and subjugated to the pirates moods and wishes. Hostages even had to ask permission to use the toilets, the duration of which was also dictated by the pirates. While there were no restrictions on the number of times the hostages could use the toilets, there are indications that sometimes the pirate guards became “difficult”. The bridge toilet remained one of the most frequently used because the bridge was the preferred location to keep hostages and it would sometimes clog up because the pirates threw cigarette butts and other items into it.

Purely depending on the availability of fresh water, and at the pirates’ discretion, the hostages were allowed to shower. The frequency varied from once in two or three days or a week or a month, sometimes more. One report also indicated that in the initial six months of captivity the hostages were only allowed to shower twice due to lack of water. This only changed when the hostages had collected rain water to use. The time allowed to each hostage varied from between two to 15 minutes. The only saving grace was that privacy was provided during this time.

2.7 Food and Water:

This section looks at the quality and quantity of food and water provided to the hostages as well as the general attitude towards food hygiene. As might be expected, the reports indicate that it appears that the policy of the Somali pirates was to use ship stores until

“We were fed once during 24 hours. There were cases when we were not fed for 3-4 days.”

–Anonymous Seafarer

“Food rationing included some macaroni, rice, wheat flour, beans, and tea that probably even animals would not eat in normal conditions.”

–Anonymous Seafarer

nearly depleted and after that to provide the vessel with a combination of meat (goats which were slaughtered onboard usually by the pirates and then cooked by ship’s cook), rice, flour, cooking oil, sugar, beans and noodles. Sometimes the food provided was UN aid food and some pirates allowed the hostages to fish to supplement their meals.

As the negotiations prolonged, the quantity of the food reduced resulting in rationing. The reports indicate that the hostages were allowed to cook and eat one to three times a day every day,

depending on the availability of stores and the supplies received from shore which depended mainly on the weather and sea conditions.

At times the food cooked was mainly comprised of meat, the vegetarian hostages remained hungry until they learned to adapt. Reports indicate that at times the pirates used to eat in front of the hostages and waste a lot of food but not give them any.

"My _____ asked for water but instead of requested water got severe treatment - he was tied with rope, he was beaten, and was forced to drink sea water."

—Anonymous Seafarer

The meal times varied from being inconsistent to following a regular pattern. Additionally, the place where the meals were served also varied from the mess room, to the cabin (when hostages were kept isolated), to the bridge which appeared to be the preferred place to keep all the hostages.

Depending on the availability of fresh water, the utensils were allowed to be either cleaned in fresh water or first cleaned in salt water and then rinsed in fresh water. Over time, as the vessel remained under negotiation the hygiene of the galley deteriorated as the hostages were not allowed to clean the galley regularly.

In one case as the ship was extremely low on fuel it was not possible for them to use the galley to cook. They had to improvise a kitchen on the poop deck where wood and other combustible materials from the accommodation (cabins, cabinets, bunks, etc.) were used as fuel for the fire. This resulted in the accommodation being completely destroyed. This report also indicated that the quantity and quality of the food was relatively good during the initial negotiation period. However, once negotiations broke down, the hostages were allowed only one meal a day of reduced quantity and quality, and fresh water was limited to one bottle per hostage each day. This led to stomach infections and other problems for nearly all the hostages. There were times when this caused the hostages to fight over the limited provisions with the stronger ones getting more. During the monsoons, as the seas became choppy, the supply boat was not always able to make the journey to the ship; in these situations the hostages had to go hungry and collect rain water for drinking.

2.8 Survival Techniques used by Hostages:

Nearly all the reports indicated that the hostages used prayer, meditation, and reading books to pass their time and maintain their sanity. If allowed by the pirate guards, the hostages watched videos or played games. In most cases the hostages stayed together and avoided any confrontation with the pirate guards. On one vessel, all communication was conducted via a designated hostage to reduce the chance of miscommunication. In most cases, the hostages encouraged and gave hope to each other. Overall upon release the hostages were mentally tired, exhausted and stressed. Most of them had suffered significant weight loss. None of the hostages felt sympathetic towards the pirates. There was only one case wherein the pirate guards asked one hostage to join them.

There was one case in which, after the first few weeks in captivity, the hostages started confronting and abusing each other and fighting among themselves. The pirates used this to their advantage and the hostages of this vessel suffered extreme physical abuse.

2.9 Vessel used as Mother Ship:

In cases when the pirates forced the hostages to sail the vessel and use it as mother ship either all hostages were kept on the bridge or those required for navigation were kept on bridge while the rest were kept in the mess room. In one incident when a hostage refused to obey the pirate

orders, he was isolated in a cabin for the duration of the time at sea.

2.10 Conclusion:

The merchant seafarer does not go out to sea expecting to face such circumstances, and is not properly trained to cope with the events described in this report. During their long months in captivity, hostages are largely on their own, with no tangible support possible from the owners, flag state or family. It is clear from the reports received by the IMB that hostages are subject to deprivation and unacceptable conditions when they were held by Somali pirates. In 10% of the reported cases, hostages were subject to extreme physical and psychological abuse which has nearly driven some seafarers to suicide and others to long-term trauma after their release from captivity. Furthermore, the families of these hostages similarly face considerable anxiety and often financial hardship during such an experience. They have limited means of support in the traditional labour-producing countries of the world. Despite the extensive crimes they commit, Somali pirates are rarely held to account.

The purpose of this report is to investigate and detail the suffering of seafarers and, where available, their families as a result of Somali piracy. The results should be used to better prepare our seafarers for this unfortunate eventuality should it befall them. The report also serves to remind all stakeholders including governments, industry, and international organizations involved in maritime trade that the plight of the hijacked seafarer is not an acceptable status quo. There can be no room for complacency despite the reduction in some of the numbers.

Seafarers move more than 90% of world trade. Their silent but invaluable role needs to be acknowledged, at the very least, by pursuing all possible means to bring Somali piracy to an end.

Final Conclusion

Although fewer hostages were captured in 2011, the violence faced by seafarers who transit through the High Risk Area has not subsided. All hostages were subject to deprivation and unacceptable conditions when held by Somali pirates. In extreme cases of violence and depravation, 149 hostages were held for more than a year, 35 hostages were killed, and 60 high risk hostages continue to be held without a clear means of securing their release. To best address these situations and provide resources to the victims, there is a continued need for full and transparent reporting on the violent crimes committed by pirates on the seafarer.

Appendix A: Declaration Condemning Acts of Violence Against Seafarers

Recognizing the increasing problem of acts of piracy and armed robbery against merchant vessels and their seafarers and the increasing use of violence as an instrument of piratical acts;

Recalling the flag State's pledge to continue to work within the Contact Group on Piracy off the Coast of Somalia (CGPCS), the International Maritime Organization (IMO), and with military, intelligence, industry and other contributing partners to find a solution to this crisis;

Further Recognizing that the collection and reporting of such information will be of value to the maritime community as a whole and the global fight against piracy;

Committing to further work with ship owners and seafarers to ascertain the specific information needed to determine the human cost of these attacks;

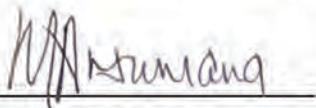
Noting that the International Maritime Bureau, of the International Chamber of Commerce, has undertaken to collate and report information provided by vessel owners, operators, or seafarers following acts of attempted acts of piracy or armed robbery;

Agreeing that there are significant sensitivities associated with the reporting of information regarding acts of piracy and armed robbery against merchant vessels and their seafarers and the increasing use of violence as an instrument of piratical acts, and that all reporting bodies or agencies should be sensitive to the concerns of the owners, seafarers, and their families, and, unless already within the public domain, refrain from reporting or confirming the names of any vessel upon which an act of piracy or armed robbery has been committed, until such time as the vessel owners or operators can confirm notification to next of kin;

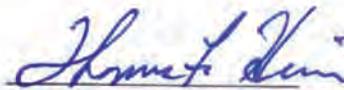
The undersigned flag States:

Affirm, in consideration of the potential sensitive nature of such information, their commitment to supply information provided to them by vessel owners, operators, or seafarers following acts or attempted acts of piracy or armed robbery to the International Maritime Bureau, in accordance with each flag State's internal procedures.

Signed on August 3, 2011 by:



Republic of Liberia



Republic of the Marshall Islands



Republic of Panama

Signed on March 19, 2012 by:



Commonwealth of the Bahamas

Appendix B: Somali Pirates and Torture

Somali pirates are now known to be conducting extreme forms of abuse against hostages including beatings, forcing hostages into freezers, and clamping plastic ties around hostages' genitals. In common parlance, many people, including the victims themselves, call these abuses torture. This section considers several leading definitions of torture as it relates to Somali pirates treatment of hostages.

One of the most prominent definitions of torture comes from international treaty law, the 1984 Convention Against Torture (CAT). Known in full as the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, it defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹⁶

Under this definition, torture does not require physical abuse—mental harm alone can be torture—and includes intimidation as a form of torture. Both of these apply to Somali pirates. The challenge with the CAT definition is that it is limited to state actors meaning Somali pirates cannot commit torture under because they are not state actors.

The International Criminal Court (ICC) offers another definition of torture. Although it lists torture as an element of a war crime as well as a crime against humanity, it is only under the latter crime. The Rome Statute of the ICC states that torture is:

the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.¹⁷

Unlike with CAT, no state nexus requirement exists in the ICC's formulation. But like CAT, the ICC's definition allows mental as well as physical harm to be deemed torture. The ICC does not permit intimidation (unless it can be shown to constitute mental harm) to be deemed torture.

The Oxford English Dictionary (OED) definition similarly does not include a state nexus requirement. The OED defines torture as "the infliction of severe bodily pain, as punishment or a means of persuasion." In a second definition it includes mental harm: "severe or excruciating pain or suffering (of body or mind); anguish, agony, torment; the infliction of such."¹⁸

In the case of Somali pirates, all leading definitions of torture may apply. Not only are these acts morally reprehensible and illegal under international law, but they also violate the human rights of seafarers.

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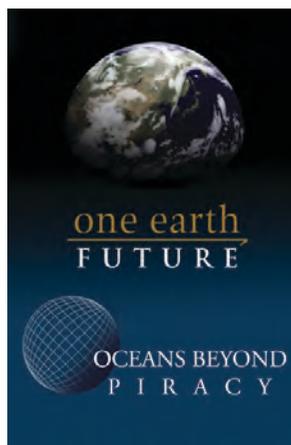
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