

THURSDAY 14 JANUARY 2010

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Present

Anderson of Swansea, L  
Chidgey, L  
Crickhowell, L  
Hamilton of Epsom, L  
Inge, L  
Selkirk of Douglas, L  
Sewel, L  
Swinfen, L  
Teverson, L (Chairman)  
Williams of Elvel, L

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Witnesses: **Rear Admiral Peter Hudson CBE**, RN Operation Commander, European Naval Force Somalia, and **Commander Clive Dow**, EU NAVFOR Legal Adviser, Royal Navy, Ministry of Defence, examined.

**Q92 Chairman:** Admiral, can I welcome you and your colleagues to this session. Perhaps I can go through some notices that I do have to give out. This is clearly, as I know you are well aware, a public hearing; in fact we are being televised this morning. A couple of other things. We obviously take a transcript of the session, a copy of which we will send you, which you will be able to amend if we have recorded it incorrectly, although, obviously, it is not an ability to change the facts, as it were. I think you have had a copy of the sort of questions that we are likely to ask. I would expect the session to last for something like an hour and ten minutes. I wonder, first of all, whether you would like to perhaps briefly introduce yourselves or whether you wish also to make a short opening statement of any kind.

**Rear Admiral Hudson:** My Lord Chairman, thank you very much for inviting me along today. It is a great pleasure to expand upon what we are doing in Operation Atalanta. As you know, we have been running now for just over a year. We started in December 2008 and I took command of this operation in June of last year from Admiral Jones, who I know

appeared before the Committee in February of last year. Since then the mandate has been extended. We are now running until the end of this year, December 2010. We have had a slight revision to our Joint Action Plan with modest changes to some of the business that we are doing in theatre, and that is all part of this comprehensive approach which the EU is taking towards Somalia. I think our links with industry and with the other maritime forces in the area have improved. Therefore, across the European Union we are seen as making a difference, adding value to the operation and making progress. My objective in 2010 is to maintain that momentum and to make sure the outputs that we have delivered so well in 2009 are sustained. I have seen the brief summary of questions that was forwarded, so perhaps they will allow me to expand in a little bit more detail as we go through the session.

**Q93 Chairman:** Can I also put it into the context that we will be making a short report to the House on Somalia, particularly Operation Atalanta, in the early part of this year of which this is a part. Can I ask what the Commander's role is as well, very briefly?

**Commander Dow:** Lord Chairman, good morning. Commander Clive Dow; I work primarily for the Chief of Joint Operations in the UK's Permanent Joint Headquarters also based at Northwood but, as part of that role, I act as part of the multi-national legal team that advises the Operational Commander for Op Atalanta.

**Q94 Chairman:** Thank you very much indeed. We would like to start off with the broader question of whether there is, in your own mind, sufficient clarity in the mission statement and the mandate for Operation Atalanta so that you can operate effectively, how you define "vulnerable ships", as set out in the November 2008 Joint Action, and, I suppose, most important of all, how do you decide your priorities with the resources that you have?

**Rear Admiral Hudson:** If I can start with the mission statement and clarity of the mission. I think it is one of the strengths of Operation Atalanta that our mandate is pretty unambiguous.

We do not have aspirational tasking; we do not have wide aspirations to rebuild the Horn of Africa with a few frigates and destroyers. Our tasks are clear. We have a focus on humanitarian aid into Somalia, supporting the World Food Programme; we support the African Union's mission (AMISOM), looking after their logistics ships that run into Mogadishu to support the TFG, we look after vulnerable shipping and work with industry to reassure them on how they should go through the high risk areas and, of course, where we can we deter, disrupt and break up pirate groups. It is well bound, it is clear, it is understood and it is easily digestible by the various ships and ships companies. That is a real strength for our operation. Within those strands, of course, you mention vulnerable shipping, and that is a key part of it. After all, it was the vulnerable ships that were being seized in 2008 and the early part of 2009 which drove this operation. What we have established in our maritime security centre Horn of Africa at Northwood is a set of criteria that we use to identify what is vulnerable: its speed, its manoeuvrability, its free board, the cargo that it is carrying, the number of people on board. Those sort of things are put into a matrix in our maritime security centre and, whilst it chunders through, we work out whether they are high risk, medium risk or low risk. Naturally, the biggest one is free board and speed. We then promulgate those lists of ships to NATO and to the coalition forces, so that between the three of us, the three main groupings in the theatre, we have a common list of vulnerable ships. All the shipping companies know that, all the ships themselves know that, so if they wish to gain our protection, reassurance operating in the Gulf of Aden, they can do that through our security centre. In that aspect, I think it is quite successful, quite straightforward in identifying them. Looking at our priorities, from an EU perspective, my Lord Chairman, the greatest, of course, is humanitarian aid to Somalia. The comprehensive approach is to make sure that the populous of that country, that fractured, broken county, we can sustain as best we

can. The World Food Programme is pivotal to that. Ensuring that their ships are not pirated, not attacked, is right at the top of the list of priorities.

**Q95 Chairman:** You still have a 100 per cent effective record on that?

**Rear Admiral Hudson:** We do. In 2009 we escorted into the ports, principally Mogadishu but also some of the northern ports, nearly 50 ships (49) delivering over 300,000 tonnes of food, every one of those escorted by a frigate or destroyer, every one of those successfully delivered to the port. Likewise, African Union ships supporting the logistics train for AMISOM, 14 of those ships escorted with essential supplies for the AU troops in Mogadishu, again, without attack. That is the top of my priorities.

**Q96 Chairman:** To put the operation in context, I know the operational area is, regrettably, expanding all the time because of piracy operations, but can you give us an idea of how many maybe commercial vulnerable ships might pass through that area a day? I know that is a very broad statistic, but it puts it in context for us a little.

**Rear Admiral Hudson:** You are right to highlight that, my Lord. I think the annual average is about 25,000 ships that transit through the Gulf of Aden principally, it is geographically constrained and that is where the bulk of them flow, whether moving towards the Suez Canal or some of the ports in places like Saudi Arabia, 25,000 ships, representing about 25 per cent of global trade. Understandably the energy supply route from the Gulf up into Europe and across to America dominates that package and the global container, the box ships that run out to the Far East also use that route considerably, so a vital strategic artery. On a day, on average, we are looking at between 75 and 100. It flows with the season and obviously the economic cycles. We have seen, in 2009, a slight dip as the economic factors have reduced the amount of traffic flowing through that area, but that is the sort of figures that we are looking at. In the Somali Basin, which is the southern part of my area of operations, the

traffic density is a lot less. The ships come out of the Gulf of Aden moving left towards the Gulf or south down towards Sri Lanka and out to the Far East. Those that run down towards South Africa and Madagascar are much fewer; so the density there is a lot lower, and we are seeing somewhere in the region of 600 to 1,000 ships, over a year, moving in the southern sectors.

**Q97 Lord Crickhowell:** You have described the vulnerable shipping analysis and so on. I am not clear how many of the total 25,000 ships identify themselves as possibly vulnerable and, therefore, get into your matrix of high, medium and low and how many are outside it and what the record then is, which is the central point of my question. Having identified the vulnerable, and then there are the others that are not vulnerable, how effective is the, presumably, extra protection that goes to the vulnerable ships as opposed to any others? Do we have a picture of the performance of the two different categories?

**Rear Admiral Hudson:** That matrix, as I said, my Lord, is based on our maritime security centre Horn of Africa website, and the ships take part of it. Our estimation is that about 70 per cent of the ships that move through the Gulf of Aden, east or west, participate in our security centre, contribute and actively engage at any one time. We have got a sizeable minority, about 30 per cent, who do not, for whatever reason, take our advice. Of that 70 per cent we have somewhere in the region of ten to 12 ships in any one day in the Gulf area in either direction that we would identify as vulnerable, for all the reasons that I outlined: manoeuvrability, speed, free board, and so on. Having identified the vulnerability, we have a range of options that we can employ to safeguard that ship ranging from, in specific circumstances, the placing of a vessel protection detachment of military personnel on the ship, very low speed ships, for instance, carrying oil rigs or heavy industrial equipment, towing them through in big barges - we could put a vessel protection detachment on board - right the way through to those that are still vulnerable but at the bottom end of the margin where we

will keep a ship within a certain distance to keep a weather eye on it as it moves through the Gulf of Aden. We pinpoint them, we establish communications with the ship, we identify the risk areas and we make sure that, if anything is encountered, that ship is alerted to it. It is a focus on an individual as opposed to a collective group, which we do with the wider community who can come through at a lower risk threshold.

**Q98 Lord Crickhowell:** The result is?

**Rear Admiral Hudson:** All the ships that we have identified as vulnerable, who have sought our support, have got through safely.

**Chairman:** Could we make sure that we do not move on to questions in the future. Lord Chidgey.

**Q99 Lord Chidgey:** Admiral, good morning. The communication between the ships that are part of your matrix, if you like, how vulnerable is the communication system to interception and, in fact, aiding the attempted piracy?

**Rear Admiral Hudson:** There are two strands. There is the straightforward commercial VHF, speaking on normal communications means, where we pass information and exchange identities, tell them who we are, just exchange information. Yes, any other ships can listen to it - pirates, for instance, would be able to listen to a VHF conversation - but in terms of merchant ships, it is quite difficult to get secure communications on to them. We can pass information through the UKNTO through Inmarsat channels, which are not overt, they are not readily interceptable, and we do do that, when we say, "Be in position X at time Y" - we pass that through Inmarsat channels - but when we meet the ship we do talk on ordinary VHF channels. In terms of co-ordination, we do have secure means of doing that at an unclassified level. It is based on an Internet, it is the same banking protocols that you and I would use to move our money around over the Internet, so it is as secure as that, and from our security

centre we release passwords, we give various companies, shipping agencies, outside organisations, access through password control, and that is where we can identify any specific threats for downward dissemination through their own routes. It is overt ship-to-ship via Inmarsat and radio but a secure area where we pass wider tactical data.

**Q100 Lord Williams of Elvel:** You identified the broad number of ships passing through your area, if I may call it that, in a given year. Is there any seasonal variation that you have identified or is it constant month by month?

**Rear Admiral Hudson:** With regards to the Gulf of Aden, my Lord, it is fairly steady through the Gulf of Aden. The flows of energy, the flows of merchant trade with an area of just enough just in time, tends to be fairly steady through the Gulf of Aden, but into the Somali Basin, which is much more prone to the monsoons, in particular in the summer the south-westerly monsoon where the sea states are quite high, some of the smaller ships, for instance the cruise liner industry, tend to stay away from the Central Indian Ocean during the monsoon periods but, as I said, that southern portion of my area has a much lower density of merchant ships. The impact on my overall operation is not that significant by the monsoon with regards to traffic flows.

**Q101 Lord Anderson of Swansea:** Admiral, you rightly point out the successes, the 100 per cent rate of supplying of the World Food Programme to Somalia, the good record of vulnerable ships, yet overall the situation is deteriorating, is it not? I noticed that, comparing 2008 and 2009, in 2008 there were 45 attacks, 2009 117 attacks; 35 hijacks in 2008, 46 hijacks in 2009. Clearly, there are lessons to be learnt on the strengths and weaknesses. There was, I believe, a review of the 12-month operation last month. Are there any preliminary conclusions yet from that review in terms of strengths and weaknesses, what needs to be done, lessons learnt?

**Rear Admiral Hudson:** There are two phases to that question, my Lord. First, the number of attacks, successful seizures by pirates between 2008 and 2009, you are right to highlight, in terms of specific numbers of ships seized in 2008 against 2009, there is no great difference between the two. Our figures would say 46 in 2008 and 43 in 2009. There is no great change.

**Q102 Lord Anderson of Swansea:** The figures we have been given by NATO in terms of attacks: 45 attacks in 2008, 117 attacks in 2009.

**Rear Admiral Hudson:** In terms of attacks, yes, and success rates.

**Q103 Lord Anderson of Swansea:** Actually the seizures are up from 35 to 46.

**Rear Admiral Hudson:** I think, without querying NATO's figures, the general trend is a steady state. But the EU only having been there since 2008, our figures in 2009, we would say that 43 ships have been seized. Where is that ambiguity? Several ships are seized - dhows from countries like Yemen, Pakistan, India, Iran - by pirates to be used as mother ships out in the Somali Basin. Often we get early reports from the Yemeni coastguard or from agents in Pakistan that one of their ships has gone missing. There is an assumption in some areas to then assume that it has been pirated, whereas often we find out weeks, sometimes months, later that that has not been the case.

**Q104 Lord Anderson of Swansea:** That is constant, surely, year on year. It would not be a different type of reporting.

**Rear Admiral Hudson:** I think it is how we then apportion it to an actual hostage situation, a seized ship, as opposed to an ill-defined, yet to be confirmed seizure. Within the EU we have looked solely at the larger merchant ships which have been taken in 2009 - of course we were not there in 2008 - and that is what the figures that we have of 43 are based on. I think the

point that I would stress is the relationship between seizures and attacks has changed slightly. Because of the profile of piracy in 2009, we now have a number of attacks reported by various agencies which, in the grand scheme of things, are not skiffs with pirates armed with RPGs, AK47s aiming to assault ships. There is a jitterishness about some of the masters, and with organisations like the International Maritime Bureau, our own security centre, the NATO Shipping Centre, we are trying to filter out what are alarmist calls and what are genuine attacks. It is quite a challenge to work out what is a pirate assault and what is a master seeing a fishing vessel or some other illegal activity - human smuggling across the Gulf of Aden - and raising it as an attack; but my focus is trying to drive down the number of ships that are ultimately seized, and that is where in terms in success our relationship with industry is extremely important, because those ships that adopt best management practice, those ships that take full self-protective measures, those ships which follow not just the advice of the EU but their own organisations, have reduced the risk significantly and have rarely - I will not say never - fallen foul of the pirates. If I could use the example of the Somali Basin: over the last three months we have seen around 13 ships using the Somali Basin, a spike after the monsoon period, and I would say something like two-thirds of those ships were operating in areas where we and NATO and other organisations advised them not to go. Therefore, if they are prepared to cut corners, if they are prepared to take the risk, occasionally they wear the consequences of it.

**Q105 Lord Anderson of Swansea:** Before coming on to the second part, presumably there would be insurance implications if ships go into areas where they are advised not to go?

**Rear Admiral Hudson:** We would like that to be the case, but at the moment there is not that sophistication in the insurance premiums where the insurance companies would say, "If you do not adhere to the following criteria, your insurance will go up." There is a war risk area, a high risk area established in the Gulf of Aden and a large part of the Indian Ocean that ships

in transit will pay a premium to go through it in case they are seized by pirates. We would like to see ships that take full best practice, full self-protective measures get a small discount, but that is beyond the means of insurance companies and we have made little progress.

**Q106 Lord Anderson of Swansea:** On the review?

**Rear Admiral Hudson:** The review at the end of 2009, as I mentioned, resulted in a small revision to our Joint Action Plan. The biggest review was: let us keep going. We will go for another year through until the end of 2010. Capacity building is a big issue in the Horn of Africa. We could be here for five, ten, 15, 20 years unless, we can get some sort of way, whether it is the institutions in Somali, whether it is the coastguard capabilities of countries like Somalia, or the regional capabilities improved. There is a huge raft of initiatives in place - whether it is the IMO's Djibouti Code of Conduct, the information sharing centres, the Coastguard Training Centre in Djibouti, whether it is the EU's big initiative - to try and engender security assurance in Somalia and help the TFG go from transitional to a proper federal government in Somalia which would allow the institutes to mature. In my revision to the mandate I have taken on some modest capacity building, without detriment to my operations, for countries like Kenya, Djibouti, where we can, working with the Yemeni coastguard, supporting some of the coastguards in Puntland and Somaliland - I stress without detriment to the operations - and also to inform Somalia of activity such as fisheries in their notional EZ. Toxic waste is often used as an example of why piracy has arisen. As we go about our business we cover a lot of ground. We can feed that situational awareness back to Mogadishu.

**Q107 Lord Chidsey:** Building on some of the responses given to Lord Anderson, which were straying into this area, you will see from the notes you have we are rather interested to know a little more about the latest trends in terms of the frequency, type and location of pirate

attacks in the Gulf of Aden and off the east coast of Africa, and particularly the trends in pirate tactics. You have covered the statistics at some length already, but I am quite interested to know, if I can put it this way - it may be an exaggeration to say so - is there some sort of philosophical development in the pirates' activities in response to what we are collectively trying to do to constrain them and protect shipping? I am looking particularly at the criminal activities which, of course, are to a degree shore-based as well, and I want to try and develop that theme above the platform of the raw statistics of the number of attacks and the number of seizures.

**Rear Admiral Hudson:** My Lord, if I could split the area into two, because they have very different operating styles and the style of piracy has evolved differently in each. Starting with the Gulf of Aden, bound by Somalia to the south and Yemen to the north, I have to say, over the last six months the level of attacks in the Gulf of Aden has been very low, notwithstanding the disappointing seizure over New Year of two ships, one in the corridor and one just to the east of the corridor, they were the first seizures since June. We lost a dhow in July, but the first major seizure. In six months we have had a pretty good strike rate in the Gulf of Aden. Why is that? I think that the military co-ordination is much better, both within the military forces and within the merchant community. The pirates have seen their rewards against risk ratio skewed the wrong way and they have sought alternative criminal activity. Therefore, human smuggling into Somalia has become very appealing to them and we have seen a spike in the autumn of people being transited across the Gulf of Aden into Somalia. They pay \$150 a head. There are 24,000 by the UNHCR's estimation. The pirates have got another revenue stream. Also the Puntland authorities have taken a greater interest in their northern coasts and they have been effective. The Gulf of Aden has gone down, but it is like a balloon: it will pop up elsewhere. We have seen the pirates move out into the Somali Basin using mother ships, long-range skiffs towing attack skiffs behind them, using things such as the currents which

run off the Somali coast to get out into the deep Indian Ocean. They loiter near those north/south shipping routes knowing that distance will always be my constraint and I cannot get to them as frequently as I would like. They have altered their patterns and eased back on the Gulf of Aden, concentrating their efforts in the Somali Basin. The weather has been good for that. I think that, as the north easterly monsoon cuts in, we may see them return to the Gulf of Aden. So these are adaptive organisations. They look at the conditions, they look at where the military forces are and that is how they are able to exploit the weaknesses in our armour.

**Q108 Lord Chidzey:** Can I ask a follow-up regarding the fate of the hostages and whether the pirates have any sort of collective view on this. We have heard reports, of course, of al-Qaeda type terrorists muscling in, I suppose, is one way of putting it in terms of the hostages held on the shore. Is that a trend, is that just opportunist, or is that part of the overall view of how to maximise the returns on this activity?

**Rear Admiral Hudson:** I do not believe we have any direct linkage between those terrorist organisations and piracy. Piracy we still see as personal financial avarice by some of the gangs in the northern and eastern sides of Puntland. That said, last year somewhere in the region of \$80 million was generated by these ransom ships and as Secretary of State Clinton, said in the early summer of last year, tracing the money, where does it go, is a key part of the overall assault on piracy. It is not part of my remit, but the crime agencies, Interpol and so on, are trying to find out where the money goes. The link between terrorism and piracy, at this stage we do not see such a link. Do we see any change in the way that the hostages are dealt with? I have to say that, generally, the hostages, notwithstanding the psychological impact of being held ransom for three or four months on a ship, have been reasonably well treated. We have not seen huge overt violence towards them. Generally, the hostages are released in a fit state; the ships take a lot of damage but they are not ransacked. The pirates

know that their commodity for trade is the people and that if they step over a certain threshold their trade will ease. Those have been generally well-treated. One or two of the pirates have come from inland areas of Somalia to try and get a piece of the pie, and they have been rather more aggressive in their dealings with hostages. We will have to see whether that trend changes in 2010.

**Q109 Lord Hamilton of Epsom:** Have any people died as a result of these activities on either side?

*Rear Admiral Hudson:* Hostages? Sadly, we have had some hostages killed in this process. Not many, but nevertheless some have been killed. I do not know the exact number, but they have.

**Q110 Lord Hamilton of Epsom:** By pirates?

*Rear Admiral Hudson:* By pirates, yes. When they seize the ship or when they break into the compartments some hostages have been killed or seriously injured, but I do stress the numbers are comparatively small. With regards to pirates, yes, pirates have lost their lives, not only in interaction with military forces but also the fact that they are six, eight, 1,000 miles off the coast in open skiffs does mean that when they breakdown sometimes they are at the mercy of the elements, and we have come across abandoned boats with nobody in. So it is a high risk game.

**Q111 Lord Williams of Elvel:** Admiral, you did mention gangs of pirates. Could you say something about the organisation of the pirates? These gangs: how large are the gangs? Do they have good onshore technology? Can you say a little more about that?

*Rear Admiral Hudson:* Our understanding of the pirates is that they are largely based around three clans. Of course, Somalia is a clan-based country, the Darod clan to the north, the

Hawiye Clan in central Somalia and then the southern one based around Xarardheere tend to have their own organisations. They are known as companies, pirate companies. They have their own individual players, whether it is a negotiator, whether it is the individual who looks after the logistics, the individual who looks after the boats, the attack team. It is configured around a small company as an entity in these pirate hubs around the clans. They leave from a great deal of pirate ports - little coves and harbours along the coast. It is 3,000 kms long, so they have got lots of egress routes. But when they seize a ship they bring it back to a central location, of which we know of three or four, and it is from those locations that they maintain the security of the sea ships and then conduct the negotiations, and the negotiations are done with the insurance companies back in London, or Singapore, or wherever they may be, for the transfer of the ransom payments.

**Q112 Lord Hamilton of Epsom:** Under what circumstances can naval vessels operating as part of the EU operation engage and fire on suspected pirates?

**Rear Admiral Hudson:** I hope, my Lord, will understand that I will not go into the specifics of firing but I would say that the rules of engagement given by the European Union to the ships under my command are very accurate, strong, for this type of operation, and the range of operations, notwithstanding the issues of self-defence, which pervade all operations, we have the flexibility to do what we need to do to disrupt, deter and arrest pirates, and I would say that over the last 13 months that this operation has been running we have not come across a circumstance where rules of engagement have stopped us completing a specific strand of our mission. I do not know if Commander Dow wants to expand on that.

**Commander Dow:** The only thing I would add, my Lord, is that this is clearly a law enforcement operation rather than a war against pirate or an armed conflict such as we are engaged in elsewhere. There are constraints imposed by the law of the sea, either in customary international law or under the United Nations Convention on the Law of the Sea,

that we follow. The principle is the use of reasonable force, reasonable force being the minimum necessary to impose your rights under those provisions: to board, search, seize, arrest, detain, what have you. Lethal force is available where there is a threat to life, in very much the same way as for any other law enforcement operation.

**Q113 Lord Hamilton of Epsom:** You say that it is not a war; it looks quite like one to many of us serving on the side. We were told in the last lot of evidence that actually you had to catch these people in the process of trying to kidnap a ship before you could do anything about them. If they were sailing about, clearly armed and prepared with ladders and machine guns and whatever else, you could not touch them.

**Commander Dow:** My Lord, that is a slightly separate question, and I will deal with it separately, to the question of law enforcement versus armed conflict. The international community, all those involved in counter-piracy operations recognise that the applicable framework is the United Nations Convention and the Suppression of Unlawful Acts Convention. Not every nation involved in counter-piracy operations is a signatory to both, or necessarily either, of those international law provisions but certainly over time with one or two exceptions that has been the framework for the use of force that we have seen each nation employ, and certainly that is the agreed basis of EU rules of engagement. The question of prosecution of pirates is slightly different. You make a good point, my Lord, that it seems anomalous that we have to restrict our prosecutions to those who are caught in the act rather than go equipped, but that is much more a function of our regional arrangements for prosecution and, obviously, in order to provide the deterrent effect we need to select our prosecutions to maximise our chances of conviction, and that generally means in the regional courts, Kenya and the Seychelles and what have you, that we present those cases that clearly present witness evidence of an actual act of piracy.

**Chairman:** We will come on to the actual relationship with Kenya and the Seychelles later on.

**Q114 Lord Swinfen:** Admiral, you have indicated to us earlier that you know where these pirates are operating from. Why can we not go in and seize the equipment: act to prevent them committing acts of piracy?

**Rear Admiral Hudson:** I know where the clans are based, where the companies operate from, if I can use that language - the ports of Xarardheere, Hobyo, Garacad and Eyl are the principal four ports on the east coast of Somalia for pirate enterprises, organisations, however you describe them. The difficulty, my Lord, is that we know of 70 different pirate camps along the east coast of Somalia alone from where these skiffs depart, along a coast that is 1,500 miles long on the Indian Ocean side. So monitoring and controlling where they leave from is beyond the means of the few ships that I have at my disposal, or aircraft. The other point is, of course, they seize dhows off Yemen, they seize dhows in the Gulf of Oman, they seize dhows in the Gulf of Aden, which they then convert into mother ships and deploy out into the Somali Basin, again difficult to identify and pin down. If we see them coming off the coast we can intercept them; if we have the intelligence that they are departing we can intercept them; but we have very limited intelligence based ashore in Somalia, we have limited ISTAR facilities because quite naturally the focus is on other operational theatres. For all those reasons actually wading in and stopping these skiffs at sea is difficult. The other thing is my mandate goes to the high water mark, I do not operate inside Somalia, going into these towns and into these villages is not part of my operation.

**Q115 Lord Swinfen:** Would you like to be able to do it?

**Rear Admiral Hudson:** From a military perspective, it is something that, of course, we would be able to do but it draws resources, it draws assets, it draws a requirement and a whole

different ballpark if you are going to do operations ashore, and with this operation, given that it is a crisis response operation, it would set a very different theme. At the moment our focus is humanitarian, it is on identifying and supporting vulnerable ships, it is after, where we can, determining and disrupting piracy. I am not going to be in a position where I can defeat piracy, and I have never given any such guarantee or obligation. So operating inside Somalia is not something that is part of my remit and I do not see it being so in the near future.

**Q116 Lord Swinfen:** Do you have satellite observations so you could see these skiffs, these vessels coming out from the shore?

**Rear Admiral Hudson:** We have a good relationship with the European Union Satellite Centre, which is funded through Brussels, and we do use a variety of sources to keep an eye on activity.

**Q117 Lord Inge:** How many times have you had to open fire?

**Rear Admiral Hudson:** Exact numbers off the top of my head, my Lord, I cannot say but we have on several occasions. Most recently, one of our Norwegian boarding parties were inspecting some dhows off the island of Socotra and one of those dhows opened fire, fire was returned and some of those pirates were fatally injured. We have opened fire. We do use warning shots and non-disabling fire on a reasonably regular basis. With regards to numbers, we have the dexterity to do those sorts of things.

**Q118 Lord Anderson of Swansea:** If a skiff is carrying equipment which is only referable to piracy - RPGs, Kalashnikovs, ladders, and so on - and not referable to fishing, why can they not be stopped?

**Rear Admiral Hudson:** My Lord, I think, there is a difference between stopping and prosecuting. There have been no dhows, certainly in my seven months in command, that have

disappeared over the horizon waving the proverbial as they go. We have stopped every dhow that we want to stop. What we do with them thereafter is a bit of a challenge. They are not out to catch tuna, it is not a Sunday jaunt along the Somali coast; they are there for the purposes of committing piracy; but that is conspiracy to commit piracy.

**Q119 Lord Anderson of Swansea:** They are going equipped.

**Rear Admiral Hudson:** They are going equipped. The difficulty then is providing the evidence and proving that in a court, of which there are very few that will take a charge of conspiracy, in either the regional countries or, indeed, back in Europe. As Commander Dow said, whilst we can do it, and have on many occasions when there is direct linkage with an attack or an assault on a ship, finding a skiff in the Somali Basin (and we have found 14 in the last three months) equipped to commit piracy and getting those individuals into a court is beyond our means at the moment.

**Q120 Chairman:** Could I intervene on that. Certainly in our evidence from Admiral Jones, he said that there were instances where that was found, where the equipment was effectively thrown over board, and maybe, if there was more than one ship, the ship itself was sunk and they were left in one ship with sufficient provisions to get back to shore. Is that still what happens?

**Rear Admiral Hudson:** That is what we do. My effect is to disrupt piracy, my Lord. When we encounter these skiffs, and we do stop them, they will either ditch, throw overboard their paraphernalia themselves or we will do it for them. If they have attack skiffs in tow, we will destroy them. We identify and spray paint the mother ships with all sorts of luminous paints, we dispose of the bulk of their food and fuel and we make sure that they are in a safety of life at sea and a sufficient state to get back to Somalia and they cannot commit any further acts of piracy. We estimate it is about two to two and a half weeks from the Central Indian Ocean by

the time they get back, regroup, re-equip and come out again. In terms of the merchant community, it is a disruption activity which takes a group out of play. I would like, my Lord, to have them all before a judge, because they are not out fishing, but I can only work with the prosecution framework that is available to me and, in those circumstances, conspiracy is one step beyond what I can satisfactorily prosecute.

**Q121 Chairman:** We will come on to that.

**Commander Dow:** I would endorse all that from my legal perspective, but certainly my experience has also been, being involved in transferring suspected pirates for prosecution that we are dealing with limited military resources as well. It takes a long time to get a ship down to Mombassa or to Victoria, bring it alongside, go through the formal transfer procedures to the local enforcement authorities and then get the ship back on task. That is one aspect that limits our appetite necessarily for prosecutions. The prosecution arrangements themselves are robust - there is no doubt about that - but in order to deter we are interested in convictions rather than in passing every case through and relying on an arbitrary conviction rate in the local jurisdiction.

**Q122 Lord Chidgey:** I would probably address this question to the Commander because it deals with the ability you have under international law to act. Can I refer you back to the United Nations Security Council Resolutions in 2008 when this started to become an issue. They passed Resolution 1816 which, to paraphrase, authorised states co-operating with the TFG to use, in a manner consistent with relevant international law, all necessary means to repress acts of piracy and armed robbery at sea. That seems to me, as a non legal person, to give you absolutely every facility that you need to tackle this problem, but clearly there are issues here where it does not work. Would you like to develop this? Maybe the Security Council Resolution should say something more specific about how you should address this.

**Commander Dow:** It would be useful if they were more specific. In analysing the effect or the meaning of the UN Security Council Resolutions, it was clear that the Resolutions were passed on a basis that “all necessary measures” was qualified by “in accordance with existing international law”, referring back to the United Nations Convention framework and the concept of reasonable force and the law enforcement basis of counter-piracy operations generally, but even if we had the “all necessary measures” provision without qualification, I do not think it would take us very much further, in all honesty, my Lord, because we are dealing with a large area in which there are all sorts of activities, some legitimate, some unlawful, but not all of which we are empowered to take action over. For example, while piracy is a crime of universal jurisdiction and we might be empowered to take really quite aggressive action against pirates, human trafficking, for example, is not a crime of universal jurisdiction. We as a European force have no authority to take enforcement action against migrant smugglers, and it is extremely difficult to discriminate between the different types of activity - lawful, unlawful, which types of unlawful - and so we still would not be in a position where we could engage vessels on a lower standard of assurance about what it is we are dealing with. The way to deal with suspected pirates, as with most other unlawful activity at sea, is to get on board the vessel, find out what is going on and then act in accordance with your authorities.

**Q123 Lord Sewel:** Can we go back to one of the issues that you touched on in your opening remarks, and that is really your relationship with the commercial shipping companies. Clearly a good relationship with them is critical to the success of your operations. You did mention that some of them do not get in touch, some of them basically just ignore your advice. Why is that and how can it be improved?

**Rear Admiral Hudson:** That is an extremely good point, my Lord. If we can get our message from my maritime security centre and the other organisations that do this - for

instance, NATO has its own small shipping centre, the organisations themselves publish information and we could ensure that 100 per cent of the ships followed this to the letter - I am sure that the number of successful attacks would go down. Why do not they follow it? There are a variety of reasons that have been put forward. Commercial confidence is one that some shipping companies are concerned about: they believe that their information will be accessible to all sorts of other companies. Ships go through who are running short and they fear that that will be exposed. A Turkish ship went through not so long ago and was seized; it was uninsured. There are a variety of factors. We continue to target them. I have recently reached agreement with the Suez Canal Authority in Egypt for the distribution of data, charts, information of all the ships that run south through the Suez Canal to try and plug this hole, but it is not mandatory, it is voluntary. We give as open access as we possibly can, but if they are determined not to expose the details of where and why and when, then ultimately it is the shipping company's decision. I get back to my earlier point, my Lord, that those ships which have been seized, not all of them by any stretch of the imagination, but the majority are those that have not been following best management practice, self-protection measures or working with our security centre or other such organisations. The message is clear to them: if they are part of the club, they can reduce the risk.

**Q124 Lord Sewel:** Is there a role for the insurance companies?

**Rear Admiral Hudson:** I believe so, but it is quite difficult because insurance comes from across the globe and, whilst we have a very good relationship with insurance companies across Europe, including the big ones here in London, in the Far East, Africa, America and so on, we do not have as much exposure, and that threshold which we would like to see that states those ships that fully participate can get a discount has yet to be adopted by the insurance companies.

**Q125 Lord Hamilton of Epsom:** Are these commercial shippers using mercenaries and are they armed? To what degree is that happening?

**Rear Admiral Hudson:** Some of the shipping companies do use civilian armed security teams on board and, as always in an area of crisis, there are commercial gains. Some of these companies have exploited it and do charge to put teams on board as they transit through the Gulf of Aden, yes; the majority do not. It is not endorsed by the International Maritime Organisation and the bulk of shipping organisations do not encourage it either, but some of the companies do. Finally, on that point of guards, there are some national organisations, the French and the Spanish, for instance, which have tuna fleets, spread right the length of the Indian Ocean, we cannot give them close protection. French military and authorised endorsed civilian companies, endorsed by the French MoD, are now used on those fleets to provide protection.

**Q126 Lord Inge:** Could you say a little bit about the co-ordination with the NATO forces in the area and what capabilities they have got or have not got, or you would like or they would like from you, and is it successful to have two different organisations running two operations? I know it is a large area of the sea.

**Rear Admiral Hudson:** It is a huge piece of ocean: two million square miles. NATO, who today have three ships in the area, those three ships are very welcome in terms of the presence they deliver and output, but it is very important, my Lord, that we do not end up in the same area trying to do the same task and duplicate efforts.

**Q127 Lord Inge:** Do they have the same rules of engagement and everything else?

**Rear Admiral Hudson:** I do not know the details of the NATO rules of engagement, but, as we have heard, they are founded on exactly the same UN Convention, so there are no great differences in terms of specifics. Co-ordination on the ground is very good, the tactical co-

ordination. Each of the three universal forces, my Lords, the EU, NATO and the coalition forces that operate out of Bahrain, have a one star in command in theatre, and between the three of them they make sure that their distribution of ships is as efficient as possible. Co-ordination in the Gulf of Aden and the Somali Basin, we would like to keep to it, and thus far it has worked well. NATO bring skills to the operation which the EU does not necessarily have in some fields.

**Q128 Lord Inge:** Such as?

**Rear Admiral Hudson:** Some of the intelligence analyst posts, some of their co-ordination skills that they use for maritime patrol aircraft, and so on, but I bring a lot of capability that NATO does not have either. I have the majority of ISTAR assets. Maritime patrol aircraft are EU aircraft. My maritime security centre is a world leader. We all bring capabilities and what we try and do is complement rather than compete, and in theatre it has worked well thus far.

**Q129 Chairman:** One of the things that came out from Admiral Jones was that there is a certain sensitivity at a political level within the EU that we should not become too dependent on the Russians or some of the other national neighbours. Is that sensitivity still there, or has that now become rather more pragmatic?

**Rear Admiral Hudson:** Dependent on the other nationals, I am not sure. What we have to make sure is that our output, which I stress again is irrespective of flag, irrespective of company, cargo, we will support any vulnerable ship in the area that is going about its lawful business as best we can. There are other operators. You have mentioned Russia, China, Japan, Malaysia, Korea, who have forces that are largely geared to the protection of their own flag ships and where the EU has a view from the European Union perspective, it is to ensure that if there is any burden sharing it is done on a universal basis, not necessarily a national

basis. If China, for instance, wants to participate to a greater extent, it needs to look after the Panamanian flag ship just as much as the Chinese, and that is where the EU is keen to go. As I mentioned China, the indications are that she will do just that, which is very encouraging.

**Q130 Lord Anderson of Swansea:** To what extent is your operational effectiveness hampered by the communication problems between NATO and the European Union arising from the Cyprus/Turkey problem?

**Rear Admiral Hudson:** There is no doubt, my Lord, that when the operations stood up there were communications issues between the EU and NATO and, indeed, between the EU, NATO and CMF in Bahrain - they have their own membership, NATO does, the EU does - but, I think, over time we have managed to work around the majority of those. We have today amongst the European Union a wide area network EU WAN, to use the phrase, which allows us to exchange data freely amongst all the EU ships. We have a secure communications system that I alluded to, to Lord Chidgey, about Internet protocol security to allow real-time tactical information on intelligence to be passed securely. We now have access, through a NATO, CMF and EU Working Group, to make sure that tactical relevant intelligence is also passed as freely as we can. You are right to point out, my Lord, that when we stepped into this operation there were challenges, but I think where there is a will there is a way and generally we have got around it and day-to-day co-ordination is reasonably slick.

**Q131 Lord Inge:** If you had a reasonable wish-list, what capabilities would you like to be added to your task force?

**Rear Admiral Hudson:** There would be two areas there, my Lord. I think maritime patrol aircraft are in short supply across Europe, as we know. Those are the eyes in the sky. I use one example of a pirate group we identified right in the centre of the Indian Ocean, 800 miles away from my nearest warship, two and a half days to get out there, and despite the release of

warnings to merchant ships, a ship was seized by that group before I could break it up. The more aircraft I have, the greater my update rates, the more information I can give to the merchant community, but they are scarce and I fully understand that. The second one that I would touch on actually is not an additional capability, it is political clearances. We have vessel protection teams, military personnel who can go on board vulnerable ships and provide protection, but because we struggle to get clearances from flag states - countries like Sierra Leone, the Marshall Islands, the Comoros Islands - to put military personnel on their flag ships, I am denied that opportunity and I have to have a frigate close by. If I can get a military team on board to provide security, I can do other jobs with my frigates. Those two areas are the areas I would like to see progress on.

**Q132 Lord Inge:** Does anybody back in London start talking to their embassies and say, “Come on?”

**Rear Admiral Hudson:** From the EU across the piece, we try and lobby - I mentioned some countries - to try and get the right man in the right place at the right time to say, yes. My difficulty is that none of them will sign up to unilateral embarkation of military teams regardless of the task. It has to be the name of the ship, the specific option, time is short before it deploys, and we never seem to get that loop squared away.

**Chairman:** That is something maybe we could bring up with the Minister.

**Q133 Lord Anderson of Swansea:** A year ago we were told there was a shortfall of auxiliary support ships which carry fuel, obviously, and deployable force headquarters and Role 2 medical support facilities in field hospitals. Have those shortfalls now been remedied?

**Rear Admiral Hudson:** Tankers, my Lord, are still very scarce. Today I have one. My Italian command ship is a tanker, the ITS Etna, and she is with me until April, and we have tankers, after the south-westerly monsoon, but NATO does not and we have not for long

periods had tankers, CMF struggle with tankers, and it is an asset which is a key enabler for activity. We are reliant on other bodies to support us when we do not have our own, and they to us when we have them. Going back to the point of co-ordination, if I cannot bring my own tanker, then my relationship with NATO or CMF allows me to use some of their assets, and that is where we share our pools but it is a struggle to keep those going. Role 2 medical facilities: again, I have a full Role 2 capability today, but it is the first time for some period, and we continue to encourage Member States in Europe to provide such a facility. If we get into any difficulties, if we want to do certain types of operations, then often that is a key facility that we require in theatre, so the absence of it does shape some of the operations that we can and cannot do.

**Q134 Chairman:** Can I be clear on a very important question by Lord Anderson there. Does the lack of tanker support, or a consistent tanker, mean you have to send ships back to Djibouti or into port when they should be out doing their job?

**Rear Admiral Hudson:** Just that. Frigates today are fuel hungry beasts and when you are in the middle of the Somali Basin you can only stay there for a finite period of time before you have to do a fuel stop in Mombassa or Victoria, or go back up to Djibouti or up to Salalah, so I get ships away from the operating theatre to fuel, which is not the way we should be doing business.

**Q135 Lord Selkirk of Douglas:** Perhaps I should express an interest as an Honorary Air Commodore to the City of Edinburgh Squadron. May I ask the Admiral, how great is the insufficiency of maritime aircraft? You have said there was an insufficiency. Can you give us some picture as to how many more aircraft would be required overall?

**Rear Admiral Hudson:** We have set our minimum threshold in our debates with Europe and Member States as three maritime patrol aircraft, the Atlantics, Auroras, the big aircraft, which

would allow us, we believe, to keep a full sortie every day in the Gulf of Aden particularly during high threat periods around sunrise and sunset when the pirates attack, and that was our ambition. We do not have that at the moment. We have smaller aircraft, civilian aircraft, funded by Luxembourg, based out of the Seychelles which gives us eyes in the southern Somali Basin, but if I do not have three I cannot surge them into the Somali Basin as often as I would like, and with that expanse of ocean, it is eyes in the sky that will see the pirate skiffs and then I can alert the merchant community. If I could have a force structured that allowed me to keep aircraft in the south as well as the north, I could make differences to the deterrence and disrupt function, but they are in scarce supply.

**Q136 Lord Selkirk of Douglas:** In the interests of achieving maximum results, would you place this as a top priority or just a very high priority?

*Rear Admiral Hudson:* Of the assets that I am short of, notwithstanding the tankers, Role 2 medical facilities, and so on, aircraft would be at the top of my list, maritime patrol aircraft, and not just mine, NATO and the coalition forces. Aircraft are a key enabler for this theatre.

**Q137 Lord Hamilton of Epsom:** Do you have any drones operating in the area?

*Rear Admiral Hudson:* We do not have any UAVs in the European Union force.

**Q138 Lord Hamilton of Epsom:** But there might be in the NATO?

*Rear Admiral Hudson:* The capabilities that NATO and the CMF bring, I think there are national and coalition capabilities which sometimes change command, if you get my drift, particularly from America. I do not have any in the EU, but with regards to the coalition forces, I could not comment.

**Q139 Lord Hamilton of Epsom:** Do you need an aircraft carrier to fly drones in the area?

**Rear Admiral Hudson:** No, the drones that are operated today internationally are the sort of drones that you see operating in Afghanistan, my Lord, have huge endurance and we can operate them from other sites. You will have seen press reports about the Americans operating drones out of the Seychelles. The necessity for an aircraft carrier is not there. The drones themselves can operate from the shore.

**Q140 Lord Hamilton of Epsom:** You could do with a few more of them then.

**Rear Admiral Hudson:** They are in scarce supply and I am pragmatic that other operational theatres have a higher demand.

**Q141 Lord Williams of Elvel:** Admiral, you are charged with monitoring fishing activities off the coast of Somalia. In practice what does that mean?

**Rear Admiral Hudson:** This, my Lord, came in at the end of last year when our Joint Action Plan was slightly refined. The reason we do that is that there is a perception in some quarters of Somalia that illegal fishing is rife off their coast; that their stocks are being pillaged and, therefore, some of their fishing communities are turning to piracy because of that. What we have agreed with the TFG, through the EU, is that as my ships – and they regularly transit to places like Mogadishu up to Berbera escorting World Food Programme ships - transit through the 200-mile boundary with Somalian waters, if we see any fishing vessels, regardless of flag, regardless of whether they are licensed or not - that is not my role - we will pass it to Brussels so they can inform the appropriate authorities in Somalia, so they can get a more honest appreciation of what is happening in their waters rather than anecdotal evidence from disgruntled fishermen. I have to say that in the 12 months that we have been operating in that theatre we have seen very few fishing vessels inside the 200 miles, probably because they are frightened of being pirated, but my point of the TFG is that, in terms of wholesale pillaging of

their economic or their natural environment, we do not see it. Nevertheless, I will try and give them evidence.

**Q142 Lord Williams of Elvel:** It is not because people might think these are pirates in disguise.

**Rear Admiral Hudson:** Yes.

**Q143 Lord Williams of Elvel:** Or is it because they may be pirates in disguise masquerading as fishing boats, it is to monitor the fishing activity itself?

**Rear Admiral Hudson:** And there is a lot of it, close in, 12 to 24 miles off Somalia. Subsistence fishing is the way I would describe it from the villages. I think the TFG is more concerned about the industrial fishing - the large tuna fleets that come into the Indian Ocean. From the EU perspective, all the EU fleets stay well outside the 200 miles, but if we see anything from any other fleets, we will pass that on. The point about pirates changing jobs as they go is true. In the Gulf of Aden they can be fishing one day and having a go the next to seize a ship, and we have seen them in the past, my Lord.

**Lord Sewel:** Extend the common fisheries policy.

**Q144 Chairman:** I was going to say, can you identify an undersized cod when you see one!

**Rear Admiral Hudson:** The dead fish police, as they say. The final point on fisheries: we are not there to monitor licenses, to say that is an unlicensed fishing boat, or a licensed fishing boat, or it is catching too many of them; we are just providing an appreciation of the activity in their waters as we go about our day-to-day operations. It is not a force driver.

**Q145 Lord Swinfen:** Do you have any concerns about EU states contributing enough forces so you can continue your mission during the coming year, and what forces is the United Kingdom contributing?

**Rear Admiral Hudson:** The forces assigned to me for 2010 are now largely in place. We had our Generation Conference at the end of last year and Member States have assigned forces, and against my minimum thresholds for ships that are required to do my output, we have met that. We have got a full switch which hits the nerve and for a large part of the time we are above that. Member States in terms of ships have been reasonably generous and supportive of this operation. We have issues, as I discussed, with aircraft and some of the issues with tankers and Role 2, but ships we are pretty much there and at the Force Generation Conference the United Kingdom declared that they would supply a frigate at the back end of 2010 to Atalanta. My next Force Generation Conference is in March of this year and I would expect the United Kingdom to identify dates when it will be available for me to start tasking. We do have one from the UK at the end of this year.

**Q146 Lord Crickhowell:** Commander Dow has given us a comprehensive account of the legal background and the desire to only take cases where you have got a good chance of getting a successful prosecution, but could you say a little more about the co-operation which we are getting in the handling of the pirates when you get hold of them in Kenya and the Seychelles? Is it working well? Is it co-operation at a high level?

**Rear Admiral Hudson:** Before I ask Commander Dow to look at the specifics, Kenya has been very supportive of this operation. We have nine groups of pirates, i.e. nine specific skiffs, mother ships, where we have arrested the pirates who are now being processed through the Kenyan judicial system - 75 in total - and that works well. We have a good arrangement with their prosecutors, with the Director of Public Prosecutions and the Attorney General to ensure that the evidence that they require to ensure the smooth process through their courts is correctly captured by our ships. We train them to do that. In terms of our relationship with Kenya, it is pretty strong. With regards to the Seychelles, our Letters of Agreement are comparatively new, they were signed at the back end of last year, and as yet we have not

transferred any pirates that we have arrested to the Seychelles for prosecution, although our aircraft that are based in Victoria have supported the Seychelles coastguard to arrest pirates and their evidence is part of that trials process. Kenya is mature: we have got a strong relationship; they are processing a lot of pirates on our behalf. The Seychelles is just about to get off the ground.

**Q147 Lord Crickhowell:** You are processing a large number?

**Rear Admiral Hudson:** Yes.

**Q148 Lord Crickhowell:** How many successful prosecutions have there been so far?

**Rear Admiral Hudson:** From an EU perspective, of those nine cases that I referred to, the first one was transferred to Kenya in April and they have yet to go through the full process, but several of them are well on the way and, touch wood, our first successful case, or otherwise - I am not prejudging the case - will conclude at the end of January or early February, so about a month away for this. Earlier this week one of the American cases was completed and the pirates were sentenced to seven years in jail. That sentence was handed down this earlier week, my Lord.

**Commander Dow:** All that I would add to that, my Lord, is that there is truly a comprehensive approach when it comes to prosecutions across the military operations as well as in the political arena. The EU mission works particularly closely with the UN Office on Drugs and Crime, which is charged with assisting capacity building, not only in Kenya and the Seychelles, but in any other regional area where prosecutions might take place, as well as concentrating its effort, obviously, on building capacity in Somalia, in Somaliland and Puntland, and that ensures not only the case management happens in a way that is certainly favourable by comparison with some European jurisdictions - eight months to completion of a trial is not too bad, in my personal view - it also ensures that particularly across the EU

mission where there is obviously a key concern that basic human rights standards are met, we work with those other agencies to make sure that we are at all times assured that prosecutions happen in a fair way and that the conditions for suspected pirates are satisfactory by basic standards. That cannot be done in isolation for pirates, however. If we are going to assist with capacity building in regional jurisdictions, that has to apply to the whole system. We certainly would not win any friends if we insisted on separate facilities, prisons for pirates that met exact European standards whereas the rest of the remand population suffered difficult conditions, or what have you. It is a big task overall.

**Q149 Lord Crickhowell:** Are all European countries participating in the force following the same practice used in Kenya or are some using other jurisdictions?

**Rear Admiral Hudson:** My Lord, the strength of the EU force Atalanta is that, regardless of the country which delivers the warship, if it is under my command we can access the Kenyan legal system, which is why, for instance, Norway, who is not a member of the EU but is a member of NATO, elected to deploy its frigate under my command rather than NATO command so that any suspected pirates detained by the Norwegians would then be subject to the judicial process. Regardless of country, it comes under me. There are countries in the EU, the United Kingdom being one, who have bilateral agreements with Kenya for the transfer of pirates, and that is for those individual countries, but from a European perspective, a ship, Atalanta, can have access to Kenya.

**Q150 Lord Crickhowell:** You said they can have access to Kenya. Are they all using Kenya, or are, shall we say, the French - I do not know what their position is - perhaps sending people elsewhere?

**Rear Admiral Hudson:** The process is defined, my Lord, that after the pirates are detained the first port of call for any subsequent prosecution will be either the country of the ship that

has been assaulted - that is their call - or, indeed, the Member State that has arrested the pirates, detained the pirates. It is the call of that capital to decide what they will do with them. In general, the European Union, unless there is a very direct linkage with one of their ships, as you saw with Spain, when the *Alakrana* was seized, elects not to prosecute them in Europe, it comes back to me as the operational commander and then I approach Kenya to request they review the case and decide whether they should prosecute, but the first port of call is always back to the capital. In the Spanish instance, they decided to take them back to Madrid, but in general it comes back to me and then I will approach Kenya, and, of course, it is then a national call for Kenya as to whether they take them or not.

**Q151 Lord Swinfen:** Pirates caught outside the 200-mile limit: can you not court martial them and, if not, why not?

**Commander Dow:** No, my Lord, simply because we do not have the mechanisms in place to do that, nor do I think that it would be really a suitable use of the military court system. While I do not think any of the European states could claim to be regular prosecutors of pirates, it is something that is really the meat of the crown court or its equivalent, and I do not think there will be any appetite from a military perspective to keep them within the military court system for prosecution.

**Chairman:** Maybe some United States Republicans might, I am not sure, but I am not allowed to make party political comments, even American ones!

**Q152 Lord Anderson of Swansea:** An article in *Le Figaro* on 5 January was highly critical of the delays in the Kenyan court system, corruption, the dangers of Islamist and clan influence, the danger also of springing some of those who are in prison from prisons which are near the coast. Piracy is an international crime, to what extent can it be prosecuted internationally and is there any prospect at all, as one European official told me, of finding an

island which can be properly fortified off the Yemen or Somali coast where people can be imprisoned safely?

**Commander Dow:** My Lord, you might be aware that there have been discussions broadly along those lines in the Contact Group on the problem of piracy and the Horn of Africa generally. My read-out from that is there is no appetite at the moment, or no consensus rather, on the creation of an international tribunal for the prosecution of piracy in the Horn of Africa. However, in looking at the regional state solution, there might be a number of innovative approaches that could be looked at further. One, for example, is to look at the Human Rights War Crimes Tribunal, just coming to an end in Tanzania, and whilst pirates might still be prosecuted under the local state's jurisdiction and according to its laws if the local state wished to go down that line, there might be provision for funding to be put in place, a prison to be built, or what have you, so that we could use a particular state's court as a clearing house for pirates in the region. I think that would be highly desirable, but then, again, as we have seen in our engagement with Kenya particularly and to a lesser extent with the Seychelles, Maldives and what have you, the local states, quite understandably, are interested in benefit to their judicial system as a whole rather than merely concentrating on the issue of pirates. There is a lot of work to be done, but it is an idea that is being explored, my Lord.

**Q153 Lord Selkirk of Douglas:** Do you come across a lot of subterfuge, for example persons claiming merely to be fishermen who happen to have some arms stacked away in self-defence, or is it usually perfectly clear what their genuine purpose is?

**Rear Admiral Hudson:** I have to say of the majority of people we come across, it is perfectly clear what their purpose is. In that region of the world arms are common pieces of equipment and you see them on fishing vehicles all the time just to protect their nets and their fishing rights. We know they are perfectly legal because they welcome us on board and we have a

chat, we give them first-aid packs, and so on and so forth, and we talk to them about their experiences. The guys who are out for other purposes, piracy, it is usually pretty clear what they are doing because of the equipment they need to do it, ladders, and so on and so forth. Occasionally there is that cross-over group that fish one day and pirate the next, or human smuggle to Yemen and try and attack on the way back south. Those are the ones we need to target.

**Commander Dow:** I would add to that, my Lord, that when we do arrest we do have the normal range of exculpatory statements from the suspected pirates about what they were doing right down to the fact that they were just engaging in an honest piece of migrant smuggling, or what have you, and were on their return journey.

**Q154 Lord Hamilton of Epsom:** There was evidence, when we first took evidence on this, that certain commercial companies were paying bribes to allow their ships free passage through the pirate areas. Is there evidence that that is still happening?

**Rear Admiral Hudson:** Not to my knowledge, my Lord. There are companies, as I said earlier, who will pay security teams.

**Q155 Lord Hamilton of Epsom:** No, this is to the pirate.

**Rear Admiral Hudson:** Not to my knowledge.

**Q156 Chairman:** Admiral, Commander, can I thank you very much indeed for a very, very instructive and interesting session, which I know has been enjoyed and that we found very useful for our study. I am so taken by the amount of international co-operation that has taking place in the Somali Gulf and Aden that is why I am going to a debate now on Copenhagen and the environment. Obviously you were far more successful in sorting out international issues there than maybe they were in Copenhagen and perhaps we could delegate that small

issue to you as well. I know that we are looking forward to meeting you again at Northwood in March, and can I thank you very much indeed for the evidence you have given today.

***Rear Admiral Hudson:*** Chairman, thank you very much.