

RECENT DEVELOPMENTS ON THE PROSECUTION OF PIRATES IN US COURTS



John Kimball: Blank Rome LLP
Telephone: +1 212 885 5259
E-mail: jkimball@blankrome.com



Deepa Padmanabha: Blank Rome LLP
Telephone: +1 202 772 5851
E-mail: padmanabha@blankrome.com

FIRST ARREST OF A PIRATE ON LAND IN A FOREIGN COUNTRY

The recent prosecution of Somali pirates underlines the extent to which the United States is using the court system to aggressively combat piracy. On 8 March 2011, a federal grand jury in Norfolk, Virginia indicted Mohammad Shibin, the alleged mastermind behind the hijacking and ransom negotiations of four Americans who were kidnapped while sailing on the *M/Y Quest* and later killed by Somali pirates in February 2011. The indictment, which remained under seal pending Shibin's arrest, charged him with counts of piracy, conspiracy to commit kidnapping and use of a destructive device during a crime of violence. In addition to Shibin, 14 alleged co-conspirators were indicted.

In early April 2011, FBI agents captured Mohammad Shibin in Somalia, marking the first time the US has apprehended an alleged pirate who was based in Somalia and had a leadership role. The district court in Norfolk unsealed Shibin's indictment following his capture and first court appearance. A jury trial for the accused pirates is scheduled to begin on 29 November 2011.

FIRST SENTENCE OF A PIRATE ACCUSED OF HIJACKING A FOREIGN-FLAG VESSEL

In another key prosecution, a federal judge in Washington, D.C. sentenced Jama Idle Ibrahim on 7 April 2011 to 25 years in prison. Ibrahim was charged with attacking a Danish ship, the *CEC Future*, which was carrying cargo from a US company. In November 2008, Ibrahim and other pirates detained the *CEC Future*, its cargo and the 13 crew members for more than two months before obtaining \$1.7 million in ransom from the Danish company. In September 2010, Ibrahim pled guilty to conspiracy to commit piracy under the law of nations, and conspiracy to use a firearm during and in relation to

a crime of violence. Ibrahim's sentence represents the first piracy prosecution in the US involving the hijacking of a foreign flag ship.

Ibrahim's sentence for attacking the Danish ship was not the first sentence handed down to him by a US court. In November 2010, a federal judge in Norfolk sentenced Ibrahim to 30 years in prison for his involvement in an attack on *USS Ashland*.

AN UNSETTLED DEFINITION OF PIRACY

At the time Ibrahim received his first sentence, however, there was uncertainty about how US courts define piracy. This uncertainty arose after two district judges in the Eastern District of Virginia handed down different rulings regarding the definition of piracy.

The cases involved separate armed attacks on two United States Navy ships, the *USS Ashland* and the *USS Nicholas*. In both cases, accused Somali pirates fired weapons at the ships, but were unsuccessful in capturing them. Instead, the accused pirates were captured and brought to Virginia to stand trial on numerous criminal charges, including piracy. In both cases, defence counsel moved to dismiss the piracy count of the indictments on the grounds that merely shooting at the ships was not, in itself, an act of piracy.

Judge Jackson's and Judge Davis' different rulings turned on their disagreement about the definition of piracy. In a decision issued in August 2010, Judge Raymond Jackson dismissed the piracy count in the case involving attacks on the *USS Ashland*, holding that under United States law, merely shooting at a ship is not piracy. The government has appealed Judge Jackson's ruling. Ibrahim's five co-defendants remain in jail pending the government's appeal of the dismissed piracy count.

Judge Mark Davis, however, disagreed with the definition of piracy adopted by Judge Jackson. On 29 October 2010, Judge Davis denied the defendants' motion to dismiss the piracy count and held, as a matter of law, that attacking a ship is piracy under US law and the law of nations, even if the ship and crew are not captured and robbery is not committed. After a federal jury convicted the five accused pirates for attacks on the *USS Nicholas*, Judge Davis sentenced each pirate to life in prison plus 80 years on 14 March 2011.

Until the Court of Appeals for the Fourth Circuit issues a ruling on the definition of piracy, the question of whether unsuccessful pirate attacks on ships constitutes piracy as a matter of United States law remains unclear.

Fishing vessel *Tai Yaun 227* reportedly being used as a mother ship for pirates in October 2010

