Selected Briefing Papers

Conference on
Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy

April 18-19, 2011
Dubai, United Arab Emirates

Global Challenge, Regional Responses:
Forging a Common Approach to Maritime Piracy

A public-private counter-piracy conference organised by the UAE
Ministry of Foreign Affairs in association with DP World

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This document is produced by the Dubai School of Government, as Knowledge Partner, in association with the UAE Ministry of Foreign Affairs and DP World.

Briefing papers were commissioned in order to reflect current cutting-edge academic and expert thought in the field of global counter-piracy. The articles are intended to serve as background to the conference only. The opinions expressed in them reflect the views of the authors, and nothing contained in any of the articles reflects the opinions or positions of the conference organisers. Content may have been edited for formatting purposes.

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مقدمة

نجحت قواتنا المسلحة هذا الشهر وبالتنسيق مع الأسطول الخامس الأمريكي باقتحام وتحرير سفينة "أريلة-1"الإماراتية التي تم الاستيلاء عليها من قبل القراصنة في منطقة بحرية واقعة شرقي عُمان في بحر العرب. حيث أُعيد الأشخاص الذين يشتبه في تورطهم في محاولة اختطاف السفينة إلى الدولة لتتم محاكمتهم. وتم إطلاق سراح البحارة الذين تحملوا الضغوط النفسية الكبيرة التي تعرضوا لها لأيام متواصلة أثناء وقوعهم في قبضة عصابة القرصنة.

وقد أثبت هذا الحدث للعالم التزام الإمارات العربية المتحدة بإنهاء ثقافة الإفلات من العقاب التي ميّزت عمليات عصابات القرصنة في تهديدها للممرات البحرية في منطقتنا. وهي الأنشطة التي تهدد مكانة دولة الإمارات في المنطقة كمركز للتجارة والأعمال. وسيخضع المشتبه بتورطهم في عملية الاختطاف للمحاكمة. الأمر الذي يجعل من الدولة واحدة من الدول القلائل في العالم التي تبذل قصارى جهدها في سبيل ملاحقة القراصنة. ولهذا، فإننا نشجع الدول كافة على تبني مسؤولياتها القضائية في أعقاب عملياتها العسكرية.

وتعكس العملية العسكرية الناجحة. التي نفذتها دولة الإمارات. حجم الاستثمارات التي قدمتها الدولة في مجال عمليات مكافحة القرصنة. حيث قدرت المنظمة الدولية للملاحة البحرية التكاليف السنوية للقرصنة 12 مليار دولار أمريكي. من ضمنها 2 مليار دولار أمريكي كنفقات الدول المساهمة في الاستجابة العسكرية الدولية على القرصنة. ويعتبر تحرير سفينة "أريلة-1". إلى جانب العمليات الدولية الناجحة الأخرى في مكافحة القرصنة. بمثابة عائد لمثل هذا الاستثمار والذي تعم فائدته بالتالي على كافة المعنيين.

تشير تجربة تحرير السفينة "أريلة-1"إلى توجه مقلق: فقد تصاعدت أعمال القرصنة خلال الأشهر الثلاثة الأولى من عام 2011. وعلى الرغم من الاستجابة الدولية العالية. إلا ان عدد الهجمات التي شنها القراصنة خلال العام الجاري قد ازدادت. ولا يقتصر نطاق هذه الهجمات على المناطق المقابلة للسواحل الصومالية فحسب. بل إنها وفي حقيقة الأمر امتدت وللمرة الأولى منذ عامين إلى منطقة جنوب شرق آسيا. كما أثار تزايد عدد الهجمات على السواحل في غرب إفريقيا قلق المراقبين أيضاً في الوقت ذاته.

كما أعرب الكثير من المراقبين عن قلقهم من أن القرصنة قد بدأت تصبح "الصناعة الإجرامية" للقرن الـ21. ونظراً لكون القرصنة هي مسألة ربحية فقد أخذت عصابات القراصنة تقوم بتطوير وتحديث نفسها. حيث أصبحت تستفيد اليوم من التقنيات المعقدة. وهي قادرة على تكييف وملائمة إجراءاتها وأنماطها التشغيلية والتكتيكية بوتيرة سريعة تفوق قدرة القوات البحرية وقوات خفر السواحل على الاستجابة لها. وببساطة يتوقع القراصنة بأن يكون عام 2011 الأكثر ربحاً بالنسبة إليهم.

لقد رافق تزايد الهجمات التي يشنها القراصنة ارتفاعاً مثيراً للقلق في مستويات العنف. فقد أعرب العالم أجمع عن سخطه وغضبه الشديدين في نهاية شهر فبراير لمقتل أربعة سياح أمريكيين تم اختطاف مركبهم من قبل القراصنة قبالة سواحل عُمان. وعادة ما ترافق أعمال العنف هذه زيادة في معاناة أفراد أطقم البحارة والمسافرين الذين يتم احتجازهم عند اختطاف السفن. ويقبع في الأسر حالياً نحو 640 شخصاً كرهائن في الصومال من بينهم أطفال. كما أمضى بعض هؤلاء زهاء عامين في الأسر.

ويبقى سكان الصومال رغم ذلك الأكثر تأثراً ومعاناةً من القرصنة. فحالة انعدام الأمن التي يغذيها الاقتصاد الإجرامي للقراصنة المتمركزين في الصومال تهدد تخصيص المساعدات من قبل برنامج الأغذية العالمي. كما حَرم الصوماليين من الاستثمارات الموجودة للوظائف طويلة المدى. والتي من شأنها أن تؤدي إلى استقرار التنمية لكافة فئات المجتمع. كما أن هناك فئات أخرى عرضة للخطر بسبب القرصنة. وفي حال بقي تهديد القرصنة دون معالجة فقد تنساق دول أخرى إلى اقتصاديات القرصنة بنفس الطريقة تماماً.

كما يتوجب علينا عدم السماح للمناقشات المتعلقة بتكاليف مكافحة القرصنة أن تؤدي إلى توقف البحث عن حلول مستدامة للقرصنة. كما يتوجب علينا التوصل إلى هذا الحل بالنسبة لليابسة أيضاً في الصومال. الأمر الذي قد يؤدي إلى حصول الفئات الشابة في الصومال على مستقبل مشرق وعلى سبل مستدامة للعيش كي لا ينساقوا إلى حياة الإجرام والعنف. ويعتبر هذا هو السبب وراء قيام دولة الإمارات العربية المتحدة بحَثِّ المجتمع الدولي على وضع إستراتيجية شاملة لدعم الحكومة في الصومال فيما يتعلق بوضع خارطة طريق سياسية وتنموية واضحة وقادرة على حفظ السلام وضمان الأمن والاستقرار لكافة السكان في الصومال. على الرغم من أن العمليات البحرية تشكل جانبا هاما من جوانب مكافحة القرصنة. إلا أن مساعدة السلطات في الصومال لاعادة سيادة القانون لا تقل أهمية عن بسط الأمن في البحر.

وعلى الرغم من ذلك فإن الموارد المتاحة لمشاريع تنموية من هذا القبيل محدودة جداً. وفي حقيقة الأمر فإن الصندوق الائتماني الذي أنشأته مجموعة الاتصال الدولية الخاصة بمكافحة القرصنة -والذي تذهب 70 في المائة من أرصدته إلى مشاريع في الصومال- لن يكون قابلاً للاستمرار مالياً بعد الآن ما لم يتلقى تمويلات إضافية عاجلة.

ويعتبر هذا الأمر السبب وراء موافقة الإمارات العربية المتحدة. وبناء على طلب الأمين العام للأم المتحدة بان كي مون. على الرئاسة المشتركة مع الأم المتحدة لاجتماع المانحين الدوليين خلال المؤتمر رفيع المستوى حول مكافحة القرصنة والذي تستضيفه دولة الإمارات هذا الأسبوع في دبي. وسيقدم هذا التبرع فرصة تاريخية لكافة المستفيدين من دعم الجهود الدولية الجارية حالياً لمكافحة القرصنة. كما سيضمن بألا تؤثر التكاليف التي نتكبدها الآن على التزامنا طويل المدى بالتوصل إلى علاج للمشكلة. وأشارت دولة الإمارات بأنها سوف تقدم مساهمة مستدامة إلى الصندوق الائتماني. وستشجع شركائه الدوليين وقادة القطاعات ذات الصلة على فعل الشيء ذاته.

ويتوجب على المجتمع الدولي في الوقت الذي يتم فيه صياغة جداول الأعمال. أن يبقى يقظاً للتهديد المتزايد الذي تشكله القرصنة البحرية. ومن المهم جداً أن نمضي قدماً في هذه العملية. وعليه فإن دولة الإمارات العربية المتحدة تتطلع خلال الشهر الجاري إلى استضافة كافة شركائها الدوليين من حكومات وقطاعات أخرى في الحرب ضد القرصنة البحرية.

سمو الشيخ عبد الله بن زايد آل نهيان
وزير الخارجية، دولة الإمارات العربية المتحدة

Preface

This month our armed forces, in coordination with the US Fifth Fleet, successfully stormed and freed the *MV Arrilah-I*, a UAE-flagged ship seized by pirates east of Oman in the Arabian Sea. The individuals suspected of hijacking the ship were returned to the UAE to face trial. The ship's crew - seafarers who had endured the psychological pressure of days under capture - were rescued.

This historic action demonstrated to the world the UAE's commitment to ending the culture of impunity enjoyed by the pirate gangs that threaten our region's sealanes and indeed its livelihood as a centre of commerce and trade. The suspects captured in the attack on the *MV Arrilah-I* will now stand trial in the UAE's courts, making the UAE one of only a handful of countries to actively prosecute pirates. We encourage other countries to follow-up effective military action with judicial responsibilities.

The UAE's successful military operation reflects the extensive investment that the UAE has already made into counter-piracy operations. The International Maritime Organization estimates annual costs of piracy of up to US$ 12 billion, including an estimated US $2bn in costs for states contributing forces to the international military response. The freeing of the *MV Arrilah-I*, and other successful international operations, is a dividend of that investment.

But the experience of the *MV Arrilah-I* also represents a worrying trend: In the first three months of 2011, the threat from maritime piracy has both escalated and intensified. Despite a heightened international response, there has been a rise in the number of attacks this year – and not just off the coast of Somalia. In fact, the number of attacks grew for the first time in two years in South East Asia. While the increase in attacks on the coast of West Africa has alarmed observers.

Many fear that piracy is becoming the criminal "growth industry" of the 21st century. As maritime piracy has become more profitable, so pirate gangs are upgrading and modernizing their tactics. Today's pirates make use of sophisticated technology, and are able to adapt their operational and tactical patterns and procedures faster than many navies and coast guards can respond. In 2011 pirates are expecting to enjoy their busiest and most profitable year on record.

This rise in attacks has been coupled with a troubling increase in violence. Earlier this year, the world was outraged by the murder of four American tourists whose boat was seized by pirates off the coast of Oman. Such heinous acts are accompanied by an intensification in the suffering of captured crews and passengers. More than 640 hostages are currently being held captive in Somalia at land and sea – some of them children. Some of these victims have been held as long as two years.

However, the greatest victims of maritime piracy remain the people of Somalia. The insecurity fuelled by the criminal economy of Somalia-based pirates threatens the provision of aid by the World Food Programme. It also deprives the Somali people of long-term job-creating investments that can lead to stabilising development for the whole society. Others are at risk as well. If the piracy threat continues unchallenged, other countries could slip toward piracy economies in much the same way.

We must not let discussions regarding the costs of tackling maritime piracy hijack the search for a longer-term, sustainable solution to piracy. And this solution is one that must be reached on land for Somalia. It will require ensuring that young people in Somalia have bright futures and livelihoods, so that they are not led towards lives of crime or violence. This is why the UAE has urged the international community to build a comprehensive strategy to support the government of Somalia in developing a clear political and development road map capable of restoring peace, security and stability for all the people of Somalia. Although naval operations are an important aspect of countering piracy, helping the authorities in Somalia to reestablish rule of law is as important as enforcing security at sea.

However, resources available for such development projects have been severely limited. In fact, the Trust Fund of the international Counter-Piracy Contact Group – seventy per cent of which is channeled to projects in Somalia - will no longer be financially viable if it does not receive urgent additional funding.

That is why the UAE has agreed, at the request of United Nations Secretary General Ban Ki Moon, to co-chair with the UN an international donors meeting on the margins of the high-level counter-piracy conference that the UAE will host this week in Dubai. This donor session will represent a historic opportunity for all stakeholders to support ongoing international counter piracy efforts, and ensure that the costs we are all incurring from the response do not affect our longer-term commitment to the cure. The UAE has already indicated that it will make a substantial contribution to the Trust Fund, and encourages its international partners and concerned industry leaders to do the same.

At a time when political agendas are filled with a myriad of equally important issues, the international community must nevertheless remain vigilant against the growing threat from maritime piracy. It is crucial that we now step up the pace. To this end, the UAE looks forward to hosting all its international partners this month, from governments and industry, in this high-level collaborative effort that will advance the global struggle against maritime piracy.

His Highness Sheikh Abdullah bin Zayed al Nahyan
Minister of Foreign Affairs, United Arab Emirates

Executive Summary

Once thought to be the scourge of a bygone age, maritime piracy has re-emerged in recent years as a serious threat to both crews and property on the high seas. Globally, attacks have risen from 239 in 2006 to 445 in 2010, with 1181 seafarers taken hostage last year alone. The total annual economic cost is estimated at $7-12 billion. Despite growing awareness of the threat, and a variety of national, regional and international initiatives, the tide of piracy continues to rise. It is in this context that the UAE Ministry of Foreign Affairs and DP World convened the conference entitled "Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy," held in Dubai on April 18-19, 2011. The gathering brought leaders from government, the shipping industry and non-governmental organisations together with renowned experts in the field of counter-piracy to discuss ways in which the international response to the global challenge of maritime piracy might be supported and enhanced, and to identify specific, tangible opportunities for collaborative action.

In order to stimulate innovative thinking on the subject, the conference organisers engaged the Dubai School of Government to commission a series of short briefing papers reflecting the cutting edge of academic and expert thought on piracy and related issues. These papers correspond to the four conference content categories: General Background and Regional Overviews; Addressing Root Causes; Opportunities for Information Sharing and Civil-Military Cooperation; and, Relevant Issues in International Law. The selected papers cover a wide range of topics and broach a number of key themes, ranging from the hidden economy of piracy to the plight of captive seafarers. Collectively, however, the papers share a common perspective: In spite of substantial investments in a number of areas, the current international response falls short of what is required to end this phenomenon. Furthermore, an effective and enduring solution to the global challenge of maritime piracy must entail a long-term, comprehensive effort, both onshore and offshore, which involves all relevant public and private sector stakeholders.

General Background and Regional Overviews

This section focuses on the regional theatres of operation in which most incidents of maritime piracy occur, including Somalia-based piracy in the Gulf of Aden and the northwest

Indian Ocean, as well as piracy in the Strait of Malacca and Southeast Asia, and in the Gulf of Guinea off the western coast of Africa. Authors in this section address ongoing trends in global piracy, as well as how and where these trends could evolve in the future. Independent of where it occurs, the authors agree that the root causes of the phenomenon must be addressed onshore.

Roger Middleton emphasizes that while "the emergence of Somalia as the dominant global piracy hotspot is a relatively recent occurrence," the range and capabilities of Somali pirates have grown steadily, and they now hunt vessels "over 1000 nautical miles from the coast of Somalia." Rashid Abdi points out that despite this trend, "The concrete drivers of the crisis inside Somalia hardly feature in the debate," and that support for self-governing regional polities may hold the best hope for Somali piracy. Turning to Southeast Asia, Rommel Banlaoi warns that a lack of capacity and coordination among littoral states of that region, combined with increased shipping traffic and a favourable geography, are incentivising underdeveloped fishing communities to engage in piracy. Looking at West Africa and the Gulf of Guinea, J. Peter Pham contends that the "political" nature of the Niger Delta attacks is overemphasised, while criminal motives receive less attention than they should. In analyzing future prospects for piracy, which Martin Murphy calls "worryingly good," Murphy emphasises that "the belief that it [piracy] can be suppressed solely at sea is largely illusory."

This section puts forward several trends, one of which is that pirate capabilities at sea are likely to continue to improve. Improved tactics, the use of "motherships," powerful weapons and access to advanced technologies for tracking and monitoring potential targets have improved pirate capabilities, and this trend is likely to continue. In areas where deep-sea attacks are rare at present, such as off the coast of West Africa, the expansion of petroleum and natural gas fields, coupled with local political instability and "lessons learned" from Somali pirates, could shift coastal attacks to further out at sea.

Authors in this section are not optimistic regarding future trends in maritime piracy. The potential of more failed states along the coastline of West Africa, the increasingly lucrative ransoms gained by Somali pirates, the resilience and resurgence of piracy in Southeast Asia, and the international application of lessons learned by Somali pirates all point to the likely growth of deep-water piracy, unless concerted efforts are made to address the problem. While seaborne counter-piracy measures are necessary, they are not sufficient. Real and lasting solutions can only be effected on land.

Addressing Root Causes

In this section, authors focus primarily on onshore efforts to combat piracy in the Horn of Africa region. Rudolph Atallah gives a robust overview of the "piracy economy," and calls for the international community to "put a premium on identifying the key players that finance piracy." Martin Murphy and Joseph Saba argue for a multi-faceted onshore development approach that specifically targets Puntland, which they label as "piracy's epicentre." Similarly, Ethan Chorin, Dorothy Muroki and Robert Ritzenthaler make a compelling case for industry involvement in local development, and propose an initiative that builds capacity in "fragile" regions by focusing on health infrastructure, job creation, technical assistance and security. Ambassador Lange Schermerhorn emphasizes the need for a development approach that engages and empowers the Somali diaspora and works at the grassroots level in Somalia itself. Finally, Eric Frecon

contends that while piracy has declined in Southeast Asia, its root causes — the most pressing of which is unemployment among young males in the Indonesian islands off the Malacca Strait — still need to be addressed, if we are to avoid a return to the past.

There is consensus among the authors that without a comprehensive, sustained, and committed approach to onshore development, piracy rates are likely to grow. However, they suggest a variety of approaches and elements that could be potentially be adopted. While Schermerhorn emphasizes village-level micro issues and engagement of the Somali diaspora, Murphy and Saba raise the need for macro development to improve economic activity, particularly in expanding port infrastructure in Puntland. In addition to development efforts, other initiatives to disrupt the ecosystem that supports piracy are also needed — e.g., investigating links of financial institutions to the piracy economy. The authors in this section stress that while there are some examples that deserve attention, not enough is being done to address the onshore root causes that have driven the growth of maritime piracy in recent years. While a maritime security response will remain necessary for the foreseeable future, real and sustainable solutions will require an onshore presence, along with close coordination between international, national and local actors.

Opportunities for Information Sharing and Civil-Military Cooperation

Authors in this section examine a number of areas to improve maritime security and counter-piracy efforts. Four papers look at the nature of security and military responses. General (Ret.) Khaled Abdullah Al Bu-Ainnain argues that the failure to find an indigenous Arab solution to the Somali pirate epidemic will pose greater problems later for the region. Carolin Liss maintains that while the increased use of Private Military Security Companies (PMSCs) may be necessary, improved regulation and oversight are required. Claude G. Berube argues that an anti-piracy maritime "watchtower network" run largely by maritime security companies could be deployed effectively along key stretches of the Somali coastline. Meanwhile, Giles Noakes advocates from the perspective of industry, criticising a lack of governmental commitment to addressing piracy and proposing a well-regulated Convoy Escort Programme (CEP) instituted by the private sector to protect ships.

In looking specifically at what can be done to improve information sharing, Philip Holihead asserts that seafarers and navies need to share data more effectively to build a solid foundation for a regional maritime awareness program. Capt. Pottengal Mukundan calls for a new, robust information-sharing model that unifies data in a single centre, thereby limiting duplication and simplifying the process for the merchant maritime community. Finally, two papers appeal for increased attention to the situation of seafarers threatened by piracy. David Cockroft calls for greater seafarer rights, and for coordination among maritime industry, unions and welfare organisations toward programs that safeguard the interests of seafarers and their families against the peril of piracy. Jane Fiona Cumming and Adrian Henriques promote a "Multi-Stakeholder Initiative" to guarantee ethical treatment of seafarers by the maritime industry throughout all levels of the supply chain process.

The papers in this section bring to light the diverse actors, initiatives, and components involved in building an effective framework for civil-military cooperation and information sharing. In some areas, such as in vessel tracking and incident reporting, there are competing and

overlapping structures at present; this leads to duplication, confusion on the part of seafarers and, at times, contradictions. The multi-faceted security response has led to the emergence of entire sectors — such as PMSCs — that have been left largely unregulated, with predictable consequences. Moreover, the focus on immediate responses has led to the neglect of important issues such as seafarers' rights, or the building of a regional security response.

While the authors collectively highlight a series of gaps and challenges in the civil-military response, they do suggest a number of innovative and yet practical ideas, as mentioned above. However, the common theme is that the status quo is not sufficient and more needs to be done to turn the tide.

Relevant Issues in International Law

The final section focuses on the international legal framework for combating maritime piracy, as well as on the practical problems countries face in arresting, trying and incarcerating convicted pirates. Douglas Guilfoyle highlights problems the international community faces in prosecuting pirates, attributing these largely to a lack of "political will." Eugene Kontorovich proposes introducing international rules to criminalise possession of specific types of equipment used for piracy, in order to help ease the successful capture and prosecution of pirates. James Kraska emphasises that the current international legal framework is sufficient, but that the domestic judicial framework and capacity of countries needs to be improved. The final two authors examine the domestic challenges faced by states in the Horn of Africa region. Alan Cole describes the challenges of developing court systems that can effectively prosecute pirates, while Glenn Ross illustrates the unique requirements for the over 700 convicted Somali pirates (estimated) who are currently held in custody around the world.

In general, the authors agree that the international legal framework is sufficient to allow for prosecution of pirates. There are proposals to introduce new laws, such as the "equipment articles" proposed by Kontorovich, or to improve awareness of existing laws and apply them more effectively at the national level. However, without corresponding capacity and political will at the domestic level, the current situation will likely continue. Additionally, as Guilfoyle points out, creating a new international structure such as a "special tribunal" for piracy prosecution is unnecessary, as well as "expensive and legally complex."

The authors agree that the international legal framework governing piracy suffers not from a lack of jurisdiction, but rather from inadequate mechanisms of implementation across countries. The main obstacle in some countries is a lack of adequate national anti-piracy laws; while existing legislation requires better implementation in some countries, in others a solid legal foundation has yet to be constructed at the national level. The current situation also calls for better cooperation between the regional and international naval forces that intercept and arrest pirates on the high seas, and the regional states that prosecute them. Between the existing legal framework, ongoing regional initiatives (such as those by the UN Office of Drugs and Crime in Kenya), and new proposals, there is a strong foundation for strengthening the role of judicial systems in combating maritime piracy.

Briefing Papers

1

General Background and Regional Overviews

Trends in Piracy: A Global Problem with Somalia at the Core

Roger Middleton

As a multi-million dollar criminal enterprise that affects thousands of sailors each year, piracy is of vital concern to the international maritime community. While there are pirates active in a number of areas throughout the world, it is nonetheless the situation arising from Somalia that dominates global statistics and media coverage. Stemming from the lack of an effective government in Somalia, this problem has become one of the most profitable "enterprises" in the region. This essay briefly outlines some of the major trends in piracy, particularly off the coast of Somalia, and gives some thoughts as to the causes behind changing patterns.

The emergence of Somalia as the dominant global piracy hotspot is a relatively recent occurrence. Significant international attention had previously been focused on the Malacca Strait between Singapore, Malaysia and Indonesia, and on the South China Sea. Likewise, the potent mix of violence and contested politics in the Gulf of Guinea had made piracy and armed robbery at sea off the western coast of Africa particularly concerning. However, since the mid-2000s Somalia has emerged as the leading source of piracy attacks. While piracy from Somalia has grown dramatically, there has been a decline in attacks in the Malacca Strait and the South China Sea. Piracy in Asia and West Africa remains a serious concern, but in terms of raw numbers — i.e., hijacks, money involved and sailors affected — piracy from Somalia is by far the leading concern.

Many have noted the basic factors that have made Somalia such a prominent and, from the pirates' point of view, successful place of piratical activity. A long coastline alongside some of the busiest shipping lanes in the world provides plenty of targets, and offers places to wait with captured vessels during ransom negotiations. A population with few opportunities provides a steady supply of young men ready to take part in this risky activity: In a country where per capita GDP is estimated at around $600 per year, the $10,000 available to even the most junior pirates from a successful attack and ransom is hugely attractive, and far outweighs the risks of capture or drowning. Most importantly, the lack of a government able — or, in some places willing — to tackle the problem means pirates can operate safely and without fear of interruption. One can view Puntland, the source of most pirate attacks from Somalia, as a place with a government too weak to challenge the pirates, but just strong enough to keep out the endemic

violence and competing armed groups that fight over territory further south. These factors, combined with a willingness to adapt tactics as the situation has developed, have allowed Somali pirates to become extremely successful.

It is important to distinguish between the number of successful hijackings and that of total attacks, which includes both successful and failed hijackings. Looking specifically at the number of total attacks stemming from pirates in Somalia[1], the rise is striking — from a 2007 figure of 50, to 111 in 2008, 204 in 2009 and 219 in 2010. With 83 attacks through the middle of March in 2011, it seems that this trend continues to be an upward one. A closer look reveals that the rise in successful hijackings is less extreme, however, climbing from 42 in 2008, to 47 in 2009, 49 in 2010 and 14 through the same period in 2011.[2]

Increased numbers of reported attacks worldwide — both successful and attempted — have translated into rising numbers of seafarers being held hostage — while 188 were taken hostage in 2006, the total climbed to 1,050 in 2009 and to 1,181 in 2010. The increase in overall attacks is attributable to a number of factors, including an increase in pirate numbers (although this is likely to be modest) and an improvement in their tactics: Pirates with faster engines, more experience and greater ability to stay at sea for longer periods are more likely to attack multiple ships, even when the chance of success is reduced. Couple this with the vertiginous increase in the ransom paid for the release of ships, and the motivation is clear.

Figure 1: Pirate Attacks from Somalia and Ransom Payments (2006-2010)
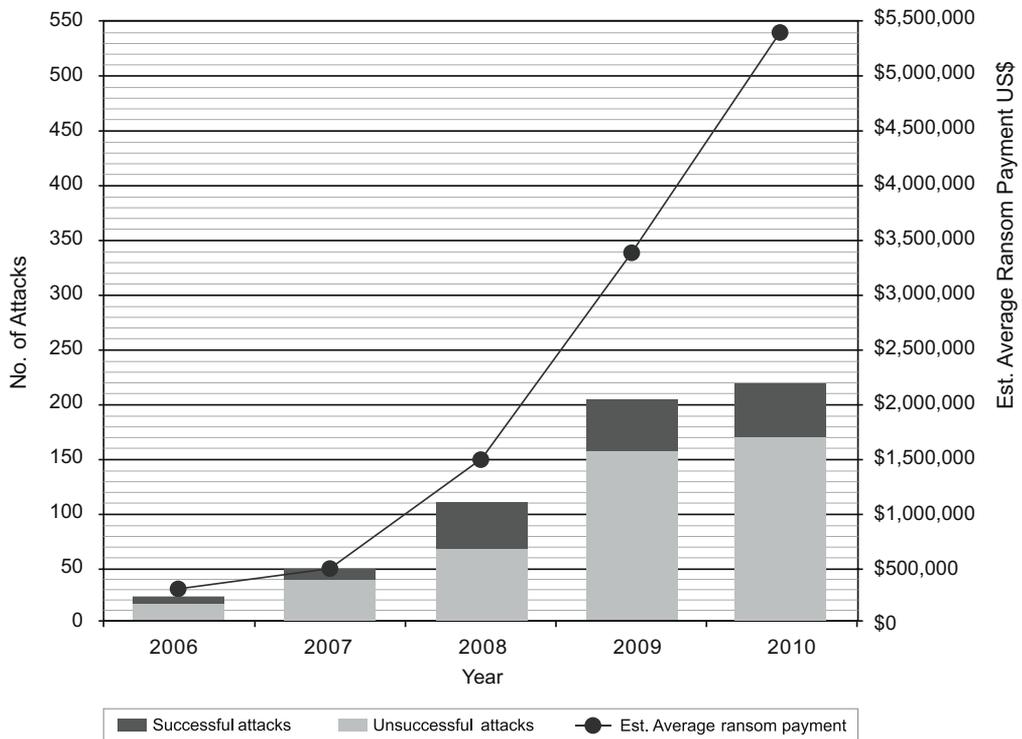
Source: International Maritime Bureau

Figure 2: Successful and Attempted Pirate Attacks off the Coast of Somalia (January 2007 to June 2010)
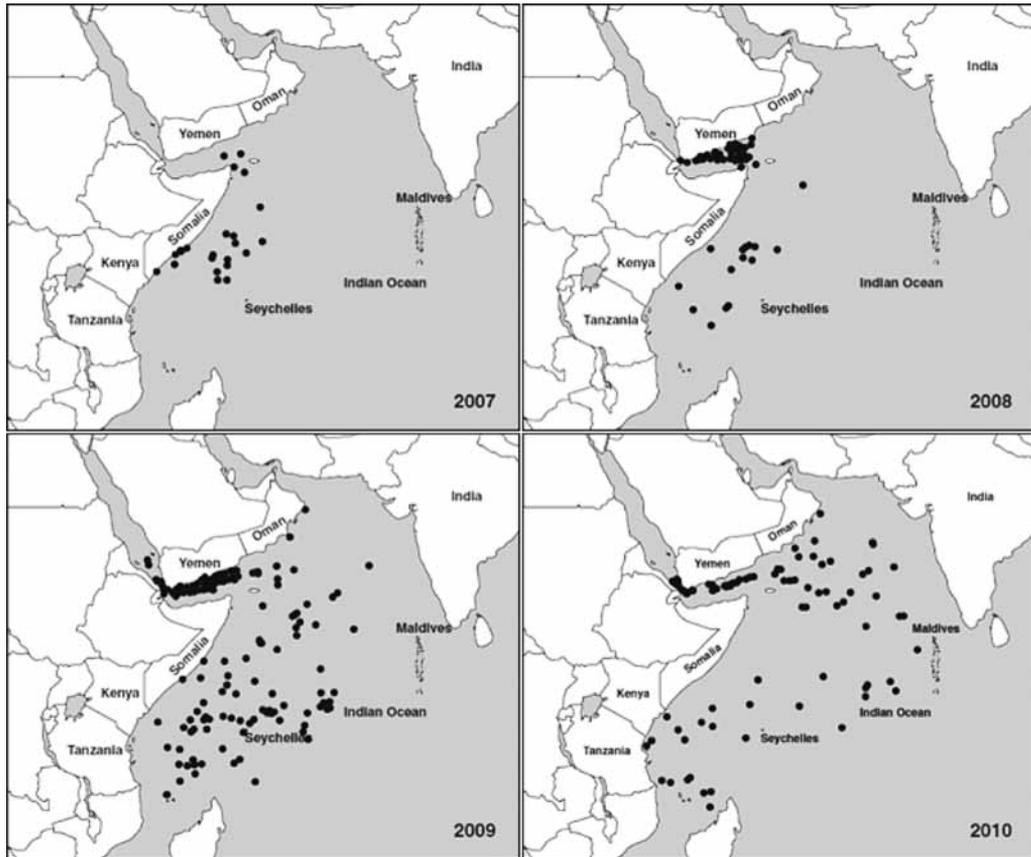
Source: GAO analysis of International Maritime Bureau data

Indeed, the payment of ransom is at the centre of what has become an incredibly profitable business model for pirates. In the absence of other means of securing the safe release of captured sailors, shipping companies have little option but to pay ransoms. However, there is a very clear link between increasing ransom payments and increasing incidences of piracy from Somalia. In 2011, average ransom payments so far are over US$5 million — a huge increase over previous years. In 2008, the average ransom was in the region of US$1-2 million, while in 2006 it was in the hundreds of thousands of dollars. Pirates have been able to increase ransoms year after year as they have honed their negotiating tactics. Recently, they have also shown both a willingness to hold hostages for longer periods, and to use the harsh treatment of captured sailors (including fake executions and beatings) to apply pressure on owners. The result is that piracy is now likely to be the second largest generator of money in Somalia, bringing in over US$200 million annually. Only remittances from Somalia's large and dispersed diaspora bring in more (around US$1 billion per year).

Another alarming development in Somali piracy has been the spread of the problem from the Horn of Africa across the Indian Ocean. Previously, piracy in this region was mainly concentrated within about 50 nautical miles of the coast of Somalia. In 2008, however, pirates began shifting the main focus of their attacks from ships heading towards Somali ports in the south of the country toward ships transiting the Gulf of Aden off the north coast. This proved to be a sensible choice, providing a busy source of shipping in a constrained area. However, the increased activities of international navies and naval task forces, along with the establishment of the Internationally Recommended Transit Corridor (IRTC) through the Gulf of Aden, have made this area much more difficult for pirates to operate within. Responding to the greater level of security off the north coast, pirates have shifted their activities back to the Indian Ocean and greatly expanded their range, now regularly operating over 1000 nautical miles from the coast of Somalia. Now places as far away as the Seychelles and areas close to the coast of India are vulnerable to Somali pirates, who have been able to expand their range through the increased use of "motherships" stocked with fuel and water. Initially, these motherships were fishing boats or dhows, but recently pirates have been using hijacked merchant vessels to serve as mobile bases for their attacks.

In recent years, the problem of piracy has posed an increasing threat to the international maritime community. This has largely been driven by the expanding range and improved capabilities of pirates operating from Somalia. Pirates have been able to carry out this expansion despite the resources that international navies have spent on the problem and the increasing self-protection measures taken by commercial shipping. Somali pirates are highly adaptive and run a low-tech operation, making them hard to stop on the ocean. This brief overview of some of the main trends should serve to reinforce the understanding that this is not a problem that can be solved on the ocean, although it can be alleviated there. The solution ultimately lies on land, with effective and legitimate local government(s) both willing to take action against pirates and able to provide an environment that offers attractive alternative sources of employment to young men lured to the riches available from piracy. Although this problem affects the rest of the world, a workable long-term solution must be Somali-driven. The history of foreign meddling in Somalia's internal politics is littered with disasters.

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Notes

1. The number of total attempted attacks from pirates globally is as follows – 263 in 2007, 293 in 2008, 410 in 2009 and 445 in 2010. The vast majority of successful attacks (i.e. hijackings) stem from Somalia. For example in 2010, 49 of 53 hijackings globally can be attributed to Somalia-based pirates.

2. Statistics on piracy attacks are taken from the International Maritime Bureau, and are correct as of March 2011.

Maritime Piracy in Southeast Asia: Current Situation, Countermeasures, Achievements and Recurring Challenges

Rommel C. Banlaoi

Introduction

Despite serious national and regional efforts to counter maritime piracy in Southeast Asia, the threat continues to pose a clear and present danger to the maritime security of the region. In the past, Southeast Asia earned international notoriety as the piracy hotspot of the world, in some years accounting for more than half of the annual number of recorded piracy incidents globally. This trend reached a peak in 2000, when 242 out of 469 attacks reported globally occurred in Southeast Asia, according to the International Maritime Bureau (IMB).

By 2009, however, a remarkable change had occurred, with the IMB reporting that only 45 out of 416 worldwide piracy incidents had originated from Southeast Asia. It was during this period (2000-2009) that the global epicentre of world piracy attacks shifted from Southeast Asia to the Gulf of Aden. Sadly, though, the threat of piracy seems to have resurfaced once again in Southeast Asia, with a substantially higher number of incidents recorded in 2010. It is likely that because of the pirates' growing capabilities, the concentration of global shipping traffic in the area, the attractiveness of piracy as an alternative to pervasive poverty, and limitations of both capacity within and coordination among littoral states, piracy will remain one of the top maritime security threats in Southeast Asia for some time to come.

Current Situation

Next to the Gulf of Aden — particularly around Somalia —and the waters of West Africa near Nigeria, Southeast Asia remains one of the most pirate-infested areas of the world. Though Southeast Asia experienced a drop in piracy attacks between 2005 and 2009, the wider Asian region experienced a 60 percent rise in piracy in 2010, with a majority of attacks occurring in Southeast Asia. This upsurge has renewed maritime security anxieties, especially considering the region's longstanding image as a global maritime piracy hotspot. There is no doubt that Southeast Asia continues to be conducive to piracy attacks, due to a number of reasons.

First, the waters of Southeast Asia — particularly the Strait of Malacca, the South China Sea, the Sulo Sea and the Celebes Sea — are still one of the most favoured shipping routes for international navigation. More than 50,000 ships pass through these waters annually, and the

Malacca Strait in particular carries more than a quarter of the world's maritime trade a year.[1] These waters thus present an environment that is rich in potential targets for pirates and sea robbers.

Second, many communities around the littoral states of Southeast Asia continue to experience the kind of pervasive poverty that encourages people to resort to piracy as an alternative means of livelihood. This is especially the case in fishing communities, which have suffered from a continuous decline in catches due to overfishing, intense competition and illegal fishing practices. As fishing is the principal source of income in these communities, decreased catches have further exacerbated the inhabitants' already harsh economic conditions. Needless to say, this grim reality offers strong temptations for some people — who already possess the necessary maritime skills — to resort to piracy. In short, the continuing economic marginalisation of maritime peoples in Southeast Asia has created a labour pool very conducive for piracy.[2]

Third, the geography of Southeast Asian coastal waters presents major challenges for regional governments, as well as a hospitable environment for pirates to operate. Countries in the region have a combined coastline of 92,451 km, representing 15.8 percent of the world's total. Protecting this huge coastline is a very expensive proposition, and the limited naval capacities of littoral states gives further confidence for pirates to operate. In addition to vast coastlines and limited capacities among regional states, efforts to pool efforts and resources among these states have suffered in recent years. Though regional maritime cooperation is constantly promoted among Southeast Asian countries in their efforts to protect the region's coastlines, overlapping maritime boundaries and existing territorial disputes among the littoral states are slowing down regional cooperative efforts. The sluggish pace of cooperation among states contrasts distinctly with the swift and decisive operations of the pirates. Issues related to national sovereignty and jurisdiction also affect the pace of regional anti-piracy measures in Southeast Asia.

Finally, piracy is still perceived to be socially acceptable in many of the coastal communities of Southeast Asia, and has been described as "an acceptable part of the local culture, a normal but illegal means of making money."[3] It is difficult to eradicate what is seen as an integral aspect of local culture, and an essential part of the local economy of coastal communities in the littoral states of Southeast Asia.

Countermeasures and Achievements

To address the piracy problem, Southeast Asian countries and extra-regional powers have entered into various regional countermeasures. For example, Malaysia, Singapore and Indonesia formed the MALSINDO patrols to fight piracy in the Malacca Strait. Other regional efforts — such as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP), the annual meeting of the Heads of Asian Coast Guard Agencies (HACGA), and even the Cooperative Mechanism for Maritime Safety and Environment Protection in the Malacca and Singapore Straits — have all contributed to the substantial drop in piracy attacks in Southeast Asia from 2005 to 2009. It is largely due to these regional cooperation measures that the epicentre of global maritime piracy threats has shifted away from Southeast Asia in recent years, demonstrating their effectiveness in preventing and deterring piracy operations.

Recurring Challenges

While some have feared that pirates in Southeast Asia are increasingly imitating the techniques and methods of Somali pirates, anti-piracy experts in the region challenge this view. Compared with Somali pirates, Southeast Asian pirates are less violent, less organised, and ill equipped to mount greater operational range.[4] Moreover, Somali pirates operate from a failed state, while in Southeast Asia states are rapidly modernising and strengthening the rule of law, in line with their own domestic characteristics.

That being said, challenges in regional cooperation have made the eradication of piracy in Southeast Asia substantially more difficult. One major roadblock to increased cooperation involves the perception by many regional states of regional cooperation measures as opportunities to enhance their national sovereignty — or as a risk to reduced sovereignty at the hands of other states. To this effect, slowdowns in regional cooperation can be expected when the process is perceived by states as threatening their national sovereignty.

A related challenge concerns the maritime boundary disputes that continue to apply in Southeast Asia. Overlapping maritime boundary claims are a constant irritation in inter-state relations among Southeast Asian nations, and this problem hinders effective regional cooperation measures against maritime piracy.

Conclusion

Through various regional maritime security arrangements, piracy threats in Southeast Asia subsided during the period 2005-2009. In 2010, however, piracy experienced a resurgence in the region, largely because of the resilience of the pirates themselves and the persistence of underlying conditions that make piracy an integral part not only of the local culture, but also of the local economy.

It is likely that Southeast Asian piracy will continue to exact an increasing toll on the international shipping industry — increasing operational costs and insurance premiums — as well as on the security costs of littoral states, unless a number of steps are taken to enhance the anti-piracy campaign. Regional cooperation measures must be sustained and enhanced, while the capacity of individual nations to combat piracy must also be expanded and improved. Capacity-building efforts must address not only the naval forces and law enforcement agencies, but also the agencies of government that are tasked with addressing the underlying social and economic conditions that create a climate conducive to piracy.

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Notes

1. This view has already been argued much earlier in Rommel C. Banlaoi, "Maritime Security Outlook for Southeast Asia" in *The Best of Times, the Worst of Times: Maritime Security in the Asia Pacific,* ed. Joshua Ho and Catharine Zara Raymond (Singapore: Institute of Defence and Strategic Studies and World Scientific, 2005), 66.

2. Adam J. Young, *Contemporary Maritime Piracy in Southeast Asia: History, Causes and Remedies* (Singapore: Institute of Southeast Asian Studies, 2007), 64.

3. Stuart W. Smead, "A Thesis on Modern Day Piracy," accessed March 6, 2011, http://www.angelfire.com/ga3/tropicalguy/piracy-modernday.html.

4. Sam Bateman, "Piracy and Maritime Security in East Asia," *East Asia Forum*, February 10, 2011, accessed February 28, 2011, http://www.eastasiaforum.org/2011/02/10/piracy-and-maritime-security-in-east-asia-2/.

West African Piracy: Symptoms, Causes, and Responses

J. Peter Pham

With almost all of the attention and, hence, the bulk of the resources for combating piracy off the coasts of Africa focused on the challenges posed by Somali pirates, it is often forgotten that piracy in the Gulf of Guinea and nearby waters off West Africa can pose as significant a threat, if not a greater one, to both the states in the region and to the broader international community. As both the number of attacks and the level of violence increases, there is an urgent need for greater awareness of this danger and of the type of provisions that must be made in order to counter it.

Piracy is, of course, not new to West Africa. In one infamous episode, the Danish cargo ship *MV Lindinga Ivory* was brutally attacked just three nautical miles outside of the port of Lagos in 1979. During the assault, the master was killed and his body thrown overboard by the attackers, who also wounded all 14 crew members and looted the cargo. In fact, until fairly recently, there were more recorded cases of attacks by pirates in the waters off Nigeria than in those off Somalia. Even in 2010, the International Maritime Bureau recorded 39 incidents off the coast of West Africa, including 19 near Lagos. There, 13 vessels were boarded, four were fired upon, and there were two attempted attacks.[1]

Moreover, as the head of the International Association of Independent Tanker Owners (INTERTANKO) has cautioned, "The number of officially reported incidents may be doubled to give a more realistic picture of what is happening in this area." Writing two years ago to the Secretary-General of the United Nations' International Maritime Organization, Peter Swift stated that his industry was "very seriously concerned by the ongoing violent attacks in the Gulf of Guinea against innocent merchant ships by armed pirates operating out of a network of more than 3,000 creeks in Nigeria alone, and also by the apparent inability of the national and regional governments to protect shipping from these attacks" which, he noted, are "well planned and coordinated and frequently violent," and carried out by pirates who are "usually heavily armed."[2]

Some analysts have highlighted the "political" nature of the attacks, both at sea and in the Niger Delta between 2006 and 2009, by militants angry at what they perceive to be political marginalisation and the lack of economic opportunity. These attacks, including a rather

spectacular raid by the Movement for the Emancipation of the Niger Delta (MEND) on an offshore petroleum production site in the Bonga Field some 65 nautical miles off the coast of Nigeria, went on until late 2009, when the Nigerian federal government offered an amnesty. This amnesty was not altogether a surprising choice, given that the net effect of the attacks was to cut Nigeria's oil exports by somewhere between one-fourth and one-third of its capability. While "political" motives have received considerable attention, somewhat less attention has been paid to the criminal motives and organisations behind some of the assaults on international shipping.

While most analyses of these maritime predations have focused on the costs they impose on the global economy as a whole in terms of upward pressures on shipping costs — including longer routes taken, delays in ports, higher insurance rates, and costs which are passed on to consumers —, less attention has been paid to their effect on the very countries in the region whose weakness gave rise to the piracy in the first place. In fact, reports of Gulf of Guinea piracy that make it into outside media largely ignore the fact that the majority of attacks are carried out against local vessels and mariners, to say nothing of the overwhelming cost burden from these assaults being borne by the people of the sub-region. In Nigeria, for example, piracy and other types of outlaw behaviour have not only negatively impacted the oil industry; they have affected local fisheries and regional trade as well.

By most estimates, until recently fishing constituted Nigeria's second most significant non-hydrocarbon export industry, after cocoa. Yet piracy and other types of violence have devastated the sector. The country's Maritime Security Task Force on Acts of Illegality in Nigerian Waters (IAMSTAF) reported in December 2008 that Nigerian fishing boats suffered no fewer than 293 attacks between 2003 and 2008.[3] The assaults ranged from demands for "protection" money from fishermen, to the theft of catches, and even to the wholesale theft of fishing boats and killing of their crews. The situation has deteriorated so much that, at one point in 2010, a headline in *The Vanguard*, one of the leading newspapers in the Nigerian commercial capital of Lagos, screamed *"FISH SCARCITY LOOMS!"* as it reported that some 170 fishing trawlers were idled because their owners were afraid to put out to sea, threatening some 50,000 jobs. According to the paper's editors, Nigeria is losing some $600 million in export revenues annually from piracy threats to the fishing industry alone.[4] It goes without saying that in addition to losses in export earnings, the dramatic decrease in supply has driven up the cost of seafood, a major source of protein for coastal populations. In some areas, seafood costs have risen by as much as fivefold, thus worsening the misery of some of the most vulnerable portions of the population.

If piracy in West Africa may be said, however tangentially, to be the *result* of social, economic, and political marginalisation, maritime criminality has also proven to be the *cause* of additional hardship, since it threatens vital fisheries as well as regional trade. Meanwhile, the reduction of revenue from hydrocarbons and other primary exports deprives governments of potential resources for development.

Effective action to combat piracy in West Africa is hampered by a lack of information about the true extent of the problem. For example, when fishing boats are attacked at dockside or close to shore, such incidents do not meet the international legal definition of "piracy," and are thus not reported as such; mechanisms for recording and making available data on "robberies at sea," moreover, are less developed than those for piracy. Moreover, the ability

of West African states to counter piracy is also limited by an underdeveloped appreciation of the value of their territorial seas, to say nothing of insufficient maritime domain awareness, inadequate intelligence and early warning capabilities, and the inability to sustain patrol operations with sufficient reach over any meaningful period. Even a regional power like Nigeria has naval and coast guard assets that are so degraded that a majority of its vessels larger than open patrol boats are listed as having their "serviceability in doubt."[5] A report last year by the UN Office on Drugs and Crime (UNODC) concluded the following: "West African countries currently do not have the adequate legislative framework and enforcement capacities to address such a complex crime where legal obstacles are plenty and action requires important logistics and specialised know-how."[6]

Fortunately, both individual states and regional, sub-regional, and specialised organisations — including the African Union, the Economic Community of West African States (ECOWAS), and the Maritime Organization of West and Central Africa (MOWCA) — have demonstrated a growing understanding that maritime security, including the suppression of piracy and robberies at sea, is an imperative. The key will be developing the political will and finding the resources necessary to act upon that conviction. In this respect, international partners can assist, whether through training and capacity-building exercises for maritime security forces of regional states, such as those provided by the US Navy and Coast Guard through the Africa Partnership Station (APS) initiative, or through other multilateral and bilateral assistance partnerships.

With increased maritime commercial traffic in the West African region, and the development of petroleum and natural gas fields off the coasts of many regional countries, coupled with ongoing instability in some of the littoral states, reports of piracy are burgeoning. Many of these attacks are being carried out by criminal organisations that are capable of launching attacks far out at sea, even if they have hitherto largely confined their attacks to areas close to shore. These acts of piracy and robbery at sea not only cost the affected countries in terms of direct loss of revenues from diminished hydrocarbon exports and fisheries, but also indirectly through increased transportation and infrastructure costs, and by discouraging tourism and direct foreign investment. Not only must the extent of the damage be better understood but, given resource constraints, cooperative schemes and other partnerships must be developed to leverage both regional and international assets and capabilities to more effectively counter a growing challenge in an area of increasing geostrategic importance, both for its abundant natural resources and for the sea lanes which it straddles.

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Notes

1. ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships: Annual Report, 1 January-31 December 2010,* January 2011, 23, http://www.simsl.com/Downloads/Piracy/IMBPiracyReport2010.pdf.

2. Peter M. Swift, Managing Director, INTERTANKO, to Efthimios Mitropoulos, Secretary-General, International Maritime Organization, February 18, 2009, accessed March 15, 2011, http://www.intertanko.com/upload/17124/Piracy%20-%20Gulf%20of%20Guinea.pdf.

3. Gboyega Akinsanmi, "Nigeria: Nations Loses N25bn to Piracy, Sea Robberies," *allAfrica.com*, December 6, 2008, accessed March 15, 2011, http://allafrica.com/stories/200812060006.html.

4. Omoh Gabriel, Godfrey Bivbere, and Ifeanyi Udwadu, "Fish Scarcity Looms: Nigeria May Lose $600 Million Export Earnings," *The Vanguard*, June 2, 2008, accessed March 15, 2011, http://allafrica.com/stories/200806021083.html.

5. See John Raidt and Kristen E. Smith, *Advancing U.S., African, and Global Interests: Security and Stability in the West African Maritime Domain*, A Report of the Michael Ansari Africa Center and the On the Horizon Project (Washington, DC: Atlantic Council of the United States, November 30, 2010), 32.

6. United Nations Office on Drugs and Crime (UNODC), *Regional Programme for West Africa 2010-2014*, (New York: United Nations, 2010), 16
http://www.unodc.org/documents/commissions/WG-GOVandFiN/Regional_Programme_for_West_Africa.pdf.

Rethinking the Cure:
Towards a Land-Based Solution for Somali Piracy

Rashid Abdi

The problem of piracy in the Gulf of Aden and the Indian Ocean appears nowhere near resolution, at least not in the foreseeable short term. Somalia-based pirate gangs have honed their skills, extended their reach and operate at will, seemingly undeterred by the aggressive naval patrols mounted by a flotilla of warships that have been deployed in these waters. A various and growing array of counter-piracy and deterrence measures — from violent armed attacks on suspected pirate skiffs and motherships to arrests, trials and imprisonment of suspects in Kenya and other non-Somali jurisdictions — have proven less effective than hoped.

It is clear that the strategy so strenuously pushed by the Western naval alliance over the past two years is not meeting expectations. The reason for this ineffectiveness is obvious: The response has remained a predominantly military one, albeit increasingly tempered by legal, political and diplomatic efforts. Since 2009, there has been a discernible shift in international thinking about the problem. The official policy lexicon has changed and, rhetorically at least, everyone now subscribes to the idea of a "multi-pronged" strategy based on "land-based" interventions, consciously targeted at tackling the root causes instead of the symptoms.

Sadly, however, evidence on the ground suggests that not much has changed, and the heavy emphasis on military and security responses remains intact. Despite the rhetoric and the subtle variations in nuance and detail, the dominant tendency has been to militarise the problem. Contrary to claims, the counter-piracy strategy is dominated by a militarist mindset, impervious to mounting evidence that the military response is failing to effectively deal with a problem that is complex and inextricably tied to the prolonged crisis of Somalia.

Military might has demonstrably failed to deter piracy. Extensive and robust patrols, and aggressive pursuits of suspect vessels, have inadvertently displaced the problem. Pirate gangs have simply shifted to less tightly patrolled waters farther from the Somali coast. More troubling, military pressure is unintentionally improving the adaptability, versatility and resilience of the pirate gangs. With ransom payments now at an all-time high, they are using the financial windfall to upgrade and modernise — investing in faster skiffs, high-tech navigation and communications gear, better weapons, etc. In this seemingly uneven contest with some of the world's best and most advanced navies, a motley collection of Somali pirates is waging a low-

tech guerilla campaign on the high seas, their momentum and initiative undiminished, crucially aware time is on their side.

The pirates' greatest tactical advantage over the enemy is time. They know very well that the naval deployment is time-bound and at some point there will be a drawdown, whether because of an adverse shift in domestic public opinion or, as is most likely, budgetary constraints, not to mention the outbreak of another global crisis. Rather than challenge the navies, they can simply opt to outwait them — disbanding temporarily and retreating to their land bases to lie low. Indeed, credible evidence suggests some may have already taken this route, or are in the process of branching off into other, less lucrative, criminal rackets like people smuggling and kidnap-for-ransom. The prospect of such a tactical retreat is, of course, only plausible if military operations do not extend to the land — as some fear — and if the clan-based pirate support networks survive.

If a temporary, tactical retreat is a viable possibility, we should be skeptical of some of the positive statistics routinely churned out by military officials to prove that pirate attacks are on a downward trend, by implication demonstrating the efficacy of the naval operations. To put it differently, to what extent is such a reduction, if true, attributable to a lull induced by a tactical retreat rather than a decisive defeat? Whatever the case, suggestions of a tipping point in the struggle against piracy are premature, as long as military pressure is not consciously combined with and consistently augmented by more crucial, non-military, land-based interventions aimed at bringing about a sustainable long-term solution.

Since 2008, the UN has adopted a flurry of UN resolutions; meanwhile, a number of special task forces, agencies and envoys have been created as part of the fight against piracy. Yet, it is neither evident that overall global coordination has improved, nor that are we anywhere near a discernible strategy and action plan that all the concerned parties are prepared to support. In a way, the piracy problem has become abstracted, much like the problem of terrorism. It is being slowly de-contextualised and overly internationalised, to a point where the concrete drivers of the crisis inside Somalia hardly feature in the debate. This is not accidental. It is deliberate and a function of conflict fatigue, largely brought about by the dismal experiences of state building in Iraq and Afghanistan. To be precise, a jaded, conflict-weary Western policy establishment has little appetite for the heavy lifting needed to tackle the problem at its roots. Yet, the reality is that this what a comprehensive sustainable solution precisely entails.

The prospect of a neat solution achieved with ease and at minimal cost on the high seas is tantalizing, but simply unachievable: There are no shortcuts to dealing with the piracy problem emanating from Somalia. The global community must either embark on the messy, arduous and complicated work of fixing a failed state, or remain stuck in a rut, simply tinkering at the edges of a problem that now risks getting out of hand.

To be fair to the international community, many are sympathetic to the argument that ambitious and sustained efforts are needed to effectively enable Somalis themselves to tackle the problem at the source. There have been modest proposals to train and equip small coastguard units in Puntland, Somaliland and Mogadishu, besides other forms of technical assistance to rebuild and revamp local security infrastructures, the judiciary and prison facilities. Progress has been slow, however, because of numerous and well known challenges. Because of the disappointing history of foreign intervention and state building in Somalia, and the

perceived intractability and complexity of the conflict, many in the international community are understandably wary of becoming deeply involved.

But this pessimism is valid only up to a point. Beyond Mogadishu, where a weak Transitional Federal Government (TFG) is hemmed in by a powerful insurgency and — with the help of some 8,000 African troops — is desperately attempting to recreate a central state, the picture is not so bleak. Besides Somaliland and Puntland, which are relatively stable and have functional governments, a number of tiny self-governing clan-based polities have emerged. Despite their fragility and numerous political, economic and security problems, these polities — such as Galmudug, Ximan and Xeeb in central Somalia — are making tentative attempts to restore stability and overcome the legacy of war and anarchy. The disproportionate amount of international media attention focused on Mogadishu and the grim stories of violence and TFG dysfunction detracts from the positive developments and remarkable peacebuilding and state formation processes now under way in central and northern Somalia.[1]

Because the TFG has struggled to steer the process of devolution, impatient local communities in the periphery have, over the last four years, been busy rebuilding the rudiments of regional state institutions, improving inter-communal harmony, and experimenting with a quasi-democratic and consensual style of governance. In this, they are mimicking similar processes in Somaliland and Puntland. It is true, however, that some of these emerging self-governing regional polities are far from stable, and the gains they have made remain highly tenuous and reversible.

Nevertheless, there is little doubt that the "revolt against the centre," and attempts to create viable local administrations, are genuine, organic and underpinned by a remarkable degree of popular support — a political development that stands in stark contrast with the hopeless situation in Mogadishu, where a weak and discredited TFG appears out of sync with the wishes and aspirations of its people. While it may not appear immediately obvious, international support for these fragile entities and "recovery" pockets in central and northern Somalia is the best means to banish the piracy menace from Somalia.

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Note

1. International Crisis Group, Somalia: *The Transitional Government on Life Support,* Africa Report No. 170, February 21, 2011, http://www.crisisgroup.org/en/regions/africa/horn-of-africa/somalia/170-somalia-the-transitional-government-on-life-support.aspx.

Future Scenarios and Future Threats: What Happens if Piracy is not Controlled, and How Might Manifestations Change?

Martin N. Murphy

Introduction

Piracy is a crime of opportunity that is able to exploit gaps in an international political and economic system that is far from seamless. Four trends — state failure, changing economic geography, the absence of effective regional maritime security regimes, and technological proliferation — drive the spread of piracy. It is likely that unless these trends are addressed effectively, existing outbreaks will continue and spread to new areas. This paper will explain why.

Changing Dynamics of Piracy

Piracy is a crime of the land that is manifested at sea. The belief that it can be suppressed solely at sea is largely illusory and will remain so, as long as littoral havens remain unaddressed. Piracy exploits the political, legal, cultural and geographical seams in the world's international political and economic order, principally by working the line where the law of nation states meets international law. It benefits from confusion over the distinction between the criminal and the political, and creates space for itself when that distinction collapses. Action to suppress piracy, if it is to be successful, needs to be flexible enough to combine law enforcement and foreign relations, police methods and military action. Unfortunately, this coordination appears to be increasingly difficult to realise. Whereas once such action was within the reach of nations with the vital combination of interest, will and power, resolution is now devolved to multinational institutions and operations reduced, almost by definition, to "lowest common denominator" measures.

Piracy arises in response to the opportunity opened up by seven basic factors.[1] Not all of these may be present on every occasion, but in general, they can be summarised as follows:

- *Inadequate security:* On land as much as at sea, this is probably the single most salient reason for the rise of piracy.

- *Legal and jurisdictional openings:* The most obvious opening is the difference between territorial and international waters, but sea areas with disputed maritime boundaries, such as the South China Sea, can provide others.

- *Favourable geography:* Traditionally, this has entailed physical features such as narrow seas with concentrated shipping lanes close to areas where pirates can hide. However, patterns of economic geography can shift, turning physically favourable coasts without significant passing traffic into pirate hunting grounds when shipping patterns change.

- *Conflict and disorder:* Piracy broke out off the coasts of Lebanon and Somalia during and after the civil wars in those states, even though neither had suffered from piracy previously. Piracy in the Gulf of Aden might further increase if Yemen were to fragment.

- *Permissive political environment:* Piracy will flourish where national or regional political elites and their agents in the police or military choose to tolerate or support it.

- *Maritime tradition:* Economically and politically marginalised populations who are familiar with the sea, such as those in Indonesia's Riau Archipelago and East Kalimantan, can serve as pools of labour and expertise.

- *Reward disproportionate to risk:* Without the pull of lucrative payoffs, piracy would not happen.

Stretching back from today through time immemorial, pirates have been able to exploit these basic factors using three primary operational dynamics — mobility, their opponents' lack of political will, and access to sanctuary.

Mobility: Contemporary pirates in Southeast Asia have exploited mobility by moving from one jurisdiction to another to avoid arrest, while pirates off Somalia have shifted the locus of their operations from the Indian Ocean to the Gulf of Aden, and then back again, to elude naval patrols.

Absence of political will: Similarly, piracy has benefited from reluctance by states to suppress it. This weakness of political will usually stems from the fact that while pirates attack the ships of all nations, they have rarely inflicted sufficient damage on the shipping of any one particular nation for it to take action on behalf of others. The absence of a political or economic imperative to counter piracy continues to animate state behaviour today.

Sanctuary: States have always been understandably reluctant to interfere in the internal affairs of any other state, even if it harboured pirates, preferring to rely instead on the hope that internal security or political circumstances would change. Today, this reluctance extends to states that have failed, and which have little chance of enforcing the rule of law without external assistance. Land-based military operations are foresworn, but so are attempts to use the levers of political and economic influence to restrict pirate operations. Whenever pirate attacks have been launched from a state which can be pressured or incentivised to take action against them, as was the case with Indonesia, then piracy can be controlled if not suppressed completely. Whenever piracy has been launched from a failed state such as Somalia, or a weakened state such as Nigeria, pirates have enjoyed varying degrees of sanctuary, because such states are less amenable to either bargaining or state-system restraint. As the number of failed states or states with portions of poorly governed coastlines increases, providing rewarding targets are available, piracy could well rise.

These three "traditional" dynamics have now been supplemented by three of more recent origin — judicial constraints, lack of ship self-protection, and technological proliferation.

Judicial constraints: While the capacity of legal systems has always been an issue — reflect, for example, upon the role of judicial incapacity in the rise of piracy in the English colonies prior to the legal and administrative reforms starting in 1696 — there is now a marked reluctance among states to take action against pirates. While the body of international law on piracy may not be ideal, it is good enough. For the most part, the problem is rooted in domestic legislative shortcomings: anti-piracy laws that are absent, out of date, incomplete or poorly worded, complicated in some cases by court rules and human rights legislation that take no account of the tyranny of distance imposed by the sea. In some cases, the prospect of a few years in a Western jail can appear an attractive alternative to someone used to a harsher existence. Off Somalia, these factors have combined to drive a policy of "catch-and release," which invites contempt amongst its intended targets. This dynamic is exacerbated in every case where the sea and the land are controlled by different powers with different priorities.

Lack of ship self-protection: Ships and the sailors that man them are no longer used to protecting themselves. Changing that means reversing an ingrained trend that began in the 18th century. Even in the face of a clear and present danger off Somalia, the International Maritime Organization (IMO) recently estimated that fully 80 percent of ships took no precautions against pirate attack. This needs to change, but except in cases where ship owners find it economical to deploy armed guards, it is only effective as part of a comprehensive security policy which can deliver assistance quickly. Moreover, many of the most vulnerable ships, often owned by the poorest ship owners, are too small and too slow to take effective precautions.

One word of caution needs to be inserted at this point. If more ships are forced to take responsibility for their own defence, then the standards of that defence will become more variable, with a consequent rise in the number of injuries and accidents.

Technological proliferation: Pirates are benefiting from the steadily falling cost of maritime technology. Starting in Southeast Asia after World War II, pirate mobility began to improve dramatically with the wide availability of military surplus engines. This has continued with the development of ever more powerful and economical outboard motors. The wider availability of compact radars, GPS receivers and satellite phones has brought about a step change in piracy surveillance, navigation, and command-and-control capabilities. The cost of small arms is now so low that pirates will willingly throw AK-47s over the side when approached, knowing full well that a replacement can be bought for a few dollars when they return home.

This combination of basic factors, which couples well-established factors with more recent operational dynamics, suggests that while still not assured, the spread of piracy is more likely than most observers imagined even five years ago. It is instructive to note that off the coast of Somalia, the overall numbers of ships and seamen held captive have increased, while per ship ransoms have climbed as well—all at the same time that the numbers of naval vessels and aerial assets on station have grown, judicial capacity in regional states has improved, and the number of successful interceptions has increased. This suggests that the critical "seam" is the one dividing the land from the sea, and that piracy can only be suppressed successfully when both sides of the seam are controlled by a state willing and able to make effective piracy suppression a priority, or by two states that can work in accord.

Future Scenarios

If, as seems entirely possible, more states fail or lose effective control of portions of their coastlines, and if economic geography changes in ways that bring rewarding targets closer, then piracy may well occur in new areas. That possibility is enhanced if state failure or loss of control is brought about by, or results in, violent conflict. The continent most at risk would appear to be Africa, with areas along the west coast particularly vulnerable to a number of actors — politically and tribally motivated insurgents, smugglers, traffickers and pirates — coming together to create a complex milieu of disorder. Any growth in the number of ungoverned spaces would appear to be well suited to the expansion of the Somali model, with its emphasis on hostage taking rather than cargo theft. However, the persistence of piracy in Southeast Asia suggests that deeply rooted cultural traditions, uneven economic growth rates and poor maritime security continue to make piracy an attractive option for some social groups there too.

The Somali gangs have also engineered the return of deep-water piracy. They have done so because they need to go where the ships are. The ships have moved away from the Somali coast to the point that some hug the coastline of India because maritime security in the Arabian Sea is spread so thinly. So long as suppression remains focused on legal constraints exercised through naval assets, rather than on the elimination of land-based sanctuaries, and so long as it is safer for a pirate team to transit the vast Indian Ocean than it is for commerce to transit the same waters, then deep-water piracy is likely to continue. In fact, it may well become more sophisticated as profits rise, perhaps with pirates looking at historical examples for tactical guidance. At the beginning of World War II, for example, distant German U-boat operations were sustained by a small fleet of freighters that rendezvoused with the submarines to provide them with supplies and unload the crews of the ships they had sunk. On January 12, 2011, pirates attacked the *Leopard*, a general cargo vessel, 270 nautical miles northeast of Socotra Island in the Indian Ocean. Unable to sail their prize back to Somalia, they transferred the crew to their mothership and took them to Somalia. Is this type of multi-vessel tactical coordination an early indication of things to come?[2]

Despite a lack of credible evidence, the existence of a pirate-terrorist nexus has been asserted regularly. Admittedly, those who argue this gap can and will be bridged can point to other instances of cooperation between criminals and terrorists that provide some grounds for their belief. In most cases, however, terrorists have adopted criminal methods without direct recourse to assistance from criminals themselves. The Colombian FARC group uses the proceeds of crime to finance its operations. Likewise, Sri Lanka's Tamil Tigers and various Moro insurgent groups in the southern Philippines have engaged in piracy. On the other hand, criminals cooperated with Al-Qaida in Iraq; moreover, whereas "traditional" organised crime groups such as the Cosa Nostra and the Yakuza have not worked with terrorists, it appears that a new generation of criminals has emerged that is less wary of such links. So far at least, this subculture has not yet included maritime pirates.

Conclusions

The prospects for piracy are worryingly good. The spread of land-based disorder makes offshore disorder more likely. Cooperation between pirates and terrorists is possible, depending upon local circumstances, but remains unlikely and unnecessary from the pirates' perspective.

The inherent mobility of piracy suggests that solutions depend upon the development of *regional* maritime security regimes whose members recognise that suppression depends upon land-based action to reduce the economic incentives and raise the disincentives for piracy's growth. So long as the international community remains wedded to sea-based solutions and reluctant to intervene on land, piracy is likely to continue. Last, so long as the international piracy effort continues to stress defence, thereby conceding the initiative to the pirates, pirate successes — and perhaps spectacular ones — must be viewed as highly probable.

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Notes

1. Based on the typology in Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World* (New York and London: Columbia University Press, 2009), 28-45.

2. *ICC Commercial Crime Services*, "Latest Attack Changes Dynamic of Somali Piracy," January 14, 2011, http://www.icc-ccs.org/news/428-latest-attack-changes-dynamic-of-somali-piracy; Eoin O'Cinneide, "'Arms' Ship Feared Hijacked," *Tradewinds*, January 13, 2011, http://www.tradewinds.no/casualties/article573886.ece?service=printArticle.

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Addressing Root Causes

Pirate Financing: Understanding and Combating a Complex System

Rudolph Atallah

Introduction

The spate of recent pirate hijackings and murders off the East African coast should leave little doubt among policy makers and security officials within the international community that piracy must be tackled head-on. While armed escorts and the presence of allied naval forces in the region contribute a modicum of security to shipping and private transit, these measures can best be described as "too little" and, often, "too late."

The argument of some of the most knowledgeable specialists is that perhaps the most fundamental step towards staunching the development of pirate networks is to attack their financial system. Indeed, there may be no more effective method of disincentivisation available, as recent attacks suggest that the threat of military force is often insufficient. However, in order to attack the financial structure of piracy, it must be better understood, along with its place in Somali society.

This paper provides a brief overview of the system of Somali pirate finance and its social impact. It also offers several recommendations to tackle the problem. It is hoped that the material presented here provides a starting point for a more robust discourse on the issue of pirate finance, while simultaneously pinpointing areas requiring more focused research.

Background

Most of Somalia's modern-day pirates are fishermen who have traded nets for guns. They learned that ransom is more profitable than robbery, and rather than squandering their loot, they reinvest in equipment and training to perpetuate their lucrative trade.[1] Today, few ships are safe within several hundred miles of the Somali coast, as recent events have quite tragically demonstrated.

Since 2005, we have seen an exponential increase in ransom payments made to Somali pirates from ship owners who spare no expense to repossess their pirated vessels. Today, the average ransom payment is around US$4 million[2], a dramatic increase from the first US$50,000 payments made in 2005 by a fishing company to pirates from the Haradheere area. The resulting lucre has strongly impacted coastal villages in Puntland and Central Somalia, after their decade-and-a-half struggle for mere subsistence following the ousting of Siad Barre in 1991.

Unfortunately, Somali piracy is a booming business today. It has brought wealth to a country with no functioning government, a relatively vibrant economy to formerly destitute villages and, in some cases, considerable wealth to the financiers who commission it. However, its overall impact has been negative, not only for regional security and commerce, but also for Somali society. Understanding and combating piracy effectively requires achieving a firm grasp of this complex dynamic.

A Complex System: Piracy Finance and Profiteering

Piracy has developed into a complex and lucrative economy of its own; its second- and third-order impacts extend deep into Somali village structure and life. Piracy does not simply enrich individuals or pirate groups; it brings wealth to entire villages. Coastal villages make money by providing food to pirates and hostages who wait for negotiations to end favourably. Local negotiators make money by bringing the ship owners to pay the ransom money via a cash drop at sea or on land. Further, pirate financiers — in many cases, pirates themselves — invest in pirate crews who venture out to capture vessels on the high seas. The wives of these pirates receive compensation money before their husbands go out on a mission. Pirates are also provided with the necessary tools of the trade, such as satellite phones, global positioning systems (GPS) and weapons. Pirate financiers will spend as much as US$30,000 on a pirate group that "hunts" in the Indian Ocean, and upwards of US$10,000 on pirates operating in the Gulf of Aden. And to protect themselves and their operations, pirates pay local militias (guns for hire) as much as US$10,000 per month to protect them from sub-clan rivals or external threats.

Quite naturally, ransom payments are also a significant source of wealth. For instance, the coastal villages around Haradheere receive around 5% of a total ransom payment simply for allowing pirated ships to anchor there. All ransoms are paid in cash, and distributed between pirates, financiers, negotiators and local village elders.

According to ongoing private sector research, the average "take" of pirates following the payment of a ransom is broken down as follows:

- financiers (and sponsors) receive 50%;

- the pirates, pirate commander, mothership crew and attack squads split 30%;

- village elders receive 10%; and,

- the security squad (guns for hire to protect hostages and vessels) receives 10%.

Interestingly, while the individuals who risk their lives on a piracy operation split 30% of the ransom money, the bankroller(s) ends up with 50% of the take.[3] However, most pirate "soldiers" are illiterate, and happy to receive large amounts of cash without knowing the true value of their services.

To date, there is limited accessible research that identifies key pirate financiers and their associated business investments. This represents a gaping hole in our counter-piracy approach, given that that some pirate financiers have invested in now thriving global businesses.

In sum, the system of piracy finance is wide and complex, both in terms of scope and impact. Once the international community better understands and identifies the "vertebrae" in

this, the proverbial backbone of Somali piracy, the chances of combating it more effectively will drastically improve. Moreover, we will be better equipped to assist Somalis in replacing this illegitimate economic system with a more viable alternative.

Social Ramifications of Piracy

Despite the sudden and significant material success brought about by the economy of piracy, its negative impact on village life in coastal Somalia has been nearly as dramatic. Clan traditions are being eroded by this system's newfound prosperity and demand for labour, and the impact on local fishing villages has been significant. In discussions with Somali elders, it was observed that many villages are losing hundreds of young men who go out to sea and never return. Indeed, the loss of these young men, who represent the backbone of its work force, will dramatically impact these areas over time.

Further, given the sudden influx of money, alcohol, drug abuse, prostitution and increased violence have emerged on the local scene. Given their new purchasing power, young men are increasingly indulging in these social taboos while disregarding local traditions or guidance from elders. In sum, the very fibre of Somali clan culture is being slowly corroded by an extremely corrupt system built on robbery and violence. Traditional clan dynamics are being challenged directly by an alternative form of perceived legitimacy (piracy), and the sum total of this predicament is contributing to the country's deeper slide into chaos and disaster.

Solutions

Doing away completely with the scourge of piracy off the East African coast is an extremely difficult proposition. However, there are a number of ways that the problem can be addressed more effectively than it has been to date. Several of these inherently multinational and interdisciplinary approaches to counter-piracy are outlined below.

First, it must be categorically stated that piracy cannot be stopped at sea. Efforts to stop piracy in a maritime environment are akin to putting a plaster on a cancer. Developing a comprehensive land-based solution is essential.

Second, the primary method to combat Somali piracy is to disrupt its economic system. Pressuring and disrupting the flow of finance to the pirates is essential. This means that the international community must put a premium on identifying the key (Somali and non-Somali) players that finance piracy, as well as conduct deep research to isolate and expose their investment patterns. A number of governments are currently focusing on monitoring the *hawalah* systems – a traditional form of transferring funds found especially in the Middle East and parts of Africa – through which individuals who receive ransom cash have utilised in order to launder that money into "legitimate" businesses. With proper research, businesses who are using the *hawalah* systems for illegal ends (i.e. profiting from piracy) can be identified and action can be taken to stop their expansion. This, in turn, will pressure pirate financiers by virtue of removing their financial security blankets. This type of research is ideal for organisations such as INTERPOL, the US Department of Treasury or the FBI to undertake.

Third, identifying the areas where pirates buy their gear is important. In order for pirates to be effective, they must purchase equipment and weapons to conduct their attacks. Global positioning devices, satellite and mobile phones, and weapons should, therefore, be seen not

only as essential items for piracy, but from the perspective of international security agencies, vulnerabilities.

Fourth, a plan must be developed and delivered that offers sufficient incentives to replace the lure of piracy with an acceptable alternative. In other words, once the piracy money stops flowing, it must be replaced with a carefully tailored social and economic alternative of sufficiently valuable perceived worth. Such an alternative must be crafted to fit within the social landscape of Somalia, and supported within a clan framework.

Finally, there must also be sufficient disincentives, backed by accepted and strengthened social (and political) authorities, to compel individuals to give up the business of piracy. The very attitudes, values and beliefs of piracy's "culture" must be attacked from within by authoritative Somali voices. It is therefore critical to incorporate into any counter-piracy initiative a mechanism to demonstrate to Somali clan elders and leaders that pirate money is destroying the very fibre of cultural life and threatening to change clans, villages and country forever. Only a carefully calibrated mixture of carrots and sticks will work.

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Notes

1. See *Wired* for an excellent overview of this phenomenon:
http://www.wired.com/politics/security/magazine/17-07/ff_somali_pirates.

2. This is a rough estimate based on current reports, but is subject to changes given the frequent changes in ransom payments.

3. In fact, a pirate financier may make more than 50% by paying an accountant to massage the numbers in his favour.

Countering Piracy: The Potential of Onshore Development

Martin N. Murphy and Joseph Saba

This paper argues that piracy off the coast of Somalia can be countered most effectively by the adoption of a layered approach which works outwards from political, economic and social initiatives to crowd out the incentives for piracy on land, and in so doing, makes naval and law enforcement activity at sea more effective. The adoption of such an approach is in line with successful historical practice.

Piracy arises in response to opportunity. Opportunity, meanwhile, derives from seven factors, the importance of which varies from case to case: legal and jurisdictional openings, favourable geography, conflict and disorder, inadequate security, permissive political environment, maritime tradition, and the presence of reward. How well any opportunity is exploited depends on a variety of other factors, including the pirates' mobility, access to sanctuary, the political will of their opponents — which is linked, in turn, to the presence or absence of an economic imperative —, the willingness of ships to protect themselves adequately, and the pirates' ability to exploit technology that over the last 50 years has evolved from the availability of lightweight outboard motors into automatic weapons and Global Positioning Systems (GPS).

All these factors have combined to create what is arguably a "perfect storm" of piracy off Somalia. Identifying a single root cause for such a complex and dynamic phenomenon would be overly reductionist, but it is unquestionably true that Somalia — in common with other areas of the world where piracy has occurred, including parts of Indonesia and Nigeria — is a place where traditional community values, protection systems and orderly governance have broken down. The impetus in the case of Somalia was quite specific: Societal breakdown was consciously engineered as an act of ruthless political survival during the final years of the Barre regime, which finally fell from power in 1991. During those years, and in the two decades of misery that have followed, tens thousands of people have lost their lives and tens of thousands more have lost their livelihoods.

Opportunities for material gain were circumscribed by clan and political interests, and were always at risk of violent expropriation. In such an environment, resources — human and physical — came under the control of various leaders who encouraged violence to further their own economic agendas. These leaders — most of who could be described fairly as clan-based

"warlords" — used their access to resources to build patronage networks, a skill most of them had learnt from their mentor Barre. Not all economic activity was subject to their control, nor were all areas of Somalia affected equally. Somaliland detached itself from the remainder of the country in 1991, and has pursued an independent and largely stable political and economic course ever since. Various other governance structures also survived, were rebuilt or arose in response to prevailing conditions. These included the *abbans* networks, clan elder authority, religious (Islamic) authority, and a viable business sector, all of which need to be tapped if Somali civil society is to be restored.

Somali piracy had its origins in a mixture of self-protection measures by local fishermen and crude taxation attempts by various warlords, aimed primarily — but never exclusively — at foreign IUU (illegal unreported, unregulated) fishing fleets. The warlord groups quickly came to protect these fleets by licensing their operations in exchange for fees. Piracy was the product of competition between these groups, but from the outset vulnerable vessels of all types, not just fishing craft, were targeted. In 2005, a group emerged in the central Mudug region with clear links to Puntland that systematically exploited the lack of a functioning state capable of restricting its activities on land, and poor international mechanisms for counter-piracy coordination, information exchange and enforcement at sea. This group became the model for all the others that followed. Although most pirates were drawn initially from the participating clans, pirate numbers have grown because of the availability of large numbers of unemployed young men with weakened clan affiliations — sometimes referred to as *moryean* — who are vulnerable to the inducements of the piracy network leaders. Effective counter-piracy requires concerted and coordinated efforts on several fronts, most especially onshore initiatives able to offer alternative opportunities, the restoration of a lawful economy, and the strength to crowd out the piracy network leaders by depriving them of human and capital resources. This process of crowding out requires the building of institutions for physical and economic security and sustained deterrence that do not merely mirror international models, but which work with the grain of Somalia's messy and decentralised politics.

This last point is fundamental to success: Over the past decade, efforts in Somalia have been fragmented and generally ineffective. Throughout the 20 years during which Somalia has been a failed state, the international community has approached the problem through the prism of the state, supporting multiple failed attempts to bring about its preferred solution of a single government to address what are clearly problems of inter-clan competition arising out of a climate of fear and violence. This history of repeated failure suggests that a new approach is needed, one which is opportunistic but also holistic, where stakeholder roles — i.e., civil society, private sector, clan elders, local government — are geared to stabilising those parts of Somalia where development measures can be implemented effectively and which have a reasonable hope of returning it to orderly growth. *This means targeting those areas and groups where incentives capable of crowding out the piracy networks can be built and sustained.*

A quick survey of existing economic activity suggests that a strategy of local economic development centred on port cities presents the best opportunity for building replicable, scalable efforts to crowd out the growing pirate economy. The development of Puntland's principal port of Bossasso, together with related projects, could provide a focus for development; this offers the best way to tame the piracy problem by diverting profit seeking and employment

into legitimate channels. The stakeholders would have the incentive to cut off finance from the pirates and remove them physically from an important base, and also be able to offer employment opportunities to youth.

The elements of such a program should include strategic infrastructure, as well as economic and human development facility projects, coupled with the strengthening of local community governance and law enforcement capacities. The best chance for impact and results would be to take a holistic, cluster strategy, not a piecemeal or fragmented project-by-project approach. Elements of the program would include some or all of the following:

- Identification and expansion of critical port infrastructure
- Development of new container and general cargo terminals to reduce dwell time and enhance transhipments
- Feasibility study of warehousing and light industry estate in a free zone
- Bonded marine industry and warehousing and re-export support services zone
- Rehabilitation of business district and neighbourhoods providing basic services to the population
- Intensive assistance with port management, urban financial management and local governance reform
- Improvements to the overall business environment for the greater port city district
- Attention to human development — i.e., health, education and training — for which ROADS[1] might be the perfect vehicle, scaled up for health and some vocational training
- Provision of a SafeTStop[2] type of facility
- Enhanced security for the district, relying on local, traditional models to achieve legitimacy and sustainability

Complementary programs would consist of improved telecommunications, enhanced maritime services — including insurance and financial services —, and connector roads.

The difficulty is that although there are compelling reasons on both sides why any such a development initiative should succeed, Puntland's political leadership is strongly suspected of benefiting financially from piracy and protecting piracy networks. It may be the case that piracy's tentacles have wrapped themselves too tightly around those in power currently to make negotiations ultimately worthwhile. Given the risk of failure, therefore, channels also need to be opened up with other social groups including clan elders, local communities, business and religious leaders who could provide alternative foci for such efforts. Any development work needs to be preceded by some sort of social mapping to identify who these groups might be, and how they can be approached and engaged. It must be tied without equivocation to the elimination of piracy. Pirates and pirate financiers who choose to continue plying their trade must know that they stand in severe jeopardy of losing their liberty and their assets.

Developing Bossasso alone would boost the Puntland economy, but such an investment would be made more effective if numerous private partnerships could be structured to give the Puntland sub-clans a stake and mutual dependency. Moreover, a rudimentary network of

all-weather roads could be constructed, linking the port with major centres such as the capital Garowe. To affect piracy more thoroughly, any plan would need to state at the outset that an additional or satellite port (or ports) would be developed within a short time period in the south, perhaps at Eyl and Garacad. The building of a road linking Bossasso to these centres would serve to demonstrate the seriousness of that commitment and reward these two towns for the stand they have taken against pirate operations.

The port of Berbera in Somaliland may be a more advantageous port city development opportunity than Bossasso. For example, superior communication links such as a fibre optic cable connection are already under construction. Using the same model outlined above, such a program could enhance the region's potential as a service provider to Ethiopia. Somaliland is not, however, afflicted by piracy. Although some reports suggest a small pirate group has operated out of the Sanaag border area disputed with Puntland, Somaliland's law enforcement infrastructure is robust enough to prevent pirate operations from its coast. Somaliland, moreover, wishes to assert its independence and separation from Somalia. At the same time, the international community wishes to draw it back in by gaining its cooperation in counter-piracy plans. Balancing both aims will not be easy, but it would be manifestly inequitable to focus international development efforts on Puntland, whose political elite has been complicit in piracy, while denying Somaliland access to similar assistance because of its political aspirations.

Puntland, however, is less economically developed than Somaliland. This means that Bossasso has access to a less productive hinterland that Berbera, which would also serve as a gateway and entrepôt for Ethiopia. If the development of Bossasso, Eyl and Garacad are to crowd out piracy effectively, additional economic development programs need to be initiated. Five areas are suggested for further investigation.

Resolution of the border dispute between Somaliland and Puntland: Reaching a successful resolution would provide both parties with a substantial boost to their credibility and lay the best foundation for any necessary cooperation in the future. It would demonstrate that both Somali regions were serious about making their territories safe for investment — this is not really in dispute when it comes to Somaliland, but is obviously a concern in relation to Puntland. It could also release the logjam which has prevented the development of onshore oil because the most promising finds lie — or are believed to lie — under the disputed territory.

Investment in animal husbandry: Northern Somalis in particular are primarily a "land-centric," pastoral people. Herding is central to their identity and remains Somalia's most widespread economic activity. An initiative that addresses this centre of gravity would reassure traditional interests and demonstrate how development could work for them. Eighty percent of goat and camel meat raised in Somalia is exported, and local herders will want to see it moving through the newly developed ports. Unfortunately, the standards of exported Somali meat are not high, and concerns about disease lead to the regular imposition of import bans by its major export markets — Saudi Arabia and the Gulf states. Investment in improved breeds, veterinary care, refrigerated transport, more slaughterhouses and freezing plants would do a great deal to quell these periodic anxieties. What is required at this stage is a study focused mainly on the implementation of a veterinary regime and improving export sales, including the following:

a)   Value Chain Analysis to analyse how partnerships can be established with development organisations in the livestock sector;

b)   Ancillary port and transport services, including training and other assistance in livestock maintenance and exports;

c)   Port facilities necessary for the safe storage and export of livestock; and,

d)   Financial sector assistance, including insurance, payment guarantees, etc.

Fishery development:[3] The waters off Somalia remain a world-class source of fish protein, despite the ravages inflicted upon them by illegal fishing. Provided the area is allowed to rest for one complete four-year cycle, the waters off Puntland are still potentially the most productive crayfish production area in the world, with an estimated value well in excess of $50 million per annum. Likewise, while tuna stocks are seasonally dependent, they remain among the best in the world. A long-term and sustainable fisheries program will depend upon the establishment of an effective protection regime based on clear rights enforced through licenses and inspections. Nonetheless, initial steps can be taken immediately to strengthen successful existing fisheries — such as those on the Indian Ocean coast around Xaafuun — and encourage artisanal fishermen in other areas further south to return to the sea.

A scheme to install Fishery Aggregation Devices (FADs)[4] no more than 1,500 feet (500 metres) from the shoreline would create, within a few months, a supply plentiful enough to support fishing communities. The buoys would be moored too close to shore to attract the interest of any but the most foolhardy deep-water fishing operators. Giving these communities control of the landing sites means they would effectively be self-policing; fishermen are very aware of what constitutes a safe extraction limit. These sites would also be locations where value could be added through the use of basic processes such as drying, smoking, salting and icing. The market for this fish would be largely internal: Somalis are not large consumers of fresh fish, but a form of preserved fish called *haneed* is a basic foodstuff that is consumed in large quantities not only in Somalia, but across much of East Africa. Development based on simple and robust measures such as these would obviate the necessity to develop an energy-intensive, flash-freezing infrastructure in the short term.

The fish population in the Gulf of Aden is very different from that of the Indian Ocean. Nevertheless, it supports two commercial fish species which, although compromised currently, could become highly productive if elementary conservation measures were to be adopted.

As with the development program for the livestock sector outlined above, the initial step would be to commission a study of the salient issues.

Water resources: Providing Somaliland and Puntland with supplies of potable water would be a major economic and public health advance. There are reasons to believe that Somaliland (and possibly Puntland) lies atop a major untapped aquifer.

Mineral extraction: The region's oil and gas deposits may already be tied up contractually, but deposits of various minerals are believed to exist, including rare earth deposits, which are not currently so encumbered.

Piracy was a symptom of Somalia's internal turmoil, and it is now becoming a cause of further dislocation, misery and conflict. Piracy's epicentre is Puntland, including for the gangs that operate outside its borders in Mudug and Galguduud, and pirate activity is now a major part of the Puntland economy. Its lure has undermined fishing off large parts of the Puntland coast, and piracy is now sucking in young men from the interior that lack any experience of

boats or the water. Local communities are watching their young men die at sea and succumb to the hazards of drink and drugs on land. They are seeing their young women, who once aspired to marry pirates, being draw into prostitution instead. A rootless generation is emerging as the discipline of clan loyalty erodes. As the international community concentrates its efforts and resources on a limited range of legal issues and security measures that take effect outside Puntland's borders, the economic alternatives to piracy on land wither. Yet as the recent Lang report to the United Nations makes clear, countering piracy requires a multi-layered approach which includes an economic component "aimed at developing activities that cannot thrive in an environment of piracy, safeguarding the sovereignty of Somali authorities over their territory and regulating service activities to ensure that their development does not spark an increase in piracy. There are several priority sectors: port and fishery operations, livestock exports and the regulated development of telecommunications services."[5] This paper suggests others, but without this component, whatever its composition, the security and judicial aspects of the plan will fall short. Without it Somali piracy will continue to grow, placing shipping throughout the eastern Indian Ocean and perhaps beyond in continuing peril.

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Notes

1. ROADS is a joint project involving DP World, the United States Agency for International Development (USAID) and Family Health International (FHI). The project involves a growing network of "SafeTStop" resource centres delivering health services along regional transport corridors within East, Central and Southern Africa. Central to the ROADS approach is the notion that transport corridors are the nexus for a range of vulnerable populations; to that end, the project focuses on delivering services to the interstate trucking community. See Ethan Chorin et al., "A Case for Industry Involvement in Onshore Development," background brief published for the "Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy" conference, April 2011,
http://www.counterpiracy.ae/background_papers.html.

2. Ibid.

3. The authors would like to acknowledge the help and expert assistance of David Pearl, John Virdin, Stephen Akester, Marcel Kroese, Tim Webster and Chris Short.

4. Fishery Aggregation Devices (FADs) are essentially buoys anchored in the open sea to which mats have been attached that encourage the growth of a micro-environment attractive to fish.

5. UN Security Council, "Letter dated 24 January 2011 from the Secretary-General to the President of the Security Council," S/2011/30, p. 3,
http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/206/21/PDF/N1120621.pdf?OpenElement

A Case for Industry Involvement in Onshore Development

Ethan Chorin, Dorothy Muroki and Robert Ritzenthaler

By the time piracy has manifested offshore, the contributing factors of economic displacement, chronic underdevelopment and weak governance have already reached a critical stage. "Onshore" development, comprising a systematic effort to create basic infrastructure and realign economic incentives, is now widely viewed as the only long-term solution to the problem of maritime piracy.[1] The goal of this paper is to describe the evolution of a unique industry-government partnership with potential to address terrestrial development in piracy-affected regions. Industry involvement in the Roads to a Healthy Future (ROADS II) project began modestly, but has generated an ever-widening set of capacity-building engagements in health, education, ICT, solar energy and road safety.

ROADS in Djibouti

ROADS II is a growing network of "SafeTStop" resource centres delivering health services along regional transport corridors within East, Central and Southern Africa. Underpinning ROADS's approach is the fact that transport corridors are the nexus for a range of vulnerable populations.[2] If social and economic vulnerabilities can be addressed at the source, so the argument goes, society as a whole will reap great benefits. Having had considerable success along the interior segments of many of the port-bound routes, the originators of ROADS were looking to extend the network to the termini, i.e., ports and port communities.

DP World, the world's third-largest port operator and operating authority for the Port of Djibouti as well as the Doraleh Container Terminal (DCT), heard of ROADS for the first time at the 2008 PMAESA conference, and quickly recognised the project's potential relevance to a number of key constituents, including the Ethiopian and Djiboutian trucking communities, local Djiboutian settlements, and port workers and their extended families.[3] A further point in ROADS' favour was its apparent adaptability to almost any developing country port environment.

Thus the company spent the better part of a year, from October, 2009 to June, 2010, working closely with FHI, USAID and the Government of Djibouti to create a Global Development Alliance (GDA) to develop ROADS-related infrastructure and programming in

Djibouti. During this process, a significant concern for DP World was that the programme be adapted and linked directly to the needs of the port community. This entailed expanding the remit of ROADS beyond its core of HIV/AIDS, malaria and tuberculosis, into a range of basic health services, while increasing access to multiple port stakeholders.

In line with the principle that each partner contribute according to its comparative advantage, it was agreed that DP World would fund and manage the construction of a 1600 square foot SafeTStop at PK 12, the primary staging point for trucks incoming to DCT from Addis Ababa, and home to a quasi-settled population of over 30,000. The GDA assured programme sustainability by specifying long-term commitments by FHI and the Government of Djibouti to run, supply and maintain the centre. Signed in July 2010, the DP World-ROADS/FHI-USAID GDA became the first Public-Private Partnership in Djibouti backed by the US government, and the first joint US-UAE joint development partnership in East Africa.[4]

One Thing Leads to Another
An additional advantage of constructing a larger clinic in the shadow of the port was that the much smaller, existing SafeTStop was free to be moved along the highway to the village of Dikhil, near the Ethiopian border, adding another node to the network.

In the months signing the GDA signing, DP World managed to attract the interest of a range of other companies, from local partners, to Dubai commercial agents, to suppliers. When it became too expensive to maintain a link to the existing electrical grid, for example, the Djibouti Free Zone (DFZ) offered to fund the installation of solar panels at the original facility. One of DP World's global suppliers, Dimension Data, is working on a plan to connect SafeTStops to the Internet, and set up kiosks offering interactive health-related educational software. Other discussions have focused on using the SafeTStops as collection and distribution points for information on road conditions, as well as vehicle maintenance tutorials. Forbes Lux FZE, a Dubai-based company, provided water filters for use at the facility. Other services have also been established in anticipation of an operational facility: In early 2010, DP World Djibouti began shuttle service linking local communities and the port; once the clinic is complete, the clinic will be added to the shuttle route.

The DP World-ROADS collaboration informed a similar project in Yemen, where DP World has helped expand the capacity of Ras Morbat Clinic, the sole public access health facility in the port city of Aden, through infrastructure grants and fellowships for local medical students to pursue advanced training at UAE hospitals. Ras Morbat Clinic provides basic health care, including ophthalmological surgeries, to thousands of community members every year. The Ras Morbat Vocational Training Centre, also supported by DP World, offers trade apprenticeships to local youth.

The above developments led DP World to the idea of collaborating with customers and shipping lines to create a seaborne surgical clinic that might easily "plug in" to add surgical capacity at Ras Morbat, as well as the existing ROADS network. Housed within containers, the compact operating theatres would allow shifts of volunteer medical staff to perform high-demand surgeries (e.g., cataracts, reconstructive surgeries) at five or six port communities each year.

Clinics Without Borders

As the ROADS GDA progressed in Djibouti, the same partners reassembled to consider similar arrangements at DP World-run ports in Dakar, Senegal and Maputo, Mozambique. These efforts have added to the overall proof of concept, while benefitting from the framework created for Djibouti. From the Djibouti ROADS experience, it was clear that for the partnership to work, it had to address the needs of each partner, as well as unique local conditions. In the case of DP World and other port-based entities, this meant a direct tie-in with employees and their extended families — as ports are secure environments, family members are typically unable to access dispensaries on the port premises. Thus, while preventing the spread of HIV/AIDS in Djibouti is a top priority, in Senegal the offering is being adapted to fight a large number of malaria-related fatalities and extended convalescences. DP World has found that terminal management and staff quickly overcame initial scepticism to become some of the programme's fiercest champions. At the time of writing, a formal GDA was about to be signed in Mozambique, and was well underway in Maputo.

A Modest Proposal: The Port Communities Livelihood and Security Initiative

Healthy port communities serve as bulwarks against piracy; unhealthy communities promote the pirate economy. In line with this logic, DP World has been working with the UAE Ministry of Foreign Affairs to integrate ROADS into a more holistic concept that might be used to build capacity in any port state affected by piracy. The Port Communities Livelihood and Security Initiative (PCLSI) seeks to build capacity in "fragile" regions by focusing on the following four integrated services:

1. *Health Infrastructure:* Projects in this category focus on developing basic health services within the port community. The proven ROADS concept described above would be a central offering, with the goal being to establish a central SafeTStop Resource Centre near the port(s) in questions, accessible by port workers, local residents and the trucking community. In parallel, partners would work towards implementing the "sailing clinic." It is hoped that the "sailing clinic" (also referenced above) will be implemented in parallel, in some cases "plugging in" (physically) to existing port-based ROADS SafeTStops.

2. *Job Creation/Livelihood Development:* Projects in this category would focus on high-capacity port-centred trades like fishing/canning, livestock export, and/or light assembly. In this context, it will be important to identify and create viable financing mechanisms, whether through Islamic microfinance, concessional loans, etc. With an increasingly stable local business environment, expatriate businessmen can often be convinced to support start-up activities in their home country.

3. *Technical Assistance:* Port operators, shipping lines and logistics firms are technology and management-intensive enterprises. Often a bit of technical assistance, in the form of feasibility studies, short-term consulting, etc., can lead to large improvements in capacity and productivity.

4. *Security:* Projects in this category would address the physical security needs of the port and surrounding community, with a view to reducing the attractiveness of both as bases or and/or provisioning centres for pirates. A challenge will be to integrate onshore security programmes with efforts to monitor pirate movements in the immediate offshore environment.

For maximum flexibility and impact, it is envisioned that PCLSI would be administered thinly: A steering community, composed of representatives from industry, the public sector, and relevant implementing organisations would help refine the concept, while screening applications for suitability/fit with initiative objectives. Thus, PCLSI would effectively be an industry-led "club" of projects that advanced initiative goals, and promised opportunities for synergies. Each project would be implemented by its direct stakeholders: In the case of ROADS, this typically includes FHI, a public sector funder, and industry participants. Further, PCLSI would work with multilateral organisations such as the UN and others to fund development and expansion of member projects.

Why Industry?

While different segments of the maritime industry suffer the effects of piracy more directly than others, it is clear that in the longer term, as fatalities increase and commercial costs mount, the case for industry leadership will only become more robust.

The efforts described above are complex, and could be burdensome if implementation rested wholly with any one organisation. One of the attractive features of ROADS has been the degree to which it spreads financial responsibilities across multiple players, over time, according to comparative advantage. The underlying simplicity and logic of the approach has made ROADS an easy sell to local and international companies alike, attracted by the notion that one can provide meaningful services to direct stakeholders, while also serving the broader community.

By taking the lead on collaborative initiatives such as PCLSI, the industry has a compelling opportunity to take care of its own and generate regional goodwill, while addressing the root causes of piracy.

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Dorothy Muroki is Director of the Roads to a Healthy Future (ROADS II) Project.[6]

Robert Ritzenthaler is Deputy Director of the Roads to a Healthy Future (ROADS II) Project.

Notes

1. See, for example, Bronwyn E. Bruton, *Somalia: A New Approach* (Council on Foreign Relations, 2010).

2. Jeffrey Ashley, "An Excursion of Hope: Fighting HIV/AIDS," *The Foreign Service Journal*, December 2004.

3. 90% of Ethiopia's imports/exports transit Djibouti, with an estimated 1000 trucks passing any given point on the corridor daily.

4. "The U.S. Government's First-Ever Public Private Partnership in Djibouti Addresses Critical Healthcare Needs Along Djibouti-Ethiopia Transport Corridor." August 12, 2010, www.eastafrica.usaid.gov.

5. For information on engaging with PCLSI, please contact Ethan Chorin, ethan.chorin@dpworld.com.

6. For further information on ROADS, please contact Dorothy Muroki, dmuroki@fhi.org.

The Man from Minnesota: A Model for Local Economic Development?

Lange Schermerhorn

Introduction

Piracy evokes mental pictures of the bounding main, 18th-century Caribbean buccaneers, or Barbary Coast pirates. Whether the image is historical, or as recent as the Gulf of Aden/Somalia coast or the Strait of Malacca, analysts cite economic factors as the primary motivators for those who engage in piracy. The scourge of maritime piracy comprises many complex issues; however, the root cause overwhelmingly remains the lack of alternatives for constructive economic integration into local communities. The degradation of public amenities, the breakdown of secular education and the absence of the rule of law combine to form a lethal mix in Somalia, ensuring that young people have no skills, no gainful employment, and no hope of achieving aspirations for a secure present and a prosperous future.

Top-down vs. Bottom-Up Development: The donor community's emphasis on "top-down" development, managed by a central government and predicated on training and capacity building, requires too long a time to bring hope to results-starved communities. Observers of the continuing chaos in Somalia – the ultimate failed living laboratory – are increasingly viewing "bottom-up" development as offering potential for successful, timely, and cost-effective improvements in local communities.[1] These improvements offer the key to restoring stability, a necessary precursor to rebuilding governance institutions. However, there has been little evidence at the micro level of a comprehensive "bottom up" approach by the international community.

The Micro Level ("Grass Roots"): Looking at development at the micro level offers business an opportunity to engage directly with local communities and NGOs to foster community cohesion and directly support the creation of the sense of the common weal needed to sustain a positive, vibrant community that provides benefits to its residents, but also expects reciprocal obligations and responsibilities. An important part of the local interface involves paying heed to the desires of the community and engaging through its elders, who are key figures too often ignored in top-down management structures. Prospective players in this equation are numerous: Public-Private Partnerships, international and local NGOs, philanthropic foundations, trade and affinity associations, social service organisations and, most importantly, members of the ethnic diasporas, who bring skills, problem-solving experience, and language abilities.

One successful model of public-private cooperation, which focused on a very specific issue, is the polio vaccination campaign supported by Rotary International and carried out by Rotary members around the world, in collaboration with World Health Organization (WHO) country representatives and host governments. Another model involves a very small US embassy program titled "Self-Help," which provides micro-grants directly to communities for specific projects such as rehabilitating schools. Some civil affairs projects of the US military also work directly with communities on individual infrastructure projects. While these programs address some issues of local ownership and development, they have limitations, not least of which is that the entity given the grant must display minimum standards as a functioning NGO, and are not part of an integrated community development plan.

A New Model for Local Development in Somalia

Mohamed Adeb is a 37-year-old man who left war-torn Somalia at age 22 for Minneapolis, Minnesota (USA). After gaining a degree in Management Information Systems, he returned at age 37 to his previous home of Adado, in central Somalia. His odyssey from and back to Adado was featured in *The New York Times* as "Back from the Suburbs to Run a Patch of Somalia."[2]

Adado is one of the poorest areas in Muduq, the poorest and most drought-prone part of Somalia. Somalis cite it as the area from which people migrate to other locales in the country because it offers so little, thus helping to create, or amplify, some of the chronic problems of land ownership and competing claims to resources that continue to beset Somalia. Adado is also adjacent to the areas in which pirates operate.

As the story relates, "With money channelled from fellow clansmen living in the United States and Europe, he has transformed Adado … into an enclave of peace, with a functioning police force, scores of new businesses, new schools and new rules." Adeb said, "People want government, even in Somalia. They're begging for it." He further explained, "You have to start from the grass roots. People don't trust each other. You start small, and when people see that it's working, they will want to join." His model relies on the clan to mobilise funds and to identify with a particular place in Somalia, contrary to the top-down efforts of the international community, which decries the focus on clan while nonetheless continuing to enable and abet it.

This model also benefits from on the increasing levels of cooperation within and between Somali diaspora groups around the world, capitalising on their desire to find a way to make a difference that can break through or circumvent the current political paralysis in Somalia governance.

What is Necessary to Replicate the Model Successfully Elsewhere in Somalia?

From the diaspora: In order to effectively implement the "Minnesota model" in Somalia, members of the Somali diaspora need to engage fully in the process and commit to a high level of moral, psychological and material support for development projects. The diaspora can recruit qualified individuals to stimulate community efforts towards restoring order and services. Moreover, diaspora members will know best how to employ a "building block" approach, targeting areas where security is sufficient to operate, soliciting the agreement of elders to accept outside assistance, and solidifying the results before proceeding to expand.

From other actors (see "Grass Roots" above): The other actors involved in the process need to endorse the concept of working directly at the micro level. Second, they should encourage

business or trade associations to support diaspora communities who "adopt" a community in Somalia, and support those who work there with financial or in-kind aid. They should also establish an office or "clearing house" to assist the Somali diaspora in recruiting and organising qualified diaspora members in a comprehensive effort. Finally, external actors participating in the process should seek funding from a variety of different sources, and focus on sourcing amounts which are manageable and that require accountability without being mired in bureaucracy.

There are specific, practical ways in which external parties could contribute to the rehabilitation of local communities by experts from the diaspora who are following the "Minnesota model." They require local communities to cooperate for the common good, in the process building trust and, ultimately, the capacity to find workable local solutions to problems affecting everyone.

1. Generate youth employment and a focus for youthful energy as an alternative to the child soldier syndrome.

    a) *FIFA:* This model would involve working with FIFA and/or other donors to organise "football boot camps" as one tool available to diaspora experts in local communities. The camps would treat learning to play football as a "job" for 10-20 year olds, with daily instruction and practice interspersed with basic literacy and vocational or other types of instruction; lodging and food would be provided. The price of admission would include surrendering a designated number of guns, and committing to stay for a designated period. Rewards of the programme would include learning a sport to high standards, bonding with peers (engaged in constructive behaviour, as opposed to destructive quasi-military or criminal activity), food and lodging, and life skills.

    b) *Build the community physical infrastructure:* Together with trade unions, construction consortia, etc., such a project can provide workforce development and productive capacity through training in basic construction skills for youth and others, who can then build or rehabilitate structures that benefit local residents. These structures might include markets, community centres, clinics, school buildings, sports facilities and basic housing.

2. Supply energy and manage water distribution.

    a) *Clean water and ancillary services:* Access to clean water is one of the most critical needs of communities. A mobile solar-powered unit that pumps, purifies or desalinates water for irrigation and drinking has a proven track record in Sudan, Iraq, Haiti and elsewhere.[3] The units can be fixed at a site, or operated as a mobile unit on a small flatbed truck. Although the unit does not address the problem of finding adequate water supplies, it does greatly facilitate pumping and distribution of clean water to communities that do not have a reliable electrical grid. Battery storage allows the unit to operate at night, and to power a telephone communication module.

    b) *A model for community capacity building:* While the aforementioned water unit requires virtually no maintenance, it does require stringent safeguards to protect it

from damage or disappearance. Managing this asset — which benefits the whole community and provides a focus for acknowledging a need shared by everyone — requires community cooperation and consensus decision making for access, thereby developing the attributes needed for the community to flourish.

Conclusion

Participants in the international dialogue on piracy should consider ways of paying greater attention to the root causes of piracy, centred on the lack of viable local economies that can provide jobs. While such focus should not be limited to Somalia, that country can be referenced as the most urgent case study. The lack of a viable, job-creating economy in Somalia derives largely from instability on the ground, as well as the failure of institutions of governance. Supporting a model that utilises knowledgeable, interested, culturally connected parties from the diaspora directly at the local community level, seeking and cultivating community ownership and buy-in for development, could reap important, readily visible results.

Ambassador Lange Schermerhorn (ret.) concluded a 35-year career in the US Foreign Service as Ambassador to the Republic of Djibouti from 1998-2000. She also served as Political Advisor to the commanding general of the Combined Joint Task Force-Horn of Africa based in Djibouti in 2003-2004. She has completed numerous consulting assignments since then, focusing on the Horn region.

Notes

1. Jeffrey Gettleman, "Anarchy-Cursed Nation Looks to Bottom-Up Rule," *The New York Times,* August 18, 2008.

2. Jeffrey Gettleman, "Back From the Suburbs to Run a Patch of Somalia," *The New York Times,* October 3, 2009.

3. See www.worldwatersolar.com.

Combating the "Pirate Hydra":
Addressing Root Causes in the Strait of Malacca

Eric Frécon

As the main shipping channel between the Pacific and Indian Oceans, the Strait of Malacca witnesses the passage of about 94,000 vessels annually[1], carrying about 14 million barrels of oil every day.[2] The security of this strategically vital maritime corridor between Sumatra and Singapore, off the Indonesian province of Riau Islands, is therefore an issue of utmost priority. The area has been long been prone to piracy, however, from the days of the Srivijaya Thalassocracy (7th-13th centuries CE) until present times, with the most recent resurgence beginning just after the vacuum of power following the end of the Cold War. To counter an upsurge of hijackings and sea robberies in the early 2000s, when rumours started to swirl regarding possible collusion between pirates and terrorists, Malaysia, Singapore and Indonesia — with help from Japan and the USA — joined forces to combat the pirate menace.

Together, Malaysia, Singapore and Indonesia implemented the *Malsindo*, or Malacca Strait Sea Patrols (MSSP), in 2004 and the "Eyes in the Sky" air patrols in 2005. In addition, two information-sharing centres were also created, both in Singapore, the main port complex of the region. The first centre gathers regional maritime police units, or coast guards, under the 2006 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), while the second one, known as the Information Fusion Centre (IFC), houses liaison officers of the region and of the main naval powers; the IFC has been active since April 2009. As a result, after 75 attacks in the Strait of Malacca in 2000, only two incidents were reported by the International Maritime Bureau (IMB) in 2010. The same dramatic decline occurred in the Singapore Strait and in Indonesian waters.

The Dark Side of the Strait of Malacca

However, the "pirate phoenix" appears to be rising again: From zero attacks reported in the South China Sea in 2008, 31 attacks were reported in 2010. Generally, pirates are either migrating to the south, towards more secretive places in the vicinity of Jambi Province, or moving further to the east, in the open seas and far from the coasts and the patrols. There, they attack not only tugboats, but also small tankers and vessels. Hence, the shipping community faces the critical question of how to assess these initiatives and counter-measures, both in the *longue durée* and at the regional level.

Above all, the roots of piracy have not yet been destroyed. It is true that the typical "countryside pirate" is retiring and is moving to legal businesses in kampongs (small, traditional villages). The pirate generation that was very active in the 1980s and 1990s is now getting older. These former outlaws of the sea are now mostly married with children, and are not so keen to take risks at sea. During interviews on the field, they confessed that they did not want their children to see them in prison. Most of them have returned to their primary occupations as taxi-boat drivers and fishermen and, thankfully, the younger generation is not taking up piracy. Instead, they are taking advantage of economic opportunities available in the nearby city of Batam, located in the 1989 SIJORI (Singapore-Johor-Riau) Growth Triangle. Batam's population has grown from 6,000 in the early 1970s to about 1 million today. Free Trade Zones (FTZ) were established in April 2009 on the islands, and for teenagers, piracy is reduced to the last option to get easy money. Instead, they prefer to work in offices and factories, instead of risking life at sea without life jackets or GPS navigation.

The situation is different for the "town pirate," who is still on "stand by," waiting for calls and opportunities to hijack merchant vessels. Unlike the "countryside pirate," he was not born in the Riau Islands province, or in coastal cities. Most of the time, he left his native kampong and his family to get a proper job in the industrial estates of Batam. But as a consequence of economic crises in 1997 and 2008, he became a victim of unemployment. These idle, desperate, bitter and rootless men gather with others from their own ethnicity, often killing time by drinking coffee in slum areas, like Tanjung Uma in the suburbs of Batam. Little by little, they begin to meet older pirates, who offer them "small businesses." Occasionally, they also work as freelance muggers for local godfathers.

Besides these two groups of pirates, there are also newcomers perpetrating attacks in the area. Recent testimonies have mentioned people coming from South Sulawesi, in the east of Borneo, staying in coastal kampongs and launching raids into the vicinity of the Singapore Strait, before returning home. Other maritime robbers come straight from Palembang, a large city in South Sumatra, on "motherships" similar to those employed by Somali pirates, to attack merchant vessels in the South China Sea.

"Catch Me if You Can"

Many factors can explain this increase. Previously, trilateral cooperation between Malaysia, Singapore and Indonesia deterred the pirates. At the same time, however, experts have expressed concerns about the infrequent rotations of patrol aircrafts. The countries involved have appeared more reluctant than expected to set up not only coordinated but real joint and trans-border patrols. Moreover, the patrol aircraft fly mainly in daytime, and they cannot differentiate fishing vessels from pirate vessels. In Indonesia, law enforcement agencies often lack oil and modern equipment. Finally, most warships are simply too large to track pirate vessels among the many mangroves and islets which characterise this area. After the initial psychological impact of these operations, sea criminals have perhaps realised the weaknesses and ineffectiveness of the naval patrols.

Another critical point is that information-sharing centres are mainly reactive in spreading alerts and news — they rarely prevent attacks. Furthermore, Malaysia and Indonesia, where most of the incidents occur, are not members of these maritime and regional bodies. Obviously, this does not facilitate cooperation. On the other side of the Strait of Malacca, in Indonesia, socioeconomic conditions remain difficult, with local people unhappy about unreliable

infrastructure and recurrent electricity blackouts. Foreign companies are unable to recruit qualified workers, and some have indicated that they intend to leave the province. Moreover, investors are upset by administrative impediments and overlapping bureaucracies of authority. Corruption remains a big concern, and the former governor was arrested last year. Last but not least, fishermen — who possess many of the seafaring skills so valuable for pirates — suffer from overfishing and pollution along from ports and shipyards.

For these combined reasons at sea and on land, embittered people are still motivated to attack ships. After having operated far from the patrols — especially in late 2008, 2009 and 2010 — pirates are once again daring to operate along the Singapore Strait. It appears that various gangs — from the Riau Islands, Sumatra, and Sulawesi — are sharing and dividing the area into localised clusters in the South China Sea, in the east of the Singapore Strait, and to the west of this channel.

Effective solutions to the piracy problem in this area should not focus exclusively on the sea, because of the usual territorial disputes, and legal and diplomatic issues. Solutions can be found on land if the authorities can offer legal and better alternatives to the pirates. To this end, battalions of NGOs are perhaps more effective than armadas of patrol boats. The main objectives must be to improve local economic development — for example, via free trade zones, as was accomplished in the Riau Islands province — and to provide sustainable housing and proper infrastructure to connect the "grey areas" cut off from the administrative centres. Finally, let us not underestimate the psychological impact and deterrence value of continued media coverage of counter-piracy patrols.

To conclude, by the point at which pirates are at sea, the battle is already lost. To be effective, anti-piracy measures must be taken upstream. This shift in focus will also bring gains in countering smuggling, trafficking and illegal immigration at the same time. In order to address criminal issues at sea, authorities must finally deal with human security on land. The most recent initiatives of the Indonesian and provincial governments — including the creation of a local agency to fight corruption, the election of a new governor, and the setting up of a new and unique administrative authority materially supported by Japan and the USA — are all welcome developments. However, these initiatives will be effective only if they operate not only on Batam and in the economic centres, but also far away, along the frontier in the remote islands. Over time, as "anchor points" of social and economic stability develop, security will be able to stretch over the waters.

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Notes

1. Nippon Foundation, "Malacca Straits: Aids to Navigation Fund," July 31, 2009, http://www.nippon-foundation.or.jp/eng/news/20090731AidstoNavigation.html.

2. US Energy Information Administration, "World Oil Transit Chokepoints: Malacca," http://www.eia.doe.gov/emeu/cabs/World_Oil_Transit_Chokepoints/Malacca.html.

3

Opportunities for Information Sharing and Civil-Military Cooperation

The GCC and Piracy: An Arab Solution

General (Ret.) Khaled Abdullah Al Bu-Ainnain

Introduction

Maritime piracy is becoming one of the largest challenges facing the Arabian Peninsula today. In the first two and a half months of 2011, despite a heightened level of international response, 83 commercial cargo ships have come under attack from Somalia-based pirates, and 14 vessels have been hijacked. Some 40 ships are currently estimated to be under Somali pirate control, together with 800 mariners held captive, many in appalling conditions. In addition to the devastating human cost of piracy, the financial cost to global trade is also significant, with estimates as high as US$12 billion a year. Information sharing is a critical component of the anti-piracy fight.

HH Sheikh Abdullah bin Zayed al-Nahyan, UAE Minister of Foreign Affairs, said: "Maritime piracy is quickly becoming one of the most threatening challenges of the 21st century. It hurts not only global trade and commerce, but also has a damaging impact on peace, security and stability in many regions of the world. To defeat piracy, a coordinated and sustained effort by governments, security forces and industry is required; and a successful response must address not just the symptoms of piracy, but also the underlying causes."[1] His Highness went on to state, "Importantly, the impact on the seafarers who are captured and their families is immeasurable. Countering piracy will not be achieved overnight — it will take a long-term commitment from all involved. We encourage our industry colleagues to be part of this important initiative and help find meaningful, long-term solutions to the problem."[2]

Arabian Peninsula, GCC Reactions

While the international community has focused increased attention on the problem, and deployed considerable military assets to protect shipping lanes and deter attacks, the pirates have substantially improved their operational tactics, equipment and weapons, and intelligence networks. Pirates also have a robust intelligence network at sea and in ports that appears to be tracking potential targets. For instance, in 2008 the Saudi tanker Sirius Star was seized 700 kilometres off the coast of Kenya, leading to the conclusion that pirate agents had tipped off pirates at sea to the precise location of the tanker. It is believed that pirate agents are monitoring

movement of ships from ports in Aden, Eritrea and Djibouti. Pirates are also using the Internet to track shipping and manifests, while "motherships" are increasingly being used to spot targets radioed in by onshore Somali trackers.

Somali pirates have created a systemic network of managers and staff who man operations, conduct attacks, and collect ransoms. Once a pirate operation is finished, new targets are located. Significantly, the area of operations for Somali pirates is expanding at an alarming rate, as the pirates become both more brazen in their targeting, while at the same time outfoxing the counter-piracy forces, whose maritime monitoring and interdiction is limited because of distances. The driver behind these advances in pirate capabilities is evident: Although the costs for pirates conducting an attack are very low, the ransom payoff offers an extraordinarily high rate of return.

Although a variety of multinational efforts have been engaged to thwart piracy emanating from the Somali coast, the countries in and around the Arabian Peninsula have a special responsibility to protect the waters and shipping lanes in their home region. While GCC states have an obvious interest in protecting the shipping lanes which supply their petroleum exports, Egypt is concerned that Somali piracy will force shipping companies to opt for safer routes that avoid the Suez Canal, whose annual tolls bring in about $5 billion for the Suez Canal Authority. This confluence of interests among littoral states may spur the type of regional coordination that worked very well in another part of the world that faced similar problems with pirates in the past — the Malacca Strait. To that end, GCC and other Arab countries may want to pursue an "Arab solution" toward anti-piracy efforts.

Moreover, there are reports of Arab countries becoming apprehensive about the increasing foreign naval presence near their coasts without political, legal and security cooperation and coordination. To address this, international efforts need to be coordinated with other concerned littoral states — including Saudi Arabia, Egypt, and Kenya — and international organisations as much as possible.

Arab Participation in Anti-Piracy Efforts

Two years ago, Egypt hosted an emergency Arab League meeting on piracy attended by representatives from Yemen, Saudi Arabia, Sudan, Jordan and Somalia. They discussed several options, including establishing joint operations by Arab navies, setting up a piracy monitoring centre, and implementing warning systems for ships. Unfortunately, none of these initiatives bore any fruit, but if implemented they could provide the roadmap for effective regional anti-piracy coordination and information sharing.

At present, Arab patrols and coordination are mostly coordinated via third countries. Arab naval officers are integrated into the anti-piracy effort to promote training and communication, including information sharing. The US Fifth Fleet is helping to train Arabian Peninsula countries in counter-piracy operations. For instance, Saudi Arabia, the UAE, and Bahrain are all part of the CTF 151[3] tasked with anti-piracy operations in the Gulf of Aden. The training these regional navies receive, along their integration into the information sharing structure, should provide them with the capability to directly engage in anti-piracy efforts in the near future. Oman also plays a key role in the multinational efforts by providing logistical and maintenance services, as well as surveillance and reconnaissance.

The direct anti-piracy capabilities of some GCC states are already becoming apparent: On April 2, 2011, a UAE special counter-terrorism unit, backed by air force units and in coordination with the US Fifth Fleet, stormed the bulk cargo carrier MV Arrilah-I, which had been seized by pirates in the Arabian Sea. All hostages were rescued, and the pirates were arrested. The operation could serve as a basis for a collective security approach that promotes information sharing, coordination, and execution.

The situation off the coast of Yemen needs to be placed in a separate category for coordination. The states of the Arabian Peninsula must help Yemen to crack down on the illegal arms trade and human trafficking that occurs between Yemen and Somalia. Although the Yemeni Coast Guard has formed an anti-piracy unit of 1,600 Special Forces troops and 16 high-speed boats, this could be made into a much larger force. The Saudi Arabian Navy and the Egyptian Navy can also be engaged in these naval efforts, and if they need further equipping and training, this assistance can and should be provided by other Arabian Peninsula states.

The GCC Advantage

While complementing the efforts of multinational forces, regional Arab states can utilise a political comparative advantage in the struggle against Somali piracy. Trading families from GCC countries have had a long history of business relations with Somalis, and have good knowledge of the Somali clan systems, which figure heavily in the social and business structure of Somali piracy. In one illustrative and successful instance, the UAE-flagged vessel *al-Khaleej* was captured by Somali pirates in April 2008 as it was delivering food from the UAE to Somalia. However, after UAE pressure on clan-based authorities in the semi-autonomous region of Puntland, 16 crew members were freed in the port of Bossasso.

The UAE believes in productive partnerships to enhance stability and fulfil progress and prosperity. The country has invested in manpower to produce quality citizens, officers and soldiers, and has invested in importing the latest state-of-the-art technologies to stay in the forefront of modernity in our industries, trade and commerce and way of life. The UAE civilian and defence industries are growing in various areas. The UAE military reflects the modernity and progress achieved on the national level. It has been used for the protection of the nation, and also for serving the international community through contributions to peacekeeping and rescue operations in various parts of the world. The UAE has always sought, and will always seek, diplomacy to resolve disputes with its neighbours, and has always called for dialogue as means to solving problems regionally and internationally. However, the UAE Armed Forces will always remain strong and on alert to deal robustly with any threats to the nation and the region.

History and experience have taught us that vigilance, unity, cooperation and determination, whether on national or international levels, are the best means to prosper and to overcome difficulties. The counter-piracy mission is becoming an important component in the UAE's outlook.

Conclusion

Failure to find an indigenous, Arab solution to the Somali pirate epidemic now will pose greater problems later for the region—including increased illicit tracking of arms, drugs and human beings — from Kenya to Saudi Arabia and beyond, down the coast of Africa and east

around India, including the Maldives. This anarchy also helps al-Qaeda and its affiliates who operate in Yemen and Somalia to create a larger theatre of operations and spread outwards. In fact, the epidemic of piracy is so great that other pirate groups — such as those operating in the Gulf of Guinea — may begin to mimic the Somali pirates. By studying the lessons learned of Somali pirates, and migrating those tactics, techniques, and procedures to West Africa, they may expand their range and thereby create yet another transnational piracy threat. GCC states and their Arab neighbours must get involved more in the counter-piracy fight and, in the near future, lead the effort since this illegal activity is so close to our homelands.

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Notes

1. Emirates News Agency (WAM), "Maritime piracy is quickly becoming one of the most threatening challenges of 21st century: Abdullah," March 2, 2011, http://www.uaeinteract.com/docs/Maritime_piracy_is_quickly_becoming_one_of_the_most_threatening_challenges_of_21st_century_Abdullah/44627.htm.

2. Ibid.

3. Combined Task Force 151 (CTF 151) is an international naval task force established in January 2009 in response to piracy attacks in shipping lanes off the coast of Somalia. CTF 151 operates in the Gulf of Aden and off the eastern coast of Somalia, covering an area of approximately 1.1 million square miles. Within CTF 151, all counter-piracy operations are coordinated through a monthly planning conference called Shared Awareness and Deconfliction (SHADE).

A Shipping Industry Perspective on Piracy: Current Issues and Possible Solutions

Giles Noakes

It is quite clear that piracy off the coast of Somalia and throughout the northwest part of the Indian Ocean is likely to persist for the foreseeable future. Despite a number of efforts by the United Nations to address the issue, including the establishment of working groups and strong statements from UN Secretary-General Ban Ki-Moon appealing to public and private sector stakeholders to identify effective solutions, a successful approach has yet to emerge. The process is slow, and there has been only limited progress toward a solution to date.

The Challenge

Most observers believe that the "war against piracy" from Somalia cannot truly be won at sea; instead, the long-term solution lies onshore in the establishment of a proper and legitimate government, together with and improved prospects for economic development and security. While onshore development presents the greatest challenge for the international community, it is instructive nonetheless to examine the difficulties and problems that have weakened anti-piracy efforts at sea.

In terms of traditional naval strategy, area superiority in the Gulf of Aden has reached the best ratio that can be expected, and it remains open to question whether even simple area parity in the NW Indian Ocean can be achieved, even with a doubling of the naval assets currently deployed. Moreover, although we have witnessed improved coordination among multinational naval forces, the efficacy of these forces is still limited. Reasonable Rules of Engagement (ROE) appear to be in place, but legal issues and a lack of political will have prevented the establishment of an effective judicial cycle, which must include the arrest, prosecution, sentencing and incarceration of pirates captured. While "disruption" (intercept, search and confiscate) has served some deterrent value, the strategy is frustrating to naval commanders because of the enforced "catch and release" policy toward suspected pirates.

Another potential option — the grouping together of merchant vessels in convoys protected by vessels from national navies — is economically unviable, as warships are already in short supply in the area of operations. Conventional naval warfare doctrine is therefore unsuitable to the challenge at hand.

The Situation

The ever-growing threat of piracy is now confronting the shipping industry with the real prospect of entirely boycotting large stretches of the Indian Ocean. Ship owners face the dilemma of either abandoning these routes or sending their ships into dangerous waters where there is the direct risk of attack and confrontation. The international community has failed to adequately address the problem, instead forcing ship owners to assume ever higher levels of risk with both their people and property. Ship owners are also reluctant to risk charges of corporate manslaughter potentially threatened by third-party seafarer action or, indeed, by contracting private security firms to protect their vessels with the same risks involved.

The industry holds that maintenance of freedom of passage of the high seas — as enshrined in the United Nations Convention on the Law of the Sea, or UNCLOS — is a fundamental responsibility of the international community. Moreover, one might expect that given the strategic importance of the Indian Ocean, the oil importing nations of the world would endeavour to protect their vital interests more effectively by safeguarding vessels transiting "choke points" in the Gulf of Aden and the NW Indian Ocean.

The current naval assets provided to address the problem are simply inadequate, and the industry perspective is that there is an urgent need to provide more naval and maritime patrol aircraft assets to deter and defeat piracy in the Indian Ocean. As long as those assets are not forthcoming, then the risk/reward ratio for ship owners continues to grow even more unacceptable. It is the risk/reward ratio for pirates, not ship owners, which must be spurred. Unfortunately, the growing perception within the shipping industry is that many governments implicitly consider the defence of maritime trade to be an archaic and dated strategic policy.

The lack of political will on the part of many states to introduce strong national anti-piracy legislation is an abrogation of their responsibilities as set forth under UNCLOS and the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA 1988), both of which are sufficient legislative conventions in themselves to introduce robust piracy laws into any state. This action, or lack thereof, leads to the unacceptable practice of "catch and release" of suspected pirates, and thereby sends the wrong message to ship owners already fearful of the growing risks of piracy. If the trend continues, it will force ship owners to take matters into their own hands by boycotting the region.

Potential Solutions

The Baltic and International Maritime Council (BIMCO) favours a multipronged strategy to address the threat to international shipping posed by piracy. First, BIMCO continues to advocate for the implementation of national laws that are sufficiently robust to allow states to capture pirates and their motherships. This is possible by criminalising the "conspiracy to carry out piratical acts" through legislation based on UNCLOS and SUA 1988, which provide nation-states with a sufficient international legal framework to adopt appropriate national legislation — as also confirmed in UN Security Council Resolutions 1846 and 1897. The currently established international Rules of Engagement (ROE) are sufficiently robust to deal with the capture of pirates.

While improved judicial frameworks are essential, in the long term the solution to piracy from Somalia lies onshore. As this is unlikely to occur in the near future, however, BIMCO encourages the international community to establish, train and support effective local and

regional coast guards to secure the area. BIMCO stands prepared to explore all avenues of assistance towards this objective, both conventional and otherwise.

One option that is worthy of consideration is that of a Convoy Escort Programme (CEP) operated by a private company, but under the strict tactical control of national militaries — and thus governments. Facilitated by the insurance industry, such a programme would harness the critical mass of shipping traffic to provide exposure coverage for underwriters that is significantly more cost effective than that provided currently through the War Risks Additional Premium (WRAP).

The principle of such a project might appear problematic to the shipping industry at first, as it may seem to absolve governments of their responsibility to provide "safe innocent passage," as enshrined in UNCLOS. If handled correctly, however, CEP may provide an interim capacity-building solution that complements regional coast guards in their efforts to patrol the Somali coastline. It could also reduce the pressure on navies in the International Recognised Transit Corridor (IRTC) and release more assets out into the wider Somali basin, thereby maximising and increasing naval efficiencies.

The CEP concept would likely gain more traction within industry if the following criteria could be met:

- The program should be relatively cost-neutral for ship owners.

- Convoys should operate under one flag state authority, and have ROE allied with the military.

- The CEP must be recognised by stakeholders as legitimate in terms of the application of criminal and civil law.

- The CEP must operate under tactical control of the military, with trained naval liaison officers or government ship riders present to manage and monitor proportionality of the use of force, as well as to carry out arrests.

- The CEP must make a contribution to capacity building (e.g., annual no claims bonuses return to a trust fund and further, training under the Djibouti Code of Conduct).

- The CEP must not be seen as compromising UNCLOS, or the rights of merchant shipping that are contained therein.

If these conditions could be met, then the shipping industry would likely see merit in exploring the concept further. Moreover, an initiative of this sort would reflect the shipping industry's willingness to take more effective and direct measures against maritime piracy. In summary, there is a pressing need for a radically different strategy, as current naval doctrines will not resolve the situation, and onshore solutions to Somalia-based piracy will only be feasible in the long term.

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An Analysis of Current Reporting Systems for Piracy

Pottengal Mukundan

Definitions

"Piracy" is defined under Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), which states, inter alia, that the act of piracy occurs upon the high seas "in a place outside the jurisdiction of any State." "Armed robbery against ships," on the other hand, is defined by the International Maritime Organization (IMO) under the Code of Practice (MSC Circular 984, Article 2.2) as taking place "within a State's jurisdiction over such offences." From the perspective of the victim ship's master, however, these definitions are merely legal distinctions. The danger to him and his crew is precisely the same, whether the attack is legally defined as "piracy" or "armed robbery." For the purposes of this paper, therefore, the term "piracy" refers to both definitions described above, whether the attack is committed within a state's jurisdiction or on the high seas.

The statistics and trends on piracy attacks referred to in this brief are from the International Maritime Bureau's Piracy Reporting Centre (IMB PRC).

Difficulties

Piracy is a unique crime in some respects. The seafarers who are victims of the crime cross international boundaries as part of their normal work. While the crime may take place in national territorial waters, it is impractical from an operational perspective to divert the vessel into the nearest port, and for the ship master to file a complaint with the nearest law enforcement agency, as normally required for crimes committed onshore. This logistical difficulty is further complicated when ships are attacked on the high seas outside the jurisdiction of a coastal state, as frequently happens today in the case of Somali attacks.[1] In many countries, piracy is not a crime that features highly on the local law enforcement agenda, and anti-piracy measures compete for adequate resources against more urgent onshore law enforcement needs.

Traditional law enforcement requires a formal complaint by the victim against the criminal, backed up by evidence of the crime. This evidence frequently includes witness statements and identification of criminals by the crew of the victim ship. In the case of

piracy, however, this may not always be possible. The crime scene cannot simply be secured and preserved, as there is an economic imperative for the vessel to continue the voyage on to its destination. Upon reaching the destination, the witnesses (crew members) will sign off the vessel, go on leave, and then join other vessels belonging to different companies under a different flag state. It may be difficult to locate them and secure their attendance and testimony when the criminal case comes to trial. Sometimes, the crew may be afraid of reprisals by organised pirate gangs.

Moreover, by the time of their apprehension the pirates may have sailed out of the jurisdiction of the prosecuting state. Their arrest may therefore require extradition agreements and the active cooperation of authorities from other countries. With law enforcement and judicial budgets under increased pressure in many countries with a piracy problem, the prospect of interviewing witnesses overseas and having them flown across to attend trial may simply be an overwhelming exercise.

Principles Underlying Piracy Reporting

Against this environment, what is the most effective method of reporting piracy incidents? Several underlying principles are clear.

First, it is vitally important to promptly collect information about each piracy attack from the frontline victims of the crime — the master and crew of the victim vessel. It follows, therefore, that the reporting procedures from the vessel should be as direct and simple as possible. This requirement is made more difficult simply by the nature of the maritime business, in which vessels sail from one port to another throughout the world. Ship masters have informed the IMB PRC that they would like to have one single point of contact to report attacks, wherever they may be in the world; that point of contact, in turn, would then promptly report the incident to the nearest law enforcement agency. In the confusion and stress of dealing with the attack on board, it is impractical for the master to figure out which is the nearest law enforcement agency and then report directly to them. They do not keep on board a contact list of maritime law enforcement agencies for every stretch of coastline, and experience has shown that in many of the countries with a serious piracy problem there is often little response from the agency when a vessel contacts them in this regard.

Second, it is important that the post-attack report is sent by the swiftest means possible to the onshore authority that is able to mobilise a police, coast guard or naval vessel to attend to the scene of the incident. A speedy response may help law enforcement to catch the pirates before they leave the scene of the crime, and/or the jurisdiction, and provide medical and other help as needed to the crew.

Third, unless it is absolutely essential, there must be no interruption to the resumption of the voyage. If victim vessels are pulled into port whilst the police conduct their investigations — sometimes for days or even weeks — most ships will simply not report an incident. Evidence of the crime will be suppressed, allowing pirates to increase the frequency and violence of their attacks. Another effect of suppressing reports is likely to be increased numbers of other maritime crimes, such as mass illegal immigration, smuggling of drugs and weapons, and other illicit activities.

The Options

A number of reporting systems — some more effective than others — are currently used. The International Maritime Bureau's Piracy Reporting Centre (IMB PRC) was established in 1991, and is financed by donations from the industry. As such, it enjoys the confidence of ship masters and owners. The IMB PRC is manned on a 24-hour basis, and is the oldest centre dedicated purely to collecting and disseminating information on piracy worldwide. When the Centre receives information of a pirate attack, it promptly passes that information to the nearest law enforcement agency for action, as well as broadcasts the type of attack, location, time and date to all participating ships around the world, so that ship masters intending to transit the area can be aware of the risks. It also produces detailed quarterly reports, which are used to inform area governments of the piracy within and around their waters, and often acts as a catalyst for increased resources and sharper focus on the problem. As part of the International Chamber of Commerce (ICC), the IMB PRC is apolitical, and thus not subject to political pressures to amend or downplay the problem. The services of the IMB PRC are free of cost to governments and taxpayers, as well as to the ships that benefit from their services.

While the IMB PRC is the "industry option," the Information Sharing Centre of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP ISC) is the "intergovernmental option" for information sharing.

The ReCAAP ISC is established by regional governments with support from the IMO, and depends upon information on attacks being provided to them by a network of focal points within each participating country. These focal points vary among different countries, but include coast guards, police and ministries of transport. The first such centre was the ReCAAP ISC set up in Singapore at the end of 2006 to cover Asia. Not all maritime countries in Asia participate in the ReCAAP agreement, however. To deal specifically with the problems of Somali piracy, the Djibouti Code of Conduct was agreed on through the IMO, with three information centres established — in Sanaa, Mombasa and Dar es Salaam. These information centres can play a useful role in capacity building within the region, and in raising the issue of piracy with governments; a similar inter-governmental arrangement has been proposed for West Africa.

At the national level, Maritime Rescue Co-ordination Centres (MRCCs) are a decades-old concept, and are primarily set up to provide search-and-rescue services to ships in their area of influence. The worldwide network of MRCCs is well known to the shipping industry, and MRCCs have played an important role for many years. Piracy is not their primary task, but they are a vital help point for ship masters at sea.

In the more difficult context of Somali piracy, a complex system of information sharing and merchant traffic coordination with international naval vessels has been established. Somali pirates range throughout the Arabian Sea and parts of the Indian Ocean, hijacking vessels more than 1000 nautical miles off Somalia, and then taking them back to Somalia until a multi-million dollar ransom is paid in cash for the release of the vessel and crew. In response, the UN Security Council has passed several resolutions — the latest being UNSCR 1950 — calling upon countries which have the naval capacity to take action off the coast of Somalia against the pirates including, under certain circumstances, operations within the territorial waters of Somalia. Some 30 naval vessels from different countries — including the US, EU, NATO, China, India, Russia and many others — are engaged against pirates in this area. An elaborate

system registering the transits of merchant vessels has also been developed, whereby merchant vessels report their movements — and attacks against them —to the naval coordination centres of EUNAVFOR, UKMTO and CMF.

This elaborate arrangement is, however, unique to the special circumstances of Somalia, and may not be replicated easily within the sovereign waters of another state.

Thoughts on the Way Ahead

The three principles set out in the "Principles Underlying Piracy Reporting" section above are key to the successful implementation of whichever model of reporting is adopted. It is important to avoid duplication of services whenever possible. Multiple reporting channels confuse victims of piracy, and it is arguable whether they add value that could not be achieved in other, more cost-effective, ways.

Hotspots of piracy shift from one part of the world to another, depending partly on local maritime law enforcement weaknesses. Instead of simply reacting to the problem and rushing to establish local reporting arrangements after problems arise, it makes sense to set up a single channel for reporting piracy attacks, wherever they occur in the world, which survives the problems of today and is able to respond to those of tomorrow.

The real value of multiple regional centres is in building local capacity, a role they are well placed to perform. It may be unnecessary for these centres to also provide multiple reporting channels, as this could in time result in a plethora of expensive centres requiring a disproportionate amount of resources, when the problem has already moved on to other areas of the world.

Captain Pottengal Mukundan is Director of the International Maritime Bureau (IMB).

Note

1. In 2010, Somalia-based piracy accounted for 49.2% of worldwide attacks reported to the IMB PRC. In 2011, as of early March it has accounted for around two thirds of worldwide attacks.

Information Sharing: A Key to Surviving in Pirate-Infested Waters

Philip Holihead

A commonly used definition of information describes it as "data that has been verified to be accurate and timely, is specific and organised for a purpose, is presented within a context that gives it meaning and relevance, and can lead to an increase in understanding and decrease in uncertainty. The value of information lies solely in its ability to affect a behaviour, decision or outcome. A piece of information is without value if having received it, things remain unchanged."[1]

Information sharing, therefore, is a three-stage process — gathering data, sharing or communicating data, and acting upon relevant information. Achieving all three at sea is not a simple task.

Information Gathering

International naval forces have been operating in the Gulf of Aden and Somali basin since the current spate of Somalia-based piracy began. The effectiveness of naval operations in the Internationally Recommended Transit Corridor (IRTC) in the Gulf of Aden, along with operations to suppress skiff activity from the Somali coast, have forced pirates to change tactics: Pirates are now using hijacked "motherships" to extend the range of their criminal activities across much of the Indian Ocean.

The huge increase in the range of piracy that the motherships provide means that navies have a much wider area to patrol, and insufficient resources to meet the task. One of the many strategies they utilise in an effort to overcome this challenge is to focus limited resources where they are most needed, which they determine by gathering information on ships transiting the areas at high risk for piracy. In order to protect the more vulnerable vessels — typically those with a slow speed and a low freeboard — navies need to have access to some essential information about vessels in transit through the high risk area. To this end, all ships entering the high risk area are invited to register and then to report in, via either e-mail or telephone, through various "check-in portals," so that navies have a clear understanding of what vessels are in the area on any given day and can, resources permitting, focus attention on the most vulnerable targets. Unfortunately, whilst larger, less vulnerable

ships are increasingly using this system, many of the most vulnerable ships continue to transit the area without informing navies of their presence. Without knowing they are there, it is virtually impossible for navies to lend their support. This unfortunate situation continues, despite navigational warnings that are issued many times daily, promotion by the International Maritime Organization (IMO) and the shipping industry of the "check-in" system, and other self-protection measures highlighted in various guideline documents, including the Best Management Practices. Awareness has also been raised through the high level of media attention that piracy has attracted worldwide.

Undaunted by their inability to get certain shipping vessels to declare their own presence, navies are seeking other means of obtaining necessary data on ships in the area in order to increase their chances of having a positive effect. Not only do they need to know where all the merchant ships are — in military parlance the "White Picture" —, they also need to know where the pirates are — referred to as the "Red Picture" —, since knowledge of the "opposition" whereabouts is vital, both in deciding where to concentrate scare naval resources and in alerting merchant ships of particular areas to avoid.

Considerable time and effort are required to develop these "Pictures," and the capability of Maritime Patrol and Reconnaissance Aircraft (MPRA) to cover large tracts of ocean is invaluable in this process. Another invaluable tool for navies is satellite-based vessel tracking data. The IMO has recently given navies in the area access to a new information distribution facility through which flag administrations can provide Long Range Information and Tracking (LRIT) data that includes the identity and location of merchant vessels in the area. This is an opt-in system which a growing number of flag administrations are committing to, as it has tangible benefits to ships; namely, that navies endeavour to directly contact ships, by means of broadcast or even telephone, that are thought to be at risk of pirate attack. In order to benefit from this service, it is vital that ships transiting the area take all necessary self-protection measures, including checking in with, and providing their LRIT data to, security forces in the area. This allows navies to act on this information and endeavour to effect a positive outcome in the event of a pirate attack.

Information Sharing

There are many challenges to sharing information in the maritime domain. At a national level, there is the question of whether such information sharing is in the interest of the state. At a departmental level, there can be impediments to sharing information between or amongst departments. These impediments can be legal, political, or even personal in nature. At the level of the shipping industry, there may be concerns with respect to what a competitor might do with proprietary information. Meanwhile at the military level, there can be a culture of over-classification of information as "intelligence," and thus not widely shared. Pirates, regrettably, do not suffer such constraints and freely share information amongst pirate groups with respect to tactics and the worth of newly hijacked ships.

Yet despite the challenges, there are three multinational naval forces successfully operating alongside each other in the region, together with ships from independently operating navies. While all are operating according to different mandates or national rules, thanks to a shared goal and a pragmatic approach, a much higher level of interoperability and coordination of groups

and individuals has been achieved. The Shared Awareness and Deconfliction (SHADE) forum provides a mechanism for countries conducting counter-piracy operations in the risk area to harmonise their activities, including utilisation of a common method of communications for information sharing.

Information sharing is also a building block for trust and cooperation; it is not by chance that the IMO's counter-piracy implementation project known as the Djibouti Code of Conduct characterises information sharing as a cornerstone activity. In promoting information sharing, the IMO is building on the experiences and lessons of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia Information Sharing Centre (ReCAAP ISC), the role of which is to coordinate responses to and promote better understanding of piracy and armed robbery against ships in Asia.

The IMO Djibouti Code of Conduct Project Implementation Unit is creating three such Information Sharing Centres (ISCs) — one each in Yemen, Kenya and Tanzania — that will receive and share piracy information amongst the 17 regional states that currently participate in the Djibouti Code of Conduct. Whilst early ambitions are modest, these ISCs are intended to form a backbone for the provision of the regional "Red Picture." Other capacity-building initiatives include the UAE-funded Automatic Identification System (AIS) and radar installations in the Seychelles, as well as similar IMO technical interventions in Tanzania and others proposed under a regional maritime awareness programme. When linked together, these various initiatives will combine vessel identification and tracking data to provide a regional "White Picture."

Acting on the Information

Gathering the information to form a maritime picture is the first step; the next is to communicate and share knowledge related to that information in order to take the third step of acting upon it. The challenges of gathering, sharing and acting upon information faced by the international navies pale into insignificance when set against the current capabilities of regional maritime forces. Regionally, resource shortfalls are acute, with modest maritime forces endeavouring to protect huge expanses of ocean and coastline. Having better information will help make the best use of scarce assets but, as the SHADE experience highlights, to act effectively on that information requires a shared aim amongst all partners and an agreed mechanism for all available resources to operate towards that aim in the most effective manner.

It is towards that goal that the IMO has conceptualised a new maritime regional cooperation initiative designed to protect the southern sea lanes. This initiative, which is being developed within the Djibouti Code of Conduct, and which draws together many of the issues outlined in the Action Plan from the Mauritius meeting of October 2010, sets the framework for a regionally-controlled force of maritime assets collaborating to counter piracy. This regional force will have coast guard functions, work within a common framework, and share information on the whereabouts of fishing vessels and merchant ships, as well as the pirates that hunt them. Although still in a conceptual form, such a regional cooperation mechanism is vital for the development of an actionable regional maritime strategy.

Conclusions

Without reliable, actionable information, those tasked with protecting seafarers from the risks of being attacked by pirates are effectively blind. Thus, it seems logical that any ships intending to transit the areas at high risk of piracy should assist the navies as much as possible by giving them the data they require. If the navies currently acting in the region are to hand back responsibility for maritime security to regional states in the future, the lessons of gathering and sharing information must be learned now. These lessons will provide a solid foundation for a regional maritime awareness programme within which the region can operate its small, seagoing forces to suppress piracy or other maritime security threats.

Philip Holihead is Head of the Counter-Piracy Project Implementation Unit at the International Maritime Organization.

Note

1. Businessdictionary.com

A Public-Private Maritime Security Option for Coastal Monitoring

Claude G. Berube[1]

Introduction

Somali piracy has spread far beyond nominal Somali territorial waters, affecting multinational ship crews and companies while threatening the expectation of safe transit for legitimate commerce on the global maritime commons. Therefore, regional states, the international community and industry must collectively address this threat. The threat level and cost of piracy today requires a layered security approach that is a collaborative effort between industry and sovereign nations.

Somali piracy is most vulnerable to suppression at its geographical source. The reduction of piracy will require a cooperative public/private approach to a modified patrol, interception, and inspection regime for select areas off the Somali coastline. Such a regime should be part of a layered security approach that includes ship self-defence measures and state navy patrols of high-traffic, high-risk areas. This brief proposes the implementation of an integrated watchtower network, which would be regulated by a competent authority — whether an international organisation or appointed state—, but would employ maritime security companies.

The Need for a New Security Approach

The inherent danger of relying too heavily on anti-piracy technologies or practices is complacency; this leads to the failure to adequately recognise threats, and to underestimating the adaptability of pirates. Non-state actors — in this case, Somali pirates — can adapt their operational and tactical patterns and procedures faster than navies or industry can respond. Moreover, while they are largely effective, anti-piracy technologies are not infallible. In concert with industry's *Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area*, industry should continue to invest in defensive technologies and measures as the first step in a layered approach to security. In addition to the protection offered by naval platforms when they are available, some commercial traffic has also benefitted from self-defence provided either by onboard armed security or armed escort vessels.

If focused correctly, maritime security companies could be an essential force multiplier to counter the spread of piracy. Private armed security has not been universally accepted as a possible solution. Most shipping companies have been understandably dismissive of the

concept for legitimate reasons such as liability issues, hiring costs that exceed the cost of the risk, and the potential for escalating the violence of the Somali pirates themselves.[2] In addition, the differences in firearms regulations and licensing fees in regional countries can be an obstacle for some firms. As the number and range of attacks have increased, and as the costs associated with piracy have risen, some (but not the majority of) shipping companies and insurers have become more accepting of this option.

Advantages of a Watchtower Network

Pirates may be able to overcome countermeasures, but they remain captive to the forces of nature. Weather, for example, is one deterrent since the skiffs are limited in conducting operations during monsoon seasons. Neither can Somali pirates alter geography. While they have exploited the geography of the greater Indian Ocean to their advantage so far, one of the most efficient means of reducing piracy could be to turn geography to their disadvantage. Pirates must have coastal support from their towns and villages along the Somali coastline; whether they capture ships or not, they must eventually return to those towns and beachheads, and that is where limited assets would be most effective.

Given the paucity of naval platforms in the fleets of major navies due to the post-Cold War environment, and the lack of sufficiently sized regional navies and coast guards in the Western Indian Ocean, a long-term blockade of the Somali coastline solely by state navies is neither politically nor financially viable. However, the international community can take a leading role in regulating and holding accountable an anti-piracy maritime watchtower network conducted largely by maritime security companies using organisations and vessels that are already available or that could soon be ready.

The purpose of the watchtower network would be to inspect Somali waterborne craft for contraband (primarily weapons) and equipment normally used for conducting pirate attacks. Any personnel found with contraband would be transferred to the appropriate governmental authorities. Having a watchtower network in close proximity to the Somali shoreline might also act as a deterrent to pirates, as well as encourage a return to legitimate trades like fishing, if fisheries protection is part of the international community's layered security approach to regional stability. Finally, the platforms would provide additional opportunities to impede captured ships from reaching the Somali coastline, where hostages are transferred to land sites, thereby making rescue far more difficult.

The watchtower network would include four primary stations: one along a span of 200 nautical miles off the northern coast of Somali from Bossasso east, and three similarly sized spans on the eastern coast north of Mogadishu. The operating area for each station would be from 12 to 30 nautical miles from the coastline, with each station having 3,600 square miles to patrol.[3] The four stations together would be responsible for less than 14,000 square miles at the source of piracy, versus the area of several million square miles of the Indian Ocean in which pirates now operate.

Each station would be secured by a largely privatised anti-piracy security group (APSG). Each APSG would have an Afloat Forward Staging Base (AFSB) for command and control; intelligence, surveillance and reconnaissance; and replenishment. These mobile maritime platforms, which could also provide support for naval assets, could be converted freighters similar to those proposed by the US firm Maersk.[4]

In addition to serving as a base for unmanned aerial vehicles (UAVs), each AFSB would have responsibility for three classes of security vessels in its station. The first class of ship would be similar to those purchased or sought after by current maritime security companies — approximately 55 metres in length, 300-700 tonnes, with a range of 5,000-10,000 nautical miles. Too slow to adequately challenge higher-speed skiffs, these ships would, in turn, serve as command platforms for the two other classes. The role of intercept and inspection security vessels could be filled by such former naval and coast guard ships as have been employed by companies in the Gulf of Aden, including former Swedish 200-class vessels or more modern commercial variants, given appropriate security personnel onboard. A sufficient number of rigid-hulled inflatable boats (RHIBs) would complete the station-keeping platforms.

The global cost of piracy, which is currently estimated at between US$7-12 billion,[5] includes an estimated US$2 billion spent annually in operational costs for navies on station. These ever-increasing costs have now reached a threshold that necessitates the implementation of a maritime watchtower network of mobile platforms along the Somali coastline. Investment in the network would require approximately US$3.5 billion for the first year of implementation; this would include procurement of those platforms not already available with current maritime security companies. Costs for the second and third years of implementation would be approximately US$500 million annually for personnel and operations/maintenance costs. In its first three years of operation, the total cost would be approximately US$4.5 billion, compared to a total cost of piracy during the same period ranging from US$ 21-36 billion, assuming costs such as ransoms and insurance rates remain relatively constant.[6]

Payment for the network would be shared by the international community and industry, based on a scaled formula derived from countries that have lost revenue from canal fees and trade, companies and flagged states that operate in the region, and states whose navies have borne unanticipated annual operating costs.

Conclusion

When combined with a layered-security approach, the watchtower network would reduce piracy at its most vulnerable point, while enabling legitimate Somali fishermen to pursue their trade in a more secure environment. This dynamic would help to stabilise an economy based on legitimate, rather than criminal, enterprises. This network would also permit the international community, should it elect to do so, to eventually move security and stabilisation ashore.

Industry and the international community can continue operating in the current environment, but it will still simply be responsive and reactive in measure. Piracy will not be diminished, much less stopped. If Somali piracy is not adequately challenged, then the international community and industry risk security at sea elsewhere if littoral states fail or fall. This could happen in areas throughout the world, if not by pirates then by other non-state actors, such as terrorists, who use the maritime environment and mount operations similar to piracy.

The price for implementing a watchtower network and related security measures can be costly, but so too is the cost of not doing enough.

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Notes

1. The views of the author are his alone and not those of the US Naval Academy, the Department of the Navy or the US Government.

2. In February 2011, the International Chamber of Shipping, for example, reversed its long-held position against armed security, and now suggests that it could be one option in ship's self-defence.

3. Although the stations would be outside of Somali territorial waters, this could be modified with permission of local governments to operate within territorial waters.

4. Based on 2009 interview with Maersk, these Afloat Forward Staging Bases were proposed as an alternative to US Navy LHA(R)s at a cost of approximately US$500 million per unit.

5. One Earth Future (OEF) Foundation, "The Economic Cost of Maritime Piracy, One Earth Future Working Paper, December 2010,

http://www.saveourseafarers.com/assets/files/The_Economic_Cost_of_Piracy_Summary.pdf.

6. Cost estimates are based on independent analysis.

Private Military and Security Companies in the Fight against Maritime Piracy

Carolin Liss

Introduction

Piracy in the wider Gulf of Aden area remains a serious security concern, despite efforts by governments from around the world to address the problem. Given the failure of government agencies to combat piracy, Private Military and Security Companies (PMSCs) are increasingly employed to secure international shipping in piracy-prone waters. However, the employment of these private security providers has been controversial. This paper gives a brief overview of PMSCs and the anti-piracy services they offer. It then focuses on the benefits and controversies surrounding the employment of PMSCs in the maritime sphere. The paper concludes by suggesting that PMSCs need to be effectively regulated in order to make a valuable contribution to the fight against piracy.

PMSCs and Commercial Anti-Piracy Services

PMSCs have emerged over the past 20 years, offering a vast menu of military and security services, including services that were in the past the responsibility of government agencies. Active throughout the globe, PMSCs provide services ranging from logistics support, risk analysis, training of military units and intelligence gathering, to the protection of assets and people in conflict zones.[1]

The demand for private military and security services around the world comes in part from the maritime sector.[2] Indeed, PMSCs are today employed to secure the world's oceans, or more precisely, commercial vessels, yachts, cruise ships, offshore energy installations, container terminals and ports. Most companies active in the maritime security sector offer a range of anti-piracy services, including the following:

1. *Risk assessment and consulting:* Almost all companies offer risk consulting services, either consisting of general political risk reports or client-specific risk assessments.

2. *Training of crews, port authority personnel, or military and law enforcement units; vessel tracking:* These services include security-awareness training courses for crewmembers, and more advanced training for law enforcement officers or military personnel.

3. *Provision of (armed) guards:* A large number of companies offer to provide armed or unarmed guards, or escort vessels, for commercial vessels or yachts.

4. *Crisis response - hijackings:* Many companies offer crisis response, including recovery of hijacked vessels or assistance in the negotiation process in cases of kidnapped crewmembers.

5. *Fisheries protection:* These services include the protection of fishermen from pirates.

PMSCs, therefore, offer preventive as well as post-attack services, addressing all types of pirate incidents on commercial vessels and pleasure crafts. For example, hit-and-run robberies, and perhaps even attacks by pirate syndicates, may be prevented through better crew training, or by the presence of guards on board a vessel. Ship owners whose vessels have been hijacked can, on the other hand, rely on crisis management assistance during the event, or employ a company to relocate or recover the ship or stolen cargo.

Many PMSCs offering anti-piracy and other maritime services are either part of, or linked to, larger PMSCs or transnational corporations outside the security industry. Many of the larger companies that offer such services are based in the US and Great Britain, with some of them having offices around the world. Moreover, a number of smaller companies have been established, including in regions where demand for anti-piracy services is high. The majority of PMSCs offering anti-piracy services seem to be founded by, and to employ, ex-military or ex-law enforcement personnel, and often consist only of a small number of permanent staff, an office and, usually, an impressive presence on the Internet. These companies hire additional personnel and acquire necessary equipment on a case-by-case basis, once a contract with a client is signed, allowing the companies to run their business with limited expenses and capital. While this type of company setup can be beneficial for the client — as resources are bought and staff hired specifically for the client's needs — it also allows companies to rapidly dissolve and recreate themselves if need be.

PMSCs Employment and Controversies

Hiring a PMSC to protect a vessel is costly, and such companies are therefore only employed in parts of the world where pirates are believed to pose a serious threat, and government forces are not able to ensure the safety of shipping. Consequently, most PMSCs provide security in piracy hot spots such as the Malacca Strait and, especially today, in the wider Gulf of Aden area. Indeed, with pirates in the Gulf of Aden area having already collected many millions of U.S. dollars in exchange for hijacked vessels and kidnapped crews, the extra costs for private security seem more and more justifiable for ship and cargo owners, insurance companies and other clients of PMSCs. The current spate of pirate attacks off the Horn of Africa has therefore spurred a considerable rise in the number of companies offering anti-piracy services.

The increasing employment of anti-piracy PMSCs off the Horn of Africa and in other places around the world has been controversial. Concerns mostly centre on the lack of transparency and public oversight of operations and business practices of these PMSCs, and the question of whether or not the protection of national security and the provision of military services should remain within the domain of governments, rather than the profit-motivated private sector. While proponents of PMSCs have argued that these companies can offer more

effective military services at more competitive prices than state militaries, and can respond to crises more rapidly,[3] critics have questioned whether or not PMSCs should be allowed to provide armed guards and armed escort ships to protect merchant vessels. Concerns have, for example, been raised over the possibility of excessive use of violence by PMSC employees, and it has been stressed that weapons in the hands of guards on a large commercial cargo vessel or tanker can have devastating consequences if handled in a careless, inconsiderate, or over-eager fashion.[4] Other critics have pointed to the fact that PMSCs have cooperated with local government agencies and have, for example rented patrol vessels or personnel from government agencies. Such cooperation is controversial because government resources are being used to protect assets of PMSC clients, and not to provide public security services.[5] To avoid such controversial working practices and "accidents," it is crucial to effectively regulate PMSCs to ensure, for example, that only guards with appropriate training and expertise are employed.

However, regulation of PMSCs providing anti-piracy services is a difficult and complex task. For example, PMSCs often do not operate in the countries where they are based, and work in environments where it is difficult to provide oversight over their activities. Furthermore, a vessel protected by armed PMSC personnel does not only move between various states and jurisdictions, using the right of innocent passage, but also sails under the flag of yet another state. Different national and international laws and regulations therefore have to be taken into account with regard to jurisdiction over water areas and the use of armed personnel or escort vessels. This makes the regulation of PMSCs a complex issue, particularly because laws or guidelines regarding the use of private armed personnel are often unclear or do not exist.

At present, PMSCs providing anti-piracy services can be roughly divided into two categories — those that (are registered in the countries where they are active and) operate within regulatory frameworks, and those operating outside national and international regulations. The latter often pay off local government personnel, or work in areas where government agencies either do not exist or are unable to interfere with PMSC activities. Such working practices are clearly controversial because there is no public oversight over such PMSCs.

Conclusion

PMSCs are increasingly employed to provide anti-piracy services, and given the ongoing pirate attacks in areas such as the Gulf of Aden, it appears likely that the PMSC business will continue to grow and prosper. There are a number of problems and controversial issues inherent in the private maritime security industry, and if the employment of PMSCs in this sector is to increase, then improved regulation and oversight of these companies is needed. The need to regulate PMSCs has been acknowledged internationally and governments, multilateral bodies and other organisations around the world now have begun to slowly address the problem. However, it is important to keep in mind that even though effectively regulated PMSCs can make a valuable contribution to combating piracy by preventing individual pirate attacks and helping victims deal with the aftermath of an attack, they do not address the underlying root causes of modern-day piracy itself.

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Notes

1. Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell: Cornell University Press, 2003).

2. The information about PMSC anti-piracy services was gathered from PMSC Web sites and interviews with PMSC staff between 2005-2010.

3. Doug Brooks, "Messiahs or Mercenaries? The Future of International Private Military Services," in *Managing Armed Conflicts in the 21st Century*, ed. Adekeye Adebajo and Chandra Lekha Sriram (Portland, Oregon: Frank Cass Publishers, 2001), pp. 131-32.

4. Karl Malakunas, "Private Armed Escorts in High Demand on Sea," Agence France Press, May 11, 2005, http://www.corpwatch.org/article.php?id=12241.

5. Carolin Liss, "Losing Control? The Privatisation of Anti-piracy Services in Southeast Asia," *Australian Journal of International Affairs,* Vol. 63, No. 3 (2009): 390-403.

Captive Seafarers: Aid, Information and Advocacy

David Cockroft

"It was not the threat of physical abuse or the intimidating way the pirates approached us, (or) their clear disregard for human life – more than anything else I felt alone, abandoned … that there would not be anyone able to assist me and my crew."

These words from the recently released captain[1] of a hijacked ship illustrate something of the feeling of helplessness experienced by the victims of piracy. They hint too at the psychological pressure seafarers experience whilst passing through pirate-infested areas. This burden, placed on a seafarer who is already under work-related pressure, may even have potential consequences for his or her safety, the safety of the rest of the crew, and the ship itself.

The International Transport Workers' Federation (ITF) believes that this human factor is a key element when examining the issue of piracy, and one that the international community needs to embrace. Seafarers are an integral part of any successful shipping enterprise and deserve recognition as such. Although some are now being trained on how to behave during a piracy attack, for most there is still a yawning gap in pre- and post-attack information and care.

The stress caused by anticipation of pirate attack is not new. Even before pirates started to physically harm captive seafarers at the end of 2010, there was an awareness that should one be captured, one could be detained for an indefinite period, with little hope of being rescued, while a lengthy process of negotiation between the ship owner and the pirates ran its course.

The perception — and in some cases the reality — at that time was that during the period of captivity, seafarers' families would not always be informed about the progress of negotiations, the well being of their loved ones and, ultimately, whether they could count on receiving the wages of hostage seafarers for financial support. Seafarers knew of cases in which hostages were not paid, or in which employers tried to pay only the bare minimum.

Since then the situation has worsened dramatically. Seafarers are now likely to see, first hand, ships that have been shot up when evading an attack. They know that other seafarers have been tortured and killed by pirates, had guns put to their heads when a naval vessel approached, and been held captive for up to a year. They know, too, that pirates have dramatically increased the range of their operations and the frequency and severity of violence. Even passive security

measures, such as retreating to an onboard citadel, are likely to elicit a response from the pirates, who have been known to set fire to the rooms around it and, on at least one occasion, fired a rocket-propelled grenade (RPG) at the "safe room."

The ITF acknowledges that the industry is moving to recognise the role that seafarers play, and the risks they are subject to while travelling in certain areas. However, since the overall problem of piracy remains undefeated, mainly due to the lack of a joint international political response, it is of the utmost importance that an assistance system is implemented that can tend to seafarers' psychological and practical needs. We have identified three areas that we believe should be given consideration in order to guarantee an effective and consistent approach to the welfare of seafarers whose ships trade in the risk areas:

1. **Prevention and information**
   Seafarers should be trained and provided with updated information about the countermeasures needed to evade a piracy attack. They should be kept regularly informed regarding the procedures the owner of the vessel has in place while transiting a risk area. Some of these procedures include preferred escorted convoy routes, informing the authorities that the ship is about to transit the area, and ensuring that officers are aware of how to communicate with naval forces in case of need. They should also be made aware how to react if the ship is boarded by pirates, including procedures on where to gather if the ship is taken, and the shortest routes to a secure citadel, if one is available.

2. **Coping with fear**
   If the worst happens, with the ship taken and the crew detained, the crew should already be aware of the contingency plan the owner has in place to ensure that professionals are tasked with negotiating a ransom, as well as the efforts the ship owner will make to minimise the length of their captivity. The seafarers should also know that the owner or the owner's agent will appoint a designated person to liaise regularly with their families, that psychological support will be provided to the families when needed, and that the seafarers' wages will be channelled to their families. Seafarers should be briefed about the typical behaviour of pirates, and how to cope while being held captive. Although there are already booklets that explain this, there is room for more in-depth literature, prepared by experts with the necessary experience.

3. **Continuous assistance in the aftermath**
   Once the seafarer is released, there should be a guarantee of a thorough psychological assessment of his or her condition, as well as regular check-ups to monitor any possible long-term effects of the captivity. A paid period of holiday should be granted to ensure that as much time as possible can be spent with family in order to rebuild family routines. Wherever possible, the return to work at sea should be on vessels which are less likely to travel into the risk area.

These three recommendations are neither a final nor an exhaustive list of all possible options, but they represent a basic framework that is quite feasible to implement, in the process improving conditions for seafarers. Moreover, industry, the ITF and welfare organisations

cannot sustain the entire burden. The lack of input from many governments and flag states toward meeting the humanitarian needs of ships' crews leaves a gap that needs to be filled sooner rather than later.

Conclusions

Unless seafarers are recognised as having the same rights as shore-based workers, regardless of the flag of the ship they work on, and until it is acknowledged that the service they provide to the global community puts them in the front line of risk, it is unlikely that they will receive the support they need.

Seafarers are the victims of piracy. The fact that a crew may be comprised of several different nationalities, perhaps working far from home and the home nation of the shipping register, does not provide an excuse for governments and flag states to ignore the problem. Flag states and governments have to work side by side with the maritime industry, unions and welfare organisations to implement programmes to ensure that seafarers are adequately assisted before, during and after any possible pirate attack.

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Note

1. As per his wishes, the captain has not been named.

An Ethical Response to Piracy?

Jane Fiona Cumming and Adrian Henriques

In this current economic situation, consumers – and the media – increasingly demand good value. But they are also demanding responsible supply chains in exchange for a "license to operate" and as a condition for making a profit. Workers' rights, safety, conditions and pay are part of that contract, and where this has been ignored the first cases of corporate manslaughter are being brought. At a macro level, this is manifest in the social contract an employer has with its employees. Failures of this social contract are being highlighted in high profile media exposés, and thus employees, unions, upstream procurement and even end-consumers are seeking clarity on what such a social contract should cover. The central tenet of this brief is that a social contract is relevant to shipping and the subject of piracy. What should a business expect to cover? What do its communities — employees, their families and other stakeholders — expect business to cover? Is there a match? For it is within any mismatch that the reputation risk lies for industry.

The Costs

The London-based International Maritime Bureau (IMB) reports that pirates hijacked a record 53 ships and 1,181 crew members in 2010, most of them in the waters off Somalia.[1] The Oceans Beyond Piracy report *The Economic Costs of Maritime Piracy*[2] reviewed the costs of such actions. It primarily analyzed direct costs as well as some secondary (indirect) costs, estimating the total costs of piracy in 2010 were US$7-12 billion.

The Response to Date

There have been various commercial and practical responses to the dangers facing seafarers, and these responses have been led by unions, industry and government. Most recently, the Save Our Seafarers (SOS) campaign was launched on March 1, 2011, by the International Transport Workers Federation (ITF), the Baltic and International Maritime Council, the International Chamber of Shipping, the International Shipping Federation, Intercargo and Intertanko. According to the ITF Web site, "The campaign, backed by a comprehensive Web site and advertisements in the world's top newspapers, aims to encourage millions of people

to put pressure on their governments to crack down on piracy. The move follows last year's successful worldwide petition calling on governments to tackle piracy, which attracted almost a million signatures."[3]

Another example involves the International Maritime Organisation (IMO), which set the 2010 World Maritime Day theme as "Year of the Seafarer." This campaign seeks to drive increased public awareness of seafarers and their work; the adoption of major amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention) and its associated Code; and, the creation of an annual "Day of the Seafarer." Further, the IMO's 2011 theme is "Piracy: Orchestrating the Response." Its associated action plan aims to encourage a decisive and effective global response to piracy, urging seafarers to play their role in implementing best management practices when sailing through pirate-infested areas.

A Gap?

Whilst these responses are part of the solution, there needs to be an overarching ethical response as well. There are both moral and commercial contracts between ship owning companies and their staff (however sub-contracted their staff supply chains may be). In that context, the principle focus for such a response should be those staff members themselves, ensuring that they have both equity of access and shared input into the debate about the problem, as well as a role in developing solutions. What is needed is a compact.

Opportunity for a New Partnership

This proposed compact would seek to answer the need for protection of sailors and their families, including, for example:

- training for sailors — e.g., what to expect and how to handle yourself if the ship you are working on does get attacked and you get taken hostage;

- appropriate support for sailors — e.g., rehabilitation and counselling for sailors on release;

- an appropriate approach for the families of sailors who are taken hostage — e.g., what the sailors themselves would like to be done; and,

- appropriate welfare plans and support for these families, in such situations in which the main breadwinner is not able to support the family.

Who is Responsible?

As asserted previously, the issue that most urgently needs to be addressed is to determine who is responsible for what. Moreover, if the issues are industry-wide and global, can isolated actions succeed in enabling real systemic change? What are the wider responsibility issues implicit in this situation, and how can the industry organise to facilitate and deliver a sustained and sustainable response to those issues in their direct control (i.e., beyond defence or legal protection against pirates)?

The Business Case

In different parts of the world, different laws and moral norms apply. However, threats to employee health and safety — including the outcomes of piracy — fall within the scope of fundamental human rights and the UN's Millennium Development Goals agenda, as well as within an operating company's corporate responsibility. Moreover, these situations are beyond the law, and therefore need companies to take leadership in building a compact for their "at risk" employees as a social contract, recognising the risk that they run in the course of carrying out their employment. The advantages for the shipping industry could include the protection of their corporate reputation, greater cooperation and support from sailors, and fewer successful piracy incidents.

Learning from Others

Practical action to implement a compact with sailors need not and should not be commercially competitive. The maritime industry and its stakeholders can work together collectively; such a collective response needs to be a "multi-stakeholder initiative" (MSI).

An MSI typically enables companies, NGOs, employees, unions, academics, investors and other stakeholders to come together in a forum to work on specific issues. Key ingredients of such a forum include participation, inclusivity, responsiveness, transparency and a shared commitment to building shared understanding, and a shared solution to the material issues. In this case, the material issue is provision for the worker on the ship, ranging from health and safety, to family care and support in the event of a pirate attack and capture.

Well known MSIs include The Forestry Stewardship Council, the Kimberley Process and the Ethical Trading Initiative. These particular MSIs all focus on supply chain issues, and arose because of end-consumer concern over the working conditions within a supply chain. From these and other responsibility programmes, we suggest that the any proposed MSI in this regard should incorporate the following lessons:

- Sharing specific "evidence," as well as in-depth knowledge and resources, can provide broader perspectives, creating and delivering shared value and governance.

- The engagement needs to be purposive about seeking a solution — although not prescriptive as to what the solution should be — and should be fully participative, inclusive and responsive, sharing the agenda, decision making and responsibilities.

- Transparency regarding outcomes and the decision-making process is essential.

- There needs to be clarity as to what can and cannot be addressed, the timeframe for initial action, and what might need further work over time.

Given their relationship to conflict — in this case conflict minerals and diamonds — the Kimberley Principles may be a relevant model. To date, they have gained the support of a large proportion of the world's diamond industry, including companies, governments and NGOs, while simultaneously curtailing the flow of conflict diamonds and increasing trade in legal diamonds. This shift of the diamond trade from the illicit to the legal has also provided effective support for fragile states struggling with the management of mineral wealth.

Taking it Further — Direct to Consumers?

How far could the use of a "better transport" label appeal to consumers? Consumer labels can be very effective in mobilising consumer activity, as the Fair Trade movement has shown. But the effectiveness of such labels may be undermined if the sustainability of the entire value chain – from raw material to shop – does not also support the ethical claims made. An example of this is an "end to end" audit/verification process such as that implemented by the Forestry Stewardship Council (FSC), in which the FSC Chain of Custody certification tracks the FSC-certified material through the production processes all the way to the store.[4]

While a complete value chain sustainability label may be possible, depending on the nature of the cargoes concerned, the effort involved should not be underestimated. Piloting such an approach could be the topic of early discussions of any work in establishing the proposed "multi-stakeholder initiative" for the industry.

It is important to note that in every case so far where these MSIs have been implemented, society has demanded action from the retailers, as well as from the companies involved.

Next Steps?

As a direct result of this conference, key players could agree to an industry-wide forum to establish the facts as they are known, the gaps (What do we need to know?), immediate "wins" (What should/could we do now?) and, as responsible corporate citizens, what we would like to do now. A sizeable body of evidence needs to be brought to this forum from marginalised workers, trade unions, and local level monitoring and verification organisations in developing countries. Where there are gaps in knowledge, robust and measurable studies — including feasibility or pilot studies for any opportunities identified — can be set up as part of a "shared fact-finding" approach. The outcomes of such a forum could sit alongside the broader efforts on preventing piracy, including working in Somalia and other nations of conflict to build the local economies and peace.

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Notes

1. Bill Varner, "China, Russia Lead UN Bid to Stabilize Somalia, Combat Piracy," *Bloomberg Businessweek,* March 7, 2011, http://www.businessweek.com/news/2011-03-07/china-russia-lead-un-bid-to-stabilize-somalia-combat-piracy.html

2. One Earth Future (OEF) Foundation, "The Economic Cost of Maritime Piracy, One Earth Future Working Paper, December 2010, http://www.saveourseafarers.com/assets/files/The_Economic_Cost_of_Piracy_Summary.pdf. The One Earth Future (OEF) is a private foundation whose first project is a strategic commitment to the Oceans Beyond Piracy Project.

3. http://www.itfglobal.org/news-online/index.cfm/newsdetail/5743

4. http://www.fsc-uk.org/?page_id=51

4

Relevant Issues in International Law

Towards a Robust Legal Framework on Piracy: Law and Politics

Douglas Guilfoyle

Introduction

The provisions of international law governing piracy are relatively clear, and there are no significant problems of jurisdiction.[1] However, there are two main areas in which legal frameworks need to be substantively strengthened in the fight against piracy. First, there is a lack of national laws designed to implement the powers of international law; and second, there are numerous complexities involved in cooperation *between* national systems. If a Somali pirate is apprehended by a United Kingdom warship, prosecuted in the Seychelles and then transferred to a third state to serve his sentence, a chain of legal relationships is involved. One of the basic difficulties involved in this type of chain involves how to gather evidence if a capturing warship does not know in advance which state will agree to prosecute suspect pirates. Moreover, some states may also find it legally difficult to transfer suspects to partner states for prosecution without human rights guarantees. Although it is sometimes suggested that this problem of "disposition" (choosing where to send pirates for trial) would be simplified if there was an international piracy tribunal, such ideas are impractical for a number of reasons, and cooperation among nations remains the best option.

The ultimate obstacle to more piracy prosecutions is political will: Simply put, more states must be willing to prosecute suspects if more trials are to occur. A key obstacle is finding states willing to detain convicted pirates, as this entails a much larger cost than prosecution. This could be remedied with the establishment of United Nations-constructed and locally run prisons in stable areas of Somalia. A network of agreements governing the transfer of convicted pirates would also be required.

International Law and Piracy

Piracy is defined in the 1982 UN Convention on the Law of the Sea (UNCLOS), which largely reproduces provisions of the 1958 Geneva High Seas Convention.[2] Under UNCLOS, piracy is defined as (1) an act of violence, detention or theft; (2) on the high seas (being all waters outside the territorial sea);[3] (3) committed for private ends; and, (4) by one private vessel against another vessel ("the two vessel requirement").[4] This definition is accepted as customary

international law (i.e., it applies to all states irrespective of treaty membership), and it includes an offence of voluntary participation in a vessel intended for future pirate use or previously used by pirates and remaining under the same dominant control.[5]

The UNCLOS law, however, has gaps. UNCLOS confirms the duty of all states to cooperate to *suppress* piracy, but makes the actual *prosecution* of pirates discretionary.[6] UNCLOS includes no express provisions on transferring suspects to other jurisdictions, nor any requirement that states have adequate national laws for prosecuting pirates; much is left to discretion.

Under customary international law, every state has the power to prosecute a pirate subsequently found in its territory. Under such "universal jurisdiction," there is neither a requirement that the crime has affected the national interests of the prosecuting state in any way, nor any hierarchy of jurisdictions (i.e., there is no rule stating such jurisdiction should only be used if other states are unable or unwilling to prosecute). It is a jurisdiction with few limits and requires no "links" to the prosecuting state.

Practical Problems in Prosecuting Pirates

If all states have universal jurisdiction to prosecute pirates, then why are there not more trials? Many of the problems involved are practical, not jurisdictional. These can include the following: (1) insufficient evidence; (2) no adequate national law; or, (3) lack of a location for the trial. In regards to the first, unless they are caught in the act, it is easy enough for pirates to dump their boarding ladders and weapons into the sea when they are intercepted by naval vessels. An independent prosecutor may be reluctant to run a case based solely on circumstantial evidence. The result is often, then, that piracy suspects are released on the basis of insufficient evidence. Second, no prosecution can occur unless there is an adequate national law in place. Many states either have no piracy law, or have implemented a law requiring some "link" with the prosecuting state (e.g., the crime was committed against that state's nationals or its flag vessel). Such laws should be updated to include universal jurisdiction. Finally, if a warship's flag state will not or cannot prosecute suspects it intercepts, the only option remaining is to transfer the suspects to a partner state for prosecution. If the warship's flag state has no transfer agreements in place, then the only option is release.

Where states have concluded transfer agreements, intercepting states and prosecuting states need to review their respective national legal requirements. In general, it should not be necessary for naval officers to be trained in the laws of evidence of foreign jurisdictions, but they will need practical guidance on steps they should take to avoid prejudicing trials. As an example, early transfers of piracy suspects from UK warships to Kenya for prosecution were complicated by the practice of disarming suspect pirates and throwing their weapons into the sea. This was problematic, as Kenyan law required the production in court of the firearms alleged to have been used. Depending on a flag state's national law and applicable human rights treaties, a range of legal obligations may also affect transfer agreements. Some of these obligations include the need for a national law authorising detention at sea, the duty to bring a detained suspect promptly before a judge, and an obligation not to send a person to a state where there are real grounds for believing they may be exposed to torture or other prohibited treatment.[7] In some cases, governments may be required by their own courts to seek human rights guarantees from partner states concerning the treatment of piracy suspects transferred

for prosecution. This should not result in an infringement of sovereignty. If a prosecuting state objects to such arrangements, then the result is that transfers simply cannot take place.

The Way Forward

Significant work has been done in examining the options for prosecuting piracy suspects. A major forum for such discussion is the Contact Group on Piracy off the Coast of Somalia, Working Group 2: Judicial Issues (CGPCS WG2), a group of legal officers representing more than 50 governments, international organisations and industry bodies. The meetings of CGPCS WG2 are not widely reported, but some of the Chairman's Conclusions are publicly available.[8] These make it clear that the option attracting widest support is that of "dedicated piracy chambers plus," which would involve national court systems in the region setting up a courtroom or trial chamber dedicated to hearing piracy cases, with international support. Such institutions could be flexible, cost effective and would have provide certainty regarding the applicable law and rules of evidence and procedure.

An international tribunal, on the other hand, would involve several complications.[9] It would be slow to set up and expensive to run, and though in theory it would be easier to send all suspects to a single international institution with uniform rules of evidence and human rights protections, there is no guarantee it would have the resources to hear the hundreds of piracy trials required. Suggestions that piracy could be added to the jurisdiction of the International Criminal Court or the International Tribunal for the Law of the Sea are also impractical. In both cases, a major international treaty would have to be amended, and neither tribunal is set up to deal with the volume of cases required. The alternative suggestion that a special Somali court sitting outside Somalia could be established is likewise problematic. It is not clear that Somalia itself has either well-adapted national laws governing piracy, or judges to spare. The experiences of the Lockerbie bombing case (involving a Scottish court sitting in the Netherlands to try Libyan suspects) and of the extra-territorial Special Tribunal for Lebanon suggest that establishing such courts is expensive and legally complex.

In conclusion, the best answer is the CGPCS WG2 "dedicated piracy chambers plus" model. To be effective, however, this model would have to be supported by two networks of transfer agreements: first, those permitting transfer of piracy suspects from the capturing warship to the prosecuting state; and second, agreements permitting the post-conviction transfer of sentenced pirates to a state willing to detain them. The most promising option in the latter respect would involve prisons built with UN assistance in either Somaliland or Puntland, within Somalia.

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Notes

1. See in particular Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* (Cambridge: Cambridge University Press, 2009); J. Ashley Roach, "Countering Piracy off Somalia: International Law and International Institutions," *American Journal of International Law* 104 (2010): 397-416; and, Tullio Treves, "Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia," *European Journal of International Law* 20 (2009): 399-414.

2. See Articles 100-110, "United Nations Convention on the Law of the Sea," December 10, 1982, 1833 UNTS 3 [hereinafter, "UNCLOS"]; and, Articles 14-22, "Geneva Convention on the High Seas," 1958, 450 UNTS. The UNCLOS provisions are recognised as the applicable law in UN Security Council Resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010) and 1950 (2010).

3. Piracy can be committed in an Exclusive Economic Zone. See Article 58 (2), UNCLOS.

4. Article 101, UNCLOS

5. Articles 101(b) and 103, UNCLOS

6. Articles 100 and 105, UNCLOS

7. Douglas Guilfoyle, "Counter-Piracy Law Enforcement and Human Rights," *International and Comparative Law Quarterly* 59 (2010): 141-169.

8. e.g., Contact Group on Piracy off the Coast of Somalia, 4th Meeting of Working Group 2 on Legal Issues, Copenhagen 26-27 November 2009, "Chairman's Conclusions," http://www.marad.dot.gov/documents/WG2-4th_Meeting_chair-conclusions-November_26-27-2009-mtg.pdf. See generally: UK Foreign and Commonwealth Office, "The International Response to Piracy," http://www.fco.gov.uk/en/global-issues/conflict-prevention/piracy/international-response.

9 See UN Security Council, "Report of the Secretary-General on Possible Options to Further the Aim of Prosecuting and Imprisoning Persons Responsible for Acts of Piracy and Armed Robbery at Sea off the Coast of Somalia...," S/2010/394, July 26, 2010, http://www.unhcr.org/refworld/docid/4c74d3a02.html. See also UN Security Council, "Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia," S/2011/394, January 25, 2011, http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-8E4TWP?OpenDocument.

Equipment Articles: An International Evidence Rule for Piracy

Eugene Kontorovich

The current struggle against Somali pirates is generally regarded as unsuccessful. One factor contributing to this perception is the failure of nations to prosecute a sufficient number of suspects. Moreover, large numbers of suspected pirates captured by coalition navies since 2008 have been released. Nations often cite evidentiary concerns to explain their release of captured suspects, and indeed, it can be difficult to prove that armed men in a boat on the high seas are pirates. They often claim to be mere fishermen, and simply possessing arms on the high seas is not a crime. Yet catching pirates in the act is even more problematic: Once pirates board a vessel, they create a hostage situation that usually results in ransom rather than arrest. Thus, nations that encounter suspected pirates fear both high prosecution costs and possible acquittals, in which case they may be stuck with the alleged pirates indefinitely.

This briefing paper will discuss how the promulgation of "equipment articles" could facilitate the prosecution of piracy. Equipment articles are rules that create a judicial presumption of guilt on piracy charges for the crews of civilian vessels possessing certain specified equipment within a defined area of the high seas plagued by pirate attacks. For example, equipment articles could create a presumption of piracy for people found on a Somali vessel of less than a certain length, with engines of a certain horsepower, equipped with grappling hooks, boarding ladders and dollar counting machines, armed with rocket-propelled grenades (RPGs) and/or heavy machine guns, and far out at sea with obviously inadequate provisions (which could suggest that the boat operates from a "mothership"). Similar laws were crucial to the prosecution and suppression of the transatlantic slave trade in the 19th century, perhaps the greatest example of international legal cooperation before World War I. More recently, senior United States State Department officials have publicly promoted the possibility of applying such measures to high seas piracy.

In the 19th century, Britain made the complete suppression of the slave trade a major focus of its foreign policy. As part of this effort, London negotiated a series of bilateral treaties with almost every maritime nation in the western world. These treaties mandated that vessels seized on suspicion of slave trading would be brought for adjudication before specially established mixed commissions. These tribunals were perhaps the first international human rights courts.

However, the mixed commissions encountered serious difficulties in demonstrating that captured vessels were engaged in the prohibited trade. If a ship did not actually have slaves on board, it could not be proven that it was engaged in slave trading, even if it was outfitted in a manner characteristic of slavers — e.g., with shackles and manacles, as well as quantities of water and other provisions far beyond the needs of the crew.

In response to this problem, equipment clauses first appeared in an 1823 treaty, and quickly became a standard feature of mixed commissions and treaties, with nearly two dozen nations signing them over the next four decades. The treaties invariably enumerated ten standard categories of proscribed equipment. The presence of "any one or more" of the articles would be "prima facie evidence that the vessel was employed in the African slave trade."[1] The presumption, however, could be rebutted with "clear and incontrovertible evidence ... that at the time of her detention or capture the vessel was employed in a lawful undertaking, and that such of the different articles above specified ... were indispensable for the lawful object of her voyage."[2] The equipment clauses contributed significantly in the campaign to reduce and eliminate the transatlantic slave trade.[3]

Recent years have seen a revival of maritime security laws that employ a similar logic. The 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation[4] (henceforth referred to as the 2005 SUA Protocol) criminalises the transportation or possession on the high seas of certain equipment that, while having legitimate uses, could also be used for serious crimes. For example, under the Protocol, a person commits an offense when he knowingly "transports on board a ship ... any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material" that could be used to make unconventional weapons.[5]

The principle of the 2005 SUA Protocol is largely the same as that employed in equipment articles. When suspicious "dual-use" material is found on a ship, proving it is for an unconventional weapon is exceedingly difficult. The Protocol criminalises possession of the equipment as a way of getting around these evidentiary difficulties. Thus, use of equipment laws to prove piracy should in fact be less controversial than the Protocol, because piracy is already a universally recognised crime; there is no international crime of designing or possessing unconventional weapons.

Equipment articles against Somali pirates could be promulgated in several ways, each with its advantages and disadvantages. The specific list of proscribed equipment and boat configurations should be informed by discussions with naval and maritime security specialists. Unlike their 19th century predecessors, such lists should require more than the presence of one article to trigger the presumption of guilt; rather, they should specify a combination of equipment, as well as provide the opportunity for suspects to rebut the presumption of piratical activity.

1. Municipal Statutes

International law leaves much of the secondary aspect of criminal law — rules about conspiracy, attempts, evidence and rules of procedure — to the discretion of national legislation. Thus, nations can implement equipment articles by legislating them into their domestic law

codes. This would be particularly helpful for nations whose courts could potentially become regional piracy prosecution centres.

Some nations may have concerns about the legitimacy of such laws. With the exception of piracy, nations may lack authority under international law to punish foreigners for crimes on the high seas with which those nations have no connection. Since there is no international crime for having the relevant equipment (e.g., RPGs, grappling hooks, etc.) on private vessels on the high seas, equipment articles promulgated through national legislation may raise concerns that they criminalise beyond what international law permits.

However, this concern reflects a misperception about equipment laws. They do not define a new crime. Rather, they establish the elements of proof for an existing crime — piracy. Indeed, under the United Nations Convention on the Law of the Sea (UNCLOS), a nation need not prove an actual act of piracy. Both "operati[ng]" a pirate vessel and "internationally facilitating" piratical acts can be prosecuted as piracy under UNCLOS. Thus, the crew of a skiff can be prosecuted for piracy if the vessel "has been," or is, "intended" by them to be used in a piratical act. Equipment laws simply codify one way of demonstrating intent — that the vessel is intended to be used for piracy.

2. Treaties

One could imagine promulgating equipment articles through a multilateral treaty like the SUA Protocol. Yet such treaties require the agreement of a significant number of states to become effective, and can take years to be implemented. Perhaps the most convenient method of implementing equipment articles today most closely follows the 19th century model, in which one central "hub" nation enters into a series of bilateral treaties with "spoke" countries. Conveniently, the majority of pirates operating in the world today are Somali nationals in Somali vessels. Thus, a series of agreements could be made between the UN-recognised Somali Transitional Government and individual coalition states on anti-piracy patrols and the hosting of piracy prosecutions. Such treaties would give patrolling nations more confidence to arrest and prosecute suspects by effectively reducing the cost of prosecution. Agreements with Somalia would also avoid any concerns about equipment laws going beyond the existing definition of piracy in international law. Moreover, the bilateral treaty route could avoid many of the technical difficulties involved with multilateral treaties (slowness) and national laws (incompleteness of coverage).

3. Security Council Resolutions

Equipment laws could also be articulated in UN Security Council resolutions. The advantage of such resolutions is that they could be adopted quickly, would provide a uniform international standard, and would relate these evidentiary rules to the international crime of piracy. Even if the resolutions have no binding legal force in judicial proceedings, they might make nations more willing to act.[6]

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Notes

1. "Treaty between the United States and Great Britain for the Suppression of the Slave Trade," April 7, 1862, http://avalon.law.yale.edu/19th_century/br1862.asp.

2. Ibid.

3. See David Eltis and Paul F. Lachance, "Estimates of the Size and Direction of Transatlantic Slave Trade," *Voyages: The Trans-Atlantic Slave Trade Database,* 2009, http://www.slavevoyages.org/downloads/estimates-method.pdf.

4. International Maritime Organization (IMO), "Protocol of 2005 for the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation," October 14, 2005, accessed March 28, 2011, http://www.nti.org/e_research/official_docs/inventory/pdfs/aptmaritime.pdf.

5. Ibid, at Art. 4, Par. 5 (1) (b) (iii).

6. See Douglas Guilfoyle, "Counter-Piracy Law Enforcement and Human Rights," *International and Comparative Law Quarterly* 59 (2009): 141-149. Note that while Security Council anti-piracy resolutions do not confer new substantive powers, they make it "politically or constitutionally easier" for some states to act.

Looking for Law in all the Wrong Places: Maritime Piracy as a Domestic Legal Problem

James Kraska[1]

Introduction

Many commentators have focused on improving international law as a way to address the threat of piracy in the Horn of Africa. But the international law of maritime piracy is quite clear—any nation may assert criminal jurisdiction over the crime of piracy. The courts of the state that carried out the seizure may prosecute captured pirates in criminal court, or transfer suspects to other nations for legal disposition. The legal difficulty in countering piracy arises in implementing the international obligation to act against piracy, as states may lack adequate naval capability or retain weak domestic criminal laws. In Resolution 1918 (2010), for example, the UN Security Council noted that the domestic criminal laws of a number of states lack provisions criminalising piracy, or are deficient in criminal procedural rules needed to effectively prosecute pirates. States also face a lack of political will and resources required to conduct expensive criminal trials and to imprison convicted pirates for long periods of time. In sum, although international law against piracy is sufficient, many nations lack the practical criminal legislation or judicial and prison capacity to prosecute piracy.

International Law of the Sea is Sufficient

Piracy affects the entire international community, and therefore is a classic collective action problem that can be effectively addressed only through the adoption and implementation of uniform rules. The international law of maritime piracy is reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is recognised as the constitution for the world's oceans, and it reflects customary international law binding on all nations. UN Security Council Resolution 1838 (2008) reaffirmed that UNCLOS sets forth the governing legal framework for suppressing piracy.

Articles 100–107 of UNCLOS contain both broad philosophy and a specific mandate concerning maritime piracy. First, naval warships or law enforcement vessels of any nation may interdict pirate ships. Ordinarily, jurisdiction may be asserted over a ship at sea only by the flag state or, in special cases, by a port or coastal state. In the case of piracy, however, there is no requirement for a jurisdictional link to the flag state—any nations may exercise

jurisdiction over pirates, which are considered the "enemy of all mankind." Piracy occurs in any waters beyond the 12-nautical mile territorial sea; inside the territorial sea, the crime is "armed robbery at sea," and is the sole responsibility of the coastal state. The generalised authority of all nations to assert universal jurisdiction over pirate ships is set forth in Article 105 of UNCLOS: "On the high seas [or exclusive economic zone], or in any other place outside the jurisdiction of any state, every state may seize a pirate ship [or ship] taken by piracy and under the control of pirates, and arrest the persons and seize the property on board." In the case of Somalia, however, UN Security Council Resolution 1816 (2008) provides authority for warships from other nations to conduct counter-piracy operations in Somalia's territorial sea.

Second, piracy is conducted for "private ends," meaning that pirates are not licensed to act on behalf of a government, but instead are private individuals. The "private ends" requirement, however, does not mean that piracy may not be politically motivated as well, as is the case in the Gulf of Guinea. The intention to commit armed robbery or gain a pecuniary or monetary interest is also not required. Acts of piracy may be prompted by feelings of hatred or revenge, and not merely by the desire for gain. Third, two ships must be involved for a crime to constitute the act of piracy — a pirate ship (such as a skiff) and a victim ship. Mutiny of a single vessel is not piracy under UNCLOS. Fourth, piracy includes what are called "inchoate" or planning offenses, such as conspiracy to commit piracy or attempted piracy. The definition of piracy is set forth in Article 101 of UNCLOS, which states that piracy is:

a)   any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or 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 intentionally facilitating an act described in subparagraph (a) or (b).

Pirate ships, however, may not be seized in the 12-nautical mile territorial seas, archipelagic waters (such as Indonesian internal waters), and internal waters (such as harbours), without the consent of the coastal state, even for criminal acts of piracy that were committed on the high seas. In areas that have national waters in close proximity to other nations, fleeing pirate vessels can escape into the territorial sea of a neighbouring state and avoid capture if the adjoining state is unable to act. A coastal state may lawfully pursue a ship from the territorial sea, archipelagic waters, or the contiguous zone onto the high seas when it believes the vessel violated the law of that state. If the pursuit begins within the contiguous zone, however, it may be conducted only for violations of the rules pertaining to the contiguous zone, such as customs-related offenses. Likewise, if a foreign ship violates the lawful regulations of the coastal state pertaining to the exclusive economic zone, such as state fisheries laws, the coastal state may initiate pursuit of the vessel onto the high seas. Hot pursuit may not extend into the territorial sea of another state, however, without the permission of the other state.

Under the auspices of the International Maritime Organisation (IMO), nations developed the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and the 2005 SUA Protocol, which entered into force on July 28, 2010. These two treaties provide ample additional authority for states' parties to interdict piracy and collaborate in the detention, extradition and prosecution of piracy suspects. The 1988 SUA Convention sets forth the rule that all nations have an obligation to prosecute or extradite individuals suspected of ship hijacking. UN Security Council Resolution 1846 (2008) noted that the 1988 SUA Convention provides a comprehensive framework for cooperation in criminal prosecution of most types of piracy. Meanwhile, the 2005 Protocol to the 1988 Convention criminalises a wide range of offenses committed on a ship, including endangering a vessel, using a ship as a weapon, or seizing a vessel in order to compel government action.

UN Security Council Resolution 1851 (2008) encouraged the establishment of an international forum to broaden and deepen counter-piracy cooperation, and more than 20 states created the Contact Group on Piracy off the Coast of Somalia (CGPCS). The CGPCS, which has four working groups, has helped in developing shipping industry best management practices and implementing regional maritime security cooperation. The purpose of Working Group 2 is to facilitate legal issues, such as criminal prosecution and the imprisonment of pirate suspects within domestic criminal law systems; the Working Group facilitates the sharing of information on the extradition and prosecution of suspects, as well as post-trial transfer issues, ensuring protection of basic human rights for both suspected and convicted pirates. Working Group 2 has also explored creating a legal framework for the transfer of convicted pirates from prosecuting states in the region — such Kenya and Seychelles — to Somalia, to serve their sentences in the newly constructed UN prison that opened at Hargeisa, Somaliland, on November 22, 2010.

Conclusion—Improve Regional Justice Systems

Piracy is the quintessential crime of universal jurisdiction, which means that any nation may assert criminal law enforcement jurisdiction over piracy. Piracy is not, however, a "universal crime." A universal crime is one that is unlawful in every jurisdiction, such as the crime of genocide. Furthermore, there is no international piracy court, such as the International Criminal Court in The Hague, which could assert jurisdiction over the crime of piracy. Furthermore, it would be prohibitively expensive and politically contentious to try to create an international piracy court. Consequently, pirates must be brought to justice within a domestic criminal court system. Although there is ample authority in international law for all nations to bring pirates to trial, many nations lack sufficient domestic legislative authority, law enforcement capability, or judicial institutions and prison facilities. The best approach is for nations with greater resources — and a stake in freedom of navigation and global trade — to provide technical, legal and financial resources to expand the capacity of justice systems in developing states in the Middle East and East Africa.

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Note

1. The views presented are those of the author and do not reflect the official policy or position of the US Navy.

Prosecuting Piracy: Challenges for the Police and the Courts

Alan Cole

While its impact upon the international maritime community is widely known, the emergence of piracy off the coast of Somalia over the last five years has affected the legal systems of numerous states as well. Just as seafarers have had to adapt their methods to cope with the threat of attack off the Horn of Africa and in the Indian Ocean, so those states that have apprehended piracy suspects have been forced to re-examine their criminal justice processes to support trials for this unusual offence.

Piracy cases differ from other types of criminal cases in a number of respects. First, by definition as pirates, the suspects are arrested beyond the territorial limits of the prosecuting state. Second, the suspects rarely have any form of identification on their person; in Somalia, moreover, there is no effective mechanism that prosecuting states can draw upon to verify the identity of individuals, or to establish if they have past criminal convictions. Third, many countries have piracy laws that were drafted for piracy of a different kind from a different age, and these laws are not easily applied to the modern brand of piracy practiced off the coasts of Somalia. Together, these three factors and others combine to make piracy a challenging crime for the police and courts to address.

Challenges for the Police

Piracy cases are prepared for trial by the domestic police forces of the prosecuting state. In this respect, they are no different from any other offence that the police investigate. However, there are a number of other significant differences between a piracy case and a local crime.

First, the apprehension of pirates may arise in two separate circumstances:

a)   the operations of a domestic law enforcement agency (e.g., 36 of the 57 piracy suspects held in Seychelles were apprehended by the Seychelles Coast Guard); or,

b)   the operations of international navies (e.g., all of the 136 piracy suspects passed to Kenya were apprehended by foreign navies[1]).

Police officers of the prosecuting state are not usually present at the point of apprehension on the high seas. Although some countries (e.g., Seychelles) deploy a police officer in their

national coast guard vessels, generally the police will receive the suspects and evidence from maritime forces at some point after the arrest, usually when a warship has arrived in port carrying the suspects. This means that the initial actions at the point of apprehension — including the taking of statements from civilian witnesses and the securing of evidence — are often carried out by personnel who are not familiar with the specific requirements of the police force that will complete the investigation.[2] Several regional states have begun to address this problem by producing handover guidance specified by their senior prosecutors. So far, only Kenya and the Seychelles have issued handover guidance for foreign navies, specifying the manner in which evidence packages should be produced by navies intending to transfer suspects for trial in those countries. Mauritius has recently developed draft guidance as well, produced at a joint drafting session arranged and supported by the United Nations Office on Drugs and Crime (UNODC), and attended by prosecutors and police of the prosecuting state, as well as representatives of the European Union Naval Force Somalia (EUNAVFOR) and the US-led Coalition Maritime Forces (CMF).

Second, the initial evidence collection work may not necessarily be carried out by civilian police officers with experience preparing cases for trial. Different navies have different approaches to this issue: Some use naval police who are carried by the ship to deal with onboard disciplinary issues; some use specialist military police; some use naval personnel trained specifically for the role, and others embark with their own national civilian police. Whichever approach is used, the task needs to be carried out with care, as flaws in the seizing of evidence are difficult to rectify at a later stage. It is noteworthy that the quality of the evidence packages passed to regional countries by foreign navies has improved dramatically since the early handovers in 2008, and the prosecutors and judges of regional states now routinely report to UNODC that the cases prepared by foreign navies are amongst the very best that they see in their courts.

Another difference between piracy and local crimes is that in a piracy case, most witnesses disperse around the world shortly after the apprehension of the pirates. Crew from ships that have been attacked will generally continue to their next port of call without delay, so there is no opportunity for police in the prosecuting state to take a statement further to the one taken by the naval personnel at the time of the attack, if one was taken at all. Naval personnel will be available during the handover to give statements to the police of the prosecuting state, but will then return to sea, so opportunities for taking further statements are few.

Separate from the issue of evidence in direct support of the prosecutions is the collection of intelligence. While perhaps not essential to securing a conviction of the suspects transferred for trial, accurate and timely intelligence is of great value to the international policing community in their efforts to identify those organising and directing Somali piracy. Many of the regional countries undertaking piracy prosecutions have limited or no capability to analyse intelligence gathered in the course of criminal investigations. To this effect, INTERPOL and UNODC have begun a training programme to improve capacity in this area. The programme trains and equips analysts how to gain insight into the persons or networks behind the pirates. This information will then be made available to support ongoing investigations, as well as to initiate new ones.

Courts

For the courts, the starting point is whether there is an adequate legal framework to effectively handle the prosecution of pirates. To be effective, such a framework should provide for

a)   the criminalisation of acts of piracy;
b)   jurisdictional reach of the national courts beyond the territorial sea (the normal limit of national criminal jurisdiction);
c)   criminalisation of attempt and conspiracy to commit piracy, if the full extent of the international law is to be exploited; and,
d)   a legal regime for detention of pirates at sea, often in the absence of a police officer or any access to judicial oversight.

UNODC has not developed model legislation on piracy, but has instead provided customised assistance to individual countries based on the particular legal system and practice of each country. These programmes take into account the particular legal tradition of each country — whether common law, civil law, Islamic law, or a combination —, along with each state's legislative practices, such as whether the state employs a criminal code, enacts separate statutes, and/or relies on common law principles.

Providing elements (a) and (b) above are in place, states are then able to prosecute piracy cases; however, more practical issues then arise. As with the police, the courts need to take into account that witnesses are almost always foreign nationals who have no obligation to appear, and give evidence, in a court of a country that is not their own. Where a witness is serving in the military of a foreign country — e.g., the captain of an arresting warship, an officer who boarded the pirate vessel, or a helicopter pilot who witnessed an attack —, then their own command will generally arrange for them to attend. However, for civilian witnesses — usually the crew of a vessel that has been attacked —, it is necessary for the prosecuting state to make contact and arrange attendance at the trial. To date, UNODC has worked with the prosecuting states to identify the witnesses that are required, and to make the necessary arrangements for their travel to the court, as well as for security and accommodation while they are there. To date, in large part due to the active support of the shipping industry, every civilian witness called upon to attend a trial has done so.

Translation requirements are also complex. In a typical case, UNODC provides two English/Somali interpreters to ensure that the accused can communicate with their lawyers and understand the proceedings. Somali interpreters are not widely available, so UNODC has based full-time interpreters in regional countries to cover court cases and to ensure that medical, social and other problems that may arise amongst Somalis in custody can be understood by prison staff. In cases where the military witnesses do not speak English, they too will require an interpreter. Finally, civilian witnesses — who are often from Southeast Asia — may need interpretation.

In the area of legal representation, not all regional countries have a tradition of ensuring that all those charged with a criminal offence as serious as piracy have access to defence lawyers. Where a transfer has been made by a foreign navy, it may be a requirement of the transfer that a defence lawyer is provided for the suspect. UNODC has provisions for either directly arranging a defence lawyer if the trial country does not provide one, or for reimbursing the trial country for the expenses it incurs in funding a lawyer, if the government does provide one.

Conclusion

There are currently around 750 Somali men either awaiting trial or serving prison sentences for piracy in 14 countries around the world. UNODC operates in the countries with the greatest number of cases — Somalia, Kenya, Seychelles and Yemen hold some 650 convicted or suspected pirates between them —, and has helped support the trial process from the point of arrest to the completion of imprisonment for those convicted, or repatriation to Somalia for those acquitted. While there have been a number of suggestions about other possible models for prosecuting piracy, including international court structures and Somali courts sitting outside Somalia, the sheer volume of cases — most of the approximately 750 have arisen in less than two years — makes regional prosecutions in a number of states the only practical model in the short to medium term. Piracy is an offence of universal jurisdiction, and there is an obligation upon states that have ratified the Law of the Sea Convention[3] to have effective laws and processes to prosecute cases that are before them. The UN Security Council has also called on states to criminalise and prosecute piracy offences.[4] It is to the great credit of all those states engaged in piracy prosecutions, particularly those with substantial criminal justice challenges of their own, that they have risen to the challenge.

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Notes

1. The navies of France, Germany, Italy, Spain, Sweden, the UK and the US

2. In fact, to complicate matters further, the naval forces are very unlikely to know at the point of apprehension in which country the trial will take place. That is subject to negotiations between governments on a case-by-case basis.

3. And arguably as a matter of customary international law, as well

4. UN Security Council Resolution 1918 (2010) of April 27, 2010, S/RES/1918 (2010); UN Security Council Resolution 1950 (2010) of November 23, 2010, S/RES/1950 (2010)

Prosecuting Somali Pirates: Challenges for the Prisons

Glenn Ross

Introduction

Although it is difficult to state with specificity exactly when the piracy situation in the Horn of Africa began to grow into the menace that it is today, we can be comfortable in saying that it was well in play by 2006, when 10 pirates were captured by the United States and taken to Kenya for trial and subsequent imprisonment. Over time, increasing incidences of piracy gradually drew the attention of the maritime industry and the international community to the current position, where piracy is widely recognised for its destabilisation of the maritime shipping industry and for the trauma it causes those mariners and others taken hostage.

Table 1: Somali Pirates and Alleged Pirates in Custody

Country of Detention	Number	Status
Somaliland	88	all convicted
Puntland	260	estimated 200 convicted
Kenya	119	50 convicted
Seychelles	47	31 convicted
Yemen	120	all convicted
Maldives	34	awaiting deportation in absence of law
Tanzania	1	awaiting trial
Oman	12	all convicted
Belgium	1	n/a
France	15	n/a
Germany	10	n/a
Netherlands	10	5 convicted
Spain	2	n/a
United States	12	2 convicted

Source: UNODC Counter-Piracy Programme Report, January 21, 2011

While much of the international effort has thus far centred on sea-based efforts to prevent attacks from occurring in the first place, considerable resources have also been expended in the capture of those engaged in acts of piracy. The following table is testimony to those efforts, and identifies the numbers of convicted and alleged pirates being held in custody around the world.

Concomitant with sea-based efforts to prevent piracy, the United Nations Office on Drugs and Crime (UNODC) Counter-Piracy Programme has been involved in land-based activities in several regional countries to improve criminal justice processes relating to the investigation, prosecution and imprisonment of Somali pirates. Of particular significance has been the work undertaken in this regard in Kenya, the Seychelles and Somaliland. This brief reflects on the experiences of the prison systems in these countries, and on some of the challenges involved in accommodating Somali pirates.

Incarcerated Pirates and Security

A major early concern for imprisoning countries in the region was the potential for incarcerated pirates to gain the assistance of clan or criminal colleagues to aid in escape from prison or court, and the related fear that this would pose a direct threat to custodial staff and to the general population. However, experience gained over four years has shown that concerns over external escape assistance to pirates either in transit to court, while in the precinct of the court or when otherwise held in custody, have proven unfounded.

Fourteen countries — consisting of eight from the region, five from Europe, and the United States — are currently holding 731 convicted and suspected pirates (see Table 1). Recognising that the European countries and the US are more difficult targets for reprisal actions or escape assistance due to distance, and that the requirement for sea travel to get there poses difficulty for most of the remainder, this still leaves Somaliland, Puntland and Kenya as countries within easy reach. Despite the proximity of these three countries, there have been no reported attacks or other attempts to aid or abet pirates in escaping, either while they are under escort or otherwise in custody. To date, such fears have not materialised.

This is not to suggest that precautions and increased security have not been taken. In Somaliland, a new maximum-security 450-bed prison has been opened in Hargeisa, housing its first prisoners in January 2011. This prison was designed with a security capability to hold pirates and insurgents/terrorists, and is both the first new prison constructed in Somalia for over 30 years as well as its most secure.

In Mombasa, Kenya, where a considerable number of piracy trials have been held, court security has been strengthened through engagement of a private security firm to manage access to and egress from the court precinct, along with improvements made to the court holding cells. Most significantly, a purpose-built court was constructed and opened in June 2010 in close proximity to Shimo le Tewa prison, some 20 kilometres from the centre of Mombasa. This courthouse significantly reduces the requirement to transport pirates to court under escort, with a resultant reduction in aided escape opportunities.

In the Seychelles, a secure 60-bed facility has been constructed at Montagne Posée prison for the purpose of accommodating pirates in a high-security environment divorced from the remainder of the prison. This separate arrangement should be seen more as a precautionary measure than in response to any demonstrated requirement for extra security.

This is not a comprehensive survey of the increased security arrangements that have been implemented; however, it does serve to illustrate the seriousness with which the incarceration of pirates has been considered. It is pleasing to observe that to date, these enhanced security arrangements have been tested by neither externally-assisted nor internally-instigated escape attempts.

Incarcerated Pirates and Their Behaviour in Prison

There is no doubt that the crimes perpetrated by Somali pirates around the Horn of Africa and in the Western Indian Ocean are frequently ones of great violence — no more evidence is required than the fact that in their attacks against merchant vessels, they frequently fire rocket-propelled grenades (RPGs) and AK-47s at the vessels under attack. There have also been a number of distressing recent incidents in which hostages have been killed by their hijackers.

This indicates that the Somali pirates are very violent criminals who are prepared to use extreme measures to fulfil their piracy objectives. However, once captured and disarmed, the pirates rarely display these violent extremes. In fact, the violent behaviour witnessed on the sea is rarely continued or repeated once the pirates have been taken into custody. There have been no reported incidents of assaults on staff, and only a very small number of incidents with other prisoners. The observation has been made that when a problem appears to be brewing in a prison, the Somali pirates do their best to make themselves scarce.

The evidence of four years is that Somali pirates are usually compliant prisoners who self-organise and cause little, if any, concern for prison management. It can be extrapolated from this that the violence caused on the sea by the pirates is behaviour designed to achieve a specific result. It is not driven by ideological or extremist views, but instrumental in nature. Once in custody, that violent behaviour no longer serves a purpose.

As a note of caution, the experience thus far regarding security and behavioural issues has been based on a pirate profile mainly consisting of "fishermen" from Puntland. With the apparent changing of that profile to include increasing numbers of ex-militia from South Central Somalia, it is not yet clear whether this will impact the relatively peaceful behaviour of incarcerated pirates exhibited thus far.

Incarcerated Pirates and Health Concerns

Given the problems that Somalia faces overall, it is not surprising that the delivery of public health services is inadequate. Many Somalis have had little or no contact with a qualified health practitioner, and even when this might be available, the absence of treatment interventions or the cost of such often proves prohibitive. Consequently, the health status of Somali pirates is generally, and understandably, poor.

A comprehensive health assessment of Somali pirates at Shimo la Tewa prison evidenced the following types of problems:

- *Mental health* — high prevalence of depression, anxiety and associated ailments, with a lesser number experiencing psychosis;

- *Dental health* — poor oral hygiene, large number of caries and missing teeth; and,

- *Physical health* — high numbers with abdominal problems, including Peptic Ulcer Disease (PUD), as well as chest pains often caused by Upper Respiratory Tract Infections (URTI).

These and other types of health problems place a heavy burden on already overtaxed prison health services.

Incarcerated Pirates and Their Needs

Somali pirates being held outside the country face many of the same issues as "international" prisoners incarcerated anywhere around the world. They experience difficulties with language and in understanding judicial and prison processes, need to become accustomed to a different diet, and have difficulty in maintaining communication with family and friends in their home country.

Yet whereas many international prisoners have the benefit of access to an embassy or consulate staff to assist in these matters, the same is not true for Somali pirates, as these amenities do not exist for them. This absence places a further burden on the prison to attempt to ameliorate these issues for prisoner management purposes. Prisoners who understand what is taking place, and what is likely to happen to them, are generally less problematic than the converse. Similarly, prisoners who are well fed and in contact with their families are less likely to have cause for unrest, or to be troublesome. Prisons can benefit from making efforts to accommodate the needs of the Somali pirates by keeping them fully informed of what is occurring, providing language classes, and meeting other social and cultural needs. This should not be regarded in any way as pandering to these prisoners or creating VIP prisoners, but rather as contributing to sound prison management practices.

There has been some expectation that members of the Somali diaspora might take an interest in the pirates, and provide them with assistance of various forms. Although some have suspected that members of the diaspora may have assisted in providing funding for their legal defence, this is not well established. Discussions with diaspora members in Kenya and the Seychelles have indicated, in fact, that they are reluctant to have any involvement with public authorities (i.e., courts, police, prisons, etc.) due to previous negative experiences in the past, particularly in Somalia. Moreover, they are concerned that providing any assistance to the pirates would paint them as "tainted" with the piracy brush, and subject to increased unwanted and unwarranted attention by authorities. It must be admitted that these are quite reasonable concerns, one consequence of which is that anything required by the pirates needs to be provided from within the limited capacities of the prisons themselves.

The "Principle of Less Deservability"

In managing the security and other needs of Somali pirates, it is important to remain mindful of the "principle of less deservability." This principle holds that conditions in prisons in general, or for any specific group of prisoners in particular, should not be at the same level or better than those experienced by citizens — and especially prison staff — who have not committed an offence.

Problems can occur for prison management, and for the pirates themselves, if too much attention is devoted to them relative to other sections of the prisoner population or to the staff

of the prison. Retaliation by other prisoners or by staff to perceived favouritism or preferential treatment is not in anyone's interest. Furthermore, community support for incarcerating Somali pirates in "host" countries can quickly evaporate if it is felt that they are receiving more favourable treatment than law-abiding citizens, staff of the prison, or non-pirate prisoners of that country.

In order to effectively carry out their mandate, all criminal justice systems must have the confidence, trust and support of the local communities in which they are based. This maxim holds true as well in the case of Somali pirates.

Conclusion

Despite the violent nature of their offences, the evidence indicates that Somali pirates do not continue to commit violence once taken into custody. Instead, they have shown themselves to be compliant and non-aggressive prisoners. As with other international prisoners, the pirates being held outside of their native country are isolated due to barriers of language and culture, lack of contact with family, and unfamiliar legal processes. Addressing the needs of the Somali pirates, including their health needs, can do much to ensure their continuing good behaviour and the safety of the prison and staff. Nevertheless, in meeting these needs, care must be taken to ensure that the pirates are not the recipients of a different standard of treatment from that received by other prisoners.

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Claude Berube has taught since 2005 at the United States Naval Academy, where his courses have included Terrorism, Emergent Naval Warfare, Naval History, and Maritime Security Challenges. He has worked for two US senators and in the defence industry. An officer in the US Navy Reserve, he has been mobilised several times, including for counter-piracy operations off the coast of Somalia. The co-author of two books, his articles have appeared in *Jane's Intelligence Review, Naval Institute Proceedings, The Washington Times, Vietnam Magazine,* and others. His next edited book is on private market options to combat piracy, terrorism, and other security challenges.

General (Ret.) Khaled Abdullah Al Bu-Ainnain is Former Commander of the UAE Air Force and Air Defense (UAEAF&AD), and President of the Institute for Near East & Gulf Military Analysis (INEGMA). During his 32-year career with the UAEAF&AD, he held numerous staff and command positions and participated in both Gulf Wars. General Khaled has taken part in various high-level government negotiations between the UAE and a number of foreign countries, and has initiated, led and managed several multi-billion dollar programs for the UAE government and military. Over the course of his career, General Khaled has received 25 awards and decorations from the UAE and foreign governments. General Khaled is also Chairman of the Abu Dhabi-based Baynuna Group.

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David Cockroft is General Secretary of the International Transport Workers' Federation (ITF). He began his professional life in 1974 in the Economic Department of the British Trades Union Congress (TUC). In 1985, he came to the ITF as Research and Publications Department Secretary, and was subsequently given responsibility for the Dockers', Civil Aviation and Tourism Services' sections. In 1991, he was appointed ITF Assistant General Secretary and, following the decision of the then-General Secretary to retire, was appointed ITF Acting General Secretary in 1993. The following year, he was elected ITF General Secretary at the 37th Congress in Geneva, and was re-elected at the New Delhi and Vancouver Congresses.

Alan Cole is Programme Coordinator at the United Nations Office on Drugs and Crime (UNODC), where he manages the UNODC counter-piracy programme in Nairobi, Kenya. Prior to joining UNODC in May 2009, he served for 18 years in the UK Royal Navy in frigates, destroyers and submarines. He qualified as a barrister in 1999, and practised in both civilian and military courts as a prosecutor and defence advocate. He served as the senior military lawyer to the Commander of UK Forces in Iraq and Afghanistan in 2006/2007, advising on all aspects of targeting, detention operations and use of force. Mr. Cole co-authored the *Multinational Rules of Engagement Manual*.

Jane Fiona Cumming is the Director and Founding Co-Partner of Article 13 Group. With a life sciences degree, an MBA in strategic marketing and a diploma in corporate governance, her work is focused on enabling innovation and self-motivated behaviour change to deliver a more sustainable society. This includes monitoring and scrutinising performance, challenging and contributing to strategy development, and breaking down complex issues into practical plans and communications. Her approach also involves working alongside local communities and internal teams, all around the world, to identify often "hard to reach" communities or stakeholders. She works with governments, private companies, not-for-profit organisations, trade unions and the health sector.

Eric Frécon is a research fellow at the Rajaratnam School of International Studies (RSIS) Nanyang Technological University (Singapore), where he serves on the Indonesia Programme.

He has just published *Chez les pirates d'Indonésie* [Among the Indonesian Pirates] (Paris: Fayard, 2011). Dr. Frécon completed his Ph.D. in Political Science at Sciences Po (Paris), and holds a master's degree in International Relations from the Sorbonne (Paris). He has taught lectures at Sciences Po (Lyon). Additionally, he has written reports for French embassies, INTERPOL and the Centre of High Maritime Studies (CESM) in Paris. Dr. Frécon has pursued field research in numerous areas prone to Indonesian piracy.

Douglas Guilfoyle is a Lecturer in the Faculty of Laws at University College London and the author of *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009). Prior to undertaking graduate study at the University of Cambridge, Dr. Guilfoyle worked as a judge's associate in the Federal Court of Australia and as associate to the President of the Australian Administrative Appeals Tribunal. He specialises in law of the sea issues, especially matters relating to high-seas piracy, continental shelf claims and the use of force at sea. In 2009, he was appointed to prepare a report on treaty-based jurisdiction over pirates for the legal issues working group of the Contact Group on Piracy off Somalia.

Adrian Henriques is Visiting Professor of Accountability and CSR at Middlesex University Business School, as well as a social auditor and independent advisor on corporate accountability and sustainability. Mr. Henriques has been active globally in stakeholder facilitation, the development of standards and the practice of corporate responsibility for the past two decades. He works with companies, NGOs and the public sector, and has been a Senior Associate of Article 13 Group for many years. His publications include "Corporate Truth: The Limits to Transparency," and "Corporate Impact: Measuring and Managing your Social Footprint."

Philip Holihead has 35 years of service as a Warfare Officer in the Royal Navy, and vast experience with multinational operations, including command of UN maritime forces in Cambodia and diplomatic postings as the UK Defence Attaché in Egypt and Yemen. On leaving the Royal Navy in 2009, Captain Holihead worked temporarily for the European Union as an expert conducting needs analysis for the Critical Maritime Routes programme. In April 2010, he was approached by the IMO to lead the newly-formed Counter-Piracy Project Implementation Unit. There, he works to build capacity in the Gulf of Aden and Western Indian Ocean in accordance with the Djibouti Code of Conduct, manage the IMO multi-donor trust fund, and run the Project Implementation Unit.

Eugene Kontorovich is Associate Professor of Law at Northwestern University Law School, where he specialises in constitutional and international law. Professor Eugene Kontorovich's research focuses on extending the economic analysis of law to public law. He is also one of the leading experts on maritime piracy and universal jurisdiction, and has been called on to advise lawyers in historic piracy trials around the world. He is currently working on a book, *Justice at Sea: Piracy and the Limits of International Criminal Law,* under contract with Harvard University Press.

James Kraska is author of *Contemporary Maritime Piracy: International Law, Strategy and Diplomacy at Sea* (Praeger, 2011), and serves as the Howard S. Levie Chair of Operational Law at the US Naval War College. Dr. Kraska also holds appointments as Senior Fellow at the Foreign Policy Research Institute, and as a Guest Investigator at the Marine Policy Center, Woods Hole Oceanographic Institution. As a Navy lawyer, he served as legal advisor for joint and naval task force flag rank commanders in the Asia-Pacific, and completed four Pentagon major staff assignments. Dr.

Kraska was the principal military drafter of the president's US Piracy Policy and the first UN Security Council resolution on maritime piracy, Resolution 1816.

Carolin Liss is a Research Fellow at the Griffith Asia Institute and the Centre for Governance and Public Policy, Griffith University. Dr. Liss is the author of *Oceans of Crime: Maritime Piracy and Transnational Security in Southeast Asia and Bangladesh*, and various articles on maritime piracy, terrorism and the privatisation of security in Asia and Africa.

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Pottengal Mukundan is Director of the International Maritime Bureau (IMB). After an initial career at sea, Captain Mukundan completed his Ship Master's Certificate of Competency Class 1 from Southampton in the UK. He completed a B.Sc. (Hons.) degree in Nautical Studies at Plymouth, UK, and an MBA from the Cranfield School of Management in the UK. In 1981, he joined the newly formed ICC International Maritime Bureau (IMB) as an investigator. He became the Assistant Director at the IMB in 1987, Director in 1996 and Director / CEO of its holding body, ICC Commercial Crime Services, in 1999. The IMB runs the Piracy Reporting Centre, one of the major providers of information on piracy attacks to the world.

Dorothy Muroki is Director of the USAID-funded Roads to a Healthy Future (ROADS II) Project. She has 19 years of experience managing health and development programming in sub-Saharan Africa, with core competencies in institutional development and capacity building for non-governmental, community- and faith-based organizations, participatory training, and monitoring and evaluation. The winner of FHI's 2009 Lynda Cole Award for Excellence, Ms. Muroki has expertise in mobilising communities and working with them to contextualise new program ideas. As ROADS II Director, and previously as Deputy, she has been instrumental in developing key public-private partnerships and other project innovations, including the "cluster" community-organising model and programming to address gender-based violence, economic strengthening and food insecurity in the context of HIV and broader health.

Martin Murphy is an internationally-recognised expert on piracy and unconventional conflict at sea. Dr. Murphy is the author of three books on piracy: *Somalia, the New Barbary? Piracy and Islam in the Horn of Africa* (New York & London, 2011); *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World* (New York & London, 2009), and *Contemporary Piracy and Maritime Terrorism* (Adelphi Paper 388, 2007), in addition to book chapters and journal articles. He is a Research Fellow at the Centre for Foreign Policy Studies, Dalhousie University, Halifax, and Visiting Fellow at the Corbett Centre for Maritime Policy Studies at King's College, London.

Giles Noakes is the Chief Maritime Security Officer and runs the Maritime Security Department of the Baltic and International Maritime Council (BIMCO). The department covers all aspects of illegal maritime and criminal activities from drug and immigrant smuggling through stowaways, fraud, piracy and terrorist risk. He is currently heavily involved with the shipping industry input into dealing with piracy off the coast of Somalia, and sits on two working groups of the Contact Group on Piracy off the Coast of Somalia (CGPCS). He was previously employed by Hart Security, ran a joint venture business with Global Marine Systems, and served as CEO of Multistar Container Transport and Jigsaw Container Logistics Security (JCLS).

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Joseph Saba is Senior Advisor and former Director, Middle East, at the World Bank, where he focuses on development practice in fragile and conflict-affected states (FCS). He has co-led teams in South Sudan and Yemen for economic security and development programs and advised on private sector strategies in Afghanistan, the GCC and Iraq. He has also co-led studies on the use of multi-donor trust funds in FCS. Mr. Saba was the World Bank Director for Middle East Strategic Cooperation and Technical Assistance, and has directed World Bank programs in Iraq, Jordan, Iran, Lebanon, Syria and the West Bank/Gaza. He served as a Foreign Service Officer in the US State Department, and practiced law for 16 years.

Amb. Lange Schermerhorn concluded her diplomatic career as US Ambassador to the Republic of Djibouti (1998-2000). She served as Political Advisor (2003-04) to the Combined Joint Task Force-Horn of Africa (CJTF-HOA) and participates in training exercises for CJTF-HOA and the US Africa Command (AFRICOM). Ambassador Schermerhorn consults about and speaks frequently on the Horn of Africa. A graduate of Mount Holyoke College and the US National War College, her publications include "Threats and Responses: Djibouti: Fulcrum of the Horn," (US Institute for Peace, January 2004) and a chapter in *Battling Terrorism in the Horn of Africa,* edited by Robert Rotberg (Brookings Institution, October 2005).

About DP World

DP World is one of the largest marine terminal operators in the world, with 49 terminals and nine new developments and major expansions across 31 countries (as of February 11, 2011). Its dedicated, experienced and professional team of nearly 30,000 people serves customers in some of the most dynamic economies in the world.

DP World aims to enhance customers' supply chain efficiency by effectively managing container, bulk and other terminal cargo.

The company constantly invests in terminal infrastructure, facilities and people, working closely with customers and business partners to provide quality services today and tomorrow, when and where customers need them.

In taking this customer-centric approach, DP World is building on the established relationships and superior level of service demonstrated at its flagship Jebel Ali facility in Dubai, which has been voted "Best Seaport in the Middle East" for 16 consecutive years.

In 2010, DP World handled nearly 50 million TEU (twenty-foot equivalent container units) across its portfolio from the Americas to Asia. With a pipeline of expansion and development projects in key growth markets, including India, China and the Middle East, capacity is expected to rise to around 92 million TEU by 2020, in line with market demand.

About the Dubai School of Government

The Dubai School of Government (DSG) is a research and teaching institution focusing on public policy in the Arab world. Established in 2005 under the patronage of HH Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of the United Arab Emirates and Ruler of Dubai, in cooperation with the Harvard Kennedy School, DSG aims to promote good governance through enhancing the region's capacity for effective public policy.

Toward this goal, the Dubai School of Government also collaborates with regional and global institutions in delivering its research and training programs. In addition, the School organizes policy forums and international conferences to facilitate the exchange of ideas and promote critical debate on public policy in the Arab world.

The School is committed to the creation of knowledge, the dissemination of best practice and the training of policy makers in the Arab world. To achieve this mission, the School is developing strong capabilities to support research and teaching programs, including

- applied research in public policy and management;
- master's degrees in public policy and public administration;
- executive education for senior officials and executives; and,
- knowledge forums for scholars and policy makers.

Once thought to be the scourge of a bygone age, maritime piracy has re-emerged in recent years as a serious threat to both crews and property on the high seas. Globally, attacks have risen from 239 in 2006 to 445 in 2010, with 1181 seafarers taken hostage last year alone. The total annual economic cost is estimated at $7-12 billion. Despite growing awareness of the threat, and a variety of national, regional and international initiatives, the tide of piracy continues to rise. It is in this context that the UAE Ministry of Foreign Affairs and DP World convened the conference entitled "Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy," held in Dubai on April 18-19, 2011. The gathering brought leaders from government, the shipping industry and non-governmental organisations together with renowned experts in the field of counter-piracy to discuss ways in which the international response to the global challenge of maritime piracy might be supported and enhanced, and to identify specific, tangible opportunities for collaborative action.

In order to stimulate innovative thinking on the subject, the conference organisers engaged the Dubai School of Government to commission a series of short briefing papers reflecting the cutting edge of academic and expert thought on piracy and related issues. These papers correspond to the four conference content categories: General Background and Regional Overviews; Addressing Root Causes; Opportunities for Information Sharing and Civil-Military Cooperation; and, Relevant Issues in International Law. The selected papers cover a wide range of topics and broach a number of key themes, ranging from the hidden economy of piracy to the plight of captive seafarers. Collectively, however, the papers share a common perspective: In spite of substantial investments in a number of areas, the current international response falls short of what is required to end this phenomenon. Furthermore, an effective and enduring solution to the global challenge of maritime piracy must entail a long-term, comprehensive effort, both onshore and offshore, which involves all relevant public and private sector stakeholders.