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Somalia and the Pirates

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Contents

Somali Piracy: Historical context and political contingency	1
<i>David Anderson</i>	<i>1</i>
The Evolution of Piracy	9
<i>Rob de Wijk.....</i>	<i>9</i>
Somali Based Piracy: Operations in a legal context.....	19
<i>Steven Haines.....</i>	<i>19</i>
Somali Terrorism and Piracy (A ‘Lesser-included Case’)	25
<i>Jonathan Stevenson.....</i>	<i>25</i>

Somali Piracy: Historical context and political contingency

David Anderson*

The problem

Even though kidnappings, killings, attacks on UN and NGO compounds, suicide bombings, and the assassinations of local judges and other public figures, and the many other features of lawlessness in the Horn of Africa have become so commonplace that they are rarely now reported by European news media, from September 2008 Somalia once again dominated the news agenda. In that month pirates operating from small ports and harbours along Somalia's eastern coast mounted a series of successful attacks against international shipping, first capturing a Ukrainian vessel with its cargo of heavy armaments bound for southern Sudan (via the Kenyan port of Mombasa), and then intercepting a number of container ships before mounting an attack on a passenger vessel that was repelled by the crew. Finally, in November, the pirates landed the prize of a fully-laden Saudi-owned oil tanker. By the end of the year the pirate gangs operating out of Eyl, Harardheere and other harbours along the desolate eastern coast of Puntland, were reckoned to be holding no fewer than 40 vessels for ransom, with more than 200 crew members in captivity.

As analysts belatedly got to grips with this story, the world came to realise that Somali piracy had been a serious problem for a long time. The events of the closing months of 2008 only reached global attention because of the cargoes and value of the shipping captured. In fact, ransoms had regularly been paid out by all the major international nautical insurers to free other captured shipping over the previous decade. During 2008 alone, it was estimated (though no one can know the true figure because of the secrecy of the insurers and ship-owners) that ransoms worth above US \$45 million had been paid out to recover vessels and crew from Somali hands.

By the time another spate of attacks materialised in April 2009, American and international naval task forces were operating in the region to protect shipping, and international anxiety had come to focus on the potential links that might exist between Somali pirates and Islamic terrorists. Piracy was most commonly presented as a function of Somali's 'failed state' – perpetrated along a coastline with no state defences, no customs authorities, and no national navy. The presence of known terrorists in the southern Somali towns of Mogadishu and Kismayo and the strengthening of the Al Shabaab movement, especially following the withdrawal of Ethiopian forces in January 2009, framed American and European concerns. The weakness and corruption of reconstructed but as yet internationally unrecognised governments in Gerowe (Puntland) and Hargeisa (Somaliland) only served to emphasise the lawless and apparently unregulated political economy of the region.

Many assumptions about the Somali state and its failure underlie the analysis of the piracy threat and its causes, but in this paper I wish to refute all of them and instead offer a more historical and contextualised explanation of what has been happening and what its causes might be. Let us begin by challenging five commonly repeated assumptions about 'the pirate problem':

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1. Piracy along the coast of Somalia and in the Gulf of Aden is **not** a new phenomenon – far from it: piracy here has a deep and rich history, embedded in a maritime economy.
2. Piracy is **not** linked to Islamic fundamentalism in Somalia, and nor is it promoted in support of terrorism or the funding of terrorism. This is not to say that terrorists have not sought to tax the activity of pirates – the point is one of cause and effect. Fundamentalism and terrorism are explicitly **not** the causes of piracy.
3. Piracy is **not** a function of the failure of the Somali state – and this assumption has perhaps been the most pervasive yet the most misleading of all. The reinvigoration of Somali piracy is connected to the reconstruction of the state in what was Somalia, not its collapse, and its consequences are therefore very serious for the future. Strengthening the state will **not** necessarily lessen piracy, though changing the character of the transactions conducted by state actors probably will.
4. Piracy is **not** a function of Somalia's 'war-lord politics'. This does not mean that there are no connections between pirate gangs and the political overlords who control the Somali regions, but piracy is not promoted or directed by such people.
5. And lastly, and here we must address some more imaginative aspects of the international coverage of the piracy question, Somalia's pirates are **not** 'global warriors' concerned to save our planet from exploitation, and **not** should they be seen as social bandits seeking to achieve a redistribution of resources from the rich to the poor. However, this rhetoric has its origins in the historical experience of coastal communities over the past 30 years and in dismissing it as a motive we should not ignore the deeper message it conveys about the stability of the coastal economy.

None of this is intended to underplay the importance of the piracy problem. Somali's pirates may be young, and they may be naïve in several respects, but they are incredibly dangerous and we are right to be deeply concerned about the consequences and the implications of their activities. But to do that we need to better understand what forces drive those activities, firstly by examining the historical context out of which the current piracy has emerged, and secondly by identifying the political contingencies that affect piracy.

Historical context

Eastern Puntland has for centuries been a maritime community. Fisheries and the sea dominate the local economy here, and there is also an ocean-going sea-faring tradition of dhow sailing and of engagement with international maritime trades. Red Sea sailors were known in Europe as Lascars – communities of these adventurers to be found in London and other major British ports by the eighteenth century: even today there is a rest home for retired Somali sailors in Cardiff's Tiger Bay, with more than a dozen elderly Somali seafarers still in residence. Lascars were recruited by European shipmasters in the ports of the Red Sea, the Gulf of Aden, the Gulf of Persia, and the West coast of South Asia. They moved with the monsoon around the waters of the northern Indian Ocean, working the coastal dhow trade as well as the transcontinental sailing ships that plied these waters in increasing numbers from the late-seventeenth-century. Majerteen and Hyobo men from the eastern coast of Puntland were renowned as hardy and skilled seafarers in these waters, as were those recruited from the northern shore of what is now Somaliland, from the ports of Berbera and Bosoca.

Piracy and other forms of seaborne predation were known to Europeans sailing these waters from at least the early eighteenth century. But in the age of sail, seaborne piracy here was limited to smaller local dhows, these being frequently intercepted and run down by pirates who would seize the cargoes. The dhow trade between the Persian Gulf and the coast of Yemen to Berbera, Aden, Djibouti, and Massawa was commonly pillaged by pirates from both the Somali

and Yemen coasts. Larger ships of European type were generally too large and too well-protected to be targeted by such activities, and until the opening of the Suez Canal relatively few larger vessels passed on the west-east lane through the Gulf of Aden. However, the waters around the Somali coast were treacherous to shipping in other respects – the currents and tides, and the strength of the monsoon making this a notoriously difficult stretch of water for sailing ships. The north-eastern and eastern coastlines of Puntland were known for these dangers by the early eighteenth century, and by the 1780s there had been several infamous cases of shipwreck on this coast with the survivors being taken captive and then ransomed by local communities. There was a seasonal rhythm to this for the people of coastal Puntland. When the winds were fair and the coastal currents good, they engaged in fishing and coastal trading; in the monsoon season they turned to land-borne pursuits and harvested the European shipping that floundered on their rocks. This seasonality still affects the incidence of piracy against dhows along this coastline today.

As Linda Colley's best selling history of ransoming, *Captives: Britain, the Empire and the World 1600-1850*, makes clear, the ransoming of captives was a long-term strategy of investment that did not necessarily bring early results. Pirates who hope to accrue from ransoms have always needed patience – in the early nineteenth century it might take several months to deliver the ransom demand to the shipping agent in Aden or Djibouti, and then many months more before a response was received. Among pirates here, as in the Caribbean or in North Africa, the short-term gains were from the pillaging of cargo; ransoming was a slower and altogether more speculative enterprise. The need to keep hostages safe and in good health has long been well understood along the Puntland coast.

Historians writing about the Majerteen and Hobiyo polities provide us with details not only of opportunistic pillaging or wrecks and the subsequent ransoming of European and Asian captives, but explain how lights and fires were set in a purposeful attempt to lure ships onto the rocks. Wayne Durrill, writing of Majerteen in the late-eighteenth and early nineteenth-century links this explicitly to a political system of predation, from which the ruling political elite received rent for every wreck, just as they controlled and taxed the fisheries and other trade of the coastal ports by this time. The Italian historian Battera, whose study of the Puntland coast takes us through to the early twentieth century, elaborates on the continuation and extension of this predation and its importance in building the economic strength of the local Hobiyo and Majerteen polities through the systematic payment of tribute. Wrecks on the coastline were treated as the property of the local sheekh, who was thereby entitled to a share of the spoils. This was seen as part and parcel of the political control of, and protection of, coastal trading.

Thus, the role of **predation** and **tribute** in shaping the politics of state formation in Somalia is clear in the excellent historical work of both Durrill and Bottera, linking the maritime economy of the coastal zone to the inland economy of pastoral production and agricultural exchange described so eloquently in the work of Lee Cassanelli. Both coastal historians also make the point that it was always the maritime economy that presented the opportunities for the more rapid accumulation of wealth by those willing to use coercion to exert control of trading networks and those most willing to take the risks.

Smuggling is another element of the maritime economy that we need to consider here, because although its importance emerges rather later, it has been intimately linked to piracy along the Red Sea Littoral and in the Gulf of Aden since the early years of the twentieth century. The second half of the nineteenth century saw steam replace sail, thus reducing the opportunities for piracy of wrecking against European shipping, yet the opening of the Suez Canal saw a dramatic increase in the number of ships plying the waters through the Gulf of Aden. From the late nineteenth century through to the early twentieth century, piracy in these waters was confined to sailing ships, predominantly dhows and the merchant ships that plied between the ports of

north-east India and the gulf of Aden, and thus was very much a local matter affecting trade between the various ports of the region. The advent of colonialism at the end of the nineteenth century placed those ports in the hands of European governments who sought then to tax the intermediaries conducting trade. In an important sense, the predation of European colonialisms replaced the predation of local sheikhs, but essentially nothing had changed very much. However, differences between the laws imposed by the French, Italian and British colonialists in this region enhanced the opportunities for smuggling between the various jurisdictions – a factor that had already been apparent in the trade during the second-half of the nineteenth century.

Details of this trade and the rampant smuggling that accompanied it are detailed in Richard Pankhurst's magisterial survey of the Red Sea ports, and has most recently been elaborated in Jonathan Miran's wonderfully evocative history of the port of Massawa, *Red Sea Citizens: Cosmopolitan Society and Cultural Change in Massawa*. Indian and Arab trading houses were well-established in all the ports of the region by this time, and in often fiendish competition with one another and with local traders they had succeeded in establishing dominant positions over credit provisions in many of the key ports. Indian and Arab traders paid their dues in tribute to local Somali political leaders, and in return facilitated money-lending to local traders, some of whom brought goods to the coast from inland and others who were themselves involved in maritime trade. European colonialisms brought new currencies into this market, as well as new regulations, that saw many of the established trading firms seeking ways to avoid colonial oversight so as to maintain their own monopolies and privileges. The complexity and intimacy of this history is hinted at in Pankhurst's account of the pricing structures, licensing regimes and tribute systems operating in the various ports.

By 1919, coastal smuggling was a key issue in the region for all of the colonial powers – principally the British in Aden and Berbera, the French at Djibouti and the Italians at Massawa and along the eastern Puntland coast and down to Mogadishu. The outbreak of the First World War politicised this even further, with stories of gun-running across the Red Sea as local traders sought to break embargoes and licensing controls – troubles that were again to be vigorously renewed with the Italian conquest of Ethiopia in 1936 and the outbreak of the Second World War in 1939. By the 1920s stories of smuggling and seafaring adventures in the Red Sea were immortalised in the writings of Henry de Montfried, whose autobiographical adventures were recorded in more than 20 novels, including *Hashish – a Smuggler's Tale*, and *Smuggling Under Sail in the Red Sea*. The British suspected de Montfried of running cannabis and guns into Djibouti and Massawa from Yemeni coastal ports, and had him arrested and his skiff impounded on more than one occasion.

Illicit maritime trade has a deeply rooted connection to local political actors in this region, but there has also always been a very fine line between legitimate trade and smuggling. Henry de Montfried had exceedingly good relationships with the leading coastal sheikhs on the Somali and Yemeni coastlines and was a close associate of the main European merchants who were involved in coastal trade. Among these was a fellow Frenchman named Antonin Besse, who ran what was by the late-1920s the region's largest trading company, based in Aden. Besse employed de Montfried many times to run trade goods in the region, and his good name became briefly somewhat besmirched by this association – especially during the 1940s when de Montfried again fell under grave suspicions of gun-running.

Although local smuggling remains vibrant and economically important, by the 1950s we hear less about international piracy in this region, although there are occasional incidents of tourist yachts being caught up and attempts to ransom the crew. Local piracy against dhow traders and fishing vessels continues, however, records of which are to be found in the British Colonial Office papers on Somaliland right up until independence at the beginning of the 1960s.

The emphasis of the maritime economy of the Somali coast shifted very emphatically in the 1960s as Cold War politics blew into the Horn. Russian support for Somalia brought a strong military presence to the coastline, with Berbera and Mogadishu's port facilities being heavily militarised and internationalised. The Soviets also brought Somalia a sophisticated and modern fishing fleet for the exploitation of its own coastal waters, and with this commercial fishing new kinds of opportunities for predation were created.

As far as we can tell from limited sources, sporadic smuggling continued through the smaller ports and harbours of Somalia throughout the 1960s and 1970s with virtually no controls by the state – “it has always been this way” as one elderly fisherman told an American journalist back in November 2008. The appalling economic management of the Said Barre government, which saw corruption and rent-seeking invade virtually every facet of Somali public life during the 1970s finally spiralled into financial collapse by the mid-1980s with the rapid re-invigoration of local political actors in directing economic activities in each part of the country. The maritime economy suffered in the management and the collapse of the Barre regime, along with all other aspects of the Somali economy.

Political contingency

The political difficulties of Somalia since 1991 have been well documented. Here I will restrict myself to five brief points relating to the maritime economy.

(a) Fisheries and coastal customs

French political scientist Roland Marchal is a long-time critic of the simplicities with which the world tends to consider Somalia's problems. His view of the current piracy crisis is typically trenchant. Marchal makes a connection between piracy and the collapse of international fisheries along the coast. To that we can add analysis of the efforts by Puntland's putative government to get a grip on its ports and harbours to give a more rounded view of how fisheries and customs issues have impacted very directly upon the recent upsurge of piracy.

Marchal reminds us that piracy was intimately connected “with the early stage of the civil war and the international intervention”. Before 1991, there were very few attacks on international shipping, but with the collapse of the Barre government, harbour and port facilities became prizes to be won in the struggle for economic resources. In December 1989 a Somali rebel group, the Somali National Movement, seized an oil tanker and two other ships off the Somali coast, and issued warnings to international shippers not to deal with the “dying Somalia regime”. These ‘pirates’ off-loaded everything they could from the ships before releasing them early in 1990. There has been a pattern of interference with international shipping that has been slowly escalating in the waters off Somalia ever since; the reason is to be found in the economic importance of maritime resources.

This is most clearly seen in relation to the fishing industry. Having run a successful large-scale fishing industry out of Mogadishu from the early 1960s, the ships and infrastructure of this Somali enterprise gradually fell into disrepair and disuse after 1977. In 1983 the Somali government entered a new agreement with an Italian firm (the Somali High Seas Fishing Company, known as SHIFCO), which provided a fleet of five trawlers and one freezer mother ship to supply fish caught off Somalia to Italy and the EU. When the Barre government collapsed, SHIFCO relocated its base to Yemen, from where the company was run by close associates of the Barre family. In an effort to retain a monopoly of off-shore trawling, SHIFCO allegedly paid monies at this point to leading Somali political figures to engage their support.

This arrangement initially succeeded in securing SHIFCO's interest, but was soon challenged as the various factions that emerged after the fall of Barre turned against one another and began to

compete to control economic resources. Rival political elites began to support other contractors to fish in Somali waters, while ships from other international countries now flooded into Somali waters undermining SHIFCO's monopoly. Marchal reports that the UNOSOM Justice Commission looked at this issue in 1993, but elected not to seek to interfere with SHIFCO's contract. In the meantime, the various political factions with interests in the ports along the coast began to compete against each other to tax the industry, with the first incidents of local boats seeking to interfere directly with the trawlers operating off-shore. To do this, local sailors needed larger, faster boats, and they began the process of improving their technology accordingly.

The foundation of the new 'state' of Puntland in the late 1990s brought this to a head. The government of Abdullaahi Yuusuf wanted to gain revenues from taxing off-shore fisheries, and so employed a private security firm, Hart, to administer its ports and coastal customs. Stig Jarle Hansen's excellent article, published in *Review of African Political Economy* in December 2008, explains how this apparent 'liberalisation' and 'security' measure in fact played into local politics between rival factions in the war to gain tribute. Hart ultimately failed to secure the ports of Puntland, but in the process they employed and trained a good number of local men – perhaps as many as 40 in all – in the use of GPS, maritime tracking and security methods, and the techniques of apprehending, boarding and securing 'suspect' shipping in hostile waters. There is good reason to suspect that Hart's former employees are prominent among the gangs now preying upon shipping off the Somali coast. With a combination of improved technology and know-how (computer tracking and communications equipment), heavy weaponry (rocket-propelled grenades capable of piercing the hull of a vessel), and excellent local seamanship (in the form of local fishermen who know the waters, tides and currents of this difficult coast), the most professional of the pirate gangs is now capable of running down large international shipping and at increasing distances from the shore.

(b) Political transitions (Islamic courts)

The American-sponsored Ethiopian invasion of Somalia was designed to remove elements from Mogadishu who were believed to be operating in support of fundamentalist Islamic politics in general, and the interests of anti-America terrorist groups in particular. The Islamic Courts administration that had taken over in Somalia's former capital had certainly restored many elements of sharia law, and there were almost certainly a number of wanted men in hiding in Mogadishu – though whether they were under the protection of local political elites or not is a moot point. Yet, as Hassan and Barnes, among many others, have forcibly pointed out, the Islamic Courts government enjoyed a high degree of local support and credibility precisely because they were successful in restoring a degree of order to the city and its suburbs, bringing back trade and other civil activities to the great benefit of the local population. Most importantly, they also controlled the undisciplined and predatory militias whose greed and extortion was inflicting misery on all of those seeking to restore business and service provision in the city. One of the positive aspects of the period in which the Islamic Courts ran Mogadishu was the improvements in port security around the harbour area, and the clearing out from Mogadishu of a number of private groups who were preying upon local shipping in the area.

Did the demise of the Islamic Courts then spawn a rise in piracy? No – that is too simple a conclusion: but their presence reinforced a degree of political order in which criminal activity in general was suppressed. Somali piracy needs to be understood as a criminal activity, not a political act.

To what extent is the resurgence of piracy on the Puntland coast therefore a feature of criminality emanating from Puntland's political elite in Gerowe? The government in Gerowe wishes to be viewed as a Western ally, and thereby hopes to gain international legitimacy. But

in seeking to maintain local support, politicians in Gerowe cannot afford to be too closely identified with the Ethiopian invasion or directly with US policy. It is undoubtedly the case that some prominent politicians and business people in Gerowe have close links to the pirate gangs and their financiers. In Gerowe's difficult political environment, a blind-eye has been turned to those among the Gerowe administration who benefit in the form of tribute by maritime predation.

(c) Criminality and the economy

As with the case of the Balkans in the 1990s, the emergence of criminal networks amid reconstruction has been dismissed in Puntland and Somaliland as a 'merely-to-be-expected' opportunistic response to political transition. Only later did those involved in the Balkans come to see the dangers of letting criminal factions into the very heart of government in this crucial transitional phase. Are we repeating the same mistake in the horn of Africa? Embedded criminality is extremely difficult to dislodge from government, as we have subsequently learned in the Balkans, in some of the former Soviet republics, and most recently in Croatia. In Africa, parallels to the Somali case are to be seen in DRC, and also in Liberia.

Given its current geo-politics, Somalia appears to be in the process of partition. And the circumstances of this process is creating a politics in which criminality is becoming embedded. It is grimly ironic that Africa's one overtly irredentist post-colonial state should be the one that is first torn into pieces. There are three new states in the making at present. Somaliland, Puntland, and the residual state of Somalia that is at least putatively run from Mogadishu. How legitimate are these new polities? The world still hesitates to recognise Somaliland, although it receives encouragement and support from a number of countries and through UN agencies. Likewise Puntland, the self-proclaimed 'state-in-the-making', with its capital and so-called 'transitional government' at Gerowe. These may not be perfect arrangements, but international agencies work with the administrations in Hargeisa and Gerowe because some authority is better than no authority – of course, so long as this authority is not linked to fundamentalist Islam. The administrations of Puntland and Somaliland are vehemently opposed to one another, yet they are both acutely aware of the need to play politics in a way that will not alienate Western allies.

(d) The incremental scale of piracy

There is not yet any clear indication of how many distinct pirate gangs are operating from the coast of Somalia, but the best guess puts the figure at around ten. Two or three of these are relatively new, the others being believed to be long-standing practitioners. Up to 2007, it has been estimated that each gang made around a dozen attacks on international shipping per year. The apparent up-scaling of pirate activities since 2007 is therefore a consequence of only two or perhaps three new gangs coming into operation. This incremental scale of increase needs to be borne in mind – a relatively small investment in equipment and technology, or the relocation of pirates from one area to another, or the shifting of a criminal network from smuggling into piracy can be sufficient to create the kind of increase we have seen in the past two to three years. Given the reported success of pirates over the period in persuading insurers to pay ransoms for the ships held, it may seem hardly surprising that additional crews have joined in the action.

(e) International architecture

It has been estimated that ransoms to the value of US \$45 million were paid out to Somali pirates during 2008. So, where does the average pirate spend this money? That of course is the question that leads many advisors on international security to worry that this money may find its

way into the hands of others who have ambitions beyond acquisitive consumerism. But, despite claims of the pirates being among the wealthiest of their community and anecdotal stories that they are propping up the local economy, it is clear that only a tiny fraction of the rewards from piracy finds its way back into the local economy. The pirates themselves take money and valuables from the ships they attack – they stole \$30,000 from the safe of the US ship whose captain was taken hostage, for example – and parts of cargoes are often sold-off into Somalia's thriving black economy while the ships sit at anchor awaiting the due process of the ransom negotiations. The Ukrainian ship carrying the tanks and heavy weapons bound for Sudan was only saved from being stripped out and its cargo looted because the pirates could not find a way to move the heavy tanks and other machinery from the hold.

The international architecture of the laundering of the money delivered for ransom remains hazy, but it is suspected that there are connections to members of the Somali diasporas, notably in Dubai and Doha. At least some of the money then finds its way back to Somalia via legitimate trade exchanges of goods purchased with the ransom earnings, to be sure, but the vast bulk of the millions secured through piracy is clearly **not** being invested in the Horn of Africa.

The Evolution of Piracy

Rob de Wijk*

Introduction

Piracy is not a new phenomenon, but over the years there has been a shift towards more advanced, sophisticated and professionalised forms of piracy. This paper discusses its evolution and looks at the changing modus operandi. Although most piracy attacks are conducted for economic gain, politically motivated piracy should not be overlooked.

Piracy is defined as an “act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of that act”.¹ The conclusions and insights provided in this paper are largely derived from The Hague Centre for Strategic Studies’ (HCSS) piracy database, which contains the majority of the incidents as of 2003. Although most of the HCSS piracy data are also included in the database of the International Maritime Bureau (IMB) and the shipping reports of the National Geospatial Intelligence Agency, the HCSS data also contain information about numerous other reported maritime-related security incidents, including kidnappings of oil workers and sabotage of oil pipelines, whereby maritime operators could be adversely affected.

Consequences

As integrated supply chains and ‘just-in-time’ management techniques are imperative in today’s global economic environment, new forms of piracy have important economic repercussions. Disruptions of supply chains and increased freight rates have strong implications for the companies involved and affect business confidence.² The IMB estimated that costs related to piracy vary between 0.01% and 0.2% of the annual value of maritime commerce, which totals almost \$8 trillion USD.³ However, systematic studies designed to get a substantiated indication of the magnitude of economic costs have yet to be undertaken.⁴

This does not neglect the fact that the physical and psychological consequences of piracy attacks are serious. It is estimated that from 1995 to 2009,⁵ around 730 persons were killed or are presumed dead, approximately 3,850 seafarers were held hostage, around 230 were kidnapped and ransomed, nearly 800 were seriously injured and hundreds more were threatened with guns

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¹ Definition used by International Maritime Bureau (IMB). It is broader in comparison to the conceptualisation adopted under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The latter restricts its focus only to attacks that occur on the high seas, which is problematic since the majority of piracy incidents take place in territorial or coastal waters. For reasons of brevity, an actual or attempted armed robbery directed at a ship that is berthed, anchored or at sea is also included under the header of ‘piracy’ in this Future Issue.

² Michael Richardson (2004), “A Time Bomb for Global Trade: Maritime-related Terrorism in an Age of WMD”, Institute of South East Asian Studies.

³ J. Hastings (2009), “Geographies of state failure and sophistication in maritime piracy hijackings”, *Political Geography*, July; IMB (2007); P. Chalk (2000), “Maritime Piracy: A Global Overview”, *Jane’s Intelligence Review*, Vol. 12, No. 8, pp. 47-50.

⁴ Ibid.

⁵ Year-to-date: 21st October 2009.

and knives.⁶ In most cases, the act of piracy falls within the category of armed robbery, where pirates board the ship and remove valuables from the crew. During the last two years there has been a slight increase in attacks committed for the purposes of hijacking a ship and kidnapping crew members for ransom. This trend is especially prevalent in Somalia and the Gulf of Aden region, where such violence accounted for 70% of the world total in 2007 and 80% in 2008. In these attacks, the preferred types of weapons are machine guns and rocket-propelled grenades (RPGs), indicating that pirates are becoming increasingly ruthless in these areas.

Modus operandi

Pirates are aided by the absence of a global law enforcement agency and the weak implementation of UN resolutions and maritime security regimes. The establishment of EU and NATO maritime task forces off the coasts of Somalia demonstrates that the international community now takes implementation more seriously. The deployment of maritime task forces indicates that piracy has gone through different stages, causing an increasing threat to Sea Lines of Communication (SLOCs). Analyses of various databases reveal four forms of piracy.

Moderate, low-level piracy

The bulk of these attacks take place in bays, estuaries and archipelagos, where favourable geographic circumstances offer the best opportunities for pirates.⁷ In regions where targets are close to shore, berthed in ports or sailing through swampy river systems, such as the Niger Delta, South American Amazon and the Malacca Straits, low-level piracy is dominant. Obviously, these geographical characteristics are not only present in those areas; the Everglades and Northern Territory share them as well. However, the former are characterised by a high degree of lawlessness, poverty and a range of other variables that drive piracy. Pirates are often armed with only knives and pistols, while operating from rubber boats or small wooden motor boats. The intention of these armed culprits, occasionally disguised as naval officers or harbour police, is to ransack the ship and deprive the crew of their valuables before disappearing again in the darkness to seek refuge in their nearest sanctuaries. In the majority of cases, violence is 'limited' to assault and threatening of victims.

Advanced, medium-level piracy

Over the last several years, however, there seems to have been an increase in the levels of violence used. Pirates are increasingly employing heavier firearms and occasionally end up in gunfights with local authorities and naval forces. Mostly, the raids are generally hit-and-run attacks, but next to personal valuables specific cargo is often targeted as well. It would therefore seem that pirates' intelligence is getting better. The pirates, however, rarely view the cargo as the prime target of the hijacking. The main reason for this is that the economic landscape discourages particular operations that require a proper infrastructure to offload cargo and sell them on the open market. In addition, the lack of a functioning financial sector and market system causes the pirates to focus on ransom negotiations for ship hijackings and the use of overseas financial networks.⁸ On the other hand, pirates in these areas do enjoy the advantage of operating in a political and judicial vacuum, meaning they have enough time to negotiate

⁶ HCSS Maritime Security Database (2009); M. Murphy (2007), "Contemporary Piracy and Maritime Terrorism", Adelphi Paper, International Institute for Strategic Studies, Routledge.

⁷ Ibid.

⁸ J. Hastings (2009), "Geographies of state failure and sophistication in maritime piracy hijackings", *Political Geography*, July.

ransoms while not being pursued by legal forces. During kidnappings in, for example, the Niger Delta, crew members are the prime target for demanding ransom or are used as bargaining chips for the release of political rebels. By using high-speed boats, these armed assaults not only take place in close proximity to the shore, but also at ships anchored several nautical miles off coast, or even further up in the exclusive economic zone. In some areas, for example in the Horn of Africa, pirates are becoming more audacious, even committing attacks in broad daylight and giving interviews to various media outlets.⁹

Professional, high-level piracy

In some areas there is the occurrence of a particular type of pirate, with an even more sophisticated modus operandi than in the medium-level type of piracy. In the professional, high-level category, pirates use AK-47 automatic machine guns, RPGs and even P4A dynamite to commit attacks and threaten crew members. These pirates operate from so-called ‘mother ships’ to launch smaller crafts on the high seas, allowing pirates to target vessels farther out at sea.¹⁰ At present, the poorly policed waters off the Somali coast, Gulf of Aden, the Philippines and Southern India are particularly prone to this type of attack. The use of these mother ships has the implication that the ‘threat-zone’ for ships has expanded significantly. A few years ago this ‘threat-zone’ was approximately 50 NM off coast, but is already around 1000 NM off the coast of Somalia.¹¹ These pirates tend to favour larger vessels, above 10,000 Gross Register Tonnage (GRT), in order to commit major criminal hijackings and kidnappings of the crew.¹² The preference for large ships can be explained by the fact that they yield some important advantages for the pirates. They generally have more crew members on board to kidnap or take hostage, meaning a higher ransom, and usually carry goods and commodities, such as palm oil and sugar, which sell fast on the ‘black’ market.¹³ Also, shipping companies that are attacked in international waters have, in general, a greater willingness to actually pay ransom, since they are better insured in such waters. Furthermore, the type of pirates that aim for large cargo ships operate under even more complicated circumstances than simply demanding ransom. It demands a high level of operational sophistication and professionalism to dispose of cargo without getting caught. It is hard to sell cargo straight off a hijacked ship, so it has to be stored, requiring a properly equipped network of ports, warehouses and commodities market. Thus, pirates need to have a network in place that takes full advantage of the complex communication and transportation infrastructure, something pirates in Southeast Asia have done rather successfully over the years.¹⁴

Politically motivated piracy

In certain cases piracy attacks are politically motivated. This manifestation of piracy differs significantly from the varieties described earlier. These types of pirates are better described as

⁹ Ibid.

¹⁰ Munich Re (2008), *Piracy – Threat at Sea*, Münchener Rückversicherungs-Gesellschaft, Germany.

¹¹ On May 2nd 2009, the Malta-flagged Greek tanker, the Ariana, was attacked by pirates in the Indian Ocean between the Seychelles and Madagascar, approximately 950 NM SE of Mogadishu, while carrying soy from Brazil to Iran (<http://www.eaglespeak.us/2009/05/somali-pirates-nato-stops-hijack-finds.html>).

¹² Although not their prime targets, pirates do increasingly attack private yachts and cruise ships in these waters, whereby seriously wounding or even killing unarmed sailors becomes more frequent.

¹³ Munich Re (2008), *Piracy – Threat at Sea*, Münchener Rückversicherungs-Gesellschaft, Germany.

¹⁴ J. Hastings (2009), “Geographies of state failure and sophistication in maritime piracy hijackings”, *Political Geography*, July.

militants attacking ships or oil facilities as a result of local grievances. It is reasonable to assume that these politically motivated attacks might morph into 'pure revenue-seeking' groups, much like FARC in South America switched from political movement to narco-terrorism once they found that the attacks were too profitable to discontinue. In some cases these piracy attacks may resemble maritime terrorism. Their modus operandi classifies them in the medium-level and high-level forms of piracy. For example, the well-trained and equipped Movement for the Emancipation of the Niger Delta (MEND) uses M-16 assault rifles, AK-47 machine guns, dry explosives and RPGs to attack government and oil industry targets.¹⁵ A similar situation existed in the oil rich Indonesian province of Aceh, where the side effects of lucrative oil business in the country created comparable grievances and resistance amongst the local population against foreign oil companies and central government. The so-called Free Aceh Movement (GAM) specifically targeted Exxon Mobil, which in the past led to multiple natural gas and oil production shutdowns at the refineries in the Lhok Seumawe Industrial Zone.¹⁶

How big is the threat?

Piracy has always existed but comprehensive piracy records have only been kept for a short period of time. This makes it difficult to confidently identify clear trends over time.¹⁷ Moreover, scholars in the field of piracy point to the limitations of collecting statistics on actual and attempted piracy attacks. For example, piracy incidents often go unreported due to reasons such as intimidation by pirates, fear of reputation damage, fear of increased insurance premiums and interpretative discrepancies in the definitions of piracy. In spite of these limitations, a short-term trend analysis covering the period 2003-2009 year-to-date¹⁸ is illustrative.

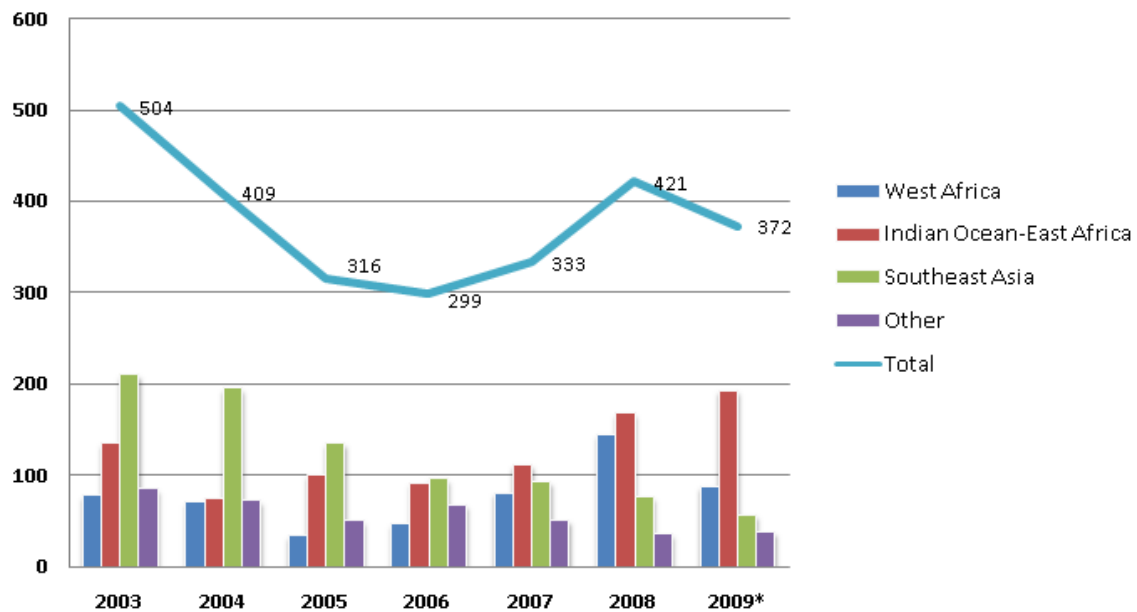
¹⁵ In their most recent attacks on platform rigs and oil pipelines, the oil production is brought down with nearly 1 million bpd, thereby triggering global oil prices upwards again (<http://www.bloomberg.com/apps/news?pid=20601102&sid=aJhJeQ.t3MDk&refer=uk>, accessed 18 September 2008).

¹⁶ Finally, as of late December 2005, the GAM and the Indonesian government reached a peace agreement, after 26 years of fighting (http://www.bbc.co.uk/worldservice/learningenglish/newsenglish/witn/2005/12/051214_aceh.shtml).

¹⁷ Piracy reports are only readily available since the 1990s, with very little recording before this period. These reports are issued on a regular basis by organizations such as the International Maritime Bureau (IMB), the International Maritime Organization (IMO), the UK's Defence Intelligence Staff (DIS) and the US National Geospatial Intelligence Agency's Anti-Shipping Activity Message database.

¹⁸ Year-to-date: 21st October 2009.

Figure 1. Number of reported piracy incidents 2003 - 2009 (up to 21 October 2009)



Source: HCSS piracy database.

The waters off Indonesia, the Caribbean and Latin America were amongst the highest risk areas in 2003, but witnessed a significant decrease in piracy in the following years (90% and 95% respectively). The Singapore and Malacca Straits have also seen a decline in reported piracy attacks during the last few years (from 209 reported attacks in 2003 to 75 in 2008). The affected shipping companies in these areas were increasingly pressing littoral states to improve the risk situation. After the Malacca Straits were marked as very risky in 2005, shipping companies were forced to pay for this enhanced risk. To counter this additional burden, they demanded better control, more frequent patrols by the authorities and a better cooperation with neighbouring countries. Remarkably, in the years after the initiation of ReCAAP¹⁹ and the concept of the “Eye in the Sky” joint security-initiative to provide cooperative air surveillance over the Malacca Straits, piracy attacks in this region began to drop significantly. Consequently, some insurance markets, such as Lloyds of London, reversed their previous decision and deleted the region from the list of enhanced risk areas.²⁰

The opposite occurred in Nigerian waters (from 30 reported attacks in 2005 to over 140 in 2008) and the Horn of Africa region, where there has been a significant rise in piracy activity over the last two and a half years (a large increase of more than 220%). Somalia wasn't always a pirate safe haven, but the scourge in attacks can largely be explained by the fact that piracy is regarded as a highly profitable business. Pirates make high returns on investment, i.e. the huge ransoms paid for a hijacked ship, making this type of ‘work’ extremely interesting in a country where the average Somali is lucky to earn \$600 USD a year.²¹ Reported incidents in the Indian

¹⁹ On September 4th 2006 the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) came into force.

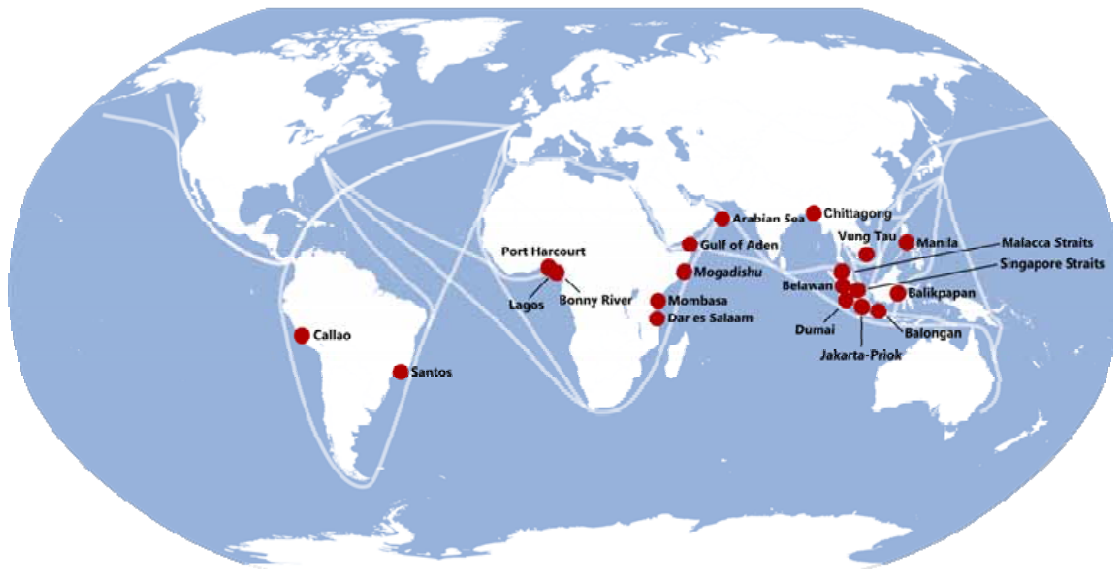
²⁰ Munich Re (2008), *Piracy – Threat at Sea*, Münchener Rückversicherungs-Gesellschaft, Germany.

²¹ D. Sekulich (2009), *Terror on the Seas: True Tales of Modern-Day Pirates*, St. Martin's Press, NY, p. 148.

Subcontinent including India and Bangladesh, remained relatively stable, but are still responsible for a large proportion of total incidents worldwide (averaging around 45 incidents per year since 2003).

Most piracy incidents worldwide take place near fragile or failed states, where there are large ungoverned areas, weak state structures and ungoverned territories or ‘black holes’. These areas include Somalia, Nigeria, the Indian Subcontinent and areas in the South China Sea. This figure illustrates the ports and anchorages with the most piracy incidents worldwide.

Figure 2. Overview of ports and anchorages with high piracy activity



Source: IMB (2008); HCSS (2009).

Recent trends

The bulk of attacks occur in West Africa and the Horn of Africa, in particular Nigeria and the Gulf of Aden. During the early months of 2009 there was a spectacular rise in piracy incidents off the coast of Somalia and Nigeria. These attacks are more violent and professionally executed. The result was increased media attention and a growing political willingness to address the problem. Despite this significant rise in the overall amount of maritime security incidents compared to 2008, we also observed a relative decline in incidents since May 2009.

Horn of Africa

The overall level of piracy has decreased in the Horn of Africa since May 2009, including in the Horn of Africa and the Indian Ocean. Still, by June 2009 the amount of actual and attempted attacks in this region had already surpassed the total number of attacks in 2008. The decline of *actual* attacks in the Horn of Africa is partly due to the presence of naval forces in the Gulf of Aden, being CTF-151, NATO’s Allied Protector, the EU-NAVFOR mission or individual contributions by nation states, which have made it more difficult for pirates to actually hijack vessels. To a large degree this decline can also be attributed to the stormy weather conditions associated with the monsoon season (May until September). The high seas and rough winds caused a decrease in piracy activity along the east coast of Africa. Despite the adaptive nature of

pirates' tactics, merchant vessels could take advantage of the protection offered by monsoon conditions. The likelihood of a successful attack in these conditions is considered to be low along much of the east coast of Africa, with wind speeds of SW Force 4 or above. However, this did not cause Somali pirates to quit their activities. Instead, pirate groups such as the 'Puntland' and 'Marka' groups and the 'Somali Marines' are seeking new hunting grounds in the southern Red Sea near places such as Bab el-Mandeb and in the Arabic Sea near the coast of Oman. However, the latest HCSS data indicates that after a period of relative calm, Somali piracy surged again from August 2009 onwards. In addition, they are becoming much more audacious, committing attacks as much as 900 NM offshore, around the Seychelles Islands (and even near the Maldives), farther to the south east of Somalia and in the Mozambique Channel. Attacks increasingly occurred during the hours of darkness, suggesting the need for increased vigilance of shipping vessels at any time transiting through the high risk areas in this region.

West Africa

According to the HCSS dataset, the Gulf of Guinea is the highest risk area at the moment, in particular Nigerian waters and the Niger Delta. These attacks pose a mounting threat to international shipping and there is a growing concern over the increasing level of violence. The naval forces in West Africa are ill-equipped to protect merchant vessels – and even local fishing boats – against the violent attacks of, in particular, the militant groups MEND and the Freelance Freedom Fighters (FFF). Attacks on vessels in the Gulf of Guinea, in particular Nigerian waters, are mired in a mix of petty crime and politically-motivated violence. In the latter case, the types of pirates are better described as militants attacking ships or oil facilities as a result of local grievances. In these cases the piracy attacks resembles politically motivated piracy (or even maritime terrorism), where the economic motivations are not dominant. In an announcement in July 2009, the European Commission stated that the recent implementation of several of its projects in nine states of the Niger Delta (worth over 45 million Euros) was stalled due to disruptive militant attacks.

Southeast Asia

A worrying development is the spread of MEND's militant tactics into neighbouring countries through organised criminal gangs and separatist movements in, for instance, Cameroon's Bakassi Peninsula, Angola, Benin and Equatorial Guinea. Criminals and militant groups active in these areas may have ideological or operational links to the Ijaw' militants of MEND. These groups have stepped up their activities, mounting attacks on targets affiliated with the oil and gas industry. The risks to personnel, vessels and (sub) contractors in the oil and gas industry are probably more severe than in the Horn of Africa. There is an increased awareness that as a result of the current economic crisis, low public spending and unemployment could fuel the (re)emergence of piracy hotspots in Southeast Asia. 'Old' piracy networks, as they appeared in the recent past in this region, could re-emerge in the coming months. Anecdotal evidence suggests that low-intensity incidents of maritime theft aimed at robbing engines from locals, boats and material is thriving again. However, fear exists that these criminal groups might copy successful tactics employed by pirates in Africa, thus aiming at ransacking more valuable vessels and crew. Unfortunately, the bulk of these incidents go unreported by piracy reporting centres since they mostly include attacks on (large) commercial vessels in their reports.

Other regions

Low-level incidents of piracy and armed robbery are increasing in some areas in Latin America, particularly in the waters off Peru, Colombia and Brazil. The risk of kidnap-for-ransom is slowly spreading out into neighbouring areas. For example, Colombian criminal gangs are spreading their activities into Venezuela and Ecuador. Obviously, the local drivers behind

kidnapping might differ from those in, for example, Nigeria, but it is still vital to properly assess the risk to expatriates and local staff.

Drivers

We found three main drivers of piracy: *opportunity*, *capability* and *target*. These drivers are not only influenced by a combination of several underlying variables, they also mutually influence each other. It is this interplay between factors that explains the variations of piracy in place and over time.

Opportunity

Opportunities for criminals to commit acts of piracy arise from a variety of interrelated variables, including weak local government authority, particular geographical characteristics and the weak implementation of international maritime regimes or standards of state behaviour.

Piracy flourishes in areas with weak government authority. The lack of government authority often coincides with underfunded law enforcement agencies, such as police forces and coastal guards, which lack the necessary equipment and personnel to carry out their duties and are thus induced to corruption more quickly. Naval law enforcement is expensive and consists of radars, boats, command and control centres, as well as well-paid (and, therefore, less prone to corruption) personnel with knowledge of the local area. This is usually outside the budget of affected countries. Limited funding for law enforcement agencies leads to high levels of corruption, a typical characteristic of weak and fragile states. In places where government authority has ceased to exist, predation and lawlessness form the foundation for pirates to organise and engage in attacks. Such areas, which are in the dominion of failed states, are also called ungoverned territories or ‘black holes’. Areas can turn into ‘black holes’ during military conflict (e.g., Lebanon, 1975) or after a military conflict from which no single victory has emerged (e.g. Somalia, after 1991).²² Therefore, weak local government authority is a key determinant of piracy. It is often closely correlated with underlying factors such as bad governance, and lack of economic development. Lack of authority, capability and political will to combat and prosecute pirates can lead to a further breakdown of its already weak state structures.

Pirate attacks usually take place close to coasts or in narrow seas. The vicinity of coasts provides pirates with a safe haven to which to escape after an attack. Pirates prefer to attack vessels sailing through narrow seas, since vessels often reduce speed when transiting through such maritime chokepoints. Such chokepoints therefore provide excellent ‘hunting grounds’ for pirates. However, international waters also provide latitude for pirates. Shipping companies are better insured in these waters and are therefore more inclined to pay a ransom. This means that every sea lines of communication (SLOC) used for trade, logistics and naval forces could become vulnerable.

Capability

The capability of pirates to attack vessels is a function of the technology, arms and pre-established logistical infrastructure they have at their disposal. Faster vessels and more lethal weaponry allow pirates to wage attacks farther from coastlines on a wider variety of vessels. The proliferation of arms and technology after the end of the Cold War, which boosted the black

²² R. Korteweg (2008), “Black Holes: On Terrorist Sanctuaries and Governmental Weaknesses”, *Civil Wars*, Vol. 10, No. 1, March, pp. 60-71.

arms market, has tremendously enhanced the capabilities of pirates. Where in the past pirates used knives and guns, today, according to Noel Choong, a director at the IMB, “they come equipped with AK-47s, M-16s, and rocket-propelled grenades.”²³ This is leading to an increased awareness amongst policy-makers, authorities, insurers and sea farers to combat this threat.²⁴

Target

The type of target chosen by pirates depends on the opportunities and capabilities of the pirates, as well as to what extent target ships are actually ‘suited’ to attack. The majority of the vessels under attack are the ships above 10,000 Grosse Registered Tonnage (GRT) such as general cargo vessels, container ships, chemical and production tankers as well as oil tankers.

The extent to which ships use technology and protection against piracy varies significantly and with this the chance to fall victim to an attack. Piracy can be prevented via surveillance mechanisms and through actively detecting pirates early and fending them off with non-lethal means.

The majority of pirates are ultimately driven by profit motives.²⁵ Piracy will be around as long as there are profits to be made in the piracy business. The vast majority of piracy attacks are committed by petty thieves who often operate along clan or family lines. More professionalised organisations kidnap crews for ransom or steal the commodities transported by the vessels, and in some cases even hijack the entire vessel. They have a great and growing number of high value targets due to a massive increase in commercial maritime traffic over the years. While the value range varies significantly, it is estimated that as of 2008 pirates pocketed an average of \$10,000 per attack for a classic armed robbery attack, but it is reasonable to assume this amount has perhaps doubled in the current piracy climate.²⁶ However, the going rate for ransom payments ranges between \$600,000 USD to as much as \$5.0 million USD.²⁷ A dramatic example was the seizure of the Ukrainian ship *MV Faina* in September 2008 - carrying 33 T-72 tanks and other military equipment - for which a ransom of \$20 million USD was demanded.²⁸ Profit rather than poverty is the driver of piracy, although poverty produces a larger pool of willing recruits. This happened in the aftermath of the Asian financial crisis of 1997-1998, for example, when severe political instability and massive unemployment induced poor workers to seek illegal means. Piracy opportunity and profitability are not only enhanced by an increase in the size of world trade transported by sea, it is also influenced by the increased willingness of companies and insurers to pay ransom for their crews and the tradability of stolen commodities.

Conclusion

To date, contemporary piracy has resulted in only temporary ceasing or re-routing shipping trade flows. However, increased costs due to piracy could act as a non-tariff barrier to trade, because the costs of using dangerous ports can be sufficiently high so that ship owners are

²³ See: http://www.forbes.com/2008/06/09/piracy-logistics-shipping-biz-logistics-cx_wp_0610piracy.html

²⁴ P. Chalk, international security analyst at RAND: <http://www.maritimesecurityagency.com/blog/?p=101>

²⁵ Some maritime security analysts dispute the existence of an ideological nexus between pirates and terrorists. Eric Frecon (2007), see: http://www.recaap.org/news/pdf/news/sep07_tackle_piracy.pdf.

²⁶ P. Chalk (2008), *The Maritime Dimension of International Security – terrorism, piracy, and challenges to the United States*, Project Air Force, RAND.

²⁷ See: <http://news.bbc.co.uk/2/hi/africa/7623329.stm>

²⁸ See: <http://news.bbc.co.uk/2/hi/africa/7674268.stm>. After several months of negotiations, the pirates eventually settled with a payment of around \$3.2 million.

dissuaded from shipping cargo there, which in effect creates a type of boycott.²⁹ Value losses should also include the indirect economic costs that piracy poses. This explains why as of October 2008 the European Union, followed by NATO, set up a costly anti-piracy military operation off the coast of Somalia.

However, the fight against piracy only by political means will not suffice. The need for security remains readily available for shipping companies. Seafarers themselves will have to develop initiatives for greater security. The use of 'private military companies' might be ineffective in the long run as it can reinforce the cycle of violence and endanger the safety of the crew.

In conclusion, the following factors will influence the future development of piracy:

- The number of areas characterised by weak governmental authority, with underfunded law enforcement agencies or no law enforcement agencies at all (so-called 'black holes');
- The choice of sea routes by vessels as piracy attacks predominantly take place along coasts or in narrow seas that are currently navigated by commercial vessels. Re-routing of SLOC is only likely to happen if piracy attacks keep increasing in maritime chokepoints;
- The proliferation of modern arms and technology in enhancing the capacity of pirates;
- The extent to which organised criminal syndicates will concentrate on piracy as a source of income in the future (opposed to the present where attacks are still predominantly waged by petty thieves).
- The profitability of piracy, which is partly a function of the size of world trade and the seas as major hub of transportation of world trade (currently 80% of world trade is transported over seas);
- The willingness of a leading state or group of states to tackle piracy is crucial for the effectiveness of international regimes and their implementation;
- Protection and safety measures implemented by ports and ships; and
- The extent to which states will value traditional security concerns and hold on to traditional prerogatives – i.e. national sovereignty in territorial waters – or whether they will allow other states' patrol vessels to enter their coastal zones to deal with the non-state threat of piracy.

²⁹ D. Dillon (2000), *Piracy in Asia: A Growing Barrier to Maritime Trade*, Heritage Foundation.

Somali Based Piracy: Operations in a legal context

Steven Haines*

Lawyers like definitions. Indeed, they are vital, not least in criminal law. Activities are lawful when they are not proscribed; those forbidden by law are crimes. In most instances, a crime is only so if it is expressly defined as such in statute law, with perhaps a very thin dividing line between lawful behaviour and criminal activity. Tax evasion is a crime; tax avoidance is not. As a very well-known former British Chancellor of the Exchequer reputedly remarked, the only difference between the two is the thickness of a prison wall.³⁰ Definitions are fairly important.

Nevertheless, one of the difficulties lawyers frequently have to face is that definitions are often inadequate. Important activities either inconveniently fall outside the definition – or equally inconveniently fall within. Also problematic is the tendency for us to think we know what we mean by a word describing a particular phenomenon – until we try to define it, when difficulties (even absurdities) can arise. ‘Terrorism’ for example: we instinctively know what this is but all attempts so far to define it adequately in international law have failed. In contrast, ‘genocide’ is something that has certainly been defined but which, bizarrely, fails indisputably to include either the massacres that occurred in Cambodia under the Pol Pot regime or the humanitarian abuses that have been meted out to the people of Darfur since 2003. We must beware definitions.

‘Piracy’ is like genocide in that it is rather precisely defined in contemporary international law. Indeed, its universally agreed definition, coupled with the notion of universal jurisdiction attached to it, means that the international law relating to piracy is very easily described and *prima facie* unproblematic. Pirates have been a constant feature of the maritime scene throughout modern history and piracy was the first significant activity to be regarded as a crime under international law. It was piracy that first gave rise to the notion of universal jurisdiction.

Although the law of sea piracy has developed over centuries, for our purposes today we can rely on the definition that emerged during the 20th century, from the work of the Harvard Research Group in the 1930s and the follow-on work of the International Law Commission in the 1950s, prior to the negotiations that produced the 1958 High Seas Convention.³¹ The 1958 definition was repeated in the 1982 UN Convention on the Law of the Sea, Article 101 of which defines piracy as the:

‘committing of any of the following acts:

1. Any illegal acts of violence, 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:
 - (a) On the high seas, against another ship or aircraft; or against persons or property on board such ship or aircraft;

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³⁰ This comment is attributed to Denis (now Lord) Healy.

³¹ B.H. Dubner, *The Law of International Sea Piracy*, The Hague: Martinus Nijhoff, 1980, p. 3.

- (b) Against a ship, aircraft, person or property in a place outside the jurisdiction of any state;
- 2. Any act of voluntary participation in the operation of a ship or of an aircraft with the knowledge of facts making it a pirate ship or aircraft;
- 3. Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this Article.’

In brief, piracy is committed on the high seas, involves two ships (one committing the act; the other the victim), and is intended for private gain. So we know what piracy is, but this precise definition has in the past proved problematic.

No relatively recent event has focused attention on the shortcomings of the legal definition of piracy as much as the hijacking of the Italian cruise ship, the *Achille Lauro*, in late 1985. The vessel was cruising in the eastern Mediterranean and was due to stop in both Arab and Israeli ports. Embarked, masquerading as holiday-makers, was a group of Palestinian terrorists. While off the Egyptian coast, they seized the ship. During the hijacking they murdered an elderly American Jewish passenger confined to a wheelchair and threw him over the side into the waters of the Mediterranean.

This incident, played out over several days, gripped the world’s media, and caused many to accuse the hijackers of piracy. In fact it was nothing of the sort. As passengers, the hijackers were mutineers not pirates. Nor were they motivated by private gain. If the hijacking had been piracy, universal jurisdiction would have applied. Since it was not, jurisdictional issues became a cause of controversy. In the wake of the hijacking, the International Maritime Bureau examined the issues³² and contributed to a process that resulted in the 1988 Convention on the Suppression of Unlawful Acts against Merchant Shipping (subsequently referred to as the SUA Convention).³³

A further issue of consideration in the *Achille Lauro* case was the location of the hijacking: did it take place on the high seas or within Egyptian territorial limits? The high seas are the areas of ocean beyond the territorial jurisdiction of coastal states. Traditionally, they commenced at the generally accepted distance of three nautical miles from the coast. Since the late 1950s, however, the outer limit of territorial jurisdiction has shifted and, certainly since the coming into force of the 1982 UN Convention, is now set at 12 nautical miles from the coast. Three nautical miles is well within visible distance of the shore. Twelve nautical miles is beyond the visible horizon of an observer positioned on the beach – at sea level. Significantly, the extension of territorial jurisdiction has effectively excluded the bulk of previously piratical acts from the modern definition. Most such acts are committed within 12 nautical miles of the coast and are not piracy in international law but breaches of the criminal law of the coastal state. In enforcement terms, a substantial proportion of piratical acts committed in recent years have, therefore, been the responsibility of coastal states, be they in the South China Sea, the Singapore and Malacca Straits or off the west coast of Africa.

³² Shortly after the hijacking, the International Maritime Bureau convened a workshop in San Jose, California to ‘brainstorm’ the problem. The present author was one of the participants in that 1986 workshop, the results of which were published as: B.A.H. Parritt (ed.), *Violence at Sea*, Paris, International Chamber of Commerce, 1986. The report was submitted to the Maritime Safety Committee of the International Maritime Organization and informed the subsequent drafting of what became the 1988 SUA Convention.

³³ Following an updating protocol of 2005, the convention is now to be referred to as the 2005 SUA Convention (Article 15(2) of the 2005 Protocol to the 1988 SUA Convention).

In the past, the governments of major maritime powers, and especially those that combined significant merchant marines with navies capable of operating beyond their immediate region, have been criticised for failing to suppress piracy. In the UK, for example, questions have frequently been posed by those working in the commercial shipping sector about the Royal Navy's lack of action in the face of persistent piracy related problems. One can discern three principal reasons why governments in the past often took no significant action to suppress piratical acts prior to the onset of Somali related piracy.

The first of these falls out of the comments made above about coastal piracy. The simple fact is that, with most piratical acts occurring within territorial limits, navies of other than the relevant coastal state have been legally constrained from taking any effective action. Warships are not able to act in such ways within territorial limits without the agreement of the relevant coastal states.

Second, navies have not previously been engaged in significant counter-piracy operations because the consequences of them not being employed to suppress it have been marginal. Although many accounts of piratical action against merchant vessels include stories of violent threats and intimidation, financially piracy has not been on a scale to drive government policy, even in states with major shipping interests. The financial costs and consequences of piracy simply have not justified major naval deployments in response.

A third reason why the governments of maritime powers have not reacted to the long standing scourge of piracy, is that it has largely been out of the consciousness of members of the general public. Whether we like it or not, even in a supposed maritime nation like the UK, publics are not especially concerned by issues that fall well beyond those that affect their own lives. Government priorities are frequently driven more by the needs of those who vote for those in power, than they are by real world problems beyond the borders of the state. It takes something quite extraordinary to provoke a government to take action in the face of events occurring beyond the sight or day to day concern of those who will ultimately pay – the taxpaying voters.

The international reaction to Somali-based piracy has been motivated by a set of circumstances in which all three of the above reasons for past inaction have been absent. First, Somali pirates are operating on the high seas. Indeed, some of the vessel seizures have occurred hundreds of miles out into the Indian Ocean and Gulf of Aden, well beyond the territorial limits of coastal states in the region.³⁴ From a practical, operational, point of view the offences have been well within sea areas in which navies can legitimately operate without first obtaining the agreement of coastal states. Second, the financial consequences have been substantially higher than those arising from the normal run of piratical activity. The vessels seized have included very large merchant vessels with valuable cargoes and the ransoms paid out to secure the release of the ships and their crews have often run into millions – whether GB pounds, US dollars or euro.³⁵ Given the timeframes necessary to negotiate the release of vessels and crews (2 to 3 months) the costs are also significantly increased by the actual ship days lost to the shipping companies.

³⁴ As recently as 11 November 2009, for example, pirates hijacked a bulk carrier with 22 crewmembers onboard in a position in the Indian Ocean over 1000 nautical miles southeast of Mogadishu (information obtained from the IMB Piracy Reporting Centre, Live Piracy Report).

³⁵ The Liberian registered (but Saudi owned) very large crude carrier (VLCC) Sirius Star was hijacked on 15 November 2008; it was the largest vessel to be seized to date and prompted a burst of media attention. The vessel itself was worth \$150M and had a cargo of crude oil valued at \$100M. Although the pirates originally demanded a ransom of \$25M, they were in fact only paid 3 million, some of which was lost when five hijackers drowned as their boat capsized.

Finally, the scale of Somali based piracy, including the seizure of several large vessels, has attracted significant international media attention in the last 12 months and this has given it a profile sufficient to warrant an international political response.

Interestingly, though, while the value of the vessels and their cargoes and the safety of crew members have prompted ransom payments in the millions of pounds, and while media attention has forced the problem onto the agendas of several governments, the consequences have not been sufficient to provoke significant action against the root cause of Somali piracy – the situation ashore in Somalia. This would involve the serious prospect of intervention in Somalia itself in an attempt to stabilise the territory and establish a reasonable level of security and good governance. No major power (e.g. the US or Britain), let alone the organisations to which they belong (e.g. NATO and the European Union) – have either any desire or free capacity to engage in that way. Conveniently, however, the absence of a legal constraint on naval action in this case has provided a way for governments to at least appear to be doing something significant in response – and their navies, anxious to demonstrate their own utility in a contemporary security context that has not played to their strengths, have leapt to the fore. Anti-piracy operations have also provided the EU, keen to establish its military credentials, with an ideal opportunity so to do. It has seized that opportunity with alacrity.

It has been this arguably unique combination of legal, operational and political conditions that has resulted in the remarkable concentration of naval forces in the region. US and European naval forces have been joined by a plethora of other units from a diverse (and seemingly unlikely) range of states: Russia, Malaysia, Japan, India – even China, beginning to flex its maritime muscles. Remarkable indeed – and one senses great power opportunism here as China puts down a marker with its surging naval capacity and keen interest in increasing its influence, in Africa in particular.

The naval forces gathered in the region are organised under various task forces and are employed on three different but overlapping tasks. Combined Task Force (CTF) 151 together with Operation Atalanta (the EU operation run from Northwood in London) and Operation Open Shield (NATO) are formally constituted groupings of forces. Other vessels also operate in the region, the whole effort benefiting from a range of coordination, command and control, intelligence and information exchange arrangements. The different tasks consist of: the provision of security for World Food Programme vessels supplying Somalia; the protection of maritime traffic on passage through the Gulf of Aden; and the maintenance of a maritime presence in the Indian Ocean between Africa and the Seychelles. Despite the element of deterrent effect this gathering of naval forces is arguably providing, from an operational point of view it is extremely difficult to cover the area of ocean affected by piracy and to provide effective security for ships in transit. There are over 20,000 ship movements annually through the Gulf of Aden (GOA) alone, for example. This is far too many to convoy. The pragmatic solution to the security of their passage has been the establishment of an internationally recommended transit corridor (IRTC) that concentrates both east and west bound vulnerable shipping in the high threat area within the hours of darkness and under the cover of naval presence. World Food Programme vessels are individually escorted. The most vulnerable vessels now are those in the Indian Ocean as far as 1,000 nautical miles from the African coast. It is impossible for naval forces to patrol that entire area and provide close cover to vessels on passage through it. The naval presence in the GOA, the effective establishment of the IRTC and the escorting of World Food Programme vessels have caused a shift in pirate activity to the more distant areas.

Despite the difficulties, we are witness to a concerted effort at sea to stem the rise in piracy in a manner fully consistent with the relevant international law. Even problems to do with the legitimate continuation of international maritime operations within the territorial waters off

Somalia have been covered. Any pirate vessels being pursued on the high seas are potentially free from interdiction as soon as they enter territorial limits; there is no right of hot pursuit into territorial waters and warships are obliged to let them proceed. This requirement has, however, been waived by UN Security Council action, coupled with Somali consent to international anti-piracy operations continuing in their waters.³⁶ International law ‘works’ to enable operations off Somalia because this particular brand of piracy fits neatly into the legal definition and Somalia itself is cooperating to allow its suppression in its waters.

But this is not the end of the legal dimension. Universal jurisdiction means that the flag state of any warship apprehending pirates can, in theory, prosecute them for their crimes. One says ‘in theory’ because this is easier said than done. The practical difficulties associated with the transfer of apprehended pirates into the criminal jurisdictions of the warships’ flag states, including the timelines involved, are mildly problematic. There is only any point in such transfers if the apprehending state is able to bring criminal prosecutions within their jurisdictions. While universal jurisdiction exists at the international level, at the municipal, or domestic, law level its application cannot be assumed. The criminal codes of the states deploying naval forces to the region cover this issue in different ways. Some can prosecute piracy, while others do not have the law in place to allow them to do so. There is also the vital issue of the quality and amount of evidence necessary to achieve a successful prosecution.

Interestingly, however, while much has been said about piracy and universal jurisdiction, the activities of pirates for the most part actually fall into other categories of criminally defined activity. One solution to the difficulties associated with prosecuting for piracy is, therefore, to find an alternative means of bringing criminal charges against those involved. The solution in many cases may well be to employ the 2005 Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation (SUA) rather than to prosecute for piracy as such. Fortunately, in the case of Somali piracy, all of the incidents that have occurred so far seem to be consistent with such an approach. Other international conventions of relevance and applicability include the 1979 International Convention against the Taking of Hostages and the 2000 United Nations Convention against Transnational Organized Crime. State parties to these three conventions should have enabling domestic legislation in place to give effect to their provisions. Instead of prosecuting for piracy, the obvious way to proceed is to use that legislation as a basis for prosecution.

In relation to jurisdiction, there are essentially four prosecution options. The first is for apprehending warships to transfer those charged with piracy to courts in their own state. Some have indeed done this, with pirates finding themselves in Europe and the US for prosecution. A second option is to land pirates to Somalia and Puntland for prosecution – the territory from which they operate. Given the political and administrative circumstances ashore there, this has not been a seriously likely option so far. A third option is to land those apprehended to another state in the region for prosecution. This is the most strongly favoured option and agreements were reached in late 2008 and early 2009 to transfer detainees to Kenyan jurisdiction for process. Although convenient, this is not ideal, and Kenya has not yet proved to be an efficient solution to the problem. A final option might be to set up a special court in the region to prosecute pirates. While this might sound an appropriate way forward, it is not favoured by the interested parties to date. Apart from the fact that it is not necessary, the creation of another international tribunal for this specific purpose would most likely prove to be an expensive and

³⁶ There have been seven UNSC resolutions since 2007, all passed under Chapter VII of the UN Charter: 1772(2007); 1801(2008); 1814(2008); 1816(2008); 1838(2008); 1846(2008); and 1851(2008). The last of these expires in December 2009 and it will require a further resolution to extend its provisions.

overly bureaucratic solution. The already established International Criminal Court (ICC) is not an option because the crime of piracy does not fall within its jurisdiction and it is most unlikely that the Rome Statute of the Court could now be modified to include it without extensive re-negotiation. For the moment, therefore, the Kenyan option is the most attractive.

Somali piracy hit the world's headlines in late 2008 in particular, largely as a result of the seizure of the *Sirius Star*, a VLCC with a full cargo of crude oil. This seizure acted as a catalyst for what followed. A substantial naval presence in the region is dealing as far as it can with the problem in a legal situation that, while to a degree problematic at the level of prosecution, is by no means acting as a serious constraint. The operations currently being conducted are, however, focusing on the symptom of piracy without dealing to any significant degree with its underlying cause. This is, undoubtedly, the situation within Somalia itself. Until that is dealt with, the problem is unlikely to go away.

Somali Terrorism and Piracy (A ‘Lesser-included Case’)

Jonathan Stevenson*

The chronic governance and security problems in Somalia began in 1991, when strongman President Mohammed Siad Barre was overthrown in a civil war. Competing clans then commandeered weapons supplied to his government, alternately by the Soviets and the Americans during the Cold War, and the country devolved into a Darwinian patchwork of armed clan fiefdoms with no central authority. Then came a famine that an ineffectual United Nations mission was unable to address, prompting the United States to lead an international military intervention in December 1992, with the relatively narrow intention of facilitating humanitarian relief, though in the grander service of a “new world order.”³⁷

In bootstrapping a humanitarian mission into coercive peace enforcement, however, the US angered Somali clan militias. Their fury culminated in the infamous October 1993 “Black Hawk Down” confrontation in which 18 US Army Rangers and hundreds of Somalis died.³⁸ This disaster spurred a hurried American withdrawal, stoked anti-Americanism, and strengthened al-Qaeda’s hand in East Africa. Osama bin Laden and second-in-command Ayman al-Zawahiri have cast the US as a “paper tiger” with no staying power, and their favourite examples include American pullouts from Lebanon after Hezbollah’s 1983 barracks bombing and from Somalia after “Black Hawk Down.”

Threat perceptions and realities

Since 1991, some 14 governments formed in exile have tried and failed to govern, though the latest one – the Transitional Federal Government (TFG) – remains intact. From the mid-1990s, Somalia has been viewed as a potential exporter of Islamist terrorism. Western threat perceptions have been high since the 11 September attacks, and especially since the defeat of the Taliban in Afghanistan in late 2001. The standing fear has been that al-Qaeda holdouts fleeing Central Asia would reconstitute their operational base in weak states in the Gulf or sub-Saharan Africa. Pakistan’s utility as an alternative base for al-Qaeda moderated these fears, but recent counter-terrorism successes there have revived them. Yemen is the leading candidate for such jihadist migration. Somalia, however, appears to be a fairly close second given its homogeneous Sunni Muslim population, absence of state enforcement mechanisms, incrementally rising militant Islamism and proximity to the Persian Gulf.³⁹

Islamist elements in Somalia have helped propagate terrorism. The explosives used in the December 2002 attack on Israeli tourists in Mombasa, Kenya probably came from Somalia, and

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³⁷ See John L. Hirsch and Robert Oakley, *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping*, Washington, D.C.: United States Institute of Peace Press, 1995; Jonathan Stevenson, *Losing Mogadishu: Testing US Policy in Somalia*, Annapolis, MD: US Naval Institute Press, 1995.

³⁸ See Mark Bowden, *Black Hawk Down: A Story of Modern War*, New York: Atlantic Monthly Press, 1999.

³⁹ See Eric Schmitt and David E. Sanger, “Some in Qaeda Leave Pakistan for Somalia and Yemen,” *New York Times*, 11 June 2009.

perpetrators of that attack and the nearly simultaneous attempted shoot-down of an Israeli airliner leaving Mombasa used Somalia as a bolt-hole. A number of Somalis reportedly went to Lebanon to help Hizbullah battle Israeli forces in the 2006 ‘summer war’ in exchange for military training. The Somali diaspora is large and widespread, and repatriates up to \$700 million a year through hard-to-monitor *hawala* remittance vehicles. Thus, the diaspora is a potential terrorist support network and recruiting pool, especially if their host nations and allies are seen as harming their country and countrymen.

The al-Qaeda-linked militant Somali Islamist group al-Shabaab (“the youth”) has transnational ambitions, aiming to create a fundamentalist Islamist state across the Horn of Africa. The group's core leadership sprang from a nucleus of hardline Somali militants working with al-Itihaad al-Islamia (AIAI) – a Somalia-based group headed by Sheik Hassan Dahir Aweys that provided protection and support (e.g., training camps) for al-Qaeda's East Africa cell, but was decimated as a result of popular hostility and, reportedly, raids by Ethiopian troops in the mid-to late 1990s. Al-Shabaab eventually broke from the AIAI leadership, began ‘manhunting’ operations against secular warlords supporting Western counterterrorism efforts, and targeted international aid workers and peace activists. The organisation, though relatively flat with loose command-and-control, then became the elite fighting force of the ICU, and now constitutes the main element of the anti-TFG insurgency. To this point, the group's most devastating attacks occurred in the relatively peaceful northern areas of Somaliland and Puntland in October 2008. Five coordinated explosions at local government offices, a UN compound, and the Ethiopian consulate reflected considerable sophistication and reach. As of late 2008, al-Shabaab was the dominant political entity in southern Somalia, imposing an especially intolerant version of sharia as well as using sheer force.⁴⁰

Al-Shabaab’s recruiting reach extends to the Somali diaspora in North America, Europe, and Australia. Shirwa Ahmed, one of about 20 ethnic Somalis recruited from the US and trained by al-Shabaab in Somalia, perpetrated the first terrorist suicide attack by an American in one of the October 2008 operations in Somaliland.⁴¹ In November 2009, the US Attorney’s office in Minneapolis announced that 14 Somali-Americans had been indicted on federal terrorism-related charges. The other major armed Islamist group is Hizbul Islam, which is headed by Aweys, maintains a more geographically confined nationalistic focus, and is considered by many to be primarily Aweys’ vehicle for his eventual leadership of an Islamic Somali state. Eritrea has supported and continues to support Somali Islamists as proxies against its arch-enemy Ethiopia, with an eye to bogging it down in Somalia. Al-Shabaab and Hizbul Islam have provided training camps for al-Qaeda as well as a safe haven for a number of its higher-ranking East Africa operatives. Two of them – Abu Talha al-Sudani by the Ethiopians in 2007 and Saleh Ali Saleh Nabhan by US special-operations forces this past September – have been killed in Somalia. Yet despite their synergistic political and operational relationship, al-Shabaab has not formally merged with al-Qaeda, and has been compromised by internal personal and political rivalries. Thus, Somalia has not, so far, ripened into a fully-fledged global terrorist threat.⁴²

⁴⁰ See A. Le Sage, “Militias and Insurgency in Somalia”, *Policy Watch*, No. 1593, Washington Institute for Near East Policy, 26 October 2009 (www.washingtoninstitute.org/templateC05.php?CID=3131).

⁴¹ See J. Straziuso & A. O. Selsky, “Somali Training Camps Fuel Threat of Attacks on US”, *Associated Press*, 29 November 2009.

⁴² See A. Le Sage, “Peacebuilding and Terrorism: Fragile Gains in Somalia”, *Policy Watch*, No. 1594, Washington Institute for Near East Policy, 27/10/09 (www.washingtoninstitute.org/templateC05.php?CID=3132).

The pirate factor

While jihadism in Somalia has been contained, Somali piracy has increased Somalia’s threat to international security. Over the last two years Somali pirates, estimated to number over 1,000 and gaining recruits, enabled by the absence of the rule of law on the ground, have staged increasingly frequent and brazen attacks on commercial vessels transporting vital cargo such as oil, food and weapons in the Indian Ocean and the Gulf of Aden. They pose at least a strategic nuisance. US Navy maritime surface and air assets assigned to US Central Command and constituting the main elements of Combined Task Force 151, patrolling the Gulf of Aden and the Indian Ocean, have conducted anti-piracy operations in coordination with NATO’s Operation Open Shield, the European Union’s Operation Atalanta, and navies of other nations (including China, India, Japan, Malaysia, Turkey, and Russia) commercially affected by Somali piracy. Despite several dramatic and successful interdictions – in spring 2009, for instance, the US Navy rescued the captain of the US-flagged *Maersk Alabama*, killing three of the Somali pirates holding him hostage – even modern blue-water navies cannot identify and target all of the small pirate vessels operating in vast expanses of water. Thus, the deterrent effect of this surge has been ambiguous at best.

Up until October 2009 Somali pirate attacks numbered 178 – more than the total of 111 for all of 2008. Their boldness and geographical adaptability do not appear to have subsided. Earlier this month, they used rocket-propelled grenades and automatic weapons to attempt to capture a Hong Kong-flagged oil tanker 400 nautical miles northeast of the Seychelles Islands – the farthest out they are known to have operated. An EU spotter plane was sent to find the pirates, but its efforts were unavailing.

The United States’ recent addition of Seychelles-based high-altitude, high-speed *Reaper* drone – with a 14-hour-plus loitering capability and a range of 3,000 nautical miles – will increase the surveillance coverage of the counter-piracy effort.⁴³ But most naval commanders do not consider the containment of the piracy problem a central military task, seeing it as a distraction from core counter-terrorism, counter-proliferation, deterrence, and war fighting missions, and in any case difficult to accomplish in practice. While Somali piracy has made a non-trivial impact on maritime trade between East Africa and Asia, and could affect strategic cargos like oil and weapons, to a significant extent the international community has thus far relied on the private sector – through better security training for crews, shipboard countermeasures, and higher insurance rates – to regulate rather than eliminate the phenomenon. Accordingly, Somali piracy may not appreciably diminish until Somalia’s ground-based security problems are improved.

Major-power calculations

In light of external actors’ political and military futility in dealing with Somalia, the US State Department’s Bureau of African Affairs, according to an internal report circulated in August 2009, rates Somalia “the hottest of many policy fires burning” in Africa. The demands of Afghanistan, Iraq and Iran, as well as arguably more urgent needs within Africa in Sudan and the Democratic Republic of Congo, will divert the major powers’ attention from Somalia and make supporting a major United Nations or African Union peacekeeping effort prohibitively difficult. But bringing greater order and control to the Somali polity is a high regional priority on account of its potential as a jihadist safe haven and operational base, as well as the impact that burgeoning Somali piracy is having on global commerce.

⁴³ See Jason Straziuso, “US Drones Protecting Ships from Somali Pirates”, *Associated Press*, 23 October 2009.

Given Islamist terrorists' effective use of maritime operations in the November 2008 Mumbai attacks and the prevalence of sea transport – licit and illicit – of military hardware and WMD-related technology by sea, possible synergies between Islamist terrorists and pirates also need to be considered. The threat appears to be real, as there are extant tactical relationships between pirates and Islamist militants. At the same time, these links appear to be essentially mercenary rather than political or ideological. Furthermore, piracy has flourished mainly in the less unruly northern part of Somalia – especially self-proclaimed, secularly run Puntland, on the Horn – and not in the anarchical south that al-Shabaab dominates.⁴⁴ Accordingly, Somali piracy is hardly of a piece with Somali jihadist terrorism, and consequently is unlikely to attract as much durable strategic attention from major powers as Somalia's ground-based problems in any case. Rather, they will tend to treat piracy as a 'lesser-included case' of anarchy-driven insecurity.

A narrow counter-terrorism approach to that insecurity, consisting of military containment plus covert support to pro-Western Somali groups and regional powers, has not worked.⁴⁵ Ethiopia's expeditious US-backed suppression in 2006-07 of the grassroots Islamic Courts Union (ICU), which held sway in Somalia for six months, and support of the internationally recognised TFG damped down the terrorist threat in the short term. But in early 2009 Ethiopia substantially withdrew its forces, which had alienated and enraged Somalis through brutal tactics. US targeted killing strikes from AC-130 gunships and Navy vessels that produced civilian casualties, though undeniable short-term operational blows to jihadism in the region, have tended to intensify anti-American attitudes and terrorist impulses among Somalis in the longer term.⁴⁶

Seemingly in direct relation to various forms of Western intervention, Islamist militants in Somalia have grown in number, probably by an order of magnitude, and resurged accordingly. Loosely estimated at between 5,000 and 10,000, they now control most of the territory in southern Somalia, though TFG and the AU-sponsored African Mission in Somalia (AMISOM) forces have managed to keep the capital city, Mogadishu, out of their hands. In summer 2009, Ethiopia dispatched perhaps hundreds of troops, reportedly with tacit US approval, to thwart Islamist takeovers of Somali towns near the Ethiopian border – in particular, Beledweyne, which in August 2009 had been overrun by militiamen of Hizbul Islam – but denied any intent to re-occupy the country.

Somalia still epitomises the failed state. The TFG has not collected taxes or provided effective social services, established a sound civilian law enforcement organisation enjoying anything like a monopoly on the use of force, or been able to make collective decisions for the populace. Without substantial political advances, even at its full strength of 8,000 troops, AMISOM forces would have no realistic chance of controlling a factionalised, heavily armed, Somali population. The current deployment, about 5,000 Ugandan and Burundian soldiers, has improved its efforts

⁴⁴ See Bronwyn Bruton, "In the Quicksands of Somalia", *Foreign Affairs*, Vol. 88, No. 6, November/December 2009, pp. 82-83.

⁴⁵ See Bruton, "In the Quicksands of Somalia", Jonathan Stevenson, "The Somali Model?", *The National Interest*, No. 90, July/August 2007. For an early warning that the Ethiopian invasion and occupation would produce perverse results, see Jonathan Stevenson, "A Fleeting Victory in Somalia", *New York Times*, 8 January 2007.

⁴⁶ See Jonathan Stevenson, "To Do: Somalia", *The New Republic* (web edition), 21 November 2008; Jonathan Stevenson, "Risks and Opportunities in Somalia", *Survival*, Vol. 49, No. 2, Summer 2007, pp. 5-20. See also Ken Menkhaus and Karin von Hippel, "Republic of Blowback", *International Herald Tribune*, 4 September 2008.

to protect the TFG and in September 2009 was given a more muscular mandate for peace enforcement, but it remains too small and under-equipped to be truly effective.

The UN, the United States, the EU, the International Contact Group on Somalia*, and Djibouti have worked hard – though inconspicuously – to facilitate two changes in the TFG. In January 2009, the TFG parliament was expanded from 275 to 550 members to realise more equitable clan representation and, crucially, to accommodate moderate Islamist parties. Less than a week after the parliamentary reform was approved, Sharif Sheik Ahmed – a relatively moderate Islamist – won the January 2009 presidential election. As a member of one of the two critical Hawiye subclans that dominate Mogadishu, he stands a chance of resolving conflicts with the other, and appears willing to try. Furthermore, Sheik Sharif, former head of the ICU, has substantial credibility with the Islamic community.⁴⁷

Which is the most plausible pathway to political rehabilitation, however, is still unclear. The intuitively attractive ‘building block’ approach – whereby self-declared Somali entities (Somaliland in the north, Puntland in the central region) are politically and economically induced to improve governance and then confederate – seems utopian. It is very unlikely that any governable entities to the south, encompassing Mogadishu and Kismayu, where al-Shabaab is based, would coalesce. Politically recognising Somali statelets could set a troublesome international precedent. A unitary state would square with the preferences of the UN, the US, and Europe, as well as the ‘one Somalia’ policy of neighbouring countries like Djibouti and Kenya, which regard a unified Somalia as the natural geopolitical balancer against Ethiopia and as less susceptible to destabilising mischief by Eritrea, the local geopolitical spoiler.

The US and other external actors appear to be adopting a less bold but more realistic approach. Sheik Sharif is being given time to consolidate his presidential authority, if necessary by using force against rival militias in the south. The idea is that if he is able to marginalise them, bring relative order to southern Somalia, and perhaps even pull together a national multi-clan militia, Somaliland and Puntland may warm to reconstituting a unitary state from the top down. Limited operational and tactical engagement by US and coalition partners – for instance, on counter-piracy matters – with Somaliland and Puntland, would tacitly acknowledge their status as functionally discrete political entities and perhaps encourage their leaders to compromise and reconcile. With this sort of remedy, anti-piracy and conflict-resolution efforts would converge.

The idea may be gaining traction. In October 2009, the Norwegian Institute for Urban and Regional Research (NBIR) published a 71-page report entitled “Piracy in the Greater Gulf of Aden: Myths, Misconception and Remedies” arguing that helping cooperative groups with some local legitimacy and power could be more effective. These would include the Puntland authorities and the central Somalia-based Sufi militia Ahlu Sunna wal Jamaa, which opposes the radical and militant interpretations of Islam espoused by al-Qaeda and al-Shabaab. Noting that the international naval coalition “is simply too small to cover the whole area” affected by piracy, “lacked any mechanism to address the onshore causes of piracy,” and offered Somalis themselves no ownership of the anti-piracy campaign, the NBIR recommended paying and training existing forces to fight piracy, establishing a separate Somali entity with a good

* The United States, the United Kingdom, Sweden, Italy, Kenya, Tanzania, Egypt, Yemen, Canada, Norway, the UN (including SRS/UNPOS, UNDP, UNICEF, OCHA), the EU (including the presidency, European Commission, Council Secretariat), the AU, the Inter-Governmental Authority on Development (IGAD), and the League of Arab States.

⁴⁷ See Jeffrey Gettleman, “In Long-Riven Somalia, a Leader is Raising Hopes for Stability”, *New York Times*, 17 September 2009.

measure of operational autonomy, or hiring private military companies to interdict piracy on-shore instead of offshore.⁴⁸ An even more ambitious EU plan was mooted in April. In Djibouti, where both France and the US have military ground presences, the French army would train a small corps of about 500 Somalis, which would in turn train 5,000 more Somalis (perhaps drawn substantially from the Puntland authorities and Ahlu Sunna wal Jamaa) to function as an official ‘coast guard’ – part of a larger, 15,000-strong EU-trained and funded Somali security apparatus – to fight and deter pirates on land. The German government supported the plan in principle, but also voiced understandable worries that EU money and weapons might wind up in the hands of pirate or other destabilising groups, and that the trainees themselves could join such groups.⁴⁹

Prospects

While policy-makers in Washington and Europe appear increasingly aware of the inadequacy of the putative narrow counter-terrorism approach, they are also sceptical of any full-blown state-building efforts that might complement or replace it. The fluid and fragile nature of Somali alliances, and the tenuousness of public support for Islamist and secular groups alike, have also suggested that inflexibly backing one faction could ultimately prove fruitless. Indeed, the expanded Somali parliament, while structurally more equitable, may prove too unwieldy to make a substantive difference.

Nevertheless, the US, UN, EU, regional multilateral organisations, and regional powers will probably continue to diplomatically support the reconstituted TFG, as Secretary of State Hillary Clinton pledged to Sheik Sharif when she met him in Kenya during her August visit, and especially to endorse any of its efforts to defeat or co-opt al-Shabaab. Most of those who have joined jihadist militias have done so for practical rather than ideological reasons. Further, al-Shabaab’s popular support is fragile owing to its imposition of harsh vice laws. And Somalis in general are more nationalistic (at times, xenophobic) than Islamist, and therefore are not likely to stay well-disposed towards any al-Qaeda connections maintained by the Somali Islamist militias. Substantially weakening them therefore may be doable. To encourage non-violent political participation and drive a wedge between al-Qaeda and the Somali Islamist groups, the US may consider removing groups like Hizbul Islam and eventually even the more intransigent al-Shabaab, or certain individual members, from its official lists of terrorist organisations and suspects. It appears possible that Aweys could be amenable to breaking Hizbul Islam’s ties to al-Shabaab in favour of a power-sharing deal with the TFG.

To avoid broader Somali hostility, counter-terrorism tactics could also be altered to minimise collateral damage, as in the American operation in which Nabhan was killed, which involved a helicopter assault that allowed for more selective targeting. While his death undoubtedly disrupted al-Shabaab’s and al-Qaeda’s regional planning, recruitment, and training capabilities in the short run, the downside is that the al-Qaeda leadership void could prompt al-Shabaab and the East Africa cell to move forward with a merger and form a more tightly run and potentially more dangerous operation. If that or other factors impelled al-Shabaab to increase pressure on the TFG, reinforcing Ugandan and Burundian AMISOM troops could be necessary to ensure their continued commitment to supporting the TFG.

⁴⁸ Jean-Marc Mojon, “Support Local Somali Structures to Curb Piracy”, *Middle East Online*, 22 October 2009 (www.middle-east-online.com/english/somalia/?id=35174).

⁴⁹ “Germany Doubtful of French Plan to Train Somali Troops”, *Der Spiegel* (web edition), 25 May 2009 (www.spiegel.de/international/world/0,1518,626667,00.html).

Piracy and rising Islamist militancy have intensified US and European diplomatic interest in Somalia. At the same time, initial African perceptions that the establishment of US Africa Command (AFRICOM) signalled the ‘militarisation’ of US Africa policy, reinforced by the growing likelihood that the 2,300-strong Combined Joint Task Force–Horn of Africa (CJTF-HOA) in Djibouti would become a long-term American base, have posed a strategic communications challenge for the United States.⁵⁰ In addition, a deteriorating humanitarian situation in drought-plagued Somalia precipitated by the October 2009 US suspension of food aid over fears that aid workers were diverting it to terrorists, and the prospect of unmanageable numbers of Somali refugees fleeing over comparatively stable Kenya’s border, have increased pressure on Washington to revise US policy. These factors could lead to a new approach – consonant with the evolving emphasis on nuanced counter-insurgency – involving the application of soft power, such as development aid, with less scrutiny on governance.⁵¹ Robust, high-profile international diplomatic or military initiatives in Somalia, however, are unlikely. It follows that near-term developments in Somalia will probably follow the depressingly familiar pattern whereby the TFG and Islamist militias maintain an uneasy military stalemate, with neither building the political infrastructure and good will required to tip the balance decisively.

⁵⁰ See Jonathan Stevenson, “Closing Argument: African-American”, *Survival*, Vol. 51, No. 1, February-March 2009, pp. 249-56.

⁵¹ See Bruton, “In the Quicksands of Somalia”, *op. cit.*

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