Modern Day Piracy
Examining the Case of Somalia

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Introduction

When speaking about pirates people often envision scenic Caribbean vistas of a bygone era, but today piracy has experienced a renaissance and is one of the biggest threats to global trade and security. In the last ten years incidents of piracy have more than quadrupled going from 90 reported cases in 1994 to 455 cases in 2003.[1] Modern day pirates have become a serious threat to international waters and their exploits have become more and more daring, targeting bigger and more high profile ships. In the areas of Southeast Asia and especially the Horn of Africa, trade has become so perilous that it has forced the hand of the world's most powerful nations as well as the United Nations Security Council (UNSC). Powerful international regulations have frequently been made to combat the growing threat of these pirates but often states lack the capacity to deal with these so-called 'criminals'. The legislation put forward is also faced with the harrowing task of how to get to the deeper causes of piracy within states. Many of the most recent proposals are mere band-aids while policy makers keep skirting the more dubious issues of failed states, severe poverty, and past infringements on sovereignty. Without addressing these key issues there is no hope in solving the crisis of high seas piracy. The question remains then what are the best kind of policies to deal with piracy, and are they being used effectively in the real world?

This paper aims to prove that without a better understanding of situation in Somalia, it will be impossible to combat piracy in the area, and we must further investigate best practices if any real progress is to be made. This will be done by giving a short history of the international laws and regulations

regarding modern day piracy. The paper will then point out how these historical understandings have made defining piracy very problematic and difficult in today's circumstances. It will then examine the case study of Somalia where piracy has had its greatest resurgence. Lastly, the paper will conclude with a discussion of the responses of the UN and the world at large and the direction that they are taking thusly.

History of Applicable Law

Piracy has long been considered a *hostis humani generis*, or "the enemy of the human race".[2] Legislation regarding it goes all the way back to ancient times, with the first recorded instances being found in *Justinian's Digest* in 529 AD and in *King John's Ordinance* of 1201.[3] In the modern context, the first major piece of legislation regarding piracy came in the form of the 1958 Geneva Convention on the High Seas. It set out 8 key provisions for suppressing piracy. It was later followed by the 1982 UN Convention on the Law of the Sea. However, this convention did not really build on the Geneva Convention on the High Seas, but rather reaffirmed the intentions of the earlier treaty.

One of the most important contributions of this treaty was its definition of piracy, which remains largely unchanged today. The UN Convention on the Law of the Sea sets out the definition as such:

> Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed to: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any

State; (b) any act of voluntary participation in the
operation of a ship or of an aircraft with
knowledge of facts making it a pirate ship or
aircraft; (c) any act of inciting or of intentionally
facilitating an act described in subparagraph (a)
or (b).[4]

This definition presents many problems. The first problem,
that of defining piracy as committed for 'private ends', is
immediately apparent. Although piracy is usually used a form of
livelihood for those who cannot find employment in the
tumultuous and poverty stricken country from which they come,
piracy often takes on a political character. In Somalia, pirates
justify their action in the Gulf of Aden and around the Horn of
Africa as a form of protest against over-fishing and waste dumping
in their territorial waters.[5] This would then suggest that Somali
pirates are actually sea terrorists. Another definitional problem is
the 'two boat paradigm' that the Convention sets out. This fails to
address the problem of internal seizures and that hijacking is not
always one boat attacking another boat. Cases where the crew or
passengers take over a vessel for either private or public gains can
hardly then be considered an act of piracy. Lastly there is the issue
that this definition sets out piracy as only existing on the high seas,
disregarding all actions within the territorial waters off a state's
coast and dismissing them as sea robbery. This definition
needlessly compartmentalizes piracy when it would be more
effective to deal with it as a whole.

Piracy in Somalia and The Gulf of Aden

The deficiencies of this definition come into plain view in
the case of Somalia. Approximately 20,000 ships pass through the
Gulf of Aden adjacent to the Indian Ocean each year, transporting
cargo that includes 12 percent of the world's daily oil supply.[6]
With its failed state status and the high levels of traffic passing by
its shores, Somalia has become a hotbed for pirate activity. Its

coastal waters have become more and more dangerous with cruise-liners being shot at, aid deliveries being jeopardized, and the crews of fishing, recreational, and aid vessels being taken hostage for ransom.[7] However, most troubling of all is that, between 2005 and 2007, the number of attacks and attempted attacks on private shipping vessels in the area has exceeded that of both the Malacca Straits and South China Sea combined. These areas were previously considered to be the epicentres of piracy in the world.[8] The chaos found at sea radiates out from the Somali mainland. Somalia has lacked a functioning government since 1991 which was preceded by years of instability. The internationally recognized Transitional Federal Government (TFG) has little power over the country.

As previously mentioned, much of the motivation for piracy derives from over fishing and pollution in Somali waters. With Transitional Federal Government having little or no sovereign authority to enforce territorial sea rights, over-fishing has become abundant. More than 700 foreign vessels, some of them armed, have taken advantage of this and have conducted unlicensed fishing or have been fishing under the 'license' of local warlords.[9] Another problem that has plagued the Somali people is the constant dumping of hazardous materials into their waters by foreign parties.[10] According to a spokesman from the UN Environmental Program who conducted an investigation in 2005, "there's uranium radioactive waste, there's lead, there's heavy metals like cadmium and mercury, there's industrial waste, and there's hospital wastes, chemical wastes, you name it".[11] According to the report from this investigation, the reason for this is cost. It is estimated that it costs $2.50 per ton to dump toxic waste in Africa compared to $250 per ton to dump waste in Europe.[12] This has only added to the local fishing communities' hardships. One of the powerful motivations to engage in piracy however, is money. Some ships and crew fetch as much as $3 million in ransom.[13] The annual haul for Somali pirates was approximately $30 million in 2008, although some estimates place

that figure at more than \$100 million. To put this into context, the money collected in ransom revenue exceeded the entire budget of the Puntland government for that year.[14]

Pirates in Somalia mainly tend to be out of work fisherman or former militia members of the Somali warlords.[15] They primarily come from the Puntland region of Somalia and are part of the various clans and organisations stationed there.[16] There appears to be no real unification or clear command structure, although they seem to be operating as an ad hoc branch of organized crime. Some press reports have suggested that the pirates are being controlled and directed by the Islamic insurgents in south-central Somalia.[17] There is no evidence, however, to support this assertion. However, the money collected from the ransoms is clearly going into the hands of an elite few, as evidenced by the construction boom taking place in the port cities of Somalia.[18] There are no reported numbers of how many pirates reside within Somalia, only that the number is on the rise from previous years.[19]

Pirates have been able to be so successful mainly because of their ability to effectively adopt technology into their operations. One of the most significant advances is their use of 'mother ships'.[20] Mother ships transport small pirate skiffs further from the coastline than they would be able to go by themselves. This allows them to go after bigger targets in international waters. Not only are these ships easily mistaken as small fishing boats, they are far more manoeuvrable than the ships they attack. Pirates have also adopted technology in other areas. Not only do they have small automatic and semi-automatic weapons, but they also commonly possess man-portable air defence systems and rocket propelled grenades. They also have better ships and weapons than would be expected, and commonly use GPS systems to help then spot ships from greater distances.[21]

With all of these factors converging, the Gulf of Aden has witnessed some of the most high-profile incidents of piracy of modern times. One of the most publicized attacks was the seizure of a Ukrainian freighter, the *Faina,* that was transporting 33 T-72 Russian tanks and depleted uranium ammunition to Kenya for consignment to the Sudanese People's Liberation Army on September 25, 2008. The *Faina* was later released in mid-February 2009. The pirates reportedly earned more than $120 million in ransom money for the ship, cargo, and personnel.[22] Another alarming hijacking incident happened only two months later involved the 1000 foot supertanker, the *Sirius Star,* from Saudi Arabia. It was headed to the United States and carried more than $100 million in oil.[23]

Incidents like these demonstrate the possible implications of pirate attacks. If the *Sirius Star* had been sunk or damaged (as is often threatened if shipping company owners refuse to meet the pirates' demands), it could cause an oil spill of such magnitude that it would have huge environmental ramifications. Additionally, in a time of such economic hardships, shipping costs have increased exponentially. In the Indian and Pacific Oceans, maritime piracy have cost shipping companies somewhere in the neighbourhood of $13–$15 billion annually in losses. In recent months, insurance rates have soared. Premiums for a single transit through the Gulf of Aden, for example, have risen from $500 to as much as $20,000.[24] This has caused shipping companies to greatly decrease or stop all business in the area. Many companies have decided to forego the use of Suez Canal all together and choose alternate routes that are longer and more costly in order to avoid the Gulf of Aden. [25]

International Response

The threat of piracy to international security has drawn much attention from global organizations and world leaders alike. This has prompted the UN Security Council to take action. In 2007 the International Maritime Office prompted the Somali TFG

to advise the Security Council that, "it consents to [foreign] warships or military aircraft . . . entering its territorial sea when engaging in operations against pirates or suspected pirates endangering the safety of life at sea."[26]   Resolution 1816 was issued by the Security Council in June of 2008, and embodied these principles. It called for

> increased coordination among those States with naval assets off Somalia; better information-sharing and cooperation over Somali piracy among and between States, international bodies and regional organizations; and encouraging States and organizations 'to provide technical assistance to Somalia and nearby coastal States.[27]

What was significant about this particular resolution was that states had to be approved by the Somali TFG and identified to the Secretary General as 'cooperating' before they were allowed to follow pirates into Somali water and use "all necessary means to repress acts of piracy".[28] The resolution was then given a six month term after which point it would be terminated. This was a major landmark in the fight against piracy as Resolution 1816 and subsequent resolutions marked that piracy was finally being taken seriously by the international community.[29]

National and regional naval forces took full advantage of the rights that this new resolution provided them. To counter the threat of piracy, many nations have deployed warships to the Gulf of Aden in order to conduct patrols and escort ships. NATO and the European Union have both sent ships to participate in Combined Task Force 51.[30] Naval forces from the United Kingdom, Canada, Turkey, Germany, Denmark, the Netherlands, France, Pakistan, India, Iran, Russia, and other countries have also been deployed to the area.[31] Even China, for the first time, has contributed warships to the effort.[32] However, this shared military

initiative has been met with limited success and the number of hijacked ships has actually increased.[33]

Another solution suggested is to adopt the best practices of Southeast Asia which has had a long history in dealing with piracy. The Malacca Straits were once classified by Lloyd's of London (an insurance company) as a 'war risk' to shipping in 2005–2006.[34] One of the reasons this area was so successful in reducing the occurrences of piracy was the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).[35]

ReCAAP was signed by sixteen Asian states including Bangladesh, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, the Philippines, Sri Lanka, Singapore, South Korea, Thailand and Vietnam on November 11, 2004.[36] The goals of the agreement were to prevent and repress piracy, arrest pirates, seize ships or aircrafts used in committing piracy, and to rescue the victim ships and crews. The member states planned achieve these goals by sharing information, cooperating in legal and judicial endeavours for the prevention and suppression of piracy (including extradition and mutual legal assistance), and cooperation in capacity building. This included technical assistance such as educational and training programmes.[37] This agreement obligates each state to cooperate fully in order to combat piracy. This agreement also created a central Information Sharing Centre (ISC), located in Singapore, in order to make information more readily available to states.[38] The ISC is composed of the Governing Council, which is the decision-making body made up of one representative from each state, and the Secretariat which is headed by the Executive Director, who is responsible for administrative, operational and financial matters.[39]

Another route that Southeast Asia has taken to combat piracy was to establish a tripartite surveillance regime. Indonesia, Malaysia, and Singapore banded together in order to provide

maritime air surveillance in the Malacca and Singapore Straits. Their efforts have shown a significant reduction of cases of piracy in the region.[40]

In the spirit of ReCAAP, African countries have started the process of setting up their own information sharing system. The beginnings of this can be seen at the Tanzanian Conference where states created a draft nonbinding regional memorandum of understanding.[41] They chose to make it nonbinding over the concern that, if they did make it binding, it would take substantially longer to be passed through national parliaments.[42] The draft does not establish a single information centre like ReCAAP, but instead Kenya, Tanzania, and Yemen offered to be communications and reporting centers and prescribed that other states should chose a single national focal point for the exchange of information.[43]

Another important divergence from the ReCAAP model is their recognition of the discussion on the concept of 'ship riders'.[44] Ship riders are law enforcement officers that are (usually) from nearby coastal state and accompany foreign vessels on their route. These ship riders are then able to enforce their own state's law against pirates. This is done so that foreign traders will not have to deal with judicial duties and trying pirates in their own domestic courts. Ship riders also may have to ability to authorize the pursuit of a pirate vessel into their territorial waters.

The draft of the Tanzania Conference does not recognize this fully however. It instead "provides a mechanism by which a State participant may request ad hoc permission from a coastal State to continue pursuit of a suspect pirate vessel into its territorial waters".[45] Such a request is made much more accessible through the creation of single contact points laid out by the draft regional memorandum of understanding.[46] If it is adopted, it could offer an effective regional answer to the crisis of piracy. However, whether

or not the draft will be implemented and what it will look like if it is, remains to be seen.

Conclusion

Piracy has deep roots within our history but there has been a problem of evolving our definitions as piracy itself has evolved. Somalia is a clear example of this as it presents a new conception of why piracy occurs, who exactly these pirates are, how they have adapted, and the possible challenges they present for the future. There have been a variety of attempts to deal with the problem but it is clear that piracy will not simply disappear by throwing more warships at it.

Notes

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[24] Kraska and Wilson, "Fighting Pirates," 43.

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[31] Keyuan, "New Developments in the International Law of Piracy," 339.

[32] Ibid.

[33] Dagne, "Somalia: Prospects for a Lasting Peace," 106.

[34] Guilfoyle, "Piracy off Somalia,"698.

[35] Ibid.

[36] Keyuan, "New Developments in the International Law of Piracy," 333.

[37] Keyuan, "New Developments in the International Law of Piracy," 333-335.

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[38] Ibid, 334.

[39] Ibid, 335.

[40] Keyuan, "New Developments in the International Law of Piracy,", 338.

[41] Guilfoyle, "Piracy off Somalia,"698

[42] Ibid.

[43] Guilfoyle, "Piracy off Somalia,"698.

[44] Ibid.

[45] Ibid.

[46] Ibid.