

**PIRACY IN THE GULF OF ADEN – A PROBLEM OF OUR DAYS**

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**ABSTRACT**

The present paper tries to elaborate on the causes of maritime piracy in the region of Somalia. The authors support the idea that there is no real incentive for the Somali government to contain piracy in the Gulf of Aden, apart from pressures of the international community and the need to improve one’s image therein.

However, the efforts to counter piracy attacks must be continued and further enhanced by multinational cooperation due to the importance this region has for the international maritime trade.

In recent years, piracy and terrorism on high seas are posing serious threats to international security and economic development. With increasing interdependence, the use of sea route for transportation has become vital. Three main issues arise in relation to this threat: piracy with focus on Somalia and the Gulf of Aden; terrorism impacting trade through Malacca Straits; and policy response of the countries whose trade is adversely affected by sea piracy and terrorism.

**Keywords:** *piracy, Somalia, sea route, Gulf of Aden.*

**1. INTRODUCTION**

To the passive observer, the multinational approach to fight piracy seems like a straightforward case of the international community working hand in hand to eradicate piracy in waters where there is much international stake riding on them. However, upon closer inspection, they can be construed as a part of a purposeful strategy to placate the maritime powers and keep them at arms length from getting involved in the Strait. The littoral states have done well to preserve the notion – if not the reality - that their sovereignty reign supreme in the Strait, while they welcome international assistance to maintain the sea-lane.

The recent spike in pirate attacks off the coast of Somalia has generated a great deal of international media attention. Somalia’s modern pirates represent not only a very real menace to maritime security, but also a growing threat to international commerce. The sensational nature of their crimes, while drawing the ire of the international community, has also ensured that the Somali pirates remain shrouded in mystery.

**2. PIRACY IN GULF OF ADEN**

Piracy is not a thing of the past, a romanticized form of crime from the pages of history. It still happens every day, and the victims don’t always live to tell the story. In recent years piracy has hit the headlines as even the largest super-tankers have fallen victim to attack by gun-wielding cutthroats.

*2.1 Definition of Piracy*

A number of attempts have been made to elaborate a definition of piracy. If one takes the time to make a comparison between the various accepted definitions, then we can notice some differences as well.

For example, there are certain differences between the International Maritime Organization (IMO) and the

International Maritime Bureau (IMB) definitions of piracy. The contrast is best observed when the two definitions are analysed side by side. There has yet to be an internationally agreed set of definitions.

Table 1. Definition of Piracy

<b>IMO definition</b>	<b>IMB definition</b>
Piracy must be committed on the high seas or in a place outside the jurisdiction of any state. A criminal attack with weapons on ships within territorial waters is an act of armed robbery and not piracy.	Distinctions do not exist between attacks on the high seas and territorial waters.
Piracy necessitates a „two-ship” requirement. Pirates need to use a ship to attack another ship. This excludes mutiny and privatising from acts of piracy.	A „two-ship” requirement is abolished. Attacks from a raft or even from the quay are acts of piracy.
Piracy is committed for private ends. This excludes acts of terrorism and environmental activism.	Piracy may not only be committed for private ends. Attacks on a ship for political or any environmental reasons qualify as piracy.
Because pirate attacks have to be committed by the crew or passengers of privately owned vessels, attacks by naval craft fall outside the bounds of piracy.	The acts of government naval craft can be deemed as piracy in certain circumstances.

Specifically related to piracy and armed robbery against ships, IMO, the United Nations Agency concerned with the safety of shipping and cleaner oceans, has issued written guidance to the maritime

industry suggesting that an armed response to any attack is discouraged: "Aggressive responses, once an attack is underway and, in particular, once the attackers have boarded the ship, could significantly increase the risk to the ship and those on board...The carrying and use of firearms for personnel protection or protection of a ship is strongly discouraged ... Carriage of arms on board ship may encourage attackers to carry firearms thereby escalating an already dangerous situation, and any firearms on board may themselves become an attractive target for an attacker. The use of firearms requires special training and aptitude and the risk of accident with firearms on board ship is great. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he has acted in self-defence."

## 2.2 *A Brief History of Piracy*

In April 2007, the International Chamber of Commerce (ICC) issued a warning addressed to commercial ships. Over the past two decades organizations like the ICC have been monitoring pirate attacks and have identified clear pirate hot-spots, where attacks are commonplace events. A brief history of piracy will help us acquire a better understanding of the phenomenon.

A reasonably tentative definition of piracy might be 'armed robbery at sea by private actors acting for selfish purposes, especially economic gain.' This already allows us to distinguish piracy from related contemporary and historical phenomena such as coastal raiding, unarmed theft from ships, maritime terrorism, maritime aspects of insurgency, and the raiding of merchant or other civilian ships belonging to an enemy nation as a strategy of naval warfare. There is definitely a certain overlap between each of these and piracy, as when a terrorist group engages in piracy as defined above, yet with the intention of using the proceeds for terrorist activities, or when commerce raiding is outsourced to privateers, who are often former pirates. Analytically, however, the six phenomena are best kept separate.

Piracy has been around since man first took to sea, a maritime scourge that appeared in historical records since before the building of the Egyptian pyramids. The Mediterranean, otherwise known as the "cradle of civilization", was also a pirate hot-spot.

At any period, piracy in the ancient world flourished when there was a lack of central control and in areas beyond the reach of major powers such as the Egyptians, the Assyrians or the Mycenaean Greeks. The first distinction that must be made is that between 'pirates' and 'privateers', where the latter is state commissioned private or commercial vessels intimately connected to the role of the state. This argument is very important, not only because it widens the intellectual scope of the general discussion about pirates, but it also points to key factors associated with piracy which help us to understand the ramifications of the Somali piracy situation in particular.

One of the earliest recordings of piracy is by the Thracians who, during antiquity, used the island Lemnos, in the Greek archipelago, as a safe haven when

targeting merchant ships. But, piracy has, in all likelihood, existed as long as the oceans have been used for trade and transport. The Thracians might have been the first recorded pirates, but, all over the globe, up to the present day, piracy has been a recurring phenomenon, mostly on a rather small scale, but, at times, reaching levels that also incited a response. During the 10th and 11th centuries, the Vikings, who primarily targeted coastal areas, prompted heavier coastal defences and the Cretan pirates impelled the Venetians to re-route and alert their merchant fleet.

## 2.3 *The Strategy of Piracy*

Piracy can be both a means and an end: a means for certain states to weaken adversaries and enrich themselves and/or an end for the individual pirate who could stand to profit a great deal from the profession. The Elizabethan Sea Dogs were a means for the English Crown to fight Spain and protect itself. Their subsequent effect in repelling the Spanish Armada, in 1588, also increased the English Crown's willingness to use privateers. But, for the pirates and the privateers themselves, it was clearly an end in itself. For privateers like Drake, Raleigh, Cavendish and Cumberland, privateering was a way not only to enrich them, but also to make a career.

The incentives for the pirate have always been about the potential riches. These incentives must be higher than the risk of being caught. It could also be argued that historically, at least in part, piracy was about an alternative lifestyle, with greater individual freedom compared to work as a regular sailor on a commercial ship or in a national navy. This has to be balanced with an efficient form of organization that prevents internal predation, minimizing conflicts within the crew while still maximizing the profit. Historically, many pirates also created systems of checks and balances and a democratic system of how to divide the loot.

Somali piracy does not seem to contain any such system. It does, however, provide a way to earn a living in a country deprived of employment opportunities. This might simply be enough. The low risk with which the Somali pirates seem to view their operations, is quite telling to their alternative livelihoods. The piracy offers an expansion of the choices available to the people of Puntland. Such an expansion of choice, which implicates a possibility to earnings incomparable to the alternative choices ashore, is the major reason for the existence of the Somali piracy.

However, for any state that is more actively sponsoring piracy, there is a clear risk in losing control over it. Although pirates and privateers are valuable in times of war and useful in tapping competing states' trade in peacetime, they may eventually become a liability. Interestingly the liability of being associated with piracy is only expressed in political disincentives, whereas the incentives are typically a combination of economical as well as political incentives.

When England, during the reign of the Stuarts in 1604, sought a more stable peace with Spain, the privateers became an acute problem. Sir Walter Raleigh's sacking of San Thomé, in 1616, prompted the

Spanish ambassador to demand compensation and the imminent execution of Raleigh. England abided, and Sir Walter Raleigh was condemned and executed in Whitehall, two years later.

Hence, the unclear border between piracy and privateering has often been instrumental for states that suddenly needed to distance themselves from piracy. Conversely, the rise in piracy increased in peacetime. Between the years 1690–1730, the piracy deeds peaked, most notably in the Caribbean, the Mediterranean and off the coast of Madagascar. In cases where the state was so weak that confrontation was not an option, as with Madagascar and Jamaica in the 18th century, the governments were eventually controlled directly by the pirates.

William E. Hall points out that an important element in the distinction of piracy is to distinguish who ultimately bears responsibility for an act of piracy. According to Hall acts of piracy “are done under the conditions which render it impossible or unfair to hold any state responsible for their commission”.

So, an important question is whether the Somali piracy activity are carried out under such conditions that it is impossible or unfair to hold Somalia, as a state, responsible.

#### 2.4 *Who Is the Controller and Who Are the Controlled?*

Somalia is grappling with one of the most dire and acute security situations in the world. Therefore, the question of whether it is impossible or unfair to hold Somalia responsible might not be readily answered. The lack of an efficient central Somali government might be enough to seek responsibility elsewhere. Nevertheless, the Somali government has, on occasion, engaged in the piracy question. One clear measure is the TFG’s occasional allowance of foreign navy vessels to in “hot pursuit” follow suspected pirates over the Somali territorial water border.

If it is not reasonable to seek responsibility in the TFG, the next instance would be the Puntland authorities. It seems, however, that the piracy situation in Puntland has grown so strong that it is virtually impossible for the Puntland government to effectively exercise any authority over the pirates. As previously mentioned, it is not unusual for a weak state to be unable to do anything about piracy. Further, for the weak state piracy easily becomes an important means of acquiring revenues. This creates a state dependency from the state on piracy, which means that the pirates do not necessarily have to exercise any direct control over the government in order to get the political protection they need.

It could be said that although it might not be unfair to hold parts of the Puntland and Somali regimes responsible, at least in part for the piracy the situation in Somalia render it quite impossible to hold them responsible.

#### 2.5 *Political Agenda?*

The discussion has already indicated that Somali piracy is a money-driven business, so well functioning

that it has integrated into the socio-economic fabric of Puntland. So, does such a constituency have a political agenda? The Nigerian Movement for the Emancipation of the Niger Delta (MEND) has conducted acts of piracy. But although MEND commits piracy deeds, it is also a political entity pursuing greater liberties for the people in the Niger Delta.

The political ambitions of MEND also leave an imprint on their operational behaviour. MEND is known for sometimes boarding a ship and trying to negotiate political reform, rather than ransom.

There is, however, no indication that the Somali pirates are pushing a political agenda of any kind, save perhaps for its potential deterrent against foreign fishing vessels.

However, though this might have been the motivation at the outset, fishing vessels are no longer the primary target for Somali pirates. It has been suggested that Somali piracy should be viewed as terrorism.

If concepts like piracy and organized crime are complicated, the concept of terrorism is marred with conceptual difficulties and heavily affected by political opinions. It is, however, not unheard of with maritime terrorism.

A possible future scenario is that some group with a political agenda and willingness to use force take up piracy as a mean to acquire funding. This is not uncommon, e.g. the German Red Army Fraction repeatedly robbed banks to finance their activities.

It should be pointed out that the organization of a terror group is not unlike that of organized crime as they share certain communalities: they both participate in legitimate market to improve their standing on the criminal market, they benefit from a state which cannot enforce property and contractual rights, and that they both have vertical hieratical structures.

Although the Somali pirates have no clear political agenda, there is another aspect of the piracy which could be said to be political. Given the economic injection the piracy gives to the poor and underdeveloped region of Puntland, and the integration of the Somali pirates into the Puntland society, they have, effectively, become a political actor. That the Somali pirates also exercise political influence in order to keep their business intact is supported by the claim that some of the piracy money goes to President Yussuf for his lack of action. Whether president Hersi of Puntland also is implicated is not clear. The inability of the Puntland militia to challenge the piracy might indicate that Hersi too is implicated, but it might simply be that his militia is too weak. If indeed Hersi too is connected to the piracy, it would not be surprising, as indicated by our previous discussion; pirates operating in a weak society regularly integrate into political life in order to safeguard their business.

An interesting question is to what extent the Somali pirates are, or could be, used as a political proxy for other actors. The case with the hostage-taken Ukrainian Faina ship, carrying weapons believed to be destined for South Sudan, is interesting. The Sudanese president Al-Bashir would, in all likelihood, be very interested that such a cargo never arrived at its destination.

### 3. ENDING OR CONTAINING PIRACY

If the root causes to the Somali piracy are the poverty in combination with a weak state and a fragile society, it is clear that piracy is very difficult to root out once it has established itself. To reply with a naval presence might create a change in tactics and a temporary reduction in acts of piracy, but, ultimately, change very little. This is because piracy is a profit-generated enterprise and until there are no more profits to be made, other economical enterprises become more lucrative or the probability of success goes down so significantly that it is not worth the effort, the piracy attacks will continue to exist.

The piracy has meant an expansion of the choices available to parts of the Puntland communities. Hence, to seriously address the piracy would mean that the choices available to the people of Puntland must be further expanded to include businesses which also offer an income. Since no legal business can possibly compete with the piracy concerning the direct earnings, the incentives for the piracy must be altered. There are a number of actions that can be taken to change these incentives for piracy to disincentives. Some of these are already being implemented and some are up for review. This section will deal briefly with the existing and potential counter-measures to piracy. These will be discussed on a tactical, operational and strategic level.

As mentioned in the introduction, the Gulf of Aden and the Somali coast is one of the most heavily trafficked maritime parts in the world. An estimated 16,000 ships pass annually, and many of the major shipping companies have vessels passing through at one point or another. In addition, many fishing vessels also traffic the water to fish, especially tuna.

So, it is not surprising that most maritime nations are concerned with the Somali piracy. According to statistics, the flag states most affected by Somali piracy are Liberia and Panama. This is because most ships sail under these so-called flags of convenience, to avoid certain forms of taxation. However, by reviewing the IMB piracy statistics, with reference to the managing countries of the ships, a better representation of which states are actually concerned with Somali piracy can be obtained. Germany, Singapore and Greece are over represented in the statistics of Somali piracy.

This might have contributed to the difficulty the shipping industry have had in coordinating a response to the Somali piracy. A limited number of countermeasures are in place, but it is unclear as to what extent they actually work. Still, there are a number of countermeasures which can be utilised. According to the shipping companies, these are: The high freeboards and the high speed to make it more difficult for the pirates to board a ship. It has been suggested that a fire hose can be used to fend off attackers, but since this practise exposes the crewman operating it to hostile fire it is by some considered too dangerous. Flashlights, increased watch in combination with a constant update of the situation and sailing along the suggested coordinates increase the probability to avoid pirates and for the coalition forces to come to rescue. Captains are also encouraged to call in suspected pirate vessels. Some shipping companies also

advocate that the Automatic Identification System (AIS) should be turned off when passing through the Gulf since its beacon can be used to track the location of a ship.

Most of the major shipping companies also entertain a non-violence policy, to reduce the risk of violent responses and long-term escalation. While exceptions exist, the majority of the attacked ships have refrained from returning fire, although some of them have been equipped to do so. A combination that, at least in part, seems to be effective is the combination of high speed, high freeboards, increased watch and keeping to the suggested coordinates by the coalition forces. Even so, ships applying all of these means have still fallen a prey to the Somali pirates.

There are a number of operational methods that governments have used in attempts to root out piracy. The only technique which seems to be 100% effective is to occupy the country from which the pirates operate. The French invasion of Algeria in 1830 effectively rooted out the notorious Barbary Corsairs. An occupation of Puntland is, however, not on the international community's political agenda.

The AU intervention mission AMISOM that is currently being built up in Mogadishu would, hypothetically, be instrumental in impeding Somali piracy. However, AMISOM is grappling with economical difficulties and finding enough troop contributing countries (TCC), so far only Uganda and Burundi have sent troops. Even if funds and troops could be allocated, it is unlikely that the priority would be Puntland, far away from the more acute problems in the south. This is unfortunate, since a land operation is probably the only way to really address the problem of piracy.

There are already two naval components on station, the CTF-150, and operation Alycon. When the WFP ship MV Rozen was hijacked, food destined for Somalia was kept on board for 100 days by the pirates. An additional WFP ship was hijacked only two months later. As a result, France took the initiative to operation Alycon, France, the Netherlands, Denmark, and lately, Canada has escorted the WFP ships in the hostile waters

It has been proposed that the WFP escorts should be expanded to general convoys of the ships passing through the Gulf of Aden. The idea of convoying merchant vessels has been proposed on several occasions, but it seems to be difficult to implement. Many of the larger shipping companies have vessels that travel at far greater speed than most of the smaller vessels. To slow down the bigger vessels is not an option, since they then would lose valuable time. In addition, the use of high speed is one of the few techniques that are known to be working to avoid being targeted by the pirates. A cluster of ships passing at low speed might also risk inspiring more piracy.

Surveying the Gulf of Aden and the Somali coast is a general problem for the warships on station, since their relative low number must cover a rather large area. A blockade of certain ports might also be difficult since the skiffs easily can be transported by lorry to a different harbour or simply be put out from an uncontrolled beach. Deterring the Somali pirates seems to be difficult.

Deterrence relies on the psychological factor that the threat is, or appears to be, credible. So far, the only deterring factor that has worked is close escort with navy vessels. France is one nation which has carried out a rescue operation. The hijacked cruiser *Le Ponant*, with a 30 hostages, was re-claimed and the hostages liberated by French forces. Although the operation was a success, it does not seem to have deterred the pirates, as the number of hijacked ships continued to rise during last years.

To increase the deterring effect of the naval presence, it would be possible to escalate by responding through the use of more force. But, this presupposes two things: first, that there is legal room for such use of force, and, second, that it does not, in turn, escalate the pirates' behaviour – which would involve a long-term risk. It is questionable whether the international community could afford an escalation of the situation. The Somali pirates are well armed and do not seem to hesitate to use violence, although they have avoided it if possible. Therefore, a departure from the more cautious approach may have tragic consequences.

The legal aspects have created some insecurity on how UNCLOS, UNSCR 1816 and 1838 relate to the penal laws of the TCC. In addition, most TCC's are reluctant to hand over captured pirates to the Puntland government since they fear that the Somali authority's treatment of apprehended pirates might not be in accordance with human rights. As a consequence the TCC have responded differently when pirates have been apprehended. The Danish Navy frigate which intercepted 10 Somali pirates decided to release them after confiscating their weapons, citing an unclear mandate. This can be compared with the French Navy, which brought the perpetrators from the *Le Ponant* hijacking to Paris to stand trial. Although the French rescue was made ashore while the Danes intercepted the pirates at sea, the states participating in the naval operation in the Gulf of Aden seem to view the mandate differently.

A possibility, which, so far, has not been discussed, would be to single out the strongest pirate group and put them in charge of coastal security, a sort of coastal privateering party. This would have the added benefit of providing Somalia with a service that they need. If viewed as a serious option, it would require some additional training and approval by the TFG as a legitimate Somali coastguard. Historically, experiences have not been overly successful in employing this method, as some of the pirates operating now are suspected to once have received such training, and put it to a different use. But, as it is possibly the most cost-effective method of impeding the piracy attacks, it may be worth another try.

#### 4. CONCLUSIONS

Piracy is one of the oldest and most lucrative illicit professions. It is an aggressive and often violent means to embezzle goods and capital, with the possibility of providing temporary but effective acquiescence from multiple stakeholders. Opportunities for attack and escape in harbour or on the high seas are aplenty in the maritime arena and it usually takes the collective effort

of nation states to crack down on what is essentially a trans-national criminal activity.

Somalia has not had a government since 1991 when warlords took over and a series of clan wars engulfed the country. Apart from the hundreds of thousands that have died in this conflict, about three million people are desperately in need of aid. However, even for the international community to provide aid is a tricky matter, given the politically volatile environment.

As of 2009, there are over twenty nation states patrolling the Gulf of Aden through the US Navy's Combined Task Force 151 and NATO efforts. According to the US State department this collection constitutes an unprecedented international armada. It includes EU member states, China, India, Japan, Malaysia Singapore and Russia. This contact group also establishes a trust fund that shall be applied towards prosecuting suspected pirates. These initiatives were undertaken after the UN Security Council unanimously passed Resolution 1851(6) which allowed all states to use force both on land and off shore if they are granted permission by Somalia's government.

However, in a region such as the Gulf of Aden, with a water space of nearly 3800km, it is still impracticable to protect every vessel along the Somali coast. Even if there is a multitude of ships operating in the area, it is not feasible to be in all places and be able to thwart all attempts of piracy. The issue however, is not piracy for that is only a symptom of the larger problem of civil strife and absence of effective governance that Somalia has been experiencing since 1991. This lack of governance has allowed piracy to proliferate to the intensity that it has. Also, the Somali piracy bears an element of patriotic justifiability to this underground business and there is indeed a public empathy for the pirates.

A counter campaign against piracy in the Gulf of Aden requires both onshore and offshore targeting of pirate strongholds. Piracy in Somalia has become a well established and organized business that is dominated and mitigated by the various clans. It is a phenomenon that has brought an economic boon to a country that has been in economic and political limbo. The regions where pirates reside have witnessed a drastic rise in the level of prosperity. This inflow of wealth has in turn affected governance in Somalia, where due to the all pervasive poverty, the corruption of government officials is hard to avoid.

There is no real incentive for the Somali government to contain piracy in the Gulf of Aden, apart from pressures of the international community and the need to improve one's image therein. However, irrespective of the sentiments of the Somali state, the international community has to continue in its counter piracy efforts in the Gulf of Aden due to the multiple global stakeholders and its importance to international maritime trade. Moreover, the area of operation of Somali pirates is far from coast, not under control of any one state and therefore the burden of all stakeholders.

A solution suggested for the problem of piracy has been to allow pirates formal ownership rights in the waters that nobody claims. Western countries such as the United States especially are against this type of solution

due to its policy of not negotiating with criminals and terrorists.

Moreover, perhaps the ownership issue should not involve pirates but other legal actors, especially nation states. Maritime security entails a range of things apart from countering piracy and if pirates are granted ownership rights, it shall leave no room for environmental concerns, marine research, and tourism or even guarantee smooth international commerce.

The best form of protection can only be afforded if states decide amongst themselves who owns the waters. Then that particular country should take the lion's share of responsibility in making that region safe, along with the opportunity to utilize the collective resources of the international community as and when the need arises.

Paying ransom to pirates in return for crew should be the last resort method and instead an efficient security apparatus should be developed, the kind that was applied by the US in rescuing the captain of US merchant ship Maersk Alabama. This is primarily because ransom money often goes towards financing arms and ammunition that would be used by the nexus of pirates in further attacks.

One of major challenges of the escalated and prolonged practice of piracy is that marauders acquire sophistication and take the hijacked ships further out to sea. This brings to the fore debates on whether or not the crews should be armed or not. This is something that shall never quite be supported by international law because it entails some kind of an authorization for escalation to full blown armed conflict at Sea.

Moreover, there is also the argument that pirates tend to be more merciful towards unarmed crews. Ultimately there would have to be agreements between individual states and the space of their respective territorial waters where it shall be feasible to arm crews of civilian vessels. Apparently, it is even a Somali pirate 'code' not to harm innocent sailors that they take over. While escorts for civilian merchant shipping vessels by naval warships provide an effective form of deterrence,

it is not possible to avail their protection at all times but mostly during high alert.

While all countries in the world today engage in varying degrees of maritime trade, it is countries with naval forces that shall lead the piracy debate and not the entire international community. Apart from the dearth of strong stable governance, there are other factors including the differing progression of piracy as well as the existing infrastructure and laws in the two regions, which contribute to the current circumstance.

Pirates are essentially businessmen. The maritime arena is a highly material world where both the marauder as well as the marauded is looking for the most cost efficient means of doing business. Piracy is a complex problem that cannot be solved overnight nor entirely done away with in the near future. It can however be contained to the extent that it is a marginal concern as opposed to a looming menace.

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