



AIR CARGO SECURITY POLICY NEWSLETTER

Piracy ,Maritime Terrorism and the Challenge of Failed States

June 9, 2011

Although open-sea piracy may still be considered as a marginal problem in itself, it is a subject that is now receiving the attention of Homeland Security authorities.¹

The connections, however, between organised piracy and wider criminal networks and corruption on land may be weakening already disadvantaged States and destabilising the regions in which it is found.

To address and control the problems of piracy and maritime terrorism in the long term it is necessary to address the underlying and political causes of maritime disorder, that encourages the actions of criminals taking advantage of conditions in failed States.

¹ Commission Recommendation (2010/159/EU) of 11th March 2010 on measures for self-protection and the prevention of piracy and armed robbery against ships (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:067:0013:0026:EN:PDF>)



Piracy is an aspect of the broader problem of disorder at sea that, exacerbated by the increasing pressure on littoral waters from growing numbers of people and organisations seeking to exploit maritime resources, encourages maritime criminality.²

As such it gives insurgents and terrorists the freedom to operate. In this context, maritime terrorism, though currently **only** a low-level threat, has the potential to spread and become more effective in the event of political change on land.

Piracy and the supply chain

According to the International Maritime Bureau (IMB) of the International Chamber of Commerce, there have been, during 2011, 211 piracy incidents world-wide and 24 hijackings of vessels. Somali pirates are currently holding 26 vessels hostage (522 crew) and since the beginning of 2011 alone 139 of the reported attacks were conducted by Somali pirates.³

The nations hit worst by piracy are those with the biggest merchant fleets. Although 90% of the EU 's external exports are transported by sea, the probability of pirate attack is still fairly small.

² This is recognised in UN resolution 1976 (2011) discussed hereinafter that calls on States " *to assist the Transitional Federal Government and regional authorities in Somalia in establishing a system of governance, rule of law and police control in lawless areas where land-based activities related to piracy are taking place*"; and " *to support sustainable economic growth in Somalia*"

³ <http://www.icc-ccs.org/piracy-reporting-centre/imb-live-piracy-map>

However, the value of the ships and the cargos they transport means there is a significant financial risk, reflected for instance in increased insurance premiums.

Furthermore, as the revenue stream from piracy is spent on improving arms and equipment there is a real risk of the problem blowing into a generalized economic threat, Piracy also increases the threat of shipwreck, which in the worst case could block a major sea route.

Regulatory approaches

International law, as codified in Article 101 of the United Nations Convention on the Law of the Sea, contains three criteria for the offence of Piracy: it must be conducted (1) on the high seas, against (2) another vessel, and (3) for private gain.

The definition used by the international Maritime Organisation (IMO) is broader and speaks not of piracy but of acts of armed robbery against ships or at sea, which also encompasses attacks in territorial waters (including internal waters) and on vessels in port. There can also be a political dimension to such acts.

Commission Recommendation 2010/159/EU¹ refers to "measures for self-protection and the prevention of piracy and armed robbery against ships". As a recommendation, this instrument does not have the status of either a Regulation (binding on the Member States) or a Directive (which must be transposed into EU national legislation). It does however propose the adoption of counter-piracy "best practices". The Commission is also undertaking over the next 18 months a study on the impact of security requirements on the manning of ships.



Article 29 of the EU Transport White Paper COM (2011)/144⁴ published on 28 March 2011 also stated:

“The EU should strive – in cooperation with IMO and other international organisations – for the universal application and enforcement of high standards of safety, security, environmental protection and working conditions, and for eliminating piracy.”

The evolving business of piracy

Maritime insecurity adopts regionally very distinct forms. In West Africa and in the Gulf of Guinea there is a concentration of attacks on ships in the Port of Lagos and the nearby Nigerian coast. Here the pirates’ objective is usually to steal cargo, although frequently crew members are also kidnapped and held for ransom. Such attacks also target oil platforms, sometimes with the goal of stopping oil production.

In the Gulf of Aden the predominant manifestation is capturing vessels and holding them and their crews for ransom. In South and Southeast Asia the aim is generally to steal cargo, although for a period an extremely sophisticated form of piracy was practiced there in which whole ships were taken over, repainted and furnished with forged documents allowing their new “owners” to operate them in their own names. In Latin America robbery is the main threat to maritime security, affecting

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http://www.europolitique.info/pdf/gratuit_fr/291007-fr.pdf

inland waterways as well as coastal waters and ports.

Between 2000 – 2009 the pattern of attacks changed. In 2000 most incidents concerned ships anchored in port or in the territorial waters of the affected States, with the notable exception of the Straits of Malacca where ships moving at high speed were also attacked. Since 2009 the majority of incidents take place on the high seas while vessels are under way.

Piracy and politics

A recent research paper entitled Piracy and Maritime Security was released by Stiftung Wissenschaft & Politik – the German Institute for international and Security Affairs (SWP).

It demonstrated clearly *“that piracy and maritime insecurity cannot be understood in isolation from developments on land. Piracy often becomes a worthwhile business where legal employment offers only a marginal income and the weakness of state institutions limits the risk of punishment. Accordingly, effective counter-piracy requires more or less functioning statehood.”*

This report provides the example of the Straits of Malacca, where *“maritime security has been largely restored in recent years – the stabilization and recovery of the Indonesian state was a central factor in this success, but Malaysia and Singapore also intensified their national efforts. Successful tri-lateral cooperation between these states and the backing of wider multilateral support programmes are also important factors for the consolidation of maritime security in Southeast Asia, along with improvements in the economic and social conditions of coastal populations.*



This report further explains how “*effective counter-piracy was hampered not only by weak statehood, but also by certain aspects of national and international law*”. It goes on to explain that “*.....it is the international character of piracy that makes this form of criminality such an enormous challenge for international politics. Transnational in this sense means activity taking place across several states or with repercussions on other states or actors, involving not only states, but to a large extent also non-state actors, from different countries*”

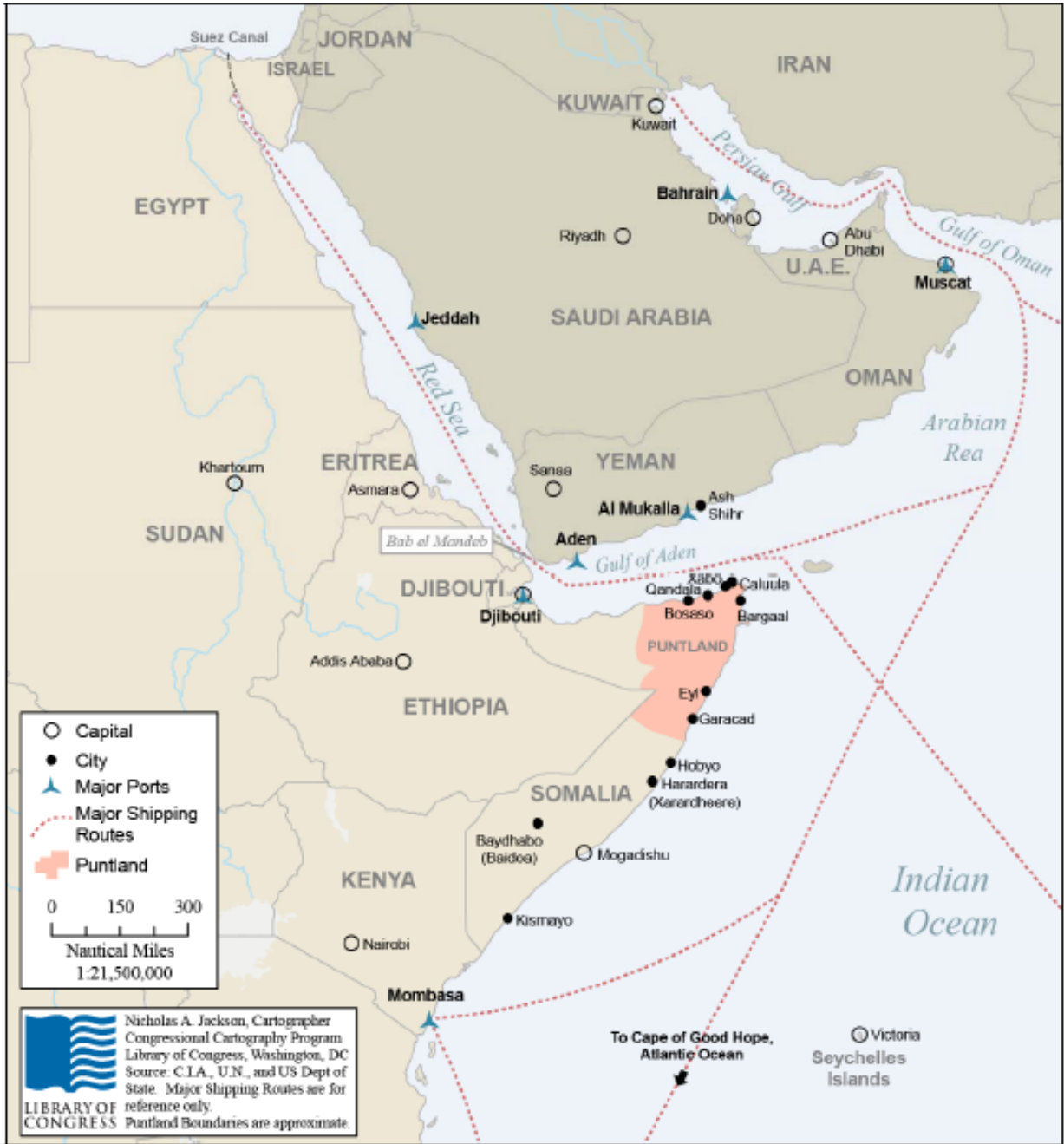
The report describes challenges related to legislation and support; victims from many

countries, resulting in the need to balance the interests of all parties involved; the diverse backgrounds of the perpetrators; the requirement to address the specific contextual conditions; all to ensure that the measures taken will be effectual.

The full SWP Research Paper can be accessed at: http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2011_RP03_mrs_ks.pdf



CRS Report to the US Congress



Source: Congressional Cartography Program, Library of Congress, adapted by CRS Graphics.

Figure 1: The Horn of Africa, Surrounding Waters, and Key Locations

A recent Congressional Research Services (CRS) report for Congress, entitled “Piracy off

the Horn of Africa” provides an update to US legislators on this subject.



The following has been extracted verbatim from the Executive Summary of the CRS report.

“Pirate attacks in the waters off Somalia and the Horn of Africa, including those on U.S.-flagged vessels, have brought renewed international attention to the long-standing problem of maritime piracy. According to the International Maritime Bureau (IMB), at least 219 attacks occurred in the region in 2010, with 49 successful hijackings. Somali pirates have attacked ships in the Gulf of Aden, along Somalia’s eastern coastline, and outward into the Indian Ocean. Using increasingly sophisticated tactics, these pirates now operate as far east as the Maldives in good weather, and as far south as the Mozambique Channel. Hostage taking for ransom has been a hallmark of Somali piracy, and the IMB reports that more hostages, over 1,180, were taken at sea in 2010 than any year since records began; over 86% of those were taken by Somali pirates.

The increase in pirate attacks off the Horn of Africa is directly linked to continuing insecurity and the absence of the rule of law in war-torn Somalia. The absence of a functioning central government there provides freedom of action for pirates and remains the single greatest challenge to regional security. The lack of law enforcement capacity creates a haven where pirates hold hostages during ransom negotiations that can last for months. Some allege that the absence of Somali coastal security authorities has allowed illegal international fishing and maritime dumping to go unchecked, which in turn has undermined coastal communities’ economic prospects, providing economic or

political motivation to some pirates. The apparent motive of most pirate groups, however, is profit, and piracy has proven to be lucrative. Somalia’s “pirate economy” has grown substantially in the past two years, with ransoms now averaging more than \$5 million. These revenues may further exacerbate the ongoing conflict and undermine regional security.

The annual cost of piracy to the global economy ranges between \$7 and \$12 billion, by some estimates. The U.N Security Council has issued a series of resolutions since 2008 to facilitate an international response, which is coordinated by a multilateral Contact Group. The Council has authorized international navies to counter piracy both in Somali territorial waters and ashore, with the consent of Somalia’s Transitional Federal Government (TFG), and has also authorized, as an exemption to the U.N. arms embargo on Somalia, support for the TFG security forces.

Counter-piracy patrols by multinational naval forces near Somalia are intended to compliment mariners’ self-protection measures. Increased patrols and proactive efforts by ships have reduced attacks in the Gulf of Aden, but the U.N. Secretary-General warns that “while the effectiveness of naval disruption operations has increased and more pirates have been arrested and prosecuted, this has not stopped piracy. The trend of the increased levels of violence employed by the pirates as well as their expanding reach is disconcerting.” Some suggest that a perception of impunity exists among pirates and financiers; nine out of ten Somali pirates apprehended by naval patrols are



reportedly released because no jurisdiction is prepared to prosecute them.

The United States has sought to prevent, disrupt, and prosecute Somali piracy through a range of interagency and multilateral coordination and enforcement mechanisms. The Obama Administration has initiated a new “dual track” policy toward Somalia, where some contend that international efforts to build a credible central authority have failed. Congress has examined options to address piracy both diplomatically and militarily. Congress appropriates funding and provides oversight for policy initiatives with implications for piracy in the region, including maritime security assistance to regional governments, support to peacekeeping operations in Somalia, and funding for U.S. Navy operations. Congress continues to debate options for addressing pirate safe havens and improving the prospects for prosecution of pirate suspects.

The full CRS report can be downloaded at:
<http://www.fas.org/sqp/crs/row/R40528.pdf>

The remainder of this newsletter reviews recent UN documents relating to the situation in Somalia.

United Nations actions relating to Somalia

The first UN document is a **Report of the Special Adviser to the Secretary General on Legal Issues related to Piracy of the Coast of Somalia.**

The following text entitled “A piracy-driven economy” and extracted from the report highlights the political dimension of the problem:

“With the industrialization of the phenomenon and especially the emergence of new professions (intermediaries, negotiators, and interpreters), the Somali population is increasingly dependent on piracy. The economy, which basically depends on export of livestock (camels, sheep) to the Gulf countries, remittances from the diaspora and port operations, is gradually relying on support for the pirates by entire villages, now with the approval of some clan chiefs and even some members of the diaspora. The risk of reaching a point of no return is emerging, with the creation of a veritable mafia, piracy-driven economy and the deep disintegration of Somali society, which is built on fragile local arrangements.

Meanwhile, growing insecurity caused by piracy is depriving the north of Somalia of possible job-creating investments (port operations, fishing and development of public infrastructure). The sponsors are exploiting a population which has no professional prospects. Some pirates operate far from the coast. As they do not always have enough fuel for their return, their survival sometimes depends on the success of their attacks.....

The piracy-driven economy is gradually overtaking the traditional economy, owing



to the development of activities on land in support of the pirates, the lack of job-creating investments in a context of widespread insecurity, and the destructive effect of piracy on Somali society which creates a vicious circle”

This report provides “a plan in 25 proposals” as follows:

1. *“Establishing international certification for compliance with certain best management practices;*
2. *Informing the flag State in the event of non-compliance with best management practices;*
3. *Intensifying close monitoring of the coastline;*
4. *Increasing cooperation with the Somali regional authorities in Puntland and Somaliland;*
5. *Encouraging all States to criminalize piracy as defined by the UN Convention on the Law of the Sea;*
6. *Encouraging all States to adopt universal jurisdiction over acts of piracy;*
7. *Adopting a legal framework for detention at sea in compliance with International human rights law and compatible with operational constraints;*
8. *Formulating an international model case report on acts of piracy and armed robbery at sea;*
9. *Facilitating the prosecution of individuals who intend to commit acts of piracy;*
10. *Raising awareness of the need for victims and their employers to testify – encouraging testimony by videoconference;*
11. *Facilitating the transfer of suspects for trial;*
12. *Facilitating the transfer of convicted persons for imprisonment;*
13. *Consolidating international assistance for increasing prison capacity of States in the region;*
14. *Encouraging general mobilization by States to prosecute persons accused of piracy;*
15. *Give Somaliland and Puntland the means to exploit their resources;*
16. *Facilitate the declaration of Somali ocean space;*
17. *Establish a committee to investigate illegal fishing and maritime pollution;*
18. *Redeploy police units to the lawless area;*
19. *Develop a land based coastguard support function;*
20. *Build the investigative capacity of forensic police in the States of the region, under the auspices of Interpol;*
21. *Ensure the admissibility of evidence against instigators;*
22. *Apply individual sanctions against instigators;*
23. *To adopt the missing legislative provisions needed to make the Somali counter-piracy body of law complete;*
24. *In the short term construction of two prisons in Puntland and Somaliland; and,*
25. *To strengthen the rule of law in Somalia by establishing a court system comprising a specialized court in*



Puntland, a specialized court in Somaliland and an extraterritorial Somali specialized court.”

The full UN Report can be accessed at:

http://reliefweb.int/sites/reliefweb.int/files/resources/C3368F7BF0D4E98525783800796871-Full_Report.pdf

A second UN document is **Resolution 1976** adopted on 11 April 2011, which includes wording calling upon States:

“to cooperate as appropriate on the issue of hostage taking”; requests relevant stakeholders “to assist the TFG (Transitional Federal Government) and regional authorities in Somalia in establishing a system of governance, rule of law and police control in lawless areas where land-based activities related to piracy are taking place”; and, “to support sustainable economic growth in Somalia. The UN Resolution further: supports the ongoing efforts by regional States in the development of anti-piracy courts or chambers in the region....; decides to urgently consider the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court....; and, invites States.....to examine their domestic legal frameworks for detention at sea of suspected pirates”.

Decides to urgently consider the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court,

UN Resolution 1976 (2011) can be accessed at:

<http://www.securitycouncilreport.org/atf/cf/%7B65BF09B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%20RES%201976.pdf>

