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Somalian Piracy: An Alternative Perspective

"Piracy is a 17th century problem that demands a 21st century solution,"

-Andrew Shapiro

Senior official, US Dept. of State¹

The tendency of nation States to attempt solving the problem of modern piracy exclusively through the employment of their naval and military might is a flawed effort and has, more often than not, proved unsuccessful. At best, it has resulted in a temporary suppression of the problem that has inevitably re-manifested itself at a later stage. This flawed exercise by various countries is currently apparent in the manner in which they are countering the “corporatized” piracy emanating from Somalia. Even with numerous navies patrolling the seas around the Horn of Africa, individually or in tandem as anti-piracy task forces, the problem refuses to die down and, even through it has abated in its original area of operation², it has only managed to spread to the seas further away from Somalia.

Types of Piracy

Modern piracy is an extremely complex problem and is largely a manifestation of various underlying socio-political issues afflicting a particular region. Hence, piracy emanating from an area is unique in itself and distinct from piracy-related incidents in other regions of the world.

The issue is best understood by categorising or classifying the various types of piracy. While some experts and researchers prefer to categorise them on regional or geographic basis, others choose to classify them

according to the intensity or the kind of acts of piracy. In the former category, there are the 'Asian', 'South American', 'West African' and 'Somalian' types of piracy. Somalian piracy is distinctly different from the rest in that it has a corporatized approach towards piracy that involves hijacking merchant cargo vessels, ocean liners or luxury yachts exclusively for collecting ransom from the concerned shipping company. The use of brazen violence has, till recently, been minimal with the hostages normally being treated well, Now, however, there is a disturbing and noticeable increase in violence in all the regional types of piracy.

The different types of piracy, according to their intensity, are categorized as follows:

- (i) Marine mugging by petty criminals
- (ii) Cargo hijacking in which the cargo is sold
- (iii) Vessel hijacking (vessel is hijacked and ransom sought)
- (iv) Barratry and maritime fraud
- (v) Hijacking vessels for terrorist missions

Marine mugging is the most prevalent type, forming the bulk of the reported incidents. The Somalian method conforms to the 'vessel hijacking' type of piracy.

"We don't consider ourselves sea bandits. We consider sea bandits [to be] those who illegally fish and dump in our seas."

Sugule Ali³

Somali pirate leader

In recent times, the Somalian scourge of piracy has brought the focus of the world's attention to this previously neglected region. But this global

concern has met with frustration as the massive might of the world's navies has failed to successfully overcome this challenge. Before exploring the reasons for this failure, it is essential to understand the prime drivers for the rise of Somalian piracy, which has defied the global armada's might in the region.

Background of Somalian piracy

One of the primary reasons for the burgeoning of Somalian pirate attacks is that the country is a classic example of a failed State. Ignored by the world, the country has not seen even a semblance of state governance since the fall of the Siad Barre regime nearly two decades ago.

The country has been torn apart by civil strife. In 1998 the autonomous state of "Puntland"⁴ was established by the ailing leader of TGF (Transitional Federal Government), Abdullah Yusuf Ahmed. The new state based itself on tribal affiliations and tribal agenda. This ideology enabled "Puntland" to leverage some parties in Somaliland.

Puntland has 1,600 km of coastline, which has an abundance of fish and other natural marine resources. However, after the collapse of the Somali central government in 1991, the coast was left unguarded against foreign intruders. The resultant poaching by outsiders was one of the main reasons that led to the increase in piracy.

Illegal fishing

Fishing is the predominant occupation of the coastal natives of Puntland and Somalia. In the absence of centralized governance, the seas off Somalia became the poaching ground for all and sundry with more than \$300m worth of tuna, shrimp and lobster being carted away every year by illegal trawlers. The situation reached a point where the local fishermen's catch dwindled almost to nothing and they were on

the verge of starvation. Mohammed Hussein, a fisherman in the town of Marka, 100 km south of Mogadishu, told Reuters: "If nothing is done, there soon won't be much fish left in our coastal waters."

Although this self righteous justification offered by the pirates may be scoffed at by security analysts and the effected shipping firms, the fact is that massive illegal fishing in Somali waters is a highly lucrative crime. It has been estimated by the United Nations that the country regularly lost up to USD \$100 million per year due to illegal fishing by countries, including Spain, South Korea and Egypt.

Dumping of radioactive waste

While poaching depleted the resources that was the lifeline of the coastal people, the nonexistence of a central state authority resulted in the abuse of the region by outsiders. All kinds of waste materials, including radioactive toxic material, were dumped near the Somalian coast by many Western firms. It was alleged that the Italian mafia was involved in this hugely profitable operation.

These allegations, which had been in circulation since the Nineties, remained unsubstantiated for years. It took the power of nature's fury—the 2004 tsunami that hit Northern Somalia—to bring the conclusive proof out of the depths of the seas to the open shores, in the form of barrels and barrels of hazardous and toxic waste materials strewn over northern Somalia's beaches.

Nick Nuttall, a United Nations Environment Programme (UNEP) spokesman stated that these containers exposed a "frightening activity" that had been going on for more than a decade. He said, "Somalia has been used as a dumping ground for hazardous waste starting in the early 1990s, and continuing through the civil war there," adding that "European companies found it to be very cheap to get rid of the waste,

costing as little as \$2.50 a tonne, whereas waste disposal costs in Europe are around \$1000 a tonne". He went on to specify, "the waste is of many different kinds. There is uranium radioactive waste, lead and heavy metals like cadmium and mercury. There is also industrial waste, hospital waste, chemical waste—you name it⁵."

The UNEP reported that the tsunami had washed up rusting containers of toxic waste on the shores of Puntland and this was confirmed by Ahmedou Ould-Abdallah, the UN envoy for Somalia, who said the world body has "reliable information" that European and Asian companies had dumped toxic waste, including nuclear waste, off the Somali coastline⁶.

It is not as if all Somalians were innocent victims of such activities. There being no governance to speak of and with a civil war going on, many of the countrymen were involved in these criminal activities which helped fund the 18-year-old war. The western companies were bribing the Somali government ministers to secure licences and contracts or to dump their toxic waste⁷.

Emergence of the Somalian pirate

It was under these circumstances/events that the 'Somalian pirates' emerged. It is said that, right in the beginning, when the situation became unbearable, some Somalian fishermen went on speedboats to try to dissuade the dumpers and trawlers, or at least make some money by levying a "tax" on them. They called themselves the Volunteer Coastguard of Somalia and found support amongst the common Somalians (especially the people of Puntland).

Gradually, this evolved into the ongoing piracy on the strength of the lucrative opportunity it offered to the unemployed youth, poor people and fishermen who had lost their means of livelihood. Not surprisingly,

low-rung criminals also joined them. In a country where the average yearly income is at most USD \$600, a pirate earns about \$20,000 to \$30,000 per year, an unimaginable amount for most Somalis.

According to one report, these pirates could be classified into three distinct groups: “battle-hardened clan-based militia, youth looking for quick money to finance plans (like marriage or immigration) and fishermen who are forcibly recruited for their navigational skills⁸”.

Despite the criminal nature of the activity, it has found societal acceptance amongst the highly religious Somalian society; primarily due to the deep sense of injustice and victimization that is prevalent amongst the local populace. Most of the people perceive a sense of satisfaction by viewing the hijackings as a kind of revenge and as the only way of national defence. Hence, it was no surprise when the independent Somalian news site, Wardheer News, found that 70 per cent of the population "strongly supported the piracy as a form of national defence". There's a wide belief among Puntlanders that "pirates (they don't use this word) are heroes, because they are protecting Somalia's unguarded resources, looted by international companies’."

Nevertheless, it would be incorrect and grossly simplistic to presume that all sections of the society condone the acts of piracy. The powerful religious authorities, supported by many Puntland residents, have often expressed their staunch opposition to the piracy and demanded that the 'rich pirates' mend their ways and reform. But their opposition is not so much against the act of piracy itself, as against the “evils associated” with it; excess wealth from piracy fosters societal evils like drinking and womanising which they, as devout Muslims, consider a worse crime. So, despite the tacit approval from the society in general, this nuanced opposition from the religious high ground and sections of

the society does put a leash on the frequency of the crime. But it needs to be noted that piracy's acceptance by the majority of the people gives it the dormant strength to re-erupt at an opportune moment.

Internal dynamics of Puntland

The internal political structure and tribal dynamics have had a fairly prominent role in the upsurge and evolution of Somalian piracy. Clan oriented piracy has developed, working out of villages such as Eyl and Garaad in the Puntland region and Hobyo and Harardhere in Xarardheere.

Puntland is dominated by the *Majeerteen* tribe, whose number is less than 50% of the country's population and an equal number of *Dhulbahante* tribals¹⁰. It is this tribe that has for long dominated the top most governmental positions and other positions of power in Somalia and Puntland.

The current President of Puntland, Abdirahman Mohamud Farole, is a *Majeerteen* tribal. It is reported that the other tribes, such as *Dhulbahante* and *Warsangali* are not allowed to lead the government or hold positions of power¹¹.

Farole is a former finance minister and a banker who defeated seven other candidates and is expected to lead the northern region for four years. He has often assured the international media: "I will eliminate piracy... and will deal with the security¹²."

While he has publicly made such proclamations, his detractors remain unconvinced, accuse him of being involved in many piracy operations and using the ransom money to fund his political campaigns. While it is debatable if such a senior leader is directly involved in such activities, there is no doubt that there are extensive links between the State Administration and such criminal activity. Moreover, it is a not

surprising that human trafficking is another major crime in the region where thousands of poor Ethiopians and Somalis are carried in small wooden boats to Yemen. The "Puntland" human traffickers charge between \$50 to \$100 per person. The administration, not surprisingly, turns a blind eye to this inhuman trafficking in human cargo¹³.

Corporatized piracy methodologies

Somalian piracy is unique both in aim and methodology of operation. The singular aim is to extort ransom from the shipping companies by hijacking their ships. The style of operation is to avoid violence as much as possible and to treat the crews well. The modus operandi reflects a highly organized and efficient corporatized system, similar to that of a modern private company. The collection of data by the pirates about prospective target ships from the ports of several nearby countries reveals a multi-national connectivity that seems to have been overlooked or ignored. The process of negotiations and money laundering also points to Somalian piracy's transnational dimensions.

Usually, the operation begins with the "seed money" that originates from the 'pirate bosses', 'financers' or 'investors' who play a crucial role in the entire operation. This money, around \$6,000 till recently¹⁴, comes out of previous ransom payments, making it a self-sustaining and a self-perpetuating system. The financers often get as much as 30% of the ransom money, though they may have to wait for weeks or even months to lay their hands on it. Since not all "ventures" are successful, at times they have to bear the losses.

This seed money funds the complete logistic apparatus, which includes sophisticated weaponry (including RPGs), bribes to officials and the entire intelligence gathering paraphernalia which comprises high-tech hand held GPS (for locating ships¹⁵), sophisticated communication gadgets, as also precise information regarding the ships on passage, the

crew, defence systems on board and the cargo. The ability to get such tactical information from overseas ports reinforces the transnational linkages of the entire operation.

Weapons dealers (mainly based in Mogadishu) and providers of logistical equipment are normally paid through a system called *hawala*—an informal money transfer system based on honour.

Earlier, the pirates used small skiffs—often fitted with heavy duty OBMs (Out Board Motors) and capable of travelling at speeds up to 30 knots—to carry out the attacks just a few miles from the coast. However, as the pirates began to venture further and further into the high seas to carry out attacks, they started using larger fishing boats (normally with more than one small skiff in tow), known as 'mother ships'. This became the norm once the merchant ships started avoiding sailing too close to the coast and the navies of several countries started patrolling the coastal seas. For the pirates, problems associated with procuring an appropriate 'mother ship' were easily overcome by forcibly hijacking a fishing boat, buying such a boat (as is done in majority of cases) or by hiring a boat. Even when all these attempts proved futile, the pirates simply 'commandeered' a good, big fishing boat and used it for their criminal operations.

In a typical pirate operation, these 'floating pirate bases' (or 'mother ships') sail and lie in wait hundreds of miles from the coast for the targeted ship. It could be a yacht, cruise ship, oil tanker or a relief cargo ship. If the wait becomes too long, the 'mother ship' harbours in any of the ports along Puntland to Yemen's western coasts. Here, the 'pirate bases' refuel, wait and gather further information from government and port officials about any 'target' ships coming their way.

The actual process of capturing a ship does not normally take too much time and can be as short as 15 minutes. The pirate skiffs—at times alone

or in groups of two or three—approach a target vessel and intimidate the crew by firing AK 47s and/or rocket propelled grenades, force it to slow down or stop. The targeted ship is then boarded and finally hijacked. The pirates quickly steer the captured ship to Eyl or a Somali harbour for the commencement of the ransom demand and negotiation phase of the operation. Throughout the operation, the hostage crew are normally left untouched, well treated and fed. Some pirates, taking pride in their professionalism, are known to have said that they are so businesslike and focussed on getting the shipping company to pay up that they aren't even bothered about the jewellery worn by women hostages¹⁶.

Ransom collection and negotiations

The phase of negotiations is often long and, for the hostages, tortuous. A pirate appointed negotiator contacts the shipping company and demands the ransom. In most cases the shipping company, rather than deal with the issue itself, prefers to hand over the complex and delicate task of negotiations to an expert or experts who know how to reduce the demand. Such professionals don't come cheap and often charge as much as \$2,500 to \$5,000 a day.

The pirate negotiators, on their part, just follow the dictates of their pirate bosses and financiers who assess the paying capacity of the company and its willingness to negotiate seriously.

The average ransoms demanded by Somali pirates have increased from \$100,000-\$200,000 in 2005 to \$ 3-5 million this year¹⁷. A few years back the pirates released a German-registered freighter for \$800,000, a Dutch cargo ship for \$700,000 and the Danish-owned *Spitzer Korsakov* icebreaker for \$1.6 million. Recently, the famous French luxury yacht *Le Ponant* was released after its owners paid \$2 million.

According to estimates, the ransom collected by Somali pirates in 2009 exceeded \$300 million. Evidently, a large part of this amount was ploughed back into the 'business' for better inventorial backing and logistical support which, in turn, has expanded the operating capacity of the pirates.

After the lengthy negotiations, the shipping company is expected to deliver the ransom. Fraught with expensive pitfalls and other implications, this task is again 'offloaded' to a specialist company which works out the method of delivery—either by boat or by air in a specialized floatable capsule.

Delivery by air is the most favoured method, since it keeps the ransom deliverer up in the sky, safe from the pirates. A light small aircraft flies over the ship, checks to see that the hostages are safe and then parachutes down the ransom money, safe in a specially made watertight floatable capsule, to a point near the ship¹⁸.

The pirates pick up the capsule and in due course release the hostages; the actual release sometimes takes upto two months.

Percentage cuts and shares

Once the booty is in their hands, tumultuous times follow. For one, it signifies the successful culmination of their operation and second, it is also the time for all the creditors and stakeholders of the operation to come forward for demanding their share of the loot.

This is a tense period with the threat of infighting breaking out and the only way to prevent it is to adhere to the previously agreed upon rules and percentages laid down for sharing the money.

After the sundry creditors (like those who catered for the hostages) have collected their dues¹⁹, the money is normally divided on the following lines.

- Funding Investors/Piracy bosses–30%
- The hijacking executors, i.e., the pirates–50%
- Guards and other creditors–20%

The actual hijacking group has a criteria laid down for sharing the money individually on a differential basis. For example, a lead jumper gets \$5000 more than others. This is because he is the first one to jump on to the victim ship and is the first to face the risk of getting hit by anything that the crew might throw at him in their wrath. His daring also enhances his image and assures his place in the next venture²⁰, for skilled pirates and first jumpers are always in demand. These 'specialists', so to speak, are the 'chosen ones' of the investors for future ventures and are always paid more than the rest.

Thus, it is evident that the entire operation follows a corporate pattern, where hierarchal positioning of each individual is clearly demarcated .

The transnational characteristics of this crime also ensures that Somalians, especially those who carry out the operations, form the lowermost rung of the hierarchy—“the foot soldiers”—as they have been described by Andrew Mwangura, who heads the East African Seafarers' Assistance Programme that negotiates frequently with pirates.

UN/Organizational Efforts

For over two years, the International Maritime Organization (IMO) had been lobbying with the United Nations Security Council (UNSC) to take action to combat the growing Somali piracy and it has finally proved successful. In an unprecedented move, on June 2, 2008 the UNSC finally adopted Resolution 1816 (2008), authorising foreign naval vessels to enter Somali territorial waters for an initial period of six

months to use "all necessary means" to repress acts of piracy and armed robbery at sea, consistent with relevant and existing provisions of international law²¹. However, the corollary was that such entry into Somali waters was to be carried out with the consent of the Somali Transitional Federal Government (STFG).

Recognising the ineffectiveness of the above resolution in curbing piracy simply by armed might, the UNSC adopted Resolution 1851(2009) in January 2009 through which a contact group was set up on piracy off the coast of Somalia. Today its membership has grown from 30 countries to more than 50 and it includes six international organizations²².

Although this UNSC resolution was welcomed by shipping companies, insurers, and others who operated off the Horn of Africa, it did little to address the root causes of the problem. It effectively opened the flood gates for military action which had initially proved ineffective, though the number of incidents did go down in the corresponding first quarter of 2010.

Military efforts

The practice of the concerned governments to send their naval forces to confront this complex transnational challenge has made the Horn of Africa a picture of a melee of warships operating individually or as Task Groups or both. Their task—to prevent attacks by pirates and to assure the safe passage of ships—is an onerous one for various reasons. The ambiguous rules of engagement make it difficult to detain the captured pirates for prosecution, since the flag countries are unwilling to accept them for that purpose. Any attempt to liquidate these pirates through excessive force is frowned upon by the international community. The problems have been compounded manifold by lack of coordination and sharing of actionable information among the naval forces. There are a

number of initiatives for cooperation on paper, but are ineffective on the seas. An example of this is the Shared Awareness & De-Confliction (SHADE) initiative. Besides, patrolling such vast areas of seas without coordination works to the advantage of the pirates who manage to carry out attacks unfazed despite the overwhelming presence of warships.

In mid-2009, the number of warships patrolling the Gulf of Aden had reached a phenomenal 20-23 with the arrival of the Second Standing NATO Maritime Group 2 (SNMG2).

Currently, all the G-20 countries are represented in the region. They include the multinational Task Force 151, European Union Naval Force and NATO. Countries that have chosen to send warships independently are China, (CTF 525 of the PLAN) Russia, India, Iran, Japan, and South Korea.

The main naval task forces that operate in the area include:

Coalition Task Force 151: The CTF 151 is under the overall coordination of the Bahrain-based Fifth Fleet of the US Navy. It was established in January 2009 with a mandate to combat piracy in the Gulf of Aden. It comprises the member countries of the Coalition Maritime Force (CMF)—Germany, UK, Turkey, Pakistan, among others.

Operation 'Atlanta' European Union Naval Force (EUNAVFOR): The EU Naval force has about six ships from 27 members of the EU, which maintain a convoy escort system codenamed Operation 'Atlanta', run under the auspices of the European Security and Defence Policy. It was launched in December 2008 in accordance with United Nations Security Council Resolutions 1814, 1816 and 1838, and is based at the Northwood Operation Headquarters in Britain; about three to five maritime patrol aircraft are also employed by this group for

surveillance. The primary mission of the task force is to protect ships delivering humanitarian food aid to Somalia under the of United Nations World Food Programme, apart from deterring acts of piracy in the region and protecting merchant vessels navigating through the area

Operation 'Ocean Shield' by NATO: A Standing NATO Maritime Group (SNMG)²³ comprising of about seven ships from Italy, Germany, Greece, Turkey, UK, USA and Spain has been deployed to allow World Food Organisation to fulfil its mission of providing humanitarian aid to Somalia under the UN World Food Programme. This operation has been codenamed 'Ocean Shield'.

The GCC countries, alarmed by the drop in Suez Canal toll revenues due to ships following the longer yet safer Cape of Good Hope route, decided to take action to prevent this downside. At the behest of Egypt, they arranged a meeting of their representatives at Riyadh on June 29, 2009 to discuss the role the GCC could play in combating piracy. They resolved that the responsibility lay with the littoral countries to maintain the security of the Red Sea and combat piracy. The meeting proposed the formation of an Arab naval taskforce of GCC Navies²⁴.

The multinational forces together with the regional navies of the Gulf can collectively put up a force of upto 30 ships to patrol the Gulf of Aden. Such a task force, once formed, will substantially increase the surveillance capability of the navies.

In addition to the present and proposed task forces and the efforts towards warship deployment in the area, other initiatives have also been taken. They include the following:

- The Maritime Security Centre (Horn of Africa) MSC (HOA) has been set up to coordinate and monitor all vessels transiting through

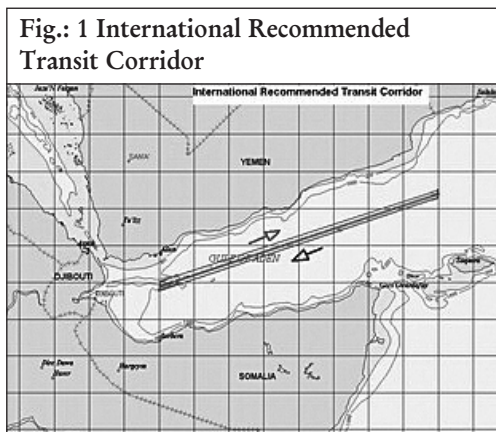
the Gulf of Aden and also to instantly alert ships in danger through a website

- Inspired by the Asian ReCAAP (Regional Co-Operation Agreement on Combating Piracy and Armed Robbery against Ships), nine countries in the region signed what came to be known as the **Djibouti Code of Conduct**²⁵. These countries agreed to establish Piracy Information Exchange Centres in Kenya, Tanzania and Yemen, and a regional training centre in Djibouti. This document is open for signing by 21 countries in the region.

Piracy has also led to some unique developments. Japan—a country with a pacifist Constitution, has decided to establish its first overseas army base in the strategically located African state of Djibouti. The \$40 million base is expected to be completed by early 2011 and is part of the international efforts to curb piracy on the Somali seas²⁶.

Since it is not possible to ensure that the entire vast area is kept incident free, it was decided to restrict the area under cover. Thus evolved one of the most important military security initiatives undertaken—the establishment of a 560-nm long sanitized corridor in the Gulf of Aden on August 22, 2008—by the US Navy Central Command

(CENTCOM). Initially known as the **Maritime Security Patrol Area (MSPA)**, it is now called **International Recommended Transit Corridor (IRTC)** and its main objective is to provide safe passage to all merchant ships sailing through it. This area is currently patrolled by the



coalition forces, NATO and EU²⁷. However, much to the embarrassment of the security forces, there have been incidents of piracy even in this corridor.

Realizing that an end to piracy cannot be achieved on the sea alone and that a multi-pronged strategy involving Puntland was needed, NATO has gone in for “a working relationship with Puntland authorities in a bid to enhance its fight against the piracy scourge along the lawless waters of the Horn of Africa. Puntland has offered its help in terms of dealing with the gangs in the mainland²⁸.” In March 2010, ministers of the Puntland government met with the Standing NATO Maritime Group 2 commander, Commodore Steve Chick, on board HMS *Chatham*, then flagship of the NATO naval group in the region. The talks reportedly “covered ways in which further cooperation between NATO and the Puntland authorities could be developed in the future²⁹.”

The Complexity of the legal dimension

Piracy is a form of barratry in which the link between its international and domestic contexts needs to be studied. The former, piracy *jure gentium*, is concerned with attacks on the seas in violation of international laws that are adhered to by the states. The latter deals with the marine laws of individual countries. The problem in prosecuting pirates arises because of the disconnect between international and domestic laws. This lacuna also affects the basic definitional approach towards piracy.

Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines piracy as:

- 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:

- ♦ On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- ♦ Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- 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;
- Any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).

This definition was arrived at when modern piracy was at an ebb and was not considered a major maritime security threat. It essentially follows the lines of the earlier formulation reached during the Laws of the Sea convention (UNCLOS I). To overcome the resultant lacunae, the International Maritime Bureau (IMB) has chosen to define piracy as an act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act. This paper relies on this definitional approach to piracy.

Piracy and Maritime Terrorism: The unholy alliance

Somali pirates have been accused of forming what has been described as an "unholy high seas alliance" with some of the Somalia's Islamist insurgents. The authoritative *Jane's Terrorism and Security Monitor* has stated that certain insurgent groups have been using pirates to smuggle weapons and supplies in return for providing bases. Thus links between such groups exist and are considered vibrant. According to Bruno Schiemsy, who formerly monitored UN arms shipments into Somalia, these links take the following formats³⁰.

- Islamists have used pirates to bring in arms shipments and foreign fighters and provided weapons and training in return. They also

help with bases from which the pirates operate

- The fundamentalist group Al Shabab, has provided operating funds and specialist weapons in return for a share of the ransoms being paid to free the ships and crew.
- As many as 2,500 young Somalis have been trained by the Al Shabab.
- The Islamists are using the pirates to train their own forces in naval tactics so that they can provide protection for arms being smuggled into Somalia from Eritrea

Additionally there are unconfirmed reports that a 480-person strong maritime force comprising of those experienced in piracy has been organised by the Al Shabab—along the lines of the Sea Tigers operated by the Sri Lankan Tamil Tigers. This group is said to have a stronghold in South central Somalia³¹.

In addition to the Al Shabab group, the pirates have linkages with the Al Qaida based in Yemen. The Al Qaida has reportedly provided the pirate groups with logistical help like procurement of weapons and 'mother ships' for conduct of piracy operations.

Despite these symbiotic linkages between the pirates and fundamentalist groups, acts of terrorism and those of piracy are essentially separate issues. Terrorism is a politically or ideologically motivated action of a group aimed to convey through fear a message or a warning to the larger community. Piracy is nothing more than an act of violence on the seas perpetrated for personal monetary gain.

Apprehended pirates and associated prosecution problems

With so many warships patrolling the seas around the Horn of Africa, one would presume that the capture and prosecution of pirates would be without any hurdles. But the facts belie such a presumption.

Boarding hijacked vessels or pirate ships is permissible under various legal rules. It can be done with the consent of the flag state under Articles 92 and 94 of the Law of the Sea, the exercise of the right of self-defense under Article 51 of the United Nations (UN) Charter and the right of boarding a vessel under Article 110 of the Law of the Sea if there are reasonable grounds to believe that the vessel is engaged in piracy³². However, it is after the pirates are caught that the situation becomes difficult. Apprehended or detained pirates become 'Persons Under Control' (PUCs) under international law, which mandates that the pirates be tried by the courts of the Flag state of the ship or the warship which apprehended them or carried out the seizure. Unfortunately, the captured pirates cannot be turned over to local authorities in Somalia or Puntland because there is no viable or working institution that can carry out the task of delivering justice. The countries on the east coast of Africa have nascent legal systems and are notoriously lacking in resources for law enforcement and the judiciary.

There is the logistics challenge of transporting the captured pirates to the Flag States—a problem compounded by the fact that these states, such as Panama, Honduras and Liberia, have a very limited capacity to prosecute. They have open registries, but hardly any judicial and logistic resources. In 2006, these difficulties forced the United States to provide temporary custody of Somali pirates on board USN warships for months at a stretch³³.

Most naval authorities found it easier to hand over PUCs to countries like Kenya or Seychelles for trial. The EU and USA have signed agreements with Kenya for the prosecution of pirates under UN Resolution 1897 of November 2009. Here too, snags have developed because of the large numbers of PUCs and the administrative resources required for conducting fair trials. Kenya has charged that it would not accept any more Somali pirates since it already has (as on April 2010)

more than 100 PUCs undertrials³⁴. Kenya charges that many countries have reneged on the financial commitments they had made towards the cost of conducting the trials.

Despite its small size and limited resources, Seychelles is still accepting the PUCs. There are 40 of them on the island³⁵ at present.

This dauntingly complex prosecution problem is highly discouraging for the naval forces, because whatever success they have achieved remains a job half done unless the PUCs are taken from the deck to the dock and prosecuted. As a result, it has been estimated that in many cases, the authorities on the warships have let the apprehended pirates go scot free after a “warning”. Quite obviously, these modern “sea dogs” jump right back into piracy, bolder than ever before.

The above mentioned fact is based on the US estimate that 706 pirates were encountered by naval vessels of the counter-piracy coalition between August 2008 and December 2009. Out of these, just 46 have been convicted so far and 23 acquitted. That means that nearly 60 per cent of the pirates encountered were let off scot free³⁶.

It now appears there is no way out of this legal quagmire. Besides, the freeing of apprehended pirates is raising a storm of controversy. In a recent incident, Russian naval forces stormed a hijacked oil tanker in a rescue operation. They killed one pirate, arrested 10, and then put them on a small vessel and let them go about 300 nautical miles away from any land—after stripping them of their weapons and all navigational equipment.

The Somalian Transitional Government reacted sharply at the loss of 10 of its citizens and legal experts came to its support, saying the Russian action was a grave violation of the legal obligation to protect lives at sea and offer the PUCs a right to a fair trial. The experts said the 10 Somalis had been sent to sure death³⁷.

In a bid to give legal teeth to the naval activities, on April 6, 2010 Russia introduced a draft resolution on Somali piracy at the UN Security Council. The draft proposed possible options to facilitate the incarceration and prosecution of the captured pirates. This has led to a degree of optimism and a UN Resolution on the issue is expected in the near future³⁸.

Arms to Merchant Ships

A suggestion has often been made to fully arm the merchant ships and make them 'self reliant'.

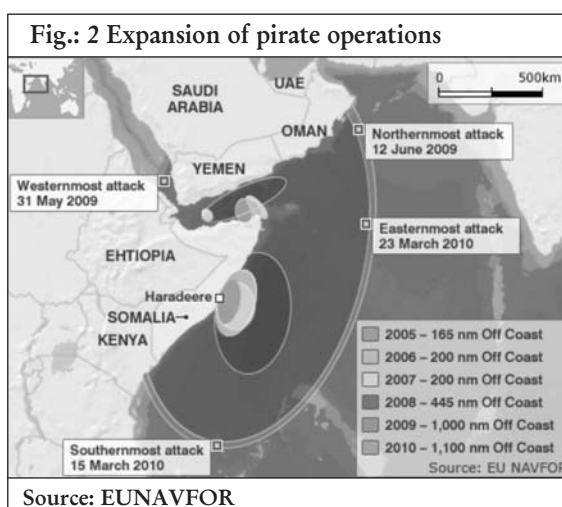
Presently, the authorisation to carry firearms onboard ships can only be given by the Flag state, but when the ship is in the territorial waters or at port of another country, it comes under the law of the host country. Most countries do not “encourage armed merchant ships” to enter ports without proper authorization and such ships can face harrowing times over days at each port trying to get necessary clearances, raising the expenses of the concerned shipping companies. This restriction on carrying arms is not arbitrary, The IMO and IMLB regulations do not support the concept of ships protecting themselves with their own arms because they lead to increased violence at sea. The underlying perception is that confrontation between armed guards and pirates could lead to secondary/collateral damage.

Undoubtedly, in the absence of clearly defined rules of engagement, the usage of firearms can pose a serious challenge. It is for this reason that this problem has been perceived differently by various states. In the erstwhile piracy hotspot, the Strait of Malacca region, Singapore was in favour of embarking armed security on board ships, but both Malaysia and Indonesia strongly opposed this move and banned all ships with armed security from entering their territorial waters.

On the other hand, following the capture of MV *Maersk Alabama*, the US government advised all merchant vessels flying its flag to carry armed security. In a recent executive order, US President Barak Obama declared piracy as a threat to national security and forbade material or financial assistance (read ransom) to pirates³⁹. This is expected to provide an impetus for the anti-piracy efforts.

What needs to be done?

It is obvious that the problem of Somalian piracy is unique in more ways than one and that conventional responses, such as the strengthening of naval force, has hardly proved successful in eliminating this scourge. This is despite the presence of an armada of more than 20 countries acting individually or in



unison. Military planners and strategists are taking heart from the recent decline in the number of⁴⁰ piracy incidents, but they are missing the most important development—that the pirates have greatly expanded the arena of their activity to more than 1100 nm from the shore. It clearly indicates enhanced capability in terms of reach, sustenance and technological prowess. In addition, the state of affairs on the pirates' homelands is tailor made for piracy and is certainly not conducive to its elimination. If at all the acts of piracy at present seem to be subdued, it is because they have been suppressed temporarily—waiting to re-erupt as soon as the navies reduce their

guard or return home, since it is not feasible for them to keep up the current tempo of patrol indefinitely.

The vexed situation has steadily deteriorated due to the manoeuvrings of vested interests and calls for specific solutions which would root out the evil once and for all. This paper suggests a multi-pronged approach with the first and foremost focus being to cure the socio-economic ailments on the land that are, as has been argued, the root cause of the violence on the seas.

Solutions from Land

There is little doubt that the permanent solution to piracy in the region lies on land and not at sea which has to become an important but subsidiary focus.

This land-based efforts needs to be looked at from the following angles:

- a) The local populace of coastal Somalia and Puntland are an aggrieved lot who strongly resent the injustice meted out to them by Western powers. An earnest effort has to be made to ensure that toxic and radiation hazards generated by indiscriminate dumping near the coasts are reduced, at the very least, to the extent that the beaches in the area are again made habitable.
- b) Most of the fishermen have lost their livelihood and the workers their jobs in factories processing fish because of rampant poaching by better equipped ships of foreign companies, leading to depletion of fish catch. The local fishermen have gone into the hinterland or have shifted to work that may be linked to piracy. Giving food aid—as is the wont of many western powers—not only deprives people of their sense of self-worth but also makes them dependent on such aid. Efforts have to be made to generate

- jobs/work in the coastal areas that will wean away these people from piracy associated work.
- c) Somalian piracy is a transnational crime and the pirates are a façade for large, well-financed and well-organized criminal organizations based inland. Their tentacles extend to Kenya, Tanzania, Yemen and the United Arab Emirates. It has even been suggested that Canada, home to the largest Somali diaspora outside Africa, hosts logistical and organizational cells for some Somali pirates⁴¹. These financial and logistic support links must be investigated and severed, just as it is being done for declared terrorist organisations.
 - d) It is well known that insurance premiums and incidents of piracy have a linkage. The rise in ransom demands has been accompanied by an increase in insurance premiums for ships. The insurance surcharge for ships transiting the Gulf of Aden currently stands at \$25/ TEU or \$5/ Tonne⁴². Accordingly, the shipping companies have increased their freight charges to include the insurance surcharge and also to meet additional risk pay for the crew. This increase in freight charges is ultimately passed on to the consumer by the shipping agent who accordingly charges the exporter/importer. Thus theoretically, insurance companies—which have an opaque methodology of calculating such risks—stand to gain if incidents of piracy increase drastically. Needless to say, any inappropriate gain of this sort needs to be investigated by appropriate agencies.
 - e) One of the prime drivers of piracy has been the absence of local governance in what has been called a failed state, Somalia. The need for a strong federal government cannot be overstressed. The need to support such a government lies at the heart of the piracy issue. Currently the Transitional government's efforts at governance—a vital aspect of which is to curb piracy—have been

tenuous at best. Pouring in financial aid has been of negligible benefit to the aggrieved local populace because the region is rife with corruption and nepotism. Hence a vital part of the solution lies in helping institutions of justice and law enforcement to grow stronger. In earlier times Somalia had a proud and a fairly capable navy—which the Soviet Union helped establish in the 1960s—with bases at Mogadishu and Kismayo. Today, it is a shadow of its original self, but with the right input of infrastructure, human resources and some hard work, there is no reason why the navy cannot be rejuvenated⁴³. At present the navy, a woefully inadequate force is led by a Brigadier. In an encouraging development, the security forces of Puntland have recently shown their determination in attempting to combat piracy by freeing MV *QSM Dubai* from the clutches of pirates and arresting seven of the the criminals⁴⁴.

- f) The political dynamics of the region are such that the Transitional government (TGS) in Somalia has little control over Puntland, the haven and launching ground of the pirates where tribal affiliations reign supreme. The current President of Puntland, Abdirahman Mohamud Farole, from the *Majeerteen* tribe has been accused of having deep links with piracy gangs. However, publicly to the world media, he has often expressed his desire to control piracy. Such a complex situation poses a Hobson's choice of supporting the once powerful Islamic courts that are perfectly capable of controlling piracy and at the same time initiating a return of Islamic rule, with every possibility of fundamentalist and radical governance under the Sharia.
- g) Education and awareness programmes: A little known aspect of controlling piracy in the Malacca Straits has been a hugely successful mass education and awareness programme amongst the poor fishermen staying in the islands along the straits. A similar

programme in the Somalian (and Puntland) coasts would undoubtedly be difficult to undertake but, if implemented, it is bound to show results. The reason for this lies in the fact that the society here is deeply religious and has already shown aversion to people carrying out such criminal activities. Hence this societal distaste for piracy has to be nurtured and fostered.

- h) As is common in most African societies, elders, tribal chiefs and religious leaders have considerable influence on societal ethos and activities. Sustained interaction with elders and religious leaders in the region is bound to bear fruit. These efforts would be successful since, generally speaking, the local people are against piracy. It is important to mention that EUNAVFOR has just initiated an action in this direction which needs to be sustained.
- i) Strengthen legal support systems and anti-piracy laws: As discussed earlier, this is an area of gross inadequacy; firstly, the national anti-piracy laws must be strengthened considerably⁴⁵ and secondly, to overcome logistical problems of transporting PUCs over long distances, it is necessary to support the Russian initiative at the UN.
- j) Consequently, countries that have agreed to try the PUCs, such as Kenya and Seychelles, must be given adequate financial and logistical support to ensure the smooth process of trials. Otherwise, they are likely to get overwhelmed and refuse to take in any more apprehended pirates, as has been the case with Kenya.

The second arm of the multi-pronged approach must cover the seas.

From Sea—the secondary thrust

- a) The navies must continue patrolling the sea and escorting merchant ships since they are the visible format of anti-

piracy measures and have had a salutary effect of reducing the number of incidents. With a multitude of task forces and individual navies operating in the region, it is often forgotten that the primary aim of all such warships on patrol is to prevent acts of piracy. This is only possible in this vast oceanic area if the ships coordinate and cooperate in the fulfilment of this task. Ostensibly, there are numerous naval initiatives like SHADE (which has regular meetings), common frequencies and data exchange methodologies for sharing of information, but on ground little actionable data gets exchanged. This results from the unhealthy mindset of one-upmanship, superimposed by the self-defeating inherently competitive mindsets of the various navies which needs to be overcome if piracy is to be eliminated.

- b) Common rules of engagement: A large degree of commonality in rules of engagement by warships in the area would ensure a much needed strategy of united action by all operating anti-piracy patrols.

The final thrust must come from shipping companies that loathe adopting expensive security measures as it raises the operating costs. They need to keep in mind that several attempts at hijacking have been successfully thwarted because the ships under attack had adopted active or passive security measures. Passive methods like employing high ship speeds and using evasive maneuvering are common practices adopted for evading hijack. In addition, ship-wide alarm systems, surveillance devices, anti-boarding devices such as electric fencing, armour-plated hatches/doors, water cannons, etc are some of the low-tech and low grade equipment that are used by ships to prevent boarding by pirates.

In comparison, some equipment, like the Long Range Acoustic Device (LRAD), is relatively expensive and high-tech. Further, it is recommended that the ship's crew conduct regular anti-piracy drills, such as daily fire fighting drills, as it would prepare the crew and give them the confidence to deal with pirate attacks.

Several US and British Private Security Companies (PSC) offer security packages, such as the services of armed marshals for merchant ships transiting the Gulf of Aden/Horn of Africa. These services are expensive: a three-man armed detail may typically cost about \$ 21,000 per day, which the shipping company may find discouraging. The Yemeni Navy also provides security to merchant vessels in association with a UK PSC for \$55,000 per trip through the Gulf of Aden. A full military escort by the Yemeni Navy currently costs \$50,000 for three days.

Conclusion

Having first made headlines in 2005, Somalian piracy has evolved considerably within a short period of time—from relatively modest beginnings of attempting to collect “tax” from intruding ships to a well-established vast lucrative “corporate industry” professing transnational characteristics and extending to many parts of the world. The Somalian pirates are now the façade and part of large, well-financed and organized criminal gangs based inland. The more disturbing trend however concerns the allegations and perceptions that these activities somehow are deeply linked to terrorist organisations like the Somalian Al Shabab and the Al Qaida based in Yemen .

Given the “failed state” status of Somalia and its unsuccessful attempt at governance, the solution to this scourge lies as much on land as it does on the seas. Hence the policy most nations follow, of putting excessive reliance on the use of military power, is misplaced. The innumerable

warships in the region have at best cut down the number of incidents, and that too at great cost. To stamp out the problem in its entirety, what is needed is a nuanced, multi-pronged strategy in which all the stake holders act in cohesion. That is the only way to strike at the root of this modern, high tech piracy that has struck the soft underbelly of the shipping world.

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19. Which are given on credit till the collection of ransom and normally inflated sky high.
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22. The African Union, Arab League, EU, IMO, NATO and the UN Secretariat are members. The contact group has a rotating Chairmanship and has four working groups:
 - Military and Operational Coordination, information sharing and capacity building – Chaired by UK.
 - Judicial issues – Chaired by Denmark.
 - Strengthening shipping self awareness and other capacities – Chaired by USA.
 - Public Information – Chaired by Egypt.
23. Starting in March of 2009 NATO started rotating its Standing NATO Maritime Group 1 (SNMG 1) and Standing NATO Maritime Group 2 (SNMG 2) warship fleets off the coast of Somalia, first with Operation Allied Provider until August of last year and since with Operation Ocean Shield, which continues to the present day and which in March was extended until the end of 2012. The current fleet consists of warships from the U.S., Britain, Greece, Italy and Turkey. Its area of operations includes one million square kilometers in the Gulf of Aden and the Somali Basin. (The current name of the naval groups are NATO Response Force Maritime Groups 1 and 2.) – as stated in “Japanese Military Joins U.S. And NATO In Horn Of Africa” 26 Apr 2010 available in <http://rickrozoff.wordpress.com/2010/04/26/japanese-military-joins-u-s-and-nato-in-horn-of-africa/>
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