

The Floating Treasure:

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Introduction

Pirates ahoy! A line from the script of a Hollywood cutlass-and-buried-treasure pot-blockbuster? Hardly, at least not as far as the waters off the Horn of Africa are concerned. Although pirates may be romantic and daring figures in the popular imagination, thanks in no small part to novels such as Stevenson's *Treasure Island*, the swashbuckling films of Errol Flynn and company, and more recently the Johnny Depp *Pirates of the Caribbean* series, piracy remains a serious modern day menace. This has particularly proved to be the case in the last few months as there has been a surge in acts of piracy and attacks against shipping in the Gulf of Aden and off Somalia's eastern coast in the Indian Ocean, making these waters comfortably the most dangerous on the planet.

In response the United Nations has passed a number of Resolutions authorising the use of force to combat the pirate menace. A number of states have rushed warships to the region, leading to an unprecedented concentration of naval vessels in the region. Despite these efforts, piratical attacks have continued and, alarmingly, escalated into 2009. Indeed, in the first five months of 2009 more attacks against ships took place off the Horn of Africa than in the whole of the previous year.

Who are the pirates and how do they operate? What are the key causes of the Somali piracy phenomenon? Moreover, what is being done to meet the threat to shipping and freedom of navigation that the pirates pose, what challenges arise in this context and what are the prospects for the future?

Dangerous waters

The problem of piracy-style attacks (see box) against shipping off the Horn of Africa is by no means new. Over 700 attacks against ships were recorded in the period 1993-2005. After a noticeable dip in attacks in late 2006, piracy has been rising once again and 2008 witnessed a two hundred percent increase in incidents with 111 attacks against ships including 42 successful hijackings. By the end of May 2009 there had already been 114 such attacks, though 'only' 29 successful hijackings.

A diverse range of vessels have been attacked – from relatively small vessels such as traditional dhows, yachts and fishing trawlers to larger merchant vessels, oil tankers and even luxury cruise liners

carrying hundreds of tourists. Among the more eye-catching recent incidents was the seizure at the end of September 2008 of the Ukrainian (though Belize registered) freighter, the MV *Faina*, carrying 33 Russian-made T-72 tanks, spare parts and ammunition. The highly lucrative nature of the piracy business was emphasised by the reported US\$3.2 million ransom delivered to the pirates in return for the release of the vessel, crew and cargo in early February 2009. Yet more high-profile was the 15 November 2008 hijacking of the *Sirius Star*, a brand-new, Saudi owned super tanker carrying a cargo of two million barrels of oil valued at in excess of one hundred million dollars. The stunning seizure of such a large (330m and 318,000 dead weight tons) and modern (launched in April 2008 and costing an estimated US\$150m to build) vessel with such apparent ease grabbed headlines around the world. Once again the vessel, crew and cargo were released once a ransom, estimated at US\$3 million was paid to the Somali pirates on board the vessel on 9 January 2009.

Furthermore, on 8 April 2009, Somali pirates seized the cargo ship MV *Maersk Alabama*, a US flagged vessel 240 nautical miles south of the Somali port city of Eyl. Although the crew retook the vessel, capturing the leader of the pirates in the process, the ship's captain surrendered himself to ensure his crew's safety. The pirates fled in one of the ship's covered lifeboats and the ensuing stand-off between the pirates and the US naval vessel despatched to the scene, the USS *Bainbridge*, was brought to an end by US Navy Seal snipers who killed three of the pirates on board the life boat and freed Captain Phillips. The remaining pirate involved has been transferred to New York and is currently facing trial.

Yachts and even large cruise liners carrying hundreds of passengers have not proved to be immune from piratical attack. Several French yachts have been sized, leading to some dramatic rescue efforts on the part of French Special Forces (see below). With regard to cruise liners, the first such attack took place against the *Seabourn Spirit* in November 2005 (see below). More recently, on 30 November 2008 the luxury cruise liner, the M/S *Nautica*, carrying over 1,000 passengers and crew, was attacked by pirates in two small skiffs whilst transiting the Gulf of Aden. Although the *Nautica* was able to evade the would-be pirates, they got close enough to open fire with small-arms. Similarly, on 26 April the Italian cruise ship the *Melody*, with around 1,500 passengers and crew on board, was attacked but the would-be pirates broke off their attack when security guards on board the liner opened fire over their heads.

Key Causes

Fundamentally the key causes of the Somali piracy phenomenon lie ashore. Piracy essentially emerged off the Somali coast following the fall of the Siad Barre regime in 1991. The Somali central government collapsed and large swaths of the country have been ruled by clans and warlords ever since. The situation deteriorated still further with the withdrawal of the UN mission in 1995 (the movie *Blackhawk Down* ably demonstrating why). Instability, insecurity and the near absence of law and order on land has unsurprisingly spilled offshore.

Profound poverty also represents a powerful motivating factor. Many Somalis are near destitute with around one third of the country's 10 million strong population are dependent on food aid. In this context the huge sums to be made from piracy are thus just too enticing. A further important but generally under-reported, factor underlying the rise of Somali piracy is the fact that many Somalis feel disenfranchised and exploited by foreign powers. For example, the Somali coast has been used as a site for the dumping of toxic, including radioactive, waste from abroad. Furthermore and of particular note here is the fact that foreign trawlers exploit Somalia's fisheries with impunity. Around 700 foreign fishing vessels are known to operate illegally in Somalia's waters taking an annual catch worth an estimated U\$90-300 million annually – or roughly three times the sum said to have been paid out by the shipping industry in ransoms to the pirates. Indeed, it has been observed, not without considerable bitterness, that foreign fishers are taking far more protein out of Somalia's waters than the international community it providing in terms of food aid to Somalia's desperate population. It is also noticeable that there is something of a correlation between the states involved in illegal fishing off Somalia and those that have rushed naval vessels to the region.

The activities of foreign fishing vessels have resulted in ugly confrontations with local fishers. It has been reported that foreign fishing boats have sought to drive Somali fishermen away from their traditional fishing grounds, using high-pressure or boiling water hoses and even firearms to that end. In the face of the blatant theft of Somalia's marine living resources it is perhaps unsurprisingly that some former fishermen have turned their maritime skills to an alternative profession. It has also allowed pirates to try and justify their actions – several pirate groups style themselves "coastguards" or "marines" and characterise their ransom demands as "fines".

The attacks outlined above highlight the fact that the primary objective of Somali pirates is to take control of vessels attacked and

take the crew hostage with a view to negotiating a ransom payment (termed KnRs – kidnap and ransom). Somali piracy is therefore distinct from the vast majority of attacks against shipping that occur elsewhere around the world, including other piracy hotspots such as the Bay of Bengal, Gulf of Guinea and in Indonesian waters. Rather than involving hit-and-run style attacks with the aim of robbing the ship's safe and relieving the crew of their valuables, attacks off the Somali coast often take place in broad daylight with the objective of seizing the ship as a whole.

An important factor in this regard is Somalia's proximity to busy shipping lanes– 22,000 ships per year traverse the Gulf of Aden, primarily en route to or from the Suez Canal – making these waters a 'target rich' environment from the pirates' point of view. An allied consideration here is the willingness of the shipping industry and insurers to pay hefty ransoms. Piracy has, consequently, developed into an especially lucrative business, with the 'going rate' for the release of a ship and crew has been put at US\$500,000 to US\$2 million, or more, as proved by the ransoms for the release of the *Faina* and *Sirius Star*.

The *modus operandi* of Somali pirates

The 'tools of the trade' for Somali pirates include small, fast boats or skiffs, equipped with high-powered engines. The pirates have ready access to high-tech equipment such as satellite phones and navigation gear (global positioning systems, GPS). They also have little difficulty in accessing their main weapons of choice – Kalashnikov automatic rifles (the ubiquitous AK47) and rocket-propelled grenades (RPGs) as, according to UN estimates, there are in excess of two million such small arms in Mogadishu alone.

A common tactic is to open fire in order to try and make vessels slow or heave-to. Often multiple boats are used in 'swarm' or decoy type tactics. Somali pirates have also been known to use of fake distress calls as a ruse to lure unwary ships within range. Distinguishing between fake and genuine calls for aid can therefore prove problematic (as many Somalis seek to flee the country using often dilapidated and overloaded boats, real distress calls are by no means unheard of in these waters). Alternatively, pirates have posed as distressed fishermen in need of water supplies. This may lead to genuine fishermen being mistaken for pirates. It has also been reported that as shipping has tended to avoid the Somali coast and sail as close as possible to the Yemeni coast on the Gulf of Aden, pirate skiffs have taken to hiding among groups of Yemeni fishermen until their potential victims come within range.

A further tactic of note relates to the use of 'mother ships' (a larger vessel used as a base by smaller craft) or 'brother ships' (a larger skiff, filled with fuel, towing other skiffs) in order to extend pirates' range of operations. The hijacking of the *Sirus Star*, 450 nautical miles offshore, represents a striking example of this practice. As Admiral Mike Mullen, Chairman of the United States Joint Chiefs of Staff commented on 18 November 2008: "I'm stunned by the range of it".

The international response

The primary international response to piracy off Somalia has been a military one featuring an enhanced naval presence and increased patrols. Naval vessels from the United States, a number of European states (notably Britain, Germany, France and Spain), Canada, India, Iran, South Korea, Malaysia, Russia, Turkey, and, most recently, Australia are now active, or will soon reach, the waters off the Horn of Africa. This has led to remarkable and unprecedented international naval cooperation designed to counter piracy. Incidentally, this has also made for some rather curious bedfellows, such as China and Japan and Iran and the USA, with warships operating in close proximity and with common objectives. Several interlocking naval operations also now exist in the region. In October 2008 NATO established a counter-piracy operation called *Allied Provider* and in December of the same year the European Union initiated *Operation Atalanta*, including warships from ten countries, while in January 2009 the United States established Combined Task Force (CTF) 151.

The naval vessels rushed to the region started by providing escorts for World Food Program chartered cargo ships delivering sorely needed humanitarian aid shipments to Somalia. In order to better protect shipping in the perilous Gulf of Aden area, a Maritime Security Patrol Area (MSPA), or 'corridor' for safe passage, has now been established. However, even this does not guarantee security for shipping as, even with the significantly enhanced naval presence now in the region, there are simply not enough warships to provide comprehensive patrols. Indeed, if four naval vessels are tasked with patrolling the MSPA, only 24 per cent of the corridor and four per cent of the overall area will be covered. The gaps in the system are most starkly illustrated by the fact that vessels have recently been hijacked whilst passing through the supposedly safe corridor.

A key practical difficulty facing the commanders of the naval vessels involved is the vast area to be patrolled, especially in view of the proven reach of the pirates, coupled with the speed of attacks. Even with the increased naval presence in the region, patrols cannot be

everywhere and commonly as little as 15 minutes may elapse from attack detection to hijacking. The challenge facing the navies now patrolling the waters off the Horn of Africa is therefore to catch pirates in the act – an extremely difficult task. A further problem relates to how to tell with certainty who exactly the pirates really are. As noted above, pirates often masquerade as innocent (albeit heavily armed) fishermen. The mere possession of arms is not proof of piratical intent or guilt (almost every small vessel operating in these waters will carry arms for self-protection).

Once the pirates are in control of a vessel and have hostages at their disposal, the problem becomes significantly more complicated. In this context, a series of French yachts have been seized off the Horn of Africa and France has responded in a particularly robust manner. In September 2008 French Special Forces conducted a helicopter raid following the hijacking of the luxury yacht *Le Ponant* together with its 30-strong crew. It was noticeable, however, that in this case the French only acted to arrest the pirates once the hostages were on dry land, French forces have on two subsequent occasions stormed pirate-controlled vessels with hostages on board. In the case of the yacht *Carre d'As*, the vessel was successfully retaken and two hostages were freed on 18 September 2008. However, the storming of the yacht *Tanit* in April 2009, while successful in that four hostages were freed, one hostage lost their life in the action. Additionally, two of the pirates were killed and two injured. The three surviving pirates have been despatched to Paris for trial. This demonstrates the hazards inevitably involved in this type of intervention.

These naval operations are set against the backdrop of a series of progressively more stringent UN Security Council resolutions under Chapter VII of the UN Charter, notably Resolution 1816 (of 2 June 2008) which authorises states cooperating with the Somali Transitional Federal Government to enter the territorial waters of Somalia and use "all necessary means" to repress acts of piracy and armed robbery at sea, though in a manner "consistent with the relevant provisions of international law." This Resolution was renewed through the adoption of Resolution 1816 on 2 December 2008 which extended the international community's mandate for another 12 months. A further Resolution, no.1851 of 16 December 2008 authorised measures to facilitate more effective law enforcement (see below) and also permitted the international community to operate not only within Somali waters but also within the land territory of Somalia which is used to plan, facilitate or undertake acts of piracy and armed robbery.

Practical responses: what can the mariner do?

In short: don't go! The International Maritime Bureau (IMB) recommends that all vessels "keep as far away as possible from the Somali coast, ideally more than 250 nautical miles" offshore. If the IMB's advice is followed, shipping will be well out of very high frequency (VHF) radio range of land and, therefore, less likely to be detected by vigilant pirate groups on shore. However, a glance at the map suggests that this is easier said than done. The coastal geography of the Horn of Africa and proximity of Somalia to the constricted approaches to the Bab al-Mandab choke point at the southern end of the Red Sea makes staying 250 miles distant from the Somali coast a physical impossibility.

The alternative way of attempting to steer clear of the Somali pirates is to avoid the Suez Canal route entirely and opt for the significantly longer, and thus considerably more expensive, route by way of the Cape of Good Hope. Certainly some major shipping companies, including Svitser and Maersk have made this decision, no doubt motivated in part by the fact that shipping insurance rates for vessels passing through the Gulf of Aden have increased ten-fold of late. As noted, however, that through the use of mother ships, pirates have a remarkably reach. The *Sirius Star*, for instance, was hijacked 450 nautical miles offshore whilst taking precisely this option – en route from the Persian Gulf to the USA by way of the Cape of Good Hope.

Ordinarily, a large vessel such as the *Sirius Star*, when under way, represents a formidable target for pirates seeking to board from small boats. When moving slowly and when full-laden, however, such vessels become much easier prey. With a full load of oil on board the freeboard (that is, the distance from the surface of the water to the deck of the ship) on such vessels can be only 3-4 metres – a distance easily overcome with a grapnel and line.

The IMB therefore also advises vessels traversing pirate-threatened waters to maintain a strict 24 hours radar and anti-piracy watch (something that is difficult to achieve given the scale of some vessels and the small crews on board) and, in particular, to watch for "small suspicious boats converging on vessel". Coordination with the international naval forces present in the region is also highly recommended. Vigilance and early detection enables the Master of the threatened vessel maximum opportunity to increase speed, engage in evasive manoeuvres and mobilize anti-piracy responses.

Such responses may involve the use of high-pressure water hoses and foam. They may also include the use of barbed or razor wire to make boarding more difficult. More low-tech measures include the use of mannequins or dummy sailors to give the appearance that

more crew/guards are on board the vessel than there actually are. Additionally, new technologies are increasingly being introduced such as electric fencing for shipping (though this is not suitable in all cases as electricity and flammable vapour makes for an explosive mix) and the use of 'sonic weapons' such as long-range acoustic devices (LRAD) – which generate noises at painful, but non-lethal decibel levels with the aim of disorienting and deterring potential pirates.

Indeed, the failure of the attack on the *Seabourn Spirit*, a cruise liner carrying 302 passengers and crew at the time of the attack on the morning of 5 November 2005, has been attributed in part to countermeasures by the ship's crew. The captain headed for the open sea and increased speed to outmanoeuvre and outrun their attackers. As the pirates gave chase, high-pressure water hoses and LRAD were deployed to prevent boarding. The *Seabourn Spirit* escaped without being boarded and with no serious casualties. Nonetheless, one rocket-propelled grenade round did penetrate the hull, while another reportedly bounced off the ship's stern, illustrating the potential risk.

The option of arming non-military vessels has, however, not generally been greeted with much enthusiasm from authorities or mariners alike. In certain circumstances, private security guards have been hired. For example, Somali militiamen have on occasion been recruited to guard vessels carrying humanitarian aid shipments. Similarly, the private, armed security guards on board the *Melody* were crucial to fending off the attack above-mentioned attack on that vessel. Alternatively, in certain circumstances Flag States have embarked teams of Special Forces personnel on merchant vessels, usually of their own flag, to provide ship borne security. Rather more unconventionally, Chinese sailors have used improvised Molotov cocktails to fight off pirates attacking their vessel. The practical and logistical (as well as financial) challenges that this type of practice raise are, however, considerable.

Legal dilemmas

If pirates are captured the question then becomes one of what to do with them. As there is no functioning central government operating in Somalia, there is no authority to hand captured pirates over to. Although they can be tried under the capturing state's laws (such as the individuals captured in the course of the French actions above and the lone surviving pirate from the *Maersk Alabama* incident). However, the criminalisation of piracy is by no means comprehensive among states making it difficult to secure convictions. Furthermore, if convicted the pirates would then have

to be imprisoned in the capturing state and this actually represents a considerable financial burden. Moreover, even when such individuals have served their time, it may be difficult to return them to Somalia on human rights grounds as there is a legitimate concern that they may be subject to torture or execution on their return. All of these factors serve as disincentives to action.

The EU and USA are attempting to side-step these problems through transfer agreements with Kenya, allowing for the trial of alleged pirates there instead. This expedient option is, however, problematic given the overloaded nature of the Kenyan criminal justice system. It is also the case that legal challenges have already arisen over whether Kenya can try pirates that it did not apprehend for crimes outside its jurisdiction. Furthermore, there have been allegations of physical abuse of detainees in Kenyan prisons, laying the transferring states open to accusations of facilitating human rights abuses. The 'Rolls-Royce' option in this context is to establish a specialist tribunal specifically for pirates. This does, of course, then raise the tricky issue of who is to pay for such an inevitably highly expensive legal solution.

As a result a number of countries with naval vessels deployed to the region are effectively operating a 'catch and release' policy, simply confiscating the arms used but otherwise leaving the pirates to return another day – hardly an effective deterrent.

Prospects

Current responses to the Somali piracy phenomenon generally treat the symptoms rather than the root causes – how pirates are able to operate from secure safe havens on land and why individuals are driven to become pirates in the first place. Indeed, it is likely that naval actions are likely to, at most, result in only ephemeral victories. Driven by poverty and the plundering of Somali offshore resources, in the absence of governmental control on land to restrain criminal activities and allied to ready access to maritime skills and military hardware plus proximity to busy shipping lanes replete with tempting targets, it is little wonder that piracy has flourished off Somalia.

In this context it is ironic that the West, and the USA in particular, was instrumental in opposing the only political force that has brought a measure of stability to large parts of Somalia in recent years – the Union of Islamic Courts. This grouping of moderate and hard-line Islamists rose to prominence in mid-2006. In accordance with *sharia* law, the Courts movement "declared war" on piracy, leading to a sharp drop in attacks against shipping off the Somali

coast in the latter half of 2006. The United States backed an Ethiopian military intervention into Somalia, ostensibly in support of the largely ineffectual Somali Transitional Federal Government, which led to the toppling of the Islamic Courts by the end of 2006. Since then, piracy has been on the rise once again. Ultimately, until peace, stable political governance and the rule of law are restored in Somalia, something that unfortunately seems to be far over the horizon, piracy seems set to continue off the Horn of Africa.

BOX:

When is a 'pirate' not a pirate?

The term 'piracy' is frequently misapplied. Strictly speaking, under Article 101 of the UN Convention on the Law of the Sea, piracy only refers to acts taking place outside the territorial sea. Such territorial seas are usually 12 nautical miles in breadth, though Somalia does retain a claim to a 200 nautical mile territorial sea, though this is generally not recognised by other states. Piracy-style acts taking place within the territorial sea, that is, the vast majority of attacks worldwide, are therefore not 'piracy' in international legal terms and are instead simply referred to as "armed robbery against ships." That said, the IMB has adopted a more all-encompassing definition of piracy as, "an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance thereof." The broader IMB definition is used here.

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