RAND NATIONAL DEFENSE RESEARCH INSTITUTE

THE ARTS
CHILD POLICY
CIVIL JUSTICE
EDUCATION
ENERGY AND ENVIRONMENT
HEALTH AND HEALTH CARE
INTERNATIONAL AFFAIRS
NATIONAL SECURITY
POPULATION AND AGING
PUBLIC SAFETY
SCIENCE AND TECHNOLOGY
SUBSTANCE ABUSE
TERRORISM AND HOMELAND SECURITY
TRANSPORTATION AND INFRASTRUCTURE
WORKFORCE AND WORKPLACE

This PDF document was made available from www.rand.org as a public service of the RAND Corporation.

Jump down to document

The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world.

Support RAND

Purchase this document
Browse Books & Publications
Make a charitable contribution

For More Information

Visit RAND at www.rand.org
Explore RAND National Defense Research Institute
View document details

Limited Electronic Distribution Rights

This document and trademark(s) contained herein are protected by law as indicated in a notice appearing later in this work. This electronic representation of RAND intellectual property is provided for non-commercial use only. Unauthorized posting of RAND PDFs to a non-RAND Web site is prohibited. RAND PDFs are protected under copyright law. Permission is required from RAND to reproduce, or reuse in another form, any of our research documents for commercial use. For information on reprint and linking permissions, please see RAND Permissions.

Report Documentation Page

Form Approved
OMB No. 0704-0188

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE **2009**	2. REPORT TYPE	3. DATES COVERED **00-00-2009 to 00-00-2009**
4. TITLE AND SUBTITLE **Countering Piracy in the Modern Era. Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century**		5a. CONTRACT NUMBER 5b. GRANT NUMBER 5c. PROGRAM ELEMENT NUMBER
6. AUTHOR(S)		5d. PROJECT NUMBER 5e. TASK NUMBER 5f. WORK UNIT NUMBER
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) **National Defense University,Institute for National Strategic Studies,300 5th Avenue SW,Washington,DC,20319**		8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S) 11. SPONSOR/MONITOR'S REPORT NUMBER(S)
12. DISTRIBUTION/AVAILABILITY STATEMENT **Approved for public release; distribution unlimited**		
13. SUPPLEMENTARY NOTES		
14. ABSTRACT		
15. SUBJECT TERMS		

16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT **unclassified**	b. ABSTRACT **unclassified**	c. THIS PAGE **unclassified**	**Same as Report (SAR)**	**23**	

Standard Form 298 (Rev. 8-98)
Prescribed by ANSI Std Z39-18

This product is part of the RAND Corporation conference proceedings series. RAND conference proceedings present a collection of papers delivered at a conference or a summary of the conference. The material herein has been vetted by the conference attendees and both the introduction and the post-conference material have been reviewed and approved for publication by the sponsoring research unit at RAND.

CONFERENCE PROCEEDINGS

Countering Piracy in the Modern Era

Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century

Peter Chalk, Laurence Smallman, Nicholas Burger

Prepared for the Office of the Secretary of Defense

Approved for public release; distribution unlimited

RAND NATIONAL DEFENSE RESEARCH INSTITUTE

The research described in this report was prepared for the Office of the Secretary of Defense (OSD). The research was conducted in the RAND National Defense Research Institute, a federally funded research and development center sponsored by the OSD, the Joint Staff, the Unified Combatant Commands, the Department of the Navy, the Marine Corps, the defense agencies, and the defense Intelligence Community under Contract W74V8H-06-C-0002.

Library of Congress Cataloging-in-Publication Data is available for this publication.

978-0-8330-4793-9

The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors.

RAND® is a registered trademark.

© Copyright 2009 RAND Corporation

Permission is given to duplicate this document for personal use only, as long as it is unaltered and complete. Copies may not be duplicated for commercial purposes. Unauthorized posting of RAND documents to a non-RAND Web site is prohibited. RAND documents are protected under copyright law. For information on reprint and linking permissions, please visit the RAND permissions page (http://www.rand.org/publications/permissions.html).

Published 2009 by the RAND Corporation
1776 Main Street, P.O. Box 2138, Santa Monica, CA 90407-2138
1200 South Hayes Street, Arlington, VA 22202-5050
4570 Fifth Avenue, Suite 600, Pittsburgh, PA 15213-2665
RAND URL: http://www.rand.org
To order RAND documents or to obtain additional information, contact
Distribution Services: Telephone: (310) 451-7002;
Fax: (310) 451-6915; Email: order@rand.org

Preface

In March 2009, the RAND Corporation convened a small group of experts from the U.S. government, allied partner nations, the maritime industry, and other academic organizations to discuss piracy in the modern era. The premise of the workshop was that reconsidering the underlying factors that drive maritime piracy in the 21st century might provide valuable insights to decisionmakers and policymakers into how best to address the problem within the wider context of fostering greater order at sea.

The event was conducted over one and a half days at RAND's office in Arlington, Virginia. Workshop participants received briefings from RAND researchers and outside specialists that outlined the views of the maritime industry and presented national and international perspectives. The presentations and all related discussion were nonattributable so as to encourage open and frank debate.

This document summarizes the main points and conclusions that emerged from the workshop; it should serve as a useful resource to workshop participants as well as others interested in understanding the challenges associated with maritime disorder, violence at sea, and piracy in particular. RAND did not undertake any supporting research, nor has this report been peer-reviewed: The views recorded in this document are those of the individual participants.

The conference and the resulting proceedings were sponsored by the Office of the Secretary of Defense and conducted within the International Security and Defense Policy Center of the RAND National Defense Research Institute, a federally funded research and development center sponsored by the Office of the Secretary of Defense, the Joint Staff, the Unified Combatant Commands, the Department of the Navy, the Marine Corps, the defense agencies, and the defense Intelligence Community.

For more information on RAND's International Security and Defense Policy Center, contact the Director, James Dobbins. He can be reached by email at James_Dobbins@rand.org; by phone at 703-413-1100, extension 5134; or by mail at the RAND Corporation, 1200 S. Hayes Street, Arlington, VA 22202. More information about RAND is available at www.rand.org.

Contents

Preface iii
A Note on Compilation vii
Conference Flyer ix
Summary xi
Abbreviations xiii

Countering Piracy in the Modern Era: Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century 1
The Current Legal Framework for Countering Piracy 1
The Economic Burden Imposed by Piracy 2
Anti-Piracy off the Horn of Africa and the Opportunities for Interstate Collaboration 3
The Wisdom of Using Armed Contractors to Protect Shipping in the Gulf of Aden 4
The Extent to Which Industry Talks as Single Voice in Terms of Maritime Security 6
How to Confront Piracy off the Horn of Africa 6

A Note on Compilation

These proceedings were compiled from written notes taken during the course of the workshop. They highlight the key points that emerged as our experts presented their views or engaged in debate and are not intended to be a verbatim record. All comments are nonattributable and the notes have been amended where necessary to protect the source of the remarks.

PIRACY RECONSIDERED:

Perspectives for the 21st Century

A workshop to discuss potential future policy options for the United States.

The workshop aims to achieve international, national and public-private sector consensus on the best approaches to countering piracy in the modern era. Perspectives on legal frameworks, cost incentives and governance will be considered.

This by-invitation and no cost workshop will be of relevance to those who have an interest in the formulation of policy and strategy to tackle piracy. It is anticipated that participants will include officials from:

- International Maritime Bureau
- Office of the Secretary of Defense
- State Department
- United States Coast Guard
- United States Navy
- United States Special Operations Command
- Australia, Canada, France and UK Naval Organizations
- Maritime Industry

DATE: **March 11-12, 2009**

REGISTRATION/LUNCH:
Wednesday, 12:30 p.m. – 1:30 p.m.

TIME:
Wednesday, 12:30 p.m. – 5:00 p.m.
Thursday, 8:30 a.m. – 5:00 p.m.

LOCATION:
RAND Washington Office *(Arlington, VA)*
Main Conference Room
(Food and refreshments will be provided)

POINTS OF CONTACT:
Laurence Smallman (smallman@rand.org)
Peter Chalk (chalk@rand.org)

HELPFUL LINKS:
Location and directions:
http://www.rand.org/about/locations/wo.directions.html

Local hotels, transportation and other information:
http://www.rand.org/about/locations/conf.washington.html

RAND CORPORATION
OBJECTIVE ANALYSIS. EFFECTIVE SOLUTIONS.

RAND Washington Office
1200 South Hayes Street
Arlington, Virginia 22202-5050
Telephone: 703-413-1100

Summary

On March 11 and 12, 2009, the RAND Corporation hosted a workshop at its Washington Office in Arlington, Virginia, to consider the threat of piracy in the modern age. The event brought together stakeholders and representatives from industry, the U.S. Coast Guard, U.S. Africa Command, the U.S. Navy, and academia, as well as security analysts and officials from the diplomatic missions of the United Kingdom and Canada.

Over the course of the workshop, the participants were asked to consider, with much latitude, how the problems associated with piracy might be viewed from different perspectives. RAND researchers outlined the current state of piracy around the world and proposed a framework for examining the nexus between the various principal land-based drivers associated with crime and violence in the maritime domain. Three main factors were identified:

- governance—to include that of the coastal society and the maritime domain
- economics—how financial considerations, costs, and possibly profit affect the use of the sea and the coastal societies
- society—the extent to which a perturbed coastal society allows exploitation of disorder in its immediate maritime domain.

The agenda was structured to ensure that each of these ideas were explored and discussed from the perspectives of states, the international community, and industry.

Unsurprisingly, a wide range of issues were debated in the one-and-a-half day meeting, covering everything from which land-based factors might give rise to piracy to the appropriateness of armed mitigation measures that have been instituted to deal with the problem at sea. Six major themes, however, animated much of the discussion:

- **The relevance of the current legal framework for countering piracy.** How have the international community, national governments, and industry approached the problems off Somalia? What is working and what is not, and are there any other options? The consensus of the workshop was that current practices at the international level are sufficient, although more could be done by individual nations, perhaps within regional or subregional frameworks.
- **The economic burden imposed by piracy.** Several estimates of the economic burden imposed by piracy are available. However, the range is large and the accuracy of the figures is questionable. Workshop participants identified insurance premiums as the most significant barometer of cost, though it was pointed out that many of those affected by piracy are smaller, "mom and pop" operators that are not represented by international trade bodies and generally lack the resources to pay ransoms or increased insurance pre-

miums. In spite of the lack of good data available to inform future decisions, it is possible that a repeat of the 2005 situation that developed in the Malacca Straits region might occur. In this particular instance, once the waterway was declared an Area of Enhanced War Risk by Lloyd's of London, the three affected littoral nations—Singapore, Malaysia, and Indonesia—immediately put in place a series of coordinated initiatives to counter piracy in their respective territorial waters. The motivating rationale for the decision was to preempt any loss of revenue that might stem from a redirection of maritime traffic to other "safer" (and hence cheaper) regional sea-lanes of communication.

- **The opportunities for international collaboration that have been afforded by the joint maritime patrols off the Horn of Africa.** Most observers agree that the speed and degree of international cooperation that has led to the maritime patrols to counter Somali piracy is surprising. That said, the main trigger for much of this activity has been political self-interest, and there are questions on the general utility of a response focused solely on maritime intervention.
- **The question of using private security contractors to protect shipping transiting dangerous waters.** The hurdles to the successful employment of private solutions to protect against piracy seem to outweigh the advantages. In particular, workshop participants questioned the legality, effectiveness, and cost benefit of using armed guards (whether from a private security firm or drawn somehow from within the shipping company), and they saw the downsides of doing so as far greater than any potential benefits.
- **The extent to which industry talks with a "single voice" in terms of addressing maritime security.** While there are many international organizations that purport to speak from a supposed maritime-industry view, members of the industry are quick to acknowledge the limits of such a consensus. These organizations tend to reflect the interests and policies of larger companies based in the developed world, companies which, despite the large size of their fleets, do not constitute the majority of maritime shipping. Smaller, independent operators are not heard and generally have no representation. An industry view, even of itself, seems hard to define.
- **Means of confronting the unique nature of piracy off the Horn of Africa.** Drawing on the various themes outlined above, workshop participants explored possible options for addressing how the current scourge of Somali-based piracy might best be addressed. Targeted initiatives to boost governance and socio-economic development in coastal societies such as Eyl and Haradhere and ensuring the buy-in of industry, particularly the smaller operators, were especially highlighted.

This timely workshop explored new ideas and allowed a wide range of experts to offer comment and discuss an extensive variety of topics related to piracy specifically and maritime disorder more generally. Perhaps the most important conclusion that can be drawn from the workshop is that mitigating the complex nature of maritime crime requires the input of all relevant stakeholders—state, national, private, and nongovernmental—and must necessarily embrace measures that go well beyond the simple and expedient reactive deployment of naval assets.

Abbreviations

APEC	Asia-Pacific Economic Cooperation
BIMCO	Baltic International Maritime Council
EU	European Union
FoC	flag of convenience
IMB	International Maritime Bureau
IMO	International Maritime Organization
MoU	memorandum of understanding
P&I	protection and indemnity
ReCAPP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships
SUA Convention	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
UNCLOS	United Nations Convention on the Law of the Sea

Countering Piracy in the Modern Era: Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century

The Current Legal Framework for Countering Piracy

Piracy is defined in international law as an illicit endeavor that takes place on the high seas and which must involve at least two ships.[1] It is generally understood as a crime of universal jurisdiction, meaning all states have the right and responsibility to detain and/or arrest any person who is caught in the prosecution of the act. While this legal framework would seem to provide an adequate basis for prosecuting pirates, its practical application depends on whether national governments have sufficient domestic legislation and political will to actually bring pirates to justice—and many do not. The current situation off the Horn of Africa is indicative of the problem. Here, a number of navies have been forced to release detained pirates because it was not apparent that they could be brought to trial in the respective apprehending flag state, while returning them to Somalia—the main country of origin for most of these individuals—is not an option because of its lack of any viable domestic criminal justice system.

In an effort to overcome these difficulties, the United States, the United Kingdom, and the European Union (EU) have all entered into agreements with Kenya, whereby the latter will act as a third-party state to try Somalis detained on suspicion of engaging in armed maritime crime. The value of these accords is that they provide Washington, London, and Brussels with the option of putting pirates on shore where legal consequences can be delivered. That said, the accords only extend to the United States, the UK, and the EU, meaning that they have no relevance to the other dozen international navies operating in the region. In addition, Kenya has a capacity problem—namely where to jail detainees—and is beset with a judicial system that is both highly corrupt and inefficient. Compounding the situation is the requirement under Kenyan law that all criminals must be presented before a judge within 24 hours. This stipulation could conceivably pose enormous logistical difficulties, not least because pirates may well be seized far from the country's territorial space (the hijacking of the *Sirius Star*, for instance, took place 500 nautical miles out to sea in an area that was closer to the Seychelles than to East Africa).

In general, the current international framework for suppressing piracy is regarded as sufficient by most states and shipping companies, and there is no major push to institute more-

[1] Under international law, *piracy* is defined as "any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State."

inclusive legal definitions, such as those advocated by the International Maritime Bureau (IMB).[2] However, there is an appreciation of the need for national governments to enact and enforce domestic laws congruent with the responsibilities imposed by international agreements such as the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention). At present, there is no single point of reference that details which states actually have the necessary laws and statutory provisions to execute their obligations under these two accords, and this is certainly something that could be usefully addressed.

Global conventions such as UNCLOS and SUA could also be accompanied (rather than replaced) by additional subregional agreements that impose greater obligations and responsibilities on signatory states. The Japanese-sponsored Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships (ReCAPP), which has been operating with some success in Asia, could serve as a potentially useful template in this latter respect. The accord has already helped inform the contents of a memorandum of understanding (MoU) to counter piracy in the western Indian Ocean, the Gulf of Aden, and the Red Sea. This instrument was concluded in Djibouti on January 29, 2009, and there is no reason why it could not be similarly applied for agreements in other parts of the world.

The Economic Burden Imposed by Piracy

There is no definitive breakdown of the true economic cost of piracy, either in absolute or relative terms. The figures that have been touted—approximations have ranged from $1 billion to as much as $50 billion—are probably way off the mark (especially toward the higher end of the spectrum) and should not be taken as any metric of accuracy. What can be said with somewhat more authority is that piracy does not pose a threat to international maritime trade (which presently generates annual revenues in excess of $7 trillion), much less to the global economy. Piracy is a regional problem, the effects of which fall disproportionately on those states that are most severely affected by the phenomenon, namely Somalia, Nigeria, Indonesia, Tanzania, India, and Bangladesh.

The fact that piracy is not considered a major economic threat has caused several analysts to question the appropriateness of the current international naval response that has been deployed off the Horn of Africa. Over 14 international navies have so far dispatched ships to the region, with the average operating cost per frigate estimated to be in the range of $50,000 a day. Critics argue this response is not only out of proportion to the problem (in 2008, only 0.5 percent of shipping transiting the Gulf of Aden was actually attacked), it also represents a complete misallocation of resources, with many pointing out that a fraction of this money

[2] The IMB is a specialized division of the International Chamber of Commerce. It was established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice (International Chamber of Commerce, "International Maritime Bureau," Web page, undated. As of May 27, 2009:
http://www.icc-ccs.org/index.php?option=com_content&view=article&id=27&Itemid=16)

The IMB defines piracy as "an act of boarding or attempting to board any ship with the actual or apparent intention to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of the act." This designation is wider than that adopted by UNCLOS in that it obviates the traditional two-ship requirement and also includes attacks that take place in territorial waters.

could be more usefully spent addressing the socio-economic "push" factors on land and that give rise to piracy in the first place.

As far as shipping companies are concerned, the main economic burden imposed by piracy results from insurance premiums, although it is smaller firms that are most exposed. Global operators such as A.P. Moeller-Maersk are comparatively insulated from higher premiums, largely because they are represented by protection and indemnity (P&I) clubs[3] that can use their market "muscle" to obtain the best insurance deals for their members. "Mom and pop" shipping operators, by contrast, have no P&I representation and therefore have no independent leverage to negotiate lower insurance rates in piracy-prone regions such as the Horn of Africa. Unfortunately, it is these same small companies that frequently operate on narrow profit margins and which, therefore, have the least ability to absorb the cost of increased premiums.

While piracy may not represent a significant economic threat in and of itself, the potential fiscal ramifications arising out of the phenomenon have, on occasion, acted as a major stimulus for concerted collaborative action on the part of maritime states abutting attack-prone regions. This became readily apparent in 2005 after Lloyds of London declared the Malacca Straits an Area of Enhanced War Risk. Faced with the prospect of shipping companies choosing alternative routes to avoid having to pay additional war premiums, the three littoral states (Singapore, Indonesia, and Malaysia) held an emergency summit meeting within three days of the designation to discuss how best to tackle piracy—an issue that they had steadfastly refused to talk about for the better part of a decade. A range of collaborative measures quickly ensued, including joint maritime patrols, the creation of centralized databases to facilitate the rapid exchange of intelligence, the initiation of a nascent regime of airborne surveillance over the Malacca Straits and, remarkably, tentative moves to grant limited rights of hot pursuit into territorial waters.

Anti-Piracy off the Horn of Africa and the Opportunities for Interstate Collaboration

The rash of joint measures that have been instituted to deal with piracy off the Horn of Africa represent an unprecedented degree of interstate collaboration in the modern era. In the space of little more than four months, the EU deployed a naval flotilla ("Atlanta") to the region, with contributions from the UK, the Netherlands, Spain, France, Germany and Greece; the United States helped to establish a dedicated combined task force (CTF-151) to coordinate international maritime patrols along predefined corridors in the Gulf of Aden; several other governments sent frigates to the region, including among others Russia, India, China, Saudi Arabia, Malaysia, and South Korea; and the United Nations Security Council passed three resolutions (1816, 1846, and 1851) that collectively sanction all "cooperating" states to take whatever actions necessary to disrupt pirate attacks emanating from Somalia's territorial and maritime space.

---

[3] Underwriters limit protection and indemnity insurance to a maximum 75 percent of the liability. To cover the remaining 25 percent in the event of a claim, ship owners moved to create mutual-insurance associations. These clubs, which originated in the 19th century, are composed of influential insurers and reinsurers and will act in concert to protect the interests of their members.

The trigger for these measures was not economic—as noted, the actual fiscal threat arising from piracy is marginal and is believed to impact on less than 1 percent of the shipping passing around the Horn of Africa. Rather, the stimulus for action was political. Countries such as France, India, China, and Russia only became involved when their flag vessels were attacked. The U.S. government was largely forced to take action following the hijacking of the M/V *Sirius Star*, when Asia-Pacific Economic Cooperation (APEC) leaders personally approached then–Secretary of State Condoleezza Rice demanding to know what the United States planned to do to address the problem. Domestic and international pressure became even more marked after the attack on the Ukrainian-registered M/V *Fiana*, which raised fears that advanced weaponry would find its way to Islamist insurgents battling in Somalia. These latter two incidents also gave a concrete face to an issue that had already received a fair amount of media attention throughout the year. For many average citizens, continuing to allow gangs to operate with apparent impunity off the Horn of Africa was simply not an option.

Although questions have been raised concerning the overall utility of the armed naval response off the Horn of Africa, the cooperation it has engendered highlights one vital point: The manner by which the use of the seas has evolved over several hundreds of years dictates that the maintenance of maritime order ultimately relies on joint interstate agreement and enforcement. This reality has provided a unique opportunity for both the U.S. Navy and partner nations to engage one another and work out issues of interoperability and coordination. While it is true that piracy will never be comprehensively mitigated by purely militaristic sea-based deterrence—there must be viable incentives on land to discourage maritime marauding—the type of multilateral action that is currently being witnessed in the Gulf of Aden does arguably offer a template for furthering joint initiatives aimed at heightening the overall level of governance on the world's oceans. If appropriately developed, such endeavors could be usefully formalized into a nascent regime of interstate collaboration that not only offers a suitable framework for meeting other transnational threats such as illegal fishing, environmental degradation, and drug trafficking but that also is ultimately able to influence the weight attached to the normative value of national sovereignty.

The Wisdom of Using Armed Contractors to Protect Shipping in the Gulf of Aden

Apart from triggering government action, the exponential increase in piracy off the Horn of Africa has prompted initiatives on the part of the private sector. UK-based firms that offer commercial protection services, such as Eos, Hollowpoint, Anti-Piracy Maritime Security Solutions (APMSS), and Secopex, have said they would be willing to provide military-trained personnel—both armed and unarmed—to help safeguard ships transiting the Gulf of Aden. The U.S. security contractor Blackwater (now called EI) has made similar overtures in addition to offering at least one boat, the *MacArthur*, to undertake dedicated escort duties for tankers and freighters passing through the region.[4] At the time of writing, no shipping company had actually taken any of the contractors up on these offers, largely because the asking price is beyond what most owner-operators are willing to pay (especially when weighed against the

[4] The *MacArthur* has been available for antipiracy patrols since April 2009.

relatively low probability of actually being attacked). The cost of a three-man security detail, for instance, runs to around $21,000 a day.

However, even if charges were lowered, employing maritime security contractors poses problems on several fronts. The use of armed guards would, at the very least, have immediate ramifications for the right of innocent passage, as most coastal states do not allow ships to enter their territorial waters if they have weapons on board. Equally, because most traditional flag states do not allow armed personnel on vessels they register, they could increase the incentive for ship owners to sail under flags of convenience (FoCs)[5]; such a trend would merely compound what is an already amorphous and poorly regulated industry. Death or injury to an innocent party as a result of an exchange involving security contractors would almost certainly expose ship owners to exorbitant compensation claims (which would not be covered by insurance) and could very well result in criminal charges being laid against them. It is not apparent what authority (if any) an escort boat has to board a pirate vessel that is threatening a vessel owned by their client (under UNCLOS, only warships that are clearly identified as being in the service of a sovereign government retain this right). Underscoring all of these considerations is the real possibility of pirates, faced with prospect of having to engage armed guards, elevating their own threshold of violence, storming vessels with an active intent to use lethal force against any they confront (including crew, who until now have been relatively well treated).[6]

The very real difficulties inherent in employing armed guards has been recognized by major commercial shipping firms, including A.P. Moeller-Maersk, the largest supply vessel operator in the world, as well as key nongovernmental stakeholders such as the IMB, the International Maritime Organization (IMO), and the Baltic International Maritime Council (BIMCO). These entities argue that any possible deterrent benefit from using security contractors is far outweighed by their attendant costs and that a far more preferable approach is to safeguard shipping through combined state and industry efforts, in particular:

- enhancing the overall level of policing on the seas
- ensuring that any military assets deployed in pirate prone areas are properly coordinated and work according to transparent rules of engagement
- encouraging target hardening by requiring vessels transiting dangerous regions to sail over 15 knots (not a panacea, as there have been cases when ships traveling near or over 15 knots have been attacked),[7] adhere to predefined or "cleared" maritime corridors, maintain close communication with coastal authorities, sail at night (if transiting the Gulf of Aden), and have prepared and practiced protocols for dealing with hostage situations (including have defined "safe room" where crews can hold out for a period of time)
- installing nonlethal defenses such as electrified perimeter fences to prevent unauthorized boardings and long-range acoustic devices that emit loud, disorienting blasts of sound.[8]

---

[5] Prominent FoCs include the Bahamas, Malta, Panama, Liberia, Honduras, and Cyprus.

[6] Somali pirates rarely harm the crew they abduct as they want to maximize bargaining leverage in subsequent negotiations for their release. Thus far only one seaman, a South Korean, has been killed at the hands of his captors.

[7] The traditional wisdom is that pirates will not attack a ship sailing over 15 knots. However, this should not be viewed as a panacea: The *Sirius Star* was hijacked while traveling at 14.5 knots, and there have been instances when smaller vessels have been boarded at speeds up to 19 knots.

[8] It should be noted that large operators such as Maersk remain somewhat skeptical of these initiatives. Although perimeter fences do reduce the ease of boarding a ship, they also increase difficulties of evacuating a crew in the event of an emer-

The Extent to Which Industry Talks as Single Voice in Terms of Maritime Security

To an extent, industry does have a specific perspective in relation to maritime security. Moves toward greater regulation, for instance, are by and large eschewed for fear that it will merely heighten costs, reduce turnover, and limit commercial efficiency. Most companies also share a general reluctance to employ armed guards to protect their vessels and generally welcome an increase in sovereign maritime naval patrols to police the seas, as long as they are properly coordinated and controlled.

Beyond these areas, however, there does not appear to be a unified "access" point through which to engage the private maritime sector. While the IMO, IMB, and BIMCO have made efforts to be as inclusive as possible, they are not operational entities, and much of the current debate concerning order at sea has consequently been dominated by the prerogatives and perspectives of larger players such as A.P. Moeller-Maersk. This is problematic, as roughly 65 percent of the contemporary pirate target set consists of smaller owner-operators which, as noted, are already forced to absorb the lion's share of elevated insurance premiums demanded in areas such as the Horn of Africa. Not surprisingly, this mismatch in representation and burden has engendered a highly diverse range of perspectives as to how great a threat maritime criminality actually is. According to some analysts, this has served to constrain the overall effectiveness of international responses to piracy, the relatively high degree of cooperation currently being witnessed off the Horn of Africa notwithstanding.

One area where there is virtually no coordination in industry is ransom payments. Although it is certainly apparent that shipping companies are prepared to negotiate for the return of their vessels (largely because governments typically consider a captured ship as a *fait accompli*), universally they do not want others to know what their limits are or what procedures they follow when dealing with pirates. Unsurprisingly, there is nothing that even remotely reflects an industry-wide policy on ransoms, with large and small firms alike concurring that the more opaque the issue remains the better.

The one factor that could change this attitude would be a case involving the hijacking of a U.S.-flagged vessel. A.P. Moeller-Maersk in particular remains concerned about such a scenario given the existence of U.S. statues that prohibit materially supporting terrorist/criminal organizations.[9] In the absence of transparent, judicially accepted protocols for handling a hostage situation, shipping companies could either be exposed to legal sanction for agreeing to a ransom or forced to desist from making such payments, which in the latter case would greatly elevate the risk to their vessels and crew.

How to Confront Piracy off the Horn of Africa

The swath of pirate attacks currently being witnessed off the Horn of Africa are a direct manifestation of the general lawlessness and anarchy that has been such an endemic feature of Soma-

---

gency. As far as acoustic devices are concerned, it is highly questionable that these would constitute an effective deterrent in the face of a determined raiding party.

[9] It should be noted that the RAND workshop occurred prior to the April 2009 hijacking of the *Maersk-Alabama*—the first case of a U.S.-flagged vessel being attacked in the waters off the Horn of Africa.

lia since the fall of the Said Barre dictatorship in 1991. Until this void in regional governance is filled, the incidence of piracy in this part of the world will continue to flourish, threatening a key maritime corridor that connects the Indian Ocean with Europe via the Suez Canal.

Problematically, all of the processes that have been enacted off the Horn of Africa have failed to engage two key elements: the Somalis (western intelligence collection efforts on the ground are virtually nonexistent, and there are no mechanisms for understanding how citizens in the country view the problem); and the owner-operators of small "feeder ships" that make up most of the traffic in the Gulf of Aden. Just as importantly, the naval response, while providing a certain deterrent effect, will never be able to comprehensively confront the problem given the expanse of the area to be covered (over 1.2 million square miles) and because it only addresses piracy at its end point—on the sea—rather than at its root—on land.

In order to mitigate attacks off the Horn of Africa, or at least lower incidents to manageable proportions, it is essential that the international community move to rectify these failings. With regards to Somalia, incentives must be given to local coastal societies to cease supporting pirate gangs that, in many cases, provide these communities with their only economic lifeline (20 percent of ransoms are typically reinvested to boost infrastructure and employment in coastal towns and hamlets). "Soft" socio-economic development initiatives aimed at supporting small-scale industry and cooperative businesses that do not rely on piracy would seem to be the most viable means of achieving this objective. If and when a recognized governmental authority is in place in Somalia, these efforts could be backed up with "smart" capacity-building endeavors aimed at boosting and sustaining viable systems of littoral surveillance and interdiction.

It is also vital that more concerted moves are made to harden the smaller owner-operators who make up the bulk of the traffic (upwards of 65 percent) transiting the Gulf of Aden. Greater representation needs to be given to these companies in debates concerning maritime security, and insurance discounts should be considered as incentives to encourage them to develop basic security protocols (few of these firms actually have contingencies for preventing or otherwise dealing with a hijacking situation, much less practice them). Global shipping companies arguably need to accept greater responsibility in helping to ameliorate this situation, both by actively ensuring that the voices of smaller operators are heard and by more evenly spreading insurance risk across the industry as a whole. Given the amoral and overwhelmingly economic nature of maritime trade, however, it may be years before we see action of this sort and, indeed, it may not happen until a major event occurs that affects all shipping (such as an environmental catastrophe or an unprecedented hike in transit fees for the Suez Canal—one of the world's truly nonsubstitutable shipping chokepoints).

Finally the use of direct military action against pirate dens on land, although theoretically sanctioned by United Nations Security Council Resolution 1851, should be avoided at all costs. The 2nd and 3rd order implications of such a course of action will almost certainly have repercussions that go far beyond anything that we have yet witnessed off the Horn—especially if they result in widespread civilian collateral damage. Under such circumstances, the dangerous politicization (and radicalization) of what has hitherto remained a purely economic phenomenon becomes far more likely.