

COUNTERING PIRACY OFF THE HORN OF AFRICA

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USAWC CLASS OF 2011

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USAWC STRATEGY RESEARCH PROJECT

COUNTERING PIRACY OFF THE HORN OF AFRICA

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ABSTRACT

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Piracy off the Horn of Africa has been on the rise over the last two decades. The reason behind this is the failure of the international community to focus on the hub of the region's piracy: The failed state of Somalia. The current maritime effort, though costly compared to the United Nations' and the African Union's mission in Somalia, have produced no significant result so far and may even worsen the situation if expanded with hostage rescue operations and strikes against pirate assets on Somali territory, as this will trigger an escalation in piracy violence, while pushing the piracy organizations into the hand of terrorist groupings like the Al-Shabaab that are increasing their influence on the mainland. The solution remains a comprehensive approach including an extensive stabilization, capacity building, development, and state building effort in Somalia, and though the political will to embark on such a mission may be unattainable at the moment, such an effort is none the less necessary if piracy off the Horn of Africa is to be stopped.

COUNTERING PIRACY OFF THE HORN OF AFRICA

The severity of the problem off the coast of Somalia is a relatively recent phenomenon. Yet I am afraid that the problem will not only be with us for a long time to come, but also has the potential to become worse unless both Somalis and the international community address its root causes.

Secretary-General Ban Ki-Moon
United Nations¹

Piracy off the Horn of Africa has been on the rise over the last two decades despite the increased maritime efforts of the international community to counter and if possible defeat the threat. This paper raises the concern that the seemingly overwhelming focus on maritime countermeasures, especially if combined with surgical land operations against the pirate organizations, pirates, and their ships, may actually be counterproductive and increase the overall threat by further destabilizing key areas of the region. Instead this paper argues the necessity of a comprehensive approach directed towards the root cause of piracy, including stabilization, capacity building, development, and state building in the hub of piracy off the Horn of Africa: The failed state of Somalia.

The Basis for Contemporary Piracy

Though piracy has existed for millennia, one thing has not changed: It remains a money-focused criminal activity². But while the goal is clear, reasons behind piracy can be manifold. Often poverty counts as a driving factor, either as a result of armed conflict, of unequally divided resources within an otherwise comparably rich society, or of economic or structural changes that cause unsustainable migration and remove the economic foundation by creating a high unemployment rate or by making former jobs

obsolete. Equally, piracy can be driven by a necessity to finance illegal activities such as obtaining weapons needed by insurgent or terrorists, often made possible by the lack of law and order. Even thrill seeking combined with recognition and honor may be a driving factor in some societies.³ However, these conditions do not by themselves create a surge of piracy.

Therefore Martin N. Murphy⁴ in his book Small Boats, Weak States, Dirty Money⁵ suggests seven factors that create the foundation for successful and active piracy. The first is “legal and jurisdictional opportunities”. These opportunities are represented primarily by the current limitations of the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, of which article 101 states that “piracy consists of any of the following acts:

(a) 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:

(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;

(b) 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;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”

This definition raises one key problem area: It applies to the high seas only⁶ and does not provide any authority inside national waters, limiting the list of counter-piracy actions available, especially when dealing with states that either allow or cannot provide the security framework necessary to control piracy activities. The opportunities are further facilitated by the lack of legal basis on which to force states to deal with piracy within their territories.

The second factor is *favorable geography*. Besides the presence of coastal areas as an obvious precondition, a favorable geography represents a “target rich environment” in the form of heavy merchant traffic, thus providing enough opportunities to build a reliable economic foundation for piracy organizations to survive on.

Thirdly, *conflict and disorder* is a contributing factor. Countries and regions torn by armed conflict tend in general to facilitate crime, either as a means of survival or as an opportunity for economic gain. In particular, internal armed conflict can function as an incentive for piracy as well as other forms of crime, providing warring parties with the financial basis necessary for funding weapons as well as the mercenary organizations that provide the war lords with their power base.

The fourth factor is *under-funded law and enforcement/inadequate security*. An effective, well-functioning and non-corrupt national legal and security structure is a precondition for upholding the law and combating crime. However, besides requiring the necessary knowledge and training system, maintaining such a system is costly. Especially in poor or underdeveloped countries, the creation and funding of effective security structures and forces is often beyond the state’s abilities, thus creating a permissive security environment in which crime can blossom. Inadequate funding may

also indirectly cause members of the country's security forces to align with the piracy organizations by accepting bribes or even actively providing information to the organizations in order to increase income.

A fifth factor that facilitates piracy is a *permissive political environment*. Such an environment is often found in weak states that in general are incapable of effectively combating piracy and therefore rather than risking a confrontation, silently accept the piracy organizations. Alternately, there are also states that actively support piracy as a means of destabilizing regional neighbors as well as providing funding to key persons in a corrupt system. All such approaches facilitate piracy.

The sixth factor is *cultural acceptability and maritime tradition*. A precondition for piracy is the availability of ships and the presence of the maritime skill set that allows pirates to navigate and board ships in the open seas as well as in the more shallow waters closer to land. Equally, local populations tend to descend more easily and quickly to piracy activities if piracy has been a historical tradition.

Martin N. Murphy's last factor is *reward*. In other words, the gain needs to be worth the risk. This concerns not only the value to be gained by the piracy activities, but also what can be earned by alternatives such as other crime or job opportunities if such exist. Thus it can be expected that the fewer the alternatives and the higher the gain to be made, the more of a risk the pirates will be willing to take.

Finally, *lack of viable alternatives* should be added as a factor. Whether self-imposed or externally driven, extreme poverty combined with very high employment rates provides a potentially life threatening situation to a larger group of people that in itself induces crime as a means of survival, often under the leadership of more

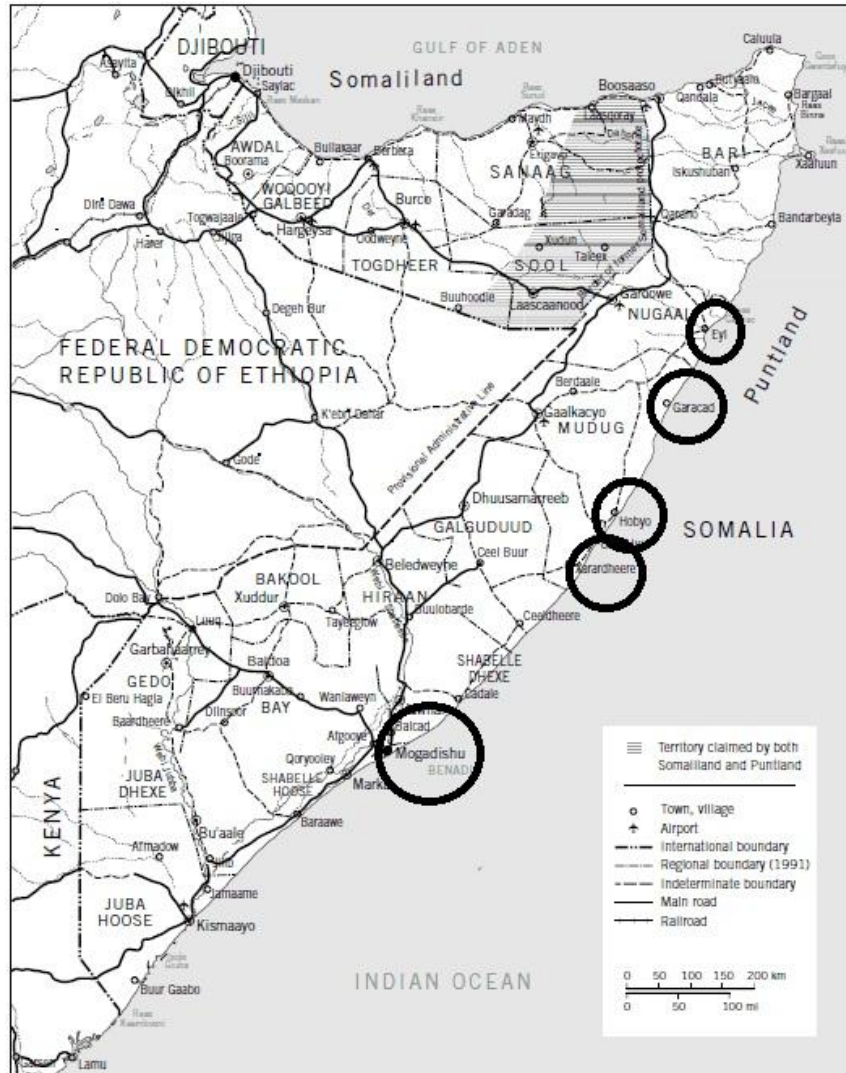
resourceful persons. Thus, though these factors in themselves may not create pirates, they play an important role in creating a basis for recruitment to piracy organizations.

Of these factors, only “favorable geography” cannot be influenced. The remaining factors can be affected, though most require long term engagement. Few factors point in the direction of military force, let alone maritime operations, as the obvious solution.

The Rise of Contemporary Piracy at the Horn of Africa

In the words of the UN Secretary-General, Piracy at the Horn of Africa is a relatively new phenomenon that has its land base on Somali territory only,⁷ though there are indications of some Yemen-based logistic support.⁸ The piracy activities seem to be linked to primarily two Somali-based groupings/clans – the Hawiye and the Darood clan – focused in five areas along the Somali coast: Eyl, Garacad, Hobyo, Xaradheere, and Mogadishu, making Puntland in the north eastern part of Somalia the current epicenter of piracy activities.⁹ These groupings have been active in the current power struggle in Somalia, at least since the end of the 1980’s, using the means gained from piracy activities to finance the acquisition of weapons in support of that effort.¹⁰

Piracy at the Horn of Africa has been increasing constantly since the beginning of the 1990s.¹¹ Prior to that, attacks were limited, both in numbers and intensity, primarily targeting smaller vessels. The piracy threat entered a new phase in the year 2000 with a change in approach focusing on high jacking ships and their crews, both to be released for ransom only.¹² The current Somali-based piracy activities go far beyond Somalia’s territorial waters including the Bay of Aden and the northwestern part of the Indian Ocean as far as within 200 miles of the coast of India.¹³



Source: Conciliation Resources.¹⁴

Piracy operations at the Horn of Africa are carried out using a method unique compared to piracy operations in other parts of the world. When operating in waters close to land, the pirates use small boats, often smaller fishing boats, which both give them an alibi to be in the area and make them difficult to distinguish from the ordinary fishermen, allowing them to attack almost without warning.

When a possible target approaches, their fishing activities stop, and the target is attacked using small arms and in some cases man-portable rocket launchers to

threaten and intimidate the target to stop and surrender. If this does not happen, the pirates may try a forceful entry by employing small skiffs, simply by jumping aboard if it's a smaller ship, or by using ladders and climbing gear. When aboard, the armed pirates then force the crew to surrender their ship, taking them hostages and bringing them and in some cases also the ship to Somali waters, where it is anchored to be released when the demanded ransom has been paid.¹⁵ When further from land, the pirates use large hijacked fishing or merchant vessels as mother ships, giving them an extended oceangoing capability. Applying the same method as describe above, using small skiffs as the actual attack boats, this allows the pirates to carry out operations in virtually the entire western part of the Indian Ocean, intercepting targeted ships at sea as far from Somalia as the west coast of India.¹⁶

When it comes to negotiation the release of hostages, the request for ransom is often facilitated by an intermediary in a neighboring country, who arranges for the money to be paid and transferred to the pirates as well as the subsequent release of hostages and ship. The ransom will normally be a cash payment, making the money trail almost untraceable.¹⁷ Finally, the pirates may be supported by an intelligence organization, using informers placed in Dubai, Yemen, and at the Suez Canal. There are even indications of "London-based consultants" assisting in selecting possible targets, suggesting a very effective and organized piracy organization.

The effectiveness of these methods is documented by the fact that in 2010 1016 seafarers were taken hostages, 13 injured and eight killed off the Horn of Africa, with seven of the eight killings taking place in the Bay of Aden. A total of 49 vessels were hijacked ranging from fishing vessels, yachts, and tugboats to tankers, Ro-Ro and

container ships.¹⁸ The killings and injuries represent an all-time high, indicating an increased willingness to use violence and weaponry in order to force attacked ships to a stop, a trend that is relatively unique to piracy of at the Horn of Africa.¹⁹

Incidents of International Piracy and Armed Robbery at the Horn of Africa, 1998-2011 ²⁰			
1998	19	2005	47
1999	16	2006	31
2000	29	2007	60
2001	22	2008	134
2002	23	2009	214
2003	22	2010	219
2004	13	2011 (Jan 18th)	22

In 2010, the number of attacks was the highest ever, totaling more than 200 attacks.²¹ With more than 680 hostages and 60 vessels held in Somalia at present,²² the Somali piracy has developed into a land-based disease with an international, maritime symptom, which does not change the fact, however, that any solution to the piracy threat at the Horn of Area will have to deal with the situation in Somalia. Seeking such a solution requires an understanding on the factors and root causes behind the rise of piracy.

The Contemporary History of Somalia

The development of piracy coincides with the internal developments in Somalia. Thus up till 1991, Somalia was marred by civil war, but remained under the dictatorship of Major General Said Barre, who violently suppressed any opposition to his rule, particularly in the northern parts of the country.²³ Despite this approach, or perhaps because of it, the opposition in the north grew in strength over time, reducing Said

Barre's effective rule to the area around Mogadishu with most of his army deserting to rejoin their respective clans. In January 1991, the opposition defeated Barre in Mogadishu with the result that the central government collapsed and along with that the entire state of Somalia. This coincides with the beginning of the "era" of contemporary piracy in Somalia.

In 1992, the international community decided on a humanitarian/peace enforcement operation, initially consisting of the American led Unified Task Force (UNITAF) and later on by the United Nations Operations in Somalia (UNOSOM I and II).²⁴ Both failed to stabilize the country and especially to create a secure environment in Mogadishu, which was under partial control of several different militias. In 1994 and 1995, the missions were closed down, having achieved none of their objectives. The missions were followed by several regional peace initiatives designed to bring the warring factions together to create a transnational government. The initiatives succeeded in 2000, when an Ethiopian-led conference resulted in the creation of the Transnational National Government (TNG). At the same time, Somali piracy entered the new phase mentioned earlier by initializing high jacking of larger vessels.

The TNG was followed by the establishment of a Transnational Federal Government (TFG) in 2004, facilitated by Kenya and supported by the United Nations; a year that saw a decline in piracy activities. However, the Somali governments failed to assert effective control over its territory, let alone its waters. With the state in reality devoid of security forces, the warring factions supported by outside forces from countries such as Djibouti, Eritrea, Ethiopia, Egypt, Yemen, and Libya, remained in control, and in 2006 the traditionalist Islamic Courts Unions (ICU) – a declared opponent

of piracy²⁵ - with its military wing, al-Shabaab, managed to take Mogadishu by force. In response to ICU's offensive and on a mandate from the United Nations, Ethiopia invaded Somalia, defeating the ICU and reestablishing the TFG control of Mogadishu. As a result, al-Shabaab turned independent and continued the fight against the Ethiopian "occupying" forces based on a strong religious foundation of traditional sharia law. As in 2004, the new development coincided with a decrease in pirate attacks.

In 2009 Ethiopia withdrew from Somalia, once again in reality leaving the control to the warring parts, among which al-Shabaab – now declared a terrorist organization by the U.S. due to its ties with Al Qaeda – remained by far the strongest, and with the TFG as a nominal government only. It is estimated that most of south-central Somalia as well of parts of Mogadishu is outside TFG control today, with Puntland and Somaliland in the north and northeast suing for autonomy. The United Nations remains in Mogadishu with a force of 8,000 soldiers²⁶ in order to facilitate humanitarian assistance and support the efforts of the TFG. Still, the United Nations describes the security situation as "fragile and unpredictable", expressing concern over the influence of the high number of foreign fighters in Somalia. Since the withdrawal of Ethiopian forces, piracy activities have remained at a record high.

Factors behind Contemporary Piracy in Somalia – Finding the Root Cause

Recognizing the apparent connection between piracy and developments inside Somalia, Martin N. Murphy's seven factors may offer an explanation as to why Somalia is so prone to piracy, which again can lead to an understanding of the root cause behind the Somali piracy.

When it comes to the *legal and judicial situation*, the Somali piracy threat has been “protected” by the UNCLOS until recently, allowing the pirates to high jack ships in international waters, where the UNCLOS is in effect and then bringing them into the safe haven of Somali territorial waters and ultimately Somali harbors, where Somali law and law enforcement only rules. This has made any maritime anti-piracy effort a race against time, where the outcome has been determined by whether the pirates can be intercepted before passing that magic border. Given the relatively slow speed of any ship, interception has been possible only when ships from the maritime forces have been very close to the actual event. Equally, UNCLOS has prevented legal anti-piracy operations to free the held hostages and ships, even though the position has often been known, as ships remain under national control. Another problem has been a lack of legal means under which to prosecute, convict, and imprison pirates caught by international maritime forces, which in some cases has forced the release of pirates on the spot, even though they were caught in the act.²⁷ For that very reason, the United Nations has felt it necessary to urge states to development procedures and adjust domestic laws.²⁸ Though Somalia may have the laws necessary to prosecute Somali pirates, the incapable government and the country’s apparent lack of security apparatus has made a solution impossible to carry out, leaving the nation which has caught the pirates in international waters to come up with a national solution.

Equally, the *geography* off the Horn of Africa has been very conducive for piracy. Firstly, Somalia has a long coastline allowing for a number of bases from which the pirates can operate, but more importantly the area represents some of the world’s larger trade routes going via the Suez Canal and the bottle neck of the Bay of Aden,

connecting Asia with Europe, North America and even the northern part of South America.²⁹ The area includes access to harbors of all of the important oil producing countries on the Arabian Peninsula. A key feature of the area is the Bay of Aden between Yemen and Somalia with its limited width of approximately 200 miles, and with its position at the southern tip of the Red Sea. Any ships going through the Suez Canal will have to pass the bay, forcing not only the ships to congest, but also to reduce their speed, providing an especially alluring, target rich environment. More than 20,000 ships pass through the Suez Canal on a yearly basis.

Being marred by civil war for more than 20 years, Somalia provides an environment of *conflict and disorder* that works as an incentive for piracy and other forms of crime. Not only has the war been destructive to the country's economy, resulting in more than 1.4 million internally displaced persons,³⁰ a very high unemployment rate, and a very low official per capita of only \$600 (2008),³¹ but it has also created the need to finance the warring factions³² as well as bringing weapons and foreign fighters³³ into and shipping refugees out of the country, primarily to Yemen. While the latter has created a base for sea-based smuggling, the former has created the need for high cash income operations that – given the limited options inside Somalia – has fueled the Somali variant of piracy focused on high jacking, with hard cash in the form of the paid ransoms being the goal of the activities. The result has been a black economy developing around the piracy activities that not only finances the war, but brings much need money into the local societies, distributing the ransom between the pirates, ground militia in control of the area, local community leaders, “financier”, and “sponsor”, with approximately 50 percent of the money staying within the local area.³⁴

Law enforcement and government controlled security organizations are virtually non-existent in Somalia, with the government relying heavily on the mission of the United Nations, which focuses primarily on Mogadishu. With a military basic training structure not yet rebuilt, no coast guard, and lack of funding of whatever limited police force that exists,³⁵ the government has no means to affect the warring factions, let alone counter the piracy organizations. Thus the piracy threat has had the opportunity to operate and expand in Somalia, virtually without limitations.

Obviously, with an impotent central government, the *political environment* in Somali remains *permissive* as the warring factions – being the de facto rulers of Somalia – as well as corrupt officials, local leaders, and the population all want or need the revenue that results from piracy. But also internationally, the political environment has been permissive due to the unwillingness to prosecute and imprison pirates caught by the maritime task forces as well as pursue pirates inside Somali waters – a possibility that has been in existence since 2008, mandated by United Nations Security Council Resolution 1816 and 1838. Though often defended as a legal consideration, the foundation for prosecution seems to be laid in these two resolutions.³⁶ Instead many western countries have sought bilateral agreements with Somalia's neighbors, primarily Kenya and Yemen to the extent that Kenya has now refused to take any more pirates out of security concerns³⁷, reopening the possibility that the task forces might again start to release pirates immediately after capture. Equally, the international community has been unable to agree on an international United Nations led tribunal that would allow the effective prosecution of pirates by removing any concern of responsibility created by differences in the nationality of captor, hostage, pirate, and ship owner.

Somalia with its long coastline also has a long *maritime tradition* as the many tribes along the coast used to base their existence on fishing in local waters. However, as a result of the total collapse of central government control over Somali territory following the fall of Said Barre at the beginning of 1991, these waters were opened up for dumping of chemical residue as well as illegal exploitation by primarily European and East Asian fishing vessels, effectively removing what was the primary source of income for many of the local communities.³⁸ As a result, local fishermen armed themselves, attacking the foreign fishing vessels, either demanding compensation by the crew directly or keeping crew and ships hostage until a ransom was paid by the owner. The fishermen often described themselves as “coast guard protecting Somali waters and resources”,³⁹ creating a *cultural acceptance* of these actions as they came to be seen as both just and “legal” by the local population. The piracy operations soon became more organized and violent as entire clans took on these “missions”, but even then the sense of justice remained and was often exploited by piracy organizations to gain support.⁴⁰ Even as late as 2008, caught pirates defended this right when interviewed by representatives from a United Nations Monitoring Group, explaining that “their fishing resources are being pillaged daily by international shipping vessels from Asia and Europe.”⁴¹

When it comes to *reward*, the potential for making money is substantial. With the average ransom at US\$ 2 million⁴² compared to the annual average income of US\$ 600, the profits by far surpass what may be earned legally in Somalia. Combined with a limited risk of being caught by either the almost non-existent Somali security forces or even the international maritime task forces, and with international unwillingness to

prosecute caught pirates, piracy becomes a very lucrative and compelling industry. The amount of money made also defines and explains the pirates' willingness to take risk, which may explain why the increased maritime efforts have had no significant effects.

Finally, the *lack of viable alternatives* to piracy is evident in Somalia. As the warring factions fight over control of Somali territory, foreign investments are virtually at non-existent, keeping the unemployment rate high and local communities focusing on survival. With agriculture limited more or less to self-sustainment, and the waters overfished by foreign vessels, the only remaining alternative is joining up with the one of the insurgent groups, which is both more risky and less well paid than piracy. Combined with the low pay level of the few remaining jobs, often as employees of international humanitarian organizations or the United Nations, the incentive for turning to piracy is very high.

In general, the circumstances around Somalia are very conducive to piracy; however two themes seem common through all the factors: Somalia's apparent lack of stability as a result of a failing government unable to provide security, basic welfare, and development, but also the lack of focused and substantial effort from the international community. It therefore seems likely that any real effort to terminate the piracy threat at the Horn of Area must include an internationally driven solution to Somalia's status as a failed state.

The Current Anti-Piracy Effort and its Effect – Focusing on the Symptom

So far, the international counter-piracy effort has focused on preventing and countering pirate attacks at sea. Though AMISOM,⁴³ the United Nations mandated security peace keeping force, is operating in Mogadishu in an effort to bring some level

of security in selected areas of operation and facilitate the limited capacity building efforts that takes place under the auspices of United Nations Development Program,⁴⁴ the force has lacked funding from sponsoring countries. In total, sponsorships have provided only US\$ 150 million to the United Nations efforts. The lack of economic support has also had a negative effect on the Somali security forces that the United Nations are trying to sustain and increase in size.⁴⁵ Thus, though capacity building efforts are ongoing, they remain limited in extent and completely inadequate as documented by AMISOM efforts to establish control over Mogadishu, while southern Somalia remains under Islamist control, primarily in the form of the al-Shabaab. At the same time, the situation in most other regions continues to deteriorate as a result of increased Islamist influence. This development threatens the fragile build-up of anti-piracy capacities that has taken place specifically in Somaliland and Puntland and though small has resulted in the interdiction and arrest of suspected pirates.

As a result of the overall security situation, the humanitarian effort has been reduced to critical lifesaving activities.⁴⁶ Another result of the development inside Somalia is a possible United States engagement with non-Islamist elements in selected regions to counter the spread of the increasing threat. This alignment focuses on groupings in Somaliland and Puntland that - given these regions' coast bound geographical location - may very well be involved directly or indirectly in piracy.⁴⁷ In summary, the current international efforts in Somalia have so far not been able to establish or contribute to development, stability or even security, nor have they been able to stem the spread of Islamist groups or improve the humanitarian situation in any

significant way. Equally, the efforts have not had any discernable impact on the piracy organizations.

The maritime focused effort on the other hand, has been relatively well funded and supported, facilitated by the United Nations and the Security Council's resolutions allowing international maritime counter-piracy operations to continue into Somali territorial waters.⁴⁸ A contact group with three working group has been established in cooperation with the International Maritime Organization, working on measures to improve coordination, capacity building, shipping awareness, and diplomatic and public information as well as identifying the legal challenges connected to the counter-piracy effort.⁴⁹ Despite this, many countries still lack the domestic law and/or willingness to prosecute pirates.⁵⁰ Regionally, three information-sharing centers are to be created under the auspices of the Djibouti Code of Conduct counter-piracy cooperation agreement; however none of the signing countries have any significant means to actively combat the piracy threat at present, and have therefore primarily offered to receive, prosecute, and imprison pirates caught by the maritime task forces working off the Horn of Africa.⁵¹ These task forces have increased over time and now consist of European Union Naval Force Somalia's Operation Atalanta,⁵² NATO's Operation Ocean Shield,⁵³ the Combined Maritime Task Force 150, 151 and 152⁵⁴ as well as independently employed naval vessels from countries such as China and Russia, totaling up to 50 vessels at a cost of more than US\$ 600 million a year.⁵⁵ While Task Forces 150 and 152 are charged with capacity building, the other task forces patrol the Red Sea, the Bay of Aden, the Coast of Somalia as well as the western part of the Indian Ocean covering an area of more than 2,000,000 nautical square miles; an area

10 times the size of Germany.⁵⁶ As the size of the area makes it impossible to patrol effectively, recent efforts have focused on the Bay of Aden halving the number of attacks from 2009 to 2010,⁵⁷ while seeing an increase in traffic through the Suez Canal. While this may prove that a maritime effort can reduce the number of pirate attacks locally, it has had no effect on the piracy threat as a whole, since the total number of attacks has gone up in the same period. Instead, both the level of violence as well as the success rate of the attacks has gone up, with the latest development being abduction of hostages while leaving the ship behind – a possible result of the pirates being forced to operate far from the coast⁵⁸ - documenting that the pirates have merely been pushed into other areas and have changed their *modus operandi* accordingly.⁵⁹ Given the vast area, countering this development even to a small degree will require a substantial increase of the number of ships allocated to the task forces. The task forces are also charged with escorting ships carrying humanitarian aid to Somalia, yet though these ships may arrive safely, the lack of security inside the country prevents any effective distribution as mentioned earlier. Thus, except for a documented local effect, it is difficult to detect any significant, lasting contribution from the maritime effort in countering the piracy problem despite an estimated cost of four times the budget of the United Nations operations in Somalia. The effects of the capacity building carried out by Task Forces 150 and 152 remain to be seen.

When it comes to the commercial ships sailing the waters off the Horn of Africa, self-protection measures, so-called “Best Management Practices”,⁶⁰ have been developed. These measures include a recommended transit corridor endorsed by the International Maritime Organization,⁶¹ recommendations on self-protection equipment,

procedures, and behaviors both before and during attacks, including requirements for observation, maneuver and speed. Though the precise effect of these initiatives is difficult to estimate, it does appear that most ships successfully attacked have not follow these guidelines, indicating that these relatively cheap measures have at least some degree of effectiveness.⁶² Whether these measures contribute more to reduce the effects of piracy threat than the costlier maritime operations is impossible to measure. A more active initiative seen lately is arming the crew or providing armed guards to the ships. Besides legal challenges as not all countries allow the arming of civilians, most merchant companies have been reluctant to take on this approach, fearing that arming the merchant vessels will escalate the pirates' use of violence further.⁶³

Finally, efforts to improve intelligence cooperation in order to provide the basis for striking against the piracy organizational structures, financial activities, and links are increasing. Among others, INTERPOL and Europol are now sharing information, and a regional Financial Intelligence Unit as well as a Financial Action Task Force on Money Laundering is under way.⁶⁴ This may provide an understanding and therefore opportunities to intercept the flow and use of money connected to the piracy activities. However, so far the "money trail" remains unclear, though it seems certain that while at least a part of the money stays in the region,⁶⁵ there are also international connections that may even participate in financing the piracy operations.⁶⁶

To summarize, the current efforts to stem the piracy threat have failed to produce significant results. The United Nations' led initiatives to stabilize Somalia have been insufficient to create a security situation that allows for the build-up of the security forces needed to credibly counter the piracy threat, let alone move Somalia away from its

status as a failed state, which is a key element of attacking the root cause of piracy. Rather, the situation remains unstable within the country which is in effect ruled by armed groupings and an Al-Shabaab on the offensive, all in need of the financial support that piracy can provide. Dealing with the threat on water has been equally unsuccessful with the level of violence and number of attacks off the Horn of Africa at the highest level ever, leading to the likely conclusion that unless the success rate of new initiatives turns out to be very high, the chosen course of action in combatting piracy will at best keep the threat at more or less its current level and at worst force it to escalate. Inherent in this maritime approach is the acceptance of a continued failed state status for Somalia.

The Options – Continue to Treat the Symptom or Start Focusing on the Cause

Two possible developments - or options - seem to crystalize in the future. One option would be a continuation of the current course of action of containing the Somali-based piracy threat, focusing on affecting *the reward factor* by increasing the risk for those involved in piracy. Popularly speaking, rather than coming up with a new treatment, this option would continue to treat the system with the same medicine, but increase the dose. This may include strengthening the task forces to allow increased patrolling, a more willing use of military force to free hostages both on land as well as aboard ships, military strikes against the piracy bases in Somalia in order to destroy both bases and equipment, all combined with an effort to build regional coastal guards in the countries bordering Somalia, a more extensive, international willingness to prosecute and imprison pirates, possibly under the auspices of the International Criminal Court as well as effective interdiction of the money flow. This approach may

seem feasible and even alluring to the world's major players as it represents a continuation of current policy and only warrants a limited, yet expensive amount of primarily naval resources, and may even be acceptable to the most of the world's economies as the effect of the piracy threat on the world economy remains negligible,⁶⁷ but the suitability is doubtful.

Firstly, even with an increased naval posture it is doubtful whether it will have any significant impact on the piracy threat as the pirates roam most of the Indian Ocean.

Secondly, while freeing hostages is certainly a possibility, doing so while they remain at sea requires the presence of a naval vessel from one of the task forces – a precondition that cannot be expected to be fulfilled particularly often given the vast area in which Somali-based piracy operations take place. The reaction time from recognition to intervention will often simply be too long. The latest piracy tactics of kidnapping the crew rather than taking the entire ship make this approach even more difficult as the pirate mother ship now needs to be identified too, among all the other vessels sailing the high seas. On land, hostage rescue operations will be challenged by the difficulty of locating the hostages as they are moved inland, making it a virtually impossible task, especially in a country without a functioning security apparatus. Under all circumstances hostage rescue operations are complex with an inherent and high risk of losses among pirates, hostages and strike force. It seems likely that should this type of operation become more common, the pirates would increase their use of violence as a countermeasure, threatening to kill hostages to prevent such operations, especially if pirates are often killed during these attacks.⁶⁸ Thus this approach may easily escalate the piracy threat.

Thirdly, the destruction of pirate physical assets is hampered by the difficulty to discriminate between pirate boats used for illegal activities and fishing boats necessary for the survival of the local community. Even if that discrimination is disregarded and the assets destroyed anyway, the destruction – if effective – will most likely result in a deterioration in the local humanitarian situation, as a main source of income for the local population will disappear without an alternative being provided as most communities rely at least in part on the income received from local pirates too. This may be even more critical, if the international attempts to intercept the money flow start to work.⁶⁹ As a result, pirates and locals may be left with no other alternative than joining the warring groupings, adding further to the destabilization of Somalia. Combined with the likelihood of creating an anti-western atmosphere, possibly furthering support for organizations like Al-Shabaab if such destruction is carried out extensively, this result may very likely be an increased risk of Somalia becoming a future safe haven for Islamist terrorists.

Finally, though the world economy may not be severely impacted,⁷⁰ the piracy threat affects free trade to and from the region as well as the inflow and delivery of humanitarian aid, potentially destabilizing the region's more fragile countries as trade diminishes and the flow of refugees from Somalia increases. Some estimates suggest a loss in 2010 as a result of piracy of US \$642 million for Egypt, US \$414 million for Kenya and US \$150 million for Yemen.⁷¹ However, this does not take into account the amount of illegal money that flows into these countries as piracy money is brought out of Somalia.

Continuing and especially escalating the current approach may therefore worsen rather than improve the situation, as a reduction in piracy - should this course of action

become effective - could trigger further destabilization of Somalia with the risk of speeding up the process of turning the country into a terrorist safe haven,⁷² possibly a worse alternative than the present situation. Doing nothing, however, will not be a enviable solution either, as organization like Al-Shabaab have shown an increased interest in piracy as a new means of income, either as receivers of protection money, carrying out piracy operations on their own, or by acquiring hostages to put pressure on countries fighting the terrorist threat in Afghanistan and Iraq.⁷³ Letting the piracy threat remain in existence will therefore at least indirectly provide funding to Islamist terrorism.

The alternative is a more comprehensive approach in the form of an extensive stabilization, capacity building, development, and state building effort in Somalia, focusing on the factors of *conflict and disorder, inadequate security, permissive political environment*, and *other viable alternatives* which are all tied to the root cause of Somali piracy: Somalia's status as a failed state. The requirement is major surgery: A strong UN-based coalition, a large military stabilization force at least initially well beyond the capability of the African Union in order to establish a safe and secure environment through an extensive counter-insurgency and counter -piracy campaign, and a military capability program aimed at building Somali security force capacity including a coast guard. This effort will work alongside a civilian capability building program focused at promoting good governance, public administration, and an effective and fair legal system, all facilitated by a substantial short and long term economic and infrastructure development/foreign investment program directed at creating prosperity through primarily education, trade and employment. Aimed directly at the root cause of piracy of the Horn of Africa, this course of action is very suitable in dealing with the piracy threat

as it – if successful – provides a termination of the armed conflict, removing the need for funding of weapons as a driver for piracy, develops the security forces needed to control illegal activities such as piracy on land and in Somali territorial waters, thus increasing the risk of being caught and subsequently prosecuted, and finally provides the development necessary to ensure legal employment as a viable alternative to making a living through crime. Though politically discouraging due to its sheer size, this approach is feasible under the precondition that a willing coalition can be build. As opposed to the containment option, the challenge therefore becomes acceptability in light of a piracy threat that has not yet had any major impact of the world economy and therefore neither on the major powers, whose active participation is a precondition for success. With the cost of the missions in Iraq and Afghanistan evident, the humiliating failures of the mid-1990's international mission in Somali still fresh in mind of the decision makers, and an ongoing economic crisis, the challenge becomes even more daring.

Two considerations need to be taken in account – one negative and one positive. On the negative side, it can be expected that any coalition with a large contribution from the United States will draw the attention of foreign Islamist fighters in support of Al-Shabaab, initially resulting in a higher level of violence. Legitimacy-wise, this can to some extent be countered by forming a broad coalition, preferably with a very visible African Union involvement. But it remains clear that without a substantial participation of the United States, significant progress will not be possible. Under any circumstances, neither the Al-Shabaab nor any other piracy group or warlord can be expected to give up power without a fight. Thus an initial and even substantial increase in the fighting must be expected. On the positive side, an intervention of this size may very well be the

only way to prevent Somalia from developing into a new safe haven for Islamist terrorists, which eventually may have triggered the need for a large scale intervention at a later point.

Any intervention into a failed state remains a high risk venture. Therefore, even though a comprehensive approach with an extensive stabilization, capacity building, development, and state building effort in Somalia may be the right and necessary approach, it is far from certain that such an effort will be carried out in the near future.

Conclusion

It is arguable how much of a deterrent effect counter-piracy forces are having.

Rear Admiral Thomas Ernst
Deputy Commander European Union Naval Forces⁷⁴

Piracy off the Horn of Africa has been on the rise over the last two decades and will very likely continue to do so, unless the character of the current effort to oppose it changes. The nearly unilateral focus on maritime operations has failed to show significant results and may even worsen the situation if escalated. Hostage rescue operations can easily trigger a spiral of violence in the pirate modus operandi, while limited military strikes against pirate assets on the Somali mainland may push the region towards further destabilization and extremism by leaving the pirates and locals no other alternative than joining hands with organizations like Al-Shabaab. It is therefore an unambiguous conclusion that escalation should be avoided.

It is an equally unambiguous conclusion that piracy off the Horn of Africa is a symptom of state failure in Somalia rather than its cause, and that any effort which does not take that into account will ultimately fail. Therefore the international community will

either have to accept piracy as a necessary evil resulting from Somali instability, postponing the inevitable by focusing on containment while avoiding escalation, or initiate a comprehensive approach of extensive stabilization, capacity building, development, and state building. Though the political will to embark on such a mission may be unattainable at the moment, such an effort is none the less necessary if piracy off the Horn of Africa is to be stopped. As in any other counter-insurgency campaign, military power alone simply will not suffice.

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