

Piracy at Sea: Somalia an Area of Great Concern

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In this paper, the author analyses piracy at sea in Somalia, to provide a general up-to-date vision of the problem which threatens the security of ships sailing in the Gulf of Aden. The pirates' *modus operandi*, the existing factors behind these punishable acts and the prevailing international response are analysed. Finally the paper reviews how the international community could act in order to tackle the problem with a view to its possible eradication.

KEY WORDS

1. Piracy at sea in Somalia. 2. Pirates' *modus operandi*. 3. Security of merchant ships.

1. INTRODUCTION. Ever since mankind started to sail, piracy at sea has existed, but although it dates back to the beginning of seafaring, it is not a concept which nowadays can be related only to former times in the pages on adventure novels or the stories about freebooters, buccaneers, corsairs and pirates. Contrary to popular belief, piracy still exists in different regions of the world and poses a considerable threat to maritime security¹.

The temptation of a “*business*” which potentially makes the huge profits to be found in a merchant ship which has limited resources and training for their defence has led, during the last decades, to a reappearance of the problem of piracy, especially on those waters around states which have been marked with the label “*weak*” or “*lawless*”. In this sense, the existence of busy sea routes in the Gulf of Aden clearly fosters the emergence of piracy and heightens the potential profit considerably. The problem is made worse by the lack of information derived from incidents that are not reported, making it more difficult to quantify the general situation. The IMO, in a conservative estimate according to many experts², considers that only one out of two incidents is officially checked.

¹ The English terms “*security*” and “*safety*” are both translated into Spanish as “*seguridad*” and in order to distinguish them, the terms “*protección*” for “*security*” and “*seguridad*” for “*safety*” are used. From the conceptual point of view, we have to distinguish between the terms security (protection against crime, which is mostly used for prevention of attacks, sabotage or theft through passive and active measures) and safety (protection against physical and occupational or other types or consequences of failure, damage, error, accidents, harm or any other event which could be considered non-desirable).

² Different estimations suggest dark figures about 20 to 70% higher than the statistical account reveals. Regarding piracy statistics see Murphy, Martin N. (2007) “*Contemporary piracy and maritime terrorism: the threat to international security*”, Adelphi Paper 388, Abingdon, pp. 22–25.

The nature and objective of piracy in the past are very similar to piracy today. An historical analysis of the root causes of this threat reveals that the factors behind it remain the same: large sea spaces that challenge easy implementation of legal restraint, propitious geography, weak, lawless or indulgent states that provide sanctuaries, corrupt officials and political leaders who can benefit from and protect piracy, conflicts and economic disruption that open markets for stolen goods, and the ransoms paid for seafarers' lives. All these factors are present in Somalia today.

Piracy in Somalia is not a new phenomenon, it has been a growing problem for the past fifteen years, especially since the vacuum of authority after the collapse of the Siad Barre government in January 2001; but until the middle of the present decade³ the incidence of piracy was quite limited. In 2005, however, the incidence⁴ grew from less than five to 35. In 2006, it declined considerably to a mere 10 incidents, only to grow up again in 2007 to 31 pirate attacks. In 2008, the problem virtually exploded, going from being an irritation to a major global concern with an unprecedented rise in pirate attacks⁵. Now navies from more than 20 states, mainly organized around three multinational taskforces, are patrolling Somalia's seas. So far in 2009, 163 attacks on ships have been carried out and 47 ships and their crews taken hostage. However, as well-publicized cases of pirates being released after capture have proved, legal constraints on the action of some states and confusion about the legal powers of others have been noticed. Naval or police action cannot provide any long-term solutions to piracy in Somalia. It is very difficult to deal with a law-and-order problem in a lawless country.

The loss suffered by national economies as a result of piracy is difficult to estimate. At first glance, the overall loss applicable to piracy seems small in relation to the total value of goods transported by sea. Clearly a company whose cargo is prevented from reaching its destination on time will lose money in addition to the cost of paying ransoms; so the damaging economic effect of piracy in the Somali region can be seen. The consequences are not limited only to companies whose vessels are hijacked; of wider concern is the growth of insurance premiums⁶ for ships that need to pass through the Gulf of Aden which is slowly being blocked as a viable shipping route⁷. If the cost of extra insurance becomes prohibitive, or the danger simply too great,

³ From the mid-nineties to 2005, in a persistently desperate way, SE Asia went on being the place in the world where there were more incidents, as around 50% of all the pirate attacks that came to light were made there.

⁴ According to the statistics of the International Chamber of Commerce's Piracy Reporting Centre in Kuala Lumpur (ICC-PRC).

⁵ According to ICC-PRC, 111 merchant ships were attacked and 42 of them hijacked, which means an increase higher than 200% over the previous year figures.

⁶ In May 2008, insurance underwriters at Lloyds of London designated the Gulf of Aden a "war risk" zone subject to a special insurance premium. London-based ocean marine insurers have raised rates for ships making the voyage through the Gulf of Aden and the Suez Canal. These levels of increase can only be estimated because of the competitive nature of the ocean marine insurance business. One group of London insurance brokers and underwriters estimates extra premiums at \$10,000 to \$20,000 per trip through the Gulf.

⁷ More and more shipping companies are opting to take the long route around the Cape of Good Hope. For example, Maersk announced in December 2008 that some of its slower vessels, as well as those without an adequate freeboard, would not be allowed to transit the Gulf of Aden, a journey that can take up to three weeks longer than going through the Suez Canal and the Gulf of Aden.

shipping companies may avoid the Gulf of Aden and take the long route to Europe and North America around the Cape of Good Hope⁸.

The effects of the pirate attacks may result in a bigger or smaller potential risk depending directly on the time used to perform their criminal act, taking into account that they carry out most of their acts on restricted or congested waters. Ships that remain unattended during and immediately after a pirate attack are more vulnerable to collisions. If the ship attacked were a VLCC sailing in the congested waters of the Gulf of Aden⁹ and, as has happened through the Malacca and Singapore Straits, the ship remained unattended with the autopilot for about an hour, it could collide with another ship or run aground¹⁰. The serious potential consequences, derived from the fact that an oil tanker may sail with no crew on the bridge for some minutes during a pirate attack and therefore with no control, are evident. Apart from the consequences derived from the sea pollution, it could be possible that the fairway or channel in those areas would be blocked to sailing and fishing for some time. However, it is an unfortunate fact of life that many people never see the potential risks even though they are high. It has often been said that only when a serious maritime problem happens as a consequence of an act of piracy will governments assign the necessary resources to make sure that no more attacks will happen.

The inherent safety risks attendant on sailing through these restricted waters means that a VLCC oil tanker Master with a suitable disposition of lookouts and other crew men engaged with sailing responsibilities does not have available personnel to keep adequate security against a pirate attack.

From the beginning of 2008 most attacks have been taking place in the Gulf of Aden, a strategically important international waterway through which a third of the world's crude oil is carried. Over 23,000 vessels pass through this area each year, which in total represents approximately 7% of the world's maritime transport.

2. THE PIRATES' *MODUS OPERANDI* IN SOMALIA. From the analysis of many recognized cases of acts of piracy, we can examine the pirates'

⁸ Rerouting vessels to avoid the Gulf of Aden and other waters near the Horn of Africa adds additional transit days and fuel costs to shipping companies. The costs vary according to the type of ship and the frequency of voyage, according to the U.S. Department of Transportation (for example, circumnavigation rather than transiting the Gulf of Aden/Suez Canal increases the annual operating cost of an oil tanker "by reducing the delivery capacity for the ship from about six round-trip voyages to five voyages or a drop of about 26 percent. The additional fuel cost of travelling via the Cape of Good Hope is about \$3.5 million annually") [see in this sense, U.S. Department of Transportation Maritime Administration (2008) "*Economic Impact of Piracy in the Gulf of Aden on Global Trade*"]. However, the latest information [Bangert (2009) p. 22] shows that shipowners could possibly save money by sailing around the south of Africa (thus, some container ships could save USD 330,000 in canal fees per voyage, the additional fuel consumption could be reduced by reducing speed, which would benefit the environment and finally, the saving on insurance premiums must also be included).

⁹ A case in point took place in April 2008 when pirates on five speed boats attacked the 150,000 ton tanker Takayama with rocket propelled grenades -RPGs- about 270 miles off the coast of Aden in south-western Yemen while it was heading for Saudi Arabia, leaving a hole from which some oil spilled into the sea. In this case the spill was contained, but it is an example that underscores the serious potential risk of an environmental disaster in the Gulf of Aden [*Somali pirates: Attack on oil tanker* (<http://www.eaglespeak.us/2008/04/somali-pirates-attack-on-oil-tanker.html>)].

¹⁰ The most prominent example of a crash caused by a pirate attack is the collision of the hijacked tanker *Nagasaki Spirit* and the containership *Ocean Blessing* in 1992 in the middle of the Malacca Straits.

modus operandi in Somalia to hijack passing vessels and then demand ransoms for the vessels and the kidnapped crews.

Pirates operate by using small low-tech skiffs of twenty to sixty feet, made of wood or fibreglass with dual powerful outboard engines of up to 80 HP. A typical team would be 10 to 15 armed pirates in three skiffs fitted out with grappling hooks, aluminium ladders, rocket propelled grenades (RPGs), automatic AK-47 assault rifles, knives, satellite phones and GPS. These boats are fast and manoeuvrable, but they lack the necessary range to attack the more lucrative targets. To overcome this constraint, pirates regularly make use of ‘*mother ships*’ from where the skiffs are launched in order to increase their range from the coast. These are generally fishing trawlers and smaller fishing boats that the pirates have previously captured near the shore and which are then used as a means of transport for attacks on the high seas. Pirates often hide among genuine fishing boats around fishing grounds and suddenly pursue passing ships. Use is generally made of deceptive tactics such as false GMDSS DSC distress alerts, distress calls on VHF channel 16 posing as fishermen, or carrying out dummy attacks to divert warships from the area of a real attack. The use of *mother ships* helps to explain how pirates have managed to increase their range so dramatically. Initial warnings to merchant vessels to stay at least 50 nautical miles away from the coast, later increased to at least 200 nautical miles, have now been replaced by warnings to stay at least 600 nautical miles off the coast of Somalia¹¹. According to available reports, it is thought that the time taken from when the pirates are first seen to the moment a vessel is boarded is some fifteen to twenty minutes; if a naval ship cannot arrive on scene within this time, it will likely arrive too late to prevent the ship’s hijacking. Such a short period of time helps to explain why even with international patrols in the area, ships are still captured. Little can be done to prevent pirates from overwhelming the ship once they are aboard without putting the vessel and the lives of the crew at risk. So in order to prevent an attack, a naval vessel would need to be close and have helicopters on immediate standby to be able to make a fast response to reach the scene of an attack; if such facilities are not available many more attacks could be successful¹². Most attacks happen between 2200 and 0600 local time, particularly at dawn and at dusk when pirates take advantage of night to succeed in their attacks; this complicates a ship’s self-defence and the ability of warships patrolling the area to respond effectively to reported attacks.

Vessels come under fire and are compelled to slow their speed while pirates climb aboard, take command of the ship and sail to an anchorage off a friendly coastal town. These anchorages are mainly in the northeast of Somalia in the semi-autonomous region of Puntland and near towns along the eastern Somali coastline such as Haradheere, Garacad, Hobyo and especially Eyl. Guards are put aboard and ransoms¹³ are then negotiated with the shipowner and their insurance company while

¹¹ The ICC-IMB *Piracy and Armed Robbery Against Ships Report* – First Quarter 2009 in cooperation with the Maritime Security Centre-Horn of Africa (MSC-HOA) advises that vessels not making scheduled calls to ports in Somalia should keep as far away as possible from the Somali coast, **preferably more than 600 nautical miles**.

¹² Air surveillance is crucial to success, so another important mission that can be played by helicopters or by patrol planes is reconnaissance to provide an overview of certain areas that would take much longer to cover by sea.

¹³ If a few years ago ransoms were between ten and a hundred thousand dollars range, nowadays they have hovered between half a million and two million dollars although recent reports indicate that demands have shot up again. According to Middleton (2008) p.5, the total ransom payments in 2008 might be as high

crews and cargo are held for a long time. Unlike in other parts of the world where such attacks take place, and where it might be likely to kill or seriously wound merchant ship crewmembers, attacks carried out by Somali pirates rarely show a willingness to harm their hostages gratuitously in the course of their raids, since extracting ransom payments is their objective.

3. FACTORS BEHIND THE ACTS OF PIRACY IN SOMALIA.

Where piracy is concerned, regional growth trends are always directly related to economic crises and inadequate legal security systems. Somalia is a recent example with a well-earned reputation as a failed state. When the Siad Barre regime was overthrown in the early 1990s¹⁴ by the clan-based warlords, the state lost control of its own coastal waters, and the sporadic first phase of Somali piracy began. Trawlers from other countries were able to fish in Somali waters unhindered, jeopardising the livelihood of local fishermen and leading to violent disputes¹⁵ that emerged as the country has lost its ability to patrol its waters. Local fishermen were more or less defenceless against the large foreign trawlers and increasingly turned to piracy to safeguard their own survival¹⁶.

The most important cause is surely the extreme economic and social hardships suffered by the general population since the Ethiopian invasion in December 2006 (the withdrawal of the Ethiopian forces was in January 2009), leaving most of them with no sources of income other than crime and creating a need to turn to piracy. Beginning as a law enforcement effort (starting by levying taxes and fines forcibly on fishing ships that pirates managed to board), the Somali piracy developed into a lucrative business for individuals and groups that attacked not only foreign fishing ships but also commercial vessels. So whatever the initial cause may have been it is clear that pirates are now motivated by the prospect of getting large sums of money by hijackings.

The rate of piracy incidents off the Horn of Africa has increased since 2005. This battle still continues, together with the power struggle between the warlords, which has now been extended to the sea. Warlords are using the power gap in Somalia for their own private attacks on ships, above all with the intention of demanding

as USD 30 million, though other source states that “*According to the United Nations, Somali pirates collected USD 150 million in ransom payments from ship owners...*” [*“Trial of Somali pirates opens in Yemen”*, RIA Novosti, July 2, 2009 (web page: <http://www.globalsecurity.org/military/library/news/2009/07/mil-090702-rianovosti05.htm>)].

¹⁴ After years of fighting throughout Somalia, the country is now in fact divided into three main regions:

- **Somaliland**, a self-declared republic since 1991 (but not recognised internationally) occupying part of the northern coast adjoining Djibouti;
- **Puntland**, a self-declared autonomous state since 1998 that has not sought independence, occupying the remaining part of Somalia’s northern coast and the northern part of the eastern coast;
- **Transitional Federal Government (TFG)**, established hypothetically in 2004 (the power is actually in the hands of local warlords and militant Islamic groups) under the control of the remaining part of the country.

¹⁵ For example, The United Nations Food and Agriculture Organization estimated that 700 foreign owned vessels were fully engaged in unlicensed fishing in Somali waters by 2005 (see report from this Organization, “*Fishery and Aquaculture County Profile: Somalia*”).

¹⁶ A July 2005 report from the United Kingdom Department for International Development (DFID) estimated that Somalis lost \$100 million due to illegal tuna and shrimp fishing in the country’s exclusive economic zone in 2003–2004.

ransoms. Piracy has been a problem in Somali waters for at least fifteen years. However, the number of attempted attacks has risen over the last three years. The only period when piracy virtually vanished around Somalia was during the six months of rule by the Islamic Courts Union in the second half of 2006, which dealt with the problem effectively. That fact indicates that a functioning government in Somalia is capable of controlling piracy¹⁷.

In 2007 a lot of piracy was focused on Eastern Somalia and Mogadishu port where, according to the UN monitoring group, port officials helped facilitate several attacks. The international community began to provide escort-protection for World Food Programme (WFP) related shipping to Somalia in November 2007, and this has provided a piracy deterrent factor along the Eastern coast of Somalia. In 2008 the most noticeable change was the shift in the main area of activity and most of the attacks took place in the Gulf of Aden which offers better hauls than Mogadishu. The consequence is that one of the most important trade routes in the world is now threatened by the chronic instability in Somalia. This shift in the pirates' operational area changes the focus in that attacks off the eastern coast of Somalia mainly affect the Somali population by hampering humanitarian aid, whereas attacks in the Gulf of Aden affect international shipping linking the Middle East and East Asia with Europe. As previously noted, the Gulf of Aden is a major shipping route with around 23,000 ships passing through each year carrying oil from the Middle East and goods from Asia to Europe and North America.

The identity of the Somali pirates, their social structures, motives, etc. is not generally known. Their number is also unknown, but it has been increasing since the middle of the present decade¹⁸. Primarily they come from the Puntland region of Somalia and being reportedly fishermen and former militia members of the Somali warlords, there does not seem to be a unified organization with a clear command structure. Several of the pirate groups argue that fishermen have become pirates because their way of life has been destroyed by the illegal fishing and toxic waste dumping¹⁹ that has been ignored by foreign governments. They see, or have at least depicted, themselves as protectors, either of their local communities or of the local

¹⁷ Nevertheless, Western countries have expressed concern about the spread of Islamic fundamentalism over the years; thus, there is a general reluctance to an Islamist government, a thought that, according to many experts, should probably change as long as Somalis are engaged with the establishment of a moderate Islamist government as it is now the case.

¹⁸ The number of Somalis who are directly engaged in acts of piracy has been estimated as being as high as 1,000 or more [Knott, John (2009) "*Somalia, The Gulf Of Aden, And Piracy*", Mondaq Business Briefing]. Another source even estimates a higher number [Greenblatt, Alan (2009) "*Attacking Piracy. Can the growing global threat be stopped?*" Global Researcher, volume 3, number 8, p. 209, states that "... Today there are at least 3,000 Somali pirates"].

¹⁹ The huge waves which battered northern Somalia after the massive tsunami in December 2004 are believed to have stirred up tonnes of nuclear and toxic waste that had been illegally dumped in Somali waters by several European firms because Somalia's long remote shoreline was used as a dump site for the disposal of toxic waste after the outbreak of the Somali Civil War in the late 1980s (the European Green Party gathered evidence about this practice by presenting copies of contracts signed between two European companies and representatives of the warlords then in power in Somalia). According to a 2005 report by the United Nations Environment Programme (UNEP) assessment mission, the number of cases of health problems has risen significantly – especially diseases related to radiation – among many inhabitants of the areas around the north-eastern towns of Hobbio and Benadir on the Indian Ocean coast. At the time of the report, the cost for a European company to dump this kind of waste off the Horn of Africa was \$2.50 per ton, as opposed to \$250 per ton to dispose of them cleanly in Europe.

marine environment, adopting names such as “*National Volunteer Coastguard*”, “*The Guards of Somali Marine Resources*”, “*Central Regional Coast Guard*” or “*Somali Coast Guard*” to suggest that they are involved in a more legal occupation than piracy. They claim that they were forced to organize themselves to defend their sea waters after foreign nations started to fish illegally in Somali territorial waters; and consequently, that they are acting in a maritime security capacity or as an alternative livelihood. Pirates have the tendency to characterize their actions as an alternative livelihood or as a retribution for illegal international activities in Somali waters. They believe that they have every right and entitlement to attack illegal fishing vessels operating in their territorial waters as their fishing resources are being pillaged daily by international fishing vessels from Asia and Europe. Even though it seems they have kept at least most of the proceeds for their own benefit and this justification may disguise the opportunistic piracy of some, pirates have maintained that they are distributing the “*tax*” demanded for foreign vessels in the form of ransom in return for fishing rights more evenly. But what began as mere “*maritime muggings*” serving as the pirates’ initial encouragement to their attacks, has evolved into multifaceted international organized crime (the pirates often allocate a portion of the ransom to their backers), which shows significant progress in the organization of Somali piracy. This fact reveals that nowadays we are no longer dealing with a group of impoverished Somali people; the highly significant degree of organization has infused the piracy network with an adaptive capacity which lets us state that after the sporadic first phase of Somali piracy in the early 1990s, which immediately followed the overthrow of Barre’s regime by clan-based warlords, piracy has now entered an advanced phase.

Pirate attacks initially focused on attacking ships along the eastern coast of Somalia putting the humanitarian aid coming from the World Food Programme²⁰ at risk, but declining significantly when France (followed consecutively by Denmark, Canada, the Netherlands, NATO Operation *Allied Provider*, and recently by the EU NAVFOR Operation *Atalanta*) began to provide escort-protection for sailing to WFP shipping to Somalia in November 2007. This may be the main reason why Somali pirates shifted their focus to the Gulf of Aden, where there is a high concentration of merchant ships in a constrained waterway providing better hunting areas, together with the fact that, in order to reduce the likelihood of an attack and under the instructions from the IMO, ships not bound for the Horn of Africa destinations have been navigating further and further from the coast shifting out to sea²¹.

Now that international naval forces are patrolling the Gulf of Aden with some effectiveness (the number of successful hijackings has dropped even though the number of attempted attacks has not decreased), Somali pirates have shifted some of their focus back to the Indian Ocean, and are able to operate hundreds of nautical miles from the Somali coastline, often with the help and support of mother ships and their modus operandi that allows attacks on vessels such as large oil, container and fishing vessels.

²⁰ This program is the main supplier of humanitarian aid to Somalia in the form of food, ninety per cent of which is delivered by sea.

²¹ However, though this tactic may prevent attacks in coastal waters, it subsequently drove the pirates further out to sea as well. The *Sirius Star* attack has shown that the pirates are now operating in an area of over 2.8 million square kilometres (1.1 million square miles) which extends beyond the recently established international patrols closer to the Horn of Africa (“*Pirates take ‘super tanker’ towards Somalia*”, CNN, 17th November 2008).

The lessons learned from the negotiation of the bilateral and multilateral initiatives in the Straits of Malacca region highlighted several issues that could give a valuable input to parties seeking to establish similar programs in the Gulf of Aden and off Somalia's coast, namely the importance of addressing local concerns over sovereignty, territorial water rights, and the presence of foreign military forces in regional waters²², but as Somalia is a failed state, the regional countries are weak and their naval capabilities insufficient, the problem of piracy is much more difficult to solve.

Finally, owing to their distinctive *modus operandi*, the model of Somali pirates seems to be different to other regions such as the Straits of Malacca or Nigeria where ships are boarded either to take the vessel or its contents. This Somali piracy can be viewed as a form of maritime kidnapping because its only characteristic has been taking the target vessel's crew hostage in return for ransom payments. This is possible because the pirates have sanctuaries on land in Somalia and in its territorial waters where they can commit pirate attacks and conduct ransom negotiations, something which is less likely in other parts of the world. As a consequence, maritime security forces are challenged by use of the traditional engagement strategies and tactics.

4. HOW THE PROBLEM HAS BEEN TACKLED IN SOMALIA.

4.1. *Introduction.* Contemporary piracy was not an urgent problem until the mid-1980s. Therefore, the definition of piracy, according to the agreements internationally accepted, has not recognised the scene existing in Somalia as they exclude the concept of attacks not taking place on the high seas and those sponsored or politically induced by a nation; these are not considered pirate attacks²³.

The lack of legal uniformity about a wider international concept of piracy is a problem that to a large extent negatively affects the measures tending to eradicate it²⁴. The study of the international law about piracy surpasses the content of this paper. Suffice to mention that an act of piracy, such as is proposed here following the definition adopted by the International Maritime Bureau²⁵ (IMB) for statistical purposes (*"an act of boarding or trying to board any ship with the intention of committing a robbery or any other criminal act and with the intention or aptitude to resort to force for such act"*), can happen when a ship is docked at port, anchored or sailing, being in this last case in territorial seas of a nation or on the high seas.

The lack of resources of some coastal countries to fight piracy at sea has already been stated and this situation is understandable and acceptable; but what really exists

²² The number of attacks has dropped in the Malacca Straits due to increased security cooperation by the littoral states Authorities since July 2005 (see [3] p. 21).

²³ See art. 15 of the Geneva Convention on the High Seas of 1958 and art. 101 of the Convention on the Law of the Sea of 1982 (Montego Bay).

²⁴ The criminal act is the same, but if it is carried out on the high seas it is named "*piracy*" and if it is carried out on the territorial sea or inland waters, legally, they are not considered acts of piracy at all, being referred to as "*armed robbery against ships*".

²⁵ This international maritime agency is a specialized organism of the International Chamber of Commerce – ICC. It is an organization with no profitable motive in mind, established in 1981 to act as a reference centre in the fight against all kind of crimes and fraudulent practices at sea. One of the main issues it is dedicated to is the suppression of piracy. The alarming increase of this phenomenon led to the creation of the Piracy Information Centre by IMB in 1992. This centre is placed in Kuala Lumpur (Malaysia) and keeps a permanent observation on all the maritime lines in the world, reporting the pirate attacks to the local authorities responsible for the enforcement of laws and warning the sailing ships in dangerous waters about piracy.

until now and is unacceptable is the lack of any coordinated response on land. Pirates act on the seas with the only purpose to commit their illegal acts; but it is clear that they must land at the end of the day to dispose of their hauls and it is here where they are vulnerable. Up to now, the rules oriented to fight piracy and enacted by different countries are not dissuasive enough; firstly, they seem not to affect the local people they legislate for, and then it is a problem that does not affect them.

According to most experts the best deterrent factor against piracy in the Somali-Horn of Africa region would be a long-term government. However, there is a view that there is little prospect of an effective national government of Somalia²⁶ in the foreseeable future capable of establishing the necessary policing methods to control and remove pirates from the country. In this section, we will make a general reference to the measures that the international community and private actors are now taking or proposing regarding piracy in this area of major concern.

4.2. *The International Response.* The international community has made several attempts to deal with the threat of piracy around Somalia and has responded by deploying warships to the Gulf of Aden and by providing protection for WFP vessels:

- Somalia has been continuously on the agenda of the United Nations Security Council (UNSC) and during 2008 it adopted three resolutions on piracy in the Horn of Africa authorizing third party governments to conduct anti-piracy operations in Somali territorial waters and on land, but only with authorization from and in coordination with the TFG²⁷.
- Combined Task Force 151 (CTF-151), in operation since January 2009, was established by the Coalition of Maritime Forces with the sole mission of conducting anti-piracy operations in the Gulf of Aden and the waters off the Somali coast in the Indian Ocean; a role that had previously been carried out by CTF-150²⁸, which continues performing counterterrorism and other maritime security operations as it has done since 2001–2002. In August 2008, CTF-150 and partner forces agreed to the establishment of a *Maritime Security Patrol Area (MSPA)* through a narrow corridor within the Gulf of Aden aimed at deterring

²⁶ At present, the internationally recognized Transitional Federal Government (TFG) is working with the Alliance for the Reliberation of Somalia (ARS) on efforts to form a unity government and reconstitute national security and law enforcement entities. There are reasons to believe that, after so many years of uncertainty (it is the 16th interim government that has tried to control the country since 1991), the election of a new president, Sheikh Sharif Ahmed (seen by many Somalis as a leader with the best chance of bringing peace and stability to Somalia), and the establishment of a moderate Islamist government under his authority is potentially the best chance Somalia has had to pull itself out of nearly two decades of state collapse. Although the situation on the ground remains critical (elements of the ARS based abroad, as well as groups and factions in Somalia, have vowed to continue fighting against the new government, and violence has surged), it seems that the establishment of a new TFG in January 2009 featuring a more broad-based coalition and moderate Islamist leadership is a significant step forward.

²⁷ **Resolution 1816** in June 2008 allowed states to use “*all necessary means to repress acts of piracy and armed robbery*” in Somali waters; **Resolution 1838** in October 2008 called for nations to intensify their efforts to combat piracy in Somalia; and **Resolution 1851** in December 2008 expanded Security Council approval of anti-piracy efforts authorizing the use of “*all necessary measures*” including operations in land and its airspace for one year, with the consent of TFG.

²⁸ This combined naval task force was set up in response to the bombing of the *U.S.S. Cole* in 2000 in the Yemeni harbour of Aden and the bombing of the French oil tanker *MV Limburg* in 2002, which illustrated the threat of potential maritime terrorism in the region.

attack and hijacking of ships seeking safe passage through the zone, serving as a dedicated, more secure transit zone for merchant vessels with the goal of lowering the success rate of Somali pirates in the Gulf of Aden transit zone.

- Other countries, outstandingly Russia, China and India have deployed naval forces to conduct anti-piracy operations in the region²⁹. These units operate under their own command but they coordinate with other naval forces.
- In March 2009, the North Atlantic Treaty Organization (NATO) deployed a Standing NATO Maritime Group force named “*Operation Allied Protector*”, to conduct anti-piracy operations in the Horn of Africa with the objective of “*detering, defending against and disrupting pirate activities*” as they sail the region³⁰.
- The European Union NAVFOR named “*Operation ATALANTA*”, its first naval operation task group deployed³¹ under the framework of the European Security and Defence Policy in operation since December 2008. According to the European Union Council Secretariat, it has the task of providing protection for WFP vessels and merchant vessels (a role had previously been carried out by CTF-150 and the NATO force “*Operation Allied Provider*” which was serving as a temporary protection force for WFP assistance shipments in the region), and it is authorized “*to employ the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where they are present*”. To assist merchant traffic in the area around the Horn of Africa with the aim of providing the best possible support for merchant shipping, EU NAVFOR has also established an online centre known as Maritime Security Centre-Horn of Africa (MSC-HOA) to record their ships’ movements voluntarily and to receive updated threat information, detailing recent trends in pirate attacks and making recommendations to vessels transiting regional waters³².
- The *Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships* in the western Indian Ocean and the Gulf of Aden that was adopted in January 2009 among representatives of 17 regional governments in an IMO-sponsored meeting in Djibouti (the nine countries in the region have already signed it). There are three regional facilities which support the information shared by the partners of the agreement³³.

²⁹ Basically, it seems that these countries are moved to this action for two reasons: on the one hand, flag-waving as a superpower, and on the other, by the concern that the current state is a threat to their trade and economy.

³⁰ From October to December 2008, the NATO deployed another Standing NATO Maritime Group named “*Operation Allied Provider*” that served as a temporary operation to protect supplies from the WFP program aid to Somalia till the EU NAVFOR “*Operation Atalanta*” took on this task. This operation was only authorised to take steps against pirates as a secondary task.

³¹ According to the European Union, the force consists of twenty ships and over 1,500 personnel. Greece, France, Spain, Germany and Italy have contributed with forces and personnel to the operation. Other EU member states are expected to contribute later.

³² Additionally, there are two similar voluntary tracking and reporting services provided by the United Kingdom Maritime Trade Operations office in Dubai and the U.S. Navy’s Maritime Liaison Office in Bahrain.

³³ The Maritime Rescue Coordination Centre in Mombassa, Kenya, the Sub-Regional Coordination Centre in Dar es Salaam, Tanzania, and a regional maritime information centre that is to be established in Sana’a, Yemen are to support the information sharing components of the agreement.

With CTF-151, EU *Operation ATALANTA* and NATO *Operation Allied Protector*, almost 50 warships are currently patrolling in the region.

4.3. *Improving Security of Merchant Ships.* Given the apparent failure of the littoral states (outstandingly Somalia) to guarantee security in this important international waterway, some shipping companies³⁴ have increasingly been looking elsewhere for ways to enhance their security by taking measures to increase the self defence of their ships. Ships' crews have developed standardized countermeasures³⁵ and better practices in their attempts to avoid and resist pirate attacks. The use of water cannons and fire hoses has increased even though this practice exposes the operating crewman to hostile fire and is considered to be dangerous. The industry has also introduced a certain number of sophisticated technical solutions in recent years such as SHIPLOC³⁶, SECURE-SHIP³⁷, the identity card³⁸ of the International Labour Organization (ILO), the alarm system demanded by the ISPS Code³⁹, and the Long Range Acoustic Device⁴⁰ (LRAD) noise generator system, all of which are now achieving more relevance.

³⁴ However, because of the relatively low risk that a vessel will be captured, many of them are just not willing to pay the cost of meaningful security.

³⁵ The IMO and other bodies such as the IMB have developed detailed guidance and recommendations for governments and commercial vessels seeking to prevent, deter, and respond to pirate attacks (see IMO MSC/Circs. 622/Rev. 1 and 623/Rev. 3 respectively).

³⁶ The IMB has been working together with a leader in satellite tracking systems, to design a satellite tracking system called SHIPLOC with the aim of locating the ships at sea or port, having already been installed in some of them. It is a small transmitter relatively cheap (it can be hired monthly for about \$250, depending on the kind of device) and it may be hidden in the ship. For their own safety the crewmembers need not be informed of the existence or place of the transmitter. The only necessary additional equipment is a PC with internet access. IMB earnestly recommend shipowners to install this device onboard their ships.

³⁷ The system consists of a folding electrified defence which causes non-lethal high voltage shocks at the slightest contact and it is set at both sides of the ship (unfortunately it cannot be used onboard ships carrying flammable materials -including tankers- because the live electric cables can start a fire). When the ship enters port or when another ship or barge needs to come alongside, the electrified defence bends easily to make the manoeuvre. As the defence is divided into port and starboard areas, it is possible to activate only one side of the ship while the other is deactivated, which is very useful when the ship is docked at port and there is the need to deactivate the side of the dock while the side to the sea is kept activated. Besides, the defences have got "doors" that allow a temporary opening as in the case of the area at the side at the height of the pilot ladder, the accommodation ladder or the lifeboats. A sophisticated control system detects any attempt to enter and it generates the starting of several devices (lights, alarms, sirens). This very strong noise generator system and the high intensity projectors assure that any attempt by pirates to get onboard is aborted. This detection system is designed in such a way that it resists any weather condition and the sea water entrance because of the waves, without reducing its effectiveness (for further information, see web page: <http://www.secure-marine.com>).

³⁸ In June 2003, the International Labour Organization (ILO) implemented the issuing of a new internationally recognised identity card to the world's 1.2 million seafarers containing their photograph and biometric data which identifies fingerprints in order to prevent the disguised boarding of pirate and terrorist crews.

³⁹ This Code, incorporated in Chapter XI-2 of the SOLAS Convention, demands the installation of a new Ship Security Alert System –SSAS– onboard in resolution 6, that will provide ships with two alarm buttons, which can be activated in case of a piracy or terrorist attack. The purpose of these alarms is to provide a covert signal which will have no sound and no flashing lights so that it is in no way obvious to any intruders onboard the ship and makes a means of alert to the company and to the flag nation of the ship possible, meaning that there has been a serious incident onboard which affects their security.

⁴⁰ Developed by the US Navy after the attack on the *USS Cole* in October 2000 to keep small boats from approaching US warships, this device is a non-lethal acoustic weapon. Of a similar size to a satellite

The carrying and use of firearms for personal protection or protection of a ship is discouraged by IMO and the IMB and it is not authorised by some coastal states because it may increase a dangerous situation onboard. Many merchant ship owners and operators and other maritime organisations as INTERTANKO⁴¹ are also averse to arming merchant ships, for practical and financial reasons. The use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board is great. Furthermore, answering with light arms to the pirates armed with heavier weapons such as RPGs may not be effective due to insufficient firepower even if properly used by the crew. In some jurisdictions, killing a national person may have unforeseen consequences even for people who believe that they have acted in self-defence. Since merchant ship crews are not often trained in the use of weapons, they might not be able to use them very effectively in a fight against pirates and the level of violence associated with piracy off Somalia could raise and increase risks to all seafarers sailing in that region. If ship crews try to defend themselves with firearms and fail, the pirates are more likely kill some crew members.

Another way of arming a merchant ship is hiring armed security teams, provided by Private Security Companies (PSCs) (mostly British-based ones, although US firms are also getting in on the action) to ride on the ships. Despite the fact that armed security teams merely act as a deterrent to potential attackers, they have provoked a strong response from some littoral states. One problem with the rising numbers of PSCs providing their services in the region's waterways is that they are currently unregulated. While there is some effort among the better-established companies to self-regulate, this is only in its early stages. It is this lack of regulation which gives rise to uncertainty, given that there is no definition of their status in international law and it is not clear how the law of self defence should be applied in a hijacking scenario, i.e. any use of arms must be governed by clear rules of engagement and this is not always the case. Additionally a question arises regarding who authorises the use of force onboard and the control about the final decision making⁴². It is for these reasons that it seems necessary that international law clarifies the status of PSCs and the role of armed security teams to defend ships with clear rules of engagement in order to give legal support to their tasks onboard.

In this case, the IMO and the IMB also maintain their policy of not advocating the use of weapons onboard because they estimate that gun battles with pirates may increase risks and will only escalate the potential for violence. Nevertheless, starting

receiver, this device not only broadcasts warnings by means of a powerful loudspeaker, but it is also able to send acoustic signs of very low frequency (the acoustic level is 150 decibels while the one of a fire alarm for example is about 80) within reach of several hundreds of metres. This noise generates significant earache making communication impossible and consequently it makes pirates desist from their attempt. This system has been installed in passenger ships and warships since 2003.

⁴¹ "Protecting Ships Against Armed Pirates", INTERTANKO sets out its piracy position, July 9th, 2009 (<http://www.intertanko.com/templates/Page.aspx?id=46767>).

⁴² Taking into account that, in this case, a contract exists between the owner and the PSC, where the master does not take part, however, the master should command authority according to the ISPS Code stated on art. 4.10: "*At all times the master of the ship has the ultimate responsibility for the safety and security of the ship*" In this sense the evidence of Capt. Phillips (Maersk Alabama) to the US Senate Committee on Foreign Relations is of interest: "*I am not comfortable giving up command authority to others, including the commander of a protection force. In the heat of attack, there can be only one final decision maker*" ("*The Perils of Piracy: The Year So Far*", Shipping & Transport – International, June 10th 2009, <http://www.internationallawoffice.com/newsletters/detail.aspx?g=3ad12eb1-b976-4be7-a99b-27f4bd4f7862>).

from the evident fact that due to the large patrol area⁴³ there are insufficient naval ships deployed in the zone to patrol it effectively, most regional states concerned with piracy at sea are in favour of this security measure, which is also encouraged by the US Navy. Thus voices have also been raised from military commanders⁴⁴ that suggest the convenience to call for armed security teams onboard ships. Some recommend hiring private armed security escorts⁴⁵ (in fact, the US PSC firm *Blackwater*⁴⁶ has just provided the services of a security escort ship carrying helicopters and armed guards to commercial ships sailing in the Gulf of Aden), and this is generating intense debate against putting this recommendation in practice, basing on the facts that, on the one hand there can be a breach of international law⁴⁷ and on the other, the possibility that the armed intervention of these ships may be considered piracy in itself. Financial concerns may also discourage against arming merchant ships because hiring armed security teams might be more expensive than paying occasional ransoms. Owing to these additional costs, some companies could be pushed out of business given that the shipping industry is operating now on a thin margin in the global economic downturn, even though a discount in the insurance premium on the risk areas could be possible if the owner contracts an armed security team with a PSC⁴⁸.

Liability for fatal shootings aboard can be a complex legal matter that may lead to expensive lawsuits. Since many ports restrict vessels from having weapons onboard, commercial ships that often make calls at multiple ports along their operating routes could find it difficult to operate along certain routes. The permission to have armed personnel on ships depends on whether they are in national or international waters, although rules and regulations on this subject may vary in each country so ships have to obey the laws of the transiting country as well as the ones of the ship's flag state.

⁴³ The geographical area of concern in the Indian Ocean off Somalia's eastern coast that needs to be patrolled has been measured at more than 1 million square miles.

⁴⁴ Admiral Gortney, the US Commander of the Combined Maritime Forces suggested that "*shipping companies must take measures to defend their vessels and their crews*" ("*Piracy. Issues arising from the use of armed guards*", INCE & Co, International Law Firm, September 2009, p. 2).

⁴⁵ British Commodore Keith Winstanley, deputy commander of the Combined Maritime Forces in the region, later expressed his support for the proposal of Admiral Gortney, stating that additionally the security measures "... would include shippers considering hiring private armed security escorts" [Cullen, Patrick, "*Fighting Gulf of Aden piracy*", International Relations and Security -ISN-, 08.10.08 (<http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?lng=en&id=92452>)].

⁴⁶ "*Private Security Firms Join Battle Against Somali Pirates*", Fox News, October 26th 2008, (<http://origin.foxnews.com/story/0,2933,444103,00.html>).

⁴⁷ The United Nations Convention on the Law of the Sea (UNCLOS) under art. 19 regarding the "*innocent passage*" it states that it is not innocent passage among other activities: ("*...any exercise or practice with weapons of any kind*") and under art. 107 it states that the power to seize ships involved in piracy is given only to military vessels ("*A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect*"); therefore, where does the legitimacy for the seizure of a private armed ship come from? In this case, an argument emerges among many authors as to whether the armed intervention of these ships is in itself piracy (see in this sense: "*The Perils of Piracy: The Year So Far*", Shipping & Transport International, June 10th 2009, <http://www.internationallawoffice.com/newsletters/detail.aspx?g=3ad12eb1-b976-4be7-a99b-27f4bd4f7862>, and "*Piracy. Issues arising from the use of armed guards*", INCE & CO, International Law Firm, September 2009, p. 3, <http://www.incelaw.com/search?q=piracy>).

⁴⁸ "*Private Security Firms Join Battle Against Somali Pirates*", Fox News, October 26th 2008, <http://origin.foxnews.com/story/0,2933,444103,00.html>, and Liss, Carolin (2008) p. 8.

Moreover, due to the novelty of PSCs protecting vessels many countries do not yet have effective laws.

Tuna trawler ships fishing on the high seas between Somalia and the Seychelles archipelago are now defenceless against pirate attacks, especially when they have nets deployed; thus, being easy targets, their flag states are taking measures to prevent Somali pirates. The approach followed to tackle this particular problem adopts different measures depending on their national law; for example, France put Marines aboard their fishing vessels to protect them, but Spanish law does not allow the military force to be used for protecting private property although recently their Defence Ministry has given permission to hire private security guards, armed with heavy weapons such as high powered rifles.

4.4. *Convoys.* There have also been proposals to convoy ships passing through the Gulf of Aden as more and more warships patrol the region, but it seems difficult to accomplish. Certainly, convoys escorted by warships is an option, although merchant ship operators may be reluctant to use them because it may require their ships to wait in a certain location for the next scheduled convoy, which can imply additional financial costs on ship owners. Furthermore, taking into account that one recommended countermeasure against piracy is the use of high speed to avoid being targeted by pirates, ships with higher speed capability will need to slow down to adapt to slower ones; an option that seems not to be the best for them. Additionally, a security tactic may be adapted by the pirates to attack different parts of a convoy at the same time to break or to separate weaker, slower or less manoeuvrable vessels from the formation⁴⁹.

4.5. *Maritime Security Patrol Areas.* As seen previously, in August 2008, CTF 150 established a *Maritime Security Patrol Area (MSPA)* in the Gulf of Aden to serve as a dedicated, more secure transit zone for merchant vessels and EU NAVFOR has also established an online centre known as *Maritime Security Centre-Horn of Africa (MSC-HOA)*. Certainly, following a standard route should make it easier for international forces in the area to monitor shipping and respond to distress calls, but the naval units are probably not sufficient at this moment and therefore a standard route could potentially offer an easier target for pirates with shorter transit distances between targets. Another risk is that pirates change their modus operandi from ransoms to for example the use of *phantom ships*⁵⁰. These problems could arise if there is insufficient international presence.

⁴⁹ A case in point that calls into question the efficacy of this protection measure took place in January 2009 when pirates captured a German liquefied-gas tanker. Escorted by an Indian warship, the vessel had been part of a convoy in the Gulf of Aden and was transiting the designated security corridor with a number of other ships when it was attacked by pirates. It had even delayed its transit through the Gulf of Aden by sixteen hours in order to travel with a convoy. Events moved so quickly, however, that the Indian warship was unable to protect the German tanker before pirates boarded the vessel.

⁵⁰ “*Phantom ships*” are ships with no real identity. The vessel is registered on the basis of false information provided to the registration authorities about the vessel’s previous names and the owner’s identity where the act of piracy, or the literal theft of the ship, is usually insignificant when compared with the criminal acts it could be used for; but it is obvious that the beginning of any such chain of crimes is an act of piracy. To sum up, and following Peter C. Unsinger (“*Phantom Ships, A Growing Menace*”, <http://www.councilcea.org>), “*phantom ships*” are described as those vessels “*without legal registry plying the seas for illegal purposes*”. Perhaps the most paradigmatic episode of a *phantom ship* was the “*Alondra Rainbow*” case initiated on 22nd October 1999 in Indonesia waters [see this story in Abhyankar, Jayant (2004) “*Piracy and Armed Robbery and Terrorism At Sea*”, ORF Workshop on Maritime Counter Terrorist, Delhi pp. 3–5].

5. CONCLUSIONS. Pirate attacks seem to be most prevalent in countries with emerging economies, large stretches of remote coastal areas, and ongoing political insurgencies. This is the case in Somalia where piracy is directly tied to the failure of the Somali state. Endeavours to fight and punish piracy as a crime are frequently fruitless in areas where there are legal vacuums and lack of political stability. Only by confronting the root causes, including state instability, country poverty, the fight against illegal fishing and the unsettling of pirate sanctuaries may offer a way to stop piracy in Somalia; however, naval presence may reduce the severity of the problem.

From the analysis of the Somalia pirates' *modus operandi* we can infer the consequence that since the 1980s, more sophisticated forms of piracy have been developed. Increasingly, from 2005, piracy in the Somalia-Horn of Africa region has become very serious where ships have been hijacked and ransoms demanded for the return of the vessel and kidnapped crew. As international responses to protect shipping were successful in one area and the risks outweighed the rewards, the Somali pirates adapted their tactics accordingly and continued to ply their illegal trade. Thus, when warships acted as a deterrent factor by escorting ships carrying humanitarian aid to Mogadishu in 2007, pirates moved their operations to the Gulf of Aden. Later, as effective international efforts grew to protect shipping around this area, some pirates have shifted their operations to the high seas of the western Indian Ocean to avoid the international warships.

Taking into account that there are incidents where there has been a serious risk of provoking a human and environmental catastrophe, particularly when as a consequence of an attack the ship has been kept unattended on the bridge for a considerable time while sailing in restricted, busy waters, it has become necessary for the marine industry to change its traditional reactive attitude. There is a need to give priority to preventative measures to eradicate piracy. The smaller crew numbers found aboard most ships (approx 15–20 compared to 40–45 in former times) also favour pirate attacks by making an anti-piracy guard service difficult. A small crew engaged in ensuring the safe navigation of their ship through congested or confined waters may also have the additional task of maintaining high levels of security surveillance with the consequent prolonged training. Companies should ensure that security watches are enhanced if their ship is in waters or ports where there is a high prevalence of attacks.

The international community has sent several warships to the Somalia area. According to the last IMB report this action, combined with ships' Masters adhering to recommended advice and carrying out robust anti-piracy precautionary measures, is resulting in a drop of the number of successful hijackings in the Gulf of Aden, even though the number of attempted attacks has not decreased. This reason drives the hiring of armed security teams to protect ships and their crews in these pirate-infested waters. Such action seems a feasible option for the owners although there are concerns about the role of PSCs from both legal and transparency viewpoints that require clarification.

In summary, while those measures have had some successes, they are substantially directed to treating one of the factors, piracy (depicted by many authors as one *symptom* and a product of the instability in the country) rather than against the root cause of the instability (the absence of an effective government). So, independent of any other anti-piracy measures which could help, the most effective deterrent

initiative against piracy would be to intensify efforts to achieve a political solution inside Somalia to bring about peace, stability and law enforcement. Otherwise pirates will be likely to continue to find sanctuary in Somalia and have too many incentives without enough deterrence to carry out attacks. In short, as history has taught us from time immemorial, the battle against piracy will be won only by determined action on land. Pirates have always needed access to sanctuary on land (they need to have access to a market in order to transfer the value and a secure place where they can conduct the negotiations without interruption) because, as historians recognize, piracy is a land-based crime which is evident at sea; so the decisive factor is what happens on land.

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