

1. Introduction: The International Response to Somali Piracy

Bibi van Ginkel and Frans-Paul van der Putten

Piracy attacks on international shipping off the coast of Somalia attracted worldwide media attention from 2008 onwards. While piracy is far from being a recent phenomenon, the response to this particular instance of piracy is unprecedented in terms of the diversity of the actors involved. What is especially striking is the many different nationalities of the actors engaged in countering Somali piracy. The international aspect of the response to Somali piracy is the main theme of this book. The idea to publish a book on the response to Somali piracy was the outcome of an expert meeting on the same topic that was organised by the Netherlands Institute for International Relations ‘Clingendael’ in July 2009.¹ The chapters in this book, apart from the introductory and concluding chapters, were initially presented as papers at the expert meeting. This book aims to provide policy makers, military personnel, academics, and students with an overview of the international response to Somali piracy. In doing so, it also intends to indicate which challenges Somali piracy poses to maritime security and where possible opportunities may be found to increase maritime cooperation.

1 ‘Pioneering for Solutions against Piracy: Geopolitical analysis, counter-piracy initiatives, and policy solutions’, international expert meeting, Clingendael Institute, 8 July 2009, organised by Jort Hemmer, Susanne Kamerling, Bibi van Ginkel and Frans-Paul van der Putten: <http://www.clingendael.nl/cscp/events/20090708/>.

The term ‘Somali piracy’ refers to the activities of Somalia-based groups who aim to generate income by attacking ships at sea. In practice the intended victims are mostly foreign merchant vessels sailing in the Gulf of Aden or in the Western Indian Ocean. The attackers are not – or at least not formally – linked to government authorities in Somalia, but can rather be characterized as gangs of private marauders. In addition to the internationally recognized but largely ineffective Transitional Federal Government of the Republic of Somalia (TFG), there are three other major governing entities in Somalia. These are the Islamist insurgency group al Shabaab in South and Central Somalia, and the de facto autonomous regional governments of Somaliland and Puntland in the north.² The preferred method used by Somali pirates is to board ships, take the crews hostage, and to extract a ransom from the shipowner in return for the release of both the crew and the ship.

The international response to Somali piracy ranges from media coverage throughout the world to donor conferences to generate financial sources to invest in state-building initiatives in Somalia, as well as the international naval presence and adjustments to the insurance rates for maritime shipping. The challenges are numerous, and some will be dealt with in this book. This book is concerned mainly with actions taken at the international level to remove the threat of piracy and to minimize the damage it is causing. The main emphasis in this volume is on initiatives by foreign (non-Somali) and international governmental actors – primarily initiatives at sea but also those on land and in the legal sphere that are closely related or complementary to what is taking place at sea. Of course Somali actors and foreign non-state actors – especially the international shipping industry – are important players as well, but we will approach these primarily in relation to actions taken by foreign governmental actors.

2 Somaliland strives to be recognized internationally as an independent state, whereas Puntland aims to maintain an autonomous status within Somalia.

Major foreign state actors include governments from countries that engage in naval counterpiracy missions off Somalia. The most prominent of these are the United States (US), China, Japan, Russia, India, South Korea, and many of the European member states of the European Union (EU) and the North Atlantic Treaty Organization (NATO). However, in the past few years various other countries have also sent warships to the region in response to Somali piracy. At the international level, apart from the EU and NATO, the United Nations (UN) are involved in various ways, for instance through the Security Council and the International Maritime Organization. National and international governmental bodies dealing with international law, or with criminal or financial issues also play an important role.

1.1 International Cooperation against Piracy

Piracy has long been referred to as an enemy of mankind ('hostis humani generis'), and yet when it comes to counterpiracy activities at sea, mankind has never responded collectively. The current operations in the Gulf of Aden probably constitute the first time in history when all of the world's major naval powers bring together significant naval assets in a specific region for a – to some extent - combined response to piracy. In the past, success against piracy was primarily achieved by hegemonic powers or a combined effort by global and regional powers. From the first century BC, the Roman Empire achieved some degree of success in fighting piracy in the Mediterranean.³ Britain, during its ascendancy as the world's dominant naval force and the leading colonial power, suppressed piracy of European origin in the Atlantic and Indian Oceans.⁴ However, state power has only rarely been so

3 Angus Konstam, *Piracy: The complete history*. Oxford: Osprey Publishing, 2008, p.19.

4 *Ibid.*, p. 272.

strong as to be able to subdue piracy at the international level more or less single-handedly. At the height of its power, Spain was unable to suppress pirate attacks on the shipping routes between Spain itself and its overseas possessions in the Americas and Asia.⁵ It is also noteworthy that today's leading maritime power, the United States, has so far been unable to end the threat of Somali piracy – in spite of the permanent presence of significant American naval forces in the Persian Gulf and the Indian Ocean.

During past centuries, up to the early twentieth century, there were various instances of joint international approaches to combating piracy, often involving the British navy or other Western maritime powers. The scope of such cooperative ventures was limited in terms of the number of participating countries. In the 1660s and for some time thereafter, the Dutch East India Company cooperated with Chinese imperial forces to attack the ships and positions of the Taiwan-based maritime warlord Zheng Jing on the South China coast.⁶ In the late nineteenth and early twentieth century, the British navy fought piracy off the Chinese coast and on China's inland waterways, formally in cooperation with the Chinese authorities. In the second half of the nineteenth century, the British, Spanish, and Dutch colonial governments in Southeast Asia worked together to eliminate piracy in the region.⁷ As an example of this joint approach, in 1861 an Anglo-Dutch naval force fought against pirates off the coast of Borneo.⁸ Joint initiatives also occurred in other regions. From the mid-seventeenth century the British and the Dutch took maritime actions against North African pirates

5 Kris E. Lane, *Pillaging the Empire: Piracy in the Americas, 1500-1750*. Armonk: M.E. Sharpe, 1998.

6 John E. Wills, Jr, 'Ch'ing Relations with the Dutch, 1662-1690', in: John K. Fairbank ed., *The Chinese World Order*. Cambridge MA: Harvard University Press, 1968.

7 Adam J. Young, *Contemporary Maritime Piracy in Southeast Asia: History, causes and remedies*. Singapore: ISEAS Publishing, 2007, p.45.

8 Angus Konstam, *Piracy: The complete history*. Oxford: Osprey Publishing, 2008, p.287.

(the so-called Barbary pirates), again sometimes in a coordinated way. In 1816 an Anglo-Dutch flotilla bombarded Algiers, which was then regarded as the capital of a pirate state. Also in the early nineteenth century, the combined – and apparently coordinated – efforts of the British and US navies and corresponding on-land policies by countries in the region led to the end of piracy in the Caribbean. The sea-based activities in this approach included the patrolling of major shipping lanes, the hunting down of pirate ships and attacks on pirate bases.⁹

During the Cold War, piracy did not play a prominent role in maritime security, at least not at the international level. Piracy once again became regarded as a serious threat to international shipping in the 1990s, when the number of piracy attacks in the Strait of Malacca grew rapidly. International cooperation played an important role in the response to Southeast Asian – mostly Indonesian – piracy in the Strait of Malacca. Major maritime powers such as the United States and Japan, which have significant strategic interests in the Strait of Malacca, were eager to be involved in addressing Southeast Asian piracy. However, Indonesia, Malaysia, and Singapore, being concerned that their sovereign rights in the Strait could suffer as a result of the internationalization of the counterpiracy approach, were reluctant to assign a major role to external actors.¹⁰ According to Adam J. Young, the most effective approach for countries outside the region involves technical assistance and funding, rather than military or security cooperation, which allows the regional states to retain the lead in combating piracy.¹¹

The regional states themselves initiated, in 2004, joint maritime patrols – the so-called MALSINDO patrols by Malaysia, Singapore and Indonesia. In 2006 the three countries

9 Ibid., p. 274-275.

10 Adam J. Young, *Contemporary Maritime Piracy in Southeast Asia: History, causes and remedies*. Singapore: ISEAS Publishing, 2007, p. 115.

11 Ibid., p. 117.

signed an agreement to create a single framework for the MALSINDO naval patrols and for air surveillance.¹² It seems likely that this regional cooperative initiative was partly motivated by the aim to avert interventions by external powers. A broader cooperative initiative related to piracy in Southeast Asia is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), that came into force in 2006 and that involves sixteen governments, mostly of Southeast Asian countries. An important outcome of this is the ReCAAP Information Sharing Centre in Singapore which aims at facilitating the sharing of piracy-related information.¹³

Since the 1990s, the threat of piracy attacks against international shipping has increased in various parts of the world, including the South China Sea, the Bay of Bengal, West Africa, and off the Brazilian coast.¹⁴ However, the most spectacular increase in recent years was off the Somali coast. Due to the weakness of the Somali state, the efforts by external actors rather than those of local authorities have so far played the most visible role in the response to piracy off the coast of

12 Rajeev Sawhney, 'Redefining the Limits of the Straits: A composite Malacca Straits security system', *IDSS Commentaries*, Singapore: RSIS, 2006: <http://www.rsis.edu.sg/publications/Perspective/IDSS0372006.pdf>

13 http://www.recaap.org/index_home.html

14 On the threat of contemporary piracy see John S. Burnett, *Dangerous Waters: Modern piracy and terror on the high seas*. New York: Plume, 2003. Much recent literature on piracy has approached the phenomenon in combination with maritime terrorism: Peter Chalk, *The Maritime Dimension of International Security: Terrorism, piracy, and challenges for the United States*. Santa Monica: RAND, 2008; Anthony M. Davis, *Terrorism and the maritime transportation system: Are we on a collision course?* Livermore: Wingspan Press, 2008; Jim Gray, Mark Monday, and Gary Stubblefield, *Maritime Terror: Protecting yourself, your vessel, and your crew against piracy*. Boulder: Sycamore Island Books, 1999; Michael Richardson, *A Time Bomb for Global Trade: Maritime-related terrorism in an age of weapons of mass destruction*. Singapore: ISEAS Publications, 2004. Indeed, the approach by the US navy against Somali piracy is derived from its anti-terrorism activities in the same region. Still, the relationship between Somali piracy and terrorism so far seems to be limited or non-existent.

Somalia. Another important difference with regard to the 1990s situation in the Malacca Strait is that the number of extra-regional countries that are involved is far greater. As will be explored throughout this book, the international dimension in the response to Somali piracy is diverse and complex. This raises the question of how the many actors interact with each other, and to which extent a common approach has been found.

In spite of the historical significance of the international response to Somali piracy, not many research data are yet available on this topic. The fact that there is an international dimension to the response has been widely noted,¹⁵ and also that a military response is in itself insufficient to end piracy.¹⁶ Moreover, it has been noted that the United Nations is as yet incapable of effectively dealing with piracy.¹⁷ However, there has been little analysis with regard to the way in which the many international actors interact, both at sea and at other levels, and which factors influence cooperation between them.¹⁸ This book will therefore make a first attempt at clarifying the different aspects that play a role in finding a solution to Somali piracy at the international level.

-
- 15 For instance, Rubick Biegon, 'Somali Piracy and the International Response', *Foreign Policy in Focus*, 29 Jan 2009, http://www.fpif.org/articles/somali_piracy_and_the_international_response.
 - 16 Stockbruegger, 'Somali Piracy and the International Response: Trends in 2009 and prospects for 2010', *Piracy Studies*, 6 March 2010, <http://piracy-studies.org/?p=111>.
 - 17 Christopher Jasperro, 'Somalia's Piracy Offers Lessons in Global Governance', *YaleGlobal*, 6 April 2009, <http://yaleglobal.yale.edu/content/somalia%E2%80%99s-piracy-offers-lessons-global-governance>.
 - 18 On the relationship between two of the actors, the EU and China, in the context of naval counterpiracy missions in the Gulf of Aden: Susanne Kamerling and Frans-Paul van der Putten, 'Europe Sails East, China Sails West: Somali piracy and shifting geopolitical relations in the Indian Ocean' in: Frans-Paul van der Putten and Chu Shulong eds, *China, Europe and International Security: Interests, roles and prospects*. London: Routledge, forthcoming in September 2010.

1.2 *Approach*

This book addresses two primary questions. First, how do the many nationalities involved interact with one another? And second, what are the prospects for increased coordination at the international level in dealing with maritime piracy? The various contributions to this book will approach the response to Somali piracy from various perspectives. Together, the following six chapters provide an overview of the main actors and initiatives in countering Somali piracy since late 2008. Each contributor has done his or her best to provide the most recent and accurate data available at the time of writing. However, in some cases there are discrepancies between the various chapters regarding certain data. This is illustrative of the fact that the topic of this book is a new phenomenon on which not much verifiable data are yet available, and for which multiple standards of measurement exist.

In chapter I, Roger Middleton provides an overview of the characteristics of Somali piracy. He points out that when put into perspective, one might wonder whether the immense financial costs of operating navy forces in the area are worth incurring when compared to the small possibility that commercial shipping is targeted. The real damage, he argues, takes place in Somalia. Nevertheless, international cooperation mainly focuses on naval presence, even though it is a well-known fact that the naval presence by itself will never be able to eradicate the problem. One of the major challenges to be faced is to chase the money and to change the politics of the international community in their approach towards the authorities in Somalia. The latter, as long as it does not contain an intervention, might in the long run contribute to changing the politics within Somalia.

In chapter II, J. Peter Pham describes the history and the cultural clan system of Somalia, and its influence on the political situation in Somalia. Pham explains how the failed state status, as well as the regional situation, are of influence on the emergence of piracy. A good understanding of these

backgrounds, Pham argues, is vital for finding a solution to Somali piracy. Like Middleton, Pham points to the importance of a bottom-up approach in engaging decentralized authorities in state-building kinds of activities to contribute to counter-piracy initiatives.

In chapter III, Kees Homan and Susanne Kamerling provide a detailed overview of the variety of international naval actors, as well as the different mechanisms and instruments in place both at sea as well as on shore. They also discuss the much-debated possibility for the shipping industry to hire private security companies to provide the needed protection. Homan and Kamerling argue that the employment of the different instruments and mechanisms as well as the large naval presence have their impact on piracy activities in the region. The number of attacks in the Gulf of Aden itself has dropped, but the pirates have also changed their *modus operandi*, shifting their activities further into the Indian Ocean and possibly also to other criminal spheres. Homan and Kamerling point out that, in this sense, the methods used by pirates show similarities with the practice of asymmetric tactics in warfare. This poses a challenge to the operational thinking of the international naval actors in the region. Furthermore, the authors lay out the operational challenges in the area of communication and coordination.

In chapter IV, Per Gullestrup and May-Britt U. Stumbaum join forces by bringing together the perspectives of the European Union and the shipping industry on fighting Somali piracy. Both actors are major players, and should serve the same purpose, namely to safeguard the maritime routes of the world's biggest trading bloc and to guarantee non-interference with trade and transportation while keeping the costs for shipping at a competitive level and to ensure a continued high flow of exports. However, as is natural, the interests of both actors are not completely identical. The authors point out that cooperation between the two actors has improved over time. Nevertheless, they highlight some areas with major challenges, such as communication and evidence

gathering and the prosecution of pirates. Several recommendations are made at the end of the chapter to improve the cooperation between the EU and the shipping industry.

In chapter V, Douglas Guilfoyle outlines the legal challenges of fighting piracy. He argues that the main problem for the international community in prosecuting piracy is not a matter of power, but rather a matter of duty. Guilfoyle is nevertheless not a supporter of the idea of developing an international tribunal to deal with piracy crimes, but rather advocates the strengthening of regional tribunals. In this context, he also points to the human rights challenges that particularly play a role with regard to the detention facilities, principles of fair trial and extradition requests. He also lays out the main rules concerning the use of force at sea. Guilfoyle emphasizes that the counter-piracy missions are police missions, and that the situation in which the naval actors operate do not qualify as situations of armed conflict. This is not only relevant for the rules of engagement of the naval actors, but is also of importance when considering the possibility of the use of violence by private security companies.

In chapter VI, James R. Holmes asks why naval powers would provide international public goods to deal with a problem that, when looking at the numbers and when making a cost/benefit analysis, does not seem to legitimize the broad scope of the current response. He argues that especially the geopolitical interests of the main players are at stake in this context. It is also the fear of a diplomatic backlash if the counterpiracy efforts are mishandled, which would especially erode America's strategic position in the Indian Ocean, where a strategic triangle is taking form among India, China, and the United States. Taking these arguments into account, Holmes then argues that for the United States, as the world's leading maritime power, the best strategic choice would be to stay on the defensive side of the problem to match the magnitude and duration of the counterpiracy effort to its political ends. Contrary to Guilfoyle, he advocates a more prominent role for

armed private security companies in addition to the activities of the naval actors.

Finally, in the concluding chapter the editors will use the insights provided by the various contributors to address the two main questions that are central to this volume and highlight the challenges and opportunities that lie ahead in the fight against Somali piracy.