

EAST AFRICAN PIRACY

Issue Brief

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East African Piracy, thrust into American political discourse by the dramatic rescue of merchant Captain Richard Phillips, represents a small but growing challenge to the United States and larger international community. The recent introduction of legislation in the U.S. House of Representatives suggests that despite the absence of continued media attention, the issue has not disappeared.¹ Nonetheless, it remains unclear how political, commercial, and military actors within the United States ought to react.

Any policy response should be crafted, considered, and implemented with a sober understanding of Somali based piracy. To achieve such, three things are required. First, a clear definition and accurate measure of the problem. Second, an appreciation of the operational environment on the Horn of Africa and at sea. And third, an accounting of the role played by the international community and regional actors.

Defining & Measuring the Problem

Pirate activity in the Gulf of Aden and Indian Ocean has increased over the last four years. How much and how quickly is difficult to delineate. Assessments vary among governments, international, and commercial entities.

The International Chamber of Commerce's International Maritime Bureau (IMB) reports the most significant escalation. In May 2009, IMB reported pirate activity off the coast of Somalia jumped from a total of 111 incidents including 42 hijackings during the twelve months of 2008 to 114 incidents with 29 hijackings during the first four months of 2009.²

¹ H.R. 2984, The United States Mariner and Vessel Protection Act of 2009, was introduced by Representative Frank Lobiondo (NJ-2) on June 19, 2009. The bill has been referred to the Committee on Homeland Security and the Committee on Transportation and Infrastructure.

² (2009) "Pirate attacks off Somalia already surpass 2008 figures." International Chamber of Commerce - Commercial Crime Services. Found at http://www.icc-ccs.org/index.php?option=com_content&view=article&id=352:pirate-attacks-off-somalia-already-surpass-2008-figures&catid=60:news&Itemid=51

Statistics from the United Nation's International Maritime Organization (IMO) generally agree with the IMB's numbers for 2008. For said year, IMO reported 115 incidents and 46 hijackings.³ However, the IMO has not found as significant an increase during 2009. During the first four months of 2009, IMO reported 62 incidents and 19 hijackings.⁴

Although differences in data collection and observer bias on the part of those filing the reports account for some of this variance, the core difference lies in how piracy is defined.

The International Chamber of Commerce's IMB defines piracy as an "...act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act."⁵ In practice, this broad definition is applied loosely to include incidents that occur within and beyond the territorial waters of nation-states -- even perceived threats are recorded as attempted piracy.⁶

Piracy is defined by the IMO via the UN Convention on the Law of the Sea. The convention holds piracy to be "...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..." To be considered piracy the convention holds that such acts must be committed on the high seas outside the jurisdiction of any state.⁷ By definition, this removes attempted acts or those actions occurring within the recognized territorial waters of a nation-state.

US law parallels the UN's logic. It defines a pirate as "...a person who unlawfully and intentionally seizes or exercises control over a ship by force or threat thereof..."⁸ In granting Congress the authority to punish piracy, Article I, Section 8 of the US Constitution defines piracy as an act committed on the high seas beyond the jurisdictional authority of any single nation. Like the UN definition, US law restricts the definition of piracy to actual incidents in international waters.

The UN and US definitions represent the customary conceptualization of piracy. It disaggregates robberies or hijackings that occur in port or within the territorial waters of a nation state as criminal activity separate from piracy. Using this customary definition and the incident reports collected by the IMO, the following patterns emerge.

In the last two years, acts of piracy increased off the coast of East Africa. At the same time, the number of maritime criminal incidents decreased. This is most likely the product of four factors.

³ (2009) "Reported Incidents of Somali Pirate Attacks and Hijackings in the Gulf of Aden for 2008." UNOSAT. Found at http://unosat.web.cern.ch/unosat/asp/prod_free.asp?id=28

⁴ Ibid.

⁵ (2003) "Piracy and Armed Robbery Against Ships." Annual Report. International Chamber of Commerce - International Maritime Bureau. p. 3

⁶ Patch, John. (2008) "The Overstated Threat." Proceedings Magazine. Volume 134, Issue 12.

⁷ (1982) Article 101, UN Convention on the Law of the Sea

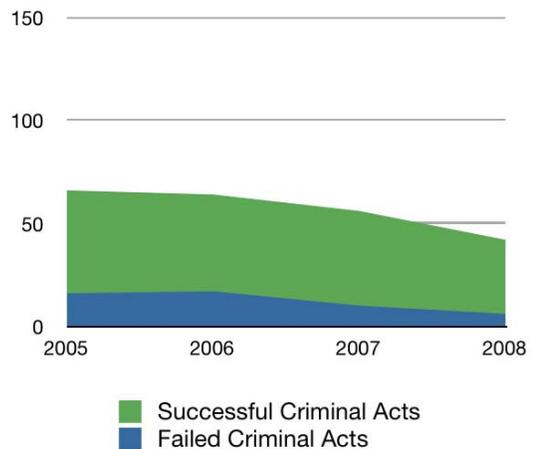
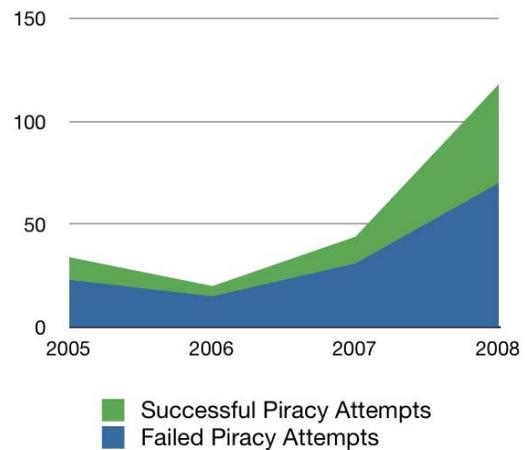
⁸ See Title 18 USC § 2280 (a)(1)(A)

The decrease in criminal activity is likely the result of international efforts to heighten merchant awareness of the threat, protect shipping by encouraging merchants to transit the area at greater distances from the African coast, and to provide military escort to certain vessels destined for Somalia.

The increase in piracy is likely the unintended consequence of the Maritime Security Patrol Area. By establishing this corridor, the international community effectively created a target rich environment with shorter transit distances between targets.⁹ In effect this has increased the number of attempts each pirate crew can make as well as their success rate.

Definitional clarity and better measurement represent only part of the task in developing an understanding of the true magnitude of the problem. What is also needed is a better appreciation of the level of risk posed.

Given the number of vessels transiting this area -- estimated at more than 33,000 a year¹⁰ -- the observed ten percent increase in successful incidents of piracy represents a small increase in the level of risk. According to US Under Secretary of Defense Michèle Flournoy, Somali pirates attack “less than one half of one percent” of those vessels transiting the area. Pirates successfully intercept less than one third of this number. In short, the probability that a merchant ship will be the victim of piracy during a single voyage through the Gulf of Aden and Indian Ocean area is .0014545.¹¹ Decision makers should keep this fact in mind when developing a policy response to the issue.



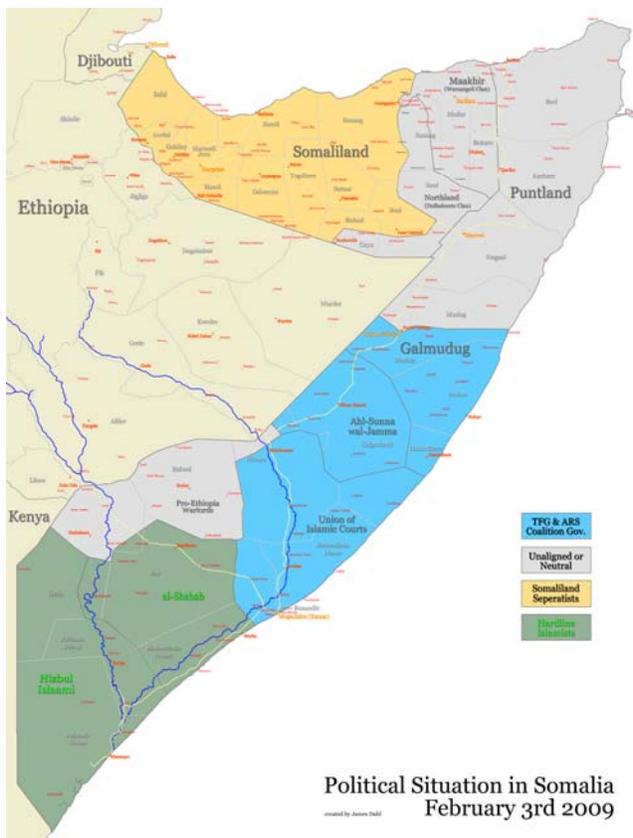
⁹ Spatial analysis on the part of UNOSAT reached the same conclusion -- see “Pirate Attack Density in the Gulf of Aden (2008)” Found at http://unosat.web.cern.ch/unosat/asp/prod_free.asp?id=28

¹⁰ Flournoy, Michèle & James Winnefeld. (2009) Testimony before the US Senate Armed Services Committee - 05 May 2009. Found at <http://armed-services.senate.gov/statemnt/2009/May/Flournoy-Winnefeld%2005-05-09.pdf>.

¹¹ For comparison, during the course of their life the average American is 4.4 times more likely to die as the result of an automobile accident. The National Safety Council calculates the odds that an American's life will come to an end as the result of an automobile related accident at 1 in 158 -- a probability of .0063291.

Motivations and the Operational Environment

As noted, piracy involves acts occurring beyond the territorial waters of a nation-state. At work is a Westphalian logic that holds criminal activity within the territory of a nation-state to be the jurisdiction and responsibility of said country's government. Piracy is a problem that exists in international space -- it is a condition arising from the lack of political authority. Piracy is controlled for by denying pirates land upon which to organize, plan, or hide. In governed spaces, piracy is controllable. In Somalia, this presents a problem.



Somalia is an ungoverned (at best barely governed) space. It has suffered in this condition since President Siad Barre was overthrown in 1991. Somalia began to disintegrate shortly thereafter. Northern clans declared five administrative regions to be the independent Republic of Somaliland.¹² In 1998, the regions of Bari, Nugaal, and northern Mudug formed the self-governing autonomous state of Puntland.¹³ Meanwhile, the remaining southern half of Somalia has struggled through political clashes among various internal and external groups.

At one point, various warlords controlled much of southern Somalia until Islamists defeated them taking control of the territory – including the capital Mogadishu.

With Western backing, Ethiopian forces invaded Somalia in 2006 and eventually wrestled control from the Islamists. However, by late 2008, Islamist forces led by al Shabab had retaken much of the southernmost territory of Somalia. Anxious to withdraw, Ethiopia pulled out its forces in January 2009.

¹² (2009) "Somalia" The World Factbook. CIA. Found at <https://www.cia.gov/library/publications/the-world-factbook/geos/SO.html>. Although Somaliland has not been recognized by any government, it has established a stable constitutional democracy with functional municipal, parliamentary, and presidential elections.

¹³ Ibid.



Officially, Somalia is currently governed by a Transitional Federal Government recognized by the international community. It is led by Sheikh Sharif Sheikh Ahmad who was elected by Somalia's parliament (sitting in Djibouti) during January 2009. In reality, however, this government controls only a fraction of Somalia. The major pirate center of Eyl lies beyond its control in the Puntland.

Eyl is ground zero for East African piracy. It is Eyl where most of the hijacked ships and their hostage crews are taken. It is in Eyl where ransoms are negotiated and payment arranged.¹⁴ The port and city, separated by canyon with easily defensible draws and spurs, provides natural advantages to the pirates. Hostage crews, normally guarded by dozens of pirates, are difficult for international forces to locate and can be easily moved.¹⁵ The terrain makes it easy to spot approaching forces and to hide readily accessible weapons caches. Furthermore, not far from the city lies the pirates' mountain base known as Bedey.¹⁶ In short, Somalia is a permissive environment within which and from which pirates may plan and launch their attacks.

¹⁴ Harper, Mary. (2008) "Life in Somalia's pirate town." BBC. Found at <http://news.bbc.co.uk/2/hi/africa/7623329.stm>.

¹⁵ Ibid.

¹⁶ Abdinur, Mustafa Haji. (2009) "Life in Somalia's pirate army." Agence France-Presse. Found at <http://www.nationalpost.com/news/story.html?id=1549233>.

Local clans represent a key component of Somalia's permissive environment. In Puntland and other areas the clans either engage in piracy or permit it.¹⁷ In many areas, pirates enjoy general public support.¹⁸ This results from the fact that although the enterprise is controlled by clans and criminal gangs, the proceeds generated from ransom payments trickle down throughout the local economy.¹⁹

Such public support hints at one of the precipitating motivations sparking East African piracy. Absent a functional government capable of defending Somali interests, its territory has been subjected to overfishing and toxic dumping on the part of international (largely European) companies.²⁰ The resulting loss of economic opportunity has led many former fishermen to either become pirates or support piracy via their knowledge of the sea.

By their very nature, the seas off the coast of Eastern Africa represent an attractive environment for pirates. The Gulf of Aden represents a vital artery through which vast quantities of finished goods, natural resources, and military supplies transit. For example, 4% of the world's daily oil production passes through the area as does 18% of the US and Europe's combined yearly oil imports.²¹

Given this area's importance to the global economy, governments around the world are contributing to attempts to secure it. Yet despite the fact that naval vessels from a host of countries now patrol some two million square miles of the Gulf of Aden and Indian Ocean, pirate attacks continue.²² Seaborne counter-piracy efforts are mired by the very size of the ocean and pirate tactics that adjust for defensive measures. For example, as merchant ships move further out to sea, pirates increase their range via the use of larger more sea worthy mother-ships from which smaller raiding boats are launched. As Rear Admiral Peter Hudson, the new commander of the European Union's anti-piracy operations, told the BBC in June 2009 -- "Illegal activity off the coast of Somalia is not necessarily something which will get solved at sea. The solution lies ashore."²³

¹⁷ Flournoy, Michèle & James Winnefeld. (2009). Gilpin, Raymond. (2009) "Counting the Costs of Somali Piracy." United States Institute of Peace. p. 7

¹⁸ Adow, Mohammed. (2009) "The pirate kings of Puntland." Al-Jazeera. Found at <http://english.aljazeera.net/news/africa/2009/06/2009614125245860630.html>.

¹⁹ Baldauf, Scott. (2008) "Who are Somalia's pirates?" The Christian Science Monitor. Found at <http://www.csmonitor.com/2008/1120/p25s22-woaf.html>.

²⁰ Bengali, Shashank. (2009) "An interview with a jailed Somali pirate leader." The Christian Science Monitor. Found at <http://www.csmonitor.com/2009/0503/p06s12-woaf.html>. Knaup, Horand. (2008) "The Poor Fisherman of Somalia." Der Spiegel. Found at <http://www.spiegel.de/international/world/0,1518,594457,00.html>. (2008) "World only cares about pirates." BBC. Found at <http://news.bbc.co.uk/2/hi/africa/7740417.stm>. (2008) "UN envoy decries illegal fishing, waste dumping off Somalia." Agence France-Presse. Found at http://afp.google.com/article/ALeqM5gVV_gQDsp1m8v7nPcumVc5McYV-Q.

²¹ Caponiti, James. (2009) Testimony before the US Senate Armed Services Committee - 05 May 2009. (2008) "FACTBOX-Somali pirates risk choking key world trade route." Reuters. Found at <http://www.alertnet.org/thenews/newsdesk/LD681364.htm>.

²² (2009) "Piracy 'cannot be solved at sea.'" BBC. Found at <http://news.bbc.co.uk/2/hi/africa/8115662.stm>.

²³ Ibid.

The Role of the International Community and Regional Actors

Although Somalia's political instability is the product of inter-clan warfare, current conditions are also the result of past actions taken by the international community -- including Somalia's neighbors.

Created in 1960 from territory held by the United Kingdom and Italy, Somalia has known only a single period of internal political stability -- that under President Siad Barre. Coming to power through a coup in 1969, Barre declared Somalia to be a socialist state.²⁴ During his tenure, Somalia would be a client of the Soviet Union, start a disastrous war with Ethiopia, and eventually turn to the United States for help after the Soviets chose to back Ethiopia.

Barre ruled until opposition from clans and other domestic actors led to the collapse of his government in 1991.²⁵ Barre's cronyism, failed economic policies, and war with Ethiopia effectively destroyed the Somali state. Eventually the army disintegrated -- soldiers deserted to join their respective clan militias.²⁶ Other national institutions followed suit. Despite attempts at political reconciliation and reconstruction, the civil war sparked by the collapse of Barre continues.

International efforts to stabilize Somalia began with American and international efforts in the early 1990s. Although the US withdrew in 1994 following the 'Blackhawk down' events in Mogadishu, international peace efforts have continued. In total, more than fourteen reconciliation conferences were held, with significant efforts put forward by the governments of Ethiopia, Egypt, Yemen, Kenya, and Italy. In 2000, Djibouti hosted the reconciliation conference that led to the first Transitional National Government.²⁷ The current Transitional National Government resulted from talks occurring in Kenya in 2004.²⁸ It was this government that was temporarily overthrown by Islamists in 2006 and later restored by Ethiopian troops.²⁹

At sea, international activities have served to both spark piracy as well as combat it. As noted earlier, overfishing and dumping have reduced the ability of Somali fishermen to successfully harvest their territorial waters.³⁰ The international community's failure to police for such crimes and protect Somali interests provides a cause with which pirates may legitimize their actions.

²⁴ (2009) "Somalia" The World Factbook. CIA. Found at <https://www.cia.gov/library/publications/the-world-factbook/geos/SO.html>.

(2009) "Country profile: Somalia." BBC. Found at http://news.bbc.co.uk/2/hi/africa/country_profiles/1072592.stm.

²⁵ (2009) "Background Note: Somalia." US Department of State. Found at <http://www.state.gov/r/pa/ei/bgn/2863.htm>.

²⁶ Ibid.

²⁷ Ibid.

²⁸ (2009) "Country profile: Somalia." BBC.

²⁹ (2009) "Somalia" The World Factbook. CIA.

³⁰ Tharoor, Ishaan. (2009) "How Somalia's Fisherman Became Pirates." Time. Found at <http://www.time.com/time/world/article/0,8599,1892376,00.html>.

Nonetheless, a diverse and growing number of nations now participate in international efforts to reduce East African piracy. In December 2008, the United Nations Security Council adopted Resolution 1851 authorizing states to take actions designed to combat Somali based pirates. The European Union has established the Maritime Security Center to coordinate the protection of merchant ships by tracking their progress through the area and coordinating military responses when necessary. NATO has established the NATO Shipping Centre to act as an information clearing house for news and information concerning pirates and best practices for merchants. And warships from the navies of the United States, China, Turkey, France, Germany, Spain, and others now participate as Combined Maritime Forces in patrols to disrupt and intercept pirates.³¹

Members of CTF-151 board suspected pirate vessel May 2009.



Although such international efforts show promise, they represent a significant expense for the national governments supplying them. Recent estimates of the costs of employing naval vessels to fight East African piracy now approach \$600 million dollars a year³² -- a price tag likely to be contested domestically during the world economic downturn. Furthermore, this price fails to consider the opportunity costs presented to national navies by not having those vessels available for other, perhaps more pressing, missions.

Crafting Policy

As decision makers in the United States and abroad begin to craft policies designed to quell East African piracy the following ought to be considered. The problem represents a small but growing risk. Any response must balance this risk with the costs of potential remedies. The genesis of this problem lies not in the greed of the pirates or the value of the crews and ships that transit this area – it lies in the chronic political instability of Somalia.

³¹ Schaeffer, Nathan. (2009) "Combined Maritime Forces Works with International Navies to Counter Piracy." Press Release, US 5th Fleet. Found at <http://www.cusnc.navy.mil/articles/2009/089.html>.

³² Knott, John. (2009) "Clan Rivalry, Military Conflict, and the Financial and Human Costs of Piracy." Holman Fenwick Willan. Found at <http://www.mondaq.com/article.asp?articleid=76272&login=true&nogo=1>.

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