

**Understanding Modern Piracy:
Geopolitical and Regulatory Considerations**

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Executive Summary

The scourge of modern piracy is often unrecognized by the general public. However, those involved in the Maritime industries are all too familiar with the danger, both physical and economic, posed by pirates. Modern pirates hearken less to the romantic imagery of the swashbuckling adventurer than they do to the violent, mercenary gangsters that they more closely resemble. Such imagery, however, does little to explain the pirates' motivations, their impact on shipping and the reaction of the governments whose economies are threatened by their actions.

The following paper will provide a brief analysis of the current impact of piracy on shipping, and the geopolitical context that allows these criminals to thrive. Further, the paper will provide an overview and analysis of some of the international efforts to curtail piratical activity and their effectiveness.

“Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war...”

-Woodrow Wilson, The 14 Points

Introduction

Modern piracy can best be described as a hidden plague on the economies of the world. While most are unaware of, or perhaps simply do not understand, the pervasiveness and impact of piracy on international shipping lanes, the phenomenon is very real and has a tangible impact, not only on the maritime industry, but also on the global economy. As the global economy struggles with worldwide recession, failing and failed states are acting as a breeding ground for organized piratical activity – from “muggings” at anchor to armed hijackings while underway.

The lack of awareness of the piracy issue, however, does not mean that this is a victimless crime or even one that has little to no impact on the public. There are very tangible costs to the crime wave for which everyone pays. For example, should a ship be the victim of a pirate attack, the owner can choose to report the incident to the appropriate authorities. If the owner does so, it must absorb not only the cost directly associated with the attack (delays and interruptions to name just a few) but must also bear the legal costs that are associated with the attack investigation.¹ This also invariably leads to higher insurance premiums, as well.

Given the costs associated with choosing to report acts of piracy, it should come as no surprise that as many as 50% of incidents are unreported. Over the last five years, incidents of piracy have grown increasingly common. In 2009 alone there were over 400 incidents of reported piracy. According to statistics from the International Maritime Bureau, acts of piracy are growing more and more violent as pirates learn from their experience, re-invest their ill-gotten gains to strengthen their criminal enterprise and widen their area of operations.

It is important that these criminals and their intentions not be underestimated. There is an apparent tendency to discount the sophistication of modern pirates. The fact that they often attack in traditional fishing vessels, dhows and skiffs often belies the shrewd organization and violent intentions of those orchestrating the attacks. In order to better understand the phenomenon of modern piracy, one must understand the origins of the crimes. What may have begun as a desperate turn by individuals seeking to supplement their dwindling incomes has become a serious plague on the international Sea Lines of Communications (SLOC).

Despite the growing impact of piracy on the shipping industry, the general public has yet to demonstrate a sustained interest in combating piracy on an ongoing basis. American public opinion has been singularly focused on issues of terrorism since the attacks of September 11, 2001. Though many scholars have theorized about a connection between piracy and terrorism there has yet to arise a substantive, tangible relationship between the two criminal acts. At their core, the two acts have very different aims – piracy is undertaken for purely economic reasons and requires secrecy and anonymity

¹ Chalk, Peter. (2008)*The Maritime Dimension of International Security: Terrorism, Piracy and Challenges for the United States*. Rand Corporation. P. 15

so that the criminals can continue their activities, while terrorism is undertaken for ideological reasons requires an audience to be effective².

Looking at the activities of piracy only tells part of the story, however. In order to understand the phenomenon of modern piracy, one must understand the underlying causes. These individuals and, in many cases, organizations, do not exist in a vacuum and are a product of the environment in which they exist. There are certainly variables that give rise to conditions favorable to crime. This paper will examine some of those conditions, including the geopolitical and economic contexts that may give rise to piracy.

Geopolitical Context

There are a number of factors that must be addressed when examining modern piracy from a geopolitical perspective. Not only must one examine the constraints facing states in fighting piracy, but one must also examine the features that allow piracy to thrive. There is a discussion of law enforcement that cites three critical elements in the prevention of crime. Of the three elements deterrence is perhaps the most important. In other words, the criminals must perceive greater danger to themselves in perpetrating the crime (ie. getting caught, wounded or killed in the act) than they see reward in committing the crime and escaping. In geopolitical terms, the deterrence of crimes becomes increasingly complex, particularly when dealing with issues of sovereignty and failed, or failing, states. For the sake of brevity, this paper will not attempt to examine every possible cause of international piracy, but will simply highlight those issues that best demonstrate the roots of the issue and the complexity associated with combating piracy.

State Sovereignty

Efforts to address international issues often give rise to conflicts of state sovereignty. The very existence of the United Nations still leads to heated debate in a variety of circles. While it is certain that international cooperation is beneficial for a number of reasons, there are those that feel that belonging to the cooperative necessarily results in the dilution of sovereignty. If countries cannot, or are at least discouraged from, taking unilateral action, one must question the degree to which they are maintaining their sovereignty in light of the communal pressures.

Contrast the need to maintain state sovereignty with the need for collective security agreements, however. Collective security agreements remain a fact of international life, the driving notion being that there is safety in numbers, for states as well as individuals. Alliances are necessary to mitigate the threat of hostility. Security and sovereignty are two fundamental requirements for the longevity of the state. These two competing needs require states to master the delicate balance of maintaining their independence and sovereignty while cooperating with neighboring states to the extent necessary to achieve stability and security.

² Sakhuja, Vijay. (2007) "Sea Piracy in South Asia," Violence at Sea: Piracy in the Age of Global Terrorism. ed. Peter Lehr. Routledge, Taylor & Francis Group; New York, NY. Pp.33-34.

Inis Claude describes the challenge of collective security: "Collective security requires the relinquishment of the sovereign free hand in the most vital issues of foreign policy, the abandonment of national biases for and against other states, and a consequent willingness to follow the lead of organs of the community in taking action in opposition to any aggressor, on behalf of any victim³." With this description in mind, one can begin to see the struggles that face the collective efforts to combat piracy, particularly in littoral regions bordered by states that are taking pains to project themselves as a strong, sovereign power. One of the most piracy prone areas in the world, the Malacca Straits, provides ample illustration.

The Trilateral Coordinated Patrol, introduced in 2004, was a joint effort among Indonesia, Malaysia and Singapore to patrol the littoral waters along the coast in an effort to deter piracy. However, in its initial implementation, the Patrol failed to produce a significant reduction in piratical acts in the area. This was at least partially attributed to the fact that the Patrol failed to allow for cross-border pursuit⁴. Issues of state sovereignty discouraged the presence of foreign navies in state waters, even in the pursuit of dangerous criminals and for the purposes of collective security.

Recent reports, from the Indonesian embassy, estimate that the Trilateral Coordinated Patrol has succeeded in reducing piracy in the area by 70%⁵. That being said, the International Maritime Bureau still cites the Malacca Straits as one of the most piracy prone areas in the world and advises ships to use extreme caution when moving through the region. Indonesia and Malaysia in particular are wary of international assistance for the Trilateral Coordinated Patrol, while Singapore has been is more welcoming.

Issues of state sovereignty are further involved due to the fact that most acts of piracy occur within the "12 nm territorial seas or the 200nm exclusive economic zones (EEZ) claimed by most states, according to Richard O'Meara. O'Meara ascribes the complications in deterrence and prosecution of pirates to the fact that they must be dealt with according to the "vagaries of local criminal codes, administration processes, resource allocation, and corruption⁶."

Consider that piracy takes place in stages, many of which begin on land. Planning, supplying and orchestrating the attack are often carried out on land. In addition, the pirates may attack domestic ports or steal ships at port with which they can then use to carry out their operations at sea. These domestic issues fall under the jurisdiction of the local governments and law enforcement agencies. For many states, allowing international law to determine the extent of deterrence and enforcement that takes place domestically is akin to sacrificing sovereignty. For that reason, anti-piracy conventions and collaborative efforts are necessarily constrained to the activities at sea. While international cooperation and regulations may be prescribed, and will be discussed later,

³ Claude, Inis L. Jr. (1962) *Power and International Relations*. Random House; New York, NY. Pp. 196-204

⁴ Raymond, Catherine Zara and Morrien, Arthur. (2009) "Security in the Maritime Domain and Its Evolution Since 9/11," *Lloyd's MIU Handbook of Maritime Security*. CRC Press; London. Pp. 3-11

⁵ ANTARA News. (July 14, 2010) "Seven Countries to Discuss Malacca Strait Security." <http://www.embassyofindonesia.org/news/2010/07/news040.htm>

⁶ O'Meara, Richard M. (2007) *Maritime Piracy in the 21st Century*:

there is no enforcement mechanism by which states can coerce others into abiding by those regulations.

Failing and Failed States

Failing states, those defined by the Failed States Index as “vulnerable to collapse” are understandably more sensitive to issues of state sovereignty than others may be. These states may act in a manner such that the international community continues to perceive them as being capable of projecting their power both domestically and abroad. In fact, the Failed States Index the definition of a failed state is one in which the state has lost physical control of its territory⁷.

Using that definition in the context of piracy, one can easily see why states like Indonesia might be reluctant to accept assistance from foreign powers in dealing with the domestic components of piracy. Using the Malacca Straits and the Trilateral Coordinated Patrol as an example, one could likely have predicted the reluctance to accept foreign assistance by simply looking at the failed states index. Indonesia has a “failure” index score of 83.1 while Malaysia scored a 69.2. Both of these states fail solidly into the “warning” category and both are resistant to taking on a great deal of direct foreign assistance in fighting piracy in their littoral waters. Contrast that with Singapore, a state that has been more willing to accept such assistance. Singapore scores a 160 on the Index, which places it almost in the “sustainable” category⁸.

Adam Young also concludes that weak states often exacerbate conditions that may lead to piracy. According to Young, “ these problems are in part created, and exacerbated, by weak state control of political hegemony, i.e. the means of a state’s legitimacy: the monopolistic control over violence within defined territorial borders. Numerous gaps in this control have allowed piracy the operational space to re-emerge...”⁹

The Gulf of Aden provides ample illustration of how failing and failed states have allowed piracy to take root and flourish. Somalia is a failed state. In fact, it ranks at number one on the Failed States Index. Its governmental organs are non-existent. There is no recognized law, nor is there any means to enforce that law if it did exist. Somali pirates often claim to be members of the Somali Navy or Coast Guard enforcing fishing rights in the region. Since no actual Somali Navy or Coast Guard exists, there is no one to prevent such acts from occurring. One might suggest then that regional collective security arrangements might be beneficial in taking on the problem of piracy. An examination of the surrounding states, however, once demonstrates why collective security arrangements would fail.

Djibouti, Somalia’s neighbor to the north, is considered a “failing” state. Yemen, the state directly across the Gulf of Aden is a “failed state.” Eritrea, the Sudan, Ethiopia – all

⁷ The Fund for Peace. (2010) “Failed States Index 2010.”
http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=102&Itemid=891#4

⁸ It should be noted that Singapore falls between France and the United Kingdom in the Failed States Index’ rankings within the “moderate” category. The United States and Japan are also in the same category.

⁹ Young, Adam. (2007) Contemporary Maritime Piracy in Southeast Asia: History, Causes and Remedies. Institute of Southeast Asian Studies; Singapore. P.99

of these states bordering either Somalia or the Gulf of Aden itself top the list of Failed States. They have little or no means of enforcing laws within their own borders, let alone attempting to work together to stem the tide of Somali pirates.

The Fall of the Soviet Union

The fall of the Soviet Union provides another illustration of the ways in which the failure of a state can have impacts on a global scale. Despite the ever-present tension between the United States and the Soviet Union, the Cold War served to establish and maintain a balance of power throughout the world. As the two countries divided the world and fought wars by proxy, the support of the two powers served to contain large-scale aggression.

Several authors cite the end of the Cold War as a factor in the rise of piracy. “The proliferation of small arms among transnational criminal syndicates since the end of the Cold War who are now able to take advantage of a huge array of sophisticated weaponry left over from past wars in Afghanistan and Cambodia as well as from the former Red Army...¹⁰” is just one example of the widespread impact of Russia’s fall from power.

When the Cold War ended, it created a power vacuum – a uni-polar world that is too large for one power police, but in which no other power has been able fill the void. The United States, understandably, projects its power into those places that hold the most strategic importance. To date, piracy has not been a strategic concern of the United States, but has most affected those countries that were on the fringes of the power struggle between the two superpowers.

Current Anti-Piracy Efforts

Having a basic understanding now of the geopolitical context in which the piratical phenomenon occurs, one can now better evaluate the current international efforts at combating it. There have been numerous international conventions and frameworks established to help combat piracy. While brevity precludes a complete list of the regulatory efforts here, following is a short discussion of some of the more well known regulations and guidelines. It should also be noted that the efforts listed below are largely those spearheaded by the United States and its allies.

International Ship and Port Facility Security Code (ISPS)

The ISPS was adopted in the wake of the September 11, 2001 attacks on the United States. The attacks highlighted perceived weaknesses in the security measures used to protect ships and port facilities. The ISPS, which applies to oceangoing vessels weighing more than 500 tons, contains two sections – the first a set of mandatory practices and the second a set of recommendations or “guidance.” It should be noted that the ISPS was not originally adopted as a counter-piracy measure, but was a more general security provision.

¹⁰ Ong-Webb, Graham Gerard. (2007) “Piracy in Maritime Asia,” *Violence at Sea: Piracy in the Age of Global Terrorism*. ed. Peter Lehr. Routledge, Taylor & Francis Group; New York, NY. P.79

The objective of the ISPS is defined within the document as the establishment of “an international framework involving cooperation...to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade¹¹.”

Among the requirements of the ISPS are the appointment of a Ship Security Officer (SSO) who is to be responsible for periodic inspections of the ship, the implementation of the ship security plan, “enhancing security awareness and vigilance on board,” and ensuring that the crew has adequate and appropriate security training.

While the ISPS represents a seemingly altruistic attempt at addressing a global problem, its implementation has been uneven. There is no mechanism for ensuring equal adoption among the Contracting Governments party the code. Nor is there parity among the countries – meaning that many states plagued by maritime security issues, simply do not have the economic resources to ensure that their ships and port facilities are fully compliant. Experts are concerned that compliance with the program is an exercise in which companies are compliant “on paper.”¹²

Maritime Transportation Safety Act 2002

The Maritime Transportation Safety Act (MTSA) was another regulation that grew out of concern spurred by the terrorist attacks of Sept. 11, 2001. It was developed alongside the ISPS and with the same objective – preventing another major terrorist attack by ensuring ports and ships were adequately secured. The law mandates many of the “suggestions” contained in Part B of the ISPS and provides the US Coast Guard with enforcement capabilities over US facilities. This law also provided for the creation of Maritime Safety and Security Teams within the US Coast Guard.

The MTSA requires ships and port facilities to conduct vulnerability assessments and to develop and implement security plans. The law applies to many ships that would not be obligated to the ISPS – including US flag commercial vessels greater than 100 GT, as opposed to the 500 GT threshold in the ISPS.

Combined Task Forces

There are a series of Maritime Security Operations that are currently active in trying to detect and prevent piracy. The MSOs are often led by NATO allies, but are not NATO missions. CTF 150 is perhaps the most familiar, as it patrols the most piracy prone waters in the world. CTF 150 patrols the Gulf of Aden, Gulf of Oman, Arabian Sea, Red

¹¹ International Maritime Organization (December 2002) “Consideration and Adoption of the International Ship and Port Facility Security (ISPS) Code.” P.4

¹² Chalk, Peter. (2008) P.42

Sea and the northern half of the Indian Ocean. CTF 152 operates in the southern and central Arabian Gulf, while CTF 158 patrols Iraqi waters¹³.

The Pirate as Rational Actor

Understanding the international effort that has evolved around the growing threat of piracy, one might ask why the pirates persist and how do they succeed given the stature of forces arrayed against them? To understand this, one must have a basic understanding of asymmetric warfare and the concept of the “rational actor.” The following definition is a very elementary discussion and is offered simply to provide context around the notion of the pirate as a rational actor.

Asymmetric Warfare is simply defined as war between opponents whose power and material strength differ significantly. The current struggle facing US forces in Iraq and Afghanistan provides a ready example. Though US forces are far superior from a conventional standpoint insurgent forces are succeeding in engaging and, in some cases, thwarting their enemies. They use unconventional tactics and non-uniformed combatants to counter the US’ policies and Standard Operating Procedures. One of the defining factors of asymmetric warfare is that the “lesser” power actually uses the strengths of the “greater” power against it. Traditional tactics become a liability rather than an asset. Guerilla warfare is a classic example if tactics employed in asymmetric conflicts.

The rational actor, on the other hand, is one that makes decisions based on an internal “cost-benefit” analysis. Only the actor knows the matrices upon which this analysis is conducted. In the case of piracy, one must take into account the geopolitical context and the economic context, as well as the level of deterrence being employed. Somali pirates, for example, operate from within a failed state in which legitimate employment opportunities are, for all intents and purposes, nonexistent, wiped away by decades of domestic fighting and economic struggles. Even fishing, a traditional area of employment for many Somalis on the coast, became barely enough to sustain a family, particularly after the Christmas Tsunami of 2004.

A rational actor will take action that provides benefit to that actor. In the case of pirates, these individuals are willing to take action to hijack a ship to obtain monetary benefit. For this reason it is relatively easy to deter a pirate attack which is driven by money. Simply raise the level of effort or consequence beyond which it is beneficial for the pirate to continue. Contrast this with a terrorist whose motivations are idealistic. In this scenario you are faced with individuals whose only motivation is maximum impact and they are willing to sacrifice their lives for the greater good. This is one reason why terrorists are typically not deterred by threats of capture, injury or death.

¹³ Pegg, Russell. (2009) “Maritime Forces and Security of Merchant Shipping in the Mediterranean Sea and Northern Indian Ocean,” *Lloyd’s MIU Handbook of Maritime Security*. CRC Press; London. Pp. 34-36

About the Author

Dr. Mark is an experienced information security, privacy, and public policy professional that is both well known and respected within numerous industries. Dr. Mark has spoken at numerous industry events on the topic of information security, privacy, mobile technology, and public policy. In addition, Dr. Mark is an experienced instructor and taught for two years at Auburn University while a Doctoral Candidate. Dr. Mark has a PhD in Public Administration and Public Policy from Auburn University. She also holds a certificate in Market Research from the University of Georgia, a CISSP, CIPP, and CPISM/A Certifications. Her knowledge of public policy and the ability to analyze the impact of that policy on day-to-day business practices gives her a unique insight into the compliance landscape.

Dr. Mark also has significant experience in the market and competitive intelligence fields. She has served as Manager of Broadband Research Services for a market intelligence firm, with responsibility for overseeing, tracking and analyzing emerging trends in the telecommunications industry. She also developed and implemented a competitive intelligence department at a large wholesale distributor. In this capacity, Dr. Mark was responsible for tracking industry, economic, regulatory and competitive trends and providing potential action scenarios and their impact on the company.

In addition to Dr. Mark's experience with information security and privacy issues, she is an experienced marketer, having run both competitive intelligence and marketing functions at a variety of companies. She also has significant experience with channel development and management. She has consulted with companies in a variety of industries to help them properly message and position their products and services in complex regulatory environments. Dr. Mark was named a 2007 "Mover and Shaker" by Transaction World Magazine and has published scores of articles on the topic of information security, privacy, and mobile technology. You can read more about her at www.drheathermark.com