

TASK FORCE 2012

The Challenge of Piracy off the Horn of Africa



Cover Photograph: A member of the HMS MONMOUTH force protection team providing cover during the boarding of the merchant vessel MV CARAVOS HORIZON.

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The Challenge of Piracy off the Horn of Africa: *U.S. Policy in Dealing With Criminal Elements and Dangerous Non-State Actors*

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Acronyms

African Mission in Somalia (**AMI**)
African Union Mission in Somalia (**AMISOM**)
Ahlu Sunna Waljamaca (**ASWJ**)
AMISOM Troop Contributing Country (**TCC**)
Anti-Money Laundering (**AML**)
Area of Responsibility (**AOR**)
Automatic Identification System (**AIS**)

Best Management Practices (**BMP**)

Cash For Work (**CFW**)
Cellphone Exploitation (**CELLEX**)
Central Intelligence Agency (**CIA**)
Civil/Military Operations Center (**CMOC**)
Closed Circuit TV (**CCTV**)
Coast Guard Operations Group (**CGOG**)
Combined Joint Intelligence Operations Center (**CJIOC**)
Combined Joint Operations Center (**CJOC**)
Combined Joint Task Force Horn of Africa (**CJTF-HOA**)
Combined Joint Task Force (**CJTF**)
Combined Joint Task Force Maritime Component (**CJTFMC**)
Combined Joint Task Force Maritime Component Operations Group Commander (**CJTFMCOGC**)
Combined Joint Task Force Maritime Component Operations Group Deputy Commander (**CJTFMCOGDC**)
Combined Maritime Forces (**CMF**)
Combined Task Force (**CTF**)
Combined Task Force 151 (**CTF-151**)
Command and Control (**C2**)
Command Naval Fifth Fleet (**COMNAVFTHFLT**)
Command, Control, Communications, Computers, Intelligence, Surveillance, Reconnaissance (**C4ISR**)
Commander United States Naval Central Command (**COMNAVCENTCOM**)
Commander, Combined Joint Task Force (**CCJTF**)
Common Operating Picture (**COP**)
Confidential Informant (**CI**)
Congressional Budget Office (**CBO**)
Contact Group on Piracy off the Coast of Somalia (**CGPCS**)
Counter-piracy Coordination Center (**CPCC**)

Deputy Commander, Combined Joint Task Force (**DCCJTF**)
U.K. Department For International Development (**DFID**)
DOT Maritime Administration (**USDOTMA**)

Electronic Intelligence (**ELINT**)
European Union Naval Force (**EUNAVFOR**)
Exclusive Economic Zone (**EEZ**)

Federal Bureau of Investigation (**FBI**)
Financial Action Task Force (**FATF**)
Financial Intelligence Unit (**FIU**)
Forward Looking Infrared (**FLIR**)

Global Children Organization (**GCO**)
Government Accountability Office (**GAO**)
Guided Missile Destroyer (**DDG**)
Guided Missile Frigate (**FFG**)

High Risk Area (**HRA**)
Horn of Africa (**HOA**)
Human Intelligence (**HUMINT**)
Human Terrain System (**HTS**)
Human Terrain Team (**HTT**)

Illegal, Unreported and Unregulated Fishing (**IUU Fishing**)
Image Intelligence (**IMINT**)
Integrated Command Structure (**ICS**)
Intelligence Community (**IC**)
Intelligence, Surveillance and Reconnaissance (**ISR**)
International Code of Conduct for Private Security Service Providers (**ICoC**)
International Committee for the Red Cross (**ICRC**)
International Criminal Tribunal for Rwanda (**ICTR**)
International Crisis Group (**ICG**)
International Maritime Bureau (**IMB**)
International Maritime Organization (**IMO**)
International Standardization Agreements (**ISA**)
Internationally Recommended Transit Corridor (**IRTC**)
Islamic Courts Union (**ICU**)

Joint Intelligence Operations Center (**JIOC**)
Joint Non-Lethal Weapons Directorate (**JNLWD**)
Joint Special Operations Command (**JSOC**)
Joint Task Force (**JTF**)

Kenyan Shippers Council (**KSC**)
Kidnap and Ransom (**K&R**)

Lead-Nation Command Structure (**LNCS**)
Line-of-sight (**LOS**)
Littoral Combat Vessels (**LCS**)
Long-range acoustic device (**LRAD**)

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Marine Security Center Horn of Africa (**MSCHOA**)
Maritime Asset Security and Training (**MAST**)
Maritime Domain Awareness (**MDA**)
Marine Stewardship Council (**MSC**)
Maritime Security Operations (**MSO**)
Memorandum of Understanding (**MOU**)
Merchant Maritime Warfare Centre (**MMWC**)
Ministry of Human Rights (**MOHR**)

National Geospatial-Intelligence Agency (**NGA**)
National Organization for Defending Rights and Freedom (**HOOD**)
National Reconnaissance Office (**NRO**)
National Security Council (**NSC**)
Navigation (**SUA Convention**)
Network Centric Warfare (**NCW**)
Network Intelligence (**NETINT**)
North Atlantic Treaty Organization (**NATO**)
Nuclear Aircraft Carrier (**CVN**)

Office of Foreign Disaster Assistance (**OFDA**)
Office of Naval Intelligence (**ONI**)
Office of the Director of National Intelligence (**ODNI**)
Ogaden National Liberation Front (**ONLF**)
Open Source Intelligence (**OSINT**)

Parallel Command Structure (**PCS**)
Private Maritime Security Company (**PMSC**)
Private Military Contractors (**PMC**)
Private Security Contractor (**PSC**)
Privately Contracted Armed Security Personnel (**PCASP**)
Public International Law Policy Group (**PILPG**)
Public Private Partnership (**PPP**)
Puntland Maritime Police Force (**PMPF**)

Radar Cross Section (**RCS**)
Recognized Maritime Picture (**RMP**)
Regional Agreement on Combating Piracy and Armed Robbery (**ReCAPP**)
Rocket-Propelled Grenade (**RPG**)
Rules of Engagement (**ROE**)

Safe Muster Point (**SMP**)
Security Association for the Maritime Industry (**SAMI**)
Shared Awareness and Deconfliction (**SHADE**)
Ship Protection Measures (**SPM**)
Ship Security Alert Systems (**SSAS**)
Ship Security Assessment (**SSA**)
Ship Security Plan (**SSP**)
Signals Intelligence (**SIGINT**)
Small Tactical Unmanned Aerial System (**STUAS**)
Special Forces Operations Group (**SFOG**)
Special Warfare Combat Crew (**SWCC**)
Standard Operating Procedure (**SOP**)

Standing NATO Maritime Group 1 (**SNMG 1**)
Standing NATO Maritime Group 2 (**SNMG 2**)
Standing Rules of Engagement (**SROE**)

Task Force (**TF**)
Transitional Federal Government (**TFG**)

United Kingdom Maritime Trade Operations (**UKMTO**)
United Nations Children's Fund (**UNICEF**)
United Nations Convention on the Laws of the Sea (**UNCLOS**)
United Nations Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (**SUA Convention**)
United Nations Development Program (**UNDP**)
United Nations Development Programme (**UNDP**)
United Nations Office on Drugs and Crime (**UNODC**)
United Nations Political Office for Somalia (**UNPOS**)
United Nations Security Council (**UNSC**)
United States Africa Command (**AFCOM**)
United States Central Command (**CENTCOM**)
United States Coast Guard (**USCG**)
United States Department of Defense (**DoD**)
United States Department of Homeland Security (**DHS**)
United States Department of Justice (**DoJ**)
United States Department of State (**DoS**)
United States Department of Transportation (**USDOT**)
United States Dollars (**USD**)
United States Government (**USG**)
United States Navy (**USN**)
United States Navy Maritime Liaison Office (**MARLO**)
Unmanned Aerial Systems (**UAS**).
Unmanned Aerial Vehicles (**UAV**)

Vehicle Mounted Active Defense System (**V-MADS**)
Visit Board Search and Seizure (**VBSS**)
Voice of America (**VOA**)

Worldwide Somali Students & Professionals (**WSSP**)



Executive Summary: The Challenge of Piracy off the Horn of Africa

By **Natalie Block** and **Erika Maskal**

In the failed state of Somalia, piracy is increasing at an alarming rate, impacting all nations that engage in trade or travel in the region. In 2011, Somali pirates attacked 122 vessels and successfully hijacked 28. Since the problem of piracy first escalated in 2008, thousands of hostages have been taken, including a number of American citizens. These hostages have often suffered systematic abuse and torture, and have on some occasions been used as human shields. In the last year alone, four American hostages were murdered by their captors. Although the economic cost of piracy is comparatively low for the U.S., it is imperative to address the issue before the economic and human costs of piracy become overwhelming. From 2010 to 2011, total ransom payouts to Somali pirates increased from \$111 million USD to \$160 million USD, raising the global cost of piracy in 2011 to approximately \$6.75 billion USD. In response to the three international task forces protecting ships in the Gulf of Aden, pirates have expanded their attack areas and are now venturing farther out into the Indian Ocean.

While the international task forces cannot effectively patrol the entire High Risk Area in the Indian Ocean, they have successfully intervened in many attacks. To deter attacks without military assistance, the International Maritime Bureau has issued Best Management Practices for vessels traveling in the area. The use of both passive security measures and private security companies has decreased the number of successful pirate attacks. However, the problem of piracy is not one that can be resolved exclusively at sea.

Piracy flourishes on land due to the lack of governance and rampant poverty in Somalia. Before piracy can be eliminated, the land-based causes must be addressed. To increase stability in Somalia, a region with significant U.S. interests, the State Department has adopted the “Dual-Track Approach,” designed to increase engagement with Somalia’s relatively effective semi-autonomous governments, primarily Somaliland and Puntland.

The Contact Group on Piracy off the Coast of Somalia was created to coordinate global counter-piracy efforts in 2009. This organization includes experts on subjects ranging from finance to military operations and is a combination of representatives from multiple countries. The five working groups under this organization address multiple aspects of the issue of piracy. One important topic is the difficulty associated with successful prosecution and detention of alleged pirates. 90% of arrested suspects are released without trial because there are no nations willing to prosecute or detain them. The few who are not immediately released are transferred to and prosecuted in any willing nation.

Despite current efforts to address the problem, many challenges remain. Coordination of military patrols between task forces is insufficient, especially in light of the fact that it is impossible to patrol the entire High Risk Area. Somalia does not currently have the capacity to prosecute or detain all persons accused of piracy, and neither does any sole country in the region. In U.S. diplomatic relations with Somalia, a failure to directly engage with clan and religious leaders limits the influence of expanded diplomacy.

It is in the urgent interest of the U.S. to directly and immediately address the issue of piracy off the Horn of Africa, because the situation will only continue to deteriorate and cannot be resolved without U.S. involvement. Though the overall economic cost to the U.S. is currently minimal, experts such as Martin Murphy predict that if piracy goes unchecked, the enterprise will help create a permissive environment for maritime terrorism, which will be more widespread and difficult to contend with. The success of piracy in the Gulf of Aden has exposed the high seas as a vulnerable platform for attacks because of the lack of security and clear jurisdiction. The U.S. must augment its counter-piracy efforts before more American lives are lost, and piracy at sea spirals out of control.

Recommendations

This Task Force proposes the following recommendations to address maritime piracy, with the goal of reducing and eventually eliminating piracy off the Horn of Africa. The U.S. State Department, in concert with the international community, should:

- » **Utilize social media to launch an anti-piracy information campaign.** The State Department should seek to engage Somali citizens as well as all members of the Somali Diaspora. By contributing to UNODC's current information campaign in Somalia, the U.S. will help prevent piracy from becoming culturally accepted and will deter youth from being recruited into the enterprise. However, the U.S. must also expand the anti-piracy campaign to enlist the support of the diaspora, which still has a heavy influence on their home country.



- » **Adopt a grassroots approach to address the land-based root causes of piracy in Somalia.** Piracy flourishes as an enterprise due to the lack of proper governance and endemic poverty, both of which must be addressed in order to eliminate piracy. Due to the historical lack of governmental stability, the State Department must modify its approach to nation building in Somalia. By directly investing in the grassroots development of education and job creation, the U.S. will ensure that Somali citizens have a viable economic alternative to piracy.
- » **Facilitate national prosecutions and detentions of suspected pirates.** The State Department must cooperate with the international counter-piracy community to design a legal framework to facilitate national prosecutions and end the impunity currently enjoyed by the vast majority of arrested suspects. To further encourage the prosecution of pirates, it is necessary to assist willing nations in expanding their prison capacity to facilitate the detention of all persons, including financiers, who are convicted for acts of piracy or armed robbery at sea.
- » **Continue to support the use of private defensive measures for commercial vessels transiting the High Risk Area.** The State Department should continue to support the use of private maritime security contractors, but should promote the further strengthening of international standards and the development of a national accreditation system for their use. Though passive defense measures and non-lethal deterrence technologies should continue to be implemented, the State Department, through CGPCS Working Group 3, should expand the current research on these technologies and tactics.
- » **Promote the creation of a singular combined joint task force.** The State Department, through the Department of Defense, should coordinate current military efforts by consolidating the three international task forces and their resources. This would reduce inefficiencies in intelligence-gathering, coordination, and communication. To facilitate this merger, a Counter-Piracy Control Center must be developed to expedite responses to distress calls and to create a singular emergency contact point for merchant and pleasure vessels.
- » **Expand U.S. diplomatic engagement with regional governments.** The Dual-Track Approach has improved stability in some areas of Somalia; however, this policy must be expanded to enlist the support of Ethiopia and Kenya against piracy. The U.S. must also consider the regions of Somalia that are more heavily influenced by clan and religious leaders than by the government and engage these community leaders to promote stability in the lawless areas where piracy flourishes.

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Introduction

By **Erika Maskal**

Maritime piracy is an old crime that has violently resurfaced off the Horn of Africa. From the Barbary Wars to the Straits of Malacca, piracy is constantly evolving and adapting. Modern piracy off the coast of Somalia is unique in its structure, persistence, publicity, and extraordinary profitability.

From its inception, the Somali situation has differed greatly from historical examples of piracy. Many modern pirates claim to be disillusioned fishermen who lost their jobs due to foreign exploitation, stating that they have resorted to piracy because they have no alternative sources of income.¹ The unemployment rate and lack of education in Somalia has created an enormous supply of potential recruits for pirate kingpins. Every pirate removed from the waters is replaceable, and Somalia has enough desperate young men to sustain the piracy enterprise well into the future.

Piracy off the Horn of Africa was originally justified as a defense against foreign exploitation and encroachment.² Pirates portrayed themselves as ad hoc coast guards and defenders of Somali waters, primarily attacking foreign fishing vessels. However noble their initial justifications may have been, their targets quickly expanded to include commercial vessels, tankers and private vessels. In 2011, only 18% of hijacked ships were fishing vessels.³

Somali pirate tactics also differ from their historical counterparts in many ways. Rather than attacking ships from the shore, Somali pirates capture dhows to use as mother ships throughout the Gulf of Aden and Indian Ocean, from which they launch smaller skiffs to pursue commercial vessels and most recently, large oil tankers. Using primarily AK-47s and RPGs, pirates take entire vessels and crews hostage. Ships and hostages are often held for months until their captors receive a ransom payment for their release. Ransom tactics have made Somali piracy an extraordinarily lucrative enterprise, with ransom payouts in 2011 totaling \$160 million USD, up from \$111 million USD in 2010.⁴

Piracy in the Gulf of Aden is steadily escalating, with 124 armed attacks and attempted boardings in 2011, and four more in the first month of 2012. Though these attacks are markedly less successful than those of previous years, with only 28 successful hijackings in 2011

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compared to 51 in 2010,⁵ pirate tactics have become increasingly brutal. Four American hostages were executed by their captors last year, and reports indicate that pirates are increasingly using torture and abuse to accelerate ransom deliveries.⁶ Thousands of merchant seamen have been subjected to gunfire and RPG blasts, and nearly 500 hostages were used as human shields in 2010.⁷ Over the last three years, the average period of captivity has been five months,⁸ an especially arduous length of time considering the extensive reports of hostages being used as human shields as well as reports of systematic abuse and torture. In November 2011, a U.S. federal court filingⁱ revealed that a band of Somali pirates physically tortured the crew of the German tanker *Marida Marguerite* in order to extract a higher ransom payout,⁹ a maneuver that does not bode well for current and future hostages.

The psychological pressure of captivity, coupled with the lack of proper nutrition and health care, has led to many hostage deaths from malnutrition and suicide. During the past three years, approximately 60 merchant seamen have died as a result of their captivity.¹⁰

The human cost of piracy extends into the heart of Somalia as well. Piracy and armed robbery at sea are both symptoms of a disease that began and remains onshore. Political instability and endemic poverty have engendered an environment where piracy flourishes as an enterprise. Local law enforcement has neither the willpower nor the resources to stop Somalis from organizing pirate campaigns, and the lack of viable economic alternatives maintains the large supply of desperate young recruits. The profitability of the pirate business has also attracted a large number of financiers, all of whom enjoy the same impunity as the pirates they employ.

While the financiers and organizers of piracy enjoy its enormous profits, the low-level recruits and onshore communities are left to face the negative consequences. Though exact statistics are difficult to determine, it is estimated that hundreds of pirates have died during the course of their operations. It is also suspected that coercion and exploitation are playing an increasingly strong role in the recruitment of Somali youth, based on the arrest of many pirates under the age of 15 and some who are as young as 11 years old.¹¹

As of February 2012, the situation off the Horn of Africa is this: ten vessels are under the control of Somali pirates; 159 hostages are held captive;¹² three vessels are abandoned and derelict on the Somali shore, posing a potential pollution hazard; and 20-30 warships are patrolling the more than 2.6 million square-mile area identified as the “High Risk Area.”¹³ In January 2012, pirates fired on at least four vessels.¹⁴ The average ransom has increased to \$5 million USD, up 25% from 2010.¹⁵

The situation has clearly worsened for maritime economies and nations, particularly for East African and Gulf States. Ransoms comprise only a small percentage of the total global cost of piracy, most of which is absorbed by the shipping industry. Investment in defensive

i This federal court filing is a petition by U.S. prosecutors explaining why the piracy charges against Mohammad Saaili Shibin should not be dropped.

measures, security and insurance cost shipping companies almost \$5.5 billion USD in 2011, but national governments also spent more than \$1 billion USD on military expenses and piracy prosecutions that same year as well.¹⁶ The rising price of oil transiting the region adds yet another dimension of financial pressure for the global economy.



Figure 1: Area directly affected by Somali Piracy

Because of its far-reaching impacts, counter-piracy efforts in the Horn of Africa have incorporated resources from around the world. Three separate international task forces—European Union Naval Force Somalia (EUNAVFOR), Combined Task Force One Five One (CTF-151) and NATO Operation Ocean Shield—patrol the High Risk Areaⁱⁱ with warships from dozens of contributing nations, responding to distress calls, intervening in attacks, and arresting suspected pirates.

To complement the efforts of these military operations and to further protect merchant

ii The High Risk Area, designated as the area bounded Suez, 78°E, and 10°S in the Indian Ocean, denotes the region where pirate attacks are most likely to occur.

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and private vessels transiting the region, the International Maritime Bureau (IMB) released Best Management Practices (BMP4), guidelines for vessels to deter pirates. To comply with BMP4, many commercial shipping companies have invested in accelerating and re-routing their vessels, decreasing the success rate of pirate attacks. Private security companies have taken an active role in the Gulf of Aden, providing merchant vessels with private security personnel and passive security measures such as barbed-wire fencing. Considering the decrease in successful hijackings despite the rise in pirate attacks, these measures all seem to be making a positive impact on the safety of commercial vessels and their crews.

In order to address the political instability that has fragmented Somalia and weakened its defense against internal criminal elements, the U.S. has adopted the “Dual-Track Approach,” a policy that is intended to engage the semi-autonomous governments of the north in addition to the Transitional Federal Government (TFG) of the south. The Dual-Track Approach has broadened U.S. diplomatic engagement in Somalia and facilitated outreach to a larger portion of the Somali population.

Because of the criminal nature of piracy, the diffusion of the perpetrators, and borderline anarchy in much of Somalia, there remain many difficulties in launching an effective counter-piracy campaign. The Contact Group on Piracy off the Coast of Somalia (CGPCS) was designed in 2009 to coordinate global counter-piracy efforts and address their current shortcomings. Yet despite the work of the CGPCS and the international task forces, there remain significant barriers to counter-piracy efforts off the Horn of Africa.

The three separate task forces remain uncoordinated, reducing the effectiveness of their efforts. Response time to distress calls is still slow, and it is impossible to efficiently patrol the entire High Risk Area.

There is currently no international legal framework or singular legal process in place to determine the prosecution or detention of pirates. Thus far, arrested pirates have only faced trial if a State has volunteered to conduct the prosecution. So although the international task forces have had marked success in arresting suspected pirates, the practical difficulties with detention and transference of suspects has led to a policy referred to as “catch and release.” Pirates are detained and disarmed, but then if a successful prosecution seems unlikely, they are simply returned to shore or to their boats. It is estimated that approximately 90% of detained pirates are released in this manner.¹⁷

While the Dual-Track Approach has successfully engaged a wider portion of the Somali population, it fails to adequately address community leaders such as clan elders and imams, who have a strong influence over Somali citizens in many areas of the country. Historically, engagement with Somali governments to address problems has proved ineffective, so it is imperative that the U.S. explore grassroots alternatives when forging relations with the citizens of Somalia.



Without increased engagement in grassroots nation building, other efforts will only treat the symptoms of the piracy disease. They will effect temporary, impermanent resolutions to a problem that will continue to devolve and spread if it is not treated.

Finally, current counter-piracy efforts fail to address the substantial population of Somali refugees living outside the country. Somali communities abroad have a significant impact on their relatives in Somalia, sustaining them through remittances. The U.S. Treasury estimates that American-Somalis transfer about \$100 million USD to Somalia every year.¹⁸ Given the strong cultural and familial ties that these refugees have with their home country, it would be an oversight not to appeal to the Somali diaspora.

Regardless of fluctuations in media interest, the piracy problem has unfailingly managed to persist and escalate. Pirates have proven that they can adapt quickly, so it may not be long before they learn to overcome the present security measures. The success of piracy off the Horn of Africa has exposed extreme vulnerabilities in international waters. The lack of governance and security on the high seas has allowed piracy to flourish, and experts such as Martin Murphy predict that the situation will eventually promote an increase in maritime terrorism.¹⁹

In order to address these vulnerabilities, the U.S. State Department must continue to utilize the international architecture, engaging national governments in addition to organs of the UN, NATO, and NGOs. Any cooperative efforts against piracy must also consider nations that have a strong interest in ending piracy—primarily regional States who have been threatened economically. Solidarity with the Somali community, inside Somalia and within the diaspora, is also essential to effecting permanent change within the source country.

This report explores the problem of Somali piracy in relation to U.S. interests. It is an attempt to capture the piracy situation as of February 2012, and to explore alternative approaches to addressing current imperfections in global counter-piracy efforts. The report is subdivided into four sections: (1) **Soft Power Solutions on Land**, (2) **Deterrence Through Legal and Financial Actions**, (3) **The Armed Response to Somali Piracy**, and (4) **Effective Use of U.S. Foreign Policy in the Region**.

“**Soft Power Solutions on Land**” analyzes the political instability and endemic poverty that have facilitated the pirate enterprise in Somalia, as well as the impact of the Somali diaspora. The purpose of this section is to present long-term recommendations to promote grassroots nation building, and to effect permanent change by improving job opportunities and education in Somalia.

“**Deterrence Through Legal and Financial Actions**” addresses the practical difficulties with the detention and prosecution of suspects, presenting recommendations that would facilitate legal accountability for the crime of piracy. By demonstrating the utility of national prosecutions in key trial and detention states, enlisting the financial assistance of the

Gulf States, identifying current legal obstacles and exploring alternative charges, the recommendations of this section seek to maximize accountability and end the impunity allowed by the current “catch and release” policy.

“**The Armed Response to Somali Piracy**” presents an examination of the current military operations in the Gulf of Aden, identifying the successes and shortcomings of the three international task forces as well as passive security measures and private security personnel. The purpose of this section is to present recommendations that will increase coordination between the task forces, improve response time to distress calls, and improve security measures for vessels transiting the High Risk Area—effecting short-term improvements in Somali counter-piracy military operations, but long-term improvements in international naval operations.

“**Effective Use of U.S. Foreign Policy in the Region**” analyzes current U.S. policy in the Horn of Africa as well as the political relations between regional governments and the semi-autonomous governments within Somalia. It presents recommendations intended to improve regional diplomatic engagement, and to utilize current political dynamics in order to increase engagement with local populations.

Though Somali piracy is a crime that primarily manifests itself at sea, it must be addressed onshore in order to effectuate a more permanent solution. It is imperative that the U.S. increase its political and diplomatic engagement in the region in order to reduce piracy before the crime promotes the more serious threat of maritime terrorism. The following chapters seek to provide a comprehensive, holistic analysis of the current piracy situation in Somalia, and actionable recommendations to improve counter-piracy efforts. They take into consideration the short-term goal of deterring attacks as well as the long-term goal of creating a stable State in Somalia.



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I. SOFT POWER

Soft Power Solutions on Land: Building a Stable Somalia

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Section Summary

Piracy off the coast of Somalia is merely a symptom of the fragmented country's endemic poverty and instability. The lack of economic opportunity encourages young men to pursue illicit sources of income, and the lack of governance allows their lucrative enterprise to flourish.

Military and judicial efforts alone are insufficient, because for every pirate removed from the waters there is a country full of desperate and greedy young men willing to take his place. The sheer number of light arms and manpower in Somalia is enough to maintain the piracy enterprise well into the future, no matter how many AK-47s are discarded into the Indian Ocean. In order to implement a more permanent and stable solution to the problem of piracy, it is essential that the State Department consider soft power alternatives.

This section outlines a variety of long-term strategies to address piracy onshore in Somalia, treating the root causes of poverty and instability as well as addressing the Somali diaspora. It addresses ways for the U.S. to actively contribute to the education and economy of Somalia through a grassroots approach, reducing many of the factors that spawned and continue to maintain piracy. This section also presents ways to utilize media campaigns in order to connect with the large populations of Somali refugees living outside of Somalia.

Partnering with the Somali Diaspora

The Domestic Campaign to End Piracy

By Lauren Graves and Nacha [Poi] Udomsrirungruang

The present-day scene off the Horn of Africa conjures memories of the Barbary Wars, when centuries ago the United States first faced the challenge of piracy in Africa. The Barbary Wars were fought in the late 18th and early 19th centuries between the U.S. and several North-western African Berber states known as the “Barbary States.” At the time, pirates posed a heightened threat to a newly independent United States.¹

The Barbary pirates represented a vast and active enterprise that had a tremendous effect on the United States’ economy. Barbary pirates intercepted valuable shipping commodities, and kidnapped crews and passengers, forcing them into slavery.² In the past two centuries, piracy has greatly evolved.

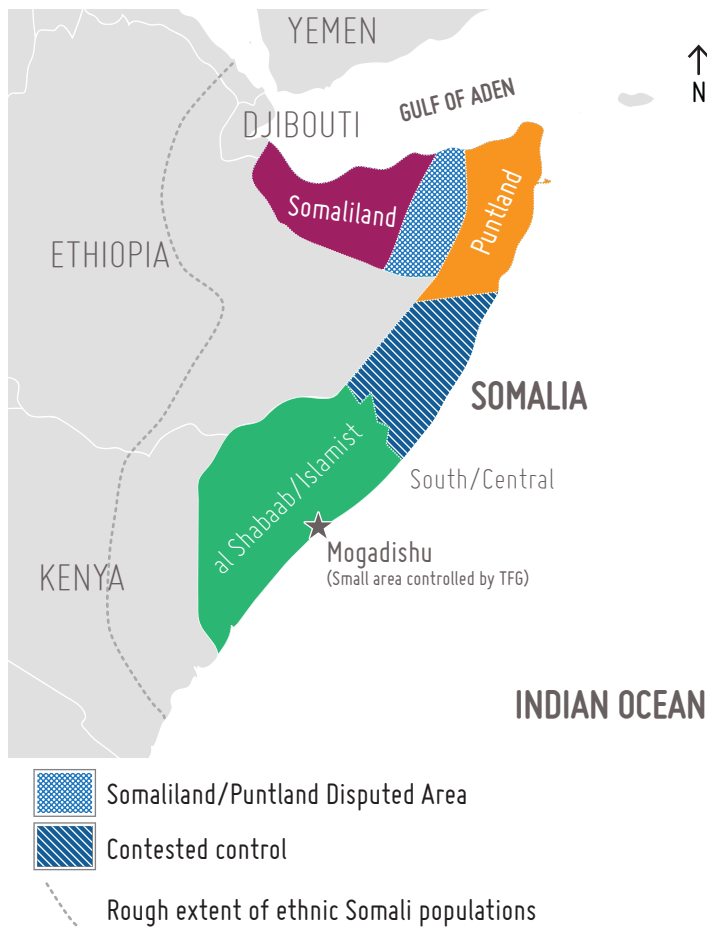
Now the U.S. is struggling to deal with Somali pirates that are incentivized not by the contents of captured ships, but by the ransom money that they receive in exchange for the release of the ship and its hostages. Somali pirates conduct their business using small skiffs rather than raiding the coasts like their predecessors, and, Somali pirate attacks are largely unsuccessful.³

The United States must continue to play a central role in the global effort to combat and eradicate piracy in East Africa. The U.S. has several unique advantages when it comes to counter-piracy, including its significant domestic population of Somali refugees. The Somali Diaspora has been largely under-utilized in counter-piracy efforts, though they are strongly opposed to the crime of piracy and its effect on their home country. In an effort to help resolve the issue of piracy, the United States should engage its portion of the Somali Diaspora.

Due to the violent and unstable nature of the Somali State, refugees from all parts of Somalia have fled their homeland for a better life in the United States, United Kingdom, and many other countries all over the world. Somalis in the diaspora community retain close ties with family and friends in Somalia and remain heavily involved in the political, social and humanitarian landscape of their home country.

Through the Somali diaspora community, the U.S. can raise awareness about the issue of piracy and enlist the support of expatriates. A strategic information campaign that discour-

ages and discredits piracy should be directed at U.S. Somali communities because, through their influence, the anti-piracy message will resonate within Somalia as well.



Somalia, as of 27 February 2012.
Lauren Graves

Somalia: A Failed State

Somalia was formed in 1960 when Britain withdrew from their protectorate, British Somaliland, which was then merged with the Italian colony of Somaliland.⁴ By 1969 a coup led by Mohamed Siad Barre established a brutal authoritarian socialist government.⁵ When his regime collapsed in 1991, the country erupted into turmoil.⁶ The opposing clans that overthrew President Barre failed to agree on a replacement to his leadership, and the situation quickly devolved into lawlessness and clan warfare.⁷ The years of fighting between rival warlords, along with uncontrollable famines and disease, has resulted in the deaths of up to one million people.⁸ Almost one million Somalis left the country, fleeing to refugee camps in the neighboring countries of Kenya and Djibouti, or seeking asylum overseas. The most recent surge of emigration from Somalia in 2011 was precipitated by the worst drought that Somalia had experienced in six decades.⁹ With millions on the verge of starvation, tens of thousands fled to Kenyan and Ethiopian refugee camps for food.¹⁰

By May 1991, clans in the northwest had formed the Republic of Somaliland, which has recently been successful in establishing its own stable governance within the bounds of its territory. However, Somaliland remains unrecognized as an independent nation by the international community.¹¹ In 1998, Somaliland's neighboring territory to the east known as Puntland became self-governing as well.¹² Puntland currently has no stated intention of becoming independent, yet it continues to dispute its territorial borders with Somaliland.¹³ In 2004, President Yusuf of Somalia's Transitional National Government (TNG) formed the current Transitional Federal Government (TFG), an extraterritorial parliament that initially governed from neighboring Kenya.¹⁴ The TFG is the fourteenth attempt at a stable government since 1991, and it continues to face the threat of Islamist militants and lacks unified clan support.¹⁵

The primary obstacle to establishing a Somali government with unified support is the issue of clan divisions. Somalis are generally ruled within clan fiefdoms, and clan loyalty often supersedes loyalty to a federal government.¹⁶ The TFG is currently supported by the United Nations and African Union troops, but still only controls the majority of the capital city of Mogadishu, despite recent troop advancements.¹⁷ The remainder of control in south and central Somalia lies with insurgent groups like al-Shabaab.

Overall, the limited success of the three different governments in Somalia has perpetuated instability and poverty, manifested by recurrent famines and armed conflicts. The resultant diaspora has led to the formation of substantial Somali communities throughout the world. The Somali Diaspora continues to have a significant impact on their home country, often sustaining relatives and friends in Somalia with financial support and other types of aid.¹⁸

The Diaspora

Somalis comprise one of the largest groups of refugees in the world. There is no official figure, but it is estimated that 14% of Somalis live outside of the country—approximately 1 million individuals.¹⁹ For a country comprised of only 9 to 13 million people, this 1 million is a very significant diaspora.²⁰

International Somali populations are currently concentrated in the Horn of Africa, the Gulf States, Western Europe and North America.²¹ Kenya and Yemen have absorbed the most refugees, but the United Kingdom, the Netherlands, Norway, Sweden, Denmark and Italy also claim large Somali populations.²² In North America, there are large concentrations of Somalis in Minnesota, Ohio, and in Toronto, Canada.²³

There is a distinct division of labor between Somalis that have settled in the Western Hemisphere and those in the Eastern Hemisphere in terms of their humanitarian contributions to Somalia.²⁴ The Western diaspora often initiates fund-raisers, while those in the East are more likely to return to Somalia to implement projects funded by Westerners.²⁵ In the United States and Canada, Somali Diaspora groups are active in the formation of associations, investment in Somalia, and are often politically involved with Somali politics.²⁶ The United Kingdom, like other states with well-established Somali populations, has a large number of volunteer associations whose members intend to return to Somalia to assist in development efforts.²⁷

Kenya is a popular destination for Somali refugees, and is often referred to as Somalia's "capital in exile."²⁸ It is also an important hub for Somali business and political leaders, who use the capital of Nairobi as a base when travelling to and from Somalia.²⁹ Additionally, the Dadaab refugee camp located on the Kenya/Somali border is currently home to more than 460,000 registered Somali refugees, 10,000 of whom are third-generation residents of the camp.³⁰

Somalis comprise one of the largest groups of refugees in the world. There is no official figure, but it is estimated that 14% of Somalis live outside of the country.

The U.S. is also a significant destination country for Somali refugees. From a survey conducted in 2010, it is estimated that 85,700 people with Somali ancestry, those born in Somalia as well as their descendants, are living in the United States.³¹ Approximately 25,000 Somalis or Americans of Somali descent live in Minnesota, with other significant populations found in the states of Ohio, Washington, and California.³² The Somali Diaspora can be reduced to three categories: (1) the first generation that immigrated during the collapse of the Barre regime, (2) the second generation Somalis, and (3) newly displaced Somalis fleeing famine and economic hardship.³³ First generation Somalis maintain the closest ties to Somalia, while the second generation Somalis have a more complicated, evolving identity with relation to their Somali roots. Specifically, second generation Somalis tend not to identify themselves by clan, and do not express the same clan prejudice as first generation Somalis.³⁴ Second generation Somalis are unique because they remain interested in the development of Somalia, have a strong cultural understanding of the country, and are more likely to unify despite clan differences.³⁵ This indicates that they could be a valuable resource for potential anti-piracy information campaigns.

The Diaspora's Impact on Somalia

In the report “Cash and Compassion: The Role of the Somali Diaspora in Relief, Development and Peacebuilding” published by the United Nations Development Programme (UNDP) in 2011, there are nine categories that outline supporters contributing to the “relief, development and political life in Somalia”³⁶ – individual households, diaspora-based NGOs, clan-based or hometown associations, professional associations, transnational asso-

ciations, mosques, private investors and shareholders in private business, members of boards of trustees, women's groups, and youth groups.³⁷ The diaspora community represents a major investor in Somalia, supporting efforts in economic recovery, and entrepreneurship.³⁸ Additionally, the diaspora is quick to respond with emergency relief in times of crisis, is involved in local institutions supported by small fund raising networks, and partners with international development agencies.³⁹

Remittances to Somalia have exceeded \$11 billion USD since the civil war broke out in 1991.

Many Somalis also remain largely dependent on remittances from the diaspora for their subsistence. This financial connection gives the diaspora community tremendous influence on their homeland. In addition to providing remittances, the diaspora community invests substantially in the Somali economy, participates in economic recovery, funds emergency relief in times of crisis, and supports local institutions.⁴⁰

Remittances to Somalia have exceeded \$11 billion USD since the civil war broke out in 1991,⁴¹ with an estimated \$100 million USD transferred annually from the U.S.⁴² This makes Somalia the 4th most remittance-dependent nation in the world, with over 40% of households relying entirely on remittances for survival.⁴³ This money provides vital economic support for Somalis, representing around 23% of total household incomes, which is especially necessary during severe famines.⁴⁴

In October 2011 two Minnesotan women were convicted for transferring over \$8,600 USD to al-Shabaab, claiming that their money was going to charity in Somalia.⁴⁵ Banks in Minnesota, home to the largest population of Somalis in the United States, subsequently ended money transfers to Somalia, fearing potential prosecution based on anti-terror legislation. Sunrise Community Banks are one branch among many in the state to officially announce that they have stopped processing remittances to Somalia because of government rules that are designed to block terrorist funding.⁴⁶ Banks do not want to risk assisting Somalis in the United States who intend to transfer money that would go on to support piracy or the terrorist organization, al-Shabaab. Minnesotan banks have stated that they will not resume processing remittance transfers until they receive assurance that no case will be brought against them by the U.S. government, or until they receive waivers to protect them from prosecution.⁴⁷

For hundreds of thousands of Somalis, remittances from the U.S. provide an invaluable lifeline. Even if domestic banks refuse to transfer money to Somali, American Somalis will continue to wire money through other countries like Kenya and Britain, where a third party will then rewire the money to Somalia.⁴⁸ Blocking transfers from U.S. banks has little deterrent effect. Furthermore, the U.S. Treasury Department has stated that there is no reason to believe that remittances to Somalia represent an elevated risk for the United States.⁴⁹ Therefore, it is not recommended that U.S. banks block money transfers to Somalia.

Remittances

Because the flow of money from the U.S. to Somalia makes no significant contribution to piracy or terrorist organizations, blocking remittances would be an ineffective strategy against terrorism or piracy. In a recent meeting between Minnesota's political representatives and the U.S. Treasury Undersecretary for Terrorism and Financial Intelligence, many proposals were brought up in an effort to assure that Minnesota banks would not be prosecuted for handling Somali remittances, citing the tens of thousands of Somalis suffering from the famine who relied on these transfers.⁵⁰

The blockade on remittances also disrupts the budding relationship between U.S. banks and *hawalas*.ⁱ Many *hawalas* have pursued training workshops to become more familiar with U.S. law regarding money transfers and anti-money laundering regulations, and are gradually building partnerships with U.S. banks. These relationships are important because they might facilitate the tracking of monetary transactions to and from Somalia, important to the identification of pirate financiers. This is currently impossible under the *hawala* system, discussed at-length in Section II, Chapter 3.

The current legal blockade on remittances is a waste of resources, since it will not deter the ultimate transfer of money, which can easily be rewired through a third party. Furthermore,

i A system for money transference that is common in Africa, the Middle East, and parts of Asia. See Section II, Chapter 3 for more information about the operation of the *hawala* system.

the United States should not punish Somali immigrants, but should pursue a more effective domestic policy that strengthens the relationship between U.S. banks and *hawalas*, and one that allows the tracking of monetary transactions to and from the region in order to identify pirate financiers. The large Somali Diaspora in the U.S. and abroad should be engaged with not only to track regional money flows, but also to spread the anti-piracy message.

Diaspora Work in Somalia

Decades of top-down foreign intervention and humanitarian assistance have failed to bring successful development in Somalia. Bottom-up development, or grassroots development, is crucial for successful, long-term nation building.

Incorporating professionals and intellectuals from the Somali Diaspora into community-level development efforts would be an ideal alternative to simple humanitarian aid. Members of the Somali Diaspora are “the best trained and skilled among the Somalis, their valuable knowledge should therefore be transferred.”⁵¹ The UN cites the UNDP’s Qualified Somali Technical Support (QUEST) program as a successful model of Diaspora involvement in Somalia’s development, which “provides incentives for the skilled Somali Diaspora to return to teach at Diaspora-Home Community driven educational projects.”⁵² During the first phase of QUEST in 2004, 27 diaspora professionals from various regions including the U.S., Europe and Asia were hired by UNDP to “support Somali institutions in [improving] their technical capacity.”⁵³ In 2007, 47 more professionals were hired as QUEST expanded their function to also improve the government sector and other areas in need of capacity development.

Members of the Somali Diaspora are “the best trained and skilled among the Somalis.”

Bottom-up development implemented by the diaspora community is ideal for development efforts in Somalia because of the low risk associated with employing Somalis as humanitarian volunteers. Foreign humanitarian workers have been targeted and killed by extremist rebel groups, a security crisis that is discussed at length in Section I, Chapter 2. Somali volunteers will be at much lower risk than foreign workers because they will not be perceived as a threat and because they are familiar with the culture, language, and clan politics of Somalia. Somali volunteers have “unique perspectives [and] cultural knowledge and sensitivity,”⁵⁴ something that would be difficult for foreign aid workers to acquire. The Worldwide Somalia Students and Professionals (WSSP) is a global movement of Somalis whose mission is to contribute to their home country by offering non-profit development efforts.⁵⁵ The WSSP are currently recruiting an estimated 1,000 Somali volunteers, including professionals such as doctors, lawyers and scientists, to travel to Somalia in order to offer skill-training. The WSSP overlooks clan divisions but has a deep understanding of Somali culture. As part of their operations, WSSP sends volunteers with appropriate clan ties to mediate conflicts in specific regions and prevent violence.

The U.S. State Department should urge the UNDP to expand QUEST by incorporating

WSSP. Because WSSP is an apolitical organization and has not institutionalized clan prejudice, there is little risk that certain clans will receive preferential treatment through their humanitarian efforts—one of the current issues with funding or donating money to local organizations in Somalia. The diaspora community also serves as a perfect medium for cooperation, negotiation and communication. The State Department should prompt UNDP to begin funding WSSP by offering the organization support via grants. UNDP can abandon their pre-existing QUEST program as there are more volunteers in WSSP, and these volunteers do not demand the financial compensation that QUEST members do.

Domestic Campaign to Stop Piracy

As has been discussed, the diaspora community represents a “lifeline of support for communities and families throughout Somalia.”⁵⁶ Members of the Somali diaspora play an active role in collecting funds to support Somalia by arranging car washes, bake sales, food drives, health clinics, NGOs, and by setting up social networking accounts to receive donations.⁵⁷ The Somali Diaspora’s strong connection to their homeland can be partially attributed to the expansion of the internet, which facilitates communication and expands opportunities to organize and mobilize. The current humanitarian efforts of the Somali Diaspora indicate that it is highly motivated to effect change in Somalia.⁵⁸

Members of the diaspora community also serve as advocates to the international community.⁵⁹ Through their advocacy, expatriates assist in the release of hostages captured by pirates and organize the return of clan representatives to Somalia in order to resolve disputes and fighting.⁶⁰ One specific incidence of this occurred when the Somali Diaspora helped to negotiate the release of a British couple held hostage from 2009 until 2010. Rachel and Paul Chandler were kidnapped by pirates and taken ashore to Saleban territory in Somalia. The facts of their eventual release are not clear, but it is widely reported that the Somali Diaspora, especially in Britain played a crucial role in effecting their release. During the Chandlers’ captivity, the British Somali community raised awareness by appearing on television and radio, and by raising money for the ransom.⁶¹ One man, Dahir Abdullahi Kadyi, an ex-cab driver from London from the same clan as the pirates is credited for his role in the couple’s release. He claims “community pressure” was used to release the couple, and he flew from Britain to Saleban territory to negotiate the Chandlers’ release.⁶² There is great speculation concerning the ransom, but an untold amount was raised by the Somali Diaspora. The release of the Chandlers would not have been possible without the efforts of the international Somali community, demonstrating the incredible potential of the diaspora and their willingness to engage in counter-piracy efforts.

The release of the Chandlers would not have been possible without the efforts of the international Somali community.

Second generation Somalis are especially important to this effort. Unlike many first generation Somalis, young people raised outside of Somalia do not typically identify themselves by clan. They identify themselves more generally as “Somalis,” and have formed organizations on the basis of this identity. WSSP is one example of such an organization.⁶³ Comprised pri-

marily of second generation Somalis of various clan backgrounds, this organization's goal is to encourage development throughout Somalia, and currently has a variety of development programs in education, agriculture, and health. To further their efforts, WSSP has capitalized on social networking sites, such as, Facebook, Twitter, and YouTube in order to spread awareness and raise money for their cause. The use of these social media facilitates organization and cooperation across wide geographic spaces that extend to Somalia.⁶⁴ The U.S. State Department should enlist the support of organizations such as the WSSP in launching future anti-piracy campaigns that specifically address the Somali Diaspora.

Donald Y. Yamamoto, who serves as Principal Deputy Assistant Secretary of State for African Affairs, wrote on the U.S. Department of State Official Blog stressing the importance of nurturing relationships and meeting with elders, community organizers, and youth of the Somali Diaspora in cities throughout the United States.⁶⁵ It is essential to maintain these relationships, routinely engaging in dialogues to better understand the needs of the diaspora community, and to design an effective campaign.

Within Somalia, there has already been extensive anti-piracy campaigning. Religious leaders have denounced "pirate money," as *haram*, or forbidden by Islamic law. Many imams also claim that piracy is detrimental to Somali society.⁶⁶ The United States should emphasize the designation of piracy as *haram*.

Social networking sites such as Facebook, Twitter, and YouTube should be utilized in the domestic anti-piracy campaign. Facebook groups and Twitter accounts that update the current conditions in Somalia, including the activity of pirates should be created and made accessible for people around the world. YouTube is another important media platform to spread the message of anti-piracy, by publishing videos of piracy trials or of violence against hostages. Information should be published in English, Arabic, and Somali in order to make the information accessible for targeted audiences.

In addition to more modern social media sources, the domestic and international information campaign should also include radio broadcasts. The use of Somali-language radio stations to transmit anti-piracy public service announcements in areas with large Somali American populations is important, because it will reach those who may be illiterate as well as non-English speakers. The diaspora has already established popular radio stations in Mogadishu, such as HornAfrik FM that reflects the positive aspects of Somali life, while also maintaining a neutral political stance.⁶⁷

The U.S. State Department should endeavor to broadcast public service announcements over the Voice of America (VOA) Somali Service news reports and post an advertisement on the VOA Somali Service website which is written in Somali. The weekly news reports are available by phone in a "call-to-listen" service that many Somalis already use.⁶⁸ VOA claims that their mission is to provide the Somali Diaspora with "accurate and up-to-date news and information" on their homeland.⁶⁹ By encouraging a piracy update to be incorporated

into the weekly VOA news casts, the U.S. State Department can ensure that the counter-piracy message reaches a wide audience.

Any impact that the State Department has on the Somali Diaspora will reverberate in Somalia. Domestic and global partnerships with Somali expatriates are essential, because they provide a unique cultural insight and influence on Somali society.

Recommendations

Based on the previous analysis of the Somali Diaspora, the U.S. State Department should:

- » **Ensure that U.S. banks will not be prosecuted for sending remittances.** The State Department must ensure that banks will not be prosecuted under anti-terrorist legislation for participating in the transfer of money to Somalia. Blocking remittances as an approach to controlling piracy will not prove effective, as since many Somalis rely heavily on remittances to support themselves, especially during times of famine. Eliminating the cash flow will leave Somalis even more vulnerable to recruitment by terrorist organizations, or they may opt to pursue piracy as a means to make money.
- » **Engage the Somali community in the U.S.** The State Department must engage and employ Somali refugee communities in the United States as allies due to their continuing influence over relatives that remain in Somalia. Through partnering with Somalis in the U.S., greater awareness of the threat of piracy domestically will permeate Somalia.
- » **Utilize social networking sites to create a domestic anti-piracy campaign.** The State Department should seek to use Facebook, Twitter, and YouTube to formulate a counter-piracy message, as well as utilize the ways that the community already operates (community gatherings, and mosques) in order to ensure that the message is received throughout the world, and back home in Somalia. Furthermore, the use of radio stations to transmit public service announcements against piracy, could also serve as a good communication tool for spreading awareness.

Combating Piracy in the Long-Term through Development Efforts

By Nacha [Poi] Udomsrirungruang and Andrijana Valladares

While current military operations have been successful at decreasing the number of successful pirate hijackings, piracy cannot be eliminated without addressing its root causes. The three most obvious root causes of piracy are political instability, poverty, and greed. According to the United Kingdom's Department for International Development (DFID), Somalia is the world's most fragile state.¹ "There is no political stability; the central state is ineffective. Security and minimal basic services are provided, if at all, largely through informal community institutions. The political outlook is highly uncertain."² Political instability allows for the piracy enterprise to flourish due to the lack of governance and law enforcement. Endemic poverty in Somalia has led young men to turn to piracy as a means of earning income, despite the risks associated with the enterprise. However, many current pirates are operating not due to poverty, but due to greed.

The international community has not been adequately funding long-term development programs and has focused too heavily on short-term interventions.

Instability and a lack of security in the country have made it difficult for humanitarian efforts to be sustainable and continue to hinder development efforts. Violence targeted at foreign humanitarian workers has forced many organizations to relocate operations to neighboring countries. As a result, the first step towards any development effort in Somalia will have to address the issue of security. In the long-term, counter-piracy efforts must include nation building and the creation of economic opportunities for Somali citizens so that piracy no longer remains an appealing enterprise. Discouraging piracy can be done by providing alternative sources of income that are legal and secure.

The U.S. has been the "largest government donor to Somalia since 2001, providing approximately \$362 million USD in humanitarian and development assistance, mostly in food aid, through USAID and State Department."³ The USAID has fed 94% of malnourished children in Southern Somalia.⁴ Through USAID, 1.2 million children in Somalia have been vaccinated, 1.9 million have access to sustainable water access and 1.1 million benefit from improved sanitation facilities.⁵ However, Somalia continues to be dependent on foreign aid. According to the Government Accountability Office (GAO) report on the limitations to humanitarian efforts in Somalia, the international community has not been adequately funding long-term development programs and has focused too heavily on short-term interventions. Short-term humanitarian efforts such as food aid have not led to noticeable

development. Food aid “has not reduced the country’s malnutrition rates, which remain above the emergency threshold in some parts of the country.”⁶ Investment should be redirected to institution-building and employment opportunities, which would reduce poverty and create a more stable Somali State.

The best way to accomplish this would be through grassroots efforts. Through education and employment opportunities, Somalis will receive the tools and skills that are necessary to earn income in sectors such as agriculture, livestock and fisheries. Diversifying employment opportunities to encompass the maritime industry will also be useful for Somalia’s economic development as it is a coastal state.

A development-based approach will discourage piracy by presenting alternative sources of income that are legal and secure. Countering piracy is not going to be solved by simply arresting pirates. Addressing the root causes of piracy, which are instability and poverty, is the only method comprehensive enough to form holistic solutions that can eliminate piracy in the long-term.

Promoting Stability

Insecurity in Somalia poses the greatest obstacle to fighting the country’s endemic poverty. Somalis are often lured into the piracy enterprise because they are not able to earn an adequate income. Somalia has lacked a functioning economy since the outbreak of violence. Without increased stability, development efforts will be futile. The high risk of attack associated with humanitarian assistance has caused a decline in aid in Somalia because “donors have been reluctant to fully fund all humanitarian assistance.”⁷ Between 2009-2011, there have been over 1.1 million displaced Somalis, 475,000 refugees and 22,000 innocent deaths⁸ as a result of the country’s instability. Aid workers have been victimized by this instability as well, hindering humanitarian efforts. Fourteen World Food Program (WFP) workers were killed between 2009 and 2011,⁹ causing reluctance amongst donor countries to contribute to development efforts. Aid that does reach the region cannot be effectively regulated and distributed, which further complicates humanitarian efforts. “U.S. officials’ inability to travel the country has prevented them from independently monitoring assistance.”¹⁰ Failure to bring security to all parts of Somalia has resulted in unequal aid distribution, amongst other obstacles.

The African Union Mission in Somalia (AMISOM) has sent peacekeeping troops as part of an effort to stabilize the region and improve the security situation. However, the mission is limited because the African Union (AU) has had difficulties recruiting troops from member nations due to the high risk involved. Of all members in the AU, only Ghana, Nigeria, Burundi, Uganda and Malawi have pledged to send troops. In 2010, 26 Ugandan peacekeepers and 29 Burundi peacekeepers were killed.¹¹ As of 2010, there were 7,000 AMISOM peace-

keeping personnel, not nearly enough to combat the dire situation in Somalia (see Section IV, Chapter 1). The United States has provided funding worth \$60 million USD to train and equip AMISOM troops. However, AMISOM expresses that “additional funding from the international community will most likely be required to equip and deploy additional troops.”¹² According to a U.S. Government Accountability Office (GAO) report: “AMISOM has not been able to fulfill its mandate to improve the security situation, support reconciliation, protect the transitional government, and facilitate the provision of humanitarian aid.”¹³ The GAO report indicates that the level of instability and violence is too high for the current troops to make any transition towards stability. The GAO reports that the best-case scenario would require at least 20,000 troops.¹⁴ The severity of the security situation has made it difficult for troops to patrol all areas of Somalia. The tasks of Ugandan troops have been reduced to patrolling only the airport, seaport and presidential compound.¹⁵ Increasing peacekeeping troops is therefore a short-term solution to improve security.

Improving the security situation in Somalia is fundamental to the success of development efforts as well as the effectiveness of long-term counter-piracy efforts. The U.S. State Department must understand that it is crucial to supply AMISOM with adequate troops. Since the U.S. has already provided the bulk of funding to AMISOM, the State Department should urge the other countries, who have a vested interest in ending piracy, such as Kenya, Ethiopia, Oman, and the UAE, to provide the rest of the funding that AMISOM needs to make its peacekeeping mission effective. Additional funding will allow AMISOM peacekeepers to monitor and protect infrastructure that is pivotal to Somalia’s development in the long-term. If AMISOM cannot effectively carry out their mission, then the millions of dollars worth investments that various foreign governments have already been contributing to Somalia’s development will be lost.

Improving the security situation in Somalia is fundamental to the success of development efforts as well as the effectiveness of long-term counter-piracy efforts.

Illegal Fishing and Toxic Dumping

Many pirates cite illegal foreign fishing and toxic dumping as their motivation to attack foreign vessels in the Gulf of Aden.¹⁶ According to Mohamed Abshir Waldo, a journalist and consultant in Kenya, the international community is engaged in illegal activities which he calls “original” piracy, inspiring Somalis to turn to piracy as a defense.¹⁷ Waldo classifies piracy in two categories: (1) original piracy and (2) shipping piracy. He argues that foreign fishing vessels are often engaged in original piracy, characterized by illegal fishing and the dumping of industrial and nuclear waste, and that this exploitation of Somali resources is largely responsible for many of Somalia’s economic and political troubles.¹⁸ Waldo claims that “shipping piracy” is a response to this “original piracy,”¹⁹ and that modern Somali pirates comprise a makeshift coast guard. However, according to *Oceans Beyond Piracy*, only 18% of hijacked vessels in 2011 were fishing ships.²⁰ This indicates that illegal fishing is no longer the primary motivating factor for piracy, and that it is simply used as a justification to gain local support. The United Nations Council has, however, confirmed that illegal fishing and toxic dumping does occur in

Somali waters, even though the lack of formal monitoring makes it difficult to estimate how many foreign-flagged trawlers are engaged in illegal activities.²¹

The United Nations Environment Program (UNEP) reports significant damage to Somalia's shore as a result of toxic waste dumping. According to UNEP, toxic substances that have been found on Somali shores include uranium radioactive waste, lead, industrial waste, hospital waste, chemical waste as well as heavy metals such as cadmium and mercury.²² The UNEP report concludes that Somali waters have been exploited because of its institutional incapability to safeguard its shores. United Nations Special Envoy Ould-Abdallah stresses that "it is important to tackle these illegal activities...and not to solely focus on the problem of piracy,"²³ because counter-piracy efforts will not succeed if root causes are not addressed.

United Nations Special Envoy Ould-Abdallah stresses that "it is important to tackle these illegal activities...and not to solely focus on the problem of piracy."

The United Nations report also reveals that Somalia's offshore fisheries have significant potential for development as a national maritime economy. Fisheries within 200 nautical miles off the Somali coast are capable of generating an estimated \$200,000 USD annually. This would be a significant resource for the Somali economy and would also secure a much needed food resource for the region.²⁴ However, a viable maritime economy cannot be developed without addressing the foreign presence and exploitation of Somali territorial waters. Many Somali fishermen feel threatened by the warships patrolling the seas,²⁵ and foreign fishing vessels are destroying reef habitats with rakes.²⁶

Due to its political instability, Somalia is incapable of policing its own territorial waters and so the international community should make an effort to protect Somali waters to encourage the Somali fishing industry. This would reduce the number of potential pirate recruits by providing a viable alternative source of income. Therefore, steps must be taken to ensure that illegal fishing is curbed by instituting monitoring systems, investigating suspicious vessels and fining those who are caught fishing illegally. While it is not feasible for the current international task forces to expand their patrols solely for this purpose, they should be given the authority to intervene and fine fishing vessels involved in illegal activity. Money from these fines should be invested into programs that would encourage the development of a Somali maritime economy.

By patrolling, halting and fining ships involved in illegal fishing and toxic dumping, a maritime economy will have room to develop. A campaign against foreign fishing vessels will also gain the popular support of local Somalis and would aid in potential anti-piracy information campaigns both domestically and in Somalia (see Section I, Chapter 1, and Section IV, Chapter 3). It will send a message to local citizens that the international community is working in the best interest of the Somali people, by protecting their seas, which would also discredit the justification of "shipping pirates." To ensure the safety of Somali fisherman, efforts must be made to address illegal fishing and toxic dumping. These fishermen must also be protected from pirates so that they can engage in maritime trade with foreign countries.

In order to further ensure that foreign vessels are held accountable for illegal fishing and toxic dumping and for the purpose of developing a maritime economy, Somalia should declare its Exclusive Economic Zone (EEZ) in accordance with the Convention on the Law of the Sea. The Convention on the Law and the Seas (UNCLOS) provides for “the protection and preservation of the marine environment, the establishment of maritime zones and the rights and obligations of flag States” and “the UNCLOS provides for the enforcement of laws and regulations of the coastal State in the exclusive economic zone with respect to living resources, including boarding, inspection, arrest and judicial proceedings as well as the protection and preservation of the marine environment.”²⁷ In accordance with the Convention, a coastal State such as Somalia has a right to a territorial sea within 12 nautical miles from its shoreline. Furthermore, a coastal State can establish an EEZ at a maximum of 200 nautical miles from its shoreline for the purpose of establishing sovereign rights with regard to exploring, exploiting, conserving, and managing natural resources. Somalia ratified the Convention in 1989 and it entered into force in 1994. However, under UNCLOS, Somalia has not “proclaimed an exclusive economic zone in accordance with the Convention on the Law of the Sea.”²⁸ The Permanent Representative of Somalia attempted in 1973 to draft legislation. Somalia’s national legislation claims that it has jurisdiction of 200 nautical miles into the sea under Law No. 37 on the Territorial Sea and Ports, signed in 1972.²⁹ However, the legislation was not made in accordance with the Convention on the Law of the Sea. Therefore, in order to protect Somali waters from being exploited or degraded, and in order to set up a legal basis for jurisdiction over the maritime environment, the U.S. should petition the TFG through the International Maritime Organization (IMO) to declare an EEZ.

While declaring an EEZ will not resolve the issues of illegal fishing and toxic dumping in Somali seas due to Somalia’s inability to enforce its laws, implementing an EEZ remains an important first step. The declaration of an EEZ would establish a legal basis for the protection of Somali sovereignty in its territorial waters.³⁰ Otherwise, it may be argued that Somalia does not have an EEZ and therefore foreign vessels within 200 nautical miles can claim that they have a right to fish, as the British Foreign Office and the Norwegian Ministry of Foreign Affairs have claimed.³¹

Somalia must establish an EEZ in order to confront foreign exploitation and allow for the development of a maritime economy—both of which are vital to counter-piracy efforts. The job creation that would result from developing a maritime economy would provide an economic alternative to piracy, and would also encourage long-term stability in the country. However, if these issues are not addressed it is probable that Somalia will continue to destabilize, and that this instability will spread throughout the region, eventually affecting neighboring States like Kenya and Ethiopia who have already received several hundred thousand Somali refugees.³²

Creating a Maritime Industry and Economy

Building a stable maritime industry will allow “legitimate Somali fishermen to pursue their

trade in a more secure environment. This dynamic would help stabilize an economy based on legitimate, rather than criminal, enterprises.”³³ Somalia has over “3,330 km of coastline and an estimated potential fisheries yield of around 220,000 tons a year.”³⁴ According to the UN Food and Agriculture Organization (FAO) estimates of Somalia’s pre-war economy, the maritime sector employed a total of 90,000 Somalis, of which 30,000 jobs were in the primary sector and 60,000 in the secondary sector.³⁵ Even in 2001, after the outbreak of civil violence, gross values of fisheries output was worth \$55 million USD, excluding vessel price. However, pre-existing maritime infrastructures have all been destroyed. The FAO’s Strategy and Action Plan for Somalia (2011–2015) estimates that further development of the country’s maritime industry can offer employment to 400,000 Somalis in “processing, trading, input supply and related activities. [Existing] data most likely underestimates the number of people involved and dependent on the sector, particularly in the diverse inland fisheries sector.”³⁶ “Fisheries resources within 200 nautical miles off the coast of Somalia have been conservatively estimated to be capable of providing sustainable annual catches of 200,000 tons,”³⁷ which would create employment opportunities within the maritime industry including port duties and an increase in fishing as a source of income.

The TFG of Somalia intends to improve its maritime economy and has created a Ministry of Fisheries, Marine Resources, and Environment (MFMRE) to oversee the protection and management of Somali waters. Since Somalia is a coastal nation, the TFG recognizes that the ability to tap both its renewable and non-renewable marine resources will stimulate Somalia’s economic growth. It also acknowledges that destructive activities such as illegal fishing and toxic dumping by foreign vessels must be halted for Somalia’s marine resources to remain sustainable. However, various challenges face the MFMRE including a lack of funding and resources. The TFG also lacks the recognition and bureaucratic power to effectively implement the MFMRE’s goals. Moreover, the lack of stability in the country makes building infrastructure futile. As mentioned, increased security through international peacekeeping will allow the first step in re-building a Somali maritime economy, among other development efforts.

Legal employment in the maritime industry could replace engagement in the illegal and dangerous piracy enterprise.

The U.S. should recognize the importance and necessity of helping Somalia rebuild its maritime economy. Not only will it be a significant source of income for locals, it will also contribute to improving Somalia’s GDP. Most importantly, offering fishermen opportunities for secure and legitimate employment in the maritime sector will be a viable long-term solution to combatting piracy. Legal employment in the maritime industry could replace engagement in the illegal and dangerous piracy enterprise. Moreover, the creation of maritime jobs will ensure that local fishermen and those employed in this sector will continue to encourage authorities to protect Somali waters.

Despite the significant potential of Somalia’s maritime industry, aid in the fishery sector has not been sufficient to date. International organizations that are currently offering humanitarian assistance such as job creation in Somalia largely ignore the re-creation of a maritime

industry, focusing more on improving the agriculture and livestock industry. WFP's Food for Assets program focuses on building infrastructure such as schools and hospitals, but fails to consider building ports and other maritime infrastructure. "The fishing sector has received very little attention from the international community and aid agencies. Therefore, it seems that the fishery sector, which could recover and develop quite swiftly given the right support, has been neglected."³⁸ Since 2004, UNDP has "provided support to a number of small-scale pilot fishery development programs with the aim of poverty reduction, development of the artisanal fishery sector and accelerating recovery from the destruction of civil wars."³⁹

To encourage the development of a maritime industry, the TFG must join various regional organizations with a maritime economy and industry focus. The TFG does not have the institutional capacity to monitor and safeguard its own waters so joining these organizations will allow other countries to aid Somalia in protecting its fisheries and ecosystem. If Somalia joined the Indian Ocean Tuna Commission (IOTC), member countries will help Somalia ensure that the toxicity level of its waters remain low, or tuna stocks will be poisoned and will not be able to sell in the world market. The IOTC's objective "is to promote cooperation among its members with a view of ensuring, through appropriate management, the conservation and optimum utilization of stocks and encouraging sustainable development of fisheries."⁴⁰

The State Department should persuade the TFG to join regional cooperation organizations that focus on management of fisheries and ecosystems, as these organizations will help Somalia safeguard its waters. Currently, Somalia is a member of the Southwest Indian Ocean Fisheries Commission. The State Department should urge the TFG to join similar organizations, such as the Indian Ocean Tuna Commission. Somalia does not have the capacity to monitor illegal dumping, which may possibly destroy parts of its maritime industry, joining programs like the Marine Stewardship Council (MSC) will put Somali seafood at the forefront of international attention so that toxic dumping will increase in importance for the international community. MSC is a certification program that offers eco-labels to sustainable fisheries.⁴¹ Once Somalia develops its fisheries, it should get certified for being sustainable and well-managed, because if toxic waste begins affecting its exported seafood in the international market, there will be a greater international response.

Other Employment Opportunities

Despite the importance of developing Somalia's maritime economy, it is also necessary to offer assistance in other employment sectors to diversify employment opportunities. This will ensure economic growth that is both sustainable and extends beyond coastal areas. For development efforts to be successful in the long term, humanitarian assistance must focus on developing functioning institutions instead of merely aid distribution. The main employment sectors with potential for growth include the telecommunications, energy, livestock and agricultural sectors. Instead of top-down approaches such as aid-giving, the U.S. and

other donor countries should focus on a grassroots approach, engaging local communities and creating employment opportunities.

The U.S. has been contributing substantially through USAID's funding of programs like the WFP. In 2011, USAID's total funding to humanitarian assistance in Somalia was \$22,000,000 USD, of which \$14,500,000 USD went to the WFP.⁴² Of all WFP programs, only one targets creating employment opportunities. The WFP's Food for Work and Assets program addresses the need to create infrastructure that will stimulate development. Although the programs funded by USAID have been successful, they have not contributed to long-term development efforts. Short-term aid is not effective in catalyzing Somalia's development. Funding in humanitarian assistance should heavily incorporate employment opportunities so that Somalis can earn income. Food for Work provides fortified food rations in exchange for work, such as trash collecting or planting trees. Food for Assets provides food to Somalis in exchange for work that would contribute to building community infrastructure. Another way to earn food rations is to take WFP-sponsored classes that teach skills such as irrigation, terracing, or soil and water conservation. Besides WFP, the Cash for Work (CFW), funded by USAID, is also offering cash in exchange for work. "CFW programs provided more than 15,100 households with short-term employment to rehabilitate approximately 390 km of roads and nearly 100 water catchments."⁴³ However, providing food in exchange for work, such as road-building, fails to generate a permanent and stable source of income. USAID should allocate funding for organizations that create direct employment opportunities. Reducing poverty and unemployment will eliminate one root cause of piracy.

“Exclusion of the poor from the financial system is a major factor contributing to their inability to participate in the development process.”

Microfinance as a Solution to Poverty

Microfinance programs are growing throughout the developing world and have a demonstrated record of success in reducing poverty. "A large number of studies on poverty indicate that *exclusion* of the poor from the financial system is a major factor contributing to their inability to participate in the development process. Financial exclusion, thus, binds them into a vicious circle of poverty."⁴⁴ The USAID is not currently funding any microfinance programs in Somalia; however, it is critical that USAID incorporate these programs as part of a more comprehensive plan for Somalia's development because it encourages grassroots development and reduces reliance on foreign aid.

Somalia has unique needs concerning microfinance and microcredit. Because it is an Islamic country, loans cannot be offered with interest, no matter the size of the loan, in order to comply with Shari'a law. Although finance in any Islamic country is more difficult than in other places, microfinance has succeeded in many Islamic countries, such as Pakistan.⁴⁵ It is also advisable to loan to women in Somalia. Women typically refrain from spending loan money on "instant gratification" such as sugar or alcohol in countries around the world.⁴⁶ In the case of Somalia the issue is not alcohol, but khat. Since fewer women than men chew

khat,⁴⁷ women are more likely to spend money on their children's education, which combats poverty (and piracy) not only for their generation, but for their children's generation as well.⁴⁸ Somalia is a unique country that has unique requirements concerning microfinance. Therefore, programs that are culturally sensitive, such as Doses of Hope, should be supported.

Doses of Hope (DoH), began as a small-scale microfinance program founded by three Somali refugees in the Netherlands in 1999, lending 100 women loans through its Rural Credit Program.⁴⁹ By 2004, it was offering loans to over 4,000 Somalis, with women comprising one-third of their recipients. The turnover by 2004 was \$272,000 USD compared to \$15,000 USD in 1999 when it began.⁵⁰ The success of DoH lies in its ability in "culturally" ensuring repayment, implementing the policy that "each borrower has an Elder as a guarantor."⁵¹ In society, Elders have the power to make important decisions, such as marriage. Defaulting on an Elder would lead to an individual being ostracized from the community.⁵² The founders of DoH claim that there are higher default rates when foreign organizations offer loans, because people do not feel obligated to repay the loan and because there is no consequence for defaulting.⁵³ DoH records demonstrate a high return rate, suggesting that their cultural approach to microfinance is effective. External auditors calculate repayment figures to be between 87%-92.4%, which is a very low default rate.⁵⁴ DoH also acts as a small bank: every borrower is obligated to make a monthly contribution of \$3 to the DoH fund, which allows loan recipients to have access to banks or saving accounts.⁵⁵ The successes of DoH lies in the fact that they are creating change at the grassroots level.

USAID, in conjunction with the U.S. Office Foreign Disaster Assistance, has implemented the first "Islamic micro-finance institution in Ethiopia providing Shari'a-compliant microfinance services."⁵⁶ The USAID should begin allocating part of its funding to microfinance programs that are Shari'a-compliant, like the one in Ethiopia. The State Department, through USAID, should initiate microfinance programs in Somalia because temporary cash-for-work and food-for-work programs are not offering Somalis a secure, permanent source of income. By offering loans, Somalis can invest in their own economic development. Bottom-up development relies on individual self-determination and innovation, which has proven to be successful at the grassroots level, especially in countries with weak institutions such as Somalia.

Education

Education is also essential to empowering individual Somalis in the fight against poverty and instability. According to UNICEF, "Somalia has one of the lowest primary education enrolment rates in the world."⁵⁷ Currently, only 37.8% of the Somali population is literate, and the majority of literate Somalis are male.⁵⁸ Professor Abdurahman M. Abdullahi, Chairman of the Board of Trustees of Mogadishu University, claims that the lack of education in Somalia leads its youth to engage in illegal activities such as piracy.⁵⁹ The U.S. should encourage and invest in Somali education to provide youth with greater economic oppor-

tunities and practical alternatives to piracy.

Furthermore, education can be used as a great tool to stabilize Somalia and overcome clan tensions. This can be done through different educational programs in the form of summer camps modeled after the programs designed by the Global Children's Organization (GCO), which are designed to relieve ethnic and religious tensions that threaten stability.⁶⁰ These programs would be designed to integrate children from various clans. They should be organized by NGOs in Somalia and funded with the help of the U.S. and the United Nations Development Programme (UNDP).

Clan politics have had a detrimental effect on peace and stability in Somalia. Due to strong clan tensions and identity in Somalia, political unity is currently untenable because most clans are unwilling to unify under a single leader—demonstrated by the Hawiye clan's violent protests against TFG President Yusuf in 2007, who was from the Darod clan.⁶¹ These divisions are often exploited and exacerbated by neighboring governments and by Islamist factions within Somalia, leading in many cases to violence.⁶² Overcoming clan divisions is essential to stability in Somalia. However, because clan identity is so deeply embedded in Somalis, the reduction of clan tension will necessarily be a long, slow process. Education can play an important role in this effort.

The GCO is a non-profit organization based in Los Angeles that runs several summer camps in Bosnia and Herzegovina and in Northern Ireland. These nations were selected by the GCO because they are countries where ethnic and religious conflicts have also impeded peace and stability. In addition to integrating children from conflicting backgrounds, the objective of these summer camps is to increase literacy and to prepare children to be active in “building a peaceful world.” In the case of Bosnia and Herzegovina and Northern Ireland, ethnic and religious differences strongly determine how children engage with each other. The GCO summer camp projects instructed children on how to overcome these differences and demonstrated how people from different backgrounds can live in peace.⁶³ Integrating children from different backgrounds, and educating them together forms a sense of community and understanding that is intended to overcome ethnic tensions over time. A similar program should be instituted in Somalia, integrating children from different clans. In order to have the most effective outcome, the program in Somalia should be larger and more inclusive than the programs in Bosnia and Herzegovina, which involved only a few dozen students. Additionally, these programs should be incorporated into the general educational system in Somalia. It may take several years to realize visible progress, but investment in Somali education is vital to stabilizing the country and reducing clan prejudices. Education is a powerful tool and can be used to overcome many of the root causes of piracy, specifically poverty and instability.

It is also important to engage the Somali Diaspora in improving the education systems in Somalia. Somali youth are particularly eager to return to Somalia to invest in economic development and educational improvement.⁶⁴ Worldwide Somali Students and Professionals

(WSSP) is a non-profit organization created by students who are “modern and believe in doing good for the sake of our country rather than out of regional, clan or familial affiliations.”⁶⁵ This NGO is crucial to the creation of grassroots movements in Somalia because its members are the “engineers, doctors, nurses, teachers, Earth scientists and future leaders of Somalia.”⁶⁶ They are from all regions of Somalia and are living now across all the major continents of the world, presenting great potential for Somalia. Many of their goals focus on improving the education of Somali students and youth. Members of WSSP conduct yearly fundraising activities around the world in order to sponsor Somali students, who lack the financial means for higher education.⁶⁷ Organizations like WSSP are very promising for the future and stability of Somalia because they have the capability and the programs to educate young people in Somalia who could potentially become the future leaders of the country. Furthermore, they are promoting Somali Nationalism instead of tribalism and regionalism,⁶⁸ which are significant obstacles to stability in Somalia. The U.S. should encourage the work of organizations like WSSP by funding some of their projects on educational and agricultural development such as Operation Restore Home 2012, set to launch in the summer of 2012. This program is mobilizing up to 1000 educated and experienced Somali youth to go back to Somalia in order to bring change to their country. The priorities of the programs are to bring changes in the education, agriculture and healthcare fields for Somali people.⁶⁹ In order to improve the lack of education in Somalia, educational resources must be made more accessible. The U.S. should engage the AU and Somali governments, specifically addressing the importance of free elementary school in Somalia to encourage literacy and to deter youth from engaging in piracy. To this end, the U.S. State Department should petition the UNDP to launch an educational project to promote free education in Somalia. Elementary education in Somalia currently costs about \$8 per month, a substantial amount for families struggling to feed themselves.⁷⁰ Assistance can be given by directly funding elementary education in order to increase attendance. Also, stipends should be given to students to incentivize the pursuit of education, and books and other supplies should be delivered directly to schools instead of giving grants for supplies to local authorities to avoid misallocation of funds. Higher stipends should be given for higher education to encourage students to continue their education. These books and supplies can be collected by chapters of organizations such as WSSP and then transported to Somalia with the assistance of the U.S. government.

The U.S. also should encourage an educational exchange program, specifically designed to provide funding for Somali students to come to the United States to pursue higher education. Students should be chosen from different regions in order to equally represent the various Somali clans. Full scholarships, with weekly stipends and room and board should be provided to participants. Also, they should be eligible to work part-time while in school if they choose. Once they return to their country, they will have the opportunity to invest in their country based on the knowledge that they gained abroad.

Improving the educational systems in Somalia is important in the long-term reduction of poverty and instability, some of the primary root causes of piracy. Though it may take years

or even decades before definitive results can be measured, investment in developing Somalia's educational system is vital to developing a more stable country. More directly, education would provide Somali youth with greater economic opportunities and practical alternatives to piracy. It will not eliminate piracy, but it is an important platform to alleviate instability and to deter the recruitment of young people into the piracy enterprise.

Recommendations

Based on the previous analysis of the root causes of piracy in Somalia, the U.S. State Department should:

- » **Improve the security situation in Somalia by supporting AMISOM's peacekeeping mission.** The State Department should encourage UN member countries to contribute to AMISOM's peacekeeping mission, which will directly improve security in Somalia. Unless there is an increase in troops and equipment, AMISOM will not be able to perform its peacekeeping mission effectively. Because security is essential to maintaining a humanitarian presence in Somalia, improving security is the first step towards any successful, long-term development model that would reduce piracy.
- » **Encourage Somalia to declare an EEZ.** The U.S. State Department should encourage Somalia, through the IMO, to declare an EEZ in order to protect Somali seas from exploitation and degradation, and promote the development of a maritime economy. The subsequent job creation will reduce recruitment of potential pirates.
- » **Authorize the international task forces to intervene in illegal fishing.** The current task forces patrolling Somali waters should be given the authority to intervene and fine fishing vessels involved in illegal activity. Protecting Somali seas from exploitation while protecting merchant vessels from pirates will make the seas safer for business and enable the development of a maritime economy, which will have a positive outcome on the country concerning stability and poverty.
- » **Promote the rebuilding of Somalia's maritime industry.** The development of Somalia's maritime industry and economy is vital for Somalia's economic growth and long-term counter-piracy. If the U.S. aids the TFG in maritime industry development, there will be employment opportunities that can deter piracy. Moreover, a maritime economy will help tackle one root cause of piracy—a lack of alternative income.
- » **Encourage the TFG to join regional maritime organizations.** There is strong evidence of toxic dumping Somali shores, which poses a significant obstacle to the sustainability of the country's maritime industry. Toxic dumping will disrupt economic gains, such as a loss of revenue due to poisoned tuna. Since Somalia lacks the institutional capacity to monitor its waters, the State Department should urge the TFG to join regional maritime organizations such as the Indian Ocean Tuna Commission (IOTC). Such organization will ensure that Somalia's waters are free of toxic substances by helping Somalia to monitor toxin levels in their waters and in their seafood.
- » **Support microfinance programs in Somalia.** The State Department, through USAID, should imitate the Islamic microfinance program in Ethiopia and fund a similar project

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in Somalia. A Shari'a-compliant microfinance program in Somalia will lead to successful grassroots development that allows Somalis to develop unexplored sectors of the economy.

- » **Invest in Somali education.** The State Department should promote education in Somalia through different forms such as primary education, post secondary education, clan-integrated camps, and educational exchange programs. The U.S. should fund innovative educational projects through NGOs such as WSSP since they are a promising grassroots movement in Somalia that can have a positive impact on poverty and instability, which will ultimately result in the long-term reduction of piracy.

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II. LEGAL ISSUES

Deterrence through Legal and Financial Actions: Ending Pirate Impunity

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Section Summary

While international task forces have successfully arrested many pirates, the vast majority of these detainees never face trial: they are simply disarmed and released onshore. Pirates enjoy impunity under this “catch and release” policy because there is no pre-existing legal framework to facilitate their prosecution and detention. Currently, suspected pirates are only prosecuted if a State is willing to hold the trial, and there is absolutely no accountability for the financiers of piracy.

In order to improve this abysmal prosecution rate and to increase punishment for the crime of piracy, a new legal framework must be established to support the national prosecutions and detention of pirates. The effort must be in cooperation with states that have a vested interest in counter-piracy, particularly with those regional states that have expressed willingness to conduct prosecutions and Gulf States who are willing to contribute financially to the proceedings. By identifying and aiding key trial states, and by establishing comprehensive transfer agreements, the State Department will ensure that there is accountability for piracy without having to expend excessive resources transporting suspects to be tried in U.S. domestic courts.

Deterring Piracy through Prosecution

By Karl Eckhardt

The United States must reinforce its position as an active member in the effort to prosecute pirates captured off the Horn of Africa in order to effectively deter piracy and to promote the rule of law in Somalia and its surrounding waters. This position is a “vital element of the United States” effort to “help Somalia regain stability, eliminate terrorism, and respond to the humanitarian needs of [Somalia’s] people.”¹ The United States’ response has focused on diplomatic and legal efforts to “actively support the prosecution of suspected pirates by regional states” in lieu of Somali prosecutions since, presently, Somalia does not possess a fully functional legal system.² However, this strategy has exposed inadequacies and inconsistencies in the current international and national legal regimes used to prosecute pirates. These inconsistencies demonstrate the infeasibility of using international courts or prosecutions to address the problem and highlight the lack of international consensus on the definition of piracy. Additionally, the United States’ current approach has clearly indicated that military task forces’ abilities to arrest pirates have vastly outstripped global capacity and willingness to prosecute – emphasizing the need for dedicated trial States.³ If the United States is to effectively pursue its stated goal of supporting prosecutions⁴ it must (1) aid States’ efforts to undertake national prosecutions; (2) facilitate the development of internationally recognized guidelines for the implementation and interpretation of piracy law and the prosecution of suspected pirates and (3) provide funds, technical assistance, and political support to Kenya, the Seychelles, and other regional States in order to support their development as long-term trial States.

Military task forces’ abilities to arrest pirates have vastly outstripped global capacity and willingness to prosecute – emphasizing the need for dedicated trial States.

Support for National Prosecutions

The United States Justice Department has expressed “readiness to pursue prosecution... when [the United States’] own citizens or interests are attacked,” as have many other States.⁵ However, there is little international consensus on how piracy, as a crime of universal jurisdiction, should be handled either by an international court or by individual national courts.ⁱ While both international and national legal regimes are in place, the lack of

ⁱ This paper specifically addresses piracy (an offence committed outside the jurisdiction of any State) and

a singular international definition of piracy, no clearly defined jurisdiction under international law, and the absence of an international body capable of prosecution, all complicate the development of an international piracy court or tribunal. Therefore it is not feasible in the near future. It is recommended that the State Department support the use of national prosecutions by States that have jurisdiction over acts of piracy including: the flag state of any ships affected, the home countries of any sailors affected, and any states that have extraterritorial jurisdictionⁱⁱ over the pirates.

Definitional Singularity

National prosecutions provide a distinct advantage over international prosecutions since domestic legal codes, while limited, do provide a single definition of piracy within that nation's domestic legal code.ⁱⁱⁱ Conversely, under international law, piracy has four separate definitions codified by four separate treaties: (1) the Convention on the High Seas,⁶ (2) the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention),⁷ (3) the United Nations Convention on the Law of the Sea (UNCLOS),⁸ and, indirectly, in (4) the United Nations International Convention Against the Taking of Hostages.⁹ As a result, there are four distinct definitions of piracy under international law. Both UNCLOS and the Convention on the High Seas restrict their definition of piracy to offences "committed for private ends by the crew or passengers of a private ship," while the SUA Convention and Hostage Convention do not.¹⁰ This multiplicity presents complications for the international prosecution of piracy that would have to be resolved prior to the establishment of an international piracy court. Conversely, national prosecutions are generally based on a single statute – typically within a State's penal code – that specifies a definition of piracy that is not subject to conflicting statutes or definitions.¹¹ The definition of piracy presented in well constructed national statutes, like those of Kenya and the Netherlands, thus provides a key advantage over international prosecutions, which would be significantly more complicated due to the difficulty of uniting definitional discrepancies. National prosecutions, therefore, provide a superior alternative for prosecutions; an alternative that has already received broad international support, and should continue to be supported by the State Department.¹²

Clear Jurisdiction

National prosecutions are additionally advantageous because they provide a clear definition for States' jurisdictional authority whereas international legal regimes presently do

not armed robbery at sea (the same offense committed within the jurisdiction of a State). Since armed robbery at sea falls under a State's jurisdiction, that State would be required to prosecute any such offenses. For the purposes of this paper however, pursuant to UN Security Council Resolutions, armed robbery at sea committed within the boundaries of a State unable to prosecute or enforce its laws (e.g. Somalia) is considered an act of piracy.

ii Extraterritorial jurisdiction refers to the legal ability of a State to exercise authority beyond its national boundaries.

iii For a discussion of the definition of piracy see Footnote i.

not. Regardless of whether they are of narrow or broad construction, national statutes carry explicit definitions for jurisdictional authority and typically have well-developed bodies of case law to address potential alternative interpretations.¹³ This facilitates the immediate initiation of piracy prosecutions and helps to streamline prosecutions once they begin. However, international law provides three conflicting definitions of jurisdictional authority: the SUA Convention allows any state jurisdiction over “any person [who] commits an offense”; the Hostage Convention limits States to the prosecution of nationals or those within their territorial boundaries; and UNCLOS and the Convention on the High Seas grant jurisdiction only for offenses that are committed “on the high seas” or “in a place outside the jurisdiction of any State.”¹⁴ Should international prosecutions via an international piracy court or tribunal be pursued, these three jurisdictional definitions would have to be reconciled, which would impose time delays, additional costs, and interpose the issue of sovereignty. While United Nations Security Council Resolutions on the issue, Resolution 2020 being the most recent, have temporarily solved these jurisdictional issues under international law, no-long term solution exists at the international level.¹⁵ On the contrary, national legal regimes provide clear definitions of jurisdiction that are legal, practical to prosecute with and, moreover, are a long-term solution to the problem. National prosecutions are therefore preferable to international regimes, and should continue to be pursued by the State Department because they may be implemented immediately, provide a long-term solution unavailable in international law, and do not have the conflicting jurisdictional definitions, time delays, high costs, and other complications that would be involved in establishing an international piracy court.

The Political Advantage of National Prosecutions

Beyond these advantages, a strategy of national prosecution is advisable both for its practicality and its political advantage. National prosecutions have a demonstrated record of success, broad international support, and have been openly encouraged by the United States Justice Department.¹⁶ Moreover, many countries including the United States, Japan, and the Netherlands have been successful in conducting prosecutions and two States, Kenya and the Seychelles, have been successful in trying large numbers of suspects.¹⁷ The success of these prosecutions, and the international recognition and acclaim they have received, has made national prosecutions politically advantageous, reflected by the fact that the number of States undertaking prosecutions doubled in 2011.¹⁸ Support for national prosecutions will also strengthen existing international legal initiatives surrounding piracy, particularly the Djibouti Code of Conduct, a document signed by many East African and Middle Eastern States that promotes a coordinated anti-piracy approach.¹⁹ While the Djibouti Code of Conduct has had limited success in strengthening national ability to prosecute, it does not address or encourage the actual undertaking of prosecutions.²⁰ Because national prosecutions utilize existing legal systems, they do not require substantial multilateral political or financial cooperation. Moreover, the implementation of Memorandums of Understanding (MOUs) in key trial states (e.g. Kenya and the Seychelles) have demonstrated that national prosecutions can achieve judicial economies of scale, making them a more efficient, nation-

ally-based solution with international support.^{iv 21}

Another existing international alternative to national prosecutions would be ad hoc modification of existing international bodies, such as the International Criminal Court or the International Tribunal for the Law of the Sea. This solution would make existing legal efforts, like the Djibouti Code of Conduct, irrelevant and would violate the mandates of these institutions, therefore making such a solution politically impractical and inadvisable.^{22 23} However, the success of national prosecutions in dealing with piracy suspects demonstrates that it is a practical and politically feasible solution. Support for national prosecutions thus promises a practical, immediate, and effective solution to the problem of deterring piracy off the coast of Somalia. This solution addresses the United States' interests in the region and the State Department's stated goal of supporting the prosecution of suspected pirates.²⁴

Therefore, it is strongly recommended that the State Department encourage the Justice Department and Executive Branch to continue to support domestic national prosecutions when U.S. interests are involved *and* actively support national prosecutions of piracy by other States. Specifically, the State Department should encourage the Justice Department to continue its efforts to prosecute pirates who attack U.S. flagged vessels and U.S. citizens. Additionally, it is recommended that the State Department initiate diplomatic efforts through Working Group 2 of the International Contact Group on Piracy off the Coast of Somalia (CGPCS) and the UN to press other nations to prosecute pirates in cases where they have jurisdiction in order to increase the overall number of piracy trials held. In support of this policy, the State Department should pursue media-based efforts including public statements, press releases, and public relations campaigns to encourage other nations to undertake piracy prosecutions and publicize trials within Somalia in order to provide a deterrent to potential pirates. This type of diplomatic and public messaging strategy has already been demonstrated as effective,^v as evidenced by Japan's prosecution of the pirates who attacked the MV Guanabara in response to messaging efforts by the United States. Public messaging strategies will continue to be an effective means of promoting national prosecutions in the future,²⁵ and provide a direct means through which the State Department can increase the number of global national prosecutions and increase international support for national prosecutions.

Guidelines Regarding Interpretation and Implementation of International Law

To facilitate the implementation of national prosecutions, it is necessary to address their

iv For a more complete discussion of these Memorandums of Understanding see Section II, Chapter 2

v One of the best examples of this was the United States' successful efforts to persuade Japanese prosecutors to indict and subsequently try the pirates responsible for the attack on the Japanese owned ship, the MV Guanabara.

limitations. The conflict between piracy definitions in international law complicates national prosecutions in the case of States wishing to try pirates according to international law. Additionally, the limited nature of many national statutes either prevents extraterritorial jurisdiction or limits the applicable charges. Japan’s penal code, for example, lacks extraterritorial jurisdiction and prevents prosecutors from filing applicable domestic charges such as murder, hostage-taking, or kidnapping.²⁶

In order to resolve or mitigate these complications, it is strongly recommended that the State Department leverage its diplomatic connections to help establish and facilitate a regular dialogue between national legal systems, Working Group 2 of the CGPCS, and various stakeholder bodies, such as the Public International Law Policy Group (PILPG) and the International Maritime Bureau (IMB), to develop Best Practices – guidelines designed to advise countries on how best to pursue national prosecutions of pirates and implement piracy law. Specifically, this is intended to facilitate current national prosecutions easier and to make future national piracy statutes easier to implement by providing a published, non-treaty, non-binding, document that sets forth guidelines for (1) the interpretation of international piracy law for use in national prosecutions and (2) the implementation of new piracy laws so that they contain adequate provisions for extraterritorial jurisdiction and prosecution of piracy related crimes.

Streamlining the Interpretation of International Law

Providing this set of Best Practices is critically important for the purposes of streamlining national prosecutions since it can help establish a clear international consensus on the interpretation of international piracy law. At present, national statutes provide clear definitions of piracy but, in States that use common law, statutory definitions or interpretations can be supplemented with definitions or interpretations derived from international law. This practice has become problematic as a result of the ambiguities in the current international treaties regarding piracy law, presenting complications for domestic trials in certain common law^{vi} States, and making it difficult for those States’ national courts to effectively prosecute pirates. This issue is demonstrated by the cases of *Hasan v. United States* and *Said v. United States*, where conflicting verdicts were reached based on different interpretations of a piracy statute.^{vii 27} Providing a set of internationally recognized Best Practices detailing guidelines for the interpretation of international law will streamline national prosecution efforts by eliminating the current ambiguities in international legal definitions. It is therefore strongly recommended that the State Department actively support and facilitate the development of a document defining Best Practices and including guidelines for the interpretation of international piracy law to ensure effective and efficient national prosecutions.

vi Common law states use law derived from judges, also called case law, in addition to statutory law.

vii The United States’ piracy statute defines piracy according to the law of nations – leading to varying interpretations based on which international treaty is selected to define piracy.

Guiding the Development of New Piracy Statutes

Developing a set of Best Practices is a critical opportunity to strengthen national prosecutions by ensuring that new piracy statutes are drafted to include the most effective elements of existing statutes: the use of extraterritorial jurisdiction and the charging of related crimes. While national statutes are independently developed, and present a better alternative than international piracy law, domestic codes are often initially based on international laws. Both the Australian and Kenyan piracy statutes, for example, are modified versions of the definition of piracy contained in UNCLOS.²⁸ As a result, the present fragmentation of international piracy law has been translated into extremely inconsistent national piracy statutes with different States' statutes.²⁹

Many States have used certain international laws as models with unintentional adverse affects: restricting the jurisdiction granted to the prosecuting authority and in many cases preventing the prosecution of piracy-related crimes such as financing piracy or conspiring to commit piracy. The Japanese and South Korean statutes do not grant extraterritorial authority, a feature drawn from the International Convention on the Taking of Hostages, and this has severely limited their jurisdictional reach and hindered successful prosecution by these States.³⁰ Similarly, the Australian statute criminalizes only piracy and not related crimes, a critical limitation considering the increasing importance of prosecuting financiers of piracy (See Section II, Chapter 3).³¹ The development of clear, internationally sanctioned guidelines regarding the implementation of new piracy statutes can pro actively help solve these issues by carrying provisions that encourage broad jurisdiction and the authority to prosecute piracy-related crimes. The statutes of Kenya and the Netherlands, two nations where the most successful prosecutions have been carried out, are exemplary in this respect.³² They grant (1) broad jurisdiction, including extraterritorial jurisdiction over "any act of violence" and (2) extensive authority to prosecute individuals "inciting or...intentionally facilitating" piracy.³³ The State Department should therefore recommend a similar articulation of such guidelines for Best Practices and utilize the Kenyan and Dutch statutes as models.

Coordinating an International Response to Piracy

Efforts to construct an internationally recognized set of Best Practices regarding piracy law also directly address the need for an "increased role in harmonizing and de-conflicting counter-piracy efforts" – one of the foremost recommendations advanced by key stakeholders and nongovernmental bodies like Oceans Beyond Piracy.³⁴ Working Group 2 of CGPCS should be commissioned to develop these Best Practices, which would attempt to synthesize, deconflict, interpret, and provide guidelines regarding international piracy law as it pertains to national prosecutions and statutes – something that does not exist at present.³⁵ While some international bodies, such as the International Tribunal for the Law of the Sea, oversee related areas, they have limited authority to interpret international piracy law

and have no authority to recommend Best Practices with respect to piracy.³⁶ Development and publication of the recommended guidelines by Working Group 2 would provide the international community with a comprehensive legal framework for piracy law, harmonizing and streamlining international efforts to prosecute piracy. Moreover, the development of a set of Best Practices and the establishment of Working Group 2 as a legal advisory body would additionally expand upon the Djibouti Code of Conduct's efforts, improving national legal regimes by providing an international standard to measure improvements.³⁷ This informal non-treaty, non-binding strategy bypasses the time-consuming negotiations associated with formal binding agreements and still achieves the goals of both the State Department³⁸ and international policy groups – supporting a more coordinated international response to the promotion of national prosecutions.³⁹

It is recommended that the State Department coordinate a dialogue between stakeholders, NGOs and national legal regimes through Working Group 2, and host conferences to develop and publish, via Working Group 2, this set of Best Practices regarding the interpretation and implementation of international piracy law in national legal systems. It is further recommended that these guidelines be structured according to the statutes of the Netherlands and Kenya, which grant both broad jurisdiction and the authority to prosecute piracy-related crimes. The State Department should also support the adoption of these guidelines in national statutes, both through diplomatic means and through public statements of support. Finally, it is recommended that the State Department press for the expansion of Working Group 2's duties to enable it to adopt a more active role in harmonizing and coordinating international piracy law – primarily through development, maintenance, and publication of the aforementioned Best Practices.

Reestablish Kenya as a Key Trial State

While independent national prosecutions provide an immediate means of prosecuting pirates, they are only a relatively short-term solution since the international community's ability to absorb piracy cases is limited.⁴⁰ The United States must seek to establish one or more key trial States geographically proximal to the High Risk Area in order to centralize prosecutions and provide a means of achieving judicial economies of scale, in order to ease the collective burden that piracy prosecutions place on the international community. Of the regional States, Kenya is especially notable because its national justice system has a demonstrated record of success and potentially has the capacity to handle the prosecutorial burden associated with being a key trial state. It is one of two States, along with the Seychelles, that has signed Memorandums of Understanding (MOUs) formally acknowledging willingness to engage in extraterritorial prosecutions on behalf of other nations.^{viii 41} Recently however, Kenya has dissolved its MOUs with the U.S.

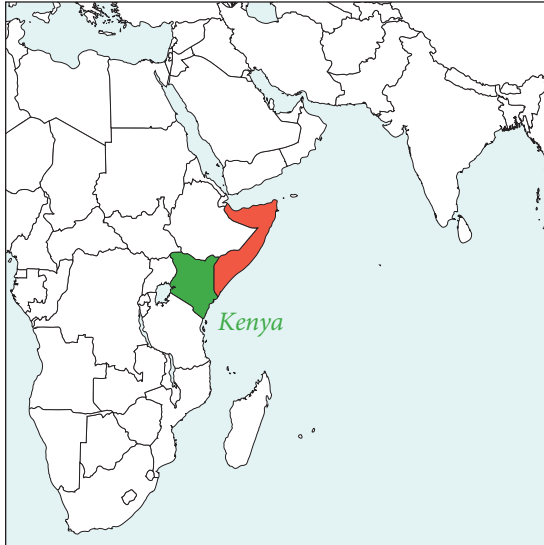
Kenya has conducted 143 prosecutions as of October 2011, making it the most active extraterritorial prosecutor of Somali pirates in the world.

viii The MOUs referenced are formal agreements between (1) Kenya (or the Seychelles) and the United States and (2) Kenya (or the Seychelles) and the European Union stating that, should pirates be arrested by either the United States or the European Union, Kenya would be willing, though not obligated, to

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and the EU, and in October 2010 a Kenyan High Court ruling restricted Kenya's ability to prosecute pirates. A decision made in response to the international community's failure to provide the support that was agreed upon in the MOU.⁴²

Kenya has conducted 143 prosecutions as of October 2011, making it the most active extraterritorial prosecutor of Somali pirates in the world.⁴³ Moreover, Kenya's prosecutions



have received broad international acclaim and, while the MOUs were in effect, Kenya was the primary international venue for piracy cases – centralizing prosecutions and dramatically easing the collective burden such prosecutions placed on the international community.⁴⁴ Kenya has therefore demonstrated a historical capability, capacity, and willingness to prosecute, more so than any other potential trial State. As previously mentioned, Kenya possesses one of the most comprehensive national piracy statutes in the world. Additionally, Kenya has undertaken steps to increase its legal system's capacity to prosecute pirates, partnering with the UN Office on Drugs and Crime (UNODC) in various initiatives to increase both its judicial effectiveness and its ability to detain pirates, most notably in the retrofitting of the

piracy-specific Shimo La Tewa Courtroom and Prison in Mombasa.⁴⁵ The Seychelles is the only other potential trial State that has made such direct commitments to supporting the development of national piracy prosecutions.⁴⁶ Kenya's prosecutions have been encouraged by much of the international community, including by the United States, European Union, and U.N.⁴⁷ Continued support of Kenya as a key trial state is a central element of UNODC's Counter Piracy Programme's Strategic Plan.⁴⁸ The development of Kenya as a key trial state is practical, politically advantageous, and provides an optimal means of improving the international community's ability to prosecute pirates in the short- to medium-term. It is therefore in the best interest of the United States, and the international community, to press for Kenya's reinstatement as a key trial state and for the reestablishment of formal MOUs between Kenya and arresting States.

The primary obstacle to the reestablishment of a formal MOU with Kenya is the High Court's new legal restrictions on the prosecution of pirates.⁴⁹ Both the retraction of the first MOUs and the restrictions on prosecution came as a political response to the failure of the international community to provide sufficient support for Kenyan national prosecutions and detentions. Kenya claimed that the E.U. and the U.S. both failed to provide the amount of logistical and financial support that they had initially pledged, according to the terms of their MOUs.⁵⁰ Despite their official termination of prosecutions, Kenya has continued to hold trials on a case-by-case basis, indicating a continued willingness to undertake prosecutions.⁵¹ Kenya's present stance is most likely a political response to the failure of the

pursue prosecution on behalf of the arresting nation in return for international aid to develop its legal system. See Section II, Chapter 2 for more information.

international community to provide practical support for prosecutions.^{ix} The development of a dedicated system of financial and technical assistance, provided via existing channels established by UNODC, will offset these political concerns and provide for the reestablishment of MOUs and reinstatement of Kenya as a key trial state. Such international support promises to (1) provide an incentive for Kenya to resume prosecutions and (2) to lower the cost of pirate prosecutions, given that the cost of trial in Kenya is one-third that of most current national prosecutions.⁵²

Such international support would additionally aid in addressing human rights abuses in the Kenyan penitentiary system as well as Kenya's suspiciously high conviction rate in piracy. By providing funding, technical assistance, and oversight for further improvements in Kenyan judicial proceedings and detainment, encouraging reform and alleviating the overcrowding issues that often perpetuate human rights violations.⁵³ Despite these concerns, Kenya remains an ideal key trial State because of its record of success, its willingness to prosecute piracy and the feasibility of addressing current civil rights concerns. It is recommended that the State Department actively work with UNODC and stakeholder bodies like the IMB, industry representatives, and NGOs to continue working with the Kenyan government to reestablish Kenya as a key trial state. Specifically it is recommended that the State Department reestablish a formal MOU as well as develop an official program to offer financial and technical assistance to prosecutions in Kenya.

It is recommended that the State Department actively work to reestablish the dissolved MOUs and provide a long term means of supporting Kenya's efforts at prosecution. The State Department should use its diplomatic connections in Kenya, the United States, other stakeholder nations, and the United Nations, to host diplomatic talks with the goal of reestablishing MOUs between the Kenyan government and arresting nations. The State Department must also cooperate with UNODC, stakeholder bodies like the IMB, industry representatives, and NGOs to (1) develop an official program of financial and technical assistance to offset the burden these prosecutions impose and (2) pursue the development of alternative trial states recognizing that, while Kenya provides an optimal short- to medium-term solution, it does not have the capability to prosecute all pirates.

Continue to Support the Seychelles as a Key Trial State

Supporting the reinstatement of Kenya as a key trial State would greatly increase the international community's judicial capacity; however, it is still necessary to pursue additional

^{ix} It should be noted that while the lack of international support has been the driving factor behind Kenya's current political stance, difficulties in interacting with the task forces particularly with respect to obtaining truthful histories of events and accurate evidence, has been a major issue. See endnote 42 for further information.

key trial States.⁵⁴ The Seychelles provides another ideal regional option since it currently possesses the most developed system of nationally-based prosecutions on behalf of the international community. It has demonstrated both capability and willingness to prosecute by entering into MOUs with the United States, the European Union, and other states and has prosecuted 64 pirates as of June 2011.⁵⁵ The Seychelles is also one of the only States to actively engage in prosecution on a large scale, formally undertaking both domestic and international programs via UNODC in an effort to expand its ability to prosecute and detain pirates.⁵⁶ Trials in the Seychelles have additionally been commended for their efficiency, fairness, and positive human rights record.⁵⁷ The critical limitation of continued support of the Seychelles as a key trial state is its comparatively small judicial capacity, a



problem compounded by its very limited pre-trial and post-trial detention capacity. Recently, this limited capacity has forced the Seychelles to turn away increasing numbers of suspects. However, the United States can address these deficiencies and aid the continued development of the Seychelles as a key trial state by (1) facilitating continued international financial and technical assistance provided through UNODC; (2) aiding efforts to improve the Seychelles' ability to prosecute and detain pirates; and (3) seeking to develop additional key trial States recognizing that the Seychelles, particularly with its limited detention capacity, cannot bear the burden of international piracy prosecutions alone.

While the Seychelles has been an active proponent of piracy prosecutions, its capacity to handle new trials is becoming severely restricted due to its limited capacity. Since Kenya's withdrawal from its MOUs, the Seychelles has become the only key trial State for pirates, straining its judicial and detention capacity. As recently as January, the Seychelles has turned away suspects due to issues with over-capacity, and in many cases the Seychellois government has been pressured to accept suspects.⁵⁸ It is therefore critical to create a support system for the Seychelles in its current efforts to undertake prosecutions and ensure that this support system can be maintained. Existing programs by UNODC and NGOs, such as PILPG, should be utilized to create this support system, as they have already expanded the Seychelles' judicial capacity and improved its legal system's ability to try pirates.⁵⁹ Additionally, support will have to be provided for the development of more extensive pre- and post-trial detention capacity or the arrangement of prisoner transfer agreements to offset the Seychelles' limited detention capacity (see Section II, Chapter 2 for more detail).

Promotion of the Seychelles as a key trial state is critically important given the current strain on international piracy prosecutions.⁶⁰ Further development of the Seychelles' prosecutorial and detention capacities would provide both a short- and a medium-term resolution for centralized piracy prosecutions. The United States' support for the development of the Seychelles as a key trial state would complement the current efforts of UNODC's Counter Piracy Programme's Strategic Plan.⁶¹ Given that Kenya is currently only prosecuting piracy

on a case-by-case basis and given the uncertainty of whether and when it will be reinstated as a key trial State, the Seychelles is the only dedicated key trial state readily available to the international community. Continued U.S. support for the Seychelles' prosecutorial efforts is therefore necessary in order to maintain centralized national prosecutions of piracy.

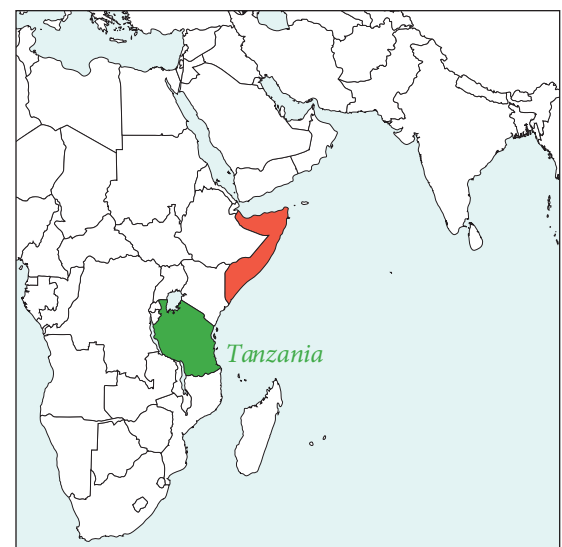
The State Department should work through diplomatic channels, media outlets, and existing international bodies such as Working Group 2 of the CGPCS or UNODC, to continue to promote and support the Seychelles' prosecutorial efforts. It is strongly recommended that the State Department use its diplomatic connections and its connections with Working Group 2 of the CGPCS and UNODC to facilitate and coordinate the continued expansion of international financial and technical assistance provided to the Seychelles. Finally, it is recommended that the State Department work with UNODC, Working Group 2, and stakeholder bodies like the IMB to continue to develop additional trial States and leverage its diplomatic connections to support national prosecutions in an effort to ease the prosecutorial burden placed on the Seychelles.

The long-term success of international prosecutorial efforts depends on the continued development of piracy prosecution hubs, or key trial States.

Pursue the Long-Term Development of Tanzania as a Trial State

The long-term success of international prosecutorial efforts depends on the continued development of piracy prosecution hubs, or key trial States. Potential key trial States should be identified by their geographical proximity to the High Risk Area, their political stability, their judicial capacity, and the capacity of their penitentiary systems. Key trial States are essential to (1) ensure higher prosecution rates of piracy suspects and (2) centralize prosecutions and ease the burden placed on short-term trial states like the Seychelles and Kenya.

Tanzania has been proposed by the UN and Oceans Beyond Piracy as a potential candidate for a long-term, high capacity, national prosecution center.⁶² Tanzania presents several key advantages when compared with other potential trial states: (1) it has already undertaken 19 piracy prosecutions as of 2011 and has entered into MOUs with other African nations; (2) has collaborated with UNODC on developing its ability to prosecute piracy; and (3) has the potential to convert the existing International Criminal Tribunal for Rwanda's (ICTR) court facilities into a piracy prosecution center.^{63 64} The existing court facilities in Arusha present a cost advantage because it requires a relatively small upfront investment of only \$2.73 million USD (2011) for its conversion to a piracy court and an annual operating cost of only \$2.33 million USD (2011) – substantially less than many

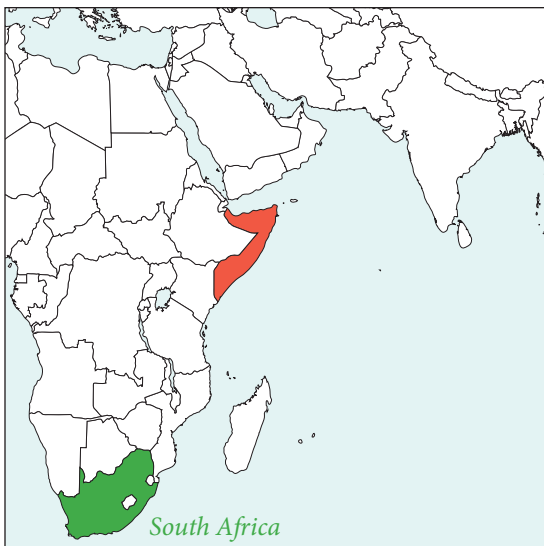


other alternatives.⁶⁵

Despite these advantages there are several critical limitations regarding the development of Tanzania as a key trial State. Most importantly, while Tanzania is an attractive option for the international community, its government has only recently expressed an interest in taking on such a role. Additionally, substantial international investment would likely be required to provide adequate oversight and guarantee pirates' human rights to fair trials and imprisonment, because Tanzania's ability to do so is more limited than other potential trial States.

In spite of these potential setbacks, Tanzania is an attractive candidate for the development of large-scale national prosecutions. It is therefore recommended that the State Department engage the Tanzanian government, UNODC, and stakeholder nations, particularly Gulf States who could supply funding, to develop a solution to: (1) convert existing international courts for use in national piracy prosecutions; (2) establish MOUs between Tanzania and arresting nations, expanding on the agreements it already has in place with South Africa and Mozambique; and (3) provide adequate and ongoing financial assistance to fund this court and technical assistance to protect the human rights of suspects and detainees.

Pursue the Long-Term Development of South Africa as a Trial State



South Africa should be considered a strong candidate for a key trial State due to its well-established judicial system and its potential to handle large volumes of prosecutions. South Africa's judicial system is one of the largest and most effective in the greater East African and Indian Ocean region.⁶⁶ It is therefore much more likely than other potential regional trial States to have the judicial capacity for piracy trials that meet UN standards. Additionally, South Africa's existing partnership with UNODC in efforts to strengthen its judicial system and improve its judicial capacity could help to streamline the development of South Africa as a large-scale trial state in the long-term.⁶⁷ However, despite its advantages, South Africa has only recently indicated an interest in prosecuting pirates.⁶⁸ Additionally, it is one of the furthest potential trial states from Somalia, an issue that will raise

logistical complications and increase the cost of prisoner transfer. Similarly, if the cost of prosecution in South Africa is commensurate with regional estimates, its costs of prosecution and detention will be higher than in other potential trial States.⁶⁹ This would require significantly higher levels of international financial support to make this option viable over the long-term. Despite these limitations, its judicial system's existing capacity and quality

make it a candidate for development as a high capacity trial state. The State Department should therefore utilize its diplomatic connections within South Africa and stakeholder nations, and its partnerships with international stakeholder bodies like the CGPCS to inquire into the possibility of (1) South Africa undertaking large-scale national prosecutions of pirates; (2) the international community supplying adequate levels of funding and technical assistance to support such a project.

Recommendations

The issue of piracy prosecution should be considered independently from the issue of detention. Judicial capacity and penitentiary capacity vary widely across States in East Africa, and it is not necessary to detain pirates in the State that prosecuted them. While prosecution may be untenable in certain States, detention may not be. Given the complexity of regional capacity and judicial development, the State Department should consider potential States as exclusive destinations for pirate detention. Also, to maintain States' ability to effectively prosecute and detain pirates, the State Department should engage regional nations that have a vested economic interest in deterring piracy—particularly the Gulf States. Nations like Oman, Yemen and the United Arab Emirates, have been threatened economically by the piracy enterprise and have the financial means to facilitate piracy prosecutions and detentions. The potential of Gulf States as financiers is discussed at length in the following section.

Based on this analysis of the current and potential legal structures to facilitate the prosecution of piracy, the U.S. State Department should:

- » **Support National Prosecutions.** It is strongly recommended that the State Department encourage the Justice Department and Executive Branch to continue to support national prosecutions when United States interests are involved and actively support national prosecutions of piracy by other States. In support of this policy, the State Department should use diplomatic connections and media-based efforts to encourage other nations to undertake piracy prosecutions when able, and publicize trials within Somalia in order to provide a deterrent to potential pirates.
- » **Support the Development of Best Practices Regarding Piracy Law.** The State Department should coordinate a dialogue between stakeholders with the aim of developing and publishing a set of Best Practices regarding the international legal response to piracy, including guidelines regarding the interpretation and implementation of international piracy law into national legal systems. It is further recommended that (1) the State Department support the adoption of these guidelines in national statutes and (2) work to provide for their long-term maintenance by a credible international body, ideally Working Group 2 of CGPCS.
- » **Work to Reestablish Kenya as a Key Trial State.** The State Department should actively work to reestablish the dissolved MOU between the U.S. and Kenya, and provide a long-term means of supporting Kenya's efforts at prosecution. In support of this it is recom-

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mended that the State Department facilitate the development of an official program of financial and technical assistance, aid Kenya's efforts at prosecution, and continue to pursue the development of alternative trial states, recognizing that Kenya cannot bear the entire burden of pirate prosecutions.

- » **Continue to Support the Seychelles as a Key Trial State.** The State Department should work through diplomatic channels, media outlets, and stakeholder bodies (Working Group 2 of the CGPCS, UNODC, etc.) to continue to promote and support the Seychelles' prosecutorial efforts. Specifically, it is recommended that the State Department facilitate and coordinate the continued expansion of international financial and technical assistance provided to the Seychelles and to continue to develop the country's prosecution and detention capacity.
- » **Support the Development of Tanzania as a Key Trial State.** The State Department should work to engage the Tanzanian government, UNODC, and stakeholder nations in efforts to pursue inquiry into the development of Tanzania as a key trial state. As part of this process it is strongly recommended that the State Department (1) work to expand existing MOUs with Tanzania; (2) facilitate the conversion of existing international courts in Arusha, Tanzania for use in piracy trials; and (3) support the development of a system of ongoing financial and technical assistance to support Tanzanian prosecutions.
- » **Support the Development of South Africa as a Key Trial State.** The State Department should support the development of South Africa as a key trial state by utilizing its diplomatic connections in South Africa and stakeholder nations, and its partnerships with international stakeholder bodies like CGPCS to inquire into (1) the possibility of South Africa undertaking large scale national prosecutions of pirates and (2) the capacity of the international community to supply adequate levels of funding and technical assistance to support such a project.

Pirates in Prison

An Analysis of Pre-Trial and Post-Conviction Piracy Detentions

By H. Jacqueline Brehmer

While the obstacles to effective piracy prosecutions are numerous, the main factors hindering the proper detention of individuals convicted for piracy are the willingness of a State and that State's penitentiary capacity. Regional States are reluctant to accept suspects due to the financial burden of detention, overcrowded prison facilities, and unresolved repatriation issues. The international task forces—Combined Task Force 151 (CTF-151), European Union Naval Force Operation Atalanta (EUNAVFOR), and NATO Operation Ocean Shield—have made increased efforts to apprehend individuals suspected of acts of piracy or armed robbery at sea. Unfortunately, once these individuals are taken ashore, they are often released due to a lack of sufficient funds, capacity, or motivation to prosecute and detain them. Recent reports claim that roughly 90% of individuals arrested for piracy or armed robbery are released because of the practical difficulties post-arrest.¹ It is imperative to improve the rate of detention in order to end impunity and establish accountability for the crime of piracy. In order to facilitate the national detentions of piracy suspects, the U.S. State Department should seek to develop comprehensive transfer agreements so that nations who express willingness to detain suspects pretrial and convicts post-trial receive the pirates. To simplify the process of prosecution and detention, the State Department should also identify nations that could potentially house permanent detention facilities, such as Kenya, the Seychelles, South Africa, and Tanzania. Although prosecution and detention will not resolve the issue of piracy off the coast of Somalia, it will reduce the numbers of repeat pirates, act as a deterrent, and potential repatriation programs would help educate and re-integrate convicts.

Recent reports claim that roughly 90% of individuals arrested for piracy or armed robbery are released because of the practical difficulties post-arrest.

Memorandums of Understanding

In order to prosecute and detain individuals suspected of acts of piracy or armed robbery at sea, they must first be apprehended and transferred to a State willing to accept them. In previous decades, few arresting States have expressed willingness to prosecute and detain all of the individuals they apprehend. Given the general lack of post-arrest procedure and the unwillingness of States to prosecute, most arrested suspects are disarmed and then returned to their boat or to the Somali shore. To prevent this “catch-and-release” policy, binding prisoner transfer agreements must be formulated between

the nations of arresting parties and regional nations with the willingness to prosecute and the physical capacity to detain suspects.

International legal regimes do not currently facilitate the creation of these transfer agreements due to the ambiguity of relevant conventions. The United Nations Convention on the Law of the Sea (UNCLOS) is silent on the matter of transfers while Article 8 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) holds that “the master of a ship of a State Party to the Convention can deliver a person suspected of having committed any of the offenses defined in Article 3 SUA Convention to the authorities of any other State Party.”² Article 8 of the SUA Convention helps to promote the use of transfers between nations; however, it is questionable whether or not the language of Article 8 allows only the victim vessel to arrest and transfer suspects, or whether law enforcement officers also have that authority. The lack of clear authority for transfers between law enforcement parties is a great obstacle, especially because the international task forces are responsible for the majority of piracy arrests off the Horn of Africa.

In order to solve the authority issue in Article 8 of the SUA Convention, many States create bilateral agreements, most commonly known as Memorandums of Understanding (MOU).³ In MOUs, a specific nation agrees to receive the piracy suspects apprehended by another State party. A variety of nations have already created bilateral agreements with Kenya and the Seychelles, establishing the two East African nations as locations for prosecutions. The United States signed a bilateral agreement with Kenya on January 16, 2009 and with the Seychelles in July of 2010.⁴ While the international community was made aware of the existence of these agreements, the terms of the agreements have not yet been made public. The EU, U.K., China, Canada, and Denmark have all also signed agreements with the Kenyan government, allowing for the transfer of individuals suspected of piracy and armed robbery to Mombasa prison for pre-trial detention and prosecution.⁵ Unfortunately, in September 2010, Kenya terminated all of its MOUs with foreign nations, citing the failures of their partners to provide the necessary funding, judicial capacity and technical support in order for Kenya to sustain the large number of prosecutions and detentions.⁶ As of February 2012, Kenya prosecutes piracy suspects solely on a case-by-case basis.⁷

Since Kenya has withdrawn its MOUs, the EU and the U.K. have sought to form new MOUs with other regional governments with the capacity to prosecute and detain suspects. Since March 2010, the EU has opened negotiations for MOUs with Mauritius, Mozambique, South Africa, Tanzania, and Uganda.⁸ There are several long-term and short-term actions that the U.S. must take in order to facilitate the prosecution and detention of piracy suspects. The U.S. should encourage Kenya to re-sign an MOU by providing the assistance originally agreed upon to improve Kenya’s judicial capacity. In addition, the U.S. should maintain its current agreement with the Seychelles, taking care to provide the appropriate funds and legal support to sustain national prosecutions and detentions in order to ensure that the Seychelles does not terminate its bilateral agreement as well. Lastly, the U.S. must consider opening MOUs with other regional nations.

Until Somalia has its own functioning legal system, the most practical alternative is to detain suspects in other States throughout the region. Given their relative political stability and judicial capacity, the U.S. should specifically open MOU negotiations with Tanzania and South Africa. Both nations are proximal to the Gulf of Aden and, with support from the current international architecture, can generate the capacity for national prosecutions and detentions. For more information about Tanzania and South Africa's capacity to prosecute, see Section II, Chapter 1.

Short-Term Goals – National Detentions

Due to the large number of convicted pirates it is impractical to rely solely on one nation to detain them. In the short-term it is impossible to send all those convicted to any one key trial State, because no country has the capacity to detain all those captured and convicted alone. Therefore, while re-establishing Kenya as a key trial and detention State is important, it should not be considered the exclusive destination for piracy suspects or convicts. No single nation should be required to fund or house all of the piracy prosecutions and detentions. The following are States that have the potential to aid in the prosecution and detention of pirates.

East Africa

Many States in East Africa are directly affected by Somali piracy. The States of Kenya, the Seychelles, South Africa, and Tanzania are all viable options for the prosecution and detention of pirates because they all have relatively stable democratic governments, functioning judicial systems and at least several penitentiaries.

Kenya

Thus far, Kenya has been the most successful nation to prosecute and detain individuals suspected of piracy. As of October 2011 Kenya had prosecuted 143 individuals suspected of piracy and convicted 50 of those individuals.⁹ In comparison to the number of pirates currently in the Indian Ocean, this may not seem significant; however, they have prosecuted and detained more than the U.S. and the EU combined. Despite the steps Kenya has made over the past five years, it should be noted that its influence and willingness to detain piracy has waned substantially. As of September 2010, Kenya terminated its MOUs with the EU and the U.S., citing a lack of adequate financial and logistical support.¹⁰

The current restriction on transfers is not the only issue with piracy detention in Kenya. The Kenyan penitentiary system has a dismal record of human rights abuse: there are currently 99 penal institutions in Kenya with an approximate expected capacity of 22,000 inmates.¹¹ As of 2010, there were roughly 49,757 inmates in the prison system, putting the official ca-

capacity at 226.2%.¹²

Of the current detainees in the Kenyan prison system, approximately 36% have not yet faced trial and are being held without an official sentence.

The overcrowding of these prisons has perpetuated a plethora of human rights abuses. The prisons are poorly lit and ventilated, and many are without access to running water or electricity. These conditions enable the spread of disease, which is exacerbated by a general lack of access to legitimate medical facilities.¹³ Visitation rights are extremely limited in many prisons, detainee abuse is common, and inmates are often undernourished.¹⁴ Of the current detainees in the Kenyan prison system, approximately 36% have not yet faced trial and are being held without an official sentence.¹⁵ In comparison to other East African nations the percentage of pre-trial detainees is relatively low, but the issue of overcrowding has greatly complicated the current situation.

The U.S. should maintain Kenya as a key nation for the detention of piracy suspects on the condition that it is able to remedy the major flaws of its prison system, addressing first and foremost the overcrowding and capacity issues. One of the contributing factors to overcrowding is Kenyan justices' preference of custodialⁱ over non-custodial detentions.¹⁶ Therefore, one way to relieve prison overcrowding is to commute the sentences of lower-level offenders to probation or less restrictive alternative (LRA) settings, as opposed to detention in a locked prison block. This would move individuals out of the detention facilities and into the community under supervised watch.

Despite these setbacks, it is important to consider Kenya as a key trial State. As a neighbor to Somalia, Kenya has much to lose if piracy continues in the region. See Section IV, Chapter 2 for further information. In addition, Kenya, as mentioned above, has the highest number of successful prosecutions and detentions of piracy suspects of any country in the world. Kenya is one of the most stable republics in the Horn of Africa and has a functioning judicial system.¹⁷ Kenya also has a university system that produces well-educated lawyers and judges,¹⁸ unlike many other States in the region. Therefore it is important that the U.S. State Department continue to use Kenya as a key trial State and seek to re-open an MOU.

In order to alleviate some of the burdens of structural inefficiencies on the Kenyan penitentiary system, the U.S. through UNODC should support Kenya in commuting prison sentences for low-level offenders. UNODC has already established a Counter-Piracy Program in order to increase Kenya's capacity to detain pirates. The U.S. should ensure that this program receives adequate funding in order for it to continue its work within Kenya, and should seek to re-open its MOU with Kenya.

Therefore, the U.S., through Congressional appropriations or other methods of funding should continue to financially support UNODC's efforts to improve the Kenyan prison sys-

ⁱ The difference between custodial and non-custodial detention is whether the convicted individual serves his or her sentence in prison or through an alternative means. Examples of non-custodial sentences would include probation or community service.

tem, while simultaneously working to re-open an MOU with the Kenyan government.

The Seychelles

Currently, the government of the Republic of Seychelles is taking action in developing its own capacity to detain individuals convicted of acts of piracy or armed robbery at sea. Over the past year, the Seychelles has coordinated with UNODC in expanding and renovating the Montagne Posée Prison, the nation's only prison. As of 17 November 2010, the prison held 404 male prisoners, 294 of whom have been convicted.¹⁹ Sixty-four of these inmates are piracy suspects who are either awaiting trial or have already been convicted.²⁰ However, in 2009, the prison did not meet international standards for prison conditions. Many prisoners were dependent on their own families for food, were restricted to indoor spaces at all times, and were not receiving proper medical treatment. Through the government's work with UNODC, the prison now has full-time doctors and nurses on staff, allows for prisoners to have visitors, and has fully trained prison guards.²¹ In September 2011, with the assistance of UNODC, the Seychelles government opened a new 60-bed block to increase its physical capacity.²² Though this may appear to be a small adjustment, the opening of this facility and its efforts to conform to international standards demonstrate its willingness to continually improve its national detention capability.

Despite their efforts and their willingness to participate in the national prosecution and detention of pirate suspects, the Seychelles does not have the physical capacity to detain large numbers of suspects. In January 2012, the government was forced to refuse 25 piracy suspects detained on a Danish ship due to their insufficient capacity.²³ ⁱⁱ The Seychelles' MOU with the EU includes prisoner transfers with Denmark; however, this by no means requires them to accept suspected pirates. The lack of physical capacity for detentions severely limits the ability of the Seychelles to participate in national prosecutions and detentions. If the Seychelles is to be maintained as a key trial and detention State for suspects, it will require increased support from the international community.

The U.S. cannot and should not disregard the Seychelles as a place for continued prosecutions and detentions of piracy suspects. The State Department should continue to support the Seychelles detention of convicted pirates so long as it has the capacity and willingness to do so and as long as it maintains a positive human rights record. The U.S. should support a continuing relationship between the Seychelles and UNODC in order to maintain prison standards and possibly to expand its physical detention capacity.

Due to the Seychelles' limited capacity, the U.S. must also pursue other nations as alternative locations. However, the U.S. through Working Group 2 should publicize the Seychellois prison reforms and use them as a model for reforms in other East African nations.

ⁱⁱ According to a February 13, 2012 BBC Worldwide Monitoring report, the Seychelles later agreed to prosecute and detain four of these individuals. Four more were later accepted by Kenya for prosecution and detention, while the remaining 17 were released.

South Africa

The U.S. should also consider developing South Africa as a key trial and detention state for piracy-related crimes. Thus far, South Africa has not prosecuted any piracy suspects, nor has it detained any. However, South Africa is becoming increasingly involved in counter-piracy efforts. In February 2012, South Africa joined a trilateral agreement with Mozambique and Tanzania to create a consolidated maritime force that would increase security patrols off of the coastal waters of the three nations. South African forces will participate in “combined maritime operations aimed at searching and interdicting piracy bases and other illegal activities in territorial waters.”²⁴ ⁱⁱⁱ While the details of this agreement are still unknown, it will allow national forces to patrol the waters, pursue pirate ships, and arrest any individual suspected of piracy or other crimes at sea. These operations will soon compel South Africa to address the issue of detention, so the U.S. should support the development of national detentions within South Africa. South Africa has a very stable government, an established judicial system and geographical proximity to the High Risk Area,²⁵ all of which make it a viable candidate for the prosecution and detention of Somali pirates. However, it is not the perfect solution due to the overcrowding issue that it shares with most States in the region.

Before South Africa is able to accept suspected Somali pirates it must first address some of the flaws in its own penitentiary system. South Africa currently has 241 correctional facilities,²⁶ many of which do not meet national or international standards.²⁷ There are 160,545 inmates in the South African system, 70.18% of which have been sentenced and are serving their terms.²⁸ South African prisons are overcrowded, with an average 135.87% occupancy rate.²⁹ However, South Africa has made an effort to address this problem, by working to reduce the occupancy levels of eight of their facilities.³⁰ This overcrowding is likely due to unreasonably high sentencing minimums—approximately 20,509 inmates are serving sentences of 20 years to life.³¹ Changing minimum sentencing standards would greatly help South Africa reduce overcrowding in its prison systems. While only 70% of inmates have been sentenced, it does demonstrate that the South African legal system is operating relatively effectively and is a good option for trying and detaining pirates.

The overcrowding issues in South Africa’s detention system will hinder their ability to effectively detain piracy suspects without risking human rights violations. The South African government, with the assistance of the international community, must address overcrowding in order to create room for the detention of pirate suspects. In implementing prison reforms, South Africa should follow the model of the Seychelles and should seek out UNODC for assistance in training its prison personnel, renovating prison facilities, and increasing overall capacity. In addition, South Africa should establish working relationships with non-profit organizations such as the Public International Law and Policy Group (PILPG) to train judges and lawyers.

ⁱⁱⁱ “Territorial waters” in this case refers to the territorial waters of South Africa, Mozambique, and Tanzania. The trilateral agreement, therefore, gives each of these nations the authority to pursue pirates in the waters of the other two nations, in addition to the high seas.

The United States should take an active role in the development of South Africa as a key trial and detention nation. The State Department should open negotiations with the South African government to create a new MOU, increasing the number of nations to which the Combined Joint Task Force can transfer the individuals whom it apprehends. The State Department should also, through USAID, contribute resources to assist South Africa in its attempts to reform its prison system and specifically to reduce overcrowding. USAID is already currently operating in South Africa and focusing on three areas of development, one titled “Governing Justly and Democratically.”³² USAID should expand this objective to support local officials in reducing overcrowding and violence within the justice system. By taking these actions the U.S. can maintain its positive relations with South Africa and generate increased prison capacity..

Tanzania

Tanzania has recently taken a more active role in the anti-piracy campaign as well. In February 2012, Tanzania joined the aforementioned trilateral agreement with South Africa and Mozambique, to increase anti-piracy security in its territorial waters.³³ As with South Africa, this agreement will compel Tanzania to become more involved in the criminal detention of suspects. Due to its geographical location, relative political stability and its role in the International Criminal Tribunal for Rwanda (ICTR), Tanzania has great potential as a key trial and detention state. However, in order to facilitate national detentions within their borders, Tanzania must also make reforms to its prison system.

As Tanzanian forces begin to apprehend individuals suspected of acts of piracy, they will be forced to make changes in their penitentiary system to better meet international human rights standards. As of October 2011, Tanzania held six individuals suspected of acts of piracy, and successfully convicted six more.³⁴ Overall, the Tanzanian prison system has a maximum capacity of 22,699 individuals, but is actually holding approximately 38,477 inmates, putting the national occupancy rate at 169%.³⁵ This level of overcrowding puts an excessive burden on all of the nation’s 122 penal institutions and creates life-threatening conditions for detainees. Of the total prison population, 19,529 inmates are still in the pre-trial phase of their detention.³⁶ There are a myriad of factors that have led to this exorbitantly high level of pre-trial detainees; however, the major underlying issue is the lack of efficient case management. In many cases, efforts to decrease prison sentences have been undermined by lost documents, inability to transport prisoners, or unexplained inaction.³⁷

Unlike many other potential trial and detention States, Tanzania has the infrastructural capacity (122 penal institutions) and the political willingness to detain suspects; however, without substantial changes to the current prison system, the State will only be able to accept a limited number of suspects. To expand their capacity and reduce its level of overcrowding, Tanzania must address the large population of pre-trial detainees, by accelerating trials and by releasing those who have been detained without sentencing. In order to do this Tanzania must continue to expand its judicial capacity, working with international NGOs

such as the American Bar Associations Rule of Law Initiative, the Public International Law and Policy Group (PILPG) and UNODC to educate justices and lawyers, reduce managerial inefficiencies and mishaps, and to facilitate the transport of prisoners for trial. Through these measures, Tanzania will slowly be able to reduce the number of individuals trapped in the pre-trial stage so that they can begin to serve their sentences or be released. Individuals convicted of smaller crimes, such as petty theft or burglary, will be able to serve the length of their sentence and be released from the penitentiary system, freeing space within the prisons.

The U.S. should recognize Tanzania's potential as a key detention state, supporting the State's reformation of its judicial system and opening negotiations to create an MOU between Tanzania and the Combined Task Force. To increase Tanzania's potential, the U.S. through Working Group 2 should research reformative measures for the Tanzanian judicial and penitentiary systems. Finally, the U.S. should continue to support the work of NGOs in the nation working on judicial reform. Currently, Tanzania is in no condition to hold, prosecute and detain an excessive number of piracy suspects. However, with the help of the international community, Tanzania can increase its capacity and take a more active role in the detention of piracy and armed robbery suspects.

Arab States

The role of Arab States should be taken into consideration when discussing the national detentions due to their immense financial assets and their interest in countering piracy. The economy of the Gulf States has been greatly threatened by pirate attacks in the Gulf of Aden, inspiring several countries to take a greater role in the counter-piracy effort. Currently, the United Arab Emirates (UAE), Oman and Yemen have all taken steps to prosecute and detain piracy suspects. It is imperative that the U.S. partner with these nations given their limited maritime forces, incredible wealth, and their wide expanses of available land on which to construct potential prisons. These nations have the funds, the capacity and the capability to construct prisons for pirates. For this reason, the U.S. should promote the development of national detention facilities for individuals suspected of or convicted of piracy or armed robbery in both Yemen and Oman, with the financial backing of the UAE.

Yemen

Yemen has a strong interest in combating piracy off the coast of Somalia due to its extensive coastline on the Gulf Aden. While Yemen is currently experiencing social and political unrest, its government is still forced to address the issue of piracy, as commercial activities along this coast are vital to its economy. No matter who has political control in Yemen, the country will have an economic interest in reducing the effects of piracy. Thus far, Yemen has prosecuted and detained more individuals suspected of piracy than any other nation in the League of Arab of States, aside from Somalia, and is second to Kenya in the total number of prosecutions and detentions of piracy suspects. As of October 2011 Yemen has detained

129 piracy suspects with 123 successful convictions.³⁸ This extremely high conviction rate demonstrates the willingness of the Yemeni government to convict pirates, but also alludes to flaws in the overall justice system. Yemen's specialized criminal courts are often seen as unfair; defense attorneys are often unaware of the charges against their clients, and evidence is often withheld or purposely erased.³⁹

Yemeni prisons also do not meet international standards. Over the past year, the quality of the prison system has diminished as a result of increased inmate populations. This increase has led to overcrowding, decreased sanitation, food shortages, and decreased medical assistance. While the current prison population is unknown, in 2009 Yemeni prisons held 11,313 inmates.⁴⁰ The government currently maintains that the increases in violent crime and anti-terrorism efforts are the reason for the growth and the overcrowding.

The Yemeni penitentiary system does not appear to be the most opportune to place for the U.S. to support the development of piracy incarcerations. However, while the prison system may currently lack capacity, the government appears willing to play a strong role in the prosecution and detention of pirates. For this reason, the U.S. should work with the Yemeni government to help reform their prisons, so that they are in accordance with international standards. The U.S. should support periodic reviews by the International Committee for the Red Cross (ICRC), the National Organization for Defending Rights and Freedom (HOOD), and the Ministry of Human Rights (MOHR) to monitor the human rights situation in Yemeni prisons and advocate for reforms.⁴¹ In addition, the U.S. should pressure the Yemeni government to address its political prisons and reduce human rights violations in order to make it a viable detention state for piracy suspects.

Oman

Like Yemen, Oman has a large coastline bordering the Gulf of Aden. Therefore, in order to protect its coastline and economic interests, it is essential that Oman address the issue of piracy. Currently, Oman has prosecuted and successfully convicted 12 pirates.⁴² While this number is small, Oman does have the capacity to detain a greater number of pirates. Of all the penitentiary systems reviewed in this report, Oman's is the only one that generally conforms to international standards for prison conditions. While there are a few Omani prisons that lack basic utilities and are overcrowded, the Omani penitentiary system has a positive human rights record, and complaints regarding the conditions of the prisons or the actions of security forces are appropriately investigated by the Omani government.^{iv} The last available report for the overall prison population of Oman was in 2002, which claims that there were 1,403 inmates in three penal institutions across the country.⁴³

Due to the overall humane prisons conditions, Omani willingness to prosecute piracy suspects, and Oman's positive relationship with the U.S., the State Department should seri-

iv The conclusions reached from these investigations were not made available to the public.

ously consider supporting the construction of a piracy prison in Oman. With the support of the international community, the Omani government could construct a facility specifically designated for the prosecution and detention of piracy suspects. If agreed upon, the prison should become an international detention center for piracy convicts, allowing for the transfer of convicted pirates from other countries such as Yemen, the UAE, and Somalia. These individuals could both be prosecuted in nations around the region or they could be prosecuted in Oman; however, either way, they should be transferred to Oman to serve their sentences. The feasibility of constructing a new piracy prison in Oman is dependent on Oman's continued interest in resolving the issue of piracy, sufficient funding by both Oman and the international community, and the willingness of Oman to detain these individuals. Therefore, the State Department should begin to discuss the potential for this prison with the Omani Sultanate, including Yemen and the UAE in these negotiations.

United Arab Emirates

As of October 2011 the UAE had not taken an active role in the prosecution or detention of pirates, having only detained 10 suspects. Despite this apparent unwillingness to prosecute and detain pirates it appears that the UAE is willing to fund the prosecution and detention of piracy suspects and convicts in other States. On 19 April 2011, the UAE announced counter-piracy measures that include a donation of \$1 million USD to the UN's counter-piracy trust fund.⁴⁴ The UAE should therefore be considered a potentially major financier of piracy prosecutions and detentions rather than a key trial and detention State. In its relations with the UAE government, the State Department should consider the available alternatives in enlisting the support of the UAE in the campaign against piracy.

Long-Term Goals

The development of multiple national detention facilities for individuals suspected and convicted of piracy is necessary to limit piracy in the short- to medium-term. However, the creation of these facilities is not a permanent legal solution for the crime of piracy. In order to effect a more permanent, long-term resolution, detention facilities must be constructed in Somaliland and Puntland in addition to a continental pirate detention facility.

Developing Somalia's Penitentiary System

The most stable solutions to piracy will stem from onshore reform rather than at sea. This holds true for the issue of detention as well. It is vital that the U.S., along with the international community, work together with Somali governments to foster and develop their judiciary and penitentiary systems. For more information on this subject, please see Section IV, Chapter 2.

A Continental Alternative

While the rate of pirate attacks and hijackings have increased off the coast of Somalia over the past five years, it should also be noted that there has been a simultaneous resurgence of pirate attacks along the West African Coast. As of 12 August 2011 Nigeria and Benin have reported 22 piracy incidents. Contrary to Somali piracy, piracy off the West African Coast is characterized by simple robbery, with no incidents of hostage-taking, ransom demands, or murder. However, piracy is still a unique crime that requires criminal prosecutions and detentions. Therefore, as a long-term solution, the State Department through the UN and the African Union should seek to create a continental detention center designed specifically for pirates. Through the UN, the U.S. should promote a new Security Council Resolution to reallocate the current ICTR facilities in Arusha, Tanzania, and transform them into a continental detention facility for convicted pirates.

The current facilities of the ICTR were created through SC Resolution 955 and are located approximately 10 km outside of Arusha, Tanzania. The facilities contain 89 individual cells, a library, a kitchen, medical facilities, a classroom and a gymnasium. The tribunal itself has completed 69 cases (42 finalized, 17 pending appeal, ten acquitted), with five currently in progress and one awaiting trial. The ICTR, through the UN, has signed a series of agreements with Mali, Benin, Swaziland, Italy, France, Sweden, Rwanda, and Senegal that allow sentenced prisoners to be transferred to another nation to serve their sentence, creating space within the ICTR's own detention facility. Of the 42 individuals currently sentenced, 25 are serving sentences of fewer than 40 years,^v indicating that the majority of these prisoners will be released within the next several decades.

According to Security Council Resolution 1966 (2010), the UN will continue fund and maintain the facilities through 31 December 2014.⁴⁵ The average trial time per case is approximately 62 days,⁴⁶ which has gradually decreased over the past five years. Therefore it is reasonable to predict that the ICTR will have completed all of its criminal prosecutions by the end of 2018. Once the ICTR prosecutions have finished, the prison population will slowly decrease as prisoners are either transferred to other States to serve their sentences or are released. Therefore, as the prison population within the ICTR facilities slowly dwindles, the UN should consider transforming the facilities into a continental piracy prison facility. Oceans Beyond Piracy supports the transformation of this facility in order to be used as an extra-territorial Somali court and detention facility. While this is an option that should be considered, national prosecutions should still be favored in order to avoid the legal complexities of an international tribunal. Once convicted under a national court, convicted pirates could be transferred to the ICTR facility for detention.

Since the detention of piracy suspects is rapidly becoming a continental issue, the UN should consider transferring the facility to the authority of the AU in order to create a

^v The author calculated these figures by reading the *Judgment and Sentence* documents of the roughly 40 individuals who have been convicted by the ICTR.

continental tribunal and detention center—a process that should begin by 2030.^{vi} The UN and AU should work together to integrate the prison into the AU's budget. According to *Oceans Beyond Piracy*, this facility would cost approximately \$2.7 million USD to maintain in 2011 and each following year would be approximately \$2.3 million USD.⁴⁷ The creation of a continental AU detention facility would spread the burden of piracy detentions, provide an example for humane detention facilities, and act as a more permanent legal solution to African piracy.

The establishment of an AU extra-territorial prison in Arusha would require the cooperation of the Tanzanian government. Despite the current interest Tanzania has made in expanding its counter-piracy operations, it is uncertain whether the government would be willing to accept a large number of convicted pirates into its territory. In order to guarantee the success of the prison, the State Department could offer Tanzania financial support to reform its penitentiary system.

The development of a continental prison is important for the legal solution to piracy detentions. As a member of the UN Security Council, the U.S. would have an active role in the creation of a continental pirate detention facility. In addition to the proposed SC Resolution above, the State Department should work through *Oceans Beyond Piracy* and Working Group 2 to provide more cohesive research on the procedures necessary for the transfer of the UN prison to AU officials. The proposed SC Resolution must therefore include provisions to ensure that Tanzania receives necessary support and it must also establish a timeline for the transfer of the prison from UN to AU management.

Repatriation

The repatriation of convicted pirates is contentious for a variety of reasons. There is limited information regarding repatriation. It appears that in Somaliland and Puntland they are simply released back into the community after completion of their sentence, and receive no training or skills to change their social status. Therefore, it is probable that many released pirates turn to piracy again. With this in mind the U.S. should take an active role in creating in-prison programs that will facilitate the transition of pirates from detention facilities into the communities to ensure a low level of recidivism. One way to improve the repatriation process is by expanding education programs within prison facilities. UNODC is currently working with Kenyan officials to develop Swahili and English language courses as well as religion classes in the Shimo La Tewa Prison.⁴⁸ This program has increased literacy among prisoners and has given inmates the opportunity to assume leadership roles as teachers of religion classes. One prisoner commented, “Before I didn't know the difference between right and wrong but now I do and I want to start a new life. But thanks to the people here [Shimo La Tewa] I have some education and I know I can now do something with my life.”⁴⁹

The U.S. through UNODC should contribute financial and material resources to the devel-

vi The writer and editors of this Task Force created the brief timeline presented here.

opment of these programs. As prisons are built or renovated, classrooms and other instructional facilities should be included into the new design. Special emphasis should be given to developing programs for language and mathematics skills, job training, and other life skills. These programs should also be designed with special consideration for the culture and nationality of the prisoners in order to better prepare them for reentry. In addition to continually contributing to existing prison education programs, the U.S. should work with Working Group 2 to create a committee to study the issue of pirate repatriation. This type of information is vital to gauging the deterrent impact of detention, and to determining whether or not it effectively reduces recidivism. It is therefore imperative for the international community to determine a means to track and communicate with former pirates after they have been released from detention facilities.

Recommendations

Based on this analysis of the complications with pirate detentions and transfers, the U.S. State Department should:

- » **Expand regional diplomacy in order to forge transfer agreements with new nations.** The State Department, through its ambassadors to countries in the region, specifically South Africa and Tanzania should open negotiations for the development of new transfer agreements. The State Department, through the Public International Law & Policy Group (PILPG), should conduct an in-depth analysis of the legal regimes, judiciaries, and prison capacities of these nations to discern the capability of each nation to detain pirates. The State Department, through the respective diplomatic channels, must re-open its MOU with Kenya. The American Ambassador must work with Kenyan officials to determine the root causes of the agreement's initial dissolution, generate procedures to ameliorate the situation, and sign a new agreement for the transfer of suspected pirates.
- » **Continue to contribute to UNODC's trust fund for piracy off the coast of Somalia.** The State Department, through Congress, must continue to provide funds to the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. The State Department should continue to press any private donors with which it is affiliated to contribute as much as possible to this fund. In addition, the Office of Counter-Piracy must continue to extend diplomatic relations to other contributing nations, such as the UAE, because financial support of these projects from a diverse array of countries world-wide is necessary. Continued contributions to this fund are vital in order to complete prison renovations and in-prison training programs.
- » **Develop a system for tracking released pirates.** The State Department, through the Office of Counter-Piracy must coordinate with Working Group 2 of the Contact Group on Piracy off the Coast of Somalia and the respective individuals in all detaining nations to develop a system to track the progress and actions of pirates once they have been released from prison.
- » **Support the construction of international detention facilities in Oman and Tan-**

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zania. The State Department must support, in speech and action, the creation of two international, regional detention facilities in Tanzania and in Oman. The State Department, through the appropriate diplomatic channels must facilitate Prisoner Transfer Agreements between prosecuting nations and Tanzania or Oman, respectively, in order to ensure the legal movement of prisoners from prosecuting nations to international detention facilities. The State Department, through the U.S. UN representative, must propose a Security Council Resolution, to transform the current ICTR facilities into an international piracy detention that will be owned and managed by the African Union. The State Department, through UNODC, must create a timeline (such as the one proposed above) for the completion of this transfer.

Combating Piracy through Monitoring Financial Transactions

By Seung Hee Lee

The efforts of the U.S. and the international community to combat piracy by patrolling the waters in the High Risk Area and prosecuting pirates have reduced piracy to some degree. However, piracy persists due to its extremely high returns, with the average ransom amount in 2011 standing at \$4.97 million USD.¹ Because Somalia has been a failed state for decades without functioning institutions, it is easy for pirate money to be transferred and laundered. Without institutions to oversee financial activities, physically channeling money across borders is simple and monetary transactions through various banking systems are nearly untraceable. The current conditions in Somalia permit undetected money flow in the investments of financiers and in the reinvestment of ransom money to purchase weapons and other gear for future piracy missions. These financiers, who receive the largest portion of the ransom money, are believed to be the key figures that reinvest and organize further piracy operations.² Thus, identifying the pirate kings and other financiers who sponsor piracy is vital to deterring piracy. If the key sponsors are prosecuted, the “foot soldier pirates” who depend on the sponsors’ commands would not be able to operate. Therefore, monitoring pirate ransom flows and sharing financial intelligence to identify the financiers, along with developing legalities to prosecute financiers are imperative steps in combatting piracy. Identifying lead figures who organize piracy is the best way to reduce piracy on a larger scale which in turn will also reduce the problem of overcrowded prisons that are currently filled with minor pirate participants.

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Difficulties with Tracing Pirate Money

Financing piracy involves extensive organization through a hierarchical structure. According to the UN Monitoring Group’s report on Somalia, a pirate gang consists of different individuals functioning in a systematized manner, and the different actors receive different percentages of the ransom payment.³ The players in the hierarchy include maritime militia, ground militia, local community members, financiers, and sponsors, along with a number of government officials who provide political cover and protection.⁴ After a ransom payment is disbursed to the pirate gang, the money is spent or reinvested in further pirate activities. The ransom payments are made in cash, usually U.S. dollars. The money trail disappears once the ransom is delivered, because ransom payments are divided multiple ways and large amounts are laundered before they are used.⁵ Somalia presents a special challenge

because formal banks and mechanisms to oversee financial actions are absent while the money moves from hand to hand, making ransom money tracing difficult if not impossible.

To make the ransom money traceable, the U.S. could invest in technology to bug or lace the ransom money, or to make it detectable by satellite devices. Bugging the ransom money with microscopic chips, or lacing the money with chemical substances would make it possible to trace the ransom money. The trail left by the money would make it possible to find out how the money is moved in and out of Somalia, what the money is used for, and who the financiers are. However, this approach would not be practical because inserting microscopic chips in or lacing large amounts of ransom money would be potentially expensive and difficult to control since ransom payments do not come from governments, but rather from individuals.⁶ In fact, President Obama signed an Executive Order 13536 in 2010, prohibiting U.S. citizens from paying ransom, if the money was to go to one of two well-known pirate kings.⁷ While no U.S. citizen to date has been prosecuted for paying ransom, this order would prohibit any member of the U.S. government from tampering with ransom money before it was sent to Somalia, because ransoms cannot legally be sent to Somalia according to this Order. Therefore, ransoms must be traced or tracked in ways other than bugging or lacing the money.

Therefore, the U.S. should focus on tracing the purchases and money laundering activities of pirates to identify the lead members and to freeze their assets. The millions of dollars collected in ransom are often spent on property purchases, khat, cars,⁸ and equipment for further piracy operation such as weapons, fuel, motorboats, and communication tools.⁹ There are certain commodities that are popular among pirates, like Toyota Land Cruisers.¹⁰ Efforts should be dedicated to investigating these purchases, such as Toyota Land Cruisers, that are frequently paid for with pirate money. If specific purchases are monitored closely, it could leave a trail that can be used to identify pirates. Also, interviews with active pirates reveal that businesses “charge the pirates much higher prices for food and khat.”¹¹ This reveals that Somali vendors are aware of who the pirates are. This information could be used to create valuable Confidential Informants (CI) who can aid in the tracking of pirate money and other intelligence operations. See Section III, Chapter 4 for further information on the importance of CIs.

Monitoring Piracy Related Money Flows

Efforts must be put into evaluating unusual financial activities, such as the purchase of large quantities of land or a sudden increase in unidentified foreign investment. Various reports speculate that the recent increase in real estate prices in Kenya is a result of pirate money being invested in large amounts; however, this has not been confirmed.¹² Moreover, a report by the Council of Europe indicates that “members of the Hardheere pirate group are linked to the trafficking of arms from Yemen to the Somali towns of Hardheere and Hobyo, which have long been two of the main points of entry for arms shipments to armed groups in Somalia and Ethiopia.”¹³ Furthermore, the U.S. State Department indicated that “the UAE

is used as a financial center by pirate networks operating off the coast of Somalia” and that “Kenya is developing into a major money laundering country... and the laundering of funds related to Somali piracy is a substantial problem” in its 2010 International Narcotics Strategy Report.¹⁴ Cases such as those mentioned above need to be investigated. The results of those investigations could help to identify pirate financiers, not just in Somalia, but in the region as well.

In order to track purchases and investigate money-laundering activities, the cooperation of the countries and areas in the region such as Somaliland, Puntland, Kenya, Ethiopia, Yemen and the UAE is essential. The U.S. must work with Working Group 5 of the Contact Group on Piracy Off the Coast of Somalia (CGPCS), the United Nations Office on Drugs and Crime (UNODC), the Egmont Group, and the Financial Action Task Force (FATF) to implement the Anti-Money Laundering (AML) standards in accordance with the Financial Intelligence Units (FIUs) in these areas to formally investigate and share financial intelligence. Working Group 5 of CGPCS is tasked with identifying and disrupting the financial networks of pirate leaders and their financiers.¹⁵ In the CGPCS Tenth Plenary Session’s Communiqué, it was mentioned that INTERPOL, EUROPOL, EUROJUST and several other organizations have assembled information on piracy cases, especially against financiers, leaders and organizers. The Communiqué also stated that the Egmont Group, UNODC and the World Bank’s input in counter-piracy actions focused on financial intelligence gathering through strengthening the regional FIUs.¹⁶ UNODC launched the Anti-Money Laundering International Database in 2006 under the International Money Laundering Information Network, and it coordinates with the FATF on AML efforts.¹⁷ The Egmont Group organizes and coordinates FIUs around the world, and the FATF “develops and promotes policies to protect the global financial system against money laundering and terrorist financing.”¹⁸ The U.S. must encourage Working Group 5 to continue its efforts to cooperate with these various organizations to create FIUs in the neighboring regions of Somalia, and to encourage these FIUs to share their financial intelligence in order to develop a map of pirate money movement.

An FIU is “a central, national agency responsible for receiving, analyzing and disseminating to the competent authorities, disclosures of financial information.”¹⁹ The creation of FIUs in countries neighboring Somalia would ease efforts in intelligence-gathering, since local agents can be a valuable resource. The FIUs can track incoming and outgoing suspicious financial activities in their operating regions. Very large sums of money coming from Somalia are unusual, because large sums typically flow into Somalia not out of it. The transactions going to neighboring countries should especially be carefully monitored as it is likely the money is connected to piracy and in fact is a portion of the ransom returning to a financier. FIUs can play a large part in this monitoring system as well as in tracing serial numbers on the bills of ransom money. There have been cases where marked bills of the ransom money could have been tracked, but were not due to non-reporting by FIUs.²⁰ With FIUs established in the area and the reporting of marked bills made a priority, there is a high likelihood that ransom money’s flow from one country to another could be tracked.

By tracing known common pirate purchases and large transfers of money, the identification of specific pirate actors will be plausible and is also valuable evidence with which to prosecute these figures.

The need of AML measures and FIUs in the region is crucial to monitoring the financial activities of pirate gangs. However, the existence of the *hawala* network in the region is a huge setback because FIUs cannot monitor an informal banking sector. The U.S. State Department through Working Group 5 should cooperate with the World Bank and the UN to give the FIUs authority to monitor the *hawala* network.

Developing a System to Monitor the *Hawala* Network

The *hawala* network is a remittance system that operates on trust. The *hawaladar*, who handles the transactions, simply makes a phone call to another *hawaladar* in a foreign country

The clandestine nature of the *hawala* system benefits pirates in the same way that it does terrorist organizations.

or distant city that money was received and may be disbursed to the receiver. No receipts are made, and no records are kept.²¹ Due to such elusive methods, tracing *hawala* transactions is extremely difficult. Additionally, *hawala* systems serve as an easy method of money laundering, because of the lack of records or required justification on the sources of money. Then, after money is 'sent' to a foreign country or distant city, the receiver acquires 'clean' cash that has no trace to the sender.

Because of these characteristics of the *hawala* system, it has been known to be a channel for illicit money transactions and laundering, including being a major source of al-Qaeda funding. An assessment on an al-Qaeda financier Mohammed Soliman Barre by the Department of State asserted that one of the major *hawala* companies, Dahabshiil, was used in transmitting funds for al-Qaeda.²² Although there are currently no ties between piracy and terrorism, whether it is al-Qaeda or al-Shabaab, the clandestine nature of the *hawala* system benefits pirates in the same way that it does terrorist organizations. Because the transactions are nearly untraceable, it is a source that can be used to easily channel large sums of illicit money, including pirate money. Therefore it is essential for the U.S. to monitor the *hawala* network, as much as possible, to track ransoms and pirate money.

In the failed state of Somalia, formal banks cannot operate and *hawala* is one of the only methods of financial transaction. Also, without institutions in Somalia, monitoring the numerous *hawaladars* inside Somalia would be impossible. However, pirate money is being sent outside of Somalia, which means that there is another branch outside of Somalia where money is received. Thus, the U.S. State Department, through Working Group 5, must work with the UN and individual countries in contacting *hawala* companies outside of Somalia to assert the importance of *hawaladars'* cooperation in deterring pirate money flows, and to craft an agreement with the *hawaladars* to record suspicious transactions.

In the U.K, the *hawala* system was legalized on the condition that *hawaladars* be registered

and the transactions made traceable.²³ It is crucial that the U.S., through Working Group 5, advocate implementation of laws similar to the U.K.'s in the countries neighboring Somalia where pirate money is speculated to be laundered and invested. Subsequently, the established FIUs could monitor the registered *hawaladars* and gather financial intelligence through them. A traceable *hawala* system will have a huge impact on determining and deterring illicit money transfers and laundering.

The U.S. should especially focus on monitoring *hawala* transactions in known pirate camps in Somalia, such as Hobyo, Eyl and Hardheere as well as other pirate havens that can be identified with satellite imagery.²⁴ Due to clearly defined clan areas and the importance of clan in Somalia (See Section I, Chapter 2), it is unlikely that pirates would travel far out to purchase or transfer money, therefore it would be effective, at least in the short term, to monitor certain pirate haven areas. Working with *hawala* companies and implementing legal measures to have some standards and means of tracking money is vital to tracing pirate money and identifying the financiers.

One concern is that cooperation of *hawaladars* within Somalia would be difficult. Piracy does not affect them negatively and they do not have sufficient incentives to engage in counter-piracy. In fact, some reports argue that pirate money has benefited the Somali economy. Dr. Anja Shortland stated in an interview with BBC Radio that night light emission from Somalia shows improvement in living standards, and that ransom money was creating wealth, which in turn creates more employment.²⁵ Thus, to offset the beneficial factors of piracy,

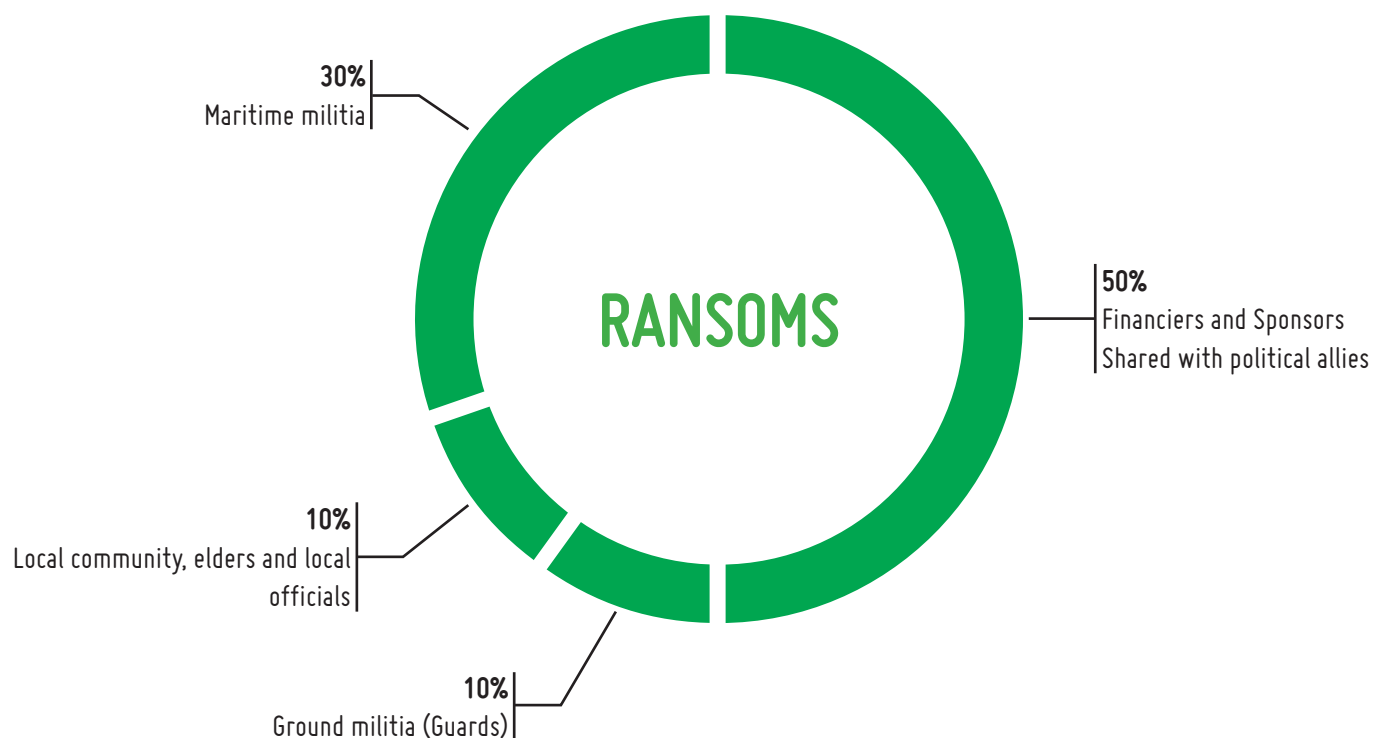


Figure 1: Approximate distribution of ransoms from successful operations

Source: UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1811 (2008)*, 10 December 2008, S/2008/769, available at: <http://www.unhcr.org/refworld/docid/494900240.html> [accessed 8 February 2012]

incentives may need to be provided, perhaps financial incentives, to *hawaladars* to gain the necessary cooperation. However, since cooperation within Somalia would not be possible in the short-term without the existence of institutions, the U.S. should focus on cooperating with *hawaladars* in regional countries outside of Somalia. In the long-term, building formal banking systems and financial intelligence units should be prioritized along with efforts to stabilize the country.

Cooperation with the International Legal System to Prosecute Financiers

Establishing FIUs and implementing laws to monitor the *hawala* system to gain financial intelligence will hopefully lead to the identification of pirate financiers and the intermediary actors in piracy. Piracy financiers play an important part in pirate activity because without financiers, pirates would not be able to invest in weapons and supplies nor launder money to be used elsewhere. According to the Monitoring Group's Report on Somalis, the division of a ransom payment is as follows:

- » 50% for financiers and sponsors, who also share with political allies
- » 30% for maritime militia, who distribute the amount equally between all members
- » 10% for the local community, including elders and local officials
- » 10% for ground militia, such as guards²⁶

While the financiers and sponsors receive the largest part of the ransom, they are the safest, taking action only behind the scenes. In a sense, the financiers and sponsors who organize the attacks are the most crucial and perhaps criminal of all the pirate gang. The UN Security Council in its Resolution 2020 recognized "the need to investigate and prosecute not only suspects captured at sea, but also anyone who incites or intentionally facilitates piracy operations, including key figures ... who illicitly plan, organize, facilitate, or finance" pirate attacks.²⁷ An investigation by the Belgians was done through an "analysis of SIM cards used by pirates, [which] led to bank account numbers and to an unidentified resident of the United Arab Emirates", whom they tracked and arrested in 2011.²⁸ Investigations such as that are effective and essential, and it is important for the U.S. to cooperate through the UN Security Council to continue efforts to investigate and prosecute financiers.

Despite the progress made by organizations in capturing pirates, the problem of trying and imprisoning pirates is growing because of the inability of Somalia to prosecute and imprison on its own people. Therefore, it became the responsibility of the international community to do so, which is causing logistical problems. With an increasing number of pirates being captured due to international naval operations, a solution to prosecution and detention methods is needed, because no country in the region currently has the capacity to try and detain all of those captured and arrested. Defining the laws clearly about pirates and financiers and creating legitimate institutions to carry out the prosecutions are necessary to ease the procedure. Refer to Section II, Chapters 1 and 2 for more information on prosecution

and detention issues.

Prosecuting financiers should be made a priority because it would ease the problem of backlogged courts and overcrowded prisons by reducing the number of people committing acts of piracy to a large degree. Although poverty is one main cause of piracy, the poor do not have the money or resources to gather equipment and the information necessary to start up pirate gangs themselves. The Somalia Report elaborates that an investor “typically pays for the food, weapon[s], fuel, and boats for at least eight pirates before the operation ... [and] after during the waiting-for-ransom period ... for everything the pirates need, including fuel, food, and khat.”²⁹ Hence, without the financiers who sponsor and plan the attacks, the foot soldiers would be incapable of conducting attacks themselves, naturally reducing the burden on prosecuting nations and on overcrowded prisons.

Alternatives

One way to reduce the pirate money flow is to eliminate the *hawala* system in Somalia or to prevent the use of the *hawala* system to and from pirate dominant regions by forcefully or logistically closing the branches in the area. However, both ways would not be effective because pirates do have mobility. This mobility was shown in cases when certain towns repelled pirates by refusing to sell them food or khat, so pirates moved on to another city.³⁰ If there is no operating branch in their country or city, the pirates can simply go to another country or city and transfer money. Moreover, cutting off the *hawala* system creates the problem of harming innocent Somalis who depend on remittances, from family members abroad, for living. Therefore, instead of cutting off the *hawala* system, the U.S., through Working Group 5, should work with the *hawala* companies in known pirate camp areas to monitor where the money flows.

Another possible solution to halt piracy is to advocate a ‘no ransom’ policy for all captured ships and crew. However, there are many adverse effects of this policy that must be taken into consideration. Without the prospect of a ransom payout, pirates may: 1) become more violent and kill hostages or 2) adapt their end-game to not attacking ships for the ransom, but attacking in order to sell the ship itself and its cargo. Many countries and companies will buy oil if it is offered at a cheap price, whether or not they know that it is from pirates. Rather than promoting an elimination of ransom payments, the U.S. should continue to focus its efforts on stopping the pirates at sea and arresting the foot soldiers to try to dissuade young men from joining pirate ranks, but the State Department should also consider recommendations concerning finance.

Recommendations

Based on the previous analysis of Somalia's financial patterns and the financial organization of pirate gangs, the U.S. State Department should:

- » **Monitor pirate money flow and money laundering activities.** The U.S. State Department should work with international organizations such as Working Group 5 of CG-PCS, UNODC, the Egmont Group, and FATF to advocate and form FIUs in the countries and regions neighboring Somalia. The U.S. and these organizations can coordinate in compiling a database of financial intelligence regarding pirate money flows to trace pirate financiers and intermediaries.
- » **Encourage the implementation of laws in neighboring countries that require *hawala* transactions to be traceable.** The *hawala* system has been a means of illicit financing for piracy. The U.S. should emphasize this point and advocate to the international community that the *hawala* system must be monitored. Executing a law that enables the FIUs to monitor the transactions is vital to identifying the ransom money's path and to evidence collection for the prosecution of financiers.
- » **Cooperate with the international legal system to locate and prosecute the pirate financiers.** The financiers are the key players in organizing attacks, and without them the foot soldier pirates would not be able to operate. The U.S. must work with international organizations to have the financiers be tried in the same courts as captured pirates.

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III. HARD POWER

The Armed Response to Somali Piracy: Strategic, Tactical and Organizational Challenges

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Section Summary

The dramatic impact of piracy on shipping and commerce off the Horn of Africa warrants an immediate multinational response on the part of navies and the private sector. There are many precautions that should be taken to reduce the risk of hijackings of commercial transports. Protective measures for merchant vessels and pleasure craft include a wide range of passive and active defense strategies, as well as technologies to combat piracy like those recommended by the International Maritime Organization's Best Management Practices.

Military patrols under EUNAVFOR, CTF-151, NATO, and a handful of independent nations such as China and Russia have, separately, taken the initiative to protect vessels traveling in the High Risk Area, specifically in the Internationally Recommended Transit Corridor. Although these measures have reduced the number of successful hijackings, the number of unsuccessful attacks has risen substantially over the past three years, especially as the range off the coast of Somalia in which the pirates are willing to operate has expanded. As pirates continue to venture further away from the coast of Somalia and adapt to avoid or outmaneuver military patrols, naval strategy, tactics, and operations must evolve and adopt a Network Centric Warfare-style infrastructure for combating piracy. However, military task forces are not a long-term solution

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to the elimination of piracy in the High Risk Area. Until the underlying problems are solved on land, steps must be taken at sea to facilitate free, secure access to the Gulf of Aden and the Indian Ocean.

This section explores the various ways private vessels can increase their own protection, including evaluations of military and commercially-available technologies, and recommends specifications for the streamlining and coordination of maritime task forces in relation to communication, intelligence, and command structure to effectively fight piracy at sea in order to achieve the highest return-on-investment in the short- and medium-terms for participating nations and companies.

Developing Communication and Strategies to Keep Merchant Vessels Safe

By **Brittany Davis-Roberti**

Military means are not the solution to the problem of piracy off the coast of Somalia. Military measures should continue to be used only for regulation and for deterrence. The United States military, in conjunction with other States, has committed to decreasing pirate attacks on merchant vessels off the Horn of Africa. Military operations have been successful in decreasing piracy by using innovative tactics and using flexible Rules of Engagement; however, the operations between merchant vessels and military forces have not yet reached full efficacy. The challenges and possible solutions for better communication and methods for keeping merchant vessels safe will be further discussed in this chapter. These measures help to minimize and contain the problem; however, diplomatic strategies must be used to fully address this issue. The United States should implement the recommendations outlined within this section in order for military forces to be more effective in deterring piracy on the sea and to keep commercial vessels and maritime trade safe from piracy.

Rules of Engagement

The United Nations Security Council has widened the scope of international law on piracy with Resolution 1816, Resolution 1846 and Resolution 1851—See Section II, Chapters 1 and 2.¹ In order to attain greater international cooperation, UN Resolution 1816, enacted in June 2008, allows States to enter the territorial waters of Somalia in order to deter acts of piracy and armed robbery at sea.¹ The mention of armed robbery, illegal activities in waters under a State's jurisdiction, in conjunction with piracy widens the jurisdiction of those States actively working towards deterring and repressing piracy. This will also allow for expanded military and intelligence operations, as described in Section III, Chapters 4 and 5. The UNCLOS grants States seizing a pirate vessel the authority to use “all necessary means for repressing acts of piracy and armed robbery.”² Generally States use force in cases of self-defense, and in situations when authorized by UN authority.³ Since piracy off the coast of Somalia is³ not an armed conflict, it is legally considered

i The United Nations Convention on the Law of the Sea (UNCLOS) has established the international law of piracy in Articles 100 to 107 and 111. Piracy as defined by UNCLOS, is “any illegal acts of violence or detention, committed for private ends by the crew or the passengers of a private ship or aircraft and directed...on the high seas against another ship or aircraft, or against persons or property on-board such a ship or aircraft”. In addition, any state has the right to seize a pirate ship or aircraft, arrest the persons and seize the property on-board.

a law enforcement issue.⁴ However, the United States military will still abide by the Standing Rules of Engagement (SROE) since military operation CTF-151 off the coast of Somalia is underway. At this point in the United States' operations off the coast of Somalia, SROE have proved to be adequate and there are no significant flaws that need to be addressed. According to SROE, commanders are responsible for establishing mission-specific ROE and for informing their units of any changes. These specific ROE must coincide with the SROE and the ROE of senior commanders. But in all cases, commanders reserve the right to "use all necessary means available and to take all appropriate actions in the self-defense of their unit and other U.S. forces in the vicinity."⁵ Self-defense may be used in cases of national, unit, and individual threat where a hostile attack has occurred or there is "a demonstration of a hostile act."⁶ National cases also include U.S.-flagged commercial vessels. This means all U.S. commercial vessels operating in the High Risk Area (HRA), as bound by Suez, 78°E and 10°S in the Indian Ocean according to BMP 4,⁷ are protected by the United States military. All forces will respond as if the attack were against U.S. forces. U.S. forces also have the responsibility of collective self-defense, therefore, defense of non-U.S. forces or foreign nationals. When using self-defense, all military personnel must react only when necessary and must use proportional force. Proportional force is defined as "the use of force in self defense as necessary, the nature, duration, and scope of the engagement should not exceed that which is required to decisively counter the hostile act or demonstrated hostile intent and to ensure the continued protection of U.S. forces or other protected personnel or property."⁸ Deadly force should only be used as a last resort, or in a situation of imminent threat to life. In the cases of multi-national operations such as missions under NATO or CTF-151, the United States will make efforts to compile a common ROE among participating States. In the case

that a common ROE cannot be constructed, United States military forces will follow the current SROE, and other participating parties will be notified. The United States military indicates that they "have an obligation to repress piracy on or over international waters directed against any vessel, or aircraft, whether U.S. or foreign flagged and are authorized to employ all means necessary to repress piratical acts."⁹ These ROE comply with the international guidelines described by the International Institute of Humanitarian Law.¹⁰

Best Management Practices

Piracy continues to impact the global economy, including increasing economic costs for the domestic shipping industries: ransoms, damage of cargo, delay in deliveries, increased insurance rates, and pre-emptive measures. In

cases of captured ships, paying ransom has thus far kept the level of violence at a minimum. Unfortunately, the continuation of ransom payments has only fueled more pirate attacks.¹¹ In order to effectively address this issue, shipping industry professionals—including INTERTANKO, UKMTA, and NATO—recently produced the fourth version of "Best Management Practices for Protection Against Somali Piracy."¹² The BMP4 outlines the best ways to prevent and handle pirate attacks, and while adherence to its recommendations is not mandatory, their adoption is highly encouraged by the IMO. The report highlights the three

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most crucial requirements of BMP4. First, a ship must register at the Maritime Security Center Horn of Africa (MSCHOA) and submit a Vessel Movement Registration Form before entering the High Risk Area. Second, upon entering the area controlled by the United Kingdom, the Vessel Position Reporting Form-Initial Report must be sent to the United Kingdom Maritime Trade Office (UKMTO). It is strongly advised that each vessel e-mail the UKMTO a Daily Position Report at 0800 hours GMT every day while still in the HRA. Third, Ship Protection Measures described further in the BMP4 report should be implemented at all times while operating in the HRA.¹³ If pirates are unable to board the ship, then the possibility of hijacking is very slim. Even though military presence in the Internationally Recommended Transit Corridor (IRTC) has succeeded in decreasing pirate attacks in that area, it has also pushed the attacks further out into the ocean. Although these measures have succeeded in keeping merchant vessels safe, the differing bodies of communication could be compiled together for more efficient communication with commercial vessels.

According to BMP4, commercial vessels should always be prepared for an attack at any time during operation in the HRA. Prior to entering the HRA, masters of the vessel should perform a thorough risk assessment regarding prevention, mitigation, and recovery. Risk assessment includes, but is not limited to, crew placement, height of the ship, and freeboard, and maximum speed. Crew placement needs to be discussed and planned so that all members can reach the pre-determined Safe Muster Point or Citadel in the case of an attack. These areas are either safe rooms or a meeting point that is covered in order to protect the crew. Experience has shown that vessels with a low entry point, a freeboard lower than 8 meters, and a maximum speed of lower than 18 knots are more vulnerable to a pirate attack.¹⁴ Pirates most often attack vessels traveling at a speed lower than 18 knots, with two skiffs. They attempt to board at the lowest height of the ship using ladders, ropes, or long hooked poles to climb onto the vessel, in conjunction with small arms, often Kalashnikovs and Rocket Propelled Grenades (RPG) used as intimidation to prompt ships to slow down.¹⁵ With this assessment the probability of an attack should be identified, taking into consideration the latest information concerning pirate movements. Naval forces present within the HRA provide continual updates of pirate sightings, attacks, and warnings. Vessels should be prepared to alter course at any time during operation in the HRA in order to avoid known pirate areas.

A planning list for both company and shipmasters is provided in the BMP4 guidelines. Companies should register their vessels with MSCHOA and obtain latest information from them and the NATO Shipping Center websites. These companies should also review Ship Security Assessment (SSA) and Ships Security Plan (SSP) with all shipmasters, install the Ship Protection Measures (SPM) of their choice, and conduct training with their crew. Shipmasters should brief the crew on the current climate of piracy and conduct an emergency drill, as well as submit the Vessel Movement Registration Form to MSCHOA and both the Initial and Daily Reports to UKMTO. While voyaging through the Gulf of Aden, HRA masters should be well informed with the IRTC Group Transit Scheme and address MSCHOA's advice and warnings about passage plans. Shipping companies have many different agencies

from which to access information on piracy and coordinate with to ensure the safety of their vessel; however, these agencies can be combined into one entity to create a single database for shipping companies and shipmasters.

Along with risk assessment, ships can also install various SPMs or practice differing strategies to deter piracy attacks. SPMs can consist of bridge enhancements such as blast resistant film instead of glass, fabricated metals, or a wall of sandbags, and physical barriers to increase the height and difficulty of climbing aboard. Suggested barriers are razor wire or electrified fences. Water sprays, cannons or foam monitors are also discussed.¹⁶ See Section III, Chapter 3 of this report for more information on the effectiveness, cost and risk of differing SPMs. Strategically, ships can increase speed, provide additional watch-keeping rotations with night vision optics, practice maneuvering tactics during attack, or control access routes to delay pirates upon boarding.¹⁷ Currently, there are very few strategic methods available to merchant vessels. More research needs to be conducted on the passive deterrence of piracy so that ships can avoid capture.

In the event of an approach by a pirate skiff, vessels should increase to maximum speed and initiate the emergency procedures practiced in previously discussed crew briefings. Activation of the vessel-specific Emergency Communication Plan coordinated by the shipping company, shipmaster, and crew, as well as the sounding of the pirate specific alarm, and sending of a distress message to the UKMTO or MSCHOA are necessary. The SSAS should also be activated in the case of an attack. Other private agencies also exist to receive distress calls as well as the International Maritime Bureau—see Section III, Chapter 5. The Automatic Identification System (AIS) should be switched on for proper identification by military vessels. Controversy surrounding the AIS system states that pirates now have the ability to track and single out ships with their AIS turned on throughout the voyage.¹⁸ Shipmasters currently have discretion on whether to use AIS or not, however in the case that pirates have located the vessel, it should be switched on. At this point in the pirate attack, all crewmembers should report to the SMP or Citadel and the shipmaster should alter course whenever possible to travel away from attacking skiffs. If the attack is successful then the crew should stay at the previously discussed safety point. At the point of control, all crewmembers should continue to stay calm and compliant. Under the influence of the drug khat, agitation can take hold of a pirate's attitude and actions.¹⁹ Consequently, all crewmembers should act with caution and be cooperative. Any CCTV should be left running for recording and later collection of evidence for prosecution. In the event of a military intervention or rescue mission, all members of the crew need to keep below deck and keep their hands visible. No movements that could be interpreted as aggressive should be made. Lastly, crew members should be prepared to prove their identity to rescuers and cooperate fully with any rescue mission.²⁰

BMP are designed to avoid, deter, and delay piracy attacks. The proper execution of these recommendations will aid in the prevention of capture. However, there are weaknesses and limitations presented within these BMP4. The naval and military forces need to present a user-friendly center for companies and shipmasters to access and send their ship information

to. In times of attack the shipmasters do not have time to send distress messages to different entities in order to receive help. In addition, vessels should be able to register, send daily reports, and gain passage and route information from one center. As of now ships can gather information from UKMTO, IRTC, MSCHOA, or NATO. Streamlining communication will effectively address all the necessary procedures more efficiently. Also, consolidating these responsibilities under one entity, which has direct communication with all military forces in the HRA, can aid in decreasing response time. The current line of communication between merchant vessels, information centers and naval forces has presented these challenges. Furthermore, strategic measures of deterring and delaying pirates once they are in the process of boarding, or if they are already on-board the ship, should be addressed in order to allow time for military forces to arrive on the scene.

Streamlining Communications

The United States needs to take action to maintain maritime security at the highest possible level. An effective way to keep mariners safe is to continue to improve the systems supporting BMP4. Currently, with the help of other agencies, the UKMTO controls the majority of the communication responsibilities in this area.²¹ However, this process can be simplified to be more efficient at keeping the number of successful pirate hijackings low. The U.S. State Department should aid in the streamlining of communication between merchant and military forces. The most effective way to execute this would be through a single information base. As of now the Contact Group for Piracy off the Coast of Somalia (CGPCS) Working Groups are designed to create a collective effort with each State completing a certain aspect. The U.K. focuses on leading information sharing and naval operations, while the U.S. attempts to increase industry awareness and capabilities.²²

Talks of a Counter Piracy Coordination Center (CPCC) have been discussed but there have yet to be tangible results. Possible locations for this center are Yemen, Djibouti, and Kenya.²³ The Gulf States have shown their support for the anti-piracy movements through their monetary contributions to the UN's trust fund, used to fund various anti-piracy projects such as the building of a prison in Puntland.²⁴ The Gulf States monetary availability makes countries, such as Yemen, appealing for a CPCC. Although political instability has recently struck the country of Yemen, the island of Socotra owned by Yemen is a plausible option for the building site. Socotra is located 80 kilometers off the Horn of Africa, and is "at the crossroads of the strategic naval waterways of the Red Sea and the Gulf of Aden."²⁵ In the past the United States has considered setting up a military air force base in Socotra, however those plans never came to fruition.²⁶ The instability of Yemen would have to be taken into consideration, yet, through the United Nations, it may be possible to create an area on the island under UN mandate and outside of Yemeni governance. Socotra would be an ideal location for the CPCC. To have this facility located within the greater Horn of Africa (HOA) would encourage the involvement of the surrounding countries. These countries would eventually have enough training and manpower to run the CPCC alone. This facility would host an intelligence fusion center built upon outside resources and personnel, similar

to the J-2 discussed in Section III, Chapter 5. The States surrounding Somalia could provide the manpower to be trained while the United States, European Union, and other willing States could contribute technology, equipment, and manpower for training.²⁷ The design of this base would be similar to the Regional Agreement on Combating Piracy and Armed Robbery (ReCAPP) located in Singapore. This agreement was led by Japan and signed by seventeen other nations.²⁸ The Information Sharing Center created was designed to have a high operational coordination efficacy.²⁹ Not only does this center support coordination between signatory States, but the International Maritime Organization (IMO) also states that it “is a good example of successful regional cooperation which the IMO seeks to replicate elsewhere.”³⁰ ReCAPP requires that signatory States choose a representative to serve as a liaison with other countries. Each State also carries other significant responsibilities that revolve around each country’s assigned focal point. The focal point’s responsibilities include the coordination and management of all piracy incidents, exchange of information, implementing law enforcement investigations, synchronization of surveillance and 24/7 availability to all other countries.³¹ Regional support off the HOA for this statute is necessary in order to effectively conduct surveillance, supply information to ships, and perform rescue missions.

Other alternative methods of streamlining communication concerning piracy in the HOA are also available. At the very minimum increased communication between the UKMTO and the U.S. Central Command (CENTCOM) headquarters in Bahrain should be established through specific means, such as a red phone or separate telephone lines. This is necessary in order to streamline communication; however this type of action will not have the same effect as a unified CPCC, which would also streamline communication between merchant vessels and naval forces in the HRA. Nor would this action allow for a combined center, which would ease access to suggested routes, weather conditions, registry of vessels, daily reporting and distress calls. However, for strictly military operations CENTCOM in Bahrain would be a viable option—Section III, Chapter 5 expands on the use of CENTCOM for a Combined Joint Task Force.

A second alternative calls for increased action of placing a liaison office in the UKMTO office for U.S. ships as well as other willingly participating parties. Essentially this plan would take the existing office of the UKMTO and co-located it with other willing States in order to increase communication between them. The communication between vessels would still run through the UKMTO, but this information would be released to each office. Offices could have corresponding duties such as reporting, updating access channels and the location of pirates, and producing the updated locations of all merchant vessels. Although liaison offices would eliminate many issues of the former alternative, it poses challenges as well. A disconnect between offices would be present, making the supposed seamless communication between merchant vessels and their lifeline disrupted. Once again, the issue of multiple organizations helping in one situation creates a disruption in information sharing and most importantly in the timely response to distress calls. Also, liaison offices still create an African dependency on outside forces to aid in surveillance and organization off the coast. This alternative would not put Africa in charge of their coastline and hamper the eventual turnover

of operations to them when they can effectively manage counter-piracy operations.

The best option for the United States State Department is to advocate for U.S. participation in a single CPCC that covers all naval coordination and information sharing in Socotra. Through the United Nations, the United States State Department should propose this recommendation. All existing parties operating in the HRA should be highly encouraged to reallocate resources, manpower, and equipment to build this CPCC. The reallocation will be brought from existing resources in operation in the HRA as well as equipment not in use from Iraq.³² Surrounding countries will provide the manpower and eventually will conduct the daily tasks of this center without international logistical and financial support. However, in the initial stages the United States government and other involved States will provide training for the manpower. Outside forces will also continue to allocate naval ships and military forces until the issue of piracy can be fully addressed. A CPCC would not require more funding towards increased military activity; it would simply be a reallocation of resources already in place in the HRA. A maintenance fee would be included in creating this CPCC, but a vast increase in budgeting will not be needed. If increased funds become an issue, the State Department should propose that the UN Trust Fund be used to supplement costs.³³ An issue of U.S. coordination with other militaries and sharing of information will certainly arise—see Section III Chapter 5 for further discussion of military coordination. However, the United States has participated in similar exercises, such as with the Indian military in 2006.³⁴ This partnership allowed the two States to “conduct bilateral maritime exercises, cooperate in search and rescue operations at sea, exchange information, and enhance cooperative capabilities.”³⁵ A model such as this should be followed for coordination between all naval forces and information sharing. The United States has formed this partnership before, and now the scale will just be enlarged. Through this coordination, it is probable that response time to distress calls will decrease. As of now, response time is a major deterrent for effectively capturing pirates in the act—see Section III Chapter 4 for further discussion. The number of military vessels conducting operations in the HRA cannot fully access all parts of the vast seas. With the CPCC, the communication center can send the distress call and location of a ship to the closest military force, regardless of any vessel’s flag. All States that agree to form within this entity will agree to help any foreign nation operating within the HRA. Currently, military presence is creating a short-term solution to decreasing pirate attacks. The creation of a CPCC would produce a long-term solution to surveillance of maritime activity and pirate attacks. While the U.S. and other partners would be involved initially until the challenge of piracy has been fully addressed at the diplomatic level, a gradual phase out of their presence would allow for the independence of African countries to monitor their coast. This option increases the value of the center, while simultaneously offering the possibility for the creation of an East African Coast Guard Center or Regional Surveillance Center. This center will not solve the challenges of piracy single-handedly, however it will provide a communication base that will effectively decrease pirate attacks now and in the future, in order to keep the global economy from further and future risk.

Strategic Layers of Defense

The relationship between the military and merchant vessels needs to be simplified and made more efficient; however, merchant vessels and shipping companies, with the help of the State Department, can also take the initiative to improve their own safety in the HRA. Vessels should continue to follow the guidelines laid out in the fourth version of BMP4. One study has shown that “80 percent of attempted pirate attacks are now foiled without assistance from warships on patrol.”³⁶ Even though these steps from BMP4 have made an impact, many ships are still being attacked.

Arming and training crewmembers is one alternative strategic defense that has been discussed. These crewmembers would be specifically trained to use small arms in order to combat a pirate attack while simultaneously delaying the boarding process so that the military can arrive in time to perform a rescue mission. While this layer of defense may decrease the risk of pirates boarding the vessel, it also creates the opportunity for escalation of force and increased violence: “arming crews poses safety and training issues and offers no guarantee that they would be proficient enough to fend off heavily armed pirates.”³⁷ Because of this, arming an untrained crew would not be productive. Another option to increase safety is for vessels to avoid the HRA completely. Ships would re-route their voyages to sail around the Cape of Good Hope. While this option would ensure protection from piracy, the alternate route would create higher costs and elongated trips. An INTERTANKO spokesman commented that this route could “add up to 20 days to the round trip voyage,”³⁸ and cost the company around \$40,000 USD per day for the 2,700-mile detour.³⁹ While the possibility of a pirate attack is nearly eliminated through this method, the added cost and mileage to each trip would not be suitable for most shipping companies.

Although BMP4 outlines risk assessment planning and checklists for both shipping companies and shipmasters, private businesses—such as Citadel Maritime—will work side by side with companies and masters to guarantee that the pre-existing assessment and emergency plan will be sufficient and aid in areas of improvement. Their training services include: day-to-day operations, consultations on SPM for vessel hardening, and most importantly citadel drills and emergency procedures.⁴⁰ The IMB has stated that the popular use of citadel—safe rooms—may not be the best solution for every situation. Citadels should never be used as the primary measure of defense, but rather in conjunction with other SPM, outlined in Section III, Chapter 3, and the BMP4 guidelines. Crewmembers are put into danger when the citadels are used incorrectly. Crewmembers should advance to the citadel only when the authorities have been notified and responded as well as a risk assessment of the attack has been made. If the authorities have not been properly notified or responded to the call for help, the crew may be trapped without knowing when to safely emerge. Improper use of this technique can lead to dangerous outcomes.⁴¹ Therefore proper training, such as that provided by Citadel Maritime, would have a positive impact on crewmembers’ awareness and readiness for an attack. Increased costs to shipping companies for the training of personnel presents a challenge to this option, however the investment is worth the safety of their ship and cargo. Integration of this alternative as well as all other strategic techniques should be

left to the discretion of each company.

Through Working Group III of the CGPCS the United States State Department needs to encourage the use of and increase the amount of research on strategic layers of defense for merchant vessels. A few other options exist as of now such as increased surveillance, night watches, and various maneuvering techniques. While these techniques are mildly successful, more research needs to be conducted to provide shipping companies with better options.⁴² If vessels can successfully deter attacks on their own then military presence in the HRA could decrease. These passive measures are, therefore, worth the investment.

Recommendations

Based on the previous analysis of current rules of engagement and counter-piracy communications in the Horn of Africa, the State Department should:

- » **The existing Rules of Engagement used by the United States military are adequate at this point.** No grave flaws exist and forces should continue to act according to the SROE. The United States military should continue to adjust mission-specific ROE according to the changing climate of the pirate situation.
- » **Merchant vessels operating in the High Risk Area should continue to abide by and implement the guidelines discussed in version four of the Best Management Practices.** The U.S. State Department should continue to support the use of these guidelines, as they are designed to keep merchant vessels safe from pirate attacks. The State Department should encourage in any manner possible that each shipping company follow the recommendations.
- » **Through the United Nations, the United States State Department should propose and support the creation of a Counter Piracy Coordination Center for the greater Horn of Africa.** The United States needs to commit to establishing this CPCC in the host country of Yemen, on the island of Socotra. The United States will back this center and encourage militaries already operating off the Horn of Africa to contribute. States will reallocate resources and equipment from pre-existing operations in the Gulf of Aden as well as shift unused resources from military operations, such as Iraq. Temporary manpower, training, and a maintenance fee—paid by participating militaries or supplemented by the UN Trust Fund—will also be provided in order to properly build the CPCC. Surrounding countries, including Somalia, will designate manpower to be trained and in the long-term independently run the coordination center. This recommendation will not only improve the safety of maritime activity now, it will also allow for African countries located in the Horn of Africa to monitor and protect merchant vessels in the long-term.
- » **The State Department, through Working Group III, should support new research on strategic defensive measures.** This measure should increase the safety of the U.S. maritime economy, as well as merchant vessel personnel. As well as increase the success rate of merchant vessels warding off attacks.

Reducing Risk and Insurance Costs on the High Seas

The Importance of Privately Contracted Armed Security Personnel in a Multi-Layered Defense

By Jeff Wheeler

The waters around the Horn of Africa (HOA), including the Gulf of Aden and the eastern half of the Indian Ocean, contain the most dangerous shipping lanes in the world. Piracy has doubled within the past five years, and naval forces from various countries attempting to create a more secure trading route are stretched extremely thin. Countries could supply more naval vessels to the areas affected, but they still would not be able to cover the entire area in which pirates operate. Since no commercial vessel has been hijacked while employing the use of armed guards¹(as of 27 February 2012), the private sector can take a bigger role in the defense of its own vessels in the areas in which pirates operate around the Horn of Africa, known as the High-Risk Area (HRA). Over 42,000 vessels transit the HRA annually,² and while only a small amount of U.S. commerce flows through this region, it is still necessary to maintain a stabilized environment where the circulation of goods can move without constant risk to both human life and to vessels and their cargo. Even if the cost to other countries is greater, this loss will eventually be passed on to the U.S. market. Additionally, the amount of global oil that passes through the HRA on a daily basis is quite significant, and the possibility of an environmental crisis with an oil supertanker cannot be overlooked.

The use of on-board Privately Contracted Armed Security Personnel (PCASP) has increased greatly. Many insurance companies have even declared the HRA as a “war-risk” zone, raising rates and calling for armed security aboard vessels as a way to reduce premiums.³ The possible escalation in violence has commonly been used as a pretext for arguing against the use of PCASP. However, with properly vetted and responsible PMSCs under a national licensing system built on the foundations of the International Code of Conduct for Private Security Service Providers (ICoC), the use of passive Ship Protection Measures (SPMs) and non-lethal actions will be exhausted before any armed warning or lethal response is necessary. Both the shipping and insurance industries have argued that having PCASP on-board commercial vessels would increase the likelihood of a violent encounter and escalate matters unnecessarily. The ICoC has guidelines for the Rules for Use of Force (RUF), including employing all other means before using lethal force, and only if the lives of the crew are in immediate danger.⁴

Even with the number of pirate hijackings down in 2011, as compared to previous years,⁵

and with only 28 vessels hijacked by Somali pirates,⁶ more vessels were fired upon in 2011 than during 2010.⁷ Pirate tactics have also been changing, with a greater emphasis on the use of mother ships and violence towards hostages when negotiations fail. In August of 2011, a new tactic was noted and a warning released by the Private Maritime Security Company (PMSC) Neptune Maritime Security.⁸ The new tactic was that instead of one or two skiffs attacking a vessel by climbing aboard, now a large number of skiffs are attempting to “swarm” vessels.⁹

With the killing of four Americans in 2011,¹⁰ and the eventual release-after-ransom of the U.S.-bound oil tanker M/T Irene,¹¹ the U.S. has as much at stake in ending piracy as any other country despite the fact that the U.S. economy is not greatly affected.¹² With over 40% of the world's seaborne oil passing through the Gulf of Aden and the Arabian Sea,¹³ this is a constant threat to not only the global trading environment itself but to U.S. national security interests.

Assistant Secretary Andrew Shapiro of the State Department's Bureau of Political-Military Affairs, stated in November of 2011 “to date no ship with an armed security team aboard has been successfully pirated,”¹⁴ which is a statement that remains true to this day. It is in the State Department's best interest to not only encourage the use of PCASPs on-board commercial and private vessels, but to enact specific standards to better protect human life and the trade routes that flow through the HOA and outlying areas. By supporting and expanding the ICoC and requiring PMSCs to become signatories and obtain certification, this will ensure that only the most responsible, transparent, properly trained and insured PMSCs are employed in the protection of vessels in international waters.

Naval Forces and Resource Allocation

There are currently three cooperating international task forces protecting ships in the region, collectively offering between 20 and 30 patrol vessels in and around the HRA at any given time.¹⁵ EUNAVFOR's Operation Atalanta prioritizes escorting merchant vessels carrying humanitarian aid from the World Food Program and vessels from the African Union Mission in Somalia (AMISOM).¹⁶ Altogether, none of these combined task forces cover (or can cover) the entire area in which pirates are known to stage attacks. Most naval forces operate in the Gulf of Aden and along the coast of Somalia. The U.S. Department of State claims that naval forces cannot protect every commercial vessel, and that armed security should be hired to protect against pirate attacks.¹⁷ The naval ships in the region have a limited standard area of coverage; the CTF-151 patrolling an area which is approximately 1.1 million square miles.¹⁸ With an area of roughly 2.5 million square miles¹⁹ in which pirates operate, there is an obvious lack of coverage. Because of the large distances within the HRA, a naval response is not always plausible, and in fact it is impossible to interdict a sudden pirate attack if no naval vessels are within the vicinity.

The U.S. and other nations currently spend a large amount of money in diverting naval

ships, their crews, and other resources away from other pressing matters to combat piracy around the HOA and surrounding areas, which is only going to increase. Approximately \$1.27 billion USD was spent on multilateral naval operations dealing with piracy in 2011.²⁰ More Navy and Coast Guard ships will have to be built, and more resources will have to be allocated to combat this threat. Presently, about 1% of U.S. commerce transits the area each

If the current trend in pirating continues, the disruption of the flow of goods and oil throughout the world would be large, creating a market with increasing premiums to consumers due to the rising cost to the shipping industry.

year, so the return on investment is quite minimal, although threat to any American life should be avoided at all costs.²¹ If the current trend in pirating continues, the disruption of the flow of goods and oil throughout the world would be large, creating a market with increasing premiums to consumers due to the rising cost to the shipping industry. It is in the best interest of the U.S. to work with its trading partners and the industry as a whole to ensure the free flow of goods and maintain as risk-free an environment as possible around the HOA and the Indian Ocean as a whole. The U.S. needs to, as the U.K. has begun,²² move towards supporting a system for creating national standards for PMSCs in regard to on-board PCASP not only on U.S. flag-carrying vessels, but all vessels transiting the HOA. These standards should follow the ICoC, including the mandatory prerequisite of all U.S. PMSCs to become signatories to the ICoC, including the future "Oversight Mechanism" that will be launched in June 2012. The U.S. should promote the de-

velopment of the Oversight Mechanism, and try to obtain one of the four seats given to governments on the board as part of the governance structure. The U.S. can strengthen the ICoC from within, creating a true framework for PMSCs to abide by.²³ The U.S. should also make it mandatory for flag-carrying U.S. vessels to hire only qualified PMSCs to ensure that proper standards and practices are kept.

There is a need for both private sector and military responses to piracy. The U.S. and other countries are increasing their spending each year to combat piracy around the HOA. With the requirement by the U.S. government that PMSCs become signatories to the ICoC and enact better practices, more companies with ships transiting HOAs will hire from these accredited PMSCs. This will take some of the financial/military/logistical burdens away from the U.S. government. Due to current economic turmoil worldwide, this can only be seen as a positive move towards the reduction and eventual elimination of piracy around the HOA. Without these changes, it will only continue to be a drain on U.S. taxpayers.

Additionally, many shipping organizations from around the globe have proposed the idea of the UN providing a force of armed military guards to be carried on merchant vessels transiting the HOA. The Baltic and International Maritime Council, International Chamber of Shipping, INTERTANKO, INTERCARGO and others have been encouraging this UN investment,²⁴ which would present a sizeable cost to the countries involved in supplying these UN merchant vessel protection teams. While these organizations support the use of on-board PCASP, having a reliable system whereby shipping companies hire accredited PCASP that follow a set of rules set out in the ICoC may alleviate certain issues and fears. One must readily understand that the scope and cost to governments by creating a UN force of armed

military guards for merchant ships is not the answer, but it does show governments involved that the existing state of affairs is inadequate. Eliminating piracy in international waters is a responsibility that must be shared by both government and industry.

PMSCs, Armed Guards, and Escort Vessels

An estimated 35% of the total number of vessels transiting the HRA in the Gulf of Aden and the Indian Ocean deploy armed guards to better protect vessels from pirates, according to a circular by the Indian Director General of Shipping.²⁵ Even if it is only one half of that, it means that nearly one-fifth of total commercial vessels are already using PCASP as a means of protection. Shipping companies are turning to on-board PCASP to protect not only their vessels but their crewmembers as well. These personnel are in addition to Best Management Practices (BMP) guidelines and Ship Protection Measures (SPMs) (as explained in Section III, Chapters 1 and 3). It is predicted that the use of PCASP will not only continue at current levels, but rise. For those shipping companies using PCASP on-board, they have been met with a 100% success rate thus far, as no protected ships have been hijacked.²⁶ The problem with passive and non-lethal SPMs is that they are designed to deter and to delay pirate attacks. If the pirates are delayed, then the only means a vessel has to avoiding a boarding and hijacking is the possibility of a naval ship intervening that is already within the vicinity. This is not typically the case. Thus the extra layer of protection that PCASP can offer is essential to the safety of the crew, ship, and cargo.

At present, there are approximately 159 people currently held hostage by pirates (as of 31 January 2012),²⁷ and there has been an increase in the level of violence employed by pirates.²⁸ Companies such as Drum Cussac, Neptune Maritime Security, MAST and ESPADA Logistics and Security Group all offer on-board PCASP services, intelligence, technical guidance on SPMs and crew training. These companies are signatories to the ICoC, and many vessels navigating the HOA and surrounding areas currently use these PMSC services. While on-board, many PCASP companies train crews how to react if boarded, how to recognize dangers early on, and other ship defensive procedures. This leads to a more well-trained and prepared crew, better able to handle nonlethal equipment to ward off future pirate attacks.²⁹ The UN's International Maritime Organization (IMO) has produced Circulars concerning interim guidance on the use of PCASP, MSC.1/Circ. 1405 and 1406.³⁰ Although not officially endorsing their use, the IMO realizes the need for more security than what is currently available. With piracy maturing into one of the most profitable enterprises in Somalia, the typical rag-tag groups of pirates are turning into well-trained, well-paid and more developed outfits with a strict organizational hierarchy.

The number of vessels reporting the carriage of PCASP rose in 2011 as compared to the year before.³¹ Due to the lack of accreditation, transparency, and regulation among PMSCs, there are many concerns about the RUF during encounters with pirates. Guidance is not only needed on how to use on-board PCASP, but also on which PMSCs are transparent, responsible, and operate within international laws and procedures. It is in the Department of State's

best interest to support a system for creating national standards for U.S. domestic PMSCs, and one that is strengthened by and built upon the ICoC. The ICoC provides protocol ranging from RUF to properly evaluating PMSC personnel to incident reporting and more.³² The United States' PSCs/PMSCs are not seen in a very positive light due to the Blackwater fiascos in Iraq and Afghanistan, and the nationality of the masters of vessels must also be taken into account. There has been a great deal of negative media on private security companies, and especially those from the United States. Nigel Booker, Director of the PMSC Neptune Maritime Security, stated that many shipping companies believe that U.S.-based PMSCs are too militaristic and do not wish to do business with the U.S. companies.³³ The U.S. government can work with organizations and companies that have historically been responsible

There have been no hijackings by pirates when PCASP have been on-board.

and transparent and can assist in creating a standardized national licensing system that would include thorough vetting procedures on all aspects of PMSCs, including rules of employment and RUF. Companies and groups such as the Security in Complex Environments Group (SCEG), Gray Page and Neptune Maritime Security can be drawn on by U.S. policy makers as information sources. Regulation of PCASP must be addressed, and the U.S. can use the foundations of the ICoC to further implement higher standards (such as the U.K. is currently doing with the Aerospace Defense and Security's Working Group SCEG).³⁴ Companies certified by this system will adopt RUF and work within a specific set of guidelines. "Accredited" PMSCs will be used as the standard, assisting the U.S. with its tarnished image internationally due to the prior use of excessive force by its largest PSC contractor in Iraq during the mid to late 2000s.ⁱ

There are many benefits to the on-board presence of PCASP, such as the training of ship crew on BMP while transiting the HRA, peace of mind that there is a well-trained and capable security team on-board, and extra intelligence offered to the master and the company by the PMSC and its on-board team leader. However, there are negatives brought up by various companies, organizations and governments. These range from adding to the expense of the shipping company's journey, the unnecessary use of lethal force toward pirates, legal issues concerning on-board PCASP and licenses needed for each port the vessel stops at. However, these issues can be taken care of individually. It does add to the expense of the company to hire PCASP, where around \$10,000 USD per day can be charged for a qualified security team.³⁵ Nevertheless, there are insurance premium reductions if armed security is used,³⁶ and there have been no hijackings by pirates when PCASP have been on-board, therefore relieving the possible mental and economic toll attributed to lengthy and dangerous hostage negotiations. The risk of violence escalation is not only shared by PCASP. Military patrols have also caused an increase in violence in many occasions. The four Americans killed from the private yacht *Quest* were killed in the process of a standoff between pirates and the U.S. Navy.³⁷ Concerning the unnecessary use of lethal force, as witnessed on 15 February 2012, the Italian Navy, with their own servicemen as a security detachment on-board the *MV Enrica Lexie*, shot and killed 2 Indian fishermen accidentally mistaken for pirates.³⁸ Not all proper BMP guidelines were followed, and they used lethal force well before they should

i In 2007, 17 unarmed Iraqi civilians were killed and 23 wounded by Blackwater employees.

have. This unfortunate event could have been avoided by the hiring of properly vetted and responsible PCASP. Even using a country's own naval commandos as security for merchant vessels does not guarantee that all rules will be followed. Lastly, concerning legal issues and licenses necessary for PCASP at each port of call, a responsible and experienced PMSC should have all papers in order before they first board the merchant vessel, and a legal maritime arm of the company can assist with this.

Escort vessels have also been brought up as a positive alternative to PCASP, as legal issues at ports would involve only the PMSC's boat and not the merchant vessel itself, and any pirate ship could be kept at a distance from the client's vessel. Unfortunately, escort vessels may have less range than commercial tankers or container ships, and, according to Richard Martinson, USCG Commander (ret) and president of Global Offshore Security, there are currently no companies escorting ships in the Indian Ocean.³⁹ With the lack of escort vessel operations in the Indian Ocean and the prohibitive costs compared to that of PCASP, companies continue to eschew escort vessels as an option and continue the use of PCASP.

Commercial vessels can protect themselves without PCASP by increasing their speed to a constant 18 knots or higher, since, as of yet, there have been no boardings by pirates at that speed, or by rerouting around the Cape of Good Hope. Neither of these means is worth realization. Increased speed may be an effective deterrent, but Oceans Beyond Piracy indicates that this is an extremely expensive resolution. In 2011, \$2.7 billion USD was spent by containerships alone to increase speeds, out of the total \$7 billion USD spent on piracy that year.⁴⁰ The rerouting of ships around the Cape of Good Hope is also another tactic, but again a failing one. In 2011, the rerouting of bulk carriers and tankers cost the industry between \$486 and \$680 million USD.⁴¹ It is simply too costly, and commercial vessels lose too much time between shipments if this method is used.

In addition to commercial shipping interests, it is important to consider private pleasure vessels, such as yachts, sailboats, and cruise ships. Of the 439 ships attacked in 2011, only four were yachts.⁴² This does not mean that it is safer to sail a private pleasure vessel in the HRA, only that their numbers are far smaller than that of merchant ships transiting the region. The most important and basic rule for these ships comes from the International Shipping Federation's "Danger of Piracy" Warning Notice, which states that no private pleasure vessel should sail in the Western half of the Indian Ocean, the Arabian Sea, the Somali basin or the Gulf of Aden.⁴³ It is best for these types of vessels to either find an alternate way around the HRA, or to hire a company that transports yachts to various destinations around the world as a way of circumventing those areas, such as Sevenstar Yacht Transport.⁴⁴ Despite that the hiring of PCASP is an option for all private pleasure vessels, there is no need for them to traverse the HRA as they have the option to avoid the region completely, unlike that of the commercial shipping industry.

Many insurance agencies deem the HOA and surrounding waters "war-risk" zones, and charge accordingly.

Insurance Firms Encourage the Use of PCASP

The global cost of piracy is escalating at an alarming rate, with around \$7 billion USD annually lost due to attempted and successful hijackings, rerouting ships away from the HOA, and increasing insurance rates. Some of which have multiplied nearly 120 times what was the standard amount, from \$500 USD per ship, per voyage⁴⁵ to just over \$60,000 USD per ship, per transit.⁴⁶ Many insurance agencies deem the HOA and surrounding waters “war-risk” zones,⁴⁷ and charge accordingly. Kidnap and Ransom (K&R) and war-risk insurance premiums paid by shipping companies are rising due to the currently unavoidable problems around the HOA, with around \$635 million USD expended in 2011 for K&R and war-risk premiums alone.⁴⁸ With the rise in insurance prices comes a rise in costs to consumers. Although many insurance companies are making large profits due to the increase in purchasing insurance, the payouts required when ships are hijacked are also increasing. That is why insurers that require K&R coverage for ships passing through the HRA are supporting the use of PCASP. Special discounts are now being offered to shipping companies who deploy PCASP on their ships while transiting through the HRA.⁴⁹ Many K&R insurance firms are demanding the presence of PCASP, while others are offering additional discounts of up to 35% if vessels are equipped with K&R insurance policies, follow the BMP 3 or 4 guidelines on the use of SPMs and other non-lethal defensive measures (see Section III, Chapters 1 and 3), and employ the use of PCASP.⁵⁰ Some K&R premiums come with an estimated 30% reduction if armed guards are on-board,⁵¹ and in 2010, Hiscox Ltd. was offering premium reductions of up to 50% for ships that had armed protection in addition to the standard SPMs.⁵² As shipping companies and insurance companies are greatly increasing their acceptance and use of PCASP, the PMSC industry is looking to expand considerably in the long-term.

One alternative is for insurers and shipping companies to continue paying ransoms. This is inadvisable because it will lead to an increase in ransom demands, and violence to hostages may escalate if pirates understand that torture will result in faster payment. More Somalis will turn to piracy as one of the most lucrative employments available. Following this, insurance companies will keep raising rates, and profiting. This would only give pirates the opportunity to re-invest in more specialized equipment and boats. By requiring U.S. PMSCs to become signatories to the ICoC and by creating a stronger system of standards, the U.S. and the shipping industry can collaborate with insurance companies to continue to lower premiums.

Violence Escalation

Many argue against the use of PCASP due to the risk of violence escalation. Yet, pirates themselves are escalating the violence against hostages where armed guards were not present, as evidenced by the mutilation of the fishing vessel FV Shiuh Fu-1’s captain’s right arm in January 2012.⁵³ The use of specific SPMs, such as electrified fencing, barbed wire, blinding lights and sonic devices may also lead to violence escalation. Harassing SPMs may incite pirates to become more violent towards hostages. With any layered security response such

as this, escalations are nearly inevitable. Additionally, there have been SPMs such as Propeller Arresters that can surround the commercial vessel and stop any skiffs with outboards motors.⁵⁴ The problem with countermeasures like these is that it leaves the pirates with no choice but to use any means necessary to board the ship, as it is now their only lifeline.

Once pirates take over a vessel, they typically demand a substantial amount to release the ship and its crew. The average ransom payout in 2011 was \$4.97 million USD.⁵⁵ Between 2008 and 2010, shippers paid over \$178 million USD in ransoms to Somali pirates, whereas during the year of 2011, 31 ransoms were paid with a total of \$160 million USD collected.⁵⁶ With this drastic rise in monies collected, it must be assumed that piracy will only grow alongside profit. The escalation in violence used by pirates in hostage negotiations, as was witnessed by the mutilation in January 2012 of the Shiuh Fu-1's captain, will also increase with or without the use of PCASP.

However, there can in fact be a de-escalation in violence with the use of PCASP, as there have been no hijackings with on-board security teams. If the crew is without armed guards and is hijacked, this can lead to a dangerous standoff between armed pirates and naval forces (as was noted earlier with the unsuccessful negotiations between the pirates on-board the private vessel *Quest* and the U.S. Navy), or months of captivity if not rescued or their ransom is not paid. Additionally, of the 1,090 seafarers taken hostage in 2010, over 400 were used as human shields by pirates.⁵⁷ Therefore, over 40% were used as human shields. Over half of the seafarers taken hostage in 2010 faced increased levels of violence, abuse, use as a human shield, or forced involvement in the operation of pirate mother ships.⁵⁸ Furthermore, pirates are not always releasing every hostage after being paid the ransom, such as the vessel that was released on 15 April 2011. Only eight of the fifteen crewmembers of the "Asphalt Venture" were released.⁵⁹ This will lead to severe problems in future hostage negotiations, as some pirates may not honor all agreements.

As vital as crew alertness is, and even following the BMP guidelines and all SPMs, there are many who are not highly trained in the areas of ship and self-defense. This is where properly vetted and licensed PCASP must come into play. Armed security teams must exhaust all non-lethal measures necessary during engagements with pirates before employing any sort of lethal means. Moreover, not all pirates are equipped with automatic weapons and RPGs. There have been many instances where they have boarded a ship and taken hostages with only knives and metal bars as weapons, such as the Tug "Ever Master," which in February of 2011 saw its crew taken hostage for a short time while pirates escaped with valuables using only knives.⁶⁰ It is apparent that violence used by pirates will escalate whether there are armed guards or not, and having licensed and responsible PCASP as an additional layer of defense and supplemental to the BMP guidelines and other passive SPMs is the best plan for the private commercial industry.

Recommendations:

Based on the previous analysis of security personnel and insurance rates, the U.S. State Department should:

- » **Continue to support the use of on-board PCASP.** On-board PCASP have an unbroken record of success at deterring pirate attacks, and should continue to be utilized for commercial vessels transiting the HRA.
- » **Work with the U.K., the IMO, the Aerospace Defense and Security's Working Group SCEG to collaborate on a more robust licensing system based on the ICoC.** This should be accomplished with assistance from transparent companies and organizations such as the SCEG, Gray Page, Neptune Maritime Security and MAST that either already employ high standards or have accreditation systems in the process of implementation. This standardized national licensing system can be created with one or more partners and can be based off of the U.K. system that is currently in development.
- » **Require that all PMSCs in the short-term become signatories to the ICoC and its Oversight Mechanism as well as to a future U.S.-specific licensing system in the long-term.** Additionally, require U.S. flag-carrying vessels to hire only PCASP from PMSCs who have been licensed and vetted by specific standards set up by the U.S. and other countries that the U.S. government deems acceptable. This will ensure that the best companies will be able to provide the best protection.

The Impact of Technology on Counter-Piracy off the Horn of Africa

By Zachary Gerber

Piracy off the coast of Somalia presents a great challenge to the agencies and industries commissioned to deter, track, map and capture pirates. Pirate operations take place over vast ocean areas; to effectively counter them, the latest technologies in unmanned surveillance and deterrence need to be utilized in a way that compliments conventional naval operations and law enforcement efforts. Chatham House recently reported that satellite imagery has been used to map piracy-related development on land, demonstrating the potential of space-based equipment in supporting counter-piracy efforts and intelligence collection. There are also many new technologies that could be used to enhance private vessels' ability to repel pirate attacks.

While there is no technological panacea to piracy, the proper implementation of technology may accomplish the short-term goal of reducing the number of successful pirate attacks. If used to complement naval operations and critical land-based efforts, appropriate technologies could help reduce the success rates of piracy and increase the disincentives for individuals engaging in it. Technological improvements can also help make vessels more resistant to pirate attack.

The challenge for policy makers continues to be what technologies to use to combat piracy, while taking into consideration the potential costs, risks and impacts. Some technologies have broader applications than others in the fight against piracy, a fact that should influence development and implementation. Incorporating technology into counter-piracy is vital to expanding the shipping industry's deterrence capabilities. Technology can also aid evidence collection, shifting some of the burden away from the naval task forces that currently play a disproportionate and unsustainable role in securing the maritime domain against piracy.¹

There is no technological panacea to piracy, but the proper implementation of technology may accomplish the short-term goal of reducing the number of successful pirate attacks.

Deterring Pirate Attacks with Technology: Tactics vs. Strategy

Oceans Beyond Piracy, in their independent assessment, concludes that most current efforts to combat piracy fall under “mitigation of symptoms,” and that most current planning has “containment” as its goal. A shift towards deterrence and suppression is recommended in order to make a more effective use of limited resources.² Most technology has the potential to deter piracy both tactically and strategically.³ A tactical deterrent can be used to counter specific attacks, while a strategic one will prevent attacks at all points.⁴ In order to best deter a pirate attack at a tactical level, a layered proportional defense is highly recommended. This allows a vessel under attack to increase the intensity of response from an initial warning to later stages of defense incrementally and proportionally to the determination of the attacker.⁵ Previous deterrent efforts have been largely tactical, allowing pirates to shift their efforts to those vessels that have not implemented sufficient deterrent methods.⁶ All ships in the High Risk Area should be equipped with adequate deterrent technologies in order to counter this trend.

Piracy off the Horn of Africa should also be evaluated at the strategic level. Although pirates may not be consciously developing and evaluating strategy, viewing their operations as strategic allows technologies that act strategically to be assessed and implemented to counter attacks. At the strategic level, the assessment of a technology considers the system’s impact on the pirates’ ability to deploy enough capable ships to carry out an attack.⁷ The use of technology, given the considerable cost of most systems, should address the need to create an impact beyond tactical deterrence.

Remote Sensing

Technologies that enable users to collect information remotely and disseminate it to increase maritime domain awareness (MDA) have the advantage of keeping surveillance personnel out of danger. Land-based automatic identification system services (AIS) are currently useful in locating and tracking ships up to 40 nautical miles from shore.⁸ Space-based AIS allow the detection of vessels earlier and much farther from the shore than land-based AIS stations.⁹ Currently satellite imagery is the basis of systems that the International Maritime Bureau (IMB) recommends, such as ShipLoc which photographs a vessel’s location 6-24 times a day and can discreetly record an attack.¹⁰ Remote sensing technologies offer low risk methods to tracking piracy but also come with a high cost. The capabilities of coalition partners as well as to the shipping industry, in some cases, are also a constraint on their application. However, unmanned aerial systems and space-based technologies can be fused with one another, and existing tracking data like that provided by an automatic identification system (AIS) to provide a common operating picture (COP) that increases the value of each system. This is most apparent with Unmanned Aerial Systems that are not commercially available, decreasing their impact somewhat, yet when combined with commercial sources of space-based imagery allow for a largely enhanced picture of the maritime domain for all coalition

partners.

Unmanned Aerial Systems

Unmanned aerial systems (UAS) allow detection of vessels in real time, providing decision makers with direct observation of a ship's activities and surroundings.¹¹ Small tactical unmanned aircraft systems (STUAS) such as the Boeing ScanEagle have shown their utility in counter-piracy operations, a notable example being the rescue of the captain of the Maersk Alabama in 2009.¹² Northrop Grumman's MQ-8B Fire Scout can deliver broad area surveillance in real time to decision makers. The MQ-8B Fire Scout specifically can provide radar, electro-optical and infrared images as well as target-specific full motion video to its operators.¹³ The MQ-8B has the advantage of previously being fielded by the U.S. Navy. Also, unmanned aerial systems such as the Northrop Grumman MQ-8B Fire Scout could provide the necessary evidence for the detention and perhaps the prosecution of suspected pirates.

A possible alternative to UAS solely for the purpose of detection and classification would be the use of armed UAS to deliver lethal payloads against pirates. This option is undesirable because it exposes future hostages to increased danger of violence and abuse from pirates who themselves fear attack.

Another alternative is the use of Unmanned Surface Vessels, such as the Israeli Protector and the United States' Spartan Scout.¹⁴ This option is limited by several factors, including the craft's limited range as well as the difficulty in applying these platforms outside of military operations.

Recently, in 2012, there have been occurrences of piracy near or within ports.¹⁵ If this tactic is more widely adopted by pirates, the use of Aerostats (balloons for short and medium range surveillance) may have a high impact.¹⁶ The advantages that come with their use are ease of operation, relatively low cost compared to other UAS, and the near continuous coverage they can provide. The disadvantages of such systems are their decreased performance in bad weather as well as their operation at low altitudes, which makes them easier to destroy.¹⁷

Evidence Collection

INTERPOL has identified evidence collection as a challenge in cases of maritime piracy.¹⁸ Currently evidence collection occurs through the use of Closed Circuit Televisions (CCTV) and witness testimony. Best Management Practices advocate for the use of CCTV to limit the exposure of the crew to danger in evidence collection efforts.¹⁹ A persistent issue in the capture and detention of suspected pirates (intercepted on the open ocean before any attempt at piracy has occurred) is a lack of material evidence with which to hold them. Unmanned surveillance could play a role in this effort by providing video and/or photographic evidence for detention upon seizure of a suspected pirate vessel.

Space-Based Technologies

One area where there is potential for a broad impact on anti-piracy efforts is innovative uses of space-based technologies. As previously mentioned, at the highest strategic level technology's impact on counter-piracy is enhanced through its integration with land-based solutions. An example of effective integration of the two would be the use of satellite imagery to investigate piracy related activities on land. A recent report by Chatham House has demonstrated the utility of satellite imagery in discerning valuable intelligence of and insight into the impact of piracy on Somali cities. By using local market data and satellite images of Garowe and Bosaso the report tracks the development and impact of piracy in Puntland. According to the report the data allows us to “ascertain three factors: the proportion of ransom payments that actually benefits the local economy; the trickle down effect of piracy revenue into local communities and consequently the size of the pro-pirate interest group; and the location of the main beneficiaries of piracy.”²⁰ A key revelation provided by the images is that piracy is not significantly benefitting the coastal communities from which most pirate operations are launched.²¹ The potential positive effect of this type of analysis on counter piracy operations of all kinds is great due to the strategic implications it raises. It shows that by using satellite images in innovative ways we can see that messaging the populations of the “pirate capitals” of Hobyo and Eyl are worth exploring. It also reveals the potential negative impacts of taking military action against pirates on land due to the wide de-stabilizing effect it would have on a region without many other sources of development.²²

Space-based technologies are a key component in fusion between different sensor and information types that if brought together, could have a significant positive impact on MDA. Commercial satellite imagery alone has been used to track captured vessels, an example of which was the detection of the MV Sirius Star off the Somali coast in 2009 soon after it was reported missing.²³ Commercial synthetic aperture radar (SAR) satellites are already in use by the sixth fleet of the U.S. Navy to “...generate, actionable, near real-time, situational awareness products...”²⁴ The impact of unclassified commercial space-based imagery is ever-increasing as fusion with other intelligence and predictive analysis tools is further developed. Given the limitations of land-based AIS stations, space-based AIS is critical in the detection of ships in open ocean areas.²⁶ Also, space-based SAR has the added advantage of all-weather capability.²⁵ Recent operational demonstrations have shown commercial satellites as capable of providing actionable intelligence to decision makers at an unclassified level.²⁷ This is why fusion between commercial satellite imagery and unclassified information from the Automatic Identification System has been identified as an empowerment tool in maritime security operations.²⁸ In order to find smaller vessels such as pirate skiffs, however, airborne surveillance, such as provided by UAS, is still needed due to limitations with satellite SAR imagery.²⁹

Assessment of On-Board Deterrent Technologies

There are three parameters that sum up a technology’s value in countering piracy, a technology’s cost, risk, and impact. Here cost is defined as the cost of installation and operation (when available) as well as the ease of broad implementation given current practices. Risk is defined as the probability of violent reprisals resulting from the use of a system or combination of systems. Impact is a broader term and can be associated as follows:

Non-Lethal Deterrent Technology has a demonstrated or potential deterrent effect as well as potential integration with other technologies to create a layered proportional defense.

UAS and Space-based technology are narrowly defined in terms of tracking and integration with other sensing technologies, and broadly defined when providing useful data in land-based solutions such as messaging campaigns or collaboration between governments and industry.

Assessment Matrix

This matrix will provide an at-a-glance appraisal of whether or not a given system should be considered:

Strongly Recommended: Systems with a low cost, low risk, yet high impact should be considered as the most appropriate to the task they are given and have the most potential to deter pirate attacks.

Provisionally Recommended: Constraints exist that limit this system’s implementation or certain factors and considerations are present that call for provisional approval.

Not Recommended: A combination of factors makes this system’s value in terms of countering piracy questionable, thus making it a low priority for implementation and approval.



On-Board Deterrent Technologies

Deterrent technology for use by merchant ships is a fast growing industry as ransom amounts climb ever higher (the highest in 2010 was \$9.5 million USD) and insurance companies are looking to invest in prevention.³⁰ Deterrent technologies are necessary because many of the ships at risk lack the speed to outrun pirate skiffs and operate in waters where the presence of a naval force cannot guarantee a vessel’s safe passage.³¹ The cost of current deterrent technologies varies widely from sandbags and sonic deterrent equipment, \$1,200 USD and \$1,250 USD respectively, to electrified fences that cost at least \$40,000 USD (many technologies described below cost more) per vessel.³²

Basic methods of deterrence that are already in use are things such as pepper spray, flare guns and blinding lights (see “incoherent dazzlers” below).³³ Fire hoses that deliver water at a pressure of 80 lbs per square inch have a proven record in deterring and repelling pirates.³⁴ The IMB recommends Secure Ship, a commercially available system that combines a powerful electrified fence, floodlights and sirens to deter pirates.³⁵ These methods are cheap and carry less risk of violent reprisal than the use of firearms, which makes them desirable. It has been noted however that the use of any and all non-lethal devices still carries a significant risk of violent reprisal by attacking pirates. Therefore, the focus must be on ways to use deterrent technologies in a way to repel as many attacks as possible. To this end, technologies with a more sophisticated design should be integrated with the current Best Management Practices in use in order to achieve this result. The use of dazzlers, long-range acoustic devices (LRAD), water cannons and propeller arresters will be explored to this effect.

Though the cost of these technologies is significantly higher, they deliver a significant advantage at the tactical level and may have a considerable impact at the strategic level if broadly implemented. Each of these technologies is basically an enhanced form of the technologies already in use, which will aid in their swift integration and implementation.³⁶ Furthermore, proportional engagement from a defending vessel decreases the risk of violent reprisal.³⁷ Integrated use of these technologies will increase the likelihood of achieving voluntary compliance from an aggressor while decreasing the chances of an aggravated approach.³⁸ For the time being, the use of the newest directed energy systems is limited by a number of factors (discussed below) and these will need to be addressed before broad implementation. Recent trends show the number of successful pirate attacks is decreasing as ships become better protected with deterrence technologies and armed guards.³⁹ This suggests that Best Management Practices integrated within a non-lethal proportional defense strategy could have a medium impact on the number of successful acts of piracy.



Dazzlers:

Dazzlers are deterrence technologies that use light to degrade an attacker’s vision temporarily. Two main types of dazzlers exist: coherent and incoherent.⁴⁰ Coherent dazzlers emit a laser while an incoherent dazzler is a conventional spotlight.⁴¹

Until recently, coherent dazzlers have had low deterrent value because they are subject to dwell time limitations and aiming uncertainty when cross speeds are high.⁴² These difficulties could arise in situations similar to the attempted piracy of an Iranian vessel on 05 February 2012 when 35 attack skiffs swarmed the targeted vessel.⁴³ The ability of the user to dwell on a target long enough to have the desired effect as well as to aim accurately goes down when swarming tactics are used. However, improvements in laser technology promise to make coherent dazzlers more operationally effective in the near future.⁴⁴ The newest generation of lasers, costing around \$100,000 USD, utilize “spatial scanning” to greatly increase the volume of the laser beam.⁴⁵ An integrated range-finder that can ensure that an engagement remains non-injurious to both user and target is another recent improvement.⁴⁶ Currently,

the implementation of these large systems aboard vessels remains a challenge that limits their immediate application to counter-piracy efforts.

V-MADS:

Another directed energy system with potential deterrent application is the vehicle mounted active denial system (V-MADS). Also known as the “pain ray” this system delivers a narrow beam at a target that induces an acute burning sensation.⁴⁷ The psychological effects on a target provided by this system are high, and could possibly lead to successful deterrence. In an assessment funded by the Joint Non-Lethal Weapons Directorate at the Department of Defense (JNLWD) it was concluded, “...that ADS is a non-lethal weapon that has a high probability of effectiveness and a low probability of injury.”⁴⁸ However, given its more aggressive nature and the determination of pirates to board and capture, a real concern with this type of technology is the potential of instigating an “aggravated approach” by pirates not deterred by its use.⁴⁹



LRAD:

Currently in use by the U.S. Navy, long-range acoustic devices play the same role as dazzlers in warning a target, determining a target’s hostile intent and potentially achieving voluntary compliance.⁵⁰ The cost of acoustic devices, though variable based on vessel size and particular system, is around \$20,000 USD.⁵¹ LRAD can be applied in tandem with dazzlers in order to determine whether a target has hostile intent and to achieve voluntary compliance.⁵² Currently, given the constraints on the use of directed energy systems discussed above it is recommended that LRAD remains the technology that is deployed in the initial phases of an engagement. The use of LRAD also runs into problems of dwell time and aiming errors.⁵³ LRADs record of limited success in deterring piracy suggests that it is still an appropriate option for implementation, however not the most effective.⁵⁴



Water Cannons:

Water cannons could be used to incapacitate a target and represent one of the better options for the later stages of an engagement.⁵⁵ However, because water cannons can only be used effectively when pirates are boarding or very close to boarding a ship, this technology must be used as one of the last lines of defense after other deterrent technologies to do not succeed.



Propeller Arresters:

Another option for incapacitating a pirate vessel is the use of propeller arresters.⁵⁶ The Merchant Maritime Warfare Centre (MMWC) lists these as one of the best options to successfully impede a pirate attack.⁵⁷ However, if a pirate’s boat is incapaci-



tated by a propeller arrester, then the merchant vessel becomes the only hope of survival for the pirates, who will use any means necessary to capture the ship. Therefore, the use of propeller arresters may not be ideal for every situation.

Recommendations

Based on the previous analysis of available technologies the U.S. State Department should:

- » **Promote ongoing efforts to consolidate multiple types of sensor data to map and track pirate activity at sea, in ports and in urban areas.** Through Working Group 3, the U.S. State Department should encourage innovative uses of unclassified data, to provide analysis of pirate activities to naval forces as well as to the private shipping industry. This information would improve the precision of counter-piracy operations and better protect merchant vessels.
- » **Encourage the further development and implementation of on-board non-lethal deterrent technologies.** These technologies can provide private vessels with a layered, proportional defense against piracy. Technologies that increase private vessels' ability in the event of a pirate attack, without having to resort to lethal means, decreases the likelihood of violent reprisal and decreases the burden on naval forces to secure the maritime domain against piracy.
- » **Enlist the support of UAS in collecting photographic evidence.** The U.S. State Department should involve UAS in counter-piracy efforts, given the potential that their photographic evidence could have in piracy prosecutions. This photographic information might also enable the current naval forces in the Horn of Africa to detain suspected pirate vessels before an attack occurs.

The Problem of Piracy: The Evolving Military Dynamic

By David La Boon

Despite the criminal nature of piracy, naval assets make a crucial contribution in counter-piracy operations. Military force should be utilized as a tool for mitigating the manifestations of piracy while simultaneous initiatives such as State building, diplomacy, and law enforcement address its onshore source. The problem of piracy is not a maritime problem, but a terrestrial problem with a maritime manifestation.¹ Thus, military operations should be adapted accordingly: by reorienting military assets toward a Network Centric Warfare (NCW)² strategy with an inland component. Currently, three partially redundant international flotillas, (EUNAVFOR, NATO, and CTF-151) utilizing a defensive posture with no terrestrial component, are conducting anti-piracy operations off the Horn of Africa.

NCW, however, attempts to convert an information advantage into a combat advantage through the use of information technology. Strong, unified communication networks connecting all forces will improve information sharing, thus improving the quality of the information gathered. This ultimately leads to higher levels of situational awareness, and the effectiveness of both command and combat operations. NCW is typified by the notion of compressed Command and Control (C2) feedback loop speedⁱ and the co-evolution of maritime asset organization. The strategy will mark a paradigm shift from the attrition-style warfare seen today, with three lumbering, partially coordinated Combined Task Forces (CTF), into a singular, much more agile and effective Combined Joint Task Force (CJTF). This old combat style yields decreasing returns over time by amassing forces rather than amassing effects of force. In theory, NCW's operational structure consists of three components: sensor grids (Intelligence Surveillance Reconnaissance (ISR) inputs) and engagement grids (operational outputs) that are both networked and supported by compressed C2 processes, (See Section III, Chapters 1 and 5). In practice this will translate to an expanded and deeper intelligence gathering effort that will support a streamlined and consolidated CJTF. Consolidation of the C2 structure compresses the C2 feedback loop speed, which has profound impacts on the outcome of operations by "locking-out" pirate tactics and "locking-in" successful counter-piracy tactics.³ In practical terms, this means that the CJTF will be able to think and operate many steps ahead of the pirates, and respond accordingly to their actions. This allows pirate advances to be countered and every military failure to be remedied with little penalty. To

The problem of piracy is not a maritime problem, but a terrestrial problem with a maritime manifestation. Thus, military operations should be adapted accordingly.

i Improvement in networks that collect and analyze information allow the speed of processing information to increase, augmenting operational advantages.

this end, a multi-faceted approach is recommended for both short-term gains and as a long-term solution. The consolidation and streamlining of CTF assets and command structure must be coupled with the ISR expansion at sea and its establishment on land.

Even without a major change in command structure, the U.S. can focus its efforts to further integrate and coordinate maritime operations through the Shared Awareness and Deconfliction (SHADE) organizational structure. Maritime piracy off the coast of Somalia and further into the Indian Ocean has increased in both breadth and sophistication, prompting the international community to increase and expand its engagement with the Horn of Africa. According to the U.S. DOT Maritime Administration, 124 maritime attacks occurred in 2011, with 28 successful hijackings in the Gulf of Aden, the Indian Ocean extending as far as the Maldives, as far south as the Seychelles, and all along the coast of Somalia, an area known as the High Risk Area (HRA).⁴ While individual States could increase their support of individual CTFs, thus increasing the patrollable maritime surface area, this method could complicate anti-piracy operations in other ways. First, this will further complicate the three Parallel Command Structures (PCS) present (See Section III, Chapter 5). Second, internal domestic politics and a lack of vested interest could potentially present the U.S. with unwanted *quid pro quo* relationships. For instance, the U.S. may be pushed into unwanted concessions to a potential donor State in order to garner its support. CTFs or the U.S. could enlist Somalia's neighbors as proxy coast guards to patrol Somalia's waters. This will, however, add another layer of coordination that must be managed, as well as issues arising from the lack of capacity and the commanding of inferior military assets with lesser financial backing.

Financially, all of these alternatives either maintain the current expenditures or increase them through third party payments. In light of these alternatives, CTF consolidation and streamlining to support NCW presents the most feasible option.

Intelligence, Surveillance and Reconnaissance

Without their operational infrastructure and criminal support networks on land, pirates cannot be successful at sea. It is therefore the most logical course of action to identify, disrupt and destroy the operational infrastructure and criminal support networks ashore prior to their development. Intelligence operations are best equipped and most effective at accomplishing this goal.⁵ Ultimately, this will require the creation of a terrestrial component that works in conjunction with a maritime component and shift away from the current maritime-exclusive intelligence gathering methods.⁶

Current surveillance abilities are limited to Line Of Sight (LOS) observations from patrolling vessels, aircraft, satellite imagery and Unmanned Aerial Vehicles (UAV), solely in the maritime environment. One example of current technology is the Boeing ScanEagle now aboard the USS Mahan.⁷ The ScanEagle has a range of 810 nautical miles (nmi), cruising speeds between 50 mph and 78 mph and an altitude ceiling of 16,000 ft.⁸ The unique characteristic of the ScanEagle is its catapult launch and runway-independent hook retrieval technology

allowing it to be utilized by Visit Board Search and Seizure boats (VBSS).⁹ Another comparable example of UAV technology is the Shadow (RQ-7B). LOS observations depend heavily on the time of day and weather conditions, while seaborne UAVs have limited ranges and payload capacities. The Shadow RQ-7B utilizes the Plug-in Optronic Payloadⁱⁱ, POP-200¹⁰ or POP-300,¹¹ electro-optical system with a payload capacity of no greater than 55.8 lbs.¹² This enables the RQ-7B to scan 115 mi² at an altitude of up to 13,100 ft in high definition Closed Circuit Television (CCTV), Forward Looking Infrared (FLIR), and stills. With the HRA designated as covering the Gulf of Aden, Arabian Sea and part of the Indian Ocean, aerial surveillance of 115 mi² amounts to a very small portion of the total at-risk area.¹³ Somali pirates utilize fast and agile skiffs to hijack fishing vessels, like the *dhow*, to increase their effective reach up to 1,000 nmi from shore. These ‘mother ships’ later re-launch the skiffs in order to capture bigger, more valuable vessels. The Somali mother ship tactics provide cover for pirates blending into commercial traffic, adding more complication to the LOS ISR method. Further ISR is gathered from merchant vessel distress calls, IMB reports and ships’ radar. Unfortunately, Somali pirate skiffs have a small two-dimensional Radar Cross Section (RCS) and may be lost in radar noise during rough seas states.¹⁴ Responding to distress calls is a reactive measure rather than proactive deterrence. In short, the CTFs have an information gap that is then passed on to merchant vessels, increasing the risks with every transit through pirate-infested waters. Since piracy is a land-based problem with a maritime manifestation, it is not enough to provide incomplete and reactive information to merchant traffic on the water.

The final consolidated and streamlined CJTF should achieve information superiority at sea and on land. A key part of this will include an expansion of the CTF Area of Responsibility (AOR) inland to Somali pirate havens. In order to have a significantly better understanding and awareness of the expanded AOR, successful counter-piracy operations will require: intelligence operations that cast a much wider net; fast and powerful Signals Intelligence (SIGINT) and Human Intelligence (HUMINT) networks that work in concert; and rapid dissemination of actionable intelligence to military assets with unified communications procedures and technology. The process of dissemination must include warnings and guidance issued to relevant merchant vessels. Creating and coordinating a land-based ISR element working in conjunction with maritime assets can better serve this end. This fused intelligence umbrella throughout the expanded AOR is referred to by EUNAVFOR as the Recognized Maritime Picture.¹⁵

Inland ISR should come in several forms. First, the development of HUMINT networks is crucial. Initially, this will develop through the collection of Open-Source Intelligence (OSINT), mapping the human terrain with the help of NGOs and aid agencies on the ground and other local assets. This should eventually be developed into networks of Confidential Informants (CI) within pirate hierarchies and social structures and collection from the Joint Interrogations and Debriefings Cell from captured pirates (See Section III, Chapter 5). Sec-

ii POP is a compact surveillance and targeting system that is usable day and night, and is installed on many UAVs due to its ability to be replaced easily if malfunction occurs.

ond, the expansion of Image Intelligence (IMINT) facilitated by the expansion of continuous UAV gathered ISR is needed. Third, Cellular Phone Exploitation (CELLEX) and other existing NSA controlled SIGINT surveillance capabilities should be used to provide real-time actionable intelligence to military assets. And finally, Finance Intelligence (FININT) used in the tracking of al-Barakat and Dahabshiil remittance networks globally and money transfers within Somalia will aid in prosecuting criminal elements militarily and judicially (See Section II, Chapter 3).

The primary function of the Human Terrain System (HTS) is to gather information related to: social structures, key regional personalities at all levels of the social hierarchy, links and divisions between clans, families and political affiliations, economic issues, communications and agricultural productivity. The system utilizes Human Terrain Teams (HTT), which are groups of 5-9 people and are comprised of personnel from disciplines within the social sciences of anthropology, sociology, political science, regional studies and linguistics. HTTs can be integrated into existing command structures, as discussed in Section III, Chapter 5, or operate within the Department of State as they conduct unclassified OSINT and field research, as well as provide operationally relevant assistance for planning, preparation, execution, and assessment of current and future operations.¹⁶ HTTs collect and archive data, which the CJTF, the Intelligence Community (IC) and the U.S. State Department can access and analyze¹⁷ at a future date to support further ISR, military operations and diplomatic efforts relevant to Somalia.¹⁸ The current use of HTTs in Afghanistan to increase the level of cultural knowledge, familiarity of local power brokers and social hierarchies for unit commanders can be co-opted for use in the Horn of Africa.

Concurrently, SIGINT through listening posts and CELLEX will serve as the lynch pin in the evolving ISR effort inland. Somalia's extensive cell phone networks facilitate the pirates' communications. These phones are frequently disposed of and replaced in an attempt to elude ISR efforts.¹⁹ Simply tracking the phone number provided to the merchant vessel's owner during the negotiating process could circumvent the pirates' disposable phone tactic. Further tracking of the line to other contacts allows the network of pirates to be uncovered as well as the location of the phone, and the identity of its owner. These calls could also provide the IC with evidence necessary for future judicial prosecutions and actionable intelligence for military operations. On-board communications often use satellite phones, which can be analyzed without difficulty by existing National Security Agency (NSA) SIGINT systems.²⁰ Complementing SIGINT, HUMINT efforts should be directed toward the development of human assets and CIs embedded within the pirate social hierarchies and relevant clan structures. This will take time and effort, but could ultimately pay invaluable dividends toward counter-piracy and anti-terror operations by providing actionable intelligence, and nation building initiatives by identifying willing partners.

An additional element to the counter-piracy effort could be the development of a Psychological Operations (PYSOPs) program directed at placing increased pressure on criminal elements through the clan structure and links to emigrant populations of the Somali Di-

aspora. PYSOPs are performed at the tactical level in order to produce a strategic effect.²¹ Practically, this amounts to the development of a focused, culturally and environmentally attuned message. This may be, but is not limited to, dissemination of information through social media, the press, word of mouth and advertising.²² For more information about information campaigns to the diaspora, refer to Section I, Chapter 1 and for information about information campaigns within Somalia, refer to Section IV, Chapter 3.

In conjunction with expanding ISR inland, the Defense Department in coordination with the IC, should increase UAV deployments in order to expand UAV-based ISR regionally. Expanded SIGINT and HUMINT networks should support this increase in deployment locales. Potential UAV deployment locations include Camp Simba in Kenya, Camp Lemonier in Djibouti and various areas within The Seychelles. The State and Defense Departments should also simultaneously enter into discussions with Yemen in order to establish a military facility on the Yemeni island of Socotra, which could be used to coordinate SIGINT, HUMINT and logistical support for both expanded UAV intelligence collection and current naval operations. The island of Socotra is part of a four island archipelago, also called Socotra, located just southeast of the Internationally Recommended Transit Corridor (IRTC) (12°30'36"N 53°55'12"E) off the coast of Puntland.²³ Socotra provides both tactical and strategic benefits to potential and ongoing maritime operations in the region, as well as a launch point for terrestrial operations in and around Puntland. Geographically, the island is near the epicenter of maritime criminality and the mouth of the IRTC. Since 1999, Socotra Island Airport (OYSQ) has been in operation, located about 8 mi west of the main city of Hadibu. A deep-water port has been designed and analyzed²⁴ as necessary for UAV operations as well as naval moorage and resupply. The Kuwait Fund for Arab Economic Development has already allocated \$41 million USD (2009) for the port project near Dhi Hampt, Socotra.²⁵

Using Predator drone (R/MQ-1A) specifications as a metric, UAV ISR would extend 675 nmi in all directions from the above four locations. This would cover virtually all of the IRTC, Gulf of Aden, Yemen, Somalia, Ethiopia, Kenya, Djibouti, the Seychelles, and extend hundreds of nautical miles into the Indian Ocean and half of Oman. Patrolling 100% of this area 24 hours a day is impractical and overly expensive.²⁶ However, increased focus on merchant vessel sea-lanes, pirate havens and actionable intelligence from inland could compensate for this drawback while still meeting CJTF requirements.

When comparing the M/RQ-1A to current manned aircraft used in electronic warfare and surveillance missions, such as: the U.S. Navy's (USN) F/A-18, the U.S. Air Force's (USAF) F-16, and their replacement, the F-35, the drone possesses advantages in: per unit cost, cost per flight hour, required support crew, dwell time and risk to personnel. While manned aircraft hold advantages in payload, top speed, range and altitude. The mission capabilities provided by three M/RQ-1As, its four pilots on the ground, and 35 mechanics on a 24-hour reconnaissance mission would require eight traditional manned-aircraft, 15 pilots, and 96 mechanics.²⁷ The M/RQ-1A has a payload capacity of 450 lbs, top speed of 135 mph, range of 675 nmi, altitude ceiling of 25,000 ft, unit cost of \$20 million USD (2009) and a per flight

hour operating cost of \$5,000 USD (2005).^{28 29} The F/A-18 and the F-16 have payload capacities of 13,700 lbs and 6,080 lbs, mach 1.8 and mach 2 (1,370.2 mph and 1,522.4 mph respectively), a range of 1,275 nmi and 1,740 nmi, altitude ceilings of 50,000 ft, a unit cost of \$57 million USD and \$18.8 million USD (2005) and a cost per flight hour of \$5,500 USD (2006) and \$5,000 USD (2006) respectively.^{30 31 32} These costs balloon when compared to the F-35 Lightning II manned aircraft, which will be phased into service during the next decade. Currently, the Defense Department is planning to purchase 2,444 F-35s at approximately \$323 billion USD (2010) per unit to replace the fleet of F/A-18s and F-16s.^{33 34} The cost benefit and the preclusion of risk for CTF personnel weigh heavily in favor of UAV systems. A balanced choice could be the deployment of the USN's unmanned RQ-4 Global Hawk or the USAF's unmanned RQ-170 Sentinels. The range, speed, and altitude ceiling disparities between them and their manned counterparts are closed drastically at the expense of a small increase in per unit and per flight hour costs. The advantages of a UAV fleet over a manned airwing would place less necessity on American capital ships tasked with anti-piracy, and thus free them up for other objectives in the region. This contributes to de-conflicting anti-piracy tasked assets and facilitates a better more effective implementation of NCW.

Intelligence gaps inland require a reactionary and defensive military posture at sea.

With ISR efforts at current levels, intelligence gaps inland require a reactionary and defensive military posture at sea. This posture allows for undeterred opportunity to hijack merchant vessels. ISR may be kept at current levels with an expanded AOR. This may lead to a dilution of IC assets and a decrease in ISR effectiveness. ISR efforts may be limited to aerial reconnaissance from manned aircraft or Type II UAVs currently on board the USS Mahan and other similar warships. This would have a decreasing cost benefit ratio and would also provide a gap in intelligence in the crucial areas of SIGINT and HUMINT for the purposes of disrupting piracy's social structures and evidence collection. Without UAV base expansion it will be difficult for real-time IMINT and evidence collection. This would place the aerial reconnaissance square on the shoulders of the fifth fleet carrier airwing or maritime borne Type II UAVs. Lastly, FININT could also be maintained at current levels, which could prevent expanded evidence collection or potential ransom recovery.

Reorganization and Streamlining

The lack of a coherent Somali government also means a lack of Somali coastal security forces. Filling this maritime security void are three transnational combined naval task forces: CTF-151, EUNAVFOR Operation Atalanta, NATO's Operation Ocean Shield and several third-party States with independent missions.³⁵ The three task forces and other independent State actors have independent chains-of-command, provide redundancies, and therefore limit efficient and effective maritime security operations.

Several strategies have been employed by the CTFs to date. Each CTF utilizes a defensive posture and relies on 'presence' and 'threat of force' as deterrence.³⁶ The presence of warships has effectively deterred pirates, who dispose of their weapons and boarding equipment to

avoid arrest. Although, this strategy is not a perfect method, as illustrated by several successful hijackings within range of warships in the IRTC,³⁷ it has produced positive results. Merchant vessel traffic is also urged to use the IRTC,³⁸ spanning the effective length of the Gulf of Aden,³⁹ in order to facilitate warship patrols to provide more effective protection.^{40 41} This ideally serves as a secure route for merchants traversing the Gulf of Aden but also provides the unintended risk of concentrating merchant traffic, potentially easing pirate operations.

Each CTF consists of various combinations of destroyers, frigates, cruisers, corvettes, logistical support vessels, aviation and aerial reconnaissance vehicles, smaller agile seaborne crafts and, in certain circumstances, a capital ship.^{42 43 44} These assets are all expensive to construct and maintain. For example, the Arleigh Burke class DDG-51s cost \$1.5 billion USD, the Ticonderoga class CG-47s cost roughly \$1 billion USD and a Nimitz class CVN-68 aircraft carrier comes in at \$4.5 billion USD per unit to construct.^{45 46} These warships have limitations on mobility, the scope of achievable national and international mission objectives, and limitations on the amount of nautical surface area able to be patrolled. These problems on an individual level worsen three-fold when scaled up to include all the task forces.

The U.S. State Department should continue every effort to coordinate redundancies between the CTFs, with the final goal of consolidating them into a single combined joint task force (CJTF). This will free un-utilized and under-utilized assets for use toward other objectives. The final consolidated CJTF should also be streamlined to be more agile, smaller and cost effective, (See Section III, Chapter 5). The CJTF, acting with greater reach, increased speed and a high level of precision, will achieve the “massing of effects” characteristic of NCW versus the “massing of forces” characterized by attrition warfare.⁴⁷ This would greatly reduce pirates’ tactical options and their disorientation from the correspondingly devastating CJTF-inflicted consequences.

The consolidation process should not complicate streamlining efforts, which should be undertaken simultaneously. The use of Littoral Combat Ships (LCS), VBSS vessels, long-range UAVs and Sikorsky Seahawk helicopters (SH/MH-60) in squadrons supporting DDG-51s will better meet this streamlined function. The USN’s development of the LCS platform is intended to replace the aging Oliver Perry class FFG-7 frigates as well as several minesweeping, amphibious and anti-air surface vessels. To this end, there are current efforts underway to field the LCS. The Freedom class LCS costs \$637 million USD and the Independence class costs \$703 million USD per unit (2009).⁴⁸ These versatile, agile and fast warships are much more affordable than currently fielded warships and they are customizable to meet different mission objectives. Three interchangeable mission modules allow for tasking on anti-surface warfare, anti-mine warfare and anti-submarine warfare missions. Other modules under development include: troop transport, humanitarian and special operations modules.⁴⁹ A special operations module would be incredibly useful in the support of future counter-piracy operations similar to those previously conducted.^{50 51} Each mission module offers UAV surveillance capabilities, SH/MH-60 helicopters and rapidly deployable VBSS boats, suitable for anti-piracy operations. The ability to both rapidly deploy and adapt to changing condi-

tions, supported with more complete intelligence, will increase military effectiveness, piracy deterrence and the safety of maritime traffic.

The continued deployment of the current fleet makeup will maintain current spending levels in addition to redundancies in counter-piracy operations. This also neglects the inevitability of the Oliver Perry class frigates' decommissioning, which will leave fleet vacancies that are scheduled to be filled by an LCS vessel. Other potential complications include the potential prioritization of mission objectives if other regional issues arise such as increased sectarian violence in Iraq, destabilization of Afghanistan and escalating tensions with Iran. Predictably, one mission objective would be central and the other peripheral. This could give criminal elements the ability to expand the piracy enterprise. Increases in regional piracy could subsequently complicate logistical support for other regional military engagements.

Recommendations

Based on the previous analysis of the current military operations, the U.S. State Department should:

- » **Encourage a multilateral adoption of Network Centric Warfare operations through a singular Combined Joint Task Force and integrated sensor networks.** The U.S. State Department should work with the Defense Department and the Intelligence Community to adopt NCW operations to provide military commanders a powerful and agile combat framework. The shift toward an NCW posture should be accomplished as soon as possible. This will enable a dynamic and robust backbone for anti-piracy operations as well as better equipped military assets for future challenges arising elsewhere. Practically, this will translate to increased and more advanced sensor grids and real-time, linked, smart engagement grids both networked and supported by compressed C2 processes.
- » **Establish an expanded Intelligence Surveillance Reconnaissance effort.** The U.S. State Department should work with the Defense Department and the Intelligence Community to increase Unmanned Aerial Vehicle deployments, as well as inland Signals Intelligence and Human Intelligence networks. With UAV reconnaissance based at Camp Simba, Kenya, Camp Lemonier, Djibouti, Socotra and The Seychelles, effective and uninterrupted surveillance can be deployed to support the consolidated smaller and more agile CJTF, as well as merchant vessels in the IRTC. This coupled with concerted efforts toward the establishment of developed HUMINT, OSINT, FININT, IMINT and SIGINT capabilities inland, providing actionable ISR on pirate havens, operations, and targets will drastically reduce piracy's ability to manifest itself on the water.

Building an Effective Multinational Military Response to Somali Piracy

By Luke Eden

Piracy is not a new tactic for maritime warfare or crime, and its resurgence off the Horn of Africa is understandable for a marginalized and impoverished group of people like the typical young, destitute Somali males who become pirates. Alas, the Horn of Africa is next to one of the largest and busiest shipping channels in the world, the Gulf of Aden, which carries significant amounts of cargo between Asia, the Middle East, Europe and the Americas.¹ In response, a large number of western navies have deployed their forces to the High Risk Area (HRA) to try to deter and combat piracy. Primarily made up of “billion dollar” destroyers and frigates with armaments and equipment not designed for counter-piracy operations, these operations are expensive and relatively ineffective at combating large numbers of small Somali skiffs spread over large swaths of the HRA.² While military operations cannot solve the long-term problem of Somali piracy, a more efficient, effective strategy can and should be applied in the immediate- and medium-terms to help create the conditions necessary for implementing political and economic policies that can address the fundamental causes of piracy in Somalia. Implementing the strategic and tactical shifts necessary to deter and intercept pirates will require organizational changes and consolidation, and will require significant effort on the part of the U.S. Government to unify existing multinational counter-piracy operations. The United States has a significant interest in maintaining free and secure access to the ocean, for military, civilian, and commercial purposes, and must continue to promote effective counter-piracy solutions over the short-, medium-, and long-terms.

Current Military Operations

Current counter-piracy operations are primarily organized under three distinct entities, or Parallel Command Structures (PCS): NATO's Operation Ocean Shield, EUNAVFOR's Operation Atalanta, and the U.S.-led Combined Maritime Force's (CMF) Combined Task Force 151 (CTF-151). CTF-151, for example, is supported by Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) assets from the Fifth Fleet and U.S. Naval Forces Central Command (NAVCENT) under the Combined Maritime Forces (CMF) command.³ EUNAVFOR and NATO maintain separate hierarchies, reliant on their own C4ISR structures, even though all three C4ISR structures are

made up of various personnel from the U.S., UK, and other leading powers.ⁱ

Adding to the complexity and inefficiency of a three-task force PCS is the fact that those task forces are themselves multinational. There are currently at least forty-four nations who contribute or have contributed assets ranging from liaison officers and battleships to counter-piracy task forces. Typically, command of those assets is then rotated between different contributing nations.ⁱⁱ NATO Allied Maritime Command, which has tasked Standing NATO Maritime Group 2 (SNMG 2) to Ocean Shield counter-piracy operations in the HRA, maintains a command structure made up of British, German, Dutch, Canadian and Belgian staffs.⁵ SNMG 2 itself is commanded by a Turkish Rear Admiral, and is comprised of Turkish, American, British and Danish warships.⁶

The task forces are made up of various different platforms and vessels, but are primarily a mix of destroyers and frigates. SNMG 2 currently contains three frigates, a destroyer, and a flexible support ship and is capable of fielding approximately ten helicopters and numerous specially-trained Visit, Board, Search and Seizure (VBSS) teams.⁷ American warships currently partake in both CTF-151 and SNMG 2, but report to separate command structures. Multiple reports have highlighted the shared need for additional Maritime Patrol Aircraft and military oil tankers and supply vessels.⁸ Refer to Section III, Chapter 4 of this report for analysis relating to the vessel and equipment requirements of counter-piracy operations in the HRA.

In order to try to coordinate and deconflict the PCS task forces, an initiative called Shared Awareness and Deconfliction (SHADE) was established in 2008. It has since expanded to include “115 representatives from the militaries of 27 nations, law enforcement agencies, the shipping industry and various [sic] governments,” and meets every three months in Bahrain.⁹ SHADE maintains an “interactive partnership” with the Contact Group on Piracy off the Coast of Somalia (CGPCS), especially with the naval coordination and maritime operations Working Group 1.¹⁰ While SHADE does allow for the discussion of high-level concepts like the Best Management Practices (BMP), the infrequency and structure of its meetings prevent its ability to provide ongoing, consistent operational and tactical coordination between the various naval fleets and merchant vessels operating in the area.

In addition, a number of independent deployers, or States with naval assets in the region that are not a part of established task forces, are operational in the HRA. These deployers include potentially-significant naval powers like China, India, Japan and Russia.¹¹ These states, to varying degrees, partake in international counter-piracy operations, but have elected to maintain complete control over their naval assets so that they can pick and choose which merchant vessels they respond to. While, recently, progress has been made in integrating

i CMF, to which CTF-151 reports, is commanded by a U.S. Admiral and has a U.K. deputy commander (US Naval Forces Central Command n.d., "CMF").

ii CMF has 25 contributing nations, EUNAVFOR's Operation Atalanta has drawn upon 28 nations, and NATO's Operation Ocean Shield has included vessels and commanders from at least 13 nations. (EUNAVFOR n.d.), (Combined Maritime Forces n.d.), (NATO Allied Maritime Command n.d.)

their operations into those of the three taskforces through SHADE, they operate outside of the international effort, are not bound by internationally-agreed Rules of Engagement (ROE), cannot be relied upon to take part in the rescue and recovery of internationally-flagged commercial and civilian vessels, and cannot be relied upon to implement strategic shifts in concert with the international community.

In sum, at any given time more than thirty naval vessels (both those assigned to task forces and those independently deployed) may be operating in the HRA.¹² In addition to various types of equipment, they bring with them various capabilities, motivations and missions. EUNAVFOR's Operation Atalanta, for example, has focused on escorting World Food Program vessels as they attempt to bring humanitarian aid to the region. In contrast, CMF's CTF-151 has focused on maritime security and counter-piracy operations, as well as coordination of the IRTC.¹³ All three face political, economic and strategic constraints on their ability to allocate military resources to the HRA, but all three have shown significant abilities in terms of executing the counter-piracy mission.¹⁴

At any given time more than thirty naval vessels (both those assigned to task forces and those independently deployed) may be operating in the HRA.

Problems with the current system

The first major problem with current counter-piracy operations is the issue of overlap and redundancy. Three task forces, in addition to numerous independent deployers, require three separate headquarters staffs, communication systems and logistical support structures, and maintain separate reporting and tracking systems for interfacing with the commercial maritime community. In addition, non-military organizations like the globally-focused International Maritime Bureau Piracy Reporting Center and the regionally-focused UK Maritime Trade Office (UKMTO) track incidents of piracy globally, and within the HRA.¹⁵ On the military side, even after taking steps like physically co-locating headquarters at Northwood, EUNAVFOR and NATO still maintain separate command staffs.¹⁶ Of the three major types of operational organization, PCS are the most inefficient and least-able to coordinate command and control (C2), and “should be avoided if at all possible” according to current U.S. Military doctrine.¹⁷ PCS requires separate military headquarters and command staffs, and the separate task forces have established separate, competing offices and centers for C4ISR. U.S. military doctrine strongly opposes PCS operations, as it recognizes that the separate coalition hierarchies “must develop a means for coordination among the participants to attain unity of effort.”¹⁸ While SHADE has “continued to improve” coordination among the various military and non-military partners, its status as a forum for discussion and collaboration means that strategic, operational and tactical shifts cannot be implemented across-the-board without the agreement of the three task force commands.¹⁹

Another problem is effective coordination concerning the collection, analysis and dissemination of intelligence relating to piracy. The United States, through Intelligence Community (IC) agencies like the CIA and NSA, collects intelligence relating to counter-piracy,

counter-terrorism, and other transnational issues of strategic importance to the United States. Other IC agencies like the National Geospatial-Intelligence Agency (NGA) and the National Reconnaissance Office (NRO) maintain intelligence-collection and analysis assets that could assist international counter-piracy efforts. The U.S. government has recognized this, and “requires full and complete national and international coordination, cooperation, and intelligence and information sharing” as part of the U.S. counter-piracy effort.²⁰ Even within the United States, however, information and intelligence sharing is hampered by the lack of a single counter-piracy joint force, as current structures are reliant on liaison and voluntary sharing, and the Government Accountability Office (GAO) has recommended that the National Security Council develop joint guidance relating to information-sharing mechanisms.²¹

While intelligence-sharing between U.S. agencies is relatively easy, the sharing of information between multinational PCS can be much more difficult. At a basic level, States operating as part of combined forces must synchronize their intelligence collection and analysis doctrines, and must come to a common understanding regarding intelligence collection and analysis capabilities.²² On a more technical level, intelligence dissemination between international partners, especially those not included in NATO or bound by other U.S. treaties, can be difficult. While these issues can be partially resolved through the use of tear-lines and by implementing write-for-release and sanitization protocols, fully-functional intelligence collaboration will require significant investment in terms of manpower and the development of U.S. and combined force protocols for intelligence dissemination.²³

Possible Solutions

Current counter-piracy efforts in the Indian Ocean and Gulf of Aden are, essentially, already a coalition operation. Thanks in part to the drawn-out nature of the resurgence of piracy and the initial requirements of the military responses, this ad-hoc structure has not led to the development of a strongly unified C4ISR structure that would have typically formed to deconflict allied operations, share intelligence, prevent fratricide and develop common ROE guidelines. Rather, the crisis of piracy has resulted in the formation of three combined multinational forces, operating in parallel, with different strategic and operational goals, and with few clearly delineated paths for sharing strategy, tactics, and intelligence. As previously stated, this system is inefficient and requires immediate improvement.

One of the first and most important strategic steps in forming a joint or combined military response, and one that was not specifically undertaken by forces operating in the HRA, is the development of unified action on the part of the U.S. military and government, multinational, intergovernmental, nongovernmental, and private sector actors. According to U.S. military doctrine, “unified action is a comprehensive approach that synchronizes, coordinates, and when appropriate, integrates military operations with the activities of other governmental and NGOs to achieve *unity of effort*.”²⁴ Concerted multinational efforts require significant amounts of planning and preparation, even when they take part within existing

international organizations like NATO. Planning for multinational operations must be undertaken as early and as comprehensively as possible, with as many stakeholders and contributors as possible providing input from the earliest stages to select and establish the most appropriate C2 structure.²⁵ In a multinational operation, there are typically three structures for unified action: Integrated Command Structures (ICS), Lead-Nation Command Structures (LNCS) and PCS.²⁶ All three are options for continued counter-piracy operations in the HRA.

Integrated Command Structures

In an ICS, the entire command structure is made up of officers and staffs from contributing nations. Strategic, operational and tactical control flow downward, as in a typical command structure, but contributing nations agree to (temporarily, and in accordance with their own laws and regulations) cede control to a combined force commander. The entire ICS typically shares a single, multinational HQ, which is responsible for providing standard J-1 through J-6 directorates for, respectively, coordination and control of personnel, intelligence, operations, logistics, planning and communications. The ICS can contain multiple integrated force components made up of multinational units and assets, with varying levels of operational and tactical commanders.²⁷ With a single ICS HQ, C4ISR operations will be streamlined, and duplication of effort will be eliminated. Improved unity of effort with regards to intelligence collection, analysis and dissemination will allow force commanders to operate with a much more comprehensive vision of the operating environment, especially if UAV and satellite-derived intelligence is shared as openly as possible. Harmonized communication systems and operational protocols must be implemented to fully support and take advantage of Network Centric Warfare (NCW) doctrines, as explored in Section III, Chapter 4 of this report. Unified task forces will also be able to apply consistent ROE guidelines, improving the capability and responsiveness of counter-piracy deterrents and interdiction operations. In order to strengthen the deterrent effect of counter-piracy operations and avoid the radicalization of piracy, the pirates must understand that regardless of which nation's forces they are interdicted by, they will be dealt with effectively, legally, and fairly.^{iii iv} Unified task forces can also immediately respond to future evolutions in piratical tactics and shifts in operational areas, rather than having to rely upon information being shared upwards through SHADE and then downwards through PCS.

iii Islamic terrorist organizations are active in Somalia, and while there is currently limited evidence linking them to piracy, responding states should exercise caution so that piracy is not radicalized. In short, if enough pirates were injured or killed in the course of counter-piracy operations, there would be a significant risk that pirates would shift from attacking for profit to attacking for political or ideological reasons. Pirates in skiffs can be stopped, but it would be much more difficult to stop a 'suicide skiff' laden with explosives from driving into the side of an oil tanker.

iv A handful of nations—especially those that do not already take part in international task forces—might continue to deploy independently in order to maintain their own ROE's and standards for the use of force against pirates. While this would be counter to the overall unification effort, the detrimental effects would be minor due to the limited operational capabilities of independent deployers.

Parallel Command Structures

While maintaining the current PCS structure is a viable option, it would not fix existing problems of overlap and inefficiency of resource allocation and would not facilitate the development of the most comprehensive military response possible to counter piracy in the HRA. Without developing SHADE into a more functional and more integrated organization, tactical deconfliction will continue to be accomplished exclusively on an ad-hoc basis. Due to its fundamental design and structure, however, there are limits to the capabilities of SHADE. Continued reliance upon the organization will not provide a comprehensive solution to the military response to piracy. Relying on SHADE as the coordinating element of a PCS could not create a sufficiently unified implementation of tactical, operational and strategic changes.

“U.S. forces often will be the predominant and most capable force within an alliance or coalition and can be expected to play a central leadership role.”

Lead-Nation Command Structures

LNCS is an attractive option, and one that could easily be implemented under CMF’s CTF-151 as that force is, essentially, already operating as an LNCS, as it integrates multiple nations’ naval vessels under a predominantly U.S. C4ISR structure.^v U.S. C4ISR capabilities are typically more capable and experienced than many partner and allied nations, and U.S. military doctrine notes that “U.S. forces often will be the predominant and most capable force within an alliance or coalition and can be expected to play a central leadership role.”²⁸ While an LNCS is certainly operationally and tactically feasible, there are a number of strategic downsides. First, an LNCS would be unlikely to generate as much international support as the ICS, as its HQ functions and

C4ISR would primarily be assigned to one state’s military. This would discourage consolidation and could result in the formation of even more independent deployers, which have previously been more difficult to coordinate and deconflict than inter-task force operations. Second, many of the non-military organizations involved in counter-piracy operations are international. They would also be less likely to directly interface with a U.S.-operated LNCS, which would make operations and intelligence processes slower and costlier. Instead of consolidating and joining operations in combined force HQ facilities, organizations like INTERPOL, the UN Office on Drugs and Crime (UNODC) and the UKMTO might choose to maintain their own operations and staff, and liaise with LNCS command staff. While liaison networks are important parts of all of the possible command structures, they are not as effective and efficient as the creation of integrated command, operational and tactical structures.

While U.S. doctrine recognizes that coalition operations typically fall into either PCS or LNCS, the counter-piracy mission is an ideal opportunity to implement an ICS.²⁹ First,

^v CTF-151 is a multinational mission made up of vessels and staff from many of the 25 nations that contribute to CMF. While CTF-151 maintains a rotating command that is currently, as of February 2012, held by Denmark, the U.S. provides the majority of CTF-151’s C4ISR structure through CMF and NAVCENT. (see (US Naval Forces Central Command n.d., "Leadership") and (Combined Maritime Forces 2012))

the military and political stakes are relatively low—after all, pirates are *hostis humani generis*^{vi}—compared with wartime military operations. This should encourage more states to sign on to consolidated international efforts. Second, the pace of operations is much slower, allowing for more time to be spent in the establishment of a capable ICS and the achievement of unity of effort. Finally, the tactical requirements of the counter-piracy mission are smaller and more flexible than those of other potential military operations, allowing many more states to contribute valuable resources and assets. Already, this has enabled small and landlocked states like Luxembourg to contribute small, but important numbers of personnel, equipment and expertise to existing missions.³⁰ Increased international participation in ICS is not only good for developing ongoing political and professional connections between naval forces, but also for developing a shared body of experience, expertise and standards that can be called upon in future multinational operations, such as in responding to natural disasters or acts of terror.

The Combined Joint Task Force

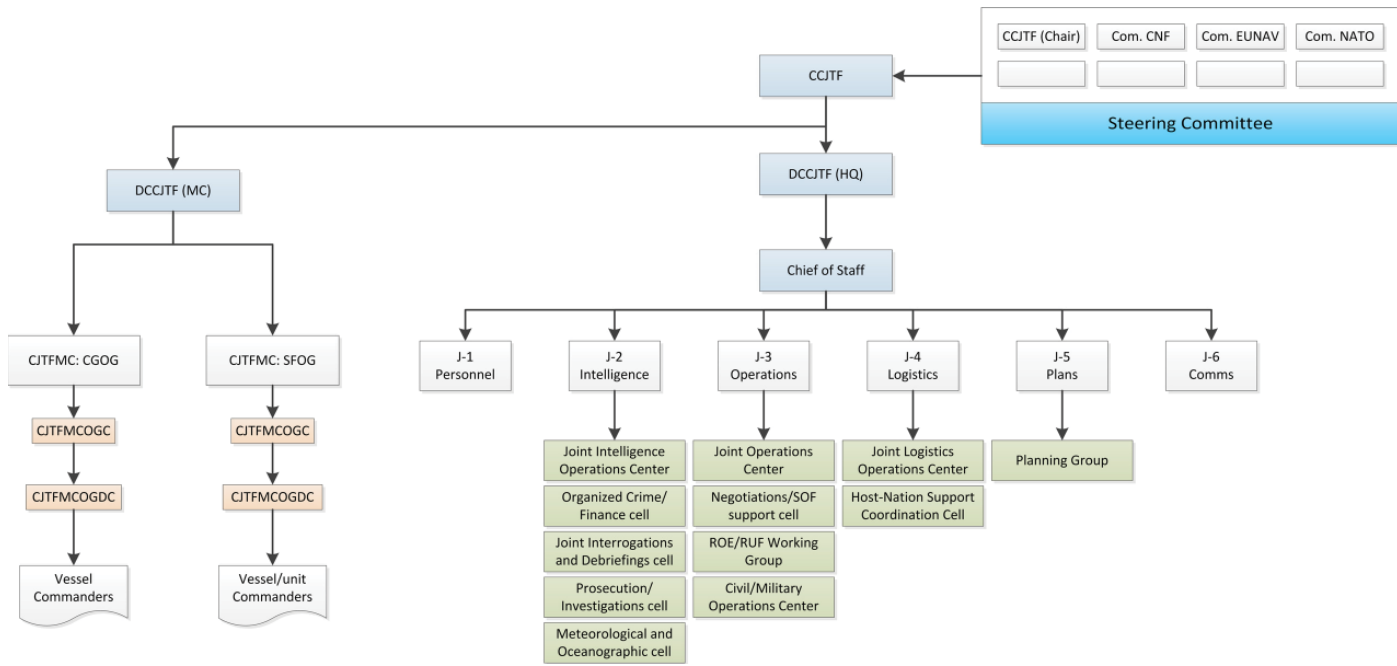
With appropriate and comprehensive planning, the U.S. government should implement a Combined Joint Task Force (CJTF) structured as a modified ICS in order to unify multinational counter-piracy operations in the HRA. This is not a new suggestion—see Lt. Cdr. Kjell Wander’s 2006 paper, for example—but it will require significant investment on the part of the U.S. and other NATO and non-NATO coalition governments, as it is an integral part of ensuring the continued efficiency and efficacy of military counter-piracy operations.³¹ The U.S. State Department in coordination with the Defense and Justice Departments and the IC must foster a united, “whole-of-government” approach on behalf of the U.S. effort as well as international contributions.

(Refer to Figure 1 for the CJTF hierarchy)

Overall, the CJTF would operate two components: a Combined Joint Task Force Maritime Component (CJTFFMC) consisting of a Coast Guard Operations Group (CGOG) and a Special Forces Operations Group (SFOG), as well as a Headquarters (HQ) organization, comprised of standard, multinational J-1 through J-6 joint staff directorates to provide CAISR. The two components would be commanded by a single Combined Joint Task Force Commander (CCJTF). The CJTFFMC would ideally consolidate all currently deployed military vessels and tactical units under one command structure, facilitating efficient joint deployment and distribution across the HRA. With the appropriate CCJTF orders, elements of the CGOG would take over existing escort operations for humanitarian relief vessels, negating the need for separate NATO and EUNAVFOR commands.

The relationship between the CGOG and SFOG would be similar to that of the relationship

between domestic law enforcement patrol units and their tactical (SWAT) counterparts: CGOG units, with appropriate training and equipment, would provide the bulk of VBSS interdiction and deterrent operations in the HRA, while SFOG units, supported by elements of the J-2 and J-3 HQ directorates, would be called upon to respond immediately to hijacked vessels in an attempt to begin negotiations and resolve hijackings safely and expeditiously. In many cases, the prompt arrival and presence of counter-piracy vessels can con-



CCJTF	Commander, Combined Joint Task Force	SFOG	Special Forces Operations Group
DCCJTF	Deputy Commander, Combined Joint Task Force	CJTFMCOGC	Combined Joint Task Force Maritime Component Operations Group Commander
CJTFMC	Combined Joint Task Force Maritime Component	CJTFMCOGDC	Combined Joint Task Force Maritime Component Operations Group Deputy Commander
CGOG	Coast Guard Operations Group		

Figure 1: Combined Joint Task Force hierarchy

vince pirates to surrender—SFOG units would be deployed in tactically delicate situations where pirates had repelled VBSS teams by fortifying their positions or by using vessel crews as hostages. Physically, SFOG units could be stationed on CGOG vessels when operating out of range of counter-piracy bases, or they could remain on standby at counter-piracy bases and transit by helicopter to CGOG vessels as required in response to hijackings. Obviously, the training and equipment standards for SFOG units would be more stringent than those for CGOG units, and all CJTFMC units would be required to follow orders and ROE guidelines passed down from CCJTF.

In order to be successful and to attract multinational contributions, the ICS will have to be structured such that it integrates as many nations as possible. The first, and potentially most significant, modification to the typical ICS will help accomplish this: hierarchically, the CCJTF should be required to chair a “steering committee” made up of participatory nations, modeled off of the current SHADE effort. U.S. doctrine calls for the formation of an

Executive Steering Group to help steer Joint Task Forces—in this case it would be modified to include international contributors to the CJTF. For the CJTF, the body would be responsible for establishing strategic goals and monitoring overall progress of the taskforce, as well as for reaching out at high-levels to potential partner governments. The steering committee must be small enough to come to a consensus, but large enough to include a wide range of contributors. The committee should be structured so that it includes both nautically-powerful States and States with smaller possible commitment levels, in order to more accurately represent the full range of contributory governments. While the specifics can certainly be adapted depending on the size of the CJTF, the committee should at a minimum be chaired by the CCJTF, contain seats for a representative from CMF, NATO and EUNAVFOR, and contain a similar selection of representatives from other contributory navies. Committee meetings should be open to observation by all participatory states and international/non-governmental organizations, similar to the current SHADE meetings.

In accordance with the strategic vision and aims decided upon by the steering committee, CCJTF would be responsible for providing strategic and operational command of HQ and CJTFMC efforts. CCJTF would be supported by two Deputy Commanders (DCCJTF): one in charge of HQ operations and one in charge of the CJTFMC. The DCCJTF for HQ operations would be supported by a Chief of Staff. The Chief of Staff, DCCJTFs and CCJTF would remain in their positions for terms of no less than one year in order to ensure the CJTF's continued operational stability, and must be approved by the steering committee in order to ensure continued international agreement and alliance. The operation groups within the CJTFMCs would both be commanded by a forward deployed Combined Joint Task Force Maritime Component Operations Group Commander and deputy (CJTFMCOGC and CJTFMCOGDC), who would rotate between contributing nations every four to six months in similar fashion to current multinational operations.^{vii}

On a C2 level, CCJTF would be responsible for ensuring the synchronization and tempo (also known as Battle Rhythm) of both HQ and CJTFMC operations. She or he would also be required to ensure “mutual confidence”—respect, rapport, knowledge of partners, and patience—on the part of all CJTF members. U.S. doctrine notes that these four tenets are critical to the effective functioning of multinational operations, and that standard command structures should be cognizant of differences between national missions and standard operating procedures.³² Doctrine even goes so far as to recommend that small foreign-nation teams be given more respect and responsibility than their size or rank would require, in order to prevent the development of discord between small nations and CJTF commanders.

CJTF HQ

The majority of CCJTF-directed operations should be supported by standard J-1 through J-6 directorates at the CJTF HQ, rather than relying on member nation C4ISR support.

vii Operational command of CTF-151 rotates “between participatory nations on a four to six month basis.” (Combined Maritime Forces n.d.).

Physically, the HQ should be located in an allied state with the infrastructure to support military communications, transportation, and the residential/logistical requirements of maintaining a fully-staffed headquarters. While the HQ could be located at one of the proposed counter-piracy naval bases proposed in Section III, Chapter 4, other locations in the HRA might prove more suited to the operational requirements of a multinational HQ. CMF, for example, maintains its Naval Support Activity headquarters on a military base in Bahrain co-located with NAVCENT and the Fifth Fleet command.³³ A site like this would be ideal, as it would not require basic development like power or water supply, or physical structures, and it has easy access to both air and maritime transportation hubs. As the headquarters for CMF, base personnel are already experienced in integrating and working with multinational forces and staff. Governments, including the U.S., would assign personnel to the CJTF HQ through Temporary Duty Assignments and Permanent Changes of Station depending on requirements and lengths of assignment. While at the HQ, they would report to the Chief of Staff and the CJTF's military hierarchy.

The J-1 personnel directorate would be responsible for coordinating “human” logistics and HQ facility operations—such as providing financial support, human resources, and translation facilities. The J-4 directorate would provide coordinated task force logistical support through a Task Force Logistics Operations Center, and would be responsible for both standardizing logistical requirements and ensuring that all aspects of HQ and CJTFMC operations are sustainable and synchronized over the long-term.³⁴ Logistics, especially over an operational area the size of the HRA, are an extremely important part of the planning process that should not be overlooked. The J-5 directorate would provide planning support to the command staff and steering committee, and would be responsible for crafting high-level, long-range analysis and planning to identify potential shifts in CJTF operations and strategy. The J-5 directorate could, optionally, be tasked with coordinating training programs for regional and international partners, in accordance with the Djibouti Code of Conduct, as discussed in Section II, Chapter 1. The J-6 directorate would be responsible for planning, integrating and maintaining communication systems to link the various HQ centers, CJTFMC assets, and international partners including civil and non-military participants. Standards for communication integration and interoperability already exist, known as International Standardization Agreements (ISA). While it is beyond the scope of this paper to suggest a specific ISA, the United States currently participates in a number of multinational standardization programs.^{viii 35}

Currently, there is no single entity tasked with collecting, processing, analyzing, fusing and distributing counter-piracy intelligence across military and civilian channels—each task force relies on limited intelligence-sharing through SHADE and liaison staff.³⁶ The CJTF

viii “The DOD is actively involved in several multinational standardization programs, including NATO’s main standardization fora, the five-nation (United States, Australia, Canada, United Kingdom, and New Zealand) Air and Space Interoperability Council, the American, British, Canadian, Australian Armies’ Program (ABCA), and the seven nation (Australia, Canada, France, Germany, Italy, United Kingdom, and United States) Multinational Interoperability Council (MIC).” – (Joint Chiefs of Staff 2007, I-6)

should establish a J-2 directorate to be responsible for the intelligence operations of the CJTF. Centered on a Combined Joint Intelligence Operations Center (CJIOC), the directorate would be staffed with analysts from the U.S. and allied international ICs. NCW is an intelligence-driven doctrine, and requires a relatively fast battle rhythm in terms of intelligence collection, analysis and dissemination to commanders. Ideally, as much data as possible would be routed into the JIOC for processing and analysis. Some types of analysis, however, would have to, by nature, be processed by collecting agencies (HUMINT, for example, would have to be reviewed by CIA to protect sources and operational methods). While this increases processing time, the effective use of liaison officers between the IC and the JIOC can allow the development of more sources for intelligence collection and analysis. Additionally, as explained previously, systems exist for sharing intelligence between NATO and core coalition states. Tear-line and write-for-release protocols can speed the dissemination of key intelligence and information between the JIOC and other sources of intelligence. Finally, Foreign Disclosure Officers can, with the support of superiors in the U.S. military hierarchy, disclose classified information when it is “consistent with U.S. foreign policy and national security objectives... can be expected to result in a clearly identifiable advantage to the United States... [and] can be reasonably assumed that the disclosed information would not be used against U.S. interests.”³⁷ The JIOC should be staffed with Foreign Disclosure Officers who can quickly and safely disseminate sanitized actionable intelligence to CJTF partners.

In order to better support CJTF operations, the CJIOC and J-2 should maintain a number of cells for specific issues and projects. An Organized Crime/Financial Targeting Cell should be established in partnership with INTERPOL, the FBI, the Treasury Department’s Office of Terrorism and Financial Intelligence, and other U.S. and international financial law enforcement and civil investigation teams.³⁸ A Joint Interrogations and Debriefings Cell should focus on developing actionable HUMINT from captured pirates, and providing a standardized, legally compliant method for debriefing captured pirates prior to transportation to prosecuting nations, as reviewed in Section III, Chapter 4. As the number of captured pirates goes up, the need for such a cell will only increase. The J-2 should also contain a Prosecutions and Investigations Cell for conducting forensic, scene-of-crime analysis and providing support to prosecution efforts around the globe, in support of the judicial reforms included in Section II, Chapters 1 and 2. The UN has recognized the “need to expand and formalize the mechanism for investigative and prosecutorial purposes” so that information gathered by military operations can be shared with “various law enforcement and judicial bodies, such as the Monitoring Group on Somalia and Eritrea established pursuant to Security Council Resolution 1916 (2010) and INTERPOL.”³⁹ This cell would most likely be staffed with a mixture of prosecutors and law-enforcement investigators who would serve as post-incident liaisons with prosecuting justice systems around the world.

The J-3 directorate would be responsible for coordinating and providing operational and tactical support for CJTFMC operations. The Combined Joint Operations Center (CJOC) would act as the nerve center for the entire CJTF, maintaining a 24-hour watch over the

region in concert with JIOC NCW assets like drones and Maritime Patrol Reconnaissance Aircraft. The JIOC would be responsible for producing the Recognized Maritime Picture (RMP)—the fused product of signals and operational intelligence that provides an overview of all civil, military, and piratical activity within the HRA. Communications and information-sharing between task forces have previously hindered the development of a unified RMP across all counter-piracy forces within the HRA.⁴⁰ Through the Civil/Military Operations Center (CMOC), the J-3 would become the single point-of-contact for civilian vessels in the region, allowing for immediate tracking and alert transmissions between CJTFMC assets and friendly vessels in the HRA. CMOC would facilitate two-way information and intelligence sharing between civilian vessels and the CJTF, and could organize protected convoys through the IRTC. Due to its similarity to the UKMTO office in Dubai and EU-NAVFOR's Marine Security Center Horn of Africa (MSCHOA), these two entities could be integrated into the CMOC in order to prevent duplication of operations and to facilitate better interface with merchant mariners.

The J-3 would maintain a separate Special Forces Support Cell, designed to support (and in some cases, deploy with) the SFOG to provide tactical and operational support tailored to each situation, as well as to provide negotiation staff for longer-term hijackings. The J-2 and J-3 would liaise with U.S. and international Special Forces entities, like the U.S. JSOC and CIA, which are reportedly conducting counter-terrorist operations in Somalia.⁴¹ The J-3 would also liaise with and potentially help train regional coast-guard command centers and operations. As a temporary task force with appropriate security and infrastructure requirements, however, it would remain separate from any regional coast-guard effort. Finally, the J-3 would coordinate an ROE/RUF working group to develop, maintain and standardize adequate regulations for CJTF operations in the HRA. In order to maximize operational effectiveness, the J-3 might be required to provide foreign CJTFMC vessels with liaison staff and compatible equipment; while this would add cost to the CJTF operations, the net result would be a more capable and effective task force.

Costs and Benefits Associated With Piracy and Counter-Piracy

The cost of piracy, while small in comparison to the volume of trade that passes through the Gulf of Aden, nevertheless justifies the cost of integrating task forces in a CJTF. The U.S. has already deemed the shipping pathways in the Gulf to be strategically important to U.S. interests, as ships travelling through the region carry more than 10% of the world's oil each year.⁴² The NGO Oceans Beyond Piracy (OBP) has claimed that in 2010, almost \$250 million was paid in ransoms to Somali Pirates.⁴³ Combining that with the additional costs of increased insurance premiums, re-routing ships, private security equipment, and the cost of piracy to regional economies, like decreased trade and fishing revenues, OBP estimates that piracy costs \$5 to \$10 billion USD per year.⁴⁴ Other analyses have projected that, assuming pirate operations continue to expand and piratical tactics continue to evolve, the total cost of piracy will increase to between \$13 and \$15 billion USD per year in 2015.⁴⁵ The three counter-piracy task forces in the region were deployed in order to address this economic

threat. Nevertheless, the current international architecture could allocate its resources more efficiently, with more return-on-investment, by establishing an ICS.

Clearly, however, implementing an ICS will present structural and logistical complexities that will require significant planning to overcome. Cost is one important issue that must be addressed: while individual vessel operational and logistical costs (fuel, food, ammunition, etc.) would be covered by that vessel's government, the integrated headquarters would require investment in the form of communications equipment, supplies, and even a physical location. While some of these costs could be covered by generous participatory nations—the United States offering part of its naval facilities in Bahrain to support the integrated headquarters, for example—others will collectively require resources from the CJTF. It will be up to the members of the steering committee to convince participatory nations to donate both physical and financial resources beyond simply providing staff and naval vessels. Shifting from billion-dollar battleships to lighter, cheaper combat vessels supported by NCW will significantly reduce costs, as explained in Section III, Chapter 4. Integrating more nations into counter-piracy operations would diffuse operational costs associated with the CJTFMC and HQ, as opposed to a reliance on U.S. resources through the CMF. Finally, the greater levels of shared experience and knowledge that can be drawn upon in future civil and military operations also make the formation of a CJTF invaluable.

There may, however, be risks associated with diminished U.S. control over counter-piracy operations in the HRA. While the shift to an ICS should free up currently-engaged American tactical and strategic assets participating in the CMF and NATO operations, the resulting CJTF could conceivably be controlled by non-U.S. military officers who could deploy U.S. assets where they are not used to their best advantage. In a worst-case scenario, a poorly structured steering committee could come to be dominated by forces opposed to U.S. strategic and tactical directions. These scenarios are unlikely, as counter-piracy is a relatively simple tactical mission with constrained strategic options. Thanks to U.S. tactical dominance and strategic naval experience, any CJTF is likely to be U.S.-led and is likely to reflect U.S. interests in the region. The international community already cooperates through SHADE and the CGPCS, so even if only one seat in the steering group was held by an American naval officer, the risk of a 'rogue' steering group is low. The State and Defense Departments are well-respected by the international military community, which will aid in the rapid adoption of NCW doctrine and in the appropriate tasking of U.S. military resources.

Recommendations

Piracy is an asymmetric tactic that requires a unified response from all international actors. So long as there are no forthcoming non-military solutions to the systemic conditions in Somalia that enable piracy, military operations should continue in the strongest, most

The Challenge of Piracy off the Horn of Africa

efficient, and most capable manner possible. Doctrinal shifts towards NCW will be ineffective if attempted unilaterally, bilaterally or without international support. The State and Defense Departments as well as the National Security Council will have to work with their international counterparts, through the United Nations and the Contact Group on Piracy off the Coast of Somalia, to plan for and implement a cohesive shift to a Combined Joint Task Force.

Based on this analysis of the current dynamics among the three international task forces, the State Department should:

- » **Propose the formation of a Combined Joint Task Force.** Through Working Group 1, the State Department should propose the formation of a Combined Joint Task Force, which will provide C4ISR support to international counter-piracy missions in the High-Risk Area. The State Department should work with its counterparts in NATO and EU-NAVFOR sponsor countries to build multilateral support for a unified counter-piracy taskforce.
- » **Provide resources and reassign personnel to the Combined Joint Task Force Maritime Component and Headquarters.** Along with the Department of Defense, the State Department should assign resources and personnel to the Combined Joint Task Force Maritime Component and Headquarters. U.S. personnel and equipment are the most competent and experienced in the world, and will provide much of the capability to the Combined Joint Task Force. Appropriate selection and tasking of vessels and resources, as identified in Section III, Chapter 3, will ensure that the Maritime Component and Headquarters can provide the best response possible to piracy off the Horn of Africa.
- » **Release an updated Action Plan for responding to piracy.** The U.S. State Department, through the National Security Council, should release an updated Action Plan for responding to piracy off the Horn of Africa through a Combined Joint Task Force that would outline U.S. strategy, responsibilities, and expectations. The National Security Council should also, as part of the planning process for Combined Joint Task Force implementation, prepare guidelines for the dissemination of as much counter-piracy intelligence as possible to partner states, while protecting U.S. intelligence assets, procedures, and technologies as necessary.

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IV. FOREIGN POLICY

Effective Use of U.S. Foreign Policy in the Region: Enhanced Diplomatic Engagement

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Section Summary

In order to end piracy in the Horn of Africa, effective foreign policy involving the contributions of many nations must be implemented. This is especially true concerning States in the Horn of Africa, and individual regions and actors inside of Somalia itself. Current U.S. policy regarding Somalia takes a “Dual-Track Approach.” The Dual-Track Approach seeks to distribute aid and communication amongst the functioning areas more efficiently instead of, as previously attempted, focusing all aid and communication with the Transitional Federal Government, which is largely confined to Mogadishu due to instability. Several areas have already benefitted from closer communication with the United States. However, there are also downsides to this approach, as the policy has been criticized for increasing clan divisions. In their quest for U.S. aid, small branches of clans have created numerous, autonomously governed areas, which has resulted in the further fracturing of a failed State.

This section of the report provides analysis and recommendations for U.S. foreign policy in diplomatic relations with Kenya and Ethiopia, relations inside of Somalia with Somaliland and Puntland, as well as the rest of Somalia. It recommends the best ways to engage with citizens and governments in all these areas to discourage and eliminate piracy from the Horn of Africa.

Regional Dynamics and Potential for Partnerships

Kenya and Ethiopia's Potential Roles in the Campaign Against Piracy

By Ashley Bullock

Piracy is not just an international issue affecting large shipping companies; it is a regional issue caused by and contributing to instability in Somalia. As long as Somalia remains unstable, it will continue to drain the resources of and impact the development of its neighboring countries in the Horn of Africa, especially Ethiopia and Kenya. Kenya and Ethiopia have been negatively affected by various manifestations of Somalia's instability including piracy, the current conflict with al-Shabaab, and the flow of Somali refugees into their territories. Despite negative historical conflicts and current strained relations, Ethiopia and Kenya are ideal long-term partners in the effort to stabilize Somalia, a necessary step in the efforts to permanently end piracy in the region.

Kenya and Somalia: Historical Relations and Current Considerations

Historically, Kenya has had unstable political and social relations with Somalia. In the Shifta Wars from 1963 until 1967, Kenya fought Somali guerrillas along their borders over a contested area in Kenya that is heavily populated by ethnic Somalis. In 1977 the tensions were reignited after Kenya supported Ethiopia in its war against Somalia over rights to the Oga-den region.¹ Despite periods of relative quiet, the situation in the border regions of both Somalia and Kenya has remained tense. Kenyan forces killed 400 Somalis in 1984 during the Bagalla massacre and the collapse of the Somali State caused thousands of Somali refugees to flood over the border into Kenya in the 1990s.² Refugees have continued to flood into Kenya more recently due to the drought and conflicts in Southern Somalia, putting pressure upon Kenya's government and straining relations further.

Currently Kenya and Somalia are entwined by six major issues all related to piracy and instability in the region: the large trade of khat from Kenya, the flow of refugees from Somalia to Kenya, continued border conflicts, multiple pirate kidnappings of Kenyan tourists, the military invasion of Somalia by Kenyan forces, and potential al-Shabaab backlash. These major issues, all negatively affect Kenya's economy, sovereignty and development.

Kenya also supports a large number of Somali refugees. Refugee camps around the Kenyan town of Dadaab have registered over 463,000 Somalis--10,000 of which are third-generation refugees whose parents were also born in the camps.³ This number excludes the tens of

thousands of unregistered refugees around Dadaab. Despite international efforts to deliver aid to the refugees, these camps are plagued by crime, disease and malnourishment—an increasingly heavy and unwanted burden for the Kenyan government.⁴

“Piracy increases the cost of imports [into Kenya] by \$23.8 million per month, and exports by \$9.8 million per month.”

Kenya’s economy and tourism industry have suffered because of the pressures placed on their resources by Somali refugees as well as by the threats of violence and the recent attacks on their soil by both pirates and al-Shabaab. In October 2011 and September 2011 Somali pirates kidnapped two groups of tourists in Kenya⁵ and al-Shabaab has been linked to a number of cross-border kidnappings and attacks in Kenya already in 2012.⁶ This has resulted in a decrease in tourism to the region. According to the Kenya Tourist Board in 2010 “the number of tourists visiting Mombasa by cruise ships... declined by 95%.”⁷ Since this study was published, there have been increased security issues both in the waters around Kenya and on land, further harming the tourist industry.

Kenya’s broader economy has also been negatively affected by piracy in the region. In a 2010 report by the group Oceans Beyond Piracy, it was estimated by the Kenyan Shippers Council (KSC) “that piracy increases the cost of imports [into Kenya] by \$23.8 million per month, and exports by \$9.8 million per month.”⁸ These costs are ultimately passed down to the Kenyan consumer, causing import prices to increase but also making Kenya a less attractive business partner, lowering foreign investment and interest in conducting business in the region.

The most pressing issue linking Somalia and Kenya is Kenya’s 2011 military invasion of Somalia. On 16 October 2011, Kenyan troops entered into Somalia to fight the extremist group al-Shabaab with no publicly stated international support. On 31 October 2011 Kenya and Somalia released a joint communiqué stating that Kenya’s incursion into Somalia “was being carried out with the support of and in close coordination with Somalia’s Transitional Federal Government (TFG) and under the leadership of TFG forces.”⁹ The communiqué highlighted that the invasion “was based on the legitimate right to self-defense under Article 51 of the Charter of the United Nations.”¹⁰ The communiqué further explained Kenya’s motives behind the invasion, stating their aim as the eradication of the threat posed by al-Shabaab to their borders and economy. The invasion is the first attempt to control a large portion of Somalia since Ethiopia’s invasion from 2006 to 2009. Since Kenya’s invasion, countries and international organizations such as the UK and the EU have begun to express their support for Kenya’s actions “so long as it is undertaken in co-ordination with the Transitional Federal Government, and so long as it complies with international law.”¹¹

There are lessons that should be taken from Ethiopia’s 2006 invasion of Somalia that can be applied to both Kenya and Ethiopia’s potential roles in the country now. Similar to Kenya’s current campaign, the Ethiopian invasion in 2006 attempted to eradicate the Islamic Courts Union (ICU), a governing party that was in conflict with the Transitional Federal Government (TFG).¹² Ethiopia’s lengthy three year occupation, due in part to the guerrilla tactics of

the Islamic insurgency, led to large numbers of refugees requiring humanitarian assistance and a high number of civilian casualties.¹³ Human Rights Watch found evidence through satellite imagery of burned villages that “widespread violence was part of [Ethiopia’s] vicious counterinsurgency campaign.”¹⁴ Because Ethiopia is largely a Christian nation, the violent intervention, for three years, to oust an Islamic party in Somalia, sparked controversy and fear amongst the Somali population and resulted in the growing popularity of the Islamic extremist group al-Shabaab.

The 2006 invasion has made the international community all too aware of the cost of intervening militarily in Somalia. Prior to the current invasion, Kenya preferred to fight smaller skirmishes along the borders rather than invest in a large-scale operation because of the potential to become stuck in a drawn out military campaign in Somalia. However, despite the difficulties of past fighting in Somalia, thus far, Kenya has had some success at driving al-Shabaab out of parts of the country. The lesson the international community should learn from Ethiopia’s previous invasion is that no one country can easily quell such a slippery adversary as al-Shabaab, and that the U.S. must back Kenya or expect a similar outcome to 2006. However, despite the need to back a full-scale war with al-Shabaab it is imperative that all forces engaged in Somalia attempt to keep civilian casualties as low as possible. Historically, public support has been against Ethiopia and Kenya and few Somali’s view the TFG as a source of government. In order to prevent the rise of another powerful group in the place of al-Shabaab, Somali’s must know that the invasion is for their benefit. The best way to send this message is to keep the number of civilian casualties low, support those displaced by the fighting, and not question their right to be an Islamic country or their sovereignty.

Despite Kenya’s initial claims that the invasion was in reaction to kidnappings that had occurred in the previous months, in fact the operations had been planned for some time.¹⁵ Increasing instability in Somalia, the potential for an overflow of violence across the Kenyan border, and the construction of a Kenyan port “just 60 miles south of Somalia” all factored into the decision to invade.¹⁶ Kenya’s decision to engage al-Shabaab in what they knew would be a difficult war and willingness to invest so much of its own resources points to their willingness to work towards long-term stability in Somalia and the greater region as a whole.

As of February 2012, Kenyan forces remain in Somalia and appear to have had success in driving al-Shabaab out of the capital, Mogadishu, and other areas they had previously been entrenched in. Despite Kenya’s gains, the fight against al-Shabaab is far from over especially due to their recent official merger with al-Qaeda in the beginning of February 2012.¹⁷ Kenya has stated that it intends to integrate its troops with the current African Union (AU) forces on the ground in Somalia, the African Union Mission in Somalia (AMISOM). According to a report by the Special Representative of the United Nations Secretary General on Somalia, on 09 December 2011, the AU requested that the United Nations Security Council expand its support package for AMISOM. The AU stated that they required the additional funding and support in order to sustain their involvement in Somalia as well as to be able

to integrate Kenyan troops into their current forces.¹⁸ The United States should support the African Union's request for additional funding through continuing monetary support and calling upon U.N. member states to give additional funding to the UN Trust Fund for AMISOM.

Ethiopia and Somalia: A History and Current Considerations

Historically Ethiopia and Somalia have had negative relations with one another. According to the Ethiopian Ministry of Foreign Affairs, the popular support within Somalia for the ideology of "Greater Somalia", which claims Somalia's rights to portions of Ethiopia, inhabited by large populations of ethnically Somali people, has threatened the borders of Ethiopia since their independence and Somalia's continued disintegration has allowed "anti-peace elements" to use "the country as a base and place of transit in order to threaten Ethiopia's peace."¹⁹ In addition to continuous small skirmishes along their borders, Ethiopia and Somalia fought two major wars in 1964 and 1977 over the disputed area of Ogaden, a portion of Ethiopia primarily inhabited by people of Somali ethnicity.

Ethiopia and Somalia's negative relations are deeply rooted in historical conflicts that have resulted in perceived threats of each country's sovereignty, territorial disputes, and fear of religious persecution.

Ethiopia and Somalia's negative relations are deeply rooted in historical conflicts that have resulted in perceived threats of each country's sovereignty, territorial disputes, and fear of religious persecution. Ethiopian troops did not withdraw from the 2006 campaign until 28 January 2009 leaving many Somali people bitter over their long occupation, which is believed to have resulted in an increase in al-Shabaab's popular support.²⁰ During the occupation, al-Shabaab "gained increasing support from Somalis, at home and abroad, because it was seen as the most effective force fighting a foreign and "Christian" occupation -- not because of its extremist orientation."²¹ This occupation has left a mark on the psyche of Somali people resulting in a deep distrust of the Ethiopian government and its people.

Similar to Kenya, Ethiopia's economy also suffers due to Somalia's instability. Being a landlocked country, Ethiopia could benefit from access to Somalia's ports and increased safety in the area would result in the lowering of costs for importers.²² According to the Ministry of Foreign Affairs of Ethiopia, "there are no less than seven ports in Somalia that can be used by different parts of [their] country... these possibilities could significantly contribute to [their] development."²³ Both Kenya and Ethiopia also spend large amounts on defense and security due to the threats from extremist groups and border disputes that could potentially be used for the development of infrastructure within their own country if Somalia were more stable.

The Issue of Khat

Both Kenya and Ethiopia's economies are tied to Somalia due to their khat production and exports. In Ethiopia, khat is "the second largest foreign exchange earner worth some U.S.

\$413 million between 1990/1991 and 2003/2004” and has “constituted an average of 1.7% of GDP in Ethiopia.”²⁴ Despite the many negative aspects of khat, studies show that “growing khat not only generates substantial revenues for [Ethiopia] but considerable wealth for everyone associated with the industry.”²⁵

However in 2012 the industry has come under increased pressure. Khat is currently banned in many countries including the U.S., Canada, and France but remains unregulated in such countries as the Netherlands, the U.K., Kenya, Uganda and Ethiopia. In 2012, the Netherlands announced plans to ban the drug. Due to the ban it is estimated that khat farmers will “lose up to Sh 1.6 billion [or around \$19 million USD] in annual export earnings” a large blow to both Kenya and Ethiopia’s economies.²⁶

Somalia is a large importer of khat and the drug plays a large role in the wider Somali society, as well as amongst pirates. It was estimated in 2003 by the Ministry of Planning and Statistics of Puntland that Puntland alone imports around 2,544,000 kgs of khat annually, with 1,456,000 kgs of the total being from Ethiopia and 1,088,000 from Kenya.²⁷ Not only does the khat affect the health of Somali citizens but it is also “a huge drain on Somalia’s foreign exchange holding, sending hundreds of millions of U.S. dollars per year to Kenya and Ethiopia at the expense of domestic investment.”²⁸

Although it is hard to find many statistics on the importation and consumption of khat in Somalia, from the data and first hand accounts it is evident that khat plays a large role in Somalia, and more specifically in piracy.²⁹ It is unclear what the effects of the current invasion of Somalia by Kenya and Ethiopia, and the possible addition of Kenyan forces to AMISOM will have on the industry. However, since khat is such a large cash crop for Kenyan and Ethiopian farmers, Somalis are one of the largest consumers of khat, and it is mentioned consistently in news stories of pirates it is imperative that khat be understood in the context of piracy.

The possible use of khat bans to control piracy, while a potentially powerful tool, would negatively effect Kenya and Ethiopia’s economies, making it inadvertently even more expensive for Kenya to be a part of AMISOM forces and possibly resulting in backlash from those affiliated with the khat industry. In 2001 Kenya imposed a ban on the trade of khat into Somalia out of the fear of illegal arms being smuggled with the shipments, however, Kenyan farmers immediately appealed to have the ban lifted because of the damage it would do to their livelihoods.³⁰ Without long-term planning and working within Kenya and Ethiopia to lower their dependence on the export of the drug, a ban on the trade of the drug in the region could potentially result in more regional instability. Khat is a major link between the three countries and should not be ignored as a part of the issue of piracy and Somalia’s overall stability although if and how it can be used to put an end to both issues will require further study.

Kenya and Ethiopia's Potential Roles in Somalia

Despite the potential gains for both countries if piracy were eradicated, it is clear that neither country is willing to focus their efforts solely on piracy until their own borders and soil are secure from unrest and extremist groups. Currently, Kenya appears to be moving towards integrating its troops with AMISOM forces to continue the fight against al-Shabaab while Ethiopia intends to withdraw completely from Somalia as soon as possible. In order to incentivize Kenya and Ethiopia's involvement in the fight against piracy, the United States, international, and regional communities should be willing to support a campaign for the long-term stability of Somalia. Otherwise, it appears that, especially for Ethiopia, it will continue to make more sense for the countries to continue the pattern of fighting small scale battles along the border intermittently when issues arise that directly threaten their sovereignty. Neither country has the funds nor the forces to contribute to a campaign purely focused on piracy that will not potentially secure their borders and allow for development in the region.

Due to historical tensions, the assistance of Kenya and Ethiopia in Somalia must be overseen by international organizations. Ethiopia's continued direct presence in Somalia, independent of an international organization, such as AMISOM, could potentially give fuel to al-Shabaab propaganda against the country and undermine any chance of local support for reconciliation or coordination between Somalia and Ethiopia. After Ethiopia's invasion of Somalia from 2006 to January of 2009, al-Shabaab was able to gain popularity amongst the Somali population because of the perceived threat to Somali sovereignty. However, due to al-Shabaab's use of violence, implementation of conservative laws, and actions that resulted in the blockade of international aid bound for drought victims during their period of control, the public currently appears to be supportive of anyone willing to oust them.³¹ However, if the invasion continues without positive results, such as a significant reduction in al-Shabaab strongholds, public support could once again turn against Ethiopia, Kenya and international intervention.

Ethiopia's direct involvement in the fight against al-Shabaab has already resulted in attacks in the Galgaduud region of Somalia. The Ogaden National Liberation Front (ONLF), a group of ethnically Somali people living in the Ogaden region of Ethiopia who seek independence from Ethiopia, directed attacks at the Ahlu Sunna Waljamaca (ASWJ) in Somalia in the beginning of February 2012.³² The ONLF, and other Somali's that distrust Ethiopia's intentions are angered by the ASWJ's support for the TFG, and consequently the current invasion of Ethiopian forces. Furthermore there remain strained relations between Eritrea and Ethiopia, who have fought "proxy wars often...on Somali soil", over disputed areas.³³ Ethiopia maintaining an independent presence in Somalia could potentially result in Eritrea supporting Islamic groups as it did with the ICU in the early 2000s.

Despite the delicacy of the relations between Somalia and Ethiopia, Ethiopia does have one of the largest armies in Africa and one American official stated

“The feeling is that the Ethiopians have the muscle and the Kenyans don't but it would be much better for the Ethiopians to back these operations discreetly.”

anonymously to the New York Times that “the feeling is that the Ethiopians have the muscle and the Kenyans don’t but it would be much better for the Ethiopians to back these operations discreetly.”³⁴

The UN acknowledges Ethiopia’s presence in the Galguduud region of Somalia and is working towards creating a coherent strategy amongst the various forces currently in Somalia, in reference primarily to Kenya, Ethiopia, AMISOM and the TFG. On December 2, 2011 in a communiqué written by the Chiefs of Defense Staff of AMISOM and the African Union Peace and Security Council, they “welcomed the decision of Ethiopia to support the AMISOM-Transitional Federal Government-Kenya operation.”³⁵ This statement seems to infer that the UN supports Ethiopia’s presence as long as their goals continue to align with those of the African Union and the TFG.

Kenya’s strained relations with Somalia also leave it vulnerable to negative propaganda. Al-Shabaab has already begun campaigns to smear Kenyan forces in Somalia. One al-Shabaab spokesman Sheikh Ali Mohamud Rage claimed to Somalia Report, a Somali news outlet, after an airstrike by unknown jets killed seven Somali civilians on 15 January 2012 that “the incursion of Kenya is not aimed only at al-Shabaab but to kill every Somali Muslim.”³⁶ There is already suspicion amongst the public in Somalia of Kenya’s intentions especially after the news reports were released that Kenya’s invasion was not merely a response to the recent kidnappings, rather they had been planning the attacks for some time.³⁷

Public support of forces involved in Somalia is a key factor in the long-term campaign to stabilize the area and end piracy. The close ties between the United States and Kenya, and between Ethiopia, Kenya and the AU, could potentially jeopardize all international efforts in the area, including aid distribution, if relations were to deteriorate. All forces in Somalia must be controlled and organized ideally through one intergovernmental alliance such as AMISOM. This would quell fears that Somalia’s sovereignty is being threatened by another nation and make military actions more efficient.

On 02 December 2011 the African Union Peace and Security Council “adopted a communiqué requesting Kenya favorably consider the integration of its forces into AMISOM.”³⁸ If Kenya and Djibouti (another country in the Horn of Africa in talks with the AU to send forces to join the mission in Somalia) agree to send forces to AMISOM, their numbers will increase from 12,000 to 17,731.³⁹

The United States should support the integration of Kenyan troops into AMISOM’s forces, support the withdrawal of Ethiopia’s forces from the region while creating incentives for Ethiopia to become involved or offer support indirectly, assist in the building of both countries’ internal security to protect them against backlash, and assist in rebuilding the social and political ties between the three countries. In doing so the expansion of troops and improved relations in the region would allow not only for a crushing defeat of al-Shabaab but a possible campaign on land against piracy in the future.

Next Steps

The U.S. should support the integration of Ethiopian forces into AMISOM. While Ethiopia is currently, publicly stating its intentions to withdraw from Somalia, their clear dependence on stability in the region and their substantial military forces make them optimal partners in the fight against al-Shabaab and other extremist groups, as well as against piracy. In order to sway Ethiopia and Kenya into contributing to AMISOM forces, the U.S. State Department, through its funding to AMISOM, should pledge to aid both countries in developing their homeland security against terrorist attacks. This would lessen both countries' current largest fears of continuing to be involved in Somalia.

However, the United States should not support the continued independent presence of Ethiopia in Somalia. Continuing negative opinions of Ethiopia amongst the Somali population could potentially turn support towards other Islamic groups or again towards al-Shabaab.

If Ethiopia chooses not to join AMISOM forces, the United States should support their planned complete withdrawal from the country. However, Ethiopia's involvement in the training of Somali forces through the African Union or European Union for the TFG or the ASWJ, similar to the European Union program in Uganda should be supported as a viable alternative, see Section IV, Chapter 3.

The U.S. should support Kenya's integration into AMISOM forces. The U.S. has strong ties to Kenya and has historically "provided capacity building assistance to help Kenya defend its land and maritime border against terrorist threats and armed incursions."⁴⁰ The U.S. should use its close diplomatic relations with Kenya to guarantee that their troops are integrated into AMISOM.

At the U.N. Security Council Briefing on Somalia on 11 January 2012 the U.S. pledged to continue to support AMISOM troop contributing countries (TCCs). In addition to the "\$337 million [USD] worth of training, equipment, and logistics support to AMISOM and its TCCs [the U.S. has provided] to date", they have committed \$106 million USD to support the training and development of Somali security forces.⁴¹ The U.S. should not only follow through on their commitment to AMISOM but also urge other member states of the AU and of the UN to contribute to the UN Trust Fund for AMISOM. It is important that the international community come together at this critical moment and take advantage of the successes that AMISOM, Ethiopia, and Kenya have been able to have so far. Also, these contributions could be used to persuade both Ethiopia and Kenya to officially guarantee troops to AMISOM.

It is imperative that the U.S. also supports AMISOM, Kenya and Ethiopia in maintaining positive relations with the Somali population while stationed in the country. This will mean continuing the positive treatment of Somali refugees as they flee the conflict and drought into Kenya, the continued support of Somalia's sovereignty through the TFG and the continuation of the Roadmap plan, the humane treatment of civilians during the conflict,

as well as actively undermining al-Shabaab propaganda. Programs such as USAID should continue to provide Kenya with the support necessary to take care of refugees.

Recommendations

Based on the previous analysis of the potential, past and current involvement of Kenya and Ethiopia in Somalia, the U.S. State Department should:

- » **Support the integration of Kenyan troops into AMISOM forces.** The United States should continue its funding of AMISOM troop contributing countries through the United Nations Security Council AMISOM Fund thereby incentivizing Kenya's integration. The United States should make its future support of Kenya contingent upon their integration into AMISOM or withdrawal from Somalia. In conjunction with support for Kenya's court system, the United States should aid in internal security within Kenya through AMISOM TCC funds.
- » **Support the expansion of international funding for AMISOM.** Through the United Nations Security Council and the African Union, the United States should urge countries to contribute to the UN Trust Fund for AMISOM.
- » **Support the withdrawal of Ethiopian forces as an independent force and encourage their integration with AMISOM.** The U.S. State Department should combat anti-Ethiopian sentiment in Somalia, but supporting their national withdrawal of troops from Somalia. However, due to Ethiopia's vested interest in Somalia and their large military force, the U.S. should encourage Ethiopia to send troops to AMISOM.

Current and Future U.S. Foreign Policy Concerning Somaliland and Puntland

By Steven Chang

Somaliland and Puntland, situated in the northwest and northeast of Somalia respectively, can be great allies in counter-piracy efforts. Their position along the coast makes piracy a key threat to their economic development. Yet, Somaliland and Puntland each pose challenges with regard to regional, national, and international issues of piracy. As a symbol of democracy and electoral success, Somaliland defines itself as unified across political, social, and economic lines and independent from the rest of Somalia. However, it continues to be attacked by extremist and clan-aligned forces. Puntland is semi-autonomous as well, but does not recognize itself as independent. Rather, it is a part of a federal Somalia, and also suffers from attacks by Islamic extremists.¹ It is also a home to many known perpetrators of piracy. Dividing these two regions are the disputed territories of Sool, Cayn, Togdheer, and Sanaag, where border violence hinders a bilateral effort towards the rest of the region. For the United States, both regions hold potential for anti-piracy efforts. Both Somaliland and Puntland have participated in the capture, trial, and incarceration of pirates, and both governments are officially committed against piracy. However corruption and ineffectiveness still hinder success.

Somaliland

Somaliland's commitment to counter-piracy efforts is unique from other parts of the country because Somaliland disassociates itself from "Somalia," which they believe to be the source of piracy. Somaliland believes that its claim to independence absolves it from direct guilt in the issue. The international community has yet to recognize this area as a sovereign nation, but has invested in its infrastructure in order to fight piracy. The Somaliland Government has also taken several promising steps in solving the piracy issue, at least in its own territory.

The Constitution

The Somaliland Constitution recognizes its proud history of autonomy and establishes political, social, and economic standards and expectations for its citizens. It strives to create a uniquely unified community on the basis that: “a Somaliland nation is a family that has everything in common, such as religion, culture, customs and language; and whose members are no different from each other and are ready to build together a state in which everyone has equal status.”² It does not focus on clan differences, although the area is predominantly of Issaq heritage. The commitment to Islam as its primary and only religion, to economic equality, and to the denunciation of discrimination also help to unify the area. Somaliland citizens are recognized as: “Any person who is . . . a descendant of a person residing in Somaliland on 26th June 1960 or earlier shall be recognized as a citizen of Somaliland.”³ The constitution does not currently acknowledge the necessity of a standing army nor does it recognize piracy.⁴ The State Department should encourage the adjustment of the Somaliland constitution so that it can establish the fair prosecution of pirates from Somaliland or greater Somalia. However, serving as direct advisors to this process would likely incur diplomatic challenges because the U.S. does not currently have a large presence in the region. It is best that the U.S. monitor the current efforts made by NGOs and organizations to initiate political and judicial reform in Somaliland, such as UNDP and UNODC, but not directly influence the decision-making process. It would be more advantageous at this point to assist organizations already established in the region that have credibility in the region. The U.S. should support these organizations, with the intention of ensuring that constitutional changes include international and transnational crimes, support law enforcement efforts, and continue the development of a judiciary and penitentiary system in Somaliland that can aid in counter-piracy. The State Department should also encourage increased cooperation between Somaliland and the rest of Somalia, in an effort to spread both the anti-piracy message, and stability.

State Department support of the amendment of the Somaliland constitution to acknowledge piracy is an important step in the development of Somaliland as a key location for piracy trials and prosecutions. This support is intended to aid Somaliland in its quest to effect long-term solutions to piracy. However, State Department aid in Somaliland could pose a high risk to the people of the region, due to the violent attacks from greater Somalia in an effort to distance Somaliland from western support. Constitutional change in Somaliland is a long-term project that must be carried out carefully.

International Recognition

Although Somaliland has declared itself as independent, the international community has yet to acknowledge this independence. As a result, Somaliland is ineligible to participate in influential organizations such as the African Union (AU) or the United Nations (UN).⁵ Establishing statehood through international recognition would provide a strong morale boost for Somaliland to continue their democratic project in an unstable country. Despite the lack of political recognition, however, Somaliland is recognized economically; the EU

and the United Kingdom have established significant economic relations with the region. Ethiopia, China, and Somaliland have also negotiated economic and trade relations.⁶ Additionally, the United Arab Emirates, the Coca Cola Corporation and Western Union have all invested in Somaliland.⁷

Recent news from 7 February 2012 reports Somaliland's efforts in obtaining independence and recognition in an international conference in London, which includes 44 other nations.⁸ As history has shown, Somaliland's interaction with the rest of Somalia has resulted in greater violence, an ongoing border dispute with Puntland, and a more difficult road to a unified, national democracy. A report from 12 February 2012 by the U.K.'s Martin Horwood illustrates the difficulties facing Somaliland from many regional areas, but specifically from Ethiopia. He also calls upon strong African nations such as Ghana, South Africa, and Nigeria to aid Somaliland in the process of gaining recognition.

This international recognition does not depend necessarily on defined borders. The International Court of Justice's only territorial requirement for statehood is that there is a core territory.⁹ A disputed region of the territory is not a hindrance to its potential statehood. Because Somaliland was a sovereign nation for five days in 1960, many Somalilanders claim that there are defined borders and that these borders still define the Somaliland Colony.¹⁰

Despite the potential advantage of a stable partner in the region, the State Department should not recognize the independence of Somaliland.

Despite the potential advantage of a stable partner in the region, the State Department should not recognize the independence of Somaliland. Tensions within Somalia would assuredly increase if political recognition was granted to any one area. Many in Somalia feel that the country should not be fragmented and often react violently against the prospect of a "balkanization" process.¹¹ Instead, the U.S. should focus on solely economic recognition of Somaliland through trade agreements.

International recognition is one of the last steps in Somaliland's pursuit for complete autonomy and disassociation from the greater Somalia. Somaliland has already demonstrated its formidable presence in the economic market, which surpasses that of many other African nations. It has also demonstrated remarkable political stability,ⁱ and its continuing potential for political, social, and economic improvement. However, recognizing Somaliland's independence can potentially result in strong backlash from the rest of Somalia. Furthermore, the border disputes that exist between Somaliland and Puntland, and between Somaliland and Ethiopia, make state boundaries incredibly difficult to determine.

Combating Piracy at Sea and on Land in Somaliland

Somaliland has funded and trained over 300 maritime police officers to fight pirates and to protect commercial investments near the port of Berbera; however, according to the com-

ⁱ In 2010, Somaliland took part in the only peaceful transfer of power from one political party to the other, on the whole continent, despite threats of violence and the change to the opposition party.

mander of this police force, there was no external support for these efforts.¹² According to Casey Kuhlman, a U.S. lawyer who works in Somaliland:

“There is an underfunded Coast Guard (headquartered in Berbera) who have an extraordinarily low morale, human capacity, and other severe limitations. The U.K. has the lead in building their capacity and they work steadily on this from what I hear. There is room for increased U.S. engagement in this area- particularly in the area of information exchange. A simple stop in at Berbera on one of the transits near by a [U.S.] frigate or so would go a long way towards endearing the Somaliland Coast Guard toward the [U.S. Navy] and catalyze a closer working relationship.”¹³

Other experts within the field share the same beliefs on the value of Berbera as an anti-piracy hub. According to Frederick Lorenz, Senior Lecturer at the University of Washington, and a Senior Fellow of the Public International Law and Policy Group (PILPG), an NGO working in the region, Berbera has great potential in anti-piracy efforts.¹⁴

Additional advantages to improving maritime law enforcement in Somaliland could come from a more developed port and larger coastguard. However, there have already been several measures of success with the small and poorly trained one now. First, in 2010 alone, a Triton-trained Somaliland Coastguard captured, prosecuted, and jailed more than 120 pirates. Officials in Somaliland have said that pirates rarely cross into their waters from renowned pirate havens in the region due to the Coastguard’s reputation for intercepting them. Second, as a result of these measures, the World Food Program considers Berbera a safe port for the delivery and distribution of food aid destined for the region. Finally, the Coastguard has also intercepted vessels intending to conduct IUU fishing.¹⁵ Depending on continued interest, the U.S. could monetarily support companies that train reliable Somali coast guards, such as the Somaliland one.

In terms of Somaliland infrastructure, September 2011 reports recognize the presence of the Chinese company PetroTrans Ltd. This company seeks to invest in the modernization of Berbera as a key port in a deal with the government that will help PetroTrans export the natural gas it extracts from Ethiopia. Modern roads connecting Somaliland and Ethiopia will also be part of the deal.¹⁶ “Redevelopment of Berbera Port to make it a gateway to East Africa is the major project of the framework of an agreement signed by the government of Somaliland and PetroTrans Company.”¹⁷ This decision has been debated because China’s provision of aid up until this point has been sparse, and their interests are solely economic. The U.S. must be cautiously optimistic about this growth and could potentially implement growth restrictions; however, it is currently in the U.S.’s best interest to support this effort.

The U.K. has also stated its willingness to train coast guard forces. However, low morale and poor equipment have already demonstrated the need for greater economic assistance. It is recommended that the U.S. also provide coordinated capacity building assistance via training, and that the U.S. also provide financial support to expand the port in Berbera for increased anti-piracy efforts.

The State Department can use Berbera as a valuable port for anti-piracy issues. Because of economic advantages already developing in Berbera, the port can serve as a stronghold for medium- to long-term efforts against piracy. However, Berbera is not located in the heart of current piracy efforts. As the HRA continues to expand, its geographical position may limit its effectiveness. The port is also currently littered with sunken ships,¹⁸ and using the port as an anti-piracy port would require headquarters on land in Somalia which is not currently an option for any international naval force, although it may be possible in the medium- to long-term.

Criminal Justice and Law Enforcement

Somaliland does not currently prosecute pirates for the crime of piracy because the penal code is not currently structured to recognize these acts as crimes. However, pirates are routinely prosecuted for underlying acts during piracy (what international criminal law refers to as the “crime base”), such as the illegal use of weapons, kidnapping, or murder. Somaliland is in the very early stages of a longer process (currently being led by Casey Kuhlman’s Water Shed Legal Services firm) to review the penal code and ensure that it is up to date with modern international and transnational crimes, and that the criminal procedure code allows for modern law enforcement and trial methods to be steadily integrated into the Somaliland system.¹⁹ Currently, Somaliland is not prosecuting pirates captured by international forces, only pirates captured by Somaliland forces. The Somaliland government refuses to accept transfers from international forces according to Ismail Moummir Aar, the Somali Justice Minister, but it maintains its stance that pirates will be accepted and prosecuted if they are repatriated Somaliland nationals.²⁰ Within the past year, both Somaliland (Hargeisa) and Puntland have received money from UNODC in order to improve and expand their penitentiary systems with the intent that eventually repatriated and prosecuted pirates can be held within Somalia. These measures must guarantee that detainees will be held humanely during their time in Somali prisons according to international standards.²¹ According to the United Nations on current Somaliland development:

“In Somaliland, a national justice conference from 14 to 16 June 2011 approved a five-year strategy for the development of the judicial sector. UNDP completed the construction of court buildings in Hargeisa and Boorama and a regional prosecutor’s office in Burao and provided legal materials and equipment. Somali legal aid providers, supported by UNDP, have dealt with approximately 2,500 cases in 2011. Hargeisa prison, which opened in March, was equipped by UNDP and the United Nations Office on Drugs and Crime.”²²

Prisons in Somaliland, as well as Puntland, are necessary for an independent and pirate-free Somalia. The UNDP steps taken to create an expanded holding area (100 prisoners) for repatriated pirates must continue. International standards for human rights should be maintained through proper training. Increased infrastructure and a proven unbiased court system must be developed to ensure the peaceful and just trials of repatriated pirates.

In criminal justice and law enforcement, there is also room for increased U.S. engagement with Somaliland. The criminal justice and law enforcement effort is currently being led by UNDP and Water Shed Legal Services, which is deeply involved in this process. Under this leadership the serving prison officers have received training. Standing and operational orders were developed, and prisoners received uniforms. The PILPG Piracy Working Group has also contributed, by encouraging the adoption of the UNSC Resolution 2015 in conjunction with the UNDP and UNODC that states, “assuming that sufficient international assistance is provided, piracy trials being conducted by courts in Somaliland and Puntland are expected to reach international standards in about three years. . . this timeline will be accelerated if suitable experts, including those from the Somali Diaspora, can be identified and recruited.”²³ One simple method to identify potential qualified and knowledgeable experts would be use organizations such as the Worldwide Somali Students and Professionals (WSSP). They have a wide membership that includes internationally educated lawyers and students of Somali descent.

The UNDP has developed an extensive work plan, which is currently underfunded.²⁴ In order to improve this work plan, the State Department must divert money via the UNDP to promote growth in the law enforcement and criminal justice fields of this operation. The United Nations Political Office for Somalia (UNPOS) has also planned for a more active role within Somaliland and Puntland, rather than a “light” footprint.²⁵ Eliminating a light footprint means the development of greater logistical support for the U.N. within Somalia, including streamlined facilities and an AMISOM manned U.N. protection force.²⁶

Between 2008 and 2010 the U.S. government funded the efforts of an NGOⁱⁱ in Somaliland that provided legal assistance and policy support for constitutional and legislative reform. Aided by the NGO, and based on international and state reform processes, the Somaliland Constitution was revised. Current legislation was also drafted based on these new international and state practices. The NGO also provided technical assistance and workshops on Best Practices for Somaliland officials and policymakers. The NGO established two tracks to aid Somaliland policymakers: (1) a technical assistance track, which largely provided memorandum work, and (2) a capacity building track, which provided a democratic basis to ensure that Somaliland could continue without the influence of external factors. The NGO’s approach allowed for legal and technical advice as needed. According to Frederick Lorenz, the NGO made a “major contribution to the peaceful transition of government in Somaliland in 2010.”²⁷

The proposed prosecution of all Somali pirates within Somaliland territory would prove difficult, due in part to the lack of support from political leaders. Although piracy is an issue in Somaliland, many citizens see the issue as a “Somalia” problem and refuse to cooperate. For the rest of Somalia, and especially for border rival Puntland, the trial, prosecution, and detention of their citizens in Somaliland territory would exacerbate tensions between

ii It was requested that the name of the organization be withdrawn from this report. In this paragraph “the NGO” refers to the same organization.

Although piracy is an issue in Somaliland, many citizens see the issue as a “Somalia” problem and refuse to cooperate.

the regions. Current Somaliland law prosecutes pirates under piracy-related charges (such as murder or kidnapping), which has demonstrated some level of success. Current funding for prison infrastructure also shows how current operations have served to improve human rights standards in Somaliland detention centers.

In summary, Somaliland has begun to create the proper infrastructure to function as an independent entity. Current law facilitates prosecution under charges other than piracy. NGOs have aided new constitution writing methods, and UNDP and UNODC prisons have been built. However, all this work is dependent on the continued motivation of the people of Somaliland. Expanded Coast Guard patrols and piracy prosecutions are seen as long-term solutions rather than an immediate answer to the problem of piracy.

Puntland

According to Abdirahman Mohamud Farole, President of the Puntland State of Somalia, his government is strongly committed to the anti-piracy effort. Over 240 convicted pirates and suspected pirates are now in Puntland detention facilities.²⁸ Puntland also plans to establish a Maritime Police Force, funded by the United Arab Emirates.²⁹ They oppose ransom payments on the grounds that this provides pirates with the financial means to expand their enterprises. President Farole also stresses the need for community engagement and international support in providing coastal communities with vocational training schools, job opportunities for youth, and funding to revive the fishing industry. Through community engagement programs and economic assistance the U.S. State Department can provide infrastructure support to eliminate piracy as the most viable economic option for the poor.³⁰

Trials and Detention

Building new prisons in Somaliland and Puntland is vital, as UNODC Counter Piracy Programme Coordinator Alan Cole explains:

“The international community is now largely in agreement that we must work towards ensuring Somali pirates are tried in their own country and, when they have been tried abroad, returned home to serve their prison sentences in Somalia. Hargeisa prison is the first new prison to be opened in Somalia for many years and is a clear demonstration that Somaliland is committed to improving its prison sector and UNODC is going to continue to work in Somaliland and Puntland with the authorities to ensure that they are properly supported in the fight against piracy.”³¹

The prison in Bosaso is one of two prisons serving a population of 1.3 million. The other in Qardho is not yet operational.

Clan law takes precedence in Puntland, with only one person incarcerated per 5,000 in government-run prisons and many of those inmates claiming to have had inadequate legal representation.³² Clan affiliation also makes prosecution of well-known pirates difficult, due to the ‘mafia’ style mentality of pirate organizations. Although the majority of pirate bases are located in Hawiye and Darod clan areas, there is no guarantee that pirates are from those clans. In addition, the number of sub- and sub-sub-clans complicates the identification of pirates by the international community, but creates a unique judicial system that is utilized before government law. According to Jay Bahadur “the state-administered justice system is, in a way, a last recourse in the event that clan mechanisms of dispute resolution fail.”³³ Half of the inmates in Bosaso are pirates, a skewed statistic that is representative of the Puntland government’s desire to be perceived as “anti-piratical” to the international community. The prison is currently overcrowded, carrying double its capacity. Inmates are served little food and allowed little time outdoors. As Bahadur explains, the arrival of the president to the prison signified something other than just representation, as many prisoners were pardoned and given a small stipend upon their release.³⁴ In terms of capacity building, according to Bahadur, “Puntland simply lacks the capacity to handle a steady stream of detainees from the international naval forces...Puntland will remain unable to carry its share of the burden without international assistance.”³⁵

The UNODC project, which includes assistance with staff training, design and construction of prisons, associated law reform and prison operations,³⁶ is in progress in Bosaso and has been proposed to begin in Garowe as well.³⁷ The State Department must aid in the building of prisons to ensure international standards of health within prison systems and increase capacity building. At current levels, prisoners are subject to extreme overcrowding in the prisons in Garowe and Bosaso.³⁸ The State Department should help finance the new construction in Puntland, with the aim of increasing the region’s prison capacity to roughly 1500–2000 inmates.³⁹ As a long-term effort, when it is demonstrated that clan affiliation does not affect prosecution, these facilities should be turned over to Puntland authorities.

Expanding the penitentiary system is the easiest solution to current human rights violations that occur within Puntland prisons. However, due to the corruption that still exists in Puntland, funds for prison building are often redirected to clan affiliated systems of justice. Building a prison is not the solution if the actors in the system still allow for rampant pardons or easy escape.

Law Enforcement

According to Roger Middleton, Puntland is the perfect place for pirate operations because it is both stable and ungoverned. Further south there is “too great a chance of getting caught in the crossfire and too many competing interests to pay off.”⁴⁰ It is still commonly viewed that Puntland is ‘the epicenter of Piracy.’⁴¹ It is suggested by the International Expert Group on Piracy off the Somali Coast that many government officials at both the junior and senior levels were and are involved in pirate activities.⁴² According to the International Crisis

Group (ICG), Abdullahi Yusuf served as a warlord in the operation, receiving at least some monetary profit from piracy. The arrival of the 'Somali Marines' or the Defenders of Somali Territorial Waters, one the most sophisticated pirate groups⁴³ also marks a coincidental point in Puntland's anti-piracy efforts. Many see this new piratic Coast Guard as just a front to the whole of Puntland's operation.⁴⁴ Local officials, Puntland police, and Puntland soldiers have supported piracy because they see the opportunity to make large amounts of money in a region overcome by financial burdens. According to information received from a convicted pirate, a single armed pirate can earn anywhere from \$6,000 USD to \$10,000 USD for a \$ 1,000,000 USD ransom.⁴⁶ There is much evidence that the government and piracy were closely linked; "pirates admitted they had close relations with the Puntland administration and told reporters that the former government was insincere in its claims to clamping down on their activities."⁴⁶ As of 2010, high ranking pirates could still walk the streets of cities such as Garowe with little fear of arrest. According to the Special Representative to the UN Secretary General for Somalia, Ahmedou Ould-Abdallah, in a 2008 report, "the Puntland leadership has made it easy for pirates to establish a base there" and the presidential elections of 2009 were funded in part by piracy.⁴⁷ According to the same report, Puntland is headed towards becoming a criminal state.⁴⁸ With a projected income of nearly thirty million dollars expected from piracy this year, the activity dwarfs the Puntland government's income of ten million dollars by three times.⁴⁹

Despite these negative reports on Puntland, there have been many recent positive actions in the region. In 2011 an MOU signed between Somalia (TFG) and Puntland proposed: improving ties and cooperation, fighting against terrorism, piracy, and illegal immigration, strengthening security, providing equipment and security training to Puntland, and promoting political and economic development.⁵⁰ According to Farole as of 5 February 2012, the Puntland State had begun to develop its natural resources, including exploration for oil and minerals. He called for international support to strengthen security institutions and to advance socio-economic development projects including the development of hydrocarbons, infrastructure buildup, livestock, fisheries, agriculture, transport and communications, and banking and finance, among other economic sectors.⁵¹ Investment in these areas is projected to alleviate poverty, address unemployment and contribute to improving security all of which will aid in the fight against piracy.⁵²

Urban centers also display evidence of Puntland's anti-piracy efforts. The media works against piracy by issuing press releases detailing raids, arrests, and the imprisonment of pirates. Additionally, Farole's entrance into power in 2009 marked the reorganization of the Darawish, Puntland's security forces. As a result, "soldiers positioned at regular checkpoints throughout the city checked every passing vehicle...and there had been a successful campaign to get guns off the streets."⁵³ President Farole has demonstrated his willingness to overlook clan prejudice in order to gain support from the international community in anti-piracy efforts, which is crucial in the battle against piracy.⁵⁴ However, often anti-piracy efforts in Puntland are thwarted by untimely local intelligence gathering. The main problem is the inability to transport troops to land-based battles. Troops are often outmatched by

the types of ammunition pirates have access to. Puntland troops are also seen as clan based rather than government based. The designation of piracy as *haram* also influences the way in which infrastructure is built. Many citizens of Puntland refuse to live in or use infrastructure furnished by pirate money.⁵⁵ Still there is the belief that the Puntland government is complicit, or even actively involved in piracy.⁵⁶

The European Union's proposed effort to expand its anti-piracy operation inland suggests that greater efforts will be made to destroy pirate infrastructure and bases onshore in Puntland. The Puntland Government, who believe the EU's attack on the coast will aid their efforts inland, support this policy. However, reports have shown that civilians and especially fisherman believe that EU efforts would create insurmountable pressure on them from two fronts: the pirates and foreign navies.⁵⁷ Puntland has sent their newly trained anti-piracy unit, the Puntland Marine Police Force (PMPF) to Bosaso following an extensive six-month training course. According to the coordinator of these maritime police, these soldiers were funded only by the Puntland Government.

The U.S. must investigate the training and use of Public Private Partnerships (PPP)ⁱⁱⁱ that have begun to establish themselves in Puntland, in an effort to improve infrastructure, such as the government partnership with Shaba Water Company in Boroma. This new agreement, with the help of UNICEF, has improved water supply to more than 80,000 people living in the town.⁵⁸ Further infrastructure programs like this are crucial to ensuring that Puntland continues to develop.⁵⁹ However, NGOs that are doing positive work in the region must be supported and potentially funded (see Section I, Chapter 2). With help and financial support from the current international architecture, targeting long-lasting economic improvements is a vital part of sustainable development efforts. Puntland has begun rebuilding its infrastructure with financial aid from the United Nations.⁶⁰ This infrastructure includes the drilling of oil, which is a controversial issue because there are many basic infrastructural needs of Puntland that should be addressed before those of Africa Oil's Horn Petroleum Corporation.⁶¹

The U.S. must consider multiple ways to address the issue of piracy, specifically focusing on instability in Puntland. Although outdated, the U.N. International Expert Group's recommendations for intervention including: developing the fishing industry, building up coastal infrastructure through labor-intensive job creation, vocational training for youth, support of youth groups, engagement with the diaspora, and support to pastoralists,⁶² must all be considered. The State Department must consider these on-the-ground projects as key tools towards improvement directing funds to U.K. or U.N. projects along the coast (see Section I, Chapter 2).

In her analysis of Puntland published January 2012, Anja Shortland suggests that inland

iii Public Private Partnerships are a way to strength the government and the private sector through increased communication and effectiveness in various projects by their partnership. Often these agreements are facilitated by international organizations such as UNICEF.

urban centers rather than coastal villages are the greatest beneficiaries of pirate ransom money. They have created employment despite much of the money being transferred to foreign accounts, and have improved the livelihoods of those beneficiaries. However, “even if Somali communities received all of the ransom money, replacing this source of income (for example with a combination of a foreign-funded security forces and development aid) would be considerably cheaper than continuing with the status quo.”⁶³ This status quo has seen lavish pirate lifestyles inland and noticeable infrastructure development within communities such as Garowe.⁶⁴ Extending aid to urban areas in Puntland via the international community or advising them using satellite imagery technologies developed in the United States could prove to be effective in decreasing the incentives that come with support for piracy. However, the conclusions Shortland has made are contradicted by the Somaliland Press who viewed her conclusions as irrational and uneducated. Extending aid, in their opinion, would be like “paying a bank robber not to rob a bank.”⁶⁵ The press also disagrees with the claim that aiding disgruntled coastal villages in the anti-piracy effort would be a solution to the problem.⁶⁶

Puntland has demonstrated its capacity to build infrastructure and thwart piracy. Its backing by much of the international community demonstrates its progressive movements.

Despite positive efforts, corruption still occurs on a large scale in the region. The government’s perceived link to piracy is a cause for concern and more research on this connection should be explored.

Recommendations

Based on the previous analysis of Somaliland and Puntland, the U.S. State Department should:

- » **Support and aid the amendment of the Somaliland constitution.** For pirates to be repatriated before trial and for detention purposes as well, the State Department should through international law groups such as PILPG assist with the amendment of the Somaliland constitution.
- » **Not recognize Somaliland’s independence.** Although a beacon of democracy and stability, Somaliland should not be officially politically recognized due to the high tensions in the region over the division of Somalia. The U.S. should support Somaliland through economic recognition to continue to encourage its positive progress.
- » **Develop Berbera for use as an anti-piracy base in the long-term.** The Somaliland port of Berbera is an optimal location for an anti-piracy base, in the long-term. The State Department, through the CGPCS should further research ways to utilize this deep water port in the short- to medium-terms.
- » **Support the expansion of prosecution and detention capacity in both Puntland and Somaliland.** The State Department should support the ongoing UN projects to expand

the capacity of Somali to try and detain its own citizens. In the long-term, any captured pirates should be repatriated for trial and detention upon conviction. However, further development should not be acknowledged in Puntland until it can be established as a region devoid of complacency with piracy.

- » **Invest in job creation and infrastructure building in Puntland.** The U.S. State Department should seek to provide alternative economic opportunities to piracy to diminish the number of voluntary recruits. Previously established U.K. and U.N. programs should be considered for support before new programs are begun by the United States.

U.S. Foreign Policy in Somalia

The TFG, Onshore Support and the EUTM Somalia

By Emily Stromme

Somalia has been in a continuous state of armed conflict since 1989. After the collapse of the Barre regime in 1991, several Somali factions battled to control the state. These small wars led to a series of national reconciliation conferences and mediation efforts by neighboring states that were ultimately unsuccessful. Finally, at a conference in Djibouti in early 2000, clan elders and other senior figures created the Transitional National Government (TNG). However, the TNG was largely ineffective and by the end of its 3-year mandate, it had reported bankruptcy.¹ As a result, Kenya organized another reconciliation effort in 2004 that established the Transitional Federal Parliament (TFP), and facilitated the appointment of a president who would lead the new Transitional Federal Government (TFG).²

The new interim government has been provided with humanitarian and development aid by international organizations in an effort to stabilize the state. In addition, the U.S. also provides financial and material support to the government to increase public backing for the TFG within the State and among the Somali Diaspora.³ However, regardless of these efforts, Somalia still currently lacks a strong central government. The TFG instead has struggled both internally and against warring clans and Islam extremist groups. In turn, this has led to a diversion of resources aimed primarily towards keeping the nation's capital of Mogadishu within government control. The resulting instability from this lack of governance has caused drastic increases in criminal activity—most notably, the development of maritime piracy.

The exacerbation of this problem in recent years has necessitated the re-development of counter-piracy measures. In response, the TFG, its aligning parties, and other local administrations have condemned piracy as a criminal act. In cooperation with the TFG and other regional actors, international organizations have established several anti-piracy operations in Somalia. The U.S. has provided support for these efforts and is a contributor to organizations such as EU Operation ATALANTA, NATO Operation Ocean Shield, CTF-151, the African Union Mission in Somalia (AMISOM) and the United Nations Operation in Somalia (UNISOM). This multilateral approach is the basis of U.S. policy towards Somali piracy and serves to establish the importance of international cooperation in resolving this problem. More specifically, U.S. anti-piracy efforts have emphasized a multi-dimensional response, focusing on the issues of security, prevention and deterrence.⁴ As a result, there

has been notable success. The implementation of Best Management Practices, as well as an international coalition of counter-piracy vessels has strengthened offshore efforts to combat piracy.

However, the U.S. has made it clear that a major root cause of piracy is state failure in Somalia. The only long-term solution to eradicate piracy is the achievement of a stable state that is based upon good governance.⁵ Currently the U.S. diplomatic policy towards Somalia is the “Dual-Track Approach.”⁶ On Track One, the U.S. provides its support to the TFG, the Djibouti Peace Process and AMISOM. Track Two serves to expand engagement with regional administrations and important local Somali constituents—mainly clan leaders and civil society groups—who oppose extremism and seek stability.⁷ While engagement will occur with leaders from Puntland and Somaliland, the U.S. does not currently recognize either semi-autonomous region; instead offering its support to a single unified Somalia. Under this approach the U.S. maintains an open dialogue with the TFG and the other aforementioned Somali stakeholders. The U.S. Dual-Track Approach towards the state of Somalia and its contributions to international organizations combatting piracy has clearly been significant. However, piracy has undergone an evolution of tactics; the utilization of mother ships, better technology, and increased inter-pirate communication has facilitated a continual rise in the number of attacks. Pirates have also become more violent towards captives, even murdering victims in recent captures.⁸ As the situation continues to worsen, it is clear that additional foreign policy efforts must be implemented by the U.S. to ensure the safety of maritime travelers and ultimately to enhance the stability of the Somali State.

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Continued Backing of the TFG

The efficiency and trustworthiness of the TFG is subject to enormous debate. The new government has overtly disposed of unnecessary cabinet positions, removed al-Shabaab from the nation’s capital and acquired al-Shabaab land in southern and south-central Somalia. Additionally, U.S. Representative to Somalia James Von stated recently that the TFG has made “very significant progress.”⁹ Plans for a permanent government reiterate Von’s statement and exemplify efforts to stabilize the state. However, President Sharif Ahmed has also been heavily criticized for his inability to forge alliances between clans, provide local Somalis with economic opportunities, or establish the TFG as a legitimate governing power. Instead, corruption has continued unchecked, and according to the International Crisis Group it is now “more pernicious and serious than ever, presided over by powerful establishment figures and permeating every tier of government.”¹⁰ As a result, the TFG has not put forth any significant efforts to stop piracy without direct international intervention.

The Somalia End of Transition Roadmap sets forth the priority measures to be implemented before the current governing arrangements end in August 2012. Produced by ruling mem-

bers of the TFG, TFP, Puntland government and the Galmudug government, the document garnered support from several states and international organizations such as the UN.¹¹ Benchmarks within the Roadmap clearly delineate each area requiring improvement as well as the key tasks and timelines within which these measures would be met. Benchmark 1B focuses specifically on the issue of building effective maritime security and implementing counter-piracy policy and strategy. Outlined in this plan are seven steps: 1) The declaration of an Exclusive Economic Zone (EEZ). 2) The appointment of a Counter-Piracy Coordinator. 3) The establishment of a Somali offshore police force that is coordinated with onshore forces. 4) A maritime security strategy agreed upon by the surrounding regions and other governments. 5) The development of programs that encourage anti-piracy community engagement. 6) Capacity building around the prosecution trial and imprisonment of piracy cases. 7) The enactment of anti-piracy legislation.¹²

In addition, the Somali National Consultative Constitutional Conference held in Garowe from 21 December to 24 December 2011 resulted in the announcement of the Garowe Principles and the Garowe II Principles. Yet, this agreement prolongs the transition to a permanent political order for Somalia, moving the deadline from August 2012 until 2016. These principles were brought into existence by the organized political administrations creating the new constitution under the TFG, TFP, the presidents of Galmudug and Puntland, the moderate Islamist group Ahlu-Sunna Wal Jamaaca (ASWJ) and the Special Representative of the Secretary General of the UN to Somalia.¹³ Severe internal strife resulted from the formation of these principles. Additionally, Somali observers were surprised by the lengthy extension of the transition period.¹⁴ Consequently, fear that the TFG will miss its Roadmap benchmark deadlines exists throughout the international community. This overtly calls into question whether or not the TFG will be capable of implementing effective counter-piracy policy both onshore and offshore in Somalia.

In response, the U.S. State Department must be extremely clear on its stance towards the TFG. The U.S. could continue to provide financial support to the TFG regardless of its ability to make progress on the issue of piracy or meet its self-proclaimed deadlines, in an effort to stabilize the government and aid in its expansion throughout the state. However, continuing to provide direct financial aid to the TFG or endorsing international organizations that fund the TFG regardless of its notable progress will diminish the incentive to implement necessary changes. Instead, the U.S. must assure the TFG that if it does not meet the expectations set forth in the Roadmap, it will no longer provide the interim government with any support. On 11 January 2012 Ambassador Jeffrey De Laurentis, U.S. Alternate Representative for Somali Political Affairs to the UN stated:

“Let me be absolutely clear on this point: we will hold the Roadmap signatories to account. They are responsible for achieving the tasks outlined in the Roadmap, including an agreed upon constitution, parliamentary reform, and credible and transparent elections. Any further support by the United States will be contingent upon successful completion of the key tasks in the Roadmap. We will stand by Somalia’s side, but are prepared to walk away if the TFG and TFIs cannot show concrete, measurable progress

in 2012.”¹⁵

The U.S. must additionally specify that progress will be measured on whether or not the TFG is fulfilling its requirements in meeting the designated deadlines of the Roadmap. Notably, whether or not it is completing the key tasks stated under the aforementioned Benchmark 1B. If the TFG is unable to reach these goals the U.S. should instead concentrate its support on more operative local entities, until a more appropriate and effective national government is negotiated. More precisely, the U.S. should divert funding to Somali based non-governmental organizations (NGOs) that aim for piracy deterrence or international missions that focus directly on the issue of piracy such as the UNODC “Somalia Beyond Piracy” campaign elaborated upon below.

Onshore Support

Currently, the U.S. does not have any prominent human presence on the ground in Somalia, and although the U.S. lends its support to AMISOM’s humanitarian operations, there is little U.S. or international desire to send in additional troops to counter piracy.¹⁶ As a result, any large-scale U.S. military presence onshore is unlikely to occur. This presence would ultimately be a counterproductive strategy that threatens any possibility of a domestic-based movement to address the problem. However, scholars of the counter-piracy community have made it clear that onshore efforts are critical to combatting the current issue. Vice Admiral William Gortney, Commander of U.S. Naval Forces Central Command (ret), reiterated this sentiment in testimony before the House Armed Services Committee in 2009: “Ultimately, piracy is a problem that starts ashore and requires an international solution ashore.”¹⁷

The U.S. State Department could create anti-piracy campaigns that target areas known for piracy. However, it would be largely ineffective to attempt to mobilize local Somali citizens through an outside government. Instead, the U.S. should determine where local efforts are showing promise as well as popular support and legitimacy, and aid them in creating local public interest campaigns against piracy. At a minimum, financing and providing material support to organizations that overtly engage with Somali citizens, public interest groups and media outlets in opposition to piracy will allow greater public awareness of the problem. Additionally, by endorsing pre-existing campaigns, the U.S. will not risk any additional human life in an effort to establish and maintain a new U.S. campaign on Somali territory.

Focusing campaigns to send a clear message to a broad scope of Somali citizens is critical in ensuring the effectiveness of these anti-piracy efforts. Involvement of important local community members such as imams, elders, women’s groups and youth groups will provide a more targeted outreach campaign that gives attention to a wide range of Somali voices. Religious leaders should be specifically supported, so as to make their opposition to piracy clear. Already these individuals have advised people not to be attracted by the wealth that piracy offers, furthermore declaring that not only is piracy against Islamic Law, but that any

marriage to a pirate is also considered *haram*.¹⁸ To expand awareness at a local level, the U.S.—through international organizations in Somalia such as UNISOM and AMISOM—should unite local religious leaders with clan elders against piracy. In turn, this will allow the solidification of a single front against piracy, especially in areas that are known to harbor these criminals.

Additionally, centering these campaigns on a single theme—piracy deterrence—will not only serve to reiterate the legal repercussions of committing an act of piracy, but will raise awareness about the negative social consequences of piracy as well. The United Nations Office on Drugs and Crime (UNODC) has already created an Anti-Piracy Advocacy Campaign entitled “Somalia Beyond Piracy,” which endeavors to make piracy unappealing by highlighting the negative aspects of a career in piracy, and demonstrating that there are positive career alternatives within the Somali State. The campaign will span over two years and has four clearly defined messages: 1) piracy is haram 2) piracy has eroded Somalia’s cultural and traditional values 3) piracy has destroyed Somalia’s international reputation and standing 4) piracy increases the chance of death or imprisonment.¹⁹ The underlying theme in each of these messages is clearly that piracy is unacceptable. Yet, each of the first three messages also calls upon a specific aspect of Somali life that its citizens hold dearly. Specifically: the Muslim faith, deep-rooted traditions, and strong Somali patriotism. The fourth message purely serves to provide Somali locals with an explanation on the consequences of piracy, which is information that most citizens do not know have any prior knowledge of.²⁰

In an effort to ensure the success of the campaign, UNODC has also gained the support of Somali Abshir Abdullahi “Boyah”, a famous former pirate and pirate recruiter.²¹ UNODC seeks to utilize this Somali recruiter as an advocate against piracy, explaining that piracy

leads to an increased chance of death or imprisonment and is not a viable job opportunity. Wayne Miller of the “Somalia Beyond Piracy” Campaign has also stated that other reformed pirates may be utilized to expand and solidify Boyah’s anti-piracy contributions.²² In an attempt to reach the greatest number of citizens, the “Somalia Beyond Piracy” campaign will provide consistent multimedia messages that reiterate the initial interviews and recordings of anti-piracy messages documented in the local community. Radio, specifically, is the single most important form of Somali communication and is used to support their oral culture. While the campaign has already made clear that it will use radio, stations commonly listened to such as the BBC Somali Service, VOA Somali Service, and Radio Daljir should be utilized to expand and monitor the campaign. In addition to using radio and older forms of communication such as television and newspapers, the campaign will integrate new social media—notably, Twitter, Facebook, SMS, and YouTube—to effectively spread the anti-piracy message.²³ Consequently, the U.S.

should support these efforts and publicly endorse UNODC’s anti-piracy information campaign. The “Somalia Beyond Piracy” campaign will also provide questionnaires to Somali citizens located across the country periodically every six months to measure the impact and

By extending local public awareness campaigns into educational programming for Somali youth, there will be a greater understanding of the negative consequences of piracy and the dissolution of pro-piracy beliefs.

progress of the campaign. In addition, the campaign will monitor radio programs that allow citizen feedback in an effort to identify any obstacle or notable success. Furthermore, the U.S. should take a direct role in providing public support to this campaign by televising the successes of the “Somalia Beyond Piracy” campaign—notably, visuals of youth anti-piracy education, speeches of reformed pirates and other general information campaigning.

In addition, by extending local public awareness campaigns into educational programming for Somali youth, there will be a greater understanding of the negative consequences of piracy and the dissolution of pro-piracy beliefs. “Somalia Beyond Piracy” plans to provide anti-piracy education to school youth starting at around ten years old, in an attempt to counteract growing gang ideology towards piracy.²⁴ Additional youth outreach efforts are being conducted by the UN Political Office for Somalia (UNPOS), which currently target Somali youth through messages in newspapers, radio and television shows, as well as on the internet.²⁵ The campaign currently attempts to contradict the image of pirates as heroes who quickly become wealthy through their exploits, instead underscoring the aforementioned dangers of taking part in acts of piracy. The U.S. should encourage the expansion of this educational programming through local grassroots organizations as opposed to establishing new international missions within Somali borders that do not actively bring Somalis into their work. These local efforts will not only allow citizens to listen to these anti-piracy efforts, but empower them to participate in the organizations and continued education surrounding this issue. In an effort to measure the success of anti-piracy education, the U.S. should encourage those organizations conducting the program to survey students before and after the presentation to measure whether or not the program had encouraged any change in beliefs. A follow-up class to answer additional questions should also be implemented where the issue of piracy is re-addressed with older youth and they are assigned as mentors to younger peers. As a result, not only will successful education efforts be relatively self-sustaining, but the youth will be held accountable by their peers.

Furthermore, piracy-prone areas that respond well to campaigning efforts—such as Eyl—should be rewarded with additional foreign investment for reducing and stigmatizing piracy, thereby providing the town’s inhabitants with other economic opportunities. As a result, not only will local business grow, but other areas will be provided with additional incentive to rid their area of piracy in order to receive these same benefits as well.

Counter-Piracy Training Missions in Somalia

In 2009 the European Union (EU) decided to move forward in a campaign to reduce piracy in the Gulf of Aden. In cooperation with the African Union (AU), a team of advisers was dispatched to the region a year later. This European Training Mission (EUTM) aims to provide military training to strengthen the TFG as a functioning government and seeks to encourage a Somali-based intervention on the issue of piracy.²⁶ Under the EUTM, soldiers are trained in mine awareness, fighting, communications and medical training. These trainings take place in Uganda at the Bihanga Training Camp, conducted with direct assistance

from the Ugandan Peoples Defense Forces (UPDF). The AU had already been training Somali forces prior to the mission's commencement. Permanent equipment was provided for by both the AU and EUTM Somalia; training equipment was supplied primarily by Uganda and the U.S.²⁷

Initial hesitations about the mission centered primarily on the issue of EU-trained soldiers defecting to the militant side once they had returned to Somalia. As a result, the selection of Somali trainees was stringent. The EUTM only accepted Somalis with a clean human rights record, ensuring that all citizens were of age and that there was a fair representation of Somali clans within each trainee intake. Eligible candidates were first suggested by the TFG and then checked by the U.S., AMISOM and the EU.²⁸ Colonel Ricardo Gonzalez Elul—the first commander of EUTM—clarified that there were “strong initiatives” to discourage defection, including a “reintegration and monitoring system” in Mogadishu.²⁹ Additionally, AMISOM forces mentor the soldiers for the first two months after training, ensuring that they stay focused on the mission and stay physically fit.³⁰ In December 2010 the first intake of Somali soldiers completed their training, with a total of 911 Somalis declared professional soldiers in the future army of Somalia.³¹ Two Somali training missions have been successfully completed and a third intake has begun in partnership with the UPDF.

It is evident that the EUTM has implemented several safety measures to counteract the instability in Somalia and has clearly contributed to a wider comprehensive approach by the international community. However, it has been critiqued as well. An inability to pay wages has led to hundreds of military members deserting the army, with some even joining rebel groups allied against the TFG.³² In response, the U.S. should ensure that the money it is donating to these training missions is not only training forces, but that it is also providing soldiers with reasonable and timely wages. The International Crisis Group (ICG) has stated that the selection of trainees is skewed in favor of certain clans and that it will only be successful under a TFG leadership that can instill within its soldiers “a sense of loyalty, patriotism and direction.”³³ Currently, the TFG is unable to garner this type of support. Anti-piracy efforts specifically are only a partial focus of EUTM Somalia—under its mission of conducting training as a means of strengthening the TFG and the institutions of Somalia.³⁴ Consequently, it is difficult to clearly assess what is being done by these newly trained Somali forces to counteract piracy. Therefore, although the U.S. provides both supplies and financial support to EUTM Somalia, it should necessitate that a greater focus be put on counter-piracy training. To ensure that EUTM Somalia is providing comprehensive counter-piracy training, the mission should create clear, measurable documentation on how Somali forces will be trained. In cooperation with the TFG, the U.S. should devise a plan to more effectively disperse Somali forces to onshore areas known to harbor pirates, thereby enhancing proactive measures against piracy.

Recommendations:

Based on the previous analysis of greater Somalia and its counter-piracy efforts the U.S. State Department should:

- » **Continue to support the TFG of Somalia.** The U.S. State Department should continue to support the TFG on the condition that it makes measurable progress on benchmarks set forth in the Roadmap. If the TFG is unable to meet the deadlines of these key tasks, efforts should instead concentrate support on more operative local entities that focus on piracy, until a more appropriate and effective national government is negotiated.
- » **Invest in local anti-piracy information campaigns.** The U.S. State Department should engage with Somali citizens and international organizations, such as UNODC, that are currently active in Somalia to determine where local efforts are showing promise as well as popular support and legitimacy. These organizations should be provided with assistance in creating local public interest campaigns against piracy. In addition to providing support to these pre-existing Somali organizations, the U.S. should publicly endorse and provide financial assistance to UNODC “Somalia Beyond Piracy” campaign, thereby also facilitating engagement with the U.S. Somali Diaspora and encouraging greater international participation in onshore efforts to deter piracy.
- » **Support and expand EUTM Somalia.** The U.S. State Department should provide support to EUTM Somalia under the condition that Somali soldiers are being trained in addressing and combatting acts of piracy. To ensure the effectiveness of this counter-piracy training, comprehensive documentation that includes measurable goals should be created. The U.S. should also work with the TFG to create an outline of how these new Somali troops can effectively be used as a pro-active measure against piracy and funding should be used to ensure that trained soldiers are paid in a timely manner.

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Conclusion

By **Natalie Block**

Based on the previous analysis of the situation off of the Horn of Africa, there are several overall conclusions that must be considered when implementing or continuing any counter-piracy effort. Primarily, piracy in the Horn of Africa must continue to be addressed vigorously and unrelentingly. The lack of government in Somalia has allowed piracy to thrive on its shores and off its coastline, and in doing so has exposed the vulnerability of the High Seas. If six or seven men with a small skiff, a ladder, and a few Kalashnikovs can hijack an oil tanker, then even a very poorly funded terrorist organization can hijack an oil tanker or a cruise ship. Although there are currently no proven ties between Somali piracy and al-Shabaab or al-Qaeda, it is only a matter of time until the situation off the Horn of Africa becomes associated with maritime terrorism. Just like the situation in the un-governed, lawless areas of Afghanistan and Pakistan, piracy has proven that the waters off the coast of Somalia are suited to acts of terrorism. Therefore, counter-piracy efforts will work to not only end organized crime for profit, but also to improve security against acts committed by terrorist organizations.

In order to effectively end piracy and prevent the development of maritime terrorism, instability must be addressed on land as well as at sea. While foreign navies and the three international task forces have been successful in deterring many attacks, the problem of piracy cannot be solved at sea alone. The failed State of Somalia requires investment in nearly all sectors; however, basic security and law enforcement are required before substantive progress can be made in other areas. If pirate bases are disrupted on land, pirates cannot operate effectively at sea. Piracy is an international issue. The U.S. does not need to solve the problem alone and should combat this problem in cooperation with the international community.

The United States must expand its current efforts in order to eliminate piracy in the region and support other U.S. interests. Aside from ensuring the safety of oceanic transit through the region, the U.S. has a vested interest in Somalia. A stable Somalia could provide a valuable economic and political ally in future disputes in the region, such as potential confrontation with Iran. Somalia has not yet developed its oil reserves, but those reserves could prove to be profitable if proper infrastructure was provided and secured. A supply of oil from a country that is not an OPEC member would be beneficial to the United States. Due to the history of U.S.-Somali relations, it is also in the U.S. interest to see a stable and democratic Somali government that is devoid of extremism and in-fighting.

Media attention often affects government action through persuasion by public opinion. The U.S. invasion of Somalia in 1992 was widely supported by the American public because of media images of the starving Somali people. When photos of mutilated American soldiers were released, public opinion quickly turned to support the withdrawal of U.S. forces from the region. Regardless of the media attention to the problem of piracy, it is important to address the issue; however, with recent successes against piracy, such as the rescue of two hostages by U.S. Navy SEALs last month, public opinion is widely in favor of counter-piracy efforts. Due to this support, now is the optimal time to expand U.S. involvement.

This report has proposed a wide variety of recommendations that deal with different aspects of piracy off the Horn of Africa:

One of the greatest under-utilized resources in the campaign against piracy is the Somali Diaspora. These communities have close ties with family and friends in their homeland, are educated, and total close to one million. While the social media anti-piracy information campaign that UNODC has begun in Somalia should be supported, another campaign engaging the diaspora should be implemented. By enlisting members of the Somalia Diaspora in the campaign against piracy, the U.S. will help prevent piracy from becoming socially and culturally accepted and will deter youth from being recruited into the enterprise. Diaspora monetary and moral support for their homeland is constant, as was seen during the recent drought when remittances and donations increased exponentially to aid those in need. The diaspora has also been actively involved in the release of hostages captured by pirates. Thus far, there has been little effort to include the U.S. domestic diaspora in counter-piracy efforts, but they are a valuable resource that should not be ignored. In the short-term, the U.S. should seek to adapt the information campaign that UNODC has recently begun in Somalia for a domestic audience. In the medium-term the U.S. should seek to encourage other countries with large diaspora populations to also launch information campaigns. In the long-term the U.S. should fund educated Somalis to travel back to their homeland and build infrastructure, improve education, agriculture and health, and encourage stability through organizations like Worldwide Somali Students and Professionals. The results of incorporating the Somali Diaspora in anti-piracy efforts would diminish community support for piracy in Somalia, and provide a powerful ally for anti-piracy efforts on land.

Another crucial enhancement to the current counter-piracy effort is to directly address the root causes of piracy: political instability, poverty, and greed. The best way to deal with political instability, beyond the support of AMISOM, is to adopt a grassroots approach to nation building, enlisting established NGOs and the diaspora to develop Somalia's economic sectors from the ground-up through microfinance and skill-building.

In order to eliminate piracy, aid must also be more directly routed to the people who need it and not through unreliable governments. Direct investment in education, such as funding that would allow primary schooling to be free, or even offered with a stipend, would allow families to raise themselves out of poverty, simply by sending their children to school. Job creation, specifically a reviving of the maritime economy, would create an economic alternative to piracy for many Somalis. The results of these projects would be visible only in the long-term; however, it is imperative that they are begun immediately in order to combat piracy, poverty, and instability all at once.

While greed is difficult to combat, the most effective way to end misbehavior is to negatively incentivize piratic action. That is why prosecutions and detentions are critical to counter-piracy efforts. In the short-term the U.S. State Department should end impunity by encouraging national prosecutions in any willing state as well as working to design an international legal framework that will facilitate in prosecuting the crime of piracy in national courts. In addition, States that are willing to improve their detention facilities, who have a positive human rights record should be assisted, by the U.S. and also by wealthy States in the region, to expand their penitentiary capacity. In order to reduce overcrowding in detention facilities in the region, the investigation and prosecution of pirate kings and financiers is key. Without these organizers the piracy enterprise would cease to be as effective. Instead of prosecuting and detaining all of the "foot soldier" pirates captured at sea, identifying and prosecuting these few criminals would improve capacity issues. In the long-term, the prosecution and detention of Somali pirates should be the responsibility of Somalia. The result of legal efforts would be the end of impunity and, through the publication of piracy trials, the discouragement of piracy as an occupation.

To limit the number of successful pirate attacks at sea until piracy can be adequately addressed on land, the U.S. State Department should continue to support the use of privately contracted armed security personnel on-board commercial vessels, as well as passive security technologies. However, the U.S. should promote the strengthening of international standards for armed guards in order to ensure that only the most responsible private maritime security companies are hired. The development of a national accreditation system for these companies would ensure that commercial vessels have the best and most reliable armed protection. The U.S. State Department, through Working Group 3 of the Contact Group on Piracy off the Coast of Somalia, should expand current research on the best technologies and tactics to prevent hijackings. The result of improving individual commercial vessels' protection would be a decrease in successful hijackings, which has already been

seen in the previous year as more shipping companies turn to use more active security. It is also possible that an increase in defense on ships will escalate violence during attacks; however, violence escalation may be inevitable no matter the level of security on vessels.

In regard to current military operations, the State Department and the Department of Defense should promote the creation of a combined joint task force. The three international naval task forces currently patrolling the High Risk Area often have the same member countries and conflict with one another in multiple areas of operation. A consolidation of intelligence, command and communication structures would result in a more effective military force that could quickly respond to attacks and escort aid vessels. The combination of resources of the current three task forces would allow the consolidation to occur without a significant increase in expenditure. To facilitate this merger, a Counter-Piracy Control Center should be developed to streamline and simplify communication between vessels in distress and naval forces. The result of this short- to medium-term change would be a faster and more agile naval force that could easily adapt to changes in pirate tactics, as well as the improvement of allied coordination and training which could prove invaluable in later conflicts.

The primary responsibility of the State Department is diplomatic engagement with foreign governments. For that reason, the U.S. State Department should expand its counter-piracy efforts by increasing diplomatic engagement with regional governments. The Dual-Track Approach has had positive results in some areas of Somalia; yet, this policy should be expanded to enlist the support of surrounding countries that have a vested interest in the elimination of piracy such as Ethiopia, Kenya, Oman, and Yemen. Due to the rigid clan structure of Somalia, it is also important to reach out to community leaders inside the country, like imams and clan elders. The U.S. should focus on establishing communication with leaders in remote areas where piracy flourishes. It has been reported that many coastal towns do not support the presence of pirates. The U.S. should reach out to these areas in order to disrupt pirate hierarchies on land and undermine their support base. The result of expanded diplomatic engagement with the region would be positive relationships in the long-term, but a reduction in the areas where piracy is tolerated in the short- to medium-terms.

Although these recommendations seem expensive and time-consuming, they will cost less in the long-term than continuing current operations. The U.S., over the past twenty years, has provided billions of dollars as part of efforts to fight terrorism in, stabilize, and feed Somalia. Presently, many nations are taking an interest in helping the U.S. in the effort to counter piracy. With funding from and the support of the international architecture, the U.S. has the potential to not only eliminate piracy, but to leave behind a stable, prosperous, and democratic State that will eventually not require outside assistance. Action now will ensure that not only money, but lives are saved in the future.

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The purpose of this report is to analyze multiple aspects of piracy off the Horn of Africa as the situation stands in February 2012. Our hope is not only to accurately describe the current situation, but to provide innovative alternatives to the various solutions being sought in international counter-piracy efforts. This report was written for evaluation by the U.S. State Department's Office of Counter Piracy and Maritime Security and any recommendations are, for that reason, directed towards the U.S. State Department. This report is completed as of 27 February 2012.

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