



Executive summary

The piracy problem off the coasts of Somalia veritably exploded in 2008, due to a mixture of push and pull factors. The general misery in the country pushed Somalis into piracy, and the high earnings from successful pirate attacks pulled businessmen into the pirate business. The international community has sent several patrols to the area, but the decisive factor is what happens on the ground in Somalia.

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Piracy off the Coast of Somalia

Bjørn Møller

bmo@diis.dk

www.diis.dk/bmo

PIRACY OFF THE COAST OF SOMALIA

The aspect of the Somali crisis which in 2008 attracted most foreign attention was the explosive growth in piracy off the coasts of Somalia. Not only does it illustrate how an internal problem has external repercussions, but it also offers a good case study of how the various regional and international state and non-state actors interact.

THE PROBLEM

Piracy in Somalia is not a new phenomenon, but until the middle of the present decade the incidence of piracy was quite limited. In 2005, however, the incidence—according to the statistics of the International Chamber of Commerce’s Piracy Reporting Center (ICC-PRC)—grew from less than five to 35. In 2006, it declined considerably to a mere ten incidents, only to grow in 2007 to 31 pirate attacks. In 2008, the problem virtually exploded with an unprecedented rise in piratical attacks. In the first three quarters of 2008, a total of 63 incidents were thus reported, of which 51 occurred in the Gulf of Aden and 12 off the eastern coast. In the third quarter alone no less than 26 vessels were hijacked and 537 crew members taken hostage. The quarterly report for the remaining three months of 2008 was not available by the time of writing, but judging by newspaper reports, the problem had exacerbated further.

Whereas until recently most of these attacks occurred off the eastern coast of Somalia, in 2008 this was overtaken by the north coast of the same country, i.e. the Gulf of Aden, at the entrance to the Red Sea and with the Suez Canal at the other end. The difference between the two is of some significance, as attacks on shipping along the east coast mainly affect the Somali population, inter alia by hampering humanitarian aid, whereas those on the north coast mainly affect international shipping linking the Middle East and East Asia with Europe.

Not only has the frequency of piratical attacks increased steeply, but the attacks have also become more daring, all attacks being launched against steaming ships, whereas the majority of attacks in other parts of the world occur against ships that are either berthed or anchored. All recorded incidents also involved the use of firearms, whereas this was much less frequent elsewhere. On the other hand, the actual use of violence remained quite modest, only one crew member having been killed in both the Gulf of Aden and the eastern coast of Somalia—which may be taken as evidence of a high degree of professionalism. Several ships have been boarded and hijacked by pirates armed with firearms and grenade launchers (in some cases also man-portable air defence systems), operating in small fast crafts, making full use of modern technologies such as mobile phones and GPS (Global Positioning System) devices, and in some cases apparently using mother ships allowing them a much longer range.

CAUSES

Push and pull factors seem to have combined to bring about this surge in piracy. Among the former, creating an experienced need for parts of the population to turn to piracy, the most important is surely the extreme economic and social hardships suffered by the general population since the Ethiopian invasion, leaving the majority without any other sources of income than crime. Even before that the fishing industry had suffered severely from the Tsunami of the 26th of December 2004, leaving many fishermen redundant.

There is generally a lack of knowledge about the identity of the Somali pirates, their social structures, motives, etc. It does, however, seem that some of the pirate groups see, or have at least depicted, themselves as protectors, either of their local communities or of the local marine environment, adopting names such as the “National

Volunteer Coastguard” (NVCG). This group has claimed to be distributing the “tax” demanded from foreign vessels in the form of ransom in return for fishing rights more evenly, even though it seems to have kept at least most of the proceeds for itself, apparently using it for the purchase of weapons. There may thus be at least elements of what Eric Hobsbawm called “social bandits,” and in any case the pirates seem to enjoy a certain fame and popularity in their respective communities.

Among the pull factors, creating opportunities for piracy, the best explanation for the general rise in piracy is surely to be found ashore. Somalia has not had a functioning state since 1991, and the present Transitional Federal Government (TFG) has ever since its establishment in 2004 been impotent and completely lacking in governance capacity and legitimacy (see a companion DIIS brief and report by the same author). One manifestation of this statelessness has been the complete absence of any coastguard or navy to patrol the coastal waters, as well as an absence of any police force able and willing to patrol and perhaps destroy “pirate lairs” such as the coastal city of Eyl in semi-autonomous Puntland.

As piracy presupposes commercial shipping, another important pull factor is obviously the dense traffic in the Gulf of Aden, through which a large part of the commerce between the Middle and the Far East and Europe passes. As this has been a rather constant factor, however, it cannot explain the surge in piracy but, at best, its volume. Some of the growth in piracy along the eastern coast of Somalia may be explained by the rising volume of humanitarian aid coming in, e.g. from the World Food Programme (WFP), providing an estimated 185,000 metric tonnes of food to the Somali population, around ten times the amount provided in 2004. Another factor in this respect is the degree of protection for shipping, piratical attacks declining significantly when France in November 2007 began to provide escorts to WFP shipping to Somalia. This may, in fact, be a contributory cause of the surge in pi-

rical activity along the northern coast, as some of the southern Somali pirates may simply have moved north in search of better “hunting grounds.” Another explanation of explosion of piracy in the Gulf of Aden in 2008 may simply be that an effective *modus operandi* had been invented—e.g. the aforementioned use of mother ships—which allowed for attacks on large vessels such as oil tankers, producing a veritable avalanche of “copycat” attacks.

REACTIONS

Both because of the humanitarian problems related to attacks against WFP shipping and the general economic problems created for world trade, international attention to the piracy problem has risen quite steeply—significantly more when the main victims were the international shipping companies than when it “merely” affected Somali civilians.

The UN Security Council passed two resolutions, UNSCR 1816 of 2 June 2008 and UNSCR 1838 of 7 October 2008. In the former the Security Council expressed particular concern about the pirate attacks against ships carrying humanitarian support to Somalia. Paying due tribute to UN Convention on the Law of the Sea (UNCLOS), the resolution also offered quite a permissive interpretation of its provisions, calling for measures to repress piracy, “including but not limited to boarding, searching and seizing vessels engaged in or suspected of engaging in acts of piracy.” It further noted that the TFG had requested international assistance to suppress piracy in its waters. On this basis, the Council decided to authorise states approved by the TFG to “enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea” and to use “all necessary means to repress acts of piracy and armed robbery.” In the follow-up resolution 1838, the Security Council, explicitly “acting under Chapter VII of the UN Charter,” i.e. with an implicit authorisation to use

force, called upon states “to take part actively in the fight against piracy” by “deploying naval vessels and military aircraft.”

Quite a few actors have responded to the Security Council’s call for international assistance: First of all, by the end of 2008 no less than three multilateral missions had been deployed. First came the Combined Task Force 150, in which Denmark has played an active role. It was deployed under the auspices of the US Combined Joint Task Force-Horn of Africa (CJTf-HOA), which is headquartered in Camp Lemonier in Djibouti and associated with the Operation Enduring Freedom-Horn of Africa (OEF-HOA), which is mainly tasked with counter-terrorist operations. Fortunately for the Task Force, it does not (yet) appear to have been compromised by this association with the US counter-terrorism activities which have played such an unfortunate role in precipitating the present crisis in Somalia and the resultant humanitarian emergency. However, it may just be a matter of time before somebody discovers this link and capitalises on it, in which case the link may well become a serious liability.

Next came NATO which in October 2008 deployed the Standing NATO Maritime Group-2 (SNMG2) for Operation “Allied Provider,” tasked with providing escort for merchant vessels as well as ships chartered by humanitarian agencies such as the WFP. Last and quite slowly came the European Union which in December 2008 deployed “Operation Atalanta,” mainly intended to provide protective armed units onboard vessels of the WFP delivering food to the Somali population as well as general protection against and deterrence of pirates in the form of naval escorts for convoys of civilian ships.

Quite a few individual states have also deployed naval units to the region, mainly for the protection of their own merchant ships, but some have provided this protection in the form of naval escorts for convoys as a “public good,” freely available to everybody. As far as the latter have been

concerned, there have been complaints about “free-riding” against especially ships flying flags of convenience. Some shipping companies seem to have reflagged their ships in order to obtain the protection which their real home country can provide, but open registry states such as Panama and Liberia cannot. Countries which had by year’s end already deployed naval forces to the area included India, China, Russia, Malaysia and Iran while a country like South Korea was still procrastinating.

Foreign states may also prove the key to solving a problem which has haunted the counter-piracy efforts for years—the unresolved question of who should prosecute, convict and subsequently assume penal and/or correctional responsibility for pirates apprehended by third parties such as all of the above. A good example was the confusion following the successful apprehension of ten Somali pirates by the Danish warship *Absalon* on the 17th of September 2008 which was only “resolved” by the subsequent release of the suspects. However recommendable such a “catch and release” procedure may be for anglers, it surely does little to deter pirates. This is much less a legal than a practical and political problem, as universal jurisdiction would surely apply to Somali pirates captured read-handed (“*in flagrante delicto*”) in the Gulf of Aden, considering that for centuries pirates have been considered *hostes humani generis*, i.e. “common enemies of mankind,” and that the aforementioned UN resolutions should certainly suffice to remove any remaining legal obstacles. Indeed, a further UNSC resolution explicitly addressed this problem, by urging states to develop procedures for rendition of suspected pirates and to amend their legislation to allow for the prosecution of arrested pirates (UNSCR 1846 of 2 December 2008, art. 14-15). However, the external powers operating off the coasts of Somalia have generally been quite reluctant to assume responsibility for their “catch” themselves by prosecuting the suspects at their own courts and having the convicts serve their sentence in their own correctional institutions,

perhaps out of fear that they would subsequently be forced to grant asylum to the convicts who had served their sentence or even to those who might be acquitted for lack of evidence. The demand for Somali thugs in the West is generally quite limited, hence the attraction of involving states in the region. On the 21st of January 2006, an American destroyer thus captured ten Somali pirates who had attempted an attack on a vessel flagged in the Bahamas. They were subsequently rendered to the Kenyan authorities for prosecution, found guilty and convicted to seven years imprisonment in Kenya.

Private actors have also a role to play. Among the most influential actors we here find the business community, more specifically the international shipping industry. Its leverage is very considerable as it is the one offering targets and *ipso facto* opportunities for the piracy business—but is, in turn, heavily influenced by the insurance business. As soon as piracy begins to exact a heavy economic toll on shipping, insurance companies will increase their premiums which will impact the economic calculations of the shipping companies, who just may reach the conclusion that it is cheaper to take the longer route south of Africa. By late 2008 certain major shipping companies had already made such a decision while others were seriously contemplating it. If this happens on a major scale, piracy will automatically decline for lack of lucrative targets—implying that the entrepreneurs behind the Somali piracy may simply have overplayed their hand.

Other commercial actors seeking to exploit the piracy problem are private military and/or security companies. Gurkas have previously been employed as maritime guards, and in 2008 the world's largest PMC, Blackwater, announced its readiness to take up a whole panoply of protection tasks against piracy.

THE SOLUTION (?)

Ironically the withdrawal of the Ethiopian troops by the end of 2008 may prove to be the solution to the piracy problem. “An Islamic extremist victory in Somalia—the very end result the US and western powers did not want—may be the best hope for international shipping running the gauntlet through the Gulf of Aden,” as the shipping and maritime insurance newsletter *Lloyd's List* wrote in an editorial on the 5th of December 2008. The logic behind this surprising statement is that an Ethiopian withdrawal will most likely lead to the establishment of control by Islamist groups of the entire country. Judging by the experience from the reign of the Union of Islamic Courts in the latter half of 2006, when piracy declined substantially, the Islamists may, once again, be able to solve the problem. This does, however, pose the question whether the cure is worse than the disease.

DANISH INSTITUTE FOR INTERNATIONAL STUDIES

STRANDGADE 56 • 1401 COPENHAGEN K • DENMARK
TEL. +45 32 69 87 87 • diis@diis.dk • www.diis.dk