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Current Trends in Global Piracy: Can Somalia's Successes Help Combat Piracy in the Gulf of Guinea and Elsewhere?

Sandra L. Hodgkinson

CURRENT TRENDS IN GLOBAL PIRACY: CAN SOMALIA'S SUCCESSES HELP COMBAT PIRACY IN THE GULF OF GUINEA AND ELSEWHERE?

Sandra L. Hodgkinson[*]

While piracy is an age-old crime, it has recently re-emerged in different forms off the Coast of Somalia, in the Gulf of Guinea, and through the international straits of Indonesia. Acts of piracy surged off the Somali Coast of Somalia between 2008 and 2011 and began to decline over the past year. However, while piracy may have begun its decline off the Coast of Somalia, it is now growing steadily elsewhere, including on the East Coast of Africa in the Gulf of Guinea, Indonesia, and Malaysia. This article discusses these current global trends in piracy. It also describes successful efforts that the international community has used to combat piracy off the Coast of Somalia, and assesses whether these efforts can be exported to other piracy hotbeds around the world.

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I. INTRODUCTION

While piracy is an age-old crime, it has recently re-emerged in a few different varieties off the Coast of Somalia, in the Gulf of Guinea, and through the international straits of Indonesia. Global acts of piracy rose quickly off the Coast of Somalia from 2008 to 2011,[1] and then fell during the 2013 time period,[2] signaling possible success in the international methods used to combat piracy in this region. Most notably, but possibly not as a direct consequence of the decline, key pirate leader Mohamed Abdi Hassan announced "his retirement" from the Somali pirate business,[3] demonstrating just how commonplace piracy has become in the life of Somalis. However, while piracy may

1. In 2011 alone, there were more than 270 attacks in Somalia, nearly twice the annual number in each of the previous three years. *See* U.N. Secretary-General, *Rep. of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region*, ¶ 7, U.N. Doc. S/2012/50 (Jan. 20, 2012).

2. In 2011, approximately 275 of the 439 global piracy attacks occurred off of the Coast of Somalia. *Piracy & Armed Robbery News & Figures*, ICC COMMERCIAL CRIME SERVS. (Aug. 13, 2013); *see also* Annette Leijenaar & Timothy Walker, *Rooting Out Somali Piracy Starts On-Shore*, ISS AFR. (July 9, 2012), http://www.issafrica.org/iss-today/rooting-out-somali-piracy-starts-on-shore. On the other hand, in the first three-quarters of 2013, there have only been eleven reported piracy attacks in Somalia, versus thirty in Nigeria. *Piracy & Armed Robbery News & Figures*, ICC COMMERCIAL CRIME SERVS. (Oct. 22, 2013), www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures.

3. *See* Adjoa Anyimadu, *Notorious Somali Pirate Quits: Now Is Shipping Safe?*, CNN (Jan. 11, 2013), http://www.cnn.com/2013/01/11/opinion/somalia-pirate-retires/.

be declining off the Coast of Somalia, it is now growing steadily on the East Coast of Africa in the Gulf of Guinea,[4] Indonesia[5] and Malaysia, among other regions.[6] This article will first discuss the current global trends in piracy and how they are emerging. It will next identify the methods that the international community has used to effectively counter the piracy threat off the Coast of Somalia, contributing to piracy's sharp decline over the past year. Finally, this article will assess whether these methods, which have been so successful off the Coast of Somalia can be exported to address the emerging piracy threat in the Gulf of Guinea and other piracy hotbeds around the world.

II. GLOBAL TRENDS IN PIRACY

From 2001 to 2010, Indonesia and Somalia had roughly the same number of pirate attacks, with 990 in Indonesia and 968 in Somalia, although Somalia's annual number grew tenfold over this time period while Indonesia's declined.[7] Comparatively, Nigeria was in third place, with 330 attacks over this time period, also growing sharply toward the end of this period.[8] As indicated above, the number of attacks in Somalia is now in decline, while the number of attacks in Nigeria and the Gulf of Guinea are on the rise, and Indonesia continues to face significant challenges with piracy.[9] In Indonesia, the number of piracy attacks remains high, with sixty-eight attacks for 2013 by the end of

4. *See* Lisa Millar, *Pirates Kidnap Two American Sailors in the Gulf of Guinea off Nigeria*, ABC NEWS (Oct. 25, 2013), http://www.abc.net.au/news/2013-10-25/pirates-kidnap-two-american-sailors-off-nigeria/5045250 (noting that the "International Maritime Bureau . . . recorded 31 pirate attacks in the first half of 2013").

5. *See* Adelia Anjani Putri et al., *Pirate Attacks on the Rise in Indonesia: Report*, JAKARTA GLOBE (Jul. 25, 2013), http://www.thejakartaglobe.com/news/pirate-attacks-on-the-rise-in-indonesia-report/ (reporting that attacks in Indonesia grew by 50 percent in the first half of 2013).

6. *See* Godwin Oritse & Onyegbadue Amamdi, *Nigeria, Indonesia Others Rank High in Piracy*, VANGUARD NGR. (Oct. 23, 2013), http://vanguardngr.com/2013/10/nigeria-indonesia-others-rank-high-piracy/ (noting that as of October 2013, Indonesia had the highest number of attacks, with sixty-eight pirate attacks).

7. Anamika Agnieszka Twyman-Ghoshal, Understanding Contemporary Maritime Piracy 79–80 (May 1, 2013) (unpublished Ph.D. dissertation, Northeastern University) (on file with the Northeastern University Libraries system), *available* at http://hdl.handle.net/2047/d20002928.

8. *Id.*

9. *See Live Piracy & Armed Robbery Report 2014*, ICC COMMERCIAL CRIME SERVS., http://www.icc-ccs.org/piracy-reporting-centre/live-piracy-report (last visited Mar. 31, 2014) (indicating that several recent piracy attacks occurred in Indonesia).

October, but these attacks have been characterized as lower level in nature and far less violent.[10]

While not every act of piracy is the same, there are general regional trends in how acts of piracy are carried out. Recent "Somali-style" piracy has been characterized by smaller ships using arms and modern GPS systems to take larger vessels by force.[11] A principal tactic used in Somali piracy has been the kidnapping of crew members for ransom.[12] These acts of piracy have generally been carried out by lower level pirate foot soldiers,[13] many of whom are poor juveniles from Somalia. The higher-ups who have financed and led Somali piracy are smaller in number and have generally not been involved in the acts of piracy themselves, but have greatly profited from the enterprise.[14] In 2011, the U.N. estimated that numbers of pirates included 10-20 financiers, 50 main pirate leaders, 300 leaders of pirate attack groups, and approximately 2,500 lower level foot soldiers.[15] At the peak of the Somali piracy epidemic in 2010-2011, pirates were reported to have caused more than $25 billion in losses[16] with great profit to the senior leaders of this enterprise. Further, in response to this growing trend, insurance companies saw increased sales of kidnap and ransom policies, paying out large ransoms for piracy-associated kidnappings.[17]

While some basic elements of piracy attacks are similar everywhere—pirates attack vessels and tend to avoid attacking vessels at sea rather than in port where there is security and lighting[18]—there

10. Oritse & Amamdi, *supra* note 6.

11. *See* Sandra L. Hodgkinson et al., *Piracy: New Efforts in Addressing This Enduring Problem*, 36 TUL. MAR. L.J. 65, 68–69 (2011).

12. *See* Mary Beth Quirk, *Kidnap & Ransom Insurance: In Case You're Ever Around Somali Pirates*, CONSUMERIST (July 1, 2013), http://www.consumerist.com/2013/07/01/kidnap-ransom-insurance-in-case-youre-ever-around-somali-pirates/; *see also* Twyman-Ghoshal, *supra* note 7, at 122.

13. *See* David Axe, *War is Boring: Amateurish Foot Soldiers Belie Sophisticated Piracy Networks*, WORLD POLITICS REVIEW (May 6, 2009), http://www.worldpoliticsreview.com/articles/3710/war-is-boring-amateurish-foot-soldiers-belie-sophisticated-piracy-networks.

14. *See* U.N. Secretary-General, *Rep. of the Secretary General on the Modalities for the Establishment of Specialized Somali Anti-Piracy Courts*, Annex I ¶¶ 1, 3, U.N. Doc. S/2011/360 (June 15, 2001).

15. *Id.* ¶ 3.

16. Roger L. Phillips, *Upcoming Event: Panel on Establishment of a Special Anti-Piracy Tribunal: Prospects and Reality*, COMMUNIS HOSTIS OMNIUM (Feb. 5, 2012), http://piracy-law.com/author/archipirata/page/10/.

17. Quirk, *supra* note 12.

18. *See* Twyman-Ghoshal, *supra* note 7, at 83.

are some key distinctions in how global piracy trends are emerging. In the Gulf of Guinea, for example, the overall trend for piracy attacks over the past year has been more traditional, in that pirates are focused on stealing ships' cargoes, principally oil,[19] rather than kidnapping crews for ransom. This is partly because of the significant transit of oil from Nigeria and the region through the Gulf of Guinea, both legitimate and illegitimate to include oil bunkering.[20] Notwithstanding cargo seizures, there are some very recent reports of kidnapping in Nigeria and a rising concern that many abductions are not reported so as to avoid scrutiny over amounts paid.[21]

The general territories of piracy attacks have also changed in recent years. In Somalia, much of the piracy has occurred in the high seas; in contrast, the majority of the Gulf of Guinea piracy incidents occur within the territorial waters of Nigeria and Benin.[22] In Asia as well, including Indonesia, piracy attacks also tend to occur closer to shore, where pirates know the islands, inlets and waterways, rather than in the high seas.[23]

A more generic trend that is not specific to any one region is the shift from piracy being a purely nocturnal crime to one that may just as likely occur in the daytime.[24] Also, while traditionally pirate attacks were carried out on stationary vessels, they are now also likely to occur when the target ship is moving, although this trend is more visible in Somalia and Indonesia than in other regions.[25] A more traditional trend, theft continues to be a principal motivator for piracy attacks globally, making the kidnappings in Somalia,[26] and now possibly Nigeria,[27] exceptions rather than the rule.

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19. *See* Millar, *supra* note 4.

20. *See, e.g.*, Rick Gladstone, *Pirates Abduct Two Americans on Oil Ship off Nigerian Coast*, N.Y. TIMES, Oct. 25, 2013, at A4, *available at* http://www.nytimes.com/2013/10/25/world/africa/two-american-mariners-abducted-off-nigerian-coast.html?_r=0 (reporting that a piracy attack occurred where "the oil-rich Niger Delta empties into the Gulf of Guinea, in West Africa").

21. Millar, *supra* note 4; Gladstone, *supra* note 20.

22. *See* Punch Editorial Board, *Tackling Piracy in Nigeria's Territorial Waters*, PUNCH (Oct. 26, 2012), http://www.punchng.com/editorial/tackling-piracy-in-nigerias-territorial-waters/ ("Of the 30 deaths recorded in the first half of 2009, half occurred in Nigeria's territorial waters, according to IMB.").

23. Twyman-Ghoshal, *supra* note 7, at 80–81.

24. *Id.* at 90.

25. *Id.* at 98–99.

26. *See id.* at 121–29 (describing motivations for piracy in several countries).

27. *See, e.g.*, Gladstone, *supra* note 20.

III. DECLINE OF PIRACY OFF THE COAST OF SOMALIA – HOW DID IT HAPPEN?

The decline in Somali piracy can be largely credited to the four principal ways the international community has used to address the problem: (1) maritime patrols by international naval forces; (2) industry development of a series of "Best Management Practices" (BMPs)[28] for preventing piracy attacks; (3) the increased use of armed security personnel on board ships; and (4) the increase in international prosecutions for the crime of piracy.

A. Maritime Patrols by International Naval Forces

Deployment of maritime patrols by international naval forces has been a well-coordinated international effort that has developed to combat piracy off the coast of Somalia. In 2008, the European Union first created EU NAVFOR Somalia ("European Naval Force") under the auspices of U.N. Security Council Resolutions.[29] The purpose of this initial naval force was to protect vulnerable ships off the Somali coast and deliver food aid.[30] Around the same time, NATO also created a Standing NATO Maritime Group and conducted Operation Allied Provider, which escorted World Food Program vessels and patrolled the region to the extent possible.[31] Operation Allied Protector and Operation Ocean Shield followed over the next few years, making the NATO contribution to this anti-piracy effort extremely significant.[32]

The U.S. began its own antipiracy operation, Combined Task Force 151 (CTF-151), in January 2009 that had an exclusive

28. BEST MANAGEMENT PRACTICES TO DETER PIRACY IN THE GULF OF ADEN AND OFF THE COAST OF SOMALIA (2009) [hereinafter BMP2], *available at* http://www.nee.gr/downloads/26BMP.pdf; BMP 4: BEST MANAGEMENT PRACTICES FOR PROTECTION AGAINST SOMALI BASED PIRACY 1 (2011) [hereinafter BMP4], *available at* http://www.mschoa.org/docs/public-documents/bmp4_low_res_sep_5_2011.pdf.

29. *EU Naval Operation Against Piracy (EU NAVFOR Somalia – Operation ATALANTA)*, COUNCIL OF THE EUROPEAN UNION, http://www.consilium.europa.eu/uedocs/cmsUpload/100201%20Factsheet%20EU%20NAVFOR%20Somalia%20-%20version%2014_EN.pdf (last updated Feb. 2010).

30. *Id.*

31. *Counter-Piracy Operations*, NATO, http://www.nato.int/cps/en/natolive/topics_48815.htm#Protector (last visited Mar. 31, 2014).

32. *See id.*; *see also* Press Release, Allied Mar. Command, NATO Warships Meet for Counter Piracy Mission Handover (Mar. 12, 2010), *available at* http://www.manw.nato.int/pdf/Press%20Releases%202010/Jan%20-%20May%202010/SNMG%20Operational%20Handover12Mar10.pdf.

counter-piracy mission.[33] The Indian Navy also contributed vessels,[34] the Chinese Navy deployed a task force,[35] and the Japanese Maritime Self Defense Force deployed several vessels as well, all to support counter piracy efforts.[36] These international maritime interdiction forces have been extremely effective at countering the piracy threat.[37] Recently, British naval forces, operating as part of the Combined Military Forces (CMF) counter piracy task force, apprehended nine pirates after they attempted to pirate the supertanker *Island Splendor* using gunfire and then attacked a Spanish vessel.[38]

Given that much of the piracy off the Coast of Somalia has taken place in the high seas, these international naval forces have had to do their best to cover large amounts of territory at a high cost. Further, based on the consent of the Somali government, the U.N. Security Council passed a series of Chapter VII resolutions, beginning with U.N. Security Council 1816,[39] which authorized countries to take action within Somalia's territorial seas that would otherwise only be permitted on the high seas under the U.N. Convention on the Law of the Sea (UNCLOS) or other international law. This language, in effect, takes the well-known UNCLOS resolutions and applies them

33. *New Counter-Piracy Task Force Established*, U.S. NAVY (Jan. 8, 2009), http://www.navy.mil/SEARCH/display.asp?story_id=41687.

34. *India 'To Step Up Piracy Battle'*, BBC NEWS (Nov. 21, 2008), http://news.bbc.co.uk/2/hi/south_asia/7741287.stm.

35. Ranjit B. Rai, *China's Fast Growing Navy*, INDIA STRATEGIC (Jan. 2010), http://wwwindiastrategic.in/topstories470.htm.

36. *Japan Destroyers Set Sail on Anti-Piracy Mission*, CNN (Apr. 20, 2009), http://www.cnn.com/2009/WORLD/asiapcf/03/14/japan.pirates/index.

37. *See* RADM Joseph W. Kuzmick, *Navy Efforts to Combat Piracy Continue*, NAVY LIVE (Apr. 11, 2013), http://navylive.dodlive.mil/2013/04/11/navy-efforts-to-combat-piracy-continue/ (attributing part of the successful anti-piracy efforts to international naval forces); *see also* Thom Shanker, *U.S. Reports That Piracy off Africa Has Plunged*, N.Y. TIMES (Aug. 28, 2012), http://www.nytimes.com/2012/08/29/world/africa/piracy-around-horn-of-africa-has-plunged-us-says.html?_r=0.

38. Ellen Branagh, *Suspected Somali Pirates Captured by Navy-Led Forces After Attack on Supertanker*, THE INDEPENDENT (Oct. 21, 2013), http://www.independent.co.uk/news/world/africa/suspected-somali-pirates-captured-by-navyled-forces-after-attack-on-supertanker-8894344.html.

39. S.C. Res. 1816, paras. 3, 7, U.N. Doc. S/RES/1816 (June 2, 2008) (authorizing the use of force against Somali pirates in Somalia's territorial waters). Subsequent U.N. Security Council Resolutions reiterated or included the same authorization, such as S.C. Res. 1838, pmbl., U.N. Doc. S/RES/1838 (Oct. 7, 2008); S.C. Res. 1846, para. 10, U.N. Doc. S/RES/1846 (Dec. 2, 2008); S.C. Res. 1851, para. 3, U.N. Doc. S/RES/1851 (Dec. 16, 2008).

within Somalia's territorial seas.[40] Accordingly, the international naval forces had additional latitude to operate within Somalia's territorial seas and apply UNCLOS' provisions.

B. Best Management Practices

The shipping industry has also contributed heavily to the reduction of piracy incidences off the coast of Somalia through its development of BMPs for preventing piracy attacks.[41] The most recent version from 2011, BMP4, included simple steps, such as reporting and registration procedures, posting additional look-outs on shipping vessels, re-routing ships away from heavily pirated waters, and even posting dummies on ships to make it appear as though there are larger crews.[42] Other measures include: sounding alarms, evasive maneuvering, increasing lighting, establishing a safe lockable "citadel" for crews, and installing closed-circuit television.[43]

BMP4 also recommends increased training of crews to identify and address piracy and keeping a ship's speed at least at eighteen knots, or at "full sea speed," when transiting pirated waters to make it more difficult for pirates to catch and stop the ships.[44] The widespread adoption and use of these BMPs throughout the industry has mitigated the risk of pirate attacks across the board.[45] Perhaps the most interesting recent tactic ships have used to ward off pirates is the blaring of music, particularly Britney Spears.[46] Apparently, pirates do not like loud music, and according to a particular crew, Ms. Spears' songs were selected because the "pirates would hate them most."[47]

C. Armed Security Guards on Ships

The development of armed security personnel on ships, either as government-provided Vessel Protection Detail (VPD) or as Privately Contracted Armed Security Personnel (PCASP), was considered a

40. Hodgkinson et al., *supra* note 11, at 96.

41. Twyman-Ghoshal, *supra* note 7, at 128.

42. *Id.* at 128; *see* BMP2, *supra* note 28; BMP4, *supra* note 28.

43. BMP4, *supra* note 28, at 25–40; Twyman-Ghoshal, *supra* note 7, at 128.

44. BMP4, *supra* note 28, at 7, 10.

45. Thomas Kelly, Remarks at Combating Piracy Week on the U.S. Government's Approach to Countering Somali Piracy (Oct. 25, 2012), *available at* http://www.state.gov/t/pm/rls/rm/199929.htm.

46. Steve White, *Britney Spears Music Blasted out by Merchant Navy to SCARE off Somali Pirates*, MIRROR (Oct. 27, 2013), http://www.mirror.co.uk/news/weird-news/britney-spears-music-blasted-out-2646660.

47. *Id.*

"game-changer" by the U.S. government in 2012 in the effort to combat piracy.[48] In fact, to date, no ship with armed security guards has been pirated,[49] which serves as a testament to the effectiveness of these guards or at least demonstrates that their mere presence on the ships may serve as a good deterrent against would-be pirates. However, from the outset, these armed security personnel have been controversial, partly out of a concern over escalating violence and partly over costs and resources.[50] The average ship using armed security personnel has approximately four armed security guards to help protect the crew and cargo, which can cost up to $45,000 in a high-risk area.[51] This additional cost of security is offset by lower insurance premiums but nonetheless drives up the cost of piracy for the shipping industry.[52]

D. International Piracy Prosecutions

At present, there are more than 1,000 pirates who have recently been brought to justice in twenty countries.[53] This is a tremendous tribute to the many regional countries that have shouldered the burden of prosecuting these piracy cases either under domestic or universal jurisdiction. Kenya, the Seychelles, and Mauritius have led the way in piracy prosecutions, working with the support of the U.N. Office of Drugs and Crime (UNODC)[54] and other international

48. Kelly, *supra* note 45.

49. *Id.*

50. *See* Hodgkinson et al., *supra* note 11, at 112–13; *see also* P. Manoj, *Armed Guards Back in Spotlight After Detention of Anti-Piracy Ship in India*, LIVEMINT (Oct. 24, 2013), http://www.livemint.com/Opinion/tP9S8lnqPVPEojiojRNSQO/Armed-guards-back-in-spotlight-after-detention-of-antipirac.html (reporting how a ship owned by a U.S.-based maritime security firm was intercepted in Indian territorial waters, where it was found with heavy weaponry without valid permits).

51. *Laws and Guns*, THE ECONOMIST (Apr. 14, 2012), http://www.economist.com/node/21552553.

52. *Id.*

53. *U.S. Hails Life Prison Terms for Somali Pirates*, VOICE OF AM. (Aug. 7, 2013), http://www.voanews.com/content/us-hails-life-prison-terms-for-somali-pirates/1725590.html (citing a statement from U.S. State Department Spokesperson Jen Psaki).

54. U.N. OFFICE ON DRUGS & CRIME [UNODC], COUNTER-PIRACY PROGRAMME: SUPPORT TO THE TRIAL AND RELATED TREATMENT OF PIRACY SUSPECTS, ISSUE 5, at 5–6 (2011), *available at* http://www.unodc.org/easternafrica/en/piracy/index.html (describing UNODC's achievements in Kenya, including training for police officers and prosecutors and refurbished police buildings). *See generally* Council Decision 2011/640/CFSP, Agreement Between the European Union and the Republic of Mauritius on the Conditions of Transfer of Suspected Pirates and Associated Seized Property from the European Union-Led

donors in support of U.N. Security Council Resolution 1851. UNODC has developed a piracy prosecution capacity-building program for Somalia and for these other regional countries, which focuses on training programs and international legal support to strengthen the capacity of judges, prosecutors, and investigators involved in piracy cases.[55] The program also addresses prison capacity issues, such as over-crowding and treatment, through the development of new facilities, funding, and training programs for prison personnel.[56] One interesting aspect of the UNODC effort to strengthen prison capacity in Somalia has been its role in facilitating transfer arrangements between these prosecuting countries and Somalia, allowing convicted pirates to serve out their sentences in Somalia.[57] This facilitation has alleviated some of the burden on these prosecuting states' prison systems while bringing these pirates back to their home country.[58]

European and U.S. courts have also conducted several prosecutions, although principally these cases concerned individuals who pirated their own flag-state vessels, or vessels being crewed by their nationals; these prosecutions were not initiated as an exercise of universal jurisdiction. The relatively modest penalties in several European cases—five to ten years in prison[59]—have also raised

Naval Force to the Republic of Mauritius and on the Conditions of Suspected Pirates After Transfer, 2011 O.J. (L254) 1, 3.

55. UNODC, *supra* note 54, at 4.

56. *Id.* at 9–11.

57. *Id.* at 11.

58. *Id.*; *see also* AMBER RAMSEY, CIVIL MILITARY FUSION CTR., REGIONAL COURTS AND PRISONS: DEVELOPING LOCAL CAPACITY TO PROSECUTE SOMALI PIRATES 4 (2012), *available at* https://www.cimicweb.org/Documents/CFC%20Anti-Piracy%20Thematic%20Papers/CFC_Anti-Piracy_Report_Courts_and_Prisons_JAN_2012_FINAL.pdf (describing how prosecuting regional states have limited prison capacity, and thus prisoner transfer agreements with Somalia relieve this burden).

59. *See, e.g.*, *Dutch Court Convicts Five Somalis of Piracy*, TELEGRAPH (June 17, 2010), http://www.telegraph.co.uk/news/worldnews/piracy/7836714/Dutch-court-convicts-five-Somalis-of-piracy.html (reporting on the conviction and five-year sentence of the M/V *Samanyolu* pirates and noting the harsh living conditions in Somalia as a mitigating factor in the sentencing); Roger L. Phillips, *Long Road to Justice – The German Piracy Trial*, COMMUNIS HOSTIS OMNIUM (Oct. 21, 2012), http://piracy-law.com/2012/10/21/long-road-to-justice-the-german-piracy-trial/ (noting that the German court in the MV *Taipan* case sentenced adult pirates to six to seven years and only two years for the juveniles); *see also* Eugene Kontorovich, *The Penalties for Piracy: An Empirical Study of National Prosecution of International Crime* 13–14 (Northwestern Univ. Sch. of Law Scholarly Commons, Working Paper No. 211, 2012), *available at* http://scholarlycommons.law.northwestern.edu/faculty workingpapers/211 (discussing the disparities between sentencing regimes in different piracy prosecuting states).

concerns that these pirates will seek asylum in their new "countries" upon release from jail, creating a disincentive for countries to exercise universal jurisdiction over piracy cases in general.[60] U.S. penalties have been much higher, but the financial costs of the U.S. justice system make large-scale support for piracy prosecutions under universal jurisdiction unlikely.[61]

However, despite the challenges and initial concerns that the fear of conviction could never outweigh the potential gains to a Somali pirate and thus dissuade him from piratical behavior, the international prosecutions for piracy have been one of the principal deterrents to the rise in piracy. According to Ambassador Thomas Winkler of Denmark, Chairman of the Legal Committee of the Contact Group for Piracy, "[t]he number of active pirates is perhaps 3,000. So if you put a thousand behind bars, and 300-400 die every year at sea from hunger (or) drowning . . . you will quickly come down."[62]

IV. EXPORTING SUCCESS TO OTHER PIRACY HOTBEDS SUCH AS THE GULF OF GUINEA AND INDONESIA

There is no question that some combination of these four effective tactics explained above to combat piracy off the Coast of Somalia, in addition to the natural perils of the life of a pirate, has resulted in a significant decline in the number of piracy attacks. Many skeptics of counter piracy initiatives have expressed the view that the only real way to fix the Somali problem is through efforts to politically stabilize the region.[63] While such capacity-building efforts continue and some progress has been made, Somalia still has political challenges and extreme poverty that would normally help perpetuate the piracy

60. Yvonne M. Dutton, *Pirates and Impunity: Is the Threat of Asylum Claims a Reason to Allow Pirates to Escape Justice*, 34 FORDHAM INT'L L.J. 236, 239–41 (2011).

61. The estimated cost of piracy trials and imprisonment in 2010 was approximately $31 million. *See* OCEANS BEYOND PIRACY, THE ECONOMIC COST OF PIRACY 1 (2011), *available at* http://www.ics-shipping.org/docs/default-source/Piracy-Docs/the-economic-cost-of-piracy.pdf?sfvrsn=0.

62. *No Somali Pirate Hijacking in Nearly a Year, Says UN*, THE GUARDIAN (May 3, 2013), http://www.theguardian.com/world/2013/may/03/somali-pirate-hijacking.

63. *See, e.g.*, *Ending Somali Piracy: Go After the System, Not Just the Pirates*, THE WORLD BANK (Apr. 11, 2013), http://www.worldbank.org/en/news/feature/2013/04/11/ending-somali-piracy-go-after-the-system-not-just-the-pirates (stating that "[p]iracy is a symptom of the breakdown of Somalia's political system").

epidemic,[64] making the Somali anti-piracy successes even more astonishing. This now begs the question as to whether these effective Somali-specific tactics will be able to successfully counter piracy in the Gulf of Guinea, Indonesia, and elsewhere, or whether to the contrary, like the drug trade, pirates will either move to the most vulnerable location or indigenously grow there.

A. Gulf of Guinea

A cornerstone of the Somali effort was the use of international naval forces, both in the high seas and in the territorial sea of Somalia.[65] The Nigerian Maritime Administration and Safety Agency (NIMASA) has launched an anti-piracy campaign to tackle robbery, illegal oil bunkering, and piracy in Nigeria's territorial waters[66] and recently announced a plan for three patrol boats dedicated exclusively to preventing and combating piracy and sea-armed robbery.[67] NIMASA reports that it has arrested more than fifty people this year for piracy and oil theft, some of which are now in the Nigerian court system.[68] NIMASA reports that it is working to address the rise in piracy in the Gulf of Guinea by strengthening their Memorandum of Understanding with the Nigerian Navy.[69] These domestic law enforcement efforts will be an important part of Nigeria's ability to curb this growing threat. While the international naval force strategy was effective in Somalia, it is unlikely to be a critical part of the Gulf of Guinea plan, as the territorial waters in the Gulf of Guinea are very shallow.[70] Furthermore, given the territorial integrity and

64. *See* Anyimadu, *supra* note 3 (describing how piracy is the result of economic and political shortcomings, and that the lack of employment opportunities makes piracy an attractive option to Somali men).

65. Tullio Treves, *Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia*, 20 EUR. J. INT'L L. 399, 399–408 (2009) (reviewing various countries' naval anti-piracy efforts in Somalia).

66. *Containing Activities of Pirates in Nigeria's Territorial Waters*, HELLENIC SHIPPING NEWS (Jun. 22, 2013), http://www.hellenicshippingnews.com/News.aspx?ElementId=f2dc0078-8942-492c-bd42-e5afca9fa679.

67. John Iwori, *Nigeria: NIMASA Unveils Three Patrol Boats to Fight Piracy*, ALL AFR. (Oct. 11, 2013), http://allafrica.com/stories/201310110593.html.

68. Andrew Utulu, *NIMASA: Waging War Against Piracy, Oil Theft*, DAILY INDEPENDENT, http://www.dailyindependentnig.com/2013/01/nimasa-waging-war-against-piracy-oil-theft/ (last visited Apr. 3, 2014).

69. *NIMASA, Navy Reappraise Maritime Security MoU*, SHIPS & PORTS, http://www.shipsandports.com.ng/news.php?id=764 (last updated Oct. 24, 2012).

70. *See* Emil Maine, *Surging Piracy in the Gulf of Guinea Threatens U.S. Interests*, THE FOUNDRY (Oct. 28, 2013, 5:48 PM), http://blog.

sovereignty of Nigeria and other countries in this region, there has not yet been an effort to develop a U.N. Security Council endorsed plan. However, just recently, West African leaders have established a new working group to address piracy that will combine maritime law enforcement efforts.[71]

Instead of an international naval force strategy, the U.S. military is using its 2007 Africa Partnership Station as an international platform to build maritime law enforcement capacity and interoperability of coastal state Navies through theater security and cooperation exercises.[72] This strategy has greatly enhanced the abilities of other African states to combat piracy.[73] Under this program, U.S. Naval Forces Africa, with participation from African, European, and South American forces, has been hosting four different regional maritime security exercises, including Obangame Express, Cutlass Express, Saharan Express, and Phoenix Express.[74] Nigeria also hosted Spain, Britain, the Netherlands, and the U.S. in October 2013 for maritime security joint training operations.[75] These efforts to strengthen domestic capabilities to address the piracy and other criminal threats in coastal waters may become one of the more effective tools for the Gulf of Guinea—provided of course that the host country governments in Nigeria and Benin take the threat seriously.

In addition, ships passing through the Gulf of Guinea area should consider armed security personnel and applicable BMPs,[76] as these methods have been effective in both territorial waters and the high seas. Although NIMASA reports an increase in both arrests and prosecutions of pirates over the past year,[77] there does not appear to be enough data about the effectiveness of prosecutions. Given that there have been concerns over the rule of law in Nigeria in general,[78]

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heritage.org/2013/10/28/surging-piracy-in-the-gulf-of-guinea-threatens-u-s-interests/.

71. Heather Murdock, *West African Leaders Promise to Combat Piracy Surge*, ALL AFR. (Oct. 31, 2013), http://allafrica.cpm/stories/201311011233.html.

72. Kuzmick, *supra* note 37.

73. *Id.*

74. *Id.*

75. Murdock, *supra* note 71.

76. *See* Maine, *supra* note 70.

77. *See* Utulu, *supra* note 68.

78. *See* Maine, *supra* note 70 (describing the political environment in West Africa, where pirates are able to "take advantage of a well-established illicit political economy" and "pre-existing international criminal networks").

whether the government can and will strongly get behind a prosecution regime remains to be seen. That said, the Somali model does have something to offer here on capacity-building. At this time, there is no reason to expect other regional or international countries will play a leading role in prosecuting these pirates as they did in Somalia. Third countries may only take jurisdiction over piracy attacks against their own nationals or flag-state vessels. Accordingly, a capacity-building program like the one developed for Somalia could be useful in the Gulf of Guinea and could have the collateral benefit of strengthening the rule of law in Nigeria, Benin, and throughout the region.[79]

West Africa also has a recent history rife with international criminal networks that are being leveraged by these pirates, in contrast with Somalia's more general inability to govern.[80] The pirates operating in the Gulf of Guinea are able to leverage these criminal networks that have pre-existing leverage with local government officials and military members.[81] Accordingly, the ability to trace and prevent these attacks may be harder, and there may be less enthusiasm by government officials to embrace methods that will effectively combat piracy.

B. Indonesia

Indonesian piracy also occurs closer to shore than it does in Somalia,[82] but unlike Nigerian piracy, Indonesian piracy tends to be less organized and more opportunistic.[83] The lack of effective maritime law enforcement in Indonesia contributes to this problem and will require the Indonesian Navy and the National Police to increase their capabilities.[84] While they have a reasonable enough force size, they are responsible for a vast expanse of maritime domain spanning six million square kilometers and 17,500 islands (6,000 inhabited) and have significant problems with illegal logging and fishing, which are often higher priorities for the government.[85] So far, requests for a

79. *See generally* Elijah Okon John, *The Rule of Law in Nigeria: Myth or Reality?*, 4 J. POL. & L. 211 (2011) (arguing that while the rule of law is enshrined in the Nigerian Constitution, there is blatant disrespect for rule of law by Nigeria's senior leadership).

80. *See* Maine, *supra* note 70.

81. *Id.*

82. Twyman-Ghoshal, *supra* note 7, at 80–81.

83. Putri et al., *supra* note 5.

84. *Id.*

85. S. RAJARATNAM SCH. OF INT'L STUDIES, POLICY REPORT: INDONESIA'S NAVAL DEVELOPMENT AND MARITIME COOPERATION 3 (2012), *available at* http://www.rsis.edu.sg/publications/policy_report/Indonesia_Naval_Development_Maritime_Cooperation_5_July_2012.pdf;

multilateral initiative involving neighboring states have gone unanswered, but there has been a recent suggestion that perhaps Australia could step in and assist, as it assisted Indonesia in the aftermath of the Bali bombings.[86] If so, Indonesia could benefit from joint naval patrols and assistance to help police their waters. As with the Gulf of Guinea, efforts in Indonesia to use armed security personnel and BMPs will clearly help to combat the increase in piracy and perhaps will be an even more effective deterrent given that the attacks tend to be more opportunistic and less organized.

Similar to the model used to address piracy in Somalia, regional courts in Indonesia, Malaysia and other neighboring states should all step up efforts to ensure that they are prosecuting as many of the pirates in the region as possible. Capacity-building efforts should also be explored to address deficiencies and conditions in Indonesia that might contribute to piracy.

C. Elsewhere

Piracy exists in many other parts of the world and will ebb and flow in response to regional circumstances. While not every tool is necessarily effective in each location, it appears that broad use of BMPs is both scalable to address cost burdens on ships and useful in minimizing the number of successful attacks. Armed security personnel were effective in Somalia, and as long as they remain affordable enough and do not generally begin to escalate the level of violence in pirate attacks, they are also a good tactic for ships to employ wherever they may be.

Despite the extremely effective use of international naval patrols off the coast of Somalia, partly fueled by the U.S., U.N., and European calls for action, it is difficult to imagine that this level of maritime support will be afforded in other regions of the world due to the expense and effort. Instead, countries should welcome international support for their domestic maritime law enforcement capabilities and interoperability with neighboring states along the lines of the current Africa Partnership Station program. Additionally, regional alliances or support from more capable neighboring allies, consistent with possible Australian support for Indonesia, can also help increase maritime law enforcement capacity and reduce the piracy threat.

With respect to prosecution, the best case scenario is to have domestic court systems that can effectively prosecute piracy cases.

Andrew Manners, *Piracy on the Rise in Indonesia: Can Australia Help?*, FUTURE DIRECTIONS INT'L (Jul. 31, 2013), http://www.futuredirections.org.au/publications/indonesia/45-indonesia-swa-articles/1226-piracy-on-the-rise-in-indonesia-can-australia-help.html.

86. Manners, *supra* note 87.

When that is not possible, capacity-building efforts, like the UNODC effort for Somalia, is the best solution, as it promotes prosecution in the country closest to where the crime occurred and has a potential collateral spill-over effect of promoting justice and the rule of law as a whole. The establishment of an international piracy tribunal is extremely unlikely given the current level of tribunal fatigue, the historical financial costs of establishing new, international tribunals, and the fact that domestic prosecutions, as a whole, are on the rise.[87] Specialized, anti-piracy courts are one option, but as Jack Lang and the U.N. explored in the context of Somalia, capacity-building efforts for the regular domestic court system may be a better choice given that the efforts do not require new facilities and new courts and can have a positive impact on the justice system.[88]

V. CONCLUSION

As recent as a year ago, there were few to no predictions of a rapid decline in piracy off the Coast of Somalia. The international community was skeptical that there was too much to gain for a would-be pirate and not enough deterrent. Further, there were concerns that domestic and regional prosecution capacity was too weak to be effective. There was not yet enough recognition of the value that the armed security personnel and BMPs would contribute. Notwithstanding these doubts, these methods all together worked. There has been no evidence that the Somali pirate leaders have fled to other regions, such as the Gulf of Guinea, to carry out their work there either. Even though the piracy characteristics vary from region to region, countries facing piracy problems should aim to combine BMPs and armed security personnel, and focus efforts on domestic prosecutions and strengthening capacity as needed. Where local maritime law enforcement capabilities are more limited, piracy-afflicted countries should seek international partnerships and assistance to strengthen their capacity. Pirates beware—this age-old crime did not take ages to counter in Somalia.

87. Sandra L. Hodgkinson, *Establishment of a Special Anti-Piracy Tribunal: Prospective and Reality, the Challenges Associated with Prosecuting Somali Pirates in a Special Anti-Piracy Tribunal*, 19 ILSA J. INT'L & COMP. L. 305, 312–13, 317 (2013).

88. *See id.* at 312 (stating that instead of proposing specialized anti-piracy courts, "there may well be an appetite for morphing this proposal into an enhanced UNDP and UNODC-style capacity-building plan for Somalia, leveraging the existing court structures").


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