

2014

# New Thinking in the Fight Against Marine Piracy: Financing and Plunder Pre-Empting Piracy Before Prevention Becomes Necessary

Hugh R. Williamson

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>



Part of the [International Law Commons](#)

---

## Recommended Citation

Hugh R. Williamson, *New Thinking in the Fight Against Marine Piracy: Financing and Plunder Pre-Empting Piracy Before Prevention Becomes Necessary*, 46 Case W. Res. J. Int'l L. 335 (2013)

Available at: <https://scholarlycommons.law.case.edu/jil/vol46/iss1/15>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

A stylized world map in shades of blue and white, showing the continents and oceans, serving as a background for the top section of the cover.

# Case Western Reserve Journal of International Law

---

Volume 46

Fall 2013

Issues 1 & 2

---

NEW THINKING IN THE FIGHT AGAINST  
MARINE PIRACY: FINANCING AND PLUNDER  
PRE-EMPTING PIRACY BEFORE PREVENTION  
BECOMES NECESSARY

*Hugh R. Williamson*

# NEW THINKING IN THE FIGHT AGAINST MARINE PIRACY: FINANCING AND PLUNDER PRE-EMPTING PIRACY BEFORE PREVENTION BECOMES NECESSARY

*Hugh R. Williamson\**

*Contemporary piracy has been a serious regional problem since the 1980s. In addition to the seizure for ransom of vessels off the Horn of Africa, attacks against the refugee “boat people” in the Gulf of Thailand, hijacking of yachts in the Caribbean, the armed robbery of vessels in the Straits of Malacca, and the seizure of oil tankers in West Africa are all “piracy-like” criminal activities, even if they do not fit the classical legal definition of maritime piracy. Rather than focus on one specific outbreak, the Dalhousie Marine Piracy Project has undertaken a global study of a business model of contemporary piracy and studied potential identifiers for potential outbreaks, as well as weak points that may be exploited to suppress piracy in the future.*

## CONTENTS

I.	INTRODUCTION .....	336
II.	PIRACY: THE DEFINITIONAL PROBLEM .....	337
III.	THE EMERGENCE OF CONTEMPORARY PIRACY: FROM OPPORTUNISTIC TO ORGANIZED CRIME .....	338
IV.	THE PIRACY CYCLE.....	343
V.	THE PIRACY BUSINESS MODEL: WHEN OPPORTUNISTIC BECOMES ORGANIZED .....	345
VI.	THE PIRACY INDICATORS MODEL.....	349
VII.	IDENTIFYING POSSIBLE OUTBREAKS.....	350
VIII.	ESTABLISHING A PRE-EMPTIVE STRATEGY.....	352
IX.	CONCLUSION.....	354

---

\* Lead Investigator, Dalhousie Marine Piracy Project, Dalhousie University, Halifax, Nova Scotia, Canada.

## I. INTRODUCTION

While much of the global concern surrounding marine piracy is a result of the outbreak in the Horn of Africa, the origins of contemporary piracy were evident several decades earlier. During the 1980s there were attacks on Vietnamese boat people in the Gulf of Thailand marked by extreme violence and a series of armed robberies on ships transiting through the Straits of Malacca that were notable for the size of the targeted vessels.<sup>1</sup> This drew some attention to what was formerly thought as a historical anachronism. While there have always been sporadic attacks on commercial shipping around the globe, it is the forms of contemporary piracy which have highlighted the inadequacies of the current system in dealing with serious crime at sea.

The Dalhousie University Marine Piracy Project (DMPP) was launched in 2011 to examine modern piracy on a global basis. It was not restricted to any particular geographical area, class, or vessel. The objective was to identify vulnerable regions and to recommend suitable pre-emption or prevention strategies to lessen the problem and deal with the more serious consequences. The aim was not to duplicate work done by other organizations, but to identify where new or different strategies might provide a more effective solution.

Antipiracy activities tend to fall under three main categories. The first includes actions to prevent pirate attacks, which involves actions by security forces and protection measures by ships. The second is the prosecution and punishment of pirates and their associates, which includes law enforcement and criminal justice activities. The third involves the strategies for the pre-emption of piracy, which is a far more difficult task since it attempts to keep “pirates” from becoming pirates in the first place.

There may not be many new or innovative solutions to the prevention of pirate attacks, or the prosecution and punishment of pirates. Naval and security forces are well versed in the operational requirements, ships have been provided with both the guidance and training to avoid or hinder successful piracy attacks, and most criminal justice systems have the legal means, if not necessarily the political will, for effective law enforcement. However, it may be that providing better employment alternatives for potential pirates and decreasing profitability for piracy offers a more successful solution to avoid future outbreaks.

---

1. See CAROLIN LISS, OCEANS OF CRIME: MARITIME PIRACY AND TRANSNATIONAL SECURITY IN SOUTHEAST ASIA AND BANGLADESH 57–58 (2011); see generally MARTIN N. MURPHY, SMALL BOATS, WEAK STATES, DIRTY MONEY: PIRACY AND MARITIME TERRORISM IN THE MODERN WORLD (2009).

This article argues that antipiracy efforts should be channelled into pre-emptive strategies. First, piracy is essentially a profitable business, and efforts to combat piracy should focus on vulnerabilities in its business model, thereby preventing piracy's evolution into a sophisticated, organized enterprise. Second, this article explains DMPP's piracy indicators model, which evaluates current piracy trends in order to predict which other countries are susceptible to a piracy outbreak. Finally, it concludes that regional and international cooperation is required in order to develop an effective pre-emptive strategy to predict outbreaks of piracy and prevent its escalation.

## II. PIRACY: THE DEFINITIONAL PROBLEM

In the initial development of the study, one of the most difficult tasks was determining the limits of the subject matter. The problem with the definition of piracy is that it is both legally constraining and operationally vague. There have been numerous and very detailed analysis of the definition of piracy; however, for the purpose of the DMPP study, and this article, a working definition was chosen to allow the inclusion of piracy and piracy-like activities, while excluding those which were felt to be largely unrelated, or a distraction to the problem at hand.<sup>2</sup> The project definition was as follows:

Piracy is the actual or potential deliberate criminal interference with the rights and freedoms of the seas which target marine craft and persons for economic gain.<sup>3</sup>

The hallmark of this piracy definition is that it includes illegal activities at sea carried out to obtain money, plunder booty, etc. by theft. This was seen as the motivation for piracy, but not necessarily the motivation for the individual pirates. The purpose of piracy is direct economic gain by the pirates, whether it involves the taking of valuables, ransom or extortion payment, or taking property for later use, such as seizing a yacht to be used for smuggling purposes. For this study, piracy does not include politically motivated actions, and would normally not include activities such as: political terrorism; illegal radio broadcasting (pirate radio); IUU fishing (pirate fishing); environmental activism (ecoterrorism); drug smuggling; slavery; mutiny; or hijacking. While these activities may be associated with

- 
2. See L. FANNING, M. SLOAN, S. WHITMAN, H. WILLIAMSON & S. DOUGLAS, EXPLORING AN INTEGRATED APPROACH TO THE SUPPRESSION AND PREVENTION OF MARINE PIRACY 6 (MARINE AFFAIRS PROGRAM TECHNICAL REPORT #4) (2012), available at <http://www.dal.ca/faculty/science/marine-affairs-program/research/research-news/map-technical-series-reports.html>.
  3. See *id.*

piracy, they are not its primary motivation, nor would they necessarily be the primary source of financial return. In short, piracy is a criminal activity for financial gain.

### III. THE EMERGENCE OF CONTEMPORARY PIRACY: FROM OPPORTUNISTIC TO ORGANIZED CRIME

There have been at least six independent outbreaks of contemporary piracy, starting in the 1970s. These have all resulted in a serious threat to mariners and those working, voyaging, or in the case of refugees, escaping at sea.

The first notable outbreaks were the attacks by local Thai fishermen on the ethnic Vietnamese boat people who were fleeing post-war Vietnam.<sup>4</sup> While the refugees were not rich, what they had of value they carried with them in the form of gold or cash, making them attractive targets. They had no protection, and they were often crowded in large numbers on small vessels crossing the Gulf of Thailand. The Thai fishermen were able to rob, assault, and murder the refugees with relative impunity until international pressure forced the Thai government to take police action.<sup>5</sup> By modern comparison, the payoff to the pirates was small, but during a time of economic collapse in the local fisheries, this represented a substantial source of money.

During the same period, local criminal gangs, possibly including fishermen, were engaged in what can be described as “breaking and entering” on ships transiting through the Straits of Malacca.<sup>6</sup> The pirates would board the ships from small boats, usually at night, armed with knives or possibly handguns. The pirates would force the captain to open his safe, which often contained a sizable amount of cash. They would also steal any valuables from the crew, and then leave the ship. In addition to the danger of violent assault on the crew, sometimes the ship would be left with no one at the helm while transiting one of the most congested waterways in the world.

Contemporary piracy in the Caribbean was believed to be related to drug trafficking, with smugglers hijacking yachts or other small

- 
4. See U.N. HIGH COMM’R FOR REFUGEES, THE STATE OF THE WORLD’S REFUGEES 2000: FIFTY YEARS OF HUMANITARIAN ACTION 79, 86–87 (2000), available at <http://www.unhcr.org/3ebf9bad0.html>.
  5. See *id.* at 87 (describing the anti-piracy program in Thailand, which included law enforcement efforts on land and sea).
  6. See LISS, *supra* note 1, at 58; see also J.N. Mak, *Pirates, Renegades, and Fisherman: The Politics of “Sustainable” Piracy in the Strait of Malacca*, in VIOLENCE AT SEA: PIRACY IN THE AGE OF GLOBAL TERRORISM 199, 200–01 (Peter Lehr ed., 2008) (describing how piracy has evolved in the Strait of Malacca).

vessels to use for the transport of drugs to the U.S.<sup>7</sup> The exact numbers are not known; however, the suspicious disappearance of yachts and their crews with no other reasonable explanation resulted in an increase in patrols by the U.S. and regional Coast Guards.<sup>8</sup> While still considered a potential problem, changes in drug trafficking patterns have reduced the likelihood of these incidents. However, there continues to be a local problem with piracy against small fishing vessels on the Guyana coast, targeting fish catch and vessel equipment. This problem is sufficiently serious that the Government of Guyana has established a compensation fund to reimburse fishermen for stolen catch.<sup>9</sup>

Piracy in the Indian Ocean falls into two major categories of activity. There is an ongoing and serious situation involving attacks on local fishing vessels off the Bangladesh coast.<sup>10</sup> These incidents are largely unreported outside the local press unless they involve a substantial loss of life. This is considered a local issue, and the Bangladesh government is reluctant to label it as piracy in order to avoid increases in insurance rates.<sup>11</sup> These attacks have involved the theft of catch and equipment, and some ransom demands from the families of the fishermen. Because they have not involved commercial shipping interests, the international shipping community has largely ignored such attacks.

The better-known Somalia-based piracy off the Horn of Africa has attracted most of the world's attention, as the major targets are international commercial vessels. The objective of the pirates was to

- 
7. See, e.g., *Pirates of the Wild Coast*, STABROEK NEWS (Sept. 30, 2010), <http://www.stabroeknews.com/2010/news/stories/09/30/pirates-of-the-wild-coast/> (finding that maritime piracy in Guyana is a by-product of other related crimes, including drug trafficking).
  8. See *id.* (reporting on local Coast Guard efforts to counter piracy, including the establishment of communication systems with radios and GPS devices).
  9. See *id.* (describing the compensation fund and noting that it was one part of a comprehensive strategy to combat piracy).
  10. See, e.g., Syed Tashfin Chowdhury, *Rising Piracy Threatens Coastal Bangladesh*, KHABAR S. ASIA (May 4, 2013), [http://khabarsouthasia.com/en\\_GB/articles/apwi/articles/features/2013/05/04/feature-01](http://khabarsouthasia.com/en_GB/articles/apwi/articles/features/2013/05/04/feature-01) (“Between January 2011 and November 2012, pirates attacked more than 1,000 fishing boats, abducted over 3,000 fishermen, killed 45 and collected more than Tk 100m (\$1.28m) in ransoms from fishery owners in the two coastal towns Chakaria and Maheshkhali alone . . .”).
  11. See Saleem Samad, *U.N. Agency Says Bangladesh No Longer a “High Risk” Piracy Area*, GANT DAILY (Jan. 2, 2012), <http://gantdaily.com/2012/01/02/u-n-agency-says-bangladesh-no-longer-a-high-risk-piracy-area/> (reporting that Bangladesh requested it be removed from the “high risk” piracy areas list because the designation increased insurance costs).

hold ships and crews for ransom. This represented a major innovation in modern piracy, since the ransom amounts were quite large—to the order of several million dollars—where the pirates were generally unconcerned with disposing of either the ship or the cargo. As this represented a serious threat to international maritime commerce transiting through the Red Sea/Suez Canal and later into the Gulf, the resulting response by the international community included U.N. Security Council resolutions,<sup>12</sup> deployment of international naval forces,<sup>13</sup> and major changes to commercial shipping operations.<sup>14</sup> The pirates also targeted local coastal ships, or dhows traffic, as well as fishing vessels and yachts. Though these were not the preferred targets, they were sometimes used as mother ships to increase the operating range of the “pirate action groups.”<sup>15</sup>

The latest piracy trend to attract international attention has been on the Nigerian and West African coast.<sup>16</sup> This initially started with attacks on local fishing vessels, commercial vessels in port or at anchor, and offshore oil installations. The pirates have increased their operating area to encompass most of the Gulf of Guinea and have also extended farther offshore. Many of the vessels taken have been tankers which are being robbed of their cargo of crude oil or petroleum products.<sup>17</sup> This indicates a fairly sophisticated distribution

- 
12. See, e.g., S.C. Res. 1816, U.N. Doc. S/RES/1816 (June 2, 2008); S.C. Res. 1846, U.N. Doc. S/RES/1846 (Dec. 2, 2008); S.C. Res. 1851, U.N. Doc. S/RES/1851 (Dec. 16, 2008); S.C. Res. 1897, U.N. Doc. S/RES/1897 (Nov. 30, 2009); S.C. Res. 1918, U.N. Doc. S/RES/1918 (Apr. 27, 2010); S.C. Res. 2015, U.N. Doc. S/RES/2015 (Oct. 24, 2011).
  13. See, e.g., *Operation Description*, EUR. EXTERNAL ACTION SERV., [http://www.eeas.europa.eu/csdp/missions-and-operations/eu-navfor-somalia/mission-description/index\\_en.htm](http://www.eeas.europa.eu/csdp/missions-and-operations/eu-navfor-somalia/mission-description/index_en.htm) (last visited Mar. 31, 2014) (describing the EU’s naval force (EU NAVFOR), which was launched in 2008 as part of a comprehensive strategy to combat piracy in Somalia).
  14. See, e.g., BMP 4: BEST MANAGEMENT PRACTICES FOR PROTECTION AGAINST SOMALI BASED PIRACY (2011), available at [http://www.mschoa.org/docs/public-documents/bmp4\\_low\\_res\\_sep\\_5\\_2011.pdf](http://www.mschoa.org/docs/public-documents/bmp4_low_res_sep_5_2011.pdf) (containing recommendations and best practices that the shipping industry should follow in order to prevent or delay piracy attacks, including increased speed and the employment of private maritime security contractors).
  15. See, e.g., Luis Martinez, *Dutch Warship Destroys Pirate ‘Mother Ship’*, ABC News (Oct. 24, 2012), <http://abcnews.go.com/Blotter/dutch-warship-destroys-pirate-mother-ship/story?id=17554703>.
  16. See *Piracy Increasing in West Africa, Latest Report Shows*, ICC COMMERCIAL CRIME SERVS. (Apr. 23, 2012), <http://www.icc-ccs.org/news/737-piracy-increasing-in-west-africa-latest-report-shows>.
  17. See *id.* (reporting that Nigerian piracy is “increasing in incidence and extending in range”); Mark Doyle, *Nigeria’s Piracy – Another Form of Oil Theft*, BBC (June 18, 2013), <http://www.bbc.com/news/world-22956865> (distinguishing the Somalia-based piracy model, which centers



system to facilitate the transfer and sale of large quantities of cargo, which would require the complicity of port officials and international business interests.

A number of ship and cargo hijackings haven taken place in the South China Sea, with the collusion of corrupt officials in isolated ports who facilitate the disposal of the cargo and the renaming and subsequent sale of the ship.<sup>18</sup> There is also a particular concentration on hijacking tug and tow boats,<sup>19</sup> which may also be supplying a black market demand for tugs in the region.

What is obvious is that while all the outbreaks may be classified as “piracy,” there are sufficient variations in perpetrators and targets to preclude a uniform response or solution.

---

on kidnapping and ransom, from the Nigerian model, where the main motivation is to steal crude oil or refined petroleum products from tankers).

18. *See Piracy in South East Asia, a Growing Threat*, IDARAT MAR. (July 17, 2009), <http://www.idaratmaritime.com/wordpress/?tag=islamic-terrorist-groups> (“In the 1990s capture of ships and the murder of their crews, if they resisted, was not unknown in the South China Seas. In some cases ships were taken to a Chinese port, renamed, repainted and launched on a new career, all with the help of corrupt local officials.”).
19. *See* Karsten von Hoesslin, *Piracy and Armed Robbery Against Ships in the ASEAN Region: Incidents and Trends*, in *PIRACY AND INTERNATIONAL MARITIME CRIMES IN ASEAN: PROSPECTS FOR COOPERATION* 126, 130 (Robert C. Beckman & J. Ashley Roach eds., 2012) (noting that tugboat hijackings are unique to the South China Sea area and that many tugboats are resold on the black market).

**Table 1: Contemporary Outbreaks of Marine Piracy<sup>20</sup>**

Location and Timing	Victims	Perpetrators	Objective	Response
<b>Caribbean Basin</b> (1970s – ongoing)	Yachts and fishing vessels	Drug smugglers, armed criminals	Obtain a vessel to carry drugs to U.S., seize equipment and vessels	U.S. Coast Guard patrols, Caribbean ship rider agreements
<b>Gulf of Thailand</b> (1980s)	Vietnamese boat people (refugees)	Local Thai fishermen	Theft of valuables carried by fleeing refugees	Regional anti-piracy patrol, Thai police land-based initiatives in fishing ports
<b>Straits of Malacca</b> (1980s – ongoing)	Transiting merchant ships	Local criminal gangs	Money in master's safe and crew's valuables	Regional anti-piracy agreements
<b>South China Seas</b> (1990s)	Transiting merchant ships	Possible rogue elements of military from the region	Ship and cargo	Diplomatic pressure
<b>West African Coast</b> (1990s – ongoing)	Transiting oil tankers, fixed offshore installations, fishing vessels	Local criminal gangs	Theft and resale of oil cargoes and other tanker products, money, catches, use of fishing vessels as mother ships	Regional anti-piracy strategy and agreements, regional operational coordination mechanisms
<b>East Africa/Red Sea/Indian Ocean</b> (2000 – ongoing)	Transiting merchant ships, yachts, fishing vessels	Local criminal gangs	Ship and crew held for ransom	Anti-piracy patrols, rerouting of vessels

20. L. FANNING, H. WILLIAMSON & S. DOUGLAS, LEGAL, INSTITUTIONAL AND GOVERNANCE ARRANGEMENTS FOR APPREHENDING AND PROSECUTING MARINE PIRATES (MARINE AFFAIRS PROGRAM TECHNICAL REPORT #2) 28–47 (2012), *available at* <http://www.dal.ca/faculty/science/marine-affairs-program/research/research-news/map-technical-series-reports.html>.

#### IV. THE PIRACY CYCLE

Unlike the “golden age of piracy” displayed in modern cinema with Jack Sparrow and the Pirates of the Caribbean, modern piracy has evolved independently, usually in specific regions, where local gangs began to target vessels in coastal waters. Attacks on large ships are seldom the first piracy incident in a region. Piracy follows a fairly predictable pattern or cycle, the early stages of which can usually be identified in hindsight after piracy has become more obvious and well entrenched. The cycle, as initially identified by Philip Gosse in his 1932 book *The History of Piracy*,<sup>21</sup> comprises three phases: a coastal subsistence phase, a professionally organized phase, and a “pirate as independent state” phase. Most contemporary piracy falls into one of the first two phases, as even in modern Somalia the pirates have not taken over the country.<sup>22</sup>

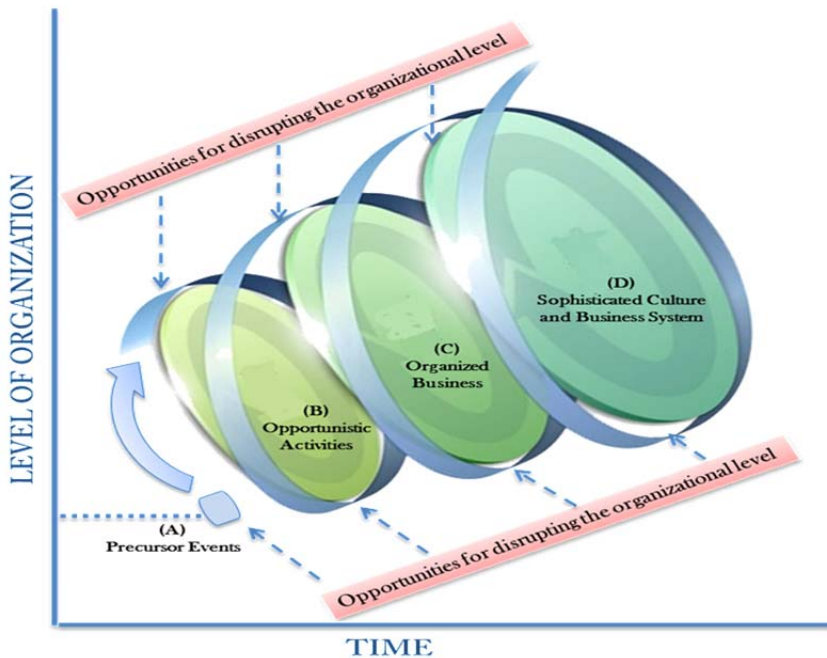


Figure 1: Diagram illustrating the piracy cycle

21. See PHILIP GOSSE, *THE HISTORY OF PIRACY* 1–2 (Dover Publ’ns 2007) (1932).
22. See Edward R. Lucas, *Somalia’s “Pirate Cycle”: The Three Phases of Somali Piracy*, 6 J. STRATEGIC SECURITY 55, 63 (2013), available at <http://scholarcommons.usf.edu/jss/vol6/iss1/8/> (stating that Gosse’s piracy cycle is not fully applicable in the modern context because it is unlikely that current piracy organizations can achieve independent state status).

As shown in Figure 1, the cycle starts with precursor events, which are criminal or other activities associated with the maritime environment, but which may not necessarily target ships and cargoes directly. This may involve such things as smuggling, poaching of fish or traps, civil war, or lawlessness ashore. This opportunistic piracy, or armed robbery against ships, is usually committed by those already engaged in maritime activities, typically fishermen or smugglers from coastal communities, who capitalize on an opportunity encountered while undertaking their regular business. The example of Thai fishermen who chanced upon boatloads of Vietnamese refugees and robbed them while at sea is a classic case of “opportunistic piracy.” Significantly, the personnel, equipment, and costs support the primary activity, with the proceeds of piracy providing an added financial bonus.

Piracy evolves from opportunistic to an organized business activity when the perpetrators abandon their traditional activity, be it fishing, smuggling, or in some cases, law enforcement, and begin to specifically target vessels for criminal gain. This marks a shift to organized piracy, where the gain from the enterprise’s “plunder” must cover the operating costs and show a profit as well. This increases the associated risks, driving pirates to seek greater reward. At this point, the participants may still largely be composed of the original opportunistic pirates who now pursue a more lucrative line of work.

As with other organized crime activities, a successful and profitable enterprise will attract new entrants. The requirements of a larger and more sophisticated logistics support network will also increase piracy’s visibility and influence through wealth distribution in the community, corruption of local officials, and the recruitment of new and younger members. Piracy has evolved into a sophisticated culture and business system.

There may be an additional phase to the cycle, where due to outside pressure, successful enforcement activities, lack of targets, or a decrease in profitability, the pirates opt out of piracy and choose other activities. Pirate attacks against the Vietnamese boat people eventually ceased due a halt in the exit of refugees and successful actions taken by the Thai police.<sup>23</sup> There are recent reports that some of the Somali pirate gangs have switched roles, and are now providing security for foreign fishing vessels in the region. This is an interesting transformation, since one of the claimed precursors to piratical activities in the Horn of Africa was the enforcement action by the Puntland coast guard and other irregular militias against illegal foreign fishing during the 1990s.<sup>24</sup>

---

23. See U.N. HIGH COMM’R FOR REFUGEES, *supra* note 4, at 87.

24. See Chair of the Security Council Comm. Pursuant to Resolutions 751 (1992) and 1907 (2009), Letter dated July 12, 2013 from the Chair of the Security Council Comm. Pursuant to Resolutions 751 (1992) and

One of the practical issues consistently raised concerning global efforts to combat marine piracy is the comparative cost of trying to eliminate piracy entirely, or to reduce it to an “acceptable” level. The DMPP Intersectoral Working Group (ISWG), comprised of international experts on piracy, suggested an agreed end-state for organized piracy whereby “[t]he crime of marine piracy is reduced to an internationally agreed or acceptable level—by creating and sustaining a level of maritime security that allows vessels and their crews to feel confident and safe without the need for an armed escort.”<sup>25</sup> Such an end-state model acknowledges that the elimination of all opportunistic piracy is unrealistic. The ISWG felt that efforts might focus on preventing the evolution to the organized business stage.

As part of the piracy cycle, it was postulated that there are points of particular vulnerability, when the piracy organization is evolving to a higher level, where specific actions can hinder the operational effectiveness and reduce the profitability of a piracy enterprise. By specifically targeting these vulnerabilities, most notably when opportunistic piracy begins to evolve into an organized activity, it may be possible to suppress the emergence of a major piracy outbreak before it becomes entrenched.

## V. THE PIRACY BUSINESS MODEL: WHEN OPPORTUNISTIC BECOMES ORGANIZED

As part of the development of a business model of piracy, the DMPP working groups considered the support structures necessary to facilitate a large and fairly sophisticated criminal enterprise. The development of this stylized business model for piracy highlighted several components where the piracy enterprise may be particularly vulnerable. Organized piracy, as it increases in complexity, requires a sophisticated logistics system to sustain its operation. This includes: obtaining a vessel, food, fuel, and water; recruiting a trained crew; procuring weapons; maintaining a sufficient support base; gaining the cooperation of local officials through corruption and bribery; identifying purchasers and selling plundered cargo; transferring and paying money; and acquiring intelligence on potential targets.

---

1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council, ¶ 52, U.N. Doc. S/2013/413 (July 12, 2013).

25. DALHOUSIE UNIV. MARINE PIRACY PROJECT, INTERSECTIONAL WORKING GROUP WORKSHOP SUMMARY REPORT, 25–27 July 2012, at 8 (2012).

## STYLISED BUSINESS MODEL

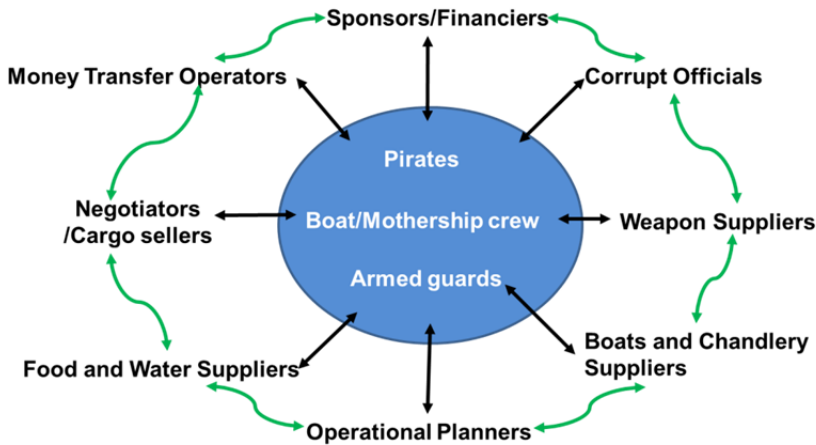


Figure 2: Stylized Business Model

Most of the individual sectors associated with the business model, such as food and water suppliers or the cargo sellers, represent legitimate activities within the greater community in which the pirates are based. Transactions with these providers, such as the purchase of fuel or the sale of a cargo commodity, would not necessarily be a violation of any law unless it could be proven that there was knowledge of the intended criminal use. Since these activities also form part of the regular pattern of legitimate activities, such as local fishing, it becomes difficult to control access by pirates without hindering the legitimate users.

The tracking of piracy finances has also proven somewhat problematic. In opportunistic piracy, the amount of actual cash or valuables is usually quite small, and it would not generally attract much attention. When piracy becomes better organized and begins to attract larger payouts, the movement of larger payout, from either the illegal sale of plundered cargo, or in the Somalia piracy situation, the laundering of large cash ransom payments, may be easier to identify. One of the necessary support structures for organized piracy is access to banking or other financial transfer systems.

The presence of an informal value transfer system (IVTS) has been instrumental in allowing Somali pirates to distribute ransom payments without passing through formal banking channels, where such funds might be identified by financial reporting requirements.<sup>26</sup>

---

26. See Shima D. Keene, *Maritime Piracy, Somalia*, INST. FOR STATECRAFT (Dec. 11, 2012), <http://www.statecraft.org.uk/research/maritime-piracy-somalia> (“The movement of money within Somalia and out of Somalia is

The hawala system, which is present throughout the Middle East, is the major form of finance movement for many of the local and immigrant communities. The system allows monies to be transferred both within the community and internationally. While it has been identified as a major potential conduit for piracy money and other criminal funds, this represents only a small (6 percent) amount of total financial transactions.<sup>27</sup> As a result of the danger in carrying cash or other valuables, and the corruption present in the official financial systems of weak states, including those experiencing piracy, the development of cellular telephone-based payment systems has become widespread for everyday financial transactions. This allows pirates and other organized criminal activities to gain access as well, and it provides for another currently unregulated IVTS. This method is widely used in Somalia to purchase supplies and make payments in the local communities. While the identification and tracking of finances should be pursued, due to the existence of such informal systems, it may not be the primary means of reducing the profitability of contemporary piracy.

The need for pirates to obtain sophisticated modern weapons and the cooperation of local officials through bribery or corruption may also prove an effective means of weakening the piracy business structure. Much of the opportunistic piracy and armed robbery of vessels is still carried out using edged weapons, such as knives and machetes, to intimidate smaller crews. Attacks on larger vessels and their capture for ransom have generally involved the use of military grade weapons, including assault rifles and RPGs.<sup>28</sup> Such weapons are difficult to obtain in most countries, and controlling their movement, and restricting their availability, is another area where antipiracy forces should cooperate with other law enforcement and security bodies.

One of the attributes of contemporary organized piracy is that it succeeds in a weak state rather than a strong state or a totally failed state. A strong state has sufficient governance and enforcement capabilities to suppress piracy. In failed states, there is insufficient infrastructure to support organized piracy and insufficient security to

---

via either cash couriers or the informal value transfer system known as hawala, due [to] the lack of an established banking system within Somalia.”).

27. See J. MACPHEE, BEATING THE BANKS: HAWALA’S PLACE IN THE GLOBAL FINANCIAL ENVIRONMENT AND ITS POTENTIAL LINKS TO PIRACY (MARINE AFFAIRS TECHNICAL REPORT #8) 1 (2012), available at [http://www.dal.ca/content/dam/dalhousie/images/faculty/science/marine-affairs-program/Technical\\_series/MAP%20Technical%20Report%20%238.pdf](http://www.dal.ca/content/dam/dalhousie/images/faculty/science/marine-affairs-program/Technical_series/MAP%20Technical%20Report%20%238.pdf).
28. See Frank Gardner, *Dangerous Waters: Running the Gauntlet of Somali Pirates*, BBC (Mar. 13, 2012), <http://www.bbc.com/news/world-asia-17354830>.

protect their ill-gotten gains from other criminals. Paradoxically, in a weak state, there is access to functioning logistical support, but insufficient government control to keep the pirates from using it.<sup>29</sup> For organized piracy to thrive, it requires a secure base of operation; weak or permissive local enforcement; access ports and facilities for unloading cargoes; and access to markets for the sale of plunder. This requires the acquiescence or participation of local officials and members of the business community. The strengthening of weak state governance, specifically to assist in developing and implementing anticorruption measures,<sup>30</sup> combined with better coordination and implementation of international anticorruption agreements, can deprive contemporary pirates of safe and accommodating havens for their activities.

One area that the ISWG working group identified as a major potential tool against organized piracy is the reduction of individuals recruited into organized piracy.<sup>31</sup> In particular, focusing on the recruitment and employment of children and juveniles in criminal activities, especially maritime piracy, could provide a major deterrence to piracy operations through a reduction in profitability. It is estimated that up to one third of modern pirate gangs are made up of juveniles and children.<sup>32</sup> This represents not only a major source of potential pirate recruits, but also the cheapest source of available

- 
29. *The Influence of State Weakness and State Failure on Marine Piracy*, 5 MARINE AFF. POL'Y F. (Dalhousie Marine Piracy Project, Halifax, N.S.), Apr. 2013, at 3–4 (analyzing how the degree of a state's failure may be a driver in piracy operations).
30. Organized crime requires the systematic use of corruption and corrupt officials—a point which is underappreciated. See COMBATING TRANSNATIONAL CRIME: CONCEPTS, ACTIVITIES AND RESPONSES 63–64 (Phil Williams & Dimitri Vlassis eds., 2001) (“[C]riminal organizations usually function effectively . . . through systematic activities designed to evade government efforts to control or halt their illicit activities. In some cases, they take major initiatives to corrupt governments, trying to achieve a form of systemic or ‘institutionalized corruption’ that, in effect, allows them to operate on or through national territory with impunity.”).
31. See S. WHITMAN, H. WILLIAMSON, M. SLOAN & L. FANNING, DALHOUSIE MARINE PIRACY PROJECT: CHILDREN AND YOUTH IN MARINE PIRACY – CAUSES, CONSEQUENCES AND THE WAY FORWARD (MARINE AFFAIRS PROGRAM TECHNICAL REPORT #5) 5–6 (2012), available at [http://www.dal.ca/content/dam/dalhousie/images/faculty/science/marine-affairs-program/Technical\\_series/MAP%20Technical%20Report%20%235.pdf](http://www.dal.ca/content/dam/dalhousie/images/faculty/science/marine-affairs-program/Technical_series/MAP%20Technical%20Report%20%235.pdf) (noting how children are a valuable asset to piracy groups because, among other things, they are easily manipulated and are cheap to employ).
32. See Mark A. Drumbl, *Child Pirates: Rehabilitation, Reintegration, and Accountability* 11 (Washington & Lee Pub. Legal Studs., Working Paper No. 2013-16, 2013).



labor. While piracy as an offence may not be serious enough to warrant prosecution at the International Criminal Court level, the systematic employment of children as part of the business model may be seen as a sufficiently serious “crime against humanity” to warrant the prosecution of those who organize, finance, and direct maritime piracy from the safety of shore. As with child pornography and child prostitution, holding those who employ children as marine pirates to a higher and more dangerous level of criminal accountability could go a long way to discourage their involvement in marine piracy, which may cause a decrease in overall profitability.

## VI. THE PIRACY INDICATORS MODEL

As part of the DMPP project, the Socio-economic Module undertook the development of a predictive indicators model to determine whether it was possible to identify early symptoms or precursors to a more substantial outbreak of maritime piracy.<sup>33</sup> The objective was also to identify those countries or regions which might be at risk of experiencing a potential outbreak.

Using a database of reported piracy events and other available geographical and socioeconomic data, the study used a number of variables to determine if there was any correlation between them and incidents of piracy. One initial difficulty was the lack of comprehensive reported data on the different classes of vessels involved in piracy attacks. While the information is fairly detailed for incidents involving large commercial vessels, which are reported to the International Maritime Bureau (IMB)’s piracy reporting center, there was less data available for attacks on smaller vessels such as dhows or fishing vessels, and even fewer for attacks on yachts.<sup>34</sup>

The study eventually selected ninety-nine countries, each of them with coastlines and available data for the selected variables. This included the fourteen countries, which have experienced reported piracy outbreaks (classified as more than twenty piracy events) from 2000 to 2011. The selected variables were: the length of coastline; the human development index score; the gross national income per capita;

---

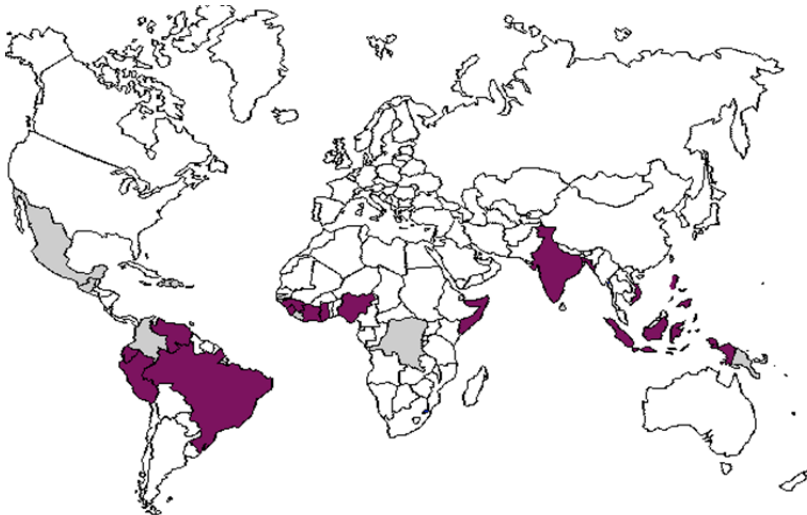
33. See generally M.R. BROOKS, R. PELOT, J.W. REUHLIN & S. REZAEI, NON-OPERATIONAL PREDICTIVE INDICATORS OF PIRACY: IDENTIFYING POTENTIAL OUTBREAKS (MARINE AFFAIRS PROGRAM TECHNICAL REPORT #10) 12 (2013), available at <http://marineaffairsprogram.dal.ca/Publications> (describing the process and details of the piracy indicators model).

34. See *id.* at 10–11 (describing the informational gaps in IMB’s statistics due to, among other things, under-reporting and non-trade vessels’ lack of familiarity with IMB reporting procedures).

the corruption perception index score; the failed state index score; and the environmental and socioeconomic impacts of overfishing.<sup>35</sup>

The initial results of the analysis did not provide any strong indicators. In part, this is attributed to a lack of more comprehensive data for all the selected states. There were, however, some interesting results when the selection of countries was subsequently narrowed to exclude those countries that have not had a single piracy event during the study period. With this modification, a single variable showed a significant degree of correlation. As part of the failed state index, there was a component for “human flight and brain drain” (HFBD).<sup>36</sup> While the nature of the correlation is not clear, there may be a link to countries experiencing an exodus of refugees with the resulting instability. It is also possible that the loss of human capital results in a decrease in the partnership and the development of local alternatives to piracy. This may lead young people seeking relative economic or social security to seek employment in the criminal sector.

## VII. IDENTIFYING POSSIBLE OUTBREAKS



**Figure 3: Map of piracy outbreak countries and countries with increased risk of outbreaks**

The study identified fourteen countries which have experienced piracy outbreaks, but also identified a further thirteen countries which

---

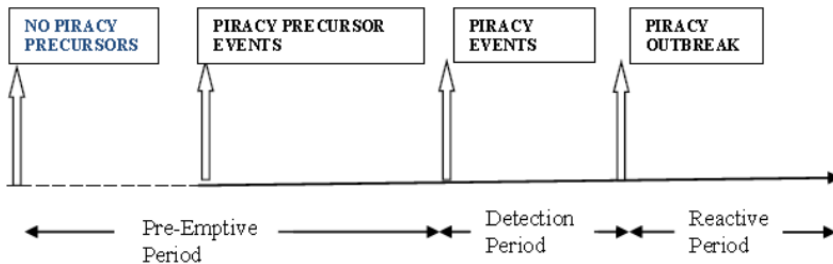
35. *Id.* at 18.

36. *Id.* at 29 (explaining that “countries that suffer from ‘brain drain’ and also an ‘economic drain’ of people leaving in search of better economic perspectives or out of fear of persecution or repression have a higher chance of piracy”).

are vulnerable to an outbreak of piracy.<sup>37</sup> The countries highlighted in dark in Figure 3 have already experienced a piracy outbreak in the 2000–2011 period. These are Somalia, Indonesia, Nigeria, Bangladesh, Philippines, India, Peru, Vietnam, Brazil, Guinea, Venezuela, Côte d’Ivoire, Ecuador, and Ghana.

The countries shown in grey in Figure 3 have experienced low levels of piracy in the same period, but their levels of HFBD suggest that they maintain a chance of piracy outbreaks in excess of 25 percent.<sup>38</sup> These countries are Guatemala, Mexico, Liberia, Guinea-Bissau, Papua New Guinea, the Democratic Republic of Congo, Trinidad and Tobago, Haiti, Sierra Leone, Sri Lanka, Colombia, and the Dominican Republic.

There are several points of significance that can be gleaned from these results. For one, the presence of Brazil is somewhat puzzling as it has had significant piracy attacks, but the model does not indicate it to be at serious risk. Brazil is a strong state with extensive governance and strong military resources. One fact that may explain why Brazil has experienced piracy outbreaks is its proximity to Guyana. Guyana was not included due to a lack of reported incidents at the time of the study, but it has experienced an increase in fisheries-related piracy problems, some of which may extend along the coast. What is more interesting is that since the study was completed, there have been additional reported attacks in Papua New Guinea, Sierra Leone, and the Democratic Republic of Congo, all from the list of potential outbreaks.<sup>39</sup>



---

37. *Id.* at 25, 31.

38. *Id.* at 31.

39. See SURITEC, PIRACY REPORT: PIRACY AND ACTS OF ARMED ROBBERY AT SHIPS, NOVEMBER 2013, at 17, 22 (2013) (noting the violent piracy attacks that have occurred recently in Papua New Guinea, Sierra Leone, and the Democratic Republic of Congo); see also SURITEC, PIRACY REPORT: PIRACY AND ACTS OF ARMED ROBBERY AT SHIPS, FEBRUARY 2014, at 6, 8 (2014).

There is clearly a need for further development of the model, including the greater acquisition of relevant data and a better understanding of the significance of some of the indicators. The ability to provide a more accurate warning of potential trouble areas could be a valuable tool for the pre-emption of piracy.

### VIII. ESTABLISHING A PRE-EMPTIVE STRATEGY

What is apparent from the study of the present situation is that there is no shortage of analysis, instruments, or agreements on ways to fight piracy. What is also very clear is that there is a sufficient difference in the way piracy has evolved around the world to preclude any single strategy, or any single legal mechanism, from providing a uniform solution. As with other areas of law enforcement, combating piracy does not necessarily require new piracy-specific laws; increasing the effective use of previously established mechanisms is more important.

It is suggested, however, that in addition to more effectively using the tools and resources available, the fight against piracy requires better coordination and information sharing among the parties involved. This would include better cooperation between different agencies, both nationally and internationally, and an integration of enforcement efforts. There are insufficient resources to provide for an individual solution each time the problem arises. This means that the various countries and bodies with responsibility for specific areas and issues must cooperate in efforts to share information, responsibility, and the work involved. It is important to acknowledge that piracy is an international problem, but it is not the only international problem.

To this end, in addition to the security and operational activities involved in the prevention of piracy attacks, there must be a concerted effort to eliminate the development of organized piracy by severely restricting pirates' abilities to profitably operate their businesses.

Doing so can be effected using existing international legal instruments and organizations to accomplish the following four goals. First, financial movements, both in the payment for illegal activities and the laundering of piracy profits must be restricted. Second, ships and smaller vessels which have been taken by pirates for sale or disposal must be identified and tracked. The International Maritime Organization registration currently covers larger vessels, but it does not include fishing vessels and other smaller classes of ships. Third, access to military grade weapons must be limited. Fourth, countries must assist each other in identifying and prosecuting bribery and other corrupt practices, so as to limit the corruption of public officials.

Piracy does not exist in isolation, but is often combined with other problems in the maritime area. States and organizations must be encouraged to develop an integrated approach to maritime

security. It is significant that the new West African Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa,<sup>40</sup> while using the Djibouti Code of Conduct as a model, requires member states to cooperate to the fullest possible extent in the “repression of transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea.”<sup>41</sup>

The code further defines “transnational organized crime in the maritime domain” to include: money laundering; illegal arms and drug trafficking; piracy and armed robbery at sea; illegal oil bunkering; crude oil theft; human trafficking; human smuggling; maritime pollution; IUU fishing; illegal dumping of toxic waste; maritime terrorism and hostage taking; and the vandalising of offshore oil installations.<sup>42</sup>

This shows the great concern in West Africa with more comprehensive issues of marine security. This is a change from the Djibouti Code of Conduct, which deals only with the issue of piracy and armed robbery at sea. This obviously reflects Nigeria’s great concern with the theft of oil, but also the general regional concern for a wide range of marine security problems, which need to be addressed as well, such as human smuggling, illegal fishing and environmental issues. This may reflect the perception that piracy in Somalia was preceded by extensive illegal fishing and waste dumping activities, and that these were instrumental precursor events in its emergence. It may also reflect a greater willingness of the regional states to take a more reasonable view of sovereignty, and to assist the weaker and less capable states in the protection of their offshore areas. This may be the necessary step in preventing pirates from using adjoining territorial sea boundaries to avoid pursuing naval forces. By including a greater range of marine security issues, the West African Code of Conduct may provide a more effective model for pre-empting organized piracy, by establishing a means for cooperation during the early stages of an outbreak.

---

40. *See IMO Strategy for Implementing Sustainable Maritime Security Measures in West and Central Africa*, INT’L MAR. ORG. (Mar. 18, 2014), <http://www.imo.org/OurWork/Security/WestAfrica/Pages/WestAfrica.aspx>.

41. Economic Community of West African States [ECOWAS] et al., *Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa*, art. 2(1) (June 25, 2013), available at [http://www.ecowas.int/publications/en/maritime\\_security/code\\_of\\_conduct.pdf](http://www.ecowas.int/publications/en/maritime_security/code_of_conduct.pdf).

42. *Id.* art. 1(5).

## IX. CONCLUSION

Whatever else it may be, marine piracy is a business, and it will persist as long as there is money to be made. Identifying and exploiting potential vulnerabilities in the business model can reduce the profitability of piracy and help restrict it to an opportunistic activity. Once established on an organized basis, it becomes increasingly difficult to prevent attacks on ships and the associated social disruptions on land.

The early identification of potential piracy outbreaks can allow for the implementation of a pre-emption strategy to deal with emerging incidents and precursor events, and also to prevent the development of full-scale organized piracy. The huge costs associated with piracy in Somalia may well have been avoided had there been earlier interventions. This is not just to protect shipping in the region, but more importantly, to deal with precursor events, such as the exploitation of the vulnerable coastal regions of weak or failing states by foreign fishing and other interests. This is a situation where “an ounce of prevention could have avoided many millions of £’s, \$’s and €’s of cure.”



SCHOOL OF LAW

---

CASE WESTERN RESERVE  
UNIVERSITY