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# Somali Piracy -- Are We at the End Game?

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A stylized world map in a light blue-grey tone, showing the outlines of continents and major landmasses. It is set against a background of a faint grid of latitude and longitude lines.

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## SOMALI PIRACY— ARE WE AT THE END GAME?

*Jon Huggins & Liza Kane-Hartnett*

# SOMALI PIRACY— ARE WE AT THE END GAME?

*Jon Huggins\* & Liza Kane-Hartnett†*

*“Somali Piracy—Are We at the End Game?” examines the current state of Somali piracy and provides recommendations for reaching a sustainable solution both at sea and onshore. The authors provide a detailed background on international efforts to mitigate piracy and over the course of the article attempt to put the goals of both nations and international organizations, and the shipping industry, into context by: (1) assessing how close we have come to the “End Game” of piracy; (2) taking a closer look at the current positive trends and statistics; (3) evaluating the primary factors that must be considered in developing a long-term and sustainable solution at sea; and (4) addressing the importance of on-shore based initiatives. They conclude that while the initial crisis has been mitigated, a continued commitment and an increased focus on onshore initiatives are*

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*needed to ensure that a long-term and sustainable solution to Somali-based piracy is reached.*

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## I. INTRODUCTION

The Oceans Beyond Piracy (OBP) program, a project of the One Earth Future Foundation,<sup>1</sup> was initiated at the absolute height of the Somali piracy crisis in the fall of 2010. At that time, nearly 700 hostages were being held in over thirty ships off the coast of Somalia. In order to understand the complex nature of the piracy attacks, and the equally complex response, OBP cultivated a relationship with multiple stakeholders across the international navies, maritime nations, industries, advocacy groups, and academia.

After initial setbacks, where the pirates seemed able to adapt and effectively counter actions taken by the international community, the response at sea finally turned the tide against the Somali pirates. Through the combined efforts of industry and navies, pirate attacks were suppressed, and pirate groups were mostly deterred from

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1. The Oceans Beyond Piracy (OBP) program is a project of the One Earth Future Foundation, a privately funded and independent non-profit organization located in Colorado, USA. OBP was launched in 2010 with the intent to develop a response to maritime piracy through: mobilizing stakeholders from the maritime community; developing public-private partnerships to promote long-term solutions at sea and ashore; and encouraging sustainable deterrence based on the rule of law.

launching new assaults.<sup>2</sup> Much of the coordination required to accomplish this can be credited to the efforts of the Contact Group on Piracy off the Coast of Somalia (CGPCS),<sup>3</sup> the Shared Awareness and De-confliction (SHADE) coordination mechanism for navies,<sup>4</sup> and industry efforts to coordinate ship self-defense through agreed Best Management Practices (BMP).

Throughout this three-year process, OBP has remained engaged by close association with CGPCS activities and by convening meetings with relevant stakeholders. After the international community achieved a milestone of six consecutive months without a successful pirate attack by the fall of 2012, OBP asked its partners to participate in a working group to develop expectations and define the desired end state to the Somali piracy threat. For the purposes of defining goals, the group was split between members of the shipping industry and those representing nations and international organizations. The group representing the nations and international organizations determined that continued observance of BMP and a sustained international navy presence would facilitate a move toward regional leadership and development ashore, establishing a safe and sustainable environment for merchant vessels and seafarers in the Red Sea, the Gulf of Aden, the Arabian Sea and the Indian Ocean. The group representing the shipping industry came to a similar conclusion, desiring to establish a set of conditions in the Red Sea, the Gulf of Aden, the Arabian Sea and the Indian Ocean whereby vessels can return to transit procedures and self-protection requirements in place before 2005 without undue risk to the crew.

Over the course of this article, we shall attempt to put these goals into context by: (1) assessing how close we have come to the “End Game” for Somali-based piracy; (2) taking a closer look at the current positive trends and statistics; (3) evaluating the primary factors that must be considered in developing a long-term and sustainable solution at sea; and (4) addressing the importance of shore-based initiatives.

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2. *See Piracy Falls in 2012, but Seas off East and West Africa Remain Dangerous Says IMB*, INT’L CHAMBER OF COMMERCE (Jan. 16, 2013), <http://www.iccwbo.org/News/Articles/2013/Piracy-falls-in-2012,-but-seas-off-East-and-West-Africa-remain-dangerous,-says-IMB/>.
  3. *See Contact Group on Piracy off the Coast of Somalia: Quarterly Update*, U.S. DEP’T OF STATE (Dec. 24, 2013), <http://www.state.gov/t/pm/rls/fs/2013/219088.htm> (summarizing CGPCS’ efforts to curtail the incidents and effects of piracy through international cooperation).
  4. *See, e.g., 19th SHADE Meets to Discuss Counter-Piracy*, COMBINED MAR. FORCES (May 17, 2011), <http://combinedmaritimeforces.com/2011/05/17/19th-shade-meets-to-discuss-counter-piracy/> (stating that SHADE meets regularly to coordinate the efforts of multiple military forces in order to combat piracy).

## II. ARE WE READY TO DECLARE “END GAME?”

With the dramatic drop in piracy attacks in the Gulf of Aden and Western Indian Ocean, some stakeholders are cautiously asking whether the international community has successfully ended Somali-based piracy. The fact that knowledgeable policymakers are having this debate indicates that things are going much better than they could have hoped just eighteen months ago. On the surface, much of the evidence supports a conclusion that the problem has been solved. For example, reported attacks have dropped by more than 80 percent between 2011 and 2012;<sup>5</sup> 2013 saw a continued decline, with the IMB reporting only 15 incidents, both actual and attempted attacks, attributed to Somali pirates.<sup>6</sup> The number of hostages has dropped to fewer than 100 in 2013—down from a high of around 700 hostages at the beginning of 2011.<sup>7</sup> Finally, as of May 2013, it had been more than a year since pirates had hijacked and held a ship.<sup>8</sup>

In spite of the good news, the world has not yet reaped the benefits from this drop in attacks. The cost of suppressing piracy in terms of first order costs had only decreased by around 20 percent to around \$6 billion according to the latest Economic Cost of Piracy Report by OBP.<sup>9</sup> The World Bank has also estimated that, even in a down year, piracy impacted the global economy to the tune of around

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5. See Alaric Nightingale, *Somali Pirates Seize 80% Fewer Ships as Early Strikes Work*, BLOOMBERG (Jan. 19, 2012), <http://www.bloomberg.com/news/2012-01-19/piracy-declines-for-first-time-in-five-years-as-navies-intervene.html>.
  6. See ICC INT’L MAR. BUREAU, PIRACY AND ARMED ROBBERY AGAINST SHIPS: REPORT FOR THE PERIOD 1 JANUARY–31 DECEMBER 2013, at 5 (2014).
  7. See OFFICER OF THE WATCH, MARITIME PIRACY MONTHLY REPORT 2 (2013), *available at* <http://officerofthewatch.files.wordpress.com/2013/09/oow-piracy-monthly-report-2013-081.pdf>; KAIJA HURLBURT & CYRUS MODY, THE HUMAN COST OF SOMALI PIRACY 2011, at 3 (2012), *available at* [http://oceansbeyondpiracy.org/sites/default/files/attachments/View%20Full%20Report\\_0.pdf](http://oceansbeyondpiracy.org/sites/default/files/attachments/View%20Full%20Report_0.pdf).
  8. See *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> (stating that while pirate attacks were still occurring, there had not been a successful pirate attack since May 2012).
  9. Jonathan Bellish, The Economic Cost of Piracy 2012, at iv (2013) (working paper) (on file with Oceans Beyond Piracy & One Earth Future Found.), *available at* [http://oceansbeyondpiracy.org/sites/default/files/attachments/View%20Full%20Report\\_1.pdf](http://oceansbeyondpiracy.org/sites/default/files/attachments/View%20Full%20Report_1.pdf).

\$18 billion when the secondary impacts were considered.<sup>10</sup> Thus, despite successful suppression efforts, the international community is still paying a premium price in its fight against piracy.

### III. A CLOSER EXAMINATION OF POSITIVE TRENDS AND STATISTICS

#### A. *Attack Reporting*

While reported attacks are down 80 percent since 2011, there are signs that some attacks may have only been reported amongst internal channels of owners and flag states, meaning that the attacks were not included in international databases and reporting. Earlier this year, two of the leading reporting agencies made the following appeals:

It has come to our attention that some private military security companies are reporting suspicious incidents through their internal communication channels and then to their customers. It is in all seafarer[s]' interest[s] that any concerns are reported immediately by phone to [the United Kingdom Maritime Trade Organization] UKMTO in accordance with BMP4.<sup>11</sup>

Additionally, the NATO Shipping Center also issued a call for more timely and accurate reporting in a weekly report from February 2013, stating:

It has been observed that some Masters are choosing to phone their Company Security Officer (CSO) first in the event of a piracy incident. However, one of the fundamental requirements of BMP4 is that UKMTO is the primary point of contact for merchant vessels during piracy incidents in the HRA. This aims to avoid unnecessary delay and prevent inaccurate or incomplete information from reaching military commanders.<sup>12</sup>

In addition to calls for more accurate reporting by information centers serving the Indian Ocean, there was circumstantial evidence that indicated that not all attacks were being reported. First, based on military statistics, the span between the end of 2011 and the start of 2012 was a particularly active time for Pirate Action Groups

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10. See THE WORLD BANK, *THE PIRATES OF SOMALIA: ENDING THE THREAT, REBUILDING A NATION* 5 (2013), available at <http://documents.worldbank.org/curated/en/2013/01/17672066/pirates-somalia-ending-threat-rebuilding-nation>.
  11. Kaija Hurlburt & D. Conor Seyle, *The Human Cost of Maritime Piracy 2012*, at 33 (Oceans Beyond Piracy & One Earth Future Found., Working Paper, 2013) (on file with OBP).
  12. *Id.*

(PAGs).<sup>13</sup> Many of these groups were observed operating in critical areas in the Indian Ocean, but this high number of potential attackers was not consistent with the low number of attacks actually reported based on historic rates.<sup>14</sup> Second, the success rate for attacks (based on the number of successful attacks as a percentage of total attacks) actually increased in 2012 after showing a downward trend over the previous two years.<sup>15</sup> This increase runs counter to the widely held belief that ships were less vulnerable after implementing BMP and other measures. Finally, there is ample anecdotal evidence from both Somali sources and from private companies themselves that not all attacks are reported and that many encounters have occurred in which neither party (the private security team or the pirates) had motive to report the incident.<sup>16</sup>

### *B. The Shipping Industry's Continued Commitment*

At the height of the piracy crisis in 2010–2011, the shipping industry made enormous commitments to protect its vessels. As documented in the Economic Cost of Piracy Reports by OBP, measures adopted by the shipping industry amounted to around \$5 billion over the course of 2012, which represented around 85 percent of the total direct costs of piracy to the international community.<sup>17</sup> The measures taken by the shipping industry were encapsulated in an industry-generated, self-governing mechanism called the “Best Management Practices (BMP) for Protection against Somalia-Based Piracy.”<sup>18</sup> Recommended measures included ship-hardening techniques, suggestions for increased vigilance of crew, increased transit speeds, and established re-routing procedures. Also incorporated by most of the industry was the practice of developing a safe room, or “Citadel,” where a crew could safely retreat in the event of a piracy attack until a naval response could be summoned.<sup>19</sup>

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13. THE WORLD BANK, *supra* note 10, at xxii (2013) (showing figures indicating a peak in piracy incidents in Somalia in 2011 and early 2012).

14. *Id.*

15. *Id.*

16. *Id.*

17. Bellish, *supra* note 9, at 1–4 (finding that the shipping industry incurred protection costs through, among others, armed guards and ransom payments, where the total direct costs of piracy to the international community was between \$5.7 and \$6.1 billion).

18. Bibi van Ginkel & Lennart Landman, *In Search of a Sustainable and Coherent Strategy*, 10 J. INT’L CRIM. JUST. 727, 740 (2012).

19. *Id.*; see also BMP 4: BEST MANAGEMENT PRACTICES FOR PROTECTION AGAINST SOMALI BASED PIRACY 5, 7 (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) [hereinafter BMP4].



At the height of the crisis, it was estimated that up to 80 percent of the shipping industry was practicing this expensive set of recommendations in spite of the industry's economic downturn that had created very slim profit margins.<sup>20</sup> However, the fact that so many companies were observing these practices created a "level playing field," which ensured that no company could reap an economic advantage. This system was sustainable until the perceived lack of threat led some companies to unilaterally stop participation and revert to pre-BMP practices by slowing down their vessels, "cutting the corner" by Somalia, and disregarding other ship-hardening recommendations in the BMP.<sup>21</sup>

The shipping industry has also reluctantly agreed to undertake the embarkation of Privately Contracted Armed Security Personnel (PCASP). These teams, which cost an average of \$40,000 to \$60,000 per transit,<sup>22</sup> are not only expensive but also logistically challenging to embark and leave the industry vulnerable to liability issues. It should be noted that the use of armed security is not a part of BMP procedures but was understood to be a means of supplementary protection for vulnerable vessels. Although the use of PCASP is completely voluntary, it is estimated that up to 60 percent of the ships transiting the high-risk areas of the Indian Ocean routinely embark these teams, and many use them as replacements for implementing other BMP recommendations.<sup>23</sup>

Over the last several months, there have been decreases in registered and reporting vessels as well as documented evidence that ships are traveling closer to the coast and transiting at slower speeds.<sup>24</sup> This un-leveling of the playing field has essentially

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20. Stephen Askins, Creation of New Industrial Standards and Compliance Regulations 1 (June 2012) (on file with the United Arab Emirates Counter Piracy Conference), *available at* <http://www.counterpiracy.ae/upload/Briefing/Stephen%20Askins-Essay-Eng-2.pdf>.
  21. *See Ships Cutting Corners*, SEC. ASS'N FOR THE MAR. INDUS. (Sept. 27, 2013), <http://www.seasecurity.org/2013/09/ships-cutting-corners/> (stating that with fewer attacks, more ships are "sneaking around the corner" near Somali coasts, risking pirate attacks).
  22. *Id.*
  23. Bellish, *supra* note 9, at 19; *see also* Robert Wright, *Ships Slow Down in Pirate Waters to Save Fuel*, FINANCIAL TIMES (May 7, 2012), <http://www.ft.com/cms/s/0/1d6d962e-984e-11e1-ad3e-00144feabdc0.html#axzz2pnRml8Xf>. (noting that "shipping companies have switched to relying on guards . . . for protection").
  24. *See* Michelle Wiese Bockmann, *Ships with Armed Guards Seen Not Reporting Somali Pirate Strikes*, BLOOMBERG (Oct. 12, 2012), <http://www.bloomberg.com/news/2012-10-23/ships-with-armed-guards-seen-not-reporting-somali-pirate-strikes.html>; *Ships Cutting Corners*, *supra* note 21; Wright, *supra* note 23.

jeopardized further shipping industry support for following BMP, as most companies will not continue to participate in procedures that leave them at a competitive disadvantage.

*C. The Naval Response*

The involvement of international navies has been a leading factor in reducing the incidence of piracy at sea. Since 2009, three international navy coalitions, EU NAVFOR Operation Atalanta, NATO Operation Ocean Shield, and Combined Task Force-151 (CTF-151), have been patrolling the Gulf of Aden and the Western Indian Ocean.<sup>25</sup> These coalitions are in addition to several unaffiliated nations who have also contributed their efforts. These so-called “independent deployers,” including China, Russia, South Korea, and Japan, have also made significant contributions.<sup>26</sup> Further, the NATO and EU efforts are currently authorized by political mandate through the end of 2014,<sup>27</sup> while the U.S.-sponsored CTF-151 has an undefined commitment to counter piracy.<sup>28</sup> Although it is believed that both the NATO and EU mandates will be extended through 2016, it is of importance to note that nations still must volunteer their forces, and a political mandate does not guarantee adequate forces will be generated. In this age of military austerity and fiscal constraint, many nations may abstain from participation, especially in light of the perceived lower threat level. In addition to the vessels and aircrafts patrolling the high-risk areas, coordination mechanisms, such as SHADE, have been created to coordinate naval activity in the Indian Ocean.<sup>29</sup>

*D. The Possible Return to Historic (Pre-Piracy) Levels  
of Maritime Security*

As indicated in the response from the shipping industry, there is a strong desire to return to shipping patterns and protections in place prior to the current outbreak of piracy. As we have also seen, the slow atrophy of those companies committing to the continued use of BMP has un-leveled the playing field and may render it economically unfeasible for some shipping companies to continue. Essentially, a de facto abandonment of BMP might already be occurring. However, before the official change to pre-piracy levels of maritime security can be made, it will be necessary to assess a number of factors to

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25. Bellish, *supra* note 9, at 14 (describing EUNAVFOR’s Operation Atalanta, NATO’s Operation Ocean Shield and CTF-151).

26. *Id.* at 3.

27. *Id.* at 14.

28. *See id.* at 15 (showing that there is no termination date for CTF-151).

29. *Id.* at 17.

determine the minimum amount of protection that must remain in place in order to ensure safety for vessels at sea.

One important factor to consider is that the publicity generated from successful pirate attacks on both the east and west coasts of Africa has brought to light the vulnerabilities of merchant vessels that can be exploited by criminal elements. Modern ships are meant to deliver goods in an efficient and cost effective manner. Consequently, these ships are manned with a minimum number of crewmembers, meaning that a large tanker could be manned by as few as fifteen to eighteen crewmen.<sup>30</sup> This leaves very few crewmen available for extra watch duties and to respond to attacks; in contrast, navy frigates and destroyers can be manned by upwards of 200 people.<sup>31</sup> Ships are also made to efficiently operate at relatively slow speeds in order to save on bunkering fuel, and many have very low freeboards (i.e., low in the water) when loaded with product—thus providing easier access for pirate attacks.<sup>32</sup> The small number of crewmen, slow operating speeds, and low deck heights above the water make some categories of modern merchant vessels inherently vulnerable to the kinds of attacks that Somali pirates mastered by the mid-2000s.

In addition to the physical characteristics of the vessels, there have also been changes in the dynamics of the maritime sector that have altered traditional relationships between a vessel and the flag it carries. Whereas in the past, ships were registered with traditional nautical nations with large navies, the shift to Open Registries (sometimes called Flags of Convenience) means that this close connection no longer exists.<sup>33</sup> In practice, this means that the traditional naval powers have no direct obligation to protect vessels flagged in other nations and has created a disconnect in which the large flag states for merchant vessels are not associated with the large

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30. See N. WINCHESTER ET AL., AN ANALYSIS OF CREWING LEVELS: FINDINGS FROM THE SIRC GLOBAL LABOUR MARKET SURVEY 12–13 (2006), available at <http://www.sirc.cf.ac.uk/uploads/publications/Analysis%20of%20crewing%20levels.pdf> (finding that some larger vessels do not contain a proportionate level of staff).

31. Bellish, *supra* note 9, at 16.

32. See Phillip J. Ballou, *Ship Efficiency Management Requires a Total Solution Approach*, 47 MAR. TECH. SOC'Y J. 83, 83 (2013) (stating that reduced speeds lead to lower fuel consumption); see also Peter Shadbolt, *Asia's Sea Pirates Target Treasure of Marine Fuel*, CNN (Feb. 8, 2013), <http://www.cnn.com/2013/02/08/world/asia/asia-piracy/index.html> (explicating how a ship's low freeboard risks pirate attacks).

33. David F. Matlin, Note, *Re-Evaluating the Status of Flags of Convenience Under International Law*, 23 VAND. J. TRANSNAT'L L. 1017, 1019–20 (1991) (explaining Open Registries and their advantages).

naval powers.<sup>34</sup> Due to this shift in the traditional relationship between navies and merchant ships, a new model for the protection of shipping must focus on cooperation amongst multiple stakeholders in the maritime sector.

#### IV. ASSUMPTIONS AND PRIMARY FACTORS FOR CONSIDERATION

Based on the above arguments, the following assumptions can be made regarding what a safe and sustainable End Game for countering piracy must take into account:

- (1) Due to exposed vulnerabilities of modern shipping, ship owners must commit to retain some parts of BMP in order to ensure the safety of their vessels and cannot expect to go back to historical levels and methods of protection; and
- (2) Due to the lack of a firm relationship between the flag state and the ship-owner, large navies can no longer be relied on as the sole guarantors of protection from maritime crime: a multi-stakeholder solution must be implemented.

Taking in to account the assumptions above, several specific issue-areas should be examined to determine changes necessary to establish a sustainable solution to piracy over the longer term.

##### *A. Factor One: Response Capability at Sea*

Intervention by naval forces has been the traditional response for piracy incidents. The initial area of the Somali threat, the Gulf of Aden, was small enough to reasonably expect a navy response to the threat of attacks. However, the success of the navy forces in detecting and disrupting attacks caused the pirates to turn to the Somali Basin along the Eastern coast of Somalia and later across the whole of the Indian Ocean.<sup>35</sup> This increase in range was made possible by the pirates' use of captured mother ships to provide increased range. Once the High Risk Area (HRA) had expanded to this extent, the navies reached out to the shipping industry to help provide better reporting, information sharing and increased use of citadels to allow more time for an effective response. Another demand on naval forces,

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34. *Cf. id.* at 1053 (recounting cases where open registry vessels had subpar conditions, partly due to the fact that “the flag state did not have a genuine link, [and] the flag state could not exert effective control over the vessel so as to avoid these substandard conditions”).

35. *See* Lee Willett, *Pirates and Power Politics: Naval Presence and Grand Strategy in the Horn of Africa*, 156 *RUSI J.* 20, 22 (2011) (detailing a “balloon effect” of the navy pushing pirates into other areas).

particularly the EU Naval Forces, was the requirement to provide individual escorts for humanitarian support vessels, World Food Program shipping carriers, and other vulnerable vessels.<sup>36</sup>

In light of increased demand on these assets, the navies have increasingly relied on embarked uniformed security teams, known as Vessel Protection Detachments, to protect vulnerable shipping and to free up patrolling assets.<sup>37</sup> Naval forces are also economized through a focus on more intelligence-driven tactics to identify, track and disrupt PAGs. This proactive response has better focused navy efforts but relies heavily on expensive intelligence and surveillance assets, which are in high demand in other theaters. Lastly, in order to maximize the impact of the various naval forces in the Indian Ocean, the SHADE process was developed to better integrate the navy forces of the three larger coalitions as well as independent deployers. SHADE provides the forum for participating nations to de-conflict patrol areas, organize convoy protection along the Internationally Recognized Transit Corridor, and coordinate the use of scarce assets such as surveillance platforms and re-fueling tankers.<sup>38</sup>

However, in spite of all these efforts, navies still were unable to provide individual protection for all vessels. In response, the shipping industry adopted the practice of hiring private security teams to repel pirates at the point of attack. While many of these teams were deployed before they were officially sanctioned by flag states and coastal nations, there was eventual consensus across most stakeholders that the guards were necessary as an interim measure to protect vessels and crews. It should be noted, however, that the industry is strongly opposed to “institutionalizing” the use of armed guards and would like to turn away from this requirement as soon as practicable.<sup>39</sup>

Some have argued that the long-term solution to maintaining a response capability for piracy attacks is to build up regional forces,

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36. See *Fact Sheet: EU NAVFOR Somalia—Operation ATALANTA*, EUROPEAN EXTERNAL ACTION SERV., [http://www.eeas.europa.eu/csdp/missions-and-operations/eu-navfor-somalia/pdf/16102012\\_factsheet\\_eu-navfor-somalia\\_en.pdf](http://www.eeas.europa.eu/csdp/missions-and-operations/eu-navfor-somalia/pdf/16102012_factsheet_eu-navfor-somalia_en.pdf) (last updated Oct. 16, 2012) (outlining the objectives of the EU’s Operation Atalanta, including protection of World Food Programme vessels).

37. See JAMES BROWN, LOWY INSTIT. FOR INT’L POLICY, *PIRATES AND PRIVATEERS: MANAGING THE INDIAN OCEAN’S PRIVATE SECURITY BOOM* 9 (2012).

38. See Andrew Muratore, *EU-NATO Co-Operation and the Pirates of the Gulf of Aden*, 2 AUSTL. J. MAR. & OCEAN AFF. 90, 100 (2010) (describing the purpose of SHADE).

39. See PETER CHALK ET AL., RAND NAT’L DEF. RESEARCH INSTIT., *COUNTERING PIRACY IN THE MODERN ERA* 6 (2009), available at [http://www.rand.org/pubs/conf\\_proceedings/CF269.html](http://www.rand.org/pubs/conf_proceedings/CF269.html).

including a Somali coast guard.<sup>40</sup> While some forces in the area, particularly those from Seychelles and Kenya, have some capability for responding to attacks, the ability of regional forces to respond to piracy attacks on the high seas is considered to be many years away. This issue is compounded by the fact that the Somali coast, the longest in Africa, is not expected to have any organic capability for the foreseeable future.

In sum, we propose that one short-term solution to the piracy problem is continued international naval presence and coordination mechanisms, with increased emphasis on proactive, intelligence-based actions. Further, working with regional and coastal nations to facilitate private armed security teams and then improving cooperation between the regional teams and navy forces would also be another short-term consideration. These cooperation measures could include: (1) more transparent and consistent laws on embarkation across coastal states; and (2) consistent reporting and overseeing of private teams based on internationally recognized processes (e.g., International Code of Conduct, International Standards Organization processes). However, the international community should also take into account the long-term solution of building regional capacity to provide responses to piracy incidents and increase regional leadership in coordination processes such as SHADE.

*B. Factor Two: Maritime Situational Awareness and Reporting*

In order to provide an effective response at sea, a comprehensive understanding of where both friendly and merchant traffic is located, as well as an understanding of where suspect or threatening vessels are lurking, is required. Collectively, this information is known as Maritime Situational Awareness (MSA).<sup>41</sup> The wide range of factors that contribute to MSA include: position self-reporting by vessels, radar contacts, Automated Information System (AIS) transponder information, reports by naval vessels and coast watchers, Long Range Information and Tracking (LRIT) information provided by flag states, and information provided by other vessels at sea.<sup>42</sup> The SHADE

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40. See Ken Menkhaus, *Dangerous Waters*, 51 SURVIVAL 21, 25 (2009) (describing the need for a Somali coast guard and stronger local law enforcement).

41. Capt. Dale Ferriere et al., *The Office of Global Maritime Situational Awareness: A Collaborative Approach to Government Information Sharing*, 66 PROCEEDINGS 10, 11 (2009) (stating that the goal of MSA is to improve knowledge of the maritime domain by persistent monitoring so that trends and anomalies can be detected).

42. See, e.g., *A Review of Federal Maritime Domain Awareness Programs: Hearing Before Subcomm. on Coast Guard and Mar. Transp. of the H. Comm. on Transp. & Infrastructure*, 112th Cong. (2012) (written testimony of Vice Admiral Peter Neffenger, U.S. Coast Guard Deputy Commandant for Operations) (explaining how the U.S. Coast Guard

mechanism has also been used to ensure optimal employment of surveillance platforms and coordination of vessel information to ensure any gaps in coverage are addressed.

A comprehensive MSA system enables faster navy reaction, better protection for vulnerable shipping, and proactive re-routing from emerging threats at sea. This system is largely in place but is heavily reliant on international structures such as the EU's Maritime Security Center – Horn of Africa (MSC-HoA) and the UKMTO.<sup>43</sup> The missions of these organizations are based on crisis response mandates that must be renewed by political decisions of their parent organizations and cannot be relied upon indefinitely.<sup>44</sup>

Regional structures, such as the Information Sharing Centers (ISCs) in Sana'a, Dar Es Salaam, and Mombasa, and the Regional Maritime Coordination Centers (RMCCs) throughout the Indian Ocean have thus far had limited involvement in developing MSA. This is largely due to limited funding, training and equipment and their inability to coordinate timely responses to attacks.<sup>45</sup> There is also a lack of trust from the shipping companies, which are hesitant to provide the regional structures with sensitive information. However, because of their permanent mandates, regional structures offer a logical and long-term solution to building permanent MSA once their current weaknesses can be overcome. Thus, the international community should consider reform as a three-tiered process, where transitioning from reporting infrastructure and MSA to regional organizations and leadership is the ultimate long-term goal. To reach this final stage, the international community should begin with a short-term, immediate strategy of establishing closer liaisons and information sharing between the shipping industry, private

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utilizes AIS, LRIT, and other systems to increase maritime domain awareness).

43. *See About MSCHOA and OP Atalanta*, MAR. SEC. CTR.—HORN OF AFR., <http://www.mschoa.org/on-shore/about-us> (last visited Dec. 30, 2013) (explaining how MSC-HoA provides 24-hour monitoring and coordination between shipping and military forces); *see generally UK Maritime Trade Operation*, ROYAL NAVY, <http://www.royalnavy.mod.uk/Operations/Maritime-Security/Keeping-the-Sea-Lanes-Open/UK-Maritime-Trade-Operation> (last visited Sept. 25, 2013) (explaining how UKMTO acts as the main point of contact for commercial vessels and the military in the region).
44. *See About MSCHOA and OP Atalanta*, *supra* note 43 (describing MSC-HoA's mission for Operation Atalanta, where its mandate is subject to EU Council Joint Action approval).
45. *See Press Briefing: Piracy Information-Sharing Centre in Mombasa Commissioned by IMO Secretary-General*, INT'L MAR. ORG. (Mar. 31, 2011), <http://www.imo.org/MediaCentre/PressBriefings/Pages/15-mombasa-isc.aspx> (announcing the creation of the Mombasa RMCC, and explaining the function of other ISCs and RMCCs).

security teams, and navies, with a focus on incentivizing cooperation. As a medium-term consideration, the international community should continue the SHADE mechanism as the means to integrate international and regional efforts.

*C. Factor Three: Law Enforcement on the High Seas*

To successfully develop a sustainable solution to Somali-based piracy, a myriad of legal issues will need to be resolved and a framework put in place for the prosecution and imprisonment of those convicted. Although we have seen an improvement in the willingness of some nations to prosecute pirates, the high percentage of “catch and release” incidents, where pirates caught red-handed are released back on the beach, highlights the many legal issues that need to be resolved in order to develop a long-term solution. Much of the lack of clarity surrounding the legal side of piracy stems from the confusion surrounding overlapping jurisdictions. While historically a flag state represented the owner, crew, and interest of a vessel, this is not true in present day; each incident of piracy affects numerous countries. This is because the ship-owner, crew, and flag can all hail from different nations, giving any incident a multinational nature. Due to the resulting vacuum of accountability, pirates are often released without standing trial or being held accountable for their crimes.

Prosecuting pirates is easy on paper, yet hard in practice. Although piracy is a crime of universal jurisdiction, a lack of both political will and evidence sharing creates difficulties. Some of the lack of political will stems from the economic cost of both prosecution and imprisonment, which cost the international community \$14.89 million in 2012.<sup>46</sup> The high costs provide a deterrent not only for the international community but also for Somalia, regional nations, seafaring nations, and flag states that do not have the economic capacity to finance trials or the physical capacity to hold the pirates in their prisons. The U.N. Office on Drugs and Crime has provided support to these nations by both financing the trials and imprisonments, as well as through the building of prisons in Garowe, Puntland, and Hargeisa and Bossaso in Somaliland.<sup>47</sup> Additionally, Working Group Two of the CGPCS has spearheaded efforts to establish transfer agreements, allowing arresting authorities to

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46. Bellish, *supra* note 9, at 27.

47. See U.N. OFFICE ON DRUGS & CRIME, COUNTER PIRACY PROGRAMME: SUPPORT TO THE TRIAL AND RELATED TREATMENT OF PIRACY SUSPECTS, ISSUE 11, at 3 (2013) (reporting the construction of various correctional facilities for convicted pirates).



transfer suspects for trial and prosecuting nations to transfer convicted pirates back to Somalia for incarceration.<sup>48</sup>

Apart from the high cost of prosecuting and imprisoning pirates, the lack of standardized evidence gathering and sharing makes it difficult to produce a full range of evidence in court. This has improved through the years with organizations, such as INTERPOL, launching initiatives aimed at improving evidence collection and dissemination, building regional capacity to arrest and investigate cases, and improving coordination and information-sharing among other organizations, such as Europol, NCIS, SOCA, and NATO.<sup>49</sup> Although improvements have been made, a continued commitment is needed to ensure that the regional nations, and Somalia particularly, have the capacity to respond to piracy through a rule of law approach.

Another factor, albeit unique to Somalia, is the lack of awareness and understanding of international legal procedures among the general public. Consequently, there is no system to notify communities and families that captured pirates have been prosecuted and incarcerated. Even though over 1,000 Somali pirates have been convicted or are awaiting trial, there is no system in place to exploit the messaging opportunities and build deterrence for piracy using the rule of law.<sup>50</sup>

In short, we recommend that the international community take into account three short-term general strategies to combat the piracy problem: (1) continue to support the building of regional prosecution capacity in line with U.N. Secretary General-identified goals; (2) gain full cooperation of all maritime stakeholders to ensure 100% sharing of evidence for prosecutions; and (3) broaden the scope of nations that either contribute to regional prosecutions or prosecute, to include seafaring nations and major flag states. However, through

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48. *Working Group 2*, CONTACT GRP. ON PIRACY OFF THE COAST OF SOMAL., <http://www.thecgps.org/work.do?action=workSub2> (last visited Sept. 25, 2013).

49. *See generally Maritime Piracy: International Involvement*, INTERPOL, <http://www.interpol.int/Crime-areas/Maritime-piracy/International-involvement> (detailing INTERPOL's work with international organizations to combat piracy) (last visited Sept. 25, 2013); *see also UK Crime Agency's Visit to INTERPOL Highlights Co-Operation Against Transnational Crime*, INTERPOL (Apr. 8, 2010), <http://www.interpol.int/News-and-media/News/2010/N20100408> (showing the cooperation between SOCA and Interpol).

50. *See* AMBER RAMSEY, CIVIL MILITARY FUSION CTR., BARRIERS TO PROSECUTION: THE PROBLEM OF PIRACY 2 (2011), *available at* [https://www.cimicweb.org/cmo/Piracy/Documents/CFC%20Anti-Piracy%20Thematic%20Reports/CFC\\_Anti-Piracy\\_Report\\_Prosecution\\_Aug\\_2011\\_FINAL.pdf](https://www.cimicweb.org/cmo/Piracy/Documents/CFC%20Anti-Piracy%20Thematic%20Reports/CFC_Anti-Piracy_Report_Prosecution_Aug_2011_FINAL.pdf) (suggesting that without a legal regime to make piracy more risky, there is no adequate deterrent to piracy).

(1) ensuring prosecution; (2) consistent sentencing; and (3) coordinating messaging campaigns, the international community may build long-term and stable deterrence against piracy through rule of law.

*D. Factor Four: Vessel Awareness/Protection*

In response to the crisis of Somali-based piracy the shipping industry developed a set of voluntary vessel protection measures known as BMP, intended to decrease the likelihood of a successful attack as well as provide protection for the crew in the event of a pirate boarding. The shipping industry has coordinated its initiatives with other stakeholders in Working Group Three of the CGPCS.<sup>51</sup> The first version of BMP was released in February 2009, with the most recent, version four, released in 2011.<sup>52</sup> BMP is built around three fundamental requirements: (1) register with MSC-HoA; (2) report to UKMTO; and (3) implement ship protection measures.<sup>53</sup> Ship protection measures vary from ship to ship but often include: providing additional lookouts and enhancing means of operation through better technology; using increased speeds in HRAs; enhancing bridge protection; and using physical barriers such as razor wire and water spray.<sup>54</sup>

While BMP has proven useful and greatly reduces the chances of a successful attack, these measures are expensive, with re-routing and increased speeds alone costing the international community over \$1.82 billion in 2012.<sup>55</sup> Due to these high costs and the perception that the threat of Somalia-based piracy has lessened, some in the shipping industry are slowly moving away from BMP measures. The movement of some ship-owners away from BMP creates an uneven playing field and thus encourages more ship-owners to stray from the BMP guidelines in order to garner a greater profit. Ultimately, the shipping industry would like to move away from the expensive BMP recommendations, return to pre-2005 security measures, and ensure an environment in which vessels can travel at optimum efficiency without added risk to crew and cargo.

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51. *Working Group 3*, CONTACT GRP. ON PIRACY OFF THE COAST OF SOMAL., <http://www.thecgps.org/work.do?action=workSub3> (last visited Dec. 30, 2013).
52. *Id.*; see Int'l Maritime Org. [IMO], *Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia*, MSC.1/Circ.1332 (June 16, 2009), available at <http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MS1.Circ.1332.pdf>.
53. BMP4, *supra* note 19, at v.
54. *Id.* at 7, 23, 25, 28, 32.
55. See Bellish, *supra* note 9, at 19 (showing how implementing BMP4 recommendations have led to increased costs).

Aside from BMP measures, such as vessel hardening, private security teams have been a major factor in the decrease of successful pirate attacks, as no commercial vessel with an armed team on board has been hijacked.<sup>56</sup> Although the use of armed teams has been controversial in the past and is not mentioned in BMP, the teams are accepted as a necessary, although not ideal or permanent, measure. However, the presence of armed teams on board vessels creates an added liability on the ship-owner and/or flag-state, which could be held accountable in the event of a tragedy. This has already occurred in the case of the *Enrica Lexie*, in which Italian Marines misinterpreted the intent of an approaching vessel and shot and killed two Indian fishermen.<sup>57</sup>

While BMP and private security teams have reduced the number of successful pirate attacks, we cannot declare an End Game to Somali-based piracy as long as we have defined High Risk and War Risk Areas. These defined areas are agreed upon by the shipping industry (HRA) and the Joint War Committee (War Risk Area). As long as the Risk Areas remain in force and there is a continued need for armed guards, we cannot consider that we are at the End Game of the piracy threat.

In the short to medium term, we suggest that it is in the international community's best interest, to regulate the use of private armed teams through internationally applied governance and consistent application of more transparent coastal state laws. In the medium term, the international community should consider the continued need for defined Risk Areas in the Indian Ocean. As a long-term consideration, regional states and the international community as a whole should strive to create conditions that obviate the need for private armed guards.

#### *E. Factor Five: Conditions of Seafarers*

While Somali-based piracy has dropped dramatically, seafarers are still affected on a daily basis. When transiting the HRA, they put themselves in harm's way, often without receiving the proper preparation or the benefits for which they are eligible. For seafarers, the actual piracy incident is often just the beginning of the traumatic situation in which they find themselves; hostages often deal with psychological, physical, and economic trauma from the time they are boarded to well after their release. In order to declare a sustainable end game to piracy, seafarer support should be predictable and consistent and cover all aspects of seafarer life that have been affected

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56. *Id.* at 19.

57. Tom Wright & Margherita Stancati, *Italy, India Clash over Ocean Shooting*, WALL STREET JOURNAL (Feb. 23, 2012), <http://online.wsj.com/news/articles/SB10001424052970204778604577239163888809948>.

by the incident of piracy, much as other work-related incidents are handled in other industries.

One of the larger problems in dealing with seafarer issues is the seafarers' lack of representation. Seafarers hail predominately from poor nations and often lack the awareness and education about the dangers that they may face, the training that they require, and the benefits that they are eligible to receive.<sup>58</sup> This lack of awareness leads to the exploitation of seafarers by manning agencies and other bodies. However, while many seafaring nations have a long way to go in regard to ensuring seafarer awareness and safety, gains have been made. For instance, seafaring nations such as the Philippines require seafarers to undergo counter-piracy training prior to embarking on their voyages. While the training does not prepare seafarers for all scenarios onboard, seafarers did report an increased feeling of safety as a result of pre-trip training sessions.<sup>59</sup> While nations such as India and the Philippines have made efforts to increase the awareness of seafarers,<sup>60</sup> other stakeholders intentionally fail to notify seafarers of potential or imminent entry into the HRA and their right to disembark. Although seafarers have a right to disembark, many will not choose this path out of fear of being blacklisted and being unable to find future work.

Much like the legal issues discussed earlier, the numerous stakeholders involved in each incident of piracy create a void of accountability regarding the treatment and support of seafarers. As previously mentioned, seafarers often do not receive the benefits to which they are entitled prior to, during, and after a voyage. Economic benefits are often disregarded, such as double wages for the days spent in the HRA, which are stipulated in the International Bargaining Forum-High Risk Area Agreement.<sup>61</sup> This omission impacts not only the seafarer himself but also his family at home, who rely on his wages. Furthermore, after a hostage situation has been resolved and the seafarers released, seafarers require a multitude of services including repatriation and long-term physical and

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58. See Hurlburt & Seyle, *supra* note 11, at 1 (describing the numerous difficulties seafarers and their families face in the event of piracy).

59. See *id.* at 10 (finding that seafarers felt safer in Somali waters after receiving briefings on how to use BMP and cope with piracy).

60. See *MPHRP Train the Trainer Sessions in India*, MAR. PIRACY HUMANITARIAN RESPONSE PROGRAM (Oct. 25, 2013), [http://www.mphrp.org/news\\_details/index.php?NewsID=165](http://www.mphrp.org/news_details/index.php?NewsID=165); see Press Release, Nat'l Mar. Polytechnic, NMP Conducts Orientation-Seminar on Anti-Piracy Course for Seafarers, <http://www.nmp.gov.ph/frames/pdf/FB2.pdf>.

61. See *2012–2014 IBF Framework TCC Agreement*, INT'L TRANSP. WORKERS' FED'N art. 17.3, <http://www.itfseafarers.org/files/seealsodocs/33555/20122014IBFFrameworkTCCAgreement.pdf>.

psychological care. Post-treatment support is rarely provided for seafarers, and many continue to suffer and are unable to return to work years after the incident.<sup>62</sup> Much of the issue surrounding payments to seafarers stems from a lack of tracking systems and administrative bodies to ensure that seafarers receive the necessary support throughout their voyages as well as after their releases.<sup>63</sup>

Although information channels and reporting mechanisms have improved as a result of the efforts of Working Group Three of the CGPCS, seafarer advocacy groups, flag state commitments, and other initiatives, more work must be done to ensure seafarer awareness and safety. Until all hostages are released and seafarers can confidently travel through the HRAs, piracy is not over.

Therefore, as a short-term consideration, the international community should take into account solidifying stakeholder expectations for seafarer welfare before, during, and after attacks through ongoing Working Group Three efforts. Furthermore, we suggest that the international community recognize institutionalizing gains in seafarer welfare as a long-term consideration.

## V. GOVERNANCE ASHORE – THE REAL END GAME FOR SOMALI PIRACY

The international community has successfully mitigated the crisis of Somali-based piracy at sea. However, now that the crisis mitigation phase is over, we must begin to assess and develop the End Game, which requires a more sustainable level of effort and commitment over the long term.

While this article mostly addresses the response at sea, there must be more support and increased commitment through better governance on shore, security, and economic development. The piracy business model is founded on poverty, lack of opportunity onshore, and a lack of governance to keep criminal elements in check. Only by changing these conditions through efforts on shore and off shore will piracy be over for good. Breaking the piracy business model must occur on three different levels: (1) the recruiting pool must decrease; (2) pirate groups must be disbanded; and (3) financiers must no longer be willing and/or able to fund PAGs.

The pirate foot soldiers comprise the largest workforce in the piracy business model and require special attention for the End Game

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62. See *Save Our Seafarers Press Release: Seafarer Death Toll Mounts as Somali Pirates Hijack, Torture, Intimidate & Murder*, INT'L TRANSP. WORKERS' FED'N (June 20, 2011), <http://www.itfglobal.org/press-area/index.cfm/pressdetail/6110/region/1/section/0/order/1>.

63. Hurlburt & Seyle, *supra* note 11, at 28 (noting that owners and companies frequently do not provide support for seafarers, leaving them to their own resources).

to be successful. In February 2013, the President of the Federal Government of Somalia, Hassan Sheikh Mohamud, offered amnesty to the pirate foot soldiers with the aim of providing them with the opportunities for alternative means of earning a living.<sup>64</sup> The concept of reintegrating these pirates into the community is controversial, as many argue that the pirates are common criminals and should be imprisoned rather than given a second chance among the community. Regardless of stance on the issue of reintegration, a framework should be established for how to deal with the large number of now out-of-work pirates; as long as the pirate groups are still intact, it is difficult to argue that piracy is over.

The most influential tier of the Somalia-based piracy business model is that of the financiers. These individuals are responsible for providing the money to PAGs. Up to this point, the international community has not been successful in bringing these people to justice, and unfortunately, their continued presence signals that action groups can still be quickly financed and sent to sea.<sup>65</sup>

## VI. CONCLUSION

Although the piracy business model has yet to be fully dismantled, the immediate crisis of Somali-based piracy has been successfully mitigated. Unfortunately, while the crisis has been mitigated, the situation on the ground has not improved enough to declare piracy over and the End Game reached. This article focuses on ensuring a long-term commitment at sea through the continuation of naval operations, BMP, and private security, but the conditions that bred, and continue to breed, piracy still remain in place. For the international community to truly establish its End Game, we must see a continued dedication to better governance systems, the building of regional and Somali legal and institutional capacity, and a strengthening of security sectors.

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64. *See Somali President Hassan Sheikh Mohamud Offers Amnesty to Pirates*, THE NEWS TRIBE (Feb. 28, 2013), <http://www.thenewstribec.com/2013/02/28/somali-president-hassan-sheikh-mohamud-offers-amnesty-to-pirates/>.

65. *See* DANIEL J. WHITENECK ET AL., PIRACY ENTERPRISES IN AFRICA 16–18 (2011), *available at* <http://www.globalinitiative.net/download/piracy/subsaharan-africa/CNA%20-%20Piracy%20Enterprises%20in%20Africa.pdf> (describing three piracy financing business models); *see also* Rudolph Atallah, *Pirate Financing: Understanding and Combating a Complex System* 2–3 (Apr. 18–19, 2011) (on file with UAE Counter-Piracy Summit), *available at* [http://www.uaecounterpiracysummit.com/briefing\\_papers/Atallah,%20Pirate%20Financing%20Understanding%20and%20Combating%20a%20Complex%20System.pdf](http://www.uaecounterpiracysummit.com/briefing_papers/Atallah,%20Pirate%20Financing%20Understanding%20and%20Combating%20a%20Complex%20System.pdf) (stating that the limited research into key pirate financiers “represents a gaping hole” in the current counter-piracy approach).



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