

# THE HUMAN FACE OF MARINE PIRACY

## Consequences and Policy Options



**Proceedings of a Conference**

Karachi, Pakistan 29 February - 2 March, 2012

Edited by David N. Griffiths



Bahria University  
Karachi



Dalhousie University  
Halifax, Canada



National Defence University  
Washington, DC



FHRI  
Fazalada Institute  
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Cover Design: Rear Admiral M. Zahir Shah

ISBN 978-969-9805-00-4

Printed by **Graphics Link**, Islamabad, Pakistan

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## Abbreviations and Acronyms



**Note:** *The acronyms and abbreviations listed here are those that have been used by authors, but not all may be official or universally recognized.*

AIS	Automatic Identification System
AMISOM	African Union Military Mission in Somalia
BMP	Best Management Practices (for Protection against Somali Based Piracy)
CMF	Coalition Maritime Forces
CP	Counter-piracy
CPLC	Citizens-Police Liaison Committee (Karachi, Pakistan)
CTF	Combined Task Force
DMPP	Dalhousie (University) Marine Piracy Project
EEZ	Exclusive Economic Zone
FHRI	Fazaldad Human Rights Institute (Pakistan)
GOA	Gulf of Aden
HRA	High Risk Area
ICG	Indian Coast Guard
ILO	International Labour Organization
IMB	International Maritime Bureau
IMO	International Maritime Organization
IO/SB	Indian Ocean / Somali Basin
IRTC	Internationally Recommended Transit Corridor
ISR	Intelligence, Surveillance and Reconnaissance
ITF	International Transport Workers' Federation
KR, K&R, KRI	Kidnap and Ransom Insurance
MPHRP	Maritime Piracy Humanitarian Response Programme
MSA	Maritime Security Agency (Pakistan)
MSC-HOA	Maritime Security Centre – Horn of Africa
NATO	North Atlantic Treaty Organization
NCMPR	National Centre for Maritime Policy Research (Pakistan)
NESA	Near East and South Asia (Center for Strategic Studies)
PAG	Pirate Attack Group
P&I	Protection and Indemnity
PCASP	Privately Contracted Armed Security Personnel
PMSC	Private Maritime Security Company
PNSC	Pakistan National Shipping Corporation
ROE	Rules of Engagement

SHADE Shared Awareness and Deconfliction  
SOLAS Safety of Life At Sea (convention)  
SOS (a) The internationally recognized code for an emergency  
(b) SaveOurSeafarers (an organization)  
UKMTO United Kingdom Maritime Trade Office (in Dubai)  
UNODC United Nations Office on Drugs and Crime  
UNSCR United Nations Security Council Resolution

## **The Humanitarian Challenge of Piracy (Conference Opening Remarks) by Mr. Naeem Sarfraz**

Many of us know about the incident of the *Titanic*, particularly from the recent film. One thing that we may not have noted at the time was that a passing ship called the *Californian* was not very far away. The Radio Officer of *Californian* informed his Captain that he had received an “SOS” and that *Titanic* was sinking. The Captain replied that *Titanic* was unsinkable. When he reached New York he was arrested because, in the marine world, every single life is given high importance.

You may be on an aircraft carrier worth billions of dollars with a hundred aircraft on board, or you may be on a small boat. In either case you are required by maritime law to go to the assistance of a vessel in distress, irrespective of the risk to yourself. The value of human life is considered sacred throughout the maritime world, and it has been so for centuries. Tens of thousands of people have been affected in saving life at sea. Hundreds have lost their own lives and ships have gone down in trying to rescue others in distress. So, for us at this conference, and particularly for someone like myself who is running an organization involved with human rights abuse, as well as being a mariner, a naval officer, a merchant ship captain, and a shipowner, it still comes as a shock after all these years to see how badly mariners in distress are being treated all over the world, particularly on vessels flying “flags of convenience”, many of which carry crews from the countries represented at this conference, especially the Subcontinent.

One of the main issues that we must address is the plight, not only of the mariners themselves, but also of their families which do not get any money if their primary wage-earner is hijacked by pirates. For the first month or two these families may borrow, beg, etc., but after that, for months on end there is no money coming in for basic necessities, let alone for educating the children or health care. They

become virtually destitute because there is no mechanism to get money to the families of hijacked seafarers. Furthermore, when the crews return home after release, the seafarers themselves face further major personal problems after the trauma they have gone through, including rehabilitation, resettlement and then, of course, reemployment. In many of our countries the regulations and mechanisms for supporting crews of “flag of convenience” ships is very, very weak. As a result – as Captain Wasi Hassan will describe – crews like that of the MV *Suez* often remain in a difficult situation months after gallant and successful efforts have resulted in their release and return.

The Navy of course plays a very important role in everything that happens off our coast. In Pakistan, the Maritime Security Agency is run by the Navy, and all coastal defences are under control of the nation’s Navy and not the coastal Provinces. Of course on the high seas all incidents are the responsibility of the Navy. Consequently, we are very grateful that the Chief of the Naval Staff has personally been able to grace this conference. Other Senior Officers present have also been engaged in this piracy issue, not only involving our own ships but also internationally, particularly through Task Force 151. The last commander of TF 151 will address the conference and describe his experiences with Task Force operations.

Then there are the negotiators themselves. They must try to work appropriately with Somali pirates in order to obtain safe release of ships and crews. It is important to note that the ships and cargos are insured, so the shipowner has very little interest in doing anything more than getting his money out of it. The crews, unfortunately, are covered neither by Hull and Machinery insurance nor Protection and Indemnity (P&I) coverages. We are fortunate to have a mariner at this conference who is now “number two” at a major insurance company and will address what sort of insurances are possible to supplement P&I, Hull and Machinery, as well as other coverage, to provide support to crews and their families.

In addition to merchant mariners, our fishermen have also suffered capture by pirates and having their boats used as “mother ships”. Consequently this conference will include presentations from people in the fishing industry.

Piracy problems also affect national organizations such as our Directorate General of Ports and Shipping, the Principal Officer Mercantile Marine Department, Shipping Masters, etc., so I am very glad that they are participating in this conference too. They are responsible for the safety and welfare of our mariners but have a very tough job in this sort of situation because there is very little they can do unless crews are adequately covered by some form of insurance or guarantee. For example, every ship has hundreds of millions of dollars worth of insurance against oil pollution if there is an accident. They have all the legal and administrative support available from the P&I Clubs and, of course, cargo interests. In Western countries the unions are strong, the shipowners are strong and, of course, state companies like the Pakistan National Shipping Corporation (PNSC) are strong and well organized. But it is the random tramp ships and “flag of convenience” vessels on which many of our sailors work which remain the greatest difficulty.

To bring all these issues together we have at this conference a number of academics from several countries. Many have naval background, like the former head of the Indian Coast Guard who is now addressed by his civilian title as *Doctor Paleri*, having followed an academic career since retiring from the ICG. Similarly, many other academics present who will be addressing the conference as Speakers, as Chairs or as participants in the Working Groups have similar backgrounds. Hopefully, through discussion and Working Groups, they will be able to contribute to compiling and documenting our suggestions and recommendations.

Finally, let me mention the International Maritime Bureau which was set up thirty years ago. When it was still a brand new organization I was one of the first shipowners to become a member. One of my ships had a bit of a problem. In fact, like me, the

Commanding Officer was a retired naval officer, Commander H.M. Khan. We were experiencing some difficulty as victims of maritime fraud. The brand new IMB was then headed by gentleman called Eric Ellen who was a former police officer from the UK. Not being a mariner, he had no idea about what happens at sea so he recruited a young Master Mariner, Captain Pottengal Mukundan, to join him. In my case, between the two of them they were able to get all stakeholders in my problem together with me over there, in their office, and sorted out the problem. As a result, I recognized the significance and importance of this brand new organization. Today, of course, it is the leading organization involved with maritime fraud cases. As a shipowner, if I am offered a cargo by somebody, I quickly send a message to the IMB and they send me a write-up about that organization, which helps me to decide whether to take the cargo or not. Similarly, the cargo owner can ask for full details about the shipowner. The IMB now tracks ships all over the world on a daily basis and maintains a very, very comprehensive database. It is our good fortune that Capt. Mukundan is still with the IMB 30 years later, now as its Director, so it is my great pleasure to welcome him as our keynote speaker.




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*Mr. Naeem Sarfrāz is a Master Mariner, former naval officer and retired shipowner. He is now Chairman of the Fazaldad Human Rights Institute in Pakistan.*

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## **The Human Cost of Piracy (Conference Keynote Address) by Captain Pottengal Mukundan**

The key hot spots for piracy today are the Gulf of Guinea on the west coast of Africa, and the waters around the Horn of Africa off the east coast. In 2012 there have so far been 89 attacks reported with nine vessels hijacked and 134 crew taken hostage. In addition, 49 crew members are held ashore in Somalia in unknown conditions. There are currently 197 crew members held on board vessels in Somalia.

The number of attacks has continued to rise steadily since 2007, with last year's total being 439, of which 45 vessels were hijacked and 802 crew taken hostage.

Off the Horn of Africa and in the Arabian Sea it is estimated that there are around 42,000 vessel transits. The number of vessels attacked is a very small percentage of this. However for those crews and owners who face this problem the situation can be very difficult. There is one vessel with 24 crew which has been held by Somali pirates for nearly two years and four vessels with 62 crew which have been held for more than a year. The average time spent by vessels in Somalia after being hijacked is between 6 and 8 months.

There is considerable physical and psychological abuse as a result of hijacked vessels. There is very little data which is shared from past incidents in this respect. Save Our Seafarers is an industry organisation which has been trying to bring this situation to the attention of the world. The Maritime Piracy Humanitarian Response Programme (MPHRP) speaks to crew members, provides guidelines for the care of seafarers during and after such traumatic experiences.

There are numerous agencies who take statements from the crew after the vessel is released. They include representatives from the owners, law enforcement agencies, flag states and others. It is unfortunate that this information is not shared between themselves and with the wider industry. Hence, the knowledge gained and

lessons learnt remains in individual silos. The people who lose out are the officers and crew who continue to go through these waters without the benefit of the experiences of others who have survived these incidents.

On August 3<sup>rd</sup> 2011, Liberia, Marshall Islands and Panama signed a declaration in Washington condemning the acts of violence against seafarers. This was supported by the Oceans Beyond Piracy Programme and the TK Foundation. The declaration recognised the lack of collection, collation and dissemination of information on the human cost. Given the sensitive nature of the information, and the need to keep the identity of the owners and the crew confidential, the IMB was noted in the document as the organisation to analyse and distribute the data collected.

The IMB has now collected 17 reports from flag states and shipowners on the treatment of the crew whilst under captivity by Somali pirates. In addition, they are now debriefing the Master of a tanker and are speaking to owners' representatives with respect to another incident in which allegedly the crew faced very difficult, stressful conditions in captivity. So far, the database includes 384 crew from 22 nationalities. In general the crew were all treated in a similar manner. In two cases there was a suggestion that some of the Muslim crews were treated marginally better during the month of Ramadan.

## **FOOD & WATER**

The main source of food and water for captives is the ship. When the on-board stocks are depleted, rice, flour, cooking oil, sugar, beans, noodles and goats are brought on board the ship. The crew are allowed to cook meals, which are served between once a day to sometimes three times a day. At times the only food that is cooked is meat and, therefore, vegetarian crew go hungry. The cooking utensils are washed or rinsed in fresh water depending upon its availability.

## **PHYSICAL**

All crew at some stage of detention are subject to physical abuse, slapping and pushing, especially after the pirates first board the vessel. A few crew in some cases are beaten with sticks or rifle butts, hands and feet tied with cable ties, and sometimes made to stand on deck for long periods causing injury. Such treatment seems to occur more often when soundings of fuel oil and fresh water tanks are taken and the pirates do not believe the readings. In one report the crew faced severe physical punishment, including being reportedly hung over the side by their feet, having their testicles tied with cable ties, put in the freezer naked and made to stand in the sun. Nearly all crew suffered some form of physical abuse. Weapons were fired close to their head and ears. Telephone calls were made to their families, then weapons fired close by to indicate to the family that the seafarer had been shot. Some crew members were taken ashore and the rest of told that they had been killed. A few were kept in isolation.

## **LIVING – HYGIENE AND SANITARY CONDITIONS**

Crew were kept mainly on the bridge throughout their months of captivity and deprived of basic freedom of movement. As time went on, the living hygiene and sanitary conditions deteriorated. The pirates ruined the accommodation and the toilets. Crew were allowed to use only one or two toilets for which, each time, permission had to be requested and, in some cases, the pirates denied an immediate response. The toilets were very dirty and not allowed to be cleaned. Their clothes were washed in salt water and rinsed in fresh water, if available. The crew showered at the pirates' discretion, restricted to once or twice a week and sometimes not allowed for many weeks. The time for a shower varied from 2-15 minutes.

## ***SURVIVAL TECHNIQUES***

*Survival* techniques used by crews included reading, praying, playing games with the permission of the guards, watching TV and videos with the guards' permission, trying to maintain a semblance of daily routine and providing support and encouragement to each other and trying to stay together. The pirates often try to divide the crew and create dissension.

## **IN CLOSING...**

It is important that a skilled person debriefs the crew, taking into account the trauma the crew have gone through. However, in the absence of this, any information regarding the condition of the crew in detention, and the triggers for the increase or decrease of violence are vital and should be made available to all others at sea. This information can be used to develop training modules for officers and crew to better prepare them for the psychological stress of being a hostage under the total control of pirates. The collation, analyses and dissemination of such information is a role that the IMB is well suited to perform. We will aggregate the data and remove all references to individuals, vessels or owners. All the information we hold will be made freely available to all who need to know, and is not subject to limitations, or political understatement. As an independent industry body, IMB is not subject to the restrictions of governments and other bodies in the sharing of information. It is important in our view that flag state, international and industry organisations encourage their members who have had such experiences share this information for the benefit of all.




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*Captain Pottengal Mukundan is Director of the International Maritime Bureau, London.*

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## **The Naval Perspective from Pakistan**

**by Admiral Asif Sandila, NI(M)**

I am extremely pleased to have been invited to inaugurate this seminar. Let me start by commending the efforts of the Fazaladad Human Rights Institute in Islamabad, Dalhousie University in Halifax Canada, the Near East and South Asia (NESA) Center for Strategic Studies in Washington, USA, and Pakistan's National Centre for Maritime Policy Research (NCMPR) in Karachi for organizing this seminar. The theme chosen for discussions could not have been more apt and current. I am sure that the public in general, and mariners like me in particular, stand to benefit immensely from the deliberations, especially from the eminent scholars who have travelled from far and wide.

Marine piracy is perhaps as old as the time that mankind first ventured onto the sea, however despite extensive technological advancements and the ongoing efforts by the international community, piracy at sea remains pervasive in our region. During last 10 years, the international community has been increasingly concerned with sharp rise in piracy in the Gulf of Aden and Somali basin that has been using non-traditional tactics and innovative yet elementary ideas. This has resulted in numerous hostage situations, a rise in insurance premiums and freight charges, and shippers being forced to change route and circumnavigate Africa to avoid the Gulf of Aden/Red Sea altogether. It is ironic that while insurance companies show great interest in the release of vessels, regrettably, there is less attention paid to the human element of seafarers who are the actual victims. The plight of the victims and their families, who get no salaries and become virtually destitute, has not received much attention. In particular, crews of "Flag of Convenience" vessels are the worst affected as they have little support from shipping companies, shipowners or from the country whose flag they are flying, due to a host of complex issues. A large number of these

victims belong to our region and even today there are 12 ships still held captive by pirates and 12 Pakistani crew also held hostage.

Another disturbing development *vis-à-vis* piracy has been the ever expanding reach of pirate attacks and the increasing level of violence. The weapons being employed are heavier and the treatment meted out to hostages is worsening. Pirates, apart from claiming ransom, are also seeking release of fellow pirates who have been arrested earlier. Thus, there is a need for the international community to collaborate even more in order to respond effectively across the full spectrum of piracy issues.

I feel that during the last three years piracy has remained consistent, however the success rate has been reduced significantly due to naval presence in the area, merchant ships following the Best Management Practices promulgated by the shipping industry, and the use of Armed Escort Security Teams aboard merchant vessels. I am happy to see that there has been a declining trend in piracy incidents in the region, however I feel that it should be tackled right from the grass roots level, for which the international community needs to adopt a two-pronged strategy: i.e., to maintain deterrence at sea and to resolve the socio-political issues of Somalia. We need to understand that the real solution to piracy lies on land. Firstly, there is a requirement to make Somalia a peaceful country, perhaps through UN missions, and thereafter develop infrastructure to create job opportunities for the Somali people. These steps will encourage the local population to shun piracy and engage in other constructive activities to live in a respectable manner.

The Pakistan Navy is contributing side by side with the international community to curb piracy in the Gulf of Aden. In line with the Government's policy of preserving peace and stability, the Pakistan Navy is fulfilling its international and national obligations concurrently. Apart from providing support to our own shipping, whenever requested the Pakistan Navy is also escorting ships of the international community transiting through piracy prone areas. One such example is the escorting of MV *Suez* and bringing the crew

home safely.<sup>1</sup> We are also providing support to the other Task Forces and independent navies of many nations deployed against piracy in our region.

I am particularly glad that academia and the institutions fighting for the rights of seafarers and their families have got together to address this problem in a responsible manner. The list of participants and speakers gives me confidence that this conference will offer viable solutions to present to the international community for implementation. I am particularly glad to see representatives of NESAs, Dalhousie University, NCMPR, and notable experts from all over the world who have come all this way to provide input and support to this event. To conclude, I once again appreciate the effort of all those who are involved in organizing this conference which, I believe, will go a long way in finding ways toward eradicating this menace from the region.




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*Admiral Asif Sandila NI(M), is Chief of the Naval Staff of the Islamic Republic of Pakistan.*

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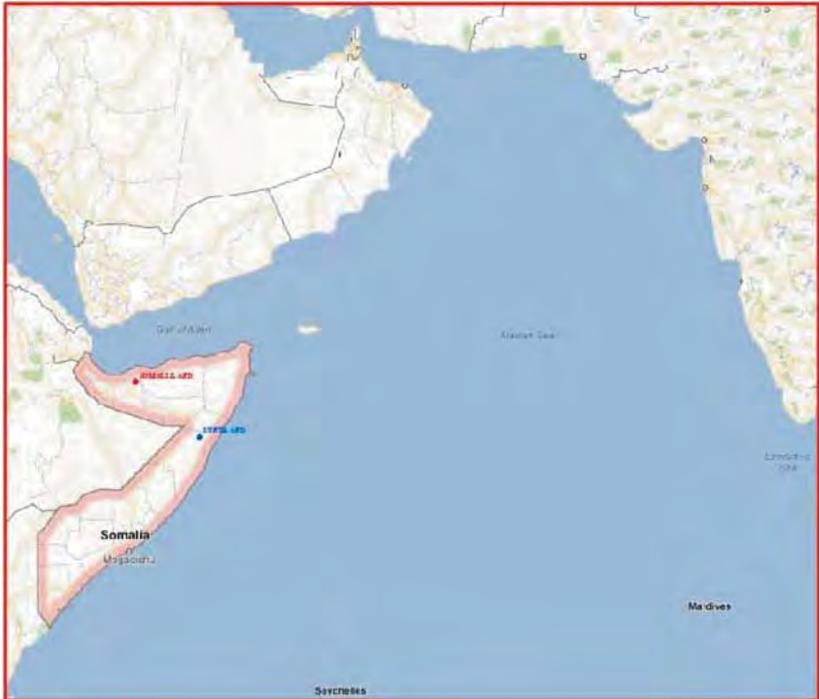


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<sup>1</sup> See Captain Wasi Hassan, “Being Hijacked: A Personal Perspective” in this volume.



## Indian Ocean



## Indian Ocean

## **Being Hijacked: A Personal Perspective**

### **by Captain Wasi Hassan**

Last year the story of my ship was heard all over the world through newspapers and electronic media. Now I would like to share some of my memories and observations of the episode with this distinguished audience.

My ship sailed in the early morning of July 26<sup>th</sup>, 2010 from Karachi to its destination in Eritrea. The ship had a crew of 23 including an Indian who received clearance from immigration authorities only a few hours before sailing so had to be signed off.<sup>1</sup> On the day of sailing we were informed by the owner that the ship had been registered with United Kingdom Maritime Trade Operations (UKMTO) based at Dubai.<sup>2</sup> He further informed us that we were to join a convoy on the 31<sup>st</sup> at Point "B".<sup>3</sup> Our maximum speed was 10 knots but, because of monsoon season, the sea was very rough so we were only able to maintain a maximum of 6 knots. Because of that, we reached that point a day after the scheduled time. A second convoy was scheduled for the next day so I talked to the owner who authorized us to follow the oncoming convoy. On the night of August 1<sup>st</sup> at 10:00 P.M. local time our ship was attacked but the culprits failed. Normally they do not attack in night and when they did, the entire crew was awake so they gave up. I immediately informed the owner about this incident, as well as NATO forces and UKMTO. I remember that the owner told us that a Singapore Navy warship would be following us, which it did, steaming beside us till 5:00 A.M. and then leaving without informing us.

On August 2<sup>nd</sup> at 07:00 AM, when we were 100 miles east of Aden, we saw a boat coming towards us and immediately informed

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<sup>1</sup> The remaining crew of 22 consisted of four Pakistanis, six Indians, eleven Egyptians and one Sri Lankan.

<sup>2</sup> UKMTO is the primary point of contact for merchant vessels and military liaison in the region.

<sup>3</sup> Point "B" is the western entry point for the Internationally Recommended Transit Corridor.

all concerned, including NATO forces. NATO replied that they would come within five minutes. Meanwhile, we defended ourselves for approximately 45 minutes using hoses as water guns. Due to heavy firing with modern automatic weapons from the other side it became impossible to stand on the deck, so we had to surrender to the pirates who climbed aboard and took over our ship. Just after our capture, a NATO helicopter flew over the ship and tried to talk with me about the situation, but the pirates ordered me to tell the helicopter to leave otherwise they would shoot us all. I did as I was told and the helicopter left the scene. Five pirates armed with the latest automatic weapons made us stand on the bridge while one who could speak a little English counted us – we were 22 in number. He took a list out of his pocket containing the names of all ships of our company and the number of our crew which, according to his list, was 23. After counting, they inquired about the absent crew member and started with physical torture. As we had been hoping to reach the next port within three days, fortunately I had already prepared the crew list and all passports. I showed this list to the pirates and after that they spared us. Perhaps they were afraid that the missing 23rd crew member might attack them. However, one question is still roaming in my mind – how did they get such complete information? Did they get it from UKMTO? Or the owner? The answer remains a mystery.

They took us south near Latitude 6°, to a place they called Grath (Garad). They made us stand off four miles from the offshore anchorage area where 10 to 15 ships were already anchored. The next day, 15 more armed persons boarded our ship with modern heavy weapons and took their positions on the monkey bridge<sup>4</sup> with machine guns and rocket launchers. An interpreter who knew English also came with them and told us to talk to the owner. It is pertinent to mention that while defending the ship from pirates I had already informed the owner, and presumably NATO had also, that

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<sup>4</sup> The highest navigational bridge, above the pilot house.

the ship and entire crew had been “seajacked”. On the instructions of the interpreter I did talk with the owner, but he adopted a shameful and insulting attitude, calling me names and disconnecting the phone.

The first five months were not very hard. But, although we tried to talk to and convince the owner by different means for up to eight months, he totally refused to give a single penny to Somali pirates, even if they were to shoot all the crew. In such circumstances I requested the pirates to provide me with telephone facilities in order to contact and explain the situation to my countrymen. When they did, I was able to talk to my family which, with the help of electronic media, launched a campaign. The appeal of my younger daughter, Laila, softened people’s hearts to help us get released. As a result, the Governor of Sindh, Dr. Ishrat-ul-Ibad Khan, social activist Ansar Burney, the Chief of the Citizens Police Liaison Committee Ahmed Chinoy, and others came forward and made intense efforts to collect the amount.

A total of US \$2.1 million was paid to pirates as per their demand, and \$200,000 to the airline that delivered the cash to the pirates. Out of the total funds, an amount of \$1 million was contributed by the owner of the ship and the remaining \$ 1.3 million was collected by my family from relatives, friends and my beloved Pakistani people.

Today, I have right to question the misery and mental torture we faced from the time of the attack until we were finally freed by Somali pirates. Will the \$1.3 million be recovered from the owner to be used for the welfare of the families of these hostages, or the families of other crew who are still being held hostage by Somali pirates?

We were in captivity for 11 long months and during that period we were always under imminent threat of torture. I lost my teeth during torture by Somali pirates. During our captivity, every day was doomsday for us and when we were released after payment of ransom, the owner of the ship once again did a heinous thing by not

providing us with a rescue squad to ensure that we reached a safe port. During the journey after release we ran short of fuel and spent 72 hours in high seas, during which time our ship was attacked yet again. All my thanks go to Admiral Noman Basheer<sup>5</sup> and Vice Admiral Abbas Raza<sup>6</sup> who rescued us with a naval ship and brought us back to Pakistan safely.<sup>7</sup>

The story of 11 months captivity is full of cruelty to us, and dreadful torture to our family members. Who will be held responsible for this? If I narrated the whole story, it would take hours and hours, but a number of questions remain in my mind after our seajacking and long captivity.

- During the entire time, NATO Task Forces 150 and 151 were on high alert patrol in the affected area of the Indian Ocean, in addition to the high-alert patrolling of European and other navies in the same area. So, how was it possible for Somali pirates to attack ships 600-700 miles away and capture them and their crews? Are the Somali pirates so smart and clever, or are NATO forces somehow behind them?
- A surprising activity that I also observed during captivity was that up to 100 miles, which seems to be the “No Go” area, Italian and French fishing trawlers appear to be moving freely and easily, performing their routine activities without any fear and with no one (i.e., Somali pirates) capturing them.
- Another surprising observation was that all the ships seajacked and anchored that I saw belonged to Muslim or Far East countries. I failed to see any Western ships – European, Australian or American – in captivity in that area. I am unable to understand why. Are some countries playing their own games? I raise the question as a seaman – what else can we do? What is our fate? And what is the fault of our family members that they suffer in this

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<sup>5</sup> Chief of Naval Staff, Pakistan Navy.

<sup>6</sup> Commander, Pakistan Fleet

<sup>7</sup> The ship itself, out of fuel and taking on water, had to be abandoned and scuttled.

type of grave situation? Why is Indian Ocean traffic being pushed towards shutting down or standing still? Could there be some dirty game behind all this?

To conclude I will reiterate my question – what action will be taken to protect ships against seajacking by Somali pirates and to safeguard the crew members? I am hopeful that the International Maritime Bureau and others represented at this conference will take up these matters on compassionate grounds and facilitate help for the affected families and safeguarding of crew members. I believe strongly that these questions about safe transit of ships, safety of hijacked ships and crews, and adequate welfare for the families of the hostages, must not be politicized.

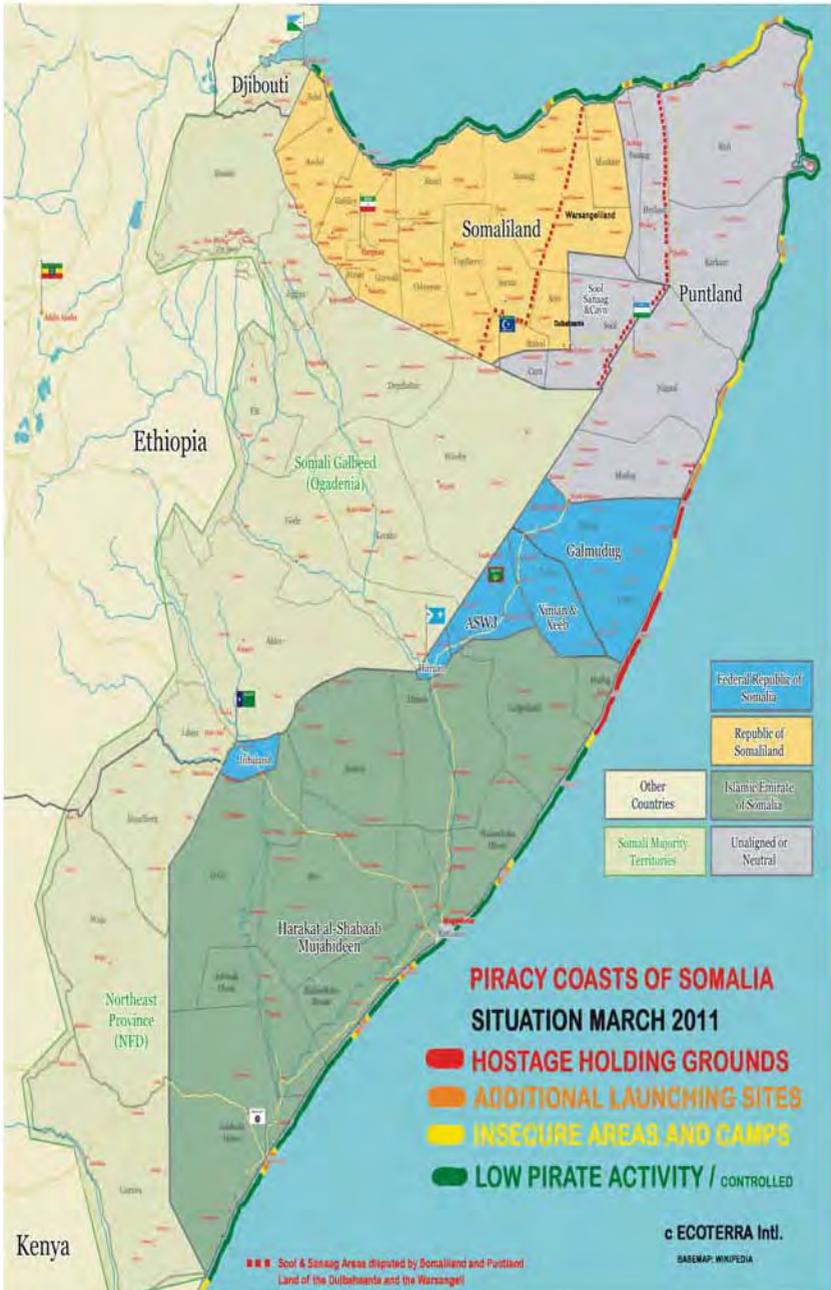
I hope sincerely that positive measures will be taken by this Conference as recommended by the participants, and I extend my thanks to all the participants, the agencies represented, and particularly to the Director of the International Maritime Bureau who has spared his valuable time to address grievances of seamen.



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Captain Wasi Hassan is former Master of MV Suez which was hijacked by Somali pirates in 2010.

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Piracy coasts of Somalia

## **The Role of Media in Piracy Situations**

***by Mr. Javed Jabbar***

My felicitation to Mr. Naeem Sarfraz on instituting this very timely initiative on a subject that, I think, has never before been addressed on this scale in our country. Even so, our country has been directly affected by marine piracy. Even if were not, piracy is still the subject of major international concern. So I am very happy that the Fazaldad Human Rights Institute is not focused only on conventional issues like so many other organizations, but has chosen to open up much needed thought and discussion on this important subject.

On the night before this conference began I had the privilege of informal discussion with all of the overseas participants. Not only did I benefit personally from our deliberations, but am also sure that Pakistan will benefit from their contributions to this initiative. Hopefully the purposeful outcomes, recommendations and observations of the conference will not end up filed away in the relevant ministries but will be referred to and used as representing the essence of our collective experience and insights.

Mr. Sarfraz's observations and Mr. Mukundan's comprehensive, informative and educational presentation have introduced this subject well. I think that the theme of this conference highlights the paradox of vulnerability, considering that piracy is perhaps one of the oldest crimes known to humanity. Over the past 200 years humanity has undertaken many joint initiatives in almost every field: health; education; communication; even the unprecedented cooperation between the more than 193 states which are now members of the United Nations. Never before in history have we had such a large number of treaties, conventions, rules and regulations to enforce order, discipline and cohesion on this planet. And yet we find that, in the year 2012, marine piracy makes a virtual mockery of this two hundred years of phenomenal progress. This illustrates the incredible vulnerability of our systems; in some cases very complicated systems. For example, all you have to do is to slip some

terrible virus or germ into a water supply system; someone getting past all the checks and balances can instantly place the lives of millions of people in peril. But at least that is happening on land. Piracy at sea is a subject that defies adequate addressing with resources which the modern world has mobilized so far.

So, I think the first aspect that strikes one as we set out to explore the relationship between the media and marine piracy is the irony of how fragile, vulnerable and weak the systems that we have created are. The events of “9/11”, in a perverse way, illustrate how vulnerable buildings can be in the very epicenter of capitalism, democracy and military might. Just as a few criminals penetrated that and signaled a new chapter in history, similarly these pirates, under-equipped by most military standards, stray characters, are able to pulverize and make a real shambles of international systems. The ironies that we have to address in the current session are boundless.

## **TWO IMPRESSIONS**

The first thing that strikes me is the duality of the word “piracy”. The words “piracy” and “media” have other connotations in the context of what we view, especially in Pakistan, India, Asia and Africa, where copyright enforcement standards are very poor. We are viewing pirated content and people are getting away with this form of “piracy” under the very noses of law enforcement.

In our country we have something called the Pakistan Electronic Media Regulatory Authority (PEMRA). Little did I know that when I, as a Minister, drafted that law for two Cabinets and finally had it enforced by General Musharraf, that it would be made a mockery of. Every cable operator has the freedom to operate five of his own channels and he fills those with illegal, uncensored, pirated Indian and foreign films, and gets away with it. And the ultimate irony is that I see this happening even in the cantonments of the Armed Forces where one would imagine that enforcement should be slightly stricter

because the military likes to think that they are better than these “bloody civilians”. But we bloody civilians sometimes also have a conscience. We want the armed forces to take more stringent action on that kind of piracy. Be at that as it may, we are talking here about *marine* piracy, and that is a fine example of what is called a “moving target”.

Marine piracy is not a fixed target. Most humanity, indeed all of humanity, lives on a land. Consequently 99 percent of the criminal activity and catastrophe reported by the media happens on land, unless some ship strikes a rock (as happened in Italy recently) and people can get to the scene of the action. You can also have media coverage if someone makes a political statement; in which case you can go to the other side and get a counter statement – you can get access to cover virtually all aspects of what is happening on land. But with marine piracy the first problem the media faces is lack of access. First of all, not every media outlet has a helicopter or gunship to fly out immediately to the scene of action, unlike the ability to get to a train accident or explosion in a bazaar. There are no time lapses – in fact, media feed off frenzy because they love incidents, catastrophe and bloodshed. But marine piracy is a very difficult subject to cover except for second-hand news such as the evocative, powerful story told by Captain Wasi Hassan earlier in this conference. There was certainly no problem in understanding what he said, and one could sense the pain that he has transcended and conquered. But the reality is that this kind of story could not be heard until he was released because media had no access to him when he was in captivity. In comparison, recently we have had the great pleasure of a Pakistani documentary film winning an Oscar award for the first time, when the victims of the acid attacks are immediately accessible. You can hear them, you can see them, you can sense the tragedy. But this, Captain Wasi Hassan’s case, involved an 11-month time lapse. So, media access is the first problem.

A second impression is that media, perhaps understandably, tend to be very parochial and nationalistic when it comes to reporting on the victims of marine piracy. Of course if you are a Western country you have networks like CNN, BBC or even now Al-Jazeera. Fortunately Al-Jazeera is not Western. If two Frenchmen or one American get hijacked or taken captive, the world is full of the names because they have global networks, especially in English which is the world's fastest growing communications language. On the other hand, countries like Pakistan, which in any case have a very bad international image and have never invested in international media, get the dirty end of the stick. Our names do not get mentioned. Capt. Wasi's name also deserves to be mentioned and heard by the steel workers living in Philadelphia or New York, but I doubt that it was. Compare that to what happened in 2007 when, if my memory serves me right, a French ship got hijacked and was forced to pay a ransom. That was not even reported in the US media, whereas a later incident involving a Captain Richard Philips, Master of a Maersk Line ship, got a great deal of coverage because he was American and, of course, special U.S. military intervention occurred which resulted in the death of four pirates. So media tend not to be fair. That is probably an aspect of the global media, but each individual country's own media try to do justice to its own. But to examine that we need to identify three roles that media play.

## **MEDIA ROLES**

The first of these three media roles is that of pure information: the "what, where, when, who, why" of what happened. The "Five Ws" are the basics of reporting, so that is what the media do, whether they are Pakistani or American. But I do not know if the American media even get around to mentioning some hijackings because of its very insulated media climate, so unless American interests are involved they tend not to take notice. Take a sample year like 2007. There were 263 incidents of marine piracy that year – 43 in Indonesia, 31 in

Nigeria and 31 in Somalia – but I do not recall the media in Pakistan doing justice to the scale of incidents in Indonesia or Nigeria. Because Somalia is so close it did receive attention, but there was imbalance. The average person in Pakistan is so flooded with information about Somalia that they do not realize this problem has existed in other parts of the world and still exists. So, in the informational role, media in both Pakistan and overseas need to be more even handed and fair. Wherever human beings suffer, wherever the systems are attacked, they should at least receive basic informational coverage.

The second media role, I think, is as interpreters of why things are happening. First I want to say that in the informational role itself the media face the limitation that there is so much to report. With the growth of media has come the growth of material to report, so the question arises whether there is now information overload. After all, is there a limit to how much people can listen to and absorb every day? There has to be some kind of limitation. It cannot be infinite because the age we are living in is explosive in its growth of information. No scholar can ever hope to remain well informed, even in a narrow discipline, because so much research is been done every minute of the day that he has to scramble all the time to keep updated in his own very narrowly focused discipline. So much more so in the whole world at large, where so much is happening. This is a problem that media faces – information overload. Where do they put this news of hijackings, of piracy in Indonesia? What does it mean to people in Pakistan? Of course it means something because the victims are human beings, but all humanity does not receive equal priority.

The third role involves another disturbing media development, especially in the electronic media, and that is the merging of hard news information with entertainment. Because for some reason proprietors of television channels and their corporations, especially internationally and now unfortunately even in Asia, make no bones about it and call it “infotainment”; that is, information and

entertainment. So now, even a news bulletin has to be entertaining. There has to be music, or there has to be some humour, or the newscaster has to make some slick remark to make it entertaining. People's tastes have to be honoured or catered to all the time. But this is very unfortunate because the sobriety and seriousness with which we should listen to and address news is being diluted. The tragedy is that this affects the sobriety and depth with which marine piracy issues are being reported. The media is catering to competitive ratings, and the invisible intensity of "media buying", so if rating agencies say that a channel's program was only seen by "B" category of viewers, then advertisers tend to prefer programs who were "A" category or larger. A terrible sight is this incursion onto the front pages of newspapers which should be sacred space – hard news – the most important news to be read without distraction. Yet virtually every single newspaper in Pakistan, except one leading English-language paper published in Karachi, has allowed its front pages to become infested with cheap advertising and commercials.




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*Mr. Javed Jabbar is a former Senator and Federal Minister of Information, Science and Technology in the government of Pakistan. He is currently the Chairman, MNJ Communications, Karachi.*

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# **Maritime Piracy: Global Impact and Human Consequences**

*by Dr. Lucia Fanning*

## **INTRODUCTION**

During the past 30 years, there have been at least six distinct outbreaks of “piracy”, defined as crimes of violence affected on the high seas and in areas beyond national criminal jurisdiction. While these outbreaks have all been dealt with under the general rubric of “piracy”, they have been sufficiently different in geography, motivation and execution to preclude a uniform solution. Most past and current meetings and conferences on the topic have dealt with the problem from a single perspective (namely security/military, commercial shipping, legal enforcement, etc), and usually from the regional geo-political perspective where the outbreak has occurred. However, there is a need to consider the problem from both an integrated and international perspective, not just examining the current manifestations of piracy, but also considering how current lessons and insights may be applied to anticipating and preventing the next outbreaks of violence at sea.

This paper contributes to the “Human Faces of Marine Piracy: Consequences and Policy Options” conference by focusing on the humanitarian consequences of modern marine piracy – an area that has seen limited attention despite the increase in global effort to address the problem of piracy. The paper first highlights the legal and operational difficulty in separating out crimes against persons at sea then discusses the objectives of modern marine piracy, the principal targets of piratical attacks and the human victims of piracy, including the pirates themselves.

## CHALLENGES ARISING FROM THE LEGAL DEFINITION OF PIRACY

Piracy is an extremely old problem, possibly the oldest concerning commercial shipping.<sup>1</sup> It has never been entirely absent from the maritime environment. However, there have been persistent outbreaks of sufficient magnitude that have required a major effort by shipping concerns and naval forces.

The term “piracy” has been used to cover a wide variety of different activities at sea. In general, however, piracy concerns acts of violence (theft and possible assault and murder) committed at sea, for commercial gain directed against non-military (commercial, fishing, yachting) vessels, both within and outside of national waters.

The generally accepted definition of piracy is that contained in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), where piracy is defined as:

1. “any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
2. any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
3. any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

This definition makes clear that while an act that matches the above definition on the high seas is covered under universal law, a similar act within a state’s territorial waters falls under the jurisdiction of the coastal state. In other words, an imaginary line drawn in the sea at

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<sup>1</sup> J. L. Jesus. 2003. Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects. *International Journal of Marine and Coastal Law* 18 (3): 363-400.

12 nautical miles currently determines whether an act is considered to be piracy according to international law. This raises a number of legal and operational challenges. For example, what is the international law to address pirate-like activities on the high seas that do not exactly match the definition provided in Article 101 of UNCLOS? What about violent crimes that occur against ships in transit within a state's territorial waters as a result of innocent passage granted under UNCLOS Article 110 or as a result of hot pursuit, granted under Article 111? What about the international implications of violent attacks against visiting ships in port that are clearly not simply port theft? While these are questions for legal scholars and legislators to address, they have little operational relevance for the seafarer who is attacked, held hostage or killed within or outside of the territorial sea. Similarly, it would seem to pose little difference to the criminal committing an act of violence against another vessel for economic gain.

These challenges arising from the mismatch between operational and legal aspects of violent crime against vessels suggest that a more operational definition for acts of marine piracy might be warranted. This arises not only for the above cited reasons but also due to the absence of any reference to attempted acts of violence in the UNCLOS definition. As such, the Dalhousie marine piracy project has adopted a definition that identifies “operational piracy” as *the actual or potential deliberate criminal interference with the rights and freedoms of the seas which target marine craft and persons for economic gain, whether on the high seas, in a state's territorial waters or at port.*

## **PRINCIPAL TARGETS OF PIRACY**

In attempting to identify potential targets of piracy, a major problem that arises is the wide spectrum of illegal and violent actions at sea, the usual objective of which is illegal economic gain. Hence, the specific illegal objective and victims of piracy will change as new

opportunities develop, and as existing practices prove too risky or insufficiently profitable. Anti-piracy activities in the past have been reactive, dealing with the threat presented at the time. This is highlighted in Table 1 where the targets, objectives and responses to modern marine piracy over the past thirty to forty years demonstrate significant diversity. While the main targets have spanned commercial shipping, fishing vessels, yachts and refugees or “boat people”, the source of economic gain has ranged from holding the ship and crew for ransom, taking the ship and/or cargo as booty, taking the ship for other purposes (e.g., to serve as a “mother ship”) to committing acts of violence against the ship and/or crew for other economic reasons. Or these reasons, it is likely that the next outbreak of piracy may be sufficiently different as to make the tools developed to deal with the last outbreak ineffective.

**Table 1: Recent Outbreaks of Maritime Piracy**

Location and Timing	Targets	Perpetrators	Objective	Response
Caribbean Basin  1980's – ongoing	Yachts and Fishing vessels	Drug smugglers -- Petty criminals	Once related to drug smuggling. Now petty crime.	Enhanced national enforcement. US-led initiatives. Caribbean Ship Rider agreements
Gulf of Thailand  (1980's)	Vietnamese Boat People (refugees)	Local fishermen, mostly Thai. Official indifference	Theft of valuables carried by fleeing refugees	Regional anti-piracy patrol, Thai police land based initiatives in fishing ports
Strait of Malacca  1980's – ongoing	Transiting merchant ships	Local and transnational criminal gangs	Primarily money in Master's safe and crew valuables	Regional anti-piracy arrangements. Joint patrols. Enhanced national enforcement

Location and Timing	Targets	Perpetrators	Objective	Response
South China Sea 1990's	Transiting merchant ships	Gangs, possibly including rogue elements of regional officials	Ship and cargo	Diplomatic pressure. National policy changes and enhanced national enforcement
West Africa 1990's – ongoing	Merchant ships at anchor	Local criminal gangs	Money and valuables. Oil cargoes.	Increased national enforcement. International capacity building. Improved security on vessels
East Africa / Red Sea 2000 – ongoing	Transiting merchant ships	Local criminal gangs	Ship and crew held for ransom	International anti-piracy patrols, routing of vessels, introduction of Best Maritime Practices

## HUMAN VICTIMS

The problems associated with piracy affect virtually everyone who has dealings with the sea. Indirect involvement includes commercial shipping interests; marine insurance companies; cargo owners; criminal gang leaders, and organizations providing logistical support to pirates; criminal organizations who support piracy for ulterior motives (contraband, weapon and drug smugglers); terrorist organizations who utilize pirates to support their operations; governments; national and international humanitarian organizations; national maritime administrations and policy agencies; and, international organizations such as the IMO. However, some have a more direct and personal involvement, in terms of the dangers posed by piratical acts. Those directly affected include:

- Captains, crews and passengers of targeted ships, who are exposed to violent attack and seizure as hostages.
- Family members of attacked crew and passengers.

- Crews of maritime security forces and land-based enforcement personnel, who are engaged in the apprehension of armed and dangerous criminals.
- Fishers.
- Local government and coastal communities.
- Refugees.
- Crews and passengers of yachts.
- The pirate crews – criminal gangs, which may include young and underage members.

### **Commercial Shipping Crews and Their Families**

Issues affecting crews, including the captain, and passengers of attacked vessels are multi-varied. The hardships of detention, fear of assault, torture and even murder take their toll on both the captured members and their families. This often results in the long-term psychological consequences arising from Post Traumatic Stress Disorder (PTSD). While this condition has been recognized in victims of pirate attacks, there is a lack of international standards for post-piracy rehabilitation, leading some crews to be better cared for than others. Additionally, depending on the integrity of the ship's owner and/or the level of insurance coverage, the crew's interests may not be appropriately represented during negotiations for release of vessels, leading to lengthy periods of detention while ransom demands are negotiated.

### **Warship and Military Crews**

Under Article 107 of UNCLOS, warships are given the power to arrest pirates. However, military crews are generally not “peace officers”. This poses two immediate problems. The first relates to the lack of training in criminal matters including evidence gathering and the taking of statements, oftentimes resulting in an inadequate chain of custody for use in a court of law. The second relates to the fact

that the rules of engagement and use of force familiar to military crews have limited applicability in law enforcement. Finally, apart from the personal danger to military crews from a confrontation with pirates, warships have other obligations (i.e., search & rescue) which may require the offering of assistance to suspected pirates.

## **Fishers**

Given their prominence in the marine domain, it is not surprising that fishers are prime targets of pirate attacks and are also subject to cases of mistaken identity by navies pursuing pirates. In 2008, the Indian Navy killed 14 Thai fishermen hostages when attacking a pirate “mother ship” while in early 2012, two Indian fishermen were shot by Italian marines from a security detail on an Italian tanker last week.

Currently, major attacks on fishermen in the Gulf of Bengal have been reported in the media and there have been increased incidents of pirate attacks on local fishing vessels off the coast of Guyana. Despite these increasing attacks on fishing vessels, many are underreported and the large numbers of vessels and wide dispersal makes protection at sea difficult.

The attacks on fishers have additional consequences as fishers generally do not have the financial resources or insurance for ransom payments so are more likely to be disposed of at sea or used as pirate crews. Furthermore, given the fisher’s role in the provision of food to many coastal communities, any interference with fishing from piracy, either through fear or the actual taking of fish, could contribute to food shortages and other socio-economic hardships within these communities.

## **Local Governments and Coastal Communities**

Research presented by Dr. Anja Shortland in a recent report for Chatham House assessing the impact of piracy on Somali coastal

communities, suggests the increasing criminalization of local communities, as piracy becomes an acceptable profession and traditional livelihoods are lost.<sup>2</sup> The report also estimated some 35% or \$21 million of ransom payments in 2009 was shared among the local Puntland economy, more than the entire official budget of Puntland. There is also evidence of weakening local governance, through participation, bribery of local officials or threats against local enforcement officials.

## Refugees

Refugees have also been the victims of piracy. The most notorious case involved Vietnamese boat people the 1980-1990s in which some 1.6 million refugees fled the country in boats numbering in the thousands each year. Of these, approximately 50-75% of the vessels were attacked by local fishermen, resulting in more than 1,000 murders or serious assaults in some years.

More recently, Somali refugees numbering in the tens of thousands have fled by boat to Yemen. There is anecdotal evidence to suggest that pirates may be using these boats as shields while military vessels tend to avoid contact with the refugees.

## Crews and Passengers of Yachts

The taking of yachts by pirates has primarily been crimes of opportunity in which the vessel is attacked for robbery, ransom or used by drug runners, “mother” ships or as status and luxury goods. However, in many cases, yachts contain families, introducing the trauma of attack on children as well. In some cases, family members on board yachts have been killed as was evidenced by the killing of

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<sup>2</sup> Shortland, Anja, 'Robin Hook': The Developmental Effects of Somali Piracy (September 1, 2011). DIW Berlin Discussion Paper No. 1155. Available at SSRN: <http://ssrn.com/abstract=1940271> or <http://dx.doi.org/10.2139/ssrn.1940271>.

four by Somali pirates on board the s/v *Quest* in 2011 off the coast of Oman.

## Pirate Crews

Children are rarely discussed in the security discourse as they are not viewed as key actors. However, the reality is that the demographics of many developing nations is such that 50% of the population is often below the age of 18 years. Hence, the possibilities of children engaging in conflict are real. This includes the possible use of children in piracy. Using children for illegal activity is viewed as desirable by criminal gangs and armed groups as they are vulnerable, fearless, relatively cheap to control, easily manipulated or indoctrinated, and may not have any alternative options for survival.

The status of many of the pirates who have been arrested have posed some challenges for the courts due to their young ages. For example, the Somali pirate, Abduwali Abdukhadir Muse, who was captured during the seizure of the *Maersk Alabama* and taken to the United States, was found to be 16 years old. In India, 25 of 61 pirates being held are under the age of 16, while in Malaysia, three of seven captured pirates were also under 16 years of age. This raises the question of the legal status of the pirate to be tried as an adult or a child. For example, under the *International Convention on the Rights of the Child* (1989), a person under 18 years of age is considered a child. Under the 1999 *Worst Form of Child Labour Convention*, the use, procuring or offering a child for illicit activities is a forbidden form of child labour. Furthermore, children who engage in criminal activities through coercion are considered victims under the *Model Guidelines for the Effective Prosecution of Crimes Against Children*.

If detained, national and international laws dealing with the custody of children will apply. If arrested, national criminal laws dealing with “young offenders” will apply. If released, returning a child to a criminal enterprise may be an offence. For these and many

other reasons, including their seemingly unlimited supply and the romance and prestige associated with successfully attacking a vessel, it is not difficult to understand why criminal gangs use children.

Other issues surrounding the issue of pirates as victims include the issue of seeking refugee status in the prosecuting state and the international treaties that come into play in the treatment of pirates. These include the *European Convention on Human Rights*; *UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*; *UN Convention Relating to the Status of Refugees*; *Geneva Convention (III) relative to the Treatment of Prisoners of War*, and the *International Covenant on Civil and Political Rights*. In the case of Somalia, there is also the issue of whether they are pirates or local coast guard, established to address foreign fishing and illegal toxic dumping in Somali waters.

## CONCLUSION

The major factors involved in contemporary piracy are the presence of a high density of relatively undefended commercial vessels, in reasonably close proximity to failed or failing coastal states. These states do not have the resources, political ability or will to prevent criminal gangs from operating from their shores. However, since piracy is a commercially-motivated crime, the specifics will change as new or more lucrative opportunities present themselves.

Based on the above discussion on the victims of piracy, a number of observations can be summarized. These include:

- Commercial shipping is not the only victim of piracy.
- Military personnel are being asked to make legal decisions, such as on suspect status, without proper legal training or political backing.
- Attacks on “other” types of victims (i.e., refugees or fishermen) may divert naval forces away from protection of merchant ships.
- Piracy is harder to stop once a society has become “criminalized”.

- Essential to understand the pirate “business model” to address piracy and responses must target both land and sea components of the model.
- Comprehensive awareness of maritime domain is required for identifying potential problems and acting early.

Piracy, as defined by international law, involves violent crime committed upon the high seas. For the purpose of the Dalhousie marine piracy project, it will be necessary to consider all violent crime at sea, both in territorial waters and high seas, since the crime and the pirate do not differentiate. However, when examining the possible responses and solutions, it will be necessary to differentiate between initiatives falling under national jurisdiction, and those on the high seas requiring international cooperation and acceptance.

Finally, it is clear that the problem of piracy cannot be solved at sea. While individual pirate attacks can be dealt with by naval forces, mechanisms for addressing all of the victims of piracy must be included as part of the solution. This must include supporting the development of strong, stable and legitimate governments, capable of maintaining peace and security on land, and in its ocean territory.

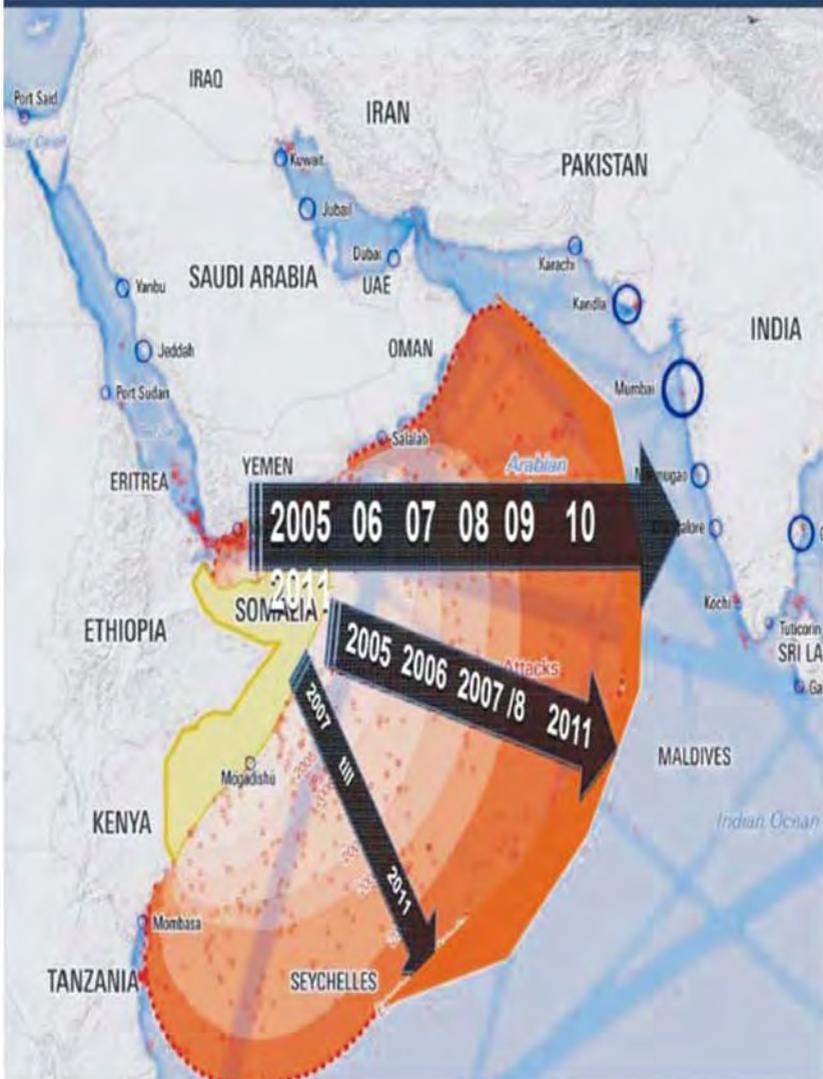



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# PIRATES AREA OF OPERATION



**Pirates area of operations**

## **The Negotiating Process**

### **by Mr. Ahmad Chinoy**

As head of the Citizens Police Liaison Committee (CPLC) which has been helping the victims of crime since 1990, I have had the distinction of being associated with the institution since the very beginning. In addition to helping victims of crime, we have also been assisting law enforcement agencies for the last 22 years or so. This I think is a unique example not only of assisting citizens but also acting as a supportive force for law enforcement agencies. Unfortunately Karachi has been the subject of numerous crimes of varying nature, whether terrorism, robberies, kidnapping, extortion, snatching of valuables, and so on. Karachi being a megacity and major metropolitan city of Pakistan has the same characteristics as other big cities around the world and obviously has many of its own issues to be resolved.

### **THE CITIZENS POLICE LIAISON COMMITTEE (CPLC)**

In the year 1990, when there was a spate of kidnapping in Karachi and other parts of Sindh, businessmen approached the then Honorable Governor of Sindh, Mr. Fakhruddin G. Ibrahim, who was trying to control the situation. After considerable thought and deliberations with the business community he developed the idea of CPLC which I think was a wonderful beginning of an institution that has served voluntarily and without any discrimination of caste, creed or religion to citizens for the past 22 years.

CPLC has handled kidnapping cases proficiently and today (*Alhamdulillah*) CPLC is an institution which is unparalleled in anti-kidnapping all over Pakistan. We not only cater to the citizens of Karachi but also to the citizens of Sindh and citizens in all of Pakistan who have benefitted from our expertise and service in combating this menace of kidnapping. We voluntarily provide our services wherever and whenever required. In Karachi alone about

one hundred cases of kidnapping take place each year. CPLC is in the forefront of solving these cases with respect to investigation, negotiation with the kidnappers, and also in guiding, counseling and dealing with the families of victims. The success rate of CPLC in these kidnapping cases is more than 98%, which is truly commendable for an institution which had no formal training and had to acquire its skills on the ground. Slowly and gradually we mastered it and learned that the most important function is to assist the victims' families and to prepare them, guide them, counsel and assist them in negotiating with the kidnappers. Since the founding of CPLC in 1989 until today, all the governors of Sindh, and particularly the current Honorable Governor Dr. Ishratul Ibad Khan, have patronized and supported our cause of fighting against crime.

## THE MV SUEZ CASE

The current governor of Sindh, Dr. Ishratul Ibad Khan, approached me as CPLC Chief in late 2010 or early 2011 to resolve the case of MV *Suez* which had been hijacked by pirates off the Somali coast. We studied the whole case and the Governor, along with Mr. Ansar Burney<sup>1</sup>, invited me for a briefing on all the issues at which we gave our input. As a result I was entrusted with finalizing the negotiation process with the pirates. Initially the Captain of the ship, Captain Wasi<sup>2</sup>, conveyed to us the pirates' demand of around \$5 million. We initially offered one million and finally two million dollars. When we started the negotiation process the pirates raised their demand to \$2.9 million and finally we negotiated and compelled them to come down to \$2.1 million.

Now please note this \$ 2.1 million was not a ransom amount. It was the cost of the entire ten month saga: ten months of unbearable

<sup>1</sup> A human rights and civil rights activist; Chairman and Founder of the Ansar Burney Trust.

<sup>2</sup> See Captain Wasi Hassan, "Being Hijacked: A Personal Perspective" in this volume.

conditions for the victims in captivity, the unbearable condition which the families of the victims faced in Karachi, in other parts of Pakistan and in other parts of the world because the crew were not only Pakistanis but also from other parts of the world. The amount paid was a sort of “compensation” to the pirates for the maintenance and upkeep of the victims for the previous ten months. We had no other alternative to save the lives of crew members who were being kept in miserable conditions by the pirates. I had heard the screams of the Captain on the telephone and the screaming of the other crew members so I knew the conditions in which they were being held. During negotiations the kidnappers always try to get sentimental statements from the victims urging their families to come forward with a higher amount. We knew that ultimately the things would be settled but, to pressure the world and the victims’ families, the pirates were threatening that the captives would be killed, destroyed or paralyzed if the ransom demanded was not met at the earliest.

We had studied the psychology of Somali pirates and done lots of research before entering into this negotiation process: we knew what condition they were in, what type of food they were getting and what type of treatment they were receiving from the pirates. Finally we agreed to the compensation amount. Although it was enormous at \$2.1 million and it would be an enormous task for us to collect that amount from various parts of the world and various organizations from Pakistan. But we accepted the challenge only for the sake of these victims and their families who were the innocent victims of this saga. These innocent victims, as Captain Wasi has described, were constantly under the knife and under threat of being killed. Initially we did not have \$2.1 million dollars and had only 15 days to get this amount to the pirates. Our negotiation skills helped us to buy more time and we were able to take four months to collect and deliver this amount. These four months were nightmare for all of us because the pirates regularly told us that we had only two more days, but we were able to negotiate an extension each time. This was the real threat for us because we had to handle not only the families at home,

but the crew members in captivity and the pirates, so there were three segments to handle, along with the fourth segment – the enormous task of collecting the money.

I can say honestly that no one other than Pakistan and the Pakistani people offered monetary support to us. Technical and physical support were also offered and given by the Pakistani authorities. We approached all the countries to which the hostages belonged, including Indians who, unfortunately, backed out because national policy is against making any payment of ransom. We told them about interpreting the ransom as “compensation” and asked if there was any other way out. Without support from the international community, international marine community, international organizations and other human rights organizations in paying attention to the plight of these crew members we had no other way out than to pay “compensation” and save their precious lives. The owner of the vessel supported us in terms of raising almost half of the amount and other half was raised through the good offices of the Honorable Governor of Sindh, Dr. Ishratul Ibad Khan, and organizations such as Ansar Burney and CPLC who used their good offices to get the amount. We worked jointly with Ansar Burney and I do not want to underrate his efforts on this issue since he worked very hard and dedicatedly with us and, in fact, was the face of the effort with us and we supported him on every front.

That was not the only negotiating. It was not just a matter of negotiating the ransom amount but also the whole deal: how the payment would be made; what steps would have to be taken; how the payment would reach the vessel; how they would acknowledge receipt of the “compensation” and how they would release the victims. And then the final step of how they would bring these victims safely back to shore. Fortunately when everything was finalized and the payment was delivered we got confirmation of receipt from the pirates. The next step was to get the pirates to leave the vessel, but before doing so to ensure that they left sufficient fuel, water and food

aboard. That was agreed in writing and signed by both parties: the pirate leader on the pirate side and me for the families.

Initially we collected all the money in Egypt where the Egyptian amount was pooled with ours. The Egyptian Government officially allowed us to bring that much into the country and take the amount out on a chartered private Cessna Jet. It came all the way from Kenya into Thayo where the money was handed over. Early next morning it reached its destination and a pre-arranged code was flashed to identify the aircraft as the one carrying the money. At that time we instructed that all the 21 crew members be assembled on the forward deck with their hands up so that the co-pilot could count the number. Finally, the three or four bags were dropped on different levels near the vessel and then, when the last bag was taken up by the vessel, they signaled that the amount was safely retrieved. The pirates counted the money and started clearing the accounts of food suppliers and other vendors, distributing the remaining amount among themselves. After that they started leaving the vessel one by one.

What we were feeling at the time I cannot explain in words. The vessel started its journey home immediately but the engine soon stopped, was repaired and started again, but then there was another attack by pirates. This time the Pakistan Navy was there to intervene. Believe me, the support we got from Pakistan Navy was immense – they not only rescued that vessel from the pirates but, when the ship broke down, transferred all the crew to a naval ship and then another naval vessel. Finally they reached Pakistan with all 21 crew members. We hosted a greeting reception here in Karachi. We must commend the efforts and support by Dr. Ishratul Ibad Khan, the Governor Sindh, who was the key person behind all this. He not only finalized all the arrangements through us but had been extremely supportive at every inch: every minute detail was worked out with him, he used to speak to the Captain himself, as well as with the other crew members and their families. He spoke with all the authorities personally and made it possible for these victims so much

struggle to come back safely with flying colors. I must say that the joy that we felt after their release was an immense pleasure and the whole nation was overwhelmed. We not only supported the Pakistani crew on the vessel but also supported all the communities represented by the crew of that vessel, which is the best part of the whole episode. Then we made sure that they all returned to their homes safely. So, that, in brief, is the saga of *MV Suez*.

## **THE MV ALBEDO**

The question always remains as to how long we must keep doing this. The next case was *MV Albedo* which was hijacked in November 2010 and is still in captivity now, at the beginning of March 2012, with the pirates demanding a ransom of about \$10 million. Immediately after the June saga of the release of *Suez*, families of the *Albedo* crew approached me, and I took them to the Governor. After long deliberations he asked us to go ahead with this case also.

So we started negotiations, using all diplomatic channels to keep the pirates engaged. Keeping them engaged is necessary to keep them from feeling threatened and satisfied that they are dealing with the victims' families or relevant authorities and hope that they will get their money. We have now been keeping them engaged since June 2011 and for the past months, believe me, on a daily basis I have been not only talking to pirates for an average of about two hours but also the family members calling us from all over the world. The crew of *Albedo* comes from Iran, Bangladesh, Sri Lanka, Egypt, India and Pakistan. Obviously the families are in a lot of pain and lot of stress because every message received directly from the vessel increases their anguish and fear. They get panicky and all CPLC day in and day out from all over the world. CPLC is the organization which is available to them "24/7" and almost all of them have my mobile number. They call me even at odd times like 4 or 5 o'clock in the morning -- we entertain calls from all over the world at whatever time

they feel comfortable. CPLC under the direction of the Honorable Governor just does everything that we can to save humanity.

## **NEGOTIATING WITH KIDNAPPERS**

Going back to the kidnapping cases with which we deal in Karachi, obviously people ask why we negotiate with kidnappers at all. The only reason for negotiating or assisting the family to negotiate here in Karachi is to gain direct access to the kidnappers and to keep them engaged in the negotiation process so that they do not kill the hostage. Whatever sentiments the families express would not be expressed by anyone other than the hostages' own family members, so they must talk to the kidnappers with the basic purpose of keeping them engaged so that we can gain time to investigate the case.

We have three options of tackling kidnappers in a kidnapping situation:

1. While the ransom amount is being negotiated we try to track them down, get hold of them and get the victim released safely.
2. During the actual ransom exchange, which is usually early in the morning. Just today, for example, I did not get to sleep until 8 AM because a 26 year old man had been kidnapped the day before yesterday. We negotiated a nominal amount of ransom which I instructed the family to pay, also telling them that we would accompany them disguised. We did that early this morning at around 5 o'clock. After several changes of location the ransom exchange finally took place. In the period that the ransom amount was being picked up by the kidnappers we got hold of them after extensive firing. We managed to arrest one kidnapper, another was seriously injured and the third ran away. The result was we found the location of victim and got him safely released.
3. Third option is to let the family pay the ransom amount, whatever nominal amount is negotiated, and then once we get the victim back we try to track down and apprehend kidnappers.

It is much easier in Karachi where we have the support of sensitive technical agencies and other resources in Pakistan so that we can finally track down and bust kidnapper gangs. So far we have had a 98% success rate, but the three options above do not apply to piracy. Piracy of ships or sea and kidnapping of those hostages is a slightly different situation than kidnapping for ransom in a place for which we have all the requisite infrastructure facilities and the ability to move as and when required. But in a situation in the open seas, perhaps 30 miles off the Somali coast, we may know the exact location but any foolish act on our, or any on else's behalf, can endanger the precious lives of the hostage crew members and losing control of the pirates. If we care for the lives of the crew members, then there should be some responsibility on the international community to support us.

Last week there was a conference in London and I read in the paper that there were a lot of issues resolved and that several resolutions were passed on anti-piracy and all that. But what is the result? Even today when I read the latest report on the Somali coast reporting that more than 250 hostages are still there, including 17 or 18 on land? Let us say it is 200 people, but they are our people – they were there to earn their bread and butter but ended up in this misery. It is the responsibility of the international world to help them in whatever way we can. We are not in favor of paying any ransom or compensation but still, if there is no way out at least we should be able to prepare and to pay a “compensation” amount so we can get them safely released.

I have heard some of the honored guests at this conference explain that normally the ransom amount is exchanged in London and Dubai for some of the cases, and that through lawyers. So then why is the international community sleeping over that issue when the ransom is being exchanged in major cities like Dubai and London, through lawyers? Who are these lawyers and their clients? They are not being arrested, so that is how this situation can still take place.

That hefty ransom amounts are being paid in the international cities of the world is condemnable. This may not be the topic that I was asked to address in this paper, but it is closely related to this issue with which I have been dealing for the past year and a half.

We sincerely believe that we have a responsibility to help our people, whether they are Pakistanis or nationals of other countries. During the negotiation process I have been advocating in different forums that it is not only about the handling of the situation but about analyzing each and every aspect of the entire saga. Obviously we must help the authorities in the relevant quarters to negotiate, and then we have to take care of the family. The owner is also a vital component in all that. In the case of MV *Albedo*, initially the Malaysian owner did not respond but now, finally, he has come on board with us. I myself flew to Malaysia and spoke to him and Malaysian authorities as well as to the Malaysian Ambassador here. Then I spoke to the Ambassadors of the other countries represented by the hostages aboard *Albedo* so they are all with us and have given us the go-ahead to negotiate. I mentioned earlier that the initial demand had been for \$10 million but as of today I think we are just hand-shaking distance away from finalizing the compensation amount with these pirates. Of course for security reasons I cannot disclose the amount but I do believe that the sincere and dedicated efforts of CPLC have brought us a day or two away from finalizing the amount.

The case of *Albedo* is more typical in nature than *Suez* because whatever we say in any forum now is passed through the internet to pirates immediately. If something is reported in the media it reaches them like a fire and then it becomes difficult for us to convince them that I haven't said what has been reported. These kidnappers sometimes also quote local TV channels or other sources of information. They are always on the hunt for the news. Sometimes I am asked to send a text message confirming that I did not say something. There are a lot of issues involved. In the case of *Albedo* I think that the longer time taken has been because of infighting

between pirates over not agreeing to any amount. Finally I think they have now come to a situation where they want to negotiate immediately, get the amount and release the hostages.

We have devised methodology for a winning hostage situation that not only assists the families in negotiating the compensation amount but also ensures the safety of the hostages. The topmost priority we give is to protect the lives of hostages and no action can be taken that would jeopardize their lives. The hostages were kept several weeks without being in touch with their families while the pirates demanded an outrageous amount that was eventually settled at very low amount. We did not want to go too fast, this has been our aim and approach, and there is always family counseling and negotiation with the pirates to be conducted. Obviously families are counseled, which is much more difficult when they believe that we are their only hope and only access to settle this saga. The Captain would agree with me that his own family was disturbed and under extreme distress at all levels, especially his daughter who was continuously in touch with me. She would call me and ask “Ahmed, uncle, what happened?” Believe me I had tears in my eyes every time she called, but God is great and we got immense help from all quarters. Being negotiators we must be calm, confident and talkative besides being able to handle extreme pressures. You know, there have been instances when the pirates have contacted us without informing the hostages to say that they had taken the life of the Captain. I received a call from a kidnapper telling me that he had killed the Captain and that the same call had been made directly to First Officer’s wife, the family and then us. Believe me, it was obviously very difficult to handle at that stage but we assured them “Look we will pay this amount” and made it clear that they would be fools to forego the amount by killing one person. We made it specifically clear to them that if anyone is hurt or anyone gets killed, the amount will not be paid and if they dare to kill anyone then we will make it sure that they all go from this world. We had to take a stand on this issue and it was very harshly stated several times

during the negotiation on *Albedo*. We often conveyed them not to take law into their own hands, that we are committed to paying the compensation amount but that if anyone gets hurt, they will get hurt. During this negotiation I stopped negotiating several times telling them: “Look, you are wasting your time with us and whatever demand you are asking us is unrealistic, impossible and un-payable by us so please, if you want to carry on this way we will not be able to solve this issue.” We have always been very strict on the issue of obtaining proof of life for every crew member both in the MV *Suez* case and in the case of MV *Albedo*. In both cases we have stressed that each crew member needs to be able to talk to their family so that we have proof of their life, and that if anything happens to them we would no longer negotiate money issues.

I must say again that the commitment of CPLC, of our government and of the Honorable Governor of Sindh, Dr. Ishratul Ibad Khan, is to save the lives of these seafarers in whatever way we can, keeping international law in mind. That is why we do not favour paying ransom but keep favoring the “compensation” approach so that at least we can get our beloved ones back safe and (*inshallah*) will keep on doing so. We will try our level best and are quite optimistic about the release of MV *Albedo* crew members which will soon be made. And whatever happened during the MV *Suez* saga, we learned from our mistakes and our experience. The pirates there now talk to me as if I am in sole charge of the entire saga. I tell them that I do not have any authority until and unless they provide me with confirmation from their side of the safety of the hostages. Then I can go back to concerned authority to finalize things. In this way we try to keep someone at our back so that we can have a fall back if required. This approach has been employed successfully in different negotiation techniques both locally and internationally.

## CONCLUSION

The time has come to decide on the plight of these hostages, and to take the pirates to task. The international community has done whatever it could but still the attacks on ships are ongoing. I read in a newspaper report few days ago that a vessel (I do not remember the name) was again attacked by pirates but was saved by the Marines and that the international community should do something urgently to arrest this growing trend of piracy.

I commend the recent measures taken at the London Conference but those 250 people who are still hostages still need to be taken care of and something should be done to achieve their release and then whatever the international community can do to make that area free and safe for travel at sea.

I think Pakistan is a front runner in these international safety measures. At the time of MV *Suez* when the Pakistan Navy was in the front line with the combined forces at sea they really helped us. The Chief of Naval Staff at that time intervened personally in the release of the *Suez* crew members and all the logistic support here. The unsung hero of the whole saga is the Honorable Governor Dr Ishratul Ibad, who made us work on those issues. The MV *Albedo* issue is still there and the Governor is still trying to get reports on a daily basis. *Inshallah*, a time will soon come when we will get the safe release of all hostages. We appeal to everyone to help us so that we can manage the safe and quick release of the MV *Albedo* crew members and bring them back to their family members.




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***Mr. Ahmad Chinoy is Chairman of the Citizens-Police Liaison Committee in Karachi, Pakistan.***

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## **The Human Face of Pirates** **(Opening Remarks, Day 2)** **by Mr. David Griffiths**

On the first day of this conference Admiral Sandila emphasized that the ultimate solution to piracy lies ashore. Dr. Fanning pointed out that many pirates themselves are victims of piracy, especially those who are youths or even children. Mr. Jabbar warned the audience about demonizing pirates. After all, pirates are people too. Like us they have parents, family, friends, hopes, ambitions, fears and some set of values. We need to understand pirates as human beings if we are ever to find a lasting solution to piracy.

As a young officer in the Canadian Navy during the days of the Cold War I once had the chance to wander alone through the slums of Ecuador's port city of Guayaquil. As I walked I found myself pondering a troubling question – What would I do if I had been born and raised there, had little or no education and knew no other life? To my great surprise I came to the conclusion that I would see no other option than to become a Marxist revolutionary. That came as a bit of a shock to a young man whose job was to combat Communism. Now, a quarter-century later, the port of Guayaquil is experiencing significant levels of maritime crime. Most is within port limits, on the river and in the harbour approaches but, in February 2011, an unsuccessful Somali-style pirate attack occurred on a tanker steaming approximately 130 nautical miles off Guayaquil.<sup>1</sup> Criminals watch the news too, so perhaps some see marine piracy as a reasonable business model. Had I been born a poor Guayaquileño I would certainly not be addressing a conference about counter-piracy. I might have become a pirate.

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<sup>1</sup> International Maritime Organization (IMO). (2011). *Reports on Acts of Piracy and Armed Robbery Against Ships* (MSC.4/Circ.175), 20 September 2011. Available online at: <http://www.imo.org/OurWork/Security/SecDocs/Documents/PiracyReports/175-Aug2011.pdf>

Last year marked the 1,300<sup>th</sup> anniversary of the arrival of Islam in what is now Pakistan. The reason that young general Muhammad bin Qasim brought a naval landing force to these shores was to punish and suppress pirates who had been attacking Arab shipping. The target of the expedition was Debal (modern Bhanbore) just sixty kilometres east of modern Karachi. The venue for this conference was once the pirate-infested Somalia of its day. Had history taken a different turn, we might not be here discussing counter-piracy. We might have been pirates.

We cannot change the behaviour of people we do not understand. Individuals do not turn to piracy on a whim – they have reasons. We must understand those reasons if we are to see an end to the scourge of piracy in our lifetimes. We cannot arrest, imprison or kill all of them because they will simply be replaced by others if the root motivation is not addressed realistically, vigorously and persistently. To use a firefighting analogy; naval and military action can contain the fire and beat down the flames, but unless another part of the team is simultaneously tackling the sources of fuel, oxygen and heat, then the process becomes a perpetual and futile waste of time and resources. Indeed, it can make matters worse. We are already seeing a form of Darwinian “unnatural selection” among Somali pirates as naval enforcement weeds out the weak and incompetent while others grow more efficient and increase their spread, capabilities and sophistication. Enforcement is important, but it is only part of the solution.

During the American Civil War in the late 19<sup>th</sup> Century, President Abraham Lincoln gave a speech in which he spoke sympathetically about the rebels. An elderly woman complained that he would speak kindly of his enemies when he should be talking about destroying them. “Why madam,” Lincoln replied, “do I not destroy my enemies when I make them my friends?”<sup>2</sup> There is no question that there are

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<sup>2</sup> Ury, W. (1991). *Getting Past No: Negotiating With Difficult People*. New York: Bantam Books, p. 146.

some very unpleasant people in pirate gangs. But there are others, particularly the youngsters, who are doing what they do because they see it as a rational choice of the best option. Of course there is a need to arrest and punish, but there is also a need to rehabilitate and offer realistic alternatives. Then, as the Holy Quran reminds us, “if they incline toward peace, do you also incline toward peace, and trust in Allah, for He is the One that hears and knows all things (8:61). But first we need to do our homework to understand the people whose behaviour we wish to change.



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Frequency of Pirate Attacks

## **The *Alondra Rainbow* Case by Vice Admiral (Ret'd) Suresh Bangara**

At the outset let me place on record my gratitude to the organizers of this conference for making it possible for me to share some thoughts with this audience. It has taken many months of diligent and sincere communication between us to overcome all the obstacles to obtaining the necessary clearance for me to travel to Karachi. I am honoured and delighted to be with you.

Since the sub-continent provides a fair share of seafarers to the shipping industry, it is but natural that we will continue to have some of our crew in ships that are hijacked. The threat is common to all of us and it is imperative that we join hands to fight together since it cuts across our existing disagreements on bilateral and historical antagonism. It is in this context that we need to revisit the *Alondra Rainbow* case to draw lessons that may assist the international community to find amicable solutions to the scourge of piracy at sea. Let me briefly outline the facts related to the actual act of piracy, circumstances leading to the capture of the hijacked ship by Indian maritime forces and, finally, lessons learnt or unlearnt as perceived by us.

This is a classic case of good coordination and cooperation among agencies such as the International Maritime Bureau's Piracy Reporting Centre (IMB/PRC) in Kuala Lumpur; alert standards of watchkeeping by ships in receipt of warnings; quick reaction by maritime forces having clear intent to pursue and capture the pirated vessel; and finally, the successful prosecution of the captured crew by courts of law in India.

On October 22<sup>nd</sup> 1999, MV *Alondra Rainbow*, a Japanese ship of 7,762 tons registered in Panama with a crew of 15 Filipinos and 2 Japanese, was hijacked within two and half hours of leaving Kuala Tanjung in Indonesia enroute to Miike in Japan. The crew was blindfolded and transferred to a barge, MV *Sanho*, and thereafter set afloat in a life raft. Fortunately the crew was rescued by a Thai

trawler and the Japanese Master promptly registered a case. Consequently IMB/PRC was informed and a bulletin to look out for *Alondra Rainbow* was put out on 27 October. There is also a report that Thomas Cooper, an insurance company, offered a reward of US \$200,000 – the cargo consisting of aluminium ingots was worth a billion or more Yen. What was not known at this stage was that the ship was being converted into a “phantom” vessel, renamed as *Mega Rama*. Half the cargo had been disembarked and the ship had set sail for the Persian Gulf.

At the southwestern tip of India, MV *Al Shuhada*, a Kuwaiti motor vessel sighted MV *Mega Rama* on 13 November and an alert watchkeeper noticed considerable resemblance to *Alondra Rainbow*. Despite the new name on display he reported the matter promptly to the IMB/PRC. An equally alert Indian Coast Guard decided to intercept the vessel and check its credentials.

It was the Coast Guard vessel ICGS *Tarabhai*, a small inshore patrol vessel, which closed in and thus commenced a chase on 14 November. *Mega Rama* neither responded nor cared to establish radio contact, while increasing speed and altering course due west. A Coast Guard Dornier aircraft joined at first light and flew across the bows of the ship to reconfirm that the new name was indeed painted over. By then, Lloyds Register had also confirmed that the ship called *Mega Rama* did not exist on the record books of ships in commission.

It was at this stage of the operation that the Indian Navy decided to support the efforts of the Coast Guard. Since I was the head of operations at that time I can, with certainty, recall the factors that were considered before arriving at the decision. It was established beyond doubt that the ship being pursued was indeed *Alondra Rainbow*. The then Prime Minister of Japan had made a statement in the legislature on the loss of the ship and the desire of the people of Japan to repossess the ship if possible. The interpretation of existing maritime laws, and specifically Articles 100 to 107 of the *United Nations Convention on the Law of the Sea* (UNCLOS) were carefully

considered. It was also recalled that the original *Regulations Indian Navy*, before the recent amendments, had very specific instructions to the Commanding Officer of Indian warships to pursue pirates aggressively at sea and that insufficient action in such pursuits may invite disciplinary action against the Commanding Officer.

It was also envisaged that should firing be required in self defence or to persuade the ship to stop, it would necessitate graduated use of minimum force to achieve the end result. The Commanding Officer should not be burdened with restrictions and laying down clear Rules of Engagement (ROE) was the task of higher echelons of the Navy.

Finally, the past experience of thwarting a coup at Maldives in 1988 at the request of the then President in Male, and the subsequent engagement of MV *Progress Light*, which resulted in rescuing the hostages and arresting the rebels, had taught a few critical lessons which needed to be implemented. It was with these considerations in mind that the Chief of Naval Staff took the decision to deploy the nearest missile vessel, and later a frigate and a destroyer with their larger contingent of damage control teams able to prevent scuttling of the hijacked vessel.

The missile vessel INS *Prahar*, which reached the scene of action on 15 November after sunset, used all available means of communication, illuminated the vessel in question, circled her at close quarters and, when the pirates tried to ram *Prahar*, and only when all efforts failed did he start firing across the bows of *Mega Rama / Alondra Rainbow* with a small calibre weapon.

By 16 November it was clear that the pirates were hardened criminals with adequate knowledge of ship management skills to delay or prevent the capture of their ship. The highest calibre gun system was brought into action and it needed only two shots in the vicinity of the bridge and funnel to stop the pirates abruptly. White flags were hoisted by the pirates but they had also initiated the process of scuttling the vessel. The boarding parties had two objectives: to capture the pirates and prevent the sinking of the

vessel. Both having been achieved, the ship was towed into Mumbai harbour by the Coast Guard on 16 November. Within a period of three months thereafter, the pirated vessel with half the cargo was returned to the rightful owner. The main battle was to follow in the courts of Mumbai.

The weaknesses in existing national legislations and laws, and their alignment with evolving international maritime laws, conventions, agreements and international custom were huge impediments in courts of law. Thanks to the presence of the old Admiralty courts and processes which fortuitously remained in force, the court was able to sentence and impose fines and penalties on the offenders. There were many issues of jurisdiction, identification of offenders, etc., which later came to light in the higher courts of law, but by then the seven year penalty had almost been completed by the pirates. Also the *Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (SUA) convention had not been ratified at that time. The legal framework and legislation to be worked by parliament are matters for detailed study by legal luminaries.

Let us briefly examine some interesting findings, which are my personal thoughts on retrospection and introspection.

Firstly, “phantom ship” operations which involve pirating; renaming and repainting; disposal of illegitimately acquired cargo; use of poorly regulated ports to acquire legitimate charters; inter-alia need a lot of “white collar” support from shore authorities, money launderers, lawyers and the whole gamut of well qualified and authorised phantom crew to run and manage the ship. How is it that the international community, and commercial and UN led initiatives have not been able to generate cooperative measures to nail them down? It is, as in the case of Somali piracy, a lucrative multi-billion dollar industry convenient to all stakeholders. Like tax evasion agreements, could there be bilateral or multilateral agreements among nations?

Secondly, sharing of information and diligent patrolling among littoral nations, along with time shared presence of warships for quick and seamless intervention, is a need that merits attention. India and Pakistan can work at sea without prejudice to their disagreement on ongoing political issues.

Thirdly, in an increasingly globally networked environment, is it not possible to maintain a centralised record of qualified merchant marine officers and their whereabouts to locate those that sell their souls to indulge in piracy-related activities? It would provide instant information of location and details of unemployed but qualified crew who have the inclination and potential to support illegal trade.

Rules of Engagement are essential to enable warship Captains to defend and use graduated and minimum necessary offensive action to thwart and deter piracy. Governments such as that of India have promulgated them, leading to effective neutralisation of mother ships and a remarkable decrease in high seas deployment of pirates.

Finally, it is time to create a cadre of specialists in maritime law, and nurture them by providing sufficient avenues of employment in the industry and state-led initiatives. If they have a merchant marine, naval or coast guard background, so much the better. I was delighted to meet one in Karachi who, having served the Navy, is now a successful legal luminary in maritime law.




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Albedo Pakistani public voluntarily contributed to pay for release of the crews SUEZ



# **The Path to Securitization: Chinese Anti-Piracy Operations and their Implications in the Indian Ocean**

by *Dr. Xu, Ke*

## **I. INTRODUCTION**

Maritime piracy has plagued the Indian Ocean since the 1990s. The piracy-prone areas are along the sea lines of communication in the Indian Ocean: the Straits of Malacca and Indonesian waters to the east, and the Somali coast and Gulf of Aden to the west. From 1994 to 2004 the Strait of Malacca and Indonesian waters were the most pirate-infested with 1,050 piracy incidents in these areas.<sup>1</sup> After the terrorist attacks on the United States on 11 September 2001 ("9/11"), the alleged piracy and terrorism nexus led the littoral states to enhance anti-piracy cooperation, so piracy incidents declined significantly, especially in the Strait of Malacca. However, off the western coast of the Indian Ocean, piracy incidents off the Somali coast and in the Gulf of Aden have been increasing since 2005: from 2005 to 2010 total piracy incidents amounted to 635.<sup>2</sup>

This paper compares piracy off the east and west coasts of the Indian Ocean, examines the dilemmas in international anti-piracy cooperation, reviews Chinese responses to maritime piracy in the Indian Ocean, and finally discusses their implications for the Chinese Indian Ocean Strategy.

### **Definition**

Piracy has many definitions in the contemporary era. Currently, two definitions are well known. The first is in the *United Nations Convention on the Law of the Sea*, 1982 (UNCLOS); the second is

<sup>1</sup> IMB-PRC, "Piracy and Armed Robbery against Ships: Annual Report, 1 January – 31 December 2007," (London: ICC International Maritime Bureau, 2008), p.5.

<sup>2</sup> IMB-PRC, "Piracy and Armed Robbery against Ships: Annual Report, 1 January – 31 December 2010," (London: ICC International Maritime Bureau, 2011), p.5.

that of the International Maritime Bureau Piracy Reporting Centre (IMB-PRC) of the International Chamber of Commerce.

Piracy is defined in UNCLOS Article 101 as follows:

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed;
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).<sup>3</sup>

This definition applies only to any of the described illegal acts committed either *on the high seas* or *outside the jurisdiction of any state*. Any violent and illegal acts against ships or property and people on board ships taking place in ports or inside territorial waters are called "armed robbery against ships". As stated in the United Nations International Maritime Organization (IMO) *Draft Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships* (MSC/Circ.984) article (2.2):

Armed Robbery against Ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of "piracy", directed against a ship or against

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<sup>3</sup> International Seabed Authority. *The Law of the Sea: Compendium of Basic Documents* (Kingston: International Seabed Authority, Caribbean Law Publishing, 2001), p.39.

persons or property on board the ship, within a State's jurisdiction over such offences.<sup>4</sup>

The second definition of piracy is that of the IMB-PRC (1992) which defines piracy as "an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act".<sup>5</sup> This definition "covers actual or attempted attacks whether the ship is berthed, at anchor or at sea", which is much wider than UNCLOS Article 101.<sup>6</sup>

In the *Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)*(2004), Article 1 adopts the above mentioned terms, "piracy" and "armed robbery against ships", to cover all the unlawful acts outside and within a State's jurisdiction. The definition of piracy is pursuant to UNCLOS Article 101 and the definition of "armed robbery against ships" adopts the definition of the United Nations International Maritime Organization (IMO).<sup>7</sup> This paper adopts the IMB definition as a working definition; that "piracy" refers to both "piracy" as defined under Article 101 of UNCLOS and "armed robbery against ships" as defined by the IMO.

## Data

Piracy research is based mainly on two kinds of data: trial records and time series reports. The trial records provide first-hand knowledge of piracy, however, trial records on piracy cases usually are difficult to access, thus many researchers have to use the time-series piracy reports compiled by some international institutes, which are easy to acquire. These time-series piracy reports are compiled by three organizations: the International Maritime Bureau Piracy

<sup>4</sup> IMO, "Draft Code of practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships (MSC/Cir.984)", Article 2.2. <http://www.imo.org>.

<sup>5</sup> IMB-PRC, *Piracy Report 1992* (London: ICC International Maritime Bureau, 1993), p.2.

<sup>6</sup> *Ibid.*

<sup>7</sup> IMO, "Draft Code of practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships (MSC/Cir.984)", Article 2.2. <http://www.imo.org>.

Reporting Centre (IMB-PRC); the International Maritime Organization (IMO), and the Information Sharing Centre of ReCAAP.

The IMB-PRC, a non-government organization sponsored by the shipping industry, has published the *IMB Piracy and Armed Robbery against Ships Reports* since 1992. The IMB-PRC reports provide detailed information on locations of actual and attempted attacks, status of ships during actual attacks, the types of arms used, the type of violence, types of ships attacked, nationalities of ships attacked and countries where victim ships were controlled, as well as trend and highlight of piracy attacks.<sup>8</sup> The IMB reports are often cited by media and researchers.

The United Nations International Maritime Organization (IMO) Maritime Safety Committee has published *Piracy and Armed Robbery against Ships Reports* since 1995. These reports, compiled from piracy reports from shipping industry, are similar to IMB-PRC reports, but less detailed.

New types of piracy reports are published by Information Sharing Centre (ISC) of ReCAAP, which was set up in Singapore in November 2006. The ISC data are collected directly from focal points of member States and the data in ISC reports only cover piracy and armed robbery against ship incidents in Asian waters.<sup>9</sup>

## II. THE COMPARATIVE STUDY OF PIRACY THE INDIAN OCEAN

What factors caused the surge of contemporary piracy in the Indian Ocean? This paper explains the phenomenon by examining PLACE, PIRATES, PREY, and POLITICS variables. PLACE refers to the geographic position; PIRATES to pirates and their political economy situation; PREY to the global shipping industry; and POLITICS to the obstacles to anti-piracy operations among these countries.

<sup>8</sup> IMB-PRC, "Piracy and Armed Robbery against Ships: Annual Report (1991-2004), (London: ICC International Maritime Bureau, 1992-2008).

<sup>9</sup> See <http://www.recaap.org>.

## Place: Chokepoints of the Sea Lines of Communication

The pirate-infested areas in the Indian Ocean are located at the chokepoints of major sea lines of communication, e.g., the Strait of Malacca and the Gulf of Aden. The Strait of Malacca remains the shortest sea route from the ports of India and the Persian Gulf to ports on mainland East Asia. Nowadays tanker traffic through the Strait of Malacca is more than three times that of Suez Canal traffic, and well over five times that of the Panama Canal.<sup>10</sup>

## Prey: Shipping Industry

Since the 1990s, the robust economic situation in East Asia has given fresh impetus to seaborne trade and the shipping industry. A huge volume of cargo flowing through the sea lines of communication provides abundant prey for pirates. The global shipping industry is the direct prey of piracy. The prey includes ships, cargoes and crew. Among all the victim ships, bulk carriers were at the top of the list with 1,153 incidents – nearly 21 percent of total attacks from 1991 to 2010. Bulk carriers travel at a limited speed and their freeboards are low, which makes it easier for pirates to board them when they are underway.<sup>11</sup>

The other vulnerable types of vessels were general cargo ships, container ships and oil tankers. From 1991 to 2010 there were 891 attacks against general cargo ships (nearly 18 percent of total attacks); 723 attacks against crude oil tankers (nearly 15 percent of total attacks); and 583 attacks against chemical tankers (nearly 9 percent of total attacks). In the Straits of Malacca and Singapore these vessels are most likely to be attacked because they have to slow down when passing through the Straits. Besides, fishing boats

<sup>10</sup> Hussin, A. R. The Management of Straits of Malacca: Burden Sharing as the Basis for Co-Operation. *LIMA International Maritime Conference 2005*. Awana Porto Malai, Langkawi, Malaysia, 2005.

<sup>11</sup> Freeboard: the distance between the water line and the uppermost full deck of a ship.

and trawlers are also vulnerable for their slow speed and their lucrative seafood cargoes which are easy to dispose of in open markets. From 1991-2010 there were 311 attacks against fishing boats and trawlers.<sup>12</sup>

Some inherent weaknesses in the shipping industry make ships vulnerable to piratical attacks. Thanks to modern technology, the number of crew now needed on board has been greatly reduced; this makes it easier for pirates to seize control of such ships. For example, bulk carriers have an average of only 20-25 crew members on board; container ships 21; tankers 12 to 25 and fishing boats less than 10.<sup>13</sup> Furthermore crew have been discouraged from fighting back for fear of escalating the situation. This has encouraged pirates to be more daring in their attacks.<sup>14</sup>

To make the matter worse, many ship owners register their ships under Flags of Convenience (FOC). A FOC is referred to as “the flag of any country allowing the registration of foreign-owned and foreign-controlled vessels under conditions which, for whatever the reasons, are convenient and opportune for the persons who are registering the vessels.”<sup>15</sup> The FOC lacks “genuine link” with flag states. FOC countries are typically small states that have neither the power nor the administrative machinery to impose effective governmental or international regulations on ships under their registration. FOC countries’ principal aim is to earn money from registration and they have no intention or power to protect ships under their registration.<sup>16</sup> Thus those ships under FOCs are vulnerable to piratical attacks.

<sup>12</sup> ICC-IMB, “Piracy and Armed Robbery against Ships Annual Report” (1991-2010) (London: ICC International Maritime Bureau, 1992-2008).

<sup>13</sup> ISC-ReCAAP, “Analysis of Type of Ships involved in Incidents of Piracy and Armed Robbery in Asia (2003-2007).” (Singapore: ISC-ReCAAP, 2008).

<sup>14</sup> IMO, Piracy and Armed Robbery against Ships: Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery against Ships (29 May 2002 [cited 1 Nov 2005]); available from [http://www.imo.org/includes/blastDataOnly.asp/data\\_id%3D5378/623r3.pdf](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D5378/623r3.pdf).

<sup>15</sup> Richard M. F. Coles and Nigel P. Ready, *Ship Registration* (London: Lloyd’s Shipping Law Library, 2002), p.15.

<sup>16</sup> B. N. Metaxas, *Flags of Convenience: A Study of Internationalisation* (Aldershot, Hants Hampshire: Gower Pub. Co., 1985), pp. 14–15.

From 1991 to 2010, ships flying Panama, Liberia, Cyprus and Bahamas FOC flags were on the top of the victim ship list. Panama-registered ships were involved in 808 piracy incidents; Liberia 229; Cyprus 281 and Bahamas 206.<sup>17</sup>

The loophole of FOC has long been used by pirates for re-registering stolen ships. The criminal groups use their network to find a suitable ship to be hijacked at sea. The cargo on board is offloaded, and disposed of through their smuggling network on the black market. The crew are either killed or abandoned. The ship becomes a so called "phantom ship." The phantom identity enables the owners of "phantom ships" to commit maritime fraud. Firstly, the phantom shipowner offers competitive freight rates to shippers who are not aware of the conspiracy. After the cargo has been loaded, the ship is diverted to another destination and the cargo off-loaded and sold to pre-arranged buyers. The ship is then re-registered with yet another phantom identity and the crime is committed all over again. It is difficult to trace these ships because none of their registration details are accurate.<sup>18</sup>

## Pirates

Piracy has been fostered by interrelated political and economic factors. The poor economic situation in Southeast Asia played an important role in the surge of piracy. The massive amount of sea traffic passing through the Strait of Malacca not only led to navigational congestion in the Strait, but also imposed a negative impact on the local maritime environment, such as the degradation of fish habitats and a slump in profits from fishing.<sup>19</sup> Consequently, this aggravated the economic crisis of coastal and especially Indonesian fishermen. Poverty provided strong incentives for coastal people to

<sup>17</sup> ICC-IMB, "Piracy and Armed Robbery against Ships Annual Report" (1991-2010) (London: ICC International Maritime Bureau, 2010).

<sup>18</sup> *Ibid.*, p. 33.

<sup>19</sup> Tom McCawley, "Sea of Trouble," *Far Eastern Economic Review* 167, no. 21, pp.50-53 (2004).

turn to piracy as an alternative source of income.<sup>20</sup> The Asian financial crisis in 1997–1998 further exacerbated the Indonesian economic situation and led to a dramatic increase in piratical incidents in 2000.

Apart from the poor, small-time pirates in the Strait of Malacca, criminal syndicates were also much involved in piracy. These syndicates had networks dealing with all kinds of criminal activities, such as piracy, smuggling, human trafficking, etc. To support their operation, the criminal syndicates were often in collusion with local law enforcement officers.<sup>21</sup> They were equipped with advanced weaponry and had well developed international networks through which to dispose of stolen goods. These syndicates were capable of dealing in the hijacking of ships, disposal of stolen cargoes and re-registration of ships as “phantom ships”.

In terms of recent rampant piracy off the Somali coast and in the Gulf of Aden, the serious situation was the spill-over from the chaotic situation in Somali. After the collapse of the Mahamad Siad Barre regime in 1991, Somali was broken into many independent areas such as Somaliland in the north-western region and Puntland in the north-east. Until now, Somalia has yet to have an effective central government. The Transitional Federal Government (TFG) was established and recognized by the United Nations in 2004, however, it only controls a small area near the capital, Mogadishu, let alone controlling the Somali coast. Somali piracy was acquiesced or even supported by the local government governments.<sup>22</sup>

<sup>20</sup> Anucha Charoenpo, *Illegal Thai Fishing Robbed Indonesia Off Billions of Catches and Cash* (Southeast Asian Press alliance, 2006 [cited 18 May 2006]), available from <http://www.seapabkk.org/fellowships/2002/anucha.html>.

<sup>21</sup> Peter Chalk, *Grey-Area Phenomena in Southeast Asia: Piracy, Drug Trafficking and Political Terrorism*, (Canberra: Strategic and Defence Studies Centre Research School of Pacific and Asian Studies, Australian National University, 1997).

<sup>22</sup> Risk Intelligence, *Piracy off the Horn of Africa: A Comprehensive Analysis of Somali Hijackings* (Denmark: Risk Intelligence, 2009), p. 72.

## Politics: Anti-Piracy Cooperation

Piracy in Southeast Asia is generally a transnational crime involving parties or processes in more than one country. The suppression of piracy requires related States to cooperate. Since the early 1990s, the littoral countries have been cooperating in anti-piracy operations. However, divergences in national interests among the littoral states have resulted in different incentives regarding anti-piracy operations. For example, in the eyes of Indonesian officials, piracy in Southeast Asia is petty theft which did not have a great impact on its national interest. In fact they had a point: the majority of victim ships were foreign, not Indonesian. From 1991-2010, there were only 59 Indonesian ships attacked out of total 5,398 victim ships.<sup>23</sup> Thus, the Indonesian government was reluctant to spend money on protecting foreign users of their shipping lanes who were not contributing to the cost of maintenance of navigational facilities and maritime security in the Strait of Malacca.

The Malaysian government was also reluctant to spend money on these foreign “free riders”. However, the main Malaysian ports such as Port Klang and Tanjung Pelepas Port are situated along the Strait of Malacca and maritime safety and security in the Strait are important for the Malaysian economy. Facing similar budget constraints and insufficient maritime capability, the Malaysian government has been appealing for a “Burden-Sharing Scheme”, urging other users of the Strait of Malacca, together with Japan, to share the cost of maintaining and enhancing maritime safety and security in the Strait of Malacca.

Singapore, as a city-state, is greatly dependent on its ports and considers piracy as a serious threat to its national security. Although Singapore has the highest incentive to combat piracy, only the

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<sup>23</sup> IMB-PRC, “Piracy and Armed Robbery against Ships: Annual Report (1991-2010) (Essex: ICC International Maritime Bureau, 1992-2010).

southern tip of the Strait of Malacca is under Singapore's jurisdiction and thus Singapore cannot be of much help.

In terms of incentives for combating piracy, Indonesia has the lowest incentive for anti-piracy operations, Singapore the highest, while Malaysia falls in between. In short, incentives regarding anti-piracy operations differ in the littoral countries. Piracy was rampant in the countries where the government had little incentive to combat it, and this is most true of Indonesian waters.

Maritime capacities have long been a problem in Southeast Asia: the constraints in defence budgets have hampered their capabilities; the lack of funding for anti-piracy operations constitutes a bottleneck for some poor countries like Indonesia in implementing anti-piracy operations.<sup>24</sup> With their current material capabilities the law enforcement agencies of Indonesia cannot successfully implement anti-piracy operations. In terms of maritime capability, Indonesia is the lowest, Singapore is the highest, and Malaysia comes somewhere in between.

Furthermore, sovereignty becomes a main concern in law implementation of anti-piracy patrols involving Indonesia, Malaysia and Singapore. All the multilateral patrols in the Strait of Malacca at present are coordinated, not joint, showing that trust and confidence among the littoral countries have yet to be established.<sup>25</sup>

## **Piracy off the Horn of Africa**

In term of piracy off the Horn of Africa, as discussed earlier, piracy is the spill-over effect of the chaotic Somali situation. The separate states in Somali, such as the Puntland government, have no

<sup>24</sup> Bernard Kent Sondakh, "National Sovereignty and Security in the Straits of Malacca," (paper presented at the "Straits of Malacca: Building a Comprehensive Security Environment", Kuala Lumpur, Malaysia, 11–13 October 2004).

<sup>25</sup> Coordinated Patrol: the law enforcement agencies coordinate while patrolling within their own territorial waters, but they cannot cross national sea borders. Each law enforcement agency has its own commander. Joint Patrol: all law enforcement agencies of the participating countries constitute one task force and patrol together, under one commander; this task force is empowered to cross national sea borders.

incentive or capability to combat piracy. On the contrary, some local officials supported pirates by taking no action in ports such as Eyl. Pirates hijacked ships and sailed them to Eyl port, asking for the huge amount of ransom.<sup>26</sup>

The events of “9/11” were the turning point for anti-piracy cooperation off the east coast of the Indian Ocean. In the aftermath of 9/11, the alleged piracy and terrorism nexus provided the United States with an excuse to intervene in Southeast Asia in the name of anti-terrorism.<sup>27</sup> The United States has led the global anti-terrorism campaign, and integrated anti-piracy policies as a part of its maritime security project. The United States launched three international maritime security initiatives: the Container Security Initiative (CSI) in 2002, the Proliferation Security Initiative (PSI) in 2003, and the Regional Maritime Security Initiative (RMSI) in 2004.

The aim of CSI is to identify high-risk containers before they are delivered to the United States, using screening technology in the originating ports. The purpose of PSI is “to stop trafficking of weapons of mass destruction (WMD), their delivery systems, and related materials to and from states and non-state actors of proliferation concern”.<sup>28</sup> The CSI and PSI apply to a global scope, while the RMSI deals particularly with maritime security in the Strait of Malacca.<sup>29</sup>

In March 2004, Admiral Thomas B. Fargo, then the U.S. Pacific Command commander, unveiled the US Regional Maritime Security Initiative (RMSI) in the course of his annual U.S. PACOM posture testimony to the United States House of Representatives. The goal of RMSI was ‘to partner the region’s nations, of all manner of

<sup>26</sup> Risk Intelligence, *Piracy off the Horn of Africa: A Comprehensive Analysis of Somali Hijackings* (Denmark: Risk Intelligence, 2009), p. 36.

<sup>27</sup> Bhagyashree Garekar, “China’s Rise Prompts Us to ‘Re-Energise’ S-E Asia Ties,” *The Straits Times*, 3 June 2006.

<sup>28</sup> Bureau of International Security and Nonproliferation, “Fact Sheet: What Is the Proliferation Security Initiative?” <http://www.state.gov/t/isn/rls/fs/105217.htm>

<sup>29</sup> David Rosenberg and Christopher Chung, “Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities”. *Ocean Development & International Law*, 39, pp.51-65 (2008).

differing capabilities, to create a relationship to observe, monitor and intercept any transnational threats in their waters, with the use of existing international and domestic legislation.”<sup>30</sup> Singapore welcomed American involvement in maritime security in the Strait of Malacca but Indonesia and Malaysia rebuffed U.S. offers to provide intelligence, conduct joint patrols and send U.S. Marines into their territorial waters.<sup>31</sup>

After 9/11, piracy was high on the agenda of many international government level forums and meetings such as the ASEAN Regional Forum, ASEAN meetings and Asian Security Summits. In May 2002 the Asian Security Summit or “Shangri-La Dialogue”, organised by the London-based International Institute of Strategic Studies, was held in the Shangri-la Hotel in Singapore. Participants included defence ministers and security officials from India, Japan, Indonesia, the Philippines, Malaysia, Singapore, Thailand, South Korea, Australia and New Zealand, together with US Deputy Defence Secretary Paul Wolfowitz, British Defence Minister Geoffrey Hoon and the Director-General of China’s Foreign Affairs Bureau, Major-General Zhan Maohai. Since the inaugural meeting in 2002, the Shangri-la Dialogue has become a key event in Asian defence diplomacy.<sup>32</sup> At the third Shangri-la dialogue in June 2004, the United States expressed its intention not only to retain its “forward presence” in the Asia-Pacific region, but also to seek to update its military-strategic doctrines.

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<sup>30</sup> Global Security, “Regional Maritime Security Initiative” (cited 7 July 2006), available from <http://www.globalsecurity.org/military/ops/rmsi.htm>.

<sup>31</sup> AP, *Malaysia, U.S. To Discuss Port Security* (USA Today, June 6th 2004 [cited 2 June 2006]), available from <http://www.iiss.org/conferences/the-shangri-la-dialogue/press-coverage/press-coverage-2004,/usa-today---discuss-port-security>.

<sup>32</sup> IISS, *The IISS Shangri-La Dialogue* (International Institute for Strategic Studies, 2006 [cited 3 June 2006]); available from <http://www.iiss.org/conferences/the-shangri-la-dialogue>.

## Capability Building

In 2002 the Malaysian and Philippine navies conducted a six-day joint military anti-piracy exercise. Furthermore, in 2002, Indonesia, Malaysia and the Philippines signed a trilateral security pact to enhance cooperation on transnational crime issues. In February 2003 Indonesia and the Philippines conducted anti-piracy drills with Japan, similar to those held between Malaysia and the Philippines.<sup>33</sup>

On 20 July 2004 Malaysia, Singapore and Indonesia launched new coordinated patrols, the Trilateral Coordinated Patrols, or *Malsindo*, in the Straits of Malacca; these new coordinated patrols involve year-round patrols using ships from the littoral states.<sup>34</sup>

On 27 May 2005, the Republic of Singapore Navy (RSN) and the Indonesian Navy officially launched Project SURPIC (Surface Picture) in Batam. SURPIC is a sea surveillance system, which allows the RSN and Indonesian Navy to share a common real-time sea situation picture of the Singapore Strait.<sup>35</sup>

On 13 September, the three littoral states, together with Thailand, began coordinated air patrols over the Strait of Malacca to “attain maritime domain awareness over the Straits of Malacca and Singapore.”<sup>36</sup> The three States each donated two planes for the patrols, which were known as the “Eyes in the Sky” (EiS) patrols. These aerial patrols provide a valuable supplement to the Trilateral Coordinated Patrols, or *Malsindo*, carried out by the navies of the littoral states.<sup>37</sup>

<sup>33</sup> France-Press Agence, “Malaysia, Philippines Begin Maritime Exercises,” *Jakarta Post*, 13 May 2002.

<sup>34</sup> AFP, “Indonesia, Malaysia, Singapore Agree to Joint Malacca Strait Patrols,” *Jakarta Post* 30 June 2004.

<sup>35</sup> Graham Gerard Ong, “Charting a Unified Course for Safer Seas,” *The Straits Times*, 25 June 2005.

<sup>36</sup> MINDEF, “Launch of Eyes in the Sky (EiS) Initiative”, *MINDEF News*.  
[http://www.mindef.gov.sg/imindef/news\\_and\\_events/nr/2005/sep/13sep05\\_nr.html](http://www.mindef.gov.sg/imindef/news_and_events/nr/2005/sep/13sep05_nr.html)

<sup>37</sup> ABC News, *Indonesian Navy Plans Fleet Expansion to Boost Maritime Security* (ABC News Online, 12 Feb 2005, [cited 16 October 2005]); available from <http://www.abc.net.au/news/newsitems/200502/s1301509.htm>.

Although piracy and terrorism have some similarities, there has been no evidence proving a nexus between piracy and terrorism in reality so far.<sup>38</sup> However, the myth of a piracy and terrorism nexus has made anti-piracy cooperation in the Strait of Malacca and the South China Sea integrated into the global anti-terrorism framework after 9/11. The myth has also driven the littoral states to shift their paradigms of anti-piracy policies, and thus changed the reality of this region tremendously.

Incentives and capabilities for anti-piracy cooperation in the littoral countries were enhanced. Malaysia and Indonesia enhanced their maritime capabilities in order to show that they were capable of safeguarding their own waters, and to prevent foreign navies from intervening in the name of protecting the Strait of Malacca. From 2002 onward, the littoral states enhanced bilateral and multilateral patrols with such initiatives as *Malsindo* and “Eyes in the Sky” (EiS) patrols which were sufficient to reduce piracy on the open sea.<sup>39</sup>

In addition, the implementation of the IMO International Ship and Port Facility Security (ISPS) Code, which provides a standardised and consistent maritime security framework for ships and port facilities, has significantly reduced the opportunities for crimes to be committed at ports and anchorages. The ISPS Code was implemented in port facilities in Southeast Asia in 2004, which led to a significant decline of piracy incidents.<sup>40</sup> After three years of effort, from 2002 to 2004, pirates lost their crime scenes at ports, anchorages, and on the open sea. The following Table highlights the key points of the above discussion.

<sup>38</sup> Mark J. Valencia, “Piracy and Terrorism in Southeast Asia: Similarities, Differences, and Their Implications”, in *Piracy in Southeast Asia: Status, Issues, and Responses*, ed. Derek Johnson and Mark Valencia (Singapore: Institute of Southeast Asian Studies, 2005), pp.77-102.

<sup>39</sup> AFP, “Indonesia, Malaysia, Singapore Agree to Joint Malacca Strait Patrols,” *Jakarta Post* 30 June 2004.

<sup>40</sup> IMO, “What is the ISPS Code?”, <http://www.imo.org> (accessed March 1, 2007).

**Table 1: Comparative Variables of Piracy off the East and West Coasts of the Indian Ocean**

Variables	East Coast	West Coast
<b>PLACE</b>	Off Somali Coast, Gulf of Aden, Arabian Sea	The Strait of Malacca, Indonesian waters, South China Sea
<b>PREY</b>	Ships, crew and cargo for ransom	Valuables, cash and equipment on ships.
<b>PIRATES</b>	Quasi-governmental pirate groups Large scale with land bases	Fishermen, gangsters, international criminal syndicates Small in number, Difficult to locate
<b>POLITICS</b>		
• Governments	Failed Somali state	Weak littoral states
• Anti-piracy measures	CTF 150, CTF 151, EU Atlanta, WFG Escort, Unilateral Escort (Russia, India, China, Japan, Malaysia, Saudi Arabia)	<i>Malsindo</i> patrols and the “Eyes in the Sky” (EiS) Patrols, GPS ship tracking system, ISPS Code, etc
• Incentives	Weak incentive	Divergent incentives in the littoral states
• Capabilities	Strong capability	Low capabilities

### III. CHINESE RESPONSES TO MARITIME PIRACY

Chinese responses to maritime piracy can be divided into three periods: “Anti-smuggling period” (1990-2001); “Anti-terrorism period” (2001-2008) and “Escorting period” (2008-the present).

#### Anti-Smuggling Period (1990-2001)

This period extended from the late 1990s until “9/11” in 2001. In the late 1990s China was the favourable destination for pirates’ stolen goods. Pirates in the eastern Indian Ocean robbed ships on the high sea and sold the stolen goods through the coastal smuggling networks. A typical illustration of this kind of attack is the “Cheung Son Case”. This was one of China’s most brutal cases of piracy in the South China Sea, involving the murder of 23 Chinese seamen on

board the MV *Cheung Son*, whose bodies were dumped overboard, and ending with 13 pirates being sentenced to death. The *Cheung Son* was repainted and turned into a “phantom ship” before the pirates were caught. The ship has never recovered, she might still be somewhere in the world, using another name.<sup>41</sup>

In 1998 The Chinese government took firm measures to crack down on smuggling in coastal provinces, as well as on piracy in the South China Sea.

***China Maritime Law Enforcement Authorities.*** China has four main maritime law enforcement agencies directly in charge of anti-piracy operation in territorial waters: The Maritime Police of the Border Control Department (BCD), The Maritime Safety Administration (MSA), The Fisheries Law Enforcement Command (FLEC), and General Administration of Customs (GAC).

*The Maritime Police of the Border Control Department (BCD).* The China Maritime Police (CMP) is a part of the Border Control Department (BCD), which is a subcomponent of the People’s Armed Police, under the Ministry of Public Security. The China Maritime Police operate speedboats and small cutters armed with machine guns or small cannons. The Maritime Police fleet is equipped with Seal HP1500-2, a high speed patrol craft. These small vessels are capable of 52 knots, have a range of 250 km, and require a crew of six to eight personnel. The mission of CMP includes escort, marine inspections, and search and rescue. The new standard small cutter for the Maritime Police is the Type 218. This design is 41 meters in length, has a beam of 6.2 meters, displaces 130 tons, develops a top speed of 29 knots, carries a crew of twenty-three and mounts a single 14.5 mm machine gun. In 2006, CMP were equipped a large Type 718 patrol cutter which has a length of 100 meters, a helicopter

<sup>41</sup> Guangdong Higher Court, “Court Judgement Of ‘The Case of Wei Siliang and Soni Wee and Others, Total 38 Suspects’,” in *Renmen Fayuan Caipan Wenshu Xuan* [The Selected Court Judgements] (Beijing: Falu Chubianshe , 2001).

landing platform, and a 37 mm cannon. CMP recently got two older People's Liberation Army (PLA) Navy *Jianghu* frigates, after they had been overhauled and renamed *Haijing 1002* and *Haijing1003*.<sup>42</sup>

*The Maritime Safety Administration.* (MSA) of the Chinese Ministry of Transportation has twice as many personnel as the BCD, consisting of nearly 20,000 personnel, approximately half of the aggregate of the five maritime enforcement agencies. MSA missions include inspection and registration of Chinese and foreign vessels in Chinese ports, investigation of maritime accidents, the training and certifying of seafarers, supervision of marine traffic control, maintenance of aids to navigation, implementation of domestic and international maritime laws, and maritime search and rescue. There are fourteen regional MSA offices, mainly in the coastal provinces but also at some inland river transport centres, such as along the Yangtze River. Each MSA regional office has a rescue coordination centre, and several in coastal provinces have a variety of rescue sub-centres.

*The Fisheries Law Enforcement Command (FLEC)*, part of the Ministry of Agriculture, has just a thousand personnel.<sup>43</sup> The strategic implications of the state of China's fisheries enforcement capabilities were suggested in early 2009 when Chinese fishing or fisheries vessels were involved in a variety of international incidents with regional neighbours and the United States.<sup>44</sup> The fisheries enforcement department has the function of escorting fishing vessels, but because they are unarmed they lack enforcement, deterrence and coercion capabilities, and thus have trouble dealing with emergency situations. Chinese maritime rights and interests, as

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<sup>42</sup> Chen Guangwen, "China's Coast Guard Capabilities", *Ordinance Knowledge* (May 2009), pp. 50–51.

<sup>43</sup> He Zhonglong et al., *Research on the Building of the Chinese Coast Guard*, p. 37.

<sup>44</sup> Lyle Goldstein, "Strategic Implications of Chinese Fisheries Development," *China Brief* 9, no. 16 (5 August 2009), available at [www.jamestown.org/programs/chinabrief/](http://www.jamestown.org/programs/chinabrief/).

well as national honour, are difficult to protect in such circumstances.<sup>45</sup> The public security maritime police, being equipped with all types of weaponry, are limited to Chinese territorial waters and thus can only play a supporting role in escorting fishing vessels.

*General Administration of Customs (GAC)*. The huge amount of international commerce taking place in China's ports and in its coastal waters reflects the importance of the role of customs in maritime enforcement. Chinese Customs implement many missions: compilation of foreign trade statistics, revenue collection, customs control, anti-smuggling, and port control.<sup>46</sup> The latter two missions are most relevant to maritime enforcement capabilities. According to the China Customs 2009 annual report, the GAC represents the competent anti-smuggling authority of the Chinese government which takes up most, if not all, of the responsibility for combating smuggling. The significant smuggling cases prosecuted by the GAC in 2008 were reported to number 9,790, involving more than US\$8.25 billion.<sup>47</sup>

Apart from above mentioned maritime law enforcement agencies, the Chinese People's Liberation Army Navy (PLAN) is responsible for protecting sovereignty and national interest beyond territorial waters and on the high sea, which will be elaborated later in the "Escorting period".<sup>48</sup>

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<sup>45</sup> He Zhonglong et al., *Research on the Building of the Chinese Coast Guard*, p. 40.

<sup>46</sup> "China Customs Annual Report 2007," p. 1, *General Administration of Customs*, [www.customs.gov.cn/publish/portal0/](http://www.customs.gov.cn/publish/portal0/).

<sup>47</sup> China Custom, "China Custom Today", <http://www.customs.gov.cn/publish/portal0/tab38393/module90709/info219550.htm>.

<sup>48</sup> Zou Keyuan, "Piracy at Sea and China's Response", *Lloyd's Maritime and Commercial Law Quarterly* (2000), pp.364-382.

## Anti-Terrorism Period (2001-2008)

This period started with “9/11” in 2001 and continued until China dispatched its navy to escort Chinese ships in the Gulf of Aden on 28 December 2008. After 9/11, facing U.S.-led aggressive anti-terrorism operations, China changed its low profile policy and began to take an active role in enhancing maritime security in Asia. In 2002 China and ASEAN reached consensus on the *Declaration on the Conduct of Parties in the South China Sea*, which not only reaffirmed both sides’ commitment to maintain peace and stability in the region, but also their willingness to enhance cooperation on maritime environment protection, maritime transport and navigational safety, and the fight against transnational crimes at sea.

In accordance with the *Joint Declaration of China and ASEAN on Cooperation in the Field of Non-Traditional Security Issues*, released at the 2002 China-ASEAN Summit, China and ASEAN signed a Memorandum of Understanding (MOU) on *Cooperation on Non-Traditional Security Issues* in 2004. The objective of the MOU is:

To develop practical strategies in accordance with their national laws and regulations to enhance the capacity of each individual country and the region as a whole in dealing with such non-traditional security issues as trafficking in illegal drugs, people smuggling, including trafficking in women and children, sea piracy, terrorism, arms smuggling, money laundering, international economic crime and cyber crime.<sup>49</sup>

In 2003, China ratified the UN *Convention against Transnational Organized Crime*. In 2004, the China-ASEAN Prosecutors-General Conference was held in China, and both sides agreed to work

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<sup>49</sup> ASEAN Secretariat, “Memorandum of Understanding between the Governments of the Member Countries of the Association of Southeast Asian Nations (ASEAN) and the Government of the People’s Republic of China on Cooperation in the Field of Non-Traditional Security Issues,” (2004 [cited 4 Nov 2004]); available from <http://www.aseansec.org/15647.htm>.

together in the fight against crimes, including transnational maritime crimes.<sup>50</sup>

Shortly after 9/11, in November 2001, Japanese Prime Minister Junichiro Koizumi proposed the establishment of a government-level working group to study the formulation of a regional anti-piracy cooperation agreement at the ASEAN+3 Summit in Brunei. China welcomed the Japanese proposal. Negotiations on the agreement continued for three years. Eventually, the *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia* (ReCAAP) was concluded in Tokyo on 11 November 2004 among 16 Asian countries, including China, Japan, South Korea, Bangladesh, Sri Lanka, India, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.<sup>51</sup>

The ReCAAP agreement came into force on 4 September 2006 however the two key littoral states of the Strait of Malacca, Malaysia and Indonesia, have yet to ratify the agreement. ReCAAP has three aims: Information Sharing, Capacity Building, and Cooperative Arrangements. The key pillar of ReCAAP was the establishment of the Information Sharing Centre (ISC). The ISC is a government-level international organisation that aims to facilitate communication and information exchanges between member countries as well as improve the quality of statistics and reports on piracy and armed robbery against ships in the region.<sup>52</sup> The ISC, located in Singapore, communicates with member countries through focal points in those countries. China has two focal points; one in Beijing and the other in Hong Kong.

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<sup>50</sup> Zhao Jianhua, "Straits Malacca and Challenges Ahead: Perspectives from Littoral and User States," in *The Straits of Malacca: Building a Comprehensive Security Environment* (Kuala Lumpur: Maritime Institute of Malaysia, 2004).

<sup>51</sup> MFA, Singapore, "The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP)," Singapore: the Ministry of Foreign Affairs, 2005, 28 April 2005.

<sup>52</sup> *Ibid.*

## Escorting Period (2008-the present)

The escorting period started from 28 December 2008 when China dispatched its first batch of an escorting fleet to the Gulf of Aden, and is still ongoing. The Chinese PLAN had been considered as a “green water” navy, which was limited to operating within Chinese territorial waters and its Exclusive Economic Zone (EEZ), lacking long distance projection. However China dispatching its first batch PLAN fleet to join other navies in the Gulf of Aden in anti-piracy operations surprised the world. The Chinese response reflected Beijing considering piracy as a securitized issue, which requires extraordinary measures.

The increased number of Chinese victim ships off the Somali coast in 2008 triggered the Chinese escorting operation. There were 22 piracy attacks on Chinese controlled and managed ships in 2008. For example, in the early hours of 14 November 2008, the Chinese fishing vessel, *Tianyu No.8* was hijacked off southern Somalia. Pirates boarded the fishing vessel, hijacked it with its 24 crew members and sailed the vessel into Somali waters. Only four days after this incident, on 18 November 2008 at 0600 UTC, the Hong Kong bulk carrier, *Delight*, was hijacked in Gulf of Aden. The pirates boarded and hijacked 25 crew members as hostage. The pirates sailed the vessel into Somali waters and anchored south of Eyl.<sup>53</sup> The Chinese media gave wide coverage to these cases. The Chinese government was under great pressure from the domestic media appealing for the PLAN to take action to protect Chinese ships. On 28 December, two PLAN destroyers, *Wuhan and Hankou*, and a supply ship, *Weishanhu*, were dispatched from a southern Chinese port to the Gulf of Aden to escort Chinese ships. Since then China has dispatched nine batches to escort Chinese ships in the Gulf of Aden.

<sup>53</sup> IMB-PRC, "Piracy and Armed Robbery against Ships: Annual Report (2008) (Essex: ICC International Maritime Bureau, 2009), p.56.

**Table 2: Chinese Anti-Piracy Missions in the Gulf of Aden (2008-2011)**

Fleet Batch No	Start Date	Names of Ships	Escorted Batches	Escorted Ships	Rescued Ships	Fend off Suspect Ships
1	28 Dec 2008	Destroyers: <i>WUHAN, HANKOU</i> Supply Ship: <i>WEISHANHU</i>	40	206	3	-
2	2 Apr 2009	Destroyer: <i>SHENGZHEN</i> ; Frigate: <i>HUANG SHAN</i> Supply ship: <i>WEI SHANHU</i>	45	393	4	12 9
3	16 Jul 2009	Frigates: <i>ZHOUSHAN, XUZHOU</i>	53	582	9	-
4	30 Oct 2009	Frigates: <i>CHAOHU, MANANSHAN, WENZHOU</i>	24	169	2	-
5	4 Mar 2010	Destroyer : <i>GUANGZHOU</i> Frigate: <i>CHAOHU</i> ; Supply ship: <i>WEISHANHU</i>	41	588	-	-
6	7 Sep 2010	Destroyer: <i>LANZHOU</i> ; Amphibious landing ship: <i>KUNLUN</i> Supply ship: <i>WEISHANHU</i>	49	615	3	4
7	21 Nov 2010	Frigates: <i>ZHOUSHAN, XUZHOU</i> ; Supply ship: <i>QIANDAOHU</i>	38	578		9
8	21 Feb to 29 Aug 2011	Frigates: <i>WENZHOU, MA'ANSHAN, QIAN DAHU</i>	46	507	7	2
9	25 Jul 2011	<i>WU HAN, YU LIN,</i>	41	280	-	-
10	13 Dec 2011- Now	<i>HAI KOU, YUANCHENG</i>				

Source: Ministry of National Defence, China, 2012

#### **IV. CONCLUSION: IMPLICATIONS FOR CHINESE INDIAN OCEAN STRATEGY**

According to the Copenhagen School Securitization Model, the Chinese response to piracy in the Indian Ocean is the path to securitization. With increasing importance of the sea lines of communication, the piracy issue in the Chinese political agenda developed from a “non-politicized” issue (Anti-smuggling Period 1990-2001), to a “politicized” issue (Anti-terrorism Period, 2001-2008), finally reaching the current “securitized” issue (Escorting

Period, 2008-the present). Now Beijing has taken the extraordinary measure of dispatching the PLAN to escort Chinese ships off the Somali coast and in the Gulf of Aden.

One aspect of the Chinese Indian Ocean Strategy is to reduce dependency on the Strait of Malacca for Chinese imports of energy and national resources – the so called “Malacca Dilemma”. The anti-piracy operation in the Indian Ocean provides a precious opportunity for China to realize its Indian Ocean strategy. For example, the Chinese escorting fleet is facing a serious overseas supply problem, calling for the establishment of the overseas supply ports. With the help the local governments, China has built Gwadar port in Pakistan, Chittagong in Bangladesh, and Hambantota in Sri Lanka, which were labelled as “the String of Pearls” by Christopher J. Pehrson.<sup>54</sup>

In order to facilitate the anti-piracy cooperation in the Indian Ocean, Chinese must set up more anti-piracy bases along the Indian Ocean with the help of their all-weather friend, Pakistan.




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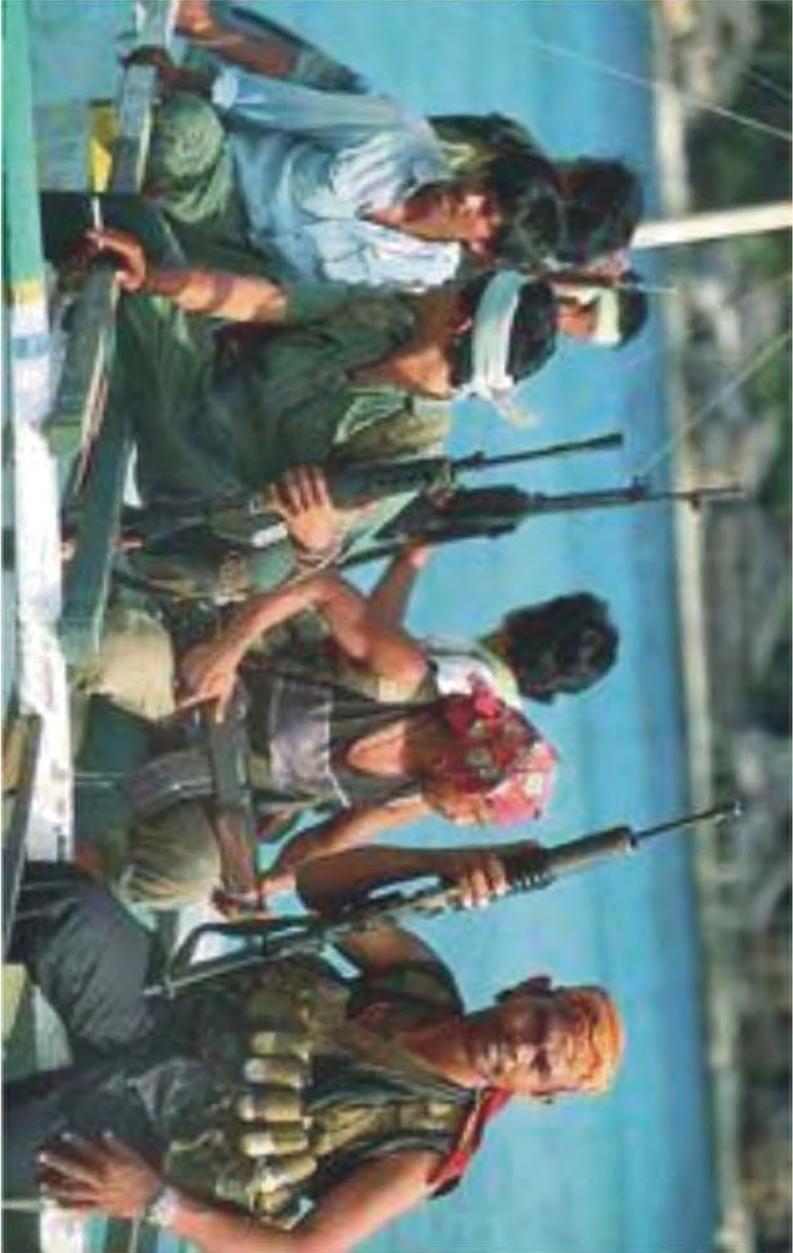
*Professor XU, Ke is Associate Professor with the Faculty of International Relations, Xiamen University, China.*

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<sup>54</sup> Christopher J. Pehrson, “Strings of Pearls: Meeting the Challenge of China’s Rising Power Across the Asian Littoral.” Strategic Studies Institute, U.S. Army War College, July 2006, p.3.



Typical pirates out hunting

## **The Role of Ship Agents: Challenges and Response**

*by Captain Javed Iqbal*

It has been rightly said that piracy against shipping is as old as maritime trade and, like international trade, piracy has also evolved over the years. It was not very long ago – in the late 1980s – when I sailed for almost three years in the Indian Ocean on regular routes from the Persian Gulf to East Africa, India and Pakistan. Mogadishu in Somalia was one of our regular ports where we never had a problem apart from the deep rooted corruption that is common, even in some other African countries. Those three years were the best of my seagoing career: it was so peaceful.

Today the world has changed. Statistics show that there were as many as 1,000 seafarers being held hostage by armed gangs of Somali pirates during the past year, under appalling conditions and subject to physical and psychological abuse. The human cost to seafarers and their families is enormous.

As we all know, over 90% of the world's trade is seaborne, and nearly half of the world's seaborne oil supply passes through the pirate-infested parts of the western and northern Indian Ocean. According to SaveOurSeafarers (SOS), there are over 100,000 seafarers at any one time either travelling through, or preparing to go through the Gulf of Aden.<sup>1</sup> Taking their families' concerns into account, that means half a million people gripped by fear of Somali piracy.

Our agency handles ships calling at Pakistani ports and my managers who normally visit the ships tell me stories from those sailing through the high risk areas – how tense and fearful the Master and crew are, in spite of taking such defensive measures as erection of extensions along the gunwale, welded grills, razor wire,

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<sup>1</sup> SaveOurSeafarers is a maritime industry initiative devoted to raising awareness of the human and economic cost of piracy. Its website is <http://www.saveourseafarers.com/>

etc. Most seafarers taken hostage reported abusive treatment. Those who are released are traumatized and broken in mind and spirit. Young ones have a chance to recover and resume their lives but older hostages rarely return to sea. As other papers have noted, piracy has cost the global economy an estimated US \$7 billion last year. According to SOS figures, only 2% goes toward ransom, while 49% goes to additional fuel burned for increased speed and longer routes, and another 46% to insurance and security, including navies. All in all, the expense ratio between private sector agencies and government is 80:20. Obviously these costs affect the entire supply chain and it is the consumer who is suffering. The fact is that carriers will not pay the additional cost from their own pockets, so it must be built into the commodity's cost and freight (C&F) price calculation.

Looking at the statistics, there is hardly any improvement. In fact it's getting worse. The ransom payments are showing an upward trend, the cost of insurance is rising, plus the pirates' geographical operating area is increasing, as are the number of days that hostages are being held. If you wish to avoid the risky area, the additional fuel costs will kill you. Surely if we do not tackle this problem, the costs will rise even further. When we are talking about a US \$7 billion dollar industry and, as Captain Mukundan has pointed out in his paper, 80% of the pirates caught are released back to their business, this question needs to be answered. There are tens of organizations making recommendations and suggesting measures to operators and Masters but, to be very frank, it is tougher than that. It is one of those things that are easier said than done!

From discussion on the first day of this conference, both in the auditorium and in the hallways, it is clear that all those we speak to who have suffered say that there is lack of *will*, and therefore a lack of *action*. A layman on the street, or in this conference, may ask: "If a guy inside a compound in Abbottabad can be located, why can't they locate and blow up those mother ships with all their equipment like aluminum ladder, weapons, Thurayas (satellite telephones), Global Positioning Systems (GPS), etc.; or those inland command

centers with sophisticated antennas located on the Somali coast?” It should have been done right at the beginning – it is not that easy now since pirates always have some ships in captivity so if harsh action is initiated they can harm the hostages. Consequently the issue is very sensitive and must be treated wisely.

Pakistan has only a couple of ship management companies operating locally. Nonetheless, there are about 40 recruitment agencies which are engaging an estimated 4,000 Pakistani seafarers at any given time. There are only nine ships operated by the Pakistan National Shipping Corporation and, if I take an average of 30 hands on each vessel, we are talking about approximately 270 seamen sailing under the Pakistan flag. Most of our seafarers are engaged by ships flying “flags of convenience”. All of these “sign on” with a Shipping Office through an Article signed by the seafarer and the recruitment agent on behalf of the ship owner or operator. When boarding the ship the seafarer signs the flag state’s “articles of agreement” which is the real contract between the shipowner and the seaman.<sup>2</sup>

The Philippines is the largest and most organized country today with respect to seamen’s training and skills, providing approximately one-third of the world’s seamen, followed by China and Indonesia. The Philippine government requires all local and foreign recruitment agencies to follow strictly the procedures and contracts issued by the Philippine Overseas Employment Administration (POEA) which protects its nationals in event of incidents like injury or death. Similarly, the Maritime and Port Authority (MPA) in Singapore governs all the functions and procedures related to the maritime sector, including the hiring of seamen, so that proper employment procedures are followed. In Pakistan, how well the recruitment agent can help the seaman and his family depends on the relationship between the agent and the owner, as well as the reputation of the

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<sup>2</sup> The procedure is governed by International Labour Organization instruments such as the *Convention Concerning Seamen's Articles of Agreement* (1926), the *Recruitment and Placement of Seafarers Convention* (1996), etc.

owner/operator. Reputable and God-fearing owners really take care of their crew and keep their recruitment agents informed so that families of seamen receive updates on their whereabouts. On the other hand, substandard owners vanish from the horizon soon after any incident occurs.

To give you a good example from my personal experience:

We loaded a ship with bagged cement for the Seychelles and Comoros, as well as general cargo for Dar es Salaam. After discharging cement in the Seychelles and on the way to Dar es Salaam, just 3 hours after leaving the port in morning hours, it was boarded by pirates in a position almost 800 miles from Somalia. The pirates took command and took the ship to the Somali coast. Three naval vessels arrived on the scene but could not do much as the pirates had already boarded the ship. It remained anchored off the Somali coast for 11 months.

During all this time, the ship's operator first sent his representative to Karachi to meet with the crew's families, then sent crew salaries to their families, and called the families regularly to reassure them about the wellbeing of their loved ones. I spoke to ship's Chief Engineer who told me about the torture they been through for all those 11 months confined on board the ship. Most of the time they had very little food (only broken rice, potatoes and onions) which they boiled in sea water as there was hardly any fresh water available. With no fresh water for showers they sponged their bodies with sea water and as a result developed skin problems. When the ship's cook died they could not send the body for burial ashore but instead disposed of his remains in the sea. The only comfort they had was that their families were getting full support from the operator.

The ship's underwriters negotiated the ransom amount and later, two low flying planes filmed the ship and then dropped a bag with the money. After getting their money the pirates left the ship and the

poor crew tried to prepare it for sailing. But, after 11 months at anchor, there was sea growth almost a foot wide all around the ships' side so at full speed it hardly made one knot. Later, experiencing some water ingress, they sent an SOS distress message and an Italian naval vessel rescued them and took them to Mombasa. The operator was there to receive them, accommodated them in a five-star hotel and, when the medical checkups were done, flew them home. The ship was a total loss and sank off the Somali coast.

Unlike this example, the substandard operators disappear over the horizon when such incidents occur, and even recruitment agent doesn't know the whereabouts of the ship. When these agencies try to call such shipowners they either fail to reply or say "we will contact you once we require any change of seaman and need to hire new ones".

In dealing with shipowners for crew employment, a recruitment agent should ensure that:

- shipowners have insurance coverage for the crew in case of hijacking, since kidnap and ransom insurance cover will ensure that ransom is paid and crew is taken care of; and
- that Best Management Practices (BMP) are implemented on the ship.

Frankly speaking, however, recruitment agents are stuck between the ship operator and the families. They often get little information from owners but full pressure from families and local authorities. As Mr. Ahmad Chinoy explained in his paper, the negotiation process with pirates is very complex and affected by many factors, hence the limited information from ship operators is understandable.

So how can the recruitment agent face the challenge?

The foremost challenge is this: in a piracy situation it is vital for the agent to gain the confidence of crew's families as quickly as possible so that they support the shipowner or operator during any sort of captivity that may occur. Experience shows that having the families on the agent's side helps the operator to focus on dealing with the pirates appropriately rather than having to focus on all the worries and concerns of families.

Agents should have a clear understanding with ship operators that in the event of a hijacking, information shall be made available to the agents to allow them to deal with the families, authorities, cargo owners, etc. As soon as the hijack of a vessel is established, the following principles should be followed.

- If naval forces are unable to affect a rescue, expect that the pirates will try to move the vessel to one of their ports on the Somali coast and stabilise the vessel before starting a negotiation process. Do not expect any contact until that time. It is of course possible that the master will call ship operator again to explain what is happening.
- The agent should contact individual families and any other relevant parties, including authorities who have an interest in the vessel.
- The agent should be prepared to advise the families in writing to give them a confidence as soon as the situation clarifies (a suggested format is provided below). It is important that families should learn the facts officially before they hear them from the media. That will also give them confidence in the agent as the one who will help them.
- Prepare a statement for the media which should be as non-committal as possible, simply confirming the facts. The media get hold of information about events like these surprisingly quickly so the agent must be ready for this.
- Identify with ship operators how many days of fuel and provisions are on board. This will help to determine how best to help the vessel safely. The pirates may pressure the Master to report that the fuel and food are running out far sooner than it will actually

happen. It is very important that this information is established so that pressure tactics by pirates can be understood.

- In case the Master calls the agent, a short script for responding to the call should be prepared: something like:  
*“Thank you for calling. I will contact the owner and would like you to call me back in 24 hours, once I have located him... I suggest a call on this number between ..... (a time window agreed with the ship operator --- ideally a new number so that it can be dedicated to the negotiating)... or can I call you back, myself in (the same time window)?”*
- It is very important to start and maintain a detailed log of events to record accurately all contacts made between the agent and all other parties. This will be important to confirm who said what to whom, and when.
- Continue with updates and keep families and all other relevant parties advised.

I hope that this sheds some light on the practical implications and challenges of piracy that are faced by agents, and offers some practical solutions for this part of the world.




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*Captain Javed Iqbal is a Master Mariner and MICS who earned his Masters from the University of Glamorgan in Cardiff, UK. He sailed for 16 years with Asian and European ship owners before settling ashore to serve a Swedish origin shipping agency in Pakistan for 16 years and now as the elected Chairman of the Pakistan Ship Agents Association. He is also CEO of EastWind Shipping, Pakistan, as well as Director of GreenPak Shipping and BluePak Shipping Pakistan.*

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### Sample Format for a Letter to Families of a Hijacked Crew

Dear .....

I would like to give you an update on the present situation with regards to the hijack of the MV ----- and its crew.

The vessel was intercepted by pirates at approximately ----- hrs on ----- 2012, near \_\_\_\_\_ en route to \_\_\_\_\_.

- I. There has been no contact from the pirates to date. This is not unusual as the pirates are only likely to communicate when they feel secure and are ready to articulate their demands. We were contacted by the Master as the pirates were in the process of boarding the vessel but have since been out of contact. We are not yet aware of the situation but some time will be needed before the situation is clarified.
  
- II. It is likely that your relatives will shortly be taken to the coast of Somalia, but their current location has not yet been confirmed.
  
- III. Experience shows that in comparable Somali piracy cases, the crews have been treated relatively well by the pirates, who have their own code of conduct and are seafarers themselves.
  
- IV. When the pirates do make contact, it is likely that there will be several threats made to increase the pressure on the shipping company to accede to the pirates' demands. The crew may even be asked to call their families and to inform them about bad treatment, separation from the other crew members, limited or no food, brutality and violence etc., but these claims are generally untrue. However, in some cases the crew has not been allowed to talk to their families, which could increase your concern and frustration.
  
- V. If you are contacted, you may be asked by the pirates or your loved ones to call the media to increase pressure on the company for a resolution. We would ask you not to do that. Their pressure and media interest have been shown to prolong incidents rather than shorten them. In such circumstances, please call us immediately for advice on how to respond. You can contact us or the owners at this/these number(s) .....

### Sample Format for a Letter to Families of a Hijacked Crew

- VI. The pirates may also try to open a negotiation with you. If you do speak with them, they will exploit every opportunity to apply pressure on the situation. This will prolong the case.
- VII. As the agent of employers of the crew, and responsible for the safety of all employees, all threats and demands will be taken seriously and we reassure you that all efforts will be made to resolve the situation. The safety of your relatives is our highest priority.
- VIII. We are taking advice from the appropriate national and international authorities, as well as other organisations with considerable experience in such situations.
- IX. You will appreciate that owners cannot relay to you every detail of our communications with the pirates. We will, however, undertake to keep you advised of any key developments and give you regular updates on the situation. This can often be a long process so please understand that days will go by with little change in the situation. Should the pirates or your captive relatives contact you, then please understand the intent is to place pressure on the situation. Listen to what is said and explain the matter is being dealt with by the company. Give your relatives every encouragement that all is being done to affect their release. Please  
  
inform the company of any contact.
- X. It is not in the interests of the pirates to harm the crew. Generally they are treated humanely, but we must accept there is always risk in such situations. Boredom and frustration is commonplace amongst crews held in such situations. They will also feel intimidated by the pirates. *(Explain details of family liaison contact. Who to call and the contact telephone number. Explain how updates will be delivered).*
- XI. I hope and am sure that we will solve the matter together, even though it will require considerable patience. This will take time. Do not expect this to be over soon. Six months duration would not be unusual. Some other cases of course are shorter: others have been longer. Our thoughts and sympathies are with you and your families.



Somali Pirates on a captured ship

## **Legal Options for Crews and Families** **by Mr. Ali M. R Thaheem**

Paper not available for publication

### **Editor's Note:**

Mr. Thaheem pointed out that while the human cost of piracy to crews and families is impossible to calculate, one international organization has estimated the annual cost of piracy overall to be between \$4.9 and \$ 8.3 billion.

Legal options for family and crew vary from case to case, depending on the terms of the seafarers' employment contracts and the terms of insurance coverage provided under the marine insurance policy held by the shipowner. There may be a lack of clarity on who will act on behalf of the victims.

He suggested that kidnap and ransom (K&R) insurance is probably the most efficient way of dealing with a hijacking. Coverage usually includes guidance through the negotiation process, medical assistance, salary of the crew, the fees of the negotiators, etc. Quick payment of ransom usually results in quick release, which is attractive to many shipowners. The problem is that K&R insurance is usually taken out only by shipowners from developed countries, but rarely by owners using open registries ("flags of convenience"). In those cases the norms are not followed and the interests of the crew not protected. Such owners treat the insurance as unnecessary expense, and any policies they do get tend to neglect the interests of the crew. In Mr. Thaheem's view, the United Nations must take steps to ensure that all shipowners provide the appropriate insurance to protect the interests of the crew and their families.

Mr. Thaheem then discussed whether ransom is indeed the most efficient way of dealing with pirates and concluded that there is no clear answers. Insurers only pay when the shipowner has a legal liability. In the absence of liability, protection and indemnity (P&I) clubs have made it clear that they are not liable for ransom payments.

Shipowners must ensure that the needs of families are met and that post-event support is provided. If owners or insurers do not meet their obligations, then it is the responsibility of states to take action. Once an action is commenced against any shipowner, its ships may be seized in any port in the world.



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*Mr. Ali M. R Thaheem is Legal Associate with Surridge and Becheeno, Karachi, Pakistan.*

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# **P&I Coverage: Available and Proposed**

## **by Mr. George Kiourktsoglou**

### **INTRODUCTION**

The commercial impact of Somali piracy on the shipping industry has been massive, with more than US \$160 million paid for ransom in 2011 alone. Global trade has been badly affected, a fact that has compounded the decelerating rate of international economic growth. In the meantime, national governments around the globe are strongly urged to assume a more aggressive approach and to put an end to the pirates' menace off Somalia.

Pundits claim that a long term viable solution to the problem inevitably lies ashore and not at sea. Political and economic analysts talk of growth and infrastructure projects in Somalia to attract back Somali youths currently "employed" in "piracy ventures" along the coast(s). However, we all need to ask ourselves a simple, straightforward question: "Do we really understand Somali piracy? Can we see "behind the curtain" and adopt broader perspectives along with deeper insights?"

This presentation does not aspire to reinvent the wheel. It aims neither to extol nor to cast stones. It just purports to add to the improvement of seafarers' welfare.

### **STATISTICS**

Piracy's "Kidnap and Ransom" polls of interest feature the pirates, the business interests (ship owners, charterers, shippers, marine insurers, agencies of all kinds etc) of international shipping and the seafarers. On any given day more than 100,000 seafarers prepare for or transit through the Indian Ocean and the Gulf of Aden. In 2010 alone, 4,185 seafarers were attacked, 1,090 held hostage, 342 used safe rooms or "Citadels" and 516 were used as human shields. Between 2007 and 2010, 3,500 people (mainly seafarers) were held

hostage (62 among them never made it back). As of February 2<sup>nd</sup>, 2012, 225 hostages were being held at sea (average duration of captivity, eight months) and 26 hostages ashore (average duration of captivity, ten months). Ominously, one out of every three seafarers held hostage by Somali pirates has been subjected to some type of torture.

Based on the most recent research, 52% of the "seajacked" crews come from five countries: the Philippines, India, China, Thailand and Ukraine. It also seems that the presence of a country's naval forces off Somalia has statistically no impact on the seajacks of crews which include any number of its nationals. Last but not least, although one out of every four seafarer victims of Somali pirates comes from the Philippines, the island nation has no naval presence off East Africa.

Although in the last quarter of 2011 the numbers both of ships held by pirates and hostage crews have considerably gone down, the average ransom (paid to Somalis) has shot up to more than \$5 million, a rather meteoric growth.

## **P&I CLUBS**

A "Protection & Indemnity" club is a mutual association of shipowners and charterers. It mainly covers liabilities, risks and expenses of its members. Every club has its own rules. Typical covers provided by a P&I club include:

- injury, illness and death of seamen;
- repatriation & substitute expenses;
- wages, shipwreck and unemployment indemnity;
- loss of damage to the effects of seamen and others; and
- life and salvage.

Interestingly, a P&I club also offers "Piracy Unemployment Indemnity" cover (code for unpaid wages while crews in captivity) with one condition attached: the shipowner must first pay and then

claim the monies from the Club. Taken from a seafarer's standpoint, the above cover, although it is a step in the right direction, does little to offer relief to the seafarers themselves and their families, while the former are in the hands of pirates. The reason is twofold:

- When a crew is held hostage, wages must still be paid, even if payments of the charter party's hire discontinue to the shipowner.
- Wages must be directly paid to the seafarers' families (and not indirectly through the shipowner).

## EPILOGUE

For the above reasons, the setup of a special fund could be of great use in the case of seafarers who have fallen into the hands of pirates. The fund could easily be created and managed by national branches of the International Transport Federation. Contributions could be made by shipowners, charterers, shippers, national governments and seafarers themselves (preferably on a voluntary basis entailing full entitlement). The fund would make payments directly to the families of the crews if the latter were held hostage. In this way, the families could count on some form of financial support while their loved ones remained away and incapable of providing income.




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*Mr. George Kiourtsoglou is a currently a PhD Candidate in Maritime Security at the University of Greenwich, (UK) where he also works as a Part Time Lecturer on Strategy and Management. Prior to that, he worked for Royal Dutch Shell in the downstream sector.*

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Participants at the Conference

## General Insurance: Options for Distressed Mariners

*by Captain Azhar Ehtesham Ahmed*

The face of modern piracy has changed from mere boarding and looting to a manifestly egregious act. Today, safe havens provide pirates with the comfort of lengthy periods of safety, so the time hijacked seafarers spend in captivity has expanded from mere days to sometimes more than a year. Consequently there is a wide range of stakeholders suffering from contemporary piracy, representing:

- the ship;
- the cargo;
- freight and time hire costs;
- loss of opportunity; and
- crew members and their families.

### MARINE HULL INSURANCE,

Marine hull insurance coverage may be based on time, rather than voyage, in which case coverage ceases after a specified time, whether or not the ship has completed its voyage. Consequently, if a ship is detained for a long period of time, its marine hull insurance may expire before it reaches the port of destination. At one time, piracy was usually covered as one of the insured perils of the sea, but that is a matter of insurer's discretion and it is now generally excluded.

A War Endorsement does provide cover against piracy, and ransom may be covered under General Average or Sue and Labour expense.<sup>1</sup> Prolonged detention of a vessel may entitle the owner to

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<sup>1</sup> **General average** refers to loss from voluntary sacrifice of any part of the ship or cargo or expenditure to safeguard the ship and remaining cargo. **Sue and labour** refers to the right of an insured party to "sue, labour and act in defence of" property without prejudice to rights under the insurance policy.

claim a Constructive Total Loss (CTL).<sup>2</sup> Similarly, covers for Loss of Hire is available to ship owners or charterers. Similar cover is also available for cargo interest. Loss of Hire refers to the loss of income resulting from the vessel being out of operation and unable to continue earning income as a freighter. In addition to the time spent in captivity, this period may also include the time required to re-commission the vessel after its release, repair damage, or other reasons delaying return to service.

As discussed above, if a ship, as a result of prolonged captivity, is declared a total loss, there will be nothing left for Sue and Labour. In another case, if the ship is released but part of the crew is abducted, the hull insurer or the cargo interest will not be obliged to make any further payments because the subject matter of the insurance (ship and cargo) will no longer be endangered – the case of M.V. *Leopard* is one example.<sup>3</sup> The amount of ransom alone may exceed the maximum liability under hull insurance (the value of the vessel minus cargo). Protection and Indemnity (P&I) clubs may be expected to cover shipowner's liability to the crew, however ransom and legal liability are antonyms. Ransom is considered an illegal act and therefore does not constitute a legal liability of any sort. The P&I club will therefore restrict itself to paying the crew cost, and that only after the shipowner has met that cost out of his own resource.

## KIDNAP AND RANSOM (K&R) INSURANCE.

Kidnap and Ransom (K&R) insurance is commonly used by business executives at risk and employees of companies operating in

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<sup>2</sup> **Constructive Total Loss** (CTL) is when the cost of repairing or recovering lost or damaged property plus the value of the salvage would exceed the property's value when repaired or recovered.

<sup>3</sup> In January 2011, MV *Leopard* was attacked by pirates 200 miles off the coast of Oman after its security team had disembarked. The Danish crew were taken hostage and transferred to a mother ship. The ship was later found adrift with engines disabled. The crew remain captive.

potentially dangerous areas. There is also Marine K&R insurance available for shipping. Typical coverage is as follows.

### ***The Ship***

- Cash value of ransom and its possible loss in transit, as well as cost of the courier.
- Fee of negotiator, crisis manager, public relation consultant.
- Interest on the ransom.
- Cost of fuel oil during the event and charges of by port authorities.
- Communication and/or advertisement cost incurred to facilitate the release.
- Defence costs.

### ***The Crew***

- 100% of gross salary and other benefits.
- All medical, psychiatric and rehabilitation expenses.
- Personal Accident, Death and Disability benefits.
- Repatriation of mortal remains and burial expenses.

Taking out Marine K&I insurance offers many advantages, including these.

- Complete and certain protection.
- Special support by retained professionals.
- Speedy settlement.
- Availability of pre-voyage audit, training and piracy threat response.
- Reduction in War Risk premium (50% on \$5 million cover).
- The K&R policy, with a waiver of subrogation or vicarious liability, becomes the primary cover.
- Hull and War policies may provide a top-up cover.
- The loss records of marine hull policies are protected.
- Can be extended to cover loss of hire with no deductible.

The problem is that not all ship owners take out such coverage and, at the moment, there are no affordable insurance plans available to individual seafarers.

## A LOCAL SCENARIO

It is possible for a company like mine to devise insurance cover that would provide relief to bereaved families in addition to the other existing protections. The table below shows two options for typical cover that could be offered to individuals at affordable rates.

<b>Cover</b>	<b>Option 1</b>	<b>Option 2</b>
<b>Death during captivity</b>	5,000,000	2,500,000
<b>Monthly allowance to family</b>	100,000	50,000
<i>All figures in Pakistan Rupees. Thirty day waiting period for allowance</i>		

## THE WAY FORWARD.

To a large extent, an individual sailor is limited in choice of employer. Consequently in Pakistan the Articles of Agreement, Gazette and Merchant Shipping Ordinance need to be revisited to provide better protection. Another useful and helpful initiative would be the formation of a voluntary body representing the Pakistani seafarers. In addition, the establishment of affordable personal K&R insurance for individual seafarers would be a significant step forward.



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***Captain Azhar Ehtesham sailed the high seas as a merchant mariner for 17 years before taking an early retirement from command and stepping into the profession of non-life insurance. Property and casualty has been his specialty. He had also served as the CEO of a mid tier company in Pakistan for six years before joining Alfalah Insurance Company as Executive Director. A graduate from University of Karachi and a Master Mariner, Capt. Ehtesham has also studied at Nautical Institute of Warsash, Southampton..***

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View of the capacity packed Conference Hall

# **CTF 151 Counter Piracy Operations: Naval Cooperation**

*by Rear Admiral Kaleem Shaukat, SI(M)*

## **INTRODUCTION**

On behalf of the Pakistan Navy I had the privilege of commanding Combined Task Force (CTF) 151 from September 11<sup>th</sup> 2011 to January 12<sup>th</sup> 2012. The opportunity provided good insight into the dynamics of piracy off the coast of Somalia and the challenges being faced by the counter piracy forces dealing with the problem.

I must highlight here that piracy is the result of the instability in Somalia, and naval forces at sea are only dealing with the symptoms of a problem whose comprehensive solution lies ashore.

There are three Task Forces operating in the area to deal with piracy: Combined Task Force 151, NATO Task Force 508 and European Union Task Force 465 commonly known as EUNAVFOR. CTF 151 is led by the United States and is a coalition of 25 nations. Its command is rotated between various participating nations and the Pakistan Navy has commanded it twice.

Besides these Task Forces there are a number of countries operating their naval ships independently to protect merchant shipping in the Gulf of Aden. These include China, Russia, India, Japan, Thailand, Korea and Malaysia. At any given time there are approximately 30 or more ships operating in the Gulf of Aden and Indian Ocean (GOA/IO) region to deal with pirates. Compared to the area in which piracy has spread, i.e., 2.1 million square miles, the counter-piracy forces face a gigantic task.

Besides these ships there are a number of maritime patrol aircraft and organic helicopters which carry out aerial surveillance of the area continuously to locate and monitor pirate activities.

## OVERVIEW OF PIRACY ACTIVITIES

Piracy has gradually spread from a limited area off the Somali coast and Gulf of Aden into the wider Indian Ocean, thus making the task of counter-piracy forces difficult. Pirates keep shifting their tactics, techniques and procedures in response to the deployment pattern and capabilities of counter-piracy forces. Nowadays they hijack dhows and use them as “mother ships” in areas far from the Somali coast. These dhows, because of their appearance, are difficult to distinguish from genuine fishing vessels and therefore difficult to identify as pirate vessels. Similarly, the pirates are known to use Automatic Identification Systems (AIS) to determine details of merchants ship movements and cargo, and accordingly choose their target according to ease of boarding and potential to fetch maximum ransom. Also, in the Gulf of Aden and Bab el Mandeb, they operate small skiffs which merge with legitimate fishing vessels, thereby masking their intentions.

## NAVAL FORCES COUNTER PIRACY CAMPAIGN

- **CTF 151.** To deter, disrupt and suppress piracy and bring it to a level where it can be managed by the regional countries.
- **CTF-508 (NATO).** To deter and disrupt piracy to the maximum extent possible, protect vulnerable shipping, and provide presence and reassurance in their Area of Operations to enhance the general safety of commercial traffic in the region. The military end state for NATO’s operation is that the incidence of piracy is reduced to a level not requiring international intervention in accordance with United Nations Security Council Resolutions (UNSCR).
- **CTF-465 (EUNAVFOR).** To protect vessels of the World Food Programme and African Union Military Mission in Somalia (AMISOM) proceeding to and from Somali ports. Also to conduct counter-piracy operations in coordination with other Task Forces.

- **Independent Deployers.** The independent deployers generally have the mandate to escort/protect shipping transiting through the Gulf of Aden and operate under national Rules of Engagement (ROE).

## KEY LINES OF OPERATION

### Military

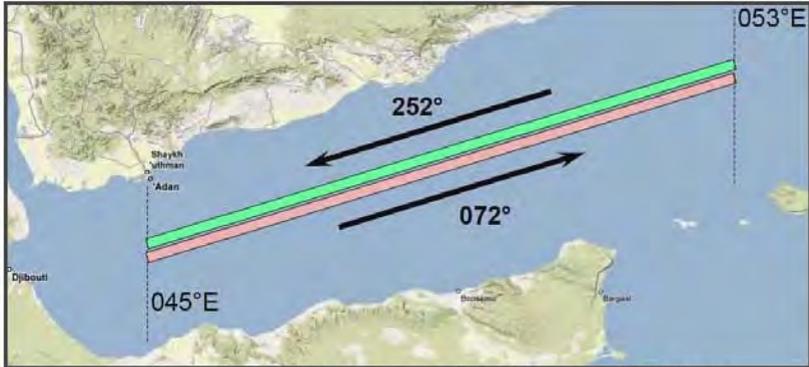
Military engagement, better situational awareness and effective counter-piracy presence are the focus areas under the military line of operation. The Task Force commanders maintain good coordination amongst each other and with the Independent deployers to deal with piracy. During our tenure in command of CTF 151, I visited CTF 508, CTF 465 and a number of independent deployers which helped with better coordination and synchronization of our counter-piracy efforts. Similarly, considering the vastness of the area of operation it is important to have good situational awareness and intelligence on pirate activities ashore as well as at sea. This is being done through aerial surveillance by shore based maritime patrol aircraft as well as through organic shipborne helicopters. Better situational awareness helps in better placement of ships in the most likely pirate operating areas, thus helping greatly in disrupting pirate “mother ships” or preventing merchant ships under attack from being pirated.

Now a few words about the “Scheme of Manoeuvre”. The Gulf of Aden remains the prime area of focus because of its restricted waters and close proximity of land. An Internationally Recommended Transit Corridor (IRTC) has been established, however I would like to highlight that escorting operations are conducted only by the independent deployers between points *Alpha* and *Bravo*.<sup>1</sup> The ships under various Task Forces do not escort ships but can provide

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<sup>1</sup> The eastern and western extremities of the IRTC.

“Supported Transit” to a ship vulnerable to piracy if requested. Under “Supported Transit” a naval ship is kept within 30 minutes reaction time from the ship being protected.



**Figure 1. Internationally Recommended Transit Corridor (IRTC).**  
(Source: NATO Shipping Centre)

In the Somali Basin, the counter-piracy campaign is conducted in three stages: “Insight”, “Contain and Disrupt”, and “Find and Neutralise”. During the Insight phase, intelligence is obtained on pirate activities along the Somali Coast. Containment and disruption is done through placement of counter-piracy ships near high probability pirate anchorages or towns. Finding pirates and their neutralization is done against pirates dhows which manage to escape to the high seas. During our tenure in command of CTF 151 approximately 36 disruptions of pirate vessels were carried out.

## Maritime Industry

The counter-piracy forces remain engaged with maritime industry and the merchant community, encouraging them to comply with the Best Management Practices (BMP) promulgated for the safety of merchant ships against pirate attacks. The latest edition, BMP4, is a comprehensive document recommending a number of measures ranging from “Bold” manoeuvres, to use of water cannons and

having a protective citadel. Similarly, merchant ships are encouraged to register with the Maritime Security Centre – Horn of Africa (MSC-HOA) and United Kingdom Maritime Trade Office (UKMTO) while they are transiting through the Gulf of Aden/Indian Ocean region. The advantages are:

- Regular updates on piracy prone areas and incidents.
- Fastest channel to inform counter-piracy forces in the vicinity if the ship is in danger or under attack.
- Best channel to route requests to independent deployers in the vicinity for joining convoy through the IRTC.
- Services available 24 hours a day, seven days a week, 365 days a year.

Embarkation of armed security teams is also encouraged as this provides the best bet against a pirate attack. It was our experience that a ship with an embarked security team was never pirated. The Coalition Maritime Forces (CMF) have also established the Shared Awareness and De-Confliction (SHADE) forum wherein all stakeholders affected by piracy get together and deliberate on ways and means to tackle piracy.

## **Regional Capacity Building**

Regional capacity building forms the corner stone of the desired end state of the Coalition Maritime Forces counter-piracy campaign plan and, in fact, is a component of the UNSCRs. A comprehensive plan was made to interact with key leadership of Oman, Djibouti, Yemen and Saudi Arabia. This helped greatly in exchange of ideas and sharing of vital counter-piracy related information. Similarly, ships going for a port call were encouraged to interact with the local key leadership, maritime community and naval forces. The overall aim is to provide training in counter-piracy operations to maritime forces of the country, whether navy or coast guard; conduct joint exercises in

order to develop inter-operability; and enhance level of information sharing.

## CAMPAIGN PLAN ASSESSMENT

During our 14 weeks in command of CTF 151 the success rate of the pirates was kept down to a minimum level. Only two ships got pirated, primarily due to non-compliance with BMPs, compared to 19 ships during the same period in year 2010. Similarly, there were seven ships in pirate custody on January 15<sup>th</sup> 2012 as against 19 ships at the same time last year. Figure 2 shows some of the important statistics.

<b>Event</b>	<b>27 Sep 2010 to 10 Jan 2011</b>	<b>27 Sep 2011 to 10 Jan 2012</b>
<b><i>Pirated</i></b>	<b><i>20</i></b>	<b><i>2</i></b>
<b><i>Attacks</i></b>	<b><i>78</i></b>	<b><i>24</i></b>
<b><i>Disruptions</i></b>	<b><i>38</i></b>	<b><i>21</i></b>
<b><i>Total Incidents</i></b>	<b><i>136</i></b>	<b><i>47</i></b>

**Figure 2. Comparative Statistics**

These statistics speak of the success of the counter-piracy campaign plan. Here I would like to highlight that this was only possible due to good coordination between all the Task Forces and the independent deployers. This wholesome strategy gradually created an environment in which a large number of independent deployers started contributing towards IRTC patrol efforts including helicopter sorties; intelligence, surveillance and reconnaissance (ISR); and intelligence updates. Engagement with key leadership of regional countries especially Oman and Djibouti, also helped in achieving better response by these countries in case of pirate activities near their coastal waters.

## CHALLENGES

It is considered pertinent to highlight the following challenges in countering piracy off the coast of Somalia.

- **Lack of a comprehensive approach** towards tackling the piracy issue is a major impediment in attainment of the assigned mission. While the naval component is active in deterring, disrupting and suppressing piracy, progress toward political engagement ashore with Somali authorities and improving the economic conditions in Somalia is not being pursued with the same vigour. Hence piracy, which is a symptom of the instability in Somalia, is being tackled without any headway towards addressing the root causes.
- **Lack of effective legislation** to prosecute the pirates in regional countries is resulting in a “catch and release” approach by the naval forces dealing with the pirates. Once the pirate skiffs or dhows are apprehended, counter-piracy forces prefer to throw the piracy related paraphernalia overboard and let the pirates go, rather than taking them to a court of law. Hence the pirates return to sea with greater vigour after a few days. This approach has also emboldened the pirates who fired upon the boarding team of the Italian warship *ITS Andrea Dorea* while it was approaching their dhow for a compliant boarding.
- **Lack of requisite force flow** is another impediment to maintaining effective presence in the vast Area of Operations. It was felt that there were not enough ships available to effectively guard the high risk Gulf of Aden/IRTC region, conduct containment operations off the Somali coast, and at the same time deal with the Pirate Action Groups active on the high seas in the Indian Ocean/Somali Basin (IO/SB) region.
- **Piracy has become a lucrative business.** There is hardly any effort being made to track the ransom money after it is delivered to the pirates. If this money were tracked and the actors involved

identified and prosecuted it would be an effective deterrent to all those involved.

- ***There is a need to track down the sponsors, financiers and officials*** who are the main characters and beneficiaries of the piracy value chain. Until this is done, piracy is likely to grow in the foreseeable future.
- ***While EU and NATO are engaging with counter-piracy actors ashore in Somalia/ Puntland there is no such engagement by the CMF.*** This is also considered an impediment in finding a solution to the piracy issue.

## **PAKISTAN NAVY COUNTER PIRACY EFFORTS**

Pakistan has been a staunch supporter of an integrated approach to combating the menace of piracy. Pakistan shares the international will and desire to find the right way forward, which would lead to not only to eradication of piracy, but also the elimination of causes germinating this threat. It is important to note that despite limited assets and national commitments, the Pakistan Navy has been able to augment coalition efforts, which is a testimony to its sincere commitment to contain and eradicate maritime threats prevailing in the region in all their forms and manifestations.

So far, eleven Pakistan Navy destroyers in rotation have completed Counter Piracy Deployments in the Gulf of Aden and Horn of Africa region as part of CTF 151. Pakistan Navy ships provided supported transit to a number of high risk and vulnerable shipping through the Gulf of Aden and rescued numerous survivors under the provisions of the Safety of Life at Sea (SOLAS) convention during counter-piracy operations. So far, the Pakistan Navy has commanded Task Force 151 twice; once in late 2010 and again in 2011. This is a matter of pride for Pakistan in general and the Pakistan Navy in particular. The Pakistan Navy is the first regional navy to command TF 151 which is, besides other things, a rewarding experience for Pakistan Navy.

At home, the Pakistan Navy has formulated national Counter Piracy Measures to deter piracy in Pakistan's own Exclusive Economic Zone (EEZ). Fleet units are regularly tasked to conduct piracy sweeps and conduct surveillance of the area to locate pirate groups, suspicious boats and mother ships. Guidance and appropriate instructions are provided to Pakistani flag carriers scheduled to transit through piracy prone areas.

## CONCLUSION

The command of CTF 151 provided a good opportunity to understand the dynamics of piracy off the coast of Somalia. The Coalition Maritime Forces campaign plan is effectively suppressing piracy through military engagement, regional capacity building and encouraging implementation of Best Management Practices by merchant ships. However, presence of the requisite number of counter-piracy ships cannot be sustained indefinitely and a comprehensive approach addressing the root causes of piracy ashore in Somalia is needed to deal with the problem. It is believed that the approach adopted by the counter-piracy naval forces to achieve the aim is weakened due to a number of factors, the main being non-existence of effective legislation or a dedicated court of law where piracy related cases could be pursued and effective punishments given to those proven guilty.

Lack of active engagement with the counter-piracy actors ashore in Somalia is another limiting factor. A comprehensive approach which tackles the root causes of piracy ashore and deals with the symptoms at sea is required to achieve the desired aim.




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*Rear Admiral Kaleem Shaukat, SI(M) is former Commander of CTF151 and is now Commander of the Pakistan Naval War College in Lahore, Pakistan.*

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A distinguished audience

# **A Shipowner's Perspective on the Impact of Piracy and Policy Initiatives Needed**

*by Mr. Muhammad Yousuf*

Piracy clearly affects the world largest trade transport industry, the shipowner, but how much is it costing the world? The One Earth Future (OEF) foundation has conducted a large-scale study to quantify the cost of piracy as part of its Ocean Beyond Piracy project. Based on our calculations, maritime piracy is costing the international economy between \$7 and \$12 billion US per year.<sup>1</sup>

Approximately 80% of world trade currently travels by sea, representing around 93,000 merchant vessels, 1.25 million seafarers and almost six billion tons of cargo. Since the end of the Second World War, seaborne trade has doubled every decade. In recent years, the international community has witnessed one of the world's oldest crimes against this trade, piracy, re-emerge and flourish.

## **COSTS OF PIRACY**

### **The Cost of Ransom**

One of the most spectacular increases in the cost of piracy in recent years has been the increasing rise of ransoms paid to release hijacked ships. In 2005, ransoms averaged around \$150,000 US; by 2009 the average ransom had risen to around \$3.4 million; in 2010 the average was about \$5.4 million. The total cost of ransom is estimated to be approximately double the amount actually paid to pirates because of a number of factors such as cost of negotiation, psychological trauma counseling, repair of ship damage caused while it is held captive, and the physical delivery of the ransom

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<sup>1</sup> For details on the One Earth Foundation see <http://www.oneearthfuture.org>.  
The Oceans Beyond Piracy website is <http://oceansbeyondpiracy.org/>

money which is often done by helicopter or private plane. Finally, large costs result from ships being held out of service.

### **The Cost of Insurance**

In reaction to the growing threat and cost of ransoms, the maritime insurance industry has responded by increasing its shipping rates and premiums, especially in designated high risk piracy zones. Shipping insurance comes in four main types: war risk, kidnap and ransom, cargo, and hull.

### **The Cost of Re-Routing**

For some vessels, especially low and slow moving ships which are at greater risk of pirate attack, avoiding risk zones altogether may be a safer or cheaper option, but re-routing ships on a longer voyage also has its costs. Routing a tanker from Saudi Arabia to the United States via the Cape of Good Hope adds about 2,700 miles to the voyage. A re-routing from Europe to the Far East will add about 6 extra days to a journey for a liner and up to 15 or 20 days for a cargo ship. This excess duration of transmit time reduces a vessel's annual voyages equivalent to about a 17% reduction in its yearly delivery capacity. We can make a rough estimate that the shipping industry pays around \$2.3 to \$3 billion additional per year by re-routing ships to avoid piracy.

### **The Cost of Deterrent Security Equipment**

Ship owners may also attempt to protect their property and crew from pirate attacks by preparing their ships with security equipment and/or personnel prior to transiting a high risk zone. The OEF cost model estimates that if a ship were to purchase all forms of security equipment and personnel, on average they would pay around \$134,000 per transit. We calculate that the total cost of deterrence

equipment to the shipping industry is between \$360 million and \$2.5 billion per year.

### **The Cost of Naval Forces**

Over 27 countries currently contribute naval forces towards piracy deterrence. Together these military efforts move over 43 vessels operating off the Horn of Africa and the Indian Ocean. We approximate the cost of operating these military vessels at around \$1.3 billion per year.

### **The Cost of Piracy Prosecution**

Under universal jurisdiction of piracy, any state can prosecute the crime, regardless of whether it has a direct nexus (e.g. nationality of the shipowner, nationality of the criminal, nationality of the crew) to the act. From rough calculations we estimate that the cost of piracy prosecutions is around \$31 million per year.

## **RECOMMENDATIONS**

The following recommendations were made to authorities, shipmasters and crews, as well as shipowners. Authorities were encouraged to enhance stepped up patrols and develop inter-governmental linkages and co-operation. Ships masters and crew were reminded to adopt basic security vigilance at all times, respond and report immediately once an incident occurs, cooperate with authorities on investigation and be wary of small boats approaching their vessel when anchored. Ship owners should acquire situation awareness, be alert to the latest developments, maintain comprehensive ship security plans, perform crew profiling and report all incidents immediately (e.g., to ReCAAP focal points of the coastal state, or to UKMTO).

The IMO containment strategy against piracy is to protect shipping, deliver humanitarian aid on behalf of the world food programme and other humanitarian agencies, secure global trade through the water off the coast of Somalia, and the suppression of piracy and armed robbery against ships in a manner consistent with International law. It has been pointed out that the geographic spread is getting broader as pirates operate further away from the coast of Somalia to waters close to India, covering almost the entire Indian Ocean. The attack tactic is also changing. Ships being hijacked are used as mother ships and the crew kept on board, which makes it difficult for naval forces to respond and release the mother ship. Under the IMO banner there are a number of conventions dealing with piracy incidents, including the Safety of Life at Sea (SOLAS), Maritime Search and Rescue (SAR), the International Ship and Port Facility Security (ISPS) Code, International Safety Management (ISM) Code and so on. Parties to these conventions have the obligation to enforce law and to maintain safety and security of navigation at sea. Political will, national legislation, clear strategic direction and capability for law enforcement were some of the key factors for interagency approaches at both national and regional levels.




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# **Rehabilitation of Seamen and Welfare of Families**

*by Captain Syed Hashim Hasnain*

## **THE BIRTH OF PIRACY IN SOMALIA**

Before Somalia became famous for its piracy activities it was an upcoming fishing hub. However poverty, hunger and unemployment thrived in the nation because of the continuous conflicts between the locals and government troops. Somalia desperately needed help from other countries to survive. Countries such as Great Britain and West Germany provided aid to develop Somalia's fishing industry and because of this, many Somali people jumped at the opportunity to maximize fish catch for export and good profit. But at the same time as the increase in fishing activities, civil war in the country also increased. As a result, aid coming in for the fishing industry was diverted to finance criminal acts.

As there was no stable government and no coastal or maritime laws, other countries saw this misfortune as an opportunity and began illegal fishing in Somali waters. Lack of any rules and regulations also made Somali waters a dumping ground for many countries for easy and cost-free dumping disposal of toxic waste and harmful material.

In December 2005, when the Asian tsunami washed ashore on the east coast of Somalia, it uncovered a great scandal. Tons of radioactive waste and toxic chemicals drifted onto the beaches after a giant wave dislodged them from the sea bed off Somalia. Several thousand Somalis fell ill after coming into contact with this waste and more than 500 people died. Many European, U.S., and Asian companies had been using the Somali coast as a toxic dumping ground. Despite the evidence uncovered by the tsunami, no investigation into this toxic dumping episode was conducted.

Somali fishermen also complained to the United Nations that foreign fishing fleets were plundering their fish stock however, despite repeated requests, no action was taken. In view of this, angry fishermen began to arm themselves and, disguising themselves as coast guards, began to seize ships and releasing them after payment of ransom. These Somalis justified that their actions as being motivated by attempting to stop toxic dumping and believed the money they demanded as ransom for the return of the hijacked ships was nothing compared to the devastation caused by dumping of radioactive and toxic waste. Piracy in Somalia was thus born and flourished. Today this operation has been transformed into a multimillion dollar industry.

## SOMALI PIRATE ACTIVITIES

There has been a significant and rapid rise in the level of piracy activities over the past few years as pirate groups have become better resourced, better equipped and capable of attacking vessels further away from the coastline. The threat to merchant shipping and seafarers posed by the activities of Somali pirates unfortunately shows no sign of being eliminated and the piracy problem has now reached a critical threshold, one that presents many challenges. Whilst the naval deterrent that exists within the Gulf of Aden (GoA) has resulted in a significant reduction in the number of attacks there, vessels continue to be at risk of attacks far off shore where naval resources are thinly spread. The *Best Management Practices* (BMP) guidelines have been compiled by the industry to assist Masters and their crews to implement effective action to deter piracy and render vessels less vulnerable to attack.<sup>1</sup> It is axiomatic that if pirates are prevented from boarding a vessel, it cannot be hijacked and

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<sup>1</sup> UKMTO. *BMP4: Best Management Practices for Protection against Somalia Based Piracy* (Version 4 – August 2011). Available online at [http://www.mschoa.org/docs/public-documents/bmp4-low-res\\_sept\\_5\\_2011.pdf?sfvrsn=0](http://www.mschoa.org/docs/public-documents/bmp4-low-res_sept_5_2011.pdf?sfvrsn=0)

consequently effective implementation of BMP4 is essential to reduce the risk of a vessel being pirated.

## **COUNTER PIRACY REGIME IN THE PAKISTAN NATIONAL SHIPPING CORPORATION**

In response to the growing menace of piracy, the Pakistan National Shipping Corporation (PNSC) has enforced a comprehensive counter piracy regime. This comprises the following.

1. Standard operating procedures (SOP) to prevent piracy.
2. Communication Plan when in the High Risk Area and when under attack.<sup>2</sup>
3. High Risk Area route planning and its implementation after obtaining concurrence from the Director Naval Operations, Naval Headquarters, Islamabad.
4. Mandatory compliance with requirements of BMP4.
5. Standing “No Objection Certificate” (NOC) allowing the Pakistan Navy to conduct kinetic operations onboard.
6. Non-lethal sonic Long Range Acoustic Device (LRAD) weapons employed on vessels continuously plying the High Risk Area.
7. Electrical fencing employed on vessels other than tankers.
8. Extensive briefing and training of ship staff with particular emphasis on adherence to BMP4.
9. Citadel with dedicated independent satellite phone established on all vessels.
10. Ships directed to transit the Gulf of Aden only under escort (National Convoy) or in Internationally Recommended Transit Corridor (IRTC) group transit.
11. Employment of privately contract armed security personnel when required.

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<sup>2</sup> The High Risk Area is defined in BMP4, section 2.4.

12. Post-piracy emergency response committee constituted to handle post piracy contingencies (including issues pertaining to rehabilitation and welfare).

## **HOSTAGE SITUATIONS**

It should be noted that current Somali piracy *modus operandi* revolve around the hijacking of ships and holding the crew as hostages, with the crew, ship and cargo held for payment of ransom. Ship's crew taken hostage face a dangerous, life threatening experience and need assistance in being able to deal with it and survive if taken hostage. The situation for seafarers sailing pirate infested waters has changed tremendously since the beginning of 2011. The area covered by the Somali pirates has now expanded to such an extent that realistically in many cases the chance of receiving assistance from naval forces is practically zero. Seafarers now really have to fear for their lives since the pirates have become brutal in their approach towards them.

### **Somali Pirate Violence and Torture**

There have been recent reports that the Somali pirates have now started torturing their hostages in the most barbaric ways which include:

- dragging hostages behind boats
- beating
- forcing hostages into freezers
- hanging them over the ship sides by ropes around their ankles with head under water.
- mental torture

In 2010, thousands of seafarers in the Indian Ocean and the Gulf of Aden were subjected to assaults with automatic gun fire and rocket-propelled grenades (RPG), beating and extended confinement as

hostages. In some cases, hostages were used as human shields to protect pirates from naval vessels, or were forced to crew “mother ships” that were used to lure and attack other merchant traffic. In spite of the violent nature of these crimes, the cost of human piracy is still under-reported and misunderstood by the public whereas the economic cost of piracy is well known and propagated. There is very little data available about violence faced by the hostages, which is indeed a pity.

## **PSYCHOLOGICAL IMPACT OF PIRACY ON SEAFARERS AND THEIR FAMILIES**

Seafarers are traumatized through various acts of violence by pirates as indicated earlier. The transit through pirated waters alone adds significant stress to their job. The stress caused by anticipation of pirate attack is not new. Even before pirates started to physically harm captive seafarers there was an awareness that should one be captured, one could be detained for an indefinite period, with little hope of being rescued, while a lengthy process of negotiation between the ship owners and pirates ran its course. Trauma to seafarers is undervalued and misunderstood, but it can have lasting negative implications both for seafarers and their families. The time the crew spends locked in a citadel during a pirate attack can be extremely stressful as this is likely to elicit a response from the pirates who have been known to set fire to spaces around it or fire RPGs at the safe room. Families and others that depend on seafarers are faced with stress and fear from the time that the seafarer enters high risk regions until he leaves. In the case of a hijacking, families may be subjected to psychological manipulations from the pirates who call specifically to traumatize them and increase pressure for ransom.

## Seafarer's Families

The impacts of piracy attacks and hostage extend beyond the seafarers who are directly exposed. The seafarer's families are an important group of victims that is often overlooked. Their experience may not be as obvious as those of seafarers who are captured by the pirates, but in many ways the psychological impact of their suffering is just as severe. Seafarers themselves have said that their greatest concern while in captivity is the wellbeing of their families, and this statement will be endorsed by Captain Wasi Hassan of MV *Suez*. One of the main sources of trauma for the families is their lack of knowledge about the situation. In most cases families are not only terrified for their loved ones but also in a state of uncertainty with no clear ideas of to whom to turn for accurate and timely information. There are also reports of Somali pirates using families as a method of increasing pressure on the shipping companies during negotiations. Families and seafarers have reported that pirates may encourage seafarers to call their families, only to take the phone and threaten the family that their loved one will be killed if the ransom is not quickly paid. There is some evidence that this has a long term impact. Seafarer families have been reported to have a higher rate of mental health problems than in general.

## Effect after Release

Seafarers experience may also affect their families directly after a release. Post traumatic distress and long term problems are characterized by an increase in negative behaviors, including increase substance abuse, problems with interpersonal relationships, and spousal abuse. Even if a survivor's loved one is not directly affected by the distress of the hostage situation, there is a possibility that the survivor may act in ways that are destructive or damaging in interpersonal relations.

## **POST PIRACY CARE FOR SEAFARERS**

In view of the psychological impacts of piracy on the seafarers and their families, three major areas have been identified by the International Transport Workers Federation (ITF) which should be given consideration in order to guarantee an effective and consistent approach to the welfare of seafarers whose ship trade in the High Risk Area. The three areas identified are: prevention and information; coping with fear (stress management); and continuous assistance in the aftermath.

### **Prevention and Information**

This should include provision of updated information regarding Pirate Attack groups (PAG); countermeasures needed to evade piracy attack; a communication plan when in the High Risk Area and when under attack; reaction when pirates board the ship; and citadel procedure.

### **Coping with Fear**

The crew should be made well aware of the “shock of capture” as the greatest anxiety is usually experienced in the hours after the initial hijack incident. The crew should be encouraged to focus on surviving the ordeal. In my opinion one of the major motivational factors is the assurance of the company’s commitment to its continued obligations towards the crew in respect of safety, and continuous payment of wages to the families in addition to physiological support to them. The crew should be made well aware of the company’s post-piracy contingency plan.

## **Continuous Assistance in the Aftermath**

Once the seafarer is released, there should be a guarantee of thorough psychological assessment of his condition as well as regular checkups to monitor any possible effects of captivity, like the survivor and Stockholm syndromes, particularly after prolonged captivity. To ensure that family routines are rebuilt, the seafarer should be granted a paid period of holiday. Whenever possible, the return to work at sea should be on vessels which are less likely to go into High Risk Areas. These recommendations are neither final nor an exhaustive list of all possible options, but represent a basic framework that can ideally be implemented to improve conditions for seafarers.

### **PNSC POST-PIRACY PLAN: REHABILITATION OF SEAMEN AND WELFARE OF FAMILIES**

Seafarers are an integral part of any successful shipping enterprise and deserve recognition as such. PNSC at a very early stage had acknowledged the role its shipboard staff was playing and the risks they were consequently subjected to while travelling in High Risk Areas, and as such constituted the post piracy emergency response committee mentioned earlier. This committee has been tasked exclusively to handle all post piracy issues including rehabilitation of PNSC seamen and welfare of their families. The PNSC Post Piracy Response Committee has developed a plan which addresses the following issues:

#### ***1. Communication during the Crisis***

- a. Communication between the company and the ship.
- b. Communication of piracy information to relevant authorities.
- c. Communication between the Emergency Response Committee (ERC) and the crew in the citadel.

- d. Communication with the Pakistan Navy to conduct kinetic operations.
- e. Establishment of a single point of contact within the company for communication with the pirates.
- f. Establishment of point of contact within the company for communication between company and the crew families in an event of a piracy contingency.

## **2. Establishment of Management Teams**

- a. On-scene advisor to Pakistan Navy teams conducting kinetic operations.
- b. Negotiator.
- c. Spokesman (media relations)
- d. Logistics and operations.

## **3. Post Release Aspects**

- a. Choosing the initial post-release port of refuge.
- b. Repatriation and replacement of crew.
- c. Medical assistance post-release, including counseling and debriefing of crew.

The mandate of this committee is to ensure that the post-piracy contingency is handled in an efficient manner, following sound practices to address humanitarian needs of the crew and their family members during the three phases of incident from pre-departure, during and after, are adopted.

Other salient features of the PNSC post-piracy plan include the following.

- A commitment by PNSC that everything possible will be done to expedite release.
- Appointment of a family liaison officer to provide ongoing information and co-ordinate support to families of next of kin.

- Commitment and reassurance to families that they will continue to receive wages/remittance of the crew.
- Maintaining personal data and accurate medical information

## **MARITIME RESPONSE TO SUPPORT SEAFARERS AND THEIR FAMILIES**

Seafarers play a vital role in any piracy incident and the appropriate preparations are integral to their wellbeing, as well as ultimately to their families. In view of this, a program referred to as Maritime Piracy Humanitarian Response Programme (MPHRP) has been recently launched in London to help seafarers and families cope with the physical and mental trauma caused by torture and abuse at the hands of pirates.<sup>3</sup>

### **Extracts from Testimonies of Seafarers and Families**

Seafarers and their families who have provided feedback from their experiences have reported the following.

- Most seafarers recalled that the most difficult phase of the hijack incident was the shock of attack and capture. They were also unsure about the response of their companies and whether their wages/remittances would be continued to be paid to their families.
- Most of the companies had not made assurances to expedite their release in an event they were made hostage.
- Very few seafarers stated that the company had provided them any anticipatory training.

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<sup>3</sup> MPHRP is a “panindustry alliance of ship owners, unions, managers, manning agents, insurers and welfare associations (maritime, labour, faith or secular)” the objective of which is to “address the three phases of ‘pre-, during and postincident’, with the aim of implementing a model of assisting seafarers and their families with the humanitarian aspects of a traumatic incident caused by a piracy attack, armed robbery or being taken hostage.” < <http://www.mphrp.org>>

- The family members stated that most of them came to know about the piracy act from the media. They recall that very little news came directly from the company. They had to initiate contact with the company themselves and most of the time they seemed to be talking to a different person each time they contacted to seek news.
- Most of the family members complained of lack of financial support from the companies.

## **RECOMMENDATIONS**

In view of these observations, the following recommendations are made.

- Anticipatory training to the seafarer traversing the High Risk Area should be conducted.
- Shipping companies whose ships ply in the HRA should have a family liaison representative.
- all shipping companies should be committed to providing assurance to the crew with respect to continued payment of wages to their families.
- Commitment from shipping companies that they will do everything practical to expedite release of crew.
- A medical assessment of released seafarers should be conducted immediately upon their release, and a follow up and psychological screening scheduled before the crew return to duty.
- Seafarers should be provided with direct communication with family members as soon as possible after release.

## **CONCLUSION**

It is evident that humanitarian support is needed for the seafarers and their families before, during and after piracy incidents. Seafarers and their families are a resilient group of people. Training and

information sharing can prepare them for such incident if they do occur. During the attack, pre-training in how to handle the psychological reactions which may be experienced in conditions of captivity could minimize some of the negative feelings for those involved. If companies and seafarers can give the families knowledge that a plan exists to support them in the unlikely situation of a piracy attack, this can alleviate immediate fears of being forgotten in the process. In my opinion standardized training for seafarers to survive piracy and increased awareness of the risks involved are extremely essential. Finally, it is recommended that organizations seeking to support seafarers and their families should work together so that good practice can be affirmed and reinforced.




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## **Hijacked Seafarers Ransom: New Developments in China's Legislation** *by Doctor Professor Wang, Hanling*

There are approximately 1.55 million seafarers worldwide, a large percentage of who are Chinese. An increasing number of those are being hijacked, which raises legal issues about ransom. Essentially there are two types of Chinese seafarers affected: those employed by and working in Chinese ships, and those recruited or assigned by Chinese manning agencies to work on ships that are owned and operated by foreigners

### **RANSOM**

Ransom for Chinese seafarers employed and working on Chinese ships is the responsibility of two stakeholders: the seafarer's employer (the shipowner or shipping company signing the employment contracts with seafarer), and the manning agency (depending on its contract with the shipping company). These expenses are compensated (normally only partially) by insurance. Ransom for Chinese seafarers who are recruited or assigned by Chinese manning agencies to work on ships owned and operated by foreigners or foreign shipping companies raises questions of who pays the ransom – the Chinese manning agency or the foreign shipowner or shipping company. The answer depends on the employment contract. Normally it should be the foreign shipowner/shipping company who pays, but normally they are not willing (or able) because there are no provisions about ransom in the employment contract.

### **LEGISLATION**

Two main pieces of Chinese legislation address this issue: *Regulation of the People's Republic of China on Seamen* (2007) and

*Provisions of the People's Republic of China on the Administration of Overseas Assignment of Seamen* (2011).

### **Regulation of the People's Republic of China on Seamen<sup>1</sup>**

Article 26 provides for job safety and safeguards for seamen. The employer is responsible for a seaman's welfare in the case of sickness, going missing, injury or death. Article 27 states that the employer shall conclude labor contracts with seamen pursuant to the laws and regulations on labor contract, and international treaties on seamen's labor and social security. Article 44 states that a ship manning agency shall urge the employer to conclude labor contracts with seamen (i.e., the employer should pay ransom). From a legal perspective, the problem with such Chinese law is that it is not applicable, or at least difficult to apply, to a foreign shipowner or shipping company unless there are clear provisions on issues like ransom written into the contract.

### **Provisions of the People's Republic of China on the Administration of Overseas Assignment of Seamen<sup>2</sup>**

Article 4 states that the overseas assignment of seamen shall follow the principle of "whoever assigns seamen overseas is responsible for them". An institution engaged in overseas assignment of seamen (the Agency) shall be responsible for the seamen and do a good job in all guaranteed work during their overseas service (both while on board and during period during which they board and disembark).

Chapter II (Qualifications of Institutions Engaged in Overseas Assignment of Seamen) Article 8 requires the institution to have sufficient reserves to be able to pay a total of up to one million yuan for overseas assigned seamen. Article 21 states that these reserves

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<sup>1</sup> The text is available online at:  
<http://en.msa.gov.cn/msa/features/root/1251421155489/1251421700996/1251699429716#c1>

<sup>2</sup> Ministry of Communication, effective as of July 1, 2011.

shall be deposited in a special account and used for the designated purpose only. The use and management of such reserves shall comply with the management systems of the State.

Article 24 requires the Agency to ensure that seamen being assigned overseas have concluded employment contracts with any of the following entities:

- the Agency itself;
- an overseas ship-owner; or
- a Chinese shipping company or any other entity of a relevant industry.

The Agency shall also be responsible for:

- examining the content of the employment contract;
- requesting the overseas shipowner to make timely corrections if the content of the contract does not comply with the laws, regulations, or provisions of relevant international conventions, or contains clauses contrary to the interests of the seaman; and
- purchasing overseas personal accident insurance for the seaman (Article 25)

Article 27 states that the agreement between the Agency and an overseas shipowner shall at least cover the following:

- (6) seaworthiness and navigation areas of the ship;
- (7) the personal accident insurance purchased by the overseas shipowner for the seamen;
- (10/14) disposal of emergencies/special circumstances;
- (11) repatriation of seamen; and
- (12) treatment of injury, sickness or death of seamen assigned overseas

Under Article 29 the Agency shall conclude an agreement with seamen including at least the following:

- (1) all clauses in the ship manning service agreement that are related to the interests of the seamen assigned overseas;

(2/3) the Agency's responsibilities for management and service to seamen, especially in case of an emergency.

Chapter IV (Disposal of Emergencies) states that in case of any emergency the Agency shall immediately initiate a contingency plan and provide timely reports to the Maritime Safety Administration, jointly with the overseas shipowner. Where the overseas shipowner fails to perform its emergency responsibilities fully and in a timely manner, the Agency shall deal with the emergency properly to avoid any harm to the interests of the seaman. Where the Agency refuses or is unable to take responsibility for an emergency, the financial reserves for overseas assignment of seamen may be used to cover the cost of returning the seaman to China or for other emergency relief.

## CONCLUSION

Chinese legislation protects seafarers by requiring provision for ransom to be included in employment contracts or agreements. Furthermore, Chinese legislation provides for four tiers of potential ransom payment sources:

- the employer (foreign ship owner);
- the Chinese manning agency;
- the Reserve Fund; and
- compensated (partially) by insurance.



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## **Managing the Problem**

### ***(Opening Remarks, Day 3)***

#### **by Rear Admiral (Retd) Pervaiz Asghar, HI(M)**

The theme of the conference focuses on the recurring plight of the hapless victims of piracy and their grieving dependants. The first two sessions dealt with the ‘piracy experience’ and the ‘impact of piracy’ from varying perspectives.

We now come to the third, and need I say, the most vital leg of the piracy triad, that of ‘managing the problem’. I’m glad that instead of the usual phrase, ‘solving the problem,’ the more pragmatic one – managing the problem – has been used. Broadly speaking, it can be done in a number of ways: by defanging the pirates, by increasing the ship’s own protective measures and by ensuring that all captured pirates are successfully prosecuted, which can be expected hopefully to serve as a deterrent.

But all these, some may correctly argue, have nothing to do with assuaging the miseries of the prospective victims, which forms the theme of this conference. Granted; but it still stands to reason that one of the surest ways of accomplishing this is by containing its primary cause, the element of piracy itself.

To be fair, these countermeasures are indeed a regular, on-going feature, though with varying degrees of success. Around 5,000 pirates have been captured so far, with many of their weapons and skiffs destroyed. With so much to gain and having gained much, there is apparently no dearth of manpower and equipment as far as the pirates are concerned.

Most shipowners, who were hitherto quite wary of employing armed guards, are quite receptive now. Such guards have indeed managed to thwart almost all the attacks attempted against the vessels on which they were borne. Though the International Maritime Organization’s (IMO) Maritime Safety Committee has issued interim guidelines on the employment of privately contracted armed security personnel on board ships transiting high risk piracy areas, problems

still remain. We have seen that a British security company has recently had a number of its operatives arrested in Eritrea for bringing weapons into that country. A number of ship masters have likewise been arrested in South Africa for having arms on board their vessels and not having complied with the correct reporting mechanism. With Egypt also coming out with its own instructions for arms-carrying merchantmen, it is true that most ports strongly discourage the presence of arms on board merchant ships. Besides, it is only a matter of time before some serious mishap occurs, like the killing of unarmed Indian fishermen by armed guards on board a transiting Italian ship on the suspicion of being pirates. It won't be long, either, before the pirates devise and unleash some more lethal measures to neutralise the guards. Time will tell whether in the long run it would have been better to stick with intelligence and awareness-led protection as well as non-lethal self protective measures like evading pirates through the use of citadels, blinding them with light, tripping them with foam, drenching them with water cannons, stopping them with razor wire or deafening them with sound blasts.

As far as action against the captured pirates is concerned, around 800 of them have been prosecuted so far, with almost all of them languishing in prisons in Kenya, Seychelles, Somaliland and Puntland. It is another story that for every pirate captured, more than five times that number have been captured and released. In one well-publicized case almost an year back, a British warship, HMS *Cornwall*, released 17 pirates found on board a hijacked "mother ship" with 5 hostages on board, claiming that it did not have legal grounds to detain them.

Anti-piracy measures have by far been reactive in nature, with a lack of coordination being their most defining feature. Warships of around 25 countries are engaged in anti-piracy patrols with most of them, including groups like the US-sponsored CTF 151, NATO's Operation *Ocean Shield* and the European Union's Operation *Atalanta*, all looking after their own specific interests, other actions

being incidental. The United Nations, IMO and International Maritime Bureau's role as catalysts and facilitators must, however, be lauded.

The steps being taken are obviously not effective enough, as during the past four years, 62 seafarers have died at the hands of the Somali pirates with 3,500 being kidnapped and held hostage. Such personal tragedies were brought closer to home through an emotional campaign waged by the young daughter of the Pakistani skipper of an Egyptian owned vessel, whose captors were threatening to kill him along with the 21 other kidnapped crew members if the demanded ransom was not paid. Although the MV *Suez* crewmembers were eventually released after more than 10 months of captivity, others have not been that lucky. The problem mostly centres on vessels flying "flags of convenience" whose owners, having claimed insurance, show reluctance in owning up to their civic responsibilities. The case of two students of Bahria University, whose seafaring father has been languishing in captivity for nearly fifteen months now, is heart-rending. The lives of such families, even if the release of their breadwinners comes about, are invariably scarred forever.

Now that the international community is aware of the scale and immensity of the problem, it is important to close ranks to address the problem with the intellectual intensity that it deserves. We have in the recent past witnessed some international initiatives, which taken to its logical conclusion, would yield the desired dividends. The Djibouti Code of Conduct, which offers regional countries a major stake in the enterprise, is one such undertaking, though it needs to be constantly prodded. It's Project Implementation Unit, established by IMO in April 2010, has adequately equipped three regional counter-piracy information sharing centres.

The full thrust of the international anti-piracy efforts has until recently been directed against the scores of unemployed young men hijacking ships at sea. It has now sunk in that this criminal enterprise is actually being controlled by only a handful of organizers who fund

it and benefit extensively from it. A multi-national task force is now focussing its energy towards targeting such financiers as well as the shady negotiators involved in the business. Rather belatedly, but nevertheless correctly, it intends to zoom in on them by tracing the path of ransom money after it is paid.

The most important point that always comes across is the need for political stability. The transitional government that was installed with the help of African peacekeepers has lost its credibility through excessive corruption. It needs to be replaced by a representative government which ensures an adequate level of autonomy for its various clans. It also needs to be recognized that the regions where most piracy ventures originate are virtually autonomous. One of them, Somaliland, has even had an election in 2010. These regions should be bolstered through international help to generate alternate sources of livelihood for their people and develop the ability to restrain piracy on their own.

One of the frequently cited root cause of piracy, to which sufficient international attention has not been devoted, pertains to poaching and radioactive waste dumping in Somali waters. The contours of any long-lasting solution should not ignore this vital aspect.

Most importantly, what this conference and other such forums should primarily aim at is the setting-up of an institutionalized welfare system dedicated towards mitigating the plight of the hostages and their families in every possible manner. In cases like the MV *Suez*, for example, where the captured vessel is flying a “flag of convenience” and the crew constitutes a number of nationalities, someone or some organization should be prepared and equipped to represent them and endeavour to seek their release and provide succour to their families. The bottom line is that victims of piracy and their dependants should never feel abandoned at any cost.

And finally let me end on an optimistic note. We kept hearing during the conference about the solution of piracy being on land. As revealed by Lloyd’s List before the recently concluded London

conference on Somalia, a number of countries are funding a drive to have anti-piracy forces in Somaliland, Puntland and Transitional Federal Government (TFG) controlled areas trained and equipped through private security agencies. So some hope may be around the corner.

It has been accurately said that “the only thing necessary for the triumph of evil is for good men to do nothing”. In the case of the evil of piracy, this conference proves that there are indeed many good men and women who are willing to do something to manage the problem.




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Registration on Inaugural day

# **Piracy Victims: the Indian Experience**

## **by Dr. Prabhakaran Paleri**

### **INTRODUCTION**

India's tryst with maritime piracy can be traced back to the Vedic Age. The piracy story of ancient India also overlaps that of Pakistan. The problems of maritime piracy that both the countries face today are almost identical. There are deviations, though, but the human trauma is repeated. An example is the case of the 11 crew of the Pakistani fishing vessel *Al Imran* that sailed from the coastal town of Piskhan in February 2011. The fishers were besieged by Somali pirates and could get released only after eight months of grueling life. They were helped by a few good people who understood their misery. Their story was poignant.<sup>1</sup> There are many Indian and Pakistani fishers and seafarers, along with others from Asia, who suffer silently while eking out a living battling the perils of the sea. Their stories are not known to the many in the modern world.

Among the various unlawful activities at and from the sea, maritime piracy has turned around within the changing dictums of economics and politics for identified purposes with time. And so have the problems of the people who were caught in the economical, social and political aspects of maritime piracy. The purpose of piracy has changed but its underpinning character remains the same. The human trauma still remains agonising and long lasting all the way for the victims and their families. As in the past, the human issues haven't caught the attention of the governments or agencies seriously. It still remains secondary and selective in national and international policies barring a few mentions in the media, or organised agitation by the families of affected seafarers to draw the attention of the government as it happened in India a couple of

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<sup>1</sup> Wolfgang Bauer, Verloren am Ende der Welt, *Zeit Magazin*, Nr. 6, 2 February 2012.

times. Human rights become the ultimate victim in a lethargic and complacent society.

## **MARITIME PIRACY—DRAWING PARALLELS FROM THE PAST**

An interesting point that comes to the notice of the vehemently obstinate piracy chaser is the way the crime has been used as an excuse for war or war-related activities since the very beginning. A case in point was the war against Sindh reportedly in the 7<sup>th</sup> century. It was told that a ship from Sri Lanka on its way to the caliphate of Baghdad on Tigris was looted at sea off the ancient port of Debal near Karachi's Manora Island. The Caliph of Bagdad used it as an excuse to carry out his long cherished ambition of invading Sindh even though King Dahir of Sindh submitted that it was not under his control.<sup>2</sup> Nor did the Caliph desire to eliminate piracy by attacking Sindh. While there are many inconsistencies in recording the stories of Debal and its pirates there is also information that the area along the coast up to Sri Lanka was intermittently infested with thriving bands of pirates waiting to attack vessels that carried valuables and slaves across.<sup>3</sup>

If war and associated activities were excuses for piracy, wars also fed piracy and rejuvenated it because piracy was required to ensure the supply chain for the rulers who supported the idea. Along India's west coast, the war horses imported from Persia and Africa by Indian rulers became a major attraction. Pirates attacked such vessels. That was followed by 'privateers' arriving on the scene officially authorised by the affected ruler to attack and recover the loot, especially the war horses. Piracy became a lucrative profession along the western coast of India. Pirates and privateers often reversed their roles across the waters. Some of the pirates acted as

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<sup>2</sup> en.wikipedia.org/wiki/Pirate#In\_India. Retrieved on 20 February 2012. There are different versions of this incident and the war that is not properly recorded in history. But historians are in convergence about the piracy activities in the area in those days.

<sup>3</sup> Ibid.

privateers for a particular kingdom and as pirates in other parts. This trend continued and attacks on ships belonging to Portuguese and British too came up in the later stage often in the name of patriotism. For the colonial traders and merchants, the attackers were pirates. The bottom line is that piracy flourished around the west coast of India in the early days, fired by the need for resources or denying the resources to the adversaries by breaking the logistics chain. It was deeply rooted in the socio-economic-political aspects of coastal history of India as in the case of many littorals of the period. There was also European piracy against the ships from India en route to Mecca on Haj pilgrimage. Indian rulers lacked the reach to take on the pirates that attacked their ships in those days. The area around the rim of the ocean along the African coast too was bustling with pirates. Madagascar had a large pirate population. St. Mary's Island became a popular base for pirates throughout the 17th and 18th centuries. An interesting aspect was that, in 1694, there was an uprising of the natives who destroyed the pirate havens of the island. Such uprising was not seen elsewhere or subsequent to it where the locals were involved in chasing out the pirates denying them sanctuary. The southern coast of the Persian Gulf became known as the Pirate Coast as raiders based there harassed foreign shipping. There were British naval expeditions in the early days to protect the Indian Ocean trade. Today we have the Combined Task Force and other navies engaged in parallel independent operation almost around the area because of the Somali triangle. Things have not changed in the world of piracy. Piracy is thriving and the governments are attempting to eliminate it by using repeat tactics. The human sufferings continue as in the past. This indicates that piracy will be an assured crime at sea for many generations to come, unless the governments change tactics. It also means human sufferings have to be seen from a different perspective and not by eliminating piracy for better and faster results. The view of the government of India and many others is to help Somalia in containing piracy from land through negotiations, reforms and regulations under effective

governance. That is how Indonesia contained the Malacca Strait issues to a great extent. India's approach is based on its experience. India understands that piracy is best eliminated by land-based activities for various reasons, not by handling pirates at sea alone. That is the required tactical change in handling piracy.

Earlier, pirates remained near the coast without venturing deep into the ocean because most of their prospective victims also navigated near the coast. In certain parts of the world these pirates came by the sea and struck deep into inland waters like bandits on the highways. They raided the villages along the way, creating mayhem among the natives by looting, plundering, raping and killing. The law enforcers and vigilantes, where they existed, handled the pirates ashore. This kind of incidents did not happen along the Indian peninsula. Indian pirates remained at sea near the coast but did not venture seriously into inland waters. Today's pirates operate more professionally and very deep into the ocean. That perhaps is the only major change.

Piracy was a global phenomenon most of the time. Pirates were active in India, East Asia, South East Asia, Africa, Eastern Europe, the Caribbean and North America. They raided vessels that carried goods and passengers. Today piracy is eliminated only in those areas where the governments took political actions that had social impact.

The other side of the story from history is the social impact the pirates have acquired through popular culture and folklore. Piracy is seen as an adventure in the folklore. The criminal aspects of piracy are set aside temporarily. This situational attitude needs to be changed by social awareness about the sins of piracy and its long term impact on people. In Somalia, under the influence of the ongoing piracy mindset, the younger generation of society is fast degrading without proper education and constructive employment. They are becoming addicted to drugs, alcohol and crime. Many among the older generation are seriously concerned about it, though piracy has also created boom-towns in Somalia. The government

should make them act against piracy and help them to wean away their young from the crime. Many among them are child pirates. It is juvenile crime that needs urgent attention of human rights activists. The issues of human face have to be turned towards the pirates too. They need urgent help to escape from the criminal world of piracy by bondage to powerful criminal syndicates.

## LAW AND PIRACY

The world had woken up to the horrors of maritime piracy quite early. It has been considered a crime throughout the period. Punishment, often death by public hanging, was meted out by the authorities to the apprehended pirates in quick summary trials. Their bodies were suspended in public places for the information of the public who suffered them and, sometimes, as warning to those who supported them. But, today, the governments are seemingly reluctant to try alien pirates over their land for various reasons including the chances of them asylum seeking after completing the punishment. This is in spite of the fact that maritime piracy is a crime under customary international law. Piracy, when it happens in the jurisdictional waters of a state, is called armed robbery under international usage and a number of other crimes according the municipal laws of the state. Still the laws, in the absence of an exclusive piracy law, are not enforcement friendly to the extent that justice can be awarded on a fast track. India too has this problem. It had recently arrested a large number of Somali pirates operating in its adjacent waters west of Lakshadweep.

There are national laws like the UK Piracy Act, 1837; the United States Suppression of Piracy Act Bill 2011 (introduced in the House), United States Code (18 U.S.C. § 1651) and others; Piracy Act, No. 9 of 2001 of Sri Lanka; etc. But not all littorals have promulgated definite laws against maritime piracy. India does not have an exclusive Act to control maritime piracy. In the case of *MV Alondra Rainbow* India charged the accused under various sections of its

common criminal laws. A charge of piracy under the Admiralty Offences (Colonial) Act, 1849 and the Admiralty Jurisdiction (India) Act, 1860 were added in the charge sheet subsequently. These Acts were not revoked by India post-independence. India, being a not so reluctant participant in anti-piracy operations lately, definitely needs an exclusive piracy act compatible with international law and supportive to the victims of piracy, including collateral victims of piracy. The act, besides acting as a deterrent to piracy, should also provide succor to the victims. Such legislation should incorporate not only trials of pirates but also the victims' rights for legal support, compensation, counseling, medical support, rehabilitation, etc., and their rights to the wages during the period of custody of pirates

International law notes piracy representing the earliest invocation of the concept of universal jurisdiction. Under international law, piracy is a crime that states must uphold as a breach of *jus cogens*—a compelling law where derogation (partial revocation of law) is not permitted. But are the states following it? That becomes a compelling question especially when it is a matter of human suffering. The states have to do more. International law declares pirates as *hostis humani generis* – enemies of humanity. Here the underlying point is human suffering for the elimination of which the law stands. Piracy can be contained if competent and powerful states apprehend pirates and try them in their countries under this dictum. Universal jurisdiction implies that action can be taken against the pirates without objection from the flag state. This represents an exception to the principle *extra territorium jus dicenti impune non paretur* (the judgment of one who is exceeding his territorial jurisdiction may be disobeyed with impunity). It needs, of course, the support of national laws.

There are complexities. Under the Law of the Sea, piracy is an act committed, as defined in it, on the high seas. A similar act when committed in the sovereign waters of a state becomes armed

robbery under International Maritime Organization (IMO) circular.<sup>4</sup> An armed robber at sea is a 'pirate' who commits the crime of piracy as defined according to the Law of the Sea, read together with the relevant IMO Circular or in the respective state's national laws where exists, in its jurisdictional waters. So much for that. If a Somali pirate is apprehended in Somalia's jurisdictional water he has to be tried by the Somali authorities according to Somali law. The reluctance to follow the law in its jurisdictional spirit appropriate to sovereign waters and high seas, for various reasons that states would like to refrain from, is one of the reasons that keeps piracy going. Here the idea of universal jurisdiction becomes an unrealizable paradigm and thereby gets relegated to legal notes and textbooks. That is the tragedy of laws in providing succor to human sufferings. It is most visible in the crime of maritime piracy.

There are also serious ambiguities in the laws of piracy of nations with respect to international law. There is a need for uniformity in state laws to strengthen measures against piracy in the modern world since it is a declared universal crime.

## **HUMAN FACE OF PIRACY – INDIAN EXPERIENCE**

The Indian experience in the saga of the people who get caught in piracy is not markedly different from those of other countries. Human agony is transboundary. A large number of Indians have fallen victim to piracy from the very early days. Today they are attacked, held hostage for ransom, used as human shields, tortured, maimed, humiliated or just threatened. Many of them spend long periods as hostage under extreme mental and physical torture. There are also collateral damages. The latest one in which two Indian fishers succumbed to bullet injuries on 15 February 2012 by firing from a merchant ship that allegedly mistook them for pirates on India's west

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<sup>4</sup> IMO, MSC/Circ.623/Rev.3 on "Guidance to Shipowners and Ship Operators, Shipmasters and Crew on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships," 29 May 2002.

coast is perhaps the first of its kind in the world paranoid about piracy. It needs considerable attention among the international community not to repeat it elsewhere. The case is *subjudice* in the local court. Serious diplomatic engagements between India and Italy are also ongoing.

Indian victims of piracy and human abuse belong to the seafaring community which sails in Indian and foreign flag vessels, dhows and other small vessels, and also engaged in maritime fishing. While the seafarer and his family gets psychological trauma, the shipowner faces financial distress when he has to pay ransom or an increased insurance premium to operate. The cost of shipping has increased because of piracy. It is also a business in a way for insurance companies. There are owners who prefer to pay ransom to informing the law enforcement agencies to avoid further complications and displeasure of the pirates. It is like protection money for the underworld.

In the case of Indian fishers there were incidents of hijacks by alien insurgents who made them work in their own vessel as hostages, or get killed under mistaken identity as already mentioned. The saga of Indian fishers calls for a separate study. There were also cases where a ship crew mutinied against the captain for non-payment of their wages by the company; or ship's crew being held at ransom by stowaways who compelled the Master to smuggle them to a chosen port.

India started inquiring into the matter subsequent to the *Alondra Rainbow* incident<sup>5</sup>. But they were not directly focused on the human issue. The Director General of Shipping, who is the authority for maritime administration in India, does not have the arrangements for providing support to victims except for what the government decides on a case by case basis. The Indian Navy presently has the charter

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<sup>5</sup> *Alondra Rainbow* was a Japanese vessel pirated off Kuala Tanjung in Indonesia that the Indian security forces successfully apprehended with the cargo and pirate crew on 16 November 1999. The crew were convicted later in a trial in Mumbai, India.

for preventing piracy in designated areas on independent patrol along with the coalition forces under defined rules of engagement. The Indian Coast Guard executes orders as and when assigned to apprehend pirates or protect the vessel under attack. There is no overall coordination between the forces and the administration in handling the human issues of piracy in India. But there are thoughts in that direction.

The human face of piracy is very poignant all over the world. Unlike in other places where pirates operate to loot the cargo or the vessel for phantom operation, Somali pirates seek ransom for release of the vessel and the crew. There is a sublime assurance to the hostage that he may be kept alive, even if tortured. But the treatment and uncertainty can be grueling. Indian sailors have experienced such trauma many times. Some of the sailors were the only earning members in their families. Many such victims have horror stories to tell. The fear starts going down the spine hours before they enter the pirate waters. The entire crew huddles without any hierarchical segregation even before the pirate points the gun towards them. They become equal *sans* a hierarchy from then on, driven by fear. Once caught by the pirates, they eat together, sleep together, think about death together, and silently weep together thinking of their dear ones more than themselves, as one of the victims narrated to this conference. They lose all their human dignity in the hands of the gruesome pirates. They think they will never see home again and come under extreme psychological pressure that demands serious counseling post-release. They do not get it. A large number of Indian victims of maritime piracy have gone through these ordeals. There are no solutions identified yet.

Many of them had been to sea for the first time. Their salaries are low; and that too paid much later. Some of them who get caught are very young and on their first voyage. Watching seniors and older colleagues getting tortured in front of them by their captors brings in a feeling of helplessness in them. That remains a scar for the rest of their lives. Many of them leave the profession forever. Besides

regular seafarers, there were a few Indians, whose offshore work environment was quite threatening in the Niger Delta. The Delta pirates kidnapped people for ransom from oil companies. There were even threats to the Nigerian Navy. The offshore people also had frightening stories to tell. Almost all the captives when they are released leave for their homes where, away from the euphoria of their freedom, they will nurture silently in recurring nightmares the agonising pangs of torture that they have undergone. They find it difficult to sleep. Along with that, they have to forget a career cut short, and carry the financial losses, scars of torture and other inflicted abuses, and physical and mental injuries, for the rest of their lives. They are also angry with the system, the authorities, the society and the government who, they feel, didn't care for them when they needed them most.

There are a few good people like the Pakistani lawyer and human activist Ansar Burney who works to free innocents travelling around the troubled spots. He has helped Indians too. The case of *MV Suez* (2011) is well known. Indian sailors are very grateful to him. For him human dignity is beyond boundaries of nations and religions. Humanism is the universal religion. He is right.

According to the National Union of Seafarers of India (NUSI), the dangers of Somali piracy that has the largest reach in the world has been to make seafarers in India, Malaysia, Bangladesh and Philippines refuse offers to cross the Gulf of Aden. Governments have refused to act in many cases according to the NUSI. About 40% of the world's seaborne oil passes through the Strait of Hormuz into the Indian Ocean. As do \$50 billion in imports and \$60 billion in exports from Indian shores (2010).

If shipping companies do not have kidnap and ransom insurance it becomes more difficult for the company to pay. It also means the torture will last very long for the crew. There are incidents when crew died during torture. Fortunately there are officials who will sit with the pirates and negotiate patiently and also inform the families about the developments. In many cases the families of the crew had to collect

money for ransom. The one whose family cannot arrange it will be tortured further. The money thereafter will be handed over through the mediator to the ransom seekers in the adopted mode. Often ransom has to be paid as humanitarian aid since paying ransom is illegal under international law.

The Indian Navy has done a commendable job in its involvement in anti-piracy operations off Somalia according to many victims of piracy. The Coast Guard too has been in the forefront of anti-piracy activities when called for. Besides protecting ships of various nationalities, they had also apprehended Somali pirates who are presently undergoing trials in India. It has also brought a twist in the piratical activities; prompting an element of Somali pirates to hunt for Indian sailors in the hope of swapping them for their colleagues in crime being held in Indian custody, even though economics of piracy takes priority for the syndicates who control the foot soldiers. The government of India is also in the process of providing more support to anti-piracy activities to avoid human trauma, especially after public protests and increased awareness.

## **THE TREND**

If history is a lesson, maritime piracy is not going to end one fine morning. The trend shows that Indian Ocean piracy is very lucrative for the pirates, who have raised their ransom to very high amounts. They are not going to leave it because the lure is addictive. Piracy is a well organised crime. There were cases of state support in piracy. Economics run piracy and it cannot fade away when the going is good. A seaman fetches US \$4 to 5 million as ransom according to certain reports, and Somali piracy has whipped up around \$500 million in the last five years. The seaman, not the owner, will bear the brunt of extreme torture, if the ransom is not paid.

Piracy is also a kind of business that raises demand for arms trafficking and other unlawful activities to raise funds for destructive politics.

The Government of India, however, believes that adopting diplomatic means with the Somali government is a better choice in handling piracy issues than apprehending the pirates and placing them under trial. Presently there are a good number of Somali pirates under trial in India.

## **CONCLUSIONS AND RECOMMENDATIONS**

Throughout the centuries, maritime piracy has survived all the actions which rulers and governments have taken to eradicate them. They have become immune to actions repeated for centuries. Along with it, human suffering has increased. Piracy is a crime that is most heinous, on a par with human trafficking. The victims of piracy suffer in silence whining in agony without much being done for them by the community. Treatment of victims of piracy surpasses all the norms of human rights. Ideally that can be stopped only if piracy is eliminated. While many parallels can be drawn from the past on the issues of piracy, the most important is the need for land-based action to eliminate piracy. The battle against piracy has to be fought on land, not at sea. The solution lies on land-based governance. It has to come from national laws, enforcement of such laws at sea, jointness with international community and, more than ever, local governments determination to eliminate piracy from their waters through political decisions and processes. It is here one has to deal with pirates too with a human face. Considering that there is no serious action even in responsible countries in this direction, piracy, and along with it the human sufferings, are going to continue.

As in the past in piracy infested areas, freedom of navigation is curtailed even today in spite of international laws and formidable forces operating in the ocean. The national laws should be framed keeping in mind their effectiveness in ensuring this freedom and also alleviating the sufferings of the victims of piracy. The latter calls for expeditious action to protect victims, and providing for their

counseling, legal and medical services and compensation. In many cases they will also require rehabilitation.

While no such changes can be expected in the immediate future, it is left to those who care, including the governments, to look into promoting ideas for providing assistance to victims of piracy and also bringing awareness among various governments and people. Such organisations, with public and private interaction wherever possible, could come up with various ways. An organisation similar to Médecins Sans Frontières (MSF) for dealing with the issues of victims of maritime piracy under the joint initiation of willing nations as an independent entity with the support from governments to start with need not be a far cry. It can look into the matters of piracy victims. It could expand subsequently with the participation of others who find merit in it.

Mariners, fishers, and other seafarers have always worked in a disjointed and disrupted organisational structure without serious proactive interaction at sea. The much needed cohesion was lacking.<sup>6</sup> Piracy has brought some kind of camaraderie among people on board a vessel at sea. That is a change. This can be strengthened and individuals can be made to feel important by various means of psychological as well as physical training. This is necessary to induce confidence among the individual seafarers. The aim is not to prepare them like soldiers, but to make them self confident and able face the consequences without easily breaking down. Directive pre-counseling to appreciate and face the hazards of the profession is a well recommended idea. It is mostly done in training special forces and contingents that work on sheer cohesive strength of individuals.

Another recommendation is to introduce a fund at national or regional level with money donated by shipping and allied companies under their corporate social responsibility for looking after the human

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<sup>6</sup> Prabhakaran Paleri, *A Comparative Study of Shipping as an Industry and India's Position in World Shipping*, MBA Thesis, 20 March 1977.

interests of piracy victims and their families. This proposal could also be taken up with IMO or other international bodies related to human rights. If created at national level it could be a model for others to follow. The fund could establish transactions through insurance companies and other allied organisations.

The government of India, being a major maritime nation in the area, should urgently enact legislation on an independent piracy act that is compatible with international law on the subject that would also contain provisions for victim rehabilitation and compensation. India should assist the governments of the pirate countries to eliminate piracy from their waters. It is important that India change to become a proactive anti-piracy nation instead of a reluctant one. India should enumerate all the victims of piracy in India so far, provide them urgent counseling, and also examine their rehabilitation and compensation issues to bring them back into real life, possibly back at sea with added confidence, courage and endurance. The Director General of Shipping and the shipping corporate sector in India have the key role to play in this activity. This is also a proactive process which any other country concerned about the human face of piracy can introduce. Just the act of official enumeration and recording itself will bring back lost confidence among piracy victims.

Hope has to prevail under the dignity of human rights. It is everyone's duty.




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# **From Economic to Humanitarian Concerns: Counter-Piracy, Paradigms and Campaigning for Support**

*by Dr. Christian Bueger*

## **INTRODUCTION: TOWARDS A REFRAMING OF THE PROBLEM OF PIRACY**

Piracy is a persistent menace in the North Western Indian Ocean region. While a decade ago incidents were few, in recent years piracy has come increasingly to affect the wider region. Piracy affects inter-regional and international trade relations, it increases the costs of shipping and it seriously distresses maritime professionals, seafarers and fishermen, their families as well as communities. To some degree the efforts to address the menace by regional states and international actors are impressive. Over one thousand pirate suspects have been prosecuted or are awaiting trial worldwide; over 30 states contribute to an extended naval patrolling program in the region; a multitude of actors and international organizations aims at coordinating counter-piracy or has developed plans and manifestos on how to improve counter-piracy. This includes the United Nations (UN) Security Council, the International Maritime Organization (IMO), the United Nations Office of Drugs and Crime (UNODC), and the African Union. Two major counter-piracy trust funds have been set up by the IMO and the UN Contact Group to Address Piracy off the Coast of Somalia. The international efforts show effect: the success rate of piracy attacks has been significantly lowered. Yet, there are no signs that piracy organizations disengage from their criminal practice, or that piratical activity as such is in decline.

Counter-piracy is caught in a classical “tit for tat” game. Any tactical move in counter-piracy operations so far has led to an improved piracy tactic. For instance, the establishment of a transport corridor in the Gulf of Aden has led pirates to use “mother ships” to

increase their operational range far in the Indian Ocean. In extending their range, attacks now occur in a geographical space which is simply too extended to be patrolled effectively by navies. That the current tit for tat game has some tragic consequences becomes visible if we peer into two trends of (counter-) piracy. The mother ship tactic, and the increasing difficulties of successfully hijacking high value targets, have led pirates increasingly to target any type of vessel, independent of its size or value. Hijacked vessels now include small fishing boats, dhows or low value bulk carriers. Pirates have learned the lesson that they gain benefits from these vessels. They use them as mother ships and they have learned also that low value vessels might produce ransom income, since requesting ransoms from families (rather than companies) has shown some success recently. The increasing targeting of low value vessels is one trend; the escalation of violence is another. Counter-piracy actors are increasingly using force to re-capture vessels. At the same time there are a growing number of reports that pirates mistreat hostages and torture them. The spiral of violence in the piracy game is rotating faster. Both trends reveal a paradox of current counter-piracy policy. The actors who are physically threatened by piracy and most vulnerable to it are those who have gained the least from counter-piracy. The situation for maritime professionals is getting worse, not better. Already marginalized communities, local fishing communities or seafarers, are not benefitting from counter-piracy, and instead face growing dangers.

If this diagnosis is adequate then more support for counter-piracy is needed; counter-piracy needs to be improved and it needs to be centered on the core victims of piracy. In this contribution I shall primarily address the first issue of how more support for counter-piracy can be gathered. I argue that a better case should be made for why piracy is problematic and why it requires more resources. The current argumentation in public campaigns for more support so far, as I will show, is weak. I shall advance an intellectual argument in so far as I investigate the principles on which current counter-

piracy is based and scrutinize current campaigns for rallying support for counter-piracy. This intellectual argument is, however, of immediate practical relevance as it indicates how campaigns to gather support for counter-piracy should be rephrased. The primary practitioner audiences of this argument are hence the advocates for more resources to counter-piracy. I shall be less concerned about the ‘how’ question; the question of by which means counter-piracy can be improved. Current literature on counter-piracy already provides an interesting range of creative and alternative ideas for what can be done differently.<sup>1</sup> These proposals shall not be repeated here.

Instead, I like to draw attention to five radically different understandings of piracy. These “paradigms of piracy” provide different problematizations of piracy, suggest different problem coping responses and have a different potential for justifying counter-piracy.<sup>2</sup> I will show that the current dominant understanding of piracy is an economic one. Framing piracy as an economic problem is, however, of disadvantage for rallying support for counter-piracy, given that piracy is considered to be only a problem for the interests of a few private actors. I suggest that a re-framing of the piracy problem is necessary to gather public and political support for counter-piracy. I argue that such a re-framing best centers on

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<sup>1</sup> See among others Bueger, C., 2012. Drops in the bucket? A Review of Onshore Responses to Somali Piracy. *WMU Journal of Maritime Affairs*, 15(1), 15-31; Bueger, C., Stockbruegger, J. & Werthes, S., 2011. Pirates, Fishermen and Peacebuilding: Options for Counter-Piracy Strategy in Somalia. *Contemporary Security Policy*, 32(2), p.356-381; Ehrhart, H.-G. & Petretto, K., 2012. The EU and Somalia: Counter-Piracy and the Question of a Comprehensive Approach. A Study for the Greens/European Free Alliance, Hamburg. Klein, A. 2012. The Moral Economy of Somali Piracy – Organised Criminal Business or Subsistence Activity? *Global Policy*, forthcoming; Oliveira, G.C.D., 2012. Naval Peacekeeping and Piracy: Time for a Critical Turn in the Debate. *International Peacekeeping*, 19(1), p.48-61; Rothe, D.L. & Collins, V.E., 2011. Got a band-aid? Political discourse, militarized responses, and the Somalia pirate. *Contemporary Justice Review*, 14(3), p.329-343; Samatar, A.I., Lindberg, M. & Mahayni, B., 2010. The Dialectics of Piracy in Somalia: the rich versus the poor. *Third World Quarterly*, 31(8), p.1377-1394.

<sup>2</sup> Cp. Bueger, C. 2012. *Orchestrating the Response: Somali Piracy and Ontological Complexity*, mimeo, available at <http://bueger.info>

humanitarian issues. Such a change in public presentation of the problem also connects the piracy problem to other contemporary agendas, such as the human security agenda.

My argument is structured in the following way. In the next section I will provide a short overview over different paradigms of (counter-) piracy. I briefly draw on the case of the SaveOurSeafarers campaign to draw attention to the fact that the economic paradigm is currently dominant in public campaigning and discuss some of the disadvantages of such a framing. I proceed in suggesting that a humanitarian framing will be advantageous for gathering further support for counter-piracy.

## **PARADIGMS OF COUNTER-PIRACY**

A policy is based on the understanding that there is a problem which requires addressing. Counter-piracy policy is based on the assumption that piracy is a problem which requires attention, responses, and considerable public resources. Yet, there are different understandings of why piracy is a problem. Below I discuss five of them, that is: a security, a law enforcement, an economic, a development, and a humanitarian understanding.<sup>3</sup> These understandings provide diverging problematizations of piracy. They frame the piracy problem in a distinct way and suggest means of coping with the problem. They also provide a different basis for justifying measures against the problem of piracy. Such a basic understanding is dubbed in the following a “paradigm”. As we will see the paradigms of piracy differ quite remarkably from each other and suggest different practices of acting against piracy.

A security paradigm understands piracy as a “threat”. Piracy is turned into a question of security thinking. This implies firstly to present piracy as an existential threat for the survival of distinct

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<sup>3</sup> For a more detailed discussion of the notion of paradigm and the different types of (counter-) piracy paradigms see Bueger, *Orchestrating the Response*.

referent actors or objects. In security discourse, piracy is presented as a threat to national referents such as the national economy, or international trade. Seen from this paradigm, pirates are considered to be “enemies”. Given that piracy is understood as an existential threat, security discourse justifies extraordinary measures, that is, military action and the use of force, which may include the killing of piracy suspects.

The second paradigm, the legal or law enforcement paradigm differs. It does not understand piracy as a threat, but as a form of “crime”. In consequence, the pirate is not considered to be an enemy (to which the usual rules and procedures do not necessarily apply), but as a legal subject, as a “criminal” who has breached the rule. The paradigm suggests that what is required is effective law enforcement action, including police work and effective forms of prosecution and punishment.

An economic paradigm suggests yet a different understanding of why piracy is a problem. Here piracy is primarily considered to be a “cost” for the industry on the one side, and on the other piracy is interpreted as a “business model”. The individual pirate is considered to be an “entrepreneur” whose behavior follows a cost benefit calculation in weighting ransom income against the risk of getting caught. In consequence, responses to piracy are also seen differently. This implies firstly to have an impact on piracy by influencing the cost benefit calculation of the pirates (e.g., in reducing the chance of a high ransom or in denying ransom payments at all), and secondly in foregrounding the importance of private corporative solutions (including measures such as best management practices, vessel hardening, innovative insurance solutions, re-rerouting, or private armed guards).

A fourth paradigm develops a further understanding of the piracy problem. The development paradigm foregrounds the root causes of piracy and suggests that piracy should be primarily considered as a secondary problem, as a symptom of other problems, namely underdevelopment, poverty, the lack of employment opportunities, the lack

of infrastructure, high levels of violence and insecurity in the host society, as well as weak governance and official corruption. This interpretation leads to a reversal of the other interpretations of piracy, since it is suggested that the pirates are, in the end, victims of these structures of under-development. Pirate behavior is considered to be determined by these structures and causes. The set of measures such a perspective suggests relies on the development policy repertoire of means. The structures that produce piracy have to be changed by development assistance, state building programs or security sector reforms.

The fifth paradigm frames piracy as a problem of humanitarianism. It shifts attention to the consequences of piracy and its victims. This paradigm suggests that the main problem of piracy is the physical suffering and the financial consequences it causes for individuals, their families and communities. The measures suggested in this paradigm are directed primarily at victims and potential victims. They include preparedness trainings as well as after-incident care, trauma counseling as well as financial assistance to families and communities.

As sketched there are five different understandings of what is problematic about piracy. They suggest different problematizations of piracy, and they argue for and justify different types of measures.

Arguably in counter-piracy discourse all paradigms are of relevance. The calls for tougher action against pirates and more use of force corresponds to a security framing; the emphasis of the international community put on law enforcement and the prosecution of piracy suspects demonstrates the importance of the legal paradigm; the increasing understanding of piracy as a “business model” and the weight put on corporative responses and self-regulatory initiatives, such as the best management practices, highlights the importance of the economic paradigm. The development as well as the humanitarian paradigm are less prominent in the discourse. They are however reflected in calls to

address the root causes of piracy, or to conduct more work for the (potential) victims of piracy.

Many actors draw simultaneously on more than one paradigm and have developed hybrids between these paradigms. For instance, naval mandates tend to blend a security and a law enforcement paradigm. The UN Office of Drugs and Crime's counter-piracy programme mixes the law enforcement with a development paradigm. At the UN Contact Group to Counter Piracy off the coast of Somalia, all paradigms come together.

Using the five paradigms as an analytical grid it becomes also observable that there is a shift in emphasis placed on the paradigms and the practical hybrids formed from it. This is, for instance, observable in the emphasis placed in the series of UN Security Council Resolutions. In 2007 and early 2008 with the first resolutions being negotiated, there was an emphasis on security and partially on humanitarian issues. This was firstly the outcome of the lobby work of the World Food Programme, which saw its humanitarian deliveries to Somalia threatened by piracy. Secondly it was the consequence of three high profile incidents: The 2008 hijacking of the *MV Faina*, a ship carrying conventional weapons, including tanks, grenade launchers and anti-aircraft guns; the 2009 hijacking of the *Maersk Alabama*, which was the first attack on an US flagged vessel and forced newly elected president Barack Obama to authorize the use of force for the first time,<sup>4</sup> and the 2009 hijacking of the *Sirius Star*, a Saudi oil tanker, carrying oil worth as much as sixty million US dollars.<sup>5</sup> Thirdly, it was the product of growing concerns over a link between piratical and terrorist activities. These are three factors which led to the prominence of a security understanding. Yet, the first resolution also provided a clear justification that counter-piracy operations have a humanitarian goal, and that the protection of humanitarian deliveries have to be a number one priority.

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<sup>4</sup> Eichstaedt, P., 2010. *Pirate State. Inside Somalia's Terrorism at Sea*, Chicago: Lawrence Hill Books, 7-13.

<sup>5</sup> Eichstaedt, *Pirate State*, 35.

After UN Security Council Resolution 1816, the first major counter-piracy resolution, there is a clear shift in tone. Increasingly the piracy problem is phrased as a problem of law enforcement, and the discourse is primarily concerned with prosecution, arrest protocols, and improving the rule of law in the Eastern African region. From 2011 onwards it can be observed that the economic and development paradigms become more prominent. The economic paradigm increasingly sets the tone of the discourse. The talk about the costs of piracy and the understanding of piracy as a business model is increasingly becoming the vocabulary by which actors are discussing how to improve counter-piracy. Below public discourse there is however also a growing number of initiatives which aims at tackling piracy through some form of development project.<sup>6</sup> These are general trends if a broad perspective on the development of counter-piracy discourse is taken. If we peer into public campaigns, the tendency is much clearer: it is the growing dominance of the economic understanding. Let me briefly document this by a short deconstruction of the content of the main campaign that wants to raise awareness for the problem of piracy and lobby for more financial and material resource to counter-piracy.

## **THE DOMINANCE OF THE ECONOMIC PARADIGM IN PUBLIC CAMPAIGNS**

The campaign SaveOurSeafarers (SOS) was launched in March 2011 with the objective of increasing awareness of the problem of piracy and to lobby policymakers into increasing investment in counter-piracy. The campaign is financially carried and backed by the major international shipping associations such as The Baltic and International Maritime Council (BIMCO) and the major Protection and Indemnity (P&I) clubs. It is mainly an internet-based campaign, but promotional material has been widely and globally disseminated, for

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<sup>6</sup> See Bueger, Drops in the Bucket.

instance at international shipping events. Campaigning material as well as a banner is also available within the headquarters of the IMO. 32,000 individuals have so far signed the letter of the campaign, which is everything but an impressive number. Leaving aside the question of what the results of a general evaluation of the success and impact of the campaign would be, let me briefly scrutinize the core messages of the campaign in the light of the five paradigms.

The campaign has four main slogans<sup>7</sup>:

- 1) "Stop Piracy. Act Now!"
- 2) "Stop Disruption to World Shipping"
- 3) "2,000 Somali Pirates are hijacking the World's Economy"
- 4) "Oppose Kidnap and Torture of Innocent Seafarers"

While the first slogan does not clearly correspond to any paradigm, since it is merely a call for action, the others do. The second and the third point us to an underlying economic paradigm. They emphasize that piracy is a problem because it affects "World Shipping" and the "World's Economy". The fourth one is the only statement which suggests a humanitarian paradigm: it stresses the problem that "innocent" seafarers are victims of kidnapping and torture. That the campaign is primarily driven by an economic understanding of piracy, becomes even more evident if we scrutinize the further text of the campaign. Throughout all of the texts the campaign foregrounds the economic category of "costs". The suggestion is that piracy is a problem because of the costs it induces. These costs are quantified. And even if the campaign speaks about seafarers it does so in economic terms by speaking about the "human costs". The following two passages clearly indicate this:

"Innocent seafarers on commercial cargo ships are *being held to ransom for millions of dollars* by armed gangs of Somali pirates. The *cost* of Somalian piracy is *both human and economic*. It

<sup>7</sup> <http://www.saveourseafarers.com/>

affects seafarers and their families and YOU. Piracy costs the global economy \$7-12bn a year because it is beginning to strangle key supply routes.”

“The human cost is just part of the story. Around 20 per cent of the world’s shipped goods pass through waters that are now infested with pirates. Few vessels are safe - from supertankers to small cargo ships. Research conducted by the Oceans Beyond Piracy Project estimates that costs of insurance due to Somali piracy at between US\$460 million and US\$3.2 billion.”<sup>8</sup>

With the latter statement the campaigners almost openly admit that their true concern is not with the seafarers. Seafarers are primarily a concern because they are a human cost, but moreover these costs are “just part of the story“. How much the campaign is driven by business interests as well as presented as such, can also be revealed if we investigate what the “our” in the campaign refers to. In principle the use of a phrase such as “our seafarers” could be a strong argument since it is a public category and refers to larger commonalities beyond private interests. Yet, the following passage from the campaign demonstrates which seafarers the campaigners have in mind, and what the “our” refers to.

“We are one of the biggest ever maritime industry groupings, comprising thirty organisations that have joined together to raise awareness of the human and economic cost of piracy. [...] we believe *our innocent seafarers and the global economy* have the right to protection.”<sup>9</sup>

The link established here is relatively straightforward. It is not the global community of the seafaring professionals, of all fishermen and seafarers worldwide that the campaign refers to. In this phrasing it is the employees of the shipping companies. Hence it is not a humanitarian, egalitarian understanding of “our seafarers” that the campaign foregrounds. “Our seafarers” refers to the employees of

<sup>8</sup> <http://www.saveourseafarers.com/>

<sup>9</sup> <http://www.saveourseafarers.com/our-campaign.html>

businesses. The seafarer is not projected as a human suffering from piracy, but as an employee which cannot be adequately protected by his employer and as a category of costs.

To be fair, within the campaign there are also traces of other paradigms. This is indicated by the fourth core statement (oppose kidnap and torture of innocent seafarers), which is the only statement in the campaign that does not have a reference to the economic understanding. There are also references to a security framing. Yet as the following passage highlights, even if the concept of threats is used there is an immediate link to economic costs, rather than to other potential referent objects threatened by piracy.

“But the world's politicians don't seem to realise the severity of the crisis. World trade is under threat. Piracy costs the global economy \$7-12bn a year.”<sup>10</sup>

Now, maybe there is nothing surprising in the finding that a campaign run by shipping companies foregrounds that the piracy problem is an economic problem, that it affects the business interests of the associated companies and that the main problem is that it increases the costs of their businesses. We might conclude from this analysis that it is just a case of badly designed lobbying work. The campaign fails to deliver the message that piracy is a problem of the common which requires public money being spent. If we draw such conclusion then our perspective is cynical, we suggest that piracy is a problem similar to, let's say, the rise of a business tax. The problem induces costs for some faction, and in consequence they lobby against it.

Yet, if we think that piracy is an actual problem, a problem that should be the concern of the public and a problem that demands more action and resources, then the SOS campaign is more a hindrance than a help for gathering more support. A campaign that foregrounds the economic dimension and stresses that piracy is

<sup>10</sup> <http://www.saveourseafarers.com/the-cost-of-piracy.html>

primarily a concern of the business interests of some, fails to convince the public that addressing piracy is in the general interest, and that it might even be a normative duty to protect the potential victims of piracy. Public support, and in consequence political support, is difficult to rally if a problem is framed as a private one, and that is certainly the case if issues of international politics are at stake. Why spent taxpayers money on an issue that is only of relevance to some companies, the majority of which do not even pay a large sum of taxes in the countries they are lobbying? Would anyone have supported an intervention in Bosnia, Kosovo, or Afghanistan if what was at stake were the business interests of some international corporate?

In summary, the SOS campaign might *de facto* undermine public support for counter-piracy. Yet, given that the campaign is one of the major vehicles of raising awareness for counter-piracy, and if one joins in the assumption that more political support for counter-piracy is needed, then the question is how the campaign can be or should be redesigned. While my intention is not to suggest any practical measures of improving the campaigners work, below I suggest that it is important to reframe the campaign (and other similar ones) in humanitarian terms.

## TOWARD A HUMANITARIAN FRAMING

As a recent study of media reporting on Somali piracy suggests, the media has so far largely presented the issue as one of the concerns of shipping industry and mariners.<sup>11</sup> “Widespread public concern was not demonstrated” in the media, the study concludes.<sup>12</sup> In other words, public campaigns as well as policymakers have not succeeded in convincing their publics that piracy is more than an issue of business interests. Although, as the study suggests, piracy

<sup>11</sup> Collins, V.E., 2012. Dangerous seas: Moral panic and the Somali pirate. *Australian & New Zealand Journal of Criminology*, 45(1), p.106-132.

<sup>12</sup> Collins, *Dangerous seas*, 125.

has mainly been presented in the media as a security issue, that is, as a threat. Yet, it has been presented as an issue of “economic security”. In other words, the media presents piracy through a mixture of the economic and the security paradigm. As we have seen in the brief analysis above, the SOS campaign pulls piracy as an issue even stronger into the domain of the economic paradigm. How can the case that piracy is an issue of public concern be made stronger? If we peer into the means by which recent military interventions have been sold to the public and succeeded in convincing that the situation in a country is in the public’s interest, then we are pointed to the importance of humanitarian thinking straightforwardly. International action that involves large resources today is justified primarily on humanitarian grounds. A major example of such a justification is the case of the Afghanistan intervention, which was not only justified in the frame of the Global War on Terror narrative, but also as a war to liberate Afghan women. There is hardly a recent case of contemporary international interventions which does not at least involve a humanitarian justification along other arguments such as security concerns. If this is a valid diagnosis, then one answer to the question of how more public, and in consequence political support can be won for counter-piracy, lies in the importance of a humanitarian framing. How can such a framing look like and what should be emphasized?

A strengthened humanitarian framing first of all foregrounds the victims of piracy. And it does so in treating all types of victims equally. Now, there are at least four major groups of individuals which are the main victims of piracy.

The first is the category emphasized by the SOS campaign, the seafarers which are the employees of the major international shipping companies. This victim group is to some degree already well looked after, since such employers will comply with the best management practices (BMP) which significantly reduces the risk of being kidnapped, and for the case of a piracy incidents negotiation is in the hand of professionals and insurances being paid.

In contrast to this relatively exclusive club of victims, the second category of victims is constituted by the maritime professionals which do not fall in the first category. This includes seafarers employed by small companies and the 'black sheep' of the international shipping industry. Those companies often do not comply with the BMPs and are not adequately insured, be it for the lack of resources, or the lack of will. This category also includes local traders which are often small scale family run businesses, or the crew of local small scale fishing enterprises. As suggested in the introduction, this category is increasingly becoming harmed by piracy. In their cases, there is hardly any association or professional agency which handles a piracy incident, nor is there someone guaranteeing the income of the family and the communities.<sup>13</sup>

There are two more categories of victims which should be kept in mind. This is, thirdly, the category of individuals whose fate has been part of the original justifications for the counter-piracy operations, that is, the people in Somalia who are dependent on humanitarian aid. This group may be extended to those people affected in the wider region by the decrease of inter-regional trade. Although exact numbers are uncertain on how piracy has affected inter-regional trade, and, in consequence, people in the region, reaching from port workers to people that have to pay higher prices, this group remains one of the main victims of piracy.

A fourth group relates to those individuals who are living in the piracy-infested areas of Somalia. Reports suggest that people living in the villages which host piracy organizations do not necessarily benefit from these criminal enterprises. Rather, they suffer from higher level of insecurity due to the behavior of pirates, inter-pirate violence, drug and alcohol consumption, prostitution or rape. Piracy

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<sup>13</sup> See the discussion of two such cases in Bueger, Christian. *The Human Face of Piracy: Pakistan's Response*, Piracy-Studies.org Blog, March 2012, <http://piracy-studies.org/2012/the-human-face-of-piracy-pakistans-response/>

activity also has negative economic effects for the population in such villages, for instance by price inflation for basic goods.

Foregrounding the fate of the latter three groups will be important for refashioning a successful campaign. It is these groups which have no representative voice and are those affected by piracy the worst. Their stories of agony caused by piracy have not achieved public attention so far. Foregrounding their fates in a redressed public campaign is a win-win situation. It will help the international shipping industry to gather more support against piracy and it will also assist in bettering the situation for those affected by piracy the most. There is a further strategic advantage in reframing the counter-piracy problem in such way: New allies can be found that might be willing to support the cause of counter-piracy. Campaigners for human security, humanitarian intervention or the responsibility to protect have long argued for foregrounding human concerns in international relations. By demonstrating that counter-piracy is a humanitarian issue it is likely that these audiences can be won.

To summarize, in this contribution I have argued that there are different understandings of why piracy is a problem. The current counter-piracy campaign so far has centered on an economic understanding. Neither this paradigm, nor its hybrid of economic security, are adequate means to rally further political or public support for counter-piracy. They fail to make a case why piracy is not a private, a business problem but a public concern. In refashioning the concerns of the campaigns in humanitarian terms more support for counter-piracy can be won and this, in the long run, will also be beneficial for those who are the major victims of piracy.




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## **Stockholm Syndrome and Post Stress Disorder** **SEALs who killed Osama had earlier rescued** **Capt. Phillips from Somali Pirates**

On 8 April 2009 pirates captured the MV MAERSK ALABAMA and fled with its Master, Captain Richard Phillips as hostage in a lifeboat, the 4 pirates demanding \$2 million for his release. A few days later the boat ran out of fuel and was taken in tow by the USS BAINBRIDGE while ransom negotiations continued. Capt. Phillips tried to escape but was recaptured by the pirates, one of whom, Musi, was injured and taken on board the BAINBRIDGE. That is when SEAL Team Six was flown in to rescue Capt. Phillips. It was the same team which two years later became famous in the attack on Osama bin Ladin, narrated in the book "NO EASY DAY".

One of the SEAL team became friendly with Musi and offered him ice-cream and Cokes on the stern of the ship from where the other three pirates could see them. He persuaded Musi to pull the pirate boat closer to the BAINBRIDGE so they could communicate.

The line got shorter. On the fantail, the SEALs scanned the lifeboat. One of the pirates always sat on top of the covered area keeping watch; engaging him would be simple. They could also see one pirate steering the boat, another relatively easy target. But the third pirate was always hidden. The only way to shoot them was to get the third pirate to expose himself. Finally, after hours of waiting, on Sunday night the third pirate's head and shoulders emerged from the rear hatch of the lifeboat. That was all the snipers needed. Three shots were fired, the pirates were killed and Captain Phillips recovered.

Capt. Phillips was confused and disoriented. That is when the SEALs noticed how mariners get traumatized when in captivity. On seeing three pirates killed Capt. Phillips remarked "Why did you guys have to do that?" It was a clear indication of the master of the ship suffering from the Stockholm Syndrome and Post Stress Disorder.

## **Arming Merchant Ships: Cost Effectiveness Analysis of an International Dilemma**

*by Professor Ye, Hailin*

Of course, arming merchant ships is one option for countering piracy attacks because it is simply not possible to provide an escort for every merchant ship in such a huge area as the Indian Ocean – that would be totally beyond the capability of any navy. And since the speed of some merchant ships is rather slow, they can be “sitting ducks” on the ocean. So the question arises: how can we turn “sitting ducks” into sitting ducks with teeth – barracks on the ocean – so they can protect themselves from hijacking attempts?

There have been many suggestions on how best to arm merchant vessels, ranging from installing high pressure water curtains, to providing small arms training to the crew, to recruiting professional security guards. In essence, those are the only three possible options for enhanced self-protection: making the ship inaccessible; turning sailors into soldiers or marines; or recruiting additional security staff.

Some of these options have already been adopted by certain shipping companies and it should be acknowledged that they do work. Merchant ships with armed protection face less risk than “naked” ships. Meanwhile, some suggestions are more imaginative than rational. A recent Google search revealed a brilliant idea on a Chinese website: the blogger suggests that a merchant ship could use some sort of kinetic machine to throw gasoline barrels at potential hijackers like a big slingshot. The blogger may have been a computer game geek or an amateur military enthusiast mad about defending ancient castles, but at least he or she does care. We should respect that spirit but, of course, not necessarily pursue that particular suggestion. This paper will certainly not explore such suggestions, not only because it would be “mission impossible” – human imagination is limitless – but also because technological factors are not the key issue. We can always find technical means if

we want to. As a matter of fact, in all the debates on arming merchant ships, technology issues raise the least concern. The focus is much more on legal issues than on technology.

The key issue is the total cost of arming merchant ships, and the implications of doing so. While we know that an armed merchant ship faces reduced risk, we are not clear on what the impact might be on overall international maritime behavior, its legal framework, to the shipping industry in general, or even to the global economy.

In any debate on policy options there are three factors to be considered: technological feasibility, political feasibility and economic feasibility. Among these, technology is usually the fundamental issue. If an option is not technically possible or violates some scientific principle, then we cannot consider it at all.

Political feasibility involves a whole package of considerations that include legal framework, diplomatic concerns, potential public reaction, and moral standards. That can be very complicated, but not impossible. From a political science perspective, I consider that if there is strong and convincing evidence that we should do something in spite of legal obstacles, then we always have the option of amending the law. After all, except for matters of natural law, law exists to serve the needs and interests of humanity, not the opposite.

So what is the key issue in arming merchant ships? Simply put, it is economic feasibility, which raises several questions. Is it worth it? How can we evaluate the costs and benefits? What will the impact be on the global economy? These are the questions to which I will now turn.

In assessing economic feasibility, the first requirement is to establish an assessment model to evaluate cost and effects. That may seem simple but is, in fact, very complicated.

The first question is to establish who will pay the cost and who will receive the benefit. In my opinion it should be the entire shipping industry in general rather than any single company, or even individual ship owner. If we only consider whether arming a ship as a counter-piracy measure works or not, and whether it is worth the

cost, then I could stop here with nothing more to say. There is no need for “pro and con” analysis for a company that is capable of paying the additional costs of security staff. Wealthy enough companies could even afford their own gunboat escorts and enjoy perfect safety. The only consideration would be whether cargo owners are willing to pay more to have their goods shipped in perfect safety.

But the impact on the entire industry must be considered and added into the calculation. When we discuss the overall cost of arming ships we cannot simply look at the cost to one company; we must calculate the cost of putting armed personnel and equipment on all merchant ships, because if we start introducing the system to some, eventually it will need to be adopted by all.

Even if we were lucky enough for all pirates to abandon their criminal activities because all of our merchant ships became technically unconquerable, the likely consequence would be that maritime transportation costs would have risen rapidly and the price of all products in the international market would be higher than at present. Unless we can prove definitively that the total cost of arming merchant ships is less than the losses caused by piracy, it is not an economically acceptable option. Even without doing a detailed calculation, it is certain that arming ships would not be cheap. It would most probably lead to a large expansion of the marine security industry and, as a result, China would have to pay more for gasoline and parents around the world would have to pay more for their children’s toys.

Let me use the example of stolen cars to make comparison. Assume that there are a million cars in a city and ten thousand of those will get stolen. If each car is worth \$200 then the total loss will be \$2 million. From the perspective of economic science, if the city and its citizens have to pay more than \$2 million to ensure their cars are not stolen, it is not worth it. No matter which kind of measures are taken, that is the limit of economic practicality.

Of course, that is an over-simplified model which ignores the benefit that certain interest groups gain from loss by others, such as insurance companies increasing premiums and shops selling more car locks. Admittedly this simplified model is imperfect because it ignores the most important and often overlooked factor. But economic methodology deserves attention because, if the conclusion does apply, the overlooked factor may not matter as long as we eliminate some disturbing factors from our thought pattern. If the conclusion does not apply or is ridiculous, then the overlooked factor will matter. Let us return to the case of car theft. If the municipal government adopts a resolution making installation of car locks mandatory, but implementing the resolution will cost \$4 million, then we may suspect that some kind of lobby is behind the resolution.

So, back to the discussion of armed protection of merchant ships, let us assume that there are ten thousand ships voyaging near Somalia each year and that if we did nothing, the pirates could hijack a hundred ships per year and request five million US dollars for each ship and crew. That would mean a total cost of \$500 million dollars per year. That figure would be the cost ceiling for protecting the entire world's shipping industry per year. If the expense is more than it that, it means it has been incurred for other than pure business reasons, such as moral humanitarian standards or geopolitical concerns.

If we are expending resources for humanitarian reasons, we could establish a charity foundation to help seafarers and their families while we pay the ransom. That is the easiest way. If at least some of us had another agenda, that would go beyond this discussion and we should organize another conference called "Who is taking advantage of piracy in the Somalia region?"

What can we do within the cost ceiling? That is the real problem we must answer. And another factor must be mentioned when we think about this question. If we adopt such a policy, what would happen to those who do not adopt the same policy?

I would like to raise another economic model called “the dilemma of the public lake”. Imagine a lake surrounding by houses. If some selfish individuals dump garbage into the lake to avoid paying a recycling fee, they will receive the benefit but leave their neighbors to suffer. Of course eventually they also have to pay the final price of the lake becoming heavily polluted, the water becoming hazardous and everyone having to move. But what if they move away before the lake is totally poisoned? In that case they will enjoy the benefit without any loss. It is absolutely selfish and short-sighted behavior, but unless the community imposes some regulation to ban it, what they have done is economically rational.

But we must recognize that the world is interlinked: one person’s behavior will have effects on someone else. So, the question is that, when one seeks to maintain or maximize one’s own interest, is there an obligation to consider that of others? Of course it could be argued that dumping garbage into a lake is not only a disgrace but also illegal. But it is different with recruiting security guards for merchant ships. That is a legal activity; or at least we can make it legal, if we want to – it is not immoral.

That is true, but not entirely true.

There are always two factors that should be considered in judging whether a certain behavior should be classified as negative, like polluting. One is the nature of the impact on a non-directly-related partner. Must the innocent pay the price or will there be some form of compensation? The other is the consequences for the general public. Usually that is in the form of the rising overall general cost which I mentioned earlier. In either case, the point is that the behavior impacts on others.

If an individual shipping company takes high level security measures, it will ensure the safety of its own ships and so pirates will abandon their attempts to hijack them. But what will the pirates do next? If they shift their attention to some “naked” ship and are

successful in hijacking it, then the hijacked ship will have paid the price, while the benefit will have been to the company that armed its ships.

That is what is happening right now. Armed merchant ships are getting safer, but meanwhile the total number of hijacking incidents is not reduced. That means pirate groups are simply selecting different targets, not giving up the business. So, arming some merchant ships is not helpful in solving the overall problem.

And since the problem is still there, the other merchant ships have only two options: give up this market or institute their own armed protection arrangements. If we are lucky, the pirates will then realize that it is not possible to hijack any merchant ship because they will have all been upgraded to semi-military vessels. There is also another possibility: that the pirates start an arms race with the merchant shipping community. In that circumstance, the ransom will be very high to rescue any hijacked ship because the pirates will need more money to smuggle more sophisticated weapons such as missiles.

Is there any way to enhance the safety of some merchant ships without exposing others to more serious risk? In theory and in practice there is.

Going back to the stolen cars case again: what are the similarities between a large car lock and the armed security guards on a merchant ship? The most essential similarity is that they send the same message to bad guys – “I am invulnerable so try that weak and shabby one over there”. As result, as relevant data suggests, car locks could stop car-stealing criminals just as armed security guards can reduce some ship hijacking. Unfortunately, a car thief may take only a very short time to find a way to break the car lock. That is not an encouraging signal for merchant ship armed protection initiatives.

So what? Is the situation hopeless? Not really.

I will give another example. It is a device called LoJack used to prevent car theft in the US. It is a small device installed in some secret place in a car. Unlike a big mechanical lock, it is small and smart. Car thieves are unlikely to find it before they steal the car. Once the car is stolen, LoJack will send a signal to the police and the owner of the car, so that it is easy to find where it is – usually where the thief is also. It is a wonderful invention, not only from the perspective of GPS technology, but also the perspective of economy. It benefits the owner of the car who has paid for the device, but meanwhile it also brings benefit to others who have not bought one. The reason is simple – the thief cannot tell which car is fitted with this device and which is not, so it is a deterrent to all attempted car theft. That is what we could call a positive external impact, unlike the large visible car lock which only diverts the danger to other cars.

Unfortunately, it seems that even the LoJack concept will not be helpful for stopping or reducing Somali piracy. The reason is quite simple: unlike car thieves or the pirates in Southeast Asia for several years, Somali pirates do not hijack ships to sell them – they do not want ghost ships; or at least that is not their major aim. They want the ransom. They do not care whether the hijacked ship can be located by GPS or not. That is why the Automatic Identification System (AIS) already installed on merchant ships is not helpful in reducing hijack attempts by Somali pirates.

And so we see the real dilemma of merchant ship self-protection initiatives. To introduce armed security guards could lead to arms race, not only between the pirates and merchant ships, but also among merchant ships themselves. And it also will lead to rising prices because of the need to hire so many people. AIS is not, like LoJack devices ashore, helpful in preventing or deterring hijacking for ransom attempts. The dilemma is not because of international law or diplomatic concern. Whether arming merchant ships should be the preferred option depends on whether it works economically or not.

Again it should be emphasized that when we do the cost-effectiveness assessment, the point is that we should not just compare the costs of recruiting security guards for any single shipping company to the potential loss from piracy. We should calculate the total cost of armed merchant ship initiatives for the entire maritime transportation industry as a whole, and then make the decision.



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## **Working Group Reports**

### ***Edited by Mr. David Griffiths***

During the conference, working groups were established to consider specific aspects of the conference theme in detail. On the first afternoon they identified and discussed relevant factors. On the second they turned to consideration of practical courses of action for preventing or mitigating piratical acts, responding when they occur, and facilitating post-event recovery.

Because of the number of speakers and duration of productive discussion during the plenary sessions, the time remaining for group discussion was relatively limited. Nonetheless, the groups achieved an impressive degree of consensus and a solid body of recommendations. It is noteworthy that several similar suggestions arose independently in more than one group. The five working groups were as follows.

1. Marine Transport and Fishing Industries
2. Maritime and National Laws
3. Negotiating with Pirates
4. Welfare of Seafarers
5. Impact of Piracy on Families and Community

### **WORKING GROUP 1: MARINE TRANSPORT AND FISHING INDUSTRIES**

#### **Discussion**

In accordance with the 1982 UN Convention on Law of the Sea (UNCLOS), Articles 100, 105 and 110, all states have an obligation to cooperate to the fullest possible extent in countering piracy. They have universal jurisdiction on the high seas to seize pirate ships and aircraft, or ships or aircraft taken and under the control of pirates. They have the right to arrest persons and seize property on board. This also allows states to exercise a right of visit *vis à vis* ships

suspected of being engaged in piracy. Consequently, regional coastal states have both obligations and rights with respect to piracy.

## Recommendations

The working group made two broad recommendations for regional coastal states.

1. ***Assumption of State Responsibilities.*** Regional coastal states must fulfil their obligations to cooperate in dealing with the menace of piracy within the auspices of UNCLOS.
2. ***Enactment of Effective Piracy Legislation.*** Each coastal state that has not already done so should enact comprehensive national piracy legislation expeditiously. Such a Piracy Act should comprise two parts to address two broad issues.
  - *Operational – Prevention and Response in the State’s Own Area of Jurisdiction.* This should establish policy for assisting ships being attacked or hijacked in which naval forces, coast guards or other maritime security agencies are tasked to respond and counter any piracy act. Responsibilities of all concerned organizations should be defined clearly.
  - *Humanitarian – Mitigating the Effect of a Piracy Incident.* This may be achieved by formulating a national policy to generate funds through shipping companies, seafarers, port authorities, welfare organizations, NGOs, government resources, etc. These moneys could be utilized for the following purposes and be recovered afterward, with interest, from the relevant shipowner:
    - addressing financial and social problems faced by the families of seafarers captured by pirates;
    - medical treatment and rehabilitation of released hostages; and
    - meeting any other expenses directly related to human aspect of piracy.

## WORKING GROUP 2: MARITIME AND NATIONAL LAWS

### Discussion

International piracy laws derive from the 1982 UN Convention on Law of the Sea (UNCLOS), the earlier 1958 High Seas Convention and customary international law. Sources of domestic law include national substantive laws, procedural laws, and national rules and regulations. The key provisions of UNCLOS relative to piracy are:

- Definition of Piracy (Art 101)
- Definition of Pirate Ship (Art 103)
- Duty to cooperate in repression of Piracy (Art 100)
- Loss of Nationality of Pirate ship (Art 104)
- Seizure of Pirate Ship (Art 105)
- Liability for Wrongful Seizure (Art 106)
- Ships Entitled to Seize Pirate Ship (Art 107)
- Right of Visit to Suspected Pirate Ship (Art 110)

Law enforcement at sea in international waters is generally undertaken by coalition campaigns or task forces. The advantages of this approach are deterrence and cooperation both internationally and multilaterally. The weaknesses are that coalitions have no independent laws, prosecution mechanisms, trial courts, funds to compensate for damage or wrongful arrest of vessels, or uniform rules of engagement (ROE).

There are many legal and administrative challenges to dealing with piracy. One is the problem of detaining pirates before they can be prosecuted. Challenges to the legal process include the formalities and gathering of initial evidence, language barriers during investigation and trial, and ensuring attendance of witnesses before the court. After the trial, if the accused are found guilty, there is then the problem of detention and later what to do with them after their term of detention is over. In addition there are considerations of

disposal of the pirate vessel, what to do about the victim ship and her cargo, and compensation for any damage during the operation.

Options for courts in which captured pirates may be tried are numerous. Internationally there are the International Court of Justice (ICJ), International Criminal Court (ICC), international tribunals and special regional courts. Domestically, each state may either use regular courts or establish special courts specifically for piracy.

Proportionality of punishment for those found guilty is not simple or straightforward. Most countries have abolished capital punishment and sentences are often lenient. Many countries also adopt a policy of concurrent punishment for different acts. The presence of juveniles in the gangs is also an issue. Furthermore some well-meaning humanitarian organizations sometimes appear to care more about the criminal than the crime.

Jurisdiction is not a problem since many states have the right to try pirates. These include the state of the arresting ship; of the victim vessel; of the victim crew; of the charterer of victim vessel; having cargo interest; in whose territorial waters the pirate vessel entered or whose nationals commit piracy; indeed all states in agreement with prosecution. There are, however, factors which make some states reluctant to prosecute. These include concerns that their national flag carriers may be targeted specifically; the responsibility for disposing of pirates after completion of punishment; the risk that pirates will claim asylum or refugee status on release; the complexity of the legal procedures; the cost in effort and money; and the compromising of other operational commitments of officers or other personnel engaged in the proceedings. Consequently, a "catch and release" policy may appear attractive but, in the end, is counter-productive. That only encourages pirates, reduces the deterrent effect of counter-piracy operations and is meaningless to pirates who, because they are engaged in well-funded organized crime, consider the loss of their weapons and equipment a simple cost of doing business.

## Recommendations

Given that ultimate responsibility for the prosecution of pirates rests with individual states, the working group made the following four recommendations.

1. **Enactment of Domestic Piracy Law.** Individual states must improve their domestic laws on piracy
2. **Political Will.** States must demonstrate the political will to implement the relevant national and international laws.
3. **Regional Approaches.** Regional approaches to anti-piracy cooperation should be strengthened.
4. **Countering Somali-Based Piracy.** In the specific case of Somalia, the law enforcement capability of the neighbouring states needs to be enhanced.

## WORKING GROUP 3: NEGOTIATION WITH PIRATES

### Discussion

The first question to be considered is whether we should negotiate with pirates at all. The clear answer is yes, for three reasons. The first is pragmatic: it is taking place anyway. The second is humanitarian; the suffering of seafarers should be minimized. Thirdly, the negotiation process provides a unique channel of communication to the pirates; hence it can be used to have an impact on pirate behavior and the future of piracy. In other words, negotiation may also be an opportunity.

If negotiations take place, the next question is who should conduct them: state agencies or private professionals? The group consensus was that, in principle, negotiations should be carried out by private professionals, although state agencies still have a role in monitoring negotiation processes carefully and observing their impact on the development of piracy.

Considering the conference theme, the main issue that arises is how negotiations can be carried out when ships do not have

sufficient insurance (as in the case of MV *Suez* or the fishing vessel *Al Imram*). The group proposed that in such cases the “Chinese model” of a compulsory insurance scheme through manning agencies should be followed. This implies that all states are encouraged to implement similar models in their own national shipping legislation. However, given that it is unlikely that international compliance can be reached on this issue, an additional alternative mechanism is required. The group proposed that such a mechanism could take the form of an international trust fund to cover the provision of professional negotiation support.

There are, however, two major problems with implementing such a fund. First, while such a trust fund could cover the cost of negotiations, it is unclear where the ransom would come from. If pirates are aware that any seafarer is covered by an international kidnap and ransom fund, this would set the wrong incentives for pirates (as they would know that they will receive ransom in any case). The group proposed that the fund should be used to buy private universal kidnap and ransom insurance at fairly low costs. This, however, creates a potentially significant free rider problem. It is also unclear how such a process could be bureaucratically managed. How to register seafarers in such insurance, and how to provide cover for the wider maritime community (which includes fishermen as well as small dhow traders, who equally have become victims of piracy)?

The second problem is that it is unclear where the donations to such a fund would come from. One suggested potential source was those who profit from counter-piracy, namely international private maritime security providers. As for organization, such a fund could, for example, be implemented in the framework of the existing counter-piracy trust fund managed by the United Nations Office of Drugs and Crime, or the Trust Fund of the Maritime Security Program of the International Maritime Organization.

## Recommendations

Like it or not, there are times when negotiation with pirates is unavoidable. Consequently, the working group made the following recommendations.

1. **Private Negotiators.** Negotiation is best conducted by private professional experts.
2. **State Oversight.** The role of State agencies when negotiations are occurring should be to monitor the process to ensure that such negotiations contribute to, and do not prejudice the progress of national and international counter-piracy.
3. **Trust Fund.** An international trust fund should be established to cover the cost of professional negotiation support. Ideally this could be managed by institutions such as the United Nations Office of Drugs and Crime or the Maritime Security Program of the International Maritime Organization. Sources of income could include those who benefit from the counter-piracy business or some form of international insurance regime.

## WORKING GROUP 4: RESPONSE & RECOVERY – WELFARE OF SEAFARERS

### Discussion

A consistent theme throughout the conference has been the impact of piracy not only on the business of merchant shipping, but also on hijacked seafarers and their families at home. On the one hand, seafarers stranded on ships not only suffer the pains of unlawful detention, torture and inhumanity, but also psychological trauma thinking about their helpless families. Meanwhile their families are suffering fears, uncertainty and anxiety, as well as severe economic problems due to stoppage of remittances from their bread-winners. Concrete response and recovery measures must be adopted, along with welfare measures for such seafarers and their families.

The group discussed the creation of a welfare fund at length. Various options for obtaining funds were considered, including legislation for mandatory contributions by recruiting agents and shipowners. In the case of Pakistan, approximately 25,000 registered seafarers are available for employment although most of the employment is dependent on foreign flag ships. Approximately 7,000 Pakistani seafarers are employed at any given time. The problem would be that such legislation could negatively impact seafarer jobs and employment opportunities, and the level of unemployment among Pakistani seafarers could therefore increase. The working group concluded that a better approach would be to establish a fund to which all registered seafarers would pay a small, refundable deposit, returnable with interest after a predetermined maturation period. In situations when hijacked seafarers' wages are stopped and their families affected, this fund could then be utilized for disbursement of a subsistence package to the family until their wage-earner is released. Modalities of the proposed fund could be worked out in detail if the proposal itself is considered workable and appropriate.

## Recommendations

The working group proposed six recommendations.

1. **Organized Homecoming.** On release from captivity, seafarers should return home to the encouragement of a warm welcome from both their government and society.
2. **Medical Support.** Immediate medical assistance should be provided by the government to seafarers who have been released from captivity.
3. **Compensation.** All efforts should be taken by recruiting agencies to recover the wages due to hostage seafarers. Suitable compensation should be provided by the shipowners for the suffering of seafarers, assisted as required by government

4. **Re-employment.** Re-employment of affected seafarers should be arranged on a priority basis.
5. **National Action.** General welfare funds for seafarers and their families should be established to meet their financial assistance in such emergency situation. In the case of Pakistan, for example, a fund should be established for all registered seafarers who, when employed, would be required to set aside a small percentage of their monthly earnings as a deposit to this fund. At the end of a predetermined maturation period the seafarers would get their deposited money returned, along with profit from interest on their contributions over the years. This payment would not relieve unscrupulous employers of responsibility for paying wages and benefits owed to the hijacked seafarer. Rather it would be a means of providing immediate temporary relief to families while the fund pursues reimbursement from the employer.
6. **International Action.** The IMO and ILO should be urged to advocate and facilitate an initiative to make it obligatory under some international legislation or convention for all shipowners and recruiting agencies to insure their ships and innocent seafarers against piracy, kidnapping, ransom and the risks involved in such incidents.

## **WORKING GROUP 5 – IMPACT OF PIRACY ON FAMILIES AND COMMUNITY**

### **Discussion**

Response to, and recovery from the impact of piracy on the families of seafarers and their communities should be the concern of numerous agencies. In the case of seafarers serving on national flag carriers and local shipping companies these include government authorities (for example, in the case of Pakistan, the Director General Ports and Shipping), P&I clubs and shipowners. In the case of those serving on “flag of convenience” ships, responsible

authorities include national governments (in the case of Pakistan, coordination by DG Ports and Shipping), local government authorities, international counter-piracy organizations (e.g., IMB, UKMTO, ITF), concerned companies and NGOs.

The impacts on families are usually of two main types: psychological and financial. Causes of psychological stress include the lack of communication with the hijacked seafarers, in some cases receiving threatening calls from pirates directly to the family members, and in most cases a feeling of helplessness. Financial problems stem from having no money to make ends meet, disruption of children's education and other necessities, and dependence on relatives for financial support.

Seafarers belong to an interlocking chain of communities, particularly their home community, the community of seafarers and the maritime business community. All are affected by acts of piracy.

## Recommendations

The Working Group's recommendations addressed the two primary types of impact: financial and psychological.

### FINANCIAL IMPACTS

1. **National Arrangements.** Some type of endowment fund could be generated at government level (for example shipping authorities like Pakistan's DG Ports and Shipping) through funding from shipping companies, shipping agents, labour organizations and perhaps a small share from the seafarers salary.
2. **International Arrangements.** International organizations such as the International Maritime Organization, International Transport Workers' Federation, International Labour Organization or others could take the lead in introducing a treaty or convention to make funds available to families of victims sailing under a "flag of convenience".

3. **Regulation of Shipowners and Manning Agents.** Shipowners and manning agents should be bound by rules requiring payment of salary and allowances to families of seafarers being held hostage. This should be enforced under national laws.
4. **Role for NGOs.** Non-government organizations may be requested and encouraged to take a special interest in helping victims' families in cooperation with, and coordinated by, the appropriate levels of government.

### PSYCHOLOGICAL IMPACTS

5. **Responsibilities.** Government shipping authorities should ensure that psychological support is made available to the families.
6. **Counselling and Therapy.** Counseling and psychotherapy should be available to the family, especially the children, both during and after the ordeal. This would include the following.
  - *Psychological assessment* to understand the level of impact and seriousness of issues.
  - *Screening and Diagnosis* to determine appropriate services.
  - *Initial Crisis Intervention* to counter potential long-term impact of trauma.
  - *Psychotherapy*, specifically trauma therapy and rehabilitation sessions.
  - *Catharsis and adjustment* support.
  - *Cultivating awareness* among extended family and friends about the psycho-social impacts. This could include such tools as “awareness camps” or focus group sessions.
7. **Media.** Access to media communication facilities should be provided to family members if desired and appropriate.
8. **Travel assistance** to enable the family to have board and lodging in the port city to which seafarers may return.
9. **“Caesar Syndrome”.** Many hijacked seafarers once released are too traumatized to return to a seagoing career. This is not only a loss of income for the family but also a loss of trained seafarers to the industry. This problem might be prevented or

mitigated by counselling seafarers before they sail in pirate-prone areas. Dr. Paleri advocated encouraging what he called a “Caesar Syndrome”, recalling the example of Julius Caesar who, when captured by pirates in 74 CE, maintained a confident attitude throughout his captivity that he would be released and that his captors would ultimately be brought to justice (he was, and they were).

## **Defining a Way Ahead**

**by Dr. Lucia Fanning and Mr. David Griffiths**

*Now this is not the end.  
It is not even the beginning of the end.  
But it is, perhaps, the end of the beginning.*

Winston Churchill, 10 November 1942

Nothing is more frustrating than going through all the effort of preparing a conference, and particularly all the research and writing of papers, and then for nothing more to happen. When a conference is about as important as this – the human impact of marine piracy – failure to follow through with practical actions would be a crime. Because of a happy combination of circumstances there is a remarkably useful opportunity to integrate the work begun in this conference with a results-oriented project already underway at Dalhousie University.

This paper offers a first impression of key observations made during the conference from the perspective of the Dalhousie University research so far. Reflecting the purpose of the conference – to provide much greater visibility to the humanitarian aspects of the problem – the paper briefly recaptures the issues raised over the three days of this conference.<sup>1</sup> Not surprisingly, it draws attention to the challenges and hardships confronted by merchant ships' crews and their families as they transit high risk areas. However, it also highlights the issue of how to deal fairly and humanely with pirates and pirate communities, recognizing that this requires integrating security, legal, economic, developmental and humanitarian considerations in a complementary manner. As a means of advancing the objectives and outcome of the conference, the paper concludes with a brief overview of the Dalhousie marine

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<sup>1</sup> This paper does not specifically capture the discussions and findings provided during the five breakout sessions focusing on the marine transport and fishing industries, maritime and national laws, negotiating with pirates, welfare of seafarers during and after the hijack experience, and impact on families and communities. These are presented in detail in the preceding paper.

piracy project and how its work and that of this conference might be continued jointly.

## PURPOSE OF THE CONFERENCE

In setting the stage to present key observations, the purpose of this conference can be re-stated and summarized as follows.

- **Prevention & Mitigation.** Understanding current piracy situations and identifying actions needed to prevent outbreaks of piracy, focusing on shipping, fisheries and legal aspects.
- **Response & Recovery.** Provide a comprehensive suite of integrated policy alternatives to be considered by key policy actors, focusing on negotiation, welfare of seafarers and the impact on family and communities

## DEFINITION OF PIRACY

While considerable time was spent during the conference on the legal and operational challenges arising from the definition of piracy in the UN Convention on the Law of the Sea (UNCLOS) Article 101, the working definitions for discussion throughout the conference considered piracy to have the following four characteristics:

- a violent, economically motivated crime;
- by use of a vessel and against vessels (ships, boats etc), their crew and/or passengers;
- conducted by criminal enterprises, private groups or individuals who have no direct commercial or proprietary interest in the threatened vessels;
- on the high seas, or within the marine territorial jurisdiction of a coastal state or both.

This definition is considerably broader in scope than what is traditional understood as “piracy under the law of nations” in that it

recognizes that the legal mechanisms available to deal with piracy may change, depending on which side of a jurisdictional line in the ocean the events or perpetrators are found. On the high seas or within marine territorial jurisdiction, piracy occurs in places where vessels of all flags normally have a right of access. This includes the high seas (freedom of navigation) and territorial waters (rights of passage). A single criminal or piratical act may fall under a number of different jurisdictions. While the legal categorization may change, the nature of the act does not. As of June 2011, according to the United Nations Office on Drugs and Crime (UNODC) statistics, over 1,000 pirates have been prosecuted or awaiting trial in some 19 countries, while just over half of these have been convicted or serving sentences.

## **PRELIMINARY OBSERVATIONS**

The plenary sessions of this conference covered a wide range of topics relating to the human face of marine piracy. These included first hand reporting of the hijacking experience, ransoms and negotiations, securitization, management challenges and response, the legal options for crews and families, varying forms of insurance, ship owners' perspectives, rehabilitation of seamen and welfare of families, and regional approaches and strategic perspectives, including the arming of merchant ships. Some of the key observations arising from these discussions are summarized in bullet form below.

- Piracy is harder to stop once a society has become “criminalized”.
- Difference in responses and responsibilities with respect to piracy are influenced by the location of the event, but it is unlikely that pirates or the seafarers who are attacked see it that way.
- There is a need to ensure that seafarers and families have the financial and psychological support needed during and after being held for ransom.

- We must understand the pirate “business model” which varies from region to region, and we need to target both land and sea components of the model, i.e., there is a need to “think like a pirate”.
- Addressing piracy requires commercial, private sector, navy/coast guard as well as coastal communities’ involvement and a justice system capable of effective prosecution consistent with international law and the protection of human rights.
- The importance of national capacity-building to address the problem on land.
- Implementing Best Management Practices (BMP) at sea has been shown to be a valuable deterrent in minimizing the number of successful piracy attacks.
- Lack of consensus on arming merchant ships and the need to differentiate between defensive and offensive actions of private armed security companies.
- The need for regional littoral states to cooperate in addressing the problem, especially to avoid the problem moving from one country to another. e.g., Nigeria to Benin or Somalia to Yemen.
- Comprehensive awareness of maritime domain, not just parts of it, is critical for identifying potential problems and acting early.
- The need for comprehensive reporting of incidents, including those occurring in a state’s territorial waters and against vessels other than those engaged in marine transport, such as fishing vessels.
- Need to identify effective measures to disrupt/deny availability of information to pirates.

## **WHERE DO WE GO FROM HERE?**

While participants in the conference related firsthand experiences of piracy attacks, flagged significant challenges and offered an array of potential solutions, it was evident that more work needs to be done to advance the desired objectives and outcome of the event. To advance that goal, this event marks the beginning of partnership

between the Fazaldad Human Rights Institute and Dalhousie University's "Policy Development and Interdisciplinary Research for Actions on Coastal Communities, Youth and Seafarers" (PIRACY) project, normally described more simply as the Dalhousie Marine Piracy Project (DMPP). This will allow an opportunity for the outcomes of this conference to contribute to the policy-focused output of DMPP research and analysis.

### **The Dalhousie Marine Piracy Project (DMPP)**

During the past few decades, there have been at least six distinct outbreaks of "piracy" worldwide. While these outbreaks have all been labeled "piracy", they have been sufficiently different in geography, motivation and execution to preclude a uniform solution. Most past and current meetings and conferences on the topic have dealt with the problem from the isolated perspectives of the military, commercial shipping, or law enforcement. Usually, these perspectives are limited to the regional, geo-political context of where the activity is occurring.

The two-year DMPP which began in June 2011 is funded by the TK Foundation<sup>2</sup> and is intended undertake a broad stocktaking of piracy incidents and counteractions taken to date, so as to determine the true impacts, and costs of piracy on maritime commerce, seafarers, coastal states and those communities where piracy has become a major industry. The analysis will lead to: an assessment of policy alternatives for dealing with the problem in a comprehensive and integrated manner; the consequences associated with implementing the identified policy options; and the strategic directions that need to be adopted to implement corrective measures. These outputs will be available for discussion and action by key policy stakeholders. The key stakeholders include those in

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<sup>2</sup> The TK Foundation is a private grant-making foundation supporting non-profit maritime and youth development programs (<http://www.tkfoundation.bs>).

the private, public and civil society sectors who have both the mandate and responsibility for addressing the problem of piracy and for protecting the economic and social well being of communities and seafarers that are affected by acts of piracy.

## Organization

The DMPP is headed by Dalhousie University's Marine Affairs Program and involves researchers from the Center for Foreign Policy Studies, Marine and Environmental Law Program, Department of Industrial Engineering, School of Information Management and School of Business. These researchers bring a wide diversity of experience and a network of connections in the various marine and other sectors affected by piracy. The project is organized around three substantive research areas (Law & Governance, Operation Responses and Socio-Economic Issues), each of which is supported by an information management component.

## Project Goals

The DMPP has identified three major goals which have a suite of research related activities associated with each goal.

**Goal 1** focuses on a comprehensive analysis of the origins, cost and consequences of modern maritime piracy and initiatives taken and helping to anticipate potential piracy situations before they arise.

*Key research areas* contributing to the achievement of this goal are as follows:

### Under the Law & Governance module:

1. The origins and manifestations of piracy: drug related (hijacking vessels for smuggling), vessel robbery, vessel seizure and crew capture for ransom. It will also look at the

linkages between piracy and organized crime, drug smuggling and terrorism.

2. The apprehension of piracy; an examination of the law dealing with the location and apprehension of pirates in national and international waters including the UN Convention on the Law of the Sea (UNCLOS), other instruments of international law and policy considerations.
3. The prosecution of piracy: an examination of the criminal prosecution of pirates in national courts or international tribunals, including a consideration of the implications of human rights law, law of armed conflict, and anti-terrorism legislation. A detailed examination will be made of the current practice, with emphasis on the cost and consequences borne by participating states in the region, specifically Kenya, as a case study.

*Under the Operational Responses module:*

1. The discouragement of piracy: disincentive strategies designed to discourage or frustrate piracy activities.
2. The suppression of piracy: Operational responses, naval patrols, integrated enforcement initiatives, surveillance and intelligence, on-land responses.

*Under the Socio-Economic Issues module:*

1. The cost of piracy: the effect piracy is having on commercial shipping, including responses by the shipping and insurance industries, and issues of risk management, including the safety of seafarers.
2. The prevention of piracy: Considerations of the social, political and economic factors which contribute to the emergence of piracy, including an exploration of parallels to be found in research currently being undertaken in the area of “child soldiers”.
3. The impact on associated societies (costs and benefits).

In addition, a cross-thematic research activity focusing on a generalized predictive model to anticipate potential piracy outbreaks is being developed, drawing on the identification of a conceptual piracy cycle and appropriate social, economic and political indicators and actions considered useful in developing the model.

**Goal 2** focuses on sharing the data and information collected during the DMPP with the internal and external research community, governments, policy think tanks, the public, etc.

*Key research activities* include the development of a piracy research thesaurus and a comprehensive database of primary and secondary research materials of the state of knowledge regarding past, present and potential future acts of maritime piracy, using a web-based portal

**Goal 3** focuses on the provision of an interdisciplinary assessment of policy options contributing to the suppression and prevention of piracy, integrating aspects of governance, operational responses and socio-economic factors.

*Key research activities* surrounding the achievement of this goal are the provision of external expert policy level input at both the module-specific level and at a cross thematic, integrative level. It is at this component of the research that the outputs of the Karachi conference will be most influential and contribute to the discussions leading to an integrated suite of recommendations for policy makers and those who implement their decisions.

## DMPP Outputs

Based on the research conducted and the input of a broad range of sectoral experts working across the sectors, the DMPP is expected to contribute to:

- an integrated understanding of the social/political situations which lead to outbreaks of piracy;
- an increased appreciation of the costs and benefits associated with implementing a range of policy options by governments and other key decision makers;
- an awareness of potential “hot spots” for piracy outbreaks; and
- the ability to respond effectively to suppress piracy outbreaks, should they arise in any location around the world.

## Conclusion

The observations made during the plenary sessions at this conference have made it clear that the problem of piracy cannot be solved at sea. While individual pirate attacks can be dealt with by naval forces, mechanisms for addressing all of the victims of piracy must be included as part of the solution. This must include not only supporting the development of strong, stable and legitimate governments, capable of maintaining peace and security on land, and in its ocean territory but also paying particular attention to those who have borne the disproportionate burden of the consequences arising from piratical activity – namely the seafarers and their families and the plight of under-aged pirates.




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**Typical Working Group sessions**



## **Concluding Observations**

**by Mr. Naeem Sarfraz**

Going back to where we started, it was the Dalhousie University Marine Piracy initiative which got us thinking about having this week's specific program. Then the Near East and South Asia (NESA) Center for Strategic Studies came on board with its incredible support. Imagine this – on a Friday afternoon I got on a train in New York at half past one on a Friday afternoon having requested a meeting with somebody in NESA later that afternoon. It takes about two hours and forty minutes to get to Washington and Friday afternoon not the best of time to try and get anybody there. But, to my delight, three of the NESA team were there to see me and discuss the project in detail. For that I am very grateful because it was just about the last moment for tying up everything so that we could hold this conference.

After that I got in touch with Admiral Haroon who, at that time, was the Rector of Bahria University. He felt that it would be wonderful if the National Centre for Maritime Policy Research (NCMPR) were to be involved with Centres in other research universities and it would be most appropriate to hold the Conference in NCMPR's facilities. I then called upon Chief of the Naval Staff and asked for his support and must say that Admiral Asif Sandila did not hesitate for a moment. He accepted the invitation to chair the Inaugural Session and also extended full support of the Navy for anything else we required, for which of course we are all very grateful – all four organizations involved with the arrangement and the sponsorship of the Conference.

Again I must express my personal thanks to David Griffiths and the Dalhousie team in Halifax. They were working for many months before we actually got to the stage of deciding on the dates and the exact program. You can't imagine the amount of work that they had put in over there in support of preparing all the details of the programs *etcetera*.

The Fazaldad Institute is a human rights organization, a theme with which we have been involved for almost fourteen years. When

we started, my first feelings were the same as Dr. Fanning expressed in the preceding presentation – that it is vital to address prevention rather than just cure. We have found in Pakistan that lots of organizations work on curing human rights abuse, but there was not much effort on prevention. So what we did initially was to get a whole lot of senior persons from different walks of life – education, media, human rights organizations, government, etc., – to spend a few days brainstorming and working out a plan of action. That started with changing the national education curriculum. It took us three years to change the curriculum to include human rights from Class 1 through to High School level. That impacts 20 million students in the country. We then expanded it to teaching teachers who would be involved in human rights education. We trained tens of thousands of them in about 150 different Tehsil and District Headquarters level towns. We further expanded it to those people who were involved in implementing human rights. And you will be glad to know that at the moment all government organizations’ training institutions – that includes the Civil Service Academy, National Institute of Public Administration, Administrative Staff College, Judges Academy, Police Academy, Police Training Schools – all have got formal human rights education programs in their curriculum.

As a mariner I was deeply disturbed to see all the incidents that were going on where human rights abuse was occurring at sea. I did not take piracy simply as an economic or financial matter, but as a direct violation of human rights. Piracy is a violation of human rights. To begin with, it is denying the crew the right to life. That is a fundamental right. It is denying them the right to liberty, denying them the right of free movement, denying them the right of employment and, of course, most important of all, in the abuse that they go through denying them their dignity. As you might remember, one of the fundamental things in most religions and certainly in most civilized societies is human dignity. You can hang a man for committing a murder. You can sentence him to life imprisonment, but you can’t slap him. You slap him, you take his dignity away. You can punish him for a crime but you can’t slap him. That is violating his

dignity, and the obscenity with which pirates are violating the dignity of mariners was a matter of serious concern to us.

Then again when we come to the families, piracy is denial of their right to sustenance, their right to food and shelter. If they are not getting salaries, they are suddenly left totally destitute. They are denied their right to health care. These are all the fundamental rights of the families. Then you come to children – and this conference has heard about a couple of students right here in Bahria University whose fathers are even now being held hostage. In addition to all other rights, piracy denies children those two very fundamental rights which are exclusive for children: one, of education and the other, the right to recreation. Both these rights are denied to children of mariners who are taken hostage by pirates in Somalia or elsewhere.

We have discussed many options and have found that there are many laws in existence. Implementation may be a bit difficult in many of them. Starting with the basic one, the UN Charter itself guarantees fundamental human rights. Besides the UN Charter there are a whole lot of international Conventions such as the Convention on the Rights of the Child, the Convention Against Torture, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), etc. There are Conventions which many countries have signed but some have not yet ratified. But even those who have not ratified them generally follow them in a broad sense even though they have their own limitations on ratifying them at this stage. But the world is generally respecting all the United Nations Conventions which cover fundamental human rights.

Coming to mariners, we have heard all about Safety of Life at Sea (SOLAS); we have heard about Law of the Sea; we have heard about national laws. There are plenty of national laws under which various forms of prosecution, interrogation etc., can be done. A couple of items that have been raised (although more privately than in public), which persons like me working in the field of human rights had a bit of difficulty on supporting, included a suggestion that perhaps there may be some navies in the world whose Commanding Officers already have substantial powers of punishment, therefore perhaps the rules of engagement of those countries could extend to

trying pirates on board. There you would have all the evidence, you would have all the witnesses, you would have the alleged criminals – everybody is there and you could never get them together again. I am not too sure if I would be favorably inclined towards this option personally. People are also looking at Australian or American models such as the Australians putting immigrants on a deserted island or Americans taking individuals to Guantanamo Bay.

There are alternatives available where there is a will. National and international laws can be applied quite effectively, but at what cost? All these alternatives have severe limitations as far as the cost to the victims and to the alleged criminals is concerned. Everybody is affected, and whether they are right from the aspect of human rights I am not sure, but we have to study the details.

What we have seen in the three days of this Conference is, of course, the financial impact of about seven billion on the world economy; of about 500 million dollars being paid to the pirates over the last few years. The ransom amounts have now gone up to the five million dollar mark for each ship. These are all interesting figures but, as has been mentioned in other presentations, looking at the future we must take tangible steps concerning victims and their families.

There are a couple of things that have emerged in this Conference which I have not seen before anywhere in the world. The first is the exploration of the “Chinese Model” (compulsory insurance through manning agencies). This is something that I would recommend strongly that we look at because it is there, it is effective, and some other countries may well be able to benefit from following it. Again, as Dr. Fanning has said, we do not have to reinvent the wheel. If there is something that works, let us try and see if its work for us as well.

Besides the Chinese Model the second thing that I have not come across so far which has been a wonderful experience was the proposal from Alfalah Insurance. Its Executive Director, himself a Master Mariner, Captain Azhar Ehtesham Ahmed, spoke to us not as an insurance man but as a mariner. His proposal was to provide individual insurance which would cover salaries to be paid to families

of detained sailors directly, from the day they are taken by pirates until their release. We asked him the cost of the premium. His response, of course, was that it depends on how many people take the policy. The more who take it, the lower the cost. We calculated that the rate could come down to just a few thousand rupees per year per person, if it is done correctly and effectively. If it is expanded through their underwriters to others as well, the rate can come down even more. You see, none of the insurance companies is on its own. It is reinsured in London, in Europe, Lloyds, Munich Re, etc. If they can get one of the Reinsurers to agree to the idea then they can spread it worldwide and reinsurers can give you, I would say, a premium right down perhaps 0.1 or 0.2 percent. That would be absolutely amazing because that can provide immediate relief to the families at a negligible cost since the number of mariners at sea is huge and that broad base can provide a very, very low premium which is certainly worth looking at.

The final thing that has been of immense interest here is that in Pakistan we have experience of various aspects of marine piracy which no other country has been able, or been put in a position, to be involved in. We have representation in Combined Task Force 151. We have had the leadership of CTF 151. Our Commander Task Force has been commanding a group of ships from different countries, so we are directly involved in that aspect of policing the seas under international coverage. The second thing, which is probably the most important, is the only case I know where successful negotiation has been done for the release of a vessel and its crew purely by the volunteer private sector taking the initiative: the Citizen Police Liaison Committee (CPLC). I am not aware of any such initiative anywhere in the world. That is something which should be kept in mind for one principal reason: all other negotiators charge money. My understanding is that something like 10% to 20% of the funds that are generated for releasing a vessel go to various people involved, including negotiators, facilitators, people who move them around, put them on aircraft and bring them back, the banking channels – all sorts of people are involved and they take away easily at least 10% to 20% of the money. Here the CPLC did all that work

without charging a penny. Nobody else was involved. No money was paid out to anybody. That again is an important aspect.

During the second day of the Conference a couple of speakers mentioned that perhaps we in Pakistan can take a lead in that, having had experience of getting a vessel released through negotiations; escorting it out; the blasted thing sinking on the way(!); rescuing all the crew; bringing them back – not just Pakistani nationals but others as well – and, in a surprising turn, got them repatriated. We have rescued seamen earlier as well. The trouble is that every time we picked them up and brought them ashore, the police put them in jail. Everywhere else in the world they would be repatriated immediately. That is the basic, fundamental law of the sea. But here between India and Pakistan we have a problem with that. This time, after the released crew's reception at the Governor House the Indian government's representatives took direct custody of the Indian citizens and as well as others such as the Egyptians and, straight from the dinner, they went back to the custody of their country's representatives. Now that again, from a seamen's point of view, is very important. You don't want to be picked up from sea, rescued at sea and then put in jail ashore not knowing what is going to happen to you and for how long. This is again a very good precedent set only with the release of the crew of the MV *Suez*.

With these points I feel that there are some suggestions and conclusions that we can build upon fairly quickly, particularly for providing relief to seamen's families. Our Shipping Master is one of the busiest persons in our shipping industry but he has been here throughout the three days of this Conference because he looks after the welfare of families when sailors are abroad, either at sea or if they are held up anywhere. That is a huge responsibility. Meanwhile he has an office to run, and he has to sign all those Articles etc., for crew being signed on and all that. But he has spent all that time here with us to try to see how the Shipping Office can interact with the marine industry to provide maximum relief to families and subsequently to sailors themselves as far as their rehabilitation and getting back to their jobs are concerned, which is equally important.

There is also the offer from Bahria University's psychology specialists who described the two forms of support that they can provide to the Shipping Office. First, they can help the families deal with the trauma while seamen are still being held hostage by pirates, and secondly, they can provide psychological support to the crew when they return. If we do not have any other regular institutions of a higher level which the Shipping Master can go to, this is a very good options. And, literally, over here it is without any expense. That would be a fantastic thing for our seamen.

These three or four actions we can take immediately. We have taken some of them already and there is no reason why we should not take more. The CPLC even today is negotiating the release of another ship. There is nobody else in the world doing that except through institutions like the money-making organizations in London, in Dubai etc. So I would like to compliment all these people who are making the effort to help mariners and their families – we should build on that in future. There are of course dozens of other points which have emerged which now appear in these Proceedings.

And with that I would like to thank all of those in the audience who have shared their time and patience with those of us who have been up on the dais speaking. I think it is important to note that approximately 250 university students have attended this three-day session. We speakers have told our side of the story so now we challenge our younger colleagues; in government, in the private sector, in the maritime and insurance industry, to be the future supporters of this work because, as has been said repeatedly, this problem is not going to go away in a hurry – it is going to be around for a long while, and lots of solutions still have to be found.




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*Mr. Naeem Sarfraz is a Master Mariner, former naval officer and retired shipowner. He is now Chairman of the Fazaldad Human Rights Institute in Pakistan.*

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## **Address by the Chief Guest**

### **by Senator Iqbal Haider**

I wish to thank Mr. Naeem Sarfraz and all the host universities and institutions for conferring on me this privilege and honor to chair the Concluding Session. I was immensely pleased and deeply impressed by the presentations given on the final day: the Working Group reports, the presentation by Dr. Lucia Fanning and Mr. David Griffiths, and the concluding observations by Mr. Sarfraz. Dr. Fanning has nicely summarized the three days of deliberations, suggestions and recommendations. Determining the way forward is an integral part of every successful and meaningful deliberation because we cannot just gather, debate and then disperse – we have to find some cogent and tenable way forward for containing the menace of piracy. I am so glad that the organizers have chosen this curse of piracy to be the focal point of this conference. Indeed it is one of the worst forms of encroachment on many human rights enshrined in our constitution and by the Universal Declaration of Human Rights. As rightly pointed out by my friend Naeem Sarfraz Sahib, marine piracy denies innocent mariners the right to life, to liberty, of movement and of freedom of expression, as well as imposes the humiliation of being hostage. This is an international crisis and a matter of concern for all developing and developed countries.

I am so glad that our Citizen Police Liaison Committee has been so active in negotiating with the pirates for the release of hostages, supported by citizens of Pakistan whether they belong to the merchant marine or are ordinary citizens. We succeeded in securing the release of hostages recently which has made our country prominent in the war against piracy. With pride in their success I extend my compliments to all those responsible. They deserve genuine credit for their support and efforts toward release of all hostages from the clutches of pirates, irrespective of their nationality, whether Indian, Pakistani, or non-Pakistani from anywhere. This is a

matter of great pride for us. I compliment them and sincerely admire their efforts and achievement in rising above all prejudices to help victims of the menace and curse of piracy.

Again, my gratitude for the privilege of making concluding remarks and my compliment to all the organizers for raising these issues for the sake of seafarers, their families, and humanity at large.



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*Senator Iqbal Haider is Senior Advocate, Supreme and High Courts, former Attorney General and Minister of Law, Justice and of Human Rights, Pakistan.*

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## **Introduction to Fazaldad Human Rights Institute**

Fazaldad Human Rights Institute (FHRI) was established in 1999 in memory of the late Ch. Fazaldad Wahla, a young doctor who gave his life so that another may live. It is one of the few NGOs in Pakistan granted Special Consultative Status at the United Nations ECOSOC. Fazaldad Institute was founded on the principle that education is the most sustainable defense against violence and extremism. Our methodology is geared toward "changing the mindset" of society towards moderation, peace and tolerance. Our programs have an approach that is "preventive" rather than "reactive" towards abuse and oppression of the vulnerable.

The Institute is working closely with Government and civil society to introduce sustainable human rights education in the country. Since 2001 the Institute has conducted 28 diploma courses in which about 1000 administrators, professors, principals, headmasters, lawyers, judges, police officers and senior bureaucrats were trained to help them introduce human rights education effectively in their jurisdiction.

The Institute's resource persons, with the help of local partners, conduct comprehensive one-day workshops for groups of 200-250 teachers. About 70,000 teachers have been sensitized in such workshops in more than 165 locations throughout Pakistan. Special workshops for religious leaders and Khateebis have also been conducted.

Human Rights Days have been arranged in different schools across Pakistan in which over 150,000 students have been sensitized. They participated in activities like debates, quizzes, drama, role-play, posters competition, speech competitions, tableaux, national songs and lectures on human rights subjects. FHRI has conducted programs on human rights education in Afghan refugees camps where tens of thousands of children are receiving education.

The Institute also has considerable experience in emergency response and humanitarian disasters like earthquakes and floods and has frequently set up free medical camps in effected areas. As organizers of this very important Conference, Fazaldad Institute has undertaken the responsibility of publishing its proceedings in book form which will be widely distributed and the book will be placed on the internet for free of cost access.



Piracy is essentially a form of terrorism, perhaps its oldest and worst form. In its classical sense it entails violence towards owners of cargoes carried in ship's bottoms but there is also a human element to it which is often forgotten. I allude to restraint of the freedom of the ships' crews and the trauma that their families undergo as a result.

Through presentations by world's leading experts in the field, this Conference has succinctly high lighted the sense of deprivation and the frustration of ships' crews subjected to piracy and has also suggested measures to thwart this menace and to alleviate the misery of the crews and their families and has thus adroitly filled an obvious gap in the study of piracy.

Justice M. Shaiq Usmani  
former Judge, Sindh High Court  
Karachi, Pakistan

A galaxy of national and international experts who participated in the Conference highlighted the plight of piracy victims and their families and made suggestions to help them.

It is now for the maritime industry to study the Proceedings and implement the excellent Recommendations which emerged in the Conference.

Admiral T K Khan  
former Chief of the Naval Staff  
Pakistan Navy

Published by  
Naeem Sarfraz, Chairman  
Fazaldad Human Rights Institute  
Islamabad, Pakistan