

MARITIME PIRACY IN EAST AFRICA

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More than 200 years ago, just as the United States was developing into a nation, corsair piracy challenged the ability of the country to conduct international trade throughout the Mediterranean Sea. While the Barbary threat was defeated, piracy continues to thrive and has become a feature of the contemporary age. Now, pirates operating off the Somali coast represent a destabilizing force in the region, and their attacks wreak havoc on world shipping markets at the very time the industry is suffering from economic collapse. Although piracy in the Horn of Africa has picked up throughout the past five years, 2008 was an especially remarkable year. In 2008, Somali pirates attacked more than one hundred vessels in the Gulf of Aden and western Indian Ocean. The audacity and scope of this piracy campaign is unprecedented in the modern age. Twenty thousand ships transit the Gulf of Aden annually and in 2007 about 6,500 tankers, carrying 12 percent of the world's daily oil supply, used the route.¹ This strategic area links trade between the east and west through the neighboring Strait of Bab el-Mandeb and into the Suez Canal. Piracy also occurs in Southeast Asia, off the African west coast and in the Caribbean, but the explosion in the number and scope of incidents in the Horn of Africa has galvanized world attention. Increasingly, Somali pirates seize and hold for ransom seafarers and valuable cargo. Among the take are thirty-three Russian armored tanks, 2 million barrels of crude oil valued at \$100 million and tankers full of bulk chemicals.²

Piracy suppression includes collective efforts to deter and defeat the crime, from intercepting money transfers of ill-gotten ransoms to taking expeditionary military action in the coastal towns and villages located in the Puntland state of Somalia. On the operational end of the spectrum of efforts to repress piracy, a host of nations, including France, Denmark, Malaysia, India, Iran and Russia, have sent warships to the area. Combined Task Force 151, a multinational coalition that coordinates with the U.S. Navy's Fifth fleet, operates in the Horn of Africa to deter

maritime terrorism and to promote the rule of law at sea. The European Union (EU) response includes deployment of naval vessels and surveillance planes to the area under Operation “Atalanta.” Belgium, the UK, France, Germany, Greece, the Netherlands, Spain and Sweden have all made contributions to this EU effort, with other nations also heeding the call. Japan is sending warships to the region, while China has already deployed two destroyers and a supply ship. However, the dramatic increase in the number and type of warships patrolling the Horn of Africa has been unsuccessful in stemming the threat of maritime piracy.

The seas are a unique legal milieu of flag, port and coastal state jurisdiction. Criminal offenses on the oceans frequently involve perpetrators, victims and wit-

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nesses from multiple countries. Most of the oceans and airspace above the seas lie beyond any coastal state’s jurisdiction, so cooperation with flag states—which typically exercise exclusive jurisdiction over their vessels at sea—is essential for effective action. This article focuses on the international laws and policies that connect the many nations, regional initiatives and international organizations in a common enterprise to repress maritime piracy. Developing workable legal and policy solutions provides the basis for collective action and can tie regional and global efforts into a more effective approach.³ With such diverse and varied interests converging to address piracy, ensuring there is a unity of effort, effective communication, coordination and support for punishing perpetrators is critical. To successfully contain piracy, collective action should connect the efforts of private industry with those of governments and international organizations,

and encompass political, military, financial and legal support. Collaborative confrontation of the problem of piracy in the Horn of Africa has begun to strengthen relationships among states in East Africa, and between them and maritime powers and shipping nations. Other global organizations, including the International Maritime Organization (IMO) in London, the EU and the North Atlantic Treaty Organization (NATO), now aggressively support piracy repression efforts.

First, we begin by briefly setting forth the threat of maritime piracy in the Gulf of Aden and the western Indian Ocean—the epicenter for piracy in the contemporary era. Second, we focus on the established international law governing counter-piracy repression efforts and consider how to further develop the law of maritime

security treaties and partnerships. The Law of the Sea Convention is the bedrock of ocean law and policy, and piracy features prominently within the text. Since more than 155 countries are state parties to the convention, the Law of the Sea provides guidance on defining the problem of piracy and sets forth jurisdictional issues relating to the crime. Third, we turn toward international efforts to counter maritime piracy off the coast of Somalia and some related regional initiatives that serve as models for increasing maritime security in East Africa. In this regard, the IMO—a specialized agency of the United Nations—is the leading institution. More recently, at the prompting of the IMO Secretary-General, the UN Security Council has become engaged in the issue. Adopting four resolutions in less than a year, the Security Council took collective action against Somali piracy under chapter VII of the UN charter, authorizing states to take “all necessary measures” to suppress piracy in East Africa.⁴ Two of the resolutions were informed by the findings of a special UN commission that met in Nairobi and delivered a report in November 2008. In addition, the most recent UN Security Council resolutions, adopted on 2 and 16 December 2008, endorsed the application of a general maritime security treaty—the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA). Invoking the terms of the SUA Convention is a watershed because it will help states to work more closely together to extradite and prosecute criminal piracy gangs operating from the Somali shoreline.

THE THREAT OF MARITIME PIRACY IN EAST AFRICA

The threat of maritime piracy exists in the Horn of Africa as a result of the desperate situation in Somalia and the devastated political economy along the coastline. In an area where one attack can yield \$10,000 for a working-level pirate, such criminal activities have flourished. It would take several years—perhaps considerably longer—for a Somali to earn that much money. As many as 1400 Somali men are now actively engaged in piracy, and illicit revenue is fueling a mini-construction boom along the coastline of the Puntland.⁵ The annual haul for Somali pirates was estimated to be \$30 million in 2008.⁶ Money collected in ransom revenue exceeded the entire budget of the Puntland government for the year by a factor of three to one.⁷ The number of piracy attacks in the Gulf of Aden and off the coast of Somalia doubled from 2007 to 2008.⁸ While attacks are declining in areas in which the littoral states and the international community have focused efforts, such as the Straits of Malacca and Singapore, the threat of maritime piracy exists worldwide and has rapidly increased in the waters of East Africa.⁹ The crimes that have unfolded off the Somali coast, which include seizing seafarers from at least twenty-five countries as hostages, underscore that piracy in the Horn of Africa is a global security issue.

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Before 1990, piracy was fairly insignificant, but a more structured form of maritime piracy emerged in the mid 1990s when armed groups patrolled the exclusive economic zone of Somalia, claiming they were the authorized “coast

guard” charged with protecting Somalia’s fishing resources. Somali pirates have become increasingly sophisticated in their methods and operations. They approach merchant ships in small, fast boats and are armed with Kalashnikov assault rifles, rocket-propelled grenades, global positioning devices and walkie-talkies.

Piracy endangers sea lines of communication, interferes with freedom of navigation and the free flow of commerce, and undermines regional stability. As piracy spirals out of control off the Somali coast, concern has grown about the threat to global trade as well as the effect of millions of dollars in ransom flowing into the hands of pirate warlords operating from the Puntland region of Somalia. Ultimately, the only way to halt the disturbing piracy attacks off East Africa is to increase governance and the rule of law in Somalia, as the country lacks the capacity to patrol its own waters. But until

the world can effectively craft and execute a long-term solution to stabilize the country, the problem of piracy must be addressed from the sea to the shore rather than the other way around.

INTERNATIONAL LAW

The English jurist William Blackstone wrote, “Piracy consists by the common law, of those acts of robbery and depredation upon the high seas, which, if committed upon land, would amount to felony there.”¹⁰ In large part, piracy repression requires international action and coordination because much of the ocean’s surface is under no individual state’s jurisdiction. Maritime piracy is a violation of international law and a universal crime, which means that any state may take action. The legal regimes for countering piracy emerged from customary international law, the 1958 Convention on the High Seas, and the 1982 United Nations Convention on the Law of the Sea.

Maritime piracy is an illegal act of violence or detention committed for private (rather than political) ends on the high seas or in any other place outside the territorial waters—or jurisdiction—of a state, such as ungoverned areas like Somalia’s

territorial sea.¹¹ Inside territorial waters, such crimes constitute armed robbery at sea and are the responsibility of the coastal state.¹²

The Law of the Sea also contains provisions relating specifically to maritime security. Article 99 pertains to trafficking in human slaves; Articles 100 through 107 address piracy; and Article 111 contains provisions for hot pursuit from the high seas into a coastal state's territorial sea. Because international maritime drug trafficking became more prevalent during the decade of negotiations for the treaty, the Convention also provides for the control of the illicit traffic in narcotic drugs in Article 108. Article 110 incorporates the customary norm in international law that warships may approach commercial vessels in order to determine their nationality. Normally, the exercise of the right of approach by a warship does not impose a requirement on the part of the queried vessel to respond to the queries, and a refusal to do so does not automatically trigger a right of visit on the hailing ship.¹³ The Convention also permits a right of visit or boarding on the high seas by warships of all nations—even without the consent of the flag state—for the purpose of disrupting certain universal crimes, such as human slave trafficking and maritime piracy. This peacetime right should not be confused with the belligerent right of visit and search of neutral vessels in order to search for contraband or to determine the enemy character of the ship or its cargo under the law of neutrality, an offshoot of the law of armed conflict.¹⁴

Enforcement and compliance is most effectively accomplished in port and with the collaboration of all interested parties, with the flag state playing the central role. In addition to flag state consent under Articles 92 and 94 and port state control measures under Article 25 of the Law of the Sea, there already exists ample legal authority for boarding vessels, including invitation of the master of the vessel and pertinent UN Security Council enforcement action. Ultimately, if a vessel presents a threat of armed aggression against a state, the threatened state may conduct a boarding based on the inherent right of individual and collective self-defense under Article 51 of the UN Charter. Difficulties associated with prosecuting maritime piracy have led states to avoid the courtroom. In several cases in 2008, countries simply released Somali pirates after capturing them.¹⁵ Although the policy has been criticized as “catch and release,” Denmark and Germany have released pirates without prosecuting them.

THE INTERNATIONAL MARITIME ORGANIZATION

As the specialized international agency for maritime matters, the IMO has been the most active and effective multilateral institution in creating awareness, support and frameworks for combating piracy. Because the international organization is funded by member states in accordance with a formula based on the size

of their shipping registry, the states with the largest open registries—Panama and Liberia—pay a greater share of the budget than wealthier countries with fewer registered vessels.

In 1983, the IMO first addressed the problem of maritime piracy in Resolution A.545(13), after Sweden submitted a paper to the Maritime Safety Committee (MSC) expressing alarm over the high incidence of piracy. The Resolution set forth measures to prevent acts of piracy and armed robbery against ships. Three years later the organization approved Circular 443, “Measures to Prevent Unlawful Acts Against Passengers and Crew On Board Ships.”¹⁶ In November 1993 the IMO Assembly reaffirmed Resolution A.545(13), urging governments “to take, as a matter of highest priority, all measures necessary to prevent and suppress acts of piracy and armed robbery...”¹⁷

After a surge in piracy in the early 1990s, particularly in Southeast Asia, the IMO developed a working group comprised of experts from ten member states to prepare a report on piracy. As a result of this report, two circulars, MSC/622 and MSC/623, were issued by the 62nd session of the MSC in May 1993.¹⁸ The first document contained detailed recommendations to governments for preventing and suppressing piracy, and the second focused on providing guidance to the maritime sector—ship owners, operators, shipmasters and crews. In 1999, the circulars were revised.¹⁹ The revision to MSC/622 recommended that states work with seafarers and ship owners as part of the process of crafting action plans for preventing piracy and responding to piracy attacks. The document also set forth investigative protocols for use after a pirate attack. Finally, the circular contained a draft regional agreement on cooperation for preventing and suppressing acts of piracy and armed robbery against ships. This draft agreement should be used as a model by states that would like to work more closely together. Provisions of the draft include procedures for each country to board and search suspect vessels as well as provisions for criminal enforcement and determining choice of jurisdiction among coastal and flag states. The revision of the second circular, MSC/623.Rev.1, provided guidance on measures for the shipping industry to reduce vulnerability to piracy, such as enhanced lighting and detection, and provided additional steps that states can take during and after an attack, such as enhanced alarm procedures and reporting. In November 2001, the IMO Assembly adopted a code of practice for investigating piracy and armed robbery against ships.²⁰ This code urged states to investigate piracy and report the results of those investigations to the IMO.

Since 1998, the IMO has conducted an anti-piracy project consisting of a number of regional centers and workshops, with participants coming largely from piracy-infested areas of the world. The projects included a number of evaluation and assessment missions to areas particularly affected by piracy. The goal of the

meetings and assessment missions was to foster greater integration of regional anti-piracy efforts. In 2001 and 2002, missions were held in Jakarta, Indonesia, Singapore, Guyaquil, Ecuador and Accra, Ghana.

In November 2007 IMO Resolution A.1002(25) called upon states in East Africa to conclude an international agreement to “prevent, deter and suppress piracy.”²¹ It urged IMO member states, the Somali Transitional Federal Government (TFG) and regional partners to address the problem of piracy off the coast of Somalia. The resolution also strongly urged IMO member states to increase their efforts to suppress piracy worldwide; develop capacity through legislative, judicial and law enforcement action that would facilitate prosecution and extradition of pirates; and bring technical assistance to the states of East Africa to enhance regional capacity for suppressing piracy.²² The resolution specifically requests that the TFG deny the use of the Somali coastline as a “safe haven” for pirates; ensure that vessels hijacked by pirates and taken into Somalia’s territorial waters are “released promptly;” and advise the UN Security Council that it consents to foreign warships conducting counter-piracy patrols in its waters and to indicate a willingness to conclude international agreements to facilitate such operations.²³

The IMO sponsored meetings from 2005 to 2008 in Yemen (Sana’a Seminar), Oman (the Oman Workshop), and Tanzania (Dar es Salaam), to develop a piracy treaty in the western Indian Ocean. On 29 January 2009, a meeting in Djibouti produced a regional agreement called the Code of Conduct, which will facilitate cooperation in the prosecution and repatriation of captured Somali pirates. Nine states have signed the Code of Conduct, which is open for signature to twenty-one African and Arab states. The Djibouti agreement envisions creation of Regional Maritime Information Sharing Centers in Yemen, Tanzania and Kenya, implementing a recommendation for greater regional coordination referenced in Resolution 1851.²⁴

The IMO was involved in other regional initiatives that serve as important precedents for increasing maritime cooperation in the Horn of Africa. In 2005 more than twenty-five user states and the littoral states of Malaysia, Indonesia and Singapore met in Jakarta to develop a framework for improving maritime safety, security and environmental protection in the Straits of Malacca and Singapore. The meetings have effectively facilitated an increase in maritime patrols by the nations along the straits and focused user states toward assisting with capacity building. The negotiations continued in Kuala Lumpur in 2006 and Singapore in 2007. At the Singapore meeting, states signed the Cooperative Mechanism, an agreement that provides for user states to help littoral states develop maritime security capacity for the management of the straits. The Cooperative Mechanism marked the first time that littoral and maritime states have worked together to

ensure the safety and security of an international strait, as set forth in Article 43 of the Law of the Sea.

The model that may be most promising for the Gulf of Aden is one that could be borrowed from the other side of the African continent—the Gulf of Guinea. The Maritime Organisation of West and Central Africa (MOWCA) was created in 1975 but initially maintained an unremarkable record. However, like the progressive city of Abidjan, Côte d’Ivoire in which it is based, MOWCA is experiencing a renaissance. The forum is helping the member states cooperatively manage all matters of a maritime character: port and vessel security, maritime constabulary functions and safety of navigation and environmental protection. The network has launched several programs designed to enhance collaboration in the international shipping transport sector.

In 2006, MOWCA conducted a forum in Dakar that led to the development of a functional Memorandum of Understanding on the establishment of a sub-regional coast guard network for the west and central African regions in July 2008. The comprehensive agreement establishes an institutional framework for close cooperation on suppression of piracy, armed robbery and terrorism at sea; illegal, unreported and unregulated (IUU) fishing; drug trafficking; fuel theft; smuggling; pipeline security; and maritime accident response. The agreement also provides guidelines for coastal surveillance, maintaining presence in the exclusive economic zones, and enforcement of international treaties, especially the Law of the Sea and IMO instruments. It is remarkable that of the twenty-five MOWCA states, five are land-locked, demonstrating that all states concerned with facilitating international trade and enhancing regional stability have a stake in maritime security.²⁵

The successes of MOWCA and the Cooperative Mechanism illustrate how multilateral institutions can serve as a basis for meaningful cooperative responses to maritime piracy. An early lesson that may be derived from both experiences is that building regional partnership capacity is a prerequisite for developing greater cooperation and coordination.

THE UN SECURITY COUNCIL

The UN Security Council took historic action against piracy off the coast of Somalia by adopting four key resolutions in 2008 to enhance collaboration, strengthen operational capabilities, remove sanctuary, expand legal authorities and support prosecution efforts. The resolutions were decided under Chapter VII of the UN Charter, which authorizes all necessary means, and the instruments are legally binding on all states.

The Security Council first adopted Resolution 1816 in order to obtain greater international cooperation against Somali piracy. Pirates had eluded capture by

fleeing into Somalia's 12 nautical mile territorial sea. Resolution 1816 closes that sanctuary by authorizing, for a period of six months, entry into Somali's territorial waters. While this resolution does not compel any state to take and prosecute pirates, it provides a valuable umbrella of political support for logistics related to extradition and repatriation of suspected pirates. The resolution also encourages states to increase and coordinate their efforts to deter acts of piracy in conjunction with the TFG. Although the UN Security Council has repeatedly recognized the authority of the TFG as the governing body in Somalia, the TFG has no maritime law enforcement capability. If indeed the world intends to recognize the TFG as the lawful government, then it should do more to ensure that the organization is able to successfully govern and maintain the rule of law in Puntland, including supporting Somalia's capacity to patrol coastal waters as stipulated by Resolution 1816.

Next, the UN Security Council adopted Resolution 1838. This resolution called upon states to take part in actively fighting piracy by deploying naval vessels and aircraft to the affected area. The UN Security Council also reaffirmed that the Law of the Sea Convention embodies the rules applicable to countering piracy and armed robbery at sea. The resolution further urged states to promulgate IMO guidance to their ships regarding precautionary measures to protect vessels from attack when sailing in waters off the coast of Somalia.

THE NAIROBI REPORT

In November 2008, a UN working group met in Nairobi, Kenya to consider new legal and political approaches to combating piracy.²⁶ Commissioned by Ambassador Ahmedou Ould-Abdallah, the Special Representative of the Secretary General of the United Nations to Somalia, the group released the most thorough UN study to date of the legal and policy issues associated with Somali piracy. Experts from the private sector, diplomats and military, humanitarian and peacekeeping officials met for eleven days to produce the report. Several operative paragraphs of UN Security Council Resolution 1851 reflect recommendations made by the group, so the report stands as an authoritative and unparalleled source of context, background and analysis on the problem of maritime piracy in the Horn of Africa. The Nairobi report describes Somalia's descending trajectory, explaining that if the problem of piracy is not resolved, countries around the world will be negatively impacted. Stability on land must be complemented by the disruption of the illicit revenues from maritime piracy and implementation of vessel security measures to minimize the risks of new attacks on ships at sea.²⁷ The underlying economic and political challenges include "[p]overty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources

due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia.”²⁸ The confluence of these factors keeps the country on a downward arc and contributes to the rise and continuation of piracy from Somalia.

There has been no effective governmental control over Somalia’s borders for nearly two decades. Human trafficking and smuggling are as endemic as maritime piracy. Collectively, these offenses are just another manifestation of the syndicates of organized crime controlling Somalia and operating in the region.

It is axiomatic that when ship owners and governments pay ransoms they unintentionally place other seafarers and vessels at future risk. The report recommended two possible courses of action with respect to ransoms: (1) an education program, pursued at international and national levels, to inform the media and the wider public about the greater, longer terms risks inherent in surrendering to the demands of hijackers and kidnappers; and (2) the development of formal or informal international agreements that discourage or ban the payment of ransoms. Although such a ban could not be enforced, it would make it easier for individual ship owners and governments to withstand media or public pressure to pay.²⁹

Agreements that invite regional law enforcement personnel to embark on foreign warships patrolling the area could enhance collaboration. The Nairobi Report suggested that shipping nations and regional coastal states permit embarkation of their law enforcement officials on foreign warships, so that ship rider law enforcement powers may be used to board, search, detain, arrest and transfer ashore Somali pirates. The concept of partner-nation ship riders serving onboard foreign warships already is in place to facilitate counter-narcotics interdiction in the Caribbean and eastern Pacific, and to support cooperation in fisheries enforcement in the western Pacific.³⁰ This recommendation was adopted by the UN Security Council in Resolution 1851, which invited states and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates. The regional countries are particularly important in this regard because they are often ideally situated to conduct an investigation and carry out trial prosecutions of persons detained as a result of operations.


Taken together, there is sufficient jurisdiction and a nascent legal capacity in East African nations to impose law and order in response to piracy. However these states require assistance in order to enhance their capacity. The Global Train and Equip program authorized under section 1206 of the U.S. National Defense Authorization Act of 2006 is perhaps the best example of methodically assessing how partnerships can produce greater regional security. The program takes a new approach to address emerging and acute threats in an environment

of weak states, rapidly developing threats and ungoverned areas that can be exploited as terrorist safe havens. By leveraging Pentagon funds to train and equip regional forces, the program mitigates the risk that small security problems will grow into larger issues. One way for the United States to develop greater maritime security capacity throughout the Horn of Africa would be to broaden and fully fund Global Train and Equip. About one-third of the program, which is jointly run by the Departments of Defense and State, focuses on strengthening maritime security. Support to partner states currently includes development of coastal surveillance infrastructure, patrol boats and maritime interdiction capabilities. Last year there were \$800 million in requirements, but only \$300 million were provided.³¹ Much like the G-8 has pooled resources to fund Cooperative Threat Reduction, the major maritime powers should develop and fund a shared and coherent program of maritime security capacity building based upon the Global Train and Equip program.

United Nations Security Council Resolution 1846 of 2 December 2008 suggests, for the first time, that the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) may be used by states to cooperate in the extradition and prosecution of pirates. States that want to prosecute maritime piracy but do not have national laws proscribing the crime could prosecute under legislation that implements SUA commitments. The challenge of holding pirates accountable through criminal prosecutions has been repeatedly cited as the one of the most vexing in containing piracy. The Security Council urged the 149 state parties to SUA to fully implement their obligations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia. However, some have raised doubt regarding the number of state parties that have actually enacted such legislation.

The SUA convention was created in response to the hijacking, hostage taking and murder committed on board the Italian-flagged passenger liner *Achille Lauro* in 1985. At the time of the attack on the cruise ship, many states did not have legislation governing the extradition or prosecution of hijackers. Over a three-year period, member states at the IMO developed and adopted SUA, which entered into force in 1992. A key SUA offense is to unlawfully and intentionally seize or exercise control over a ship by force, threat or other form of intimidation. The treaty provides that state parties shall either prosecute a violation or extradite the offender, taking into account the grave nature of the crimes when devising penalties. In 2005, SUA was amended with two protocols that promulgate a new legal framework to combat the proliferation of weapons of mass destruction and their delivery systems on board vessels and platforms at sea.³²

CONCLUSION

Recent actions by individual states, in regional and international venues and at the global level at the UN, provide a strong framework for improved maritime domain awareness and communication and have sharpened legal authority. Over the past two years, new developments in collaborative counter-piracy repression efforts have been promising, culminating in unprecedented UN Security Council action in 2008. These innovative resolutions have shaped the nature of the relationship between the UN Security Council and the maintenance of the rule of law at sea. The problem of maritime piracy has also encouraged a broad, informal coalition of states and international organizations to send forces into the coastal waters affected by Somali piracy. The large number of warships, however, cannot stop maritime piracy in this vast area, which spans more than 2 million miles. The states situated in the Horn of Africa will have to be at the center of a long-term solution, and evolving international treaties and partnerships are a force multiplier that brings these states together and links them to overseas maritime powers and shipping states. In this regard, Kenya has assumed a leadership role by signing counter-piracy cooperation agreements with the United Kingdom and the United States. UN Security Council resolutions and the IMO provide an effective basis for a more integrated regional maritime security posture in the Horn of Africa. The maritime powers should complement regional integration through an expanded program of capacity building, using Global Train and Equip as a template. Effectively responding to the threat of piracy off the coast of Somalia requires attacking the root causes of piracy on the ground and providing comprehensive support for operations, logistics, investigations and prosecutions. The states in the Horn of Africa—with support from the global community—can and should take the lead in fighting maritime piracy in the Gulf of Aden and western Indian Ocean. 

NOTES

* The views expressed are those of the authors and do not reflect the official policy or position of the U.S. Navy or Department of Defense.

¹ “Q&A: Piracy in the Gulf of Aden,” *Al Jazeera*, 19 November 2008; John W. Miller, “Piracy Spurs Threats to Shipping Costs,” *Wall Street Journal*, 19 November 2008, A12.

² Nick Wadhams, “Somali Pirates’ Unexpected Booty: Russian Tanks,” *TIME* (26 September 2008); David Williams and Niall Firth, “Indian Navy destroys Somali pirate ship as hijackers demand \$10m ransom for captured Saudi supertanker,” *Daily Mail*, 19 November 2008; David Osler, “Pirates strike again with chemical tanker hijacking,” *Lloyd’s List*, 28 November 2008.

³ For the U.S. approach, see, *Countering Piracy Off the Horn of Africa: Partnership and Action Plan* (December 2008).

⁴ See the following United Nations Security Council Resolutions: S/Res 1816 (2 June 2008), S/Res 1838 (7 October 2008), S/Res 1846 (2 December 2008) and S/Res 1851 (16 December 2008).

⁵ International Expert Group on Piracy off the Somali Coast (IEGPSC), "Piracy off the Somali Coast," (report of the workshop commissioned by the Special Representative of the Secretary General of the UN to Somali, Ambassador Ahmedou Ould-Abdallah, Nairobi, Kenya, 10-21 November 2008), 32. Referred to in the article as "Nairobi Report."

⁶ Miller, A12.

⁷ IEGPSC, 20.

⁸ International Chamber of Commerce, International Maritime Bureau (IMB) Reports Unprecedented Rise in Maritime Hijackings, 16 January 2009.

⁹ "Malacca Strait Shows Piracy Can Be Tackled," *Lloyd's List*, 13 June 2007, 3.

¹⁰ John Bethune Bayly, *Commentaries on the Laws of England, In the Order and Compiled from the Text of Blackstone and Embracing the New Statutes and Alterations to the Present Time* (London: Bayner & Hodges, 1840).

¹¹ U.N. Convention on the Law of the Sea, Montego Bay, 10 December 1982, Article 101.

¹² More specifically, the Law of the Sea defines piracy as consisting 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 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 intentionally facilitating an act described in subparagraph (a) or (b). Source: UN Convention on the Law of the Sea, Montego Bay, 10 December 1982, Articles 101, 1833 U.N.T.S. 397.

¹³ *The Mariana-Flora*, 4 U.S. (11 WHEAT.) 1, 44 (1826).

¹⁴ Louise Doswald-Beck, "San Remo Manual on the Law Applicable to Armed Conflict at Sea," 1995, 31-32.

¹⁵ Paulo Prada and Alex Roth, "On the Lawless Seas, It's Not Easy Putting Somali Pirates in the Dock," *Wall Street Journal*, 12 December 2008.

¹⁶ Circular 443 applied to passenger ships on voyages of twenty-four hours or more, and the port facilities that service those vessels. In 1991, the IMO requested governments to report promptly and in detail all incidents of piracy.

¹⁷ IMO Res. A.738(18), "Measures to prevent and suppress piracy and armed robbery against ships," 4 November 1993.

¹⁸ IMO Doc. MSC/Circ. 622, "Recommendations to Government for preventing and suppressing piracy and armed robbery against ships and MSC/Circ. 623, Guidance to ship-owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy armed robbery against ships," 16 June 1999.

¹⁹ IMO Doc. MSC/Circ. 622/Rev. 1, Jun. 16, 1999 and MSC/Circ. 623/Rev. 1.MSC/622./Rev.1 were revised based upon recommendations that came out of regional seminars in Brazil and Singapore in 1998.

²⁰ IMO Doc. A.922(22), "Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships," November 2001. See also, "Piracy and Armed Robbery against Ships," (Annual Report, International Chamber of Commerce, International Maritime Bureau, 1 January-31 December 2006, January 2007), 2.

²¹ IMO Res. A.1002(25), "Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia," 29 November 2007.

²² *Ibid.*

²³ *Ibid.*

²⁴ Another recommendation of UN Security Council Resolution 1851 was creation of a forum for coordination between the countries of the Horn of Africa and other states. On 14 January 2009 the

UN Contact Group on Somali Piracy (CGSP) met in New York, with more than twenty countries participating.

²⁵ MOWCA consists of the coastal states of Angola, Benin, Cameroon, Cape Verde, Republic of the Congo, Democratic Republic of the Congo, Côte d'Ivoire, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Equatorial Guinea, Liberia, Mauritania, Nigeria, São Tomé & Príncipe, Senegal, Sierra Leone, and Togo, and the land-locked states of Burkina Faso, Central African Republic, Mali, Niger and Chad.

²⁶ International Conference Working Group Commissioned by the Special Representative of the Secretary General of the UN to Somalia, Ambassador Ahmedou, "Piracy off the Somali Coast," (Workshop, Nairobi, Kenya: 2008).

²⁷ *Ibid.*, 41.

²⁸ *Ibid.*, 15.

²⁹ *Ibid.*

³⁰ *Ibid.*, 12.

³¹ U.S. Department of Defense, Defense Security Cooperation Agency, Fiscal Year 2009 Budget Estimates (Dec. 2008), 424.

³² Amendments to the SUA were approved at the IMO in 2005 and will enter into force after ratification by twelve states. The SUA amendments also provide a framework for criminalizing the conduct of those who transport terrorists or use a ship as a weapon. They further provide enforcement mechanisms to facilitate non-flag state boarding of vessels suspected of being involved in such illicit activity, and mandate that a state party either prosecutes or extradites suspected SUA offenders.