



# DIIS REPORT



Bjørn Møller

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Piracy, maritime terrorism  
and naval strategy

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DIIS Report 2009:02



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**PIRACY, MARITIME TERRORISM  
AND NAVAL STRATEGY**

*Bjørn Møller*

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Cover Design: Carsten Schiøler

Layout: Allan Lind Jørgensen

Cover Photo: AP

Printed in Denmark by Vesterkopi AS

ISBN 978-87-7605-304-8

Price: DKK 50.00 (VAT included)

DIIS publications can be downloaded

free of charge from [www.diis.dk](http://www.diis.dk)

Hardcopies can be ordered at [www.diis.dk](http://www.diis.dk)

This publication is part of DIIS's Defence and Security Studies project which is funded by a grant from the Danish Ministry of Defence.

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## **Abstract**

Piracy is an old problem which is now again attracting attention, mainly because of the surge of pirate attacks off the coasts of Somalia. Closer analysis shows the problem to be of quite modest proportions. The international naval protection of merchant shipping holds out some prospects of containing the problem, but it is most likely to solve itself. If international shipping opts for the route south of Africa, piracy will die out for a lack of targets. Maritime terrorism is, likewise, a problem of very limited proportions. It is often conflated with piracy, but there are significant differences between the two phenomena, the latter being undertaken for selfish reasons, the former for the sake of some higher cause. Whereas it is conceivable that maritime terrorists will gradually transform themselves into pirates, a transformation in the opposite direction is well nigh inconceivable. Besides the analysis of these two phenomena, the overlap between them and certain naval strategies are also briefly touched upon.

## I. Preface

The phenomenon of piracy has once again caught the attention of the media as well as governments, mainly because it has come to affect international shipping through the Gulf of Aden. Besides these real economic concerns, there are numerous speculations that (mainly international) terrorists may begin using the sea as a medium for their mischievous activities, for instance, by using ships as weapons or attacking vessels of high economic and/or symbolic value such as oil-tankers or luxury cruise liners—and that there are clear links between such maritime terrorism and piracy. Closer analysis, however, shows maritime terrorism to be a very minor problem and the links to piracy to be largely non-existent.

In the present report the main focus is on piracy, but considerable attention is also paid to maritime terrorism, with some of the links and similarities between piracy and certain naval strategies being highlighted. Not only are navies now engaged in counter-piracy operations, but their predecessors practised what was effectively state-sanctioned piracy, mainly by contracting pirates and privateers to engage in commerce raiding against their respective adversaries—missions which later became important for regular navies.

For reasons of space, most of the documentation (i.e. virtually all the references and most of the statistics), as well as chapters on the history and artistic representations of piracy, have been omitted in the present version. However, the full and as yet unpublished version is available online at <[www.diis.dk/graphics/\\_Staff/bmo/Pdf/Piracy.pdf](http://www.diis.dk/graphics/_Staff/bmo/Pdf/Piracy.pdf)>, to which the reader is referred for documentation. As far as the special case of Somali piracy is concerned, a *DIIS Brief* by the same author is devoted exclusively to this phenomenon.

## 2. 'Piracy' and Related Phenomena

I begin with a tentative definition of the phenomenon of piracy in order to determine what should be dealt with in this document. In due course I shall return to the question of the legal definitions of both piracy and maritime terrorism—both of which are of considerable importance in attempting to suppress these phenomena.

A reasonably tentative definition of piracy might be 'armed robbery at sea by private actors acting for selfish purposes, especially economic gain.' This already allows us to distinguish piracy from related contemporary and historical phenomena such as coastal raiding, unarmed theft from ships, maritime terrorism, maritime aspects of insurgency, and the raiding of merchant or other civilian ships belonging to an enemy nation as a strategy of naval warfare. There is definitely a certain overlap between each of these and piracy, as when a terrorist group engages in piracy as defined above, yet with the intention of using the proceeds for terrorist activities, or when commerce raiding is outsourced to privateers, who are often former pirates. Analytically, however, the six phenomena are best kept separate.

Piracy is one of the oldest of all professions. In ancient Greece, piracy seems to have been widespread and widely regarded as an entirely honourable way of making a living, and even during Roman times parts of the Mediterranean were infested with pirates, provoking several naval campaigns to suppress them. With the fall of the Roman Empire the incidence of piracy rose again and continued throughout the Middle Ages. Well into the early modern and modern period, states would occasionally find it advantageous to align themselves with pirates for raids against their respective adversaries. The distinctions between pirates as criminals and privateers enjoying some authorisation by recognised states were fuzzy, to say the least.

During the 'golden age of piracy,' from around 1690 to 1730, pirates were sometimes provided with *lettres de marque* by the British crown, which formally transformed them from pirates into privateers, and more than one pirate-turned-privateer was knighted by the crown, most (in)famously Sir Francis Drake. The UK thus used privateering as the foundation for its gradual achievement of command of the sea, employing a privatised *guerre de course* in the form of commerce raiding, and the same was the case for other naval powers. When privateering was outlawed under the 1856 Paris Declaration, however, governments who continued to believe in the strategic value of commerce raiding had no choice but to assign their own navies to

such tasks, and quite a few did so. Whereas the strongest naval powers have typically sought a more or less all-encompassing and offensively oriented sea command based on a regular battle fleet, lesser powers have often opted for 'cruising warfare.' This was the hallmark of the French naval tradition of the *Jeune École*, which envisaged a *guerre de course* of commerce raiding by means of an abundance of smaller warships, which were dispersed widely prior to the raid as a hedge against their being destroyed by the superior enemy's battle fleet. Other continental European powers adopted similar strategies, including Germany, one of the consequences being the unrestrained submarine operations during both world wars, which exhibited many similarities with the use of corsairs in previous centuries. The same was the case for Soviet naval strategy during the Cold War, which aimed to sever the transatlantic sea lines of communications between the United States and its European allies.

Occasionally naval tactics quite similar to commerce raiding have also been used for humanitarian reasons, as when the Royal Navy began boarding slaving ships on the high seas in the early nineteenth century. One might even see the enforcement of various UN embargoes as entailing something akin to cruising warfare, boarding and seizing ships carrying contraband to states subjected to economic sanctions, as NATO warships did in the Adriatic Sea in connection with the wars in Yugoslavia.



### 3. Piracy Today

Contemporary piracy has been attracting considerable and growing attention. The available data on piracy are far from satisfactory and usually lump together piracy and armed robbery from ships, thus disregarding the legal distinctions between the two categories, to which I shall return in the next chapter. This makes a lot of sense, and it may in fact be the legal definitions which are out of touch with reality. It does, however, mean that the available data-sets list quite a lot of instances which do not legally constitute piracy, though they do satisfy the criteria listed in the tentative definition above.

All analysts seem to agree that there is a significant under-reporting of incidents, mainly because of the low probability that reporting an event to the authorities will do anything to help recover the lost cargo or ship. Combined with the costs of reporting in terms of additional time spent in port, and perhaps the fear of shipping companies that reporting may have a negative impact on their reputation and raise their insurance premiums, most captains and companies do not have many incentives to report an incident. However, even accounting for under-reporting, the overall picture is one of a problem of quite limited proportions. The total number of reported cases of piracy and armed robbery against ships listed by the Piracy Reporting Centre of the International Chamber of Commerce (ICC-PRC) for the last five years is provided in Table 1.<sup>1</sup>

Except for a couple of 'pirate hotspots,' to which I shall return shortly, the risk of experiencing a pirate attack is actually minuscule, and most attacks are distinctly minor, e.g. involving petty theft from ships in harbours or at sea. Piracy thus does not seem to have any significant impact on global shipping or world trade. The average annual number of piracy attacks worldwide from 2003 to 2007 was 310.

<sup>1</sup> Prepared by the author based on data from Table 1 in the ICC International Maritime Bureau: *Piracy and Armed Robbery Against Ships. Annual Report 1 January-31 December 2007* (London: ICC, 2008), pp. 5-6. At the time of writing, the annual report for 2008 had not yet appeared.

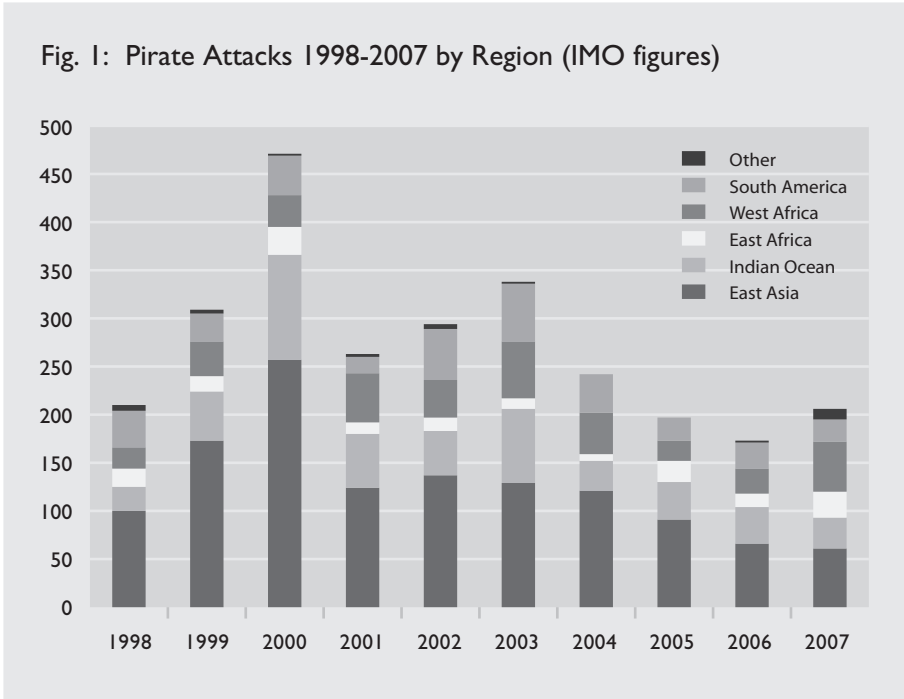
Table I:  
Pirate/Armed Robbery Attacks Against Ships 2003-07

Country	2003	2004	2005	2006	2007	Sum	Avr.
Far East	4	11	10	2	3	30	6.0
China	1	3	4	1	0	9	1.8
South China Sea	2	8	6	1	3	20	4.0
Others	1	0	0	0	0	1	0.2
Southeast Asia	185	162	112	86	77	622	124.4
Indonesia	121	94	79	50	43	387	77.4
Malacca Straits	28	38	12	11	7	96	19.2
Malaysia	5	9	3	10	9	36	7.2
Philippines	12	4	0	6	6	28	5.6
Singapore Straits	2	8	7	5	3	25	5.0
Thail. + Gulf	2	4	1	1	2	10	2.0
Vietnam	15	4	10	3	5	37	7.4
Others	0	1	0	0	2	3	0.6
South Asia	87	32	37	53	30	239	47.8
Bangladesh	58	17	21	47	15	158	31.6
India	27	15	15	5	11	73	14.6
Sri Lanka	2	0	0	1	4	7	1.4
Others	0	0	1	0	0	1	0.2
Middle East	3	5	12	7	11	38	7.6
Arabian Sea	0	2	2	2	4	10	2.0
Iran	2	0	0	2	2	6	1.2
Iraq	0	1	10	2	2	15	3.0
Others	1	2	0	1	3	7	1.4
East Africa	29	15	53	29	66	192	38.4
Kenya	1	1	0	0	4	6	1.2
G. Aden/Red S.	18	8	10	10	13	59	11.8
Somalia	3	2	35	10	31	81	16.2
Tanzania	5	2	7	9	11	34	6.8
Others	2	2	1	0	7	12	2.4

Table I continued ...

Country	2003	2004	2005	2006	2007	Sum	Avr.
West Africa	64	58	27	32	54	235	47.0
Angola	3	0	0	4	1	8	1.6
Cameroon	2	4	2	1	0	9	1.8
DRC	0	0	0	3	4	7	1.4
Ghana	3	5	3	3	1	15	3.0
Guinea	4	5	1	4	2	16	3.2
Côte d'Ivoire	2	4	3	1	0	10	2.0
Nigeria	39	28	16	12	42	137	27.4
Senegal	8	5	0	0	0	13	2.6
Sierra Leone	0	3	0	2	2	7	1.4
Others	3	4	2	2	2	13	2.6
Latin America	71	44	25	29	21	190	38.0
Brazil	7	7	2	7	4	27	5.4
Columbia	10	5	2	2	0	19	3.8
Dom. Rep.	6	2	1	0	0	9	1.8
Guyana	6	2	1	1	5	15	3.0
Haiti	1	6	2	0	2	11	2.2
Jamaica	5	7	8	3	1	24	4.8
Peru	7	5	6	9	6	33	6.6
Venezuela	13	7	2	4	1	27	5.4
Others	16	3	1	3	2	25	5.0
Others	2	2	0	1	1	6	1.2
Total	445	329	276	239	263	1,552	310.4

Legend: 'Others' in Far East: Taiwan; in Southeast Asia: Myanmar, Papua New Guinea, Solomon Islands; in South Asia: Indian Ocean; in the Middle East: Arabian Gulf, Oman, Saudi Arabia; in East Africa: South Africa, Egypt, Eritrea, Madagascar, Mozambique; in West Africa: Benin, Liberia, Mauritania, Morocco, Togo; in Latin America: Argentina, Caribbean, Cuba, Ecuador, Honduras, Martinique, Panama, El Salvador, Suriname, Trinidad & Tobago. 'Others' in general: Belgium, Bulgaria, UK, USA, Pacific Ocean



As shown in Fig. 1,<sup>2</sup> there is no clear trend in the incidence of piracy, but considerable fluctuation around a mean of about 270 annual attacks worldwide. The fact that most attacks take place in East Asia, especially in the Malacca Straits, is less significant than one might think, as it closely corresponds to the total amount of shipping through these, the world's most congested waterways (*vide infra*). The average risk of falling prey to pirates in this part of the world is thus not necessarily any higher than elsewhere; indeed, it may even be lower. Southeast Asia has accounted for a very large share of all piratical attacks, but there is a clear decline in the figures for this region. The same is the trend for Latin America, whereas there is no clear trend (as opposed to a steep short-term rise) on the eastern or western coasts of the African continent.

In the period covered by the above data, most attacks took place against anchored or berthed ships, and most took the form of boarding. In most cases only knives were used, closely followed by firearms, yet fortunately with very modest loss of life. In

<sup>2</sup> Calculated by the author on the basis of the Appendix 2 of the IMO's annual *Reports on Acts of Piracy and Armed Robbery from Ships* from 1998 to 2007. The 2003 report contained some obvious mistakes (in the sense of wrong totals) which have been corrected by the author as far as possible.

2007, for instance, 'only' five crew members lost their lives due to piratical violence, with thirty-five being injured. Most attacks are small-scale, half of them being perpetrated by fewer than ten pirates or robbers, who rarely resort to actual violence. Many attacks are unplanned raids against 'targets of opportunity', such as small ships which happen to be passing by, where the attackers are mainly out for the cash they expect to find on board the ship or other portable valuables that are easily sold.

The typical attack occurs at night and involves a handful or so of pirates in a small vessel such as a speedboat or inflatable who board a vessel in coastal waters, threatening its crew with knives or holding it at gunpoint, off-loading the portable goods and then disappearing into the night without further ado. This form of piracy is relatively undemanding, as it neither requires much planning nor any elaborate organisational structure for fencing the stolen goods. More demanding are those cases where the pirates hold the ship with its cargo, crew and occasionally passengers at ransom. This requires a certain staying power as well as the ability to get away. Even more demanding are attacks against large ships such as huge oil-tankers which usually require a quite elaborate criminal infrastructure, including smaller tankers into which the oil may be pumped before it can be sold to the highest bidder. In some cases the entire ship is appropriated which usually calls for an entire replacement crew with the requisite skills to navigate the ship, sometimes in order to have it repainted so that it can be resold and continue as a 'phantom ship.'

Fortunately for everybody (except the pirates), there seems to be a very strong inverse correlation between the seriousness of a piratical incident and its likelihood, which is quite logical. The bigger or the more valuable and/or dangerous a cargo or ship is, the higher the vessel's freeboard and the more effective its safeguards tend to be, which places greater and often prohibitive demands on any would-be pirate attackers, thus making an attack less likely to occur and even less likely to succeed. Serious attacks are thus quite rare, frequent ones not particularly serious.

There is general agreement in the literature about the geographical concentration of piracy, i.e. so-called pirate hotspots. Historically, such hotspots have come and gone, but they tend to be quite durable. Their emergence is usually due to what happens on the ground, presenting either challenges such as economic hardship, which push people into piracy, or opportunities pulling people in the same direction (for example, a sudden increase in shipping through their local environment) or a combination of challenges and opportunities such as may result from a political crisis or an armed conflict ashore which also leads to a relaxation of law enforcement at sea.

Most attacks take place in Southeast Asia, either in the Malacca and Singapore Straits, in the Indonesian or Philippine archipelagos or in the South China Sea. The main reason is simply the exceptionally dense traffic through these waterways, which represent the shortest and thus most economical route from economic great powers such as Japan, China and Korea to Europe, the Middle East and Africa. However, while the incidence of piracy is higher than elsewhere, the risk is nevertheless minuscule, the annual loss having been estimated to be in the range of 0.001-0.002 percent of the total value of shipping through the straits, which is surely not alarmingly high.

The area is generally quite hospitable to piracy. First of all, the waterways are quite narrow and congested, making it fairly easy for a pirate vessel to hide among other ships. Secondly, there is a wealth of bays and other natural harbours accessible to pirates, many of which are even well sheltered by forests. Thirdly, the archipelagic nature of both Indonesia and the Philippines means that their total coastlines are immense, providing pirates with plentiful shelter, and severely hampering the ability of the local navies and coastguards to patrol the entire coastline. In some cases, pirates appear to benefit from the support of the local population, partly because the legitimacy of the state is contested in parts of both Indonesia and the Philippines. Some pirates thus resemble what Eric Hobsbawm called 'social bandits' in that they are supported by, and in return provide for, their local communities at the expense of foreigners. Most of the littoral states have quite inadequate naval forces with which to patrol the area effectively, which is one of the reasons why China, Japan, India and the United States have come up with proposals for support. Due to concerns about sovereignty, however, most of these offers have been turned down, for example, by Indonesia. Nonetheless, sub-regional collaboration between littoral states seems to be making some headway.

In Africa, the Gulf of Guinea and the Niger River delta used to be the most piracy-ridden. Even though they have been overtaken by Northeast Africa in recent years, piracy is still a serious problem, featuring attacks on oil tankers and fishing vessels and the kidnapping of crew for ransom. Some of these attacks have been undertaken by the Movement for the Emancipation of the Niger Delta (MEND), but they still probably qualify as piracy (as opposed to maritime insurgency or terrorism) because the immediate aim is to raise funds. Most recently East Africa has emerged as a piracy hotspot. Whereas until 2008 most attacks occurred off the eastern coast of Somalia, in 2008 this was overtaken by the north coast of the same country, adjacent to the Gulf of Aden, at the entrance to the Red Sea and with the Suez Canal at the other end. The difference between the two is of some significance. Attacks on shipping

along the east coast mainly affect the Somali population, inter alia by hampering humanitarian aid, whereas those on the north coast mainly affect international shipping without really affecting the local population. Not only has the frequency of piratical attacks increased steeply in 2007 and even more dramatically in 2008, but the attacks have also become more daring, all of them being launched against ships on the move, whereas the majority of attacks in other parts of the world occur against berthed or anchored ships. All recorded incidents also involved the use of firearms, which is much less frequent elsewhere. On the other hand, the actual use of violence has remained quite modest, which may be taken as evidence of a high degree of professionalism.

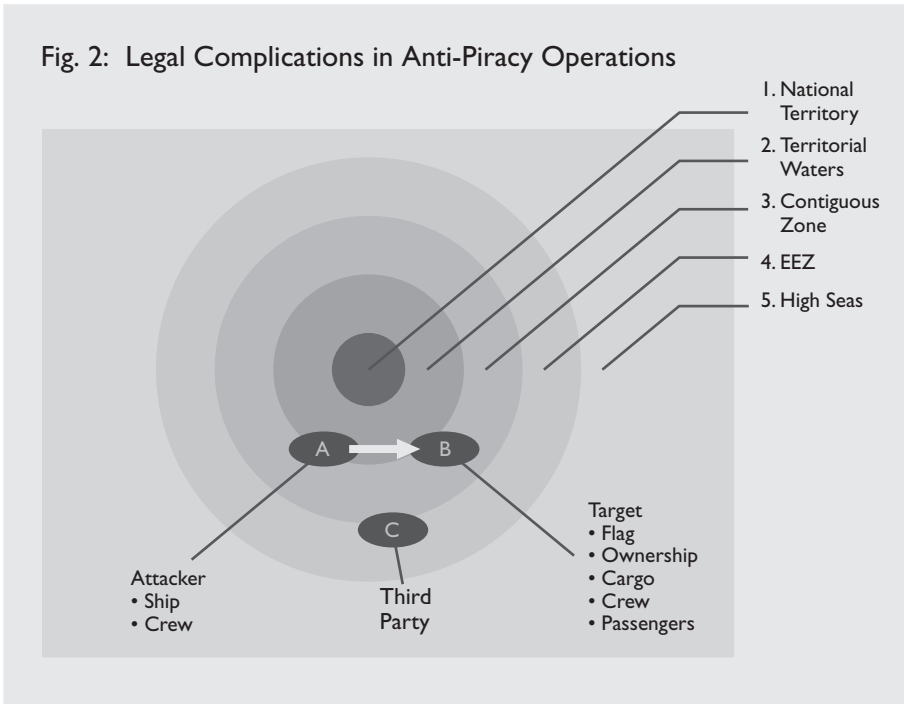
Part of the explanation for the rise of piracy in this area is to be found ashore, where the Somali state collapsed completely in the early 1990s, leaving the area *de facto* stateless ever since and thus completely deprived of any coastguard or navy—and with a population with few other sources of income than crime, including piracy. A temporary decline in the frequency of pirate attacks occurred in 2006 when the Union of Islamic Courts had assumed control of most of the country, but following the Ethiopian invasion in December of that year, the situation rapidly deteriorated in all respects. For further details, the reader is referred to a forthcoming DIIS report on the Somali crisis by the present author and to a DIIS brief devoted exclusively to Somali piracy.

## 4. Legal Problems

In some cases of (what we usually call) piracy, the legal situation is unproblematic, when, for example, the attack is perpetrated in the territorial waters of a particular country by nationals of that country against a ship belonging to and flagged by the same country. In such cases the only constraint is the actual ability of this country's law-enforcement agencies (mainly its coastguard or equivalents), its court system and national legislation. However, in most cases—at least those of interest to the international community—the situation is much more complex as illustrated in Fig. 2, depicting a hypothetical (but not at all unlikely) situation in which a ship belonging to a third party observes and considers whether to act to prevent an attack by pirates against a ship belonging to another nation on the border of the territorial waters of yet another state.

First of all, it is important whether the attack takes place within the territorial waters (usually 12 nautical miles from shore) of the coastal state where this state enjoys jurisdiction, in the so-called 'contiguous' or 'exclusive economic zones' where it has some jurisdiction, or on the high seas, i.e. in international waters. Here the various ships fall under the jurisdictions of their home or flag state, unless some form of universal jurisdiction may be invoked which might give other states some jurisdiction (*vide infra*). Secondly, the nationality of the attackers matters, in so far as both the ship and its crew are concerned. If both 'belong' to the coastal state, it is usually clear that this state has jurisdiction over them and that others do not, unless the attack has taken place in international waters. Thirdly, the nationality of the target or victim of the attack matters, as such a ship usually falls under the sovereignty of the mother nation. However, the growing tendency for the major shipping companies to 'flag out,' i.e. to use 'flags of convenience,' makes it increasingly unclear to which country a ship 'really' belongs. Most 'flag of convenience' (also known as 'open registry') countries have absolutely no capacity to protect the ships flying their flag—indeed, some of them are landlocked. Besides the ownership of the ship, there is also the question of the owners of the cargo and the nationalities of the crew and perhaps passengers, which may come into play, as quite a few countries claim their right or even obligation to protect their citizens abroad. Finally there is the big and largely unresolved question of the rights and obligations of 'third parties' with no direct stake in the attack, which may be resolved by ad hoc authorisation such as UN Security Council resolutions, but for which there are only a few general rules.





Besides national legislation about piracy, the main body of relevant law consists of international law, subdivided into customary and written laws, the latter typically enshrined in treaties or conventions, and usually binding only on those states that have duly signed and ratified the agreement in question. However, according to *opinio juris* (i.e. expert opinion), a few may also be binding on non-signatories.

One of the most basic rules of customary law, one that has subsequently been codified in international agreements, pertains to the status of the high seas, which are extra-territorial, falling beyond the jurisdiction of individual states according to the principle of *mare liberum*, which was most authoritatively enunciated by Hugo Grotius in 1609. *A priori*, the right of free navigation belongs not only to all nations, but also to all ships navigating the world's oceans, including those of suspected or prospective pirates. This right of free navigation may, however, be forfeited by an act of piracy, which makes the perpetrators *hostes humani generis*, i.e. common enemies of mankind. As far as such *hostes* are concerned, there seems to be general agreement in the *opinio juris* on the applicability of universal jurisdiction in the sense that all states have the right, or even the duty, to apprehend

and prosecute pirates lawfully. Piracy may also belong to the very limited body of so-called *jus cogens* crimes, i.e. peremptory and non-derogable norms, which not only can, but must, be prosecuted by everybody, thus constituting an *obligatio erga omnes*, regardless of any national or international legislation or lack thereof. Piracy falls into this exclusive category along with slavery, genocide and torture, at least according to the prevailing *opinio juris*.

This raises the question of how to define piracy legally. Besides the nature of the acts themselves, motive is an important criterion for whether something constitutes piracy or something else, e.g. maritime terrorism. The central element is here the *animus furandi*, i.e. the intention to steal, which distinguishes piracy from politically motivated attacks against shipping. As far as the acts themselves are concerned, the 1958 Convention on the High Seas defines piracy as any of the following acts:

- (1) Any illegal acts of violence, 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:
  - (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

The convention further stipulated that ‘All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.’ It mentions the seizure of pirate ships, the arrest of persons and the seizure of property on board, etc., but it limits universal jurisdiction to the high seas, implicitly proscribing even ‘hot pursuits’ into territorial waters without the due permission of the coastal state.

The successor to the 1958 convention, the UN Convention on the Law of the Sea (UNCLOS), which has been in force since 1994, retained the definition of piracy. Its article 105 stipulated that:

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action

to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

This paragraph clearly provides scope for the lawful prosecution of pirates anywhere by the state apprehending them. Even though the impression seems to have gained ground that prosecution should take place as close to the scene of the crime as possible, for instance in a neighbouring state, there is no legal basis for this.

According to UNCLOS, only certain ships are entitled to intervene, i.e. 'warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.' This seems to rule out the use of private military and/or security companies for the apprehension of pirates as opposed to their use for the on-board protection of individual ships. Even though a company such as Blackwater has shown a keen interest in counter-piracy, their options are thus quite narrowly circumscribed.

According to the literature, both the above conventions suffer from three limitations. They only apply to the high seas, even though most pirate attacks (as usually understood) occur in territorial waters; they presuppose the involvement of two ships, thus excluding, for instance, attacks committed by pirates disguised as stowaways or mutinous crew members; and they explicitly exclude attacks committed for unselfish ends. These problems are partly addressed by the 1998 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), which covers the same acts, regardless of the motivation and without the 'two-ship criterion,' thus also applying to, for instance, at least certain instances of maritime terrorism. The SUA Convention does, however, suffer from the same spatial limitations as UNCLOS as it does not apply to territorial waters. Within the latter, the coastal state is obliged to deal with the offences, whereas beyond that any party to the convention may exercise jurisdiction and, for instance, hand over suspects to any other party; parties are also obliged to extradite suspects to other parties.

One of the limitations of conventions such as the above is that they are, as a general rule, only binding on the signatories or, more precisely, those states that have signed and duly ratified them. None of the three main conventions has been signed by all the relevant actors. It may be especially significant that the United States has not been willing to ratify UNCLOS, even though it is bound by its 1958 predecessors. US courts also frequently invoke and refer to the UNCLOS convention, albeit mainly as a presumably valid reflection of customary law. Besides the non-ratification by

significant shipping and/or flag nations, that of certain coastal states along the major shipping routes also represents a potential problem. While it does not really matter whether the 1958 convention has been ratified by coastal states that are signatories to UNCLOS, such as India or Indonesia, it is significant that it has not been ratified by Iran, which remains outside the UNCLOS regime. It is likewise significant that SUA has not been ratified by states such as Eritrea, Somalia, Iran, Iraq, Indonesia or Thailand.

Besides adopting and seeking to enforce international conventions, the United Nations also has the option of granting *ad hoc* authorisation to suppress piracy forcefully in a particular part of the world, as has recently been the case for Somalia. The UN Security Council has thus passed several resolutions authorising states to enter Somali territorial waters (UNSCR 1818, 2 June 2008) to suppress piracy ‘by all necessary means,’ explicitly urging third parties to do so (UNSCR 1838, 7 October 2008) and even to operate in Somalia itself (UNSCR 1851, 16 December 2008)—all subject to the permission of the so-called Transitional Federal Government (TFG). The latter, however, is a ‘quasi-government’ without any actual control of the country—a point which is elaborated upon in a companion DIIS report by the present author.<sup>3</sup>

<sup>3</sup> Møller, Bjørn: ‘The Somali Crisis: The Role of External Powers,’ *DIIS Report*, 2009:3, at ##. The much more comprehensive preliminary version, including quite generous annotation, is available for download at [www.diis.dk/graphics/\\_Staff/bmo/Pdf/Somalia.pdf](http://www.diis.dk/graphics/_Staff/bmo/Pdf/Somalia.pdf).

## 5. Defence Against, and Suppression of, Piracy

We may subdivide counter-piracy into three categories of measures: preventative ones intended to make both actual and prospective pirates abandon this ‘career;’ offensive measures intended to defeat pirates, thereby preventing the launch of pirate attacks in the future; and defensive measures intended to protect shipping against pirates.

One of the lessons of history is that piracy has often flourished in the aftermath of wars, especially naval ones. One of the explanations for this was that the *lettres de marque* issued to pirates for the duration of a war either expired or were retracted when two states signed a peace agreement, thus transforming pirates-turned-privateers back into pirates. Peace also usually meant a large-scale decommissioning of naval crews, leaving the redundant sailors with few options other than turning to piracy. The remedy has always been to provide the former sailors or pirates with an alternative livelihood, and this remains relevant even today as far as redundant personnel from the shipping and fishery industries are concerned too. One might also want to consider equivalents to such DDR programmes for the disarmament, demobilisation and reintegration of former combatants which would be applicable to former pirates. Development aid targeted at concrete communities deemed to be at risk of turning to piracy might also be relevant.

Legal reforms may also hold out the promise of deterring people from turning to piracy, but it is at least as important to improve law enforcement and the judicial system. This may both entail such measures as better training for the police and the coastguard (or equivalents) and reforms to the legal and penal systems. As all forms of piracy, but especially organised large-scale piracy, are dependent on a network ashore, these measures would have to be quite comprehensive in order to be really effective. Given that piracy is transnational, measures would often need to be of bilateral or regional scope too.

Depriving pirates of lucrative targets would, at least in principle, also be a viable preventative measure. One way of doing this might be to devise alternative shipping routes which stay clear of narrow and congested waterways such as the Southeast Asian straits or the Gulf of Aden, but in most cases economic logic militates strongly against this, especially in view of the low risk of substantial losses due to pirate attacks. This is probably an issue which could safely be handled by the market, i.e. by the shipping and insurance companies.

While few of the above preventative measures involve any use of force, there is also a need for forceful measures. At the strategic and grand strategic levels, offensive measures might, in principle, involve naval operations tasked with sinking pirate fleets and land/air operations to destroy pirate lairs ashore as frequently happened in the past. However, today's pirate fleets usually consist of much smaller vessels than in the past, typically speedboats or even inflatables, which are easily hidden and replaced at quite modest cost—but it might well make sense to seize or even sink the 'mother ships,' which are coming into fashion, especially off the coasts of Somalia, thus providing the small pirate vessels with extended range and staying power. Attacking communities ashore, especially if undertaken by external actors, would in most cases violate international law and/or be incompatible with human rights conventions and the laws of war, as this would entail deliberately destroying civilian targets.

At the tactical level, offensive operations would entail preventive or pre-emptive attacks against pirates in anticipation of their attack, but this requires strong evidence of an impending attack, which might not suffice to persuade the judges in the subsequent legal prosecution of the apprehended pirates. This problem would, of course, disappear after an actual attack has occurred, either while the pirates remain onboard the pirated vessel or after their departure. However, to board a ship controlled by pirates is problematic as it will endanger the safety of crew and passengers, who are usually not in any grave danger in the hands of pirates who are in it for the money and have no particular urge to kill anybody—as opposed to terrorists. Hence, all shipping organisations advise strongly against any use of weapons against pirates onboard a ship. Once the pirates have left the ship with their loot, however, it makes a lot of sense to pursue them with a view to recovering the loot and punishing the culprits, not least for the sake of deterring future attacks.

As far as defensive measures are concerned, the most effective one seems to be maintaining high alert in pirate-infested waters, but the fact that crew sizes have shrunk considerably makes this difficult to uphold, especially at night, when most attacks occur. Improved warning systems and 'dummy watchmen' may also be of some use in a 'scarecrow capacity,' while various technical measures are available such as electrical 'pirate fences,' and the use of the fire hoses ships carry anyway for other purposes. That none of these inexpensive measures are in universal use probably testifies to the modest severity of the problem of piracy. Individual ships may also arm themselves for protection against piratical attacks, either by carrying weapons for the crew and training crew members in their use, or by soliciting the services of armed guards. If deployed on guard to prevent boarding this is fairly unproblematic, but taking up

arms against armed pirates on board may result in otherwise avoidable bloodshed.

In especially heavily pirate-infested waters, dispatching coastguard ships or naval ships of the line may sometimes be useful, both to deter piracy as such and to provide protective escorts for convoys of civilian ships. However, such deployments are in most cases prohibitively costly and therefore surely only feasible for carefully selected pirate hotspots for short periods of time. Moreover, in waterways that are not very narrow, convoys with insufficient warships to escort them may even be counter-productive, as it forces merchant ships to sail in a pre-defined pattern, usually within a narrow sea lane, thus 'gathering the prey' for the pirates and depriving civilian ships of the protection that dispersal makes available.

Because of the transnational character of most piracy—at least in the legal sense of the term—regional collaboration is usually very important, but it has often run up against concerns over sovereignty. Moreover, it has proved quite difficult to find a niche for extra-regional actors with vested and legitimate interests in the security of shipping.

## 6. Maritime Terrorism and Insurgency

The impression seems to be gaining ground that there is a nexus between piracy and (maritime) terrorism. However, while there are certainly both links and similarities between the two phenomena, there are also significant differences between them, just as the interests and objectives of pirates and terrorists are different and often even incompatible.

### 6.1 Maritime Terrorism

Just as there is no authoritative definition of terrorism as such, 'maritime terrorism' is hard to define. What distinguishes it from piracy is mainly its aim, piracy being undertaken with the *animus furandi* referred to above, i.e. for selfish reasons, whereas terrorism is best understood as one among several forms of armed rebellion for the sake of some higher cause. Moreover, terrorism is a strategy or tactics which an actor may choose, either fully and permanently or, much more frequently, partly and periodically, either alternating between or combining non-violent political struggle with guerrilla war and/or terrorism.

The distinction between terrorism and guerrilla war is far from clear-cut. The main distinction lies in the scale of operations and the typical targets of attack. Guerrilla war is usually waged on a fairly large scale and is directed against military or at least government targets, whereas terrorism takes place on a much smaller scale and is typically employed against civilian and non-state targets. The prefix 'maritime' also raises definitional questions, as there simply are no exclusively maritime insurgencies for the simple reason that the oceans are uninhabited. What we are left with for possible inclusion in the categories of maritime guerrilla warfare or terrorism are thus maritime aspects or segments of rebellions which are primarily terrestrial. The similarities and distinctions between the various phenomena are summarised in Table 2.

Even though maritime terrorism has so far been a very minor problem, one cannot completely discount the rather widespread fears of much worse to come. Most 'nightmare scenarios' envisage a use of ships as floating bombs or as delivery vehicles for explosive devices, perhaps even nuclear ones; or attacks against passenger ships, such as a ferry or cruise ship, that are simply intended to cause a maximum of fatalities; or the sinking of ships in order to produce a maximum of economic damage, for instance, by blocking congested and narrow waterways such as the Malacca Straits or the Suez Canal. One might also envisage attacks intended to cause environmental



Table 2: Piracy, Maritime Insurgency and Terrorism: Comparison

Features \ Category	Piracy	Armed Rebellion	
		Maritime Guerrilla War	Maritime Terrorism
Principals/Agents	Private/Private	Movement/Military Wing	
Aim	Private Gain	Altruistic	
Motive	Private Gain	Altruistic or personal	
Activity	Attacks against ships at sea	Attacks against or from ships	
Means	Small, fast vessels, Mother ships		Speed boats, bombs
Deployment	Dispersed		Very dispersed
Stratagem	Hit-and-run		Hit-and-run, Suicide attack
Main Targets	Civilian	Military/Government	Civilian

damage, e.g. by causing oil spills. Why any terrorists might want to do this is hard to fathom, but it just might appeal to ‘millenarian groups’ like the *Aum Shinrikyō* or ‘Christian Identity’ cults that wish to precipitate the Apocalypse. Even though such highly unlikely worst-case scenarios cannot be ruled out completely, it is far from obvious that safeguards against them should be implemented, as this almost inevitably entails major costs.

There are no good statistics covering the whole field of ‘maritime terrorism,’ and quite a few of the incidents that are recorded in various datasets do not even qualify as such, either because they do not constitute terrorism or because they are not maritime. Some have been directed against military targets, whereas (according to most definitions) terrorism targets civilians; and most attacks have occurred within territorial waters, not least archipelagos, or on rivers or lakes, thus strictly speaking representing archipelagian, riverine or lacustrine, rather than maritime, terrorism. In Table 3, attacks against ships have been singled out from the US *Worldwide Incidents Tracking System*, which unfortunately only covers the period since 2004.<sup>4</sup> It appears

<sup>4</sup> National Counterterrorism Office: *Worldwide Incidents Tracking System*, at <http://wits.nctc.gov/>.

Table 3: Maritime Terrorism 2004-2007 by Year and Location

Maritime Terrorism by Year					I	D	W	H		I	D	W	H	
Year	I	D	W	H	Colombia	12	42	28	38	Bangladesh	2	1	58	0
2004	3	135	0	0	Panama	1	1	0	0	India	2	0	0	0
2005	21	49	70	65	Lat. Am.	13	43	28	38	Nepal	1	0	0	1
2006	10	10	8	51	Iraq	2	3	8	0	Pakistan	1	0	0	18
2007	12	0	82	56	Jordan	1	1	2	0	Sri Lanka	3	0	3	32
Total	46	194	160	172	Lebanon	1	4	1	0	South Asia	9	1	61	51
Average	12	49	40	43	M. East	4	8	11	0	France	1	0	0	0
Maritime Terrorism by Region					Indonesia	4	0	12	23	N. Zealand	2	0	2	0
Algeria	1	3	13	0	Malaysia	1	0	0	3	Others	16	43	30	38
Nigeria	6	1	1	50	Philipp.	3	138	32	0	Legend: I: Incidents; D: Deaths;				
Somalia	1	0	0	0	Thailand	1	0	0	7	W: Wounded; H: Hostages;				
Africa	8	4	14	50	SEA	9	138	44	33	M. East: Middle East;				
					SEA: South-east Asia									

that the average annual number of such incidents in this period was 11.5 and the corresponding figure for fatalities 48.5, roughly equal to both the number of injured and hostages. These figures are heavily influenced by one single incident, i.e. the attack on the *Superferry 14* on the 27<sup>th</sup> of February 2004, which accounted for 135 out of a total worldwide death toll of 194 from 2004 to 2007. As the perpetrators, the Abu Sayyaf Group (ASG), had sent an extortion letter to the ferry company shortly before demanding a million dollars for safe navigation, this attack may not even count as a terrorist incident because of the selfish motive (*vide infra*).

Two attacks by Al Qaeda are often mentioned as instances of maritime terrorism. The first was a failed attack in January 1999 on the *USS Sullivan*, followed by a successful one on the American destroyer *USS Cole* on 12<sup>th</sup> October 2000 in the port of Aden, which killed seventeen and wounded thirty-eight. However, a US Navy destroyer is hardly as civilian target, making it more meaningful to categorise the incident as one of maritime guerrilla warfare. The second incident attributed to Al Qaeda was the attack against the French very large crude carrier (VLCC) *MS Limburg* in the Gulf of Aden in October 2002, which was seemingly staged by an AQ affiliate and certainly qualified as terrorism, though it had rather insignificant consequences.

## 6.2 Piracy and Terrorist Funding

Quite a lot has been made of the presumed links between terrorism and various forms of criminal activity, similar to the well-documented links between insurgency and crime. It is, of course, true that both insurgency and terrorism require funding, but the latter to a much lesser extent than the former, simply because terrorism is generally quite cheap. Nevertheless, some funding is required, and as most sources of external funding have dried up since the end of the Cold War, most rebels and terrorist groups rely for the bulk of their funding on indigenous sources.

To the extent that partly terrorist rebel movements are unable to ‘live off the land,’ they may resort to various forms of legal or illegal means of generating funds. Some, including *Hizbollah* and Al Qaeda, seem to have turned to the illicit diamond trade, whereas others, including FARC (*Fuerzas Armadas Revolucionarias de Colombia*) and now the Taliban, are deeply involved in the drugs trade. It is entirely conceivable that certain groups might also turn to piracy as a source of funds for their terrorist (or insurgent) activities, even though it is unknown to what extent this is the case. There certainly does not seem to be any very clear connection between the two, and a rational terrorist group would probably (*ceteris paribus*) prefer legal sources of income to criminal ones.

There may be a link between the two phenomena in the sense that maritime terrorists may metamorphose into pirates, just as rebels may gradually transform themselves into regular bandits by acquiring an *animus furandi*. In their quest for funds for the altruistic cause, both rebels and terrorists may simply come to appreciate all the nice things that money can buy. This transformation does seem to be a one-way street, as there are no recorded instances of ordinary and selfish criminals turning to terrorism or rebellion for non-selfish ends. Some terrorists may, however, come full circle from fighting for their own altruistic cause via fighting for personal gain to fighting for somebody else’s altruistic cause in a mercenary capacity as, effectively, ‘contract terrorists.’ This may have been the case for the Abu Nidal group or indeed the notorious Carlos, better known as ‘the Jackal.’ It is also entirely conceivable that terrorist groups may hire pirates in a mercenary or privateer capacity to undertake acts of maritime terrorism—as it has been speculated might happen with the Somali pirates, who just might be hired by a terrorist group such as the *al-Shabaab*, for instance to sink a ship in order to block access to the Suez Canal. On the other hand, selfish but rational and far-sighted pirates would probably refuse such collaborative ventures because of the fundamental incompatibility between the long-term interests of pirates and terrorists respectively. Whereas terrorists would seek to block a shipping route in order

to maximise economic damage, local pirates would want to keep it open in order to have something to loot in the future.

### 6.3 Insurgent or Terrorist Groups Using the Sea

Various insurgent groups that are sometimes labelled terrorists have made quite extensive use of the sea, usually because they operate in local areas that are closely linked to it. Even though only some of their maritime activities really constitute maritime terrorism, we shall nevertheless briefly consider them here.

The only rebel group with a substantial designated naval wing is the Liberation Tigers of Tamil Eelan (LTTE), better known as the 'Tamil Tigers.' In 1984, the LTTE established a naval wing, the 'Sea Tigers,' which included speedboats as well as larger vessels, including 'phantom' or 'ghost' ships, and armed scuba divers, who have attacked both vessels belonging to the Sri Lankan navy, including a passenger ferry operated by the navy, and at least one merchant ship. The total strength of the Sea Tigers is usually estimated at around two thousand plus 100-200 suicide cadres in the so-called 'Black Sea Tigers,' but the numbers were particularly uncertain at the time of writing, when a large-scale and apparently successful government offensive was in full progress.

The Palestine Liberation Organisation (PLO) likewise had (and may still have) a naval branch, established after the Yom Kippur War of 1973, and designated 'the Palestinian Arab Navy.' While it was initially mainly used as a logistical chain for the support of the PLO's land-based forces, it gradually started undertaking combat missions itself. Some of these attacks were directed against Israeli ships, mainly in harbours, but one sank a Greek charter ship *Sanya* in 1973, fortunately without any casualties. Gradually, however, the emphasis shifted to infiltration from the sea and other (generally small-scale) coastal raids against Israel. In several of these operations, the Palestinians employed the tactics mentioned above of using a 'mother ship' servicing small dinghies. On 25<sup>th</sup> April 1988, the first maritime suicide mission was launched in the form of a small vessel loaded with explosives being detonated close to an Israeli warship. The Lebanese movement, *Hizbollah*, has also developed maritime capabilities, allegedly even including a submarine, but its maritime activities have been quite limited, and most of them do not meet the criteria of terrorism.

As well as being a piracy hotspot, Southeast Asia is also home to several insurgent groups that have waged parts of their struggle at sea, occasionally featuring acts that

would meet the criteria of maritime (or at least archipelagic) terrorism. In Indonesia there is, among others, the Free Aceh Movement (GAM: *Gerakam Aceh Merdeka*), which has mainly attacked targets on land, but is also known to have targeted off-shore installations such as oil-rigs and tankers, which just might qualify as maritime terrorism. Following heavy losses in the 2004 tsunami, the group seems to have abandoned its armed struggle and signed a peace with the government. In the Philippines there are several ostensibly Islamist groups struggling against the government (including the ASG already referred to), the 'signature missions' of which have been coastal raids. Whereas it was initially primarily Islamist, it seems to have gradually abandoned its religio-political ambitions in favour of economic motives. Then there are the Moro National Liberation Front (MLF) and a splinter group, the Moro Islamic Liberation Front (MILF), both of them fighting against the government of the Philippines for independence, even though the former seems to have abandoned the armed struggle. The latter, however, has not and seems to be quite closely aligned with the *Jemaah Islamiya* (JI), which has apparently also been involved in the planning of maritime terrorism.

Finally, there are claims that Al Qaeda has assembled its own small fleet in the form of 'ghost ships,' i.e. hijacked ships which have been re-flagged and re-registered, but others have disputed these claims as entirely speculative. It does, indeed, seem dubious that Al Qaeda would want to acquire such fixtures as actual ships when their general strategic reorientation goes in the direction of becoming a 'network of networks' lacking such fixtures, which would inevitably be vulnerable. There is, however, little doubt that Al Qaeda would be able to charter ships on an ad hoc basis, which is probably exactly what they would need. It also seems that Al Qaeda has tried to develop what one might call a strategy for maritime terrorism, though this must have been set back considerably with the arrest of their 'maritime strategist,' Abd al-Ramin al Nashiri (also known as Mohasmmmed Omar al-Harazi), in 2002.

Lest the reader should think that Islamist groups have a monopoly on (maritime or other) terrorism, we need to mention a couple of cases with an entirely different ideological basis which might satisfy at least some of the criteria for maritime terrorism. A possible candidate might be environmental terrorism such as the activities of the 'Sea Shepherds,' who, since 1979, have been trying to protect whales against (particularly Japanese) whaling ships, ramming and sabotaging several and sinking at least one, albeit without any loss of life. However, as the activities of this group have (so far at least) caused no harm to humans, the terrorist

label does not seem appropriate. In fact, the label seems to be more appropriately pinned on an event on 10<sup>th</sup> July 1985, when, in a port in New Zealand, French special forces sank the *Rainbow Warrior*, a ship owned by the environmentalist NGO Greenpeace and involved in protest activities against French nuclear weapons tests in the South Pacific. Unless one *a priori* excludes state activities from the category of terrorism, this was one of the least ambiguous instances of maritime terrorism.

#### **6.4 Protection Against Maritime Terrorism**

Some of the measures to suppress or combat piracy would also be suitable against maritime terrorists and vice versa. For instance, Task Force 150, which is fighting piracy off the Somali coast, is part of the US Operation Enduring Freedom Horn of Africa (OEF-HOA) which is mainly devoted to the struggle against terrorism.

One of the initiatives taken by the United States in the wake of 9/11 may impact on both maritime terrorism and piracy, even though it is ostensibly mainly motivated by concerns about the proliferation of weapons of mass destruction. The Proliferation Security Initiative, launched by the United States in May 2003, is really a cluster of bilateral agreements allowing signatory states to search each other's ships and aircraft on suspicion that they might be carrying cargo related to weapons of mass destruction. What makes it relevant for the struggle against piracy and maritime terrorism are the provisions for the search and seizure of ships and the term 'non-state actors of proliferation.' As of November 2008, a total of 93 states had thus acceded to the initiative, but only nine states had actually signed the envisaged bilateral ship-boarding agreements. Moreover, highly relevant states such as China, India and Indonesia, or countries regarded by the Bush administration as 'rogue states' such as Syria or members of the 'Axis of Evil' such as Iran and North Korea, had not joined the initiative.

The US 'Container Security Initiative' was spurred by the fear that explosive devices such as radiological 'dirty bombs' might be concealed in ordinary containers and detonated upon arrival in a US port, or even transported inland to still more important targets for detonation. The initiative basically entails various checks to be performed in the port of departure abroad rather than that of destination in the United States. For all its potential merits, however, one of the limitations with schemes such as this is the sheer amount of global container shipping, making more than random checks of a minuscule proportion of them impossible.

## 7. Conclusion

We have thus seen that there are numerous links and similarities between the three phenomena under investigation, namely piracy, maritime terrorism and various naval strategies.

For long periods of human history, piracy, in the form of privateering, has been a form of naval warfare, by means of which states have sought to weaken their enemies by preying on their foreign trade through commerce raiding. Even though pirates *qua* private actors pursuing private ends plundered for their personal gain, their services could nevertheless be utilised by states who could simply issue them with *lettres de marque* and thus, literally with a stroke of a pen, increase their naval power. Upon the outlawing of privateering with the Paris Declaration of 1856, states began utilizing their navies for the same kind of activity, usually referred to as *guerre de course*. Rather than merely using pirates, states thus arguably became pirates in all but name, and states such as France, Germany and the Soviet Union envisaged waging their maritime wars in more or less the same manner as they would previously have done by outsourcing the task to privates-turned-corsairs.

There is some (but still inconclusive) evidence that the pendulum may be swinging back from the state to the private sector, as private military companies may be starting to encroach on missions which have so far been regarded as the prerogative of states and their navies, including that of protecting maritime trade from piracy and, to some extent, from maritime terrorism. Combining a Shakespearean quote with the title of a Hitchcock movie, one might say that this comes close to ‘setting a thief to catch a (saltwater) thief.’ This may, in fact, be quite effective, but also raises numerous legal questions, a satisfactory answer to which had better be found before ‘letting loose the dogs of (maritime) war.’

We have also seen that there are resemblances and links between piracy and maritime terrorism, even though the latter is a quite rare and rather insignificant phenomenon. Most recorded instances of what is usually held to be maritime terrorism are actually instances of something else such as ‘insurgent warfare with maritime components,’ as they are usually directed against military targets rather than the civilian ones which, according to almost all definitions, is what defines a terrorist act. Even though the nightmare scenarios of hijacked ships causing huge explosions in ports such as that of New York cannot be completely dismissed, they seem highly unlikely—mainly because

the same kind of effect might be achieved much more easily by other means. There are thus numerous good reasons to stay calm and devise reasonable strategies and means to reduce the risk without sacrificing important values such as the principles of free navigation on the world's oceans and respect for international law.



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