

Piracy – threat or nuisance?

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A spate of high-profile hijackings over the New Year and the publication of the 2009 Annual Piracy Report issued by the International Maritime Bureau's Piracy Reporting Centre in mid-January have brought the piracy problem back on stage. Despite the employment of naval forces from the European Union, NATO and various nations in counter-piracy and counter-terrorism missions, the figures for 2009 are alarming: according to reports, from 2008 to 2009 piracy grew by almost 40%². It is not only since pirates captured the *Sirius Star*, a tanker carrying about 25% of Saudi Arabia's daily oil production, that we have also started to worry about the possible economic damage caused by these piratical activities: about 95% of all world trade is handled by maritime transport, with the shipping business itself accounting for 5% of global GDP³. About 50,000 vessels are employed, most of them passing through bottlenecks such as the Gulf of Aden or the Malacca Straits⁴, and therefore are exposed to attacks from ashore. Fears about the high economic cost of piracy seem therefore all too justified.

With NATO currently working on both a new Strategic Concept and an Alliance Maritime Strategy (with the last NATO maritime strategy dating back

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² Piracy and Armed Robbery at Sea Annual Report for the Period 1 January -31 December 2009; Kuala Lumpur (2009) - International Maritime Bureau, International Chamber of Commerce; available on request at www.imb.org

³ Review on Maritime Transport 2007, United Nations Conference on Trade and Development. See also International Shipping and World Trade – Facts and Figures, International Maritime Organization Maritime Knowledge Center, available at http://www.imo.org/includes/blastData.asp/doc_id=8540/International%20Shipping%20and%20World%20Trade%20-%20facts%20and%20figures.pdf (accessed September 21st 2009).

⁴ Sea Lane Security and U.S. Maritime Trade: Chokepoints as Scarce Resources/Donna J. Nincic; in NDU Maritime Strategy and Global Power, 2002.

to as far as 1984), it might seem that piracy is turning into a major emerging threat that should accordingly be reflected in these documents. After all, piracy seems to combine all the qualities of today's "wicked problems": pirates are non-state actors, engaged in asymmetric attacks (both vis-à-vis unarmed ships and mission forces), could potentially cooperate with terrorists, profit from globalization and legal grey spheres, are tied to the failed states, are a potential threat to energy security and are linked to other key transnational challenges such as climate change, environmental degradation and organized crime. The securitization of piracy is therefore hardly surprising.

But is piracy really one of the major probable scourges of the next century and is NATO likely to be engaged in anti-piracy missions of the current kind for a long time? And, consequently, should NATO reserve a prominent place for piracy in its Strategic Concept and/or Maritime Strategy?

1. CONTEMPORARY RESEARCH ON PIRACY

Recent years have seen an increasing number of papers on piracy, maritime terrorism and maritime security in general, which are in happy disagreement about the issue. In their research, authors vary greatly in their assessment of the dimension of the threat, ranging from minimization of the problem to the development of ever more alarming horror scenarios about floating bombs and imminent economic disasters. The aim of this paper will therefore be to explore the nature of modern piracy, identify recent changes in its quality and quantity, make a critical assessment of piracy's real impact, both present and future, on the global economy, and then discuss what future role there is for NATO in counter-piracy.

a) The statistical challenge of piracy

The above-mentioned impressive rise in numbers in the last

year combined with its possible economic implications could on the one hand make piracy seem the upcoming security challenge to the global economy. But on the other hand, compared with the overall 50,000 vessels currently employed in sea trade, in absolute numbers the incidents only add up to a minuscule probability of attack. In fact, researchers usually challenge each other with the same few available statistics, coming to completely different conclusions. Estimates of the economic damage caused by piracy vary from 1 to 16 billion dollars⁵. As a first step for assessing the real dimensions of piracy, it may therefore be necessary to engage in a critical analysis of the statistics used in most of the literature.

It is crucial for such an analysis to arrive at a suitable definition of piracy. The United Nation's Convention on the Law of the Sea (UNCLOS) defines piracy as

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

Even though this official definition would seem to be a good starting point, one has to be aware of its legal framework: the UNCLOS is limited to international waters and may therefore only include acts on the high seas. This means that endorsing the UNCLOS definition would mean ruling out the possibility of piracy outside international waters. But in many sea zones, ships engaged in

⁵ Peter Chalk, "The Maritime Dimensions of International Security", RAND Project Air Force, p. 16.

global trade have to cross territorial waters, which as a result of exclusive economic zones can extend up to 200 nautical miles. Taking for example attacks in the Straits of Malacca, none of these would constitute piracy, as they are all in territorial waters. Since this paper focuses on piracy's impact on the global economy and security, the geographical limitation of the UNCLOS definition of piracy would clearly reduce the ability to address the phenomenon properly.

In fact, the various statistical reports available do not limit themselves to accidents as defined by the UNCLOS: the most cited and used references, the International Chamber of Commerce's Piracy and Armed Robbery at Sea Reports, each give the following definition:

“[an] act of boarding or attempting to board any vessel with the apparent intent to commit theft or any other crime, and with the apparent intent or capability to use force in furtherance of that act.”

Although this definition obviously is not conditioned by geographical limitations, it is somewhat problematic: 58% (2008: 56%) of the actual attacks in 2009 occurred against ships which were either anchored or berthed⁶. A proper assessment of the incident reports reveals that it covers a high percentage of armed theft, occurring most frequently in ports. The Director of the IMB himself, Captain Pottengal Mukandan, correctly refers to this as simple “maritime mugging”⁷. This seems to have absolutely nothing to do with the actual piratical attacks we were worrying about in the introduction and that the Alliance's naval forces are confronting in East Africa: when thieves with knives ai-

ming to steal cash in a port are mixed up with RPG-armed hijackers of Very Large Crude Carriers, it is pretty obvious that the statistics start to become unreliable.

After the IMB reports, the UN's International Maritime Organization's Reports on Acts of Piracy and Armed Robbery against Ships are the second most important source, followed by the U.S. Naval Intelligence Office's Worldwide Threat to Shipping Reports. Both reports vary only very slightly from the ICC reports, which is a positive sign of the completeness of the accounts, but also means that they suffer from the same problem as the ICC reports.

Taking account of the inherent weaknesses of both the UNCLOS definition and the various available reports, it seems that the best thing would be to establish a working definition of “piratical attacks” that is able to assess the global economic and political repercussions of piracy. Fortunately, all three of the reports mentioned contain detailed reports on each single attack, providing an excellent opportunity for the creation of statistics based on a developed working definition.

For the purposes of this analysis, the author proposes the following working definition of piratical activities:

(a) any illegal acts of violence or detention, or any act of depredation, involving the attempt to take control of the vessel even only temporarily and committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed:

(i) on territorial and high seas, as well as in contiguous and exclusive economic zones⁸, outside ports and internal waters, against another ship

⁶ Piracy and Armed Robbery at Sea Annual Report for the Period 1 January -31 December 2009; Kuala Lumpur (2009) - International Maritime Bureau, International Chamber of Commerce; available on request at www.imb.org

⁷ Growing threat of 'maritime muggers', BBC News, March 15, 2005 <http://news.bbc.co.uk/1/hi/world/asia-pacific/4350881.stm>

⁸ The UNCLOS (1) defines the territorial sea as “Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” Internal Waters are therefore not part of a state's territorial sea. It states: “For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.” Accordingly, ports are also excluded.

or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

This definition differs in two important points from the UNCLOS definition. Firstly, it abolishes the legal implications of the UNCLOS regarding its area of application; all acts outside ports and internal waters are included.

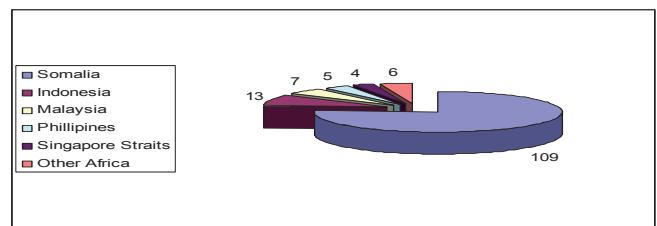
Secondly, it deals with a problem arising from the change in the high sea criterion: the definition would now include any act of depredation at sea. This is exactly what was recognized as a problem in the available IMO, IMB and NIO reports, all of which included theft. To avoid repeating this mistake, a further criterion is introduced that should highlight the difference between piracy and theft: the intent to take control of a ship. In many of the cases stated in the various reports, the “pirates” were actually just thieves, armed purely for self-defence. When spotted by guards, they mostly fled. The above working definition rules out this case: only acts directed at seizing control of the ship from the crew, even if the purpose is simply to steal cargo or spares, are regarded as piracy.

The new working definition combines therefore the UNCLOS and the IMB definitions, avoiding their fallacies: it ensures that the whole of the sea except ports and internal waters is included and excludes theft. Only through this measure is it possible to focus clearly on Piracy and Armed Robbery at Sea relating to security on a global dimension.

b) The global dimensions of piracy

Available data on Piracy

According to the ICC’s IMB, acts of piracy have dropped from 445 (IMO: 452) to 406 (IMO: 403) from 2003 to 2009. So obviously piracy has decreased in the last years, even if we include the dramatic rise in 2008 and 2009. This emphatically contradicts what we thought we were experiencing. Again, we see that the statistics just seem to give a misleading impression of the problem.



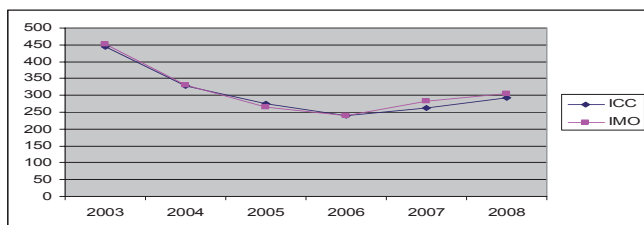
Even taking as a reference the problematic (because it is exaggerated) definition used by the IMB, piracy is consequently, on a global scale, a fairly negligible threat. Even though the increase in attacks in the Malacca Straits around 2003 was dramatic (as is this year’s rise), outside this hotspot piracy remained at a low level. Statements such as “we are experiencing the highest levels of piracy risk for four centuries” may therefore appear somewhat surprising at the moment⁹.

c) New Assessment

Applying our new definition of piracy to the incident reports of the IMB for 2009, this study ends up with a total of 252 attacks, of which 73 constituted actual (successful) and 179 attempted (failed) attacks. If we compare this with the number of incidents in 2008 according to the new definition, we see that piracy has risen by 68% from 150, while actual and attempted attacks have risen by 52% and 132% respectively.

⁹ Lloyd’s Chairman Lord Levene at the European Conference on Maritime Piracy. Transcript of the Speech available at http://www.lloyds.com/News_Centre/Speeches/Todays_piracy_problem.htm

A comparison of these numbers with the attacks originally accounted for in the IMB Report reveals that almost 40 % percent of these occurred in ports and internal waters or were just forms of theft. Obviously, the decision to challenge the statistics was well justified.



Of the 252 (2008:150) piratical attacks in our new database, 217 (109) attacks, 48 (43) actual and 169 (66) attempted, were performed by Somali pirates. This leaves us with 35 (30) piratical attacks outside Somali waters! Further, of these attacks by non-Somali pirates, only 1 involved more than the robbery of cash, spares and stores. Consequently, both the numbers and the type of attacks outside Somali waters have not changed.

If we take a total number of 50,000 ships involved in sea trade, the average probability of suffering a piratical attack was 0.5 % (0.35). If we consider how much has been written about the worldwide spiralling threat of piracy, it is quite surprising that, leaving aside Somalia, piratical attacks today are actually exceptional cases, on a small scale of violence and mostly directed at cash, stores and spares. Even if we assume that 50% of attacks go unreported, the global situation is far from dramatic.

On the other hand, when looking at the Somali attacks, the picture is quite dramatic: a total of 252 attacks all included firearms, and many involved the use of rocket propelled grenades (RPG). In all but one attack the vessel was hijacked, with the number of hostages reported as high as 1052. In comparison to 2008, a further striking feature is

the increase of unsuccessful (“attempted”) vis-à-vis successful (“actual”) attacks.

d) Getting the picture right

If we examine the ideas we have formed about present day piracy and its development over recent years, several conclusions can be drawn. Firstly, there is no such thing as global piracy: piracy as a major phenomenon is limited to a few regional hotspots, which seem to emerge and disappear cyclically, as the Straits of Malacca and Indonesia in general show. Further, piracy is usually about depredation of goods on the ships, such as cash, spares and stores. Statements that “piracy has re-emerged as a global security threat”¹⁰ can therefore not be supported by evidence. A noteworthy continuing field of debate are cases of “piracy in Nigeria”. Most of these operations are pursued by local insurgent militias and consist of attacks against installations. There is no reason to count them as piracy, which is pursued for private purposes.

At the same time, statistics show that Somali piracy is in a class of its own. At the peak of attacks in the Malacca Straits, which drew public attention to piracy for the first time, the number of piratical attacks rose, with the Straits becoming definitely the most dangerous waterway on earth. But even while conducting frequent attacks, Malaccan pirates still conducted the kind of piracy they pursued before, attacking bigger ships but maintaining their aim, which was robbery and sometimes phantom-ship operations. The change was mainly of a quantitative rather than a qualitative nature. As already asserted, Somali piracy has brought about a quality change in the piracy issue. The armoury of pirates and their organizational and operational capabilities, as well as their focus on ransom payments, have brought about a worrisome revolutionary change in the quality of piracy.

¹⁰ Lauren Ploch, Christopher M. Blanchard, Ronald O'Rourke, R. Chuck Mason and Rawle O. King, “Piracy of the Horn of Africa”, Congressional Research Report for Congress, Washington D.C. April 24, 2009.

2. ECONOMIC IMPACT

The economic cost of piracy can be divided into two categories, direct and indirect damage. Direct damage mainly includes the damaging or sinking of ships, the murder of crewmen, the ransoms paid for crews and vessels, delay penalties and clients' loss of confidence in shipping companies, as well as the requirement for tighter security measures for the ship. More indirect damages of piracy are higher insurance premiums.¹¹

a) Direct Costs

Fortunately the number of ships sunk since 2000 is not very high, and so it seems unlikely that huge financial losses will be caused by the sinking of ships. In the end, sinking is not in the pirates' interest at all. Damages to ships are more likely to occur. As we can see in the IMB reports, before the upsurge in Somali piracy only a very small number of pirates had firearms, and a minuscule quantity fired on the ships. Moreover, up to now nobody has used RPGs outside Somali waters. So, as far as damages are concerned, outside Somali waters, the risk of ships being damaged or even sunk through piratical attacks is very low. In Somali waters, however, the constant RPG attacks on ships often lead to serious damage to ships and have the potential to sink ships one day.

It is estimated that ransoms paid to Somali pirates for crew and vessels may have reached a total of 30 million dollars in 2008 alone¹². It is very hard to give an accurate figure, as companies and governments are usually reluctant to admit what they were willing to spend. The economic damage does of course not end with the payment of the ransom: often payments involve complicated and costly

negotiations and money transfers, which can be as high as the actual sum of the ransom. Often, however, ransom is covered by insurance. Piracy can also result in shipping delays. Shippers promise to bring in their goods by a certain date, and may be held responsible for delays in delivery. In the case of perishable goods, the situation is even worse. But the cargo is usually insured against these problems, so that this is more a problem for insurers than for shippers. The diminishing confidence in shippers may, however, have severe effects on companies.

In most of the current discussions and studies, authors call for ships to protect themselves with appropriate security equipment. This can vary from the installation of barbed wire to sonic deterrence devices or the employment of professional private security providers. Equipping a ship with non-lethal deterrent devices in a proper way would cost about 20,000 dollar per trip. Equipping all ships passing through the Gulf of Aden would therefore cost about 400 million dollars. Passive defence systems such as barbed wire cost about 2-3000 dollars per ship, and would therefore amount to only 60 million dollars.

After 2005, the Joint Hull Committee of the Lloyd's Market Association started to put piracy back on the war risk list. According to Brit. Insurance, 80% of policies in London now run under war policy.¹³ According to Lloyds, the cost of insurances for the passage through the Gulf of Aden has today risen to 20,000 \$ per trip (from 500 last year), possibly resulting in a financial burden of 400 million.¹⁴ This number is though very unlikely, as not all ships are insured.

According to the U.S. Maritime Administration, the costs of rerouting ships around Cape Horn would increase the

¹¹ Peter Chalk, "The Maritime Dimensions of International Security", RAND Project Air Force, p. 15.

¹² Lloyds Chairman Lord Levene at the European Conference on Maritime Piracy. Transcript of the Speech available at http://www.lloyds.com/News_Centre/Speeches/Todays_piracy_problem.htm

¹³ "Marine insurers transfer piracy risks to war cover", Business Insurance, March 30, 2009.

¹⁴ "Piracy could add \$ 400m to Owners' Insurance Cover Costs", Lloyd's List, November 21, 2008.

transportation costs very considerably¹⁵: If the Gulf of Aden were to become inaccessible following a further rise in attacks, the route around Cap Horn would result in a substantial additional cost in fuel, additional vessels and hire. Further, it would delay delivery significantly, possibly causing second-order effects in industries and with further implications, especially for perishable goods.

The impact on the insurance industry nevertheless remains negligible, as “it appears that the insurance industry would be financially capable of handling US exposures to acts of piracy in international waterborne commerce¹⁶. This throws suspicion on the increased pressure on the issue caused by insurers rather than merchants.

b) Potential Costs

Apart from these risks, which are already creating costs at the present time, there are some major potential costs which could evolve:

- Escalation of Violence due to the presence of international forces and private security forces: Pirates are well aware of the fact that international forces are reluctant to board conquered ships. The increasing presence of international forces could therefore lead pirates to try to conquer ships as rapidly as possible, for instance by the use of ever greater violence to show their clear intent to use destructive violence if the ship were to engage in evasive tactics. The increasing use of private military contractors such as Xe, which deployed a vessel and declared its willingness to take over such missions in the Gulf of Aden, could also lead pirates to engage in preventive acts of violence.

- Environmental Disaster: The sinking of a VLCC could lead to an environmental disaster of apocalyptic proportions.
- Terrorism: Possible links between piracy and terrorism have so far not been found, but there are signs that the Al Qaida-linked Somali Al-Shabaab militia has now started to establish contacts with pirates.¹⁷
- Cruise Ships: The hijacking of a Cruise Ship would lead to a new dimension of piracy, with hundreds of (probably wealthy) civilians held hostage.
- Escalation of Violence is very likely to happen and is in fact what we are already experiencing now. Environmental disaster, terrorism and the seizure of a cruise ship are incalculable threats, known as peak risks. They are not very likely to occur, but would have disastrous results if they ever did materialize. Of course, the Escalation of Violence would increase the likelihood of these risks.

Like the numerical dimension, the economic dimension of piracy also offers a somewhat ambiguous picture. On the one hand, as easily deducible from the numerical dimension of piracy, the economic impact of piracy outside Somali waters is globally quite negligible: no huge damage is caused to ships, no ransoms are demanded, nor are ships seized. On the other hand, Somali piracy causes considerable damage to ship owners because of the high proportion of ships being fired upon, and most shippers have to pay higher insurance premiums.

¹⁵ “Economic Impact of Piracy in the Gulf of Aden on Global Threat”, U.S. Maritime Administration.

¹⁶ Rawle O. King, “Ocean Piracy and Its Impact on Insurance”, Congressional Research Service report for Congress, Washington D.C. December 03, 2008, p. 2.

¹⁷ Bruno Schiemy, “Piracy’s rising tide - Somali piracy develops and diversifies”, Jane’s Intelligence Review, January 29, 2009.

The above damages, which can be calculated by adding together the estimated maximum amount of ransom paid so far (150 million), the maximum (and very unlikely) insurance costs and the maximum employment of security measures, amount to about one billion dollars. The IMB estimates the cost of piracy as somewhere between 1 and 16 billion dollars. One wonders how this figure was obtained. Anyway, even if we take the higher figure, it is still minuscule compared to global trade, which is currently estimated at about 7.8 trillion dollars! Consequently, piracy is simply not a threat to the global economy.

3. IMPLICATIONS

As we have seen so far, piracy is certainly not a new phenomenon, despite claims to the contrary. It seems rather that piracy continues to operate at a low level of intensity, with regional hotspots emerging cyclically, such as Lebanon, Malacca, Indonesia and now Somalia.

a) The emergence and disappearance of piracy and the particularities of the Somali case

The adjusted statistics show that outside Somali waters there were 35 cases of piracy and armed robbery at sea worldwide in 2009, consisting mostly of damage below 10,000 dollars per attack. The potential economic impact of this kind of piracy is therefore clearly negligible. But our assessment also reveals that Somali piracy is one of a kind. It clearly differs from piracy in all other parts of the world, which consists of acts of robbery. The Somali case, with its unique concentration on ransom payments and its high level of armed aggression, clearly is a new and unknown phenomenon.

This leads of course to the question how and why piracy

hotspots emerge and what has led to the unique form of Somali piracy. The development of these hotspots is driven by push and pull factors. It is a product of both intense maritime traffic and the decreasing military presence at sea. The Malacca Strait is a case in point: funding for navies and coast guards has decreased as a result of the increase in land-based security measures following 9/11.¹⁸ While this may hold true for South Asian piracy, piracy in Somalia, where there has been a total lack of any state control for almost 20 years, clearly is not a result of this problem. Leaving aside the 9/11 argument, the intense maritime traffic and lack of policing of domestic waters can easily be identified as key facilitators for piracy. In fact, both the Straits of Malacca, Indonesian waters in general and the Gulf of Aden – the major hotspots of the last ten years – are all located near some of the most frequently used sea lines of communication. So the geographical location is clearly a cause. But if we look at the piracy-free Strait of Hormuz or the Skagerrak, both bottlenecks like the ones mentioned above, it becomes obvious that vicinity to a highly frequented waterway alone is not enough to qualify as a piracy hotspot.

Instead, what really paves the way for piracy is unsecured waterways. This holds true for South East Asia, where the archipelago-like geography provides piracy with an easy hideout, as well as for Somalia, which lacks the institutional capacity to police its seas. One of the most important studies in the last years in fact clearly linked piracy to unpoliced waterways.¹⁹

Aside from these factors, economic exclusion is an obvious decisive factor for this risky business. According to U.N. Special Representative to Somalia Ambassador

¹⁸ Peter Lehr (ed.), *Violence at Sea: Piracy at the Age of Terrorism* (London: Routledge, 2006).

¹⁹ Peter Chalk, "The Maritime Dimensions of International Security", RAND Project Air Force, p. 15.

Ahmedou Ould-Abdallah, “poverty, 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”.²⁰

There are consequently three factors which, when combined, cause the emergence of piracy hotspots:

1. Vicinity to an international waterway
2. Unsecured waterways
3. Economic deprivation

When thinking about the Somali case and its focus on hijackings and ransom payments, it has further to be kept in mind that Somalia sadly has led the world failed states statistics for almost 20 years²¹. As argued in a Congressional Research Service Report on Somali piracy, “this approach to piracy is possible because the pirates have a sanctuary on land in Somalia and its territorial waters from which they can launch pirate attacks and conduct ransom negotiations. Pirates in other parts of the world are less likely to have such sanctuaries. This has presented maritime security forces with significant challenges to traditional engagement strategies and tactics.”²² With Somalia engaged in a long and brutal civil war, the necessary weapons for this aggressive kind of piracy are of course not difficult to acquire.

b) NATO and the Gulf of Aden missions

In view of the numerical and economic implications of both global and Somali piracy, one could of course seriously question the utility of the employment of NATO forces in

counter-piracy, especially as they were unable to limit piracy effectively in 2009.

It is now easy to argue that the amount of hostage taking and violence included in piracy is simply not acceptable from a human point of view, especially as often crew members or ships from our own nations are attacked. Further, the political pressure in the event of non-action would probably have been too high. But the current NATO operation is well justified, and not only for these reasons. Paradoxically, the securitization of piracy and NATO’s engagement provide the Alliance and especially its maritime forces with a couple of positive side effects:

Firstly, piracy is an interesting topic for domestic publics. It seems to involve all the factors that today transform problems into “wicked problems”: pirates are non-state-actors engaged in (seemingly) non-traditional “asymmetric” attacks (both on unarmed ships and against mission forces), potentially work with terrorists, are hard to bring to justice, are assisted by globalization, have an impact on energy security and are related to further “hot” transnational challenges such as climate change, environmental degradation and organized crime. The current mission in the Gulf of Aden therefore gives the Alliance’s navies, which have so far not been able to play a visible role in the GWOT in general and in Afghanistan and Iraq in particular, a prominent place in current debates again. There are voices who argue that “a lot of navies are looking for a job to do, and there are many ships in the world prepared for a big naval war, which isn’t going to happen”. Aware of the need for visibility in order to obtain proper funding, as the “only show in town”, piracy offers them a possibility to gain a more prominent and proactive role in public perception. The Economist has

²⁰ Final Report: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah, November 10-12, 2008, Nairobi, Kenya.

²¹ See Foreign Policy Magazine’s Failed State Ratings Index: http://www.foreignpolicy/story/cms.php?storz_id=4350&page=1

²² Lauren Ploch, Christopher M. Blanchard, Ronald O’Rourke, R. Chuck Mason and Rawle O. King, “Piracy off the Horn of Africa”, Congressional Research Report for Congress, Washington D.C. April 24, 2009.

picked up this exact same argument: “It gives them a noble new mission, claim on budgets and cross border work to which nobody objects”. As opposed to other combat units, they hardly risk serious confrontations with pirates. So piracy provides NATO’s navies with a great chance to gain high media coverage and publicity at a very low level of risk.

Additionally, pirates are *hostes humani generis*: nobody likes them and their actions have made them enemies to everyone. Counter-piracy, with Chinese, Russian and other nations’ ships all engaged in these operations, is a great common enemy and a good chance for the forgotten art of maritime diplomacy, which might have considerable potential for positive engagement with other nations and organizations. Much has been written about the emergence of international regimes and the cooperation in the Indian Ocean, and why should the Red Sea not be an opportunity for a similar development? Indeed, during his December visit to Russia the Secretary General identified piracy as one of the “21st Century Common Security Challenges that NATO and Russia face together” and that they agreed to cooperate on.²³

c) Towards a future in counter-piracy?

Much has been written about the possible spread of Somali-like piracy around the world. Taking into account the positive side effects of missions like the current one and the considerable amount of stakeholders in the issue, it could seem that the engagement of NATO forces in similar missions is a) likely and b) to a certain point even desirable, at least from a navy point of view. So are we moving towards more NATO missions of this kind in the future?

To answer this question, we could simply ask what possible hotspots could emerge in the future and where NATO might need to undertake counter-piracy actions again. With regard to the Straits of Malacca, it must be remembered that when the United States offered to send forces to secure the straits in 2004, the responsible governments at the time refused US involvement in their territorial waters. No country with a sufficient level of statehood can be expected to give up sovereignty over its territorial waters so easily. So a further NATO engagement would not only require a combination of the three triggers for piracy but would be further limited to a case like Somalia, i.e. an only nominally existing state.

The most likely possibility of NATO embarking on future counter-piracy missions would therefore be another Somalia-like failed state, lacking any institutional capability. Fortunately, given its total state collapse and unlucky Western interventions, Somalia is a very exceptional case. Even other states with a high degree of state failure, such as Yemen, are not comparable with the “burned soil” of Somalia, where no power is likely to send forces in the foreseeable future. As is usually agreed, the current solution “from sea to shore rather than the other way around”²⁴ is one that should be used only in the most extreme cases. Even VADM William Gortney, Commander of the U.S. Naval Forces Central Command, leaves us in no doubt about the solution: “Ultimately piracy is a problem that starts ashore and requires an international solution ashore; we made this clear at the offset of our efforts. We cannot guarantee safety in this vast region.”²⁵

²³ The Secretary General hereby stated that “Two weeks ago, we agreed to launch a joint review of 21st Century Common Security Challenges that NATO and Russia face together. We agreed to focus on fighting terrorism, proliferation of weapons of mass destruction, piracy and the threats from Afghanistan”. The full press statement is available at http://www.nato.int/cps/en/natolive/topics_50091.htm?selectedLocale=en

²⁴ James Kraska and Brian Wilson, “Maritime Piracy in East Africa”, *Journal of International Affairs*, Spring/Summer 2009, Vol. 62, No. 2, (New York) 2009, p. 55.

²⁵ Testimony before the House Armed Services Committee, March 5, 2009.

This is extremely important because, after the attempted bombing of an US flight by a Nigerian national supported by Yemeni AQ operatives, Yemen is increasingly being pictured as a second Somalia. The perception of a combination of increasingly Al Shaabab-backed Somali pirates cooperating with Yemeni pirates linked to AQ operatives could pave the way to a final “super-securitization” of the piracy problem and lead to a call for a robust comprehensive intervention. This, however, confuses two inherently different cases. Unlike Somalia, Yemen is by no means as failed and has a fairly cooperative government as well as support from neighbouring Saudi-Arabia. Further, it is precisely the coastland which is most under government control. So, whatever the solution envisaged for the Yemeni question, we have to be very careful not to mix it up with the Somali problem. The situations on the ground may look similar at a first glance, but differ substantially.

As already mentioned, the main determinants of the successful anti-piracy activities in the Straits of Malacca were the international expectations that the problem could be solved. But at the same time, the political, social and economic capacities of the affected states enabled them to solve the problem on their own.²⁶ The main reason why they were able to fight against piracy was that the level of statehood of these countries was sufficiently high. As successful as the piracy patrol might further have been, the effects of the tsunami, which destroyed almost all the pirates' infrastructure and led to the end of the insurgency in Indonesia, had a big share in the success in fighting piracy.

As the Malacca case shows, piracy can and must be dealt with by the state confronting the problem. It can further not be regulated by sea alone, but needs a clear land com-

ponent. A real solution to the Somali problem has indeed already been seen: from June to December 2006, the Islamic Courts Union gained control over almost all of Somalia, before it was overrun by US-backed Eritrean troops. During this time of rigid rule, piracy in the Gulf of Aden and the Somali waters literally ceased to exist.²⁷

NATO's future role in counter-piracy is consequently more likely to be of a supportive kind, as was the US assistance in the battle against Malaccan piracy: providing the necessary equipment and training to states that lack the institutional capability to secure their own seas. The NAC decision to help the AU to develop its own counter-piracy capabilities is to be welcomed. But it has to be acknowledged that a true solution to the problem can be achieved only on shore.

The stakeholders in the securitization of piracy are legion and range from insurers and private security companies to navies and diplomats. However useful it may be to employ it as a toolbox for promoting other interests, counter-piracy comes at a considerable cost. While the Alliance's militaries are spending billions of their tight defence budgets on these operations, we should ask the industries profiting from the engagement to accept their share of responsibility. An INTERTANKO report in November states that 25% of all ships passing through the Gulf of Aden are still not registering with the anti-piracy operation nor applying best management practices, let alone using passive defence systems. This is crucial, as of 8 vessels then held by pirates 7 had not been reporting their movements while only 2 of the 15,000 vessels with registered transit had been successfully hijacked.²⁸ Insurers have been full of praise for their flexibility, but ultimately no reward is given to the shippers that take on the (albeit very low) costs of at least

²⁶ Julia Galaski, “Chancen und Grenzen der Pirateriebekämpfung”, German Institute for Foreign and Security Affairs, Berlin, March 2009 p. 3.

²⁷ Bjoern Moeller, “Piracy off the Coast of Somalia”, Danish Institute of International Studies, Copenhagen, 2009, p. 4.

²⁸ GULF OF ADEN: INTERTANKO Bulletin on Piracy, 25 November 2009, available at <http://www.cargosecurityinternational.com/channeldetail.asp?cid=9&caid=11459>

passive defence systems. This is unacceptable, as one of the striking features of 2009 is the success of exactly these best management practices and passive defence systems.²⁹

When thinking about strategic concepts, maritime strategies, further missions and future capabilities, it should be kept in mind that counter-piracy is not likely to be one of NATO's principal tasks in the future. As suggested by a Senior NATO analyst, "the risk for defence policy planners is that they may be open to charges of overstating these threats for the benefit of naval force capability development. Defence planners advising their governments must be vigilant in ensuring that the discussion of maritime crime and terrorism is commensurate with the projected threat posed, based in part on historical trends, and does not overshadow other maritime security concerns, including emergent naval powers."³⁰

The Alliance's current maritime strategy has lasted for 26 years. In times of shrinking defence budgets we should be careful to weigh the future importance of counter-piracy against other maritime security operations. As rightly argued in an U.S. Naval Institute article ultimately piracy "as a localized nuisance, ... should not serve to shape maritime force structure or strategy."³¹

²⁹ As mentioned above, in Somali waters 2009 there have been only 5 more successful, but 103 more unsuccessful attacks than 2008.

³⁰ Interview with Dr. Brooke Smith-Windsor, Senior Research Analyst for Maritime Strategy, NATO Defense College, December 2009.

³¹ John Patch, The Overstated Threat, Proceedings Magazine, U.S. Naval Institute, Dec. 2008, Vol. 13471271, 270.