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Time to rethink the fight against maritime piracy in the Indian Ocean

by Maxim Worcester

Background

Maritime piracy has been on the rise for years, according to the IMB Piracy Reporting Centre. But until 2008, when pirates operating off the coast of Somalia hijacked a ship full of Russian tanks and an oil super tanker, the crime drew limited international attention. By early 2009, more than a dozen countries had deployed naval ships to the region. The stakes grew higher after the U.S. Navy killed three Somali pirates in a rescue operation. By October 2009, piracy attacks surpassed 2008 numbers and the use of firearms by pirates had increased by 200 %.

In 2009 there were 217 attacks by Somali pirates. 49 ships were captured, 1052 crew members taken hostage, 8 crew members killed and 68 wounded. These are the reported figures; numerous attacks are simply not reported.

The level of violence has increased further in 2010 as pirates have been able to purchase faster boats and use “mother ships”, thus enabling them to operate throughout the Indian Ocean and off the routes patrolled by the Naval ships. Pirates are now able to attack and board super tankers, enabling them to demand yet higher ransoms. In 2009 pirates are estimated to have received around €40 million in ransom, this number is bound to rise as the value of ships captured increases.

The international community must take some of the blame for this development. When in 1991 Somalia descended into chaos after the fall of the regime of Mohamed Siad Barre, some European and Asian countries took advantage of the situation and sent their fishing fleets into Somali waters. Others used the waters to dispose of thousands of drums of toxic wastes. Without a coast guard to prevent such illegal activities, Somali fishermen began organizing

and arming themselves to confront waste dumpers and collect fees from foreign fishing vessels. What began as a legitimate fight against exploitation soon turned into a criminal enterprise when everyone discovered its lucrative potential.

The explosion of piracy off the coast of Somalia has exposed a weakness in the United Nations maritime law that makes piracy illegal throughout the world. Signed in 1982 by more than 150 countries, the Law of the Sea defines piracy as illegal acts committed on the high seas for private ends. It also states that all countries have a right to seize and prosecute those committing pirate acts on the high seas. The convention, however, clearly did not take into account the emergence of failed states such as Somalia, and furthermore did not question what happens if a pirate attack takes place within countries territorial waters and is not able to respond.

NATO, and countries such as India, Pakistan, China, Russia and South Korea, have responded by deploying warships to the region in order to protect shipping from the pirates. This has had a positive impact on the situation, without the presence of such naval ships the number of pirate acts would undoubtedly be far higher. As a result of the presence of naval vessels the pirates have resorted to operate in areas not patrolled by the Navies and have adopted the use of “mother ships” to support the fast skiffs used by the pirates. When naval ships are in the area or make their presence felt, the pirates break off the attacks. Lack of numbers of naval ships do however not allow for full coverage of the area under threat.

The Wrong Ships?

Naval ships operating against the pirates were designed to either fight other ships or submarines but not pirates in small boats. A typical frigate on patrol in the Indian Ocean or off the coast of Somalia is HMS Cornwall, a type 22 frigate. She was launched in 1985, carries a crew of 250 and cost €150 million to build. Her annual running costs come to around €20 million and she is heavily armed with cannons, missiles and torpedoes. A modern frigate comparable to HMS Cornwall today costs around €350 million. Clearly, such ships are somewhat of an overkill in the fight against the Somali pirates in the Indian Ocean. Low intensity warfare, such as the fight against pirates, calls for a less sophisticated solution.

It is very likely that low intensity naval conflicts will increase in the future and that the acts of piracy in the Indian Ocean are a sign of things to come. As the scarcity of resources and trade continue to grow, the need to protect shipping assets and off-shore resources will increase. The flood of refugees from North Africa following the upheavals in Tunisia and Egypt are a sign of things to come and illustrate the need for protecting maritime borders.

What is clearly missing in the arsenal of modern Navies is a class of ship which is able to provide adequate protection in sufficient numbers at a price which is affordable. One could do worse than copy the Somali pirates by using a combination of mother ships which service a fleet of small, fast patrol vessels, helicopters and UAVs. The development of ships and tactics to counter the threat of piracy and other low intensity conflicts must be a priority for Governments and Alliances such as NATO. What is not called for is a sophisticated, heavily armed and expensive Littoral Combat Ship capable of taking on an enemy warship. A low technology vessel, suitably armed, equipped with modern Radar and able to support a medium sized helicopter is what is called for, the days of bottomless defence budgets are over and the security threat has changed since the days of the Cold War.

There are ships serving in the major Navies today which could well be used as mother ships to service a fleet of patrol boats. All blue water Navies have Fleet Replenishment Vessels which are used to service and supply war ships in mid ocean. Such ships can support helicopters, are armed and carry supplies such as fuel, food, ammunition and water. They are large enough to provide accommodation for crews of patrol boats thus allowing personnel to rotate and keep patrol boats at sea for long periods of time.

The Role of the Ship-owners

Ship-owners too will have to rethink and adjust to the new threat posed by piracy. Many shipping companies are reluctant to arm their crews or employ armed private security guards to defend against the threat of piracy. Some nations, such as Russia, have deployed armed guards who have been known to open fire when under attack. Interestingly enough, since this has been common practice, no Russian ships have been boarded.

The debate on the issue of arming men on board ship and the role of private security companies is ongoing. The case for armed guards seems to have hardened in recent months perhaps in part because of the reluctance to arrest and prosecute pirates and the fact that naval forces are unable to stop the attacks entirely. Gone are the days when pirates shot ahead of the ship or into the hull. Now reports of RPG rounds being fired into accommodation areas are common and this escalation of attacks by pirates has been one sided and has not been caused by a more robust defence by ships crews.

The call for armed guards has been supported by military commanders, notably American commanders, who suggest that shipping companies must take measures to defend their vessels and crews. This message has been reinforced by the issue of a Maritime Security Directive which forces US ships to have security teams on board in high risk areas.

Currently most shipping companies rely on the presence and protection of the Naval ships in the region and passive defence measures such as barbed wire, water cannons and “safe rooms”. The problem with this strategy is that it allows pirates to approach merchant ships to within the range of automatic weapons or within range of the ubiquitous RPGs much favoured by pirates. Furthermore, pirates often attack at dawn making the sighting of the pirates difficult, and make use of blind spots in the Radar coverage to the rear of the attacked ships.

In order to reduce the risk of being captured and ransomed by pirates, ships in such waters as off Somalia and even in the Indian Ocean will need to both improve passive and adopt active defence measures. Ships need to have Radar systems which can pick up small vessels such as those used by pirates and employ optical systems to identify the threat at least 2000 meters from the ship. This will give the crew time to prepare defences well in advance. At the same time ships need to have non-lethal and possibly lethal defence systems to keep attackers out of range of automatic weapons and grenade attack. The maximum range of both automatic weapons and RPGs is around 500 meters and the aim of the defending crew must be to ensure that the attackers cannot close this range.

The only non-lethal weapon system which can achieve this is currently under development and thus not available – a laser system designed to dazzle but not blind attackers. Other

systems such as Long Range Acoustic Devices are not effective at such a range, nor are stun grenades or kinetic munitions such as rubber rounds.

In any case, most merchant seamen are not trained to use such sophisticated systems and are not used to performing efficiently when under fire. Furthermore, most merchant ships are manned by too few crew members and none are dedicated only to the task of securing the ship from being boarded by pirates. What follows from this observation is that ship owners will have to either increase the level of manning and train seamen to defend their ship, deploy police or soldiers on board or employ private security companies to protect the ships and operate the defence systems. Whatever route the owners go they will have to invest in hard ware and personnel.

The suggestion of the German ship owners to embark extra personnel or police/military in areas which are under threat is unrealistic. At one stage the German ship owners had suggested to deploy three mother ships, one in the Red Sea, the second off Sri Lanka and the third north of the Seychelles. This plan has since been rejected for fear that the mother ships might be attacked. Current plans call for guards to be based on land and transported to merchant ships by high speed launch.

The problem with this approach is the inflexibility and the danger of the bases on land being attacked by pirates. The pirates act opportunistically and attack ships throughout the Indian Ocean. It would be very difficult to say which area is safe at any one point in time. The answer, therefore, has to be to protect each vessel wherever it might be, and back these defences with wide ranging naval patrols. While the use of police or military on board might be attractive as it would present fewer legal problems than the use of private security companies the fact remains that there are simply not enough serving members of either the police or military to provide an adequate coverage.

Use of Force

The ultimate layer of defence is using lethal force. It should be standard operating procedure to open fire on attacking vessels once they have opened fire and have somehow overcome the non lethal layers of defence. The aim of the defenders should not be the killing of pirates but the immobilisation of their vessel by targeting the outboard engines. Given that the defender is firing from a stable platform, such a task can be accomplished by a fully trained security guard with a high calibre sniper rifle.

The use of private security companies protecting ships from pirates has been widely debated and is highly controversial. Some argue that only the state can employ force to protect assets and persons, a notion which not all share. Others point to the scandals surrounding the conduct of private security companies in Iraq and Afghanistan. What tends to be forgotten in this argument is that reconstruction in Iraq and Afghanistan would have been impossible without private security companies and that most such companies act in a responsible manner at all times. The use of such companies in trouble spots has become essential as there are simply not enough soldiers to do the more mundane jobs such as protecting bases, embassies, personnel or convoys.

Deploying police or military to guard ships threatened by pirate attacks will not work for the very same reason – there simply are not enough to cover the demand. At the same time it can

also be argued that a police officer or even a soldier does not have the right training for the job in hand, nor do such personnel normally have experience of responding under fire. Many of the personnel employed by the private security companies have had combat experience, have been vetted and furthermore have volunteered for the job. Clearly the ship owner needs to show that he has exercised due diligence when deploying armed guards on board ships. Owners should insist on viewing the CVs of those being deployed in order to ensure that nobody with a past conviction or a medical problem is entrusted with the armed defence of a vessel and its crew. Furthermore the fundamental question as to who authorises the use of force needs to be clear. Under the contract between shipping company and private security company the master may not have control or the final decision in whether weapons might be deployed or used. In other words, the master might not be in charge of something which relates to the safety of the crew and the vessel. Indeed there may be a contractual obligation for the master to obey security instructions from the guards which extend to the routing of the vessel. This represents a fundamental shift from the role of the master who traditionally has at all times ultimate responsibility for the safety and security of the ship under his command.

Legal Opaqueness

Opponents of a more robust approach to combating piracy often cite the legal grey area surrounding the inability of Somalia to apprehend and prosecute its own pirates. The legal situation becomes even more confused because so many nations have a vested interest when a ship is hijacked. A ship might be owned by a German company, managed by a company in Cyprus, crewed by Indians and skippered by a Norwegian. The cargo could be owned by a multinational company and insured in London. What is called for here is a clearer definition of the 1988 UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. The Act obliges coastal states who signed the convention to prosecute pirates unless they can explain why the convention does not apply. What is required in order to bring some degree of legal clarity is an agreement between the affected nations and shipping companies to enable real-time coordination for dealing with arrested pirates and sorting out where they will be temporarily detained and subsequently prosecuted. Successful models for such agreements exist, such as the United States maritime threat response plan and maritime narco-trafficking agreements in the Caribbean.

Clearly steps need to be undertaken to prevent the rise in piracy acts on merchant shipping. Current passive measures are not solving the problem and ships continue to be hijacked and personnel taken hostage. The pirates are growing more aggressive and a number of sailors have been killed or injured.. Unless force is met by force the situation will continue to escalate and the death toll is bound to rise as pirate resort to yet more violent measures. There is the additional danger of terrorist organisations joining the band wagon and hijacking vessels with dangerous cargos putting them in a position of being able to threaten critical infrastructures such as ports or choke points such as the Straits of Hormuz or even the Suez Canal. Pirates might even “sell” a hijacked tanker to terrorist organisations, much as hostages taken in Iraq by criminal gangs were sold to the insurgents and subsequently ransomed for political gain or executed. Allowing the current situation to run its course increases the danger of such events taking place.

In order to move forward politicians need to bring the Law of the Sea into the 21st century. It fails to take into account the fact that piracy can take place in territorial waters, nor does it consider the situation of states such as Somalia not being able to enforce the rule of law in its

waters. Failed states were not an issue when the law was drafted. Politicians also need to address the issue of outsourcing security measures to private security companies and lay down clear rules of engagement and supervision. Ship owners must realise that they cannot continue to rely on the Navy for protection and that they will have to invest in their own security.

The situation can be compared with the emergence of aircraft hijacking in the US and elsewhere in the 1970s. Airlines and Airports were forced to take measures to combat the trend and did so by ensuring that potential hijackers could not board aircraft. They realised early on that only by ensuring that such persons could not board aircraft with weapons could the problem be solved. In the case of piracy the same lesson holds true – pirates must be prevented from boarding a ship by active and passive measures. The responsibility for this is in the hands of the ship owners, state actors such as the navy, can only play a supporting role.

The Role of Transnational Crime Groups

Many if not all the discussions around the issue of piracy tend to concentrate on the protection of crews and ships and look at ways of improving their security and managing the risk of piracy. Others look at the issue of stabilising the territories from which pirate raids are launched. The latter is laudable, however given the reluctance of the US, NATO and EU to become involved in yet another conflict along the lines of Iraq and Afghanistan such a move is highly unlikely.

What is often forgotten in the fight against high profile criminal business activities such as piracy is that such activities can have an even broader transnational implication than the conflict itself. Most of the treasure captured by the pirates off the coast of Somalia and in the Indian Ocean flows not to the pirates but to those dark forces that are pulling the strings in the background. The success of the pirates over the past years has in part been due to the high risk appetite of the pirates themselves who are willing to put to sea in small boats and put their life on the line. It has also been due to their masters, sitting in such maritime centres such as the ports of the Middle East and Europe who provide the pirates with sophisticated equipment, intelligence and the ability to launder the proceeds of their activities. In the past they also played a role in funding piracy – given the current cash flow this role has in all likelihood become less significant.

Transnational organised crime groups are beginning to play a significant role in piracy. Without intelligence on proposed routes, cargoes and ship details the pirates would not be able to focus their activities in the manner they do. Clearly there are informers in the ports and offices of shipping companies who act as information gatherers and pass on intelligence to organised crime groups. These in turn pass on the intelligence to those controlling the pirates who then deploy pirates with the aim of capturing high value vessels and cargoes in order to maximise profits.

Pirates, according to UN sources, end up with around 30 % of the booty; the rest of the money ends up with the local community, village elders, the militia and the sponsors. There is speculation that Islamist groups such as al-Shabab also get a cut, so far, however, no clear link has been established between pirates and such terrorist groups. Much of the proceeds appear to end up in one or other of the Gulf States where the funds are laundered and brought into circulation.

Some analysts play this situation down with the argument that the proceeds of piracy, running at around €70 million are too small to attract large international crime syndicates. That might be true; nevertheless the development is cause for concern. Should the level of piracy continue to rise it will indeed become attractive for international crime syndicates, much as the drug trade became attractive in the late 1970s. The result of that interest is clear today and is a suitable warning to all those who are down-playing the serious risks which piracy poses not only to world shipping but also to international crime levels.

The way forward

It is clear to all that there is no single way to fight the rise of piracy off the coast of Somalia and in the Indian Ocean. What is called for is a coordinated set of measures which in combination will lead to a reduction and eventual elimination of piracy. The latter must be the aim, even if it might appear to be illusionary.

- The first step should be a new look at the Maritime Laws which govern the use of force on the high seas and within the territorial coastal areas. These laws need to be taken into the 21st Century and adopted to the threats of today.
- The Rules of Engagement of the naval units charged with protecting the trade routes needs to be coordinated and agreed. Furthermore, a close look needs to be taken at the kind of naval vessels might be required in order to combat piracy more cost effectively.
- The use of Private Security Companies should be regulated and agreed.
- Shipping companies need to conform to basic security requirements when operating in danger areas and should at all times comply with due care for the crews and cargo. They will need to invest in superior passive defence measures and adopt active measures if required.
- Police and the Security Services should actively combat those international crime groups involved in piracy at the earliest possible point in time in order to reduce the attractiveness of piracy. They should also ensure that piracy cannot be used by terrorist organisations to advance their aims.
- The banking community should take a much closer look at money laundering and report all suspicious transactions to the authorities.
- Long term plans to bring the beginnings of stability to Somalia and the establishment of an effective Coast Guard need to be drawn up and funding made available. This could be a Public-Private Partnership involving suitably qualified Private Security Companies.

Current activities by naval forces and ship-owners have succeeded only in part. The growth of Piracy in the region has been slowed down at best; clearly, however, the current measures are one dimensional and have not contributed to the reduction of piracy. Much as in Counter Insurgency Operations a multifaceted approach is called for which attacks the problem by both directly confronting the pirates on the sea and their backers on land. The attractiveness of such activities needs to be significantly reduced and the risk of arrest and prosecution of all those involved must be dramatically increased. In short – the business model of modern

piracy at sea must be made very unattractive. If the economics don't work and there is no political gain the problem of Piracy in the region will become a footnote in history.

Remarks: Opinions expressed in this contribution are those of the author.



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