



Piracy: A Fresh Look is Essential

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Summary

Piracy especially in mid-ocean areas is on the increase. It is evident that present measures in force are unable to contain acts of piracy. Issues such as the legalities involved and inadequacy of maritime forces available vis-à-vis the spatial extent of piracy are hindering anti-piracy operations. Therefore, land-based operations could be the only viable solution to deter piracy. A fresh look is required at the international level to deal with this scourge effectively. It is time for India to take the lead and push for a change in tack both regionally and in international fora.

Piracy when seen in a holistic manner has brought to light a number of difficulties faced in combating it. This brief argues that at present levels - maritime forces cannot tackle piracy due to the large area in which pirates operate. These operations are also hindered by the differing laws of nations and the restrictive UNCLOS articles on piracy. It also examines the five point plan proposed by India in the UN Security Council, and concludes that land-based operations may be a solution to end piracy originating from Somalia, thereby serving as a deterrent for piracy as a whole. It also looks at the steps India could take to address piracy.

Increase in Piracy

The action of deploying warships by nations has not had the desired effect of reducing piracy. This stems from the fact that the number of warships on patrol at any given time is unable to cover piracy prone areas adequately and thereby deter piracy by either presence or military engagement. Figures as per International Maritime Bureau report for the period 01 January 2010 to 31 December 2010 are indicative that acts (attempted and actual) of piracy the world over are on the increase¹.

Year	2006	2007	2008	2009	2010
Acts of Piracy	239	263	293	410	445

However, it is clearly apparent that the number of incidents has reduced in the areas where states have vigorously pursued anti-piracy actions. The year 2010 saw a drastic fifty percent reduction in acts of piracy in the Gulf of Aden. This is mainly due to the presence and actions taken by maritime forces in the area as also by actions by the crew of ships under attack. The breakdown of acts of piracy² in India's area of interest, as per the above report, is a matter of concern.

Year	2006	2007	2008	2009	2010
India	5	11	10	12	5
Bangladesh	47	15	12	18	23
Sri Lanka	1	4	1	-	-
Somalia	10	31	19	80	139
Gulf of Aden	10	13	92	117	53
Malacca Straits	11	7	2	2	2
Arabian Sea	2	4	-	1	2
Indian Ocean	-	-	-	1	-

¹ International Chamber of Commerce (ICC) – International Maritime Bureau (IMB), Piracy and Armed Robbery Against Ships, Report for the period 01 January – 31 December 2010.

² Ibid.

The Indian Navy successfully thwarted three attempts, one around 450 nautical miles from Mumbai on 11 November 2010 and two in quick succession off the Lakshadweep Islands on 28 January 2011 and 06 February 2011. These incidents of piracy, distant from the piracy prone areas off the coast of the Horn of Africa, which can be termed as 'mid ocean areas' are indicative of the changing dangerous trend in piracy. Firstly, mid ocean sailing requires a mariner's expertise and this evidently is available to the pirates from amongst the hijacked crew. Secondly, the hijacked vessel is being used as a mother ship. These facts permit the pirates the ability to transit unobtrusively and operate in areas where there is no presence of maritime forces. This expansion of piracy operations into mid ocean areas will definitely require more maritime force assets and more importantly exhaustive and comprehensive cooperation amongst nations.

Five Point Plan

India has long accepted the fact that piracy is a threat to seaborne commercial trade and has been maintaining a presence since 2008 in the piracy prone areas in the Gulf of Aden and has been rendering assistance to merchant ships irrespective of the nationality. On 26 January 2011 India's Permanent Representative to the UN proposed a five point plan to the UN Security Council to tackle the problem of piracy off the coast of Somalia.

- = Reinforcement of tracking the trail of ransom money to different parts of the world, as entrusted to the Interpol.
- = Prosecution of the beneficiaries of ransom money for abetting piracy.
- = Consideration of the conduct of the naval operations under the UN as the preferred option.
- = Sanitisation of the Somali coast line through identified corridors and buffer zones and tracking of fishing vessels around the Somali coast.
- = Enactment of national laws on priority to criminalise piracy as defined in the UN Convention on the Law of the Sea and the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia as required under resolution 1918 (2010).

The five point proposal is a positive step towards addressing the issue of piracy off Somalia. A critical analysis of the points brings out issues that would require a long time frame for consideration, acceptance and action. Further, in order to curb piracy world wide some more steps would require to be taken.

The first and second points would require nations to either introduce and/or amend their laws. It would also call for agreements with nations in terms of investigative cooperation, jurisdiction with respect to area/person and extradition. This aspect would take time and could be considered 'long term' actions.

The third and fourth points would require a large number of assets to be present at any time given the vast expanse of the area and the short response time available for rendering assistance to a ship under attack. This would require nations to commit maritime forces for extended durations. More so as it is highly unlikely that military action would totally eradicate piracy as it is an extremely 'lucrative' business. The presence and the actions of maritime forces would at best, reduce the effectiveness of pirates in the area of operations. Therefore, the emergence of piracy in other areas of the world cannot be ruled out. This would require similar actions. The ability of nations to commit maritime assets in the numbers required for long durations is suspect as is clearly evident in the ongoing operations.

The fifth point requires a deeper look. The varying laws of nations are affecting the operations of multinational maritime forces. In the region of the Horn of Africa and Gulf of Aden the operational commanders have to contend with the laws of the many nations of that region. This aspect slows down the action that can be taken against the pirates post capture and reduces the deterrence value of anti piracy operations. Even in India pirates can at best be charged with armed assault, armed with a deadly weapon, attempt to murder, criminal conspiracy and such similar charges. Enactment of the requisite laws would have to cater for multinational agreements as is in the case of the first and second points. Therefore an acceptable base for nations to lay down these laws in tandem with existing international laws and understanding would be in order. This is again considered a 'long term action'.

UNCLOS

Another issue that requires debate are the UNCLOS articles concerning piracy. As per UNCLOS article 101³, piracy consists of any of the following acts: -

- = 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:
 - o On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - o Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- = 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
- = Any act of inciting or of intentionally facilitating an act described in subparagraphs above.

³ UNCLOS. Available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/part7.htm (Accessed on 24 Nov 2010).

Article 101 is supplemented by articles 105, 106 and 107. Article 105⁴ clearly states that a pirate ship may be seized on the high seas or in any other place outside the jurisdiction of any state. It also states that the courts of the state carrying out the seizure may decide the penalties to be imposed and the action to be taken.

Article 107⁵ states that the seizure may be carried out only by warships or by ships clearly marked and identified as being on government service and authorized to that effect. Article 106⁶ on the other hand could be considered as a dampener as it states that seizure on inadequate grounds would hold the state affecting the seizure liable for loss and damages.

Although article 100⁷ states that all states shall cooperate towards the repression of piracy it again limits the boundaries to acts of piracy to the high seas or in a place outside the jurisdiction of any state.

This definition is highly restrictive as piracy also occurs in places under the jurisdiction of states and in territorial waters. A revision of the articles mentioned above and any other related articles is considered essential so that anti-piracy operations in the future would not be limited in their area and scope of operations.

Land-Based Operations

By looking at piracy over both time and space, it is clear that naval operations alone will not eliminate the operations of pirates. The best approach is to remove one of the three pillars of piracy: geography, political instability, or safe havens. Since the first pillar, geography, is almost impossible to change, primary consideration must be given to the remaining pillars, both of which are land based.⁸ The UN Security Council adopted Resolution 1851⁹ on 16 Dec 2008 which authorised land-based operations in Somalia by laying down that States and regional organizations could undertake all necessary measures "appropriate in Somalia", to interdict those using Somali territory to plan, facilitate or undertake such acts (of piracy). This resolution has been renewed by UNSCRs 1897 and 1950. Despite the mandate authorised by the UNSCRs very little has been done to tackle the problem from landward. It is evidently clear that there has been no progress for want of a national and collective will or it could stem from the fact that Somalia is not considered a 'place of interest' and piracy a 'big threat' by the nations that have the ability to combat it.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Wombwell James A, "The Long War Against Piracy: Historical Trends", Occasional Paper 32, May 2010, Combat Studies Institute, US Army Combined Arms Center Fort Leavenworth, Kansas pp 167

⁹ UNSCR 1851. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/655/01/PDF/N0865501.pdf?OpenElement> (Accessed on 24 Nov 2010).

Arguing for land-based operations would be a complex task as it would require convincing nations to commit troops.

India's Action Plan

Having raised the issue in the UN Security Council, India as an affected nation, should look at a five tack approach.

Firstly - advocate land based operations to destroy pirate bases in Somalia. This is now the only viable option to eradicate this 'plague' from the area. It would also serve as a deterrent for setting up of pirate bases in the future. In the absence of adequate support from major world players India could examine the possibility of formulating a regional cooperative force under the aegis of the UN.

Secondly, take up the case of revising the UNCLOS articles concerning piracy. Thirdly, formulate a methodology on which basis nations could either establish national anti piracy laws and/or amend existing laws in a way that would permit a smooth flow of information across borders and enable nations to dispense justice. Fourthly, amend or introduce national laws based on the methodology. Fifthly, formulate an anti piracy regional cooperative group of affected nations who could operate in mid ocean areas. This grouping would not necessarily consist of regional nations but also include other nations willing to contribute towards eliminating piracy.

These actions would auger well for India and enhance its position as a factor for regional and eventually international stability.

Conclusion

In the overall analysis it is amply clear that addressing piracy requires a unified international stand. Given the large amounts of money involved, vast ocean areas and other maritime commitments of nations; changes in laws, increased availability of maritime assets and land based operations may not be able to eradicate piracy totally. However, cooperation and mutual understanding amongst nations would restrict piracy and ensure safety of seaborne commercial trade.