

Tackling Development and Maritime Security in the Horn of Africa

Leaving aside the tragic cost in lives lost due to maritime piracy around the Horn of Africa, the financial cost to the international economy runs between \$7 billion and \$12 billion per year, most of that piracy occurring in Somalia. The United States, the European Union, and other nations have reportedly spent some \$2 billion in security costs alone around the Gulf of Aden. Sadly, that money has been largely wasted.

Piracy in the Horn of Africa is primarily a land problem in the sense that it reflects systemic issues related to inadequate economic development and governance. By developing local legal systems and investing in fishing, ports, and the livestock industry—while also legitimizing private security companies through the application of international standards—we can crowd out the business of piracy in Somalia. This multipronged approach, supported by international and regional actors, offers the chance to promote sustainable development that raises the level of stability and maritime security.

DEVELOPMENT OF PORTS AND FISHING

The development of fisheries and ports along the Somali coast would present an opportunity for legitimate industry in Somalia to compete for resources currently used by pirates. For example, militias and pirate financiers have taken advantage of the lack of government and infrastructure in the region to enlist knowledgeable mariners.¹ Investing in port and fishing infrastructure will help licit business, such as livestock trading, become more profitable and squeeze out piracy. In addition, the inter-

Photo by Jason R. Zalasky, U.S. Navy



Suspected Somali pirates surrender to a U.S. Navy team in February 2009.

national community must make a visible effort to stop foreigners engaged in illegal, unreported, and unregulated (IUU) fishing off the Somali coast to give locals confidence in their ability to work in territorial waters.

Most people in Somaliland and Puntland are pastoral nomads who derive their income from the livestock sector. However, as Emmanuel Sone has observed, artisanal fisheries in Puntland saw substantial growth between 1991 and 2004. It is widely believed in Somali territory that IUU fishing is responsible for the failure of fisheries in the area after 2004. The pirate leaders took advantage of these beliefs to enlist fishermen. Alleviating their grievances by interdicting IUU fishing would go a

¹ Emmanuel Sone, *Piracy in the Horn of Africa: The Role of Somalia's Fishermen*, Naval Postgraduate School Thesis, December 2010, p.42.

The role of ransom

Logic would seem to dictate that if ransom payments stop, piracy would stop. But this radical measure is a nonstarter given the emotional demands on the companies and families of crewmen held hostage.

Somali pirates operate a business: targeted shipping companies know that paying a ransom will secure the release of their personnel—even though paying up proliferates the problem. Their decision is facilitated by insurance policies that cover ransom payments resulting in the return of many mariners, but, again, contributing to the overall problem.

For their part, governments should not condone ransom payments, but must accept that they are going to occur and demand reporting of incidents to law enforcement.

Ultimately, the way to combat hostage taking and piracy is through development: a more effective legal system, better port operations, a regional coast guard, and the interdiction of pirate financiers should combine to make the risks of hostage taking gradually outweigh the benefits.

long way toward making the international maritime presence legitimate in the eyes of Somalis.

In November 2009, the United Nations (UN) sponsored the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing, signed by 92 countries. The treaty allows for inspection of vessels and bars entry into ports of any vessel suspected of IUU fishing. According to the UN, as of August 2011, the Maldives, Oman, Seychelles, and Yemen have not signed the treaty. A unified international front against IUU fishing in Somalia starts with all countries in the region signing the treaty.

Any action on the international front must be accompanied by proper patrolling by a coast guard-style force in Somali territorial waters to help regulate IUU activities. A regional maritime group that includes the autonomous Somali regions, Kenya, the Maldives, Oman, Seychelles, and Yemen would greatly aid development of Somaliland and Puntland maritime services. Other regional coast guards demonstrate the importance of including industry representatives, the International Maritime Organization, and civil service organizations and nondefense government institutions.

Developing the fishing industry in areas where pirates operate, while also combating IUU fishing activities, will have a direct effect on the participation of local Somalis in piracy. Fishing will not generate the money that piracy does, but will provide legitimate and safer alternatives for mariners on whom pirate operations rely. It may also improve local ability to regulate and police maritime activities around Puntland.

PORTS AND LIVESTOCK

The livestock trade is the largest source of income and employment in the Horn of Africa. Estimated annual livestock sales top \$200 million—double the reported \$100 million in ransom received by pirates. If local governments and leading businessmen see piracy as an obstacle to greater profits, they will work to ostracize pirate elements.

The large numbers of live animals shipped to the Arabian Peninsula (especially during the Muslim *hajj* or pilgrimage) represent a base for growth and stability in pastoral communities. These animals come from grazing areas in Ethiopia and Western Somalia. Extreme heat and drought decimate much of the product as it waits in storage areas near the ports prior to shipping; inadequate water systems and animal husbandry skills throughout the region further limit the supply of usable, sanitary animals. There is a clear need for skills, knowledge, training, and equipment, and a clear opportunity to build a sustainable local industry able to touch the poorest herder, yet also affect large business.

Working ports that ship animals provide jobs for support personnel as well as berths for ships in other industries. Well-maintained ports in Berbera, Bosaso (Puntland), and Mogadishu would provide shipping capability for livestock herds as well as maintenance capabilities for the fishing industry. With suitable development of roads and rails, these ports could also be primary export points for Ethiopia and South Sudan, given their proximity to major shipping lanes and the Suez Canal.

Holding back port improvements in the region is the lack of access to financial capital and banking services. Islamic banking services have emerged to support local business, but their lack of access to letters of credit makes international business difficult. While the rest of the world relies on registered banks to finance international trade, Somali businessmen must carry cash—an impractical proposition. International support of banking in the area is needed for larger businesses to flourish.

In sum, Somalia's port access to major shipping lanes has huge potential for trade. The livestock sector could form the nucleus of this development, which would have further implications in multiple sectors of the Somali economy. Effective ports, trade, and banking institutions will help to delegitimize pirate operations in the area and provide the international community with entry points to work with Somali citizens.

DEVELOPMENT OF LOCAL LEGAL SYSTEMS

Local legal systems may provide the legitimacy, deterrence, and reasonable rule of law necessary to legally engage the criminal act of piracy. The local community has the best ability to deter individuals from participating in piracy, or make participation costly for an individual in terms of family and culture. The challenge is developing judicial systems to a level where international standards of rule of law are recognized, while maintaining local legitimacy within cultural norms.

Most piracy in Somalia originates in the Puntland and north central regions of Somalia, according to the U.S. Army Asymmetric Warfare Group. "The Puntland State of Somalia is a relatively stable region with an existing judiciary, but it requires considerable support to become an effective, fair and fully functional institution that can bring pirates to justice in a manner that garners the respect and support of its citizens and the world at large," writes Leanne McKay.²

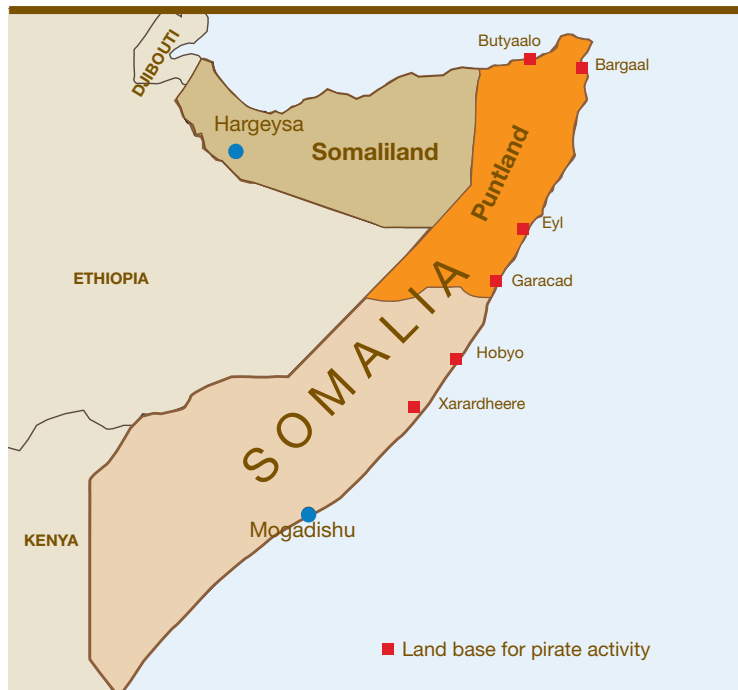
The customary legal system that governs the interactions of Somalis is called *xeer*, and is run by local elders. The foundation of *xeer* is consideration of what is best for the community. The system lacks written decisions that might lend it continuity, predictability, and accountability, but at its base, this oral system is similar to a common law system of reasonable precedential decisions.

Because the main purpose of *xeer* decisions is to support and improve the com-

munity, individual grievances are secondary concerns. *Xeer* decisions result in "sentences that involve both prison terms and the payment of compensation, or blood money (*diyah*), to victims' families or clans," writes McKay.

Compensation is common in legal systems. What is lacking in Somaliland and Puntland is accountability on the part of decision makers. That said, elders can agree to refer cases that involve serious criminal acts to a more formalized judiciary. Convincing elders that it is in the clan's best interest to allow such a body to

PIRATE BASES ON THE HORN OF AFRICA



The state of Somalia consists of three autonomous regions. Somaliland and Puntland in the north declared their independence in 1991 and 1998, respectively. The current Transnational Federal Government in Mogadishu is recognized by the United Nations as the head of state, and is supported by African Union soldiers. This support is necessary due to the fact that the militant Islamic group Al Shabaab controls most of the area in and around the capital, Mogadishu.

Although Somaliland and Puntland have not been recognized as independent countries by most of the international community, including the United States, they have become *de facto* governments in their areas of control. The borders of the states are similar to clan and tribal boundaries.

² Lynne McKay, *Piracy off the Coast of Somalia: Towards a Domestic Legal Response to an International Concern*, Monograph 178, Institute for Security Studies, 2011, pp. 221–255.

take jurisdiction over serious criminal acts is complicated, but not impossible. In 2010, according to Maria Vargas Simojoki, some Puntland elders “committed themselves to referring serious criminal acts to the formal justice system ... the impetus for revising customary law came from within the xeer membership as opposed to being externally driven.”³

Limited piracy prosecutions in Puntland, conducted with the support of the United Nations and France, demonstrate the potential and limitations of the judiciary to provide legal remedies that foreign governments deem legitimate, writes McKay. Local justice systems have the potential to deter piracy because they involve the clans and societies where pirates live. But once again, we see an opening for international community support; in this case, by assisting nascent Somali judiciaries in their efforts to enhance the legal deterrence of piracy.

SELF-DEFENSE AND OTHER PROACTIVE MEASURES

The sheer expanse of water subject to piracy in the Indian Ocean makes patrolling effectively impossible and means that preventive practices and self-defense of ships is essential, because most attacks will be over before help can arrive. While the International Maritime Organization discourages placing arms on commercial ships, self-defense is increasingly seen as legitimate because pirates are raising the stakes and acting more violently.

A big concern is the legal accountability of private security companies (PSCs). Many of these issues are addressed in the recently signed Montreaux Document, which was written by the International Committee of the Red Cross and has been signed by many countries, including the United States and United Kingdom, and endorsed by PSCs in an industry compact called the International Code of Conduct for Private Security Service Providers. The code was written by the Swiss Government’s Federal Department of Foreign Affairs, which maintains the list of PSCs in compliance. As of August 1, 2011, the steering committee had approved 166 companies.

The growing number of countries involved in the oversight of PSCs should boost confidence in the industry’s ability to adhere to human rights principles and be held accountable for its members’ actions. Looking ahead, the shipping industry’s ability to provide its own security should allow governments to focus on the deeper causes of piracy and take action on governance, legal systems, and commerce in the Somalia area.

³ Maria Vargas Simojoki, *Enhancing Legal Empowerment Through Engagement with Customary Justice Systems*, International Development Law Organization, United Nations Development Programme, 2010.

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