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## Is Piracy Eradicated?

What are the root causes of maritime piracy and how should they be addressed? For James Kraska, the Janus-faced answer is simple — the absence of the rule of law and the failure of land-based governance provide the ideal conditions for organized crime at sea.

By James Kraska for ISN

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Maritime piracy is the commission of criminal acts at sea; it has been a feature of the oceans for as long as seafarers have ventured from shore. Piracy encompasses all manner of unlawful depredations at sea, including theft, assault, hostage taking, and murder, and therefore is part of the human condition and cannot be completely eradicated. Piracy springs from a breakdown of civil authority and law enforcement on land, and a lack of good order at sea, so it is less prevalent where there is stable governance and the rule of law. The collapse of official authority in Somalia after 1991, for example, set off a ruinous economic depression and a shift in power from organs of the state to clan-based warlords. Destitute coastal fishermen began to seek compensation in the form of fish or cash from foreign factory fishing vessels poaching the Somali Basin. Seeing opportunities for even greater rewards through hijacking and hostage taking, by the mid-2000s, well-armed militia entered the foray. From 2005-2011, the incidence of maritime piracy off the coast of Somalia skyrocketed, forcing policymakers for the first time in generations to think about the origins of maritime piracy, the factors that affect its spatial distribution, and how to effectively counter it.

At the dawn of recorded history, individual marauders, brigands, and bandits plied every corner of the globe, from the Mediterranean Sea to the Baltic Sea, and the Arabian Sea to the South China Sea. From ancient times through the middle of the nineteenth century, states used pirates as an economical means of engaging in naval warfare. Lacking the funds to construct a proper navy, for example, the American colonials licensed privateers to conduct raids on British shipping during the Revolutionary War. At the same time, the Barbary principalities of the Ottoman Empire—situated along the coast of North Africa in contemporary Tunisia, Morocco, Libya, and Algeria—waged a two hundred year campaign of terror against European and American shipping in the Atlantic Ocean and Mediterranean Sea, capturing in the process some 800,000 Caucasian and Christian slaves.

During the early years of the American Republic, cases involving maritime piracy clogged the dockets of U.S. federal courts. In the aftermath of the Crimean War, the European powers resolved to end state-sanctioned piracy or privateering as a method of warfare. The 1856 Paris Declaration Respecting Maritime Law abolished privateering. Thereafter, only warships could seize enemy commercial ships as prize, or inspect neutral vessels to determine the enemy character of their cargo. Piracy returned to its origin as a criminal act, and it was regarded as so heinous a crime that courts in

the United States and the United Kingdom acknowledged that any nation could bring perpetrators to justice. For nearly 150 years, the incidence of maritime piracy was rather subdued, as a large British Royal Navy—later complemented by an immense U.S. Navy, maintained global freedom of the seas. During the Cold War, the naval forces of the Soviet bloc states and those of the Western alliance system prevented the emergence of piracy in most of the oceans. The rules for universal jurisdiction against maritime piracy were codified in the United Nations Convention on the Law of the Sea (UNCLOS), which was adopted at a general diplomatic conference in 1982. The fall of the Berlin Wall in 1989 precipitated a huge surge in international maritime trade at the same time that naval force structure in the East and West plummeted.

### **Contemporary piracy**

During the 1990s and early-2000s, the incidence of piracy was greatest in Southeast Asia. Ethnic enclaves operating from islands in Indonesia and the Philippines struck international shipping throughout the region. Insurance giant Lloyds of London implemented war risk insurance rates for ships transiting the 500-mile Strait of Malacca. In order to address the threat and reassure the 50,000 ships that transit the area annually, Asian states implemented a number of responses that helped to suppress piracy. The littoral states of Singapore, Malaysia, and Indonesia initiated combined air and surface patrols throughout strait. This cooperation was promoted by generous contributions from Japan and other countries to establish a counter-piracy Information Sharing Centre in Singapore to coordinate responses among 16 regional states. The 2004 Christmas earthquake and tsunami, which killed upwards of 250,000 people in the region, with Indonesia especially hard hit, also decimated major suspected coastal pirate havens. The United States supplied substantial maritime security infrastructure, including coastal radar, communications systems, and patrol boats and training, as part of section 1206 of the National Defense Authorization Act program called “Global Train and Equip.” In 2009, some 30 states that regularly use the Strait of Malacca, including Japan and China, and the three littoral states, formed a Cooperative Mechanism under Article 43 of UNCLOS to enhance maritime safety and environmental protection along the waterway—further building out the network of cooperation and coastal security infrastructure.

Just as these events contributed to a major decline in Southeast Asian piracy, the incidence of piracy off the coast of Somalia soared. The International Maritime Bureau reports that in 2006, there were 20 incidents of piracy in the Somali Basin and Gulf of Aden; that figure jumped to 44 in 2007, 111 in 2008, and 194 in 2009 and 192 in 2010. During this period, the international community responded by establishing three major counter-piracy naval task forces in the region—one operating on behalf of the European Union, another sent by NATO, and the third reporting to the commander of the U.S. Fifth Fleet in Bahrain. Despite coordinated patrols by warships from two-dozen countries, Somali piracy persisted, spreading from the Somali Basin and the Gulf of Aden to the Red Sea and Arabian Sea, and virtually to the shores of India. The international commercial shipping industry implemented a series of Best Management Practices (BMP) against piracy, such as running concertina wire along the lifelines of the ship, to deter pirates from boarding. Yet Somali piracy kept coming: nothing seemed to work. In 2011, there were 237 pirate attacks in the Red Sea, Somali Basin, and Gulf of Aden. Then, in 2012, the number of attacks in these areas plummeted to 75. In 2013, remarkably, there were only 13 incidents—and Somali pirates did not successfully seize a single ship, although two vessels were held for less than a day before they were freed by naval action.

Where the adoption of BMP and naval patrols failed to stem the tide of Somali piracy, armed security guards posted on board ships transiting the High Risk Area of the Indian Ocean were effective. Ship owners initially were reluctant to embark armed security teams to protect their ships in the region, but the statistics were too compelling to ignore. Somali pirates have not been able to board any ship with an embarked armed security team. The introduction of private maritime security contractors

onto ships, however, has raised a host of legal and policy issues. Generally, the carriage and use of firearms on board ships is governed by the laws of the flag state in accord with Articles 92 and 94 of UNCLOS. Some nations, however, purport to forbid the transit of ships with firearms while in innocent passage in the territorial sea under Article 19 of UNCLOS. Furthermore, coastal states and flag states may have different rules for the permissive use of force against suspected pirates. Consequently, the Member States of the International Maritime Organization have developed guidance for ship operators and ship owners, as well as recommendations for states, concerning the use of private security at sea.

Globally, by the end of 2013, maritime piracy had reached its lowest level in six years. Just as Somali piracy has waned, the locus of piracy once again may be shifting. One of the areas of greatest concern is the Gulf of Guinea off the coast of West Africa, which had, by 2012, surpassed Somali piracy in the number of vessel attacks. There were only 12 incidents of Nigerian piracy in 2006. In 2007, there were 42, and 40 in 2008, 28 in 2009, and 19 attacks in 2010. In 2012, there were 27 attacks by Nigerian pirates, and in 2013, Nigerian pirates accounted for 31 out of a total of 51 attacks in the Gulf of Guinea, taking 49 people hostage and kidnapping 36. Two ships were hijacked off the coast of Nigeria, and another 13 ships were boarded and 13 fired upon. The pirates operate from estuarine mangrove swamps in the Niger Delta, and use speedboats to attack targets along the coast or in the Gulf of Guinea, venturing as far as the waters off Gabon, Ivory Coast and Togo, where they were linked with at least five of the region's seven reported vessel hijackings.

Oil is the lifeblood of Nigeria, which has long suffered from the large-scale theft of oil from pipelines or ships to sell to vessels offshore. The proceeds sometimes are used to fund armaments for disaffected insurgents, such as the Niger Delta People's Volunteer Force and the closely connected Movement for the Emancipation of the Niger Delta. Like Somali piracy, Nigerian piracy flows from unstable socio-political order and an absence of the rule of law that in its most venal form borders on anarchy. The two models, however, are very different. Nigerian pirates are particularly violent, whereas Somali pirates have tended not to be. While Somali piracy generally occurs beyond the territorial sea, piracy in the Gulf of Guinea usually occurs in territorial waters—often targeted at the oil terminals, tankers, and terminal services ships and Western expatriate workers that service them.

The dichotomy of piracy in Southeast Asia, the Indian Ocean, and the Gulf of Guinea underscores that even in the contemporary era, piracy continues to be part of the marine environment. Each region affected by piracy has its own original impetus for emergence of offshore crime, and local law enforcement capabilities and legal order shape the response of governments. A lack of effective governance and the rule of law provide fertile conditions for maritime piracy, which is fundamentally organized crime at sea.

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James Kraska is the Howard S. Levie Chair in International Law at the Naval War College, a guest investigator at the Marine Policy Center, Woods Hole Oceanographic Institution, and a senior fellow at the Foreign Policy Research Institute. He is the author of *Maritime Power and Law of the Sea* (Oxford 2011) and was selected for the 2010 Alfred Thayer Mahan Award for Literary Achievement by the Navy League of the United States.

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