THE PALINGENESIS OF MARITIME PIRACY AND THE EVOLUTION OF CONTEMPORARY COUNTER-PIRACY INITIATIVES

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DEDICATION

Dedicated to all those who work at sea.

ACKNOWLEDGMENTS

ABBREVIATIONS

A.I.S.	Automatic Identification System
AMISOM	African Union Mission in Somalia
A.P.A.	Anti-Piracy Arrangement
A.R.F.	ASEAN Regional Forum
ASAM	Anti Shipping Activity Message
ASEAN	Association of Southeast Asian Nations
A.S.G.	Abu Sayyaf Group
A.U.	African Union
BIMCO	Baltic and International Maritime Council
B.M.P.	Best Management Practice
C.G.P.C.S.	Contact Group on Piracy off the Coast of Somalia
CRIMGO	Critical Maritime Routes Gulf of Guinea
C.S.C.A.P.	Council for Security Cooperation in the Asia-Pacific
C.S.D.P.	European Common Security and Defence Policy
C.T.F.	Combined Task Force
D.P.L.D.	Disrupting Pirate Logistic Dumps
E.C.D.I.S.	Electronic Chart Display and Information System
E.C.S.	Electronic Chart Systems
E.E.Z.	Exclusive Economic Zone
E.I.S.	Eyes In the Sky program
E.U.	European Union
EUCAP NESTOR	European Union Maritime Capacity Building Mission in the Horn of Africa
E.U.C.M.R.	European Union Critical Maritime Routes programme
EUNAVFOR	European Union Naval Force
E.U.T.M.	European Union Training Mission in Somalia
GAM	Gerakan Aceh Merdeka
G.P.S.	Global Positioning System
H.A.D.R.	Humanitarian Assistance/ Disaster Relief
H.L.H.	Hong Kong-Luzon-Hainan 'terror triangle'
H.R.A.	High Risk Area
I.C.C.	International Chamber of Commerce
I.C.O.C.	International Code of Conduct for private security service providers
I.C.S.	International Chamber of Shipping
I.M.B.	International Maritime Bureau
I.M.F.	International Monetary Fund
I.M.O.	International Maritime Organization
I.R.T.C.	Internationally Recommended Transit Corridor
I.S.C.	Information Sharing Centre
I.S.F.	International Shipping Federation
I.S.O/P.A.S	International Organization for Standardization/ Publicly Available Specification

I.S.P.S	International Ship and Port-facility Security Code
ITLOS	International Tribunal for the Law of the Sea
I.U.U.	Illegal, Unreported and Unregulated fishing
LRIT	Long-Range Identification and Tracking of ships
J.M.S.D.F.	Japanese Maritime Self Defence Force
J.W.C.	Joint War Committee
L.P.G.C.	Liquefied Petroleum Gas Carrier
M.A.A.	Monitoring and Action Agencies
MALSINDO	Malacca Straits Coordinated Patrols
MARS	Mariners' Alerting and Reporting Scheme
M.D.A.	Maritime Domain Awareness
M.E.C.C.	Malaysian Maritime Enforcement Coordination Centre
MEND	Movement for the Emancipation of the Niger Delta
M.G.N.	Marine Guidance Note
MILF	Moro Islamist Liberation Front
MIMA	Maritime Institute of Malaysia
M.M.E.A.	Malaysian Maritime Enforcement Agency
M.R.C.C.	Maritime Rescue Coordination Centre
M.S.C.	Maritime Safety Committee
M.S.C.H.O.A.	Maritime Security Centre-Horn of Africa
M.S.C.P.	Malacca Straits Coordinated Patrols
M.S.S.P.	Malacca Straits Sea Patrol
N.G.A.	National Geospatial Intelligence Agency
NIMASA	Nigerian Maritime Administration Safety Agency
P.A.G.	Pirate Action Group
P.C.A.S.P.	Privately Contracted Armed Security Personnel
P.M.C.	Private Military Company
P.M.S.C.	Private Maritime Security Company
P.R.C.	Piracy Reporting Centre
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia
R.M.S.I.	Regional Maritime Security Initiative
R.U.F.	Rules for the Use of Force
SHADE	Shared Awareness and De-confliction forum
SLOC	Sea-Lines of Communication
S.N.M.	Somali National Movement
S.N.M.G.	Standing NATO Maritime Group
SOLAS	Convention for the Safety of Life at Sea
S.R.S.P.	Somali Revolutionary Socialist Party
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
T.F.G.	Transitional Federal Government
U.I.C.	Union of Islamic Courts
U.K.M.T.O.	United Kingdom Maritime Trade Operations
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development

U.N.H.C.R.	United Nations High Commissioner for Refugees
UNITAF	Unified Task Force
U.N.O.D.C.	United Nations Office on Drugs and Crime
UNOSOM	United Nations Operation in Somalia
UNSOM	United Nations Assistance Mission in Somalia
UNPOS	United Nations Political Office for Somalia
U.S.C.	United Somali Congress
U.S.O.N.I	United States Office of Naval Intelligence
U.S.V.	Unmanned Surface Vessels
W.F.P.	World Food Programme
VAP	Vientiane Action Programme
V.L.C.C.	Very Large Crude Carrier
V.P.D.	Vessel Protection Detachment

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INTRODUCTION

The pirate has declared war against all mankind;
all mankind must declare war against him[1]

This thesis examines the phenomena of contemporary maritime piracy in Southeast Asia and Northeast Africa during the late twentieth and early twenty-first centuries. This was not an exceptional occurrence. Maritime piracy had experienced regular periods of substantial growth and decline since the earliest days of transoceanic trading motivated frequently by political, economic and socio-cultural fluctuations ashore. Indeed, piracy emerged as a significant impediment to the consolidation of European colonial and mercantile ambition during the nineteenth-century predominantly also in the waterways of Southeast Asia and the southern Mediterranean Sea. By the late nineteenth-century, attacks on European merchant trade had been suppressed in these regions and in some cases eliminated entirely.

For the majority of the twentieth century maritime piracy was a 'micro-maritime' concern for western governments, dwarfed by macro events such as the First and Second World Wars. It was not until the early 1980s that the International Maritime Organization's (I.M.O.) Maritime Safety Committee (M.S.C.) highlighted that piratical attacks had once again escalated to such an extent that the situation was 'alarming'.[2] Indeed, officials from the International Maritime Bureau (I.M.B.), a specialised division of the International Chamber of Commerce, noted that maritime piratical attacks were regularly reported during the late 1970s in West Africa and the Gulf of Thailand.[3]

With this in mind, this thesis consists of three key areas of examination carried out under a broad theoretical framework that encompasses historical analysis combined with an examination of contemporary military practice and international maritime law. In the first instance, it investigates whether the escalation in maritime piratical activity in the late twentieth century constituted a 'palingenesis' by considering the modern historical

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[1] Sir William Blackstone, *Commentaries on the laws of England* (4 vols, Philadelphia, 1893), ii, p. 72.
[2] International Maritime Organisation (I.M.O.), 'Piracy and armed robbery at sea' in *Focus on I.M.O.* (Jan. 2000), p. 2.
[3] *Christian Science Monitor*, 30 Apr. 1985.

context of piracy, in particular the late nineteenth-century. This explores the maritime climate relative to piracy in the southern Mediterranean and Southeast Asia between 1800 and 1900 focussing on escalation, manifestation and responses. Moreover, this analysis positions the latter case studies on contemporary piracy in chapters II-VI within a historical framework and illustrates how the escalation of piracy in the twentieth century was contextually diverse to piracy from previous eras. The term 'palingenesis' is used in this context to represent the regeneration or rebirth of a historical phenomenon in a contemporary form, which is contextually diverse from previous manifestations.

In terms of historical context for the case studies on Northeast Africa in chapters IV-VI, the southern Mediterranean Sea/ North African coast is utilised as the nearest proximal waterway to experience manifestations of piracy during the nineteenth-century. Prior to the opening of the Suez Canal in 1869, the waterways that bordered the Northeast coast of Africa were not established trading routes and therefore had not witnessed the profusion of piratical attacks as was the case in the southern Mediterranean. In addition, during the nineteenth-century the coastline of present day Somalia was securely under British control deterring potential maritime criminality and disorder in the region. From 1869 to 1884, following the opening of the Suez Canal, coastal Somaliland was under the control of the Turkish viceroy of Egypt. Within three years, the region was under the direct administration of Italian, British and French colonial programmes that declared protectorates in 1887. This divided the country into British Somaliland to the east, Italian Somaliland to the south and Abyssinia and French Somaliland to the west. The resourceful colonial presence maintained tight control over maritime boundaries, which deterred illicit maritime activity such as piracy.

The historical analysis establishes a foundation for an examination of the maritime climate between 1900 and 1914, the interwar period and post-Second World War when, it is argued, 'micro-maritime' threats such as piracy faded in terms of strategic importance. Merchant vessels were frequently targeted by belligerent navies during the First and Second World War. This was, however, a 'guerre de course' intent on the destruction and disruption of sea trade rather than the acquisition of merchandise for

private gain.[4] Due to a lack of reliable statistical information available to gauge levels of piratical 'incidence' between 1900 and 1979, a quantitative methodological approach is employed to gauge levels of 'interest'. This approach collates and charts occurrences of piracy in the selected works of noted maritime theorists such as Alfred Thayer Mahan and Julian Corbett alongside contemporary journals and newspaper articles. What is particularly relevant is the maritime climate that emerged following the Second World War and how it was conducive to a resurgence of piracy in the late 1970s and early 1980s. This initial section therefore addresses two central questions arising from this research. Firstly, can the re-emergence of piracy in the later part of the twentieth century be declared a 'palingenesis' or was it simply a materialisation of a enduring problem, and secondly, was it diverse or comparable to manifestations of piracy from previous eras? These questions are crucial in addressing a key argument in this research, that maritime piracy experienced a palingenesis in the late twentieth century that was distinctive to occurrences of piracy during previous historical periods.

Next, this thesis traces the development and evolution of counter-piracy initiatives since this resurgence through comprehensive case studies of Southeast Asia and Northeast Africa. This represents the core qualitative research methodology in this work. Statistically, Southeast Asia accounted for the largest percentage of maritime piracy attacks worldwide between 1979 and 2005. In 1993 alone, incidents of piracy and armed robbery against ships in Southeast Asia accounted for over 73 percent of the global total.[5] By 2005, this trend was reversed as attacks in the Gulf of Aden and in the Somali basin escalated considerably. In 2009, Somali pirates were responsible for around 80 percent of all incidents of maritime piracy worldwide.[6] These major case studies present a detailed exploration of how regional and extra-regional governments responded to these upsurges of piracy and how responses evolved over the course of the last forty years. This analysis attempts to reveal the effectiveness or otherwise of these efforts and what affect, if any, did suppressing piracy at sea have on tensions and instability ashore.

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[4] 'Guerre de course' translates to 'War of the chase'.
[5] I.C.C. I.M.B., *Piracy and armed robbery against ships annual report: 1998* (London, 1999), p. 5.
[6] I.C.C. I.M.B., *Piracy report 2010*, p. 5.

Each region is examined initially in isolation under a thematic framework that critically incorporates landward and seaward initiatives alongside the progression and utility of international maritime law. This analysis also addresses a broader question: how did the international legal framework evolve and how effective or otherwise was it in suppressing contemporary piracy?

Chapter II traces the initial resurgence and responses to piracy in Southeast Asia beginning with attacks on Vietnamese boat refugees in the Gulf of Thailand and South China Sea in the late 1970s and 1980s. This is followed by an analysis of alternative regional incidents up to the beginning of the Asian financial crisis in 1997. A more pervasive and organised form of piracy evolved after 1997 that peaked in 2000 with 259 attacks reported in Southeast Asian waters, chiefly Indonesia.[7] Chapter III highlights how piracy and armed robbery against ships manifested in the region during this period and how external events, such as the attacks on the United States in September 2001, influenced regional approaches to maritime security. This culminated in the signing of the first strategic regional counter-piracy framework, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) in 2006. This agreement alongside increased multilateral engagement by littoral states resulted in a steady decline in attacks from 105 in 2005 to 59 by 2008.[8]

In terms of Northeast Africa, chapter IV examines the period from the foundation of the Somali Republic in 1960 to its collapse in 1969 and the subsequent rise and fall of Siad Barre's military regime that lasted from 1969 to 1991. This analysis establishes the root causes of contemporary Somali piracy and frames it within the wider and disordered political, economic and social context ashore. Furthermore, it illustrates the direct connection between the collapse of the state structure in Somalia and the escalation in maritime piracy after 1991.

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[7] I.C.C. I.M.B., *Piracy report 2010*, p. 5.
[8] I.C.C. I.M.B., *Piracy report 2009*, p. 5.

By 2005, the Somali pirate infrastructure had evolved into organised criminal enterprise and a calculable threat to shipping transiting the Gulf of Aden and the Somali Basin. Chapter V illuminates this threat and focuses on chiefly non-military initiatives launched to counteract these pervasive acts of piracy between 2008 and 2013. This includes the formation of industry Best Management Practice (B.M.P.), the proliferation of Private Maritime Security Companies (P.M.S.C.) alongside legal and jurisdictional potencies and limitations. Chapter VI expands on the period between 2008 and 2013 by analysing the unprecedented international military and diplomatic response to Somali piracy through expeditionary naval operations, judicial enhancement and reform, maritime security capacity building alongside rehabilitation and reintegration initiatives. These multifaceted efforts combined to diminish the freedom of movement and activities of Somali pirates by 2013.

The final section of this thesis constructs a multi-level comparative analytic framework to gauge the effectiveness and shortcomings of these counter-piracy initiatives in both Southeast Asia and Northeast Africa. This consists of comparatively analysing responses at the strategic, operational and tactical level, thereby offering a more comprehensive contribution to the literature. This comparative analysis addresses several central questions in this research such as what commonality, if any, do incidents of piracy possess across the geographic divide and, perhaps more importantly, can an in-depth understanding of the evolution of contemporary counter piracy efforts lead to more effective and sophisticated anti-piracy efforts in the future? Furthermore, this section explores experiences of piracy in alternative geographic settings to deepen the efficacy of this study and illustrate how manifestations of piracy are unique to particular regions political, socio-economic or cultural intricacies at a particular period.

Contemporary definitions

According to article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), piracy consists of any of the following:

> (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).[9]

The UNCLOS determination limited acts of piracy to those committed outside the jurisdiction of a state's maritime boundary. This was problematic as the majority of piratical attacks, particularly in Southeast Asian waters, occurred in anchorages, ports and littoral sea lanes.

To compensate for this restriction, the I.M.B. created a second definition that grouped piracy and armed robbery together as:

> An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.[10]

After 2010, the I.M.B. adopted the I.M.O. definition of 'armed robbery against ships' and combined it with the UNCLOS definition for statistical purposes. I.M.O. Resolution A.1025 'Code of practice for the investigation of crimes of piracy and armed robbery against ships' defined 'armed robbery against ships' as any of the following acts:

> (i) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea; (ii) any act of inciting or of intentionally facilitating an act described above.[11]

The existence of two separate definitions of what was essentially an identical crime perpetrated in a different area of water complicated counter-piracy efforts during the period of this research. Moreover, such distinctions were seemingly irrelevant to the

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[9] 'U.N. Convention on the Law of the Sea', 1982 (U.N., Treaty Series, mdcccxxxiii, no. 31363, pp 60-1).
[10] I.C.C. I.M.B., *Piracy report 2002*.
[11] 'Code of practice for the investigation of crimes of piracy and armed robbery against ships', 2010 (I.M.O., Maritime Knowledge Centre (M.K.C.), A/RES/1025/26/2010, p. 4).

perpetrators in terms of targeting vessels and to the victims of piracy. Therefore, 'piracy' in the context of this research, refers to both high seas piracy (UNCLOS article 101) and armed robbery against ships in territorial waters (I.M.O. Resolution A.1025) unless explicitly stated otherwise.

Literature Review

Secondary source material

The spectrum of publications pertaining to piracy is diverse. There are several noted academic publications such as Peter Lehr's *Violence at sea: piracy in the age of global terrorism* alongside a multitude of additional secondary material such as journal articles, magazines and reports from civilian, military and academic think-tanks. [12] Official Government documents or military funded publications on piracy have been inherently limited in the scope of their analysis. Both are typically compiled within a specific theoretical framework with a focus on internal policy making and related consequences for the national government in question. Peter Chalk's *The maritime dimension of international security: terrorism, piracy, and challenges for the United States*, for example, provides a first-class analysis on international maritime security, but it is arguably limited in its scope and wider efficacy as it primarily focuses on challenges and policy relevance for the United States under RAND's Project Air-Force Strategy and Doctrine Program.[13]

Furthermore, researchers in the field of contemporary piracy have typically focussed on one geographic location in their analysis; referencing alternative regions principally for reasons of context. While this is a worthwhile academic undertaking mostly for regional specificities, it limits a more comprehensive analysis and understanding of piracy across the geographic divide. In this regard, Stefan Eklöf's *Pirates in paradise: a modern history of Southeast Asia's maritime marauders*, Carolin Liss's *Oceans of crime: maritime piracy and transnational security in Southeast Asia and Bangladesh* and Derek Johnson et al.'s *Piracy in Southeast Asia: status, issues, and responses* provide helpful

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[12] Peter Lehr (ed.), *Violence at sea: piracy in the age of global terrorism* (London, 2007).
[13] Peter Chalk, *The maritime dimension of international security: terrorism, piracy and challenges for the United States* (California, 2008).

overviews of maritime crime specific to Southeast Asia.[14] In terms of piracy off the coast of Somalia, there are fewer books published due to the contemporaneity of the issue. Jay Bahadur's *Deadly waters: inside the hidden world of Somalia's pirates*, Stuart Yikona et al.'s *Pirate trails: tracking the illicit financial flows from pirate activities off the Horn of Africa*, Christopher L. Daniel's *Somali piracy and terrorism in the Horn of Africa* and Martin N. Murphy's *Somalia: the new Barbary?: piracy and Islam in the Horn of Africa* are some examples of complete works specific to contemporary Somali piracy and are utilised in this research as such.[15]

This thesis expands on these regional specific works by critically incorporating a detailed examination of counter-piracy initiatives in the two regions most exposed to maritime crime during the period, taking into consideration previous investigative and/or academic works throughout. This offers a more comprehensive analysis of how counter-piracy operations have evolved since the late 1970s. Seminal contemporary publications in the fields of naval, strategic and maritime security studies, such as Geoffrey Till's *Seapower: a guide for the twenty first century*, Ian Speller's *Understanding naval warfare* and David Slogget's *The anarchic sea: maritime security in the 21st century*, offer more generalised examinations of maritime piracy within the framework of the broader international context of naval operations and strategy.[16] While this is an important undertaking, it limits specific analysis of the piracy question itself, a gap that this thesis attempts to fill.

There is an abundance of journal articles and papers published that deal directly with contemporary maritime piracy and the related issues, which are utilised throughout the

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[14] Stefan Eklöf, *Pirates in paradise: a modern history of Southeast Asia's maritime marauders* (Copenhagen, 2009); Carolin Liss, *Oceans of crime: maritime piracy and transnational security in Southeast Asia and Bangladesh* (Singapore, 2011); Derek Johnson & Mark Valencia (eds.), *Piracy in Southeast Asia: status, issues and responses* (Singapore, 2005).

[15] Jay Bahadur, *Deadly waters: inside the hidden world of Somali pirates* (London, 2011); Stuart Yikona, Clement Gorrissen, George Kisaka, Kevin Stephenson, David Lamair & Francisca Fernando, *Pirate trails: tracking the illicit financial flows from pirate activities off the Horn of Africa* (Washington D.C., 2013); Christopher L. Daniels, *Somali piracy and terrorism in the Horn of Africa* (Plymouth, 2012); Martin N. Murphy *Somalia: the new Barbary?: piracy and Islam in the Horn of Africa* (New York, 2011).

[16] Geoffrey Till, *Seapower: a guide for the twenty-first century* (3rd ed., Oxford, 2013); Ian Speller, *Understanding naval warfare* (London, 2015); David Sloggett, *The anarchic sea: maritime security in the 21st century* (London, 2013).

course of this work. These range from generalised military and strategic studies journals such as *Survival*, *Journal of Strategic Studies* and the *RUSI Journal* to regional specific journals such as *Contemporary Southeast Asia* and *Journal of the Indian Ocean Region* alongside historical, economic, security and defence journals such as the *Naval War College Review*, *Jane's Navy International* and *Jane's Defence Weekly*. Resources such as the International Institute of Strategic Studies annual *Military Balance* was useful in gauging naval strength relative to counter-piracy operations since the 1970s. In addition, copious monographs, reports and papers from university centres, think tanks, military and strategic institutes and international organisations, such as the Association of Southeast Asian Nations (ASEAN), the International Chamber of Shipping (I.C.S.), International Shipping Federation (I.S.F.), Lloyds List, the Nautical Institute and the Oceans Beyond Piracy project have been published, largely following the upsurge in piracy in the Gulf of Aden and western Indian Ocean after 2008. This research attempts to synthesise these various historical and contemporary interdisciplinary studies and fuse them with original retrospective analysis. Given the fluidity of maritime crimes like piracy, this is something many contemporary works have been unable to do. This approach allows for a more holistic and substantive analysis of contemporary counter-piracy, given the suppression of attacks in the Gulf of Aden and Somali Basin in 2013.

In addition, this thesis outlines how maritime law has developed and evolved in response to contemporary piracy and how it has contributed or hampered the effective suppression of incidents bolstering the depth of this research. The works of selected experts in the field are utilised in this regard. Professor Robert Beckman, Director of the Centre for International Law has published several articles and edited chapters on international maritime law and Southeast Asia such as 'The 1998 SUA Convention and 2005 SUA Protocol: tools to combat piracy, armed robbery, and maritime terrorism'. Additional secondary legal materials utilised include Alfred P. Rubin's *The law of piracy*, Douglas Guilfoyle's *Shipping interdiction and the law of the sea*, Michael P. Scharf et al.'s *Prosecuting maritime piracy: domestic solutions to international crimes*, James Kraska's *Contemporary maritime piracy: international law, strategy, and diplomacy* and Robin Geiβ's and Anna Petrig's *Piracy and armed robbery at sea: the*

legal framework for counter-piracy operations in Somalia and the Gulf of Aden.[17] These books are complemented by various articles from several leading international law journals including *The American Journal of International Law* and *The Ocean Development and International Law Journal* alongside more geo-specific law reviews such as *Boston College Third World Law Journal*, *Singapore Journal of International & Comparative Law* and the *British Journal of Criminology*. This research amalgamates and expands on these findings within a broader, interdisciplinary analysis of counter-piracy, thereby offering a more holistic contribution to the field.

There are a multitude of authors that have published on piracy from antiquity to the twenty-first century. Many of these generalised histories lacked retrospective of the de-escalation of piracy in Northeast Africa in 2013 and the various contemporary fluctuations in Southeast Asia and therefore lack completeness in this regard. Moreover, given the large swathes of historical periods covered in these narratives a detailed regional analysis was typically unfeasible. This research attempts to fill this particular gap in the literature between 1900 and 1979 and expand these general studies into the twenty-first century to illustrate how piracy, like other forms of criminality, was fluid and experienced periods of significant growth and decline proximal to socio-political, economic and cultural variances and events ashore. Key general histories utilised in this research include Ralph T. Ward's 1974 publication, *Pirates in history*, Frank Sherry's 1986 publication, *Raiders and rebels: the golden age of piracy*, Peter Earle's *The pirate wars*, Janice E. Thomson's *Mercenaries, pirates & sovereigns: state-building and extraterritorial violence in Early Modern Europe*, Philip Gosse's *The history of piracy*, G.O.W. Mueller and Freda Adler's *Outlaws of the ocean: the complete book of*

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[17] Alfred P. Rubin, *The law of piracy* (Rhode Island, 1988); Douglas Guilfoyle, *Shipping interdiction and the law of the sea* (Cambridge, 2009); Michael P. Scharf, Michael A. Newton & Milena Sterio (eds.) *Prosecuting maritime piracy: domestic solutions to international crimes* (Cambridge, 2015); James Kraska *Contemporary maritime piracy: international law, strategy, and diplomacy* (Oxford, 2011); Robin Geiβ & Anna Petrig, *Piracy and armed robbery at sea: the legal framework for counter-piracy operations in Somalia and the Gulf of Aden* (Oxford, 2011).

contemporary crime on the high seas and Angus Konstam's *Piracy: the complete history*.[18]

While there has been an abundance of research relating to contemporary piracy published in recent years, mainly since the upsurge of Somali piracy in 2008, no work has yet to effectively analyse the conditions for the resurgence of maritime piracy in the twentieth century while simultaneously tracing the evolution of this upsurge in the parallel development of counter-piracy initiatives in both Southeast Asia and Northeast Africa. Roger Villar's *Piracy today: robbery and violence at sea since 1980*, Martin N. Murphy's *Small boats, weak states, dirty money: piracy and maritime terrorism in the modern world*, John Burnett's *Dangerous waters: modern piracy and terror on the high seas* and Jack A. Gottschalk and Brian Flanagan's book *Jolly Roger with an Uzi: the rise and threat of modern piracy* have all tackled modern manifestations of maritime piracy and as such have contributed to framing this research within the wider historiography.[19]

Primary source materials

During the period of this research, maritime piracy was a multi-causative phenomenon. This thesis will illustrate how a combination of static factors (such as geography and proximity to major shipping lanes) and fluid factors (such as socio-political stability and naval presence) collectively facilitated contemporary upsurges of piratical activity. These upsurges affected a wide variety of stakeholders and required a concerted multifaceted response to address it. Taking this into consideration, a key investigative method utilised in this research is structured, unstructured and non-directive interviews

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[18] Ralph T. Ward, *Pirates in history* (Baltimore, 1974); Frank Sherry, *Raiders and rebels: the golden age of piracy* (New York, 1986); Peter Earle, *The pirate wars* (London, 2003); Janice E. Thomson, *Mercenaries, pirates & sovereigns: state-building and extraterritorial violence in Early Modern Europe* (Princeton, 1994); Philip Gosse, *The history of piracy* (London, 1932); Freda Adler & Gerhard O.W. Mueller, *Outlaws of the ocean : the complete book of contemporary crime on the high seas* (New York, 1985); Angus Konstam, *Piracy: the complete history* (New York, 2008).

[19] Roger Villar, *Piracy today: robbery and violence at sea since 1980* (London, 1985); Martin N. Murphy, *Small boats, weak states, dirty money: piracy and maritime terrorism in the modern world* (London, 2009); John Burnett, *Dangerous waters: modern piracy and terror on the high seas* (London, 2002); Jack A. Gottschalk & Brian Flanagan, *Jolly Roger with an uzi: the rise and threat of modern piracy* (Maryland, 2000).

with a broad selection of these stakeholders at various locations in Dublin, London, Malaysia and Singapore. These included industry representatives from maritime professional bodies such as the Nautical Institute, shipping companies such as North-South Maritime based in Singapore and leading ship-management agencies such as Thome and Intermanager. These consultations are positioned alongside meetings with various military personnel at the forefront of counter-piracy operations such as former Chiefs of Staff and naval intelligence officers at EUNAVFOR Operation Atalanta at Northwood Headquarters in London and representatives of the Singaporean and Irish navies.

As this thesis examines policy level responses to maritime piracy, regional governmental representatives have been consulted including the head of the Maritime Institute of Malaysia (MIMA) alongside personnel from the Policy Operations Branch of the Singapore Ministry of Defence. In addition, leading academics and representatives from non-governmental organisations have been consulted to generate a more comprehensive, multi-stakeholder representation of contemporary maritime piracy and efforts to address it. This includes interviews and meetings with the Assistant Director of the ReCAAP I.S.C. in Singapore, the head of the I.M.B. P.R.C. in Kuala Lumpur, the Executive Director of the International Institute of Strategic Studies and a Senior Fellow at the Institute of Southeast Asian Studies. Legal experts and advisors, chiefly the Director of the Centre for International Law Professor Robert Beckman, have also been consulted for a perspective on the evolution of international law and its relationship to maritime crime. Knowledge acquired from these various interviews and consultations is assembled and assessed relative to an extensive range of statistical resources.

Statistical analysis, 1900-79
Central to exploring the evolution of contemporary counter-piracy efforts is analysing statistical data and flows to highlight successes and failures alongside various regional and global manifestations and trends. Reliable statistics on rates and occurrences for piracy before 1980 are inherently limited and as such present a degree of difficulty in

compiling an accurate picture of the scale of the problem for much of the twentieth century. The lack of statistics available prior to 1980 is in itself indicative of the strategic inconsequentiality of the issue during this period. According to Roger Villar in his 1985 publication *Piracy today: robbery and violence at sea since 1980*: 'Prior to 1980 records were either not kept or have not been retained on file in sufficient numbers to make it worth their inclusion'.[20] Carolin Liss affirmed this in her work on maritime piracy in Southeast Asia and Bangladesh: '[...] comparatively little is known about pirate attacks on small craft and merchant vessels between the end of World War II and the early 1980s'.[21] The quantitative framework created in chapter I is useful in bridging this gap and when utilised alongside archival records such as British Foreign and Commonwealth Office files helps generate a workable picture of manifestations of maritime criminality during this period.

Statistical analysis, 1979-2013

While reports on piracy escalated during the late 1970s and early 1980s, there exist only a limited number of statistical resources to gauge the level of piratical activity during this period. This changed somewhat following the establishment of the I.M.B. Piracy Reporting Centre (P.R.C.) in Kuala Lumpur in 1992. Prior to this, the primary statistical sources utilised in this research consist of (a) the 'I.M.B. chronology of pirate attacks on merchant vessels 1981-87' located in I.M.B. founder Eric Ellen's 1989 editorial *Piracy at Sea* (b) the I.M.O. Maritime Safety Committee statistical resources from 1982-92 (c) Captain Roger Villar's log of attacks from 1979-84 in his 1988 publication *Piracy Today* (d) the U.S. National Geo-Spatial Intelligence Agencies' Anti-Shipping Activity Messages (ASAM), United Nations (U.N.) Security Council reports and finally British government Admiralty files.

Compiling a practicable statistical framework of piratical occurrences from 1992 onward is comparatively uncomplicated compared with accessing figures a decade previous. The primary statistical resource utilised from this period onward is the I.M.B.

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[20] Roger Villar, *Piracy today: robbery and violence at sea since 1980* (London, 1985), p. 92.
[21] Carolin Liss, *Oceans of crime: maritime piracy and transnational security in Southeast Asia and Bangladesh* (Singapore, 2011), p. 5.

quarterly and annual reports on piracy based on information received by the P.R.C. in Kuala Lumpur. As previously mentioned, I.M.B. reports combine 'piracy' and 'armed robbery' at sea alongside 'actual' and 'attempted' attacks, which allows for a broad overview of global fluctuations of maritime piracy. However, this method limits specific analysis of regional variations and modus operandi, particularly given the disparity between the formalised hostage for ransom situation that evolved in the Gulf of Aden and western Indian Ocean and the chiefly low-level opportunistic thefts in Southeast Asia during the period of this study.

Despite this, the I.M.B. attempted to verify all reported acts of piracy or armed robbery against a vessel with the master of that vessel or the owners to enhance accuracy.[22] To compensate for these deficiencies, I.M.B. reports are considered alongside several other statistical resources. The I.M.O. has released bi-annual reports on incidents of piracy worldwide since 1984. This information is combined with a synopsis of trends and regional observations, which combined with other sources, allows for a comprehensive assessment of global piratical activity since the 1980s to the present day.

Regional-specific piracy reporting mechanisms such as the ReCAAP Information Sharing Centre (I.S.C.) in Singapore, dealt exclusively with reported incidents of piracy and armed robbery against ships in Asia. The ReCAAP I.S.C. evaluated the significance of incidents in terms of two factors. Firstly, the level of violence and secondly, the economic loss incurred.[23] Incidents are then categorised under three headings according to severity: very significant, moderately significant and less significant. This methodology provides a useful perspective on regional specificities relating to maritime crime and when combined with international reports such as the I.M.B. and I.M.O. facilitates a more accurate portrayal of fluctuations of piracy. This approach is useful as according to one analyst: 'very often you see a disparity between the I.M.B. and the

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[22] Interview with Mr. Cyrus Moody, Deputy Director of the I.C.C. I.M.B. at the I.C.C. I.M.B headquarters, Cinnabar Wharf, London (22 Oct. 2013).
[23] ReCAAP Information Sharing Centre, *Annual research report 2008* (Singapore, 2009), p. 5.

ReCAAP reports because after investigation they might deem a false report which would not make it into the final report'.[24]

In addition, the U.S. National Geo-Spatial Intelligence Agency has published annual reports of anti-shipping activity since 1981 that included reports of actual and attempted incidents of piracy and armed robbery against ships. These ASAM reports provided details of date of occurrence, geographical sub-region, aggressor, victim and a brief description of the incident and are a particularly useful tool in analysing attacks against shipping during the 1980s and early 1990s. The Nautical Institute created a confidential Mariners Alerting and Reporting Scheme (MARS) in 1992 primarily for the purpose of reporting accidents and near misses 'without fear of identification or litigation', but also received reports on incidents of piracy and armed robbery against ships and as such is a useful supplementary resource.[25]

The civil maritime analysis department of the U.S. Office of Naval Intelligence, has released a 'Worldwide threat to shipping: mariner warning information' report several times a month since May 1999 that contained a summary of piracy acts and hostile actions against commercial shipping worldwide alongside developments with regards to maritime law and counter-piracy operations.[26] Supplementary to these resources are numerous eyewitness statements, victim correspondence, academic works, press releases and official governmental and law-enforcement publications. Despite this wide array of resources and reporting mechanisms, it is widely acknowledged that the actual rate of incidents of piracy and armed robbery against ships was significantly higher than what was reported or recorded.

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[24] Interview with Ms. Jane Chan Git Yin, Coordinator - Maritime Security Programme, Institute of Defence & Strategic Studies (I.D.S.S.), S. Rajaratnam School of International Studies (R.S.I.S.) at Nanyang Technological University, Singapore (21 Mar. 2014).
[25] The Nautical Institute, 'About MARS' (http://www.nautinst.org/en/forums/mars/) (16 July 2015).
[26] U.S. Office of Naval Intelligence, 'Worldwide threats to shipping report', available at (http://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_pageLabel=msi_portal_page_64) (16 July 2015).

Problems with statistics

According to one analyst: 'The actual problem of piracy in global waters is undoubtedly far greater than [...] figures suggest, since a number of attacks - possibly as many as 50 percent - are not reported'.[27] There were a number of reasons for this under-reporting. In terms of initial attacks on Vietnamese boat refugees in the Gulf of Thailand and the South China Sea during the late 1970s and 1980s, establishing exact figures was inherently problematic given the transient nature of the victims. From the shipping industry side the reasons for underreporting were more apparent and included the potential loss of international reputation, fear of reprisal, costly investigations and impediments, cultural acceptability and governmental complicity. Roger Villar recognised this deficiency in his 1985 record of piratical attacks: 'It is the authors opinion that this is the most complete and comprehensive record in existence'.[28] He acknowledged, however, that '[...] it probably represents no more than about half the actual numbers of attacks which have taken place'.[29]

This notion is reflected elsewhere. In 1998 the U.K. Defence Intelligence Service estimated that the annual number of actual piracy cases could be 2,000 percent higher than what was being reported whereas the Australian Intelligence Organisation estimated the rate of under-reporting by 1996 was somewhere in the region of 20 to 70 percent.[30] The inconsistencies with these figures reflect the difficulties in establishing accuracy when utilising modern piracy reports and data. Gauging the genuine effectiveness of counter-piracy initiatives before 1992 is therefore problematic. The available resources do, however, allow for a reasonable assessment of the fluctuation of incidents and therefore also a measure of how contemporary counter-piracy initiatives have evolved.

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[27] Peter Chalk, *The maritime dimension of international security: terrorism, piracy, and challenges for the United States* (California, 2008), p. 7.

[28] Roger Villar, *Piracy today: robbery and violence at sea since 1980* (London, 1985), p. 92.

[29] Villar, *Piracy today*, p. 92.

[30] See: U.S. Office of Naval Intelligence & U.S. Coast Guard: Intelligence Coordination Center, 'Threats and challenges to maritime security 2020' (Mar. 1999), available at Federation of American Scientists, (http://www.fas.org/irp/threat/maritime2020/TITLE.htm) (08 Oct. 2012).

Legal materials

Additional primary source material is derived from legal tracts, official governmental reports, archival and academic publications. The U.N. Dag Hammarskjöld Library is the primary repository for United Nations Assembly and Security Council resolutions alongside a number of general reports on tackling and defining piracy and the acceded legal parameters the international community operated in to combat it. The UNCLOS of 10 December 1982, in particular articles 100, 101 and 105, sets out the legal framework applicable to combating piracy and armed robbery at sea alongside other ocean activities and stands as a key primary source document. Additional key legal agreements and conventions include the Geneva Convention on the High Seas of April 1958, the International Convention for the Safety of Life at Sea (1974) (SOLAS), the International Convention against the Taking of Hostages (1979), and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) (SUA). The U.N. produced over twenty resolutions directly pertaining to Somali piracy between 2005 and 2013. These resolutions are central to examining the legal parameters of the international communities' response to contemporary piracy. Supplementary repositories include the I.M.O. Maritime Knowledge Centre (M.K.C.) which archives official documents and publications, the U.S. Library of Congress for historical legislation and LexisNexis for contemporary case law.

In addition, a key analytic method employed throughout this work is to investigate the prevailing opinions and actions of various regional and international governments in their response to piracy. The United States has been at the forefront of anti-piracy operations in the Gulf of Aden/ Somali Basin since the events of September 2001. The White House has released several official reports, department fact sheets, press statements and congressional hearings on the matter that are utilised. The European Union established its first naval force in response to the escalation of piracy off the Horn of Africa in 2008, which consisted of eight E.U. member states making a permanent operational contribution and several more participating in a support capacity. European governments, including the U.K. have released multiple reports and anti-piracy publications, which are also utilised. Littoral Southeast Asian states such as Indonesia,

Malaysia, Philippines, Singapore, Thailand and Vietnam have all contributed, to regional counter-piracy efforts to different extents. This resulted in numerous bilateral and multilateral agreements throughout the 1990's culminating in the signing of the ReCAAP agreement in 2006, which are utilised as examples of policy level engagement.

While official governmental publications and reports provide a key investigative tool in this work, attempting to understand the motivations of maritime criminals themselves through the limited correspondence they have had with journalists and investigators is also utilised. Understanding these motivational factors is vital, not only for reasons of objectivity, but also for a more coherent and effective analysis to be presented.

With the benefit of retrospection and a multitude of regional and international piracy studies and statistics, a more encompassing analysis is now presented, which is particularly pertinent in an increasingly constrained and interdependent globo-economic setting. While the intricacies of modern maritime crime are continually shifting and changing, the decrease in successful maritime hijackings in the Gulf of Aden and Somali Basin in 2013 was a significant milestone and, therefore, strengthens the timeliness and substance of this research.

This thesis approaches the subject of contemporary maritime piracy objectively. Criteria for establishing objectivity includes engaging with a diverse range of stakeholders, from policy makers to counter-piracy practitioners, alongside a exhaustive range of sources including newspaper articles, national archival records, academic texts, industry guidelines, statistical data and legal tracts. Conclusions are based on an empirical methodology incorporating both a quantitative and qualitative analysis of collated material with no specific interest group or political agenda in mind, thereby offering a more authoritative and holistic contribution to the existing literature.

It is envisioned, therefore, that this work will serve as an authoritative analysis of modern piracy, its manifestations and efforts to combat it that will appeal to academics undertaking naval or maritime security related research, policy makers, industry

professionals, legislators, military personnel and general interest readers. Moreover, it is hoped that elements of this research invoke further examination into the historical intricacies of maritime piracy during the twentieth century, its various manifestations and contemporary strategic, operational and tactical responses.

CHAPTER I

Maritime piracy: a twentieth-century palingenesis?

[…] piracy, with its harrowing gruesomeness, its boldness and daring, its romance and adventure, its plunder and murder, its conflicts and reprisals, is a spectre of the past [...] It has lost the glamor and enchanting, romantic atmosphere which pervaded the career of Captain Kidd and made him the worshipped hero of every school-boy, or which inspired the pen of a Scott, of an Edgar Allan Poe or Frank R. Stockton, or put the charm to the tales of W. Clark Russell, for pirates and piracy are now dead, and live ingloriously only in the pages of chronicling history (1902).[1]

Introduction

Maritime piracy has existed as long as the oceans have been harnessed as a source of sustenance and as a conduit for the transportation of people and goods. In the ancient world, pirates were not simply common criminals. They often achieved high status and power positions through the acquisition of wealth at and from the sea. Indeed, the act of pirating vessels was closely associated with ancient forms of warfare in both aims and methods.[2] In the twelfth century BC, for example, collections of maritime nomads known as 'sea peoples' were thought to be responsible for the fall of the Mycenaean Greek empire and the destruction of the Hittite empire in Asia Minor.[3]

In more modern times, the endorsement of privateering under reign of Queen Elizabeth I of England resulted in widespread corsairing by English privateers and pirates during the sixteenth century which precipitated the so called 'golden age' of piracy. By the late seventeenth century, however, Britain had distanced itself from the sanctioning of maritime raiding and initiated an aggressive policy of pursuing pirates in domestic and foreign waters. Eventually, advances in naval technology and a resolute anti-piracy intervention by the nascent Royal Navy, following the wars of the Spanish succession, heralded an end to this 'age' of piracy, resulting in a sizeable reduction in incidents by 1730. However, given the cyclical nature of the problem and the political and economic dependence of several nations on the proceeds, piracy was not suppressed entirely. Following a period of relative inactivity throughout the latter part of the eighteenth

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[1] Oscar Herrmann, *Pirates and piracy* (New York, 1902), pp 45-6.
[2] Philip De Souza, *Piracy in the Graeco-Roman world* (Cambridge, 1999), pp 17-18.
[3] Angus Konstam, *Piracy: the complete history* (New York, 2008), p. 11.

century, maritime piracy once again resurfaced as a significant problem in the 1800s, predominantly in the southern Mediterranean and in the waterways of Southeast Asia.

This chapter will briefly explore early legal interpretations and the historical evolution of the term piracy alongside the maritime climate relative to piracy in both these regions during the nineteenth-century followed by an overview of the widespread suppression of incidents by 1900. This analysis focuses on escalation, manifestation and responses and does not attempt to engage in an exhaustive study of the cultural and political characteristics of nineteenth-century piracy. Understanding the fluctuation of piracy during the nineteenth-century establishes an important contextual framework for the analysis of the maritime climate in the pre-war, interwar and post-war period and in the contemporary case studies in subsequent chapters.

During the First and Second World War traditional forms of maritime piracy essentially ceased, aside from cases of state sanctioned attacks on merchant vessels that were not acts of piracy under international law. While there are limited resources available to gauge the extent of non-traditional threats in the world's oceans in the decades after the Second World War, the maritime climate that emerged was conducive for a resurgence of piratical activity by 1980.

Analysing the statistical and empirical evidence available during the years 1900 to 1979 addresses a fundamental question in this work: can the escalation of piracy in the late 1970s and early 1980s be declared a 'palingenesis' or was it merely a continuation of an entrenched problem that never really went away? Maritime piracy, this thesis argues, resurged in the late twentieth century in a distinct manner to piratical predations of previous historical eras. This distinction related to the unique political, social and economic context of that particular period and as such was a 'palingenesis' of an ancient phenomenon.

The imperial expansionism of the nineteenth-century established new maritime trading routes that were frequently beset by diverse and unchecked forms of piratical activity.

This was most prolific in the West Indies, along the North African coast, Southeast Asia and the northeastern Mediterranean. In 1826 during the War of Greek Independence, for example, it was estimated that up to one-quarter of the population of Greece was involved in some form of maritime predation due to a weakened naval fleet.[4] Indeed, for almost three centuries the distinctions between piracy, privateering and legitimate trading were essentially indiscernible.[5] Reflecting the contemporary situation in many ways, the problem had grown to such an extent that governments dependent on strategic Sea-Lines of Communication (SLOC) to support their colonial and economic aspirations were forced to respond. Prior to expanding on these responses, early legal characterisations and the historical evolution of the term 'piracy' and 'privateering' is explored and the distinction between the two noted.

Early legal interpretations and historical evolution

Localised interpretations and definitions of what constituted piracy at sea have existed for centuries. In ancient Rome, for example, according to Alfred P. Rubin, 'The legal rationalisation found by the Roman Senate for suppressing the communities of "pirates" was not an asserted Roman right to police the seas [...] but the quite different assertion of a Roman right to territorial as well as maritime jurisdiction in the Eastern Mediterranean'.[6] In England, the 'Offences at sea act' of 1536 transferred jurisdiction for the crime of piracy from the civil courts to the Court of Common Law for the first time and paved the way for modern admiralty law.[7] Further notable pre-nineteenth-century acts initiated by Britain included a series of 'Acts for the more effectual suppressions of piracy' in 1698, 1721 and 1744 respectively. The United States introduced its first piracy act in 1790. The 'Act for the punishment of certain crimes against the United States' stated: '[…] if any person or persons shall commit treason, murder, felony or robbery upon the high seas [...] or [...] out of the jurisdiction of any

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[4] W. Alison Phillips, *The war of Greek independence 1821-1833* (New York, 1897), p. 253.
[5] John Francis Guilmartin, *Gunpowder and galleys: changing technology and Mediterranean warfare at sea in the sixteenth century* (London, 1974), pp 22-3.
[6] Alfred P. Rubin, *The law of piracy* (Rhode Island, 1988), p. 12.
[7] See: J.R. Tanner, *Tudor constitutional documents A.D. 1485-1603 with an historical commentary* (Cambridge, 1922) pp 346-48.

particular state [...] every such offender shall be deemed, taken and adjudged to be a pirate'.[8]

Prior to, and indeed after the introduction of customary maritime law, piracy fell under the concept of 'universal jurisdiction'. This categorised piracy as a crime outside the jurisdiction of any one nation and therefore 'hostis humani generis', or literally translated - 'the enemy of mankind'. This meant that pirates could be prosecuted by any nation that encountered them on the high seas. The expression 'hostis humani generis' was derived from the early seventeenth-century English jurist Edward Coke's reinterpretation of a segment of Marcus Tullius Cicero's influential essay 'De Officiis' written in 44BC. Cicero stated: '[...] nam pirata non est ex perduellium numero definitus, sed communis hostis omnium; cum hoc nec fides debet nec ius iurandum esse commune', which translated to '[...] for a pirate is not included in the number of lawful enemies, but is the common foe of all the world, and with him there ought not to be any pledged word nor any oath mutually binding'.[9] This illustrated a connection between antiquated Roman anti-piracy legal tracts and more modern legislative attempts.

The idea of universal crime became commonplace in eighteenth and nineteenth-century legal discourse and criminal proceedings. The prominent 1820 case of the United States v. Smith utilised this notion: 'and pirates being *hostis humani generis* are punishable in the tribunals of all nations'.[10] There is an important distinction between municipal law (law governing individual states) and international law (law governing all states). Henry Wheaton's seminal 1836 publication, *Elements in international law*, best tackled the division:

> Piracy under the law of nations may be tried and punished in the courts of justice of any nation, by whomsoever and wheresoever committed; but piracy created by 'municipal statute' can only be tried by that State within

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[8] 'An act for the punishment of certain crimes against the United States 1790', available at The Library of Congress, (http://memory.loc.gov/rbc/rbpe/rbpe21/rbpe213/2130140a/001dr.jpg) (13 June 2012).
[9] Marcus Tullius Cicero, *De Officiis*, ed. T. E. Page (3 vols, London, 1928), iii, p. 384.
[10] U.S. Supreme Court, 'United States v. Smith', xviii, no. 153, 1820, available at (https://supreme.justia.com/cases/federal/us/18/153/case.html) (16 June 2012).

whose territorial jurisdiction, and on board of whose vessels, the offence thus created was committed.[11]

During the eighteenth and nineteenth centuries, the ideas of the enlightenment thinkers and evolving international legal frameworks further solidified crimes such as piracy as *jus cogens* or a peremptory norm. This described certain crimes that 'affect the interests of the world community as a whole because they threaten the peace and security of humankind and because they shock the conscience of humanity'.[12] Such notions were influenced by the concept of universal jurisdiction and the 'law of nations' or 'natural law'. This was reflected in the trial of the 'United States v Smith' in 1820:

> All nations are engaged in a league against them [pirates] for the mutual defence and safety of all. This renders it the more fit and proper that there should be a uniform rule as to the definition of the crime, which can only be drawn from the law of nations, as the only code universally known and recognized by the people of all countries.[13]

Additional legal understandings of piracy grew from municipal acts such as 'An act to amend certain acts relating to the crime of piracy' of 1837, 'An act to repeal an act of the sixth year of King George the fourth, for encouraging the capture or destruction of piratical ships and vessels' of 1850 and the 'Slave trade act' of 1873.

There were further legal strides taken to address the problem of piracy during the same period such as the 1854 report to the President of the British Board of Trade, Lord Clarendon. The report compiled by the British foreign secretary legal advisors to the crown defined 'pirates' and universally outlawed them. Such reports enhanced efforts to standardise maritime law and strengthen counter-piracy operations:

> [A]ll persons whatsoever Flag or Papers they may Sail, or to whomever their ship may legally belong will be pirates by the Law of Nations who are guilty of forcible robberies, or captures of Ships or Goods upon the High Seas without any lawful Commission or authority [...] They and their Vessels and

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[11] Coleman Phillipson, *Wheaton's elements of international law* (5th ed., London, 1916), p. 206.
[12] M. Cherif Bassiouni, 'International crimes: 'jus cogens' and 'obligatio erga omnes' in *Law and Contemporary Problems*, lix, no. 4, (Autumn 1996), p. 68.
[13] United States v. Smith, (1820).

Cargoes may be captured by Officers and Men in the public Service of any Nation, and my be tried in the Courts of any Nation.[14]

International accords such as the Paris Declaration of 1856 and the Hague Convention of 1899 also contributed to the legal discourse on maritime crime, chiefly in relation to privateering. There was, however, some trepidation on the part of Britain in particular that these international agreements were too restrictive: 'this country should retain a free hand, and not subscribe to any further regulations, which might be prejudicial to its interests in any future wars'.[15] The Paris Declaration, for example, stated that 'Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag'.[16] Sir William Blackstone's *Commentaries on the laws of England* summed up the legal stance of maritime piracy as understood during the eighteenth and nineteenth centuries well: 'The offence of piracy, by common law, consists in committing those acts of robbery and depredation upon the high seas which, if committed upon land, would have amounted to felony there'.[17]

Twentieth-century legal evolution

It was not until after the First World War that any genuine attempt was made to codify and address the legal and definitional aspects of maritime piracy. In April 1926, the League of Nations committee of experts compiled a list of eighteen topics for consideration at the 'First conference for the codification of international law' held at The Hague in March and April 1930. Among the preliminary topics included on the agenda was legislating for territorial water limits. The conference ultimately failed to reach agreement but expedited further deliberations. Researchers in international law at Harvard Law School compiled several drafts on key issues discussed at the Hague conference. This resulted in publications on four key matters, which included a *Collection of piracy laws of various countries,* edited by Stanley Morrison. A more extensive volume of work was published in 1932 by the law school at Harvard. This was

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[14] Rubin, *The law of piracy*, p. 238.
[15] 'Confidential print on extending the Declaration of Paris to private property', 09 Jan. 1893 (B.N.A., F.O. 881/6307).
[16] 'The Declaration of Paris, 1856' in *American Journal of International Law*, i, no. 2 (Apr. 1907), p. 89.
[17] Blackstone, *Commentaries*, p. 72.

the first tangible twentieth-century effort to define the legal parameters of maritime piracy. The Harvard 'draft convention' defined piracy as:

> Any act of violence or of depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends without bona fide purpose of asserting a claim of right, provided that the act is connected with an attack on or from the sea.[18]

The inclusion of the 'private ends' clause was significant and would become commonplace in proceeding definitions, despite the ambiguity of the phrase. Douglas Guilfoyle identified that the term was first used by American lawyer Joel Prentiss Bishop in his *New commentaries on the criminal law* published in 1892.[19] Guilfoyle concluded that '[...] all violence lacking state sanction (public violence) is violence for private ends [...] the 'private ends' requirement [therefore] only emphasises the point that *states* cannot commit piracy'.[20] These deliberations coincided with several high profile criminal proceedings such as the case of the 'SS *Lotus*' in 1927, the 'United States v Flores' in 1933 and 'In re Piracy *Jure Gentium*' in 1934. The 1933 decision, for example, was significant as the judge ruled that the jurisdiction over maritime crime extended to attacks on U.S. vessels while in navigable waters within the territorial jurisdiction of foreign sovereigns.[21]

After the Second World War, consolidation of natural maritime resources became an important issue, primarily in relation to seabed mining and fisheries jurisdiction. Then U.S. President Harry S. Truman issued a series of proclamations in 1945 that addressed U.S. claims to natural resources on the high seas. 'Proclamation 2667' of September 1945 stated that 'the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its

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[18] Harvard research in international law, 'Draft convention on piracy' in *The American Journal of International Law*, xxvi (1932), p. 743.

[19] Joel Prentiss Bishop, *New commentaries on the criminal law* (8th ed., 2 vols, Chicago, 1892), i, p. 339.

[20] Douglas Guilfoyle, 'The laws of war and the fight against Somali piracy: combatants or criminals?' in *Melbourne Journal of International Law*, xi (2010), p. 150.

[21] U.S. Supreme Court, 'United States v. Flores', 289 U.S. 137, 1933, available at Cornell University Law School, Legal Information Institute (https://www.law.cornell.edu/supremecourt/ text/289/137) (08 May 2012).

jurisdiction and control'.[22] These proclamations encouraged other nations to follow suit and lay claim to contiguous seas along their coasts, which highlighted the need for further international codification on the law of the sea.

Between 1949 and 1956, the U.N. International Law Commission was tasked with the problematic duty of planning for the codification of international law, surveying international law and selecting topics for codification. Among the matters selected were the regime of the high seas and the regime of territorial waters. This process resulted in a series of 'Articles concerning the law of the sea' in 1956. These articles underpinned the first United Nations Convention on the Law of the Sea (UNCLOS I) which ultimately created four conventions, most notably, the 'Geneva Convention on the High Seas' of 1958. The Geneva Convention addressed the weaknesses in previous international definitions of piracy and attempted to 'codify the rules of international law relating to the high seas'.[23] Section 1 of article 15 of the convention defined piracy as:

> Any illegal acts of violence, 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: (*a*) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (*b*) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State [...].[24]

The Geneva Convention was followed by a second, less dynamic U.N. Law of the Sea convention in 1960 (UNCLOS II) that highlighted the need to codify territorial sea and fishery limitations. The seminal United Nations Convention on the Law of the Sea (UNCLOS III), which ran from 1973 to 1982, eventually superseded both conventions.[25] The definition of piracy in the 1958 Geneva Convention remained unchanged in the text of 1982 convention. The enduring high-seas requirement paradoxically created a third 'category' of maritime 'armed robbery' attacks within territorial waters, which added an additional layer of complexity to the law. According to an article in 1976: 'The effect of

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[22] 'Proclamation 2667: Policy of the United States with respect to the natural resources of the subsoil and sea bed of the continental shelf', 28 Sept.1945 (U.S.N.A., Federal Register, 10/12304, p. 68).
[23] 'Geneva convention on the high seas, 1958' (U.N., Treaty Series, cdl, no. 6465/1958, p. 2).
[24] 'Geneva convention on the high seas', p. 5.
[25] 'UNCLOS III' hereafter referred to as 'UNCLOS'.

the 1958 Geneva Convention has been to confuse the law of piracy […] the danger is that the obsolescence of piracy will be marked by an increase in the commission of illegal acts of violence on the high seas'.[26] Despite obvious shortcomings, the result of these legal discourses meant that 'the "criminalisation" of piracy became complete [...] within an international system that encompassed the entire globe, including the non-western world in the post-Second World War era'.[27] The evolution and applicability of these international conventions and the legal framework for counter-piracy operations is addressed in subsequent chapters.

Maritime piracy operated outside established legal frameworks and was therefore a crime 'against all mankind'. Privateering on the other hand, although indistinguishable in practice, held a different legal position for much of the nineteenth-century. Privateering or 'corsairing' as it was commonly known in the sixteenth and seventeenth centuries, was the conferring of limited legal authority via a 'letter of marque' to privately owned and operated vessels to seize combative merchant vessels and/or cargo for recompense. More simply as one commentator noted: 'privateers preyed on the seaborne communications of enemy nations'.[28] This method of antagonism closely reflected the sea-denial stratagem of a 'guerre de course' or an attack on enemy sea-borne trade, however, the fundamental legal difference was that a 'guerre de course' was not initiated for private gain. It intended to destroy enemy commerce rather than appropriate it.

From an early nineteenth-century legal standpoint, privateering did not constitute an act of piracy in its most elementary form. However, privateering was essentially state sponsored 'legitimate piracy' and therefore fashioned a maritime environment that blurred the legal distinction between the two. Nicholas Andrew Martin Rodger illustrated this close historic interrelationship between privateering and piracy: 'English

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[26] Clyde H. Crockett, 'Toward a revision of the international law of piracy' in *DePaul Law Review*, xxvi, no. 1 (Autumn 1976), p. 98.
[27] Graham Gerard Ong-Webb, 'Piracy in maritime Asia: current trends' in Peter Lehr (ed.) *Violence at sea: piracy in the age of global terrorism* (New York, 2007), p. 47.
[28] Gary M. Anderson & Adam Gifford, Jr., 'Privateering and the private production of naval power' in *Cato Journal*, xi, no. 1 (Spring/Summer 1991), p. 100.

piracy flourished in the northern colonies under the cover of privateering against France, and with the discreet encouragement of Whig political interests in London'.[29] The act of privateering was eventually abolished under the 'Paris Declaration respecting maritime law' in April 1856, which is discussed later in this chapter. This reduced the ambiguity surrounding maritime law and solidified all forms of piracy as a criminal offence. Geoffrey Till described how privateering at times amounted to the condoning of piracy and that prior to the Congress, was a 'practice open to abuse'.[30]

The Declaration of Paris, therefore, clarified the uncertainties of previous centuries in relation to criminality at sea and strengthened counter-piracy resolve among industrialised maritime nations.[31] It is evident that two fundamental differences existed between privateering and pirating within Western discourse - legality and legitimacy. Pirates operated outside the law, whereas privateers operated within a quasi-legal framework. Simply stated, pirates committed robbery at sea under no authority while privateers committed robbery at sea under the authority of a sovereign nation. This is an important distinction to note.

This type of state-sponsored maritime raiding was particularly prevalent in the Mediterranean Sea throughout the eighteenth and nineteenth centuries. Indeed, piracy had been an instrument of political and economic statecraft along the Barbary Coast of North Africa since the late fifteenth century with western merchant trade regularly pillaged. The Barbary States were, according to Herbert Richmond: 'sea powers for reasons of plunder, not from necessities enforced upon them by the conditions of national life to use the sea for trade'.[32] Similarly, in Southeast Asia a long history of raiding at and from the sea existed that extended beyond simple criminality to the consolidation of regional economic and political power bases. Indeed, the European understanding of what constituted 'piracy' was at variance from the indigenous maritime communities of Southeast Asia. Segments of these populations practiced

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[29] N.A.M. Rodger, *The command of the ocean: a naval history of Britain 1649-1815* (London, 2004), p. 162.
[30] Geoffrey Till, *Maritime strategy and the nuclear age* (London, 1982), p. 168.
[31] Till, *Maritime strategy and the nuclear age*, p. 168.
[32] Herbert W. Richmond, *Sea power in the modern world* (London, 1934), p. 26.

maritime raiding as a 'legitimate political or commercial endeavour'.[33] Therefore, 'piracy' from a western understanding only materialised in Southeast Asia in direct correlation with the expansion of European colonial enterprise. James Warren asserted that the term 'piracy' criminalised political or commercial activities that indigenous maritime populations had for centuries considered part of their 'statecraft, cultural-ecological adaption and social organisation'.[34]

With this in mind, the maritime climate in the early decades of the nineteenth-century could be characterised by western perceptions and ambitions clashing with eastern economic and cultural traditions. This produced a situation conducive for maritime instability. Regardless of local interpretations and definitions of piracy, western powers recognised a significant rise in predations against their seaborne merchant assets. Evidence of this intensification is illustrated by the amount of media attention given to it. *The Times* newspaper, for example, included just three articles on maritime piracy in 1818. This had risen to twelve in 1820 and twenty-eight in 1822.[35] Indeed, highlighting a small selection of major nineteenth-century British newspapers from 1800 to 1860, it is apparent that piracy emerged as an issue of some significance (see fig. 1.1).

Fig. 1.1
Number of newspaper articles where 'piracy' was addressed explicitly, 1800-60

	1800-20	**1820-40**	**1840-60**
Freemans Journal	5	82	259
Morning Chronicle	158	617	793
Caledonian Mercury	76	199	238
Belfast News-Letter	0	42	186
TOTAL	**239**	**940**	**1476**

Source(s): *Freemans Journal*, assorted issues 1800-1860; *Morning Chronicle*, assorted issues 1800-1860; *Caledonian Mercury*, assorted issues 1800-1860; *Belfast News-Letter*, assorted issues 1800-1860.

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[33] Carl A. Trocki, 'Piracy in the Malay world' in Ainslie T. Embree (ed.), *Encyclopaedia of Asian History*, iii (New York, 1988), p. 262.
[34] James F. Warren, 'A tale of two centuries: the globalisation of maritime raiding and piracy in Southeast Asia at the end of the eighteenth and twentieth centuries' in *Asian Research Institute: Working Paper Series*, no. 2 (June 2003), p. 3.
[35] Peter Earle, *The pirate wars* (London, 2003), p. 218.

The French Revolutionary and Napoleonic Wars witnessed almost a quarter of a century of naval warfare and privateering. The anticipated respite in 1815 did not materialise and in one author's opinion, 'there was probably more piracy and maritime mayhem in the first fifteen years of what has been labelled Pax Britannica than there had ever been in the so called "golden age of piracy"'.[36] The disorder that followed the end of the war undoubtedly fuelled the subsequent rise of piracy. Despite the emerging dominance of the Royal Navy, Britain struggled both economically and militarily after the conflict. The result was twofold. Firstly, the colonial and mercantile ambition of Britain and indeed other European powers had to be promoted and safeguarded as a matter of priority and secondly, many ships and crew were no longer needed for warfare and therefore sought employment elsewhere.

Resurgence of maritime piracy in the nineteenth-century

North Africa

The Barbary corsairs emanated from the coastal regions of Algiers, Tripoli, Tunis and Morocco, (see figs 1.2) and shared several similarities with Southeast Asia with regard to manifestations of maritime piracy during the nineteenth-century. Both regions had a long history of state-supported maritime raiding that had been a distinctive feature of their respective political and economic climates. Both regions also benefitted economically from the slave trade, which featured as a principal form of maritime predation along the Barbary Coast in particular. One significant contrast was that piracy was suppressed along the north coast of Africa much sooner when compared with Southeast Asia owing chiefly to its proximity to continental Europe.

During the eighteenth-century, relations between European states and the Barbary powers were relatively stable, maintained through a combination of treaties, agreements and tribute payments for the safe passage of merchant vessels. However, the expansion of maritime trade transiting the Mediterranean during the nineteenth-century directly contributed to the escalation of piratical attacks and seizures. Indeed, global maritime

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[36] Earle, *The pirate wars*, p. 212.

trade increased by an estimated 400 percent from 1870 to 1913.[37] Much like Southeast Asia, indigenous rulers viewed piratical attacks against foreign mercantile trade as legitimate economic and political action against belligerent nations or nations unwilling or unable to pay a tribute to transit or operate in their littoral waters. Potential new targets emerged in the form of the United States whose fledging naval force no longer enjoyed the relative protection of the British flag following the ratification of the Treaty of Paris in 1783. By 1790 an estimated 100 American ships sailed to the Mediterranean annually.[38]

Religion also played a significant role in promoting piratical activity as the Muslim corsairs targeted 'infidels' thereby fuelling religious fervour while profiting from their actions. Indeed, reminiscent of Southeast Asia, this east-west historical and cultural dichotomy reinforced maritime piracy in both regions. J. E. G. de Montmorency stated in his 1918 publication on the legal aspects and implications of Barbary piracy that 'the history of the international relationship of the European Christian powers with these Muhammedan powers of North Africa has never been worked out'.[39] Much like the initial European response to piracy in Southeast Asia, there was no concerted effort to address attacks on merchant trade in the southern Mediterranean. This lack of continuity resulted in minimal external threats to corsairing operations along the Barbary Coast, which enabled the states to solidify regional maritime power bases and more importantly prestige. By the mid-nineteenth-century, the Barbary States had reached the pinnacle of their power in the Mediterranean facilitated by rivalry between England, France, and Turkey and the maritime weakness of Spain and Italy.[40]

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[37] David S. Jacks & Krishna Pendakur, 'Global trade and the maritime transport revolution' in *The Review of Economics and Statistics*, xcii, no. 4 (Nov. 2010), p. 745.
[38] R. Earnest Dupuy & William H. Baumer, *The little wars of the United States* (New York, 1968), p. 28.
[39] J.E.G. de Montmorency, 'The Barbary states in international law' in *Transactions of the Grotius Society, Problems of the War: Papers read before the Society in the Year 1918*, iv (1918), p. 89.
[40] Ellen Churchill Semple, 'Pirate coasts of the Mediterranean Sea' in *Geographical Review*, ii, no. 2 (Aug. 1916), p. 150.

Fig. 1.2
Map of Mediterranean Sea/ North Africa (1885)

Southeast Asia

The piratical situation along the North African coast mirrored that of Southeast Asia in several ways (see fig. 1.3). Like North Africa, maritime piracy expanded extensively in the region during the 1800s and directly threatened western naval and mercantile ambitions fuelled by an exponential growth in the volume of trade between Europe and Southeast Asia. It is estimated that from 1750 to 1800 spice imports from the Far East into Europe tripled.[41] The fledging nation of the United States sent on average 39 vessels per year to the Orient from 1815 to 1820.[42] In 1832, the total figure for both

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[41] Anthony Reid, 'An "age of commerce" in Southeast Asian history' in *Modern Asian Studies*, xxiv, no. 1 (Feb. 1990), p. 7.

[42] James A. Wombwell, 'The long war against piracy: historical trends' in *Combat Studies Institute Occasional Paper*, no. 32 (May 2010), p. 105.

imported and exported trade between the United States and China, for example, amounted to almost US$7 million, which exceeded that of all nations except the United Kingdom.[43] This influx of commercial maritime activity in Southeast Asia and the wider region resulted in an increase in piratical activity from indigenous coastal communities for whom maritime raiding was deeply interwoven into the economic and political fabric of society.

Indeed, there were several ethnic pirate tribes operating in the area known as the Sulu Sultanate during the nineteenth-century. Most notable among these were the Iranun (or Illanun), the Balangingi Samal and the aristocratic Taosug hailing from the Sulu archipelago in the southern Philippines. The second significant group were from the Malay states situated in the Riau Archipelago at the southern end of the Strait of Malacca. The substantial growth in east-west trade meant that these regions 'depended on systems of trading, raiding and slaving for the development and evolution of statecraft and societal structure' with an estimated 68,000 men labouring each year alone in the Sulu Zone's tripang fisheries, for example.[44] In the South China Sea, between 1802 and 1810, the organised and thriving pirate group the Guangdong Confederation reportedly exhibited more control in maritime regions than that of the government or the local elites.[45] The federation reached the height of its power in 1809 with 40-60,000 followers and hundreds of vessels at its disposal.[46] Initially these maritime raiders of the Sulu Sultanate and the South China Sea avoided plundering the well-armed European merchant vessels, but with the evolving network of trade and abundance of potential high value targets, attacks on European vessels steadily increased in the early decades of the nineteenth-century.

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[43] Robert E. Johnson, *Far China station: the U.S. Navy in Asian waters 1800-1898* (Maryland, 1979), p. 3; Charles O. Paullin, *American voyages to the orient, 1690-1865: an account of merchant and naval activities in China, Japan and the various Pacific islands* (Maryland, 1971), p. 23.

[44] James F. Warren, 'Slavery in Southeast Asia' in Seymour Drescher & Stanley L. Engermen (eds.), *A historical guide to world slavery* (New York, 1998), pp 3-80.

[45] Robert J. Antony, 'Piracy on the South China coast through modern times' in Bruce A. Elleman, Andrew Forbes & David Rosenberg (eds.), *Piracy and maritime crime: historical and modern case studies* (Rhode Island, 2010), p. 41.

[46] Antony, 'Piracy on the South China coast through modern times', p. 39.

Events such as the Opium War (1839-42), the Arrow War (1856-60) and the Taiping Rebellion (1850-64) contributed to a maritime climate conducive to an expansion of piratical activity, which reached its height in the decades following these conflicts. In 1853 alone, there were 70 reported incidences of piracy in the waters near Hong Kong.[47] The Opium War ended with the signing of the Treaty of Nanking in 1842, which surrendered Hong Kong to Britain on a 99-year lease and opened four more regional ports to British trade. Similarly, the Arrow War and the Taiping Rebellion opened five more ports to trade. Grace Fox accurately articulated the maritime climate following the turmoil of the wars. She stated: 'By 1854 the civil disturbances in China added rebels who were alternatively pirates to the usual supply of marauders in the waterway between Hong Kong and Canton [...] foreign ships were attacked and "trade was at a standstill"'.[48] The problem was exacerbated by weak Chinese coastal governance and restrictive rules of engagement for Royal Navy anti-piracy operations at the insistence of Vice Admiral William Parker.[49]

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[47] Sheilah E. Hamilton, *Watching over Hong Kong: private policing 1841-1941* (Hong Kong, 2008), p. 93.
[48] Grace Fox, *British admirals and Chinese pirates 1832-1869* (Connecticut, 1973), p. 123.
[49] Fox, *British admirals and Chinese pirates*, pp 98-9.

Fig. 1.3
Map of European settlements in Southeast Asia (1890)
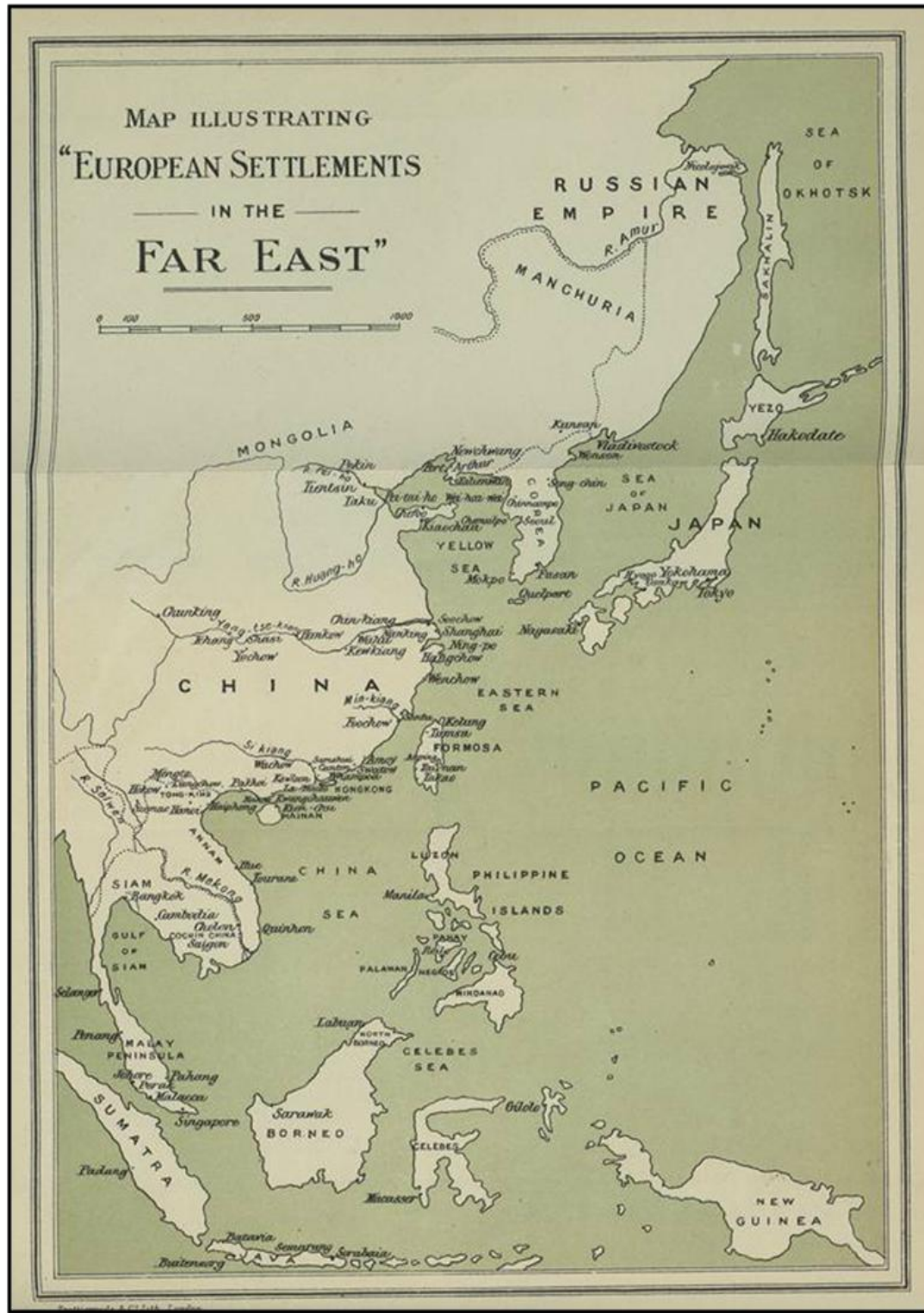
Suppression of maritime piracy in the nineteenth-century

Technological innovations

Several factors contributed to the suppression of piracy in both the southern Mediterranean and Southeast Asia by the late nineteenth-century. At sea, the advent of steam power greatly enhanced western anti-piracy operations. The first steam engine was successfully tested in the eighteenth-century and steam was harnessed for ocean-going vessels on an extensive basis by the mid-nineteenth-century. These vessels could sail without the restrictive reliance on wind and therefore at a greatly increased speed. Such innovations also resulted in a kind of 'technological naval race' between European sea powers to maintain superior naval capability, which contributed albeit indirectly to containing criminal disorder at sea. The first screw-driven ship successfully crossed the Atlantic Ocean in 1830 and quickly became the preferred method of propulsion. By 1855, for example, 174 ships of the Royal Navy had been fitted with the new screw propulsion system. [50] Aside from advancements in naval structural technology, innovation in naval armaments and armoury from wood hulls to iron clad hulls in the 1850s and later steel also enhanced the ability of navies to engage pirate bases and vessels in North Africa and Southeast Asia.

The evolution from 'solid shot' to exploding shells initiated by French gunner Colonel Henri-Joseph Paixhans became standard on almost all European Vessels by the 1850s (see fig. 1.4). This evolution significantly aided in both landward and seaward counter-piracy operations. At sea, devastating damage could be inflicted on the traditional wooden vessels still utilised by most indigenous pirate groupings while ashore higher levels of damage could be inflicted against pirate bases and strongholds from the sea. The 1860s also saw the creation of revolving turret gun and the modern self-propelled torpedo. The combination of these technological advancements and innovations gave counter-piracy forces a significant advantage over the more traditionally equipped pirate,

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[50] John Timbs, *Wonderful inventions: from the mariner's compass to the electric telegraph cable* (London, 1868), p. 270.

many of whom still employed traditional muzzle-loading cannon into the early twentieth-century.[51]

The nineteenth-century witnessed not only a revolution in naval and military technology but also in communications. A more interconnected and globalised system began to emerge that facilitated enhanced and timely communication on maritime threats and activities among western nations. Samuel Morse's system of telegraph transmission, known as 'Morse code', was developed in 1835, which along with the invention of the first electromagnetic telegraph in 1837 greatly assisted in the exchange of information. These technological advances were augmented by the emergence of a worldwide information collection service headed by the marine insurer Lloyds of London that produced the shipping paper *Lloyds List* three times per week.[52] The creation of a more fluid information-exchange system promoted a degree of reciprocity in terms of keeping trading routes free from pirate attacks and developing continuity in suppressing the threat.

Fig. 1.4
Paixhans naval shell gun
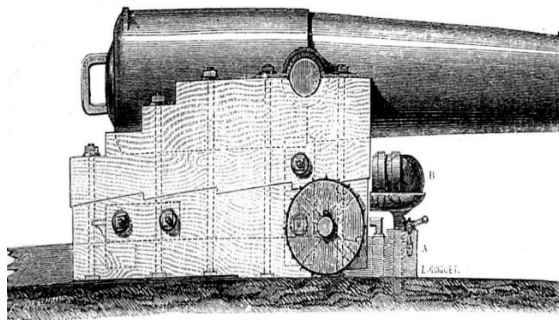
Source: Musée de la Marine, France.

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[51] Benerson Little, *Pirate hunting: the fight against pirates, privateers, and sea raiders from antiquity to the present* (Virginia, 2010), p. 269.
[52] Earle, *The pirate wars*, p. 233.

Imperialist expansion and solidification

The expansion and consolidation of European colonial interests was arguably the prime reason for the suppression of piracy in North Africa and Southeast Asia by 1900. Peter Earle described how 'The expanding tentacles of European empires gradually eliminated more and more of the bases and havens on which pirates depended until, by the late nineteenth-century, there was hardly anywhere left on the globe which was safe from imperialist attention'.[53] Indigenous pirate groups no longer benefited from the safe havens that littoral waterways and land bases once offered. Events such as the Crimean War, for example, encouraged Britain to strengthen its maritime presence in Southeast Asia to maintain freedom of passage between the Indian Ocean and the South China Sea. This increased naval presence had a direct impact on the fluctuation of piracy in the region and illustrated how external imperialist concerns contributed to establishing constabulary order at sea.

Britain's need to suppress piratical attacks on its seaborne trade was expedited by the economic slump that followed the end of the Napoleonic Wars. According to one commentator: '[...] after Waterloo economic realities asserted themselves [...] the war-ravaged continent of Europe was in no condition to make large purchases of foreign goods and the inflated British economy collapsed'.[54] Despite the reduction in naval assets following the war, the Royal Navy possessed a substantial fleet unrivalled by any other at that time, which led to the conception of 'Pax Britannica'. By January 1821, Britain held 143 serviceable naval vessels manned by over 20,000 personnel, which could be augmented at relatively short notice.[55] Lessons learned during the Napoleonic Wars, such as the ability to deploy and sustain numerically inferior naval assets on a global scale, expanded the intellectual and strategic capabilities of the Royal Navy and enhanced its ability to counter piracy.[56]

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[53] Earle, *The pirate wars*, p. 11.
[54] N. Gash, 'After Waterloo: British society and the legacy of the Napoleonic Wars' in *Transactions of the Royal Historical Society*, xxviii, no. 5 (1978), pp 145-6.
[55] Earle, *The pirate wars*, p. 231.
[56] Ian Speller, 'The war at sea in the age of Napoleon and the development of maritime strategy' in *A Guerra No Tempo De Napoleáo: antecedentes, campanhas militares e impactos de longa duracáo - Acta/ International Commission of Military History*, no. 35 (Sept. 2009), p. 389.

The suppression of piracy was also used as justification for imperialist expansion. According to Stefan Eklöf: 'it was easier to convince public opinion at home [...] of the need to suppress piracy and safeguard the oceans for British trade rather than of the justice in conquering and subjugating indigenous rulers and tribes'. [57] This rationalisation may have been particularly effectual given the prevailing economic circumstances. Captain Henry Keppel's 1846 publication, for example, expanded on this and offered some insight into Britain's colonial perspective during the nineteenth-century. He stated:

> Piracy must be put down, slavery must be effaced, industry must be cherished and protected; and these objects [...] may be accomplished; and we may further learn [...] that from the experience even of "a little war", an enlightened observer may deduce the most sound data on which to commence a mighty change, leading, probably, to the happiness of millions, and the foundation of colonial empire.[58]

Abolition of the slave trade

The Treaty of Paris in 1814 agreed to 'induce all the powers of Christendom to decree the abolition of the Slave Trade, so that the said trade shall cease universally, It shall cease definitively, under any circumstances [...] in the course of five years; and that during the said period, no slave merchant shall import or sell slaves [...]'. [59] A supplementary act in 1824 explicitly described acts of slavery as piracy. It declared that any British subject was guilty of piracy 'who upon the high seas [...] carries away any person as a slave'.[60] Such initiatives harnessed continuity among European powers in suppressing the closely interwoven acts of slaving and piracy that existed in North Africa and Southeast Asia. As previously mentioned, the proliferation of slaves was intrinsic aspect of economic and political control in both Southeast Asia and along the Barbary Coast. The intensification of British, Dutch and Spanish anti-slavery operations

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[57] Stefan Eklöf, *Pirates in paradise: a modern history of Southeast Asia's maritime marauders* (Copenhagen, 2009), p. 11.
[58] Capt. Henry Keppel, *The expedition to Borneo of HMS Dido for the suppression of piracy: with extracts from the journal of James Brooke Esq., of Sarawak* (New York, 1846), p. 74.
[59] 'The Treaty of Paris: article I of additional articles', 30 May 1814 (C.I.H.M., microfiche series, p. 48439).
[60] Philip Gosse, *The history of piracy* (London, 1932), p. 317.

in Southeast Asia, for example, massively reduced the number of slaves transiting the region by the 1880s and consequently incidents of piracy.[61]

Abolition of privateering

Much like the abolition of slavery four decades previous, the outlawing of privateering did much to suppress the level of piratical activity worldwide. Following the end of the Crimean War and the subsequent Congress of Paris, seven nations (the United States a notable exception) signed the Paris Declaration in 1856. This included a declaration respecting maritime law that effectively outlawed privateering from the world's oceans. The text of the declaration explicitly stated that the 'Plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn declaration (that) Privateering is, and remains, abolished'.[62] By removing the suggestion of legality or legitimacy from piratical acts, the potential ambiguity in counteracting it was also removed. This led to more comprehensive anti-piracy legislation influenced by the law of nations and the idea of universal jurisdiction.

North Africa

By 1830, much of the Barbary Coast was under the direct administration of European colonial powers. This resulted in the near eradication of pirate bases and networks in that region. Unilateral counter-piracy operations began in 1801 with the First Barbary War or the Tripolitan War, which saw the fledging American navy launch a largely ineffectual campaign to suppress attacks on their merchant vessels off the North African coast. A U.S. Mediterranean naval squadron commanded by Commodore Richard Dale arrived off the Tripolitan coast in July 1801. The U.S. Fleet consisted of the 44-gun frigate *President*, the 36-gun *Philadelphia* and the 32-gun *Essex* alongside the 12-gun schooner *Enterprise*.[63] The war ended in 1805 with the surrender by the Pasha of Tripoli

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[61] Warren, 'A tale of two centuries', p. 11.
[62] 'The Declaration of Paris, 1856' in *The American Journal of International Law*, i, no. 2, (Apr. 1907), pp 89-90.
[63] Dudley Knox, *A history of the United States Navy* (New York, 1936), p. 62.

Yusuf Karamanli and an agreement to stop attacking American vessels. Despite initial successes and a protracted naval blockade of Tripoli, piratical attacks continued.

Further predations against American and British vessels led to the Second Barbary War in 1815 alongside an acknowledgment by western nations of the need to suppress the Barbary corsairs entirely. The most significant engagement of the war and a turning point in the suppression of Barbary piracy was the assault upon Algiers in August 1816. The 'bombardment of Algiers' led by an Anglo-Dutch squadron, under the command of Lord Exmouth, destroyed all but two of the Algerian warships and reduced much of the city fortifications to rubble. The offensive severely hampered the Barbary States' ability to launch maritime raids in the region; it did not, however, entirely suppress incidents of piracy. According to Peter Earle: 'The Algerian and Tunisian Corsair fleets were both still active in the 1820s but by now the writing really was on the wall'.[64]

The 'writing' came in the form of the French invasion of North Africa and conquest of Algiers in 1830 that ended over three centuries of autonomous Algerian rule. Following the failure of a French blockade, France dispatched a fleet from Toulon carrying 37,000 infantry that landed in Algiers on 13 June 1830. An article in the contemporary British newspaper, *Northern Star,* commented: 'Our own piracy committed on the Chinese has furnished a "precedent" for the destruction of Tangiers, and for the occupation of any portions of the coast of Africa that the French may desire'.[65] Within weeks of the French invasion, the Dey of Algiers capitulated. According to Earle: 'A month after the French conquest of Algiers, the Bey of Tunis renounced corsair activity "entirely and for-ever" and abolished the institution of Christian slavery [...] a few days later the pasha of Tripoli followed suit'.[66] A further aggressive counter-piracy operation by the Spanish navy off the Moroccan coast in 1854-56 resulted in the capture of 44 Moroccan boats that paralysed coastal trade and forced local leaders to renounce piracy.[67] This

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[64] Earle, *The pirate wars*, p. 218.
[65] Shijie Guan, 'Chartism and the First Opium War' in *History Workshop*, no. 24 (Autumn 1987), pp 17-31.
[66] Earle, *The pirate wars*, p. 252.
[67] C.R. Pennell, 'The geography of piracy: northern Morocco in the mid-nineteenth century' in idem, *Bandits at sea: a pirates reader* (New York, 2001), p. 61.

effectively ended three centuries of maritime raiding in the proximal waters of European nations. Earle observed that 'the holy war in the Mediterranean was over and so was piracy throughout the Western world'.[68]

Southeast Asia

As was the case in the southern Mediterranean Sea, initial disparity in anti-piracy efforts between Dutch, British and Spanish governments in Southeast Asia dissipated during the 1860s and a concerted multilateral approach was initiated. The consolidation of conflicting geographic boundary claims was the key enabler for the suppression of piracy in the region where, for example, the British colonial authorities recognised the Dutch claim over the Riau Archipelago and similarly the Dutch recognised the Spanish claim over the Sulu zone.[69] The economic depression between 1830 and 1840 also motivated counter-piracy activity in the region as maintaining the regular, uninterrupted flow of merchant trade was crucial. Aside from European powers, the United States Navy was also actively involved in anti-piracy operations in the South China Sea between 1820 and 1840.

Prior to consolidating any form of direct rule in the region, the principal colonial powers of Britain and Holland were firmly engaged in vigorous commercial competition and consequently offered little continuity in addressing the growing threat from pirates. Much like the situation along the North African coast, the piratical threat would need to be effaced in order to regularise, rationalise and stabilise regional merchant trade. By 1846, the problem had grown to such an extent that a new and more aggressive multilateral response was initiated.

The newfound continuity among western powers resulted in a number of mutually beneficial aggressive multilateral counter-piracy operations in Southeast Asia. Much like operations along the Barbary Coast, technological advances in naval weaponry and armaments amplified these efforts. The Battle of Bantung Maru of 31 July 1859

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[68] Pennell, 'The geography of piracy […]', p. 253.
[69] Ger Teitler, 'Piracy in Southeast Asia: a historical comparison' in *MAST Maritime Studies*, i, no. 1 (2002), p. 71.

illustrated the effectiveness of the British and American strategy of targeting susceptible land bases and safe havens used by the pirates. This strategy was particularly effective given the archipelagic nature of the region and the difficulties this presented in engaging pirates at sea. The battle witnessed British forces decimate Dayak pirate strongholds from the sea, which resulted in an estimated 800 pirates killed and 60 pirate vessels destroyed.[70] The decisive engagement meant that pirates operating in the Borneo region never recovered.[71]

Both the British and U.S. Navy also launched joint operations a number of times against Chinese pirates. In 1849, for example, the U.S. sloop *Preble* supported British naval forces in the destruction of two pirate havens and the capture of 57 junks.[72] Aggressive anti-piracy action continued unabated following the Opium War in 1853 and by November 1854 an anti-piracy coalition force was established which consisted of American, British, Chinese and Portuguese naval vessels with the addition of Dutch and Prussian vessels in the mid-1860s. This was bolstered by the signing of the Treaty of Tienstin in June 1858, which granted British and American warships access to Chinese waters in 'hot pursuit' of pirates.[73]

In 1866, the British government introduced new laws, which enforced tighter restrictions on all junks entering and leaving Hong Kong harbour. This was according to one commentator: '[...] the final step in Britain's fight against East Asian piracy'.[74] Britain also sought to provide Chinese authorities with the necessary tools to combat piracy themselves and presented them two gunboats to use in anti-piracy patrols in 1869. By 1870, Britain had scaled back anti-piracy operations in the South China Sea. This was a clear indication of the success and suppression of incidents in the region. By the

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[70] Wombwell, 'The long war against piracy', p. 102.
[71] David Cordingly (ed.), *Pirates: terror on the high seas from the Caribbean to the South China Sea* (Atlanta, 1996), p. 198.
[72] David F. Long, *Gold braid and foreign relations: diplomatic activities of United States naval officers, 1798-1833* (Maryland, 1988), p. 218.
[73] Fox, *British admirals and Chinese pirates*, p. 143.
[74] Bruce A. Ellerman, 'The Taiping Rebellion, piracy and the Arrow War' in Bruce A. Ellerman, Andrew Forbes, & David Rosenberg (eds.), *Piracy and maritime crime: historical and modern case studies* (Rhode Island, 2010), p. 61.

time Spain ceded the Philippines to the United States in 1898, piracy was essentially non-existent in Southeast Asian waters, particularly when compared to a century previous. Gosse described how the Malay archipelago of Southeast Asia was 'the last stronghold of piracy' and that 'the breakup of its gangs finished, probably for ever, piracy as it had existed for many thousands of years'.[75]

Pre-war period, 1900-14

The suppression of piracy in North Africa and Southeast Asia by the end of the nineteenth-century was not exceptional. It was a materialisation of the spread of colonial influence and solidification spread across the globe. By 1900 therefore, piratical activity had significantly declined in these regions. This was to remain the status quo for almost the next eighty years. Limited statistical information on piracy exists between 1900 and 1980, a reflection in itself of the dwindling relevance of the issue. Quantitative data is typically collated as a reactionary process, for example, to highlight an evolving threat to influence policy and the allocation of financial or military resources to address that threat. In the early 1980s, for example, the I.M.O. noted 'with great concern' the upsurge in incidents involving acts of piracy and armed robbery against ships and consequently began collating statistics to quantify the level of the threat. [76] Prior to this, the reports simply did not exist in sufficient number to merit a statistical record.

While it might be reasonable to assume that the disorder generated by the First & Second World War encouraged crime like piracy to flourish, the opposite held true. Valuable maritime commerce was routinely either escorted by heavily armed naval vessels or travelled in convoy, which negated the prospect for piracy in any traditional sense. The existential threat to maritime commerce came in the form of a 'guerre de course' by belligerent navies bent on the destruction of this commerce rather than the acquisition of it.

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[75] Gosse, *The history of piracy*, p. 295.
[76] 'Measures to prevent acts of piracy and armed robbery against ships', 17 Nov. 1983 (I.M.O., Maritime Safety Committee (M.S.C.), A/RES/545/13/1983, p. 1).

During the early years of the twentieth-century, localised or 'micro' threats such as piracy dwindled in relevance to western governments and naval leaders. The emergence of large technologically advanced navies alongside rising political tensions shifted the focus to 'macro' concerns and the threat of a globalised conflict. Contemporary naval discourse during these years was heavily influenced by the work of maritime strategists such as Alfred Thayer Mahan and Julian Corbett who were concerned with wartime issues of grand strategy such as decisive battle and the command of the sea though naval superiority.

The late nineteenth and early twentieth-century witnessed several naval engagements prior to the official outbreak of the First World War primarily in the Pacific arena. These included the Sino-Japanese War (1894-5), the Spanish-American War (1898) and the Russo-Japanese War (1904-5). Such engagements diverted attention from micro-maritime or constabulary issues like piracy as they were superseded by more nefarious threats to economic security. That is not to say that piracy did not still exist in small isolated pockets or that it was entirely overlooked in contemporary pre-war deliberations. Indeed, Herman A. Heydt wrote in his introduction to Oscar Herrmann's 1902 work *Pirates and piracy* that 'Although it has passed the zenith of its perverse glory, and modern naval development has made it impracticable and impossible, vestiges of piracy remain in the Malay Archipelago and the China Sea'.[77]

Fig. 1.5
Relative strength of the British, French and Russian navies built and building 1893/4

	Britain	France	Russia
Battleships	45	34	15
Coast defence vessels	17	9	14
Cruisers	130	65	28
Torpedo-boats/ destroyers	45	13	9
Total	**237**	**121**	**66**

Source: P.H. Colomb, 'England in the Mediterranean' in *The North American Review*, clviii, no. 450 (May 1894), p. 589.

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[77] Herrmann, *Pirates and piracy*, p. 7.

Newspapers, parliamentary debates & admiralty records

Contemporary newspaper and parliamentary reports from the period suggested a small-scale piracy problem on the West River route between Canton and Hong Kong between 1900 and 1914. In 1905, it was reported that 'China is probably the last of the nations with any claim to the rank of an important power which has not long since cleared its coasts and waters of these sea robbers'.[78] Robert J. Anthony described how a localised resurgence of piracy occurred along the Southern coast of China following the revolution of 1911; however, he affirmed that 'despite the disorder, there was still a flourishing sea trade out of Hong Kong, Shanghai and other Chinese ports'.[79] This appeared indicative of piracy during the pre-war period as a largely localised and reactive problem rather than a material threat to shipping.

The issue of maritime piracy arose several times in House of Commons proceedings between 1900 and 1914. Concern was expressed that British vessels were coming under attack from the Chinese pirates on the Canton and West River and in the Persian Gulf. This resulted in the establishment of a counter-piracy patrol by the Commander-in-Chief on the China Station in November 1907. The British vessels were withdrawn shortly afterwards, however, following the initiation of an 'effective preventive service' by Chinese authorities.[80] The Admiralty also set aside funds for the construction of two river gunboats for counter-piracy patrols along the Yangtze River in 1911 that were never commissioned. This reflected the relatively trivial scale of the problem during the pre-war period.

The most significant act of piracy reported during this period appeared to be that on the British steamer *Tai-On* by Chinese pirates in 1913. This attack called into question Britain's ability to protect its merchant assets in the region. Winston Churchill, then First Lord of the Admiralty, was questioned on the matter in May 1914. Sir Arthur Fell enquired: 'if the absence of river gunboats in Chinese waters was the indirect cause of

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[78] *Penny Illustrated Paper and Illustrated Times*, 16 Dec. 1905.
[79] Antony, 'Piracy on the South China coast through modern times', p. 45.
[80] *The parliamentary debates*, fourth series, 1892-1908 (clxxxiv, London, 1908).

the destruction of the British steamer "Tai On" by pirates?' Churchill responded that 'the British patrol of the Canton Delta is believed to be sufficient for its purpose'.[81]

Despite brief enquires in the Commons over relatively isolated incidents, it is apparent piracy was not an issue of material consequence for either the British government or Admiralty during this period. In 1914, according to the statement by the First Lord of the Admiralty: 'The disturbed state of China made it necessary for a short time last summer to resume some of the naval precautions which were in force during the revolution […] with the exception, however, of a limited patrol of the West River by torpedo boats as a precaution against piracy, the dispositions of the station are now normal'.[82]

Maritime writers

To construct a more comprehensive representation of how maritime piracy manifested in the years prior to the First World War and in light of an absence of reliable statistical information; a selection of works from late-nineteenth and early twentieth-century maritime writers and theorists is analysed. The first writer selected is arguably the most influential naval theorist of the time - Alfred Thayer Mahan. Taking three of Mahan's works: *The influence of sea-power upon history 1660-1783* (1892); *Naval administration and warfare* (1908) and *Naval strategy: compared and contrasted with the principles and practices of military operations on land* (1911), it is apparent maritime piracy was an antecedent historical matter.[83] At no time did Mahan highlight or suggest any contemporary analogous issue within these combined works. In his discussion on the 'elements of sea power', for example, Mahan described how 'In the most active days of colonising there prevailed on the sea a lawlessness the very memory of which is now almost lost […]'.[84]

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[81] *The parliamentary debates*, fifth series, *House of Commons*, 1909-42 (lxii, London, 1914).
[82] *Statement of the First Lord of the Admiralty explanatory of the Navy Estimates 1914-15*, 9, [Cd. 7302], H.C. 1914, liii, 297.
[83] A.T. Mahan, *The influence of sea power upon history 1660-1783* (London, 1892); A.T. Mahan, *Naval administration and warfare: some general principles with other essays* (London, 1908); A.T. Mahan, *Naval strategy: compared and contrasted with the principles and practice of military operations on land* (London, 1911).
[84] Mahan, *The influence of sea power upon history 1660-1783*, p. 28.

Similarly, maritime historian and geo-strategist Sir Julian Corbett addressed piracy in his major theoretical work, *Some principles of maritime strategy* (1911), in terms of its historical role as a tool of the state or as a substitute to state naval power describing it as 'a primitive and unscientific conception of war'.[85] Corbett's research into Sir Francis Drake, the renowned English privateer, provides an interesting source for attempting to gauge the level of piracy during this period. Corbett published three works on Drake, namely, *Sir Francis Drake* (1890), *Drake and the Tudor Navy, with a history of the rise of England as a naval power* (1899) and *The successors of Drake* (1900). Collectively, these works reveal little about pre-war contemporary piracy. Corbett did refer to the lack of an accepted definition of piracy in Drake's time and stated: '[...] still at that time International Law had not so nicely ascertained the limits of piracy and irregular reprisal'.[86] For Corbett, like Mahan, maritime piracy did not appear a topic worthy of consideration or a threat worthy of analysis, which indicated it was an issue of nominal relevance at that time.

An analysis of John Colomb's 1902 publication *British dangers* reaffirmed that piracy was a negligible threat to British 'over sea business' at the time of writing.[87] Colomb, much like Mahan and Corbett, highlighted that the primary 'macro' threat to maritime commerce during the pre-war period was destruction by belligerent navies and not predation by maritime criminals. Sir Charles Edward Callwell 1902 publication *Military operations and maritime preponderance: their relations and interdependence further supports this thesis.* Callwell wrote in relation to the unchecked privateering and piratical activity prior to the Declaration of Paris: 'It seems extremely doubtful if the experiences in those seas a century ago are altogether applicable to the present day'.[88] However, Callwell (accurately) prophesised that: '[...] occasions may yet arise in [the] future when the seizure of the base or bases will prove to be the best means of checking an undoubted evil'.[89]

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[85] Julian S. Corbett, *Some principles of maritime strategy* (London, 1911), p. 92.
[86] Julian S. Corbett, *Sir Francis Drake* (London, 1890), p. 48.
[87] John Colomb, *British dangers* (London, 1902), p. 13.
[88] Charles E. Callwell, *Military operations and maritime preponderance: their relations and interdependence*, ed. Colin S. Gray (Maryland, 1996), p. 102.
[89] Callwell, *Military operations and maritime preponderance*, p. 102.

Collectively these publications indicate, at least from the perspective of the authors, that maritime piracy was an issue of nominal relevance for western navies and governments in the early years of the twentieth-century. This is consistent with the widespread suppression of piracy on a global scale in the late nineteenth-century. It is clear that macro-naval concerns were at the forefront of western deliberation in the years prior to the First World War illustrated by, for example, the launch of the first *Dreadnought* battle ship in 1906. By the outbreak of hostilities in 1914 Britain had an estimated 609 warships (built and building), which outnumbered that of the closest naval rivals of the United States, France, Japan and Germany (see fig. 1.6). With such large, expansive global naval presence, traditional forms of piracy were to remain inconsequential during the years of the First World War.

Fig. 1.6
Naval strength, 1914

	Britain	Germany	France	Austria-Hungary	Italy	Russia	Japan	United States
Dreadnoughts (available & building)	35	20	12	6	3	7	4	14
Battlecruisers (available & building)	10	7	0	0	0	4	4	0
Semi and Pre-dreadnoughts	40	22	20	9	6-8	10	10	23
Coastal defence ships	0	8	1	3	0	1	4	0
Armoured cruisers	34	8	19	2	7	6	12	12
Protected cruisers	52	17	19	3	11	8	15	22
Scout & Light cruisers	35	16	0	3	3	0	6	0
Destroyers	221	90	81	18	33	42	50	50
Torpedo boats	109	115	187	65	71-85	75	0	23
Submarines	73	31	67-75	5	20-22	26	12	18
Total	**609**	**334**	**410**	**113**	**163**	**179**	**117**	**162**

Source: P. G. Halpern, *A naval history of World War I*, (London, 1994), pp 7-20.

Interwar period 1919-39

Newspapers, Admiralty records, parliamentary debates

In the years following the end of the First World War, there was a renewal of interest, particularly in academic and legal circles, in micro-maritime and peacetime issues such as piracy. However, from a strategic and naval perspective piracy remained a negligible issue, which is reflected in interwar naval and academic deliberations. By 1919 according to a report in *The Times*: 'Pirates used to be possible because of the immensity of the sea, but now men can talk over its distances as if over a dinner table, and the pirate has no more chance than a highway man in London'.[90] For Britain, securing economic and infrastructural recovery following the First World War meant maintaining and securing SLOC and suppressing threats to these interests such as piracy. In 1920, the British cabinet in its conclusions stated it was 'determined to maintain the navy at a standard of strength which shall adequately secure the safety of the Empire and its maritime communications'.[91]

In the South China Sea, for example, the British naval presence 'kept piracy to a minimum' reflecting the reach of British naval authority during these years.[92] Indeed, the British government abolished the deployment of naval and military armed guards on their Far-East merchant ships in April 1930 as according to the then First Lord of the Admiralty:

> These pirates travel in a ship disguised as passengers […] responsibility for dealing with this form of piracy rests primarily with the shipping companies and with the civil authorities on shore. His Majesty's Navy assists in the suppression of piracy by patrolling the vicinity of such known bases as Bias Bay, in order to intercept pirated ships before they are brought in and abandoned.[93]

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[90] *The Times*, 04 Sept. 1919.

[91] 'Conclusions of a meeting of the cabinet held at 10 Downing St. on Wednesday 8th December 1920' (B.N.A., CAB/23/23, p. 3).

[92] Charles W. Koburger Jr., 'Selamat datang, kapitan: post-World War II piracy in the South China Sea' in Bruce A. Elleman, Andrew Forbes, & David Rosenberg (eds.), *Piracy and maritime crime: historical and modern case studies* (Rhode Island, 2010), p. 66; The Royal navy had 302 warships and 806 auxiliaries under order at the time of the armistice in November 1918, see: *The parliamentary debates*, fifth series, *House of Commons*, 1909-42 (cxviii, London, 1918).

[93] *The parliamentary debates*, fifth series, *House of Commons*, 1909-42 (ccxxxvi, London, 1930).

This also illustrated the relative sea-control exerted by the Royal Navy given that pirates typically disguised themselves as passengers before commandeering a ship, which indicted a likely reticence to approach from the sea.[94] Given the proximity of passengers and crew to this type of piracy, fatalities were occasionally reported. A description in the *Royal United Services Institution Journal* dated 1930, for example, reported a pirate attack on the S.S. *Hai Ching* in December 1929 during which an estimated thirty passengers and crew were killed.[95] Similarly, in Somalia and the Horn of Africa British colonial control maintained a significant air presence and naval control throughout the 1920s.[96]

An extract from *The Times* entitled 'Modern Chinese pirates' recounted the tale of a of a small opportunistic act of piracy '15 minutes out of the little West River port of Pekhai' in December 1929. It stated that 'the pirates were an amateur lot, several being members of a semi-Bolshevised crew sacked some weeks before for insubordination [...] a simple ruse finished their ebbing spirits'.[97] This affirmed that piracy had not disappeared during the interwar years but instead, according to Phillip Gosse, threatened only 'in an occasional and bastard form' apparently as a derivative of the Chinese civil war of 1927 to 1936.[98] Gosse went so far as to (incorrectly) predict that maritime piracy was never likely to return:

> It is hard to conceive that even if our civilisation is overturned and lawlessness again becomes law, the pirate will ever emerge again [...] it seems fantastic to think of [...] peaceful steamer lanes haunted by buccaneers from little island republics of their own creation whiter the fleets of the nations dare not penetrate.[99]

Such statements illustrated how maritime piracy had evolved into an issue of historical curiosity during the interwar years rather than an extant threat to shipping.

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[94] *The parliamentary debates*, fifth series, *House of Commons*, 1909-42 (ccxxxiii, London, 1930).
[95] 'Piracy of the S.S. Hai Ching' in *RUSI Journal*, lxxv, no. 498 (1930), pp 383-88.
[96] Gary E. Weir, 'Fish, family and profit: piracy and the Horn of Africa' in Bruce A. Elleman, Andrew Forbes, & David Rosenberg (eds.), *Piracy and maritime crime: historical and modern case studies* (Rhode Island, 2010), p. 207.
[97] *The Times*, 12 Dec. 1929.
[98] Gosse, *The history of piracy*, p. 297.
[99] Ibid. p. 298.

Beginnings of legislative reform

However, not all interwar commentators agreed with this hypothesis. Reflecting the contention that piracy had been suppressed to the point of near elimination by the end of the nineteenth-century, Edwin D. Dickinson composed an article for the *Harvard Law Review* in 1925 that asked 'Is the crime of piracy obsolete?'. For Dickinson the threat of maritime piracy was insignificant but prophetically, a tangible future concern: 'While the occasions for invoking ["the law of piracy"] is less frequent now than formerly, it may still be made a potent factor in preventing lawlessness upon the seas [...] It belongs emphatically to the law in reserve rather than to the law in history'.[100] Indeed, it was at Harvard Law School that significant debates and elucidations took place on piracy during the interwar period, which culminated in the 'Harvard draft convention on piracy' in 1932. As previously mentioned, the Harvard draft was a prelude to the more comprehensive 1958 Geneva Convention on the high seas. Both treatises attempted to codify the rules of international law relating to the high seas and address the deficiencies and disorder of previous international piracy legislation.[101]

The Harvard draft was inspired by previous interwar attempts at codifying international law in relation to piracy such as the 'Roumanian draft for the Suppression of Piracy' in 1926 and 'Matsuda's draft Provisions for the Suppression of Piracy' that same year. Indeed, the complexities of codifying and legislating maritime piracy emerged as a central issue within legal circles during these years (see fig. 1.7). This was likely motivated by the legal ambiguity surrounding several high profile U.S. trials for piracy during the nineteenth-century and more immediately by the hijacking and pillaging of ships carrying illegal alcohol during prohibition and the potential applicability of piracy law.[102] This illustrated that during periods of relative peace, persistent micro-issues such as maritime piracy, tended to receive a disproportionate amount of consideration.

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[100] Edwin D. Dickinson, 'Is the crime of piracy obsolete?' in *Harvard Law Review*, xxxviii, no. 3 (Jan. 1925), p. 360.
[101] 'Geneva Convention on the high seas', p. 2.
[102] See for example: United States v. Smith, 18 U.S. 153 (1820); United States v. Klintock, 5 Wheat. 144 (1820); United States v. David Bowers and Henry Mathews, 5 Wheat. 184 (1820); United States v. Holmes, 5 wheat. 412 (1820); Brig Malek Adhel v. United States, 2 How. 210, 238 (1844); United States v. Rodgers, 150 U.S. 249 (1893).

Fig. 1.7

Articles where 'piracy' was addressed explicitly in the *American Journal of International Law* 1907-90
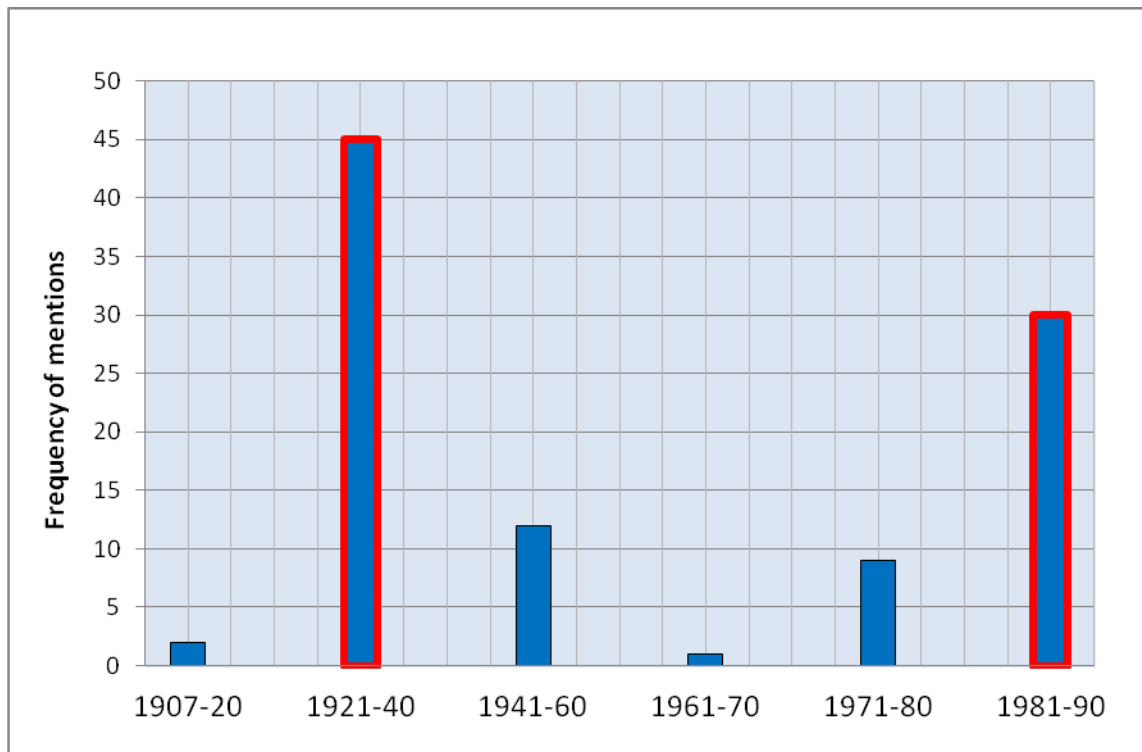
Source: *The cumulative analytical index of the American Journal of International Law and supplements incorporating the proceedings of the American Society of International Law* (84 vols, Washington, 1907-90), i-lxxxiv.

These efforts to address some of the more confounding legal aspects of piracy were not confined to the United States. 'The report of the lords of the judicial committee of the privy council' delivered on 26 July 1934 was asked whether actual robbery was an essential element of the crime of piracy. This followed the decision of the full court of Hong Kong to acquit two men on charges of piracy after it had concluded that robbery was necessary to support a conviction of piracy. The judicial committee concluded that actual robbery was not an essential element in the crime of piracy *jure gentium* and that a frustrated attempt to commit piratical robbery is equally piracy *jure gentium*.[103] Such expositions on the international codification of maritime piracy during these 'pre-resurgence' decades had significant implications for counter-piracy operations in the late twentieth and early twenty-first centuries. The judicial committee in 1934 correctly

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[103] 'In the matter of a reference under the Judicial Committee Act, 1833, in the matter of piracy jure gentium v JCPC', 26 July 1934 (B.N.A., Privy Council, 586/54, p. 2).

theorised that: 'A careful examination of the subject shows a gradual widening of the earlier definition of piracy to bring it from time to time more in consonance with situations either not thought of or not in existence when the older jurisconsults were expressing their opinions'.[104]

Maritime writers

Following the First World War several naval leaders, most notably Admiral Herbert Richmond, campaigned that the protection of merchant trade against belligerent navies must be prioritised at policy level. This demonstrated how at the macro level, perceived potential threats to seaborne commerce came in the form of rival navies and not pirate groups. However, Richmond acknowledged that while piracy may have been strategically irrelevant, it had not disappeared entirely: 'Duties of a navy in peace are of a police or a philanthropic character [...] Those, for example, which are performed by the naval forces of various nations in the China Seas and rivers, are for the common purpose of suppressing piracy and banditry'.[105]

Richmond referred to piracy at various times in his work, primarily in relation to its historic associations and intricacies. However, he also highlighted the need for continuity in counter-piracy operations: 'German trade developed in the Baltic and as elsewhere, pirates preyed upon it [...] the fighting forces, adequate though they were to deal with the individual pirate, lacked unity, even more than those of the Mediterranean city states'.[106] Richmond recognised the influence that piracy had on naval thinking and the ideas of sea power. He associated the evolution of warships as a response to piratical aggression: 'Both the trade and the colonies offered prizes to the pirates, and hence, as the cargo carrier could not be a match for the pirate, so ships specially adapted and furnished for fighting were found necessary for her protection'.[107] Indeed, Richmond offered perhaps the most accurate insight in the piratical situation during the interwar years in his 1932 publication, *Imperial defence and capture at sea in war*. He stated:

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[104] 'In the matter of a reference under the Judicial Committee Act [...]', p. 11.
[105] H.W. Richmond, *Seapower in the modern world* (London, 1934), p. 193.
[106] Richmond, *Seapower in the modern world*, p. 23.
[107] Ibid. p. 18.

At sea there are "frontier" or "external" defence services to be performed in peace. Where piracy still exists as in China, or where internal disturbances, uncontrollable by government, injure peaceful trade, defence to that trade must be afforded; precisely as in the early part of the last century protection had to be given in the Mediterranean, at all times, against attack by the piratical states of Tunis, Tripoli and Algiers. Today the waters and great rivers of China are the only remaining spots where this disease exists, and small craft, largely river gunboats, preserve order in the rivers, and vessels at sea, cruisers, destroyers and sloops, are available to give security in the coastal waters.[108]

Admiral Raoul Castex of the French Navy published his distinguished work, *Theories strategiques*, in 1929 shortly before the publication of Herbert Richmond's two works. Castex's work as the title suggested, dealt almost exclusively with the strategic level of naval thought and operations. It did, however, offer a brief insight into continental interwar contemplation on piracy. Castex mentioned piracy in relation to its historical effect on maritime communications and the notion of freedom of the seas: 'As practiced in earlier naval conflicts, commerce war was often simulated by greed and, degenerating into piracy, was accompanied by inhuman acts parallel to the ravaging, pillaging, and endless destruction characteristic of contemporary land warfare'.[109] This suggested that naval encounters during the interwar period did not 'degenerate into piracy' which gave some indication that it was not an issue of concern. Castex implied there was a shift in the maritime climate from these 'earlier naval conflicts [...] often degenerating into piracy' to a 'modified' situation when *Theories strategiques* was written: '[...] the notions of seizure of private property, contraband and blockade must remain intact, though modified to meet contemporary sensibilities'.[110] Castex primarily addressed macro, wartime naval concerns in his work and therefore omitted constabulary concerns such as piracy.

The respite of the interwar years afforded the opportunity to address chiefly peacetime maritime concerns such as piracy, which was reflected in the writings of interwar naval theorists, wider maritime literature and the deliberations of legal academia. The

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[108] H.W. Richmond, *Imperial defence and capture at sea in war* (London, 1932), pp 52-3.
[109] Raoul Castex, *Strategic theories*, ed. Eugenia C. Kiesling (Maryland, 1994), p. 39.
[110] Castex, *Strategic theories*, p. 39.

outbreak of the Second World War, however, downgraded the prominence of micro-maritime issues such as piracy once more. As previously mentioned the Second World War witnessed consistent raids and attacks on maritime commerce in the form of a 'guerre de course'. This was, however, state sanctioned wartime naval actions intended to cripple enemy SLOCs and not, as with piracy, the pillage of goods for private ends. What is relevant, therefore, to this research is the maritime climate that emerged in the decades after the Second World War and how this contributed to the eventual resurgence of piracy in the late 1970s and early 1980s in Southeast Asia and later, Northeast Africa.

Post-war period 1945-79

Geo-strategic ideas on the role of the military and national security shifted in the post-war years resulting in a reduction in dependence on navies and sea power and an increase in the level of importance assigned to land power. N.A.M. Rodger wrote in relation to this 'shift' that '[...] the twentieth-century brought in the age of great land empires bound together by railways rather than shipping [...] their competition transformed a seaborne empire, and the navy which protected it, into a burden rather than a strength'.[111] New political and territorial boundaries were drawn on land and at sea, which created new tensions over control of maritime natural resources and sovereignty alongside a dangerous ideological struggle between Soviet Russia and the United States. This international tension between the east and west culminated in a number of military engagements between 1945 and 1980. An article written in 1960 about the ecology of future international politics correctly forecasted that 'for several generations we have been living in an era of transition between great system changes [...] that era is now coming to a close, and a period of instability is ahead'.[112] This instability directly facilitated the palingenesis of maritime piracy. Former colonies gained greater autonomy and eventually, in some cases, full independence and thus the 'international machinery for suppressing piracy became largely impotent'.[113]

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[111] Rodger, *The command of the ocean [...]*, p. 576.
[112] Bruce M. Russett, 'The ecology of future international politics' in *International Studies Quarterly*, xi, no. 1 (Mar. 1967), p. 30.
[113] Koburger Jr., 'Selamat Datang, Kapitan [...]', p. 65.

Southeast Asia & Northeast Africa (1945-79)

Southeast Asia experienced an era of massive political, social and economic change in the decades following the end of the Second World War. This ultimately created the conditions for a resurgence of piratical activity at different stages during the late twentieth and early twenty-first centuries. The waterways of Southeast Asia were the initial platform for this 'palingenesis' of piracy in the late 1970s and early 1980s and experienced the highest rates of piracy and armed robbery against ships on a global scale until piracy evolved into a material threat to shipping in the Gulf of Aden and western Indian Ocean after 2005. The upsurge in Somali piracy between 2005 and 2013 was contextually distinct from the palingenesis experienced in Southeast Asia after 1979 and for this reason is addressed independently in chapters IV-VII.

Piracy is not a mono-causal issue. Several diverse factors can be attributed to its resurgence in Southeast Asia during the late twentieth-century. These included, but were not limited to, colonial regression, post-conflict inheritance, the growth of global seaborne trade, economic hardship and inefficient coastal security all facilitated by favourable geography. Indeed, comparable factors ultimately contributed to the escalation of maritime piracy off the coast of Somalia after 2005 indicating some universality in terms of causality as opposed to manifestation. This seems to indicate that certain general static conditions (such as geographic proximity to both shipping lanes and sanctuary ashore) combined with fluid conditions (such as post-conflict instability), exist in areas where maritime crime periodically emerges as problematic. However, unique contextual and regional specificities result in different manifestations of the crime.

In Southeast Asia, the cultural and political history of the region also undoubtedly contributed to the rise of piracy given the entrenched acceptance of several indigenous communities on maritime raiding as a legitimate vocation. Pirates could not function successfully without the support of these local networks for resources, shelter and the concealment and movement of illicit goods. Indeed, as previously mentioned, piracy had never been totally eradicated from the region, only suppressed to manageable levels. In

the Southern Philippines and Northern Borneo, for example, piratical attacks continued throughout the 1950s and 1960s on a 'smaller – but still frequent – scale'.[114] Despite the inherent proclivity toward piracy that many of these regions displayed, there was a distinct difference between the politically motivated acts of piracy of the nineteenth-century and the 'systematic interdependent and interconnected [...] grey area activities' of pirates operating in the late twentieth-century.[115] Therefore, contemporary manifestations of piracy must be analysed within a modern contextual framework as distinct from acts of piracy of previous historical eras.

One of the underlying reasons as to why elements of these maritime communities began pirating in an extensive manner in the late 1970s was a substantial increase in poverty and economic hardship due to the commercial exploitation of fish stocks in the region.[116] The availability of new technology developed in the 1950s enabled larger fisheries to procure catches at accelerated rates. Combined marine catches from Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam increased fourfold between 1960 and 1980 from 1.5 million tonnes per year to 5.5 million tonnes per year.[117] This growth was stimulated by destructive mass-fishing techniques such as trawling, fish-bombing and cyanide poisoning.[118] This large-scale illegal fishing led to a significant depletion in fish stocks, which directly affected the smaller coastal communities for whom fishing was the single biggest source of income. The experience was more acute in parts of Indonesia, which was described as 'the poorest of the poor'.[119] A number of these fishermen turned to pirating vessels to supplement their loss of income. Indeed, it was primarily aggrieved 'fishermen turned pirates' who were responsible for the initial resurgence of piracy in the late 1970s and early 1980s.

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[114] Stefan Eklöf, 'The return of piracy: decolonization and international relations in a maritime border region (the Sulu Sea) 1959–63' in *Working Papers in Contemporary Asian Studies*, no. 15 (2005), p. 7.
[115] Carolin Liss, *Oceans of crime: maritime piracy and transnational security in Southeast Asia and Bangladesh* (Singapore, 2011), p. 6.
[116] Liss, *Oceans of crime*, p. 6.
[117] Daniel Pauly and Chua Thia-Eng, 'The overfishing of marine resources: socio-economic background in Southeast Asia' in *AMBIO: A Journal of the Human Environment*, xvii, no. 3 (1988), p. 202.
[118] Warren, 'A Tale of two centuries', p.15.
[119] Ibid. p. 15.

Over-fishing and increased pollution were by-products of the spread of the global market-driven system and globo-economic interdependency. This led to an exponential growth in maritime trade transiting Southeast Asia between 1970 and 1980 (see fig. 1.8). Indeed, the last four decades have witnessed a quadrupling of seaborne trade, from just over 8 thousand billion tonne-miles in 1968 to over 32 thousand billion tonne-miles in 2008.[120] Mismanagement of this rapid economic development widened the gap between rich and poor, isolated already disparate coastal communities and reinforced the conditions that 'compel marginalised maritime-orientated communities to turn to piracy'.[121]

The Indonesian island of Batam served as an example of the destructive and dissociative effect of this economic activity at a local level. Batam witnessed a huge growth in manufacturing industries during the 1980s, which transformed it from a small fishing community to a major industrial hub. Eklöf described how an influx of migrants came to the island in search of employment but 'were unable to find work in line with their expectations and education (or) find any work at all'.[122] The result was a rise in criminal activity such as piracy. The growth in maritime freight transiting the area also presented potential pirates with an abundance of high value targets transiting narrow and congested sea-lanes proximal to safe havens ashore. This new wave of piratical activity, facilitated by the rise of the consumerist system, was enhanced by the decline of the colonial system. Historically in the 'clash between the policies of free trade and the policies of territorial assertion, that is where the roots of piracy can be found'.[123]

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[120] Maritime International Secretariat Services, 'Shipping and world trade: value of volume of world trade by sea 2010' (http://www.marisec.org/shippingfacts/worldtrade/volume-world-trade-sea.php) (10 Apr. 2012).
[121] Ong-Webb, 'Piracy in maritime Asia', p. 48.
[122] Eklöf, *Pirates in paradise*, p. 48.
[123] Eklöf, 'The return of piracy […]', p. 12.

Fig. 1.8
Total imports & exports: Southeast Asia 1970-80
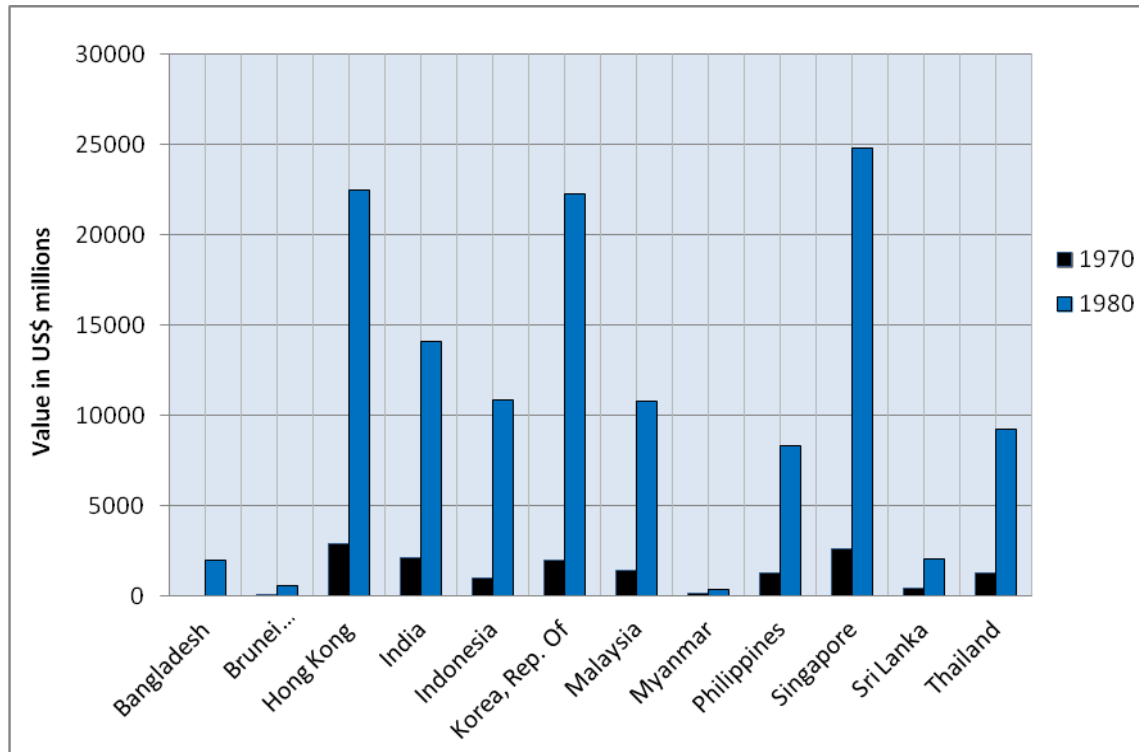
Southeast Asia experienced an era of rapid decolonisation and colonial regression in the decades following the Second World War. The progressive process of decolonisation essentially concluded when Britain announced its withdrawal from Singapore and Malaysia in January 1968, which was extended to 1971 as a concession to the Singaporean government. This was part of Britain's wider strategic withdrawal 'East of the Suez' owing to the heavy economic and financial burden of maintaining foreign naval bases. [124] Parliamentary papers at the time estimated that the naval base in Singapore consumed 15 percent of the British defence budget and 40 percent of defence costs overseas.[125]

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[124] The phrase 'East of the Suez' is derived from a poem written by Rudyard Kipling in 1890 entitled 'Mandalay': 'Ship me somewheres east of Suez, where the best is like the worst, Where there aren't no Ten Commandments an' a man can raise a thirst [...]'; Rudyard Kipling, *Mandalay* (New York, 1898), p. iii.

[125] P.L. Pham, *Ending 'east of Suez': the British decision to withdraw from Malaysia and Singapore 1964-1968* (New York, 2010), p. 22.

During the colonial period, piratical incidents and disorder at sea were kept to a minimum owing chiefly to a large western naval presence. The decline of 'Pax Britannica' and colonial control meant that this stabilising naval presence receded. The resultant governments that emerged were fragile, under-resourced and struggled to establish effective national and regional security. This instability was predominantly evident in some of the more isolated coastal communities. The former British colony of Singapore was to some extent the exception to this. In the years after independence from Britain and later Malaysia, the newly formed government began actively seeking foreign direct investment, which eventually transformed the small state from a colonial trading outpost to a robust export economy.

For most regional states, investment went into developing land forces in the years after decolonisation at the neglect of naval and maritime security capabilities. This compounded the inability of ex-colonies to supplant the naval presence that their former imperial rulers offered. Former deputy director of the International Maritime Bureau (I.M.B.), Jayant Abhyankar commented:

> The international community had hoped that those countries, geographically part of the region, would fill the gap left by the major powers [...] unfortunately these countries [had] insufficient finances to mount anything like a reasonable physical sea going presence that could act as a deterrent against the pirates.[126]

This lax coastal security was exacerbated by little or no multilateral cooperation in attempting to counter regional piracy in the early years of the palingenesis. In Somalia, this instability was embedded throughout the fledgling state. According to one commentator: 'The colonial legacy of illegitimate boundaries took on enormous significance in a pastoral economy where family members were separated from each other and from critical grazing areas'.[127]

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[126] Jayant Abhyankar, 'Piracy and armed robbery against ships', 17 Nov. 1997, p. 4 (Presentation made at the eleventh international conference on the Sea Lanes Of Communication studies, Royal Park hotel, Tokyo, 17-18 Nov. 1997).

[127] Catherine Besteman, 'Violent politics and the politics of violence: the dissolution of the Somali nation-state' in *American Ethnologist*, xxiii, no. 3 (Aug. 1996), p. 581.

The haste in which Britain abandoned its naval presence, for example, left the waterways of the region unpatrolled and therefore vulnerable, compounded by the weakness of the Republic of China Navy in the South China Sea. This fragile new maritime security environment was acutely felt in the ex-colony and further afield. The former Prime Minister of Singapore Lee Kuan Yew commented: 'I was completely incredulous that there could be such a rapid chop and change [...] All I am asking you is to show the flag so that no rapacious attack will take place'.[128] The earlier American withdrawal from the Philippines in 1949 had provoked similar concerns and illustrated the vulnerability of the maritime environment without a commanding naval presence. The British legation in Manila wrote to the minister of state for foreign affairs describing the challenges facing the authorities following the withdrawal:

> [...] now the American officers are gone and the Philippine authorities have not hitherto shown themselves capable of maintaining the constabulary at its old standards [...] The result among the Moros is, I fear, that they are reverting to type and are again finding in piracy and smuggling an easy way of making a living.[129]

Combined with endemic poverty, weak governance and the increase in regional commercial activity, the maritime climate was heavily conducive toward piracy. Much like Southeast Asia, Somalia experienced a similar post-colonial naval abandonment that left behind a vulnerable maritime environment that no longer benefited from the relative security and stability of colonial rule.

The conditions outlined above were augmented by the availability of weaponry inherited from several regional conflicts during the post-war years. The accessibility of this weaponry did much to bolster the lethality and efficacy of pirate gangs. Indeed, since the end of the Second World War the proliferation of weapons, in particular automatic weaponry, has been widespread in the region. Shortly after the end of the Second World War, Southeast Asia witnessed a series of conflicts collectively known as the Indochina Wars. This resulted in large-scale conflict and devastation in Cambodia, Thailand and

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[128] *The Straits Times*, 15 Jan. 1968.
[129] See: Eklöf, 'The Return of Piracy [...]', p. 4.

Vietnam alongside proximal internal conflict in Malaya, Indonesia and the Philippines between 1946 and 1980.

In the Southern Philippines, for example, Muslim separatists engaged in an armed insurgency against the government led by Ferdinand Marcos, a supporter of U.S. policy in Vietnam in 1969. The insurgency ended in 1972 but almost certainly increased the proliferation of arms in the region. The saturation of the region with military grade weaponry enhanced the capabilities of pirates and undoubtedly encouraged the spread of criminality on land and at sea. More worryingly for authorities the availability of this weaponry increased the levels of violence witnessed during piratical attacks in Southeast Asian waters mostly in the Gulf of Thailand and the Philippines throughout the 1980s. In 1981 alone, there were an estimated 454 deaths related to pirates targeting Vietnamese boat refugees in the Gulf of Thailand.[130] The Conservative peer Lord Beloff commented in 1981: 'Can one really say that that part of the world has too much in the way of force at its disposal, or that the decline in the power of the navies of the commercial states of the world has not brought with it severe human penalties?'.[131]

Palingenesis?

The conditions described above collectively created the conditions for a resurgence of maritime piracy in Southeast Asia in the late 1970s and early 1980s that evolved into a macro-maritime concern for international and regional navies. This revival reflected what Peter Earl described as 'the maritime dangers of a post-imperial world in which the navies of the great powers can no longer patrol where and how they wish and former colonies have neither the naval power nor the resources and will to eradicate the problem'.[132] This palingenesis was particularly evident in the extensive attacks on boat refugees fleeing Vietnam following the accession of the communist government after the Vietnam War in the late 1970s and early 1980s. These attacks constituted the initial upsurge of incidents in the early 1980s and are analysed in detail in Chapter II. It is

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[130] 'I.M.B. chronology of pirate attacks on merchant vessels 1981-87' in Eric Ellen (ed.) *Piracy at sea* (London, 1989), pp 241-6.
[131] *The parliamentary debates* (*Hansard*), *House of Lords*, 1943- (cdxxvi, London, 1981).
[132] Earle, *The pirate wars*, p. 253.

estimated that the number of attacks on Vietnamese boat refugees reached a high of 1,122 in 1981.[133] It is important to note that these attacks were not isolated incidents. They were a symptom of a regional wide re-emergence of maritime criminality. Roger Villar described how armed attacks on merchant ships and yachts reached epidemic proportions in early 1981 with up to twelve merchant vessels attacked each day.[134] Liss described how violent attacks similar to those on the 'boat people' also occurred during the 1980s in the waters off the west coast of Thailand, in Malaysian waters, in the northern part of the Malacca Strait and in the waters off Bangladesh.[135]

Just as Villar's 1985 publication highlighted a resurgence of piracy, other contemporary literature also supported this notion such as Geoffrey Till's 1982 *Maritime strategy and the nuclear age*. In a section entitled 'new tasks for new navies', Till stated: 'Action will also continue against the ancient and dishonourable practice of piracy [...] a significant hazard in many of the world's seas'.[136] Indeed, according to a 1989 article in *Jane's Defence Weekly*: 'with few exceptions, merchant shipping sailed virtually without incident on the high seas from the end of the Second World War to the start of the 'Tanker War' between Iran and Iraq'.[137]

Analysis of a number of selected contemporary journals and periodicals offers further credibility to the thesis of a palingenesis of piracy during the late twentieth-century (see fig. 1.9). The majority of the literature selected focused on the macro naval, military and security issues of the day within a specific area of interest. The inclusion of 91 piracy related articles from 1980 to 1992 as opposed to just 19 from 1970 to 1979 is a significant indicator that it was, at least in these fields, considered a noteworthy issue. Isolating the *U.K. Naval Review* between 1913 and 1999, as one example, it is evident that piracy developed as a topic of relevance in British naval circles during the 1980s and 1990s compared to the period between 1913 and 1979 (see fig. 1.10).

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[133] 'I.M.B. chronology of pirate attacks on merchant vessels 1981-87', pp 241-71.
[134] Villar, *Piracy today*, p. 10.
[135] Liss, *Oceans of crime*, p. 58.
[136] Till, *Maritime strategy and the nuclear age*, p. 205.
[137] 'Protecting shipping in war: the role of NCSORG' in *I.H.S. Jane's Defence Weekly* (05 Aug. 1989).

Fig. 1.9

Articles in selected journals/periodicals that addressed explicitly and/or related to maritime piracy, 1970-92

Journals/Periodicals	1970-79	1980-92
American Journal of International Law	9	30
U.K. Naval Review	9	41
International Journal Of Maritime History	0	5
Survival Journal	0	7
The Washington Quarterly	0	3
Studies In Conflict & Terrorism	0	3
The Strategic Survey Journal	1	1
RUSI Journal	0	1
Total	**19**	**91**

Sources: *American Journal of International Law*, lxiv-lxxxvi (1970-92); *U.K. Naval Review*, lviii-lxxx (1970-92); *International Journal Of Maritime History*, i-iv (1989-92); *Survival Journal*, xii-xxxiv (1970-92); *The Washington Quarterly*, i-xiv (1978-92); *Studies In Conflict & Terrorism*, i-xv (1977-92); *The Strategic Survey Journal*, lxxi-xciii (1970-92); *RUSI Journal*, cxv-cxxxvii (1970-92).

Fig. 1.10

Articles where piracy was mentioned explicitly in the *U.K. Naval Review*, 1913-99
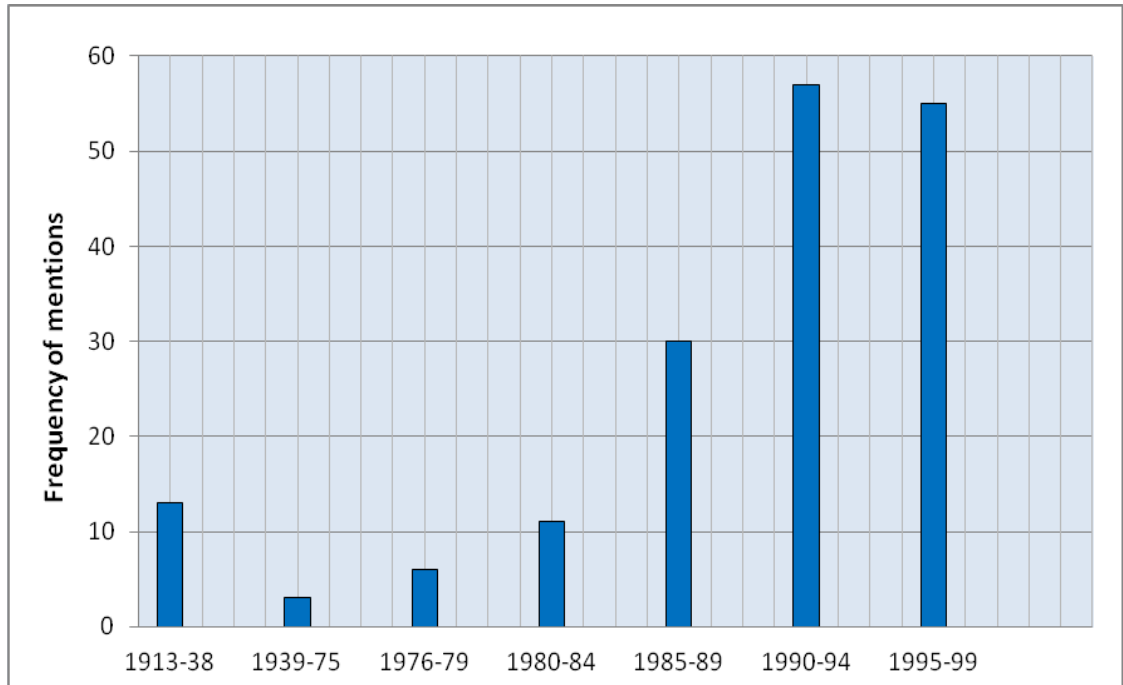
Source: Basil H. Tripp (ed.), *The naval review index*, i – lxiv (London, 1913-99).

Aside from the supporting literature presented, key events that occurred in the early 1980s also stand as testament to a palingenesis of maritime piracy and the beginning of modern international attempts at countering the problem. These proceedings are addressed in detail in the subsequent chapters as examples of counter-piracy initiatives. The I.M.B. was established in 1981 under the auspices of the International Chamber of Commerce (I.C.C.) initially to address issues relating to maritime fraud. However, I.M.B. officials noted that maritime piratical attacks were reported as far back as 1970.[138] Despite this, the seminal Convention for the Safety of Life at Sea (SOLAS) of 1974 made no explicit reference to piracy or maritime crime.[139] In 1983, the Swedish government submitted a paper to the I.M.O.s most senior technical body, the Maritime Safety Committee (M.S.C.), which stated that piratical attacks had grown to such an extent that the situation had become 'alarming'.[140] That same year I.M.O. Resolution 543 noted 'with great concern the increasing number of incidents involving piracy and armed robbery against ships including small craft at anchor and underway.[141]

By April 1984, a report entitled 'piracy and armed robbery against ships' appeared as a separate issue on the agenda of the I.M.O. M.S.C. This marked the beginning of modern attempts at an international level to collate statistics on maritime piracy and ascertain the extent of the problem. The committee received a 'summary of all reports on piracy and armed robbery against ships submitted by member governments and international organisations in 'consultative status'.[142] The international community was starting to take notice. By 1992, the increase in reported acts of piracy to the I.M.B. led to the establishment of the Regional Piracy Centre (P.R.C.) in Kuala Lumpur, Malaysia.

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[138] Karen K. Clark, 'Maritime piracy: nature, impact and legal frameworks for prosecution' in *The International Journal of Criminal Justice Sciences*, iv, no.1 (June 2009), p. 13.
[139] See: 'International Convention for the Safety of Life at Sea, 1974 (with annex and final act of the International Conference on Safety of Life at Sea), 1974' (U.N., Treaty Series, mclxxxiv, no. 18961, pp 278-453).
[140] I.M.O., 'Piracy and armed robbery at sea' in *Focus on I.M.O.* (Jan. 2000), p. 2.
[141] 'Measures to prevent acts of piracy and armed robbery against ships' 17 Nov. 1983 (I.M.O., Maritime Knowledge Centre (M.K.C.), A/RES/543/13/1983, 10b).
[142] I.M.O., 'Piracy and armed robbery at sea', p. 2.

Conclusion

During the late 1970s, maritime piracy experienced a palingenesis in the waters of Southeast Asia distinct from manifestations of piracy during the nineteenth-century. While enduring factors such as poverty and opportunity facilitated both upsurges, the unique political and socio-economic context of the late twentieth-century, such as the legacy of the Indochina Wars, for example, ultimately produced a contextually diverse wave of piracy. Indeed, it is evident that piracy has fluctuated several times in Southeast Asia since 1800. This suggests, as this thesis argues, that episodes of piracy are not only contextually unique across the geographic divide, but also regionally during different historical periods.

Exploring the rise of piracy during the early nineteenth-century in the southern Mediterranean and Southeast Asia revealed several comparable factors to contemporary manifestations. However, the maritime security environment of the twentieth-century differed significantly from that of the nineteenth, which meant that any initiatives intended to counteract crimes like piracy would also need to evolve. The evolution of these initiatives is explored systematically in the next section of this work beginning with responses to the initial palingenesis and alternative manifestations of piracy in Southeast Asia between 1979 and 2006 and ending with the upsurge of piracy off the Horn of Africa after 2005.

CHAPTER II

A regional response to a regional problem? 1979-97

Ships that pass in the night, and speak each other in passing,
Only a signal shown and a distant voice in the darkness[...][1]

Introduction

Piracy as it had been traditionally experienced declined drastically by 1900. This condition endured for much of the twentieth-century aside from sporadic occurrences of opportunistic attacks chiefly in the South China Sea. This relative tranquillity did not last, as a new and more violent wave of piratical aggression beset the waters of Southeast Asia in the late 1970s and early 1980s.[2] The series of conflicts that gripped the region in the decades after the Second World War significantly altered the geo-political landscape and combined with the issues addressed in chapter I ultimately facilitated this palingenesis of piracy. The initial victims of this new wave of piracy were the hapless 'boat people' fleeing Vietnam in a maritime exodus across the Gulf of Thailand and the South China Sea.[3] Indeed, it was this large migration of people and valuables that presented disparate elements of impoverished coastal communities an opportunity to recoup some of their material and financial losses.

What began as opportunistic robberies on vulnerable targets by indigent local fishermen soon escalated into unprecedented violence and brutality evolving into organised criminality. Piracy was not confined to the Gulf of Thailand or the South China Sea. The waterways of Indonesia, Malaysia, the Philippines and Singapore also witnessed a notable rise in maritime predations during this period. By 1991, according to one analyst:

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[1] Horace E. Scudder (ed.), *The complete poetical works of Henry Wadsworth Longfellow: Cambridge edition* (Cambridge, 1893), p. 274.
[2] The geographic delineation of Southeast Asia for the purposes of this research consists of the extended maritime domains of Cambodia, Indonesia, Malaysia, Myanmar (Burma), the Philippines, South China (Hainan, Hong Kong and Macau), Singapore, Southern Taiwan, Thailand and Vietnam.
[3] The 'Gulf of Thailand' is also referred to as the 'Gulf of Siam'.

'these assaults have been of sufficient quantity to consistently designate Southeast Asia as by far, the most piracy-prone region of the world'.[4]

As illustrated in chapter I, several diverse factors combined to create the conditions for this palingenesis of piracy in Southeast Asia during the late 1970s and early 1980s. These included the regression of colonial authority in the decades following the Second World War and the subsequent instability this caused, alongside the rapid growth in regional seaborne trade, which widened the gap between rich and poor. There is a common misperception, primarily from a western perspective, that the modern rise of piracy in Southeast Asia occurred in reaction to the Asian financial crisis that gripped the region in 1997. It did, however, materialise much sooner. This chapter examines regional and international efforts initiated to counteract this piratical activity, exploring some of the inherent difficulties that counter-piracy operations presented and how they were addressed. In addition, this chapter analyses the important consequences for counter-piracy operations following the ratification of the seminal United Nations convention on the Law of the Sea (UNCLOS) in 1988.

General obstacles to regional counter-piracy operations

Prior to analysing any specific counter-piracy measures initiated by regional and international actors in response to the palingenesis of piracy in the late 1970s, it is important to examine some of the enduring difficulties that maritime security operations faced in the waters of Southeast Asia. Just as it facilitated piracy in previous centuries, the distinctive geographic features of the region hampered counter-piracy operations throughout the 1980s and 1990s. The Malay Archipelago, which incorporates Indonesia, Malaysia and the Philippines, is the largest in terms of surface area on earth, consisting of over 25,000 islands, many of which are uninhabited (see fig. 2.1). Indonesia alone is comprised of 13,667 of these islands resulting in approximately 93,000 square kilometres of inland seas.[5] The Philippines possess one of the longest coastlines of any

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[4] Peter Chalk, 'Contemporary maritime piracy in Southeast Asia' in *Studies in Conflict & Terrorism*, xxi, no. 1 (Sept. 1998), p. 89.
[5] U.S. Library of Congress, Federal research division, 'Country studies (1988-98)' (http://lcweb2.loc.gov/frd/cs/cshome.html) (09 Oct. 2012).

nation on earth due to its archipelagic configuration. Thailand also possesses a significant coastline of 2,420 kilometres on the Gulf of Thailand and the Andaman Sea whereas Singapore, despite a coastline of just 138 kilometres, was in terms of shipping tonnage the world's busiest port in 1988.[6] What this meant in terms of sea-based counter-piracy action was that it made engaging pirates in any extensive way extremely difficult. As one commentator noted: '[...] you [would] need ten thousand patrol boats [...] there are thousands of islands for pirates and hijackers to hide'.[7] They could evade capture by crossing into other maritime jurisdictions or sheltering among the many bays, estuaries, rivers, reefs and tree-lined inlets beyond the reach of their pursuers.

Merchant vessels that approached the region from the west were funnelled into the narrow geographical chokepoint of the Malacca Strait; just 1.7 nautical miles at its narrowest point, as the most direct route to ports in Northeast Asia (see fig. 2.2). Similarly, the Singapore Strait and the Strait of Malacca constituted the main sea-lane between the Pacific Ocean and the Indian Ocean. In 1982, an estimated 43,633 vessels transited the Malacca Strait. By 1993, this figure had risen to 91,826 vessels, an increase of 128.9 percent in a little over a decade.[8] Less congested straits included the Lombok Strait, the Sunda Strait and the Makassar Strait (see fig. 2.3). These minor straits accounted for just 28 percent of commercial maritime traffic in 1997 compared to 72 percent transiting the Malacca and Singapore Strait.[9]

These shipping lanes presented pirates with an abundance of slow moving, vulnerable targets proximal to safe havens and sanctuaries ashore. The sheer scale of the maritime environment and coastline meant that any patrols initiated by the small regional navies were largely ineffective. Simply put, the geographic character of the region bolstered and encouraged illicit maritime activity while simultaneously hampering the ability to counteract it. This was also the case during the nineteenth-century. As Warren accurately observed: 'they simply had to wait, sheltered behind a convenient island,

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[6] U.S. Library of Congress, 'Country studies (1988-98)'.
[7] See: *Christian Science Monitor*, 13 June 1996.
[8] Chia Lin Sien, 'The importance of the Straits of Malacca and Singapore' in *Singapore Journal of International & Comparative Law*, no. 2 (1998), pp 305-6.
[9] Lin Sien, 'The importance of the Straits of Malacca and Singapore', p. 306.

headland or bay overlooking strategic sea-routes, and sooner or later "coastwise" targets, never straying out of sight of land, would cross their path'.[10]

Fig. 2.1
The Malay Archipelago

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[10] James Francis Warren, 'A tale of two centuries: the globalisation of maritime raiding and piracy in Southeast Asia at the end of the eighteenth and twentieth centuries' in *Asian Research Institute: Working Paper Series*, no. 2 (June 2003), p. 9.

Fig. 2.2
Strait of Malacca

Source: 'Southeast Asia' (U.N. map no. 4365, rev. 1).

Fig. 2.3
Sunda, Lombok and Makassar Straits

Source: 'Southeast Asia' (U.N. map no. 4365, rev. 1).

Given this complex geographic setting, it is unsurprising that maritime territorial disputes arose. These disputes evolved primarily in response to the United Nations Convention on the Law of the Sea (UNCLOS) in 1982, which solidified the legal limits of a nation's territorial sea (12 nautical miles from shore baseline), contiguous zone (24 nautical miles from baseline) and Exclusive Economic Zone (E.E.Z.) (200 nautical miles from baseline). In the congested and archipelagic waters of Southeast Asia these boundaries often overlapped resulting in a lack of clear jurisdiction, bitter legal disputes and as a result, a breakdown in regional maritime relations. The territorial dispute that emerged over ownership of the resource rich Spratly Islands in the South China Sea, for example, illustrated the problem in this regard. Following the introduction of the E.E.Z. under articles 55, 56 and 57 of UNCLOS, Brunei, China, Malaysia, the Philippines and

Vietnam claimed exclusive territorial rights to all or part of the islands. These opposing claims led to a number of political and military engagements during the 1980s and 1990s that weakened regional relations and created instability in the maritime environment. Pirates operating in the region manipulated this instability to their advantage. The impact of UNCLOS on regional and international counter-piracy policy and approaches is explored in detail later in this chapter.

Peter Chalk highlighted an incident from May 1992, which illustrated how this negatively affected unilateral counter-piracy operations. He described how a stolen trawler operated by pirates was stalking vessels near the disputed region of Sabah off the northeast coast of Borneo. The trawler was spotted by a Royal Malaysian Police Marine patrol that commenced pursuit. The Malaysian vessel was forced to call off its pursuit when the trawler entered into Philippine territorial water as 'no agreement of *posse comitatus* had been reached between Manila and Kuala Lumpur'.[11] The implications and relevance of UNCLOS in relation to counter-piracy operations are discussed in detail later in this chapter. The existence of this complex maritime environment meant that multilateralism and continuity, vital for effective counter-piracy operations, was not forthcoming.

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[11] Peter Chalk, *Non-military security and global order: the impact of extremism, violence and chaos on national and international security* (London, 2000), p. 76.

Fig. 2.4
Singapore Strait and the Phillip Channel

Source: 'Southeast Asia' (U.N. map no. 4365, rev. 1).

These issues were compounded by allegations of corruption and governmental complicity. Empirical data, chiefly eyewitness testimony reported by ships masters, suggested this was an issue in China, Indonesia and the Philippines at various times throughout this period. Some argued that this manifested itself in 'official sanctioning and collaboration' while others suggested, in the case of Indonesia, for example, that pirates were 'either actual members of the [...] armed forces or at least benefit[ted] from close links with Indonesian military and customs units [...]'.[12] Jon Vagg suggested '[...] it is possible that [armed forces] condoned, assisted and 'taxed' non-military pirates just as they would many other illegal enterprises'.[13]

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[12] Samuel P. Menefee, 'Violence at sea: maritime crime and the rise of piracy' in *Jane's Defence 1997: The Yearbook for Jane's Defence Magazines* (1997), p. 100; Chalk, 'Contemporary maritime piracy in Southeast Asia', p. 94.

[13] Jon Vagg, 'Rough seas? Contemporary piracy in Southeast Asia' in *British Journal of Criminology*, xxxv, no. 1 (Winter 1995), pp 76-7.

This complicity was also evident in relation to attacks on boat refugees in the Gulf of Thailand. Numerous allegations of incompetence, abetment and collusion with pirates were directed at the Thai government in the 1980s. Pascal Dupont, who reported for the French news weeklies *Actuel* and *L'Express* during the 1980s, alleged that in the spring of 1981, nineteen Vietnamese refugees were captured by the Thai Navy and sentenced to death after they had killed several Thai pirates that had attacked them.[14] Duong Phuc and Vu Thanh Thuy, a Vietnamese couple who were victims of a pirate attack, suggested that the Thai government simply ignored the crisis in an attempt to discourage 'new waves' of refugees from seeking temporary refuge in Thailand.[15]

The Vietnamese/American boat people SOS committee, founded in 1980, made its dissatisfaction with Thai anti-piracy efforts clear in a white paper published in 1981:

> Thai pirates, operating with virtual impunity in the Gulf of Siam, are subjecting thousands of refugees to ordeals of rape, robbery and murder. The unarmed refugees in their rickety fishing boats can neither escape nor defend themselves against the heavily armed pirates. The sickening tales told by survivors of these attacks should long ago have moved Thai officials to act. Instead, the Thais say only that they lack the resources to police a 2,000 mile coastline. While that is undoubtedly true, it is also apparent that Thai police and naval units are not even trying [...] It has been suggested that Bangkok's willingness to look the other way as Thai pirates plunder, rape, and kill is the government's way of discouraging new waves of refugees from seeking temporary haven in Thailand. If so, it is a vile tactic fully deserving of international condemnation.[16]

Thai officials vehemently denied such allegations. The then Thai Secretary General to the Prime Minister, Chamlong Srimuang, responded to similar claims in April 1980:

> The pirate activities in the Gulf of Thailand do not take place in the Thai territorial waters only [...] Our Police Marine has to combat against those terrorists who, from time to time, attacked not only the Vietnamese boat people but also those of Thai nationality as well [...] Furthermore the long

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[14] See: Pascal Boulanger, 'The Gulf of Thailand' in Eric Ellen (ed.) *Piracy at sea*, (London, 1989), p. 87.
[15] Nhat Tien, Duong Phuc & Vu Thanh Thuy, *Pirates on the Gulf of Siam: report from the Vietnamese boat people living in the refugee camp in Songkhla – Thailand* (California, 1981), p. 112.
[16] Nhat Tien et al., *Pirates on the Gulf of Siam*, p. 112.

eastern coast of Thailand does not facilitate our small marine force to accomplish such operation.[17]

Regardless of whether the Thai government acted improperly or not, this response reflected the inherent difficulties small regional navies encountered in attempting to combat piracy in Southeast Asian waters.

The situation was exacerbated further by the inadequacies of the coastal states' naval resources in the late 1970s and 1980s. Investment in the years following decolonisation tended to focus on strengthening land forces at the neglect of maritime security capabilities. In the case of the Philippines, for example, this was due to internal threats from communist organisations such as the New People's Army, the military wing of the communist party of the Philippines and later from Islamist separatist groups such as the Moro National Liberation Front and Abu Sayyaf in the South. Eventually attempts were made to modernise naval assets. However, these initially focussed on securing large patrol craft such as frigates, antisubmarine warfare corvettes, and missile-equipped surface combatants. Thailand, for example, entered into an agreement with China in 1988 and 1989 to acquire four Jianghu class and two Naresuan class frigates.[18] By 1997, Thailand had acquired a small aircraft carrier from Spain, a decision that reportedly 'perplexed' adjacent states.[19] These uneconomical investments did little to benefit maritime security operations or promote regional cooperation. Instead, they illustrated that national prestige was favoured over utility - an indication of the insular nature of regional state policy at that time.

Keeping these causative factors in mind two distinct, but not entirely unrelated episodes of piracy, can be identified in Southeast Asia between 1979 and 1997. These will be addressed separately. Beginning with an examination of efforts to counter the pervasive acts of piracy and armed robbery against Vietnamese refugees in the Gulf of Thailand and the South China Sea incorporating counter-piracy initiatives in alternative areas of

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[17] 'Letter from the office of the Prime Minister, government house, Bangkok to Dr. Ven Thich Man Ciac' 10 Apr. 1980 in Nhat Tien et al., *Pirates on the Gulf of Siam [...]*, app. ii.
[18] G.V.C. Naidu, 'ASEAN navies in perspective III' in *Strategic Analysis*, xxi, no. 7 (Oct. 1997), p. 1061.
[19] Naidu, 'ASEAN navies in perspective III', p. 1061.

Southeast Asia from 1979 to 1991, followed by an examination of initiatives from 1991 to 1997 in the period following the decline in the flow of refugees until the beginning of the Asian financial crisis.

Vietnamese boat refugees 1979-91

Reports of pirate attacks on refugee boats transiting the Gulf of Thailand began to surface following communist victories in Vietnam in 1975, which resulted in large numbers of people fleeing the country, many of them by boat. However, the outbreak of hostilities between the People's Republic of China and the Socialist Republic of Vietnam in early 1979 intensified this exodus drastically, resulting in an estimated 2,000 refugees arriving in Thailand each month of 1979.[20] This figure had risen to 6,000 per month in 1980.[21] In 1981, a total of 15,479 refugees in 452 boats arrived in Thailand.[22] It was estimated that a staggering 77 percent of these boats were attacked by pirates operating in the Gulf of Thailand - an average of 3.2 times per boat.[23] This totalled a massive 1,112 attacks in 1981 alone (see fig. 2.5). Despite the high frequency of incidents, it was the manner in which this 'particularly hideous form of piracy' was committed that brought the issue to the attention of the international community.[24] Reports for 1981 suggested that 571 female refugees were raped, 228 refugees were abducted and 454 were murdered by pirates. TIME magazine described these events as a 'liquid Auschwitz' in an article written in July 1979, the same month that the U.N. summoned a conference at Geneva to discuss the Indochinese refugee crisis. An article in the *Sydney Morning Herald* from 1985 illustrated a typical attack:

> [...] a fishing boat arrived from which 20 pirates, armed with knives and iron bars, boarded the Vietnamese boat and began searching the people for gold and valuables. All men above the age of 17 were thrown in the water. Most of them drowned [...] the women were raped.[25]

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[20] Villar, *Piracy today*, p. 131.

[21] Ibid.

[22] 'Piracy statistics (based on refugee reports): Thailand' in Eric Ellen (ed.), *Piracy at sea* (London, 1989), pp 282-85 (Henceforth cited as 'Piracy statistics: Thailand').

[23] In 1981: boats arrived = 452, boats attacked = 349, no. of attacks = 1122 => no. of attacks per attacked boat = 3.2 ('Piracy statistics: Thailand', pp 282-85).

[24] 'Piracy and armed robbery against ships' 15 Oct. 1984 (I.M.O., M.S.C., 15/19/ADD.1/1984, p. 10).

[25] *Sydney Moring Herald*, 27 Dec. 1985.

The same article estimated that between 1980 and 1985 Thai pirates killed 1,450 and raped in excess of 2,300 refugees.[26] The unprecedented levels of violence and brutality resulted in widespread condemnation and mounting international pressure on the Royal Thai Government to suppress the pirates operating in their territorial waters.

Fig. 2.5
Piracy statistics: Vietnamese boat refugees [based on refugee reports] 1981-88

	1981	1982	1983	1984	1985	1986	1987	1988
■ No. of Attacks	1,122	373	181	117	101	87	117	51
■ No. of Boats Arrived	452	220	155	186	269	448	1,112	307
■ Percentage of Boats Attacked	77	64	53	35	23	13	8	11
☐ Fatalites	454	155	42	59	45	18	0	20
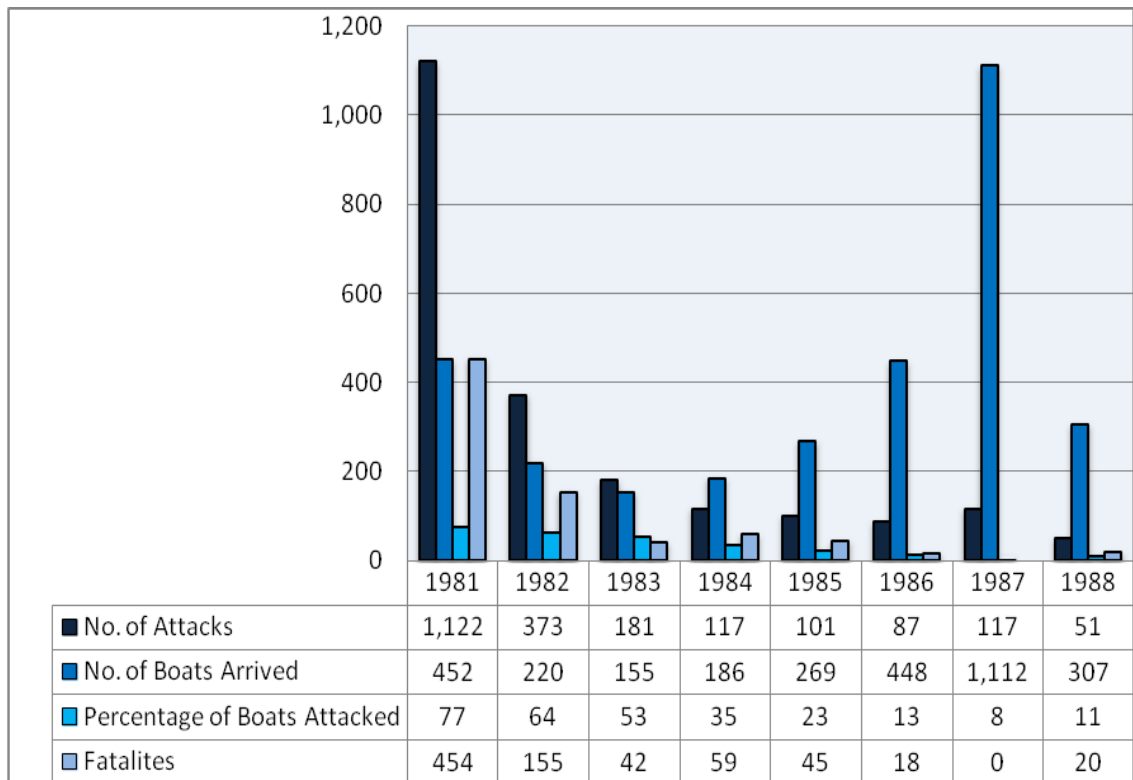
Source: 'Piracy statistics (based on refugee reports)' in Eric Ellen (ed.), *Piracy at sea* (London, 1989), p. 282.

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[26] *Sydney Moring Herald*, 27 Dec. 1985.

As early as June 1980 the Royal Thai Government publicly stated its intention to mount a more 'active' program against the pirates and requested international assistance in the endeavour.[27] Thailand's under-resourced and overstretched maritime capability meant it was unable to tackle the problem in isolation. In 1980, the United Nations High Commissioner for Refugees (U.N.H.C.R.), in what appeared to be a reactionary gesture, provided the Thai Navy with a high speed, unarmed surveillance vessel to support anti-piracy patrols. However, the first tangible anti-piracy programme was not initiated until February 1981. This brief scheme was a bilateral endeavour between the United States and the Thai government facilitated by a US$2 million donation to subsidise operational expenses. The initiative lasted just seven months; dissolving in September due in part to disputes over financial maintenance. It had been suggested difficulties arose due to investment in expensive and largely ineffectual air-sea surveillance, chiefly two twin engine O-2 spotter aircraft and a Thai coastguard cutter.[28] Despite this, the scheme had some limited success and paved the way for further cooperative initiatives. Twenty-five suspects were arrested and charged with piracy, five suspected pirate vessels were seized and an estimated 180 boat people were assisted while under attack.[29]

Following a series of delays and negotiations, a more comprehensive and calculated counter-piracy initiative was launched on 23 June 1982. The Anti-Piracy Arrangement was convened under the auspices of the U.N.H.C.R. and subsidised by donations from twelve countries: Australia, Canada, Denmark, Germany, France, Italy, Japan, Netherlands, Norway, Switzerland, United Kingdom and the United States. A total of US$3,672,033 was donated including US$1.2 million directly from the United States government.[30] The operation was headed by the Thai Navy anti-piracy unit from the coordination centre in the southern province of Songkhla with a nine-man team stationed on small offshore islands, such as the notorious Koh Kra.

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[27] See: 'Letter from U.S. Department of State, Office of Asian refugees to the President of the boat people SOS committee' 15 June 1980 in Nhat Tien et al., *Pirates on the Gulf of Siam [...]*, app. xii.
[28] W. Courtland Robinson, *Terms of refuge: the Indochinese exodus and the international response* (London, 1998), p. 167.
[29] Robinson, *Terms of refuge [...]*, p. 167.
[30] Harry C. Blaney III, 'Anti-piracy in Southeast Asia: U.S. and international efforts and programmes' in Ellen (ed.), *Piracy at sea*, p. 102.

Koh Kra Island had become synonymous with the worst of the violence and depredation witnessed in the piratical acts. Numerous graphic victim testimonies exist which relay the brutal conditions suffered by the refugees abducted and held there by pirates. One eyewitness described the 'sad scene that all people brought to the island must suffer'. She stated: 'The men were tortured and beaten to find out where valuables were hidden, the women were gang-raped by different bands of pirates, which at the high point came to fifty different fishing boats clustered around the entrance to the island'.[31]

A number of seaward and landward counter-piracy initiatives were spearheaded under the Anti-Piracy Arrangement. An anti-piracy surface unit was established that consisted of three sixteen-metre fast patrol craft, six special operation task trawlers alongside several rubber patrol boats. The surface unit was complemented by an aircraft unit consisting of five surveillance aircraft including spotter planes that coordinated with the surface unit and land base to identify vulnerable vessels and patterns of piratical activity. Patrols were executed on a twenty-four hour rotating basis. The funds donated to the Anti-Piracy Arrangement were also used for the enhancement of post-incident investigations, the strengthening of land-based information gathering, upgrading of communications equipment and a harbour department registration and licensing programme.[32]

Notwithstanding these improvements and investments, the extent of the Anti-Piracy Arrangement's operational zone was limited. The available resources meant that only a limited section of the Gulf of Thailand could be monitored and patrolled (see fig. 2.6). Roger Villar remarked: 'Even twice that force would have little chance of covering so large an area effectively'.[33] Despite these limitations, the Anti-Piracy Arrangement did achieve some success. Reported incidents of piracy dropped from 373 in 1982 to 117 in 1984, a decrease of over 50 percent.[34] The number of reported deaths at the hands of

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[31] Nhat Tien et al. *Pirates on the Gulf of Siam*, p. 29.
[32] See: Joachim Henkel, 'Refugees on the high seas: a dangerous passage' in Ellen (ed.), *Piracy at sea*, p. 108.
[33] Villar, *Piracy today*, p. 36.
[34] 'Piracy statistics: Thailand'.

pirates also declined from 176 in 1982 to 59 in 1984.[35] While it is evident that the 1982 arrangement did contribute to a reduction in attacks, the reduction in the flow of refugees must also be recognised as a contributory factor. The total number of refugees recorded as arriving in Thailand in 1981 was 15,479. This had dropped to just 3,343 in 1983 indicating a substantial decrease in refugee movement.[36]

The U.N.H.C.R/ Royal Thai Government counter-piracy programme was extended in 1984 and witnessed a progression from predominantly sea-based operations to land-based initiatives, primarily on the recommendations of a U.S. interagency task force. Lessons learned from earlier operations meant that emphasis was placed on training, intelligence gathering and judicial development over acquiring expensive vessels and air assets. This appeared to be an acknowledgement that the root cause of piracy was ashore and illustrated an evolving proficiency in regional counter-piracy efforts. A number of substantial initiatives were launched under the 1984-87 programme, principally in relation to the apprehension and prosecution of suspected pirates. At the lowest level, this took the form of educative crime prevention, considered vital given the chiefly opportunistic nature of the acts of piracy.[37]At the highest level, this resulted in several prosecutions and convictions.

From January 1982 to December 1985, just thirty suspects were arrested for offences against boat people, reflective of the emphasis placed on sea-based counter-piracy operations under the Anti-Piracy Arrangement.[38] Under the new programme, sixty-six suspects were arrested in a little under two years between January 1986 and October 1987.[39] The sentences imposed ranged from two to fifty years' imprisonment, with one pirate sentenced to death in December 1986. The harshness of the sentencing was undoubtedly designed to act as a deterrent to those considering committing piratical acts. These positive results were facilitated by the development of compulsory computerised

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[35] 'Piracy statistics: Thailand'.
[36] Ibid.
[37] I.R. Hyslop, 'Contemporary piracy' in Ellen (ed.) *Piracy at sea*, p. 36.
[38] 'Summary of arrests, prosecutions, convictions and sentences in Thailand for piratical offences against boat people 1982-87' in Ellen (ed.), *Piracy at sea*, p. 286.
[39] Ibid.

registration and a paid 'informer' system under the guidance of U.S. law enforcement professionals. The U.N. High Commissioner for Refugee's Poul Hartling commented in an address to the general assembly in 1985:

> [...] very encouraging has been the increasing efficiency with which the Thai authorities are implementing the Anti-Piracy Arrangement [...] the deterrent effect is definitely beginning to show up in the statistics [...] I believe this can be a source of satisfaction both for the Thai authorities and the donors who have steadfastly supported their efforts to combat this evil.[40]

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[40] 'Opening statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees, to the executive committee of the programme of the United Nations High Commissioner for Refugees, thirty-sixth session, Geneva', 07 Oct.1985 (U.N.H.C.R., Records of Poul Hartling 1968-85, MS13/2, f. 0013).

Fig. 2.6
Gulf of Thailand: limit of anti-piracy operational zone

Source: Eric Ellen (ed.), *Piracy at sea* (London, 1989), p. 290; 'Greater Mekong subregion' (U.N. Dept. of Peacekeeping Operations, Cartographic section, Map no. 4112, rev. 2, Jan. 2004).

Aside from efforts at the policy and operational level, the U.N.H.C.R. also initiated programmes designed to encourage masters of commercial vessels transiting international waters to assist vulnerable refugees at sea. This request was initially met with some trepidation, principally due to potential financial implications. The first of these initiatives, the 'Disembarkation Resettlement Offers', was designed to encourage ships flying flags of states operating an open registry or 'flags of convenience' to aid in the rescue of refugees at sea by facilitating their disembarkation and resettlement in countries that contributed resettlement places. By 1985, eight countries offered resettlement places for refugees under the Disembarkation Resettlement Offers scheme. These were Australia, Canada, Germany, France, New Zealand, Sweden, Switzerland and the United States. This initial scheme offered little incentive to merchant shipping to delay operations to assist in the rescue of refugees and as such a second initiative was launched in May 1985, which offered to negate the financial burden through 'Rescue at Sea Resettlement Offers'. One month later in June 1985, a companion programme, the 'Rescue at Sea Reimbursement Project', was launched that allowed for costs directly related to the rescue of refugees to be directly reimbursed to ship-owners.

The U.N.H.C.R. circulated a pamphlet in 1985 that explained the procedures and guidelines for the disembarkation of refugees and reimbursement procedures. It stated: 'On request, U.N.H.C.R. will reimburse shipowners for the subsistence of refugees on board ship [...] calculated at US$10 per refugee per day [...] The maximum amount reimbursed under any single claim should not normally exceed US$30,000'.[41] These initiatives were bolstered by personal radio broadcasts from the high commissioner encouraging shipmasters in the South China Sea to aid refugees in distress. These humanitarian and civilian initiatives had an immediate effect by disrupting piratical activity on the high seas. Hartling commented in 1985 that 'the appeals of U.N.H.C.R. and the I.M.O. have not fallen on deaf ears, and in the best traditions of the sea [...] ship-masters and crewmen – often at their cost, inconvenience, and sometimes personal risk – are going out of their way to save lives'.[42]

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[41] U.N.H.C.R., 'Guidelines for the disembarkation of refugees' (1985), p. 4.
[42] 'Opening Statement by Mr. Poul Hartling', 07 Oct. 1985.

The long-term impact of the rescue programmes should not be over-stated as the numbers rescued during the period 1985 to 1987 were generally lower than the numbers from previous years.[43] Nonetheless, the figures, when expressed in relation to the total number of arrivals, reveal a five percent increase in rescues between 1984 and 1985.[44] By 1987, only eight percent of boats arriving in Thailand had reported an attack compared to 23 percent in 1985, a partial indication of the success of the land-based counter-piracy initiatives. However, between 1988 and 1989 an upsurge in attacks resulted in an estimated 1,250 refugees killed by pirates and a sharp increase in abductions and incidents of rape.[45] The successful shore-based initiatives, in particular the severe prison sentences, almost certainly had the effect of deterring the more opportunistic 'fishermen turned pirates', which according to W. Courtland Robinson '[left] behind a hard core of professional criminals [...] [who] were taking greater pains to leave no witnesses'.[46]

Despite these setbacks the flow of refugees declined drastically by 1991. The collapse of the Soviet Union and the end of the Cold War reduced the rigid economic limitations placed on Vietnam, which opened the door for small-scale private and foreign direct investment. This combined with the end of the repression of the Hoa people in the south resulted in substantial economic growth and stability in the country and as a consequence a sharp decline in the migration of refugees. This reduction predictably led to a decline in piratical attacks in the Gulf of Thailand. Elsewhere, however, attacks in the region escalated. In December 1991, the U.N.H.C.R. anti-piracy programme was terminated, not because the piracy problem had been eliminated but because according to the final assessment report, '[...] it [had] reached the stage where it [could] be effectively managed by local agencies'.[47]

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[43] Hyslop, 'Contemporary piracy', p. 37.
[44] Ibid.
[45] Office of the United Nations High Commissioner for Refugees, *The state of the world's refugees 2000: fifty years of humanitarian action* (New York, 2000), p. 87.
[46] Robinson, *Terms of refuge [...]*, p. 171.
[47] U.N.H.C.R., S*tate of the world's refugees 2000*, p. 87.

Alternative regional piracy 1979-91

As the violent acts of piracy on boat refugees in the Gulf of Thailand and the South China Sea garnered international news coverage, other regions of Southeast Asia also witnessed an escalation in piratical activity during the same period. The regions principally affected from 1979 to 1991 were the southern region of the Malacca Strait, the Phillip Channel, the Strait of Singapore, the Riau Archipelago and the Sulu Archipelago in the southern Philippines. One of the first reliable reported cases of piracy against a merchant vessel in the region occurred on 1 August 1980 in an anchorage west of Singapore port limits. The *Hellespont Pride* was boarded at night by two intruders armed with long knives, who stole US$10,584 in cash, two wristwatches and one gas lighter.[48] The modus operandi of this attack was reflective of the chiefly low-level, opportunistic nature of robberies against merchant vessels at both anchorage and underway during this period. However, more serious high-level armed raids and hijackings were also reported. According to the I.M.O: '[...] reports of crews being kidnapped, ships being hi-jacked, deliberately run aground or blown up by explosives [and] passengers [being] threatened and sometimes killed grew during the early 1980s'.[49]

With the absence of any centralised regional piracy reporting mechanism prior to 1992, the numbers of reported incidents varied significantly. As fig. 2.7 illustrates, there was little consistency among the various organisations and individuals collecting and collating figures on piratical incidents during the 1980s. What is evident is that attacks were predominantly sporadic and opportunistic in nature before 1991. Despite this, there was also evidence of the emergence of a more organised type of piracy operated by trans-regional criminal syndicates during the 1980s that evolved into a more widespread problem in the late 1990s and early 2000s.

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[48] U.N.H.C.R., S*tate of the world's refugees 2000*, p. 87.
[49] International Maritime Organisation (I.M.O.), 'Maritime security and piracy' (http://www.imo.org/OurWork/Security/Pages/MaritimeSecurity.aspx) (08 Aug. 2012).

Fig. 2.7

Reported piracy incidents [excluding attacks on Vietnamese boat refugees]: Southeast Asia 1979-91

	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
■ ASAM	2	0	0	0	1	3	5	7	12	10	3	8	10
■ I.M.B.	0	0	42	73	68	18	41	32	36	0	0	0	102
■ I.M.O. M.S.C.	0	0	0	0	6	7	11	16	32	8	2	10	67
□ Villar (1979-84)	4	71	154	118	110	28	0	0	0	0	0	0	0
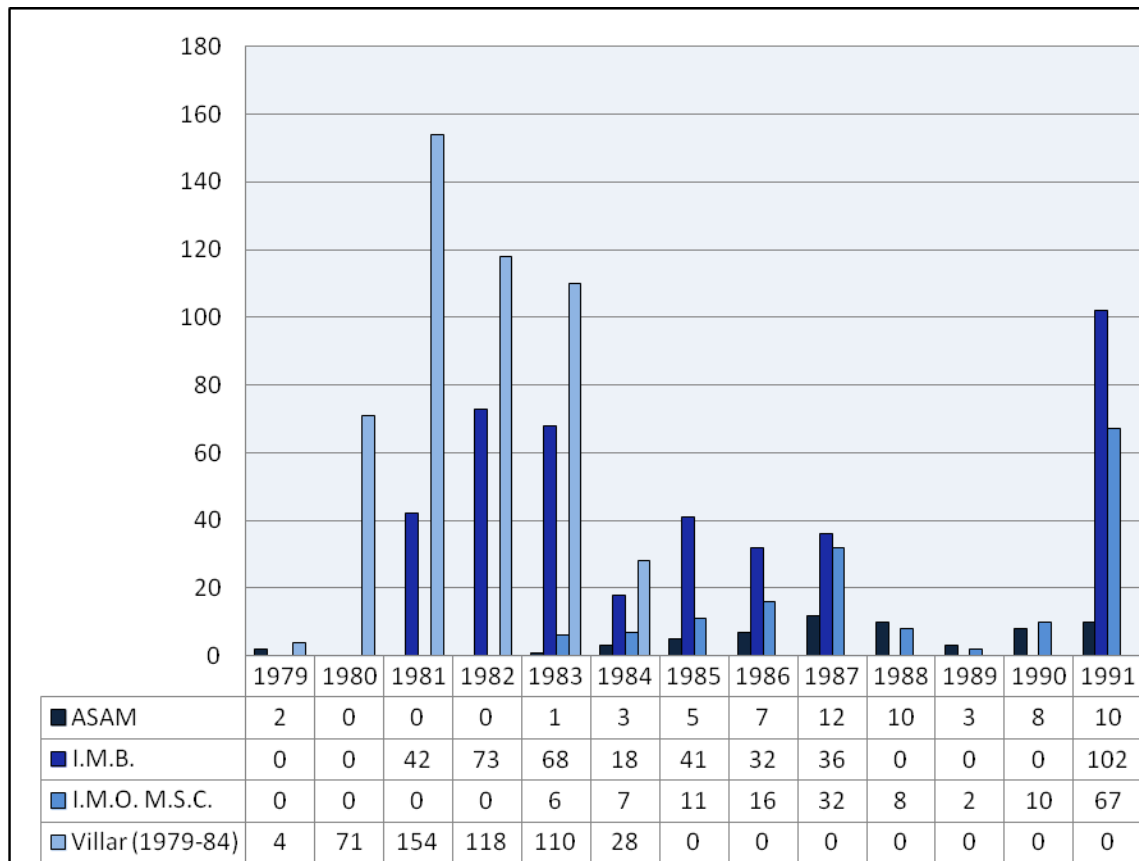
Source: See: 'IMB chronology of pirate attacks 1981-87' in Eric Ellen (ed.), *Piracy at sea* (London, 1989), pp 241-71. ICC IMB, *Piracy and armed robbery against ships: annual report 1992-2002* (London). IMO-MSC, 'Statistical resources on piracy and armed robbery 1982-1992'. Roger Villar, *Piracy today: robbery and violence at sea since 1980* (London, 1985), pp 92-153. U.S. National Geo-Spatial Intelligence Agency, 'Anti-Shipping Activity Messages 1979-1991'.

Opportunistic piracy

Throughout the 1980s, opportunistic attacks increased on merchant vessels transiting the sea-lanes of Southeast Asia. These attacks were chiefly concentrated around the choke points at the southern end of the Malacca Strait and Phillip Channel into the Singapore Strait and elsewhere the Sulu Archipelago in the southern Philippines. The attacks ranged from unsophisticated low-level 'hit and run' robberies using knives, swords and parangs [50] to, as was more common in the Philippines, serious assaults involving automatic weaponry. Between 1981 and 1984 a total of 179 piratical incidents were

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[50] Indigenous large knife, similar to a machete.

reported to the Singapore authorities.[51] According to these reports, incidents tended to follow a specific archetype, reflective of the majority of attacks during the decade. Pirates typically attacked under the cover of darkness in groups of three to five armed usually with parangs. There were no reports of firearms discharged, although they were sometimes carried.[52] Vessels were typically approached by small high-speed outboard 'prahu's' and boarded using grappling hooks from the stern.[53] The pirates preferred to avoid confrontation with the crew if possible and targeted cash and portable articles, neglecting bulky cargoes. As fig. 2.8 illustrates, this pattern of low-level theft continued throughout much of the decade with only thirty-three cases of cash sums over US$2,000 reported stolen and zero attempts to steal container cargo. The sea-lanes eastward of Singapore heading toward the South China Sea appear to have been relatively pirate-free prior to 1991 or more likely 'had not yet reached a level at which they could be of serious concern to the shipping community'.[54]

Fig. 2.8
Indication of pirate spoils: Malacca Strait area (including Singapore Strait and Phillip Channel)

Year	Container cargo	Cash theft over US$2,000	Low-level theft[55]
1981	0	3	12
1982	0	8	24
1983	0	9	34
1984	0	1	6
1985	0	6	18
1986	0	4	14
1987	0	2	21
Total	0	33	129

Source: Compiled from Eric Ellen (ed.), *Piracy at sea*, p. 280.

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[51] Sharon Tan, 'Thefts and robberies on board ships in the Singapore Strait' in Ellen (ed.), *Piracy at sea*, p. 224.
[52] Tan, 'Thefts and robberies on board ships in the Singapore Strait', p. 225.
[53] Prahu = native skiff, approx. 8-10 ft long (Villar, *Piracy today*, p. 24).
[54] Villar, *Piracy today*, p. 31.
[55] This includes smaller sums of cash, personal property, miscellaneous ship equipment, non-containerised cargo and/or other manifest items.

The relatively low level of violence witnessed in piratical attacks in the Malacca Strait and Singapore area was at odds with the incidents reported in Philippine waters, chiefly the Sulu and Celebes Seas, during the same period. Villar detailed 23 separate attacks in the 'Philippines area' between 1981 and 1984.[56] A closer analysis of the report revealed that firearms were used in 13 of the 23 attacks. Even more revealing was the high-level of fatalities reported. There were an estimated 83 deaths resulting from pirate attacks in Philippine waters from 1981 to 1984. Revealingly, there were no deaths resulting from over 144 attacks during the same period in the Malacca Strait/ Phillip Channel/ Singapore Strait area and only negligible injuries reported.

One report, dated 31 August 1981, described an attack on the 135-ton motor launch *Nuria* 500 miles south of Manila en-route to Sabah. Five pirates, aided by two accomplices aboard, intercepted the vessel in motor boats close to the island of Cagayan de Tawi Tawi in the Sulu Sea. The group raided the ship's armoury and shot dead ten crewmembers before fleeing to a nearby island shelter with US$126,528 worth of goods and US$380,000 in cash.[57] It was reported that a further 25 crewmembers drowned attempting to flee the shooting.[58]

The distinctively high level of violence perpetrated by pirates operating in Philippine waters during the 1980s can perhaps be explained by the connection to Islamist separatist groups agitating for Muslim self-rule, alongside historical proclivity. Authorities claimed that separatist groups such as the Moro Liberation Front were financing their movement with kidnappings and piracy. These groups had been involved in a violent campaign, which had resulted in an estimated 60,000 deaths between 1975 and 1981.[59] Aside from this, a historical and cultural connection to maritime raiding had existed in the region for centuries. Villar described pirates operating in the region as 'full time predators' who were 'the heirs of [...] gentlemen described 1500 years ago by Fa Hsien in warning his compatriots of "many pirates who, come on you suddenly [and]

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[56] Villar, *Piracy today*, pp 139-41.
[57] *The Daily Reporter*, 31 Aug. 1981.
[58] Villar, *Piracy today*, p. 140.
[59] *The Bulletin*, 02 Sept. 1981.

destroy everything"'. [60] Similarly, Warren illustrated nineteenth-century historical parallels: '[...] in both cases we are dealing with processes of engagement and disengagement from world commerce and economic growth, through which regional states are formed, stagnated or fragmented [...]'. [61]

Organised piracy

The majority of these violent acts of piracy and armed robbery against ships were chiefly opportunistic criminal occurrences. However, organised criminal syndicates were also actively involved in more sophisticated acts of piracy throughout the 1980s. Warren identified four Asian crime syndicates in Indonesia, the Philippines, Hong Kong and mainland China that '[...] had the right amount of transnational sophistication to make money from crime on the high seas during the 1980s and 1990s'. [62] These differed from the previous piratical activity mentioned in that they usually involved a network of criminals and enablers with access to capital, technology and a supportive infrastructure ashore to move illicit goods and launder stolen money.

These groups were typically involved in two types of operations. Firstly, at the lower level, they targeted and hijacked vessels carrying high value cargo and commodities such as diesel oil, kerosene, palm oil, rubber, steel copper and aluminium concentrates to sell on the Asian black market. [63] Secondly, at the higher level, they seized merchant vessels to employ as so-called 'phantom ships'. This involved re-registering a hijacked ship under a fraudulent name, altering its appearance and changing flag-state. Panamanian, Honduran, Belize and St. Vincent consulate officials were identified by the I.M.B. as featuring prominently in the issuing of phantom registrations. After re-registration, the cargo was then delivered to an alternative port or a third party buyer. The process could be repeated several times under different names and registries. It was suggested, for example, that a pirate syndicate headed by a Philippine native Emilio Changco was involved in organising every major ship hijacking and 'phantom ship'

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[60] Villar, *Piracy today*, p. 139.
[61] Warren, 'A tale of two centuries', p. 13.
[62] Ibid. p. 19.
[63] John S. Burnett, *Dangerous waters: modern piracy and terror on the high seas* (London, 2003), p. 218.

fraud in Philippine waters between 1980 and 1992.[64] This type of piratical activity and the revenue it generated had a destabilising effect on the region and undermined already ineffectual local law enforcement. In one instance, a merchant vessel the M.V. *Harpers* was hijacked with a hold full of cargo worth an estimated US$4.5 million.[65] According to the U.S. Office of Naval Intelligence, this type of organised piratical activity had the potential to 'be more destabilising than the activities of revolutionary or terrorist groups'.[66]

The case of the Liberian flagged vessel M.V. *Silver Med* served as an illustrative example of a phantom ship operation. The following information is derived from an ASAM report dated 15 September 1988.[67] The *Silver Med* was hijacked on 5 September 1988 in Manila harbour by eight heavily armed men, reported to be disaffected Philippine naval officers. The next sighting came on the 28 September when the vessel was spotted at an anchorage in Singapore territorial waters off Sultan Shoal. The vessel had been renamed *Lambamba*. The ship was then spotted off Kota-Kinabalu, Sabah on 5 October 1988 now named *Searex*. The Indonesian port authority had deployed a police launch to intercept it, but it had sailed before any action could be taken. Between 10 and 26 October 1988, the 'phantom' vessel loaded a consignment of plywood destined for Huangpu in China. Finally, in January 1989 Filipino military authorities recovered the *Silver Med*, now renamed *Star Ace*, off Poro Point on the north-western coast of Luzon. In the space of just five months, the *Silver Med* had undergone at least four name changes and visited several ports to load and offload illegal freight.

Wider regional criminal organisations such as the Japanese Yakuza and Chinese triads were primarily linked to other forms of maritime criminality such as drug trafficking, human smuggling and arms running. However, given the high level of sophistication

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[64] Martin N. Murphy, *Small boats, weak states dirty money: piracy and maritime terrorism in the modern world* (London, 2009), p. 185.
[65] Jayant Abhyankar, 'Maritime fraud and piracy' in Phil Williams and Dimitri Vlassis (eds.), *Combating transnational crime: concepts activities and responses* (London, 2001), p. 182.
[66] U.S. Office of Naval Intelligence & U.S. Coast Guard: Intelligence Coordination Center, *Threats and challenges to maritime security 2020* (Mar. 1999), p. 25.
[67] Anti-Shipping Activity Message 1988-28, available at U.S. National Intelligence Agency (N.G.A.), Maritime safety office (http://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_pageLabel=msi_portal _page_65) (04 Dec. 2012) (henceforth cited as 'N.G.A. ASAM [date], [ref.]').

and organisation needed to perform a successful phantom ship hijacking and fraud it is likely elements of these organisations were involved either as financiers or as directors.[68] More worrying was the alleged involvement of ship's crew in the hijackings. One estimate suggested that 75 percent of heisted cargoes were inside jobs involving the ship's crew and even the captain.[69] This offered some explanation for the under-reporting of incidents as 'shipping companies [would] often write off these losses rather than suffer bad press and risk losing their insurance'.[70] These issues compounded the ineffectiveness of regional counter-piracy initiatives before 1991.

Counter-piracy 1979-91

Counter-piracy in Southeast Asia was a complicated issue during the 1980s. This was primarily due to a lack of continuity and collaboration among regional states combined with a large and unregulated maritime domain. The corruption and complicity that was present in certain areas also significantly restricted progressive counter-piracy efforts. Elements of the shipping industry suggested that before 1992 up to 50 percent of local pirate attacks involved the Indonesian navy, marine police or customs units.[71] This presented obvious difficulties for any cooperative maritime security efforts.

Responses to opportunistic piracy

As previously mentioned the two areas primarily affected by opportunistic piracy prior to 1991 were Singapore and Indonesia. Singapore initiated a rapid response to counteract these robberies in its territorial water owing to its dependence on foreign direct trade. The Singaporean port authority established a unique V.H.F. frequency to open communication with vessels transiting the Singapore Strait to report and share information on piratical incidents. Littoral patrols by the navy and Marine Police were intensified, predominantly during the hours of darkness, when the majority of the more opportunistic acts of piracy occurred. While there was little cooperation between

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[68] See for example: Adam J. Young, *Contemporary maritime piracy in Southeast Asia: history, causes and remedies* (Singapore, 2007), pp 75-6; Liss, *Oceans of crime*, p. 183.
[69] Peter Gwin, 'Dark passage' in *National Geographic,* ccxii, no. 4 (Oct. 2007), pp 138-9.
[70] Gwin, 'Dark passage', pp 138-9.
[71] See: Christopher B.R. Cobb, 'Combating maritime piracy' (M.A. thesis, Naval postgraduate school, California, 1994), p. 72.

Singapore and Indonesia in maritime security operations during this period, there was a level of intra-agency continuity undertaken in Singaporean territorial waters. The Marine Department, the port authority, the navy, the Ministry of Defence and the Marine Police all began to coordinate their efforts in relation to anti-piracy operations.

The success of these chiefly reactionary initiatives was limited. Sharon Tan, a former representative of the Singapore diplomatic service, highlighted some of the jurisdictional issues that hampered regional counter piracy initiates at that time. She stated: 'Most of the incidents occur on passing ships, not calling into Singapore port [...] nevertheless, all cases occurring within the jurisdiction of Singapore are exhaustively investigated'. [72] The response from Singapore reflected the unilateral and non-cooperative maritime environment that existed in the late 1970s and 1980s. To launch any effective counter-piracy patrols authorities would have been required to enter Indonesian territorial waters in the Phillip Channel, which they were extremely reluctant to do.[73] Indonesia in contrast, lacked both the naval and financial resources necessary to patrol its extensive coastline and island groupings. Despite increasing helicopter and boat patrols in 1982, pirates continued to operate almost uninterrupted in the Riau Archipelago throughout the decade.[74]

Aside from these relatively ineffective efforts at a local level, several governmental and international organisations published a series of security recommendations and precautionary measures for vessels and shipmasters transiting Southeast Asian waters. This was in response to an I.M.O. resolution in 1983 that invited 'Governments concerned and interested organisations to advise shipowners, ship operators, shipmasters and crews on measures to be taken to prevent acts of piracy and armed robbery and minimise the effects of such acts'. [75] These ranged from preventative and deterrent measures taken prior to transit to actions taken after pirates had boarded. The number of international organisations and stakeholders involved in this initiative reflected the

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[72] Tan, 'Thefts and robberies on board ships in the Singapore Strait', p. 225.
[73] Villar, *Piracy today*, p. 28.
[74] Ibid.
[75] 'Measures to prevent acts of piracy and armed robbery against ships' 17 Nov. 1983 (I.M.O., M.S.C., A/RES/543/13/1983, 10b).

gravity of the issue within the maritime community. The U.S. Maritime Administration, the Baltic and International Maritime Council (BIMCO), the International Shipping Federation, the Swedish Ship-owners Association and the I.C.C. I.M.B. all published recommendations as requested by the I.M.O. General precautions included enhanced watch-keeping, safety drills, use of searchlights, use of fire hoses and signalling equipment. The BIMCO recommendations went so far as to recommend the use of firearms and tear gas to repel a pirate attack: 'In cases were pirates are unarmed, a shotgun fired in the air from the main deck would be an extremely effective deterrent'.[76]

These recommendations were enhanced by the introduction of Anti-Shipping Activity Messages by the U.S. National Geo-Spatial Intelligence Agency in 1978. The ASAM provided details of geographic location of attack, sub-region, aggressor, victim and a descriptive account of the incident to alert shipmasters to areas of high risk. The creation of these publications and reports encouraging ship-owners to take almost total responsibility for countering a pirate attack and in particular the suggestion of using firearms, highlighted three points. Firstly, that vessel's transiting Southeast Asian waters were extremely vulnerable to attack. Secondly, that the scale of the piracy problem was significant and finally that regional states had failed to address the issue.

Responses to organised piracy
Organised piracy was predominantly a localised affair during the 1980s with the majority of stolen cargo sold to buyers in China and occasionally the Philippines. The targets, however, were frequently international merchant vessels, which unsurprisingly prompted a response from international maritime bodies. In 1979, the I.M.B. was created as a specialised division of the I.C.C. initially to investigate incidences of maritime fraud and wider maritime malpractice. The focus of the I.M.B. soon shifted to piracy due to the escalation in ship hijackings and violent attacks in Southeast Asia. I.M.O. Resolution A.504 welcomed the 'positive and constructive initiative' to set up the I.M.B. and urged governments and organisations to 'maintain and develop coordinated action in all relevant areas to combat maritime fraud, including the

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[76] 'Recommendations for security: BIMCO' in Ellen (ed.), *Piracy at sea*, app. xvii.

exchange of information and all appropriate cooperation with the International Maritime Bureau'.[77] Later, in 1983 the Maritime Safety Committee (M.S.C.), the I.M.O.'s most senior technical body, explicitly addressed the issue of piracy for the first time. It noted with concern 'the increasing number of incidents of piracy and armed robbery against ships including small craft at anchor and underway'.[78] By April 1984, the I.M.O.'s committee solicited reports on piracy based on submissions by member governments and international organisations on a consultative basis. The reports attempted to ascertain the names and descriptions of the ships attacked, their position and time of attack, consequences to the crew, ship or cargo and actions taken by the crew and coastal states to which the incidents were reported.[79] The secretariat also forwarded relevant information to coastal authorities to encourage regional counter-piracy action and awareness.

Prior to the establishment of the I.M.B. P.R.C. in 1992, the bureau launched a number of initiatives in an attempt to address the growing threat of organised piracy and maritime fraud. The I.M.B. began identifying patterns of criminal activity at sea, investigating incidences of maritime fraud and attempted to educate shipping companies and other interested parties on these threats. In addition to this, and supplemented by the creation of the Counterfeiting Intelligence Bureau in 1985, threats to shipping such as charter party fraud, cargo theft, ship deviation and ship finance fraud were investigated and reported on.[80]

The marine insurance industry also initiated a response to the rising occurrences of fraud and piratical hijackings. Insurers from London, Singapore, Hong Kong and Malaysia established an investigative body known as the Far-East Regional Investigation Team in 1979. The team published a report of its findings, which highlighted and identified the role of regional crime syndicates in serious maritime fraud in Southeast Asia. Despite this, no prosecutions were made based on the report. It did, however, result in a

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[77] 'Barratry, unlawful seizure of ships and their cargoes and other forms of maritime fraud', 20 Nov. 1981 (I.M.O., Maritime Knowledge Centre (M.K.C.), A/RES/504/12/1981, p. 14).
[78] I.M.O., A/RES/543/13/1983, 10b.
[79] 'Piracy and robbery at sea' in *Focus on I.M.O.* (Jan. 2000), p. 2.
[80] See: I.C.C. Commercial crime services: IMB (http://www.icc-ccs.org/icc/imb) (25 Jan. 2013).

considerable reduction of fraud and maritime hijackings in the early 1980s owing presumably to an increased awareness on the part of the marine industry.

There was a considerable escalation and evolution in counter-piracy efforts between 1979 and 1991 chiefly in relation to promoting awareness within the international community and shipping industry. Despite this, there was an upsurge of incidents in 1991 resulting in 102 reported attacks in Southeast Asian waters. This illustrated the ineffectiveness of the chiefly reactionary and unilateral counter-piracy initiatives undertaken by regional states during this period.

Legal initiatives, 1979-91: UNCLOS and SUA Convention

As maritime piracy was escalating in the Gulf of Thailand and opportunistic attacks were mounting elsewhere in the region, significant milestones in international maritime law were reached. It is important point to note that the drafting of UNCLOS was not a response to the escalation of maritime piracy in either Southeast Asia or any other region. However, it had a disproportionate affect on responses to maritime crime, which is illustrated in this section. The seminal convention, which was convened in December 1982 but not formally implemented until 1994, solidified the legal paradigm for the modern interpretation of maritime piracy and the legal constraints and freedoms available to counteract it. UNCLOS essentially completed a twentieth-century process to codify and legislate on maritime piracy that had originated with the 'Harvard draft convention' in 1932 and later the 'Geneva Convention on the High Seas' in 1958.

UNCLOS was distinct from its predecessors due its international reach and global significance. The outlawing of privateering, for example, under the Declaration of Paris in 1856 was a euro-centric affair with minimal direct influence on the wider world. UNCLOS conversely, attracted an unprecedented 119 signatories; the United States was a notable exception. It should be noted that the suppression of maritime piracy was not the motivation behind the formulation of UNCLOS; however, it had a significant bearing on the issue in spite of this. Indeed, piracy was addressed explicitly in just seven articles (100-107) from a field of 320. In addition to this, the terminology of the

UNCLOS definition borrowed heavily from the Harvard draft convention of 1932 and as such did not take in to account contemporary geo-political sensibilities.[81] This resulted in a lack of clarity in the wider applicability of the provisions in relation to the suppression of piracy.

According to article 101 of UNCLOS, piracy consisted of any of the following:

> (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).[82]

Supplementary to this definition, article 100 addressed the duty of all signatories to 'cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State'.[83] Article 105 provided recourse for every state to 'seize a pirate ship [...] or a ship [...] taken by piracy and under the control of pirates, and arrest the persons and seize the property on board'.[84] Article 102-107 addressed associated issues such as the definition of a pirate ship and liability for seizure without adequate grounds. Significant also was article 111 that addressed the issue of 'hot pursuit'.

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[81] Article 3 of the Harvard draft defined maritime piracy as: 'Any act of violence or of depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends without bona fide purpose of asserting a claim of right, provided that the act is connected with an attack on or from the sea [...] If the act is connected with an attack which starts from on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without national character'. (Harvard research in international law, 'Draft convention on piracy' in *The American Journal of International Law*, xxvi (1932), p. 743).
[82] 'U.N. Convention on the Law of the Sea', 1982 (U.N., Treaty Series, mdcccxxxiii, no. 31363, pp 60-1) (Henceforth cited as 'UNCLOS 1982').
[83] UNCLOS 1982, pp 60-1.
[84] Ibid.

Limitations of UNCLOS as a counter-piracy mechanism

The utility of UNCLOS as a counter-piracy mechanism was particularly limited. Piratical attacks continued and escalated throughout the decade it was convened and in the case of Southeast Asia, remained a significant problem throughout the 1980s and into the 2000s. Despite presenting a codified legal definition of maritime piracy and urging all nations to cooperate in the repression of piracy, UNCLOS it is argued, weakened and undermined potential and actual counter-piracy activities rather than enhanced them. The introduction of territorial sea limits [article 3 (ii)], a contiguous zone [article 33 (iv)] and an E.E.Z. [article 57 (v)] via a system of straight baselines paradoxically undermined the potential efficacy of article 101.

By introducing these artificial boundaries at sea that had hitherto not existed, UNCLOS had limited piracy *jure gentium* to acts occurring outside the jurisdiction of any state. This was problematic given that only 7-15 percent of piratical incidents in Southeast Asian waters during the 1980s and 1990s occurred outside the jurisdiction of a state.[85] This territorial limitation meant that responsibility for addressing the majority of attacks fell under the domestic jurisdiction of the state within whose territorial waters the incidents occurred. As previously mentioned, states such as Indonesia, lacked the capacity, resources and political incentive to patrol their newly acquired archipelagic seas or to counter the threat from indigenous pirates. Furthermore, evidence of state complicity in piratical incidents in Indonesian territorial waters further undermined potential regional counter-piracy cooperation and exposed weaknesses in UNCLOS.

The ambiguity of the E.E.Z. concept, evident in article 58 entitled 'Rights and duties of other States in the exclusive economic zone', created further uncertainty in relation to the suppression of piracy at sea. Article 58 (1) stated: 'In the exclusive economic zone, all States [...] enjoy [...] the freedoms referred to in article 87 [freedom of the high seas] of navigation [...]'. However, 58 (3) appended: '[...] [in the E.E.Z.] States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and

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[85] P.W. Birnie, 'Piracy past, present and future' in *Marine Policy*, xi, no. 3 (July 1987), p. 163.

regulations adopted by the coastal State in accordance with the provisions of this Convention'.

The provisions in article 111 on the right of 'hot pursuit' added further ambiguity on the legal implications of pursuing a vessel suspected of engaging in piratical acts. This provision significantly restricted unilateral seaward counter-piracy action in the constrained and contested zonal limits of Southeast Asia. Article 111 (1) stated: 'The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State'. However, article 111 (3) enforced strict limitations of such pursuit: 'The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State'. As previously noted, pirates operating in Southeast Asian waters exploited this weakness in the legislation.

By limiting acts of piracy to those committed for 'private ends' in article 101 (a), UNCLOS could not be utilised to prosecute politically motivated acts of piracy or incidents of maritime terrorism, such as the hijacking of the *Achille Lauro* in October 1985. Indeed, the designation of what constituted 'private ends' was not defined in UNCLOS and was therefore open to interpretation and contestation. Douglas Guilfoyle, for example, interpreted 'private ends' to mean 'a lack of public sanction'.[86] He stated: 'The test of piracy lies not in the pirate's subjective motivation, but in the lack of public sanction for his or her acts'.[87] However, others argued 'private ends' could be 'theft or the desire for gain, but it could also translate in acts of personally motivated hatred or sheer vengeance'.[88] In addition to this, article 101 (a) stipulated that two vessels must be involved for an incident to be piracy *jure gentium*. This did not take into account, for example, acts of violence detention or depredation committed for private ends by the crew or the passengers of a single vessel or robbery from the shore against a ship that is berthed. These limitations were partially rectified with the drafting of the Convention

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[86] Douglas Guilfoyle, *Shipping interdiction and the law of the sea* (Cambridge, 2009), p. 37.

[87] Guilfoyle, *Shipping interdiction and the law of the sea*, p. 37.

[88] José Luis Jesus, 'Protection of foreign ships against piracy and terrorism at sea: legal aspects' in *The International Journal of Marine and Coastal Law*, xviii, no. 3 (2003), pp 377-8.

for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) in 1988.

The limitations of UNCLOS as a counter-piracy instrument were further evident in its failure to impose a legal obligation on states to suppress piracy in their territorial waters or to cooperate in the suppression of piracy in these waters. Article 100 encouraged states to 'cooperate to the fullest possible extent in the repression of piracy on the high seas […]' which according to judge José Luis Jesus of the International Tribunal for the Law of the Sea 'ceases to exist the moment the pirates move into a state's territorial waters'.[89] Moreover, the absence of any international enforcement mechanism in UNCLOS was a significant shortcoming. It is plausible that states such as Indonesia, Malaysia and Singapore, all of which bordered internationally recognised straits, might have addressed piracy within their territorial waters under article 44 of UNCLOS as a 'danger to navigation'. Article 44 obliged these states to 'give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge'. Article 43 facilitated 'States bordering straits [to] adopt laws and regulations relating to transit passage through straits, in respect of […] the safety of navigation and the regulation of maritime traffic'. However, as Christopher Cobb highlighted: 'Piracy occurs because states refuse to adequately fund protective measures […] often due to a paucity of resources'.[90]

Incidents such as the hijacking of the *Achille Lauro* in October 1985 sparked debate and highlighted the ambiguity in international legal circles over what constituted an act of maritime piracy in relation to the UNCLOS definition.[91] This confusion was reflected in a briefing by the then U.S. National Security Advisor Robert McFarlane: 'I am told [...]

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[89] Jesus, 'Protection of foreign ships against piracy and terrorism at sea', pp 380-1.
[90] Cobb, 'Combating maritime piracy', pp 42-3.
[91] On 07 October 1985, four members of the Palestinian Liberation Army hijacked the Italian cruise ship *Achille Lauro* shortly after departing from Port Alexandria in Egypt. The hijackers demanded the release of fifty Palestinian prisoners held by Israel. During the seizure a 69 year old American Leon Klinghoffer was killed. The hijackers eventually secured a deal with Egypt negotiating safe passage by plane for the release of the hostages. The hijackers were intercepted by the U.S. Air Force over Italy and forced to land at a NATO base. The hijackers were arrested and prosecuted by Italian police. The United States requested the extradition of the hijackers to stand trial for, amongst other crimes, 'piracy on the high seas'.

and please don't hold me to this [...] under a crime of piracy, with respect to the United States, the crime committed is one of hostage-taking'.[92] The United States subsequently released a warrant for the arrest of the leader of the *Achille Lauro* hijackers Abu el-Abas on three separate charges: (i) hostage taking (18 U.S.C. section 1203) (ii) piracy under the law of nations (18 U.S.C. section 1651) and (iii) conspiracy (18 U.S.C. section 371). The legal basis for the charge of piracy was specified as section 1651 of U.S. Code 18 that read: 'Whoever, on the high seas, commits the crime of piracy as described by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life'.[93] In an affidavit attached to the criminal complaint form of one of the five accused hijackers Abu el-Abas, the charge of 'piracy on the high seas' was presented as follows:

> [The accused] did knowingly, wilfully and unlawfully commit and cause the commission of the crime of piracy as defined by the law of nations, that is, did knowingly, wilfully and without legal authority from any sovereign power and for private ends seize control of the cruise ship *Achille Lauro* by force, violence and threat of force and violence.[94]

However, the U.S. charge fell short of the requirements for piracy under UNCLOS in three ways: (i) the hijacking did not involve two vessels (ii) the hijacking most likely occurred within Egyptian territorial waters and therefore not outside the jurisdiction of any state (iii) there was uncertainty in defining a political hijacking as an act undertaken for 'private ends'. Therefore, according to one commentator: 'The problem with the United States' piracy claim [...] lies not with its jurisdictional basis, but [...] with the difficulty in fitting both the *Achille Lauro* hijackers and Abbas within the somewhat restrictive definition of piracy articulated in the 1982 Law of the Sea Convention'.[95]

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[92] 'Briefing by national security advisor Robert McFarlane on the apprehension of the Achille Lauro hijackers', 11 Oct. 1985 in *International Legal Materials*, xxiv, no. 6 (Nov. 1985), p. 1517.
[93] 'Piracy under the Law of Nations', 25 June 1948 (United States Code (U.S.C.), Supplement 5, Title 18, Sec. 1651, p. 387).
[94] Don C. Piper (ed.), 'Documents concerning the Achille Lauro affair and cooperation in combating international terrorism' in *International Legal Materials*, xxiv, no. 6 (Nov. 1985), pp 1556-7.
[95] Tracey E. Madden, 'An analysis of the United States' response to the Achille Lauro hijacking' in *Boston College Third World Law Journal*, viii, no. 11 (Jan. 1988), p. 141.

The *Achille Lauro* incident highlighted the ambiguity and limitations of UNCLOS as a judicial counter-piracy mechanism and the vulnerability of shipping not only on the high seas, but also within the jurisdiction of a state. In December 1985, just three months after the hijacking of the *Achille Lauro*, the U.N. general assembly adopted resolution 40/61 in response to a draft submitted by the Austrian, Egyptian and Italian governments. The resolution requested the I.M.O. to 'study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures'.[96] Essentially, the I.M.O. was invited to redress the inefficiencies of UNCLOS in relation to threats at sea. This request culminated in the drafting of the SUA Convention in Rome in 1988.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988
The SUA Convention attempted to address some of the shortcomings that UNCLOS presented in relation to threats at sea including although not explicitly addressed, maritime terrorism and piracy. Article 3 of SUA offered a broader, more comprehensive definition of offences at sea. Unlike UNCLOS, this definition omitted a private or political motivational requirement, a high seas requirement or a two-vessel requirement. Under article 3 of the SUA, an individual could be prosecuted or extradited for prosecution if that individual unlawfully and intentionally:

> (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or (f) communicates information which he knows to be false, thereby endangering the safe navigation of a

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[96] 'Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes', 09 Dec. 1985 (U.N., Dag Hammarskjöld Library (D.H.L.), A/RES/40/61/1985, p. 13).

ship; or (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).[97]

The SUA Convention had evolved from UNCLOS in that offences such as piracy, could be committed within the territorial waters of a state, however, this did not extend to universal jurisdiction to counteract threats within these waters. It did, however, oblige signatory states to enact applicable domestic law to addresses these offences. Article 5 stated: 'Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences'.[98]

Limitations of SUA

The SUA Convention broadened the definition of maritime crime and encouraged prosecution and extradition but it had limited utility as an anti-piracy mechanism. Unlike UNCLOS, it was not requisite customary international law and therefore was only applicable to state parties who were signatories. Indonesia, Malaysia and Singapore did not ratify the SUA Convention at this time and therefore were not party to its provisions. This significantly undermined the convention's usefulness as a counter-piracy mechanism in Southeast Asia given that the majority of piratical offences occurred in these waters prior to 1991. Despite this, it is doubtful whether ratification of SUA would have actually contributed to the prevention and suppression of regional piracy. Notwithstanding it facilitated the prosecution of an offender for offences committed in the jurisdiction of a signatory state, 'there [was] no right-of-entry into territorial waters for nations capable of actual suppression'.[99]

The effectiveness of the SUA Convention, like UNCLOS, was further restricted as a participant state was only obliged to hold a 'preliminary inquiry' into an offence but not actually prosecute and punish offenders. Article 13 required states to 'cooperate in the prevention of the offences set forth in article 3' by:

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[97] 'Convention for the Suppression of Unlawful Acts against the safety of navigation', 1988 (U.N., Treaty Series, mdclxxviii, no. 29004, pp 244-5) (henceforth cited as 'SUA Convention 1988').
[98] SUA Convention 1988, p. 226.
[99] Michael Bahar, 'Attaining optimal deterrence at sea: a legal and strategic theory for naval anti-piracy operations' in *Vanderbilt Journal of Transnational Law*, xl, no. 1 (Jan. 2007), p. 25.

(i) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories [and] (ii) exchanging information in accordance with their national law, and co-ordinating administrative and other measures [...].[100]

The practical application of the SUA Convention in Southeast Asia from 1988 to 1997 was non-existent simply because no regional state had ratified the treaty. Taken as a broader counter-piracy mechanism, the SUA Convention attempted to address some of the definitional shortcomings of UNCLOS, however, it was not until 2008 that any individual was prosecuted under the SUA Convention, almost twenty years after its ratification.[101]

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[100] SUA Convention 1988, pp 230-1.
[101] See: United States District Court, D. (Hawai`i), No. 02-00116HG, 'United States of America (Plaintiff) v. Lei Shi (Defendant)', 396 F.Supp.2d 1132, 16 Sept. 2005, available at (http://law.justia.com/cases/federal/district-courts/FSupp2/396/1132/2567184/) (27 July 2014).

Alternative regional piracy 1991-97

Fig. 2.9
Reported piracy incidents: Southeast Asia 1991-97 (a)

	1991	1992	1993	1994	1995	1996	1997
■ Cambodia	0	0	1	1	1	1	1
■ Indonesia	55	49	10	22	33	57	47
■ Myanmar (Burma)	0	0	0	0	0	1	2
■ Malacca Strait	32	7	5	3	2	3	0
■ Malaysia	1	2	0	4	5	5	4
■ Philippines	0	5	0	5	24	39	16
■ Singapore Strait	0	0	0	3	2	2	5
■ Thailand	0	0	0	0	4	16	17
■ TOTAL	88	63	16	38	71	124	92
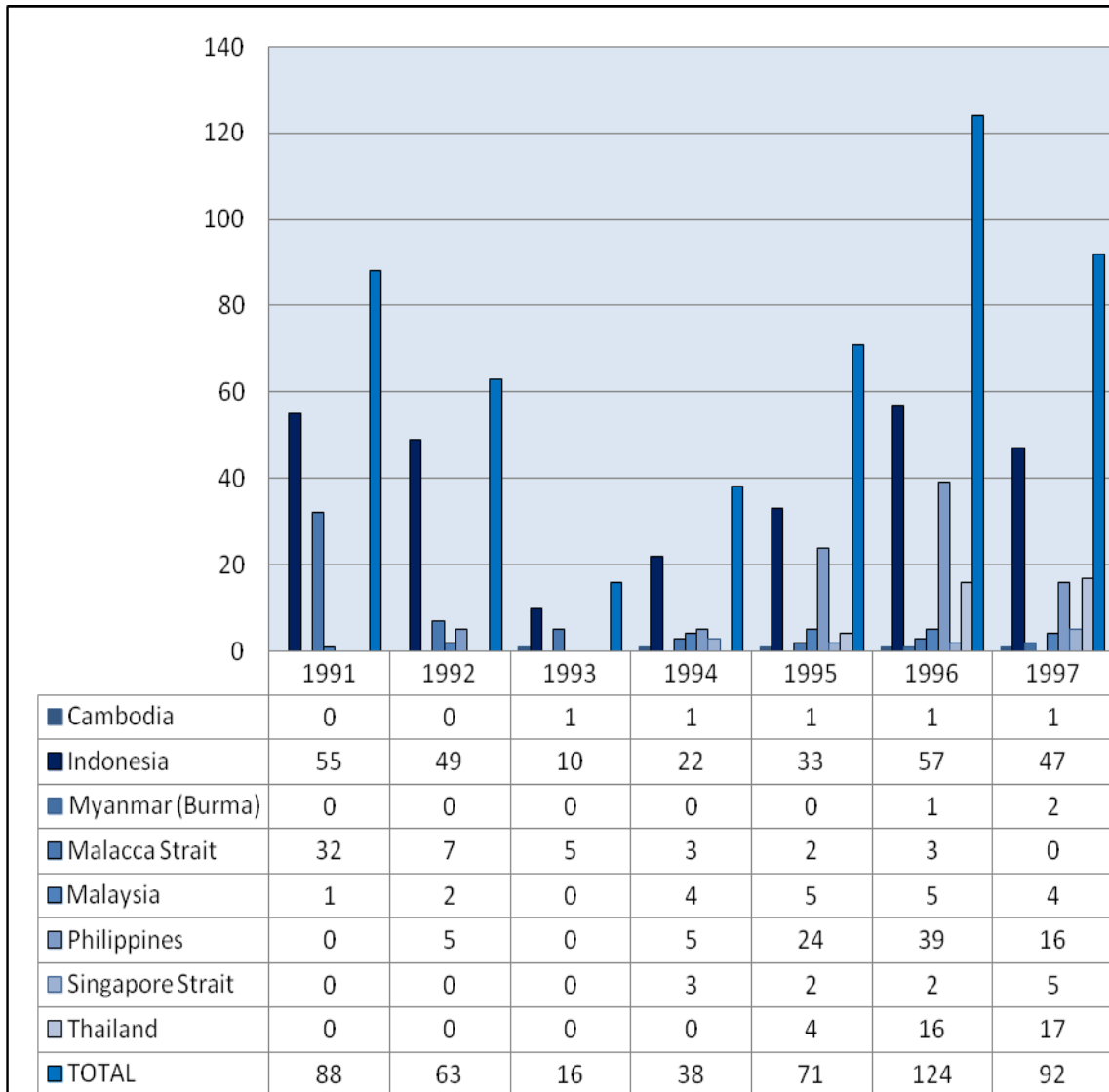
Source: I.C.C. I.M.B., *Piracy and armed robbery against ships annual report: 1998* (London), p. 5.

Fig. 2.10
Reported piracy incidents: Southeast Asia 1991-97 (b)

	1991	1992	1993	1994	1995	1996	1997
■ China/ Hong Kong/ Macau	0	0	1	6	31	9	5
■ Hong Kong/ Luzon/ Hainan	0	0	27	12	7	4	1
■ Papua New Guinea	0	0	0	0	0	1	1
■ South China Sea	14	6	31	6	3	2	6
■ Taiwan	0	0	0	0	2	0	0
■ Vietnam	0	0	0	2	4	0	4
■ TOTAL	14	6	59	26	47	16	17
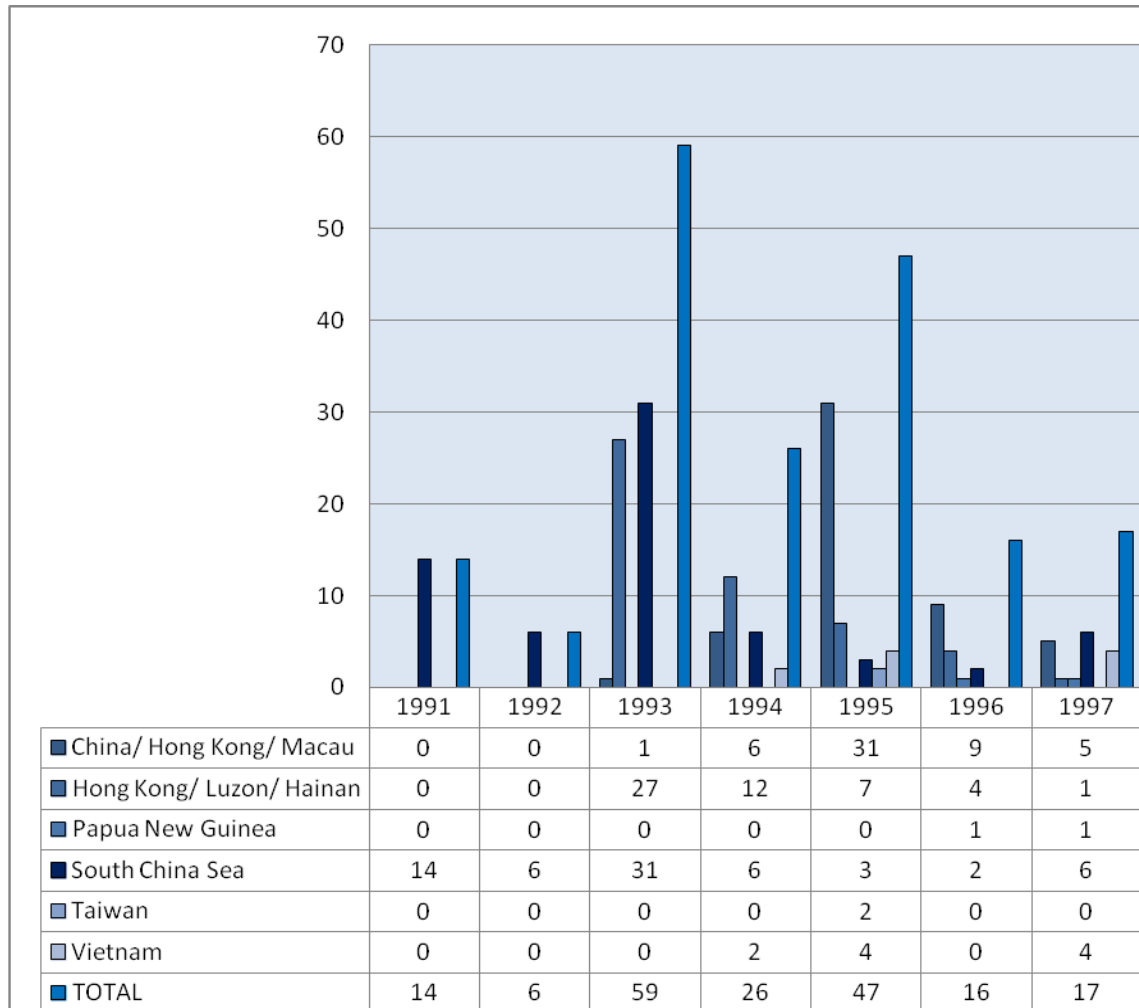
Source: I.C.C. I.M.B., *Piracy and armed robbery against ships annual report: 1998* (London, 1999), p. 5.

Post-Cold War counter-piracy initiatives 1991-97

The evolution in counter-piracy strategy and operations was apparent in the years following the decline in attacks on Vietnamese refugees. Most Southeast Asian nations acknowledged that at least limited cooperation and information sharing was necessary if maritime crimes such as piracy were to be effectively addressed. The formation of UNCLOS, the conclusion of the Cold War and the subsequent escalation in maritime crime likely reinforced this approach.

Fig. 2.11
Total reported piracy incidents: Southeast Asia 1991-97

	1991	1992	1993	1994	1995	1996	1997
TOTAL	102	69	75	64	118	140	109
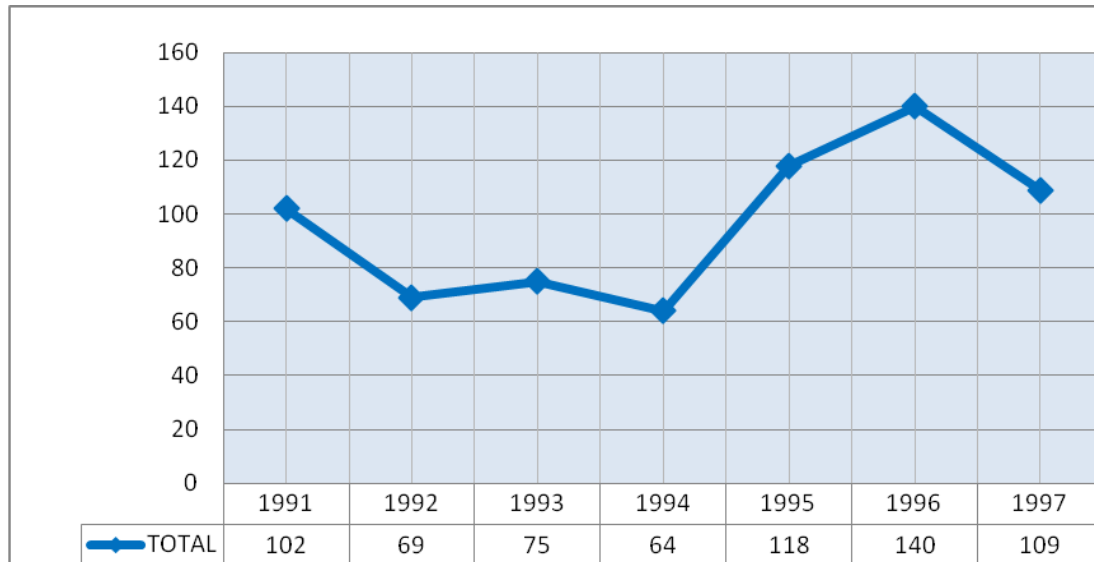
Source: I.C.C. I.M.B., *Piracy and armed robbery against ships annual report: 1998* (London, 1999), p. 5.

The end of the Cold War in 1991 significantly altered the maritime environment of Southeast Asia and highlighted the need for regional cooperation at sea. The collapse of the Soviet Union resulted in a sharp decline in the number of Soviet naval vessels patrolling the region, which consequently led to a reduction in U.S. naval assets. In 1991, the U.S. closed Clark air base on Luzon Island in the Philippines. The following year saw the completion of the U.S. military withdrawal resulting in the closure of the naval base at Subic Bay - the largest U.S. overseas naval installation at that time. Reminiscent of the British withdrawal in the 1960s, the rapid contraction of a previously large and stabilising naval presence enhanced the vulnerability of the maritime domain. Regional navies were too small to achieve and maintain a similar presence unilaterally. It was estimated that after the Cold War, British and U.S. naval assets in the region were reduced by around 50 percent.[102] This reduction in a military maritime presence corresponded with an increase in a civilian maritime presence, which according to Peter Lehr resulted in 'lower security for licit forms of trade and higher security for illicit

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[102] Jayant Abhyankar, 'Piracy and armed robbery against ships', 17 Nov. 1997, p. 4 (Presentation made at the eleventh international conference on the Sea Lanes Of Communication studies, Royal park hotel, Tokyo, 17-18 Nov. 1997).

activities'.[103] The fact that most regional naval forces were still comparatively small in the early 1990s in contrast to the large maritime area meant that some form of strategic continuity was essential in any seaward anti-piracy operations.

Problems with multilateralism

Historically, multilateral cooperation in Southeast Asia had been complicated due to the geo-political character of the region and the challenges presented in implementing coordinated patrols in respective territorial seas. This was to some extent the result of the introduction of colonial boundaries in the nineteenth-century, which overlooked indigenous ethnic, religious, historical and cultural sensitivities and delineations. The Association of Southeast Asian Nations (ASEAN) was established in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand to address the fragmented state of regional economies following decolonisation and to encourage multilateral political engagement.[104] The 1967 ASEAN declaration established an annual meeting of foreign ministers combined with a standing committee, chaired by the Foreign Minister of the host country alongside various specialist ad-hoc committees.[105] However, ASEAN was primarily concerned with the idea of nation building and socio-economic consolidation and as such did not result in enhanced security cooperation at sea before the formation of the Regional Forum in 1994. Indeed, issues surrounding regional cooperation were not confined to the maritime domain. The Chairman of the ASEAN Regional Forum commented in 1994 that 'habits of cooperation are not deep-seated in some parts of the region'.[106] An article written in 1992, for example, reflected the insular and jingoistic attitude of Indonesia, Malaysia, and Singapore at that time: 'Pride and patriotism runs high in each of the three nations, while mutual suspicions are always a factor in relations [...]'.[107]

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[103] Peter Lehr, (ed.) *Violence at sea: piracy in the age of global terrorism* (London, 2007), p. viii.
[104] See: Jamil Maidan Flores & Jun Abad, 'ASEAN at 30' (Aug. 1997), available at Association of Southeast Asian Nations (ASEAN) (http://www.asean.org/?static_post=asean-at-30) (12 Nov. 2015).
[105] '1967 ASEAN declaration', 08 Aug. 1967 (Centre for International Law (C.I.L.), ASEAN Constituent Documents, p. 2).
[106] 'Chairman's Statement of the 1st Meeting of the ASEAN Regional Forum, Bangkok', 25 July 1994, available at ASEAN Regional Forum library, A.R.F. chairman's statements and reports (http://aseanregionalforum.asean.org/ library.html) (11 Mar. 2013).
[107] *South China Morning Post*, 21 Sep. 1992.

The problematic issue of multilateralism was partly solved by the implementation of bilateral initiatives after 1991. It was far easier to coordinate patrols with the navy of one country rather than multiple countries. Japan attempted to bridge this gap in the 1990s by providing training and assistance to the littoral states in an attempt to stimulate a more cooperative maritime environment particularly in the repression of piracy. Events such as the collision of the Japanese tanker *Nagasaki Spirit* with the *Ocean Blessing* in September 1992 were influential in creating a proactive Japanese position on piracy. The containership *Ocean Blessing* was apparently a post-pirated '"rogue ship" zig-zagging across shipping lanes' when it collided with *Nagasaki Spirit* in the northern Straits of Malacca.[108]

Japan was heavily dependent on maritime trade for the majority of its domestic fuel and consumption needs and therefore had a vested interest freedom of navigation through connective Southeast Asian straits. This recognition of the strategic importance of maintaining and defending Southeast Asian sea-lanes was publicly declared in 1981. Then Prime Minister Suzuki Zenko stated in a press conference to the National Press Club: 'We will strengthen our defence capability in order to defend several hundred miles of surrounding waters and the sea lanes to a distance of 1,000 nautical miles'.[109] Japan was aware of the enduring difficulties that impeded regional maritime cooperation. This was acknowledged in a presentation by the Japanese Maritime Self Defence Force (J.M.S.D.F.) Rear Admiral (rtd) Sumihiko Kawamura at the eighth international conference on the Sea Lanes of Communication in 1993:

> I have not included any comments on a key factor for success in international cooperation – inter-operability – which involves many problems such as naval control and protection of shipping [...], common operating procedures and tactics, compatible communications, the exchange of intelligence and joint training [...] these difficulties have been discussed at

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[108] William M. Carpenter & David G. Wiencek, 'Maritime piracy in Asia' in idem, *Asian security handbook 2000* (New York, 2000), p. 91.
[109] *New York Times*, 09 May 1981.

this conference for a number of years and I will not add to these discussions here.[110]

Such a degree of strategic 'interoperability' was not achieved in any genuine sense until the signing of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) in 2006. ReCAAP was the first authentic multilateral cooperative agreement convened on a governmental to governmental level to address regional piracy and reinforced how a 'cooperative security' framework could exist without eroding sovereignty. This interplay connoted what former Australian Foreign Minister Gareth Evans described as 'consultation rather than confrontation, reassurance rather than deterrence, transparency rather than secrecy, prevention rather than correction, and interdependence rather than unilateralism'.[111]

1992 initiatives

In 1991, regional piracy had escalated dramatically shifting predominantly from the Gulf of Thailand to the busy shipping lanes of the Malacca Strait and Indonesia (see fig. 2.9). There were 107 attacks reported worldwide in 1991 of which 102 occurred in Southeast Asian waters.[112] This equated to approximately 82 percent of all reported incidents of piracy that year. The I.M.O. responded by pressuring regional states to:

> [...] increase their efforts as a matter of the highest priority to suppress and prevent acts of piracy and armed robbery against ships in or adjacent to their waters as well as to ensure that further and prompt action including strengthening of security measures is taken against pirates and armed robbers reportedly operating in their waters.[113]

Incidents such as the violent attack on the *Valiant Carrier* in April 1992, in which a pirate had stabbed an infant girl during a botched raid, placed further pressure on littoral

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[110] Sumihiko Kawamura, 'International cooperation for the maintenance of the SLOC's: burden sharing – a Japanese perspective', 25 Jan. 1993 (Presentation given at the eighth international conference on the Sea Lanes Of Communication, Nusa Dua Beach Hotel, Bali, 24-26 Jan. 1993).
[111] Gareth Evans, 'Cooperative security and intra-state conflict' in *Foreign Policy*, no. 96 (Autumn 1994), p. 7.
[112] I.C.C. I.M.B., *Piracy and armed robbery against ships: annual report, 01 Jan. – 31 Dec. 1997* (London, 1998), p. 5. [henceforth cited as: 'I.C.C. I.M.B., *Piracy report*']
[113] Prevention and suppression of acts of piracy and armed robbery against ships, 21 Nov. 1991 (I.M.O., M.S.C., A/RES/683/17/1991, pp 1-2).

states to initiate a resolute response to the problem. Indeed, the levels of violence witnessed in piratical attacks rose from 42 reported violent incidents in 1991 to 62 in 1992.[114] There was also a significant increase in the use of firearms from just one reported incident in 1991 to 18 in 1992.[115] The violence was not only directed against civilian targets. In a case reported in July 1991, a Philippine naval patrol boat was reportedly attacked by a group of seven 'heavily armed' pirates 850km south of Manila, which resulted in the suspected deaths of seven Philippine naval personnel.[116]

The I.M.O. recognised the benefit of a multilateral approach and invited neighbouring states to 'co-ordinate their actions against pirates and armed robbers operating in areas within or adjacent to their waters'.[117] Motivated partly by the mounting international pressure and the loss of national reputation, there were a number of counter-piracy initiatives launched in 1992. Indeed, resistance to external influence was explicitly referenced in the ASEAN declaration of 1967, which stated that the signatories were '[…] determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities'.[118] This might explain to some extent the gradual evolution toward closer regional relations.

Unilaterally Singapore, Indonesia and Malaysia increased the frequency of littoral patrols to interdict the movements of pirate groups along their respective coasts. These states also actively began to prosecute those suspected of engaging in piracy. Indonesia, for example, launched 'Operation Eroding the Pirates' (Operasi Kikis Bajak) in June 1992 which resulted in, according to the *Far Eastern Economic Review*, seventy arrests for piracy in a six-month period between June and November 1992.[119] The Malaysian government created a special unit called the 'Sabah Police Field Force brigade' with the dual intention of curbing maritime piracy and the entry of illegal immigrants. The brigade deployed intelligence gathering techniques and placed brigade officers and staff

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[114] I.C.C. I.M.B., *Piracy report 1996*.
[115] Ibid.
[116] N.G.A. ASAM 1991, Ref. 1991-30.
[117] I.M.O., A/RES/683/17/1991, p. 2.
[118] '1967 ASEAN declaration', p. 2.
[119] Eklöf, *Pirates in paradise*, pp 136 & 149.

in strategic locations along the Sabah coast to deter and interdict piratical activity in the Sulu Sea.[120] The brigade, which was based in Sandakan on the northeastern coast of Borneo, had up to forty patrol craft at its disposal.

Littoral states along the Malacca Strait, chiefly Malaysia, wanted to introduce a toll or levy on merchant ships transiting through the passage to subsidise and bolster regional counter-piracy and maritime security measures. Under international law, however, this was prohibited as all vessels enjoyed the right of free passage through internationally recognised straits. Article 26 (1) of UNCLOS stated that: 'No charge may be levied upon foreign ships by reason only of their passage through the territorial sea'.[121] The Malaysian government asserted that the money would contribute to the creation of a maritime surveillance system, which would enable Malaysian authorities to 'provide help to ships involved in accidents, pirate attacks and for controlling oil spills'.[122] The financial burden of the clean-up operation following the collision of the *Nagasaki Spirit* and *Ocean Blessing*, for example, fell on the Malaysian government. Then Malaysian Prime Minister Mahathir bin Mohamad commented: 'When pirates board these big ships and tie up the crew the ships are left to sail on their own for miles [...] what happens when the direction is wrong and it lands on our shores?'.[123] The difficulties presented with these unilateral counter-piracy efforts likely encouraged a number of bilateral initiatives, which were also instigated that same year.

The neighbouring countries of Indonesia and Singapore signed a joint agreement in 1992 that provided for information sharing on regional piratical activities and coordinated anti-piracy patrols in the Singapore Strait and the Phillip Channel. These patrols occurred at a rate of four times per year, with one warship and one marine police vessel from Indonesia and Singapore for sixty days per coordinated patrol.[124] More importantly, this agreement opened up direct communication links between the navies of

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[120] See: *New Straits Times*, 29. Oct. 1992.
[121] UNCLOS 1982, p. 33.
[122] *Business Times*, 26 Aug. 1992.
[123] *New Straits Times*, 09 Oct. 1992.
[124] Susumu Takai, 'Suppression of modern piracy and the role of the navy' in National Institute for Defence Studies, *Journal of Defence and Security: Security Reports,* no. 4 (Mar. 2003), p. 54.

each nation in relation to anti-piracy operations. That same year Indonesia and Malaysia agreed to form a joint unit known as the Maritime Operation Planning Team to conduct coordinated patrols along their common borders in the Strait of Malacca. The mission consisted of four joint patrols annually involving customs, search and rescue and police. [125] Indonesia, Malaysia and Singapore also concluded bilateral agreements between each pair of countries indicating their recognition that warships of either country may happen to enter territorial seas of other states in the course of controlling piratical activity.[126]

There were, however, limits to these cooperation mechanisms. The then director of the Malaysian Maritime Enforcement Coordination Centre was quoted as saying: 'Under no circumstances would we intrude into each other's territory [...] if we chase a ship and it runs to the other side, we let the authorities there handle it'.[127] This was reflective of the enduring geo-political difficulties counter-piracy operations confronted in the region. The introduction of UNCLOS as previously mentioned compounded these difficulties as it gave legal credence to territorial claims and disagreements.

In support of littoral counter-piracy operations along the Malacca Strait, the I.M.O. formed a working group in 1992 under the direction of then I.M.O. Secretary-General William O'Neil. The initiative consisted of selected experts from ten member states including representatives from Indonesia, Malaysia and Singapore with the intention of compiling a report on piracy in the Malacca Strait. The working groups report addressed issues such as navigation, search and rescue, radio communications alongside piracy and armed robbery in the Malacca Strait region.[128] The findings of the report resulted in the issuing of two circulars by the I.M.O. in May 1993 on recommendations and guidance to governments, ship-owners, ship-operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships.

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[125] Yann-huei Song, 'Regional Maritime Security Initiative (RMSI) and enhancing security in the Straits of Malacca: littoral states' and regional responses' in Shicun Wu & Keyuan Zou (eds.) *Maritime security in the South China Sea: regional implications and international cooperation* (Surrey, 2009), p. 120.
[126] Susumu Takai, 'Suppression of modern piracy', p. 54.
[127] See: Chalk, 'Contemporary Maritime Piracy in Southeast Asia', p. 100.
[128] 'Piracy and robbery at sea' in *Focus on IMO*, p. 3.

Aside from these efforts at the political and military level, there was also a noticeable increase in the promotion of similar preventative and deterrent measures by a number of civilian maritime associations such as the Nautical Institute, the International Shipping Federation and the I.M.B. The limitations of small regional navies were once again apparent given the responsibility ship-owners and masters were expected to take to prevent and deter a pirate attack.

I.M.B. Piracy Reporting Centre

An important chapter in the evolution of counter-piracy initiatives was reached in 1992 with the establishment of the I.M.B. regional P.R.C. in Kuala Lumpur just six months after the violent attack on the *Valiant Carrier*. The P.R.C., despite providing the first centralised regional piracy reporting mechanism and coordination hub, was met with objections by some regional states. Both Malaysia and Indonesia, for example, rejected the idea, claiming that the problem could be tackled exclusively by local agencies. The then director of Malaysia's Maritime Enforcement Coordinating Centre, Commodore Hashim Mohamad, commented in 1992 that 'they are not professional pirates [...] it is really petty thieving at sea'.[129] The director of operations of the Indonesian Navy Commodore Sutedjo reinforced this sentiment and claimed: 'Unlike real piracy they don't go after the cargo'.[130] Both Indonesia and Malaysia maintained that localised bilateral initiatives were sufficient to address regional piracy and clearly suggested that it was a negligible issue. The I.M.B. disagreed and insisted that 'local law enforcement [...] turned a deaf ear [and] chose to ignore that there was a serious problem in their waters'.[131]

The P.R.C. was primarily interested in the safety of seafarers transiting piracy prone areas and acted as a first point of contact. During the early 1990s, the centre focussed on documenting and analysing patterns and trends of piracy in Southeast Asia and reporting on these potential threats on a twenty-four hour basis. The centre produced annual

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[129] 'Pirates "Petty Thieves"', 02 Aug. 1992, available at Ohio university, 'Apakabar' database (http://www.library.ohiou.edu/indopubs/1992/08/01/0003.html) (19 Mar. 2013).
[130] Ibid.
[131] I.C.C. I.M.B., 'Piracy Reporting Centre' (http://www.icc-ccs.org/piracy-reporting-centre/) (08 Aug. 2012).

reports on piracy and armed robbery against ships to alert seafarers to high-risk areas and fluctuating patterns of piratical activity. Initially the centre was funded by voluntary contributions from regional and international shipping industry bodies such as the Hong Kong ship-owners Association. However, by 1997 donations from regional shipping associations diminished owing to an apparent reluctance to fund the P.R.C. despite an escalation in acts of piracy and armed robbery in the region.[132] This could be explained in two ways. Firstly, due to regional states' discontent at the centres 'regional' focus, and secondly, some shipping associations had written in their manual of procedures not to report a piracy attack to law enforcement or information gathering bodies such as the I.M.B. P.R.C.[133] By 1997 the 'Regional Piracy Reporting Centre' was renamed the 'Piracy Reporting Centre', an indication of its evolving global focus and a measure of appeasement to regional states who felt a disproportionate amount of negative attention was directed on maritime crime in Southeast Asia.

1993-97 initiatives

The intensification of counter-piracy initiatives launched in 1992 resulted in a short-lived reduction in incidents. The I.M.O. at its eighteenth assembly session in 1993 recognised '[...] the significant reduction in the number of incidents of piracy and armed robbery against ships in the Malacca Strait area since the implementation of countermeasures by the littoral states, including co-ordinated sea patrols'.[134] In just two years reported attacks decreased from 55 in Indonesian waters to just 10 and from 32 in the Malacca Strait to just five.[135] The bilateral initiatives that were undertaken marked a significant evolution in regional counter-piracy efforts and paved the way for future multi-state initiatives.

The case of the M.V. *Al Zahrah* illustrated the effectiveness of this new cooperative approach. The vessel was boarded by pirates on 26 January 1992. The master relayed a distress call to the Singapore Coast Guard who in turn relayed the message to

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[132] Chalk, 'Contemporary Maritime Piracy in Southeast Asia', p. 101.
[133] See: Chalk, 'Cross-border crime and grey area phenomena in Southeast Asia', p. 72.
[134] 'Measures to suppress and prevent piracy and armed robbery against ships', 04 Nov. 1993 (I.M.O., M.S.C., A/RES/738/18/1993, p. 1).
[135] I.C.C. I.M.B., *Piracy report 1997*, p. 9.

Indonesian security authorities. This resulted in the successful apprehension of the pirates who previously might have evaded capture by crossing into the opposing maritime jurisdiction. While these bilateral initiatives were an important component in the evolution of counter-piracy initiatives in the region, they were still limited by what Peter Chalk described as 'continuing regional sensitivity over the issue of territorial sovereignty'.[136]

This success of these initiatives was short-lived. Despite the decline in incidents in the Malacca Strait and Singapore area, there was a substantial shift eastward toward the Philippines' and into the South China Sea where attacks escalated significantly between 1993 and 1997. The geographic areas principally affected were the territorial waters around Hong Kong and Macau, the Chinese island province of Hainan and the waters off the Philippine island of Luzon. Collectively these zones became known as the Hong Kong-Luzon-Hainan (H.L.H.) 'terror triangle' due to the frequency and scale of attacks (see fig. 2.12).[137] Between 1993 and 1995 there were an estimated 122 separate piratical attacks reported in the 'triangle', representing over half of all reported incidents in Southeast Asia.[138] Aside from officially collated reports, it was estimated that in 1993 alone, upwards of 143 piracy attacks occurred in Philippine waters resulting in at least 30 deaths; none of which were reported to the I.M.B. P.R.C.[139] Former Executive Director of the I.M.B. Eric Ellen estimated that losses due to piracy amounted to US$200 million each year from 1990 to 1994.[140]

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[136] Chalk, 'Contemporary maritime piracy in Southeast Asia', p. 100.
[137] Peter Chalk, *The maritime dimension of international security: terrorism, piracy and challenges for the United States* (California, 2008), p. 16.
[138] See: I.C.C. I.M.B., *Piracy report 1996*.
[139] Chalk, 'Contemporary maritime piracy in Southeast Asia', p. 90.
[140] Greg Myre, 'Pirates on the loose in Indonesian waters, maritime group says', 14 Dec. 1994 in *Associated Press news archive* (http://www.apnewsarchive.com/1994/Pirates-on-the-Loose-in-Indonesian-Waters-Maritime-Group-Says/) (20 Mar. 2013).

Fig. 2.12
H.L.H. 'terror triangle' (est.)

A number of regional meetings and agreements were initiated in response to the escalation of piracy in the South China Sea primarily due to the negative effect the upsurge was having on transiting maritime trade. Between 1985 and 1995, container volumes increased six-fold through the region, which by the end of the decade equated to approximately one-third of the Asian total.[141] Hong Kong, for example, was the world's busiest port from 1992 to 1997. The escalation of piracy resulted in a loss of international reputation and, in relation to Hong Kong, threats by maritime associations such as NUMAST and the Japan Shipowner's Association to boycott port facilities and

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[141] United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), *Regional shipping and port development strategies: container traffic forecast* (New York, 2005), p. 6.

reduce trade.[142] More problematic was evidence of official Chinese sanctioning and collaboration in incidents of maritime piracy. A confidential position paper complied by the Hong Kong government in 1994 suggested that between September 1992 and May 1993 Chinese customs, naval and police officials may have been directly involved in as many as 50 percent of incidents in the South China Sea.[143]

Despite this, on 1 December 1993 a Memorandum of Understanding on port state control in the Asia-Pacific region was signed in Tokyo by sixteen nations; most notably China, Indonesia, the Philippines, Malaysia, Singapore, Thailand and Vietnam. Though not a legally binding contract, the Memorandum of Understanding bolstered cooperation in relation to the suppression of piracy by highlighting 'the importance of the safety of life at sea and in ports and the growing urgency of protecting the marine environment and its resources'.[144] It further affirmed the necessity of an 'improved and harmonized system of port State control and of strengthening cooperation and the exchange of information'.[145] The Memorandum of Understanding facilitated, for example, Malaysia and the Philippines in the commission of coordinated anti-piracy patrols along their common sea boundaries and in the exchange of information gathered from these patrols.

A technical working group was also established in 1993 in response to the escalation of piracy and maritime disorder in the South China Sea. The Technical Working Group on Safety of Navigation, Shipping and Communication held its first meeting in 1995 where it discussed the need for cooperation to combat piracy, illicit drug trafficking and refugees at sea.[146] In 1994, the ASEAN Regional Forum (A.R.F.) was established to 'forge a consensual approach to security issues'. The first meeting of the A.R.F. took place in Bangkok on 25 July 1994 and highlighted, amongst other issues, the need for a

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[142] Chalk, 'Contemporary maritime piracy in Southeast Asia', p. 90.
[143] See: Peter Chalk, 'Cross-border crime and grey area phenomena in Southeast Asia' in *IBRU Boundary and Security Bulletin* (Autumn 1998), p. 75.
[144] 'Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region', 01 Dec. 1993, p. 1 (http://www.tokyo-mou.org/organization/mou_text.php) (13 Mar. 2013) [henceforth cited as Tokyo M.O.U. 1993].
[145] Tokyo M.O.U. 1993, p. 2.
[146] See: 'The first meeting of the Technical Working Group on Safety of Navigation, Shipping and Communication in the South China Sea Jakarta, Indonesia', 03-06 Oct. 1995, available at (http://faculty.law.ubc.ca/scs/twgsnsc.htm) (13 Mar. 2013).

multilateral approach toward regional maritime security. The initial meeting also highlighted the enduring difficulties of attaining an operational multilateral framework in the region. The chair stated that the A.R.F. should not move 'too fast for those who want to go slow and not too slow for those who want to go fast' and discussed the need for a 'gradual evolutionary approach'.[147] The forum was principally focussed on trust and confidence building measures as a foundation for any potential multilateral initiatives to 'foster a regional environment conducive to maintaining the peace and prosperity of the region' and as such was slow to implement concrete agreement on approaches to maritime security.[148]

Despite the convening of these groups and the creation of a more cooperative maritime climate in relation to the suppression of piracy, by 1994 there were 64 reported incidents in Southeast Asia. By 1996, this figure had risen to 140.[149] In 1994 alone, it was estimated up to 12 phantom ships were operating in Southeast Asian waters at any one time.[150] Between 1994 and 1997, the I.M.B. reported nine 'long-term' ship seizures in the region.[151] While the activity between 1993 and 1997 did little to suppress incidents of piracy in the South China Sea in particular, the opening of dialogue would eventually facilitate a more unified regional response to piracy in the decade following the Asian financial crisis of 1997.

I.M.B. definition v. UNCLOS definition

In an attempt to rectify some of the weaknesses of the UNCLOS definition, the I.M.B. initially proposed an alternative definition of maritime piracy. The I.M.B. attempted to define piracy in 1988 as 'any violent attack (or depredation) on a vessel, or any attack which has the potential for violence'.[152] By 1997, this definition had evolved to 'An act of boarding any vessel with the intent to commit theft or any other crime and with the

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[147] Chairman's Statement of the 1st Meeting of the ASEAN Regional Forum (1994).
[148] Ibid.
[149] I.C.C. I.M.B., *Piracy report 1997*, p. 9.
[150] Cobb, 'Combating maritime piracy', p. 16.
[151] I.C.C. I.M.B., *Piracy report 1998*, pp 14-15.
[152] Hyslop, 'Contemporary piracy', p. 7.

intent or capability to use force in the furtherance of that act'.[153] The definition was later modified to include attempted attacks:

> An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.[154]

The I.M.B.'s broad and simplistic definition applied to a wide variety of potential attack locations including vessels at anchor, berthed and at sea. The I.M.B.'s definition removed the two-vessel requirement, the high-seas requirement and the private ends requirement, thus affording the definition far wider applicability. Captain Jayant Abhyankar, former deputy director of the I.M.B., offered some insight into the formation of the I.M.B.'s alternative definition:

> [...] it makes little difference to the seafarer to know that the man who shot him is a robber rather than a pirate [...] in a similar way, the owner of a ship forced to stay in port until stolen equipment is replaced is more interested in avoiding the cost he incurs, rather than whether the criminals are thieves or pirates.[155]

In any event, the shipping industry and most maritime institutions favoured the broader I.M.B. definition. The I.M.B.'s annual piracy reports became the chief statistical resource for investigation and analysing piratical incidents worldwide.

Conclusion

Between 1979 and 1997, Southeast Asia witnessed an unprecedented upsurge in maritime piracy that stimulated a fundamental evolution in regional relations. Indeed, this upsurge was the first of its kind during the twentieth-century and therefore, as this argues, constituted a palingenesis of piracy or a modern manifestation of a periodic historical problem. The violent piratical attacks inflicted on the Vietnamese boat refugees in the Gulf of Thailand and the South China Sea highlighted the vulnerability of boats at sea and placed the issue of piracy firmly on the international agenda. The

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[153] Abhyankar, 'Piracy and armed robbery against ships', p. 2.
[154] I.C.C. I.M.B., *Piracy report 2002.*
[155] Abhyankar, 'Piracy and armed robbery against ships', p. 2.

maritime climate that emerged in Southeast Asia in the decades after the Second World War was heavily conducive toward disorder. Piracy was the manifestation of this disorder. The response to this maritime crime wave was chiefly reactionary and superficial and as such had a limited utility. The cessation of attacks against boat refugees, for example, had as much to do with the decline in the flow of refugees as it did with any counter-piracy initiatives.

The problematic issue of multilateralism significantly limited the potential efficacy of counter-piracy initiatives during this period. Despite some temporary reductions in the fluctuation of incidents, by 1996 attacks had increased to 140 from just 64 in 1994.[156] Indonesia, the Malacca Strait and the Philippines once again emerged as the most piracy beleaguered regions of Southeast Asia and indeed the world. In 1996, attacks in Indonesia and the Philippines accounted for over 68 percent of all piratical incidents in Southeast Asia. In 1997, Southeast Asia was plunged into a financial crisis, which resulted in the emergence of a more sophisticated, more brutal and more organised breed of pirate. This marked the beginning of new era of piracy in Southeast Asia. Within just nine years, however, the evolutionary progression towards multilateralism would essentially be complete and with it, the effective suppression of regional piracy by 2006.

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[156] I.C.C. I.M.B., *Piracy report 1997.*

CHAPTER III

Towards multilateralism, 1997-2006

[…] even pirates and privateers, though following the sea as highwaymen the road, they but plunder other ships, other fragments of the land like themselves, without seeking to draw their living from the bottomless deep itself.[1]

Introduction

The period from 1979 to 1997 witnessed the first major upsurge of piracy in Southeast Asia since the late nineteenth-century. The efforts initiated to combat and control it, aside from brief periodic successes, ultimately failed. This failure resulted from a shortage of resources, expertise and political motivation combined with a rigid and insular intergovernmental system. These reactionary and relatively superficial counter-piracy efforts resulted in a brief decline in attacks by 1994. This decline did not endure. By 1997, there were 109 reported piratical attacks in Southeast Asian waters equating to 44 percent of all reported incidents worldwide.[2] Aggravated by the fallout of the Asian financial crisis of 1997-99, and hampered by continuing issues over territorial sovereignty, piracy peaked in 2000 with an estimated 259 reported incidents in Southeast Asian waters. This equated to over 55 percent of all reported piracy incidents worldwide.[3]

Critical international events such as the attacks in New York and Washington D.C. on 11 September 2001 had a circuitous impact on the security environment in Southeast Asia. International pressure mounted on littoral states to secure essential sea-lanes against all forms of predation from low-level opportunistic robberies to high-level organised criminal and terrorist acts. Indirectly this heightened global focus ushered in a new era of regionalism and cooperation in Southeast Asia, particularly in relation to the suppression of piracy. Despite enduring territorial and political tensions such as the

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[1] Hermann Melville, *Moby Dick or the white whale* (Boston, 1920), p. 65.
[2] International Chamber of Commerce (I.C.C.) International Maritime Bureau (I.M.B.), *Piracy and armed robbery against ships: annual report 2006* (London, 2007), p. 5 [henceforth cited as I.C.C. I.M.B., *Piracy report*].
[3] I.C.C. I.M.B., *Piracy report 2006*, p. 5.

prioritisation of sovereignty over security, intra-regional cooperation was favoured over allowing foreign powers, chiefly the United States, to take the lead in domestic security issues. This emergent multilateral approach to maritime security resulted in the first government to government anti-piracy agreement in 2006 and consequently, to a significant, albeit it temporary, decrease in reported acts of piracy and armed robbery against ships in the region.

This chapter examines this evolution in counter-piracy initiatives in the decade after the Asian financial crisis of 1997 to the signing of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) agreement in 2006. While the majority of piratical incidents were still chiefly opportunistic affairs during this period, there was a noticeable increase in the levels of violence and organisation in attacks. There was also concern expressed over the apparent emergent nexus between maritime piracy and terrorism and the rise of transnational organised crime.

Changing perceptions of global security threats resulted in an increase of external state interest in the internal security affairs of Southeast Asia, particularly in the wake of 11 September 2001 and exemplified by the United States' 'war on terror'. Aside from the United States, countries such as China, India and Japan had a stake in the unimpeded movement of maritime trade and in this regard contributed to the establishment of counter-piracy frameworks and dialogue throughout the period. To explore the evolution and utility of these various regional, international and legal counter-piracy initiatives, a detailed examination of tactical and operational responses to specific incidents of piracy and armed robbery is presented alongside a substantive and comprehensive statistical analysis.

Compiling a pragmatic statistical picture of piratical occurrences from 1997 to 2006 is comparatively uncomplicated when compared to accessing figures a decade previous. By 1997, the International Maritime Bureau's Piracy Reporting Centre (I.M.B. P.R.C.) had been compiling and collating reports on piracy for over five years and had

developed improved methods of statistical analysis due to an increasing industry awareness of the problem. This included verifying all reported acts of piracy or armed robbery against a vessel with the master of that vessel or the owners alongside more rapid collation of this data for timely dissemination.[4] However, under-reporting was still a serious issue and must be considered when utilising I.M.B. and other piracy reports.

The International Maritime Organization's (I.M.O.) Maritime Safety Committee (M.S.C.) estimated that in 2002, 34 incidents of piracy occurred in the Malacca Strait while I.M.B. figures placed this much lower at 16.[5] The disparity between local agencies estimations and I.M.B. figures was also apparent. It was reported that the Malaysian Maritime Enforcement Coordination Centre documented 78 piracy incidents in the Indonesian region of Sabah between 1997 and 2002, while the I.M.B. recorded just 35 attacks during the same period.[6] The disparity in the I.M.B. figures can be explained in number of ways, most obviously that the I.M.B. predominantly received reports of attacks against commercial vessels, which according to its own estimates, were still underreported by around 50 percent.[7] Piratical attacks against smaller indigenous vessels were far less likely to be reported to the I.M.B. Despite this, the I.M.B. figures were the most authoritative representation of piratical attacks against commercial vessels worldwide.

Causes and context

The period from 1997 to 2006 witnessed a significant evolution in regional counter-piracy successes. In just six years incidents of piracy decreased from a high of 259 attacks in 2000 to just 88 recorded attacks in 2006, a drop of almost 66 percent.[8] While the causal factors remained much the same, the character of Southeast Asian piracy

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[4] Interview with Mr. Cyrus Moody, Deputy Director of the I.C.C. I.M.B. at the I.C.C. I.M.B headquarters, Cinnabar Wharf, London (22 Oct. 2013).

[5] See: 'Reports on acts of piracy and armed robbery against ships: annual report 2002', 17 Apr. 2003 (I.M.O., Maritime Safety Committee (M.S.C.), Circ.32/4/Anx.2).

[6] J.N. Mak, 'Incidents at sea: shipjacking, maritime muggings, thefts and illegal migration in Southeast Asia', 23 Mar. 2011, p. 35 (http://community.middlebury.edu/~scs/docs/JMMak-piracy.pdf) (02 Oct. 2013).

[7] See; Carolin Liss, 'Maritime dimension of energy security' in Benjamin K. Sovacool (ed.), *The Routledge handbook of energy* security (New York, 2011), p. 115.

[8] I.C.C. I.M.B., *Piracy report 2006*, p. 5.

changed after 1997 due to a combination of internal and external events. The expansion of the globalised system, enhanced by the availability of new technologies and communication mediums, facilitated the spread of transnational organised crime. In practice, this meant criminals could exploit and profit from increasingly porous borders, ease of international travel, telecommunications and the internet, a large ungoverned sea-space and more interconnected financial markets. According to a U.N. Office on Drug and Crime (U.N.O.D.C.) report, globalisation meant that 'Human and commercial flows are too intense to easily distinguish the licit from the illicit'.[9]

The sea was a natural medium for illicit transnational activity given Southeast Asia's position as a key global trade artery. Aside from piracy, several transnational crimes had a distinct maritime dimension such as the illegal trafficking of weaponry, drugs, human beings and counterfeit goods. In 2008, for example, it was estimated that 81 percent of all counterfeit products from South Asia to Europe were transported by sea.[10] The 'rapid mass movement of goods' due to containerisation facilitated this activity and meant only a minute percentage of freight could be readily inspected.[11] The rise of 'transnationality' also meant that pirates, who previously engaged largely in localised operations, developed extra-regional networks for the exchange of illicit goods, capital and information.

Similarly, a number of indigenous Islamist groups agitating for autonomous rule began to identify with extended global terrorism networks such as Al-Qaeda through enhanced mediums of communication. After 2001, and owing chiefly to the heightened awareness of threats from such militants, there was growing concern over the apparent link between piracy and regional terrorist organisations. This was particularly evident in the northern Indonesian region of Aceh and in the Southern Philippines where groups such as Gerakan Aceh Merdeka and the Moro Islamic Liberation Front were reputably utilising maritime hijackings and robberies to fund acts of terrorism and disrupt

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[9] U.N. Office on Drugs and Crime (U.N.O.D.C.), *The globalisation of crime: a transnational organized crime threat assessment* (Vienna, 2010), p. 29.
[10] U.N.O.D.C., The *globalisation of crime [...]*, p. 179.
[11] Ibid. pp 29-31.

international trade transiting the region.[12] The connection between terrorism and piracy is discussed later in the chapter

Fig. 3.1
Reported incidents of piracy in Southeast Asia: 1997-2006 (a)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Indonesia	47	60	115	119	91	103	121	94	79	50
Malacca Strait	0	1	2	75	17	16	28	38	12	11
Malaysia	4	10	18	21	19	14	5	9	3	10
Myanmar (Burma)	2	0	1	5	3	0	0	1	0	0
Philippines	16	15	6	9	8	10	12	4	0	6
Singapore Strait	5	1	14	5	7	5	2	8	7	5
Thailand	17	2	5	8	8	5	2	4	1	1
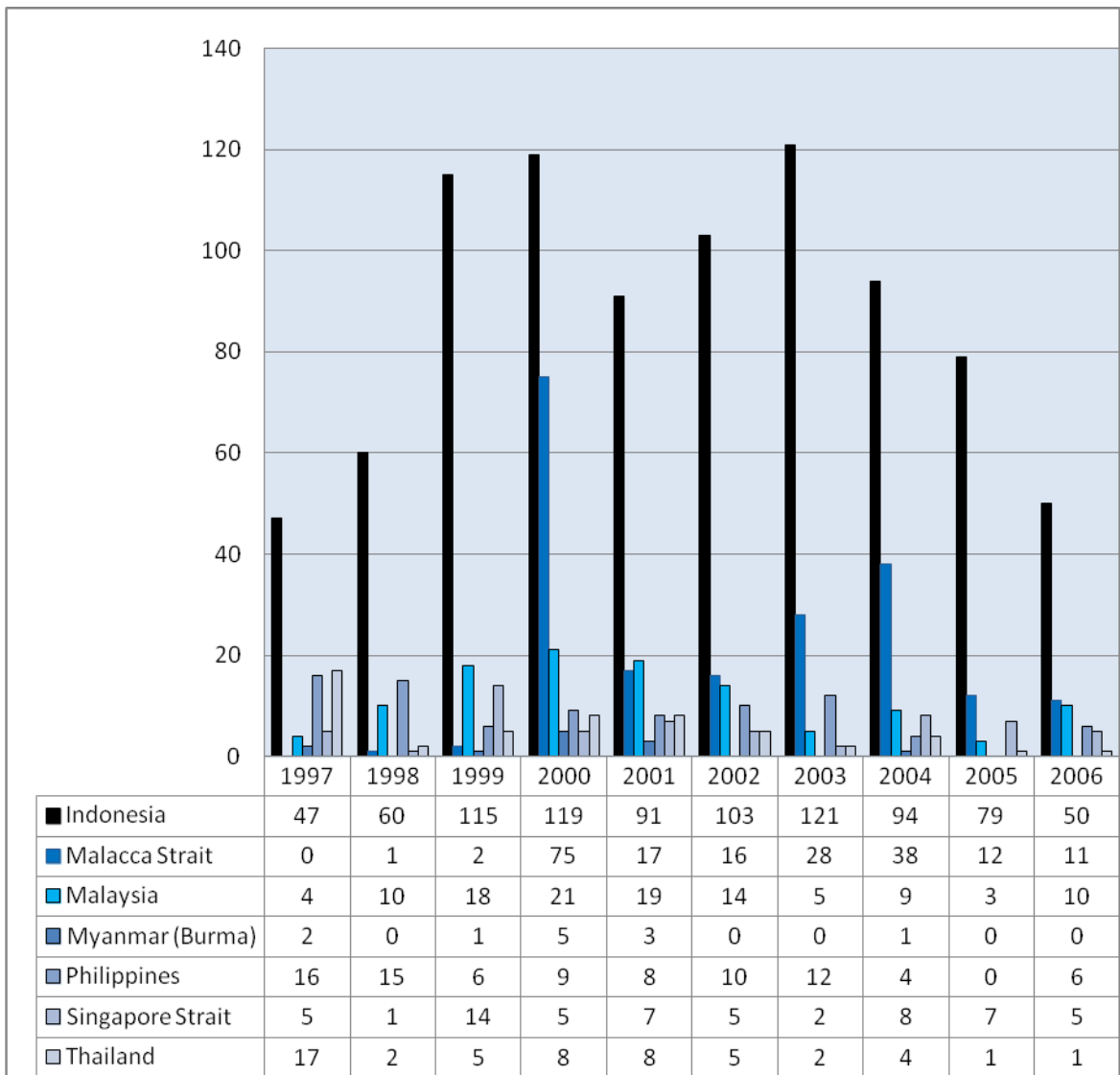
Source: I.C.C. I.M.B., *Piracy report 2000 & 2007*.

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[12] Gerakan Aceh Merdeka translates to 'Free *Aceh* Movement'.

Fig. 3.2
Reported incidents of piracy in Southeast Asia: 1997-2006 (b)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
■ China/ Hong Kong/ Macau	5	2	0	2	0	0	1	3	4	1
■ Hong Kong/ Luzon/ Hainan	1	0	0	0	0	0	0	0	0	0
■ Papua New Guinea	1	3	0	0	1	1	0	0	0	0
□ South China Sea	6	5	3	9	4	0	2	8	6	1
□ Taiwan	0	0	0	0	2	1	1	0	0	0
■ Vietnam	4	0	2	6	8	12	15	4	10	3
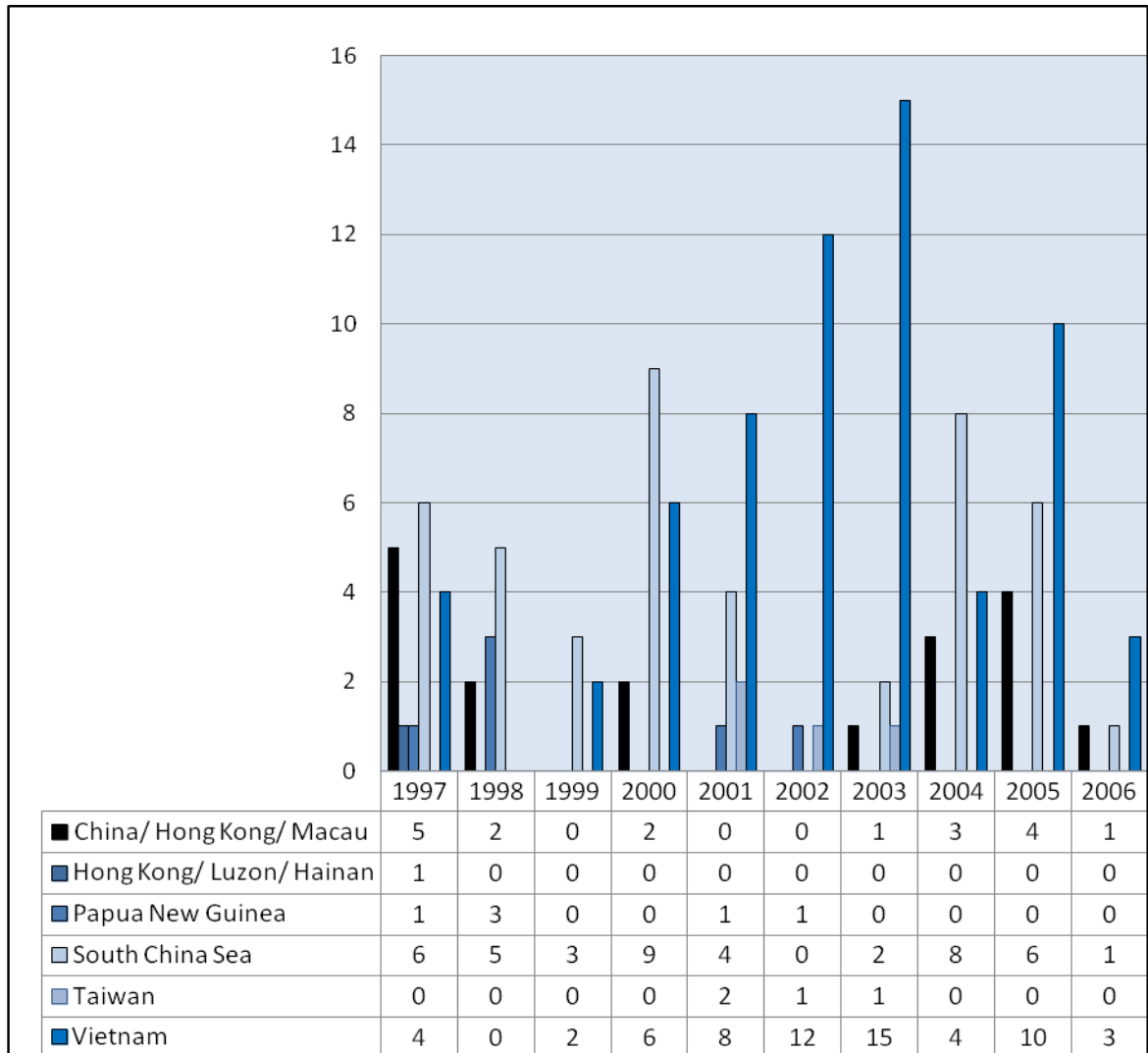
Source: I.C.C. I.M.B., *Piracy report 2000 & 2007*.

Fig. 3.3
Total reported incidents of piracy: Southeast Asia v. worldwide 1997-2007

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Worldwide	248	202	300	469	335	370	445	329	276	239	263
Southeast Asia	109	99	166	259	168	167	189	173	122	88	79

Source: I.C.C. I.M.B., *Piracy reports 1997-2007*.

Fig. 3.4

Total reported incidents of piracy in Southeast Asia as percentage of world total 1997-2007

1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
44%	49%	55%	55%	50%	45%	42%	52%	44%	37%	30%

Source: Percentages calculated from I.C.C. I.M.B., *Piracy reports 1997-2007*.

Asian financial crisis

The Asian financial crisis of 1997 coupled with the relinquishment of the British naval base on Hong Kong Island to China and the subsequent departure of over 500 Royal Navy and Royal Air Force personnel likely had an impact on the fluctuation of piracy in Southeast Asia.[13] Between 1965 and 1995 Hong Kong, Singapore, Taiwan and the three newly industrialised economies of Indonesia, Malaysia, and Thailand enjoyed a period of rapid and sustained economic expansion. These economies developed faster than the economies of all other regions achieving what was described as 'miraculous growth'.[14]

However, in 1997 a severe and widespread financial and currency collapse occurred. Multiple explanations have been offered on the reasons for the crash. Aseem Prakash identified five contributory factors that summarised the different theories well. These were the accumulation of short-term debt, regulatory oversight, balance of payments woes, contagion effect, imprudent investments and the reversal of capital flows.[15] The scale of the crash was illustrated by the immense bailout instituted by the International Monetary Fund (I.M.F.), the World Bank and the Asian Development Bank. Indonesia received US$40 billion, Thailand received US$17.2 billion and the Philippines received a bailout fund of US$1 billion.[16] The financial crisis therefore, increased unemployment and impoverishment in coastal regions and decreased capital available for investment in

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[13] Peter Howard, 'U.K. forces poised for Hong Kong handover as deadline looms' in *I.H.S. Jane's Defence Weekly* (Oct. 1996).

[14] John Page, 'The East Asian miracle: four lessons for development policy' in *NBER Macroeconomics Annual 1994*, ix (Jan. 1994), p. 219.

[15] Aseem Prakash, 'The East Asian crisis and the globalization discourse' in *Review of International Political Economy*, viii, no. 1 (Spring 2001), pp 122-5.

[16] See: Paul Bowles, 'Asia's post-crisis regionalism: bringing the state back in, keeping the (United) States out' in *Review of International Political Economy*, ix, no. 2 (May 2002), p. 235.

maritime security programmes. This combined with widespread political and social unrest, particularly in Indonesia, resulted in an increase in acts of piracy and armed robbery.

Indonesia

Indonesia was hardest hit by the crisis in relation to piracy. The economic fallout of the collapse resulted in a sizeable reduction in the availability of capital for military and naval expansion and modernisation projects at the behest of the I.M.F. This resulted in the curtailment of plans to acquire new weapons systems and expansion of its two-boat submarine flotilla.[17] Reports indicated that in 1993 there were just 10 incidents of piracy in Indonesian waters. By 1999, just two years after the financial crisis, this figure had increased to 115, accounting for over 97 percent of all reported incidents in Southeast Asia that year.[18] This equated to over 50 percent of all reports worldwide.

The association between the financial crisis and the upsurge could be explained in two ways. Firstly, the crisis inevitably resulted in increased unemployment and impoverishment in coastal regions already struggling with these issues and consequently a rise in criminal activity such as piracy. According to one study, Thailand and Indonesia were hardest hit by the crisis with 'tens of millions' pushed back into poverty.[19] An article from the *Modern Economy* journal illustrated a poverty rate increase in Indonesia from 15.1 percent in 1996 to 24.2 percent in 1998 as a direct result of the crisis.[20] Secondly, the crisis led to widespread political and social unrest, which ultimately led to the downfall of Indonesian President Suharto in May 1998.[21] This contributed to general levels of lawlessness, communal violence, food shortages and corruption and therefore a more permissive environment for illicit activities such as piracy.

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[17] Richard Scott, 'Southeast Asian navies: slowly surfacing', 21 Mar. 2002 in *I.H.S. Jane's Defence Weekly* (Mar. 2002).
[18] I.C.C. I.M.B., *Piracy report 2000*.
[19] Gregory W. Noble & John Ravenhill (eds), *The Asian financial crisis and the architecture of global finance* (Cambridge, 2000), p. 23.
[20] Tulus T. H. Tambunan, 'The Indonesian experience with two big economic crises' in *Modern Economy*, no. 1 (Nov. 2010), p. 160.
[21] See for example: *Jakarta Post*, 02 Mar. 1998; *New York Times*, 21 May 1998.

Following the fall of Suharto, Indonesia's navy fell into a state of significant disrepair due to inadequate financial investment, which consequently limited maritime security operations along its vast coastline. A Mariners' Alerting and Reporting Scheme (MARS) report from August 2000 described the effect in the southern Malacca Strait: 'Warships, naval vessels, patrol craft, coast guard cutters or other military, quasi military or police vessels were conspicuous by their absence. The message is clear. You are on your own. Expect no help from anyone'.[22] By 2001, only eight of Indonesia's 30 Air Force helicopters were operational and according to former Indonesian President Abdurrahman Wahid, the 'ancient vessels' used by the Indonesian Maritime Police were in urgent need of replacement.[23]

Philippines, Malaysia & Singapore

Not all regional economies suffered to the same degree as Indonesia as a result of the financial crisis. The Philippines, for example, managed to escape the worst of the fallout in relation to incidences of maritime piracy due to its 'Latin American-style populist regime'.[24] This was reflected in piracy reports, which were significantly lower in Philippine waters than elsewhere. There were just 15 reported incidents of piracy in the Philippines in 1998 compared to 60 in Indonesia.[25] This indicated a direct correlation between the financial crisis and the fluctuation of piracy in the region as Indonesia, which was hardest hit by the crash, witnessed the greatest increase in attacks. Malaysia avoided the socio-economic damage witnessed in Indonesia due to its comparatively low-level of foreign debt, which nullified the need for an I.M.F. bailout.[26] In the case of Singapore, there was actually an increase in the growth rate of its exports due to the

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[22] Mariners' Alerting and Reporting Scheme (MARS), Report no. 200056 (Aug. 2000), available at The Nautical Institute, Knowledge Library (http://www.nautinst.org/en/forums/mars/index.cfm) (01 July 2015).
[23] 'Indonesia seeks new sources for equipment', 26 Jan. 2001 in *I.H.S. Jane's Defence Weekly* (Jan. 2001).
[24] Renato Cruz De Castro, 'The 1997 Asian financial crisis and the revival of populism/neo-populism in 21st century Philippine politics' in *Asian Survey*, xlvii, no. 6 (Nov./Dec. 2007), p. 932.
[25] I.C.C. I.M.B., *Piracy report 2000*.
[26] Michael Lim Mah-Hui & Goh Soo Khoon, 'How Malaysia weathered the financial crisis: policies and possible lessons' in *CenPRIS Working Paper*, no. 146/12 (Dec. 2012), p. 2.

crisis. This was primarily due to increases in petroleum product and clothing sector exports, which grew by 15.7 percent in the three-year post-crisis period.[27]

Significantly, in relation to counter-piracy operations, the financial crisis inadvertently stimulated a new period of regional cooperation and economic partnership probably due to external political and market pressures rather than any genuine desire to collaborate. According to Paul Bowles: 'The contours of post-financial crisis regionalism are, by state design, aimed at restoring to Asia a greater degree of political power and autonomy vis-a-vis the rest of the world'.[28]

Increase in trade despite financial crisis

In spite of the economic difficulties of 1997-99, Southeast Asia experienced an average growth rate of merchandise exports and imports of around eight percent per annum between 1995 and 2005.[29] In 1998, the figure for exports and imports of goods and services stood at a low of US$397 million as a direct result of the monetary crisis. By 2006, however, this figure had increased over 128 percent to US$908 million.[30] This growth was encouraged by the accumulation of foreign exchange reserves and the implementation of an export-led development strategy.[31] Commercial maritime traffic transiting the region also increased. The data from 1999 to 2004 indicated that traffic in the Malacca Straits, for example, rose by 45 percent.[32] At a local level, this economic progress did little to benefit poorer maritime communities mainly in parts of Indonesia. Instead, the transitory trade provided criminals and indigent fishermen ample sources of potential revenue. Once again, an increase in maritime freight contributed to an increase in predations against ships.

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[27] Dosse Toulaboe & Zafar U. Ahmed, 'Impact of the Asian crisis on Singapore's export competitiveness' in *The Journal of Developing Areas*, xxxvii, no.2 (Spring 2004), p. 129.

[28] Bowles, 'Asia's post-crisis regionalism', p. 231.

[29] Figure extrapolated from: United Nations Conference on Trade and Development (UNCTAD), *UNCTADstat*, 'Value growth rates of merchandise exports and imports, annual, 1950-2012' (http://unctadstat.unctad.org/Table Viewer/tableView.aspx) (06 June 2013).

[30] UNCTAD, 'Exports and imports of goods and services, annual, 1980-2012'.

[31] World Trade Organisation (W.T.O.), *World trade report 2007* (Switzerland, 2007), p. 28.

[32] Joshua H. Ho, 'The security of sea lanes in Southeast Asia' in *Asian Survey*, xlvi, no. 4 (July/Aug. 2006), p. 560.

Increased levels of violence

Notwithstanding the violent character of piratical attacks on Vietnamese boat refugees in the late 1970s and 1980s, acts of piracy carried out before 1997 were generally less violent than acts perpetrated in the period after the financial crisis (see figs 3.5 & 3.6). There was also a notable increase in the use of firearms and other potentially lethal weaponry in attacks (see figs 3.7 & 3.8), with some estimates that 95 percent of pirates were armed.[33] The hijacking of the M.V. *Cheung Son* in November 1998 served as an extreme but illustrative example of this increased violence. The *Cheung Son* was en-route from Shanghai to Port Kelang, Malaysia, with a cargo of furnace slag. It was reported that a gang of thirteen, including one Indonesian, intercepted the vessel by masquerading as Chinese custom officials off the southern coast of China.[34] The 23 crewmembers were then reportedly executed with machine guns or thrown overboard.[35] Chinese authorities later identified three of six bodies caught in fishermen's nets off Shantou, China as being those of the *Cheung Son* crew. The bodies had reportedly been bound, gagged and weighted.[36] During an unrelated investigation, Chinese officials allegedly found a suspect in possession of photographs, which depicted hijackers on board the *Cheung Son* celebrating among dead crewmembers. This ultimately led to the capture of thirteen pirates whom were subsequently tried, sentenced to death and executed in January 2000. The remaining crewmembers and the vessel itself remained unaccounted for.

Aside from high-level organised hijackings it was also evident that pirates '[...] kill[ed] even for paltry rewards such as mooring ropes or petty cash'.[37] In 1996 there were 25 reported fatalities transpiring from incidents of piracy. Just one year after the financial crisis this figure rose to 78.[38] It is reasonable to assume that professional criminals utilised more extreme measures to obtain a vessel or cargo and to leave no witnesses.

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[33] *New York Times*, 20 Aug. 2000.

[34] *Peoples Daily*, 29 Jan. 2000.

[35] *Newsweek*, 04 July 1999.

[36] Anti-Shipping Activity Message 1988-68, available at U.S. National Intelligence Agency (N.G.A.), Maritime safety office (http://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_pageLabel=msi_portal _page_65) (04 Dec. 2012) (henceforth cited as 'N.G.A. ASAM [date], [ref.]').

[37] *The Economist*, 16 Dec. 1999.

[38] I.C.C. I.M.B., *Piracy report 1998*.

Noel Choong of the I.M.B. commented in 2000 in relation to the *Cheung Son*, that 'The head pirate wanted everyone on his team implicated, so he systematically forced each pirate to kill one crewman'.[39]

Fig. 3.5
Types of violence to crew: Jan. – Dec. 1991-96

	1991	1992	1993	1994	1995	1996	Total
Taken hostage	33	18	6	11	320	193	**581**
Threatened	3	9	1	8	59	56	**136**
Assaulted	2	12	4	0	2	9	**29**
Injured	4	16	3	10	3	9	**45**
Killed	0	3	0	0	26	26	**55**
Missing	0	4	0	0	0	0	**4**
Total	**42**	**62**	**14**	**29**	**410**	**293**	**850**

Source: I.C.C. I.M.B., *Piracy and armed robbery against ships, annual report 1998* (London, 1999).

Fig. 3.6
Types of violence to crew: Jan. – Dec. 1997-2006

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
Taken hostage	419	244	402	202	210	191	359	148	440	188	**2803**
Threatened	119	68	21	72	45	55	65	34	14	17	**510**
Assaulted	23	58	22	9	16	9	40	12	6	2	**197**
Injured	31	37	24	99	39	38	88	59	24	15	**454**
Killed	51	78	3	72	21	10	21	32	0	15	**303**
Missing	0	0	1	26	0	24	71	30	12	3	**167**
Total	**643**	**485**	**473**	**480**	**331**	**327**	**644**	**315**	**496**	**240**	**4434**

Source: I.C.C. I.M.B., *Piracy and armed robbery against ships, annual report 2000 & 2007* (London).

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[39] *New York Times*, 20 Aug. 2000.

Fig. 3.7
Types of weapons utilised by pirates: Jan. – Dec. 1991-96

	1991	1992	1993	1994	1995	1996	Total
Firearms	1	18	29	17	39	32	**136**
Knives	3	0	7	13	9	23	**55**
Other weapons	42	29	2	6	33	54	**166**
Unknown	2	4	37	54	106	119	**322**
Total	**48**	**51**	**75**	**90**	**187**	**228**	<u>**679**</u>

Source: I.C.C. I.M.B., *Piracy and armed robbery against ships, annual report 1998* (London, 1999).

Fig. 3.8
Types of weapons utilised by pirates: Jan. – Dec. 1997-2006

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
Firearms	71	48	54	51	73	68	100	89	80	53	**687**
Knives	31	40	85	132	105	136	143	95	80	76	**923**
Other weapons	24	18	24	40	39	49	34	15	13	10	**266**
Unknown	12	96	137	246	118	117	168	130	103	100	**1227**
Total	**138**	**202**	**300**	**469**	**335**	**370**	**445**	**329**	**276**	**239**	<u>**3103**</u>

Source: I.C.C. I.M.B., *Piracy and armed robbery against ships, annual report 2000 & 2007* (London).

11 September 2001 and maritime security in Southeast Asia

The events of 11 September 2001 illustrated the vulnerability of the global transportation system to attack and increased pressure on Southeast Asian states to improve security and responsiveness, particularly in the region's critical sea-lanes. This pressure emanated primarily from the United States government, which in the aftermath of the attacks of 11 September 2001, viewed Southeast Asia as a possible 'second front' in its 'war on terror' due to the existence of several indigenous Islamist groups apparently linked to the wider Al-Qaeda network.[40] The arrest of 21 suspected Al-Qaeda operatives in Singapore in 2002 and further arrests in Malaysia and the Philippines seemed to justify the connection although, some analysts claim Washington

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[40] See: John Gershman, 'Is Southeast Asia the second front?' in *Foreign Affairs*, lxxxi, no. 4 (July/Aug. 2002), pp 60-74.

overestimated the link.[41] Indeed, Norwegian and U.S. intelligence services identified a suspected 'terrorist fleet' of at least twenty vessels linked to Al-Qaeda in 2001, which highlighted the vulnerability of coastal targets and inadequate security regulation within the shipping industry.[42]

In response, the Association of Southeast Asian Nations (ASEAN) issued a 'Declaration on joint action to counter-terrorism' in November 2001, which became the foundation for ASEAN's international counter-terror strategy. This declaration led to a number of subsequent counter-terrorism pacts with regional and extra-regional actors. Agreements were convened with Australia, Canada, China, the European Union, India, Japan, New Zealand, Pakistan, Republic of Korea, Russia and the United States between 2001 and 2006. Non-traditional security threats such as piracy frequently featured throughout these declarations alongside terrorism, weapons smuggling, money-laundering, international economic crime and cyber crime.[43]

The attacks against the United States on 11 September 2001 heightened global awareness of non-traditional security threats and, more meaningfully, transformed traditional perceptions and approaches toward them. It is important to note that acts of international terrorism were widespread in the period before 2001 (see fig. 3.9). Indeed, between 1996 and 2001, acts of international terrorism against U.S. interests averaged at about 139 attacks per annum.[44] The events of 11 September 2001 therefore, simply refocused the threat and precipitated a move toward more proactive counter measures over traditional reactive responses, exemplified by the U.S. 'war on terror' and the invasion of Iraq and Afghanistan in 2003. This new strategic approach also exposed a latent connection between maritime piracy and terrorism in Southeast Asia, which is discussed in more detail later in this chapter.

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[41] See for example: *USA Today*, 16 Sept. 2002; *New Zealand Herald*, 15 Oct. 2002; *Asia Times*, 24 Jan. 2002; Gershman, 'Is Southeast Asia the second front?' pp 60-5.
[42] *The Observer*, 23 Dec. 2001.
[43] See for example: 'Joint Declaration of ASEAN and China on cooperation in the field of non-traditional security issues', 04 Nov. 2002 in *ASEAN documents on combating transnational crime and terrorism: a compilation of ASEAN declarations, joint declarations and statements* (Jakarta, 2012), p. 30.
[44] U.S. Department of State, *Patterns of global terrorism 1996, [...] 1997, [...] 1998, [...] 1999, [...] 2000, [...] 2001* (Washington D.C., 1997-2002).

Fig. 3.9
Patterns of international terrorism 1996-2001

	1996	**1997**	**1998**	**1999**	**2000**	**2001**
Acts of international terrorism	296	304	273	392	423	346
Fatalities	311	221	741	233	405	3,547
U.S. interests/ citizens targeted	73	100	111	169	200	179

Source: U.S. Department of State, *Patterns of global terrorism 1996, [...] 1997, [...] 1998, [...] 1999, [...] 2000, [...] 2001* (Washington D.C., 1997-2002).

Categories of piracy

Opportunistic piracy

Between 1997 and 2006, there was a significant increase in incidents of violent organised piracy and cases of maritime kidnap-for-ransom involving transnational criminal syndicates and, allegedly, terrorist organisations in Southeast Asia. However, the majority of piratical incidents were still categorised as low-level opportunistic robberies from ships either berthed, at anchor or steaming. These opportunistic pirates usually boarded a vessel under the cover of darkness in search of currency, personal belongings, miscellaneous shipping equipment, non-containerised cargo and other manifest items.

In 1999, for example, there were 31 ASAM reports issued for the geographical sub-region of northern Indonesia, the Malacca Strait and Malaysia. From these reports, 25 incidents could be described as low-level opportunistic attacks. On closer examination, the incidents typically involved the theft of items including cash sums up to US$18,700, miscellaneous crew valuables, paint, walkie-talkies, binoculars, mooring rope, engine spares and general vessel equipment.[45] In many cases, attacks were abandoned when the crew became alerted. The case of the *Ayia Markella* typified this type of arbitrary opportunistic piracy. It was reported that three small boats containing pirates armed with knives and firearms boarded the vessel while anchored off Belawan, Indonesia, on 6 August 1999. The thieves accosted the deck watchman and stole his watch, cigarettes

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[45] See: N.G.A. ASAM 1999, Ref. Geographical Sub-region: 71.

and lighter.[46] They then made several unsuccessful attempts at breaking into the ship's forecastle before fleeing empty handed.

These attacks were relatively unsophisticated and designed to obtain quick plunder from susceptible vessels. Little organisation or capital investment was evident aside from the procurement of small boats and an aptitude to manoeuvre them toward a steaming or anchored vessel. This was a relatively uncomplicated enterprise given that many opportunistic pirates were most likely former fishermen. The lack of pre-planning in these attacks was apparent in the case of the *Ayia Markella* were the perpetrators came ill equipped to infiltrate the ship's forecastle.

Organised and transnational piracy

While the majority of incidents involved low-level piracy likely carried out by former fishermen and petty criminals, it was suggested that those ultimately responsible for the network of pirates operating in Southeast Asia were 'shadowy figures with ready capital and well-oiled organisations [...]'.[47] Indeed, after 1997 a more sophisticated form of maritime crime emerged. Organised criminal syndicates with international links began hijacking ships and cargoes with increased frequency. In 1999, for example, it was suggested that new cases of phantom ship fraud were reported every three weeks.[48] An article written in *The Economist* estimated that phantom ships earned between US$40 million and US$50 million for Southeast Asian criminal syndicates.[49] Other analysts suggested this figure could have been as high as US$200 million.[50] I.M.B. figures indicated that in 1992, the first year piracy reports were officially tabulated; there was just one incident of ship hijacking. In 2002, this had increased to 25 reports of ship hijacking (see fig. 3.10). In 2004, for example, all reported ship hijackings occurred in Southeast Asian waters.

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[46] N.G.A. ASAM 1999, Ref. 1999-72.
[47] *The Independent*, 20 Jan. 2000.
[48] *Newsweek Magazine*, 04 July 1999.
[49] *The Economist*, 16 Dec. 1999.
[50] Ali M. Koknar, 'Terror on the high seas' in *Security Management*, xlviii, no. 6 (June 2004), p. 75.

These well organised piratical operations were enhanced by the availability of sophisticated modern technologies such as high-powered speedboats, Global Positioning Systems (G.P.S.), radar, satellite phones, V.H.F. radios, night vision devices and automatic weaponry. Moreover, the expertise and capital available from extended transnational criminal networks together with corrupt local officials allowed for more sophistication and organisation in attacks. According to Martin N. Murphy: 'Organised criminal pirates can enjoy the support from those in power [...] because frauds like phantom ship scams are big business, they bring organised criminals together with corrupt officials and politicians'.[51] Dr Pino Arlacchi, former Director-General of the United Nations Office for Drug Control and Crime Prevention, commented in 2001 that 'Organised crime [...] used to be a largely local and later national affair […] today it is a truly transnational phenomenon and is a subject of international concern [...] the risk to regional and even global stability is a very real one'.[52]

Fig. 3.10
Reported incidents of ship hijacking worldwide 1992-2006[53]
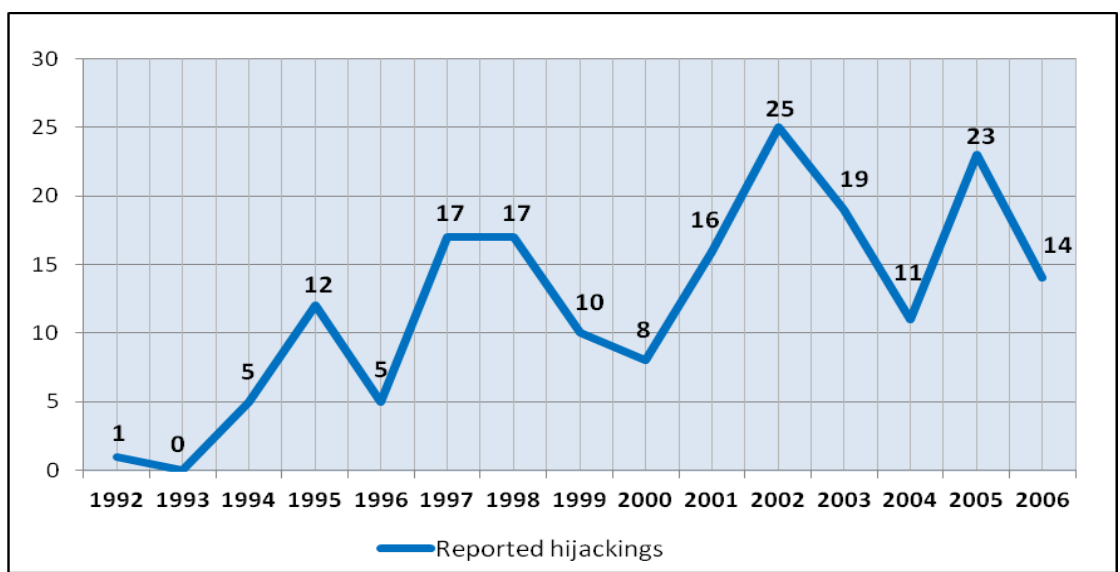
Source: I.C.C. I.M.B., *Piracy reports* 1997-2006.

[51] Martin N. Murphy, *Contemporary piracy and maritime terrorism: the threat to international security* (London, 2007), p. 41.
[52] Pino Arlacchi, 'Scope of, and responses to, transnational crime keynote address', 21 June 2001 (Presentation given at the Australian Institute of Criminology's fourth National Outlook Symposium on Crime, Canberra, Australia, June 2011).
[53] The noticeable drop in incidents of hijacking in 2004/05 can likely be attributed to the impact of the Indian Ocean tsunami. The drop in 2006 can be attributed to increased multilateral engagement.

M.V. Petro Ranger

The hijacking of the M.V. *Petro Ranger* in April 1998 served as an illustrative example of the high-level of organisation and sophistication evident in piratical hijackings in the period after the Asian financial crisis. The vessel was hijacked in the South China Sea while en-route from Singapore to Vietnam. While underway, it was repainted and given the name 'Wilby'. The vessel was eventually stopped and searched by Chinese Marine Police on suspicion of smuggling and the pirates were arrested. They were subsequently deported to Indonesia without charge. Aside from evidence of corruption and complicity among Chinese officials, the *Petro Ranger* case highlighted the proficiency and transnational character of the criminal syndicate involved in the hijacking. In an interview with the captain of the *Petro Ranger* in 2000, the extent of the complexity of the phantom ship operation was revealed.

The article in the *New York Times* uncovered that individuals from China, Hong Kong, Indonesia, Malaysia and Singapore were involved in the operation and had 'inside access' to the shipping company Petroships.[54] The Captain further revealed that the pirates knew the *Petro Ranger* would be sailing with a cargo of high valued jet fuel, which was easily transferred on the black market. The pirates were also aware of the date of embarkation and the details of the captain and crew. The pirate leader, an Indonesian referred to as 'Herman', possessed documentation for registration of the 'Wilby' and papers that identified him as the legitimate captain along with his crew including bills of lading[55] identifying the cargo on board as part of a legitimate charter.[56]

M.V. Tenyu

In September 1998, just five months after the hijacking of the *Petro Ranger*, a Japanese owned vessel the *Tenyu* was hijacked en-route from Sumatra to South Korea with a cargo of aluminium ingots worth an estimated US$3 million.[57] In December, the vessel materialised in Zhangjiagang, a port on China's Yangzi River. It had allegedly

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[54] *New York Times*, 20 Aug. 2000.
[55] Legal document that acts as both an itemized receipt and contract of carriage of goods between agent and shipping company.
[56] *New York Times*, 20 Aug. 2000.
[57] See: *Washington Post*, 05 July 1999 & *New York Times*, 23 Nov. 1999.

undergone four different name changes in just three months.[58] The fourteen original crewmembers were unaccounted for and presumed dead. The original cargo had been unloaded in Burma destined for buyers in China.[59] The case of the *Tenyu* highlighted once again the organised nature and high levels of violence in such hijackings. The ASAM for the attack stated: '[...] the renaming of the ship and its apparent ability to trade undetected since October [...] leads to conclusion that the hijack is the work of a highly organised gang'.[60] Aside from the obvious preparation and organisation, the hijacking also suggested the work of an extended transnational criminal network. John Burnett highlighted the involvement of criminal elements from several countries: 'Three South Koreans were arrested and charged with acquiring stolen cargo from the *Tenyu* [...] those arrested admitted buying the ship and aluminium from two Chinese Indonesians and selling them to a Chinese company in Myanmar via another company in Singapore'.[61]

Organised kidnap-for-ransom

Aside from low-level opportunistic attacks and high-level organised hijackings, a new and more troublesome form of piracy materialised in Southeast Asia between 2001 and 2002. Incidents of maritime kidnap-for-ransom emerged as a significant issue particularly along the northern Malacca Strait near the contested Indonesian region of Aceh. In 2004, the I.M.B. expressed particular concern over the escalation of kidnap-for-ransom incidents and estimated that 36 crewmembers were kidnapped in the Malacca Straits that year.[62] These attacks typically involved a large group of heavily armed pirates commandeering a vessel, which was then forced to navigate off course. Senior crewmembers were then typically abducted and held while ransom negotiations were initiated. Ransom demands reportedly ranged from US$100,000 to US$200,000;

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[58] *Washington Post*, 05 July 1999.
[59] Ibid.
[60] N.G.A. ASAM 1998, Ref. 1998-61.
[61] John S. Burnett, *Dangerous waters: modern piracy and terror on the high seas* (London, 2002), p. 322.
[62] See: I.C.C. I.M.B., *Piracy report 2004*, p. 16.

however, the amount actually relinquished was usually much lower, estimated between US$10,000-US$20,000.[63]

While it is apparent that in the majority of cases, ransoms were paid and the hostages released unharmed, this was not always the case. In February 2004, for example, it was reported that four crewmembers were shot dead by Indonesian pirates and dumped into the sea after a shipping company refused to pay a US$12,000 ransom.[64] The attack on the tanker *Penrider* in August 2003 typified the modus operandi of a kidnap-for-ransom piracy. It was reported that fourteen pirates boarded the vessel armed with AK-47 and M-16 assault rifles. The ship's captain was forced to sail into Indonesian waters, where three of the crew were taken hostage. Following 'protracted ransom negotiations' they were eventually released.[65]

Terrorism & piracy

The rise in organised maritime kidnap-for-ransom attacks, and the high-level of violence displayed, prompted some analysts to suggest the involvement of terrorist organisations. However, given the lack of any substantive evidence, it is uncertain whether there existed any genuine association between maritime piracy and terrorism. The chiefly anecdotal speculation likely resulted from a heightened awareness and vigilance in the wake of the attacks of 11 September 2001. Moreover, direct attacks by Al-Qaeda against western economic interests, such as that on the French oil tanker M.V. *Limburg* in October 2002, combined with threats of further attacks, heightened anxiety of more a pervasive maritime terrorist threat.[66] The same year as the attack on the Limburg, the

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[63] Catherine Zara Raymond, 'Piracy in Southeast Asia: new trends, issues and responses' in *IDSS Working Paper Series*, no. 89 (Oct. 2005), p. 8.

[64] *Christian Science Monitor*, 18 Mar. 2004.

[65] Kate McGeown, 'Aceh rebels blamed for piracy', 08 Sept. 2003, available at BBC News Online (http://news.bbc.co.uk/2/hi/asia-pacific/3090136.stm) (13 June 2013).

[66] Al-Qaeda's political bureau stated in October 2002: 'If a boat that didn't cost US$1,000 previously managed to ruin a destroyer worth over US$1 billion, and its symbolic value cannot be measured, and a similar boat managed to devastate an oil tanker of that magnitude, so imagine the extent of the danger that threatens the West's commercial lifeline which is [oil]. This region sits on the largest [oil] reserves, owns the largest quantities and contains [the industry's] most important passages and lanes'; see: 'Statement from Al Qaeda's political bureau regarding the explosion of the Christian oil tanker in Yemen', 13 Oct. 2002, translation available at Ben N. Venzke & Aimee Ibrahim, IntelCenter, 'al-Qaeda threat to oil industry and U.S. allies v1.0', 16 Oct. 2002 (https://intelcenter.com/ OilAllies-v1-0.pdf) (01 July 2015).

I.M.B. recorded 169 reports of piracy and armed robbery at sea in Southeast Asia. The fact that both pirates and those committing terrorist acts within the maritime domain used the sea as a platform for their various deeds likely blurred distinctions between the two and heightened fears of crossover.

The United States government recognised the difficulty in distinguishing between political and criminal motivations in what it described as 'terrorist-related activities' regarding cases of kidnap-for-ransom in the Southern Philippines in 1999.[67] The United Nations also highlighted the link between transnational organised crimes such as piracy and terrorism in the U.N. global counter-terrorism strategy in 2006. Indeed, the severity of the situation was illustrated when in June 2005 Lloyd's marine insurers Joint War Committee included the Malacca Strait in its 'war, strikes, terrorism and related perils' risk list. This essentially re-designated the Malacca Strait as a 'war-zone' or an area that suffered from 'warlike occurrences or events, including acts of terrorism, or arising from the use of weapons of war'.[68] Littoral states strongly disagreed with this assertion and denied links between piracy and terrorist groups. Former Malaysian Transportation Minister commented that the 'war risk' designation had been made on an 'insufficient basis' and sent the 'wrong message to the international community'.[69]

There is an important distinction to be noted here. Individuals committing piratical acts to obtain revenue to commit, for example, acts of terrorism ashore are essentially indistinguishable from 'regular' pirates. They both seek to gain capital from acts of piracy. How this capital is distributed after the attack is irrelevant in this regard. These acts are distinct from those whose objective is to commit actual terrorist acts within the maritime domain, such as the bombing of a cruise ship or the intentional disruption of trade. There was also an important legal distinction between maritime terrorism and maritime piracy. Piracy related to acts committed for 'private' ends as defined in UNCLOS, whereas terrorism was generally considered acts committed for political or

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[67] U.S. Department of State, *Patterns of global terrorism 1999* (Washington D.C., 2000), p. 25.
[68] 'Submission by the international group of P&I clubs', 07 Sept. 2005 (Submission made at the I.M.O. Jakarta meeting on the straits of Malacca and Singapore: enhancing safety, security and environmental protection, Jakarta, Indonesia, 07 & 08 Sept. 2005), p. 3.
[69] *The Star (Malaysia)*, 09 Aug. 2006.

ideological ends, despite no customary legal definition.[70] Regardless of the ambiguous motivations, the modus operandi often overlapped which, in relation to counter-piracy, was arguably more important at least from the victim's perspective. The Flag Officer commanding of the Eastern Command of the Indian Navy, Vice-Admiral O.P. Bansal commented in 2003: '[...] there is a piracy of a different angle. If someone is to hijack a super tanker which has only up to ten crew and some 300,000 tonnes of fuel on board, you can do a lot with it, terrorism basically'.[71]

To analyse this apparent nexus between piracy and terrorism in Southeast Asia, specific incidents and the activities of documented regional terrorist organisations are discussed. There were several internationally recognised terrorist cells operating in Southeast Asia between 1997 and 2006 (see fig. 3.11) most notably MILF and the Abu Sayyaf Group (A.S.G.) in the Southern Philippines, Gerakan Aceh Merdeka in the northern Indonesian Island of Sumatra and Jemaah Islamiyah with cells in Indonesia, Thailand, Singapore, Malaysia and the Philippines. Two groups, GAM and A.S.G., were suspected of being directly involved in incidents of maritime piracy and maritime terrorism.

Gerakan Aceh Merdeka

GAM were a separatist group agitating for independent rule in the northern Indonesian region of Aceh until a peace agreement with the Indonesian government in 2005. It was believed that GAM used piratical hijackings as a source of revenue for its armed insurgency. The hijacking of the *Penrider*, as previously mentioned, was suspected to be the work of GAM rebels.[72] GAM was also implicated by the Indonesian government in the hijacking of the *Ocean Silver* in August 2000 that resulted in six of the twelve crewmembers taken hostage and held for US$34,000 ransom.[73] There was concern expressed that some of these hijackings may also have served as 'practice runs' for more serious acts of terrorism, much like the flight schooling the hijackers received before

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[70] See: UNCLOS (1988).
[71] *The Tribune*, 13 Nov. 2003.
[72] Mike Chinoy, 'Terrorism threat from Asia's pirates', 12 Sept. 2003, available at CNN Online (http://edition.cnn.com/2003/WORLD/asiapcf/east/09/11/asia.pirates) (08 June 2013).
[73] See: N.G.A. ASAM 2001, Ref. 2001-266.

launching their attack on 11 September 2001. The hijacking of the *Dewi Madrim* off the coast of Sumatra in March 2003 seemingly supported this theory.

The *Dewi Madrim* was boarded by ten armed pirates in a high-speed boat. Instead of steering the ship to a secure location and beginning ransom negotiations or simply pillaging the vessel, the hijackers disabled the ship's communication system and reportedly took turns in navigating the ship along the Malacca Strait for about one hour.[74] They then abandoned the vessel. It was suggested that the hijacking was a means of 'acquiring expertise' and 'learning to drive a ship' to launch a maritime terrorist attack.[75] This was, however, speculative. It must be noted that GAM denied any involvement in piratical acts despite issuing threats to the contrary, namely to disrupt shipping along the Malacca Strait.[76] The United States Pacific Command commented in 2003: 'These were no ordinary pirates and more cases of this nature are being reported [...] The suspicion is that the pirates are either Aceh rebels, or even rogue Navy personnel or worse, Islamic militants'.[77]

Abu Sayyaf Group

Aside from GAM, the A.S.G. were also active in the maritime domain, not surprising given that they were agitating for an independent Islamic state in western Mindanao and in the Sulu Archipelago in the southern Philippines. The A.S.G. were not only suspected of engaging in piratical acts to raise revenue for their campaign but also actual acts of maritime terrorism in including the bombing of the *Super-ferry 14* outside Manila in February 2004 which resulted in the loss of 116 lives. Abu Sayyaf chieftain Khaddafy Janjalani and alleged bomber Habil Dellosa were later charged with the attack in 2005.[78] In August that same year the A.S.G. were suspected of carrying out a bomb attack on the passenger ferry *Dona Ramona* docked at Basilan Island in the southern Philippines,

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[74] *The Economist*, 02 Oct. 2003.
[75] Ibid.
[76] See: *New Straits Times*, 04 Sept. 2001 & N.G.A. ASAM 2001, Ref. 2001-266.
[77] USCINCPAC, Virtual Information Center, 'Primer: piracy in Asia', Oct. 2003, p. 7, (http://www.secure-marine.com/piracy_update.pdf) (06 June 2009).
[78] *Union-Tribune San Diego*, 26 Feb. 2005.

which wounded at least thirty people.[79] It was believed that following the execution of A.S.G. leader Ustadz Abdurajak Janjalani in 1998, the organisation suffered a breakdown in organisational structure and discipline. The lack of central leadership reportedly led to a rise in maritime piracy and incidents of kidnap-for-ransom among its members.[80]

A number of piratical kidnap-for-ransom incidents were reportedly linked to the A.S.G. including the hijacking of the tug-boat *SM 88* in June 2002. The vessel was attacked by eleven armed pirates in military-style uniform off the A.S.G. stronghold of Jolo Island in the Southern Philippines.[81] Four members of the crew, including the Captain, were taken hostage and transported to the island. Shortly afterward one of the crew escaped and claimed his captors were from the A.S.G.[82] Nine months later another crewmember escaped from Jolo Island and reaffirmed that the A.S.G. were responsible for the attack.[83] In April 2004, a Malaysian tug *East Ocean II* and a barge *Sarinto I* were attacked near Taganak Island by between eight and ten suspected A.S.G. members/pirates armed with M-16 rifles and grenade launchers.[84] Almost one year later in March 2005, the tugboat *Bonggaya 91* was attacked east of Mataking Island by five pirates armed with M-16 and AK-47 rifles. Once again, several crewmembers were taken hostage. The ASAM report dated 30 March 2005 speculated that the gunmen may have been linked to the A.S.G. but highlighted the absence of 'hard evidence'.[85] Despite the chiefly anecdotal nature of the evidence, chiefly eye-witness and victim testimonials, it is likely the A.S.G. was to some extent involved in piratical attacks to raise revenue for their military campaign.

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[79] *New York Times*, 29 Aug. 2005.
[80] Rommel C. Banlaoi, 'Maritime terrorism in Southeast Asia: the Abu Sayyaf threat' in *Naval War College Review*, lviii, no. 4 (Autumn 2005), p. 69.
[81] N.G.A. ASAM 2002, Ref. 2002-170.
[82] Ibid.
[83] CNN International, 'Hostage escapes Abu Sayyaf', 28 Mar. 2003 (http://edition.cnn.com/2003/ WORLD/asiapcf/southeast/03/27/philippines.indonesian.reut/) (28 Aug. 2013).
[84] N.G.A. ASAM 2004, Ref. 2004-90.
[85] N.G.A. ASAM 2005, Ref. 2005-117.

Fig. 3.11
Terrorist groups operating in Southeast Asia

Country	Terrorism cells
Indonesia	*Majilis Mujahidin Indonesia, Laskar Jihad, Laskar Jundulla,* GAM, FPI, DI, Jammah NIII, *Laskar Mujahidin*, Mujahidin KOMPAK, ABB, AMIN, and RP11
Malaysia	*Kumpulan Mujahidin Malaysia*, Al-Muanah
Myanmar	Arakan Rohingya National Organisation
Philippines	Abu Sayyaf Group, Moro Islamic Liberation Front (MILF), Misuari Breakaway Group (MBG), Balik Islam/Rajah Solaiman Islamic Movement (BI/RSIM)
Thailand	*Gerakan Mujahidin Pattani Islam*

Source: Bilveer Singh, *The Talibanization of Southeast Asia: losing the war on terror to Islamist extremists* (London, 2007), p. 86.

Counter-piracy 1997-2006

General context

Former I.M.O. Secretary General Efthimios Mitropoulos correctly asserted that '[...] unlawful acts, such as attacks by terrorists, pirates and armed robbers, is a problem that does not recognize national boundaries and which, therefore, cannot be completely solved by any one country acting alone'.[86] As previously mentioned, enduring issues relating to sovereignty and territorial integrity initially hampered multistate counter-piracy cooperation. Ultimately, a combination of external pressure and internal compromise resulted in the establishment of a multilateral anti-piracy framework by 2006. The limited cooperation and information sharing that began in the 1990s evolved significantly after 2001. Assisted by the development of new navigational and satellite technologies, several national, bilateral and multilateral counter-piracy initiatives were undertaken. There was also a significant contribution from extra-regional states such as Australia, China, Japan, India and the United States in bolstering regional maritime security initiatives and dialogue. International maritime law also continued to expand

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[86] Efthimios E. Mitropoulos, 'Opening address', 18 Sept. 2006 (Address made at the I.M.O. Kuala Lumpur meeting on the Straits of Malacca and Singapore: enhancing safety, security and environmental protection, Kuala Lumpur, Malaysia, 18 Sept. 2006).

and evolve in reaction to the continuing criminal threat posed by pirates and 'sea-robbers'.

Unanticipated events also had a significant impact on suppressing maritime crime in the region. The Indian Ocean tsunami of December 2004 had a direct bearing on the fluctuation of piracy along the Malacca Strait where reported attacks decreased from 38 in 2004 to just 12 in 2005.[87] The tsunami resulted in widespread devastation and loss of life in coastal areas, predominantly the northern Indonesian island of Sumatra and the province of Aceh. There were an estimated 160,000 fatalities in Indonesia alone, with fatality rates as high as 75 percent in some parts of Aceh.[88] The tsunami suppressed piracy in two ways. Firstly, large numbers of pirates were likely killed and, secondly, the supporting infrastructure needed to commit piratical acts such as boats, harbours and safe havens were either damaged or destroyed. The devastation in Aceh also precipitated ceasefire negotiations between GAM and the Indonesian government that ultimately led to cessation of the conflict.[89] This likely contributed to the drop in piracy in the region and in particular incidences of kidnap-for-ransom hijackings.

Technological initiatives

New advances in global maritime communication and navigational technology significantly enhanced maritime security and counter-piracy capabilities during this period. Equally, several of these advances enhanced the ability of organised pirate groups to track and hijack vessels in Southeast Asia. In the late 1990s, the I.M.O., in conjunction with the International Hydrographic Organization, created the Electronic Chart Display and Information System (E.C.D.I.S.) as the performance standard for the use of Electronic Chart Systems (E.C.S.). Since then several technological initiatives were launched that aided in the suppression of piracy in Southeast Asia and further afield. On 1 February 1999 the Global Maritime Distress and Safety System (G.M.D.S.S.) was fully implemented by the I.M.O. This marked a significant evolution

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[87] I.C.C. I.M.B., *Piracy report 2005*, p. 5.
[88] *The Guardian*, 19 Jan. 2005.
[89] See for example: *The Guardian*, 29 Dec. 2014; *Financial Times*, 18 Dec. 2014; Karl F. Inderfurth, David Fabrycky & Stephen Cohen, 'The 2004 Indian Ocean tsunami: one year report' in *The Sigur Center Asia Papers*, no. 25 (Oct. 2005), p. 32.

in marine radio-communications technology as it utilised an integrated satellite and terrestrial radio-communication system.[90] Implementation of the G.M.D.S.S. meant that all vessels of 300 gross tonnage and above transiting international waters had to be equipped with specialised radio-communications equipment for sending and receiving distress alerts and maritime safety information. The system allowed for ease of communication on occurrences of piracy and areas of high risk.

Systems such as G.M.D.S.S. facilitated the adoption of Standard Marine Communication Phrases by the I.M.O. in November 2001, which attempted to streamline and standardise the exchange of information at sea to avoid navigational hazards and enhance communication on security risks such as piracy. I.M.O. Resolution A.918 listed the standard communicative procedure for transmitting a pirate attack and for abandoning a vessel due to a pirate attack.[91] In July 2002, all newly constructed vessels of 3,000 gross tonnage and above were legally required to carry a Voyage Data Recorder. This newly developed data recorder was essentially the equivalent of the 'black box' recorder on an aircraft. The Voyage Data Recorder was primarily utilised to investigate accidents at sea. However, given that it documented background bridge conversation and radio communications, it also had utility as a post-piracy intelligence gathering implement or tracing the voyage of a pirated vessel following recovery.

The introduction of a mandatory Automatic Identification System (A.I.S.) in 2004 for vessels over 300 gross tonnage and upwards was arguably the foremost anti-piracy technological innovation during this period, particularly in the suppression of phantom ship fraud. A.I.S. provided for the exchange of information on vessel identity, position, course, speed and navigational status to maritime authorities ashore and other similarly equipped vessels and aircraft. Such information enhanced regional counter-piracy capability by facilitating the analysis of shipping traffic to identify areas of high risk,

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[90] I.M.O., Maritime Safety, 'Radio communications and search and rescue' (2013) (http://www.imo.org/OurWork/Safety/RadioCommunicationsAndSearchAndRescue/Radiocommunications/Pages/Default.aspx) (26 July 2013).
[91] 'Standard Marine Communication Phrases', 29 Nov. 2001 (I.M.O., Maritime Knowledge Centre (M.K.C.), A/RES/918/22/2001, pp 32-3).

post-pirated vessel tracking and convoy management.[92] However, open access to this information also invariably benefited maritime criminals. The A.I.S. was further limited due to its relatively short-range of effectiveness. To compensate for this deficit, the I.M.O. adopted a resolution to establish a Long-Range Identification and Tracking of ships technology (LRIT) in May 2006.

Alternative counter-piracy satellite technologies introduced during this period included the 'ShipLoc' system, which was compliant with I.M.O. regulations and endorsed by the I.C.C. I.M.B. Similarly to A.I.S., though not a legal requisite, the ShipLoc system utilised satellite technology that allowed for accurate monitoring of a vessels' location by vessel traffic services and also the monitoring and recovery of hijacked vessels. Critically, the system also incorporated a direct ship-to-shore alert system in the event of, for example, a pirate attack. This message could be delivered discreetly and therefore remain undetected by any potential aggressors on board or by other ships in the vicinity. The hijacking of the tanker *Selayang* and the subsequent liberation by Indonesian security forces in 2001 was the first publically declared recovery utilising the ShipLoc system and illustrated its effectiveness in counter-piracy operations.[93]

The advances in E.C.S. resulted in initiatives such at the Marine Electronic Highway, which was conceived in the late 1990s and implemented as a demonstration project in June 2006. The concept of the Marine Electronic Highway was to enhance navigational security and promote marine environmental protection in the Malacca Straits and Singapore by combining E.C.D.I.S. and environmental management tools in an integrated platform.[94] This would allow for maximum exchange of information between vessels transiting the strait and shore-based authorities. The creation and continued development of these maritime security technologies illustrated a growing international awareness of the need to maintain and enhance security and awareness of movements in

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[92] Peter Mabson, 'Global AIS: enhancing maritime safety and security through satellite AIS detection', 25 Nov. 2010 (Presentation made at I.M.O. Maritime Safety Committee meeting, London, 27 Nov. 2010).
[93] N.G.A. ASAM 2001, Ref. 2001-193.
[94] I.M.O., Maritime safety, 'Marine Electronic Highway: demonstration project in the Straits of Malacca and Singapore', 2013 (http://www.imo.org/ourwork/safety/navigation/pages/ marineelectronichighway.aspx) (26 July 2013).

and from the maritime domain. Former head of the U.S. Navy, Adm. Michael G. Mullen, highlighted that the ability of states to monitor small boats would be key to international efforts to boost maritime security in the future.[95]

National initiatives

Indonesia

Mounting international pressure was partially responsible for initiating a number of counter-piracy measures at a national level in Southeast Asia after 2001. Indonesia felt this pressure more than neighbouring states given the pervasive piracy problem in its territorial waters. In 2003, there were 121 reported piratical incidents in Indonesian waters.[96] This represented approximately 64 percent of all incidents in Southeast Asia that year. Enduring issues such as allegations of corruption among law enforcement agencies, a deficiency of financial resources and disagreement over the prioritisation of piracy within broader maritime security threats continued to hamper Indonesian counter-piracy efforts. Former Indonesian President Megawati Sukarnoputri acknowledged these shortcomings and emphasised the need for a strong navy to counter the alarming increase in illegal activities in Indonesian waters, chiefly piracy and illegal fishing.[97]

The Indonesian special advisor to the Minister for Maritime Affairs and Fisheries claimed that it would take in excess of 300 vessels to defend Indonesian maritime space and resources adequately.[98] It was suggested in 2004 that only about 25 Indonesian naval vessels were operating at sea at any given moment. Notwithstanding these shortcomings, Indonesia had one of the lowest expenditure rates on defence in the region. In 1999, Indonesia spent just US$1.5 billion or 0.8 percent of G.D.P. on defence compared with the vastly smaller Singapore, which spent US$4.2 billion on defence in

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[95] *The Star*, 03 Nov. 2006.
[96] I.C.C. I.M.B., *Piracy report 2004*.
[97] *Jakarta Post*, 10 Sept. 2001.
[98] Hasjim Djalal, 'Piracy in South East Asia: Indonesian & regional responses', 19 Jan. 2004 (Presentation made at Centre for Strategic and International Studies, American-Pacific Sealanes Security Institute conference on maritime security in Asia, Honolulu, Hawaii, 18-20 Jan. 2004).

1999.[99] This may have been one of the reasons for the separation of Indonesia's military and national police into two distinct bodies that same year.

Despite the financial impediments and capability restrictions faced by Indonesia in the years after the financial crisis, there was a small, if largely ineffectual, effort at a national level to initiate counter-piracy measures. In December 2001, the Indonesian navy established a new anti-piracy operation centre in Bangka on Sumatra Island to join with two earlier bases, one near the Sumatran city of Medan and the other on Batam Island. Due to the escalation of piracy in Indonesian waters between 2000 and 2004, a new programme for coordinating security operations at sea was proposed. Previously the navy was responsible for coordinating maritime security and law enforcement at sea in collaboration with the Marine Police, the Directorate of Guard and Rescue and the Customs Office.

In December 2005, a presidential regulation established a new maritime coordination mechanism called 'Bakorkamla' to standardise and coordinate and the work of the various government institutions on matters of maritime security. Bakorkamla consisted of twelve government member agencies including the army, navy, police, intelligence agency and ministries of defence and foreign affairs. Indonesia also launched Operation Gurita in June 2005, which intensified anti-piracy air and sea patrols along the Malacca Strait; however, rising fuel prices hampered the effectiveness of the initiative. Despite this, the operation yielded a reduction in attacks and several arrests.[100] This, according to former I.M.B. Director Pottengal Mukundan, was a 'simple strategy based around a concentrated show of force in areas where there had been coordinated attacks'.[101] Despite these efforts and increased rhetoric from President Yudhoyono, who ordered more patrols along the Malacca Strait and increased intelligence gathering in coastal communities in 2005, unilateral efforts in Indonesia had a minimal effect on rates of piracy. Indonesia still lacked a functioning independent coast guard in 2006, which

[99] International Institute for Strategic Studies (I.I.S.S.), *The military balance 2000* (Singapore, 2001), pp 198-212.
[100] *New York Times*, 10 Oct. 2006.
[101] Dense Hammick, 'Turning the tide: maritime security in Southeast Asia', 19 Nov. 2007 in *I.H.S. Jane's Defence Weekly* (Nov. 2007), p. 2.

hampered its effectiveness in littoral waters. This relative ineffectiveness further illustrated the need for cooperative regional action.

Malaysia

Malaysia, in contrast to Indonesia, utilised resources more efficiently in relation to maritime security operations and was better equipped in regards to its navy in the years after the financial crisis. In 2000, the government intensified anti-piracy patrols and announced the construction of a new naval base at Semporna in Sabah to increase maritime security in the northeast of the state following a period of increased insurgent activity.[102] That same year witnessed the highest number of reported incidents of piracy in Malaysian waters, with 21 attacks.[103] Despite the relatively low number of incidents compared to Indonesia, the Malaysian government invested considerably in new equipment and personnel.

Under the 'Eighth Malaysia plan: 2001-2005', MR10.8 billion or 9.8 percent of the total fund was allocated for strengthening the security sector.[104] This included the purchase of additional enforcement vessels, navigational aids and implementation of the Marine Electronic Highway. Critically, for domestic counter-piracy capabilities, the plan paved the way for the introduction of A.I.S. and 'Differential Global Positioning' systems to strengthen maritime security in the Straits of Malacca. In addition, training programmes were enhanced to meet international standards, which included watch-keeping instruction for seafarers.[105] This investment enabled the Malaysian navy to offer escorts for vulnerable commercial vessels transiting its territorial waters in 2004.

In 2005, the Malaysian Maritime Enforcement Agency (M.M.E.A.) was established to coordinate the activities of Malaysia's seven primary maritime security agencies and allow for the more fluid exchange of information on maritime security threats. That

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[102] Arjuna Ranawana, 'The Malaysian view' in *Asiaweek Magazine*, xxvii, no. 19 (May 2000), available at (http://edition.cnn.com/ASIANOW/asiaweek/magazine/2000/0519/nat.phil.malaysia.html) (02 Oct. 2013).
[103] I.C.C. I.M.B., *Piracy report 2001*.
[104] Malaysian Economic Planning Unit (M.E.P.U.), *Eighth Malaysia plan, 2001-2005* (Kuala Lumpur, 2001), p. 176.
[105] M.E.P.U., *Eighth Malaysia plan*, p. 294.

same year a serious of radar stations were installed along the Malaysian side of the Malacca Strait to monitor passing traffic. By 2006, Malaysia had intensified domestic counter-piracy operations by purchasing new police boats and increasing joint anti-piracy maritime exercises. Despite this, there were issues with Malaysia's maritime security structure. The Royal Malaysian Police Marine and the Royal Malaysian Navy were the agencies primarily responsible for counter-piracy patrols and operations. However, up to 22 separate authorities had some role in the wider applicability of maritime security operations, which complicated coordination and hindered the effectiveness of unilateral action.

Philippines

Other states, such as the Philippines, also initiated a number of unilateral counter-piracy initiatives with limited success. Much like Indonesia, this action was hampered by a paucity of resources and equipment alongside allegations of corruption among elements of the navy. The Philippine navy was small compared to other regional navies and lacked the capability to patrol its vast archipelagic waters independently. The former national security adviser to the Philippine government, Norberto Gonzales, suggested that it was impossible to monitor every vessel that 'travelled between Indonesia and Mindanao' owing to the government's 'meagre resources'.[106]

The Philippine government recognised the necessity of monitoring illicit activity at sea as highlighted in their 1998 Defence Policy Paper: '[The] Department of National Defence must be able to monitor activities, both legal and illegal, [...] and respond to unauthorized incursions and criminal activities like piracy and smuggling'.[107] Initiatives included the provision of an additional thirty vessels to the Philippine Coast Guard for counter-piracy patrolling in 2002 and the creation of a new naval detachment to strengthen maritime security in along the south coast of the country in 2005. The

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[106] *Philippine Star*, 16 Oct. 2006.
[107] Security and Defence Network of Latin America, 'Philippines 1998 Defence Policy Paper' (http://www.resdal.org/Archivo/d000006b.htm) (03 Oct. 2013).

detachment complemented a naval coast watch station that had previously been established in Tinaka Point.[108]

Singapore

Singapore, unlike most other regional states, was particularly effective at controlling piracy unilaterally in its limited territorial waters, given the comparatively sophisticated state of its navy and coast guard.[109] Moreover, Singapore's economic prosperity depended almost entirely on maritime trade. Koh Swee Lean Collin highlighted that Singapore's geo-strategic context meant that seaward defence against external maritime aggression and safeguarding of SLOC security were fundamental aspects of its maritime security.[110] Singapore instituted several unilateral maritime security measures such as a Harbour Craft Transponder System, which obliged all Singapore-registered small craft below 300 tonnes to install a tracking system.[111] In 2003, Singapore created an interagency Maritime and Port Security Working Group that incorporated the navy, police coast guard, and the maritime and port authority. The Singapore Navy in conjunction with the Police Coast Guard subsequently initiated a sea marshal programme called 'Accompanying Sea Security Teams'. The sea security teams deployed specialised naval personnel on board certain merchant vessels transiting Singapore waters to deter, in the first instance, acts of terrorism.[112]

These efforts were amplified by the creation of an integrated surveillance and information network for tracking and investigating suspicious movements, intensified navy and coast guard patrols and the re-designation of shipping routes to minimise the

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[108] United Press International (U.P.I.), 'Philippine navy cracks down on terror', 08 Nov. 2005, (http://www.upi.com/Business_News/Security-Industry/2005/11/08/Philippine-navy-cracks-down-on-terror/UPI-96871131510322/) (03 Oct. 2013).

[109] See for example: I.I.S.S., *The military balance 2002* (London, 2003), pp 162-63.

[110] Koh Swee Lean Collin, 'Seeking balance: force projection, confidence building and the Republic of Singapore navy' in Geoffrey Till & Jane Chan (eds.), *Naval modernisation in Southeast Asia: nature, causes and consequences* (Oxford, 2014), p. 227.

[111] 'RADM Chew Men Leong, 'Navies and maritime security - a Republic of Singapore Navy perspective' in *Pointer: Journal of the Singapore Armed Services*, xxxiii, no. 3 (Autumn 2007).

[112] Lin Yuankai, 'COSCOM muscles up for challenges ahead' in *Navy News: A Publication of the Republic of Singapore Navy*, no. 2 (2005), p. 9.

convergence of small craft with high-risk merchant vessels.[113] Collectively, these operational measures helped not only to deter potential acts of terrorism but also to suppress piracy, sea robberies and smuggling activities.[114] In addition, Singapore bolstered these deterrent efforts with the acquisition of more appropriate assets for security operations in the littoral including the purchase of remote-controlled Israeli Rafael Armament Development Authority Protector Unmanned Surface Vessels in 2005 for counter-piracy and counter-terrorism operations at sea.[115]

Bilateral and trilateral initiatives

National efforts were inherently limited in tackling transnational maritime crimes such as piracy, which meant a multinational, collaborative response was required. Generally, bilateral counter-piracy cooperation was favoured as it was easier to manage territorial and political sensitivities with one government than with multiple ones. Bilateral anti-piracy exercises and agreements that had begun in the early 1990s were strengthened and expanded between 1997 and 2006 to include, in some cases, trilateral collaboration. This cooperation was most evident along the Malacca Strait, where several bilateral and trilateral counter-piracy initiatives and exercises were undertaken. These generally centred on the gathering and sharing of intelligence and surveillance, cooperative anti-piracy frameworks and coordinated maritime surface patrolling.

Indonesia, Malaysia, Singapore and the Philippines engaged in several bilateral counter-piracy initiatives during this period. Malaysia and the Philippines established a Border Patrol Coordination Group, which conducted maritime security manoeuvres such as the ten-day 'Malphi-Laut' naval exercise northwest of Manila in October 2001. These exercises were designed to enhance and strengthen existing bilateral defence cooperation agreements, such as that signed in 1994, against common maritime threats like piracy. The Philippines and Indonesia also established a similar joint border patrol mechanism to deter piracy and terrorism at sea.

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[113] 'Singapore stresses counters to maritime terrorism', 13 Nov. 2003 in *I.H.S. Jane's Defence Weekly* (Nov. 2003).
[114] Leong, 'Navies and maritime security [...]'.
[115] See: 'Singapore reveals Protector USV buy', 20 May 2005 in *I.H.S. Jane's Defence Weekly* (May 2005); *Sydney Morning Herald*, 18 May 2005.

Singapore and Malaysia had been actively engaged in bilateral coordinated anti-piracy patrols and exercises since the resurgence of piracy in the 1980s. In November 2005, for example, the navies of Malaysia and Singapore began a nine-day counter-piracy exercise consisting of six ships from each nation. This was the seventeenth such bilateral naval exercise undertaken by the two states. Similarly, Indonesia and Singapore expanded the 'Indon-Sin' Coordinated Patrol that had been created in 1992 by launching a joint marine surveillance system entitled Project SURPIC in May 2005. [116] Project SURPIC enabled the instantaneous exchange of information between both navies on piratical threats in the Singapore Strait via a synchronised visual relay. The navies of Malaysia and Thailand also conducted joint patrols in the Gulf of Thailand and the Andaman Sea to deter and prevent piracy and arms trafficking in the area.

A number of these initiatives evolved into tripartite agreement such as the 2002 'Agreement on Information Exchange and Establishment of Communication Procedures' signed by the Philippines, Indonesia, and Malaysia. This was a cooperative security pact intended to enhance existing bilateral defence, border and security cooperation arrangements between the three nations. Specific counter-piracy initiatives included conducting joint training and exercises, establishment of 'hot lines', harmonising legislation, designated entry and exit points and sea-lanes, exchanging information and enhancing the penalties for transnational crimes. [117] These agreements facilitated more evolved and sophisticated cooperative counter-piracy applications such as the 'Coast Watch South' initiative conceptualised by the Philippines, Indonesia, and Malaysia in November 2005. Expert groups on maritime security issues evolved considerably during this period such as the Tripartite Technical Experts Group initiated by Indonesia, Malaysia and Singapore in the late 1970s.

Despite a steady decline in the number of pirate attacks in Southeast Asia after 2003 and the strengthening of political relations, these initiatives were limited in reach, duration and effectiveness without wider regional multilateral engagement. The majority of the

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[116] SURPIC = **SUR**face **PIC**ture.

[117] ASEAN, 'Agreement on information exchange and establishment of communication procedures', 07 May 2002 (http://www.asean.org/archive/17346.pdf) (15 Oct. 2013).

patrols were coordinated and occurred intermittently in narrow designated sea zones, which limited their effectiveness. There was also limited provision for 'hot-pursuit' into opposing territorial waters. Indeed, there was not regional-wide consensus that piracy was the foremost maritime security threat, which meant participation in these agreements was to some extent conciliatory rather than substantive. This apathetic approach eventually evolved into a more meaningful multilateral engagement owing chiefly to external pressure from extra-regional user states.

Multilateral initiatives

Regional Maritime Security Initiative

The Jakarta Post ran a headline in December 2005 that read: 'Territory no longer an issue in Malacca Strait security'.[118] Although oversimplifying the issue, this headline reflected the progress made in multilateral consensus between littoral states on the issue of counter-piracy since 1997. The various national, bilateral and trilateral counter-piracy arrangements created after the financial crisis provided the foundation for regional wide engagement, which was more likely driven by external pressure over any genuine desire for multilateral collaboration. The United States in particular was keen to participate directly in helping monitor and secure strategic sea lanes in Southeast Asia. In 2004, a conceptual framework labelled the Regional Maritime Security Initiative (R.M.S.I.) was proposed by the United States as a joint patrol and intelligence gathering agreement to help secure the Malacca Straits against transnational threats such as piracy and terrorism. On 31 March 2004 Admiral Thomas Fargo, then officer commanding of U.S. Pacific Command, testified before the House Armed Services Committee on U.S. Pacific command posture. In his statement he outlined the aims of the R.M.S.I. as: 'Working first with other navies of the region, our approach is to assess and then provide detailed plans to build and synchronize interagency and international capacity to fight threats that use the maritime space to facilitate their illicit activity'.[119] Fargo also suggested that

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[118] See: *The Jakarta Post*, 12 Dec. 2005.
[119] 'Statement of Admiral Thomas B. Fargo, U.S.N. commander, U.S. Pacific Command before the house armed services committee on U.S. Pacific command posture', 31 Mar. 2004 (www.dod.mil/dodgc/olc/docs/test04-03-31Fargo.doc) (11 Nov. 2013).

special U.S. expeditionary forces could carry out maritime security operations 'when the decision has been made to do so'.[120]

A degree of misinterpretation and misinformation followed Fargo's statement, which resulted in a hostile reaction mostly from Indonesia and Malaysia. While there was a willingness to share intelligence and information with the U.S. to enhance regional maritime security, any direct U.S. involvement was seen as an infringement of sovereignty. The former Malaysian deputy prime minister commented: 'we recognise there is a need to increase the capacity of the littoral states to increase our capabilities [...] but the actual interdiction will be done by littoral states'.[121] There were further concerns that any direct U.S. military involvement in the region would heighten political tensions and encourage the spread of Islamic fundamentalism.[122]

Despite attempts by senior U.S. officials, including Donald Rumsfeld, to allay fears of U.S. basing or standing patrol forces, the R.M.S.I. was untenable in spite of support from Singapore and Thailand. In September that same year, Admiral Fargo acknowledged that employment of forces in the region required cognisance of territorial sensitivities. He stated: 'Optimising these immediately employable forces requires an appropriate footprint with more reach back, less infrastructure, and less burden on hosts'.[123] However, Indonesia was vehemently opposed to any foreign military involvement in what it perceived as internal security issues as such intervention would run contrary to its policy of non-alignment.[124]

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[120] 'Statement of Admiral Thomas B. Fargo [...]', 31 Mar. 2004.
[121] *New Straits Times*, 07 June 2004.
[122] See: *Republika*, 07 June 2004.
[123] 'Statement of Admiral Thomas B. Fargo, U.S.N. commander, U.S. Pacific Command before the committee on armed services United States senate on the global posture review of United States military forces stationed overseas', 24 Sept. 2004 (http://www.gpo.gov/fdsys/pkg/CHRG108shrg23080/html/CHRG-108shrg23080.htm) (12 Nov. 2013).
[124] *Asia Times*, 16 June 2004.

Association of Southeast Asian Nations

ASEAN emerged as a key facilitator in the development of maritime security cooperation after 2001 principally through the workings of the ASEAN Regional Forum (A.R.F.) Prior to the attacks of 11 September 2001, Southeast Asian nations tended to view threats such as terrorism and piracy as internal security matters. Acts of terrorism had traditionally been committed by domestic separatist movements such as GAM, A.S.G. and Jemaah Islamiyah, which were akin to groups such as the Palestine Liberation Organisation or the Irish Republican Army. Terrorism was therefore typically viewed as a matter of national security rather than an issue of regional collaboration. The events of 11 September 2001 changed this and exposed the complex transnational networks in which a number of Islamist groups operated. External pressure, chiefly from the United States, accumulated on Southeast Asian governments to address these transnational threats owing to the geo-strategic importance of Southeast Asian SLOCs. The threat of piracy and maritime terrorism directly threatened the security and viability of these critically important waterways.

Notwithstanding the lack of a specific counter-piracy framework, ASEAN convened a number of conferences, agreements and initiatives intended to address piracy and other maritime security issues on a regional wide level. Prior to September 2001, ASEAN issued a 'Declaration on transnational crime' in 1997 that recognised the 'pernicious effects' of piracy and endeavoured to strengthen and enhance the commitment of regional countries in combating it.[125] By 1999 a 'plan of action' had been convened in Myanmar which, alongside other objectives, hoped to foster regional cooperation at the investigative, prosecutorial, and judicial level when tackling crimes such as piracy.[126] The association established a special projects division on transnational crime in 2001 followed by a meeting of senior officials in 2002. That same year a declaration was signed between ASEAN member states and China on the conduct of parties in the South China Sea, which tentatively recommended multilateral cooperation in combating piracy

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[125] ASEAN, 'Declaration on transnational crime', 20 Dec. 1997 (http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-on-transnational-crime-manila-20-december-1997) (05 Nov. 2013).
[126] See: ASEAN, 'Plan of action to combat transnational crime', 23 June 1999 in *ASEAN documents on combating transnational crime and terrorism*, pp 18-24.

and armed robbery at sea 'pending a comprehensive and durable settlement of the disputes'.[127]

Despite the apparent obstacles to a complete multilateral framework, the A.R.F. recognised the importance of cooperative maritime security, which was officially added to agenda in 2003. In June that year, the A.R.F. published a 'Statement on cooperation against piracy and other threats to maritime security' that committed participants to enhance multilateral maritime security in the form of information exchange and anti-piracy exercises. The statement was explicit, much like other ASEAN statements on cooperative initiatives, that all activities must be respectful of territorial integrity, sovereignty, jurisdiction and applicable international conventions.[128]

By 2004, there were some general signs of a shift in regional attitudes toward multilateral engagement and some flexibility in relation to issues of sovereignty and territorial integrity. According to one analyst: '[...] despite intra-mural differences, [ASEAN] has been able to assume a prerogative role of a kind in an intermittent process of negotiations about establishing rules of the game'.[129] In October 2004, a conference was held on building a comprehensive security regime in the Straits of Malacca, which was co-organised by the Maritime Institute of Malaysia (MIMA). One month later a more integrated regional programme was adopted known as the Vientiane Action Programme (VAP).

VAP illustrated how littoral states were beginning to recognise the benefit of regional consolidation and how this was a more palatable option than allowing foreign powers to influence and direct Southeast Asian security policy. The VAP called for the promotion of an 'ASEAN identity' and declared a desire to pursue a 'comprehensive integration of

[127] ASEAN, 'Declaration on the conduct of parties in the South China Sea' 04 Nov. 2002, (http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea) (07 Nov. 2013).
[128] ASEAN Regional Forum (A.R.F.), 'Statement on cooperation against piracy and other threats to maritime security', 17 June 2003 (http://aseanregionalforum.asean.org/library/arf-chairmans-statements-and-reports/172.html) (08 Nov. 2013).
[129] See: Amitav Acharya, 'Do norms and identity matter? Community and power in Southeast Asia's regional order' in *The Pacific Review*, xviii, no. 1 (Mar. 2005), p. 98.

ASEAN' in socio-cultural, economic and security matters. [130] There was a clear evolution toward multilateralism within ASEAN in relation to combating piracy; however, no tangible multilateral counter-piracy framework had been created despite calls for a 'Maritime Forum' in the VAP. According to Jane Chan: 'If you look at ASEAN, sovereignty is right up there [...] don't mess with each other's internal problems [...] it is not only targeted at external powers even amongst neighbours'. [131]

Council for Security Cooperation in the Asia-Pacific

Aside from ASEAN, other multistate regional forums such as the Council for Security Cooperation in the Asia-Pacific (C.S.C.A.P.) were actively attempting to address the piracy problem in Southeast Asian waters. C.S.C.A.P. published a number of memoranda on maritime security and other transnational crimes, which were submitted for consideration at policy level. These publications examined and identified weaknesses in current maritime legislation and consistently emphasised the need for regional cooperation to overcome these weaknesses. The council also highlighted the need for a specific regional anti-piracy agreement as early as 2001. [132] C.S.C.A.P. produced several memorandums relating to counter-piracy, which included 'Guidelines for regional maritime cooperation' in December 1997, 'Cooperation for law and order at sea' in February 2001 and 'The practice of the law of the sea in the Asia Pacific' in December 2002.

Malacca Straits Security Initiative

As previously discussed, external pressure, in particular the proposed R.M.S.I., accelerated the creation of a regionally based multilateral maritime security regime. In July 2004 Malaysia, Indonesia and Singapore formed a tri-partite maritime security programme called MALSINDO or the Malacca Straits Coordinated Patrols (M.S.C.P.)

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[130] ASEAN, *Documents series 2004* (Jakarta, 2005), pp 20-32.

[131] Interview with Ms. Jane Chan Git Yin, Coordinator - Maritime Security Programme, Institute of Defence & Strategic Studies (I.D.S.S.), S. Rajaratnam School of International Studies (R.S.I.S.) at Nanyang Technological University, Singapore (21 Mar. 2014).

[132] CSCAP, 'Memorandum no. 5: cooperation for law and order at sea', Feb. 2001 (http://www.cscap.org/index.php?page=cscap-memoranda) (11 Nov. 2013).

under the banner of the Malacca Straits Security Initiative.[133] This initially consisted of coordinated, not joint, anti-piracy surface patrols of the Malacca Strait by the navies of Malaysia, Indonesia, and Singapore and was essentially a regional alternative to the R.M.S.I. The MALSINDO patrols partially addressed the issue of 'hot pursuit' that had hampered counter-piracy operations in the past. Navies were given limited permission to enter into the sovereign maritime jurisdiction of participating countries while in 'hot pursuit' of a pirate vessel provided it was communicated to the host country in advance. A hotline was also established to facilitate this exchange and, while it did not ultimately resolve the problem of hot pursuit, it did illustrate an evolution in regional counter-piracy efforts.

Eyes in the Sky

In September 2005, the M.S.C.P. was enhanced by the introduction of the 'Eyes in the Sky' (E.i.S.) programme. The E.i.S. concept was first proposed during the 2005 'Shangri-La dialogue' by then Malaysian Deputy Prime Minister and Minister of Defence Dato' Sri Mohd Najib Tun Haji Abdul Razak.[134] Operationally, E.i.S. was divided between designated bi-weekly aerial patrols and state specific ground assets called Monitoring and Action Agencies. The air-surveillance observed and reported on suspected piratical activity and strengthened regional maritime domain awareness while the Monitoring and Action Agencies responded to reports of threats. E.i.S. also permitted patrolling aircraft to cross into participating states' airspace up to three nautical miles from shore.

The E.i.S. programme was significant as it illustrated littoral states' willingness to ease restrictions on entering sovereign jurisdiction during counter-piracy operations. This reflected a general regional shift toward multilateralism. At the inaugural EiS air patrol at Subang Air Base in September 2005, the Malaysian Deputy Prime Minister commented: 'This initiative highlights the sense of togetherness among ASEAN

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[133] MALSINDO = **MAL**aysia-**Sin**gapore-**INDO**nesia.
[134] See: Dato' Sri Mohd Najib Tun Haji Abdul Razak, 'Enhancing maritime security cooperation', 05 June 2005 (Speech made at the fifth plenary session of the Shangri-La Dialogue, Shangri-La Hotel, Singapore, 03-05 June 2005).

countries'.[135] Such initiatives, while a useful deterrent, were arguably more symbolic and demonstrated to external powers that littoral states were proactively addressing piracy and other maritime security concerns. Some observers questioned the effectiveness of the E.i.S. programme given the relatively low number of sorties, limited technological capability of the aircraft and large expanse of ocean to be monitored.[136]

In April 2006, MALSINDO and E.i.S. were amalgamated and renamed the Malacca Straits Patrol (M.S.P.). The M.S.P. was divided into three distinct divisions: the Malacca Straits Sea Patrol (M.S.S.P.), the E.i.S. and the Intelligence Exchange Group. While the surface patrols were coordinated, the E.i.S. element was a joint initiative as the air-crew consisted of members from each participating state. The deterrent effect of the M.S.P. combined with the devastation wrought by the 2004 Indian Ocean tsunami resulted in a sharp decline in incidents of piracy along the Malacca Strait from 38 in 2004 to just 12 in 2005.[137]

Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia

The ReCAAP agreement was the most significant of all the various national, bilateral and multilateral initiatives undertaken to combat piracy in Southeast Asia. ReCAAP was the first genuine multilateral agreement in Southeast Asia convened at government to government level that focused exclusively on maritime piracy and armed robbery at sea. The concept was initially discussed at the regional conference on combating piracy and armed robbery against ships held in Tokyo in April 2000 known then as the 'Tokyo Model Action Plan'. One year later Japanese Prime Minister Junichiro Koizumi formally presented the ReCAAP proposal, which was essentially a modified and more conservative version of the 1997 Japanese Ocean Peace Keeping concept.[138]

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[135] Mervyn Lim, 'Keeping the coast clear with Eyes in the Sky' in *Navy News*, no. 5 (2005), p. 8.
[136] See: Graham Gerard Ong and Joshua Ho, 'Maritime air patrols, the new weapon against piracy in the Malacca Straits' in *Institute of Defense and Strategic Studies Commentaries*, no. 70 (Oct. 2005), pp 1-3.
[137] I.C.C. I.M.B., *Piracy report 2005*, p. 5.
[138] Victor Huang, 'Building maritime security in Southeast Asia: outsiders not welcome?' in *Naval War College Review*, lxi, no. 1 (Winter 2008), p. 98.

The agreement was finalised in Tokyo on 11 November 2004 and entered into force on 4 September 2006. That same year an Information Sharing Centre (I.S.C.) was established in Singapore to act as a focal point for contracting governments to exchange information and intelligence and report on incidents of piracy and armed robbery at sea. The I.S.C. also published quarterly reports on piracy, convened anti-piracy seminars and generally raised regional-wide awareness of the problem. By 2007 Bangladesh, Brunei Darussalam, Cambodia, China, India, Japan, South Korea, Laos, Myanmar, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam had all ratified the agreement.

In relation to specific counter-piracy conduct and operations at sea, article 3 of ReCAAP obliged contracting parties to:

> (a) to prevent and suppress piracy and armed robbery against ships; (b) to arrest pirates or persons who have committed armed robbery against ships; (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and (d) to rescue victim ships and victims of piracy or armed robbery against ships.[139]

Aside from counter-piracy operations at sea, contracting states were also free to follow up investigations ashore distinct to the agreement. Any physical enforcement was left to the discretion of individual states. The relative success of the ReCAAP model may be explained in several ways. Firstly, reports were verified and investigated which built stakeholder trust. Secondly, by distinguishing piracy and armed robbery, a more realistic picture of regional incidents was generated. This qualitative analysis was bolstered by secondments by representatives from contracting parties to the I.S.C. Finally, ReCAAP classified attacks by severity and location, which allowed contracting governments to disperse maritime enforcement assets more economically in areas of heightened activity. International shipping could also contact ReCAAP for the latest report on piratical activity and plan a route accordingly.[140]

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[139] 'Regional Cooperation Agreement on combating Piracy and armed robbery against ships in Asia' in *International Legal Materials*, xliv, no. 4 (July 2005), p. 830. [henceforth cited as ReCAAP].
[140] Interview with Ms. Lee Yin Mui (24 Mar. 2014).

The agreement also attempted to address the habituated concerns of regional states in relation to sovereignty and territorial integrity. Article 2 (4) stated: 'Nothing in this agreement, nor any act or activity carried out under this agreement shall prejudice the position of any contracting party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea'.[141] Despite these assurances, Malaysia and Indonesia were the only two ASEAN states not to become signatories. Malaysia primarily objected to the placement of the I.S.C. in Singapore arguing that the I.M.B. P.R.C. in Kuala Lumpur was an appropriate location for the centre.[142] Indonesia, once again, cited concerns relating to sovereignty and territorial integrity and argued that the M.S.P. were a sufficient counter piracy mechanism along the Strait.[143]

Despite this, both Malaysia and Indonesia cooperated with ReCAAP at an operational and reporting level through the Malaysian Maritime Enforcement Agency and Indonesia's maritime coordination apparatus 'Bakorkamla'. The existence of several intergovernmental maritime agencies initially complicated ReCAAP's efforts to compile an accurate picture on piracy and armed robbery incidents. According to Assistant Director of Research at the ReCAAP I.S.C., Ms. Lee Yin Mui: 'some of them are the navy, some the coast guard, some are the Department of Shipping, some are port authority and some are Marine Rescue Coordination Centres [...] so it's a mix and it varies from country to country'.[144]

Despite these challenges, the agreement combined with the various other counter-piracy efforts and initiatives at a national and bilateral level resulted in a drastic reduction in the number of incidents of piracy in Southeast Asia (see fig. 3.12). By 2007, there were just seven reported piratical incidents in the Malacca Strait.[145] In Indonesian waters the

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[141] ReCAAP, p. 830.

[142] Sam Bateman, 'Piracy and armed robbery against ships in Indonesian waters' in Robert Cribb & Michelle Ford (eds.), *Indonesia beyond the water's edge: managing an archipelagic state* (Singapore, 2009), p. 119.

[143] John F. Bradford, 'Shifting the tides against piracy in Southeast Asian waters' in *Asian Survey*, xlviii, no. 3 (May/June 2008) p. 489.

[144] Interview with Ms. Lee Yin Mui, Assistant Director (Research) - Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), Information Sharing Centre (I.S.C.), at ReCAAP I.S.C., headquarters, NOL building, Alexandra Road, Singapore (24 Mar. 2014)

[145] I.C.C. I.M.B., *Piracy report 2008*, p.5.

number of piratical incidents also fell considerably, to just 47 reported attacks in 2007. [146] The success of ReCAAP and other regional multilateral counter-piracy initiatives was exemplified in August 2006, when Lloyd's insurers removed the Malacca Strait from the war risk category.

Fig. 3.12
Decline in incidents of maritime piracy in Southeast Asia 2003-09
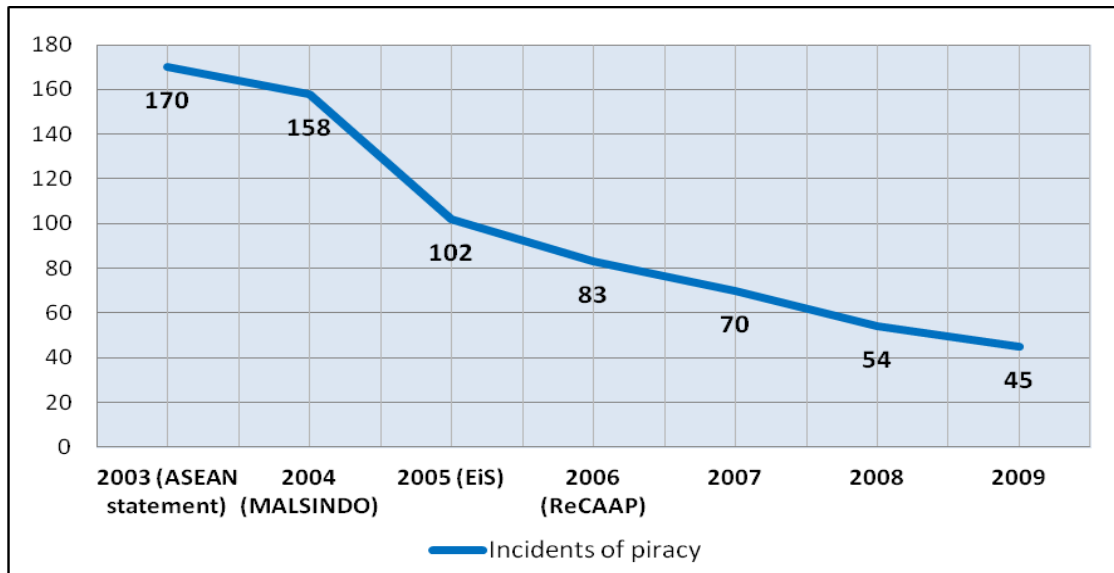
Extra-regional initiatives

Maritime security efforts in Southeast Asia were bolstered and enhanced by extra-regional user states owing chiefly to the strategic importance of the regions sea-lanes. Indeed, this external concern as previously discussed, was partly responsible for the implementation of successful multilateral anti-piracy frameworks such as ReCAAP. Enduring sensitivity over territorial sovereignty meant that littoral states were hesitant to permit any foreign naval force to conduct maritime security operations in sovereign waters without explicit regional management. The rejection of the U.S-led R.M.S.I. by Malaysia and Indonesia was a clear example of this. However, several nations directly assisted Southeast Asian states in counter-piracy capacity building through, but not limited to, multinational naval exercises, training programmes and funding for maritime

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[146] I.C.C. I.M.B., *Piracy report 2008*, p.5.

law enforcement in a 'spirit of burden sharing by beneficiaries' without unilateral foreign naval patrols.[147]

Multinational frameworks such as the Five Power Defence Arrangement that comprised Australia, Malaysia, New Zealand, Singapore and the U.K. and the Western Pacific Naval Symposium provided a platform for extra-regional states to contribute to wider maritime security in the region.[148] In May 2007, for example, eighteen Western Pacific Naval Symposium member navies conducted a security exercise in Singaporean waters that incorporated tactical scenarios and information sharing on maritime terrorism and piracy that utilised for the first time a common operating picture via the Singapore Navy's Regional Maritime Information System.[149]

Japan

In 2001, Hiroshi Terashima, executive director of Japan's Nippon Foundation, recognised that cooperation among Southeast Asian states was 'not necessarily in the most ideal state' and that regional cooperation was the 'key issue' in establishing order at sea and countering threats such as piracy.[150] In 2004, 70 percent of Japanese food imports arrived by sea and 99 percent of exports by volume were shipped.[151] Considering, that approximately 80 percent of Japan's petroleum imports transited through the Strait of Malacca, keeping these sea-lanes secure was a priority for the Japanese government.[152] High-profile pirate attacks on Japanese vessels, such as the *Alondra Rainbow* in 1999, raised public awareness of the issue in Japan, which facilitated significant investment in counter-piracy initiatives by both the private and

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[147] Akio Suda, 'Basic policy of Japan's contributions and cooperation in the Straits of Malacca and Singapore', 18 Sept. 2006 (Statement made at the Kuala Lumpur meeting on the Straits of Malacca and Singapore, Kuala Lumpur, Malaysia, 18-20 Sept. 2006).

[148] In October 2010 W.P.N.S. member states consisted of Australia, Brunei, Cambodia, Canada, Chile, France, Indonesia, Japan, Malaysia, New Zealand, Papua New Guinea, People's Republic of China, Philippines, Republic of Korea, Russia, Singapore, Thailand, Tonga, United States of America and Vietnam; see: Singapore Ministry of Defence, 'Fact sheet: background of the Western Pacific Naval Symposium, MCMEX, DIVEX and NMS' (http://www.mindef.gov.sg/imindef/press_room/official_releases/nr/2011/mar/25mar11_nr/25mar11_fs.html#.VZZ7yUaa9I4) (02 July 2015).

[149] *Jane's Defence Weekly* (Nov. 2007), pp 2-3.

[150] *The Straits Times*, 27 June 2001.

[151] John F. Bradford, 'Japanese anti-piracy initiatives in Southeast Asia: policy formulation and the coastal states responses' in *Contemporary Southeast Asia*, xxvi, no. 3 (2004), p. 485.

[152] Bradford, 'Japanese anti-piracy initiatives in Southeast Asia', p. 485.

public sector. Shortly after the *Alondra Rainbow* hijacking, then Prime Minister Keizo Obuchi proposed a counter-piracy initiative at the ASEAN+3 Summit in Manila. The 'Obuchi initiative' called for a multilateral 'regional coast guard body' to perform joint maritime security patrols with littoral states. Despite some initial enthusiasm for the scheme, it was ultimately rejected by Indonesia and China.

However, a number of less invasive recommendations were adopted resulting from the failed initiative including the 'Model Action Plan' and 'Asian anti-piracy challenges 2000'. Despite the relative failure of these more radical proposals, Japan had been quite successful at the bilateral level successfully implementing joint anti-piracy training exercises with Brunei (2002), Indonesia (2002), Malaysia (2000), the Philippines (2003), Singapore (2003) Thailand (2004) and Vietnam (2002). Aside from conducting joint exercises, attempts were made to enhance to capabilities of regional coast guard services by offering instruction at the Japan Coast Guard academy and training school. These efforts were complemented by a series of maritime security conferences, seminars and education programmes.

In 2006, Japan initiated a grant aid program for cooperation on counter-terrorism and security enhancement. This initiative provided investment for the construction of three high-speed vessels for deployment by the Marine Police of the provinces of Riau, North Sumatra and the Indonesian National Police in Jakarta at a cost of JPY1.9 million. The new vessels extended the patrol area of each base from a 170-mile radius to 250 miles.[153] Japan's financial investment in Southeast Asian counter-piracy capability was significant. Aside from government investment, the private sector in Japan had donated an estimated JPY15 million toward enhancing maritime security since the late 1960s.[154] Japan also created an assistance package of US$70 million for ASEAN integration' and announced the establishment of the Japan-ASEAN Integration Fund in March 2006.

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[153] Ministry of Foreign Affairs of Japan, 'Grant aid to Indonesia for the project for construction of patrol vessels for the prevention of piracy, maritime terrorism and proliferation of weapons', 16 June 2006 (http://www.mofa.go.jp/announce/announce/index.html) (18 Nov. 2013).
[154] Akio Suda, 'Basic policy of Japan's contributions and cooperation in the Straits of Malacca and Singapore', 18 Sept. 2006 (Statement made at the Kuala Lumpur meeting on the Straits of Malacca and Singapore, Kuala Lumpur, Malaysia, 18-20 Sept. 2006).

Arguably, the most significant contribution from Japan in strengthening regional counter-piracy capacity was its leading role in the formation of the ReCAAP agreement, which, as previously mentioned, was the first multilateral government to government agreement that dealt exclusively with piracy and armed robbery at sea.

United States

In contrast to Japan, the United States was relatively inexperienced as regards addressing non-traditional security threats, such as piracy, in Southeast Asia. Following the events of 11 September 2001, the United States began to focus attention on securing the region owing to the existence of Al-Qaeda affiliated groups such as Jemaah Islamiyah and the vulnerability of maritime trade to pirates. Indeed, maritime piracy was frequently mentioned alongside terrorism in a large number of post-September 11 U.S. news and security reports. According to Jeremy Engels: 'Following 9/11, piracy enters into the United States' social imaginary [...] as "terrorism," thereby rhetorically masking piracy's statelessness or a pirate's intention to plunder for private gains'.[155] Similarly, foreign relations correspondence emanating from Washington D.C. regularly equated piracy and terrorism in Southeast Asia as parallel threats: 'Working with the United States, Indonesia is vastly improving its ability to protect vital sea lanes from terrorists and piracy'.[156]

U.S. interest in Southeast Asia extended beyond piracy and terrorism, however, to wider geo-political concerns such as relations with China and tensions over Taiwan. This was reflected in a statement before the U.S. 'House Committee on Foreign Affairs, subcommittee on Asia, the Pacific, and the global environment' in 2007: 'We [...] remain deeply concerned about the growing arsenal of missiles and other military systems arrayed against Taiwan, as well as Beijing's refusal to renounce the use of force

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[155] Jeremy Engels, 'Floating bombs encircling our shores: post-9/11 rhetoric's of piracy and terrorism' in *Cultural Studies ⇔ Critical Methodologies, vii, no. 3* (Aug. 2007), p. 330.
[156] Cameron Hume, Ambassador-Designate to Indonesia, 'Statement to the U.S. Senate Committee on Foreign Relations', 27 May 2007, available at U.S. Dept. of State Archive 2001-09 (http://2001-2009. state.gov/p/eap/rls/rm/2007/85749.htm) (19 Nov. 2013).

against Taiwan'. [157] The United States also negotiated a 'Maritime cooperation framework' with India in March 2006 to enhance maritime security and prevent piracy and other transnational crimes at sea.

The United States was keen to develop Indonesia's capacity to address maritime security threats as the vast majority of piratical incidents occurred in Indonesian territorial waters along the Malacca Strait. The restoration of military ties between the two governments in 2005 went some way to enhancing maritime security cooperation and information exchange. Despite these progressive steps, the former Indonesian defence minister Juwono Sudarsono warned U.S. Secretary of Defence Donald Rumsfeld that the U.S. should not interfere excessively in regional security efforts: 'The primary responsibility for security and anti-terrorism measures should lie with national governments, rather than the U.S. forcing its will on other countries [...]'. [158] However, this public posturing did not reflect the true extent of Indonesian-U.S. relations. The U.S. was instrumental in funding the Indonesian Integrated Maritime Surveillance System and developed eight additional coastal surveillance stations to improve communications capabilities at the Indonesian headquarters command centre including an upgrade of X-Band radars on seven Indonesian ships in 2006. [159]

The United States, along with other extra-regional parties, was duly aware of the complexities surrounding the issue of sovereignty. The U.S. Naval Forces 2007 'Commanders handbook on the law of naval operations' explicitly stated [in relation to the pursuit of pirates into foreign territorial seas or archipelagic waters] that:

> If a pirate vessel [...] fleeing from pursuit by a warship [...] proceeds from
> international waters [...] into the territorial sea [or] archipelagic waters [...]
> of another country, every effort should be made to obtain the consent of the
> nation having sovereignty over the territorial sea [or] archipelagic waters
> [...] to continue pursuit [...] The inviolability of the territorial integrity of

[157] Thomas J. Christensen, 'Statement before the House Committee on Foreign Affairs, subcommittee on Asia, the Pacific, and the global environment', 27 Mar. 2007, available at U.S. Dept. of State Archive 2001-09 (http://2001-2009.state.gov/p/eap/rls/rm/2007/82276.htm) (18 Nov. 2013).
[158] *Asia Times*, 22 June 2006.
[159] U.S. Department of Defence, 'Contracts for 13 September 2006', no. 898-06 (http://www.defense.gov/contracts/contract.aspx?contractid=3337) (14 Oct. 2013).

sovereign nations makes the decision of a warship or military aircraft to continue pursuit into these areas without such consent a serious matter.[160]

The United States government also provided significant financial support toward enhancing regional capabilities. In 2002, President George W. Bush pledged US$130 million in bilateral assistance for Indonesia with a special focus on assisting efforts with legal and judicial reform.[161] This included US$47 million to strengthen the capacity of the police and US$16 million in technical assistance to combat the financing of terrorism and money laundering.[162] This was followed by Humanitarian Assistance/ Disaster Relief (H.A.D.R.) in the form of a US$900 million post-tsunami assistance fund in 2005.[163]

The period after 2001 also witnessed the development of closer ties between the U.S. administration and ASEAN on transnational security issues. This closeness resulted in several security agreements and declarations including the **'**Joint declaration for cooperation to combat international terrorism' in 2002, the 'Joint vision statement on the ASEAN-U.S. enhanced partnership' and a **'**Memorandum of understanding concerning cooperation on trade-related standards and conformance issues' both in 2001. In July 2005, a joint U.S.-Singaporean strategic framework was drafted which recognised the 'excellent' relations between the two nations and controversially affirmed that a 'strong United States military presence is vital for regional peace and stability'.[164]

By 2006, the United States had developed a comprehensive National Strategy for Maritime Security. In areas like the Malacca Strait, this consisted of planning, capacity

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[160] U.S. Department of the Navy, *The commander's handbook on the law of naval operations* (Washington D.C., 2007), f. 3.6.
[161] 'Joint statement between the United States of America and the Republic of Indonesia', 19 Sept. 2001, available at U.S. Dept. of State Archive 2001-09 (http://2001-2009.state.gov/p/eap/rls/ot/25510.htm) (16 Nov. 2013).
[162] David Capie, 'Between a hegemon and a hard place: the 'war on terror' and Southeast Asian–U.S. relations' in *The Pacific Review*, xvii, no. 2 (June 2004), p. 229.
[163] Robert Zoellick, 'Press conference in Indonesia', 07 May 2005, available at U.S. Dept. of State Archive 2001-09 (http://2001-2009.state.gov/s/d/former/zoellick/rem/45772.htm) (19 Nov. 2013).
[164] 'Strategic framework agreement between the United States of America and the Republic of Singapore for a closer cooperation partnership in defence and security', 12 July 2005, available at U.S. Dept. of State documents (http://www.state.gov/documents/organization/95360.pdf) (20 Nov. 2013).

building, information sharing, International Ship and Port-facility Security Code (I.S.P.S.) implementation, technical assistance, training and exercises, private sector outreach, maritime environmental stewardship and counterterrorism.[165] Unsuccessful initiatives like the R.M.S.I., enduring issues surrounding sovereignty and terse relations with adjacent nations like China, meant that U.S. counter-piracy efforts were predominantly limited to financial assistance, information and intelligence exchange and capacity building.

China

Aside from Japan and the United States, several other nations also contributed to maritime security efforts in Southeast Asia between 1997 and 2006 including Australia, China and India. The South China Sea witnessed a surge of piratical activity during the early 1990s, which resulted in widespread allegations of corruption among Chinese maritime officials. This external pressure and the threat of economic boycott prompted Chinese authorities to crackdown on piracy and corruption within its territorial waters. This concentrated effort resulted in several high profile prosecutions of persons for piracy, which are discussed in more detail later. By 2000, incidents of piracy had dropped to manageable levels within Chinese waters with just eleven incidents reported to the I.M.B. P.R.C.[166] Outside of sovereign waters, China was traditionally less willing to engage in multilateral initiatives due, in part, to concern over Japanese naval expansion. This was evident in 2002 with the rejection of Japan's proposal for joint naval patrols in the Malacca strait with India, Indonesia, Singapore, Malaysia and South Korea. In 2003, India proposed a joint anti-piracy exercise in the Malacca Strait with China, similar to those conducted with Indonesian and U.S. warships. China rejected the offer stating that counter-piracy operations were the task of the coast guard.[167]

The Chinese government did, however, convene a number of declarations and memorandums of understanding with ASEAN in relation to the suppression of piracy

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[165] 'Fact sheet on maritime security in the Asia-Pacific region', 26 Apr. 2006, available at U.S. Dept. of State Archive 2001-09 (http://2001-2009.state.gov/r/pa/scp/2006/64956.htm) (19 Nov. 2013).
[166] I.C.C. I.M.B., *Piracy report 2000*, p. 4.
[167] *Asia Times*, 08 July 2003.

and other transnational threats. The 'Declaration on the conduct of parties in the South China Sea' signed of 4 November 2002 illustrated China's emergent willingness to engage in a multilateral framework to combat piracy and armed robbery at sea. At the 2004 'Conference on the Straits of Malacca: building a comprehensive security environment', Deputy Director General Zhao Njianhua of China's Ministry of Foreign Affairs demonstrated for the first time a shift in China's view on cooperative maritime security in Southeast Asia. He stated: 'China stands ready to cooperate with other countries in the region to combat maritime security threats and build an enduring and stable regional maritime security environment'.[168] This strategic shift facilitated China's participation in the ReCAAP agreement in 2006.

India, Australia and Britain

Other major user states such as India also contributed to regional counter-piracy efforts at sea through confidence-building measures, information exchange and naval exercises with littoral states including China. India initiated a multilateral naval exercise known as MILAN off the Andaman Islands in 2003 that involved naval assets from Australia, Indonesia, Malaysia, Myanmar, Singapore, Thailand and Vietnam. Similar exercises had been taking place since the mid-1990s. The Indian navy, the largest in the region, also conducted bilateral patrols with Indonesia along the Malacca Strait in 2004 after which the Indonesian President sought to 'institutionalise the arrangement'.[169]

Aside from seaward operations, India worked closely with ASEAN during this period resulting in several agreements, declarations and summit meetings. In 2002, the first ASEAN-India summit was held in Phnom Penh, where the linkages between sea-piracy and other transnational threats were discussed. This summit resulted in six more meetings by 2007. During the same period, India strengthened its domestic counter-piracy capabilities following an escalation of armed robberies in its territorial waters and around the anchorages and approaches to Chittagong port in Bangladesh between 2000

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[168] Zhao Njianhua, 'The Straits of Malacca and challenges ahead: China's perspective', 11 Oct. 2004 (Presentation made at the 'Conference on the Straits of Malacca: building a comprehensive security environment', Kuala Lumpur, Malaysia, 11-13 Oct. 2004).
[169] *The Tribune*, 29 Nov. 2004.

and 2003. A combination of successful prosecutions, increased surveillance, coast guard enhancement and multilateral engagement resulted in a drop in incidents of piracy in the Indian sub-continent from 85 in 2003 to just 32 in 2004.[170] The publication of the first Indian maritime doctrine in June 2004 and the establishment of the National Maritime Foundation of India in 2005 illustrated the importance of maritime security.[171]

Given its geographical proximity to Southeast Asia and its dependence on regional sea-lanes, Australia also had a strategic interest in supporting counter-piracy efforts. In 2000, the former Australian defence minister pressed the idea of Australian forces undertaking 'cooperative endeavours' with Indonesian forces, such as 'trying to combat the growing problem of piracy at sea'.[172] However, no joint patrols were instigated between the two nations until an illegal fisheries surveillance patrol in November 2007.[173] Aside from Indonesia, Australia forged closer maritime security links with the Philippines during this period that included the signing of an agreement in July 2003 on combating transnational crime including maritime piracy, smuggling and terrorism.[174] Three major bilateral maritime security initiatives were created between Australia and the Philippines during this period. These were the Philippines Port Security Capacity Building project, the Army Watercraft project and the Coast Watch South project.[175] These efforts were supported by the Royal Australian Navy Sea Power Centre, which was established in 2000 to foster and encourage maritime security and strategic thought. The Sea Power Centre, for example, commissioned a 'maritime needs analysis' for the Philippines in 2005 to facilitate more tailored maritime security support to the Philippines.[176] The Australian government also negotiated a number of economic agreements with ASEAN and in 2004 committed to undertake 'urgent steps' to prevent and combat the 'menace'

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[170] I.C.C. I.M.B., *Piracy report 2004*, p. 5.
[171] Ministry of Defence Government of India (Navy), Integrated Headquarters, *Indian Maritime Doctrine*, INBR 8, (New Delhi, 2005).
[172] *Sydney Morning Herald*, 03 May 2000.
[173] Australian Embassy Indonesia, 'Groundbreaking Australia – RI joint fisheries patrol', 02 Nov. 2007 (http://indonesia.embassy.gov.au/jakt/MR07_074.html) (06 July 2015).
[174] Rommel C. Banlaoi, 'Philippines-Australia maritime security cooperation and the status of visiting forces agreement' in Andrew Forbes (ed.) *Australia and its maritime interests: at home and in the region: proceedings of the Royal Australian Navy sea power conference 2008* (Canberra, 2009), p. 183.
[175] For more see: Banlaoi, 'Philippines-Australia maritime security cooperation [...]', pp 184-5.
[176] Ibid. p. 184.

of transnational crimes such as maritime piracy.[177] These commitments resulted in Australia signing the ReCAAP agreement in 2006.

The British government was noticeably absent as a direct participant in bolstering Southeast Asian maritime security during this period aside from generalised counter-piracy guidance and contribution to the formation of international agreements. This was not surprising perhaps given just 32 attacks occurred on British registered vessels between 1993 and 2004 or two-three attacks on average per year.[178] The House of Commons Transport Committee stated in a report on piracy in 2006 that the 'U.K. Government and the international community generally, ought to be ashamed that they have failed to put effective measures in place to prevent the present high level of piratical attacks on seamen and women'.[179] The government responded to such claims:

> Whereas every state has jurisdiction to intervene or investigate acts of piracy in international waters, such extraordinary powers cannot or should not be extended to territorial waters [...] nearly all of the recorded violent attacks have taken place in a handful of overseas locations with most occurring in territorial waters where [...] the government is limited in the direct action it can take.[180]

At a non-governmental level, British N.G.O.s were involved in the donation of body armour to the Indonesian navy for counter-piracy patrols in 1999.[181]

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[177] 'Joint declaration of the leaders at the ASEAN-Australia and New Zealand commemorative summit', 30 Nov. 2004 (http://www.asean.org/news/item/joint-declaration-of-the-leaders-at-the-asean-australia-and-new-zealand-commemorative-summit-2) (21 Nov. 2013).
[178] *House of Commons Transport Committee, Piracy, eighth report of session 2005–06 : report, together with formal minutes, oral and written evidence*, p. 06, H.C. 2005/06, (1026), 10.
[179] *Piracy, eighth report of session 2005–06 [...]*, p. 19.
[180] *House of Commons Transport Committee, piracy: governments response to the committee's eighth report of session 2005-06*, p. 06, H.C. 2005-06 (1690), 03.
[181] *Defence Committee third report Foreign Affairs Committee second report International Development Committee third report Trade and Industry Committee fourth report annual reports for 1997 and 1998 on strategic export controls report, together with the proceedings of the committees, appendices to the report and further appendices to the minutes of evidence*, p. 67, H.C. 1999/00 (225), 123.

Legal initiatives

International

The period from 1979 to 1997 witnessed a number of significant developments in the field of maritime law pertaining to piracy and armed robbery at sea. This chiefly reactionary process continued after 1997 resulting in several important legal initiatives that attempted to address the problem of criminality at sea. The I.M.O. came under increased pressure to produce effective legal remedies given the growing awareness of the dual threat of maritime piracy and terrorism after 11 September 2001. Following proposals by Indonesia, Malaysia and Singapore, the I.M.O. adopted the 'Mandatory ship reporting system in the Straits of Malacca and Singapore' or 'STRAITREP' in 1998. This system provided littoral maritime authorities with information on vessel name, call sign, I.M.O. identification number, position, type of cargo, assessment of structure, cargo or equipment and/or any other circumstances that might affect normal navigation.[182]

In June 1999, the I.M.O. published two comprehensive sets of recommendations for preventing and suppressing acts of piracy and armed robbery against ships. The first document was directed at ship owners, ship operators, shipmasters, and crews and the second toward governments. These documents were particularly significant as they provided information on the legal recourse available to governments when dealing with incidents of piracy and armed robbery at sea. A revised addition in 2000 highlighted appropriate legislation, training of investigators, investigative strategy, preservation of evidence and crime scenes, proportionality, forensic examination, dealing with witnesses and finally the distribution of information and intelligence to appropriate agencies.[183]

The phenomenon of 'phantom ship' fraud, which had grown significantly in Southeast Asian waters during the 1980s and 1990s, was addressed formally by the I.M.O. in 2001. I.M.O. Resolution A.923 called on governments to review their ship registration

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[182] 'Mandatory ship reporting system', 26 May 1998 (I.M.O., M.S.C., RES/73/69/1998, p. 3).
[183] 'Draft code of practice for the investigation of the crimes of piracy and armed robbery against ships', 20 Dec. 2000 (I.M.O., M.S.C., Circ.622/Rev.1/2000, p. 7).

procedures to ensure that safeguards were enacted to prevent the registration of 'phantom' ships.[184] To address this, the I.M.O. 'identification number scheme', which had become mandatory for all ships in 1996, evolved in 2002 to include a permanent identification number in a visible place on either the ship's hull or superstructure. Phantom ship fraud was essentially eradicated by the introduction of these ship identification numbers alongside the Continuous Synopsis Record, which was introduced as an amendment to the Safety of Life at Sea (SOLAS) convention in 2002. The Continuous Synopsis Record was a statutory instrument that obliged vessels to maintain a contemporaneous record of information including flag state, registered owner, company and administrative body responsible for issuing document of compliance, safety management certificate and international ship security certificate.[185]

In November 2001, the I.M.O. formally adopted a 'Code of practice for the investigation of the crimes of piracy and armed robbery against ships'. Aside from the I.M.O., other international organisations, such as the United Nations, recognised the threat from criminal activity such as piracy. In 2000, the U.N. 'Convention against transnational organised crime' addressed several complex legal concerns in relation to transnational threats. This included the protection of sovereignty, criminalisation of participation in an organised crime group, prosecution, adjudication, sanctions, confiscation seizure, extradition and jurisdiction.[186]

International Ship and Port-facility Security Code

The International Ship and Port-facility Security Code (I.S.P.S.) was the first internationally agreed regulatory framework addressing the issue of maritime security and provided a standardised system of assessing threats against ships and port facilities. The Code amended Chapters V and XI of the SOLAS convention and was divided between mandatory and recommendatory requirements. Key legally binding regulations

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[184] 'Measures to prevent the registration of "phantom" ships', 29 Nov. 2001 (I.M.O., M.K.C., A/RES/923/22/2001, p. 2).
[185] 'Format and guidelines for the maintenance of the Continuous Synopsis Record (CSR)', 05 Dec. 2003 (I.M.O., M.K.C., A/RES/959/23/2003, p. 5).
[186] 'Convention against transnational organised crime', 15 Nov. 2000 (U.N., Treaty Series, mmccxxv, no. 39574).

included the completion of a ship/port security assessment followed by the creation of a ship/port security plan and designation of a ship/port security officer. The I.S.P.S. Code was created against a backdrop of concern over the vulnerability of ships to attack after the events of 11 September 2001 but ultimately contributed to strengthening oceangoing vessels against acts of piracy and armed robbery at sea through enhanced onboard security measures. Vessels were also required to be fitted with a 'ship security alert system', that transmitted a noiseless alarm signal to designated authorities ashore identifying the ship, its location and indicating that the security of the ship was under threat from, for example, a piratical attack.

The code established a three-tier threat assessment, which facilitated a link between the ship and port-facility and the appropriate security responses.[187] By 1 July 2004, an estimated 90 percent of ships and declared port facilities subject to the security regime had adopted the I.S.P.S. Code measures.[188] Despite the high level of compliance, there was not a corresponding decline in incidents of piracy. The former director of the I.M.B. commented that 'the code alone cannot defeat the challenges facing maritime security'.[189] This irregularity might be explained in several ways. According to the Company Security Officer for Thome Ship Management Benny Low: 'Ports or governments certify their own facility, do their own audits and hire their own security officer - there is no third party to actually come and scrutinise their certification or procedures [...] that's why there are still a lot of ports where ships are very prone and there is a high risk of robbery, pilferage, stowaways and contraband despite I.S.P.S, Code compliance'.[190]

Domestic

The I.M.O. also worked directly with littoral states in Southeast Asia to enhance regional maritime security, largely along the Malacca Strait under the 'Protection of

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[187] Steven Jones, *Maritime security: a practical guide* (London, 2012), p. 40.
[188] 'I.M.B. says security threats remain, despite new safety measures', 20 Sept. 2004 (http://www.icc-ccs.org/news/414-imb-says-security-threats-remain-despite-new-safety-measures) (21 May 2013).
[189] Ibid.
[190] Interview with Mr. Benny Low, Group Security Manager/ Company Security Officer - Thome Ship Management at Thome Ship Management headquarters, Raffles Quay, Singapore (19 Mar. 2014).

vital shipping lanes initiative'. In 2005, a meeting was convened in Jakarta in cooperation with Malaysia and Singapore on enhancing safety, security and environmental protection in the Straits of Malacca and Singapore. The two-day event resulted in the 'Jakarta statement', which was released on 8 September 2005. The three littoral states agreed to establish a cooperative mechanism, to conduct coordinated maritime patrols, maritime security training programmes and to strengthen capacity building to address security threats to shipping.[191] The relative success of the Jakarta meeting resulted in a second meeting convened in Kuala Lumpur in 2006. The 'Kuala Lumpur statement' that followed commended the anti-piracy successes in the region since the Jakarta meeting and expressed the desire of littoral states to work closely with the I.M.O. and user-states to identify areas of mutual cooperation and assistance. This included the provision of resources, capacity-building, training, technical support, to promote further co-operative measures and significantly possible options for burden sharing.[192]

Prosecutions

Aside from these 'soft-law' agreements and frameworks, there were several successful prosecutions for the crime of piracy in domestic courts. In Malaysia, for example, the arrest of several high-profile pirates in 2000 coincided with a steady reduction in the number of attacks in Malaysian waters from 21 in 2000 to just five in 2003.[193] Malaysia also strengthened its domestic counter-piracy legal framework with the initiation of the 'Malaysian maritime enforcement agency act' in 2004. Section seven (2) of the act established the powers of the agency in relation to countering crimes such as piracy. It included provision for the boarding of any vessel, the right to demand production of any documentation or certification, the power to exercise hot pursuit and the power to expel any vessel in the Malaysian Maritime Zone.[194] Similarly, under Indonesian criminal law the crime of piracy on the high seas or armed robbery in coastal waters was considered a

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[191] See: 'Jakarta statement on enhancement of safety, security and environmental protection in the straits of Malacca and Singapore', 08 Sept. 2005 (I.M.O., M.K.C., Circ.23/ES/8/Anx.2/2005, p. 5).
[192] 'Kuala Lumpur statement on enhancement of safety, security and environmental protection in the straits of Malacca and Singapore', 20 Sept. 2006 (I.M.O., M.K.C., Circ.97/12/Anx.2/2006, pp 4-5).
[193] I.C.C. I.M.B., *Piracy report 2004*, p. 5.
[194] 'Malaysian maritime enforcement agency act', 2004 in *Laws of Malaysia*, no. 633 (2006), p. 10.

serious criminal offence. The Indonesian criminal code categorised maritime piracy into sea-piracy, coast-piracy, beach-piracy and river-piracy with each act punishable by the maximum sentence of fifteen years imprisonment.[195] The code also made provision for a lesser sentence of between 10 and 12 years for those who knowingly aided or abetted an act of piracy. In 2000, for example, Indonesian authorities successfully arrested four pirate leaders in South Sumatra, which resulted in a significant decrease in incidents in that area.[196]

China emerged as the regional leader for piratical prosecutions during this period, primarily due to a number of high-profile cases following a Chinese government crackdown on corruption and maritime crime in the late 1990s. The Chinese authorities were involved in several criminal prosecutions for piracy in relation to attacks on the *Cheung Son* (1998), *Louisa* (1998), *Tenyu* (1998), *Master of Ocean* (1999), *Mary Master* (1999), *Siam Xanxai* (1999) and *Global Mars* (2000). A Chinese court also sentenced ten Indonesians to between 10 and 15 years imprisonment for the crime of piracy following an attack on a Thai tanker in February 2003.[197] The most high profile criminal proceeding relating to maritime piracy was the trail of the hijackers of the *Cheung Son*. In December 1999, a Chinese court convicted thirty-eight men of hijacking the vessel. Thirteen members of the pirate gang were sentenced to death and executed in January 2000. The executions and the lengthy prison sentences likely had a significant deterrent effect and therefore a significant bearing on reducing incidents of piracy in the South China Sea.

Case of the Alondra Rainbow

While the prosecution and imprisonment of pirates or maritime armed robbers under domestic legislation tended to be a relatively straightforward process; prosecuting suspected pirates apprehended outside the jurisdiction of a state was a more challenging prospect. The trial of the *Alondra Rainbow* suspects, which began in 2001, illustrated

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[195] 'Penal Code of Indonesia', Article 438 (1), pp 70-1, available at U.N.O.D.C. (http://www.unodc.org/res/cld /document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf) (06 July 2015).
[196] Stefan Eklöf, *Pirates in paradise: a modern history of Southeast Asia's maritime marauders* (Copenhagen, 2009), p. 139.
[197] *Peoples Daily*, 19 Feb. 2003.

the difficulty and ambiguity in the practical application of international maritime law in relation to the crime of piracy. Ten armed pirates hijacked the *Alondra Rainbow* on 22 October 1999 near Kuala Tanjong, Indonesia on route to Japan with a cargo of 7,000 tons of aluminium ingots. The crew were set adrift and the ship was repainted and renamed *Global Venture*. The vessel underwent two more name changes before the valuable cargo was fully offloaded. The hijacking was characteristic of several phantom ship operations carried out by organised pirate groupings in Southeast Asia at that time. The I.M.B. P.R.C. in Kuala Lumpur issued an alert identifying the vessel as a victim of a pirate hijacking. On 14 November, an Indian patrol plane spotted a vessel matching the description of the *Alondra Rainbow*, now renamed *Mega Rama*, around 430 kilometres off India's southern coast and dispatched two coast guard vessels to intercept the ship. However, the hijackers successfully evaded the coast guard vessels, only capitulating when an Indian Navy missile-armed corvette opened fire.[198]

The capture of the hijackers of the *Alondra Rainbow* was seen as a clear example of how inter-agency cooperation could yield positive counter-piracy results. The fifteen hijackers were arrested for the crime of piracy on the high seas under article 105 of UNCLOS. India's decision to assume jurisdiction and prosecute the hijackers under article 105 was commended as 'courageous' by the director of the I.M.B. at the time due to the obvious difficulties in initiating legal action in a case that involved a 'foreign ship, carrying a foreign cargo, hijacked by foreign nationals in the waters of another country'.[199] The case was further complicated by a lack of relevant counter-piracy legislation under Indian domestic criminal code. Eventually the pirates were convicted under section 307 of the Indian penal code for the crime of attempted murder, among several lesser offences, and sentenced to seven years of 'rigorous imprisonment' in 2003.[200]

In March 2005, the Mumbai High Court overturned the decision of the lower court and acquitted the pirates on all charges. The conviction had been ruled unsafe due to a lack

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[198] *New York Times*, 23 Nov. 1999.
[199] *Asia Times*, 27. Feb. 2003.
[200] Ibid.

of eyewitness testimony during the trial. It was suggested that the master and engineer of the *Alondra Rainbow* feared possible reprisals if they identified the hijackers in open court.[201] Indeed, it was reported that both crewmembers did not go to sea again due to the trauma of the hijacking.[202] The case of the *Alondra Rainbow* illustrated the difficulties in the practical application of UNCLOS and demonstrated that apprehending suspected pirates was far easier than prosecuting them. Indeed, the number of prosecutions achieved using universal jurisdiction jurisprudence was negligible. Between 1998 and 2007, it is estimated that just four prosecutions were secured using universal jurisdiction for the crime of piracy.[203] Considering an estimated 754 incidents of piracy were reported during this period, this amounted to a prosecution rate of just 0.53 percent.

Conclusion

By 2006, incidents of piracy had significantly decreased in maritime Southeast Asia. There was a 70 percent decline in reported incidents between 2000 and 2007 from 259 reported attacks to just 79 in 2007.[204] Parallels can be drawn with the situation at the end of the nineteenth-century when piracy had escalated to a point where extra-regional colonial forces had to cooperate to counter the threat for reasons of mutual benefit. Similarly, after the palingenesis of piracy in the twentieth-century, regional forces eventually established a multilateral framework to counter the threat once again born out of necessity rather than desire. Indeed, the unique archipelagic maritime geography of Southeast Asia meant that on every occasion discussed here, some form of cooperative engagement was necessary to effectively counter and suppress piracy to a manageable level.

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[201] R.S. Vasan, 'Alondra Rainbow revisited: A study of related issues in the light of the recent judgment of Mumbai high Court' in *South Asia Analysis Group Papers*, no. 1379 (May 2005), available at (http://www.southasiaanalysis.org/papers14/paper1379.html) (21 Mar. 2012).

[202] Vasan, 'Alondra Rainbow revisited [...]'.

[203] Eugene Kontorovich & Steven Art, 'An empirical examination of universal jurisdiction for piracy' in *The American Journal of International Law*, civ, no. 3 (July 2010), p. 445.

[204] Figures extrapolated from: I.C.C. I.M.B., *Piracy report 2000 & 2008*.

Prior to the events of 11 September 2001, most Southeast Asian states tended to consider coastal security as an internal matter extending occasionally to bilateral cooperation, such as coordinated patrols, with a neighbouring state. A blinkered governmental system combined with opposing territorial claims and fears of erosion of sovereignty excluded any multilateral counter piracy efforts. The global security climate that emerged after September 2001, lead by the United States, significantly influenced a move toward maritime security multilateralism in Southeast Asia.

Between 1997 and 2006 when incidents of maritime piracy were beginning to decline in Southeast Asia, the Gulf of Aden and along the Somali coast witnessed a steady rise in attacks. By 2007, Southeast Asia no longer held the title as the most pirate infested waterway in the world. The shipping industry and international community turned its attention to the Horn of Africa where a diverse and far more dangerous form of maritime predation was taking root.

Fig. 3.13
Fluctuation of reported incidents of piracy: Southeast Asia & Africa 2003-08
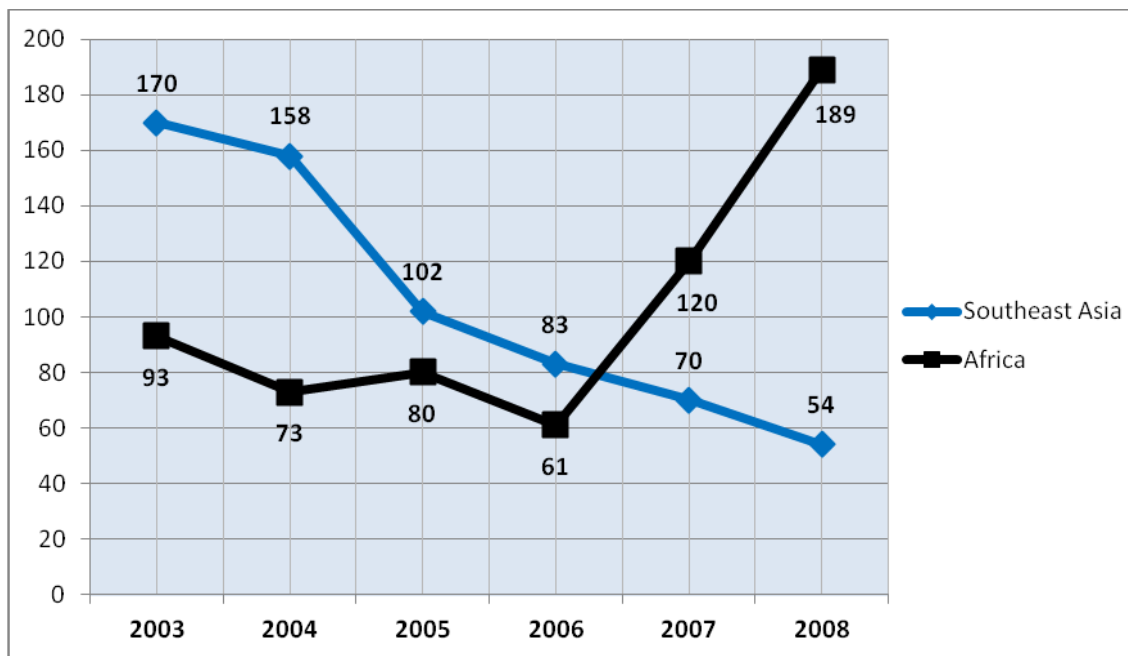
Source: I.C.C. I.M.B., *Piracy report 2009*.

CHAPTER IV

The seeds of disorder at sea are sown ashore, 1960-2005

To be Somali is to be a people united by one language and divided by maps
- Salman Rushdie [1]

Introduction

In 1960, following over fifty years of colonial occupation and protectorship, the first Republic of Somalia was declared. Within just nine years, the fledging liberal democratic state, based on the Italian system, collapsed by way of a bloodless coup initiated by army General Mohamed Siad Barre. The newly formed Somali state was insufficiently prepared for the political and security challenges of self-governance in what had traditionally been a clan-based, heterogeneous system. Barre's regime initially brought an era of superficial prosperity to Somalia and enhanced security on land and at sea.

Piratical incidents along the Somali coast were essentially non-existent during the rule of Barre's Supreme Revolutionary Council and the Somali Revolutionary Socialist Party (S.R.S.P.). The presence of a functioning naval force and strong army supported by the Soviet Union and later, the United States, maintained law and order. However, the Ogaden War of July 1977 significantly weakened Barre's position and eventually contributed to the collapse of central government in 1991. The fall of Barre's administration initiated a devastating civil war, lawlessness and widespread famine. This disorder was the primary catalyst for the outbreak of piracy off the Horn of Africa, which coincided almost directly with the collapse of the state structure.[2]

This chapter firstly examines the period from the foundation of the Somali Republic in 1960 to its subsequent collapse in 1969 followed by an examination of Siad Barre's

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[1] *Washington Post*, 06 July 1991.
[2] The geographic delineation of 'Northeast Africa' and the 'Horn of Africa' for the purposes of this research consists of the extended maritime domains of Djibouti (formerly French Somaliland), Eritrea, Kenya, Somalia (including the de facto states of Somaliland and the Puntland Republic of Somalia) and Yemen.

regime from 1969 to 1991. This analysis illuminates the root causes of contemporary Somali piracy and attempts to frame it within the wider and disordered political, economic and social context ashore. Prior to the collapse of Barre's authoritarian regime, maritime piracy had not been an obstacle to shipping transiting the Gulf of Aden or the eastern Somali seaboard. The reasons for this are examined alongside the causative factors that contributed to the escalation of piracy after 1991. These include the legacy of colonial rule, the fall of Siad Barre's government and the subsequent civil war, statelessness and lawlessness ashore, population growth coupled with a humanitarian crisis, extreme poverty and unemployment and finally decimation of the indigenous fishing industry.

To analyse the evolution of counter-piracy activity in the region effectively it is important to establish why piracy and armed robbery at sea did not emerge as a security concern before 1991. Between 1991 and 2005, piracy escalated synchronously with the debilitating political and economic situation ashore. The direct and indirect efforts to address the emerging threat are analysed, focussing on regional, international and legal initiatives. While the Southern territories of Somalia disintegrated into statelessness and lawlessness after the collapse of central authority, the former British protectorate of Somaliland to the north declared unilateral autonomy in 1991. Seven years later the neighbouring territory of Puntland declared itself a semi-autonomous Somali state as opposed to an independent nation (see fig. 4.1). Whereas Somaliland managed to contain maritime criminality along its coastline after independence, attacks off Puntland escalated and eventually evolved into an organised maritime criminal network.

Fig. 4.1
Territorial claims by Somaliland and Puntland

Source: University of Texas, Perry-Castañeda Library map collection (2012)
(http://www.lib.utexas.edu/maps/africa/txu-pclmaps-oclc-795784383-
somalia_2012_somaliland_and_puntland.jpg) (03 Feb. 2014).

Fig. 4.2
Principal Somali clans and sub-clans
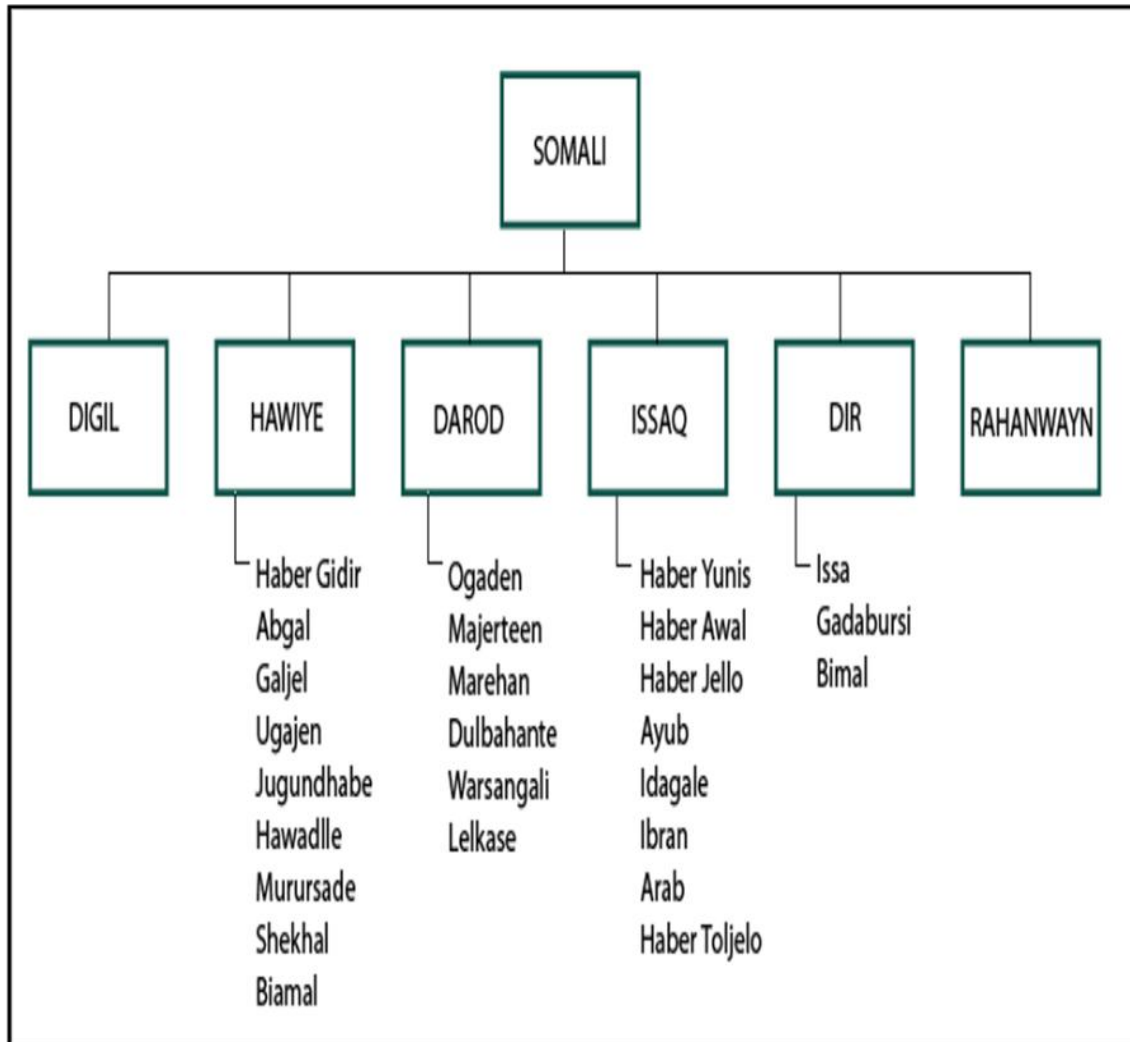
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   │ DIGIL │  │HAWIYE │ │DAROD  │ │ISSAQ  │ │ DIR   │ │RAHANWAYN  │
   └───────┘  └───┬───┘ └───┬───┘ └───┬───┘ └───┬───┘ └───────────┘
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HAWIYE
- Haber Gidir
- Abgal
- Galjel
- Ugajen
- Jugundhabe
- Hawadlle
- Murursade
- Shekhal
- Biamal

DAROD
- Ogaden
- Majerteen
- Marehan
- Dulbahante
- Warsangali
- Lelkase

ISSAQ
- Haber Yunis
- Haber Awal
- Haber Jello
- Ayub
- Idagale
- Ibran
- Arab
- Haber Toljelo

DIR
- Issa
- Gadabursi
- Bimal

General context

Maritime criminality, including piracy, smuggling and hostage-for-ransom kidnappings[3], had been a feature along the Somali coast and in the Gulf of Aden since at least the early eighteenth-century. [4] By the early nineteenth-century, piracy was predominantly a localised affair that periodically affected dhows and merchant ships that transited between ports in Northeast India and the Gulf of Aden.[5] During the European imperial expansion in the late nineteenth-century, the Horn of Africa region, which was at that time inhabited by several nomadic ethnic Somali clans, was sub-divided between British, Italian, French and Ethiopian colonial administrations (see fig. 4.3). This process introduced for the first time arbitrary boundaries that neglected traditional pastoral migration routes. By 1900, the region was subdivided into French Somaliland and British Somaliland to the north, Italian Somaliland to the south and the Ethiopian Ogaden region to the west. These delineations were significant as they facilitated divisions in the later civil war and therefore ultimately contributed to the escalation of criminal disorder such as piracy.

During this period, from approximately 1899 to 1920, British and Ethiopian colonial forces encountered fierce resistance to their colonial programmes from the 'Somali dervish resistance movement' led by Mohammad Abdille Hasan. The conflict, combined with a severe famine, resulted in the deaths of an estimated one-third of the population of British Somaliland in the north of the country. [6] In comparison to the Italian settlement to the south, the British appeared to have had little interest in developing the territory, which was essentially a 'feeding ground for Aden'.[7] Indeed, several different government agencies were encumbered with the administration of Somaliland with minimal investment yet the territory still exhausted an estimated 70 percent of the

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[3] It was reported that during the 1780s survivors of shipwrecks along the Somali coast were taken captive and ransomed by local communities; see: David Anderson, 'Somali piracy: historical context and political contingency' in *Centre for European Policy Studies: Working Paper*, no. 33, (Dec. 2009), p. 2.

[4] Anderson, 'Somali piracy [...], p. 3.

[5] Ibid. p. 4.

[6] Frasier Brown, 'Tragedy in Somalia: clans, colonizers, superpowers, and the cult of personality' in *Origins*, i, no. 1 (May 1993), p. 11.

[7] *The Times*, 22 Aug. 1888.

protectorate's budget on the maintenance of law and order.[8] This reflected the inherent disaffection of Somalis to the imposition of a centralised colonial system on a traditionally nomadic existence.

The Italian conquest of Ethiopia in 1936 merged Italian Somaliland, Italian Eritrea and the former Ethiopian Empire into Italian East Africa. In August 1940, almost one year after the outbreak of the Second World War, Italy annexed British Somaliland and incorporated it into the larger Italian East Africa territory. However, by November the following year Italy surrendered the province following several defeats in a series of military engagements with British Commonwealth forces during the Allied East Africa campaign. Britain assumed control of both British Somaliland and Italian Somaliland and administered the territories as a single military protectorate until 1948. Significantly, Britain conceded the Ogaden region to Ethiopia, which provided a catalyst for future conflict between Somalia and Ethiopia.

During this period, a number of Somali factions emerged to agitate for independence, such as the Somali Youth League and the Somali National League. In 1950, the United Nations agreed to place Italian Somaliland under an international trusteeship system with Italy as the administrating authority. The trusteeship was essentially a transitory mechanism for the formation of a sovereign Somali state ten years from the date of approval by the General Assembly.[9] Despite the political disorder ashore, incidents of piracy and robbery along the coast were negligible, aside from occasional reports of opportunistic attacks on tourist yachts and attempted kidnap for ransom incidents.[10] By 1956, Italian Somaliland trust territory was renamed Somalia and granted internal autonomy for the first time. This was followed by a formal declaration of independence in 1960.

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[8] Brock Millman, *British Somaliland: an administrative history 1920-1960* (New York, 2014), pp 68-111.
[9] *Report on the proceedings of the fourth session of the General Assembly of the United Nations held at New York 20th September-10th December, 1949 [with annexes]*, 80 [Cmd 7924], H.C. 1950, xxiv, 653.
[10] Anderson, 'Somali piracy [...]', p. 5.

Fig. 4.3
Somali colonial boundaries, 1891-1960

FRENCH
SOMALILAND

Gulf of Aden

Berbera

BRITISH
SOMALILAND

ETHIOPIA

SOMALILAND

ITALIAN

N

*Indian
Ocean*

Mogadishu

KENYA

Chisimayu

Boundary established by
protocols, 1891-1907

Italian interpretation of 1908
Convention

Ethiopian interpretation of
1908 Convention

Populated place

Area in dispute, 1908-50

Area transferred from Kenya to
Italian Somaliland, 1925

Boundary between Kenya and
Italian Somaliland, 1925-60

Administrative line established
in 1950

0   50 100 150 Kilometers
0   50   100   150 Miles

Source: Helen Chapin Metz (ed.), *Somalia: a country study* (Washington D.C., 1993), p. 12.

Colonial legacy and independence, 1960-69

For some contemporaries, the nascent independent Somali Republic was predisposed to fail. In 1955 Gregorio Consiglio, former editor of the International African Institute journal *Africa*, commented that 'Somalia has not now and it will not have in the next few years an infrastructure and economic productivity able to support even the poorest state balance'.[11] This was an accurate appraisal given the heavy reliance on foreign financial aid and development investment in the years following independence (see figs 4.4 & 4.5). The legacy of colonial rule and administration resulted in a variance between traditional decentralised pastoral structures and the centralised character of the post-colonial state.[12] The withdrawal of British and Italian forces, therefore, resulted in a fragile security situation that the independent Somali government was ill equipped to address. This created widespread uncertainty and unrest in more isolated parts of the state. Mohamed Aden Sheikh, a former member of the S.R.S.P., described this as '[...] the outcome of a neo-colonial domination of the western world all over Africa'.[13]

Mogadishu had no functioning port in the initial period after independence and little or no national maritime security capability. Despite this, the presence of extra-regional naval forces in the Gulf and western Indian Ocean likely contained threats to maritime order such as piracy during these years. Britain, for example, maintained a substantial naval presence in Aden, which played host to the Royal Navy's Gulf headquarters in 1963. This was augmented by the Royal East African Navy base in Mombasa, Kenya up until 1963. For the Royal Navy 'the emphasis was entirely on projecting power ashore, rather than engaging in traditional naval operations'.[14] This suggested a high-degree of sea-control maintained by a large naval presence, which would make it difficult for acts of maritime criminality to go unnoticed or unchecked.

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[11] Gregorio Consiglio, 'Insistiamo: attenzione alla Somalia!' in *Affrica*, x, no. 3, (Mar. 1955), p. 66.

[12] Ismail I. Ahmed & Reginald Herbold Green, 'The heritage of war and state collapse in Somalia and Somaliland: local-level effects, external interventions and reconstruction' in *Third World Quarterly*, xx, no. 1 (1999), pp 113-27.

[13] Mohamed Aden Sheikh, *Arrivederci a Mogadiscio* (Rome, 1991), p. 46.

[14] Eric J. Grove, *Vanguard to Trident: British naval policy since World War II* (London, 1987), p. 250.

Indeed, the Royal Navy was engaged in more generalised maritime security operations in the Gulf in response to a violent uprising in Aden. The 1966 'Statement on the defence estimates' detailed: 'In the Persian Gulf and in the Aden area, naval frigates, minesweepers and amphibious warfare ships with Royal Air Force maritime-reconnaissance aircraft patrolled to prevent the smuggling of arms and the infiltration of rebels into the Gulf states and the South Arabian federation'.[15] Furthermore, the Royal Navy had engaged in traditional counter-piracy operations in the Gulf of Aden/Horn of Africa region previously. In 1953, for example, the H.M.S. *Flamingo* was ordered to search the southern Arabian Gulf for an Indian Dhow that had been attacked and hijacked by pirates.[16] The dhow was subsequently retaken and towed back to Aden. Such encounters appeared to be rare in the Gulf of Aden/ western Indian Ocean between 1950 and 1980. Despite earlier aspirations, Britain withdrew all of its naval assets from Aden by 29 November 1967 following a violent uprising against pro-western forces in the region, a move that mirrored in some ways the earlier evacuation of the naval base in Kenya and the later withdrawal from Singapore and Malaysia in 1970.

Despite the British withdrawal from the Gulf in 1971, a Soviet naval contingent of at least a dozen warships was stationed on a semi-permanent basis in the region during the early 1970s.[17] Similarly, France maintained a substantial naval task force that intermittently included two carriers off Djibouti between 1975 and 1978.[18] The relatively stable and secure maritime environment, in terms of criminality, was illustrated by the productivity and functionality of the port of Aden. According to newspaper reports, 554 ships and 143 dhows visited the port during November 1962 with an estimated UK£2 million worth of oil shipped out.[19] The omission of any reported robberies or acts of piracy against such a high frequency of potential valuable targets suggested a relatively secure and unobstructed maritime environment under

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[15] *Statement on the defence estimates 1966. Part II. Defence estimates*, 11 [Cmnd. 2902], H.C. 1966-67, ix, 37.
[16] *Statement of the First Lord of the Admiralty explanatory of the Navy Estimates, 1954-55*, 6 [Cmd. 9079], H.C. 1954-55, xxii, 326.
[17] *The Times*, 17 Oct. 1970.
[18] Alain Rouvez, *Disconsolate empires: French, British and Belgian military involvement in post-colonial sub-Saharan Africa* (Boston, 1994), pp 165-6.
[19] *The Times*, 05 Mar. 1963.

British colonial control. The notion of a naval presence acting as a deterrent to illicit maritime activity like piracy was nothing new. The Royal Navy, for example, seemed to be of the opinion that a presence was enough to exert a palliative effect ashore that presumably extended along the coast. Following an escalation of piracy around Brunei in 1962, for example, a Royal Navy frigate alongside two minesweepers 'showed themselves off the coast'; this immediately brought 'a renewal of confidence and improvement in morale among the local population'.[20]

Fig. 4.4
Sources of development finance: domestic vs. foreign 1963-69

	Total in Somali Shillings (So. Sh.)[21]	Percentage of total
Domestic revenue	283,531	14.9
Foreign revenue	1,691,528	85.1
Total revenue	1,903,059	100

Source: See: Ozay Mehmet, 'Effectiveness of foreign aid: the case of Somalia' in *The Journal of Modern African Studies*, ix, no. 1 (May 1971), p. 37.

By 1962, Somalia had established closer relations with the Soviet Union, which was instrumental in facilitating the growth of Somali military capability and in this regard maritime security. After independence, a National Somali Army was created from the existing 'Army of Somalia' and the 'Somali Scouts'. By 1963, the force consisted of between 4,000 and 5,000 personnel.[22] Between 1963 and 1967, Somalia's defence budget roughly doubled from c.UK£1.5 million to UK£3.2 million.[23] This enabled the formation of Somalia's first naval force in 1965.

By 1970, after the fall of the Republic, it was estimated that armed forces totalled around 20,000 personnel.[24] It is likely that the presence of an operational military force

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[20] Grove, *Vanguard to Trident [...]*, p. 262.
[21] One U.S. Dollar equated to approximately 6.35 Somali Shillings between 1963 and 1969; See: Abdullah A. Mohamoud, *State collapse and post-conflict development in Africa: the case of Somalia, 1960-2001* (Indiana, 2006), p. 110.
[22] See: *The Times*, 11 Nov. 1963; Helen Chapin Metz (ed.), *Somalia: a country study* (Washington D.C., 1993), p. 181.
[23] *The Economist*, 27 May 1967.
[24] Paul B. Henze, *The Horn of Africa* (Basingstoke, 1991) pp. 95-9.

ashore combined with a strong international naval presence at sea, had the effect of deterring any potential criminal or subversive maritime activity. Indeed, constabulary security capability was also enhanced during the short period of the Republic. In 1965, for example, Germany invested DM7.5 million in a Somali police-training programme that equipped the force with small arms, signalling apparatus and vehicles.[25] Despite this, less conspicuous maritime crimes such as smuggling were still regularly reported along the coast. [26] Another possible explanation for the low percentage of attacks on commercial shipping was the lack of targets attributable to the closure of the Suez Canal from 1967 to 1975, which resulted in merchant vessels detouring via the Cape of Good Hope at an estimated cost to the global economy of US$12 billion.[27]

By March 1963, Somalia had formally severed diplomatic relations with Britain, which cost an estimated UK£1.25 million in economic aid.[28] British parliamentary debates at the time reflected the emergent security dilemma:

> [...] we have a very dangerous build-up in the country. We have a determination to create an army of 20,000 men. We have the granting of military aid of 11 million to Somalia by the Soviet bloc [...] A dangerous situation is, therefore, being created in this area with the building up of opposing blocs which could lead far more probably to war than to the Federation which has been talked about today.[29]

Internally, these 'opposing blocs' consisted of the military and security forces that felt most aggrieved and marginalised by central government. The resignation of the Chief of Police just prior to the 1969 election was evidence of this agitation. [30] Geographic divisions, roughly along clan lines, between the former British colony to the north and the Italian territory in the south created further instability. The execution of then president Abdirashid Ali Shermaarke by a policeman on 15 October 1969 and the dissention among the armed forces facilitated a passive coup d'état five days later and

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[25] *The Economist*, 20 Feb. 1965.

[26] *The Times*, 16 Sept. 1969.

[27] William Graves, 'New life for the troubled Suez Canal' in *National Geographic* (June 1975).

[28] *The Times*, 19 Mar. 1963.

[29] *Parliamentary debates (Hansard)*, *House of Commons*, 1942-81 (dclxxxiv, London, 1963).

[30] Metz (ed.), *Somalia: a country study*, p. 36.

the beginning of an autocracy under the leadership of the military and the banner of 'scientific socialism'.

Fig. 4.5
Breakdown of foreign financial support to Somalia 1963-69

	Total in Somali Shillings (So. Sh.)	Percentage of total
U.S.S.R.	388,928	20.4
U.S.A.	326,489	17.2
E.E.C.	245,108	12.9
World Bank	219,427	11.5
U.N.	143,567	7.5
Federal Republic of Germany	122,951	6.5
Italy	71,339	3.7
China	39,220	2.1
Saudi Arabia	14,561	0.8
Others	47,938	2.5
Total	<u>1,619,528</u>	<u>85.1</u>

Source: See: Mehmet, 'Effectiveness of foreign aid [...]', p. 37.

Fig. 4.6
Breakdown of financial development funds: domestic vs. foreign 1963-86

	Domestic revenue		Foreign revenue	
	So. Sh. (millions)	Percentage of total	So. Sh. (millions)	Percentage of total
1963-69	28.3	14.9	169.1	85.1
1971-73	118.9	16.2	615.0	83.8
1974-78	1,260.3	32.6	2,602.9	67.4
1982-86	3,119.0	20.0	13,050.0	80.0

Source: Abdi Ismail Samatar, *The state and rural transformation in Northern Somalia, 1884-1986* (London, 1989), p. 121.

Siad Barre military coup and regime, 1969-91

The brief democratic experiment that was the first Somali Republic collapsed following a passive takeover initiated by Somali Army General Mohamed Siad Barre and his troops on 20 October 1969. The parliamentary institutions of the former republic were dissolved and replaced by a twenty-four-man Supreme Revolutionary Council with Barre as President. The new 'Somali Democratic Republic' was administered under a system of scientific socialism, borrowing from Marxist ideology, which denounced tribalism and appeared, initially at least, beneficial for Somalia. Between 1970 and 1975, the new government initiated a number of domestic reforms including improvements to the health care and education system by way of a literacy campaign, legal reform, construction of roads and economic reform through increased exports. Indeed, in relation to domestic security, one commentator described the new Somali Republic as '[...] unquestionably one of the safest places in Africa'.[31] However, these improvements were heavily dependent on foreign financial support and the majority of the reconstruction projects were confined to the capital Mogadishu. This served to further isolate and alienate clans in the north of the country.

For the vast majority of Barre's rule, micro-maritime threats like piracy were dwarfed by large-scale conflict ashore and as such were rarely, if ever, highlighted. However, as early as 1975 hypothetical 'seeds were being sown' for the eventual upsurge of maritime piracy as 20,000 disenfranchised Somali nomads were relocated to established settlements along the coast to become fishermen following a severe and widespread drought. This newly developed coastal 'community' initially struggled to develop the expertise to effectively fish and procure powerboats and other related equipment. It is possible that elements of these 'fisher-folk' communities later turned to piracy during similar times of economic and humanitarian hardship.[32] By 1976, the Supreme Revolutionary Council disbanded and transferred political administration to the oligarchic S.R.S.P. under the direction of a 'Supreme Council'.

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[31] Ken Menkhaus, 'State collapse in Somalia: second thoughts' in *Review of African Political Economy*, xxx, no. 97, (2003), p. 412.
[32] *The Times*, 29 Sept. 1975.

Ogaden War, 1977-8

Somalia's defeat in the Ethio-Somali War or the Ogaden War of 1977-78 marked a decisive turning point in Barre's regime. The Ogaden campaign initially engendered widespread domestic support as an opportunity to create a unified Somali state. However, the retreat of Somali forces from the region in March 1978 significantly undermined Barre's authority and the stability of his regime, which created, for the first time, a formal armed internal opposition to his rule. Just one month after the capitulation, the newly formed Somali Democratic Salvation Front, which contained dissident elements from the Somali Army, attempted a coup but was quickly defeated by government forces. The conflict also had a devastating impact on Somalia's fragile economy, in particular manufactured goods for export, which became almost non-existent following the war.[33]

Aside from domestic instability, Somalia's international relations significantly shifted because of the Ogaden War. Ethiopia, a former ally of the United States, formed an alliance with the Soviet Union and Somalia, formerly supported by Soviet Union, now developed closer ties with the United States. This was a considerable shift in allegiance and illustrated the geo-strategic relevance of the region to the global 'superpowers'.[34] Both countries were anxious to retain a foothold in the Horn of Africa primarily as the Gulf was a major conduit for the shipment of oil supplies from the Middle East.

Cold War: Soviet relations

The foundation of the Somali Democratic Republic was positioned against the backdrop of the Cold War in which the Somali state essentially became a willing pawn in the geo-strategic aspirations of the Soviet Union and the United States. According to one contemporary: 'The situation in the Horn is uncertain [...] neither war nor peace is allowed unless it is to the advantage of the superpowers'.[35] The friendly relations between the Soviet Union and Somalia continued to develop during the early years of

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[33] Metz (ed.), *Somalia: a country study*, p. 132.
[34] The term 'superpowers' is used in reference to the United States and the Soviet Union during the period 1945-91.
[35] R. G. Bhardwaj, *The dilemma of the Horn of Africa* (New Delhi, 1980), p. 164.

Barre's government alongside Soviet military expansion. By 1970, it was reported that Soviet naval assets in the Indian Ocean amounted to 24 warships, at least 13 submarines and 24 auxiliaries.[36] A previously confidential C.I.A. document from 1970 highlighted the increased Soviet naval activity along the Somali Coast as a threat to U.S. interests in the region.[37] Such apprehension was justified given the Soviet Union's agreement with Somalia that facilitated the establishment of a naval base at the port of Berbera in 1972. By 1974, the naval installation at Berbera hosted an estimated 2,500 Soviet advisors and technicians alongside a naval missile storage facility, a long-range radio station to control ship movement from the shore and an airfield capable of handling large bombers.[38] Aside from the base at Berbera, the Soviet Union maintained control of the Port of Aden and had planned for a further naval base at Socotra Island in the Gulf of Aden.

The strategic intention of the Soviet navy appeared to be power projection while simultaneously utilising the forward presence capability of the navy to facilitate the global spread of communism. As Admiral Sergei Gorskhov, then Commander in Chief of the Soviet fleet, stated: '[...] Soviet mariners, from rating to admiral bring to the people of other countries the truth about our socialist country, our Soviet ideology and culture and our Soviet way of life'.[39] While these macro-concerns dominated strategic and security policy, micro-security threats such as maintaining constabulary order along the Somali coast was not an objective. Indirectly, however, the presence of such a strong naval contingent negated the opportunity for illicit maritime crimes such as piracy. Despite this, there were still localised reports of low-level goods and contraband smuggling operations along the coast in the mid-1970s.[40] The Ogaden War dramatically altered Somali political relations with the Soviet Union, which resulted in the expulsion of Soviet personnel from Berbera in November 1977. Despite this, the Soviet Union still maintained a naval presence in the Red Sea in the Dahlek Islands.

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[36] *The Times*, 20 Nov. 1970.
[37] 'National Intelligence Estimate: the Horn of Africa', 21 May 1970 (C.I.A., National Intelligence Council Files, 79-R01012A, Box 390, p. 2).
[38] See: *The Times*, 15 Nov. 1974 & Metz (ed.), *Somalia: a country study*, p. 209.
[39] S. G. Gorshkov, *The sea power of the state* (Maryland, 1979), p. 252.
[40] *The Times*, 23 May 1974.

Cold War: U.S. relations

In 1980, Barre agreed to provide naval facilities to the United States on the proviso of American military and financial support**.** In January 1981, the U.S. subsequently acquired control of the naval base at Berbera following the clearance of a US$42 million defensive military aid package, which significantly increased the size of the Somali military (see fig. 4.7). Between 1981 and 1982, U.S. military aid included three AN/TPS-43 air search radar, 448 anti-tank missiles, 15 Commando V-150 and 23 M-113 Armoured Personnel Carriers alongside 300 FIM-43C Redeye portable Surface to Air Missiles.[41] Notably, there was no provision for the acquisition of naval assets, which suggested a relatively secure and functional maritime environment. In 1983, a U.S. Rapid Deployment Force established a forward headquarters on the U.S.S. *La Salle* in the Indian Ocean, adding to the naval presence in the region and further deterring illicit maritime activity such as piracy.

Indeed, both the Soviet Union and the U.S had been reinforcing naval assets in the region since the late 1960s, illustrated by the United Nations 'Indian Ocean Peace Zone' initiative in 1971, which attempted to facilitate dialogue between the two nations to reduce their massive military footprint in the region. The declaration called upon the superpowers to eliminate naval bases, logistical supply facilities, weapons of mass destruction and any manifestation of great power military presence in the Indian Ocean conceived in the context of great power rivalry.[42] By 1986, the U.N. Department for Disarmament Affairs published a report entitled 'The naval arms race', that examined the nature and role of naval forces in the nuclear age, including counter-piracy, and the impact and importance of the 1982 U.N. Convention on the Law of the Sea for international cooperation.[43] The expert group described how the development of naval capabilities since the Second World War had become a 'competitive accumulation and

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[41] 'Transfers of major conventional weapons between the United States and Somalia: deals with deliveries or orders made for year range 1981-82'; available at: S.I.P.R.I. Arms Transfers Database, (http://armstrade.sipri.org/armstrade/page/trade_register.php) (25 Feb. 2014).
[42] 'Declaration of the Indian Ocean as a zone of peace', 16 Dec. 1971 (U.N., Treaty series, xxvi, no. 2832, p. 36).
[43] U.N. Department for Disarmament Affairs (U.N.D.D.A.), Report of the Secretary-General, *The naval arms race* (New York, 1982).

qualitative refinement of arms with a momentum of its own'.[44] The document also testified to the large naval build-up in the Indian Ocean and attempted to establish diplomatic mechanisms for disarmament and disengagement. It highlighted the so-called 'gunboat diplomacy', which the United States and the Soviet Union were undertaking in the Indian Ocean:

> By maintaining strong fleets in various parts of the world, capable of taking offensive or intervention action, the naval forces of certain States are able to play a deterrent role in many circumstances, thereby bringing the threat or use of military force to bear on the course of situations far from their own shores.[45]

Such a pervasive military presence in the region, on land and at sea, mitigated the conditions that allow crimes like piracy to take root and grow. In the long term, however, the financial and military support offered by the Soviet Union and the United States did little to benefit the security situation in Somalia. Instead, it saturated the country with weaponry, fuelled corruption and violence and helped create a lawless environment that precipitated the escalation of piracy.

Fig. 4.7
Estimated Somali armed forces personnel numbers, 1970-1991

Year	No. of personnel
1970 -75 (S.R.C. consolidates rule)	15,000 - 20,000
1977-78 (Ogaden War)	23,000 – 37,000
1979 (Post-war)	12,000 – 20,000
1981 (U.S. military aid package)	50,000
1991 (Collapse of regime)	65,000

Source: see: Metz (ed.), *Somalia: a country study*, p. 181; Ruth L. Sivard, *World military and social expenditures, 1978* (Virginia, 1978), p. 15; *The Times*, 19 May 1972 & 03 Mar. 1975.

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[44] U.N.D.D.A., *The naval arms race*, p. 82.
[45] U.N.D.D.A., *The naval arms race*, p. 40.

Fig. 4.8
Value of United States military assistance to Somalia, 1981-89

Year	Amount in US$
1981	40 million
1982	14.3 million
1983	21.2 million
1984	24.3 million
1985	80 million
1986	40 million
1987	37.1 million
1988	1.4 million

Source: Figures extrapolated from Metz (ed.), *Somalia: a country study*, p. 212.

Somali Navy 1965-91

Somalia's somewhat obsequious relationship with the Soviet Union and later the United States allowed for significant investment in maritime assets. By 1980, Somalia's merchant fleet consisted of 74 vessels including, 15 oil tankers and 53 general cargo ships.[46] Comparatively, this was one of the largest merchant fleets in eastern Africa at that time. Prior to the outbreak of the Ogaden War and the fracture in relations with the Soviet Union, Somalia's small navy was also one of the best equipped in the region. This was due, almost entirely, to Soviet military donations. The Somali Navy, headed by Admiral Mohammed Omar Osman, maintained bases at Berbera, Mogadishu and Chisimayu, including a single radar site at Merca. In the late 1980s, before the fall of Siad Barre's regime, Pentagon reports suggested that the Somali navy consisted of two ex-Soviet Osa II missile craft (see fig. 4.9), four ex-Soviet Mol class torpedo craft, two ex-Soviet Poluchat class patrol craft, one ex-Soviet Polnochny class amphibious craft and four smaller mechanised landing craft.[47] These craft were not optimised for maritime security operations, which indicated that non-traditional threats, such as piracy, were not driving policy.

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[46] United Nations Conference on Trade and Development (UNCTAD), *UNCTADstat*, 'Merchant fleet by flag of registration and by type of ship, annual, 1980-2013' (http://unctadstat.unctad.org) (30 Jan. 2014).
[47] See: 'U.S., Soviet weapons in Somali arsenal' in *I.H.S. Jane's Defence Weekly* (02 Jan. 1993), p. 1 & Metz (ed.), *Somalia: a country study*, p. 12.

The small naval force participated in joint exercises with the U.S. Navy in 1983 code-named 'Eastern Wind 1983'. Exercise 'Eastern Wind 1983' involved an estimated 2,800 U.S. service members and included an amphibious landing deployment near Berbera and naval training exercises by the U.S. Navy aircraft carrier *Carl Vinson*. The U.S. held additional exercises with other regional states such as Egypt (code-named 'Bright-Star') and Sudan (code-named 'Natural-Bond') beginning in the 1980s. These exercises supplemented the abundant naval activity in the region and likely contributed to creating a maritime environment not favourable to criminal activity such as piracy and armed robbery. Despite possessing a relatively large maritime security capability, the capacity to employ and maintain this capability diminished considerably following the cessation of Soviet military assistance in 1977. By 1991, Somalia's small naval force was inoperable. The merchant fleet dwindled to just 14 semi-operational vessels, which after 1991, also ceased to function.[48]

Causes of civil war

A combination of clan-based discrimination, alienation from the central political process (chiefly in the north of the country) and disillusionment with Barre's leadership after the Ogaden War ultimately led to the collapse of central authority and a subsequent civil war. On June 7 1982, Barre ordered the arrest of seventeen high-ranking politicians, all of whom were prominent figures in the Isaaq, Majeerteen and Hawiye Clans. These arrests were the primary catalyst in the formation of armed oppositional groups loosely based along clan lines. These groups briefly set aside traditional inter-clan rivalries to fight a common enemy in Barre. A coalition of these clans constituted the primary armed opposition groups that eventually toppled Barre's regime in 1991.[49] The first of these groups, the Somali National Movement (S.N.M.), launched a campaign against Barre's loyalist troops in 1988 and was quickly joined by the United Somali Congress and the Somali Patriotic Front in a joint military committee to oppose the Mogadishu government.

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[48] *I.H.S. Jane's Defence Weekly* (02 Jan. 1993).
[49] Metz (ed.), *Somalia: a country study*, p. 46.

It was during this period of conflict that the S.N.M. issued a warning to all shipping agencies transiting the coast of Somalia not to cooperate with the 'dying regime of Mogadishu'. [50] The self-appointed 'S.N.M. Coast Guard' subsequently seized a Panamanian flagged ship en-route to the government controlled port of Berbera on 5 December 1989. [51] By the end of December, the S.N.M. had seized four vessels all of which were later released after the payment of a ransom. These early attacks illustrated an awareness of the importance of the sea as leverage in conflict ashore and more importantly the abundance, vulnerability and potential value of merchant shipping transiting in the Gulf of Aden. It is important to note that the escalation of piracy at sea must always be considered within the context of events ashore. It is perhaps unsurprising then that these political acts of seizure evolved into organised acts of armed robbery and hostage for ransom kidnappings against shipping.

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[50] U.S. National Geo-spatial Intelligence Agency (N.G.A.), Maritime safety office, Anti-Shipping Activity Message (ASAM) 1989-19, available at (http://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_page Label=msi_portal_page_65) (09 Apr. 2014) (henceforth cited as 'N.G.A. ASAM [date], [ref.]').
[51] N.G.A. ASAM 1989, Ref. 1989-19.

Fig. 4.9
Somali Navy fast attack craft (red rectangle) are visible as equipment was offloaded during the amphibious landing phase of U.S. Marine Corp exercise 'Bright Star' (Berbera, Somalia, 1983).

Fall of regime, civil war and the growth of piracy, 1991-2004

Despite attempted diplomatic intervention by Italy and Egypt, Barre fled Mogadishu following intense fighting on 20 January 1991. This ended indefinitely the last semblance of centralised governance in greater Somalia and initiated a return to the traditional clan-based societal structure throughout much of the country. After Barre was ousted, the two principal oppositional leaders, Ali Mahdi Mohammed and General Mohammed Farah Aideed, became embroiled in a bitter struggle to fill the power vacuum left by the exit. In August 1991, the two factions reached agreement resulting in Ali Mahdi's appointment as President of the third Somali Republic on the proviso that United Somali Congress doctrine would be strictly adhered to and Aideed would approve the appointment of any high-ranking officers.[52] However, this conformity did not last and within one-month disagreement escalated into violent conflict between the two opposing factions. The outbreak of hostilities and the breakdown of law and order coincided with the first formal reports of sporadic maritime piracy along the coast. According to one commentator: '[...] many of the other armed men were little more than bandits [...] Barre's men had increasingly looted and their example was continued in the vacuum left behind'.[53]

Early incidents

The violent hijacking of the M.V. *Naviluck* in January 1991 is generally considered the first modern incident of piracy Somalia.[54] However, the hijacking of the M.V. *Kwanda* in December 1989 by S.N.M. members was likely the first actual occurrence of piracy. Despite being executed by militia members, the incident was essentially a hijacking and an armed robbery, mirroring in some ways the later business model employed by Somali pirates after 2005. The *Kwanda* was held for 27 days and according to a U.S. Geospatial Intelligence Agency's Anti-Shipping Activity Message (ASAM) report was illegally

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[52] Mario Sica, *Operazione Somalia* (Vienna, 1994), p. 186.

[53] Peter Woodward (ed.), *U.S. foreign policy and the Horn of Africa* (Hampshire, 2006), p. 61.

[54] The ASAM report for the incident stated: 'Somali pirates attacked MV *Naviluck* off Somalia, killing three Filipino crewmen and setting fire to the vessel. Three boatloads of armed Somali pirates boarded the vessel on 12 Jan. 91 took the crew ashore and killed three of them. The captain said the vessel was attacked off Xaafuun while on her way from Mombasa to Jeddah. He declined to specify the cargo. The surviving crew were made to jump overboard [...]'; see: N.G.A ASAM 1991, Ref. 1991-4.

relieved of 350 tons of fuel oil, food reserves, tools, money, the crew's clothes and 'everything else that could be removed and sold'.[55] Self-appointed armed groups styling themselves the 'Somali coast guard' or the 'Somali army', for example, were responsible for many of these early incidents. This appeared to be an attempt to justify the attacks by claiming legitimacy as a constabulary force interdicting illegal fishing vessels in sovereign waters. However, a closer analysis of the early incident reports suggested that the motivation was likely financial gain, given that in almost all cases were vessels were successfully boarded, property and/or valuables were stolen.[56] Jay Bahadur recounted an interview with a small lobster fishing company owner in Puntland who recruited thirty men to serve as 'marines' in a 'coast guard'. The group claimed to have stopped nine Pakistani dhows and ransomed three of them back to the Pakistani government, which indicated that financial acquisition was a significant feature of the operation.[57]

In 1992, the International Maritime Organization (I.M.O.) included for the first time a report of piracy in the Somali region in its quarterly piracy and armed robbery against ships report. The report stated that five armed men boarded the L.P.G.C. *Pauline* while anchored off the coast of Djibouti and stole various ship's equipment, cash and personal effects.[58] That same year, the U.N. also highlighted the deteriorating maritime security situation in the context of attacks on ships delivering humanitarian aid supplies.[59] These early maritime security incidents were dwarfed by major events ashore such as the Battle of Mogadishu in 1993 in which eighteen U.S. special forces servicemen were killed during what became known as the 'black hawk down' incident. This landward focus likely contributed to the escalation in piracy and armed robbery incidents at sea during the 1990s. The impact of these international efforts is covered in more detail later

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[55] N.G.A. ASAM 1989, Ref. 1990-2.
[56] This notion is supported by Stig Jarle Hansen who conducted over thirty-five interviews with Somali pirates in 2009; see: Stig Jarle Hansen, 'Piracy in the greater Gulf of Aden: myths, misconceptions and remedies' in *Norwegian Institute for Urban and Regional Research (NIBR) Report*, no. 29 (Oct. 2009), p. 8.
[57] Jay Bahadur, *Deadly waters: inside the hidden world of Somali pirates* (London, 2011), p. 31.
[58] 'Report on acts of piracy and armed robbery against ships, 1992' (I.M.O., M.S.C., Circ.577/Add.7/1992, p. 4).
[59] U.N. Security Council 'Resolution 794', 03 Dec. 1992 (U.N., Dag Hammarskjöld Library (D.H.L.), S/RES/794/1992, p.2).

in the chapter. The departure of U.N. forces in 1995 corresponded with a noticeable increase in reports of maritime piracy from just two reports in 1993, to eight in 1994 and 15 in 1995 (see figs 4.10 & 4.11). This escalation was not surprising given that the United Nations Operation in Somalia (UNOSOM I & II) 'significantly influenced' the appointment of Somali police and judges, contributed upwards of 28,000 military and police personnel and enhanced port security for the delivery of humanitarian aid.[60]

The full withdrawal of the international contingent in 1995 was followed by the first reported use of a 'mother ship' as a platform for launching piratical raids at a greater distance from the shore. The M.V. *Bonsella* was hijacked off the coast of Puntland by a group of up to twenty-six individuals styling themselves the 'Somali Coast Guard – northeast region' in September 1994.[61] The hijackers indicted that they would use the *Bonsella* to capture unlicensed fishing vessels until a faster vessel could be taken.[62] Four days after the hijacking, the *Bonsella*, along with a dhow, sailed for high seas to wait for passing vessels to assault. Once again, despite claims of legitimacy, the attack on the *Bonsella* degenerated into armed robbery. The master was forced at gunpoint to empty the ships safe and the cargo of aid supplies, stores and equipment were stolen.[63]

This incident illustrated the evolving proficiency of Somali pirates' capability and operational awareness. Aside from piracy and armed robbery incidents, the disorder ashore resulted in over 50,000 Somalis being smuggled by sea to neighbouring Yemen.[64] Reflecting to some extent the exodus of Vietnamese boat refugees two decades previously, the crossing, conducted by former fishermen turned smugglers, frequently resulted in loss of life and contributed to the anarchic maritime environment. In 1998, for example, the U.S.S. *Saturn* recovered 180 bodies from a smuggling ship

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[60] See: U.N. Security Council 'Resolution 814', 26 Mar. 1993 (U.N., D.H.L., S/RES/814/1993, p. 4); U.N. Security Council, 'Report of the commission of enquiry established pursuant to Security Council Resolution 885 (1993) to investigate armed attacks on UNOSOM II personnel which led to casualties among them', 01 June 1994 (New York, 1994), p. 19.

[61] 'Report on acts of piracy and armed robbery against ships, 1995' (I.M.O., M.S.C., Circ.698/1995, p. 3).

[62] N.G.A. ASAM 1995, Ref. 1995-8.

[63] Ibid.

[64] Peter Kessler, 'Somalia: a new wave of boat people' in *Refugees Magazine*, no. 112 (June 1998).

that had sunk.[65] Seven years later an estimated 10,000 refugees a year made the crossing from Somalia to Yemen in overcrowded, unseaworthy boats with insufficient provisions that often resulted in a high number of fatalities.[66]

Fig. 4.10
Early reported incidents of maritime piracy and armed robbery off the coast of Somalia, 1989-94
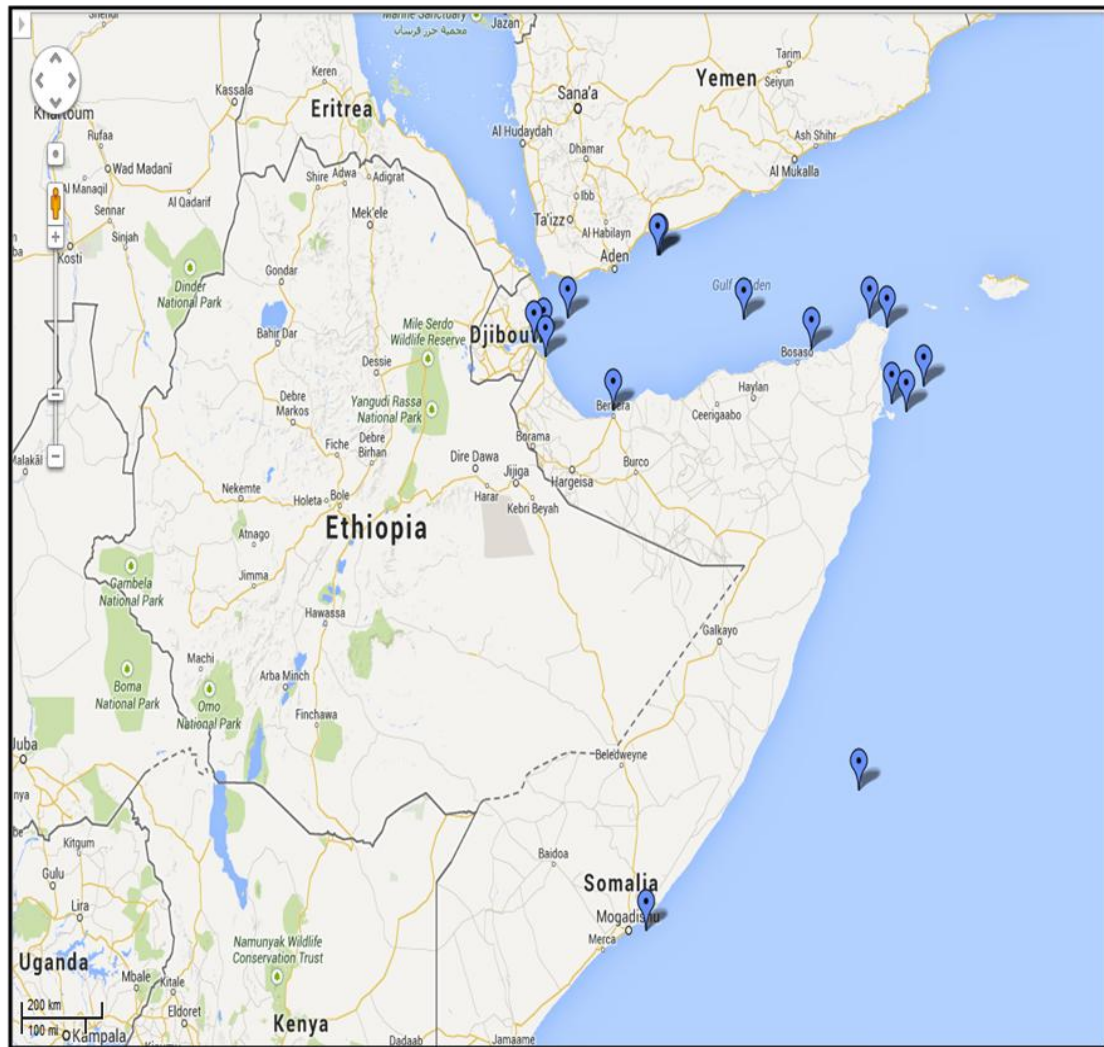
Source: Information extrapolated from: N.G.A. ASAM 1989-94, Geographical region 61 & 62; I.M.O, statistical resources, *Piracy reports 1982-95* (http://www.imo.org/KnowledgeCentre/ShipsAnd ShippingFactsAndFigures/Statisticalresources/Piracy/Pages/default.aspx) (14 Apr. 2014); I.C.C. I.M.B., *Piracy & armed robbery against ships: annual report 1991-94* (London, 1992-95); Blank map image © Google maps.

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[65] Kessler, 'Somalia: a new wave of boat people'.
[66] U.N.H.C.R, 'Robert Colville: press briefing', 16 Sept. 2003 (http://www.unhcr.org/cgi-bin/texis/vtx/ search?page=search&docid=3f6713f44) (08 May 2014).

Somaliland & Puntland

In 1991, the former British protectorate of Somaliland recognised opportunity in the disorder and formally declared unilateral independence. In comparison to Puntland to the east and greater Somalia to the South, Somaliland managed to create a relatively stable system of governance, which brought with it increased security and lawfulness in the period after declaring autonomy. This was illustrated by the minimal number of piracy incidents in its waters especially in comparison to neighbouring Puntland. One study estimated that pirate attacks in Somaliland's maritime zone equated to just one incident every two years between 1999 and 2005.[67]

The relative success of Somaliland's security situation at sea originated ashore. Local clan leaders launched a 'bottom up' peace initiative in the period after independence that utilised conventional mechanisms of arbitration between hostile clans.[68] This approach led to the Borama Conference in 1993, which established a civil administration and institutionalised the role of the clan elders by creating an upper house in the parliament known as the 'Guurti'; loosely based on the British system.[69] Despite these political advances, the international community did not formally recognise Somaliland as a sovereign state. This meant Somaliland had no legal claim to territorial seas or any international funding apparatus to bolster maritime security capacity and capability, which limited its ability to contribute to maritime defence beyond its immediate coastal waters.

Despite varying degrees of internal conflict, a constitution for the Republic of Somaliland was created at a conference in the capital Hargeisa in 1997, which paved the way for increased security, stability and growth. Under the new constitution, a decentralised system of regions and districts was adopted, in which legislative council's

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[67] Hansen, 'Piracy in the greater Gulf of Aden [...]', p. 30.
[68] Ahmed Y. Farah & Ioan M. Lewis, 'Making Peace in Somaliland' in *Cahiers d'Études Africaines*, xxxvii, no. 146 (1997), p. 350.
[69] Somaliland Non-State Actors Forum (SONSAF), 'Somaliland elections review report', 11 Mar. 2011, p. 9 (http://www.somalilandlaw.com/somaliland_elections_review_2011.pdf) (21 Apr. 2014).

enforced internal security within communities.[70] This allowed for a relatively stable and efficient system of local and national law enforcement. Despite a negligible maritime enforcement capability, stabilising security efforts ashore negated criminal activity at sea, despite the abundance of high-value cargo transiting the Gulf of Aden. It was estimated that over 70 percent of Somaliland's national budget of about US$20 million supported the maintenance of security forces, chiefly the army and police.[71] By 1998, then Somaliland Minister of Defence Yusus Ali Aynab Museh claimed that the self‑proclaimed state had a military strength of 12,840, with a further 1,726 in reserve including a small rudimentary coast guard capacity.[72] Including constabulary forces, this number amounted to over 20,000 security personnel.[73] The presence of a strong, but more importantly, operational security force ashore likely helped deter and negate criminality at sea.

The neighbouring de facto region of Puntland declared autonomy in 1998 and appointed Colonel Abdullahi Yusuf Ahmed as President. Unlike Somaliland to the west, Puntland wished to remain part of a greater federalised Somalia. In contrast to its neighbour, maritime crime escalated progressively off the coast of Puntland following the demise of centralised control (see fig. 4.11). Indeed, the majority of piratical attacks between 1991 and 2004 were primarily a 'Puntland phenomenon' dominated by the Majeerteen clan.[74]

Several reasons likely accounted for this variance. Firstly, the relative stability in Puntland was infused with poverty and corruption that allowed criminal enterprises, like piracy, to thrive. Secondly, the geo-strategic position of Puntland, at an intersection between the busy shipping channels in the Gulf of Aden and the western Indian Ocean, presented an abundance of targets and therefore was a likely driver of indigent groups toward piracy. Finally, in 1999, efforts were made to establish and train a 'fisheries

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[70] Ibrahim Hashi Jama (trans.), 'The constitution of the Republic of Somaliland' (2000), p. 35, available at (http://somalilandgov.com/new/wp-content/uploads/2012/06/Somaliland-Constitution-Text-only-Eng-IJ.pdf) (21 Apr. 2014).
[71] Asteris Huliaras, 'The viability of Somaliland: internal constraints and regional geopolitics' in *Journal of Contemporary African Studies*, xx, no. 2 (2002), p. 162.
[72] 'In brief: Somaliland's army strength' in *I.H.S. Jane's Defence Weekly* (04 Mar. 1998).
[73] *New York Times*, 04 Dec. 1999.
[74] Hansen, 'Piracy in the greater Gulf of Aden [...]', p. 24.

protection agency' to perform coast guard and other maritime security duties. It was reported by the Aljazeera news agency that a London based company, the HART Group, headed by Richard Bethell[75], was responsible for the operation.[76] The venture ultimately failed but the group had passed on specialist knowledge on weapons handling, navigation and vessel boarding to 'hundreds of Somali men'.[77] However, evidence of the correlation between this programme and incidents of piracy in Puntland was predominantly anecdotal.[78] A study by the International Crisis Group in 2005, identified endemic governmental corruption and crime, poverty and hyper-inflation alongside the unregulated licensing of offshore resources as issues that created a maritime environment in Puntland ideal for criminal syndicates involved in arms smuggling, piracy, human trafficking, kidnapping and counterfeiting.[79]

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[75] Also known as Lord Westbury.

[76] Aljazeera news agency, 'Firms reap Somali piracy profits', 09 Sept. 2009
(http://www.aljazeera.com/news/africa/2009/09/20099894242623358.html) (25 Apr. 2014).

[77] Ibid.

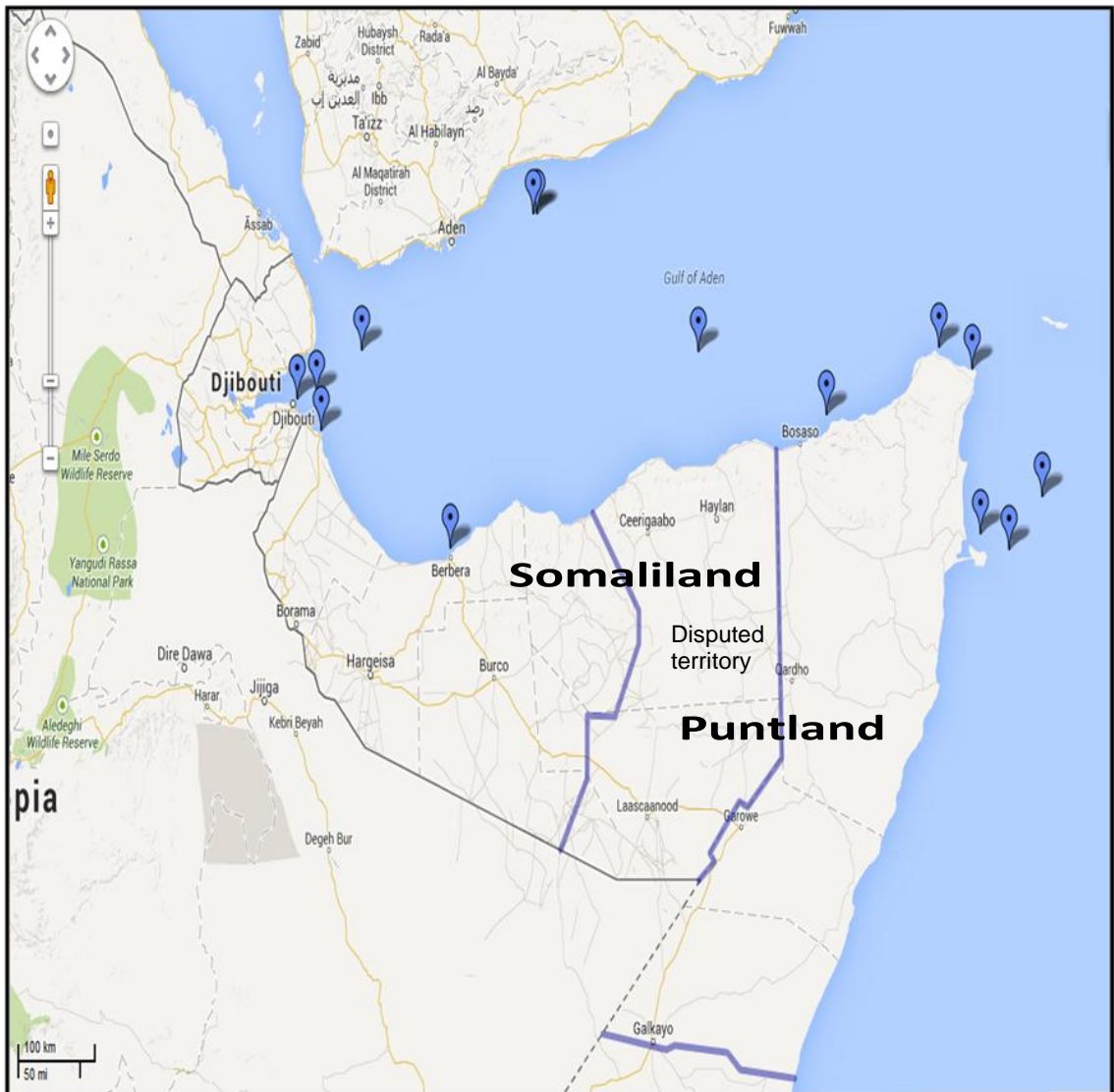[78] Roger Middleton, 'Piracy in Somalia: threatening global trade, feeding local wars' in *Chatham House Briefing Paper* (Oct. 2008), p. 5.

[79] International Crisis Group (I.C.G.), 'Somalia: the trouble with Puntland' in *Crisis Group Africa Briefing*, no. 64 (12 Aug. 2009), p. 6.

Fig. 4.11

Reported incidents of maritime piracy and armed robbery off the coast of Somaliland & Puntland, 1989-94

Fig. 4.12
Reports of actual and attempted pirate attacks: Northeast Africa region, 1995-2005

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
■ I.M.O.	15	7	11	19	16	29	22	24	22	13	49
■ I.M.B.	16	8	14	12	17	25	27	25	26	12	52
□ ASAM	14	1	4	8	12	28	26	36	29	25	77

Source: I.M.O, *Piracy reports 1982-95*; N.G.A. ASAM 1994-2005, Geographical region 61 & 62; I.C.C. I.M.B., *Piracy reports 1995-2005.*

Transitional National Government, 2000-04

Following the events of 11 September 2001, most regional and international governments believed that a centralised administration in Mogadishu and a unified Somalia were needed to increase security in the Horn of Africa. Significantly, this political direction did not take into account Somaliland's functioning independence to the northwest and Puntland's semi-autonomous state in the northeast. In early 2000, a series of meetings were held at Arta, in Djibouti, initiated by then Djiboutian President Ismael Omar Guelleh. The intention was to promote reconciliation by directly engaging the Somali clan leadership. By the end of August, the 2,500 Somali delegates who had gathered at Arta adopted a 'Transitional Charter', which was essentially a provisional

constitution, and elected a 225 member Transitional National Assembly. The charter provided for a transitional government based on a federal system, a transitional national assembly elected based on clan affiliation and finally the establishment of a provisional capital in Baidoa until Mogadishu had been secured.[80] In 2001, the interim Somali President, Abdiqasim Salad Hasan, issued a decree re-establishing the national army, which had disintegrated in 1991.

Fig. 4.13
Average number of reported piratical incidents: Northeast Africa region, 1995-2005

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Average	15	5	10	13	15	27	25	28	26	17	59

Source: I.M.O, *Piracy reports 1982-95*; N.G.A. ASAM 1994-2005, Geographical region 61 & 62; I.C.C. I.M.B., *Piracy reports 1995-2005.*
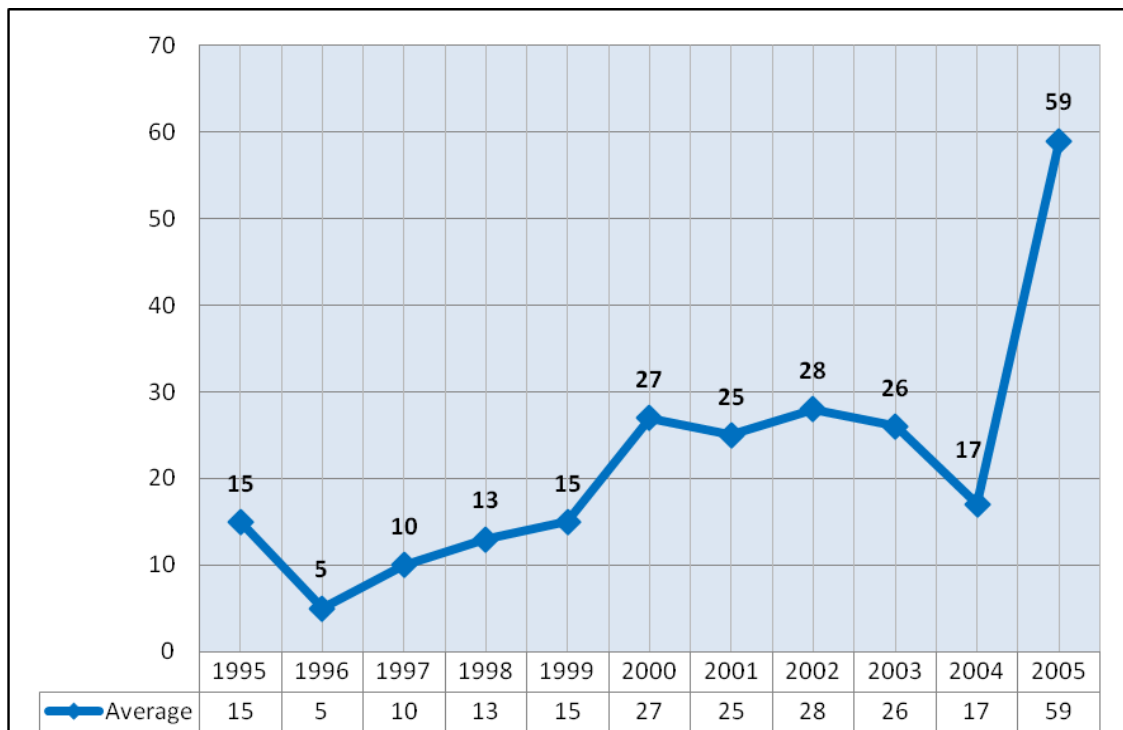
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[80] Fiona Lortan, 'Rebuilding the Somali state' in *African Security Review*, ix, no. 5-6 (2000), p. 96.

Despite these attempts at addressing the security threat ashore, maritime crime continued to escalate. Piratical incidents during the short reign of the Transitional National Government (T.N.G.) averaged around 25 attacks per year between 2000 and 2004.[81] In relation to piracy, international attention was still focussed primarily on the threat to shipping transiting Southeast Asian sea-lanes. In 2004, for example, almost 47 percent of all incidents of piracy still occurred in the Southeast Asian waters while less than five percent of the global total occurred in Somali waters.[82] Despite this, a 2003 U.N. Security Council report on Somalia recognised that 'continuing lawlessness in Somalia, particularly where it prevails in the coastal areas, is a threat not only to Somalis but also to the international community'.[83] The I.C.C. I.M.B. also recommended, in 2004 that vessels should 'keep well clear of the Somali coast'.[84]

Illicit criminal activities in the Gulf of Aden and Somali Basin were not limited to piracy and smuggling. Al-Qaeda affiliated militants targeted and attacked the U.S.S. *Cole* as it was refuelling in the Port of Aden in October 2000. Two suicide bombers detonated an explosive laden skiff alongside the hull, which resulted in the deaths of seventeen U.S. naval personnel and over US$250 million in structural damage.[85] The threat of terrorism extended to commercial maritime targets also. In 2002, the French tanker M.V. *Limburg* was attacked, while steaming in the Gulf of Aden, by a speedboat loaded with explosives, resulting in the death of one crewmember and the loss of over 90,000 barrels of crude oil.[86] The attack on the *Limburg* raised fears in some quarters of a possible emerging nexus between piracy and terrorism.[87] In reality, it was more likely

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[81] Figure extrapolated from: I.M.O, *Piracy reports 1982-95*; N.G.A. ASAM 1994-2005, Geographical region 61 & 62; I.C.C. I.M.B., *Piracy reports 1995-2005*.
[82] I.C.C. I.M.B., *Piracy report 2007*, pp 5-6.
[83] 'Report of the panel of experts on Somalia pursuant to Security Council Resolution 1425', 24 Feb. 2003 (U.N., Official Document System (O.D.S.), S/2003/223, p.8).
[84] I.C.C. I.M.B., *Piracy report 2004*, p. 16.
[85] See for example: David Nagle, 'USS Cole rejoins the fleet', available at U.S. Naval Sea Systems Command Public Affairs (http://www.navy.mil/submit/display.asp?story_id=1415) (05 May 2014); 'Ingalls shipbuilding selected to repair USS Cole', 09 Nov. 2000, available at U.S. Department of Defence, News release: press operations (http://www.defense.gov/Releases/Release.aspx?ReleaseID=2747) (05 May 2014); *New York Times*, 30 Oct. 2000.
[86] See: *New York Times*, 09 June 2004; for a more detailed analysis of these incidents see: Mark Gaouette, *Cruising for trouble: cruise ships as soft targets for pirates, terrorists and common criminals* (California, 2010).
[87] *New York Times*, 15 Aug. 2003.

that both groups were simply exploiting a weak and anarchic maritime environment toward different ends. The T.N.G. lasted just four years having never achieved any effective operational stability. Former Deputy Prime Minister of the T.N.G. Ahmed Abdisalam Adan stated that it was the leadership's failure to continue the reconciliation process and bring the armed opposition into the transitional process that hastened the downfall of the T.N.G.[88]

Parallel causal factors

While historical, political and socio-economic factors were the primary drivers behind the upsurge of Somali piracy after 2005; other, less obvious factors, also had an effect on the fluctuation of piracy off the Northeast coast of Africa. These include population growth coupled with severe drought; Illegal, Unreported, and Unregulated (I.U.U.) fishing; the discarding of toxic waste along off the northeastern seaboard, and, to a lesser extent, the aftermath of the 2004 Indian Ocean tsunami. Despite an estimated exodus of over 800,000 refugees and a further 450,000 to 1.5 million deaths resulting from the civil war, the population of Somalia steadily increased, almost uninterruptedly, from 1960 to 2005 (see fig. 4.14).[89] The escalation in population after 2005 coincided with a severe drought and devastating famine, which resulted in a higher demand and competition for basic resources such as food, shelter and water. The resultant humanitarian crisis, along with the depletion of fish stock, was a likely driver of coastal populations toward subsistence criminal activity such as piracy.

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[88] Ahmed Abdisalam Adan, 'Fixing the transitional process for Somalia (2000-2011): assessing the structural limitations that undermine the transitional institutions and proposals for resolving', Mar. 2011, p. 6 (http://www.hiiraan.com/op2/2011/jun/fixing_the_transitional_process_for_somalia_2000_2011.aspx) (03 May 2014).

[89] John Norris & Bronwyn Bruton, 'Twenty years of collapse and counting: the cost of failure in Somalia' a *Joint Report from the Center for American Progress and One Earth Future Foundation* (Sept. 2011), p. 1.

Fig. 4.14
Population growth in Somalia, 1960-2005
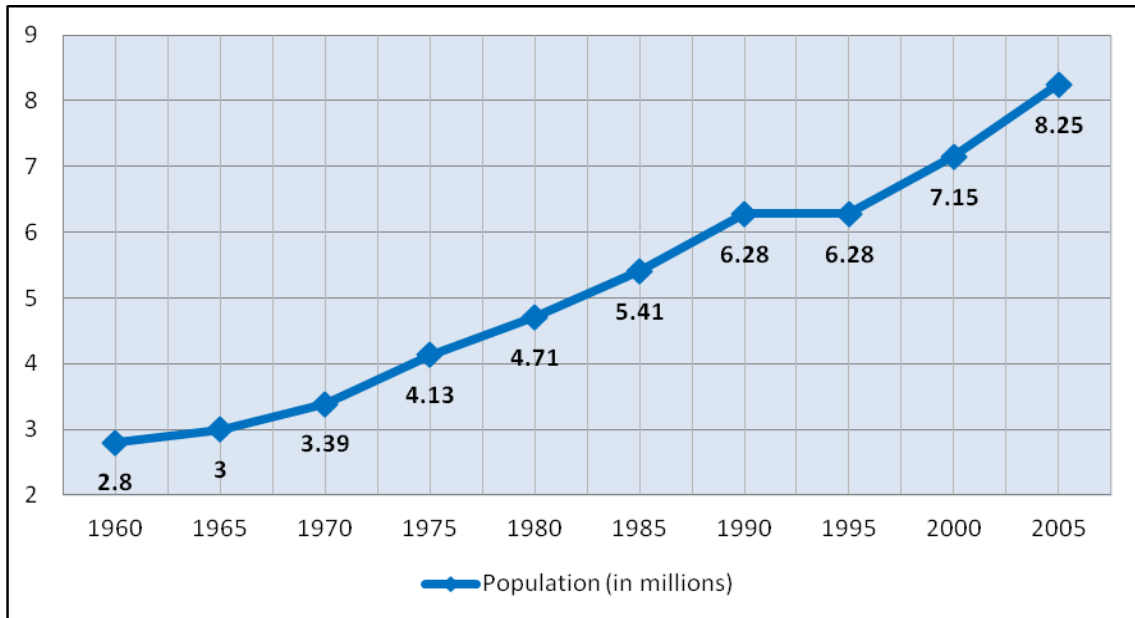
Illegal, Unreported and Unregulated (I.U.U.) fishing had existed in Somali waters long before the collapse of central government in 1991. However, incidents of maritime piracy only began to escalate as direct result of the political disorder and division ashore after the collapse. As early as 1970, owing chiefly to Somalia's submissive relationship with the Soviet Union and a weak maritime enforcement capability, the indigenous fish stock was heavily exploited. According to a report in *The Times* in 1970: 'penetration by means of the Soviet fishing fleet ha[d] already become remarkably widespread'.[90] I.U.U. fishing continued in this manner despite the U.N. 'Code of conduct for responsible fisheries' that came into force in 1995. In 2005, a study by the U.K. Department for International Development found that that Somalia lost an estimated US$100 million to illegal tuna and shrimp fishing between 2003 and 2004 alone.[91]

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[90] *The Times*, 17 Oct. 1970.
[91] U.K. Department for International Development (D.F.I.D.), Marine Resources Assessment Group (M.R.A.G.), 'Review of impacts of Illegal, Unreported and Unregulated fishing on developing countries: synthesis report' (June 2005), p. 6.

Interviews with Somali pirates, such as those carried out by Stig Jarle Hansen in 2009, indicated that many pirates claimed to be operating in a 'coast guard' capacity protecting Somali waters from I.U.U. fishing and levying offenders for such acts.[92] Some groups, such as self-styled 'National Volunteer Coast Guard' that operated from the southern port of Kismayo appeared to concentrate on interdicting fishing vessels between 1998 and 2001 in particular.[93] However, recreational and commercial vessels were also frequently targeted and pillaged which indicated that financial gain and not constabulary policing was likely the primary motivation.

The likelihood that I.U.U. fishing and illegal dumping exclusively motivated fishermen toward piracy is questionable. However, it does appear that fishermen were involved in piratical activity. In 1997, for example, the M.V. *Helena* was approached by two fishing vessels while transiting off the coast of Somalia.[94] One of the fishing vessels reportedly fired a grenade and indicated that they wanted the tanker to stop. The tanker increased speed and the fishing vessels eventually stopped. One month earlier in a similar attack, eight Somali gunmen seized a Kenyan registered vessel near Mogadishu and demanded a ransom payment of US$1 million for its release.[95] The use of fishing vessels in pirate attacks and the seafaring knowledge required to carry out such attacks suggested that fishermen were likely perpetrating armed robberies and piracy alongside militiamen during this period.

According to Abdiwahid Mahamed Hersi, a former pirate and Director General of the Puntland Ministry of Fisheries between 2004 and 2013, illegal fishing vessels were operating under the protection of Southern warlords during the 1990s.[96] This illustrated the disparity between piratical attacks in different parts of a divided Somalia. According to Hansen: '[Somali pirates] are heterogeneous and [...] motivations [...] vary from pirate to pirate, group to group and geographical location to geographical location'.[97] After the

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[92] Hansen, 'Piracy in the greater Gulf of Aden [...]', p. 29.
[93] Camille Pecastaing, *Jihad in the Arabian Sea* (California, 2011), p. 91.
[94] N.G.A. ASAM 1997, Ref. 1997-38.
[95] N.G.A. ASAM 1997, Ref. 1997-34.
[96] Bahadur, *Deadly waters*, p. 31.
[97] Hansen, 'Piracy in the greater Gulf of Aden [...]', p. 29.

collapse of the T.N.G. in 2004, these relatively opportunistic attacks evolved into more organised hostage-for-ransom operations that extended, in some cases, up to 400 nautical miles from the coast by the end of 2005.[98]

This unlawful fishing persisted alongside the illegal discarding of hazardous materials in Somali waters. This resulted in a regional 'Action plan for the conservation of the marine environment and coastal areas in the red Sea and Gulf of Aden' in 1982, which was revised in 1995 and again in 2005. The agreement highlighted and calculated the scale of pollutants affecting human health and marine ecosystems in the region from municipal, industrial and oil pollutants.[99] Despite the 1992 Basel 'Convention on the control of transboundary movements of hazardous waste', illegal dumping continued in Somali waters by nations exploiting the political disorder ashore and lack of a maritime security capability at sea. In 1992, for example, a loophole in the Basel convention allowed Italian and Swiss companies to secure a US$80 million contract for dumping of toxic waste in Somali waters. The contract was allegedly signed by the Somali 'Minister of Health', despite the lack of a functioning administration in Somalia at that time.[100]

To a lesser extent than in Southeast Asia, the Indian Ocean tsunami of December 2004 played a role in suppressing piracy and armed robbery along the coast of Somalia. There was a notable drop in reported attacks from an average of 26 attacks in 2003 to just 17 in 2004.[101] However, this was very much a temporary phenomenon. The impact of the tsunami simply exacerbated an already severe humanitarian and economic situation by destroying an estimated 600 fishing boats and 75 percent of fishing equipment along the northeast coast of Somalia.[102] This, combined with continued trawling operations by

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[98] I.C.C. I.M.B., *Piracy report 2005*, p. 15.

[99] The Regional Organisation for the Conservation of the Environment of the Red Sea and the Gulf of Aden (PERSGA), 'Action plan for the conservation of the marine environment and coastal areas in the Red Sea and Gulf of Aden, 1982' (Saudi Arabia, 1985), p. 4.

[100] Hao-Nhien Q. Vu, 'The law of treaties and the export of hazardous waste' in *UCLA Journal of Environmental Law and Policy*, xii, no. 2 (1994), pp 430-31.

[101] I.M.O., *Piracy report 2003-04*; N.G.A. ASAM 2003-04, Geographical region 61 & 62; I.C.C. I.M.B., *Piracy reports 2003 & 2004*.

[102] World Health Organisation (WHO), *Tsunami inter agency assessment mission: Hafun to Gara'ad northeast Somali coastline* (28 Jan. - 08 Feb. 2005), p. 36 (http://www.who.int/hac/crises/international/ asia_tsunami/som/ somalia_report_8feb.pdf) (07 May 2014).

foreign fishing vessels, decimated the local fishing industry and severely depleted fish stocks. Given the high dependence on fishing for coastal populations sustenance and livelihoods, it is likely that this was driver of these impoverished inhabitants towards piracy, which at least partly accounts for the sharp escalation of reported attacks in 2005 (see fig. 4.15).

Fig. 4.15
Average reported piracy attacks off the coast of Somalia, 2003-05
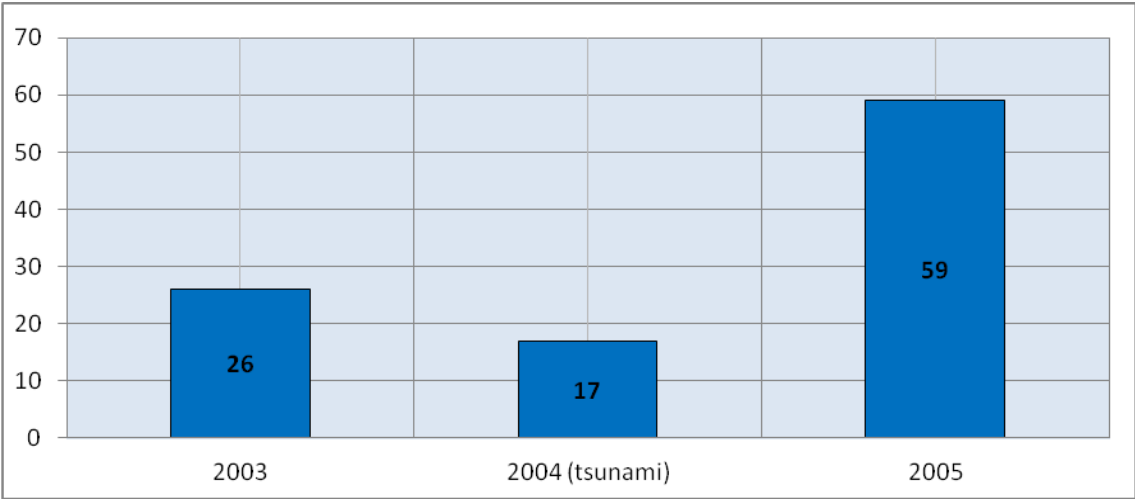
Source: I.M.O, *Piracy reports 2003, 2004 & 2005*; N.G.A. ASAM 2003-2005, Geographical region 61 & 62; I.C.C. I.M.B., *Piracy reports 2003, 2004 & 2005.*

Counter-piracy, 1991-2005

General context

Extreme instability ashore in Somalia after the collapse of centralised authority allowed maritime crime to escalate unchecked off the coast from 1989 onward. Indeed, it was not until after 2000, and particularly 2001, that international governments and the shipping industry began to identify piracy and armed robbery off the coast of Somalia as a significant threat to trade and the safety of mariners. As attacks on shipping grew throughout the 1990s, international and regional focus was fixed on the security and humanitarian crisis ashore. This allowed the piracy threat at sea to deteriorate and evolve into an organised criminal venture. The British government recognised this in 2002 and highlighted the growth of maritime piracy as 'a new dimension to organised crime, which will merit further attention [...]'.[103]

A number of measures, both direct and indirect, were initiated in reaction to Somalia's unique security situation to address threats such as maritime piracy. Indeed, non–traditional or asymmetric threats, both on land and at sea, emerged as a priority for western governments in the post-11 September 2001 security environment. Aside from the Middle East and Southeast Asia, Somalia emerged as a new focus for the U.S. 'war on terror'. There were several reasons for this; most notably the speculation that Somalia might be a likely place of refuge for Osama Bin Laden[104] given the lack of state structure and a noted connection with Al-Qaeda.[105]

In terms of enhancing maritime security, the situation differed considerably in Somalia compared to Southeast Asia during the same period. The lack of a functioning government or a security force ashore in Somalia severely hampered the operational

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[103] *European Scrutiny Committee; First report of session 2003-04; Report, together with formal minutes 2003-4*, p. 69, H.C. 2003 (42), i, 71.

[104] Founder of the Al-Qaeda group who perpetrated the attacks against the United States on 11 September 2001 amongst others; see for example: *The Telegraph*, 09 May 2011; for a more detailed analysis see: Michael Scheuer, *Osama Bin Laden* (New York, 2011).

[105] National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission report: final report of the National Commission on Terrorist Attacks upon the United States* (Washington D.C., 2004), p. 125.

potential. To counteract this lack of access ashore, U.S-led coalition forces committed maritime assets to the region to increase surveillance and aid in intelligence gathering. In March 2002, for example, the German Navy deployed a task group to Djibouti to monitor and intercept ships heading towards Somalia under the mandate of the global 'war on terror'. The naval force consisted of three frigates, five patrol boats, four support vessels and a land-based helicopter contingent supported by three Breguet Atlantic maritime patrol aircraft and 160 personnel based in Mombasa, Kenya.[106] While the global 'war on terror' was not a counter-piracy mission, the increased naval presence likely minimised incidents between 2002 and 2005.

Private Military Companies

The idea of privatising security at sea had long existed given the inherent vulnerability of merchant vessels. It was reported in 1984, for example, that some Soviet and Israeli merchant vessels carried sharpshooters and that some companies had hired armed guards to protect against cargo theft in the Mediterranean and in Southeast Asia.[107] In 1993, the issue arose in the British parliament, primarily in reaction to increased reports of ship hijacking, the murdering of crews and the declining utility of the Royal Navy as a counter-piracy force. Sir Hugh Bonsor M.P. proposed: 'It might be worth considering arming merchantmen, as we did during the war, as a possible way to see off the pirates and safeguard the security of trade and individuals'.[108] The suggestion of merchant mariners carrying and utilising firearms onboard a commercial vessel was 'strongly discouraged' by the I.M.O. and other maritime bodies at that time.

In 1999, the I.M.O. issued a circular that contained recommendations for preventing and suppressing acts of piracy and armed robbery against ships. Section 45 of the document stated that 'carriage of arms on board ship may encourage attackers to carry firearms thereby escalating an already dangerous situation [...] the use of firearms requires

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[106] 'Allies enhance Somalia surveillance' in *I.H.S. Jane's Defence Weekly* (27 Mar. 2002).
[107] See for example: *Toledo Blade*, 28 Sept. 1984, *Lawrence Jour*nal, 28 Sept. 1984, *The Spokesman Review*, 28 Sept. 1984 & *Observer Reporter*, 04 Oct. 1984.
[108] *Hansard 6 (Commons)*, ccxxiv, 1993.

special training and aptitudes and the risk of accidents with firearms carried on board ship is great'.[109]

The decline in global naval assets after the end of the Cold War meant fewer ships to police the world's oceans. In the period after the attacks of 11 September 2001 and the so-called 'global war on terror', the deployment of P.M.C.s or security companies in high-risk maritime security zones such as Somalia became a viable alternative. The British House of Commons Foreign Affairs Committee published a detailed report on the matter in 2002 and called for legislation in line with the United States' International Traffic in Arms Regulation and the European Union 'Code of conduct for arms exports'.[110] Indeed, British private security companies, such as the HART Group, had been actively involved in counter-piracy activities such as hostage negotiation in the Gulf of Aden since 2001.[111]

In December 2005, exiled transitional Somali government officials reportedly awarded a US$55 million contract to an American company Topcat Marine Security to undertake counter-piracy patrols along the Somali coastline.[112] However, conflicting reports exist about the ultimate fate of the deal including that the U.S. Government issued a 'cease and desist' order against Topcat Marine Security in December 2005 or that a French company Scopex negotiated a deal to replace Topcat following allegations of impropriety surrounding the company's CEO Peter Casini in 2006.[113] While maritime organisations and governments still officially recommended against the use of privately contracted armed guards aboard merchant vessels, the practice had become increasingly

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[109] 'Piracy and armed robbery against ships: Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships', 21 June 1999 (I.M.O., M.S.C., Circ.623/Rev.1/1999, p. 8).
[110] *House of Commons. Foreign affairs committee. Private Military Companies 2001-2*, p. 11, H.C. 2001/02, (922).
[111] *New York Times*, 12 Sept. 2001.
[112] Henri Fouché, 'Policing piracy and armed robbery of ships in south Africa's territorial waters and contiguous zone' (Ph.D. thesis, Tshwane University of Technology, Pretoria, 2006), p. 129.
[113] See for example: *Daily Nation*, 05 Feb. 2006; David Zlutnik, 'Sea bandits: poverty, business and the rise of Somali piracy' in *Nor Easter*, no. 4 (Winter 2009), p. 4; Noah Shachtman, 'Could mercenaries return as pirate foes?', 06 Oct. 2008 (http://www.wired.com/2008/10/mercenaries-vs/) (13 Nov. 2015).

commonplace.[114] This development illustrated the increased threat to shipping and seafarers by pirates off the Horn of Africa by the end of 2005 and the need for a more robust regional and international response.

International efforts, 1991-2005

U.N. operations in Somalia, 1992-95

In response to the deteriorating humanitarian and security environment in Somalia after the collapse of centralised government and the abundant media attention it attracted, the United Nations Security Council adopted six resolutions concerning Somalia in 1992 alone (see fig. 4.16). While countering the growing levels of piracy and armed robbery off the coast was not the primary reason for the deployment of U.N. forces, piratical attacks on ships transporting humanitarian aid relief supplies from the sea was highlighted as a concern.[115]

In April 1992, U.N. Security Council Resolution 751 created the first United Nations Operation in Somalia (UNOSOM I) in response to the magnitude of human suffering and the threat to international security by the situation in Somalia.[116] However, despite a mandate for increasing numbers of security personnel, in the absence of law and order, relief organisations experienced increased hijacking of vehicles, looting of convoys and detention of expatriate staff.[117] This combined with the continued pillaging of relief supplies along the coast, predominantly around the port of Mogadishu, hastened the adoption of U.N. Security Council Resolution 794 and the creation of the Unified Task Force (UNITAF) in December 1992.[118]

The United States assumed leadership of the UNITAF under Operation 'Restore Hope' that same month, to establish a secure environment for the humanitarian relief operation by 'all necessary means' in accordance with Chapter VII of the United Nations

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[114] See: *Piracy on the high seas. Transport Select Committee eighth report with proceedings, evidence and appendices*, p. 20, H.C. 2005/06, (1026), 26.

[115] U.N. Security Council 'Resolution 794', 03 Dec. 1992 (U.N., D.H.L., S/RES/794/1992, p.2).

[116] U.N. Security Council 'Resolution 751', 21 Apr. 1992 (U.N., D.H.L., S/RES/751/1992, p.1).

[117] U.N. Department of Public Information, 'Somalia: UNOSOM I', 21 Mar. 1997 (http://www.un.org/Depts/DPKO/Missions/unosomi.htm) (10 May 2014).

[118] Gary J. Ohls, 'Somalia...from the sea' in *The Newport Papers*, no. 34 (July 2009), p. 59.

charter.[119] The so called 'Bush plan' consisted of a U.S. led multinational force of 30,000 troops to secure vital seaports, airports, roads and aid distribution centres in central and southern Somalia.[120] Two U.S. Navy task forces in the Indian Ocean[121] were deployed to transport troops and logistical supplies to Somalia for the mission. The relative sea-control and power projection exerted by these offshore assets was likely a factor in deterring attacks against vessels transporting merchant goods and humanitarian aid. According to one study: 'throughout the operation, the ships remained in that general vicinity - sometimes within view of the land and sometimes over the horizon - exerting a calming effect on events ashore'.[122]

Fig. 4.16
United Nations Security Council Resolutions concerning Somalia, 1992

U.N.S.C.	Date	Principal measure
Resolution 733	23 January 1992	Imposition of arms embargo
Resolution 746	17 March 1992	Humanitarian relief and ceasefire
Resolution 751	21 April 1992	Established first United Nations Operation in Somalia (UNOSOM)
Resolution 767	27 July 1992	Humanitarian airlift operation
Resolution 775	28 August 1992	Strengthened UNOSOM deployment
Resolution 794	03 December 1992	Authorised creation of Unified Task Force (UNITAF)

Source: U.N. Security Council Resolution 733 (1992); 746 (1992); 751 (1992); 767 (1992); 775 (1992); 794 (1992).

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[119] U.N., S/RES/794/1992, p.3.
[120] John Bolton, 'Wrong turn in Somalia' in *Foreign Affairs*, lxxiii, no. 1 (Jan. – Feb. 1994), p. 58.
[121] This consisted of a four-ship Amphibious Readiness Group under the command of Captain Braden Phillips & Colonel Michael W. Hagee.
[122] Ohls, 'Somalia...from the sea', p. 62.

By March 1993, a new mandate was needed to facilitate the transition from the UNITAF to the expanded UNOSOM II owing primarily to the continued violence, notably increased attacks against civilians engaged in humanitarian work on behalf of the U.N. and non-governmental organisations.[123] On 26 March, U.N. Security Council Resolution 814 was adopted which transferred operational control from UNITAF to UNOSOM II. The ambitious UNOSOM II lasted just two years having ultimately failed in its mission to advance political reconciliation and to restore the rule of law.[124] Despite this, the U.N. noted the relative success of its humanitarian operation having saved 'hundreds of thousands of human lives from famine'.[125]

The U.N. operation was openly criticised in some quarters. According to former Labour party M.P. Tony Worthington, 'there is an utter lack of purpose there [...] the staff have no idea what they are supposed to be doing'.[126] What began as a humanitarian mission evolved into a peace enforcement and military operation epitomised by the disastrous Battle of Mogadishu in October 1993 in which eighteen U.S. Army Rangers and between 500 and 1,000 Somali militiamen and civilians were killed.[127] It was reported that the Italian government threatened to withdraw 2,600 troops from Somalia out of concern that the relief mission had turned into a combat operation that was taking sides in a civil war.[128] Indeed, Ireland, the Vatican, World Vision and the Organisation of African Unity called for a review of U.N. policy in Somalia.[129] According to Ken Menkhaus, Somalia itself had to accept the majority of the blame, as it 'proved impervious to the one of the most ambitious nation building efforts in the post-Cold War

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[123] U.N. Security Council 'Resolution 814', 26 Mar. 1993 (U.N., D.H.L., S/RES/814/1993, p. 1).
[124] See: U.N., S/RES/814/1993, p. 4 & U.N. Security Council 'Resolution 954', 04 Nov. 1994 (U.N., D.H.L., S/RES/954/1994, p.2).
[125] U.N., S/RES/954/1994, p. 1
[126] *Hansard 6 (Commons)*, ccxli, 1994.
[127] See for example: *The Inquirer*, 17 Nov. 1997 & *New York Times*, 25 Oct. 1993.
[128] *New York Times*, 16 July 1993.
[129] Ramesh Thakur, 'From peacekeeping to peace enforcement: the U.N. operation in Somalia' in *The Journal of Modern African Studies*, xxxii, no. 3 (1994), p. 398.

era [...]'.[130] Indeed, the U.N. acknowledged that the lack of cooperation from the Somali parties over security issues fundamentally undermined the operation.[131]

In the short term, the U.N. and U.S. operation had a positive impact on the maritime security situation in Somalia. Between 1992 and 1994, there were just six reports of piracy and armed robbery off the Northeast African coast.[132] The international deployment helped secure ports, ensured safe passage for humanitarian relief supplies from the sea and, combined with the large troop contingent ashore and naval presence, helped deter criminality such as piracy and armed robbery. On 28 February 1995, a U.S. led combined task force, codenamed 'United Shield', conducted an amphibious landing at Mogadishu and established a protected enclave for the removal of remaining U.N. forces.[133] This illustrated that a significant level of sea control had been achieved and maintained before the exit. However, the withdrawal of U.N. personnel in March 1995 under U.N. Security Council Resolution 954 left behind a precarious security situation that was ideal for crimes such as piracy to take root and flourish. This was reflected in piracy reports. In 1995 alone, reports of piracy and armed robbery off the Somali coast increased to 15, from just three reported incidents in 1994.[134]

I.C.C. International Maritime Bureau

Non-governmental organisations such as the I.C.C. I.M.B. recognised the threat to seafarers transiting off the coast of Somalia since the establishment of the P.R.C. in 1992. Between 1992 and 2005, the I.M.B. played an important counter-piracy role in advising shipping on the practicalities and best practice to prevent and deter a piracy attack. Aside from this, they raised industry awareness of the problem and helped influenced owner-states to address maritime security threats, mostly in Southeast Asia. In 1995, the I.M.B. received 15 reports of piratical attacks against merchant ships

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[130] Ken Menkhaus, 'Vicious circles and the security development nexus in Somalia' in *Conflict, Security & Development*, iv, no. 2 (Aug. 2004), p. 152.
[131] U.N., S/RES/954/1994, p. 2.
[132] I.M.O, *Piracy report 1992-95*; N.G.A. ASAM 1992-95, Geographical region 61 & 62; I.C.C. I.M.B., *Piracy report 1995*.
[133] Ohls, 'Somalia...from the sea', p. 176.
[134] I.C.C. I.M.B., *Piracy report 2004*, p.4.

transiting off the coast of Somalia including three armed hijackings. [135] Given the instability ashore and the decline in attacks between 1996 and 1997, it was suggested that piracy in Somalia might be 'the exception rather than the rule'. [136] The I.M.B. and other interested parties were still primarily focussed on the proliferation of maritime piracy attacks in Southeast Asia during this period.

Despite this, a number of general preventative counter-piracy measures were proposed for ships transiting high-risk areas such as the Gulf of Aden and the Somali coast in the late 1990s. These included contingency planning, enhanced surveillance and watch keeping, C.C.T.V., use of lighting and fire hoses as a deterrent and monitoring radio broadcasts. [137] The I.M.B. also endorsed and promoted the I.M.O.'s counter-piracy guidelines for ship-owners and governments that were published in 1999. By 2000, following an upward trend in hijackings and ransom demands, the I.M.B. warned shipping transiting the region to keep at least 50 miles from the Somali coast (see fig. 4.17). [138]

The 2001 I.M.B. piracy report highlighted the Bab el Mandeb, Gulf of Aden and Somalia as high-risk areas for hijackings and advised ships to transit 100 nautical miles from the Somali coast 'if possible'. [139] Due to the evolving technological capability of Somali pirates, the I.M.B. also advised shipping to keep radio communications, including V.H.F., to a minimum to counter the possibility of being intercepted by patrolling pirates. [140] By 2003, the probability of an attack along the Somali coastline increased from 'one of possibility to a certainty'. [141] In 2005, there was a sharp escalation in reported piracy incidents off the Horn of Africa. This amounted to 52 actual and

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[135] I.C.C. I.M.B., *Piracy report 1995*, p. 13.
[136] Jayant Abhyankar, 'Piracy and armed robbery against ships', 17 Nov. 1997, p. 7 (Presentation made at the eleventh international conference on the Sea Lanes Of Communication studies, Royal park hotel, Tokyo, 17-18 Nov. 1997).
[137] Jayant Abhyankar, 'Piracy and armed robbery against ships', p. 35.
[138] B.B.C. News, 'China executes pirates', 28 Jan. 2000 (http://news.bbc.co.uk/2/hi/asia-pacific/62243 5.stm) (27 Apr. 2013).
[139] I.C.C. I.M.B., *Piracy report 2001*, p. 15.
[140] Ibid.
[141] B.B.C. News, 'Pirate warning for Somalia's coastline', 30 Jan. 2003 (http://news.bbc.co.uk/2/hi/ business/2709339.stm) (14 May 2014).

attempted attacks compared to just 12 in 2004 according to I.M.B. figures. [142] In response, the I.M.B. increased its recommended 'safe range' from 100 nautical miles from the shore to 200 nautical miles and promoted the use of more elaborate defensive measures such as the 'ShipLoc' satellite tracking system and the 'Secure-ship' electric fence system. [143]

Fig. 4.17
Reported number of hijackings worldwide, 1991-2005
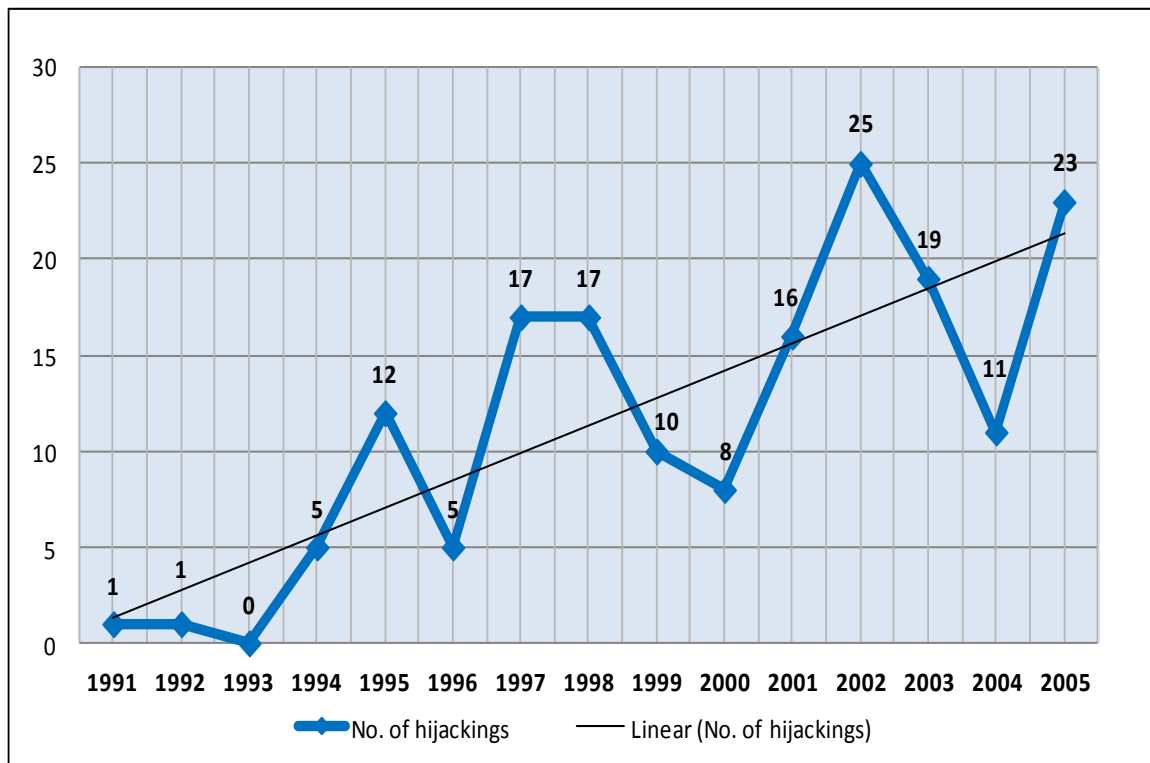
Source: I.C.C. I.M.B., *Piracy report 2003*, p. 9*; 2004*, p. 9*; 2005*, p. 10.

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[142] I.C.C. I.M.B., *Piracy report 2005*, p. 5.
[143] Ibid. pp 15-29.

United States

In the aftermath of the collapse of centralised authority in Somalia and the ensuing humanitarian crisis and civil war, the United Sates initially focussed its efforts on establishing security and stability ashore. This landward approach ultimately failed following the withdrawal of UNOSOM II in 1995. This failure combined with the attack on the U.S.S. *Cole* in Aden in 2000 and the subsequent events of 11 September 2001 ushered a renewed focus on the importance of securing the maritime domain against threats such as terrorism and piracy. Indeed, the United States was aware that 'hardening of land and aviation targets [would] shift the threat to sea targets particularly to commercial maritime targets'.[144]

This culminated in the creation of the 'Maritime Security Act' of 2002 and the decisive International Ship and Port-facility Security Code (I.S.P.S.) in 2004, which as discussed in chapter II, was a formative initiative in bolstering global maritime security. Indeed, post-11 September 2001 initiatives must be viewed as part of the United States wider strategic objective of the maintaining a military presence in the Horn of Africa, securing future oil supplies and its global 'war on terror'. In the case of Somalia, strengthening the naval presence and exerting sea control would not only increase maritime security, but influence events ashore where no functioning government existed. The attack on the *Cole* and the *Limburg* just two years later, illustrated the inherent vulnerability of maritime assets to attack by 'non-traditional' forces. Piratical attacks on merchant vessels also persisted in the region at an average rate of 25 attacks per year between 2000 and 2004.[145] However, these incidents were likely overshadowed by the heightened awareness of the terrorism threat post-11 September 2001.

Following the events of 11 September 2001, Task Force 150, initially a navy formation attached to the United States Naval Forces Central Command, was re-established as a multinational Combined Maritime Force named Combined Task Force 150 (C.T.F. 150).

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[144] 'Statement of Rohan Gunaratna to the third public hearing of the National Commission on Terrorist Attacks upon the United States', 09 July 2003 (http://www.9-11commission.gov/hearings/hearing3/witness_gunaratna.htm) (11 June 2014).
[145] Figure calculated from I.C.C. I.M.B., *Piracy reports 2000-2005*.

C.T.F. 150 was mandated to undertake maritime counter-terrorism and security operations around the Horn of Africa including assist and approach visits, 'visit, board, search and seizure' and interdiction patrols.[146] In 2003, the U.S. expanded on this approach and proposed the Proliferation Security Initiative, which concerned the interdiction of vessels suspected of transporting Weapons of Mass Destruction on the high seas. The initiative had implications for counter-piracy operations, as it required the interdiction of shipping on the high seas for reasons other than those stipulated in article 110 of UNCLOS.[147] More directly, a US$100 million East African Counter-Terrorism Initiative was announced in June 2003 to strengthen regional security forces.

The U.S. bolstered its own regional maritime security capability in March 2004 with the creation of C.T.F. 152 in the Arabian Gulf. This ancillary naval force was tasked with conducting maritime security operations in conjunction with regional partners. Royal Navy Commodore Keith Winstanley commented: 'The innocent who sail the waters, people who live in the region and citizens of the world rely on coalition patrols to provide security at sea'.[148] By 2004, the United States recognised the strategic importance of enhancing the capabilities and professionalism of African maritime and naval forces in conjunction with ground forces.[149] Escalating reports of piracy and armed robbery were a contributory factor in the re-launching of the U.S. led 'African coastal security programme' in 2004, which aimed to improve the capability of inadequate, and in the case of Somalia, non-existent regional navies and coastguards to conduct better maritime surveillance operations.[150] More practically, several small coastal patrol craft were donated to assist regional navies in counter-piracy and maritime security patrols. This included two 55-metre WLB Balsam-class seagoing buoy tenders

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[146] C.M.F., 'C.T.F. 150: maritime security' (http://combinedmaritimeforces.com/ctf-150-maritime-security) (10 June 2014).

[147] '[...] (a) the ship is engaged in piracy; (b) the ship is engaged in the slave trade; (c) the ship is engaged in unauthorized broadcasting and the flag state of the warship has jurisdiction under article 109; (d) the ship is without nationality; or (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship'. See: 'Convention on the Law of the Sea', 1982 (U.N., Treaty Series, mdcccxxxiii, no. 31363, p. 63).

[148] See: 'U.S. Navy Assumes Command of C.T.F. 152', 03 Dec. 2006 (http://www.navy.mil/submit/display.asp?story_id=26870) (11 June 2014).

[149] 'U.S. is now set to turn the focus on African security' in *I.H.S. Jane's Defence Weekly* (16 Apr. 2004), p.1.

[150] 'U.S. is now set to turn the focus on African security', p.1.

to Ghana in 2001 and Nigeria in 2002/03 alongside smaller craft to Djibouti, Madagascar, Nigeria, the Seychelles, Tunisia and Yemen.[151]

The shift from predominantly land centric initiatives to a more maritime focused approach was illustrated by the publication of the first U.S. 'National strategy for maritime security' in 2005. The white paper identified 'well organised', 'well equipped' pirates and transnational criminals as a distinct threat to maritime security.[152] More generally, the strategy highlighted the importance of the unhindered movement of maritime trade to American economic prosperity and the need for international coordination, cooperation and intelligence sharing among public and private entities to secure the maritime domain against threats such as piracy.[153]

Britain

In 1993, the U.K. Department of Transport published advice on maritime piracy for the shipping industry for the first time. Merchant Shipping Notice M-1517 urged ship owners and operators to report actual and attempted attacks to the coastal state within whose waters the incident occurred. Two years later on 5 April 1995, the first U.K. registered ocean going yacht the *Longo Barda*, was attacked by pirates armed with mortars off the northern coast of Somalia.[154] Indeed, the U.K. government catalogued 32 reports of piracy and armed robbery against U.K. flagged vessels between 1993 and 2004.[155] The escalation in attacks off the Somali coast presented an obvious problem for the approach outlined in M-1517 as no functioning government or maritime law enforcement mechanism existed. Merchant Shipping Notice M-1517 was subsequently updated and replaced in 1998 by Marine Guidance Note (M.G.N.) 75. M.G.N. 75 was made available on the internet for the first time to encourage wider circulation. It focused on self-defence and deterrent measures that could be employed by vessels transiting high-risk areas, where no assistance or support was available from shore.

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[151] Koch, 'Into Africa', p. 2.
[152] 'National strategy for maritime security', Sept. 2005, p. 5, available at Homeland Security Digital Library (H.S.D.L.), *Policy & strategy documents* (https://www.hsdl.org) (14 June 2014).
[153] 'National strategy for maritime security', p. 13.
[154] N.G.A. ASAM 1995, Ref. 1995-49.
[155] *Piracy on the high seas. Transport Select Committee eighth report [...]*, pp 6-10.

The escalation of piracy and maritime robbery in Northeast Africa and Southeast Asia in the 1990s raised questions in the British parliament about the role of the Royal Navy in contemporary counter-piracy operations. It was evident that the Royal Navy no longer possessed the capacity or capability to operate as a solitary global constabulary force. As Sir Nicholas Bonsor M.P. highlighted:

> [If] the Royal Navy should be made responsible for putting down piracy in the Indian and Pacific oceans [...] we shall need a navy that is very much bigger than the one that we have now [...] to make the Royal Navy responsible for piracy would be a large commitment, which would make almost everything else that it does pale into insignificance.[156]

Domestically, the House of Lords debated a proposal for the abolition of the death penalty for the crime of piracy under U.K domestic law in 1998.[157] The British government favoured a more holistic approach to maritime security strategy that emphasised multilateral cooperation over unilateral action in relation to counter-piracy operations.[158] For example, Britain attempted to strengthen Somaliland's judicial and legal sector within the framework of UNOSOM's wider programme in 1994, but the effort was constrained by poor security and problems with local support.[159]

By 2002, M.G.N. 75 was replaced by M.G.N. 241, which recognised the 'notable' increase in piracy and armed robbery attacks, the severity of these attacks and the risk of hijack and kidnap-for-ransom off the coast of Somalia and in the Gulf of Aden. The document set out a comprehensive set of guidelines to deter and manage piratical attacks including recommended practices, an anti-piracy plan, evasive manoeuvring and use of hoses, criminal jurisdiction, naval intervention and role of the coastal state.[160] That same year British army and naval units were involved in reconnaissance and surveillance operations in and around Somalia as part of the global 'war on terror'. This included the

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[156] *Hansard 6 (Commons)*, ccxxiv, 1993.
[157] *Parliamentary debates (Hansard)*, fifth series, *House of Lords*, 1943-98 (dlxxxvii, London, 1998).
[158] *Parliamentary debates (Hansard)*, sixth series, *House of Commons*, 1981-93 (ccxxiv, London, 1993).
[159] *Hansard 6 (Commons)*, ccxxxviii, 1994.
[160] 'Measures to counter piracy, armed robbery and other acts of violence against merchant shipping', Nov. 2002 (U.K. Dept. of Transport, M.C.A., M.G.N. 241 (M), pp 4-13).

deployment of the Royal Navy type 22 frigate H.M.S. *Campbeltown* to track suspect vessels in the Horn of Africa.[161]

Royal Navy policy at that time held that if an incident of piracy was encountered while conducting other operations or tasks on the high seas, the Royal Navy would counter the incident accordingly and arrest those responsible in accordance with the appropriate rules of engagement.[162] Indeed, Royal Navy Commanders were given specific counter-piracy guidance and training. In a more general sense, the British government recognised the benefit of engaging with international defence intelligence and maritime security communities alongside the commercial shipping industry in relation to countering piracy.[163] The British Government highlighted, what the Transport Select Committee called, a 'disturbing increase' in incidents of piracy in Somali waters and the Gulf of Aden in 2005 and subsequently published a revised version of the Marine Guidance Note.[164] The updated M.G.N. 298 took into account the latest counter-piracy and terrorism initiatives including the I.S.P.S. Code of 2004, the Ship Security Alert System and the Automatic Identification System (A.I.S.) as discussed in chapter III.

Italy, Russia & European Union

Aside from the United States and Britain, the former colonial power of Italy and Cold War ally the Soviet Union contributed less in terms of maritime security and counter-piracy support in Northeast Africa between 1991 and 2005. Italian troops were deployed as part of the UNOSOM II, despite apprehension from the United States over Italy's colonial legacy in Somalia and close relationship with Siad Barre.[165] For this reason, Italian troops were chiefly involved in humanitarian operations including convoy escorts, food and drug distribution and health-care organisation.[166] Almost five years after the withdrawal of U.N. forces, Italy provided ships as part of the U.S. led maritime

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[161] 'Allies enhance Somalia surveillance'.
[162] *Hansard 6 (Commons)*, cdxii, 2003.
[163] *Hansard 6 (Commons)*, cdxii, 2003.
[164] *Piracy on the high seas. Transport Select Committee eighth report [...]*, Ev. 41, 100.
[165] Paolo Tripodi, 'The absent metropolis: an investigation of the relationship between Italy and Somalia, from colonial administration to Operation Restore Hope' (Ph.D. thesis, Nottingham Trent University, Nottingham, 1997), p. 180.
[166] Tripodi, 'The absent metropolis [...]', p. 180.

security initiative C.T.F. 150 off the Horn of Africa alongside the U.K., France, Germany, The Netherlands and Pakistan. The Italian navy also maintained a coastal patrol unit as part of the Multinational Force Observers at Sharm−el Sheik in the Red Sea between 2001 and 2005, but were not active in maritime security operations in the Gulf of Aden or off the Somali coast.[167]

Following the end of the Cold War and the disintegration of the former Soviet Union, Russia's naval capability and capacity diminished, as did its influence in the Indian Ocean. By 1996, funding for the maintenance of the fleet stood at around 10 percent of that required by the navy, which rendered many vessels inoperative or in need of major refits and repairs.[168] The 2001 Russian Federation 'Marine doctrine 2020' set out, among other objectives, Russia's long-term strategic maritime policy in the Indian Ocean. This consisted of three aims. Firstly, the expansion of Russian transport, shipping and fishing in the region; secondly, protection of these assets from piracy in conjunction with the international community and finally to maintain a Russian naval presence in the region on a periodic basis.[169] This strategy illustrated Russia's awareness of the evolving nature of the piracy problem in the region as early as 2001.

However, in 2003 Russia's naval strength was reduced by a further 20 percent due to the decommissioning of a substantial number of reserve ships and submarines.[170] Despite ambitions to undertake counter-piracy operations in the Indian Ocean, the Russian Defence Ministry prepared a blueprint for strengthening the navy in early 2004, which de-prioritised blue-water operations in favour of securing small class vessels capable of operating within a 500km zone of territorial waters.[171] Economic realities dictated that Russian national maritime policy had to give precedence to mineral exploitation,

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[167] 'Annual report of the Director General Multinational Force Observers', Jan. 2001, pp 13-14, available at (http://mfo.org/assets/docs/annual_report_2001.pdf) (15 June 2014).
[168] 'Russia to make more navy cuts', 10 Jan. 2003 in *I.H.S. Jane's Defence Weekly* (Jan. 2003).
[169] 'Maritime doctrine of the Russian Federation 2020' (27 July 2001), p. 13, available at (www.oceanlaw.org/downloads/arctic/Russian_Maritime_Policy_2020.pdf) (14 June 2014).
[170] *I.H.S. Jane's Defence Weekly* (10 Jan. 2003).
[171] Andrei Kislyakov, 'Will Russia create the world's second largest navy?', 13 Nov. 2007, available at *RIA Novosti* (http://en.rian.ru/analysis/20071113/87843710.html) (15 June 2014).

maritime transport and pipeline security over long-range maritime security operations before 2005.[172]

Aside from these individual nations, European Union (E.U.) member states contributed to the creation of the I.S.P.S. Code and submitted proposals on maritime security issues to the I.M.O. in April 2002. In March 2004, the E.U. issued a comprehensive regulation on enhancing ship and port facility security. The regulation highlighted the threat to the European shipping community from international criminal activity, namely maritime terrorism and piracy.[173] The directive also aimed to facilitate the implementation and monitoring of the special measures to enhance maritime security adopted by the I.M.O. in December 2002 and the I.S.P.S. Code. In terms of contributing to counter-piracy, the regulation took its lead from the I.S.P.S. Code and made mandatory such provisions as protection of the confidentiality of security plans and assessments, application of security measures recommended by the state in whose territorial waters they are sailing and frequency of security drills and exercises.[174] Individual European states such as Germany and Sweden, for example, also contributed financially to the African Union's (A.U.) stabilisation efforts in Somalia in 2003.[175]

Regional efforts

African Union

There were a number of African led peace and reconciliation initiatives launched in response to the deteriorating security situation in Somalia after the outbreak of the civil war. However, addressing the declining maritime security environment was rarely prioritised given the scale of the crisis ashore. The Organisation of African Unity did, however, recognise the importance of fostering maritime trade to develop the nation economically. The 'African maritime transport charter' of 1994 was created to facilitate

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[172] Capt. Thomas Fedyszyn, 'Renaissance of the Russian navy?' in *U.S. Naval Institute Proceedings Magazine*, cxxxviii, no. 3 (Mar. 2012), p. 33.

[173] 'Regulation (E.C.) no. 725/2004 of the European Parliament and of the council on enhancing ship and port facility security' in *Official Journal of the European Union*, no. 129 (Mar. 2004), p. 6.

[174] 'Regulation (E.C.) no. 725/2004 [...]', p. 9.

[175] 'Report of the interim chairperson on the reconciliation process in Somalia', 29 Aug. 2003 (A.U., Central Organ, MEC/AMB.2/XCIV/2003, p. 3).

cooperation among African countries to address issues impeding the development of the maritime transport sector. Given that just eight incidents of maritime piracy and armed robbery were reported in African waters in 1994, it is not surprising perhaps, that piracy was not mentioned in the charter as an impediment to developing maritime trade in Africa.[176] It should also be noted that several other African states struggled with internal conflict and economic privation during this period. In 1996 alone, it was estimated that fourteen African nations were afflicted by armed conflict, which accounted for almost half of all war related deaths worldwide that year and a further 8 million persons displaced.[177] This, according to a U.N. report, 'seriously undermined Africa's efforts to ensure long-term stability, prosperity and peace for its peoples'.[178]

The Organisation of African Unity held a conference on national reconciliation in 1993, which attempted to provide a platform to negotiate an end to the conflict in Somalia. This effort appeared successful initially and resulted in the 'Addis Ababa disarmament treaty' in March 1993, which was the first tangible regional attempt to address the security situation in Somalia after the collapse of central government. Significantly, the treaty identified banditry and criminality as the chief obstacle to building peace, stability and security in Somalia.[179]

The 1993 treaty also highlighted the need for international assistance in securing Somalia's territorial waters from threats to shipping such as piracy.[180] Despite consensus from fifteen representatives of different warring factions to the principles set out in the disarmament treaty, continued violence combined with the withdrawal of the U.N. mission in 1995, eventually dissolved the agreement. Several more attempts to facilitate the cessation of hostilities among opposing Somali factions at the regional level

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[176] I.C.C. I.M.B., *Piracy report 2004*, p. 4.
[177] 'Report of the Secretary-General on the work of the Organisation: the causes of conflict and the promotion of durable peace and sustainable development in Africa', 13 Apr. 1998 (U.N. Security Council, O.D.S., A/52/871/1998, p. 3).
[178] Ibid.
[179] U.N., 'Addis Ababa Agreement concluded at the first session of the Conference on National Reconciliation in Somalia', 27 Mar. 1993 in *The United Nations and Somalia 1992-1996, the United Nations Blue Books Series*, viii (New York, 1996), p. 264.
[180] Ibid. p. 264.

occurred after 1993, culminating in the Arta conference in May 2000. The Arta conference, much like the Addis Ababa treaty, enjoyed only limited success as the T.N.G. administration lasted just four years.

There was renewed focus on addressing emerging and existing security threats after the events of 11 September 2001. The A.U. protocol 'Convention on the prevention and combating of terrorism' was adopted in 2002 and highlighted the union's commitment to countering security threats in observance of international norms. By 2003, maritime piracy and armed robbery attacks had escalated considerably in African waters, particularly off the coast of Somalia where 21 incidents were reported in 2003 compared to just nine during the same period in 1998.[181] Some African states began to recognise the need to address the deteriorating security situation at sea. Ghana, for example, recommended that a new agenda item on maritime security be included in the programme of the A.U. in 2003. The Ghanaian proposal highlighted the escalation of maritime crimes such as piracy and stressed the need for African states to implement the I.S.P.S. Code to 'enhance maximum maritime security for international trade'.[182]

The Chairperson of the A.U. commission included in his report in 2003 that local clans were engaged in skirmishes to gain control of seaports around the towns of Marka and Kismayo in Southern Somalia.[183] This was likely a reflection of the evolving awareness of the revenue that could be generated from pirating vessels off the coast given that Kismayo emerged as a key pirate stronghold. That same year, the A.U. proposed more ambitious initiatives for enhancing regional security, such as a Continental Early Warning System. The early warning system intended to provide a direct linkage between regional mechanisms to anticipate security threats like piracy and armed robbery.[184] By 2004, negotiations were underway for the establishment of an African

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[181] I.C.C. I.M.B., *Piracy report 2004*, p. 4.
[182] 'Maritime security in Africa: item proposed by the Republic of Ghana', 08 July 2003 (A.U., Executive Council (EX/CL)/61/III/Add.1/2003, p. 1).
[183] 'Report of the chairperson of the commission on the situation in Somalia', 29 Apr. 2004 (A.U., Peace & Security Council/PR/2 /VI/2004, p. 7).
[184] 'Report of the workshop on the establishment of the A.U. Continental Early Warning System (CEWS)', 31 Oct. 2003, pp 18-9 (http://www.peaceau.org/uploads/report-workshop-2003.pdf) (08 July 2014).

standby force and a Common African Defence and Security Policy.[185] In February, the policy was initiated, however, inexperience combined with a lack of capacity and diversity of military cultures and administrative tradition limited its effectiveness.[186] Despite these restraints, the A.U. sent a fact-finding and reconnaissance mission to Somalia in 2005 in anticipation of a peace support mission at the request of the newly appointed Transitional Federal Government (T.F.G.).

Individually, the majority of coastal African states lacked the capacity to enforce maritime security in their own territorial waters let alone patrol or assist in enforcement further afield. This was due, in part, to a traditional reliance on land-based forces. In 2005, U.S. European Command Major General Jonathon Gration commented: 'it's almost impossible right now for most African states to respond to a crisis off their shores'.[187] Somalia's largest neighbour Ethiopia, for example, lost its naval bases and access to the Red Sea when Eritrea became an independent state in 1993. Indeed, apart from South Africa, only Gabon, Ghana, Nigeria and Senegal had a navy with more than a limited inshore capability while Kenya was the only east African nation that possessed a navy capable of patrolling beyond its territorial waters.[188] Aside from Kenya, Tanzania possessed a minute naval contingent of just six small patrol vessels and a small air force with no patrol aircraft.[189] Several wider regional navies including Bahrain, Oman, the United Arab Emirates and Yemen conducted naval exercises with the U.S. led C.T.F. 150 while Eritrea, Ethiopia and Kenya were hosted aboard C.T.F. 150 ships, which illustrated a basic level of regional maritime security engagement and awareness.[190]

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[185] See: 'Report of the chairperson of the commission on the meeting of ministers of defence, held in Addis Ababa, Ethiopia, on 20-21 January 2004, and the draft policy framework on the establishment of the African Standby Force (ASF) and the Military Staff Committee (MSC)', 23 June – 03 July 2004 (A.U., EX/CL/110/V/2004).

[186] Omar A. Touray, 'The common African defence and security policy' in *African Affairs*, civ, no. 417 (Oct. 2005), p. 651.

[187] See: Koch, 'Into Africa', p. 2.

[188] Helmoed-Römer Heitman, 'Africa: security is the key' in I.*H.S. Jane's Defence Weekly* (14 July 2005), p. 2.

[189] Heitman, 'Africa: security is the key', p. 2.

[190] 'German navy takes charge of taskforce' in *I.H.S. Jane's Defence Weekly* (10 Dec. 2004)

In general, there was a significant lack of supportive infrastructure from African states in terms of capacity building in Somalia. Regional efforts to enhance stability and security ashore during this period continually failed. In August 1998, for example, an Egyptian and Libyan backed coalition of Mogadishu warlords created an administration. However, the same administration was opposed by an Ethiopian backed grouping of similar leaders in Mogadishu.[191] This illustrated the complexity of national and regional political interrelationships and the difficulty in establishing any functioning state structure. Several neighbouring states did, however, assist in hosting large numbers of Somali refugees during the civil war despite the difficulties this presented.[192]

Somaliland & Puntland

Somalia's de facto neighbour Somaliland, declared independence in 1991 and struggled initially to create a stable government. This meant that maritime security was not an early priority for the Somaliland administration. However, in 2003 a marine college was established in Berbera in response to escalating incidences of piracy and illegal fishing in the Gulf of Aden. One report suggested as many as 100 naval officers graduated each year from 2003-05 to serve in the Somaliland navy.[193] However, this was in juxtaposition to derisory naval assets. The small navy also reportedly conducted counter-piracy exercises with littoral states such as Djibouti. According to one local report: '[...] Somaliland [was] undeniably the most staple bulwark against all forms of extremism in the Horn'.[194] However, despite effectively deterring piracy in its territorial waters between 1991 and 2005, Somaliland's capacity as a regional maritime security force was significantly undermined without international recognition for its claim to statehood.

Puntland, which declared semi-autonomy in 1998, was far less successful in addressing maritime piracy compared to its neighbour (see fig. 4.18). Indeed, despite escalating levels of armed robbery and piracy off the coast in 2005, the Puntland government

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[191] Patrick Gilkes, 'Briefing: Somalia' in *African Affairs*, xcviii, no. 393 (Oct. 1999), p. 573.
[192] U.N., S/RES/814/1993, p. 2.
[193] 'Somaliland navy: only way to stop Somali piracy?', 25 Nov. 2008 (http://ireport.cnn.com/docs/DOC-153410) (15 June 2014).
[194] *Somaliland Times*, 29 Oct. 2005.

initiated a 'disarmament, demobilisation and reintegration' programme to reduce the size of security forces due to budgetary constraints.[195] According to one commentator, the increased incidences of piracy off Puntland was due in part to 'the inability of non-state actors to control political entrepreneurs' access to resources [which] undermine[d] the ability of any single authority to concentrate and control the exercise of coercion'.[196] In contrast to Puntland, Yemen, for example, invested significantly in increasing its maritime security capability after 2001. The Yemeni Navy secured the delivery of ten fast patrol boats from the Australian military contractor 'Austal' in 2003 to aid in constabulary maritime security patrols in its territorial waters.[197]

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[195] *Somaliland Times*, 01 Nov. 2005.

[196] William Reno, 'Somalia and survival in the shadow of the global economy' in *QEH Working Paper Series*, no. 100 (Feb. 2003), p. 38.

[197] 'Austal to build ten patrol boats for Yemen', 09 June 2003 (http://www.austal.com/en/media/media-releases/03-06-09/Austal-to-Build-10-Naval-Patrol-Boats-for-Yemen.aspx) (08 July 2014).

Fig. 4.18
Distribution of actual [red] and attempted [purple] pirate attacks off the coast of Somalia, 2005
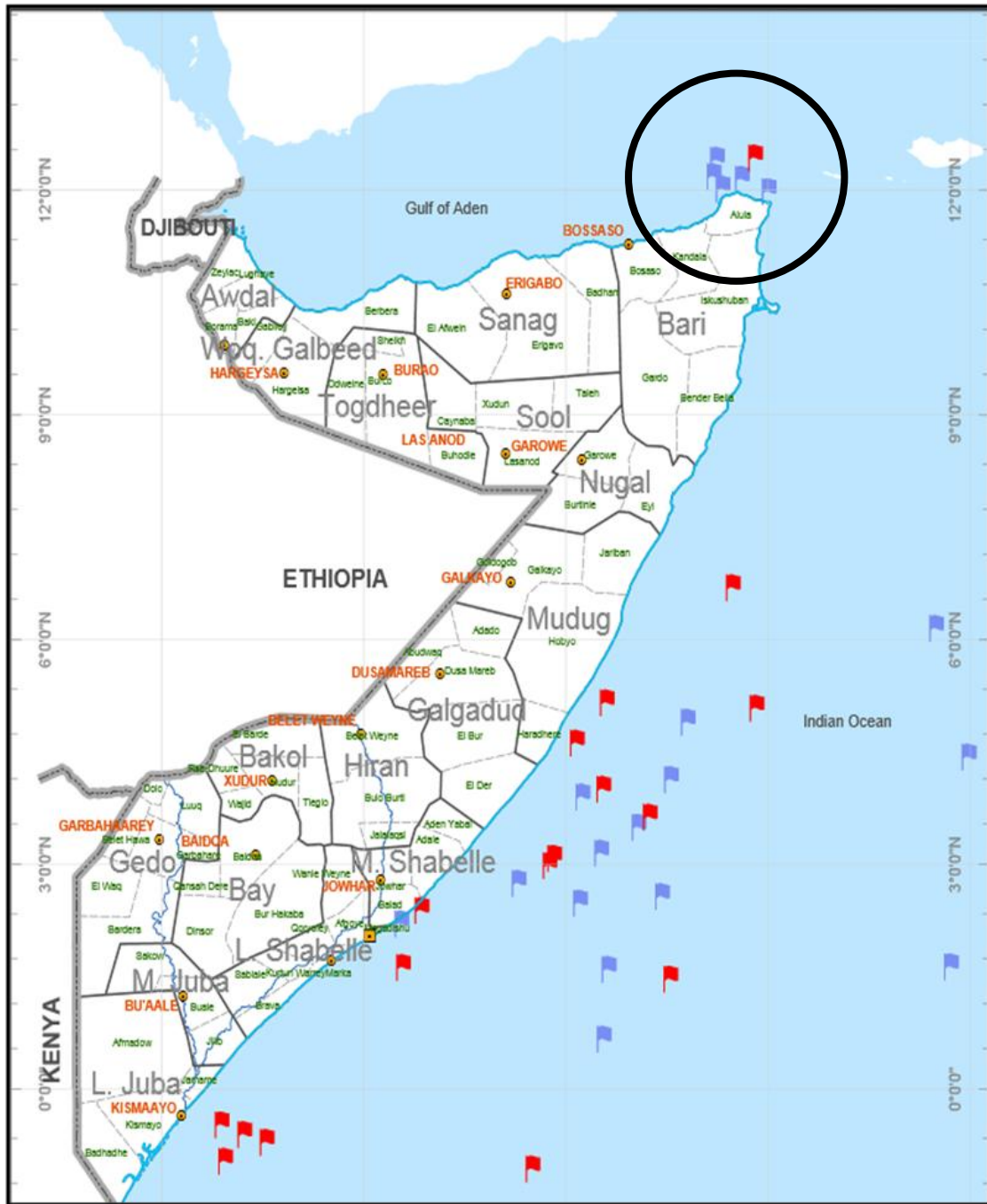
Source: Image: Food Security Analysis Unit (F.S.A.U.) - Somalia (http://www.fsausomali.org);
Distribution of piracy incidents: I.C.C. I.M.B. *Piracy report 2005*.

Ethiopia & Kenya

Somalia's two largest neighbours, Ethiopia and Kenya, played host to a large population of ethnic Somali's within their borders. It was alleged that the restoration of a central Somali state heightened fears of a resurgent Somali irredentism, which threatened Ethiopia and Kenya's already unsteady ethnic balance.[198] This led to speculation that both Ethiopia and Kenya benefited from the instability and insecurity in Somalia and therefore actively pursued polices to maintain the status-quo. Indeed, it appeared Ethiopia's interference in Somali affairs actually damaged relations with the T.N.G.[199] Kenya also allegedly benefited from the disorder, particularly from the cross border trade in arms and the narcotic 'Khat'. The situation was further complicated by the involvement of Somali's in the Kenyan administration where, for example, the Chief of Staff was a Somali with active clan links.[200]

However, this alleged policy of preserving an unstable Somalia did not extend to the maritime domain. Indeed, most African states recognised the mutual benefit of promoting and maintaining a secure and functional maritime environment. Daniel D. Kendie, for example, highlighted several mutually advantageous maritime transportation projects linking Ethiopia and Somalia. This included facilitating Ethiopian access to the ports of Kismayo and Mogadishu, which might have stimulated regional employment and maritime trade.[201] Such an approach may have also bolstered regional maritime security cooperation. However, the Ethiopian government stated in its 2002 'Federal Democratic Republic of Ethiopia's foreign policy, security policy and strategy' that such an approach was, at that time, 'unrealistic' given the security situation in Somalia.[202] Despite having identified 'no less than seven' potentially useful Somali ports, the report concluded that the security situation in Somalia had 'contributed to the uncertainty about regional peace and the lack of economic linkages between the two countries'.[203]

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[198] Lortan, 'Rebuilding the Somali state', p. 102.
[199] Fiona Lortan (ed.), 'Security Brief' in *African Security Review*, x, no. 1 (2001), p. 39.
[200] I. M. Lewis, 'Misunderstanding the Somali Crisis' in *Anthropology Today*, ix, no. 4 (Aug. 1993), p. 1.
[201] See: Daniel D. Kendie, 'Toward northeast African cooperation: resolving the Ethiopia–Somalia disputes' in *Northeast African Studies*, x, no. 2, (2003), pp 96-101.
[202] Ethiopian Ministry of Information, *Federal Democratic Republic of Ethiopia's foreign policy, security policy and strategy* (Addis Ababa, 2002), p. 76.
[203] Ibid.

Ethiopia did, however, develop closer diplomatic and maritime ties with Somaliland. In 2005, for example, Ethiopia secured an agreement to divert a percentage of its maritime import-export operations through the Red Sea port of Berbera.[204]

Somalia's largest adjacent maritime force, the Kenyan Navy, was actively involved in bolstering regional maritime security and counter-piracy capability both at a national and multilateral level. In 1999, the Kenyan Navy participated in a joint naval exercise with the U.S. Navy off Mombasa code-named 'Noble Piper'. This involved mission planning, small boat operations, underwater demolition projects and a naval scenario to secure areas of the coast from pirate raids.[205] By 2001, the navy consisted of four missile craft, four patrol and coastal combatants, one amphibious craft and a single support vessel.[206] The Kenyan navy celebrated its fortieth anniversary in 2004 and with it the acquisition of two more training vessels. Then President Mwai Kibaki emphasised the importance of the navy in patrolling and securing Kenya's maritime boundaries against all forms of illicit activity.[207] Following the upsurge of piracy and armed robbery attacks in Somali waters in late 2005, the Kenyan Navy began to escort merchant vessels operating north of Mombasa and instructed all international ships transiting Kenyan waters to notify the navy of their presence.[208]

South Africa

Farther afield, South Africa emerged as a regional leader in counter-piracy and maritime security promotion during this period. South Africa possessed a comparatively large and functional naval fleet compared to other African states and enjoyed relatively crime free territorial waters. By the mid-1990s, South Africa's fleet consisted of three Daphne-class submarines, nine Minister-class missile craft, four river-class mine hunters, four

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[204] *Somaliland Times*, 22 Oct. 2005.

[205] Andrew England, 'U.S. and Kenyan forces join up for coastal exercise' in *I.H.S. Jane's Defence Weekly* (14 Apr. 1999).

[206] I.I.S.S., *The military balance 2000-2001* (London, 2000), p. 273.

[207] 'Military to compliment Government's nation building efforts', 17 Dec. 2004 (http://www.statehousekenya.go.ke/news/dec04/2004171201.htm) (10 July 2014).

[208] 'Kenyan navy goes on anti-piracy patrol', 12 Dec. 2005 (http://www.ports.co.za/navalnews/article_2005_12_12_4029.html) (15 June 2014).

ton-class minesweepers and various coastal and logistical craft.[209] In 1992, the S.A.S. *Tafelberg* transported over 650 tons of relief to Somali refugees in Northern Kenya during 'Operation Flush/Big Tree'.[210] Aside from the obvious humanitarian aspect, the operation facilitated closer cooperation on maritime security affairs between the Kenyan and South African navies.

By 1995, South Africa had established a Maritime Standing Committee and hosted a conference for regional navy chiefs with the aim of increasing naval and maritime policy cooperation. This evolving regional maritime consciousness culminated in the first 'Seapower for Africa symposium' held in Cape Town by the South African Navy in August 2005. In his opening address, the South African Minister for Intelligence Services, Ronnie Kasrils stated that 'Africa must also move swiftly to deal with the problem of piracy, before it reaches levels that make Africa's ports unattractive destinations [...] while this used to be a problem restricted to the Gulf of Guinea, pirate attacks are now common off Somalia'.[211] Indeed, combating maritime crime and piracy emerged as a key strategic priority of the meeting, which stressed the need to empower national navies to perform coast guard functions.[212] Despite this emergent continental maritime cooperation and recognition of the threat posed by piracy, by the end of 2005 there were 80 reported incidents in African waters.[213] In excess of 50 percent of these attacks were perpetrated by Somali pirates, which according to the I.M.B., placed Somalia second in terms of worldwide reported incidents of piracy and armed robbery against ships that year.[214] However, after 2005 South Africa was hesitant to support internationally led counter-piracy efforts in any meaningful way.

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[209] I.I.S.S., *The military balance 1996-1997* (London, 1996), pp 264-65.
[210] André Wessels, 'Flag-showing cruises by South African warships, 1922-2002' (http://www.navy.mil. za/aboutus/history/ambassadors.htm) (17 July 2014).
[211] 'Opening address by the Honourable South African Minister for Intelligence Services, Ronnie Kasrils, MP, at the "Sea Power for Africa" symposium', 29 Aug. 2005 (http://www.polity.org.za/article/kasrils-sea-power-for-africa-symposium-29082005-2005-08-29) (17 July 2014).
[212] *Cape Times*, 15 Sept. 2005.
[213] I.C.C. I.M.B., *Piracy report 2005*, p. 7.
[214] Ibid. p. 16.

Legal initiatives

International Maritime Organization

The introduction of the I.S.P.S. Code as a legal requirement in July 2004 was a critical event in the evolution of contemporary maritime security. However, many of the international legal maritime security mechanisms that were introduced since 1991 could not be applied or enforced in Somalia due to a lack of a functioning administration ashore. Indeed, the lack of statehood essentially meant that Somalia operated outside of international legal norms. According to Michael Bahar: 'the fact that an entity named Somalia became a party to UNCLOS on 24 July 1989, and that that entity laid claim to an excessive 200 nautical mile territorial seas in 1972, is of no moment because that entity has legally ceased to exist'.[215] In an attempt to rectify this issue, the I.M.O. published M.S.C. 623 (Rev.3) in 1999 that provided practical guidance to shipowners, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships. However, this document advised that the ship master report the incident to the authorities of the coastal State in whose waters the attack occurred or, if on the high seas, to the authorities of the nearest coastal State.[216] In the case of Somalia, this was unfeasible and there was no regional reporting mechanism similar to the I.M.B. P.R.C. in Kuala Lumpur to act as a proxy.

The I.M.O. attempted to redress this imbalance somewhat with the adoption of the I.S.P.S. Code in 2002 and its enactment as a statutory regulation in 2004. This obliged both passenger ships and cargo ships to create and maintain a minimum level of security compliance that included the creation of a Ship Security Plan and a Ship Security Officer.[217] These measures significantly enhanced on board security and therefore lowered the risk of a successful pirate attack. This was imperative in high-risk areas like Somalia were no constabulary support was forthcoming from the shore. This transferred the responsibility for deterring an attack entirely on the shipmaster and crew, hence the

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[215] Michael Bahar, 'Attaining optimal deterrence at sea: a legal and strategic theory for naval anti-piracy operations' in *Vanderbilt Journal of Transnational Law*, xl, no. 1 (Jan. 2007), p. 67.
[216] I.M.O., Circ.623/Rev.1/1999, p. 11).
[217] 'Mandatory requirements regarding the provisions of chapter XI-2 of the international convention for the safety of life at sea, 1974, as amended', 12 Dec. 2002 (I.M.O., SOLAS/Conf.5/34/Anx.1/2002, pp 9-13).

importance of a legal mechanism to enforce security measures. Aside from initiating the I.S.P.S. Code, the I.M.O. attempted to strengthen sub-regional legal mechanisms to address piracy and armed robbery off the Horn of Africa. In April 2005, in response to the rise in reported incidents of piracy in the Gulf of Aden, the I.M.O. facilitated the first regional conference at Sana'a in Yemen to increase cooperation in curtailing the rise in incidents of maritime piracy and armed robbery. Ten participant states agreed to improve communication, cooperation and coordination in the field of regional maritime security following the meeting.[218]

By November 2005, in the wake of increased piratical activity, the I.M.O. Assembly adopted its first resolution directly addressing maritime piracy off the coast of Somalia. Reported attacks in the region had increased from just ten in 2004 to 45 by December 2005.[219] I.M.O. Resolution 979 noted 'with great concern' the escalation in serious incidents of piracy and armed robbery off the coast of Somalia and the protracted distance from shore in which several attacks occurred. Furthermore, the strategic importance of the Gulf of Aden/ Indian Ocean sea-lanes and the danger to life meant that an 'exceptional response' was required to counter piracy and armed robbery in the region.[220] The Resolution also highlighted how the proceeds from piratical hostage-for-ransom kidnappings was fuelling instability ashore, primarily in relation to the purchase of arms in violation of the arms embargo imposed by U.N. Security Council Resolution 733 in 1992.[221]

Resolution 979 had evolved from previous, more generalised, maritime piracy legislation. Despite stating that the jurisdiction and territorial integrity of Somalia under the relevant provisions of international law must be respected, the resolution strongly urged governments to increase efforts to prevent and suppress acts of piracy and armed

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[218] 'Contribution of the International Maritime Organisation (I.M.O.) to the secretary-general's report on oceans and the law of the sea, 2008', pp 21-2 (http://www.un.org/depts/los/consultative_process/mar_sec _submissions/ imo.pdf) (22 July 2014).
[219] I.C.C. I.M.B., *Piracy report 2005*, p. 5.
[220] 'Piracy and armed robbery against ships in waters off the coast of Somalia', 23 Nov. 2005 (I.M.O., A/RES/ 979/24/2005, p. 3).
[221] Ibid. p. 2.

robbery against ships 'irrespective of where such acts occur'.[222] The I.M.O. also stressed the importance of adopting national legislation, in accordance with international law, to prosecute those engaged in maritime criminal activities.

United Nations

The U.N. also recognised the need to enhance regional legal mechanisms to address the escalating incidences of maritime piracy and armed robbery as part of their strategy of strengthening the rule of law and criminal justice system in Africa. In 1998, the U.N. General Assembly's report of the African Regional Preparatory Meeting on the prevention of crime and the treatment of offenders highlighted four areas were concerted action was needed. These were (i) promoting the rule of law and strengthening the criminal justice system (ii) international cooperation in combating transnational crime (iii) effective crime prevention and (iv) accountability and fairness in the justice process.[223]

The 2004 report for the eleventh U.N. Congress on crime prevention and criminal justice in Africa had evolved to include terrorism, corruption and economic/financial crime as substantive areas in need of strengthening to create efficient judicial systems throughout Africa. [224] However, the U.N. report noted that not all the existing international standards and norms could be applied throughout the African continent because of the lack of adequate resources, as well as insufficient knowledge about the modalities of application. [225] In wider legal circles, particularly after 2001, the applicability of piracy legislation, namely universal jurisdiction, to terrorist offences was widely debated. It was suggested during a sitting of the U.K. House of Lords in December 2001 that serious terrorist offences should be treated as offences against the

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[222] I.M.O., A/RES/979/24/2005, p. 4.
[223] 'Report of the African Regional Preparatory Meeting for the tenth United Nations Congress on the prevention of crime and the treatment of offenders', 23 Dec. 1998 (U.N., O.D.S., A/Conf.187/RPM.3/1/1998, pp 3-5).
[224] 'Report of the African Regional Preparatory Meeting for the eleventh United Nations Congress on crime prevention and criminal justice', 16 Mar. 2004 (U.N., O.D.S., A/Conf.203/RPM.3/1/2004, pp 3-11).
[225] U.N., A/Conf.203/RPM.3/1/2004, p. 12.

human race or the modern equivalent of piracy and therefore the United Kingdom courts should accept universal jurisdiction in such cases.[226]

Conclusion

By the end of 2005, reported incidents of piracy and armed robbery had escalated significantly off the Somali coast and in the Gulf of Aden, accounting for over 50 percent of all reported incidents on the African continent that year.[227] More alarming was the proliferation of hostage-for-ransom kidnappings at sea, especially when compared to other piracy prone regions worldwide. According to the I.M.B., there were 248 crewmembers taken hostage by Somali pirates in 2005 compared to just 31 in 2004.[228] This figure far exceeded similar incidents in Indonesia, despite a far higher number of actual pirate attacks reported there (see fig. 4.19).

Somalia experienced a complete breakdown of law and order following the collapse of central government in 1991. The resulting humanitarian and political crisis ashore dwarfed the degenerating security situation at sea. This regional and international apathy likely contributed to the escalation of maritime piracy in the ungoverned waters off the coast of Somalia between 1991 and 2005. By the time the I.M.O. formally recognised the intensification in serious incidents of piracy and armed robbery off the coast of Somalia in November 2005, it was a case of 'too little too late'. Somali pirates had already established an organised criminal business model and acquired the assets, weaponry and expertise to perpetrate attacks hundreds of miles from the coast. Regional and international governments needed to evolve and formulate an innovative approach to counter-piracy operations in response to this rapidly evolving form of violent and organised maritime crime.

Although the escalation in piracy off the coast of Somalia after 2005 was largely unprecedented, the failure of regional and international states to confront effectively the problem either politically or militarily before then undoubtedly facilitated this upsurge.

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[226] *The parliamentary debates (Hansard)*, *House of Lords*, 1943-2001 (dcxxix, London, 2001).
[227] I.C.C. I.M.B., *Piracy report 2005*, p. 7.
[228] Ibid. p. 10.

The strategic importance of the sea-lanes through the Gulf of Aden and western Indian Ocean and the inability of Somalia to police its own territorial waters combined with the threat to the lives and safety of seafarers necessitated an exceptional response by international and regional governments after 2005. This culminated in one of the largest multinational expeditionary naval coalitions put to sea in peacetime.

Fig. 4.19
Number of piracy attacks vs. number of hostages taken: Indonesia & Somalia/ Gulf of Aden, 2004-05

	Indonesia		Somalia/ Gulf of Aden	
	No. of piracy attacks	*No. of hostages*	*No. of piracy attacks*	*No. of hostages*
2004	93	72	10	31
2005	79	76	45	241

Source: I.C.C. I.M.B., *Piracy report 2005 & 2006*, p. 10.

CHAPTER V

Hostis humani generis – a threat to global trade?

What started as a series of local hijacks and ransom demands against commercial fishing vessels has spiralled into an international threat to the basic freedom of the seas upon which the global economy depends.[1]

Introduction

Decades of political and humanitarian turmoil ashore in Somalia resulted in the first major upsurge of maritime piracy in the twenty-first-century. A combination of favourable geography and financial incentive alongside extreme poverty, lawlessness and jurisdictional ambiguity contributed to the creation of an organised maritime criminal network along the coast of Somalia after 2005. By 2008, these criminal networks had expanded their reach hundreds of miles from the shore by utilising mother ships and high-speed skiffs. Together with an abundance of heavy calibre weaponry, maritime expertise and modern radar and radio equipment, these groups targeted susceptible vessels transiting some of the world's busiest shipping lanes in the Gulf of Aden and western Indian Ocean.

While incidents of piracy and armed robbery began to appear and escalate after the collapse of the state structure in Somalia between 1991 and 2004, it was only after 2005 that attacks evolved into a serious threat to global shipping transiting the region. Somali pirate groups targeted and hijacked a multitude of international vessels and held thousands of crewmembers of various nationalities hostage for ransom. Aside from the obvious threat to the passage of international commerce through this vital sea-lane, the threat to the lives of seafarers was significant. The International Maritime Bureau (I.M.B.) estimated that Somali pirates were responsible for killing at least thirty seafarers between 2005 and 2012 and holding some 3,947 hostage for varying lengths of time, usually until a ransom had been secured for their release.[2] This figure was not

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[1] David Sloggett, *The anarchic sea* (London, 2013), p. 56.
[2] Figures extrapolated from: International Chamber of Commerce (I.C.C.), International Maritime Bureau (I.M.B.), *Piracy and armed robbery against ships, annual reports, 1 Jan. – 31 Dec. 2005-2013* (London, 2006-2014).

surprising given that firearms were used in almost 100 percent of Somali pirate attacks. Given the lack of any naval or law enforcement capability in Somalia, an international response was needed to counteract this regional threat to the movement of global trade.

In 2004, almost 47 percent of all incidents of maritime piracy worldwide occurred in Southeast Asian waters while less than five percent of the global total occurred off Somalia.[3] Within just four years, this situation was reversed (see fig. 5.1). By 2008, Somali pirates were responsible for around 44 percent of all incidents of maritime piracy worldwide.[4] This equated to approximately 111 actual and attempted attacks in 2008 alone. This huge upsurge in ship hijackings and kidnap-for-ransom of crews initiated an unprecedented response from the international community, which culminated in one of the largest multinational expeditionary naval forces put to sea in peacetime. Aside from the proactive response at sea, several innovative counter-piracy initiatives were undertaken ashore by both regional and international states. The role of the shipping industry was also critical in raising awareness of piracy and implementing Best Management Practice (B.M.P.) to protect against and deter attacks. These efforts resulted in a substantial decline in piracy and armed robbery in Northeast African waters by 2013. This chapter, therefore, explores chiefly non-military counter-piracy efforts between 2005 and 2013 focussing on the political context ashore, the issue of ransom payments, victims of piracy, proliferation of Private Maritime Security Companies (P.M.S.C.) and finally legal and jurisdictional issues. International political and military counter-piracy initiatives are analysed in chapter VI.

Somalia's precarious political balance and lack of state infrastructure presented a unique set of problems legally. International statutory norms were not applicable to Somalia as it lacked the capacity to enforce such laws, especially in the maritime domain. This ambiguity initially undermined counter-piracy operations at sea and forced a fundamental re-examination of the legal rules of engagement. The unprecedented scale of the piracy upsurge and the limitations placed on naval forces also resulted in the

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[3] I.C.C. I.M.B., *Piracy report 2005*, p. 5.
[4] I.C.C. I.M.B., *Piracy report 2009*, p. 5.

propagation of P.M.S.C., largely after 2008, which presented a new set of challenges for legislators. Moreover, P.M.S.C.s proved to be a highly effective counter-piracy mechanism. By the close of 2013, no vessel that employed Privately Contracted Armed Security Personnel (P.C.A.S.P.) had been successfully hijacked by pirates.[5] Indeed, the successful drop in incidents of piracy off the Horn of Africa was widely attributed to, in part, the deployment of P.M.S.C.s.

Fig. 5.1
Fluctuation of reported piracy attacks: Southeast Asia & Northeast Africa, 2003-13
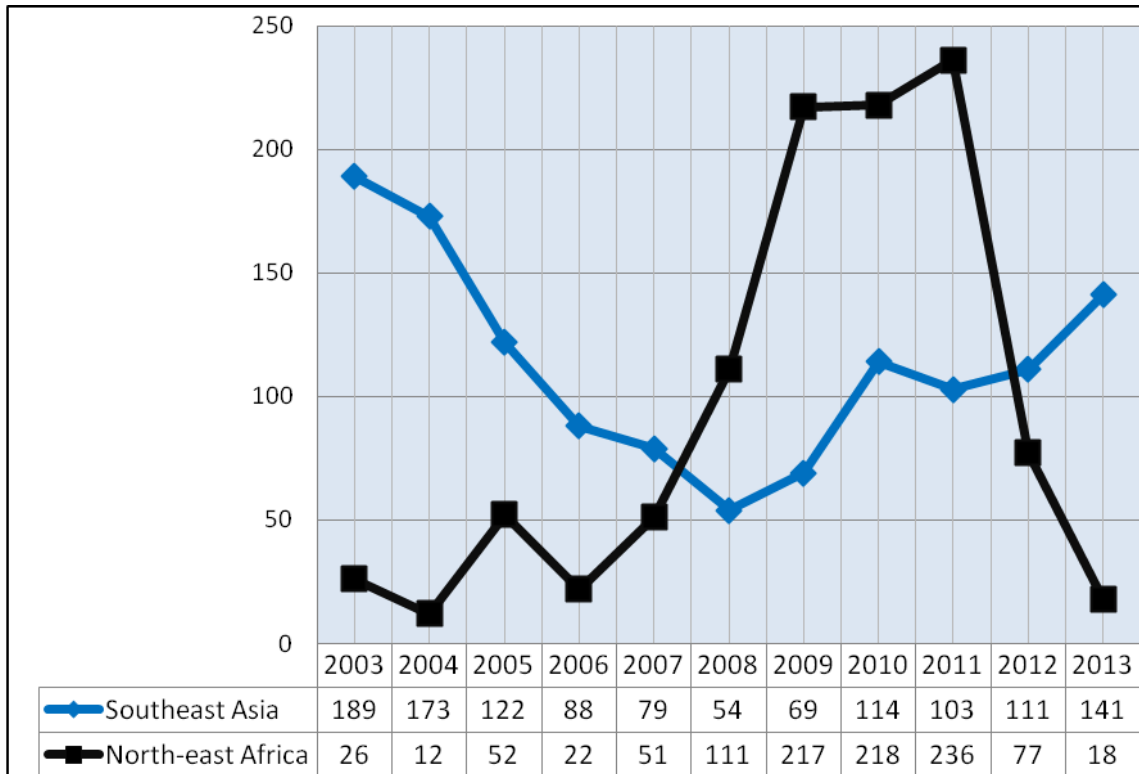
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Southeast Asia	189	173	122	88	79	54	69	114	103	111	141
North-east Africa	26	12	52	22	51	111	217	218	236	77	18

Source: I.C.C. I.M.B., *Piracy and armed robbery against ships, annual reports, 1 Jan. - 31Dec. 2003-2013* (London, 2004-2014).

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[5] See for example: *The Guardian*, 03 May 2013.

General context

Since 1970, global seaborne trade had experienced almost uninterrupted growth (see. fig. 5.2). This upward trend resulted in a 60 percent increase in seaborne trade worldwide between 2000 and 2013 (see fig. 5.3). The Bab-el-Mandeb strait, a narrow chokepoint that links the Red Sea to the Gulf of Aden, is a critical international sea-lane, chiefly for the transport of crude oil from the Persian Gulf to Europe and the United States. In 2008, a total of 21,415 vessels (northbound and southbound) transited via the Gulf of Aden and through the Bab-el-Mandeb toward or from the Suez Canal.[6] This equated to approximately 29 percent of the global total for 2008 or an average of 59 merchant vessels per day passing proximal to the Somali coast.[7]

Fig. 5.2
Increase in global seaborne trade 1970-2010

	1970	1980	1990	2000	2005	2010
Global seaborne trade (millions of tons loaded)	2605	3704	4008	5984	7109	8409
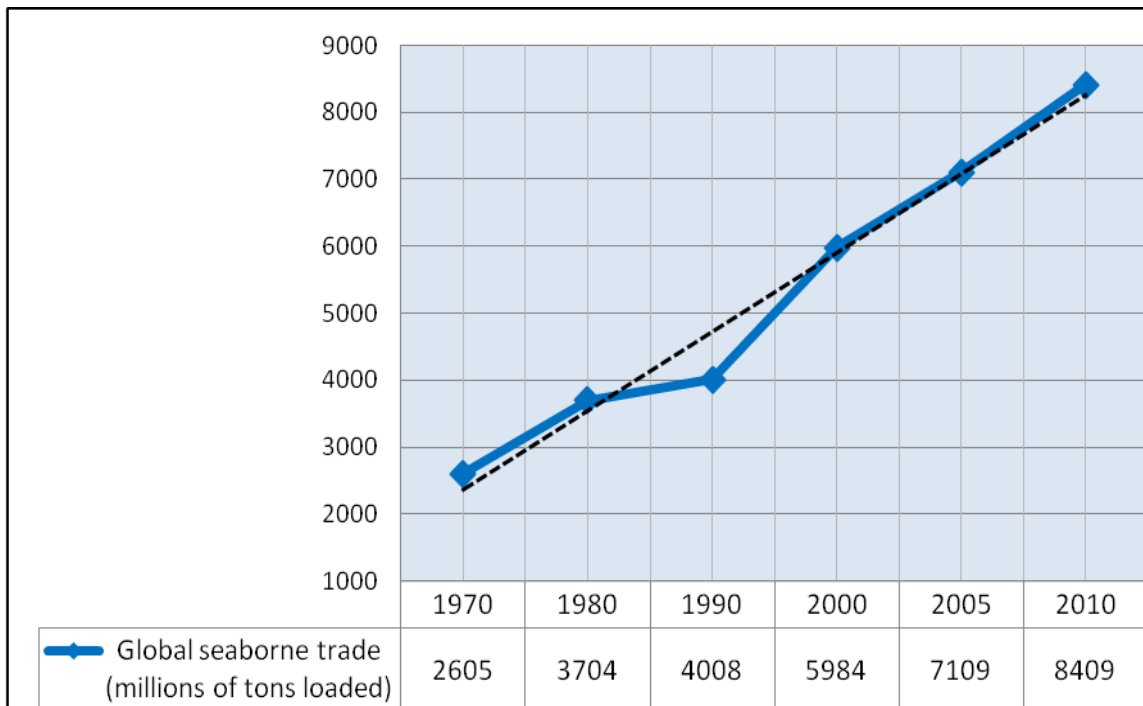
Source: United Nations Conference on Trade and Development (UNCTAD), *Review of maritime transport 2013* (New York, 2013), p. 7.

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[6] Suez Canal Authority, '2008 report', p. 2 (http://www.suezcanal.gov.eg/Files/Publications/44.pdf) (31 July 2014).
[7] European Maritime Safety Agency (E.M.S.A.), EQUASIS statistical database, 'The world merchant fleet in 2008', p.7 (http://www.emsa.europa.eu/implementation-tasks/equasis-a-statistics/download/481/472/23.html) (08 Aug. 2014).

The degenerative security situation in Somalia combined with the abundance of high-value vessels transiting adjacent to the coast significantly facilitated the upsurge in piratical attacks. More targets simply meant more opportunity for a successful hijacking. While the majority of attacks before 2005 were directed against commercial vessels or small craft, this quickly extended all types of vessel regardless of function. On 26 June 2005, the M.V. *Semlow*, a World Food Programme (W.F.P.) vessel, was hijacked approximately 40 nautical-miles (nm) off the coast of Hobyo, eastern Somalia with over 850 metric tons of rice destined for humanitarian distribution in Bossaso to the north.[8] While aid convoys were frequent victims of banditry and hijacking ashore during the 1990s, this was the first time that a W.F.P. ship had been hijacked at sea.[9]

It was reported that the *Semlow* was seized by the same group of pirates responsible for the attack on the M.V. *Timbuk* two months previous.[10] Both vessels were eventually released after the payment of a ransom despite claims by the group's leader, Mohamed Abdi Hassan, that the vessels were impounded because of improper documentation.[11] In October 2005, roughly one month after the release of the *Semlow*, Somali pirates hijacked a second W.F.P. humanitarian vessel. The M.V. *Miltzow* was seized by six gunmen in the port of Merka while offloading humanitarian provisions, but was released just thirty-two hours later.[12] In response to these armed attacks, shipping companies working with the W.F.P. increasingly began to demand armed escorts.[13] Tactically, Somali pirates had also evolved and gradually became more organised after 2005 by increasing the use of previously hijacked ships as bases for attacks farther from shore and reportedly issuing false distress signals to bait vessels into an ambush.[14]

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[8] U.S. National Geo-spatial Intelligence Agency (N.G.A.), Maritime Safety Office, Anti-Shipping Activity Message (ASAM) 2005-216, available at (http://msi.nga.mil/NGAPortal/) (09 Apr. 2014) (henceforth cited as 'N.G.A. ASAM [date], [ref.]').

[9] *New York Times*, 16 Sept. 2005.

[10] N.G.A. ASAM 2005, Ref. 2005-216.

[11] N.G.A. ASAM 2005, Ref. 2005-216.

[12] See: N.G.A. ASAM 2005, Ref. 2005-314; World Food Programme (W.F.P.), 'WFP welcomes release of second food aid ship hijacked in Somalia', 14 Oct. 2005 (https://www.wfp.org/news/news-release/wfp-welcomes-release-second-food-aid-ship-hijacked-somalia) (08 Aug. 2014).

[13] W.F.P., 'WFP welcomes release of second food aid ship hijacked in Somalia', 14 Oct. 2005.

[14] U.S. Office of Naval Intelligence (O.N.I.), Civil maritime analysis department, 'Worldwide threat to shipping: mariner warning information', 30 Nov. 2005 (http://msi.nga.mil/MSISiteContent/StaticFiles/MISC/wwtts/wwtts_20051130000000.txt) (25 Nov. 2014).

Fig. 5.3
Fluctuation of global seaborne trade, 2000-13

While increased attacks on commercial and humanitarian vessels heightened awareness among the shipping industry and international governments about the scale of the piracy problem, the attack on the *Seabourn Spirit* on 5 November 2005 conveyed the issue of Somali piracy to a broader audience. The *Seabourn Spirit,* a cruise liner carrying 108 passengers, was attacked while underway approximately 70nm off the east coast of Somalia. This was the first time a passenger ferry had been targeted by Somali pirates. The Anti-Shipping Activity Message (ASAM) for the incident reported that six heavily armed pirates pursued and attacked the ship with R.P.G.s and machine-guns, which inflicted damage to the hull. The attack was reportedly abandoned after the captain employed evasive manoeuvres and fled the area.[15]

The audacious and violent attack generated widespread international media coverage due to the potential for loss of life. The United States Office of Naval Intelligence commented: 'The only difference between this attack, the numerous other attacks, and vessel hijackings in this area is the interest it generated, due to the nature of the

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[15] N.G.A. ASAM 2005, Ref. 2005-340.

victim'.[16] On 23 November, just two weeks after the *Seabourn Spirit* incident, the International Maritime Organization (I.M.O.) adopted Resolution 979, which formally recognised Somali piracy as a distinct threat to the safety and security of the shipping industry, seafaring community and the citizens of Somalia.[17] The unique character of piracy off the Somali coast required what the I.M.O. termed as an 'exceptional response'.[18]

By December 2007, there were 51 reported incidents of piracy and armed robbery in Northeast African waters, a 50 percent increase from 2006.[19] The absence of any domestic naval or coast guard capability in Somalia meant that pirates and armed robbers could attack, hijack and hold for ransom commercial and humanitarian vessels with impunity. This resulted in increased calls for new legislation to allow foreign navies to undertake counter-piracy operations in Somali territorial waters. The I.M.O. formally requested that the United Nations (U.N.) backed Somali Transitional Federal Government (T.F.G.) consent to allow identifiable warships or military aircraft access to territorial waters when 'engaging in operations against pirates or suspected pirates and armed robbers endangering the safety of life at sea'.[20] On 28 October 2007, one month prior to the revised I.M.O. resolution, a Panamanian flagged chemical tanker, the M.T. *Golden Nori* was hijacked by Somali pirates while underway in the Gulf of Aden. This resulted in one of the first incursions by a foreign navy into Somali territorial waters when the U.S.S. *Arleigh Burke* entered Somali territorial waters at the behest of the T.F.G. in pursuit of the hijacked vessel.[21]

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[16] N.G.A. ASAM 2005, Ref. 2005-340.

[17] 'Piracy and armed robbery against ships in waters off the coast of Somalia', 23 Nov. 2005 (I.M.O., A/RES/979/24/2005, p. 3).

[18] I.M.O., A/RES/979/24/2005, p. 3.

[19] I.C.C. I.M.B., *Piracy report 2007*, pp 5-6.

[20] 'Piracy and armed robbery against ships in waters off the coast of Somalia', 29 Nov. 2007 (I.M.O., A/RES/1002/25/2007, p. 7).

[21] See for example: Cable News Network (C.N.N.), 'U.S. destroyer pursuing hijacked ship in Somali waters, military says', 29 Oct. 2007 (http://www.cnn.com/2007/WORLD/africa/10/29/somalia.pirates /index.html) (02 Aug. 2014); U.S. Naval Forces Central Command, 5th Fleet Public Affairs, 'Golden Nori released', 12 Dec. 2007 (http://www.navy.mil/submit/display.asp?story_id=33869) (08 Aug. 2014).

In 2008, incidents of Somali piracy had increased by around 200 percent compared to figures for 2007 with attacks reported up to 500nm from the coast.[22] It was reported that 42 vessels were successfully hijacked and over 800 crewmembers held hostage.[23] The I.M.B. commented: '[...] the reward to risk ratio for the Somali pirate is so large that only robust measures by international governments and navies will enable the safety and security of this major trade route to be restored'.[24] The year 2008 proved to be decisive in the evolution of contemporary counter-piracy initiatives, due to several high-profile hijackings.

The passenger sailing vessel *Le Ponant*, for example, was hijacked while underway approximately 80nm north of Caluula, Somalia on 4 April 2008. Ten pirates armed with AK-47s and R.P.G.s approached in two speedboats and successfully boarded the vessel.[25] Thirty crewmembers were taken hostage; however, there were no additional passengers on board at the time.[26] Following the payment of a ransom by the yacht owner, the crew of the *Le Ponant* were released unharmed. French commandos were monitoring the situation and subsequently tracked the pirates ashore and apprehended six of the twelve hijackers.[27] The *Le Ponant* incident expedited the first U.N. Security Council resolution on Somali piracy in June 2008, which is discussed in detail later in this chapter. Aside from the *Le Ponant* episode, two other noteworthy hijackings occurred in 2008, which further illustrated the threat to global commerce from Somali pirates.

The first of these high profile hijackings occurred on 25 September 2008 when a Ukrainian vessel the M.V. *Faina*, was attacked approximately 280nm east of Mogadishu. The *Faina* was loaded with a cargo of 33 Russian manufactured T-72 battle tanks alongside significant quantities of ammunition and other armaments reportedly destined

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[22] I.C.C. I.M.B., *Piracy report 2008*, pp 5-24.
[23] Ibid. p. 24.
[24] I.C.C. I.M.B., *Piracy report 2008*, p. 26.
[25] N.G.A. ASAM 2008, Ref. 2008-85.
[26] *New York Times*, 15 Apr. 2008.
[27] B.B.C. News, 'France raid ship after crew freed', 12 Apr. 2008 (http://news.bbc.co.uk/2/hi/africa/ 7342292.stm) (08 Aug. 2014).

for Kenya.[28] Despite the obvious danger of such high-grade weaponry being acquired by criminals, a representative for the Somali pirates claimed they were only interested in the ransom money.[29] Aside from this, the *Faina* incident further highlighted the threat posed by Somali pirates. It also hastened Russian naval involvement in the region, as three Russian nationals were among the hostages.

A little less than two months later on 15 November, the M.T. *Sirius Star* a Liberian flagged Very Large Crude Carrier (V.L.C.C.) with 23 crewmembers, was hijacked approximately 450nm from the Somali coast. This event was significant for two reasons. Firstly, the *Sirius Star* was the largest vessel captured by Somali pirates up to that point at deadweight of 319,430 tons and secondly, it was hijacked at a greater distance from shore than any vessel previously.[30] The attack illustrated the capability and tenacity of Somali pirates and increased calls for additional P.C.A.S.P. to protect merchant vessels beyond the reach of the limited international and regional naval assets. Commander Jane Campbell, a spokeswoman for the U.S. Navy Fifth Fleet, commented: 'In the case of the *Sirius Star*, [hiring private contractors] may have been the only way to prevent this particular attack, given its distance from shore, the size of its crew and the size of the vessel [...] we absolutely think it would be a good idea to employ such companies'.[31] The hijacking of the *Faina* and *Sirius Star* were instrumental in hastening international counter-piracy naval operations off the coast of Somalia.[32] This included the European Union's first naval operation codenamed 'Atalanta' in December 2008, which is examined in chapter VII.

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[28] See: *TIME*, 03 Oct. 2008; Sky News, 'Pirates demand ransom of millions', 28 Sept. 2008 (http://news.sky.com/story/636214/pirates-demand-ransom-of-millions) (10 Aug. 2014).
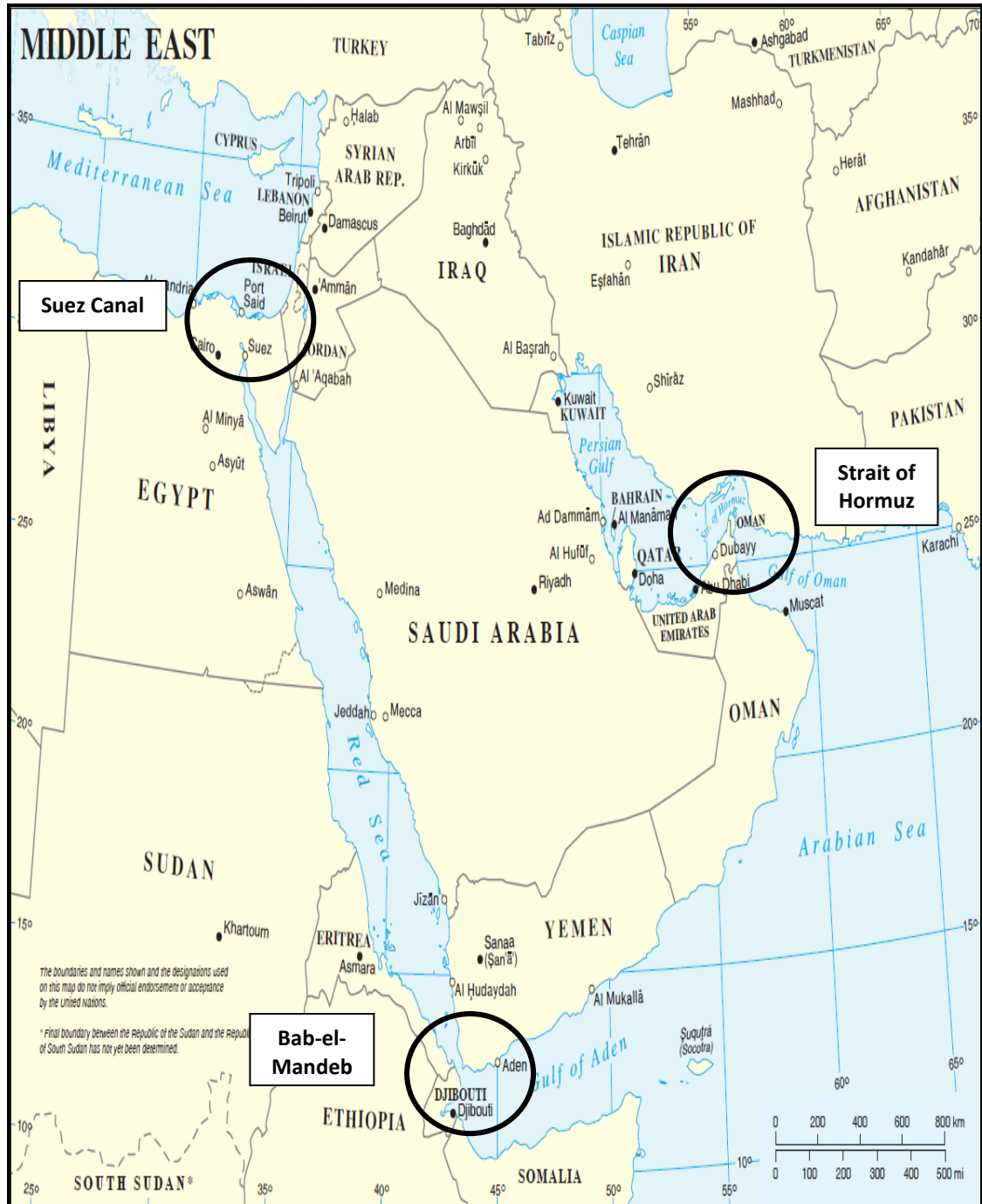[29] *New York Times*, 30 Sept. 2008.
[30] N.G.A. ASAM 2008, Ref. 2008-428.
[31] Cassandra Zoro, 'Naval cooperation key to Somalia anti-piracy effort' in *I.H.S. Jane's Defence Weekly* (25 Nov. 2008), p. 2.
[32] See for example: *The Times*, 03 Oct. 2008.

Fig. 5.4
Suez Canal, Bab-el-Mandeb & the Strait of Hormuz

The violent modus operandi alongside the high profile nature and regularity of Somali pirate attacks, particularly after 2008, attracted global media attention. This put further pressure on regional and international user-states to counteract the threat to shipping, seafarers and regional stability. Claims that these attacks were a legitimate Somali coast guard defending territorial waters against illegal encroachment by foreign fishing vessels were now essentially redundant. As Hansen highlighted, Somali pirates targeted commercial vessels because they attracted higher ransoms despite a lower chance of success compared with targeting fishing vessels which 'undermined the validity of any claim that what they are doing is based on their alleged contempt for the foreign fishing sector'.[33]

Despite this rising global awareness and a concerted international and regional effort, Somali pirate incidents peaked in 2011. Between January and December there were 236 actual and attempted attacks reported at distances up to 1000nm from shore.[34] According to a report by the World Bank, between 2010 and 2013 Somali pirate networks evolved into a more organised enterprise with international membership.[35] Despite the increase in the frequency of attacks, the amount of successful hijackings fell in 2011 (see fig. 5.5).[36] This was due to a combination of the increased deployment of P.C.A.S.P. on merchant vessels, wider implementation of B.M.P. and multinational naval counter-piracy efforts. These high profile attacks combined with other incidents, such as the first attack on a U.S. merchant vessel the M.V. *Maersk Alabama* in 2009, resulted in an unprecedented international and regional counter-piracy response, which extensively suppressed attacks in Northeast African waters by 2013.

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[33] Stig Jarle Hansen, 'Debunking the piracy myth: how illegal fishing really interacts with piracy in East Africa' in *The RUSI Journal*, clvi, no. 6 (Dec. 2012), p. 27-8.
[34] I.C.C. I.M.B., *Piracy report 2011*, p. 22.
[35] Stuart Yikona, Clement Gorrissen, George Kisaka, Kevin Stephenson, David Lamair & Francisca Fernando, *Pirate trails: tracking the illicit financial flows from pirate activities off the Horn of Africa* (Washington D.C., 2013), p. 3.
[36] I.C.C. I.M.B., *Piracy report 2011*, p. 22.

Fig. 5.5
Fluctuation of successful maritime hijackings Northeast Africa, 2005-13
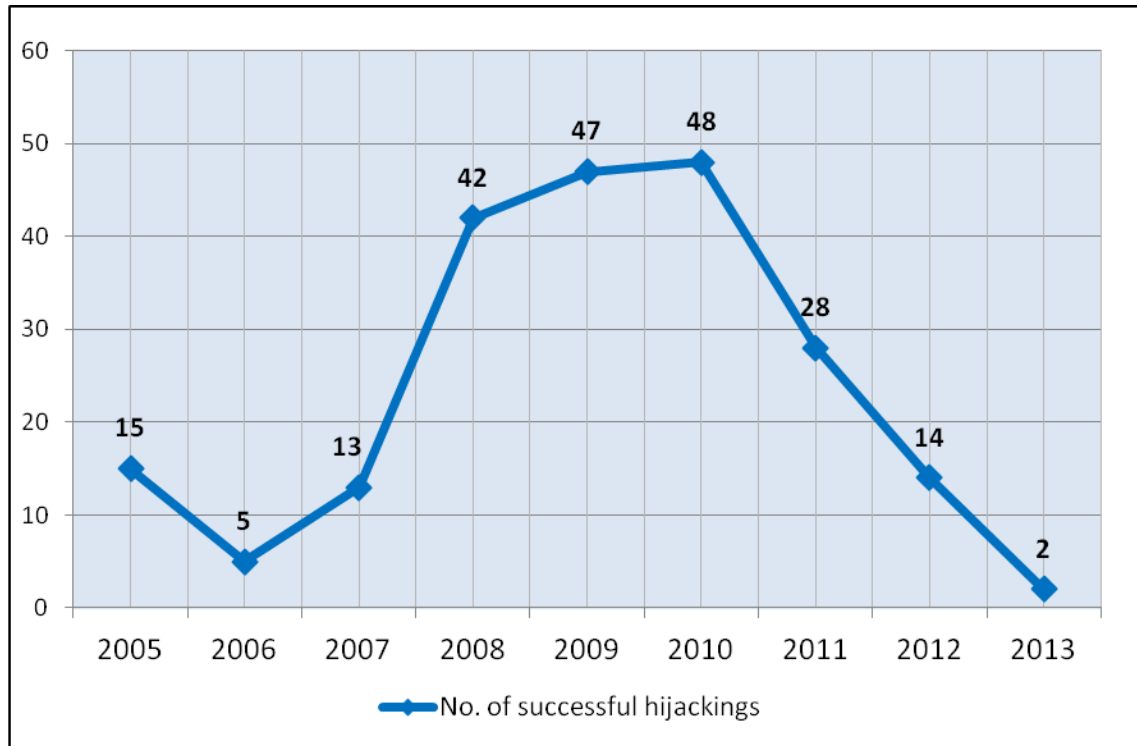
Transitional Federal Government

Piracy is a crime that is committed at sea, but is rooted ashore. Political and economic instability was perhaps the single biggest driving force behind the escalation of maritime crime off the coast of Somali after the collapse of centralised government in 1991. Following several unsuccessful attempts at reconstituting an administration in Somalia, a Transitional Federal Charter was contracted in Nairobi in February 2004 following the dissolution of the Transitional National Government. The charter set out the terms for the creation of a Transitional Federal Government (T.F.G.) and a Transitional Federal Parliament, which elected Abdullahi Yusuf Ahmed as president in October 2004. Despite the chronic instability ashore, the new T.F.G. Minister for Internal Affairs, Hussein Farah Aidid, acknowledged that maritime piracy was one of the greatest challenges facing the fledging administration.[37] Much like previous administrations, the

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[37] Sentinel Security assessments, 'Somalia calls for piracy help' in *I.H.S. Jane's Defence Weekly* (28 Oct. 2005).

T.F.G. had no national coastal patrol capability and was further constrained by its initial inability to establish authority in the capital Mogadishu. The T.F.G. was therefore, forced to assemble in Jowhar and later in Baidoa, where the parliament was convened in February 2006.

Union of Islamic Courts (May-Dec. 2006)

Just four months later, the Union of Islamic Courts (U.I.C.)[38], which was an assortment of Islamist organisations centred on a system of autonomous courts in the south, expanded its reach and seized control of the capital Mogadishu from the various militias and warlords. The U.I.C., which was not represented in the new T.F.G., aimed to introduce an alternative system of governance for Somalia through the enforcement of sharia law.[39] This brought the U.I.C. into direct conflict with the internationally recognised Transitional Federal Institutions in Baidoa. By late 2006, the U.I.C. had extended its reach beyond Mogadishu as far the Kenyan border to the west and the autonomous region of Puntland to the northeast.[40] Diplomatic attempts to subdue hostilities between the T.F.G. and the U.I.C. such as the 'Khartoum peace process', initiated by the League of Arab States, ultimately failed.

On 6 December 2006, the U.N. authorised the Intergovernmental Authority for Development in Eastern Africa and the African Union (A.U.) to establish a protection and training mission in Somalia in support the T.F.G. and its institutions. The U.N. Resolution was rejected by the U.I.C., which claimed that the deployment of foreign forces equated to an invasion.[41] The rapid consolidation of much of southern Somalia by the U.I.C. alarmed the T.F.G.'s closest regional ally Ethiopia. On 24 December 2006, Ethiopian ground and air forces, in support of T.F.G. forces, launched an extensive military offensive against the U.I.C. between the lower Juba Valley to the south and

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[38] Also known as the Islamic Courts Union (I.C.U.).
[39] Cedric Barnes & Harun Hassan 'The rise and fall of Mogadishu's Islamic courts' in *Chatham House Africa Programme Briefing Paper*, no. 2 (Apr. 2007), pp 2-4.
[40] International Crisis Group (I.C.G.), 'Somalia: the tough part is ahead' in *Africa Briefing*, no. 45 (Jan. 2007), p. 1.
[41] U.N. Security Council, 'Report of the Secretary-General on the situation in Somalia', 28 Feb. 2007 (U.N. D.H.L., S/2007/155, p. 2).

Galkayo in central Somalia. Within nine days, the U.I.C. was defeated and Mogadishu capitulated.

Aside from the lack of international recognition, the U.I.C. addressed some off the fundamental causative factors that precipitated the escalation of piracy off the Somali coast during its brief reign. Problems such as lawlessness, insecurity and political and economic instability were temporarily quelled by the governance of the U.I.C. Prior to the U.I.C. acquiring control of Mogadishu and southern Somalia, local clan leaders were incapable of preventing acts of maritime piracy aside from assisting in negotiations for the release of crew, vessels and equipment.[42] Following the reunification of Mogadishu under the authority of the U.I.C., incidents of maritime piracy and armed robbery against ships off the southern coast dissipated significantly. The I.M.B. recorded just ten attacks against ships in Somali waters (excluding the Gulf of Aden to the north) in 2006 compared to 35 in 2005.[43] The U.I.C. achieved this through a series of concrete and symbolic initiatives. These included unifying the capital, disarming and ousting the warlords, reopening Mogadishu airport and seaport, clearing roadblocks and removing litter, establishing courts to deal with claims for the restitution of property, stopping illegal land grabs and removing illegal squatters from government buildings.[44]

Following the collapse of the U.I.C. in December 2006, maritime piracy resurged, with 51 attacks reported in 2007. In terms of law enforcement, the U.I.C. had a documented history of suppressing criminality in areas it controlled. Between 1999 and 2000, for example, the sharia courts and associated militia reportedly kept the seaport town of Merka secure from theft prior to the establishment of the Transitional National Government.[45] Clan and religious leaders both actively encouraged young Somalis not to become involved in piracy, as it was seen to undermine their respective secular and

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[42] U.N. Security Council, 'Report of the panel of experts on Somalia pursuant to Security Council Resolution 1425' (U.N., D.H.L., S/2003/233, p. 45).
[43] I.C.C. I.M.B., *Piracy report 2006*, p. 5.
[44] Barnes & Hassan 'The rise and fall of Mogadishu's Islamic courts', p. 4.
[45] Menkhaus, 'State collapse in Somalia [...]', p. 417.

spiritual authority.[46] Even more extreme elements within the wider Islamic network, such as Al-Shabaab, openly condemned piracy and other forms of criminality although there was speculation that they may have benefitted from the proceeds of ransom payments.[47] Aside from condemning piracy, the U.I.C. reportedly launched a military operation against pirate groups in the port of Harardheere in August 2006 to retrieve supplies the pirates had seized.[48] According to a U.N. report:

> [The] I.C.U. took over Harardheere [...] which has been the pivotal area for the main group of Somali pirates - the Somali Marines - which had been the principal threat to maritime shipping in Somali coastal waters [...] since the elimination of that pirate group, there have been no acts of piracy along the central and southern coastal area.[49]

On 7 November 2006, U.I.C. fighters also reportedly liberated the cargo ship M.V. *Veesham I* that had been hijacked by pirates north of Mogadishu.[50] However, according to one commentator: 'The operation had less to do with any principled opposition to piracy and more to do with the fact that the owner of the *Veesham I* […] was one of the key financial backers of the Islamist movement […]'.[51] Despite this, there was a direct correlation between the temporary enforcement of law and order by the U.I.C. and the fluctuation of maritime piracy, which illustrated the fundamental causal connection between stability ashore and piracy at sea.

The fall of the U.I.C. resulted in the 're-warlordisation' of Mogadishu and a return to lawlessness exacerbated by the announcement of a three day deadline for armed groups to hand over weapons by T.F.G. Prime Minister Ali Mohamed Gedi.[52] The deteriorating security situation ashore once more channelled itself into the maritime domain. Acts of

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[46] International Expert Group on Piracy off the Coast of Somali Coast, *Piracy off the Somali coast: workshop commissioned by the special representative of the Secretary General of the U.N. to Somalia Ambassador Ahmedou Ould-Abdallah* (Nairobi, 2007), p. 9.
[47] *The Telegraph*, 26 Nov. 2008.
[48] Angel Rabasa, *Radical Islam in East Africa* (California, 2009), p. 21.
[49] U.N. Security Council, 'Report of the monitoring group on Somalia pursuant to Security Council Resolution 1676', 22 Nov. 2006 (U.N., D.H.L., S/2006/913, pp 39-40).
[50] N.G.A. ASAM 2006, Ref. 2006-264.
[51] J. Peter Pham, 'Putting Somali piracy in context' in *Journal of Contemporary African Studies*, xxviii, no. 3 (July 2010), p. 329.
[52] Rabasa, *Radical Islam in East Africa*, p. 63.

piracy and armed robbery against ships escalated exponentially in 2008 with 111 reported attacks in Northeast African waters compared to just 51 in 2007.[53] In August 2007, the T.F.G. held a multi-party National Reconciliation Conference in Mogadishu. However, remnants of the ousted U.I.C. and opposition leaders convened a separate conference in Eritrea where they agreed to fight the T.F.G. under the banner of the Alliance for the Re-liberation of Somalia.

By August the following year, a cessation of armed confrontation between the T.F.G. and the Alliance for the Re-liberation of Somalia was signed in Djibouti. The Djibouti agreement called upon the U.N. to deploy an international stabilising force that did not include neighbouring states.[54] However, it was decided that the A.U. should be responsible for any military or peace support operations within Somalia and as such, the African Union Mission in Somalia (AMISOM) was extended to support the implementation of the agreement.[55] In January 2009, the T.F.G. and the Alliance for the Re-liberation of Somalia formed a unity government and elected Sharif Sheikh Ahmed as president.

Despite these tenuous political advances, maritime piracy continued to escalate uninterruptedly off the Somali coast between 2008 and 2012. Unilaterally, the T.F.G. failed to achieve any meaningful progress in tackling maritime crime given the serious political and economic instability ashore. The T.F.G. was further constrained and undermined by Somaliland's functioning independence to the north, Puntland's semi-autonomous state in the northeast and its own limited influence outside of the capital Mogadishu. However, regional and international governments had significantly amplified multilateral counter-piracy initiatives and operations in the region. By 2011,

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[53] I.C.C. I.M.B., *Piracy report 2008*, pp 5-6.
[54] 'Agreement between the Transitional Federal Government of Somalia (T.F.G.) and the Alliance for the Re-liberation of Somalia (A.L.S.)', 09 Aug. 2008, available at U.N. Political Office for Somalia (U.N.P.O.S.) (http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/080818%20-%20Djibouti%20Agreement.pdf) (28 Aug. 2014).
[55] See: 'Communique of the 139th meeting of the Peace and Security Council', 29 June 2008, available at Peace and Security Council of the African Union (http://www.peaceau.org/uploads/decisionsomaliaeng .pdf) (29 Aug. 2014).

the I.M.B. recorded the highest number of attacks by Somali pirates since it began collating reports in 1992, at distances up to 1000nm from shore.[56]

On 6 September 2011, a U.N.-backed consultative meeting was held in Mogadishu to address critical issues impeding the transition to permanent governmental institutions. This resulted in an 'end of transition roadmap' that outlined four key benchmarks to be addressed before the transition could be completed. These were security, the constitution, political outreach and reconciliation and good governance. The guidelines were a product of the Kampala Accord of June 2011 that outlined the need to establish a 'roadmap' with 'benchmarks, timelines and compliance mechanisms for the implementation of the priority task'.[57] The section on security was divided between security in Mogadishu and greater Somalia and maritime security including counter piracy policy and strategy. The inclusion of a counter-piracy strategy illustrated the scale of the problem and the negative effect it was having on Somali's fragile political institutions and international reputation. Key counter-piracy tasks included the formation of an operational Somali maritime police and coastal monitoring capability, a wider regional maritime security strategy, anti-piracy community engagement and the enactment of anti-piracy legislation.[58]

By August 2012, a provisional constitution was created in conjunction with the course set out in the roadmap, which included provisions for tackling illegal dumping, establishing a judiciary, promoting peace and security and an anti-corruption commission to freeze, seize, confiscate or return any gains from criminal activity.[59] However, there was frequent criticism from elements within the international community that the T.F.G. was not doing enough to tackle piracy directly. The Russian

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[56] I.C.C. I.M.B., *Piracy report 2011*, p. 22.
[57] 'Agreement between the President of the Transitional Federal Government of Somalia and the speaker of the Transitional Federal Parliament of Somalia made in Kampala', 09 June 2011, p. 2, available at U.N.P.O.S. (http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/110609%20%20 Kampala%20Accord% 20%28signed%29.pdf) (22 Feb. 2015).
[58] 'Consultative meeting on ending the transition in Somalia: Somalia end of transition roadmap', 06 Sept. 2011, Anx. 1, available at U.N.P.O.S. (http://unpos.unmissions.org/Portals/UNPOS/Repository%20 UNPOS/110906%20-%20Initialled %20Roadmap.pdf) (28 Aug. 2014).
[59] 'The Federal Republic of Somalia: Provisional constitution', 01 Aug. 2012, available at U.N.P.O.S., (http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=) (28 Aug. 2014).

Federation, for example, expressed its disappointment over the T.F.G. rejection of an international proposal to establish an extraterritorial court to prosecute Somali pirates in 2011. [60] There were also more serious allegations of shielding suspected pirates, corruption and mismanagement of funds.[61] Despite this, these stabilising political efforts ashore were an important element in bolstering wider regional and international counter-piracy and maritime security efforts initiated during this period.

Ransom Payments

Prior to analysing humanitarian and legal programmes, it is important to briefly highlight the issue of ransom payments. As fig. 5.6 illustrates, payments for the return of hijacked vessels and kidnapped crews escalated significantly from an average of US$150,000 per crew/vessel in 2005 to an estimated US$5.2 million per crew/vessel in 2010. [62] However, ransom payments were often significantly higher, such as the estimated US$13.5 million reportedly paid for the release of the M.V. *Irene SL* in April 2011.[63] Piracy off the coast of Somalia was fuelled by this formalised hostage-for-ransom model which, created so called 'pirate-economies' in certain towns where the proceeds of piracy became the chief source of revenue.[64] This even reportedly extended to the formation of a piracy 'stock exchange' in the coastal town of Harardheere in 2010.[65] Considering that in 2011 proceeds from piracy equated to approximately 15 percent of Somalia's Gross Domestic Product (G.D.P.), it is unsurprising that systems developed to manage and invest in this revenue flow.[66]

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[60] U.N. Security Council, 'Report of the 6614th meeting of the Security Council', 14 Sept. 2011 (U.N., D.H.L., S/6614/2011, p. 23).

[61] Andrews Atta-Asamoah, 'Long walk to restoration: lessons from Somalia's transition process' in *Institute for Security Studies Africa: Situation Report* (July 2013), pp 2-3.

[62] Financial Action Task Force (F.A.T.F.), 'Organised maritime piracy and related kidnapping for ransom' in *F.A.T.F. Report* (July 2011), p. 8.

[63] See for example: *Financial Times*, 08 Feb. 2012; *USA Today*, 10 Feb. 2011.

[64] See for example: *New York Times*, 31 Oct. 2008; Anja Shortland, 'Treasure mapped: using satellite imagery to track the developmental effects of Somali piracy' in *Chatham House Africa Programme Paper* (Jan. 2012), pp 4-5; *The Economist*, 02 Nov. 2013; *The Atlantic*, 04 Apr. 2014.

[65] Lauren Gelfand & Helmoed-Römer Heitman, 'South Africa could join Gulf of Aden anti-piracy patrols' in *I.H.S. Jane's Defence Weekly* (24 Apr. 2010).

[66] United Nations Office on Drugs and Crime (U.N.O.D.C.), 'Transnational organised crime in eastern Africa: a threat assessment' (Sept. 2013), p. 35.

Fig. 5.6

Estimated average cost of ransom payments to Somali pirates [for the release of hijacked vessel & crew] 2005-13

2005	2006	2007	2008	2009	2010	2011	2012	2013
US$2.2 million	US$1.5 million	US$6.5 million	US$38 million	US$117 million	US$238 million	US$160 million	US$31.7 million	US$21.6 million

Sources: Averages extrapolated from: Anna Bowden (ed.), 'The economic cost of maritime piracy' in *One Earth Future Foundation Working Paper* (Dec. 2010), pp 9-10; Anna Bowden and Shikha Basnet, 'The economic cost of Somali piracy 2011' in *One Earth Future Foundation Working Paper* (2012), pp 11-13; Jonathan Bellish, 'The economic cost of Somali piracy 2012' in *One Earth Future Foundation Working Paper* (2013), pp 10-13; Jens Vestergaard Madsen, Conor Seyle, Kellie Brandt, Ben Purser, Heather Randall, Kellie Roy, ' The state of maritime piracy 2013' in *One Earth Future Foundation Report* (2014), p. 10; Roger Middleton, 'Trends in piracy: a global problem with Somalia at the core' in *Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy* (Dubai, 2011), p. 22; I.C.C. I.M.B., *Piracy reports 2005-2013*.

A report compiled by the World Bank and INTERPOL in 2013, outlined the typical dissemination of ransom payments between a network of sponsors and local supporters (see fig. 5.7). According to a U.N. report on transnational organised crime, this typically equated to 30 percent of the proceeds paid directly to the Pirate Action Group (P.A.G.), 10 percent to the supportive infrastructure ashore, 10 percent in bribes or taxation to local community officials and elders with the remaining 50 percent to the financiers and sponsors of the operation.[67] In some areas, as much as 20 percent of the proceeds were reportedly paid to local militias in control of seaports, such as an arrangement between pirates and Al-Shabaab in Harardheere around 2011.[68] Despite only receiving an estimated 0.01 percent to 0.025 percent of an average ransom payment, an individual Somali pirate could still earn on average the equivalent of two to three years' worth of salary for an armed guard at a humanitarian agency.[69]

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[67] U.N.O.D.C., 'The globalisation of crime: a transnational organised crime threat assessment' (2010), p. 199.

[68] Stuart Yikona et al., *Pirate trails* […], p. 49.

[69] Yikona et al., *Pirate trails [...]*, p. 45; U.N.O.D.C., 'The globalisation of crime […]', p. 199.

Fig. 5.7
Dispersion of ransom payments
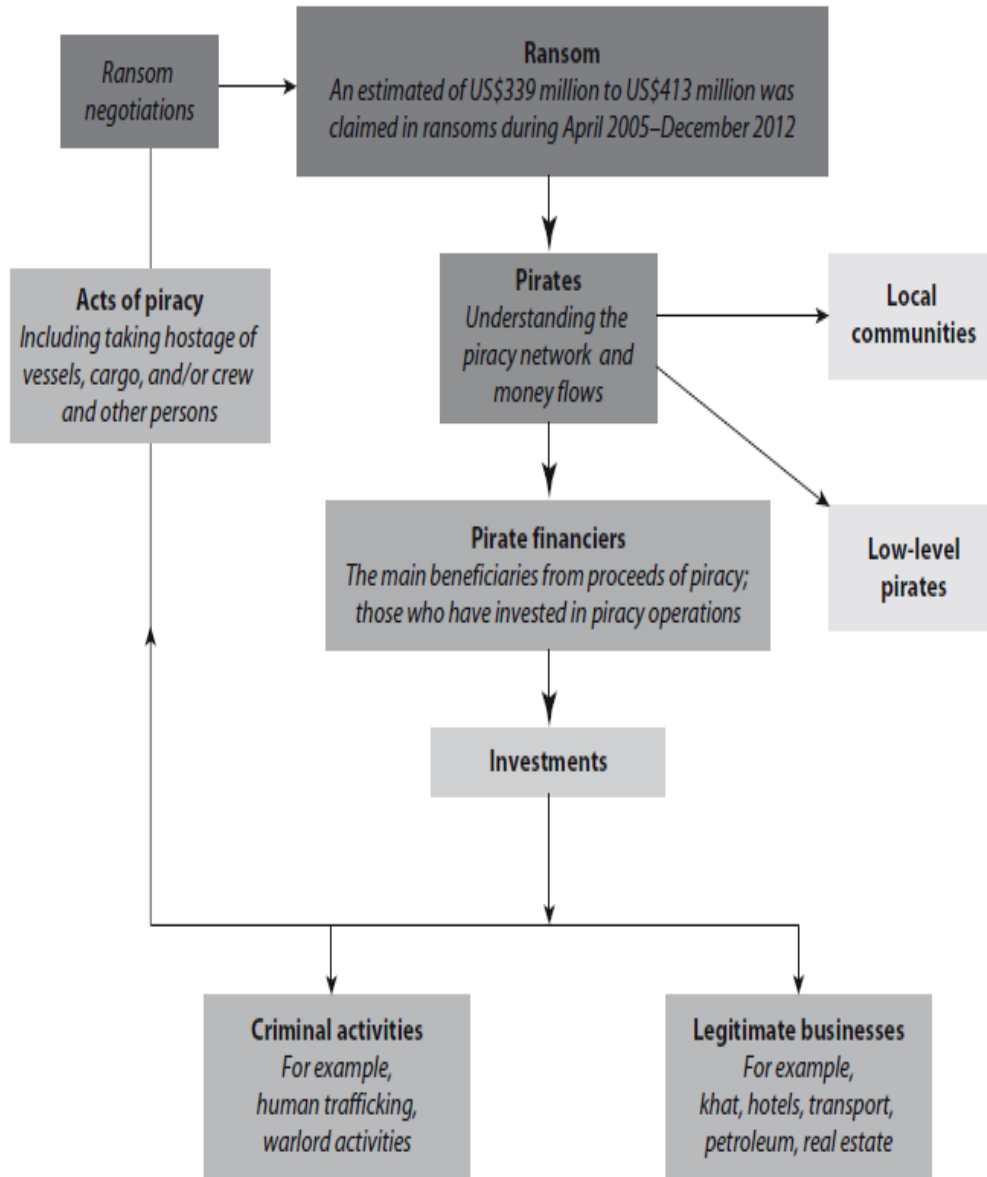
Source: Stuart Yikona, Clement Gorrissen, George Kisaka, Kevin Stephenson, David Lamair & Francisca Fernando, *Pirate trails: tracking the illicit financial flows from pirate activities off the Horn of Africa* (Washington D.C., 2013), p. 1.

Between 2005 and 2010, the average length of time a hostage was held by Somali pirates increased from 38 days to 152 days.[70] In 2011, this had increased to an average of 177 days.[71] While the potential proceeds from ransom payments were undoubtedly a driver of piratical activity off the Horn of Africa, the expense in detaining and sustaining hostages during protracted ransom negotiations significantly depleted the financial return. This may have been a contributory factor in the decline in attacks by 2013. According to the U.N. Office on Drugs and Crime (U.N.O.D.C.): 'Since investors get paid first, and pirate expenses during negotiation are deducted from their share, some pirates may wind up barely breaking even'.[72]

The ethical dilemma for shipping companies and governments in paying ransoms for the return of hostages was both a divisive and complex issue. While the payment of ransoms to pirates for the return of crew and vessel undoubtedly encouraged the spread of the activity, non-payment directly endangered the lives of seafarers.[73] The United States government, for example, had long adopted a policy of the non-payment of ransoms. Thomas Kelly of the Bureau of Political-Military Affairs commented in relation to Somali piracy in 2012: 'While some may consider ransoms a cost of doing business, every ransom paid further institutionalises the practice of hostage-taking for profit and promotes its expansion as a criminal enterprise'. [74] While most international governments subscribed to this theory of non-payment, several European nations such as France, Spain and Switzerland reportedly paid a combined US$81.5 million in ransom payments to Al-Qaeda and affiliate organisations for the release of hostages between 2008 and 2014.[75]

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[70] U.N.O.D.C., 'Transnational organised crime in eastern Africa […]', p. 36.
[71] Average extrapolated from: Anna Bowden and Shikha Basnet, 'The economic cost of Somali piracy 2011' in *One Earth Future Foundation Working Paper* (2012), p. 11.
[72] U.N.O.D.C., 'Transnational organised crime in eastern Africa […]', p. 36.
[73] For example, Somali pirates executed a Syrian hostage and wounded another crewmember of the M.V. *Orna* in September 2012 in protest over a delayed ransom payment (See: *New York Daily News*, 01 Sept. 2012; *The National*, 02 Sept. 2012).
[74] 'Remarks by Thomas Kelly, principal deputy assistant secretary, Bureau of Political-Military Affairs at combating piracy week, London, United Kingdom', 25 Oct. 2012 (http://www.state.gov/t/pm/rls/rm/199929.htm) (09 Oct. 2014).
[75] *New York Times*, 29 July 2014.

In the case of pirate hijackings off the Somali coast, it was shipping companies; chiefly via a third party and not national governments that normally paid a ransom for the safe return of a crew, vessel and cargo as the preferred method of settlement. The I.M.B., for example, claimed paying ransoms to pirates promoted the humane treatment of hostages, limited the risk of environmental disasters and was a cost-effective and proven tool for conflict resolution.[76] Contentious issues like ransom payments highlighted how Somali piracy had evolved into a regional phenomenon with global ramifications that required a global response. Moreover, the payment of a ransom, for example, could be avoided by addressing and countering the threat before a vessel was boarded.

Humanitarian initiatives

The foremost victims of piracy were the crewmembers that endured armed attacks and in some case prolonged periods of captivity under highly stressful conditions as ransom negotiations were taking place. As fig. 5.8 illustrates, 3,452 seafarers were held hostage by Somali pirates between 2008 and 2013 with others enduring various degrees of violence. The duration of captivity during ransom negotiations fluctuated from several weeks to three years, with an average detainment of eleven months in 2011.[77] The twenty-two crewmembers of the M.V. *Iceberg I*, for example, were released in December 2012 after more than 1,000 days in captivity. Crewmembers held hostage ashore without a ship-owner or insurance company actively negotiating their release were designated 'high-risk hostages'.[78] The hijacking of the M.V. *Albedo* by Somali pirates in November 2010, illustrated a high-risk scenario. Following the hijacking, one crewmember was shot and killed and the remaining crew were eventually transferred ashore. The crewmembers had been held hostage for 1,131 days as of 31 December 2013 and were reportedly subjected to 'inhumane treatment in both psychological and physical forms'.[79]

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[76] Charles Marts, 'Piracy ransoms: conflicting perspectives' in *One Earth Future Foundation Working Paper* (Aug. 2010), p. 7.
[77] See: Kaija Hurlburt & D. Conor Seyle, 'The human cost of maritime piracy 2012' in *Oceans Beyond Piracy: One Earth Future Foundation Working Paper* (2013), p. 4.
[78] Hurlburt, (et al.), 'The human cost of maritime piracy 2012', p. 5.
[79] Vestergaard Madsen, (et al.), 'The state of maritime piracy 2013', p. 41.

Aside from the obvious trauma of long-term confinement there was, mostly after 2011, evidence of abuse of captured seafarers tantamount to torture. According to the former operational commander of EUNAVFOR, Major General Buster Howes, there were 'regular manifestations of systematic torture' inflicted on hostages by Somali pirates.[80] Indeed, a surviving crewmember of the *Iceberg I* recounted that 'they [Somali pirates] would tie our legs and turn us upside down […] they hit us with wooden planks and long wires and they never let us sleep at night […] they hurt us a lot'.[81] To support seafarers and their dependents with the humanitarian aspects of trauma caused by a pirate attack or hostage-taking, a pan-industry Maritime Piracy Humanitarian Response Programme was launched in 2011.[82]

The programme was created by an alliance of ship-owners, unions, managers, operating agents, insurers and welfare associations that offered humanitarian assistance, including psychological and financial support, to seafarers and their families following a piracy incident. Key initiatives launched by the programme included the establishment of a 'piracy helpline', a professional aftercare network and 'good practice' guides for management of victims from pre-deployment, during the crisis and post release/post incident.[83] The programme also established a fund in collaboration with supporters in the insurance and maritime industry to provide financial assistance to victims of piracy in relation to medical care, post-incident counselling and travel costs.[84]

In March 2011, a similar campaign was launched to pressure international governments to address maritime piracy more proactively. The 'Save Our Seafarers' campaign aimed to eradicate maritime piracy by (i) working with industry to ensure the maintenance of naval forces involved in counter-piracy activity; (ii) ensuring pirates faced trial, sentencing and punishment; (iii) endorsing the U.N. principle of financing, building and

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[80] *The Telegraph*, 10 Apr. 2011.
[81] *The National*, 24 Dec. 2012.
[82] Maritime Piracy Humanitarian Response Programme (M.P.H.R.P.), 'Annual report: financial year 2012-2013' (Apr. 2012 – Mar. 2013), p. 1, available at (http://www.mphrp.org/publications/ MPHRPAnnual%20Report% 202012-13.pdf) (10 Dec. 2014).
[83] M.P.H.R.P., 'Outcomes of the programme' (http://www.mphrp.org/about_us/) (10 Dec. 2014).
[84] M.P.H.R.P., 'Maritime piracy humanitarian response fund' (http://www.mphrp.org/mphrf/) (10 Dec. 2014).

operating courts and jails in the cooperating autonomous regions of Somalia and neighbouring states; (iv) seeking a sustainable political solution; and (v) supporting the introduction of a criminal information database. [85] The very existence of such programmes reflected the unprecedented volume of hostages and the need for subsequent psychological and financial support on a large scale. Moreover, they reflected a lack of provision and oversight for such incidents in the 2006 Maritime Labour Convention. These humanitarian missions also reflected the global reach of Somali-based piracy and an evolution in counter-piracy initiatives.

Fig. 5.8
Types of violence perpetrated against seafarers: Somalia v. rest of the world 2008-13 (inclusive)

Type of violence	Somalia/Horn of Africa	Rest of the World	TOTAL
Hostage	3,452	1,352	**4,804**
Injured	29	200	**229**
Kidnap/ ransom	13	140	**153**
Killed	26	18	**44**
Missing (presumed dead)	15	15	**30**
Threatened	0	91	**91**

Source: I.C.C. I.M.B. *Piracy report 2008 – 2013*, pp 11-14.

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[85] Saver Our Seafarers, 'Our aim and objectives' (http://www.saveourseafarers.com/our-campaign.html) (10 Dec. 2014).

Private Maritime Security Companies & Privately Contracted Armed Security Personnel

P.M.S.C.s played an important role in reducing the number of successful Somali piracy attacks by 2013. The deployment of multinational naval counter-piracy patrols in 2008 had the latent effect of displacing attacks from the relatively narrow shipping lanes of the Gulf of Aden farther into the western Indian Ocean. Somali pirates adapted and evolved their modus operandi by employing mother ships to exploit this vast sea-space and sustain P.A.G.s hundreds of miles from the shore. To mitigate this threat, shipping companies began to rely increasingly on the services of P.M.S.C.s in areas outside the remit of coalition naval forces. The growth of P.M.S.C.s was also influenced by increased insurance premiums for transit through the High Risk Area (H.R.A.) alongside a reticence to arm seafarers.[86]

According to a report in the *Wall Street Journal* in 2010, insurance premium reductions of up to 50 percent were offered to shipping companies employing armed security on vessels transiting through the Gulf of Aden.[87] Indeed, the employment of P.C.A.S.P. increased dramatically between 2008 and 2013. 'EoS Risk Management', a London based P.M.S.C., described how deployment on-board vessels transiting the H.R.A. had 'tripled' in 2009 alone.[88] By 2011, it was estimated that between 25 and 50 percent of all ships transiting the H.R.A. employed P.C.A.S.P.[89] This figure increased to an estimated 38-60 percent of all vessels by the end of 2012 or approximately 33,306 ships.[90]

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[86] In 2005, the International Bargaining Forum (I.B.F.) in conjunction with the International Transport Workers Federations (I.T.F.) designated an area up to 12nm from the north coast of Somalia as a 'warlike operations area'. In 2008, under the 'I.B.F. / H.R.A. agreement' this was extended to 400nm from the east coast encompassing all Somali territorial water in the Gulf of Aden. By 2011, the H.R.A. encompassed the coastline at the border of Djibouti and Somalia to Mayyun Island in the Bab El Mandeb Straits and Rhiy di-Irisal on Suqutra Island to the coastline at the border between Yemen and Oman, together with a 400 nm zone off the eastern coast of Somalia; See: 'I.T.F. list of warlike and high risk designations with main applicable benefits' 01 Apr. 2012 (I.T.F., Circ.068/S17/D20/SS7/Anx. 2); 'Revision of the IBF High Risk Area in the Gulf of Aden and Indian Ocean', 25 Mar. 2011 (http://www.ukpandi.com/fileadmin/uploads/uk-pi/Documents/Industry_organisations/Revision%20of%20IBF%20High%20Risk%20Area%20250311.pdf) (05 Nov. 2014).
[87] *Wall Street Journal*, 06 Jan. 2010.
[88] *The Economist*, 20 Aug. 2009.
[89] Bowden & Basnet, 'The economic cost of Somali piracy 2011', p. 17.
[90] Bellish, 'The economic cost of Somali piracy 2012', p. 19.

On 9 November 2010, an 'International code of conduct for private security service providers (I.C.O.C.)' was created as a follow up to the 2008 'Montreux document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict'. The I.C.O.C. was a Swiss government-led multi-stakeholder initiative designed, in the first instance, to clarify international standards for the regulation of Private Security Companies; secondly, to establish rules of engagement consistent with international law and human rights principles; and, lastly, to establish specific principles for compliance, accreditation, weapons handling, vetting of contractors and overall accountability.[91]

The I.C.O.C. was signed by 58 private security companies from fifteen countries at the inaugural signing in Geneva in November 2010. By 1 September 2013, this had risen to 708 signatory companies from over seventy countries. Approximately 400 of these companies either specialised exclusively in counter-piracy and maritime security services or at the very least offered maritime security services.[92] This illustrated a direct link between the escalation of piracy off the northeast coast of Africa and the proliferation of P.M.S.C.s., but more importantly, the increased demand for armed escort services. Such demand was unsurprising, perhaps, given that, as of 31 December 2013, no vessel that employed P.C.A.S.P. had been successfully hijacked by Somali pirates.[93] Aside from the obvious deterrent factor, P.M.S.C.s also represented a force multiplier and unburdened to some extent the already overextended counter-piracy naval assets in the region.

Challenges

While the advantages for contracting P.M.S.C.s while transiting the H.R.A. were obvious, there were related difficulties concerning legality, accountability, rules of

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[91] International Code of Conduct for Private Security Service Providers (I.C.O.C.), 'About I.C.O.C.' (http://www.icoc-psp.org/About_ICoC.html) (03 Nov. 2014).
[92] See: 'The International Code of Conduct for Private Security Service Providers signatory companies: complete list as of 1 September 2013 - version with company details', 01 Sept. 2013, available at I.C.O.C., Signatory companies (http://www.icoc-psp.org/uploads/Signatory_Companies_-_September_2013_-_Composite_List-1.pdf) (04 Nov. 2014).
[93] See for example: U.K. Dept. of Transport, 'Interim guidance to U.K. flagged shipping on the use of armed guards to defend against the threat of piracy in exceptional circumstances' (May 2013), p. 6.

engagement and jurisdiction. These legal matters and attempts to standardise and regulate the industry are examined in more detail later in the chapter. Aside from this legal ambiguity, there was apprehension in certain quarters that the rise of P.M.S.C.s might generate an escalation in violence or simply displace attacks to unprotected vessels. However, in relation to facilitating higher levels of violence, the opposite appeared to hold true. Rather than engaging with P.C.A.S.P., Somali pirates tended to abandon an attack when embarked armed security was identified. The P.A.G. could simply wait for an unescorted and more vulnerable vessel to pass. According to Alex Shapiro, Assistant Secretary of the U.S. Bureau of Political-Military Affairs: 'In most cases, as pirates approach a ship the armed security teams will use flares or loudspeakers to warn the pirates [...] If the pirates keep coming, they will fire warning shots [...] That is usually when the interaction ends'.[94] This was not always the case however. A report in the *New York Times* dated 24 March 2010, for example, detailed an engagement between a P.A.G. and a P.M.S.C. detachment in which a pirate was killed. In relation to this incident, Royal Navy Cmdr. John Harbour commented: 'Normally, the private security firms fire warning shots [in this case] the pirates came for a second time firing their guns, and the security team fired back'.[95]

Fig. 5.9
Total yearly estimated average cost of P.C.A.S.P. and other security provisions for transit through H.R.A. 2010-13

	P.C.A.S.P.	Security equipment	Total
2010	US$849 million	US$578 million	**US$1.4 billion**
2011	US$581 million	US$531 million	**US$1.1 billion**
2012	US$1.37 billion	US$514 million	**US$1.9 billion**
2013	US$821 million	US$273 million	**US$1.0 billion**

Source: Averages extrapolated from: Anna Bowden (ed.), 'The economic cost of maritime piracy' in *One Earth Future Foundation Working Paper* (Dec. 2010), pp 9-10; Anna Bowden and Shikha Basnet, 'The economic cost of Somali piracy 2011' in *One Earth Future Foundation Working Paper* (2012), pp 11-13; Jonathan Bellish, 'The economic cost of Somali piracy 2012' in *One Earth Future Foundation Working Paper* (2013), pp 10-13; Jens Vestergaard Madsen, Conor Seyle, Kellie Brandt, Ben Purser, Heather Randall, Kellie Roy, ' The state of maritime piracy 2013' in *One Earth Future Foundation Report* (2014).

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[94] 'Remarks to the U.S. Chamber of Commerce by Andrew J. Shapiro, Assistant Secretary, Bureau of Political-Military Affairs', 13 Mar. 2012 (http://www.state.gov/t/pm/rls/rm/185697.htm) (05 Nov. 2014).
[95] *New York Times*, 24 Mar. 2010.

In terms of cost, as fig. 5.9 illustrates, significant financial resources were invested in P.C.A.S.P. alongside additional security equipment for transit through the H.R.A. In 2012 alone, shipping companies spent an estimated US$1.37 billion on P.C.A.S.P.[96] This resulted in an average of US$34,000 per transit for a three-guard team and US$46,000 per transit for a four-guard team in 2012.[97] Despite the expense, employing P.M.S.C.s was generally a more cost effective strategy than re-routing around the Cape of Good Hope, absorbing increased insurance premiums or paying a ransom for the return of a hijacked vessel and crew.

There was, however, concern expressed in government circles that some shipping companies were neglecting implementation of B.M.P. while employing P.M.S.C.s. According to B.M.P. guidelines: 'If armed Private Maritime Security Contractors are to be used they must be as an additional layer of protection and not as an alternative to B.M.P.'.[98] The United States, for example, highlighted additional problems with the abstruse international regulatory regime regarding P.M.S.C.s such as the undesirable use of force or a successful attack by pirates against a vessel protected by substandard P.C.A.S.P.[99] The *Enrica Lexie* incident, in which two Indian fishermen were reportedly mistaken for pirates and shot dead by Italian Marines as part of a six man anti-piracy marine detachment, highlighted the related dangers associated with the widespread, unregulated deployment of P.M.S.C.s. The *Enrica Lexie* incident called into question international piracy law, territorial jurisdiction and prompted a diplomatic incident between India and Italy. The legal ramifications of the case are addressed in more detail later in this chapter.

Aside from P.M.S.C.s, which were essentially exploiting the disorder at sea for profit, private military and security companies were also active ashore in Somalia. A U.N.

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[96] Bellish, 'The economic cost of Somali piracy 2012', p. 20.
[97] Ibid.
[98] U.K. Maritime Trade Operations (U.K.M.T.O.), *Best Management Practices for protection against Somalia based piracy: suggested planning and operational practices for ship operators and masters of ships transiting the High Risk Area* (Edinburgh, 2011), p. 40 [henceforth cited as 'B.M.P. IV […]'].
[99] U.S. Government, 'United States counter piracy and maritime security action plan', June 2014, p. 2, available at (http://www.whitehouse.gov/sites/default/files/docs/united_states_counter_piracy_and_ maritime_security_action_plan_2014.pdf) (27 Nov. 2014).

report from 2013 detailed how foreign contractors, such as the London based 'Saracen Security', were providing military training and equipment to the Puntland Maritime Police Force in violation of the Security Council arms embargo and therefore represented a threat to stability in Somalia.[100] Moreover, the report identified that without appropriate regulation and oversight, entities such as the Puntland Maritime Police Force had been utilised, for example, for internal political activity outside the remit of anti-piracy operations.[101] Despite the challenges and impediments discussed here, in terms of reducing the number of successful hijackings and attacks off the coast of Somalia, P.M.S.C.s were, in conjunction with the various other counter-piracy initiatives, a key contributory factor.

Legal issues

Clarifying the rules of engagement for counter-piracy operations off the coast of Somalia and legislating for the deployment and operation of P.M.S.C.s, presented an exceptional and challenging set of problems for lawmakers. Somalia's unique position as a failed state void of any indigenous maritime security capability or enforcement capacity challenged traditional maritime legal norms. The U.N. and the I.M.O. alongside other international organisations such as INTERPOL attempted to address the legal strictures for counteracting Somali piracy and actively encouraged and supported regional states such as Kenya and the Seychelles in enhancing regional judicial capacity to assist in the prosecution and detention of suspects. Unilaterally, several international and regional states also initiated domestic counter-piracy reform, particularly in relation to legislating for the crime of piracy to enable more effective prosecution, sentencing and imprisonment.

While the limitations of the U.N. Convention on the Law of the Sea (UNCLOS) as a counter-piracy mechanism have been addressed in chapter II, Professor Robert Beckman argued that international law was not the problem. He suggested instead that 'states did

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[100] U.N. General Assembly, 'Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination', 01 July 2013 (U.N., D.H.L., A/HRC/24/45/Add.2, pp 2-10).
[101] Ibid. p. 10.

not have the political will to exercise the rights they had or fulfil their obligations [...] the law just provided the framework, what you need then is the political will to enforce that'.[102] Regional and international states appeared reluctant to prosecute piracy suspects under alternative legislation such as the convention for the Suppression of Unlawful Acts against the Safety Maritime Navigation (SUA) (1988) or the convention for the Suppression of Unlawful Seizure of Aircraft (1971). These conventions were considered counter-terrorism legislation and therefore seemingly did not satisfy the 'private gain' condition for piracy under UNCLOS. However, according to Beckman, 'every attack by Somali pirates is also an offence under SUA and an offence under the hostage taking convention […] if you hijack a ship you are an international criminal […] if you enter anyone's territory they must arrest you and they must either prosecute you or extradite you, the obligation is clear'.[103] Unlike UNCLOS, which outlined that every state *may* detain and arrest pirates and decide upon penalties to be imposed, the SUA convention obliged signatories to, regardless of whether or not the act was committed in its territory, either to prosecute offenders or to extradite them to another state with jurisdiction without exception.[104]

Evolution of U.N. Security Council Resolutions

The ambiguity surrounding the 'high seas' stipulation for piracy under UNCLOS and the rules of engagement for counter-piracy operations off the coast of Somalia was addressed by U.N. Security Council Resolution 1816 in 2008. It authorised for the first time, all states in accordance with international law and the T.F.G. of Somalia, to secure the territorial and international waters off the coast of Somalia for the safe conduct of shipping and navigation. [105] Significantly, Resolution 1816 stipulated that states cooperating with the T.F.G. of Somalia could enter Somali territorial waters and use all necessary means to repress acts of piracy and armed robbery at sea in a manner

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[102] Interview with Professor Robert C. Beckman, Director - Centre for International Law and Associate Professor - National University of Singapore - Faculty of Law at the Parkroyal Hotel, Kitchener Road Singapore (24 Mar. 2014).
[103] Interview with Prof. Robert C. Beckman.
[104] See: 'Convention for the Suppression of Unlawful Acts against the safety of navigation', 1988 (U.N., Treaty Series, mdclxxviii, no. 29004, pp 226-30); 'U.N. Convention on the Law of the Sea', 1982 (U.N., Treaty Series, mdcccxxxiii, no. 31363, p. 63) (henceforth cited as: 'UNCLOS, 1982, p. [ ]').
[105] U.N. Security Council 'Resolution 1816', 02 June 2008 (U.N., D.H.L., S/RES/1816/2008, p. 2).

consistent with such action permitted on the high seas with respect to piracy under relevant international law.[106] This essentially meant that piracy under UNCLOS, i.e. 'an act committed outside the jurisdiction of any state', was now applicable to the territorial sea of Somalia. Indeed, the U.N. Security Council produced over twenty resolutions that directly and indirectly addressed Somali piracy between 2005 and 2013. This was a clear indication of how the issue had evolved into a global, strategic concern. It is important to note that the U.N. Resolution 1816 did not create new legal paradigms for suppressing piracy. Instead, it simply extended the high-seas piracy provision in UNCLOS to include the territorial waters of Somalia with the consent of the T.F.G.

By December 2008, this had evolved to include land-based counter-piracy operations with an emphasis on investigation and prosecution through U.N. Security Council Resolution 1851. This authorised states and regional organisations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia for which 'advance notification' had been provided by the T.F.G. to the Secretary-General to 'undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea'.[107] By 2013, the U.N. Security Council had evolved its counter-piracy mandate into a more holistic strategy that included calls for the accreditation and standardisation of P.M.S.C.s, judicial capacity building, combating illicit international financial flows and enhancing domestic piracy legislation.[108]

Indeed, the U.N. highlighted how disharmony between domestic piracy legislation and international conventions had hampered more robust international counter-piracy efforts, often resulting in the premature release of suspects despite strong evidence of guilt.[109] U.N. Resolution 2025 (2013) reiterated how international conventions like UNCLOS and the SUA Convention obliged parties to 'create criminal offences, establish

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[106] U.N., S/RES/1816/2008, p. 3.
[107] U.N. Security Council 'Resolution 1851', 16 Dec. 2008 (U.N., D.H.L., S/RES/1851/2008, p. 3).
[108] See: U.N. Security Council, 'Resolution 2025', 18 Nov. 2013 (U.N., D.H.L., S/RES/2025/2013); 'Report of the Secretary-General on the situation with respect to piracy and armed robbery at sea off the coast of Somalia', 17 Oct. 2013 (U.N., D.H.L., S/2013/623).
[109] U.N., S/RES/2025/2013, p. 3.

jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation'.[110] However, it is also likely that, as previously highlighted, there was a dearth of political resolve to extradite Somali pirates for prosecution given the logistical, legal and financial corollaries of such action.

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[110] U.N., S/RES/2025/2013, pp 3-4.

Fig. 5.10

United Nations Security Council Resolutions concerning piracy in Somalia 2006-13

U.N.S.C.	Date	Principal measure
Resolution 1676	10 May 2006	Expressed concern over increase in incidents of piracy
Resolution 1772	20 Aug. 2007	Noted the joint communiqué of the I.M.O. & W.F.P. of 10 July 2007
Resolution 1801	20 Feb. 2008	Stressed concern over upsurge following Secretary-General's report
Resolution 1816	02 June 2008	Authorised naval forces to enter Somali territorial waters
Resolution 1838	07 Oct. 2008	Called upon states to deploy military assets to combat piracy
Resolution 1844	20 Nov. 2008	Noted role of piracy in financing embargo violations
Resolution 1846	02 Dec. 2008	Called on states to implement obligations under SUA Convention
Resolution 1851	16 Dec. 2008	Authorised land-based counter-piracy operations in Somalia
Resolution 1872	26 May 2009	Requested international adherence to Djibouti Agreement
Resolution 1897	30 Nov. 2009	Urged states to facilitate investigation & prosecution
Resolution 1910	28 Jan. 2010	Renewed AMISOM mandate
Resolution 1918	27 Apr. 2010	Called on states to prosecute and imprison pirates
Resolution 1950	23 Nov. 2010	Investigate international networks financing and facilitating piracy
Resolution 1976	11 Apr. 2011	Called for extraterritorial specialised anti-piracy court
Resolution 2015	24 Oct. 2011	Called for construction of prisons to hold pirates
Resolution 2020	22 Nov. 2011	Expressed concern over low number of prosecutions for piracy
Resolution 2036	22 Feb. 2012	Called for comprehensive counter-piracy strategy
Resolution 2067	18 Sept. 2012	Consolidate security in areas secured by AMISOM and S.N.S.F.
Resolution 2077	21 Nov. 2012	Strengthening of Somali maritime capacity
Resolution 2125	18 Nov. 2013	Standardisation of certification for P.M.S.C.s

Source: U.N.S.C., Resolution 1676 (2006); 1772 (2007); 1801 (2008); 1816 (2008); 1838 (2008); 1844 (2008); 1846 (2008); 1851 (2008); 1872 (2009); 1897 (2009); 1910 (2010); 1918 (2010); 1950 (2010); 1976 (2011); 2015 (2011); 2020 (2011); 2036 (2012); 2067 (2012); 2077 (2012); 2125 (2013).

United Nations Office on Drugs and Crime: Counter-Piracy Programme

Aside from an abundance of counter-piracy resolutions and recommendations, the U.N.O.D.C. initiated its own Counter-Piracy Programme in 2009, which was fundamental in the establishment of a regional 'piracy prosecution model'. This model facilitated the transfer of suspected pirates apprehended by international naval assets to regional states such as Kenya, Mauritius and the Seychelles for prosecution and imprisonment. This was complemented by a U.N.O.D.C. 'piracy prisoner transfer programme' that facilitated the transfer of convicted pirates to serve their sentence in prisons in greater Somalia to enhance prospects for rehabilitation and reintegration. For the programme to be effective, regional states and entities had to create domestic legislation consistent with the fundamental tenets of criminal law and existing international practice with the assistance of the Counter-Piracy Programme. In this regard, both Somaliland and Puntland passed several laws in 2012 that facilitated the transfer of prisoners convicted of piracy (see fig. 5.11).

In Kenya, for example, by January 2013 there were 64 piracy suspects remanded, 74 convicted, 17 acquitted and 10 repatriated to Somalia.[111] Similarly, in the Seychelles there were 21 piracy suspects remanded, 102 convicted and 34 transferred back to Somalia to complete their sentences.[112] The Counter-Piracy Programme also provided training for regional prosecutors, learning exchanges for regional judges, criminal analyst training for intelligence officers, witness protection facilities, courtroom refurbishment alongside handover guidance for international navies on how to present piracy cases for prosecution in regional courts.[113] By the close of 2013, the 'piracy prisoner transfer programme' had implemented infrastructural updates and vocational training programmes in three Somali prisons: Hargeysa Central, Mandhera and Bosasso alongside the construction of sixty-bed prison block in Seychelles. U.N.O.D.C.

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[111] U.N.O.D.C., 'In-depth evaluation of the Counter Piracy Programme: combating maritime piracy in the Horn of Africa and the Indian Ocean - increasing regional capacities to deter, detain and prosecute pirates' (New York, 2013), p. vi.
[112] U.N.O.D.C., 'In-depth evaluation of the Counter Piracy Programme […]', p. vi.
[113] Ibid. pp vii-ix.

complemented these efforts with the publication of model laws in mutual assistance in criminal matters, witness protection, money laundering and the financing of terrorism.[114]

Fig. 5.11

Counter-piracy and prisoner extradition legislation passed by Somaliland & Puntland, 2012

Somaliland	Puntland
1. The Law for Combating Piracy Law (or the Piracy Law) - Law No. 52 (2012)	1. Puntland Piracy Law – No. 18 (19 Nov. 2012)
2. Somaliland Transfer of Prisoners Law - Law No. 53 (2012)	2. Law on Transfer of Convicted Prisoners of the State of Puntland (15 Nov. 2012)
	3. Amendment of Law on Transfer of Convicted Prisoners of the State of Puntland (17 Nov. 2012)
	4. Puntland Prison Law (20 Sept. 2012)

Source: U.N.O.D.C., 'Piracy prisoner transfer programme', available at (http://www.unodc.org/unodc/en/piracy/piracy-prisoner-transfer-programme.html) (30 Jan. 2015).

International Maritime Organization

The I.M.O. council elected 'piracy: orchestrating the response' as the theme for the thirty-fourth World Maritime Day in December 2011. Former I.M.O. Secretary General Efthimios E. Mitropoulos outlined several key priorities for the long-term suppression of piracy off the coast of Somalia including the capture, prosecution and punishment of those involved in piracy, the tracing of ransom money and the confiscation of proceeds of crime derived from hijacked ships.[115] Aside from disseminating legal guidance to ship owners and operators,[116] the I.M.O. was instrumental in the convening of the Djibouti meeting and subsequent 'Code of conduct' in 2009. A fundamental aim of the

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[114] UNCTAD, 'Maritime piracy - part II: an overview of the international legal framework and of multilateral cooperation to combat piracy' in *Studies in Transport Law and Policy*, no. 2 (2014), p. 34.
[115] Efthimios E. Mitropoulos, 'A message from the Secretary-General of the International Maritime Organisation, World Maritime Day 2011', 30 Aug. 2011, available at (http://www.imo.org/About/Events/WorldMaritimeDay/2011/Pages/default.aspx) (25 Jan. 2014).
[116] See for example: I.M.O. 'Circular letter no. 3180 concerning information and guidance on elements of international law relating to piracy', 17 May 2011, available at (http://www.un.org/depts/los/piracy/circular_letter_3180.pdf) (20 Dec. 2014).

meeting was to strengthen the judicial capacity of participant states, article 4 (a) of the 'Code of conduct', for example, obliged participants to cooperate in 'arresting, investigating, and prosecuting persons who have committed piracy or are reasonably suspected of committing piracy'.[117] The code also obliged signatories to review national legislation towards ensuring that domestic law criminalised piracy and armed robbery against ships, and that adequate guidelines were in place for the exercise of jurisdiction, conduct of investigations, and prosecutions of alleged offenders.[118]

In furtherance of these goals, I.M.O. Resolution A.1025 outlined the code of practice for the investigation of crimes of piracy and armed robbery against ships. The resolution highlighted the importance of actionable domestic legislation and outlined how inefficient legislative frameworks and investigative guidelines hampered conviction rates. In terms of investigating acts of piracy and armed robbery at sea, the code highlighted four key areas: training of investigators, investigative strategy, dealing with an initial report and proportional subsequent investigation.[119] Correct investigation of maritime piracy was accomplished by establishing and recording all relevant facts, recording individual witness accounts, detailed forensic examination of scenes, searching intelligence databases and distribution of intelligence to appropriate agencies.[120]

In addition, the I.M.O. attempted to strengthen Somali judicial capability by collating a list of Somali laws relevant to maritime law enforcement within the different Somali entities including Puntland and Somaliland in March 2013. In terms of strengthening industry counter-piracy defensive measures, the I.M.O. published guidance on the implementation of B.M.P. through Resolution 324 in May 2011 alongside a comprehensive counter-piracy Resolution A.1044 in December that year. The I.M.O.'s Global Integrated Shipping Information System also helped circulate important

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[117] 'Code of conduct concerning the repression of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden', 29 Jan. 2009 (I.M.O., Council/102/14/Anx., p. 9).
[118] I.M.O., Council/102/14/Anx., p. 14.
[119] 'Code of practice for the investigation of crimes of piracy and armed robbery against ships', 19 Jan. 2010 (I.M.O., A/RES/1025/26/2010, pp 5-11).
[120] I.M.O., A/RES/1025/26/2010, pp 8-11.

legislation and guidance to ship owners, operators and members of the public on local regulations, the Safety Of Life At Sea (SOLAS) convention, I.S.P.S. code, the International maritime dangerous goods code and surveys and certification.[121]

Legislating for Private Maritime Security Companies

The escalation in the deployment of P.C.A.S.P. following the upsurge in piracy off the coast of Somalia around 2008 resulted in an urgent need to regulate and standardise the industry. Key issues included certification to agreed international standards, rules of engagement for the use of force and the movement and use of firearms transiting the territorial waters of a sovereign state. The lack of an accepted international legal standard for the deployment of P.M.S.C. under UNCLOS meant that the domestic law of the flag state governed their use. This adhered to article 94 of UNCLOS, which outlined that every state must 'assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship'.[122] This meant that there were several different international legal frameworks governing the use of P.M.S.C. on board vessels.

The I.C.O.C., as previously discussed, was a follow up to the 2008 'Montreux document', and represented the first multi-stakeholder led attempt to standardise the private security industry through the creation of an independent oversight mechanism alongside certification, auditing, monitoring and reporting.[123] However, it was not until May 2012 that the I.M.O., in conjunction with the C.G.P.C.S. adopted four sets of interim 'soft law' guidelines on the use of P.C.A.S.P on board ships in the High Risk Area. These quasi-legal guidelines were directed at, in the first instance, ship-owners, ship-operators and shipmasters followed by P.M.S.C.s and their personnel and finally port, coastal and flag states. Together the documents outlined detailed requirements and guidance on the regulations and minimum standards for the selection, deployment and disembarkation of P.C.A.S.P. For example, MSC.1/Circ.1443 for ship-owners, ship-

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[121] I.M.O., Global Integrated Shipping Information System (G.I.S.I.S.) available at (https://gisis.imo.org) (03 Feb. 2015).
[122] 'UNCLOS', 1982, p. 58.
[123] I.C.O.C., 'About I.C.O.C.' (http://www.icoc-psp.org/About_ICoC.html) (03 Feb. 2015).

operators and shipmasters, outlined P.M.S.C. selection criteria and risk assessment, service provision considerations alongside rules for the use of force and management of firearms and ammunition from embarkation to disembarkation. [124] Similarly, MSC.1/Circ.1443 provided interim guidelines for P.M.S.C.s providing P.C.A.S.P. that included standards for professional certification, applicable laws of flag, port and coastal states with respect to the transport, carriage, storage and use of firearms, operational competence alongside legal documentation requirements, selection, vetting and rules for the use of force.[125]

These guidelines provided the foundation for the development of the International Organization for Standardization/ Publicly Available Specification (I.S.O/P.A.S.) 28007 on guidelines for P.M.S.C.s providing P.C.A.S.P. on board ships, published in December 2012. The guidelines published under I.S.O/P.A.S. 28007 differentiated from the 2010 I.C.O.C. as it specifically addressed maritime private security regulation as opposed to land-based private security. Indeed, it was the only published international standard regulating for the deployment of armed guards on ships. Moreover, I.S.O/P.A.S. 28007 was drafted at the request of the I.M.O. and endorsed by various international governments and law enforcement agencies such as INTERPOL, the European Commission and the C.G.P.C.S. Key components of the specification included security management systems for pre-transit planning and training, legal and regulatory requirements including rules for the use of force, incident investigation and crime scene management alongside performance evaluation including internal audits and monitoring. [126] According to Giles Noakes, BIMCO's Chief Maritime Security Officer: 'There are other standards being claimed as being suitable recognition of competence [e.g. I.C.O.C.] but in the view of BIMCO, these very much lack the depth

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[124] 'Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the high risk area', 25 May 2012 (I.M.O., M.S.C.1, Circ.1405/Rev.2, pp 2-8).

[125] 'Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the high risk area', 25 May 2012 (I.M.O., M.S.C.1, Circ.1443, pp 4-10).

[126] International Organisation for Standardisation (I.S.O.), Publicly Available Specification (P.A.S.) 28007, 'Ships and marine technology - guidelines for Private Maritime Security Companies (P.M.S.C.) providing Privately Contracted Armed Security Personnel (P.C.A.S.P.) on board ships (and pro forma contract)', (15 Dec. 2012), pp 3-23.

of detail and relevance that a certified I.S.O/P.A.S. 28007 P.M.S.C. will provide to members'.[127] This view was endorsed by I.M.O. Secretary–General Koji Sekimizu, who stated that the regulation would be 'particularly useful to flag states and [would] in turn help ship owners who urgently need practical as well as legally acceptable solutions'.[128]

Other organisations and individuals also contributed to regulatory discourse on the deployment of P.C.A.S.P on board ships. In 2013, following almost two years of consultation with marine industry stakeholders, an international model set of maritime Rules for the Use of Force (R.U.F.) were published. The '100 Series Rules' were drafted to compliment existing legislation including the SOLAS Convention, I.S.O/P.A.S. 28007, I.M.O. Maritime Safety Committee outputs and applicable national and international law.[129] The R.U.F. did not bind flag states to their use, but instead provided a template for optional incorporation into domestic regulation. According to the lead author David Hammond: 'This objective international legal test is deemed to be of a higher legal standard than that of subjective national legislative provisions for self-defence'.[130] In addition, the U.N. Interregional Crime and Justice Research Institute, developed a soft law instrument including guidelines and standards regarding the use of P.C.A.S.P. on-board merchant vessels aimed at private sector companies and international governments in 2013.

Despite a lack of a universally accepted legal foundation for the deployment of private maritime security personnel, by the end of 2013 substantial efforts had been made to regulate the private maritime security industry. According to the Chief Executive of the Nautical Institute, Philip Wake: 'they are much better organised now […] there is a

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[127] Giles Noakes, 'ISO PAS 28007 moves on' in *BIMCO Bulletin*, cviii, no. 4 (2013), p. 44.
[128] Koji Sekimizu, 'Address of the Secretary-General at the opening of the ninety-first session of the Maritime Safety Committee', 26 Nov. 2012, available at (http://www.imo.org/MediaCentre/Secretary General/Secretary-GeneralsSpeechesToMeetings/Pages/msc-91-opening.aspx) (03 Feb. 2015).
[129] The 100 Series Rules: an international model set of maritime Rules for the Use of Force (RUF)', 03 May 2013, p. 2, available at (https://100seriesrules.com/uploads/20130503-100_Series_Rules_for_the_ Use_of_Force.pdf) (08 July 2015).
[130] 'The 100 Series Rules for the Use of Force in maritime piracy situations wins new support', 17 June 2013, available at 9 Bedford Row, Resources (http://www.9bedfordrow.co.uk/87/records/58/100%20 Series%20Rules.pdf) (08 July 2015).

proper industry association helping to regulate it and proper contracts have been put in place […] proper assessment and scrutiny of employees is largely in place […]'.[131]

Enrica Lexie case

The case of the M.V. *Enrica Lexie* highlighted a 'grey area' in terms of maritime jurisdiction and the legal rights applicable in zones under UNCLOS, chiefly in relation to armed security detachments on board commercial vessels. As previously highlighted, the incident involved the shooting dead of two Indian fishermen by two Italian marines as part of a six-man Vessel Protection Detachment (V.P.D.) on board the Italian flagged *Enrica Lexie*. V.P.D.s consisted of small teams of naval or military personnel placed on board commercial vessels in an almost identical role to P.C.A.S.P., but with formal government authorisation. This had traditionally been the preferred method of close-protection by the shipping industry. Nautilus International, for example, stated in a 2011 U.K. Foreign Affairs Committee report for parliament that V.P.D.s 'would ensure there are no concerns regarding training and authority and we believe this would be cost-effective and provide direct protection to merchant vessels'.[132]

The case of the *Enrica Lexie* highlighted several legal difficulties surrounding the deployment of armed guards on commercial vessels, illustrated by the various arguments made by the defence council for the Italian marines and the Indian prosecutorial staff. Legal representatives for the Italian marines argued that the incident occurred within international waters as per article 97 of UNCLOS; i.e. outside the 12 nm territorial limit of Indian sovereign waters and therefore the flag state (i.e. Italy) had sole jurisdiction to try the offence. [133] Whereas Indian prosecutors argued under the provisions of the SUA Convention and the 'Territorial waters, continental shelf, Exclusive Economic Zone and other maritime zones act' (1976), that India had criminal

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[131] Interview with Philip Wake, Chief Executive, Nautical Institute at the Nautical Institute headquarters, Lambeth Road, London (18 Oct. 2013).
[132] *Piracy off the coast of Somalia, Foreign Affairs Select Committee, tenth report with formal minutes and written evidence*, p. 78, H.C. 2011 (1318), ii.
[133] Manimuthu Gandhi, 'The Enrica Lexie incident: seeing beyond the grey areas of international law' in *Indian Journal of International Law*, liii (2013), p.2.

jurisdiction over both the contiguous zone and the E.E.Z. (i.e. 200 nm from baseline) given that it was a criminal case involving Indian citizens in an Indian registered boat.[134]

The case highlighted several important legal issues pertaining to broader maritime security and counter-piracy and the deployment of armed security such as the ambiguity of UNCLOS in terms of the extent of jurisdictional scope over maritime zones, rules of engagement, sovereign immunity and authorisation for military personnel aboard commercial vessels. While there had been several reported incidents in which fishermen have been mistakenly killed by anti-piracy forces, such as the 2008 case where an Indian navy vessel fire upon a Thai trawler after mistaken it for a pirate mother-ship, the *Enrica Lexie* incident was unique as it had been brought under judicial scrutiny.[135]

Prosecutions

Prosecuting piracy suspects emerged as an early impediment to counter-piracy efforts off the coast of Somalia given the lack of regional judicial capacity, outmoded or non-existent domestic legislation among the extra-regional states engaged in naval counter-piracy operations and an apparent lack of political will to exercise universal jurisdiction to prosecute cases. Indeed, prior to the upsurge of piracy attacks in Northeast Africa, piracy legislation was predominately abstract and very rarely utilised in criminal proceedings. There was also some apprehension in western states that imprisoned pirates would, on release, claim asylum.[136]

In 2009, U.N. Resolution 1897 highlighted how limited domestic legislation in relation to facilitating the extradition and prosecution of suspected pirates after capture by nations engaged in counter-piracy operations off the Horn of Africa had resulted in the premature release of suspects.[137] This so called 'catch and release' policy largely consisted of boarding a suspect skiff, destroying weaponry and related equipment,

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[134] 'Republic of Italy & Ors. (Petitioners) Vs. Union of India & Ors. - in the supreme court of India civil original jurisdiction writ petition (civil), no.135 of 2012', 18 Jan. 2013, p. 11 available at (http://judis.nic.in/supremecourt/ imgs1.aspx?filename=39941) (04 Feb. 2015).
[135] See: *Business Standard*, 15 Mar. 2013; Gandhi, 'The Enrica Lexie incident [...]', p. 26.
[136] See for example: *Piracy off the coast of Somalia, Foreign Affairs Select Committee [...]*, ev. 44.
[137] U.N. Security Council, 'Resolution 1897', 30 Nov. 2009 (U.N., D.H.L., S/RES/1897/2009, p. 2).

gathering biometric data from suspects followed by the release of suspects and vessel.[138] This resulted in calls by the U.N. for the creation of provisions under domestic law for criminalising piracy and procedural provisions for the effective criminal prosecution of suspected pirates under, for example, the SUA Convention. One possible solution proposed by Jack Lang, former U.N. special advisor to the Secretary General on legal issues related to piracy off the coast of Somalia, was the creation of specialised Somali and extraterritorial piracy courts.[139] However, such an initiative failed to materialise primarily due to substantial legal, constitutional and political impediments. According to Douglas Guilfoyle:

> All other factors aside, the need for extensive law reform to support a Somalia extra-territorial court underlines that this would be a novel experiment in terms of substantive law, thus making no use of the existing regional experience of prosecuting pirates in national systems.[140]

A more effective apparatus appeared to be the U.N.O.D.C. Counter-Piracy Programme's regional 'piracy prosecution model' that utilised existing domestic legislation to prosecute pirates in national courts. This proved to be a comparatively successful initiative. Between January 2006 and January 2012, twenty regional and international states had detained 1063 suspects with approximately 612 cases resulting in convictions for piracy (see figs 5.12 & 5.13).[141] By December 2013, this figure had increased to over 1,200 suspects either convicted or detained for the crime of piracy in twenty-one countries, including several E.U. Member States.[142] Regionally, Kenya was the first state to accept Somali pirates for prosecution in 2006. By late 2013, Kenya had secured 83 piracy convictions whereas Seychelles had secured 70.[143]

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[138] Douglas Guilfoyle, 'Counter-piracy law enforcement and human rights' in *International and Comparative Law Quarterly*, lix, no. 1 (Jan. 2010), p. 141.

[139] U.N. Security Council, 'Annex to the letter dated 24 Jan. 2011 from the Secretary-General to the President of the Security Council: Report of the Special Adviser to the Secretary-General on legal issues related to piracy off the coast of Somalia', 25 Jan. 2011 (U.N., D.H.L., S/2011/30, pp 38-43).

[140] Douglas Guilfoyle, 'Prosecuting Somali pirates: a critical evaluation of the options' in *Journal of International Criminal Justice*, x (2012), p. 789.

[141] U.N. Security Council, 'Report of the Secretary-General on specialised anti-piracy courts in Somalia and other States in the region', 20 Jan. 2012 (U.N., D.H.L., S/2012/50, p. 5).

[142] European Union External Action Service (E.E.A.S.), 'Factsheet: the E.U. fight against piracy in the Horn of Africa', 23 Dec. 2013, p. 3, available at (http://eeas.europa.eu/statements/docs/2013/131223_03 _en.pdf) (06 Feb. 2015).

[143] U.N., S/2013/623, p. 11.

The U.N. recognised the comparative success of regional piracy prosecutions and commended Kenya, Mauritius, Seychelles and Tanzania for their efforts in both prosecuting suspected pirates in their national courts and incarcerating convicted pirates in a third state after trial elsewhere.[144] Despite the outward success of the regional piracy prosecution model, there was acknowledgment by Alan Cole, the Regional Coordinator of the U.N.O.D.C. Counter-Piracy Programme, that the organisers and facilitators of piracy remained relatively untouched. He stated: 'While the young men in boats have been investigated, prosecuted and imprisoned in large numbers, those behind the crime have been left largely unscathed'.[145] Cole identified less than six successful prosecutions of pirate financiers and organisers as of June 2013 primarily due to the complexities of identifying, investigating and arresting such suspects.[146]

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[144] U.N. Security Council, 'Resolution 2125', 18 Nov. 2013 (U.N., D.H.L., S/RES/2125/2013, p. 4).
[145] Alan Cole, 'Large-scale prosecution of Somali piracy suspects: what have we learned?', 11 Sept. 2013, p. 4, available at (http://www.counterpiracy.ae/upload/2013briefing/Cole%20Alan%20Sec1Ch3%20 Final%20Briefing%20Paper-En-Website.pdf) (06 Feb. 2015).
[146] Cole, 'Large-scale prosecution of Somali piracy suspects […]', p. 4.

Fig. 5.12
Global piracy prosecutions 2006-12

Country	No. held	Additional information
Belgium	1	1 convicted
Comoros	6	n/a
France	15	5 convicted
Germany	10	n/a
India	119	n/a
Japan	4	n/a
Kenya	143	50 convicted
Madagascar	12	n/a
Malaysia	7	n/a
Maldives	37	Awaiting deportation
Netherlands	29	10 convicted
Oman	22	All convicted
Seychelles	70	63 convicted
Rep. of Korea	5	5 convicted
Spain	2	Both convicted
United Arab Emirates	10	n/a
United Rep. of Tanzania	12	6 convicted
United States of America	28	17 convicted
Yemen	129	123 convicted / 6 acquitted
Total	**661**	

Criminalisation of piracy under domestic law

Internationally, there were substantial steps taken in several countries to comply with U.N. requests to criminalise piracy under domestic law to expedite the extradition and prosecution of Somali piracy suspects. The U.N. Division for Ocean Affairs and the Law of the Sea compiled a database on national legislation on piracy in October 2011 from fifty nations.[147] There had been several incidents of Somali pirates tried in extra-regional courts. Japan, for example, enacted legislation entitled 'Penalisation of acts of piracy and measures against acts of piracy' in July 2009. Subsequently, in February 2013, the Tokyo District Court sentenced three Somali defendants to between five and ten years imprisonment for the crime of piracy.[148]

Similarly, several European nations accepted Somali piracy suspects for judicial proceedings between 2008 and 2013. The first piracy case to be tried in Europe in living memory occurred in the Netherlands in June 2010. A Rotterdam court sentenced five Somali nationals to five years imprisonment each for the attack upon Dutch flagged cargo ship the M.V. *Samanyolu* in the Gulf of Aden in 2009.[149] In December 2011, a Paris court sentenced five of the six Somali nationals accused of pirating the French yacht *Carre d'As IV* and holding her crew hostage off the coast of Somalia in 2008 to between four and eight years imprisonment.[150] More recently in October 2012, a court in Hamburg found ten Somali nationals guilty on charges of kidnapping and conducting an attack on maritime traffic. In one of the longest trials in post-war German history, judges sentenced the men to prison terms ranging from two to seven years for the April 2010 hijacking of a German-flagged container ship, the M.V. *Taipan*.[151]

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[147] See: U.N. Division for Ocean Affairs and the Law of the Sea, National legislation on piracy database, 26 Oct. 2011, available at (http://www.un.org/Depts/los/piracy/piracy_national_legislation.htm) (06 Feb. 2015).

[148] *Japan Times*, 28 Feb. 2013.

[149] B.B.C. News Europe, 'Five men jailed for piracy by Dutch Court', 17 June 2010 (http://www.bbc.co.uk/news/10342547) (16 Mar. 2014).

[150] France24 News Agency, 'French court sentences five Somali pirates', 01 Dec. 2011 (http://www.france24.com/en/20111130-france-court-somali-pirates-jail-time-kidnapping-french-couple-gulf-of-aden/) (16 Mar. 2014).

[151] See; *Der Spiegel*, 19 Oct. 2012; *New York Times*, 19 Oct. 2012.

The relative success in prosecuting Somali pirates in regional and international courts was facilitated in several ways. The widespread ratification of UNCLOS and the SUA Convention by international states following requests from the U.N. enhanced the judicial scope to prosecute for piracy. By 2012, 162 nations had ratified UNCLOS whereas 156 had ratified the SUA Convention.[152] A smaller number of states also adapted domestic law to criminalise piracy and facilitate prosecution in national courts. These processes were streamlined by the U.N.O.D.C. Counter-Piracy Programme's regional 'piracy prosecution model' alongside assistance from international criminal investigative bodies such as Europol and INTERPOL. Despite this, it should be noted that just one case of prosecution was attained under the SUA Convention since its ratification. Moreover, the 2008 case of the 'United States v. Shi' was the first time in almost two hundred years that a U.S. court invoked the doctrine of universal jurisdiction over piracy.[153]

In January 2010, INTERPOL created a Maritime Piracy Task Force that focussed on improving evidence collection for effective prosecution, facilitating data exchange and building regional judiciary capabilities.[154] The effectiveness of the task force was amplified by the 'Global database on maritime piracy' that comprised of over 4,000 records of personal details of pirates and financiers, phone records, hijacking incidents and bank accounts used in ransom payments.[155] In January 2012, Europol in conjunction with INTERPOL, under the auspices of the European Union's judicial cooperation unit 'Eurojust', created a 'joint investigation team' to collect admissible evidence for legal action against major piracy financiers, negotiators and organisers.[156] Notwithstanding these efforts, the U.N. Security Council Resolution 2125 of November 2013 reiterated earlier concerns that limited domestic legislation continued to hamper the effective

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[152] See: I.M.O., 'Status of conventions' (http://www.imo.org/About/Conventions/StatusOfConventions /Pages/Default.aspx).
[153] Eugene Kontorovich, 'Unites States v. Shi – international decisions' in *American Journal of International Law*, ciii, no. 4 (Oct. 2009), p. 734.
[154] INTERPOL, 'Maritime piracy', available at (http://www.interpol.int/Crime-areas/Maritime-piracy/ Maritime-piracy) (09 Feb. 2015).
[155] INTERPOL, 'Intelligence', available at (http://www.interpol.int/Crime-areas/Maritime-piracy/ Intelligence) (09 Feb. 2015).
[156] E.E.A.S., 'Factsheet […]', p. 4.

prosecution of pirates and suspected pirates continued to be released 'without facing justice'.[157]

Fig. 5.13
Somalia piracy prosecutions 2006-12

Somalia	No. held	Additional information
Puntland	290	Approximately 240 convicted
Somaliland	94	68 convicted (60 subsequently released)
South Central	18	Status of trial unclear
Total	**402**	

Source: U.N., S/2012/50, p. 5.

Conclusion

The escalation of piracy off the Horn of Africa after 2005 was unprecedented. By 2008, the international community was forced to intervene and respond to what had evolved into a regional crisis with global ramifications. The chronic instability ashore in Somalia not only precipitated maritime criminality but also meant that there was no indigenous capability to counteract it unilaterally. Despite this, by 2013 a provisional constitution had been created for Somalia alongside several regional and internationally led programmes aimed at increasing domestic security capability on land and at sea, judicial capacity and political stability. The upsurge in piracy was largely facilitated by the substantial revenue streams available through ransom payments, which emerged as a fundamental obstacle to counteracting the problem.

The rise of P.M.S.C.s emerged as a critical force-multiplier in countering Somali piracy in the western Indian Ocean particularly as attacks were frequently reported at distances over 1,000nm miles from the coast and therefore outside the remit of limited multinational naval patrols.[158] Regulating for the emergent industry posed a significant

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[157] U.N., S/RES/2125, p. 3.
[158] I.C.C. I.M.B., *Piracy report 2013*, p. 22.

challenge for legislators and the shipping industry. Moreover, 'Rules for the Use of Force' for P.C.A.S.P. did not become standardised in any material way until 2013. Indeed, the broader legal framework for navies involved in counter-piracy operations off the coast of Somalia resulted in a re-evaluation, primarily in academic and legal circles, on the practical application of international law and 'universal jurisdiction' to prosecute for the crime of piracy. This was further complicated by outdated, disharmonious or non-existent domestic legislation alongside an apparent lack of political will, which initially hampered the extradition and prosecution of suspected pirates. International efforts to address the escalation of piracy off the coast of Somali had to frequently adapt and evolve toward a more holistic, multi-sectoral and multi-faceted counter-piracy strategy. These non-military, diplomatic and jurisdictional efforts formed an important foundation for the comprehensive international and regional military, industry and political response to countering Somali piracy after 2008.

CHAPTER VI

A global response to a regional threat? 2005-13

All maritime nations are affected by these challenges, and all of us must bear a hand in taking them on. The future of maritime security depends like never before on international cooperation and understanding. Frankly, we need each other.[1]

Introduction

Between 2005 and 2008, aside from the brief rule of the Union of Islamic Courts (U.I.C.), Somali pirates could hijack and hold ships and crew for ransom without any real danger of interdiction or reprisal. More troubling, perhaps, were several attacks on World Food Programme (W.F.P.) vessels delivering vital humanitarian aid to the region between 2005 and 2007. These incidents, alongside an upsurge in violent attacks and hijackings against merchant shipping transiting the region in 2008, necessitated a more proactive international and regional response. United Nations (U.N.) Security Council Resolution 1816 of 2 June 2008 was the first of its kind to directly address Somali piracy. It authorised states to enter the territorial waters of Somalia and use 'all necessary means' to repress acts of piracy and armed robbery at sea in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law.[2] This culminated in an unprecedented multinational naval response complemented by robust efforts from the shipping industry through the creation and widespread implementation of Best Management Practice (B.M.P.). Non-state entities, specifically private military and security companies, also became significant force multipliers to counter-piracy operations in the Gulf of Aden and western Indian Ocean after 2008.

This chapter will firstly analyse the unprecedented international military response to the escalation of piracy off the coast of Somalia after 2005, exploring how these initiatives

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[1] Commentary by Adm. Mike Mullen former U.S. Chief of Naval Operations, *Honolulu Advertiser*, 29 Oct. 2006.

[2] U.N. Security Council 'Resolution 1816', 02 June 2008 (U.N., Dag Hammarskjöld Library (D.H.L.), S/RES/1816/2008, p. 3).

had evolved by 2013. This is followed by an examination of several political counter-piracy strategies initiated ashore by regional and international governments. These ranged from political and financial support for the Transitional Federal Government (T.F.G.) to humanitarian assistance, cooperative and information sharing mechanisms, judicial enhancement and reform, maritime capacity building alongside rehabilitation and reintegration initiatives. Collectively, these measures resulted in a substantial decline in incidents of piracy and armed robbery in Northeast African waters from 236 reports in 2011 to just 15 reported incidents in 2013.[3]

The sharp escalation in hijackings of merchant vessels and kidnapping of mariners in the Gulf of Aden and the western Indian Ocean around 2008 necessitated a robust response by the international community. The need for an extra-regional response was accelerated by the inability of Somalia and its neighbouring states to tackle the issue. According to Cyrus Moody, Deputy Director of the International Maritime Bureau (I.M.B):

> Somalia needed an international response for the simple reason that it was a failed state […] it had absolutely no capability within itself to do anything in terms of addressing the crime and its neighbours did not have the capability of responding to this crime in naval and coast guard terms – they didn't have the boats, the capability or the capacity.[4]

There were several multilateral counter-piracy initiatives launched by various international governments and organisations including the U.N., the European Union (E.U.), the International Maritime Organization (I.M.O.) and the North Atlantic Treaty Organization (NATO). These included naval operations, maritime transit corridors, cooperative mechanisms, maritime security capacity building, guidance for shipping, political and financial support for the T.F.G. alongside the promotion and implementation of judicial reform. Non-governmental bodies such as the I.M.B. and the shipping industry were also actively involved in raising awareness and publishing guidelines for transit through the High Risk Area (H.R.A.), through the formation of

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[3] International Chamber of Commerce (I.C.C.), International Maritime Bureau (I.M.B.), *Piracy and armed robbery against ships, annual reports, 1 Jan. – 31 Dec. 2013* (London, 2014), pp 5-6.
[4] Interview with Mr. Cyrus Moody, Deputy Director of the I.C.C. I.M.B. at the I.C.C. I.M.B headquarters, Cinnabar Wharf, London (22 Oct. 2013).

B.M.P. for deterring piracy. These efforts were complemented by a number of unilateral counter-piracy deployments and initiatives by international user-states including Britain, China, Russia and the United States.

Multilateral international initiatives

United Nations

The U.N. was the key international body for promulgating agreement on regulation for counter-piracy operations in the Somali Basin and promoting awareness of the threat, particularly after 2008. Indeed, the U.N. had maintained an almost uninterrupted presence in Somalia since 1992. Between 2005 and 2013, the U.N. Security Council produced over twenty resolutions that addressed Somali piracy, an indication of the global relevance of the issue. The U.N. Political Office for Somalia (UNPOS) was established in 1995 to extend assistance and mediation to peace and reconciliation initiatives ashore in Somalia. By 2009, UNPOS received a new mandate to implement the Djibouti peace agreement and to facilitate coordination of international support to these efforts under U.N. Security Council Resolution 1863.[5] While UNPOS did not operate an explicit counter-piracy programme, it played an important role in coordinating the various international and regional counter-piracy initiatives in Somalia.

Comparable U.N. strategic missions included the 'Development Programme' in Somalia, which was involved in a wide range of stabilising and capacity-building initiatives throughout the region. This ranged from promoting accountable and human rights based Somali federal security institutions to revitalising the Somali economy and generating employment. It also initiated programmes to tackle unemployment and social exclusion, factors described as 'gateways to terrorism, crime, and piracy', while simultaneously enhancing the capacity to prosecute suspects for serious crimes such as piracy.[6]

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[5] U.N. Security Council, 'Resolution 1863', 16 Jan. 2009 (U.N., D.H.L., S/RES/1863/2009, p. 5).
[6] United Nations Development Program (U.N.D.P.), 'Somalia annual report 2013', pp 7-9, available at U.N.D.P., 'Research and publications' (http://www.so.undp.org/content/somalia/en/home/library/human_ development/publication_22/) (11 Nov. 2014).

On 3 June 2013, the U.N. Assistance Mission in Somalia (UNSOM) was established as a strategic initiative to support the T.F.G. in state-building, governance and security sector reform.[7] UNSOM superseded UNPOS, which had officially completed its mandate in June that year. One of four key areas of focus under the new UNSOM mandate was rule of law and security-sector reform, which included maritime security, disengagement of combatants, disarmament and reintegration.[8] The evolution from UNPOS to UNSOM illustrated the comparative achievement of international capacity-building efforts ashore in Somalia following the escalation of maritime piracy in 2007/08. The election of Hassan Sheikh Mohamud as president of the Federal Republic of Somalia in September 2012, the first legitimate election since the fall of Siad Barre in 1991, alongside the creation of an interim constitution and a representative parliament, was widely heralded by the international community as a positive step toward long-term stabilisation ashore.[9] However, the process was reportedly marred by allegations of corruption and tension over enduring issues such as maritime piracy.[10]

Aside from supporting strategic political development ashore, the U.N. was also concerned with humanitarian assistance, not only for disparate Somalis, but also for the immediate victims of piracy – seafarers. In this regard, the U.N.O.D.C. and the UNPOS implemented, in conjunction with the 'Trust Fund to support the initiatives of states to counter piracy off the coast of Somalia', the creation of a 'Hostage Support Programme' in November 2012. This initiative acknowledged the physical and psychological impact on seafarers held hostage by Somali pirates and provided material support during release and repatriation alongside debriefings of hostages in conjunction with INTERPOL to bolster prosecution and to develop best practices.[11]

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[7] U.N. Security Council, 'Resolution 2102', 02 May 2013 (U.N., D.H.L., S/RES/2102/2013, pp 2-3).
[8] Ibid, p. 2.
[9] See: United Nations Political Office for Somalia (UNPOS), 'International community reactions on the 10 September Somali presidential elections outcome', 12 Sept. 2012, available at (http://unpos.unmissions.org/LinkClick.aspx?fileticket=8D7NTUAxyE%3D&tabid=9705&mid=12667&language=en-US) (11 Nov. 2014).
[10] See for example: *The Guardian*, 10 Sept. 2012.
[11] U.N. Security Council, 'Report of the Secretary-General on the situation with respect to piracy and armed robbery at sea off the coast of Somalia', 21 Oct. 2013 (U.N., D.H.L., S/2013/623, pp 2-3).

International Maritime Bureau

The non-governmental, non-commercial organisation the I.C.C. I.M.B. emerged as the leading body for the collation and dissemination of statistics on incidents of maritime piracy worldwide between 2005 and 2013. This was reflected in the broad user-base of I.M.B. data among national governments, industry policy makers, researchers and academics. Despite inherent difficulties with under-reporting, the I.M.B.'s statistical resources were also utilised in the creation of software to identify predictive patterns of piratical activity. The I.M.B. published comprehensive quarterly and annual reports that became the primary source of statistical information pertaining to maritime piracy and illustrated how, Somali piracy in particular, had evolved into a global threat after 2008. Data attained via the I.M.B. Piracy Reporting Centre (P.R.C.) was shared with the I.M.O., shipping industry bodies and various governmental, non-governmental and law enforcement agencies to enhance understanding of the problem and reduce its effects.[12]

In terms of countering piracy off the coast of Somalia, the I.M.B. was fundamental in raising awareness within the wider shipping industry and international community on the threat. In 2005, following an upsurge in pirate attacks off the coast of Somalia and in the Gulf of Aden, I.M.B. Director Pottengal Mukundan appealed to naval forces operating in the region to assist merchant vessels under attack by, at the very least, 'prevent[ing] potential hijackers taking these ships into Somali waters'.[13] The I.M.B.'s annual piracy report was an important counter-piracy resource throughout this period. The reports detailed actual and attempted attacks by geographical location, status of ship, type of weapons used, type of violence used, nationality and flag state of vessel alongside monthly comparisons of incidents, piracy prone areas, warnings, trends, observations and narrations of attacks.[14]

Perhaps the most significant I.M.B. led counter-piracy initiative was the creation of the 24-hour P.R.C. in Kuala Lumpur as a first point of contact for shipmasters to report

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[12] I.C.C. Commercial Crime Services, 'I.M.B. Piracy Reporting Centre' (https://www.icc-ccs.org/piracy-reporting-centre) (13 Nov. 2014).
[13] *The Independent*, 12 Nov. 2005.
[14] See for example, I.C.C. I.M.B., *Piracy report 2013*, pp 5-71.

actual or attempted pirate attacks regardless of geographic position. The P.R.C. had evolved from just four staff members in the early 1990s to a staff of twenty-two by 2013.[15] This was some indication of the growth in maritime piracy, mainly off the northeast coast of Africa, and the importance of the P.R.C. as a focal point. In terms of counter-piracy, the P.R.C. broadcasted daily status reports on piracy and armed robbery against ships on the Inmarsat-C SafetyNET service and assisted regional and international law enforcement bodies in apprehending and prosecuting pirates. [16] Furthermore, all verified reports of actual or attempted pirate attacks were relayed to the nearest Maritime Rescue Coordination Centre (M.R.C.C.).

This contributed to countering-piracy in two ways. Firstly, if the incident was ongoing, the M.R.C.C. could deploy an asset to help and assist the victim and, secondly, it informed the M.R.C.C., Coast Guard or littoral government that there was criminal activity occurring within their waters that needed to be addressed.[17] Moreover, the I.M.B. relayed this warning to all shipping in the vicinity of an incident, which enabled vessels to heighten defensive measures or bypass the area of high-risk at a particular time. The I.M.B. further expanded its counter-piracy efficacy by employing satellite imagery to forecast and advise on patterns of piratical movement.

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[15] Meeting with Mr. Noel Choong, Head of I.C.C. I.M.B. Piracy Reporting Centre (P.R.C.) at the I.M.B. P.R.C., Asia regional office, Jalan Sultan Ismail, Kuala Lumpur, Malaysia (26 Mar. 2014).
[16] I.C.C. I.M.B., *Piracy report 2008*, p. 2.
[17] Interview with Mr. Cyrus Moody (22 Oct. 2013).

Fig. 6.1

Evolution of distance warnings in comparison to attack locations, Somalia 2005-11

Year	Farthest reported attack from coast	Advised distance from coast
2005	165nm	200nm
2006	200nm	250nm
2007	200nm	250nm
2008	445nm	250nm +
2009	1,000nm	600nm +
2010	1,300nm	n/a
2011	1,750nm	n/a

Source(s): I.C.C. I.M.B., *Piracy report 2005-2011*; 'Report of the Secretary-General pursuant to Security Council resolution 1950', 25 Oct. 2011 (U.N., D.H.L., S/2011/662, p. 2); B.B.C. News Africa, 'The losing battle against Somali piracy', 10 Feb. 2011 (http://www.bbc.co.uk/news/world-europe-12412565) (29 Oct. 2014).

European Union

The European Union launched its first naval operation in response to the upsurge of piracy off the coast of Somalia in December 2008 as part of its wider 'comprehensive' approach to Somali piracy. This integrated approach, within the framework of the European Common Security and Defence Policy (C.S.D.P.), also included the E.U. Training Mission in Somalia (E.U.T.M) and the E.U. Maritime Capacity Building Mission in the Horn of Africa (EUCAP NESTOR). Since November 2011, these multi-sectoral initiatives came under the umbrella of the E.U.'s 'strategic framework for the Horn of Africa', which was finalised in January 2013. The framework outlined the various security and humanitarian issues that contributed to criminality and disorder in Somalia such as the lack of stable democratic and economic prospects for the population alongside the absence of democracy, rule of law, governance and human security.[18] In terms of the E.U.'s counter-piracy approach, the strategy noted the importance of tackling piracy on land by enhancing judicial capacities to arrest, transfer, detain and prosecute piracy suspects alongside enhancing the coastal security capabilities of

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[18] E.U. Parliament, 'European Parliament Resolution on E.U. strategy for the Horn of Africa', 15 Jan. 2013 (E.U. Parliament Resolution, P7_TA/2013/0006, p. 4). (http://www.europarl.europa.eu/portal/en) (17 Nov. 2014).

riparian countries, encouraging adherence to B.M.P. and improving standards for the maritime security industry.[19]

European Union Naval Force - Operation Atalanta

Central to this strategy was the European Union Naval Force (EUNAVFOR) Operation Atalanta, which was deployed under the auspices of U.N. Security Council Resolutions 1814, 1816 and 1838 in December 2008. Operation Atalanta was mandated to (i) provide protection to vessels chartered by the W.F.P. and other vulnerable vessels off the coast of Somalia; (ii) deter, prevent and repress acts of piracy and armed robbery off the Somali coast; (iii) arrest, detain and transfer persons who had committed, or were suspected of having committed, acts of piracy or armed robbery; and, (iv) seize the vessels of the pirates or armed robbers.[20] The typical composition of Operation Atalanta's physical assets in its 'area of operation'[21] consisted of between four and seven surface combat vessels including embarked helicopters, one and two auxiliary ships, three to four military patrol and reconnaissance aircraft alongside a number of Vessel Protection Detachment (V.P.D.) teams, making it the largest multinational counter-piracy deployment operating in the region.[22] EUNAVFOR's budget amounted to EUR8.4 million in 2010, EUR8.05 million in 2011 and EUR8.3 million in 2012. In March 2012, the Council of the E.U. extended the mandate of Operation Atalanta until December 2014 with a budget of EUR14.9 million for common costs.[23]

Aside from deterring and interdicting pirates at sea, EUNAVFOR, under the mandate of U.N. Security Council Resolution 1851, actively disrupted and targeted pirate logistic dumps ashore. On 15 May 2012, it was reported that EUNAVFOR deployed a number

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[19] 'European Parliament Resolution on E.U. strategy for the Horn of Africa', p. 11.

[20] E.U. Council, 'European Council joint action on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast', 05 Nov. 2008 (European Council (E.C.), Official Journal of the E.U. (O.J.), 13989/08, p. 7).

[21] EUNAVFOR Operation Atalanta's area of operation extended from the territorial and internal waters of Somalia and the Southern Red Sea to the Gulf of Aden and the western Indian Ocean, including the Seychelles. This equated to an area of approximately 2,000,000 square nautical miles or 1.5 times the size of mainland Europe (See: E.U. external action, EUNAVFOR mission (http://eunavfor.eu/mission/) (17 Nov. 2014)).

[22] European Union Naval Force – Operation Atalanta, 'Information booklet' (Northwood, 2014), p. 7.

[23] Ibid., pp 1-12.

of maritime patrol aircraft and helicopters to target and destroy several pirate attack skiffs in the Galmudug region on Somalia's central southern coastline.[24] According to a representative of EUNAVFOR Somalia, the operation was carried out following a lengthy reconnaissance mission, which made 'absolutely clear' that the skiffs belonged to pirates and not legitimate fishermen.[25] Indeed, identifying pirate skiffs was one of several 'day to day' challenges encountered during the operation. According the former Operation Commander Rear Admiral Philip Jones: 'a pirate is only a pirate when he is committing an act of piracy […] he may be a people smuggler overnight […] he may then turn into a fisherman the next morning and then, in the afternoon, go out to do some piracy […]'.[26] Notwithstanding its primary mission of escorting vessels of the W.F.P. and other vulnerable shipping, EUNAVFOR was also instrumental in the formation of the Maritime Security Centre - Horn of Africa (M.S.C.H.O.A.) and the Internationally Recommended Transit Corridor (I.R.T.C.) in the Gulf of Aden.

The M.S.C.H.O.A. provided an important interface between naval assets and the shipping industry in the Gulf of Aden by monitoring registered vessels on a 24-hour basis while transiting the High Risk Area and relaying the latest counter-piracy guidance. By 2010, the importance of the service provided by the M.S.C.H.O.A. was evident by the some 4,000 subscribers to its website, 2,700 of which were shipping companies.[27] The M.S.C.H.O.A. facilitated the creation of the I.R.T.C. (see fig. 6.2), which was an enhanced version of the 2008 U.S. led Maritime Security Patrol Area.
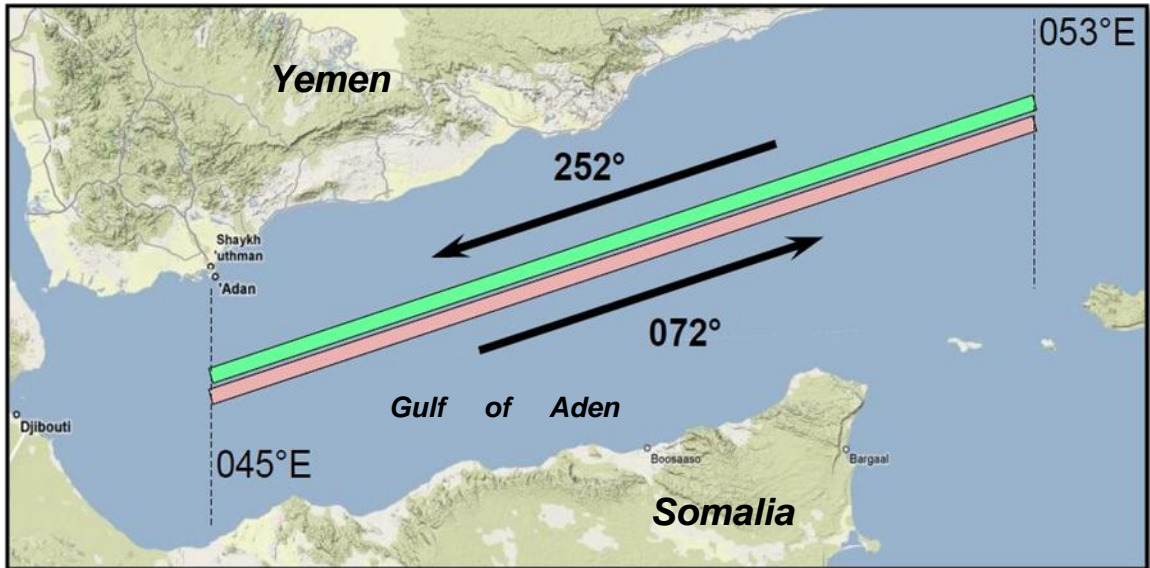
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[24] Kate Tringham, 'EUNAVFOR destroys pirate land base on shoreline' in *I.H.S. Jane's Defence Weekly* (16 May 2012), p. 1.
[25] Ibid.
[26] *Combating Somali piracy: the E.U.s naval Operation Atalanta: report with evidence*, *minutes of evidence taken before the select committee on the European Union* p. 3, H.L. 2010 (103), xii.
[27] *Combating Somali piracy […]*, p. 21.

All shipping transiting the Gulf of Aden was advised to use the I.R.T.C. and the group transit system, which afforded vessels a higher level of protection by placing them proximal to international naval assets patrolling in the corridor and by the relative security of travelling in clusters. The provision of a designated corridor also allowed naval vessels to monitor and secure the sea area ahead of merchant ships. These initiatives significantly reduced the number of successful pirate attacks in the Gulf of Aden from a peak of 117 in 2009 to 59 in 2010 and just six in 2013.[28] However, the relative success in suppressing piracy in the Gulf of Aden displaced attacks farther into the western Indian Ocean. Indeed, attacks off the eastern seaboard of Somalia increased significantly from 80 in 2009 to 139 in 2010 and peaked at 160 by 2011.[29]

Critical Maritime Routes programme & Training Mission in Somalia
Aside from military operations like Atalanta, the E.U. launched a Critical Maritime Routes (E.U.C.M.R.) programme in 2009. The western Indian Ocean programme aimed to secure the safety of critical sea-lanes in three ways. Firstly, through education and

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[28] I.C.C. I.M.B. *Piracy report 2010*, p. 5.
[29] I.C.C. I.M.B. *Piracy report 2013*, p. 5.

training in support of the regional-led 'Djibouti Code of Conduct' concerning the repression of piracy and armed robbery against ships; secondly, through information sharing via regional sharing centres and M.R.C.C.s; and, finally, by building the maritime capacity of coastal states to respond to piracy threats.[30] A further key element in the E.U.'s holistic approach toward the problem of Somali piracy was the E.U.T.M. in Somalia, which was established in 2010. The E.U.T.M. was tasked with strengthening the institutions of the Somali T.F.G. by training Somali military forces in cooperation with other international actors like the African Union Mission in Somalia (AMISOM) and the U.N. By December 2012, the E.U.T.M. completed two consecutive training periods of six months that contributed to the training of approximately 3,600 Somali soldiers alongside specialist training in the areas of military police, civilian-military cooperation, intelligence, company commander and combat engineering.[31] In January 2013, E.U.T.M.'s mandate was extended for a further two years with a shift to strategic advisory and mentoring activities in addition to training.[32]

Regional Maritime Security Programme

In October 2010, a 'regional strategy' and 'plan of action' was agreed at the second regional ministerial meeting on piracy and maritime security in the eastern and southern Africa and Indian Ocean region. In support of this agreement, the E.U. created the Regional Maritime Security Programme in January 2012 with an initial budget of EUR37.5 million. The programme aimed to contribute to the regional strategy by firstly, enhancing the infrastructural capability for arrest, transfer, detention and prosecution of pirates; secondly, strengthening regional capacity to disrupt the financial networks of pirate leaders and their financiers; thirdly, enhancing regional maritime capacity; and, lastly, improving regional coordination and information exchange.[33] Collectively, these

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[30] E.U. Critical Maritime Routes information portal, 'C.M.R. Western Indian Ocean (MARSIC)' (http://www.crimson.eu.com/projects/cmr-western-indian-ocean-marsic-3/) (18 Nov. 2014).
[31] European External Action Service (E.E.A.S.), E.U.T.M. Somalia: mission description (http://www.eeas.europa.eu/csdp/missions-and-operations/eutm-somalia/index_en.htm) (18 Nov. 2014).
[32] E.E.A.S., 'E.U.T.M. Somalia: mission description'.
[33] Pantelis Vassiliou, 'Maritime Security in ESA-IO region in the framework of the Horn of Africa strategy, MASE Programme' (2014), available at European Commission, Joint Research Centre (https://ec.europa.eu/jrc/sites/default/files/EC_DEVCO_presentation_on_MASE.pdf) (18 Nov. 2014).

approaches contributed to wider international efforts to establish stability and security ashore in the context of strategic solutions to maritime piracy.

EUCAP NESTOR

The final key initiative under the E.U.'s strategic counter-piracy framework was launched in July 2012 under the C.D.S.P. EUCAP NESTOR was a wider regional civilian-led mission in partnership with the A.U., I.M.O. and the U.N. that aimed to strengthen and enhance the maritime security capacities of Somalia and its littoral states including Djibouti, Kenya, Tanzania and the Seychelles. EUCAP NESTOR's mission can be divided into three key areas – operations in Somalia, operations in littoral states (Djibouti, Kenya and the Seychelles), and wider regional engagement. In Somalia, the mission aimed to support the creation of a land-based coastal police capability alongside a comprehensive regulatory framework in the field of counter-piracy and maritime governance.[34] In regards to littoral states, EUCAP NESTOR aimed to bolster existing maritime security agencies such as coast guards, by assisting authorities through training courses and dissemination of expertise.[35] These efforts were conducted alongside broader expert driven regional networks to promote maritime security awareness.

Financial & other

The E.U. augmented the initiatives discussed here by attempting to tackle some of the wider causative factors that precipitated maritime piracy such as Illegal, Unreported and Unregulated (I.U.U.) fishing in the western Indian Ocean. This approach included a EUR10 million 'regional surveillance plan' for fisheries in the south-west Indian Ocean between 2007 and 2011. The Council of the European Union also enacted comprehensive legislation establishing a community system to prevent, deter and eliminate I.U.U. fishing in September 2008.[36] At the developmental level, the E.U. committed almost EUR500 million between 2008 and 2013 toward governance, security

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[34] E.E.A.S., 'EUCAP NESTOR: mission description' (http://www.eeas.europa.eu/csdp/missions-and-operations/eucap-nestor/mission-description/index_en.htm) (19 Nov. 2014).
[35] E.E.A.S., 'EUCAP NESTOR: mission description'.
[36] See: 'European Council Regulation for establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (E.E.C.) no. 2847/93, (E.C.) no. 1936/2001 and (E.C.) no. 601/2004 and repealing Regulations (E.C.) no. 1093/94 and (E.C.) no. 1447/1999', 29 Sep. 2008 (E.C., O.J., L286/1005/2008, pp 1-54).

and economic growth, which made it the largest extra-regional donor to Somalia.[37] In 2012 alone, over EUR15 million per month in financial support was provided for AMISOM.[38] The E.U. was also the largest contributor to the U.N.O.D.C. counter-piracy programme.[39]

North Atlantic Treaty Organization

NATO was a key contributor to counter-piracy operations in the Gulf of Aden and Somali basin in the period after 2008. In 2006, NATO published the Naval Cooperation and Guidance for Shipping manual for owners, operators, masters and officers to act as an interface between naval forces and merchant shipping. This interaction became critical in relation to counter-piracy operations off the north and east coast of Africa. The manual outlined guidance for naval cooperation, guidance on threats, navigational warnings and assistance to, or naval supervision of, merchant shipping in high-risk areas, such as the Gulf of Aden.[40]

Operation Allied Provider & Protector

In October 2008, NATO initiated Operation Allied Provider following a request by the U.N. Secretary General Ban Ki-Moon after a sharp escalation in piratical attacks in the Gulf of Aden. Allied Provider was launched in support of U.N. Security Council Resolutions 1814, 1816 and 1838 with a primary responsibility for escorting vessels of W.F.P. and deterring acts of piracy by patrolling waters off the Somali coast. Three ships, I.T.S. *Durand de la Pe*nne, the H.S. *Temistokles* and the H.M.S. *Cumberland*, from Standing NATO Maritime Group 2 (S.N.M.G. 2), were redirected for counter-piracy duties in the Gulf of Aden.[41] Operation Allied Provider was replaced by

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[37] E.E.A.S., 'The way out: stabilisation in Somalia through assistance and dialogue' (http://www.eeas.europa.eu/ piracy/stabilisation_en.htm) (18 Nov. 2014).
[38] Ahmed Soliman, Alex Vines & Jason Mosley, 'The E.U. strategic framework for the horn of Africa: a critical assessment of impact and opportunities' (Brussels, 2012), p. 27.
[39] E.E.A.S., 'Judicial international cooperation to end impunity' (http://www.eeas.europa.eu/piracy/ judicial_cooperation_en.htm) (18 Nov. 2014).
[40] NATO Standardisation Agency (N.S.A.), 'Naval Cooperation And Guidance for Shipping (N.C.A.G.S.) manual for owners, operators, masters and officers' in *Allied Tactical Production* (A.T.P.), ii (Dec. 2006), p. 1-2.
[41] NATO Maritime Command (MARCOM), Operations, 'Operation Allied Provider' (http://www.mc.nato. int/ops/Pages/Operation-Allied-provider.aspx) (26 Nov. 2014).

Operation Allied Protector in March 2009. Allied Protector's mission was an extension of Allied Provider and aimed to defend against, deter, and disrupt pirate activities in the Gulf of Aden and off the Horn of Africa with a focus on merchant shipping.[42] Between March and June 2009, counter-piracy operations were undertaken by five vessels from S.N.M.G. 1, which were replaced by five vessels from S.N.M.G. 2 from June to August.[43]

Operation Ocean Shield

Since August 2009, NATO expanded on its two previous counter-piracy missions with the formation of the more comprehensive Operation Ocean Shield. Both S.N.M.G. 1 and S.N.M.G. 2 were tasked with undertaking operations on a six-month rotating basis. The maritime groups were typically composed of between six and ten naval vessels complemented by a number of maritime patrol aircraft. The mission of Ocean Shield had evolved from NATO's previous counter-piracy efforts beyond simply deterring and disrupting pirate activities at sea. Firstly, naval and air assets operating under Ocean Shield regularly conducted intelligence, surveillance and reconnaissance missions to verify shipping activity off the coast of Somalia. Secondly, NATO ships escorted supply vessels of the U.N. Support Office for AMISOM to the harbour entrance of Mogadishu. Finally, Operation Ocean Shield assisted in regional capacity building efforts through training, educational courses, participation in military exercises and advice on security sector reform.[44]

Cooperation between the various regional and international counter-piracy operations in the region was imperative for NATO given that it operated with minimal assets, particularly during the Operation Allied Provider and Allied Protector phase. In an interview with the former head of S.N.M.G. 2, Commodore Steve Chick, the absence of air assets was a clear shortcoming. He stated: 'The key weapons that you need for an

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[42] See: NATO MARCOM, Operations, 'Operation Allied Protector' (http://www.mc.nato.int/ops/Pages/ Operation-Allied-Protector.aspx) (25 Nov. 2014).
[43] Tim Fish, 'NATO maintains counter-piracy presence with S.N.M.G. 2' in *I.H.S. Jane's Defence Weekly* (30 June 2009).
[44] NATO, 'Operation Ocean Shield: fact sheet' (Nov. 2014), pp 1-2, available at (http://www.nato.int/ nato_static_fl2014/assets/pdf/pdf_topics/1957-14_Factsheet_OOS_en.pdf) (25 Nov. 2014).

operation like this are air assets, so a Maritime Patrol Aircraft (M.P.A.), helicopter, a sea boat and a boarding party […] I don't care who owns the M.P.A., whether it's French, German or Japanese; all I need is an M.P.A.'.[45] This deficiency was rectified under Ocean Shield. However, assets were still generally deemed insufficient for purpose. According to Commodore Ben Bekkering, former commander of S.N.M.G. 1, Operation Ocean Shield was under-resourced, with just eight warships to cover a maritime operating area the size of Western Europe.[46] Despite these challenges, by the end of 2013, Operation Ocean Shield had arguably completed its mandate, given the decrease in piracy and armed robbery incidents in the Gulf of Aden and western Indian Ocean.

NATO Shipping Centre

The NATO Shipping Centre bolstered counter-piracy efforts through the publication of a 'dhow and skiff recognition guide' and chart in 2011 to enhance understanding of regional maritime trade in the Gulf of Aden, Arabian Gulf and Indian Ocean and thereby, prevent pirates hijacking and utilising local vessels for illicit activities. The guide identified five main categories of dhow operating in the Indian Ocean (see fig. 6.3) and pertinent details such as specific sailing routes, physical characteristics and typical crew composition. Such knowledge was important in distinguishing pirate skiffs from legitimate fishermen and acquiring data on ownership, registration, trade routes, fishing, communications procedures and other normal activities to assist regional and international states in counter-piracy operations.[47]

Indeed, the guide was an important tool in disrupting attacks. In 2012, for example, a helicopter from the NATO counter-piracy task force flagship, the T.C.G. *Giresun*, positively identified a suspect Yemeni-style dhow and directed it to stop. It was discovered the dhow had been hijacked by pirates and was being employed as a mother

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[45] Gerrard Cowan, 'Interview: Commodore Steve Chick, Commander, Standing NATO Maritime Group 2' in *I.H.S. Jane's Defence Weekly* (09 Nov. 2009), p. 2.

[46] Brooks Tigner, 'Allied anti-piracy efforts having dramatic effect, officials say' in *I.H.S. Jane's Defence Weekly* (19 Dec. 2012), p. 2.

[47] NATO Shipping Centre, 'The dhow project: identification guide for dhows, skiffs and whalers in the High Risk Area', p. 3 (http://www.shipping.nato.int/operations/OS/Pages/Guidance-and-advice.aspx) (25 Nov. 2014).
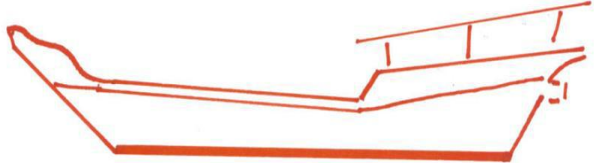
ship. On board were fourteen suspected Somali pirates and seven Yemeni hostages.[48] The NATO Shipping Centre augmented the dhow and skiff recognition guide and chart with regular standing guidance and advice on piracy threats including a daily updated 'pirate action map'.[49] Such initiatives illustrated the evolving diversity of counter-piracy efforts in Northeast Africa.

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[48] NATO Allied Maritime Command, News release, 'NATO's rapid response frees hostages and defeats pirates', 12 May 2012 (http://www.mc.nato.int/PressReleases/Documents/OOS%202012%2016.pdf) (25 Nov. 2014).
[49] See: 'Known pirate activity map', available at NATO Shipping Centre (http://www.shipping.nato.int/operations/OS/Pages/Daily-Piracy-Update.aspx) (26 Nov. 2014).

Fig. 6.3
Categories of dhows operating in H.R.A.

Type of Dhow	Structure
Sambuq	
Boum	
Round stern Jelbut	
Square stern Jelbut	
Yemeni	
Shu'ai	

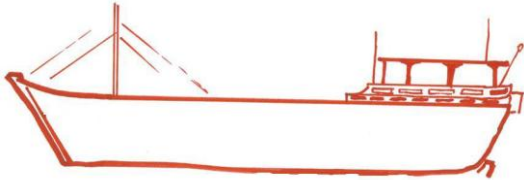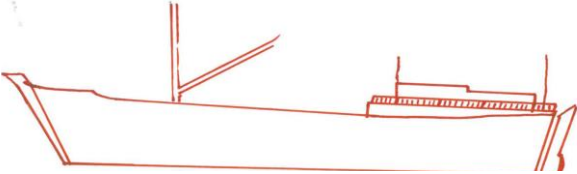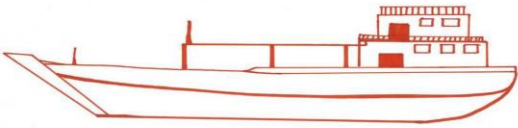**Source**: NATO Shipping Centre, 'The dhow project: identification guide for dhows, skiffs and whalers in the High Risk Area', pp 8-13 (http://www.shipping.nato.int/operations/OS/Pages/Guidance-and-advice.aspx) (25 Nov. 2014).
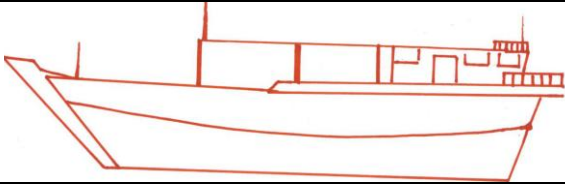
Combined Maritime Forces

Prior to the escalation of piracy off the coast of Somalia in 2008, the multinational Combined Task Force 150 (C.T.F. 150), as part of U.S.-led Combined Maritime Forces, was engaged in a maritime security mission that covered the Red Sea, Gulf of Aden, Indian Ocean and Gulf of Oman. An ancillary multilateral task force C.T.F. 152 was operating in a similar capacity in the Arabian Gulf. Both task forces were chiefly concerned with counter-terrorism activities including deterring and disrupting the movement of personnel, weapons and income-generating narcotics and as such maritime piracy was not a central mission objective.[50] However, the escalation in attacks against merchant shipping by pirates in the Gulf of Aden and Somali basin in 2008 positioned piracy as the foremost maritime security threat in the region.

In this regard, the Combined Maritime Force created a third force tasked explicitly with counter-piracy operations in January 2009 under the auspices of U.N. Security Council Resolutions 1816, 1838, 1846, 1851 and 1897. According to U.S. Vice-Admiral William Gortney, former commander of U.S. Central Command: 'To lessen the ambiguities about operational mandate, a combined coalition task force, C.T.F. 151, was created […] It has a counter-piracy mandate, making it easier for states to participate, given C.T.F. 150's narrow counter-terrorist focus'.[51]

By 2011, C.T.F. 151 consisted of approximately two dozen ships from twenty-five countries including France, Germany, Greece, Italy, the Netherlands, Pakistan, Saudi Arabia, Spain, South Korea, Turkey, the United States, the United Kingdom and Yemen.[52] The mission-based mandate of the counter-piracy task force was to 'deter, disrupt and suppress piracy in order to protect global maritime security and secure

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[50] See: Combined Maritime Forces (C.M.F.), 'C.T.F. 150: maritime security' (http://combinedmaritimeforces.com/ctf-150-maritime-security) (27 Nov. 2014); C.M.F., 'C.T.F. 152: Gulf maritime security' (http://combinedmaritimeforces.com/ctf-152-gulf-security-cooperation/) (27 Nov. 2014).

[51] Alex Vatanka, 'Million mile patrol - Vice-Admiral William Gortney, commander of U.S. forces Central Command' in *I.H.S. Jane's Intelligence Review* (26 Mar. 2009).

[52] Lauren Ploch, Christopher M. Blanchard, Ronald O'Rourke, R. Chuck Mason & Rawle O. King, 'Piracy off the Horn of Africa' in *C.R.S. Report for Congress* (27 Apr. 2011), p. 25.

freedom of navigation for the benefit of all nations'.[53] Strategically, the mission was divided into three phases. The first phase focussed on closer international naval cooperation and expansion; the second phase focussed on closer coordination with the shipping industry to enhance self-defensive measures such as B.M.P. and, finally, to streamline the transfer of pirates ashore for prosecution.[54] The anti-piracy task force was augmented by the U.S. Coast Guard's 'Law Enforcement Detachment 405' alongside the navy's 'Visit, Board, Search and Seizure' teams for advice on specialised tasks such as boarding policies and procedures and evidence collection and preparation.[55] Much like the other multinational counter-piracy operations mentioned, C.T.F. 151 had a limited number of deployable assets in comparison to the large theatre of operations and, therefore, coordinated its efforts closely with international maritime forces in the region. Despite these challenges, according to a report by the U.N. Secretary General in 2011, C.T.F. 151 had successfully deterred multiple pirate attacks, liberated a hijacked vessel, responded to vessel distress calls and seized large quantities of weapons, drugs and related materials.[56]

Coordinating mechanisms

Given the assortment of multistate naval assets engaged in counter-piracy activity off the Horn of Africa between 2008 and 2013, it was essential that mechanisms were created to coordinate patrols and information sharing to streamline operations and avoid overlap. Aside from EUNAVFOR Operation Atalanta, NATO Operation Ocean Shield and C.T.F. 151 there were several individual nations that contributed naval assets including China, India, Iran, Japan, Malaysia, the Republic of Korea, Russia, Saudi

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[53] 'Statement of Rear Admiral Joseph W. Kuzmick, Director, operations and plans United States Navy before the subcommittee on Coast Guard and maritime transportation committee on transportation and infrastructure U.S. House of Representatives on efforts to combat piracy', 10 Apr. 2013, p. 3, available at (http://www.navy.mil/ah_online/antipiracy/images/gallery/testimony.pdf) (27 Nov. 2014).
[54] U.S. Naval Forces Central Command, U.S. Fifth Fleet C.M.F., 'Coalition forces work to deter piracy in Gulf of Aden', 19 Jan. 2009 (http://www.cusnc.navy.mil/articles/2009/004.html) (27 Nov. 2014).
[55] 'Statement of Radm. William Baumgartner on international piracy on the high seas before the subcommittee on Coast Guard & Maritime Transportation Committee on transportation & infrastructure, U.S. House of Representatives', 04 Feb. 2009, p. 6, available at (http://www.marad.dot.gov/documents/ HOA_Testimony-RADM%20William%20Baumgartner-USCG.pdf) (27 Nov. 2014).
[56] U.N. Security Council, 'Report of the Secretary‑General pursuant to Security Council resolution 1950', 25 Oct. 2011 (U.N., D.H.L., S/2011/662, p. 9).

Arabia and Yemen.[57] Indeed, the presence of such an array of naval forces illustrated the truly global nature of the response to piracy off the northeast coast of Africa alongside a unique opportunity for foreign navies to demonstrate blue water capability and project soft power on an international stage. Moreover, these coordinating mechanisms facilitated collaboration between traditional enemies against a common threat or 'Hostis humani generis', which also illustrated the unique diplomatic utility of naval forces. This demonstrated to some extent the activities of, what Geoffrey Till termed, 'post-modern navies' that focus on international rather than traditional security. He stated that post modern navies are 'acutely aware of the centrality of general maritime security to the efficient operation of a globalised sea-based trading system [...] they put a premium on developing good, enduring and constructive maritime relationships with other [navies]'.[58]

China's counter-piracy deployment, the first blue-water expeditionary maritime operation in modern Chinese history, strengthened Beijing's overseas soft-power projection by 'facilitating interaction and dialogue between China and the many countries whose ports and geographic locations heighten the strategic value of these relationships'.[59] Russia's decision to deploy naval assets to tackle piracy off the coast of Somalia re-established a naval presence in the region for the first time since the 1970s. The NATO-Russian Council published a 'Russian-English English-Russian glossary on counter-piracy' in 2012 as a practical tool to facilitate communication and cooperation between NATO and Russia in relation to counter-piracy activities off the coast of Somalia.[60] Traditional adversaries such as China and Japan also established common ground through counter-piracy operations in the Gulf of Aden and, along with India and later South Korea, established 'Escort convoy coordination' in 2012. Indeed, these countries had engaged in joint air and naval drills, reciprocal aircraft landings and

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[57] U.N., S/2011/662, p. 9.
[58] Geoffrey Till, *Seapower: a guide for the twenty-first century* (3rd ed., Oxford, 2013), pp 40-1.
[59] Andrew S. Erickson & Austin M. Strange, 'China's blue soft power: antipiracy, engagement and image enhancement' in *Naval War College Review*, lxviii, no. 1 (Winter 2014), p. 72.
[60] See: R.N. Stefanova, S.A. Stepanov, N.J. Brown, D.E. Budgen, A.A. Burov, V.P. Goremykin, I.A. Grigorieva-Maes, A.V. Rug, E.G. Knyazeva, D.M. Mikhailov, G.J. Moullec, D.B. Ovsyannikov, A.V. Smushko, I.R. Stepkin, Yu.A. Telushkin (eds.) *NATO-Russian Council glossary on counter-piracy* (Brussels & Moscow, 2012).

officer visits to naval vessels, mechanisms for sharing best practices and joint participation in the Shared Awareness and De-confliction (SHADE) forum.[61]

Shared Awareness and De-confliction mechanism

The SHADE initiative was created in December 2008 as a mechanism to coordinate and synthesize the various counter-piracy activities of multinational naval coalition forces and later, independent naval deployers, in the Gulf of Aden. On an operational level, this involved monthly workshop meetings between representatives of the various navies that addressed, for example, coordination of assets along the I.R.T.C., Somali Basin operations in a particular weather-transition window, campaign analysis, air coordination and updates on B.M.P. from the shipping industry.[62] Despite these cooperative efforts, by 2011 pirate attacks peaked around the Horn of Africa, which raised questions over the effectiveness of mechanisms like SHADE and the paucity of resources available to counteract Somali piracy.

I.M.O. Secretary-General Efthimios Mitropoulos commented in May 2011: 'I am not convinced SHADE is the right answer […] I know [the navies] communicate, but I am not sure to what extent this kind of established co-ordination produces the optimum results'.[63] Despite criticisms, the U.N. Secretary-General in his report pursuant to Security Council resolution 1950 stated that SHADE 'continued to improve military coordination'.[64] SHADE also served as an initial focal point for multinational tactical and operational commanders to provide feedback to the primary cooperative mechanism, the Contact Group on Piracy off the Coast of Somalia (C.G.P.C.S.).

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[61] Daewon Ohn & Mason Richey, 'Cooperation on counter-piracy in the Gulf of Aden among China, Korea, and Japan: implications for trilateral security cooperation in Northeast Asia' in *The Korean Journal of Defense Analysis*, xxvi, no. 1 (Mar. 2014), p. 85.
[62] NATO Allied Maritime Command, News release, 'NATO chairs counter-piracy meeting in Bahrain', 02 June 2010 (http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede120710nato releasebahrain_/sede120710 natoreleasebahrain_en.pdf) (28 Nov. 2014).
[63] *Lloyd's List*, 06 May 2011.
[64] U.N., S/2011/662, p. 10.

Contact Group on Piracy off the Coast of Somalia

The C.G.P.C.S. was the primary cooperative body for countering piracy off the coast of Somalia, which was established shortly after SHADE in January 2009. The mechanism was created in response to U.N. Security Council Resolution 1851, which called upon international states and regional organisations fighting piracy and armed robbery at sea off the coast of Somalia to 'establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organisations on all aspects of combating piracy […]'.[65] The C.G.P.C.S. was initially divided into four thematic 'working groups' (see fig. 6.4), chaired on a rotating basis by a contributing member state. A fifth working group was subsequently created at the ninth plenary session of the contact group in July 2011, which reflected the holistic approach to counter-piracy adopted by the contact group. By 2013, the C.G.P.C.S. comprised of over sixty nations and around twenty international organisations, an indication of the magnitude of the global response to maritime piracy off the northeast coast of Africa. Indeed, according to James Kraska, the C.G.P.C.S. was 'the broadest coalition of nations ever gathered to develop and coordinate practical solutions to the scourge of maritime piracy'.[66]

Trust Fund

Perhaps the most significant contribution of the C.G.P.C.S., aside from the collaborative efforts of the working groups, was the creation of a 'trust fund' in January 2010 to support the initiatives of states engaged in counter-piracy activity off the coast of Somalia. Between January 2010 and October 2013, the trust fund received approximately US$17.5 million in contributions from participating states and the maritime industry, which funded thirty-one counter-piracy projects.[67] On a practical level, this included supporting regional prisons in meeting the U.N. 'Standard minimum rules for the treatment of prisoners', creation of a biometric based fishermen database system in Puntland, educative programmes for detained pirates and vulnerable youth in

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[65] U.N. Security Council, 'Resolution 1851', 16 Dec. 2008 (U.N., D.H.L., S/RES/1851/2008, p. 3).
[66] James Kraska, *Contemporary maritime piracy: international law, strategy, and diplomacy* (Oxford, 2011), p. 160.
[67] U.N., S/2013/623, p. 7.

Somalia and the repatriation of forty Somali nationals suspected of piracy previously detained by the Maldives.[68] Aside from this, the trust fund contributed to expenses associated with prosecution and detention of suspected pirates and the reimbursement of short-term prosecution related expenses.[69]

The relatively ad-hoc nature of the C.G.P.C.S., outside the direct remit of the I.M.O. and the U.N., contributed to the success of multinational counter-piracy cooperation in the region, as the group was not restricted in terms of bureaucracy and procedure.[70] This flexibility also allowed non-naval contributory nations such as the Philippines to participate in the contact group. Moreover, according to Christian Bueger: 'The growing experimentalism was also supported by the confidence to formally invite representatives other than states [...] shipping associations, industry associations, humanitarian organisations and even academics were formally invited to feed their ideas and proposals into the process'.[71] Despite the obvious utility of C.G.P.C.S., there were associated challenges. A 'One Earth Future Foundation' report on the group identified resources, sustainability, equitable partnership and strategic vision as four key challenges that faced the organisation in 2013.[72] However, the report concluded that: 'the C.G.P.C.S., which provided political support to SHADE, may have positive spillover for international relations beyond counter-piracy'.[73]

This illustrated the unique global nature of the Somali piracy threat and, moreover, the unique global response. Despite this, there were calls for a single command structure to coordinate counter-piracy operations in the region. According to Nautilus International,

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[68] U.N., S/2013/623, p. 7.
[69] Contact Group on Piracy off the Coast of Somalia (C.G.P.C.S.), 'Annual narrative progress report: trust fund to support the initiatives of states countering piracy off the coast of Somalia', 01 Jan. - 31 Dec. 2012, p. 10, available at U.N.D.P., Multi-partner trust fund office gateway (http://mptf.undp.org/document/download/11594) (01 Dec. 2014).
[70] Danielle A. Zach, D. Conor Seyle, & Jens Vestergaard Madsen, 'Burden-sharing multi-level governance: a study of the Contact Group on Piracy off the Coast of Somalia' in *One Earth Future Foundation: Oceans Beyond Piracy Report* (2013), p. 34.
[71] Christian Bueger, 'Experimental Governance: Can the Lessons of the CGPCS be transferred to other policy fields?' in Thierry Tardy (ed.), *The Contact Group on Piracy off the Coast of Somalia (CGPCS): A lessons learnt compendium* (Paris, 2014), p. 82.
[72] Danielle A. Zach et al., 'Burden-sharing multi-level governance […]', p. 38.
[73] Ibid. p. 42.

in a written submission to the House of Commons Foreign Affairs Committee in 2011: 'whilst the level of coordination amongst military forces providing protection to shipping is extremely good, it falls short of what could be achieved under a single unitary command structure'.[74]

Fig. 6.4
C.G.P.C.S. working groups' overview

Working group	Function
I	Naval operational coordination and regional maritime capacity building
II	Legal & judicial issues
III	Self-protection measures for shipping industry
IV	Strategic diplomacy
V	International information sharing to identity and disrupt financial networks of pirate leaders and their financiers ashore

Source: See: Contact Group for Piracy off the Coast of Somalia (C.G.P.C.S.) (http://www.thecgpcs.org/).

Shipping industry

Best Management Practice

The shipping industry created a key counter-piracy instrument in the form of B.M.P. in response to the escalation in piratical attacks and hijackings in 2008. Despite the presence of multinational naval counter-piracy forces operating in the region, merchant shipping was inherently vulnerable to an attack given the vast sea-space in which Somali pirates were active. B.M.P. was one example in a series of short-term reactive preventative measures such as the deployment of warships and the creation of the I.R.T.C. to protect merchant vessels while transiting the H.R.A. Given the rapidly

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[74] *Piracy off the coast of Somalia, Foreign Affairs Select Committee, tenth report with formal minutes and written evidence*, p. 29, H.C. 2011 (1318), x.

changing maritime security environment in the Gulf of Aden and the Somali Basin, B.M.P. was forced to evolve alongside the threat. This resulted in four separate B.M.P. documents between 2009 and 2011.

B.M.P. outlined a series of practical preparatory and defensive measures that could be employed prior to, during or following a pirate attack with the basic aim to deter and deny pirates access to the vessel, or failing that, to deny pirates the ability to control the vessel. Preparatory measures such as watch-keeping and enhanced vigilance alongside the installation of intruder detection equipment such as Closed Circuit Television, alarm systems and upper deck lighting was recommended in order to pre-empt an attack.[75] Physical barriers were also recommended such as electrified fences and razor wire to deny access to the bridge, accommodation and machinery spaces alongside the deployment of water spray and/or foam monitors.

In terms of evasive manoeuvres, B.M.P. advised that the Master should increase speed and commence small alterations of helm to restrict approaching skiffs from coming alongside in preparation for a boarding attempt.[76] Captain Amol Deshmukh of the M.T. *Kasugta* described how he successfully countered a pirate attack on his vessel in 2008 by employing this technique: '[I] increased speed to maximum and started manoeuvring in a zigzag fashion in order to use the wake to successfully throw the [pirate] skiffs off'.[77]

If defensive measures failed and pirates boarded a vessel, a further passive defence option was mustering to a pre-arranged 'citadel'. B.M.P. IV defined a citadel as a 'designated pre-planned area purpose built into the ship where, in the event of imminent boarding by pirates, all crew will seek protection'.[78] By congregating the crew in a secured area, with access to the command and control capability of the vessel including external communication, pirates could be denied access to potential hostages and control

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[75] 'B.M.P. 4 […]', pp 24-37.
[76] Ibid. p. 43.
[77] Email correspondence with Captain Amol Deshmukh, Master *M.T.Kasugta* (Jan. 2010).
[78] 'B.M.P. 4 […]', p. 38.

of the ship long enough for military assistance to arrive or for an attack to be abandoned. The first engineer of the *Maersk Alabama*, for example, emphasised the importance of having a 'well-fortified location with food and water supply' during the hijacking.[79]

Despite endorsement by over twenty marine industry, insurance and governing bodies, B.M.P. was not universally implemented by vessels transiting the H.R.A. According to Capt. Richard Farrington, former EUNAVFOR Operation Atalanta Chief of Staff: 'a blinkered minority of owners continue to claim that commercial pressures prevent them from taking any self-protection measures that are not mandated by law'.[80] The rate of non-compliance was estimated to be somewhere in the region of 20-40 percent of the world fleet by summer 2011.[81] The relative expensive of implementation for smaller shipping companies and the lack of legal obligation for ship-owners to adhere to its provisions might account for these figures. However, non-compliance greatly increased the likelihood of a successful hijacking. Capt. Harry Gale of the Nautical Institute reaffirmed this point: 'the ships that are being captured are the ships that are not operating B.M.P. or reporting in'.[82] By the beginning of 2013, it was estimated that non-compliance had dropped to around 15 percent, which was a likely contributor to the reduction in successful hijackings that year.[83]

Evolution of B.M.P.

The first set of guidelines was published by Oil Companies International Marine Forum in January 2009 in conjunction with other industry stakeholders under the title 'Practical measures to avoid, deter or delay piracy attacks'. This was superseded in February 2009 by a more comprehensive set of measures, this time in collaboration with the I.M.O. and the C.G.P.C.S., entitled 'Best Management Practices to deter piracy in the Gulf of Aden and off the coast of Somalia' (B.M.P. I). The first guide covered company planning

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[79] 'Lessons Learned' in *Pacific Maritime* (May 2009), p. 38.
[80] Capt. Richard Farrington, 'Somali piracy: E.U. action' in *Seaways: The International Journal of the Nautical Institute* (Apr. 2010), p. 12.
[81] *Piracy off the coast of Somalia, Foreign Affairs Select Committee […],* p. 78; Chris Spencer, 'Pirate activity update' in *Standard Bulletin* (Sept. 2011), p. 4.
[82] Interview with Capt. Harry Gale, Technical Manager, Nautical Institute at the Nautical Institute headquarters, Lambeth Road, London, United Kingdom (10 Feb. 2010).
[83] International Chamber of Shipping (I.C.S.), *Annual review 2013* (London, 2013), p. 18.

prior to transit, ship's master planning, voyage planning, pre-transit and mid-transit defensive measures, actions if attacked/boarded by pirates and guidance in the event of military action.[84] The I.M.O. stressed that nothing in the measures outlined in B.M.P. I should be considered contradictory to the I.M.O.'s universal guidance on piracy contained in 'Guidance to ship owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships' of June 2009.

By August 2009, a revised version of B.M.P. was created that expanded and clarified the original guidelines mostly in relation to defensive measures, which included securing potential access points, ship contingency planning, 'remotely operated' search lights and zigzag manoeuvring.[85] B.M.P. II also emphasised the importance of regular contact with M.S.C.H.O.A., expanded on best practice for the use of 'citadels' and included a new section on post incident reporting. The subsequent two iterations of B.M.P. were published for the first time in booklet form, which enabled wider dissemination among the shipping industry. B.M.P. III, entitled 'Best Management Practices to deter piracy off the coast of Somalia and in the Arabian Sea area' was published in June 2010. This revised edition replaced B.M.P. II and expanded the limits of the H.R.A., heightened ship protection measures, encouraged post-incident reporting in addition to a vessel position reporting form template, anti-piracy planning chart and additional guidance for fishing vessels alongside several colour images.[86]

In August 2011, B.M.P. III was replaced by the final B.M.P. document produced between 2008 and 2013. B.M.P. IV included several updates from the previous version, most notably the inclusion of a section dedicated to Private Maritime Security Companies (P.M.S.C.s) and the deployment of Privately Contracted Armed Security Personnel (P.C.A.S.P.), despite an initial reluctance to endorse such measures.[87] A new

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[84] 'Best Management Practices to deter piracy in the Gulf of Aden and off the coast of Somalia', Feb. 2009 (I.M.O., M.S.C.1/Circ.1332/Anx.1).
[85] 'Best Management Practices to deter piracy in the Gulf of Aden and off the coast of Somalia: version II', Aug. 2009 (I.M.O., M.S.C.1/Circ.1335/Anx.2).
[86] U.K.M.T.O., *Best Management Practices to deter piracy off the coast of Somalia and in the Arabian Sea area: suggested planning and operational practices for ship operators, and masters of ships transiting the Gulf of Aden and the Arabian Sea* (Edinburgh, 2010).
[87] 'B.M.P. 4 […]', pp 39-40.

section on how a shipping company and crew could assist law enforcement authorities with the prosecution of pirates was also included which not only illustrated the evolution of B.M.P., but also broader counter-piracy efforts in the region. Other specific changes included in B.M.P. IV were a recommendation to keep A.I.S. active throughout a voyage, enhanced information of the use of citadels, clarification on reporting requirements and a practical visual 'aide memoire' to help facilitate wider application of best practice (see fig. 6.5). In addition to B.M.P., the shipping industry initially worked with a number of companies on the development of more elaborate non-lethal counter-piracy technologies. Several devices were developed for merchant shipping companies after 2008 such as the Long-Range Acoustic Device or L-Rad that reportedly created 'safety zones' and influenced the behaviour of an intruder through 'powerful voice commands' and 'deterrent tones'.[88] However, the use of such non-lethal devices never became extensive and they were superseded by the deployment of P.C.A.S.P., which proved to be a far more effective piracy deterrent.

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[88] L-Rad Corporation, 'Product overview' (http://www.lradx.com/site/content/view/15/110) (22 Feb. 2015).

Fig. 6.5
Best Management Practices for protection against Somali based piracy: 'Aide memoire'

AVOID BEING A VICTIM OF PIRACY

Do not be ALONE
- Report to UKMTO (email or call) and Register transit with MSCHOA.
- Use the Internationally Recommended Transit Corridor (IRTC) and Group Transit Scheme or Independent Convoy.
- It is recommended to Keep AIS turned on.

Do not be DETECTED
- Keep track of NAVWARNS and visit relevant websites (MSCHOA and NATO Shipping Centre) for known pirate operating locations.
- Use navigation lights only.

Do not be SURPRISED
- Increased vigilance - lookouts, CCTV and Radar.

Do not be VULNERABLE
- Use Visible (deterrent)and Physical (preventative) Ship Protection Measures.
- These could include: razor wire, use of water/foam etc.
- Provide additional personal protection to bridge teams.

Do not be BOARDED
- Increase to maximum speed.
- Manoeuvre vessel.

Do not be CONTROLLED
- Follow well practiced procedures and drills.
- Use of Citadels (Only with prior agreement Master/Ship Operator & fully prepared and drilled - Noting a Naval/Military response is not guaranteed.
- Deny use of tools, equipment, access routes.

Source: U.K.M.T.O., *Best Management Practices for protection against Somalia based piracy: suggested planning and operational practices for ship operators and masters of ships transiting the High Risk Area* (Edinburgh, 2011), p. vi.

Unilateral international initiatives

United States

As previously highlighted, several individual nations contributed naval assets to counter-piracy operations in the Gulf of Aden and Somali Basin predominantly after 2008. This section briefly highlights the unilateral counter-piracy activity of the United States, Britain and India at a national level between 2005 and 2013. The 2005 U.S. National Strategy for Maritime Security identified piracy as a threat to security in areas of heavy commercial maritime activity. Moreover, the modus operandi of Somali pirates demonstrated a potential conduit for terrorist activity: 'The capabilities to board and commandeer large underway vessels - demonstrated in numerous piracy incidents - could also be employed to facilitate terrorist acts'.[89] These concerns alongside the escalation of attacks against shipping off the coast of Somalia from 22 reported incidents in 2006 to 51 in 2007, promoted the creation of a general U.S. 'Policy for the repression of piracy and other criminal acts of violence at sea' in June 2007.[90] The policy outlined several ways in which the U.S. government would, in collaboration with coalition partners and consistent with domestic and international law, address contemporary piracy. This included prevention, interruption and termination of acts of piracy, reducing the vulnerability of the maritime domain, prosecution of pirates and leading international efforts to preserve freedom of the seas.[91]

The 2007 policy led to a more geo-specific counter-piracy action strategy for the Horn of Africa following the upsurge of attacks in 2008. The 'National strategy for countering piracy off the Horn of Africa: partnership and action plan' consisted of several concrete operational measures designed to 'prevent, disrupt, and punish acts of Somali pirate organisations'.[92] The strategy aimed to prevent, interrupt and, ultimately, terminate Somali piracy by (i) supporting and contributing to a regionally based counter-piracy

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[89] 'National strategy for maritime security' (Sept. 2005), p. 5, available at Homeland Security Digital Library (H.S.D.L.), Policy & strategy documents (https://www.hsdl.org) (14 June 2014).
[90] I.C.C. I.M.B., *Piracy report 2007*, p. 5.
[91] 'Memorandum from the President: annex B: policy for the repression of piracy and other criminal acts of violence at sea', 14 June 2007, available at (http://georgewbush-whitehouse.archives.gov/news/releases /2007/06/20070614-3.html) (11 Dec. 2014).
[92] United States National Security Council (N.S.C.), Countering piracy off the Horn of Africa: partnership and action plan (Washington D.C., 2008), p. 6.

coordination centre; (ii) seizing and destroying vessels outfitted for piracy and related equipment; (iii) persistently interdicting suspect vessels; (iv) maintaining a capable presence; (v) supporting shiprider programs and regional counter-piracy agreements; (vi) disrupting and dismantling pirate bases ashore; and, (vii) disrupting pirate revenue.[93] The partnership and action plan culminated in the creation of the U.S. led counter-piracy force C.T.F. 151 in January 2009 (see pp 51-2).

U.S. counter-piracy policy evolved following the first Somali pirate attack on a U.S. registered vessel the *Maersk Alabama* in April 2009. In the aftermath of the hijacking, the U.S. State Department adopted a more holistic approach toward Somali piracy and immediately despatched an envoy to attend the international Somali peacekeeping and development meeting in Brussels, followed by meetings with the International Contact Group on Piracy to develop and expanded the multinational response.[94] This was followed by the deployment of a diplomatic task force to engage with the T.F.G. and leaders in Puntland to take action against pirates operating from bases within their territories and finally, a team was directed to work with the shipping and insurance industry to address breaches in self-defence measures.[95] In relation to self-protection, an 'anti-piracy assistance team' was created in March 2009 to inspect U.S. flagged merchant ships prior to transiting the H.R.A. to assess and advise on physical security vulnerabilities and to provide information on B.M.P. This was augmented by weekly piracy analysis and mariner warning information regarding worldwide threats to shipping issued by the U.S. Office of Naval Intelligence alongside port security advisories issued by the U.S. Coast Guard.

The United States' ability to disrupt pirate revenue as outlined in the 'partnership and action plan' was bolstered in April 2010 with the creation of presidential 'Executive Order 13536'. This essentially enabled the United States treasury to disrupt and block known pirate financiers' property and interests. The directive applied to those who had

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[93] U.S. N.S.C., Countering piracy off the Horn of Africa [...], pp 10-12.
[94] 'Announcement of counter-piracy initiatives by U.S. Secretary of State Hilary Rodham Clinton' 15 Apr. 2009, available at (http://www.state.gov/secretary/20092013clinton/rm/2009a/04/121758.htm) (11 Dec. 2014).
[95] Ibid.

materially assisted, sponsored or provided financial, logistical or technical support to pirate operations in Somalia.[96] Despite this, the legislation had not been formally applied as of 31 December 2013. The U.S. State Department also advocated and encouraged countries to allow merchant vessels to carry P.C.A.S.P. under the command of the ships master as it acknowledged in 2012 that '[…] not a single ship with Privately Contracted Armed Security Personnel aboard has been pirated […] not a single one'.[97]

By 2013, U.S. counter-piracy strategy had evolved from a predominantly military focused intervention to a more multi-dimensional approach that incorporated long-term stabilising initiatives ashore with an emphasis on prosecuting pirates and disrupting their sources of revenue. Between 2009 and 2013, the United States government provided over US$1.5 billion in assistance to Somalia in the areas of security sector reform, developmental and humanitarian assistance including mentoring, training, logistical support, and provision of equipment for the Somali National Security Forces.[98] These efforts were a clear indication of U.S. strategic interest in a stable Somalia as a criterion for regional security and accessibility.

Britain

In response to the 'disturbing increase' in maritime piracy off the coast of Somalia in 2005, the U.K. Department for Transport issued Marine Guidance Note (M.G.N.) 298, which replaced M.G.N. 241 of 2002.[99] The guide outlined several protective measures to reduce the risk of a successful pirate attack and highlighted potential responses and the importance of reporting incidents.[100] The marked escalation in attacks off the Horn of Africa in 2008 precipitated the need for a revised set of counter-piracy measures. M.G.N. 420 was subsequently published in August 2010, which superseded M.G.N. 298. While

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[96] 'Executive Order 13536 concerning Somalia', 13 Apr. 2010, available at (http://www.whitehouse.gov/the-press-office/executive-order-concerning-somalia) (04 Nov. 2014).
[97] 'Remarks to the U.S. Chamber of Commerce by Andrew J. Shapiro […]'
[98] 'U.S. assistance in Somalia, fact sheet, Office of the Spokesperson, Washington, D.C.', 07 May 2013, available at (http://www.state.gov/r/pa/prs/ps/2013/05/209062.htm) (16 Dec. 2014).
[99] *Piracy on the high seas. Transport Select Committee eighth report with proceedings, evidence and appendices*, Ev. 41, H.C. 2005/06, (1026), 100.
[100] 'Measures to counter piracy, armed robbery and other acts of violence against merchant shipping', Nov. 2002 (U.K. Dept. of Transport, M.C.A., M.G.N. 241 (M), pp 1-2).

M.G.N. 298 adopted a broad outlook that encompassed counter-piracy guidance in Southeast Asia and Somalia, M.G.N. 420 identified Somali piracy as the dominant manifestation of a 'global problem'.[101] M.G.N. 420's key messages included planning, risk assessment, training, vigilance, high speed and evasive manoeuvring in H.R.A., communication with relevant authorities and implementation of the shipping industry's B.M.P.[102]

As counter-piracy initiatives evolved in Gulf of Aden/ western Indian Ocean, a new M.G.N. was issued in November 2011 that provided more accessible online links to counter-piracy guidance. This included a revised Department for Transport 'Guidance to U.K. flagged shipping on measures to counter piracy, armed robbery and other acts of violence against merchant shipping' alongside 'Interim guidance to U.K. flagged shipping on the use of armed guards to defend against the threat of piracy in exceptional circumstances' and the latest edition of B.M.P. The inclusion of government policy on the use of P.C.A.S.P. was significant and illustrated the evolution of the U.K.s counter-piracy approach given that prior to October 2011 private armed security was prohibited on British flagged vessels.

The interim guidelines outlined three 'exceptional circumstances' in which P.C.A.S.P. may be deployed on U.K. flagged ships. These were (i) when transiting the H.R.A. (bounded by Suez and the Straits of Hormuz to the north, 10°S and 78°E); (ii) the latest B.M.P. is implanted but is not deemed sufficient to protect against acts of piracy and (iii) the use of armed guards is assessed to reduce the threat to crewmembers.[103] In reality, given Britain's 'wide-ranging extant and enduring military commitments', the Royal Navy was not enthusiastic or indeed capable of providing V.P.D.s on board vulnerable commercial shipping.[104] This, alongside the obvious deterrent function, likely

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[101] 'Measures to counter piracy, armed robbery and other acts of violence against merchant shipping', Aug. 2011 (U.K. Dept. of Transport, M.C.A., M.G.N. 420 (M), p. 4).
[102] Ibid. pp 1-3.
[103] U.K. Dept. for Transport, *Interim guidance to U.K. flagged shipping on the use of armed guards to defend against the threat of piracy in exceptional circumstances* (May 2013), pp 13-14.
[104] *Tenth report from the Foreign Affairs Committee of session 2010-12 piracy off the coast of Somalia response of the Secretary of State for foreign and commonwealth affairs*, 2, [Cm 8324], H.C. 2010-12, x.

encouraged the British government to endorse the deployment of P.M.S.C.s, which could essentially offset this deficiency.

While the U.K. was active in naval counter-piracy operations in the Gulf of Aden and western Indian Ocean, the government stressed its leadership role in bolstering maritime security. The Parliamentary Under-Secretary of State Henry Bellingham M.P. stressed that 'the role the U.K. is taking is not only a matter of the vessels that we have deployed, but the leadership role that we are supplying, the lead that we have provided on strategy and the thinking behind a number of the different strands' (see fig. 6.6).[105] This direction was illustrated at the 'London Conference' on Somalia in February 2012, which was hosted by the U.K. government and attended by key international representatives.[106] Maritime piracy was identified as one of the fundamental destabilising issues in Somalia alongside famine, terrorism and weak political and security structures.[107] A second U.K. led international conference on Somalia was held in London in May 2013 that expressed support for the T.F.G. of Somalia's efforts to establish internationally recognised Somali waters alongside international efforts to support the development of Somali maritime security capacities.[108]

In a more applied sense, the U.K. Maritime Trade Operations (U.K.M.T.O.) office in Dubai acted as the primary point of contact for merchant vessels transiting the Gulf of Aden/ Somali Basin. Under the U.K.M.T.O. Voluntary Reporting Scheme, merchant vessels were encouraged to register details including position, course, passage speed, freeboard, cargo, destination and estimated time of arrival.[109] Vessels could then be tracked and monitored through the H.R.A. using A.I.S. and Long Range Identification

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[105] *Piracy off the coast of Somalia, Foreign Affairs Select Committee[…]*, ev. 38.

[106] Key participants at the London Conference on Somalia of February 2012 included British Prime Minister David Cameron, U.S. Secretary of State Hillary Rodham Clinton, U.N. Secretary-General Ban Ki-Moon, T.F.G. of Somalia President Sharif Sheikh Ahmed, Ethiopian Prime Minister Meles Zenawi Asres, Ugandan President Yoweri Kaguta Musuveni, Kenyan President Mwai Kibaki, Qatari Prime Minister Hamad bin Jassim, Turkish Foreign Minister Ahmet Davutoglu and French Foreign Minister Alain Juppé.

[107] See: 'London Conference on Somalia: communique', 23 Feb. 2012 (https://www.gov.uk/government/ news/london-conference-on-somalia-communique--2) (15 Dec. 2014).

[108] 'Somalia Conference 07 May 2013: key outcomes', 13 May 2013 (https://www.gov.uk/government/ news/somalia-conference-7-may-2013-key-outcomes) (15 Dec. 2014).

[109] 'B.M.P. 4 […]', pp 55-6.

and Tracking (LRIT). The U.K.M.T.O office then transmitted these details to the multinational military coalitions operating in the region thereby generating an accurate picture of transitory merchant traffic and allowing counter-piracy forces to position warships accordingly. Aside from piracy, the U.K.M.T.O. also provided general guidance on other maritime security issues in the Gulf of Aden, Straits of Hormuz and Gulf of Oman including forthcoming naval operations, exercises and possible interaction between them and transiting vessels.

Fig. 6.6
Royal Navy vessels dedicated to counter-piracy operations in Northeast Africa 2007-11

Date	Unit	Force assigned to
08 Jan. – 27 July 2007	H.M.S. *Montrose*	(NATO) S.N.M.G. 2
22 Aug. – 21 Dec. 2007	H.M.S. *Northumberland*	(NATO) S.N.M.G. 2
21 Jan. – 01 Aug. 2008	H.M.S. *Somerset*	(NATO) S.N.M.G. 2
23 Oct. – 05 Dec. 2008	H.M.S. *Cumberland*	(NATO) Op. Allied Protector
08 Dec. – 28 Feb. 2009	H.M.S. *Northumberland*	(E.U.) Op. Atalanta
25 June – 20 Aug. 2009	H.M.S. *Cornwall*	(NATO) Op. Allied Protector
21 Aug. – 08 Nov. 2009	H.M.S. *Cornwall*	(NATO) Op. Ocean Shield
26 Jan. – 02 July 2010	H.M.S. *Chatham*	(NATO) Op. Ocean Shield
29 Aug. – 03 Dec. 2010	H.M.S. *Montrose*	(NATO) Op. Ocean Shield
25 Sep. – 06 Dec. 2010	R.F.A. *Fort Victoria*	(U.K.) Op. Capri
05 Jan. – 15 Apr. 2011 & 11 June – 10 July 2011	H.M.S. *Richmond*	(E.U.) Op. Atalanta

Source: *Piracy off the coast of Somalia, Foreign Affairs Select Committee, tenth report with formal minutes and written evidence*, p. 35, H.C. 2011 (1318), x.

India

By 2008, Somali pirates had extended their area of operation over 1000nm into the western Indian Ocean and Arabian Sea. It was little surprise then that India, owner of the largest proximal naval force in the region, launched counter-piracy patrols in the Gulf of Aden in October 2008. Indeed, India had experienced 55 incidences of domestic piracy between 2008 and 2013 and a further 86 incidents during the same period in neighbouring Bangladeshi waters, more specifically the anchorages and approaches to Chittagong harbour.[110] To address this, in 2009 the Indian navy assumed central authority over all maritime and coastal security agencies and invested in Fast Interceptor Craft for security operations in the littoral. This resulted in closer inter-agency cooperation and fifteen coastal security operations and exercises in 2012.[111]

In 2011, India had forged an anti-piracy operational agreement with China and Japan to share information on warship dispersal to achieve a greater economy of force in the Gulf of Aden. According to Indian Navy Assistant Chief of Naval Staff Rear Adm. Monty Khanna, this was an 'evolved a mechanism under which it will be ensured that there is enough gap between the Indian, Chinese and the Japanese convoys and they are well-displaced'.[112] India also collaborated closely with EUNAVFOR and escorted not only Indian flagged but also international merchant vessels through the I.R.T.C.

Regional initiatives

General context

Regional states were for the most part incapable of addressing Somali piracy in any meaningful way without international led collaboration and financial assistance. Indeed, several neighbouring countries also struggled with socio-economic problems, although to a lesser extent than Somalia. This meant that resources available for counter-piracy operations were limited, predominantly in relation to naval capacity and capability. The notable absence of African navies in multinational counter-piracy patrols in the Gulf of

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[110] I.C.C. I.M.B., *Piracy report 2008-2013*, p. 5.
[111] Indian Ministry of Defence, *Annual report 2012-2013*, pp 37-8, available at (http://mod.nic.in/write readdata/AR-eng-2013.pdf) (09 July 2015)
[112] *The Economic Times*, 01 Feb. 2012.

Aden and Somali Basin testified to this. Moreover, there was likely a reluctance and lack of desire to commit already limited resources to a long-term failed state. Indeed, most regional countries lacked the capability to provide effective maritime security within their own territorial waters. According to one study in 2010:

> […] the region lacks capabilities such as intelligence, early warning, maritime air surveillance and reconnaissance […] No credible indigenous maritime forces with sufficient mobility, flexibility and the firepower necessary for sustainable operations and deterrence exist; coastguards and civilian maritime agencies are wanting, while no single agency […] exists that cooperates on maritime security issues in the region.[113]

The escalation in piracy between 2005 and 2008 changed this regional apathy somewhat given the wider repercussions of Somali piracy to the economic prospects of littoral states. While most regional countries were limited in what they could contribute to maritime security unilaterally, the A.U. framework became an important element in regional efforts to enhance long-term political stability ashore. Despite this, the international community remained a significant contributor to regional counter-piracy efforts. According to one study: 'Until a sufficient level of capacity is reached, or the region shows it has the leadership and funds to develop capacity themselves, the international community will have to keep playing a large role in combating piracy and other transnational threats'.[114]

African Union Mission in Somalia

On 6 December 2006, U.N. Security Council Resolution 1725 authorised the Intergovernmental Authority on Development in Eastern Africa and member states of the African Union to establish a protection and training mission in Somalia. The initiative, named IGASOM, was never deployed. A little over one year later on 19 January 2007, the A.U. authorised a peace-support mission in Somalia dubbed

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[113] Thean Potgieter & Clive Schofield, 'Poverty, poaching and pirates: geopolitical instability and maritime insecurity off the Horn of Africa' in *Journal of the Indian Ocean Region*, vi, no. 1 (June 2010), p. 93.
[114] Jens Vestergaard Madsen & Liza Kane-Hartnett, 'Towards a regional solution to Somali piracy: challenges and opportunities', 05 Apr. 2013 (Presentation given at the International Studies Association annual conference, San Francisco, California, April 2013).

AMISOM that consisted of nine infantry battalions each consisting of 850 personnel supported by maritime coastal and air components. One month later, the operation was formerly authorised by the U.N. under Security Council Resolution 1744. The aim of AMISOM was, in the first instance, to support stabilising efforts in Somalia through dialogue and reconciliation; secondly, to facilitate the provision of humanitarian assistance and finally to create the conditions for long-term stabilisation, reconstruction and development ashore.[115] While the January 2007 A.U. communiqué did not make any explicit reference to maritime piracy as a destabilising factor, a follow-up document in January 2008 expressed concern at the 'persistence of the phenomenon of piracy off the coast of Somalia and its serious implications for security and delivery of humanitarian assistance.'[116]

Though not a counter-piracy mission, AMISOM's stabilising efforts ashore likely contributed to suppressing piracy at sea. International governments were reticent to commit troops to Somalia in support of the T.F.G. given the unsuccessful history of such operations, despite acknowledging the importance of stability and security ashore in tackling the roots of maritime piracy. Therefore, an 'African ownership of an African problem' approach was adopted and supported by international community. Initially the mission was hampered by understaffing and a lack of tactical equipment. The troop contingent between 2006 and 2008 consisted primarily of the remnants of the Ethiopian invasion force and a small number of Ugandan troops.[117] However, by 2010 a battalion from Burundi joined the force, which elevated troop numbers to 9,000.[118] By 2012, the troop numbers stood at approximately 12,000.[119] In terms of counter-piracy, AMISOM force Commander Fredrick Mugisha commented in 2011: 'We are still concentrating

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[115] 'Communique of the 69th meeting of the peace and security council', 19 Jan. 2007, p. 2, available at A.U., Peace & Security Council (http://www.peaceau.org/uploads/communiqueeng-69th.pdf) (10 Dec. 2014).
[116] 'Communique of the 105th meeting of the peace and security council', 18 Jan. 2008, p. 2, available at A.U., Peace & Security Council (http://www.peaceau.org/uploads/communique105eng.pdf) (16 Dec. 2014).
[117] Benedikt Franke & Romain Esmenjaud, 'Who owns African ownership? The Africanisation of security and its limits' in *South African Journal of International Affairs*, xv, no. 2 (Dec. 2008), p. 152.
[118] Nathan Mugisha, 'The way forward in Somalia' in *The RUSI Journal*, clvi, no. 3 (June/July 2011), p. 26.
[119] U.N. Security Council, 'Resolution 2036', 22 Feb. 2012 (U.N., D.H.L., Res. 2036/2012, p. 4).

with phase one of our operations. It is only after this phase that we might move near the marauding pirates in Southern Somalia near Kismayu and also Central Somalia'.[120]

Despite this, AMISOM did contribute to wider regional counter-piracy efforts. In December 2011, for example, the A.U. Peace and Security Council authorised the training and deployment of V.P.D.s on board supply vessels for AMISOM. The V.P.D.s worked closely with EUNAVFOR assets through specialised anti-piracy drills alongside training in pirate modus operandi, tactics, rules of engagement, unarmed combat and detention of suspects.[121] In practical terms AMISOM, in conjunction with Somali T.F.G. forces, managed to secure key strategic sites in the capital Mogadishu including the seaport, which enabled AMISOM forces to escort shipping and more importantly deny use of the littoral maritime space as a potential springboard for piratical attacks.[122]

U.N. Security Council Resolution 2036 of December 2012 expanded the mandate of AMISOM to include a ceiling of over 17,000 troops alongside reimbursement of contingent owned equipment including force enablers and multipliers.[123] However, the resolution stopped short of supplying essential marine vessels which AMISOM claimed were needed not only deny Al-Shabaab the opportunity to benefit from piracy and illegal maritime trade but contribute to the international counter-piracy mission off the coast.[124]

By 2013, AMISOM had achieved a significant operational success against Al-Shabaab in Mogadishu and in areas of central and southern Somalia despite limited resources and troops. Material insufficiencies aside, according to one commentator: 'AMISOM […] liberated over one million Somali citizens from Al-Shabaab's tyrannous social control […] provided increased safety and security in liberated territories; and has taken the first

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[120] *The Star* (Kenya), 08 Oct. 2011.
[121] AMISOM, 'Mission profile: AMISOM maritime' (http://amisom-au.org/mission-profile/amisom-maritime/) (13 Jan. 2015).
[122] Mugisha, 'The way forward in Somalia', p. 29.
[123] U.N., A/RES/2036/2012, p. 4.
[124] AMISOM, 'Mission profile: AMISOM maritime'.

steps toward terminating the country's decades-long civil war'.[125] In terms of countering maritime piracy, AMISOM's efforts contributed to tackling the root causes of the crime ashore, specifically political instability and lack of law enforcement.

Djibouti Code of Conduct

The most significant regional centred counter-piracy initiative during this period was the creation and ratification of the 'Code of Conduct concerning the repression of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden' referred to as the 'Djibouti Code of Conduct' in January 2009. The 'code of conduct' was convened by the I.M.O. and initially signed by Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, United Republic of Tanzania and Yemen. By 2013, it had been ratified by twenty eligible states including Egypt, Saudi Arabia and South Africa. Although not legally binding, the Djibouti Code of Conduct established a comprehensive regional maritime security framework that included measures to repress piracy, protections measures for ships, coordination and information sharing, review of national counter-piracy legislation and a dispute settlement mechanism.[126] The code was loosely modelled on the 2004 Regional Co-operation Agreement on combating Piracy and Armed robbery Against ships in Asia (ReCAAP) that proved to be a highly effective regional based cooperative counter-piracy framework.

A key achievement under the Djibouti Code of Conduct was the creation of three regional maritime information-sharing centres that acted as focal points for reports of pirate activity and dhow movements (see fig. 6.7). The centres were strategically located in Mombasa to cover the central area, Dar-es-Salaam to receive reports from member states in the southern region and Sana'a in Yemen to cover information received in the north. This information was then disseminated to assist international naval forces in identifying mother ships and patterns of piratical movement.[127] By April 2010, the Djibouti Code of Conduct had evolved to include a 'project implementation unit' tasked

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[125] Noel Anderson, 'Peacekeepers fighting a counterinsurgency campaign: a net assessment of the African Union Mission in Somalia' in *Studies in Conflict & Terrorism*, xxxvii, no. 11 (Mar. 2014), p. 952.

[126] 'Code of Conduct concerning the repression of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden', 29 Jan. 2009 (I.M.O., Council.102/14/Anx., pp 8-16).

[127] U.N., S/2013/623, p. 8.

with assisting signatory states in implementing the agreement. The implementation unit consisted of several specialists in various fields such as operational training and maritime law and was financially sustained through a donor state trust fund.

In 2013, the I.M.O. trained over 600 regional officials in counter-piracy through the regional training centre in Djibouti, which illustrated some measure of the relative success of the initiative. Despite functioning as a regional based counter-piracy framework, the formation of the Djibouti Code of Conduct was truly an international effort. The Djibouti meeting, for example, was attended by delegations from eighteen nations, observers from a further twelve nations,[128] U.N. bodies alongside observers from the European Commission, INTERPOL, the League of Arab States, ReCAAP, NATO, the Organisation of the Islamic Conference, BIMCO and INTERTANKO. In June 2009, a pan-Arab anti-piracy task force was created separate from the Djibouti Code of Conduct to bolster regional maritime security and enhance cooperation with multinational naval patrols by several Gulf States including Bahrain, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, Sudan, the United Arab Emirates, and Yemen.

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[128] Canada, India, Indonesia, Iran, Italy, Japan, Nigeria, Norway, Philippines, Singapore, United Kingdom and United States, see: I.M.O., Council.102/14/Anx., p. 1.

Fig. 6.7

Djibouti Code of Conduct information sharing network and national focal points
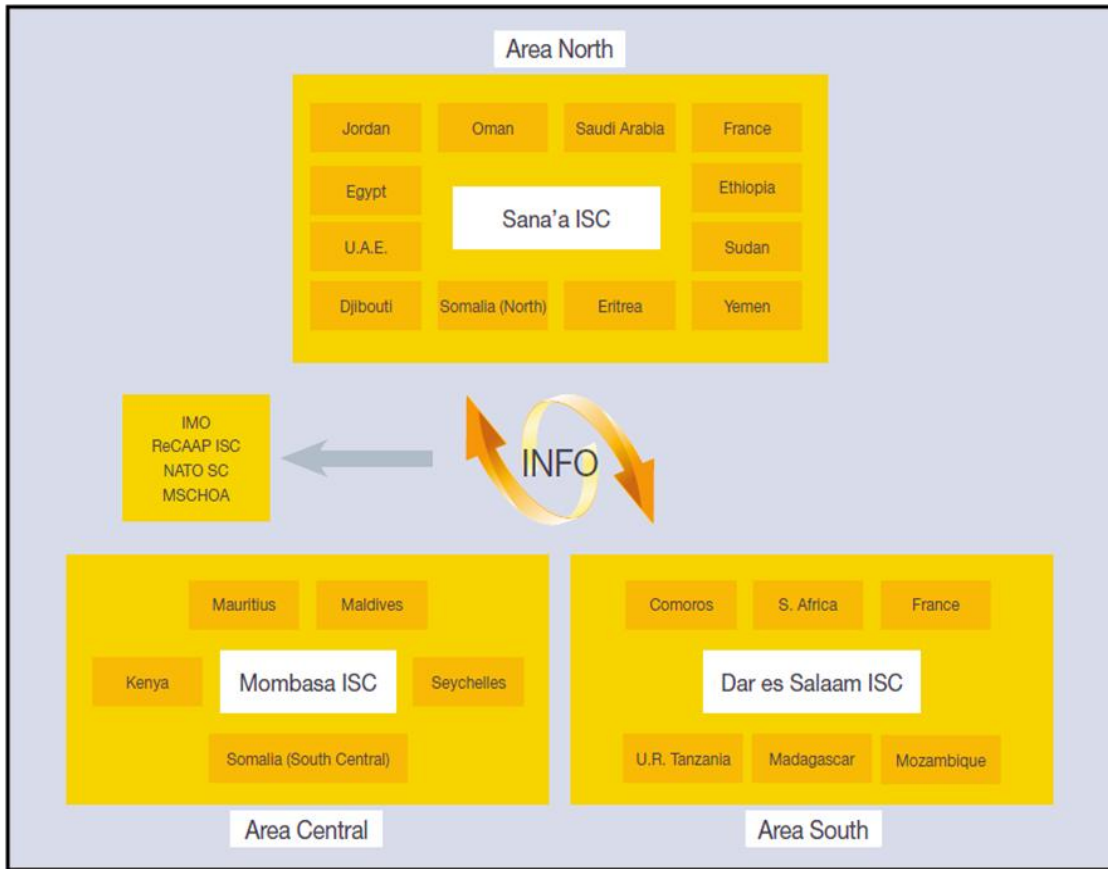
Somaliland & Puntland

In 2009, Somaliland was described by one analyst as 'the only pirate-free area in Somalia'.[129] This remained consistent throughout the period covered in this analysis despite a lack of international recognition and a limited maritime enforcement capacity. Indeed, Somaliland's efforts to suppress piracy after 2008 were likely motivated by claims of statehood, as successes would strengthen its case for international recognition. The Somaliland Coast Guard reportedly operated a fleet of between five and seven functional boats to patrol some 860 kilometres of coastline between Djibouti to the north

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[129] Stig Jarle Hansen, 'Piracy in the greater Gulf of Aden: myths, misconceptions and remedies' in *Norwegian Institute for Urban and Regional Research (NIBR) Report*, no. 29 (Oct. 2009), p. 29.

and Puntland to the South with an annual budget of just US$200,000.[130] Other analysis suggested Somaliland's maritime capacity was even more restricted. A 2011 report observed that the Somaliland coast-guard comprised of 'two large, nine-meter boats, which can be fitted with heavy machine guns and look fit for rough seas […] but most of the other vessels seem to be battered plastic hulls without engines or seats'.[131] Despite these constraints, the purported 600-strong Somaliland Coast Guard detained over 94 pirates between 2006 and 2012 alongside 'countless' illegal fisherman, smugglers, human and arms traffickers.[132] This illustrated the relative effectiveness of countering pirates ashore thereby denying them the opportunity to commit criminal acts at sea.

These counter-piracy achievements were marred by allegations of corruption, particularly surrounding the reported release of 60 convicted pirates from a Somaliland prison in 2011 following the payment of bribes to court and prison officials.[133] The long-term effectiveness of local counter-piracy efforts were further hampered by ongoing issues surrounding the campaign for international recognition as an independent state. In June 2013, for example, Somaliland authorities denied UNSOM permission to operate in Somaliland territory on the basis that UNSOM was only mandated to work in the Federal Republic of Somalia from which Somaliland was independent. [134] Notwithstanding these diplomatic difficulties, in March 2013 Puntland and Somaliland agreed to jointly share information and collaborate on a series of security cooperation measures relating to terrorism, piracy and other forms of organised crime.

In contrast to Somaliland, Puntland and to a lesser extent the state of Galmudug to the south, emerged as the primary operating bases for Somali pirates after 2008. By 2011, it was estimated that pirates held over 300 kidnapped crewmembers hostage ashore in

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[130] Jatin Dua, 'Piracy and the narrative of recognition: the view from Somaliland' (2011), available at Social Science Research Council (S.S.R.C.) (http://www.ssrc.org/pages/Piracy-and-the-Narrative-of-Recognition-The-View-from-Somaliland/) (13 Feb. 2015).

[131] See: U.N. Security Council, 'Report of the Secretary-General on specialised anti-piracy courts in Somalia and other States in the region', 20 Jan. 2012 (U.N., D.H.L., S/2012/50, p. 5); Dua, 'Piracy and the narrative of recognition […]'; *Somaliland Times*, 09 Apr. 2011.

[132] *Somaliland Times*, 09 Apr. 2011.

[133] U.N., S/2011/662, p. 14.

[134] U.N., S/2013/623, p. 4.

Puntland during the course of ransom negotiations.[135] Despite this, the U.N. highlighted how the Puntland authorities assisted in securing the hostages eventual release.[136] Puntland had previously formed a small Coast Guard contingent in 2000 with the assistance of the U.K. based private military company the HART group. According to a report by the U.N. Monitoring Group on Somalia, since mid-2008 'the Puntland Coast Guard [had] begun to demonstrate limited but growing effectiveness in its operations against pirate groups operating in Puntland coastal water'.[137]

In 2009, the Puntland administration under President Abdirahman Mohamud Farole was credited with ejecting pirate groups from the principal town of Garowe through a combination of negotiation and use of force that was bolstered by a strong local anti-piracy sentiment.[138] The most significant practical counter-piracy measure initiated by the Puntland administration was the creation of the Puntland Maritime Police Force (P.M.P.F.) in 2010. Between December 2010 and February 2012, the P.M.P.F. were reportedly responsible for the arrest of over 700 pirates.[139] In terms of equipment, the P.M.P.F. was limited to Kalashnikov rifles alongside several skiffs for maritime operations and 4x4 vehicles for operations ashore. The force also claimed to operate an 'AN-26' aircraft as a 'maritime surveillance platform' but this was likely a chartered plane with no specialised surveillance equipment.[140]

In 2012, the P.M.P.F. launched a counter-piracy operation ashore in the former pirate stronghold of Eyl in southern Puntland that included the construction a small airstrip, water drilling facilities and a base to support counter-piracy operations off the coast.[141]

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[135] See: U.N., S/2011/662, p. 2.
[136] Ibid.
[137] U.N. Security Council, 'Report of the monitoring group on Somalia pursuant to Security Council Resolution 1811', 18 Dec. 2008 (U.N., D.H.L., S/2008/769, p. 15).
[138] A.T. Weldemichael, 'When elephants fight, the grass suffers: a report on the local consequences of piracy in Puntland' in *Dalhousie Marine Piracy Project: Marine Affairs Programme Technical Report*, no. 12 (2014), p. 38.
[139] Weldemichael, 'When elephants fight, the grass suffers […]', p. 40.
[140] Jeremy Binnie, 'Puntland expands counter-piracy force' in *I.H.S. Jane's Defence Weekly* (29 Mar. 2012), p. 2.
[141] Robert Young Pelton, 'Puntland marine police force enter Eyl', 02 Mar. 2012 (http://www.somaliareport.com/index.php/post/2978/Puntland_Marine_Police_Force_Enter_Eyl_) (11 Feb. 2015).

An additional 400 personnel were reportedly recruited by the P.M.P.F. for the mission in March 2012.[142] At sea, the P.M.P.F. demonstrated an ability to disrupt and force pirates from a particular area of operation albeit with limited resources. In May 2012, for example, the P.M.P.F. launched a major operation along the Bari coastline that forced pirates operating in the area, including alleged pirate leader Isse Yuluh, to flee from littoral waters toward open-ocean aboard the hijacked vessels M.V. *Royal Grace* and M.T. *Smyrni*.[143]

Despite these relative successes and support from the T.F.G. of Somalia, the P.M.P.F. was heavily criticised in a report by the U.N. Monitoring Group on Somalia and Eritrea in 2012. The report labelled the P.M.P.F. a 'private army disingenuously labelled a "counter-piracy" force' and alleged that it was funded by contributions from high-ranking officials from the United Arab Emirates and supported by a private military company Sterling Corporate Services (formerly Saracen International).[144] According to the P.M.P.F.s official website: 'The land-based P.M.P.F. […] plays no role in border disputes […] [it] furthers the restoration and sustainability of security in Somalia generally, a key pillar of the larger reconciliation efforts supported by the international community'.[145]

Kenya

The ramifications of piracy off the coast of Somali spread throughout littoral states and inhibited already struggling regional economies while exacerbating pre-existing political tensions. In 2008, for example, a total of 35 cruise liners called at ports in Kenya with an

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[142] Pelton, 'Puntland marine police force enter Eyl'.
[143] Jeremy Binnie, 'P.M.P.F. pursues pirate gang' in *I.H.S. Jane's Defence Weekly* (12 June 2012); Ministry of Security and DDR Puntland State of Somalia Garowe, 'Puntland Maritime Police Forces deploy in strategic coastal towns', 08 June 2012 (https://pmpf.files.wordpress.com/2012/06/pr_08june 2012_en1.pdf) (12 Feb. 2015).
[144] U.N. Security Council, 'Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2002', 13 July 2012 (U.N., D.H.L., S/2012/544, pp 21-2).
[145] Puntland Maritime Police Force (P.M.P.F.), Website: homepage (https://pmpf.wordpress.com/) (12 Feb. 2015).

estimated revenue stream of US$300,000 per vessel.[146] As a direct result of the escalation in piracy in the Gulf of Aden and western Indian Ocean, this figure had dropped to zero by 2012. As early as 2005, Kenya had offered support to address the increasingly frequent reports of piracy off the coast of Somalia following an escalation in international attention, however; the Kenyan navy was ill equipped, especially in relation to patrol craft, to combat the 'well-armed' pirates.[147] By 2009, Kenya adopted a more proactive role and became the first regional state to accept Somali pirates for prosecution and detention following several bilateral agreements with the United States and European Union. This resulted in the conviction of over 50 Somali nationals in Kenyan courts for the crime of piracy by 2013.[148]

In terms of sea-based counter-piracy initiatives, Kenya launched a navy patrolled maritime 'security corridor' in November 2010 aimed at deterring Somali based pirates.[149] Indeed, the Kenyan navy received delivery of two newly refurbished fast attack patrol craft in August 2011 complemented by the donation of a patrol boat for counter-piracy duties by France in June that year. The United Kingdom also donated a rigid-hulled inflatable boat to Kenya in June 2013 to bolster the navy's ability to tackle piracy threats and other illegal maritime activity.[150] Notwithstanding these capability enhancements and an apparent willingness to engage with internationally led counter-piracy initiatives, the head of the EUCAP NESTOR mission Etienne de Poncins, commented in 2013 that 'the political situation in Kenya is not so favourable for the moment'.[151] Indeed, criticism that Kenya was not proactively addressing the root causes of piracy had previously been highlighted. According to Andrew Mwangura of the East African Seafarers Assistance Programme: 'We need to address the root causes of piracy

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[146] Lisa Otto, 'Kenya and the pest of piracy: a prospective partner for peace' in *Institute for Security Studies: Situation Report* (Feb. 2012), p. 2, available at (http://www.issafrica.org/uploads/22Feb12 Kenya.pdf) (16 Feb. 2015).
[147] 'Somalia calls for piracy help' in *I.H.S. Jane's Defence Weekly* (28 Oct. 2005), p. 2.
[148] U.N., S/2012/50, p. 5.
[149] Lauren Gelfand, 'Kenya announces security corridor to deter pirates' in *I.H.S. Jane's Defence Weekly* (26 Nov. 2010).
[150] Jeremy Binnie, 'UK donates RHIB to Kenya' in *I.H.S. Jane's Defence Weekly* (24 June 2014).
[151] Brooks Tigner, 'EUCAP NESTOR chief outlines progress, challenges' in *I.H.S. Jane's Defence Weekly* (08 Oct. 2013).

and follow the money where it goes […] a lot of the [piracy] money comes to Kenya why is the government not concerned about that?'.[152]

Apart from Kenya, the Seychelles was the first regional nation to contribute to military counter-piracy operations after 2008. Indeed, the Seychelles participated in several multilateral counter-piracy operations between 2009 and 2013 including a joint mission involving a French Airborne Warning and Control System aircraft in which a pirated fishing vessel was recaptured approximately 240nm northwest of Port Victoria.[153] Other regional states such as Maldives, Mauritius and Tanzania also launched limited maritime security operations. Tanzania, for example, despite a limited naval capacity and no patrol aircraft, reportedly prevented four separate pirate attacks between 2010 and 2011.[154]

South Africa

Given the limited maritime capacity of southeast African coastal states such as Madagascar, Mozambique and Tanzania, pressure mounted on South Africa to address this regional maritime security deficiency. During the 1990s, South Africa emerged as a leader in regional maritime security cooperation and development, however, the continent's largest and most functional naval force resisted requests to join international efforts following the upsurge in piracy attacks off the coast of Somalia around 2008. The European Union formally requested that South Africa participate in the international counter-piracy operation off the Somali coast in September 2009, mostly as it was one of the best-equipped navies on the African continent.[155] Similarly, W.F.P. requests to serve as an escort to humanitarian vessels to Somalia were reportedly disregarded despite an offer by France to reimburse refuelling costs for South African

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[152] Gelfand, 'Kenya announces security corridor to deter pirates'.

[153] Helmoed-Römer Heitman, 'Briefing: pirate patrol' in *I.H.S. Jane's Defence Weekly* (30 Aug. 2012), p. 6.

[154] Heitman, 'Briefing: pirate patrol', p. 7.

[155] According to the International Institute of Strategic Studies (I.I.S.S.) *Military Balance 2009*, the South African Navy consisted of 4 *valour* class frigates alongside 26 patrol and surface combatants, 2 mine countermeasure vessels, 6 amphibious landing craft and 6 logistical and support vessels; See: I.I.S.S., *The military balance 2009* (London, 2010), pp 319-20.

Navy ships. [156] Internal political opposition to expeditionary counter-piracy patrols seemed to emanate from budgetary constraints alongside an unwillingness to commit assets outside of the Southern African Development Community waters. [157]

It was not until Somali pirate attacks extended far enough south to threaten South Africa's extended maritime domain that the government recognised the need to respond. Indeed, it was feared that South African waters were becoming an 'attractive alternative' for Somali pirates attempting to avoid the various maritime task forces in the Somali Basin and the Gulf of Aden. [158] Operation Copper was South Africa's first counter-piracy operation, which was initiated following the hijacking of a fishing vessel *Vega 5* by Somali pirates off the coast of Mozambique in December 2010. The counter-piracy deployment included South African Navy frigates, a C47TP maritime patrol aircraft, a Super Lynx maritime surveillance helicopter and 377 military personnel. [159]

By February 2012, South Africa signed a trilateral counter-piracy Memorandum of Understanding with Mozambique and Tanzania under the auspices of the Southern African Development Community. As per the terms of the agreement, South Africa supplied two frigates; Mozambique provided a naval base at Pemba alongside twelve inland patrol vessels, while Tanzania contributed three additional patrol vessels. [160] South Africa expanded its engagement with regional counter-piracy efforts by becoming the nineteenth state to sign the Djibouti Code of Conduct in May 2012. In October 2013, the South African Navy ship the S.A.S. *Spioenkop* visited Angola, Ghana, Namibia, Nigeria and Senegal for the purposes of counter-piracy training exercises. [161]

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[156] Helmoed-Römer Heitman, 'EU requests that South Africa join anti-piracy effort' in *I.H.S. Jane's Defence Weekly* (17 Sept. 2009).

[157] Lauren Gelfand & Helmoed-Römer Heitman, 'South Africa could join Gulf of Aden anti-piracy patrols' in *I.H.S. Jane's Defence Weekly* (23 Apr. 2010).

[158] 'Address by L. N. Sisulu, M.P., Minister of Defence and Military Veterans at the S.A.D.C. Extraordinary Meeting on Regional Anti-Piracy Strategy', 25 July 2011, available at Rep. of South Africa, Dept. of Defence (http://www.dod.mil.za/speeches/July2011/Anti-Piracy%20Strategy.htm) (17 Feb. 2015).

[159] Republic of South Africa, Dept. of Defence, 'Operation Copper - maritime security on the Mozambican channel' (http://www.dod.mil.za/operations/international/operation_copper.htm) (16 Feb. 2015).

[160] Lisa Otto, 'South-Africa and anti-piracy: pragmatic foreign policy or misguided intervention?' in *African Armed Forces Journal* (Nov. 2014), p. 20.

[161] Ibid. p. 20.

Conclusion

Between January and December 2013, reports of pirate attacks in the Gulf of Aden and the western Indian Ocean had reached its lowest levels since 2006 with just fifteen incidents reported the I.M.B. (see fig. 6.8).[162] A combination of internationally led naval patrols, widespread compliance with industry B.M.P., proliferation of P.C.A.S.P. and increased prosecutions alongside progressive political normalisation and military efforts ashore contributed to the reduction in attacks. Indeed, the global response to piracy off the coast of Somalia after 2008 was unprecedented in modern times. Naval efforts witnessed traditional enemies cooperating against a common enemy to all or 'Hostis Humani Generis'. In relation to the People's Liberation Army Navy of China, for example, one commentator suggested that the impact of counter-piracy operations off the coast of Somalia was such that first decade of the twenty-first-century should be divided into a 'pre-anti-piracy' operations period and a 'post-anti-piracy' operations period.[163] This global response was necessitated, not only due to the inherent international nature of the crime, but moreover the inability of Somalia and its neighbouring states to counter-act the threat in any meaningful way.

Early international counter-piracy efforts off Somalia were chiefly reactionary and focussed primarily on military measures to interdict and deter piracy at sea. By 2013, anti-piracy strategy had evolved into a more comprehensive and holistic framework that aimed to tackle the root causes of the crime ashore while simultaneously suppressing the threat at sea. The E.U.'s counter-piracy efforts, for example, evolved from a predominately naval based response via Operation Atalanta to strengthening Somali judicial capability ashore through the Regional Maritime Security Programme and maritime infrastructural capacity through EUCAP NESTOR. Similarly, several regional states, in collaboration with international user states, convened the Djibouti Code of Conduct in 2012 that established a comprehensive framework for regional maritime

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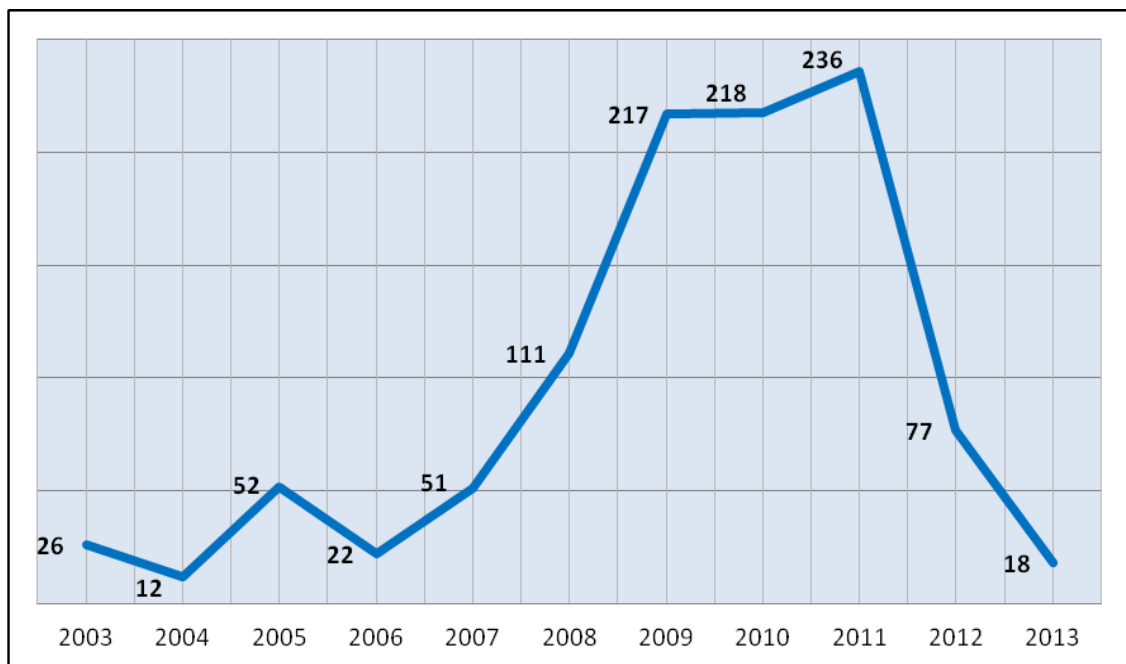[162] I.C.C. I.M.B., *Piracy report 2013*, pp 5-6.
[163] Michael McDevitt, 'PLA naval exercises with international partners' in Roy Kamphausen, David Lai and Travis Tanner (eds.) *Learning by doing: the PLA trains at home and abroad* (Pennsylvania, 2012), p. 92.

security for the first time including information sharing centres in Kenya, Tanzania and Yemen.

Despite the substantial decline in piracy incidents off the northeast coast of Africa by 2013, the issue remained at the 'macro' or policy level among international governments. It was widely recognised that transitory counter-piracy measures, such as coalition naval patrols, had only a palliative effect on the crime and that without a long term stabilising strategy ashore, attacks could easily resurge. The U.N. Security Council emphasised that 'Somalia's long-term security rests with the effective development by Somali authorities of the Somali National Security Forces'.[164] However, improving the economic, political, social and security environment of Somalia would take significant time and resources. This meant that international and regional counter-piracy initiatives had to endure because, as the I.M.B. highlighted in its 2013 piracy report: 'any change or complacency, at this stage, could rekindle the pirate activity'.[165]

Fig. 6.8
Fluctuation of reported actual and attempted pirate attacks Northeast Africa 2003-13

Source: I.C.C. I.M.B., *Piracy report 2004-2013*.

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[164] U.N. Security Council, 'Resolution 2125', 18 Nov. 2013 (U.N., D.H.L., RES/2125/2013, p. 5).
[165] I.C.C. I.M.B., *Piracy report 2013*, p. 24.

CHAPTER VII

The effectiveness of suppression:
A multi-level comparative analysis of contemporary counter-piracy initiatives

A destroyer: even the brave fear its might.
It inspires horror in the harbour and in the open sea.
She sails into the waves
Flanked by arrogance, haughtiness and false power.
To her doom she moves slowly
A dinghy awaits her, riding the waves.[1]

Introduction

Southeast Asia and Northeast Africa both experienced distinct manifestations of maritime piracy and armed robbery at sea at various times during the course of this study. While several comparisons can be drawn between the broader counter-piracy responses in both regions, the contrasts are perhaps most striking. Indeed, while the term 'piracy' is applied to incidents in both regions, the categories, modus operandi and severity of attacks committed varied considerably. Whereas high-profile hijacking of vessels and kidnapping of crews for ransom was the primary modus operandi of Somali pirates after 2005, attacks in Southeast Asia generally constituted more 'low-level' armed robberies and petty thefts (see fig. 7.1). This is an important distinction to note.

Furthermore, there was a fundamental contrast between the failed state of Somalia and the functioning albeit 'fragile state' status of several Southeast Asian nations during the course of this research. This resulted in considerably different strategic approaches and operational intricacies and impediments in counteracting maritime criminality. Despite these issues, by 2013 maritime piracy had been substantially suppressed off the coast of Somalia in a manner comparable to the successes experienced in Southeast Asia between 2006 and 2008. While it remains to be seen if the decrease in attacks due to the multifaceted efforts to combat piracy off the coast of Somalia will endure, Southeast

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[1] Text from a poem allegedly recited by Osama Bin Laden at the wedding of his son in January 2001 apparently in reference to the attack upon the USS *Cole* in Aden three months previous, see: *The Guardian*, 15 Oct. 2001.

Asia, chiefly Indonesian waters, experienced a resurgence in maritime piracy and armed robbery against ships between 2009 and 2013 (see fig. 7.2).

Fig. 7.1
Rate and severity of piratical incidents: Southeast Asia 2009-13
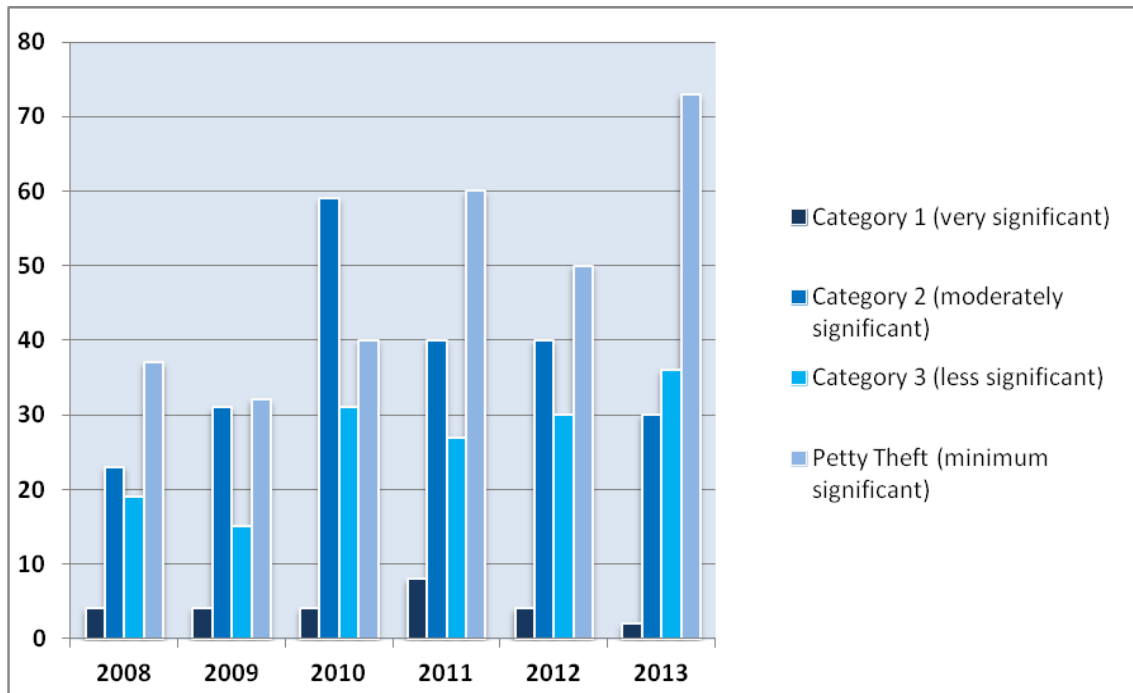
Source: Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), Information Sharing Centre (I.S.C.), *Piracy and armed robbery against ships in Asia: Annual report Jan. – Dec. 2013* (Singapore, 2013), p. 10.

This chapter will firstly briefly highlight the comparable historical context to maritime piracy in both regions alongside an outline of the most recent manifestations in 2014. Next, a comparative analysis is presented of counter-piracy initiatives in Southeast Asia and Northeast Africa as outlined in the case studies at the strategic/policy level, the operational level and the tactical level.[2] The comparative analytical framework is divided into three distinct areas for clarity. The strategic analysis explores policy-level counter-piracy activity in both regions focussing on political engagement and multilateral diplomacy, the role of international organisations and governments alongside the utility and influence of international law. Analysis at the operational level examines naval and maritime law enforcement, military initiatives such as the European

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[2] For a detailed analysis of these different levels see: U.K. Ministry of Defence, *Joint Doctrine Publication 01 (J.D.P. 01): U.K. Joint Operations Doctrine* (Swindon, 2014).

Union Naval Force's (EUNAVFOR) 'Operation Atalanta' and the Malacca Strait Patrols (M.S.P.) alongside the Internationally Recommended Transit Corridor (I.R.T.C.), implementation of the International Ship and Port-facility Security Code (I.S.P.S.) and the role of Private Maritime Security Companies (P.M.S.C.). Finally, the tactical analysis compares and contrasts engagements between authorities and maritime criminals in both Southeast Asia and off the coast of Somalia alongside practical compliance with industry Best Management Practice (B.M.P.), joint and coordinated patrols, interdicting pirates at sea and the utility of reporting mechanisms. This is followed by an analysis of the fluctuations and responses to maritime piracy in West African waters between 1980 and 2013 to provide a deeper understanding of how national intricacies and socio-political context ashore create diverse manifestations of piracy that are regionally unique.

Fig. 7.2
Fluctuation of reported piracy attacks: Southeast Asia & Northeast Africa, 2003-13
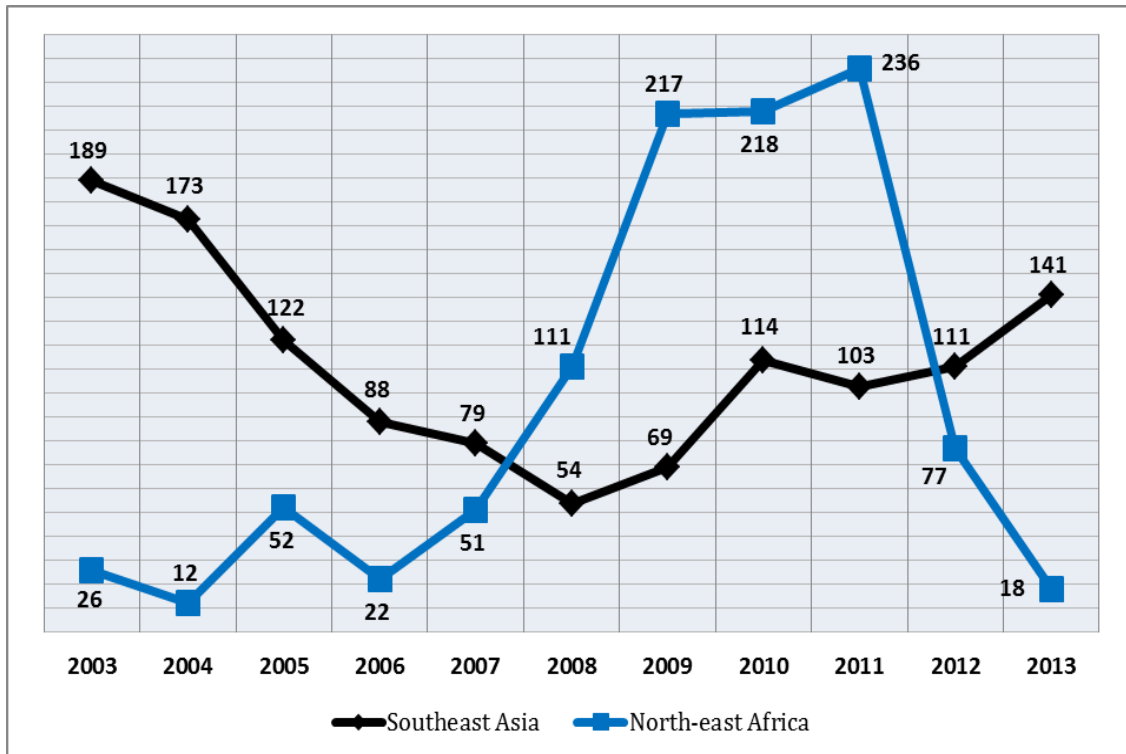
Source: International Chamber of Commerce (I.C.C.), International Maritime Bureau (I.M.B.), *Piracy and armed robbery against ships, annual reports, 1 Jan. - 31Dec. 2003-2013* (London, 2004-2014).

Analogous historical & causal factors

While Southeast Asia played host to the initial 'palingenesis' of contemporary maritime piracy in the late 1970s and early 1980s, piracy off the Horn of Africa did not become a material threat to merchant shipping until after 2005. Nevertheless, this study has identified several analogous historical and causal factors that precipitated the rise of maritime criminality in both regions. While it is important to highlight the broader historical causes of maritime piracy across the geographic divide, regional and cultural specificities and political context must always be considered. The regression of colonialism in the decades after the Second World War was a precursor to later manifestations of maritime piracy in both regions. The process of decolonisation left behind fragile systems of self-governance that were strained economically and susceptible to internal divisions precipitated by colonial boundaries that disrupted traditional ethnic dispersal. Moreover, this departure left behind a vulnerable maritime environment that no longer benefited from the relative security and stability that the colonial naval presence maintained.

This post-colonial instability culminated in armed conflict in both regions between 1950 and 1980 including the Ogaden War between Somalia and Ethiopia and the Vietnam War in Southeast Asia. Aside from fuelling political instability ashore, these conflicts increased the proliferation of military grade weaponry, which not only enhanced the capabilities of pirates but also encouraged the spread of criminality on land and at sea. Despite internal divisions and conflict ashore, the waterways of Southeast Asia and around the Horn of Africa still witnessed abundant extra-regional naval activity during the period of the Cold War. By 1991, however, these naval assets had declined and this positioned against the growth in global sea-borne trade during the 1980s, was a driver of maritime piracy. Moreover, the 1990s witnessed the collapse of central government and a violent civil war in Somalia alongside a financial crisis in Asia. The ensuing economic hardship gave rise to widespread poverty in coastal areas and famine in Somalia.

The combination of poverty and inefficient or, in the case of Somalia, non-existent coastal law enforcement, political dissonance and jurisdictional weakness alongside

geographic proximity to safe havens ashore and major shipping lanes in the Gulf of Aden and the Malacca Strait fuelled maritime piracy and armed robbery at sea in both Southeast Asia and Northeast Africa. While attacks had been extensively suppressed in Southeast Asian waters by 2007, incidents off the coast of Somalia escalated considerably. However, given the apparent cyclical nature of maritime piracy in susceptible regions, incidents in the Gulf of Aden and western Indian Ocean decreased dramatically by 2013 whereas armed robberies against ships in Southeast Asia escalated once again after 2009.

Recent manifestations

As figs 7.3 and 7.4 illustrate, rates of maritime piracy shifted from Northeast Africa in 2009 to Southeast Asia by 2014, illustrating to some extent the regionally cyclic nature of maritime criminality. Indeed, attacks in Southeast Asia reached a four-year high in 2014, an increase of 22 percent from 2013 including a significant upsurge of attacks in the regions' principal sea-lanes of the Malacca and Singapore Straits. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) annual report highlighted a total of 183 actual and attempted attacks in 2014, including 48 incidents in the Malacca and Singapore Straits compared to just 12 in 2013.[3]

Despite the high rates of occurrence, an estimated 62 percent of attacks were categorised as low-level petty or opportunistic armed or unarmed robberies according to the ReCAAP report.[4] Statistically, the majority of incidents involved between one and six pirates armed with knives or unarmed, boarding vessels at anchorage or at berth under the cover of darkness and pilfering general ship stores and other manifest items. There were also several reported armed hijackings of small coastal tankers explicitly for the purposes of siphoning marine gas oil and ship diesel to sell on the black market.

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[3] Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) Information Sharing Centre (I.S.C.), *Piracy and armed robbery against ships in Asia: annual report Jan. – Dec. 2014* (Singapore, 2015), pp 3-12.
[4] ReCAAP, I.S.C., *Annual report 2014*, p. 10.

This was in sharp contrast to the modus operandi employed by Somali pirates between 2008 and 2013, who engaged in armed hijacking of vessels and kidnapping of crew for ransom. Despite this, rates of attacks continued to decline in the Gulf of Aden and western Indian Ocean in 2014 with just eleven reported occurrences.[5] However, suspected Somali pirates still held 33 crewmembers for ransom as of 31 December 2014.[6] While statistically, Southeast Asia dominated piracy reports for 2014, according to Pottengal Mukundan, Director of the International Maritime Bureau (I.M.B.): 'the most serious attacks today remain in the Gulf of Guinea in the West Coast of Africa'.[7]

Despite officially accounting for just 17 percent of the global total for 2014, maritime piracy and armed robbery attacks of the West Coast of Africa are likely to be significantly higher due to considerable underreporting of incidents.[8] Moreover, the propensity for violence, kidnapping and injury to crew further highlights the seriousness of the crime in the Gulf of Guinea in particular.[9] In comparison to piracy off the coast of Somalia where crewmembers are kidnapped and held for ransom, attacks off West Africa tend to target diesel fuel or ship's equipment and cargo therefore little incentive exists to manage or maintain the welfare of the crew.[10]

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[5] International Chamber of Commerce (I.C.C.), International Maritime Bureau (I.M.B.), *Piracy and armed robbery against ships, annual report, 1 Jan. – 31 Dec. 2014* (London, 2015), p. 5.

[6] I.C.C. I.M.B., *Piracy report 2014*, p. 19.

[7] Sofia Diogo Mateus, 'Worrying rise in piracy attacks around Malacca Strait', 11July 2014, available at Deutsche Welle (D.W.) (http://www.dw.de/worrying-rise-in-piracy-attacks-around-malacca-strait/a-17780275) (19 Mar. 2015).

[8] I.C.C. I.M.B., *Piracy report 2014*, p. 29; Oceans Beyond Piracy (O.B.P.), 'The state of maritime piracy 2014: assessing the economic and human cost - executive summary' (2015), p. 6, available at (http://oceansbeyondpiracy.org/sites/default/files/attachments/SoP2014ExecutiveSummary.pdf) (11 June 2015).

[9] See for example: I.C.C. I.M.B., *Piracy report 2014*, pp 20-1.

[10] See for example: *The Economist*, 29 Nov. 2014.

Fig. 7.3
Fluctuation of actual and attempted pirate attacks worldwide, 2009
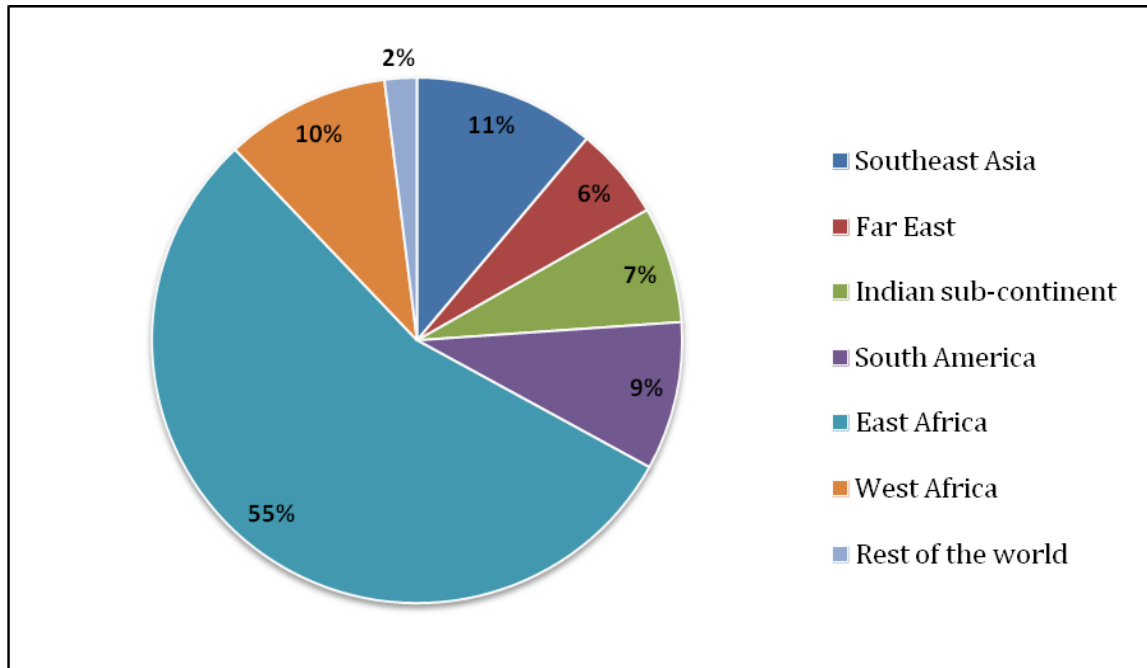
Fig. 7.4
Actual and attempted pirate attacks worldwide, 2014
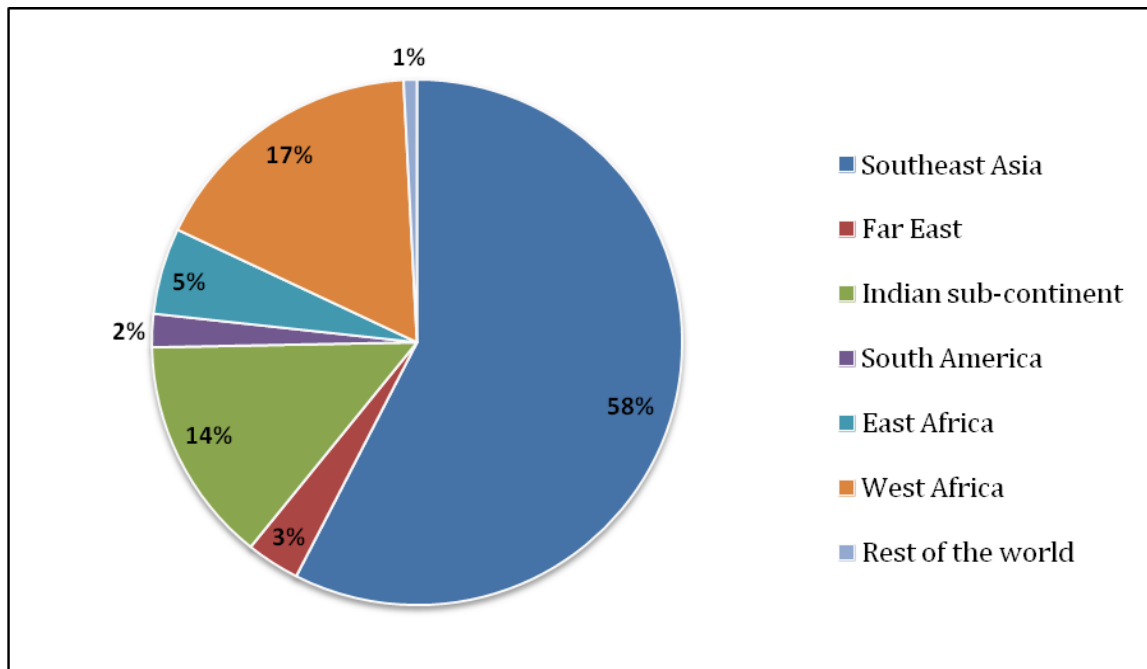
Strategic/policy level analysis

Counter-piracy efforts in Southeast Asia between 1997 and 2007 can be described as regionally-led strategic-engagement enhanced by the international community, whereas approaches to the problem in the Gulf of Aden and western Indian Ocean after 2005 were entirely an internationally-led strategic-engagement reinforced by regional states. In both regions, maritime piracy was a manifestation of wider political and economic instability ashore. Piracy therefore was not an obvious initial strategic priority for the majority of Southeast Asian or Northeast African governments, considered more a symptom of instability rather than a cause. However, given the transnational character of piracy, its victims and wider economic and security implications, international pressure eventually necessitated a policy level response in both regions.

Indeed, there was little unanimity across Southeast Asian administrations in particular, that piracy was a policy issue in any sense, chiefly in the period before the Asian financial crisis of 1997-99. According to Ian Storey: 'Indonesia did not care about piracy in the Malacca Straits, Singapore was concerned with maritime terrorism, Malaysia's main concern was illegal migration from Indonesia, so the three of them had different perceptions of what the problem was'.[11] This lack of multilateral continuity infused with a historical mistrust and sensitivity over sovereignty was a critical initial weakness in mounting an effective strategic response.

Similarly, addressing Somalia's chronic instability ashore emerged as a strategic priority for the international community during the 1990s illustrated by the United Nations Operation in Somalia (UNOSOM I & II). No functioning centralised government existed to address criminality either ashore or at sea. This was combined with a wider regional apathy toward maritime security as littoral states also suffered from a paucity of resources and maritime enforcement assets alongside a lack of political will to tackle crimes like piracy. Indeed, both regions lacked a modern indigenous naval history as a by-product of colonialism, which may explain the neglect of investment in maritime enforcement assets and early deficiencies in regional responses.

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[11] Interview with Dr Ian Storey, Senior Fellow - Institute of Southeast Asian Studies (I.S.E.A.S.) and Editor - *Contemporary Southeast Asia* at the Institute of Southeast Asian Studies, Pasir Panjang, Singapore (20 Mar. 2013).

While there were a number of African-led peace and reconciliation initiatives launched in Somalia after the outbreak of the civil war, maritime security was rarely prioritised given the scale of the humanitarian and political crisis ashore. The escalation in attacks after 2005 and the inability of Somalia or its neighbouring states to address the threat saw maritime piracy emerge as a significant international policy level concern particularly given the importance of the Gulf of Aden and western Indian Ocean as a strategic conduit for international trade.

Political engagement and multilateral diplomacy

Geoffrey Till postulated that 'the ocean need to be thought of as a global system characterised by countless interconnections in which a disturbance in any one component may well effect all the others'.[12] Manifestations of maritime piracy in both Southeast Asia and Northeast Africa during the period of this research illustrated this concept well. Piracy and armed robbery against ships affected not only the crew and shipping company but also wider regional and international maritime trade and stability. In Southeast Asia, this was demonstrated in June 2005 when Lloyd's marine insurers included the Malacca Strait in its 'war, strikes, terrorism and related perils' risk list. This designation combined with pressure from international user states and the importance of seaborne trade to regional economies, precipitated multilateral diplomatic engagement and a concerted counter-piracy effort by the littoral states of Indonesia, Malaysia and Singapore.

Similarly, the escalation in maritime piracy off the coast of Somalia after 2007 exacerbated existing regional economic hardship, curtailing, for example, visits by international cruise liners to Kenyan ports and negatively affecting fisheries and tourism

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[12] Geoffrey Till, *Seapower: a guide for the twenty-first century* (3rd ed., Oxford, 2013), p. 308.

that constituted some 65 percent of the G.D.P. of the Seychelles.[13] This was a likely driver of the Kenyan and Seychelles administrations alongside those of Madagascar, Mauritius, Oman, Tanzania and Yemen, in accepting hundreds of Somali pirate suspects for prosecution and imprisonment between 2008 and 2013. This multilateral political engagement and diplomacy in both regions, which was influenced to different degrees by international states, culminated in the signing of the ReCAAP agreement in 2007 and the Djibouti Code of Conduct in 2009, which emulated the ReCAAP model.

Despite establishing a multilateral government-to-government framework for counteracting piracy, both agreements were intrinsically limited by the unique political, historical and economic context of each region. In Southeast Asia, for example, neither Malaysia nor Indonesia ratified ReCAAP. Moreover, enduring issues surrounding territorial integrity and sensitivities over sovereignty dominated not only maritime security policy, but also wider strategic political engagement under the Association of Southeast Asian Nations (ASEAN) framework.[14] In contrast, Somalia as a failed state lacked any functioning administration or indigenous maritime enforcement capability. In addition, a wider lack of regional political will, national rivalries and a paucity of maritime security resources hampered effective implementation of the Djibouti Code of Conduct illustrated by the financial and material reliance on the I.M.O.'s Project Implementation Unit and Trust Fund.

Despite contextual contrasts, agreement was reached in November 2011 between representatives of the three Djibouti Code of Conduct Information Sharing Centres (I.S.C.) and ReCAAP I.S.C. on standard operating procedures for communicating

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[13] See: Lisa Otto, 'Kenya and the pest of piracy: a prospective partner for peace' in *Institute for Security Studies: Situation Report* (Feb. 2012), p. 2, available at (http://www.issafrica.org/uploads/22Feb12 Kenya.pdf) (16 Feb. 2015); *The Independent*, 08 Feb. 2010; Lt. Col. Michael Rosette (Deputy Chief of Staff, Seychelles People's Defence Forces), 'Piracy in the Seychelles', 03 Feb. 2012, available at The Royal Institute of International Affairs: Chatham House (http://www.chathamhouse.org/sites/files/ chathamhouse/public/Research/Energy,%20Environment %20and% 20 Development/020212rosette.pdf) (21 Apr. 2015).
[14] Interview with Ms. Jane Chan Git Yin, Coordinator - Maritime Security Programme, Institute of Defence & Strategic Studies (I.D.S.S.), S. Rajaratnam School of International Studies (R.S.I.S.) at Nanyang Technological University, Singapore (21 Mar. 2014).

and exchanging piracy related information.[15] Aside from this, comparable strategic coordinating mechanisms and inter-governmental organisations facilitated the development of maritime security cooperation and engagement in both regions. In Southeast Asia, the ASEAN Regional Forum (A.R.F.) and the Council for Security Cooperation in the Asia-Pacific, for example, helped to promote multilateral regional collaboration in combating piracy and armed robbery at sea.[16] While these organisations attempted to strengthen regionally-led maritime security cooperation, the Contact Group on Piracy off the Coast of Somalia (C.G.P.C.S.) existed as an internationally-led cooperative mechanism to act as a common point of contact between both regional and international states engaged in counter-piracy operations.[17]

Role of international community

Effective multilateral counter-piracy engagement was frequently hampered by a lack of will to address maritime piracy at policy level. International pressure was therefore a critical driver in the promotion of maritime security and piracy as a strategic concern for both Southeast Asian and Northeast African governments. Nevertheless, the extent of international involvement varied significantly in each region. According to Jane Chan, Coordinator of the Maritime Security Programme at the Institute of Defence & Strategic Studies in Singapore: 'as much as littoral states didn't want external countries patrolling their waters for good reasons, they have always welcomed external contribution'.[18] In contrast, the fledging Somali Transitional Federal Government (T.F.G.) directly requested international naval patrols in its territorial waters in 2008 to tackle the indigenous piracy crisis, given its complete inability to confront the issue.

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[15] Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), *Press release*, 11 Nov. 2011 (http://www.recaap.org/Portals/0/docs/News%20and%20Press%20Releases/2011-11-11%20Press%20Release.pdf) (21 Apr. 2015).
[16] Association of Southeast Asian Nations (ASEAN), 'Declaration on the conduct of parties in the South China Sea' 04 Nov. 2002, available at (http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea) (07 Nov. 2013).
[17] U.N. Security Council, 'Resolution 1851', 16 Dec. 2008 (U.N., Dag Hammarskjöld Library (D.H.L.), S/RES/1851/2008, p. 3).
[18] Interview with Ms. Jane Chan Git Yin (21 Mar. 2014).

In Southeast Asia the perceived possibility of infringement of maritime sovereignty or loss of influence to the United States under the proposed Regional Maritime Security Initiative (R.M.S.I.) in 2004, for example, stimulated strategic engagement amongst littoral states and accelerated the creation of a regionally based multilateral maritime security regime. Despite reservations, extra-regional powers such as China, India, Japan and the United States enhanced these regional led counter-piracy efforts through training programmes and funding for maritime law enforcement. Indeed, ReCAAP was an initiative conceived by Japan and finalised in Tokyo in November 2004.

In contrast, efforts to suppress piracy off the coast of Somalia after 2005 were entirely commanded by the wider international community of user states and extra-regional entities. The Somali piracy crisis propelled maritime security to the forefront of global policy. This appeared to be part of a wider evolution in approaches to security after 2001 that recognised not only the importance of the unhindered movement of maritime trade to the global economy, but also the intrinsic susceptibility of the maritime domain as a conduit for all types of criminal and terrorist activity. This recognition manifested in the promotion of the Maritime Domain Awareness concept[19] alongside the publication of the U.S. 'National maritime security strategy' in 2005, the 'Cooperative strategy for 21st century seapower' in 2007 and the U.K. 'National strategy for maritime security' in 2014. Moreover, maritime security now appeared as a distinct military dimension of maritime power in the doctrine of several navies including the Australian Navy, Royal Navy, U.S. Navy and the Russian Federation Navy. Indeed, the Australian government launched a multi-agency 'waterfront task-force' known as Operation Polaris in 2010 to address organised crime in the maritime port environment.[20] In addition, the U.N. Security Council produced over twenty resolutions that directly and indirectly addressed

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[19] The United States' 'National strategy for maritime security: national Maritime Domain Awareness (M.D.A.) plan' defined M.D.A. as 'the effective understanding of anything associated with the maritime domain that could impact the security, safety, economy, or environment of the United States'; The Maritime Domain is defined as 'all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, vessels, and other conveyances'; See: 'National Maritime Domain Awareness plan for the National Strategy for Maritime Security', Dec. 2013, p. iv, available at Homeland Security Digital Library (H.S.D.L.), *Policy & strategy documents* (https://www.hsdl.org) (14 June 2014).

[20] Australian Crime Commission (A.C.C.), Organised crime, 'Waterfront task forces' (https://www.crimecommission.gov.au/organised-crime/joint-task-forces-and-initiatives/waterfront-task-forces) (02 June, 2015).

Somali piracy between 2005 and 2013, a clear indication of how the issue had evolved from a localised coastal criminal enterprise into a global, strategic concern.

Such policy-level counter-piracy engagement was unsurprising perhaps, considering the inability of any solitary nation or navy to address transnational maritime threats such as piracy. International involvement in counter-piracy operations exemplified what Till termed as a maritime security 'away-game'.[21] In terms of Somali piracy this constituted 'the world community coming together in order to provide integrated, over-arching and global responses to […] threats to good order at sea […]'.[22] Whereas, in the case of Southeast Asia, the 'away-game' approach consisted of internationally led maritime capacity building through financial donations, material assistance, intelligence and bilateral training exercises such as the Cooperation Afloat Readiness and Training (CARAT) and the associated Southeast Asia Cooperation Against Terrorism (SEACAT). The fundamental difference in both approaches was the deployment of physical naval assets. No extra-regional navies were granted permission to unilaterally patrol sovereign waters in Southeast Asia consistent with international law, whereas the international legal regime was expanded to allow international naval assets to enter Somali territorial waters whilst engaged in counter-piracy operations.[23]

International legal regime

International law affected approaches to counter-piracy strategy in diverse, though not unrelated ways, in Southeast Asia and Northeast Africa during the period of this study. While the criminalisation of piracy and armed robbery at sea had been manifest under international law for centuries, procedures for punishment and dispensation fell under the authority of domestic legislation. Inefficient or obsolete national laws combined in many cases with little political will to pursue prosecution led to a so-called 'catch and release' policy that saw suspected Somali pirates apprehended and subsequently released. This was somewhat rectified with the U.N. office on Drugs and Crime) (U.N.O.D.C.) Counter Piracy Programme's 'piracy prosecution model' that utilised and

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[21] Till, *Seapower [...]*, p. 312.
[22] Ibid.
[23] See: U.N. Security Council 'Resolution 1816', 02 June 2008 (U.N., D.H.L., S/RES/1816/2008, p. 2).

expanded existing regional domestic legislation to prosecute pirates in neighbouring jurisdictions. By December 2013, over 1,200 suspects had been convicted or detained for the crime of piracy in 21 countries including several E.U. member states. [24] According to Capt. Brian Wilson: 'Whole-of-government processes have proved instrumental in national-level responses to Somali piracy […] as actions on the water – evidence collection, obtaining statements, duration of detention at sea, and chain of custody – are being addressed by civilian agencies in courtrooms and diplomatically'.[25] Similarly, in Southeast Asia states typically favoured deportation of suspected pirates rather than prosecution in national courts, with just four examples of prosecutions secured using universal jurisdiction for the crime of piracy between 1998 and 2007.[26]

The formative United Nations Convention on the Law of the Sea (UNCLOS) of 1982 significantly influenced approaches to maritime security and counter-piracy in both regions during the course of this study. The codification of legal limits to state's maritime boundaries under UNCLOS heightened pre-existing territorial sensitivities in parts of Southeast Asia and resulted in an erosion of regional maritime relations. During the 1990s and 2000s, when incidents of piracy and armed robbery against ships escalated considerably in Indonesian territorial waters, the provisions in UNCLOS designated such attacks as 'armed robbery' and therefore exclusively under Indonesian jurisdiction. Indonesia was unable to tackle the problem unilaterally due in part to a paucity of naval assets and financial resources. This contributed to undermining and eroding potential multilateral counter-piracy collaboration by intensifying maritime territorial rivalries and allowing pirates the opportunity to evade capture by traversing from one national maritime jurisdiction to another.

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[24] European Union External Action Service (E.E.A.S.), 'Factsheet: the E.U. fight against piracy in the Horn of Africa', 23 Dec. 2013, p. 3, available at (http://eeas.europa.eu/statements/docs/2013/131223_ 03_en.pdf) (06 Feb. 2015).

[25] Brian Wilson, 'Five maritime security developments that will resonate for a generation' in *Harvard Law School: National Security Journal Online* (Mar. 2015), available at (http://harvardnsj.org/wp-content/uploads/ 2015/04/ Wilson-NSJ-Article-PDF.pdf) (12 June 2015).

[26] Sheldon W. Simon, 'Southeast Asian international relations: is there institutional traction?' in N. Ganesan & Ramses Amer (eds.), *International relations in Southeast Asia: between bilateralism and multilateralism* (Singapore, 2009), p. 56; Eugene Kontorovich & Steven Art, 'An empirical examination of universal jurisdiction for piracy' in *The American Journal of International Law*, civ, no. 3 (July 2010), p. 445.

Given the lack of a functional state apparatus in Somalia between 2005 and 2012, UNCLOS became a useful tool in legitimising international counter-piracy operations in the Gulf of Aden and western Indian Ocean. U.N. Security Council Resolution 1816 of 2008 extended Article 101 of UNCLOS to encompass the territorial waters of Somalia. This formally permitted foreign navies to apply the high seas rule for piracy in Somali waters.[27] Critically Indonesia, given sensitivities over maritime sovereignty and piracy in Southeast Asia, insisted that a paragraph was added to the resolution emphasising that this was a unique extension that applied exclusively and explicitly to Somalia. The 'Indonesian paragraph' affirmed that the resolution applied only with respect to the situation in Somalia and did not affect the rights of member states under international law with respect to any other situation and furthermore was authorised only following a formal request from the permanent representative of the Somalia Republic to the United Nations.[28] According to Prof. Robert Beckman: '[Indonesia] used the law of the sea as a shield in that sense against foreign powers, whether it's Australia, India, Japan or the United States to keep them at bay […] if you want to help us give us more patrol vessels and aid, but don't tell us you want to patrol in our waters'.[29] This highlighted how international law played an important role in influencing policy level decision making regarding maritime security enforcement in both regions.

In a broader sense, despite some of the political impediments mentioned here, there was a wider diplomatic benefit to the multinational expeditionary counter-piracy operations off the coast of Somalia and the multilateral regional counter-piracy operations in, for example, the Strait of Malacca. In both cases traditional adversaries combined to address a common security threat toward a mutually advantageous situation. This cooperation opened avenues for further political and diplomatic engagement on a range of maritime security issues given the inherently global and interconnected nature of maritime trade. Such engagement, especially off the coast of Somalia, not only illustrated the deterrent capability of navies, but moreover their unique diplomatic utility. According to David

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[27] U.N., S/RES/1816/2008, p. 2.
[28] U.N., S/RES/1816/2008, Sec.9, p. 3; Interview with Professor Robert Beckman, Director - Centre for International Law (C.I.L.) and Associate Professor – Faculty of law, National University of Singapore (N.U.S.) at the Parkroyal Hotel, Kitchener Road Singapore (24 Mar. 2014).
[29] Interview with Professor Robert Beckman (24 Mar. 2014).

Slogget: '[…] a blend of bilateral and multilateral agreements provides an approach that allows a wider catchment of nations to be involved from a strategic viewpoint, and for practical tactical measures to be implemented at the bilateral level to combat criminality and other threats'.[30]

Operational level analysis

Maritime piracy steadily evolved into a policy level concern for Southeast Asian governments during the late 1990s and 2000s and far more rapidly for the wider international community following the upsurge in attacks off the coast of Somalia after 2005. This section will compare and contrast several operational responses to maritime piracy in Southeast Asia and Northeast Africa including naval operations, issues with law enforcement at an operational level, deployment of Privately Contracted Armed Security Personnel (P.C.A.S.P.) and implementation of initiatives such as the I.S.P.S. Code. Governments in both regions struggled to various extents with capacity and resource issues at an operational level. Individually the majority of coastal Northeast African states lacked the capacity to enforce maritime security in their own territorial waters let alone contribute to enforcement further afield. In that capacity, international naval involvement was essential. In Southeast Asia, governments such as Indonesia struggled to maintain a maritime enforcement capacity capable of patrolling some 50,000km of archipelagic coastline. Expeditionary counter-piracy operations off the coast of Somalia reflected in some ways the so called 'gunboat policy' during interwar years that Herbert Richmond described as an 'expression of the policy of maintaining order where a foreign nation cannot or will not maintain it itself'.[31] This as previously suggested was easier to implement operationally off the coast of Somalia than in Southeast Asia owing to pre-existing sensitivities over sovereignty.

Naval counter-piracy operations

Predictably, naval operations were launched in both Southeast Asia and Northeast Africa in response to upsurges in maritime piracy in 2004 and 2008 respectively.

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[30] David Sloggett, *The anarchic sea: maritime security in the 21ˢᵗ century* (London, 2013), p. 91.
[31] H.W. Richmond, *Imperial defence and capture at sea in war* (London, 1932), p. 53.

Despite some innate similarities due to the operating environment, they were fundamentally different in terms of context. While counter-piracy naval operations such as the Malacca Strait Sea Patrol (M.S.S.P.) were coordinated patrols initiated by littoral states, EUNAVFOR Operation Atalanta, for example, was a multinational expeditionary operation led entirely by extra-regional states. Both initiatives, however, shared a similar operational model based on sea, air and intelligence platforms. The M.S.S.P. was complemented by the Eyes in the Sky (EiS) joint air patrol and an 'intelligence exchange group' while Operation Atalanta was supported by embarked helicopters alongside military patrol and reconnaissance aircraft that disseminated intelligence with other multinational naval coalitions through the Shared Awareness and De-confliction mechanism (SHADE) and the C.G.P.C.S.

In terms of countering piracy, each operation had a calculable deterrent effect. Incidents in Gulf of Aden, for example, dropped substantially following the deployment of international naval assets from 117 attacks in 2009 to just six in 2013.[32] Similarly in the Malacca Strait, according to Jane Chan: '[…] even though the number of arrests were not that high […] there has been anecdotal evidence by researchers on the ground that naval patrols were a real deterrent factor'.[33] This deterrent factor was a likely dynamic in a progressive decline in incidents in the Malacca Strait and Singapore Strait following the launch of the Malacca Straits Patrol from 60 in 2004 to just two in 2008.[34]

In addition to the M.S.S.P., the Indonesian Navy launched a unilateral counter-piracy effort named 'Operation Octopus' (Operasi Gurita) in June 2005, which intensified anti-piracy air and sea patrols along the Malacca Strait and intelligence gathering operations in communities along the coast of Sumatra and on the Riau Islands.[35] One report suggested the operation comprised of twenty warships, seven Rigid-Hulled Inflatable Boats, four 'frogmen' teams, three amphibious reconnaissance teams and a joint

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[32] I.C.C. I.M.B. *Piracy report 2010*, p. 5.

[33] Interview with Ms. Jane Chan Git Yin (21 Mar. 2014).

[34] 'Reports on acts of piracy and armed robbery against ships: annual report 2004', 05 May 2005 (I.M.O., Maritime Safety Committee (M.S.C.) 4/Circ.64/Anx.1, pp 2-4); 'Reports on acts of piracy and armed robbery against ships: annual report 2008', 19 Mar. 2009 (I.M.O., M.S.C.4/Circ.133/Anx.1, p. 6).

[35] Ian Storey, 'Securing Southeast Asia's sea lanes: a work in progress' in *Asia Policy*, no. 6 (July 2008), p. 118.

intelligence team.[36] Despite a restricted period of just three months due in part to fuel costs, the operation yielded some positive results. According to the Indonesian Navy, an estimated 127 suspect vessels were boarded and twelve individuals were arrested during the course of the operation.[37] In the Gulf of Aden and western Indian Ocean, EUNAVFOR Operation Atalanta was similarly complemented by two additional international naval counter-piracy coalitions - the U.S. led Combined Task Force 151 (C.T.F. 151) and NATO Operation Ocean Shield - alongside several independent naval deployments including China, India and Russia.

Despite the relative success of these naval counter-piracy operations in terms of suppressing attacks, there were significant limitations to their wider efficacy. Counter-piracy operations in both regions were compromised to some extent by an imbalance between physical naval and military assets and a large uncontested sea space. In the Gulf of Aden, this resulted in displacement of attacks from the I.R.T.C. farther into the western Indian Ocean with a resultant rise in the deployment of P.M.S.C.s to fill the vacuum. Similarly, the EiS joint aerial patrol in the Strait of Malacca flew just six daytime sorties per week in 2011, which fell short of the estimated 70 sorties needed to provide twenty-four hour coverage.[38]

Such physical limitations were amplified by the difficulty in harmonising multiple national navies at an operational level. As Till observed: 'Multinationality is a force multiplier, but it does add a level of complexity to every aspect of an expeditionary operation'.[39] Surprisingly perhaps, this complexity hindered littoral naval patrols in the Malacca and Singapore Strait more than multinational naval operations off the coast of Somalia. The expeditionary nature of counter-piracy operations off the Somali coast combined with the expanded legal remit under U.N. Security Council Resolution 1816

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[36] Singapore Institute of International Affairs (S.I.I.A.), 'Indonesia launches 'Operation Octopus' in Malacca Strait', 15 July 2005 (http://www.siiaonline.org/page/insightsDetails/id/2688/ArticleCategory Id/7#.VUD5xWP_k5o) (27 Apr. 2015).

[37] Storey, 'Securing Southeast Asia's sea lanes […]', p. 118.

[38] Sheldon W. Simon, 'Safety and security in the Malacca Straits: the limits of collaboration' in *Asian Security*, vii, no. 1 (Feb. 2011), pp 35-6.

[39] Till, *Seapower [...]*, p. 260.

facilitated closer operational cooperation and cohesion among the majority of international navies.

Moreover, the operations occurred far from the territorial waters of participating states, thereby negating conflict of interest in terms of sovereignty and fewer restrictions on movement. This afforded multinational naval assets operating in the Gulf of Aden and western Indian Ocean the opportunity to engage in broader diplomatic activities and joint counter-piracy drills and exercises that arguably would have been implausible a decade previous. Examples of such engagement included two bilateral Chinese and U.S. naval exercises off the Horn of Africa in August 2013 and December 2014, which, according to Capt. Doug Stuffle, Commander of the U.S. Navy Destroyer Squadron I: 'help[ed] establish clear paths for communication […] and allow[ed] us to demonstrate cooperative efforts in the international community to help us work together to deal with transnational threats'.[40]

The same operational flexibility could not be applied to the Malacca Strait Patrol for example. The principal operational impediment was that the sea patrols were coordinated rather than joint due primarily to enduring territorial sensitivities. This limited the effectiveness of the operation by restricting patrolling and 'hot pursuit' of piracy suspects in adjacent maritime jurisdictions. Moreover, such restrictions were not observed by maritime criminals engaged in acts of piracy or armed robbery against ships. This led to criticism that the M.S.S.P. was 'little more than an exchange of patrol schedules'.[41] However, while the M.S.S.P. remained coordinated, the EiS and the 'intelligence exchange group' were joint initiatives that coordinated information exchange through the Information Fusion Centre at the Changi naval base in Singapore.[42]

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[40] 'U.S., China conduct anti-piracy exercise', 12 Dec. 2014, available at U.S. Navy, U.S. Naval Forces Central Command/5th Fleet (http://www.navy.mil/submit/display.asp?story_id=84858) (28 Apr. 2015).
[41] Carolyn Liss, 'The privatisation of maritime security in Southeast Asia: the impact on regional security cooperation' in *Australian Journal of International Affairs*, lxviii, no. 2 (Oct. 2013), p. 198.
[42] Interview with Ms. Jane Chan Git Yin (21 Mar. 2014).

The restrictiveness of 'hot pursuit' was somewhat rectified with the agreement of standardised operational procedures in April 2006 that facilitated limited pursuit of a suspect vessel up to 5nm into the sovereign waters of an participating state.[43] Gauging the material effectiveness of the M.S.P., however, is difficult. According to one commentator: 'the paucity of public data on M.S.P. activities makes an empirical judgement about their effectiveness impossible'.[44] Despite these limitations, incidents of piracy in the Malacca Strait declined following creation of the M.S.P. in 2004. However, the available data suggests that attacks have been increasing since 2010, with a notable upsurge in 2014 (see fig. 7.5).

Fig. 7.5
Average no. of reported piracy incidences in the Strait of Malacca 2004-14[45]
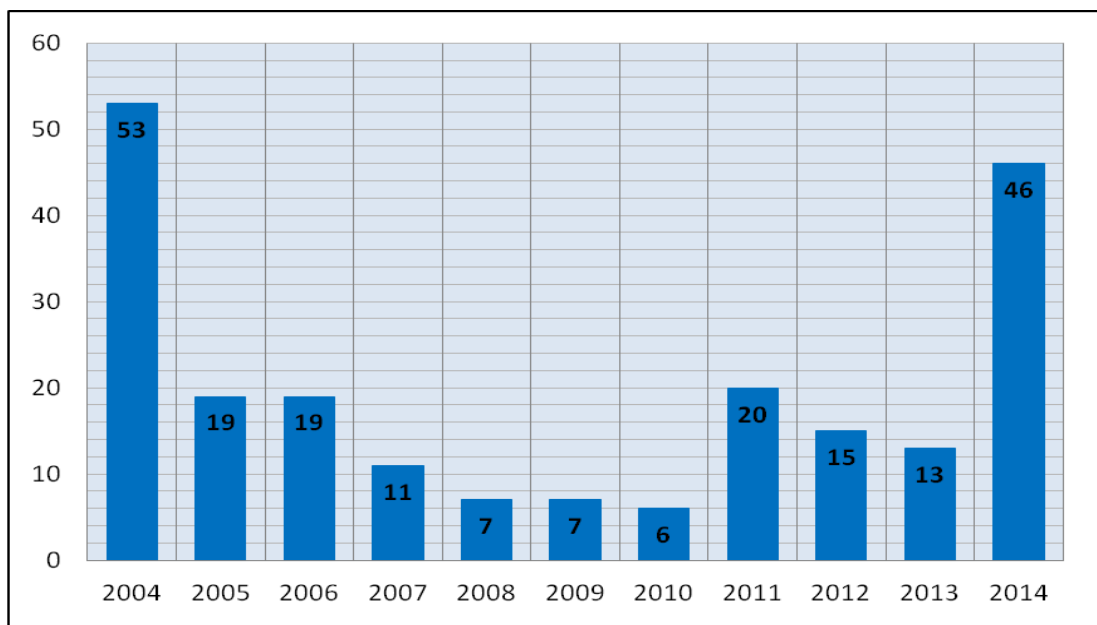
Source: Averages extrapolated from: I.C.C. I.M.B., *Piracy reports 2005-2014*; ReCAAP Information Sharing Centre (I.S.C.), *Piracy and armed robbery against ships in Asia: annual reports 2012-2014*; I.M.O., *Reports on acts of piracy and armed robbery against ships: annual reports 2004-2013*.

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[43] Storey, 'Securing Southeast Asia's sea lanes […]', p. 119.

[44] Euan Graham, 'Expanding maritime patrols in Southeast Asia' in *S. Rajaratnam School of International Studies (R.S.I.S.): Commentary*, no. 082 (Apr. 2015), available at R.S.I.S. (http://www.rsis.edu.sg/ wpcontent/uploads/2015/ 04/CO15082.pdf) (27 Apr. 2015).

[45] Figures for 2014 illustrate the variance in reporting; ReCAAP received 48 reports, I.C.C. I.M.B. recorded just 9 reports and I.M.O. recorded 88 reports of piracy in the Strait of Malacca and Singapore.

Naval counter-piracy operations, regardless of geographical location, were an inherently transitory measure and unsustainable in the long term given that the origins of piracy, like all forms of criminality, is ashore. This influenced an evolution towards a more holistic and sustainable counter-piracy strategy that incorporated legal, political and stabilising economic initiatives on shore. The E.U., for example, launched a regional maritime capacity-building programme called EUCAP NESTOR in 2013. This complemented other E.U. initiatives such as the Training Mission in Somalia (E.U.T.M.) that aimed to strengthen the institutions of the Somali T.F.G. by providing training to Somali military forces in support of wider regional initiatives such as the African Union Mission in Somalia (AMISOM).

Similarly, in Southeast Asia after 2011 further steps towards a more comprehensive maritime security regime under the ASEAN framework were instigated at both policy and operational level. This included the first ASEAN Maritime Security Information-Sharing Exercise in July 2012 co-hosted by the Singapore and Indonesian navies that addressed various maritime security scenarios such as piracy, sea robbery and maritime terrorism.[46] In addition, the ASEAN Maritime Forum was formally expanded in October 2012 to enhance maritime connectivity by looking at strategies for capacity building, including infrastructure and equipment.[47]

Law-enforcement operations
Disharmony between domestic maritime criminal law and UNCLOS frequently hampered the arrest of suspects for piracy or armed robbery at sea in both Southeast Asia and Northeast Africa during the course of this study. In the Gulf of Aden and western Indian Ocean, this evolved into a 'catch and release' policy whereas in Southeast Asia, with the exception of Thailand, neither Indonesia, Malaysia, the Philippines, Singapore nor Vietnam had enacted domestic legislation for universal

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[46] Singapore Ministry of Defence, Official releases, 'Singapore and Indonesia Navies co-host inaugural ASEAN maritime security information-sharing exercise', 09 July 2012 (http://www.mindef.gov.sg/imindef/press_room/official_releases/nr/2012/jul/09jul12_nr.html#.VT5xq2P_k5o) (26 Apr. 2015).
[47] 'Chairman's statement, 1st expanded ASEAN Maritime Forum Manila', 09 Oct. 2012, available at ASEAN, Statements & communiques (http://www.asean.org/news/asean-statement-communiques/item/1st-expanded-asean-maritime-forum-manila) (18 Apr. 2015).

jurisdiction over acts of piracy or over such acts in the Exclusive Economic Zone (E.E.Z.).[48] It is difficult therefore to ascertain a figure for the number of maritime criminals arrested or prosecuted for piracy or armed robbery at sea in Southeast Asian jurisdictions in particular. The Malaysian Maritime Enforcement Agency, for example, which was established in 2005, only made its first successful arrest and prosecution of seven maritime armed robbers in March 2011.[49]

This legal deficiency extended beyond piracy in littoral waters. A Malaysian court, for example, prosecuted Somali pirates for firearms offences against Malaysian armed forces in the Gulf of Aden, as no provision existed in Malaysian national law for the crime of piracy.[50] In the case of Somali piracy as previously mentioned, this problem was partially solved by bolstering the capacity of regional judiciaries to prosecute and imprison Somali pirates. For Southeast Asian states, Robert Beckman suggested one solution might be to ratify and effectively implement the 1988 'Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation' (SUA) and the 1979 'International convention against the taking of hostages' to enable prosecution of cases of hijacking of ships and hostage taking of crew members.[51] As of December 2014, Indonesia, Malaysia or Thailand had not ratified the 1988 SUA Convention or 2005 SUA protocols.[52]

Internationally Recommended Transit Corridor & safe anchorages
Law-enforcement operations were supported by additional counter-piracy measures such as the introduction of the I.R.T.C. in the Gulf of Aden in 2008 and the designation of patrolled 'safe anchorages' near designated high-risk Indonesian ports in 2014 (see fig.

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[48] Robert Beckman, 'Regional cooperation to combat piracy and international maritime crimes: the importance of ratification and implementation of global conventions' (Paper given at the 'Conference on the Practices of the UNCLOS and the Resolution of South China Sea Disputes', National Taiwan Normal University, Taipei City, Taiwan, 03 Sept. 2012).
[49] See: Karsten Von Hoesslin, 'Piracy and armed robbery at sea in Southeast Asia: organized and fluid' in *Studies in Conflict & Terrorism*, xxxv, no. 7-8 (Aug. 2012), p. 546; *The Star* (Malaysia), 11 Mar. 2011.
[50] B.B.C. News, 'Somalia 'pirates' charged in Malaysia', 11 Nov. 2011 (http://www.bbc.com/news/world-asia-pacific-12430671) (27 Apr. 2015).
[51] Interview with Professor Robert Beckman (24 Mar. 2014).
[52] See: I.M.O., Status of conventions, available at (http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx) (30 Apr. 2015).

7.6). Both initiatives afforded vessels a higher level of protection by placing them proximal to naval assets patrolling in the vicinity and by the relative security of amalgamating in groups. By identifying 'hot spots', limited naval assets could be more economically deployed given the large sea area in which pirates operated in both regions and, in the case of Indonesia, 68 out of 100 vessels boarded in 2014 were at anchor or berthed.[53]

Fig. 7.6
Designated safe anchorages, Indonesia (2014)

Source: Coordinates available at: I.C.C. I.M.B. *Piracy report 2014*, p. 20.

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[53] I.C.C. I.M.B., *Piracy report 2014*, p. 29.

Utilisation of Private Maritime Security Companies

P.M.S.C.s played a role in counter-piracy operations in both regions. The deployment of P.C.A.S.P. was one of the central 'pillars' to the successful suppression of piracy off the coast of Somalia by 2013. Somali pirates, in contrast to maritime criminals in Southeast Asia, developed the capacity to operate well over 1,000nm from the shore. P.C.A.S.P. were therefore an effective force-multiplier in repelling attacks in areas outside the remit of coalition naval forces. While there was a history of private security operating in Southeast Asian waterways, especially since the end of the Cold War, their deployment was far less prolific than the lucrative industry that sprang up in response to the escalation of piracy off the Horn of Africa. According to Benny Low, Company Security Officer for Thome Ship Management: 'there was an expectation among the ship-owners and operators that piracy was a military problem […] so the anti-thievery measures were basically traditional ones of lock your cabin and have deck patrols – the Somali situation changed that'.[54]

The majority of P.M.S.C.s operating in Southeast Asia were based in the U.K. or U.S.A. with regional offices in Singapore and were chiefly deployed in the Malacca Strait.[55] Carolyn Liss identified two primary roles of P.M.S.C.s in the Malacca Strait. Firstly, they carried out shore-based advisory services such risk assessments and secondly, in a similar manner in the western Indian Ocean, they provided armed guards on board merchant vessels as well as armed escort ships to protect tankers passing through the strait.[56] However, in comparison to Somalia, the demand for P.M.S.C. was limited. According to Kevin Doherty, President of Nexus Consulting P.M.S.C. based in Southeast Asia: 'the "high risk" zones are only a day or two of transit, not like the 7-10 days in the [western] Indian Ocean or a week at anchorage in West Africa'.[57]

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[54] Interview with Mr. Philip Wake, Chief Executive - Nautical Institute at the Nautical Institute headquarters, Lambeth Road, London (18 Oct. 2013).
[55] Liss, 'The privatisation of maritime security in Southeast Asia', p. 201.
[56] Ibid. pp 201-2.
[57] See: Scott Cheney-Peters, 'Whither the Private Maritime Security Companies of South and Southeast Asia?', ii, 21 Apr. 2014, available at Centre for International Maritime Security (CIMSEC) (http://cimsec.org/part-2-whither-pmscs-south-southeast-asia/10912) (04 May 2015).

Moreover, Indonesia and Malaysia prohibited private security providers escorting vessels transiting their sovereign waters along the Malacca Strait, presumably as most providers were extra-regional companies. An Indonesian foreign ministry representative stated in 2005 that 'responsibility for maintaining security should remain in the hands of Indonesia, Malaysia and Singapore'.[58] Thome Ship Management, for example, had removed P.C.A.S.P. from its ships between Asia and the Far East by 2013 but maintained armed guards for vessels transiting the Gulf of Aden and advised a 400nm transiting distance from the Somali coast.[59]

The proximity to territorial seas in the Malacca and Singapore Strait as opposed to the anarchic waters off the failed state of Somalia combined with a functional regional naval and coast guard capacity likely accounted for diminished reliance on private security in the Malacca Strait after 2005. In contrast to Somalia, the role of P.M.S.C. in Southeast Asia extended in some cases to port-side security as opposed to exclusively escorting vessels underway. In the Indonesian port of Belawan, for example, one study identified members of a private company named 'Pemudan Pancasila' that controlled access to the port, patrolled the vicinity and had direct access to ships and cargoes.[60]

International Ship and Port-facility Security Code
Universal regulatory initiatives such as the 2004 I.S.P.S. Code illustrated how maritime security legislation had evolved since the drafting of the Safety of Life at Sea (SOLAS) convention in 1974. The code was the first internationally agreed regulatory framework addressing the issue of maritime security and provided a standardised system of assessing threats against ships and port facilities. Moreover, it provided a foundation for more practical defensive counter-piracy measures such as B.M.P. Operationally, the I.S.P.S. code was enforced by Company and Ship Security Officers and Port Facility

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[58] Bloomberg news agency, 'Indonesia rules out private armed escorts in Malacca Strait', 02 May 2005 (http://www.bloomberg.com/apps/news?pid10000080&sidaRlpGcMYBSME&referasia#) (04 May 2015).
[59] Interview with Mr. Benny Low, Group Security Manager/ Company Security Officer - Thome Ship Management at Thome ship management headquarters, Raffles Quay, Singapore (19 Mar. 2014).
[60] Alban Sciascia, 'Monitoring the border: Indonesian port security and the role of private actors' in *Contemporary Southeast Asia*, xxxv, no. 2 (Aug. 2013), p. 177.

Security Officers that were expected to maintain compliance with minimal standards subject to inspection by contracting governments and I.M.O. authorities.

Port security was a far more pressing issue in Southeast Asia in terms of piracy and armed robbery than in Somalia. In 2013, for example, 80 percent of armed robbery incidents in Southeast Asian waters involved a ship at anchor or at berth.[61] While attacks on ships unloading humanitarian aid were reported during the 1990s in Mogadishu port, for example, the overwhelming majority of attacks by Somali pirates were targeted against ships while underway on the high seas after 2005. In that regard, concrete measures such as vessel hardening under B.M.P. were far more operationally relevant than compliance with the I.S.P.S. in terms of countering or deterring a pirate attack off the coast of Somalia.

In 2008, the United States Coast Guard issued a Port Security Advisory for sixteen major Indonesian ports that were not I.S.P.S.-compliant, including the main Jakarta international container terminal and the Belawan multi-purpose terminal. By December 2012, following implementation of improved port security measures, Indonesian port facilities became I.S.P.S.-compliant resulting in a significant reduction in delays.[62] Despite this, of the 65 incidents of piracy and armed robbery reported in Indonesia in 2012, 52 occurred at ports and anchorages (see fig. 7.7).[63]

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[61] ReCAAP, I.S.C., *Annual report 2013*, p. 18.
[62] 'Increased facilitation for Indonesian ships entering U.S. ports', 26 Nov. 2012, available at Embassy of the United States: Jakarta, Indonesia, Press release (http://jakarta.usembassy.gov/news/pr_11262012.html) (05 May 2015).
[63] ReCAAP, I.S.C., *Annual report 2012*, p. 17.

Fig. 7.7
Location of incidents of piracy and armed robbery against ships in Indonesia (2012)
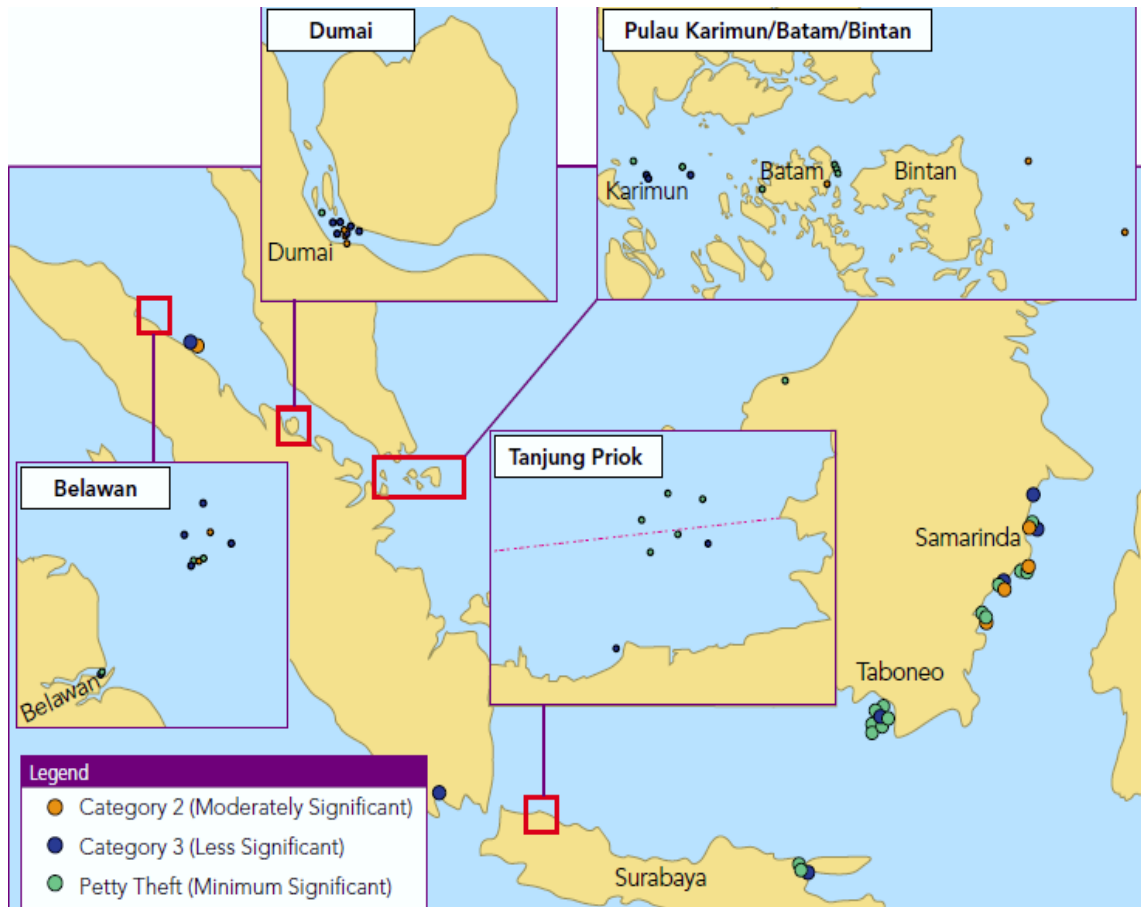
Source: ReCAAP, I.S.C., *Annual report 2012*, p. 17.

Tactical level analysis

Meteorological tactical considerations

Given the environment in which pirates and maritime criminals operated, meteorological conditions had a significant bearing on both the fluctuation of attacks and tactical responses. Both Southeast Asia and the Horn of Africa experience two annual periods of monsoon weather patterns lasting from approximately late November to early April and late May to early October. As fig. 7.8 illustrates, the manifestations of monsoon weather conditions had a direct bearing on the fluctuation of maritime piracy. According to Karsten Von Hoesslin: 'while there is a relative degree of consistency concerning theft at anchor [in Southeast Asia], in-transit attacks such as those off the

Anambas Islands are clearly seasonal and commonly occur during the transitional monsoon period between March and the end of October'.[64]

Fig. 7.8
Monthly breakdown of piracy incidents vs. monsoon season fluctuations, 2009-12
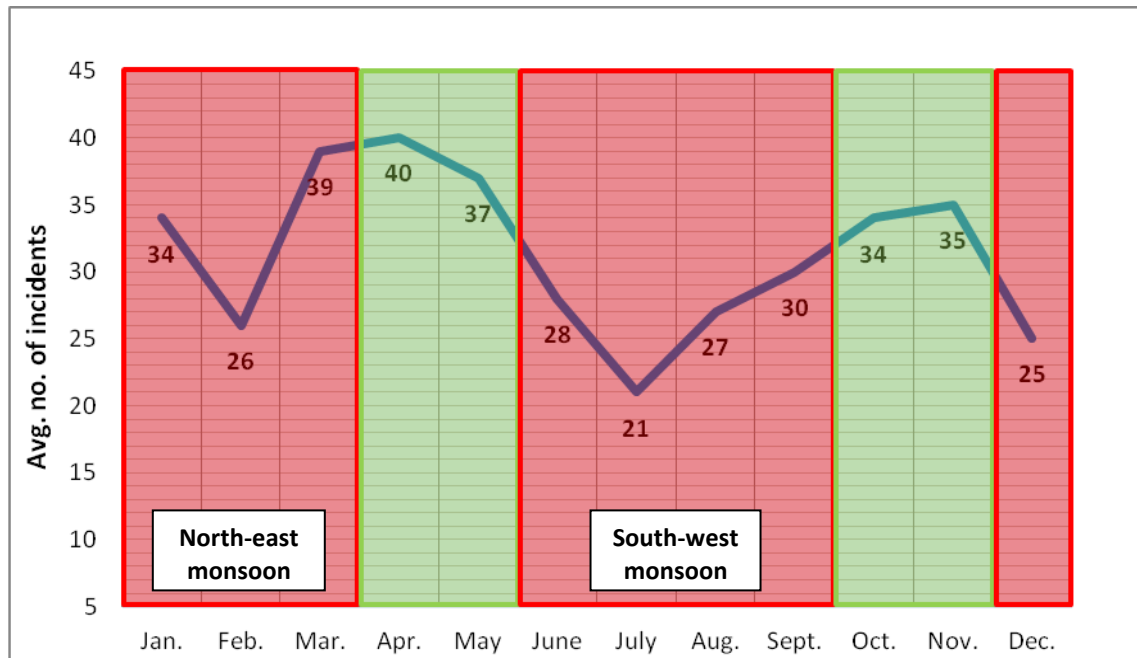
In a similar manner to attempted hijackings off the Somali coast, strong winds and increased wave heights made boarding, particularly during the hours of darkness when most attacks occurred in Southeast Asian waters, significantly more challenging to complete. In terms of Somali piracy, when the majority of attacks took place during daylight hours, the U.S. Maritime Administration calculated that Somali pirate skiffs would be severely hindered when weather conditions precipitated winds greater than fifteen-knots and wave heights greater than seven-feet.[65] Such knowledge was an important tool in formulating tactical responses to piracy and an economic division of

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[64] Von Hoesslin, 'Piracy and armed robbery at sea in Southeast Asia […]', pp 543-4.
[65] U.S. Dept. of Transportation, Maritime Administration (MARAD), 'Horn of Africa: threat factors for commercial shipping and forecast of pirate activity through 2009', available at (http://www.marad.dot.gov /documents/ Factors_Affecting_Pirate_Success_HOA.pdf) (05 May 2015).

labour and assets given restricted resources. The U.S. Office of Naval Intelligence, for example, issued an unclassified maritime OPINTEL report that forecasted weekly weather conditions including wave height and wind speed and the probability therefore of a pirate attack in such conditions (see fig. 7.9).

Aside from influencing tactical responses at sea, meteorological events such as the 2004 Indian Ocean tsunami had a direct impact, at least temporarily, on the fluctuation of piracy and maritime criminality in affected coastal areas. In the Northern Indonesian region of Aceh, piracy was essentially eradicated following the devastating effects of the tsunami with fatality rates as high as 75 percent in some parts of the province.[66] Moreover, the tsunami also damaged the capacity and infrastructure of some Southeast Asian navies, chiefly Thailand and Indonesia. This resulted in fewer resources for naval force expansion and delays in acquisition programmes, which limited physical patrols and engagement of maritime criminals.[67] In Somalia, the tsunami ultimately resulted in an intensification of piracy due to the destruction of an estimated 75 percent of fishing equipment along the northeast coast.[68] This aggravated an already challenging economic and humanitarian condition and was a likely driver of impoverished former fishermen toward subsistence crime, illustrated by an increase in attacks from 17 in 2004 to 55 in 2005.[69]

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[66] *The Guardian*, 19 Jan. 2005.

[67] Sam Bateman, 'Naval balance in Southeast Asia - search for stability' in *Jane's Defence Weekly* (05 Apr. 2005).

[68] World Health Organisation (WHO), *Tsunami inter agency assessment mission: Hafun to Gara'ad northeast Somali coastline* (28 Jan. - 8 Feb. 2005), p. 36, available at (http://www.who.int/hac/crises/ international/ asia_tsunami/som/ somalia_report_8feb.pdf) (06 May 2015).

[69] I.M.O, *Piracy reports 1982-95*; U.S. National Geo-spatial Intelligence Agency (N.G.A.), Maritime Safety Office, Anti-Shipping Activity Message (ASAM) 1994-2005 - Geographical region 61 & 62, available at (http://msi.nga.mil/NGAPortal/) (09 Apr. 2014) (henceforth cited as 'N.G.A. ASAM [date], [ref.]'); I.C.C. I.M.B., *Piracy reports 1995-2005*.

Fig. 7.9
Ten-day piracy small boat operations weather forecast: May 2012
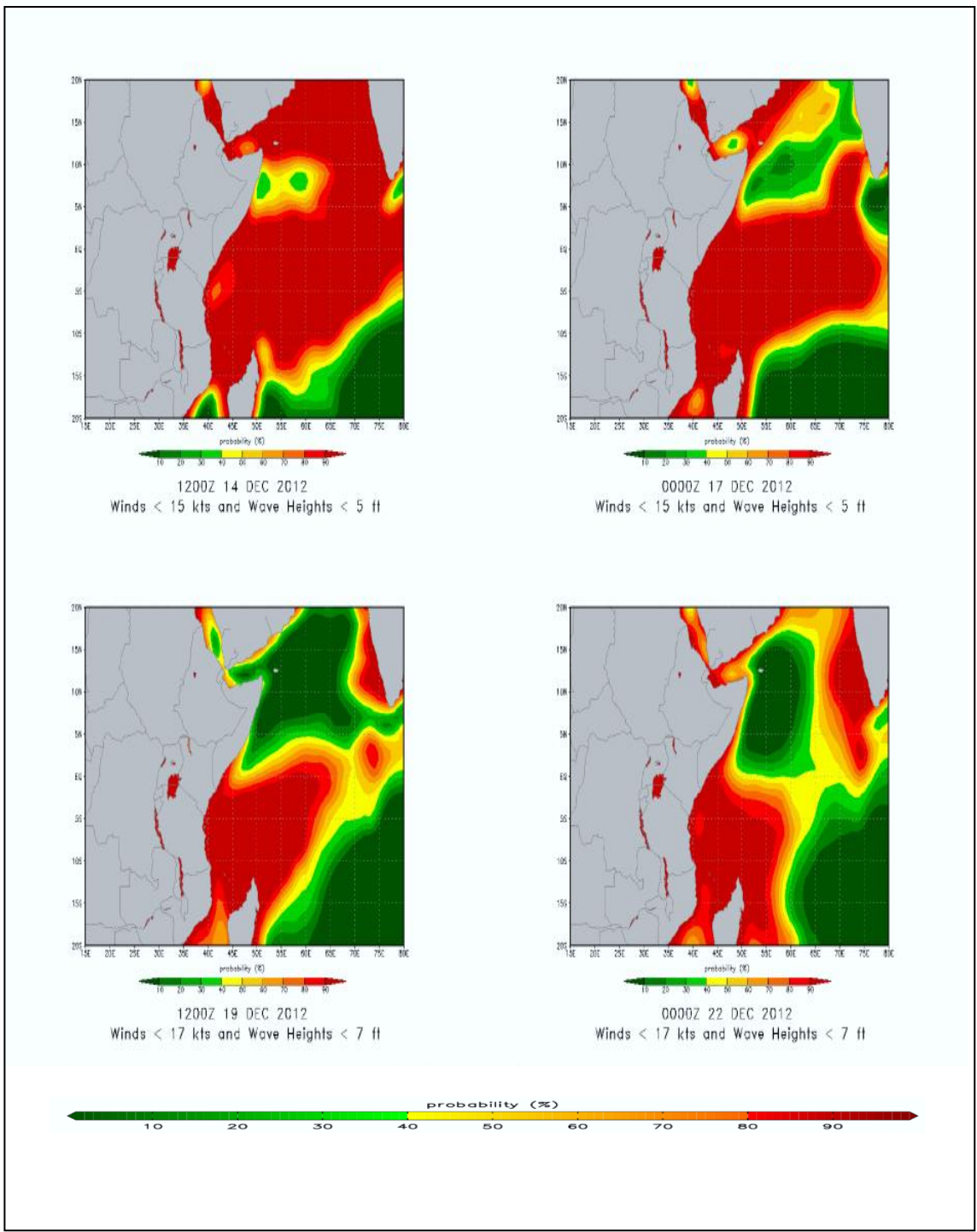
Naval and aerial tactical responses

Counter-piracy tactics employed by naval assets off the coast of Somalia and in Southeast Asia varied significantly owing to the particular context of each region. One initial problem for naval forces operating in the Gulf of Aden and along the eastern Somali seaboard was distinguishing between legitimate fishermen and Pirate Action Groups (P.A.G.s). Unique identifiers (in both regions) included excess quantities of fuel and more powerful engines than were needed for fishing alongside non-fishing related equipment such as ladders and weaponry.[70] In terms of engaging Somali pirates and interdicting suspect skiffs at sea, tactics typically involved destroying or confiscating the pirate skiff, weapons and related illicit equipment and releasing the pirates with enough food and fuel to return to shore.[71] This emerged as a common counter-piracy tactic for most multinational naval coalitions operating around the Horn of Africa. Between September 2008 and January 2009, for example, of the 177 pirates encountered by C.T.F. 151, 63 were handed over to authorities, 107 were released after disarming and two were killed.[72]

The so-called 'catch and release' approach altered somewhat after 2010 following agreements with Kenya and the Seychelles, which resulted in more suspected pirates being arrested alongside a more tailored appropriation of evidence including gathering of biometric data and the transport of suspected pirates for prosecution in regional courts. By 2012, these tactics evolved into Disrupting Pirate Logistic Dumps (D.P.L.D.) ashore following an E.U. Council extension of Operation Atalanta's area of operation. This facilitated intelligence driven disruptive action against pirate boats, equipment and fuel dumps along the coast aimed at 'denying pirates impunity ashore and a secure base to launch attacks at sea, thus increasing costs and decreasing their capability'.[73]

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[70] *Combating Somali piracy: the E.U.s naval Operation Atalanta: report with evidence*, *minutes of evidence taken before the select committee on the European Union*, p. 30, H.L. 2010 (103), xii.
[71] *Combating Somali piracy [...]*, p. 32.
[72] Commodore Per Bigum Christensen, 'Task Force 150 anti-piracy operations', (Presentation given at the 2009 MARLO Maritime Conference, Emirates Towers, Dubai, United Arab Emirates, 25 Jan. 2009).
[73] Council of the European Union, 'EUNAVFOR-Operation Atalanta: disruption of pirates' logistics in Somalia', 15 May 2012, p. 1 (https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/esdp/130250.pdf) (11 May 2015).

In both regions, air surveillance was a key tactical element in countering piracy. Given the extended maritime domain in which pirates operated in the Somali Basin and the Malay Archipelago alongside the congested littoral waters of the Malacca Strait, air surveillance was crucial in identifying patterns of piratical movement at range. As previously mentioned air assets were utilised in both the M.S.P. and the multinational naval coalition forces in the Somali Basin. In both cases, however, air surveillance assets were deficient for purpose. According to Major General Buster Howes, former Operation Commander of EUNAVFOR:

> We seek to optimise those scarce assets through clever use of surveillance and the maritime patrol and reconnaissance aircraft. The P3, in particular, which is the most sophisticated form, is able to interrogate 360,000 square miles of ocean in an hour. Partly through intelligence analysis, which gives us an idea of where the pirate will operate, we cue our assets accordingly and, partly through careful use of our surveillance devices, we can position our ships to best effect.[74]

Similarly, along the Malacca and Singapore Straits the multilateral EiS programme had an insufficient number of patrol aircraft to survey the entire length of the waterway, even after the accession of Thailand to the programme in 2008. To compensate for this, advanced radar and electro-optic sensor systems of the S-70B naval helicopter, for example, were utilised that allowed for a more accurate detection of illicit maritime activity and surveillance of the Strait.[75] This was bolstered by a Singaporean air force F-50 maritime patrol aircraft that could fly for up to eight hours without refuelling.[76]

The idea of navies escorting or facilitating a convoy of vulnerable merchant vessels had long existed, primarily during times of protracted conflict. The tactic of 'group transit' was advanced in the Gulf of Aden following the escalation in hijackings around 2008 and evolved into the I.R.T.C. initiative. Given the vast amount of merchant traffic

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[74] *Piracy off the coast of Somalia, Foreign Affairs Select Committee, tenth report with formal minutes and written evidence*, ev. 13-4, H.C. 2011 (1318), ii.

[75] Ong Hong Tat, 'Prowling the pirate alley' in *Cyber Pioneer* (Dec. 2012), available at Singapore Ministry of Defence, Resource library (http://www.mindef.gov.sg/imindef/resourcelibrary/cyberpioneer/topics/articles/features/2012/dec12_cs.html#.VVIEy2P_k5o) (13 May 2015).

[76] Singapore Ministry of Defence, Navy, 'Fokker 50 Maritime Patrol Aircraft' (http://www.mindef.gov.sg/navy/ careers/our-assets/maritime-patrol-aircraft.html) (13 May 2015).

transiting the Gulf, it was impossible for the limited naval assets to escort individual merchant vessels. Instead, coalition naval forces systemically established a series of 'boxes picketed by warships', which meant that a naval asset could theoretically respond to a pirate attack along the corridor within thirty minutes.[77] While a group transit scheme was a viable counter-piracy tactic in the Gulf of Aden, a similar initiative was not practical along the Strait of Malacca.

Enduring issues of territorial sensitivity, overlapping jurisdictions and a pre-existing contracted and congested waterway negated the feasibility of a patrolled transit corridor. Despite this, it is likely that the presence of navies in the Gulf of Aden/ Somali Basin and the Malacca/ Singapore Strait alone had a deterrent effect on rates of piracy and armed robbery against ships. Nautilus International trade union highlighted in 2011 that the presence of naval forces in the high-risk areas of the Gulf of Aden and Somali Basin had 'done much to deter and disrupt the threat of attacks on merchant ships'.[78] NATO also supported the idea of presence as deterrence: 'the very presence of this international naval force, composed of vessels from NATO and other entities, is deterring pirates from pursuing their activities to the point of completely suppressing piracy in the region'.[79] Similarly, according to an Indonesian Coast Guard officer based in the port of Tanjung Priok: 'once we are on patrol, our presence will automatically scare the small (pirate/ armed robber) boats and it will prevent them from approaching the big ships'.[80]

Best Management Practice

While naval assets played a crucial role in counter-piracy operations in both regions, measures enacted on board the target vessels themselves were arguably a more effective deterrent tactic. Hardening of vessels emerged as a key defensive approach while transiting high-risk waterways. This was standardised in 2008 following the escalation in attacks off the coast of Somalia in the form of B.M.P. guidelines. The universality of

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[77] *Piracy off the coast of Somalia, Foreign Affairs Select Committee [...]*, ev. 14.
[78] Ibid. ev. 103.
[79] NATO, 'Counter-piracy operations', 26 Mar. 2015 (http://www.nato.int/cps/en/natohq/topics_48815.htm) (12 May 2015).
[80] C.N.N. News, 'Asia's sea pirates target treasure of marine fuel', 08 Feb. 2013 (http://edition.cnn.com/2013/02/08/world/asia/asia-piracy/) (13 May 2015).

B.M.P. made it a potent and effective tactic to deter or repel a pirate attack. Analogous B.M.P. methods included the construction of citadels, tactical placement of razor wire and water/foam spray, increased watch keeping and use of C.C.T.V. alongside increased upper deck lighting and alarm systems.[81] However, given contrasts in manifestations of piracy in terms of targeting and modus operandi, certain approaches had to be tailored with regional particularities in mind. In this regard, the ReCAAP I.S.C. published a *Tug boats and barges against piracy and sea robbery* guide in December 2012 following an escalation in attacks against these vessel types in Southeast Asia around 2008.[82] The guide included risk assessment guidelines, physical protection measures, voyage planning and incident reporting.[83]

In contrast to slow moving tug-boats and barges in the confines of the Malacca and Singapore Strait, the large sea space of the Somali Basin and the modus operandi employed by Somali pirates (targeting large vessels with heavy weaponry) meant alternative tactics were needed. These included enhanced bridge protection to repel a R.P.G. attack and use of evasive manoeuvring at high speed to create wash to disrupt the approach of a pirate skiff alongside (a tactic that would be redundant in a narrow and congested sea-lane such as the Malacca Strait).[84] Under reporting was an issue that affected responses and management of piracy and armed robbery against ships worldwide. B.M.P. highlighted the importance of accurate and timely reporting of an incident. In this regard, the I.M.B. aided at the tactical level through the dissemination of a detailed piracy reporting form template (see appendix: fig. A.1). This enhanced and streamlined the accuracy of piracy and armed robbery against ships reports but did not resolve the endemic problem of underreporting.

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[81] U.K. Maritime Trade Operations (U.K.M.T.O.), *Best Management Practices for protection against Somalia based piracy: suggested planning and operational practices for ship operators and masters of ships transiting the High Risk Area* (Edinburgh, 2011), pp 23-40 (henceforth cited as 'B.M.P. IV […]').
[82] See: ReCAAP, I.S.C., *Tug boats and barges against piracy and sea robbery* (Singapore, 2012), p. 2.
[83] ReCAAP, I.S.C., *Tug boats and barges against piracy and sea robbery*, pp 6-17.
[84] B.M.P. IV […], p. 43.

Privately Contracted Armed Security Personnel

These vessel self-protection measures were frequently amplified by the deployment of P.C.A.S.P. This became far more prevalent on vessels transiting through the High Risk Area (H.R.A.) of the Gulf of Aden and western Indian Ocean than Southeast Asia as previously discussed. Marine representative bodies such as BIMCO typically recommended a minimum of four armed guards per transit.[85] Despite this, some smaller companies reportedly utilised just one or two armed guards due to cost restrictions with larger ship management companies such as THOME, using a minimum of three armed guards when transiting the H.R.A. in 2014.[86] In terms of tactics, much like a naval asset, presence was often enough to deter an attack. Failing this, model rules for engagement recommended a 'graduated deterrent approach including non-lethal methods and warning shots'.[87] Under the '100 Series Rules' model for the use of force of 2013, tactical responses initiated with non-kinetic warnings followed by warning shots and finally, when an attack is imminent, use of force including 'as a last resort' lethal force.[88] Regardless of these guidelines, tactics appeared to vary extensively from reports of targeting an approaching skiffs engine and/or crew to designating skiff free perimeters where deadly force was authorised by proxy.[89]

With relation to firearms, hunting rifles combined with semi-automatic rifles were typically favoured as the best combination as they offered both range and cover fire as opposed to shotguns that were only effective at close-range.[90] Lax regulation and tactical oversight for P.M.S.C. led to several high profile incidents, notably the case of

[85] Baltic and International Maritime Council (BIMCO), 'GUARDCON contract for the employment of security guards on vessels: part I', 2012, p. 11, available at (https://www.bimco.org/Chartering/ Documents/Security/~/media/Chartering/Document_Samples/Sundry_Other_Forms/Sample_Copy_GUA RDCON__04_01_2013.ashx) (12 May 2015).

[86] Interview with Mr. Benny Low (19 Mar. 2014).

[87] International Organisation for Standardisation (I.S.O.), Publicly Available Specification (P.A.S.) 28007, 'Ships and marine technology - guidelines for Private Maritime Security Companies (P.M.S.C.) providing Privately Contracted Armed Security Personnel (P.C.A.S.P.) on board ships (and pro forma contract)', (15 Dec. 2012), pp 3-23.

[88] 'The 100 Series Rules: an international model set of maritime Rules for the Use of Force (R.U.F.)', 03 May 2013, pp 5-6, available at (https://100seriesrules.com/uploads/20130503-100_Series_Rules_for_the _Use_of_Force.pdf) (14 May 2015).

[89] See: *The Economist*, 14 Apr. 2012; Matt Walje, 'Private Maritime Security Companies and the use of force', Spring 2015, available at Sié Chéou-Kang Center for International Security and Diplomacy (http://psm.du.edu/ commentary/archive.html) (13 May 2015).

[90] Interview with Mr. Benny Low (19 Mar. 2014).

the M.V. *Enrica Lexie* that resulted in the shooting dead of two Indian fishermen by an Italian Vessel Protection Detachment in February 2012. Operating P.M.S.C.s was a far more complicated affair in the Malacca Strait and the South China Sea. Whereas Somali territorial waters were essentially anarchic with no indigenous judicial or enforcement capability, most Southeast Asian waterways were heavily contested and at the forefront of regional tensions over territorial assertions. According to marine Protection & Indemnity insurers Skuld: 'The littoral states in [Southeast Asia] take matters of security very seriously and at present there are no arrangements or regulations in place that would allow armed P.M.C.s to be on board vessels in the same way as in the GoA [Gulf of Aden] area'.[91]

West African piracy

While this research has predominantly focussed on manifestations and responses to piracy in Southeast Asia and Northeast Africa, it is important to note that acts of piracy were not exclusive to these regions. Several West African ports and anchorages were hit by a relatively short lived but intensive wave of maritime piracy and armed robberies between 1980 and 1987. The conditions that precipitated this upsurge were contextually unique compared with Southeast Asia and, later Northeast Africa, and therefore required regionally tailored responses. In 1981, there were 94 reported pirate attacks in West African waters.[92] This figure dwindled to just three significant attacks on cargoes by 1987.[93] This decline can be attributed to three factors. Firstly, investment in maritime security capabilities by the Nigerian government, including the acquisition of fifteen inland patrol craft, for the specific duties of combating smuggling and piracy and the creation of a maritime security task force.[94] Secondly, the reduction in seaborne trade

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[91] Skuld, 'South and South East Asia: piracy', 10 Feb. 2015 (http://www.skuld.com/topics/voyage--port-risks/piracy/south-asia/south-and-south-east-asia-piracy/) (12 May 2015).

[92] 'I.M.B. chronology of pirate attacks on merchant vessels 1981-87' in Eric Ellen (ed.) *Piracy at sea* (London, 1989), pp 241-71.

[93] Ian R. Hyslop, 'Contemporary piracy' in Ellen (ed.) *Piracy at sea*, p. 9.

[94] Office of the defence attaché, Permanent mission of Nigeria to the United Nations, 'Piracy control in Nigeria's territorial seas' in Ellen (ed.) *Piracy at sea*, pp 219-23.

transiting the region meant pirates had less access to potential targets. [95] Finally, authorities initiated a concerted effort to disrupt pirate operations ashore and interrupt the movement of the illicit proceeds of piracy.

From around 1996, piracy and armed robbery against ships again resurged as a significant issue in the Gulf of Guinea with 31 reports of attacks against shipping in the region in 1997.[96] By 2003, this had escalated to 64 reported piracy and armed robbery incidents, over half of which occurred in Nigerian territorial waters.[97] Despite closer regional maritime security cooperation and some policy level efforts by the Nigerian government, there were 424 incidents of actual and attempted acts of piracy and armed robberies reported in West African waters between 2005 and 2013.[98] Approximately half of all incidents occurred in Nigerian territorial waters in the Gulf of Guinea, which was a major conduit for the shipment of crude oil.

While the motivation for attacks by Somali pirates, for example, was almost exclusively financial, a large percentage of piracy in the Gulf of Guinea was at least partly politically motivated.[99] Militant groups, such as the Movement for the Emancipation of the Niger Delta (MEND), were reportedly responsible for several high-profile acts of piracy and armed robberies, maritime hijackings, oil pilferage, kidnapping of seafarers for ransom and killing of Nigerian security forces.[100] According to the U.N.O.D.C: '[...] what had been a funding source for insurgency [...] quickly [...] converted into an organised crime activity, with new commodities dealt to existing crime connections or along existing channels'.[101] An article in *The Economist* highlighted how, during the height of the insurgency, militant groups extended their reach beyond Nigerian waters:

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[95] Imports to the Economic Community of West African States fell from US$23,821 million in 1980 to just US$11,204 million in 1987 (U.N. Department of economic and social development statistical office, *1992 International trade statistics yearbook*, i (New York, 1993), p. 1050).
[96] I.C.C. I.M.B., *Piracy report 2005*, p. 5.
[97] Ibid.
[98] I.C.C. I.M.B., *Piracy reports 2006-2013*.
[99] I.C.C. I.M.B., *Piracy report 2008*, p. 26.
[100] See for example: Tom O'Neill, 'Curse of the black gold: hope and betrayal on the Niger Delta' in *National Geographic*, no. 2 (Feb. 2007), pp 89-95; *The Telegraph*, 15 Sept. 2008; Jeremy Binnie, 'Nigerian military rejects MEND claim for attack' in *I.H.S. Jane's Defence Weekly* (01 Feb. 2012).
[101] U.N. Office on Drugs and Crime (U.N.O.D.C.), *Crime and development in Africa* (June 2005), p. 25.

'since then, ships across the length of the gulf - from Gabon in the south to Liberia in the west - have been targeted'.[102]

Fig. 7.10
Reports of actual and attempted piracy attacks: West Africa 1995-2013
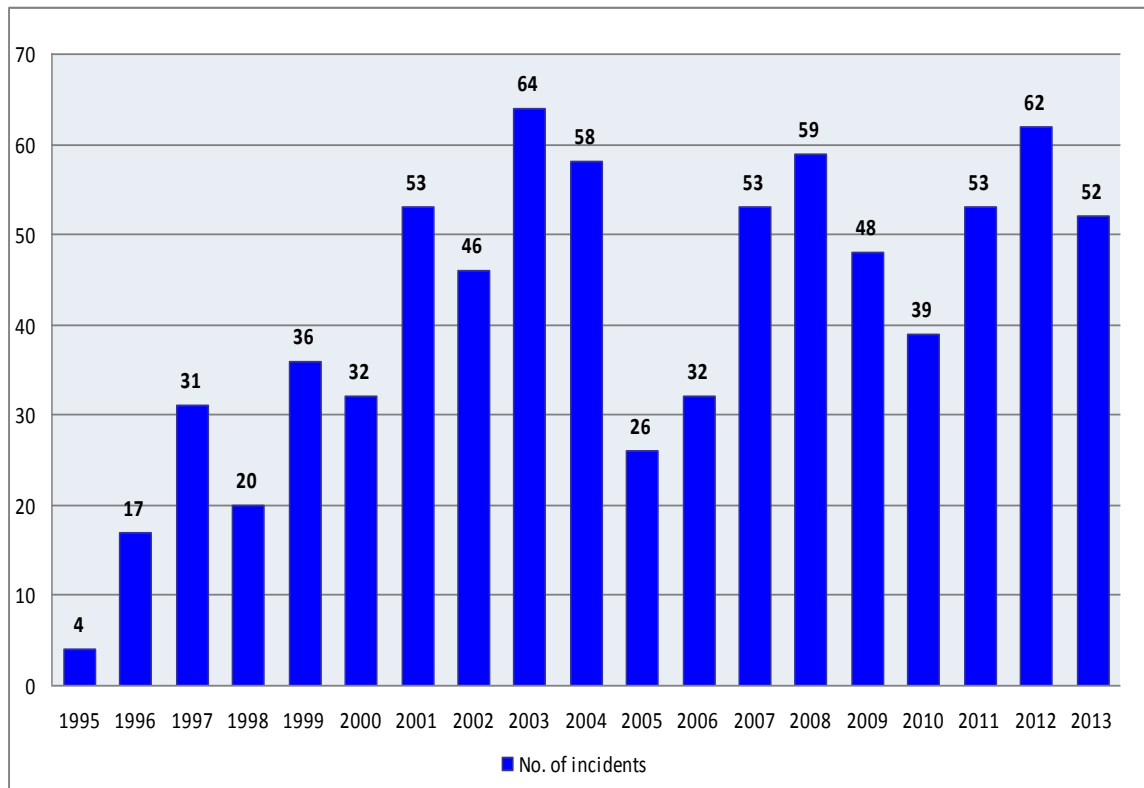
Grievances over the mismanagement of the regional oil industry and the ensuing political unrest was one reason for the increased likelihood of violence in acts of piracy and armed robberies in West African waters. There were 158 injuries and 10 deaths attributed to pirates and armed robbers in West African waters between 2005 and 2013. However, as with maritime crime elsewhere, numerous incidents went unreported. For example, there were 50 attacks and at least 10 murders reported by the Nigerian Trawlers Owners Association in January 2008 alone, whereas the I.M.B. recorded just 19 attacks worldwide during the same period.[103] The I.M.B. acknowledged in its 2011 report that underreporting was a cause for concern in Nigeria and highlighted an

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[102] *The Economist*, 25 May 2013.
[103] See: *New York Times*, 12 June 2008; I.C.C. I.M.B., *Piracy report 2008*, p. 7.

additional 34 incidents of piracy and armed robbery, provided by Bergen Risk Solutions that went unreported in 2011.[104]

The location of attacks was also significant and hampered the international community's ability to assist in counter-piracy operations. Between 2002 and 2012, there were 108 attacks reported in international waters, 173 in territorial waters and 270 in port areas.[105] Jurisdictionally therefore, the responsibility for almost 80 percent of these attacks fell on the coastal states. While the majority of littoral states struggled with weak maritime governance, none was devoid of central authority or classifiable as a 'failed state'. This meant that, unlike Somalia where no functional government existed, the international community could not undertake unilateral counter-piracy action in sovereign waters.

An upsurge in attacks on shipping in the Gulf of Guinea in 2012 resulted in increased international calls for a comprehensive regional anti-piracy strategy. U.N. Resolution 2039, pursuant to Resolution 2018 (2011), urged regional states to develop and implement national maritime security strategies for the prevention and repression of piracy and armed robbery at sea and to establish a legal framework for the prosecution and punishment of persons engaging in those crimes.[106] This international pressure resulted in a major regional summit on maritime safety and security in the Gulf of Guinea in June 2013, which resulted in several multilateral regional counter-piracy policies in the context of the wider '2050 Africa's Integrated Maritime Strategy'.[107]

The problem of piracy in West Africa, therefore, largely evolved as a symptom of the turmoil created by the negligence of the regional oil industry alongside the issue of ethnic and political 'ownership' of resources in a post-conflict environment.[108] In 2005 alone, an estimated US$1 billion in Nigerian oil pilfered from pipelines along the

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[104] I.C.C. I.M.B., *Piracy report 2011*, p. 24.
[105] R.I.I.A., *Maritime security in the Gulf of Guinea*, p. 15.
[106] U.N. Security Council 'Resolution 2039', 29 Feb. 2012 (U.N., Dag Hammarskjöld Library (D.H.L.), S/RES/2039/2012, p.3).
[107]
[108] Bronwen Manby, 'The Warri crisis: fuelling violence' in *Human Rights Watch*, xv, no. 18 (Nov. 2003), p. 3.

coast.[109] This activity extended further out to sea to the tankers shipping oil from the region alongside various merchant and fishing vessels. These robberies were facilitated by a largely ungoverned maritime domain and corrupt and under resourced regional naval and law enforcement assets. According to one analysis, littoral navies had minimum capability, little air assets and negligible communications and technical support.[110] The context differed considerably from the situation in Somalia at that time given the existence of a functioning government ashore with a coast guard and naval capability, albeit a limited one. Indeed, as previously highlighted, while there are often analogous factors, maritime crime arises in different regions due to the unique political and socio-economic context of that particular region at a specific period in time.

Conclusion

While, Southeast Asia and Northeast Africa experienced the most significant upsurges of maritime piracy in the twentieth and twenty-first centuries, West Africa experienced a series of violent, though less frequent, episodes of maritime criminality during the same period. While comparisons can be drawn between the inherent use of the sea as a conduit for criminal activity in all three regions, the unique context of each region's political, socio-economic and cultural circumstances, created distinct manifestations of piracy and therefore required tailored political, military and tactical responses.

At the strategic level, states were initially slow to address maritime piracy; however, when a concerted policy-level effort was eventually initiated significant advances were made in suppressing attacks. Given the inability of any single nation to address transnational threats such as piracy comprehensively, multilateral diplomacy and implementation of international law were key components in formulating strategic approaches to countering contemporary piracy. At the operational level, counter-piracy evolved off the Horn of Africa from a military dominated response to a more holistic and comprehensive effort that addressed the root causes of the problem ashore alongside issues such as judicial weakness and maritime security capacity building. In Southeast

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[109] Andrew Koch, 'Into Africa' in *I.H.S. Jane's Defence Weekly* (04 Jan. 2005), p. 2.
[110] 'African paramilitary threats – Forgotten "wars"' in *I.H.S. Jane's Defence Weekly* (15 Sept. 2004), p. 1.

Asia, recent upsurges in piracy and armed robbery against ships suggest the need for a renewed focus on multilateral counter-piracy operational engagement that extends beyond piracy to a more holistic regional maritime security strategy. Tactical approaches also evolved from 'catch and release' policies to utilising meteorological date for an economic dispersion of force, deployment of P.C.A.S.P., more streamlined arrest and prosecution processes and widespread compliance with B.M.P.

CONCLUSION

Piracy has been the principal manifestation of maritime criminality since the earliest days of using platforms to transport people and goods at sea. The palingenesis of piracy in Southeast Asia during the late 1970s and early 1980s witnessed a contextually unique albeit innately connected wave of maritime criminality that evolved into a more sophisticated threat during the 1990s and 2000s. In a similar manner, the upsurge of maritime piracy off the coast of Somalia after 2005 was inimitable in terms of context and modus operandi, but comparable given the inherent use of the sea as a space to conduct criminal activity. With this in mind, there are a number of conclusions, predictions and wider implications that can be extrapolated from this analysis of the multifaceted attempts to counteract these various contemporary upsurges of piracy and armed robbery at sea in both Southeast Asia and Northeast Africa.

Given the inherent attributes of the marine environment combined with the interconnectedness of the global economy of the late twentieth and early twenty-first centuries, crimes like piracy could not be tackled by the unilateral efforts of any one nation or navy. As this research has illustrated, piracy and armed robbery at sea may be perpetrated by nationals of one state in the territorial waters of an adjacent state against crew-members hailing from a third state on board a vessel registered in a fourth state and owned by a company based in a fifth state while transporting goods to a sixth state. This scenario illustrates, to some degree, the extensive transnational corollaries of a relatively localised criminal activity and the latent effect on the movement of regional and international marine trade. This highlights a relatively rudimentary lesson, that multilateral engagement and regional wide cooperation is necessary to successfully secure shipping lanes and counteract piracy.

In both Southeast Asia and Northeast Africa multilateral engagement at both the strategic and operational level resulted in a decline in successful incidents of piracy and maritime armed robbery. This multilateral approach evolved off the coast of Somalia into a 'multi-stakeholder' approach under the Contact Group on Piracy off the Coast of

Somalia (C.G.P.C.S.) that incorporated not just regional and international states but non-state actors and international organisations.[1]

In a broader sense, contemporary counter-piracy efforts resulted in a realisation that maritime security threats, frequently underrepresented at policy level, could be just as destabilising as shore-based threats and therefore merited investment and strategic consideration. Suppressing piracy, therefore, and maritime criminality in general, benefited not only littoral states but also regional and international user states. This emergent maritime multilateralism illustrated to some extent the post-Cold War shift from a state centric approach to a mutually beneficial cooperative approach in addressing transnational criminality.[2] According to Slogget: '[…] this land centric short-sighted viewpoint fails to grasp a key essence of that landscape; the sea not only provides the highway for the world's nations to trade, it also provides transnational criminals with a space in which, in the absence of any coherent maritime security, they can operate'.[3]

With multilateralism as a foundation, the need for a more holistic and inclusive approach to maritime security that extended beyond piracy and armed robbery at sea emerged as a central lesson. While piracy has been the primary focus of this research, it is only one aspect of a broad collection of threats to security that exist in and from the maritime domain. This research has highlighted emerging and existing interconnections between piracy and other manifestations of maritime criminality from narcotic and human trafficking to acts of terrorism at sea. What connects these different criminal acts together is they all use the sea as a conduit for illicit activity. In Southeast Asia, several diverse but often overlapping maritime security threats existed alongside piracy such as illegal smuggling, marine pollution, narcotic trafficking and territorial disputes. While the international community of user states argued that piracy and armed robbery against

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[1] Jon Huggins & Jens Vestergaard Madsen, 'The CGPCS: the evolution of multilateralism to multi-stakeholder collaboration' in Thierry Tardy (ed.), *The Contact Group on Piracy off the Coast of Somalia (CGPCS): A lessons learnt compendium* (Paris, 2014), pp 18-27.
[2] See: Peter N. Grabosky, 'Using non-governmental resources to foster regulatory compliance' in *Governance: An International Journal of Policy, Administration and Institutions*, viii, no. 4 (Oct. 1995), pp 527-50.
[3] David Sloggett, *The anarchic sea: maritime security in the 21st century* (London, 2013), pp 50-1.

ships was the most pressing maritime security threat, regional states such as Indonesia prioritised alternative threats such as maritime 'food sovereignty'.[4] A more holistic approach toward maritime security therefore, might encourage states such as Indonesia to play a more active leading role in regional maritime security engagement by 'benefiting from the cooperation as opposed to being targeted by it'.[5] There were suggestions that the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (ReCAAP), for example, might expand its operational mandate and geographical scope to encompass broader maritime security concerns in alternative regions, however, given the escalation of piracy between 2010 and 2014 this was not sanctioned.[6]

Similarly, in Somalia, piracy existed alongside other maritime criminal enterprises, chiefly smuggling. According to Philip Holihead, International Maritime Organization's (I.M.O.) head of the Project Implementation Unit of the Djibouti Code of Conduct:

> [we] need to address the broader endemic issues such as the smuggling, whether that be arms, charcoal or people […] are we just going to focus on the one crime and try to contain it […] whilst addressing the regional basis in the extent of the other criminalities […] Does our capacity building address the bigger problems, while the containment addresses the specific crime.[7]

In relation to Somali piracy, the holistic approach incorporated international and regional states, international organisations and non-state actors such as Private Maritime Security Companies (P.M.S.C.s) that not only addressed the maritime manifestations of piracy but also the long-term foundational issues ashore. The central lesson that

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[4] Adelle Neary, 'Jokowi spells out vision for Indonesia's "global maritime nexus"' in *Centre for Strategic and International Studies (C.S.I.S.): Southeast Asia from Scott Circle*, v, no. 24 (Nov. 2014), p. 2.

[5] Interview with Professor Robert Beckman, Director - Centre for International Law (C.I.L.) and Associate Professor – Faculty of law, National University of Singapore (N.U.S.) at the Parkroyal Hotel, Kitchener Road Singapore (24 Mar. 2014).

[6] Interview with Ms. Lee Yin Mui, Assistant Director (Research) - Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), Information Sharing Centre (I.S.C.) at ReCAAP I.S.C. headquarters, Alexandra Road, Singapore (24 Mar. 2014).

[7] Christian Bueger, 'Focus on delivery! In conversation with Phil Holihead, I.M.O.', 06 Oct. 2014, available at 'Lessons from piracy: capturing the experience of the Contact Group on Piracy off the Coast of Somalia' (http://www.lessonsfrompiracy.net/2014/10/06/focus-on-delivery-in-conversation-with-phil-holihead-imo-2/) (09 June 2015).

emerged was that naval and military counter-piracy efforts alone were palliative and that long-term suppression rested with creating effective central governance and law enforcement, socio-political stability alongside economic and humanitarian security ashore. The decrease of piracy during the brief rule of the Union of Islamic Courts (U.I.C.) in 2006, for example, illustrated the correlation between security enforcement and central authority ashore and suppression of piracy at sea. Moreover, the stabilising effect of the fledgling Somali federal government institutions is generally considered one of the reasons for the decline in successful pirate attacks off the coast in 2013.[8] Much like Southeast Asia, maritime governance off the coast of Somalia must evolve into an integrated, regionally led affair for a permanent solution to the problem. The deployment of the African Union's Mission in Somalia (AMISOM) in 2007, for example, was an important step toward this end.

This idea of maritime multilateralism was a central element of the 2007 U.S. 'Cooperative strategy for 21st century seapower', which highlighted the idea of a 'global maritime partnership' as a 'catalyst for increased international interoperability in support of cooperative maritime security'.[9] The fact that the largest, best equipped navy was emphasising soft-power multilateral engagement with an emphasis on maritime security and asymmetric threats was an indication of a relatively sedate maritime threat environment at the time of publication. However, the revised 2015 strategy statement revealed a shift to more traditional hard-power strategic concerns such as China's naval expansion into the Indian and Pacific Oceans and Russian military modernisation and annexation of the Crimea.[10] This demonstrated an earlier argument in this research that, much as it did during the early decades of the twentieth-century, 'micro-maritime' security threats such as piracy fade in terms of strategic importance as 'macro-maritime' concerns, such as belligerent navies expanding anti access/area denial (A2/AD) activities, evolve.

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[8] International Chamber of Commerce (I.C.C.), International Maritime Bureau (I.M.B.), *Piracy and armed robbery against ships, annual reports, 1 Jan. - 31Dec. 2013* (London, 2014), p. 24.
[9] U.S. Department of the Navy, 'A cooperative strategy for 21st century seapower', Oct. 2007, p. 17, available at (http://ise.gov/sites/default/files/Maritime_Strategy.pdf) (22 July 2015).
[10] U.S. Department of the Navy, 'A cooperative strategy for 21st century seapower' Mar. 2015, pp 3-4, available at (http://www.navy.mil/local/maritime/150227-CS21R-Final.pdf) 22 July 2015).

Given the innate connections between different maritime security concerns, lessons learned from contemporary counter-piracy operations can have a wider applicability to other security challenges such as the recent surge of illegal migration from North Africa across the Mediterranean Sea to Southern Europe in 2015. By potentially replicating the EUNAVFOR Operation Atalanta 'Disruption of Pirate Logistic Dumps' (D.P.L.D.) tactic, for example, smugglers boats, fuel dumps and embarkation stations could be targeted and destroyed thereby denying them impunity and security ashore and accordingly increasing costs and decreasing their capability.[11]

Impediments in prosecuting pirates in both Southeast Asia and Northeast Africa resulted in a clear need for harmonisation between the international legal framework and domestic legislation for the crime of piracy and armed robbery at sea. This will involve strengthening rule of law and expediting prosecution of international criminal acts by re-examining obstacles to this process in particular legal distinctions between maritime piracy and other maritime criminal acts including armed robbery against ships and acts of terrorism at or from the sea.

In terms of prosecution, the vast majority of Somali pirates convicted were low-level members of Pirate Action Groups (P.A.G.s) far removed from the organisational and financial leadership ashore. This illustrated the need to formulate a 'top-down' prosecution model of pirate financiers and directors for enduring solutions. With the exception of Mohammad Saaili Shibin and Ali Mohamed Ali, both pirate ransom negotiators convicted in the United States for the crime of piracy under the law of nations amongst other violations, and Mohamed Abdi Hassan who was arrested in

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[11] Council of the European Union, 'EUNAVFOR-Operation Atalanta: disruption of pirates' logistics in Somalia', 15 May 2012, p. 1 (https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/esdp/130250.pdf) (11 May 2015).

Belgium in October 2013, no leadership-level Somali pirate benefactors, investors or architects have been prosecuted.[12] According to Kenneth Scott:

> The international community's law-enforcement model was, and remains, a predominantly reactive, decentralised, horizontal model, involving a group of roughly equal national and organisational peers, relying largely on regional States and consisting entirely of 'volunteers', with no entity providing central direction, structure, or processes other than a common goal of 'fighting piracy'.[13]

The rapid evolution of P.M.S.C. in response to the upsurge of Somali piracy resulted in chiefly reactive attempts to legislate and regulate for their deployment. This resulted in the need for a clearly defined and uniform set of rules of engagement for the use of force with international consensus and within the framework of international law. According to a 2015 International Chamber of Shipping (I.C.S.) report: '[…] their deployment [was] an exceptional response and neither normal nor permanent and a number of legal issues remain with respect to their use on the ships of many flags […]'.[14] The document subsequently acknowledged, however, that 'in view of the likely future use of armed guards in some circumstances it will be important for the international community to finalise the development of Rules for the Use of Force by the International Organization for Standardization (I.S.O.), alongside the new I.S.O. standards for the regulation of Private Maritime Security Companies which were adopted in 2012 […]'.[15]

Despite these enduring legislative difficulties, the success of Privately Contracted Armed Security Personnel (P.C.A.S.P.) in countering and deterring piracy,

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[12] See: 'United States Court of Appeals for the fourth circuit, no.12-4652: United States of America, (plaintiff – appellee) v. Mohammad Saaili Shibin, a/k/a Khalif Ahmed Shibin, a/k/a Mohammad Ali, a/k/a Ali Jama (defendant – appellant)', 12 July 2013, pp 9-10, available at United States Court of Appeals for the fourth court (http://www.ca4.uscourts.gov/opinions/Published/124652.p.pdf) (09 June 2015); United States Court of Appeals for the District of Columbia circuit, no. 12-3056: United States of America (appellant) v. Ali Mohamed Ali, a/k/a Ahmed Ali Adan, a/k/a Ismail Ali (appellee), 11 June 2013, available at United States Court of Appeals: District of Columbia circuit (http://www.cadc.uscourts.gov) (09 June 2015).
[13] Kenneth Scott, 'Prosecuting pirates: lessons learned and continuing challenges' in *One Earth Future and Oceans Beyond Piracy (O.B.P.) Research Report* (2014), p. 15.
[14] International Chamber of Shipping (I.C.S.), 'Lessons identified from Somali piracy', 18 July 2013, pp 5-6, available at (http://www.ics-shipping.org/docs/default-source/Piracy-Docs/lessons-identified-from-somali-piracy.pdf) (05 June 2015).
[15] I.C.S., 'Lessons identified from Somali piracy', pp 5-6.

predominantly in the western Indian Ocean, meant that they would likely be a feature of maritime security in high-risk maritime zones for the foreseeable future. Moreover, it is likely that seafarers, after experiencing several years of armed guard protection, will increasingly demand armed escorts during high-risk transits, which may lead to some level of standardisation of P.M.S.C.s despite traditional resistance from the shipping industry.

In terms of fluctuation, this research has found that manifestations of contemporary maritime piracy tended to be regionally cyclical, experiencing periods of escalation and de-escalation typically in conjunction with political, socio-cultural and economic vicissitudes ashore. In Somalia, and to a lesser extent Southeast Asia, piracy not only displayed a cyclic pattern in terms of occurrence, but also by further destabilising the conditions ashore that created the problem in the first place. In almost all regions where piracy is pervasive, rates of occurrence peaked and waned depending on the level of political engagement with the problem by governments ashore. In Southeast Asia, for example, incidents of piracy and armed robbery against ships declined significantly in the Malacca Strait after 2005 following a concerted strategic effort by littoral states to tackle the problem.

In both regions, a key tactical lesson that emerged was the importance of intelligence driven maritime situational and domain awareness. Given the +1,000nm range of Somali pirates' area of operation juxtaposed to the limited number of naval and air assets available to patrol such a vast sea space, early warning and identifying patterns of piratical movement became crucial.[16] According to a report commissioned by NATO's Joint Analysis and Lessons Learned Centre: 'Sharing accurate and timely situational awareness information is essential to counter piracy forces and the mariners (merchant and private) they support; sharing decreases the risks to the lives of those at sea'.[17]

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[16] I.C.C. I.M.B., *Piracy report 2013*, p. 22.
[17] NATO's Joint Analysis and Lessons Learned Centre, 'External information sharing in support of NATO counter-piracy operations', 15 July 2011, p. 5, available at (http://www.jallc.nato.int/newsmedia/docs/counter-piracy%20non-class%20extract.pdf) (10 June 2015).

In contrast to Somalia, the majority of piratical attacks in Southeast Asia were targeted against ships at anchor, berthed or transiting littoral sea-lanes. In 2013, this amounted to 110 reported piracy/armed robbery attacks against ships at anchor or at berth predominately in Indonesian waters.[18] Monitoring and enhancing port security therefore emerged as a key lesson in terms of counteracting attacks against shipping. Indeed, the International Ship and Port-facility Security Code (I.S.P.S.) highlighted the importance of 'co-operation and understanding between all those involved with, or using, ships and port facilities including ships personnel, port personnel, passengers, cargo interests, ship and port management and those in national and local authorities with security responsibilities'.[19]

Insecure port facilities not only facilitated armed robberies against ships but also operated as a channel for other types of maritime criminality such as merchandise, weapons and narcotic smuggling and, more ominously, incidences of terrorism. The attack on Mumbai in November 2008 was an extreme example of the potential consequences of lax port and coastal security. It was reported that a ten-man terrorist cell travelled via a small Pakistani merchant ship from Karachi before commandeering an Indian fishing trawler to gain access to Mumbai port then finally boarded inflatable rubber boats to gain access inshore, landing at a fishing village at Badhwar Park. From there the team dispersed and launched their attack, which resulted in over 100 fatalities.[20] The Mumbai attack established a 'new paradigm' in maritime security that, according to Slogget meant 'law enforcement and military organisations responsible for coastal security have had to go back to the drawing board and reconsider their contingency plans'.[21]

In terms of counter-piracy, central to defensive measures was the formalisation of methods for deterring or preventing an attack and/or boarding by merchant vessels

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[18] See: Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) Information Sharing Centre (I.S.C.), *Piracy and armed robbery against ships in Asia: annual report Jan. – Dec. 2012* (Singapore, 2013), p. 17.

[19] 'The International Ship and Port-facility Security Code and SOLAS amendments 2002', 12 Dec. 2002 (I.M.O., SOLAS/Conf.5/34/Anx.1, p. 3).

[20] *The Telegraph*, 28 Nov. 2008; *New York Times*, 26 Nov. 2008; Slogget, *The anarchic sea […]*, p. 351.

[21] Slogget, *The anarchic sea […]*, p. 349.

themselves through industry Best Management Practice (B.M.P.). The fortifying of merchant vessels alongside the deployment of P.C.A.S.P., multinational naval patrols and the centralisation of governance in Somalia was responsible for the dramatic decline in successful attacks by Somali pirates in 2013. The importance and universality of B.M.P. therefore was a key lesson from the experience of combating modern piracy. It would appear reasonable then that, given its utility, a minimal level of B.M.P. compliance is made a statutory regulation, increasing to full implementation during transit through designated high-risk zones. If such a legal requirement were applied to all merchant shipping without prejudice, this would negate any competitive edge of one company over another as an incentive not to implement, thereby creating a level playing field, which should encourage compliance. This process could be aided by timely and accurate reporting of attacks by shipping companies, which at present appears to be insufficient. Reporting of an actual or attempted piracy/armed robbery attack might also be made a statutory requirement, however, this would likely be met with resistance from the shipping industry as subsequent investigations and delays might impede normative commercial activity.

While much has been written about the consequences of maritime piracy for the shipping industry, governments and the global economy, less is written about the impact on seafarers and their dependents. According to the U.N. Office on Drugs and Crime (U.N.O.D.C.): '[…] so much international effort was directed at prosecuting the pirates themselves and preserving their human rights, whilst none was focused upon assisting the hostages - the primary victims of this criminal activity'.[22] Indeed, Somali piracy had already developed into an organised criminal enterprise before any concerted international action was taken. Similarly, it was not until after the Malacca Strait was designated a war risk that comprehensive counter-piracy action was initiated by littoral states.

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[22] U.N. Office on Drugs and Crime (U.N.O.D.C.), 'Hostage Support Programme (Project 045) (part of the Maritime Crime Programme) lessons learned, after action review and improvement plan', 11 Apr. 2014, p. 3, available at (http://www.lessonsfrompiracy.net/files/2014/06/Hostage-Support-Programme-Lessons-Learned-Report-14-Apr-14.pdf) (10 June 2015).

This reflects what appeared to be a disconnect between regional and international governments and the plight of ordinary seafarers at the frontline of piracy. The experience of the victims of Somali piracy was especially stark. Thousands of seafarers were held hostage for extended periods that spanned over 1,000 days in some cases and suffered physical and psychological violence that resulted in long-term post-release psychosomatic and financial ramifications.[23] A study on the human cost of piracy commission by the Oceans Beyond Piracy (O.B.P.) initiative stated: 'The decline in Somali piracy is a heartening trend, but even if all new instances of piracy were to stop tomorrow there would be a large number of seafarers who are still dealing with the impact of past pirate attacks'.[24]

In conclusion, several lessons have been extrapolated from the various efforts to counter-act modern piracy in Southeast Asia and Northeast Africa during the period of this research. Firstly, the importance of a holistic and multilateral approach toward maritime security; secondly, that maritime security threats can be just as destabilising as shore based threats; thirdly, the need to strengthen the rule of law to expedite prosecution of international criminal acts alongside universal regulation for P.M.S.C; fourthly, the universality of B.M.P.; and, finally, that the consequences of piracy are extensive, negatively affecting, not only economies and political stability, but seafarers and their dependents. According to the I.C.S: 'the core lesson of responding to illegality robustly and without delay will be more easily delivered next time if these basic lessons are kept readily to hand'.[25]

In 2012, the O.B.P. think tank generated a working group to liaise with national governments and international organisations to define a strategic end-state for counter-piracy operations off the coast of Somalia. This was defined as:

> '[A] safe and sustainable environment for merchant vessels and seafarers
> […] through continued adherence to applicable portions of Best

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[23] Kaija Hurlburt & D. Conor Seyle, 'The human cost of maritime piracy 2012' in *Oceans Beyond Piracy: One Earth Future Foundation Working Paper* (2013), p. 22.
[24] Ibid.
[25] I.C.S., 'Lessons identified from Somali piracy', p. 7.

Management Practices and a sustained international navy presence, facilitating a move towards regional leadership and development ashore.[26]

Indeed, a slightly amended strategy could be applied to an end-state for counter-piracy operations in Southeast Asia:

'[A] safe and sustainable environment for merchant vessels and seafarers […] through continued adherence to applicable portions of Best Management Practices and a sustained *regional* navy presence, facilitating a move towards *enhanced* regional leadership and development ashore.[27]

In this regard, such a state of finality had not been achieved by the termination of this research. While significant progress has been made in tackling piracy and maritime criminality in both Northeast Africa and Southeast Asia over the last four decades, any apathy at policy level or significant downgrading of current maritime security operational assets would likely result in an escalation in attacks. Indeed, it appears that piracy much like criminality ashore cannot be permanently eradicated. It can, however, be suppressed to manageable levels when a multilateral and multifaceted approach is adopted.

Recent indications that international naval strategic focus is shifting from 'micro-maritime' and asymmetric security threats, such as piracy, toward more traditional 'macro' concerns, such as the potential for fleet-on-fleet engagement, will likely have an impact on fluctuations of maritime crime in the future. Chinese naval expansion and assertions in the South China Sea alongside increased A2/AD activities, Russian naval modernisation and forward presence deployments, political and humanitarian instability in the Middle East and North Africa, proliferation of Weapons of Mass Destruction and the increased vulnerability of the cyberspace and the electromagnetic spectrum have contributed to this shift.[28] As historical analysis has attested, if international and regional governments neglect 'micro-maritime' security threats entirely in favour of more

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[26] Jon Huggins & Liza Kane-Hartnett, 'Somali piracy – are we at the end game?' in *Oceans Beyond Piracy Working Paper* (2013), p. 1, available at (http://oceansbeyondpiracy.org/sites/default/files/attachments/Jon%20 Cleveland%20Document%20_final.pdf) (21 Jan. 2015).
[27] Huggins & Kane-Hartnett, 'Somali piracy – are we at the end game?', p. 1.
[28] See for example: U.S. Department of the Navy, 'A cooperative strategy for 21st century seapower' (2015), pp 3-8.

traditional threats or downgrade or dilute current combative efforts, maritime piracy may once again experience a 'palingenesis' and become *the* 'macro' security concern.

APPENDIX

Fig. A.1
I.C.C. I.M.B., Piracy reporting Centre, Piracy and armed robbery attack report template

ICC-INTERNATIONAL MARITIME BUREAU
(PIRACY REPORTING CENTRE)
PIRACY & ARMED ROBBERY ATTACK REPORT

The ICC - International Maritime Bureau (IMB) was established in 1981 to act as a focal point in the fight against all types of maritime fraud, malpractice and piracy. The United Nations (UN) International Maritime Organization (IMO) in its resolution A 504 (XII) (9) adopted on 20 November 1981, has among other things urged all governments, interests and organizations to exchange information and provide appropriate co-operation with the IMB. The IMB also has an observer status with the International Criminal Police Organization (ICPO – INTERPOL).

PART A: VESSEL PARTICULARS / DETAILS

1	NAME OF SHIP:
2	IMO NO:
3	FLAG:
4	TYPE OF SHIP:
5	TONNAGES: GRT: NRT: DWT:
6	OWNERS (ADDRESS & CONTACT DETAILS):
7	MANAGERS (ADDRESS & CONTACT DETAILS):
8	LAST PORT/NEXT PORT:
9	CARGO DETAILS (TYPE/QUANTITY):

PART B: DETAILS OF INCIDENT

10	DATE & TIME OF INCIDENT: LT UTC
11	POSITION: LAT: (N/S) LONG: (E/W)
12	NEAREST LAND MARK / LOCATION:
13	PORT /TOWN / ANCHORAGE AREA:
14	COUNTRY /NEAREST COUNTRY:
15	STATUS (BERTH /ANCHORED / STEAMING):
16	OWN SHIP'S SPEED :
17	SHIP'S FREEBOARD DURING ATTACK :
18	WEATHER DURING ATTACK (RAIN/FOG/MIST/CLEAR/ETC,), SEA / SWELL HEIGHT) :
19	WEATHER DURING ATTACK: WIND (SPEED & DIRECTION) ,
20	WEATHER DURING ATTACK: SEA
21	WEATHER DURING ATTACK: SWELL,
22	TYPES OF ATTACK (BOARDED / FIRED UPON / ATTEMPTED):
23	CONSEQUENCES FOR CREW, SHIP AND CARGO: ANY CREW INJURED / KILLED: ITEMS / CASH STOLEN :
24	AREA OF THE SHIP BEING ATTACKED:

PART C: DETAILS OF RAIDING PARTY

25	NUMBER OF PIRATES / ROBBERS:
26	DRESS / PHYSICAL APPEARANCE:
27	LANGUAGE SPOKEN:
28	DESTINCTIVE DETAILS:
29	CRAFT USED:
30	CLOSEST POINT OF APPROACH (CPA) :
31	METHOD OF APPROACH:
32	DURATION OF ATTACK:
33	AGGRESSIVE / VIOLENT:

1

PART D: DETAILS OF WEAPONS USED AND DAMAGE CAUSED

34	WEAPONS SIGHTED (YES / NO):
35	WEAPON TYPE :
36	WEAPONS USED (YES / NO):
37	DAMAGED CAUSED (YES / NO):
38	DETAILS OF DAMAGE (PLEASE GIVE AS MUCH INFORMATION AS POSSIBLE):
39	LADDERS SIGHTED (YES / NO):
40	OTHER BOARDING EQUIPMENT SIGHTED (PLEASE GIVE DETAILS):

PART E: FURTHER DETAILS

41	ACTION TAKEN BY MASTER AND CREW:
42	WAS INCIDENT REPORTED TO THE COASTAL AUTHORITY? IF SO TO WHOM?
43	ACTION TAKEN BY THE AUTHORITIES:
44	ANTI PIRACY MEASURES EMPLOYED (PLEASE SPECIFY) :
45	WAS PRIVATE SECURITY TEAM EMBARKED (YES / NO): ARMED /UNARMED:
46	NUMBER OF CREW / NATIONALITY:
46	PLEASE **ATTACH** WITH THIS REPORT – A BRIEF DESCRIPTION / FULL REPORT / MASTER – CREW STATEMENT OF THE ATTACK / PHOTOGRAPHS TAKEN IF ANY.

ADDRESS: ICC-INTERNATIONAL MARITIME BUREAU
PIRACY REPORTING CENTRE
P.O. BOX 12559
50782 KUALA LUMPUR,
MALAYSIA

CONTACT DETAILS: TEL: 603 2031 0014 (24 HOUR MANNED HELP LINE)
TEL: 603 2078 5763
FAX: 603 2078 5769
TELEX: MA 34199
E-MAIL: imbkl@icc-ccs.org; / piracy@icc-ccs.org

2

Source: I.C.C. I.M.B., Piracy Reporting Centre (https://icc-ccs.org/piracy-reporting-centre).

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