

Put Pirates to the Sword

Targeted killings are a necessary, justified and legal response to high-seas piracy.

By [SANDEEP GOPALAN](#)

Pirates started 2010 with a bang: two hijackings—the British-flagged "Asian Glory," and the Singaporean-flagged "Pramoni." According to the Piracy Reporting Center of the International Maritime Bureau (IMB), 214 vessels were attacked in 2009, resulting in at least 47 hijackings. This is not a blip: IMB reported that 111 ships were attacked in 2008, and there is no indication that the triple-digit year-to-year increase in pirate attacks is abating. Currently, more than a dozen ships are in the hands of pirates, and the fate of over 300 crew members remains uncertain. Now is the time to take the fight to the pirates by using lethal force. Here's why and how.

Piracy is costly—estimates of cost range from \$1 billion to \$16 billion a year. In 2008, the typical ransom paid ranged from \$500,000 to \$2 million. Insurance premiums have also increased 10-40 times for a single transit through the Gulf of Aden. The perception that there is easy money to be made has meant that piracy has grown and ransom payments have increased. The human impact can be seen by the fact that over 889 people were held hostage in 2008.

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There is an even more important reason for immediate action: terrorism. It is well-known that Somali pirates have ties to al Qaeda elements in the region. Recent incidents involving Yemen—Somalia's neighbor—must throw up red flags. Even the most dim-witted terrorist must have realized that there is easy money to be made through piracy. It would be folly to ignore the likelihood that some of the recently escalated activity in Yemen is being financed by ransom money. Sickeningly, Western money might be funding terrorist acts here.

The problem is truly international in every sense—an affected ship might fly the flag of one maritime nation, be chartered by a company in another state, financed by entities in several other nations, employ nationals from countries as diverse as India and Ukraine, and might be carrying goods to a state at the opposite end of the globe. Citizens of every country are potentially affected by terrorism.

On paper, there are adequate legal tools to tackle piracy. Conceptualized as a crime against the "law of nations," there is universal jurisdiction over piratical acts. Accordingly, all states enjoy jurisdictional competence to adjudicate upon individuals accused of piracy, regardless of their nationality or where on the high seas the alleged crimes took place.

Despite this legal mandate, states have not shown a willingness to prosecute pirates. The typical response was a policy of catch-and-release, and navies were reduced to ferrying captured pirates to the beach. The best example of this phenomenon was the Dec. 18 release—after giving them food and water—of 13 Somali pirates captured after a failed attack on the ship MV BBC Togo by the Dutch warship *Eversten*.

European states are afraid of bringing Somali pirates to trial on their territory, largely based on imaginary fears about the misuse of their human-rights laws by pirates and their lawyers. To dodge this phantom menace, the U.K. entered into a secret

agreement with the Kenyan government to prosecute captured pirates in Kenya. The EU concluded a similar agreement with the Kenyans in March 2009, with much celebration about Kenya guaranteeing human-rights protections to pirates. These agreements do not seem to be working, based on the MV BBC Togo incident—the EU instructed the Dutch authorities to release the Somalis after the Kenyan government refused to prosecute them.

Why should Kenya do Europe's dirty work? Apart from having other national priorities, piracy might be to Kenya's benefit. There are reports that Somali pirates are investing heavily in Kenya's economy—house prices have gone up two- to threefold in the past few years, and Nairobi's Little Mogadishu neighborhood is thriving with the new found fortunes of its Somali denizens. Such an infusion of capital into a poor country will inevitably create incentives for the Kenyan government to go soft on international promises to prosecute.

Aside from asymmetric incentives, simply dumping pirates in Kenya and relying on that country's justice system to deal with them effectively is foolish. Kenya's courts face a backlog of over 800,000 cases, and suspects languish in jail for more than a year before they are brought before a judge.

Prosecution can only be a small part of the fight against piracy. The main weapon has to be ruthless force.

There have been a variety of fractured military responses so far—ranging from the United States' Combined Task Force 151, to naval deployments by China and India, to the European Union's EUNAVFOR Atalanta—but these have been bedeviled by a lack of strategic clarity and authority to use lethal force.

Naval officers have been shy to use lethal force because of the absence of clear guidelines. In a rare instance, the US Navy killed three pirates during the rescue of Captain Phillips (a US national) of the cargo ship Maersk Alabama, only after obtaining clearance from senior officials in the Obama administration.

This confusion over the legal authority to use lethal force has emboldened pirates. In the immediate aftermath of the Maersk Alabama killings, AP quoted a pirate from Somalia as saying "Every country will be treated the way it treats us. In the future, America will be the one mourning and crying."

Naval officers and others need not hesitate to use lethal force against pirates: The United Nations Security Council passed resolution 1851 in December 2008 authorizing states to take "all necessary measures—that are appropriate in Somalia, for the purpose of suppressing acts of piracy." This resolution was issued under Chapter VII of the U.N. Charter and should serve as a sufficient legal basis to kill pirates. Further, the law of self-defense ought to cover the use of lethal force against pirates boarding ships armed with lethal weapons.

In addition to these legal authorizations for the legitimate use of lethal force, the U.S. also needs to extend the successful targeted killing policy that is being used in Afghanistan and Pakistan, to Somalia and Yemen. Under this policy, expanded recently by the Obama administration, targeted strikes are conducted by drones and

missiles against al Qaeda and Taliban leaders. They are permissible under international law.

The targeted killing strategy must be used to hit pirates in Somalia—when they set off from Somali shores to hijack ships, and more easily when they return with ransom money. This is the only way forward.

It is regrettable that the failure of the legal system to bring pirates to justice effectively has created a perverse incentive to kill rather than prosecute. Until Somalia has a legal system capable of convicting pirates, killing them is the only option.

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