Marine Piracy: A Continuing Challenge

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Introduction

Since the peak of the Somali piracy outbreak between 2010 and 2011, piracy has been on the decline. Nevertheless, the problem has not gone away, the figures for the first half of 2017 showing 87 incidents of piracy and armed robbery reported to the International Maritime Bureau (IMB) Piracy Reporting Centre. Furthermore, piracy is not only a crime in its own right, but also destabilizes economic, social, and political structures. Countering piracy therefore remains an important challenge, particularly off Indonesia and the Philippines, in the Gulf of Guinea, and in parts of the Indian Ocean. This short essay can only skim this complex subject, but considers the nature of piracy, and some of the factors that can help contribute to its prevention.

Definition

The definition of piracy needs to be established at the outset in order to provide a baseline for subsequent discussion. That most widely accepted definition is enshrined in the United Nations Convention on the Law of the Sea (UNCLOS), which states that piracy is “illegal acts of violence or detention, or any act of depredation committed for private ends, on the high seas,” committed “in a place outside the jurisdiction of any State”, and includes “inciting or intentionally facilitating (such) an act.”

In the context of this essay, three important facts emerge from this definition. The first is that piracy is ‘committed for private ends’. Attacks conducted or sponsored by terrorist groups are therefore excluded from the definition, and from this discussion. The second is the fact that the acts are only considered piracy if they are conducted ‘on the high seas’ and ‘in a place

1 International Maritime Bureau (IMB), ICC-IMB Piracy and Armed Robbery Against Ships—Report for the Period 1 January–30 Jun 2017, available on request from International Chamber of Commerce Commercial Crime Services at https://www.icc-ccs.org/index.php/piracy-reporting-centre/request-piracy-report.

2 Montego Bay, 10 December 1982, 1833 U.N.T.S. 3, art. 101.
outside the jurisdiction of any state'. Acts committed inside territorial waters are, therefore, not considered to be piracy, but would fall instead under the heading of armed robbery. The third is in sub-paragraph (c) of the UNCLOS definition, which includes those ‘intentionally’ facilitating the crime, so that those supporting the activity could be prosecuted as pirates.

Studying piracy, but ignoring attacks not perpetrated on the high seas, adversely affects the ability to gain a true understanding of the problem. Notably, it fails to examine and quantify the totality of the threat to seafarers, and therefore hampers the development of appropriate response strategies whether on land or at sea, nationally, regionally, or internationally. Nor does it contribute to the identification of potential precursors to outbreaks of piracy, which are equally threatening to mariners even though they occur in waters that are under a state’s jurisdiction. From the maritime perspective, this prevents the development of comprehensive maritime security strategies. This shortcoming is recognized by organizations such as the IMB, Oceans Beyond Piracy (OBP), and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia. The IMB, for example, not only collects reported incidents that meet the UNCLOS definition of piracy, but also includes those that meet a definition of armed robbery occurring in a state’s “internal waters, archipelagic waters and territorial sea.”

This wider perspective more fully captures the extent of the challenge, and both piracy and armed robbery will therefore be addressed here under the heading of piracy. However, incidents must be reported to be recorded, and there is general recognition that many incidents are still not reported, which means that the full extent of the problem is not exposed. Comparing the total number of incidents gathered through a recently established ‘Community of Reporting’ with those reported through formal channels, the IMB assessed that 63 percent of incidents in the Gulf of Guinea region between January and June 2017 were not reported through official channels.

Motive, Means and Opportunity

Now, as historically, piracy occurs where the drivers of motive, means and opportunity combine to the extent that the potential private ends outweigh the perceived or actual risk of arrest, injury, or death. The basic motive is generally the same as for any financially related crime—greed and the ability to achieve material gain more easily than through lawful means and at an acceptable degree of risk. Nevertheless, other factors may also drive motive, including gang

3 IMB, supra note 1.
4 Id., p. 12.
or tribal loyalties, revenge, and social retribution. Means includes the availability of the organization, finances, materiel, information, and personnel necessary to support the activity. Opportunity arises from a flawed security environment on land and at sea, which reduces the risk taken by pirates, and contributes to an increase in the availability of potential targets.

Where attacks do occur, they can be graded on a scale of complexity. At one end of the scale, subsistence-type piracy is simple, often opportunistic, requires limited organization, and provides low levels of economic gain. This category can be found around the world where the outcome is simple theft of stores and personal possessions, for example. In contrast, in its most developed form, piracy is transnational organized crime requiring a complex web of enablers. Any effort to prevent piracy should, ideally, therefore address the drivers on both the land and at sea, rather than either in isolation. In addition, such efforts will require a multi-agency approach that almost certainly extends beyond national boundaries to include regional and international partners.

So What?

Breaking piracy down into its drivers (motive, means, and opportunity), makes it easier to identify the main elements of each. Once these are identified, decisions can be made about those efforts to counter them that will be most effective.

To counter motive, if alternative means of income generation can be introduced, this will go some way to removing the motive of economic gain. However, although easily said, it can be very difficult to achieve. This is especially so in failed states where there is minimal rule of law and little likelihood of alternative, legal ways of earning a living being established until there is a will to succeed and it is safe to act. Although the driver identified by the UNCLOS definition of piracy is ‘private ends’, these are not always economic gain, even if that is the most common motive. The International Contact Group on Piracy off the Coast of Somalia stated that “piracy is symptomatic of the overall situation in Somalia including the prevalence of illegal fishing and toxic waste dumping off the coast of Somalia, which adversely affects the Somali economy and marine environment.”

It can be argued from this that the initial motive in this case therefore included grievance as well as material gain. Identifying ways to counter the means to conduct piracy can be helped by considering the network of activities needed to support the pirates’ business.

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5 International Contact Group on Piracy off the Coast of Somalia, “Communiqué from the First Plenary Session,” (New York, 14 January 2009), last accessed 8 August 2017, http://www .lessonsfrompiracy.net/files/2015/03/Communique_1st_Plenary.pdf.
model. Even the simplistic, generic business model at Figure 1, shows the complexity of support required when piracy has evolved from the subsistence level to organized crime. However, looking globally, although there are elements of the model that are common to any of the more complex outbreaks of piracy, specific outbreaks will have unique characteristics. Each therefore requires a tailored rather than generic solution.

Considering the business model in use allows identification of those parts of the model that are most vulnerable, or that will have most effect on the operation of that model if disrupted. Such disruption may be short term, allowing more permanent measures to be put in place in order to counter any or all of motive, means, and opportunity, or they may be longer term solutions in themselves. However, pirates are able to adapt their operations, whether as a natural process or in response to external pressures. Forcing changes to the pirates’ mode of operation will result in changes to the business model, in the same way that forcing changes to the business model may require the mode of operation to be adapted to fit the changed circumstances or, preferably, cause it to fail. Strategies developed to counter piracy must therefore be equally adaptable.

Historically, many efforts to counter piracy have focused on the sea-borne element of the model, and paid less attention to the land-based supporting and enabling functions, without which piracy could not be sustained. This may be born of necessity if it is not possible for national, regional, or international bodies to tackle the problem ashore. Such was the case in much of Somalia at the height of the Indian Ocean piracy outbreak, when the lack of government and law enforcement meant that it was often not possible for outside agencies to operate safely or effectively. Once again it is clear that, without action on land, the problem can only be contained and not solved.

As with countering motive and means, reducing opportunity, including increasing risk to the perpetrators, must also look across both the land and sea.
A coastline subject to limited or no rule of law, provides opportunity for pirates not only to launch their operations, but also to hold ships and crews hostage pending completion of ransom arrangements. This was the situation in much of Somalia for a period. Likewise, corruption can create opportunity, as seen in the Gulf of Guinea where it is a contributory factor to the pirates’ ability to sell stolen cargos of oil products. At sea, opportunity can be reduced by lowering the number and/or vulnerability of potential targets and/or increasing the level the risk posed to pirates when conducting an attack. In the Straits of Malacca, the pirates’ ability to find vulnerable targets has been reduced by improving maritime security both nationally and regionally. In many piracy areas, implementation of self-protective measures derived from best management practices have also had a positive effect. The embarkation of privately contracted armed security personnel (PCASP), heightened international military presence, and improved mechanisms for prosecuting those captured, were further significant factors in reducing opportunity in the Indian Ocean. In the Gulf of Guinea, the use of PCASP has not been as widespread because many of the attacks occur inside territorial waters, where coastal states control the use of civilian armed teams. However, adoption of best management practices, combined with improved maritime security capabilities of coastal states has achieved a significant reduction in the number of attacks. Nevertheless, as pointed out by OBP, “there are still no piracy convictions that can be cited to support an effective Rule of Law solution,”6 both willingness and ability to prosecute being important factors in the risk versus gain balance for pirates. There are, therefore, a wide range of means by which opportunity can be reduced.

Conclusion

Preventing piracy and armed robbery is a multi-faceted task. It first requires information about the nature and extent of the problem, regardless of whether it is present in its precursor or more developed forms. Thereafter, willingness and the ability to act against motive, means, and opportunity on land and at sea, across the full spectrum of agencies nationally, regionally, and internationally, supported by the necessary legal processes, are essential. Such actions are having an effect, as evidenced by the significant reduction in the number of attacks over recent years. However, there is no room for complacency, and lessons learned from recent outbreaks must not be forgotten.

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6 Oceans Beyond Piracy, “Working Group Meeting Held 13 March, London, UK,” (March 2017), http://oceansbeyondpiracy.org/sites/default/files/attachments/March_2017_Wing _Group.pdf.