

ANALYSIS OF THE STRATEGY TO COMBAT MARITIME PIRACY

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MASTER OF MILITARY ART AND SCIENCE
Strategy

by

WILLIAM M. DAVIS, LCDR, USN
B.S., North Carolina State University, Raleigh, North Carolina, 1996

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Name of Candidate: William M Davis, LCDR USN

Thesis Title: Analysis of the Strategy to Combat Maritime Piracy

Approved by:

_____, Thesis Committee Chair
Phillip G. Pattee, M.M.A.S.

_____, Member
Michael Mihalka, Ph.D.

_____, Member
CDR Raymundo Villarreal, M.M.A.S.

Accepted this 11th day of December 2009 by:

_____, Director, Graduate Degree Programs
Robert F. Baumann, Ph.D.

The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

ANALYSIS OF THE STRATEGY TO COMBAT MARITIME PIRACY, by LCDR William M. Davis, USN, 95 pages.

The United States Navy has always considered combating piracy a mission and responsibility under international law and tradition. Recently, the importance of this mission has increased markedly. There are two reasons for this. First, the increase in pirate attacks has endangered the passage of shipping through major shipping lanes and choke points. Pirates have attacked several ships, placing the lives of U.S. citizens in danger. Second, because piracy has recently been highly profitable, many unsavory characters have accumulated large sums of money. These parties may, at least in part, be supplying funding to support terrorist groups.

A nation must have a plan to expend limited resources in pursuit of a clear and achievable objective. Given the United States limited assets, is the current Strategic Plan to combat piracy effective? This thesis argues that the United States current strategy for combating piracy is ineffective because the social and economic factor that contribute to piracy in the Horn of Africa are not adequately addressed.

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ACRONYMS

AIS	Automatic Identification System
AMISOM	African Union Mission to Somalia
ASEAN	Association of Southeast Asian Nations
CGPCS	Contact Group on Piracy off the Coast of Somalia
CMF	Combined Maritime Forces
CTF	Combined Task Force
CUSNC	Commander U.S. Naval Forces Central Command
ESDP	European Security and Defence Policy
EU	European Union
ICC	International Chamber of Commerce
IMB	International Maritime Bureau
IMO	International Maritime Organization
IRTC	Internationally Recognised Transit Corridor
ISPS	International Ship and Port Facility Security Code
ISEAS	Institute of Southeast Asian Studies
LNG	Liquid Natural Gas
MMEA	Malaysian Maritime Enforcement Agency
MORTR	Maritime Operational Threat Response Plan
MSCHOA	The Maritime Security Centre – Horn of Africa
MSPA	Maritime Security Patrol Area
MSI	Regional Maritime Security Initiative
NSC	National Security Council
PUC	Persons Under Control

SLOC	Sea lines of communication
SSA	Ships Security Assessment
SSP	Ships Security Plan
SUA	United Nations Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TFG	Transitional Federal Government
UNCLOS	United Nations Convention on the Law of the Sea
USD	United States Dollar
U.S.	United States

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CHAPTER 1

INTRODUCTION

Problem statement

The majority of commerce that fuels the world economy is transported by ship and the oceans are a primary source of food and natural resources. Secure Sea Lines of Communication (SLOC) are necessary to ensure the free passage of global trade. Due to the effects of globalization, any disruption to the free flow of commerce on the sea can have a global economic impact.

The United States (U.S.) Navy has always considered combating piracy a mission and responsibility under international law and tradition. Recently, the importance of this mission has increased markedly. There are two reasons for this. First, the increase in pirate attacks has endangered the unhindered passage of shipping through major shipping lanes and choke points. Pirates have attacked ships, placing the lives of U.S. citizens in danger. Second, because piracy has recently been highly profitable, many unsavory characters have accumulated large sums of money. These parties may, at least in part, be supplying funding to support terrorist groups. It has also been proposed that terrorist groups may employ pirates as a vehicle to carry out their agenda.

Primary Research Question

A nation's resources are limited. As a result a nation must have a plan to expend limited resources in pursuit of a clear and achievable objective. This leads to the study's first question: Is the current United States strategy to counter piracy effective?

This paper will analyze piracy, and the resultant counter-piracy efforts, in the Indonesia/Strait of Malacca and Somalia/Gulf of Aden (also referred to as Horn of Africa) regions to ascertain the causes of piracy and the effectiveness of the counter-piracy efforts. The Somalia/Gulf of Aden region was chosen due to the current level of piracy and the resultant United States and international response. The Indonesia/Strait of Malacca region was chosen due to the fact that it occurred in recent history, had a similar effect on the United States, and a similar international response. It is also useful in the comparison of the effectiveness of the strategies due to the perceived success of counter-piracy efforts in the Strait of Malacca.

Secondary Research Questions

In order to evaluate the effectiveness of the United States strategy to counter piracy will first require the answering of the following questions:

1. What is piracy? The definition of piracy is sometimes vague and for the purpose of this paper a standardized definition will be established.
2. How is the counter-piracy strategy defined? The counter piracy strategy will be defined for both regions and then used to evaluate compliance with strategy.
3. What conditions, when present, facilitate the existence of piracy? In order to evaluate the effectiveness of a counter-piracy strategy it will be necessary to establish the conditions favorable to piracy and to analyze if the conditions are addressed by the strategy. For this paper conditions which favor piracy will be established. The effect on these conditions, as they exist in the affected regions, will be evaluated. The effect on these conditions will be judged against the number of pirate attacks in the region to ascertain the effectiveness of the strategy.

Definition of Piracy

The first definition to be addressed comes from the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS). Article 101 of the convention defines piracy as:

- (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). (United Nations 1982, 57)

This definition is sufficient on its own, except that UNCLOS Article 105 *Seizure of a pirate ship or aircraft* states that: “on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft . . .” This precludes any external state from pursuing or seizing pirates in another state’s territorial waters without the expressed permission of that state. This can be exploited by pirates merely running to, or operating, in the territorial waters of a state that does not interfere with their criminal activities. This definition is good, but it limits piracy to the 'high seas'.

The second definition is from the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (SUA). This is a United Nations treaty first signed in Rome in 1988 and ratified in 1992. The convention does not specifically define piracy. But, in Article 3 it lists what is to be considered an offence. In general it lists any act of violence, destruction, and attempt to control by force a ship or person aboard a ship as an offence (International Maritime Organization 1992, 224). The SUA is

based on establishing “measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews.” as was required from a previous resolution of the assembly of the International Maritime Organization (International Maritime Organization 1992, 223). The references to terrorism and “the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators” (International Maritime Organization 1992, 223) is indicative of the fact that this Convention was written as an anti-terrorism measure (Young 2007, 9).

With regards to jurisdiction the SUA states: “This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States” (International Maritime Organization 1992,225). The Convention holds the state responsible to create and enforce laws to combat maritime crime within its territorial waters. But, it does not allow for the enforcement of the law by an outside state in the territorial waters of another state without permission.

Based on the UNCLOS definition of piracy, and substantiated by the fact that the SUA does not use the word ‘piracy,’ in a legal sense piracy can only occur outside of territorial waters on the high seas. Unfortunately, it is a fact that many incidences of what would otherwise be called piracy occur within territorial waters.

To this end the International Maritime Bureau (IMB) has promulgated the following definition of piracy:

“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 furtherance of that act” (ICC International Maritime Bureau 2009, 3). There are two reasons for considering this the best definition of piracy. First, it is concise and adequately covers any events that would be considered piracy. Second, it is the definition that the International Maritime Bureau uses to collect and collate data for reporting piracy and has therefore, thru usage, become an internationally accepted definition. The definition is often quoted by experts in writing on the subject of piracy. This paper will use the IMB definition for piracy and will utilize the piracy statistics based on this definition, as tabulated by the IMB, for analysis.

Definition of Counter-Piracy Strategy

The 2005 *National Strategy for Maritime Security* provides guidance for improving the security of the maritime domain both at home and abroad. It is based on the belief that: “The safety and economic security of the United States depends upon the secure use of the world's oceans” (White House 2005, ii). The strategy directs improvement in maritime domain awareness, cooperation, and improved security practices by civilian organizations. In 2007 the White House issued the *Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea* as Annex B to the *National Strategy for Maritime Security*. The document states: “It is the policy of the United States to repress piracy, consistent with U.S. law and international obligations, and to cooperate with other nations in repressing piracy. . . .” (U. S. National Security Council 2008, Annex1). The policy directs that the United States will do this by; preserving freedom of the seas, protecting sea lines of communication, preventing and

interrupting acts of piracy against U.S. vessels, persons, and interest in accordance with international law, reducing the vulnerability of the maritime domain, holding those who commit acts of piracy accountable, and continuing to lead the effort to repress piracy and other acts of violence (U. S. National Security Council 2008, Annex1). This document identifies the United States strategy to combat piracy worldwide. In response to piracy in the Horn of Africa the U.S. National Security Council issued *Countering piracy off the Horn of Africa: partnership & action plan* in December 2008. The plan establishes the intent to suppress piracy off the Horn of Africa in accordance with the *National Strategy for Maritime Security* by furtherance of the following three lines of action:

- 1) prevent pirate attacks by reducing the vulnerability by reducing the vulnerability of the maritime domain to piracy;
- 2) disrupt acts of piracy consistent with international law and the rights and responsibilities of coastal and flag States; and
- 3) ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates by flag, victim and coastal States, and in appropriate cases, the United States. (U. S. National Security Council 2008, 3)

This plan establishes the counter-piracy strategy for the United States in the Horn of Africa region and will be used as the template upon which to measure compliance with strategy.

A definition of the counter-piracy strategy in the Strait of Malacca is not as easy to ascertain. The littoral states affected by piracy in the Strait of Malacca; Indonesia, Malaysia, and Singapore, had established governments and were interested in maintaining security in the region. Although, much of the interest was as much a result of interest in maintaining territorial sovereignty as it was a concern for maintaining law and order. This is demonstrated specifically by Malaysia and Indonesia, after rumors that United States Marines were to be deployed to the region, in 2004: “In response, the two

countries emphasized only U.S. intelligence and financial support, not forces, would be welcome” (Shie 2006, 178). Based on increased international pressure, especially from the United States, which included the U.S. proposed Regional Maritime Security Initiative (RMSI) the three states formed a joint task force on maritime security (Shie 2006, 178). The strategy put in place by the three states is best defined by the doctrine that was presented by Malaysia's Deputy Prime Minister Najib Razak to a Asian security conference in June 2005. The policy consisted of six points that stated that the counter-piracy effort in the region should be a concern primarily of the littoral states concerned, technology will be integral to empowering the affected states in coordination and enforcement, the littoral states should be in the “driver's seat” and the efforts of outside states should be primarily financial and technical support, enforcement is best directed at the source of the pirates than the high sea, any efforts must not impinge on the territorial integrity of the littoral states one, and additional mechanisms that can act as effective deterrents must constantly be explored. But, future options are to be decided by the littoral states (Ong-Webb 2006, xxix-xxx). This doctrine guided the counter-piracy strategy of Malaysia, Indonesia, and Singapore in the Strait of Malacca.

Definition of Conditions Favoring Piracy

The conditions that favor piracy can be described in a variety of ways. In testimony before the U.S. Congress subcommittee on Coast Guard and Maritime Transportation, Peter Chalk, a Senior Policy Analyst with the RAND Corporation, lists seven contributing factors for the rise of contemporary piracy. They are paraphrased below:

1. Growing trend towards using skeleton crews and reduced availability of concerted anti-piracy watches.
2. Redirection of resources after 9/11 to expensive land-based security initiatives and away from limited resources for monitoring territorial waters.
3. Lax coastal and port side security.
4. Corruption and easily compromised judicial structures that encourage official complicity in high-level pirate rings.
5. The endemic anarchic situation in Somalia.
6. Willingness of shipowners to pay increasingly large sums of money for the return of their vessels and cargoes as provided added incentive to engage in maritime crime.
7. The global proliferation of small arms. (U.S. Congress 2009, 3)

A 2009 Congressional Research Report in explaining the motives for piracy give the following:

According to the final report of the experts group convened in November 2008 by U.N. Special Representative to Somalia Ahmedou Ould-Abdallah, “poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia.” While the profitability of piracy appears to be the primary motivating factor for most pirates, other observers argue that since conditions in Somalia make survival difficult for many and prosperity elusive for most, the relative risk of engagement in piracy appears to have lowered in many areas. (Ploch 2009, 6)

In his book *Contemporary maritime piracy in southeast Asia history, causes and remedies*, Adam Young lists divide the causative factors for piracy into three categories: (1) the marginalization of maritime peoples, (2) gaps in the political hegemony of states, and (3) tools, intelligence, tactics, and complimentary technology (Young 2007, 57). The first has to do with the effects of the uneven distribution of economic wealth in southeast Asia and the Asian economic crisis in creating a pool of poor and disaffected people to serve as a labor force in support of piracy. The second is based on the gaps in government control and the potential for government corruption and complicity. The third relates to the availability of improved weapons, vehicles, and intelligence.

For the purposes of this paper the conditions favoring piracy will be divided into economic, social, and political conditions. The economic conditions will be defined as either the conditions that result in a lack of legitimate employment or those in which the gains achieved by committing piracy are greater than the risk. The social conditions are defined as those in which piracy is considered to be culturally acceptable. the political conditions are generally a measure of good governance. This area is divided into three sub-conditions. The first is a measure of the ability of the government, or other legitimate authority, to provide adequate control/oversight over the land portion of the littoral environment. The second is a measure of the ability of the government, or other legitimate authority, to provide adequate control/oversight over the maritime environment. The third is a measure of the level of government corruption and complicity in the support of piracy.

Limitations

This paper is intended to be a study of the United States strategy to combat maritime piracy. Specifically, the piracy in off the Horn of Africa in the Gulf of Aden and off the east coast of Somalia. It will focus on the international problem from the position of the United States. Issues for individual states will be from the point of view of the international community from the United States perspective. The paper will use primarily piracy in the Indonesia/Strait of Malacca and Gulf of Aden/Somalia regions. The Indonesia/Strait of Malacca region is chosen due to the fact that it was affected recently by piracy and is considered to be an example of a successful counter piracy strategy. The Gulf of Aden/Somalia region is chosen as it is currently the area of leading international and United States concern due to the significant increase in piracy over the last several

years. Even though these two regions will be used specifically, the intent is to explain piracy in generic terms so that the principles observed can be applied to other areas in which piracy is occurring, or may occur.

Delimitations

A case has been made that there is a probability that terrorist networks could, and will, use pirate networks as a means to make money and/or carry out attacks. The subject of a “Piracy-Terrorism Nexus” (Chalk 2008, 31) is often discussed. In this paper the subject of terrorism will only be lightly touched upon and will not otherwise be addressed. There are two reasons for this. First, in general piracy is an attempt to profit monetarily whereas terrorism is an attempt to further organizational beliefs through the utilization of terrorist tactics. Therefore, it can be argued that piracy and terrorism are exclusive of each other. But, it cannot be completely be ruled out that pirate and terrorist networks would cooperate as a matter of convenience (Valencia 2006, 85). This would mainly be due to the fact that the conditions that foster piracy will also allow for the existence of terrorist networks. This supports the second reason for not discussing terrorism. The conditions leading to piracy, if they also lead to terrorism, would be observed and corrected in a manner that would not differ. Therefore, there is no need to differentiate between the two in the analysis or recommendations that are a result of the analysis.

CHAPTER 2

LITERATURE REVIEW

Why Piracy Matters

Most references state that around 90 percent of the world's trade is transported via the maritime environment. As a result, anything that inhibits or endangers the free transit of vessels in the maritime domain can have serious economic and security implications. As observed by Alfred Thayer Mahan in the *Influence of seapower upon history*: "The profound influence of sea commerce upon the wealth and strength of countries was clearly seen long before the true principles which governed its growth and prosperity were detected" (Mahan 1957, 1). The increased pirate activity in the Malacca Strait and Horn of Africa regions during the first decade of the twenty first century has become a concern for the United States. The U.S. National Maritime Security Strategy, issued in 2005, stated that the "safety and economic security of the United States depends upon the secure use of the world's oceans," and identified "well organized and well equipped" pirates and criminals as threats to international maritime security (Ploch 2009, 3). The concern caused by the increased piracy is twofold. First, a concern for the economic impact on international trade and the economies that are supported by it. Second, a concern for the safety of the mariners that earn their living on merchant vessels.

The economic effects of piracy are varied, they range from the increase in operating costs due to increased insurance rates, extra fuel expended to alter routes to avoid pirates, upgrading of ships, and possibly hiring armed guards, to make merchant vessels a harder target, and the money paid as ransom or to recover seized cargo. A secondary economic cost is the resources expended by a state, or states, to employ

maritime forces in active counter piracy operations (Ploch 2009, 10). In testimony before the U.S. Congress subcommittee on Coast Guard and Maritime Transportation, in 2009, Peter Chalk estimated the annual cost of piracy to the maritime industry to be between \$1 billion and \$16 billion (U.S. Congress 2009b, 4).

The danger to mariners is exemplified by the fact that: “A total of 32 vessels were hijacked by Somalia pirates in the first nine months of 2009, with 533 crew members taken hostage” (ICC 2009). As of November, 2009 Somalia pirates held over 190 people, including a British couple captured on their personal yacht, hostage and were capable of carrying out attacks as far as 1,000 miles east of the Somalia coast (Associated Press 2009b). Pirates have attacked several ships, placing the lives of U.S. citizens in danger. To include the crew of the M/V Maersk Alabama in April, 2004 (Ploch 2009, 1).

The conditions that support and increased level of piracy are also of concern. “These characteristics facilitate other maritime security threats, including maritime terrorism, weapons and narcotics trafficking, illegal fishing and dumping, and human smuggling operations” (Ploch 2009, 3).

These additional concerns are often used in the justification of making piracy a significant international concern. There are two potentially dangerous by-products inherent to the act of piracy. The first is a result of the fact that during an attack by pirates the crew is either engaged in defending from the pirates or under the pirate’s control. During this time, unless the pirates are trained in the navigation of the ship, the ship has the potential of not being under any positive control. This makes the ship a hazard to navigation and increases the chance, especially in high traffic areas, of a collision. This would be even worse if the ship not under control was carrying a large amount of crude

oil or other hazardous product. The result could be a casualty with potentially severe environmental implications. “The IMB is convinced that, because there will be no second chance with an oil-spill, a proactive attitude to the possibility is essential and it would be foolhardy to the point of irresponsibility not to take all possible measures to prevent the first one” (Abhyankar 2006, 16). The second is the potential cooperation, or at least the use of pirate networks by terrorist. Pirate networks could be used in many ways to support terrorism. They could be used as a way to transport weapons, people, or money. Terrorist networks could set up their own ‘pirate networks’ as a method to make money to support their operations. Terrorist could also hijack vessels and then use the vessels themselves as weapons. But, as noted in a 2003 article in *Contemporary Southeast Asia*: “Although the circumstances that allow piracy and terrorism to develop are similar, the root causes are different. For pirates, the motivating factor is economic; for terrorist it is generally political and religious ideology stemming from perceived injustices, both historical and contemporary” (Young 2003). In spite of the ideological difference that seem to make piracy and terrorism exclusive of one another, it was observed in *The maritime dimension of international security: terrorism, piracy, and challenges for the United States*: “. . . the possibility of a nexus emerging between piracy and terrorism has certainly informed the perceptions of governments, international organizations, and major shipping interests around the world” (Chalk 2008, 32).

International Law

The United Nations Convention on the Law of the Sea is the internationally recognized overarching document with regard to all aspects of operating on the sea. it covers all aspects of using the sea to include, but not limited to, navigation, transit,

national boundaries, and economic zones. According to the United Nations website, it was a result of the third United Nations conference on the law of the sea which was in accordance with resolution 3067 issued in 1973. The convention was submitted for signature in 1982 and went into effect in 1994. The document consists of 311 articles of which UNCLOS Articles 100 thru 107 deal directly with piracy. UNCLOS Article 101 provides the definition of piracy:

Piracy consists of any of the following acts:

- (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).

Unfortunately, this definition is restricted in scope to international waters by sections (a) (i) and (ii) above. It does however in UNCLOS Article 100 require that “All States shall cooperate to the fullest possible extent in the repression of piracy on the high sea or in any other place outside the jurisdiction of any State.” This was therefore a good faith attempt at obtaining international cooperation in the prosecution of piracy. But, when it was written piracy was not of major concern. It is the author’s belief that the articles concerning piracy were merely a continuation of existing traditions with regards to piracy that had been the standard for several centuries.

The majority of the UNCLOS, being concerned with lawful use of the sea amongst states, did not address the impending importance that piracy would achieve due to the increase in its incidence in the strait of Southeast Asia and the Gulf of Aden.

To address the issue of violence within the territorial waters the International Maritime Organization, a Specialized Agency of the United Nations, was directed by United Nations resolution 40/61 to “study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures” and by its own assembly in November of 1985 “which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews” (International Maritime Organization 1988, 223). This was done in response to the attack on the *Achille Lauro* in 1985 by the Palestine liberation Front (Shie 2006, 177). As a result the *Convention for the suppression for unlawful acts against the safety of maritime navigation* was developed and went into effect in 1992. Although, the Convention does not specifically use the word piracy it does state, in significant detail, in Article 3 the acts that constitute an offense. The acts that constitute an offense more than adequately cover any acts that would be constituted as piracy. This document is also key in that it covers the littoral environment and holds the state responsible for creating and enforcing laws to prevent criminal acts within its territorial seas. But, due to the issues it raises with respect to national sovereignty, vague terms it would use to define piracy, and the fact that it was written as an anti-terrorism measure has caused reluctance on the part of Southeast Asian nations to use the Convention (Young 2007, 9).

United States Counter-Piracy Strategy

The *National Security Strategy*, dated 2006, does not directly address piracy. It does address several subjects which are either affected by, or affect piracy. In general the strategy is designed to promote the rule of law, economic growth, and cooperation with other nations. It also has the stated goal to; “Engage the opportunities and confront the challenges of globalization.” It is the author’s belief that piracy is a challenge of globalization. The *National Defense Strategy*, dated 2008, adds little to what has been promulgated by the *National Security Strategy*.

The *National Military Strategy*, dated 2004, also does not directly address piracy. Several goals of the strategy do directly affect the mission of combating piracy. The first is that the United States military will maintain a forward presence to ensure security and stability. Secondly, the United States military will expand cooperation with allies to enhance interoperability to ensure security and stability. And finally, the United States military will ensure that terrorist are denied safe haven. This affects piracy, as the same areas that may be prone to harbor terrorist, are likely to also support the development of a system of piracy.

The *National Strategy for Maritime Security*, dated 2005, is written to provide guidance for improving the security of the maritime domain both at home and in foreign sea lanes. It directs improvement in maritime domain awareness, cooperation, and improved security practices by civilian organizations.

All of the national strategies are written with a slant towards the post 9/11 condition and are therefore geared towards the ongoing conflicts in Iraq and Afghanistan. The methods for combating the spread of terrorism and for combating piracy are similar

enough that many of the tools and missions developed to fight terrorism can be used to also combat piracy.

In 2007 the White House issued Annex B to the *National Strategy for Maritime Security*. The annex, titled “Policy for the Repression of Piracy and Other Criminal Acts of Violence at Sea,” directly addresses the problem of piracy. The document specifies the policy of the United State as follows:

It is the policy of the United States to repress piracy, consistent with U.S. law and international obligations, and to cooperate with other nations in repressing piracy through the following actions:

- Prevent pirate attacks and other criminal acts of violence against U.S. vessels, persons, and interests;
- Interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states;
- Reduce the vulnerability of the maritime domain to such acts and exploitation when U.S. interests are directly affected;
- Ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates and ensure that persons suspected of committing acts of violence against maritime navigation are similarly held accountable by flag and littoral states and , in appropriate cases, the United States;
- Preserve the freedom of the seas, including high seas freedoms;
- Protect sea lines of communication; and
- Continue to lead and support international efforts to repress piracy and other acts of violence against maritime navigation and urge other states to take decisive action both individually and through international efforts.

Response to these threats will vary according to geographic, political, and legal environments. The scope of the mission and the defined nature of the threat also will affect the choice of response. . . . (U. S. National Security Council 2008, Annex 1)

With regards to piracy in the gulf of Aden/Somalia region, the National Security Council issued *Countering Piracy off the Horn of Africa: Partnership and Action Plan* in December of 2008. The plan gives a quick overview of the threat and states: “The U.S. objective of is to repress this piracy as effectively as possible in the interests of the global economy, freedom of navigation, Somalia, and the regional states” (U.S. National Security Council 2008, 6). The plan stresses the importance of a global partnership as: “A guiding principle of the Strategy is that success in securing the maritime domain will not come from the United States acting alone, but through a powerful coalition of nations maintaining a strong, united front” (U.S. National Security Council 2008, 7). The plan establishes the short term goals of an effective global partnership:

- Implement a consequence delivery system aimed at Somalia pirates;
- Improve and share counter-piracy best practices with industry;
- Support and assist those States willing to repress piracy at sea and/or deliver or facilitate the delivery of consequences ashore; and
- Enhance the legal and political framework necessary to disrupt and dismantle piratical organizations ashore. (U.S. National Security Council 2008, 7)

The plan intends to counter-piracy by; preventing pirate attacks, interrupting and terminating pirate attacks, and holding accused pirates accountable (U.S. National Security Council 2008, 7-13). The methods for achieving these lines of action are described in detail. This document prescribes the cornerstone for the United States strategy to combat piracy in the Horn of Africa.

In 2007 the United States Navy, United States Marine Corps, and the United States Coast Guard issued *A Cooperative Strategy for 21st Century Seapower*. It is a broad based description of the maritime services strategy to support the national

strategies. In a list of expanded core capabilities it establishes Maritime Security essential to mitigating threats short of war, including piracy, weapons proliferation, drug trafficking, and other illicit activities in order to protect the homeland, enhance global stability and secure freedom of navigation for the benefit of all nations (USN 2007). It explains that the United States maritime forces will execute the strategy by maintaining a forward presence, improving interoperability within US forces and with international forces, and by improving awareness. Improved awareness will be through and increased commitment to Maritime Domain Awareness and enhancement of the intelligence, surveillance, and reconnaissance (ISR) capabilities and capacity. The *cooperative strategy* is significant in that it defines maritime security, to include combating piracy, as a specified task. It also defines specific sub-tasks key to completing the primary task.

Counter-Piracy Strategy: Strait of Malacca

Maritime issues, more often than not, are given low priority in Southeast Asia, relegated to the realm of functional cooperation and low politics. more importantly, contending interests are likely to make cooperation over maritime issues problematic. In fact, the little maritime cooperation that has taken place in the ASEAN region has been marked by contention, dissension and contestation. (Mak 2006, 134)

This observation is indicative of the challenge of establishing an anti-piracy strategy in Strait of Malacca. The three littoral states, Indonesia, Malaysia, and Singapore, each had their own issues with regards to sovereignty and maritime safety in the region (Mak 2006, 137). Along with this was the perception that the lack of safety in the strait had been exaggerated as an excuse for foreign powers to exert control over the region (Mak 2006, 153). This perception led to the littoral states addressing the problem of piracy more as an effort to stave off foreign interference than out of concern for the

safety of commerce. In response to this the ASEAN Secretariat, in 2002, introduced a Plan of Action to Combat Transnational Crime. With regards to piracy the plan included the following to be implemented in 2005:

- Establishing a compilation of national laws and regulations of ASEAN Member Countries pertaining to piracy and armed robbery at sea;
- Compilation of national studies to determine trends and “modus operandi” of piracy in Southeast Asian waters;
- Consider the feasibility of developing multilateral or bilateral legal arrangements to facilitate apprehension, investigation, hot pursuit, prosecution and extradition, exchange of witnesses, sharing of evidence, inquiry, seizure and forfeiture of proceeds of a crime in order to enhance mutual legal and administrative assistance among ASEAN members;
- Enhance cooperation and coordination in law enforcement and intelligence sharing of piracy and armed robbery at sea activities. (Mak 2006, 177)

This plan established an overall strategy for the ASEAN member states. The specific strategy of Indonesia, Malaysia, and Singapore to combat piracy in the Strait of Malacca is best described by what Graham Gerard Ong-Webb considered to be “tantamount” to a regional maritime security doctrine for the Malacca Strait. The doctrine was presented by Malaysia's Deputy Prime Minister Najib Razak to a Asian security conference in June 2005 and consisted of six points:

1. Maritime security is an area of enforcement within regional security in which the need to cooperate is greatest and where consensus building and a united position are key. Given the narrow nature of the Strait, it is easy for criminals to escape across national boundaries into another jurisdiction. Datuk Seri Najib suggests that including the Royal Thai Navy into current coordinated patrols by Malaysia, Indonesia and Singapore (established in July 2004) may further enhance security along the approaches to the Strait.
2. Technology will play a decisive role in empowering the littoral states to achieve more effective coordination and enforcement. For example, surveillance through maritime patrol aircraft, coastal radar linked to satellites and radio tracking technology in providing real-time information for enforcement operations could be carried out.
3. The littoral states must be in the driver's seat in maintaining regional maritime security and they retain primary responsibility for implementation of any measures designed to strengthen safe passage. While the need for greater

cooperation extends to states using the Strait, good intentions are best translated in terms of financial support, intelligence sharing, training and provision or loaning of equipment such as ships and aircraft.

4. Stronger enforcement, regional cooperation and a better use of technology is best directed towards the effort in detaining pirates at source rather than in the high seas. In this case, it means attacking the bases from which pirates operate and cutting off the resources and manpower they depend on. It is also a proposition for the littoral states to develop their law enforcement capacities and promulgate harsher laws in dealing with pirates and other criminals.
5. Any form of preventative measures and operational arrangements to secure the Strait must not impinge on the territorial integrity and sovereignty of the littoral states, in tandem with international law. Consequently, the region must counter-propose the idea of foreign vessels being escorted by their naval or coast guard ships passing through the Strait. In addition, while private armed escort services on commercial vessels plying the Strait should not be denied transit passage, they must cease operations when in the territorial waters of the littoral states. As an alternative, the littoral states could provide their own law enforcement personnel on vessels travelling through the Strait.
6. Additional mechanisms that can act as effective deterrents must constantly be explored. Against the longstanding grain of criticisms by security analysts and observers regarding the fanatical obsession of the littoral states over their individual sovereignty, Datuk Seri Najib made a path-breaking suggestion that, while it was important to take current measures at a comfortable pace, an “open mind” should be kept in evolving coordinated naval patrols into regional “joint” patrol (which would allow for inter-territorial hot pursuit) at some point in the future. (Ong-Webb 2006, xxix-xxx)

This strategy is significant in that it allows for expanded cooperation between the littoral states and in paragraph 4 it stresses the importance of attacking the pirate's bases to cutoff their manpower and resources.

Contemporary Maritime Piracy: Overview

Statistics

In the last twenty years several geographic areas have been noted as being significantly affected by piracy. The areas are Indonesia, including the Strait of Malacca, the west coast of Africa in the vicinity of Nigeria, and the Gulf of Aden/east coast of Africa off the coast of Somalia.

As described in a the report of the 68th session of the Maritime Safety Committee dated June 6, 1997; “The number of incidents of piracy and armed robbery against ships reported to the IMO was 228 in 1996, a rise of 96 over the figure for 1995. Since 1984, 968 such acts have been reported” (Maritime Safety Committee 1997). This was a significant increase in the incidence of piracy and was a prelude to the increase that occurred early in the 21st century.). For the years 2003 thru 2008 there has been an average of 307 attacks per year. “A total of 32 vessels were hijacked by Somalia pirates in the first nine months of 2009, with 533 crew members taken hostage” (ICC 2009).

The International Maritime Bureau along with routine reports on matters concerning piracy on its website also provides quarterly and annual reports on piracy and armed robbery against ships. These quarterly and annual reports are the generally accepted standard with regards to piracy statistics. For the collection and reporting of piracy statistics the International Maritime Bureau defines piracy 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 furtherance of that act” (ICC International Maritime Bureau 2009, 3).

The reports provide data for the previous five years. The data is broken down by type and location. The report also provides a description of each reported attack. The reports from the International Maritime Bureau are often cited in writings on piracy and the written descriptions are no doubt valuable in discerning trends and techniques. The table below is based on these reports and shows that attacks worldwide were 445 in 2003, and may be on track to reach 400 for 2009.

Table 1. Total Actual and Attempted Attacks Worldwide 2003-2009

Total Actual and Attempted Attacks Worldwide 2003-2009						
2003	2004	2005	2006	2007	2008	2009*
445	329	276	239	263	293	306
*2009 data through Sep 30						

Source: Created by Author. 2009 data from ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” 1 January-30 September 2009 (London, United Kingdom, October), 7; 2003-2008 data from ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” 1 January-31 December 2008 (London, United Kingdom, October), 6.

The increase for 2009 is in spite of a significant decrease in the number of attacks in the Far East. The decrease in the Far East has been largely offset by an increase in the number of attacks in the Horn of Africa region. It should be noted that these numbers reflect only reported attacks. It has often been a concern that the number of actual attacks may be much higher. The belief is that many ships do not report attempted attacks or even actual attacks for fear that their insurance rates will be adversely affected. As noted by Peter Chalk in testimony before the U.S. Congress subcommittee on Coast Guard and Maritime Transportation: “The true figure is undoubtedly greater because in many cases (possibly as many as 50 percent) shipowners are reluctant to report attacks against their vessels out of concern that it will merely lead to increases in maritime insurance premiums and result in lengthy and costly post-incident investigations” (U.S. Congress 2009b, 2).

Economic Impact

The economic impact of piracy is a combination of the increase in insurance cost, money spent to thwart pirates by the shipping companies by upgrading their ships, hiring

guards, or rerouting, and the cost in ransom or to replace lost cargo. “Today, the overall annual cost of piracy to the maritime industry is estimated to be anywhere between \$1 billion and \$16 billion. The true figure could be far higher, especially once expenses incurred from implementing mitigation efforts are factored in” (U.S. Congress 2009b, 4).

The increase in insurance rates due to the threat of piracy in the Gulf of Aden has been significant. In an article for the Naval Institute’s *Proceedings*, Admiral Stavridis states: “In June 2009, marine insurers were charging between 0.05 percent and 0.175 percent of the value of a ship per voyage in the Gulf of Aden versus zero to 0.05 in May of 2008. For a vessel the size of the *Sirius Star*, that amounts to between \$150,000 and \$500,000 per trip.” In a report by the United States Maritime Administration the increase on cost to obtain a war risk binder is assessed as follows:

The cost of the war risk binder for ships transiting the Gulf of Aden is estimated at \$20,000 per ship per voyage, excluding injury, liability, and ransom coverage. A year ago, the cost of the additional insurance premium was only \$500. (“The long Way Around,” Lloyd’s list, November 26, 2008) It is estimated that the increased cost of war risk insurance premiums for the 20,000 ships passing through the Gulf of Aden could reach as much as \$400 million. (“Piracy Could Add \$400m to Owners’ Insurance Costs,” Lloyd’s List, November 21, 2008) Clearly, this estimate represents an upper bound on additional insurance cost as not all vessels will seek the additional coverage, and the estimate excludes rebates given when no claim is exercised on the policy. (Maritime Administration 2009)

As stated in the quotation this is an upper bound of the increased cost of insurance. It should be noted that the war insurance premium is purchased above and beyond standard insurance. Therefore, the increase in cost is cumulative with the increase in basic premiums stated previously. Whether or not the increase in insurance costs is a significant problem seems to be a matter of opinion as best stated in the closing paragraph of a report completed by the Congressional Research Service:

Available statistics suggest that industry resources are adequate, given the property and casualty insurance industry surplus and the relatively low cost of insurance premiums. As a result, despite the increased activity of pirates, some may contend that Congress does not need to amend the existing federal insurance statutory construct. Others, however, may urge increased levels of oversight and an investigation into the situation in an effort to ensure that international commerce remains stabilized, particularly at a time of global economic crisis. (King 2009, 7)

Regardless of opinion on the impact of the increased insurance rates, the fact is that they have increased. The impact of their effect will be discussed to greater extent in the analysis section of the paper.

The next cost increases to be discussed are an either/or situation. The first considers that the risk is considered too great and the decision is made to transit south around the Cape of Good Hope vice conducting the transit via the Suez Canal and Gulf of Aden. The second choice is to spend money on training, equipment, and or personnel to make a vessel less susceptible to piracy.

The report on the economic impact of piracy completed by the United States Maritime Administration divides the impact into two discreet cases. The first being for a tanker sailing from Saudi Arabia to the United States. For this case it states:

For example, routing a tanker from Saudi Arabia to the United States via the Cape of Good Hope adds approximately 2,700 miles to the voyage. This longer distance will increase the annual operating cost of the vessel by reducing the delivery capacity for the ship from about six round-trip voyages to five voyages, or a drop of about 26 percent. the additional fuel cost of travelling via the Cape of Good Hope is about \$3.5 million annually. (Maritime Administration 2009)

The second example is for a vessel sailing from Europe to the Far East. For this case it states:

For example, a routing from Europe to the Far East via the Cape of Good Hope, rather than through the Suez Canal, would incur an estimated additional \$89 million annually, which includes \$74.4 million in fuel and \$14.6 million in charter expenses. In addition, the rerouting would increase transit times by about 5.7 days

per ship. this would result in the need for additional vessel to maintain the service frequency. (Maritime Administration 2009)

These cost increases are of course dependent on commercial carriers determining that the risk is significant enough that the cost to mitigate the risk is large enough to justify the increased cost.

The value of loot taken in a piracy attack will vary from what can be stolen from the crew to the entire cargo of a large vessel. A common method of obtaining monies from piracy, especially in the horn of Africa region, is to hijack the vessel and crew and then hold them for ransom to be paid by either the insurance companies or the home state of the vessel or crew. The money paid recently for ransom of ships hijacked in the vicinity of the Horn of Africa has been significant. The projected income from ransom for the Somalia pirates in 2008 was \$20 million (Chalk 2009, 3). The Saudi flagged oil tanker *MV Sirius Star* and the Ukrainian flagged *MV Faina* were reportedly ransomed for \$3.0 and \$3.2 million respectfully in January and February 2009 (Ploch 2009, 9). According to the Associated Press a British couple kidnapped on their yacht by Somalia pirates is being held for a reported ransom of \$7.0 million (Associated Press 2009a, 1).

Types of Piracy

Piracy occurs over a significant spectrum of violence, sophistication, and monetary value. At the lowest level are the individual boats manned by pirates that are not part of a larger organization. They are best described as low skilled or displaced personnel that have turned to the criminal profession, they will normally have access to the maritime environment via a boat that was more than likely used previously for legitimate purposes. This is the most prolific form of piracy as described by Adam J.

Young, “The most common incidents of piracy are on the low end of the typology and can be classified as sea-robbery, simple hit-and-run thefts involving individuals to small gangs with ad hoc organization” (2007, 13). The lower level pirates are more likely to concentrate their attacks on smaller ships and will only remain on the vessel long enough to steal what they can from the crew. The upper limit of the spectrum will include larger groups of pirates that use several boats in a coordinated manner to subdue their victim.

At the top of the scale on the high-end organized side are the long-term and permanent seizures where the entire ship is ransacked, or the target was the cargo itself, often valuable and/or resellable goods such as palm oil, fuel oil, electronics, or refined metal ores. The ships themselves can also become a target. these ships are called “phantom ships” because they simply disappear; the ships are repainted and reflagged (registering the ship with a different nation). (Young 2007, 13-14)

The groups conducting these high-end attacks will normally consist of a larger ‘mother ship’ and one or more smaller and faster attack skiffs. The larger groups will also frequently use cellular or satellite phones for communication and have relatively sophisticated level of weapons. Their weapons will very often consist of automatic rifles and rocket propelled grenades.

Once they target a vessel, pirates typically coordinate a two- or three-pronged simultaneous attack from multiple directions. pirates are typically armed and fire upon their targets with small arms, automatic weapons, and rocket-propelled grenades, which they likely obtain through the constant and largely unimpeded stream of illegal weapons transiting through Somalia in violation of the 1992 united nations embargo on arms into Somalia 9U.N. Security Council resolution 733 (1992)). (U.S. National Security Council 2008, 5)

Coordination is a product of the amount of oversight or control exhibited by a specific criminal organization. This is usually in the form of a regional criminal organization, but in some cases it has been the government of a given state. For example, the pirate

networks based in the Puntland region district of Eyl and the Mudug region district of Harardera in Somalia (Ploch 2009, 6).

Contemporary Maritime Piracy: Causative Factors

Contemporary maritime piracy in southeast Asia history, causes and remedies, divides the causative factors for piracy into three categories: (1) the marginalization of maritime peoples, (2) gaps in the political hegemony of states, and (3) tools, intelligence, tactics, and complimentary technology (Young 2007, 57). The first has to do with the effects of the uneven distribution of economic wealth in southeast Asia and the Asian economic crisis in creating a pool of poor and disaffected people to serve as a labor force in support of piracy. The second is based on the gaps in government control and the potential for government corruption and complicity. The third relates to the availability of improved weapons, vehicles, and intelligence.

A 2009 Congressional Research Report in explaining the motives for piracy give the following:

According to the final report of the experts group convened in November 2008 by U.N. Special Representative to Somalia Ahmedou Ould-Abdallah, “poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia.” While the profitability of piracy appears to be the primary motivating factor for most pirates, other observers argue that since conditions in Somalia make survival difficult for many and prosperity elusive for most, the relative risk of engagement in piracy appears to have lowered in many areas. (Ploch 2009, 6)

The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States was written as part of the RAND corporation’s Project Air Force. The book covers the causes and implications of piracy. The book lists seven

factors contributing to the emergence of piracy. Those factors are; the massive increase in commercial maritime traffic, the heavy use of narrow and congested maritime chokepoints, the lingering effects of the Asian financial crisis, the difficulties associated with maritime surveillance, lax coastal and port-side security, corruption and dysfunctional systems of national criminal justice, and the global proliferation of small arms (Chalk 2008, 11-13).

In testimony before the U.S. Congress subcommittee on Coast Guard and Maritime Transportation, Peter Chalk, a Senior Policy Analyst with the RAND Corporation, again listed seven contributing factors for the rise of contemporary piracy. In addition to the factors listed previously, the following are given; the growing trend towards using skeleton crews and reduced availability of concerted anti-piracy watches, redirection of resources after 9/11 to expensive land-based security initiatives, the endemic anarchic situation in Somalia, willingness of shipowners to pay increasingly large sums of money for the return of their vessels and cargoes as provided added incentive to engage in maritime crime (U.S. Congress 2009, 3).

In a 2009 article in the *Harvard Africa Policy Journal*, the recent increase in piracy in the Horn of Africa region is attributed to three main reasons: “first, the development of a more sophisticated method of operation has allowed pirates to successfully attack bolder targets and thus reap greater rewards; second, the growth of the region's maritime industry has increased the number of potential targets; and third, the worsening state of affairs in Somalia has made illegal activities an increasingly attractive and viable business” (Ross 2009, 58).

CHAPTER 3

RESEARCH METHODOLOGY

Choice of Case Studies

For this paper piracy in two specific regions has been chosen. The first region is the Indonesia/Strait of Malacca. This region was chosen due to the fact that piracy was a concern there within recent history and the conditions are similar to present concerns in the Horn of Africa and not affected greatly by any changes in perception or customs that occur over time. Piracy was of interest just prior to, or after, 9/11 and therefore is affected by the increased interest in combating terrorism in the same manner as the Horn of Africa case study.

An additional aspect that makes the choice of Indonesia/Strait of Malacca useful is that the response to piracy in the region is regarded as being successful whereas the response, to date, in the Gulf of Aden/Somalia region has been deemed overall unsuccessful.

The second region chosen is the Gulf of Aden/Somalia. It was chosen due to the current level of piracy in the region and the associated level of United States and international interest.

Conditions Favoring Piracy

The causes of piracy are better described as conditions, which if they exist, will increase the probability of piracy occurring. For the purpose of analysis the conditions which lead to piracy will be divided into the three categories: economic, social, and political. Social, political, and economic conditions are irrefutably intertwined and almost

always changes in one will affect the other. The division of the causes of piracy along the lines chosen is not in any way meant to imply that the individual categories are closed systems.

This fact that the conditions are interrelated be used to advantage, as some actions in the counter-piracy strategy could indirectly effect one aspect by correcting another. But, is also a disadvantage in that a detriment to one condition will cause harm to another. In this case attempting to correct the affected condition is only treating the symptom and not the cause.

The economic conditions that affect piracy can again be broken down into two characteristics. These characteristics are not exclusive of each other and in most cases are actually complementary. The first characteristic is the same as any other theft crime, that one can obtain goods without paying for them and then sell them for a price. The selling price, minus operating cost, will show a much larger profit margin than realized by legal production. The measure of this condition is the ratio of the profit associated with illegal action to the risk associated with committing the illegal action. The higher the profit and the lower the risk the more likely a person will be inspired to commit the illegal action. The second economic factor is that of poverty or the inability in either means or desire to make a living by what would be considered a lawful profession. This condition is indirectly proportional to the level of prosperity in a locality or region. Therefore the lower the level of prosperity the more likely one will be unable to find gainful employment. This will then result in a larger number of personal available for employment in illegal activity. Example of this would be the loss of livelihood experienced by Somalia fishermen with the collapse of the Somalia state and their

subsequent entry into the business of piracy, and the economic crisis in the Far East that led to the increase in piracy in the 1990s (Shie 2006, 173).

The social factor affecting piracy is its acceptability within the local culture. One example of the social acceptance of piracy is the “Pirate kingdoms” of the 8th century in Southeast Asia (Young 2007, 26). Another example would be the pirate community that existed on the Caribbean island of Port Royal in the 17th century (Frick 2008). Somalia is an example of a current area in which piracy has become an acceptable profession. These are all examples of instances where piracy was and is able to flourish on the fringe of the civilizations that exist at the time.

The political factors are a measure of governance. The area in which piracy is to occur and/or the area the pirates are to operate from needs to be out of the reach of the instruments of legitimate state power. A lack of governance will occur because the government is complicit in the piracy, is too weak to effectively provide security in the area, or is not concerned with the problem. For analytical purposes the ability to provide security will be a measure of the ability to provide control/oversight over a given area. The areas will be divided into the landward side of the littoral (ashore) and the seaward side of the littoral (maritime). The separation of maritime environment into territorial sea and international sea will be addressed with regards to enforcement as affected by international law.

In the 16th and 17th centuries it was common practice for states to issue letters that authorized private mariners to raid ships of an enemy state. The licensing of Privateers was legal into the 18th century when the practice was outlawed by international agreement. The issuing of privateer license is an overt case of a state being

complicit in piracy, and was the case with both Great Britain and France in the 17th century. In this case the state was wholly complicit in piracy as the privateer license was issued by the monarch. In another case in the early 1990s several Vietnamese vessels were seized and accused of smuggling by local Chinese “customs officials” in the South China Sea. When the assessed fines were not paid the cargo was seized. This along with several other seizures by uniformed personnel claiming to be Chinese officials led to charges of piracy against the Chinese government. No official evidence was ever brought to light and there were eventually trials and executions conducted by the Chinese government. Whether these were actual officials, “rogue” local officials, or perpetrators pretending to be Chinese official is not known (Young 2007, 77). There was, at least for a while, the perception that the Chinese government was complicit in piracy. The other and more likely case of complicity is that local merchants or businesses which for all appearances are a legitimate business, but also participates in illicit trade. These businesses may or may not rely on bribing local officials to look the other way.

In the case of piracy given above, if the Chinese government was not complicit they had nonetheless been unable to provide adequate control over the area in question and allowed their ports to become safe havens for pirates (Young 2007, 77). This is unusual in that the Chinese government is considered to be a functioning state government in control of its territories. The conditions in the Strait of Malacca are an example of a lack of concern by the state governments. This is evidenced by the piracy networks were able to flourish in spite of the fact that the three states concerned Indonesia, Malaysia, and Singapore had functioning state governments. This lack of concern was not necessarily the result of willful neglect. It was more likely the result of

more pressing concerns. The current conditions in Somalia are an example of a government that is too weak to effectively combat piracy.

Factors contributing to piracy are summarized graphically in Figure 1.

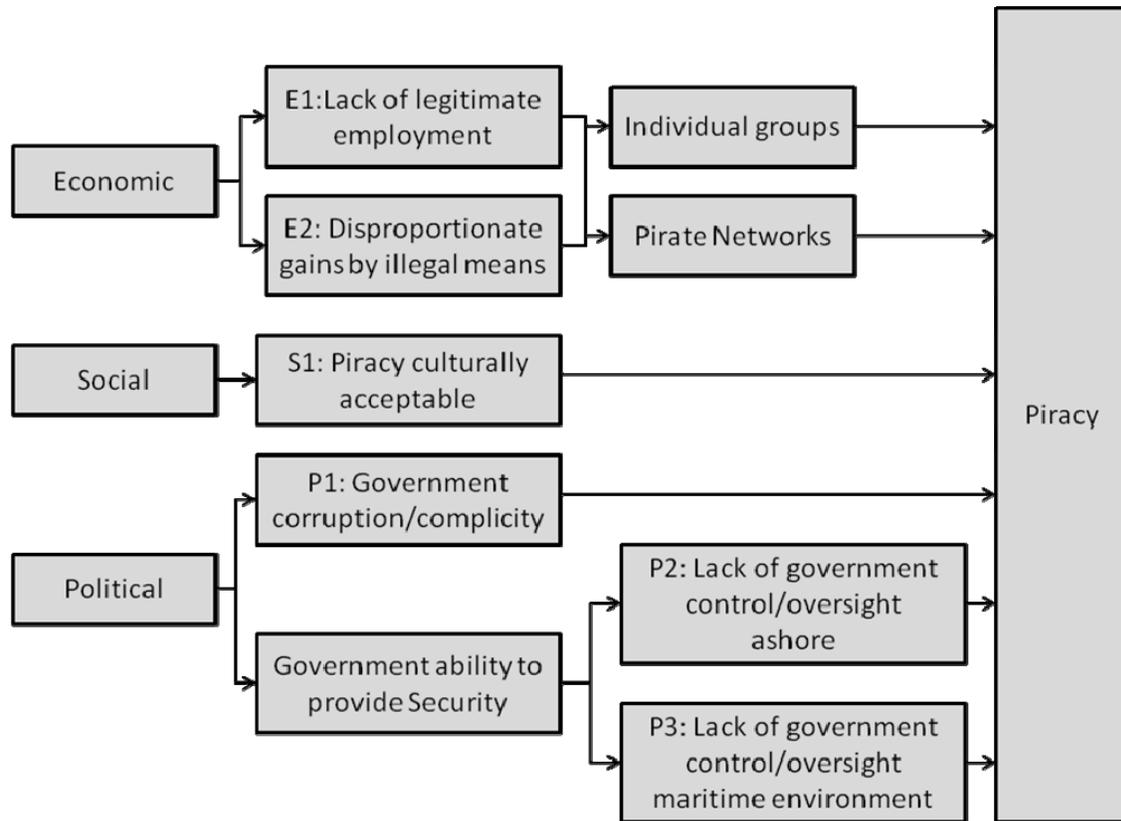


Figure 1. Factors Contributing to Piracy

Source: Created by Author.

Case Study Structure

The start of the case study will be a brief overview of the area. This will be primarily concerned with issues that led to the conditions that facilitate piracy, but that do not necessarily fit into the specified categories of economic, social, or political with

regards to piracy. The economic issues that specifically contribute to the development of an available workforce for employment in acts of piracy and the support of piracy will be assessed. Examples of and reasons for the cultural acceptance of piracy will then be discussed. The political system, and its ability to govern the area of concern will then be analyzed. For all conditions in the specified region that support piracy examples which illustrate the condition will be provided. For each region the time line over which the conditions came in existence will be correlated with specific data provided on the number and style of attacks in an attempt to correlate the data.

An analysis of the international and local state response will then be analyzed and its effect on the causative factors correlated with provided statistical data to assess the effectiveness of the implemented strategy. The information will be presented in table form as a comparative analysis. The causative factors will be based on a qualitative analysis and the result will be based on a quantitative analysis of the number of attacks as recorded by the International Maritime Bureau. An example is presented below:

Table 2. Example Comparative Analysis

Country	Factors						Result
	Economic		Social	Political			Piracy
	E1	E2	S1	P1	P2	P3	
Country A (i)							
Country A (f)							
Key: E1 = Lack of legitimate employment E2 = Disproportionate gains by illegal means S1 = Piracy socially acceptable P1 = Government corruption P2 = Lack of government control/oversight ashore P3 = Lack of government control/oversight maritime (i) = initial condition (f) = final condition A = Condition supports piracy B = Condition does not support piracy Y = Piracy excessive/increasing Z = Piracy negligible/decreasing							

Source: Created by Author. Data from Todd Landman, *Issues and Methods in Comparative Politics an Introduction*, 3rd ed. (New York, NY: Routledge, 2008), 80.

After analyzing the case studies individually they will be then compared to one another. The difference in outcomes will be compared against the strategy applied in an attempt to ascertain differences that may have affected the outcome. Any differences that affected the outcome will be utilized to ascertain defects in an unsuccessful strategy.



Figure 2. Comparison of Case Studies

Source: Created by Author.

CHAPTER 4

ANALYSIS

Strategy to Combat Piracy in the Strait of Malacca

The doctrine presented by Malaysia's Deputy Prime Minister Najib Razak to a Asian security conference in June 2005 and consisted of six points:

1. Maritime security is an area of enforcement within regional security in which the need to cooperate is greatest and where consensus building and a united position are key. Given the narrow nature of the Strait, it is easy for criminals to escape across national boundaries into another jurisdiction. Datuk Seri Najib suggests that including the Royal Thai Navy into current coordinated patrols by Malaysia, Indonesia and Singapore (established in July 2004) may further enhance security along the approaches to the Strait.
2. Technology will play a decisive role in empowering the littoral states to achieve more effective coordination and enforcement. For example, surveillance through maritime patrol aircraft, coastal radar linked to satellites and radio tracking technology in providing real-time information for enforcement operations could be carried out.
3. The littoral states must be in the driver's seat in maintaining regional maritime security and they retain primary responsibility for implementation of any measures designed to strengthen safe passage. While the need for greater cooperation extends to states using the Strait, good intentions are best translated in terms of financial support, intelligence sharing, training and provision or loaning of equipment such as ships and aircraft.
4. Stronger enforcement, regional cooperation and a better use of technology is best directed towards the effort in detaining pirates at source rather than in the high seas. In this case, it means attacking the bases from which pirates operate and cutting off the resources and manpower they depend on. It is also a proposition for the littoral states to develop their law enforcement capacities and promulgate harsher laws in dealing with pirates and other criminals.
5. Any form of preventative measures and operational arrangements to secure the Strait must not impinge on the territorial integrity and sovereignty of the littoral states, in tandem with international law. Consequently, the region must counter-propose the idea of foreign vessels being escorted by their naval or coast guard ships passing through the Strait. In addition, while private armed escort services on commercial vessels plying the Strait should not be denied transit passage, they must cease operations when in the territorial waters of the littoral states. As an alternative, the littoral states could provide their own law enforcement personnel on vessels travelling through the Strait.
6. Additional mechanisms that can act as effective deterrents must constantly be explored. Against the longstanding grain of criticisms by security analysts and

observers regarding the fanatical obsession of the littoral states over their individual sovereignty, Datuk Seri Najib made a path-breaking suggestion that, while it was important to take current measures at a comfortable pace, an “open mind” should be kept in evolving coordinated naval patrols into regional “joint” patrol (which would allow for inter-territorial hot pursuit) at some point in the future. (Ong-Webb 2006, xxix-xxx)

This doctrine best describes the counter-piracy strategy of Malaysia, Indonesia, and Singapore in the Strait of Malacca.



Figure 3. Map of Indonesia

Source: *The World Factbook 2009* (Washington, DC: Central Intelligence Agency, 2009).

Case Study: Indonesia/Strait of Malacca

The area at the meeting of the Pacific Ocean, Indian Ocean, and South China Sea contains several archipelagic nations. These nations to include Indonesia, Philippines,

Malaysia, and Thailand have a long history of piracy. Even though their definition of piracy most likely differed from the one used in this thesis, early written accounts by Shih Fa-Hsien, travelling through the Strait of Malacca in the fifth century CE, and Chia-Tan, from an account of a Southeast Asian kingdom in the eighth or early ninth century CE, both describe a significant amount of piracy in the region (Young 2007, 26).

In the modern era, piracy became a problem in Indonesia and the Strait of Malacca, after rising from 5 and 10 attempts in the Malacca Strait and Indonesia respectively, in 1993 (Abhyankar 2006, 9), to the levels shown in the table below for the years 1999 thru 2004. Actions taken by the local governments and the international community have been seen as successful and responsible for a marked decrease in pirate attacks in the region over the last five years.

Table 3. Total Actual and Attempted Attacks Strait of Malacca 1999-2009

Total Actual and Attempted Attacks Indonesia/Strait of Malacca 1999-2009											
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009*
Malacca Strait	2	75	17	16	28	38	12	11	7	2	2
Indonesia	115	119	91	103	121	94	79	50	43	28	7

*2009 Data thru Sep 30, 2009

Source: Created by Author. 2009 data from ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” 1 January-30 September 2009” (London, United Kingdom, October), 7; 2003-2008 data from ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” 1 January-31 December 2008” (London, United Kingdom, October), 6; 1999-2002 data from Jyant Abhyankar, *Piracy, Armed Robbery and Terrorism at Sea*, In *Piracy, Maritime Terrorism and Decuring the Malacca Strait*. ed. by Graham Gerard Ong-Webb (Pasir Panjang, Singapore: ISEAS Publishing), 9.

Indonesia/Strait of Malacca: Economic Factors

The rise of the Far East in the world economy has been significant in the period after World War II and into the present day. The result of the economic rise of the area in question is well explained as follows:

Second, by virtue of their geographical location and relative efficiency, Southeast Asia's ports and waterways are essential to international maritime trade. Six of the world's top twenty-five container ports are located in Southeast Asia: Singapore, port Kelang (Malaysia), Tanjung Priok (Indonesia), Tanjung Pelepas (Malaysia), Laem Chabang (Thailand), and Manila (the Philippines). Singapore currently ranks as the world's busiest port, the second largest container port, and the third largest port when considered in terms of global cargo percentage. It is also the location of the third largest oil refinery industry in the world. Over 135,000 maritime vessels were reported to have docked at Singapore in 2003. (Shie 2006, 164)

The often booming economy of the Far East has resulted in large growth and great wealth. Unfortunately, the wealth has not been well distributed. "Like many other people, they have become tired of the Indonesian Government's broken promises of reaping the dividends of the 'Asian miracle' and distributing them to the people" (Frecon 2006, 72). This has resulted in a variety of large migrations of people in an attempt to better their position. This has in turn resulted in a patchwork of regions varying drastically in wealth and culture. Often these areas can be in close proximity. this has resulted in a large semi-transient population of unemployed men.

This condition was farther exacerbated by the lingering effects of the Asian economic crisis in the late 1990s (Young 2007, 61). As a result of the economic crisis the number of unemployed people increased and the money available for the affected States to allocate to policing their maritime domains decreased.

Indonesia/Strait of Malacca: Social Factors

The long history of piracy in the Far East notwithstanding, the recent history has led to a condition in which piracy is considered to be a fair profession. In describing a small village on one of the Riau islands Eric Frecon says the following;

Along the coast, fishermen, pirates, and the chief of the village are neighbors. The community is closely knit as everyone is quite familiar with each other. When the tide is low, fishing for prawns become a worthy enterprise. However, on a moonless night, they turn towards attacking vessels crossing the Strait, just ten minutes from Pig island. Indeed, lights of Singapore shine in the background. The Philip Channel is very near to Kampung Hitam, on the other side of the bay. This helps to explain why piracy is a favourable trade. (Frecon 2006, 74)

This scenario was repeated at various locations throughout the region resulting in a significant number of pirates. The pirates were usually parts of small groups that worked for a local “pirate chief.” The local pirate chief may or may not be the agents of larger criminal organizations.

Indonesia/Strait of Malacca: Political Factors

No States admit to supporting or condoning piracy in the modern international community. In most cases the findings have been actually, or at least blamed on, localized corruption. This is also the case in the Far East. In the case of the community described above it was evident that the local authorities were complicit in the piracy originating from their community. Eric Frecon notes;

The local police are, no doubt, fully aware of the criminal activities that exist on the island and along the Strait. In fact, in order to reach the Strait, pirates have to pass their view on the way out. Some people the author spoke to have also commented that until a few years ago, policemen actually collected a small “tax” from boats sailing around the island. (Frecon 2006, 73)

Eric Frecon, goes on to note later in the same reference:

It serves to mention that a government official actually manages this district where pirates live and symbolizes the strange attitude that Indonesian authorities have regarding piracy in their backyards. He told the author that his task was to inform his office in Jakarta if problems such as piracy get out of hand. However, he appeared to display an indifferent attitude towards the reality that pirates were operating under his watch. He even admitted that his own daughter had married a pirate chief. Thus, it is quite clear that he has not made any reports to Jakarta to date. (Frecon 2006, 74)

Indonesia/Strait of Malacca: Response

“Why is cooperation so difficult to achieve in the Strait of Malacca and Singapore? The primary and overarching problem was the clash of interests between the key littoral states of Malaysia and Indonesia, which are essentially coastal states with coastal interests on one hand, and the international users of the Strait on the other hand, in particular the major maritime nations. Singapore occupies a unique position in Strait cooperation, being geographically a littoral state, but in terms of interests and perceptions, more inclined to adopt the world view of a maritime state” (Mak 2006, 135). The consequences of this statement is that since the 1960s in arguments over the Malacca Strait and maritime sovereignty between the three states Malaysia and Indonesia have held the position that the Strait of Malacca are internal waters and Singapore has held the position that they are international strait. Malaysia and Indonesia being more concerned with asserting ownership over the territory and therefore over whatever resources they may hold. Singapore being concerned with their, and other major maritime nations, access to transit the strait in support of commerce.

The United States is also concerned with access to the strait, one of seven major choke points on the globe, to support not only trade but as a means to transit for military forces and therefore important to power projection. These concerns are also shared with other maritime states, such as China and India.

With the increase in pirate attacks in the Malacca Strait, in the 1990s and into the early 2000s, the United States attempted to pressure the local governments to take action to secure the strait. This pressure became more acute after 9/11 due to a perceived increase in the probability that the strait could be vulnerable to a terrorist attack. The theory of the possible “Piracy-Terrorism Nexus” was also of concern during this time (Mak 2006, 151). In response to the threat the United States coordinated with India to escort “high value” merchant vessels, tankers and LNG carriers, through the strait for a six month period in 2002 (Mak 2006, 151; Valencia 2006, 90). In 2004 the United States proposed the Regional Maritime Security Initiative (RMSI). “The goal of the RMSI is to develop a partnership of willing regional nations with varying capabilities and capacities to identify, monitor, and intercept transnational maritime threats under existing and domestic laws” (Fargo 2004). Although, U.S. Pacific Command Commander, Admiral Fargo’s previous statement specified regional nations, he was quoted in a French newspaper in April 2004 “as saying that U.S. Marines and Special Forces would help patrol the Strait of Malacca.” The United States claimed that this was only hypothetical (Mak 2006, 152).

Singapore supported the initiative. “Defence minister Teo Chee Haen said in a public speech that given the very large number of ships plying the Strait of Malacca and Singapore, it was beyond the capacity of any single state to safeguard the Strait” (Mak 2006, 152). Malaysia and Indonesia did not support the initiative. “More than that, Malaysia pointedly stated that security should not be used as an excuse to compromise the country’s sovereignty, and Malaysian Foreign Minister Syed Hamid warned Singapore against ‘going it alone’ in engaging U.S. forces to patrol the Malacca Strait”

(Mak 2006, 152). “Once again, it was the sense of ‘incomplete sovereignty’ in the Malacca Strait and the fear that their maritime sovereignty could be further eroded that made Malaysia and Indonesia respond to the Singapore call for stepping up security in the Malacca Strait” (Mak 2006, 153). As a result the Malaysian government stated that the Malaysian Maritime Enforcement Agency (MMEA) patrols scheduled to begin in 2005 would be primarily tasked with securing the Strait of Malacca and they offered to provide escort for “high risk” naval vessels at no cost (Mak 2006, 153). The three nations also agreed to begin patrols under the MALSINDO (Malaysia-Singapore-Indonesia) program. These coordinated patrols were commenced in July, 2004. These patrols were seen to be mostly an attempt to prevent the erosion of sovereignty and were limited by the fact that patrols could not cross territorial sea boundaries while pursuing pirates (Mak 2006, 155).

Table 4. Indonesia/Strait of Malacca Comparative Analysis

Country	Factors						Result
	Economic		Social	Political			Piracy
	E1	E2	S1	P1	P2	P3	
Indonesia/Strait of Malacca(i)	A	A	A	A	A	A	Y
Indonesia/Strait of Malacca(f)	B	A	B	B	B	B	Z
Key: E1 = Lack of legitimate employment E2 = Disproportionate gains by illegal means S1 = Piracy socially acceptable P1 = Government corruption P2 = Lack of government control/oversight ashore P3 = Lack of government control/oversight maritime (i) = initial condition (f) = final condition A = Condition supports piracy B = Condition does not support piracy Y = Piracy excessive/increasing Z = Piracy negligible/decreasing							

Source: Created by Author. Data from Todd Landman, *Issues and Methods in Comparative Politics an Introduction*, 3rd ed. (New York, NY: Routledge, 2008), 80.

Regardless of their intent, the three nations increased their efforts to eradicate piracy. The effects of their efforts are shown in table 4. The table compares the conditions present prior to their efforts compared to those present after their campaign to eradicate piracy. The Author was not able to find any reference to actions taken ashore with regards to social and political aspects. But, one could argue that increased political pressure ashore, along with increased persecution at sea, no doubt resulted in making piracy less attractive. Economic stress was relieved by the subsequent recovery from the economic crisis of the late 1990s. Additionally, the geography of the area supported the increased enforcement efforts. The maritime area is essentially contained by the concerned countries. This allowed their efforts to be coordinated in a confined area and prevented the pirates from shifting their operations to another location within the region. The only factor not affected is disproportionate gains, it stands to reason that this factor always exist to some extent and that its influence is mostly affected by the other factors to ensure that the cost of criminal activity is prohibitive.

The number of pirate attacks in the Indonesian/Strait of Malacca region has decreased markedly in the last five years and was briefed as an “Area of Improvement” by Captain Pottengal Mukundan, Director ICC International Maritime Bureau, at a 21 January, 2009 brief given in Brussels (Mukundan 2009).

Strategy to Combat Piracy off the Horn of Africa

The United States strategy for combating piracy is best described in *Countering piracy off the Horn of Africa: partnership & action plan* issued by the National Security Council in December, 2008. The National Security Council issued the guidance based on

direction issued by the President's *Policy for the repression of piracy and other Criminal act of violence at sea* which is Annex B to the *National Strategy for Maritime Security*.

The first aspect of the strategy is to establish as a “guiding principle” that the United States cannot unilaterally solve the problem of piracy. That “a powerful coalition of nations maintaining a strong, united front” is required (U.S. National Security Council 2008, 7). The strategy defines three lines of action:

1. Prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy,
2. Interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states,
3. Ensure that those who commit acts of piracy are held accountable for their actions by facilitating the prosecution of suspected pirates by flag, victim, and coastal states, and in appropriate cases, the United States (U.S. National Security Council 2008 7-13).

The first line of action is based on the assertion that; “Preventing pirate attacks is both safer and more cost effective than interrupting attacks in progress or rescuing hostages after an attack has occurred” (U.S. National Security Council 2008, 7) and the unlikely fact that a maritime patrol will be close enough to respond in time to an attack. The reason for this is merely the size of the area in question and the number of civilian vessels in proportion to maritime patrol vessels. In support of the first line of action the strategy defines four tasks.

The first task of the first line of action is to establish and maintain a contact group of countries with “the political will, operational capability, and/or other resources to devote to combating piracy off the Horn of Africa.” The primary purposes of this group are to “develop and coordinate international policy initiatives, share and disseminate information, provide national forces to engage in, support, or help build the capacity of

regional partners to undertake counter-piracy operations, and advocate for other mechanisms to repress piracy” (U.S. National Security Council 2008, 8).

According to information on the U.S. Department of State website, pursuant to United Nations Security Council resolution 1851 the Contact Group on Piracy off the Coast of Somalia was established on 14 January 2009 (U.S. Department of State 2009).

The second task of the first line of action is to; “Strengthen and Encourage the Use of the Maritime Security Patrol Area (MSPA) in the Gulf of Aden.” The U.S. Naval Central Command established a Maritime Security Patrol Area in the Gulf of Aden in August 2008. The Maritime Security Patrol Area is established as a corridor for merchant vessels to travel this establishes borders to establish boundaries to improve the surveillance effectiveness of participating military vessels. It is also recommended that ships check in, in advance is preferred, when transiting the Maritime Security Patrol Area to allow them to be tracked. In return for nations assigning assets to the Maritime Security Patrol Area the United States “within legal constraints, will share information and coordinate with non-CMF member navies that are acting to repress piracy” (U.S. National Security Council 2008, 8).

The third task of the first line of action is to encourage all ships operating off the Horn of Africa to strictly follow the International Ship and Port Facility Security Code (ISPS). Specifically, to ensure that their ships security assessments (SSA) and ships security plans (SSP) are up to date and that when transiting the Gulf of Aden they pay special attention to a list of actions recommended in the strategy. These are a list of “encouragements” for ships to do things like; operate at fastest speed, change course

repeatedly, take appropriate non-lethal measures, and even to embark certified, but unarmed, security consultants during transit (U.S. National Security Council 2008, 9).

The fourth task of the first line of action is that the United States “will lead and support a global public information and diplomatic campaign to highlight the international cooperation, coordination, and integration undertaken to repress piracy off the Horn of Africa” (U.S. National Security Council 2008, 9).

The second line of action is directed at interdicting piracy on an operational/tactical level. It directs six tasks to be carried out.

The first task of the second line of action is to; “Support and Contribute to a Regionally Base Counter-Piracy Coordination Center (CPCC).” The purpose of this center is to be a continuously manned center to maintain a common operating picture, receive and disseminate reports, and to employ assets in response to actions of piracy (U.S. National Security Council 2008, 10). Although the European Union Naval Force has established a Maritime Security Centre, the author could find no evidence that this center was considered to be the center called for in the strategy. There is also the Combined Joint Task Force Horn of Africa, the NATO Shipping Centre, and the Maritime Liaison Office based in Bahrain that all provide information and guidance for ships transiting the area around the Horn of Africa.

The second task of the second line of action is to: “Seize and Destroy Vessels outfitted for Piracy and Related Equipment.” It directs that:

Consistent with applicable U.N. Security Council resolutions and subject to the availability of resources, we may conduct and urge others to conduct operations in international waters and in the territorial sea of Somalia targeting the interdiction of vessels intended to be used or that have been used to commit piratical acts, and

also in the territory of Somalia to suppress piracy. (U.S. National Security Council 2008, 10)

This is to include the destruction of vessels and equipment used in piracy and the delivery of suspected pirates to authorities ashore for prosecution (U.S. National Security Council 2008, 10-11).

The third task of the second line of action is to maintain a “persistent interdiction-capable presence.” This directs that the United States, consistent with other mission requirements will maintain a presence in the region. Units deployed in the region will conduct maritime patrols and interdict as necessary to prevent piratical acts before, or during the act and to deliver apprehended persons to authorities ashore. This is the shortest task to describe, but the largest with regards to the resources required to execute (U.S. National Security Council 2008, 11).

The fourth task of the second line of action is to: “Support Shiprider programs and Other Bilateral and Regional Counter-Piracy Agreements and Arrangements.” This is in support of an International Maritime Organization program that would involve embarking law enforcement personnel on ships as part of a larger program design to assist in the repression of piracy in the Western Indian Ocean, Gulf of Aden, and Red Sea (U.S. National Security Council 2008, 11).

The fifth task of the second line of action is to; “Disrupt and Dismantle Pirate Bases Ashore.” This task is based on the fact that authority has been granted via United Nations Security Council resolution and agreements with the Somalia government to take action against pirate bases ashore (U.S. National Security Council, 2008, 12).

The sixth task of the second line of action is to “disrupt pirate revenue.” This task is a comprehensive attempt to trace and seize the assets of pirate networks. The

prosecution also extends to those that conspire with the pirates to place their monies into the legitimate banking system. “Paying ransoms puts other seafarers at increased risk, enables pirates to apply financial leverage to increasing capability, incentivizes, piracy, and ultimately provides support to criminal organizations.” It is implied that the best way to combat this is to disrupt the revenue path (U.S. National Security Council 2008, 12).

The third line of action is directed at ensuring piracy is not viewed as a consequence free endeavor. “Establishing an effective consequence delivery system is essential to the success of any counter piracy operations” (U.S. National Security Council 2008, 12). It directs four tasks to be carried out.

The first task of the third line of action is to; “Conclude agreements and arrangements to formalize custody and prosecution arrangements.” This includes agreements with States in and outside of the region. The agreements are meant to be for holding suspected pirates for prosecution and for prosecution. The support of Kenya in receiving and prosecuting pirates is also acknowledged (U.S. National Security Council, 2008, 13).

The second task of the third line of action is to; “Support and encourage the exercise of jurisdiction under the SUA Convention.” This section states that the United States will “support and encourage” the prosecution of pirates under the *Convention for the suppression of unlawful acts against the safety of maritime navigation*. It also notes that under the Convention masters of ship may deliver suspected pirates to a coastal State and that the State is obliged to take them. The coastal State can then do one of two things; articulate that the Convention does not apply and extradite the suspected pirate to an interested State, or prosecute the case in their own judicial system. The United States also

promises to assist with investigation and logistical support, and provide assistance with the development of legislation, regulations, procedures, and infrastructure to any State willing to assist in the holding and prosecution of suspected pirates in accordance with the *Convention for the suppression of unlawful acts against the safety of maritime navigation* (U.S. National Security Council 2008, 13).

The third task of the third line of action is to; “Support and encourage the use of other applicable international conventions and customary international law.” The United States will encourage and support the prosecution of pirates using any “relevant and appropriate” international convention. This includes the 1979 Hostage Taking, the 1999 Terrorist Financing, and the 2000 Transnational Organized Crime Conventions. “In cases of States that are not Parties to these conventions or the SUA Convention, we [United States] will support and encourage the exercise of relevant and appropriate jurisdiction over interdicted pirates in accordance with customary and treaty-based international law” (U.S. National Security Council 2008, 14).

The fourth task of the third line of action is to; Enhance capabilities of regional States to accept suspected pirates for prosecution, extradition, and incarceration. The United States will work with “interested parties” to provide assistance for them to identify and build the required capacity for the State to effectively arrest, detain, and prosecute, by fair trial, those accused of being involved in piracy (U.S. National Security Council 2008, 14).



Figure 4. Map of Somalia

Source: *The World Factbook 2009* (Washington, DC: Central Intelligence Agency, 2009).

Case Study: Gulf of Aden/Somalia

Somalia is bordered on the north by the Gulf of Aden and on the west by the Indian Ocean. The Gulf of Aden is central to the maritime transit route to and from the Strait of Hormuz, Bab-el Mandeb, and the Suez Canal. These are considered three of the world's "Vital Chokepoints" and a significant amount of the world's maritime commerce transits the Gulf of Aden as well as the waters off the east coast of Africa (Nincic 2002, 146). "It is estimated that 25,000 ships per year transit the area in question, and the pirates enjoyed complete freedom of movement both at sea and ashore" (U.S. Congress 2009a, 2).

Somalia pirates operate along a 2,300-mile coast and in 2.5 million square miles of ocean. . . . Somalia-based piracy against chemical and oil tankers, freighters,

cruise ships, yachts, and fishing vessels poses a threat to global shipping. This combination of illicit activity and non-existent rule of law offers a breeding ground for higher levels of instability, organized crime, and other transnational threats. (U.S. National Security Council 2008, 5)

As of November, 2009 Somalia pirates held over 190 people, including a British couple captured on their personal yacht, hostage and were capable of carrying out attacks as far as 1000 miles east of the Somalia coast (Associated Press 2009b) The pirates operate in groups, predominately organized along clan lines, with the two primary groups operating in the Puntland region district of Eyl and the Muddug region district of Harardera (Ploch 2009, 6).

The increased frequency of attacks by Somalia based pirates in the last five years is of increasing concern to, and cause of increasing response from, the international community.

Table 5. Total Actual and Attempted Attacks Gulf of Aden/Somalia 2003-2009

Total Actual and Attempted Attacks Gulf of Aden/Somalia 2003-2009							
	2003	2004	2005	2006	2007	2008	2009*
Gulf of Aden	18	8	10	10	13	92	100
Somalia	3	2	35	10	31	19	47
*2009 data through Sep 30							

Source: Created by Author. 2009 data from ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” 1 January-30 September 2009” (London, United Kingdom, October), 6-7; 2003-2008 data from ICC International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” 1 January-31 December 2008” (London, United Kingdom, October), 5-6.

Gulf of Aden/Somalia: Economic Factors

With the collapse of Somalia as a functional State in the 1990s after the failure of the United Nations mission the country essentially broke up into small regions controlled by local warlords. The breakdown of the government essentially made it impossible for Somalia to safeguard its maritime interests. “Somalia pirates interviewed by international media sources frequently link their piracy activities to trends such as illegal fishing and dumping in Somalia waters that have emerged as the country has lost its ability to patrol its waters over time” (Ploch 2009, 6). As a result, foreigners were able to fish the waters off the coast of Somalia without restrictions. In January, 2009, CNN interviewed a “local pirate leader,” by the name Boyah:

Boyah said that the piracy began because traditional coastal fishing became difficult after foreign fishing trawlers depleted local fish stocks. traditional fishermen started attacking trawlers until the trawler crews fought back with heavy weapons. The fishermen then turned to softer targets.

We went into deep ocean and hijacked the unarmed cargo ships,” Boyah said. “For the past three years, we have not operated near the Somalia coast. We have operated at least 80 miles [out], in international waters. (Sterling 2009)

Somalia’s Prime Minister stated in a speech in October, 2009 that many pirates are fishermen “responding to the loss and disappearance of their livelihoods” (Associated Press, 2009a).

This coupled with the lack of any reasonable economy in Somalia has ensured an ample supply of unemployed men to work in the growing piracy industry. This workforce includes ex-fishermen, with a knowledge of the sea, ex-militiamen, with combat skills, technical experts, with knowledge to operate navigation and military equipment, and a network of intelligence gatherers to obtain information on ship movement (Ross 2009, 57).

Another byproduct of the bad economy in Somalia is that piracy has become a leading industry in the country. “The most profitable year ever for the pirates was 2008, with Kenya's foreign minister stating that more than \$150 million was paid in ransoms. Piracy is an industry that awards handsome profits and is an increasingly attractive option in a country with dwindling economic opportunities” (Ross 2009, 59).

Money spent by pirates on food, lodging, and other required services, to include the illegal arms trade, are in some places the main source of income for those that provide the services.

Gulf of Aden/Somalia: Social Factors

The dire conditions in Somalia has led to piracy becoming an acceptable profession. The fact that it has become a primary industry in Somalia has led to a wide acceptance of the pirates:

In fact, according to reports, conspicuously extravagant residential buildings have sprung up all over Somalia's poverty-stricken towns, raising questions as to the origins of this unaccounted capital influx. Newfound riches plunders from large shipping corporations as ransom for their crews and cargo have lined the pockets of Somalis and awarded them lavish lifestyles. “They wed the most beautiful girls; they are building big houses; they have new cars; new guns,” says Abdi Farah Juha who lives in Garowe. “Piracy in many ways is socially acceptable. They have become fashionable.” As long as piracy is “trendy” for disenfranchised Somali citizens, the industry can be expected to develop and expand over time. (Ross 2009, 60)

Another way that the current conditions in Somalia led to the social acceptance of piracy is that with the lack of government institutions for the protection of Somalia's offshore interests has allowed many of the pirate groups to claim that they have assumed the duties. One of the pirate groups, operating out of central Somalia, identifies itself as the “Somali Marines” and another, operating out of Kismayo, identifies itself as the

“National Volunteer Coast Guard” (Ross 2009, 56). The general acceptance of the pirate groups is evidence that they are seen, by local Somalis, to be filling the void left by the absence of an organized government. The pirates do not see themselves as criminals: “We consider sea bandits [as] those who illegally fish in our seas and dump waste in our seas. We are simply patrolling our seas” (Ross 2009, 57). This opinion is undoubtedly shared by many Somalis. “In addition to the core group of men used to hijack ships, there is a broader support operation that includes accountants, negotiators, and even local pirate restaurants to prepare food for the crews and hostages” (Harper 2008). Although, Helen Bours, an expert on fisheries in Africa, is skeptical. She states; “the extent to which the piracy business has developed is way beyond a few fishermen turning (into) pirates,” and goes on to note that the deep sea fishing taking place would not be a direct threat to smaller Somali fishing boats (Associated Press 2009a). Based on this point of view one would be left to believe that many in Somalis are willing to believe the pirates story out of their own desire to reconcile their acceptance of piracy. But, what Ms Bours does not take into account is that, with the failure of the state of Somalia, it is more than just fishermen that have lost their livelihood.

Gulf of Aden/Somalia: Political Factors

“Fourteen attempts have been made since the overthrow of Siad Barre in 1991 to construct a functioning Somali government. However, they have been unsuccessful due to immense difficulty of reconciling the warring clans, many of which have strongly opposed foreign intervention by Ethiopia” (Ross 2009, 59). The problem in Somalia is not a “lack of governance,” but an “absence of governance.” There is an ongoing effort to establish the Transitional Federal Government as a viable institution. Even with strong

international and United States support: “Ethiopia has now withdrawn, and a new, more broad-based TFG offers some hope, but the human rights crisis in Somalia remains acute and continues to deepen, the threat of Islamist extremism that the U.S.-backed incursion sought to neutralize persists, and piracy continues despite the deployment of a multinational armada” (Menkhaus 2009, 1).

There are also reports of government complicity in piracy:

“Believe me, a lot of our money has gone straight into the governments pockets,” said Farah Ismail Eid, a pirate who was captured in nearby Berbera and sentenced to 15 years in jail. His pirate team, he said, typically divided up the loot this way: “20 percent for their bosses, 20 percent for future missions (to cover essentials like guns, fuel and cigarettes), 30 percent for the gunmen on the ship and 30 percent for government officials.” (Gettlemen 2008)

It could be argued that the word of a pirate was not reason enough to prove that at least portions of the government were complicit. But, Abdi Waheed, the director general of the fisheries and ports ministry of Puntland, openly acknowledged in an interview, in the spring of 2008, that “there are government people working with the pirates” (Gettlemen 2008). According to a Congressional Research Service report:

U.S. and international officials suspect that in some cases, Somalia businessmen and international support networks provide pirate groups with financing, supplies, and intelligence on the movements of ships in regional ports in return for shares of ransom payments. The pirates refuel and purchase logistical supplies like fuel and engine parts in Yemen, according to U.S. naval officials. (Ploch 2009, 8)

With the level of sophistication and the open manner in which the pirates operate, even if not complicit, the Transitional Federal Government, and that of the semi-autonomous region of Puntland, lacks the desire and/or resources to combat piracy.

Gulf of Aden/Somalia: Response

Based on training the author received in 2005, prior to deployment in 2006, the U.S. Navy was cognizant of the problem of piracy off the Horn of Africa. Ships were being deployed to the area, at the Dutch led task force (CTF 150), in an attempt to provide security (Associated Press 2006). “In August 2008, CTF 150 and partner forces agreed to the establishment of a Maritime Security Patrol Area (MSPA) in the Gulf of Aden to serve as a dedicated, more secure transit zone for merchant vessels. The MSPA has been credited in part with lowering the success rate of Somalia pirates in the Gulf of Aden transit zone” (Ploch 2009, 16). Even so, the National Security Council's *Countering Piracy Off the Horn of Africa: Partnership and Action Plan* notes: “Combined Maritime Forces (CMF) warships and aircraft patrol this area and preliminary data indicates that the pirate success rate for hijacking is only slightly lower inside the MSPA than outside” (NSC 2008, 8). The decrease in pirates attacks in the Gulf of Aden may also be explained by other factors:

The attack on the *Alabama* was one of several to occur during a recent resurgence in pirate activity in the west Indian Ocean, where Somali pirates have relocated some of their operations to avoid more robust international naval patrols to the north in the Gulf of Aden. Experts suggested that the higher volume of foreign patrols, bad seasonal weather, and a series of sizeable ransom payments in recent months contributed to a downward trend in pirate attacks in the region from December 2008 through early March 2009. (Ploch 2009, 1)

The proposed decrease in piracy is relative at best as the total number of attacks in the Gulf of Aden/Somalia region, as shown in table 5, were up from 44 total in 2007 to 111 total in 2008.

As noted in a Congressional Research Service report the response to piracy in the region did not begin to coalesce until late 2008, early 2009. The Congressional Research

Service report states: “However, until the establishment of Combined Task Force 151 in 2008, the United States did not assign any naval forces the sole task of performing anti-piracy operations in the Horn of Africa region” (Ploch 2009, 3). Although it is stated that CTF 151 was formed in 2008, the report notes later that the combined task force was established in January 2009 (Ploch 2009, 16). This is collaborated by an article published by the Commander, Combined Maritime Forces Public Affairs office that states: “The Commander Maritime Forces (CMF) established Combined task Force 151 (CTF 151) Jan. 8 specifically for counter-piracy operations” (Commander CMF 2009). In recognition of the international response to piracy in the region the Congressional Research Service report states:

Similarly, until 2008, the international community did not respond to the threat of piracy in the waters off of Somalia in a coordinated, dedicated manner. In December 2008, the European Union launched EU NAVFOR Operation ATLANTA, representing the first naval operation under the framework of the European Security and Defence Policy (ESDP). (Ploch 2009, 3)

In support of Operation ATLANTA, EU NAVFOR will deploy up to twelve ships through December 2010 to: “Employ the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where they are present” (EU NAVFOR 2009a). In addition to the United States and European Union: “In March 2009, NATO launched its second anti-piracy mission, Operation Allied Protector, which is being carried out by Standing NATO Maritime Group 1 (SNMG1). According to NATO, the forces participating in Operation Allied Protector will ‘deter, defend against and disrupt pirate activities’ as they transit the region” (Ploch 2009, 17). Also of note:

Other countries, most notably Russia, China, and India have deployed naval forces to the region to participate in monitoring and anti-piracy escort operations.

From an operational perspective, while these countries do not formally and fully coordinate their policies with CTF-151, there are ongoing communication efforts. Naval observers and officials in the United States have noted the engagement of China with particular interest, as Chinese naval operations in the Horn of Africa region demonstrate the Chinese government's desire and ability to protect international shipping lanes far from China's shores. (Ploch 2009, 16)

The large international response and United States support is in line with United States policy and strategy. “A guiding principle of the *Strategy [The National Strategy for Maritime Security]* is that success in securing the maritime domain will not come from the United States acting alone, but through a powerful coalition of nations maintaining a strong, united front” (U. S. National Security Council 2008, 7).

The United Nations Security Council issued ten resolutions concerning Somalia in 2008 (as counted on the UNSCR 2008 web page. http://www.un.org/Docs/sc/unsc_resolutions08.htm). The two most often associated with combating piracy are United Nations Security Council Resolutions (UNSCR) 1846 (2 December 2008) and 1851 (16 December 2009). The resolutions were summarized by RADM Branch in testimony to the U.S. Congress:

UNCSR 1846: United Nations Security Council Resolution (UNSCR) 1846, passed in December [2008] (renewing UNSCR 1816) and valid for 12 months, provides certain authorities for countering piracy off Somalia. It condemns piracy and calls upon States to increase cooperation in counter-piracy operations and subsequent disposition of PUCs. UNSCR 1846 also authorizes States cooperating with the Transitional Federal Government (TFG) to enter Somali territorial waters and use all necessary means consistent with international law in those waters to repress acts of piracy and armed robbery. This resolution also urges States to implement their obligations under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) to help in PUC disposition.

UNSCR 1851: united Nations Security Council Resolution (UNSCR) 1851 also expresses concern over the payment of ransoms to pirates, and calls upon States to deploy naval assets and seize and dispose of boats, arms and related equipment used by pirates. UNSCR [1851] also contains language authorizing “all necessary

means” to combat piracy at sea (within Somalia territorial waters). (U.S. Congress, House of Representatives 2009a, 4)

The resolutions authorize, and add legitimacy to, the current deployment of naval forces to combat piracy in the region. Of significance is that they allow for the pursuit of pirates within Somalia territorial waters.

The deployment of ships to combat piracy is in line with the United States strategy as described in *Countering Piracy off the Horn of Africa: Partnership & Action Plan*. Line of Action 1 of the *Plan* is to “Prevent pirate attacks by reducing the vulnerability of the maritime domain to piracy.” Specifically, 1.b. calls for the United States to: “Strengthen and Encourage the Use of the Maritime Security Patrol Area (MSPA) in the Gulf of Aden” (U. S. National Security Council 2008, 7-8). The deployment of naval vessels is also follows Line of Action 2: “Interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal and flag states.” Specifically, item 2.b calls for forces to: “Seize and Destroy Vessels outfitted for Piracy and Related Equipment” and item 2.c. calls for the United States to maintain a: “Persistent Interdiction-Capable Presence” (U. S. National Security Council 2008, 10-11). The result is an international deployment of naval warships to the area and has resulted in several highly reported interventions by coalition forces.

United Nations Security Council Resolution 1851 also “encourages” the creation of an international contact group and to consider creating a center in the region to “coordinate information relevant to piracy and armed robbery at sea off the coast of Somalia” (United Nations 2008b, 3).

Pursuant to United Nations Security Council Resolution 1851, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate discussion and coordination of actions among states and organizations

to suppress piracy off the coast of Somalia. The CGPCS will report its progress periodically to the UN Security Council. (U.S. Department of State 2009)

Twenty four nations and five groups, the African Union, European Union, NATO, UN Secretariat, and the International Maritime Bureau, were represented at the initial meeting of the group. The group designated four working groups to address military operational matters, information sharing, establishment of a regional coordination center, judicial matters, shipping self awareness and capabilities, and diplomatic and public information efforts (U.S. Department of State 2009). Based on a web search by the author the group the group has met four times in 2009. To “Establish and Maintain a Contact Group” is item 1.b. from the *Countering Piracy off the Horn of Africa: Partnership & Action Plan*.

In 2009 pursuant to United Nations Security Council Resolution 1851, and consistent with the *Countering Piracy off the Horn of Africa: Partnership & Action Plan* item 2.b. “Support and Contribute to a regionally based Counter-Piracy Coordination Center (CPCC)” (U.S. National Security Council 2008, 10), the European Union established the Maritime Safety Centre - Horn of Africa (MSCHOA). “MSCHOA has been set up by the EU as part of a European Security and Defence Policy initiative to combat piracy in the Horn of Africa” (MSC-HOA 2009). According to the EU NAVFOR website:

The MSC-HOA centre provides 24 hour manned monitoring of vessels transiting through the Gulf of Aden whilst the provision of an interactive website enables the Centre to communicate the latest anti-piracy guidance to industry and for Shipping Companies and operators to register their movements through the region. (EU NAVFOR 2009b)

The center acts to coordinate between European Union, CTF 151, and NATO naval forces to assist in counter piracy operations. It also provides for “Group transit,” in which EU NAVFOR coordinates with merchants to “sanitise” an area prior to transit, and for

“focused” operations to target pirate activities (EU NAVFOR 2009b). “Since 1 February 2009, MSCHOA (www.mschoa.org) has established the Internationally Recognised Transit Corridor (IRTC). Military assets (Naval and Air) will be strategically deployed within the area to best provide protection and support merchant ships” (ICC International Maritime Bureau 2009a, 25).

There are other websites that provide similar services. For example, the NATO Shipping Centre (<http://www.shipping.nato.int/>), Commander U.S. Navy Central Command’s Maritime Liaison Office (MARLO) (<http://www.cusnc.navy.mil/marlo/>), and the International Maritime Bureau's Piracy Reporting Center (<http://www.icc-ccs.org/>) all provide information on current anti-piracy operations, policies, recommendations, news, and provide for a method to report pirate attacks. The MARLO and NATO sites refer to the MSC-HOA website frequently for guidance in the Horn of Africa region. Even though: “The IMB also has established a 24-hour Piracy reporting center in Kuala Lumpur, Malaysia, which seeks to serve as the global, one-stop shop for piracy reporting and piracy threat information distribution for commercial vessels.” (Ploch 2009, 20). The International Maritime Bureau coordinates with regional centers and “For the Horn of Africa region, the IMB and European Union Maritime Security Center-Horn of Africa (MSC-HOA) issue periodic 'Industry Updates' detailing recent trends in pirate attacks and making recommendations to vessels transiting regional waters” (Ploch 2009, 20).

In addition to providing information on pirate activity and protection through show of, and possible use of, force the established organizations provide recommendations civilian merchants. Recommendations prior to attack include; check in

with MSC-HOA prior to transit, maintain a constant and vigilant topside watch, be aware of areas affected by piracy, assign communications officer, use the Automatic Identification System (AIS), have fire hoses rigged. Recommendations if attacked include; activate Emergency Communication Plan and contact authorities, activate Ship Security Alert System (SSAS), make “MAYDAY” call, Maximize speed, alter course frequently to prevent skiffs from closing, use fire hoses to repel pirates, and “DO NOT STOP” (MARLO 2009). As noted in a Congressional Research Service Report: “Crews also have developed a number of unique countermeasures and best practices in their attempts to ward off and resist pirate attacks. The use of water cannons, fire hoses, and passive sonic defense has become more widespread, and industry surveys suggest that ships that operate at speeds above 15 knots and that have higher freeboards have proven less susceptible to pirate attack, thus far” (Ploch 2009, 20). The updating of Ship's Security Plans, along with encouragement for all ships to carry out actions similar to those recommended above are delineated in Line Of Action item 1.b. of the *Countering Piracy off the Horn of Africa: Partnership & Action Plan*.

It should be noted that in the Gulf of Aden in 2008 there were 92 attacks of which 34 resulted in the merchant vessel being boarded (2) or hijacked (32). (ICC International Maritime Bureau 2009b) As of September 2009, in the Gulf of Aden, there have been 100 attacks of which 18 have resulted in the merchant vessel being hijacked (ICC International Maritime Bureau 2009a). For the area of the east coast of Somalia, the number of attacks increased from 19, in 2008, to 47 through September 2009. While number of attacks resulting in hijack/boarding increased from 10 to 14 (of which 23 of 24 resulted in hijacking) (ICC International Maritime Bureau 2009a/b). It could be argued

that the increased emphasis on the Gulf of Aden has resulted in pirates directing their efforts to the region off the east coast of Somalia. Based on these numbers it appears that the overall success rate for the pirates has decreased. The reason for this improvement is open to debate.

Most defense analysts acknowledge that while the unprecedented level of naval patrols in the area -- conducted by more than fifteen nations -- has deterred some attacks, the area is simply too vast to prevent all incidents. When the *MV Maersk Alabama* was attacked on April 8, 2009, the closest naval vessel, the *U.S.S. Bainbridge*, was approximately 300 nautical miles away. Similarly, the *U.S.S. Bainbridge* was only able to arrive on the scene of an aborted April 14 attack on the *MV Liberty Sun* a reported 6 hours after the attack ended. (Ploch 2009, 20)

In the same Congressional Research Service Report it stated that vessels under attack have less than 30 minutes between sighting pirates and the taking of their ship and that unless a naval vessel is within a few miles they will not arrive in time to prevent the attack (Ploch 2009, 8). It could therefore be argued that the decrease in successful pirate attacks is more a consequence of actions carried out by the crew of the merchant vessel.

There are many in favor of embarking armed security onboard vessels transiting high risk areas. The debate is sure to be invigorated by the thwarted attack on the *MV Maersk Alabama* in November 2009. "A U.S. naval commander hailed the ship's new defense and family members rejoiced at the Maersk Alabama's escape this time around, but the handling of the attack highlights a growing schism over the use of weapons on commercial vessels" (Straziuso 2009). An example of the argument for armed guards:

In testimony in May [2009], Arthur J. Volke Jr., vice president of American Transport, Inc., said private guards were already on his group's ships in the Gulf of Aden and the Persian Gulf. He said the best way to protect U.S.-flagged ships was by deploying military teams to avoid "regulatory shortfall, liability concerns, and international reluctance to permit armed merchant vessels into their ports." (Torchia 2009)

The argument against this expedient is based on the belief that it will result in elevating the level of violence employed by pirates. “A range of maritime groups and insurer oppose arming ships because of liability issues and fears that violence could provoke an arms race with the pirates. Still, some ship-owners hire private guards; Israeli commercial boats are believed to routinely carry arms” (Torchia 2009). Congressman Elijah E. Cummings (MD) has proposed legislation that would require the deployment of military security teams on “those U.S.-flagged vessels truly at risk of pirate attack” even though the Department of Defense's response is that “deploying such security teams would impair other operational commitments” (Cummings 2009). Based on the legal implications alone, this subject is far from resolution.

One of the toughest challenges with regards to piracy is the prosecution of suspected pirates once they are apprehended. It is complicated by the fact that the nation of the affected ship and crew are frequently different and therefore several states may have jurisdiction. The second problem is that without an operational government in Somalia. As a result arrangements must be made with other Horn of Africa nations to hold and prosecute the suspected pirates if the affected nation chooses not to prosecute them. Several agreements have been made between the United States, the United Kingdom, and the European Union with Horn of Africa nations, especially Kenya, for the detention, transfer, and prosecution of suspected pirates (Ploch 2009,24).

The final area to be addressed is the condition ashore in Somalia. The Transitional Federal Government, in addition to infighting among local warlords, has been struggling to counter an insurgency by Al Shabaab, the militant wing of the Islamic Courts Union, that continues to exert itself in an attempt to impose Sharia law (Ross 2009, 56-61). A

2008 article from the Council on Foreign Relations gave the following assessment of the Transitional Federal Government:

Experts say Somalis have mixed feelings about the transitional government. Many had hoped it would bring stability to the country, but after a year during which the Islamist insurgency has grown stronger, not weaker, the population has grown disillusioned with the TFG. They also fear the TFG's military and police, which human rights groups accuse of attacking civilians. (Hanson, 2008)

In spite of significant international effort conditions in Somalia have improved little.

With the election of a moderate Islamist government in January 2009, and the subsequent withdrawal of Ethiopian troops, there is hope for improvement.

The latest effort--a five-year transition to democratic elections administered by a Transitional Federal Government, or TFG--nearly collapsed after two years of Ethiopian occupation and brutal counterinsurgency warfare. Ethiopia has now withdrawn, and a new, more broad-based TFG offers some hope, but human rights crisis in Somalia remains acute and continues to deepen, the threat of Islamist extremism that the U.S.-backed incursion sought to neutralize persists, and piracy continues despite the deployment of a multinational armada. (Menkhaus 2009, 1)

Prior to their withdrawal the majority of peacekeeping troops in support of AMISOM were Ethiopian. The Ethiopian troops were resented and seen as an attempt by Ethiopia of exerting undue influence in Somalia.

International support for improvements in the condition of Somalia is strong. "The 23 April donors conference netted over \$250 million in pledges of support for AMISOM and TFG plans to establish police and security forces," in addition to which the Obama Administration is seeking a total of \$90 million in funds to support peacekeeping efforts (Ploch 2009, 2). Regardless, the process is far from final resolution.

Table 6. Gulf of Aden/Somalia Comparative Analysis

Country	Factors						Result
	Economic		Social	Political			Piracy
	E1	E2	S1	P1	P2	P3	
Somalia/Gulf of Aden (i)	A	A	A	A	A	A	Y
Somalia/Gulf of Aden (f)	A	A	A	A	A	A	Y

Key:
 E1 = Lack of legitimate employment
 E2 = Disproportionate gains by illegal means
 S1 = Piracy socially acceptable
 P1 = Government corruption
 P2 = Lack of government control/oversight ashore
 P3 = Lack of government control/oversight maritime
 (i) = initial condition (f) = final condition
 A = Condition supports piracy
 B = Condition does not support piracy
 Y = Piracy excessive/increasing
 Z = Piracy negligible/decreasing

Source: Created by Author. Data from Todd Landman, *Issues and Methods in Comparative Politics an Introduction*, 3rd ed. (New York, NY: Routledge, 2008), 80.

As shown in the table above all factors in the Somalia/Gulf of Aden region support the continuation of piracy. This is despite the efforts of the international community to exert control of the maritime environment. The number of attacks in the region has increased from 2008 into 2009.

Comparison of Case Studies

The strategies in both the Horn of Africa and Malacca Strait are similar in that they both involved increasing the amount of maritime patrol and enforcement. The difference is that in the Malacca Strait the patrols were performed by the three littoral states concerned and in the Horn of Africa the patrols have been performed by a coalition of warships from the international community. As noted in the case studies, in spite of the efforts of the international community the number of pirate attacks in the Horn of Africa have increased. This may be primarily due to the fact that maritime enforcement only effects the seaward side of the littoral. In the Strait of Malacca the affected littoral states

are also able to exert control over the landward side of the littorals. As indicated by the described counter-piracy policy for the Malacca Strait: “Stronger enforcement, regional cooperation and a better use of technology is best directed towards the effort in detaining pirates at source rather than in the high seas” (Ong-Webb 2006, xxix-xxx). Any landward efforts in Somalia have provided no significant result. After: “The latest effort - a five-year transition to democratic elections administered by a Transitional Federal Government, or TFG - nearly collapsed after two years of Ethiopian occupation and brutal counterinsurgency warfare” (Menkhaus 2009, 1), the conditions in Somalia are still tenuous at best. This has allowed the conditions ashore that facilitate piracy to continue.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

Conclusions

Is the current Strategic Plan to combat piracy effective? In order to answer this question, three questions must first be answered. First, is there a cohesive strategy? Second, is the strategy being followed? Third, by what metrics is effectiveness to be measured?

The United States strategy to combat piracy is a subset of the *National Strategy for Maritime Security* (2005) and is articulated in Annex B the *Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea* (June 2007). The U.S. National Security Councils *Countering Piracy off the Horn of Africa: Partnership and Action Plan* prescribes how the strategy is to be implemented to suppress piracy in the Gulf of Aden/Somalia region.

The *Countering Piracy off the Horn of Africa: Partnership and Action Plan* has four basic goals: To promote a “Global Partnership” to counter piracy, to prevent pirate attacks, to interrupt and terminate acts of piracy, and to hold pirates accountable for their actions (U.S. National Security Council 2008 7-13). The *Countering Piracy off the Horn of Africa: Partnership and Action Plan* mainly addresses the political aspect of piracy in that it attempts to provide security in the maritime commons of the Gulf of Aden/Somalia region. Through an international effort, an attempt is being made to provide a force to patrol and enforce the rule of law in the region. This includes, under authority of UNSCR 1846, the Somali territorial waters. This is being done at a significant expenditure of not only United States, but also international capital. Naval vessels from the United States,

European Union, NATO, China, Russia, India and several other countries have been deployed to the area over the last couple of years to support the counter-piracy effort.

The plan addresses the economic aspect only in that by improving security it attempts to make the cost of practicing piracy high enough as to discourage it from being a viable option. But, as stated in an article in the Harvard Africa Policy Journal the improvement of security in the territorial and high seas of the coast of Somalia is not enough:

Indeed, pirates weigh the risks of engaging in piracy and benefiting from massive rewards and nonengagement in a country “where legitimate business is difficult, where drought means agriculture is nothing more than subsistence farming, and instability and violence make death a very real prospect.” (Middleton 2008)

“It seems involvement in piracy is seemingly worth any perceived risks” (Ross 2009, 58).

To be fair, there are other initiatives and strategies to assist in rebuilding the failed state of Somalia and it should be taken into account that the counter-piracy strategy is part of a broader national strategy for the region.

The plan does not directly address the social acceptance of piracy in Somalia. As long as piracy is a leading industry in Somalia and provides a livelihood for the service sector created to support the pirate networks it will be a challenge to make piracy socially unacceptable. It is generally understood that in order to combat piracy in the Horn of Africa region, a strategy that addresses the problems other than security is required:

In January 2009, Dr. Jun Bando, maritime Security Coordinator and U.S. AFRICOM Liaison for the U.S. Department of State Bureau of African Affairs argued that “a durable solution for ending piracy in the Horn of Africa will require improving security, stability, rule of law, and economic opportunity in Somalia, as well as solidifying political progress by forming a unity government and advancing the peace process.” (Ploch 2009, 27)

Also from the same Congressional Research Service Report Vice Admiral William Gortney, Commander, U.S. Naval Forces Central Command, is quoted from his testimony before the House Armed Services Committee, on 5 March 2009: “Ultimately, piracy is a problem that starts ashore and requires an international solution ashore. We made this clear at the offset of our efforts. We cannot guarantee safety in this vast region” (Ploch 2009, 27). The author uses these quotes to emphasize the fact that the economic, social, and political factors are well known, but that the strategy to combat piracy does not directly address all of them. Even if the strategy to combat some aspects affecting piracy are dictated by other means they should at least be acknowledged in the counter-piracy strategy. Therefore, the strategy to combat piracy as written is limited to only addressing the lack of security in the region. And, the actions driven by the strategy only address the lack of security in the maritime domain.

Is the strategy for combating piracy is being followed? An international coalition has been created by naval vessels from the United States, European Union, NATO, and several non-associated nations. Acts of piracy have been interrupted and terminated. This has been through intervention by military vessels and actions carried out by the merchant vessels themselves. But, as argued in Chapter 4, there is a good case for concluding that the actions of the merchant vessels are more effective. Progress has been made in the prosecution of suspected pirates by flag, victim, and coastal states. This includes the pirate captured in the hijacking of the *MV Maersk Alabama*, who was prosecuted in a trial in New York City. For the most part the United States strategy is in line with the direction provided for by United Nation Security Council Resolution and is being followed by the United States and in effect by all nations participating in the counter-

piracy effort. Based on the clear linkage between actions taken by naval forces and tasks specified in the *Countering Piracy off the Horn of Africa: Partnership & Action Plan*, the strategy is being followed.

What metrics should be used to measure effectiveness? The most convenient metric would be the total number of attacks. Based on the numbers provided by the International Maritime Bureau the total number of attacks has increased from 111 in 2008 to 147 for the first nine months of 2009 for the Gulf of Aden/Somalia region. Using the ratio of successful attacks (those resulting in boarding or hijack) to total attacks improves the results. For 2008 there were 44/111 successful attacks compared to 32/147 successful attacks in 2009. But, as there is a low probability that a naval vessel would be close enough to interdict in an attack it is the author's belief that any improvement is due more to the actions of the merchant vessel's crew. It is also the author's judgment that the total number of attacks is a better indication of the impact of naval presence. This is primarily due to the fact that an indication of an improvement in security would be a decrease in the number of attacks overall.

Another metric that would be useful, is a cost benefit analysis. This would be a ratio of the cost of counter-piracy efforts to the value of the benefit. This would be extremely difficult for several reasons. First, calculating the exact cost of conducting counter-piracy operations would be difficult. Should the whole cost of the operating a naval vessel and crew be charged or only the additional cost that can be specifically attributed to counter-piracy operations? The only reference to cost found by the author was that the cost of the current EU NAVFOR operations were estimated at euro 8.3 million (Ross 2009, 62). There were no details as to how the cost was calculated. Second,

how would the benefit be valued? Would it be the money saved by the merchant vessel operators in ransom and insurance? Or, the value of lives saved by preventing attacks? None of these can be accurately measured and are subject to opinion.

Therefore, it is the author's opinion that the best metric is the total number of attacks in the region. It should be noted that the effectiveness or cost of the endeavor does not affect whether the counter-piracy effort is or is not the right thing to do.

It is the author's opinion in that the strategic plan to combat piracy is incomplete in that it does not acknowledge fully the factors contributing to piracy. The fact that the total number of attacks has increased, in spite of significant international effort, demonstrates that the strategy is not effective.

Recommendations

1. United States and international actions should focus on improving Somali rule of law, governance, and economic development. As described in the comparison of the two case studies. The main difference between the Strait of Malacca and the Horn of Africa is that the Strait of Malacca effort involved the three littoral states. This allowed for combating piracy at its source. Combating piracy at its source was a key concept in the counter-piracy effort in the Strait of Malacca (Ong-Webb 2006, xxix-xxx). Until Somalia has a functioning government able to provide the required level of governance and security on the landward side of the littoral, efforts to counter piracy on the seaward side will have a minimal impact.

2. Continue efforts to train and equip merchant vessels to defend themselves. A priority should be placed on passive defense measures as they will most likely provide the greatest benefit with the smallest cost and least amount of danger to the mariner. The

successful defeat of a pirate attack by the *M/V Maersk Alabama*, in November 2009, demonstrates the effectiveness of self defense. But, the arming of merchant mariners or the deployment of military teams on merchant ships raises issues that still need to be addressed (Straziuso 2009).

3. An area of further study may be an attempt to quantify the cost of the implemented strategy and its realized monetary benefit. This would allow a cost benefit analysis of the effort to combat piracy. The ability to correctly assess the cost and the monies saved by preventing piracy will be imprecise at best, but it may still be useful in deciding the worthiness of a specific course of action. Significant saving could be realized by analyzing for and reducing redundancies in the concurrent counter-piracy operations being conducted by the United States, European Union, and NATO.

APPENDIX A

INNOCENT PASSAGE: UNCLOS Articles 17 thru 21

Article 17 *Right of innocent passage*

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

Article 18 *Meaning of passage*

1. Passage means navigation through the territorial sea for the purpose of:
 - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
 - (b) proceeding to or from internal waters or a call at such roadstead or port facility.
2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 19 *Meaning of innocent passage*

1. Passage is innocent as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
 - (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - (b) any exercise or practice with weapons of any kind;
 - (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
 - (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
 - (e) the launching, landing or taking on board of any aircraft;
 - (f) the launching, landing or taking on board of any military device;

- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of willful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.

Article 20

Submarines and other underwater vehicles

In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 21

Laws and regulations of the coastal State relating to innocent passage

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
 - (a) the safety of navigation and the regulation of maritime traffic;
 - (b) the protection of navigational aids and facilities and other facilities or installations;
 - (c) the protection of cables and pipelines;
 - (d) the conservation of the living resources of the sea;
 - (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
 - (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
 - (g) marine scientific research and hydrographic surveys;
 - (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.
2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.
3. The coastal State shall give due publicity to all such laws and regulations.
4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

APPENDIX B

TRANSIT PASSAGE: UNCLOS Articles 37 thru 40

Article 37 *Scope of this section*

This section applies to strait which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

Article 38 *Right of transit passage*

1. In strait referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

Article 39 *Duties of ships and aircraft during transit passage*

1. Ships and aircraft, while exercising the right of transit passage, shall:
 - (a) proceed without delay through or over the strait;
 - (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress;
 - (d) comply with other relevant provisions of this Part.
2. Ships in transit passage shall:
 - (a) comply with generally accepted international regulations, procedures

- and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;
- (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.
3. Aircraft in transit passage shall:
- (a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
 - (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40
Research and survey activities

During transit passage, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the States bordering strait.

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