

P r o c e e d i n g s
16th IAMU Annual General Assembly
Opatija, Croatia, 2015



Sveučilište u Rijeci
Pomorski fakultet Rijeka
University of Rijeka
Faculty of Maritime
Studies Rijeka



IAMU

International Association of Maritime Universities

THE CONTINUING CHALLENGE OF MARITIME PIRACY: WILL WHAT WORKED IN SOMALIA WORK IN THE NEW PIRACY “HOT SPOTS”?

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Abstract. Up until very recently, the focus of the international maritime sector has been on the prevention and protection against maritime piracy off the coast of Somalia. However, beginning in 2014, pirate attacks tended to be concentrated more in the Strait of Malacca region and the Gulf of Guinea. This paper addresses the efficacy of the measures adopted to deter and prevent pirate attacks in the Horn of Africa, and assesses their transferability to other parts of the world. The paper concludes that many of the measures that were successful against Somali piracy will be problematic if implemented in other parts of the world.

Key words: maritime piracy, task forces, PCASPs, armed guards, best management practices

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1 INTRODUCTION

For nearly all of the past ten years, the focus of the global maritime security community has been on challenge of maritime piracy off the coast of Somalia. With attacks committed by Somali pirates reaching an all-time high in 2011 (with over 160 attacks directly attributed to Somali pirates), the numbers have since dropped dramatically to the point where there have been almost no successful attacks committed by Somali pirates in the first months of 2015.

Regrettably, the decline of Somali piracy has not meant that global piracy is on the decline in every other region of the world. Rather, we have seen a significant rise of maritime piracy in the region of the Strait of Malacca, and piracy in the Gulf of Guinea and off the coast of Nigeria remains a significant concern – not only for regional maritime shipping (and fisheries) but for offshore energy infrastructure as well, as seaborne exploration and drilling continues to develop and expand.

The essential question is this: Are the programs and procedures that worked so well in reducing Somali piracy *transferable* to other parts of the world? This pa-

per argues that the political and legal climates are different in the Gulf of Guinea and the Malacca region, and that this will make the implementation of the solutions that worked so well in reducing Somali piracy extremely difficult, if not impossible.

1.1 The current state of maritime piracy

Global maritime piracy has fluctuated in a cyclical pattern from 2002 (when records first began to be kept by the International Maritime Bureau) through 2014. As can be seen by the figures presented in Figure 1, we are currently in a period of low numbers of maritime attacks globally, with 245 attacks reported in 2014, the second lowest year since records have been kept (Table 1).

Table 1, however, shows that while global attacks may be in a period of decline, there have actually been rises in the number of attacks in some regions of the world.

During this time, attacks by Somali pirates dropped by 95%, from 237 in 2011 to only 11 reported attacks in 2014. At the same time, attacks in and near the Strait of Malacca rose from a low of 60 in 2010 to more than

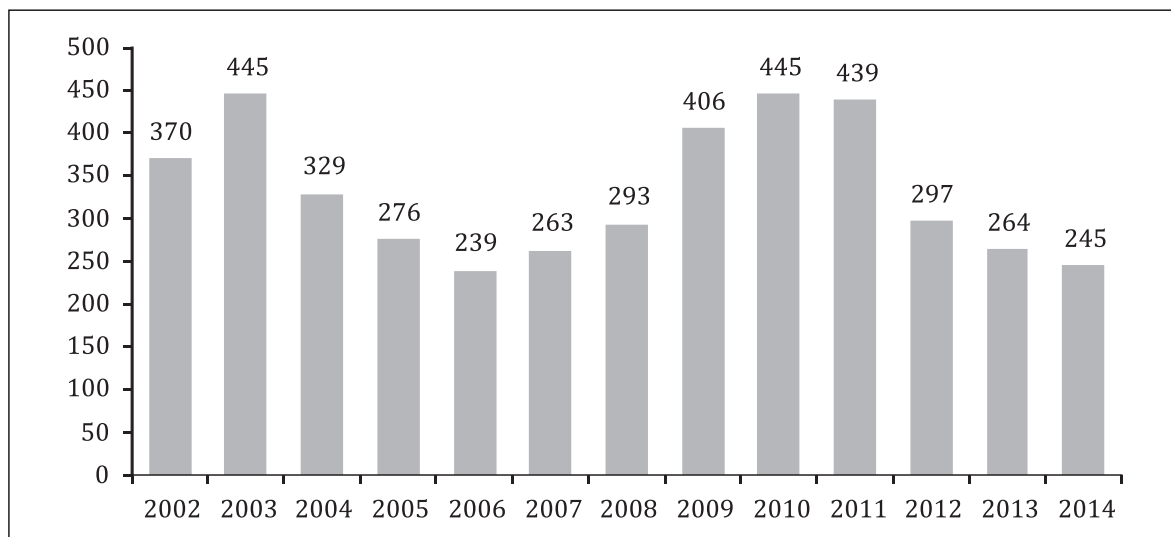


Figure 1 Global Maritime Piracy: 2002-2014 [1]

Table 1 Attacks by Regional “Hot Spot”: 2010-2014 [1]

Year	Attacks by Somali Pirates	Attacks in the Gulf of Guinea	Attacks in the Malacca Region
2014	11	18	133
2013	17	31	125
2012	75	37	95
2011	237	33	63
2010	219	28	60

double by 2014, with 133 attacks. And during the same time, while Nigerian piracy seems to have declined, it is well-known that pirate attack statistics in Gulf of Guinea are generally (and often substantially) under-reported and are, therefore, less reliable.

Given the dramatic decline in the number of attacks by Somali pirates, the potentially disturbing rise of attacks in the Strait of Malacca, and the continued threat from Nigerian pirates, it is important to know how and why such dramatic declines were achieved in Somalia, and whether there are lessons learned that can be applied to other “pirate hot spots” of the world.

2 THE DECLINE OF SOMALI PIRACY IN THE HORN OF AFRICA

How global shipping and the international community were able to force this reduction in Somali piracy is an impressive success story. More than a dozen nations contributed to the international task forces operating off the coast of Somalia; also, many nations individually deployed naval assets to the Horn of Africa region to protect the merchant ships flying their own flags. Additionally, many ships and shipping companies developed and implemented “best management practices” (BMPs); the use of these most successful strategies culminated in *BMP4: Best Management Practices for Protection against Somalia Based Piracy, Suggested Planning and Operational Practices for Ship Operators and Masters of Ships Transiting the High Risk Area*. Lastly, many shipping companies began to deploy armed security teams on their vessels; to date, no ship deploying these “privately-contracted armed security personnel” (PCASPs) has been successfully captured by pirates.

2.1 International task forces

On June 2, 2008 the UN Security Council unanimously adopted Resolution 1816 authorizing foreign military vessels to enter Somalia’s territorial waters to use “all necessary means” to combat maritime piracy “in a manner consistent with international law” [2]. Soon afterwards, three separate naval task forces operated in the Gulf of Aden with the mission of combating maritime piracy: Combined Task Force 151, the European Union’s Operation Atalanta, and NATO’s Operation Ocean Shield. At the same time, the naval forces of additional countries operating independently from the task forces have offered significant and cooperative anti-piracy support in the region as well. These include naval deployments from Russia, India, China and Iran.

CTF 151 was established in January 2009 to “disrupt piracy and armed robbery at sea and to engage

with regional and other partners to build capacity and improve relevant capabilities in order to protect global maritime commerce and secure freedom of navigation” [3]. It is a multinational force operating to protect merchant vessels in over one million square miles off the coast of Somalia in the Gulf of Aden and Indian Ocean; in conjunction with the European Union Naval Force Somalia (EU NAVFOR), the North Atlantic Treaty Organization (NATO), and together with independently deployed naval ships, CTF 151 helps to patrol the Internationally Recommended Transit Corridor (IRTC) in the Gulf Aden.

EU NAVFOR’s Operation Atalanta was formed in December 2008, with the initial objective of protecting the relief vessels of the UN World Food Programme. Additional mission components have included: 1) The protection of shipping in support of the African Union Mission in Somalia (AMISOM); 2) The deterrence, prevention and repression of acts of piracy and armed robbery at sea off the Somali coast; 3) The protection of vulnerable shipping off the Somali coast on a case by case basis; and 4) Monitoring of fishing activities off the coast of Somalia.

Working alongside CTF 151 and Operation Atalanta, NATO’s Operation Ocean Shield (formed in 2008) was the third leg of the multi-national counter piracy mission and has provided “naval escorts and deterrence capabilities, while increasing cooperation with other counter-piracy operations in the area in order to optimize efforts and tackle the evolving pirate trends and tactics” [4].

In addition to the multi-national task force efforts, several countries independently contribute to the global fight against Somali piracy. These include China, India, Russia and Iran. Working in communication and cooperation with the task forces, the navies of these countries have also been responsible for a number of successes against Somali pirates; including the capture and arrest of pirates and rescue of ships under attack.

In early 2014, the near unanimous conclusion reached by the international community has been that the task forces and independent navies have made a significant dent in the success and will of the Somali pirates. Several high profile rescues – including that of the Maersk Alabama – have made it clear that engaging in piracy has increasingly high costs – from being arrested, tried and imprisoned, to loss of life.

2.2 Best management practices

The currently-recommended best management practices contain three fundamental requirements for vessels transiting the Horn of Africa region: 1) Ships should register with the Maritime Security Centre – Horn of Africa (MSCHOA) prior to entering the High

Risk Area;¹ 2) upon entering they should report to the United Kingdom Maritime Trade Operations (UKMTO) located in Dubai, and 3) during transit they should implement Ship Protection Measures (SPMs) [5].

While an essential component of BMP4 is that merchant ships transiting the High Risk Area liaise with naval and military forces operating in the region, it is well-understood that the SPMs are integral to the deterrence and prevention of successful pirate attacks. While specific SPMs will vary from ship to ship, general recommendations detailed in BMP4 include: 1) Watchkeeping and enhanced vigilance; 2) enhanced bridge protection; 3) control of access to bridge, accommodation and machinery spaces; 4) the use of physical barriers, water spray, alarms and foam monitors to deny access; 5) maneuvering practice; 6) CCTV and upper deck lighting; 7) denial of the use of ship's tools and equipment, and protection of equipment stored on the upper deck; and 8) safe muster points/citadels [5].

The objective of these measures is to "avoid, deter and delay" successful pirate attacks [5] More specifically, ships are urged to take action to ensure they: 1) are not alone when transiting high risk areas; 2) are not detected by pirates; 3) are not surprised by pirates; 4) are not vulnerable to attack; 5) are not boarded; and 6) if boarded, are not controlled [5]. Contacting regional authorities prior to, and during transit ensures that ships are not alone during transit of high-risk areas. Being aware of the latest reports of pirate activity and details of where pirates are operating reduces the risk of detection by pirates. The use of good watchstanding practices, radar, CCTV and other detection aids, reduces the risk of surprise if pirates are targeting the vessel. "Hardening" the vessel with razor wire, water cannons and similar anti-boarding measures makes the ship appear less vulnerable, and therefore less likely to be attacked as pirates are known to target less visibly prepared vessels. If the ship is targeted, increasing to maximum speed and performing evasive maneuvers can significantly reduce the likelihood of an actual boarding. Lastly, the use of citidels and safe rooms, and denying the pirates the use of key tools, machinery and equipment can help make it less likely that the pirates will actually be able to control the vessel.

The practiced use of these and similar measures have helped to mitigate the chances that pirates will be able effectively to seize control of the vessel and sail it to a pirate safe haven, even if the pirates are able to detect the ship and are successful in boarding.

2.3 Armed security teams

To provide an additional degree of security, some shipping companies are now deploying private armed security teams on their vessels during transits of high-risk areas. Also known more formally as "privately-contracted armed security personnel" (PCASPs), they are very expensive to deploy and as such outside the reach of many shipping companies. This said, the effectiveness of these teams is not in dispute as no ship to date has been successfully captured when an armed security team has been onboard the vessel.

The goal of the PCASP teams is very straightforward: If there is fear of imminent attack by pirates, the armed teams take all necessary measures – up to and including lethal force – to repel the attack and if the attack cannot be prevented, to ensure pirates do not seize control of the vessel. While pirates have managed to board some ships deploying security teams, the teams have always been successful in denying control of the vessel to the pirates.

It must be noted that international law is not entirely clear-cut on the use of PCASP teams, even in international waters, as details of liability should someone (ship crew, security personnel or pirate) be injured or killed. And while it is clear that the master of the ship has full command and authority over the vessel at all times, it is the PCASP team leader – and not the ship's captain and master – that makes the strategic and tactical decisions regarding the operational details of the PCASP team, including the decision to use armed and lethal force. It is important to reiterate that these "grey areas" of authority and responsibility have yet to be worked out fully in domestic and international law. However, these legal ambiguities have not prevented the use of PCASP teams, primarily because their use almost guarantees that the ship will not be captured successfully.

The combination of these three global efforts – the international task forces, best management practices, and the deployment of PCASPs – is widely agreed to be the primary reason for the dramatic decline of maritime piracy off the Horn of Africa.

3 THE TRANSFERABILITY OF SOMALI SOLUTIONS

According to the International Maritime Bureau [1], six countries accounted for 75% of all global attacks in 2014:

Indonesia: 100	Bangladesh: 21	India: 13
Malaysia: 24	Nigeria: 18	Singapore Straits: 8

The question, then, is are the practices and operations that worked in Somalia transferrable to these ar-

¹ An area bounded by Suez and the Strait of Hormuz to the North, 10 °S and 78 °E

eas of the world where attacks by maritime pirates are either persistent or increasing?

3.1 International task forces

The success of the international task forces in Somalia rested on both the will to operate in the region, and the capacity to operate in both territorial and international waters. While nearly all attacks by Somali pirates occurred in international waters, in most cases the majority of attacks in 2014 in the current hot spots occurred in *territorial waters* while berthed or at anchor [1]:

Indonesia: 72%	Bangladesh: 85%	India: 100%
Malaysia: 46%	Nigeria: 60%	Singapore Straits: 0%

UN Resolution 1816 gave the task forces permission to operate in Somali territorial waters only; they cannot be deployed legally to the territorial waters of other regions of the world unless specifically invited to do so by the state(s) in which the attacks are occurring. For a number of reasons beyond the scope of this paper, it is highly unlikely they would be given permission to do so, even if the nations contributing to the current task forces were willing to commit to anti-piracy operations in other parts of the world.

3.2 Best management practices

While many of the best management practices outlined above would be essential to the safety and security of vessels operating in the Gulf of Guinea and Strait of Malacca regions, some would be problematic. The use of good watchstanding practices would continue to be critical in these regions in ensuring that any pirates attempting attack are spotted when there is still sufficient time for effective vessel response. Hardening options, as detailed above, could still be useful as pirates are known to target vessels that seem less well protected, than those appearing less vulnerable. The use of citadels and other safe areas on the ship would also be important to reduce the risk of injury or death to the crew, should the vessel be successfully captured. This is important to note as deaths and injuries do occur in the Gulf of Guinea and Strait of Malacca regions, and the waters off the coast of Nigeria have been known as “the most dangerous in the world” for mariners.

However, it is the recommendation that if the ship is targeted, it should increase to maximum speed and perform evasive maneuvers that will be problematic in areas where piracy is currently concentrated. There is little to no room for maneuver or increased speed in the Strait of Malacca, or even in waters in or proximate to Nigeria where ships are heading towards anchorage. Ships transiting Somali pirate areas were in transit

only, and in nearly all circumstances had the seaway to outrun pirate attacks, and perform effective evasive maneuvers.

3.3 Armed security teams

The use of privately contracted armed security personnel (PCASPs), while expensive, have proven to be a near perfect deterrent against a successful vessel capture by pirates. While pirates may be able to board the vessel, there are no known instances where they were able to take the vessel hostage when a security team was onboard. However, the use of armed guards is likely to be extremely problematic, absent significant changes to littoral state and port-state domestic law, given that the presence and use of armed guards on merchant vessels may be illegal under many circumstances in the territorial waters of many countries in the world.

For example, in October 2013, the crew and 25 guards aboard the *Seaman Guard Ohio*, an armed ship operated by a US maritime security firm, were arrested for failing to produce papers authorizing it to carry weapons in Indian waters [6]. While the charges were subsequently dismissed in July 2014, on the grounds that the ship was in Indian waters “out of necessity” [7] as it was seeking to avoid Cyclone Phailin, this in no way has created a precedent for the use or presence of armed teams within the territorial waters of India.

Additionally, in June 2014, a vessel sailing within Nigerian territorial waters was arrested by the Nigerian Navy for employing armed guards provided by the Nigerian Police. There are significant jurisdictional issues between the Nigerian Police and the Nigerian Navy, and vessels have been warned that they “may be at risk of potentially significant liabilities and delays if they employ armed guards on board their vessels who are sourced from the Nigerian Marine Police, the Nigerian Police or the ‘Joint Task Force’” [8].

4 CONCLUSION AND RECOMMENDATIONS FOR THE FUTURE

Given some of the problems outlined within this paper, the global shipping community must develop new and *regionally-specific* strategies to protect their ships and maritime trade from pirate attacks in *all* parts of the world. Furthermore, it is incumbent on the world’s MET institutions to ensure future mariners are prepared to deal with piracy (within the context of STCW and the Manila Amendments) no matter where in the world it should occur.

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