

Future Scenarios and Future Threats: What Happens if Piracy is not Controlled, and How Might Manifestations Change?

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Introduction

Piracy is a crime of opportunity that is able to exploit gaps in an international political and economic system that is far from seamless. Four trends — state failure, changing economic geography, the absence of effective regional maritime security regimes, and technological proliferation — drive the spread of piracy. It is likely that unless these trends are addressed effectively, existing outbreaks will continue and spread to new areas. This paper will explain why.

Changing Dynamics of Piracy

Piracy is a crime of the land that is manifested at sea. The belief that it can be suppressed solely at sea is largely illusory and will remain so, as long as littoral havens remain unaddressed. Piracy exploits the political, legal, cultural and geographical seams in the world's international political and economic order, principally by working the line where the law of nation states meets international law. It benefits from confusion over the distinction between the criminal and the political, and creates space for itself when that distinction collapses. Action to suppress piracy, if it is to be successful, needs to be flexible enough to combine law enforcement and foreign relations, police methods and military action. Unfortunately, this coordination appears to be increasingly difficult to realize. Whereas once such action was within the reach of nations with the vital combination of interest, will and power, resolution is now devolved to multinational institutions and operations reduced, almost by definition, to “lowest common denominator” measures.

Piracy arises in response to the opportunity opened up by seven basic factors.¹ Not all of these may be present on every occasion, but in general, they can be summarized as follows:

- Inadequate security: On land as much as at sea, this is probably the single most salient reason for the rise of piracy.
- Legal and jurisdictional openings: The most obvious opening is the difference between territorial and international waters, but sea areas with disputed maritime boundaries, such as the South China Sea, can provide others.

- Favourable geography: Traditionally, this has entailed physical features such as narrow seas with concentrated shipping lanes close to areas where pirates can hide. However, patterns of *economic* geography can shift, turning physically favourable coasts without significant passing traffic into pirate hunting grounds when shipping patterns change.
- Conflict and disorder: Piracy broke out off the coasts of Lebanon and Somalia during and after the civil wars in those states, even though neither had suffered from piracy previously. Piracy in the Gulf of Aden might further increase if Yemen were to fragment.
- Permissive political environment: Piracy will flourish where national or regional political elites and their agents in the police or military choose to tolerate or support it.
- Maritime tradition: Economically and politically marginalized populations who are familiar with the sea, such as those in Indonesia's Riau Archipelago and East Kalimantan, can serve as pools of labour and expertise.
- Reward disproportionate to risk: Without the pull of lucrative payoffs, piracy would not happen.

Stretching back from today through time immemorial, pirates have been able to exploit these basic factors using three primary operational dynamics — mobility, their opponents' lack of political will, and access to sanctuary.

Mobility: Contemporary pirates in Southeast Asia have exploited mobility by moving from one jurisdiction to another to avoid arrest, while pirates off Somalia have shifted the locus of their operations from the Indian Ocean to the Gulf of Aden, and then back again, to elude naval patrols.

Absence of political will: Similarly, piracy has benefited from reluctance by states to suppress it. This weakness of political will usually stems from the fact that while pirates attack the ships of all nations, they have rarely inflicted sufficient damage on the shipping of any one particular nation for it to take action on behalf of others. The absence of a political or economic imperative to counter piracy continues to animate state behaviour today.

Sanctuary: States have always been understandably reluctant to interfere in the internal affairs of any other state, even if it harboured pirates, preferring to rely instead on the hope that internal security or political circumstances would change. Today, this reluctance extends to states that have failed, and which have little chance of enforcing the rule of law

without external assistance. Land-based military operations are foresworn, but so are attempts to use the levers of political and economic influence to restrict pirate operations. Whenever pirate attacks have been launched from a state which can be pressured or incentivized to take action against them, as was the case with Indonesia, then piracy can be controlled if not suppressed completely. Whenever piracy has been launched from a failed state such as Somalia, or a weakened state such as Nigeria, pirates have enjoyed varying degrees of sanctuary, because such states are less amenable to either bargaining or state-system restraint. As the number of failed states or states with portions of poorly governed coastlines increases, providing rewarding targets are available, piracy could well rise.

These three “traditional” dynamics have now been supplemented by three of more recent origin — judicial constraints, lack of ship self-protection, and technological proliferation.

Judicial constraints: While the capacity of legal systems has always been an issue — reflect, for example, upon the role of judicial incapacity in the rise of piracy in the English colonies prior to the legal and administrative reforms starting in 1696 — there is now a marked reluctance among states to take action against pirates. While the body of international law on piracy may not be ideal, it is good enough. For the most part, the problem is rooted in domestic legislative shortcomings: anti-piracy laws that are absent, out of date, incomplete or poorly worded, complicated in some cases by court rules and human rights legislation that take no account of the tyranny of distance imposed by the sea. In some cases, the prospect of a few years in a Western jail can appear an attractive alternative to someone used to a harsher existence. Off Somalia, these factors have combined to drive a policy of “catch-and release,” which invites contempt amongst its intended targets. This dynamic is exacerbated in every case where the sea and the land are controlled by different powers with different priorities.

Lack of ship self-protection: Ships and the sailors that man them are no longer used to protecting themselves. Changing that means reversing an ingrained trend that began in the 18th century. Even in the face of a clear and present danger off Somalia, the International Maritime Organization (IMO) recently estimated that fully 80 percent of ships took no precautions against pirate attack. This needs to change, but except in cases where ship owners find it economical to deploy armed guards, it is only effective as part of a comprehensive security policy which can deliver assistance quickly. Moreover, many of the most vulnerable ships, often owned by the poorest ship owners, are too small and too slow to take effective precautions.

One word of caution needs to be inserted at this point. If more ships are forced to take responsibility for their own defence, then the standards of that defence will become more variable, with a consequent rise in the number of injuries and accidents.

Technological proliferation: Pirates are benefiting from the steadily falling cost of maritime technology. Starting in Southeast Asia after World War II, pirate mobility began to improve dramatically with the wide availability of military surplus engines. This has continued with the development of ever more powerful and economical outboard motors. The wider availability of compact radars, GPS receivers and satellite phones has brought about a step change in piracy surveillance, navigation, and command-and-control capabilities. The cost of small arms is now so low that pirates will willingly throw AK-47s over the side when approached, knowing full well that a replacement can be bought for a few dollars when they return home.

This combination of basic factors, which couples well-established factors with more recent operational dynamics, suggests that while still not assured, the spread of piracy is more likely than most observers imagined even five years ago. It is instructive to note that off the coast of Somalia, the overall numbers of ships and seamen held captive have increased, while per ship ransoms have climbed as well—all at the same time that the numbers of naval vessels and aerial assets on station have grown, judicial capacity in regional states has improved, and the number of successful interceptions has increased. This suggests that the critical “seam” is the one dividing the land from the sea, and that piracy can only be suppressed successfully when both sides of the seam are controlled by a state willing and able to make effective piracy suppression a priority, or by two states that can work in accord.

Future Scenarios

If, as seems entirely possible, more states fail or lose effective control of portions of their coastlines, and if economic geography changes in ways that bring rewarding targets closer, then piracy may well occur in new areas. That possibility is enhanced if state failure or loss of control is brought about by, or results in, violent conflict. The continent most at risk would appear to be Africa, with areas along the west coast particularly vulnerable to a number of actors — politically and tribally motivated insurgents, smugglers, traffickers and pirates — coming together to create a complex milieu of disorder. Any growth in the number of ungoverned spaces would appear to be well suited to the expansion of the Somali model, with its emphasis on hostage taking rather than cargo theft. However, the persistence of piracy in Southeast Asia suggests that deeply rooted cultural traditions, uneven economic

growth rates and poor maritime security continue to make piracy an attractive option for some social groups there too.

The Somali gangs have also engineered the return of deep-water piracy. They have done so because they need to go where the ships are. The ships have moved away from the Somali coast to the point that some hug the coastline of India because maritime security in the Arabian Sea is spread so thinly. So long as suppression remains focused on legal constraints exercised through naval assets, rather than on the elimination of land-based sanctuaries, and so long as it is safer for a pirate team to transit the vast Indian Ocean than it is for commerce to transit the same waters, then deep-water piracy is likely to continue. In fact, it may well become more sophisticated as profits rise, perhaps with pirates looking at historical examples for tactical guidance. At the beginning of World War II, for example, distant German U-boat operations were sustained by a small fleet of freighters that rendezvoused with the submarines to provide them with supplies and unload the crews of the ships they had sunk. On January 12, 2011, pirates attacked the *Leopard*, a general cargo vessel, 270 nautical miles northeast of Socotra Island in the Indian Ocean. Unable to sail their prize back to Somalia, they transferred the crew to their mothership and took them to Somalia. Is this type of multi-vessel tactical coordination an early indication of things to come?²

Despite a lack of credible evidence, the existence of a pirate-terrorist nexus has been asserted regularly. Admittedly, those who argue this gap can and will be bridged can point to other instances of cooperation between criminals and terrorists that provide some grounds for their belief. In most cases, however, terrorists have adopted criminal methods without direct recourse to assistance from criminals themselves. The Colombian FARC group uses the proceeds of crime to finance its operations. Likewise, Sri Lanka's Tamil Tigers and various Moro insurgent groups in the southern Philippines have engaged in piracy. On the other hand, criminals cooperated with Al-Qaida in Iraq; moreover, whereas "traditional" organized crime groups such as the Cosa Nostra and the Yakuza have not worked with terrorists, it appears that a new generation of criminals has emerged that is less wary of such links. So far at least, this subculture has not yet included maritime pirates.

Conclusions

The prospects for piracy are worryingly good. The spread of land-based disorder makes offshore disorder more likely. Cooperation between pirates and terrorists is possible, depending upon local circumstances, but remains unlikely and unnecessary from the pirates'

perspective. The inherent mobility of piracy suggests that solutions depend upon the development of *regional* maritime security regimes whose members recognize that suppression depends upon land-based action to reduce the economic incentives and raise the disincentives for piracy's growth. So long as the international community remains wedded to sea-based solutions and reluctant to intervene on land, piracy is likely to continue. Last, so long as the international piracy effort continues to stress defence, thereby conceding the initiative to the pirates, pirate successes — and perhaps spectacular ones — must be viewed as highly probable.

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¹ Based on the typology in Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World* (New York and London: Columbia University Press, 2009), 28-45.

² ICC Commercial Crime Services, "Latest Attack Changes Dynamic of Somali Piracy," January 14, 2011, <http://www.icc-ccs.org/news/428-latest-attack-changes-dynamic-of-somali-piracy>; Eoin O' Cinneide, "'Arms' Ship Feared Hijacked," *Tradewinds*, January 13, 2011, <http://www.tradewinds.no/casualties/article573886.ece?service=printArticle>.